

REPORT OF  
THE INDEPENDENT MONITOR  
FOR THE  
DETROIT POLICE DEPARTMENT



**Kroll**

*Office of the Independent Monitor  
of the Detroit Police Department*

REPORT FOR THE QUARTER ENDING  
MAY 31, 2005

ISSUED JULY 15, 2005

## **EXECUTIVE SUMMARY**

On June 12, 2003, the United States Department of Justice (DOJ) and the City of Detroit (City) (collectively, the parties) filed two Consent Judgments (CJs) with the United States District Court for the Eastern District of Michigan (Court).<sup>1</sup> The Consent Judgments were negotiated and agreed to by the parties. On the same date, the parties filed a motion indicating the joint selection of an Independent Monitor, subject to the Court's approval, to "review and report on the City and the DPD's [Detroit Police Department's] implementation"<sup>2</sup> of the Consent Judgments. On July 18, 2003,<sup>3</sup> the Court entered both Consent Judgments. On July 23, 2003, after hearing testimony concerning qualifications, the Honorable Julian A. Cook, Jr., U.S. District Court Judge, appointed Sheryl Robinson, with the assistance of Kroll, Inc., as the Independent Monitor in this matter. This is the seventh quarterly report of the Independent Monitor.<sup>4</sup>

During the seventh quarter, which ended on May 31, 2005, the Monitor examined a total of 90 paragraphs or subparagraphs (66 paragraphs or subparagraphs of the UOF CJ and 24 paragraphs or subparagraphs of the COC CJ). Of these, the City and the DPD complied with 5 and failed to achieve compliance with 65; the Monitor withheld its determination of the DPD's compliance with 12 paragraphs or subparagraphs and has not yet completed its evaluation of 8 paragraphs or subparagraphs.<sup>5</sup>

As described fully in this report, during this quarter, the City and the DPD continued to make significant progress in obtaining the DOJ's approval of, and/or disseminating, its policies and related documents:<sup>6</sup>

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<sup>1</sup> The two judgments are the Use of Force and Arrest and Witness Detention Consent Judgment (UOF CJ) and the Conditions of Confinement Consent Judgment (COC CJ).

<sup>2</sup> UOF CJ at paragraph U124 (hereinafter UOF CJ paragraphs will be referenced by "U"). COC CJ at paragraph C79 (hereinafter COC CJ paragraphs will be referenced by "C").

<sup>3</sup> The "effective date" of the Consent Judgments.

<sup>4</sup> The Monitor's quarterly reports may be found on the Internet at [www.krollworldwide.com/detroit](http://www.krollworldwide.com/detroit).

<sup>5</sup> For each of these paragraphs, the Monitor's review and findings as of the end of the quarter are included in this report. The Monitor is mindful that this report is issued some 45 days after the end of the quarter. Therefore, for paragraphs assessed during the current quarter, the Monitor will make every effort to mention significant developments that occurred after the end of the quarter in footnotes throughout the report. For those paragraphs that were not assessed during the current quarter, developments that occurred during the current quarter or after the quarter's end will be fully reported on in the next quarter in which the applicable paragraph is under review. There are a higher number of paragraphs that have not yet been evaluated (NYE) in this report due to the fact that the DPD disseminated a number of policies mid-quarter and the Monitor will not test implementation until the next quarter in which the paragraph is under review. This will also provide the DPD with an opportunity to implement the requirements of the paragraph in the field.

<sup>6</sup> Throughout this report, the Monitor will refer to various submissions by the DPD to DOJ and the Monitor by the date of the cover letter or by the date that the Monitor received the document. It is noted that there is often a difference between the cover letter date and the postmark date, ranging usually from several days to a week. The

- The DOJ granted the City and the DPD approval on the following policies: Directive 203.1, *Crime Scene Investigation*; Directive 203.9, *Custodial Questioning*; Directive 304.3, *Chemical Spray*; Directive 304.1, *Firearms*; Directive 305.1, *Detainee Intake/Assessment*; Directive 305.5, *Detainee Health Care*; Directive 305.7, *Transportation of Detainees*; *Guidelines for Detainee Screening*; and Directive 403.2, *Infectious Disease Control*. The DOJ provided conditional approval for Directive 304.4, *PR-24 Collapsible Baton* pending the adoption of additional recommendations.<sup>7</sup>
- The DOJ granted the City and the DPD approval on the following training directives: Training Directive 04-2, *Positional Asphyxia*; Training Directive 04-3, *Use of Force Continuum*; and Training Directive 04-5, *Detainee Suicide Prevention: Managing the Risk*;
- On March 22, 2005, the DOJ extended a letter of conditional approval to the DPD related to the Comprehensive Medical and Mental Health Screening Program, including the Detainee Intake Form.<sup>8</sup> The DOJ also approved the following forms, logs and other documents: Placard (flowchart) with Guidelines for Prisoner Screening; DPD 651, *Detainee Intake Form – revised*; *Detainee Medical Care/Referral Form*; DPD 661a, *Mental Health High Risk Monitoring Log*; DPD 661, *Medical Health High Risk Monitoring Log*; DPD 664, *Detainee Medical Treatment/Medication Disbursement Log*; DPD 662, *Detainee Custodial Care Transfer Log*; and *Authorization for Human Immunodeficiency Virus and Hepatitis Testing and Medical Records Release*.
- The DPD submitted or resubmitted Directive 102.4, *Discipline*; Directive 102.6, *Citizen Complaints*; Directive 202.7, *Foot Pursuit*; Directive 303.3, *In-Car Video Camera*; Training Directive 04-7, *Use of Force Reporting and Investigations*; the Disciplinary Matrix; and the External Complaints and Office of the Chief Investigator In-Service Training Manual.
- According to the DPD, the following policies and training directives were disseminated during this quarter:<sup>9</sup> Directive 202.7, *Foot Pursuit*; Directive 102.3, *Code of Conduct*; Directive 202.1, *Arrests*; Directive 202.2, *Search and Seizure*; Directive 203.1, *Crime Scene Investigations*; Directive 203.9, *Custodial Questioning*; Directive 304.1, *Firearms*; Directive 304.2, *Use of Force*; Directive 304.3, *Chemical Spray*; Directive 305.1 *Detainee Intake*; Directive 305.3, *Detainee Property*; Directive 305.4, *Holding Cell Areas*; Directive 305.5, *Detainee Health Care*; Directive 305.6, *Bonding*; Directive 305.7, *Detainee Transportation*; Directive 403.2, *Infectious Disease*; Training Directive 04-1, *Confinement of Material Witnesses*; Training Directive 04-2, *Positional Asphyxia*; Training Directive 04-3, *Use of Force Continuum*; and Training Directive 04-5, *Detainee Suicide Prevention*.

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cover letter date is not meant to indicate when the DOJ or the Monitor actually received the submissions. The DPD is now making a number of its submissions by email.

<sup>7</sup> The DPD has since incorporated the DOJ's additional recommendations.

<sup>8</sup> The conditional approval related to two wording revisions identified by the DOJ. The DPD has since completed those revisions.

<sup>9</sup> The Monitor will test dissemination of these policies during the quarter ending August 31, 2005.

In addition to the above-described progress related to policies, training directives and related material, the DPD made progress in the following areas during the quarter:

- The Chief of Police is taking an active interest in the effectiveness of the DPD's Audit Team, and is currently implementing changes to its audit management processes in an effort to improve the timeliness, quality and effectiveness of its audits.
- The reorganization of the DPD's Civil Rights Division has resulted in an entity in which the leadership is more responsive than ever before. The turn-around time for policy revisions is excellent.
- The City and the DPD have continued to make progress toward the development of the risk management database including the Management Awareness System and Interim Management Awareness System. According to the DPD, the Interim Management Awareness System has been developed with DOJ's input, and DPD personnel are currently being trained on its use.<sup>10</sup>

Major areas of concern identified during the quarter ending May 31, 2005 include the following:

- Although the Monitor has seen some improvements, the Monitor identified qualitative deficiencies with all 3 of the audits evaluated this quarter. A total of 14 non-compliant audits have now been submitted since October 2004.
- There are 21 audits that are either overdue or have been skipped since the inception of the Consent Judgments in July 2003: 9 were required to be submitted by January 31, 2004, 6 by August 31, 2004, and 6 by January 31, 2005.
- In connection with certain requirements of the COC CJ, the DPD has recently demonstrated a potential lack of sustained compliance in some of the areas where it had previously achieved compliance.
- The Monitor reviewed a sample of OCI investigative files and determined that it is taking an average of 168 days to complete the investigations. The UOF CJ allows for 60 days to complete these investigations.<sup>11</sup> The Monitor also determined that the Significant Event Logs within the case files were not being filled out in a complete or consistent manner. As a result, it is difficult to determine how an investigator's time is being spent on a particular file. The OCI is undertaking a review of its staffing levels and case management issues to determine whether the length of time it is taking to complete investigations is related to staffing shortages, time management, or a combination thereof.

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<sup>10</sup> The Monitor will evaluate paragraph U89, which covers the Interim Management Awareness System, during the quarter ending August 31, 2005.

<sup>11</sup> The Detroit City Charter allows for 45 days to complete these investigations.

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- A. Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor
- B. “Report Card” Summarizing the Monitor’s Evaluation of Compliance with the Consent Judgments as of the Quarter Ending May 31, 2005

## SECTION ONE: INTRODUCTION

### I. BACKGROUND

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On June 12, 2003, the DOJ and the City filed two Consent Judgments with the United States District Court for the Eastern District of Michigan. The Consent Judgments were negotiated and agreed to by the parties. On the same date, the parties filed a motion indicating the joint selection of an Independent Monitor, subject to the Court's approval, to "review and report on the City and the DPD's implementation" of the Consent Judgments. On July 18, 2003, the Court entered both Consent Judgments. On July 23, 2003, after hearing testimony concerning qualifications, the Honorable Julian A. Cook, Jr., U.S. District Court Judge, appointed Sheryl Robinson, with the assistance of Kroll, Inc.,<sup>12</sup> as the Independent Monitor in this matter. This is the seventh report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor<sup>13</sup> outlined the history of the DOJ investigation, the Technical Assistance (TA) letters and the DPD's reform efforts. The Monitor also summarized the complaint filed against the City and the DPD and the overall content of the Consent Judgments.<sup>14</sup> The Monitor's duties and reporting requirements were also described.

As the Consent Judgments require that the DPD achieve and maintain substantial compliance for a specified period of time,<sup>15</sup> the Monitor will review the paragraphs on a periodic schedule over

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<sup>12</sup> The primary members of the Monitoring Team are Joseph Buczek, Ronald Davis, Hazel de Burgh, Ronald Filak, Thomas Frazier, Denise Lewis, Jeffrey Schlanger, David Schoenfeld, and Sherry Woods.

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

<sup>14</sup> Complaint, Case no. 03-72258. The complaint, Consent Judgments and TA letters are publicly available at [http://www.usdoj.gov/crt/split/documents/dpd/detroit\\_cover\\_2.html](http://www.usdoj.gov/crt/split/documents/dpd/detroit_cover_2.html).

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



the life of the Consent Judgments.<sup>16</sup> The paragraphs that were scheduled for review during the seventh quarter, which ended on May 31, 2005, are assessed in this report.<sup>17</sup>

## II. MONITOR'S ROLE

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The Monitor's role is to conduct compliance assessments,<sup>18</sup> make recommendations, provide TA and report on the DPD's progress toward substantial compliance with the Consent Judgments on a quarterly basis. The Monitor carries out this role with a healthy respect for the critical role the Department plays in enforcing the law and the significant risks taken by DPD officers each day. The Consent Judgments, which are orders of the Court, are meant to improve the overall policing in the City of Detroit by remedying the unconstitutional conduct alleged by the DOJ in its complaint filed against the City and the DPD. The Consent Judgments can only be modified by court order.

## III. EFFORTS TOWARD COMPLIANCE

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During the seventh quarter, the City and the DPD made significant progress in obtaining approval from the DOJ for a record number of policies and related documents and disseminating a number of policies. The DPD also made progress in revising policies and forms in response to the DOJ's TA and recommendations and TA from the Monitor; the Monitor found that a number of the policies revised by the DPD now meet the requirements of the Consent Judgments. Progress also continues to be made in other areas, as described throughout this report. Unfortunately, once again, these efforts have not yet resulted in substantial compliance, as substantial compliance has several components, generally including policy/procedural revisions, implementation,<sup>19</sup> training/instruction and audit.

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<sup>16</sup> The initial duration of the COC CJ was eight quarters. As previously reported, on December 27, 2004, the Court issued an order granting the City's motion for a two-year extension of the COC CJ; however, the Court did not extend the internal deadlines required under the COC CJ. The Monitor is currently developing a review schedule for the COC CJ paragraphs under the two-year extension; the schedule will be included in the Report Card accompanying the Monitor's Report for the Quarter Ending August 31, 2005. The minimum duration of the UOF CJ is twenty quarters. The Monitor's review schedule does not effect the due dates mandated by the Consent Judgments for the City and the DPD.

<sup>17</sup> As previously mentioned, for the paragraphs under review for this quarter, the Monitor makes every effort to report on significant matters that have taken place after the end of the quarter, although this is not possible in every instance. These occurrences appear in footnotes throughout the report.

<sup>18</sup> Paragraphs U138 and C93 require that the Monitor regularly conduct compliance reviews to ensure that the City and the DPD implement and continue to implement all measures required by the Consent Judgments. The Monitor shall, where appropriate, employ sampling techniques to measure compliance.

<sup>19</sup> Paragraphs U133 and C88 require that the Monitor conduct compliance reviews and additional reviews as the Monitor deems necessary in order to monitor and report on the City and the DPD's implementation of each

As mentioned in our previous quarterly reports, one of the most prevalent initial challenges facing the Department is policy development and revision, which must take place in an effective manner before many of the other reforms can be achieved. After the policy and/or procedural revisions are completed, the DPD must then direct its attention to the applicable implementation, training and auditing components of compliance. The Monitor understands that the City is currently facing significant fiscal issues which appear likely to cause layoffs of police personnel. It is unfortunate whenever individuals who admirably protect and serve the public are relieved of their duties due to layoffs. The City and the DPD are aware of their continuing obligations under the terms of the Consent Judgments and the Monitor is certain that they will endeavor to continue to work toward achieving compliance even if layoffs take place.<sup>20</sup>

As reported in previous quarters, the COC CJ could have terminated two years after its effective date<sup>21</sup> if the City and the DPD had achieved substantial compliance with each of the provisions of the COC CJ by the one year anniversary date of the execution of the agreement.<sup>22</sup> As described in the Background section (Section I.) of this report, on December 27, 2004, the Court granted the City's motion to extend the duration of the COC CJ for two years until an effective deadline of July 18, 2007. The Court wrote that the City, having articulated a detailed plan and schedule for compliance in its motion that was to the satisfaction of the Court, must now demonstrate that it has the commitment and willingness to meet its obligation without any further delays or extensions of time. The Court noted that in granting this motion, it has not and will not relieve the City of any other deadlines that are presently reflected in the COC CJ. The City has indicated that Proposal S, which was approved by City voters on November 2, 2004, will allow for the construction of a central detention facility that will comply with all of the physical requirements contained within the COC CJ. The City previously represented that the new facility will take approximately 24 months to complete and will be ready for use no later than April 2007. The Court recently inquired as to the City and the DPD's progress on constructing the new facility. The City informed the Court that an interim plan for the facility would be forthcoming in 45 days.<sup>23</sup>

#### IV. METHODOLOGIES

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*The Methodologies to Aid in Determination of Compliance with the Consent Judgments (the Methodologies)* generally outline the methods that will be employed by the Monitor to determine

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substantive provision of the Consent Judgments. Paragraphs U132 and C87 require that the Monitor maintain regular contact with the parties in monitoring the implementation of the Consent Judgments.

<sup>20</sup> The Consent Judgments do not address staffing levels at the DPD except with regard to requiring adequate field deployment of supervisors to implement the provisions therein (see paragraph U73).

<sup>21</sup> As previously indicated, July 18, 2003 is the effective date of the Consent Judgments.

<sup>22</sup> Paragraph C106.

<sup>23</sup> The Court's inquiry took place on June 21, 2005.

compliance by the City and the DPD with each substantive provision of the Consent Judgments. The Monitor submitted the *Methodologies* for the UOF CJ to the parties on July 30, 2004. The DOJ and the City and the DPD responded with written comments. The Monitor resubmitted the UOF CJ methodologies during this quarter.<sup>24</sup> The City and the DPD have the Monitor's draft *Methodologies* for the majority of the paragraphs in the COC CJ.

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

## V. REPORT CARD

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As a tool to assist the reader of this report, the Monitor is attaching as Appendix B a "Report Card," which provides a "snapshot" of the DPD's compliance with each of the substantive provisions of the Consent Judgments. It also serves as a tool to summarize the DPD's progress in complying with those provisions. Specifically, the Report Card summarizes the *overall* grade of compliance with each paragraph and subparagraph<sup>25</sup> of the Consent Judgments for the five most recent quarters, including the current quarter, in which compliance has been assessed.<sup>26</sup> The quarter in which the most recent evaluation was made is also indicated, as is the quarter in which the Monitor anticipates conducting the next evaluation of compliance for each paragraph. The next evaluation is estimated based on available information at the date of issuance of this Quarterly Report and accompanying Report Card. These estimated dates are subject to change as information develops and circumstances change.

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<sup>24</sup> The parties will continue to have further discussions regarding the methodologies and revisions will be made on an as needed basis. The parties are scheduling a conference call to further discuss the methodologies during the quarter ending August 31, 2005. The Monitor will attempt to resolve any issues concerning the UOF CJ methodologies before reissuing the COC CJ methodologies.

<sup>25</sup> Although subparagraphs are often specifically identified in the Consent Judgments, the Monitor has split certain paragraphs that include more than one topic. The purpose of this is to facilitate the future evaluation of and reporting on each sub-topic.

<sup>26</sup> The Monitor emphasizes that the Report Card provides summary information and should be read in conjunction with this report so that the reader may obtain a thorough understanding of the level and nature of the DPD's compliance with the provisions of the Consent Judgments.

## VI. FOCUS ISSUES

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### A. CONDITIONS OF THE HOLDING CELLS

As described in Section III above, the Court granted the City's motion to extend the duration of the COC CJ for two years until an effective deadline of July 18, 2007.<sup>27</sup> The Court granted this extension, in part, as a result of the City's submission of a supplemental brief to its motion, dated October 29, 2004, in which the City articulated that compliance would be delayed related only to those paragraphs that require capital expenditures due to required physical remediation. According to the City, this remediation will be accomplished through the construction of a new detention facility that will fully comply with the COC CJ requirements.<sup>28</sup>

In its Order, the Court stated that the DPD must demonstrate that it has the commitment and willingness to meet its obligation without any further delays or extensions of time. The Court also recognized that as of the date of the Court Order, according to the Monitor, the DPD had complied with only four of the sixty-five paragraphs since the effective date of the COC CJ. As of the quarter ending February 28, 2005, the DPD had achieved compliance with a total of five<sup>29</sup> of the 65 paragraphs since the effective date of the COC CJ. The Monitor is now concerned that the DPD has recently demonstrated a potential lack of sustained compliance in some of the areas where it had previously achieved compliance.

During the current quarter, the Monitor accompanied the DOJ and their Fire Safety and Prisoner Safety subject matter experts, and City, Detroit Fire Department (DFD) and DPD executive staff during inspections of all of the DPD's precincts (except for the 9<sup>th</sup> precinct). These inspections were initiated by the DOJ in response to a request by the DPD to exempt the First Precinct and other DPD buildings containing holding cells from certain COC CJ requirements until the new detention facility is constructed. The DOJ also requested these inspections in order to gain a better understanding of the current condition of the holding cells and to facilitate future discussions between the parties related to the interpretation of the term "holding cell" as it is

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<sup>27</sup> The Court granted this extension on December 27, 2004.

<sup>28</sup> In its Report for the Quarter Ending February 28, 2005, the Monitor noted that even though the new facility may meet the COC CJ requirements, until such time that all DPD buildings containing holding cells either meet the requirements of the COC CJ or are no longer used to confine prisoners, the DPD will be unable to achieve compliance with the COC CJ.

<sup>29</sup> The paragraphs that the DPD has previously achieved compliance with are: C20 (enforcement of non-smoking policy), last assessed and found in compliance during the quarter ending February 29, 2004; C39 (cleanliness of the holding cells) last found in compliance during the quarter ending February 29, 2004; C42a (adequate ventilation) last assessed and found in compliance during the quarter ending February 28, 2005; C43 (repair of equipment within the holding cells), last found in compliance during the quarter ending August 31, 2004; C46 (air purification) last assessed and found in compliance during the quarter ending February 28, 2005.

defined in the COC CJ.<sup>30</sup> During the inspections compliance-related issues identified include:<sup>31</sup> evidence of smoking within the First Precinct building in both the basement and in one of the specialized units housed on the 5<sup>th</sup> floor;<sup>32</sup> unsanitary amounts of garbage and unsafe storage of cleaning chemicals located in the basement of the First Precinct; hot and unventilated holding cell areas in several precincts; and inadequate residential-type fire alarm systems installed in the precincts.<sup>33</sup>

In addition to its failure to work in consultation with the DFD by installing alarms that were not pre-approved by the DFD, there has also been at least one instance in which DPD personnel failed to cooperate with the DFD. In this incident, a 9<sup>th</sup> precinct desk officer refused to let the DFD Assistant Fire Marshal behind the desk area of the precinct to re-set the fire alarms. The Assistant Fire Marshal was in full uniform and informed the desk officer that he needed to get to the fire alarm control panel, which was behind the desk area. The officer flatly refused to allow him access to the control panel. The DFD Assistant Fire Marshal reported the incident to the HCCC who immediately addressed the problem.

In addition to these issues, the DPD has not achieved compliance with any paragraphs in the areas of fire safety, emergency preparedness, medical/mental health screening, prisoner safety procedures, and food service.<sup>34</sup> The on-site inspections conducted by the Monitor throughout the course of monitoring the DPD's compliance with the COC CJ have made it clear that some of the buildings that contain holding cells are not being adequately cleaned or maintained.<sup>35</sup>

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<sup>30</sup> As noted in previous the previous quarterly report, the City and the DOJ have differing interpretations of whether the First Precinct maintains a "holding cell" and have been engaged in ongoing discussions relating to the processing and detention of arrestees at the First Precinct. As of the end of the current quarter, the parties had not reached an agreement on the interpretation of the requirements of the COC CJ related to the First Precinct.

<sup>31</sup> Paragraphs C20 (enforcement of non-smoking policy), C39 (cleanliness of the holding cells), C42a (adequate ventilation), and C43 (repair of equipment within the holding cells) are not scheduled for compliance assessments during the current quarter.

<sup>32</sup> Although paragraph C20 prohibits smoking only in holding cells or requires ashtrays and requires that all holding cells areas are constructed and supplied with fire rated materials, the DPD's no-smoking policy, cited in response to this paragraph, prohibits smoking in any DPD building.

<sup>33</sup> These alarms were not pre-approved by the DFD. In fact, according to the DFD, the DPD was advised that these fire-alarms were not sufficient to achieve compliance with the Life Safety Code. The Monitor notes that not only does the COC CJ specifically require the DPD to work in consultation with the DFD, but the Life Safety Code also requires such cooperation.

<sup>34</sup> The Medical/Mental Health and Food Service requirements were evaluated during the current quarter and the Monitor's assessment are included in this report.

<sup>35</sup> The Monitor has found that the DPD has not established an effective systematic process for ensuring that the equipment within the holding cells is repaired in a timely manner. The maintenance issues previously observed by the Monitor, which include broken toilets, sinks and lighting, and heating and ventilation problems, have been described in previous Quarterly Reports.

The Monitor recommends that uniform policies and procedures be instituted and enforced in all precincts as soon as possible. Furthermore, the DPD should increase its efforts to conduct timely audits, which will assist in identifying and correcting issues much like those revealed during the inspections by the DOJ and the Monitor.<sup>36</sup>

## B. AUDIT TIMELINESS & QUALITY

In previous quarterly reports, the Monitor expressed concern that the DPD's audits were not being completed in a timely manner, that audits were being skipped, and that the audits that were completed had qualitative deficiencies. As indicated in the current assessments for the audit-related paragraphs (paragraphs U93-U97 and C65-C72, below), although improvements have been made, those issues and concerns continue.

In an effort to more clearly understand the audit process so as to address the issues identified by the Monitor, the Chief of Police met with the Monitor on May 31, 2005 to receive executive-level training on and discuss the factors impacting the timeliness and quality of the DPD's audits. The topics addressed included: the value and importance of the DPD's audits; the roles of the DPD executive and management staff related to its audits; the type of information that should be included in the DPD's audit reports; review and quality control processes for executive staff and Audit Team management that could improve audit timeliness and quality; the DPD's current leadership and management challenges within its Audit Team; and the nature and extent of training and TA provided to the Audit Team.

The Monitor is pleased with the responsiveness of the DPD Executive Staff and their commitment to take action to improve the timeliness and quality of its audits.<sup>37</sup> The Monitor expects to report on the impact of such changes in future quarterly reports.

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<sup>36</sup> See Focus Issue below entitled "Audit Timeliness and Quality."

<sup>37</sup> On June 24, 2005, the Monitor offered to provide TA to further assist in this process through an in-depth examination of the DPD's processes for scheduling, assigning and managing its audits.

## VII. MONITOR'S PLEDGE

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

To that end, we have provided the parties with interim assessments of compliance throughout each quarter, including the quarter ending May 31, 2005. The Monitor has also made numerous recommendations and provided TA to the DPD as part of its ongoing efforts to assist the DPD in achieving compliance with the Consent Judgments. Furthermore, a draft copy of this report was made available to the parties at least 10 days prior to final publication in order to provide the parties with an opportunity to identify any factual errors,<sup>38</sup> and to provide the parties with an opportunity to seek clarification on any aspect of compliance articulated in this report.

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<sup>38</sup> As required by paragraphs U142 and C97.

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

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This section contains the Monitor's compliance assessments of the UOF CJ paragraphs scheduled for review during the quarter ending May 31, 2005.

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

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

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

This section comprises paragraphs U14-19. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004.<sup>39</sup> The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessments follow.

#### **Paragraphs U14-19 – Revision of Policy (Definition of UOF); UOF Continuum; Opportunity to Submit; Prohibition on Choke Holds; Revision of Policy within 3 Months; Strike to Head Equals Deadly Force**

Paragraph U14 requires the DPD to revise its UOF policies to define force as that term is defined in the UOF CJ.

Paragraph U15 requires the UOF policy to incorporate a UOF continuum that:

- a. identifies when and in what manner the use of lethal and less than lethal force are permitted;
- b. relates the force options available to officers to the types of conduct by individuals that would justify the use of such force; and

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<sup>39</sup> Throughout this report, for those paragraphs assessed and reported on during the current reporting period ("current quarter"), information regarding the Monitor's most recent compliance assessments, and the basis for those assessments, can be found in the "Background" sections of the respective paragraphs.



- c. states that de-escalation, disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements or calling in specialized units are often the appropriate response to a situation.

Paragraph U16 requires the UOF policy to reinforce that individuals should be provided an opportunity to submit to arrest before force is used and provide that force may be used only when verbal commands and other techniques that do not require the UOF would be ineffective or present a danger to the officer or others.

Paragraph U17 requires the UOF policy to prohibit the use of choke holds and similar carotid holds except where deadly force is authorized.

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

Paragraph U19 requires the UOF policy to provide that a strike to the head with an instrument constitutes a use of deadly force.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraphs U14-19 during the quarter ending May 31, 2004, finding the DPD in non-compliance with each. The Monitor concluded that the DPD was in non-compliance with these paragraphs due to the fact that Directive 304.2, *Use of Force*, was in the process of being reviewed as of the end of the quarter.

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

According to the DPD, the UOF policies required by paragraphs U14-19 have been included in Directive 304.2, *Use of Force*, which has been reviewed by the DOJ. The DOJ provided additional comments and recommendations on the directive to the DPD in letters dated December 17, 2004 and March 25, 2005. The DPD revised the directive and resubmitted it to the DOJ after each letter, with the latest resubmission occurring on March 26, 2005. The DPD received final DOJ approval of Directive 304.2 on April 14, 2005. According to the DPD, on April 25, 2005, the directive was submitted to the Board of Police Commissioners (BOPC) for approval. On May 26, 2005, the BOPC approved the Directive. After receiving the approvals, the finalized Directive 304.2 was disseminated by the DPD on May 27, 2005.<sup>40</sup> The DPD has three months from the DOJ approval date to implement the policy.

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<sup>40</sup> The effective date of the policy is on June 27, 2005, after the end of this quarter.

Based on the foregoing, the Monitor withholds a determination of the DPD's compliance with paragraphs U14-19.

## B. USE OF FIREARMS POLICY

This section comprises paragraphs U20-23. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that as of the end of the quarter the DPD was revising proposed Directive 304.1, *Firearms*, which is meant to address the paragraphs' requirements. The DPD must obtain DOJ's approval of its UOF policies.<sup>41</sup> The Monitor is scheduled to again assess the DPD's compliance with paragraphs U20-23 during the quarter ending August 31, 2005.

## C. INTERMEDIATE FORCE DEVICE POLICY

This section comprises paragraph U24. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that it was in the process of revising its UOF policies, including Directive 304.2, *Use of Force*, and Training Directive 04.3, *Use of Force Continuum*, both of which are meant to address, among other things, the requirements of paragraph U24. In addition, the Monitor noted its understanding that the DPD was developing a roll-out plan for the intermediate force device, which will include information concerning the UOF continuum, procurement, training and integration. The DPD must obtain DOJ's approval of its UOF policies. The Monitor is scheduled to again assess the DPD's compliance with paragraph U24 during the quarter ending August 31, 2005.

## D. CHEMICAL SPRAY POLICY

This section comprises paragraphs U25-26. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004, finding the DPD in non-compliance with each due to the fact that as of the end of the quarter it was revising proposed Directive 304.3, *Chemical Spray*, which is meant to address the requirements of the paragraphs. The DPD must obtain DOJ's approval of its UOF policies. The Monitor is scheduled to again assess the DPD's compliance with paragraphs U25-26 during the quarter ending August 31, 2005.

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<sup>41</sup> Throughout this report, for those paragraphs not assessed during the current quarter, the Monitor will include a brief description of the basis for its previous compliance assessments. The Monitor will not update any progress on these paragraphs since the last assessment, outside of any submissions or approvals outlined in the Executive Summary, until the next quarter in which the paragraph is under review by the Monitor.

## II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

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This section of the UOF CJ (paragraphs U27-41) requires the DPD to make significant changes to its policies related to general investigations of police action and to investigations of UOF, prisoner injury, critical firearms discharges and in-custody deaths. In addition to various changes in general investigatory procedures, reports and evaluations, the UOF CJ requires that the DPD develop a protocol for compelled statements<sup>42</sup> and develop an auditable form to document any prisoner injury, UOF, allegation of UOF and instance where an officer draws a firearm and acquires a target. The DPD Shooting Team must respond to and investigate all critical firearms discharges and in-custody deaths, and the DPD must develop a protocol for conducting investigations of critical firearms discharges. The DPD's Internal Controls Division (ICD) must investigate a variety of incidents, pursuant to the requirements of the UOF CJ, including all serious UOF (which includes all critical firearm discharges), UOF that cause serious bodily injury, and all in-custody deaths. Finally, the UOF CJ requires the DPD to create a command level force review team that is charged with critically evaluating and reporting on critical firearms discharges and in-custody deaths.

### A. GENERAL INVESTIGATIONS OF POLICE ACTION

This section comprises paragraphs U27-33. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2005. The Monitor found the DPD in non-compliance with paragraphs U27-30 and U32-33 based on the fact that Training Directive 04-07, *Use of Force Reporting and Investigations*, which is meant to address, among other things, the requirements of these paragraphs, was neither approved by the DOJ as of the end of that quarter, nor found by the Monitor to meet the requirements of the paragraph.<sup>43</sup> The Monitor withheld its determination of compliance of the DPD's compliance with paragraph U31 pending further discussions with the DPD regarding the protocol required by the paragraph.<sup>44</sup>

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U27-33 during the quarter ending August 31, 2005.

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<sup>42</sup> Paragraph U31 requires the DPD and the City to develop a protocol for when statements should (and should not) be compelled pursuant to Garrity v. New Jersey, 385 U.S. 492 (1967).

<sup>43</sup> The directive was submitted to the DOJ on February 24, 2005. On March 25, 2005, the DOJ submitted a letter to the DPD offering additional recommendations regarding the Use of Force Policy. The DPD resubmitted the policy on March 26, 2005.

<sup>44</sup> On December 21, 2004, the DPD submitted to the Monitor a protocol for paragraph U31 that purports to specify the conditions under which statements should and should not be compelled pursuant to Garrity v. New Jersey, 385 U.S. 493. The Monitor reviewed the protocol but had not provided the DPD with comments on the protocol as of the end of the quarter ending February 28, 2005. On March 23, 2005, after the end of that quarter, the Monitor met with the DPD and outlined several concerns with the Garrity Protocol.

## B. UOF AND PRISONER INJURY INVESTIGATIONS

This section comprises paragraphs U34-36. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

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

- a. officers to notify their supervisors following any UOF or prisoner injury;
- b. that upon such notice, a supervisor must respond to the scene of all UOF that involve a firearm discharge, a visible injury or a complaint of injury. A supervisor must respond to all other UOF on a priority basis. Upon arrival at the scene, the supervisor must interview the subject(s), examine the subject(s) for injury, and ensure that the subject(s) receive needed medical attention;
- c. the supervisor responding to the scene to notify the IAD<sup>45</sup> of all serious UOF, UOF that result in visible injury, UOF that a reasonable officer should have known were likely to result in injury, UOF where there is evidence of possible criminal misconduct by an officer or prisoner injury; and
- d. IAD to respond to the scene of, and investigate, all incidents where there is evidence of possible criminal misconduct by an officer, a prisoner dies, suffers serious bodily injury or requires hospital admission, or involves a serious UOF, and to permit IAD to delegate all other UOF or prisoner injury investigations to the supervisor for a command investigation.

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

- a. command UOF preliminary and final investigations to be completed within 10 and 30 days of the incident, respectively; such investigations must include a synopsis of the incident,

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<sup>45</sup> Although IAD (Internal Affairs Division) is mentioned in the UOF CJ, the DPD calls this division the ICD (Internal Controls Division). Additional information regarding the structure of various DPD units is contained in the Background and Current Assessment of Compliance sections for paragraphs U37-38, below.

photographs of any injuries, witness statements, a canvas of the area, a profile of the officer's prior UOF and allegations of misconduct, and a first-line supervisory evaluation;

- b. IAD investigations to be completed within 60 days of the incident; and
- c. copies of all reports and command investigations to be sent to IAD within 7 days of completion of the investigation.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraphs U34-36 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that Directive 304.2, *Use of Force*, was still under review as of the end of the quarter. The DPD received TA from the DOJ on the directive on July 13, 2004. The policy was revised based on DOJ's recommendations and resubmitted. In addition, the auditable form initially developed by the DPD to meet the requirements of Paragraph U34 did not adequately address all requirements and it provided insufficient guidance to officers regarding the details to be captured on it. During this time, DPD used an interim U34 auditable form that would be revised, as necessary, based on the final policy.

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

According to the DPD, the policies required by paragraphs U34-36 have been included in Directive 304.2, *Use of Force*. The DOJ provided additional comments and recommendations on the directive to the DPD in letters dated December 17, 2004 and March 25, 2005. The DPD revised the directive and resubmitted it to the DOJ after each letter, with the latest resubmission occurring on March 26, 2005. The DPD received final DOJ approval of Directive 304.2 on April 14, 2005. After receiving approval, the finalized Directive 304.2 was disseminated by the DPD on May 27, 2005.<sup>46</sup>

The requirements of Paragraphs U34 and U35 are also addressed in Training Directive 04-07, *Use of Force Reporting/Investigations*. The DOJ forwarded a letter regarding the training directive, with suggested revisions, on December 17, 2004. The revised training directive was resubmitted to the DOJ and the Monitor on February 18, 2005. On March 23, 2005, the DOJ submitted another letter outlining recommendations. The training directive was resubmitted to the DOJ and Monitor on May 17, 2005.

The DPD submitted Auditable Form UF-002, *Detroit Police – Use of Force/Detainee Injury Report*, to the Monitor and DOJ on May 23, 2005.<sup>47</sup> On the same date, the DPD also submitted

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<sup>46</sup> The effective date of the policy is on June 27, 2005, after the end of this quarter.

<sup>47</sup> The Monitor previously provided TA on this form.

an additional form, UF-002-A, *Detroit Police – Supervisor Investigation and Report*, which the Monitor was receiving for the first time.

The Monitor reviewed the training directive and the auditable forms during the current quarter and concluded that the DPD must make additional revisions to the forms and the guidelines documents before they can be disseminated. Furthermore, although the training directive meets the requirements of paragraphs U35a, c and d and U36, it has other deficiencies that must be corrected prior to dissemination.<sup>48</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U34-36.

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

This section comprises paragraphs U37-41. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

#### *Paragraph U37-38 – Creation of Shooting Team; Protocol for Investigations of Critical Firearms Discharges*

Paragraph U37 requires the DPD's Shooting Team, which is composed of officers from the Homicide Section and IAD, to respond to the scene and investigate all critical firearms discharges and in-custody deaths.

Paragraph U38 requires the DPD to develop a protocol for conducting investigations of critical firearms discharges that, in addition to the requirements of paragraphs U27-36, requires:

- a. the investigation to account for all shots fired, all shell casings, and the locations of all officers at the time the officer discharged the firearm;
- b. the investigator to conduct and preserve in the investigative file all appropriate ballistic or crime scene analyses, including gunshot residue or bullet trajectory tests; and
- c. the investigation to be completed within 30 days of the incident. If a Garrity statement is necessary, then that portion of the investigation may be deferred until 30 days from the declination or conclusion of the criminal prosecution.

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<sup>48</sup> For example, the training directive fails to adequately incorporate several of the requirements of other paragraphs that it is designed to address, including paragraphs U28, U29, U32 and U35b. The Monitor provided the DPD with a written memorandum containing recommendations on the training directive and the auditable forms on June 10, 2005, after the end of the quarter.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U37 during the quarter ending May 31, 2004, finding the DPD in non-compliance. Although the Shooting Team had been created and implemented to respond to the scene and investigate all critical firearms discharges and in-custody deaths as required by paragraph U37, the protocol for conducting the investigations that the team is charged with had not yet been developed. Furthermore, according to the Force Review Team's (FRT's) Standard Operating Procedures (SOP), the Force Investigation Unit I (FIU I), which is also referred to as the Deadly Force Unit and is responsible for investigating critical firearm discharges and in-custody deaths, was not composed of Homicide Section and IAD<sup>49</sup> officers as required by the paragraph. The draft Board of Review policy contained this requirement but it had not yet been implemented. Also, the three or four documents that purported to make up the critical firearm discharge investigative "protocol" did not all cross-reference the others. The Monitor recommended that the documents be consolidated into one comprehensive "protocol" document.

## *Current Assessment of Compliance*

The DPD has revised its approach with regard to paragraphs U37-41 since the Monitor's last review of these paragraphs. According to the DPD, the requirements of paragraphs U37-41 are incorporated into Directive 304.5, *Board of Review*. The Monitor reviewed the directive, as well as the Force Investigation Section (FIS) SOP and the Internal Affairs Section (IAS) SOP, with regard to paragraphs U37-38 and found that the DPD has codified the requirement to form a "shooting team" in both Directive 304.5 and the FIS SOP. The team, composed of Force Investigative Fatal Unit and Homicide Section officers, is called the Joint Incident Shooting Team (JIST). The DPD also incorporated many of the recommendations made by the Monitor in the Fifth Quarterly Report. However, the documents still lack consistency with regard to the investigation of critical firearm discharges and in-custody deaths and there is no readily identifiable protocol for conducting critical firearm discharge investigations.<sup>50</sup>

Once again, as in the Fifth Quarter, the Monitor notes that there are multiple documents that contain partial components of the protocol for conducting investigations of critical firearm discharges. The Monitor recommends that a separate document be developed to include the protocol. This will eliminate confusion and provide one source document that investigators can use as a guide for conducting these crucial investigations. If the DPD will not develop a single source document for the protocol, which is the preferred method, the Monitor expects that a protocol will be developed that can easily be located and followed by the relevant personnel.

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<sup>49</sup> As described previously, although IAD is mentioned in the UOF CJ, the DPD calls this division the ICD.

<sup>50</sup> For example, paragraph U38 requires that paragraphs U27-36 be incorporated in the development of a critical firearm discharge investigative protocol. However, neither Directive 304.5 nor the FIS SOP contain or incorporate all of the requirements of paragraphs U27-36. The Monitor provided comments and recommendations regarding the Directive, the FIS SOP and the IAS SOP to the DPD on June 10, 2005, after the end of the quarter.

The IAS SOP, dated April 29, 2005, was submitted to the Monitor by the DPD in response to a document request asking for the ICD SOP. The IAS SOP has not been fully revised to incorporate the requirements of the UOF CJ. According to the FIS SOP, ICD consists of IAS and FIS. The IAS SOP is not as clear on this point. Furthermore, the IAS SOP refers to the FIS “Alert Team” as the entity designated to respond to situations involving force including police shootings and death or injury of police prisoners. However, the FIS SOP does not mention an “alert team” but refers to two units: the Force Investigation Fatal Force Unit and the Force Investigation Non-Fatal Unit. Once again, as the Monitor recommended in the Fifth Quarter, the terms mentioned in these documents should be consistent to provide clarity to the officers.

When the UOF CJ refers to IAD, the Monitor will look for ICD, and thereby IAS and FIS, to fulfill the pertinent requirements.<sup>51</sup> The Monitor will seek clarification with regard to obtaining an SOP for ICD and a definitive investigative protocol for critical firearm discharges.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U37 and 38.

**Paragraphs U39-41 – Command Level Force Review Team; Time Limits for Command Level Force Review Team Aggregate Review**

Paragraph U39 mandates that the DPD require a Command Level Force Review Team (CLFRT) to evaluate all critical firearms discharges and in-custody deaths. The team must be chaired by the Deputy Chief who directly supervises IAD. The DPD must establish criteria for selecting the other members of the team.

Paragraph U40 mandates that the DPD policy that defines the CLFRT’s role must require the team to:

- a. complete its review of critical firearms discharges that result in injury and in-custody deaths within 90 days of the resolution of any criminal review and/or proceedings and all other critical firearms discharges within 60 days and require the Chief of Police to complete his or her review of the team’s report within 14 days;
- b. comply with the revised review of investigations policies and procedures;
- c. interview the principal investigators; and
- d. prepare a report to the Chief of Police in compliance with the revised investigatory report and evaluation protocol.

Paragraph U41 requires the Chair of the CLFRT to annually review critical firearms discharges and in-custody deaths in aggregate to detect patterns and/or problems and report his or her

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<sup>51</sup> For example, paragraphs U29c, U35d, U36, U37, U39 and U67.



findings and recommendations, including additional investigative protocols and standards for all critical firearms discharge and in-custody death investigations, to the Chief of Police.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U39-41 during the quarter ending November 30, 2004, finding the DPD in non-compliance. The CLFRT, referred to by the DPD as the Command Level Board of Review (CLBR) or Board of Review,<sup>52</sup> was not operational as of the end of the quarter. The Monitor noted its understanding that the criteria for selecting other team members had been developed; however, they had not been submitted to the Monitor. In addition, Directive 304.4, *Board of Review*, was posted to the DPD's website for review and comment on October 26, 2004 and was under review by the BOPC. Finally, according to the DPD, the Deputy Chief of the Professional Accountability Bureau (PAB), who will serve as Chair of the CLBR, had prepared a report on the analysis of the circumstances surrounding fatal and non-fatal officer-involved shootings; however, this report was still under review by the DPD.

### *Current Assessment of Compliance*

As described in the Current Assessment of Compliance for paragraphs U37-38, above, according to the DPD, the requirements of paragraphs U37-41 are incorporated into Directive 304.5 (formerly Directive 304.4), *Board of Review*. The directive was approved by the BOPC on February 3, 2005 and forwarded to the DOJ and Monitor on March 9, 2005. Once the review of the policy began, the Monitor inquired as to whether the Monitor's recommendations in the Fifth Quarterly Report had been incorporated into the directive. The DPD then revised the directive and resubmitted it on April 19, 2005. The directive was again resubmitted with the FIS SOP on April 23, 2005. The Monitor reviewed the directive and determined that it addresses the requirements of paragraphs U39-41 with a few exceptions. In order to comply with paragraph U40b, which incorporates the requirements of paragraphs U32 and 33, the directive incorporates Training Directive 4-7; however, Training Directive 4-7 does not include all of the requirements of the revised investigative review of policies and procedures.<sup>53</sup> The Monitor provided the DPD with several verbal recommendations to clarify some of the information included in the directive.

During the current quarter, the Monitor also requested and received a listing of all critical firearms discharges that occurred between October 1, 2004 and December 31, 2004. The Monitor understands that Boards of Review were not necessarily convened for these incidents because the system for review has not yet been fully implemented.

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<sup>52</sup> The CLFRT or CLRB has been renamed Board of Review by the DPD.

<sup>53</sup> For example, the training directive does not fully incorporate the requirements of subparagraph U33e.

In response to a document request for the Chair of the Board of Review's annual review of critical firearm discharges and in-custody deaths, the Monitor received a 43-page report, dated April 27, 2005, which analyzed the six fatal and twenty-five non-fatal critical firearm discharges that occurred during the year 2004.<sup>54</sup> The report made some recommendations that individual officers receive remedial training; however, there were no findings or recommendations relative to detecting overall patterns and/or problems in connection with the incidents. Also, there were no recommendations for changes or additions to the investigative protocols and standards for all critical firearms discharges and in custody deaths.

Furthermore, the Monitor is concerned that a number of the incidents are still being investigated by FIS even though the incidents occurred from six months to over a year ago. This is also true where the criminal review was completed some time ago.<sup>55</sup> The time period that FIS is taking to conduct these investigations is in violation of the requirements of paragraph U38c, which requires the investigation to be completed within 30 days of the incident unless a Garrity statement is necessary, in which case that portion of the investigation may be deferred until 30 days from the declination or conclusion of the criminal prosecution.

The Chief of Police is to complete her review of each Board of Review report within 14 days. The FIS Annual Report, which was submitted to the Monitor in response to paragraph U41 (discussed below), indicates that six of the twenty-five non-fatal critical firearm discharge incidents occurring in 2004 were forwarded for "executive review." In each of these incidents, the administrative investigation had determined that the officer(s) should be exonerated. The report provided no additional information regarding the executive review. Therefore it is difficult to ascertain whether this executive review refers to the Chief's review of each Board of Review report under paragraph U40a. It also appears that these reviews were ongoing as of the date of the annual report (4/05) although the incidents took place in 2004, which is in violation of paragraph U40a.

Paragraph U41 requires that the Chair of the Board of Review to annually review critical firearms discharges and in-custody deaths in aggregate to detect patterns and/or problems and report his or her findings and recommendations to the Chief of Police. The DPD's Board of Review policy requires that this annual review be submitted no later than thirty days after the end of the calendar year. The FIS Annual Critical Incident Report, which was submitted in response to paragraph U41, was dated nearly four months after the end of the calendar year. Furthermore,

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<sup>54</sup> According to the DPD, there were no prisoner in-custody deaths in the year 2004.

<sup>55</sup> For example, with regard to a non-fatal critical firearm discharge that took place on April 18, 2004, the Wayne County Prosecutor's Office (WCPO) conducted a criminal investigation and issued a felony warrant charging the officers. However the charges were withdrawn on December 16, 2004 for both officers due to insufficient evidence. Although the criminal dismissal took place over four months before the FIS report, the report indicated that the FIS is currently investigating the incident.

this annual review should be submitted by the Chair of the Board of Review, the evaluating entity, not FIS, one of the investigating entities.<sup>56</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U39-41.

### III. ARREST AND DETENTION POLICIES AND PRACTICES

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This section of the UOF CJ (paragraphs U42-60) requires the DPD to make significant changes to its policies, practices and procedures related to arrests, investigatory stops and frisks, witness identification and questioning, the detention of material witnesses, arrestee restrictions, custodial detention, prompt judicial review, holds and command notification regarding arrests and witness detention issues. For many of these areas, the DPD must develop auditable forms to document officer violations of the UOF CJ requirements or to capture certain events.

This section also requires DPD supervisors to conduct reviews of all reported violations and take corrective or non-disciplinary action. Precinct commanders and, if applicable, specialized unit commanders, are required to review within seven days all reported violations of DPD arrest, investigatory stop and frisk, witness identification and questioning policies and all reports of arrests in which an arraignment warrant was not sought, and to review on a daily basis all reported violations of DPD prompt judicial review, holds, restrictions and material witness policies. The Commanders' reviews must include an evaluation of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

#### A. ARREST POLICIES

This section comprises paragraphs U42-43. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

#### *Paragraphs U42-43 – Revision of Arrest Policies; Review of All Arrests*

Paragraph U42 requires the DPD to revise its arrest policies to define arrest and probable cause as those terms are defined in the Consent Judgment and prohibit the arrest of an individual with less than probable cause.

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<sup>56</sup> Calling it the FIS Annual Critical Incident Report is misleading in any event, since all critical firearms discharges and in-custody deaths are supposed to be investigated by a shooting team pursuant to paragraph U37. According to the Board of Review Policy, this team is called the Joint Investigative Shooting Team.

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U42 and U43 during the quarter ending November 30, 2004, at which time the Monitor elected to withhold a compliance determination pending resolution between the DPD and the DOJ regarding the definition of probable cause. The Monitor noted that except for the pending definition interpretation, all other components of Directive 202.1, *Arrests*, adequately address the requirements of the paragraphs.

### *Current Assessment of Compliance*

As previously reported in monthly status meetings, the DPD and the DOJ have not reached a resolution regarding an acceptable definition for probable cause. The City filed a motion to modify the definition of probable cause on April 19, 2005. The DOJ filed a response opposing the motion on May 13, 2005. The City replied to the DOJ's opposition papers on May 23, 2005. The Court has indicated that a hearing will be held on this matter in August 2005. As a result of the pending motion, the Monitor could not test the DPD's implementation of related policy.

The Monitor will continue to withhold a compliance determination until the issue is resolved.

## **B. INVESTIGATORY STOP POLICIES**

This section comprises paragraphs U44-45. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### **Paragraphs U44-45 – Revision of Policies; Documentation Requirement**

Paragraph U44 requires the DPD to revise its investigatory stop and frisk policies to define investigatory stop and reasonable suspicion as those terms are defined in the Consent Judgment. The policy must specify that a frisk is authorized only when the officer has a reasonable suspicion to fear for his or her safety and that the scope of the frisk must be narrowly tailored to these specific reasons.

Paragraph U45 mandates that the DPD must require written documentation of all investigatory stops and frisks by the end of the shift in which the police action occurred. The DPD must

review all investigatory stops and frisks and document on an auditable form those unsupported by reasonable suspicion within 24 hours of receiving the officer's report.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U44 and U45 during the quarter ending November 30, 2004, at which time the Monitor found the DPD in non-compliance. Although the Monitor concluded that Directive 202.2, *Search and Seizure*, which is intended to address the specific requirements of paragraphs U44 and U45, generally addressed the requirements of the UOF CJ, the BOPC had not reviewed and approved it as of the end of the quarter. In addition, Auditable Form UF-003 remained under revision based upon TA provided by the Monitor.

Based upon the Monitor's recommendation, the DPD drafted Directive 404.4, *Definitions*, to address the many definition requirements of the UOF CJ. The Monitor determined that the directive adequately defines an investigatory stop and frisk. However, it had not been approved by the BOPC or disseminated to the field and implemented as of the end of the quarter.

### *Current Assessment of Compliance*

During the current quarter, the DPD finalized Directive 404.4, *Definitions*, and disseminated it to the field on March 21, 2005. The Monitor has not yet tested dissemination of this directive.<sup>57</sup>

Revised Directive 202.2, *Search and Seizure*, intended to address the specific requirements of paragraphs U44 and U45, was disseminated to the field on April 11, 2005 with an effective date of May 2, 2005. The Monitor reviewed this finalized directive and determined that it adequately addresses the requirements of paragraphs U44 and U45.

Based on TA provided by the Monitor, the DPD revised Auditable Form UF-003, *Stops & Frisks*, and provided the revised form for additional review and comment on March 25, 2005. The Monitor reviewed this form and concluded that it also addresses the requirements of paragraphs U44 and U45.

The Monitor selected a random sample of officers and requested documentation evidencing that Directive 202.2 was disseminated to the selected officers.<sup>58</sup> For all 94 officers selected, the DPD

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<sup>57</sup> The Monitor will test dissemination of this directive during the quarter ending August 31, 2005; however, dissemination of this directive is not crucial to compliance with paragraphs U44-45, as Directive 202.2 adequately addresses the definitional requirements of the paragraphs. See paragraph U70 for further discussion of Directive 404.4.

<sup>58</sup> A random, statistical sample of 94 officers was selected out of a population of approximately 3,810 listed officers. The Monitor utilized a confidence level of 95% with an acceptable error rate of +/- four percent.

provided adequate documentation that the officers received policy responsive to the requirements of paragraphs U44 and U45.<sup>59</sup>

Now that the DPD has effectively disseminated Directive 202.2, the Monitor will commence testing the implementation of the directive during the next scheduled reporting period of the quarter ending November 30, 2005. Based on the foregoing, the Monitor has not yet completed its evaluation of the DPD's compliance with paragraphs U44 and U45.

### C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES

This section comprises paragraphs U46-48. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

#### *Paragraphs U46 48 – Revision of Policies; Submission to DOJ within 3 Months; Documentation of Interviews and Interrogations*

Paragraph U46 requires the DPD to revise its witness identification and questioning policies to comply with the revised arrest and investigatory stop policies. The DPD must prohibit the seizure of an individual without reasonable suspicion, probable cause or consent of the individual and require that the scope and duration of any seizure be narrowly tailored to the reasons supporting the police action. The DPD must prohibit the conveyance of any individual to another location without reasonable suspicion, probable cause or consent of the individual.

Paragraph U47 requires the DPD to develop revised witness identification and questioning policies within three months of the effective date of the UOF CJ. The revised policies must be submitted for review and approval of the DOJ. The DPD must then implement the revised witness identification and questioning policies within three months of the review and approval of the DOJ.

Paragraph U48 requires the DPD to memorialize all interviews, interrogations and conveyances during the shift in which the police action occurred. The DPD is also required to document, on a separate auditable form, any interrogation, interview or conveyance in violation of DPD policy within 12 hours of the event.

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<sup>59</sup> The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of officers acknowledging receipt of policy.

## *Background*

The Monitor last assessed the DPD's compliance with paragraphs U46-48 during the quarter ending November 30, 2004, at which time the DPD was found in non-compliance with each. During October 2004, the DPD submitted revised Witness Identification policies<sup>60</sup> to the DOJ for additional review based upon TA previously provided by the DOJ.

## *Current Assessment of Compliance*

During the current quarter, the DPD finalized Directive 203.9, *Custodial Questioning*, and Directive 203.1, *Crime Scene Investigation*. Both Directives were approved by the DOJ on March 23, 2005<sup>61</sup> and subsequently disseminated to the field on April 11, 2005. The Directive became effective on May 2, 2005.

The Monitor reviewed both directives and determined that they adequately address the requirements of paragraphs U46 and U48 for both seizures and conveyances. The Monitor also reviewed the DPD's revised Auditable Form UF-005, *Interviews, Interrogations and Conveyances*, and concluded that it also addressed the paragraphs' requirements.<sup>62</sup>

In order to test for the dissemination of Directives 203.1 and 203.9, the Monitor selected a random sample of officers and requested documentation evidencing that the directives were disseminated to the selected officers.<sup>63</sup> For all 94 officers selected, the DPD provided adequate documentation that the officers received policies responsive to the requirements of paragraphs U46 and U48.<sup>64</sup>

Now that the DPD has disseminated the policy required under these paragraphs, the Monitor will commence testing the implementation of policy during the next scheduled reporting period of November 30, 2005. As a result, the Monitor has not yet completed its evaluation of the DPD's compliance with paragraphs U46 and U48.

The Monitor finds the DPD in compliance with paragraph U47, as it has secured the DOJ's approval on this policy and the policy was disseminated within three months of DOJ's

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<sup>60</sup> Directive 203.9, *Custodial Questioning*, and Directive 203.1, *Crime Scene Investigation*, are intended to specifically address the requirements of paragraphs U46-48.

<sup>61</sup> For Directive 203.9, although the DOJ approved the policy it also recommended that the DPD restate or clarify guidelines for searching a citizen (as documented in Directive 202.2, *Search and Seizure*) within Directive 203.9, rather than simply referencing Directive 202.2.

<sup>62</sup> The Monitor previously provided TA to the DPD on the development of this form.

<sup>63</sup> A random, statistical sample of 94 officers was selected out of a population of approximately 3,810 listed officers. The Monitor utilized a confidence level of 95% with an acceptable error rate of +/- four percent.

<sup>64</sup> The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of officers acknowledging receipt of policy.

approval.<sup>65</sup> The DPD will remain in compliance until such time as the policy directly responsive to paragraph U47 is revised. Revisions to policy will require additional review and approval by the DOJ and trigger an additional assessment by the Monitor.

#### D. PROMPT JUDICIAL REVIEW POLICIES

This section comprises paragraphs U49-51. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2005, at which time the Monitor found the DPD in non-compliance. Although Directive 202.1, *Arrests*, met many of the requirements of paragraph U49, it did not specifically delineate or reference any other systematic process to ensure that most, if not all, arrestees would be arraigned within 48 hours. The DPD was in the process of developing and documenting a systematic process. In addition, Auditable Form UF-004, relating to prompt judicial review and warrant request requirements, had not been implemented as of the end of the quarter.<sup>66</sup>

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U49-51 during the quarter ending August 31, 2005.

#### E. HOLD POLICIES

This section comprises paragraphs U52-53. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2005, finding the DPD in non-compliance with both. Although the DPD provided Revised Directive 305.2, *Detainee Registration* to the Monitor for review and comment during February 2005, the directive was in draft form as of the end of the quarter. In addition, the related Auditable Form UF-007 had not been resubmitted to the Monitor or implemented as of the end of the quarter.<sup>67</sup>

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2005.

#### F. RESTRICTION POLICIES

This section comprises paragraphs U54-55. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2005, finding the DPD in non-compliance with both. The Monitor reviewed Directive 305.4, *Holding Cell Areas*, and determined that it adequately addresses the requirements of paragraphs U54 and U55. However,

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<sup>65</sup> Implementation will be tested under paragraphs U46 and U48.

<sup>66</sup> On March 2, 2005, after the end of the quarter ending February 28, 2005, the DPD resubmitted this form and other auditable forms.

<sup>67</sup> *Id.*



it had not been disseminated to the field and implemented as of the end of that quarter.<sup>68</sup> In addition, the DPD had yet to finalize and implement the related Auditable Form UF-008, which is designed to address the documentation of restrictions and reportable violations of policy.

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2005.

## G. MATERIAL WITNESS POLICIES

This section comprises paragraphs U56-57. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2005, at which time the Monitor found the DPD in non-compliance with both. Although Directive 202.1 meets the requirements of paragraph U56, the DPD had not demonstrated that it had effectively disseminated this policy to the field. In addition, Auditable Form UF-006 had not been resubmitted to the Monitor nor had it been implemented as of the end of the quarter.<sup>69</sup>

The Monitor is scheduled to again assess the DPD's compliance with paragraph U57 during the quarter ending August 31, 2005. The Monitor again assessed the DPD's compliance with paragraph U56 during the current quarter. The results of our current assessment follow.

### *Paragraph U56 – Revision of Material Witness Policies*

Paragraph U56 requires the DPD to revise existing material witness policies to define a material witness as a witness subpoenaed to testify in a criminal case.<sup>70</sup> Furthermore, the DPD must remove the term "police witness" from all DPD policy and procedure.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U56 during the quarter ending February 28, 2005. Upon reviewing Directive 202.1, *Arrests*, the Monitor concluded that the Directive's verbiage met the requirements of paragraph U56. The Monitor also reviewed forms posted to the DPD Intranet, hard copies of forms contained within the Homicide Division, and 12 Homicide Division investigation files for any references to the term "police witness" noting this term was not used. However, the DPD was unable to provide substantiation that a complete dissemination of this policy occurred. As a result, the Monitor concluded that the DPD was in non-compliance.

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<sup>68</sup> According to the DPD, the final approved policy was disseminated to the field on March 21, 2005, after the end of the prior quarter.

<sup>69</sup> On March 2, 2005, after the end of the quarter, the DPD resubmitted this form and other auditable forms.

<sup>70</sup> Paragraph 1aa of the UOF CJ defines a material witness.

### *Current Assessment of Compliance*

During the current quarter, the Monitor selected a random sample of officers and requested documentation evidencing that Directive 202.1 was disseminated to the selected officers.<sup>71</sup> For all 94 officers selected, the DPD provided adequate documentation that the officers received policy responsive to the requirements of paragraph U56.<sup>72</sup>

Now that the DPD has disseminated the policy required under this paragraph, the Monitor will commence testing the implementation of the policy during the next scheduled reporting period of the quarter ending August 31, 2005. As a result, the Monitor has not yet completed its evaluation of the DPD's compliance with paragraph U56.

## H. DOCUMENTATION OF CUSTODIAL DETENTION

This section comprises of paragraph U58. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

### *Paragraph U58 – Revision of Policy*

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

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

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<sup>71</sup> A random, statistical sample of 94 officers was selected out of a population of approximately 3,810 listed officers. The Monitor utilized a confidence level of 95% with an acceptable error rate of +/- four percent.

<sup>72</sup> The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of officers acknowledging receipt of policy.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U58 during the quarter ending November 30, 2004, at which time the DPD was found in non-compliance because its forms failed to capture much of the information required by the paragraph. Also, the DPD continued its effort to develop within its CRISNET Records Management System the ability to capture the information required by paragraph U58.

## *Current Assessment of Compliance*

During the current quarter, in its continuing efforts to capture within its CRISNET Records Management System all information required by paragraph U58, the DPD requested the Officer in Charge (OIC) of Science and Technology Bureau to formulate a timeline (prisoner tracking software) for documentation of Custodial Detention (Arrest Booking Module which incorporates the booking of detainees with the court system). The Monitor was informed that the purchase order for this software was at City Council pending approval. However, the DPD had not addressed the requirements of paragraphs U58 as of the end of the current quarter.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U58.

## **I. COMMAND NOTIFICATION**

This section comprises paragraphs U59-60. The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although the DPD had made some progress in addressing the policy requirements of the paragraph through Directive 202.1, *Arrests*, the Monitor determined that the directive did not meet all of the requirements of the paragraph. In addition, three auditable forms referenced within the directive, all of which must be reviewed by the Commander of the respective precinct or, if applicable, of the specialized unit, had not been implemented as of the end of the quarter. The Monitor is scheduled to again assess the DPD's compliance with paragraph U60 during the quarter ending August 31, 2005.

The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

### **Paragraph U59 – Commanding Officer Review**

Paragraph U59 requires all DPD Commanders of a precinct and, if applicable, of the specialized unit to review in writing all reported violations of DPD arrest, investigatory stop and frisk, witness identification and questioning policies and all reports of arrests in which an arraignment warrant was not sought. The commander's review must be completed within 7 days of receiving

the document reporting the event, and must include an evaluation of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending November 30, 2004, at which time the DPD was found in non-compliance as related policy was under review by the DOJ and had yet to be approved, disseminated to the field, and implemented.

### *Current Assessment of Compliance*

During the current quarter, the DPD finalized and disseminated the following policies that relate to paragraph U59: Directive 202.1, *Arrests*; Directive 202.2, *Search and Seizure*; Directive 203.9, *Custodial Questioning*; and Directive 203.1, *Crime Scene Investigation*.<sup>73</sup> The Monitor reviewed Directives 202.3, 203.9 and 203.1 and determined that they meet the requirements of paragraph U59. In addition, the DPD finalized related auditable forms necessary required for conducting the reviews required by paragraph U59. However, as described in the Current Assessment of Compliance for paragraph U42, above, the DPD and the DOJ have not yet reached a resolution regarding the definition of probable cause. Paragraph U59 specifically requires a commander review of all reported violations of DPD arrest policy to include an assessment of the application of probable cause.

Based on the foregoing, the Monitor continues to withhold a determination of the DPD's compliance with paragraph U59.

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<sup>73</sup> Please refer to paragraphs U42-U48 for additional discussion regarding these Directives.

## IV. EXTERNAL COMPLAINTS

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This section of the UOF CJ (paragraphs U61-69) requires the DPD to revise its policies and procedures regarding the intake, tracking, investigation and review of external complaints. There are specific requirements relative to the roles and responsibilities of the Office of the Chief Investigator (OCI) and the DPD, including the development and implementation of an informational campaign and the review and evaluation of each allegation in an external complaint investigation.<sup>74</sup>

Section IV's introductory section comprises paragraphs U61-63. The Monitor last assessed the DPD's compliance with these paragraphs U61, U62b-d and U63 during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U61 during the quarter ending November 30, 2004, finding the DPD in non-compliance. The DPD revised the Citizen Complaints Policy and submitted it to the DOJ and the Monitor on September 9, 2004, and then again on October 15, 2004. The Monitor reviewed the policy and made recommendations to the DPD on November 16, 2004. The Monitor noted that, among other things, the policy: failed to adequately outline a plan for each agency's responsibility for conducting community outreach and education regarding complaints; did not specifically state the requirement that officers are prohibited from discouraging any person from making a complaint or refusing to take a complaint; and included information that may be construed to allow intake officers to include opinions regarding a complainant's mental capacity, which is prohibited. The DPD resubmitted the policy on November 30, 2004, incorporating many of the Monitor's recommendations into the revised version. However, the policy still failed to include adequate information concerning

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<sup>74</sup> The OCI reports to the BOPC and is responsible for conducting all external complaint investigations.

a plan for each agency's responsibility for conducting community outreach and education regarding citizen complaints, as required by paragraph U61. The policy only mentioned the informational brochure and contact form required by paragraph U63. There was no mention of the informational campaign, BOPC meetings,<sup>75</sup> precinct community meetings, or any other means of outreach and education. Furthermore, as of the end of the quarter, the policy had not yet been disseminated to OCI and DPD personnel and implemented.

### *Current Assessment of Compliance*

During the current quarter, the DPD re-submitted the Directive 102.6. *Citizen Complaints Policy*, several times in response to the Monitor's comments and recommendations. After the Monitor provided additional recommendations on February 11, 2005, the policy was resubmitted by the DPD on March 3, 2005. The Monitor again provided additional comments and recommendations in a memorandum dated April 5, 2005 and during a conference call with the DPD on the same date.

The policy was re-submitted by the DPD on April 18, 2005. The Monitor noted that modifications had been made to the policy based on the Monitor's April 5, 2005 memo; however, the Monitor continued to have concerns regarding specific language included in section 6.2(b) of the policy that allowed the officer to decide whether to provide a contact form to the citizen or refer the citizen to the supervisor. The Monitor recommended that the language be modified to take into account the complainant's preference. Following the Monitor's comments and recommendations, the DPD re-submitted the Citizen Complaint policy on April 28, 2005. Based on the modifications made to the policy, the Monitor made additional comments on May 31, 2005.<sup>76</sup> As of the end of the quarter, the policy had not yet been completed or disseminated and implemented.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U61.

### *Paragraph U62 – Informational Campaign*

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

- a. informing persons they may file complaints regarding the performance of any DPD employee;
- b. distributing complaint forms, fact sheets and informational posters at City Hall, OCI, all DPD precincts, libraries, on the internet and, upon request, to community groups and community centers;

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<sup>75</sup> BOPC meetings are mentioned in the policy but not as a tool for community outreach regarding complaints.

<sup>76</sup> Directive 102.6 was resubmitted on June 3, 2005 and again on June 22, 2005, after the end of the quarter.

- c. broadcasting public service announcements (PSA) that describe the complaint process; and
- d. posting permanently a placard describing the complaint process, with relevant phone numbers, in the lobby of each DPD precinct.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U62 during the quarter ending November 30, 2004, finding the DPD in non-compliance with subparagraph U62b, and in compliance with subparagraph U62c and d.<sup>77</sup> The Monitor found that various locations were missing some of the materials required by sub-paragraph U62b. The Monitor found that the PSA required by subparagraph U62c met the minimum requirements of the UOF CJ, although all of the Monitor's recommendations were not incorporated. Also, the posted placards required by subparagraph U62d were found to be in compliance

### *Current Assessment of Compliance*

#### *U62a Informing persons that they may file complaints*

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

#### *U62b Distribution of complaint forms, fact sheets and informational posters*

In the Monitor's Report for the Quarter ending November 30, 2004, the Monitor recommended that the City and the DPD provide paragraph U111 training as it pertains to this subparagraph to the relevant city employees at the neighborhood city halls. The Monitor also recommended that a systematic procedure under which these locations will regularly receive materials and provide information to the City employees who work there about the informational campaign and who to contact for additional materials. Similarly, although the city library employees are primarily employees of the Detroit Public School system, the Monitor suggested that the City and the DPD develop a process to educate relevant employees about the informational campaign and the process for obtaining replacement materials. Finally, the Monitor recommended that the City and the DPD develop their own method of ensuring that all locations have the materials required by the Consent Judgments.

During this quarter, the OCI implemented several of the Monitor's recommendations. Their efforts included issuing letters to the city libraries and neighborhood city halls describing the

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<sup>77</sup> Given that subsections b-d are essentially independent of each other, and it is possible for the DPD to achieve compliance with one subsection but remain in non-compliance with another, the Monitor intends to assign separate compliance grades in this report.

Consent Judgment and requesting a meeting to provide information about the informational campaign. The OCI met with the entities and provided them with information concerning the campaign materials and how to obtain additional materials when their supplies run out.

The Monitor has not yet re-checked the facilities to see if they all have the relevant information. Now that the educational component has taken place and a replenishment plan is in place, the Monitor will evaluate this sub-paragraph during the quarter ending November 30, 2005.

Based on the foregoing, the Monitor has not yet completed its reevaluation of the DPD's compliance with paragraph U62b.

#### *U62c Complaint Process Broadcasts*

As previously reported, the PSA meets the minimum requirements of describing the complaint process. The PSA airs nightly on cable television government channels 10 and 22.

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

#### *U62d Informational Campaign Placards*

The Monitor found that the DPD continues to have permanent placards posted in the lobby of each of the twelve precincts.

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

### *Recommendation*

#### *Subparagraph 62c*

As in the quarter ending November 30, 2004, the Monitor continues to recommend that the PSA include a statement informing citizens that fact sheets and informational posters are available at OCI, City Halls, libraries and all DPD precincts. Also, now that the informational brochure and contact form have been implemented, the Monitor recommends that the PSA inform citizens that officers have the contact forms in their patrol cars and describe the purpose of the forms.

#### **Paragraph U63 – Informational Brochures and Contact Forms**

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



## *Background*

The Monitor last assessed the DPD's compliance with paragraph U63 during the quarter ending November 30, 2004, at which time the Monitor withheld a determination of the DPD's compliance with this paragraph. The contact form had been approved by the DOJ during the quarter; however, the 60-day time period for the DPD's implementation of these forms was still pending at the end of that quarter. The DPD was required to implement the forms by January 9, 2005.

## *Current Assessment of Compliance*

According to the DPD, the Informational Brochure/Contact Forms were distributed on February 8, 2005. Therefore, the dissemination and implementation of the forms did not take place within 60 days of the DOJ's approval.

The DPD has developed a proposed protocol for the distribution and monitoring of the informational brochures/contact forms which outlines the responsibilities of the commander, the shift supervisors, the Compliance Liaison Office (CLO) and the individual officers. According to the DPD, members of the DPD's Civil Rights Division (CRD) trained the relevant personnel from the precincts and specialized units on the procedures for distribution and maintenance of the forms.

In early April 2005, CRD also conducted a field inspection in order to determine whether the precincts had issued the brochures and received training on their proper use. The inspection included random officer interviews to determine whether the forms were being carried in their patrol cars and whether they understood the use of the forms. The inspection yielded positive results in each precinct –the forms had been issued, personnel had been trained on their proper use and individual officers who were asked had the forms in their patrol cars and were knowledgeable regarding their use. The Monitor commends the DPD for creating an inspection function to determine whether the requirements of this paragraph are being implemented.

Furthermore, in order to document the distribution and tracking of contact forms to individual officers, the DPD has created an Informational Brochure/Contact Form Record (sign-out sheet) with guidelines for completion. The DPD also created a Contact Informational Supplement Card in order to track the issuance of the forms. Additionally, each precinct commander must submit a monthly report to CRD listing the number of forms that were issued, including the contact form number, citizen's name, citizen's address (if available), date/time of incident, location of incident and issuing officer/badge number. Once again, the Monitor commends the DPD for creating procedures to ensure accountability regarding the informational brochures/contact forms.

The Monitor recently conducted seven announced ride-a-longs in patrol cars with officers who were on-duty. Upon questioning, the Monitor learned that five pairs of officers out of the seven had the contact forms in their patrol cars as required by this paragraph. The other officers said they were aware of them but did not have the forms in the patrol car. These results, which

indicate that the DPD must take further steps, such as mentioning the forms at roll call, in order to ensure that officers are actually carrying the forms in their patrol cars, preclude the Monitor from finding the DPD in compliance with paragraph U63.

Additionally, the requirements that officers inform citizens of their right to make a complaint if an individual objects to an officer's conduct and that the DPD prohibit officers from discouraging any person from making a complaint or refusing to take a complaint are included in the Citizen Complaints Policy, which had not yet been completed or disseminated and implemented as of the end of the quarter.

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

## A. INTAKE AND TRACKING

This section comprises paragraphs U64-66. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraph U64 – Policies Regarding Intake and Tracking*

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

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U64 during the quarter ending November 30, 2004 finding the DPD in non-compliance due to the fact that Directive 102.6, *Citizen Complaint Policy*, did not require all officers to accept and document all complaints as required by this paragraph. The policy was resubmitted at the end of the quarter and scheduled for review again in the current quarter. Additionally, the DPD had not yet disseminated and implemented the revised policy.

#### *Current Assessment of Compliance*

As described in the Current Assessment of Compliance for paragraph U61, above, the DPD submitted multiple revisions to Directive 102.6, *Citizen Complaints*, throughout the seventh quarter based upon the Monitor's recommendations. The parties and the Monitor discussed the proper interpretation of the language in paragraph U64 requiring that "all officers and OCI employees to accept and document all complaints." Currently, the DPD does not allow officers

on the street to actually take complaints, although they can give the citizen a contact form. The DPD has added the requirement that officers can offer the citizen the option of having a supervisor come to the scene to take the complaint. As of the end of quarter, this issue had not yet been resolved, as the DOJ had not yet determined whether the DPD's approach was sufficient.<sup>78</sup>

Based on the foregoing, the Monitor withholds a determination of the DPD's compliance with paragraph U64.

### **Paragraph U65 – Factual Account by Intake Officer**

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

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U65 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that the Citizen Complaints Policy had not been disseminated and implemented as of the end of the quarter.

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

Although the Citizen Complaints Policy has not yet been disseminated and implemented, during the current quarter, the Monitor reviewed an initial sample of fourteen out of the ninety-eight investigations that were completed by OCI investigators in January 2005. The Monitor reviewed the complaint files to determine if intake officers or other DPD personnel had included opinions regarding a complainant's mental capacity or veracity when writing the report. The Monitor found that no opinions on those subjects were included.

However, although paragraph U65's prohibition is included in the OCI SOP, the revised policy containing this requirement, which would be disseminated to all DPD personnel, including those who have the responsibility of taking complaints, has not yet been finalized or disseminated.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U65.

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<sup>78</sup> After the end of the quarter, on June 22, 2005, the DOJ indicated that the DPD's approach was sufficient as long as the DPD tracked the use of the contact forms.

### **Paragraph U66 – Unique Identifier**

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

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U66 during the quarter ending November 30, 2004, finding the DPD in compliance.

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

The Monitor's review of complaint forms and the OCI's computer-based complaint tracking system indicates that the OCI and DPD are continuing to assign a unique complaint number to, and provide a description of the basis for, all complaints.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U66.

## **B. EXTERNAL COMPLAINT INVESTIGATION**

This section comprises paragraphs U67-69. The Monitor last assessed the DPD's compliance with paragraphs U67 and U68 during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### **Paragraph U67 – Revision of External Complaint Investigations Policy**

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

- a. provide that all complaints be referred for investigation and resolution by OCI or, if the complaint alleges potentially criminal conduct by an officer, by IAD;
- b. permit informal resolution of complaints alleging only inadequate service or the complainant's innocence of a charge and require the investigation and resolution of all other complaints;
- c. refer all complaints to appropriate agency within five business days;
- d. require complainant be periodically kept informed of complaint status;
- e. develop written criteria for IAD and OCI investigator applicants;
- f. implement mandatory pre-service and in-service training for all IAD and OCI investigators;

- g. require IAD and OCI to complete all investigations within 60 days of receiving the complaint; and
- h. upon completion of investigation, the complainant shall be notified of its outcome.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U67 during the quarter ending November 30, 2004, finding the DPD in non-compliance. Directive 102.6, *Citizen Complaint Policy*, had not been disseminated to OCI and DPD personnel as of the end of the quarter. Furthermore, although the DPD indicated that subparagraphs e and f of paragraph U67 are included in the OCI and ICD SOPs, the Monitor reviewed the OCI's SOP and determined that it did not adequately address the requirements of either subparagraph.<sup>79</sup>

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

Although the Citizen Complaints Policy had not yet been disseminated and implemented as of the end of the current quarter, the Monitor conducted on-site reviews of a sample of fourteen complaint files closed in January 2005<sup>80</sup> to determine if the DPD was complying with the various requirements of paragraph U67.

- With regard to subparagraph U67a, all complaints reviewed were referred for investigation and resolution by OCI or, if the complaint alleged potentially criminal conduct by an officer, by IAD.
- With regard to subparagraph U67b, all complaints reviewed were investigated and formal resolutions were reached. The Monitor was informed by an OCI supervisor that they do not resolve any complaints by informal resolution.
- With regard to subparagraph U67c, all complaints reviewed were referred to the appropriate agency within five business days.
- With regard to subparagraph U67d, not all complainants were kept apprised of the status of their file.
- The Monitor also reviewed the OCI SOP and IAS SOP to determine whether they address the requirements of subparagraph U67e. The Monitor determined that each SOP contains

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<sup>79</sup> The Monitor has limited its assessment to the OCI SOP since parties and the Monitor will discuss whether ICD investigators also conduct investigations of external complaints as alluded to in subparagraphs U67e and f.

<sup>80</sup> Refer to the Current Assessment of Compliance for paragraph U65, above.

some criteria for investigator applicants. The Monitor suggests that the criteria in SOPs be made consistent with one another.<sup>81</sup>

- Mandatory pre-service and in-service training for OCI and IAS investigators has not been implemented as required by subparagraph U67f.
- With regard to subparagraph U67g, none of the fourteen investigations reviewed were completed within 60 days of receiving the complaint. The average number of days that it took for OCI to complete the investigations was 168 days.
- With regard to subparagraph 67h, the Monitor determined that complainants were notified that the investigation had been closed with a form letter. However, the form letter does not indicate what type of action, whether non-disciplinary or disciplinary corrective action, was taken as required by the subparagraph. OCI has indicated that it has no means of determining whether disciplinary or non-disciplinary action has been taken. Once the file is forwarded to the Chief of Police for review as required by subparagraph U68c, the OCI has no further involvement. In order to meet the requirements of this subparagraph, the DPD and OCI must develop a means of providing the complainant with an appropriate statement regarding whether any non-disciplinary or disciplinary corrective action was taken.<sup>82</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U67.<sup>83</sup>

### *Paragraph U68 – External Complaint Review Process Time Limits*

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

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

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<sup>81</sup> For example, the IAS SOP mentions reviewing civil litigation where the applicant is a defendant and “integrity beyond reproach” in the applicant criteria. The OCI SOP does not list these requirements.

<sup>82</sup> This would likely be a subsequent letter to the one indicating that the investigation was completed. The statement need not mention the specifics of the disciplinary action.

<sup>83</sup> Because the DPD has not yet complied with the policy requirements for this paragraph, and the requirement applies to each subparagraph (a. – h.), the Monitor is not separately assessing compliance with each subparagraph. Once policy is disseminated and the policy requirements of the paragraph are adequately addressed, the Monitor will separately assess the DPD’s compliance with each subparagraph.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U68 during the quarter ending November 30, 2004, finding the DPD in non-compliance. The Monitor reviewed the OCI's SOP and determined that it includes the requirements of paragraph U68. However, since this paragraph affects both the DPD and OCI, it is necessary that the process be included in a policy or procedure, in addition to the OCI SOP. According to the DPD, the requirements for paragraph U68 are included in Directive 102.6, *Citizen Complaints*. The Monitor determined that the directive addresses the requirements of paragraph U68; however, the directive had not been disseminated to the field and implemented as of the end of the quarter.

## *Current Assessment of Compliance*

Although the Citizen Complaints Policy had not yet been disseminated and implemented as of the end of the current quarter, the Monitor conducted on-site reviews of a sample of fourteen complaint files closed in January 2005<sup>84</sup> to determine if the DPD was complying with the requirements of paragraph U68. The Monitor determined that the majority of the files were reviewed by the Chief Investigator within the seven day period required by subparagraph U68a.

With regard to subparagraph U68b, twelve out of fourteen files (86%) were reviewed by the BOPC within forty-five days. The Monitor notes that this is a marked improvement from the last review. According to OCI personnel, the two files that were not reviewed within the allotted time period had been lost by the BOPC and had to be recreated by OCI.<sup>85</sup>

With regard to subparagraph U68c, the Monitor further reviewed these files to determine if the Chief of Police or her designee completed a review within seven days of the completion of the BOPC's review. The files note the date that they are sent to the Chief of Police; however they contain no notation indicating the duration of the Chief of Police's review. According to OCI personnel, they receive an Inter-Office Memo from the Chief's office after her review, but this is not being recorded in the case files.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U68.<sup>86</sup>

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<sup>84</sup> Refer to the Current Assessment of Compliance for paragraph U65, above.

<sup>85</sup> No matter what the circumstances were surrounding the lost files, every effort should be made to preserve the original case file.

<sup>86</sup> Because the DPD has not yet complied with the policy requirements for this paragraph, and the requirement applies to each subparagraph (a. – c.), the Monitor is not separately assessing compliance with each subparagraph. Once policy is disseminated and the policy requirements of the paragraph are adequately addressed, the Monitor will separately assess the DPD's compliance with each subparagraph.

### **Paragraph U69 –External Complaint Dispositions**

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

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

### ***Background***

The Monitor last assessed the DPD’s compliance with paragraph U69 during the quarter ending November 30, 2004. The DPD had previously indicated that the requirements of paragraph U69 are addressed by Directive 102.6, *Citizen Complaints*. The Monitor reviewed the directive and determined that it addresses the paragraph’s requirements; however, it had not been disseminated to the field and implemented as of the end of the quarter.

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

During the Monitor’s review of a sample of fourteen complaint files closed in January 2005,<sup>87</sup> the Monitor determined that the OCI resolved each complaint by appropriately using the dispositions listed in paragraph U69. However, as of the end of the current quarter, Directive 102.6, *Citizen Complaint Policy*, which addresses the requirements of this paragraph, had not yet been disseminated.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U69.

### ***Recommendation***

To date, the Monitor has conducted two reviews of samples of OCI investigative files. During these reviews, the Monitor noted that in many of the files there is no way to track how the investigators are spending their time on the file, from the time the investigation is assigned to the time of completion, because the log is not being completed. In numerous files, it appeared that once the initial letter was sent to the complainant, no investigative activity takes place for a long

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<sup>87</sup> Refer to the Current Assessment of Compliance for paragraph U65, above.



period of time (sometimes months) because either no investigative activity is taking place or because it is not being noted on the log.

In order for OCI to be able to track how their investigators are spending their time for case management purposes, the Monitor continues to recommend that the OCI utilize the Significant Event Logs in the investigative files in a uniform and complete manner. The Monitor also recommends that investigators utilize Daily Activity Logs.

## V. GENERAL POLICIES

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

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

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

The Monitor last assessed the DPD's compliance with paragraphs U72 - U77 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each.

- Although Directive 102.3, *Code of Conduct*, was approved by the DPD and the BOPC and addresses the requirements of paragraphs U72 and U74, it had not been disseminated to the field as of the end of the reporting quarter.
- Regarding paragraph U73, the Monitor tested the field deployment of supervisors for a ten-day period and determined that the DPD could not provide documentation of a ratio of eight officers to one supervisor.
- Although Directive 202.1, *Arrest Policy*, and its related auditable form, adequately addressed the requirements of paragraph U75, it had not been disseminated to the field as of the end of the reporting quarter.
- Although Directive 305.4, *Holding Cell Areas*, adequately addresses the requirements of paragraph U76, it had not been disseminated to the field pending the completion of the related auditable form.
- Although Directive 303.4, *Foot Pursuit Policy*, adequately addresses the requirements of paragraph U77, the related auditable form had yet to be completed.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U72-74 and U76-77 during the quarter ending August 31, 2005.

The Monitor last assessed the DPD's compliance with paragraphs U70 and U71 during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with

these paragraphs, as well as paragraph U75, during the current quarter. The results of our current assessments follow.

### **Paragraph U70 – General Policies**

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

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U70 during the quarter ending November 30, 2004, at which time the DPD was found in non-compliance as it had neither finalized nor disseminated Directive 404.1, *Definitions*.

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

During the current quarter, the DPD finalized and disseminated Directive 404.1, *Definitions*. The Monitor reviewed the directive and concluded that, with the exception of the unresolved issue regarding an acceptable definition of probable cause,<sup>88</sup> the remainder of Directive 404.1 adequately addresses the requirements of the paragraph.<sup>89</sup>

However, the Monitor will continue to withhold a compliance determination until the probable cause issue is resolved.

### **Paragraph U71 – Proposed Policy for Community Review and Comment**

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

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U71 during the quarter ending November 30, 2004, at which time the Monitor found the DPD in non-compliance. The DPD provided the Monitor with a detailed explanation of its internal procedures for the posting of proposed policy to the DPD website and dissemination of proposed policy at weekly BOPC meetings. The Monitor reviewed these procedures and determined that the DPD had established

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<sup>88</sup> Please refer to the Monitor's discussion of compliance at paragraph U42.

<sup>89</sup> Although the directive met the minimum requirements of the UOF CJ, the Monitor identified and proffered recommendations for the inclusion of certain additional terms that would be of assistance to DPD members.

an adequate system to identify, forward, post and remove proposed policy from its Website. However, the OCI did not memorialize its protocol for identifying, addressing and responding to citizen comment.

Members of the Monitor's team met with the OCI during the quarter ending May 31, 2004 to obtain a better understanding of the methods by which the DPD informs the public of proposed policy and provides avenues to public response and input. A detailed explanation of this process is contained in the Monitor's third quarterly report, the Report for the Quarter Ending May 31, 2004.

### *Current Assessment of Compliance*

During the current quarter, the Monitor formally requested that the OCI provide a written protocol for the receipt of citizen comment. The Monitor received a response to this request on April 12, 2005. Although the response addressed some of the Monitor's concerns, it did not address all of the verbal representations made during the Monitor's 2004 meeting with the OCI. The protocol does not include steps acknowledging receipt of comment, providing comment to the BOPC at least two days prior to a regularly scheduled meeting and notifying the citizen regarding the outcome of their comment. Further, the protocol does not delineate specific responsibility in the absence of certain key OCI personnel.

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

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

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U75 during the quarter ending February 28, 2005, at which time the Monitor found the DPD in non-compliance. Although the

Monitor concluded that Directive 202.1, *Arrests*, adequately addressed the requirements of the paragraph, this Directive had yet to be disseminated to the field.

### *Current Assessment of Compliance*

During the current quarter, the DPD disseminated Directive 202.1, *Arrests*, to the field. The Monitor selected a random sample of officers and requested documentation evidencing that Directive 202.1 was disseminated to the selected officers.<sup>90</sup> For all 94 officers selected, the DPD provided adequate documentation that the officers received policy responsive to the requirements of paragraphs U75.<sup>91</sup>

Now that the DPD has disseminated the policy required under this paragraph, the Monitor will commence testing the implementation of the policy during the next scheduled reporting period of August 31, 2005. Based on the foregoing, the Monitor has not yet completed its evaluation of the DPD's compliance with paragraph U75.

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<sup>90</sup> A random, statistical sample of 94 officers was selected out of a population of approximately 3,810 listed officers. The Monitor utilized a confidence level of 95% with an acceptable error rate of +/- four percent.

<sup>91</sup> The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of officers acknowledging receipt of policy.

## VI. MANAGEMENT AND SUPERVISION

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

The Monitor last assessed the DPD's compliance with paragraph U78, the introductory paragraph to section VI., during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

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

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U78 during the quarter ending November 30, 2004, finding the DPD in non-compliance. Because the DPD was in non-compliance with the majority of the UOF CJ paragraphs related to subparagraphs a through c, it is also in non-compliance with those subparagraphs.<sup>92</sup> In addition, the DPD did provide the Monitor with any information that the reviews required under subparagraph d were being

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<sup>92</sup> In order to achieve compliance with the requirements of paragraph U78, the DPD must meet the requirements and adhere to the deadlines included in UOF CJ paragraphs related to each of the respective subparagraphs a. through c., as described above.

conducted or that the information is being shared and evaluated by DPD management. As required by subparagraph e.

### *Current Assessment of Compliance*

During the current quarter, the Monitor determined that the DPD remained in non-compliance with the majority of the paragraphs related to subparagraphs a and c.<sup>93</sup> Furthermore, with regard to subparagraphs d and e, the DPD must develop a mechanism for conducting regular and periodic reviews of all DPD policies and must conduct regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.<sup>94</sup> The Monitor has requested information regarding the DPD's compliance efforts regarding subparagraphs U78d and e. However, as of the end of the quarter, no information had been received. The DPD also did not specifically address these subparagraphs in their Seventh Quarter Status Report.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U78.

## **A. RISK MANAGEMENT DATABASE**

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

The Monitor last assessed the DPD's compliance with paragraphs U84-85, U88d and e, and U89 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each due to the fact that the DPD was revising the Review Protocol, Data Input Plan, Report Protocol, Request for Proposal (RFP) and the interim risk management system, all of which are meant to address various requirements of these paragraphs, based upon comments and recommendations from the DOJ. In addition, the DPD had neither issued an RFP nor selected a contractor to create

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<sup>93</sup> The Risk Management Database is discussed under paragraph U79 below; the auditing protocol, required by paragraph U92, was last reviewed during the quarter ending February 28, 2005. On December 8, 2004, the DPD submitted Directive 401.1, *Performance Evaluation Ratings*, which purports to satisfy the requirements of paragraph U91. The Monitor is scheduled to again assess the DPD's compliance with paragraph U91 during the quarter ending August 31, 2005.

<sup>94</sup> The requirements of paragraph 78e differ from the requirements of paragraph U110, which refers to meetings that the DPD should hold with the City Law Department specifically concerning the conclusion of civil lawsuits alleging officer misconduct. Certainly, information from the U110 meetings can be used in the U78e meetings; however, the U78e meetings are among DPD management and evaluate patterns of conduct that could increase the DPD's liability in any area (not just officer misconduct).

the Risk Management Database. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2005.<sup>95</sup>

The Monitor last assessed the DPD's compliance with paragraphs U79-83, U86-87, and U88a-c during the quarter ending November 30 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### **Paragraph U79 – Expansion of Risk Management Database**

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

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U79 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that the DOJ was still in the process of reviewing the Comprehensive Risk Management Plan.

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

On December 10, 2004, the DOJ provided the City and the DPD with comments and recommendations on their Management Awareness System (MAS) and Interim Management Awareness System (IMAS). The DOJ indicated that the MAS and IMAS documents previously submitted had been forwarded to its outside experts for review on behalf of the DOJ. The DOJ experts expressed concerns regarding the MAS and IMAS documents and submitted numerous questions to the DPD.

The DPD and DOJ participated in a conference call regarding the experts' questions and concerns on January 24, 2005. The DPD indicated that the information missing from the RFP, MAS and IMAS was intentionally left out so that the DPD could actively participate in the consultative procurement process. The DOJ submitted a letter to the DPD on March 22, 2005

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<sup>95</sup> The Monitor is scheduled to assess compliance with paragraphs U88f and g for the first time during the quarters ending August 31, 2005 and February 28, 2006, respectively, as the deadlines for compliance with these paragraphs are June 30, 2005 and December 31, 2005, respectively. However, if the DPD makes significant progress on an accelerated schedule, the Monitor will report on it. Paragraph U90 has no specific deadline; the Monitor will assess the DPD's compliance with this paragraph on an as-needed basis, as the DPD's actions pursuant to it are driven by the availability of relevant new technology and its experience with the operational Risk Management Database.



opining that this approach would be more expensive for the City but that if this was the approach DPD wanted to take, the DOJ would provide names and contact numbers of another jurisdiction who experienced difficulties related to such an approach. The DOJ's March 22<sup>nd</sup> letter also extensively outlined its additional concerns and recommendations for the MAS and IMAS.

According to the DPD's Seventh Quarter Status Report, the MAS documents, namely the Data Input Plan, RFP, Report Protocol and Review Protocol, have been revised based on the DOJ's recommendations and were re-submitted to the DOJ for review and approval on May 16, 2005. The MAS documents were not approved by the DOJ as of the end of the quarter. The IMAS was also revised based upon the DOJ's comments and according to the DPD, personnel are currently being trained on the system.<sup>96</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U79.

*Paragraphs U80-83, U86 - 88a-c – Risk Management Database Information Requirements; Identifying Information for Officers and Civilians; Data Input Plan; Report Protocol; Common Control Number; Information Maintained in Database; Schedule for Database Development*

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

- a. all UOF reports and UOF investigations;
- b. all canine deployments;
- c. all canine apprehensions;
- d. all canine bites;
- e. all canisters of chemical spray issued to officers;
- f. all injured prisoner reports and injured prisoner investigations;
- g. all instances in which force is used and a subject is charged with "resisting arrest," "assault on a police officer," "disorderly conduct" or "interfering with a city employee;"
- h. all firearms discharge reports and firearms discharge investigations;
- i. all incidents in which an officer draws a firearm and acquires a target;
- j. all complaints and complaint investigations, entered at the time the complaint is filed and updated to record the finding;

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<sup>96</sup> Paragraph U89 which covers the IMAS will be evaluated by the Monitor during the quarter ending August 31, 2005.

- k. all preliminary investigations and investigations of alleged criminal conduct;
- l. all criminal proceedings initiated as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City, or its officers or agents, resulting from DPD operations or the actions of DPD personnel, entered at the time proceedings are initiated and updated to record disposition;
- m. all vehicle and foot pursuits and traffic collisions;
- n. all reports regarding arrests without probable cause or where the individual was discharged from custody without formal charges being sought;
- o. all reports regarding investigatory stops and/or frisks unsupported by reasonable suspicion;
- p. all reports regarding interviews, interrogations or conveyances in violation of DPD policy;
- q. the time between arrest and arraignment for all arrests;
- r. all reports regarding a violation of DPD prompt judicial review policy;
- s. all reports regarding a violation of DPD hold policy;
- t. all restrictions on phone calls or visitors imposed by officers;
- u. all instances in which the DPD is informed by a prosecuting authority that a declination to prosecute any crime was based, in whole or in part, upon concerns about the credibility of a DPD officer or that a motion to suppress evidence was granted on the grounds of a constitutional violation by a DPD officer;
- v. all disciplinary action taken against officers;
- w. all non-disciplinary corrective action required of officers, excluding administrative counselling records;
- x. all awards and commendations received by officers;
- y. the assignment, rank, and training history of officers; and
- z. firearms qualification information of officers.

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

Paragraph U82 requires the DPD to prepare, for the review and approval of the DOJ, a Data Input Plan for including appropriate fields and values of new and historical data into the risk management database and addressing data storage. The Data Input Plan must detail the specific fields of information to be included and the means for inputting such data; specify the unit

responsible for inputting data; the deadlines for inputting data in a timely, accurate and complete manner; specify the historical time periods for which information is to be input and the deadlines for inputting the data in an accurate and timely fashion; and require that the data be maintained in a secure and confidential manner.

Paragraph U83 requires the DPD to prepare, for the review and approval of the DOJ, a Report Protocol for the risk management database that details the types of routine reports the DPD must generate and pattern identifications the DPD must conduct. The Report Protocol must:

- a. require the automated system to analyze the number of incidents and average level of activity for each individual officer and for all officers in a unit, and to identify patterns of activity for each data category;
- b. establish thresholds for the numbers and types of incidents requiring a review by an officer's supervisor of whether the officer or group of officers is engaging in at-risk behavior; and
- c. require the database to generate reports on a monthly basis describing the data and data analysis and identifying individual and unit patterns.

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

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

Paragraph U88 requires the DPD to develop and implement the new risk management database according to the following schedule:

- a. within 90 days of the effective date of the UOF CJ, the DPD must submit the Data Input Plan to the DOJ for review and approval within 30 days, and prior to this, share drafts of the Data Input Plan with the DOJ;
- b. by September 30, 2003, the DPD must submit the Report Protocol and Request for Proposals to the DOJ for review and approval within 30 days, and prior to this, share drafts of such documents with the DOJ;
- c. by October 31, 2003, the DPD must issue the Request for Proposals.

### ***Background***

The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2004, finding the DPD in non-compliance with each. As described in the

Background section for paragraph U79, the DPD submitted the components of the MAS and IMAS to the DOJ for review and approval on October 25, 2004. The DOJ was reviewing the MAS and IMAS.

### *Current Assessment of Compliance*

As described in the Current Assessment of Compliance for paragraph U79, after receiving recommendations from the DOJ on their previous submissions, the City and DPD re-submitted the components of the MAS for DOJ review and approval on May 16, 2005. The MAS documents were not approved by the DOJ as of the end of the current quarter.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U80, U81, U82, U83, U86, U87 and U88a, b and c.

## **B. PERFORMANCE EVALUATION SYSTEM**

This section comprises one paragraph, paragraph U91, which requires the DPD to ensure that performance evaluations for all DPD employees occur at least annually and include consideration of civil rights integrity, adherence to federal constitutional amendments and civil rights statutes and for supervisors, the identification of at-risk behavior in subordinates.

The Monitor last assessed the DPD's compliance with paragraph U91 during the quarter ending August 31, 2004, finding the DPD in non-compliance as it was in the process of revising the Performance Evaluation Forms to address the paragraph's requirements.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U91 during the quarter ending August 31, 2005.

## **C. OVERSIGHT**

This subsection of the UOF CJ (paragraphs U92-99) requires the DPD to establish an internal audit process, to perform annual<sup>97</sup> audits of all precincts and specialized units on eight aspects of policing,<sup>98</sup> to perform periodic random reviews of scout car camera videotapes and video recording equipment, and to meet regularly with local prosecutors to identify any issues in officer, shift or unit performance. Each of these oversight provisions requires the DPD to

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<sup>97</sup> On October 4, 2004, in response to a Joint Motion from the parties, the Court amended the audit schedule in the UOF CJ by requiring the DPD's UOF CJ audits to be completed annually by August 31, 2004, and every year thereafter.

<sup>98</sup> Including UOF investigations; prisoner injuries; allegations of misconduct; arrests; stops and frisks; witness identification and questioning; custodial detention practices, and complaint investigations.

examine a number of issues, but a common theme among them all is the requirement to assess and report on the appropriateness of the police activity being examined.

The Monitor last assessed the DPD's compliance with paragraph U92 during the quarter ending February 28, 2005, finding the DPD in non-compliance because the audit schedule in the 2004/05 Audit Protocol did not include all of the annual and semi-annual audits required by the UOF CJ and the COC CJ, respectively. The Monitor last assessed the DPD's compliance with paragraph U96, which requires annual audits of the DPD's custodial detention practices, during the quarter ending November 30, 2004, finding the DPD in non-compliance because of deficiencies related to timeliness, sampling, scope and reporting. The Monitor last assessed the DPD's compliance with paragraph U98 during the quarter ending February 28, 2005, finding the DPD in non-compliance because the DPD had not submitted a review protocol or directive related to videotapes and video recording equipment by February 28, 2005.<sup>99</sup> The Monitor is scheduled to again assess the DPD's compliance with paragraphs U92, U96 and U98 during the quarter ending August 31, 2005.

The Monitor last assessed the DPD's compliance with paragraphs U93-95 and U97 during the quarter ending February 28, 2005; and last assessed the DPD's compliance with paragraph U99 during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with paragraphs U93-95, U97 and U99 during the current quarter, and continued to provide TA regarding the UOF CJ audits that were in progress during this quarter. The results of our current assessments follow.

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

Paragraph U93 requires the DPD to issue a written report on the results of each audit<sup>100</sup> to the Chief of Police and to all precincts or specialized unit commanders. The UOF CJ requires such audit reports to be completed by August 31, 2004, and annually thereafter. These reports must include an examination of consistency throughout the DPD. The commander of each precinct and specialized unit must review all audit reports regarding employees under his or her command and, if appropriate, take disciplinary or non-disciplinary corrective action.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U93 during the quarter ending February 28, 2005, finding the DPD in non-compliance because the Arrest Practices Audit submitted in response to paragraph U95a did not include an examination of consistency throughout the DPD.

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<sup>99</sup> On March 18, 2005, after the end of the quarter, the Monitor received Directive 303.3, the Video Review Protocol and related documents from the DPD.

<sup>100</sup> Annual audits are required to be completed by paragraphs U94-97.

### *Current Assessment of Compliance*

During the current quarter, the Monitor reviewed documentation submitted by the DPD in response to this paragraph including two audit reports: the Stop & Frisk Audit (required by paragraph U95b) and the Witness Identification & Questioning Audit (required by paragraph U95c); audit synopses submitted on January 31, 2005; and respective transmittal sheets.

The findings in the Stop & Frisk and Witness Identification & Questioning audit reports were not written in quantitative terms, and the reports did not contain an adequate analysis or comparison for consistency among the precincts and specialized units.

The Monitor completed its review of the remaining documentation submitted in response to this paragraph and determined that it did not contain information related to any of the UOF CJ audit reports submitted to date, nor did it illustrate action or non-action on the part of the Commanding Officers (COs) as required by paragraph U93.

During discussions with the Monitor, the CRD CO indicated that the DPD has developed and is making final revisions to a Corrective Action Needed (CAN) report, which will specify actions required by each CO relative to each audit and include the date(s) by which such action should take place. This report will be generated and tracked by CRD and forwarded through the chain-of-command (including the Chief of Police), to the respective COs. A section of the CAN report is to be completed by the respective COs and returned to CRD with all necessary information to document the actions taken. The Monitor believes that once implemented, the CAN report and related processes will likely satisfy the requirements of paragraph U93 and will help the DPD in its efforts towards overall compliance with the UOF CJ. However, the CAN report was not finalized or implemented as of the end of the current quarter.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U93.

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

Paragraph U94 requires the DPD to conduct regularly scheduled annual audits of UOF, investigations, prisoner injury investigations, and investigations into allegations of misconduct. Such audits must cover all precincts and specialized units. These audits were due by August 31, 2004, and annually thereafter.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U94 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that none of the audits required by this paragraph were submitted as of the end of that quarter.

### *Current Assessment of Compliance*

The DPD had not submitted any audits required by paragraph U94 as of the end of the current quarter. The Monitor is continuing to provide TA in relation to the ongoing planning for the UOF and Allegations of Misconduct Investigations Audits, begun on February 21, 2005; however, the planning for the Prisoner Injury Investigations Audit has not begun by May 31, 2005.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U94.<sup>101</sup>

### **Paragraph U95 – Audits of Probable Cause, Stops and Frisks and Witness Identification and Questioning Documentation**

Paragraph U95 requires the DPD to conduct regularly scheduled annual audits of arrest practices, stops and frisks, and witness identification and questioning documentation. Such audits must cover all precincts and specialized units and must include an evaluation of the scope, duration, content, and voluntariness, if appropriate, of the police interaction. The arrest practices audit must also include a comparison of the number of arrests to requests for warrants and number of arrests for which warrants were sought to judicial findings of probable cause. These audits were due by August 31, 2004, and annually thereafter.

For ease of reporting, the Monitor has split paragraph U95 into the following three components:

- U95a –Arrest Practices Audit
- U95b –Stops and Frisks Audit
- U95c –Witness Identification and Questioning Audit

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U95 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each sub-paragraph. The Monitor reviewed the Arrest Practices Audit submitted to the Monitor on January 13, 2005 and determined that it contained deficiencies related to timeliness, sampling, scope and reporting; the Monitor's evaluation of the Stops and Frisks Audit was deferred to the current quarter, and the DPD had not submitted any audits related to Witness Identification and Questioning.

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<sup>101</sup> The Monitor will continue to find the DPD in non-compliance for each audit until such time as the required audits have been submitted. When such audits are submitted, the quality of such audits will be evaluated.

## *Current Assessment of Compliance*

### *U95a – Arrest Practices Audit*

The Monitor is scheduled to again assess the DPD's compliance with subparagraph U95a during the quarter ending August 31, 2005.

### *U95b – Investigatory Stops and Frisks Audit*

The DPD submitted the Investigatory Stop and Frisk Audit to the Monitor on February 18, 2005. In order to assess compliance with subparagraph U95b, the Monitor reviewed the audit report<sup>102</sup> submitted by the DPD, the Audit Team (AT) workplans, and other related documents. The Monitor did not conduct a detailed review of the DPD's working papers related to the DPD's fieldwork on this audit, including crib sheets and audit matrices.

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

There were several positive aspects to this audit:

- The scope of this audit appeared to adequately address most of the pertinent sections of the UOF CJ.
- The sample for this audit was appropriately selected from all stops and frisks that were documented in Activity Logs and Daily Reports over a 2-week period in February 2004;<sup>103</sup> however, the sample size of 103 stops and frisks was larger than it needed to be.<sup>104</sup>
- The Monitor concurs with the AT's conclusions that the DPD was non-compliant (less than 95% compliant) with all of the UOF objectives regarding investigatory stops and frisks.
- The Monitor concurs with the AT's recommendation that "there is an important need for an automated technology solution to collect, process, tabulate, analyze, report and monitor investigatory stops and frisks for management and audit purposes."

The Monitor identified the following concerns with this audit:

- The Investigatory Stop and Frisk Audit was not completed on a timely basis and was related to incidents that occurred almost one year prior to the date of submission of the audit.<sup>105</sup> Accordingly, the data reviewed in the audit was stale.

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<sup>102</sup> This audit was completed prior to formal training provided to the DPD AT by the Monitor's staff and the LAPD in December 2004 and January 2005 respectively, and consequently contained deficiencies similar to those described in the Monitor's Report for the Quarter Ending November 30, 2004.

<sup>103</sup> See the text below regarding the Monitor's concerns about the completeness of such documentation.

<sup>104</sup> The Monitor provided TA to the DPD starting in November 2003 regarding when it would be appropriate to use smaller sample sizes.



- The findings were not written in quantitative terms, and did not contain an adequate analysis or comparison for consistency among the precincts and specialized units.
- The audit report did not address the infrequency of reporting of stops and frisks compared to the number of activity logs examined,<sup>106</sup> which suggests that stops and frisks are not being fully documented as required by paragraph U45, and that further training is required.
- The audit report was not well written: it was disorganized, had repetitive material, and included grammatical errors.

Based on the foregoing, the Monitor finds this audit in non-compliance with the requirements of subparagraph U95b.

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

In order to assess compliance with subparagraph U95c during the current quarter, the Monitor reviewed the Witness Identification and Questioning Audit report submitted by the DPD on April 1, 2005. The Monitor did not review the AT's workplan or fieldwork documents as these were not provided to the Monitor.

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

- The AT submitted the audit in a timely manner compared to the date of the incidents examined in the audit;<sup>107</sup> however, the audit was actually due on August 31, 2004 and was therefore submitted late. As evidenced by the typographical errors contained within the audit report, it was not submitted internally in a timeframe that allowed for an adequate review process to occur. Notwithstanding this, this audit report was better written than all of the previous UOF CJ audit reports submitted by the DPD's AT.
- The AT selected September 15-30, 2004 as its audit time period for testing the Interviews, Conveyances, Interrogations and Material Witnesses. This time period was adequate for the first three as these activities occur on a frequent basis, but was insufficient for testing Material Witnesses. The AT was unable to locate any incidents in which Material Witnesses were detained during the 2-week period. Although the AT attempted to locate Material Witnesses via other methods, these methods were also insufficient.<sup>108</sup> The audit report appropriately contained a statement of a scope limitation related to the inability to identify any Material Witnesses during the time period selected for the audit; however, considering

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<sup>105</sup> The stops and frisks occurred between February 16 and 29, 2004.

<sup>106</sup> The ratio of stops and frisk identified to activity logs reviewed was almost 1:1.

<sup>107</sup> The audit was submitted on April 1, 2005 and related to incidents from 6 months earlier, from September 15-30, 2004. Therefore, the audit population was not stale.

<sup>108</sup> The AT attempted to identify Material Witnesses in the Homicide section, but neglected to search for Material Witnesses in any other specialized unit (for instance the drug section).

the very low frequency of occurrence, the AT should have extended its audit time period for Material Witnesses.

- The AT inappropriately excluded Interviews that did not result in a Preliminary Complaint Report (PCR), Case report or witness statement; and inappropriately excluded persons who were arrested and conveyed but not interrogated.<sup>109</sup>
- While the AT appropriately checked the completeness of the population, it was checked at the end of the audit, rather than during the planning stage. Consequently the AT did not have sufficient time to allow for the inclusion and review of incidents that were excluded in the initial audit population but identified during the completeness check.
- The sample of 16 interviews, 16 interrogations, 16 conveyances and 16 arrest conveyances was appropriately selected.<sup>110</sup>
- The compliance rates included in the audit report were incorrectly calculated and in some cases were not present. The findings were not written in quantitative terms and consequently the audit did not include an adequate analysis or comparison for consistency among the precincts and specialized units.
- The audit report did not address the fact that during the physical check of investigation files in Homicide Section, auditors were unable to locate 4 investigation files.<sup>111</sup> The audit report should have addressed this and included appropriate recommendations to address the problem.

Based on the foregoing, the Monitor finds this audit in non-compliance with the requirements of subparagraph U95c.

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

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

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<sup>109</sup> In other words, conveyances were only included related to arrests with interrogations.

<sup>110</sup> The AT's sampling methodology was consistent with the TA provided by the Monitor regarding when it would be appropriate to use smaller sample sizes.

<sup>111</sup> The AT advised the Monitor that DPD personnel were attempting to locate the files.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U97 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that the DPD had not submitted an audit in response to this paragraph as of the end of that quarter.

## *Current Assessment of Compliance*

As of the end of the current quarter, the DPD had not submitted an audit as required by paragraph U97 by August 31, 2004. The DPD AT is currently in the final planning stages for this audit and expects to submit the audit by August 31, 2005.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U97.<sup>112</sup>

## *Paragraph U99 – Regular Meetings with Prosecutors*

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

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U99 during the quarter ending November 30, 2004, finding the DPD in compliance. Through review of documents and discussions with participants, the Monitor determined that the DPD and local prosecutor's office discussed issues identified in officer, shift and unit performance as required by paragraph U99.

## *Current Assessment of Compliance*

The DPD and the WCPO continue to meet quarterly to identify issues in officer, shift or unit performance. During this quarter, the meeting was held on April 28, 2005.<sup>113</sup> There is an active exchange of information at these meetings and agreements to follow up on the issues that are identified. Some of the issues that have been discussed at these meetings include: officers failing to appear or appearing late and related case dismissals; incomplete police reports; and lack of evidence gathered for court cases, among others.

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

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<sup>112</sup> The Monitor will continue to find the DPD in non-compliance for this audit until such time as it has been submitted. When this audit is submitted, the quality of the audit will be evaluated.

<sup>113</sup> During the quarter ending February 28, 2005, the meeting was held on January 20, 2005.

## D. USE OF VIDEO CAMERAS

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

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

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending February 28, 2005, finding the DPD in non-compliance. As of the end of the quarter, the DPD had not submitted to the Monitor a review protocol or written policies and procedures that address the requirements of paragraphs U98 and U100-102.<sup>114</sup>

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2005.

## E. DISCIPLINE

This section comprises paragraphs U103-105. It requires the DPD to eliminate the current backlog of disciplinary cases and to establish guidelines and create a scheduling process that will prevent backlogs from developing in the future. In order to provide guidelines for uniformity in discipline, the DPD must create a matrix that establishes a presumptive range of discipline for each type of rule violation.

The Monitor last assessed the DPD's compliance with paragraphs U103-105 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although the DPD made significant progress in closing backlogged cases, as of the end of the quarter, not all such cases were eliminated. In addition, the DPD was still in the process of revising its policies and procedures for resolving disciplinary matters as soon as reasonably possible and the Monitor had not yet received the Disciplinary Matrix prepared by the DPD.<sup>115</sup>

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<sup>114</sup> On March 18, 2005, after the end of the prior quarter, the Monitor received the Video Equipment Policy and the video review protocol from the DPD.

<sup>115</sup> On March 1, 2005, after the end of the prior quarter, the Monitor received Directive 102.4, *Discipline*, from the DPD. On March 14, 2005, the Monitor received the Disciplinary Matrix. On April 13, 2005, the Monitor received a document from the DPD that purports to establish guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U103-105 during the quarter ending August 31, 2005.

## VII. TRAINING

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

### A. OVERSIGHT AND DEVELOPMENT

This section comprises paragraphs U106-111. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, finding the DPD in non-compliance with each. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

#### *Paragraph U106 – Coordination of Training*

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

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U106 during the quarter ending November 30, 2004, finding the DPD in non-compliance. As of the end of the quarter, the DPD had not finalized the majority of the UOF and A&D policies and, consequently, had not developed the UOF and A&D training required by the UOF CJ.

#### *Current Assessment of Compliance*

The UOF policies were approved by the DOJ on April 13, 2005. These policies provide the basis for lesson plans under development to address the requirements of the UOF CJ.

During the current quarter, the DPD submitted UOF Continuum lesson plans to the Monitor and to the DOJ. The Monitor reviewed the lesson plans, which were received on April 18, 2005, and found that they were substantive. The Monitor will make some recommendations, but commends the DPD for its progress in this area, and looks forward to the development of additional UOF and A&D lesson plans. The DPD has not yet submitted any reports of its reviews of UOF and A&D training to the Monitor and the DOJ, as the majority of the lesson plans in these areas have not yet been completed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U106.

**Paragraph U107 – Michigan Law Enforcement Officers Training Council Standards**

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

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

***Background***

The Monitor last assessed the DPD's compliance with paragraph U107 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that it had not yet finalized all of the UOF and A&D policies and training curricula, nor had it implemented procedures or processes necessary to accomplish many of the requirements of subparagraphs a through f.

***Current Assessment of Compliance***

The DPD has made progress by obtaining approval from DOJ for many of the underlying UOF and A&D policies and disseminating the policies to the field. The curricula for UOF and A&D training has not yet been submitted to the Monitor. Also, a systemic process for curriculum development, review and evaluation as not been submitted.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U107.

### **Paragraph U108 – Individual Training Records**

Paragraph U108 requires the DPD to create and maintain individual training records for all officers, documenting the date and topic of all pre-service and in-service training completed on or after the effective date of the UOF CJ.

#### ***Background***

The Monitor last assessed the DPD’s compliance with paragraph U108 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact the Michigan Commission on Law Enforcement Standards’ (MCOLES) Information and Tracking Network (MITN) did not contain all individual officer training records documenting all pre-service and in-service training completed on or after July 18, 2003.

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

The DPD is utilizing MITN to track current data for training records. According to the DPD, the MITN system does not have the capabilities to track archival training data. The DPD plans to use the MAS to implement the requirements of this paragraph.<sup>116</sup> The DPD submitted an SOP for In-Service Training Record Keeping Lesson Plans to the Monitor with a letter dated April 15, 2005. The Monitor will provide the DPD with feedback on this document during the quarter ending August 31, 2005. However, this paragraph requires that the DPD “create and maintain individual training records for all officers, documenting the date and topic of all pre-service and in-service training completed on or after the effective date of the UOF CJ.” Even with the creation of an SOP, the DPD states that it will be unable to maintain the data required until the MAS is up and running.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U108.

### **Paragraph U109 – Approved Lesson Plans / Scenario-Based Training**

Paragraph U109 requires the DPD to ensure that only mandated objectives and approved lesson plans are taught by instructors and that instructors engage students in meaningful dialogue regarding particular scenarios, preferably taken from actual incidents involving DPD officers, with the goal of educating students regarding the legal and tactical issues raised by the scenarios.

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<sup>116</sup> Paragraphs U79-83, U86-87, and U88a-c regarding the MAS are evaluated under the Management and Supervision section of this report.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U109 during the quarter ending November 30, 2004, finding the DPD in non-compliance. As of the end of the quarter, the DPD had neither developed nor approved the lesson plans required by various paragraphs in this section of the UOF CJ.

## *Current Assessment of Compliance*

On April 18, 2005, the Monitor received In-Service Training Protocols submitted by the DPD outlining the requirements of paragraph U109. This protocol is an excellent means of codifying the requirements of this paragraph. Once the lesson plans on the revised policies are developed and approved, and then taught by instructors, the Monitor will test the actual implementation of the requirements of this paragraph

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U109.

## *Paragraph U110 – Civil Lawsuits*

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

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U110 during the quarter ending November 30, 2004, finding the DPD in non-compliance. Although quarterly meetings being held between the DPD and the City's Law Department meet many of the requirements of this paragraph, the DPD was not distributing information from these meetings to staff of the Risk Management and Training Bureaus as required by this paragraph.<sup>117</sup>

## *Current Assessment of Compliance*

On March 29, 2005, a member of the Monitoring Team attended the quarterly Police Risk Management Meeting. Members of the City Law Department and the DPD, including the Risk Management Bureau and Curriculum Research and Development Section, attended the meeting. The participants discussed trends in 2005-06 lawsuits and recent lawsuit payouts. Also, related training, policy and risk management issues were discussed. A list of action items was developed for the next meeting. However, the DPD has not provided the Monitor with

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<sup>117</sup> In the DPD's Fifth Quarter Status Report, it states that this information is only distributed "if adverse behavioral patterns are discovered;" however, that does not meet the requirements of the paragraph.



documentation demonstrating that the information gleaned from the paragraph U110 meeting has been distributed to risk management and training staff.<sup>118</sup>

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

### **Paragraph U111 – Distribution and Explanation of the UOF CJ**

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

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U111 during the quarter ending November 30, 2004, finding the DPD in non-compliance. Although the DPD indicated that it had trained 3,333 sworn and 180 civilian DPD employees, the Monitor noted that the attendance logs received did not indicate that non-DPD City employees whose job responsibilities are affected by the UOF CJ received initial training on the UOF CJ. Additionally, training on the policies contained in the UOF CJ has not taken place during in-service training, as the majority of the policies have not been developed.

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

The DPD has trained, by its count, 3,653 members of the Department, including 3,430 sworn members and 223 civilian personnel. The DPD indicated that it has also provided initial training to non-DPD City employees whose job responsibilities are affected by the UOF CJ, including members of the HCCC, Detroit Police Reserves and the managers of the Neighborhood City Halls. In response to a document request, the Monitor was provided with sign in rosters from the training. Although the reserve personnel were identified on the rosters, the Monitor cannot ascertain what City office the other individuals are from. The sign-in roster simply says "civilians" at the top and has the individuals printed name and signature. The Monitor has requested additional information to evaluate whether non-DPD City employees who fall within the requirements of this paragraph have been trained. The Monitor commends the DPD for providing initial consent decree training to a large number of DPD and City employees.

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<sup>118</sup> Although several Risk Management Bureau and Training supervisors attend the meeting, unless otherwise interpreted, the information must still be distributed to the other staff members.

The paragraph also requires that initial training be conducted within 120 days of each provisions implementation and thereafter, in-service training be given on the policies contained in the UOF CJ. The DPD has not yet implemented these requirements.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U111.

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

This section comprises paragraph U112 only. The Monitor assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

### **Paragraph U112 – Annual UOF Training**

Paragraph U112 requires the DPD to provide all DPD recruits, officers, and supervisors with annual UOF training. Such training must include and address the following topics:

- a. the DPD's UOF continuum; proper UOF; decision making; and the DPD's UOF reporting requirements;
- b. the Fourth Amendment and other constitutional requirements, including recent legal developments;
- c. examples of scenarios faced by DPD officers and interactive exercises that illustrate proper UOF decision making, including the use of deadly force;
- d. the circumstances in which officers may draw, display, or point a firearm, emphasizing: officers should not draw their firearms unless they reasonably believe there is a threat of serious bodily harm to the officer or another person; the danger of engaging or pursuing a subject with a firearm drawn; and that officers are generally not justified in drawing their firearms when pursuing a subject suspected of committing only a misdemeanor;
- e. the proper use of all intermediate force weapons;
- f. threat assessment, alternative and de-escalation techniques that allow officers to effect arrests without using force and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units or even letting a subject temporarily evade arrest may be the appropriate response to a situation, even when the UOF would be legally justified;
- g. interacting with people with mental illnesses, including instruction by mental health practitioners and an emphasis on de-escalation strategies;
- h. factors to consider in initiating or continuing a pursuit;

- i. the proper duration of a burst of chemical spray, the distance from which it should be applied, and emphasize that officers must aim chemical spray only at the target's face and upper torso; and
- j. consideration of the safety of civilians in the vicinity before engaging in police action.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U112 during the quarter ending November 30, 2004, finding the DPD in non-compliance. In its Fifth Quarterly Status Report, the DPD indicated that lesson plans are being modified to reflect the revised Directive 304.2, which was under review by the DOJ as of the end of the quarter.<sup>119</sup>

### *Current Assessment of Compliance*

The DPD's compliance with paragraph U112 will require the completion of a number of lesson plans and associated curriculum development, including scenario-based training.<sup>120</sup> The Monitor understands that the Training Division has a number of efforts ongoing simultaneously and is making substantial progress in developing the lesson plans required under this paragraph. A UOF Continuum lesson plan has been submitted to address the requirements of paragraph U112a and Search Seizure Fundamental for Street Patrol lesson plans have been submitted to address the requirements of paragraphs U112b and U114b. The Monitor will provide the DPD with feedback on these lesson plans during the quarter ending August 31, 2005; however, these plans do not meet the requirements of all of the subsections of paragraph U112, including c through j.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U112.

## **C. FIREARMS TRAINING**

This section comprises paragraph U113 only. The Monitor assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

### **Paragraph U113 – Firearms Training Protocol**

Paragraph U113 requires the DPD to develop a protocol regarding firearms training that:

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<sup>119</sup> On December 17, 2004, the DOJ submitted a letter to the City and the DPD outlining the DOJ's continuing concerns regarding Directive 304.2, *Use of Force*, among others.

<sup>120</sup> Sections of this paragraph are covered in firearms training, pursuit training, mental health training, and chemical spray training, among others.

- a. ensures that all officers and supervisors complete the bi-annual firearms training and qualification;
- b. incorporates professional night training, stress training (i.e., training in using a firearm after undergoing physical exertion) and proper UOF decision making training in the bi-annual in-service training program, with the goal of adequately preparing officers for real life situations;
- c. ensures that firearms instructors critically observe students and provide corrective instruction regarding deficient firearms techniques and failure to utilize safe gun handling procedures at all times; and
- d. incorporates evaluation criteria to determine satisfactory completion of recruit and in-service firearms training, including: maintains finger off trigger unless justified and ready to fire; maintains proper hold of firearm and proper stance; and uses proper UOF decision making.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U113 during the quarter ending November 30, 2004, finding the DPD in non-compliance. Despite the fact that the DPD indicated that it has been conducting firearms training, the Monitor has not received a copy of the Firearms Training Protocol that is required by this paragraph. Furthermore, the firearms training under the UOF CJ should be based on the revised firearms policy, which had not yet received DOJ approval as required by paragraphs U20-23.

### *Current Assessment of Compliance*

The Firearms Directive was approved by the DOJ on March 23, 2005 and was disseminated to the field on April 9, 2005. According to the DPD, firearms training began in January 2004 and is being repeated in 2005. It is unclear whether a firearms training protocol has been developed consistent with the requirements of this paragraph. Also, since this training was planned prior to the finalization of the firearms directive, it is unclear whether any revisions were made based upon the revised policy. Finally, the Monitor notes that the DPD still lacks an appropriate facility for night firearms training.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U113.

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

This section comprises paragraph U114 only. The Monitor assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

### **Paragraph U114 – Annual Arrest and Police-Citizen Interaction Training**

Paragraph U114 requires the DPD to provide all DPD recruits, officers and supervisors with annual training on arrests and other police-citizen interactions. Such training must include and address the following topics:

- a. the DPD arrest, investigatory stop and frisk and witness identification and questioning policies;
- b. the Fourth Amendment and other constitutional requirements, including: advising officers that the “possibility” that an individual committed a crime does not rise to the level of probable cause; advising officers that the duration and scope of the police-citizen interaction determines whether an arrest occurred, not the officer's subjective, intent or belief that he or she affected an arrest; and advising officers that every detention is a seizure, every seizure requires reasonable suspicion or probable cause and there is no legally authorized seizure apart from a “Terry stop” and an arrest; and
- c. examples of scenarios faced by DPD officers and interactive exercises that illustrate proper police-community interactions, including scenarios which distinguish an investigatory stop from an arrest by the scope and duration of the police interaction; between probable cause, reasonable suspicion and mere speculation; and voluntary consent from mere acquiescence to police authority.

### ***Background***

The Monitor last assessed the DPD’s compliance with paragraph U114 during the quarter ending November 30, 2004, finding the DPD in non-compliance. In its Fifth Quarterly Status report, the DPD indicated that the Mechanics of Arrest and Search Training Course was scheduled to begin January 24, 2005. However, the lesson plan for this course was still under revision as of the end of the quarter. The Monitor also noted that the policies upon which the training will be based -- Arrest, Investigatory Stop and Frisk and Witness Identification and Questioning -- had not yet been disseminated to the field or implemented by DPD officers<sup>121</sup> and the auditable forms relating to these policies had not yet been finalized; therefore, any training provided by the DPD under this paragraph would be based on policies that are likely to be revised.

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

On April 18, 2005, the Monitor received Search and Seizure Fundamentals for Street Patrol lesson plans from the DPD which purport to meet the requirements of paragraph U114b. The Monitor will provide the DPD with comments on these lesson plans during the quarter ending

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<sup>121</sup> The Witness Identification and Questioning policy is subject to DOJ approval, which has not yet been obtained.

August 31, 2005. Nevertheless, the lesson plans submitted do not meet all of the requirements of paragraph U114.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U114.

## E. CUSTODIAL DETENTION TRAINING

This section comprises paragraphs U115-117. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2005, finding the DPD in non-compliance with each. The Monitor identified a number of deficiencies in the DPD's Custodial Detention lesson plans and actual training, which was conducted on January 17-21, 2005. The most significant deficiency was the absence of relevant forms and logs<sup>122</sup> for the different lesson plans.<sup>123</sup> In addition, the most current version of Directive 202.1, *Arrests*, did not adequately address the requirements of paragraph U116, including investigator availability, assignment to a specialized unit, the arrest charge(s) or the gathering of evidence to obtain a confession. Finally, although Directive 202.1 meets the requirements of paragraph U117, the DPD had yet to demonstrate that it had effectively disseminated this policy to the field<sup>124</sup> and the DPD was in the process of addressing the Monitor's TA regarding Auditable Forms UF-004, *Warrant/Arrest Compliance*, and UF-006, *Detention of Material Witness*.<sup>125</sup>

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2005.

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<sup>122</sup> The forms -- including Detainee Intake, Mental Health Screening, Authorization for Medication Treatment, Detainee File Folder -- were not yet ready for dissemination.

<sup>123</sup> Based upon DPD schedules, on March 2-3, 2005, after the end of the prior quarter, the Monitor met with the DPD Training Group responsible for assembling the training materials and delivering the lesson plans and conducted a thorough review of the lesson plans. During those meetings, the Monitor provided detailed feedback regarding the numerous deficiencies identified, including the items described above, regarding the lesson plans and the training conducted. Although the Monitor understands the need to expeditiously conduct the training; the Monitor believes that due to the critical nature of the auditable forms and logs, the attendees should receive direct, verbal instruction on their use and completion, rather than trying to obtain that information from an instruction sheet. The DPD Training Group indicated that they will revise the lesson plans to address the deficiencies identified by the Monitor, and include auditable forms and logs, and re-deliver the training to the designated "trainers" prior to their delivering the training to all precinct detention officers.

<sup>124</sup> According to the DPD, Training Directive 04-01 was approved and disseminated to the field after the end of the quarter, on or about March 21, 2005

<sup>125</sup> On March 2, 2005, after the end of the quarter, the DPD resubmitted the UOF CJ auditable forms after making revisions based upon TA provided by the Monitor.

## F. SUPERVISORY TRAINING

This section comprises paragraphs U118-120. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2005, finding the DPD in non-compliance with each. As of the end of the quarter, the DPD had yet to develop the curriculum for the training required by paragraphs U118 U119. The DPD indicated that lesson plans were being developed to reflect best practices. In addition, although, the RMB began conducting classes for newly promoted supervisors on Implementing Risk Management in a Law Enforcement Agency the training did not cover the operation of the MAS, which had not yet been fully developed or approved by the DOJ.

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2005.

## G. INVESTIGATOR TRAINING

This section comprises paragraphs U121-122. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2005, finding the DPD in non-compliance with each. As of the end of the quarter, the DPD had not yet provided the training required under these paragraphs.<sup>126</sup>

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2005.

## H. FIELD TRAINING

This section comprises paragraph U123 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although the DPD submitted material regarding its Field Training Officer forty-hour (40) basic certification course to the Monitor, this paragraph also requires that the DPD develop a protocol, which is subject to DOJ approval, to enhance its FTO program. The protocol had not been submitted to the DOJ for approval as of the end of the quarter.

The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2005.

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<sup>126</sup> The DPD indicated that it submitted its Investigator Training lesson plan and its External Complaints lesson plan, which is incorporated in the Investigator Training lesson plan, as an attachment to its Sixth Quarter Status Report. The Monitor received the attachments after the end of the quarter.

## VIII. MONITORING, REPORTING, AND IMPLEMENTATION

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Paragraph U139 is the only paragraph in this section of the UOF CJ for which the Monitor will be assessing compliance. This paragraph requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. The Monitor reviewed OCI and IAS investigative files this quarter and although the Monitor pointed out several accomplishments and some deficiencies, the Monitor did not require the DPD to reopen any investigation.



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

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This section of the report contains the Monitor's compliance assessments of the COC CJ paragraphs scheduled for review during the quarter ending May 31, 2005.

It is important to note that the organization of the COC CJ paragraphs vary, in that some paragraphs have separate but related "policy"-required paragraphs within the COC CJ,<sup>127</sup> while others do not.<sup>128</sup> These varying formats impact the way in which the Monitor assesses compliance with each paragraph. Specifically, the Monitor's compliance assessments of paragraphs that do not have a separate policy-related paragraph include a review for a written guidance or instruction.<sup>129</sup> This review for written guidance or instruction is included to ensure that the required procedures are mandated by the DPD and appropriate DPD personnel have received the necessary direction to carry out the requirements of the COC CJ.

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

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

The Monitor last assessed the DPD's compliance with paragraphs C14-19 during the quarter ending November 30, 2004 and with paragraphs C20-22 during the quarter ending February 29, 2004. The Monitor concluded that, with the exception of paragraph C20,<sup>130</sup> the DPD was in non-compliance with each. Although the DFD had conducted its inspections of the DPD buildings containing holding cells as required, the inspections revealed numerous Life Safety Code violations in connection with, among other items, the sprinklers, fire alarms, fire doors, egress routes, and fire separators. The Monitor acknowledged that the City intends to construct a new facility to comply with the COC CJ requirements; however, until such time that all buildings that contain holding cells either meet the requirements of the Life Safety Code or are no longer used to confine prisoners, the DPD will be unable to achieve compliance with the Fire Safety Policies of the COC CJ.

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<sup>127</sup> See, for example, paragraph C39 – Cleanliness of Cells and paragraph C40 – Cleaning Policy.

<sup>128</sup> See, for example, paragraph C45 - Access to Toilets and Potable Water.

<sup>129</sup> As described in the Introduction to *the Methodologies*, this is the Policy Component of compliance.

<sup>130</sup> The Monitor determined that the DPD was enforcing its No Smoking Policy as required by paragraph C20.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C14-22, during the quarter ending August 31, 2005.

## II. EMERGENCY PREPAREDNESS POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C23-25 during the quarter ending November 30, 2004, finding the DPD in non-compliance with each. The DPD had neither fully developed nor implemented its Department-wide Emergency Response Plan as of the end of the quarter.<sup>131</sup> The Monitor noted that although the DPD had submitted to the DOJ for review and approval documentation titled "*Fire Safety and Evacuation Procedures*," until such time that the Comprehensive Emergency Preparedness Program is approved by the DOJ and implemented, the DPD will be unable to achieve compliance with the emergency preparedness policies of the COC CJ. The Monitor also found that although Directive 305.4, *Holding Cells Areas*, meets the requirements of paragraph C25, it had not been implemented as of the end of the quarter ending November 30, 2004. In addition, the log referenced in the policy that will document the conduct of regular and routine inventory, testing and maintenance of all holding cell keys and locks had not yet been finalized.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C23-25 during the quarter ending August 31, 2005.

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<sup>131</sup> Prior to implementation, the emergency preparedness program must be approved by the DOJ.

### III. MEDICAL AND MENTAL HEALTH CARE POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C26-29 and C31-34 during the quarter ending November 30, 2004; the Monitor last assessed the DPD's compliance with paragraph C30 during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with paragraphs C26-34 during the current quarter. The results of our current assessments follow.

#### **Paragraph C26 – Identification and Response for Special Needs**

Paragraph C26 requires the DPD to ensure the appropriate identification of and response to prisoners' medical and/or mental health conditions. The DPD's compliance with paragraph C26 is dependent on the development of a comprehensive medical and mental health screening program (CMMHSP) required by paragraphs C27-29. This screening program, including the Detainee Intake Form, must be submitted to the DOJ for review and approval.

#### ***Background***

Compliance with paragraph C26 is dependent on the development of the CMMHSP required by paragraphs C27-29.

The Monitor last assessed the DPD's compliance with paragraph C26 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that the DPD was in non-compliance with paragraphs C27-29.

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

As described below, the DPD is currently in non-compliance with paragraphs C27-29. As a result, the Monitor finds the DPD in non-compliance with paragraph C26.

### **Paragraph C27-29 – Comprehensive Medical/Mental Health Screening Program**

Paragraphs C27-29 require the DPD to develop and implement a CMMHSP which must contain, at a minimum, the screening procedures and medical protocol standards as required by paragraphs C28-29. The CMMHSP must be approved in writing by a qualified medical<sup>132</sup> and mental health<sup>133</sup> professional. Upon their review and approval, and prior to being implemented, the CMMHSP must be submitted to the DOJ for review and approval. Thereafter, the program must be reviewed and approved in writing by a qualified medical and mental health care professional at least once every year, and prior to any revisions to the program.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraphs C27-29 during the quarter ending November 30, 2004, finding the DPD in non-compliance. With the exception of the revised Detainee Intake Form (DIF), all of the related policies had been submitted to the DOJ for review and approval; however, as of the end of the quarter, the DOJ had not yet completed its review of the policies.

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

During the current quarter, the DPD submitted the revised DIF to the DOJ to be reviewed along with the other previously submitted documents. On March 22, 2005, the DOJ extended a letter of conditional approval to the DPD related to the CMMHSP, including the DIF.<sup>134</sup> The following documents were approved by the DOJ:

1. Directive 305.1, *Detainee Intake and Assessment*
2. Directive 305.5, *Detainee Health Care*
3. Directive 403.2, *Infectious Disease Control Policy*
4. Directive 305.7, *Transportation of Detainees*
5. Training Directive 04.05, *Detainee Suicide Prevention – Managing the Risk*
6. Placard (flowchart) with Guidelines for Prisoner Screening
7. DPD 651, *Detainee Intake Form – revised*

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<sup>132</sup> The term 'qualified medical professional' is defined in the COC CJ as an individual who is currently licensed by the State of Michigan to deliver the health care services they have undertaken to provide.

<sup>133</sup> The term 'qualified mental health professional' is defined in the COC CJ as an individual who is currently licensed by the State of Michigan to deliver the mental health services they have undertaken to provide.

<sup>134</sup> The conditional approval related to two wording revisions identified by the DOJ. The DPD has since completed those revisions.

8. *Detainee Medical Care/Referral Form*
9. *DPD 661a, Mental Health High Risk Monitoring Log*
10. *DPD 661, Medical Health High Risk Monitoring Log*
11. *DPD 664, Detainee Medical Treatment/Medication Disbursement Log*
12. *DPD 662, Detainee Custodial Care Transfer Log*
13. *Authorization for Human Immunodeficiency Virus and Hepatitis Testing and Medical Records Release*

According to the HCCC, with the exception of the DIF and the Prescription, Detainee Custodial Care Transfer, and High Risk Medical and Mental Health Monitoring Logs, all of the above policies and documents were disseminated to the field on April 18, 2005, with an effective date of May 9, 2005. The DIF was posted to the DPD intradepartmental website on May 31, 2005, which was the last day of the current quarter, and the commands were instructed to begin using it.

The above forms and logs that have not yet been disseminated are integral components of the CMMHSP; as such, the Monitor will wait until the entire CMMHSP has been disseminated to test the adequacy of the dissemination, which is a prerequisite for compliance with the paragraph.<sup>135</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C27-29.

### **Paragraph C30 – Infectious Disease Policy**

Paragraph C30 requires the DPD to develop and implement a policy on infectious disease control, in consultation with qualified medical health professionals. The policy must establish appropriate housing of prisoners believed to have infectious diseases and mandate measures to prevent the spread of infectious diseases, such as proper handling of bio-hazardous materials. Once implemented, the policy must be reviewed and approved, in writing, by qualified medical health professionals on an annual basis and prior to any changes or alterations to the plan.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C30 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although the Monitor noted that the Infectious Disease Policy submitted on September 22, 2004, was comprehensive and well

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<sup>135</sup> Between May 26, 2005, and June 14, 2005, the Monitor requested the documentation to begin the process of testing the dissemination of the CMMHSP. However, given the fact that not all of the forms and logs contained in the CMMHSP have been disseminated, the Monitor will wait to fully test the implementation of the CMMHSP until the DPD indicates that they have been disseminated. The HCCC has indicated that this will occur on July 12, 2005.

written, the Monitor identified areas within the policy that required clarification and expansion in order to ensure that it included adequate measures to prevent the spread of infectious disease.

### *Current Assessment of Compliance*

During the current quarter, on March 1, 2005, the DPD resubmitted the Infectious Disease Policy to the Monitor. The Monitor determined that it adequately addresses the policy requirements of the COC CJ. On March 22, 2005, the DOJ approved the Infectious Disease Policy as it pertains to paragraphs C27-29, over which the DOJ has review and approval. According to the HCCC, this policy was disseminated on April 11, 2005 with an effective date of May 2, 2005. The Monitor has not yet tested the dissemination of this policy.<sup>136</sup>

Based on the foregoing, the Monitor has not yet completed its evaluation of the DPD's compliance with paragraph C30.

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

Paragraph C31 requires the DPD to develop and implement procedures for updating and exchanging prisoner health information. These procedures must ensure that prisoner health information is properly recorded at intake, and that it is readily available to all relevant medical and transporting personnel in a manner consistent with relevant federal and state confidentiality statutes. The procedures must also ensure that prisoners' health information is continually updated to include any additional relevant information acquired during their detention. Furthermore, these procedures must ensure that the information is documented and communicated between consecutive shifts. Finally, they must ensure that prisoners' health information travels with them when they are transferred to another facility.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C31 during the quarter ending November 30, 2004, finding the DPD in non-compliance. The DPD submitted Directive 305.7, *Transportation of Detainees*, to the DOJ for review and approval, indicating that this directive was intended to address the requirements of paragraph C31 and is a component of the CMMHSP required by paragraph C27. However as of the end of the quarter, the DOJ had not yet completed its review and the directive had been neither disseminated nor implemented by the DPD.

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<sup>136</sup> On June 14, 2005, the Monitor requested documentation to test the adequate dissemination of the policy. The Monitor will report on the dissemination of Infectious Disease Policy and the DPD's compliance with this paragraph in its Report for the Quarter Ending August 31, 2005.

### *Current Assessment of Compliance*

During the current quarter, on March 22, 2005, the DOJ approved Directive 305.7, *Transportation of Detainees*, and DPD 662, *Detainee Custodial Care Transfer Log*. According to the HCCC, this policy was disseminated on April 18, 2005 with an effective date of May 9, 2005; however, the *Detainee Custodial Care Transfer Log* had not yet been disseminated and implemented as of the end of the current quarter.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C31.

### *Paragraph C32 – Prescription Medication Policy*

Paragraph C32 requires the DPD to develop a Prisoner Prescription Medication Policy in consultation with qualified medical and mental health professionals that ensures prisoners are provided with prescription medications as directed. The policy must be approved in writing by medical and mental health professionals and submitted to the DOJ for review and approval within three months of the effective date of the COC CJ. The DPD must implement the policy within three months of the DOJ's approval. Thereafter, the policy must be reviewed and approved, in writing, by qualified medical and mental health professionals on an annual basis and prior to any revisions to the policy.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C32 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that as of the end of the quarter, Directive 305.5, *Detainee Health Care*, and the Prescription Medication Log were under review by the DOJ, and had not been disseminated and implemented by the DPD.

### *Current Assessment of Compliance*

During the current quarter, on March 22, 2005, the DOJ approved Directive 305.5, *Detainee Health Care*, and DPD 664, *Detainee Medical Treatment/Medication Disbursement Log*. According to the HCCC, the directive was disseminated on April 18, 2005 with an effective date of May 9, 2005; however, the related log had not yet been disseminated and implemented as of the end of the quarter. According to the requirements of this paragraph, the DPD must implement the policy within three months of the DOJ's approval (by June 22, 2005). The HCCC has indicated that the log will be disseminated during the training of the compliance officers, which is scheduled to be conducted on July 12, 2005.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C32.

### **Paragraph C33 – Suicide Precaution Clothing**

Paragraph C33 requires the DPD to provide appropriate clothing to all individuals placed under suicide watch while in detention.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C33 during the quarter ending November 20, 2004, finding the DPD in non-compliance. Although DPD detention officers were able to articulate the procedures for providing appropriate suicide clothing to prisoners placed under suicide watch, and the clothing was in adequate supply, the DPD was unable to provide the Monitor with documentation to demonstrate that adequate instruction had been provided to detention officers related to the procedures to follow regarding to suicide clothing.

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

During the current quarter, the Monitor conducted its assessment of DPD Directive 305.1, *Detainee Intake/Assessment*, and DPD 661a, *Mental Health High Risk Monitoring Log*, as they relate to the requirements of paragraph C33. On April 5, 2005, the Monitor forwarded a communication to the DPD that the policy and the log adequately addressed the policy requirements of paragraph C33. The HCCC has indicated that the policy was disseminated on April 18, 2005 with an effective date of May 9, 2005; however the related log, which documents the disbursement of suicide clothing to high-risk prisoners, has not yet been disseminated. The HCCC has indicated that the log will be disseminated during the training of the compliance officers to be conducted on July 12, 2005.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C33.

### **Paragraph C34 – Suicide Hazard Removal**

Paragraph C34 requires the DPD to remove or make inaccessible all suicide hazards in holding cells, including exposed pipes, radiators and overhead bars.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C34 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to the fact that precincts still had existing suicide hazards, such as exposed pipes, radiators and overhead bars, within the holding cells.



### *Current Assessment of Compliance*

As of the end of the current quarter, the DPD has not addressed the suicide hazards within the precinct holding cells. The City has indicated that Proposal S, which was approved by City voters on November 2, 2004, will allow for the construction of a central detention facility and will comply with all of the physical requirements contained within the COC CJ. However, according to the City, this new facility will take approximately 24 months to complete.<sup>137</sup> The HCCC has indicated that the DPD does not intend to retro-fit the existing DPD buildings that contain holding cells due to the substantial costs. The Monitor has expressed concern with this approach not only because of the length of time required to construct a new facility, but also because the new facility will not release the existing buildings from the COC CJ requirements unless individuals in DPD custody are no longer confined in any room or area within the building(s).<sup>138</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C34.

## **IV. PRISONER SAFETY POLICIES**

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This section of the COC CJ comprises paragraphs C35-38. It requires the DPD to develop and implement prisoner safety policies for all facilities that maintain holding cells. Each precinct, and the entire Department, must have clear and concise policies, procedures and forms that will ensure the safety and well-being of prisoners.

The Monitor last assessed the DPD's compliance with paragraphs C35-38 during the quarter ending February 28, 2005, finding the DPD in non-compliance, as the necessary policies, auditable logs, and forms had not yet been disseminated and implemented.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C35-38 during the quarter ending August 31, 2005.

## **V. ENVIRONMENTAL HEALTH AND SAFETY POLICIES**

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This section of the COC CJ (paragraphs C39-46) requires the DPD to develop and implement environmental health and safety policies for all facilities that maintain holding cells. These

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<sup>137</sup> Recently, on June 21, 2005, the Court inquired as to the City and the DPD's progress on constructing the new facility, which the City had said would be completed no later than April 2007. The City informed the Court that an interim plan for the facility would be forthcoming in 45 days.

<sup>138</sup> The term "holding cell" is defined in the Definitions section of the COC CJ (Section I, Paragraph k) to include any room or area in which individuals in DPD custody are confined, including cells at the DPD precinct stations, specialized units, and the Detroit Receiving Hospital.

procedures and policies are to be designed to ensure the cleanliness and maintenance of the cell block areas to ensure the safety of DPD prisoners.

The Monitor last assessed the DPD's compliance with paragraphs C39-46 during the quarter ending February 28, 2005. With the exception of adequate ventilation, paragraph C42a, the Monitor determined that the DPD was in non-compliance with all of the requirements of Environmental Health and Safety section of the COC CJ. These findings of non-compliance were based on the conditions of the holding cells -- the cell block areas were not adequately illuminated, were not clean, and the equipment, such as toilets and sinks, had not been maintained. Additionally, Directive 304.5, *Holding Cell Areas*, and related logs, which address temperature, cleaning, maintenance and reasonable access to toilets and potable water, had not yet been disseminated and implemented.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C39-46 during the quarter ending August 31, 2005.

## **VI. POLICIES CONCERNING PERSONS WITH DISABILITIES**

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

The Monitor last assessed the DPD's compliance with paragraphs C47-48 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although the Monitor confirmed that the DPD had begun tracking prisoners who required wheelchairs in February 2005; the documentation did not include prisoners with any type of disability who had been conveyed to and/or housed at the 5<sup>th</sup> and 6<sup>th</sup> Precincts. The only documentation that was available to the Monitor indicated that a disabled prisoner who required a wheelchair was transferred to the 2<sup>nd</sup>, rather than the 5<sup>th</sup> or 6<sup>th</sup> Precincts.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C47-48 during the quarter ending August 31, 2005.

## VII. FOOD SERVICE POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

Paragraph C49 requires the DPD to ensure that food is stored and served in a sanitary manner and in compliance with state and local health codes. The DPD's efforts to ensure that food is stored and served in a sanitary manner are also dependent on its implementation of the comprehensive food service policy required by paragraph C50.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C49 during the quarter ending November 30, 2004, finding the DPD in non-compliance because the Food Service Policy submitted by DPD was inadequate and did not meet all of the requirements of the paragraph.

### *Current Assessment of Compliance*

In order to assess the DPD's efforts to ensure that food is stored and served in a sanitary manner during the current quarter, the Monitor reviewed the Food Service Program audit conducted by the DPD AT and personnel from the Detroit Department of Health and Welfare, which was submitted on January 31, 2005. The audit findings indicate that three precincts did not store food at an adequate temperature; in one case the food had expired, which resulted in sandwiches being destroyed; and in seven of seventeen meal distributions observed, the DPD member serving the food had not washed their hands prior to serving the meals to detainees.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C49.

### **Paragraph C50 – Development and Implementation of Food Service Policies**

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

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C50 during the quarter ending November 30, 2004, finding the DPD in non-compliance. The DPD had submitted a revised version of Directive 305.4, *Holding Cell Areas*, which contained additional direction regarding Food Service and the related Meal Plan; however, the DPD did not submit documentation indicating that the Food Service portion of the Holding Cell Areas Policy was developed in consultation with a qualified sanitarian or if the Meal Plan contained therein had been approved by a qualified dietician. On December 21, 2004, the DPD submitted additional documentation related to the Food Service Policy, including the Food Service Protocol, Revised Food Service log; however, the Monitor had not yet evaluated those documents in relation to paragraph C50, as they were submitted after the end of the quarter.

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

During the current quarter, the Monitor completed its review of the Food Service Protocol and related documentation submitted by the DPD on December 21, 2004. The Monitor determined that individually and collectively, the Food Service Policy, the Food Service Protocol and the Holding Cell Area Policy fail to adequately address the requirements of this paragraph. Furthermore, the documents do not reference each other and fail to provide adequate instruction or guidance for the detention officers who must adhere to them. This is evident by the lack of compliance on the part of the detention officers related to paragraph C49, above. Additionally, the DPD did not submit documentation to the Monitor indicating that the Food Service Protocol was developed in consultation with a qualified sanitarian or that the Meal Plan contained therein has been approved by a qualified dietician.

Until such time as the Food Service policies have been revised and/or combined to ensure that all detention officers are able to comprehend and implement the procedures contained therein, the DPD will be unable to achieve compliance with this paragraph.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C50.

## VIII. PERSONAL HYGIENE POLICIES

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This section of the COC CJ comprises paragraph C51 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C51 during the quarter ending November 30, 2004, finding the DPD in non-compliance. Although the Monitor determined that Directive 305.4, *Holding Cells Areas*, adequately addressed the requirements of the paragraph, it had not yet been disseminated and implemented as of the end of the quarter, and the log referenced in the policy had not yet been finalized.

### *Current Assessment of Compliance*

According to the HCCC, Directive 305.4, *Holding Cells Areas*, and the related form for documenting the distribution of personal hygiene kits were disseminated on April 18, 2005, with an effective date of May 9, 2005. The Monitor has not yet completed its testing of the dissemination of the policy and related form; however, in order to assess the DPD's efforts to ensure that personal hygiene kits are available and provided to prisoners during the current quarter, the Monitor reviewed the Food Service Program audit conducted by the DPD AT and personnel from the Detroit Department of Health and Welfare, which was submitted on January 31, 2005.<sup>139</sup>

The audit findings indicate that the supplies of personal hygiene kits in two precincts were completely depleted and the DPD stockroom was also out of the supplies. Two other precincts did not have combs available, having decided that they could be used as weapons. The precinct personnel were unaware that new safety combs had been made available. Additionally, two of the precincts did not have adequate supplies of feminine hygiene products. The precinct personnel indicated to the AT that because female prisoners are only processed and not housed in those precincts,<sup>140</sup> it is not necessary for the processing only precincts to maintain a supply of

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<sup>139</sup> This also audit tested the DPD's compliance with the requirements of paragraph C51.

<sup>140</sup> According to the DPD, females are only housed at certain precincts.

feminine hygiene products. The Monitor notes that in addition to being a requirement of the COC CJ, there is also the possibility that a female prisoner may require feminine hygiene products during the time period of the processing prior to being transferred to another precinct for housing.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C51.

## IX. USE OF FORCE AND RESTRAINTS POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C52-54 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each. Although the Monitor determined that Directive 305.4, *Holding Cell Areas*, includes language that adequately addresses the requirements of paragraphs C52 and C53, this directive had not yet been disseminated and implemented, and the Monitor's review of the First Precinct revealed that detainees are being held to fixed objects for longer than a three-hour period. In addition, the DOJ was in the process of reviewing Directive 304.2, *Use of Force*, and Training Directive 04-07, *Use of Force Reporting*, as of the end of that quarter.<sup>141</sup>

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C52-54 during the quarter ending August 31, 2005.

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<sup>141</sup> On March 25, 2005, after the end of the quarter, the DOJ submitted a letter to the DPD offering additional recommendations regarding the UOF Policy. The DPD resubmitted the policy on March 26, 2005. .

## X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW

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This section of the COC CJ (paragraphs C55-57) requires the DPD to comply with its general incident investigation policies, UOF investigation policies and prisoner injury investigation policies in connection with all UOF, injuries and in-custody deaths occurring to prisoners in holding cells. The DPD is required to provide its revised UOF policies to the DOJ for review and approval.

The Monitor last assessed the DPD's compliance with paragraphs C55-57 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each. Although the Monitor determined that the revised Directive 305.4, *Holding Cell Areas*, adequately addressed the requirements of the paragraphs, it had not been implemented as of the end of the quarter, and the forms and logs that are mentioned in the policy have not been finalized.<sup>142</sup> In addition, the DOJ was in the process of reviewing Directive 304.2, *Use of Force*, and Training Directive 04-07, *Use of Force Reporting*, as of the end of that quarter.<sup>143</sup>

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C55-57 during the quarter ending August 31, 2005.

## XI. EXTERNAL COMPLAINTS

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

The Monitor last assessed the DPD's compliance with paragraphs C58-59 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each. As of the end of that quarter, Directive 305.4, *Holding Cells Areas*, had not yet been implemented by the DPD, and the DPD was revising Directive 102.6, *Citizen Complaints*.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C58-59 during the quarter ending August 31, 2005.

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<sup>142</sup> The Monitor provided TA on these forms and logs on February 8-9, 2005.

<sup>143</sup> On March 25, 2005, after the end of the quarter, the DOJ submitted a letter to the DPD offering additional recommendations regarding the UOF Policy. The DPD resubmitted the policy on March 26, 2005. .

## XII. GENERAL POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C60-61 during the quarter ending November 30, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraph C60 – General Policies*

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

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph C60 during the quarter ending November 30, 2004, at which time the DPD was found in non-compliance as it had yet to substantially finalize revised policy for the COC CJ.

#### *Current Assessment of Compliance*

During the current quarter, the DPD finalized and disseminated Directive 404.1, *Definitions*. The Monitor reviewed the directive and concluded that, with the exception of the unresolved issue regarding an acceptable definition of probable cause,<sup>144</sup> the remainder of Directive 404.1 adequately addresses the requirements of the paragraph.<sup>145</sup>

However, the Monitor will continue to withhold a compliance determination of the DPD's compliance with paragraph C60 until the probable cause issue is resolved.

### *Paragraph C61 – Proposed Policy for Community Review and Comment*

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

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<sup>144</sup> Please refer to the Monitor's discussion of compliance at paragraph U42.

<sup>145</sup> Although the directive met the minimum requirements of the UOF CJ, the Monitor identified and proffered recommendations for the inclusion of certain additional terms that would be of assistance to DPD members.



## *Background*

The Monitor last assessed the DPD's compliance with paragraph C61 during the quarter ending November 30, 2004, at which time the Monitor found the DPD in non-compliance. The DPD provided the Monitor with a detailed explanation of its internal procedures for the posting of proposed policy to the DPD website and dissemination of proposed policy at weekly BOPC meetings. The Monitor reviewed these procedures and determined that the DPD had established an adequate system to identify, forward, post and remove proposed policy from its Website. However, the OCI did not memorialize its protocol for identifying, addressing and responding to citizen comment.

Members of the Monitor's team met with the OCI during the quarter ending May 31, 2004 to obtain a better understanding of the methods by which the DPD informs the public of proposed policy and provides avenues to public response and input. A detailed explanation of this process is contained in the Monitor's third quarterly report, the Report for the Quarter Ending May 31, 2004.

## *Current Assessment of Compliance*

During the current quarter, the Monitor formally requested that the OCI provide a written protocol for the receipt of citizen comment. The Monitor received a response to this request on April 12, 2005. Although the response addressed some of the Monitor's concerns, it did not address all of the verbal representations that were previously made to the Monitor. For example, the protocol does not include steps acknowledging receipt of comment, providing comment to the BOPC at least two days prior to a regularly scheduled meeting and notifying the citizen regarding the outcome of their comment. Further, the protocol does not delineate specific responsibility in the absence of certain key OCI personnel.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C61.

### XIII. MANAGEMENT AND SUPERVISION

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This section of the COC CJ (paragraphs C62-72) requires the DPD to operate its holding cells in compliance with its comprehensive risk management plan and to routinely evaluate the operation of the holding cells to minimize the risks to its staff and prisoners. The DPD must evaluate such operations through the use of video cameras and via regularly scheduled semi-annual<sup>146</sup> audits that assess and report on issues affecting the safety and well-being of DPD personnel and prisoners in the DPD's holding cells.<sup>147</sup>

The Monitor last assessed the DPD's compliance with paragraphs C62-64 during the quarter ending February 28 2005, finding the DPD in non-compliance with each. In regards to paragraph C62, although the DPD had previously submitted a draft plan that proposed, among other things, that a "command level officer complete a standardized, specific and detailed inspection report of the conditions of the holding cells at DPD facilities," the Monitor was unable to substantiate whether inspection reports required under the plan were being completed on a daily basis, and whether they were being reviewed in order to evaluate the risk of harm to staff and prisoners. In regards to paragraph C63, because the DPD was in non-compliance with the majority of the related UOF CJ paragraphs (U79-99) and the majority of the related COC CJ paragraphs (C65-72), it was also in non-compliance with subparagraphs C63a-c. For subparagraphs C63d-e, the Monitor had not received any documentation from the DPD evidencing that it had implemented a system for the regular and periodic review of all DPD policies, nor had the Monitor been provided with any evidence that regular meetings of DPD management were occurring to share information and evaluate patterns of conduct that potentially increase the DPD's liability. In regards to paragraph C64, the Monitor had not received a protocol regarding the review and capture of videos as of the end of that quarter.<sup>148</sup> The Monitor is scheduled to again assess the DPD's compliance with paragraphs C62-64 during the quarter ending August 31, 2005.

The Monitor last assessed the DPD's compliance with paragraphs C65-72 during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with paragraphs C65-66 and C68-72 during the current quarter, and continued to provide TA to the members of the HCCC regarding COC CJ audits that were in progress. The Monitor did not assess the DPD's compliance with paragraph C67 during the current quarter, as the next Emergency

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<sup>146</sup> On October 4, 2004, the Court amended the audit schedule in the COC CJ by requiring the DPD's COC CJ audits to be completed semi-annually with the first and second audits due by January 31 and August 31, 2004, and subsequent audits due by January 31, 2005 and every six months thereafter.

<sup>147</sup> The topics covered by these audits include: UOF; injuries to prisoners and allegations of misconduct in holding cells; fire detection, suppression and evacuation; emergency preparedness; medical/mental health; detainee safety; environmental health and safety; and food service.

<sup>148</sup> On March 18, 2005, after the end of the previous quarter, the DPD submitted the Video Review Protocol.

Preparedness is not due until July 31, 2005.<sup>149</sup> The Monitor is scheduled to again assess compliance with paragraph C67 during the quarter ending August 31, 2005.

The results of our current assessments follow.

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

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

For ease of reporting, the Monitor has split paragraph C65 into the following three subparagraphs:

- C65a – Holding Cell Use of Force Investigations Audit
- C65b – Holding Cell Prisoner Injuries Investigations Audit
- C65c – Holding Cell Misconduct Investigations Audit

***Background***

The Monitor last assessed the DPD's compliance with subparagraphs C65a-c during the quarter ending February 28, 2005, finding the DPD in non-compliance. No audits related to uses of force or allegations of misconduct in holding cells were submitted as of the end of that quarter, and the DPD's first audit<sup>150</sup> related to prisoner injuries in holding cells contained deficiencies related to its population and scope.

***Current Assessment of Compliance***

The DPD did not submit any audits required by subparagraphs C65a-c by the end of the current quarter. These audits were due to be completed by January 31, 2005. The planning for the Use of Force and Allegations of Misconduct audits began in February 2005. The Monitor has

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<sup>149</sup> During the quarter ending February 28, 2005, the Monitor reviewed the DPD's most recent Emergency Preparedness Audit report, which was submitted on January 31, 2005, and the Error Corrections to Emergency Preparedness Programs Audit report, submitted on February 10, 2005. Although the audit and subsequent corrections report addressed all relevant COC CJ paragraphs related to emergency preparedness and presented the information in a format that was more concise and clear than the previous audit reports, the Monitor determined that they contained deficiencies related to the scope of review and erroneous reporting. As a result, the Monitor found the DPD in non-compliance with paragraph C67.

<sup>150</sup> This audit was due August 31, 2004 but was submitted until January 31, 2005.

provided on-going TA in relation to the planning for such audits; however, according to the DPD AT, the planning for the next Prisoner Injury audit has not yet begun.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C65a-c.<sup>151</sup>

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

Paragraph C66 requires the DPD to form a HCCC that is responsible for assuring compliance with the relevant provisions of the COC CJ. This paragraph also requires the HCCC to conduct regularly scheduled quarterly audits of all facilities that house holding cells to evaluate and report upon compliance with the fire detection, suppression and evacuation program as detailed in the COC CJ.<sup>152</sup>

For ease of reporting, the Monitor has split paragraph C66 into the following two subparagraphs:

- C66a - HCCC to Assure Compliance with the COC CJ
- C66b - HCCC Fire Safety Audits

### ***Background***

The Monitor last assessed the DPD's compliance with subparagraphs C66a and b during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although the HCCC made significant progress relevant to the development of policies required by the COC CJ and submitted a Fire Safety Audit on January 13, 2005,<sup>153</sup> the audit report contained numerous qualitative deficiencies in connection with its scope, sampling and reporting.

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

#### ***C66a - HCCC to Assure Compliance with the COC CJ***

During the current quarter, the HCCC continued developing auditable forms, logs and policies relating to and required by the COC CJ. It should be noted that several key policies, such as the medical and mental health policies, have been reviewed and approved by the DOJ and, according

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<sup>151</sup> The Monitor will continue to find the DPD in non-compliance for each audit until such time as the required audits have been submitted. When such audits are submitted, the quality of such audits will be evaluated.

<sup>152</sup> The scope of such audits must include an evaluation of the smoke detectors and sprinklers, the back-up power systems, and the DPD's fire equipment.

<sup>153</sup> This audit was due on August 31, 2004.

to the HCCC, have recently been disseminated.<sup>154</sup> Other policies, procedures and forms, such as those related to fire safety and emergency preparedness, remain outstanding.

In addition, 8 COC CJ audits were submitted in January 2005. Five of these were due August 31, 2004 and were therefore submitted late; the other three were submitted on-time by January 31, 2005. There are an additional two COC CJ audits that were due by August 31, 2004, and another 6 COC CJ audits that were due by January 31, 2005, none of which have been submitted.

Although the HCCC made progress in complying with some of the requirements of the COC CJ, until such time as the HCCC has assured compliance with the COC CJ through the implementation of all relevant policies, procedures and forms, and through the timely completion of the audits required by the COC CJ, it will be unable to achieve compliance with subparagraph C66a.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph C66a.

#### *C66b - HCCC Fire Safety Audit*

The DPD did not submit any audits related to Fire Safety during the current quarter. An audit of Fire Safety, which should have been submitted by January 31, 2005, therefore appears to have been skipped. According to the HCCC, no planning has begun for the audit which is due to be submitted by July 31, 2005.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph C66b.

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

Paragraph C68 requires the HCCC to conduct regularly scheduled semi-annual audits of medical/mental health care programs and policies in all DPD buildings containing holding cells.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C68 during the quarter ending February 28, 2005, finding the DPD in non-compliance. The audit dated May 2004, that was submitted to the Monitor on January 13, 2005, contained useful information regarding the topic being audited but was not submitted in a timely manner, was stale and contained numerous qualitative deficiencies in connection with its scope, sampling and reporting.

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<sup>154</sup> The Monitor is currently testing the dissemination of these policies.

### *Current Assessment of Compliance*

The DPD submitted the Medical and Mental Health Programs and Policies audit to the Monitor on January 31, 2005. In order to assess compliance with paragraph C68, the Monitor reviewed the audit report submitted by the DPD and selected AT working papers, including the audit work plan, crib sheets, matrices, and other related documents. The Monitor did not review additional working papers related to the fieldwork from this audit.<sup>155</sup>

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

- The AT submitted this audit on a timely basis;<sup>156</sup> however, as evidenced by the typographical and editing errors contained within the audit report, it was not submitted internally in a timeframe that allowed for an adequate review process to occur.
- The DPD inappropriately confined its population to those detainees who were either treated or admitted to the Detroit Receiving Hospital (DRH) during that three-month period. Although the Monitor understands that most of the DPD's detainees who require medical attention are sent to the DRH, detainees who were treated or admitted to other local health care facilities were neither identified nor quantified. As a result, the Monitor was unable to assess the completeness of the population. During subsequent meetings with the Monitor, the DPD AT suggested that this problem might be rectified by defining the population for this audit by examining billings to the DPD from all of the hospitals. The Monitor commends the DPD AT for this insightful suggestion and looks forward to its implementation the next time this audit is conducted.
- The samples for this audit were appropriately selected from the total population of detainees taken to the DRH from August to October 2004. Certain objectives were tested using minimum sample sizes of 16 detainees, while others were tested using a sample size of 24,<sup>157</sup> and one objective was tested using a sample size of 93.<sup>158</sup>
- Other objectives were tested by making observations at certain precincts, four of which were selected for review. No rationale was provided as to how or why such precincts were selected for review.

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<sup>155</sup> This audit was completed prior to formal training provided to the DPD AT by the Monitor's staff and the LAPD in December 2004 and January 2005, respectively, and consequently contained deficiencies similar to those described in the Monitor's Report for the Quarter Ending November 30, 2004.

<sup>156</sup> The audit was submitted on time by January 31, 2005 and related to testing up to 5 months earlier, from August to October 2004.

<sup>157</sup> No rationale was provided as to why 24 were selected for certain objectives, when 16 would have been sufficient.

<sup>158</sup> This sample size was justified.

- The scope of this audit did not adequately address all of the specific requirements of paragraph C68.<sup>159</sup> Consequently, the conclusions and recommendations in the audit report, while potentially valid and appropriate, did not adequately address the requirements of paragraph C68. In addition, the audit report did not include an overall evaluation of the adequacy or implementation of the DPD's medical/mental health programs and policies.<sup>160</sup>
- The audit report was clearer and more concise than previous COC CJ audit reports submitted, and included useful tables to summarize and compare the findings in each precinct for each objective. However, as noted earlier, the findings themselves were not always relevant as they did not adequately address the requirements of paragraph C68.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C68.

### *Paragraph C69-71 Audits of Detainee Safety, Environmental Health and Safety and Food Service Programs and Policies*

Paragraphs C69-71 require the HCCC to conduct regularly scheduled semi-annual audits covering all DPD buildings that contain holding cells of detainee safety programs and policies, environmental health and safety programs and the food service program.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraphs C69-71 during the quarter ending February 28, 2005, finding the DPD in non-compliance. The Monitor reviewed the Detainee Safety and Environmental Health and Safety audit reports, which were submitted by the DPD on January 13, 2005, and determined that they both contained deficiencies related to timeliness, sampling, scope and reporting. Although the Food Service Program audit report dated January 31, 2005 was submitted in a timely manner, it also contained deficiencies related to sampling, scope, and reporting.

#### *Current Assessment of Compliance*

During the current quarter, the DPD did not submit any audits related to these subjects. The Monitor understands that the AT is in the final planning stages for the audit of Environmental Health and Safety Programs; however, no planning has begun for the audits of the detainee safety or food service programs, which are due to be submitted by July 31, 2005.

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<sup>159</sup> For example, there was no indication that review of the prescription medication logs had been undertaken, there was no comparison of the hospital referral forms to prisoner intake forms, and there was no assessment of the thoroughness of the intake screening interviews.

<sup>160</sup> The audit focused on whether or not a particular policy or program (required by related paragraphs C26-34, 47 and 48) had been developed, revised or implemented, and on whether the DPD had identified or responded to particular situations. The report did not evaluate whether the particular policies or programs were being followed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C69-71.

### **Paragraph C72 – Audit Reporting Requirements**

Paragraph C72 requires the results of each of the COC CJ audits to be submitted via a written report to the Chief of Police and all precinct and specialized division commanders. The COC CJ requires such audits to be completed by January 31 and August 31, 2004 and every six months thereafter. Paragraph C72 also requires commanders to take disciplinary or non-disciplinary corrective action, when appropriate, regarding employees under their command.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C72 during the quarter ending February 28, 2005, finding the DPD in non-compliance because the audit reports submitted to the Chief of Police during that quarter did not adequately convey the results of each audit.

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

During the current quarter, the Monitor reviewed documentation submitted by the DPD in response to this paragraph including one audit report: the Medical/Mental Health Audit (required by paragraph C68), audit synopses submitted on January 31, 2005, and respective transmittal sheets.

The Monitor completed its review of this documentation and determined that although it contains some information related to the dissemination of four of the COC CJ audit reports,<sup>161</sup> and internal communications related to the concurrence of the COs regarding findings and recommendations of the audits; it does not contain information related to all of the COC CJ audit topics that have been conducted and submitted to date,<sup>162</sup> nor does it illustrate "action or non-action" on the part of the COs as required by the paragraph. Although the Monitor understands that it may not be necessary to relay all of the information contained in the 10 audit reports submitted in response to the COC CJ to date, problems identified during the prisoner safety, fire safety, and environmental health and safety audits, must also be conveyed to the precinct COs.

As described above in relation to paragraph U93, during discussions with the Monitor, the CRD CO indicated that the DPD has developed and is making final revisions to a CAN report which will specify actions required by each CO relative to each audit and include the date(s) by which

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<sup>161</sup> The four audits contained in the synopsis were Emergency Preparedness, Medical/Mental Health, Detainee Safety, and Food Service.

<sup>162</sup> The documentation did not contain information related to Prisoner Safety, Fire Safety or Environmental Health and Safety.



such action should take place. This report will be generated and tracked by the CRD and forwarded through the chain-of-command (including the Chief of Police), to the respective COs. A section of the CAN report is to be completed by the respective CO and returned to CRD with all necessary information to document the actions taken. The Monitor believes that once implemented, the CAN report and related processes will likely satisfy the requirements of paragraph C72 and will help the DPD in its efforts towards overall compliance with the COC CJ. However, the CAN report was not finalized or implemented as of the end of the current quarter.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C72.

## XIV. TRAINING

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This section of the COC CJ (paragraphs C73-78) requires the DPD to provide all detention officers with comprehensive training, maintain individual training records, provide training in key areas such as emergency response, intake and medical protocols, safety programs, maintenance protocols, and food preparation and delivery protocols.<sup>163</sup>

The Monitor last assessed the DPD's compliance with paragraphs C73-78 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each. The DPD had not developed comprehensive pre-service and in-service training as of the end of the quarter, and the majority of policies and programs required under the COC CJ had not yet been fully developed<sup>164</sup> or implemented, preventing the DPD from developing related training.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C73-78 during quarter ending August 31, 2005.

## XV. MONITORING AND REPORTING

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Paragraph C94 is the only paragraph in this section of the COC CJ for which the Monitor will be assessing compliance. This paragraph requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. The Monitor has not yet reviewed any investigative files under the COC CJ, as the DPD recently gained approval of many of its COC CJ policies and is in the process of implementing them.

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<sup>163</sup> Refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

<sup>164</sup> This included the DPD's emergency preparedness, medical/mental health screening, prisoner safety, environmental health and safety and hygiene programs and policies.

## **CONCLUSION**

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Significantly, the City and the DPD achieved a critical milestone this quarter, when the DOJ granted final approval of numerous DPD policies and related documents. The DPD also disseminated numerous policies to the field. As noted last quarter, the Monitor continues to be encouraged by this clear demonstration of progress. In this area, the DPD's next challenge will be implementation and training.

With regard to the Conditions of Confinement, as reported last quarter, the DPD still continues to face challenges in adhering to some of the requirements of the COC CJ in buildings that contain holding cells. The City has committed to building a central detention facility, which according to the City and the DPD, will be completed and ready for use by April 2007. According to the City, this central detention facility will comply with all of the physical requirements contained within the COC CJ. The Court recently requested an update on the progress in constructing this facility. The City informed the Court that a plan would be forthcoming in 45 days. In addition to the issues related to the physical remediation of the buildings that contain holding cells in order to achieve compliance with the COC CJ, recent inspections revealed that there are other compliance issues facing the DPD that are not related to the age or condition of the facilities.

Although there have been some noted improvements, the Monitor continues to have concerns about the timeliness and quality of audits and the failure to adhere to the audit submission schedule provided in the CJs by "skipping" audits. The DPD has undertaken to specifically address these issues, and the Monitor has offered to assist the DPD in improving the management of its audit function.

Sheryl Robinson Wood  
Independent Monitor

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### **Principal Contributors**

Joseph Buczek  
Hazel de Burgh  
Ronald Davis  
Ronald Filak  
Thomas Frazier  
Denise Lewis  
Jeffrey Schlanger  
Sherry Woods

## APPENDIX A:

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

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

<b>ACRONYM</b>	<b>DEFINITION</b>
A&D	Arrest and Detention
AG	Audit Group
AT	Audit Team
BOPC	Board of Police Commissioners
CALEA	Commission on Accreditation for Law Enforcement Agencies
CAN report	Corrective Action Needed report
CCR	Citizen Complaint Report
CEPP	Comprehensive Emergency Preparedness Program
CI	Chief Investigator
City	City of Detroit
CJ	Consent Judgment
CLBR	Command Level Board of Review
CLFRT	Command Level Force Review Team
CLO	Compliance Liaison Officer
CMMHSP	Comprehensive Medical and Mental Health Screening Program
CO	Commanding Officer

COC CJ	Conditions of Confinement Consent Judgment
CRD	Civil Rights Division
CRIB	Civil Rights Integrity Bureau
CSU	Communications Systems Unit
DAS	Disciplinary Administration Section
DDOH	Detroit Department of Health
DFD	Detroit Fire Department
DHWP	Detroit Health and Wellness Promotion
DIF	Detainee Intake Form
DOJ	Department of Justice
DPD	Detroit Police Department
DRH	Detroit Receiving Hospital
ECD	Emergency Communications Division
FIS	Force Investigation Section
FIU	Force Investigation Unit
FRT	Force Review Team
GAS	Government Auditing Standards
HCCC	Holding Cell Compliance Committee
IACP	International Association of Chiefs of Police
IAD	Internal Affairs Division
IAS	Internal Affairs Section
ICD	Internal Controls Division
IMAS	Interim Management Awareness System

JIST	Joint Incident Shooting Team
MAS	Management Awareness System
MCOLES	Michigan Commission on Law Enforcement Standards
MIOSHA	Michigan Occupational Safety and Health Administration
MITN	MCOLES Information and Tracking System
OCI	Office of the Chief Investigator
OIC	Officer in Charge
PAB	Professional Accountability Bureau
PAIR	Police Action Incident Report
PCR	Preliminary Complaint Report
PDO	Police Detention Officer
PSA	Public Service Announcement
RFP	Request for Proposals
RMB	Risk Management Bureau
RMG	Risk Management Group
SME	Subject Matter Expert
SMT	Senior Management Team
SOP	Standard Operating Procedure(s)
TA	Technical Assistance
USAO	United States Attorney's Office
UOF	Use(s) of Force
UOF CJ	Use of Force and Arrest and Witness Detention Consent Judgment



WCPO

Wayne County Prosecutor's Office

WIQD

Witness Identification and Questioning  
Documentation