

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiffs,

v.

Case No. 03-CV-72258
HONORABLE JULIAN ABELE COOK

CITY OF DETROIT,

Defendant.

_____ /

SECOND QUARTERLY REPORT OF THE NEW INDEPENDENT MONITOR FOR THE
DETROIT POLICE DEPARTMENT ISSUED APRIL 15, 2010

Second Quarterly Report of the Independent Monitor for the Detroit Police Department



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**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

TABLE OF CONTENTS

SECTION ONE: INTRODUCTION	1
Executive Summary from the Monitor.....	1
SECTION TWO: COMPLIANCE ASSESSMENTS - THE USE OF FORCE AND ARREST AND WITNESS DETENTION CONSENT JUDGMENT	6
III. USE OF FORCE POLICY.....	6
A. GENERAL USE OF FORCE POLICY	7
CJ Requirement U14	7
CJ Requirement U15:	7
CJ Requirement U16	8
CJ Requirement U17	9
CJ Requirement U18	9
CJ Requirement U19	10
B. Use of Firearms Policy.....	10
CJ Requirement U20	10
CJ Requirement U21	11
CJ Requirement U22	11
CJ Requirement U23:	12
C. Intermediate Force Device Policy	13
CJ Requirement U24	13
D. Chemical Spray Policy	14
CJ Requirement U25	14
CJ Requirement U26	15
IV. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW	16
A. General Investigations of Police Action	18
CJ Requirement U27	18

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

CJ Requirement U28 -----	19
CJ Requirement U29 -----	21
COMPLIANCE STATUS -----	23
CJ Requirement U30 -----	23
CJ Requirement U31 -----	24
CJ Requirement U32 -----	24
CJ Requirement U33 -----	27
B. Use of Force and Prisoner Injury Investigations-----	29
CJ Requirement U34 -----	29
CJ Requirement U35 -----	30
CJ Requirement U36 -----	31
B. IAD INVESTIGATIONS TO BE COMPLETED WITHIN 90 DAYS OF THE INCIDENT; AND 32	
C. Review of Critical Firearm Discharges and In-Custody Deaths -----	33
CJ Requirement U37 -----	33
CJ Requirement U38 -----	33
CJ Requirement U39 -----	34
CJ Requirement U40 -----	35
COMPLIANCE STATUS -----	36
CJ Requirement U41 -----	36
V. ARREST AND DETENTION POLICIES AND PRACTICES-----	37
A. Arrest Policies -----	38
CJ Requirement U42 -----	38
CJ Requirement U43 -----	38
B. Investigatory Stop Policies-----	39
CJ Requirement U44 -----	39
CJ Requirement U45 -----	39
C. Witness Identification and Questioning Policies -----	40

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

CJ Requirement U46 -----	40
CJ Requirement U47 -----	41
CJ Requirement U48 -----	41
D. Prompt Judicial Review Policies-----	42
CJ Requirement U49 -----	42
CJ Requirement U50 -----	42
CJ Requirement U51 -----	43
E. Hold Policies-----	43
CJ Requirement U52 -----	43
CJ Requirement U53 -----	44
F. Restriction Policies-----	44
CJ Requirement U54 -----	44
CJ Requirement U55 -----	45
G. Material Witness Policies-----	45
CJ Requirement U56 -----	45
CJ Requirement U57 -----	46
H. Documentation of Custodial Detention-----	46
CJ Requirement U58 -----	46
I. Command Notification -----	47
CJ Requirement U59 -----	47
CJ Requirement U60 -----	48
VI. EXTERNAL COMPLAINTS -----	50
CJ Requirement U61 -----	51
CJ Requirement U62 -----	52
CJ Requirement U63 -----	53
A. Intake and Tracking -----	53
CJ Requirement U64 -----	53
CJ Requirement U65 -----	54
CJ Requirement U66 -----	54
B. External Complaint Investigations-----	55

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

CJ Requirement U67 -----	55
CJ Requirement U68 -----	59
CJ Requirement U69 -----	60
INADEQUATE IAD CASE MANAGEMENT-----	61
INADEQUATE OCI CASE MANAGEMENT-----	61
VII. GENERAL POLICIES-----	62
CJ Requirement U70 -----	63
CJ Requirement U71 -----	63
CJ Requirement U72 -----	64
COMPLIANCE STATUS -----	64
CJ Requirement U73 -----	64
COMPLIANCE STATUS -----	65
CJ Requirement U74 -----	65
CJ Requirement U75 -----	65
CJ Requirement U76 -----	66
COMPLIANCE STATUS -----	67
CJ Requirement U77 -----	67
VIII. MANAGEMENT AND SUPERVISION -----	69
A. Risk Management Database-----	69
CJ Requirement U78 -----	70
CJ Requirement U79 -----	71
CJ Requirement U80 -----	71
CJ Requirement U81 -----	73
CJ Requirement U82 -----	73
CJ Requirement U83 -----	74
CJ Requirement U84 -----	75
CJ Requirement U85 -----	76

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

CJ Requirement U86 -----	76
CJ Requirement U87 -----	77
CJ Requirement U88 -----	77
CJ Requirement U89 -----	79
CJ Requirement U90 -----	79
B. Performance Evaluation System -----	80
CJ Requirement U91 -----	80
C. Oversight-----	81
CJ Requirement U92 -----	81
CJ Requirement U93 -----	81
CJ Requirement U94 -----	82
CJ Requirement U95 -----	82
CJ Requirement U96 -----	83
CJ Requirement U97 -----	83
CJ Requirement U98 -----	84
CJ Requirement U99 -----	84
D. Use of Video Cameras -----	85
CJ Requirement U100 -----	85
CJ Requirement U101 -----	85
CJ Requirement U102 -----	86
E. Discipline-----	86
CJ Requirement U103 -----	86
CJ Requirement U104 -----	87
CJ Requirement U105 -----	87
IX. TRAINING -----	90
A. Oversight and Development -----	91
CJ Requirement U106 -----	91
CJ Requirement U107 -----	92
CJ Requirement U108 -----	93

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

CJ Requirement U109 -----	93
CJ Requirement U110 -----	94
CJ Requirement U111 -----	94
B. Use of Force Training -----	95
CJ Requirement U112 -----	95
C. Firearms Training -----	96
CJ Requirement U113 -----	96
D. Arrest and Police-Citizen Interaction Training -----	97
CJ Requirement U114 -----	97
E. Custodial Detention Training -----	98
CJ Requirement U115 -----	98
CJ Requirement U116 -----	99
CJ Requirement U117 -----	99
F. Supervisory Training -----	100
CJ Requirement U118 -----	100
CJ Requirement U119 -----	100
CJ Requirement U120 -----	101
G. Investigator Training -----	101
CJ Requirement U121 -----	101
CJ Requirement U122 -----	102
H. Field Training -----	102
CJ Requirement U123 -----	102
 SECTION THREE: COMPLIANCE ASSESSMENTS - THE CONDITIONS OF CONFINEMENT	
CONSENT JUDGMENT -----	106
 III. FIRE SAFETY POLICIES -----	 107
CJ Requirement C14 -----	107
CJ Requirement C15 -----	108
CJ Requirement C16 -----	108
CJ Requirement C17 -----	109

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

CJ Requirement C18 -----	109
CJ Requirement C19 -----	110
CJ Requirement C20 -----	111
CJ Requirement C21 -----	111
CJ Requirement C22 -----	112
IV. EMERGENCY PREPAREDNESS POLICIES-----	112
CJ Requirement C23 -----	112
CJ Requirement C24 -----	113
CJ Requirement C25 -----	114
V. MEDICAL AND MENTAL HEALTH CARE POLICIES-----	114
CJ Requirement C26 -----	114
CJ Requirement C27 -----	115
CJ Requirement C28 -----	116
CJ Requirement C29 -----	117
CJ Requirement C30 -----	118
CJ Requirement C31 -----	119
CJ Requirement C32 -----	120
CJ Requirement C33 -----	122
CJ Requirement C34 -----	122
VI. PRISONER SAFETY POLICIES-----	123
CJ Requirement C35 -----	123
CJ Requirement C36 -----	123
CJ Requirement C37 -----	124
CJ Requirement C38 -----	125
VII. ENVIRONMENTAL HEALTH AND SAFETY POLICIES-----	126
CJ Requirement C39 -----	126
CJ Requirement C40 -----	128
CJ Requirement C41 -----	128
CJ Requirement C42 -----	129

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

CJ Requirement C43 -----	129
CJ Requirement C44 -----	130
CJ Requirement C45 -----	130
CJ Requirement C46 -----	131
VIII. POLICIES CONCERNING PERSONS WITH DISABILITIES -----	131
CJ Requirement C47 -----	131
CJ Requirement C48 -----	132
IX. FOOD SERVICE POLICIES -----	133
CJ Requirement C49 -----	133
CJ Requirement C50 -----	133
X. PERSONAL HYGIENE POLICIES -----	134
CJ Requirement C51 -----	134
XI. USE OF FORCE AND RESTRAINTS POLICIES -----	135
CJ Requirement C52 -----	135
CJ Requirement C53 -----	135
CJ Requirement C54 -----	136
XII. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW -----	136
CJ Requirement C55 -----	136
CJ Requirement C56 -----	137
CJ Requirement C57 -----	137
XIII. EXTERNAL COMPLAINTS -----	138
CJ Requirement C58 -----	138
CJ Requirement C59 -----	138
XIV. GENERAL POLICIES -----	139
CJ Requirement C60 -----	139
CJ Requirement C61 -----	140
XV. MANAGEMENT AND SUPERVISION -----	140
CJ Requirement C62 -----	140
CJ Requirement C63 -----	141
CJ Requirement C64 -----	142

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

CJ Requirement C65	143
CJ Requirement C66	144
CJ Requirement C67	145
CJ Requirement C68	145
CJ Requirement C69	146
CJ Requirement C70	147
CJ Requirement C71	148
CJ Requirement C72	149
XVI. TRAINING	150
CJ Requirement C73	150
CJ Requirement C74	151
CJ Requirement C75	151
CJ Requirement C76	152
CJ Requirement C77	153
CJ Requirement C78	153
APPENDIX: HISTORY AND METHODS	157
APPENDIX A: ACRONYMS	160

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

SECTION ONE: INTRODUCTION

The report which follows is the second quarterly report of the recently appointed second Monitoring Team in the case of United States of America v. City of Detroit. The report is based on our site visit of January 25th through January 29th, 2010, and the subsequent analyses of relevant data. In this report the Monitoring team again assesses compliance with all 176 of the requirements of the combined Use of Force (111 requirements) and Conditions of Confinement (65 requirements) Consent Judgments. The report begins with a review of compliance with the Use of Force requirements. That is followed by the review of compliance with the Conditions of Confinement requirements.

Based on our review of the "Use of Force" requirements, the Department was found to be in Phase 1 compliance with 104 of the 111 (94%) requirements. This is up from 81% on the first quarterly visit. The Department was found to be in Phase 1 and Phase 2 compliance (Full Compliance) with 45 of the 111 (41%) requirements, up from 24%.

For the "Conditions of Confinement" requirements, the Department was found to be in Phase 1 compliance with 60 of the 65 requirements (92%). That is up from 83% on the first visit. The Department was found to be in Phase 1 and Phase 2 compliance (full compliance) with 33 of the 65 (51%) requirements, up from 37%.

Overall, we have concluded that the Detroit Police Department is in Phase 1 compliance with 164 of the 176 (93%) monitored requirements. This is up from 82% in the first report. We found the Department to be in Full Compliance (Phase 1 and Phase 2 compliance) with 78 of the 176 (44%) monitored requirements of the applicable paragraphs of both Consent Judgments. That is up from 29%. Pending Compliance for Phase 2 was recognized for eight or 4% of all requirements. Growth in compliance levels across the visits is evident.

EXECUTIVE SUMMARY FROM THE MONITOR

This is our second quarterly report in the case of United States of America v. City of Detroit. The report is based on our site visit, which took place from January 25th through January 29th, 2010, and the subsequent analyses of relevant data. Consistent with the practice established in our first review we continue to consider the totality of the requirements of both the active Consent Judgments. This includes a total of 111 requirements in the "Use of Force" judgment and an additional 65 requirements in the "Conditions of Confinement." In this executive summary I will review the levels of compliance found for the quarter and highlight what the monitoring team believes are some of the more significant findings, trends, patterns and concerns that arose as a result of our evaluation.

The second quarterly visit was an opportunity for the monitoring team to continue interviews with key staff throughout DPD. It also facilitated further collection and review of data with members of the DPD Compliance team and other department members. We also scheduled and completed a review of the MAS system including a "live test" of the system in collaboration with

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

the technical staff of the department. The Monitoring team wishes to express its gratitude for the continued diligence and excellent work by the Department's Compliance Team; the Civil Rights Integrity Bureau (CRIB).

In preparing our first report we drew important information from the work of the prior monitoring team. The accumulation of their work provided a valuable foundation. Although we made our independent assessment of compliance, we took care to document the final status in the previous monitor's findings and to report the justification for those findings. This report represents a true break with the efforts of the past team. Here our intention is not to refer to the previous work but to build on the foundation of our own findings reported for the last quarter. We remain cognizant of the work of the prior team and grateful for their efforts. However, we see ourselves moving forward with our own analytic methods, the clarity of our own logic and the application of our own experience, knowledge and skills. We proceed with the goals of supporting quality policing through our analyses and for providing assistance where it is sought by the parties.

The majority of this document is dedicated to the reporting of the assessment of compliance with the requirements of the Consent Judgments. Based on our review of the "Use of Force" requirements, the Department was found to be in Phase 1 compliance with 104 of the 111 (94%) requirements. This is up from 81% on the first quarterly visit. The Department was found to be in Phase 1 and Phase 2 compliance (Full Compliance) with 45 of the 111 (41%) requirements, up from 24%.

In the "Conditions of Confinement" requirements, the Department was found to be in Phase 1 compliance with 60 of the 65 requirements (92%). That is up from 83% on the first visit. The Department was found to be in Phase 1 and Phase 2 compliance (full compliance) with 33 of the 65 (51%) requirements, up from 37%.

These figures are reported in the table below.

	Second Quarterly Report Summary					
	Use of Force		Cond of Conf		Total	
	Phase 1	Phase 2	Phase 1	Phase 2	Phase 1	Phase 2
Paragraph Numbers	14-123		14-78			
Number of Requirments	111	111	65	65	176	176
Pending Compliance	1	5	4	2	5	7
Not in Compliance	6	57	1	30	7	87
Deferred	0	4	0	0	0	4
In Compliance	104	45	60	33	164	78
Percent in Compliance	94%	41%	92%	51%	93%	44%

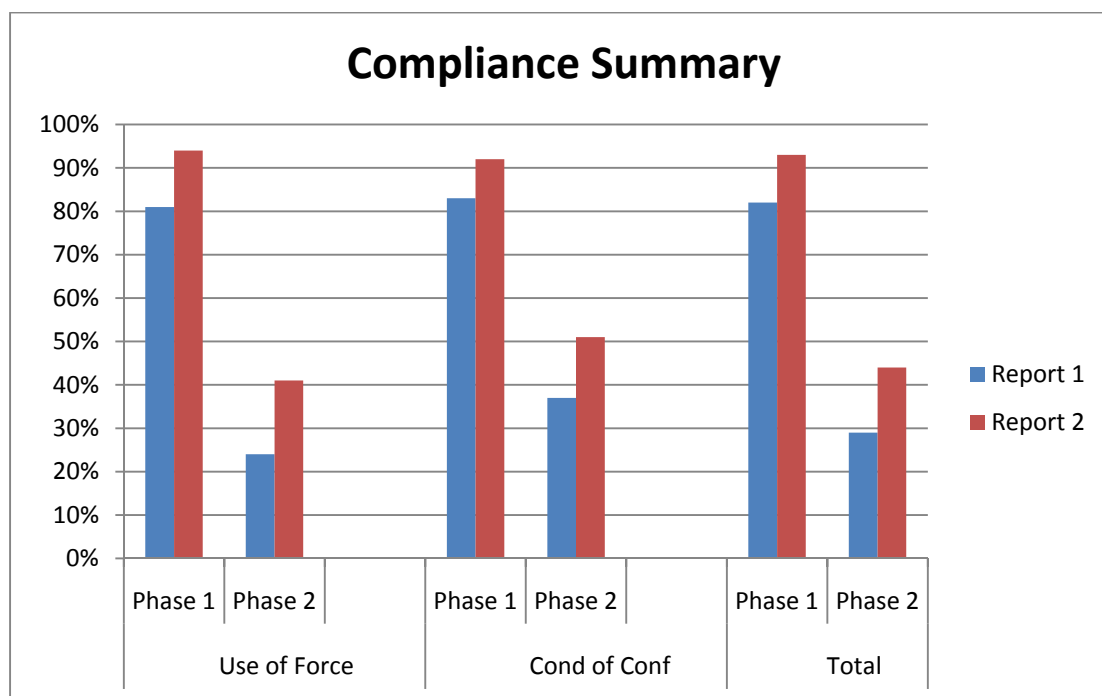
Second Quarterly Report of the Independent Monitor for the Detroit Police Department

04/15/2010

In report #1 we placed 10 requirements in the pending category for Phase 2 compliance. In this report (#2) eight of those are now “In Compliance,” one remains “Pending (COC #27) and 1 was found to have been “Not in Compliance” (COC 37). In the original report we deferred a finding for 8 requirements. For this report (#2) five of those were found to have been “In Compliance,” two (U91 and COC 52), “Not in Compliance” and one (COC 70) was placed in the pending category.

For this report (2nd) 7 requirements are listed as “Pending.” In the first report five of these had been “Not in Compliance,” one was “Pending” (COC 27), and one (COC70), had been deferred. The elevation of requirements from “Non-Compliance” to the “Pending” category is a positive step and attests to the Department’s resolve to comport with the requirements of the judgments. Compliance is designated as deferred for four requirements in this report (U16,U17,U19,U26).

In the aggregate, we have concluded that the Detroit Police Department is in Phase 1 compliance with 164 of the 176 (93%) monitored requirements. This is up from 82% in the first report. We found the Department to be in Full Compliance (Phase 1 and Phase 2 compliance) with 78 of the 176 (44%) monitored requirements of the applicable paragraphs of both Consent Judgments. That is up from 29%. Pending Compliance for Phase 2 was recognized for seven or 4% of all requirements. The Chart below illustrates the levels of compliance achieved on both judgments and on both visits. Growth in compliance across the visits is evident.



**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

The chart below provides the summary data illustrating the increases in compliance over the two visits.

	Percent in Compliance					
	Use of Force		Conditions of Confinement		Total	
	Phase 1	Phase 2	Phase 1	Phase 2	Phase 1	Phase 2
Report 1	81%	24%	83%	37%	82%	29%
Report 2	94%	41%	92%	51%	93%	44%

The review of compliance associated with the second quarterly visit did raise several issues which the monitoring team regards as critical to continued movement forward. As first noted in Report Number 1, there is continuing concern over the question of underreporting of uses of force. This issue grew out of the recognition of a substantial drop in the number of use of force reports as the department transitioned from paper reports to electronic copies. Based on the earlier report, DPD is examining this issue and the Monitoring team is looking forward to further discussion and, ultimately, resolution of this matter in the near future. In the meantime the continuing concern has influenced the Monitoring Team's finding on some requirements related to the use of force.

A second and related issue has been noted in the areas of use of force and investigations. This relates to the quality and thoroughness of documentation. Monitoring team members have noted that in many cases the detailed requirements of the Consent Judgments are not fully met. On a variety of occasions, we noted that report signatures are missing, dates are incorrect, or there is other evidence of incompleteness. These issues are often related to the expectations and training of supervisors. The report makes clear the need for added diligence on the part of supervisors in carrying out their reviews and general supervisory responsibilities.

During the second quarterly visit the Monitoring Team dedicated special attention to the state of MAS, the DPD risk management data base and allied system. That attention included a "live test" of the system conducted in conjunction with DPD technical staff. The test involved queries of the system for a variety of information that a police administrator might seek in the wake of a significant incident. The test was largely unsuccessful with the system unable to produce key information in a timely fashion including training information, and incident related information. The test largely confirmed the problems identified over six months earlier in a review of the system by a DOJ subject matter expert. With unsatisfactory test results in hand, we are continuing to work with the Court, the Department of Justice and DPD to address the fundamental question first raised by the DOJ expert: whether it is better to continue on this course or to completely reconsider the system to be used to meet these requirements.

Many of the issues noted above deal with the completeness and quality of work as required by the Consent Decrees. These issues are related to concerns about training. In addition to these

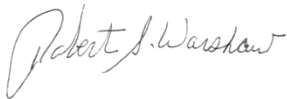
**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

topics the Monitoring team noted the need for additional clarity in training both with regard to policy and the comprehensiveness of in-service training.

The concerns identified in review of the Use of Force Decree often had parallels in the assessment of compliance with the Conditions of Confinements requirements. In particular there was concern about training and supervisor oversight. Additionally, while progress was noted, issues regarding conditions of the holding cells continued to be of concern.

The concerns noted above merit serious attention and will be considered in our discussion with the parties as the Monitoring team prepares for and moves into its third quarterly visit. These concerns, however, should not be allowed to overwhelm the evidence of clear progress that this report documents. DPD has moved forward with regard to both phase 1 and phase 2 compliance in both Use of Force and the Conditions of Confinement Decrees. A substantial increase in total compliance from 29% to 44% across both decrees is noteworthy. This improvement of phase 2 or full compliance with 50 requirements following the first visit to compliance with 78 requirements on the second visit represents a 16% improvement. Although the complexity of the issues addressed in these Consent Judgments would suggest that such improvement rates will be difficult to maintain, progress in the right direction is clearly evident in this report.

I would note, that in a meeting with Mayor Dave Bing, it became increasingly clear that his commitment to the requirements of this process in particular, and to the principles of good policing in general, is emerging as an important element in the City's drive to remediate the issues that are the underpinnings of the work that lies ahead. We look forward to working with the Mayor, the leadership of the Police Department, and the Department of Justice in assuring compliance that is sustainable and in the best interests of the citizens of Detroit.



Monitor

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

III. USE OF FORCE POLICY

This section of the Consent Judgment requires that the DPD review and revise its general use of force, firearms, and chemical spray policies. In addition, it requires the selection of an intermediate impact device, inclusion of guidelines on the use of the device in the revised policies, and the provision of appropriate training on its use.

The revised policies are to include a force continuum that identifies lethal and less lethal force options, relates the force options to the types of conduct by individuals justifying the various force options, and describes de-escalation, disengagement and other appropriate tactics and responses. The revised firearms policy must address qualification requirements, approved firearms and ammunition, and a prohibition on the firing at or from moving vehicles. The chemical spray policy must require, when appropriate, verbal warning prior to the deployment of chemical spray; set forth requirements for decontamination, medical assistance, and supervisory approval; and prohibit officers from using chemical spray on a handcuffed individual in a police vehicle.

Paragraphs U14-17 and U19 were previously considered “policy only” requirements. The implementation of the various requirements established by the revised policies was tested within the parameters of U18. We discontinued that practice and have instead elected to provide a detailed assessment of each individual task and requirement. These assessments should provide a clear picture of the effectiveness with which the policies have been implemented and provide guidance for the DPD with regard to the development of necessary materials and training.

Our compliance assessment of the requirements in this section is multifaceted. First we requested and have reviewed applicable policies and a variety of documents developed in support of the policies. That review continues in conjunction with our site visits wherein we have visited the police districts, precincts and other commands, have met and discussed operational activities with command, supervisory, and training staff and are in continuing and frequent contact with Civil Rights Integrity Bureau (CRIB) staff.¹ Finally, in order to assess actual compliance with the various requirements relating to the training and use of force in the field, we have observed training classes, reviewed arrest, use of force and related police reports, and have reviewed investigations of force, detainee injuries and allegations of force.

Our findings for this reporting period are outlined in the following section.

¹ The Civil Rights Integrity Bureau (CRIB), headed by a Deputy Chief was established in 2003. Upon the retirement of the Deputy Chief holding that position, the command was changed to the Office of Civil rights (OCR) headed by a Commander. In November 2009, CRIB was re-established, again headed by a Deputy Chief. OCR is presently a sub-unit within CRIB. The acronyms CRIB and OCR are used interchangeably in this report.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

A. GENERAL USE OF FORCE POLICY***CJ Requirement U14***

The DPD shall revise its use of force policies to define force as that term is defined in this Agreement.

Comments: The consent Judgment defines force as follows:

“The term ‘force’ means the following actions by an officer: any physical strike or instrumental contact with a person; any intentional attempted physical strike or instrumental contact that does not take effect; or any significant physical contact that restricts the movement of a person. The term includes the discharge of firearms; the use of chemical spray, choke holds or hard hands; the taking of a subject to the ground; or the deployment of a canine. The term does not include escorting or handcuffing a person, with no or minimal resistance. Use of force is lawful if it is objectively reasonable under the circumstances and the minimum amount of force necessary to affect an arrest or protect the officer or other person. “

DPD Directive 304.2, Use of Force, effective June 27, 2005, defines force consistent with the requirements of this paragraph. In addition, our review of use of force (UF002), IAD, FIS and OCI investigations described in other sections of this report also demonstrate the appropriate application of the term “force.”

In our previous report we noted that a review of historical use of force data indicated the probable under reporting of use of force events, which precluded our finding the DPD in Phase 2 compliance.² We acknowledge an increase in completed Supervisory Investigative Reports and are also advised the DPD is reviewing the use of force reporting process in order to identify deficiencies and implement corrective measures; however we are not yet assured the apparent underreporting issue is resolved. Accordingly, the DPD do not yet find DPD in Phase 2 compliance with the requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U15:

The use of force policy shall incorporate a use of force continuum that:

² DPD data indicates 1200 Use of Force, Detainee Injury and Allegations of Force in year 2007. These records were manually maintained at that time. DPD reports this record keeping was automated in August, 2008. A subsequent review of this same data for the period November, 2008 through October, 2009 indicates a reduction to 568 for these same activities.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- 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*
- 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.*

Comments: DPD Directive 304.2 Use of Force, effective June 27, Section 5.2 and DPD Training Directive 04-3, Use of Force Continuum, effective May 5, 2005 set forth the requirements of this paragraph.

Our analysis of Phase 2 compliance requires consideration of the extent to which policy requirements noted here are reflected in practice. The requires an examination of use of force reports and affirmation that the reports justify the use of force under the policy, describe the conduct of individuals against whom force is used and describe the efforts at de-escalation or avoidance that were employed. Our review of 175 Use of Force (UF002) Reports again found general indications that officers may have made attempts to de-escalate their encounters. However, the reports lacked sufficient documentation or specificity with regards to de-escalation efforts and were silent on any details of actual disengagement. The reports provided do not demonstrate that the DPD is meeting the >94% standard required for compliance.³

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U16

The use of force policy shall 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 use of force would be ineffective or present a danger to the officer or others.

Comments: DPD Directive 304.2, Use of Force, effective June 27, 2005, Section 5.2, and Training Directive 04-3, Use of Force Continuum, effective, May 5, 2005 set forth the requirements of this CJ paragraph. The DPD is Phase 1 compliant.

We reviewed 175 Use of Force Reports (UF 002) and found that 166 (95%) included verbal commands and an opportunity to submit to arrest prior to the use of force. Part of the dialogue included officers advising subjects that they were under arrest and to place their hands behind their backs for handcuffing. The nine reports that included no indication of officers giving verbal commands provided no indication that such commands would have proven ineffective or presented a danger to officers. The cases reviewed are indicative of implementation compliance

³ See U14 regarding under reporting of the use of force and other activities.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

with this protocol, however we are withholding that finding until there is a resolution to the under reporting concerns outlined in U14. Accordingly, and with the clear expectation that DPD shall aggressively address the issue of underreporting as evidenced through pronouncement, counseling, and if necessary, discipline, we shall defer a Phase 2 finding relevant to this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: Deferred

CJ Requirement U17

The use of force policy shall prohibit the use of choke holds and similar carotid holds except where deadly force is authorized.

Comments: DPD Directive 304.2, Use of Force, effective June 27, 2005, Section 4.3 prohibits the use of the types of holds described consistent with the requirements of this paragraph; therefore DPD is Phase 1 compliant.

We also reviewed 175 Use of Force Forms and the 84 completed Supervisory Investigation Reports and found no cases in which a choke hold may have been applied during a struggle.⁴ The cases reviewed are indicative of implementation compliance with this paragraph. However, here too we are withholding that finding in light of the concern with potential under reporting. Refer to U27. Accordingly, and with the clear expectation that DPD shall aggressively address the issue of underreporting as evidenced through pronouncement, counseling, and if necessary, discipline, we shall defer a Phase 2 finding relevant to this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: Deferred

CJ Requirement U18

The DPD shall develop a revised use of force policy within three months of the effective date of this Agreement. The policy shall be submitted for review and approval of the DOJ. The DPD shall implement the revised use of force policy within three months of the review and approval of the DOJ.

Comments: DPD Directive 304.2, Use of Force, effective June 27, 2005, and approved by DOJ, April 14, 2005 is compliant with the requirements of this paragraph. Phase 2 compliance will

⁴ We reviewed 175 Use of Force Reports (UF002) completed during this reporting period. Each required a command level investigation. We reviewed 84 Command Level Investigations, some consisting of multiple 002 Reports; 38 Use of Force 002's were not investigated at any level.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

rely on effective field implementation of the specific directive requirements contained in paragraphs U14-17 and U19. The requirement of policy must be reflected in practice as revealed in a fully representative review of the uses of force. We cannot grant phase 2 compliance under the current circumstances which involve potential missing cases resulting from underreporting.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U19

The use of force policy shall provide that a strike to the head with an instrument constitutes a use of deadly force.

Comments: DPD Directive 304.2, Use of Force, effective June 27, 2005. Section 4.2.4 provides that “a strike to the head of any person with an instrument constitutes a use of deadly force.” DPD is Phase 1 compliant.

Our review of the 175 Use of Force Reports found no instances of a strike to the head. Our review of nine completed Force Investigations cases found no instances wherein officers used strike to the head. While our review is indicative of Phase 2 compliance, we are withholding that finding until the under reporting of force described in U14 is resolved. Accordingly, and with the clear expectation that DPD shall aggressively address the issue of underreporting as evidenced through pronouncement, counseling, and if necessary, discipline, we shall defer a Phase 2 finding relevant to this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: Deferred

B. USE OF FIREARMS POLICY***CJ Requirement U20***

The DPD shall revise its use of firearms policies to provide that officers must successfully qualify with their department-issued firearm and any other firearm they are authorized to use or carry on-duty on a bi-annual basis, as described in paragraph 113.

Comments: DPD Directive #304.1, Firearms, effective May 25, 2005, Section 8.1 provides “All members are required to train and qualify with their primary on duty firearm and any other on duty or off duty DPD issued or approved firearm bi-annually.” DPD is Phase 1 compliant.

During the same periods, 491 and 746 members failed to report for required training. During the period July 1 – December 31, 2009, the DPD trained 2,755 of its 2,781 officers (99%). DPD is

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

in full compliance with the requirements of this paragraph for this reporting period, but must train >94% during the second half of the fiscal year to maintain this status.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U21

Officers who fail to re-qualify shall be relieved of police powers and relinquish immediately all department-issued firearms. Those officers who fail to re-qualify after remedial training within a reasonable time shall be subject to disciplinary action, up to and including a recommendation for termination of employment.

Comments: DPD Directive 304.1, Firearms, effective May 25, 2005, Section 8.1, provides that “All members that fail to qualify with their duty weapon shall relinquish their DPD issued firearms and be relieved of their police powers” consistent with the requirements of this CJ paragraph. The DPD is Phase 1 compliant.

We reviewed applicable training documentation for the period July 1 – December 31, 2009. The DPD has implemented the policy of removing firearms and police authority from officers who fail to qualify as required. During this period, the DPD trained 2,755 of its 2,781 officers (99%). Twelve of the officers who initially failed to qualify subsequently qualified as required. The remainder had their firearms removed by the Inspections Division. We will review the duty status of these officers during our next site visit. DPD is now in Phase 2 Compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U22

The firearm policy shall prohibit firing at or from a moving vehicle. The policy shall also prohibit officers from intentionally placing themselves in the path of a moving vehicle.

Comments: DPD Directive 304.1, Firearms, effective May 2, 2005, Section 5.3, provides that “Firing at, or from a moving vehicle is prohibited... Moreover, officers shall not intentionally place themselves in the path of a moving vehicle.” The DPD is Phase 1 compliant.

Our review of 175 Use of Force Reports (UF 002) found no instances where officers either fired at a moving vehicle or where they intentionally placed themselves in the path of a moving vehicle.

Second Quarterly Report of the Independent Monitor for the Detroit Police Department

04/15/2010

Our review of nine Force Investigations (FI) closed during this reporting period, included two cases involving the firing of weapons at moving vehicles.⁵ In both instances, officers fired at vehicles driven by fleeing suspects. In the first case, after a struggle with officers, the suspect, believed to be armed, broke away from officers, and as he fled the scene in his vehicle, one officer fired at the fleeing vehicle. This subject escaped, but later was arrested when he sought medical treatment for multiple gunshot wounds. The FI investigation was thorough and included a recommendation for appropriate supervisory intervention, which was approved by the Command Level Force Review Team (CLFRT).

In the second case, officers returned fire at a vehicle carjacked by a subject who was firing at officers after he had shot an individual, engaged officers in a pursuit, crashed the previous vehicle he was operating, and initiated an exchange of gunfire with officers. The FI investigation was thorough and found the officers actions reasonable, including the firing at a moving vehicle. Investigators and reviewers appropriately noted the firing at a moving vehicle was a deviation from the DPD Firearms Policy, but cited the presence of exigent circumstances. We agree the use of deadly force was objectively reasonable and agree that exigent circumstances were present. However, the policy provides no allowance for exigencies; it is absolute, "Firing at, or from a moving vehicle is prohibited..." We therefore do not concur with the DPD finding.

While the use of force reports we reviewed are indicative of Phase 2 compliance, we are withholding that finding until the under reporting of force described in U14 is resolved. In addition, the DPD should review its policy to either affirm or modify the present absolute prohibition discussed above.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U23:

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

Comments: DPD Directive 304.1, Firearms, effective May 25, 2005, Section 4, effective May 2, 2005, complies with the requirements of this paragraph. The DPD is Phase 1 compliant.

We met with DPD training staff to discuss firearms training and related matters. We found a procedure in place requiring the inspection of officers' weapons and ammunition as part of the required biannual firearms training program (qualification). Weapons are thoroughly inspected for serviceability. Officers fire the ammunition they are carrying at the time following which they are issued a new supply of approved ammunition. We also reviewed five closed FI critical

⁵ The two investigations completed by FI during this reporting period occurred in July 2008 and March 2008; therefore are not reflected in the Use of Force (UF002) data reviewing during this reporting period.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

firearm discharge investigations, including the documentation of an examination of the weapon and ammunition carried by the involved officer(s). In each case, the officer(s) were carrying authorized weapons and ammunition. In three cases the number of rounds officers were carrying was uncertain. We were previously made aware of an ongoing problem with the present ammunition magazines that sometimes do not allow them to be fully loaded; therefore leaving officers short of the required number of rounds. Investigators cited this issue in one investigation; however the remaining two were silent on the issue. We were also previously advised the DPD will be issuing replacement equipment to address this issue. Until that is accomplished, officers should make note when they experience the described difficulties. In addition, investigators should determine whether these problems exist in critical firearm discharge cases where the ammunition count is short in order to justify the deviation from the policy requirements and support a continued finding of compliance for this paragraph. Given that 99% of the officers participated in the biannual qualifications, we are finding the DPD in Phase 2 compliance with the requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

C. INTERMEDIATE FORCE DEVICE POLICY***CJ Requirement U24***

The DPD shall select an intermediate force device, which is between chemical spray and firearms on the force continuum, that can be carried by officers at all times while on-duty. The DPD shall develop a policy regarding the intermediate force device, incorporate the intermediate force device into the force continuum and train all officers in its use on an annual basis.

Comments: DPD Directive 304.2, Use of Force, effective June 27, 2005, Section 6.3; DPD Directive 304.4, PR-24 Collapsible Batons, effective July 1, 2008; and DPD Training Directive No. 04-3, effective May 9, 2005 identify the PR-24 as the authorized DPD impact device offering a less lethal method for apprehending and subduing violent and/or actively resisting subject(s), relate the PR-24 to the force continuum, and set forth training requirements for all officers.

Our review of training documents for the period July 1 - December 31, 2009 found that 1260 of the 2781(45.3%) eligible personnel received PR-24 training. This compares with 29.2% for the first half of the previous fiscal year. We encourage the DPD to achieve at least 75% compliance (2086 members) during the next reporting period.

Our review of Use of Force Reports (UF002) found documentation of the PR-24 identification number and the officer's most recent PR-24 training for those events reported. While the reports we reviewed are indicative of Phase 2 compliance, we continue to withhold that finding until the under reporting of force described in U14 is resolved.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

D. CHEMICAL SPRAY POLICY**CJ Requirement U25**

The DPD shall revise its chemical spray policy to require officers to:

- a. provide a verbal warning and time to allow the subject to comply prior to the use of chemical spray, unless such warnings would present a danger to the officer or others;*
- b. provide an opportunity for decontamination to a sprayed subject within twenty minutes of the application of the spray or apprehension of the subject;*
- c. obtain appropriate medical assistance for sprayed subjects when they complain of continued effects after having been de-contaminated or they indicate that they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis or heart ailment) that may be aggravated by chemical spray and if such signs are observed the subject shall be immediately conveyed to a local hospital for professional medical treatment; and*
- d. obtain the approval of a supervisor any time chemical spray is used against a crowd.*

Comments: DPD Directive 304.3, Chemical Spray Device, effective July 2, 2008 is compliant with the requirements of this paragraph.

We reviewed 175 Use of Force Reports (UF002) for this reporting period and found DPD officers reported the deployment of chemical spray in 13 instances. The reports indicate the provision of appropriate warnings in six (46%) of the 13. None of the reports articulated the existence of danger as the reason for not providing warning. There were no reported warnings provided in the remaining seven cases. Twelve of the 13 reports indicated appropriate decontamination within the 20-minute constraint; however one did not document decontamination since the officer believed his spray had struck the subject on his arm. Of the 12 instances wherein decontamination was provided, only seven indicated where and how it was accomplished. In one case we were able to determine that water was provided by the officers; in the other cases water was either provided by a rescue unit or at the station. Officers noted in all cases that windows were rolled down to allow for proper ventilation during the transport of subjects.

Medical assistance was provided to ten of the individuals sprayed; six received the medical attention on the scene from an EMS unit. The remaining individuals were transported to the hospital. One of the individuals transported to the hospitals were as a result of a pre-existing mental condition.

There were no reported instances of an officer spraying an unruly crowd.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

We again emphasize that the DPD should require thorough documentation of where, when and how the decontamination or flushing of the subject's eyes was accomplished.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U26

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

Comments: DPD Directive 304.3, Chemical Spray, effective July 2, 2008, Sections 5.1 and 6.1(6) prohibits the use of chemical spray on a handcuffed subject in a police vehicle of when a face down position in compliance with the requirements of this paragraph.

Our review of 175 Use of Force Reports (UF002) found no reported instances of either the deployment or allegations of the deployment of chemical spray against a subject in a police vehicle. We identified two events wherein officers sprayed handcuffed individuals when they resisted being placed in a police vehicle. There were no instances reported involving officers placing subjects in a face down position after being sprayed. We did note that when sprayed individuals are transported in scout cars, officers generally indicate the lowering of windows to provide ventilation beneficial to the subject.

The cases reviewed are indicative of implementation compliance with this CJ paragraph, however we are continuing to withhold that finding until there is a resolution to the under reporting concerns outlined in U14. Accordingly, and with the clear expectation that DPD shall aggressively address the issue of underreporting as evidenced through pronouncement, counseling, and if necessary, discipline, we shall defer a Phase 2 finding relevant to this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: Deferred

Critical Issues

There are two major and interrelated issues that affect compliance findings for the requirements presented above. Those problems are the potential for under reporting of use of force by officers and the potential that is reflects the incomplete or inadequate work of supervisors in directing their subordinates. Both issues were raised in the last report and the supervision concern is also relevant to the next section of this report. Historical data on uses of force indicated a significant drop-off in reports following a change from paper based reporting to electronic. These issues were discussed following the last report and DPD noted that it would continue to examine the

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

issues. The status of this has not changed. The possibility of significant underreporting remains under review and continues to hamper progress toward compliance in this area. We cannot overstate the importance of this concern. The definition of force, and the requirements faced in circumstances involving force, cannot be interpreted or assessed if there are significant doubts, due to underreporting, about the representativeness of the of cases studied. We look forward to further developments by DPD in explaining and or rectifying these issues so they do not continue to limit progress toward compliance.

Next Steps

Assessing compliance on these requirements will continue to involve careful review of existing policy, examination of cases and review of training. We clearly anticipate further review with DPD regarding the issues of possible underreporting and the requirements of supervisory review of uses of force and the resulting documentation.

¶	Requirements	Phase 1 - Policy	Phase 2 Implementation
14	Revise use of force policies	In Compliance	Not in Compliance
15	The use of lethal, less lethal force	In Compliance	Not in Compliance
16	Opportunity to submit to arrest	In Compliance	Deferred
17	Prohibit choke holds	In Compliance	Deferred
18	Approval of policy	In Compliance	Not in Compliance
19	Strike to the head-deadly force	In Compliance	Deferred
20	Bi-annual firearms qualification	In Compliance	In Compliance
21	Failure to qualify with firearms	In Compliance	In Compliance
22	Prohibit firing at vehicles	In Compliance	Not in Compliance
23	Selection of ammunition	In Compliance	In Compliance
24	Intermediate force device	In Compliance	Not in Compliance
25	Chemical Spray Policy	In Compliance	Not in Compliance
25	Verbal warnings	In Compliance	Not in Compliance
26	Spraying handcuffed subjects	In Compliance	Deferred

IV. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

This section of the Consent Judgment requires the DPD to review and revise its policies and practices to assure any prisoner injury, use of force, allegation of a use of force or other specified activity is fully, thoroughly, and completely documented, investigated and reviewed. This section provides guidelines for interviews, timelines for completion, and supervisory review

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

processes. In addition, it sets forth additional, specified requirements for responses to investigations and command reviews of critical firearm discharges.

The requirements of this section apply to the all DPD commands having responsibility for the specified investigative activities, including the Internal Affairs Division (IAD) and Force Investigations (FI) and to the Office of Chief Investigator (OCI). Accordingly, we reviewed directives, standard operating procedures, protocols and supporting documents to verify the promulgation of the required policy guidance. These documents generally comport with this and other sections of the Judgment. In addition, we reviewed these documents and operational practices with personnel at the Civil Rights Integrity Bureau, Internal Affairs Division, Force Investigations and the Office of Chief Investigator. We also met with field personnel and observed operational practices. And finally, we reviewed a variety of reports and case files completed during this reporting period, including command level investigative reports and IAD, FI and OCI case files.

During our meetings with the various staff and reviews of reports and documents, we continue to note mixed results with regards to incident documentation and implementation of investigative processes outlined in the Judgment and policies. Officers are generally in compliance with the completion of their Use of Force Reports (002) wherein the use of force, allegations of force, and drawing of firearms is accurately described; however improvement in the documenting of prisoner injuries and the details relating to injuries are often incomplete. Officers also often fail to document warnings preceding the deployment of chemical spray and fully describing the decontamination processes.

We found improvements in the preparation of Supervisory Investigation Reports (SIR); however these reports lack specificity when addressing the requirements in the Judgment and DPD Directives. For example, reports do not consistently document details of any canvass conducted, including addresses checked, the names of people contacted and in cases where no canvas was conducted, and the reasons why. The examination for and resolution of material inconsistencies between witness statements and steps taken to resolve them are not fully documented and details relating to photographs and medical care, though clearly required, are often incomplete.

We also found inconsistencies relating to the evaluation, investigation and documentation of initial stop and/or seizures; reports often merely contain the fact the stop or seizure was made with no evaluation of its validity. Evaluations of tactics often lack detail; often the tactics used affects the level of force used.

SIRs do not consistently document supervisor notifications and responses following a use of force or prisoner injuries; attempts to interview subjects and witnesses, the notification of specialized units, the profile(s) of the officer's prior uses of force and allegations of misconduct and whether the officer(s) complied with all DPD policies. And finally, though we consider the review, investigation, and documentation of these events to be of critical importance, we note the too frequent lack of required dates and signatures, which confirm that the review has been accomplished on the documents.

Our previous discussions with responsible staff regarding these and other issues have resulted in proposed modifications to investigative policy, the development of check-lists, additional training and other actions to strengthen the documentation and investigative processes and

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

achieve full compliance. For example, CRIB staff has proactively focused on identifying and resolving shortcomings in the command level investigative process but have not yet resolved them. FI has developed an in-service training class to specifically deal with issues raised in our previous report; however this training, which occurred in January 2010, did not impact investigations reviewed during this reporting period. And OCI drafted a new Standard Operating Procedure to strengthen its investigative processes that have not yet been officially adopted.

A. GENERAL INVESTIGATIONS OF POLICE ACTION***CJ Requirement U27***

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

Comments: DPD Directives 102.4, Standards of Conduct, and 102.6 Citizens Complaints effective July 1, 2008; DPD Directive 304:2, Use of Force, effective June 27, 2005; Training Directive 04-7, Use of Force/Detainee Injuries or Allegations of Injuries Reporting and Investigating; Force Investigations, Standard Operating Procedures, revised November, 2009; Internal Affairs Division Standard Operating Procedures, Section Five; and the Office of the Chief Investigator, Standard Operating Procedure (Rev 2008) are individually and/or collectively compliant with the requirements of this and other paragraphs contained in this section of the Judgment.

We reviewed 175 Use of Force Reports (UF002) completed during this reporting period. Each required a command level investigation; however we found only 137⁶ (78%) were included for review in the 84 Command Level investigations conducted. The remaining 38 Use of Force 002's were not investigated at any level. This review confirms our previous observation and finding that there is a need to review and strengthen accountability system and related training. A recent DPD Audit made similar findings. These steps are necessary to assure a thorough understanding, especially by supervisory and command staff, of the requirements and responsibilities encompassed in this CJ paragraph and policy.

Our review also included an assessment of nine FIS and/or JIST investigations, including five critical firearm discharges, one pursuit, and three allegations of excessive force. We found these investigations sufficiently detailed to support the findings relating to the officer's conduct in each case and no investigations were closed because the subject or complainant was unavailable, unwilling or unable to cooperate. Though the investigations sufficiently supported the findings related to the officer's conduct, we noted the lack of specific compliance with requirements outlined in U28-33; therefore we are unable to assess them as "thorough and complete."

⁶ Many of the 84 Command Level Investigations had multiple 002 Forms associated with the investigations.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

We reviewed IAD and OCI cases for consistency with the procedures contained in the IAD SOP and OCI SOPs and with generally accepted law enforcement techniques; specifically relating to procedural fairness, timeliness, confidentiality and the meticulous reporting of facts and results of an investigation. We noted facts contained in the investigations were generally complete. However, many did not contain a clear and consistent pattern with regards to the conduct and reporting of investigative activity. We previously found OCI to be inconsistent in determining its factual basis for conclusions and findings. During our current review we found this inconsistency evident in the 2007 and 2008 cases, but also noted a marked improvement in the 2009 cases.

We reviewed 37 completed Internal Affairs Division (IAD) investigations and 409 of the 475 external complaint investigations completed by Office of the Chief Investigator (OCI). With the exception of the Monthly Synopsis Reports, the IAD cases included complete data. Although there were problems with some of the data submitted by OCI, including 46 missing cases and 20 duplicate/voided cases, the review of completed cases determined that IAD and except for one OCI investigations developed sufficient facts to support a determination that justified or did not justify the officer's actions. However, 155 of the 184 OCI cases contained an incorrect finding or were closed administratively. The investigative process used by IAD and OCI did not prohibit the critical examination of an external complaint or an allegation of misconduct by its personnel.

Overall, while we recognize positive accomplishments in the investigative process, particularly relating to IAD and FI, the problems with command reviews and the various issues relating to OCI investigations, however, do not support a finding of Phase 2 compliance.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U28⁷

The DPD and the City shall ensure that investigations are conducted by a supervisor who did not authorize witness or participate in the incident and that all investigations contain:

- a. documentation of the name and badge number of all officers involved in or on the scene during the incident and a canvas of the scene to identify civilian witnesses;*
- b. thorough and complete interviews of all witnesses, subject to paragraph 31 below and an effort to resolve material inconsistencies between witness statements;*
- c. photographs of the subject's(s') and officer's(s') injuries or alleged injuries; and*
- d. documentation of any medical care provided.*

Comments: We reviewed Command Level Investigations (CLI) and investigations completed by Force Investigations (FI) for compliance with the requirements of this paragraph.

⁷ This requirement is not applicable to IAD/OCI

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Our review of 84 command level investigations (UF002A) found the following:

- Five of the investigations contained information indicating that the supervisors conducting the investigation were present during the arrest. In one of the cases the investigating supervisor authorized the entry to the residence where the use of force eventually occurred; in the others cases the investigating supervisors were present and witnessed the incidents. Sixty-two of the 84 cases (74%) reflected that a canvass had been conducted to identify civilian witnesses. This is an improvement over the compliance rate determined by DPD in their July, 2009 Audit. In some cases, supervisors provided explanations for the absence of the canvass, but generally merely indicated they conducted no canvas.
- The thoroughness and completeness of interviews of all witnesses is an issue in the above referenced audit and is also an issue in our review. Thorough and completed interviews were conducted in only 53 of the 84 cases reviewed. We acknowledge efforts to interview subjects will often be met with hostility; however, it is a requirement of the Judgment and DPD supervisors are encouraged to make the effort. There were at least two instances where supervisors made more than one attempt to interview the subject, though neither was successful.
- The thoroughness and completeness of officer interviews is particularly problematic. Many of the officer interviews documented in the investigative report appear to be cut and paste versions of information contained in the Crisnet report; in some instances the statement "Officer X's statement mirrors that of Officer Y."
- In one of the cases reviewed a subject complained of being struck across the back with a baton. The investigation reflected that the injury had been examined and that it was the opinion of the investigator that the mark on the subjects back could have been caused by a door jamb or some other object during the melee involving the subject, his brother and the officers affecting the arrest. None of the officers were questioned regarding the use of a baton. One of the 002's submitted by an involved officer had the PR-24 block checked on his 002 Form. This inconsistency was not questioned at any level throughout the command review of the investigation. In another investigation an off-duty officer observes a use of force incident and walks over to see if he can be of assistance. When he gets to the scene he observes an officers weapon on the floor and recovers it, returning it to the officer when the incident is concluded. Neither the off-duty officer nor the officer who lost his weapon is interviewed regarding the loss and recovery of the weapon. There is no explanation for not interviewing the off-duty officer; a notation in the file reference the officer who lost his weapon simply notes that his statement would be consistent with the other officers. There were no questions regarding the incident during the command review of the investigation, though given that there were no signatures affixed to the review it's always possible they didn't see the report..
- While in many reports there were no material inconsistencies to resolve (the subjects refused to be interviewed or to comment regarding the incident(s), there were some examples where the investigating supervisor could have made a greater effort in conducting the review. An older case submitted for review with these package deals with a unit dispatched to a possible robbery. En route to the location, the unit is informed of the location of the possible victim and that of the robbery suspect. The unit responds to the location of the robbery suspect and a confrontation occurs between the subject and the officers. A witness stated he was fearful for the safety of the officers, but prior to being able to make a 9-1-1 call to report the situation he states he saw a back-up unit arrive. The investigative report states that although the victim was not interviewed by the investigating supervisor, she had told the responding officers that she was beaten by the subject, apparently her boy friend. Contained in the file was a written statement from the

Second Quarterly Report of the Independent Monitor for the Detroit Police Department

04/15/2010

victim stating that he did not beat her and that the damage to her face was as a result of a fight she had been involved in with another female three days earlier. There was no mention of this statement in the investigation. This is an example of a material inconsistency which wasn't addressed, much less resolved.

- There are a number of other unanswered questions with respect to this case; why they didn't establish whether or not a robbery had occurred first; why there weren't any interviews of the back-up unit, which was observed by at least one witness.

Our review of the 84 command level investigative reports submitted found 53 (63%) met the thorough and complete standard.

We also reviewed nine Force Investigations and found appropriate documentation of the name and badge number of all officers involved in or on the scene of the various incidents, of witness interviews (recorded and written), and documentation of any medical care provided. We found a marked improvement in the thoroughness and documentation of canvasses for civilian witnesses from our last review; in particular we noted the documentation of repeated canvasses in an effort make contact with all potential witnesses.

Interviews with witnesses (recorded and written) were generally thorough. We found no instances of inconsistent statements requiring resolution by investigators. However, two case files contained no photographs of subjects and/or officer injuries.

We again recognize positive accomplishments but the absence or lack of completeness of command reviews, in particular, is problematic.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U29

The DPD and the City shall revise their procedures for all investigatory interviews to require:

- officers who witness or are involved in an incident to provide a timely statement regarding the incident (subject to paragraph 31 below);*
- whenever practicable and appropriate, interviews of complainants and witnesses be conducted at sites and times convenient for them, including at their residences or places of business; and*
- that all IAD, OCI and Critical Firearm Discharge Investigations shall also include in-person video or audio tape-recorded interviews of all complainants, witnesses, and involved DPD officers and prohibit group interviews. In cases where complainants/witnesses refuse in-person video or audio tape recorded interviews, written statements shall be taken and signed by the complainant/witness along with a signed refusal statement by the complainant/witness.*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Comments: Our review of command level investigations found those officers who were involved in or who witnessed a use of force incident were interviewed on a timely basis in 70 (83%) of the 84 cases we reviewed; however there were several cases, which were not submitted in a timely fashion. For example, the oldest case submitted for review occurred in April of 2009 and was submitted with the December Reports. We acknowledge the efforts of the DPD to reduce the number of cases not previously completed; however, timely submission of required documents is encouraged.

These investigations documented 63 (75%) interviews of complainants and witnesses at sites and times convenient for them. Most were conducted at the scene, or in the case of some subjects, in the cell block. We previously discussed the fact that in most instances, efforts to interview a subject at the scene or in the cell block are met with hostility, but the effort must be made nonetheless. There were two cases where supervisors attempted to interview subjects some days after the incident, but in one the address given was vacant and in another no one responded to the door. We continue to suggest the institution of a formalized procedure requiring follow-up contact with these individuals. Even though such a requirement may not result in improvement with the level of cooperation by the individual, it would clearly demonstrate DPD efforts to complete a thorough investigation.

We also found 40 instances (48%) of notification of specialized units, to include IAD, OCI, FI and Homicide, included in 84 files reviewed.

We reviewed nine Force Investigations and found the statements were generally taken at sites and times convenient for the person being interviewed. Statements of witnesses were taken in a timely manner, however statements from witness officers in two cases were unnecessarily delayed and reliance was placed on the officers Crisnet report in the third.

The practice with regard to the recording of witness statements varies. In cases where FI members of the Joint Incident Shooting Team (JIST) interview witnesses, recorded statements are taken unless the witness declines, in which case, a written declination is obtained and a written, signed statement is taken. When homicide members of the JIST interview witnesses; they do not request or take recorded statements, but as a matter of practice, take written statements. We identified this concern in our previous report and are advised the DPD will address this concern.

Investigators take involved officer's statements consistent with the provisions of Garrity (U31); however the taking of these statements is generally not timely with regard to the event under investigation and are often delayed for weeks or months. These delays are primarily attributable to a self-imposed requirement to await the receipt of prosecution declinations from the District Attorney; however the delays raise both credibility and accuracy issues. Officers' recollections of the facts weeks and months after an event, particularly cases involving the use of deadly force, may be significantly affected by news accounts and the officer's interaction with friends, family, and colleagues. We also identified this concern in our previous report and advised that the DPD is reviewing the issue.

We reviewed investigations conducted by IAD and OCI. Each of the 37 IAD cases contained the proper documentation, including information relating to locations and recording of complainant and witness interviews.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

The review of 409 OCI cases found an inconsistent application of the DPD directive requiring timely statements from officers during these investigations. In the one 2007 case and the early 2008 and 2009 cases, OCI investigators made timely request to conduct interviews with involved officers, but rarely did the interviews occur within the 90 day time limit established for investigation completion. Interview of officers were often delayed with little justification other than availability. The investigations did reflect that when complainants or witnesses were interviewed, investigators interviewed them at a time and place selected by the individual. All interviews were conducted individually and appropriately recorded. There were three instances involving written and signed statements where the complainant's refusal to record an interview was documented.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U30

The DPD and the City procedures for all investigatory interviews shall prohibit:

- a. the use of leading questions that improperly suggest legal justifications for the officer's(s') actions when such questions are contrary to appropriate law enforcement techniques; and*
- b. the use of interviews via written questions when it is contrary to appropriate law enforcement techniques.*

Comments: The policies reviewed in U-27 are in compliance with the requirements of this CJ paragraph.

We reviewed 84 command level investigations and found no documentation of recorded interviews, written statements, records of questions asked during interviews or other evidence indicating the investigating officers conducted thorough interviews where applicable. We are therefore unable to assess whether leading questions have been asked during the conduct of the command level investigations, but will carefully assess this requirement when reviewing IAD, OCI and FIS investigations.

We also reviewed nine FI cases, which included written and recorded statements. Our review of the written statements, including the questions asked, found no instances of leading questions. Our review of four randomly selected recorded interviews disclosed leading questions in two cases.

In addition, we reviewed 17 audio taped Garrity interviews of police officers by IAD investigators and determined that no leading questions were submitted during these interviews to support previous information or facts discovered. We reviewed no OCI case statements or recordings for compliance with this paragraph.

Compliance Status

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U31

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

Comments: DPD Training Directive 04-4, Garrity Protocol, dated February 9, 2006 and revised October 24, 2009 is compliant with the requirements of this paragraph. The directive provides Criminal and Administrative Guidelines for investigators and supervisors regarding when statements should and should not be compelled from officers during internal investigations. The protocol requires that all officers sign a Certificate of Notification of Constitutional Rights - Departmental Investigations prior to any interview.

Our review of 84 command level, 37 FI, 37 IAD and 409 OCI investigations found supervisors and investigators consistently and meticulously compliant with applicable Garrity requirements.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U32

The DPD shall revise its policies regarding all investigatory reports and evaluations to require:

- a. a precise description of the facts and circumstances of the incident, including a detailed account of the subject's(s') or complainant's(s') and officer's(s') actions and an evaluation of the initial stop or seizure;*
- b. a review of all relevant evidence, including circumstantial, direct and physical evidence;*
- c. that the fact that a subject or complainant pled guilty or was found guilty of an offense shall not be considered as evidence of whether a DPD officer engaged in misconduct, nor shall it justify discontinuing the investigation;*
- d. reasonable credibility determinations, with no automatic preference given to an officer's statement over a non-officer's statement or discounting of a witness's statement merely because the witness has some connection to the subject or complainant*
- e. an evaluation of whether an officer complied with DPD policy;*
- f. an evaluation of all uses of force, including the officer's tactics, and any allegations or evidence of misconduct uncovered during the course of the investigation;*
- g. all administrative investigations to be evaluated based on a preponderance of the evidence standard;*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- h. written documentation of the basis for extending the deadline of a report and evaluation and provide that the circumstances justifying an extension do not include an investigator's vacation or furlough and that problems with investigator vacations or workload should result in the matter being reassigned; and*
- i. any recommended non-disciplinary corrective action or disciplinary action be documented in writing.*

Comments: Our review of the policies referenced in U-27 also determined them to comply with the requirements of this paragraph.

Our review of 84 command level investigations continue to find that the reports provide precise descriptions of the facts and circumstances of the incidents with respect to the actions of the officers, complainants and subjects, but they lack the requisite evaluations of many of the initial stops. As in the previous report, we found that few (19) of the 84 investigations we reviewed included comments regarding the initial stop or seizure, though in many of the cases it was obvious to us that the initial contact was not indiscriminate; i.e., the officers were dispatched to a call for service and upon arrival were thrust into a situation over which they had some level of control,⁸ but didn't always exercise it. We also noted the lack of supervisory evaluations of the officer's initial contact to determine whether other decisions or tactics could have negated the need for a use of force.

In 47 of the cases reviewed we found evidence of compliance with the requirement that all relevant evidence, including circumstantial, direct and physical evidence be reviewed. Few of the cases reviewed contained photographs of injuries, either to the officers or the subjects, although there was evidence that photographs had been ordered. One case explained that the photographs were stored at the crime lab, and while it is possible that so were many of the others referenced in investigative files but not actually in the file, the Judgment requires their inclusion in the package. None of the 84 cases reviewed disclosed any evidence that the fact that a subject or complainant pled guilty or was found guilty of an offense was considered as evidence of whether a DPD officer engaged in misconduct. There was also no evidence that this information was used to justify discontinuing the investigation.

In 47 (55%) of the investigations reviewed there was evidence that reasonable credibility determinations, with no automatic preference given to an officers statement over a non-officer's statement, were made to reach conclusions regarding the investigations. There was no evidence of the discounting of a witnesses statement merely because the witness has some connection to the subject or complainants.

In 62 (64%) of the 84 cases evaluated there is some evidence of an evaluation of whether or not an officer or officers complied with DPD policy. We do not, however, believe that the compliance with DPD policy is limited to compliance with DPD use of force policy. We believe that in this context, the Judgment requires compliance with all applicable DPD policy. In a review of one of the use of force cases, we note that the officer conducted a pat-down search of a

⁸In many cases officers were dispatched to calls regarding armed subjects and in their initial approach to those individuals some of the officers placed themselves in harm's way by not taking proper cover or waiting for additional back-up.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

subject and cited officer safety as a concern. The officer failed, however, to state what it was that triggered the concern⁹ and the investigator failed to question the pat down search.

In 66 of the 84 cases there is evidence of evaluations of uses of force on the part of the investigator, some better than others. In some cases the investigators carefully outline the progression from verbal commands to the differing levels of force permitted by DPD to the level of force eventually utilized by the officer(s). In other cases it may be a statement referencing the Supreme Court and language the Court may have used in some decision on use of force.

There were 30 (36%) instances in which the investigating supervisor made an effort to evaluate the officer's tactics, some better than others. When we speak about evaluating an officer's tactics it is not to seek a regurgitation of the evaluations regarding his/her use of force; it is an actual evaluation of the tactics employed; i.e., except under the most exigent circumstances, should an officer approach a subject suspected of being armed without sufficient back-up; should an officer walk up to a vehicle suspected of being occupied by armed subjects without sufficient back-up; how do officers deal with handcuffed individuals that don't want to get into a scout car? These and many other defensive tactic issues need to be commented on by the investigating supervisors and those reviewing the report up the chain of command. This is an excellent way of getting local scenarios into defensive tactic training which the officers can identify with. The majority of the cases reviewed reflected reliance on the preponderance of evidence standard to reach a determination.

There were two cases previously mentioned dealing with an alleged baton strike with no follow-up investigation and also a case with a failure to follow-up with witness interviews concerning an alleged robbery where the victim provided a written statement denying that she had been beaten by the subject. There are several other cases with similar issues which will be transmitted to CRIB for any follow-up they may deem appropriate.

Of the 84 UF002a Command Level Investigations reviewed, ten contained written documentation on why the deadline for a report was extended but only two contained an actual request for extension; none were determined to have been granted to accommodate vacations or furloughs.

Thirty of the 84 cases reviewed (36%) met the deadline for submission of the report, though many of those report contained deficiencies which have been alluded to throughout this report.

Our review concludes the command level investigations are not compliant with the several sub-sections of this CJ paragraph.

We also reviewed nine FI cases and found them all to contain a precise account of the facts and circumstances of the event, witness and officer interviews, a review of relevant evidence, and where applicable, an evaluation of any stop or seizure, use of force or tactics. They also identified cases of misconduct discovered in the course of the investigation. These were adequately investigated and addressed. Findings were based upon the preponderance of evidence standard, and recommended disciplinary action was documented.

The investigations also contained requests and approvals for extending the deadline for completion of the investigations, none of which included vacation or furlough as reasons for the

⁹ Directive 202.2, Search and Seizure, Section 10.2, Pat-Down Search.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

extension. We previously noted the extension requests were not always made in a timely manner nor did they establish a new deadline for case completion; however we note FI commenced addressing that issue. The FI cases completed during the latter part of this reporting period include more timely requests for extensions and establish a new deadline for case completion.

We also reviewed 37 IAD investigations for compliance with the requirements of this paragraph. They documented the investigator's review of relevant evidence, canvas of the incident location for witnesses, prosecutorial opinion, Garrity Interviews and the investigative findings. All investigations were based on evidence of misconduct regardless of charges filed against the complaining individual. The investigators objectively evaluated all officer and witness statements. The integrity of the investigations was maintained through a complete, fair and analytical examination of the preponderance of evidence to either refute or substantiate the allegation. However, our review found eight investigations were not completed within the prescribed 90-days. The primary reason asserted was the availability of witnesses, complainants and officers for interviews. There were two IAD cases where the Prosecutor's opinion caused a significant delay beyond the deadline. As noted by the previous monitor, the IAD investigators extended deadline requests were often reviewed at the time of the submission of the final report, therefore granted after the fact and/or not reasonably supported by investigative necessity.

Our review of completed OCI cases found 304 were not completed within the prescribed 90-day timeframe. Again, the common reason asserted for the delays was the availability of witnesses, complainants and officers for interviews. However, the requests for the extensions, documented and approved by supervisory staff were, for the most part, subsequent to the 90-day time limit and were not based on investigative necessity.

In summary, although appropriate policies are in place, the analysis of implementation through examination of command review investigations and those of IAD and OCI does not support a Phase 2 compliant finding.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U33

The DPD shall revise its policies regarding the review of all investigations to require:

- a. investigations to be reviewed by the chain of command above the investigator;*
- b. the reviewing supervisors to identify any deficiencies in those investigations and require the investigator to correct any deficiencies within seven days of the submission of the report and evaluation to the reviewing supervisor;*
- c. the reviewing supervisors to recommend and the final reviewing authority to refer any incident with training, policy or procedural implications to the appropriate DPD unit;*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- d. appropriate non-disciplinary corrective action and/or disciplinary action when an investigator fails to conduct or reviewing supervisor fails to evaluate an investigation appropriately; and*
- e. a written explanation by any supervisor, including the Chief of Police, who disagrees with a finding or departs from a recommended non-disciplinary corrective action or disciplinary action, including the basis for the departure.*

Comments: Our review of the policies referenced in U-27 determined them to comply with the requirements of this paragraph. Like the previous monitor, we find that DPD does not conduct command level reviews at required levels.

For the 84 UF002a Command Level Investigation reports reviewed there were only 40 instances of reviews that ascended the chain of command. Ten other reports had names typed into the command level blocks, but had no signatures. Like the DPD Audit, we continue to find that the reviewing supervisors are not identifying the problems the investigating supervisors are experiencing with adequate documentation of their investigations. We did find that supervisors had identified deficiencies in six of the reports reviewed, returning them for corrections... In only four of those six were the deficiencies corrected within the seven day period allowed for corrections. There were no instances of a referral of any reports regarding any issues which may have been identified, with training, policy or procedural implications. There were three instances of corrective action and/or disciplinary action recommended when an investigator failed to conduct the investigation appropriately or when the reviewing supervisor failed to evaluate an investigation appropriately and two records of counseling and a recommendation for a trial board. One of the reports contained a written explanations by a command officers who disagreed with a finding or departed from a recommended non-disciplinary corrective action or disciplinary action; noting that the record of counseling should not be given to the officer who failed to complete a form properly but rather to the supervisor who failed to identify the error and then ensure that the correct form was submitted.

We also reviewed nine FI investigations and found a chain of command review of each, including appropriate recommendations and referrals related to training. The investigations also included references to supervisors' requests for additional information or investigative work. However, as we noted in our previous report, these references were generally found within the investigators notes or reports wherein the investigator indicates he or she is responding to the supervisor's request. Our discussions with FI staff sufficiently satisfied us that there is a detailed supervisory review of each investigation and that the requests for corrective, follow-up or further investigative work, now provided orally, will be documented in future case files. We are also satisfied there were no cases requiring disciplinary action during this reporting period.

We reviewed 37 IAD investigations closed during this reporting period. Our review indicated that IAD supervisors did not comply with the requirements of this paragraph and DPD Directives. For example, IAD requires that each investigator maintain a Case Supervision Sheet (refer to DPD Directive 201.2 - 8 and IAD SOP 2-3), which chronicles by date each investigative action taken to further the case. The investigator should utilize this log to document their investigative activity. An examination of the Case Supervision Sheets disclosed that IAD supervisors infrequently used the log for its intended purpose of documenting case supervision

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

and managing the investigative efforts of subordinate personnel. Typically IAD supervisors reviewed and commented on the Case Supervision Sheet late in the investigative process although we did note instances where the supervisor did return the investigation back to the investigator for additional work or for minor corrections although the supervisor noting the corrections did not indicate their content. Due to our insufficiency of knowledge the reason the initial investigative report was returned makes it difficult to determine if a training issue or discipline should be imposed. Additionally, this review revealed that the Commander, IAD and final reviewing authority did not find that any of the cases examined should be referred for training, policy or procedural issues.

OCI Policy Section 9.9 dictates that supervisors shall review completed cases for any deficiencies and require the investigator to correct any deficiencies noted within 7 days of evaluating the report. During our review of OCI completed cases, we found no evidence that the supervisors were complying with the policy. The supervisors are not routinely documenting investigations returned for correction or identifying and recording recommendations to the final reviewing authority regarding appropriate non-disciplinary corrective action or disciplinary action when an investigator fails to conduct an appropriate investigation. The great majority of cases submitted for closure this quarter do not comply with the timeline requirement. Yet there is no indication in the case folders which would indicate timely supervisor intervention to improve investigative quality or timeliness. OCI supervisors apparently do not use any type of reporting process to document the performance of subordinate personnel. The Chief Investigator and final reviewing authority does not document when or if supervisors failed to properly or timely evaluate an investigation or monitor the performance of assigned supervisors or investigators (see also U67 and U68 regarding OCI).

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

B. USE OF FORCE AND PRISONER INJURY INVESTIGATIONS***CJ Requirement U34***

The DPD shall revise its reporting policies to require officers to document on a single auditable form any prisoner injury, use of force, allegation of use of force, and instance in which an officer draws a firearm and acquires a target.

Comments: DPD Directive 304.2, Use of Force, effective June 27, 2005 is compliant with the requirements of this paragraph.

The DPD provided 175 Auditable Forms (UF002) for review. Five firearm discharges were included, four of which were appropriately referred to FI. There were also 16 instances in which targets were acquired and all but one was properly documented. In 108 of the 175 reports reviewed we were able to determine that a supervisor had responded to the scene. Fifty-nine of the investigations contained sufficient information to establish that supervisors interviewed the

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

subjects at the scene or at the cell-block and 53 of the investigations provided sufficient data to make the determination as to whether or medical treatment was provided. There was one case referred to IA involving a subject with broken facial bones. There were 15 Use of Force forms submitted citing allegations of use of force.

We previously noted our agreement with a recommendation contained in a DPD Audit regarding the completion of these reports. Supervisors have a responsibility to ensure that the 002 Forms and CRISNET reports are being accurately completed, fully articulating the details of the use of force and/or prisoner injury incidents. Officers need to better utilize the narrative portion of the form to ensure that all of the required data is available for review.

Our review of the MAS generated list of use of force Form numbers issued for this evaluation period reflects that there were 277 numbers issued; conversely, we conducted reviews on 175 forms which were provided for that period of time. DPD provided an additional 25 reports too late for inclusion in this review. However, this leaves 77 use of force reports still unaccounted for. The underreporting of uses of force was an issue in the last report and remains an issue for this one. DPD is encouraged to conduct a full audit of the report numbers generated in MAS for the period January, February, and March 2010 to determine if all reports can be accounted for.

We also reviewed 194 CRISNET reports detailing arrests for assault on a police officer, disorderly conduct, and interfering with a city employee. We determined the required use of force reports were not prepared for 36 (18%), an improvement from the last quarter in which 25% of the reports reviewed were lacking use of force reports. Our review of nine FI investigations found only one case contained the required auditable forms (UF002).

The DPD is not yet compliant with this paragraph. The underreporting of the use of force remains a serious concern.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U35

The DPD shall revise its policies regarding use of force and prisoner injury notifications to require:

- a. officers to notify their supervisors following any use of force or prisoner injury;*
- b. that upon such notice, a supervisor shall respond to the scene of all uses of force that involve a firearm discharge, a visible injury or a complaint of injury. A supervisor shall respond to all other uses of force on a priority basis. Upon arrival at the scene, the supervisor shall interview the subject(s), examine the subject(s) for injury, and ensure that the subject(s) receive needed medical attention;*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- c. *the supervisor responding to the scene to notify IAD of all serious uses of force, uses of force that result in visible injury, uses of force that a reasonable officer should have known were likely to result in injury, uses of force where there is prisoner injury¹⁰; and*
- d. *IAD to respond to the scene of, and investigate, all incidents where a prisoner dies, suffers serious bodily injury or requires hospital admission, or involves a serious use of force, and to permit IAD to delegate all other use of force or prisoner injury investigations to the supervisor for a command investigation*

Comments: DPD Directive 304.2, Use of Force, effective June 27, 2005 is compliant with the requirements of this paragraph.

The 002 Forms we reviewed all reflect a notification in the box marked “Notifications” on the 002 Form. Supervisors responded to the scene of all four critical firearm discharge events.

In order to determine whether officers/supervisors appropriately interviewed subjects, examined them for injuries and arranged for proper medical attention where required, we relied on the 84(UF002a) Command level Investigation Reports. Fifty-nine of the reports indicate the subject was interviewed at the scene, in the cell block or at the station. In the instances where the supervisor interviewed the subject, whether at the scene or at the station, supervisors ensured that subjects needing or requesting medical attention were provided that service. We determined that responding supervisors notified IAD in 29 of the 84 cases. There may have been more notifications; however, the block at the top of the 002a form, which is used to indicate the notification to IAD/FI and to verify whether or not FI will assume responsibility for the case, is not always clearly visible. Investigators are doing a better job of documenting the information in the narrative of the report and DPD is encouraged to continue to emphasize to them the importance of doing so in the future. Four of five critical firearm discharge events were referred to IA, one was not. Seventy-eight of the 84 investigations presented for review was investigated at the command level.

Our review of cases relevant to this requirement shows that, taken together the bulk of these reports did not meet the required standards.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U36

The DPD shall revise its use of force and prisoner injury investigation policies to require:

- a. *command use of force preliminary investigations to be completed within 10 days of the incident. These investigations shall include a synopsis of the incident, photographs of any injuries, witness statements, a canvas of the area, and a profile of the officer’s prior uses*

¹⁰Consent Judgment amendment, September 15, 2008.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

of force and allegations of misconduct, and a first-line supervisory evaluation. The final command use of force investigation shall be completed within 30 days of the incident;

- b. IAD investigations to be completed within 90 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.*

Comments: DPD Directive 304.2, effective June 27, 2005 and found it compliant with this CJ paragraph.

We reviewed the 84 completed UF002a's, Command level Investigations and found 21(25%) preliminary investigations completed within ten days of the event. We were unable to make a determination in several of the remaining cases due to incomplete reports and/or missing dates. Seventy (83%) of the 84 cases contained the required synopsis of the event.¹¹ None of the cases included photographs of injuries to subjects or officers. One case noted that photographs were available at the crime laboratory. There were several other investigations which reflected that injury photos had been taken by an evidence technician, but they were not available in the files.

Sixty-two of the cases documented a canvass of the area and witness statements. In 22 of the 84 cases there was no canvas conducted, and no explanation of the reason for the failure to do so. Thirty-nine of the cases included the profile of the officer's prior uses of force and allegations of misconduct.

Twenty-one of the 84 cases reviewed were submitted within the 10 day time frame (25%). Thirty of the 84 cases (36%) were submitted within the 30-day time frame, a substantial increase from the five during the last reporting period.

We also reviewed nine FI cases completed during this reporting period. Each of the investigations reviewed included a synopsis of the events and witness statements. The five cases involving critical firearm discharges included information regarding the officers' critical firearm discharges and a separate document listing the officers' other uses of forces or allegations of misconduct. The remaining cases included the listing of the officer's complaint history. It is apparent these documents are included with case files/investigations for the primary purpose of compliance with this paragraph rather than for the purposes of providing investigators with information that may assist with interviews, credibility determinations, or developing recommendations regarding training or supervisory intervention.

In addition, the majority of the investigations contained no photographs of the subject's injuries. However, we found a marked improvement in the thoroughness and documentation of canvasses for civilian witnesses from our last review; in particular we noted the documentation of repeated canvasses in an effort make contact with all potential witnesses.

Commanders are required to forward copies of command level investigation to IAD within seven days of completion. When we previous reviewed the IAD log and process for receiving these reports, we found over 50% included no case closure dates or were turned back to command for signature or further investigation. However, the data was not sufficiently detailed for us to

¹¹ DPD supervisors use the term Circumstance in place of Synopsis.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

determine whether the reports were sent and received within the required seven days. Similarly, no definitive data was available to determine whether the seven-day requirement was met during this reporting period. However, IAD has initiated revisions to the tracking process for these reports. Accordingly, they will have the ability to provide more detailed and definitive information for our assessment during the next reporting period.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

C. REVIEW OF CRITICAL FIREARM DISCHARGES AND IN-CUSTODY DEATHS***CJ Requirement U37***

The DPD has created a Shooting Team, composed of officers from the Homicide Section and IAD. The Shooting Team shall respond to the scene and investigate all critical firearms discharges and in-custody deaths.

Comments: DPD Standard Operating Procedures providing guidelines for the Joint Shooting Team (JIST) and Force Investigations (FI) and DPD Training Directive 04-07 are compliance with this and subsequent paragraphs.

We reviewed five critical firearm discharge investigations completed during this reporting period as follow: fatal (2), non-fatal (1) and unintentional discharges (2). JIST was notified and responded as required. The DPD complies with policy and implementation requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U38

The DPD shall develop a protocol for conducting investigations of critical firearm discharges that, in addition to the requirements of paragraphs 27-36, 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.*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Comments: The policies referenced in U37 are compliant with the requirements of this paragraph.

We reviewed five critical firearm discharge investigations; two fatal, one non-fatal and two unintentional discharges. In each case, investigators appropriately inventoried the officers ammunition to assist with determining the number of shots fired independently of the officer's recollection and collected shell casings at the scene. Diagrams illustrating the position of officer's and subjects during the encounters were included in the case files. However, in two of the five cases, the number of shots believed to have been fired did not match with the inventory of officer's ammunition and/or the number of retrieved shell casings. In one case, there was no conclusion drawn regarding the gun that fired the slugs found in the subject's body.

During our previous assessment of compliance with this paragraph, we noted an issue with the accounting of the number of rounds fired during critical firearm discharge events. At that time the DPD advised us of an ongoing problem with the ammunition magazines that sometimes did not allow officers to fully load them; therefore leaving officers armed with 15 rather than the required 16 rounds. The DPD anticipated correcting this problem with an issue of replacement equipment. Meanwhile, investigators must account for the number of rounds fired, and if there appears to be a discrepancy due to the described magazine problems, they must document it in the case report. With regard to the two cases wherein the number of rounds fired was at issue during this reporting period, the investigator noted the possibility of a magazine problem in one, but did not document any effort to examine the magazine or verify the problem with the involved officer. The reporting investigator makes no mention of an issue with the magazines or an effort to resolve the discrepancy in the second case.

In our previous report, we also noted the absence of gunshot residue collection and analysis and DNA collection. We were advised that gunshot residue is no longer collected since residue analysis is no longer available and that DNA analysis is limited. We were also advised of significant delays in ballistics analyses by the State Crime Lab. These are all issues mitigating the ability of FI to conduct complete critical firearm discharge investigations.

The DPD continues to exceed the 30-day time limit for completion of these investigations primarily due to delays in receiving prosecution declinations from the District Attorney. The majority of the investigations also exceed the additional 30-days allowed after the taking of a Garrity statement. Based on the foregoing, we determined the DPD to be in policy, but not yet in implementation, compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U39

The DPD shall require a Command Level Force Review Team to evaluate all critical firearm discharges and in-custody deaths. The team shall be chaired by the Deputy Chief who directly supervises IAD. The DPD shall establish criteria for selecting the other member of the team.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Comments: DPD Special Order 09-13 issued March 2, 2009 established the Command Level Force Review Team (CLFRT) to evaluate all critical firearm discharges and in-custody deaths, but does not establish selection criteria for team members. This Special Order expires December 31, 2009.

The team is chaired by the Commander, IAD and with DC, Patrol Operations Bureau, Director, Office of Training and Professional Development, DC, Risk Management Bureau and the Second DC, Legal Advisor as members. In our previous report we noted the Special Order deviation from the Judgment requirement that CLFRT shall be chaired by the Deputy Chief who directly supervises IAD. Presently a Commander directly supervised IAD and chairs the CLFRT. We have reviewed this carefully and conclude the deviation is one of semantics rather than substance and due primarily to a DPD internal organizational change.

The DPD can achieve compliance with the issuance of revisions to the present Special Order extending its effectiveness beyond December 31, 2009 and including criteria for the selection of CLFRT members.

Compliance Status

Phase 1: Not In Compliance

Phase 2: Not in Compliance

CJ Requirement U40

The DPD policy that defines the Command Level Force Review Team's role shall require the team to:

- a. complete its review of critical firearm 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 firearm 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.*

Comments: Special Order 09-13 defines the role of the Command Level Force Review Team (CLFRT) and is compliant with the requirements of this paragraph. This Special Order expired on December 31, 2009.

The CLFRT reviewed five cases, including four involving critical firearm discharges and one involving an in-custody death during this reporting period. All reviews were completed within 90-days or 60-days as required and assessed officers' compliance with DPD directives; and four included specific recommendations to the Chief of Police regarding a policy evaluation by risk management staff and officer training.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

The Chief of Police completed his review within the 14-days on four of the five cases. There was no documentation of the CLFRT interviewing principal investigators.

Continued Phase 1 compliance will depend upon the DPD extending the present Special Order. Phase 2 compliance requires the inclusion of principal investigator interview during the review process and adherence to established timelines.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U41

The Chair of the Command Level Force Review Team shall annually review critical firearm discharges and in-custody deaths in aggregate to detect patterns and/or problems and report his or her findings and recommendations, including additional investigative protocols and standards for all critical firearm discharge and in-custody death investigations, to the Chief of Police.

Comments: In accordance with previous practice, the CLFRT Chair will prepare the annual review and critique of critical firearm discharges and in-custody deaths for the year 2009 in early 2010.¹² Accordingly, the DPD is in continued compliance with this paragraph.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

Critical Issues

In the previous section dealing with uses of force we noted concern over the role of supervisors in managing officers and reviewing documentation of incidents. In this section on investigations those concern are amplified. In many circumstances we found that expected roles regarding general documentation, reporting of specific steps taken and review of investigations were not completed at the necessary levels. Compliance analysis here suggests strongly the need for greater supervisory engagement and attention to the technical requirements of supervision and review of investigations.

Next Steps

We will continue to review compliance with particular attention to meeting the specific detailed elements prescribed in these requirements. Of particular concern is the thoroughness and completeness of investigations and their review by supervisors.

¹² On January 28, 2009, the Court amended this paragraph to require the DPD provide the Monitor with a copy of the annual review and critique of critical firearm discharges within five months after the end of the year reported on.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

¶	Requirements	Phase 1 - Policy	Phase 2 Implementation
27	Revise investigative policies	In Compliance	Not in Compliance
28	Investigation by uninvolved supervisor	In Compliance	Not in Compliance
29	Procedures for investigative interviews	In Compliance	Not in Compliance
30	Leading questions prohibited, etc	In Compliance	Not in Compliance
31	Garrity protocol required	In Compliance	In Compliance
32	Revise investigatory report policies	In Compliance	Not in Compliance
33	Chain of command reviews	In Compliance	Not in Compliance
34	Auditable form required	In Compliance	Not in Compliance
35	Notification of supervisors etc	In Compliance	Not in Compliance
36	Completion of command investigations	In Compliance	In Compliance
37	Joint Incident Shooting Team	In Compliance	In Compliance
38	Protocol for critical discharge investigations	In Compliance	Not in Compliance
39	Command level force review team	In Compliance	Not in Compliance
40	Review critical firearm discharges	In Compliance	In Compliance
41	Command level force review requirements	In Compliance	In Compliance

V. ARREST AND DETENTION POLICIES AND PRACTICES

The arrest and detention policies and practice requirements are a critical component of this agreement. The policies prohibit an officer from making an arrest without probable cause and the existing policy requires supervisory review within 12 hours of the arrest. It further requires that for an arrest unsupported by probable cause or a warrant not sought, an auditable form must document the circumstances within 12 hours of the event.

The DPD revised its investigatory stop and frisk policies to appropriately define investigatory stops and reasonable suspicion. DPD also revised its witness identification policies to comply with the revised arrest and investigatory policies. Policy also establishes that a material witness can only be taken into custody by obtaining a court order prior to such taking.

The revised policies and procedures in this area require significant documentation and reviews by supervisors. Command notification is required in all instances where there exists a reported violation of DPD arrest, investigatory stop and frisk, witness identification and questioning policies and all reports in which an arraignment warrant is not sought. Compliance review in this area thus draws heavily on the detailed records required in this section.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

A. ARREST POLICIES***CJ Requirement U42***

The DPD shall revise its arrest policies to define arrest and probable cause as those terms are defined in this Agreement and prohibit the arrest of an individual with less than probable cause.

Comments: DPD Directive 202.1, Arrests, effective July 1, 2008 is compliant with the elements of this paragraph and U43. Phase 2 compliance is linked with and dependent upon the implementation of U43.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U43

The DPD shall review all arrests for probable cause at the time the arrestee is presented at the precinct or specialized unit. This review shall be memorialized in writing within 12 hours of the arrest. For any arrest unsupported by probable cause or in which an arraignment warrant was not sought, the DPD shall document the circumstances of the arrest and/or the reasons the arraignment warrant was not sought on an auditable form within 12 hours of the event.

Comments: The DPD conducted separate audits on Arrest processing at the Northeastern, Sixth Precinct, Eastern and Southwestern Districts during this reporting period. The audit results are consistent with our review of these activities during this and our previous site visit. We also noted that the commanders from the Districts responded to the audits with a plan of action to remedy the deficiencies identified in the audit.

We reviewed a random sample of reports to ascertain compliance with this paragraph. The documents reviewed included CRISNET reports, Detainee Input Sheets, DPD warrant verification logs, officers' Daily Activity Logs, Arraignment Verification Logs, Detainee File Folders, and Detained Persons Details Page. The review found one instance where the probable cause review exceeded the 12-hour requirement, which reflects a 98.9% compliance rate. Sufficient probable cause for the arrest was present in all except one case for a 98.9% compliance rate.

In cases of warrants not being sought it is required that auditable form U004 is completed. There were seven auditable forms completed in a timely fashion and submitted for supervisory review. In one case where probable cause did not exist for the arrest an auditable form was not completed, however an auditable form was completed for the warrant not being sought. In one case the auditable form (U004) did not contain the reasons for the warrant not being sought and in two others an auditable form was not completed as required. In several cases the reviewer had to revert to the Detained Persons Detail Page to retrieve this information. There are three separate and distinct requirements to this judgment and DPD's compliance rate is 97.5%

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

On form U004, the person submitting the form (usually it is the OIC) must place the date and time on the form by their signature and, in the box provided a description of why the warrant was not sought. This will verify the reason the arraignment warrant was not sought and that the form was generated within 12 hours of the event.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

B. INVESTIGATORY STOP POLICIES***CJ Requirement U44***

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

Comments: DPD Directive 202.1, Arrests, effective July 1, 2008 is compliant with this CJ paragraph. Phase 2 compliance is dependent upon the implementation of U45 (see below).

Compliance Status

Phase 1: In Compliance

Phase 2: Not In Compliance

CJ Requirement U45

The DPD shall require written documentation of all investigatory stops and frisks by the end of the shift in which the police action occurred. The DPD shall 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.

Comments: We reviewed 87 Officers Daily Activity Logs on two dates in November and December 2009 to assess compliance for investigatory stops. Our review included traffic stops and other situations where officers made investigatory stops of individuals who were not in vehicles. This review found 23 investigatory stops of which 12 indicated a lawful purpose and the remainder failed to describe the reasons for the investigation. In seven of these instances the box on the form was marked but we could not determine the location of the stop. There were 33 traffic stops and our review indicated that eight did not contain enough information to justify the stop. For example, there were situations where the officer would issue a summons for driving without a license without any other information describing why the initial stop occurred. We also found the entries on the Officer's Daily Activity Logs were difficult to understand. DPD's compliance rate for investigatory stops is 66. %.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Two of the Officer's Daily Activity Logs did not contain a supervisor's signature and in another case the date of supervisory review was more than 24 hours.

For this portion of the assessment a copy of the Officers Daily Activity Log was requested for the dates of October 19, November 20 and December 5, 2009. All Districts submitted their logs for those dates. We randomly selected 302 Activity Logs for the review. There were a total of 60 *frisks* listed on the Activity Logs with a limited number of them articulating reasonable suspicion on the log or not listing the frisk in the narrative. In four instances a frisk was conducted when the officer appeared to already have reason to affect an arrest. Thirty-one of the frisks contained enough information to articulate reasonable suspicion. Twenty five frisks did not contain sufficient information to determine if reasonable suspicion existed. For example, in five incidents where frisks were conducted the officers listed the reason for the frisk as subjects "walking in street" without any other descriptive phrase to indicate reasonable suspicion for the frisk. All frisks were documented by the end of the officer's shift. There were no *Investigatory Stop and Frisk Exception Forms* (auditable form uf003) included in the case report packets. Although there is evidence of some progress with articulating reasonable suspicion by DPD officers their compliance rate for this quarter is 51.6%. The DPD remains in non-compliance.

We reviewed the DPD's internal audit for the annual period ending August 31, 2009 and their findings are in agreement with our conclusions. We did have an opportunity to speak with personnel from the Audit Team to discuss their findings and the protocols utilized during the audit process. The audit team has recommended a number of steps to ensure compliance with the Stop and Frisk policies that include retraining of officers and timely review of all stop and frisk situations by supervisors and command personnel.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES***CJ Requirement U46***

The DPD shall revise its witness identification and questioning policies to comply with the revised arrest and investigatory stop policies. The DPD shall 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 shall prohibit the conveyance of any individual to another location without reasonable suspicion, probable cause or consent of the individual.

Comments: DPD Directive 203.9, Custodial Questioning, effective July 1, 2008, is compliant with the requirements of this paragraph and U47. Phase 2 compliance for these CJ paragraphs is dependent on the implementation of U48.

Compliance Status

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U47

The DPD shall develop the revised witness identification and questioning policies within three months of the effective date of this Agreement. The revised policies shall be submitted for review and approval of the DOJ. The DPD shall implement the revised witness identification and questioning policies within three months of the review and approval of the DOJ.

Comments: DPD Directive 203.9, Custodial Questioning, effective July 1, 2008, is compliant with this CJ paragraph. Phase 2 compliance is dependent on the implementation of U48.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U48

The DPD shall document the content and circumstances of all interviews, interrogations and conveyances during the shift in which the police action occurred. The DPD shall review in writing all interviews, interrogations and conveyances and document on an auditable form those in violation of DPD policy within 12 hours of the interview, interrogation or conveyance.

Comments: DPD Directives 203.3, Notifications, effective July 1, 2008 and 203.9, Custodial Questioning, effective July 1, 2008 are source documents for evaluating compliance with this paragraph. We reviewed 24 case files from a total of 69 from the Homicide Command for this reporting period. There were 74 witness interviews, 12 interrogations and 17 conveyances. All the witness interviews and interrogations were conducted within reasonable time frames and following prescribed policy. In one witness statement form there was supervisory review, however it occurred more than 12 hours after the conclusion of the interview. Two statements did not contain ending times for the interviews. In another case an officer conducting three consecutive interviews inverted the dates on one of the interview forms in error. All 17 of the "Witness Conveyance Consent Forms" were complete with dates, times, names, badge numbers, supervisory reviews and witness signatures. In one case, a sergeant requesting the conveyance approved his own request when his commanding officer should have that authority. DPD's compliance rate is 96.1%.

We also met with a member of the auditing team responsible for the Witness Identification and Questioning Audit Report for the Annual Period Ending August 31, 2009. We were advised that one of the audits recommendations would be to amend paragraph U48 to require supervisory reviews of the interview, interrogation or conveyance documentation from 12 to 24 hours. In effect the change would allow for supervisory review to be compliant if the incident occurred after normal work hours and the officer's immediate supervisor was not immediately available.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

D. PROMPT JUDICIAL REVIEW POLICIES***CJ Requirement U49***

The DPD shall revise its policies to require prompt judicial review, as defined in this Agreement, for every person arrested by the DPD. The DPD shall develop a timely and systematic process for all arrestees to be presented for prompt judicial review or to be released.

Comments: DPD Directive 202.1, Arrests, effective July 1, 2008 is compliant with this CJ paragraph. Phase 2 compliance is dependent on the implementation of U50.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U50

The DPD shall require that, for each arrestee, a warrant request for arraignment on the charges underlying the arrest is submitted to the prosecutor's office within 48 hours of the arrest.

Comments: DPD Directive 202.1, Arrests, effective July 1, 2008, is compliant with this CJ paragraph.

The DPD conducted Custodial Detention audits at the Eastern District, the Northeastern District, Southwestern District and the 8th Precinct during this reporting period. The scope of the audits covered U49 through U58 and U60. The results of DPD's conclusions mirror our findings in both our previous and this report. There were four main issues identified in the audits that were addressed by the Audit Team and we concur with their recommendations. The issues are: (1) the time holds/ warrants are identified and cleared; (2) auditable forms not being prepared for failing to provide prompt judicial review; (3) all pertinent information not being entered into Livescan; and (4) auditable forms not being prepared for violation of holds/warrants policies. We have also found that on occasion when Warrant Tracking Forms are prepared the OIC fails to place the date and time the form was completed and/or fails to mark the appropriate box on the form.

Due to the large number of case reports involving traffic, probation violations and warrant arrests that are handled by other means, we elected to review 80 case reports that eventually were submitted to the prosecutor's office for arraignment. The documentation supporting this review included Crisnet Reports, Warrant Verification Logs, Arraignment Sheets, Detainee Input Sheets, and Warrant Tracking Hold Forms and in some cases Officer Daily Activity Logs. Of the 80 cases, there was one that did not meet the 48- hour requirement for a 98.7% compliance

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

rate. In two other cases, the arraignment was not completed within the 48-hour time frame; however the warrants were submitted to the prosecutor prior to the 48 hour requirement. DPD Directive 202.1, Arrests, effective July 1, 2008 is the source document for U50.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U51

The DPD shall document on an auditable form all instances in which the request for an arraignment warrant is submitted more than 48 hours after the arrest. The DPD shall also document on an auditable form all instances in which it is not in compliance with the prompt judicial review policy and in which extraordinary circumstances delayed the arraignment. The documentation shall occur by the end of the shift in which there was: 1) a failure to request an arraignment within 48 hours, 2) a failure to comply with the prompt judicial review policy, or 3) an arraignment delayed by extraordinary circumstances.

Comments: The assessment of compliance for this CJ paragraph is based on a review of the same documents referenced in U50. Of the 98 total arrest case reports we reviewed there were 54 that began at the initial arrest and concluded in arraignment. Cases that were excluded included a warrant arrest, juvenile, some traffic cases and situations where the offender was able to post bond. There were three cases where the arraignment occurred after 48 hours. In all three cases an auditable form was completed. One involved extraordinary circumstances, in one the arraignment warrant was submitted timely but the arraignment was not within 48 hours and in the third case the warrant was submitted after the 48 hour requirement. The compliance rate for DPD is 94.4%

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

E. HOLD POLICIES***CJ Requirement U52***

The DPD shall revise its hold policies to define a hold as that term is defined in this Agreement and require that all holds be documented. This policy shall establish a timely and systematic process for persons in DPD custody who have holds issued by a City of Detroit court to have those holds cleared by presenting the arrestee to the court from which the warrant was issued or the setting and posting of bond where applicable. The fact that an arrestee has not been arraigned or charged on the current arrest shall not delay this process.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Comments: We reviewed DPD policy 305.2, Detainee Registration, effective September 12, 2005 and found in compliant with this requirement. Phase 2 compliance is dependent on the implementation of U53.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U53

The DPD shall document all holds, including the time each hold was identified and the time each hold was cleared. The DPD shall document on an auditable form each instance in which a hold is not cleared within 48 hours of the arrest. The documentation shall occur within 24 hours of each instance of a hold not being cleared.

Comments: DPD Directive 305.2, Detainee Registration, effective September 12, 2005 is compliant with the requirements of this paragraph.

In order to assess implementation compliance, we reviewed 98 Detainee Input Sheets and found a total of 54 holds/warrants listed on the forms.¹³ In three cases the hold exceeded 48 hours prior to being cleared. One of the three had the required auditable form included in the packet and the remaining two did not contain the necessary form. DPD is required to complete an auditable form when a hold/warrant is not cleared within 48 hours of the time it was identified. With few exceptions, the majority of the Detainee Input Sheets did not indicate a “time cleared or date cleared” in the appropriate location (box); although the actual time of release (hold/warrant cleared is indicated in Section (3), Final Charging, and Disposition and Release portion of the form which indicates when the detainee is released from custody. The lack of DPD personnel properly indicating the date and time holds/warrants are identified and cleared has been an ongoing problem. This issue was raised in our previous report and little progress has been made toward a resolution. DPD’s compliance rate is 94.4%.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

F. RESTRICTION POLICIES

CJ Requirement U54

The DPD shall not handcuff prisoners to benches for longer periods of time than are necessary.

¹³ UOF CJ, Section I .v. sets forth “the term ‘hold’ means any outstanding charge(s) or warrant(s) other than those which serve as the predicate for the current arrest.”

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Comments: DPD Directive 305.2, Detainee Registration, effective September 12, 2005 is compliant with this paragraph. Phase 2 compliance is dependent upon the implementation of U55.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U55

The DPD shall require that such restrictions be documented and reviewed at the time the restriction is issued and reevaluated each day in which the restriction remains in effect. The DPD shall document on an auditable form any violation of the restriction policy by the end of the shift in which the violation occurred.

Comments: DPD Directive 305.2, Detainee Registration, effective September 12, 2005 is compliant with this CJ paragraph.

We reviewed 98 cases and found no restrictions. DPD personnel advise that restricting a detainee's access to visitors, attorneys, and the use of telephone privileges rarely occur. A telephone restriction may arise when a detainee makes threatening or harassing type calls to individuals outside the facility. There are pay phones in each holding facility for the detainee's use. There were no auditable forms or complaints presented to the Monitor that would indicate non-compliance with the restriction policies.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

G. MATERIAL WITNESS POLICIES

CJ Requirement U56

The DPD shall revise its material witness policies to define material witness as that term is defined in this Agreement and remove the term "police witness" from DPD policies and procedures.

Comments: DPD Directive 202.1, Arrests, effective July 1, 2008, is compliant with the requirements of this paragraph. Phase 2 compliance is dependent on the implementation of U57.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

CJ Requirement U57

The DPD shall obtain a court order prior to taking a material witness into DPD custody. The DPD shall document on an auditable form the detention of each material witness and attach a copy of the court order authorizing the detention.

Comments: DPD Directive 202.1, Arrests, effective July 1, 2008 is compliant with the requirements of this paragraph.

We reviewed all DPD's request to the court for taking a material witness into custody for the period June 2009 through December 31, 2009. The auditable form, approved by a supervisor, was attached to the court order in each of the five cases. The court orders were all issued by the Judge in the 36th District Court of the State of Michigan prior to the witness' detention. DPD is in full (100%) compliance.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

H. DOCUMENTATION OF CUSTODIAL DETENTION***CJ Requirement U58***

The DPD shall revise its arrest and detention documentation to require, for all arrests, a record or file to contain accurate and auditable documentation of:

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

Comments: DPD Directive 305.2, Detainee Registration, effective September 12, 2005 is compliant with the requirements of this CJ paragraph.

We reviewed a random sample of 73 case files containing sufficient information from the initial arrest through the submittal of an arraignment warrant to assess implementation of these requirements. The source documents utilized for the review were the Detainee Input Sheet, the Warrant Verification Log, the Arraignment Log and the Livescan Form. In all instances the (a) individual's personal information, (b) crime(s) charged, (c) date and time of arrest and release,

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

(d) the time and date the arraignment was submitted, (f) the time and date of arraignment, (g) the time and date each warrant was lodged and cleared, if applicable, and (h) the individuals custodial status were listed on one of the applicable forms.

In the review of U58e, the judgment indicates that the following will be documented; “the name and badge number of the officer who submitted the arraignment warrant” revealed that in 24 of 73 cases, although the officer’s name was listed, they failed to include their badge number on the warrant verification log. In two cases there did not contain a name or badge number on the form and in four cases the warrant verification logs were missing from their respective case files. We did note from our review that two officers have not placed their badge number on any of the warrant verification logs in the past two quarters. Supervisors typically sign their name in the lower left hand corner of the log yet fail to note the submitting officer’s badge number not listed in the space provided. We tested the 73 cases for compliance with eight individual requirements (73 cases x 8=584) and found a compliance rate of 94.8% including the issue noted above.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

I. COMMAND NOTIFICATION***CJ Requirement U59***

The DPD shall require the commander of the 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 shall be completed within 7 days of receiving the document reporting the event. The commander’s review shall include an evaluation of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

Comments: DPD Directive 202.1, Arrests, effective July 1, 2008 is compliant with the requirements of this CJ paragraph.

Our review of 98 case reports found one case lacking probable cause to affect the arrest. An auditable form was not submitted for a commander’s review.

We found no completed auditable forms for the 29 of 60 frisks that lacked documented reasonable suspicion. Our previous review of frisks found no auditable forms. We found an inadequate supervisory review of Officer’s Daily Activity Logs to ensure that reasonable suspicion exists prior to the frisk.

In order to be lawful, the stop must be supported by reasonable suspicion and narrowly tailored in scope and duration to the reasons supporting the seizure. During a limited seizure, the officer may conduct a frisk if they have reasonable suspicion to believe that the suspect may have the means to do them harm. When conducting a few of the frisks there was articulated suspicion, in

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

many, that the officer did not document the basis for the frisk. While supervisors do review the Officer's Daily Logs, they are not challenging them to document the stop/frisk. The officers in most cases are only noting the stop. There were no completed DPD forms (DPD uf003, Investigatory Stop and/or Frisk Exception Form) included in the case report packets.

There were seven cases where documentation was completed indicating an arraignment warrant was not sought. On one of the forms there was not a commander's signature indicating the form was reviewed. The remaining seven forms were completed timely.

There were no violations of witness identification and questioning policies that would have required an auditable form to be completed. Due to the large number of frisks and investigatory stops that did not articulate reasonable suspicion nor contained an auditable form, DPD is not in compliance with the requirements of this paragraph.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U60

The DPD shall require the commander of the precinct, and, if applicable, of the specialized unit, to review in writing all violations of DPD prompt judicial review, holds, restrictions and material witness policies on a daily basis. The commander's review shall include an evaluation of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

Comments: DPD Directives 202.1, Arrests, effective July 1, 2008 and 305.4, Holding Cell Areas, effective May 9, 2005 are compliant with the above requirements.

During this reporting period we reviewed 98 arrest case reports of which 80 were submitted to the prosecutor's office and 71 went to arraignment. There were three cases where the arraignment occurred after 48 hours. In one case the request for the warrant was submitted timely, the second case the late arraignment was due to extraordinary circumstances and in the third, the officer failed to submit the warrant request to the prosecutor within 48 hours. In all three cases an auditable form was generated and submitted to the commanding officer. In one of these the print on our copy was poor and it could not be determined if the commander reviewed the form. DPD's compliance rate for this portion of the requirement is 66%.

Of the 54 hold/warrants identified there were three holds that were not cleared within the required 48 hours and it was not possible for the reviewer to determine the time the hold was identified as the person responsible for completing the Detainee Input Sheet failed to complete that section of the form. An auditable form was completed for one of the holds. DPD's compliance rate for this portion of the requirement is 33%.

There were no violations of detainee restrictions or material witness policies during this reporting period.

Compliance Status

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Phase 1: In Compliance

Phase 2: Not in Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 - Implementation
42	Define & prohibit arrest w/o probable cause	In Compliance	In Compliance
43	Review all arrests for probable cause	In Compliance	In Compliance
44	Revise investigatory stop and frisk policy	In Compliance	Not in Compliance
45	Written account of stops and frisks	In Compliance	Not in Compliance
46	Revise witness policies	In Compliance	In Compliance
47	Revise above in three months	In Compliance	In Compliance
48	Document content etc of interviews etc.	In Compliance	In Compliance
49	Arrests receive prompt judicial review	In Compliance	In Compliance
50	Charges to prosecutor within 48 hours	In Compliance	In Compliance
51	Document of late warrant requests	In Compliance	In Compliance
52	Revise hold policies	In Compliance	In Compliance
53	Documentation of all holds	In Compliance	In Compliance
54	Policy for restricting phone access	In Compliance	In Compliance
55	Document and review such restrictions	In Compliance	In Compliance
56	Define material witness	In Compliance	In Compliance
57	Custody of material witnesses-court order	In Compliance	In Compliance
58	Arrests and detention record requirements	In Compliance	In Compliance
59	Required written review of violations	In Compliance	Not in Compliance
60	Required written review of violations	In Compliance	Not in Compliance

Critical Issues

On January 11, 2010 the Chief Judge of the 36th District Court of the State of Michigan announced the discontinuance of evening felony arraignments conducted at the 36th District Court. In effect this will further burden DPD's ability to have detainee's arraigned and meet the within 48 hours of arrest requirement. In addition to this edict from the District Court, the cutoff time for submitting prisoner information to the court has been moved back to 10:30AM restricting DPD's ability to provide prompt judicial review.

Also of concern is the finding that officers often failed to record complete information (badge numbers, times and dates) concerning arrests and detentions and that supervisory review were often deficient. Likewise, DPD policy requires written documentation of all investigatory stops and frisks. Our review indicates that the officers often fail to articulate "reasonable suspicion."

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Supervisory monitoring of stops and frisks has also been an ongoing issue since the beginning of the Consent Judgments.

The critical issues for this section thus relate to the degree to which officers follow the detailed requirements needed for compliance and the willingness and ability of supervisors to exercise the roles required of them.

Next Steps

During the next on-site visit we will meet with DPD's Audit Team to discuss probable cause reviews and stop and frisk concerns. Completeness, accuracy and timeliness of all reports and auditable forms continue to be an issue that is a reoccurring theme from field units to administrative review. We will review all other investigative units in order to determine their compliance with interrogations, interviews, conveyances and material witness policies. Personnel who are responsible for the detainee booking process will once again be observed and interviewed on their process and procedures for detailing detainee information including the Livescan Form and how they can assist in the probable cause review as a backup for the PC verification normally completed on the Crisnet Report.

VI. EXTERNAL COMPLAINTS

The Internal Affairs Division (IAD) states that their mission is to ensure the public's trust and confidence in the Detroit Police Department (DPD) by conducting thorough and impartial investigations into allegations of criminality and serious misconduct lodged against members of the department, as well as other City of Detroit employees. Consistent with this obligation, the Internal Affairs Division will accept information from any source and requires that all officers and employees document all complaints filed in writing, verbally, in person, mail, telephone, facsimile or by electronic mail.

This on-site review examined the investigative procedures utilized by IAD for consistency in the application of procedural fairness, timeliness, confidentiality and the meticulous reporting of facts and results of an investigation. It was noted that the reports were generally well written, clear, concise, factual and complete. The investigations were conducted in accordance with DPD policy and IAD Standard Operating Procedures (SOP).

The Office of the Chief Investigator (OCI) is the investigative arm of the Board of Police Commissioners (BPC). The OCI has the responsibility for investigating non-criminal external complaints. The Board has plenary authority over citizen complaints. The OCI operates independently of the Detroit Police Department and is lead by a civilian Chief Investigator who is appointed by the BPC. The OCI is staffed with a combination of civilian and sworn investigators who assist in the investigation of citizen complaints. The OCI mission is to provide meaningful and objective investigation of citizen complaints of police misconduct.

The OCI investigates non-criminal allegations of misconduct against Detroit Police Department personnel for the following: Arrest, Demeanor, Entry, Harassment, Force, Procedure, Property, and Search and Seizure. OCI employees are required to accept complaints from any source and

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

by any method of communication to include in writing, verbally, in person, mail, telephone, facsimile or by electronic mail. The public may also file a complaint at the BPC Office or BPC meetings.

This on-site review once again examined the investigative procedures utilized by the OCI and considered thoroughness of investigative effort, inclusion of information from all sources, and the development of pertinent facts of the incident. As was true in the last review, the examination of closed and completed investigations revealed that most cases were well written, clear, concise, factual and complete. With the exception of incorrect case closure and some issues regarding timely supervisory/management oversight and case investigation noted below, all investigations were conducted in accordance with the OCI Policy established by the Board of Police Commissions.

CJ Requirement U61

The DPD and City shall 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.

Comments: DPD Directive, 102.6, Citizen Complaints, effective July 1, 2008, IAD Standard Operating Procedures, Section 1 and 3, and OCI Standard Operating Procedure, effective July 24, 2003 (revised April 29, 2004) establish the jurisdictional responsibility of the DPD (Internal Affairs Division) and OCI. The IAD is charged with the prevention, discovery, and investigation of criminal allegations and allegations of serious misconduct against department members and city employees who are assigned within the DPD. The DPD IAD is designated responsibility for all external complaints alleging possible criminal misconduct. The OCI investigates non-criminal allegations of misconduct against DPD personnel in the following categories; Arrest, Demeanor, Entry, Harassment, Force as it relates to threats, Property, Search and Service.

The established policies and procedures also provide guidance for receiving, recording, tracking, referral and the investigation of complaints. The IAD and OCI track each open, pending, and closed case by the unique case identifier which is placed on all communications produced regarding a specific external complaint and provided to each citizen upon lodging a complaint. Each entity utilizes a computerized database to record data developed concerning external citizen complaints. The OCI is required to annually compile a summary of its investigations. These summaries are distributed throughout the DPD, to the Board of Police Commissioners and are available to the public. Informational posters are on display in the public areas of all police facilities and public libraries. The city sponsors community meetings and has run public service announcements concerning how to file a citizen's complaints against the police. The Board of Police Commissioners through the OCI maintains a Community Outreach Coordinator. The coordinator attends meeting and makes presentations at the request of community organizations

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

or public forums. The Board of Police Commissioners' website provides access to an OCI fact sheet on external police complaints. The website also allows the online filing of complaints.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U62

The DPD and the City shall develop and implement an informational campaign regarding external complaints, including:

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

Comments: During this on-site visit, we inspected Police Headquarters, the Northeastern, Eastern, Southwestern, and Central Districts, the Tenth and Twelfth Precincts and the Office of the Chief Investigator for compliance with the requirements of this paragraph. All locations had permanent placards describing the complaint process displayed in a prominent location in the lobby of the district stations. All desk personnel were able to immediately produce Citizen Complaint Brochures and were aware that they should not discourage citizen from filing a complaint.

A review of the audit conducted by the Office of Civil Rights, DPD dated November 20, 2009, regarding the Inspection of Detroit Public Libraries revealed that 22 of the 23 public libraries had external complaints informational posters prominently displayed near the customer service areas of the facility. Additionally, staff at 21 of 23 libraries was able to locate and immediately distribute informational brochures and citizen complaint forms upon request. We also inspected five libraries to verify the results of the audit. The locations contained posters displayed in locations near customer service areas and citizen complaint brochure and forms were available when requested.

Both DPD and OCI performed Community Outreach programs to specifically inform citizens of the complaint process and the procedures for filing complaints. The Board of Police Commissioners' website allows for online submission of complaints against the police. The City of Detroit broadcasts public service announcements that describe the complaint process (see U61 for additional information).

Compliance Status

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U63

The DPD shall require all officers to carry informational brochures and contact forms in their vehicles at all times while on-duty. The DPD shall develop a contact form within 60 days of the effective date of this Agreement. The contact form shall be submitted for review and approval of the DOJ. The DPD shall implement the contact form within 60 days of the review and approval of the DOJ. The DPD shall 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 shall prohibit officers from discouraging any person from making a complaint or refusing to take a complaint.

Comments: DPD Directive 102.6, Citizens Complaints, effective July 1, 2008, Section 6.2 requires all on-duty officers to carry informational brochures and contact forms to provide to complainants on request. The officers are issued numbered Citizen Complaint Brochures and each district or precinct maintains a log to track the forms. All officers are also required to inform each complainant of his/her right to make a complaint and prohibits officers from discouraging any individual to make a complaint or refuse to take a complaint.

We reviewed the audit conducted by the DPD Office of Civil Rights dated November 20, 2009 regarding Citizen Complaint Informational Brochures and Contact Forms carried in police vehicles. Officers from the Northeastern, Eastern, Southwestern and Central Police Districts were randomly selected and asked to provide the brochures and forms for review. Each officer contacted provided the documents for review and were aware of the requirements of the DPD policy concerning citizen complaints. Additionally, several patrol officers from the Tenth and Twelfth Precincts were selected at random and were able to produce the required material from their patrol vehicles during our visit.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

A. INTAKE AND TRACKING***CJ Requirement U64***

The DPD and the City shall 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 (or TDD), facsimile or electronic mail.

Comments: DPD Directive 102.6, Citizen Complaints, effective July 1, 2008, IAD Standard Operating Procedures, Section 3 and OCI Policy Section 8 describe the intake and tracking

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

policy as defined by the Consent Judgment. Our review of 37 IAD and 409 OCI investigations revealed that the complaints were filed utilizing all of the communication facilities identified in this paragraph. Most external complaints involved non-criminal police actions and were referred to the OCI for investigation.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U65

The DPD and the City shall 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.

Comments: DPD Directive 102.6, Citizen Complaints, effective July 1, 2008, IAD Standard Operating Procedures Section 3 and OCI Policy Section 8 described the procedures for the intake of external complaints. Our review of 37 IAD and 409 OCI external complaint investigations found no instances where personnel accepting complaints reported any opinions regarding the mental capacity or veracity of the complainant.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U66

The DPD and the City shall assign all complaints a unique identifier, which shall be provided to the complainant, and a description of the basis for the complaint (e.g., excessive force, discourtesy or improper search).

Comments: We reviewed 37 IAD and 409 OCI external complaint investigations closed during this reporting period. Each investigative file contained a City of Detroit Citizen Complaint Report (CCR) and a letter acknowledging the receipt of the complaint with the name of the assigned investigator and the office contact number.

The letters also provided a case specific identifier for the complainant to reference when contacting either IAD or OCI.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

B. EXTERNAL COMPLAINT INVESTIGATIONS**CJ Requirement U67**

The DPD and the City shall revise its policies regarding external complaint investigations to:

- a. provide that all complaints shall be referred for investigation and resolution by OCI or, if the complaint alleges potentially criminal conduct by an officer, by IAD;*
- b. permit the informal resolution of complaints alleging only inadequate service or the complainant's innocence of a charge and require the investigation and formal resolution of all other complaints;*
- c. refer all complaints to the appropriate agency within five business days of their receipt;*
- d. require that the complainant shall be periodically kept informed regarding the status of the investigation;*
- e. develop written criteria for IAD and OCI investigator applicants, including the applicant's complaint and disciplinary history and investigative experience;*
- f. implement mandatory pre-service and in-service training for all IAD and OCI investigators, including intake, investigations, interviews and resolutions of external complaints;*
- g. require IAD and OCI to complete all investigations within 90 days of receiving the complaint; and*
- h. require that: (1) upon completion of the investigation by a command other than OCI, the complainant shall be notified of its outcome and, if the complaint is sustained, whether disciplinary or non-disciplinary corrective action has been recommended; and (2) upon completion of an investigation by OCI the complainant shall be notified of its outcome and, if the complaint is sustained, its referral to the Chief of Police for appropriate disciplinary or non-disciplinary corrective action.*

Comments: DPD Directive 102.6, Citizen Complaints, IAD Standard Operating Procedures and OCI Investigative Policy require the referral to the designated investigative entity.

IAD is responsible for conducting investigations into allegations of criminal or serious misconduct lodged against DPD members. The OCI is responsible for investigating allegations lodged against DPD members involving non-criminal misconduct or complaints about police service.

We reviewed 37 IAD and 409 OCI closed case investigations during this reporting period. These cases were investigated within the jurisdictional authority of each entity and in accordance with the requirements of this paragraph.

IAD Standard Operating Procedures do not specifically permit or encourage the informal resolution due the nature of their investigative jurisdiction of alleged criminality and/or serious misconduct lodged against department personnel. Accordingly, IAD investigates and makes findings in each case.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

The OCI Policy (Section 8.1) permits the informal resolution of complaints alleging inadequate service or the complainant's innocence of criminal charges. Policy does not permit OCI to pursue informal resolution if not agreed to by the complainant; however our review identified 155 OCI cases that were incorrectly closed administratively. This action is inconsistent with the requirements of OCI Policy.

IAD Standard Operating Procedures and OCI Policy require that all complaints be referred to the appropriate agency within five business days of their receipt. We reviewed two IAD cases and found they were appropriately referred with five days. We also reviewed 409 OCI cases and found the majority of cases were referred within five days or filed directly at OCI; however approximately 15% of these cases either did not meet the filing time requirement or indicate the time received at OCI. We conclude they were not timely filed. The OCI is not in compliance with this requirement.

Our review of IAD case files found initial letters of notification to the complainant regarding the opening of the investigation, the assigned investigator and the case status. In cases of prolonged investigations, IAD provides updated case status to complainants and upon closure, notifies them of the closure, finding(s) and action(s) taken where appropriate.

Similarly, our review of OCI case files found the initial letters of notification to complainants as required. During those cases requiring prolonged investigative activity, OCI provided appropriate but not timely advisement. Upon closure of an investigation, OCI sends an additional notice to complainants advising them of the closure, finding and actions taken where appropriate; however we found the closure notification contained an incorrect finding in 155 cases. The OCI has not yet achieved compliance with this requirement.

IAD SOP, Sections 1-5 and OCI Policy, Section 5 describe the personnel selection process utilized by each agency. The IAD process includes a review of the applicant's attendance records, performance evaluation ratings, disciplinary history, a review of complaints made against the applicant, a review of use of force history and a review of any civil litigation where the applicant was named as a defendant. The IAD Commander must deem the applicant suitable for the assignment.

OCI policy differs slightly for civilian personnel. It requires criminal background checks, reference checks, drug screening, and review of complaint and disciplinary history of former and current city employees. Civilian employees must be approved by the Board of Police Commissioners. Sworn members of the Detroit Police Department assigned to OCI must meet standards similar to the IAD selection process. Both agencies are in compliance with this requirement.

IAD SOP, Section 7.3 - 7.4 and OCI Policy, Section 5.2 specifically provide training objectives for both agencies. IAD pre-service training provides newly selected personnel with a basic understanding of the uniqueness of Internal Affairs. The training involves seven areas of concern; Police Ethics, Review of Standard Operating Procedures, Review and Discussion of Sections of Detroit Police Directives Pertinent to Internal Affairs, Assignment of a Training officer, report writing, investigative and interview techniques and relevant law to include Bargaining Agreements and Garrity/Miranda Interviews. In-service training is acquired through utilization of the Standard Operating Procedures and periodically reinforced by internal training

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

sponsored by the Commander, IAD. In addition, all sworn personnel must attend the annual mandatory 40-hour block of instruction which includes bi-annual firearms qualification, PR-24 recertification, legal updates and Use of Force Policy.

OCI pre-service training for new personnel includes classroom instruction on the following subjects: City of Detroit Charter provisions, overview of the Board of Police Commissioners, overview of the Office of the Chief Investigator, overview of the Detroit Police Department, DPD Policies and Procedures, Relevant Law, Collective Bargaining Agreements and Procedures, Investigative Techniques, Report Writing, Citizen Complaint Report Format, Intake Process and the Resolution of External Complaints. New hires also undergo an orientation that includes ride along and placement with a training officer. Additionally, OCI conducts 32 hours of annual in-service training addressing changes in the law, DPD policies and procedures, collective bargaining agreements and pertinent issues regarding external complaints. Both agencies are in compliance with this requirement.

We reviewed 37 completed and closed IAD cases for the period October 1 – December 31, 2009. We also randomly selected 17 Garrity, seven witness and two complainant audio taped interviews for review. In each case, we found investigators complied with DPD guidelines; the duration of each was reasonable; and forms acknowledging the witness interviews were conducted at a time and place of their choosing were included.

The review of IAD cases found the duration of 16 exceeded the 90-day time limit. We determined the existence of a necessary investigation purpose justifying the time in six of these cases. Two cases exceeded the 90-days due to a delay in receipt of a prosecutorial declination. The remaining eight involved case management issues. Accordingly, the compliance rate for IAD is 78.3%.

IAD SOP, Section 5-26 requires that investigators prepare Monthly Synopsis Reports on their cases, including those closed during the month, and in addition, it requires they document their daily investigative activity on Case Supervision Sheets. The SOP also requires periodic documented supervisory case reviews. Our review of these requirements for our previous report found a lack of and/or incorrectly prepared Monthly Synopsis Reports. In addition, our review of Case Supervision Sheets identified infrequent and incomplete notations by supervisors. The supervisory comments provided no specific investigative instruction or direction regarding the completion of the case in a timely manner of within the 90-day requirement. A significant delay in the initial assignments of the cases for investigation was also noted.

During the most recent review, we found an increase in notations by investigators and supervisors but continued to find the lack of specific investigative instruction or direction regarding completion of cases. We also found improvement in the assignment of cases; however the assignment of seven of the 37 cases was delayed for eight or more days. We also noted the case findings for this reporting period: Sustained – 17; Not Sustained – 16; Unfounded – 2; Exonerated -1; and Administrative Closed – 1. We further reviewed 409 OCI investigations appropriately processed through the initial intake/investigative stage and considered complete and closed by OCI. This review found that investigators did not make appropriate findings in 155; and 304 of the 409 were not closed within the prescribed 90-days resulting in a compliance

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

rate of 26%. Many of the cases examined involved procedure, demeanor or service allegations all of which should be quickly resolved.

OCI Policy, Section 9.7 requires that investigators maintain an Investigator's Activity Log where they record all actions taken related to the particular file to include dates and times of actions taken, telephone calls, any canvas activity, and appointments. Policy requires disciplinary action for failure to accurately make appropriate notations in the activity log; however we found no evidence where the failure to document investigative actions has resulted in disciplinary action. We note that the activity log is the perfect vehicle for the supervisor to monitor investigative activity and record the progress of an investigation; however a review of this log by the supervisor is not required by policy or practice. There is little evidence that supervisors maintain constant interaction with the investigator regarding the progress of the investigation or a lack of investigative effort. The only apparent supervisory review is conducted when the investigation is submitted for closure. There is no formalized process of determining investigative accomplishments with a greater frequency.

Another issue related to the lack of appropriate case management by OCI is the 1,047 complaints awaiting investigation. This impacts the Board of Police Commissioners' and the OCI's ability to accomplish their mission objective of improving the quality of law enforcement services by instilling citizen confidence in the integrity of the Detroit Police Department. This situation further promotes the perception that DPD is not responsive to citizen complaints when in reality they do not exercise any control over this process. The excessive backlog inhibits the OCI's ability to comply with the City Charter for the Board of Police Commissioners and their policy to begin efforts to contact the complainant within 10 days of receiving the complaint. In addition, the OCI is required to periodically inform the complainant concerning the status of the investigation if a delay is foreseen. The backlog has prevented the OCI from effectively following established investigative procedures and efficiently handling investigations of citizen complaints in accordance with the City Charter of Detroit. We did note a marked improvement in the quality of investigation conducted toward the end of the calendar year versus earlier cases within the year.

The Chief Investigator has represented that the OCI receives approximately 150 cases per month, while closing a similar amount. The Chief Investigator concedes that with the current closure rate, compliance will be difficult to achieve. This situation has had a dramatic effect on any attempt to reduce the backlog of cases. As a consequence, the OCI cannot effectively resolve the backlog without developing a comprehensive plan to specifically address this issue. To that end, the Chief Investigator is proposing the creation of a Preliminary Investigations Process to reduce the current backlog and prevent the future accumulation of open cases. The process would require the OCI to take the following actions;

- a. close cases where the complainant refuses to cooperate with the investigation for a period exceeding 30 days.¹⁴

¹⁴ Consent Judgment paragraph U27 prohibits the closing of cases where the complainant is unavailable, unwilling or unable to cooperate; therefore an amendment to the Judgment with the approval of the parties is necessary for implementation of the suggested change.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- b. review and attempt the informal resolution of complaints alleging inadequate service or complainant's innocence of charges as authorized in U67b
- c. institution of a weekly case management sheet for the file for supervisors as well as investigators. This process would effectively track the investigative accomplishments of each investigator and supervisor on a weekly basis
- d. Introduce a formalized case management system where supervisors are charged with conducting weekly written evaluations of all investigations. The OCI will create a document to memorialize the evaluations.

The Chief Investigator admitted that a large percentage of the investigations received are not completed within the 90-day timeframe. He states that by applying these measures, the OCI could lower the number of delinquent cases and significantly reduce the backlog of pending cases. The Chief Investigator has presented these recommendations to the Board of Police Commissioners for their approval. However, as noted above only 409 cases were closed this quarter as compared to the usual 450 cases. One Hundred Eighty Four of these cases were resolved using the administrative closure process with 155 done so improperly. Given the slowed effective rate of closure this quarter, case resolution time is likely to increase and the backlog grow if some course correction is not made. Yet, caution is raised to maintain the fidelity of the provisions of the requirements while needed process improvements are sought. It is noted that at least one of the recommendations will require an amendment to the Consent Judgment. This amendment will require agreement of the parties and the approval of the U.S. District Court. This may be a good initial step in an attempt to resolve this mounting crisis. The OCI is not in compliance with this requirement.

Finally, the monitoring team reviewed 37 IAD and 409 OCI completed and closed investigations. The appropriate notification correspondence was noted in each file (see Paragraph 67d).

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U68

The DPD and the City shall review and evaluate the external complaint review process to require:

- a. the Chief Investigator or his/ her designee to complete review of OCI investigations within 7 days of completion of the supervisor's review;*
- b. the BPC to complete review of OCI investigations within 45 days of completion of the Chief Investigator's review; and*
- c. the Chief of Police or his or her designee to complete his or her review of external complaints within 7 days of completion of the BPC's review.*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Comments: DPD Policy Directive 102.6 - 4.2, effective July 1, 2008, and OCI Policy Section 9.9.1 describe the policy related review of completed cases by the Chief Investigator. In other requirement sections of this report we have noted that the investigative process is untimely with inadequate supervisory and management oversight. We have also noted that the Chief Investigator or his designee consistently reviewed complete cases within seven days of the supervisor's review. In addition, we noted the Citizen Complaint Subcommittee, Board of Police Commissioners (BPC) completed their review within the prescribed timeframe of 45 days. Accordingly, we found the City compliant with the requirements of this paragraph.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U69

In addition to the investigatory report and evaluation requirements, each allegation in an administrative external complaint investigation shall 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.*

Comments: We reviewed 37 closed IAD cases, including internal and external complaints, and determined that one did not contain the required policy disposition noted above.

We also review 409 complaints investigated by the OCI and determined that 155 included inappropriate findings.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 - Implementation
61	Revise external complaint policies	In Compliance	In Compliance
62	Information campaign re complaints	In Compliance	In Compliance
63	Officers carry information/contact forms	In Compliance	In Compliance

Second Quarterly Report of the Independent Monitor for the Detroit Police Department

04/15/2010

64	Policy to define complaint intake/track	In Compliance	In Compliance
65	Permit factual account, no opinion	In Compliance	In Compliance
66	Unique identifier for complaints	In Compliance	In Compliance
67	Revision of complaint investigations	In Compliance	Not in Compliance
68	Time limits for review of inv/complaints	In Compliance	In Compliance
69	Required finding categories specified	In Compliance	Not in Compliance

Critical Issues

The monitoring team examined 37 closed and completed cases for the period October 1 through December 31, 2009. The review disclosed the following issues that require immediate attention.

Inadequate IAD Case Management

Each IAD investigator is required to maintain a Case Supervision Sheet (CSS) where they chronicle by date each investigative action taken during the investigation of each case. An examination of the Case Supervision Sheets disclosed that IAD supervisors infrequently used the log for its intended purpose of documenting case supervision and managing the investigative efforts of subordinate personnel.

During the review of 37 IAD investigations it was determined 16 of the cases were not completed within the prescribed 90-day timeframe, a 78.3% compliance rate. The delinquent cases are representative of a systemic case management issue. IAD requires investigators to complete a Monthly Synopsis Report (MSR) for each of their current cases including those closed for the month. The review revealed that these reports were not included in the file or not prepared as required. IAD SOP also requires the supervisor to review each case with the assigned investigator noting the progress or status of the case. The MSR and CSS were established to record supervisory comments. The examination of these logs by the monitoring team revealed that most of the supervisory remarks did not provide specific investigative instruction and direction regarding the completion of the case in a timely fashion or within the 90 day deadline.

It was determined that in seven of the 37 cases reviewed, the initial assignment to investigative personnel was delayed eight or more days from initial receipt of the complaint. The monitoring team could not determine the rationale for the assignment delay.

Inadequate OCI Case Management

The monitoring team examined 409 completed cases for this reporting period. This review revealed the OCI does not utilize efficient and effective case management for the monitoring of investigative activity by assigned personnel. OCI Policy¹⁵ requires that investigators maintain an Investigator Activity Log where they record all investigative action taken related to the particular case. The failure to maintain this log subjects the investigator to disciplinary action. There is, however, no requirement by policy or practice for the supervisor to review the investigative

¹⁵ Section 9.7

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

activity documented on the log. There is no formalized process of determining investigative accomplishments with greater frequency.

We were advised that the OCI has an identified backlog of approximately 1,047 pending external complaints awaiting investigation. OCI partially attributes the delinquency rate to a lack of investigative resources. The Chief Investigator has proposed that OCI create a Preliminary Investigations Process to review and eliminate those cases that can be closed under informal resolution provisions.

Our review of 409 OCI investigations revealed that 304 cases were not completed within the required 90-day timeframe, a 26% compliance rate. Many of the cases examined involved procedure, demeanor or service allegations, all of which were quickly resolved. Lack of appropriate supervisory oversight of investigative activity significantly contributes to the high delinquency rate. OCI must formalize and institute a more aggressive investigative plan with continuous supervisory direction and timely intervention if it is to achieve compliance.

Next Steps

We will review documentation regarding the supervision of the investigative process. Our review will examine: 1) compliance with IAD SOP Section 5-26, entitled Supervisory Review and Monthly Reviews, which requires supervisors to review each case with the assigned investigating member; 2) case assignment procedures to reduce assignment delays; and 3) revised OCI SOP if approved to ensure its compliance with CJ; 4) the OCI process to reduce backlog cases if formulated; 5) closed cases for January 1 through March 31, 2010; and 6) steps to improve supervision of the investigative process.

VII. GENERAL POLICIES

This section of the Consent Judgment addresses a variety of issues in general terms. It seeks to ensure that when developing policies all the terms used are clearly defined. It seeks to ensure that prior to making revisions to DPD policies the community is made aware of the proposed revisions by requiring the posting the proposals on the DPD website. It requires DPD to advise all of its officers that taking police actions in violation of DPD policies shall subject its officers to a variety of possible actions, to include disciplinary, criminal prosecution or civil liability. This section also requires officers to report acts of misconduct by other officers, whether on or off duty. DPD was also required to revise its policy regarding police actions by off-duty officers. DPD was required to revise the policies on how they handle prisoners, to include summoning first aid as necessary, summoning assistance if required, and prohibiting the accompanying of prisoners to the holding cell area. DPD was also required to develop a foot pursuit policy and to plan for adequate distribution of manpower.

In all instances DPD has developed the appropriate policies and is taking steps to achieve implementation.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

CJ Requirement U70

In developing and revising the policies discussed in this Agreement, the DPD shall ensure that all terms are clearly defined.

Comments: DPD Directive 101.1, Directive System, effective 07/01/08 and Directive 404.1, Definitions, effective 07/01/08 are compliant with the requirements of this paragraph. Directive 101.1 establishes the process to be used by the department to manage its written directive system. It clearly defines the following terms: Directives; Legal Advisor Updates; Personnel Orders; Policy; Special Orders; Standard Operating Procedures; Teletypes (Investigative Info); Teletypes (Administrative); and Training Bulletins. Directive 404.1 identifies a comprehensive list of terms frequently used within the department, commencing with “Actively Resisting” and ending with “Writ of Restitution.”

The DPD formed a Policy Focus Committee (PFC) to focus on policy issues. In our discussions with staff we determined that the last meeting of the PFC May 12, 2009. DPD remains in Phase 1 and Phase 2 compliance.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U71

The DPD shall continue to make available proposed policy revisions to the community, for their review, comment and education. Such policy revisions shall also be published on the DPD's website to allow comments to be provided directly to the DPD.

Comments: The DPD has three documents which govern the process to be followed to insure compliance with this requirement; a Protocol for Proposed Policy Revisions; an SOP outlining procedures for posting proposed policies to the web site; and a flow chart (Visio-DPD Policy Flow Chart) which tracks the movements of proposed policy revisions through the department and through the public review. In addition, DPD Directive 101.1, Directive System, effective July 1, 2008, provides a process for the issuance of Special Orders and guidance on their use. The Order provides that Special orders are to be used for routine and procedural matters and are only effective for one year from the date of issuance. The DPD should ensure that Special Orders are not used in a way that infringes on the communities ability to provide input. In those instances where a Special Order is utilized for a substantial matter; the DPD should ensure that the appropriate documents are simultaneously submitted to the BPOC and placed on the DPD website for appropriate vetting.

Our review determined that there were no proposed policy revisions during this evaluation period; DPD remains in compliance with this requirement.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U72

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

Comments: DPD Directive 102.3, Code of Conduct, is compliant with the requirements of this paragraph.

Our review of training data covering the first half of this fiscal year found that 1,241 (44.6%) officers received Use of Force training, which incorporates Code of Conduct material. This is an improvement from where they were at the same time last fiscal year, when only 840 officers had been trained. Based on this progress, we have determined the DPD is in Phase 2 Pending Compliance.

Compliance Status

Phase 1: In Compliance

Phase 2: Pending Compliance

CJ Requirement U73

The DPD and the City shall develop a plan for ensuring regular field deployment of an adequate number of supervisors of patrol units and specialized units that deploy in the field to implement the provisions of this agreement.

Comments: An agreed upon 1:10 ratio of supervisors to officers in patrol and specialized units is memorialized in electronic mail dated November 6, 2007.¹⁶

The DPD commenced its annual in-service training, which includes the requirements of this CJ paragraph in July 2009 and in an updated DPD Administrative Message, dated November 14, 2009, established further Roll Training requirements. Training is reported in U118.

We also reviewed DPD Compliance Inspection Reports/Evaluations regarding staffing ratios and found some lacking sufficient information to determine compliance with the requirements of this CJ paragraph.¹⁷ However, we did find that of the 15 commands reviewed, between five and 11 met the required staffing ratio.

¹⁶ Section I, Paragraph of the UOF CJ defines a supervisor as a sworn DPD employee at the rank of sergeant or above and non-sworn employees with oversight responsibility for DPD employees.

¹⁷ The Inspections referenced herein were conducted October 7, October 25, and December 19, 2009.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

In our previous report, we noted our finding that the objective of the sergeant/officer ratio was significantly impeded by the group assignment practice. For example, four sergeants could be assigned responsibility for the supervision of 20-40 officers, clearly within prescribed ratio; however sergeants are not assigned responsibility for the conduct or performance of specific officers nor are officers accountable to a specific sergeant. This practice raises issues with regards to reporting and documentation of the use of force and other policing activities, the conducting of complete and meaningful annual performance evaluations, and appropriate supervisory intervention in matters of general conduct and discipline. We are advised the DPD is addressing this issue and will report further on it in our next report.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U74

The DPD shall enforce its policies requiring all DPD officers to report any misconduct committed by another DPD officer, whether committed on-duty or off-duty.

Comments: DPD Directive 102.3, Code of Conduct, is compliant with the requirements of this paragraph.

Our review of training data found that 1,241 (44.6%) officers received Use of Force training, which incorporates Code of Conduct material, during the first half of this fiscal year compared with 840 for the same period in the last fiscal year. This is an improvement from where they were at the same time last fiscal year, when only 840 officers had been trained. Based on this progress, we have determined the DPD is in Phase 2 Pending Compliance.

Compliance Status

Phase 1: In Compliance

Phase 2: Pending Compliance

CJ Requirement U75

The DPD shall revise its policies regarding off-duty officers taking police action to:

- a. provide that off-duty officers shall 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. prohibit off-duty officers from carrying or using firearms or taking police action in situations where an officer's performance may be impaired or the officer's ability to take objective action may be compromised; and*
- c. provide that, if it appears the officer has consumed alcohol or is otherwise impaired, the officer shall submit to field sobriety, breathalyzer, and/or blood tests.*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Comments: DPD Directive 102.3, Code of Conduct, is compliant with the requirements of this paragraph.

We previously reviewed a joint communication issued by the parties wherein they agree the DPD had complied with the policy creation, dissemination, and training requirements of this paragraph. They further agreed the Monitor should assess implementation of the requirements of this paragraph by reviewing investigative files and responses to the chief's letter to the Michigan Association of Chiefs of Police requesting any member agencies report any off-duty action by DPD officers to the DPD IAD.¹⁸

There were no responses from MACP member agencies of improper police action or misconduct by DPD officers during this reporting period. Our review of the number of agencies who reported off duty actions of DPD personnel in our previous report indicate that MACP member agencies are in fact notifying the department.

Our review of FI cases closed during this reporting period disclosed one FI case wherein an off-duty officer was involved in a critical firearm discharge event. FI investigated this event and found the officer's action justified.

We also reviewed 12 IAD cases involving alleged off duty conduct by DPD personnel. Four of the cases involved domestic violence, one for sexual battery and one was related to policy issues. The remaining six cases falling under the provisions of this paragraph involved an allegation of misuse of the 911 System; fraud by claiming rewards for several auto theft recoveries; assaulting a police officer while off duty; utilizing county property without authorization; failing to report having been arrested for DUI; and harassment of a fellow police officer. Three cases involved DPD officers' actions in other jurisdictions. In two of the incidents the agency did contact DPD and in the third we could not determine if the other agency was aware that a DPD employee was involved.

All cases were investigated thoroughly; however, of the total of 12 cases reviewed, 4 were exceeded 90 day completions requirement.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U76

The DPD shall revise its policies regarding prisoners to:

- a. require officers to summon emergency medical services to transport prisoners when the restraints employed indicate the need for medical monitoring;*
- b. require officers to utilize appropriate precautions when interacting with a prisoner who demonstrates he or she is recalcitrant or resistant, including summoning additional officers, summoning a supervisor and using appropriate restraints; and*

¹⁸ The Chief of Police sent the required letter to the MACP on March 30, 2009.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- c. prohibit arresting and transporting officers from accompanying prisoners into the holding cell area.*

Comments: DPD Directive 304.2, Use of Force, effective June 27, 2005; Training Directive 04-7, effective November 21, 2005; and Directive 305-1, Detainee Intake/Assessment, effective May 9, 2005 are compliant with the requirements of this paragraph.

Our review of UF002 and UF002A Reports detailed in U15 through U36 continue to cite examples of aid being rendered to subjects who are injured in the course of their arrest. Emergency Medical Service (EMS) units are requested as required for incidents ranging from shootings to flushing the eyes of subjects who have been sprayed with chemical spray carried by officers. Officers routinely request assistance when dealing with subjects who offer resistance, including summoning a supervisor.

Our review of training data for this fiscal year indicates the DPD has provided applicable training to 44.6% of its officers thus far. Given the progress in providing the requisite training DPD is found to be in Pending Compliance status.

Compliance Status

Phase 1: In Compliance

Phase 2: Pending Compliance

CJ Requirement U77

The DPD shall develop a foot pursuit policy to:

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

Comments: DPD Directive 202.7, Foot Pursuits, effective 07/01/08, addresses the requirements of this paragraph. The preparation of a Foot Pursuit Evaluation Form (DPD 699), previously required by this Directive is no longer a requirement. Effective, August 15, 2009, the DPD requires that members document foot pursuits resulting in a use of force or detainee injury on a Use of Force Auditable Form (UF-002). This requirement is inconsistent with the provisions of DPD Directive 202.7, Foot Pursuit, effective July 1, 2008; therefore the DPD is encouraged to initiate the necessary revisions to this order, adhering to the requirements of U71 by posting the changes at the DPD website and submitting the change to the BPOC. Progress on this revision

Second Quarterly Report of the Independent Monitor for the Detroit Police Department

04/15/2010

will be evaluated during the next site visit. This directive also requires that all Foot Pursuit Evaluation Forms shall be forwarded to the Training Center and along with Use of Force Reports and Case Reports, to the Risk Management Unit for review to determine compliance with directives and assess the need for agency-wide training.

During the first half of this fiscal year, the DPD has provided Use of Force in-service training to 1,241 of their officers (44.6%). Given this progress in providing the requisite training DPD is found to be in Pending Phase 1 compliance status.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 - Implementation
70	Clear definitions in policies	In Compliance	In Compliance
71	Proposed policy changes open to comm.	In Compliance	In Compliance
72	Advise officers policy violations disciplined	In Compliance	Pending Compliance
73	Adequate officer/supervisor ratio	In Compliance	Not in Compliance
74	Enforce misconduct reporting requirements	In Compliance	Pending Compliance
75	Revise policies regarding off-duty officers	In Compliance	In Compliance
76	Revise prisoner related policies	In Compliance	Pending Compliance
77	Develop foot pursuit policy	In Compliance	Not in Compliance

Critical Issues

DPD is making progress toward full compliance. We see no major issues that suggest concerns about continued progress in this area. There are no critical issues that run through DPD's efforts in this area. DPD must, of course, continue to make progress in assuring that all staff members received the necessary training related to these requirements.

Next Steps

We will continue to monitor relevant policy changes including efforts to address the public's interest in policy. Likewise we will continue to pay attention to the training requirements inherent in policy development in this area. Finally, we will review correspondence with the Michigan Chiefs and check on the revision to the foot pursuit policy.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

VIII. MANAGEMENT AND SUPERVISION***A. RISK MANAGEMENT DATABASE***

In this portion of the Use of Force Consent Judgment several key management areas are addressed including the development of a risk management system, audit requirements, personnel evaluations and the reduction of a backload of disciplinary cases. Thirteen of the twenty-eight requirements in this section address the development and use of a comprehensive risk management system.

To address these requirements DPD has developed its own system known as the Management Awareness System (MAS). Originally used to fulfill the requirement that an interim system be used while a full Risk Management System was developed, DPD requested and received permission of the Court to develop MAS into the permanent system that would address all requirements in this section.

Under the previous Monitor, DPD produced the required policy documents for MAS, provided training for all supervisors at the rank of Sergeant and above, and engaged in the process of “rolling out” the system Department wide. The prior Monitor found DPD in compliance for all policy related areas. The assessment of implementation planned for the quarter ending August 31, 2009 did not occur as a result of the conclusion of the prior monitorship.

In January 2009 and again in May 2009, a subject matter expert from DOJ visited DPD to assess the progress being made on MAS. In June of 2009, he produced a highly critical report in which he concluded MAS suffered problems in three core areas; inadequate administrative commitment, poorly articulated technical objectives, and inadequate technological infrastructure. The report concluded by indicating that a number of pathways existed for moving forward. These choices ranged from “firefighting” until things work well enough, to developing a new system “from scratch.” Based on his review of the entire development process the DOJ examiner was, however, pessimistic that under any intermediate course of action DPD was likely “to recover and move on to success.” He reported that contracting out “for a new build” was the only option that showed some potential for success, even though that too was limited in his view.

While DPD continued development work on MAS the new Monitor recognized the need to resolve the status of MAS left unsettled in the reports of the DOJ subject matter expert. To assist DPD in resolving the issue the Monitor scheduled a “test” of MAS during the visit reported on in this quarterly report.

The test took place in three locations. The main site was at Police headquarters where representative of the parties joined the Monitor and oversaw the execution of the test under the auspices of DPD command staff. Monitoring team members also queried the system in DPD’s the 10th and 12 precincts.

The main goal of the test was to examine the utility of the system; therefore queries were posed based on the expected information needs of DPD administration. Inquiries were made about individual officers and supervisors and about events, including uses of force that could be expected to be documented in MAS.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Although the DPD staff overseeing the development of the Risk Management System has clearly made progress, many of the problems identified in the June review by the DOJ expert continued to be evident on the Monitor's test. Usability issues were clear in that data screens were often confusing, high levels of specific knowledge were needed to extract basic information, even the trained operator was required to exit MAS to seek basic information in other systems which did not interact directly with the main system. Basic information such as that from employment records was unavailable because of limitations in the HR data base. Critical information, specifically in the area of training was either not available or inaccurate thus raising concerns about noise in the data and limiting confidence in the ability to rely on the system.

Overall the efforts to search for Risk Management data that a police administrator might require in the event of a critical incident were unsuccessful. Personnel records, training records and information on known incidents could not be located in a timely fashion. From the test at the central office location we were unable to conclude that the deficiencies noted earlier were resolved or were likely to be resolved within the existing MAS programming structure.

The tests in the field were not as comprehensive as the main examination but did yield some positive results. In both districts staff was able to query the data for basic information. Staff in both locations showed proficiency in the use of the existing system. The Monitoring Team views that as evidence the department is generally prepared to benefit from an improved and well functioning Risk Management database.

The goal of this test of MAS was to respond to significant concerns raised in a review of the system by a subject matter expert from the Department of Justice. Although progress is clearly evident and the hard work of those dedicated to MAS should be recognized and acknowledge we must conclude that serious problems remain. The system does not meet the requirements of an effective Risk Management System as specified in the Consent Judgment. Furthermore it is our view that with further development along this trajectory and in isolation of the Department's other information systems, MAS is not likely to successfully meet the specified requirements within a reasonable period of time.

In light of the conclusion noted above we recommend that the parties to this Consent Judgment reconsider continuing to move forward with deployment of MAS and explore alternative courses of action which will assure the implementation of a state of the art management system which can meet the requirements of the judgment. The Monitoring team will be available to assist the parties in this matter during the next quarterly visit.

CJ Requirement U78

The DPD shall 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*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- e. *regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.*

Comments: This paragraph provides a summary of requirements detailed in paragraphs 79-99. Each of its components is evaluated separately in the material which follows. Policy requirements in the area are incorporated into the documents which are mandated as part of the risk management plan. The data entry plan, report protocol and review protocol were reviewed by the previous Monitor and judged to be sufficient. Thus, we concur. Implementation of these requirements has not yet been achieved.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U79

The DPD shall 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. Priority shall be given to the DPD obtaining an established program and database. The DPD shall 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 shall regularly use this data for such review and monitoring.

Comments: DPD obtained agreement from DOJ to develop their own risk management system based on work on its interim system. As described in required documentation, when fully operational the planned system is consistent with the requirements of this paragraph. Implementation problems, however, have raised questions about whether DPD will continue on its current course or will consider starting to work on a different system. An unsuccessful test of the usefulness of the system on this visit has reinforced the need to review this issue. With this issue undecided at this time, the status of Phase 1 compliance in the area is still recognized but will need to be revisited in the future. Phase 2 compliance requires full implementation which has not yet been achieved. Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U80

The new risk management database shall collect and record the following information:

- a. *all use of force reports and use of force investigations;*
- b. *all canine deployments;*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

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

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- y. *the assignment, rank, and training history of officers; and*
- z. *firearms qualification information of officers.*

Comments: The information requirements noted in this paragraph are included in the documentation developed for the Management Awareness System (MAS) and are part of the computerized system in its present form. This is sufficient for meeting policy related requirements. The test of MAS on this visit raised questions about the ability of the system to report out data which must be manually uploaded rather than automatically read from other data bases. Problems during the test support the conclusion that DPD has thus not yet achieved Phase 2 compliance.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U81

The new risk management database shall 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).

Comments: Required identifying information is included in the documentation developed for the Management Awareness System (MAS) and is part of the computerized system in its present form. Based on the test of MAS the system does not appear to link effectively with the Department's HR data and therefore key data elements are not reportable. These problems indicate that DPD has not yet achieved Phase 2 compliance.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U82

The DPD shall 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 shall:

- a. *detail the specific fields of information to be included and the means for inputting such data (direct entry or otherwise);*
- b. *specify the unit responsible for inputting data, the deadlines for inputting the data in a timely, accurate, and complete manner;*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- c. *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*
- d. *requires that the data be maintained in a secure and confidential manner.*

Comments: The previous Monitor noted that the Data Input Plan has received verbal acceptance from DOJ. The plan has thus been accepted as meeting policy requirements although written documentation of acceptance should be sought. It should also be noted that Phase 1 compliance should be considered tentative until a final decision about whether an alternative to MAS will be considered. A significant change in the Risk Management System would necessitate renewal of the Data Input Plan. Implementation problems preclude Phase 2 compliance at this time.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U83

The DPD shall 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 shall generate and pattern identifications the DPD shall conduct. The Report Protocol shall:

- a. *require the automated system to analyze the data according to the following criteria:*
 - i. *number of incidents for each data category by individual officer and by all officers in a unit;*
 - ii. *average level of activity for each data category by individual officer and by all officers in a unit; and*
 - iii. *identification of patterns of activity for each data category by individual officer and by all officers in a unit;*
- 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 (in addition to the regular reviews required by paragraph 84); and*
- c. *require the database to generate reports on a monthly basis describing the data and data analysis and identifying individual and unit patterns.*

Comments: On this requirement DPD compliance is similar to that in paragraph 82 which deals with the Data Input Plan. The previous Monitor noted that the Report Protocol has received verbal acceptance from DOJ. The document was regarded as meeting policy requirements. It should also be noted that Phase 1 compliance should be considered tentative until a final decision about whether an alternative to MAS will be considered. The test of MAS indicated the system was not yet capable of meeting these data requirements thus implementation problems preclude Phase 2 compliance at this time.

Compliance Status

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U84

The DPD shall prepare, for the review and approval of the DOJ, a Review Protocol for using the risk management database that addresses data analysis, supervisory assessment, supervisory intervention, documentation and auditing. The Review Protocol shall require:

- a. that when an officer or group of officers pass a threshold established in the Report Protocol the officer's(s') supervisor shall review all information in the risk management database regarding the officer(s), together with other relevant information;*
- b. the reviewing supervisor to document whether he or she took non-disciplinary corrective action or recommended disciplinary action, the basis for this decision, and what corrective action was taken, if any;*
- c. supervisors to review, on a regular basis but not less than quarterly, database reports, together with other relevant information, to evaluate individual officer and unit activity for at-risk behavior;*
- d. precinct and unit commanders to review, on a regular basis but not less than quarterly, database reports, together with other relevant information, to evaluate individual supervisor's assessment and analysis of information in the risk management database and the corrective action taken by supervisors;*
- e. appropriate DPD supervisors to review and evaluate, on a regular basis but not less than quarterly, police performance citywide, using all relevant information from the risk management database and other relevant information and to evaluate and make appropriate comparisons regarding the performance of all DPD units in order to identify any significant patterns or series of incidents;*
- f. commanders and supervisors conducting such periodic reviews to take non-disciplinary corrective action when appropriate for individual officers, supervisors or units and document any such action in writing;*
- g. that the information in the database be accessible to commanders, supervisors and the BPC;*
- h. that the information in the database is considered when evaluating a DPD employee for transfer or promotion;*
- i. commanders and supervisors to promptly review records of all officers recently transferred to their sections and units;*
- j. commanders and supervisors to be evaluated on their ability to use the risk management database to enhance effectiveness and reduce risk;*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- k. *that a designated DPD unit be responsible for managing and administering the database, including conducting quarterly audits of the system to ensure action is taken according to the process described above; and*
- l. *that aggregated information from the risk management database be shared on a regular and periodic basis with training and policy planning staff.*

Comments: The Review Protocol is the third major document required by the Consent Judgment in this area and its current status is similar to the Data Input Plan and Report Protocol. Written documentation of acceptance by DOJ should be sought. Policy requirements for this paragraph are met by the existing Review Protocol but will need to be revisited should a new risk management data base be secured. The Test of MAS indicated that data report requirements have not been fully implemented.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U85

The DPD shall seek to ensure that the risk management database is created as expeditiously as possible. As part of this effort, the DPD, in consultation with the DOJ, shall organize the risk management database into modules in developing the Data Input Plan, the Report Protocol, the Review Protocol and the Request for Proposals and in negotiating with contractors, such that difficulties with one aspect of the risk management database do not delay implementation of other modules.

Comments: As noted above DPD has moved forward on each of the three required policy documents. The Department has also taken critical steps toward implementation although these are not complete and were viewed as not sufficiently successful in a review by a DOJ subject matter expert and a test of MAS on this quarterly visit. In its current condition we recognize the efforts made as consistent with the policy requirements for Phase 1 compliance and also note the implementation difficulties which prevent recognition of compliance in Phase 2.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U86

Where information about a single incident is entered into the risk management database from more than one document (e.g., from a complaint form and a use of force report), the risk management database shall 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.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Comments: The Management Awareness System which has been developed as the risk management database by DPD does not use a common control number for linking reports associated with a common incident. Instead the system links reports by using multiple data points including dates and times. The sufficiency of this method was not conclusively established during the test of MAS. In complete or incorrect data entry can make this system of record matching ineffective. Currently data are insufficient to conclude that Phase 1 or Phase 2 compliance requirements have been met.

Compliance Status

Phase 1: Not in Compliance

Phase 2: Not in Compliance

CJ Requirement U87

The City shall 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 shall be maintained indefinitely in the risk management database.

Comments: The information requirements noted in this paragraph are included in the documentation developed for the Management Awareness System (MAS) including the Data Input Plan. This was accepted by the previous Monitor as sufficient for meeting policy related requirements. DPD is thus continued in that status. The test of MAS, however, revealed that links to the personnel data base of not completely functional. In particular queries over dates and lengths of employment were unsuccessful. Implementation issues thus currently prohibit achievement of Phase 2 compliance.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U88

The new risk management database shall be developed and implemented according to the following schedule:

- a. *Within 90 days of the effective date of this Agreement, the DPD shall submit the Data Input Plan to the DOJ for review and approval. The DPD shall share drafts of this document with the DOJ to allow the DOJ to become familiar with the document as it is developed and to provide informal comments. The DPD and the DOJ shall together seek to ensure that the Data Input Plan receives final approval within 30 days after it is presented for review and approval.*
- b. *By September 30, 2003, the DPD shall submit the Report Protocol and a Request for Proposals to the DOJ for review and approval. The DPD shall share drafts of these*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

documents with the DOJ to allow the DOJ to become familiar with the documents as developed and to provide informal comments. The DPD and the DOJ shall together seek to ensure that the Report Protocol and the Request for Proposals receive final approval within 30 days after they are presented for review and approval.

- c. *By October 31, 2003, the DPD shall issue the Request for Proposals.*
- d. *By March 30, 2004, the DPD shall submit the Review Protocol to the DOJ for review and approval. The DPD shall share drafts of this document with the DOJ and the Monitor (a position described in Section X) to allow the DOJ and the Monitor to become familiar with the document as it develops and to provide informal comments on it. The DPD and the DOJ shall together seek to ensure that the protocol receives final approval within 30 days after it is presented for review and approval.*
- e. *By May 31, 2004, the DPD shall select the contractor to create the risk management database.*
- f. *By June 30, 2005, the City shall have ready for testing a beta version of the risk management database consisting of: i) server hardware and operating systems installed, configured and integrated with the City and DPD's existing automated systems; ii) necessary database software installed and configured; iii) data structures created, including interfaces to source data; and iv) the information system completed, including historic data. The DOJ and the Monitor shall have the opportunity to participate in testing the beta version using new and historical data and test data created specifically for purposes of checking the risk management database.*
- g. *The risk management database shall be operational and fully implemented by December 31, 2005.*

Comments: DPD did not meet the time frames and dates specified in the original Consent Agreement. In an order issued July 22, 2008 the US District Court extended dates for the full implementation of the risk management database until August 11, 2008 and included requirements related to 1) adequate staffing, 2) required planning documents, 3) provision of a sampling of necessary reports of data entered, and 4) a listing of scheduled training.

DPD did not meet the new deadline for implementation. Revised deadlines do not currently exist. However, in response to this concern, DPD has added administrative staff to oversee MAS, has made technical advances on the storage and retrieval of data, and has trained supervisors on the system. It should be noted, however, that despite these considerations the results of our current test of MAS echo the findings of the subject matter expert from DOJ who found significant problems with the system in his January and June 2009 reviews.

Since all established deadlines have expired and since significant problems have been documented with regard to MAS and finally, since new deadlines are not operational, DPD is regarded as not in Phase 1 or Phase 2 compliance with this paragraph.

Compliance Status

Phase 1: Not in Compliance

Phase 2: Not in Compliance

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

CJ Requirement U89

Prior to implementation of the new risk management database, the DPD shall develop an interim system to identify patterns of conduct by DPD officers or groups of officers. The interim system shall require periodic reviews of relevant information, but no less than monthly, and evaluations of whether an officer or group of officers is engaging in at-risk behavior. This interim system shall collect and analyze the following information: citizen complaint reports and investigations; use of force investigations; shootings; vehicle chases; injured prisoner investigations; traffic collisions; canisters of chemical spray issued to officers; firearms qualifications; training; prompt judicial review; disciplinary action; arrest without probable cause; all reports regarding investigatory stops and/or frisks unsupported by reasonable suspicion; and all reports regarding interviews, interrogations or conveyances in violation of DPD policy in a format that facilitates entry into the final risk management database, to the fullest extent possible.

Comments: The Management Awareness System (MAS) was originally developed to serve as an interim system that would be in compliance with this requirement. DPD sought and received permission of the Court to continue the development of the system so that it could serve as the final version of the required risk management system. Although review of the system has identified significant concerns, it continues to function in a manner consistent with the originally envisioned interim system. That is, needed documentation exists, data are being entered and stored in the system, and reports are being generated and provided to supervisors and administrators as required. Despite identified problems then, the system can be said to be meeting the expectations of the interim system established in this paragraph. DPD is thus in Phase 1 and Phase 2 compliance with this requirement.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U90

Following the initial implementation of the risk management database, and as experience and the availability of new technology may warrant, the DPD may propose to subtract or modify data tables and fields, modify the list of documents scanned or electronically attached, and subtract or modify standardized reports and queries. The DPD shall submit all such proposals for review and approval by the DOJ before implementation.

Comments: This paragraph describes the requirement for revision of the risk management system following its initial implementation. Documentation of the system in the Review Protocol includes descriptions of the process of use of the system and its updating and revision, thus meeting the requirements of Phase 1 compliance. Since initial implementation is underway but not complete, DPD is not in a position to achieve Phase 2 compliance at this time.

Compliance Status

Phase 1: In Compliance

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Phase 2: Not in Compliance

B. PERFORMANCE EVALUATION SYSTEM

CJ Requirement U91

DPD shall ensure that performance evaluations for all DPD employees occur at least annually and include, but are not limited to, consideration of the following:

- a. *civil rights integrity;*
- b. *adherence to law, including performing duties in a manner consistent with the requirements of the Fourth and Fifth Amendments to the Constitution and the Civil Rights laws of the United States; and*
- c. *supervisor's performance in identifying and addressing at-risk behavior in subordinates, including their supervision and review of use of force, arrests, care of prisoners, prisoner processing, and performance bearing upon honesty and integrity.¹⁹*

Comments: We reviewed DPD Directive 401.1, Performance Evaluation Ratings, effective July 1, 2008; performance rating forms for the various ranks; and performance rating forms for non-sworn personnel. These documents are compliant with the requirement of this CJ paragraph. The directive requires yearly ratings for those holding the rank of inspector and commander, and twice each year for other ranks. The rating periods are established as May 1 through October 31 and November 1 through April 30. It also establishes completion dates of November and May respectively.

A total sample of 100 evaluations was requested from the Northwestern and Eastern divisions. Twenty-four reports from the Northwestern division were reviewed and 17 were identified as unavailable due to recent transfer in or out of the command. Seventeen of the 24 available reports did not provide comments to accompany the numeric ratings. This level of comments is well below that required for compliance. Seven of the reports did not include the needed signatures. Twenty-three reports from the Eastern District were reviewed. For this district all available evaluations were completed in a manner consistent with this requirement. Overall, however, the total of cases available for review is insufficient in number to definitively determine Phase 2 compliance. A finding of not in compliance is this reported. In the next review we will again seek to locate sampled cases and to identify improvement in the use of comments.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

The Court issued an order on October 4, 2004 adopting a proposed modification by the parties making these requirements applicable to DPD employees below the rank of Deputy Chief.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

C. OVERSIGHT***CJ Requirement U92***

The DPD shall develop a protocol for conducting audits to be used by each officer or supervisor charged with conducting audits. The protocol shall establish a regular and fixed schedule to ensure that such audits occur with sufficient frequency and cover all DPD units and commands.

Comments: We reviewed the Audit Protocol dated August 31, 2009, developed by the DPD and found that it fully addresses requirement U92. It establishes a schedule, describes the audit teams, specifies the roles and responsibilities of the various team members, and it describes the various audits that are to be conducted and the reports that will be produced. It sets forth a comprehensive audit plan for audits covered in this reporting period. A revision of audit protocol based on US Comptroller General Standards (revised July 2007) has been developed as of February 5, 2010 and will be applied to review of this requirements on the next quarterly visit by the Monitoring team.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U93

The DPD shall issue a report to the Chief of Police on the result of each audit and examine whether there is consistency throughout the DPD. The DPD shall also provide the reports to each precinct or specialized unit commander. The commander of each precinct and specialized unit shall review all audit reports regarding employees under their command and, if appropriate, shall take non-disciplinary corrective action or disciplinary action.

Comments: Audit procedures and existing current audits completed in October 2009 make it clear that the results of the audits do reach the Chief of Police and each precinct or specialized unit commander as required here. On our previous visit the Monitoring Team was not provided with documentation indicating that action was taken based on the audit findings as is also required. For the current visit Corrective Action Reports were provided for the required audits. These reports from precinct supervisors or Commanders to the Commander of the Civil Rights Integrity Bureau (CRIB) provide specific responses to concerns raised in the audits. Those responses are organized with reference to individual audit report paragraphs and include information related to disciplinary or non-disciplinary action taken in connection with the audits. This information satisfies the requirements for phase 2 compliance.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

CJ Requirement U94

The DPD shall conduct regularly scheduled quarterly audits, covering all DPD units and commands that investigate uses of force, prisoner injuries, and allegations of misconduct. The audits shall include reviewing a sample of command, IAD, and Homicide Section investigations; evaluating whether the actions of the officer and the subject were captured correctly in the investigative report; and evaluating the preservation and analysis of the evidence and the appropriateness of the investigator's conclusions.

Comments: Consistent with findings from the previous visit, DPD remains in compliance with this paragraph. The Department is functioning under the existing audit protocol and the revised schedule requiring annual audits. A revision of the audit protocol has been prepared and will be applicable to our next visit. Annual audits are required and appropriate reporting dates are set. The next audit period ends July 17, 2010. The required audits are being conducted according to the set schedule and the relevant Corrective Action Reports provide evidence that the audit findings and recommendations have been acted upon.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U95

The DPD shall conduct regularly scheduled quarterly audits covering all precincts and specialized units that review a sample of findings of probable cause, stop and frisk reports and witness identification and questioning documentation. The audits shall include evaluating the scope, duration, content, and voluntariness, if appropriate, of the police interaction. The audits shall include a comparison of the number of arrests to requests for warrants and a comparison of the number of arrests for which warrants were sought to judicial findings of probable cause.

Comments: We reviewed an October 4, 2009 audit report on Investigatory Stop and Frisk from the Eastern District. The audit involved a sample of activity logs, identification of stops and frisks, assessments and notations of the need for corrective action. DPD has achieved compliance with this, the only outstanding, subparagraph the requirement and is therefore in compliance with the overall requirement. Additional audits consistent with this requirement are expected to meet the July 2010 due date.

On the previous visit we found that the audit protocol addressed much of U95 but failed to specifically direct a comparison of arrests to requests for warrants and a comparison of the number of arrests for which warrants were sought to judicial findings of probable cause. This problem has been rectified in the revision of the audit protocol which will govern audits from this point forward.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U96

The DPD shall conduct regularly scheduled quarterly audits covering all precincts and specialized units that examine custodial detention practices. The audits shall include reviewing the length of detention between arrest and arraignment and the time to adjudicate holds.

Comments: As required for Phase 1 compliance the Audit Protocol of August 31, 2009, sets forth the policy required to address U96. The required audits and reports for this requirement are being produced regularly with the previous review involving the February Custodial Detention Audits. For this quarterly visit we reviewed five new audits of custodial detention practices for periods ending in October and November 2009. These audits assessed compliance on the related requirements using full populations from Livescan and random samples of arrests from the units. The DPD included all of the substantive paragraphs related to this topic and they properly defined and assessed the "time between arrest and arraignment" and the time to "adjudicate holds." The audits identified circumstances of compliance, partial compliance, and lack of compliance. The reports provided detailed information on cases and noted the need for "corrective action" where appropriate. As was the case with the last review by the previous monitor our analysis of these documents indicates that DPD continues to be in Phase 2 compliance.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U97

The Chief Investigator of OCI shall designate an individual or entity to conduct regularly scheduled quarterly audits that examine external complaints and complaint investigations. The audit shall include reviewing a sample of complaints that were resolved informally, reviewing a sample of OCI investigations of complaints, and contacting the complainants to evaluate whether the actions and views of the complainant were captured correctly in the complaint report and/or investigation. The Chief Investigator shall review all audit reports regarding officers under OCI command and, if appropriate, shall take non-disciplinary corrective action or disciplinary action.

Comments: The DPD Audit Team last conducted this audit in August 2009. Provisions, however, do not specifically address the U97 requirements that the audit review a sample of OCI investigations or those complainants be contacted to evaluate whether their views were captured. Compliance with this requirement will be reviewed again following completion of the required audits according to the current schedule of annual audits.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Compliance Status

Phase 1: Not in Compliance

Phase 2: Not in Compliance

CJ Requirement U98

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

Comments: Directive 303.3, In Car Video, effective June 21, 2004 requires DPD supervisors to perform periodic random reviews of in-car videos and related equipment to ensure that proper procedures are being followed and that the equipment is in working order. Based on this directive, DPD was determined to be in Phase 1 compliance during our first previous reporting period.

Directive 303.3 has been modified in a new standing order that has been forwarded to the DPD Chief for his approval. The new order continues the requirement that supervisors conduct periodic random reviews and in addition, directs them to record the results in the Sergeant's Daily Report.

As noted in the last review, the severe technical difficulties encountered thoroughly disrupted the initial implementation procedures the Department tried to put in place. The DPD has recently made dramatic progress in MVS implementation. As the in-car video systems become more reliable and useful, additional training for officers, supervisors and commanders will be necessary for the DPD to comply with requirement.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U99

The DPD shall ensure regular meetings with local prosecutors to identify issues in officer, shift or unit performance.

Comments: Members of the DPD and the Wayne County Prosecutor's Office meet on a quarterly basis as required as well as when needed to address case related issues. The minutes of the two most recent meetings were reviewed for the last report and reflected discussions related to the performance of DPD, including the dismissal of cases due to officers failing to appear for court and other applicable issues.

Compliance Status

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Phase 1: In Compliance

Phase 2: In Compliance

D. USE OF VIDEO CAMERAS

CJ Requirement U100

The DPD shall repair or replace all non-functioning video cameras.

Comments: The DPD is modifying Directive 303.3, In Car Video, and effective June 21, 2004 to assure compliance with this CJ paragraph. The revision will require officers to ensure that the audio/video equipment is working properly at the beginning of their shift. Officers will be required to check the equipment and record the results of their inspection on the Officer's Activity Log. The order directs that any vehicles with non-functioning MVS equipment be transported to the Lyndon Garage facility where the equipment is to be repaired or replaced. When the order is approved by the Chief and promulgated, the Department will be in Phase 1 Compliance.

We noted in the November 2009 on-site review that DPD had made important strides in making its non-functioning MVS equipment work properly. At the time, Tenth and Twelfth Precincts, which were selected as prototypes had been equipped with functioning MVS systems. During this on-site review we learned that the success in these two precincts is now being extended to additional precincts; Precincts 2, 3 and 6 and 8 are now being equipped with operational systems.

Compliance Status

Phase 1: Pending Compliance

Phase 2: Pending Compliance

CJ Requirement U101

The DPD policy on video cameras shall be revised and augmented to require:

- a. activation of scout car video cameras at all times the officer is on patrol;*
- b. supervisors to review videotapes of all incidents involving injuries to a prisoner or an officer, uses of force, vehicle pursuits and external complaints; and*
- c. that the DPD retain and preserve videotapes for at least 90 days, or as long as necessary for incidents to be fully investigated.*

Comments: DPD Directive 303.3, In Car Video, effective 6/21/2004 requires officers to activate video cameras at all times on patrol, supervisors to conduct reviews prescribed in U101, and the preservation of tapes. The DPD is in Phase 1 Compliance.

The new MVS system contains controls that enable the Department management to monitor use by officers handling patrol duties. For example, MAS notes reviews of MVS by supervisors and

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

enables their superiors to determine which supervisors are actually reviewing their subordinate's video. In addition, the DPD has developed automated analysis of video accumulated by various shifts. When a vehicle's collection of video falls out of normal range, emails are sent to the officer's supervisor pointing out what may be a deficiency.

During this site review we planned to sample traffic stops conducted by Tenth and Twelfth Precincts, but the DPD was unable to provide a comprehensive list of traffic stops conducted by these commands. We did visit Twelfth Precinct where we found three sergeants, a lieutenant, and the commander all able to conduct reviews MVS incidents at their computers.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U102

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

Comments: Directive 303.3, In Car Video, effective June 21, 2004 requires DPD officers to activate video cameras at all times on patrol and specifically to record all motor vehicle stops, consent searches of vehicles, deployments of drug detection canines. The DPD is in Phase 1 Compliance with U102. The new standing order continues these directives.

Inasmuch as only two precincts are operating systems, the DPD is not yet in Phase 2 compliance.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

E. DISCIPLINE***CJ Requirement U103***

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

Comments: The DPD provided documentation of an increase in staffing of Disciplinary Administration (DA) from a total of seven to a total of eight personnel. The staff includes one lieutenant, three sergeants, three police officers and one non-sworn individual. The unit now also has the physical capacity to hold multiple hearing simultaneously as well as accommodate administrative requirements. Summary statistics show that the unit opened 712 cases in 2009 while also closing 934 cases. In the last quarter a total of 132 cases were closed. Phase 1 compliance is recognized based on the expansion of available resources. Phase 2 is recognized based on the progress on case closures.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U104

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

Comments: The DPD provided its Disciplinary Process Timelines, revised August 29, 2006 for review. These guidelines comply with the intent of this paragraph. As noted above DPD opened 734 new disciplinary cases in 2009 and closed 934 including 132 for the quarter covered in this report. Staff and related personnel attribute progress to increased s personnel and improved facilities. They also note that timelines are sometimes compromised by regulations regarding allowable postponements and by defense practices. We examined a random sample of 90 of the 133 cases closed for the quarter and found only 1 that exceeded the timeline described in the DPD Disciplinary Process Timelines document. In that case, the Commanders' Disciplinary Action Hearing was over due by 30 days. DPD is in both Phase 1 and Phase 2 compliance with this requirement.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U105

The DPD shall create a disciplinary matrix that:

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

Comments: We reviewed DPD Directive 102.4 Discipline, effective July 1, 2008, and the DPD Discipline Matrix (DPD22a) and found the DPD compliant with the requirements of this

Second Quarterly Report of the Independent Monitor for the Detroit Police Department

04/15/2010

paragraph. These documents set forth complete, understandable procedures that include a presumptive range of discipline based upon both an officer's prior violations of the same rule as well as other violations. We examined a random sample of 90 of the 132 cases closed for the quarter and found that all discipline decisions fell within guidelines meeting sub-paragraph a, c and d. Furthermore no inconsistencies with sub-paragraphs b and c were found although it is recognized that these conclusions depend somewhat on the assumption that appropriate documentation would be in the file.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 Implementation
78	Comprehensive Risk Management Plan	In Compliance	Not in Compliance
79	Improve risk management system	In Compliance	Not in Compliance
80	Database requirements (a-z)	In Compliance	Not in Compliance
81	Database to include officer information	In Compliance	Not in Compliance
82	Data Input Plan (a-d)	In Compliance	Not in Compliance
83	Report Protocol for database (a-c)	In Compliance	Not in Compliance
84	Review Protocol for database (a-l)	Not in Compliance	Not in Compliance
85	Use modules to assure work progress	In Compliance	Not in Compliance
86	Common control number required	Not in Compliance	Not in Compliance
87	Data retention	In Compliance	Not in Compliance
88	Database schedule (expired)	Not in Compliance	Not in Compliance
89	Interim data base (rescinded)	In Compliance	Not in Compliance
90	Change process needs DOJ approval	In Compliance	Not in Compliance
91	Annual Officer Review Criteria specified	In Compliance	Not in Compliance
92	Protocol for conducting audits	In Compliance	In Compliance
93	Audit results to Chief and commanders	In Compliance	In Compliance
94	Quarterly audits-use of force	In Compliance	In Compliance
95	Quarterly audits-probable cause/stop/frisk	In Compliance	In Compliance
96	Quarterly audits-detention practices	In Compliance	In Compliance
97	Quarterly audits-external complaints	Not in Compliance	Not in Compliance
98	Random reviews of in-car camera videos	In Compliance	Not in Compliance
99	Regular meeting with local prosecutors	In Compliance	In Compliance
100	Replace/repair video cameras	Pending Compliance	Pending Compliance

Second Quarterly Report of the Independent Monitor for the Detroit Police Department

04/15/2010

101	Revision of video camera policy	In Compliance	Not in Compliance
102	Record all vehicle stops, searches etc	In Compliance	Not in Compliance
103	Elimination of disciplinary case backlog	In Compliance	In Compliance
104	Scheduling of disciplinary cases	In Compliance	In Compliance
105	Disciplinary matrix of responses/sanctions	In Compliance	In Compliance

Critical Issues

Risk Management and the Status of MAS: There is a need to make progress on determining how best to proceed with the development of the risk management system. The fundamental question raised by the DOJ expert about whether to continue with MAS or take a different direction has not been addressed. The result of our test of MAS should be factored into a discussion of these options. A process specifically designed to address this basic issue should be undertaken.

There are three key dimensions critical to the Consent Judgment in this area. First, what is the quality of the data being entered into the system; that is, does it capture and record the events intended in the Judgment? Second, does it produce the output data needed by supervisors to assist them in managing the department? And third, do officers and supervisors utilize the system as it is intended? The test of MAS indicated problems in each of these areas.

The Risk Management System is central to the Consent Judgment and if clear progress is not made on MAS soon, DPD will not only continue to fall significantly behind in this area but progress will be slowed on other data related elements of the judgment. A clear decision regarding a course of action is needed.

In-car video success: The DPD has built on its success noted in our last report. During our last visit we found that it had equipped two precincts with MVS equipment that worked and transmitted the results successfully to the DPD server. It has now begun equipping four additional precincts with operational MVS systems.

During the past quarter, the DPD issued a RFP for new MVS system and has received 16 responses to it. By early February, 2010, DPD expects to cut these to several proposals that will be more closely reviewed and, finally, to a proposal that will be selected. It currently operates about 450 cars and plans to equip about 200 cars with modern systems acquired under the RFP.

Training for In-car Video: During our last on-site, we made an unannounced visit to a precinct equipped with an operational MVS System and found that senior officers and supervisors were unfamiliar with the capabilities of the newly revised system. The people we interviewed including both ranks, senior officers and supervisors, were unaware that video could be accessed through the Department's intranet. During this on-site review we made another unannounced visit to one of the precincts that has been equipped with an operational MVS system and found that its Commander, three sergeants and a lieutenant were all able to access the system on their computers.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Uneven progress in performance evaluations: With regard to performance evaluation the Detroit Police Department appears to be making progress with their performance evaluations reviews. There should be a concerted effort from all levels of command down to the first line of supervision to ensure that employee evaluations comply with the three issues detailed in CJ U91. There remains to be serious problem with the lack of content and accountability in the current manner in which supervisors complete the evaluation form. Of particular concern are the limited comments included in evaluations as supplements to numerical ratings. Such comments are clearly required but included only sporadically. Likewise DPD must increase its success rate in locating completed evaluations which are currently not being found in adequate numbers.

Progress is being made on the backlog of disciplinary: In the area focusing on discipline, the backlog of disciplinary cases raises many issues ranging directly from the time of investigation until a case has gone through the entire process. Cases closed in the period covered in this visit reveal high levels of compliance with policy requirements. Future reviews are needed to determine the rate at which the backlog may be declining.

Next Steps

Risk Management: On the Third Quarterly Site Visit, the Monitoring Team will continue to assess compliance on all requirements relating to the risk management system. A key task will also involve review of the test of MAS from this visit and discussions with the parties on the implications of this test for moving forward. The team will seek to assist the parties in determining how to move forward toward meeting the risk management related requirements of the Consent Judgment.

Performance Evaluation: In order to address the question of supervisors accurately describing the performance of the personnel under their supervision, we will examine the training program specific to paragraph U91 and attempt to determine if the training is inadequate or the supervisor's chain of command is failing to assess the role of the first line supervisor. We will also examine the use of comments as required in the evaluations.

In Car Video: We will obtain a list of traffic stops, pursuits, canine deployments and searches conducted by the cars in precincts 10 and 12 which have been part of the pilot project to make the MVS workable. We will select a sample of the events and check to determine if video exists for them; >94% compliance will be sought.

Discipline: We will continue to monitor the disciplinary process with consideration of the timeframes involved, the process of reducing the backload of cases and finally, we will examine consistency of disciplinary as it relates to presumptive disciplinary steps. We will meet with OCI personnel and review the current process for efficiencies.

IX. TRAINING

We visited the Detroit Police Training Center and interviewed the Deputy Chief recently appointed to oversee departmental training, the current Commander of Training, the previous Commander responsible for in-service training and a lieutenant assigned to Training. We also

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

reviewed a variety of memoranda and policy material and the seven lesson plans used in recruit and in-service training.

DPD Training was reorganized two weeks before our visit. In November, 2009, two divisions that previously had separate responsibility for recruit and restoration²⁰ training and in-service training were merged and placed under the command of a single officer with the rank of Commander.

A. OVERSIGHT AND DEVELOPMENT***CJ Requirement U106***

The DPD shall coordinate and review all use of force and arrest and detention training to ensure quality, consistency and compliance with applicable law and DPD policy. The DPD shall conduct regular subsequent reviews, at least semi-annually, and produce a report of such reviews to the Monitor and the DOJ.

Comments: During our previous visit we found that the use of force policy, August 13, 2007 as recorded in the DPD Manual, Section 304.2 - 6.1 General, stated that "All members shall be trained by qualified instructors in any authorized lethal or less lethal weapon they carry." It did not, however, direct that use of force, arrest and detention training be delivered, nor did it fix the responsibility for conducting the training. Further, it did not direct that semi-annual reviews of use of force training be conducted and that reports be produced. Accordingly, we found the DPD was not in Phase 1 compliance.

During the past quarter the DPD Chief issued a comprehensive special order (No. 10-02, captioned "Training," approved on 12/30/2009) placing responsibility for all use of force, arrest and detention training on the Commander of Training. It specifically requires that all members of the DPD successfully complete use of force training on an annual basis, that semi-annual evaluations of training are conducted and reports be produced. The Department is in Phase 1 Compliance.

The DPD audited use of force classes by training managers and produced a report entitled, *Training Oversight and Development Report, December 2009*, which addresses Requirement U106. This report is the second such report issued in the past year and contains the evaluation of use of force, arrest and detention training and covers all elements of the requirement. The DPD is in Phase 2 compliance.

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

²⁰ Restoration training is the refresher training afforded to an officer returning to service who was previously trained but had a lapse in service.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

CJ Requirement U107

The DPD, consistent with Michigan law and the Michigan Law Enforcement Officers Training Council standards, shall:

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

Comments: The new special order No. 10-02 articulates policy that fulfills this requirement. DPD is in Phase 1 compliance with U107.

During our visits to the Training Bureau, we held interviews with the director and staff and conducted reviews of records. We found the DPD to be in conformity with the Michigan Law Enforcement Council standards and Michigan law. With regard to subparagraphs a-f, we found as follows:

- a. During our previous visit we found that the DPD lesson plans (Use of Force, 7/3/2009; Arrest and Search and Seizure, May 14 2007; Detention Officer Training, May 30 2007) addressed this requirement. We were advised by the DPD Training executives that the Michigan Commission on Law Enforcement Standards (MCOLES) does not require in-service training for police officers in Michigan. We confirmed this through contact with the Commission. The in-service training program that has been implemented was designed to cover every single requirement of the Consent Judgments.
- b. The DPD has developed use of force and arrest and detention training curricular that outlines the subjects taught in use of force and arrest and detention training.
- c. We determined that the process of selection of new training personnel that is in place operates in conformity with established bargaining contracts, where sergeants and lieutenants who desire to be trainers are selected based on seniority and screened in or out due to select disciplinary issues, not based on expertise or demonstrated competencies.²¹ The non-ranking member candidates for trainer positions have a more defined process. As a matter of fact, however, no personnel were added to Training during the past quarter.

²¹ Section 23, A 2 of the Police Lieutenants and Sergeants union contract states, "Whenever openings occur in precincts, sections or units, the most senior employee on the list shall be transferred. Seniority is defined by Article 18 of this Agreement."

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

- d/e. DPD policy curricula and lesson plans address these provisions. A second evaluation report of the Department's training was produced by the Training Committee chaired by the Commander of training. Members of the Training Committee are identified in f below.
- f. DPD has not yet conducted a needs assessment but it has developed a plan to do so. It will use the Training Committee which includes the Deputy Chief who oversees Internal Affairs, the Commander of the Criminal Investigation Bureau, the Commander of Risk Management, the Commander of Police Medicine, and three members from the Patrol Operations Bureau (rank unspecified). The Committee will be chaired by the Commander of Training. The Committee will review audits, cases from Internal Affairs and will identify the Department's needs for training. It will set the schedule for training during the next year.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in compliance

CJ Requirement U108

The DPD shall create and maintain individual training records for all officers, documenting the date and topic of all pre-service and in-service training completed for all training conducted on or after the effective date of this agreement.

Comments: During our previous visit we found no policy directive or order requiring compliance with Requirement U108. The new training special order (No. 10-02) corrects this deficiency and places responsibility for creating and maintaining training records on Training. The order was disseminated as an AA distribution which requires that it be conveyed to every member of the DPD and that every member sign to signify he/she has received it.

During our previous review we found no real progress to fully implement a contemporary training record system. On this visit we found that the Department has committed to record training data in the MITN System which is a part of the Michigan Commission on Law Enforcement Standards (MCOLES). We were advised that since December 1, 2009, DPD has entered data about all of its training into the MITN System. The DPD has also captured data relating to its in-service training into a spreadsheet.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in compliance

CJ Requirement U109

The DPD shall ensure that only mandated objectives and approved lesson plans are taught by instructors and that instructors engage students in meaningful dialogue regarding particular

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

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.

Comments: During our previous review we found no policy directive or order requiring compliance with Requirement U109. The new special order, No. 10-02, addresses Requirement U109. The DPD is in Phase 1 compliance.

During our previous review we found that the DPD training directive and lesson plans²² properly direct and instruct on the relevant provisions of the CJ. Our review of the lesson plans and curricula documents showed that they were sufficiently crafted to meet the requirements of the CJ. Local scenarios required by U109 had not been developed. We found that the DPD has developed scenarios utilizing Internal Affairs incidents. To date, five such scenarios have been accepted for incorporation into use of force training and another 12 scenarios have been developed and await incorporation into training. When the DPD actually begins to instruct using these scenarios, it will be in Phase 2 Compliance.

Compliance Status

Phase 1: In Compliance

Phase 2: Pending Compliance

CJ Requirement U110

The DPD shall meet with the City Law Department on a quarterly basis concerning the conclusion of civil lawsuits alleging officer misconduct, information gleaned from this process shall be distributed to DPD risk management and training staff.

Comments: The DPD met with the City Law Department pursuant to this requirement in November 2009. Meetings are held quarterly. The DPD remains in compliance with U110.

Compliance Status

Phase 1: In compliance

Phase 2: In compliance

CJ Requirement U111

The City and the DPD shall distribute and explain this Agreement to all DPD and all relevant City employees. The City and the DPD shall provide initial training on this Agreement to all City and DPD employees whose job responsibilities are affected by this Agreement within 120 days of each provision's implementation. Thereafter, the DPD shall provide training on the policies contained in this Agreement during in-service training.

Comments: Recruits receive this training after they take their state certification exam and before they graduate from the academy. DPD Training estimates that they have sign-in sheets for over

²² See Training Oversight and Development Report, summer 2009 .

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

4000 Department members who received the training in 2003. We were, however, unable to locate precise numbers showing how many DPD members, civilians and sworn, as well as relevant City employees were trained. In addition, in order to evaluate the comprehensiveness of the training, we must be able to determine how many employees were and are in each category to have been trained.

Compliance Status

Phase 1: Not in compliance

Phase 2: Not in compliance

B. USE OF FORCE TRAINING**CJ Requirement U112**

The DPD shall provide all DPD recruits, officers, and supervisors with annual training on use of force. Such training shall include and address the following topics:

- a. The DPD's use of force continuum; proper use of force; decision making; and the DPD's use of force 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 use of force decision making, including the use of deadly force;*
- d. The circumstances in which officers may draw, display, or point a firearm, emphasizing:*
- e. Officers should not draw their firearm unless they reasonably believe there is a threat of serious bodily harm to the officer or another person;*
- f. The danger of engaging or pursuing a suspect with a firearm drawn; and*
- g. That officers are generally not justified in drawing their firearm when pursuing a subject suspected of committing only a misdemeanor;*
- h. The proper use of all intermediate force weapons;*
- i. 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 use of force would be legally justified;*
- j. Interacting with people with mental illnesses, including instruction by mental health practitioners and an emphasis on de-escalation strategies;*
- k. Factors to consider in initiating or continuing a pursuit;*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

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

Comments: During our previous review we found no policy directive or order requiring compliance with Requirement U112. The new special order, No. 10-02, addresses the requirements of U112. It specifies that officers that do not attend in-service training shall be placed in an administrative "no gun" status and relieved of his/her police powers until they successfully complete the next training session. The DPD is in Phase 1 Compliance.

During our previous visit we reviewed training policy directives, curricula, lesson plans, special orders and teletypes among other materials purported to address the requirements of U112²³. Our review and analysis of the material showed the course content requirements of U112 and all of its subparagraphs have been met for all recruits. Appropriate training and instruction for some tenured members had been presented at in-service training, however, compliance had not yet been fully met for career members since the department has not trained >94% of its members. As of December 31, 2009, 1,260 (45%) of 2,772 officers had attended FY 2010 use of force in-service training. This compares favorably with last year; on 12/31/2008, 839 DPD officers (29%) or 2872 had attended in-service training.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in compliance

C. FIREARMS TRAINING

CJ Requirement U113

The DPD shall develop a protocol regarding firearms training that:

- 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 use of force decision making training in the bi-annual in-service training program, with the goal of adequately preparing officers for real life situations;*

²³ We reviewed lesson plan, instructors guides, student guides, handouts, and other materials as follows: Firearms Lesson Plan and associated guides and materials, dated 1/24/2008; PR-24Basic Course Lesson Plan, dated ; Supervisory Leadership and Accountability Lesson Plan and associated guides, dated 8/27/2007; Standard Operating Procedures Manual, FTO Program, Revised 2007; Internal Affairs Lesson Plan and associated guides and materials; dated 9/102/2008; Use of Force Lesson Plan Lesson Plan and associated guides and materials, dated 7/3/2009; Detention Officer's Training Lesson Plan and associated guides and materials, dated 5/30/2008; and Law of Arrest and Search and Seizure Lesson Plan and associated guides and materials, dated 5/14/2007.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- c. Ensures that firearm instructors critically observe students and provide corrective instruction regarding deficient firearm 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:*
- e. Maintains finger off trigger unless justified and ready to fire;*
- f. Maintains proper hold of firearm and proper stance; and*
- g. Uses proper use of force decision making.*

Comments: During our previous visit to the Training Bureau we found the DPD in Phase 1 Compliance with U113. (See teletype 09-02385). On this review, we determined that the new training policy articulated in the special order No. 10-02 contains a long standing DPD policy that directs that officers who do not attend firearms and qualify bi-annually will have their firearm(s) removed and will be relieved of their police powers until they attend a firearms training session and qualify.

On our last review we found that although the DPD had made an effort to train all of its members, it had not done so with more than 94% of its members during the past training year. During the past six months (7/1/2009 through 12/31/2009), for the first time, the DPD *enforced* its policy of removing the firearms and police authority of officers who failed to qualify. With the enforcement of the policy against the officers who failed to qualify, the DPD was able to train 2,775 of its 2,772 officers (99%).

Compliance Status

Phase 1: In Compliance

Phase 2: In Compliance

D. ARREST AND POLICE-CITIZEN INTERACTION TRAINING

CJ Requirement U114

The DPD shall provide all DPD recruits, officers and supervisors with annual training on arrests and other police-citizen interaction. Such training shall 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:*
- c. Advising officers that the “possibility” that an individual committed a crime does not rise to the level of probable cause;*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- d. *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*
- e. *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*
- f. *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.*

Comments: The new special order No. 10-02 addresses the requirements set forth in U114. The DPD is in Phase 1 compliance.

The Department has split the use of force training into an eight hour block on use of force and a four hour block on arrest and detention. Annual training is provided by DPD in its in-service training program for officers and supervisors. Until it exceeds >94% of its members trained at the various in-service sessions it will not be in compliance with requirement U114.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in compliance

E. CUSTODIAL DETENTION TRAINING

CJ Requirement U115

The DPD shall provide all DPD recruits, officers and supervisors with annual training on custodial detention. Such training shall include DPD policies regarding arrest, arraignment, holds, restrictions, material witness and detention records.

Comments: The new special order No. 10-02 addresses requirement U115. It directs sworn members of the DPD assigned to perform detention duties, Senior Detention Facility Officers (SDFO), Detention Facility Officers (DFO) and Holding Cell Compliance Committee members to attend and successfully complete the Detention Officer course on an annual basis. DPD is in Phase 1 compliance.

We found in our previous review that the DPD had developed appropriate policies and lesson plans²⁴ to comply with this provision and had developed a protocol to train all recruits,

²⁴ Law of Arrest and Search and Seizure Lesson Plan and associated guides and materials, dated 5/14/2007, Detention Officer Training Lesson Plan, dated May 30, 2008.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

confinement officers, investigators and supervisors. Detention training is to be afforded to all employees who serve in the detention cell areas on an annual basis. The Department expects to reach >94% of its detention personnel at the end of the Fiscal Year which runs from 7/1/2009 through 6/31/2010.

Compliance Status

Phase 1: In compliance

Phase 2: Not in compliance

CJ Requirement U116

The DPD shall advise officers that the DPD arraignment policy shall not be delayed because of the assignment of the investigation to a specialized unit, the arrest charge(s), the availability of an investigator, the gather of additional evidence or obtaining a confession.

Comments: The new special order No. 10-02 specifically addresses this requirement in the topics to be included in annual use of force training.

Our review found that the DPD is meeting its training obligation and may train greater than 94% of its members by the completion of the training year. While progress has been made in that the department has developed training that meets the requirements of U116, it has not yet trained >94% of its members and, accordingly, compliance has not yet been achieved.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in compliance

CJ Requirement U117

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

Comments: In our previous visit we found the DPD to be in Phase 1 Compliance with U117. The Detroit Police Department Manual, Directive 202.1, dated July 1, 2008, provides guidelines and procedures for members in making lawful arrests, the detention of material witnesses, to provide supervisory review of arrests for probable cause, and to provide for prompt judicial review of arrests. The Material Witness Policy set forth in 202.1, Section 4.4, clearly states that "only a court has the authority to decide whether an individual is a material witness, and whether that material witness should be committed to jail pending his or her testimony." The policy continues that a material witness can only be taken into custody "upon an order from the court where the criminal matter is pending." The new special order specifically states that DPD policy requiring that a court order be obtained prior to a citizen being placed in custody as a material witness is among the topics included in use of force training.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

The DPD has conducted in-service training and detention officer training that addresses the requirements of U117. As of 12/31/2009 the DPD was on a path to train 90% of its officers in its in-service training program. The Department made progress in delivering training but has not yet reached the >94% level required to be found in compliance.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

F. SUPERVISORY TRAINING***CJ Requirement U118***

The DPD shall provide supervisors with training in the appropriate evaluation of written reports, including what constitutes a fact based description, the identification of conclusory language not supported by specific facts and catch phrases, or language that so regularly appears in reports that its inclusion requires further explanation by the reporting officer.

Comments: During our previous review we found that while the lesson plan for *Supervisory Leadership & Accountability* (dated 8/27/2007) contains a section, *E. Supervisory Evaluation of Written Reports (U-118)*, which directs the instructor to address each of the requirements of U118, the lesson plan was not a policy directive and the DPD was not in Phase 1 compliance. The training special order No. 10-02 rectifies this situation and addresses requirement U118. It specifically includes among the topics to be taught at the annual Supervisory and Leadership Accountability in-service "appropriate evaluation of written reports, including what constitutes a fact based description." The DPD is in Phase 1 compliance with U118.

During the past fiscal year (FY 2009, July 1, 2008-6/31/2009), DPD trained 578 (84%) of its 689 supervisors (lieutenants, investigators and sergeants) who were available to be trained. As of December 31, 2008 the DPD had trained 207 (30%) of its then compliment of 689 supervisors. As of the same date in 2009, the DPD has trained 310 (46%) of its current compliment of 671 supervisors.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U119

DPD supervisors shall receive leadership and command accountability training and learn techniques designed to promote proper police practices. This training shall be provided to all DPD supervisors within 30 days of assuming supervisory responsibilities and shall be made part of annual in-service training.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Comments: During our last review we found that there was no written policy directive which orders compliance with this requirement. The special order for training No. 10-02 directs that "members of the rank of investigator and above shall attend and successfully complete the following training course within thirty (30) days of assuming their rank and thereafter shall attend the course on an annual basis." The Department is in Phase 1 compliance.

The DPD has not promoted to the supervisor rank during the past year. As noted in U118, during FY 2009, the DPD trained 82% of its supervisors. While it has improved and is now on a path to train over 90% of its supervisors, DPD will not be in compliance with this requirement until it reaches >94%.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U120

The DPD shall provide training on risk assessment and risk management to all DPD supervisors, including the operation of the risk management database.

Comments: During our previous review we were unable to locate specific policy directives or orders that address this requirement. The new special order on training No. 10-02 does address this requirement fully. The DPD is in Phase 1 compliance.

The Department did not train >94% of its supervisors and in the past year and is currently in the middle of its training year. It is not yet in compliance with this requirement.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

G. INVESTIGATOR TRAINING***CJ Requirement U121***

The DPD shall provide training on appropriate burdens of proof, interview techniques and the factors to consider when evaluating officer, complainant or witness credibility to all officers who conduct investigations to ensure that their recommendations regarding dispositions are unbiased, uniform and legally appropriate.

Comments: During our previous review we were unable to locate specific policy directives or orders that address this requirement. The new special order on training No. 10-02 does address this requirement fully. The DPD is in Phase 1 compliance.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

The Department did not train >94% of its supervisors and in the past year and is currently in the middle of its training year. It is not yet in compliance with this requirement.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U122

The DPD shall provide all supervisors charged with accepting external complaints with appropriate training on handling external complaints that emphasizes interpersonal skills. The DPD shall provide training on the DPD external complaint process, including the role of OCI and IAD in the process, to all new recruits and as part of annual in-service training.

Comments: During our previous review we were unable to locate specific policy directives or orders that address this requirement. Special Order No. 10-02 attempted to address the policy deficiency we found during the last visit. It orders that Supervisory and Accountability training address the external complaint process and emphasizes interpersonal skills. OCI and IAD are not, however, mentioned in the new order.

The Department did not train >94% of its supervisors in the past year and is currently in the middle of its training year. It is not in compliance with this requirement.

Compliance Status

Phase 1: Not in Compliance

Phase 2: Not in Compliance

H. FIELD TRAINING***CJ Requirement U123***

The DPD shall develop, subject to DOJ approval, a protocol to enhance the FTO program within 120 days of the effective date of this Agreement. The protocol shall address the criteria and method for selecting and removing the FTOs and for training and evaluating FTOs and trainees.

Comments: We found during our previous review that the Department did develop and implement a protocol to enhance the FTO Program. The *Standard Operating Procedures Manual Field Training Program* (revised 2007) reflects the DPD FTO Program which was approved by the DOJ.(date approved) The procedures are designed to enhance the FTO Program and address the criteria and method for selecting, removing, training and evaluating FTOs. The DPD was determined to be in Phase 1 compliance.

Furthermore, following the April, 2009, report of the previous monitor, the Training Bureau responded to the criticism that time management had been one of the major problems in the DPD

Second Quarterly Report of the Independent Monitor for the Detroit Police Department

04/15/2010

course designed to train FTOs. The then Commander of the In-Service Training Bureau personally met with the officer handling the FTO training and explained each point of criticism (e.g., long breaks, limited instructional time, no agenda provided to the students and that there were aspects of the training that were not included in the lesson plan, etc.) in an effort to avoid repetition of the same problems. A revised FTO course was presented in October, 2009. We will evaluate the modified FTO training at our earliest opportunity.

Compliance Status

Phase 1: In Compliance

Phase 2: Not in Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 Implementation
106	Coordination and review of training	In Compliance	In Compliance
107	DPD will meet state training standards	In Compliance	Not in Compliance
108	Maintain individual training records	In Compliance	Not in Compliance
109	Train from approved objectives and plans	In Compliance	Pending Compliance
110	Quarterly meetings with Law Department	In Compliance	In Compliance
111	Distribute and training on the agreement	Not in Compliance	Not in Compliance
112	Annual use of force training required	In Compliance	Not in Compliance
113	Develop firearms training protocol	In Compliance	In Compliance
114	Annual arrest, citizen interaction training	In Compliance	Not in Compliance
115	Annual training on custodial detention	In Compliance	Not in Compliance
116	Prohibition of arraignment delays	In Compliance	Not in Compliance
117	Material witness custody	In Compliance	Not in Compliance
118	Supervisory training-report evaluation	In Compliance	Not in Compliance
119	Supervisory training-leadership	In Compliance	Not in Compliance
120	Supervisory training-risk management	In Compliance	Not in Compliance
121	Investigator training-procedures	In Compliance	Not in Compliance
122	Supervisory training-external complaints	Not in Compliance	Not in Compliance
123	Enhance the FTO program	In Compliance	Not in Compliance

Critical Issues

As of December 31, 2009, 1,263 (45%) of 2,781 officers had attended FY 2010 in-service training. This compares favorably with last year; on 12/31/2008, 839 DPD officers (29%) or 2872 had attended in-service training.

Lack of policy directives for training

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

During our previous visit we found that with some minor exceptions (five of 18 training requirements); DPD did not have orders or policy directives that addressed the training requirements (U106 - U123). Accordingly, the DPD was found not in compliance with Phase 1 for 13 CJ training requirements. The Department acknowledged its need for policy directives and through a comprehensive special order addressed them all during the last quarter. The special order places them on record as official policies of the DPD. During the next year, the Department will endeavor to create permanent policies to replace the special order. The policies will have to be approved by the Police Commission.

In-service training is not comprehensive

Several of the requirements relating to training are to be provided through the delivery of in-service training. Until the Department reaches the >94% level of officers and supervisors trained at its in-service training sessions, these requirements will not be fulfilled. The DPD took an important step toward compliance with these in-service related requirements; the new special order contains a sanction for non-compliance. It directs that when a member fails to attend a mandatory training session and the period of training has concluded, the member will be placed in a no-gun status and his or her police authority removed until such time as they have attended and successfully completed the next available training session. While such a requirement has existed for the DPD firearms program, it was not implemented in the past. On December 31st the new Inspection group was directed to take the firearms of the officers who failed to attend and qualify. For the first time, DPD had 99% compliance in firearms training program.

Next Steps

In January, 2010, when we next visit Detroit to conduct an on-site review we will examine the policy directives that have been created for each of the CJ requirements relating to training. Where appropriate policies that address the training requirements have been created and promulgated, the DPD will be determined to be in Phase 1 Compliance.

We will then review each training requirement to determine if the DPD is in actual compliance with it. Wherever possible and practicable, we will measure compliance looking for >94%.

We will review:

- The list of officers selected to serve as trainers and the documentation, re: their selection and training as trainers.
- Any training record system that exists and any needs assessment that has been conducted.
- A sample of officers who have attended in-service training to determine if the training is documented in training records.
- Documentation of development of scenarios derived from local incidents used in instruction.
- Documentation of meetings with the City Law Department.
- Documentation that the City and the DPD distributed explained and trained the CJs to all DPD and all relevant City employees.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- We will determine a count of officers and supervisors who have attended in-service for FY 2010 as of 3/31/2010 which we will compare to the number that had attended as of 3/31/2009.
- We will select a number of officers, supervisors and, if appropriate, detention personnel who are required to be trained in several subjects (see requirements U114, U115, U116, U117, U118, U119, U120, U121, and U122) and we will review their training records to determine if they, in fact, received the training set forth in these requirements.
- We will obtain a list of all supervisors and a count of supervisors, who have completed supervisor training during FY 2010 as of 3/31/2010, which we will compare that number with the number that attended supervisory training during FY 2008 as of 3/31/2009.
- We will need a list of all supervisors promoted during the past quarter and the dates they received the training required by the CJ.
- We will need a list of all officers who conduct investigations. A sample will be selected and compared to the lists of officers who have actually received the training required by U121. >94% compliance will be sought.

Finally, we will review the documentation of FTO selection and training and, if available, will monitor the training process.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

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

This Consent Judgment sets forth procedural and operational requirements relating to the confinement facilities maintained and operated by the Detroit Police Department. It requires the revision and implementation of policies and practices that are safe, respectful and constitutional in the areas of fire safety, emergency preparedness, medical and mental health, prisoner safety, environmental health and safety, persons with disabilities, food service, and personal hygiene. In addition, the Judgment sets forth requirements relating to the use of force in detention facilities as well as procedures for the investigation of the use of force and complaints relating to other events occurring in these facilities. The Judgment also establishes requirements for management and supervision, the auditing of internal practices, and the training of personnel assigned detention responsibilities.

We made our first site visit in November 2009 and at that time reviewed required directives, supporting logs, forms and documentation relating to the operation of the detention facilities. Accompanied by key members of the DPD Office of Civil Rights personnel, we conducted our first on site familiarization tour of the Detroit Police Department's holding cells in the Northeastern, Eastern and Southwestern districts; Sixth and Twelfth Precincts, as well as those in the Detroit Receiving Hospital. During the tour, we interacted with available command and key detention staff at each facility. However, due to time limitations, it was not possible for us to thoroughly inspect the operations and practices at each facility. In addition, we reviewed required directives, reports, and supporting logs and forms.

During this, our January 2010 site visit, we first met with key CRIB Command staff, Audit Team personnel, and the designated health care professional for the purpose of conducting a thorough review of all requirements, DPD Directives, forms, logs and documentation relating to and required by this Judgment. In addition, we met with training staff to discuss and ascertain progress with required training.

As a result of these meetings, CRIB initiated revisions of the Infectious Disease Control, Detainee/Intake Assessment, and Detainee Health Care directives and arranged for the required health care professional to review and provide approval. These revised practices will be effective during the next reporting period and will be reported on in our next report.

Following these meetings, we visited and inspected each of the five districts/precincts with holding cells.²⁵ CRIB staff accompanied us. We were accompanied and assisted by the Cell Block Supervisors and the Compliance Officers during these inspections during which we entered and examined every holding cell, interviewed detention staff and reviewed forms and logs.

We found significant improvement in fire safety practices, including the conducting of required fire drills. These drills were conducted with greater frequency than required. We also found

²⁵ Facilities with holding cells are located in Northeastern, Eastern and Southwestern districts; Sixth and Twelfth Precincts, as well as the Detroit Receiving Hospital.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

improvement with regard to facility key control, but noted the need to revise the directive to assure consistency with practice.

The cleanliness and sanitary condition of the holding cells and adjacent areas are concerns in any detention facility and the DPD facilities are no exception. DPD Directives require these areas to be maintained in a clean and sanitary condition at all times. They also require appropriate inspections to assure the required cleanliness and sanitary conditions are maintained. Our inspection noted a high degree of compliance with regard to the conducting and documentation of the required inspections, but the actual cleanliness and sanitary conditions of the facilities do not meet those standards. Our inspection found the condition of three facilities unsatisfactory, one marginal, and one (Western) satisfactory. This is of serious concern and must be addressed.

We also reviewed a number of detainee folders wherein we noted clerical errors and missing documentation relating to medical referrals, medication logs, staff signatures, and supervisory reviews. Of particular concern is the lack of an effective exchange of information relating to health and other significant issues between shifts. The lack of effective, consistent and required observation checks continue to be an issue of concern.

While progress has and is currently being made with regard to directive and policy guidance, policies must be effectively implemented and adhered to. This requires training and competent, supervision. In addition, the DPD should insure the directives and policies, particularly those relating to health care, are annually reviewed and revised as required. The DPD must also provide detention personnel with ongoing in-service training to assure the maintenance of required standards of performance.

The details of our findings are included in the following sections.

III. FIRE SAFETY POLICIES

CJ Requirement C14

The DPD shall ensure that all holding cells, and buildings that contain them, achieve and maintain compliance with the Life Safety Code within one year of the effective date of this Agreement. The City shall ensure that the Detroit Fire Marshal conducts regular and periodic inspections to evaluate whether the conditions in DPD holding cells, and buildings that contain them, are in compliance with the Life Safety Code.

Comments: The Detroit Police Department Comprehensive Emergency Preparedness Plan (CEPP) includes a Fire Safety Plan (FSP) requiring compliance with the Life Safety Code and inspections. The FSP was developed in consultation with the Detroit Fire Marshal. DOJ approved the FSP May 23, 2006. The Fire Marshal annually reviews the FSP; the last review having been conducted on June 5, 2009. The Fire Marshal also conducts regular and periodic (annual) inspections of holding cells; the most recent having been conducted during October and November of this reporting period. The inspecting captain appropriately documented these

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

inspections on the DPD audit form in each district/precinct. Accordingly, we find the DPD has achieved full compliance with this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C15

The DPD shall develop and implement a comprehensive fire detection, suppression and evacuation program for the holding cells, and buildings that contain them, in accordance with the requirements of the Life Safety Code and in consultation with the Detroit Fire Department.

Comments: The DPD developed the required Fire Safety Plan.²⁶

In order to assess implementation of the FSP, we examined the Fire Extinguisher Inspection Reports (DPD 716) for the period October-December, 2009, and Fire Drill Documentation Logs (DPD 703) for the year 2009. Each of the five districts/precincts maintaining holding cells appropriately documented the required monthly fire extinguisher inspections. We noted however, that in one district/precinct all but two extinguishers were expired in October, again in November and that all extinguishers were expired in December. This lack of corrective action defeats the purpose of inspection, which is to rectify identified problems. We did note these deficiencies were corrected during our site inspections in January 2010.

The Fire Safety Plan also requires the holding of fire drills twice a year on each shift. In order insure compliance, the districts/precincts have commenced holding drills on a monthly basis. This effort is reflected in the 100% compliance rate evident in our analysis of the DPD 703 documentation.

The DPD has achieved compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C16

The fire safety program shall be developed in consultation with, and receive written approval by, the Detroit Fire Department. As part of developing the fire safety program, the Detroit Fire Department shall evaluate the need for and, if necessary, the DPD shall install: fire-rated separations, smoke detection systems, smoke control systems, sprinkler systems and/or

²⁶ The Detroit Police Department Comprehensive Emergency Preparedness Plan (CEPP) includes a Fire Safety Plan (FSP) requiring compliance with the Life Safety Code and inspections. The FSP was developed in consultation with the Detroit Fire Marshal. DOJ approved the FSP May 23, 2006. The Fire Marshal annually reviews the FSP; the last review having been conducted on June 5, 2009.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

emergency exits for the holding cells and building that contain them. The fire safety program shall be submitted for review and approval of the DOJ within three months of the effective date of the Agreement.

Comments: The DPD developed the required Fire Safety Plan.²⁷

Following the development of the FSP, the DPD made required structural changes to districts/precincts holding facilities, including the updating and/or installation of *sprinkler systems, fire alarm systems, and fire rated doors*. During our inspection of the district/precinct holding cells we found the presence of all three. Our interviews with supervisory staff in each of the districts/precincts determined they were appropriately familiar with the operations of each of the systems.

The DPD is in full compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C17

The DPD shall implement the fire safety program within one year of the effective date of this Agreement. Thereafter, the program shall be reviewed and approved in writing by the Detroit Fire Department at least every year, or prior to any revisions to the plan.

Comments: The DPD has developed and implemented the required Fire Safety Plan and is in continued full compliance with this CJ paragraph.²⁸

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C18

The DPD shall take immediate interim fire safety measures in all buildings that contain holding cells. At a minimum, these interim measures shall:

²⁷ The Detroit Police Department Comprehensive Emergency Preparedness Plan (CEPP) includes a Fire Safety Plan (FSP) requiring compliance with the Life Safety Code and inspections. The FSP was developed in consultation with the Detroit Fire Marshal. DOJ approved the FSP May 23, 2006. The Fire Marshal annually reviews the FSP; the last review having been conducted on June 5, 2009.

²⁸ The Detroit Police Department Comprehensive Emergency Preparedness Plan (CEPP) includes a Fire Safety Plan (FSP) requiring compliance with the Life Safety Code and inspections. The FSP was developed in consultation with the Detroit Fire Marshal. DOJ approved the FSP May 23, 2006. The Fire Marshal annually reviews the FSP; the last review having been conducted on June 5, 2009.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- a. *Ensure that the activation of any individual smoke alarm sounds an alarm throughout the building;*
- b. *ensure that prisoners in holding cells have an adequate means of reporting emergency conditions to DPD staff immediately;*
- c. *ensure that automated back-up power systems exist for all buildings containing holding cells that are capable of providing immediate power for emergency lighting, exit signs, fire alarm and smoke detection systems in the event of an electrical power failure through batteries or an emergency generator; and*
- d. *reduce the likely spread of smoke and fire throughout the buildings by means of stairwells, garages, hazardous rooms and exposed pipes, such as ensuring that fire doors in stairwells are closed.*

Comments: We visited each district/precinct maintaining holding cells and determined that the DPD has made the required structural, electronic and mechanical upgrades within the facilities. We also noted that the Fire Systems of Michigan and the Fire Marshal conducted and documented inspections of suppression systems in October and November, 2009. We also acknowledge the DPD assignment of three staff members to the holding cells on each shift, which serves to ensure that detainees have a means of notification in the event of an emergency. The DPD is in continued full compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C19

The DPD shall ensure that fire safety equipment is routinely tested, inspected and maintained, including the sprinkler systems, fire alarm systems, manual fire extinguishers, emergency lighting and exit signs, and self-contained breathing apparatuses.

Comments: The Fire Safety Plan places responsibility for ensuring the required testing, inspections and maintenance of the various systems, fire extinguishers, emergency lighting and signs and equipment with the DPD Office of Facilities Management.

The Fire Systems of Michigan and the Fire Marshal conduct the required inspections, which were last conducted in October and November of 2009. The weekly testing of emergency generator power supply systems is documented on Form 715 (Evaluation of the Operation of Holding Cells). The DPD is in full compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

CJ Requirement C20

The DPD shall enforce immediately its no-smoking policy in the holding cells or provide ash trays and ensure that all holding cell areas are constructed and supplied with fire-rated materials.

Comments: DPD Directive 305.4, Holding Cell Areas, Section 5-3, effective May 9, 2005, and the Fire Safety Plan (FSP)²⁹ prohibit smoking in the district/precinct holding cells. During our inspection of the holding cell areas, we found no trace of smoking in the facilities. A close examination of the cells revealed that they did not contain combustible materials.

The DPD is in continued full compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C21

The DPD shall insure immediately that all flammable and combustible liquids in holding cell areas and the attached and nearby DPD buildings are stored properly.

Comments: The Fire Safety Plan sets forth guidelines for the storage of flammable materials.³⁰ Our inspection of the holding facilities found each district/precinct equipped with at least one yellow storage cabinet for flammable and combustible liquids, which were located in the garage area. Four districts/precincts have two cabinets. We checked the cabinets and found flammable materials and gas storage containers. The DPD is in continued full compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

²⁹ The Detroit Police Department Comprehensive Emergency Preparedness Plan (CEPP) includes a Fire Safety Plan (FSP) requiring compliance with the Life Safety Code and inspections. The FSP was developed in consultation with the Detroit Fire Marshal. DOJ approved the FSP May 23, 2006. The Fire Marshal annually reviews the FSP; the last review having been conducted on June 5, 2009.

³⁰ The Detroit Police Department Comprehensive Emergency Preparedness Plan (CEPP) includes a Fire Safety Plan (FSP) requiring compliance with the Life Safety Code and inspections. The FSP was developed in consultation with the Detroit Fire Marshal. DOJ approved the FSP May 23, 2006. The Fire Marshal annually reviews the FSP; the last review having been conducted on June 5, 2009.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

CJ Requirement C22

The DPD shall remove immediately all highly-combustible kane fiber ceiling tiles from buildings that contain holding cells.

Comments: The DPD has been in continued compliance with this CJ paragraph since 2005 when it closed some of the facilities where kane fiber ceiling tiles were in place and removed the files from the remaining facilities. We reviewed an invoice dated February 2, 2004 wherein the required modification to the holding cells is documented. The DPD is in continued full compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
14	Holding Cell Life Safety Code compliance	In Compliance	In Compliance
15	Fire detection, suppression & evacuation	In Compliance	In Compliance
16	Fire Department consultation and evaluation	In Compliance	In Compliance
17	Implementation of fire safety program	In Compliance	In Compliance
18	Immediate interim fire safety measures	In Compliance	In Compliance
19	Routine testing of fire safety equipment	In Compliance	In Compliance
20	Enforce no smoking in holding cells	In Compliance	In Compliance
21	Proper storage of flammable liquids	In Compliance	In Compliance
22	Remove combustible cane fiber tiles	In Compliance	In Compliance

IV. EMERGENCY PREPAREDNESS POLICIES

CJ Requirement C23

The DPD shall ensure a reasonable level of safety and security of all staff and prisoners in the event of a fire or other emergency.

Comments: The DPD has developed and published a Comprehensive Emergency Preparedness Program (CEPP) addressing safety and security as required. The CEPP includes an emergency response plan for each district/precinct (see C24) and a key control system requirement (see C25).

The DPD conducted and documented fire drills as required. We reviewed the fire drills for each of the five districts/precincts during this period and found they were conducted on a monthly basis, which exceeds the two per year for each shift in each district/precinct requirement. We

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

also noted the modification to the key system. Five sets are now located in each district/precinct, three for the cell block staff, one for the front desk/lobby and one in the emergency key locker. Each ring has only one paracentric key³¹ for cells doors (all are keyed the same) and one builder's hardware key for other doors. The CEPP, the number of documented fire drills, and changes in the key system, demonstrate the achievement of full compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C24

The DPD shall develop a comprehensive emergency preparedness program that is approved in writing by the Detroit Fire Department. This program shall be submitted for review and approval of the DOJ within three months of the effective date of this Agreement. The DPD shall implement the programs within three months of DOJ's review and approval. Thereafter, the program shall be reviewed and approved in writing by the Detroit Fire Department at least every year, or prior to any revisions to the plan. At a minimum, the emergency preparedness program shall:

- a. include an emergency response plan for each building that contains holding cells identifying staff responsibilities in the event of fire-related emergencies and other emergencies, including notification responsibilities, evacuation procedures and key control procedures (discussed below); and*
- b. require performance and documentation of fire drills for all buildings containing holding cells on all shifts every six months (documentation shall include the start and stop times of each drill, the staff members who participated in the drill, a summary of the drill, and an evaluation of the success of the drill).*

Comments: The Detroit Police Department developed the required Comprehensive Emergency Preparedness Plan (CEPP) as required.³² The CEPP identifies staff responsibilities in the event of a fire emergency to include notifications, evacuation and key control procedures. Fire drills have been conducted and documented as required (see C15). Accordingly the DPD is in full compliance with this CJ paragraph.

³¹ A paracentric key is designed to open a paracentric lock. It is distinguishable by the contorted shape of its blade, which protrudes past the centre vertical line of the key barrel. Instead of the wards on the outer face of the lock simply protruding into the shape of the key along the spine, the wards protrude into the shape of the key along the entire width of the key, including along the length of the teeth. Patented by the Yale lock company in 1898, paracentric cylinders are not exceptionally difficult to pick, but this requires some skill and know-how.

³² The Detroit Police Department Comprehensive Emergency Preparedness Plan (CEPP), developed in consultation with the Detroit Fire Marshal, was approved by DOJ May 23, 2006. The Fire Marshal annually reviews the FSP; the last review having been conducted on June 5, 2009.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C25

The DPD shall develop and implement key control policies and procedures that will ensure that all staff is able to manually unlock all holding cell doors in the event of a fire or other emergency. At a minimum, the key control policies and procedures shall:

- a. provide for emergency identification of keys by touch;*
- b. and require routine inventory, testing and maintenance of keys and locks.*

Comments: DPD Directive 305.4, Holding Cell Areas, Section 6-7, effective May 9, 2005 specifies the key control policy. We reviewed DPD 715 forms and found documentation of the required monthly testing and maintenance of locks and keys and also noted completion of all required key inventories. Key sets are easily identified by staff (see C23). Our interviews of personnel found that they were familiar with related operations. We note however, the need to update both the Directive and the DPD 715 form to appropriately reference the assignment of five sets of keys (no longer three) to each district/precinct to assure continued Phase 1 Compliance. At this time, we find the DPD has achieved compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
23	Ensure reasonable safety in emergency	In Compliance	In Compliance
24	Develop comp emergency prep program	In Compliance	In Compliance
25	Implementation of key control policies	In Compliance	In Compliance

V. MEDICAL AND MENTAL HEALTH CARE POLICIES

CJ Requirement C26

The DPD shall ensure the appropriate identification of, and response to, prisoner's medical and/or mental health conditions.

Comments: Our previous assessment of applicable policies and practice required by this paragraph found the practice in the field was not consistent with the approved directives. Our review of DPD Directives 305.1 – 305.5, effective May 9, 2005 prescribe procedures generally required by this paragraph, including the documentation of medical and mental health

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

intake/screening information on the Medical and Mental Health Form 651. However, we noted the DPD has departed from that practice. Police Detention Officers enter this information into the Livescan System during the intake/screening process.

During this review of assessment, we learned that the DPD has initiated appropriate revisions to Directives 305.1 – 305.5 to recognize the utilization of the Livescan System during the detainee intake and assessment process. Accordingly, the DPD is in Pending Phase 1 compliance. We will review and report on these directive revisions in our next report.

We also reviewed a random sample of 375 detainee folders from the five districts/precincts with holding cells during this reporting period and found the DPD 44.7 % compliant with the implementation requirements of this CJ paragraph. Our review identified clerical errors; incomplete or missing documentation for medical referral and medication logs; missing signatures; missing documentation of required supervisory reviews; and the lack of a documented exchange of health information between consecutive shifts. We also noted, but did not calculate into our compliance finding, the lack of required Confidential Medical Envelopes (CME, DPD 658) in a majority of the 375 detainee folders. The DPD should insure copies of these envelopes are included in future document submissions for our review to assure a positive compliance finding.

Additionally, we preliminarily reviewed several detainee folders scheduled for assessment during our next reporting period to ascertain whether the DPD had addressed the noted deficiencies relating to medical and mental health issues. We found deficiencies similar to those reviewed for this reporting period and noted above.

We acknowledge the revisions to applicable Directives, which will move the DPD into Phase 1 compliance in the next reporting period; however full compliance with the requirements of this CJ paragraph and DPD Directives is dependent upon correct and complete documentation of detainee health assessments and appropriate responses to detainees medical and mental health needs (Refer to C27, 30, 31, and 32).

Compliance Status:

Phase 1: Pending Compliance

Phase 2: Not in Compliance

CJ Requirement C27

The DOD shall develop a comprehensive medical and mental health screening program (CMMHSP) that shall be approved in writing by qualified medical and mental health professionals. This program shall be submitted for review and approval of the DOJ within three months of the effective date of this Agreement. The DPD shall implement the program within three months of DOJ's review and approval. Thereafter, the program shall be reviewed and approved by qualified medical and mental health professionals at least every year and prior to any revisions to the programs. At a minimum, the comprehensive medical and mental health screening program shall include prisoner screening procedures and medical protocols.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Comments: Our previous review of DPD Directives 305.5-1 through 305.5-9 effective May 9, 2005, along with the forms and logs that comprise the CMMHSP found them compliant with the requirements of this paragraph; however we were unable to ascertain whether the directives were reviewed and approved by a qualified medical and mental health care professional as required.

In order to conduct the assessment of compliance for this reporting period, we met with CRIB staff and along with them reviewed all directives and supplementary documentation required for compliance with CMMHSP. Concurrently, CRIB initiated revisions to Directive 305.1 relating to the Medical and Mental Health Screening Process. We will review and report on these revisions in our next report.

Compliance Status:

Phase 1: Pending Compliance

Phase 2: Pending Compliance

CJ Requirement C28

The prisoner screening procedure, at a minimum, shall;

- a. enable the DPD to identify individuals with medical or mental health conditions, including infectious diseases, chronic conditions, including disabilities, ambulatory impairments, mental health conditions, and drug/alcohol withdrawal;*
- b. identify persons who are at risk of committing suicide, persons who have been on heightened observation for suicide risk at any time during a past incarceration and persons who have any medical contraindications for the use of chemical sprays,*
- c. require that the DPD follow a standard intake procedure for each individuals entering DPD custody;*
- d. require that intake screening be conducted within two hours of intake and through a verbal exchange between the DPD and prisoners; and*
- e. incorporate all health information pertaining to a prisoner acquired by the arresting or transporting officers.*

Comments: DPD Directives 305.1, Detainee Intake/Assessment and 403.2, Infectious Disease Control, effective May 9, 2005 outline the required detainee screening procedures. However, following our meeting with CRIB staff wherein we reviewed directives and supplementary documentation required for compliance with this and other paragraphs, CRIB initiated revisions to Directive 305.1. We will review and report on these revisions in our next report.

We also reviewed a random sample of 375 detainee folders from the five districts/precincts with holding cells during this reporting period. Our review identified clerical errors; missing signatures of Police Detention Officers and supervisors; incomplete or incorrect completion of medical and mental health assessment forms; incomplete information from the arresting officer on the Detainee Input Sheet (Medical and Mental Issues); and the failure to complete the intake screens within the prescribed two-hour window.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Our site review of practices relating to the requirements of this paragraph found that Police Detention Officers were inconsistent in recording all of the information required on the Detainee Information Form 651(DIF). In addition, we noted discrepancies between the information contained on the DIF and the Detainee Sheet 667 relating to medical and mental health issues; the incorrect completion of Medical Treatment/Medication Logs wherein medication dosages and required signatures were not included; Medical Referral Forms 660 were missing from detainee folders; and cases where detainees who should have been referred to DRH in accordance with DPD Directive were not so referred.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C29

The medical protocols, at a minimum, shall;

- a. identify the specific actions the DPD shall take in response to the medical information acquired during prisoner screening or detention, including the need for emergency care, hospitalization, prescription medication and/or intensive monitoring; and*
- b. require prior supervisory review and written approval, absent exigent circumstances, of all decisions made in response to acquired medical information.*

Comments: Our previous review of DPD Directive 305.1, Detainee Intake/Assessment, effective May 9, 2005 and found it compliant with the requirements of this paragraph. However, C30, C31 and C32 require implementation of the specific medical protocols dictated in this paragraph for acquiring and reporting medical information during the detention screening of prisoners. DPD has not fully developed and implemented the medical protocols consistent with paragraph C29.

During our assessment of compliance for this report, we met with CRIB staff wherein we reviewed directives and supplementary documentation required for compliance with this and other paragraphs. CRIB subsequently prepared revisions to Directive 305.1 and 305.5, Detainee Healthcare. We will review and report on these revisions in our next report.

In addition, we reviewed the applicable practices at each of the districts/precincts that maintain holding cells. This review found instances where staff deviated from policy regarding the referral to DRH of detainees in need of additional medical or mental health care. We observed one specific instance involving an injured detainee clearly in need of referral to DRH for further assessment and/or additional medical attention, which we referred to the duty supervisor who had not previously responded to the detainee's requests. In addition, when reviewing detainee folders for this reporting period, we noted instances where medical information taken at intake had not been appropriately responded to. For example, when detainees are classified at-risk requiring constant watch by a PDO, the watch should be immediately implemented and the

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

detainee should be referred to the DRH for further assessment. We found, in one case, that neither action had been appropriately initiated.

Accordingly, we do not find the DPD in Phase 2 compliance with the requirement of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C30

The DPD shall develop and implement policy regarding infectious disease control (IDC) in consultation with medical health professionals. The policy shall be reviewed and approved in writing by qualified medical health professionals at least every year after implementation and prior to any revisions to the policy. At a minimum, the policy shall;

- a. establish appropriate housing for prisoners believed to have infectious diseases; and*
- b. mandate measures the DPD shall take to prevent the spread of infectious diseases, including proper handling and disposal of bio-hazardous material.*

Comments: We previously reviewed DPD Directive 403.2, Infectious Disease Control, effective, May 2, 2005 and found it compliant with the requirements of this paragraph; however we noted the lack of the documented review and approval of the directive by a qualified medical professional.

During our assessment of compliance for this report, we met with CRIB staff wherein we reviewed directives and supplementary documentation required for compliance with this and other paragraphs. CRIB subsequently prepared revisions to Directive 403.2 and in addition, have arranged for review and approval of the directive by a qualified medical professional. We will continue to review, report and document our findings on these revisions in our next report.

We previously conducted an initial familiarization visit to all five DPD facilities with holding cells and the Detroit Receiving Hospital cells. We reported on our findings in our previous report, which included poor levels of sanitation in all five facilities. In January 2010, we again visited each of the facilities and completed an extensive inspection of the holding cell areas.

We continue to find poor sanitation conditions in three locations, one is marginal, and one is satisfactory. The Detroit Receiving Hospital cells were satisfactory. We report on these findings in detail in C39-42.

Our inspections of Personal Protective Equipment (PPE) found the PPE kits contained expired and dirty materials, open resuscitation kits and unclean face masks, and open anti-microbial hand wipes in three locations. We noted marginal conditions in the two remaining locations. None of the locations had an updated inventory checklist in their PPE kits and we found no process in place to assure daily checks of the PPE kits in accordance with the directive.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

We also noted soap dispensers that were not in working order and a lack of paper towels for hand washing, particularly in one location. We also observed blood on a cell wall where a detainee was being housed in another location. We were advised by the PDO that the blood hazard would be appropriately sanitized upon the release of the detainee.

First aid kits in all five facilities were not appropriately stocked. Noting among other issues the May 1998 and October 2003 expiration dates on bottles of eyewash, the April 2001 expiration date on burn gel ointment, sterile gauze removed from the sterile package, and the absence of gloves, we were advised that the kits have not been stocked for years.

Based on inadequacies in the implementation of a DPD IDC Policy, and on our onsite observations of conditions, the DPD is not in Phase 2 Compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C31

The DPD shall develop and implement a protocol for updating and exchanging prisoner health information. At a minimum, this protocol shall;

- a. require that prisoner's health information is recorded at intake and thereafter immediately readily available to all relevant medical and transporting personnel in a manner consistent with the relevant federal and state confidentiality statutes;*
- b. require that prisoner health information is continually updated to incorporate any additional relevant information acquired during his or her detention;*
- c. require that relevant prisoner health information is documented and communicated between consecutive shifts, such as whether a prisoner is taking medication or has a medical condition; and*
- d. require that prisoner health information travel with prisoners who transferred to another facility.*

Comments: Our previous review of DPD Policy 305.5, effective May 9, 2005, found it did not outline the procedures for updating and exchanging prisoner health information as required; therefore we determined that the DPD was not in Phase 1 Compliance.

During our assessment of compliance for this report, we met with CRIB staff wherein we reviewed directives and supplementary documentation required for compliance with this and other paragraphs. CRIB subsequently prepared revisions to Directive 305.5. We will review and report on these revisions in our next report.

We reviewed the Platoon Daily Detainee Summary Logs (PDDS) (DPD 659a) during out inspections of all district/precinct facilities containing holding cells. During our site inspections, we found that pertinent information relating to high risk detainees and detainees with health conditions was not consistently and appropriately documented. For example, in one location, we

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

found that three detainees with health concerns were not initially and appropriately placed on the Platoon Summary Log (DPD #659a); therefore were not added to subsequent shift logs. Relevant health information on detainees should have been documented, updated, and communicated between the initial the second shift. (Also refer to C35-38 - Prisoner Safety Policies)

We also found that on one detainee's intake form it was documented that the detainee had health issues and the detainee was on medication. There was no documentation indicating the detainee was referred to the DRH for further assessment; neither was the detainee placed on the Platoon Summary Log, DPD # 659. In addition, we found a failure to sign for receipt of documents by oncoming shift staff as required. Overall, our review found a compliance rate of 82.9% compared to 58.9% during the previous reporting period.

The Mental Health High Risk Log, DPD # 661 is used when a detainee is placed in an observation cell for mental health reasons. As protocol requires, a 15 minute watch is required. We reviewed a total of 38 DPD # 661 forms covering 19 detainees during this reporting period. Although we found the 15 minute entries were made, the date and time of removal from the observation cell was entered for only eight of the 19 individuals. We have not determined a numerical compliance rate since we are unable to determine the number of forms that should have been completed.

A Medical Health High Risk Log, (DPD 661a) is used when a detainee is placed in an observation cell for medical reasons at a 15 minute watch. We reviewed a total of 10 #661a forms submitted for this reporting period. The Officer in Charge authorizing these watched failed to appropriately sign the forms in 8 cases. We have not determined a numerical compliance rate since we are unable to determine the number of forms that should have been completed.

Our review also noted the interchangeable use of the 661 and 661a forms for suicidal detainees. For example, both forms were used for one detainee during his multi-day suicide watch.

Based on the above foregoing and the inadequacies in the implementation of the applicable directive, the DPD is not in Phase 2 Compliance.

Compliance Status:

Phase 1: Pending Compliance

Phase 2: Not in Compliance

CJ Requirement C32

The DPD shall develop a prescription medication policy in consultation with qualified medical and mental health professionals that ensures prisoners are provided prescription medication as directed. The policy shall be approved in writing by qualified medical and mental health professionals and shall be submitted for review and approval of the DOJ within three months of the effective date of this Agreement. The DPD shall implement the policy within three months of the DOJ's review and approval. Thereafter, the policy shall be reviewed and approved in writing

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

by qualified medical and mental health professionals at least annually and prior to any revisions to the program. At a minimum, the policy shall:

- a. indicate when the DPD shall convey prisoners taking prescription medication to the DRH or other treating hospital for evaluation;
- b. require the DPD distribute to prisoners only medications that have been prescribed at the DRH or other treating hospitals;
- c. require that the DPD distribute medications as prescribed and not rely on inmates to identify their need for medication;
- d. require that all prisoner medications be stored in a secure location near the holding cells and travel with prisoners that are transferred;
- e. require the DPD to record relevant information regarding the administration of prescription medication on an auditable form;
- f. require that injected medications are administered as prescribed and in a safe and hygienic manner; and
- g. required that unused medications prescribed at the DRH or other treating hospitals are provided to prisoners upon their release.

Comments: During our previous on-site visit, the DPD was unable to provide documentation verifying that the directives pertaining to prescription medication policies, DPD Directives 305.1 and 305.5 were developed in consultation with and reviewed annually by a medical and mental health professional. During our assessment of compliance for this report, we met with CRIB staff wherein we reviewed directives and supplementary documentation required for compliance with this and other paragraphs. CRIB subsequently prepared revisions to Directives 305.1 and 305.5 and in addition, have arranged for review and approval of the directive by a qualified medical professional. We will review and report on these revisions in our next report.

During our site inspections of the five precincts/districts with holding cells, we found eight medication logs with essential information missing. For example, the logs were missing detainee dosages, dosing times, detainee signatures, names of the person administering the medications, prescription release information. In one location, we observed a police officer attempting to locate a detainee's medications since the detainee had to be transferred to another precinct for video arraignment. The officer was delayed for more than two-hours and was actively attempting to locate the medications upon our departure. At another location, we found hydrocodone medication left in the medication cabinet from a detainee who had been released or transferred several days prior. The CBS was unable to provide reasons for this oversight. In addition, our review of a random sample of 375 detainee folders for this reporting period found incorrectly completed medical logs similar to those found during our previous visit, which is not suggestive of improved practices in this regard.

Based on the foregoing, we find the DPD in Pending Phase 1 compliance, but not in Phase 2 compliance with the requirements of this paragraph.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Compliance Status:

Phase 1: Pending Compliance

Phase 2: Not in Compliance

CJ Requirement C33

The DPD shall provide appropriate clothing, such as paper gowns or suicide smocks, to all prisoners placed under suicide precautions.

Comments: A review of DPD Policy Directive 305.1 effective May 9, 2005, Detainee Intake Assessment, revealed that the appropriate clothing for a detainee under suicide precaution is outlined.

The initial on-site visit at each of the five districts/precincts with holding cells revealed that the detention staff was knowledgeable about their responsibilities and duties in addressing high risk detainees with mental health issues. A supply of suicide clothing was at each site. Based upon this review, we found the DPD in full compliance with the requirements of this paragraph.

We again visited the locations of holding cells to assess compliance for this report. During our visit and inspection, we made observations at one location that were problematic with regard to compliance with DPD Directives and this paragraph. In that case, we found the intake and referral process woefully inadequate and inconsistent with directives. Specific to the requirements of this paragraph, the detainee was not provided with appropriate clothing. We recognize this is but one documented violation of DPD Directives and this specific paragraph, but given the seriousness of the attendant circumstances, we that find the DPD is not in continued Phase 2 Compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C34

The DPD shall remove or make inaccessible all suicide hazards in holding cells including exposed pipes, radiators and overhead bars. DPD does not have a policy regarding this paragraph of the COC CJ.

Comments: We conducted comprehensive inspections of each of the five districts/precincts with holding cells and the Detroit Receiving Hospital cells during our January 2010 site visit and verified that the DPD is in full compliance with the requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
26	Prisoners medical/mental health conditions	Pending Compliance	Not in Compliance
27	Medical/mental health screening program	Pending Compliance	Pending Compliance
28	Medical/mental health screening procedures	In Compliance	Not in Compliance
29	Medical protocols	In Compliance	Not in Compliance
30	Infectious disease policy required	In Compliance	Not in Compliance
31	Prisoner health information protocol required	Pending Compliance	Not in Compliance
32	Prescription medication policy required	Pending Compliance	Not in Compliance
33	Clothing-suicide prevention	In Compliance	Not in Compliance
34	Removal of suicide hazards	In Compliance	In Compliance

VI. PRISONER SAFETY POLICIES

CJ Requirement C35

The DPD shall ensure a reasonable level of safety of staff and prisoners through the use of appropriate security administration procedures.

Comments: DPD Directive 305.4, Holding Cell Areas, effective May 9, 2005 addresses policy requirements relating to the safety of staff and prisoners/detainees. It is supplemented by related DPD Directives 305.1, Detainee Intake; 305.2, Detainee Registration; 305.3, Detainee Personal Property; 305.5, Detainee Health Care; 305.7, Transportation of Detainees, all effective May 9, 2005; and 305.8, Detainee Food Service and Hygiene, effective February 9, 2006.

Our review finds these directives compliant with the requirements of this CJ paragraph. The DPD is in Phase 1 compliance. Effective implementation of the policy requirements has not yet been achieved due to staff and inmate safety measures they that are not meeting the required threshold as further articulated in C36, C37 and C38.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C36

The DPD shall develop and implement a prisoner security screening program for all buildings containing holding cells. At a minimum, the program shall:

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- a. establish protocols based upon objective, behavior-based criteria for identifying suspected crime partners, vulnerable, assaultive or special management prisoners who should be housed in observation cells or single-occupancy cells; and*
- b. require that security screening information is documented and communicated between consecutive shifts.*

Comments: DPD Directive 305.1, Detainee Intake, effective May 9, 2005 sets forth a prisoner security screening program meeting the criteria of this paragraph, however our review of associated logs revealed significant discrepancies. The DPD designed and implemented the Platoon Daily Detainee Summary (Form 659a) to ensure the effective communication of screening information between consecutive shifts. Although our review of these forms from each of the five districts/precincts for this reporting period noted an improvement over our previous findings, compliance only reached 82.9%. Non-compliance resulted from the oncoming shift's failure to appropriately document receipt of the remaining forms.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C37

The DPD shall develop and implement procedures for the performance, documentation and review of routine cell checks in all holding cells to ensure safe housing. At a minimum, the procedures should:

- a. require that cell checks on the general population are performed at least twice per hour and that cell checks of prisoners in observation cells and DRH holding cells are performed every 15 minutes, unless constant supervision is required; and*
- b. require detention officers to document relevant information regarding the performance of cell checks in an auditable log.*

Comments: DPD Directive 305.4, Holding Cell Areas, Sections 4.2 and 4.3, effective May 9, 2005, establishes the duties of the Cell Block Supervisors (CBS) and Detention Officer(s) relating to well-being checks. Supervisors are required to walk through the holding cell areas three times per shift to check on the well being of the detainees. These inspections are documented in the Desk Blotter. Detention Officers are required to make similar visual checks every 30 minutes (every 15 minutes for high risk detainees). Their observations are documented on the Detention Cell Check Log (DPD 659).

Our review of the practice found that while the CBS's and Detention Officers meet the *intent* of the directive; the procedures uniformly followed by them have not been specifically incorporated into the directive. We noted that entries for checks are made on the DPD 659 form but they interact only with general population detainees. Close observation cells are not included.

Our review of DPD 659 forms for the months of October-December, 2009, reflected 98.8% compliance. Well-being checks were routinely conducted within the 30 minute standard. This a

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

significant achievement that is at least partially due to the time clock system that has been put in place in each district/precinct.

The DPD 661 (Mental Health High Risk Monitoring Log) and the DPD 661a (Medical Health High Risk Monitoring Log) are used to document activity every 15 minutes when high risk detainees are in observation cells. We reviewed 38 DPD 661 forms dealing with 19 detainees submitted for this reporting period. Although we found that the 15 minute entries were made, we noted that only eight of the 19 individual forms reflected the date and time of, and reason for, removal from the watch/observation cell. We also reviewed a total of ten DPD 661a forms, representing five detainees, submitted for review. Only two of the ten contained the signature of the Officer in Charge authorizing the watch.

We are unable to determine the level of compliance based on this review since the number of DPD 661 and 661a forms that should have been completed is unknown. We also note the inconsistent and interchangeable use of these forms for suicidal detainees; in one case both forms were used to record the activity of one detainee during his multi-day suicide watch.

Although we continue to find the DPD Phase 1 compliant, the Directive should be revised to reflect current practice. The DPD is not in Phase 2 compliance due to the noted discrepancies with regard to documenting of activities on the DPD 661 and 661a forms.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C38

The DPD shall record in a written policy and implement a procedure that requires detention officers to provide continual direct or on site remote observation of all observation cells while they are occupied.

Comments: DPD Directive 305.4, Holding Cell Areas, Section 4.3, effective May 9, 2005, is compliant with the requirements relating to direct and/or on site remote observation of occupied observation cells. We find the districts/precincts appropriately identify specific cells as observation cells, but note the use of these cells is not restricted to detainees requiring continual supervision. For example, we observed two detainees in observation cells who were monitored every 30 minutes rather than every 15 minutes or constantly. There were no detainees in observation cells who were there on a suicide watch. We were advised that the observation cells were being temporarily used to house general population detainees.

The applicable directive cited above, states that 15 minute “well-being checks” should be documented on form DPD 659. In fact, the form actually has no field to capture this information.

It is obvious that a literal reading of this paragraph requires continuous observation of all observation cells when they are occupied. However, that standard comes into conflict with C37 which calls for 15 minute well being “...checks of prisoners in observation cells...unless

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

constant supervision is required.” That is why, in our last report, we called for the DPD to “...change policy 305.1-3.8 to reflect the requirement to provide continual direct observation of all observation cells when occupied.” During our inspection, we observed detainees in observation cells who were monitored every 30 minutes, not every 15 minutes or constantly. The explanation provided to us was that the observation cells were being temporarily used to house general population detainees.

This matter can only be resolved through clarification of DPD policy. If 305.1-3.8 is not modified as was previously suggested, then a change to policy must be put in place which authorizes and spells out alternative uses for observation cells. Until such time as that is accomplished, DPD’s current status of Phase 1 compliance and Phase 2 non-compliance will be maintained.

The present DPD Directive complies with this CJ paragraph; however the present practice of allocating these designated cells to general usage is not compliant with the Directive. Accordingly, the DPD is not in Phase 2 compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
35	Security procedures to assure safety	In Compliance	Not in Compliance
36	Prisoner security screening program	In Compliance	Not in Compliance
37	Procedures for cell checks required	In Compliance	Not in Compliance
38	On-site remove observation of cells	In Compliance	Not in Compliance

VII. ENVIRONMENTAL HEALTH AND SAFETY POLICIES

CJ Requirement C39

The DPD shall ensure that all holding cells are cleaned immediately and thereafter are maintained in a clean and sanitary manner.

Comments: DPD Directive 305.4, Holding Cell Areas, Section 5, effective May 9, 2005, establishes sanitation and cleaning standards for the district/precinct holding cells. Our inspection of the district/precinct holding cells found only the Twelfth Precinct in compliance with required sanitation standards. The DRH also meets required standards; however the cleaning and maintenance are the responsibility of the hospital.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

The positive findings at the Twelfth Precinct are, in our opinion, due to the proactive efforts of the staff who possess a “can do” attitude and a determination to identify and resolve problems, and in particular to the pride and dedication demonstrated by the designated Maintenance Officer.

The following notations summarize the observations made during our inspection of the Twelfth Precinct:

- Every key and locking mechanism functioned properly.
- There was virtually no graffiti in the cells.
- Every stainless steel sink and toilet combination was clean and in working order. There was no build up of residue inside the toilet bowls.
- Every telephone worked. While this is not a matter covered by the CJ, it is indicative of the way staff at the TP do business. They make sure that everything works.
- Every camera functioned properly and none of the lenses were blocked by toilet paper or toothpaste.
- Every light functioned properly, none were burned out.
- All cells were clean, but of particular note was the fact that empty cells were free of refuse. It is apparent that staff ensures that cells are cleaned whenever they are emptied of detainees.
- The floors were clean from wall to wall throughout the building. There was no buildup of wax or dirt at the edges of the hallways.
- Every fire extinguisher was properly inspected, as was the case throughout the districts/precincts. The difference at the TP was that each extinguisher was hanging from its wall mount or was inside a fire extinguisher cabinet (and the glass door to the cabinet was intact).
- The garage was clean and free of accumulated clutter. There was no 55 gallon oil drum in place, something that was noted in three of the other districts.
- Community service personnel were observed working throughout the facility, painting walls and cleaning floors under the supervision of the Maintenance Officer.
- The exterior and interior of the building were free of structural damage.
- Ceiling tiles were in place.
- Staff and public restrooms were outfitted with paper towels and functioning soap dispensers.

The remaining districts/precincts do not meet the required sanitation standards (See C40). Accordingly the DPD remains in Phase 1 compliance, but has not yet achieved Phase 2 compliance.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C40

The DPD shall design and implement a cleaning policy for all holding cells. The policy shall require routine cleaning and supervisory inspection of the holding cells and nearby areas.

Comments: DPD Directive 305.4, Holding Cell Areas, Section 5, effective May 9, 2005, establishes cleaning and inspection standards as required. Cell Block Supervisors Cell Block Supervisors are required to conduct inspections at the beginning of their shifts and to correct noted discrepancies. Daily cleaning of holding cell areas must be accomplished and documented in the Holding Cell Cleaning Log (DPD 701). Detention officers must clean cells immediately after they are vacated.

Our review of the DPD 701 forms for this reporting period found a compliance rate of 98.0%, which represents a significant improvement over the previous reporting period. However, while the high compliance rate with regard to completion of the DPD 701 forms is noted, also noted were the unsatisfactory sanitary conditions at three of the districts/precincts and marginal conditions at one. Only the Twelfth Precinct was satisfactory (See C39). Representative discrepancies included the following.

- *Every cell vent in one district/precinct was blocked with toilet paper.*
- *Peanut butter was smeared on the corridor wall.*
- *Graffiti was found in every cell in two districts/precincts and sporadically throughout in the others (with the exception of the TP).*

The DPD has achieved Phase 1 policy compliance. The Holding Cell Cleaning Logs appear to document >94% compliance with sanitary/cleaning standards; however the actual condition of the various holding cells does not meet standards. According, the DPD has not achieved Phase 2 compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C41

The DPD shall design and implement a maintenance policy for all holding cells that requires timely performance of routine maintenance and the documentation of all maintenance requests and responses in an auditable log.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Comments: DPD Directive 305.4, Holding Cell Areas, Section 6.6, effective May 9, 2005, establishes procedures for the maintenance of the holding cells. The Cell Block Supervisor is responsible for conducting a weekly maintenance inspection and for documenting discrepancies in the Holding Cell Maintenance Log (DPD 702). Repair orders are submitted by e-mail to the Maintenance Department.

Our review of DPD 702 forms for this reporting period found compliance with inspection requirements at 61.1% which is not a significant change from our finding of 57.3% noted in our previous report. In that report, we noted that the DPD 702 form is indicative of the problem as the form does not provide a useful means for identifying, recording or tracking maintenance issues. For example, only two districts/precincts submitted all of the required documents during this reporting period.

The DPD is in Phase 1 compliance based on the published directive; however Phase 2 compliance appears to be dependent upon the implementation of a meaningful maintenance tracking system.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C42

The DPD shall provide adequate heating and ventilation for all buildings containing holding cells.

Comments: DPD Directive 305.4, Holding Cell Areas, Section 6.6, effective May 9, 2005, established policy regarding heating and ventilation (temperature ranges) within the holding cells. During our inspection of the facilities we found the temperature within each cell block well within established limits (between 66 and 80 degrees). Our interviews with Cell Block Supervisors (CBS) revealed that they checked the temperature upon assuming the shift. Three of the five CBS(s) enter that reading into their electronic blotter to memorialize the information. Our review of the above referenced directive and observations of practice have determined the DPD to be in full compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C43

The DPD shall repair all broken or malfunctioning lighting, toilets, sinks and windows in holding cells and observation cells.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Comments: DPD Directive 305.4, Holding Cell Areas, Section 6.6, effective May 9, 2005, sets forth policy with regard to the repairs as required. As we discussed in C41, the DPD has developed no effective maintenance/repair tracking system. Accordingly, while the DPD remains in Phase 1 compliance, Phase 2 is dependent upon the implementation of an effective maintenance tracking system. The DPD 702 form is of little practical value.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C44

The DPD shall ensure that lighting in all cell block areas is sufficient to reach 20 foot candles of illumination at desk level and in personal grooming areas.

Comments: We conducted an inspection of the various district/precinct holding cells and found that supplemental lighting has been retrofitted at each location. The DPD Facilities Management Staff conducted light level tests between October 5-30, 2009 in the five districts/precincts with holding cells, and at the DRH. In each case, the light levels in the cells and adjacent areas exceeded 20 foot candles at desk level. The DPD is in continued full compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C45

The DPD shall provide all prisoners with reasonable access to toilets and potable water 24 hours-a-day.

Comments: Directive 305.4, Holding Cell Areas, Section 7, effective May 9, 2005, requires that detainees have access to toilets and potable drinking water 24 hours per day. Our inspection of the district/precinct holding cells determined that all prisoners had access to toilets and portable water at all times. Based on the published Directive and observed conditions of the physical plant in the district/precinct holding cells, the DPD is in full compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

CJ Requirement C46

The DPD shall ensure that all Hepa-Aire purifiers comply with the Michigan Occupational Safety and Health Agency standards.

Comments: The DPD staff advised and our inspections of the district/precinct holding cells confirmed the removal of all Hepa-Aire purifiers. The DPD is in full compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
39	Clean and maintain holding cells	In Compliance	Not in Compliance
40	Holding cell cleaning policy required	In Compliance	Not in Compliance
41	Holding cell maintenance policy required	In Compliance	Not in Compliance
42	Provide adequate heating and ventilation	In Compliance	In Compliance
43	Repair broken/malfunctioning cell elements	In Compliance	Not in Compliance
44	Insure sufficient cell lighting	In Compliance	In Compliance
45	Provide reasonable access to toilets and water	In Compliance	In Compliance
46	Hepa-Aire Purifiers comply with standards	In Compliance	In Compliance

VIII. POLICIES CONCERNING PERSONS WITH DISABILITIES

CJ Requirement C47

The DPD shall ensure that persons with disabilities are provided with reasonable accommodations.

Comments: DPD Directive 305.1, Detainee Intake/Assessment, effective May 9, 2005 and revised July 15, 2009 is compliant with the requirements of this paragraph. The latest revision to the directive requires the transfer of detainees requiring the assistance of a wheelchair to the Northeastern District. In addition, the directive outlines procedures to assure that detainees in need of a Telecommunications Device (TDD) have appropriate access.

We visited the Northeastern District to assess compliance with requirements relating to persons with disabilities. Our inspections of the two cells that have been fitted, equipped and designated for the holding of persons with disabilities found that one of cells toilet was not functional and the other cell was being used for detainees awaiting video arraignment. We were advised and

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

provided documentation that repairs had been appropriately requested. We were further advised by staff that if a detainee requiring one of the designated cells was taken into custody and a detainee awaiting video arraignment was occupying the designated cell, that detainee would be moved to another cell. Although staff utilizes these designated cells for multi-purposes when available, we have determined they are procedurally compliant with the intent of this CJ paragraph and DPD Directives.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C48

The DPD shall develop and implement a policy concerning the detention of individuals with disabilities in consultation with qualified medical and mental health professionals. The policy shall be approved in writing by qualified medical and mental health professionals. Thereafter, the program shall be reviewed and approved in writing by qualified medical and mental health professionals at least every year and prior to any revisions to the program.

Comments: DPD Directive 305.1, Detainee Intake/Assessment, effective May 9, 2005 and revised July 15, 2009 was developed in consultation with a qualified medical and mental health professional from the Detroit Department of Health and Wellness Promotion (DHWP). The policy was last reviewed and approved by DHWP on June 12, 2009 and for the mental health review by DHWP on July 17, 2009. We are further advised that at this writing a further review by qualified medical and mental health professionals has occurred.³³

During our previous assessment of compliance, we visited the five districts/precincts with holding cells and found a number of disparities between practice and policy. Staff was not familiar with where detainees with certain disabilities needed to be housed. Conversely, during this assessment, we found the DPD holding cell staff to be conversant with regard to directives and procedures relating to detainees with disabilities. Accordingly, we find the DPD in full compliance with the requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
47	Reasonable accommodation for disabled	In Compliance	In Compliance
48	Detention of persons with disabilities	In Compliance	In Compliance

³³ The DPD reported the completion of a review of the Directive by a qualified medical/mental health professional on February 10, 2010.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

IX. FOOD SERVICE POLICIES***CJ Requirement C49***

The DPD shall ensure food is stored and served in a sanitary manner and in compliance with state and local health codes.

Comments: DPD Directive 305.8, Detainee Food Service, effective May 9, 2005 requires that detainee meals are stored properly and served in a sanitary manner in accordance with state and local health codes. This directive was developed in consultation with a dietician and sanitation specialists from the Detroit Department of Health and Wellness Promotion (DHWP). The policy was last reviewed and signed by DHWP on February 4, 2009.

We visited and inspected the five holding cell area sites and found the refrigerators adequate to ensure safe storage of food products. Our review of the Refrigeration Log # 655 found 98.0% compliance. We also observed food distribution to detainees at four of the precincts/districts. The Police Detention Officers' practice demonstrated that the meal services delivery was distributed in compliance with the requirement of this paragraph and DPD Directives.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C50

The DPD shall develop and implement a food service policy that shall be approved in writing by a qualified sanitarian. At a minimum, the food service policy shall:

- a. require that the meal plan is initially approved in writing by a qualified dietician and , hereafter, is reviewed and approved in writing by a qualified dietician at least every year, or prior to any revisions to the program;*
- b. require that all food is stored and handled in a sanitary manner;*
- c. ensure that all prisoners are provided with an alternative meal if they are unable to eat the standard meal for religious or dietary reasons; and*
- d. ensure that food service is provided to all prisoners who are held over six hours.*

Comments: DPD Directive 305.8, Detainee Food Service and Hygiene Items, effective May 9, 2005 was developed in consultation with a registered dietician and sanitation specialist from the Detroit Department of Health and Wellness Promotion (DHWP). The policy was last reviewed and signed by DHWP on February 4, 2009; therefore will require further review during the next reporting period.

We reviewed Detainee Meal and Hygiene Items DPD Logs (#663) for each of the precincts/districts for this entire reporting period and found 100% compliance. The logs were completed fully with required signatures in place. We note, however, the underutilization of the

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

comment section by consecutive Shift supervisors and oncoming shift supervisor blocks are under-utilized. One district/precinct made no comments during the entire reporting period.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
49	Ensure sanitary food storage and service	In Compliance	In Compliance
50	Food service policies and practices	In Compliance	In Compliance

X. PERSONAL HYGIENE POLICIES

CJ Requirement C51

The DPD shall ensure that personal hygiene items should include; soap, toothbrushes, toothpaste, toilet paper, a comb, deodorant, and feminine hygiene products. The DPD shall implement this provision within one month of effective date of this Agreement.

Comments: DPD Directive 305.8, Detainee Food Service and Hygiene Items, effective May 9, 2005 is compliant with the requirements of this paragraph. In addition, the DPD devised and utilizes the Daily Detainee Meal and Hygiene items Log (DPD 663) to document the hygiene items provided to each detainee on a daily basis.

Our review of the Detainee Meal and Hygiene Logs from each of the districts/precincts with holding cells found 100% compliance for this entire reporting period. Logs were fully completed with required signatures in place. We note, however, the underutilization of the comment section by supervisors. During our visit, we also observed Police Detention Officers distributing Hygiene Kits to detainees as requested.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
51	Make available personal hygiene items	In Compliance	In Compliance

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

XI. USE OF FORCE AND RESTRAINTS POLICIES***CJ Requirement C52***

The DPD shall require that any use of force on prisoners in holding cells complies with the DPD's use of force policies and procedures.

Comments: DPD Directives 305.4, Holding Cell Areas, Section 6.2, effective May 9, 2005, and 304.2, Use of Force, effective June 27, 2006 set forth the required use of force guidance.

We reviewed five use of force events that occurred in holding cell areas during this reporting period; three in the Northeastern District, one in the Eastern District, and one in the Southwestern District. Our review determined the force used appeared reasonable and appropriate in four cases; however we were unable to make a determination regarding the remaining case due to the inadequacy of the report wherein it was not even possible to determine whether the force took place inside or outside of the district/precinct building. Accordingly, DPD Phase 2 compliance stands at 80%.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C53

The DPD shall revise and augment its policies regarding prisoners to require that:

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

Comments: DPD Directive 305.4, Holding Cell Areas, Sections 6.2 and 6.3, effective May 9, 2005, establishes the required procedures. All districts/precincts maintaining holding cells are equipped with videotaping/digital recording equipment linked to an extensive camera system that monitors hallways and common areas as well as most, but not all cells. Interviews with detention staff during our initial inspection of districts/precinct holding cells revealed the lack of hand held video cameras to record a planned use of force in a cell. Staff explained that such incidents happened so infrequently that the procurement and maintenance of hand held video equipment was not warranted. However, during our most recent meetings with detention staff, we learned of plans to purchase hand held video equipment for the districts/precincts. We will report on the acquisition of this equipment when it occurs.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Our review of the five reported use of force incidents found circumstances present in one case indicative of the need for videotaping of the planned action by officers. Officers called for backup, notified a supervisor for approval, and then took required action. The detainee was in an observation cell on suicide watch; therefore even though the cell camera lens was covered with wet paper, the event was captured by the nearby processing area camera. Although this particular event was captured on video, the full implementation of this CJ paragraph and DPD policy will not be achieved until hand held video recording capability is available in each district/precinct.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C54

The DPD shall not handcuff prisoners to benches for longer periods of time than are necessary.

Comments: DPD Directive 305.4, Holding Cell Areas, Section 6.1, effective May 9, 2005, provides that detainees will not be handcuffed to benches or fixed objects longer than is necessary (no longer than three hours). There are no records or logs available to assist in determining whether or not this requirement is adhered to; however we observed no detainees handcuffed to fixed objects during any of our inspections of the holding cells. Three of the five Cell Block Supervisors we interviewed stated that detainees are never handcuffed to fixed objects in their districts/precincts. The remaining two adhere to the three-hour rule. The DPD is in full compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
52	Use of force policies	In Compliance	Not in Compliance
53	Revise policy re use of force with prisoners	In Compliance	Not in Compliance
54	Handcuffing of prisoners to benches	In Compliance	In Compliance

XII. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW

CJ Requirement C55

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

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Comments: DPD Directive 305.4, Holding Cell Areas, Section 6.6, effective May 9, 2005, requires the appropriate thorough investigation of all uses of force, injuries to detainees and in custody deaths occurring in holding cells. We reviewed five investigations involving the use of force in the Northeastern (3), Eastern (1) and Southwestern (1) Districts during this reporting period. Each of the investigations contained discrepancies ranging from minor issues to total non-compliance. One was so inadequate that it was not possible to determine whether or not the incident occurred inside or outside of the district facility. The following discrepancies were also noted:

- No detainee witness interviews
- No medical attention provided.
- No photographs taken.
- No supervisor signature.
- No supervisory review above the rank of sergeant.
- No review of video.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C56

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

Comments: DPD Directive 305.4, Holding Cell Areas, Section 6.2, effective May 9, 2005, requires the reporting of all uses of force as required. Accordingly the DPD is in Phase 1 compliance. However, implementation of the practice has not been achieved (See C55 above).

Compliance Status:

Phase 1: In Compliance

Phase 2: **Not in Compliance**

CJ Requirement C57

The DPD shall require that all injuries to prisoners occurring in DPD holding cells are reported and investigated in compliance with the DPD's prisoner injury investigation policies.

Comments: DPD Directive 305.4, Holding Cell Areas, Section 6.2, effective May 9, 2005, requires the reporting and investigation of all injuries to detainees as required. We reviewed one investigation of a detainee injury (Northeastern District) during this reporting period. This injury was not the result of a use of force. We noted the report was not signed by the investigating

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

supervisor; the report indicated that an officer was assigned to photograph the detainee's injury at the DRH, but there is no record indicating completion of that assignment; the video was requested for review, but it had not been received for review at the time the supervisor closed the investigation; and there was no indication of a supervisory review of the investigation above the level of sergeant.

The DPD is in Phase 1 compliance; however implementation of the policy has not been achieved.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
55	Use of force investigations	In Compliance	Not in Compliance
56	Use of force investigations	In Compliance	Not in Compliance
57	Injury to prisoner investigations	In Compliance	Not in Compliance

XIII. EXTERNAL COMPLAINTS

CJ Requirement C58

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

Comments: DPD Directives 305.4, Holding Cell Areas, Section 6.2, effective May 9, 2005 and 102.6, Citizen Complaints, effective July 1, 2008, requires the acceptance and processing of external complaints regarding incidents occurring in the holding cells. We reviewed three such complaints received during this reporting period. Each was processed in accordance with adopted directives. The DPD is in full compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C59

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

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Comments: DPD Directives 305.4, Holding Cell Areas, Section 6.2, effective May 9, 2005 and 102.6, Citizen Complaints, effective July 1, 2008, requires the investigation and review of all external complaints regarding incidents occurring in the holding cells. We reviewed three complaints, one each received by the Eastern, Northwestern and the Southwestern Districts. The complaints related to the lack of communication and assistance regarding a missing person; the lack of privacy in the holding cells; and inoperative telephones in the holding cells.

Our review of these complaints found that one contained a cursory preliminary investigation and a letter dated December 3, 2009 from the Office of the Chief Investigator stating that "...due to the lack of necessary manpower, your service related complaint was resolved informally." This case was logged "Admin. Closure." Another investigative package included multiple Garrity Warnings and Certificates of Notice of Constitutional Rights, but no record of a single interview.

The cited directives are Phase 1 compliant; however the noted investigative discrepancies are not indicative of effective implementation of the required investigative procedures.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
58	Receipt of external complaints	In Compliance	In Compliance
59	Investigation of external complaints	In Compliance	Not in Compliance

XIV. GENERAL POLICIES

CJ Requirement C60

In developing, revising, and augmenting the policies discussed in this Agreement, the DPD shall ensure that all terms are clearly defined.

Comments: DPD Directive 404.1, Definitions, effective July 1, 2008 clearly explains frequently used terms as required. The DPD has incorporated these terms in various directives and other official documents throughout the term of this Agreement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

CJ Requirement C61

The DPD shall continue to make available proposed policy revisions to the community, for review, comment and education. Such policy revisions shall also be published on the DPD's website to allow comments to be provided directly to the DPD.

Comments: DPD Directive 101.1 Written Directive System, effective July 1, 2008 sets forth the procedure for developing, publishing, distributing and updating policy and procedures within the DPD. It does not contain provisions for public input on proposed policy revisions. However, our review of the DPD website revealed that a system/format is in place for the public to comment on proposed/updated policies. Although at the time of our review, no public commentary was noted; the website does provide a means for the public to provide it. The DPD is in compliance with the requirements of this CJ paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
60	Clearly define all terms in policies	In Compliance	In Compliance
61	Policy changes available to community	In Compliance	In Compliance

XV. MANAGEMENT AND SUPERVISION

CJ Requirement C62

The DPD shall routinely evaluate the operation of the holding cells to minimize harm to staff and prisoners.

Comments: DPD Directive 305.4, Holding Cell Areas, effective on May 9, 2005 is compliant with the requirements of this paragraph. The DPD uses form DPD # 715 to evaluate the operation of holding cells. We were unable to review the DPD #715 assessments; however we were able to do so for this report. Although we have reviewed the assessments there are some minor issues with regard to the validity of some of the information captured on these forms, the DPD is conducting the required inspections. During this reporting period, we found the appropriate evaluation completed 100% of the time except for at the DRH in December, 2009. These required monthly inspections of each district/precinct with holding cells and the Detroit Receiving Hospital is accomplished by the OCR Audit Team staff. Based on our findings during this reporting period, we have found the DPD is in full compliance with the requirements of this paragraph.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C63

The DPD shall operate the holding cells in compliance with DPD's comprehensive risk management plan including implementation of:

the risk management database;

the performance evaluation system;

the auditing protocol;

regular and periodic review of all DPD policies; and regular meetings of the DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.

Comments: During our previous assessment of compliance with this paragraph, we determined that the DPD conducted required audits consistent with standards articulated in the DPD 2008-2009 Audit Protocol issued in August, 2008, and with the Generally Accepted Government Auditing Standards (GAGAS). We also reviewed the DPD Police Manual on Policies, which was written in response to the requirements of the COC CJ paragraphs 14-72 and found a need for additional work in that area. For example, we found no reference to appropriate clothing for detainees who at-risk for suicide in Directive 305.1, which provides guidance for dealing with Mental Health High Risk and/or Suicidal Detainees; this information is instead referenced under Policy 305.1 Detainee Intake/Assessment. We also noted that guidelines on medical and mental health screening of detainees appear in two separate policies, neither of which was being followed in the field when conducting the screenings/assessments. We also found that the Livescan System was being used during the screening/intake process rather than the required forms. We were also unable to find documentation indicating the updating of directives on an annual basis.

During this assessment, we initially met with the CRIB staff responsible for issues relating to C63. We were advised there was no comprehensive risk management system in place covering the operation of holding cells; it appears that the Management Awareness Systems (MAS) does not cover risk management relating to holding cell operations.

We have been advised that DPD has revised the Audit Protocol and its directives in response to our recommendations during our previous assessment. In addition, applicable directives have been reviewed by a qualified medical and mental health professional.³⁴

³⁴ The DPD updated their Audit Protocol Document, effective February 5, 2010. This has been approved by the CRIB Commander. The DPD has also completed revisions in accordance with our findings during the previous reporting period, including Directive 305.1, Detainee Intake Assessment; Directive 305.5, Detainee Health Care; and Directive 403.2, Infectious Disease Control. On February 4, 2010, the applicable directives were reviewed and

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

The initiatives described above are indicative of progress addressing the shortcomings noted in our previous report; but not sufficient to prompt a change in our non compliant finding.

Compliance Status:

Phase 1: Not in Compliance

Phase 2: Not in Compliance

CJ Requirement C64

The DPD policy on video cameras shall be revised and augmented to require:

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

Comments: During our initial inspections of holding cells, reported on in our previous report, we observed the operation of video cameras in all processing areas. However, we were not provided with documentation to confirm that video cameras are in continuous operation in all holding cell areas.

During our most recent inspections, we found operational cameras in all holding cells and evidence indicating reviews of use of force videotapes by supervisors only when an incident occurs. The DPD retains recordings longer than the required 90 days since its implementation of a digital recording system. We also confirmed that supervisors do not conduct random reviews of the videotapes. Cameras were operational in the processing areas of each district/precinct, but we noted that 15 of the 19 cameras at the Eastern District were not functioning. Staff advised that these cameras have been out of order for several months; one camera has been off line for over a year. According, we find the DPD non compliant with requirements.

We also reviewed five uses of force cases for this reporting period. These reports lacked required information. One report was so lacking in descriptive data that it was not possible to ascertain whether or not the incident occurred inside or outside of the district/precinct building. In addition, we found these reports lacked references to a review of video, review above the level

approved by a qualified medical and mental health professional. Since these activities occurred post reporting period, they are applicable to compliance assessments during the next reporting period, which covers the period January 1 through March 31, 2010.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

of a sergeant, the specific location of the incident, and the supervisor's signature. (Refer to C52-59 for further results of our findings)

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C65

The DPD shall conduct regularly scheduled quarterly audits, covering all DPD units and commands that investigate uses of force, injuries to prisoners and allegations of misconduct in holding cells, including:

- a. reviewing a sample of command, IAD, and Homicide Section investigations;*
- b. evaluating whether the actions of the officer and the subject were captured correctly in the investigative report;*
- c. evaluating the preservation and analysis of the evidence;*
- d. examining whether there is consistency in use of force and injured prisoner investigations throughout the DPD;*
- e. evaluating the appropriateness of the investigator's conclusions; and*
- f. issuing a written report regarding the findings of the audit.³⁵*

Comments: The DPD developed an Audit Protocol in accordance with the requirements of U92. The Protocol, effective August 31, 2008, establishes an audit schedule; describes the audit terms; specifies the roles and responsibilities of audit team members; describes the various audits, including the one required by this paragraph; and describes the reports that are to be conducted and produced.³⁶ The Audit Team is located within the DPD Office of Civil Rights.

The OCR Audit Team conducted the required Combined Uses of Force Investigations audit for the period ending July 31, 2009. Our review finds it to be a comprehensive, robust document in which several deficiencies are identified. The CRIB Audit Team will be completing a new

³⁵ Amended to reflect the below stipulated language contained in the Court Order of April 15, 2009:

The audits required by paragraphs 65 to 71 in this Agreement shall be submitted on a semiannual basis with the first and second semiannual periods ending on January 31 and August 31, 2004. Subsequent semiannual periods shall end on January 31, 2005, and every six months thereafter. Each of these audits may be conducted on an annual rather than a semiannual basis when the Monitor concludes that the most recently submitted audit for the same topic is compliant, and the remaining requirements of this paragraph have been met for the prior audit of that topic. The DPD shall issue all audit reports to the Chief of Police and also provide copies to each precinct or specialized unit commander. The commander of each precinct and specialized unit shall review all audit reports regarding employees under their command and, if appropriate, shall take nondisciplinary corrective action or disciplinary action.

³⁶ The Audit Protocol, effective August 31, 2008 governs the audits discussed in this report; however a revised Audit Protocol, effective February 5, 2010 will govern the conduct of future audits.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Combined Uses of Force Investigations for the period ending January 31, 2010. We will report on our review of it in our next report. Accordingly, we find the DPD in full compliance with applicable requirements.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C66

The DPD shall create a Holding Cell Compliance Committee that is responsible for assuring compliance with requirements of this Agreement. The Holding Cell Compliance Committee shall conduct regularly scheduled quarterly audits in all buildings containing holding cells to evaluate compliance with fire detection, suppression and evacuation program, including:

- a. testing a sample of smoke detectors and sprinklers;*
- b. testing the back-up power systems;*
- c. reviewing a sample of fire equipment testing and maintenance records; and*
- d. issuing a written report regarding the findings of the audit.*

Comments: The DPD has established an active Holding Cell Compliance Committee that collaborates with the CRIB Audit Team for the purpose of conducting the audits required by this paragraph. The Audit Protocol, effective August 31, 2008, establishes the procedures governing the conduct of these audits.³⁷

We previously reviewed the Fire Safety Practices and Policies audit conducted by the HCCC and the OCR Audit Team for the period ending July 31, 2009. We found it to be a comprehensive, robust document.

The HCCC and the CRIB Audit Team have initiated the Fire Safety Practices and Policies audit for the period ending January 31, 2010. We will report on our review of the audit in our next report.

We also independently examined the policies and practices related to the Fire Safety Practices and Policies during our visits to the various precincts/district with holding cells and report on our findings in C14-22.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

³⁷ The Audit Protocol, effective August 31, 2008 governs the audits discussed in this report; however a revised Audit Protocol, effective August 31, 2009 will govern the conduct of future audits.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

CJ Requirement C67

The Holding Cell Compliance Committee shall conduct regularly scheduled audits in all buildings containing holdings cells to evaluate emergency preparedness, including;

- a. reviewing a sample of key and fire equipment maintenance and inventory records; interviewing selected detention officers about their participation in fire drills and on their responsibilities under emergency preparedness program and testing their ability to identify keys necessary to unlock all holding cell doors; and*
- b. issuing a written report regarding the findings of the audit.*

Comments: The DPD has established an active Holding Cell Compliance Committee that collaborates with the CRIB Audit Team for the purpose of conducting the audits required by this paragraph. The Audit Protocol, effective August 31, 2008, establishes the procedures governing the conduct of these audits.³⁸

The HCCC and the OCR Audit Team conducted the Comprehensive Emergency Preparedness Program audit for the period ending July 31, 2009. We were unable to definitively determine compliance from the documents available to us for the last report; therefore deferred our compliance determination. The HCCC and the CRIB Audit Team have initiated the required Emergency Preparedness Program semi-annual audit for the period ending January 31, 2010. We will report on our review of the Comprehensive Emergency Preparedness Program in our next report.

We also independently examined the policies and practices related to the Comprehensive Emergency Preparedness Program our visits to the various precincts/district with holding cells and report on our findings in C23-25.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C68

The Holding Cell Compliance Committee shall conduct regularly scheduled quarterly audits in all buildings containing holding cells to evaluate the medical/mental health programs and policies, including:

- a. reviewing a sampling of hospitals referral forms in comparison to prisoner intake forms to evaluate the accuracy of the intake screening and whether appropriate action was taken;*
- b. observing intake screening interviews to assess thoroughness;*

³⁸ The Audit Protocol, effective August 31, 2008 governs the audits discussed in this report; however a revised Audit Protocol, effective February 5, 2010 will govern the conduct of future audits.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- c. *reviewing a sampling of the prescription medication log to ensure that medications were administered as prescribed and that their distribution was accurately recorded; and*
- d. *issuing a written report regarding the finding of the audit.*

Comments: The DPD has established an active Holding Cell Compliance Committee that collaborates with the CRIB Audit Team for the purpose of conducting the audits required by this paragraph. The Audit Protocol, effective August 31, 2008, establishes the procedures governing the conduct of these audits.³⁹

The HCCC and the OCR Audit Team conducted audit on Medical and Mental Health Programs and Policies for the period ending July 31, 2009. We previously reviewed that Audit, which we found contained a detailed accounting of the Audit Team's findings. The CRIB Audit Team has initiated its audit of the Medical and Mental Health Program and Policies for the period ending January 31, 2010. This Audit will be command specific and should result in a more focused identification of deficiencies, required corrective action and accountability at the command level. We will report on our review of that audit in our next report.

We also independently examined the policies and practices related to the Medical and Mental Health Program during our visits to the various precincts/district with holding cells. (See C26-34)

The DPD is in full compliance with the requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C69

The Holding Cell Compliance Committee shall conduct regularly scheduled quarterly audits in all buildings containing holding cells to evaluate detainee safety programs and policies, including;

- a. *reviewing a sampling of security screening records, including written supervisory approvals, to ensure that prisoners are being properly screened and housed;*
- b. *reviewing a sampling of the cell checks logs to ensure that checks are being accurately and regularly performed and that cell checks logs are receiving supervisory review and written approval; and*
- c. *issuing a written report regarding the findings of the audit.*

Comments: The DPD has established an active Holding Cell Compliance Committee that collaborates with the CRIB Audit Team for the purpose of conducting the audits required by this

³⁹ The Audit Protocol, effective August 31, 2008 governs the audits discussed in this report; however a revised Audit Protocol, effective February 5, 2010 will govern the conduct of future audits.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

paragraph. The Audit Protocol, effective August 31, 2008, establishes the procedures governing the conduct of these audits.⁴⁰

The HCCC and the OCR Audit Team conducted audits on Detainee Safety Program and Policies for the period ending July 31, 2009. Our previous review of these Audits found them compliant with the requirements of this paragraph. The HCCC and the CRIB Audit Team have initiated the Detainee Safety Program Audit for the period ending January 31, 2010. This Audit will be command specific and should result in a more focused identification of deficiencies, required corrective action and accountability at the command level. We will report on our review of that audit in our next report.

We also independently examined the policies and practices related to the Detainee Safety Program during our visits to the various precincts/district with holding cells and report on our findings in C35-38.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C70

The Holding Cell Compliance Committee shall conduct regularly scheduled quarterly audits in all buildings containing holding cells to evaluate the environmental health and safety programs, including:

- a. inspecting holding cells and surrounding areas to ensure that they are clean and clear of debris and that the lighting, sinks, and toilets are operable;*
- b. reviewing a sampling of cleanings and maintenance logs to ensure they are properly maintained and reflected the scheduled performance of the requisite cleaning and maintenance tasks;*
- c. reviewing the systems in place for assuring that all prisoners have reasonable access to potable water and toilets 24 hours a day;*
- d. observing whether holding cells are free of any potential suicide hazards; and*
- e. issuing a written report regarding the findings of the audit.*

Comments: The DPD has established an active Holding Cell Compliance Committee that collaborates with the CRIB Audit Team for the purpose of conducting the audits required by this paragraph. The Audit Protocol, effective August 31, 2008, establishes the procedures governing the conduct of these audits.⁴¹

⁴⁰ The Audit Protocol, effective August 31, 2008 governs the audits discussed in this report; however a revised Audit Protocol, effective February 5, 2010 will govern the conduct of future audits.

⁴¹ The Audit Protocol, effective August 31, 2008 governs the audits discussed in this report; however a revised Audit Protocol, effective February 5, 2010 will govern the conduct of future audits.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

We continue to recognize the significant and good work of DPD Audit Team and the HCCC during the course of the consent judgments. We have reviewed the various audits and described them in our previous report as “comprehensive, robust documents that address the requirements articulated in the judgment(s).” However, the Environmental Health and Safety Program audit was not included in our review; therefore we deferred our compliance determination.

We are now advised that the HCCC and the CRIB Audit Team have initiated the Environmental Health and Safety Program audit for the period January 31, 2010. This Audit will be command specific and should result in a more focused identification of deficiencies, required corrective action and accountability at the command level. We will report on our review of that audit in our next report.

We also independently examined the policies and practices related to the Environmental Health and Safety Program during our visits to the various precincts/district with holding cells. (See C39-46)

The DPD is now in Pending Phase 2 compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: Pending Compliance

CJ Requirement C71

The Holding cell Compliance Committee shall conduct regularly scheduled quarterly audits of all building containing holding cells to evaluate the food service program, including:

- a. reviewing a sample of food service documentation to evaluate whether prisoners who are held over six hours receive regular and adequate meals;*
- b. assuring that food is handled in a sanitary manner; and*
- c. issuing a written report regarding the findings of the audit.*

Comments: The DPD has established an active Holding Cell Compliance Committee that collaborates with the OCR Audit Team for the purpose of conducting the audits required by this paragraph. The Audit Protocol, effective August 31, 2008, establishes the procedures governing the conduct of these audits.⁴²

We continue to recognize the significant and good work of DPD Audit Team and the HCCC during the course of the consent judgments. We have reviewed the various audits and described them in our previous report as “comprehensive, robust documents that address the requirements articulated in the judgment(s).” The Audit Team conducted the required audit in January 2009, which was found compliant with this paragraph.

⁴² The Audit Protocol, effective August 31, 2008 governs the audits discussed in this report; however a revised Audit Protocol, effective February 5, 2010 will govern the conduct of future audits.

Second Quarterly Report of the Independent Monitor for the Detroit Police Department

04/15/2010

We are now advised that the HCCC and the CRIB Audit Team have initiated the Food Service Program audit for the period January 31, 2010. This Audit will be command specific and should result in a more focused identification of deficiencies, required corrective action and accountability at the command level. We will report on our review of that audit in our next report.

We also independently examined the policies and practices related to the Food Service Program during our visits to the various precincts/district with holding cells. (See C49-50)

The DPD is now in Pending Phase 2 compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C72

*The DPD shall issue all audit reports to the Chief of Police and also provide copies to each precinct or specialized unit commander. The commander of each precinct and specialized unit shall review all audit reports regarding employees under their command and, if appropriate, shall take non-disciplinary corrective action or disciplinary action.*⁴³

Comments: The DPD developed an Audit Protocol in accordance with the requirements of U92. The Protocol, effective August 31, 2008, establishes an audit schedule; describes the audit terms; specifies the roles and responsibilities of audit team members; describes the various audits, including the one required by this paragraph; and describes the reports that are to be conducted and produced.⁴⁴ Audits are conducted consistent with Generally Accepted Government Auditing Standards (GAGAS).

The Audit Protocol requires the reporting of the various audit results to the Chief of Police and the various specified commanders. It also requires that commanders take appropriate disciplinary or non-disciplinary action.

The CRIB prepares written reports for the Chief and specified commanders; however based on our review of various reports and field observations, we were not satisfied that these reports were

⁴³ Amended to reflect the below stipulated language contained in the Court Order of April 15, 2009:

The audits required by paragraphs 65 to 71 in this Agreement shall be submitted on a semiannual basis with the first and second semiannual periods ending on January 31 and August 31, 2004. Subsequent semiannual periods shall end on January 31, 2005, and every six months thereafter. Each of these audits may be conducted on an annual rather than a semiannual basis when the Monitor concludes that the most recently submitted audit for the same topic is compliant, and the remaining requirements of this paragraph have been met for the prior audit of that topic. The DPD shall issue all audit reports to the Chief of Police and also provide copies to each precinct or specialized unit commander. The commander of each precinct and specialized unit shall review all audit reports regarding employees under their command and, if appropriate, shall take nondisciplinary corrective action or disciplinary action.

⁴⁴ The Audit Protocol, effective August 31, 2008 governs the audits discussed in this report; however a revised Audit Protocol, effective February 5, 2010 will govern the conduct of future audits.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

receiving sufficient attention. Our interviews with CRIB staff revealed this to be an ongoing issue. After conducting a review of the audit process, CRIB concluded the problem may have been that the audits were targeted at the department as a whole, rather than a particular command. The process has been changed to focus on single commands. These command specific audits are expected to result in clearer command accountability and increased responsiveness to issues identified through the audit process.

The CRIB has initiated several of the required audits for the period ending January 31, 2010. We will be receiving and reviewing those audits in our next report. Our review will focus on the effectiveness of the process of implementing and assuring appropriate corrective action is taken in response to deficiencies identified during the audit process.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
62	Evaluation of holding cell operation required	In Compliance	In Compliance
63	Operate cells in compliance with risk plan	In Compliance	Not in Compliance
64	Augment policy re video cameras	In Compliance	Not in Compliance
65	Quarterly audits required	In Compliance	In Compliance
66	Fire safety audits required	In Compliance	In Compliance
67	Emergency preparedness audits required	In Compliance	In Compliance
68	Medical/mental health program audit required	In Compliance	In Compliance
69	Detainee safety audits required	In Compliance	In Compliance
70	Environmental health/safety audits required	In Compliance	Pending Compliance
71	Food service program audits required	In Compliance	In Compliance
72	Audit results to Chief and commanders	In Compliance	Not in Compliance

XVI. TRAINING

CJ Requirement C73

The DPD shall provide comprehensive pre-service and in-service training to all detention officers.

Comments: Our previous review found that while appropriate directives and lesson plans existed; the DPD had no policy requiring the training of detention officers. The DPD developed Special Order No. 10-02, approved December 30, 2009 in compliance with this paragraph. This Special Order specifically provides that before “performing duties relative to detainees in DPD holding cells, a DPD member must have attended and successfully completed the Detention

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

Officer Course.” The Order also requires that “Sworn members of the DPD assigned to perform detention duties, Senior Detention Facility Officers (SDFO), Detention Facility Officers (DFO) and Holding Cell Compliance Committee members must attend the annual Detention Officer training course.” Additionally, on September 24, 2009, Teletype #09-3481 was issued, which declared that “(E)ffective immediately, only those members that have attended and completed the annual Prisoner Detention Officer training shall be assigned to perform prisoner detention duties.” We also learned that during the past year, the DPD trained 262 officers in the Detention Course; however the DPD could not advise how many officers actually served in detention duties during this time. We therefore, are unable to verify that all (or >94%) of DPD detention personnel received the required training.

Compliance status:

Phase 1: In Compliance

Phase 2: Not in compliance

CJ Requirement C74

The DPD shall create and maintain individual training records for all detention officers, documenting the date and topic of all pre-service and in-service training, completed for all training completed on or after the effective date of this agreement.

Comments: DPD Special Order No 10-02, Training, effective December 30, 2009, requires that the Training Section “maintain a record of all training participated in by each individual DPD officer, Senior Detention Facility Officer, and Detention Facility Officer.” The DPD is in Phase 1 Compliance with the requirements of this paragraph.

During the previous review we met with the Department’s training director who acknowledged that the process to develop an individual training records system has been difficult for the DPD. We found that slow progress had been made entering individual detention officer training records into the MITN system, and while other automated data files are being created, the DPD has not yet complied with this provision. During this visit we found that since December 1, 2009 all training records for DPD members have been entered into the MITN System.

Compliance status:

Phase 1: In Compliance

Phase 2: Not in compliance

CJ Requirement C75

The DPD shall provide all detention officers, supervisors of detention officer and members of the Holding Cell Compliance Committee with annual training in emergency preparedness. Such training shall include drills and substantive training in the following topics:

- a. Emergency response plans and notification responsibilities;*

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

- b. Fire drills and use of fire extinguishers and other fire suppression equipment;*
- c. Key control drills and key control policies and procedures; and*
- d. Responding to emergency situations, including scenarios detention officers likely will experience.*

Comments: DPD Special Order No. 10-02, Training, effective December 30, 2009 addresses the requirements of this CJ paragraph. Among other topics it directs that detention officer training include:

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

The DPD is in Phase 1 compliance.

As noted in C73 above we learned that during the past year the DPD trained 262 officers in the Detention Course but the Department could not advise how many officers actually served in detention duties during this time. We could not, therefore, verify that all, or >94%, of DPD detention personnel had received training.

Compliance status:

Phase 1: In Compliance

Phase 2: Not in compliance

CJ Requirement C76

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

- a. prisoner intake procedures and medical and mental health protocols, including protocols for transferring or housing prisoners with infectious diseases, disabilities and/or requiring increased monitoring;*
- b. recording, updating and transferring prisoner health information and medications*
- c. the prescription medication policy, including instructions on the storage, recording and administration of medications; and*
- d. examples of scenarios faced by detention officers illustrating proper intake screening and action in response to information regarding medical and mental health conditions.*

Comments: DPD Special Order No. 10-02, Training, effective December 30, 2009, fully addresses the requirements of this CJ paragraph. The DPD is in Phase 1 compliance.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

The DPD cannot be found in compliance with this requirement until the DPD can identify its personnel who have served in detention duties. Until then, we will be unable to determine if it has afforded the training required to >94% of its detention personnel.

Compliance status:

Phase 1: In Compliance

Phase 2: Not in compliance

CJ Requirement C77

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

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

Comments: Newly issued DPD Special Order No. 10-02, Training, effective December 30, 2009, fully addresses the requirements of this CJ paragraph. The DPD is in Phase 1 compliance.

The DPD cannot be found in compliance with this requirement until the DPD can identify its personnel who have served in detention duties. Until then, we will be unable to determine if it has afforded the training required to >94% of its detention personnel.

Compliance status:

Phase 1: In compliance

Phase 2: Not in compliance

CJ Requirement C78

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

- a. cell block cleaning and maintenance protocols; and*
- b. sanitary food preparation and delivery protocols.*

Second Quarterly Report of the Independent Monitor for the Detroit Police Department

04/15/2010

Comments: Newly issued DPD Special Order No. 10-02, Training, effective December 30, 2009 fully addresses the requirements of this CJ paragraph.

The DPD cannot be found in compliance with this requirement until it can identify its personnel who have served in detention duties. Until then, we are unable to determine if the DPD has afforded the training required to >94% of its detention personnel.

Compliance status:

Phase 1: In Compliance

Phase 2: Not in compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
73	Pre-service/in-service training required	In Compliance	Not in Compliance
74	Maintenance of individual training records	In Compliance	Not in Compliance
75	Emergency preparedness training required	In Compliance	Not in Compliance
76	Medical/mental health training required	In Compliance	Not in Compliance
77	Detainee safety screening training required	In Compliance	Not in Compliance
78	Environmental health/safety training required	In Compliance	Not in Compliance

Critical Issues

Our Phase 1 compliance assessment has found that the DPD is making excellent progress in updating many of the policies on the safety and health of detainees. During our January 2010 site visit, we had the opportunity to review each COC paragraph with the CRIB Command staff, Audit Team personnel, and the Medical and Mental Health Authority, who are responsible for ensuring compliance with the terms of the Consent Judgment. The OCR for the most part has provided us with all of the policies and documents that we have requested during our meetings.

With regard to OCR completeness, they acted in an expeditious manner for most of the documentation that was needed to be updated and approved by the correct authority. For example, following our meetings to discuss noted concerns with the Infectious Disease Control (IDC) Plan, the health authority initiated revisions to the IDC policy. In addition, CRIB initiated revisions to the Detainee Intake/Assessment, Detainee Health Care, and Infectious Disease Control Plan Directives. The health authority will review and approve the revisions as required. We will review and provide a substantial report on these activities in our next report covering the period January-March 2010.

Documentation regarding fire safety has improved significantly. In an effort to ensure that required fire drills are accomplished, the districts/precincts have begun to conduct monthly drills, even though the standard is two per year. This has resulted in a 100% compliance rate.

During our review of detainee folders and onsite inspections we still find major issues in regard to implementation. The deficiencies include clerical mistakes; documentation for medical

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

referrals; medication logs not filled out correctly or missing; appropriate staff signatures missing; supervisory reviews that did not take place, as well as the lack of health information being exchanged between consecutive shifts. This is particularly problematic with regard to the Platoon Daily Detainee Summary. Its primary purpose is to facilitate the transfer of critical detainee information from shift to shift, yet the primary reason that the DPD continues to be in non-compliance with regard to this form is the fact that supervisors neglect to sign for receipt of the document that was completed by the preceding shift.

Our site visit also raised concerns over PDO observation checks and documentation in several areas including well-being documentation for detainees held in close observation.

Though there has been improvement on key control, we still find that policy 305.4 on key control does not reflect what is happening in the field. For example the policy states there should be three sets of keys at each district/precinct; in fact we now find five sets of keys at each district/precinct. It should be noted that both the Directive and form need to be updated to show the assignment of five sets of keys (no longer three) to each district/precinct.

With regard to the cleaning and supervisory inspection of the holding cells and nearby areas, Policy 305.4 requires those spaces to be maintained in a clean and sanitary condition at all times. A review of the Holding Cell Cleaning Log, DPD # 701 for October-December, 2009, revealed a compliance rate of 98.0%, which represents a significant improvement over the previous reporting period. However, the condition of three of the districts/precincts remains unsatisfactory and one was marginal. Only the Twelfth Precinct was satisfactory. Representative discrepancies included the following; every cell vent in one district/precinct was blocked with toilet paper, peanut butter was smeared on the corridor wall; graffiti was found in every cell in two districts/precincts and sporadically throughout in the others (with the exception of the Twelfth Precinct).

These problems aforementioned in this report may be associated with the ongoing need for policy revisions and training of holding cell staff both onsite as well as in the classroom. It appears that the majority of the DPD COC policies have not annually been reviewed and updated for several years. As a result, any actual changes to policy or practice may not have been appropriately memorialized. The monitoring team will continue to examine existing policies and procedures for consistency with the requirements of the COC Consent Judgments.

Next Steps

For the next visit we will continue to assess compliance with all requirements of the Conditions of Confinement Consent Judgment as they relate to policy and practice. We will focus our attention on implementation of the policies that affect the health and safety of detainees.

During our next visit our assessment will include a review of material pertinent to the issues noted above. This will include an ongoing thorough review of all policies, ensuring that annual reviews of policies are completed per the requirements of the Consent Judgments. In addition we will continue to include discussions on implementing a comprehensive risk management plan for

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

holding cell compliance. The Management Awareness System is not efficient in execution of this requirement of the Consent Judgment.

We will examine ways that DPD can resolve the issues surrounding unsanitary conditions in the holding cell areas that can place staff and detainees at risk for exposure to infectious diseases.

This work began with the compilation of a list of satisfactory sanitation standards that were noted in the Twelfth Precinct during our last inspection. This list can be used by the other districts as a benchmark for their improvement efforts.

We will continue to examine issues involving HIPPA regulations as they apply to DPD and the Livescan System for its adherence to the Consent Judgment as a means to collect and store detainee health information.

We will work with DPD staff to help address the issue of documentation as it relates to verification of what should have been and should be documented. While records may be in place for a particular incident, there needs to be a method or means of validating that the required incidents were identified and reported.

We will continue to advise the DPD regarding the necessity to organize, update, and consolidate policies where needed. Furthermore, if the DPD feels they need technical assistance on policy updates, planning, and training, we will assist the DPD in their request.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Appendix: History and Methods

An historical overview and methodological review will be repeated as an appendix in all of our reports.

On October 5, 2009 the Honorable Julian Abele Cook, Jr., United States District Court Judge for the Eastern District of Michigan, Southern Division, issued an order appointing me to serve as the Independent Monitor of the Use of Force and Conditions of Confinement Consent Judgments resulting from the case of United States of America v. City of Detroit (Case no. 03-77758). I, along with my distinguished colleagues, am honored by the trust and confidence that the Court has vested in us.

Our assembled team consists of exceptional law enforcement, corrections, consulting, and research expertise. The full team conducted its first quarterly site visit from November 16th through November 20th, 2009 and our second visit from January 25th through January 29th 2010.

In preparation of our reports, the Monitoring team undertook its task with an appreciation for the efforts made by the Detroit Police Department under the past monitor. Our efforts benefit from the experience of the department and the many people who have worked diligently to bring the department into compliance with the consent judgments. We also recognize the Department's recommitment to this undertaking evidenced by some significant developments that have taken place since our engagement in this process. . The Detroit Police Department's staff, especially the men and women of the Civil Rights Integrity Bureau have contributed greatly to our understanding of the department as we completed the tasks associated with our first two reports. With regard to the requirements of the Consent Judgments, our plan for the quarterly reports is to consider, to the extent possible, the compliance status of the entire collection of requirements. This includes a total of 111 requirements in the Use of Force Judgment and an additional 65 requirements in the Conditions of Confinement Judgment. These numbers do not include subsections. In later reports we may append our normal protocols and focus special attention on particular areas of the Judgments.

Our work has benefitted from the existing documentation of the progress that the Department has made to date. The accumulated records of the prior monitoring team as well as the Department have been valuable. For this report we have essentially departed from the findings of the previous monitor as we made our own assessments based on two site visits. Our goal was to reach our own conclusions with regard to compliance with the Consent Judgments' requirements. In subsequent reports we will continue to assess compliance as it exists at the time of our visits and therefore build on the record of our own earlier analyses.

The body of our report is comprised of our assessments of compliance with the individual requirements of the Consent Judgments. We begin the report of our analyses with a narrative statement for each of the major areas of the Use of Force Judgment. In the Conditions of Confinement Judgment, there shall be only one introductory narrative statement at the beginning of that portion of our report.

The introductory narratives are followed by each of the requirements in the section as specified in the Judgments. Each requirement is followed by comments regarding the current status of compliance and then by a summary notation of Phase 1 and Phase 2 compliance. As Phase 1 and

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

Phase 2 Compliance are achieved and maintained, a description of the requirement will be moved to the appendix of the Report.

A statement of “Critical Issues” follows the reviews of the requirements in each major section of the judgment. A brief statement of “Next Steps” follows in which we describe a plan of work for the next visit including a discussion of the data we plan to review. Finally a table summarizes the compliance finding for that particular section of the Judgment.

The major task of the Monitor is to regularly determine the status of the Detroit Police Department’s compliance with the requirements of the Use of Force and Conditions of Confinement Consent Judgments. Our experience in previous monitorships reflects our commitment to the collection and analyses of data and to the reasonable interpretation of the requirements specified in the Consent Judgments.

To accomplish this, the monitoring team makes quarterly visits to Detroit to work with the Department’s compliance team, known as the Civil Rights Integrity Bureau (CRIB) and other staff of the agency, in their field offices, the streets, or at the offices that the monitoring team occupies when on site in the City. These visits will be used by the team to collect and evaluate material, prepare for work to be done between visits, and to inform the parties and the Court with status information when meetings or hearings for that purpose are convened. Team members also interview key participants and observe departmental practices. Throughout the process we shall be reviewing agency policies and procedures and collect and analyze data using appropriate sampling and analytic procedures. The results of the compliance examination shall be reported quarterly to the Court and the parties.

Our team will determine compliance through an examination of policies and implementation of practices that support each requirement in the Consent Judgments. Compliance is measured by first determining if a policy or set of procedures has been established to support each Consent Judgment requirement. Having determined that an appropriate policy has been established, we then determine if that policy has been effectively implemented.

Based on this process, we report the degree of compliance with Consent Judgment requirements on two levels. We first report if policy compliance has been met. Compliance with policy requirements is known as **Phase 1 Compliance**. We also report the extent to which required policies have been implemented. Implementation level compliance is reported as **Phase 2 Compliance**.

In general, to achieve full compliance requires that both Phase 1 and Phase 2 compliance are achieved; that is, an appropriate policy must be both adopted and effectively implemented. We recognize, however, that some areas of the Consent Judgments require substantial work and time to achieve implementation and we, therefore, believe that it is appropriate to recognize when substantial progress towards implementation has occurred. Accordingly, under some limited circumstances, a third level of compliance, “Pending Compliance” may be appropriate.

In Compliance –This is reported when policy requirements are met (Phase 1) or effective implementation of a requirement has been achieved (Phase 2).

Pending Compliance – This is reported when it cannot be said that compliance has been achieved, but substantial progress toward compliance has been made. A requirement will be

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

given this status for only two successive quarters at which time the status shall be changed to “Not in Compliance,” unless, compliance has been achieved.

Not in Compliance – This finding is reserved for circumstances where compliance has not been achieved and substantial progress has not been made.

Many parts of the Consent Judgments require the analysis of multiple instances of activity, cases or observations. In those circumstances analysis is based on a review of all cases or data, or, when appropriate, on statistically valid samples of the population. To reach conclusions based on analyses of cases, a minimal standard must be met. To achieve compliance based on these analyses we have determined that more than 94% of relevant indicators must conform to the provisions articulated in the agreement.

While the >94% standard is reasonable under almost all circumstances, we recognize that there are conditions under which it may not accurately demonstrate the Department’s compliance-related work. We appreciate the value of circumstances where corrective measures have been initiated through the command and supervisory structure but may not yet be fully reflected in the data being analyzed. There are also circumstances where the number of events to be analyzed is limited and a 6% error rate may overly influence the statistical result. Under these and similar instances a finding of “Pending Compliance” may be reported with the expectation that the limiting conditions will be rectified for future reviews.

This methodology supports a sound and rigorous review of the department’s compliance with the requirements of the Consent Judgments. We recognize, however, that the high demands of this methodology may not be fully realized in all elements of all reviews. There will be circumstances in which we will be unable to fully determine the compliance status of some requirement due to a lack of data, incomplete data, or other reasons which do not support completion of our work in a manner consistent with timely reporting. Under such circumstances we will opt not to compromise our methodology by forcing a conclusion regarding compliance levels. Instead we will report a finding as “**deferred.**” This finding is not intended to reflect negatively on the agency or to otherwise imply insufficient progress. It is intended to assure that the process is data-driven, but at all times, is conducted fairly. It is also expected that a more complete assessment of compliance in the area in question will be determined in the next report.

Our compliance assessment methodology directs the monitoring team in its work and underlies the findings presented in this report. We fully expect that this methodology will govern our work throughout our tenure in this project. Any consideration of revision or change of this methodology will, of course, be presented to the parties and the Court.

An additional point is critical. We shall point out again that our methodology for determining compliance differs significantly from that of the previous monitor. Accordingly no particular inferences should be drawn from narratives from the previous monitor when compared to our own work.

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

APPENDIX A: Acronyms

The following is a listing of acronyms frequently used in the Quarterly Reports.

ACRONYM	DEFINITION
AT	Audit Team
BOPC	Board of Police Commissioners
CBS	Cell Block Supervisor
CCR	Citizen Complaint Report
CDDT	Curriculum Design and Development Team
CEPP	Comprehensive Emergency Preparedness Program
CFD	Critical Firearm Discharge
CI	Chief Investigator
City	City of Detroit
CJ	Consent Judgment
CLBR	Command Level Board of Review
CLFRT	Command Level Force Review Team
CLO	Compliance Liaison Officer
CLI	Command Level Investigation
CME	Confidential Medical Envelope
CMMHSP	Comprehensive Medical and Mental Health Screening Program
CO	Commanding Officer
COC CJ	Conditions of Confinement Consent Judgment
CRIB	Civil Rights Integrity Bureau
DCCL	Detention Cell Check Log
DDHWP	Detroit Department of Health and Wellness Program
DDMHIL	Daily Detainee Meal and Hygiene Items Log
DFD	Detroit Fire Department
DFF	Detainee File Folders

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**

04/15/2010

DFO/PDO	Detention Facility Officer
DIF	Detainee Intake Form
DOJ	Department of Justice
DPD	Detroit Police Department
DRH	Detroit Receiving Hospital
EPP	Emergency Preparedness Program
ERP	Emergency Response Plan
FI	Force Investigation (interchangeable with FIS)
FIS	Force Investigation Selection
FSP	Fire Safety Program
FSPP	Fire Safety Practices and Policies
GAS	Government Auditing Standards
HCCC	Holding Cell Compliance Committee
IA	Internal Affairs
IAD	Internal Affairs Division
IMAS	Interim Management Awareness System
ITS	Information Technology Services
JIST	Joint Incident Shooting Team
MAS	Management Awareness System
MCOLES	Michigan Commission on Law Enforcement Standards
MITN	MCCOLES Information and Tracking System
OCI	Office of the Chief Investigator
OCR	Office of Civil Rights
OIC	Officer in Charge
PDDSL	Platoon Daily Detainee Summary Log
PDO	Police Detention Officer
PEERS	Performance Evaluation and Enhancement Review Session
PFC	Policy Focus Committee
PI	Performance Indicator
PSA	Public Service Announcement

**Second Quarterly Report of the Independent Monitor for the
Detroit Police Department**04/15/2010

RFP	Request for Proposals
RMB	Risk Management Bureau
SIR	Supervisor's Investigation Report
SME	Subject Matter Expert
SMT	Senior Management Team
SOP	Standard Operating Procedure(s)
TA	Technical Assistance
UOF CJ	Use of Force and Arrest and Witness Detention Consent Judgment
UOF	Use(s) of Force
USAO	United States Attorney's Office
WCPO	Wayne County Prosecutor's Office
WCJ	Wayne County Jail