

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.

_____ /

FIFTH QUARTERLY REPORT OF THE NEW INDEPENDENT MONITOR FOR THE
DETROIT POLICE DEPARTMENT ISSUED JANUARY 16, 2011

Fifth Quarterly Report

Independent Monitor

for the

Detroit Police Department



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January 16, 2011



Table of Contents

| | |
|---|----|
| SECTION ONE: INTRODUCTION | 9 |
| EXECUTIVE SUMMARY | 9 |
| SECTION TWO: COMPLIANCE ASSESSMENTS - THE USE OF FORCE AND ARREST AND WITNESS | |
| DETENTION CONSENT JUDGMENT | 15 |
| III. USE OF FORCE POLICY | 15 |
| A. General Use of Force Policy | 18 |
| CJ Requirement U14 | 18 |
| CJ Requirement U15: | 19 |
| CJ Requirement U16 | 20 |
| CJ Requirement U17 | 21 |
| CJ Requirement U18 | 22 |
| CJ Requirement U19 | 22 |
| B. Use of Firearms Policy | 23 |
| CJ Requirement U20 | 23 |
| CJ Requirement U21 | 24 |
| CJ Requirement U22 | 25 |
| CJ Requirement U23: | 26 |
| C. Intermediate Force Device Policy | 26 |
| CJ Requirement U24 | 26 |
| D. Chemical Spray Policy | 27 |
| CJ Requirement U25 | 27 |
| CJ Requirement U26 | 29 |
| IV. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW | 31 |
| A. General Investigations of Police Action | 31 |
| CJ Requirement U27 | 31 |
| CJ Requirement U28 | 34 |
| CJ Requirement U29 | 37 |
| CJ Requirement U30 | 41 |
| CJ Requirement U31 | 43 |
| CJ Requirement U32 | 43 |
| CJ Requirement U33 | 49 |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| | |
|---|----|
| B. Use of Force and Prisoner Injury Investigations..... | 52 |
| CJ Requirement U34..... | 52 |
| CJ Requirement U35..... | 53 |
| CJ Requirement U36..... | 55 |
| C. Review of Critical Firearm Discharges and In-Custody Deaths..... | 57 |
| CJ Requirement U37..... | 57 |
| CJ Requirement U38..... | 58 |
| CJ Requirement U39..... | 59 |
| CJ Requirement U40..... | 60 |
| CJ Requirement U41..... | 61 |
| V. ARREST AND DETENTION POLICIES AND PRACTICES | 63 |
| A. Arrest Policies..... | 64 |
| CJ Requirement U42..... | 64 |
| CJ Requirement U43..... | 64 |
| B. Investigatory Stop Policies..... | 65 |
| CJ Requirement U44..... | 65 |
| CJ Requirement U45..... | 66 |
| C. Witness Identification and Questioning Policies | 68 |
| CJ Requirement U46..... | 68 |
| CJ Requirement U47..... | 69 |
| CJ Requirement U48..... | 69 |
| D. Prompt Judicial Review Policies | 71 |
| CJ Requirement U49..... | 71 |
| CJ Requirement U50..... | 71 |
| CJ Requirement U51..... | 72 |
| E. Hold Policies..... | 73 |
| CJ Requirement U52..... | 73 |
| CJ Requirement U53..... | 74 |
| F. RESTRICTION POLICIES..... | 75 |
| CJ Requirement U54..... | 75 |
| CJ Requirement U55..... | 75 |
| G. Material Witness Policies | 76 |
| CJ Requirement U56..... | 76 |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| | |
|---|-----|
| CJ Requirement U57 | 76 |
| H. Documentation of Custodial Detention | 77 |
| CJ Requirement U58 | 77 |
| I. Command Notification | 78 |
| CJ Requirement U59 | 78 |
| CJ Requirement U60 | 79 |
| VI. EXTERNAL COMPLAINTS | 82 |
| CJ Requirement U61 | 83 |
| CJ Requirement U62 | 84 |
| CJ Requirement U63 | 85 |
| A. Intake and Tracking | 86 |
| CJ Requirement U64 | 86 |
| CJ Requirement U65 | 87 |
| CJ Requirement U66 | 87 |
| B. External Complaint Investigations | 88 |
| CJ Requirement U67 | 88 |
| CJ Requirement U68 | 90 |
| CJ Requirement U69 | 91 |
| VII. GENERAL POLICIES | 93 |
| CJ Requirement U70 | 93 |
| CJ Requirement U71 | 94 |
| CJ Requirement U72 | 95 |
| CJ Requirement U73 | 96 |
| CJ Requirement U74 | 97 |
| CJ Requirement U75 | 98 |
| CJ Requirement U76 | 99 |
| CJ Requirement U77 | 100 |
| VIII. MANAGEMENT AND SUPERVISION | 103 |
| A. Risk Management Database | 103 |
| CJ Requirement U78 | 103 |
| CJ Requirement U79 | 104 |
| CJ Requirement U80 | 105 |
| CJ Requirement U81 | 107 |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| | |
|---------------------------------------|-----|
| CJ Requirement U82..... | 108 |
| CJ Requirement U83..... | 109 |
| CJ Requirement U84..... | 110 |
| CJ Requirement U86..... | 112 |
| CJ Requirement U87..... | 112 |
| CJ Requirement U88..... | 113 |
| CJ Requirement U89..... | 115 |
| CJ Requirement U90..... | 115 |
| B. Performance Evaluation System..... | 116 |
| CJ Requirement U91..... | 116 |
| C. Oversight..... | 117 |
| CJ Requirement U92..... | 117 |
| CJ Requirement U93..... | 119 |
| CJ Requirement U94..... | 120 |
| CJ Requirement U95..... | 121 |
| CJ Requirement U96..... | 121 |
| CJ Requirement U97..... | 122 |
| CJ Requirement U98..... | 123 |
| CJ Requirement U99..... | 124 |
| D. Use of Video Cameras | 124 |
| CJ Requirement U100..... | 124 |
| CJ Requirement U101..... | 125 |
| CJ Requirement U102..... | 126 |
| E. Discipline..... | 127 |
| CJ Requirement U103..... | 127 |
| CJ Requirement U104..... | 128 |
| CJ Requirement U105..... | 129 |
| IX. TRAINING..... | 132 |
| A. Oversight and Development..... | 132 |
| CJ Requirement U106 | 132 |
| CJ Requirement U107..... | 133 |
| CJ Requirement U108..... | 135 |
| CJ Requirement U109..... | 136 |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| | |
|--|-----|
| CJ Requirement U110..... | 137 |
| CJ Requirement U111..... | 138 |
| B. Use of Force Training..... | 138 |
| CJ Requirement U112..... | 138 |
| C. Firearms Training..... | 140 |
| CJ Requirement U113..... | 140 |
| D. Arrest and Police-Citizen Interaction Training | 142 |
| CJ Requirement U114..... | 142 |
| E. Custodial Detention Training | 143 |
| CJ Requirement U115..... | 143 |
| CJ Requirement U116..... | 144 |
| CJ Requirement U117..... | 144 |
| F. Supervisory Training..... | 145 |
| CJ Requirement U118..... | 145 |
| CJ Requirement U119..... | 146 |
| CJ Requirement U120..... | 146 |
| G. Investigator Training..... | 147 |
| CJ Requirement U121..... | 147 |
| CJ Requirement U122..... | 148 |
| H. Field Training | 148 |
| CJ Requirement U123..... | 148 |
| SECTION THREE: COMPLIANCE ASSESSMENTS - THE CONDITIONS OF CONFINEMENT CONSENT JUDGMENT..... | 152 |
| III. FIRE SAFETY POLICIES..... | 154 |
| CJ Requirement C14 | 154 |
| CJ Requirement C15 | 155 |
| CJ Requirement C16 | 156 |
| CJ Requirement C17 | 157 |
| CJ Requirement C18 | 157 |
| CJ Requirement C19 | 158 |
| CJ Requirement C20 | 159 |
| CJ Requirement C21 | 160 |
| CJ Requirement C22 | 160 |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| | |
|---|-----|
| IV. EMERGENCY PREPAREDNESS POLICIES | 161 |
| CJ Requirement C23 | 161 |
| CJ Requirement C24 | 162 |
| CJ Requirement C25 | 163 |
| V. MEDICAL AND MENTAL HEALTH CARE POLICIES | 165 |
| CJ Requirement C26 | 165 |
| CJ Requirement C27 | 166 |
| CJ Requirement C28 | 167 |
| CJ Requirement C29 | 168 |
| CJ Requirement C30 | 170 |
| CJ Requirement C31 | 171 |
| CJ Requirement C32 | 173 |
| CJ Requirement C33 | 175 |
| CJ Requirement C34 | 176 |
| CJ Requirement C36 | 177 |
| CJ Requirement C37 | 178 |
| CJ Requirement C38 | 180 |
| VII. ENVIRONMENTAL HEALTH AND SAFETY POLICIES | 181 |
| CJ Requirement C39 | 181 |
| CJ Requirement C40 | 182 |
| CJ Requirement C41 | 183 |
| CJ Requirement C42 | 184 |
| CJ Requirement C43 | 184 |
| CJ Requirement C44 | 185 |
| CJ Requirement C45 | 185 |
| CJ Requirement C46 | 186 |
| VIII. POLICIES CONCERNING PERSONS WITH DISABILITIES | 187 |
| CJ Requirement C47 | 187 |
| CJ Requirement C48 | 189 |
| IX. FOOD SERVICE POLICIES..... | 189 |
| CJ Requirement C49 | 189 |
| CJ Requirement C50 | 190 |
| X. PERSONAL HYGIENE POLICIES..... | 192 |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| | |
|---|-----|
| CJ Requirement C51 | 192 |
| XI. USE OF FORCE AND RESTRAINTS POLICIES | 193 |
| CJ Requirement C52 | 193 |
| CJ Requirement C53 | 194 |
| CJ Requirement C54 | 195 |
| XII. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW | 196 |
| CJ Requirement C55 | 196 |
| CJ Requirement C56 | 196 |
| CJ Requirement C57 | 197 |
| XIII. EXTERNAL COMPLAINTS | 198 |
| CJ Requirement C58 | 198 |
| CJ Requirement C59 | 198 |
| XIV. GENERAL POLICIES..... | 200 |
| CJ Requirement C60 | 200 |
| CJ Requirement C61 | 200 |
| XV. MANAGEMENT AND SUPERVISION | 201 |
| CJ Requirement C62 | 201 |
| CJ Requirement C63 | 202 |
| CJ Requirement C65 | 204 |
| CJ Requirement C66 | 206 |
| CJ Requirement C67 | 207 |
| CJ Requirement C68 | 208 |
| CJ Requirement C69 | 209 |
| CJ Requirement C70 | 210 |
| CJ Requirement C71 | 211 |
| CJ Requirement C72..... | 212 |
| XVI. TRAINING | 215 |
| CJ Requirement C73 | 215 |
| CJ Requirement C74 | 216 |
| CJ Requirement C75 | 216 |
| CJ Requirement C76 | 217 |
| CJ Requirement C77 | 218 |
| CJ Requirement C78 | 219 |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| | |
|-------------------------------------|-----|
| APPENDIX: HISTORY AND METHODS | 222 |
| APPENDIX A: ACRONYMS..... | 225 |
| APPENDIX B: MONITORING TEAM | 229 |

FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT

January 16, 2011

SECTION ONE: INTRODUCTION

This is the fifth quarterly report of the Monitoring Team in the case of United States of America v. City of Detroit (Case no. 03-72258). The report is based on our site visit of October 18, through October 22, 2010, and our subsequent analyses of relevant data. As with our previous reports, we assess compliance with all 175 of the requirements of the combined Use of Force (110 requirements) and Conditions of Confinement (65 requirements) Consent Judgments.

Based on our review of the Use of Force requirements, the Department is in Phase 1 (policy) compliance with 107 (97%) of the 110 requirements. This is a *decline* by one requirement from the last reporting period. We found the Department in Phase 1 and Phase 2 compliance (full compliance) with 67 (61%) of the 110 requirements, a *decline* of one requirement. The specific changes are presented in a chart below.

Based on our review of the Conditions of Confinement requirements, the Department is in Phase 1 compliance with all 65 (100%) of the requirements, as it was in the last reporting period. We found the Department in Phase 1 and Phase 2 compliance (full compliance) with 39 (60%) of the 65 requirements. This is an *improvement* by six requirements and reverses a downward finding from the previous report.

Overall, for this report, the Detroit Police Department is in Phase 1 compliance with 172 (98%) of the 175 monitored requirements; a *decline* of one from the last report. The Department is in full compliance (that is, both Phase 1 and Phase 2 compliance) with 106 (61%) of the 175 monitored requirements of the applicable paragraphs of both Consent Judgments, an increase of five requirements, and up from 58% during the fourth reporting period. We also found the Department to be in pending Phase 2 compliance with nine requirements. One finding is deferred for this reporting period.

Executive Summary

This is our fifth quarterly report in the case of United States of America v. City of Detroit (Case no. 03-72258). The report is based on our site visit, which took place from October 18, through October 22, 2010, and our subsequent analyses of relevant data. Consistent with the practice we established in our first review, we continue to consider the totality of the requirements of both active Consent Judgments. This includes 110 requirements in the Use of Force Judgment, and an additional 65 requirements in the Conditions of Confinement Judgment. In this executive summary, I will review the levels of compliance found for the reporting period, 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.

During our fifth quarterly site visit, we continued our processes of review, including data collection and analysis, and interviews with key members of the Detroit Police Department. We appreciate the assistance of personnel throughout the Department as we work to complete our mission. We are especially grateful to the DPD Civil Rights Integrity Bureau (CRIB) for its

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

diligence as our requests grow in volume and complexity, and as we spend increasing time conducting onsite observations and inspections in the field.

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 is in Phase 1 compliance with a total of 107 (97%) of the 110 requirements. This is a decline of one requirement found in compliance since the last reporting period. We found some shifts in compliance levels across requirements, and we will discuss them below. We found the Department in Phase 1 and Phase 2 compliance (full compliance) with 67 (61%) of the 110 Use of Force requirements, a decline of one requirement since the last reporting period. Six additional requirements, however, were advanced from not in compliance to pending compliance since the last report.

As noted above, the overall use of force compliance level has fallen by one requirement. It is noteworthy, however, that this was accomplished with the decline from compliance of a total of three requirements; it was partially offset by gains in two others. Not only is the overall decrease in Use of Force compliance an issue but, in the eighth year of the implementation of these Agreements, the failure to sustain compliance with three requirements is a very serious concern. It is only improvements in compliance with Conditions of Confinement requirements, as noted below, that put total compliance levels for this reporting period ahead of the last reporting period.

Based on our review of the Conditions of Confinement requirements, the Department is in Phase 1 compliance with all (100%) of the 65 requirements, as it was in the fourth reporting period. We found the Department in Phase 1 and Phase 2 compliance (full compliance) with 39 (60%) of the 65 requirements. This is six requirements higher than the last reporting period, when we found a decline by two requirements. The current figures are reported in the table below.

| | Fifth 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 Requirements | 110 | 110 | 65 | 65 | 175 | 175 |
| Pending Compliance | 1 | 8 | 0 | 1 | 1 | 9 |
| Not in Compliance | 2 | 35 | 0 | 24 | 2 | 59 |
| Deferred | 0 | 0 | 0 | 1 | 0 | 1 |
| In Compliance | 107 | 67 | 65 | 39 | 172 | 106 |
| | | | | | | |
| Percent in Compliance | 97% | 61% | 100% | 60% | 98% | 61% |

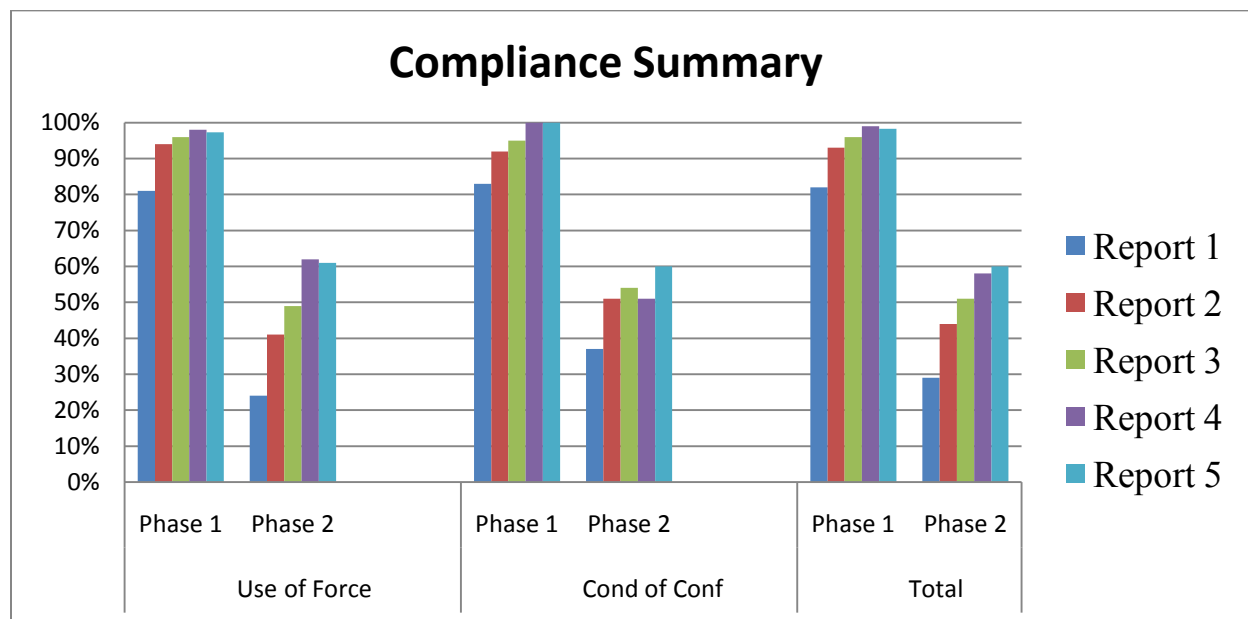
Overall, the DPD is in Phase 1 compliance with 172 (98%) of the 175 monitored requirements. This is a decline of by one requirement from the previous reporting period. We found the

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Department to be in full compliance (that is, both Phase 1 and Phase 2 compliance) with 106 (61%) of the 175 monitored requirements of the applicable paragraphs of both Consent Judgments, up from 58% during the fourth reporting period. We also found the Department to be in pending Phase 2 compliance with an additional nine requirements, or 9% of the total. One compliance assessment is deferred. These changes across specific requirements are presented in a table below.

The chart below illustrates the levels of compliance achieved on both Judgments and across all five reporting periods.



As the chart above shows, we continue to report increases in the total level of full compliance, as we have for each of the previous visits following our initial report. For this, our fifth report, we have a decline of one requirement in Phase 1 compliance for the Use of Force paragraphs and the previously noted decline at the Phase 2 level.

These overall charts may benefit from a more detailed discussion. As seen below, in all, 13 requirements advanced in the desirable direction to compliance. Three requirements showed movement away from compliance.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| | Change in Compliance Finding from Last Report | | | |
|-----|--|-------------------|---------------------|------------------|
| | | Report 4 | Report 5 | Direction |
| ¶ | Use of Force | Phase 1 | | |
| 77 | Develop foot pursuit policy | In Compliance | Pending Compliance | negative |
| | | | | |
| | Use of Force | Phase 2 | | |
| 51 | Document of late warrant requests | In Compliance | Not In Compliance | negative |
| 69 | Required finding categories specified | Not in Compliance | Pending Compliance | improved |
| 71 | Proposed policy changes open to comm. | In Compliance | Pending Compliance | negative |
| 77 | Develop foot pursuit policy | In Compliance | Pending Compliance | negative |
| 79 | Improve risk management system | Not in Compliance | Pending Compliance | improved |
| 81 | Database to include officer information | Not in Compliance | Pending Compliance | improved |
| 87 | Data retention | Not in Compliance | In Compliance | improved |
| 123 | Enhance the FTO program | Deferred | In Compliance | improved |
| | | | | |
| | Conditions of Confinement | Phase 2 | | |
| 33 | Clothing-suicide prevention | Not in Compliance | In Compliance | improved |
| 39 | Clean and maintain holding cells | Not in Compliance | Pending Compliance | improved |
| 64 | Augment policy regarding video cameras | Not in Compliance | Deferred | improved |
| 73 | Pre-service/in-service training required | Not in Compliance | In Compliance | improved |
| 75 | Emergency preparedness training required | Not in Compliance | In Compliance | improved |
| 76 | Medical/mental health training required | Not in Compliance | In Compliance | improved |
| 77 | Detainee safety screening training required | Not in Compliance | In Compliance | improved |
| 78 | Environmental health/safety training required | Not in Compliance | In Compliance | improved |
| | | | | |
| | | Total | negative (Phase 2) | 3 |
| | | | improved (Phase 2) | 13 |

The chart below provides the summary data illustrating the increases in compliance over the course of the five quarterly reporting periods.

| Quarterly Report | | | Percent in Compliance | | | |
|-------------------------|---------------------|----------------|------------------------------|----------------|----------------|----------------|
| | Use of Force | | Cond of Conf | | 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% |
| Report 3 | 96% | 49% | 95% | 54% | 96% | 51% |
| Report 4 | 98% | 62% | 100% | 51% | 99% | 58% |
| Report 5 | 97% | 61% | 100% | 60% | 98% | 61% |

The chart above summarizes improvement in compliance levels across our quarterly reports. Despite these improvements, we must note our continuing concerns. We recognize one particular theme that runs through many areas of this report, as it has in our past reports. That concern relates to the exercise of appropriate supervisory roles in some required reviews, as well

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

as in the exercise of general managerial oversight responsibilities. A lingering issue involves the need to strengthen command staff review of uses of force. Although training in supervisory roles in investigations and force review has occurred, the benefits were not observable during this review. We anticipate returning to this issue in the next reporting period.

Supervisory issues are also evident in the documentation of uses of chemical spray. Here reports show that officers are not consistently adhering to time and method requirements regarding decontamination. Likewise, we are concerned about supervisory monitoring of stop-and-frisks, and the time limits required in arrests and detentions. With regard to risk management, it is clear that DPD must now move beyond exclusive concern with technical issues, and also concentrate on the use of the system and particularly with the critical role of supervision in the system.

Finally, some Conditions of Confinement issues also reflect this concern. There remain problems with accuracy and timeliness of information in detainee folders. The maintenance of specialized records, such as the Mental Health High Risk Monitoring Log and the Medical High Risk Log, raises similar issues. In general, we are concerned that supervisors must increase their attention to the details of documentation by those they oversee, and that additional scrutiny must occur in the required reviews in areas such as investigations.

These issues underlie the movement of two of the three requirements whose compliance status has moved away from the direction of Phase 2 positive findings. The findings regarding requirements U51 and U69 both involve the Department's failure to properly report necessary information.

The other requirement whose movement away from compliance is reported in this document (U71) reflects policy-related failures. This represents a second category of concerns. In this case, both policy development and sharing proposed policies with the public are involved. In other areas, policy issues may yet arise. For example, changes in the risk management system have significantly outpaced related policy development.

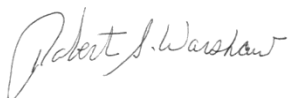
We recognize that DPD has continued to make progress when we consider the overall level of compliance that has been achieved. At the same time, we note that the advances reported in this report are the fewest in number since our monitorship began. While perhaps the most comprehensive changes will be the most difficult to accomplish and, therefore, it is reasonable to expect some slowing of the pace of improvement, we find such explanations offering little solace here. We are concerned with the pace of change. The DPD has achieved compliance with less than two thirds of the requirements. We are troubled by the reversals that are reported for the quarter considered in this report. We are ever mindful that this reform process now enters its eighth year.

The diligence and commitment of the Mayor, the Chief, and the command staff remain the key ingredients to continued success in this process. Their leadership is also reflected in the work of the Civil Rights Integrity Bureau (CRIB), which leads the Department's on-the-ground work to achieve compliance with the Consent Judgments. These efforts are critical to the accomplishments thus far and to continued improvement.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

For this report, as with our previous four reports, we consider the compliance status of each of the requirements laid out in the Consent Judgments. We provide our assessments of compliance levels and the justifications for our findings. We also highlight issues that we consider to be critical to the continued progress of the Department, especially in areas that we believe are of substantial seriousness and importance to the DPD's efforts to achieve compliance.



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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, containing paragraphs U14 through U26, requires that the DPD review and revise its general use of force, firearms, and chemical spray policies; select an intermediate impact device and develop guidelines on its use; and provide appropriate training relating to the use of force. To determine compliance with this section's various requirements, we verify that the DPD has both developed the required policy and effectively implemented the policy, including providing any necessary and appropriate training.

The DPD has conducted the requisite reviews and revisions of policies, which have been approved by the Department of Justice. The revised policies include a force continuum that identifies lethal and less lethal force options; relate the force options to the types of conduct by the individuals justifying the various force options; and describes de-escalation, disengagement, and other appropriate tactics and responses. The revised firearms policies address qualification requirements, approved firearms and ammunition, and a prohibition on the firing at or from moving vehicles. The DPD also selected an intermediate impact device, developed guidelines on its use, and provided the required training. The chemical spray policy requires, when appropriate, verbal warning prior to the deployment of chemical spray; sets forth requirements for decontamination, medical assistance, and supervisory approval if the chemical spray is to be used against a crowd; and prohibits officers from using chemical spray on a handcuffed individual in a police vehicle or keeping a sprayed individual face-down.

To assess implementation of these policies for this and the previous reporting periods, we visited police districts, precincts, and other commands; met and discussed operational activities with command, supervisory, and training staff; observed training classes; reviewed arrest, use of force, and related police reports; and reviewed investigations of force, detainee injuries, and allegations of force. We continue to find that the DPD needs to strengthen its command staff review and oversight of the uses of force. During our most recent site visit, we were informed that the Department's command staff had received training in the preparation and review of the use of force and Supervisory Investigation Reports (SIRs). While the benefits of this training will not be realized for this reporting period, we believe it will benefit future assessments.

During this reporting period, we only reviewed use of force reports and data for two months (July-August) rather than the full three months of the quarter under assessment. We will review reports and data from September, along with October and November in our next, or sixth, quarterly report. We made this adjustment to address time restrictions and to better facilitate the collection and analysis of the information; however, in the future, we will resume our review of

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

three months of reports and data for each quarterly report. We advised the DPD of this change, and the Department supports the modification.¹

In previous reports, we noted that our review of historical data indicated the probable underreporting of uses of force.² We also acknowledged the DPD initiatives to address this issue, including conducting stringent reviews of Crisnet arrest reports and requiring a declarative statement by officers regarding whether or not they used force. During our most recent site visit, we requested a listing of all use of force numbers issued this year to date, and were provided with a Management Awareness System (MAS) document listing 1,258 numbers issued as of October 28, 2010.³ We will continue to monitor these numbers.

Similar to our findings in previous reporting periods, our review of use of force reports and force investigations for this reporting period indicated that officers were making efforts to de-escalate encounters where force was considered or deemed necessary.⁴ Representatives of the Monitoring Team attended training sessions for supervisors assigned to several specialized units, and reported that the instructors also addressed the importance of documenting all disengagement efforts made by the officers above and beyond the issuance of verbal commands. The problem with trying to measuring de-escalation efforts is that, if successful, in most instances, there will be no use of force report prepared. We will continue to discuss de-escalation with DPD to establish a measuring mechanism that can satisfy the requirement.

We also noted previously that while a significant number of officers completed the required firearms training, many also failed to report for, or successfully complete, required firearms training. As a result of measures taken by the DPD, including enforcement of its policy to remove firearms and police authority from officers who fail to qualify, we have noted continual improvement in this area.

During a previous reporting period, we cited three instances where officers fired at moving vehicles contrary to stated policy; however, in one of the three, the DPD found the shooting appropriate due to the presence of exigent circumstances. Although we agreed with the presence of exigent circumstances in that case, we found neither this CJ paragraph nor the DPD directive provided for an exigent circumstance exception and suggested the DPD address this disparity.

¹ We advised the DPD of this change on October 21, 2010.

² DPD data indicates 1,200 uses of force, detainee injuries, and allegations of force in 2007. These records were manually maintained at that time. DPD reports that this recordkeeping became automated in August, 2008. A subsequent review of this same data for the period of November, 2008, through October, 2009 indicates a reduction to 568 for these same activities.

³ The data collected through October, 2010, exceeds the data collected manually for 2007; if a problem existed in data collection, the numbers suggest a correction to the problem.

⁴ For example, in one instance, a subject armed with a knife attacked several officers trying to subdue him; the officers withdrew to a safe distance and requested more assistance. When sufficient numbers were present, the officers were able to distract the subject and safely take him into custody.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Our review of use of force and Supervisory Investigation Reports (SIRs), and found no incidents involving officers firing at or from moving vehicles; however, our review of FI closed cases found two cases wherein officers fired at moving vehicles. In both instances, the investigations appropriately found the officers' actions in violation of policy; however, the Chief, consistent with his authority, imposed no discipline. While we agree with the Chief's action as an appropriate temporary solution, we continue to recommend a revision to the guiding DPD policy as the better permanent solution. We understand that the DPD is reviewing this recommendation.

To assess compliance with the requirements relating to the issuance and carrying of authorized weapons and ammunition, we examined the investigations of critical firearm discharges by FI during each reporting period.

We found that officers were carrying authorized weapons and ammunition in each case; however, the investigations disclosed that the number of rounds reportedly carried was inconsistent with policy requirements. Our inquiries disclosed an ongoing problem with the ammunition magazines that, in some cases, did not allow them to be fully loaded; however, the case reports contained no verification that such a problem was present in the specific cases that FI reviewed, and the number of rounds fired by officers during specific events was not always definitively determined. Although the DPD has issued new firearms to its members to address this and other concerns, we continue to note problems with the ammunition count in critical firearm discharge cases investigated by FI.

The DPD selected the PR-24 collapsible baton as its impact device and has provided training on its use to 893 (32%) of its personnel during the first quarter of this fiscal year. There were no strikes to the head noted during this quarter.

We also reviewed instances of chemical spray deployments during this and previous reporting periods. The Department's reports indicate that although officers are providing appropriate warnings prior to deployment, decontamination, and subsequent medical assistance, they are not consistently doing so. In addition, they are not consistently adhering to the time requirements on contamination or indicating how the decontamination was accomplished. During this reporting period, there were no reported instances of an officer spraying an unruly crowd, or instances or allegations where officers placed or kept subjects in a face-down position after being sprayed.

Our detailed compliance assessment for each of the requirements in this section follows.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

We previously reviewed DPD Directive 304.2, Use of Force, effective June 27, 2005, and found that it defined force consistent with the Phase 1 compliance requirements of this paragraph. The directive defines the following actions by an officer as force: “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 is used.”

To assess operational compliance with this requirement, we reviewed completed use of force investigations, met with DPD staff, and observed relevant operational activities. We were pleased to learn of the new practice of holding biweekly Commander Accountability Meetings (CAM) with all DPD executives. These meetings focus on the findings of the Inspection Section and the corrective actions taken in response to the findings. The commanders and inspectors report on whether each identified finding was due to an employee’s failure to comply with policy and, if so, what disciplinary action has been, or is being, taken against the member.

During our most recent site visit, we addressed the commanders at a CAM regarding the progress being made by DPD, and the steps that the Department must take to improve compliance and also embed the requirements in the culture of the organization.

As previously mentioned, we reviewed, via MAS, the current list of use of force numbers generated for 2010 and found that 1,258 numbers were issued from January 1, through October 28, 2010. We will continue to monitor the numbers of use of force reports.

DPD remains in Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

CJ Requirement U15:

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

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

Our previous review of DPD Directive 304.2 Use of Force, effective June 27, 2005, Section 5.2 and DPD Training Directive 04-3, Use of Force Continuum, effective May 5, 2005, found that force was defined consistent with Phase 1 compliance requirements of this paragraph. The DPD remains in Phase 1 compliance with this paragraph.

Our previous review of use of force reports found that they lacked sufficient documentation or specificity with regards to de-escalation and details of actual disengagement to make a definitive determination regarding Phase 2 compliance.⁵ To assess compliance during this reporting period, we verified the existence of applicable policy and again reviewed reports to determine the extent to which policy requirements noted here are reflected in practice. We also reviewed the DPD 28th Quarter Status Report, dated September 30, 2010, which did not articulate any changes in policy or training directives relative to this requirement.

We verified that the use of force reports justified the uses of force under the policy, described the conduct of individuals against whom force was used, and described the efforts at de-escalation that the officers employed. In 98% of the 123 use of force reports (UF002) we reviewed, officers attempted to de-escalate their encounters with verbal commands prior to resorting to force. However, with few exceptions, the reports lacked documentation beyond the use of verbal commands to establish the de-escalation and disengagement efforts required by subsection c. of this requirement.

In an effort to establish the level of disengagement required, and to audit the preparation of use of force reports, we also reviewed a stratified random sample of Crisnet reports involving the offenses of Disorderly Conduct, Resisting a Police Officer, Obstruction, and Assault on Police Officer. We paid particular attention to officers' efforts to de-escalate and disengage from potential use of force situations. We reviewed 203 of these cases⁶ and while we were, once again, encouraged to find officers making arrests in difficult situations without relying on force,

⁵ Report of the Independent Monitor, issued July 15, 2010.

⁶ This number includes 108 cases in July, and 95 cases in August, 2010.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

the reports do not yet meet the >94% standard required in the Judgment. DPD is making progress towards that end.⁷

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:

We previously found that 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 Consent Judgment paragraph. The DPD remains in Phase 1 compliance with this requirement. Our review of the DPD 28th Quarter Status Report, dated September 30, 2010, found that it articulated no changes in policy or training directives relative to this requirement.

Our previous reviews found DPD steadily improving in officers' use of verbal commands to encourage subjects to surrender prior to any force having to be used. In our last report, we noted their improvement to the 98% level.

To assess compliance for this reporting period, we reviewed 114 use of force reports. We found 112 or once again 98%, included verbal commands and an opportunity to submit to arrest prior to the use of force or a reason why the verbal command was not given.⁸ The DPD is in Phase 2 compliance with the requirements of this Consent Judgment paragraph.

⁷ We reviewed 203 Crisnet reports involving Disorderly Conduct, Resisting a Police Officer, Obstruction, and Assault on Police Officers. In 34 of these reports, the officers documented the use of force, and corresponding use of force reports were prepared. In three of the reports reviewed, force was used and corresponding use of force reports were not prepared. CRIB sent Corrective Action Notices (CANs) regarding these three reports to the respective commands for corrective action. In 166 (82%) of the cases, arrests of individuals were made in stressful situations with no force utilized.

⁸ We reviewed 123 cases in total; of these nine were K-9s with no contact or Detainee Injury Reports in which the injury was not the result of a police action. Of the remaining 114 cases, 112 had the verbal commands as required.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

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:

We previously found that the DPD implemented DPD Directive 304.2, Use of Force, effective June 27, 2005, Section 4.3, prohibiting the use of the described holds consistent with the Phase 1 compliance requirements of this paragraph. The DPD remains in Phase 1 compliance with this paragraph. Our review of the DPD 28th Quarter Status Report, dated September 30, 2010, found that it articulated no changes in policy or training directives relative to this requirement.

During the last reporting period, we reviewed use of force reports and investigations and found one case in which a choke hold may have been applied during a struggle in an effort to force a subject to release a choke hold he had on an officer. However, the remaining cases we reviewed were indicative of implementation compliance with this Consent Judgment paragraph.

To assess compliance for this reporting period, we reviewed 123 use of force reports, 57 completed Supervisory Investigation Reports (SIRs), and 10 completed FI investigations.⁹ There were no reported uses of a choke hold in any of the cases we reviewed.

The cases we reviewed, including one reviewed previously wherein a neck restraint was applied in violation of DPD directives but appropriately investigated, are indicative of implementation compliance with this paragraph. DPD is in Phase 2 compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

⁹ Many of the command-level investigations contained multiple uses of force forms, and three additional cases were subsequently assumed by Force Investigations.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

We previously found DPD Directive 304.2, Use of Force, effective June 27, 2005, and approved by DOJ, April 14, 2005 in compliance with Phase 1 requirements of this paragraph. Our review of the DPD 28th Quarter Status Report, dated September 30, 2010, found that it articulated no changes in policy or training directives relative to this requirement.

Phase 2 compliance with this paragraph is dependent upon the effective field implementation of the requirements contained in paragraphs U14-17 and U19. We found the DPD in Phase 2 compliance with U14, U16, U17, and U19, but not in compliance with U15. Accordingly, the DPD is not in Phase 2 compliance with the requirements of this paragraph.

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:

We previously found DPD Directive 304.2, Use of Force, effective June 27, 2005, Section 4.2.4, consistent with the Phase 1 compliance requirements of this paragraph. The directive provides that “a strike to the head of any person with an instrument constitutes a use of deadly force.” Our review of the DPD 28th Quarter Status Report, dated September 30, 2010, found that it articulated no changes in policy or training directives relative to this requirement.

Our review of use of force reports and FI-completed cases for the first four reporting periods noted one instance of an *accidental* strike to the face with a PR-24 collapsible baton. To assess compliance with these requirements for this reporting period, we reviewed 123 use of force reports, and noted no instances of a strike to the head documented in any of the reports. DPD is in compliance with the requirements of this paragraph.

Compliance Status:

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Phase 1: In Compliance

Phase 2: In Compliance

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:

Longstanding Departmental policy (see DPD Directive 304.1, Firearms, effective May 25, 2005, Section 8.1) has required that officers must successfully qualify biannually with their primary on-duty firearm and that members that fail to qualify shall relinquish their DPD issued firearms and be relieved of their police powers. DPD is in Phase 1 compliance with this paragraph.

During our initial site visit in November, 2009, we reviewed 2008 firearms training data, and found that the DPD qualified 2,535 and 2,282 members, respectively, during the first half and last half of 2008. During the same periods, 491 and 746 members, respectively, failed to report for required training. For years, the DPD had not obtained full attendance or qualification in its biannual firearms training program. In April, 2010, however, we found that DPD trained 2,755 (99%) of its 2,781 officers during the first half of Fiscal Year (FY) 2010 (July 1, 2009, through December 31, 2009) and that, for the first time, the Department was in full compliance with these requirements.

The DPD achieved compliance with its orders by placing the officers who did not qualify in “no gun” status until they reported to firearms and qualified. We found the Department in Phase 2 compliance with this paragraph. In July, 2010, we found that during the second six-month period in FY 2010, 2,713 (99%) of the 2,749 officers who were available to be trained also attended firearms training and qualified and the DPD was again found in compliance with U20.¹⁰

During the current reporting period, we interviewed the Deputy Chief, Commander, and a sergeant in DPD Training and reviewed documentation, including sign-in sheets and automated lists identifying officers who attended training during the quarter (July 1, through September 30, 2010). We found that 1,580 (57%) of 2,765 total DPD officers available to be trained during the first quarter of FY 2011 attended an in-service firearms training session during the first quarter of FY 2011 and qualified. This is comparable with the last year, when, at the same point in the year, the Department had trained 56% of its officers.

¹⁰ “Officers available to be trained” refers to the officers who are required to attend training. Officers on some form of limited duty or officers who are on extended leave, such as maternity leave, military leave, injured or sick leave, or who are in certain administrative status, are not counted.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

As noted in U20, longstanding DPD policy (304.1) calls for officers who fail to qualify at firearms biannually to be relieved of their Department-issued firearms and police powers.

For years, even though it was a policy directive of the DPD, the removal of firearms and police powers of officers who failed to qualify biannually was not acted upon, and many officers failed to qualify or even attend biannual firearms training. At the conclusion of the first six months of Fiscal Year (FY) 2010 (July 1, through December 31, 2009), the DPD removed firearms and police powers from the officers who failed to qualify. The Department found that, for the first time, it exceeded >94% attendance and qualification at firearms. During the second half of FY 2010 (January 1, through June 30, 2010), only 17 officers failed to attend and qualify. Five of these officers subsequently qualified; 12 did not and were placed in “no gun” status. The DPD gained 99% compliance with its firearms qualification policy during both the first six months of FY 2010 and during the second six months of the year. The removal of firearms and police powers was an essential step in obtaining compliance with U20.

During this current reporting period, we found that, as noted in U20, the DPD made progress towards continuing compliance with its firearms program. It is now at the halfway mark in the six-month period in which officers must qualify. At the end of December, 2010, the DPD will again determine which officers have failed to qualify. We will assess the Department’s compliance with this requirement during the next quarterly review.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

Our previous review of DPD Directive 304.1, Firearms, Section 5.3, effective May 2, 2005, found it consistent with the Phase 1 compliance requirements of this paragraph. This directive 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." Our review of the DPD 28th Quarter Status Report, dated September 30, 2010, found that it articulated no changes in policy or training directives relative to this requirement; however, the report notes that the DPD provided DOJ with a proposed revision authorizing an exception to the firing at a moving vehicle prohibition when exigent circumstances are present.

We previously cited an instance where an officer fired at a moving vehicle contrary to the prohibition in this CJ paragraph and the above-cited directive; however, the DPD found the shooting appropriate due to the presence of exigent circumstances. Although we agreed with the presence of exigent circumstances, we found neither this CJ paragraph nor the above-cited directive provided for an exigent circumstance exception. During the last reporting period, the DPD provided the DOJ with proposed revised language to resolve the issue and we expected resolution; however, the proposed revision remained under review by DOJ and the DPD. That continues to be the case.

During this reporting period, we reviewed 123 use of force reports and 57 Supervisory Investigation Reports (SIRs), and found no incidents involving officers firing at or from moving vehicles.

However, our review of four closed FI investigations found that two of the four involved officers fired at moving vehicles contrary to policy and the requirements of this CJ paragraph. Similar to the case noted above, these events involved exigent circumstances, and we agree that the officers' action would ordinarily be justified absent the cited prohibitions. In both instances, the policy violation was sustained; however, the Chief imposed no discipline pursuant to authority cited in DPD Directive 102.3-6.1.¹¹ While the Chief's decision addresses the discipline aspect of these two cases in a practical way, it does not address the fundamental policy prohibitions relating to firing at or from moving vehicles, and we do not recommend it as a permanent solution. We continue to recommend that the DPD take the necessary steps to appropriately revise the guiding policy.

¹¹ DPD Directive 102.3 – 6.1 General states, in part, "While any violation of these rules and regulations subjects an officer to disciplinary action, such discipline shall not be invoked when, in the discretion of the Chief of Police, extenuating circumstances exist, or the best interest of the Department would be served."

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

In our previous report, we noted that DPD Directive 304.1, Firearms, effective May 25, 2005; effective May 2, 2005; and 304.1, revised February 1, 2008; comply with the requirements of this paragraph. The DPD is in Phase 1 compliance with the requirements of this paragraph.

In our previous reviews, we found officers to be carrying authorized weapons and ammunition, and that the Department had implemented a procedure requiring the inspection of officers' weapons and ammunition as part of its required biannual firearms training program. During firearms training, officers fire the ammunition they are carrying at the time; following that, they are issued a new supply of approved ammunition. Since 99% of the officers participated in the biannual qualifications, we found DPD in Phase 2 compliance with the requirements of this paragraph.

During this reporting period, we observed that the DPD was making good progress in its biannual firearms training (see U20). Accordingly, we find the DPD in compliance with these requirements.

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

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

intermediate force device into the force continuum and train all officers in its use on an annual basis.

Comments:

Our previous review of 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 04-3, effective May 9, 2005; found them in Phase 1 compliance with this paragraph. This continues to be the case. These directives: 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 the DPD 28th Quarter Status Report, dated September 30, 2010, found that it articulated no changes in policy or training directives relative to this requirement.

Our review of 123 use of force reports found no strikes to the head administered when a PR-24 was utilized. During the first quarter of this fiscal year (July, through September, 2010), DPD provided PR-24 training to 893 (32%) of its personnel. DPD remains in Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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.*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comments:

In our previous reports, we noted that the DPD implemented DPD Directive 304.2, Use of Force, effective June 27, 2005; DPD Directive 304.3, Chemical Spray Device, effective July 2, 2008; and Training Directive 04-3, effective October 31, 2009; in compliance with the requirements of this paragraph. We found support for these directives in the DPD 28th Quarter Status Report, dated September 30, 2010, which states, "When the OCR has determined that a member has failed to articulate the decontamination process used in the *Use of Force/Detainee Injury Report - Auditable Form UF-002*, a Corrective Action Notice is generated and forwarded for proper disciplinary action. Additionally, the *Use of Force/Detainee Injury Investigation Guide (Revised 7/6/2010)*, which is accessible to investigating supervisors, includes a requirement that the decontamination process is documented on the *Use of Force/Detainee Injury Report - Auditable Form UF-002* and on the *SIR - Auditable Form UF-002a*." The DPD is in Phase 1 compliance with this paragraph.

In our previous review of use of force reports (UF002), we noted that some of the cases reviewed contained inappropriate times when documenting time sprayed and time flushed; in some instances the numbers 1 and 2 appeared in the respective slots; in others, the numbers 2 and 2 appeared. Many of the reports contained no information on how the decontamination was accomplished. The previous reports contained no instance in which a subject was transported face down.

To assess compliance for this reporting period, we reviewed 123 use of force reports and found eight deployments of chemical spray, with warnings or danger articulated in seven (87%) of the cases. This is an improvement over the 66% registered in our last report. However, in only three, or 37%, of the eight cases did we find that the decontamination occurred in the allotted 20 minutes. This is a significant reduction from the 73% we noted previously.¹² In the three cases, one indicated how the decontamination occurred. 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 five of the eight subjects who were sprayed. There were no reported instances of an officer spraying an unruly crowd.

We continue to emphasize that the DPD should require the 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

¹² In at least two of the cases, the numbers were indecipherable, again utilizing the numbers 1 and 2 for spraying and flushing; in another case, it was not possible to meet the 20 minutes given the process described; in one, the subject fled with the cuffs so could not be flushed.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

In our previous reports, we noted that the DPD implemented DPD Directive 304.2, Use of Force, effective June 27, 2005; DPD Directive 304.3, Chemical Spray Device, effective July 2, 2008; and Training Directive 04-3, Use of Force Continuum, effective October 31, 2009; in compliance with the requirements of this paragraph. Our review of the DPD 28th Quarter Status Report, dated September 30, 2010 found that it articulated no changes in policy or training directives relative to this requirement.

Our previous review of use of force reports (UF002) to assess implementation compliance identified no reported instances of the deployment or allegations of the deployment of chemical spray against a subject in a police vehicle. In addition, we did not identify any reported instances or allegations where officers placed or kept subjects in a face-down position after being sprayed. We noted that when sprayed individuals are transported in scout cars, officers generally indicate the lowering of windows to provide ventilation beneficial to the subject.

To assess compliance with these requirements for this reporting period, we reviewed 123 use of force reports. No chemical spray was used on a handcuffed individual in a police vehicle, nor was any subject placed in a face-down position in a police vehicle after being sprayed.

We continue to note that when sprayed individuals are transported in scout cars, officers indicate the lowering of windows to provide ventilation beneficial to the subject.

The cases reviewed are indicative of Phase 2 compliance with this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

Critical Issues:

- We requested and reviewed a copy of a MAS report listing all of the use of force report numbers issued since January 1, through October 28, 2010, to include the current status of the cases, closed or pending. There are 1,258 reports listed, which is consistent with the numbers which we have expected to find. We will continue to monitor these numbers in future site visits.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- The issue of how best to determine DPD's efforts at deescalating and disengaging with respect to use of force situations remains a perplexing issue, and one which affects DPD's compliance with several of the requirements. If the Department succeeds, it is quite possible that an auditable form will not be prepared as force will not be used; if the Department tries and fails, and force has to be used, the Department's efforts come into question. We have suggested that the Department improve its documentation of their strategies, but it has not been able to do so to date. We encourage DPD to consult with DOJ for advice on coming into compliance with this requirement.
- The documentation of how, when, and where subjects are sprayed with chemical spray, and then are decontaminated, is one which DPD must work on if they are to care for the subjects sprayed in the manner that Departmental policy and the Judgment requires. This is an error that can be corrected with specific attention on the part of supervisors, and some re-instruction on their part as to how officers are to document the spraying and flushing time (military time is easiest), and the fact that officers can use water from the locations in which they find themselves to flush the eyes.
- We have recommended that the DPD review Directive 304.1, which prohibits "the firing at or from a moving vehicle." The present prohibition in the DPD policy is absolute and allows no consideration of exigent circumstances. We expected that the DPD would address this issue for inclusion in both this and the previous reports; however, it remains under DPD review.

Next Steps:

During the next reporting period, we will:

- Continue to monitor the numbers of use of force reports generated during the next quarter, and if discrepancies are found, discuss same with DPD.
- Inquire with DPD regarding a resolution to the policy disparity relating to the firing at moving vehicles.
- Continue to work with DPD on the critical issues mentioned above.

| ¶ | Requirements | Phase 1 – Policy | Phase 2 – Implementation |
|----|--------------------------------------|------------------|--------------------------|
| 14 | Revise use of force policies | In Compliance | In Compliance |
| 15 | The use of lethal, less lethal force | In Compliance | Not in Compliance |
| 16 | Opportunity to submit to arrest | In Compliance | In Compliance |
| 17 | Prohibit choke holds | In Compliance | In Compliance |
| 18 | Approval of policy | In Compliance | Not in Compliance |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| | | | |
|----|----------------------------------|---------------|-------------------|
| 19 | Strike to the head-deadly force | In Compliance | In Compliance |
| 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 | In Compliance |
| 25 | Chemical spray policy | In Compliance | Not in Compliance |
| 26 | Spraying handcuffed subjects | In Compliance | In Compliance |

IV. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

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:

We previously reported on the implementation of Directive 304.2, Use of Force, effective June 27, 2005; and Training Directive 04-7, Use of Force/Detainee Injuries or Allegations of Injuries Reporting and Investigating, effective November 21, 2005; consistent with the Phase 1 requirements of this paragraph. We also previously reported on our review of completed Supervisory Investigation Reports (SIRs), (command-level) FI, IAD, and OCI investigations.¹³

To assess compliance for this reporting period, we verified the existence of the required directives; met with relevant staff; and assessed SIRs, as well as FI, IAD, and OCI investigations completed during this reporting period. In addition, we reviewed the DPD 28th Quarter Status Report, dated September 30, 2010, which sets forth some of the corrective measures initiated by the DPD to improve compliance; and the CRIB Uses of Force, Uses of Force in Holding Cells, Prisoners Injured and Prisoners Injured in Holding Cells Combined Audit Report, dated July 21, 2010.

The DPD 28th Quarter Status Report notes that during this quarter, the *Use of Force Detainee Injury Investigation Guide* was revised and improved after the DPD received comments from the

¹³ The term Command Level Investigations, and SIR Investigations, are used interchangeably throughout the report.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Monitor. DPD redistributed the guide (previously titled *Use of Force/Detainee Injury – Supervisory Guide*) to its executives, and provides it to all Supervisory, Leadership, and Accountability training course attendees. The Status Report also indicated that all of the U27 requirements are included in the Supervisory, Leadership, and Accountability Lesson Plan. On July 5, 2010, the DPD commenced its third consecutive annual in-service supervisor and leadership training for its supervisory members.

The Combined Audit Report notes, “The DPD commands’ lack of a systematic tracking system that accounts for investigations makes it difficult to confirm a complete population of investigations. Due to this situation, the AT cannot say with certainty that all UOF and Injured Prisoner investigations for commands were included for review.” It goes on to recommend that: “The DPD should develop one automated system for tracking all investigations. This system should, at a minimum, identify: the type of investigation; the unit conducting the investigation; the corresponding incident information; and extension requests and approvals.”

We agree with this finding and the recommendations; however, we note that this same finding has appeared in previous audit reports but still remains an issue for DPD.

Command Level Investigations: During our previous reviews, we noted issues with the timely submission, accuracy, and completeness of reports. We recommended that the DPD conduct and document more comprehensive, thorough, and detailed Supervisory Investigation Reports (SIRs); and recommended that the Department review its accountability system and available training to determine if they are sufficient to provide DPD personnel, especially supervisory and command staff, with a thorough understanding of the requirements and responsibilities set forth in the Judgment and DPD policy.

During this reporting period, we reviewed 123 use of force reports resulting in 57 SIRs.¹⁴ There were no instances where a SIR was closed simply because a subject or complainant was unavailable, unwilling, or unable to cooperate, including a refusal to provide medical records or proof of injury. The conduct was found to be justified in 53 (93%) of the 57 cases. Two cases were deemed to have been closed prematurely, one which was a half-page report that simply did not constitute an investigation, and one that lacked some of the investigatory steps and witness interviews. Only 4% of the investigations were closed prematurely. The DPD has not yet achieved Phase 2 compliance with this requirement.

Force Investigations: In our previous reports, we noted that our reviews of FI and JIST investigations, which included critical firearm discharges, pursuits, and allegations of excessive force, found these investigations sufficiently detailed to support the findings relating to the conduct of the officer(s) in each case. In addition, no investigations were closed because the subject or complainant was unavailable, unwilling, or unable to cooperate. Although we noted lack of detail or required specificity in early cases, FI has addressed these issues with strengthened supervision and in-service training.

¹⁴ Many of the command-level investigations contained multiple use of force forms. Canine tracks with no contact and cases assumed by FI were removed from the numbers reported as SIRs.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

During this reporting period, we reviewed four cases, and found them to be completed satisfactorily.

Internal Affairs Division Investigations: The Internal Affairs Division operates under the provisions of DPD Directive 102.4 Discipline/Misconduct Investigations, effective July 1, 2008; Training Directive 04-4 Garrity Protocol, effective February 9, 2006, and revised October 24, 2009; and Internal Affairs Standard Operating Procedure, revised November 20, 2009. To assess compliance with the Consent Judgment, we review all of the cases that are completed within each quarter. We review the cases for consistency with the procedures contained in applicable DPD directives and generally accepted law enforcement techniques – specifically relating to procedural fairness, timeliness, confidentiality, and the meticulous reporting of facts and results of an investigation.

During this reporting period, we reviewed all 33 cases that were closed by IAD in July, August, and September, 2010. We found that all cases except one met the above requirements of this paragraph.

Office of the Chief Investigator: The following policies are applicable to OCI's compliance with paragraphs 27-33 of the Use of Force Consent Judgment: 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; and Office of the Chief Investigator, Standard Operating Procedure (revised June, 2010). These policies are individually and/or collectively in compliance with the requirements of this and other paragraphs contained in this section of the Judgment.

During our previous reviews of completed cases, we noted that while the case files generally contained sufficient facts to support a determination that justified or did not justify an officer's actions, there were several inconsistencies between investigators, and some cases lacked the necessary information to reach a proper determination. Additionally, we made note of cases that were improperly administratively closed and cases that were significantly overdue, impacting DPD's ability to reach appropriate conclusions many months after the alleged occurrence. Many administrative closures were reopened pursuant to a Court order, adding to OCI's workload.

We noted DPD's progress in addressing some of these inconsistencies in our last report. Furthermore, additional personnel were deployed to OCI solely to address the backlog of cases. These five sergeants are only assigned to cases not completed within the 90-day timeframe required by policy and the Consent Judgment. We have noted an overall increase in the quality of investigations, although it appears that in some of the reopened and backlogged cases, quality may be suffering in an effort to quickly bring them to closure.

During our last site visit, OCI briefed our team members on changes to the case management system and the responsibilities of the "Backlog Squad." We observed the intake and assignment process for several new cases.

To assess compliance for this reporting period, we reviewed 100 randomly sampled cases from the 579 cases that were closed in July, August, and September 2010. With the exception of three

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

cases, the investigations established sufficient facts to support a determination that justified or did not justify the actions of the officer(s) or non-sworn member of the Department.¹⁵ Sixteen cases appeared to have been closed prematurely. Our sample contained 18 cases that were improperly administratively closed and were ordered to be reopened by court order. Fourteen of the 16 cases fell into this category. In the other two cases, one was closed without addressing a force complaint or obtaining medical information that was apparently available, and the other was missing several pieces of documentation which are normally included in a case package. We note, however, that for the cases that were ultimately reopened, investigative deficiencies from the first closure were generally corrected.

DPD is not in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U28

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:

Our assessment of compliance with the requirements of this paragraph included a review of applicable directives, interviews with relevant staff, and a review of command-level investigations and closed FI cases.¹⁶ Our review of the DPD 28th Quarter Status Report, dated

¹⁵ If an allegation appropriately received a finding of unfounded or not sustained, justification for the conduct was not assessed since, by definition, its occurrence was either refuted or not substantiated.

¹⁶ See U27 for all directives applicable to the requirements of this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

September 30, 2010, found that it articulated no changes in policy or training directives relative to this requirement.

Command Level Investigations: The DPD's Office of Civil Rights *Uses of Force, Uses of Force in Holding Cells, Prisoners Injured, and Prisoners Injured in Holding Cells Combined Audit Report*, dated July 21, 2010, states the following regarding their review of cases relative to this requirement: "In 10 of the investigations, no canvass was conducted to identify civilian witnesses and in 12 of the investigations, no photos were taken of the complainant's alleged injuries. In 5 investigations, the investigating supervisor failed to identify other officers at the scene for interview." The audit recommends the following apropos to this requirement:

Recommendation 5: The DPD should enforce to supervisors conducting investigations that a canvass consists of searching for civilian witnesses at the scene and, in the area of the scene, in order to ascertain what police action was observed before, during and/or after the incident being investigated. This also applies when an incident takes place in the holding cell/holding cell area.

Recommendation 6: The DPD should enforce to supervisors responding to use of force, allegations of force and prisoner injury incidents, that all injuries or alleged injuries should be photographed in order to be analyzed in the subsequent investigation. These items should be preserved in the investigative file or at Crime Scene Services for retrieval and review when necessary.

We agree with these recommendations, but again note that these same recommendations have been made in previous audits.

Our previous reviews of SIRs have consistently noted the full and complete documentation of the names and badge numbers of all involved officers. We also found general adherence to the policy that prohibits the conducting of the investigations by supervisors who authorized, witnessed, or participated in the force that was used. However, we noted that the Department was not in compliance with the requirements regarding the inclusion of the names of all officers involved or on the scene of the event, the conducting of canvasses for witnesses, the thoroughness and completeness of interviews of all witnesses, the resolution of material inconsistencies, the photographing of injuries, and the documentation of any medical care provided.

To assess compliance for this reporting period, we reviewed 57 SIRs and found the following:

- There were four instances in which the supervisor conducting the investigation authorized, witnessed, or participated in the incident, up from the one incident reported in our last report.
- Fifty-three (93%) cases contained the names of all of the officers involved or on the scene during the incident in the report. In 56 (98%) cases, the investigating supervisor conducted a canvass to identify civilian witnesses or explained why a canvass was not conducted. This is a significant improvement over our previous finding of 90%, as well as the findings of the DPD audit team.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- As we previously noted, the thoroughness and completeness of interviews of all witnesses continues to be an issue for DPD. Thorough and complete interviews were conducted in 44 (77%) cases. Although this is a 5% improvement over the previous quarter's numbers, the Department continues to have problems conducting thorough and complete interviews. Issues that plague the DPD in its efforts to achieve compliance in this area include: witnesses are allowed to leave scenes before a supervisor arrives and then they cannot be located; officer and civilian witnesses are simply not interviewed; material inconsistencies are not resolved through the interviews because the right questions are not asked; and reviewers are still being referred to a Crisnet report or the circumstances section of an SIR, actions which do not constitute an interview. All officers present at a use of force incident and who may have witnessed the incident or who are involved in an incident should be interviewed.
- Seventeen cases contained material inconsistencies; the supervisors attempted to resolve the inconsistencies in six (35%) of these. Again, this showed an improvement over the 23% we found in our last report, but still fell well below the 94% required for compliance. We reiterate that it is incumbent on individuals involved in the command-level review to question material inconsistencies that are not addressed by the investigator and to take the appropriate corrective actions.
- Twenty-seven cases might have included photos taken of officer or subject injuries. The reports noted that photos were taken in 13 (48%) of these.
- Twenty-eight cases should have included documentation of medical care in the file. We found documentation for all 28, an improvement over the 91% last quarter.

Force Investigations: Our previous reviews of force investigations found appropriate documentation of the name and badge number of all officers involved in or on the scene of the various incidents. The cases also contained witness interviews (recorded and written); however, we noted that while they covered most of the pertinent issues, they were brief and lacking in detail. The investigations we reviewed also contained documentation of canvasses for civilian witnesses and any medical care provided; however, we found that the majority of the investigations contained no photographs of officer or suspect injuries.

To assess compliance for this reporting period, we reviewed four force investigations.¹⁷ The case files included complete documentation of the name and badge number of all officers involved in or on the scene of the various incidents, canvasses for civilian witnesses in all applicable cases, and any medical care that was provided. The investigations also contained witness interviews, both written and recorded; however, one case contained inconsistencies between statements of witnesses that went unresolved, and one investigation contained neither photographs nor documentation verifying that the required photographs were taken.

¹⁷ These investigations included three non-fatal critical firearm discharge events and one pursuit resulting in two fatalities.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

These investigations continue to demonstrate improved and consistent canvassing for witnesses; however, as previously noted, we continue to encourage DPD to ensure that interviews, particularly of officers, are in-depth, probative, and detailed, given the seriousness of these events. FI indicates that it plans additional training in these areas.

The DPD is making progress with strengthening the investigative process through supervision and the initiation of specific, in-service training; however, FI is encouraged be attentive to the need for resolution of material inconsistencies between witness statements. In addition, the photographing of injuries must either be accomplished or the reasons for the lack of photographs must be documented.

Internal Affairs Division Investigations: We reviewed the 33 IAD cases that were completed during this quarter. The investigations consistently included the names of all officers involved in or on the scene during an incident. IAD expended particular efforts in identifying officers when allegations of criminal misconduct were reported and the officer(s) was unknown to the complainant. IAD conducted canvasses to identify witnesses or obtain any video recordings that might be available from businesses near the location. IAD now has the capacity to access recordings from in-car video storage from the Division's desktop computers. If any related evidence has been recorded, it can be requested from the Technical Services Unit. Witnesses were interviewed or gave written statements and the investigators made an effort to resolve inconsistencies between witness statements.

Office of the Chief Investigator: We reviewed 100 randomly sampled investigations. In seven of these, involved officers were not identified by both name and badge number. This did not necessarily impact the quality of investigations as enough identifying information was provided (name, work assignment), or the involved officers were truly unknown. In one case, the name provided by a complainant did not match any employee on the Department's roster. Canvasses were generally deficient, as outlined in CJ requirement U32. In four cases, potential witnesses were identified but not interviewed. Examples include the wife of a complainant who was present for the incident (passenger in a vehicle) and, in two cases, co-offenders or defendants. In three cases, there was a reference to medical treatment, but no documentation of the treatment was included in the files.

The DPD and the City are not in Phase 2 compliance with these requirements.

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:

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- a. officers who witness or are involved in an incident to provide a timely statement regarding the incident (subject to paragraph 31 below);*
- b. 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*
- c. 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.*

Comments:

Our assessment of compliance with the requirements of this paragraph included a review of applicable directives; interviews with relevant DPD staff; and a review of closed command-level, FI, IAD, and OCI cases.¹⁸

Our assessment of compliance with the requirements of this paragraph included a review of applicable directives; interviews with relevant DPD staff; and a review of closed SIR, FI, IAD, and OCI cases.¹⁹

Command Level Investigations: Our reviews of command-level investigations for previous reporting periods found that timely interview of the officers involved in or witnessing use of force events ranged from a high of 84% in the fourth reporting period to a low of 55% in the third reporting period. We have also commented that, in some cases, investigating supervisors simply refer to the related Crisnet reports rather than conduct separate interviews, a practice which is contrary to sound investigative procedures.

We also discussed the requirement for the interview of subjects, noting that in most instances an effort to interview a subject at the scene or at the District is met with hostility. We continue to recommend the institution of a formalized procedure requiring follow-up contact with these individuals.²⁰

Our review for this report found that in 45 (79%) of the 57 cases we reviewed, timely statements were taken from officers who were involved or who witnessed the incident. We also found that the interviews of complainants and witnesses were conducted at sites and times convenient for them in 55 (26%) of the 57 cases we reviewed, an improvement over last quarter's 94%.

¹⁸ See U27 for all directives applicable to the requirements of this paragraph.

¹⁹ See U27 for all directives applicable to the requirements of this paragraph.

²⁰ This follow-up contact might consist of a telephone call, letter, or other personal contact some days after the incident.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Force Investigations: In previous reporting periods, we noted that statements were generally taken at sites and times convenient for the person(s) being interviewed. Statements of non-police witnesses were generally taken in a timely manner; however, we expressed concerns that statements from witness officers were sometimes unnecessarily delayed, or that investigators instead relied on the officer's Crisnet report. We expressed particular concern following our finding that there were significant delays when taking Garrity statements due to the practice of awaiting prosecution declinations from the District Attorney. We also noted our concern with regards to the variance in practice between FI and Homicide members of the Joint Incident Shooting Team (JIST) when interviewing witnesses and taking statements. We were specifically concerned with the practice adopted by Homicide members of JIST to take written, rather than recorded, statements.

To assess compliance with these requirements for this reporting period, we reviewed four closed FI cases, including three non-fatal critical firearm discharges and one pursuit resulting in two fatalities. We continue to find much the same as described above. Statements were generally taken at sites and times convenient for the person(s) being interviewed. Statements of non-police witnesses were generally taken in a timely manner, usually within minutes or hours of the event; however, several statements that were taken from involved and witness officers under the provisions of Garrity were unnecessarily delayed.

Delays with interviews of involved officers in these cases, none of which were delayed due to consultation with the District Attorney, ranged from 63 to 119 days from the date of the event. This compares with the last reporting period, when the interview delays fell between 43 and 144 days. Garrity interviews of witness officers ranged from 80 to 91 days from the date of the event. We previously noted that these delays were primarily attributable to the DPD-adopted practice of awaiting the receipt of prosecution declinations from the District Attorney; however, that was not an issue with these cases, which were not awaiting review by the DA.

FI is cognizant of our concern regarding interview delays for a host of reasons, not the least of which is credibility. As we have previously noted, officers' recollections of the facts, weeks and months after an event, particularly one involving the use of deadly force, are externally and perhaps significantly affected by news accounts and their interactions with friends, family, and colleagues, and thus, often altered. The practice of delaying interviews for whatever the reason may be mitigates the accuracy and credibility of the information provided by officers. Accordingly, the DPD is not in Phase 2 compliance with these requirements.

FI investigators take officers' statements consistent with the provisions of Garrity (U31). All such statements relating to the four cases reviewed for this report were appropriately recorded.

Internal Affairs Division Investigations: During earlier reporting periods, we found that the DPD directive requiring timely statements from officers was inconsistently applied. Interviews of involved witness officers were often delayed with little justification other than unavailability. There were exceptions involving pending criminal proceedings against officers in some cases. However, it was apparent from the investigators' Case Supervision Sheets that efforts to set and keep appointments were disregarded by some of the officers. In many cases, officers were scheduled for furloughs after appointments had been made. Adherence to scheduled appointments has improved during the last two reporting period, although there is still evidence

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

of some occurrences. Of the 33 cases we reviewed in this quarter, interviews in two cases were delayed due to problems with scheduling Garrity interviews. Additionally, seven investigations were delayed due to scheduling and operational issues. Consequently, for these nine investigations, the officers were not interviewed in a timely manner.

Notably, when the Internal Affairs Alert Teams, who are available or on-call 24 hours a day, respond to a complaint or allegation of criminal activity or serious misconduct by a Department member, preliminary interviews are conducted immediately and according to DPD directives.

In all of the investigations, complainants and witnesses were interviewed at times and sites convenient for them.

Office of the Chief Investigator: During our earlier reporting periods, we noted a consistent issue with untimely interviews, particularly of officers. Interviews of sworn personnel frequently take place many months after the incident complained of. Often, no reason is given for the delay other than the difficulty in scheduling the interviews.

We have noted that complainant/witness and officer interviews are, with limited exceptions, properly recorded.

During this reporting period, we reviewed 100 randomly sampled investigations. Thirteen of these cases were initiated in 2008, 41 cases were initiated in 2009, and 46 cases were initiated in 2010. Timely interviews of involved parties, particularly officers, continue to be an issue, as more than half of the cases reviewed were received prior to 2010. Officer interviews were timely in only 23 cases. In many cases, the Significant Event Logs showed long periods where no activity was documented. Where complainants were identified as uncooperative, OCI investigators relied on the synopsis contained in the Citizen Complaint Report. Of those investigations with documented interviews, only eight investigations contained a written reference to the convenience of location and time for complainants and witnesses, although we are aware that it is common practice to begin recorded interviews by clarifying that the time and place are convenient to the person being interviewed. Seven interviews were conducted via telephone. In summary, the timeliness of interviews continues to be an issue. However, when interviews are conducted, they are administered and recorded in accordance with requirements.

While we find continued progress with FI and IAD investigations, we again emphasize that the Department needs to address the problematic issues relating to timely interview of the officers involved in or witnessing use of force and OCI must address the timely nature of interviews in general. DPD and the City are not in Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT

January 16, 2011

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:

Our assessment of compliance with the requirements of this paragraph included a review of applicable directives; interviews with relevant staff; and a review of closed command-level, FI, IAD, and OCI cases.²¹

Command-Level Investigations: The most recent CRIB Combined Audit Report contains the following comment: "Currently, within the DPD, interviews conducted during command investigations are not audio or video tape recorded. Therefore, the AT was unable to determine if leading questions were used during interviews that were conducted for the command investigations. The lack of written documentation of the interview questions or recorded statements in command investigations will prevent the DPD from obtaining compliance with U30a."

Our reviews of command-level investigations for the first three reporting periods found little documentation of recorded interviews, written statements, or other evidence that DPD used leading questions that improperly suggested legal justifications for the actions of the officer(s). During the last reporting period, we found several cases in which a question-and-answer format was used to document officer interviews in the SIR. There was no evidence that the questions that were asked were contrary to appropriate law enforcement techniques.

During this reporting period, we found that there were five cases where DPD asked leading questions in the question-and-answer format. There were no interviews via written questions contrary to appropriate law enforcement techniques.

FI Investigations: Our previous review of FI cases for compliance with these requirements found no instances where leading questions were contained in written statements. However, when listening to randomly selected recorded interviews conducted by various investigators, we noted that investigators asked leading questions in approximately 50% of the interviews. We also noted the interviews varied in thoroughness and were generally brief.

²¹ See U27 for all directives applicable to the requirements of this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

To assess compliance for this reporting period, we listened to six randomly selected recorded statements taken from police officers and found only one totally absent of leading questions. Of particular concern was the prevalent prefacing of questions with the phrase “do you remember” or “if you remember,” which prompts an answer of “No” or “I do not remember.” We recognize that it is inherently difficult for interviewing investigators to refrain from asking questions that suggest answers and we recognize the efforts of the DPD to address this issue through supervision and training; however, we emphasize the need for those efforts to continue and include a careful review and critique of all interviews in order to improve performance in this important area.

Internal Affairs Division Investigations: During the first reporting period, our review of closed IAD investigations found that investigators asked leading questions in 16% of the randomly selected interviews we reviewed. In a subsequent reporting period, we found no evidence of the use of leading questions during interviews.

To assess compliance with requirements for this reporting period, we reviewed three audiotaped Garrity interviews of police officers, and determined that investigators did not appear to ask any leading questions to support previous information or facts that were discovered. However, we found that the questions that were asked of the subject(s) or witness officers were often not formulated to invoke responses that would indicate if there were instances of violations of policy. The recordings often lacked preliminary information such as the date, time, and location of the interviews; and the names of interviewers. There was no evidence that, if a second investigator was present, that s/he had additional questions. In some of the interviews, questions were asked in a hurried manner, giving the impression to the reviewer that they were not important, or were a necessary inconvenience. Because we have interviewed the command staff and several of the investigators in IAD, we do not believe that they take their responsibility lightly; however, they would benefit from some additional interviewing techniques training. This training would aid them in their abilities to make reasonable and valid determinations of the allegations under investigation. We did not find any evidence in the case files that investigators conducted interviews via the use of written questions.

Office of the Chief Investigator: During the first reporting period, we noted that investigators asked leading questions in 15% of the selected interviews we reviewed, and a large number of cases contained no documentation regarding interviews. We reviewed no OCI case statements or recordings for compliance with this paragraph for subsequent reporting periods. OCI staff advised us that OCI is currently developing training for investigators in interviewing techniques. During the October site visit, OCI supervisors provided documentation of their intent to engage an outside trainer for this instruction. We will monitor the progress of this training during the next period.

During this reporting period, we reviewed 100 randomly sampled investigations. Absent listening to interviews for each case, there is no reliable way to determine if leading questions are used during the interviews. In order to remedy this, we will work with OCI to establish a process for reviewing recorded interviews. In nine of the cases we reviewed, we were able to determine the nature of the questions from written documentation and case synopses, and no leading questions were discovered. However, we are still unable to draw an accurate conclusion over the entire sample. OCI staff shared the training outline for recent in-service training, and

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

while the content was certainly appropriate, it did not contain the instruction on interviewing referenced above. We will continue to monitor the training provided to OCI staff for this topic.

The DPD and the City are not in compliance with this requirement.

Compliance Status:

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:

Our previous review of DPD Training Directive 04-4, Garrity Protocol, dated February 9, 2006 and revised October 24, 2009, found it in compliance with Phase 1 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 also requires that all officers sign a Certificate of Notification of Constitutional Rights - Departmental Investigations prior to any interview. We also noted that our reviews of SIR, FI, IAD, and 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 it justify discontinuing the investigation;*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- 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;*
- 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 assessment of compliance with the requirements of this paragraph included a review of applicable directives; interviews with relevant staff; and a review of closed command-level, FI, IAD, and OCI cases.²²

Command Level Investigations: The most recent CRIB Combined Audit Report contains the following comment: "In 13 command and 1 FI investigations which were not completed by the due date, none of the investigating supervisors requested an extension. In 19 investigations, there was no evaluation of the tactics used during the incident." Our findings correspond to those reported in the audit.

In our previous quarterly reports, we noted that the command-level investigations we reviewed included precise descriptions of the facts and circumstances of the incidents with respect to the actions of the officers, complainants, and subjects; but that they lacked the requisite evaluations of many of the initial stops. We also noted that the investigations lacked supervisory evaluations of the officers' initial contacts to determine whether other decisions or tactics might have negated the need for a use of force. Few of the cases we reviewed contained photographs of injuries, either to the officers or the subjects.

We also found no indication that a subject's guilty plea or guilty finding regarding an offense was used as evidence of whether a DPD officer engaged in misconduct, nor that this information was used to justify discontinuing the investigation. We noted cases wherein credibility

²² See U27 for all directives applicable to the requirements of this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

determinations were made, and found no evidence of the discounting of a witnesses statement merely because the witness had some connection to the subject or complainants.

In addition, we noted evaluations of whether or not an officer(s) complied with DPD policy in some, but not all, cases and recommended that in this context, the Judgment requires compliance with all applicable DPD policy – not simply the use of force policy. When evaluating uses of force, there was considerable variance in thoroughness among investigators. In fewer than half of the applicable cases, investigating supervisors made efforts to evaluate the officer's tactics. Finally, we found that considerably fewer than half of the cases we reviewed met the deadline for submission of the report.

During this reporting period, we examined 57 SIRs and found that 46 (81%) contained a precise description of the facts and circumstances of the incidents as required by U32a of the actions of the officers, complainants, and subjects, which is a 1% increase over the previous quarter. In 50 (88%) of the cases, investigators attempted to evaluate the initial stop or seizure, a significant increase over the 47% noted in the fourth quarter. In 44 of the cases (77%), all relevant evidence, including circumstantial, direct and physical evidence, was reviewed, an increase from the 44% in the previous report, but still significantly lower than it should be. None of the 57 cases we 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.

Fifty-five (93%) investigations contained evidence that reasonable credibility determinations, with no automatic preference given to an officer's 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 had some connection to the subject or complainants.

Fifty-three (93%) investigations contained evidence of an evaluation of whether or not an officer(s) complied with DPD policy. As in previous reports, the investigators commented on the relationship of the use of force as it was applied in the case they reviewed. We do not believe that compliance with DPD policy is limited to compliance with DPD use of force policy. We assert that in this context, the Judgment requires compliance with all applicable DPD policy. This requirement presents an opportunity for supervisors to evaluate the performance of their subordinates in the field as it relates to their compliance with policy, and in instances where there may be some deviation, to use the situation to re-instruct their subordinates on the prescribed method for performing the task at hand. In one instance, officers did not make a supervisory notification, believing that if the subject was not injured in the use of force the notification was not required. The supervisor noted the violation, but ascribed it to a violation of the Consent Judgment rather than to the appropriate DPD policy. In another investigation, supervisors and reviewers missed violations of the pat-down policy.

Investigators evaluated force in 53 (98%) of the 57 SIRs we examined. As previously noted, some of the evaluations are better than others: some supervisors continue to rely on a Supreme Court statement as the basis for justification of the use of force. On the whole, most supervisors

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

use sections of the policy as it relates to force and point out the instances of the application conforming to the policy.

There were 52 (91%) instances in which an investigating supervisor made an effort to evaluate an officer's tactics, an improvement over the 79% we found in the fourth reporting period. There were many instances in which supervisors commented on the willingness of officers to call for reinforcements when they recognized the volatility of a situation and the appropriate use of less than lethal tools to quickly disarm a situation. One instance in particular, involving a subject armed with a knife, highlights the correct use of tactics by officers. Officers kept the subject at bay, even though he lunged at officers several times, and when sufficient officers were present, he was distracted and taken to the ground, where he was cuffed without injury to officers or the subject.

There were four allegations of misconduct uncovered in the investigations we reviewed. Corrective action ranging from a commander's action to retraining is noted in three of them; one has no corrective action indicated.

Forty-eight (84%) of the cases we reviewed reflected a reliance on the preponderance of evidence standard to reach a determination. In 15 of the 36 cases that required extensions, we found written documentation of the basis for extending the deadline of a report, to include corrections to reports, problems with inputting information into MAS, to witnesses being on furlough. There were four cases where extensions were as a result of an investigator's vacation or furlough.

We found non-disciplinary/disciplinary corrective actions documented in 15 of the 22 investigations we reviewed that required corrective actions. These corrective actions ranged from re-instruction in the immediate notification of a subject's injury to a supervisor, to distribution of training materials to entire units on FI notifications, to written reprimands for delays in the proper preparation of use of force reports, to recommendations for training in officers' street survival and in the application of "verbal judo." The Department showed improvement in this area over the previous reporting period.

Force Investigations: Our review of completed FI cases for previous reporting periods found them in partial compliance with the investigative requirements of this paragraph. Case files contained a description of the event, but did not consistently evaluate the initial stop and/or seizure. For the most part, FI evaluated direct and physical evidence, but the files did not contain sufficient circumstantial evidence. There were no instances where a subject's court-related appearances had any effect on the outcome of investigations. The files contained little reference to credibility determinations. Investigations contained reviews of tactics and identified officers' unrelated conduct violations, and referrals for intervention and findings were based on a preponderance of evidence standard. In addition, any requested extensions of deadlines for reports were documented and when approved, specified a new deadline, usually within 15-30 days. There were no instances where extensions were requested due to an investigator's vacation or furlough.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

To assess compliance for this reporting period, we examined four completed case files and noted the continued inclusion of a detailed account of the facts of the event.²³ Investigators evaluated the initial stop/contact in each case and evaluated direct and physical evidence, but the files continued to remain largely silent on the presence or absence of any circumstantial evidence. There were no instances where a subject's court-related appearances had any effect on the outcome of investigations. The files documented credibility determinations but demonstrated the need for FI to provide additional training on this issue and we understand FI is addressing it. Investigations contained reviews of tactics and identified officers' unrelated conduct violations. Findings were based on a preponderance of evidence standard, and recommended referrals for disciplinary intervention were documented.

We note that requested extensions of deadlines for reports were documented. For the most part, extensions were granted for a specified period of time, usually 15-30 days. This is a positive development; however, the practice of granting multiple extensions remains problematic and tends to circumvent the intent of this requirement. For example, in one case, an investigator made an extension request to conduct additional interviews nearly 11 months after the event; a second extension request was made one month later to view video footage; and a third extension request was made another month later to interview uninvolved officers who were at the scene. This case was closed 19 months after the event.

In another case, an extension request was made over two months after the event in order to locate the complainants/subjects; a second extension request was made the next month to interview witnesses; a third extension request was made another month later, again to locate complainants/subjects; a fourth request an additional month later to review Garrity interviews; and two subsequent requests two and three months to correct report deficiencies. This case was closed ten months after the event. We recognize the challenges inherent with effective case management, and recognize the continued efforts of the DPD, particularly the IAD and FI staff to address them; regardless, it is difficult to justify the approval of deadline extensions to conduct interviews, obtain videotapes relating to an event, or to locate complainants/subjects weeks or months after an event.

Internal Affairs Division Investigations: This paragraph of the Consent Judgment encompasses the majority of the elements of a thorough investigation. The Internal Affairs investigations have consistently reflected a high quality of investigative product. The investigative packages are well-organized, and elements of the investigation are easy to locate. During all of our reviews of the IAD investigations, we found that they were conducted in a professional manner. With few exceptions, they were thorough. IAD command staff continues to make efforts to improve after reviewers discuss concerns with them. During this review of 33 completed investigations, we found that there were precise descriptions of the incidents, reviews of all relevant evidence and appropriate credibility determinations. Most importantly, we are finding that the investigators are challenging officers to refresh their memories and recount their actions by providing them with documentation or inappropriate lack of it. We found that the investigations were evaluated

²³ These investigations included three non-fatal critical firearm discharge events and one pursuit resulting in two fatalities.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

based on a preponderance of evidence and complainants or witnesses were not arbitrarily discounted. We are also finding more instances of investigators acknowledging more instances of other DPD policy violations when they become apparent during the course of the investigation.

We have a continuing concern regarding the extensions of investigation deadlines, and we are working with command staff to define appropriate reasons for extensions. There is written documentation in the Case Supervision Sheets when an extension is requested, but the new deadline date is frequently missed. As stated in prior reports, the development of a case-tracking system will provide the mechanism to aid in this endeavor. The DPD is in compliance with the requirements of this paragraph.

Office of the Chief Investigator: We noted in our first four reports that OCI investigations were most often not completed within the prescribed 90-day timeframe. Requests for extensions were frequently submitted well after the case was overdue, and adequate justification of the need for the extension was rarely provided. The delay in securing timely interviews has been a recurring problem that has impacted the quality of the investigations. However, OCI investigations have generally been factual and complete, and the preponderance of evidence standard is used in reaching determinations.

During the current reporting period, we reviewed 100 randomly selected cases. The date range of the cases was 2008 to 2010, and included 18 investigations reopened as a result of a Court order. In 94 of the cases, there was a precise description of the facts and circumstances of the incident complained of. In five cases, all relevant evidence was not considered. For example, in two cases, potentially involved officers were not interviewed. In another, medical records appeared to be available but were not obtained.

We found no evidence where a complainant's conviction or guilty plea had a bearing on the investigation. However, credibility assessments were lacking for both officers and complainants/witnesses. We found references to them in only four cases.

In all but two cases we reviewed, we noted appropriate evaluation of whether officers complied with DPD policy.²⁴ However, in four cases we noted insufficient documentation to confirm that alleged uses of force were fully investigated or evaluated. In three cases, misconduct was appropriately discovered during the course of the investigation and ultimately sustained. In five cases, the preponderance of evidence standard was not used. This is based on our determination that different findings were warranted based on the documentation provided for our review.

Eighty-seven of the cases we reviewed were not completed within the prescribed 90-day time period. Written requests for extension were submitted in 41 of these cases, although many requests were turned in well after the investigation was already overdue. In the other cases, extensions were either not requested, or workload was mentioned as a reason for the extension in contradiction of policy and this paragraph.

²⁴ If an allegation appropriately received a finding of unfounded or not sustained, evaluation of policy compliance was not assessed since, by definition, its occurrence was either refuted or not substantiated.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

There were no cases in which corrective action or disciplinary action was recommended as a result of the investigation.

We reviewed several cases in which the canvasses were either deficient or performed so long after the alleged occurrence as to have no investigative value. In many cases, we noted that investigators went to one address looking for a known individual, and identified that activity as his/her canvass. A canvass is checking an area of occurrence in an effort to locate any witnesses or persons with knowledge who are not known to the investigator as s/he commences the canvass. This should be one of the first investigative steps after an investigation is assigned. Many of the “canvasses” were conducted between six to 12 months after the event complained of.

In summary, although appropriate directives are in place, our analysis of command-level investigations, and those of FI, IAD, and OCI, do not support a Phase 2 compliance finding with this paragraph.

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;*
- 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.*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comments:

Our assessment of compliance with the requirements of this paragraph included a review of applicable directives; interviews with staff; and a review of closed command-level, FI, IAD, and OCI cases.²⁵

Command Level Investigations: The DPD 28th Quarter Status Report does not contain any information impacting on this requirement. The DPD's Office of Civil Rights *Uses of Force, Uses of Force in Holding Cells, Prisoners Injured and Prisoners Injured in Holding Cells Combined Audit Report* determined that DPD had met the requirements of paragraph 33. The audit makes no recommendations reference this requirement.

In our previous reports, we noted the lack of sufficient review of the SIR by the chain of command above the investigator. We also noted that supervisors rarely identified and took corrective action regarding investigative deficiencies, and found no reports regarding any issues that may have been identified, with training, policy, or procedural implications.

Our assessment for this reporting period found that in 56 (98%) of the 57 SIRs, there was a chain of command review above the investigator. The command review identified deficiencies in 13 cases which were sent back for corrections. In five of those cases, DPD corrected the deficiencies within seven days.

There was one case in which DPD identified issues with training, policy, or procedural implications; and there was one case in which the final reviewing authority made a referral to an appropriate DPD unit. There were four instances of corrective action and/or disciplinary action recommended when an investigator failed to conduct the investigation appropriately, ranging from re-instruct to retraining to a misconduct report.

We identified one case in which the investigation was not evaluated appropriately by the reviewing supervisor. The Commander noted this issue would be addressed under separate cover.

There were no disagreements with a finding or a departure from a recommended non-disciplinary corrective action or disciplinary action.

Force Investigations: Our previous reviews of FI cases for compliance with these requirements noted that the case files included chain of command reviews and recommended referrals to training. The investigations also included references to supervisors' requests for additional information or investigative work. However, we noted that these references were generally found within the investigators notes or reports. Based on our discussions with FI staff, we were sufficiently satisfied that there is a detailed supervisory review of each investigation; however, we recommended that these reviews be more thoroughly documented.

²⁵ See U27 for all directives applicable to the requirements of this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

To assess compliance for this reporting period, we reviewed four completed FI cases, and although we noted reference to chain of command reviews, and are sufficiently satisfied through interviews that supervisory reviews and evaluations are taking place, we found no documentation verifying that the reviews are taking place and deficiencies are rectified consistent with the requirements of policy and this CJ paragraph.

Internal Affairs Division: During our first review of IAD cases, we discovered that supervisors infrequently used Case Supervision Sheets for the intended purpose of documenting case supervision and managing the investigative efforts of subordinate personnel. Supervisors typically reviewed and commented on these sheets late in the investigative process. After discussions with the command staff, DPD changed this process, and as a result, documentation has improved considerably. In the prior reporting period and in this current period where we reviewed 33 completed cases, the supervisor regularly documented concerns and approvals on the Case Supervision Sheets of the individual investigators. With few exceptions, they have identified deficiencies in the investigations. In those cases, investigations have been rectified and returned in a timely manner.

Office of the Chief Investigator: In our previous reports, we noted our inability to determine what appropriate supervisory intervention has taken place when investigations are deficient. While there has been evidence of supervisory review in most cases, when investigations are returned, specific issues and corrective measures are usually not documented. Glaring deficiencies such as chronic timeliness issues, which would warrant counseling and/or discipline, are not addressed in writing.

For the current reporting period, we reviewed a random sample of 100 closed investigations. We were not able to substantiate a review by the chain of command in only one case. This case was missing several pieces of documentation and may have been submitted for our review prematurely. While the chain of command review was evident, we remain unable to determine specifically what investigative deficiencies were identified for correction. In 72% of the cases, there was evidence that cases were returned to investigators, usually by use of a stamp on the Significant Event Log – “To Investigator – Concerns.” We have no way of knowing what the concerns were, and if they were the same concerns we may have identified during our review of a case. Many of the cases we reviewed were not completed in a timely fashion, and yet we found no documentation that the investigator was counseled or disciplined for this specific deficiency. During our most recent site visit, OCI personnel outlined proposed enhancements to their case management system, including a one-on-one weekly review of open cases by supervising investigators and their subordinates. If included in the case package, documentation from these meetings should assist in the verification of corrective actions identified and implemented. At a minimum, the Significant Event Log should contain more details of identified deficiencies and corrective measures.

We found no cases where a reviewer disagreed with the recommended findings of the investigator. We noted one case in which a referral to another DPD unit might have been appropriate. Charges were dismissed for an arrest that resulted in the complaint because the officers failed to appear in court. That should have warranted some inquiry by an appropriate DPD unit.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

DPD is not in compliance with this requirement.

(See 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:

In our previous reports, we reviewed Directive 304.2, Use of Force, effective June 27, 2005; and Training Directive 04-7, Use of Force/Detainee Injuries or Allegations of Injuries Reporting and Investigating, effective November 21, 2005; and found them in compliance with the requirements of this paragraph. The DPD remains in Phase 1 compliance with this paragraph.

In our previous reports, we also discussed the findings of our review of auditable forms (UF002) and our review of Crisnet reports detailing arrests for assault on a police officer, disorderly conduct, and interfering with a city employee. Our reviews found that the required auditable forms were not consistently prepared as required. We also noted the completion of the forms where targets were acquired, and the appropriate referral of firearm discharge events to FI for investigation. Our review of FI cases found that the forms were rarely completed as required.

To assess compliance for this reporting period, we reviewed the DPD 28th Quarter Status Report, dated September 30, 2010, and noted that it provides a brief history regarding the Use of Force Report, Form 002, and Supervisors Investigative Report (SIR), Form 002A in the section dealing with this requirement. It also discusses changes for the electronic routing of the *Use of Force/Detainee Injury/Allegation of Force Form (UF002)*.²⁶ We also reviewed the most recent CRIB, Combined Audit Report which contains the following comment: “In 7 investigations, no

²⁶ The form routing now requires the inputting member to select the specific supervisor that was notified regarding the use of force incident; if no supervisor is selected, the report will route to the member’s span of control supervisor by default. Prior to this change, the form routed to either the supervisor who responded to the scene or to a supervisor that was working on the date of the incident. The implementation of this feature creates more accountability for the supervisor that was notified regarding the use of force incident to process the report within MAS.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

auditable form was completed or not completed according to DPD's policies and procedures." The AT determined that for their audit, DPD was not in compliance with paragraph 34.

We also reviewed 123 auditable forms (UF002), and found that 89 (72%) of the 123 forms were prepared correctly, documenting the 002 prisoner injuries, uses of force, and allegations of uses of force. The forms include six cases which were referred to FI.²⁷

As an additional control, during this reporting period, we also reviewed 203 Crisnet reports that detailed arrests for assault on a police officer, disorderly conduct, and interfering with a city employee.²⁸ We were, once again, encouraged by the fact that officers are making arrests in difficult situations without relying on a use of force. The reports do not yet meet the >94% standard required in the Judgment, but DPD is making progress towards that end.²⁹

Our review of FI investigations cases found that auditable forms were included in two of the three cases requiring them. Investigators identified and appropriately noted the deficiency the investigative findings.

The DPD is not yet in Phase 2 compliance with this paragraph.

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*

²⁷ One case involved allegations of a cuffed subject punched; one case a broken nose; two are discharges of weapons by an officer; one was a subject being processed at a detention facility claiming to have been socked by an officer; another involved a shooting by an officer;

²⁸ This number includes 108 in July, 2010; and 95 in August, 2010.

²⁹ In 34 of the cases, force was used and a corresponding report was prepared; in three of the cases, force was used and a corresponding report was not prepared. That leaves 166 cases, or 82% of the total, in which arrests of individuals in stressful situations were made with no force used. CRIB sent CAM reports on the three cases to the respective commands for corrective action.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

supervisor shall interview the subject(s), examine the subject(s) for injury, and ensure that the subject(s) receive needed medical attention;

- c. the supervisor responding to the scene to notify 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 injury; 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 investigation³⁰*

Comments:

In our previous reports, we reviewed and found DPD Directive 304.2, Use of Force, effective June 27, 2005; and Training Directive 04-7, Use of Force/Detainee Injuries or Allegations of Injuries Reporting and Investigating, effective November 21, 2005; in compliance with the requirements of this paragraph. We also assessed whether subjects were interviewed at the scene, in the cell block, or at the station; the provision of needed medical attention; the notification and response of supervisors; the proper completion of required forms and reports; and appropriate referrals to FI. We determined that, taken together, the majority of these reports did not meet the required standards.

To assess compliance for this report, we reviewed the DPD CRIB Combined Audit Report and noted that it found that in two incidents audited, the involved officers did not notify a supervisor after a use of force event, which resulted in a lack of proper notification and supervisor response. The report recommends that the DPD should enforce requirements that all uses of force and prisoner injuries are to be reported to a supervisor; that supervisors notify FI following all serious uses of force; that such notifications be appropriately documented in the investigation report; and that responding supervisors interview and examine subjects for injuries, provide for medical care where required, and also appropriately document those activities in the investigation reports. We concur with these recommendations.

We reviewed 57 cases for this report and found that in 52 (91%), a supervisor was notified following a use of force or prisoner injury. Supervisors responded to 42 (80%) of the 52, including 14 incidents in which a firearm was discharged, there was a visible injury, or there was a complaint of injury; and an additional 28 incidents on a priority basis. Of the 42 cases to which the supervisors responded, there were 37 in which the supervisor attempted to interview the subject (88%). In 34 of these cases, the supervisor examined the subject for injuries and ensured that the subjects received the needed medical attention (81%). IAD was notified in eight cases and assumed responsibility for six of the cases.

We recommend that in future training sessions, DPD place greater emphasis on the need for officers to make the appropriate notifications to supervisors, and then place additional emphasis

³⁰ Consent Judgment amendment, September 15, 2008.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

on the importance of supervisors responding to the scenes. The response to scenes is not only important with respect to interviewing subjects and evaluating them for injuries, it is also important in allowing supervisors to interview witnesses who may otherwise not be available and to conduct the canvass required by policy and the Judgment.

Our review of cases relevant to this requirement shows that, taken together, the majority of these reports did not meet these requirements. DPD is not in compliance with these requirements.

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 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:

We previously found Directive 304.2, Use of Force, effective June 27, 2005; and Training Directive 04-7, Use of Force/Detainee Injuries or Allegations of Injuries Reporting and Investigating, effective November 21, 2005; in compliance with this paragraph. This continues to be the case.

The DPD 28th Quarter Status Report contained the following information relating to U36: "On May 11, 2010, in a letter from the DOJ, an agreement was accepted for revisions to the supervisory investigation of canine-related uses of force. The DOJ agreed that only in instances when an apprehension and/or canine bite is associated with a canine deployment will a supervisory investigation be required, subsequent to the *Use of Force/Detainee Injury Report - Auditable Form UF-002* being completed. If a canine is deployed and an apprehension is not made, a supervisory investigation is not required but the *Use of Force/Detainee Injury Report - UF-002 Auditable Form* shall be completed. The agreed proposal is pending the Court's approval." The DPD disseminated this via a Roll Call Informational Bulletin, Teletype 10-1211, dated March 26, 2010."

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Command Level Investigations:

- The most recent DPD CRIB Combined Audit Report found, “the investigations were deficient in the requirements of timely command preliminary investigations, photos of injuries, conducting canvasses, profile of officer’s prior uses of force and allegation of misconduct, timely command final investigations, timely FI investigations and timely submission of command documents to FI.”

Similar to the DPD audit, our previous compliance reviews also found that the majority of SIRs did not meet the 10-day time limit for completion of the preliminary investigation, and none included photographs of injuries to subjects or officers. Most, but not >94%, contained the required synopsis of the event. Although a majority of the reports included documentation of a canvass of the area and witness statements, those that did not provided no explanation of the reason for the failure to do so. The reports generally did not include profiles of the officers’ prior uses of force and allegations of misconduct.

To assess compliance for this report, we reviewed the 57 completed UF002a command-level investigations, and found 11 (19%) preliminary investigations completed within 10 days of the event. This is a reduction from the 23% we found during the fourth reporting period. Fifty-six (98%) contained the required synopsis of the event, an increase from the 91% in the fourth quarterly report. There were no photographs of injuries in the files.

In 53 (93%) of the cases, the canvass and witness information was included in the file, an improvement over the 84% in the fourth quarter report. Officers’ prior uses of force and allegations of misconduct were included in only 41 (72%) cases. Fifty-five of the cases reflected first line supervisor evaluations (96%). The final command use of force investigations were completed within 30 days in 41 (72%) cases.

Force Investigations: We also previously reviewed completed FI cases for compliance with these requirements. The investigations included synopses of the events and witness statements, and demonstrated in each successive report, a marked improvement in thoroughness and documentation of canvasses for civilian witnesses.

We also noted that investigations lacked prior use of force, complaint, and misconduct history that could assist investigators when conducting interviews, making credibility determinations, or developing recommendations regarding training or supervisory intervention. In our most recent report, we commented on the efforts of investigators to obtain officers’ prior histories/profiles for inclusion as part of the investigations, but noted that it appeared such efforts were made to satisfy the requirements of this paragraph, rather than as an investigative objective. We also noted the lack of required photographs of injuries.

To assess compliance for this reporting period, we reviewed four completed FI cases.³¹ Each included a synopsis of the event and applicable witness statements; however, one file contained

³¹ These investigations included three non-fatal critical firearm discharges and one pursuit resulting in two fatalities.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

no photographs of injuries. We noted the inclusion of officers' prior histories/profiles in the files, which is a positive step in the investigatory process.

Three of the four cases reviewed for this report involved critical firearm discharges; however, none resulted in injuries. The fourth case involved a pursuit, which according to the investigative findings, was discontinued by officers before the vehicle in question crashed. Our review of these cases found that while each contained investigative challenges, the basis for delaying interviews with officers or for prolonging the related investigation beyond the prescribed time limit was unclear; however, these investigations took from 10 and 19 months to complete which compare with a timeframe of 11 to 13 months during the previous reporting period.³²

We previously acknowledged the issues relating to delays in receipt of DA declinations; however, these delays were not the issue with the cases reviewed for this report. We, therefore, again suggest the DPD closely evaluate case management and related issues, including staffing, to identify the means to more expeditiously complete these investigations.

Reports Submitted to IAD: Commanders are required to forward copies of completed SIRs to IAD within seven days of completion. IAD provided data reflecting that 29 (51%) of the 57 cases we reviewed were transmitted to IAD within the seven days allotted.

The DPD has not achieved Phase 2 compliance.

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:

³² Consent Judgment paragraph U38 requires the completion of critical firearm investigations within 30 days of the event, except where a Garrity interview is required. In those cases, the completion may be deferred until 30 days following the declination or completion of the criminal prosecution.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

We previously reviewed DPD Standard Operating Procedures and DPD Training Directive 04-07, which provide guidelines for the Joint Shooting Team (JIST) and Force Investigations (FI), and found them in compliance with the requirements of this paragraph.

To assess compliance for this reporting period, we reviewed three non-fatal critical firearm discharge investigations. JIST was notified and responded in one of the three cases, which is not compliant with requirements. The DPD should ensure that the appropriate JIST notifications and responses are made and included in future investigative files in order to avoid a change in compliance status.

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 Garritty statement is necessary, then that portion of the investigation may be deferred until 30 days from the declination or conclusion of the criminal prosecution.*

Comments:

During previous reporting periods, we reviewed completed critical firearm investigations, and found that although investigators appropriately inventoried the officers' ammunition to assist with determining the number of shots fired, and collected shell casings at the scene, there were instances where the number of shots believed to have been fired did not match the inventory of officers' ammunition and/or the number of retrieved shell casings. The DPD advised us of an ongoing problem with the ammunition magazines that sometimes prevented officers from loading them to capacity. The DPD indicated its intention to correct the problem with the issue of replacement equipment. We emphasized the importance of accounting for all rounds that are fired, and where there appears to be a discrepancy due to the described magazine problems, documenting it in the case reports. We also noted that while the locations of officers were generally described, diagrams depicting their positions were not consistently included in the case files.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

In addition, we expressed concerns regarding the absence of gunshot residue and DNA collection and analysis. We were advised that gunshot residue analysis is no longer available, and that DNA analysis is limited. We also learned of delays in ballistics analyses by the State Crime Lab. These are all issues mitigating the ability of FI to conduct complete and timely critical firearm discharge investigations. Finally, we expressed concern with the failure to complete these investigations within the 30-day time limit.

To assess compliance with requirements for this reporting period, we reviewed three completed non-fatal critical firearm discharge investigations, and are satisfied with the investigative findings relative to the number of shots fired in each case. However, in two of the cases, investigators did not resolve discrepancies between the number of rounds (ammunition) officers were carrying at the time of the event and the number of rounds they are required to carry by policy. Although these discrepancies cause no doubt regarding the number of rounds fired in these cases due to other evidence, they do illustrate the need for investigators to be attentive to and document DPD policy violations relating to the carrying of a specified amount of ammunition.

The investigations reviewed described the locations of the officers; however, the diagrams that were included did not specifically locate them. The locations of shell casings were noted. There were no other evidentiary issues of concern pertinent to the requirements of this paragraph.

These cases were closed in a timeframe of 10 to 19 months, clearly outside of the 30-day requirement. All of the cases included Garrity interviews; however, none required delays due to DA declinations, which were not an issue in these cases.

DPD is not in compliance with the requirements of this paragraph.

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.

Comments:

We previously found that 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 did not establish selection criteria for Team members, and was therefore not in compliance with CJ requirements. This issue was addressed with the issuance of replacement policy, Special Order 10-11, effective January 1, 2010. This order specifies the members of the

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Team by rank and position who are determined by the Chief of Police to “have the qualifications to perform the executive level evaluation of the investigations of critical firearm discharges and in-custody deaths.” The Team is chaired by the Commander, Internal Affairs/Force Investigations, and includes Deputy Chiefs, the Training Commander, and a specified Chief of Police designee.

The DPD is in compliance with this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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:

DPD Special Order 09-13 (March 2, 2009), which was replaced with DPD Special Order 10-11, effective January 1, 2010, complies with the Phase 1 requirements of this paragraph.

Our previous review of the CLFRT process found that the DPD did not include interviews of principal investigators as part of the CLFRT process; however, the DPD has addressed this concern.

To assess compliance with requirements for this reporting period, we examined the four completed CLFRT reports – three involving critical firearm discharges and one involving a pursuit resulting in fatalities. We noted documentation of interviews with and the participation of investigating officers during the meetings. However, we also noted that the timeframe between the date of the events and the CLFRT reviews ranged from approximately 10 to 19 months, which is in excess of the prescribed requirements.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

The CLFRT assessments continue to include a review of officers' compliance with DPD directives, but generally indicate agreement with the recommendations of FI, rather than the CLFRT promulgating its own recommendation(s). In addition, we note the CLFRT made no note of the variance from policy regarding the carrying of a specified amount of ammunition discussed above. The Chief signed off on each report within the required 14 days.

We have previously noted the DPD's positive movement towards compliance with these and other CJ requirements; however, we once again assert that the CLFRT needs to conduct and document more probative and in-depth reviews of these serious cases. We continue to find the DPD in pending compliance with the requirements of this paragraph; however, DPD should expeditiously implement improvements to the process to avoid a future finding of non-compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: Pending 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:

The CLFRT Chair previously prepared an annual report and critique of critical firearm discharges and in-custody deaths. These reports are due by May of the year following the year under review. Accordingly, the DPD has been in compliance with this paragraph.³³

We received the 2009 CLFRT annual report during the previous reporting period, as required. The report, prepared by Force Investigations, was comprehensive and included a description of investigative processes; case summaries; and various analyses of fatal and non-fatal firearm discharges, in-custody deaths, and pursuits. As we noted, the report indicated a downward trend in critical firearm discharges during the latest five-year period. After peaking at 59 in 2006, the DPD recorded 38 critical firearm discharges in 2009. There were no fatal shootings in 2009 after peaking at nine in 2006. The most common encounter involved armed subjects.

Although the report was comprehensive and included voluminous data, it did not include an analysis of the data to detect patterns or problems, or the absence thereof, nor did it contain any

³³ On January 28, 2009, the Court amended this paragraph to require the DPD to 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.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

findings or recommendations from the CLFRT Chair to the Chief, as required. However, DPD advised us that this would be addressed. Accordingly, we found the DPD in continued compliance pending receipt of a supplementary report containing the above-described required information. We received and reviewed the supplementary during this reporting period. It outlines issues with injuries due to critical firearm discharges resulting from fragments or ricochet rounds, the discharging of firearms at moving vehicles and officers reaching into vehicles during traffic stops resulting in their subsequently being dragged and injured. The DPD remains in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

Critical Issues:

- As previously noted, the most vital component to this investigative process is a critical review of the work product by the chain of command. DPD provides training and guides to help investigators conduct investigations. However, first-line supervisors and commanders must improve their evaluation of the investigations, and focus on compliance with all applicable DPD policies and training directives. Commanders must take these opportunities to either re-instruct investigators on implementing appropriate investigatory techniques and practices conforming to DPD policies; resort to disciplinary measures if required; or recommend enhanced training practices to the appropriate commands if, in fact, the shortcoming are a result of inadequate training. Achieving compliance with DPD policy will also affect compliance with the Judgments.
- We note that many of the recommendations contained in the most recent DPD Audits mirror our concerns. More specifically, the DPD audits are command-specific, allowing DPD management to focus attention on the commands requiring same.

Next Steps:

During the next reporting period, we will:

- Continue to review compliance with particular attention to meeting the specific detailed elements prescribed in these requirements. Of particular concern to us are the thoroughness and completeness of investigations and their review by supervisors.

| ¶ | 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 |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| | | | |
|----|--|---------------|--------------------|
| 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 | Not 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 | In Compliance |
| 40 | Review critical firearm discharges | In Compliance | Pending 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 that is unsupported by probable cause, or a warrant that is 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.

DPD has made significant progress in documenting Investigatory Stops, Detainee Registration and following their internal Witness Identification policies. Their ability to document and timely prepare warrant submittals to the prosecutor remains problematic in that failure to do so causes other violations of policy. We have found that in a few instances, the failure to prepare the required auditable form has kept DPD out of compliance with certain paragraphs. We have found that supervisory and command review in many areas is lacking, and that documentation of violations should be a Departmental priority.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

We previously reviewed the applicable DPD directives (DPD 202.1, Arrests, effective July 1, 2008, and found them in compliance with the requirements of this paragraph. Phase 2 compliance is linked to 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:

We have reviewed the applicable policy, DPD 202.1, Arrests, effective July 1, 2008, pertaining to this paragraph, and found it in compliance.

We have previously reviewed the arrest audit reports that were conducted at the Northeastern, Northwestern, Eastern, and Southwestern Districts. The results of those reviews are consistent with the results of our review for this report. We noted that the commanders from the districts responded to the audits with plans of action to remedy the deficiencies identified in the audit. DPD has been in compliance with this paragraph for the previous four reporting periods.

To assess compliance with these requirements for this reporting period, we reviewed a random sample of 110 case files. We reviewed Crisnet reports, Detainee Input Sheets, DPD Warrant Verification Logs, officers' Daily Activity Logs, Arraignment Verification Logs, and detainee file folders. In the cases we reviewed, sufficient probable cause for the arrest was present in all but one case, and supervisory approval occurred within 12 hours of the arrest. In the one case, probable cause was lacking and noted in the OIC's remarks on the auditable form.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

When an officer is not seeking an arraignment warrant, the Department is required to complete Auditable Form U004 (effective September, 2009). We reviewed 15 completed auditable forms in our random sample for this reporting period. Twelve of these forms were completed in a timely fashion and submitted for supervisory review. In four cases, although the auditable form was completed, the officers who completed the forms did not indicate the date or time the arraignment warrant was not sought. (DPD policy requires that an auditable form be completed within 12 hours of the event.) In one case where sufficient probable cause for the arrest did not exist (also warrant not sought), there should have been an auditable form prepared. An auditable form (UF001, effective March, 2005) was not prepared in this case for an arrest unsupported by probable cause. In one other case where probable cause did exist and a warrant was not sought, an auditable form was not generated. In several cases, we had to revert to the Detained Persons Detail Page to retrieve this information. On Form U004, the person submitting the form (usually the OIC) is required to place the date and time on the form by his/her signature and, in the box provided, the reasons why the warrant was not sought and the date and time the form was generated. This verifies the reason the arraignment warrant was not sought and that the form was completed in a timely fashion.

We are continuing to find Department personnel using the older version of the Warrant Tracking Form (WTF) U004 to document these events. We reviewed DPD's internal audit (July 7, 2010) of the Twelfth Precinct, and noted the finding that personnel are utilizing the older version of the WTF form is consistent with our review. DPD provided us with copies of Corrective Action Notices for the current reporting period, and we that Departmental action or retraining was in order for ensuring thoroughness and timeliness in submitting the forms.

The DPD's compliance rate for this reporting period is 95% for the three separate and distinct requirements of this Judgment.

The next DPD full agency internal audit covering arrests, detention, and witness identification will be forthcoming on August 31, 2011; and we will review any interim audits conducted by DPD prior to that date and assess its findings.

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.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comments:

We previously reviewed the applicable DPD directives (DPD 202.1, Arrests, effective July 1, 2008), and found them in compliance with the requirements of this paragraph. In addition, the issued an Administrative Message, "Roll Call Training Stop and Frisk," on March 19, 2010, with instructions that it be read at roll calls from March 20, through March 26, 2010. The message emphasized the following actions: (1) recording the investigatory stop-and-frisk; (2) documentation of supervisory review; (3) supervisory documentation of all investigatory stops and/or frisks within 24 hours; and (4) identification of stops/frisks unsupported by reasonable suspicion. Although the DPD has made significant progress documenting its investigatory stops and frisks during this quarter, compliance is related to and contingent upon implementation of U45. DPD is not in compliance with this paragraph.

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:

The applicable DPD policy for this requirement is DPD 202-3.2, Arrests, effective July 1, 2008.

In our four previous reports, we determined that DPD was not in compliance with the provisions of this paragraph. Our reviews showed that officers did not articulate reasonable suspicion with frisks, and that supervisors did not properly check the officers' Daily Activity Log entries. During the current reporting period, we found that DPD personnel have made significant progress in documenting investigatory stops. We also noted that some supervisors, when reviewing officers Daily Activity Logs, have checked off each investigatory stop on their subordinates' logs to ensure accuracy. This good practice should be continued.

To assess compliance for this reporting period, we reviewed 290 officers' Daily Activity Logs completed on three randomly selected dates.³⁴ Each district provided the logs requested, which included traffic stops and other situations where officers made investigatory stops of individuals who were not in vehicles.

³⁴ For this review, we selected Officer's Daily Activity Logs completed on July 25, August 20, and September 24, 2010.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Our review yielded 44 investigatory stops, of which 42 indicated a lawful purpose and the remaining two failed to describe the reasons for the investigatory stop. An auditable form was not completed for the two stops that did not articulate a purpose for the stop. Supervisors reviewed all stops within the required timeframe. DPD's compliance rate for investigatory stops only (excluding frisks, traffic stops, and required auditable forms) this reporting period is 91%. This is a substantial improvement over the previous quarter but it still fails to meet the standard for reporting and/or justifying these serious interactions with the community due to the lack of auditable forms completed by the supervisor.

The Logs included 159 traffic stops, and our review indicated that 17 did not contain sufficient information to justify the stop, which is a basic requirement. For example, there were situations where the officer issued a summons for driving without a license or proper insurance without providing any additional information describing what violation occurred or what investigatory purpose was necessary for the initial stop. Supervisors reviewed the 156 traffic stops in a timely fashion, marking their signatures, and dates and times of review. In two cases, the supervisor signed the log, but failed to include the time or date on the form. In another case, supervisory review was not timely (more than 24 hours). Although the DPD has made progress requiring officers to more consistently articulate reasonable suspicion for traffic stops, we continue to find the Daily Activity Log entries difficult to read or understand. DPD's compliance rate for traffic stops is 89%. This compliance rate does not take into account failure to prepare required auditable forms.

We also reviewed the 129 frisks appearing on the Officer's Daily Activity Logs. Our review indicated that 103 of the frisks articulated reasonable suspicion, and 26 failed to describe the rationale for the frisk. In four cases, the officer marked the box under "Recap of Activity" on the face sheet of the Daily Activity Log, but we were unable to locate the frisk. In one case, the officer did not mark the box indicating a frisk, but he described the reasonable suspicion for the frisk in the narrative portion of his log, which indicates the supervisor did not notice or adequately review the log. Officers are required to fill in the Recap of Activity portion of the log to indicate their total daily activities and also mark the "Frisk" box in the narrative portion of the report.

We found two instances where frisks occurred and the officers used the term "furtive gestures" to justify their reasonable suspicion for the frisk. This phrase does not adequately define the requirement for a Terry stop, and should not be used by officers unless they describe in detail the actions of the offender that led to the search (pat-down).³⁵

We discovered two instances where officers asked citizens for permission to search them if reasonable suspicion for a frisk did not exist. We believe that this method of conducting a Terry stop by DPD does not meet the intent of the Consent Judgment.

We found that all frisks were documented by the end of the officers' shifts. In one case, the supervisory review date was prior to the officer going on shift; and in two others, it was three

³⁵ Terry v. Ohio 332 US 1 (1968): Police may perform a quick surface search (pat-down) of the person's outer clothing for weapons if they have reasonable suspicion the person is armed (officer safety).

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

days or more late. Supervisory review improved during the current reporting period. There were no Investigatory Stop and Frisk Exception Forms (Auditable Form UF003) included in the case report packets. We inquired with DPD to learn if there were any auditable forms relating to this paragraph that were completed for this reporting period. Although there is evidence of some progress with articulating reasonable suspicion by DPD officers, the Department's compliance rate for frisks this quarter is 80%. This percentage does not take into account the failure to prepare the required auditable forms by the officers' supervisor. The DPD remains out of compliance with these requirements.

We reviewed the DPD's Investigatory Stop and Frisk Practices Audit Report, dated August 31, 2010. The Audit Team recommended a number of steps to ensure compliance with the Department's stop-and-frisk policies that include retraining officers and reviewing all stop-and-frisk situations by supervisors and command personnel in a timely fashion. Two of the Audit Team's recommendations should be considered: 1) periodic mini-inspections of logs by the Commanding Officer of the district; and 2) random reviews of in-car video to detect unreported frisks. It does not appear that Commanding Officers review the investigatory stops, as we have not reviewed an Activity Log of an officer with any comments by command personnel, or reviewed any documents that indicate that command personnel have questioned the lack of auditable forms generated by supervisors.

We have not received any auditable forms (Stop and/or Frisk Exception form, DPD UF-003, effective October 31, 2009) from supervisors indicating that they have challenged an improper investigatory stop-and-frisk during any of our previous reviews. An Administrative Message was issued on March 19, 2010 (Roll Call Training) that emphasized recording of investigatory stops/frisks by officers, and the supervisor's responsibility in completing the Investigatory Stop and Frisk Exception Form when the officer did not adequately document the facts and circumstances that led to reasonable suspicion. We noted that there has been corrective action/discipline taken as a response to the audits.

DPD is not in compliance with this paragraph.

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

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

We previously reviewed the applicable DPD directives (DPD 203.9, Custodial Questioning, effective July 1, 2008), and found them in compliance with the requirements of this paragraph.

Compliance Status:

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:

We previously reviewed the applicable DPD directives (DPD 203.9, Custodial Questioning, effective July 1, 2008), and found them in compliance with the requirements of this paragraph.

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:

We previously reviewed the applicable DPD directives (DPD 203.9, Custodial Questioning, effective July 1, 2008; and DPD 203.3 Notifications, effective July 1, 2008) and found them in compliance with the requirements of this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

During previous reporting periods, we reviewed interviews, interrogations, and conveyances from the Homicide Command, the Sex Crimes Command, Southwestern Investigative Unit (IOU) and the Narcotics Unit. The Homicide Command has adhered to established policy and followed the guidelines effectively in all our previous reviews.

To assess compliance with these requirements for this reporting period, in addition to Sexual Crimes Command, Narcotics, and Southwestern District, we have expanded our review to include the Northeastern District/Precinct's Investigative Operations Unit (IOU). As Homicide Command has been in compliance during all previous reporting periods, we did not review their materials during this reporting period.

During this reporting period, we reviewed 23 Sex Crimes Command case files, which contained 59 witness/interrogation interviews. Fifty-seven interviews/interrogations met the requirement, and contained the proper documentation and supervisory review within prescribed timeframes. In two cases, the supervisory review did not occur in a timely fashion. The Sexual Crimes Command's compliance rate for the previous quarter was 87%. The command made adjustments during the previous reporting period to address the lack of timeliness in supervisory review, and its progress is evident. During this reporting period, Sexual Crimes achieved a compliance rate of 97% with this paragraph.

In addition, we reviewed 61 Narcotics Unit case files, and found 13 cases involving interrogations. In the previous reporting period, the Narcotics Unit had made progress toward compliance with its personnel using the approved form and conducting supervisory reviews of the interviews. All interrogations were detailed on the approved Statement Form (DPD 103, Revised February 9, 2009). During this reporting period, we found that five of the 13 Narcotics interrogations were in compliance. Six did not contain a supervisory review, and two contained supervisory review but not the date or time of the review. In three of the cases where the supervisor did not conduct a review, the ending time of the interview was not recorded. During this reporting period, the Narcotics Unit achieved a compliance rate of 39% with this paragraph.

We also reviewed 39 case files from the Southwestern District Investigative Operations Unit (IOU), and found 57 interviews conducted on the proper form and one conducted on the Interrogation Sheet. Of these 58, six did not contain the ending time of the interview; and in 20, the supervisory review was late. In one case, the supervisor signed the document, but failed to list the date or time of the review. It should be noted that in the previous reporting period, none of Southwestern District interviews/interrogations were in compliance. They have improved considerably, and their compliance rate for the current quarter is 35%.

We reviewed 41 case files from the Northeastern Precinct/District that resulted in 54 interviews/interrogations. Thirty of the forms had been accurately completed with appropriate and timely supervisory review. The improper form (Interrogation Sheet) was utilized in five of the interviews, eight did not contain ending times of the interview, and one contained a supervisory review of the interview but failed to note the date and time of the review. The on-duty lieutenant assisted in our review, and we were able to share and discuss issues of compliance. Northeastern District/Precinct compliance rate for this quarter is 56%.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Since our first review (2009) of interviews, interrogations, and conveyances, we have seen both Homicide and Sexual Crimes come into compliance with this paragraph through the leadership and initiative on the part of employees and supervisors in those commands. We have also observed other investigative units making progress with compliance-related documentation and will be reviewing other investigative operations in our future on-site visits. Although DPD has made considerable progress in this area, it remains out of compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not 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:

We previously reviewed the applicable DPD directives (DPD 202.1, Arrests, effective July 1, 2008), and found them in compliance with the requirements of this paragraph. .

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:

We reviewed DPD's previous custodial detention audits of the Southwestern District, the Eastern District, and the Northeastern District during the previous reporting period. The scope of the audits covered U49 through U58 and U60. The results of DPD's conclusions were consistent with our findings in our previous and this reporting period. The audits identified four main issues that were addressed by the Audit Team, and we concur with the team's recommendations.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

The issues are: (1) the time it takes to identify and clear holds/warrants; (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 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 a few case reports involving traffic, probation violations, and warrant arrests that are handled by other means, or where the arrestee is taken directly to court, we reviewed 90 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. Of the 90 cases we reviewed, all but two met the 48-hour requirement with one containing the auditable form and in the other the form was not initiated, resulting in a 96% compliance rate.

DPD is in compliance with these requirements.

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:

We previously found the DPD in compliance with this paragraph. The applicable DPD policies for this review are DPD 202.1, 202.1-7.2, and 202.1-8.1, Arrest, effective July 1, 2008. To assess compliance with these requirements for this reporting period, we reviewed the same documents referenced in U50.

Of the 110 arrest case reports we reviewed, there were 54 that began at the initial arrest and concluded in arraignment. Cases that were excluded include warrant arrests, juvenile arrests, some traffic cases, and situations where the offender was able to post bond or taken directly to court. In 29 cases, the arrest occurred during a domestic violence event, and we have found that the prosecutor typically denies the arraignment due to insufficient evidence to proceed or the victim refuses to prosecute.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

There were 31 cases where the arraignment occurred after 48 hours from the time of the initial arrest. In 29 cases, an auditable form was completed, including 11 that were due to those involving extraordinary circumstances. In the two cases, we could not locate an auditable form in the case packets. In 11 cases, we could not determine if the auditable form had been prepared by the end of the shift as the OIC did not list the date/time the event was recognized or the form prepared. In every case, the revised DPD form was not used. The use of this particular outdated form has been an ongoing problem. If the OIC would date and time his/her generation of the form, regardless of the form used, DPD would be in compliance. DPD's compliance rate with this requirement for the current reporting period is 58%. Previously, the Department has been in compliance with the requirements, and the failure to comply with the requirements for two consecutive reporting periods takes the Department out of compliance.

We have determined that the Department frequently delays completing the warrant submittal unnecessarily (although it is within the 48-hour timeframe), and thus arraignments are often delayed. Our review indicates that after the arrest, the personnel completing the request may wait more than 24 hours prior to generating the documentation for the arraignment. If DPD submits the documentation in a more timely fashion, the number of arraignments delayed more than 48 hours would be reduced significantly, and the number of auditable forms required would also be reduced.

As we noted previously, the elimination of evening arraignments by the 36th District Court of the State of Michigan will continue to be problematic for DPD in its ability to arraign detainees in a timely fashion.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not 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 in the current arrest shall not delay this process.

Comments:

We previously reviewed the applicable DPD directive (DPD Directive 305.2, Detainee Registration, effective September 12, 2005), and found it in compliance with the requirements of this paragraph. DPD is in Phase 2 compliance with this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

We reviewed DPD Directive 305.2, Detainee Registration, effective September 12, 2005. DPD is in Phase 1 compliance with this paragraph.

In previous reporting periods, DPD was not in Phase 2 compliance with this paragraph, due to hold/warrants not being cleared and the auditable form not being prepared. In the fourth reporting period, the Department's compliance rate was 91%.

To assess compliance with these requirements for this reporting period, we reviewed 110 Detainee Input Sheets, and found a total of 50 holds/warrants listed on the forms. In four cases, the hold exceeded 48 hours prior to being cleared. We found that in the four hold/warrants not being cleared within 48 hours that arraignments on the initial charges were in excess of 48 hours. In two of the holds over 48 hours, the warrants were for traffic offenses where the bond was one hundred dollars.

Auditable forms for the violations were not included in the case packets. DPD is required to complete an auditable form when a hold/warrant is not cleared within 48 hours of the time it is identified. There are two separate and distinct parts to this particular requirement. With few exceptions, the majority of the Detainee Input Sheets did not indicate a "date cleared" in the appropriate location (box), although the actual time of release (hold/warrant cleared) is indicated in Section (3), the Final Charging, and Disposition and Release portions of the form, which indicates when the detainee is released from custody. As we have noted previously, the lack of DPD personnel properly indicating the date and time holds/warrants are identified and cleared continues to be a problem for the Department. DPD's compliance rate for this requirement is 92%.

We found that supervisors are not ensuring that the Detainee Input Sheets are completed in a timely fashion as it relates to warrants/holds being cleared, and that the required auditable forms are not submitted for a commander's review. These deficiencies are the basis for DPD's performance in this area during this quarter. These errors can be corrected by ensuring that officers filling in the date/time boxes on the form and completing the auditable form when required.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

F. RESTRICTION POLICIES

CJ Requirement U54

The DPD shall develop a policy regarding restricting detainee's access to telephone calls and visitors that permits individuals in DPD custody access to attorneys and reasonable access to telephone calls and visitors.

Comments:

We previously reviewed the applicable DPD directive (DPD 305.2, Detainee Registration, effective September 12, 2005) and found it in compliance with the requirements of 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:

We have reviewed DPD Directive 305.2, Detainee Registration, effective September 12, 2005, and found it in Phase 1 compliance with the requirements of this paragraph.

To assess Phase 2 compliance with these requirements for this reporting period, we reviewed 110 case files and did not find any restrictions. DPD personnel advise us that restricting a detainee's access to visitors, attorneys, and the use of telephone privileges rarely occurs. Personnel may impose a telephone restriction when a detainee makes threatening or harassing calls to individuals outside the facility. There are payphones in each holding facility for the detainees' use. DPD has been in compliance with this requirement in all reporting periods.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

We previously reviewed the applicable DPD directive (DPD 202.1, Arrests, effective July 1, 2008) and found it in compliance 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

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:

We previously reviewed DPD Directive 202.1-3.3, Arrest, effective July 1, 2008, and found it in compliance with the requirements of this paragraph.

To assess Phase 2 compliance with these requirements for this reporting period, we reviewed all of DPD’s requests to the Court for taking a material witness into custody for the period of July 1, through September 30, 2010. The auditable form, approved by a supervisor, was attached to the Court order in two of the three cases. The Court orders were all issued by a Judge in the 36th District Court of the State of Michigan prior to the witnesses’ detention. We reviewed a Corrective Action Notice prepared by DPD in response to the failure to prepare the auditable

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

form (UF-006). DPD's compliance rate with this paragraph for the current reporting period is 66%.

The Department has previously been in compliance with these requirements, and this one event will not take DPD out of 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:

We previously reviewed the applicable DPD directives (DPD 305.2, Detainee Registration, effective September 12, 2005), and found them in Phase 1 compliance with the requirements of this paragraph.

To assess Phase 2 compliance with these requirements for this reporting period, we reviewed a random sample of 90 case files that contained information from the initial arrest through the submittal of an arraignment warrant. Of these 90 cases, 54 went to arraignment. The contained documents included Detainee Input Sheets, Warrant Verification Logs, Arraignment Logs, and Livescan forms. In the majority of the instances, the: (a) individual's personal information; (b) crime[s] charged; (c) date and time of arrest and release; (d) time and date the arraignment was

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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

In the review of U58e, the Judgment requires that "the name and badge number of the officer who submitted the arraignment warrant" be documented. In our previous reviews, we found that in approximately 25% of the cases, although the officer's name was listed, the officer failed to include his/her badge number on the Warrant Verification Log. During this reporting period, we found just one case where the officer failed to list his/her badge number on the warrant submittal form. In another case, the officer failed to include relevant data under U58a; and in another case, the date of arraignment was not included under U58f. We examined the 90 cases for compliance with the eight individual requirements, and found an overall compliance rate of 100%, accounting for the issues 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:

We previously reviewed the applicable DPD directive (DPD 202.1, Arrests, effective July 1, 2008), and found it in Phase 1 compliance with the requirements of this paragraph. However, in our previous reports, we did not find the DPD in compliance with the implementation requirements, noting the lack of auditable forms, the lack of documented reasonable suspicion for frisks, and an inadequate supervisory review of Officer's Daily Activity Logs.

In our review of 110 arrests, we determined that one of the arrests lacked probable cause. The unsupported arrest did not have an auditable form (UF001, effective date October 23, 2009) completed for review by a commanding officer. In addition, we reviewed officers' Daily Activity Logs, investigatory stop-and-frisk, and checked for the presence of auditable forms (Form UF003, Investigatory Stop and/or Frisk Exception Form, effective date October 31, 2009). We found no completed auditable forms for 26 of the 159 frisks that lacked documented

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

reasonable suspicion. We also found an inadequate supervisory review of officers' Daily Activity Logs to ensure that reasonable suspicion existed prior to the frisks.

In order to be lawful, a 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 s/he has reasonable suspicion to believe that the suspect may have the means to do harm. Although officers articulated reasonable suspicion for a majority of the stops, the remainder documented no basis for the frisk. While supervisors do review the officers' Daily Activity Logs, they are not challenging officers to document the stops/frisks. The officers, in some cases, are only noting the stops. There were no completed DPD forms (DPD UF003, Investigatory Stop and/or Frisk Exception Form) included in the case report packets we reviewed.

Our review of traffic stops determined that officers' abilities to accurately describe the actions that led to the stop greatly improved over the past year; however, there were no auditable forms generated for the 17 traffic stops in which a form was required to be completed. Commanders are not receiving the forms due to supervisors not completing them.

There were 44 investigatory stops (excluding frisks and traffic stops), of which 42 were based on a documented investigatory purpose. Two of the stops did not articulate reasonable suspicion. We were unable to locate any auditable forms.

There were 15 cases where documentation was completed that indicated an arraignment warrant was not sought and an auditable form completed. In 13 cases, a commanding officer approved the form and attached his/her signature. In one case, a sergeant signed the form in the Commander's Review box. There was one arrest (WNS) that should have generated an auditable form but did not. We noted that the Department sent a Corrective Action Notice to a commanding officer for failing to review the auditable form for a WNS in a timely manner.

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 that did not articulate reasonable suspicion nor contain an auditable form, DPD is not in Phase 2 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

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

Comments:

We previously reviewed the applicable DPD directives (DPD 202.1, Arrests effective July 1, 2008; and Holding Cell Areas, 305.4, effective May 9, 2005) and found them in compliance with the requirements of this paragraph.

DPD is not yet in Phase 2 compliance with this paragraph. To assess compliance with these requirements for this reporting period, we reviewed 110 arrest case reports, of which 90 were submitted to the Prosecutor's Office and 54 went to arraignment. There were 31 cases where the arraignment occurred more than 48 hours after the arrest. In all cases but two, the request for the warrant was submitted in a timely fashion. In 11 cases, the late arraignment was due to extraordinary circumstances; and in two cases, the officer failed to submit the warrant request to the prosecutor within 48 hours. In 19 cases, there was appropriate command review. In six cases, a command review did not occur; and in five cases, the review was late. We noted that the Department sent Corrective Action Notices to Commanders who failed to review the auditable forms within the allotted time constraints. DPD's compliance rate for this portion of the requirement is 61%.

Of the 50 hold/warrants we identified, there were four holds that were not cleared within the required 48 hours. An auditable form was not generated for the four holds; therefore, the commander was unable to conduct a review.

DPD is not in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

Critical Issues:

- As we previously noted, 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. This has, in effect, further burdened DPD's ability to have detainees arraigned and to meet the requirement that arraignment occur within 48 hours of arrest. In addition to this edict from the District Court, the cutoff time for submitting prisoner information to the Court has been moved back to 10:30 a.m., restricting DPD's ability to provide prompt judicial review.
- We are concerned that officers do not always follow the detailed requirements needed for compliance; and, perhaps more important, supervisors do not always demonstrate the willingness and ability to exercise the roles required of them. For instance, as noted

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

above, we found that officers often failed to record complete information concerning arrests and detentions; and that supervisory review of their reports was often deficient. If each officer timed and dated their signature on all documents they prepared or received, achieving compliance would be much less difficult.

- Likewise, DPD policy requires written documentation of all investigatory stops and frisks, but our review indicated that the officers often fail to articulate “reasonable suspicion.” Supervisory monitoring of stops and frisks has also been an ongoing issue since the beginning of the Consent Judgments.
- When an arrest is made, personnel who typically prepare the warrant request for the Prosecutor’s Office need to present it in a timely manner. We have reviewed cases where an arrest is made early on a Monday morning, and the warrant request is not submitted until Wednesday. In our August review of timeliness of warrant submittals to the Prosecutor’s Office, we discovered four arrests for minor offenses that took two full weekdays to prepare the request. When the request is made within 48 hours of the arrest, it delays the arraignment more than 48 hours. By preparing the request promptly, there will be fewer arraignments over 48 hours, fewer holds not cleared; and thus fewer auditable forms generated, and thus less commander reviews. For every unnecessary auditable form that is created by DPD, an additional opportunity for failure exists.

Next Steps:

During the next reporting period, we will:

- Meet with DPD’s Civil Rights Integrity Bureau (CRIB) to discuss probable cause reviews and our stop-and-frisk concerns. Completeness, accuracy, and timeliness of all reports and auditable forms continue to affect field units and the quality of administrative review.
- Review other investigative units in various districts/precincts to determine their compliance with interrogations, interviews, conveyances, and material witness policies.
- Observe the personnel who are responsible for the detainee booking process; and interview them regarding their process and procedures for detailing detainee information, including completing the Livescan form; and how they can assist in the probable cause review as a back-up for the probable cause verification normally completed on the Crisnet report.
- Inquire with DPD if any additional processes have been put in place to address the dilemma that occurs when a hold has been previously placed on an arrestee, and the warrant request to the Prosecutor’s Office on the current charge has been denied. The concern for DPD in these instances creates a delay in presenting the hold for arraignment within 48 hours only on the basis of the hold; and during this reporting period, it kept the Department out of compliance.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| | Requirements | Phase 1 Policy | Phase 2 Implementation |
|----|---|-----------------------|-------------------------------|
| 42 | Define and prohibit arrest without 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 | Not 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 | Not in Compliance |
| 52 | Revise hold policies | In Compliance | In Compliance |
| 53 | Documentation of all holds | In Compliance | Not 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 |

VI. EXTERNAL COMPLAINTS

The stated mission of the Internal Affairs Division (IAD) is to ensure the public's trust and confidence in 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. 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 responsible 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.

Consistent with this obligation, IAD accepts information from any source; and requires that all officers and employees document all complaints filed in writing, verbally, in person, by mail, by telephone, by facsimile, or by electronic mail.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

During our most recent site visit, we examined the investigative procedures employed by IAD for consistency in the application of procedural fairness, timeliness, confidentiality, and the meticulous reporting of facts and results of an investigation. We 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 (BOPC). The OCI is responsible 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 led by a civilian Chief Investigator who is appointed by the BOPC. The OCI is staffed with a combination of civilian and sworn investigators who assist in the investigation of citizen complaints. The OCI's mission is to provide meaningful and objective investigations 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 by any method of communication including in writing, verbally, in person, by mail, by telephone, by facsimile, or by electronic mail. Members of the public may also file complaints at the BOPC office or at BOPC meetings.

During our most recent site visit, we examined the investigative procedures employed by the OCI for thoroughness of investigative effort, inclusion of information from all sources, and the development of pertinent facts of the incident. We visited with OCI staff and were briefed on the case management system and case assignment methodology. We met with members of the recently constituted "Backlog Squad," and were advised of their plans to address the aging cases which are/will be assigned to them. Consistent with our last review, we found most closed and completed investigations well-written, clear, concise, factual, and complete.

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:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph. 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 1, 2010; establish the jurisdictional responsibility of the DPD (Internal

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Affairs Division) and OCI. 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. IAD is responsible for all external complaints alleging possible criminal misconduct. 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, referring, and investigating complaints. IAD and OCI track each open, pending, and closed case by the unique case identifier that is placed on all relevant documentation regarding the specific external complaint and provided to each citizen upon lodging a complaint. Each entity uses a computerized database to record data that is developed concerning external citizen complaints. OCI is required to compile a summary of its investigations annually. These summaries are distributed throughout the DPD, to the Board of Police Commissioners, and to the public. In addition, the City displays informational posters in the public areas of all police facilities and public libraries. The City sponsors community meetings and runs public service announcements concerning how to file a citizen's complaint against the police. Through the OCI, the Board of Police Commissioners maintains a community outreach coordinator, who attends meetings and makes presentations at the request of community organizations or public forums. The Board of Police Commissioners' website provides access to an OCI fact sheet on external police complaints. The BOPC website also allows the public to file complaints online.

The DPD and the City are in compliance with these requirements.

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*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comments:

During previous site visits, we inspected Police Headquarters; the Northeastern, Eastern, Southwestern, and Central Districts; the Sixth, Eighth, Tenth and Twelfth Precincts; and the Office of the Chief Investigator for compliance with the requirements of this paragraph. All locations displayed in a prominent location permanent placards that described the complaint process. All desk personnel were able to produce citizen complaint brochures immediately, and were aware that they should not discourage citizens from filing a complaint. We noted that while OCI displayed the appropriate placards and posters on their floor of the building OCI is housed in, similar information should also be displayed in the building's ground floor lobby, if DPD is allowed to do so by the building owner. (OCI leases its current location.)

During our previous site visits, we also inspected four City library branches: Bowen; Neighborhood City Hall; Campbell Brown; and Conely. All locations had visible citizen complaint procedure posters, fact sheets, report forms, and brochures. The library staff was conversant in all areas, and knew how to replenish supplies when necessary.

During our most recent site visit, we inspected the Southwestern District/Schaefer, Sixth and Eighth Precincts (formerly Northwestern District), the Twelfth Precinct, and the Fort Street Station. We found the appropriate citizen complaint posters, forms, and brochures in place. We contacted desk officers who were able to provide the appropriate citizen complaint forms and brochures.

We also inspected three City Libraries (a fourth was closed upon our arrival): Skillman Branch, Elmwood Park Branch, and Duffield Branch. We found the appropriate posters on display, although one was partially covered with other material. In each location, we interviewed a library official and inspected supplies.

Both DPD and OCI conduct community outreach programs designed to inform citizens of the complaint process and the procedures for filing complaints. The Board of Police Commissioners' website allows the public to file complaints against the police online. The City of Detroit broadcasts public service announcements that describe the complaint process. DPD provided us with the broadcast schedule for the week of our site visit.

Compliance Status:

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

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

During previous site visits, we reviewed the audits conducted by the DPD Office of Civil Rights regarding citizen complaint informational brochures and contact forms carried in police vehicles. We also randomly selected officers from the Northeastern, Eastern, Southwestern, and Central Police Districts, as well as the Tenth and Twelfth precincts, and asked them to provide the brochures and forms for review. Each officer who we contacted provided the documents upon our request, and was aware of the requirements of the DPD policy concerning citizen complaints.

During this review, we contacted officers in the Southwestern District/Schaefer and the Fort Street Station. Officers were able to produce complaint forms and were knowledgeable of policy requirements. We also inspected complaint logs in each location.

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:

The following policies are applicable to DPD's compliance with the Intake and Tracking paragraphs: DPD Directive, 102.6, Citizen Complaints, effective July 1, 2008; IAD Standard Operating Procedures, Section 1 and 3; and OCI Standard Operating Procedures, effective July 24, 2003 (revised April 29, 2004, and June, 2010); establish the jurisdictional responsibility of the DPD (IAD) and the Board of Police Commissioners (OCI). 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 policy as defined by the Consent Judgment. We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.

Our past reviews of IAD and OCI external complaint investigations determined that the complaints were filed using all of the communication facilities identified in this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Our review of 33 IAD and 100 OCI investigations for this report found again that complaints were filed using all of the communication methods identified in this requirement.

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:

In our previous reviews, we found no instances where personnel accepting complaints reported any opinions regarding the mental capacity or veracity of the complainant.

We reviewed 33 IAD and 100 OCI cases for this report. We again found no instances where personnel accepting complaints reported any opinions regarding the mental capacity or veracity of the complainant.

DPD and the City are in compliance with this requirement.

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).

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comments:

During previous reporting periods, we reviewed 121 IAD and 651 OCI closed external complaint investigations. 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.

For this period, we reviewed 33 IAD and 100 OCI investigations. All investigations contained all of the required information. The letters also provided a case-specific identifier for the complainant to reference when contacting either IAD or OCI. DPD and the City are in compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

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*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- 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.*³⁶

Comments:

Internal Affairs Division: IAD Standard Operating Procedures do not specifically permit or encourage 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.

IAD Standard Operating Procedures and OCI Policy require that all complaints be referred to the appropriate agency within five business days of their receipt. Historically, we have discovered significant delays in transferring appropriate cases from OCI to IAD. We reviewed no IAD cases during the current reporting period that had been referred by OCI.

The IAD Standard Operating Procedures contains criteria for investigator applicants and training. There has been one investigator accepted into IAD in the current quarter.

In cases of prolonged investigations, IAD must provide an updated case status to complainants, and upon closure, notify them of the closure, finding(s), and action(s) taken, where appropriate. Our review determined IAD to be in compliance with these requirements.

IAD's ability to complete all investigations within 90 days remains problematic. During our current review of 33 investigations, 14 exceeded the 90-day limit. Of the 14 cases:

- four were delayed due to criminal proceedings;
- one was delayed due to criminal proceedings, and the subject officer was unavailable due to non-duty-related illness;
- two cases involved complex research into time records; and
- the remaining seven appeared to be delayed due to internal operational problems.

The IAD command staff are working with us to find solutions to improve timeliness.

Office of the Chief Investigator: For this reporting period, we reviewed 100 randomly selected OCI cases. Only one involved an allegation of potential criminal activity – the alleged theft of money – and this case was appropriately referred to IAD within five business days of receipt in OCI. Five cases were resolved informally, and all met the criteria as they involved service complaints or claims of innocence.

Timeliness of case completion continues to be an issue. Only 12 of the 100 cases we reviewed were completed within 90 days. Many had long gaps of time in which no apparent activity took

³⁶ Consent Judgment amendment, September 15, 2008.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

place. Thirty-five of the 100 cases we reviewed were not referred to OCI within five business days, as required by DPD policy. In 19 cases (10 of which were closed in September), there was no record of complainants being notified of the status of their investigation. Similarly, in 24 cases (18 of which were closed in September), there was no evidence of the complainant being notified of the final disposition of the case. OCI staff was advised of this trend, particularly with the September cases, and cautioned to make sure that the quality and the completeness of their investigations do not suffer in their efforts to address the backlog of cases.

During our last site visit, we were provided with documentation of pre-service and in-service training provided to OCI investigative staff. OCI supervisors confirmed that new members of the unit, including those temporarily transferred to the "Backlog Squad," received pre-service training. We also reviewed in-service training attendance records. Much of this training takes place in conjunction with sworn DPD personnel from other units.

DPD is not in Phase 2 compliance with this paragraph.

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 Board of Police Commissioners to complete review of OCI investigations within 45 days of completion of the Chief Investigator's review;³⁷ 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 BOPC's review.*

Comments:

During this review, as in the past reviews, the external complaint review process was completed within the appropriate timeframes. OCI staff was advised to insure that the various reviewers' signature blocks also contained a date field so that timelines can be verified. This information was missing on some of their newer forms.

³⁷ Consent Judgment amendment July 18, 2003.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

During our previous assessment of compliance with these requirements, we found that IAD cases were generally appropriately resolved with the stated dispositions based on the findings of the investigator. However, OCI cases often had either inappropriate dispositions or no dispositions for specific allegations.

For the current reporting period, we reviewed 100 randomly selected OCI cases and determined that seven had findings that were inappropriate based on the documentation provided for our review. In two of these seven cases, no findings were attributed to some of the allegations outlined in the initial complaint. We found 93% of these cases in compliance with this requirement.

In addition, we reviewed 33 IAD cases, including internal and external complaints. All contained the required dispositions; however, we determined one disposition to be inappropriate and notified the IAD supervisor. We found 97% of these cases in compliance with this requirement.

The DPD is in pending compliance with these requirements, with an overall compliance rate of 94%.

Compliance Status:

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Phase 1: In Compliance

Phase 2: Pending Compliance

Critical Issues:

We examined 33 closed and completed cases for the period of July 1, through September 30, 2010. Our review disclosed that the following issues continue to require immediate attention:

- **Inadequate Case Management:** DPD needs to implement a reliable case-tracking system that alerts the supervisors to deadlines and extended deadlines for cases. While OCI has made strides with a case management system, work remains to be done. OCI staff noted a lack of technological support, and much of OCI's case management system currently consists of written documents, handwritten notes, and ledger books.
- **Timeliness of Investigations:** DPD needs to improve in this area. OCI's adherence to the 90-day time limit for investigations continues to be an issue.
- ***Inadequate OCI Case Management:*** Our examination of 102 completed cases for this reporting period revealed that the OCI does not use efficient and effective case management for the monitoring of investigative activity by assigned personnel. OCI policy requires that investigators maintain an Investigator Activity Log whereupon they record all investigative action taken related to the particular case. A 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 activity documented on the log. There is no formalized process of determining investigative accomplishments with greater frequency. OCI does not have a reliable case tracking and management system. OCI advised us that it intends to contract with the City's Information Technology Unit to enhance its current system. We will follow up on the progress of this endeavor for our next report.

Next Steps:

During the next reporting period, we will:

- Review a sample of the cases closed by OCI and IAD for the months of October, November, and December, 2010.
- Verify the length and content of in-service training – particularly that which was developed for and offered to OCI personnel only – to ascertain if the topics are addressing the needs identified in our previous reports.
- Verify if DPD has provided any technology assistance to enhance the OCI case management system.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- Review documentation regarding the supervision of the investigative process. Our review will examine: 1) IAD and OCI case tracking; 2) OCI case assignment procedures to reduce assignment delays; 3) the OCI process to reduce backlog cases; 4) procedures for administratively closed cases; 5) steps to improve supervision of the investigative process.

| ¶ | 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 |
| 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 investigations/complaints | In Compliance | In Compliance |
| 69 | Required finding categories specified | In Compliance | Pending Compliance |

VII. GENERAL POLICIES

This section of the Consent Judgment addresses a variety of issues in general terms. It seeks to ensure that when the DPD develops policies, all the terms used are clearly defined, and that prior to making policy revisions, the DPD posts the proposals on the DPD website to inform the community of the proposed revisions. It requires DPD to advise all of its officers that taking police actions in violation of DPD policies shall subject them 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. Additionally, this section required DPD to revise its policy regarding police actions by off-duty officers; and to revise the policies on how DPD handles prisoners, to include summoning first aid as necessary, summoning assistance if required, and prohibiting the accompanying of prisoners to the holding cell area. This section also required DPD to develop a foot pursuit policy and to plan for adequate distribution of manpower. DPD has developed the appropriate policies and is taking steps to achieve implementation; however, we previously noted a need to revise the foot pursuit policy, which is pending.

CJ Requirement U70

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

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comments:

We previously reviewed the applicable DPD directives, and found them in compliance with the requirements of this paragraph. DPD Directive 101.1, Directive System, effective November 1, 2010, 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 Information); Teletypes (Administrative); and Training Bulletins. DPD Directive 404.1, Definitions, effective July 1, 2008, includes a comprehensive list of terms frequently used within the Department, from “Actively Resisting” and ending with “Writ of Restitution.”

In addition, we noted that the DPD formed a Policy Focus Committee (PFC) to concentrate on policy issues. The DPD 28th Quarter Status Report, dated September 30, 2010, states that: “During this quarter, there were no proposed policies submitted to the Board of Police Commissioners.” The DPD informed us that there have been no meetings of the PFC since May 12, 2009. DPD remains in Phase 1 and Phase 2 compliance with this paragraph.

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 developed three documents that govern the process to be followed to ensure compliance with this requirement. The DPD established a Protocol for Proposed Policy Revisions; an SOP outlining procedures for posting proposed policies to the website; and a flow chart (Visio-DPD Policy Flow Chart) that tracks the movements of proposed policy revisions through the Department and through the public review. In addition, DPD Directive 101.1, Directive System, effective November 1, 2010, provides a process for the issuance of Special Orders and guidance on their use.

To assess compliance with this requirement for this reporting period, we again examined the process for the implementation of policies and reviewed comments contained in the DPD 28th Quarter Status Report, dated September 30, 2010.³⁸ The comments contained in the Status

³⁸ The DPD has had a dedicated email address since July 2004 on the City of Detroit's website that allows for citizen comments to be provided directly to the DPD. To date, no comments have been received regarding any of

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Report indicate the DPD's continued effort to make proposed policy changes available to the community, but also note that the Department has not received any citizen comments.

As in our last review, during our most recent site visit, we inquired regarding any changes to these policies since our last site visit and learned of none.

We again caution DPD to ensure that Special Orders are not used in a way that infringes on the community's ability to provide input. In instances where a Special Order is used 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.

DPD has failed to institute the required policy changes to the foot pursuit policy; therefore is placed in Phase 2 pending compliance status. (See U77.)

Compliance Status:

Phase 1: In Compliance

Phase 2: Pending 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:

We previously reviewed DPD Directive 102.3, Code of Conduct, effective November 1, 2009, and found it in Phase 1 compliance with the requirements of this paragraph.

To assess Phase 2 compliance with this requirement for this reporting period, we reviewed the DPD 28th Quarter Status Report, dated September 30, 2010. The reports states: "On July 5, 2010, the DPD commenced its third consecutive annual in-service training relating to taking police action to its members, which is inclusive to the *Use of Force Lesson Plan*. On June 18, 2010, the training period for FY 2009/2010 ended with 99% of DPD members receiving the use

the DPD's policies. The DPD requires that all proposed policy revisions are posted for a period of 30 days on the City of Detroit's website. The OCI is currently operating under the Procedure for Reviewing Comments on Policies Posted to the DPD Website Protocol. Every policy that is developed or that is substantively or procedurally revised is presented to the BOPC. Meetings of the BOPC are open to the public and are often held as community forums. The DPD not only presents and explains new policies and directives, but encourages comments and input from the community. During this quarter, there were no proposed policy revisions submitted to the BOPC. However, during this review quarter the DPD submitted a policy on "Secondary Employment" to the BOPC for review and consideration.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

of force block of training.” We reviewed the training data for the new fiscal year, and it indicated that 902 of the members, or 33% of the workforce, received use of force training.

DPD is in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In 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:

During 2007, the DPD agreed to a 1:10 ratio of supervisors to officers in patrol and specialized units.³⁹ The agreement was reached and memorialized in electronic mail dated November 6, 2007. The previous monitor found the DPD compliant with the associated policy requirements of this CJ paragraph, but not with the implementation requirements.⁴⁰ Our initial reviews confirmed Phase 1 compliance with this paragraph, but we expressed concern with the DPD assignment practice wherein sergeants were not assigned responsibility for the conduct or performance of specific officers and officers were not accountable to a specific sergeant. We emphasized that this practice did not provide appropriate accountability mechanisms.

The DPD addressed our concerns with the issuance of Special Order 10-03, effective January 1, 2010, which is to be incorporated into a policy directive. This Special Order sets forth the ratio requirements and specifically requires the assignment of each officer to a specific sergeant; accordingly, sergeants are accountable for the conduct and performance of officers assigned to them and for preparing the required performance evaluations. The DPD reinforced these requirements through a Roll Call Training Bulletin.⁴¹

³⁹Section 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.

⁴⁰Report of the Independent Monitor for the Detroit Police Department, Quarter Ending February 28, 2009 (Report #22).

⁴¹ The DPD issued Teletype 10-00617 containing Roll Call Training 10-05 – Span of Control – Supervision: To Be Read at All Roll Calls From Platoon One, Saturday, February 13, 2010 through Platoon Three, Friday, February 19, 2010.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

During previous reporting periods, we found the DPD staffing levels at the 15 commands on varying days did not meet the >94% compliance requirement. During the third reporting period, we found that the eight field-deployed commands we reviewed met the requirements without the need for corrective action at a rate of 88%. The seven specialized commands met the requirements at a rate of 76%. The DPD was not in full compliance with these requirements.

During our most recent site visit, we met with the CRIB Commander and sergeant and discussed the DPD's progress in addressing span of control issues. In addition, we reviewed the DPD 28th Quarter Status Report and other materials. We reviewed Daily Details for the 15 precincts, districts and specialized units for three days selected at random: July 22, 2010; August 14, 2010; and September 20, 2010.

We found that 93 platoons in the eight DPD precincts and districts worked on the three randomly selected dates. Six of the 93 had a supervisor over-assigned with more than ten subordinates during the shift. Two platoons were entirely off duty or on leave. In addition, of 38 specialized unit platoons operating on the three days two had an over-assigned supervisor. Thus, of the total 129 platoons where officers worked, 120 (or 94%) were found to be in compliance with span of control requirements. Since this percentage is very close to the >94% we require for compliance, we went further in our examination of the data. We checked the platoons that had more than ten officers assigned which were, in fact, the only platoons that could exceed the span of control requirements. There were 66 such platoons where 11 or more officers were working on the random sample days. Of these, 56 (or 83%) were found to compliant with the required span of control. The DPD is in Phase 1 compliance, but has not yet achieved Phase 2 compliance, with this paragraph.

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:

We previously reviewed DPD Directive 102.3, Code of Conduct, effective November 1, 2009, and found it in compliance with the requirements of this paragraph. In the previous quarterly review we noted that the training data indicated that in the previous fiscal year ending June 2010, 2,730 (99%) of 2,749 eligible members received use of force training, which incorporates Code of Conduct material. There were no cases in which a DPD officer reported misconduct on the part of another DPD officer. We determined DPD to be in Phase 2 compliance with this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

During this reporting period, we reviewed the data in the DPD 28th Quarter Status Report for this requirement. It repeated the data as noted in U72. Our review of the training data for the new fiscal year indicated that 902 (33%) of the members have received the required training. There were no cases reported to us in which a DPD officer reported misconduct on the part of another DPD officer.

DPD remains in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In 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.*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comments:

We previously reviewed DPD Directive 102.3, Code of Conduct, effective November 1, 2009, and found it in compliance with the requirements of this paragraph. The DPD 28th Quarter Status Report, dated September 30, 2010, articulates no changes affecting this requirement, but comments on a joint communication issued by the Parties wherein they agreed that the DPD had complied with the policy creation, dissemination, and training requirements of this paragraph. The Parties further agreed that the Monitor should assess the 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.

Our previous report noted one incident in which an officer experienced an accidental discharge of his firearm while in Flint, Michigan. The incident was reported to and investigated by FI. We also noted the transmittal of the above-described Chief's letter to the Michigan Association of Chiefs of Police on April 21, 2010.

There were no cases reported during this review period. DPD remains in Phase 2 compliance with this paragraph.

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

Comments:

We previously reviewed the applicable DPD directives, and found them in compliance with the requirements of this paragraph. DPD Directive 304.2, Use of Force, effective June 27, 2005; Training Directive 04-7, effective November 21, 2005; and Directive 305-1, Detainee

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Intake/Assessment, effective May 9, 2005; are in compliance with the requirements of this paragraph.

DPD's 27th Quarter Status Report, dated June 30, 2010, noted that on July 6, 2009, the DPD commenced its second consecutive annual in-service training, which includes the requirements of this paragraph. It also reports that the training period ended in June, 2010, with 99% of the DPD members receiving the training. We verified this with our independent review of the training data.

As noted previously, our reviews 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 arrests. Medical treatment is provided 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.

Based on the 99% training level and our reviews of the auditable forms, we find DPD in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In 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.*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comments:

We previously reviewed DPD Directive 202.7, Foot Pursuits, effective July 1, 2008 and found it in compliance with the requirements of this paragraph. The DPD's 28th Quarter Status Report, dated September 30, 2010, notes that "on July 5, 2010, the DPD commenced its third consecutive annual in-service training relating to policies regarding detainees to its members, which is inclusive to the *Use of Force Lesson Plan*. On June 18, 2010, the training period for FY 2009/2010 ended with 99% of DPD members receiving the use of force block of training." A review of training data for the new fiscal year indicated that 902 (33%) members have received the requisite training.

In our previous reports, we noted that the preparation of a Foot Pursuit Evaluation Form (DPD 699), previously required by DPD directives, 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).

We have encouraged DPD to initiate the necessary revisions to DPD Directive 202.7, Foot Pursuits, effective July 1, 2008. U71 requires the posting of changes to policy at the DPD website and the submission of the changes to the BPOC. DPD previously advised us that the policy directive has been revised and is pending internal review prior to submission to the Board of Police Commissioners. DPD further advised us that it would present the revision to the BOPC in May 2010; however, that presentation was delayed and was rescheduled for December 2010.

The Special Order under which the change in procedure was implemented has a one-year limit and has expired. In our last quarterly report, we advised DPD that we would again review this issue during our next site visit to determine whether the DPD has taken the necessary steps to remain in compliance with the requirements of this paragraph. Following the site visit, we were unable to find any evidence that corrective actions have been taken.

Our review of the use of force reports for this reporting period found that there were eight documented foot pursuit cases. There were no cases documenting a request for reinforcements; two of the cases were pursuits of armed individuals, both of whom discarded their weapons during the chase.

Given that DPD has failed to properly implement the changes to the foot pursuit policy, as required by U71, DPD is now operating without a valid foot pursuit policy. Accordingly, we find the DPD in pending Phase 1 and Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: Pending Compliance

Phase 2: Pending Compliance

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Critical Issues:

- DPD is making progress toward full compliance in this area, and we see no major issues that suggest concerns about continued progress in this area. DPD must, of course, continue to ensure that all personnel receive the necessary training related to the requirements.
- The Department has failed to ensure that the controlling policy for documenting foot pursuits is vetted in conformity with the Judgment and DPD policy requirements. We have consequently placed the Department in pending Phase 2 compliance with U71, and in pending Phase 1 and Phase 2 compliance with U77.

Next Steps:

During the next reporting period, we will:

- Continue to monitor relevant policy changes, including efforts to address the public's interest in policy.
- Continue to heed the training requirements inherent in policy development in this area.
- Review correspondence with the Michigan Chiefs and review the revision to the foot pursuit policy.

| ¶ | 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 | Pending Compliance |
| 72 | Advise officers policy violations disciplined | In Compliance | In Compliance |
| 73 | Adequate officer/supervisor ratio | In Compliance | Not in Compliance |
| 74 | Enforce misconduct reporting requirements | In Compliance | In Compliance |
| 75 | Revise policies regarding off-duty officers | In Compliance | In Compliance |
| 76 | Revise prisoner-related policies | In Compliance | In Compliance |
| 77 | Develop foot pursuit policy | Pending Compliance | Pending Compliance |

VIII. MANAGEMENT AND SUPERVISION

A. Risk Management Database

This portion of the Use of Force Consent Judgment addresses several key management areas, including the development of a risk management system, audit requirements, personnel evaluations, and the reduction of a backload of disciplinary cases. Thirteen of the 28 requirements in this section address the development and use of a comprehensive risk management system.

The development of the risk management system continues to receive considerable attention from all Parties. Extensive testing of MAS resulted from an April Court Order indicating that the City of Detroit was to engage in a competitive bidding process for a system to meet the risk management requirements. Comprehensive testing of MAS by the Monitor and by DOJ took place on September 9, and 10, 2010. The testing revealed that the City had continued to make significant improvements to MAS, and that MAS had the potential to satisfy the risk management-related requirements. Results also revealed concerns with system efficiency and usability. The test also found that DPD had not yet fully trained staff in the system. The testing ultimately resulted in a joint recommendation by the Parties that DPD be allowed to continue its development of MAS. We agreed with the recommendation, and it was also accepted by Judge Cook.

The positive progress of MAS, and the acceptance of it as the principal system to respond to the risk management requirements, now puts to rest any consideration of alternative courses of action. Absent those distractions there is a new sense of urgency regarding further progress with MAS. Our subscription to that sense of urgency should be clear. It is critically important that DPD make progress on all phases of development of the risk management program. In reading the compliance reviews below, one should take note of the combined concerns with further technical developments, as well as with policy, training and broadly shared expectations about what this system can contribute to the management of the Department. We have arrived at a critical juncture with regard to the implementation of risk management and with regard to the execution of the Consent Decrees.

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);*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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

Comments:

Policy relevant to this requirement is found in DPD Directive 401.13, effective November 6, 2008 and is incorporated into the documents that are mandated as part of the risk management plan. The compliance status with regard to this requirement remains as it has been in since our first report.

This paragraph provides a summary of requirements detailed in paragraphs 79-99. Each of the system's components is evaluated separately in the materials that follow. We have deemed the Data Input Plan, Report Protocol, and Review Protocol sufficient since they were developed under the previous monitor, although they will need to be revisited as MAS continues to be revised. The implementation of these requirements is moving forward with the work on MAS but, as described in the reviews below, is not complete.

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:

Based upon the policy noted above, DPD has been in Phase 1 compliance with this requirement since our first quarterly visit. We have withheld Phase 2 compliance because of concerns as to whether policy requirements could be met with the emerging computerized database. We have explored that issue in detail over our past four site visits. We have conducted preliminary and secondary tests of the system based on the requirements described throughout the risk management section of this Agreement. After a critical review by a DOJ subject matter expert, we required DPD to demonstrate that MAS would be capable of meeting requirements. We urged DPD to consider seriously whether continuing on with MAS; or replacing that system with

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

a new, off-the-shelf system, was the best direction to take. We have also exposed DPD to alternative systems against which the Department could evaluate its development efforts.

In the face of each of our challenges, DPD has continued to revise and strengthen its risk management database. The improvement has been dramatic and deserves recognition.

This requirement describes broad expectations for the system being developed by DPD. We do not currently read it as description of technical capabilities to be precisely measured and assessed. Instead, we recognize the growing capabilities of the risk management system as consistent with the goals described in this requirement. In noting that, we understand that additional technical work is required as is training and continued review. As a result, we find DPD in pending Phase 2 compliance with this requirement – recognizing the Department's progress, and requiring continued progress.

Compliance Status:

Phase 1: In Compliance

Phase 2: Pending 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;*
- 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;*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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

Comments:

Compliance with this paragraph has not changed since our earlier reports. As indicated previously, the requirements addressing risk management have largely satisfied Phase 1 compliance standards, but are unlikely to meet Phase 2 compliance standards until the system is completely functional. The exception to this is noted above. The information requirements

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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; DPD is in Phase 1 compliance with this paragraph.

In our tests of MAS, we have explicitly sought information on many of the individual pieces of information required here. As we have moved forward, we have been encouraged by DPD's ability to retrieve the data.

To date, our probes in search of data have been general and not precise or exacting enough to fully assess this requirement. Until now, such precision was unnecessary. In light of DPD's progress, it is now time to move our analysis forward toward more complete assessment.

DPD is not in Phase 2 compliance with this paragraph.

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:

With regard to Phase 1 compliance with this paragraph, the mandated 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. DPD has been in Phase 1, but not in Phase 2, compliance with this requirement since our first site visit.

We have not recognized Phase 2 compliance because our earlier tests identified difficulties in retrieving key data points including personnel information. Our test during this past reporting period, however, demonstrated that those problems had been resolved, and that the information noted above is now retrievable from MAS. DPD is now in pending Phase 2 compliance with this; however, the Department needs to reconcile policy with the new formulations of MAS to achieve full Phase 2 compliance as well as to preserve Phase 1 compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: Pending Compliance

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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;*
- 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:

Compliance with this requirement remains unchanged during the current reporting period. With the prior acceptance of the Data Input Plan by DOJ, the requirements regarding policy development have been met for this paragraph. We note, however, that Phase 1 compliance shall be considered tentative, as the risk management system has undergone significant changes and development since the original Phase 1 compliance finding.

Although the system is not yet fully functional, changes in the risk management system will necessitate renewal of the Data Input Plan. The Department shall embark on efforts now to ensure that the governing policy and related documents are keeping pace with the ongoing revisions of the system. As development continues, we will not seek to reconcile these documents with system functions for each of our quarterly site visits, but will instead expect them to reflect the system as it becomes operational and subject to further consideration of Phase 2 compliance status.

Due to implementation issues, DPD remains out of Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

Compliance with this paragraph in this reporting period is the same as in previous reporting periods. The level of compliance continues to be similar to that in paragraph 82, which addresses the Data Input Plan. Under the previous monitor, the Report Protocol was accepted by DOJ. The document meets the policy-related requirements of the Consent Judgment. It should be noted, however, that Phase 1 compliance must be considered tentative. While the decision to retain MAS has been made, progress on the system itself now necessitates a review of policy to assure consistency with the actual operation of the system. That will necessitate the revision of relevant policies.

Due to implementation issues, DPD remains out of Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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;*
- 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*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

1. *that aggregated information from the risk management database be shared on a regular and periodic basis with training and policy planning staff.*

Comments:

This requirement refers to the third major risk assessment-related document required by the Consent Judgment. It provides details on how the risk assessment system should work. The status of the Review Protocol remains similar to that of the Data Input Plan and Report Protocol, and similar to that reported following our previous site visits. The Review Protocol has been approved by DOJ as meeting policy requirements for this paragraph, but will need to be revisited as major revisions are made to the system. Although the entire system is not yet fully functional, key components of the Review Protocol are functioning well. That is, the system identifies officers who surpass established thresholds, and prompts intervention and documentation of intervention by supervisors. The overall limitations of the system, however, indicate that data report requirements have not been fully implemented. As with the other key risk assessment documents, the review protocol will need to be reexamined to assure that it reflects the system as it becomes fully operational.

DPD remains out of Phase 2 compliance with this paragraph.

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 made progress on each of the three required policy documents. The Department has also taken critical steps toward implementation. As the Parties to this Judgment have recognized problems, the DPD has actively begun to address them by reviewing alternative and supplemental systems while also working to strengthen MAS. We recognize the efforts that the Department has made as consistent with the policy requirements for Phase 1 compliance.

As noted in our last report, this requirement outlines an essential problem-solving process that is expected to prevent delays in development. Although progress since the inception of this Agreement has not been timely, it is also clear that substantial progress has occurred over the

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

past year. That progress is sufficient to reflect problem-solving as it was envisioned much earlier in the process.

Consistent with the last two reporting periods, we find DPD in Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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.

Comments:

The compliance status of this requirement remains unchanged. DPD is continuing to work on the problem of identifying a method for ascribing a common control number. The Management Awareness System, in its current state, 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 initial test of MAS. The common control number problem presents technical challenges which are now being addressed. Policy changes will be required with the resolution of these problems which will also support recognizing changes in compliance level.

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.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comments:

The finding for this requirement has changed since our last report. 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.

Our test of MAS during the current reporting period revealed that previously identified problems of linking personnel data to MAS have been resolved. The required data are now accessible through MAS. This meets the requirements for Phase 2 compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U88

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

- a. By January 24, 2008, 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 the purposes of checking the risk management database.*
- b. The risk management database shall be operational and fully implemented by July 24, 2008.*
- c. The parties and the independent monitor shall meet on a monthly basis to discuss what actions have been taken during the previous month toward development of the new risk management database.*
- d. The defendant shall present to the plaintiff and the independent monitor, on a monthly basis, evidence of satisfactory progress sufficient to justify a conclusion that completion of the new risk management database by August 11, 2008 remains feasible. If at any time the plaintiff concludes that successful completion of the project within the time frames described in this paragraph is unlikely, the plaintiff shall so notify the Court and the defendant. Within sixty days after receipt of such notice, the defendant shall issue an RFP to develop or complete development of the new risk management database as was*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

required by 88c. of this Consent Judgment before it was amended. In that event, the requirements of paragraphs 88.d., 88.e., 88.f., and 88.g. of this Consent Judgment before it was amended shall be enforced, with dates adjusted as follows: the Review Protocol (paragraph 88.d.) shall be issued within five months after issuance of the RFP; the defendant shall select the contractor (paragraph 88.e) within seven months after issuance of the RFP; the beta version (paragraph 88.f) shall be ready for testing within fifteen months after issuance of the RFP; and the risk management database shall be operational (paragraph 88.g) within twenty-six months after issuance of the RFP.⁴²

- 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:

Compliance finding with this requirement remain unchanged from our earliest quarterly report. All of the timeframes and dates specified in the original Consent Agreement and extended by the Court have expired, and new deadlines have not been established. In one effort to support progress, the U.S. District Court, in an order issued on July 22, 2008, included requirements related to: 1) adequate staffing; 2) required planning documents; 3) the provision of a sampling of necessary reports of data entered; and 4) a listing of scheduled training. In response, DPD added administrative staff to oversee MAS, made technical advances on the storage and retrieval of data, and trained supervisors on the system.

Since all established deadlines have expired, and despite recent DPD efforts to address significant problems with MAS, and finally, since new deadlines are not operational, DPD is not in either Phase 1 or Phase 2 compliance with this paragraph. DPD is currently developing a new calendar upon which to mark the progress of MAS. That revision and the review of core MAS documents may allow for new timeframes and the renewal of this task.

Compliance Status:

Phase 1: Not in Compliance

⁴² Consent Judgment amendments, November 9, 2007, and July 22, 2008.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Phase 2: Not in Compliance

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:

There is no change in compliance status with this requirement since the last reporting period. The Management Awareness System (MAS) was originally developed to serve as an interim system that would be in compliance with this requirement. Although our review of the system has identified significant concerns, the system 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. We thus continue DPD in Phase 1 and Phase 2 compliance with this requirement, as we reported during the last reporting period.

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.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comments:

As with other MAS-related requirements, compliance with this paragraph is unchanged from the prior reporting period. 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 using the system and its updating and revision, thus meeting the requirements of Phase 1 compliance. Since initial implementation is underway but not complete, and since DPD has not yet submitted proposals for change to DOJ for review and approval, we do not find DPD in Phase 2 compliance with this paragraph at this time.

One point should be noted here, however. The continued development of MAS over the past year has brought with it significant changes from its early formulations. These include such elements as the elimination of single incident thresholds. These and other changes should be reviewed for consistency with original policy and required documentation. DPD should seek review by DOJ of any changes that may deviate from agreements made earlier in the process.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

B. Performance Evaluation System

CJ Requirement U91

*DPD shall ensure that performance evaluations for all DPD employees below the rank of Deputy Chief occur at least annually and include, but are not limited to, consideration of the following:*⁴³

- 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.*⁴⁴

⁴³ Consent Judgment amendment, October 4, 2004.

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.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comments:

DPD has been in full compliance (Phase 1 and Phase 2) for the past three reporting periods. We had recognized Phase 1 compliance with this paragraph during the first reporting period. DPD Directive 401.1, Performance Evaluation Ratings, effective July 1, 2008, meets the requirements of Phase 1 compliance. 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.

To assess DPD's Phase 2 compliance with this paragraph, we requested random samples totaling 100 employee evaluations drawn equally from the duty rosters of the Eastern District, and the Southwestern District. We have selected different districts to examine during each reporting period. For this analysis all 100 evaluations were located. Our examination of all performance reviews showed that all were individually completed with original narratives, references to "no change in status," or references to material in MAS. All were signed off by the person being reviewed, the reviewer, and commanders, when appropriate. Based on the policy documents and our review of the sample of performance evaluations, DPD is in full compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

C. Oversight***CJ Requirement U92***

*The DPD shall develop a protocol for conducting annual 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. The annual audit period for conducting the audits required by paragraphs 93 to 97 for the first year shall end on August 31, 2004. The subsequent annual periods shall end on July 17, 2005, and every year thereafter.*⁴⁵

Comments:

In previous reporting periods, we found DPD in compliance with this requirement. That status is continued for this reporting period. A new Audit Protocol was completed, reviewed, and approved by the CRIB Commander (on February 5, 2010) as noted in our last report, and is now

⁴⁵ Consent Judgment amendment, October 4, 2004.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

governing the audits completed this quarter. We also confirmed that all of the required audits were completed as required by July, or August, 2010 completion dates. The audits are listed below.

End of Audit Period Audits Completed by DPD

| | |
|-----------------|---|
| August 31, 2010 | External Complaints and Complaint Investigations Witness Identification and Questioning Arrest Audit Report- Sixth Precinct Arrest Audit Report-Twelfth Precinct Custodial Detention, Sixth and Eight Precinct Custodial Detention, Tenth and Twelfth Precinct Custodial Detention, Eastern District Custodial Detention, Northeastern District Custodial Detention, Southwestern District Investigatory Stops and Frisks Command Specific Arrest Audit, Eastern District Command Specific Arrest Audit, Northeastern District Command Specific Arrest Audit, Southwestern District Command Specific Custodial Detention Audit, Eastern District Command Specific Custodial Detention Audit, Northeastern District Detainee Food Service and Personal Hygiene Audit, Southwestern District Detainee Food Service and Personal Hygiene Audit, Western District Detainee Food Service and Personal Hygiene Audit, Eastern District Detainee Food Service and Personal Hygiene Audit, Sixth Precinct Detainee Food Service and Personal Hygiene Audit, Northeastern District |
| July 31, 2010 | Environmental Health and Safety Audit, Holding Cells Detroit Receiving Hosp. Environmental Health and Safety Audit, Holding Cells Twelfth Precinct Combined Conditions of Confinement/Allegations of Misconduct, Holding Cell Committee Uses of Force, U of F in Holding Cells/Prisoners Injured, PI in Holding Cells Uses of Force, U of F in Holding Cells/Prisoners Injured, PI in Holding Cells/ Tactical Mobile Uses of Force, U of F in Holding Cells/Prisoners Injured, PI in Holding Cells/Eighth Precinct Uses of Force, U of F in Holding Cells/Prisoners Injured, PI in Holding Cells/ Twelfth Precinct Uses of Force, U of F in Holding Cells/Prisoners Injured, PI in Holding Cells/Central Events Uses of Force, U of F in Holding Cells/Prisoners Injured, PI in Holding Cells/Eastern District Uses of Force, U of F in Holding Cells/Prisoners Injured, PI in Holding Cells/ Gaming Operation Uses of Force, U of F in Holding Cells/Prisoners Injured, PI in Holding Cells/ Investigative Operations Uses of Force, U of F in Holding Cells/Prisoners Injured, PI in Holding Cells/ Tenth Precinct Uses of Force, U of F in Holding Cells/Prisoners Injured, PI in Holding Cells/ Central District Uses of Force, U of F in Holding Cells/Prisoners Injured, PI in Holding Cells/ Force Investigations Uses of Force, U of F in Holding Cells/Prisoners Injured, PI in Holding Cells/ Internal Affairs Uses of Force, U of F in Holding Cells/Prisoners Injured, PI in Holding Cells/Northeastern District Uses of Force, U of F in Holding Cells/Prisoners Injured, PI in Holding Cells/ Southwestern District Fire Safety Practices and Policies |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comprehensive Emergency Preparedness Program
Environmental Health and Safety, Eastern District
Environmental Health and Safety, Northeastern District
Environmental Health and Safety, Sixth Precinct
Environmental Health and Safety, Southwestern District
Medical/ Mental Health Programs and Policies, Southwestern District
Medical/ Mental Health Programs and Policies, Sixth Precinct
Medical/ Mental Health Programs and Policies, Twelfth Precinct
Medical/ Mental Health Programs and Policies, Eastern District
Medical/ Mental Health Programs and Policies, Northeastern District
Medical/ Mental Health Programs and Policies, Supplemental, Combined Prec/District
Detainee Safety Program and Policies, Central District
Detainee Safety Program and Policies, Twelfth Precinct
Detainee Safety Program and Policies, Eastern District
Detainee Safety Program and Policies, Central District
Detainee Safety Program and Policies, Sixth Precinct
Detainee Safety Program and Policies, Southwestern District

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:

DPD has been in full compliance with this requirement for the past three reporting periods. The status regarding this requirement remains unchanged at this time. Audit procedures, and a review of the new audits make it clear that the results of the audits reach the Chief of Police and each precinct or specialized unit commander, as required. Corrective Action Reports are also required.

During our most recent site visit, we reviewed the notification of Chief's receipt of audit summaries and Corrective Action Reports 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. The responses are organized with

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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 with this paragraph. Additionally, DPD has developed and implemented a process of biweekly command compliance review meetings, which engage commanders in the compliance review process and provide feedback. Currently these meeting are chaired by the Chief.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U94

*The DPD shall conduct regularly scheduled annual audits, covering all DPD units and commands that investigate uses of force, prisoner injuries, and allegations of misconduct. The audits shall include reviewing a statistically valid 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.*⁴⁶

Comments:

Consistent with our findings during the previous reporting periods, DPD remains in compliance with this paragraph. The DPD revised the audit protocol, and it governs current audits. Annual audits are required and completed according to schedule. The audits of investigations of use of force, prisoner injuries, and allegations of misconduct cover all relevant DPD units. The statistical validity of sampling is difficult to ascertain since audits do not directly address the issue. Most audits appear to cover all investigations during the appropriate time period. The audits produce highly critical reports of the investigations. Those reports are then associated with Corrective Action Reports which provide some evidence that the audit findings and recommendations are being acted upon. Investigation problems are addressed elsewhere in this report (CJ 55-57). The structure and process of the audits, rather than their outcome, is what is relevant to this requirement.

DPD is in Phase 1 compliance based on the completed and adopted audit protocol, and is in Phase 2 compliance based on the quality of the audits.

Compliance Status:

Phase 1: In Compliance

⁴⁶ Consent Judgment amendment, October 4, 2004.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Phase 2: In Compliance

CJ Requirement U95

*The DPD shall conduct regularly scheduled annual audits covering all precincts and specialized units that review a statistically valid 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.*⁴⁷

Comments:

We found DPD in Phase 1 and Phase 2 compliance with this requirement in the last reporting period. At that time, we determined that the specifically mandated audit requirements were being met. With regard to this quarter, the DPD audit examined 1,899 Activity Logs from one day each in March, April, and May, 2010 to identify investigatory stop-and-frisks. To evaluate investigatory stops, DPD reviewed 90 stops from a total of 135 stops drawn from a population of 1,352. To evaluate frisks, DPD reviewed 69 stops from a total of 71 selected from a population of 239 stop-and-frisks. Although this requirement addresses audits requirements and does not demand specific levels of activity, it is worth noting that the audit identified many insufficiencies, including problems in identifying the population of stops and frisks. Those problems are addressed elsewhere in this report (U45 and U46). The structure and process of the audits, rather than their outcome, is what is relevant to this requirement. DPD is in Phase 1 compliance based on the current active audit protocol, and is in Phase 2 compliance based on the completion of the audit in a manner consistent with that protocol.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U96

*The DPD shall conduct regularly scheduled annual 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.*⁴⁸

⁴⁷ Ibid.

⁴⁸ Consent Judgment amendment, October 4, 2004.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comments:

We found the DPD in full compliance with this paragraph during the three previous reporting periods. That status remains unchanged for this reporting period. New custodial detention audits of all relevant facilities were completed in accord with the August 31, 2010 due date.

Audits in this area require complex analyses, including proper definitions of the “time between arrest and arraignment” and the time to “adjudicate holds.” As with past audits, the current reviews identified circumstances of compliance, partial compliance, and lack of compliance. The reports that were provided detailed information on cases and noted the need for “corrective action” where appropriate. DPD is in Phase 1 compliance based on the current active audit protocol, and is in Phase 2 compliance based on the completion of the audit in a manner consistent with that protocol.

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 annual audits that examine external complaints and complaint investigations. The audit shall include reviewing a statistically valid 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.*⁴⁹

Comments:

We found DPD in Phase 1 and Phase 2 compliance with this requirement in the last reporting period. At that time, we determined that the specifically mandated audit requirements were being met. For this audit, the Audit Team reviewed formally resolved (closed) investigations, informally resolved complaints, and open investigations which passed the 90-day time limits. The audit produced 11 calls for corrective action and recommendations. Although this requirement address audits requirements and does not demand specific levels of activity, it is worth noting that the audit identified these insufficiencies. Those problems are addressed elsewhere in this report (CJ 58 and 59). DPD is in Phase 1 compliance based on the current

⁴⁹ Ibid.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

active audit protocol, and is in Phase 2 compliance based on the completion of the audit in a manner consistent with that protocol.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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:

DPD Directive Number 303.3, which has been revised several times in the past few years, addresses the requirement that periodic random reviews of scout car videos and equipment be conducted. Directive 303.3 was revised most recently and effective February 22, 2010; the updated directive requires supervisors to randomly review videos and to document the results on the supervisor's activity log. Supervisors now must review one incident per MVS system per shift and note whether it actually was recorded.

We found the Department in Phase 1 compliance with U98, but because of the failure of the implementation of a MVS system, could not determine if random reviews were actually being performed at the >94% level. During the past year, DPD has made dramatic progress in successfully installing MVS equipment throughout the Department. During the July, 2010, site visit, we determined that the DPD was proceeding with its goal of equipping 300 scout cars with MVS; it had 240 cars operational.

We interviewed the Deputy Chief for Technology, and reviewed MAS to determine whether random reviews were being conducted as required by revised 303.3. We found that available MVS equipment had been fully repaired and installed throughout the Department; a total of 313 DPD cars have been equipped with operational MVS systems. We examined records relating to three districts (Northwest, Southwest, and Western) where MVS video installation had been completed; and found that of 3,252 incidents relating to MVS-equipped vehicles during the quarter, 2,316 (70.85%) were recorded on video. The DPD also produced records showing a marked improvement in recording video during the last 30 days of the quarter. Of 585 incidents reviewed, 498 (85%) were found to have video.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

CJ Requirement U99

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

Comments:

In May, 2004, the previous monitor found the DPD in compliance with the requirements of this CJ paragraph, noting that the DPD and the Wayne County Prosecutor's Office meet on a quarterly basis to discuss relevant issues. The Department has been found to be in compliance since 2004 with requirement U99.

During past reporting periods, we met with the meeting participants and reviewed the minutes documenting the various discussions that the DPD has had with local prosecutors regarding issues and performance of the Department's officers.

During this past site visit, we met with the DPD Commander who attended the quarterly meeting in August and reviewed the documentation of that meeting. We found that topics discussed included missed court appearances (which has diminished as a problem); the number of officers charged with criminal offenses (also lower than in previous years); and compliance with the Consent Judgments. The Department remains in Phase 2 compliance with U99.

Compliance Status:

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:

We previously found that the DPD had modified applicable directives to comply with the requirements of this Consent Judgment paragraph. Directive 303.3, In Car Video (effective June 21, 2004, revised February 22, 2010) requires DPD officers in precincts where operational MVS systems have been placed are required to ensure that the audio/video equipment is working properly at the beginning of their shift, check the equipment, and record the results of their inspection on the Officer's Daily 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. The Department is in Phase 1 compliance with this requirement.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

During the previous reporting period, we found that DPD had made substantial progress in repairing its non-functioning MVS equipment. The Department estimated that it has about 300 MVS units that it could successfully repair, and it had completed work on 240 (80%) of the available MVS units. In addition, the DPD had completed work on assessing the bids to provide new, upgraded MVS equipment to the Department. It expects that the new systems will be more durable and will provide enhanced management support to enable DPD supervisors to monitor the use of the equipment more effectively.

During this reporting period, we interviewed DPD Technology Bureau staff and maintenance logs and other records relating to the repair and installation of MVS equipment. We found that the DPD had repaired and installed 313 MVS units. Of 581 service events relating to MVS repairs that occurred during the past quarter, 529 (90%) were resolved with an average of one hour of technician time. The remaining events were unresolved due to a variety of issues such as vendor issues, unavailability of replacements or more significant repairs required. DPD remains in pending Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In 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:

Consistent with our findings from our previous site visits, DPD remains in Phase 1 compliance with this paragraph. The operative order is found in Directive 303.3, In Car Video, effective June 21, 2004, revised February 22, 2010 which requires that officers activate video cameras at all times while on patrol, supervisors conduct reviews prescribed in U101, and the Department preserves all recordings as mandated.

In the past year, we have observed the DPD make progress in two of the three sub-requirements of U101:

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- a. The DPD has made progress in repairing and equipping its cars with MVS systems. During the previous reporting period, DPD was well on its way to equip 300 cars with MVS systems; it had equipped of its 240 vehicles with video cameras.
- b. While supervisory review of videotapes involving injuries to a prisoner or an officer, uses of force, vehicle pursuits, and external complaints is required, DPD has been unable to provide comprehensive data identifying all such incidents. Measurement of compliance with U101b cannot, therefore, be accurately performed.
- c. DPD preserves and retains videos, as required by U101c.

During this reporting period, we found that the capabilities of MVS have now been extended throughout the Department. A total of 313 cars have been equipped with systems that are set to operate all the time when the officer is on patrol; systems are set to record one frame per second during routine operations, and to accelerate to full video when traffic stops or other events to be recorded occur.

We conducted a review of Crisnet reports to identify use of force, injuries, or pursuits during which was engaged. Of 26 such incidents that occurred during the current reporting period, the incident was captured in video in 17. In only 12, however, was audio activated. A comprehensive list of these incidents is necessary before we can make a determination regarding compliance.

The Department is in compliance with U101a and U101c. Before we can measure compliance with U101b, the DPD must develop a method to identify all such incidents during a quarter.

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:

DPD remains in Phase 1 compliance with this Consent Judgment requirement. DPD Directive 303.3, In Car Video, effective June 21, 2004, revised February 22, 2010, requires that DPD officers activate video cameras at all times on patrol and specifically record all motor vehicle stops, consent searches of vehicles, and deployments of drug detection canines.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

During the last reporting period, we noted that only 240 of DPD's 300 MVS systems are operational, and that we could not measure compliance with this requirement until the MVS was installed throughout the Department.

During this reporting period, we selected a random sample of 119 records from the traffic violations issued in August, 2010. The DPD reviewed these records and discarded 38 of them for three reasons: "not equipped;" "no car on Daily Detail;" and "tablet pulled for service." Of the remaining 81 records, full video was available in 60 (74%). DPD is not in Phase 2 compliance with this paragraph.

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:

During the last three reporting periods, we found DPD in Phase 1 and Phase 2 compliance with this paragraph due to the addition of staff and improvements to the physical space of the unit, including the addition of hearing rooms. The staff of the unit continues to include one lieutenant, three sergeants, three police officers, and one non-sworn employee. Resources for this unit have not changed since the last review.

Summary statistics continue to show that the unit is making significant efforts to address the volume of cases on its books. This quarter, 64 cases were closed, while 71 new cases were opened. This is the second of the past three reporting periods in which new cases outnumbered closures.

It is also noteworthy that command staff in the Disciplinary Unit report that they have eliminated their "backlog" of cases. More specifically, this means that the Disciplinary Unit has only four cases remaining from 2008, and none from before that. The unit has 21 cases that were opened in 2009; and 112, so far, in 2010. At the time of our most recent site visit, there were 118 disciplinary cases open. A review of the 2008 and 2009 cases reveals they remain open for one of three common reasons: the officer involved is on military, or sick leave; or there have been delays in commanders' reviews or trial boards. The Disciplinary Unit is now working with the Department's legal counsel to find appropriate ways to close such cases. The problem with them is that after a period of time officers or their representatives raise objections over timeliness even if the delays did not arise from the work of the Disciplinary Unit.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

We took note in our last report of the strategies identified and developed within the Disciplinary unit to assist in expediting cases to closure when appropriate. Aside from the methods noted in our earlier report, the Disciplinary unit is negotiating with the relevant labor organizations to permit the streamlining of the disciplinary process.

Both in its day-to-day operations and through strategic planning, the Disciplinary Unit is moving forward to solve the problems of backlogged cases. The resources needed to move forward are available to the unit and have been kept at a level supporting the unit's progress.

Thus, we find DPD in Phase 1 compliance based on the maintenance of available resources noted above. We find DPD in Phase 2 compliance with this paragraph based on the Department's continued progress with case closures.

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:

We have found DPD in compliance with this requirement in the last three reporting periods. The Department continues in that status for this reporting period. DPD manages disciplinary cases with reference to its Disciplinary Process Timelines, revised August 29, 2006, for review. These guidelines comply with the intent of this paragraph.

As noted above, DPD opened 71 and closed 64 disciplinary cases during the current reporting period. We reviewed the cases closed by the Disciplinary Unit during this time period, which included 21 in July, 21 in August, and 22 in September, for a total of 64. All of the cases were closed within the timeline prescribed in policy. Based on existing policy and our review of cases, DPD is in both Phase 1 and Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT

January 16, 2011

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:

Our analysis of case closures for the last three reporting periods found DPD in compliance with this requirement. That status is retained for this quarter.

DPD Directive 102.4, Discipline, effective July 1, 2008; and DPD Discipline Matrix (DPD22a); are in Phase 1 compliance with this paragraph. (A new Directive has been written and is currently under review and awaiting signatures.) 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 all 64 cases that were closed during the current reporting period, and found that all discipline decisions fell within guidelines described in policy. Penalties were all consistent with policy regarding expected severity of sanctions.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

Critical Issues:

- ***Risk Management and the Status of MAS:*** Progress on the risk management system has been met with the agreement of the Parties and the Court's decision to retain MAS rather than replace it with a new system. That same progress, however, has made prominent several issues critical to continued forward movement. These include:

FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT

January 16, 2011

1. The technical progress over the past year has not been matched by parallel efforts to update policies and procedures. The risk now is that policy will not reflect the reality of the system. There is a critical need to update policy, including the Data Input Plan, Report Protocol, and Review Protocol. The failure to address this could remove DPD from Phase 1 compliance with many risk management-related requirements.
 2. As DPD attends to the need to revise policy and procedures to reflect changes in the risk management data base, the Department must bear in mind the requirement of U90, which mandates that changes be reviewed and approved by DOJ. Given the current status of compliance with the Agreement, DPD must also seek approval from the Monitor for significant changes.
 3. DPD needs to train supervisors and managers on MAS. This issue is complicated by a degree of impatience which has followed the long-term commitment to the Consent Agreements, and by the fact that training is ordinarily based on policy, and in this case, policy is not yet current.
 4. It is important to recognize that much of the past year's work on MAS can be characterized as having been focused on the technical issues of the system. Now it is critical that attention focus on the implications of the system for law enforcement. That is, planning must include such issues as how the system will be received in the field, how it will be used by officers, and how it can contribute to the daily management of the department and its subunits.
 5. Finally, it is also important at this time that MAS be fully integrated into a broader perspective of risk management. This is to say, MAS must be seen as part of a system of continuous assessment, feedback, and appropriate response to problems of risk. The management of risk should be recognized as an important function throughout the Department and throughout the City of Detroit. (See Appendix B for a review of data that may contribute to a broad view of risk management in the Department.)
- ***In-car Video Progress:*** During the past year, the DPD made progress in its implementation of MVS. During each of our five site visits, we had hoped to begin an audit of the DPD management practices that relate to the MVS requirements. However, measuring compliance with such requirements as supervisory random review of videos, and determining what percentages of traffic stops have been recorded, make little sense until the equipment is generally available throughout the Department. Until then, we could not reasonably expect the DPD to meet the required standard of >94%. The DPD has now made 80% of its MVS equipment operational, and is expected to complete its initial installation of repaired systems. During our next site visit, we will concentrate on the management practices that support the MVS requirements.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Next Steps:

- ***Risk Management:*** The progress that has been made on MAS has largely been focused on meeting the technological requirement of data collection, storage, and retrieval. Scheduling now requires attention to the ancillary issues noted above. During our next visit, we will assess progress across the five areas noted under Critical Issues, above.
- ***In-car Video:*** Each month, the DPD TSB will produce a spreadsheet identifying the traffic stops, pursuits, canine deployments, injuries to officers, injuries to prisoners, uses of force, and searches that occurred in the previous month. The TSB will send the spreadsheet to the Monitoring Team electronically, and we will select a sample of incidents to be audited during the next review period.
- ***Discipline:*** With the Department's apparent control of the disciplinary backlog, the major task now is monitoring the disciplinary process to ensure that policy is followed, and that cases do not again create a backlog that slows or overwhelms the disciplinary process.

| ¶ | Requirements | Phase 1 - Policy | Phase 2 – Implementation |
|----|--|-------------------|--------------------------|
| 78 | Comprehensive Risk Management Plan | In Compliance | Not in Compliance |
| 79 | Improve risk management system | In Compliance | Pending Compliance |
| 80 | Database requirements (a-z) | In Compliance | Not in Compliance |
| 81 | Database to include officer information | In Compliance | Pending 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) | In Compliance | Not in Compliance |
| 85 | Use modules to ensure work progress | In Compliance | In Compliance |
| 86 | Common control number required | Not in Compliance | Not in Compliance |
| 87 | Data retention | In Compliance | In Compliance |
| 88 | Database schedule (expired) | Not in Compliance | Not in Compliance |
| 89 | Interim database (rescinded) | In Compliance | In Compliance |
| 90 | Change process needs DOJ approval | In Compliance | Not in Compliance |
| 91 | Annual officer review criteria specified | In Compliance | 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-and-frisk | In Compliance | In Compliance |
| 96 | Quarterly audits-detention practices | In Compliance | In Compliance |
| 97 | Quarterly audits-external complaints | In Compliance | In Compliance |
| 98 | Random reviews of in-car camera videos | In Compliance | Not in Compliance |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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|-----|--|---------------|--------------------|
| 99 | Regular meeting with local prosecutors | In Compliance | In Compliance |
| 100 | Replace/repair video cameras | In Compliance | Pending Compliance |
| 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 |

IX. TRAINING

During this most recent site visit, we visited the Detroit Police Training Center and interviewed the Deputy Chief, the Commander, and a sergeant. We also reviewed a variety of memoranda and policy material and the seven lesson plans used in recruit and in-service training. We observed Field Training Officer classroom instruction.

The Deputy Chief and Commander understand that training is fundamental to the Chief's effort for Departmental reform. From our initial reviews until now, the instructional process has made progress in the development of training policy, the association of DPD training needs to what is taught, and the methodology of instruction. We have seen improvement in the manner and content of training, in general, and in recordkeeping in support of training. During the past year, the primary challenge in Training was for the DPD to obtain full participation in its in-service training programs. It did so first with its bi-annual firearms training program in January, 2010, in which 99% of the officers available to be trained attended and qualified. In July, 2010, we determined that the DPD trained 99% of its available personnel in its in-service programs. At present, we are monitoring DPD's progress towards remaining in compliance for the next year.

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:

To assess compliance with this paragraph for this reporting period, we reviewed DPD policies and met with the Deputy Chief of Risk Management and the Commander and staff of the Training Center. DPD policies, as published in DPD Directive 304.2-Section 6.1 and Special Order 20-02, Training, dated January 16, 2010, require the training of all members "by qualified

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

instructors in any authorized lethal or less lethal weapon they carry...and that all sworn members attend mandatory annual training on use of force, laws of arrest, search and seizure, the PR-24 Baton and bi-annual firearms use.” The responsibility for the coordination, development, approval, and delivery of all use of force, arrest, and detention training rests with the Commander of Training. These directives also require that semi-annual evaluations of training be conducted.

The DPD audited use of force instructional classes by training managers and produced a report, “Training Oversight and Development Report, June, 2010,” that addresses requirement U106. This report is the third report to be issued; and contains the evaluation of use of force, arrest, and detention training and covers all elements of this requirement. The next report is scheduled to be produced by December, 2010, and is expected to cover the first six months of the current training year which began on July 1, 2010.

In addition to our review of training policies, we also observed the delivery of classroom instructions for the Field Training Officer program during our most recent site visit.

The DPD is in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

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:

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

DPD Special Order 10-02, issued January 16, 2010, is in Phase 1 compliance with the requirements of this paragraph.

To assess Phase 2 compliance with this paragraph for this reporting period, we met with the Training Director and staff at the Training Center and reviewed training records. We found that the DPD training complies with the Michigan Law Enforcement Council's standards and Michigan law. With regard to subparagraphs a-f, we found as follows:

- a. During our previous site visit, we found that the DPD lesson plans (Use of Force, July 3, 2009; Arrest and Search and Seizure, May 14, 2007; Detention Officer Training, May 30, 2007) addressed this requirement. The UOF lesson plan was modified effective July, 2010. Our review of those plans as well as the existing plans during our most recent site visit indicated that they remain consistent with the Consent Judgments. 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. As noted previously, we confirmed this with the Commission following our initial site visit; the in-service training standard has not changed since that time. The in-service training program that the DPD has implemented fully covers the requirements of the Consent Judgments.
- b. The DPD has developed use of force and arrest and detention training curricula that outlines the subjects taught in use of force and arrest and detention training. The curricula are consistent with the required standards.
- c. The DPD process for the selection of new training personnel under the existing collective bargaining contracts for sergeants and lieutenants requires that trainers be selected on the basis of seniority – rather than ability, instructional ability, or expertise. There is, however, an allowance for the screening out of personnel applying for these positions on the basis of certain disciplinary issues.⁵⁰ This process significantly mitigates the ability of DPD to select trainers who can provide the training required by contemporary policing standards; and more importantly, by police officers working in large cities or metropolitan areas. The selection of non-ranking member candidates for trainer positions are not so limited by a collective bargaining contract and a more involved process for their selection is in place. No members were added to the Training Command's staff during the current reporting period.
- d/e. DPD policy, curricula, and lesson plans address these provisions. A third evaluation report for the past operational year (dated June, 2010) was produced by the Training Committee chaired by the Commander of Training. Members of the Training Committee

⁵⁰ Section 23, A2 of the 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.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

are identified below. The first report for the current training year is due to be completed in December, 2010.

- f. The DPD Training Committee met on April 16, 2010 to implement its plan to complete the Department's assessment of training needs for the next operational year. The Training Committee is headed by the Commander of Training; and includes the Deputy Chief who oversees Internal Affairs, the Commander of the Criminal Investigations Bureau, the Commander of Risk Management, the Commander of Police Medicine, the Police Legal Advisor, and three members from the Patrol Operations Bureau (rank unspecified). The committee completed reviews of audits; Internal Affairs cases; police legal issues; contemporary national best police practices; and internal training needs surveys conducted by a first-line supervisor of field personnel regarding use of force, arrest, and detention, as well as other operational issues to gain field perspectives and surface any unknown training deficits. At the time of our last site visit, the Department was refining and analyzing the field perspectives aspect of the surveys. During our most recent visit, the Department had completed this item of their assessment. With this input the Department determined that it had completed the required needs assessment. However, it is our view that the report must contain more specific observations and input from the City Law Department, the Prosecuting Attorney, the Department's Internal Affairs Division and the Office of Citizen Complaint Investigation to be considered a comprehensive training needs assessment. Nonetheless, the Department's document has identified additional training needs for the year 2010/11 with which we concur.

While the Department has learned from this exercise, and made some amendments to its training curricula, the committee must complete a more inclusive needs assessment and a more comprehensive report of its findings. Based on the Department's continued progress, we find DPD maintains pending Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: Pending 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 first site visit, we learned that the DPD had no policy or order requiring compliance with the requirements of this paragraph; the DPD subsequently issued Special Order 10-02, effective January 16, 2010, to correct this deficiency. This Special Order places responsibility for creating and maintaining training records on the Training command. The Special Order was

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

disseminated as an important high-level distribution, which requires that it be conveyed to every member of the DPD, and that every member signs to signify that s/he has received it.

During the first reporting period, we found no real evidence of the Department's progress implementing a contemporary training record system. During this most recent and in prior site visits, we learned that the Department committed to recording training data in the MITN System, a part of the Michigan Commission on Law Enforcement Standards (MCOLES) data system. We were advised that DPD has entered data on all of its training into the MITN System from January, 2009, forward. In addition, the Department has begun retroactively entering training records for all of its members, in an effort to electronically store records dating to the beginning of the Consent Judgment. Data for years 2005 through 2007 are now complete. During this current reporting period, the Department began to enter 2008 data, which is now 60% complete. To date, the Department has archived all of its members' training records, except for years 2003, 2004, and some of 2008. The Department continues to make progress, though a lack of full compliance in this area holds the Department out of compliance.

The DPD has also captured data relating to its in-service training, and recorded it on a spreadsheet. Since the spreadsheet is used by the Department to determine if all of its officers have attended the required in-service training sessions, we conducted an audit of its accuracy. We randomly selected 100 officers who were listed on the spreadsheet as having received in-service training. There are six sessions recorded on the sheet (Detention, PR-24, Firearms, Use of Force, Report, and Legal). Of the 600 records recorded, the DPD was able to locate sign-in sheets reflecting sign-ins for all 600 sessions (100%) of the training.

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 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 first site visit, we learned that the DPD had no policy or order requiring compliance with the requirements of this paragraph; the DPD subsequently issued Special Order 10-02, effective January 16, 2010, to correct this deficiency. Our current review shows that the Special Order remains in effect and consistent with the requirements of this provision. The DPD continues in Phase 1 compliance with this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

During the first reporting period, we found that the DPD training directive and lesson plans properly direct and instruct on the relevant provisions of the Consent Judgment.⁵¹ Our review of the actual lesson plans and curricula documents indicated that they were sufficiently crafted to meet the requirements of the Consent Judgment. However, the local scenarios required by U109 had not yet been developed.

In the second reporting period, we found that the DPD had developed five scenarios utilizing Internal Affairs incidents, and accepted them for incorporation into use of force training. During our next site visit, we were informed that five additional scenarios, for a total of 10 scenarios, had been incorporated into mandated training. Also during that visit, we were advised that the DPD had developed another 12 scenarios which were not being used as training materials. As of our most recent site visit these scenarios have not been incorporated into the training curricula. Additionally, based on findings from the training needs assessment some changes to training policy and curricula regarding firearms were made during this quarter. While these changes have made the training more concise we find that the substance has not diminished. Our review of training curricula, lesson plans, and scenarios show that they properly instruct and convey the requirements of the Consent Judgment and DPD policy. The Department remains in Phase 2 compliance with this paragraph. We will review future changes and report on their compliance in coming quarterly evaluations.

Compliance Status:

Phase 1: In Compliance

Phase 2: In 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 on August 25, 2010. Meetings are held quarterly. The DPD remains in compliance with U110.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

⁵¹ See Training Oversight and Development Report, Summer, 2009.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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 complete their state certification exams and before they graduate from the Academy. DPD Training estimates that they have sign-in sheets for over 4,000 Department members who received the training in 2003. We were, however, unable to locate precise numbers indicating how many DPD members – civilian and sworn – and other relevant City employees (Detroit Fire Department-Arson, Board of Police Commissioners, and Neighborhood City Hall personnel) were initially trained at the implementation of each provision. To evaluate the comprehensiveness of the training, we must be able to determine how many employees in each category were eligible to be trained.

Based on our discussions with the Deputy Chief of Risk Management and the Commander of Training and their staff, it is unlikely that the DPD will produce past employee training records to show that training was actually given to employees who were on board within 120 days of the Consent Judgment implementation. However, DPD training records currently show that all present members of the Department and other relevant City employees have been trained and received materials regarding the Consent Judgment. Accordingly, and since appropriate policies have been promulgated to ensure that this training will be continued for as long as is necessary, we find DPD in both Phase 1 and Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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;*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- 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:*
 - i. Officers should not draw their firearm unless they reasonably believe there is a threat of serious bodily harm to the officer or another person;*
 - ii. The danger of engaging or pursuing a suspect with a firearm drawn; and*
 - iii. That officers are generally not justified in drawing their firearm when pursuing a subject suspected of committing only a misdemeanor;*
- e. The proper use of all intermediate force weapons;*
- f. Threat assessment, alternative and de-escalation techniques that allow officers to effect arrests without using force and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units or even letting a subject temporarily evade arrest may be the appropriate response to a situation, even when the use of force would be legally justified;*
- g. Interacting with people with mental illnesses, including instruction by mental health practitioners and an emphasis on de-escalation strategies;*
- h. Factors to consider in initiating or continuing a pursuit;*
- i. The proper duration of a burst of chemical spray, the distance from which it should be applied, and emphasize that officers shall aim chemical spray only at the target's face and upper torso, and*
- j. consideration of the safety of civilians in the vicinity before engaging in police action.*

Comments:

During the first reporting period, we found no policy directive or order requiring compliance with requirement U112. During the second reporting period, Special Order 10-02, which effectively addressed the requirements of U112, was adopted. Special Order 10-02 specifies that officers who do not attend in-service training shall be placed in an administrative "no gun" status and relieved of their police powers until they successfully complete the next training session. Based on this policy, we found DPD in Phase 1 compliance with this paragraph. That status remains for the current reporting period.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

During our second site visit, we reviewed training policy directives, curricula, lesson plans, Special Orders, and Teletypes, among other materials purported to address the requirements of U112.⁵² Our review and analysis showed that the course content requirements of U112 and all of its subparagraphs were met for all recruits. Appropriate training and instruction for some tenured members was presented at in-service training; however, the Department was not yet in compliance since it had not yet trained >94% of its members.

In the third reporting period, we found a sizeable increase in the number of members who had attended UOF training during 2010 in-service training, as compared to the number of officers for the prior year. By the end of the training year, we found that 99% of available members had been trained in uses of force for that training year.

During our most recent site visit, our observations for the first quarter of the new training year indicated that 902 (33%) of 2,768 members were trained, exceeding the 763 members trained for the same period for the prior year by 5%. It is evident that the Department continues to increase its pace of training. As the Department met the 94% or greater requirement for the prior year, the Department maintains its Phase 2 compliance for this quarter.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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;*

⁵² For our assessment, we reviewed lesson plans, instructor guides, student guides, handouts, and other materials as follows: Firearms Lesson Plan and associated guides and materials, dated January 24, 2008; PR-24 Basic Course 2007; Internal Affairs Lesson Plan and associated guides and materials; dated September 12, 2008; Use of Force Lesson Plan and associated guides and materials, dated July 3, 2009; Detention Officer's Training Lesson Plan and associated guides and materials, dated May 30, 2008 and; Law of Arrest and Search and Seizure Lesson Plan and associated guides and materials, dated May 14, 2007.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- 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 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;*
- 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 first site visit to the Training Center, we found the DPD in Phase 1 compliance with U113. (See Teletype 09-02385.) During our next review, we determined that the training policy codified in the new Special Order 10-02 requires the development of curricula, lesson plans, and training scenarios which address the items of this paragraph. The curricula, lesson plans and scenarios are sufficiently developed to meet these requirements.⁵³ It is also important to note that SO 10-02 articulates a longstanding DPD policy. This policy directs that officers who do not attend firearms training and qualify bi-annually have their firearms removed and be relieved of their police powers until they attend a firearms training session and qualify.

In the second reporting period, we found that during the previous six months (July 1, through December 31, 2009), for the first time, the DPD enforced its policy of removing the firearms and police authority of officers who failed to qualify. Subsequent to this enforcement, the DPD was able to train all of its officers. In the succeeding bi-annual firearms training periods, the number of members trained exceeded the number of members for the same period of the previous period and of the previous year. Following the completion of the last training year, the Department had trained 99% of its members for that year and sustained compliance. In our site visit on this occasion we found that the Department had trained 1580 members, out of 2768 members for a rate of 57% during the quarter as compared to 1,557 or 57% for the same period of last year. In view of the Department's improved training rate and having previously achieved compliance, compliance is maintained.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

⁵³ Firearms Lesson Plan and associated guides and materials, dated January 24, 2008, and revised July, 2010.

FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT

January 16, 2011

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;*
- 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:

Special Order 10-02, dated January 16, 2010, and the Law of Arrest and Search and Seizure Lesson Plan and associated guides and materials, dated May 14, 2007, are in Phase 1 compliance with the requirements of this paragraph.

The Department has split the use of force, search, and detention training into an eight-hour block on use of force; and a four-hour block on arrest, search, and detention. Annual training is provided by DPD in its in-service training program for officers and supervisors. During the period of July 1, 2009, through June 30, 2010, the Department trained 99% of its available members and achieved compliance with this paragraph.

Although we noted that the DPD was in compliance for properly training its members on the legal requirements to stop, frisk, and search citizens, there appeared to be an operational disconnect. As we reported in regard to paragraph U45 in our last report, the Department was not yet in compliance with the requirement that each member who makes a stop or frisk document, in writing, the factors leading to such action illustrating the legal justification. Nor

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

were supervisors conducting effective report review to address a lack of information documentation or to correct an improper action. Though we saw this as primarily a supervisory issue, we discussed this observation with the Training and Risk Management commanders for their consideration and action. We were informed that these issues will receive appropriate attention in their ongoing training needs assessment.

During this most recent site visit, we found that the DPD had trained 901 (33%) of 2,768 members, as compared to 771 members (28%) for the same period of last year, for a 5% increase in the rate of training. The DPD maintains its Phase 2 compliance status for this reporting period.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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:

DPD policy directs sworn members of the Department to attend in-service training where these critical subjects are taught.

In previous reporting periods, we found that the DPD had developed appropriate policies and lesson plans to comply with this provision, as well as a protocol to train all recruits, sworn members, confinement officers, investigators, and supervisors.⁵⁴ We note that officers who serve in the detention cell areas are required to receive *additional* annual detention officer training, which is more specifically related to detention responsibilities (see C73). During the last reporting period, we found that 99% of members met all of these requirements. During this current reporting period, DPD trained 902 members, or 33% of 2,768 members, as compared to 763 members, or 28%, for the same period of last year.

Our review found that DPD in-service training afforded to all officers meets the requirements of U115. The DPD remains in Phase 2 compliance with this paragraph.

⁵⁴ Law of Arrest and Search and Seizure Lesson Plan and associated guides and materials, dated May 14, 2007; Detention Officer Training Lesson Plan, dated May 30, 2008.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Compliance Status:

Phase 1: In Compliance

Phase 2: 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 gathering of additional evidence or obtaining a confession.

Comments:

DPD Special Order 10-02 and lesson plans on arrest, search and seizure, and detention previously referenced address this requirement. The Department is in Phase 1 compliance with this paragraph. Following previous reporting periods, we reported viewing records that indicated that the rate of training regarding the requirements of this paragraph showed continued improvement from quarter to quarter. Our last review found that the DPD was meeting its training obligation and had trained greater than 94% of its members during the past training year. During this current reporting period, DPD has trained 902 members, or 33% of 2,768 members, as compared to 763 members or 28% for the same period of last year.

The Department maintains Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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 previous reporting periods, we found the DPD to be in Phase 1 compliance with U117. DPD Training Directive, Number: 04-1, effective March 21, 2005, entitled, "Confinement of Material Witnesses," specifies that a material witness can be taken into custody only upon an order from the court where the criminal matter is pending. This is consistent with DPD arrest policies articulated in DPD Directive 202.1, effective July 1, 2008, entitled, "Arrests." Department policy clearly states that "only a court has the authority to decide whether an individual is a

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

material witness, and whether that material witness should be committed to jail pending his or her testimony.”

Throughout the past year, DPD has conducted in-service training and detention officer training that addresses the requirements of U117. During our July, 2010, review, the DPD gained compliance by having 99% of its officers attend in-service use of force training where these guidelines and procedures are taught. The Department remains in compliance, and we are tracking its efforts to ensure the next year’s training is well attended. During the first quarter of Fiscal Year 2011 (July 1, through September 30, 2010), 893 (32%) of its available officers attended its four-hour Arrest Procedures in-service training. This is a new in-service training, and cannot be compared with attendance at any in-service last year. DPD remains in compliance with U117.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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 the previous reporting period, we found that DPD Special Order, 10-02, effective January 1, 2010, issued January 16, 2010, specifies that DPD in-service training include “appropriate evaluation of written reports, including what constitutes a fact based description.” The DPD is in Phase 1 compliance with this paragraph.

The DPD strove to fulfill Consent Judgment Requirements U118-122 through its annual in-service training for supervisors. Accordingly, the Department would come into Phase 2 compliance with this paragraph only when it trained >94% of its supervisors in its annual in-service training program. During our July, 2010, review, we found during Fiscal Year 2010 that the DPD had trained 650 (99%) of its current complement of 652 supervisors.

We are now tracking DPD efforts to comply during Fiscal Year 2011. During the first quarter of the Fiscal Year, 190 (30%) of DPD supervisors attended the in-service. At the same point last year, the Department had trained 771 (28%) of its supervisors.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

DPD is in Phase 2 compliance with U118.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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.

Comments:

DPD Special Order 10-02, effective January 1, 2010, issued January 16, 2010, 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.” Accordingly, we find the Department in Phase 1 compliance with this paragraph.

The DPD has not promoted personnel to the supervisor rank during the past year. As noted in U118, during Fiscal Year 2010, the DPD trained 99% of its supervisors at its annual in-service training course. DPD remains in Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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:

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

During the previous reporting period, we noted that the DPD Directive 10-02 (described above) addresses this requirement.⁵⁵ Accordingly, we found the DPD in Phase 1 compliance with this paragraph.

The Department's Supervisory and Leadership Accountability in-service training addresses this requirement. The Department trained 99% of its supervisors in the past year through its annual supervisory and leadership in-service training. The DPD is in Phase 2 compliance with this requirement, and we are monitoring its progress towards remaining in compliance. As noted above (see U118), DPD is making satisfactory progress to remain in compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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:

DPD Training Directive 10-02 addresses requirement U121.

The training required by U121 is delivered in the DPD supervisory and leadership in-service. In July, 2010, we found that the DPD delivered this training to 99% of its supervisors during its Fiscal Year 2010 Supervisory Leadership and Accountability training program. The Department is in Phase 2 compliance with U121 and as described above (see U118) is making satisfactory progress towards remaining in compliance during Fiscal Year 2011.

⁵⁵ Ibid.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Compliance Status:

Phase 1: In Compliance

Phase 2: 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:

DPD Special Order 10-02 (described above) requires that in-service training include “DPD’s external complaint process, including the role of the Office of the Chief Investigator and Internal Affairs/Force Investigation in the process.” The DPD is Phase 1 compliance with this paragraph.

During our July, 2010, review, we found that the Department trained 99% of its supervisors in the past year in both its leadership and supervisory in-service training, which addresses handling external complaints; and in its use of force in-service training, which addresses the role of the OCI. Inasmuch as U122 is one of the requirements that can finally be measured annually, we are now monitoring the DPD’s progress to determine if the Department is proceeding satisfactorily to remain in compliance during the current Fiscal Year (FY 2011, July 1, 2010, through June 30, 2011). We found that during the first quarter of Fiscal Year 2011, the DPD trained 190 (30%) of its supervisors. The Department is in Phase 2 compliance with this requirement, and is proceeding satisfactorily to remain in compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comments:

During the last reporting period, we found that the Department developed and implemented a protocol to enhance the FTO Program. The Standard Operating Procedures Manual Field Training Program (revised 2007) reflects the DPD FTO Program as it was approved by the DOJ. The procedures are designed to enhance the FTO Program, and address the criteria and methods for selecting, removing, training, and evaluating FTOs. We determined the DPD to be in Phase 1 compliance with this paragraph.

During the July, 2010, quarterly review, we found that the DPD had not selected or trained any additional FTOs.

During the current reporting period, we determined that the DPD had selected 15 new FTOs who were undergoing training at the time of our visit. We reviewed the FTO lesson plan and observed the FTO training, and found it to be satisfactory.

DPD is in Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

Critical Issues:

- During the past year, we observed Training management expending efforts towards gaining compliance. As we noted in our last report, after the first reporting period, the DPD training managers quickly adopted policies to address the various requirements relating to training. The Department has been in Phase 1 compliance with all 18 Consent Judgment requirements related to training. During the past year, we found that as the Department adopted appropriate policies, the driving force in DPD Training shifted from striving to comply with the Consent Judgment to complying with Departmental policies. When we discussed training with DPD managers, they referred to the Department's policies, and not policies that were imposed by the Consent Judgment. This is a positive development.
- Until July, 2010, the DPD had never achieved full attendance at its in-service training programs. Due to the efforts of the Department and the threat of removal of police powers, Fiscal Year 2010 training was fully attended by DPD officers. Our tracking during this current reporting period indicated that attendance has increased in each of the six in-service programs that constitute the 2011 in-service training program. The Department is well on its way to remaining in compliance with the training requirements.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- Only in one area of training does the DPD still require work to obtain compliance. Requirement U107 mandates the Department conduct training 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. We determined that while DPD produced a much improved needs assessment, we believe it to be still incomplete. The Training Needs Assessment report must contain more specific observations and input from the City Law Department, the Prosecuting Attorney, the Department's Internal Affairs Division and the Office of Citizen Complaint Investigation to be considered a comprehensive training needs assessment. Nonetheless, the Department's document has identified additional training needs for the year 2010-2011 with which we concur.

Next Steps:

During the next reporting period, we will review:

- New or revised policy directives that have been developed for the Consent Judgment requirements relating to training.
- The list of officers selected to serve as trainers, and the documentation regarding their selection and training as trainers.
- The training record system and any training needs assessment that has been conducted.
- A random sample of officers who have attended in-service training to determine if the training is documented in training records.
- Documentation of the 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 the Consent Judgments to all DPD and all relevant City employees, and trained them on its content.
- A list of officers and supervisors who have attended in-service for Fiscal Year 2010 as of June 30, 2010, to determine if the DPD is in compliance (>94% attendance) with the several Consent Judgment training requirements.
- A random sample 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 their training records to determine if they, in fact, received the training set forth in these requirements.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- A list of all supervisors, and a count of supervisors, who have completed supervisor training during Fiscal Year 2010 as of June 30, 2010, which we will compare against the number who attended supervisory training during Fiscal Year 2008 as of June 30, 2009.
- A list of all supervisors promoted during the past quarter and the dates they received the training required by the Consent Judgment.
- A list of all officers who conduct investigations. From this list, we will randomly select a sample and compare it to the lists of officers who have actually received the training required by U121.
- Documentation of field training officer selection and training.

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

FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT

January 16, 2011

**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. The Judgment 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 who are assigned detention responsibilities.

During our first site visit in November, 2009, we 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 tour of the Detroit Police Department's five facilities with holding cells and the Detroit Receiving Hospital.⁵⁶ We have repeated our tours and inspections of some or all of these facilities during each of our subsequent site visits, and have had opportunities to interact with command and key detention staff at each facility.

In addition, we have met with key CRIB command staff, Audit Team personnel, and the designated health care professional to conduct a thorough review of all requirements, DPD directives, forms, logs, and documentation relating to and required by this Judgment. Our review disclosed the need for the DPD to revise various health-related directives and to have them reviewed and approved by a health care professional. This was accomplished. In addition, we met with DPD Training staff regarding training issues, which were promptly addressed.

During our visits to and inspections of the various facilities with holding cells, we were often accompanied by CRIB staff, and assisted by the cell block supervisors and compliance officers. These inspections included our entering and examining every holding cell, interviewing detention staff, and reviewing forms and logs.

The Conditions of Confinement Consent Judgment is comprised of several different categories relating to the confinement facilities maintained and operated by the DPD:

- **Fire Safety:** Although we had concerns with the fire safety practices during our first site visit, those concerns have been addressed. The DPD has implemented required practices and procedures, including the conducting of required fire drills with even greater frequency than required. However, we remain concerned that evacuation equipment – i.e., shackles for the prisoners – is not readily available in all of the facilities.

⁵⁶ Facilities with holding cells are located in the Northeastern, Eastern, and Southwestern Districts; Sixth and Twelfth Precincts.

FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT

January 16, 2011

- ***Emergency Preparedness:*** The DPD has addressed our concerns with regard to facility key control, but we note that the Department needs to revise the directive to ensure consistency with Departmental practice. We also note that the keys are not always stored in cabinets in a manner in which they are readily available if an emergency should occur. The number of available fire extinguishers is sufficient, and the fire extinguishers can easily be located in all of the facilities.
- ***Medical and Mental Health Care:*** We reviewed several detainee file folders during and in between our site visits for compliance with medical and health screening and other required procedures. We continue to note clerical errors and missing documentation relating to medical referrals, medication logs, staff signatures, and supervisory reviews. We are particularly concerned with the lack of an exchange of information relating to health and other significant issues among shifts. We are also concerned with the lack of effective, consistent, and required observation checks. In addition, we noted in this and previous reporting periods that the Mental Health High Risk Log (661) and the Medical High Risk Log (661a) have not been completed thoroughly. The most common omissions on these forms are the date/time of removal, and the reason for removal from the watch.
- ***Environmental Health and Safety:*** The sanitary conditions and cleanliness of the holding cells and adjacent areas are concerns in every 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 ensure that the required cleanliness and sanitary conditions are maintained. During our second site visit, we observed 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 did not meet those standards. Our inspection found the condition of three facilities unsatisfactory, one marginal, and one (Twelfth) satisfactory. Our third site visit inspection reflected a significant level of improvement in four out of five districts/precincts. During our fifth site visit, we observed marked improvement from the last reporting period in the cleanliness and sanitary conditions of the facilities.
- ***Persons with Disabilities:*** We continue to find problems with DPD staff's use of TDD (Telecommunications Devices for the Deaf) devices. These problems could be corrected if the districts/precincts that maintain holding cells would develop a training program for their personnel.
- ***Food Service and Personal Hygiene:*** Since the first reporting period, the DPD has made significant improvements, obtaining both Phase 1 and Phase 2 compliance with the CJ requirements related to food service and personal hygiene.
- ***Use of Force and Restraints:*** DPD is required to implement policies for the investigation of uses of force in detention facilities, consistent with their general use of force requirements. While policies are in place, the same deficiencies noted in field investigations are present in those investigations specific to detention facilities.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Additionally, the acquisition of video equipment and the utilization of available video recordings remain issues.

- **External Complaints:** DPD properly refers complaints originating from its detention facilities to IAD or OCI, as appropriate. However, we continue to note deficiencies in areas such as the timely completion of investigations.
- **Management and Supervision:** The DPD is improving in the process of updating the Department's directives, policies, and forms on an annual basis. We continue to find that when CRIB makes changes on directives and policies, the implementation of the updates and changes lags behind in practice. The Department continues to have problems training on the updated directives, policies, and forms.
- **Training:** In order to gain compliance with the Conditions of Confinement training requirements, the DPD must assign only officers who have been trained in its Detention Officer Training Program to detention duties. During this reporting period, we found that 95% of the officers assigned to detention duties received the required training. This represents a significant improvement from the third reporting period, when we found that only 78% of the officers assigned to detention duties received the required training.

The DPD has made progress with regard to directive and policy guidance; however, the DPD must effectively implement and adhere to these directives. This requires training and competent supervision. The DPD should ensure that the directives and policies, particularly those relating to health care, are reviewed annually and revised as required. Additionally, the DPD must adhere to C61, regarding "making available proposed policy revisions to the community for review, comment and education." The DPD must also provide detention personnel with ongoing in-service training to ensure 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 DPD Comprehensive Emergency Preparedness Plan (CEPP) includes a Fire Safety Plan (FSP), which requires compliance with the Life Safety Code and inspections. The FSP was developed in consultation with the Detroit Fire Marshal. DOJ approved the FSP on May 23,

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

2006. DPD Directive 305.4 Holding Cell Areas, revised March 26, 2010, provides guidelines and procedures for the operation of holding cells. The Fire Marshal reviews the FSP annually; the most recent review was conducted on June 5, 2010. The Fire Marshal also conducts regular and periodic (annual) inspections of holding cells; the most recent review was conducted in October, and November, 2009. The inspecting captain appropriately documented these inspections on the DPD audit form in each district/precinct. Accordingly, we find the DPD continues to be in Phase 2 compliance with this Consent Judgment 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.⁵⁷

During the first reporting period, we found the DPD in Phase 1, but not in Phase 2, compliance with this paragraph because required fire drills and fire extinguisher inspections were not conducted at an acceptable level. This problem was resolved during the second reporting period, which resulted in full compliance. During this reporting period, we reviewed DPD 716, Fire Extinguisher Monthly Inspection/Inventory, and DPD 703, Fire Drill Documentation Forms for all of the districts/precincts with holding cells; and determined that all facilities are in compliance with the requirements of this Consent Judgment. We also examined all of the fire extinguishers at each holding facility, and found them all to be fully charged.

The DPD remains in Phase 2 compliance with this paragraph.

⁵⁷ 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 on May 23, 2006. The Fire Marshal annually reviews the FSP; the last review was conducted on June 5, 2010.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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 emergency exits for the holding cells and buildings 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:

We found the DPD in Phase 1 compliance with this paragraph in the first reporting period. The Department maintains that status during this reporting period.

As noted above, the DPD developed the required Fire Safety Plan.⁵⁸

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 that they were appropriately familiar with the operations of each of the systems.

The DPD is in Phase 2 compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

⁵⁸ 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 on May 23, 2006. The Fire Marshal annually reviews the FSP; the last review was conducted on June 5, 2010.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

We found the DPD in Phase 1 compliance with this paragraph in our first quarterly report.

The DPD has developed and implemented the required Fire Safety Plan.

During our recent visits to each district/precinct that maintains holding cells, we found evidence of the Fire Marshal's inspections. DPD remains in Phase 2 compliance with this Consent Judgment paragraph.⁵⁹

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:

- 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*

⁵⁹ 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 on May 23, 2006. The Fire Marshal annually reviews the FSP; the last review was conducted on June 5, 2010.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- 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 found the DPD in full Phase 2 compliance with this paragraph during the first reporting period.

As previously noted, we visited each district/precinct that maintains holding cells, and determined that the DPD has made the required structural, electronic, and mechanical upgrades within the facilities. We also noted that Fire Systems of Michigan and the Fire Marshal conducted and documented inspections of suppression systems in October, and November, 2009. We acknowledge DPD's 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 remains in Phase 2 compliance with the requirements of this Consent Judgment 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:

We found the DPD in Phase 1, but not Phase 2, compliance with this paragraph in the first reporting period. In the subsequent reporting periods, we found the DPD in Phase 2 compliance with this paragraph following our review of supplemental documentation regarding routine testing of systems and equipment.

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.

Fire Systems of Michigan and the Fire Marshal conduct the required inspections, which were last conducted in October, and November, 2009. The weekly testing of emergency generator power supply systems is documented on Form 715 - Evaluation of the Operation of Holding Cells which is supported by the printouts of weekly testing completed and generated by DTE Energy.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

The DPD remains in Phase 2 compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

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:

We found the DPD in Phase 1 compliance with this paragraph in our first quarterly report.

DPD Directive 305.4, Holding Cell Areas, Section 5-3, effective March 26, 2010, and the Fire Safety Plan (FSP) prohibit smoking in the district/precinct holding cells.⁶⁰ 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. However, during a review of a sample of DPD 715 Evaluation of the Operation of Holding Cells, we found that box #2 indicated that the member conducting the evaluation observed a person smoking in the building. There was no indication on the form that a copy of the report was provided to the commanding officer of the facility. The DPD is in continued Phase 2 compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

⁶⁰ 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 on May 23, 2006. The Fire Marshal annually reviews the FSP; the last review was conducted on June 5, 2010.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

We found the DPD in full Phase 1 compliance with this paragraph in our first quarterly report.

The Fire Safety Plan sets forth guidelines for the storage of flammable materials.⁶¹ Our inspection of the holding facilities found that each district/precinct was equipped with at least one yellow storage cabinet, located in the garage area, for flammable and combustible liquids. We checked the cabinets and found flammable materials and gas storage containers. Unlike previous visits, the storage containers were free of combustible evidence. The DPD is in continued full compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

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 Consent Judgment paragraph since 2005 when it closed some of the facilities where kane fiber ceiling tiles were in place, and it removed the tiles 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 Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

⁶¹ 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 was conducted on June 5, 2010.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| ¶ | Requirements | Phase 1 – Policy | Phase 2 – Implementation |
|----|---|------------------|--------------------------|
| 14 | Holding Cell Life Safety Code compliance | In Compliance | In Compliance |
| 15 | Fire detection, suppression, and evacuation | In Compliance | In Compliance |
| 16 | Fire Department consultation/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:

DPD Directive 305.4 Holding Cell Areas, revised March 26, 2010, provides guidelines and procedures for the operation of holding cells. The DPD 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).

In the first reporting period, we found the DPD in full Phase 1 compliance, and in pending Phase 2 compliance, with this paragraph because documented fire drills were recorded at less than the required 94%. We found the DPD in full Phase 2 compliance with this paragraph in subsequent reporting periods.

The DPD 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 has conducted and documented fire drills, as required. During this current reporting period, we reviewed the Fire Drill Documentation logs, DPD 703, for each of the five districts/precincts and found that two or more were conducted on each shift in each district/precinct as required. We also noted that, based on the recommendation that we made during our first site visit, the number of key sets was increased from three to five at each district/precinct. Three were assigned to the cell block staff, one was designated for the front

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

desk/lobby, and one was placed in the emergency key locker in the lieutenants'/sergeants' office. As previously noted, DPD directive 305.4, effective March 26, 2010, does not reflect this allocation of keys, and must be brought in line with the actual practice. (DPD 305.4-6.7 states "One set in the custody of each of the detention officers." The policy does not state the number of officers that must be assigned to the detention facility.) Additionally, form DPD 715, box 24, does not provide for the accurate accounting of the key blocks. The number of key blocks, the forms, and the actual checks must be brought into conformance in order to avoid a non-compliant finding. The DPD is in continued compliance with the requirements of this paragraph at this time.

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:

We found the DPD in compliance with policy (Phase 1) but not practice (Phase 2) in the first reporting period because fire drills were not conducted at a level greater than 94%. The DPD achieved full compliance in the second and third reporting periods because it increased the frequency of fire drills to the 100% level.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

The DPD developed the required Comprehensive Emergency Preparedness Plan (CEPP).⁶² The CEPP identifies staff responsibilities in the event of a fire emergency to include notifications, evacuation, and key control procedures. The Department has also conducted and documented fire drills, as required (see C15).

During the current reporting period, we reviewed Form 703 Fire Drill Documentation and observed notations on the forms at two Districts indicating that during the fire drills, the staff was not able to find the leg shackles to secure the detainees when they are evacuated from the building. This could lead to a potentially serious breach of security for the officers and the community. During our most recent site visit, we confirmed that the shackles were missing or placed into cabinets in such disarray that it would be difficult to quickly retrieve them for an evacuation. We inquired with the staff about the missing shackles, and were told that they were being used by the transportation van.

We recommend that the detention evacuation equipment be stored in the immediate vicinity of the holding cells so that it is readily accessible to officers. We acknowledge the staff at all of the facilities for identifying and documenting the problems that are found during the regular inspections.

The DPD is in continued full Phase 2 compliance with this Consent Judgment paragraph.

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:

⁶² The Detroit Police Department Comprehensive Emergency Preparedness Plan (CEPP), developed in consultation with the Detroit Fire Marshal, was approved by DOJ on May 23, 2006. The Fire Marshal annually reviews the FSP; the last review was conducted on June 5, 2010.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

In all of the previous reporting periods, we found the DPD in Phase 1 compliance with this paragraph because Directive 305.4, Holding Cell Areas, Section 6-7, effective May 9, 2005 specifies the key control policy. However, we noted in our first quarterly report that the DPD had not achieved Phase 2 compliance with this paragraph, due to a lack of documentation regarding maintenance and operational testing of the keys. During our first site visit, we recommended that each officer working in a cell block be issued a complete set of keys. As a result, we were informed that two extra sets of keys were distributed to each district/precinct with holding cells, bringing the total at each to five – three in the cell block, one with the sergeant assigned to the public lobby, and one in the emergency key box in the lieutenants’/sergeants’ office. The DPD subsequently achieved Phase 2 compliance in this area, as we noted in our second and third quarterly reports. In both of those reports, we stated that Directive 305.4 and DPD form 715 (Evaluation of the Operation of the Holding Cells) needed to be updated to reflect current practice. Directive 305.4 was revised effective March 26, 2010, and requires an annual review. DPD form 715 has not been updated and, for as of this current reporting period, the form (block 24) continues to reflect three sets of keys.

During the current site inspection, we found that each district/precincts had five sets of keys—three in the cell block, one with the sergeant assigned to the public lobby, and one in the emergency key box in the lieutenants’/sergeants’ office. As a result of not updating the 715 form, only three sets of keys, instead of five, are accounted for in each daily inspection. When we reviewed a sample of the 715 forms, we found that in one district, a set of keys was not found during the inspection. There was no comment written to explain what actions were taken or if the keys were eventually found. Additionally, we found that there were sets of keys sitting loosely in cabinets. The keys would be more accessible during an emergency if the stored keys are labeled and hung on correspondingly labeled hooks inside the cabinet.

We expect that by the next reporting period, the Department will have updated the DPD directive 305.4-6.7 and DPD form 715. The DPD is not in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

| ¶ | Requirements | Phase 1 – Policy | Phase 2 – Implementation |
|----|--|------------------|--------------------------|
| 23 | Ensure reasonable safety in emergency | In Compliance | In Compliance |
| 24 | Develop comprehensive emergency preparedness program | In Compliance | In Compliance |
| 25 | Implementation of key control policies | In Compliance | Not In Compliance |

FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT

January 16, 2011

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:

DPD Directives 305.1, Detainee Intake Assessment; 305.5, Detainee Health Care; and 403.2, Infectious Disease Control Plan; were not reviewed nor approved on an annual basis in the first two reporting periods by a qualified health care professional. In the third reporting period, the DPD Directive was revised and approved (February 5, 2010) by a qualified medical care. The DPD continued to be in Phase 1 compliance during the fourth reporting period with the above-referenced policies.

During the first four reporting periods, we found the DPD out of Phase 2 compliance with this paragraph. Our inspections, along with our review of the quarterly detainee file folders, revealed multiple issues in this area. We uncovered issues including: clerical errors; incomplete or missing documentation of 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.

During this current reporting period, we reviewed a random sample of 375 detainee file folders from the five districts/precincts that maintain holding cells. We found that 71% were in compliance with this Consent Judgment paragraph. The DPD continues to be out of Phase 2 compliance with this paragraph. We note that the compliance percentage regressed from 75% during the last reporting period to 71% in this current reporting period.

Our most recent inspections of detainee file folders and observations of staff in the districts/precincts revealed that the staff are still not properly implementing these procedures in accordance with the DPD directives. We continue to identify clerical errors, incomplete or missing documentation of 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.

Due to the revisions of the applicable directives mentioned above, we continue to find the DPD in Phase 1 compliance for this reporting period; however, full compliance with the requirements of this Consent Judgment paragraph and DPD directives is dependent upon correct and complete implementation and documentation of detainee health assessments, with appropriate responses to

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

detainees' medical and mental health needs.⁶³ DPD remains out of Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In 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.

Comments:

The DPD Policy 305.5, Detainee Health Care became effective May 9, 2005. This directive, along with forms and logs, comprises the Comprehensive Medical and Mental Health Screening program (CMMHSP).

In the first and second reporting periods, we were unable to verify that an annual review was conducted. In the third reporting period, a qualified health professional completed an extensive review and made revisions. Effective February 5, 2010, the DPD revised and updated the policies and the policy was approved by a qualified medical and mental health professional. During the fourth reporting period, we briefed the CRIB staff on the importance of updating all policies and directives on an annual basis. We found the DPD in Phase 1 and Phase 2 compliance with this paragraph.

During this reporting period, we met with the CRIB staff responsible for updating all policies/directives. We were provided with several updated policies and directives. We reminded them that on February 4, 2010 several of their CMMHSP policies will expire. We also reinforced the importance of conducting annual policy reviews. In addition, we reminded them that they will need to provide us with documentation on updated and approve policies by a qualified health professional for our next quarterly visit.

⁶³ See CJ 30, 31, and 32.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

The DPD, at a minimum, has implemented a comprehensive detainee screening process with medical protocols. We find the DPD in Phase 1 and Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In 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:

Our review of DPD Directives 305.1, Detainee Intake/Assessment, and 403.2, Infectious Disease Control, effective May 9, 2005, found that they contain the required detainee screening procedures. The DPD revised Directives 305.1 and 403.2, effective February 5, 2010, and therefore maintained its Phase 1 compliance status with this paragraph during the third and fourth reporting periods.

During the last four reporting periods, we found deficiencies in the staff's ability to consistently implement the requirements of this Consent Judgment paragraph, and thus, we determined that the DPD was not in Phase 2 compliance with this requirement.

During this reporting period, we reviewed a random sample of 375 detainee file folders from the five districts/precincts that maintain holding cells. Our review continues to find many of the same deficiencies that we found in past reviews: missing signatures of police detention officers and supervisors; clerical errors; and incomplete or incorrect completion of Detainee Intake Form

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

(651). We also found, in several of the detainee file folders, that medical and mental health information was not being transferred from the arresting officers' documentation on the Detainee Input Sheet (DIS) to the Detainee Intake Form (DIF). In some cases, we found that the detainee intake screening was not conducted within two hours of a detainee's arrest.

In addition, several detainee file folders were missing, including: Medical Care Referral Form 660; Detainee Treatment Medication Log 664; Hospital Prisoner Form 127B; and DRH discharge instructions. Our review revealed found 71% of the folders to be in compliance, down from 75% during the last reporting period.

Our current review of 469 of the DPD forms 659a, Platoon Daily Detainee Summary, revealed an 81% compliance rate. We found that 69 of the forms did not contain any comments in the "Comments" section of the form. Comments are required under DPD Directives 305.5-4.1(2). This is a regression from the last reporting period, when we found 95% in compliance. Our inspection of these forms found that the Cell Block Supervisors are still being inconsistent in recording all of the health information required on the Platoon Daily Detainee Summary. We found that in several cases, the forms were missing information on detainees with health issues; in some cases, the information was not recorded at all between shifts.

We continue to find that police detention officers are still inconsistent in recording all of the information required on the Detainee Information Form 651(DIF). Our review revealed discrepancies between the information contained on the Detainee Intake Form 651 and the Detainee Input Sheet 667 relating to detainees' 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 missing from detainee file folders; and several cases where detainees should have been referred to DRH in accordance with DPD directives, but were not.

Our review of the detainee file folders offsite and onsite continued to find that medical and mental health information is not being updated in the Livescan system. The DPD needs to develop and implement a process, so that when a detainee's medical or mental health status changes, detention staff update Livescan accordingly.

As a result of the aforementioned, we find the DPD remains out of Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C29

The medical protocols, at a minimum, shall;

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- 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:

Directive 305.1, Detainee Intake Assessment, was revised by CRIB in the second reporting period on February 5, 2010; this policy was further revised in the third reporting period. We found the DPD to be in Phase 1 compliance with the requirements of this paragraph. However, we found that the DPD was not in Phase 2 compliance with these requirements. During the first four inspections and reviews of detainee file folders, we found that the DPD staff deviated from policy.

During this reporting period, we reviewed a sample of 375 detainee file folders, and conducted inspections at the Detroit Receiving Hospital and each of the districts/precincts that maintain holding cells. Our assessments continue to reveal instances where staff deviated from the policy in the following areas:

- Timely referral, or lack of referral, of detainees in need of medical or mental health care to DRH;
- Required red medical alert stickers missing from detainee file folders;
- Medical referrals not completed correctly;
- Medical referral forms missing from detainee file folders;
- Medical information not being placed in confidentiality envelopes, as required;
- Supervisors' signatures missing on forms regarding the health information of detainees requiring medical care;
- Hospital Prisoner Forms not completed properly;
- DRH discharge instructions missing.

Our random sample of 375 detainee file folders from the five districts/precincts that maintain holding cells found that 71% were in compliance with this Consent Judgment paragraph. This finding shows a regression from 75% during the fourth reporting period.

As a result, the DPD remains out of Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

During previous reporting periods, we met with CRIB staff and reviewed directives and supplementary documentation required for compliance with this paragraph. CRIB staff prepared revisions to DPD Directive 403.2, Infectious Disease Control Plan; and Directive 403.2-4.4-1, Care and Storage of PPE Kit; which were reviewed and approved by a qualified medical and mental health professional, and issued with an effective date of February 5, 2010. DPD is in Phase 1 compliance with this paragraph.

During our previous site visits, we inspected the Detroit Receiving Hospital and all five DPD facilities that maintain holding cells. Our inspections disclosed poor levels of sanitation in similar degrees at all five DPD facilities and the Detroit Receiving Hospital (DRH) with a trend toward improvements, but during the third reporting period, several site had relapses. We also noted issues with PPE kits and first aid kits not being properly stocked. Although we noted improvements over time, the DPD was not in Phase 2 compliance with this paragraph.

During this current visit, our inspections revealed enormous improvements with the cleanliness and sanitation in all five DPD facilities and the Detroit Receiving Hospital (DRH) – particularly in the Eastern District. In some locations, we observed during meal services that the staff collected uneaten food in garbage and drink containers in trash containers instead of the detainees discarding their garbage and uneaten food and drink containers in the holding cell corridors outside the cells. We recommend that this practice continue, as it prevents the buildup of scum to form which contributes to unsanitary conditions in the cell block corridors. We again advise DPD that to maintain the sanitary improvements that have been made, and to keep the floors clean of excess debris in the holding cell areas; staff should collect the excess food, garbage, and packaging in a garbage bag after every meal. Many of the districts/precincts have recently been painted, and it appears that the DPD is making efforts to maintain the holding cell areas. We did not see any major deterioration during this reporting period, except for in the Southwestern District, where the holding cells were painted during the third reporting period and now there is a moderate level of paint chipping from the floors.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

We also continue to observe that there is food and drink being brought in by staff in the holding cell areas. DPD Directive 403.2-5-1-8, Precaution Strategies, requires that staff do not eat, drink, smoke, apply cosmetics or lip balm, handle contact lenses, or store food or drink in work areas where there is a reasonable likelihood of significant exposure to infectious diseases. We recommend that the DPD take appropriate action expeditiously to remedy these violations of policy.

During this reporting period, we also reviewed 161 Holding Cell Cleaning Logs, and found them in order with the cleaning officers' names, dates of cleaning, and the Cell Block Supervisor's approval designated. In almost every instance, the cleaning officer checked the box in the appropriate place; however, in a few instances, the officers simply drew a line through the first entry to the last. This method is not sound practice and leaves it unclear to the reviewer whether or not the cells were clean.

During our October, 2010, site visit, we inspected 13 vacant cells at three different facilities, and found that in 11 cases, the cells were clean – a compliance rate of 85%. In the other two cells, we observed what appeared to be soap or toothpaste scum on the top or inside the sinks.

Based on the deficiencies aforementioned in the implementation of a DPD Infectious Disease Control policy, and our observations of conditions, the DPD is not in Phase 2 compliance with this paragraph.

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.*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Comments:

Directive 305.5, Detainee Health Care was reviewed, updated, and approved, effective February 5, 2010. During the second reporting period, we met with CRIB staff and reviewed directives and supplementary documentation required for compliance with this paragraph. A qualified medical and mental health professional completed an extensive review, incorporating necessary revisions, and approved the aforementioned directives. Accordingly, DPD is in Phase 1 compliance with this paragraph.

During the last four reporting periods, our reviews of DPD form 661, Mental Health High Risk Log; form 661a, Medical Health High Risk Log; and form 659a, Platoon Daily Detainee Summary Form, indicated that required detainee health information – such as whether a detainee is taking medication or has a medical condition – was not being documented and communicated between consecutive shifts. Other errors included missing dates, times, names of the officers in charge authorizing the watch, and reasons for the detainee's removal from the cell.

Our current review and most recent inspections indicated that sharing relevant health information between shifts, as required by this paragraph, remains inconsistent. This practice is critical to ensure that the detainees' health needs are met, and for the purposes of staff safety. This information must be documented, updated, and communicated between the initial shift receiving the detainee and the subsequent shifts until the detainee is released.

We reviewed the Platoon Daily Detainee Summary (Form 659a), which is used to ensure the effective communication of screening information between consecutive shifts. Our review of 469 of these forms from each of the five districts/precincts for this reporting period revealed an 81% compliance rate, a drop from the last reporting period, when we found 95% in compliance. We found that 69 of the forms did not contain any comments in the "Comments" section of the form. Comments are required under DPD Directives 305.5-4.1(2). In addition, we found that information for several detainees with health issues was left off the form completely.

During this reporting period, we also reviewed Mental Health High Risk Log (DPD 661). This form is used when a detainee is placed in an observation cell for mental health reasons. In such circumstances, personnel are required to maintain a 15-minute watch. If a detainee is under constant supervision, staff are required to make notations on the log every 15 minutes. We reviewed a total of 80 cases for the period of July 1, through September 30, 2010, that required a 15-minute watch. While the 15-minute entries were made timely, in all but four cases; we found that the date, time, and reason for removal from the cell were recorded in only 35 of the 80 cases, resulting in a 46% compliance rate.

The Medical Health High Risk Log (DPD 661a) is used when a detainee is placed in an observation cell for medical reasons, and staff maintain a 15-minute watch. During this reporting period, we reviewed a total of 15 such logs. In 13 cases, the detainee was evaluated at DRH where either the medical staff supplied the medication or authorized its use, and there was no documentation of the name of the officer in charge authorizing the watch. In eight cases, the date, time, and reason for the individual's removal from the watch was authorized by the OIC or a supervisor. This resulted in a 62% compliance rate.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

We note that DPD Directive 305.5-3.7, effective date March 26, 2010, states that the field should be using the Medical/Mental Health High Risk Log (DPD661). The DPD combined the Mental Health High Risk Log (DPD 661) and the Medical Health High Risk Log (DPD 661a) to eliminate confusion over which form to use. During our inspections and review of the logs, we found that the staff continues to use the 661 and 661a forms interchangeably. We recommend that DPD issue an Administrative Message to inform relevant personnel of the updated change in the Directive.

Our current review of detainee file folders found innumerable deficiencies in the documentation of important health information. This included clerical errors, incomplete or missing documentation for Medical Referral Form and Medication Logs, missing signatures, missing documentation of required supervisory reviews, the lack of a documented exchange of health information between consecutive shifts, and missing updated health information in Livescan and in the detainee file folders.

Based on these findings, DPD remains out of Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In 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 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;*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- 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. require that unused medications prescribed at the DRH or other treating hospitals are provided to prisoners upon their release.*

Comments:

The DPD Directive 305.5, Detainee Health Care, was effective May 9, 2005. The directive was subsequently reviewed, updated, and approved by a qualified medical and mental health professional, and issued with an effective date of February 5, 2010. As of that date, we found the DPD in Phase 1 compliance with this paragraph.

During the last four reporting periods, at the five districts/precincts that maintain holding cells, we found multiple Medication Logs missing essential detainee and staff information. Detainee dosages, dosing times, signatures, and the names of the persons administering the medications and prescription release information were frequently missing. As a result, we found the DPD out of Phase 2 compliance with this paragraph.

During the current reporting period, our review of 375 detainee file folders revealed that the DPD continued to fail to record essential detainee and staff information. We found that some medication logs on detainees who have been released were missing signatures of detention staff and detainees; therefore, it was unclear whether the detainee received their unused medications at the time they were released. This raises several serious questions regarding what happened to the medications that the detainees were prescribed by DRH. We also continued to find essential detainee and staff information missing. For instance, some of the files did not contain detainee medication logs and signatures of PDOs and detainees when medications were administered. During the most recent site visit, we interviewed a detainee who was prescribed medication from the DRH. He received the prescribed dosage, but there was no record in the detainee file, medication log, or Platoon Daily Summary.

Our inspections of the five precincts/districts with holding cells revealed several detainees who were prescribed medications but did not have medication logs, which could contribute to medication errors. When we brought these to the attention of detention staff, they were not sure whether the prescribed medications were disseminated, or if the medication log was filled out or misplaced. We also continued to find cases where the DPD has not obtained medications from the pharmacies in a timely manner, resulting in detainees missing their scheduled dosing of medications prescribed by DRH. In addition, we continued to find that several detainees who were prescribed medications and who were held longer than originally expected did not have their prescriptions refilled, resulting in detainees missing their medications prescribed by DRH.

In some districts/precincts when we reviewed detainees' medication logs onsite, there was missing documentation on detainee dosages, dosing times, signatures, and the names of the persons administering the medications. We also examined onsite the Platoon Daily Summary

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

logs, which are used to insure that detainee health information is exchange and communicated between shifts; and found, in some cases, pertinent health information missing, and detainees who should have been recorded on the log not documented.

We checked all medication cabinets, and four of the five cabinets at the precincts/districts cabinets maintaining holding cells were in order. One district's cabinet was used for the storage of other materials such as old bandages, expired heat/cold packs, expired saline solutions, cleaning solution (unknown name), an old emesis basin, a plastic spirometer, an expired first aid kit, and miscellaneous other items and refuse. The district cleaned the medication cabinet immediately. It is crucial that the medication cabinet is secured and clean, and used only for detainee medications; and that the only staff who shall have access to the medication cabinet are the detention staff who are responsible for administering medications to the detainees.

We continue to find that the Southwestern District does not follow the established procedures regarding where medication logs should be kept. The Cell Block Supervisors place the medication logs directly into the detainee file folders, preventing that information from being centralized in a medication log. This practice can result in missing administration of medications which could result in dosing errors, particularly if a shift misses recording that a detainee is on medication on the Platoon Daily Summary. CRIB staff advised us that this will be corrected before our next site visit. In addition, the medication log should be locked in the cabinet when not in use in order to maintain privacy laws.

As a result of our current findings, the DPD remains out of Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In 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:

Our previous reviews determined that DPD Directive 305.1, Detainee Intake Assessment, effective May 9, 2005, had not been reviewed and approved on an annual basis by a qualified medical and mental health professional as required; however, this was subsequently achieved with the required medical and mental health review and the issuance of a revised Directive 305.1, effective February 5, 2010. The DPD remains in Phase 1 compliance with this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

During previous reporting periods, we found that the detention staff were generally familiar with where the appropriate clothing, such as paper gowns or suicide smocks, were stored. Our inspections revealed ample inventory of appropriate clothing.

During our most recent inspections, we found the same to hold true. The staff were knowledgeable regarding where the appropriate clothing was stored. In addition, we found that four of the five districts/precincts had a sufficient supply of clothing such as suicide smocks. In the other district, we could only locate two suicide smocks. The staff stated that they have ordered the clothing and are waiting for delivery. We advised the staff that they needed to keep sufficient inventory of the appropriate clothing. We will follow up on this during our next visit.

We find the DPD in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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:

During the last four site visits, we conducted comprehensive inspections of each of the five districts/precincts that maintain holding cells, as well as the Detroit Receiving Hospital cells, and confirmed that the DPD was in full compliance with the requirements of this paragraph.

During this reporting period, we also confirmed in our inspection that the DPD remains in Phase 1 and Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

| ¶ | Requirements | Phase 1 - Policy | Phase 2 – Implementation |
|----|---|------------------|--------------------------|
| 26 | Prisoners' medical/mental health conditions | In Compliance | Not in Compliance |
| 27 | Medical/mental health screening program | In Compliance | In Compliance |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| | | | |
|----|---|---------------|-------------------|
| 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 | In Compliance | Not in Compliance |
| 32 | Prescription medication policy required | In Compliance | Not in Compliance |
| 33 | Clothing-suicide prevention | In Compliance | 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:

In the first four reporting periods, we found the DPD in Phase 1, but not Phase 2, compliance with this paragraph.

DPD Directive 305.4, Holding Cell Areas, effective February 1, 2008, addresses policy requirements relating to the safety of staff and prisoners/detainees. The directive 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.

These directives are in compliance with the requirements of this Consent Judgment paragraph. As noted above, the DPD is in Phase 1 compliance with this paragraph. However, the DPD has not yet achieved effective implementation of the policy requirements due to staff and inmate safety measures that do not meet 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:

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- 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:

In the first, second, and third reporting periods, we found the DPD in Phase 1, but not Phase 2, compliance with this paragraph. In the fourth reporting period, we found DPD in both Phase 1 and Phase 2 compliance with this paragraph.

DPD Directive 305.1, Detainee Intake, effective May 9, 2005, sets forth a prisoner security screening program that meets the requirements 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. Our review of 469 of these forms from each of the five districts/precincts for this reporting period reflected an 81% compliance rate. We found that 69 of the forms did not contain any comments in the "Comments" section of the form. Comments are required under DPD policy 305.5-4.1(2): "The OIC of the desk shall ensure that all complaints and observations are noted on the Detainee Intake Form (DPD 651), Platoon Daily Summary Log (DPD 659) and in the Desk Blotter." It appears that the majority of the errors occurred in one precinct/district. There were four cases where receiving officers failed to document their receipt of the document, and in 17, the officers did not document a time of initiation or receipt of the document. During our October, 2010, site visit, we noted that there were a few forms that did not describe detainee complaints or observations in the appropriate boxes.

As noted above, we previously found DPD in compliance with this paragraph; our findings in this reporting period will not take the Department out of compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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:

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- 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:

In the first, second, third, and fourth quarterly reporting periods, we found the DPD in Phase 1 compliance with this paragraph. In the first reporting period, we found the DPD in pending Phase 2 compliance; in the second, third, and fourth reporting periods, we found the DPD not in Phase 2 compliance with this paragraph.

DPD Directive 305.4, Holding Cell Areas, Sections 4.2 and 4.3, effective February 1, 2008, establishes the duties of the cell block supervisors (CBS) and detention officers relating to well-being checks. Supervisors are required to walk through the holding cell areas four times per shift to check on the well-being of the detainees. Detention Officers are required to make similar visual checks every 30 minutes (or every 15 minutes for high risk detainees). Their observations are documented on the Detention Cell Check Log (DPD 659).

At the Detroit Receiving Hospital, 15-minute well-being checks are entered on the DPD 659 form when holding cells are occupied. General population well-being checks are entered on the DPD 659 Form every 30 minutes at the districts/precincts. Detainees held in observation cells are monitored every 15 minutes on either the DPD 661 (Mental Health High Risk Monitoring) or the DPD 661a (Medical Health High Risk Monitoring Log).

During this current reporting period, our review of 167 Detention Cell Check Logs (DPD 659) from the districts with holding cell facilities reflected a 90% compliance rate. This shows a drop from 93% during the fourth reporting period, and 99% during the second reporting period. We attributed the decrease to the failure of officers to conduct or document their 30-minute requirement for cell checks on detainees in the general population. There were 17 late cell checks, and two officers were responsible for 41% of those. In seven instances, supervisors failed to sign/initial for their required checks. We found the Southwestern and the Twelfth Precinct to be in compliance, and the Northeastern, Eastern and Sixth Precincts to be out of compliance, with this paragraph.

The Mental Health High Risk Log (DPD 661) is used when a detainee is placed in an observation cell for mental health reasons, and personnel maintain a 15-minute watch. Even if a detainee is under constant supervision, staff are required to make notations on the log every 15 minutes. We reviewed a total of 80 cases for the period of July 1, through September 30, 2010 that required a 15-minute watch. While the 15-minute entries were made timely, in all but four cases; we found that the date, time, and reason for removal from the cell were recorded in only 35 of the 80 cases, resulting in a 46% compliance rate.

We have been advised that the Officer in Charge (OIC) is reluctant to place his/her name on the form indicating the time the detainee is removed from the watch due to personal liability.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

However, we have found other OICs who follow the policy. DPD Policy 305.1-7.4(8) states: “The Cell Block Supervisor at the high risk holding facilities shall review the ‘Patient Discharge Paperwork’ to confirm classification, any prescribed medication(s), place high risk alert sticker (orange) on the outside of the Detainee File Folder, and ensure the completion of the Mental Health High Risk Monitoring Log (DPD 661(a)).”

We reviewed 40 separate cases where the reason for the watch was suicide-related – a past history, attempts, or current ideations – yet only 20 of them were in compliance. In the remaining 20 instances, two did not have either box marked; and in 18, the 15-minute watch box was incorrectly marked on the form. In 17 cases, the reason for the watch being removed was documented by the OIC or a supervisor. DPD policy (Directive 305.1-7.4, effective May 9, 2006) requires that DPD personnel maintain a constant watch on a suicidal detainee. DPD’s compliance rate for this portion of the paragraph is 50%.

The Medical Health High Risk Log (DPD 661a) is used when a detainee is placed in an observation cell for medical reasons, and staff maintains a 15-minute watch. We reviewed a total of 15 cases during the period of July 1, through September 30, 2010. In 13 cases, the detainee was evaluated at DRH, where the medical staff supplied the medication or authorized its use. In eight cases, the date, time, and reason for the individual’s removal from the watch was authorized by the OIC or a supervisor. This resulted in a 53% compliance rate.

We note that DPD staff have continued to use the 661 and 661a forms interchangeably, even to the point of using both forms on one detainee throughout the duration of his watch. We have been provided with the revised form (DPD 661, effective October 20, 2010). This should help alleviate the confusion of duplicate forms utilized for the same purpose.

The DPD has not achieved Phase 2 compliance with this paragraph due to the significant discrepancies noted on DPD 661 and DPD 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:

In the first four reporting periods, we found the DPD in Phase 1, but not Phase 2, compliance with this paragraph. That status continues for the current reporting period.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

DPD Directive 305.4, Holding Cell Areas, Section 4.3, effective February 1, 2008, is in compliance with the requirements relating to direct and/or onsite remote observation of occupied observation cells. However, Directive 305.1-3.8, effective May 9, 2005, specifies that constant supervision is required when a detoxification/safety cell (observation cell) is used to house a suicidal detainee. Directives 305.1-3.16 authorize the use of any single cell as an observation cell to house a suicidal detainee, and it requires constant supervision.

As previously noted, the DPD continues to be out of compliance with its own policies in that detainees on suicide watches are often not placed on constant supervision. Of the 40 DPD 661 and 661a forms that we reviewed during this reporting period (that were maintained on suicide watches), 20 specified “constant supervision,” 20 specified a 15-minute watch and, as noted above, inexplicably, several specified both constant supervision and 15-minute monitoring. In addition, the matter of general population detainees being housed in observation (detoxification/safety) cells is still unresolved. We have noted that on occasion, when detainee holding cells are at capacity, DPD has utilized an observation cell as a general population cell. We do not discourage this practice when it is deemed to fulfill their mission, however, as we noted in our second quarterly report, DPD policy does not provide for such use of those cells; therefore, modification of Directive 305.1 is required. Until such time as this issue is resolved, we will continue to find the DPD out of compliance with regard to practice with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

| ¶ | Requirements | Phase 1 – Policy | Phase 2 – Implementation |
|----|--------------------------------------|------------------|--------------------------|
| 35 | Security procedures to ensure safety | In Compliance | Not in Compliance |
| 36 | Prisoner security screening program | In Compliance | 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:

In the first four reporting periods, we found the DPD in Phase 1, but not Phase 2, compliance with this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

DPD Directive 305.4, Holding Cell Areas, Section 5, effective February 1, 2008, establishes sanitation and cleaning procedures for the district/precinct holding cells. In our third report, we noted that the Twelfth Precinct did not meet the high standard that it set during the previous reporting period. During our fourth inspection, we found that the Twelfth Precinct once again set the benchmark against which the other districts/precincts can check their progress. Overall, graffiti is almost non-existent throughout the facilities, and we did not observe trash in any cells. The least satisfactory areas were offices in the cell blocks where detainees are not housed. The accumulation of dirt in those spaces is attributable to staff. The Detroit Receiving Hospital was uncharacteristically dirty and cluttered during our previous site visit, however, it made a significant turn-around for our most recent site visit, as the cells and office areas were clean and tidy.

We reviewed 161 Holding Cell Cleaning logs and found them in order with the cleaning officers' names, dates of cleaning, and the Cell Block Supervisors approval designated. In almost every instance, the cleaning officer checked the box in the appropriate place; however, in a few instances, the officers simply drew a line through the first entry to the last. This method is not sound practice and leaves the reviewer unclear regarding whether or not the cell was cleaned.

During our October, 2010, site visit, we inspected 13 vacant cells at three different facilities and found that in 11 cases, the cells were clean. In the remaining two cells, we observed what appeared to be soap or toothpaste scum on the top or inside the sinks. DPD staff should have conducted a more thorough inspection, as we were able to remove the scum with a damp paper tissue.

The DPD is in continued Phase 1 compliance, and due to its progress, has been moved to pending Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Pending 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:

In the first four reporting periods, we found the DPD in Phase 1, but not Phase 2, compliance with this paragraph. That status continues in this reporting period.

DPD Directive 305.4, Holding Cell Areas, Section 5, effective February 1, 2008, establishes cleaning and inspection standards for holding cell areas. Cell block supervisors are required to conduct inspections at the beginning of their shifts and to correct any noted discrepancies.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Holding cell areas must be cleaned daily and documented in the Holding Cell Cleaning Log (DPD 701). Detention officers must clean cells immediately after they are vacated (DPD 305.4(4)); however, it was difficult to locate those instances on the logs where a cell was vacated and immediate cleaning took place.

During the current reporting period, we found that 99% of the DPD 701 Forms were in compliance. This is the same compliance rate that we found during the last reporting period; however, during our most recent inspection, we observed that only 85% of the sinks and toilets were sufficiently clean. The only discrepancy that we noted in our previous report on the forms was a sergeant's repeatedly stamped name instead of his actual signature. During this current reporting period, we again noted the same sergeant stamping his name on the form. Sanitation appears to be satisfactory on paper, but our inspection revealed that while the previous conditions we noted have improved considerably, the cleanliness of the sinks and toilets remains at unacceptable levels.

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.

Comments:

In the first four reporting periods, we found the DPD in Phase 1, but not Phase 2, compliance with this paragraph. There is no change for this reporting period.

DPD Directive 305.4, Holding Cell Areas, Section 6.6, effective February 1, 2008, establishes procedures for the maintenance of the holding cells. The Platoon 1 Cell Block Supervisor is responsible for conducting a weekly maintenance inspection and for documenting discrepancies in the Holding Cell Maintenance Log (DPD702). The Platoon 1 Cell Block Supervisor is required to submit repair orders by e-mail to the Maintenance Department.

Our review of DPD 702 Forms (Weekly Cell Maintenance Log) for the period of July 1, through September 30, 2010, found them to be out of compliance, due either to the construction of the form or the failure to indicate when critical holding cell repairs were completed. DPD issued a new form DPD 702 (revised June, 2010); this should resolve problems with documentation. As stated previously, the old form has no utility because, among other issues, it does not track corrective action.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

During our October, 2010, site visit, we observed in three facilities that personnel placed visible signs, indicating not to use them, on the doors of cells that required maintenance.

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:

We found the DPD in full Phase 1 and Phase 2 compliance with this paragraph in all of the previous reporting periods. The Department remains in full compliance for this reporting period.

DPD Directive 305.4, Holding Cell Areas, Section 6.6, effective February 1, 2008, establishes the policy regarding heating and ventilation (temperature ranges) within the holding cells. During our inspections of the facilities, we found the temperature in each cell block well within established limits (between 66 and 80 degrees). Our interviews with cell block supervisors and on-site inspection of the facilities revealed that they checked the temperature upon assuming the shift. Based on our review of the above-referenced directive and our observations of practice, the DPD is in full compliance with the requirements of this Consent Judgment 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.

Comments:

In all of the previous reporting periods, we found the DPD in Phase 1, but not Phase 2, compliance with this paragraph.

DPD Directive 305.4, Holding Cell Areas, Section 6.6, effective February 1, 2008, sets forth Departmental policy with regard to the repairs as required. For instance, we have found critical

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

repairs to cells noted on the Maintenance Log but the logs did not note when or if they were completed. As we noted previously, the DPD was in the process of implementing a more effective maintenance repair tracking system, and effective June 8, 2010, this system became functional.

Accordingly, the DPD remains in Phase 1 compliance, but we will not be able to determine Phase 2 compliance with this paragraph until the DPD utilizes the new form.

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 found DPD in full compliance with regard to policy and practice in all of the previous reporting periods.

We inspected three district/precinct holding cells, and found that supplemental lighting has been retrofitted at each location. The DPD Facilities Management Staff has conducted light level tests in the five districts/precincts that maintain holding cells, and at the Detroit Receiving Hospital. 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 Consent Judgment 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:

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

We found the DPD in full compliance with regard to policy and practice in all of the previous reporting periods.

Directive 305.4, Holding Cell Areas, Section 7, effective February 1, 2008, requires that detainees have access to toilets and potable drinking water 24 hours per day. Our inspection of the district/precinct holding cells this quarter determined that all prisoners had access to toilets and potable water at all times. Based on the published directive and our observed conditions of the physical plant in the district/precinct holding cells, the DPD is in full compliance with the requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C46

The DPD shall ensure that all Hepa-Aire purifiers comply with the Michigan Occupational Safety and Health Agency standards.

Comments:

We found the DPD in full compliance with regard to policy and practice in all four previous reporting periods.

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 Consent Judgment 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 | Pending 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 |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| | | | |
|----|--|---------------|---------------|
| 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:

The DPD developed a Comprehensive Medical and Mental Health Screening Program (CMMHSP) effective May 9, 2005. Policy 305.1, Detainee Intake and Assessment, and Policy 305.5, Detainee Health Care, were updated and approved in writing by a qualified medical and mental health professional on February 5, 2010; however, during our previous site visit, we noted a variance between the requirements of Section 7.3-5 and actual practice pertaining to Telecommunications Devices for the Deaf (TDD). We advised that the DPD must update this policy for this review to avoid a Phase 1 non-compliance finding. The DPD completed the appropriate revisions during this reporting period. The revised policy states, "Each precinct with a holding cell is equipped with a Telecommunications Devices for the Deaf (TDD). In the event that a precinct has a device that is inoperable any deaf or hearing impaired detainee shall be transferred to a precinct that has a functioning TDD. In such instances, the Cell Block Supervisors (CBS) shall document this information in the blotter." Accordingly, we find the DPD in Phase 1 compliance with this paragraph.

Our previous site assessments found that much of the TDD equipment was not operable in the districts/precincts because the equipment was not working properly and/or staff were not being trained on its proper use. As a result, we found the DPD to be not in Phase 2 compliance with this paragraph.

In the past, we found that detainees who require the use of a wheelchair were transported and housed at the Northeastern District because the Northeastern District was equipped with two commodes that are compliant with the Americans with Disabilities Act (ADA). During this reporting period, we interviewed staff at all five districts regarding detainees who required the use of a wheelchair. The holding cell staff continue to be aware of the directives and procedures relating to the transfer of all detainees in need of wheelchair accessibility to the Northeastern District.

In one district, our review of detainee file folders revealed that a detainee who was wheelchair-bound was not transferred to the Northeastern District per directive DPD Directive 305.1. The detainee was arrested on August 30, 2010, and the arresting officer noted on the Detainee Input Sheet (DIS) DPD Form 667 that the detainee required the use of a wheelchair. The detainee was released on September 2, 2010. The detainee was held in a cell that was not equipped for a

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

handicapped person for three days. In addition, there was no documentation of the detainee's disability on the Detainee Intake Form (DIF) DPD Form 651.

Our most recent inspection of the Northeastern District found that one of the two cells that had been equipped and designated for the holding of persons with disabilities had some plumbing issues. DPD personnel had submitted a work request order for maintenance to fix the problem.

As noted in C41, our review of DPD 702 Forms (Weekly Cell Maintenance Log) for the period of July 1, through September 30, 2010 found them to be out of compliance, due either to the construction of the form or the failure to indicate when critical holding cell repairs were completed. A new form DPD 702 (revised June, 2010) has been issued and should resolve problems with documentation. We recommend that the DPD establish a process for tracking maintenance issues in this area; the current form is not effective in doing so. This was demonstrated when we asked for follow-up documentation that the plumbing issues in the handicapped cells were being addressed in a timely manner; the staff could not produce documentation confirming that they followed up on their request for cell repairs.

During our most recent site visit, there were no detainees who required the use of a wheelchair being housed in the facility.

We also inspected all five districts and precincts that maintain holding cells and found that they all had TDD equipment. We continue to encounter detention officers who have not been trained properly on the use of the equipment. When we interview the staff, they all seem to know how to use the equipment; but when we ask them to demonstrate the procedure, three of the five precincts/districts were unable to make the equipment function. At one location, one of the CRIB staff tried to use the equipment, but was also unable to get the equipment to work.

When we asked the staff if they have been trained on using the equipment, most stated that they have not. During our most recent site visit, we discussed with CRIB our recommendation that the DPD amend its procedure, and require each district/precinct to call another district/precinct and initiate a typed conversation, TDD to TDD, to test the system. Such a test would ensure that the systems work, and that every PDO has hands-on experience using the equipment. We were advised that the Department was in the process of developing a check system that would test the TDD devices to make sure they were functioning properly. We will follow up on the training issue and the development of TDD system check in our next quarterly review.

We continue to observe inconsistency in the use of the TDD device by detention staff. To date, several of the staff communicated to us that they have not been trained on the use of the equipment.

We find DPD not in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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, was last revised February 5, 2010, in consultation with a qualified medical and mental health professional from the Detroit Department of Health and Wellness Promotion (DHWP). Accordingly, the DPD is in Phase 1 compliance with this requirement.

We reviewed the Department's practices concerning the use of Telecommunications Devices for the Deaf (TDD) in the third reporting period, and informed the DPD that we would find the Department out of compliance in this area if the problems with training and practice were not improved. In the last reporting period, as these disparities continued, we found DPD not in Phase 2 compliance with this paragraph.

During the current reporting period, we visited the five districts/precincts that maintain holding cells, and continued to find a number of disparities between practice and policy regarding the TDD equipment. As we continue to see such problems, we find the DPD out of Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not In Compliance

| ¶ | Requirements | Phase 1 - Policy | Phase 2 – Implementation |
|----|--|------------------|--------------------------|
| 47 | Reasonable accommodation for disabled | In Compliance | Not in Compliance |
| 48 | Detention of persons with disabilities | In Compliance | Not in Compliance |

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.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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 specialist from the Detroit Department of Health and Wellness Promotion (DHWP). DPD Directive 305.8, Detainee Food Service and Hygiene Items log, was last reviewed and signed by DHWP on February 4, 2010. We found the DPD Phase 1 compliance with this paragraph.

During previous reporting periods, we inspected the five holding cell area sites, and found the refrigerators clean and temperatures adequate to ensure safe storage of food products. We also reviewed a sample of DPD forms 655, and found DPD in compliance with these requirements.

During the current reporting period, we received revised Directive 305.8 Detainee Food Service and Hygiene, effective March 15, 2010. In addition, the DPD revised Refrigerator Log, DPD 655, effective July 5, 2010, per Administrative Message, Teletype 310-02498.

During the current reporting period, we reviewed 144 of the Detainee Meal and Hygiene Logs (DPD 663), and found 87% of them in compliance – a decrease from the previous reporting period, when we found 99% in compliance. We attributed the drop to the fact that several logs were left blank after the lunch/dinner entries. In some cases, the officers wrote in “R,” “T,” or “DRH” in the space provided for the meal. DPD must address this issue to ensure that the detention staff completes the documentation correctly in order to avoid a finding of non-compliance in our next report.

Our current review of the Refrigeration Logs found 94% in compliance – a decrease from the last reporting period, when we found 98% in compliance. We attributed the drop to the failure of a few supervisors to sign and date the forms.

Our most recent observations of the distribution of food to detainees in several of the districts/precincts found that detention officers’ distribution of meal delivery was delivered in a sanitary manner. We find the DPD in continued Phase 2 compliance at this time; however, we note the need for DPD to address the issues cited above.

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:

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- 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 Hygiene Items, effective May 9, 2005, effective May 9, 2005, requires that a registered dietician and sanitation specialist approve and review annually the food services policy for detainee meal service. This directive was developed in consultation with a dietician and sanitation specialist from the Detroit Department of Health and Wellness Promotion (DHWP). DPD Directive 305.8, Detainee Food Service and Hygiene Items log, was last reviewed and signed by DHWP on June 12, 2010. We found the DPD in Phase 1 compliance with this paragraph.

During the third and fourth reporting periods, we found that the DPD Detainee Meal and Hygiene Logs for each of the districts/precincts were in compliance with this paragraph.

During the current reporting period, the DPD made changes to the DPD Directive 305.8, Detainee Food Service and Hygiene and Detainee Food Service and Hygiene Items Log, 655. We received signed documentation that the change in meal services delivery was approved by a dietician and sanitation specialist from the Detroit Department of Health and Wellness Promotion (DHWP).

Also during this reporting period, the DPD implemented a revised Detainee Meal and Hygiene Items Log, DPD 663, effective July 5, 2010. We received documentation of this revision, Administrative Message, Teletype 10-02497.

During this reporting period, we reviewed 144 of the Detainee Meal and Hygiene Logs (DPD 663), and found 87% of them in compliance – a decrease from 99% during the last reporting period. We attributed the drop to the fact that in some cases, the logs were left blank after the lunch/dinner entries. In some cases, the officers wrote in “R,” “T,” or “DRH” in the space provided for the meal. The DPD must address this issue to ensure that the detention staff complete the documentation correctly.

We also reviewed the Refrigeration Logs and found 94% in compliance – a decrease from 98% during the last reporting period. We attributed the drop to the failure of a few supervisors to sign and date the forms.

We inspected the refrigerators at the five districts/precincts to ensure that food was stored properly. The refrigerator temperatures and expiration dates on the food were up to standard.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

We also observed meal distribution is several of the districts/precincts, and found that the PDOs distributed food to detainees in a sanitary manner.

We also verified that the five districts/precincts that maintain holding cells had an adequate number of alternative meals available for detainees with religious or dietary needs.

The DPD remains in Phase 1 and Phase 2 compliance with the requirement of this paragraph.

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, requires that detainees be provided with hygiene items on a daily basis. DPD Directive 305.8 was last updated on March 15, 2010. In addition, the DPD developed and employs the Daily Detainee Meal and Hygiene Items Log (DPD log 663) to document that hygiene items are provided to each detainee. We found that the DPD was in Phase 1 compliance with this paragraph during the previous reporting periods.

During the third and fourth reporting period, our review revealed that the DPD log 663, Detainee Meal and Hygiene Logs, were in compliance with this paragraph. During the current reporting period, the DPD revised DPD log 663. We received documentation of the revision, Administrative Message, Teletype 10-02497, effective July 5, 2010, and a copy of the revised log.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

During the current reporting period, our review of DPD log 663, Detainee Meal and Hygiene Logs, revealed that detention officers provided each detainee with a towelette when distributing each meal.

We also found that the PDOs appear to understand the importance of providing personal hygiene items to the detainees on a daily basis, as well as the changes recently made to the policies.

We find DPD in Phase 2 compliance with the requirements of this paragraph.

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 |

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 March 2010, and 304.2, Use of Force, effective June 2006, set forth the required use of force guidelines.

We found the DPD in Phase 1 compliance with this paragraph in all previous reporting periods. We found the DPD in deferred Phase 2 compliance with this paragraph in the first reporting period, and not in compliance in subsequent reporting periods.

We reviewed four events involving uses of force that occurred during this reporting period: one in the East District; one in the Southwest District; one in the Northwest District, and one in the Sixth Precinct. While the investigations of these incidents were generally complete, there were issues with adhering to prescribed timelines for officer interviews and overall case completion. While videos should be available given the settings of these incidents, in some of the cases, the review of available video was not mentioned, or mentioned only in passing, with no comment as to the value of the video or what it showed.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

During our most recent site visit to the Detroit Receiving Hospital detention facility and the Schaefer Annex, we inquired with personnel about their responsibilities when force is used on a detainee. All of the personnel we spoke with were knowledgeable of policy requirements.

DPD is not in Phase 2 compliance with this paragraph.

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 March 2010, establishes the required procedures for this paragraph.

We found the DPD in Phase 1 compliance with this paragraph in all previous reporting periods. We found the DPD in deferred Phase 2 compliance with this paragraph in the first reporting period, and not in compliance in subsequent reporting periods.

All districts/precincts that maintain holding cells are equipped with videotaping/digital recording equipment that is linked to an extensive camera system that monitors hallways and common areas as well as most, but not all, cells. DPD has not, as of yet, required handheld video cameras in all of its detention facilities. We will report on the acquisition of this equipment when it occurs.

Of the uses of force reviewed during this reporting period, none met the criteria for this paragraph.

DPD remains not in Phase 2 compliance with this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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 March 2010, provides that detainees will not be handcuffed to benches or fixed objects longer than is necessary (no longer than three hours).

We found the DPD in Phase 1 compliance during the previous reporting periods. We found the DPD in deferred Phase 2 compliance status during the first reporting period, and in Phase 2 compliance during subsequent reporting periods.

There are no records or logs available to assist us in these compliance determinations; however, we observed no detainees handcuffed to fixed objects during any of our inspections of the holding cells. DPD personnel at the Schaefer Annex were knowledgeable of the policy requirements, and advised that there are no fixed objects in the facility such as “bull rings” to handcuff prisoners to.

DPD is in Phase 2 compliance with the requirements of this Consent Judgment 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 |

FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT

January 16, 2011

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.

Comments:

DPD Directive 305.4, Holding Cell Areas, Section 6.6, effective March 2010, requires the appropriate thorough investigation of all uses of force, injuries to detainees, and in-custody deaths that occur in holding cells.

We found the DPD in Phase 1 compliance, but out of Phase 2 compliance, with this paragraph during the previous reporting periods.

We reviewed four incidents involving uses of force and one detainee injury incident that occurred during this reporting period. As mentioned above, we found that adherence to timelines was an issue. We also found that referrals to presumably available video were inconsistent. Several forms were also missing appropriate supervisory signatures, and one investigation lacked an evaluation of adherence to policy. Of positive note in the injury case, DPD command discovered alleged misconduct during that investigation and took steps to address it.

DPD is not in Phase 2 compliance with this paragraph.

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 March 2010, requires the reporting of all uses of force.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

We found the DPD in Phase 1 compliance during the previous reporting periods. We found the DPD in deferred Phase 2 compliance status during the first reporting period, and not in Phase 2 compliance during subsequent reporting periods.

We reviewed four incidents involving uses of force that occurred during this reporting period. As mentioned above, we discovered issues with timelines, appropriate reviews of video, and supervisory sign-off. Additionally, in one case, an involved supervisor may have conducted the investigation. His report indicates he responded to the scene after hearing raised voices and “assisted with the escort.”

DPD is not in Phase 2 compliance with this paragraph.

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 March 2010, requires the reporting and investigation of all injuries occurring within detention facilities. We found the DPD in Phase 1, but not Phase 2, compliance with this paragraph during the previous reporting periods.

There was one injury report submitted for review during this reporting period. As the reviewing commander noted, there was “unexplainable lateness” with the investigation. Additionally, while video was requested, it was for the wrong date. Of positive note, DPD supervisors discovered alleged misconduct during this investigation and took steps to address it.

DPD is not in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

| ¶ | Requirements | Phase 1 – Policy | Phase 2 – Implementation |
|---|--------------|------------------|--------------------------|
|---|--------------|------------------|--------------------------|

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

| | | | |
|----|-----------------------------------|---------------|-------------------|
| 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 March 2010, and 102.6, Citizen Complaints, effective July 1, 2008, require the acceptance and processing of external complaints regarding incidents occurring in the holding cells.

We found the DPD in Phase 1 and Phase 2 compliance during the previous reporting periods.

The Department closed eight complaints originating from detention facilities during the reporting period, as follows: two in July; three in August; and three in September. All complaints were accepted and processed in accordance with DPD policy. While there were issues associated with the investigation of these complaints (see C59), DPD is in Phase 2 compliance with this Consent Judgment 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.

Comments:

DPD Directives 305.4, Holding Cell Areas, Section 6.2, effective March, 2010, and 102.6, Citizen Complaints, effective July 1, 2008, require the investigation and review of all external complaints regarding incidents occurring in the holding cells.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

We found the DPD in Phase 1 compliance with this paragraph during all previous reporting periods. We found the DPD in Phase 2 compliance with this paragraph during the first reporting period, but not in compliance during successive reporting periods.

The Department closed eight complaints originating from detention facilities during the reporting period. One of these complaints was against a Wayne State police officer, and was appropriately administratively closed after an initial investigation and notification to the complainant. Two were referred to the Force Investigation Unit within five days of receipt. The remaining five cases were investigated by OCI, and exhibited many of the issues delineated in CJ requirements U27 – U33. In particular, none of the investigations was completed in within a 90-day period. (One case was closed more than two years after receipt.) While supervisors reviewed the investigations, specific deficiencies were not documented, nor were corrective actions taken when warranted.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

Critical Issues:

- We continue to observe issues with the quality of use of force investigations and OCI investigations, as outlined in CJ requirements U27–33 and U61–69, impact CJ requirements C52–59. As these issues are addressed Department-wide, we hope to see a positive impact on the subset of cases originating from detention facilities.

Next Steps:

During the next reporting period, we will:

- Continue to review all force, injury, and complaint incidents originating from detention facilities.
- Monitor the acquisition of handheld cameras for deployment in each detention facility.
- Conduct field visits to various detention facilities to check for adherence to policy requirements.

| ¶ | 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 |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

We found the DPD in both Phase 1 and Phase 2 compliance in all of the previous reporting periods. That status continues in this reporting period.

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

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:

We found the DPD in both Phase 1 and Phase 2 compliance with this paragraph in all of the previous reporting periods.

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. The directive 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 for this quarter, no proposed policies were posted for review, and no public commentary was noted. The website does provide a means for the public to do so. The DPD is in continued compliance with the requirements of this Consent Judgment paragraph; however, the fact that no policies have been posted for public review for the past year (see our previous quarterly reports) is cause for concern. Policies, procedures, and directives should be updated annually; and we have documented the need for specific revisions in our reports. We visited the DPD website during

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

this review and found no evidence of proposed policy revisions. We recommend that DPD begin this process by updating Directive 101.1 to reflect the requirements of this Consent Judgment.

Additionally, we recommend that the DPD begin a review of all policies to ensure that they represent the current legal, departmental and community standards. Continued Phase 2 compliance must be supported by the actual posting of policy revisions on the DPD website so that the public has an opportunity to comment.

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 May 9, 2005, requires routine evaluation of the operations of holding cells to minimize harm to staff and prisoners. The DPD was in Phase 1 and Phase 2 compliance during the first and second reporting periods. During the third reporting period, we did not receive copies of DPD form 715, which documents monthly inspections, so we were unable to make a compliance determination. The DPD provided the required forms in the fourth reporting period, and we found the DPD to be in Phase 1 and Phase 2 compliance with this paragraph.

During the current reporting period, the DPD provided us with our requested sample of 715 forms for our evaluation of the five districts/precincts that maintain holding cells. All 715 forms received were signed by the Compliance Liaison Officers (CLO). However, we did not receive any documents for the DRH.

CRIB is determining whether it is beneficial for the CLO to fill out the 715 form daily or monthly. We will follow up on this issue during the next reporting period.

We find the DPD in Phase 2 compliance with this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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:

- a) the risk management database;*
- b) the performance evaluation system;*
- c) the auditing protocol;*
- d) regular and periodic review of all DPD policies; and*
- e) regular meetings of the DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.*

Comments:

Phase 1 compliance with this requirement is governed by policies related to the use of force requirements relating to the risk management system (U78-90), personnel evaluations (U90), and audits (U92-99). Each of these requirements is in Phase 1 compliance for this reporting period. Findings regarding those requirements, therefore, also apply here.

Requirements to sustain Phase 2 findings regarding personnel evaluations in the Department also apply here (U90). Evaluations of corrections personnel are included in our sample drawn for regular review. Procedures requiring audits of holding facilities are also included under the general audit requirements (U92-99). Findings of Phase 2 compliance in these areas, therefore also apply to the related subsections of this requirement (sections b, c).

Under the Consent Judgment, U78-90 establish the standards for the Phase 2 requirements of the risk management system. As was true with regard to Phase 1, our findings regarding those requirements are also relevant here. Although progress with MAS is noted in this report, the current status of the system does not yet support a finding of Phase 2 compliance (see U78-90).

DPD also conducts reviews of holding cell issues as part of the comprehensive compliance review processes of CRIB, which currently includes regular compliance assessment meetings in which documentation of the meeting minutes have been provided for this reporting period.

As noted above, DPD is in Phase 1 compliance with this paragraph. Although DPD meets the requirements for full compliance on some parts of this paragraph, full compliance with the whole

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

requirement depends on successful implementation of the risk management system. Although we note progress on that system, it does not yet support a finding of full or pending compliance.

Compliance Status:

Phase 1: 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:

The DPD is required to revise and augment its Policy 305.4-6.3, Video-Taping Use of Force, on video cameras as outlined in the requirements of this paragraph. In each reporting period, we found the DPD in Phase 1 compliance with this paragraph.

During our previous inspections of holding cells, we observed the operation of video cameras in all processing areas. However, DPD did not provide us with documentation to confirm that video cameras were in continuous operation in all holding cell areas. In addition, we found operational cameras in all holding cells and evidence indicating the supervisory reviews of videotapes, but only when a use of force incident occurred; supervisors did not conduct random reviews of the videotapes, as required by this paragraph.

During the current reporting period, we reviewed DPD forms 702, Weekly Cell Maintenance Log, for July 1, through September 30, 2010, and found that 94% were in compliance with this paragraph, as opposed to 92% in the previous reporting period.

The DPD revised the Facility Maintenance Log, DPD 702, effective July 5, 2010. The DPD provided us with documentation of an Administrative Message, Teletype 10-02487.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Also during the current reporting period, we verified that cameras were operational in the Northeastern District and the Twelfth Precinct. We viewed video in the Northeastern District for one hour at the processing area/observation cell due to the observation cell being occupied. We confirmed that DPD personnel were present the entire time. When visiting the Eastern District, we reviewed maintenance logs for June 28, through July 20, 2010, and found that the DPD reported the failure of the video cameras; staff informed us that the necessary parts had been ordered by Facilities Maintenance. That is a three-week time lag for a critical piece of equipment to not function. When we inspected Eastern District during our most recent site visit, we found that the cameras did not function. During our next site visit, we will inspect all five districts and precincts to ensure that the video cameras are functioning properly.

When we inspected the districts/precincts that maintain holding cells, we continued to find discrepancies between what we observed and what is listed in the logs. (See C41, C52-59.)

Our assessment of compliance with the requirements of this paragraph has included an operational review of video cameras throughout the detention facilities as well as in the processing areas during each of our inspections. We find that video capability throughout detention facilities is an essential component of effective and management. However, we are currently discussing with the DPD the specific requirements of this paragraph relating to whether, for the purposes of compliance, video cameras are required in the processing areas or throughout the detention facility. We will resolve this issue during our next site visit. In the meanwhile, we are deferring our compliance determination.

Compliance Status:

Phase 1: In Compliance

Phase 2: Deferred

CJ Requirement C65

The DPD shall conduct regularly scheduled semiannual 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 statistically valid 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;*

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- 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.⁶⁴*

Comments:

During the previous reporting periods, we found that the DPD, using generally accepted government auditing standards (GAGAS), developed an Audit Protocol in accordance with the requirements of U92. The protocol, effective August 31, 2008, established an audit schedule; described the audit terms; specified the roles and responsibilities of Audit Team members; described the various audits, including the one required by this paragraph; and described the reports required.⁶⁵ This protocol was reviewed and updated, effective February 5, 2010. As a result, DPD remains in Phase 1 compliance with this paragraph.

For the previous periods ending July 31, 2009, and January 31, 2010, The Civil Rights Integrity Bureau (CRIB) Audit Team conducted the required Combined Uses of Force Investigations Audits.⁶⁶

During this current reporting period, the CRIB Audit Team completed and issued its Combined Use of Force Investigations Audit on July 31, 2010.⁶⁷ We found that the Audit Team conducted detailed and comprehensive audit regarding uses of force, injuries to prisoners, and allegations of misconduct in holding cells. The team identified several deficiencies and outlined recommendations for resolving them. Therefore, we find the DPD in Phase 2 compliance with these requirements of this paragraph.

⁶⁴ 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.

⁶⁵ 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.

⁶⁶ 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.

⁶⁷ The audit will cover the period ending July 31, 2010.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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 to conduct the audits required by this paragraph. The DPD Audit Protocol sets forth requirements for conducting the audits.⁶⁸ This protocol was reviewed and updated, effective February 5, 2010. As a result, DPD remains in Phase 1 compliance with this paragraph.

We previously reviewed the Fire Safety Practices and Policies audits conducted by the HCCC and the CRIB Audit Team for the periods ending July 31, 2009 and January 31, 2010 and found that the DPD was in Phase 2 compliance with this paragraph.

During our most recent site visit to the various districts/precincts that maintain holding cells, we conducted an examination of the policies and practices related to the Fire Safety Practices and Policies. Our findings are discussed above in C14-22.

During this current reporting period, the CRIB Audit Team completed and issued its audit of the Fire Safety Practices and Policies.⁶⁹ In our review, we found that the audit was an ample and robust document.

We find the DPD in compliance with these requirements of this paragraph.

⁶⁸ 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.

⁶⁹ The audit will cover the period ending July 31, 2010.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

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 to conduct the audits required by this paragraph. The DPD Audit Protocol sets forth requirements for conducting the audits. This protocol was reviewed and updated, effective February 5, 2010. As a result, DPD remains in Phase 1 compliance with this paragraph.

We previously reviewed the Comprehensive Emergency Preparedness Program audit conducted by the HCCC and the CRIB Audit Team for the period ending January 31, 2010. We found the audit to be a detailed document that determined that the DPD met the requirements for performance and documentation of requirements of this paragraph

During our current visit to the various precincts/districts with holding cells, we independently examined the policies and practices related to the Emergency Preparedness Program. Our findings are discussed above in C23-25.

The CRIB Audit Team completed and issued its audit of the Emergency Preparedness Program during this reporting period. The DPD performance, relative to fire safety, for the period ending July 31, 2010, declined in comparison to the performance reported for the period that ended January 31, 2010. Overall, the team determined that the DPD did meet the requirements of C15-17, and C20-21. However, the DPD did not meet compliance for C14 (NFPA 13 for spare sprinkler heads, and NFPA 101 for testing and maintenance of the dry sprinkler system in the garage), C18 (test, inspect, and maintain back-up power system [subparagraph C18c], reducing the spread of fire, [subparagraph C18d], and C19 (testing, inspecting, and maintaining the fire alarm system).

Accordingly, we find the DPD in compliance with these requirements of this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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;*
- 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 to conduct the audits required by this paragraph. The DPD Audit Protocol sets forth requirements for conducting the audits.⁷⁰ This protocol was reviewed and updated, effective February 5, 2010. As a result, DPD remains in Phase 1 compliance with this paragraph.

We previously reviewed the Medical and Mental Health Program and Policies Audits conducted by the HCCC and the CRIB Audit Team for the periods ending July 31, 2009, and January 31, 2010. Both contained detailed accountings of the Audit Team's findings. The latter audit was command-specific, identified specific deficiencies, and made recommendations for corrective action and accountability at the command level. We found these audits to be thorough and note that the identification of specific deficiencies and the inclusion of recommended corrective action are positive steps.

During this reporting period, we visited the various precincts/districts that maintain holding cells, and examined the policies and operational practices related to the Medical and Mental Health Program. Our findings are discussed above in C26-34.

⁷⁰ 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.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

The CRIB Audit Team completed and issued its audit results for the Medical and Mental Health Program and Policies on July 31, 2010.⁷¹ The audit was command-specific, which identified specific deficiencies and made recommendations for corrective action and accountability at the command level. We found these audits to be thorough in the identification of specific deficiencies. We feel that the command specific audits and corrective action plans are helpful steps towards achieving compliance.

For that reason, we find the DPD in compliance with these 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 to conduct the audits required by this paragraph. The DPD Audit Protocol sets forth requirements for conducting the audits.⁷² DPD remains in Phase 1 compliance with this paragraph.

We previously reviewed the Detainee Safety Program and Policies Audits for the periods ending July 31, 2009, and January 31, 2010. The January 31, 2010 audit was command-specific, which identified specific deficiencies, and made recommendations for corrective action and accountability at the command level. We found these audits to be thorough, and note that the

⁷¹ The audit for the period ending July 31, 2010.

⁷² 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.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

identification of specific deficiencies and the inclusion of recommended corrective action are positive developments.

The CRIB Audit Team during the current reporting period completed and issued its audit results for the Detainee Safety Program on July 31, 2010.⁷³

During this current reporting period we also independently reviewed the operational implementation of policies and practices related to the Detainee Safety Program during our visits to all five districts/precincts with holding cells and the DRH. Our findings are discussed above in C35-38.

Accordingly, we find the DPD in compliance with these requirements of this paragraph.

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 to conduct the audits required by this paragraph. The DPD Audit Protocol

⁷³ The audit will cover the period ending July 31, 2010.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

sets forth requirements for conducting the audits.⁷⁴ DPD remains in Phase 1 compliance with this paragraph.

We previously reviewed the Environmental Health and Safety Program Audit for the period ending January 31, 2010. This audit was command-specific and focused on identifying deficiencies within commands and outlining recommended corrective action. At that time we also independently reviewed the operational implementation of policies and practices at the various districts/precincts.

The CRIB Audit Team completed its audit of the Environmental Health and Safety Program and issued its finding on July 31, 2010.

We also conducted an inspection separately on operational implementation of policies and practices at the all five districts/precincts with holding cells and the DRH. Our findings are discussed above in C39-46.

The DPD is in compliance with these requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C71

The Holding cell Compliance Committee shall conduct regularly scheduled semiannual audits of all building containing holding cells to evaluate the food service program, including:

- a. reviewing a statistically valid 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 CRIB Audit Team to conduct the audits required by this paragraph. The DPD Audit Protocol

⁷⁴ 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.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

sets forth requirements for conducting the audits.⁷⁵ DPD remains in Phase 1 compliance with this paragraph.

The CRIB Audit Team completed and issued its command specific audit on the DPD food service program and hygiene practices on July 31, 2010.⁷⁶ We found the audit reports to be complete and thorough.

During this reporting period, we visited all precincts/districts that maintain holding cells. We examined the implementation of the policies and practices related to the food service program and hygiene practices. Our findings are discussed in C49-50.

The DPD is in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C72

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 non-disciplinary corrective action or disciplinary action.⁷⁷

Comments:

The DPD developed an Audit Protocol, effective August 31, 2008, that established an audit schedule; described the audit terms; specified the roles and responsibilities of Audit Team members; described the various audits, including the one required by this paragraph; and

⁷⁵ 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.

⁷⁶ The audit covers the period ending July 31, 2010.

⁷⁷ Consent Judgment amendment, April 15, 2009.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

specified the reports required.⁷⁸ The protocol was in accordance with the requirements of U92, and was consistent with generally accepted government auditing standards (GAGAS). This protocol was reviewed and updated effective February 5, 2010, and now requires that commanders take appropriate disciplinary or non-disciplinary action where appropriate. Accordingly, DPD remains in Phase 1 compliance with this paragraph.

The CRIB is required under this paragraph to provide written reports for the Chief and specified Commanders; however, during our previous site visits, we found that the various reports and field responses were not satisfactory in that these reports did not receive adequate attention. CRIB staff confirmed that they also perceived the lack of attention as a continuing issue. The CRIB conducted a review of the audit process. As a result of its review, CRIB changed the audit process to focus on individual commands. These command-specific audits are now expected to result in clearer Command accountability and increased responsiveness to issues that are identified through the audit process.

During the previous reporting periods, the CRIB completed the required audits for the period ending January 31, 2010. We reviewed the effectiveness of the revised process to ensure that appropriate corrective action was taken in response to the deficiencies identified during the audits. We received the command-specific Corrective Action Plans (CAP) from the five districts/precincts and DRH for all of the audits except two (DRH, Environmental Health and Safety; and Southwest District, Detainee Food Service and Personal Hygiene Practices). In addition, we did not receive CAPs for the following semiannual audits: Fire Safety Practices and Policies; Allegations of Misconduct in Holding Cells and Uses of Force in Holding Cells Combined; and Comprehensive Emergency Preparedness Program. Our review of the command-specific CAPs found missing signatures on employee reprimands and no consistency in the format of a CAP. Some commands use an inter-office memorandum, while others use a Correction Action Plan form. We also found it difficult to ascertain the course of action taken by the commander in correcting the findings in the audits. We strongly recommend that the commanders of the districts/precincts that maintain holding cells and the DRH staff write more comprehensive responses to the CAPs that outline specifically what corrective actions are being taken, and also document who will be held accountable/responsible for making those corrections. We also recommend that CRIB develop a standardized Correction Action Plan template created to assist the commanders in more expansively addressing the deficiencies/issues identified in the command-specific audits.

During the current reporting period, we reviewed the audits that were completed on July 31, 2010. We did not receive the individual command-specific corrective action plans, because it is our understanding that CRIB made changes on how the commands respond to the audit reports and communicated this to the commands at the Holding Cell Compliance meeting on September 20, 2010. CRIB is now providing the audits to the field in an electronic format so that the commanders/inspectors can respond within the audit report timeframe. We assume that the responses from the command on specific corrective actions are being transposed by CRIB and

⁷⁸ 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.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

placed in the audit report in red font. We did not receive from CRIB a copy of an Administrative Message or Specific Order to the field on how the commands would address corrective action as a result of the audit's findings. In addition, we were not provided sufficient information on the new process stated above.

In our review of the audits for this period, the way the command responded with corrective action to deficiencies noted was insufficient. The changes instituted by CRIB during this period diminish the command's accountability, and decrease responsiveness to issues that are identified through the audit process. It is not always clear that the commanders of each precinct and specialized unit reviewed all of the audit reports regarding employees under their command; and, where justified, that DPD took non-disciplinary corrective action or disciplinary action. In addition, this new process does not require the signatures of the commanders indicating that they reviewed the audits; documentation that the commander developed the corrective action plan in response to the audit findings; and the signatures from employees who are reprimanded.

During this reporting period, we did not receive documentation that commanders received copies of the audits and where needed corrective action or disciplinary action was taken.

DPD remains out of Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

| ¶ | Requirements | Phase 1 – Policy | Phase 2 – Implementation |
|----|--|------------------|--------------------------|
| 62 | Evaluation of holding cell operation | In Compliance | In Compliance |
| 63 | Operate cells in compliance with risk plan | In Compliance | Not in Compliance |
| 64 | Augment policy regarding video cameras | In Compliance | Deferred |
| 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 | In Compliance | In Compliance |
| 69 | Detainee safety audits required | In Compliance | In Compliance |
| 70 | Environmental health/safety audits | In Compliance | In Compliance |
| 71 | Food service program audits required | In Compliance | In Compliance |
| 72 | Audit results to Chief and Commanders | In Compliance | Not in Compliance |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

XVI. TRAINING***CJ Requirement C73***

The DPD shall provide comprehensive pre-service and in-service training to all detention officers.

Comments:

The DPD developed Special Order 10-02, January 16, 2010, which specifically provides that *before* “performing duties relative to detainees in DPD holding cells, a DPD member must have attended and successfully completed the Detention Officer Course” (emphasis added). The policy 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, DPD issued Teletype 09-3481, which declared, “[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.”

During our past site visits, we have conducted surveys to determine the comprehensiveness of training afforded to detention officers, and the Department's compliance with its policies requiring that officers who handle detention duties have been afforded detention training. In April, 2010, we found that three (14%) of 22 supervisors, and 21 (24%) of 89 officers, who worked in detention on the selected days, were not trained in detention. In other words, only 78% of the 111 supervisors and officers who served in detention duties were trained as required. In July, 2010, we found better results.

During this past site visit, we conducted a survey of two randomly selected days (August 22, and September 15, 2010) within the quarter under review. We determined that on those days, a total 135 officers worked in the precincts and districts with cellblock facilities. We found that 128 (95%) of the 135 attended the Detention Officer in-service training, as required. This shows an improvement from the last reporting period, when we found that 91% received the detention training.

We note, however, that a desk supervisor has responsibility for the supervision of the three platoons assigned to the Central District. This is an unusual situation, in that the detention officers in that district handle the Detroit Receiving Hospital and have no on-site supervision. This deficiency was noted by Training in its most recent Needs Assessment Report, dated September 29, 2010. We find the DPD in Phase 2 Compliance on C73, and we are addressing the lack of supervision in U73, which addresses span of control and adequate field supervision.

The Department is in Phase 2 Compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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 10-02, Training, effective January 16, 2010 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 this past site visit, as in our past reviews, we noted that the DPD has made progress in capturing and automating training information. Since the effective date of the Consent Judgments, all years except 2003, 2004, and 2008 have been entered into the Michigan MITN system.

DPD is not in compliance with this paragraph.

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;*
- 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 10-02, Training, effective January 16, 2010, addresses the requirements of this Consent Judgment paragraph. The DPD is in Phase 1 compliance with this paragraph.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

In our reviews throughout the past year, we found that that DPD detention training adequately addresses the requirements of C75. We found, however, the Department continued to use officers and supervisors who have not been trained in detention duties. We could not, therefore, verify that all, or >94%, of DPD detention personnel had received the required training.

During the current reporting period, we found that 99% of DPD officers serving in detention duties had attended the required detention training. The DPD is in Phase 2 compliance with C75.

Compliance Status:

Phase 1: In Compliance

Phase 2: 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 10-02, effective January 16, 2010, fully addresses the requirements of this Consent Judgment paragraph. The DPD is in Phase 1 compliance with this paragraph.

During our previous reviews, we found that this requirement addresses training to be afforded to “all detention officers, supervisors and members of the Holding Cell Compliance Committee.” Since our random review of training files showed that less than 94% of the officers serving in detention duties received this training, we found the DPD not in compliance with this requirement.

Since detention training addresses the requirements of C76 and greater than 94% of officers serving in detention duties have received this training, we find DPD in Phase 2 compliance with C76.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Compliance Status:

Phase 1: In Compliance

Phase 2: 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 10-02, Training, effective January 16, 2010, fully addresses the requirements of this Consent Judgment paragraph. The DPD is in Phase 1 compliance with this paragraph.

During our previous reviews, we found that this requirement addresses training to be afforded to “all detention officers, supervisors and members of the Holding Cell Compliance Committee.” Since our random review of training files during the past quarter showed that less than 94% of the officers serving in detention duties received this training, we found the DPD not in compliance with this requirement.

Since detention training addresses the requirements of C77 and greater than 94% of officers serving in detention duties have received this training, we find DPD in Phase 2 compliance with C77.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Compliance Status:

Phase 1: In Compliance

Phase 2: 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.*

Comments:

Newly issued DPD Special Order 10-02, Training, effective January 16, 2010, fully addresses this requirement.

During our previous reviews, we found that this requirement addresses training to be afforded to “all detention officers, supervisors and members of the Holding Cell Compliance Committee.” Since our random review of training files during the past quarter showed that less than 94% of the officers serving in detention duties received this training, we found the DPD not in compliance with this requirement.

Since detention training addresses the requirements of C78 and greater than 94% of officers serving in detention duties have received this training, we find DPD in Phase 2 compliance with C78.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

| ¶ | Requirements | Phase 1 - Policy | Phase 2 – Implementation |
|----|---|------------------|--------------------------|
| 73 | Pre-service/in-service training required | In Compliance | In Compliance |
| 74 | Maintenance of individual training records | In Compliance | Not in Compliance |
| 75 | Emergency preparedness training required | In Compliance | In Compliance |
| 76 | Medical/mental health training required | In Compliance | In Compliance |
| 77 | Detainee safety screening training required | In Compliance | In Compliance |
| 78 | Environmental health/safety training required | In Compliance | In Compliance |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Critical Issues:

- The DPD is in the process of improving its directives, policies, and forms on annual basis. We continue to find that when CRIB makes changes on directives and policies, the implementation of the updates and changes lags behind in practice. Training on updated, directives, policies, and forms is still an issue.
- We continue to find that new or revised policies changes and updates have not been posted on the agency's website for public input.
- Overall, the DPD has improved the sanitation levels in all districts/precincts with holding cells, but the Department's efforts are not consistent, both among the districts/precincts and over time.
- Our quarterly review of detainee file folders continues to expose major issues. The DPD regressed during this reporting period. The deficiencies include clerical mistakes; the lack of documentation for medical referrals; medication logs not filled out correctly or missing; appropriate staff signatures missing; supervisory reviews that did not take place; and the lack of health information being exchanged between consecutive shifts. This last issue is particularly problematic in the Platoon Daily Detainee Summary.

Next Steps:

During the next reporting period, we will:

- Continue to review the DPD's updated Departmental directives, policies, and forms.
- Discuss with CRIB ways to improve compliance on critical detainee information exchange from shift to shift. The primary reason that the DPD continues to be out of compliance with the requirements related to the form 659a, Platoon Daily Detainee Summary Form, continues to be that supervisors fail to included pertinent information about detainee health issues or in some cases have not recorded detainees that should have been placed on the form. In addition, we find supervisors regularly neglect to sign for receipt of the document that was completed by the preceding shift.
- Verify standardization of the key set issuance and accountability system, and request that staff at each district/precinct demonstrate familiarity with the TDD hearing impaired telephone system by physically communicating among DPD facilities.
- Discuss with relevant Department personnel the possibility of implementing a comprehensive risk management plan for holding cell compliance, as the Management Awareness System is not efficient for this purpose.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- 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.
- Discuss with CRIB the issues around updating detainee medical and mental health information in the Livescan system.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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. 03-72258). 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 site visit from November 16, through November 20, 2009; our second visit from January 25, through January 29, 2010; our third site visit from April 19, through April 23, 2010; and our fourth site visit from July 18, through July 23, 2010. Our fifth site visit, connected with this report, occurred between October 18, through October 22, 2010.

Our compliance review 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, has contributed greatly to our understanding of the Department as we complete our assessments. With regard to the requirements of the Consent Judgments, our plan for our quarterly reports is to consider, to the extent possible, the compliance status of the entire collection of requirements. This includes a total of 110 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 protocols and instead focus special attention on particular areas of the Judgments.

As with our earlier reports, 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 the Department achieves and maintains Phase 1 and Phase 2 compliance, we will move a description of the requirement 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

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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 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, on the streets, or at the offices that the Monitoring Team occupies when onsite in the City. We use these visits to collect and evaluate material, prepare for work to be done between visits, and 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 review agency policies and procedures, and collect and analyze data using appropriate sampling and analytic procedures. The results of the compliance examinations are reported quarterly to the Court and the Parties.

Our Team determines 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 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.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

- **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, we may report a finding of "Pending Compliance" 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 ensure 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 our 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.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

APPENDIX A: Acronyms

The following is a listing of acronyms frequently used in our quarterly reports.

| ACRONYM | DEFINITION |
|----------------|---|
| AT | Audit Team |
| BOPC | Board of Police Commissioners |
| CAM | Command Accountability Meeting |
| 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 |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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| 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 |
| DFE | Detainee File Folders |
| DFO/PDO | Detention Facility Officer |
| DHWP | Detroit Department of Health and Wellness Promotion |
| 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 (<i>interchangeable with FIS</i>) |
| FIS | Force Investigation Selection |
| FSP | Fire Safety Program |
| FSPP | Fire Safety Practices and Policies |
| FY | Fiscal Year |
| 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 |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

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| 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 |
| 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 |

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT

January 16, 2011

APPENDIX B: Monitoring Team

Robert S. Warshaw, *Monitor*

Chief (Ret.) Charles D. Reynolds, *Deputy Monitor*

Evaluates compliance U37-41, Review of Critical Firearm Discharges and In-Custody Deaths.

Division Chief (Ret.) Rachel M. Burgess

Evaluates compliance with U27-33, General Investigations of Police Action; U34, Use of Force and Prisoner Injury Investigations; U61-63, External Complaints; U64-66, Intake and Tracking; and U67-69, External Complaint Investigations; C14-22, Fire Safety Policies; C23-25, Emergency Preparedness Policies; and C60-61, General Policies.

Commander (ret.) John M. Girvin

Evaluates compliance with U27-33, General Investigations of Police Action; U34, Use of Force and Prisoner Injury Investigations; U61-63, External Complaints; U64-66, Intake and Tracking; U67-69, External Complaint Investigations; C52-54, Use of Force and Restraints Policies; C55-57, Incident Documentation, Investigation, and Review; and C58-59, External Complaints.

Elizabeth F. Gondles, Ph.D.

Evaluates compliance with C26-34, Medical and Mental Health Care Policies; C47-48, Policies Concerning Persons with Disabilities; C490-50, Food Service Policies; C51, Personal Hygiene Policies; C62-72, Management and Supervision; and C73-78, Training.

Chief (Ret.) Eduardo Gonzalez

Evaluates compliance with U14-19, General Use of Force Policy; U22, Use of Firearms Policy; U24, Intermediate Force Device Policy; U25-26, Chemical Spray Policy; U27-33, General Investigations of Police Action; U34-36, Use of Force and Prisoner Injury Investigations; and U70-72 and U74-77, General Policies.

**FIFTH QUARTERLY REPORT OF THE INDEPENDENT MONITOR
FOR THE DETROIT POLICE DEPARTMENT**

January 16, 2011

Chief (Ret.) Melvin C. High

Evaluates compliance with U20-21 and U23, Use of Firearms Policy; U98-99, Oversight; U100-102, Use of Video Cameras; U106-111, Oversight and Development; U112, Use of Force Training; U113, Firearms Training; U114, Arrest and Police-Citizen Interaction Training; U115-117, Custodial Detention Training; U118-120, Supervisory Training; U121-122, Investigator Training; and U123, Field Training.

John M. Klofas, Ph.D.

Evaluates compliance with U78-90, Risk Management Database; U91, Performance Evaluation System; U92-97, Oversight; and U103-105, Discipline.

Chief (Ret.) Billy R. Riggs

Evaluates compliance with U42-43, Arrest Policies; U44-45, Investigatory Stop Policies; U46-48, Witness Identification and Questioning Policies; U49-51, Prompt Judicial Review Policies; U52-53, Hold Policies; U54-55, Restriction Policies; U56-57, Material Witness Policies; U58, Documentation of Custodial Detention; U59-60, Command Notification; C35-38, Prisoner Safety Policies; C39-46, Environmental Health and Safety Policies.

Asst Director (Ret.) Joseph R. Wolfinger

Evaluates compliance with U20-21 and U23, Use of Firearms Policy; U98-99, Oversight; U100-102, Use of Video Cameras; U106-111, Oversight and Development; U112, Use of Force Training; U113, Firearms Training; U114, Arrest and Police-Citizen Interaction Training; U115-117, Custodial Detention Training; U118-120, Supervisory Training; U121-122, Investigator Training; and U123, Field Training.

Robin Busch-Wheaton, *Editor*