

REPORT OF  
THE INDEPENDENT MONITOR  
FOR THE  
DETROIT POLICE DEPARTMENT



**Kroll**

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

REPORT FOR THE QUARTER ENDING  
FEBRUARY 29, 2004

ISSUED APRIL 15, 2004

## **EXECUTIVE SUMMARY**

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

During the quarter ending February 29, 2004, the Monitor examined 55 paragraphs or subparagraphs of the UOF CJ and 41 paragraphs or subparagraphs of the COC CJ. Of these, the City and the DPD complied with 5 and failed to achieve compliance with 86;<sup>4</sup> although the Monitor commenced reviews of the remaining 5 paragraphs, they have not yet been fully evaluated.<sup>5</sup>

The Monitor recognizes the progress that has been made in the following areas, among others:<sup>6</sup>

- On January 2, 2004, the City has assigned a full time attorney from the Corporation Counsel's office to work with the DPD in its compliance efforts. This attorney is assigned to the Civil Rights Integrity Bureau (CRIB).<sup>7</sup>

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

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

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

<sup>4</sup> The Monitor determined that the DPD partially complied with 3 paragraphs during the quarter. Partial compliance occurs when the City and the DPD have complied with one or more components of a particular paragraph (i.e. policy, training, implementation and audit requirements), but not all required components. For this report, the Monitor is including this information to demonstrate the DPD's progress in some areas. However, the paragraphs for which the DPD has achieved partial compliance receive an overall assessment of non-compliance, and are included among the 87 paragraphs classified as non-compliant in this report.

<sup>5</sup> For each paragraph, the Monitor's review and findings, to date, are included in this report.

<sup>6</sup> In general, there may be some efforts toward compliance that the DPD has made that are not included in this report. As explained in the Introduction section, the Monitor is scheduled to review certain paragraphs during certain quarters. Throughout the report, the schedule for the Monitor's review is outlined. This does not affect the due dates that the DPD and the City must adhere to that are outlined in the Consent Judgments.

<sup>7</sup> CRIB was created to coordinate the DPD's compliance efforts with the Consent Judgments.

- On January 12, 2004, the DPD has assigned a project management specialist to CRIB to effectively identify the tasks and manage the deadlines required to comply with the Consent Judgments.
- The Chief of Police issued a Special Order on January 6, 2004 officially naming the members of the Holding Cell Compliance Committee (HCCC) to include the Detroit Fire Department (DFD), the Detroit Department of Health and Wellness Program (DDOH), the Risk Management Bureau (RMB), the Medical Section, the Facilities Management Section and the Training Bureau, among others. The committee members will serve for a period of two years and meet weekly. The HCCC was originally formed on August 28, 2003, pursuant to paragraph C66, for the purpose of assuring compliance with the requirements of the COC CJ.
- As discussed within this report, the CRIB Audit Team (AT) completed the Audit Protocol pursuant to paragraph U92 towards the end of the quarter. This is a critical step in the effective oversight of the DPD and is central to the department's reform efforts. As of March 12, 2004, the CRIB AT is under the command of a senior civilian auditor, and the City also hired seven other civilian auditors to assist the DPD in conducting the audits required by the Consent Judgments.
- The DPD upgraded the former Disciplinary Administration Unit to a Section. The Disciplinary Administration Section (DAS), which faces a significant backlog of cases, is now headed by an Inspector.
- Each bureau and precinct within the DPD has assigned a Compliance Liaison Officer (CLO), at the rank of sergeant or above, to share information and address issues at the respective commands that relate to compliance with the Consent Judgments. According to the DPD, the CLOs attend monthly meetings at CRIB.

Major areas of concern identified during the quarter ending February 29, 2004 include the following, among others:

- The Consent Judgments require the DPD to develop and/or revise policy in numerous areas throughout DPD operations. Achieving compliance with these policy requirements is integral to achieving compliance with all other substantive provisions of the Consent Judgments. Although the DPD has made efforts in the policy area, as outlined in this report, the Monitor continues to have an overriding concern with its failure to develop and issue effective policies that adhere to the requirements of the Consent Judgments. .
- The City and the DPD formally raised a number of interpretation and/or implementation issues shortly after the end of the second quarter. The parties are working to resolve these issues expeditiously. The Monitor hopes that they will be resolved as quickly as possible, as decisions on these issues directly affect the monitoring function. .
- A large number of the COC CJ paragraphs deal with physical remediation efforts. While the DPD is still in the strategic development stages with most of these paragraphs, the time is rapidly approaching when substantial financial resources will be required to implement

specific physical remediation efforts.<sup>8</sup> The Monitor continues to be concerned that the City and the DPD will be unable to meet court-mandated deadlines without substantial financial resources. The City has had ample time to develop a plan for ensuring that requests for funds are acted upon in a timely fashion, since the DOJ highlighted this issue as early as July 2001.

- The Monitor continues to be concerned about the unacceptable physical conditions of the holding cells in the 3rd and 4th Precincts. As noted in the Monitor's first report, both of these precincts are in such poor states of condition that the City has decided to close them by 2005. The DPD must make an immediate decision as to whether the holding cells in both of these facilities should be shut down immediately or whether scarce resources will be spent on upgrading these short-term facilities.<sup>9</sup>

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<sup>8</sup> Efforts required under paragraphs C22 and C34, in particular.

<sup>9</sup> The COC CJ requires that the DPD achieve substantial compliance for a period of at least one year. The final 12 months of the COC CJ will begin on July 18, 2004.

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## **SECTION ONE: INTRODUCTION**

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On June 12, 2003, the DOJ and the City filed two Consent Judgments with the United States District Court for the Eastern District of Michigan. The Consent Judgments were negotiated and agreed to by the parties. On the same date, the parties filed a motion indicating the joint selection of an Independent Monitor, subject to the Court's approval, to "review and report on the City and the DPD's implementation" of the Consent Judgments. On July 18, 2003, the Court entered both Consent Judgments. On July 23, 2003, after hearing testimony concerning qualifications, the Honorable Julian A. Cook, Jr., U.S. District Court Judge, appointed Sheryl Robinson, with the assistance of Kroll, Inc.,<sup>10</sup> as the Independent Monitor in this matter. This is the second report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor<sup>11</sup> outlined the history of the DOJ investigation, the technical assistance (TA) letters and the DPD's reform efforts. The Monitor also summarized the complaint filed against the City and the DPD and the overall content of the Consent Judgments.<sup>12</sup> The Monitor's duties and reporting requirements were also described.

During the second quarter, the quarter ending February 29, 2004, the Monitor has continued to hold monthly status meetings with the parties, including the newly installed Chief of Police, Ella Bully-Cummings.<sup>13</sup> On February 2, 2004, Judge Cook held a sealed status conference regarding the City and the DPD's compliance efforts. Going forward, the parties and the Monitor will meet with the Court on a quarterly basis.<sup>14</sup> The City submitted its second quarterly status report during the week of February 16, 2004.

Unfortunately, this quarter was marked by a marked increase in gun violence including shootings and homicides.<sup>15</sup> The Chief of Police responded by, among other things, placing officers on 12-hour shifts. Regrettably, two DPD officers, Matthew Bowens and Jennifer Fettig, were fatally shot during a traffic stop on February 16, 2004. The Monitoring Team expresses its

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<sup>10</sup> The Team Leaders responsible for monitoring activities are Joseph Buczek, Hazel de Burgh, Ronald Filak, Thomas Frazier, and Jeffrey Schlanger.

<sup>11</sup> The word "Monitor" will be used to describe the monitoring team throughout this report.

<sup>12</sup> Complaint, Case no. 03-72258. The complaint, Consent Judgments and TA letters are publicly available at [www.usdoj.gov/crt/split/dpd/detroit\\_cover\\_2.html](http://www.usdoj.gov/crt/split/dpd/detroit_cover_2.html).

<sup>13</sup> Ella Bully-Cummings was installed as the permanent Chief of Police of the Detroit Police Department on December 4, 2003.

<sup>14</sup> The Monitor, who reports to Judge Cook, is in regular contact with the Court regarding the monitoring process.

<sup>15</sup> According to press reports, near the end of February 2004, shootings had increased more than 16% and homicides by more than 28% from the same time one year ago. As of February 24, 2004, there had been 53 homicide victims for the year.



sincere condolences to the officers' families, the members of the 4<sup>th</sup> Precinct and all of the members of the DPD.

In addition to the serious problems that the DPD is dealing with regarding gun violence, the DPD is currently non-compliant with the majority of the provisions in the Consent Judgments. Although the DPD continues to make efforts in some areas, as described throughout this report, the department faces major challenges in various areas that are integral to achieving compliance. The most prevalent of these challenges is policy development, which must take place in an effective manner before many of the other reforms can take place. It is noted that the DPD has engaged in a number of efforts and has adopted various internal procedures that hopefully will be of great assistance in policy development and in other areas. In fact, the Monitor understands that the DPD is actively revising its policies, although the process is not yet complete.

Since the Consent Judgments require that the DPD achieve and maintain substantial compliance for a specified period of time,<sup>16</sup> the Monitor will review the paragraphs on a periodic schedule over the life of the Consent Judgments.<sup>17</sup> The paragraphs that were scheduled for review in the second quarter, which ended on February 29, 2004, are assessed in this report.

In a future report, the Monitor will include a "Report Card," which will summarize the *overall* grade of compliance with each paragraph and subparagraph<sup>18</sup> of the Consent Judgments. The Report Card will provide a "snapshot" of the DPD's compliance with each of the substantive provisions of the Consent Judgments, and will also serve as a tool to evaluate the DPD's progress in complying with those provisions.

The Monitor is still in the process of developing "Methodologies to Aid in Determination of Compliance with the Consent Judgments" (the Methodologies) in consultation with the parties.<sup>19</sup> The Methodologies will generally outline the methods that will be employed by the Monitor to determine compliance by the City and the DPD with each substantive provision of the Consent Judgments.<sup>20</sup>

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<sup>16</sup> Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance. Paragraphs U149 and C106.

<sup>17</sup> The minimum duration of the COC CJ is eight quarters. The minimum duration of the UOF CJ is twenty quarters. The Monitor's review schedule does not effect the due dates mandated by the Consent Judgments for the City and the DPD.

<sup>18</sup> Although subparagraphs are often specifically identified in the Consent Judgments, the Monitor has split certain paragraphs that include more than one topic. The purpose of this is to facilitate the future evaluation of and reporting on each sub-topic.

<sup>19</sup> An additional partial draft of the Methodologies was submitted to representatives of the parties on March 3, 2004 (after the end of the second quarter). The DOJ provided written comments on the partial draft of the Methodologies on March 26, 2004.

<sup>20</sup> Although the methodologies will assist the City and the DPD in ascertaining what is required in order to achieve substantial compliance, they are not meant to provide the DPD with definitive guidance on how to comply with the Consent Judgments. Rather, the methodologies outline the activities the Monitor expects to engage in to evaluate

The Monitor also continues to be dedicated to making this process a transparent one. To that end, we have provided the parties with assessments of compliance throughout the second quarter. The Monitor has also made numerous recommendations and provided TA to the DPD regarding compliance with the Consent Judgments. Furthermore, a draft copy of this report was made available to the parties to provide an opportunity to identify factual errors.<sup>21</sup> The Monitor shares the interest of all of the parties in having the City and DPD achieve substantial compliance with the Consent Judgments in a timely manner.

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compliance. The Monitor also notifies the parties of its monitoring activities at monthly status meetings. The continuing development of the methodologies, in consultation with the parties, does not affect the DPD's ability to comply with the Consent Judgments, nor does it excuse the DPD's failure to comply with them.

<sup>21</sup> As required by paragraphs U142 and C97.

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

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This section contains the Monitor's compliance assessments of the UOF CJ paragraphs scheduled for review during the quarter ending February 29, 2004.

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

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This section of the UOF CJ (paragraphs U14-26) requires the DPD to make significant changes to its UOF policies. Specifically, the DPD must revise its general UOF policy, use of firearms policy and chemical spray policy. The DPD must choose an intermediate force device, develop policy for the device, incorporate the device into the UOF continuum, and provide annual training on the use of the device. The DPD is required to provide its revised UOF policies to the DOJ for review and approval; policy revisions were required to be submitted to the DOJ within three months of the effective date of the UOF CJ (by October 18, 2003).

The Monitor assessed the DPD's compliance with paragraphs U14-19 during the quarter ending November 30, 2003, finding the DPD in non-compliance with these paragraphs. The Monitor is scheduled to again assess compliance with these paragraphs during the quarter ending May 31, 2004.

The Monitor assessed the DPD's compliance with the remaining paragraphs in this section (paragraphs U20-26) for the first time during the current quarter. With the exception of paragraph U22, the Monitor found the DPD to be in non-compliance with these paragraphs. The assessment of non-compliance is primarily due to incomplete policy revisions.

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

The Monitor assessed the DPD's compliance with this section of the UOF CJ (paragraphs U14-19) during the quarter ending November 30, 2003.<sup>22</sup> The Monitor is scheduled to again assess the DPD's compliance with this section during the quarter ending May 31, 2004.

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<sup>22</sup> Throughout this report, the introductory text for each section of both Consent Judgments includes the Monitor's compliance assessments for paragraphs that were assessed in the previous quarter.

## B. USE OF FIREARMS POLICY

### Paragraph U20 – Firearms Policy

Paragraph U20 requires the DPD to 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 U113.<sup>23</sup>

#### *Current Assessment of Compliance*

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD had submitted for the DOJ's review and approval revised policies that attempted to address the requirements of numerous UOF CJ and COC CJ paragraphs. Paragraph U20 was included in the submission. However, the DPD effectively retracted its submission on November 25, 2003, and has not issued any proposed or revised policy that addresses the requirements of paragraph U20 since that time.

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph U20. The Monitor was informed that the Planning and Accreditation Section was in the process of revising the UOF policies, including the Firearms Policy (Directive 304.1), which will address paragraph U20. However, the firearms policy had not been submitted as of February 29, 2004.

The Monitor understands that the DPD is engaging in active policy development and has created a review committee to ensure that the policies drafted are in compliance with the Consent Judgments and comply with federal, state and local laws.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U20.

### Paragraph U21 – Firearms Re-qualification

Paragraph U21 states that 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.

#### *Current Assessment of Compliance*

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD had submitted for the DOJ's review and approval revised policies that attempted to address the

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<sup>23</sup> In an effort to help the reader of this report easily understand the requirements of Consent Judgments, the Monitor will often paraphrase the language of the Consent Judgments' paragraphs, rather than repeating the paragraphs' text verbatim. Of course, the Monitor assesses the DPD's compliance with the paragraphs in accordance with the exact language of the Consent Judgments.

requirements of numerous UOF CJ and COC CJ paragraphs. Paragraph U21 was included in the submission. However, the DPD effectively retracted its submission on November 25, 2003, and has not issued any proposed or revised policy that addresses the requirements of paragraph U21 since that time.

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph U21. The Monitor was informed that the Planning and Accreditation Section was still revising the UOF policies, including the Firearms Policy (Directive 304.1), which will address paragraph U21.

According to the DPD's Status Report dated February 15, 2004, the paragraph U21 provision is included in the current Firearms Training Directive enacted in January 2003. The relevant document that was referred to in the report was a Special Order entitled "2004 Firearms Qualifications Program," which was issued on December 2, 2003 and is effective from December 18, 2003 until December 16, 2004. Although this Special Order specifically incorporates a portion of the requirements of U21 by stating that "officers who fail to re-qualify shall be relieved of police powers and relinquish immediately all department issued firearms," the order does not state that 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.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U21.

### *Paragraph U22 – Firearms Policy Regarding Moving Vehicles*

Paragraph U22 requires the firearms policy to prohibit firing at or from a moving vehicle. The policy must also prohibit officers from intentionally placing themselves in the path of a moving vehicle.

### *Current Assessment of Compliance*

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph U22. The Monitor was informed that the Planning and Accreditation Section was revising various UOF policies, including the Firearms Policy (Directive 304.1), which will address paragraph U22. However, the Monitor was informed that the DPD's existing policies already comply with paragraph U22. The Monitor reviewed the DPD Manual and determined that the current UOF Policy (Directive 304.2, Section 5.2 Unauthorized Use of Deadly Force) prohibits firing at or from a moving vehicle. The directive also states that officers shall not intentionally place themselves in the path of a moving vehicle.<sup>24</sup>

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U22.<sup>25</sup>

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<sup>24</sup> The DPD also cites the current policy as it relates to paragraph U22 in its status report dated February 15, 2004.

<sup>25</sup> Paragraph U22 comprises only policy requirements; the training, implementation and audit components of compliance related to this policy are addressed by other paragraphs (training at paragraph U113; implementation at

### Paragraph U23 – Firearms and Ammunition

Paragraph U23 requires the DPD to identify a limited selection of authorized ammunition and prohibit officers from possessing or using unauthorized firearms or ammunition. The DPD must specify the number of rounds DPD officers shall carry.

#### *Current Assessment of Compliance*

As reported in the Monitor’s Report for the Quarter Ending November 30, 2003, the DPD had submitted for the DOJ’s review and approval revised policies that attempted to address the requirements of numerous UOF CJ and COC CJ paragraphs. Paragraph U23 was included in the submission. However, the DPD effectively retracted its submission on November 25, 2003, and has not issued any proposed or revised policy that addresses the requirements of paragraph U23 since that time.

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph U23. The Monitor was informed that the Planning and Accreditation Section was revising the UOF policies, including the Firearms Policy (Directive 304.1), which will address paragraph U23.

The DPD’s status report dated February 15, 2004 states that the requirements of paragraph U23 were incorporated into the Firearms Training Directive in January 2003. The relevant document that was referred to in the report was a Special Order entitled “2004 Firearms Qualifications Program,” which was issued on December 2, 2003 and is effective from December 18, 2003 until December 16, 2004.

Although this Special Order specifies the number of rounds of factory load ammunition that officers must provide, it does not specifically prohibit officers from possessing or using unauthorized ammunition. The Order does not address the number of rounds or type of ammunition required for department-issued firearms. Furthermore, although the Order limits the authorized ammunition as “factory load ammunition,” it does not specify the brands of ammunition or the type of projectile. Finally, the Order appears to be applicable to ammunition requirements for training only, whereas it is expected that the Firearms Directive that is being revised will address general ammunition requirements.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U23.

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paragraphs U27 and U32; audit at paragraph U94). Furthermore, the DPD’s current policy complies with the requirements of paragraph U22. As mentioned, the DPD is revising its firearms policy and will be re-submitting it to the DOJ for review and approval. The revised policy must incorporate the elements of current policy as it relates to paragraph U22 in order for the DPD to maintain continued compliance with the paragraph.

## C. INTERMEDIATE FORCE DEVICE POLICY

### Paragraph U24 – Intermediate Force Device Policy

Paragraph U24 requires the DPD to 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 must develop a policy regarding the intermediate force device, incorporate the intermediate force device into the force continuum and train all officers in its use on an annual basis.

### *Current Assessment of Compliance*

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph U24. The Monitor was informed that the Planning and Accreditation Section was revising the UOF policies, including the UOF Policy (Directive 304.2), Positional Asphyxia Training and UOF Continuum Training, which will address paragraph U24.

According to the DPD, the Monadnock PR-24 collapsible baton has been recommended as the intermediate force device for all officers. The baton is currently authorized for use by officers assigned to the DPD's Tactical Services Section, Special Response Team Section and Mobile Field Force. Policy addressing the current use of PR-24 is included in the Use of Force Policy (Directive 304.2, Section 12.2). Pending approval of the device by the Board of Police Commissions (BOPC), the DPD is developing a roll-out plan for the intermediate force device that will incorporate the device into the UOF continuum, and address procurement, training and integration issues.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U24.

## D. CHEMICAL SPRAY POLICY

### Paragraph U25 – Chemical Spray Policy

Paragraph U25 requires the DPD to revise its chemical spray policy to require officers to:

- 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;
- provide an opportunity for decontamination to a sprayed subject within twenty minutes of the application of the spray or apprehension of the subject;
- 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 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,

- obtain the approval of a supervisor any time chemical spray is used against a crowd.

### *Current Assessment of Compliance*

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD had submitted for the DOJ's review and approval revised policies that attempted to address the requirements of numerous UOF CJ and COC CJ paragraphs. Paragraph U25 was included in the submission. However, the DPD effectively retracted its submission on November 25, 2003, and has not issued any proposed or revised policy that addresses the requirements of paragraph U25 since that time.

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph U25. The Monitor was informed that the Planning and Accreditation Section was revising the UOF policies, including the Chemical Spray Policy (Directive 304.3), which will address paragraph U25. However, the Chemical Spray Policy had not been submitted as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U25.

### *Paragraph U26 – Chemical Spray Prohibition*

Paragraph U26 requires the DPD to prohibit officers from using chemical spray on a handcuffed individual in a police vehicle. The DPD must also prohibit officers from keeping any sprayed subject in a face-down position, in order to avoid positional asphyxia.

### *Current Assessment of Compliance*

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD had submitted for the DOJ's review and approval revised policies that attempted to address the requirements of numerous UOF CJ and COC CJ paragraphs. Paragraph U26 was included in the submission. However, the DPD effectively retracted its submission on November 25, 2003, and has not issued any proposed or revised policy that addresses the requirements of paragraph U26 since that time.

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph U26. The Monitor was informed that the Planning and Accreditation Section was revising the UOF policies, including the Chemical Spray Policy (Directive 304.3), which will address paragraph U26. However, the Chemical Spray Policy had not been submitted as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U26.



## II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

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This section of the UOF CJ (paragraphs U27-41) requires the DPD to make significant changes to its policies related to general investigations of police action and to investigations of UOF, prisoner injury, critical firearm discharges and in-custody deaths. In addition to various changes in general investigatory procedures, reports and evaluations, the UOF CJ requires that the DPD develop a protocol for Garrity statements<sup>26</sup> and develop an auditable form to document any prisoner injury, UOF, allegation of UOF and instance where an officer draws a firearm and acquires a target. The DPD Shooting Team must respond to and investigate all critical firearms discharges and in-custody deaths, and the DPD must develop a protocol for conducting investigations of critical firearm discharges. Finally, the UOF CJ requires the DPD to create a command level force review team that is charged with critically evaluating and reporting on critical firearms discharges and in-custody deaths.

The Monitor assessed the DPD's compliance with paragraphs U27 and U34-41 during the quarter ending November 30, 2003, finding the DPD in non-compliance with these paragraphs. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2004.

The Monitor assessed the DPD's compliance with paragraphs U28-33 for the first time during the current quarter, finding the DPD in non-compliance with these paragraphs. The findings of non-compliance were primarily due to the fact that the relevant policies and protocols have not yet been fully developed or submitted.

### A. GENERAL INVESTIGATIONS OF POLICE ACTION

#### Paragraph U27 - Revision of General Investigation Policies

The Monitor assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2003; the Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending May 31, 2004.

#### Paragraph U28 - Investigation Procedures

Paragraph U28 requires the DPD and the City to ensure that investigations are conducted by a supervisor who did not authorize, witness or participate in the incident and that all investigations contain:

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<sup>26</sup> Paragraph U31 requires the DPD and the City to develop a protocol for when statements should (and should not) be compelled pursuant to Garrity v. New Jersey, 385 U.S. 492 (1967).

- documentation of the name and badge number of all officers involved in or on the scene during the incident and a canvass of the scene to identify civilian witnesses;
- thorough and complete interviews of all witnesses subject to paragraph U31, and an effort to resolve material inconsistencies between witness statements;
- photographs of subject and officer injuries or alleged injuries; and,
- documentation of any medical care provided.

### *Current Assessment of Compliance*

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph U28. The Monitor was informed that the DPD is developing a protocol for investigations, which will be included in the Investigations Policy and will address the requirements of paragraph U28. The relevant policies had not been submitted as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U28.

### *Paragraph U29 – Investigatory Interview Procedures*

Paragraph U29 requires the DPD and the City to revise their procedures for all investigatory interviews to require:

- officers who witness or are involved in an incident to provide a timely statement regarding the incident (subject to paragraph U31);
- whenever practicable and appropriate, interviews of complainants and witnesses be conducted at sites and times convenient for them, including at their residences or places of business; and,
- that all Internal Affairs Division (IAD), Office of the Chief Investigator (OCI) and Critical Firearm Discharge Investigations must 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 must be taken and signed by the complainant/witness, along with a signed refusal statement by the complainant/witness.

### *Current Assessment of Compliance*

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph U29. The Monitor was informed that the DPD is developing a protocol for investigations that will address paragraph U28. The relevant protocol had not been submitted as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U29.

### **Paragraph U30 – Prohibitions of Investigatory Interviews**

Paragraph U30 requires DPD and City procedures for all investigatory interviews to prohibit 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 the use of interviews via written questions when it is contrary to appropriate law enforcement techniques.

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

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph U30. The Monitor was informed that the DPD is developing an Investigations Policy that will address paragraph U30. The relevant policy had not been submitted as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U30.

### **Paragraph U31 – Protocol for Garrity Statements**

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

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

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph U31. The Monitor was informed that the protocol has been developed and is currently under departmental review. The relevant protocol had not been submitted as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U31.

### **Paragraph U32 – Investigatory Reports and Evaluations**

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

- a precise description of the facts and circumstances of the incident, including a detailed account of the subject's or complainant's and officer's actions, and an evaluation of the initial stop or seizure;
- a review of all relevant evidence, including circumstantial, direct and physical evidence;

- that the fact that a subject or complainant pled guilty or was found guilty of an offense shall not be considered as evidence of whether a DPD officer engaged in misconduct, nor shall it justify discontinuing the investigation;
- 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;
- an evaluation of whether an officer complied with DPD policy;
- an evaluation of all UOF, including the officer's tactics, and any allegations or evidence of misconduct uncovered during the course of the investigation;
- all administrative investigations to be evaluated based on a preponderance of the evidence standard;
- written documentation of the basis for extending the deadline of a report and evaluation; and,
- any recommended non-disciplinary corrective action or disciplinary action be documented in writing.

### *Current Assessment of Compliance*

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph U32. The Monitor was informed that the DPD is developing a protocol for investigations, which will be included an Investigations Policy and will address the requirements of paragraph U32. The relevant policies had not been submitted to the Monitor as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U32.

### *Paragraph U33 – Review of Investigations*

Paragraph U33 requires the DPD to revise its policies regarding the review of all investigations to require:

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

- 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.

### *Current Assessment of Compliance*

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph U33. The Monitor was informed that the DPD is developing a protocol for investigations, which will be included in its Investigations Policy and will address paragraph U33. The relevant policies had not been submitted to the Monitor as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U33.

### **B. UOF AND PRISONER INJURY INVESTIGATIONS**

The Monitor assessed the DPD's compliance with this section of the UOF CJ (paragraphs U34-36) during the quarter ending November 30, 2003. The Monitor is scheduled to again assess the DPD's compliance with this section during the quarter ending May 31, 2004.

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

The Monitor assessed the DPD's compliance with this section of the UOF CJ (paragraphs U37-41) during the quarter ending November 30, 2003. The Monitor is scheduled to again assess the DPD's compliance with this section during the quarter ending May 31, 2004.

### **III. ARREST AND DETENTION POLICIES AND PRACTICES**

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

The Monitor assessed the DPD's compliance with paragraphs U42-53 and U58 during the quarter ending November 30, 2003, finding the DPD in non-compliance with these paragraphs. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2004.

The Monitor assessed the DPD's compliance with paragraphs U54-57 and U59-60 for the first time during the current quarter. The Monitor determined that the DPD is in compliance with the policy requirements of one of these paragraphs, but is in non-compliance with the remaining paragraphs. The findings of non-compliance were primarily due to the fact that current policies and forms failed to meet the requirements of the paragraphs, and revised policies have not yet been fully developed or submitted.

#### **A. ARREST POLICIES**

The Monitor assessed the DPD's compliance with this section of the UOF CJ (paragraphs U42-44) during the quarter ending November 30, 2003. The Monitor is scheduled to again assess the DPD's compliance with this section during the quarter ending May 31, 2004.

#### **B. INVESTIGATORY STOP POLICIES**

The Monitor assessed the DPD's compliance with this section of the UOF CJ (paragraphs U45-46) during the quarter ending November 30, 2003. The Monitor is scheduled to again assess the DPD's compliance with this section during the quarter ending May 31, 2004.

#### **C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES**

The Monitor assessed the DPD's compliance with this section of the UOF CJ (paragraphs U47-48) during the quarter ending November 30, 2003. The Monitor is scheduled to again assess the DPD's compliance with this section during the quarter ending May 31, 2004.

#### D. PROMPT JUDICIAL REVIEW POLICIES

The Monitor assessed the DPD's compliance with this section of the UOF CJ (paragraphs U49-51) during the quarter ending November 30, 2003. The Monitor is scheduled to again assess the DPD's compliance with this section during the quarter ending May 31, 2004.

#### E. HOLD POLICIES

The Monitor assessed the DPD's compliance with this section of the UOF CJ (paragraphs U52-53) during the quarter ending November 30, 2003. The Monitor is scheduled to again assess the DPD's compliance with this section during the quarter ending May 31, 2004.

#### F. RESTRICTION POLICIES

##### *Paragraph U54 – Development of Restriction Policies*

Paragraph U54 requires the DPD to develop new policies regarding restricting detainees' access to telephone calls and visitors. The policy must permit detainees with access to attorneys and reasonable access to telephone calls and visitors.

##### *Current Assessment of Compliance*

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD had submitted for the DOJ's review and approval revised policies that attempted to address the requirements of numerous UOF CJ and COC CJ paragraphs. Paragraph U54 was included in the submission. However, the DPD effectively retracted its submission on November 25, 2003, and has not issued any proposed or revised policy that addresses the requirements of paragraph U54 since that time.

A review of the existing DPD Police Manual determined that Chapter 305.3 includes policy that addresses some of the requirements of paragraph U54. Specifically Chapter 305.3 advises that a prisoner's right to speak to an attorney cannot be impeded and the DPD must make provisions for privacy. The Officer in Charge (OIC) of the desk is responsible for verifying the attorney's identification and documenting an attorney's visit in the blotter. The OIC is also responsible for contacting specialized units to determine if there are any restrictions associated with the detainee.

Current policy also permits the detainee phone access and allows restricted phone usage provided that such restriction is authorized either by the OIC or, for specialized units, the investigator's supervisor. Any phone restrictions are required to be documented in the telephone log.

Although not stipulated in existing policy, interviews of individuals in precincts and in CRIB determined that detainee telephone calls are documented in the telephone log only when a

detainee cannot use an in-cell telephone to make a collect call.<sup>27</sup> In these instances, the Detention Officer notes that a call was made, recording the date, time and detainee's name, and signs the log, validating the entry.

Existing policy is in non-compliance with paragraph U54 for various reasons. Several of the deficiencies in the current policy include:

- It fails to address visitors.
- It fails to identify examples of circumstances that may warrant restriction of telephone calls and visitors.
- It fails to identify information required to be documented for restrictions.
- It fails to require a review of restrictions at the time issued and on a daily basis thereafter, to include the manner in which such review shall be documented.
- It fails to identify the manner in which the OIC of the desk validates an attorney or visitor identification, such as a form of identification.
- It fails to identify the information each OIC is required to document for each attorney or visitor, such as name, address and telephone number.
- It fails to identify the information required to be documented when detainees who are placed under restrictions make authorized telephone calls from the holding cell, to include the number and/or name(s) of the individual(s) contacted.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U54.

### *Paragraph U55 – Documentation of Restrictions*

Paragraph U55 requires that whenever a detainee is restricted from either using the telephone or receiving visitors, such restriction must be documented, reviewed at the time the restriction is placed and re-evaluated, at a minimum, each day in which the restriction remains in effect. All violations of the DPD's restriction policy must be documented on an auditable form by the end of the shift in which the violation occurred.

### *Current Assessment of Compliance*

As discussed above in the Current Assessment of Compliance for paragraph U54, current DPD policy addressing the documentation of restrictions is not descriptive as to the exact information that must be captured and the form that must be utilized to capture the information, nor does it require the documentation of supervisory review.

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<sup>27</sup> In the event a detainee cannot make a collect call, the detainee is permitted to use a phone located inside the holding cell area to make calls. In-cell collect calls are not memorialized in any way or form.



The DPD has created Auditable Form UF-008, which is designed to address the documentation of restrictions and document any reportable violations of policy. The two-page form, entitled “Restriction Policy – Telephone & Visitors,” requires completion every 24-hours to address restrictions that extend beyond a 24-hour period, as well as any violations. Should the form require completion more than once, multiple forms will be attached for review and filing.

Form UF-008 is under review and has not yet been issued and will not be issued until a revised restriction policy is issued.<sup>28</sup>

Based on the foregoing, the Monitor finds DPD in non-compliance with paragraph U55.

## G. MATERIAL WITNESS POLICIES

### Paragraph U56 – Revision of Material Witness Policies

Paragraph U56 requires the DPD to revise existing material witness policies to define a material witness as a witness subpoenaed to testify in a criminal case.<sup>29</sup> Furthermore the DPD must remove the term “police witness” from all DPD policy and procedure.

### *Current Assessment of Compliance*

As reported in the Monitor’s Report for the Quarter Ending November 30, 2003, the DPD had submitted for the DOJ’s review and approval revised policies that attempted to address the requirements of numerous UOF CJ and COC CJ paragraphs. Paragraph U56 was included in the submission. However, the DPD effectively retracted its submission on November 25, 2003, and has not issued any proposed or revised policy that addresses the requirements of paragraph U56 since that time.

The Monitor reviewed the current DPD manual and determined that the Arrests Policy (Directive 202.1, Section 9) states that a material witness “can be taken into custody **only** upon an order from the court where the criminal matter is pending.” Although current policy generally describes what is required to take a material witness into custody, it does not specifically define “material witness.” Furthermore, the current manual still contains references to a “police witness.”<sup>30</sup> The Monitor was under the impression that the Arrest Policy was still under internal review; however the Monitor recently learned that the Arrest Policy was approved by the BOPC on March 18, 2004 and signed by the Chief of Police on April 5, 2004.<sup>31</sup> The UOF CJ requires

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<sup>28</sup> Pursuant to paragraph U132 and based on the Monitor’s review of the initial auditable forms developed by the DPD, the Monitor recently offered the DPD TA on the effective development of all auditable forms required by the Consent Judgments. On March 29, 2004, the DPD accepted the offer of TA, which will be provided during the next quarter.

<sup>29</sup> Paragraph 1aa of the Consent Judgment defines a material witness.

<sup>30</sup> Chapter 305.6 and the Index.

<sup>31</sup> This occurred after the end of the current quarter on February 29, 2004.

that any revisions to DPD policies shall be provided to the DOJ within one week of their promulgation.<sup>32</sup> Neither the Monitor nor the DOJ has received a copy of this revised policy.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U56.

### *Recommendations*

The DPD should specifically define “material witness” in the definitions section of the revised Arrest Policy.

### *Paragraph U57 – Requirement to Obtain a Court Order*

Paragraph U57 requires the DPD to obtain a court order prior to taking a material witness into DPD custody. Each material witness must be documented on an auditable form with a copy of the court order attached thereto.

### *Current Assessment of Compliance*

Current DPD policy addresses a significant portion of the requirements of paragraph U57, including the requirement that an individual can be taken into custody only upon an order, issued from the court where the criminal matter is pending, that requires the material witness’ testimony.<sup>33</sup> On October 22, 2003, the DPD issued Teletypes 03-6366 and 03-6377. Inclusive in these teletypes were guidelines and Form UF-57 to be used for the Detention of a Material Witness. The guidelines require that form UF-57 be completed each time a material witness is detained. Page two of Form UF-57, in large letters, instructs the officer completing the form to “Attach Legible Copy of Court Order and All Other Relevant Documents.” However, as described in the Current Assessment of Compliance for paragraph U56, the DPD has failed to adequately define “material witness.”

The auditable form developed by the DPD must be revised to emphasize the appropriate requirements that this paragraph is meant to address. For example, the form has a section for an explanation of why a material witness was detained without a court order. This suggests that there is an acceptable explanation for detaining a material witness without a court order. As noted in paragraph U77 of this report, the Monitor has offered to provide the DPD with TA in developing effective auditable forms. The auditable form developed in connection with this paragraph is included in that offer.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U57.

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<sup>32</sup> Paragraph U147.

<sup>33</sup> Chapter 202.1, Section 9 of the current DPD Manual. Please refer to the Current Assessment of Compliance for paragraph U56 for additional information.

## H. DOCUMENTATION OF CUSTODIAL DETENTION

The Monitor assessed the DPD's compliance with this section of the UOF CJ (paragraph U58) during the quarter ending November 30, 2003. The Monitor is scheduled to again assess the DPD's compliance with this section during the quarter ending May 31, 2004.

## I. COMMAND NOTIFICATION

### Paragraph U59 – Written Reporting of Violations

Paragraph U59 requires the Commander of each precinct or, if applicable, of a specialized unit to review in writing all reported violations of the following:

- Arrests
- Stops
- Frisks
- Witness identification and questioning.

It also requires the review of all arrests for which an arraignment warrant was not sought. Such review must be completed within seven (7) days of receiving the document<sup>34</sup> reporting the event. The Commander must evaluate actions taken to correct the violation and determine whether any corrective or non-disciplinary action was indeed taken.

### *Current Assessment of Compliance*

During the current quarter, the Monitor reviewed DPD efforts to comply with paragraph U59. The DPD's Status Report indicates that the DPD has developed a Commander's Review Form to meet the paragraph's requirement that the Commander of each precinct review the aforementioned violations in writing. This is a new auditable form that is not mandated by the UOF CJ.<sup>35</sup> It is available on the DPD's Intranet.

DPD Commanders attended sessions where training materials and a template of the form were distributed with respect to paragraphs U59 and U60. Based upon feedback received from those in attendance, the DPD subsequently determined that additional training sessions were required. As a result, Commanders attended a more intensive two-hour training session on December 23,

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<sup>34</sup> In most instances the document will be an auditable form.

<sup>35</sup> The Monitor has not yet evaluated this form, but intends to do so in assessing compliance with paragraph U59, as it appears to be the primary mechanism for determining whether a Commander's review took place.

2003 in which they were instructed to begin using the auditable form effective December 24, 2003.<sup>36</sup>

According to the DPD, the policy that specifically addresses the requirements of paragraph U59 is included in proposed UOF policy, which has not yet been submitted to the DOJ for review and approval. The Monitor understands that the policy has been submitted to the Chief of Police, whose review and approval was pending as of the end of this reporting period.

In the first quarterly report and elsewhere in this report, the Monitor has indicated that training curricula cannot effectively be developed prior to the development of the underlying policies. The training developed in connection with this paragraph illustrates the difficulties presented when training is developed and conducted prior to the finalization of policy. Commanders have already attended two training sessions (the initial training and the more intensive follow-up training), and will be required to attend additional training after the relevant policies are finalized. The multiple training sessions will inevitably lead to confusion among attendees regarding the appropriate policies and procedures to be followed.<sup>37</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U59.

### **Paragraph U60 – Daily Reporting Requirement**

Paragraph U60 requires the Commander of each precinct, or if applicable, of a specialized unit to review in writing all reported violations of the following:

- Prompt Judicial Review
- Holds
- Restrictions
- Material Witness Detention

Such review must be completed on the day the violation occurs. The Commander must evaluate actions taken to correct the violation and determine whether any corrective or non-disciplinary action was indeed taken.

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

During the current quarter, the Monitor reviewed DPD efforts to comply with paragraph U60. The DPD created a Commanders' Daily Review form to meet the requirements of U60. As

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<sup>36</sup> According to the Comstat training outline, the December 23, 2003 session covered various other topics beyond Commander's review including issues related to general policies, HCCC and audits.

<sup>37</sup> The Monitor in no way intends to discourage the DPD from attempting to quickly implement and train personnel on forms such as the Commander's Review Form; rather, the Monitor is again emphasizing that the DPD must finalize and implement policy as expeditiously as possible.

noted above, under the Current Assessment of Compliance for paragraph U59, DPD Commanders were instructed to begin using the form, which is available on the DPD's Intranet, on December 24, 2003. The relevant training sessions with regard to this paragraph are also explained under paragraph U59 above.

According to the DPD, the policy that specifically addresses the requirements of paragraph U60 is included in proposed UOF policy, which has not yet been submitted to the DOJ for review and approval. The Monitor understands that the policy was submitted to the Chief of Police, whose review and approval was pending as of the end of this reporting period.

The Monitor's concerns regarding training that is developed and conducted prior to the finalization of policy, and the potential for confusion arising from the multiple training sessions that result from this, as expressed under paragraph U59, apply equally to paragraph U60.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U60.

## IV. EXTERNAL COMPLAINTS

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This section of the UOF CJ (paragraphs U61-69) requires the DPD to revise its policies and procedures regarding the intake, tracking, investigation and review of external complaints. There are specific requirements relative to the roles and responsibilities of the OCI and the DPD, including the development and implementation of an informational campaign and the review and evaluation of each allegation in an external complaint investigation.<sup>38</sup>

The Monitor assessed the DPD's compliance with paragraphs U61-69 during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor again assessed compliance with paragraph U62 during the current quarter, and is scheduled to again assess compliance with each of the paragraphs in this section during the quarter ending May 31, 2004.

### *Paragraph U62 – External Complaint Informational Campaign*

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

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

### *Background*

The Monitor assessed the DPD's compliance with paragraph U62 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

### *Current Assessment of Compliance*

#### *62a Informing persons that they may file complaints*

The DPD will inform persons that they may file complaints regarding the performance of any DPD employee via the activities required under subparagraphs U62b – d. The Monitor is not conducting a separate assessment of compliance with this subparagraph.

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<sup>38</sup> The OCI reports to the BOPC and is responsible for conducting all external complaint investigations.

### *62b Distribution of complaint forms, fact sheets and informational posters*

From February 24-26, 2004, the Monitor evaluated the DPD's external complaint informational campaign at each of the thirteen precincts, as well as the informational campaign at the city halls. The Monitor determined that all thirteen precincts have complaint informational posters as required by paragraph U62b.<sup>39</sup> Seven of ten neighborhood city halls had the informational poster as required by paragraph 62b.

A review of the DPD's website<sup>40</sup> found that an online complaint form is available. Information on the website is also consistent with the informational posters. The Monitor will continue its assessment of the availability of complaint forms at the specified locations during the quarter ending August 31, 2004.

According to the OCI, the fact sheets required by paragraph 62b will reflect the same information found on one side of the informational brochure required by paragraph U63. These informational brochures are still being revised; once they are submitted to DOJ for review and receive approval, they will be duplicated from the brochure and distributed at the appropriate locations.

### *U62c Informational Campaign Broadcasts*

The Monitor evaluated the public service announcement (PSA) created by OCI that describes the complaint process, as required by paragraph U62c, and determined that the announcement failed to include some of the requirements of paragraph U62. For example, although the PSA informs the public that they may file a complaint by letter, telephone, Internet, fax or in-person at any DPD precinct, bureau, section or unit or at the OCI, it fails to mention City Hall and libraries, which are also included in paragraph 62b.

### *U62d Informational Campaign Placards*

From February 24-26, 2004, the Monitor evaluated the DPD's external complaint informational campaign, including the posting of complaint information placards, at each of the DPD's thirteen precincts. The Monitor determined that the complaint information placards contain the required information about the complaint process, and eleven of the thirteen precincts have permanent placards posted in their lobbies as required by paragraph U62d. The two remaining precincts do not have complaint information placards in their lobbies as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U62.

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<sup>39</sup> Ten precincts have permanent color informational posters. The remaining three precincts have black-and-white informational posters taped at their entrances.

<sup>40</sup> The URL is [http://www.ci.detroit.mi.us/police\\_commissioners/office\\_chief\\_investigator.htm](http://www.ci.detroit.mi.us/police_commissioners/office_chief_investigator.htm).

### *Recommendations*

The Monitor recommends that the DPD assign an employee in each precinct to track compliance with the informational campaign on a regular basis so that missing placards, posters and other items relevant to the campaign do not go unnoticed. The precinct CLO would be a likely choice.



## V. GENERAL POLICIES

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This section of the UOF CJ (paragraphs U70-77) requires the DPD to develop, revise, and/or enforce a variety of general policies.

The Monitor assessed the DPD's compliance with paragraphs U70-71 during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2004.

The Monitor assessed the DPD's compliance with paragraphs U72-77 for the first time during the current quarter. The Monitor found the DPD in compliance with one of these paragraphs, withheld a determination of compliance with another paragraph, and found the DPD in non-compliance with the remaining paragraphs. The findings of non-compliance were primarily due to the fact that the relevant policies have not yet been fully developed or submitted for approval.

### *Paragraph U72 – Police Action in Violation of DPD Policy*

Paragraph U72 requires the DPD to advise all officers and supervisors that taking police action in violation of DPD policy shall subject officers to discipline, possible criminal prosecution and/or civil liability.

### *Current Assessment of Compliance*

On January 15, 2004, CRIB submitted a message order to issue a Department Teletype, TT-229 to “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.” An administrative message was officially issued under Teletype #04-00200/229 and was distributed department-wide on January 15, 2004.<sup>41</sup> Instructions on the teletype call for it to be read at seven (7) consecutive roll calls, placed in the commands' pinchbacks,<sup>42</sup> and posted on each command's training bulletin board for thirty days. The Monitor intends to further evaluate whether the dissemination of the teletype effectively notified “all officers and supervisors” as required by paragraph U72

The Inter-Office Memorandum authorizing the issuance of the teletype was approved by the Chief of Police on January 13, 2004. The DPD's RMB was copied on the Inter-Office Memorandum, which also authorized the RMB to make appropriate changes to the Detroit Police Department's Manual, Directive 102.3, “Code of Conduct.”

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<sup>41</sup> According to the DPD, an administrative message that is addressed to “all commands” is sent to every entity within the DPD.

<sup>42</sup> A pinchback is a notebook that accumulates information to be disseminated at roll call.

Based on the foregoing, the Monitor withholds a determination of the DPD's compliance with paragraph U72.<sup>43</sup>

### **Paragraph U73 – Sergeants in the Field**

Paragraph U73 requires the DPD and the City to develop a plan to ensure 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.

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

The DPD issued a memorandum on October 17, 2003 entitled "Supervisory Deployment" that instructed all patrol entities to ensure that a minimum of three supervisors worked each shift. Specialized units were instructed to staff each shift with at least two supervisors. According to the memorandum, the configuration of supervisors can be one lieutenant and two sergeants or three sergeants. The Monitor understands that the DPD based this staffing on a standard requiring one supervisor for every five officers. On any given shift the DPD typically deploys five cars per precinct, with two officers per car. An additional five officers are assigned to administrative duty within the precinct station. Based on this staffing schedule, there is an average of 15 officers per shift.

On December 1, 2003, an additional memorandum was issued establishing the supervisory staffing level for each section as at least one supervisor of the rank of sergeant or greater must be working at any time members assigned to that section are working.

The DPD is in the process of providing the Monitoring team with the information used as the basis for determining supervisory field deployment to achieve compliance with paragraph U73.

Based on the foregoing, the Monitor withholds a determination of the DPD's compliance with paragraph U73, pending the receipt and review of additional documentation to be provided by the DPD.

### **Paragraph U74 – Officers to Report Misconduct**

Paragraph U74 requires the DPD to enforce its policies requiring all DPD officers to report any misconduct committed by another officer, whether committed on-duty or off-duty.

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

A review of current Directive 102.4 determined that it fails to specifically require all officers to report all misconduct, both on- or off-duty. In response to the requirements of paragraph U74,

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<sup>43</sup> The training, implementation and audit components of compliance related to this paragraph are addressed at paragraphs U106, U105 and U94, respectively.

the DPD issued teletype 04-00791, "Department of Justice Consent Decree Use of Force, Paragraph 74," dated February 13, 2004. This teletype stated that all misconduct must be reported immediately and shall include on- or off-duty members. Instructions in the teletype mandated that it be read at seven consecutive roll calls, posted on the Commanding Officer's bulletin board and filed. However, the teletype did not disclose any enforcement mechanisms to determine whether officers are properly reporting misconduct or disciplinary consequences for violations of this mandate. According to the DPD's latest status report, this will be addressed as part of its Risk Management Plan.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U74.

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

This paragraph requires that the DPD revise existing policy regarding off-duty officer police actions. Specifically, off-duty officers are:

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

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

The DPD has not issued policy and procedure that address the requirements of paragraph U75. According to the DPD, the requirements of this policy will be incorporated into the DPD's Code of Conduct Policy (Directive 102.3).<sup>44</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U75.

### **Paragraph U76 – Handling of Prisoners**

Paragraph U76 requires the DPD to revise its policies regarding prisoners to:

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<sup>44</sup> CRIB has raised the issue that the third requirement of paragraph U75 may conflict with laws protecting self-incrimination. In Michigan, a citizen may refuse any test to determine impairment. Refusal most often results in the suspension of an individual's license, as well as a court order permitting law enforcement to administer a test of a suspected impairment. The Monitor understands that CRIB has forwarded this issue to the Corporation Counsel for further consideration.

- require officers to summon emergency medical services to transport prisoners when the restraints employed indicate the need for medical monitoring;
- 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
- prohibit arresting and transporting officers from accompanying prisoners into the holding cell area.

### *Current Assessment of Compliance*

The DPD is currently revising its UOF policy to include policy and procedure that address the requirements of U76. The Monitor understands that the proposed revised policy, Directive 304.2, was provided to the Chief of Police for review and comment during the third week of February 2004. The UOF policies must be submitted to the DOJ for review and approval.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U76.

### *Paragraph U77 – Foot Pursuit Policy*

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

- Requires officers to consider particular factors in determining whether a foot pursuit is appropriate, including the offense committed by the subject, whether the subject is armed, the location, whether more than one officer is available to engage in the pursuit, the proximity of reinforcements, and the ability to apprehend the subject at a later date;
- Emphasizes alternatives to foot pursuits, including area containment, surveillance, and obtaining reinforcements;
- Emphasizes the danger of pursuing and engaging a subject with a firearm in hand; and
- Requires officers to document all foot pursuits that involve a UOF on a separate, auditable form,<sup>45</sup> such as the UOF report.

### *Current Assessment of Compliance*

Current DPD policy regarding foot pursuits does not address all of the requirements of paragraph U77. The DPD is aware of this deficiency and has developed a revised policy, which the Monitor understands was submitted to the Chief of Police for review during late February 2004.

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<sup>45</sup> The UOF CJ defines an auditable form as a discrete record of the relevant information maintained separate and independent of blotters or other forms maintained by the DPD.

During October 2003, the DPD issued a Use of Force Report (auditable form) UF-002 designed to document all foot pursuits that involve a UOF. The form was issued by Teletype #03-0306366/7/8 and included guidelines for completion of the form. The Monitor understands that CRIB AT is revising the previously issued auditable forms. The revised forms have not yet been implemented.<sup>46</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U77.

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<sup>46</sup> As noted elsewhere in this report, the Monitor recently offered TA in the development of effective auditable forms. The DPD has accepted this offer, and TA will be provided during the next quarter.

## VI. MANAGEMENT AND SUPERVISION

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

### Paragraph U78 – Development of Risk Management Plan

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

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

### *Current Assessment of Compliance*

In order to achieve compliance with the requirements of paragraph U78, the DPD must meet the requirements and adhere to the deadlines included in UOF CJ paragraphs related to each of the respective subparagraphs, a. through e., as described above. Because the DPD is in non-compliance with the majority of the related paragraphs, a number of which are outlined below, it is also currently in non-compliance with paragraph U78. The Monitor will continue to assess the DPD's compliance with this paragraph as documents are submitted and deadlines occur.

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

### A. RISK MANAGEMENT DATABASE

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

The Monitor assessed the DPD's compliance with paragraphs U80-83, U86-87, and U88a-c during the quarter ending November 30, 2003, finding the DPD in non-compliance with these paragraphs. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2004.

The Monitor assessed the DPD's compliance with paragraphs U79, U85, and U89 for the first time during the current quarter.<sup>47</sup> The DPD must share drafts of its plans for its risk management database with the DOJ and must submit the final documents to the DOJ for review and approval. As explained below, the DPD again submitted the Data Input Plan, Report Protocol and Request for Proposals (RFP) to the DOJ, who received the submission on February 9, 2004. On March 15, 2004, the DPD provided comments in response to the formal submission of the RFP. Because the draft Data Input Plan and Report Protocol expressly indicated that they did not comply with the requirements of the UOF CJ, the DOJ treated these submissions as drafts and provided informal comments.

Although the due dates for the Data Input Plan, Report Protocol and RFP have passed, many of the due dates for the remaining paragraphs have not yet taken place. However, the interim risk management system required by paragraph U89 was due within 90 days after the effective date of the UOF CJ. The interim system has not been implemented as of February 29, 2004.

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

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

### *Current Assessment of Compliance*

In order to achieve compliance with the requirements of paragraph U79, the DPD must meet the requirements and adhere to the deadlines included in the UOF CJ paragraphs related to the risk management database.<sup>48</sup> Because the DPD is in non-compliance with many of these paragraphs, it is also currently in non-compliance with paragraph U79. The Monitor will continue to assess the DPD's compliance with this paragraph as documents are submitted and deadlines occur.

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

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<sup>47</sup> The Monitor was scheduled to assess paragraphs U84, U88d-g and U90 during the current quarter. However, the Monitor deferred its assessment of these paragraphs to future quarters, as noted below, based upon the timelines for compliance indicated in the paragraphs.

<sup>48</sup> Paragraphs U80-88.

### **Paragraph U84 – Review Protocol**

Paragraph U84 requires the DPD to 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.<sup>49</sup>

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

Although originally scheduled for the current quarter, the Monitor did not assess the DPD's compliance with paragraph U84, as the DPD was not required to submit the Review Protocol to DOJ for review and approval until March 30, 2004, which is after the end of this quarter. The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending August 31, 2004.

### **Paragraph U85 – Risk Management Database Modules**

Paragraph U85 requires the DPD to 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, must organize the risk management database into modules in developing the Data Input Plan, the Report Protocol, the Review Protocol and the RFP and in negotiating with contractors, such that difficulties with one aspect of the risk management database do not delay implementation of other modules.

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

The DPD first submitted the Data Input Plan, Report Protocol and RFP to DOJ, and the DOJ provided written comments in response, during the quarter ending November 30, 2003. The DPD submitted the documents to the DOJ for review and approval with a cover letter dated January 30, 2004. According to the DOJ, the documents were received on February 9, 2004.<sup>50</sup> On March 15, 2004, the DOJ provided comments in response to the final submission of the RFP and informal comments on the Data Input Plan and Report Protocol which were not final documents. Paragraph U88 requires the DPD to submit the final documents to the DOJ for review and approval; these documents have not been resubmitted.<sup>51</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U85.

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<sup>49</sup> Paragraph U88d requires the DPD to submit the Review Protocol to the DOJ by March 30, 2004.

<sup>50</sup> Please refer to the Background section for paragraph U88, below, as well as Section VI, Management and Supervision, of the Monitor's Report for the Quarter Ending November 30, 2003 for detailed information and a chronology in connection with the DPD's submission of the Data Input Plan, Report Protocol and RFP to the DOJ and the Monitor.

<sup>51</sup> As required by paragraphs U88a-c. Please refer to the Monitor assessment of compliance with paragraphs U88a-c in the Monitor's Report for the Quarter Ending November 30, 2003 for additional information.



**Paragraph U88 - Schedule for Database**

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

- a) within 90 days of the effective date of the UOF CJ, the DPD must submit the Data Input Plan to the DOJ for review and approval within 30 days, and prior to this, share drafts of the Data Input Plan with the DOJ;
- b) by September 30, 2003, the DPD must submit the Report Protocol and a RFP to the DOJ for review and approval within 30 days, and prior to this, share drafts of such documents with the DOJ;
- c) by October 31, 2003, the DPD must issue the RFP;
- d) by March 30, 2004, the DPD must submit the Review Protocol
- e) by May 31, 2004, the DPD must select a contractor to create the risk management database by May 31, 2004.
- f) by June 30, 2005, the City must have a beta version of the risk management database ready for testing; and
- g) by December 31, 2005, the risk management database must be operational and fully implemented.

***Background***

During the quarter ending November 30, 2004, the Monitor reported that the DPD submitted the Data Input Plan, Report Protocol and RFP to the DOJ on October 3, 2003 to allow the DOJ to become familiar with the documents and to seek informal comments. The DOJ submitted a letter to the DPD on October 14, 2003 providing informal comments and outlining its concerns regarding the drafts. The DPD submitted revised documents on November 3, 2003, and on November 5, 2003 the Monitor responded with verbal and written comments. The DOJ issued a letter on December 4, 2003, confirming its understanding that the DPD was continuing to revise the risk management documents based on the comments provided by the Monitor and in accordance with the requirements of the UOF CJ. The DPD resubmitted the documents with a cover letter dated January 30, 2004 and the DOJ responded with informal comments in a letter dated March 15, 2004.<sup>52</sup>

The Monitor assessed the DPD's compliance with subparagraphs a-c of paragraph U88 during the quarter ending November 30, 2003, finding the DPD in non-compliance with each.

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<sup>52</sup> This submission and response is fully explained in the assessment of compliance in paragraph U85.

## *Current Assessment of Compliance*

### *U88d – Risk Management Database Review Protocol*

Although originally scheduled for the current quarter, the Monitor did not assess the DPD's compliance with subparagraph U88d, as the DPD was not required to submit the Review Protocol to the DOJ for review and approval until March 30, 2004. The Monitor is scheduled to assess the DPD's compliance with this subparagraph during the quarter ending August 31, 2004.

### *U88e – Risk Management Database Selection of Contractor*

Although originally scheduled for the current quarter, the Monitor did not assess the DPD's compliance with subparagraph U88e during the current quarter, as the DPD is not required to select the contractor to create the risk management database until May 31, 2004. The Monitor is scheduled to assess the DPD's compliance with this subparagraph during the quarter ending August 31, 2004.

### *U88f – Risk Management Database Beta Testing*

Although originally scheduled for the current quarter, the Monitor did not assess the DPD's compliance with subparagraph U88f, as the DPD is not required to have a beta version of the risk management database ready for testing until June 30, 2005. The Monitor is scheduled to assess the DPD's compliance with this subparagraph during the quarter ending August 31, 2005.<sup>53</sup>

### *U88g – Risk Management Database Implementation*

Although originally scheduled for the current quarter, the Monitor did not assess the DPD's compliance with subparagraph U88g, as the DPD is not required to have the risk management database operational and fully implemented until December 31, 2005. The Monitor is scheduled to assess the DPD's compliance with this subparagraph during the quarter ending February 28, 2006.<sup>54</sup>

## **Paragraph U89 – Interim Risk Management System**

Paragraph U89 requires the DPD to develop an interim system to identify patterns of conduct by DPD officers or groups of officers prior to the implementation of the new risk management database.

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<sup>53</sup> If the beta version of the risk management database is ready for testing prior to the June 30, 2005 deadline, the Monitor will move up its assessment of compliance to the appropriate quarter.

<sup>54</sup> If the risk management database is operational and fully implemented prior to the December 31, 2005 deadline, the Monitor will move up its assessment of compliance to the appropriate quarter.

### *Current Assessment of Compliance*

The Monitor met with the Risk Management Group on February 25, 2004 to discuss compliance with paragraph U89 and determined that the DPD has not implemented an interim risk management system to satisfy the requirements of the paragraph.

A special order has been drafted by the DPD that will be issued to precinct commanders describing the protocol for complying with the monthly reports required by paragraph U89. The special order will expire in one year, at which time the DPD plans to have the permanent risk management system in place. The special order will identify thresholds for assessing at-risk behavior. The DPD is utilizing selected precinct commanders as subject-matter experts to develop the thresholds. According to the DPD, the order will incorporate a training component that will include specific forms to capture and analyze information required by the related UOF CJ risk management paragraphs. The Monitor understands that the special order is currently under review by the DPD.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U89.

### **Paragraph U90 – Risk Management Database Modification**

Paragraph U90 states that following the initial implementation of the risk management database, the DPD may propose to subtract or modify data tables and fields as the experience and availability of new technology may warrant.

### *Current Assessment of Compliance*

Although originally scheduled for the current quarter, the Monitor did not assess the DPD's compliance with paragraph U90 during the current quarter, as the risk management database has not been implemented. The Monitor will assess the DPD's compliance with this paragraph on an as-needed basis, given that the DPD's actions pursuant to the policy are driven by the availability of relevant new technology.

## **B. PERFORMANCE EVALUATION SYSTEM**

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

The Monitor assessed the DPD's compliance with this paragraph for the first time during the current quarter.

### Paragraph U91 – Performance Evaluation System

Paragraph U91 requires the DPD to ensure that performance evaluations for all DPD employees occur at least annually and include, but are not limited to, consideration of:

- 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 UOF, arrests, care of prisoners, prisoner processing, and performance bearing upon honesty and integrity.

### *Current Assessment of Compliance*

The Monitor met with CRIB on January 20, 2004 to discuss the status of compliance with paragraph U91. According to the DPD, performance evaluations are conducted twice a year for all sworn members up through the rank of lieutenant.

The DPD is seeking clarification on the meaning of “performance evaluations for all DPD employees” in paragraph U91. To date, the parties are engaged in ongoing discussions regarding the scope of the paragraph.

In response to a document request and in its status report, the DPD has recently provided the Monitor with copies of its current performance evaluation forms. There are separate performance evaluation rating forms for police officers and for lieutenants, sergeants and investigators. The Monitor's initial review of these evaluation forms found that they do not meet the specific requirements of paragraph U91. Specific deficiencies identified include:

- The current evaluation forms do not appear to sufficiently address subparagraph a's requirement to consider civil rights integrity issues in the evaluation process.
- Subparagraph b requires adherence to the 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. Although the evaluation forms for officers and supervisors both require a general knowledge of federal laws and a specialized knowledge of laws that affect the individual's position, the forms do not specifically relate this knowledge to duty performance.
- Subparagraph c requires that the evaluation consider the supervisor's<sup>55</sup> performance in identifying and addressing at-risk behavior in subordinates. The evaluation form for the

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<sup>55</sup> In the UOF CJ, paragraph 1(pp), “supervisor” is defined as a sworn DPD employee at the rank of sergeant or above and non-sworn employees with oversight responsibility for DPD employees.

ranks of lieutenant, sergeant and investigator does not include this information. In addition, the two performance skills that are delineated on the form, specifically relating to personnel development and performance, do not fully meet the requirements of the subparagraph.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U91.

### *Recommendations*

The Monitor recommends that the DPD either remove investigators from the “supervisory” performance evaluation form and create an additional section that evaluates the ability of supervisors to identify and address at-risk behavior in subordinate officers, or add an additional section to the current form that specifically evaluates such supervisory skills. Either of these options will increase accountability, and will serve as an essential risk management tool for the DPD.

### C. OVERSIGHT

This subsection (paragraphs U92-99) requires the DPD to establish an internal audit process,<sup>56</sup> which is critical to effective oversight of the DPD and is central to the department’s reform efforts. It also mandates that the DPD perform quarterly audits of all precincts and specialized units on certain aspects of policing, including UOF investigations, prisoner injuries, misconduct investigations, arrests, stops and frisks, the handling of witnesses, custodial detention practices, and complaint investigations. The subsection further requires the DPD to perform periodic random reviews of scout car camera videotapes for training and integrity purposes, conduct periodic random surveys of scout car video recording equipment, and meet regularly with local prosecutors to identify any issues in officer, shift or unit performance.

Each of these oversight provisions requires the DPD to examine a variety of issues, but a common theme among them all is the requirement to assess and report on the appropriateness of the police activity being examined.

The DPD responded by establishing the AT within CRIB in July 2003, which is responsible for planning and conducting the audits required by UOF CJ paragraphs U94-97. In addition, the AT will review and approve the audits conducted by the audit teams constituted by the HCCC, as required by the COC CJ. As of February 29, 2004, the AT is being led by a civilian Audit Manager, and the AT comprised seven other civilian auditors and six sworn members.

The Monitor assessed the DPD’s compliance with paragraphs U92-98 during the quarter ending November 30, 2003, finding the DPD in non-compliance with these paragraphs.

During the quarter ending February 29, 2004, the Monitor again assessed the DPD’s compliance with these paragraphs, assessed compliance with paragraphs U98-99 for the first time, and

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<sup>56</sup> Paragraph U92.

provided TA to the members of the AT as requested by the DPD.<sup>57</sup> The DPD is non-compliance with the majority of the paragraphs in this section as a result of its failure to submit timely quarterly audits required by these paragraphs. In addition, current policy regarding the reviews of scout car camera videotapes, as well as the conduct of the random surveys of scout car video recording equipment, do not meet all of requirements of the UOF CJ. The Monitor was also unable to assess compliance with two of the paragraphs in this section, one of which addresses the Audit Protocol, pending additional documentation.

### *Paragraph U92 – Audit Protocol*

Paragraph U92 requires the DPD to develop an Audit Protocol to be used by all personnel when conducting audits. The Audit Protocol must establish a regular and fixed schedule for all audits required by the UOF CJ<sup>58</sup> to ensure the audits occur with sufficient frequency and cover all DPD units and commands.

### *Background*

As reported in the Monitor’s Report for the Quarter Ending November 30, 2003, the DPD commenced developing an Audit Protocol in the fall of 2003 with TA from the Monitor; however, this Audit Protocol was not completed by November 30, 2003. Accordingly, the Monitor found the DPD in non-compliance with paragraph U92.

### *Current Assessment of Compliance*

The DPD’s AT submitted the finalized Audit Protocol on February 16, 2004.<sup>59</sup> Due to the timing of this submission (near the end of the quarter), the Monitor assessed the content of the Audit Protocol’s, but did not complete its assessment of the training and implementation of the Audit Protocol.

The Monitor reviewed the Audit Protocol and determined that it adequately addresses most of the topics that the Monitor believes should be addressed in the Audit Protocol: it delineates suitable standards and provides guidance for the conduct of each audit, and delineates a suitable process for annual updates and improvements to the Audit Protocol.

The Audit Protocol also establishes a regular and fixed schedule for the audits required by the Consent Judgments; however, it is not yet clear whether such audits are scheduled with sufficient frequency. The DOJ’s interpretation of the requirement for “quarterly audits” is that all audits (for all audit topics in both Consent Judgments) should be conducted each quarter. The DPD

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<sup>57</sup> Such TA was provided as required by paragraph U132.

<sup>58</sup> This Audit Protocol must also address the audits required by the COC CJ (Paragraphs C65-72).

<sup>59</sup> The DPD’s failure to meet the October 16, 2003 deadline required by Paragraph U145 resulted in a finding of non-compliance for the quarter ending November 30, 2003. Because the Protocol was finalized and submitted during the current quarter, the October deadline has no bearing on compliance for this quarter.

considers that this interpretation would require an inordinate level of work, and that there would be insufficient time to implement any recommendations identified before the next audits are commenced. As a result, the City and the DPD have discussed an alternative audit plan with the DOJ.<sup>60</sup> However, the issue remained unresolved as of February 29, 2004. The Monitor will revisit this issue during the quarter ending May 31, 2004 and is withholding a determination of compliance regarding the content of the Audit Protocol in the interim.

With regard to the training and implementation of the Audit Protocol, the Monitor has requested, but has not yet received all of the documentation necessary to evaluate compliance.<sup>61</sup> For this reason, the Monitor is also withholding a determination of the DPD's compliance with the training and implementation requirements of paragraph U92.<sup>62</sup>

### *Paragraph U93 – Audit Reporting Requirements*

Paragraph U93 requires the DPD to issue a written report on the results of each audit<sup>63</sup> to the Chief of Police and to all precincts or specialized unit commanders. These reports must include an examination of consistency throughout the DPD. The commander of each precinct and specialized unit must review all audit reports regarding employees under his or her command and, if appropriate, take disciplinary or non-disciplinary corrective action.

### *Background*

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, no audit reports were submitted to the Chief of Police as of November 30, 2003. As a result, the Monitor found the DPD in non-compliance with paragraph U93.

### *Current Assessment of Compliance*

The finalized Audit Protocol submitted by the DPD pursuant to paragraph U92 directs that each audit report be submitted to the Chief of Police and to all precinct or specialized unit commanders. No UOF CJ audit reports had been submitted by the DPD as of February 29, 2004.

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

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<sup>60</sup> The City and the DPD submitted a written alternative audit plan to the DOJ after the end of this quarter (on March 19, 2004), and the DOJ responded on April 5, 2004. Discussions are ongoing.

<sup>61</sup> Although the Monitor received certain documentation as requested in early March, a further document request, made on March 23, 2004, has not yet been received.

<sup>62</sup> The Monitor expects to conclude on its evaluation of the Audit Protocol in the next quarter.

<sup>63</sup> Quarterly audits are required to be submitted by paragraphs U94-97 of the UOF CJ.

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

Paragraph U94 requires the DPD to conduct regularly scheduled quarterly audits covering all units and commands (including command, IAD and Homicide Section) that investigate UOF, prisoner injuries and allegations of misconduct. The audits must evaluate the accuracy of the incident, the collection of evidence and the appropriateness of the conclusions.

#### ***Background***

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD has not yet commenced any of these audits, and no audits were submitted to the Chief of Police in response to paragraph U94 by November 30, 2003. Accordingly, the Monitor found the DPD in non-compliance with paragraph U94.

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

Compliance with paragraph U94 will be achieved when quality audits are submitted for each of the audit topics required under this paragraph. The DPD had not performed any work relating to such audits as of February 29, 2004.<sup>64</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U94.

### **Paragraph U95 – Audits of Probable Cause, Stop and Frisk, and Witness Identification and Questioning Documentation**

Paragraph U95 requires the DPD to conduct regularly scheduled quarterly audits of arrests, stops and frisks and the handling of witnesses. Such audits must cover all precincts and specialized units and must evaluate the scope, content, duration and voluntariness, if appropriate, of the police interaction. The audits must also include a comparison of arrests to warrants, and warrants to judicial findings.

#### ***Background***

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD commenced its planning in the fall of 2003 for the Arrest and Stop and Frisk Audits, with TA from the Monitor. However, no audits were submitted to the Chief of Police in response to paragraph U95 as of November 30, 2003. Accordingly, the Monitor found the DPD in non-compliance with paragraph U95.

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<sup>64</sup> The Audit Protocol identifies that these audits are scheduled to be completed by August 2004.



### *Current Assessment of Compliance*

During the current quarter, the DPD continued planning the Arrest Audit and the Stop and Frisk Audit: the DPD completed the draft audit workplans, matrices and crib sheets, and is in the process of collecting the documentation for its audit sample; and the DPD requested and received TA relating to drafts of these documents and the process of selecting a statistically valid sample for these audits. These audits are expected to be completed by May 2004.

The DPD has not yet commenced any work on the Witness Identification and Questioning Documentation (WIQD) Audit, and expects to submit this audit by August 2004.

Compliance with paragraph U95 will only be achieved when quality audits are submitted for each of the topics required under the paragraph. No such audits had been submitted as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U95.

### *Paragraph U96 – Audits of Custodial Detention Practices*

Paragraph U96 requires the DPD to conduct quarterly audits of the DPD's custodial detention practices, including evaluating the length of detention between the time of arrest and the time of arraignment. Such audits must be conducted covering all precincts and specialized units.

### *Background*

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD commenced its planning in the fall of 2003 for the Custodial Detention Practices Audit, with TA from the Monitor. However, no audits were submitted to the Chief of Police in response to paragraph U96 as of November 30, 2003. Accordingly, the Monitor found the DPD in non-compliance with paragraph U96.

### *Current Assessment of Compliance*

The DPD's AT originally advised the Monitor that the scope of the paragraph U96 Custodial Detention Practices Audit would be included within the scope of the DPD's paragraph U95 Arrest Audit. However, during the planning process for these audits, the DPD realized that combining these two audits would be overly complex. Accordingly, the DPD concluded that a separate Custodial Detention Practices Audit would be submitted by May 2004. The Monitor will continue to provide TA relating to this paragraph, as requested by the DPD.

Compliance with paragraph U96 will only be achieved when a quality Custodial Detention Practices Audit is submitted. No such audit had been submitted as of February 29, 2004.

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

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

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

#### ***Background***

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the OCI had not designated an individual or entity to conduct quarterly audits as required by this paragraph and no work had been performed relating to such audits. Accordingly, the Monitor found the DPD in non-compliance with paragraph U97.

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

On January 21, 2004, the Monitor met with the CI of the OCI and the Executive Director of the BOPC, at which time the CI informed the Monitor that the OCI had designated the DPD's CRIB AT to conduct the quarterly audits required by this paragraph.

Compliance with paragraph U97 will only be achieved when quality audits of external complaints and complaint investigations are submitted. No audits had been submitted as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U97.

### **Paragraph U98 – Random Reviews of Videotapes and Recording Equipment**

Paragraph U98 requires the DPD to conduct and document periodic random reviews of scout car camera videotapes for training and integrity purposes. In addition, the DPD must require periodic random surveys of scout car video recording equipment to confirm that it is in proper working order.

For ease of reporting, the Monitor has split paragraph U98 into the following two components:

- U98a – Scout Car Video Tape Reviews
- U98b – Scout Car Video Recording Equipment Surveys

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

##### ***U98a – Scout Car Video Tape Reviews***

From February 24-26, 2004, the Monitor evaluated the DPD's process for conducting periodic random reviews of scout car camera videotapes for training and integrity purposes at each of the

thirteen precincts. The Monitor found that eleven of thirteen precincts have supervisors who are conducting reviews of scout car camera videotapes. Of the remaining two precincts, one had an officer conduct the initial review<sup>65</sup> and the other was planning to have a supervisor begin conducting reviews at the beginning of March 2004.

The Monitor found the review documentation procedure varied from precinct to precinct and from supervisor to supervisor. Several supervisors were not documenting their reviews as required by this paragraph, while others were documenting the reviews on their Sergeant's Daily Report but failing to report any findings. In addition, many of the supervisors were not indicating the specific tape numbers that had been reviewed, which is important for the purpose of oversight and accountability.

The Monitor notes that there is no standardization for the "periodic random" selection of tapes to review by the supervisors. Each supervisor is selecting the tapes to review in a different manner. Additionally, the supervisors were not looking for the same indicators regarding training and integrity issues, and many of the supervisors were not seeking to identify these types of issues at all but were instead attempting to determine whether the officers' log matched the times indicated on the videotape.

The DPD issued an In-Car Video Camera Policy (Directive 303.3) to meet the requirements of paragraphs U98 and U100-102. The Monitor determined that the policy does not define "periodic" and "random," nor does it provide specific procedures for conducting random periodic reviews and surveys. Furthermore, the policy does not identify how training and integrity issues should be documented and addressed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U98a.

*Paragraph U98b – Scout Car Video Equipment Surveys*

From February 24-26, 2004, the Monitor evaluated the DPD's process for conducting periodic random surveys of scout car camera video equipment to ensure proper working order at each of the DPD's thirteen precincts. The Monitor determined that only one of the thirteen precincts is conducting periodic random surveys of scout car video recording equipment to confirm that it is in proper working order as required by paragraph U98b. This precinct is pulling two random scout cars out of the field per week and playing their scout car videotapes in the precinct conference room to check for proper working order. The supervisor conducting this review documents the findings in the Sergeant's Daily Report.

Although the other twelve precincts have their officers check their equipment daily as required by Directive 303.3, this does not fulfill the requirements of this paragraph, which requires supervisory periodic random surveys of scout car video equipment for proper working order. Furthermore, the Monitor determined that the officers who are checking their video equipment

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<sup>65</sup> This precinct assured the Monitor that it would be switched to a supervisory duty immediately.

on a daily basis are providing inconsistent documentation or no documentation at all regarding this task.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U98b.

### *Monitor's Recommendations*

The DPD should provide direction for conducting these random periodic reviews and surveys of scout car videotapes in order to standardize this process department-wide. Specifically, the DPD must define "periodic" and "random," outline the types of training and integrity issues that supervisors should be looking for, and explain how to document the reviews. In addition, there should be policy or procedure for those supervisors who find issues with training and integrity when conducting these reviews, in terms of how to document the findings and which steps to take in the chain-of-command process.

The Monitor also recommends that these videotape reviews be conducted by higher-level supervisors, such as a lieutenant. The sergeants that are currently conducting these reviews may have been the field supervisors for some of the incidents being reviewed and therefore there is potential for bias by these sergeants.<sup>66</sup>

### *Paragraph U99 – Meetings Between DPD and Local Prosecutors*

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

### *Background*

The DPD submitted a letter to the DOJ and the Monitor outlining its efforts to comply with this paragraph during the quarter ending November 30, 2003. Meetings between the DPD and the Wayne County Prosecutor's Office were held on October 3 and October 8, 2003. The Monitor planned on conducting further reviews to determine whether the meetings comply with paragraph U99 requirements and did not evaluate the DPD's compliance with the paragraph.

### *Current Assessment of Compliance*

The Monitor requested that the DPD provide meeting dates, agendas, list of attendees and minutes from meetings that have taken place with local prosecutors to identify issues in officer,

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<sup>66</sup> These issues and recommendations were discussed with CRIB on March 2, 2004 and were provided to the parties in a written memorandum on March 19, 2004. CRIB commanding officer indicated that the DPD is forming a single-purpose committee to develop and draft Standard Operating Procedures (SOP) that will include specific guidance on how tapes should be logged (on single department-wide form), how the tapes should be stored (by tape number), how often and how many are to be reviewed, and how the DPD supervisors will randomly and periodically select the tapes for review.

shift or unit performance as required by paragraph U99. The Monitor also requested a schedule of upcoming meetings.

The DPD provided the Monitor with the requested documentation, which indicated that preliminary meetings between participants from the DPD and the Wayne County Prosecutors Office were held on October 3, 2003, October 8, 2003, February 5, 2004 and February 9, 2004 to discuss ways to identify issues in officer, shift or unit performance as required by this paragraph. However, the Monitor was not able to independently verify the purpose and content of the meetings from the documentation provided by the DPD. Furthermore, the Monitor was also unable to ascertain whether any actions had been taken as a result of issues identified in the meetings.

The DPD and Wayne County Prosecutors Office agreed to hold these meetings on a quarterly basis and Central Services Bureau will be responsible for convening such meetings and preparing the agenda for each meeting. The next meeting is scheduled for April 8, 2004.

Based on the foregoing, the Monitor is withholding a determination of the DPD's compliance with paragraph U99 until the Monitor can further assess the purpose and content of these meetings, and verify that they meet the requirements of the paragraph.

### *Recommendations*

The Monitor recommends that the DPD take minutes at these meetings specifically including the discussions regarding officer, shift and unit performance.

## **D. USE OF VIDEO CAMERAS**

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

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

The Monitor assessed the DPD's compliance with paragraphs U100-102 for the first time during the current quarter. The Monitor determined that the DPD was not in compliance with the requirement to repair or replace all non-functioning video cameras, as the number of functioning pieces of video equipment was inadequate. The Monitor also found that, although the DPD's

current policy met the video camera and video recording requirements of paragraphs U101 and U102, the DPD was not effectively implementing that policy.

### **Paragraph U100 – Non-Functioning Video Cameras**

Paragraph U100 requires the DPD to repair or replace all non-functioning video cameras.

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

The Monitor evaluated the DPD's process for determining whether all non-functioning video cameras are being repaired or replaced at each of the thirteen precincts from February 24-26, 2004.

The Monitor determined that several precincts have non-functioning video equipment that is in the process of being repaired or replaced. In addition, several precincts have non-functioning microphones. These precincts also indicate they are in process of replacing these microphones.<sup>67</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U100.

#### ***Monitor's Recommendations***

The DPD should ensure that all precincts have the resources needed to repair or replace all non-functioning video cameras and equipment in a timely manner. The DPD Precincts should document which scout cars have working video equipment and which scout cars have equipment that needs to be repaired or replaced.

### **Paragraph U101 – Video Camera Policy**

Paragraph U101 requires the DPD to revise and augment policy on video cameras 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, UOF, 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.

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

The DPD revised its In-Car Video Camera Policy (Directive 303.3) in an attempt to meet the requirements of paragraphs U98 and U100-102. The Monitor identified several deficiencies in

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<sup>67</sup> The DPD recently represented that all non-working video equipment has been repaired and there is no repair backlog. The Monitor will reevaluate this paragraph during the next scheduled review period.

this policy, which are outlined in the Current Assessment of Compliance for paragraph U98. The specific requirements of paragraph U101 are included in this directive except for the fact that the 90-day retention requirement is qualified by the statement “unless otherwise directed by a competent authority.”

From February 24-26, 2004, the Monitor evaluated the DPD’s implementation of the policies and procedures for in-car video cameras at each of the thirteen precincts. The Monitor determined that nine of thirteen precincts are complying with the 90-day requirement to retain and preserve videotapes. Two of the four precincts that are not in compliance indicated that there are not enough videotapes to keep up with this requirement and that they are in the process of obtaining additional videotapes. The other two precincts were still using the 60-day retention requirement.

The Monitor also determined that eleven of thirteen precincts keep a logbook for tracking videotapes as required by this DPD policy. However, each of these eleven logbooks tracked different information, and only six of the eleven included the supervisor’s signature for oversight and accountability. One of the precincts was allowing officers to insert the videotapes into the scout cars after the supervisor checked the tape out of the PREP room and logged it into the logbook.<sup>68</sup> In addition, the requirement that supervisors document the insertion and removal of videotapes in their Sergeant’s Daily Report is not being implemented by supervisors at all precincts.

The Monitor found that officers in six of the thirteen precincts are making videotape introductions as required by this policy, although there are inconsistencies in information that is included in the introduction. Of the remaining seven precincts, the officers in one precinct are sporadically making these videotape introductions and officers at the other six precincts are not recording introductions at all.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U101.

### *Monitor’s Recommendations*

The Monitor recommends that every precinct have a videotape and microphone logbook with a standardized procedure outlining the information that should be captured. In addition, for oversight and accountability purposes, all supervisors should sign in and out upon the insertion and removal of videotapes from the videocassette recorder.

### *Paragraph U102 – Video Recording Policy*

Paragraph U102 requires the DPD policy on video cameras to require officers to record all motor vehicle stops, consents to search a vehicle, deployments of a drug-detection canine, or vehicle searches.

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<sup>68</sup> This DPD policy specifically requires supervisors to insert and remove videotapes from scout cars.

### *Current Assessment of Compliance*

The DPD revised the In-Car Video Camera Policy (Directive 303.3) to meet the requirements of this and other UOF CJ paragraphs. The Monitor reviewed policy and determined that it includes the basic requirements of paragraph U102. The Monitor will conduct further reviews to determine whether this policy is being effectively implemented and whether the officers are receiving adequate training on its provisions. The Monitor's current assessment, summarized under paragraph U100, indicates that there are precincts that do not have an adequate number of functioning video cameras. The DPD cannot meet the requirements of this camera without an adequate number of functioning pieces of video equipment.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of paragraph U102, but in non-compliance with its implementation and training requirements, resulting in an overall finding of non-compliance with the paragraph.

## **E. DISCIPLINE**

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

The Monitor assessed the DPD's compliance with paragraphs U103-105 for the first time during the current quarter, finding the DPD in non-compliance with each. Although the DPD has indicated that it has developed and is currently reviewing draft policy and a draft discipline matrix intended to meet the requirements of these paragraphs, they have not yet been submitted.

### **Paragraph U103 – Backlog of Disciplinary Cases**

Paragraph U103 requires the City to 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.

### *Current Assessment of Compliance*

The Monitor met with the DAS<sup>69</sup> on February 25, 2004 to discuss its role in the disciplinary process and the status of compliance with paragraph U103. The Monitor was informed that the DPD has drafted a policy that will incorporate the requirements of this paragraph. The Monitor understands that this policy is currently under internal review by the DPD.

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<sup>69</sup> On December 30, 2003, the former Disciplinary Administration Unit was upgraded to a Section, now under the command of an Inspector (Teletype #03-07756).



According to DPD documentation, as of January 12, 2004, the number of backlogged disciplinary cases pending trial board hearings was 215.<sup>70</sup> The DPD states that since the December 30, 2003 organizational change, DAS has negotiated 21 backlogged cases. According to the DPD a screening system is being developed to review disciplinary cases to further reduce the backlog. The Monitor will continue to evaluate the process of reducing the backlogged cases.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U103.

### *Paragraph U104 – Guidelines for Disciplinary Process*

Paragraph U104 requires the DPD to 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 must establish guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process.

### *Current Assessment of Compliance*

The Monitor met with the DAS on February 25, 2004 to discuss the its role in the disciplinary process and the status of compliance with paragraph U104. The Monitor was informed that the DPD has drafted a policy that will include a process for scheduling disciplinary hearings, trials, and appeals at appropriately frequent intervals, and will establish guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process. The Monitor understands that this policy is currently under internal review by the DPD.

The Monitor understands that the DPD has taken action, pending the implementation of the revised disciplinary process, by conducting two trial board hearings per day instead of the usual one hearing per day.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U104.

### *Paragraph U105 – Disciplinary Matrix*

Paragraph U105 requires the DPD to 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;

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<sup>70</sup> A backlogged case was defined as disciplinary cases pending a hearing date that were received by the DAU in previous calendar years.

- 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.

### *Current Assessment of Compliance*

The Monitor met with the DAS on February 25, 2004 to discuss its role in the disciplinary process and the status of compliance with paragraph U105. The DPD indicated that a final draft of the discipline matrix has been developed and the Monitor understands that the matrix is still under internal review.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U105.

## VII. TRAINING

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This section of the UOF CJ (paragraphs U106-123) directs the DPD to coordinate and review all UOF and A&D training to ensure quality, consistency, and compliance with applicable law and DPD policy. The UOF CJ provides specific requirements for review and reporting on these issues to the Monitor and the DOJ. The department must also select and train trainers, evaluate all training, conduct needs assessments, and create and maintain individual training records for all officers.

The Monitor assessed the DPD's compliance with all but two of the paragraphs in this section during the quarter ending November 30, 2003, finding the DPD in non-compliance with each. The Monitor is scheduled to again assess the DPD's compliance with paragraphs U106-109 and U112-114 during the quarter ending May 31, 2004. During that quarter, the Monitor will also complete the assessment of paragraphs U110 and U111 that was commenced during the first quarter.

The Monitor again assessed the DPD's compliance with paragraphs U115-123 during the current quarter. The Monitor met with DPD personnel, including the Training Director and staff and CRIB, to discuss the overall plan for training delivery, assessment, and tracking. A substantial portion of the training required under the UOF CJ is based on departmental policy, which is currently under revision.

During the previous quarter, the Monitor recommended that the DPD recognize that the training curricula cannot effectively be developed prior to the development of the underlying policies. It appears that the DPD has implemented this recommendation in most instances. The Monitor also contended that effective training curricula development must include consultation with the effected DPD units and with the individuals assigned to draft or revise the underlying policies.

In its Report for the Quarter Ending November 30, 2003, the Monitor noted that the DPD Training Bureau is inadequately staffed to develop the number of lesson plans required by the UOF CJs. The Monitor also reported that the need for additional curriculum developers is being discussed internally by the City, and a job description was written and forwarded to the City's Human Resources Department, and preliminary meetings conducted with Wayne State University, to identify curriculum development professionals. The Monitor is unaware of any additional activity in the part of the DPD in connection with these issues during the current quarter.

### A. OVERSIGHT AND DEVELOPMENT

The Monitor assessed the DPD's compliance with this section of the UOF CJ (paragraphs U106-111) during the quarter ending November 30, 2003. The Monitor is scheduled to again assess the DPD's compliance with this section during the quarter ending May 31, 2004.

## B. USE OF FORCE TRAINING

The Monitor assessed the DPD's compliance with this section of the UOF CJ (paragraph U112) during the quarter ending November 30, 2003. The Monitor is scheduled to again assess the DPD's compliance with this section during the quarter ending May 31, 2004.

## C. FIREARMS TRAINING

The Monitor assessed the DPD's compliance with this section of the UOF CJ (paragraph U113) during the quarter ending November 30, 2003. The Monitor is scheduled to again assess the DPD's compliance with this section during the quarter ending May 31, 2004.

## D. ARREST AND POLICE-CITIZEN INTERACTION TRAINING

The Monitor assessed the DPD's compliance with this section of the UOF CJ (paragraph U114) during the quarter ending November 30, 2003. The Monitor is scheduled to again assess the DPD's compliance with this section during the quarter ending May 31, 2004.

## E. CUSTODIAL DETENTION TRAINING

### *Paragraph U115 – Annual Custodial Detention Training*

Paragraph U115 requires the DPD to provide all DPD recruits, officers and supervisors with annual training on custodial detention. Such training must include DPD policies regarding arrest, arraignment, holds, restrictions, material witness and detention records.

#### *Background*

The Monitor assessed the DPD's compliance with paragraph U115 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

#### *Current Assessment of Compliance*

According to the DPD, a training curriculum on custodial detention that meets paragraph U115 requirements has been developed for new recruits, current officers and supervisors.

However, DPD policies regarding arrest, arraignment, holds, restrictions, material witness and detention records have not been revised and/or developed. As the Monitor noted in its Report for the Quarter Ending November 30, 2003, the DPD cannot effectively develop a lesson plan on custodial detention until DPD policies regarding arrest, arraignment, holds, restrictions, material witness and detention records are completed and approved, as required by paragraphs U42-58.

The DPD has stated that once the revised or developed policies are promulgated, they will be incorporated into the curriculum, and appropriate department personnel will be trained.<sup>71</sup> The Monitor will review the lesson plans, training delivery methodologies, and pre/post comprehension testing once the policy is approved and lesson plans are completed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U115.

### **Paragraph U116 – Advise Officers not to Delay Arraignment**

Paragraph U116 requires the DPD to 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.

### ***Background***

The Monitor assessed the DPD's compliance with paragraph U116 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

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

On October 17, 2003, the DPD issued an Administrative Message<sup>72</sup> to all commands. Instructions on the teletype call for it to be read at seven (7) consecutive roll calls, placed in the commands' pinchbacks, and posted on each command's training bulletin board for thirty days. This message advised officers that, pursuant to the requirements of the UOF CJ, the DPD arraignment policy shall not be delayed because of items included in paragraph U116.

The DPD has advised that the content of paragraph U116 has been incorporated into the DPD's Arrest Policy; however, that policy is currently under revision.<sup>73</sup> Since paragraph U116 specifically refers to an "arraignment policy" that has not yet been developed by the DPD, this paragraph cannot be effectively implemented until the prompt judicial review policies under paragraphs U49-51 are completed, approved and implemented.<sup>74</sup>

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<sup>71</sup> See paragraph U59 for the Monitor's discussion of training prior to policy development.

<sup>72</sup> Teletype 03-06196 entitled "Delay of Detainees Arraignment."

<sup>73</sup> The Monitor recently learned that the Arrest Policy was approved by the BOPC after the end of the quarter on March 18, 2004 and signed by the Chief of Police on April 5, 2004. See paragraph U56. The Monitor has not reviewed a copy of this policy. The Arrest Policy is mentioned elsewhere in this report as being under review by the DPD.

<sup>74</sup> It is noted that the DPD, in conjunction with the 36<sup>th</sup> District Court, has developed a Night Felony Arraignment system. According to the DPD, this system commenced on January 5, 2004. The availability of night arraignments was communicated to the department by Teletype #03-0746/7, issued on December 12, 2003. According to the DPD, the implementation of evening arraignments is critical to supporting the mandates of U116. The Monitor will further evaluate this system.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U116.

**Paragraph U117 – Advise Officers that Material Witness Designation is a Judicial Determination**

Paragraph U117 requires the DPD to advise officers that whether an individual is a material witness, and whether that material witness should be committed to custody, is a judicial determination.

***Background***

The Monitor assessed the DPD's compliance with paragraph U117 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

***Current Assessment of Compliance***

The Administrative Message described in the Current Assessment of Compliance for paragraph U116 also advised officers that pursuant to the requirements of the UOF CJ, absent a judicial determination, no individual was to be taken into custody as a material witness.<sup>75</sup>

The DPD has advised that the content of paragraph U117 has been incorporated into the DPD's Arrest Policy; however, that policy is currently under internal review by the DPD. As the Monitor indicated in its Report for the Quarter Ending November 30, 2003, paragraph U117 cannot be effectively implemented until the material witness policies under paragraphs U56-57 are completed, approved and implemented.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U117.

**F. SUPERVISORY TRAINING**

**Paragraph U118 – Training on the Evaluation of Written Reports**

Paragraph U118 requires the DPD to 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.

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<sup>75</sup> As noted in paragraphs U56-57, the DPD has not yet defined "material witness" consistent with the requirements of the UOF CJ.

## *Background*

The Monitor assessed the DPD's compliance with paragraph U118 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

## *Current Assessment of Compliance*

The DPD has yet to develop the curriculum for supervisor training that will include the evaluation of written reports.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U118.

## *Paragraph U119 – Leadership and Command Accountability Training*

Paragraph U119 requires DPD supervisors to receive leadership and command accountability training and to learn techniques designed to promote proper police practices. This training must be provided to all DPD supervisors within 30 days of assuming supervisory responsibilities and must be made part of annual in-service training.

## *Background*

The Monitor assessed the DPD's compliance with paragraph U119 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

## *Current Assessment of Compliance*

According to the DPD, newly promoted supervisors receive leadership command and accountability training and techniques designed to promote proper police practices within 30 days of assuming supervisory responsibilities.<sup>76</sup>

Although the DPD has conducted these classes, the Monitor was not provided with the lesson plans and, as such, has been unable to review their content. In order to conclude on compliance, the Monitor must review these lesson plans and attend and/or interview supervisors who attended the training sessions to ensure that the requirements of paragraph U119 are satisfied. The Monitor will also evaluate whether the training has been made part of the annual in-service training.

Based on the foregoing, the Monitor has not yet evaluated the DPD's compliance with paragraph U119.

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<sup>76</sup> Training took place February 16 - March 19, 2004 for Sergeants and February 9 - 20, 2004 for Lieutenants.

### **Paragraph U120 – Risk Assessment Training**

Paragraph U120 requires the DPD to provide training on risk assessment and risk management to all DPD supervisors, including the operation of the risk management database.

#### ***Background***

The Monitor assessed the DPD's compliance with paragraph U120 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

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

The DPD is training its members on operating the CRISnet system, a records management system that the DPD plans to develop into the department's Risk Management Database.<sup>77</sup> According to the DPD, training on risk assessment and management for all DPD supervisors, including the operation of the Risk Management Database, will be conducted when the modules are integrated in CRISnet. Neither the risk management database nor the training has been developed yet.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U120.

## **G. INVESTIGATOR TRAINING**

### **Paragraph U121 – Training for Evaluating Credibility**

Paragraph U121 requires the DPD to 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.

#### ***Background***

The Monitor assessed the DPD's compliance with paragraph U121 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

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

According to the DPD, the policy / protocol on conducting investigations that is currently under development will include the paragraph U121 requirements to train investigating officers on appropriate burdens of proof, interview techniques and factors to consider when evaluating officer, complainant or witness credibility. This training will be provided to those individuals

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<sup>77</sup> The development of the risk management database is covered by paragraphs U79-90.



who conduct investigations to ensure their dispositions are unbiased, uniform and legally appropriate. The Monitor will review the policy / protocol, related lesson plans, and training delivery methodologies once they are completed and approved.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U121.

### **Paragraph U122 – Handling External Complaints**

Paragraph U122 requires the DPD to provide all supervisors charged with accepting external complaints with appropriate training on handling external complaints that emphasizes interpersonal skills. The DPD must provide training on the DPD external complaint process, including the role of the OCI and IAD in the process, to all new recruits and as part of annual in-service training.

### ***Background***

The Monitor assessed the DPD's compliance with paragraph U122 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

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

The DPD is currently revising training curricula for supervisors and new recruits that will address paragraph U122 requirements. The DPD has noted that the Citizens Complaint Policy will be incorporated into the training curricula once it has been revised, and prior to its implementation.<sup>78</sup> The Monitor will review the lesson plans, training delivery methodologies, and pre/post comprehension testing once the policy is approved and lesson plans are completed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U122.

## **H. FIELD TRAINING**

### **Paragraph U123 – Enhancement of FTO Program**

Paragraph U123 requires the DPD to develop, subject to DOJ approval, a protocol to enhance the FTO program within 120 days of the effective date of the UOF CJ. The protocol must address the criteria and method for selecting and removing the FTOs and for training and evaluating FTOs and trainees.

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<sup>78</sup> As the Monitor noted in its Report for the Quarter Ending November 30, 2003, effective training development must be linked to the completion and approval of policy revisions pertaining to external complaints called for under the UOF CJ.

### *Background*

The Monitor assessed the DPD's compliance with paragraph U123 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

### *Current Assessment of Compliance*

During the current quarter, the DPD completed a protocol to enhance its FTO program. The Monitor received a copy of the protocol in response to a document request. The Monitor recently learned that the protocol was submitted to the DOJ for approval. According to the DOJ, the submission was received on February 12, 2004.

Based on the foregoing, the Monitor is withholding a determination of compliance with paragraph U123 pending the DOJ's review.

## **VIII. MONITORING, REPORTING, AND IMPLEMENTATION**

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### **Paragraph U139 – Reopening of Investigations Deemed Incomplete**

The Monitor is scheduled to report on this paragraph during the quarter ending May 31, 2004.

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

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This section contains the Monitor's compliance assessments of the COC CJ paragraphs scheduled for review during the quarter ending February 29, 2004.

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

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This section of the COC CJ (paragraphs C14-22) requires the DPD to develop, implement, and train specific fire safety policies and procedures and develop and implement a comprehensive fire safety program in all DPD facilities that maintain holding cells.<sup>79</sup>

Each of these provisions requires the DPD to examine a variety of issues, but a common theme among them all is the requirement to ensure that adequate fire safety precautions are being undertaken at all facilities that maintain holding cells and that all facilities that maintain holding cells comply with the Life Safety Code.

The Monitor reviewed the majority of the paragraphs included in this section of the COC CJ (paragraphs C16, C18, C20-22) during the quarter ending November 30, 2003.

During the current quarter, the Monitor assessed the DPD's compliance with paragraphs C15 and C19 for the first time and again assessed the DPD's compliance with paragraphs C16, C18, and C20-22.<sup>80</sup> Once again, the Monitor determined that the DPD, via the HCCC, is attempting to address the requirements of the COC CJ by working closely with the DFD to develop the necessary framework for achieving compliance. The Monitor acknowledges the efforts of the DPD and the DFD. However, as noted in the Report for the Quarter Ending November 30, 2003, a considerable amount of additional effort is required, as the DPD continues in its failure to comply with both the substantive requirements and the deadlines mandated under this section of the COC CJ.

The HCCC was originally formed on August 28, 2003, pursuant to paragraph C66, for the purpose of assuring compliance with the requirements of the COC CJ. The Chief of Police issued a Special Order on January 6, 2004 officially naming the members of the Holding Cell Compliance Committee (HCCC) to include the Detroit Fire Department (DFD), the Detroit Department of Health and Wellness Program (DDOH), the Risk Management Bureau (RMB), the Medical Section, the Facilities Management Section and the Training Bureau, among others.

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<sup>79</sup> The term "holding cell" is defined in the Definitions section of the COC CJ (Section I, Paragraph k) to include any room or area in which individuals in DPD custody are confined, including cells at the DPD precinct stations, specialized units, and the Detroit Receiving Hospital (DRH).

<sup>80</sup> The Monitor was scheduled to assess paragraph C14 during the current quarter. However, the Monitor deferred its assessment of this paragraph to a future quarter, as noted below, based upon the timelines for compliance indicated in the paragraph.

The committee members will serve for a period of two years and meet weekly. The HCCC has been meeting since September 2003. Members of the Monitoring Team have participated and/or attended the majority of the meetings.

### **Paragraph C14 – Life Safety Code Compliance**

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

### ***Current Assessment*<sup>81</sup>**

The Monitor reviewed DPD and City of Detroit efforts to comply with the Life Safety Code. During the quarter, the DPD, DFD and the City continued conducting regular and periodic Life Safety Code inspections. The Monitor's review of these reports indicates that all 12 precincts, along with the DRH, have numerous life safety code violations.

As of the end of the quarter, the DPD was reviewing and evaluating the most recent Life Safety inspection reports provided to them by the Detroit Fire Marshall. Once the DPD completes its analysis, it will attempt to develop a comprehensive remediation and implementation plan.

### **Paragraph C15 – Detection, Suppression and Evacuation Programs**

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

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

The Monitor reviewed DPD efforts to develop and implement a comprehensive fire detection, suppression and evacuation program for all buildings that maintain holding cells. The Monitor assessed all 12 DPD facilities that maintain holding cells,<sup>82</sup> and the DRH, determining that none of the facilities assessed had developed or implemented a comprehensive fire detection,

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<sup>81</sup> Although originally scheduled for the current quarter, the Monitor did not assess the DPD's compliance with paragraph C14 because the DPD is not required to comply with the paragraph prior to July 18, 2004. However, the Monitor is reporting on the DPD's efforts in connection with the paragraph during the current quarter.

<sup>82</sup> In January 2004, the Monitor raised an issue regarding the use of a holding cell, as defined by the COC CJ, in the First Precinct. The Monitor's previous understanding was that holding cells were not being used in the First Precinct. The parties disagree as to whether the room within the First Precinct is a holding cell, and are engaged in ongoing discussions concerning this issue. In the interim, the Monitor is evaluating the DPD's current use of the First Precinct.

suppression and evacuation program. Some of the precincts assessed did, in fact, have limited detection capabilities, but none of the facilities maintained a fire suppression system.

Moreover, reviews by the Detroit Fire Marshall indicate that in one precinct, a state-of-the-art fire detection system has been taken off-line by officers in the precinct because no one in the precinct was able to properly maintain or reset the system.<sup>83</sup> This type of activity cannot be allowed to continue. The proper maintenance of these systems is critical to the safety and well-being of the officers, civilians and prisoners who work, visit or are detained in these facilities. The DPD must develop the capability to properly manage and maintain these systems.

The Monitor's review of the DPD's initial fire evacuation programs for the holding cells indicated that many of the plans were unsatisfactory, as they lacked sufficient detail to provide adequate guidance in the event of a fire or an evacuation event. The DPD requested, and the Monitor provided, TA in an effort to improve these plans. Through this TA, the DPD will develop a standard emergency action template for use in each precinct; this template will assist each precinct in developing appropriately detailed evacuation programs.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C15.

### **Paragraph C16 – Fire Safety Program Development**

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

### ***Background***

The Monitor assessed the DPD's compliance with paragraph C16 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

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

The Monitor reviewed the DPD's efforts during the quarter ending February 29, 2004 to develop a fire safety program. As of February 29, 2004, the DFD was in the process of updating the life safety assessments of the facilities that maintain holding cells. Once these updated assessments are completed, the DPD will be equipped to begin developing individual evaluations for each of

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<sup>83</sup> According to the Fire Marshall, the fire detection system in the 11th precinct was disconnected from the power grid because no one in the precinct knew how to recycle the system when one of the pull stations was accidentally activated.

the systems outlined in paragraph C16 and, in turn, the overall fire safety program, which must be submitted for the review and approval of the DOJ.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C16.

### **Paragraph C17 - Fire Safety Program Implementation**

The Monitor is scheduled to assess the DPD's compliance with this paragraph during the quarter ending November 30, 2004.

### **Paragraph C18 - Fire Safety Interim Measures**

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

### ***Background***

The Monitor assessed the DPD's compliance with paragraph C18 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

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

During the current quarter, the Monitor reviewed the DPD's efforts to implement interim Fire Safety measures for all DPD facilities that maintain holding cells.<sup>84</sup> The DPD informed the Monitor that the efforts to install automated back-up power systems for the precincts had been delayed due to the early onset of cold weather. Furthermore, a problem occurred in the procurement process and the agreement to acquire the generators is now on hold. The DPD is looking into the status of the agreement and will be providing an update to the Monitor.

In February, the DFD reported that all of the smoke detection systems in 11 of the 12 precincts have been upgraded to meet the standards put forth by this paragraph (namely that the activation of one alarm will annunciate throughout the entire facility).<sup>85</sup> However, the DPD was unable to

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<sup>84</sup> The Monitor has not yet evaluated interim fire safety measures in the holding cells contained in DRH.

<sup>85</sup> The 4<sup>th</sup> precinct has not received these upgrades and currently utilizes independent battery-operated smoke detectors. As long as these units remain in place, and an integrated system is not installed, and the DPD will be in non-compliance with this paragraph.

demonstrate the upgrades to the Monitor, as the individual precincts do not possess the capability to test the systems.<sup>86</sup>

In addition, the Monitor is unaware of any activity within the individual precincts to implement remediation efforts to ensure that compromised smoke and fire separations have been reconstituted.<sup>87</sup>

As noted in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD has developed and implemented a methodology for ensuring that prisoners can immediately alert the guards in the event of an emergency. During the current quarter, the Monitor conducted unannounced site assessments of all 12 DPD facilities that maintain holding cells, and the DRH, and determined that these newly enacted procedures are being effectively carried out by the DPD. During these unannounced assessments, the Monitor verified via onsite inspections and reviews of cell block log books that the DPD is posting at least one officer inside the cell blocks at all times. This officer is available to respond immediately to any report of an emergency by an inmate.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C18.

### **Paragraph C19 – Testing of Fire Safety Equipment**

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

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

The Monitor reviewed the DPD's efforts to ensure that all fire safety equipment in all facilities that maintain holding cells was routinely inspected, tested and maintained. The Monitor observed that while the DPD has begun inspecting, testing and maintaining all fire extinguishers housed within facilities that maintain holding cells<sup>88</sup>, the DPD still does not have an accurate assessment of exactly how many fire extinguishers exist within each of the precincts. The

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<sup>86</sup> Individual precincts within the DPD do not have appropriately trained individuals on staff who can properly test or evaluate the operational capabilities of the smoke detection systems currently installed in the precincts. It is the Monitor's understanding that for the DPD to test these systems, the DPD must contact the outside contractor who installed the system. These individuals were not available to test the systems during the Monitor's assessments.

<sup>87</sup> During assessment visits conducted in the previous and current quarters, the Monitor observed numerous precincts that do not maintain adequate fire separations, especially between the holding cell areas and the rest of the precincts.

<sup>88</sup> The DFD regularly inspects all fire extinguishers in a given facility. The Monitor visually inspected the tags on all of the fire extinguishers that we located in the 12 precincts and in the DRH holding cell area and noted that they were properly certified by the DFD as being acceptable.

Monitor's assessments also indicated that the DPD does not currently keep a record of when fire safety equipment is inspected, the results of these inspections, or the exact nature of any maintenance done on the equipment.<sup>89</sup>

The HCCC is in the process of developing a programmatic approach to ensure regular inspections and testing of all fire safety systems, as well as the proper maintenance of records pertaining to any and all work conducted on these systems. However, as of the end of the quarter, the DPD had yet to develop any consistent methodology for ensuring that all fire safety equipment contained within these facilities was routinely inspected, tested and maintained.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C19.

### **Paragraph C20 – Smoking Policy**

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

### ***Background***

The Monitor assessed the DPD's compliance with paragraph C20 for the first time during the quarter ending November 30, 2003, finding the DPD in compliance.

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

During the quarter ending February 29, 2004, the Monitor conducted random unannounced assessments of all 12 DPD facilities that maintain holding cells and the DRH and determined through interviews and visual inspections that the DPD continues to enforce the no smoking policy in all buildings that maintain holding cells. During these unannounced assessments, the Monitor conducted inspections of the holding cell areas to determine if there were any signs of recent smoking, such as smoking-related debris in the cells or garbage, new smoking-related graffiti, notations in precinct property log books for cigarettes and cigarette lighters, and smoking related odors. In addition, DPD officers were questioned regarding the current policy and their adherence to it.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C20.

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<sup>89</sup> This includes all maintenance efforts on the existing fire suppression systems, fire detection systems, emergency exist signage and emergency lights. The Monitor has been informed, and through its precinct assessments confirmed, that the DPD does not maintain any self-contained breathing apparatus units.



### Paragraph C21 – Storage of Flammable Liquids

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

#### *Background*

The Monitor assessed the DPD's compliance with paragraph C21 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

#### *Current Assessment of Compliance*

The Monitor reviewed DPD efforts to comply with paragraph C21 and determined that the DPD had purchased and installed flammable liquid storage lockers for all DPD facilities that maintain holding cells. Following the installation of flammable liquid storage containers, the Monitor conducted unannounced site assessments<sup>90</sup> of all twelve DPD facilities that maintain holding cells and the areas immediately surrounding the holding cell areas of the DRH.<sup>91</sup> The Monitor inspected the areas where the lockers are kept at each precinct, checking for the proper storage of flammable liquids, and also searched for indications within the holding cell areas that flammable liquids are being stored outside of the lockers.

These assessments indicated that the lockers are being utilized and the DPD has made a concerted effort to ensure that all flammable liquids are being properly stored in these approved storage cabinets, thereby effectively eliminating the improper storage of flammable liquids from all the precincts that maintain holding cells.

However, the Monitor determined that while the lockers are being utilized, the DPD has yet to develop an effective training program to accompany the deployment of these devices.<sup>92</sup> Furthermore, the DPD must develop appropriate protocols for ensuring that the lockers are being properly utilized and that each precinct ensures that all flammable liquids that may arrive at the precinct after normal business hours are immediately stored in these approved cabinets.<sup>93</sup>

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<sup>90</sup> The site assessments were conducted on January 19, 20 and 22, Feb 17-19, and February 24 and 26, 2004.

<sup>91</sup> The Monitor has only inspected those areas of the DRH that maintain or are in the immediate vicinity of the holding cell areas. Through these inspections, the Monitor determined the DRH does not store flammable liquids within these areas. The DPD has indicated that it has no control over general DRH storage facilities since the DRH is privately-owned. The Monitor does not possess any information as to how the DRH generally stores flammable liquids outside of the holding cell area.

<sup>92</sup> According to the HCCC, the DPD is in the process of developing appropriate training for all department personnel on the proper use of the cabinets.

<sup>93</sup> On numerous precinct assessments, the Monitor was informed that precinct personnel were unable to access the cabinet for the Monitor to assess compliance because either the precinct maintenance officer was unavailable or they were unaware of where the keys were being stored.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy and implementation requirements of paragraph C21, but in non-compliance with its training requirements, resulting in an overall finding of non-compliance with the paragraph.

### *Paragraph C22 – Removal of Cane Ceiling Tiles*

Paragraph C22 requires the DPD to immediately identify and remove all highly-flammable Cane ceiling tiles from all buildings that house holding cells.

### *Background*

The Monitor assessed the DPD's compliance with paragraph C22 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance.

### *Current Assessment of Compliance*

In order to assess DPD efforts to comply with paragraph C22, the Monitor conducted unannounced site assessments of all twelve DPD precincts that maintain holding cells and the DRH. The Monitor's assessments included detailed inspections of all ceiling areas within the precincts and DRH, including those areas concealed by drop ceilings and new acoustical ceiling tiles, to determine the presence of Cane ceiling tiles.

The Monitor determined that Cane ceiling tiles are present in only the 4<sup>th</sup> and 10<sup>th</sup> precincts. The Monitor further determined that the DPD, in conjunction with the DFD, has removed all of the Cane Ceiling tiles from the 10<sup>th</sup> Precinct and most of the Cane Ceiling tiles from the 4<sup>th</sup> Precinct.<sup>94</sup> Once the DPD removes the few remaining tiles in the 4<sup>th</sup> precinct, the Monitor fully expects that the DPD will be in compliance with this paragraph.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C22.

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<sup>94</sup> As of the end of the quarter, the DPD had completely removed all of the Cane ceiling tiles from the 4<sup>th</sup> precinct except for one small area on the second floor that was inaccessible to the contractors.

## II. EMERGENCY PREPAREDNESS POLICIES

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

The Monitor reviewed paragraph C24 during the quarter ending November 30, 2003, finding the DPD in non-compliance. The Monitor is scheduled to again assess the DPD's compliance with paragraph C24 during the quarter ending May 31, 2004.

The Monitor assessed the DPD's compliance with paragraphs C23 and C25 for the first time during the quarter ending February 29, 2004. While the DPD has made progress in developing emergency preparedness policies for the facilities that maintain holding cells, compliance with these paragraphs will not occur until the DPD can more effectively develop, train and implement the new policies and procedures required.

### *Paragraph C23 – Establishing of Safety Levels*

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

### *Current Assessment of Compliance*

Compliance with this paragraph will occur when the DPD attains compliance with paragraphs C24-25. The DPD is currently in non-compliance with these paragraphs.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C23.

### *Paragraph C24 – Emergency Preparedness Program Development*

The Monitor assessed the DPD's compliance with paragraph C24 during the quarter ending November 30, 2003. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending May 31, 2004.

### *Paragraph C25 – Key Control Policies*

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

### *Current Assessment of Compliance*

During the quarter, the Monitor reviewed DPD efforts to implement comprehensive key control policies and procedures by conducting Key Control Assessments at all facilities that maintain holding cells. As part of these assessments, the Monitor conducted unannounced site inspections of all 12 DPD precincts that maintain holding cells and the DRH. The Monitor determined that the DPD is utilizing a 'one key' system, whereby one key operates all of the cell door locks. This key is a large brass key that allows for easy, unmistakable identification in the event of an emergency. Via our inspections, the Monitor confirmed that all of the DPD facilities that maintain holding cells are using this system.

The 'one key' policy dictates that all holding cell doors are keyed to one key and that this key is unique and distinct from the key that secures the holding cell area. Both of these keys are maintained on one ring, with rings being provided to the guards in the holding cell area, the desk supervisor and the precinct commander. In addition, a spare set of keys is kept in a secure container in the event of an emergency.

While the Monitor is pleased with the expediency in which the DPD has enacted and implemented the 'one key' policy, the DPD has failed to develop any methodology for conducting regular and routine inventory, testing and maintenance of all keys and locks within the holding cell areas. Furthermore, the DPD has failed to develop a methodology for ensuring that the inventory and maintenance information is accurately recorded in an auditable format.

As of the end of the quarter, the HCCC was assessing various ways in which the DPD can ensure that each precinct conducts routine inventory, testing and maintenance on all holding cells locks and keys. According to the HCCC, this material will be included in the new DPD Holding Cell Policies that are currently being drafted. According to the HCCC, these policies are expected to be completed by May 31, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C25

### **III. MEDICAL AND MENTAL HEALTH CARE POLICIES**

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This section of the COC CJ (paragraphs C26-34) requires the DPD to develop and implement a series of medical and mental health care policies for prisoners. These policies and procedures must be designed and developed to ensure that the DPD is adequately identifying and responding to the medical and mental health care needs of their prisoners. The DPD must develop these programs with the assistance of a qualified medical and mental health care expert and the policies and procedures must be approved by the DOJ prior to being implemented.

During the quarter ending November 30, 2003, the Monitor assessed the DPD's compliance with each of the paragraphs included in this section (paragraphs C26-34), finding the DPD in non-compliance with each. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2004.

## IV. PRISONER SAFETY POLICIES

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This section of the COC CJ (paragraphs C35-38) requires the DPD to develop and implement prisoner safety policies for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure that each precinct, and the entire department, have clear and concise policies and procedures that will ensure that safety and well-being of prisoners.

The Monitor assessed the DPD's compliance with the paragraphs included in this section for the first time during the quarter ending February 29, 2004. The DPD has made progress in the development of new policies and procedures that directly address the requirements of the paragraphs in this section. However, the DPD has yet to complete its development of these new policies and procedures. Compliance with these paragraphs cannot be achieved until the DPD develops, trains and implements these policies.

### *Paragraph C35 – Ensure Safety Level*

Paragraph C35 requires the DPD to ensure a reasonable level of safety of staff and prisoners through the use of appropriate security administration procedures.

#### *Current Assessment of Compliance*

Compliance with this paragraph will occur when the DPD attains compliance with paragraphs C36-38.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C35.

### *Paragraph C36 – Security Screening of Prisoners*

Paragraph C36 requires the DPD to develop and implement a prisoner security screening program for all buildings containing holding cells. At a minimum, this program must 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 require that security screening information is documented and communicated between consecutive shifts.

#### *Current Assessment of Compliance*

The Monitor reviewed DPD efforts to develop and implement a prisoner screening program for all buildings that contain holding cells. The Monitor determined that the DPD is planning on utilizing its Detainee Intake Form as part of the screening process and is looking at developing a more detailed intake process that will include a formalized procedure for dealing with potential threats posed by criminal partners, assaultive and special management prisoners. As part of this

effort, the DPD is developing a program based on a ‘packet system’ for presenting important information to detention, transport and medical officers who may interact with a prisoner following the initial screening process.

The DPD reports that it is developing a new methodology for classifying prisoners utilizing behavior-based criteria. The new methodology had not been submitted to the Monitor for review as of February 29, 2004.

According to the DPD, the new Cell Block Policy will fully cover the requirements of this paragraph. The DPD currently anticipates that this policy will be available for review by DPD leadership by May 31, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C36.

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

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This section of the COC CJ (paragraphs C39-46) requires the DPD to develop and implement environmental health and safety policies for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure the cleanliness and maintenance of the cell block areas to ensure the safety of DPD prisoners.

The Monitor assessed the DPD’s compliance with the paragraphs included in this section for the first time during the quarter ending February 29, 2004. The DPD has made progress in this area, most notably in its efforts to clean and make repairs in cells and to ensure that air purification systems meet applicable standards, and has achieved compliance with several paragraphs. However, further progress is necessary to achieve compliance with the remaining paragraphs in this section.

### **Paragraph C37 – Cell Check Policies**

Paragraph C37 requires the DPD to 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, these procedures will require that cell checks on the general population are performed at least twice per hour and that cell checks on prisoners in observation cells and DRH holding cells are performed every 15 minutes, unless constant supervision is required, and that detention officers document relevant information regarding the performance of cell checks in an auditable log.

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

During the quarter, the Monitor conducted random unannounced site assessments of all 12 DPD facilities that maintain holding cells and the DRH. As part of its assessments of each facility, the Monitor examined existing log books and white board notations that track and record cell checks, and monitored DPD cell inspections as they occurred.

The Monitor determined that cell checks are being conducted every half-hour for the general population, and every 15 minutes for those individuals placed in observation cells. In the majority of cases, these checks are being logged into log books by DPD officers assigned to the cell blocks.<sup>95</sup> However, each precinct has its own methodology for recording the material and the information collected varied by precinct.

The Monitor has advised the HCCC that for the DPD to achieve compliance with paragraph C37, the DPD must develop and distribute department-wide an SOP that describes how to conduct appropriate cell checks and how to properly record and maintain records regarding these cell checks. As of the end of quarter, the DPD was developing standardized, auditable cell check logs for all DPD precincts that maintain cells. According to the HCCC, these standardized logs, and standardized procedures regarding their appropriate use, will be included in the new Cell Block Policy that is currently under development.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C37.

### *Paragraph C38 – Observation Cell Policy*

Paragraph C38 requires the DPD to 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.

### *Current Assessment of Compliance*

The Monitor reviewed all observation cells within the DPD and determined that although some DPD observation cells have the capability to conduct continuous on-site remote observation of prisoners in observation cells, the vast majority of the cells are not equipped with video surveillance.

Currently, DPD policy requires that prisoners who display any signs of possible mental illness must be placed under constant supervision.<sup>96</sup> This policy falls short of the paragraph C38 requirement that all individuals who are placed in observation cells must be provided with continuous observation. This not only includes individuals who are mentally ill, but individuals who are suspected of being on drugs or suffering from withdrawal symptoms, individuals who are suspected of being a suicide risk, and others. The DPD has recognized this shortcoming and has informed the Monitor that the new DPD Cell Block Policies currently under development will meet the standards set forth in the COC CJ.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C38.

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<sup>95</sup> In one precinct, the material is noted on a white board and erased every 24 hours.

<sup>96</sup> Section 3.5.3-4.3 states that, “Persons that are known to be mentally ill or that exhibit signs of possible mental illness shall be constantly supervised.”

### Paragraph C39 – Cleanliness of Cells

Paragraph C39 requires the DPD to ensure that all holding cells are cleaned immediately and, thereafter, are maintained in a clean and sanitary manner.

#### *Current Assessment of Compliance*

During the quarter ending February 29, 2004, the Monitor reviewed the DPD's efforts to ensure that all holding cells were cleaned immediately and then maintained in a sanitary manner. The Monitor conducted random unannounced assessments of all 12 DPD precincts that maintain holding cells and the DRH.<sup>97</sup> During these assessments, the Monitor inspected the individual holding cells to determine if the cells had been cleaned and were being maintained in a sanitary manner. The Monitor also conducted interviews with various members of each precinct holding cell area to determine the precinct cleaning schedule and to ensure that the cells were being cleaned on a regular basis.

Through the cell block inspections, the Monitor determined that the DPD has cleaned all the cells within the cell block areas. The Monitor further determined that the cells are being maintained in a clean and sanitary manner.<sup>98</sup>

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C39.

#### *Recommendations*

While the Monitor finds that the DPD cells are clean, the Monitor recommends that the DPD create a standardized auditable review process that will allow each facility that maintains a cell block to determine whether the cells are being maintained in a clean and sanitary fashion. The DPD was in the process of developing this standardized methodology for cleaning all of its cells as of the end of this quarter. As part of this process, the DPD should include auditable cleanliness review process that will ensure that cells are being cleaned consistent with departmental standards.<sup>99</sup>

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<sup>97</sup> The Monitor conducted these site assessments on January 19, 20 and 22 and February 17, 18, 19, 24 and 26, 2004.

<sup>98</sup> The Monitor is concerned about the level of graffiti within many of the holding cells and cell blocks, which contributes to a sense of unseemliness within many of the cell block areas. The Monitor is aware that the DPD is developing a new cleaning policy for all holding cells, and that as part of this new policy the DPD plans to paint all the holding cells in an effort to eliminate the graffiti.

<sup>99</sup> Please refer to paragraph C40 for details regarding the cell block cleaning policy.



### **Paragraph C40 – Cleaning Policy**

Paragraph C40 requires the DPD to design and implement a cleaning policy for all holding cells. This policy will require routine cleaning and supervisory inspection of the holding cells and nearby areas.

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

As of the end of quarter, the DPD was in the process of developing a comprehensive cleaning policy for all DPD holding cells. This policy will include specific information regarding when and how cells should be cleaned, specific requirements for monthly steam cleaning of all cells and cell block areas, and information on how precincts should maintain their cell block cleaning log books. In addition, the DPD has begun working with individual precinct officers to formulate the new standards that will be included in the new Cell Block Policy. The policy had not been submitted as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C40.

### **Paragraph C41 – Maintenance Policy**

Paragraph C41 requires the DPD to design and implement a maintenance policy for all holding cells that requires timely performance of routine maintenance, as well as the documentation of all maintenance requests and responses in an auditable log.

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

During the quarter ending February 29, 2004, the DPD made considerable headway in developing a comprehensive maintenance policy for use in all facilities that maintain holding cells, including the DRH. The policy under development by the HCCC is expected to include standardized practices that will be promulgated throughout the DPD, and to require that all maintenance requests and maintenance responses be maintained in an auditable log.

During the quarter, the Monitor conducted assessments of all the DPD facilities that maintain holding cells and the DRH and determined that the DPD currently does not maintain a standardized methodology for tracking maintenance requests and responses. Each precinct has its own methodology, and none of the precincts inspected maintain an auditable log or form to follow these requests. As such, officers on duty, including individual precinct maintenance officers, were unable to provide the Monitor with specific information regarding the timeliness of responses to maintenance requests.

The DPD reports that it is developing policy that will satisfy the requirements of paragraph C41. The new policy had not been submitted as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C41.

### **Paragraph C42 – Heating and Ventilation**

Paragraph C42 requires the DPD to provide adequate heating and ventilation for all buildings containing holding cells.

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

During the quarter ending February 29, 2004, the Monitor reviewed the DPD's efforts to ensure the proper level of heating and ventilation in all buildings that contain holding cells. Following discussions with the DDOH, the Monitor determined that in order to meet the requirements of this paragraph, the DPD must ensure that each facility that maintains holding cells achieves a minimum of six (6) air exchanges per hour and ensure that the temperature in the cell blocks does not drop below 64 degrees Fahrenheit.<sup>100</sup>

In mid-February 2004, the DPD provided the Monitor with a report issued by Great Lakes Heating and Cooling, dated October 23, 2003, which indicated that following the remediation efforts undertaken by Great Lakes Heating and Cooling, the DPD had established a minimum of six air exchanges per hour in each of the facilities that maintain holding cells. The report provided specific details on all remediation efforts undertaken by the DPD to establish the mandated 6 air exchanges per hour; it also provided specific measurements for each cell block facility, the amount of air necessary to affect six air exchanges per hour for each cell block, and the total air handling capacity of precincts air handling equipment.

The Monitor is currently reviewing this document and conducting onsite inspections to confirm the information presented and to determine whether all equipment listed is operational.

Based on the foregoing, the Monitor withholds a determination of compliance with paragraph C42.

### **Paragraph C43 – Cell Block Repairs**

Paragraph C43 requires the DPD to repair all broken or malfunctioning lighting, toilets, sinks and windows in holding cells and observation cells.

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

In order to assess the DPD's compliance with paragraph C43, the Monitor conducted unannounced site assessments of all 12 precincts that maintain holding cells and the DRH. During these assessments, the Monitor inspected all of the holding cells within the facilities, including the cells' the lighting, toilets and sinks, to determine if the operational holding cells were in proper working condition.

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<sup>100</sup> The Monitor consulted with the DDOH, the Michigan Occupational Safety and Health Administration (MiOSHA), and the Monitor's own independent expert in attempting to identify the appropriate standards. Six air exchanges is the standard most often cited when discussing appropriate ventilation.

The Monitor determined that the DPD has repaired all of the malfunctioning lights, and toilets and sinks (where present) in all of its operational cells and cell blocks. The Monitor also identified a number of non-operational cells throughout the precincts that have various maintenance problems. The Monitor determined that these non-operational cells were clearly not being utilized and, in fact, had not been utilized for a considerable period of time.<sup>101</sup>

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C43.

### Paragraph C44 – Lighting

Paragraph C44 requires the DPD to ensure that lighting in all cell block areas is sufficient to reach 20 foot-candles of illumination at desk level and in personal grooming areas.

### *Current Assessment of Compliance*

During the quarter ending February 29, 2004, the Monitor undertook a detailed lighting survey of a number of the DPD precincts that maintain holding cells to determine if the DPD is currently illuminating its holding cells to reach 20 foot-candles of illumination. While the Monitor conducted on-site assessments of all twelve precincts that maintain holding cells, a lighting survey was conducted at four precincts.<sup>102</sup> Only one of the four precincts that were assessed maintained the capability of meeting the 20 foot-candle standard required by paragraph C44. Light readings in the four precincts assessed were as follows:

- 7<sup>th</sup> Precinct – ranged from 1.2 foot candles to 5.4 foot candles
- 8<sup>th</sup> Precinct – ranged from 0.2 foot candles to 5.1 foot candles
- 9<sup>th</sup> Precinct – flood lights out: 4.5 foot candles; flood lights on: 76 foot candles<sup>103</sup>
- 10<sup>th</sup> Precinct – ranged from 0.1 to 0.6 foot candles

These results clearly indicate that lighting is a significant concern within the DPD Holding Cell areas. The lack of light represents a clear danger to the officers who work within these precincts and the prisoners who are detained within the holding cells.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C44.

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<sup>101</sup> While the Monitor is satisfied that these cells are not being utilized, the Monitor recommends that the cells be decommissioned and the cell doors be removed until such time as the cells are repaired and placed back into operation. The decommissioned cells may not be used to confine any individual in DPD custody.

<sup>102</sup> The 7th, 8th, 9th and 10th Precincts.

<sup>103</sup> The 9th precinct has mounted individually controllable spotlights outside of each cell. The officers on duty have the ability to turn on these spot lights which flood the individual cells with sufficient light to meet the 20 foot candle standard. However, when not being observed, the lights are turned off so as to allow prisoners to sleep/relax.

### **Paragraph C45 – Access to Toilets and Potable Water**

Paragraph C45 requires the DPD to provide all prisoners with reasonable access to toilets and potable water 24 hours-a-day.

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

During the quarter ending February 29, 2004, the Monitor assessed the DPD's efforts to comply with paragraph C45 by conducting unannounced site assessments of all 12 DPD precincts that maintain holding cells, and the DPD holding cells within DRH.<sup>104</sup> The Monitor determined that approximately fifty percent of all DPD holding cells do not have built-in toilet/sink facilities. For those precincts that do not have built-in toilets or drinking facilities within the individual cells, prisoners are required to ask a DFO or Police Detention Officer (PDO) for access to a toilet or a cup of water. During interviews with DFOs and PDOs throughout the DPD, the Monitor was informed that these prisoners are immediately escorted to the toilet whenever they make a request and potable water is made available to all prisoners upon request. Similar questions posed to prisoners indicated that the prisoners are being provided access when requested.

The DPD is in the process of ensuring that the procedures for providing prisoners with immediate access to the toilet and potable water are documented and included in the new Cell Block Policies that are currently under development. The policy had not been submitted as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in compliance with the implementation requirements of paragraph C45, but in non-compliance with its policy requirements, resulting in an overall finding of non-compliance with the paragraph.

### **Paragraph C46 – Hepa-Aire Purifiers**

Paragraph C46 requires the DPD to ensure that all Hepa-Aire purifiers comply with the Michigan Occupational Safety and Health Agency standards.

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

The Monitor determined that, according to the manufacturer, the Hepa-Aire purification systems installed in a number of the DPD cell blocks were incorrectly installed. The devices were designed to be integrated into an air handling system, but the DPD installed them as free-standing units when they were first purchased. Due to health concerns, the systems need to be either re-installed correctly or deactivated.

During the quarter, the Monitor assessed the DPD's efforts to comply with paragraph C46 by conducting unannounced site assessments of all 12 DPD precincts that maintain holding cells,

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<sup>104</sup> The Monitor conducted these assessments on January 19, 20 and 22 and February 17, 18, 19, 24 and 26, 2004.

and the DPD holding cells within DRH.<sup>105</sup> During these assessments, the Monitor physically inspected the filtration systems in each precinct, and the areas within DRH surrounding the holding cell facility, and determined that all Hepa-Aire filtration systems are unplugged and non-operational. According to interviews with DPD personnel in the precinct holding cell areas, the purification systems had been turned off for some time and they are not being utilized.<sup>106</sup>

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C46.<sup>107</sup>

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

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

The Monitor assessed the DPD's compliance with paragraphs C47-48 for the first time during the quarter ending February 29, 2004. Although the DPD has yet to achieve compliance with the paragraphs in this section, it is steadily working towards that goal.

### **Paragraph C47 – Accommodations for Persons with Disabilities**

Paragraph C47 requires the DPD to ensure that persons with disabilities are provided with reasonable accommodations.

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

During the quarter ending February 29, 2004, the Monitor reviewed the DPD's efforts to comply with paragraph C47. As of mid-February 2004, the DPD reiterated its position that the 5<sup>th</sup> and 6<sup>th</sup> precincts have been designated as ADA holding cell facilities. All individuals who are deemed to need handicapped accessible holding cells will be transferred to the 5<sup>th</sup> or 6<sup>th</sup> precincts.

According to the DPD, it undertook a number of repairs to the 5<sup>th</sup> and 6<sup>th</sup> precincts in November 2003 to ensure that the precincts meet some of the requirements of the Americans with Disabilities Act. The purpose of the repairs, which included repairs and replacement of bathroom stalls, door handles, faucets, mirrors and wrapping of exposed pipes, was to ensure that

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<sup>105</sup> The Monitor conducted these assessments on January 19, 20 and 22 and February 17, 18, 19, 24 and 26, 2004.

<sup>106</sup> The Monitor has recommended that the DPD remove the Hepa-Aire filtration systems from the holding cell areas, thereby ensuring that they are not accidentally turned on. The DPD has informed the Monitor and, in a letter dated March 19, 2004, the DOJ that it intends to remove the filtration systems.

<sup>107</sup> According to extensive research conducted by the Monitor, there are no Michigan Occupational Safety and Health Agency standards regarding the use and installation of Hepa-Aire purifiers.

individuals with disabilities are not excluded from services, programs and activities because some buildings and facilities are inaccessible.

The Monitor assessed both the 5<sup>th</sup> and 6<sup>th</sup> precincts and determined that the holding cell areas are accessible by individuals with disabilities. However, the Monitor intends to further evaluate the DPD's efforts to ensure that the modifications and repairs that have been completed on these precincts do, in fact, provide persons with disabilities with reasonable accommodations. The Monitor will also evaluate how the DPD identifies persons with disabilities and whether they are transported to the designated precincts in a timely manner.

Based on the foregoing, the Monitor has not yet completed its assessment of the DPD's compliance with paragraph C47.

### *Paragraph C48 – Detention of Persons with Disabilities*

Paragraph C48 requires the DPD to develop and implement a policy concerning the detention of individuals with disabilities in consultation with qualified medical and mental health professionals. The policy must be approved in writing by qualified medical and mental health professionals. Thereafter, the program must 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.

### *Current Assessment of Compliance*

During the quarter ending February 29, 2004, the Monitor assessed the DPD's efforts to comply with paragraph C48. The Monitor determined that the DPD is still in the process of developing new policies regarding the handling and detention of persons with disabilities.<sup>108</sup> These policies had not been submitted as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C48.

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<sup>108</sup> The DPD has provided the Monitor with draft versions of these policies but, according to the DPD, they are not yet ready to be reviewed. Please refer to paragraph C47 for information regarding the DPD's efforts to comply with the ADA.

## VII. FOOD SERVICE POLICIES

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

During the quarter ending November 30, 2003, the Monitor assessed the DPD's compliance with both paragraphs included in this section of the COC CJ, finding the DPD in overall non-compliance with each. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2004.

## VIII. PERSONAL HYGIENE POLICIES

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Paragraph C51 is the sole paragraph in this section of the COC CJ.

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

The Monitor assessed the DPD's compliance with paragraph C51 during the quarter ending November 30, 2003. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending May 31, 2004.

## IX. USE OF FORCE AND RESTRAINTS POLICIES

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This section of the COC CJ (paragraphs C52-54) requires the DPD to revise its policies regarding prisoners and comply with the DPD's UOF policies and procedures for any UOF on prisoners in holding cells. In addition, the DPD must not handcuff prisoners to benches for longer periods of time than are necessary. The DPD is required to provide its revised UOF policies to the DOJ for review and approval; policy revisions must be submitted to the DOJ within three months of the effective date of the UOF CJ (by October 18, 2003).

The Monitor assessed the DPD's compliance with the paragraphs in this section for the first time during the quarter ending February 29, 2004. The Monitor met with the DPD to discuss revisions to the UOF policies and was informed that the requirements of paragraphs C52-54 would be included in the Conditions of Confinement Policy (Directive 305.4). The Conditions of Confinement Policy and the UOF policies had not been submitted as of February 29, 2004.

**Paragraph C52 – Use of Force on Prisoners in Holding Cells Policies**

Paragraph C52 states that the DPD must require that any UOF on prisoners in holding cells complies with the DPD's UOF policies and procedures.

***Current Assessment of Compliance***

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph C52. The Monitor was informed that the Planning and Accreditation Section was revising the Conditions of Confinement Policy (Directive 305.4) to address the requirements of paragraph C52. The relevant policies had not been submitted as of February 29, 2004.<sup>109</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C52.

**Paragraph C53 – Prisoner Policies**

Paragraph C53 requires the DPD to revise and augment its policies regarding prisoners.

***Current Assessment of Compliance***

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph C53. The Monitor was informed that the Planning and Accreditation Section was revising the Conditions of Confinement Policy (Directive 305.4) to address the requirements of paragraph C53. The relevant policies had not been submitted to the Monitor as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C53.

**Paragraph C54 – Prisoners in Handcuffs**

Paragraph C54 states that the DPD must not handcuff prisoners to benches for longer periods of time than are necessary.

***Current Assessment of Compliance***

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph C54. The Monitor was informed that the Planning and Accreditation Section was revising the Conditions of Confinement Policy (Directive 305.4) to address the requirements of paragraph C54. The relevant policies had not been submitted to the Monitor as of February 29, 2004.

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<sup>109</sup> The Monitor was recently informed by the DPD that the requirements of this paragraph are included in the new Arrest Policy. This revised policy is discussed in connection paragraph U56. As noted herein, the Monitor has not received the revised policy. In any event, the policy was approved after the end of the current quarter.





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Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C54.

## **X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW**

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This section of the COC CJ (paragraphs C55-57) requires the DPD to comply with its general incident investigation policies, UOF investigation policies and prisoner injury investigation policies in connection with all UOF, injuries and in-custody deaths occurring to prisoners in holding cells. The DPD was required to provide its revised UOF policies to the DOJ for review and approval; policy revisions must be submitted to the DOJ within three months of the effective date of the UOF CJ (by October 18, 2003).

The Monitor assessed the DPD's compliance with the paragraphs included in this section for the first time during the quarter ending February 29, 2004. The Monitor met with the DPD to discuss revisions to the UOF policies and was informed that the requirements for paragraphs C55-57 would be included in the Conditions of Confinement Policy (Directive 305.4). The Conditions of Confinement Policy, general incident investigations policies, UOF investigation policies and prisoner investigation policies had not been submitted as of February 29, 2004.

### **Paragraph C55 – Prisoners Use of Force Investigations**

Paragraph C55 states that the DPD shall require that all UOF, 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.

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

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph C55. The Monitor was informed that the Planning and Accreditation Section was revising the Conditions of Confinement Policy (Directive 305.4) to address paragraph C55. The relevant policy had not been submitted as of February 29, 2004. Furthermore, the DPD's general incident investigation policies pursuant to paragraph U27 have not been submitted.

Based on the foregoing, the Monitor finds the DPD in non-compliance paragraph C55.

### **Paragraph C56 – Use of Force on Prisoners in Holding Cells Investigations**

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

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

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph C56. The Monitor was informed that the Planning and Accreditation Section was revising the Conditions of Confinement Policy (Directive 305.4) to address paragraph C56. The

relevant policy had not been submitted as of February 29, 2004. Furthermore, the DPD's UOF investigation policies have not been submitted.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C56.

### **Paragraph C57 – Prisoners Injuries**

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

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

The Monitor met with members of CRIB on January 21, 2004 to discuss the status of compliance with paragraph C57. The Monitor was informed that the Planning and Accreditation Section was revising the Conditions of Confinement Policy (Directive 305.4) to address paragraph C57. The relevant policy had not been submitted as of February 29, 2004. Furthermore, the DPD has not submitted the prisoner investigation policies required by paragraphs U34-36.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C57.

## XI. EXTERNAL COMPLAINTS

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

The Monitor assessed the DPD's compliance with the paragraphs included in this section for the first time during the quarter ending February 29, 2004. The Monitor met with the DPD to discuss revisions to the external complaint and UOF policies. The Monitor understands that paragraph C58-59 requirements are to be included in the Citizen Complaint Policy (Directive 102.6). The Citizen Complaint Policy and the UOF policies are currently under revision, and had not been submitted as of February 29, 2004.

### *Paragraph C58 – Acceptance of External Complaints – Holding Cells*

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

### *Current Assessment of Compliance*

The current DPD Citizen Complaint Policy (Directive 102.6) states that "It is the policy of the Detroit Police Department that any citizen who wishes to make a complaint be afforded a reasonable opportunity to make said complaint without ridicule, inconvenience, or retaliation." The DPD is revising this policy to include the requirements of paragraphs C58, C59 and various UOF CJ paragraphs.

In the meantime, the DPD issued Teletype #04-00224/5, dated January 14, 2004, which specifically incorporates the requirements of this paragraph. The teletype states that external complaints regarding incidents in holding cells shall be accepted and processed in a manner consistent with the DPD's external complaint policies found in Directives 102.6 Citizens' Complaint and 305.3 Precinct Cellblocks (Section 8.3 Incident Documentation, Investigation and Review). As mentioned in this quarterly report, the directives referred to in the teletype are currently under revision by the DPD in order to incorporate the requirements of the Consent Judgments. Compliance with this paragraph will be achieved when the DPD's external complaint policies are effectively revised and when the requirements of this paragraph are effectively implemented.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C58.

### Paragraph C59 – Investigation of External Complaints – Holding Cells

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

#### *Current Assessment of Compliance*

The current DPD Citizen Complaint Policy (Directive 102.6) states that “In accordance with the Detroit City Charter, the Board of Police Commissioners shall receive and resolve any complaint concerning the operation of the police department.” The DPD is currently revising its policies to include the requirements of paragraph C58, C59 and other paragraphs in the UOF CJ (U61, U64, U67-69).

In the meantime, the DPD issued Teletype #04-00224/5, dated January 14, 2004, which specifically incorporates the requirements of this paragraph. The teletype states that external complaints the DPD receives regarding incidents occurring in holding cells shall be investigated and reviewed consistent with the DPD's policies concerning external complaint investigations and review. As mentioned in this quarterly report, the external complaint investigations policy referred to in the teletype is currently under revision by the DPD in order to incorporate the requirements of the Consent Judgments. Compliance with this paragraph will be achieved when the DPD's external complaint investigation policies are effectively revised and when the requirements of this paragraph are effectively implemented.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C59.

## **XII. GENERAL POLICIES**

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

During the quarter ending November 30, 2003, the Monitor assessed the DPD's compliance with both paragraphs included in this section of the COC CJ, finding the DPD in overall non-compliance with each. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2004.

### **XIII. MANAGEMENT AND SUPERVISION**

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This section of the COC CJ (paragraphs C62-72) requires the DPD to operate its holding cells in compliance with its comprehensive risk management plan and to routinely evaluate the operation of the cells to minimize the risks to its staff and prisoners. The DPD must evaluate such operations through the use of video cameras and via regularly scheduled quarterly audits. The DPD must also create a HCCC, which is responsible for assuring and evaluating compliance with the requirements of the COC CJ. The HCCC is therefore critical to the effective oversight and reform of the DPD's holding cells.

The COC CJ mandates that either the DPD or the HCCC evaluate compliance with the COC CJ by performing regularly scheduled quarterly audits of all buildings containing holding cells for the following topics: UOF, injuries to prisoners and allegations of misconduct in holding cells, fire detection, suppression and evacuation, emergency preparedness, medical/mental health, detainee safety, environmental health and safety, and food service.

Each of these provisions requires the DPD/HCCC to audit a variety of issues, but a common theme among them all is the requirement to assess and report on issues affecting the well-being of the staff and prisoners in the DPD's holding cells.

The DPD responded by forming an Audit Group (AG) within the HCCC in November 2003, which has responsibility for planning and conducting most of the audits required by the COC CJ. The DPD also formed an AT within CRIB to assist in this process. By February 29, 2004, 14 personnel were assigned to conduct such audits on behalf of the HCCC,<sup>110</sup> and six were assigned from CRIB's AT to assist with such audits.

During the quarter ending November 30, 2003, the Monitor assessed the DPD's compliance with the audit-related paragraphs of this section of the COC CJ (paragraphs C65-72), finding the DPD in non-compliance with each. During the current quarter, the Monitor again assessed the DPD's compliance with these paragraphs and assessed for the first time the DPD's compliance with paragraph C63.<sup>111</sup> The DPD is non-compliance with the majority of the paragraphs in this section as a result of its failure to submit timely quarterly audits required by these paragraphs.

#### **Paragraph C62 – Routine Evaluation of Holding Cells**

Paragraph C62 requires the DPD to routinely evaluate the operation of the holding cells to minimize the risk of harm to staff and prisoners.

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<sup>110</sup> Nine members are from the DPD, two are from the DHD, and three are from the DFD.

<sup>111</sup> Although originally scheduled for the current quarter, the Monitor did not assess the DPD's compliance with paragraphs C62 and C64. The Monitor deferred its assessment of paragraph C62 pending the development of additional information. The Monitor deferred its assessment of paragraph C62 to a future quarter, as noted below, based upon the timeline for compliance indicated in the paragraph.

### *Current Assessment of Compliance*

The Monitor is deferring its assessment of paragraph C62 pending the development of additional information that pertains to the DPD's efforts to comply with the requirements of this paragraph.

Based on the foregoing, the Monitor has not yet evaluated DPD's compliance with paragraph C62.

### *Paragraph C63 – Risk Management Plan*

Paragraph C63 requires the DPD to operate the holding cells in compliance with the 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 DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.

For ease of reporting, the Monitor has split paragraph C63 into the following components:

C63a – Risk Management Database

C63b – Performance Evaluation System

C63c – Auditing Protocol

C63d – Regular and Periodic Review of All DPD Policies

C63e – Regular Meetings of DPD Management to Evaluate Patterns of Conduct

### *Current Assessment of Compliance*

#### *C63a – Risk Management Database*

The DPD is in the process of developing a risk management database pursuant to paragraphs U79-90.

#### *C63b – Performance Evaluation System*

The DPD has indicated that the current performance evaluation system meets the requirements of this paragraph. Although the forms require the evaluation of general traits that relate to a member's job function and performance, there are no specific areas identified that relate to the

operation of holding cells or dealing with prisoners. Please refer to the Current Assessment of Compliance for paragraph U91 for additional information.

*C63c – Auditing Protocol*

The HCCC has formed the AG, which has responsibility for planning and conducting most of the audits required by the COC CJ. There are also at least six individuals assigned from CRIB's AT to assist the HCCC AG with these audits. The audit protocol has been completed and was submitted to the Monitor for review near the end of the quarter ending February 29, 2004. The protocol has not yet been implemented with regard to any of the required audits, including those to be conducted by the HCCC. Please refer to the Current Assessment of Compliance for paragraph U92 for additional information.

*C63d – Regular and Periodic Review of All DPD Policies*

The DPD has stated that it is conducting regular and periodic reviews of policies. The Monitor has not received any additional information regarding the DPD's review and its inclusion in a comprehensive risk management plan, as required by C63. The Monitor will continue to seek additional information regarding the DPD's efforts.

*C63e – Regular Meetings of DPD Management to Evaluate Patterns of Conduct*

The DPD's status report, dated February 15, 2004, indicates that the DPD's Senior Management Team (SMT) will meet to review patterns of conduct that increase liability. The Monitor will seek further information regarding the SMT meetings in order to assess the DPD's compliance with this subparagraph.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C63.

**Paragraph C64 – Policy Regarding Video Cameras in Holding Cells**

Paragraph C64 requires the DPD to revise and augment its policy on video cameras to require:

- a. the installation and continuous operation of video cameras in all prisoner processing areas of DPD holding cells within one year of the effective date of the COC CJ;
- b. supervisors to review videotapes of all incidents involving injuries to a prisoner or an officer, UOF 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 prisoner processing area camera videotapes for training and integrity purposes and conduct periodic random surveys of prisoner processing area video recording equipment to confirm that it is in proper working order.



### *Current Assessment<sup>112</sup>*

The first step the DPD must take in achieving compliance with paragraph C64 is to require the installation and continuous operation of video cameras in all prisoner processing areas of DPD holding cells within one year of the effective date of this Agreement. A CRIB supervisor informed the Monitor that there are five precincts that currently have operational video systems. Four additional precincts have newly installed digital video systems. The DPD plans for all precincts to receive digital video systems by June 2004.

Given that the deadline for the installation and continuous operation of video cameras in all prisoner processing areas of DPD holding cells is “within one year of the effective date” of the COC CJ, the Monitor has not yet evaluated the DPD’s compliance with paragraph C64.

### *Paragraph C65 – Audits of Holding Cell UOF, Injuries and Misconduct Investigations*

Paragraph C65 requires the DPD to conduct regularly scheduled quarterly audits covering all DPD units and commands (including a sample of command, IAD and Homicide Section investigations) that investigate uses of force, prisoner injuries, and allegations of misconduct in holding cells. The audits must evaluate the accuracy of the incident, the consistency of investigations, the collection of evidence and the appropriateness of the conclusions.

### *Background*

As reported in the Monitor’s Report for the Quarter Ending November 30, 2003, the paragraph C65 audits will be combined with the audits required by paragraph U94. None of these audits were submitted to the Chief of Police as of November 30, 2003. Accordingly, the Monitor found the DPD in non-compliance with paragraph C65.

### *Current Assessment of Compliance*

Compliance with paragraph C65 will only be achieved when quality audits are submitted that address the requirements of this paragraph. As of February 29, 2004, the planning relating to the paragraph U94 and C65 audits had not commenced. These audits are not scheduled to be submitted until August 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C65.

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<sup>112</sup> Although originally scheduled for the current quarter, the Monitor did not assess the DPD’s compliance with paragraph C64 because the DPD is not required to comply with the paragraph prior to July 18, 2004. However, the Monitor is reporting on the DPD’s efforts in connection with the paragraph during the current quarter.

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

Paragraph C66 requires the DPD to form a HCCC that is responsible for assuring compliance with the relevant provisions of the COC CJ. This paragraph also requires the HCCC to conduct regularly scheduled quarterly audits of all facilities that house holding cells to evaluate and report upon compliance with the fire detection, suppression and evacuation program as detailed in the COC CJ. The scope of such audits must include an evaluation of the smoke detectors and sprinklers, the back-up power systems, and the DPD's fire equipment.

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

- C66a - HCCC to Assure Compliance with the COC CJ
- C66b - HCCC Fire Detection, Suppression & Evacuation Audits.

### ***Background***

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the DPD formed a HCCC in the fall of 2003 with responsibility for assuring compliance with the relevant provisions of the COC CJ. Although the HCCC had made progress relative to the development of holding cell policies, such policies were not implemented as of November 30, 2003, and HCCC's inspections did not constitute an audit. Accordingly, the Monitor found the DPD in non-compliance with paragraph C66a-b.

Effective January 6, 2004, the membership of the HCCC was expanded to include members of the DFD and DDOH. The committee also added representatives of the DPD's RMB (policy and assessment), the Medical Section, and the Training Bureau. The HCCC has been meeting on a weekly basis since September 2003.

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

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

During the current quarter, the HCCC:

- oversaw the ongoing development of the policies, programs and procedures required by the COC CJ;
- oversaw several inspections into the current state of the holding cells' conditions relative to the requirements of the COC CJ;
- developed a project management tool to assist in managing the deadlines for several HCCC projects, including the completion of the audits required by the COC CJ;

- oversaw the planning for the audits required by the COC CJ;<sup>113</sup> and
- requested and received TA from the Monitor relating to all of the audits required by the COC CJ.<sup>114</sup>

Although the HCCC has made progress relative to assuring compliance with the requirements of the COC CJ, the holding cells policies have not yet been developed and implemented and the HCCC has not yet completed any audits.

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

#### *C66b HCCC Fire Detection, Suppression & Evacuation Audits*

As of February 29, 2004, the audit fieldwork for the Fire Detection, Suppression and Evacuation Audit was completed, however the audit report was not yet completed and submitted to the Chief of Police.

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

#### **Paragraph C67 – HCCC Emergency Preparedness Audits**

Paragraph C67 requires the HCCC to conduct regularly scheduled quarterly audits covering all DPD buildings that contain holding cells to evaluate emergency preparedness. The scope of such audits must include evaluating the DPD's key and fire equipment records, and evaluating the emergency preparedness of selected detention officers.

#### ***Background***

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the HCCC has conducted a number of site visits and informal inspections that are helpful to the planning process for the audits to be conducted in this area. However, such inspections do not constitute an audit. Accordingly, the Monitor found the DPD in non-compliance with paragraph C67.

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

Compliance with paragraph C67 will only be achieved when quality emergency preparedness audits are submitted. The HCCC has made progress in planning the initial emergency preparedness audit; the HCCC AG advised the Monitor that audit fieldwork will commence

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<sup>113</sup> Paragraphs C66-71.

<sup>114</sup> This TA included training on the Audit Protocol and advice on audit planning, data collection, sampling, and reporting.

during the month of March 2004. However, no audit had been submitted as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C67.

### **Paragraph C68 – HCCC Medical/Mental Health Audits**

Paragraph C68 requires the HCCC to conduct regularly scheduled quarterly audits covering all DPD buildings that contain holding cells to evaluate medical/mental health programs. The scope of such audits must include evaluating the accuracy, appropriateness and thoroughness of the DPD's intake screening process, as well as the DPD's prescription medication distribution process.

#### ***Background***

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the HCCC has conducted a number of site visits and informal inspections that are helpful to the planning process for the audits to be conducted in this area. However, such inspections do not constitute an audit. Accordingly, the Monitor found the DPD in non-compliance with paragraph C68.

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

Compliance with paragraph C68 will only be achieved when quality medical/mental health audits are submitted. Although the HCCC has made progress in planning the initial medical/mental health audit, no audit had been submitted as of February 29, 2004.

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

### **Paragraph C69 – HCCC Detainee Safety Programs and Policies Audits**

Paragraph C69 requires the HCCC to conduct regularly scheduled quarterly audits covering all DPD buildings that contain holding cells to evaluate detainee safety programs and policies. The scope of such audits must include evaluating the DPD's security screening and cell check process, and the supervisory oversight thereof.

#### ***Background***

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the HCCC conducted a number of site visits and informal inspections that are helpful to the planning process for the audits to be conducted in this area. However, such inspections do not constitute an audit. Accordingly, the Monitor found the DPD in non-compliance with paragraph C69.

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

Compliance with paragraph C69 will only be achieved when quality audits of detainee safety programs and policies are submitted. Although the HCCC has made progress in planning the initial such audit, no audit had been submitted as of February 29, 2004.

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

### **Paragraph C70 – HCCC Environmental Health and Safety Programs Audits**

Paragraph C70 requires the HCCC to conduct regularly scheduled quarterly audits covering all DPD buildings that contain holding cells to evaluate environmental health and safety programs. The scope of such audits must include evaluating the cleanliness and maintenance of the DPD's holding cells and surrounding areas, and evaluating whether there are any suicide hazards therein; evaluating whether the lighting, sinks and toilets are operable; and evaluating whether the DPD's prisoners have reasonable access to water and toilets 24/7.

### ***Background***

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the HCCC has conducted a number of site visits and informal inspections that are helpful to the planning process for the audits to be conducted in this area. However, such inspections do not constitute an audit. Accordingly, the Monitor found the DPD in non-compliance with paragraph C70.

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

Compliance with paragraph C70 will only be achieved when quality audits of holding cell environmental health and safety programs are submitted. Although the HCCC has made progress in planning the initial audit, no audit had been submitted as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C70.

### **Paragraph C71 – HCCC Food Service Program Audits**

Paragraph C71 requires the HCCC to conduct regularly scheduled quarterly audits covering all DPD buildings that contain holding cells to evaluate food service programs. The scope of such audits must include evaluating whether prisoners held over 6 hours receive regular and adequate meals, and whether their food is handled in a sanitary manner.

### ***Background***

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the HCCC has conducted a number of site visits and informal inspections that are helpful to the planning

process for the audits to be conducted in this area. However, such inspections do not constitute an audit. Accordingly, the Monitor found the DPD in non-compliance with paragraph C71.

### *Current Assessment of Compliance*

On January 12, 2004, the HCCC Food Service AG completed a written report reflecting their findings from inspections conducted through November 2003 pursuant to paragraph C71.<sup>115</sup> However, the HCCC Chair withdrew that report as it was not considered an audit, but rather a report on the results of the inspections, and it was completed prior to the training provided by the Monitor on the Audit Protocol.

The Monitor provided feedback to the DPD and the HCCC's audit members relating to the preliminary evaluation of the aforementioned report, which focused on areas to be improved for subsequent audit reports. Although the DPD's HCCC Food Service Audit Group has subsequently commenced its planning for the next audit, the audit had not been completed as of February 29, 2004.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C71.

### *Paragraph C72 – Audit Reporting Requirements*

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

### *Background*

As reported in the Monitor's Report for the Quarter Ending November 30, 2003, no audits had been submitted by the DPD / HCCC on the conditions in the DPD's holding cells. Accordingly, the Monitor found the DPD in non-compliance with paragraph C72.

### *Current Assessment of Compliance*

The DPD advised that the written inspections report prepared pursuant to paragraph C71<sup>116</sup> was not submitted to the Chief of Police. Instead, the results of the inspections were communicated by email to the precinct commanding officers so that appropriate action could be taken. Accordingly, no formal audits had been submitted by the DPD/HCCC as of February 29, 2004.

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

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<sup>115</sup> The HCCC Food Service Audit is lead by a member of the DDOH.

<sup>116</sup> Please refer to the Current Assessment of Compliance for paragraph C71.

#### **XIV. TRAINING**

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

During the quarter ending November 30, 2003, the Monitor reviewed each of the paragraphs in this section of the COC CJ, finding the DPD in non-compliance with each. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2004.

#### **XV. MONITORING AND REPORTING**

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##### **Paragraph C94 – Reopening of Investigations Deemed Incomplete**

The Monitor is scheduled to report on this paragraph during the quarter ending May 31, 2004.

## **CONCLUSION**

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The second quarter of monitoring activity has been marked by number of compelling and significant events, including the appointment of the new Chief of Police Ella Bully-Cummings by Mayor Kwame M. Kilpatrick. The Bureau that is responsible for coordinating the DPD's compliance efforts also has a new leader. The DPD has continued to build the organizational structure and put the processes in place in order to improve its ability to achieve compliance in the future. These efforts demonstrate the City and the DPD's commitment to effectuating the provisions of the Consent Judgments. However, like the first, this quarter is marked by the DPD's failure to meet the vast majority of the deadlines set forth in the Consent Judgments. The deadline for compliance for most of the paragraphs was 90 days from the effective date of the Consent Judgments. Given that more than six months have passed and there are only a handful of paragraphs that are currently in compliance, the City and the DPD must take action by redoubling their efforts to expedite compliance. This will be the true test of level of commitment to the reforms called for by the Consent Judgments.

Over the next quarter, the Monitor will continue conduct compliance assessments, and offer recommendations and TA. The Monitor will also complete the compliance measurement criteria (Methodologies) that have been provided to the parties in draft format.

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Independent Monitor

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**APPENDIX A:****Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor for the DPD**

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

<b>ACRONYM</b>	<b>DEFINITION</b>
A&D	Arrest and Detention
AG	Audit Group
AT	Audit Team
BOPC	Board of Police Commissioners
CALEA	Commission on Accreditation for Law Enforcement Agencies
CI	Chief Investigator
CLFRT	Command Level Force Review Team
CLO	Compliance Liaison Officer
CMMHSP	Comprehensive Medical and Mental Health Screening Program
COC CJ	Conditions of Confinement Consent Judgment
CRIB	Civil Rights Integrity Bureau
DAS	Discipline Administration Section
DDOH	Detroit Department of Health
DFD	Detroit Fire Department
DOJ	Department of Justice
DPD	Detroit Police Department

DRH	Detroit Receiving Hospital
FIS	Force Investigation Section
HCCC	Holding Cell Compliance Committee
IAD	Internal Affairs Division
MCOLES	Michigan Commission on Law Enforcement Standards
MITN	Michigan Information and Tracking System
OCI	Office of the Chief Investigator
OIC	Officer in Charge
PAB	Professional Accountability Bureau
PCR	Preliminary Complaint Report
PDO	Police Detention Officer
PSA	Public Service Announcement
RFP	Request for Proposals
RMB	Risk Management Bureau
SMT	Senior Management Team
SOP	Standard Operating Procedures
USAO	United States Attorney's Office
UOF	Use of Force <i>or</i> Uses of Force
UOF CJ	Use of Force and Arrest and Witness Detention Consent Judgment
WIQD	Witness Identification and Questioning Documentation