

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
AUGUST 31, 2005

ISSUED OCTOBER 17, 2005

EXECUTIVE SUMMARY

On June 12, 2003, the United States Department of Justice (DOJ) and the City of Detroit (City) (collectively, the parties) filed two Consent Judgments (CJs) with the United States District Court for the Eastern District of Michigan (Court).¹ 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"² of the Consent Judgments. On July 18, 2003,³ 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 Wood, with the assistance of Kroll, Inc., as the Independent Monitor in this matter. This is the eighth quarterly report of the Independent Monitor.⁴

During the eighth quarter, which ended on August 31, 2005, the Monitor examined a total of 121 paragraphs or subparagraphs (65 paragraphs or subparagraphs of the UOF CJ and 56 paragraphs or subparagraphs of the COC CJ). Of these, the City and the DPD complied with 8 and failed to achieve compliance with 101; the Monitor withheld its determination of the DPD's compliance with 7 paragraphs or subparagraphs and has not yet completed its evaluation of 5 paragraphs or subparagraphs.⁵

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

¹ 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).

² 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").

³ The "effective date" of the Consent Judgments.

⁴ The Monitor's quarterly reports may be found on the Internet at www.krollworldwide.com/detroit.

⁵ For each of these paragraphs, the Monitor's review and findings as of the end of the quarter are included in this report. The Monitor is mindful that this report is issued some 45 days after the end of the quarter. Therefore, for paragraphs assessed during the current quarter, the Monitor will make every effort to mention significant developments that occurred after the end of the quarter in footnotes throughout the report. For those paragraphs that were not assessed during the current quarter, developments that occurred during the current quarter or after the quarter's end will be fully reported on in the next quarter in which the applicable paragraph is under review.

⁶ Throughout this report, the Monitor will refer to various submissions by the DPD to DOJ and the Monitor by the date of the cover letter or by the date that the Monitor received the document. It is noted that there is often a difference between the cover letter date and the postmark date, ranging usually from several days to a week. The cover letter date is not meant to indicate when the DOJ or the Monitor actually received the submissions. The DPD is now making a number of its submissions by email.

- The DOJ granted the City and the DPD approval on the Request for Proposal (RFP) and Review Protocol for the Management Awareness System.
- The DPD submitted or resubmitted Directive 102.4, *Discipline*; Directive 102.6, *Citizen Complaints*; Training Directive 04-7, *Use of Force Reporting and Investigations*; the Disciplinary Matrix; Training Directive 04-04, *Garrity Protocol*, and Directive 304.5, *Board of Review*.
- According to the DPD, the following policies and training directives were disseminated during this quarter:⁷ Directive 102.6, *Citizen Complaints*; Directive 303.3, *In-Car Video Cameras*; and Directive 305.2, *Detainee Registration*.
- The City, the DPD and the DOJ have finally resolved their differences with regard to an acceptable definition of probable cause. Although the stipulation has not been approved by the Court yet, the Monitor commends the parties for their collaborative effort, which paves the way for a final dissemination of policy and testing of implementation for compliance assessments.

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

- The DPD's Audit Team submitted its first compliant audit this quarter, an audit of Environmental Health and Safety Programs submitted on July 31, 2005.
- As described in a Focus Issue in this report, the DPD's Audit Team worked with the Monitor during technical assistance that the Monitor provided to improve the DPD's scheduling and audit management processes for future audits. The Monitor commends the Audit Team's management and staff for their collaborative efforts and receptiveness.

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

- The DPD has conducted and submitted a total of nineteen audits to date and received specific TA for each audit topic required to be conducted by the CJs. Seventeen of the nineteen audits have been evaluated by the Monitor, sixteen of which were non compliant.
- The DPD has skipped (i.e. not submitted) 33 of the 52 audits that should have been completed under the Consent Judgments to-date
- Although the DPD had successfully disseminated its policies in the quarter ending May 31, 2005, as described in a Focus Issue in this report, problems occurring at the Command level resulted in inadequate dissemination this quarter of the most recent set of policies to be approved.

⁷ The Monitor will test dissemination of these policies during the quarter ending November 30, 2005.

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SECTION ONE: INTRODUCTION

I. BACKGROUND

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 Wood, with the assistance of Kroll, Inc.,⁸ as the Independent Monitor in this matter. This is the eighth report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor⁹ 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.¹⁰ The Monitor's duties and reporting requirements were also described.

As the Consent Judgments require that the DPD achieve and maintain substantial compliance for a specified period of time,¹¹ the Monitor will review the paragraphs on a periodic schedule over

⁸ The primary members of the Monitoring Team are Joseph Buczek, Hazel de Burgh, Ronald Filak, Thomas Frazier, Denise Lewis, Terry Penny, Jeffrey Schlanger, David Schoenfeld, and Sherry Woods.

⁹ The word "Monitor" will be used to describe both the Monitor and the Monitoring Team throughout this report.

¹⁰ Complaint, Case no. 03-72258. The complaint, Consent Judgments and TA letters are publicly available at http://www.usdoj.gov/crt/split/documents/dpd/detroit_cover_2.html.

¹¹ Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance. Paragraphs U149 and C106.

the life of the Consent Judgments.¹² The paragraphs that were scheduled for review during the eighth quarter, which ended on August 31, 2005, are assessed in this report.¹³

II. MONITOR'S ROLE

The Monitor's role is to conduct compliance assessments,¹⁴ make recommendations, provide TA and report on the DPD's progress toward substantial compliance with the Consent Judgments on a quarterly basis. The Monitor carries out this role with a healthy respect for the critical role the Department plays in enforcing the law and the significant risks taken by DPD officers each day. The Consent Judgments, which are orders of the Court, are meant to improve the overall policing in the City of Detroit by remedying the unconstitutional conduct alleged by the DOJ in its complaint filed against the City and the DPD. The Consent Judgments can only be modified by court order.

III. EFFORTS TOWARD COMPLIANCE

During the eighth quarter, the City and the DPD continued to make progress in policy development, approval and dissemination. Progress also continues to be made in other areas, as described throughout this report. Unfortunately, once again, these efforts have not yet resulted in substantial compliance, as substantial compliance has several components, generally including policy/procedural revisions, implementation,¹⁵ training/instruction and audit.

As mentioned in our previous quarterly reports, one of the most prevalent initial challenges facing the Department is policy development and revision, which must take place in an effective manner before many of the other reforms can be achieved. After the policy and/or procedural

¹² The initial duration of the COC CJ was eight quarters. As previously reported, on December 27, 2004, the Court issued an order granting the City's motion for a two-year extension of the COC CJ; however, the Court did not extend the internal deadlines required under the COC CJ. The Monitor has developed a review schedule for the COC CJ paragraphs under the two-year extension; the schedule is incorporated into the Report Card accompanying this report. 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.

¹³ As previously mentioned, for the paragraphs under review for this quarter, the Monitor makes every effort to report on significant matters that have taken place after the end of the quarter, although this is not possible in every instance. These occurrences appear in footnotes throughout the report.

¹⁴ Paragraphs U138 and C93 require that the Monitor regularly conduct compliance reviews to ensure that the City and the DPD implement and continue to implement all measures required by the Consent Judgments. The Monitor shall, where appropriate, employ sampling techniques to measure compliance.

¹⁵ Paragraphs U133 and C88 require that the Monitor conduct compliance reviews and additional reviews as the Monitor deems necessary in order to monitor and report on the City and the DPD's implementation of each substantive provision of the Consent Judgments. Paragraphs U132 and C87 require that the Monitor maintain regular contact with the parties in monitoring the implementation of the Consent Judgments.

revisions are completed, the DPD must then direct its attention to dissemination of the policies and the applicable implementation, training and auditing components of compliance. During this quarter, the Monitor's compliance testing revealed that a number of policies that were disseminated by the DPD failed to reach the threshold number of officers. The DPD is working to correct this problem.

The Monitor understands that the City continues to face significant fiscal issues, which have caused layoffs of police personnel. As the Monitor has expressed previously, it is unfortunate whenever individuals who admirably protect and serve the public are relieved of their duties due to layoffs. On August 29, 2005, Chief of Police Ella Bully-Cummings announced the Police Department's plans for restructuring. According to press accounts, in order to reduce spending throughout the Department and in an attempt to comply with the City Council's mandate to cut \$54 million from the police budget, Chief Bully-Cummings will lay off 150 police officers and create six district stations to replace the twelve precincts. According to press accounts, by combining the now twelve precincts into six district stations, the Department will be able to reduce the number of desk jobs while deploying fifty additional squad cars, or 100 more officers, throughout the city on a daily basis. In addition, the Police Department will cut its aviation and mounted police units completely. This alone will allow the Department to save \$20 million.¹⁶

At the Monitor's request, the DOJ and the Monitor received a briefing from the Commander of the DPD's Civil Rights Division (CRD) on the restructuring on the day that it was announced publicly, immediately after the press conference. The Commander submitted a document entitled *Strategies for Meeting Budget Reductions, Executive Summary* to the DOJ and the Monitor. The Monitor understands that this was the same document that was distributed to the press that day. The Monitor has no additional information about the restructuring or how it will affect the DPD's compliance efforts with the Consent Judgments.¹⁷ The Monitor has not been officially informed whether or which provisions of the Consent Judgments may have influenced the shutting down of certain precincts.¹⁸

According to press accounts, the Chief later announced on September 2, 2005 that the Department would be eliminating the position of Inspector. As a result, a number of Inspectors were promoted or demoted. Although this addition to the plan would potentially cut an additional \$3.2 million, a judge ordered that the demotions will not be allowed to take place at this time. Wayne County Circuit Court Judge Isidore Torres stated that the demotion of these officers (14 Inspectors and 4 Commanders) was a violation to an order he had issued the year

¹⁶ Although this plan was challenged in court by The Detroit Police Officers Association, Wayne County Circuit Court Judge Kathleen MacDonald ruled on September 27, 2005 that the Chief's plan does not violate union contract.

¹⁷ The Monitor has been told that the precincts with cross-bars (a type of suicide hazard) will no longer house arrestees as a result of the restructuring.

¹⁸ After reading in the newspaper of community briefings that were taking place to explain the restructuring, a member of the Monitoring Team attended the meeting held on September 22, 2005 in an attempt to gain more insight into the matter.

prior that prevented the city from unilaterally reducing the pay or rank of police commanders. To date, this issue has not been resolved.

As reported in previous quarters, the City has indicated that Proposal S, which was approved by City voters on November 2, 2004, will allow for the construction of a central detention facility that will comply with all of the physical requirements contained within the COC CJ. The City previously represented that the new facility will take approximately 24 months to complete and will be ready for use no later than April 2007. On June 21, 2005, the Court inquired about the City and the DPD's progress on constructing the new facility. The City maintains that it informed the Court, the DOJ and the Monitor that it is proceeding under two separate tracks with regard to achieving compliance with the COC CJ: 1) the construction of a new detention facility by April 2007 and 2) a reorganization plan which would be announced within 45 days. As described above, the reorganization was announced publicly on August 29, 2005.

IV. METHODOLOGIES

The *Methodologies to Aid in Determination of Compliance with the Consent Judgments* (the *Methodologies*) generally outline the methods that will be employed by the Monitor to determine compliance by the City and the DPD with each substantive provision of the Consent Judgments. The Monitor submitted the *Methodologies* for the UOF CJ to the parties on July 30, 2004. The DOJ and the City and the DPD responded with written comments. The Monitor resubmitted the UOF CJ *Methodologies* during the quarter ending May 31, 2005. During the current quarter, the Monitor and the parties held additional discussions regarding the *Methodologies*. The Monitor is currently making additional revisions prior to reissuing them. The City and the DPD have the Monitor's draft *Methodologies* for the majority of the paragraphs in the COC CJ.

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

V. REPORT CARD

As a tool to assist the reader of this report, the Monitor is attaching as Appendix B a "Report Card," which provides a "snapshot" of the DPD's compliance with each of the substantive provisions of the Consent Judgments. It also serves as a tool to summarize the DPD's progress in complying with those provisions. Specifically, the Report Card summarizes the *overall* grade

of compliance with each paragraph and subparagraph¹⁹ of the Consent Judgments for the five most recent quarters, including the current quarter, in which compliance has been assessed.²⁰ The quarter in which the most recent evaluation was made is also indicated, as is the quarter in which the Monitor anticipates conducting the next evaluation of compliance for each paragraph. The next evaluation is estimated based on available information at the date of issuance of this Quarterly Report and accompanying Report Card. These estimated dates are subject to change as information develops and circumstances change.

VI. FOCUS ISSUES

A. DOJ'S OBSERVATIONS AND RECOMMENDATIONS REGARDING THE CONDITIONS OF HOLDING CELLS

As reported in the Monitor's Report for the Quarter Ending May 31, 2005, the Monitor accompanied the DOJ and its Fire Safety and Prisoner Safety subject matter experts, as well as City, Detroit Fire Department (DFD) and DPD executive staff, on inspections of all DPD's precincts, except the Ninth Precinct). These inspections were initiated by the DOJ in response to a request by the DPD to exempt the First Precinct and other DPD buildings containing holding cells from certain COC CJ requirements until the new detention facility is constructed. The DOJ also requested these inspections in order to gain a better understanding of the current condition of the holding cells and to facilitate future discussions between the parties related to the interpretation of the term "holding cell" as it is defined in the COC CJ.²¹

During the current quarter, the DOJ submitted correspondence, dated July 27, 2005, in which it addressed various issues related to the inspections and the holding cells. The following is a summary of the DOJ's evaluations and concerns.

¹⁹ 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.

²⁰ The Monitor emphasizes that the Report Card provides summary information and should be read in conjunction with this report so that the reader may obtain a thorough understanding of the level and nature of the DPD's compliance with the provisions of the Consent Judgments.

²¹ As noted in previous quarterly reports, the City and the DOJ have differing interpretations of whether the First Precinct maintains a "holding cell." The parties have been engaged in ongoing discussions relating to the processing and detention of arrestees at the First Precinct. As of the end of the current quarter, the parties had not reached an agreement on the interpretation of the requirements of the COC CJ related to the First Precinct.

Definition of a Holding Cell²²

The DOJ reiterated its position that the holding cells definition includes all areas in the DPD Headquarters Building (and other buildings) where arrestees are confined, including the door-less steel bar enclosure where individuals are handcuffed in the First Precinct.

The DOJ maintains that the DPD has a responsibility to ensure the safety of arrestees in custody. The inspections reinforced the DOJ's belief that the current conditions in the holding cells continue to a pose potential dangerous situation for persons confined there.

First Precinct and Headquarters Building Compliance with COC CJ Requirements²³

The DOJ noted violations of the Life Safety Code and COC CJ Fire Safety requirements within the First Precinct and Headquarters Building similar to those described in the Monitor's Report for the Quarter Ending May 31, 2005, and stated that these buildings must comply with the all of the COC CJ requirements, including the Fire Safety provisions of the COC CJ. The DOJ expressed continued concern for the well-being of prisoners who are confined (handcuffed to fixed objects) in this building.

Minimal Remedial Measures

Although the DOJ stated that it believes that arrestees should not be processed in the First Precinct and Headquarters Building given their current level of risk, the DOJ recommended the following short-term measures until a different location is identified to process and question arrestees. The DOJ noted that these measures will not relieve the DPD of complying with all of the COC CJ requirements but, rather, will help to temporarily mitigate some of the more serious risks to prisoners.

- Detainees should not be brought above the first floor of the building for processing or questioning;
- The fire alarm system should be repaired or replaced so that it is fully operational and is equipped with an emergency power source that is activated automatically upon loss of power;
- All arrestees held in the building should be visually supervised by an officer at all times;

²² Paragraph Ik, COC CJ, defines "holding cell" as 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).

²³ According to the DPD's announcement regarding the restructuring, the First Precinct will be closed and arrestees will not longer be brought to the First Precinct or the Headquarters Building after the implementation of the restructuring. If this takes place (the restructuring is scheduled for implementation on September 26, 2005, which is after the end of this quarter) then the City and the DPD would no longer need to address the DOJ's concerns that were specifically related to the First Precinct and the Headquarters Building.

- As required by paragraph C16 and C24, emergency evacuation procedures must be developed and implemented to include procedures for evacuating detainees who are handcuffed to fixed objects;
- The violations noted during the inspection, including debris, flammable and combustible materials, and smoking paraphernalia in the basement, must be corrected;²⁴ and,
- The no smoking policy must be more carefully enforced throughout the building.

In addition to the short term measures recommended, the DOJ recommended the following:

- Emergency lighting at sufficient levels must be installed to activate automatically within 10 seconds upon loss of power.
- Smoke detection systems should be installed throughout the first floor.

Suicide Prevention and Security and Related Minimal Remedial Measures

The DOJ indicated that the suicide risks within the First Precinct and Headquarters Building remain present and for this reason the DPD must ensure that arrestees held in the building are visually supervised by an officer at all times. The DOJ also specifically noted that the hazards within the steel bar enclosure and the bathrooms used by detainees located in the First Precinct area of the building must be repaired, at a minimum.

Medical Care and Food Service Issues

The DOJ noted that the DPD must ensure that the food service and medical care requirements of the COC CJ are complied with while detainees are being held for questioning at the First Precinct and Headquarters Building for many hours.

Other Precincts²⁵

The results of the precinct inspections renewed the DOJ's concern for detainee safety.

Fire Safety

In the area of fire safety, the DOJ noted that some improvements have been made to precinct facilities since their initial investigation revealed dangerous conditions. For example, as previously reported by the Monitor, the City has purchased flammable liquid storage cabinets,

²⁴ The Monitor notes that the recent inspections by the Monitor revealed that the DPD has cleared and cleaned the area in the basement of the First Precinct building and no evidence of smoking was observed.

²⁵ As previously stated, the inspections conducted by the DOJ were initiated in response to a request by the DPD to exempt the First Precinct and other DPD buildings containing holding cells from certain COC CJ requirements until the new detention facility is constructed.

conducted fire drills, developed a no smoking policy, and developed fire safety procedures and emergency evacuations plans. Some of the issues included the purchase of electrical generators for back up power, which staff were unable to confirm whether the generators were hooked up to the electrical system. Also, smoke detectors and monitoring panels were installed but are the type for residential use (not incarceration settings). Overall, the DOJ reiterated that it is essential for the City to comply completely with the Life Safety Code in precincts where arrestees are detained. The DOJ also stated that the DPD and the DFD should work more closely to ensure that the City eliminates dangerous life safety risks for arrestees.

Suicide Prevention, Safety and Security

The DOJ expressed the following concerns and made the following recommendations regarding suicide prevention and security:

- The DOJ expressed concerns for inmate safety in cells with suicide hazards and stated that officers do not conduct frequent enough rounds through the housing areas.
- The suicide hazards in general population holding tanks and individual cells continue to present unacceptable risk, and rounds should be increased to at least every 15 minutes (instead of 30 minutes) if the DPD insists on continuing to use these cells before repairs are made.
- Arrestees are placed in either the misdemeanor bullpen or felony cells based on the arrestee's current charge without consideration of past offenses which could increase opportunities for arrestees to victimize each other.²⁶
- The lack of coordination to ensure that DRH psychiatrists are familiar with the conditions at various precincts to appropriately assess the safety of sending an arrestee back to the precinct;
- The DOJ staff encountered areas where neither natural nor artificial lighting was sufficient to enable officers to see arrestees in their cells. The DOJ noted that in lieu of immediate compliance with paragraph C44 in the short term, such situations must be rectified immediately;
- In precincts where disabled detainees are supposed to be sent, wheelchairs cannot be brought into the cells and arrestees must be removed from their cells to go to the public bathroom. These facilities are insufficient to accommodate the needs of disabled detainees and must be remedied;

²⁶ The DOJ cited paragraph C34, which states that the DPD shall ensure a reasonable level of safety of staff and prisoners through the use of appropriate security administration procedures.

- Compliance with the Life Safety Code is essential to any building where detainees will be brought while in custody; whether they will be there for a minimal or a significant period of time.

Although the DOJ expressed a willingness to discuss the scope of necessary renovations to buildings that may not be used for more than two years, it stated that the DPD cannot continue to hold arrestees in situations that present risks of self-harm or harm to other arrestees, and procedures should be adjusted accordingly.

As of the writing of this report, the City and the DPD had not yet responded to the DOJ's letter.²⁷ As mentioned above, on August 29, 2005, the Chief of Police announced the restructuring of the Department. The restructuring, if carried out as planned with regard to precinct locations and whether they will house detainees, may have some impact on the City and the DPD's ability to achieve compliance with certain paragraphs related to conditions of confinement.²⁸ As mentioned previously, if the First Precinct is closed as planned and no arrestees are taken there or to the Headquarters Building, then the DOJ's concerns listed above specifically in regard to the First Precinct and Headquarters Building will no longer be at issue.

B. TECHNICAL ASSISTANCE RELATED TO AUDIT SCHEDULING

In previous quarterly reports, the Monitor expressed concern that the DPD's audits were not being completed in a timely manner, that audits were being skipped, and that the audits that were completed had qualitative deficiencies. Although these concerns continue in the current quarter, the DPD's Audit Team collaborated with the Monitor, who provided TA to improve the DPD's scheduling and audit management processes for future audits, including setting appropriate

²⁷ After the end of the quarter, on October 10, 2005, the City and the DPD responded to DOJ's July 27, 2005 letter. The City's letter emphasized that the DOJ's concerns regarding the First Precinct have been solved by the closing of that precinct as part of the restructuring. The City also stated that all precincts with cross-bars in the holding cells have been closed as part of the restructuring. With regard to the DOJ's concerns about access for disabled arrestees in wheelchairs, the City stated that the American Disabilities Act does not require a public agency to make any alteration that presents an "undue financial hardship." However, the City did not specify how complying with the COC CJ with regard to disabled arrestees presents "undue" financial hardship. With regard to the precincts that will remain open, the City did not address the DOJ's concerns related to the Life Safety Code, including sprinkler systems; fire separators; and the routine testing, inspections and maintenance of fire equipment. The City also did not address the DOJ's concerns regarding a more careful enforcement of the no-smoking policy, and a classification system (for placing prisoners in holding cells) that factors in more than just the current charge.

²⁸ The First and Thirteenth Precincts (Central District) will be housed at the former Thirteenth Precinct (but will not house detainees); the Fifth and Ninth Precincts (Eastern District) will be housed at the former Ninth Precinct; the Seventh and Eleventh Precincts (Northeastern District) will be housed at the former Eleventh Precinct; the Tenth and Twelfth Precincts (Northwestern District) will be housed at the former Twelfth Precinct; the Sixth and Eighth Precincts (Western District) will be housed at the former Sixth Precinct; and the Second and Third Precincts (Southwestern District) will be housed at the new station when it opens (which will not house detainees) (these officers are currently at the old Third Precinct station). The Second Precinct will be a stand-alone detention facility (housing detainees from the Southwestern District, as well as detainees from other Districts if space is available).

internal due dates and utilizing all DPD audit personnel in a more efficient manner. The Audit Team staff immediately began using these processes, which were incorporated into their project management tools. However, the DPD's CRD project management staff recently indicated that due to personnel issues (including vacations and sick leave), and competing priorities, only two of the nine audits that are ultimately due by January 31, 2006 are currently on track to meet the internal due dates that have been established for them. The DPD Audit Team also indicated that the DPD's recent re-organization may affect its audit staffing levels.

While the Monitor is pleased with the collaborative efforts of the DPD Audit Team's management and the receptiveness of its staff, the Monitor notes that because of the number of audits required to be conducted under the Consent Judgments and the current staffing levels within the Audit Team, there is little room for alterations of internal due dates. These due dates must be adhered to as closely as possible in order to ensure that the audits can be submitted in a timely manner. The Monitor will report on the impact, if any, of staffing level changes in future quarterly reports.

C. DISSEMINATION OF POLICIES

As described in our previous quarterly reports, during the last year the DPD has developed or revised a significant number of directives and auditable forms, many of which were appropriately submitted to the Monitor and/or the DOJ for review, approval and an assessment of compliance. The Monitor recognizes the effort invested by the Department in creating and enhancing these policies and procedures. The Monitor also recognizes the investment of time and resources that will be required to implement these policies and forms and effectuate the resulting reforms. As a result, the Monitor has elected to evaluate each step in the process -- from development to dissemination to implementation -- only when the DPD has fully completed the prior step.

Since the inception of the Consent Judgments, the Monitor has reiterated the importance of the adequate and timely dissemination of directives once they are approved and/or evaluated by the DPD, the Board of Police Commissioners (BOPC), the Monitor, and in certain cases, the DOJ. During the quarter ending May 31, 2005, the Monitor conducted testing and determined that certain policies had been adequately disseminated to DPD personnel.²⁹ However, during the current quarter, the Monitor again tested the dissemination of various directives approved by the DPD and the BOPC and, as described in detail in this report, determined that these directives

²⁹ The policies previously tested and found to be adequately disseminated are: Directive 201.4, *Canine Unit*; Directive 202.1, *Arrests*; Directive 202.2, *Search and Seizure*; Directive 203.1, *Crime Scene Investigation*; Directive 203.9, *Custodial Interrogation*; Directive 304.1, *Firearms*; Directive 304.3, *Chemical Spray*; Directive 304.4, *PR-24*; Directive 403.2, *Infectious Disease*; and Training Directive 04-02, *Positional Asphyxia*.

were not adequately disseminated,³⁰ resulting in the DPD's non-compliance with a number of Consent Judgment paragraphs.

Given the inconsistency with the Monitor's findings from the previous quarter, the Monitor initiated follow-up conversations with the DPD to ensure that all documentation had been forwarded for review. The DPD acknowledged that certain precincts and specialized units were experiencing difficulties with the dissemination process, including a lack of uniformity in the forms requiring signatures and illegible signatures on the forms. The DPD further represented that it had undertaken remedial and corrective measures to address these issues. At a Compliance Liaison Officer meeting on August 9, 2005, DPD personnel were advised that the Department Publication Receipt is now a mandatory form that must be completed as part of the dissemination process.

³⁰ The policies tested this quarter and found **not** to be adequately disseminated are: Directive 202.7, *Foot Pursuit*, Directive 404.1, *Definitions*, Directive 401.1, *Performance Evaluations*, Directive 102.3, *Code of Conduct*, Directive 304.2, *Use of Force*, Training Directive 04-03, *Use of Force Continuum*, Directive 305.4, *Holding Cells*, Training Directive 04-05, *Suicide Prevention*, Directive 305.1, *Detainee Intake and Assessment*, Directive 305.5, *Detainee Health Care*, and Directive 305.7, *Detainee Transportation*.

VII. MONITOR'S PLEDGE

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

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

³¹ As required by paragraphs U142 and C97.

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

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

I. USE OF FORCE POLICY

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

A. GENERAL USE OF FORCE POLICIES

This section comprises paragraphs U14-19. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2005, at which time the Monitor withheld a determination of the Department's compliance pending its implementation of Directive 304.2, *Use of Force*.³² The Monitor is scheduled to review the implementation of the directive and again assess the DPD's compliance with these paragraphs during the quarter ending May 31, 2006.³³

B. USE OF FIREARMS POLICY

This section comprises paragraphs U20-23. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004. The Monitor again assessed

³² This directive, which contains the policies required by paragraphs U14-19, was approved by the DOJ on April 14, 2005 and by the BOPC on May 26, 2005. It was disseminated by the DPD on May 27, 2005 with an effective date of June 27, 2005. The DPD has three months from the DOJ approval date to implement the policy.

³³ Throughout this report, for those paragraphs not assessed during the current quarter, the Monitor will include a brief description of the basis for its previous compliance assessments. The Monitor will not update any progress on these paragraphs since the last assessment, outside of any submissions or approvals outlined in the Executive Summary, until the next quarter in which the paragraph is under review by the Monitor.

the DPD's compliance with these paragraphs during the current quarter.³⁴ The results of our current assessments follow.

Paragraphs U20-23 – Firearms Policy; Firearms Re-qualification; Firearms Policy Regarding Moving Vehicles; Firearms and Ammunition

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.

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.

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.

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.

Background

The Monitor last assessed the DPD's compliance with paragraphs U20-23 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each of these paragraphs. The DPD had resubmitted proposed Directive 304.1, *Firearms*, which was meant to address the requirements of U20-23, to the DOJ for review and approval. The DOJ reviewed the policy, and provided TA to the DPD on July 13-14, 2004.³⁵ The DPD was still revising the policy to address the DOJ's comments and recommendations as of the end of the quarter.

³⁴ Throughout this report, for those paragraphs assessed and reported on during the current reporting period ("current quarter"), information regarding the Monitor's most recent compliance assessments, and the basis for those assessments, can be found in the "Background" sections of the respective paragraphs.

³⁵ There are references to the DOJ providing TA to the DPD throughout this report. The DOJ has provided TA to the DPD on compliance issues related to various paragraphs for which the DOJ has review and approval, primarily by reviewing the policies submitted by the DPD and providing recommendations from the DOJ's subject matter consultants. For example, paragraph U18 provides the DOJ review and approval of the use of force policy. The parties have agreed that 'use of force policy' includes paragraphs U14-26.

Current Assessment of Compliance

On February 24, 2005, the DPD resubmitted the revised Directive 304.1, *Firearms*, to the DOJ for review and approval. The DOJ responded with a letter granting final approval of the directive on March 23, 2005. The DPD disseminated the directive on April 9, 2005, with an effective date of May 2, 2005.

In order to test dissemination of Directive 304.1, the Monitor selected a random sample of officers and requested documentation evidencing its dissemination to the selected officers.³⁶ The DPD provided documentation evidencing the receipt of the directive for all 94 of the officers selected.³⁷

In order to test implementation of the policy under paragraphs U20 and U21, the Monitor submitted a document request to the DPD on August 15, 2005, requesting listings of officers who completed the most recent bi-annual firearms training and qualification, including information about officers who failed to qualify. The Monitor received a response on August 24, 2005.³⁸ In addition, the Monitor received the firearms training protocol required by paragraph U113. However, the protocol that was received does not address all of the requirements of the paragraph. Furthermore, it is unclear how the DPD will accomplish professional night training, as required by the paragraph, since it currently does not have facilities that allow for nighttime firearms training.

The Monitor also inquired as to what internal controls the DPD has developed to ensure its compliance with paragraph U23 requirements to prohibit officers from possessing or using unauthorized firearms or ammunition and ensure that officers are carrying the authorized number of rounds. The DPD indicated that it is developing an internal audit process.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U20-23.

C. INTERMEDIATE FORCE DEVICE POLICY

This section comprises paragraph U24. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

³⁶ A random, statistical sample of 94 officers was selected out of a population of approximately 3,810 listed officers. The Monitor utilized a confidence level of 95% with an acceptable error rate of +/- four percent.

³⁷ The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of officers acknowledging receipt of policy.

³⁸ The Monitor will complete its evaluation of the documents received during the quarter ending November 30, 2005.

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.

Background

The Monitor last assessed the DPD's compliance with paragraph U24 during the quarter ending August 31, 2004, finding the DPD in non-compliance. During that quarter, the DPD selected PR-24 as its intermediate force device. Training Directive 04-06, *PR-24 Collapsible Baton*, was initially approved by the BOPC on July 22, 2004. Additionally, the DPD was in the process of revising its UOF policies, including Directive 304.2, *Use of Force*, and Training Directive 04-03, *Use of Force Continuum*, both of which are meant to address the requirements of paragraph U24, among others.³⁹ The Monitor understood that a roll-out plan for the intermediate force device was being developed, which, according to the DPD, will include information concerning the UOF continuum, procurement, training and integration.

Current Assessment of Compliance

On February 24, 2005, the DPD resubmitted Training Directive 04-06 to the DOJ for review and approval. The DOJ provided the DPD with conditional approval in a letter dated March 23, 2005.⁴⁰ The error was corrected and the DPD resubmitted the training directive on March 23, 2005.

In order to test dissemination of the Training Directive 04-06, the Monitor selected a random sample of officers and requested documentation evidencing its dissemination to the selected officers.⁴¹ The DPD provided documentation evidencing the receipt by 92, or 97.9%, of the 94 officers selected.⁴²

³⁹ In accordance with paragraph U18, Directive 304.2 must be submitted to the DOJ for review and approval in order to comply with the requirements of this paragraph. The DOJ reviewed the policy and provided TA to the DPD on July 13-14, 2004.

⁴⁰ The DOJ indicated that the directive contained a typographical error and approval was conditional upon the error being corrected.

⁴¹ A random, statistical sample of 94 officers was selected out of a population of approximately 3,711 listed officers. The Monitor utilized a confidence level of 95% with an acceptable error rate of +/- four percent.

⁴² The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of certain officers acknowledging receipt of policy.

With regard to implementation of Training Directive 04-06, the Monitor has not yet received a copy of the roll-out plan for the intermediate force device. According to the DPD, a Train-the-Trainer course is being facilitated to roll out the PR-24 and to ensure that certifications for current instructors are up-to-date.

In addition, the DPD resubmitted Training Directive 04-03, *Use of Force Continuum*, to the DOJ for review and approval on February 24, 2005. The DOJ provided the DPD with final approval of the training directive in a letter dated March 23, 2005. The DPD disseminated the training directive on April 18, 2005, with an effective date of May 9, 2005. In order to test dissemination of Training Directive 04-03, the Monitor selected a random sample of officers and requested documentation evidencing its dissemination to the selected officers.⁴³ The DPD provided documentation evidencing the receipt of the directive for 37, or 39.4%, of the 94 officers selected.⁴⁴

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

D. CHEMICAL SPRAY POLICY

This section comprises paragraphs U25-26. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessment follow.

Paragraphs U25 and U26 – Chemical Spray Policy; Chemical Spray Prohibition

Paragraph U25 states that the DPD shall 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.

⁴³ As described above, the Monitor selected a random, statistical sample of 94 officers out of a population of approximately 3,711 listed officers, utilizing a confidence level of 95% with an acceptable error rate of +/- four percent.

⁴⁴ As described above, the DPD utilized a listing that identified the policies disseminated and the date disseminated, along with the signatures of officers acknowledging receipt of policy.

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.

Background

The Monitor last assessed the DPD's compliance with paragraphs U25 and U26 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each due to the fact that the DPD was in the process of revising its policy to include the comments and recommendations provided by the DOJ through TA on July 13, 2004.

Current Assessment of Compliance

On October 1, 2004, the DPD resubmitted proposed Directive 304.3, *Chemical Spray*, to the DOJ for review and approval. The DOJ reviewed the policy and provided comments and recommendations to the DPD in a letter dated December 17, 2004. In this letter, the DOJ stated that although the resubmitted policy was improved, there were still concerns with three main areas, (1) section 304.3-6.1 – Treatment – Exposure to Chemical Spray, (2) section 304.3-5.1 – The Usage Criteria and (3) section 304.3-7 – The Discharge of a Chemical Spray.

The DPD revised the directive to address the DOJ's concerns and resubmitted it to the DOJ for review and approval on February 24, 2005. The DOJ reviewed the resubmitted policy and granted the DPD final approval with additional TA in a letter dated March 23, 2005. The DPD responded immediately by providing the DOJ with a resubmission of Directive 304.3 on March 23, 2005, which addressed all of the DOJ's concerns.

The DPD disseminated Directive 304.3 on April 9, 2005, with an effective date of May 2, 2005. In order to test dissemination of the directive, the Monitor selected a random sample of officers and requested documentation evidencing its dissemination to the selected officers.⁴⁵ The DPD provided documentation evidencing the receipt of the directive for all 94 of the officers selected.⁴⁶

In order to begin testing implementation of the directive, the Monitor submitted a document request to the DPD on August 12, 2005, requesting copies of all Police Action Incident Reports (PAIR) and UF-002 forms related to the use of chemical spray submitted between the dates of June 3, 2005 and August 3, 2005. The Monitor received a response on August 24, 2005.⁴⁷

⁴⁵ A random, statistical sample of 94 officers was selected out of a population of approximately 3,810 listed officers. The Monitor utilized a confidence level of 95% with an acceptable error rate of +/- four percent.

⁴⁶ The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of certain officers acknowledging receipt of policy.

⁴⁷ The Monitor will complete its evaluation of the documents received during the quarter ending November 30, 2005.

The Monitor also requested a listing of external complaints received during the same time period related in any way to the use of chemical spray. On August 24, 2005, the Monitor received a response citing two external complaints involving the use of chemical spray. The Monitor will follow up on this information, as well as the PAIR and UF-002 forms, during the quarter ending November 30, 2005. Furthermore, Training Directive 04-07 and related form, the Supervisor's Investigation Report (SIR UF-002a), are referred to in Directive 304.3 and are relevant to the reporting and investigation of the use of chemical spray. These documents have not yet been disseminated.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U25 and U26.

II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

This section of the UOF CJ (paragraphs U27-41) requires the DPD to make significant changes to its policies related to general investigations of police action and to investigations of UOF, prisoner injury, critical firearms discharges and in-custody deaths. In addition to various changes in general investigatory procedures, reports and evaluations, the UOF CJ requires that the DPD develop a protocol for compelled statements⁴⁸ and develop an auditable form⁴⁹ to document any prisoner injury, UOF, allegation of UOF and instance where an officer draws a firearm and acquires a target. The DPD Shooting Team must respond to and investigate all critical firearms discharges and in-custody deaths, and the DPD must develop a protocol for conducting investigations of critical firearms discharges. The DPD's Internal Controls Division (ICD) must investigate a variety of incidents, pursuant to the requirements of the UOF CJ, including all serious UOF (which includes all critical firearm discharges), UOF that cause serious bodily injury, and all in-custody deaths. Finally, the UOF CJ requires the DPD to create a command level force review team that is charged with critically evaluating and reporting on critical firearms discharges and in-custody deaths.

A. GENERAL INVESTIGATIONS OF POLICE ACTION

This section comprises paragraphs U27-33. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U27-30 and U32-33 – Revision of General Investigation Policies; Investigation Procedures; Investigatory Interview Procedures; Prohibitions of Investigatory Interviews; Investigatory Reports and Evaluations; Review of Investigations

Paragraph U27 requires the DPD and the City to revise their policies regarding the conduct of all investigations to ensure full, thorough and complete investigations. All investigations must, to the extent reasonably possible, determine whether the officer's conduct was justified, and the DPD and the City must prohibit the closing of an investigation being conducted by the DPD and/or the City simply because a subject or complainant is unavailable, unwilling or unable to cooperate, including a refusal to provide medical records or proof of injury.

⁴⁸ 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).

⁴⁹ 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.

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 the criteria listed in this paragraph.

Paragraph U29 requires the DPD and the City to revise their procedures for all investigatory interviews to require the criteria listed in this paragraph.

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

Paragraph U32 requires the DPD to revise its policies regarding all investigatory reports and evaluations to require the criteria listed in this paragraph.

Paragraph U33 requires the DPD to revise its policies regarding the review of all investigations to require those criteria listed in this paragraph.

Background

The Monitor last assessed the DPD's compliance with paragraphs U27-30 and U32-33 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each. The DPD had resubmitted Directive 304.2, *Use of Force*, and Training Directive 04-07, *Use of Force Reporting/Investigating*, to the DOJ for review and approval during the quarter; however, the DOJ was still in the process of reviewing the resubmissions.

Current Assessment of Compliance

The DPD received final approval from the DOJ for Directive 304.2, *Use of Force*, on April 14, 2005. According to the DPD, this directive was submitted to the BOPC for approval on April 25, 2005, and the BOPC approved it on May 26, 2005. Directive 304.2 was disseminated to the field on May 27, 2005, with an effective date of June 21, 2005. In order to test the dissemination of the directive, the Monitor selected a random sample of 94 officers and requested documentation evidencing its receipt by the selected officers.⁵⁰ The DPD provided documentation evidencing the receipt of the directive for only 22, or 23.4%, of the 94 officers selected.⁵¹

⁵⁰ A random, statistical sample of 94 officers was selected out of a population of approximately 3,711 listed officers. The Monitor utilized a confidence level of 95% with an acceptable error rate of +/- four percent.

⁵¹ The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of officers acknowledging receipt of policy.

In addition to Directive 304.2, on May 17, 2005 and again on July 11, 2005 the DPD resubmitted to the Monitor and the DOJ Training Directive 04-07, *Use of Force Reporting/Investigating*, and the corresponding forms; UF-002, *Use of Force/Detainee Injury Report*, to be filled out immediately following the incident, and UF-002-B, *Use of Force/Detainee Injury Report*, to be completed by a non-involved supervisor. The Monitor submitted a memorandum to the DPD on June 10, 2005, outlining concerns with the training directive and related forms. The DOJ submitted a letter to the DPD on July 11, 2005, providing comments and recommendations. On August 2, 2005, the DPD resubmitted Training Directive 04-07 and corresponding forms after making the revisions suggested by the Monitor and the DOJ. The Monitor found that the training directive and related forms meet the requirements of paragraphs U27-30 and U32-33. The DOJ did not express any further concerns regarding the directive or related forms. As of the end of the quarter the DPD has not disseminated the directive and related forms.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U27-30 and U32-33.

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).

Background

The Monitor last assessed the DPD's compliance with paragraph U31 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that the Garrity Protocol was still under review by the Monitor at the end of the quarter. The Monitor and the DPD participated in conversations regarding the protocol throughout the quarter, and the parties agreed to discuss further revisions to the protocol in future quarters.

Current Assessment of Compliance

Throughout the last two quarters, the parties have participated in numerous conversations regarding Training Directive 04-4; *Garrity Protocol*. The Monitor met with the DPD on March 23, 2005 to discuss and outline several concerns with the Protocol. The DPD resubmitted the Garrity Protocol on March 26, 2005 based on recommendations made by the Monitor. The DPD and Monitor again participated in further conversations regarding the protocol on April 8, 2005. Following these conversations, the DPD resubmitted the Garrity Protocol on April 11, 2005 to the Monitor. After the Monitor provided TA, the DPD resubmitted a revised Garrity Protocol on May 18, 2005 to the Monitor and the DOJ. The Monitor provided the DPD with a memorandum on August 17, 2005 outlining the comments and recommendations of the Monitor and the DOJ.

As of the end of the current quarter, the DPD had not submitted a revised protocol that addressed the comments and recommendations contained in the August 17, 2005 memo.⁵²

Based on the foregoing, the Monitor withholds a determination of the DPD's compliance with paragraph U31.

B. UOF AND PRISONER INJURY INVESTIGATIONS

This section comprises paragraphs U34-36. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2005, at which time the Monitor found the Department in non-compliance with each. The policies required by paragraphs U34-36 were included in Directive 304.2, *Use of Force*, which was disseminated by the DPD on May 27, 2005, with an effective date of June 27, 2005. The requirements of Paragraphs U34 and U35 are also addressed in Training Directive 04-07, *Use of Force Reporting/Investigations*, and Auditable Forms UF-002, *Detroit Police – Use of Force/Detainee Injury Report* and UF-002-A, *Detroit Police – Supervisor Investigation and Report*, which required additional revisions before they could be disseminated. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2005.

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

This section comprises paragraphs U37-41. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2005, finding the DPD in non-compliance with each. According to the DPD, the requirements of paragraphs U37-41 are incorporated into Directive 304.5, *Board of Review*. The Monitor reviewed the directive, as well as the Force Investigation Section (FIS) SOP and the Internal Affairs Section (IAS) SOP, and found that the DPD had codified the requirement to form a "shooting team" in both Directive 304.5 and the FIS SOP. However, the documents still lacked consistency with regard to the investigation of critical firearm discharges and in-custody deaths and there was no readily identifiable protocol for conducting critical firearm discharge investigations⁵³. The Monitor also determined that Directive 304.5 addressed most, but not all, of the requirements of paragraphs U39-41.

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2005.

⁵² The DPD resubmitted the Garrity Protocol on September 13, 2005, after the close of the current quarter. The DOJ and the Monitor are currently in the process of reviewing the resubmission.

⁵³ The Monitor noted that there are multiple documents that contain partial components of the protocol for conducting investigations of critical firearm discharges, causing confusion and leading to concern that the protocol will not easily be located and followed by the relevant personnel.

III. ARREST AND DETENTION POLICIES AND PRACTICES

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

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

A. ARREST POLICIES

This section comprises paragraphs U42-43. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

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

Background

The Monitor last assessed the DPD's compliance with paragraphs U42 and U43 during the quarter ending May 31, 2005, at which time the Monitor withheld a determination of compliance as an agreement had yet to be reached between the DPD and the DOJ regarding an acceptable definition of probable cause.⁵⁴

Current Assessment of Compliance

On August 23, 2005, the Monitor received an electronic correspondence from the DPD informing that the DOJ and the City had agreed to add a footnote to certain policies to further explain the UOF CJ probable cause definition in lieu of continuing with the City's pending motion before the Court to modify the language of the definition of probable cause in the UOF CJ.

The parties have agreed that no changes will be made to language of the UOF CJ; however, the following directives will be revised to include the proposed footnote: 202.1, *Arrests*; 404.1, *Definitions*; 202.2, *Search and Seizure*; 203.1, *Crime Scene Investigation*; and 203.9, *Custodial Questioning*. The DPD indicated that these revised directives will be placed on the Department Intranet and a Special Order will be disseminated to include this proposed footnote and a listing of the revised policies which will contain the footnote. If the Court approves the parties' agreement, the DPD will disseminate the Special Order department-wide. The Monitor will assess the DPD's compliance with paragraphs U42-43 once the Special Order is disseminated.

Given that the issue regarding the definition of probable cause has not yet fully been resolved, the Monitor continues to withhold a determination of the DPD's compliance with paragraphs U42-43 pending dissemination of the Special Order.

B. INVESTIGATORY STOP POLICIES

This section comprises paragraphs U44-45. During the quarter ending May 31, 2005, the Monitor commenced its assessment of the DPD's compliance with these paragraphs, but did not complete its evaluation. The Monitor determined that revised Directive 202.2, *Search and Seizure*, and revised Auditable Form UF-003, *Stops & Frisks*, adequately address the requirements of paragraphs U44 and U45, and the DPD effectively disseminated Directive 202.2. The Monitor will commence testing the implementation of the directive during the quarter ending November 30, 2005.

⁵⁴ The City filed a motion to modify the definition of probable cause on April 19, 2005. The DOJ filed a response opposing the motion on May 13, 2005.

C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES

This section comprises paragraphs U46-48. During the quarter ending May 31, 2005, the Monitor found the DPD in compliance with paragraph U47 and commenced but did not complete its assessment of the DPD's compliance with paragraphs U46 and U48. The Monitor determined that Directive 203.9, *Custodial Questioning*, and Directive 203.1, *Crime Scene Investigation*, adequately address the requirements of paragraphs U46 and U48 for both seizures and conveyances, and the DPD effectively disseminated the directives.⁵⁵ The Monitor also concluded that revised Auditable Form UF-005, *Interviews, Interrogations and Conveyances*, addressed the paragraphs' requirements. The Monitor will commence testing the implementation of the directives during the quarter ending November 30, 2005.

D. PROMPT JUDICIAL REVIEW POLICIES

This section comprises paragraphs U49-51. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph U49 – Revision of Policies and Requirements of Arraignment within 48 Hours

Paragraph U49 requires the DPD to revise its policies to require prompt judicial review, as defined in the UOF CJ, for every person arrested by the DPD. The DPD must develop a timely and systematic process for all arrestees to be presented for prompt judicial review or to be released.

Background

The Monitor last assessed the DPD's compliance with paragraph U49 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although Directive 202.1, *Arrests*, met many of the requirements of paragraph U49, it did not specifically delineate or reference a systematic process to ensure that most, if not all, arrestees would be arraigned within 48 hours or released. The DPD was developing and documenting such a systematic process as of the end of the quarter. In addition, Directive 202.1 and Auditable Form UF-004, relating to prompt judicial review, had not been implemented as of the end of the quarter.

⁵⁵ Both Directives were approved by the DOJ on March 23, 2005 and subsequently disseminated to the field on April 11, 2005. The Directives became effective on May 2, 2005. Compliance with U47 was achieved with the approval by the DOJ; implementation of the directives will be tested under paragraphs U46 and U48.

Current Assessment of Compliance

During the reporting period ending May 31, 2005, the Monitor completed its testing of Directive 202.1, *Arrests*, and determined that it had been adequately disseminated to the field.

During the current reporting period, the DPD provided for review its *Daily Prisoner Report* (DPR) and related Instruction Sheet in an effort to meet the “systematic process” requirement of paragraph U49. The Monitor reviewed an electronic copy of the DPR and Instruction Sheet and assessed their usability and overall effectiveness as a systematic process. The Monitor verbally communicated to the DPD that the DPR and related Instruction Sheet, although useful; do not adequately address the “systematic process” requirement of paragraph U49. Specifically, although the DPR form appears to contain adequate information for tracking prisoners, the Instruction Sheet is not comprehensive and does not designate the persons or entities within DPD who are responsible for ensuring the proper completion and review of the DPR.

According to the DPD, Auditable Form UF-004, relating to prompt judicial review and warrant request requirements, was placed on the DPD intranet. Once the DPD has developed and included a systematic process to ensure arrestees are arraigned within 48 hours, the Monitor will commence testing the implementation of paragraph U49.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U49.

Paragraph U50-51 – Requirement of Warrant Request, Documentation of Late Request for Arraignment Warrants, and Late Arraignments

For each arrestee, paragraph U50 requires the DPD to submit to the prosecutor’s office, within 24 hours of the arrest, a warrant request for arraignment on the charges underlying the arrest.

Paragraph U51 requires the DPD to document on an auditable form all instances in which an arraignment warrant is submitted more than 24 hours after the arrest, all instances in which it is not in compliance with the prompt judicial review policy, and all instances in which extraordinary circumstances delayed the arraignment. The documentation must occur by the end of the shift in which there was:

1. A failure to request an arraignment warrant within 24 hours;
2. A failure to comply with the prompt judicial review policy, or
3. An arraignment delayed because of extraordinary circumstances.

Background

The Monitor last assessed the DPD’s compliance with paragraphs U50-51 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each due to the fact that

Directive 202.1 *Arrests*, and Auditable Form UF-004, relating to prompt judicial review, had not yet been disseminated to the field.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph U49, above, the Monitor completed its testing of Directive 202.1 *Arrests*, and determined that it was adequately disseminated to the field. However, compliance with this paragraph is dependant on compliance with paragraph U49, as the systematic process to ensure prompt judicial review must also address the 24-hour warrant request requirement of this paragraph. The Monitor will begin testing the DPD's compliance with the requirements of paragraphs U50-51 once compliance with paragraph U49 has been attained.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U50-51.

E. HOLD POLICIES

This section comprises paragraphs U52-53. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U52-53 – Revision of Hold Policies; Documentation of All Holds

Paragraph U52 requires the DPD to revise its hold policies to define a hold as that term is defined in the UOF CJ and require that all holds be documented. The policy must establish a timely and systematic process for persons in DPD custody who have holds issued by a City of Detroit court to have those holds cleared by presenting the arrestee to the court from which the warrant was issued or the setting and posting of bond where applicable. The fact that an arrestee has not been arraigned or charged on the current arrest shall not delay this process.

Paragraph U53 requires the DPD to document all holds, including the time each hold was identified and the time each hold was cleared. On a daily basis, the DPD must document on an auditable form each instance in which a hold is not processed within twenty-four hours.

Background

The Monitor last assessed the DPD's compliance with paragraphs U52-53 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each. Although the DPD had drafted a revised Directive 305.2, *Detainee Registration*, and Auditable Form UF-007, these

documents had not been disseminated as of the end of that quarter, and they were not submitted to the Monitor until after the end of that quarter.⁵⁶

Current Assessment of Compliance

The Monitor reviewed revised Directive 305.2, *Detainee Registration*, and Auditable Form UF-007, and determined that the policy and form adequately address the requirements of these paragraphs. The DPD indicated that this policy was disseminated on August 15, 2005, with an effective date of September 12, 2005. Due to the date of dissemination (near the end of the quarter) and the difficulties recently experienced by the DPD with the dissemination of other directives, as outlined in the above Focus Issue, the Monitor will test the dissemination of this directive during the next regularly scheduled review.

Based on the foregoing, the Monitor is withholding a determination of compliance with paragraphs U52-53.

F. RESTRICTION POLICIES

This section comprises paragraphs U54-55. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U54-55 – Restriction Policies; Documentation of Restrictions

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

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.

⁵⁶ Paragraph U53 has been deemed by the Monitor to be an implementation paragraph dependent upon the issuance of adequate policy pursuant to paragraph U52. Under the *Methodologies* employed by the Monitor in assessing compliance, the DPD will not be able to comply with paragraph U53 until the policy requirements of paragraph U52 are addressed.

Background

The Monitor last assessed the DPD's compliance with paragraphs U54-55 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each. Although the Monitor determined that Directive 305.4, *Holding Cell Areas*, adequately addressed the requirements of paragraphs U54 and U55, the directive had not been disseminated to the field. In addition, the DPD had yet to finalize and implement related Auditable Form UF-008.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraphs U54-55 during the current quarter, the Monitor selected a random sample of officers and requested documentation evidencing the dissemination of Directive 305.4, *Holding Cell Areas*, to the selected officers.⁵⁷ The DPD provided documentation evidencing the receipt of the directive for only 36, or 38.3%, of the 94 officers selected.⁵⁸

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U54 and 55.⁵⁹

G. MATERIAL WITNESS POLICIES

This section comprises paragraphs U56-57. The Monitor last assessed the DPD's compliance with paragraph U56 during the quarter ending May 31, 2005 and paragraph U57 during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U56-57 – Revision of Material Witness Policies; Requirement to Obtain a Court Order

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.⁶⁰ Furthermore, the DPD must remove the term "police witness" from all DPD policy and procedure.

⁵⁷ A random, statistical sample of 94 officers was selected out of a population of approximately 3,711 listed officers. The Monitor utilized a confidence level of 95% with an acceptable error rate of +/- four percent.

⁵⁸ The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of officers acknowledging receipt of policy.

⁵⁹ The Monitor will conduct additional testing of the dissemination of the directive once the DPD indicates that it has been adequately disseminated. The Monitor will commence testing implementation of the directive, including a review of completed Auditable Form UF-008, once the Monitor determines that the directive has been adequately disseminated.

⁶⁰ Paragraph 1aa of the UOF CJ defines a material witness.

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

Background

The Monitor last assessed the DPD's compliance with paragraph U56 during the quarter ending May 31, 2005. The Monitor concluded that Directive 202.1, *Arrests*, met the policy requirements of paragraph U56. The Monitor also determined that the directive was adequately disseminated to the field; however, the Monitor did not complete its testing of the implementation of paragraph U56 requirements as of the end of that quarter.

The Monitor last assessed the DPD's compliance with paragraph U57 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that it had not implemented Auditable Form UF-006 (Detention of Material Witness) as of the end of that quarter. The Monitor provided additional TA for this and other auditable forms during February 2005.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph U49, above, the Monitor previously determined that Directive 202.1, *Arrests*, which addresses the policy requirements of paragraphs U56-57, had been adequately disseminated to the field. In addition, the Monitor has not identified any reference to the term "police witness" in DPD policies and procedures.

In order to test implementation of this policy during the current quarter, the Monitor attempted to identify and evaluate the appropriate handling of any Material Witnesses held by the DPD by requesting from the DPD a listing of all Material Witnesses and related Court Orders and auditable forms for the period March 21, 2005, through July 31, 2005.⁶¹ As of the end of the quarter, the DPD had not provided any documentation related to this request.⁶²

The Monitor also queried the Wayne County Prosecutor's Office and the Wayne County Public Defender's Office about the existence of any Material Witnesses. Representatives from both offices indicated that information related to Material Witnesses is not tracked and they could not provide any assistance.

⁶¹ This document request was made on August 12, 2005.

⁶² After the end of the quarter, on September 19, 2005, the Monitor received documentation from the DPD related to this request. The Monitor has not yet completed its review of this information.

As an additional step, the Monitor initiated contact with the Office of the Chief Investigator (OCI).⁶³ The Monitor determined that the OCI lacks the technological ability to identify, quantify and consolidate any Material Witness information electronically, and that it would take several staff persons countless hours to conduct a manual review to accommodate a request for this type of information.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U56 and U57.

H. DOCUMENTATION OF CUSTODIAL DETENTION

This section comprises of paragraph U58. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2005, at which time the Monitor found the DPD in non-compliance as it had not addressed the requirements of the paragraph as of the end of the quarter. The DPD requested the Officer in Charge (OIC) of Science and Technology Bureau to formulate a timeline (prisoner tracking software) for documentation of Custodial Detention (Arrest Booking Module, which incorporates the booking of detainees with the court system); the purchase order for this software was at City Council pending approval. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending November 30, 2005.

I. COMMAND NOTIFICATION

This section comprises paragraphs U59-60. The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending May 31, 2005, at which time the Monitor withheld a determination of the DPD's compliance with the paragraph. Although the DPD had made some progress in addressing the policy requirements of the paragraph through multiple directives, agreement had yet to be reached regarding an acceptable definition of probable cause. The Monitor is scheduled to again assess the DPD's compliance with paragraph U59 during the quarter ending November 30, 2005. The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U60 – Daily Reporting Requirements

Paragraph U60 requires the Commander of each precinct or, if applicable, a specialized unit to review in writing all reported violations of the DPD's Prompt Judicial Review, Holds,

⁶³ The inquiry was an attempt to determine whether any complainants alleged false arrest or imprisonment possibly indicative of a Material Witness held without a court order.

Restrictions, and Material Witness Detention policies. 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.

Background

The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although the Monitor determined that Directive 202.1, *Arrests*, adequately addressed the Commanding Officer's (CO) review of material witness and prompt judicial review policies and provided the necessary guidance related thereto, the review of Holds and Restrictions had not yet been addressed. The DPD advised that Directive 305.2, *Detainee Registration* and Directive 305.4, *Holding Cell Areas*, would address the forms required for that review.

Current Assessment of Compliance

Since the last assessment, the Monitor completed its review of Directive 305.2, *Detainee Registration*, and Directive 305.4, *Holding Cell Areas*, and determined that these policies, together with Directive 202.1, *Arrests*, and the related auditable forms, adequately address the requirements of this paragraph.

As described in the Current Assessment of Compliance for paragraph U49, above, the Monitor previously determined that Directive 202.1, *Arrests*, had been adequately disseminated to the field. However, as described in the Current Assessment of Compliance for paragraphs U54-55, above, in regards to the dissemination of Directive 305.4, *Holding Cell Areas*, the DPD provided documentation evidencing the receipt of the directive for only 38.3% of the officers selected for testing. The DPD indicated that Directive 305.2, *Detainee Registration*, was disseminated on August 15, 2005, with an effective date of September 12, 2005.⁶⁴

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U60.⁶⁵

⁶⁴ The Monitor will test the dissemination of this directive during the next regularly scheduled compliance assessment for this paragraph.

⁶⁵ The Monitor will conduct additional testing of dissemination once the DPD indicates that the directives have been adequately disseminated. The Monitor will commence testing implementation of the directive, including a review of completed auditable forms and their subsequent review by the appropriate COs, once the Monitor determines that the directive has been adequately disseminated.

IV. EXTERNAL COMPLAINTS

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.⁶⁶

Section IV's introductory section comprises paragraphs U61-63. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2005. The Monitor found the DPD in compliance with subparagraphs c and d of paragraph U62, as a PSA that meets the minimum requirements of describing the complaint process was airing nightly on cable television government channels 10 and 22 and the DPD continued to have permanent placards posted in the lobby of each of the twelve precincts. The Monitor commenced but did not complete its assessment of compliance with subparagraph U62b; the OCI implemented several of the Monitor's recommendations to relative to compliance with this subparagraph, but the Monitor had not yet re-checked the facilities to see if they all have the relevant information.

The Monitor found the DPD in non-compliance with paragraphs U61 and U63 due to the fact that Directive 102.6, *Citizen Complaints Policy*, had not yet been completed or disseminated as of the end of the quarter. In addition, the dissemination and implementation of Informational Brochure/Contact Forms did not take place within 60 days of the DOJ's approval and the Monitor concluded that the DPD must take further steps to ensure that officers are actually carrying the forms in their patrol cars. However, the Monitor commended the DPD for creating an inspection function to determine whether the requirements of this paragraph are being implemented and for creating procedures to ensure accountability regarding the informational brochures/contact forms.

The Monitor will continue its assessment of compliance with subparagraph U62b, and again assess compliance with paragraphs U61, U63 and subparagraphs U62c and d during the quarter ending November 30, 2005.

A. INTAKE AND TRACKING

This section comprises paragraphs U64-66. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2005. The Monitor withheld a determination of the DPD's compliance with paragraph U64 pending a decision by the DOJ regarding the proper interpretation of certain language contained in the paragraph. The Monitor

⁶⁶ The OCI reports to the BOPC and is responsible for conducting all external complaint investigations.

found the DPD in non-compliance with paragraph U65 due to the fact that the Citizen Complaints Policy has not yet been disseminated and implemented. The Monitor found the DPD in compliance with paragraph U66, as the OCI and DPD continued to assign a unique complaint number to, and provide a description of the basis for, all complaints.

B. EXTERNAL COMPLAINT INVESTIGATION

This section comprises paragraphs U67-69. The Monitor last assessed the DPD's compliance with paragraphs U67 and U68 during the quarter ending May 31, 2005, finding the DPD in non-compliance due to the fact that the Citizen Complaints Policy had not yet been disseminated and implemented as of the end of that quarter. Although the policy had not yet been disseminated, the Monitor conducted on-site reviews of a sample of complaint files to determine if the DPD was complying with the various requirements of paragraphs U67-69; the Monitor determined that the DPD was complying with many, but not all, of these requirements. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2005.

V. GENERAL POLICIES

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

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

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

The Monitor last assessed the DPD's compliance with paragraphs U70 and U71 during the quarter ending May 31, 2005. The Monitor withheld a determination of the DPD's compliance with paragraph U70 pending the parties' agreement on an acceptable definition of probable cause.⁶⁷ The Monitor found the DPD in non-compliance with paragraph U71 due to the fact that the OCI's written protocol for the receipt of citizen comment did not include steps acknowledging receipt of comment, providing comment to the BOPC at least two days prior to a regularly scheduled meeting and notifying the citizen regarding the outcome of their comment, nor did it delineate specific responsibility in the absence of certain key OCI personnel. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2005.

The Monitor last assessed the DPD's compliance with paragraphs U72 -74 and U76-77 during the quarter ending February 28, 2005; the Monitor last assessed the DPD's compliance with paragraph U75 during the quarter ending May 31, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

⁶⁷ During that quarter, the DPD finalized and disseminated Directive 404.1, *Definitions*. The Monitor reviewed the directive and concluded that, with the exception of the unresolved issue regarding an acceptable definition of probable cause, the remainder of Directive 404.1 adequately addresses the requirements of the paragraph. However, the Monitor identified and proffered recommendations for the inclusion of certain additional terms that would be of assistance to DPD members.

Paragraph U72 – Police Action in Violation of DPD Policy

Paragraph U72 requires the DPD 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.

Background

The Monitor last assessed the DPD's compliance with paragraph U72 during the quarter ending February 28, 2005, finding the DPD in non-compliance. The Monitor reviewed the BPOC-approved Directive 102.3, *Code of Conduct*, and determined that it addressed the requirements of the UOF CJ; however, the policy had not been disseminated as of the end of that quarter.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U72 during the current quarter, the Monitor selected a random sample of officers and requested documentation evidencing the dissemination of Directive 102.3, *Code of Conduct*,⁶⁸ to the selected officers.⁶⁹ The DPD provided documentation evidencing the receipt of the directive for only 22, or 23.4%, of the 94 officers selected.⁷⁰

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U72.

Paragraph U73 – Sergeants in the Field

Paragraph 73 requires the DPD and the City to develop a plan to ensure regular field deployment of an adequate number of supervisors⁷¹ of patrol units and specialized units that deploy in the field to implement the provisions of this agreement.

Background

The Monitor last assessed the DPD's compliance with paragraph U73 during the quarter ending February 28, 2005, finding the DPD in non-compliance. The DPD did not submit all of the documentation requested by the Monitor related to daily attendance; however, of the

⁶⁸ Directive 102.3, Code of Conduct was disseminated on May 27, 2005, with an effective date of June 27, 2005.

⁶⁹ A random, statistical sample of 94 officers was selected out of a population of approximately 3,711 listed officers. The Monitor utilized a confidence level of 95% with an acceptable error rate of +/- four percent.

⁷⁰ The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of officers acknowledging receipt of policy.

⁷¹ Paragraph "pp" of the UOF CJ defines a supervisor as a sworn DPD employee at the rank of sergeant or above and non-sworn employees with oversight responsibility for DPD employees.

documentation received and reviewed, the Monitor determined that for 99 platoons or shifts, the DPD either had no documented staffed supervision⁷² for listed officers and investigators, or documented supervision exceeded a ratio of eight officers to one supervisor in the field.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U73 during the current quarter, the Monitor requested daily attendance records for all precincts and specialized units for the period June 8 through June 12, 2005. The DPD provided documentation for 88 of its 213 precinct platoons and/or specialized units. Of the 88 daily attendance records received and reviewed by the Monitor, 84 indicate an average ratio of 1 supervisor to every 3.61 officers and 4 depict no supervisor on duty.⁷³ As a result, the DPD's overall compliance rate was 39.4%.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U73.

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- or off-duty.

Background

The Monitor last assessed the DPD's compliance with paragraph U74 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Directive 102.3, *Code of Conduct*, which requires the reporting of misconduct, had not yet been disseminated to the field.⁷⁴

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U74 during the current quarter, the Monitor tested the dissemination of Directive 102.3, *Code of Conduct*. As described in the

⁷² The Monitor could not determine whether the lack of documentation indicated that there was no supervision or that there was supervision, but it was not documented. The Monitor provided its work product to the DPD during mid-February for review, comment and rebuttal. The DPD had not responded as of the end of the quarter ending February 28, 2005.

⁷³ Research provided by the DPD and reviewed by the Monitor indicates that the acceptable ratio of officers to supervisors for a community policing oriented department is one supervisor for every eight officers.

⁷⁴ In its Report for the Quarter Ending August 31, 2004, the Monitor reported that this directive did not identify the methods by which the DPD would enforce this requirement. It is the DPD's position that its complaint and UOF investigation processes will inherently ferret out any instances of non-compliance.

Current Assessment of Compliance for paragraph U72, the DPD provided documentation evidencing the receipt of the directive for only 23.4%, of the officers selected for review.⁷⁵

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

Paragraph U75 – Off-Duty Police Action

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

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

Background

The Monitor commenced an assessment of the DPD's compliance with paragraph U75 during the quarter ending May 31, 2005 but did not complete its evaluation as of the end of that quarter. The Monitor determined that the DPD adequately disseminated Directive 202.1, *Arrests*, which addressed the requirements of the paragraph, but deferred testing the implementation of the policy to the current quarter.

Current Assessment of Compliance

Although Directive 202.1, *Arrests*, has been adequately disseminated, as of the end of the current quarter, the DPD had not yet begun training officers on its content. In order to assess the DPD's implementation of the policy, the Monitor requested copies of the DPD's internal inspections or other management reviews that might have assessed whether officers are complying with the requirements of paragraph U75. As of the end of the current quarter, the Monitor had not received any documents in response to this request.⁷⁶

⁷⁵ The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of officers acknowledging receipt of policy.

⁷⁶ The Monitor made this request on August 19, 2005 and received a response from the DPD on September 19, 2005, after the end of the quarter. The Monitor reviewed the DPD's response and determined that it was not responsive to the Monitor's request. The Monitor will discuss this with DPD and attempt to obtain the necessary

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 policies regarding prisoners to:

- a. require officers to summon emergency medical services to transport prisoners when the restraints employed indicate the need for medical monitoring;
- b. require officers to utilize appropriate precautions when interacting with a prisoner who demonstrates he or she is recalcitrant or resistant, including summoning additional officers, summoning a supervisor and using appropriate restraints; and
- c. prohibit arresting and transporting officers from accompanying prisoners into the holding cell area.

Background

The Monitor last assessed the DPD's compliance with paragraph U76 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although Directive 305.4, *Holding Cell Areas*, adequately addressed all three requirements of paragraph U76 it had not yet been disseminated to the field.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U76 during the current quarter, the Monitor tested the DPD's dissemination of Directive 305.4, *Holding Cell Areas*. As described in the Current Assessment of Compliance for paragraphs U54-55, above, the DPD provided documentation evidencing the receipt of the directive for only 38.3% of the officers selected for review.

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:

- a. 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;

documentation to evaluate compliance with this paragraph during the next regularly scheduled review of this paragraph.

- b. Emphasizes alternatives to foot pursuits, including area containment, surveillance, and obtaining reinforcements;
- c. Emphasizes the danger of pursuing and engaging a subject with a firearm in hand; and
- d. Requires officers to document all foot pursuits that involve a UOF on a separate, auditable form, such as the UOF report.

Background

The Monitor last assessed the DPD's compliance with paragraph U77 during the quarter ending August 31, 2004, finding the DPD in non-compliance. Although Directive 202.7, *Foot Pursuit*, adequately addressed the requirements of paragraph U77, the directive and related Auditable Form UF-002 had not yet been disseminated to the field and implemented.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U77 during the current quarter, the Monitor selected a random sample of 94 officers and requested documentation evidencing that Directive 202.7, *Foot Pursuit*, was disseminated to the selected officers.⁷⁷ The DPD provided documentation evidencing the receipt of the directive for only 36, or 38.3%, of the selected officers.⁷⁸ The DPD recently revised Auditable Form UF-002 to document foot pursuits that involve a UOF based on feedback from the DOJ. The revised form has not yet been implemented.

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

⁷⁷ A random, statistical sample of 94 officers was selected out of a population of approximately 3,711 listed officers. The Monitor utilized a confidence level of 95% with an acceptable error rate of +/- four percent.

⁷⁸ The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of officers acknowledging receipt of policy.

VI. MANAGEMENT AND SUPERVISION

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

The Monitor last assessed the DPD's compliance with paragraph U78, the introductory paragraph to section VI., during the quarter ending May 31, 2005, at which time the Monitor found the DPD in non-compliance. The Monitor determined that the DPD remained in non-compliance with the majority of the paragraphs related to subparagraphs a and c; the Monitor requested information regarding the DPD's compliance efforts regarding subparagraphs U78d and e, but no information had been received as of the end of the quarter.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U78 during the quarter ending November 30, 2005.

A. RISK MANAGEMENT DATABASE

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

The Monitor last assessed the DPD's compliance with paragraph U79-83 and U86-88a.-c. during the quarter ending May 31, 2005, finding the DPD in non-compliance with each. On December 10, 2004, the DOJ provided the City and the DPD with comments and recommendations on their Management Awareness System (MAS) and Interim Management Awareness System (IMAS). The City and DPD re-submitted the components of the MAS for DOJ review and approval on May 16, 2005. The MAS documents were not approved by the DOJ as of the end of the quarter. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2005.

The Monitor last assessed the DPD's compliance with paragraphs U84-85, U88d.-e., and U89 during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance

with these paragraphs, and assessed compliance with paragraph U88f for the first time, during the current quarter. The results of our current assessments follow.⁷⁹

Paragraph U84 – Risk Management Database 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.

Background

The Monitor last assessed the DPD's compliance with paragraph U84 during the quarter ending February, 28, 2005, finding the DPD in non-compliance. The Review Protocol was resubmitted to the DOJ on October 24, 2004. On December 10, 2004, the DOJ provided the DPD with a letter with a list of questions on the Review Protocol and other MAS and IMAS documents, and on March 22, 2005, the DOJ provided DPD with comments and TA, in addition to a list of questions, regarding these documents.

Current Assessment of Compliance

The DPD resubmitted the MAS and IMAS documents for review and approval on May 16, 2005, in response to the DOJ's March 22, 2005 letter. The DOJ provided the DPD with a letter on July 11, 2005 granting approval of the Review Protocol with some additional comments. Although the DOJ granted approval of the Review Protocol, it expressed concern regarding what specific set of actions will be taken if an officer who is already being monitored reaches another trigger event. The DOJ noted that the Review Protocol indicates that in this instance, one is to refer to the IMAS, but the DOJ stated that more specific guidance should be given.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U84.

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

⁷⁹ The Monitor is not scheduled to assess compliance with paragraph U88 g until the quarter ending February 28, 2006, as the deadline for compliance with this subparagraph is December 31, 2005. However, if the DPD makes significant progress on an accelerated schedule, the Monitor will report on it. Paragraph U90 has no specific deadline; the Monitor will assess the DPD's compliance with this paragraph on an as-needed basis, as the DPD's actions pursuant to it are driven by the availability of relevant new technology and its experience with the operational Risk Management Database.

difficulties with one aspect of the Risk Management Database do not delay implementation of other modules.

Background

The Monitor last assessed the DPD's compliance with paragraph U85 during the quarter ending February 28, 2005, finding the DPD in non-compliance. The DPD resubmitted documents related to the risk management database to the DOJ on October 24, 2004. On December 10, 2004, the DOJ provided the DPD with a letter with a list of questions on the Review Protocol and other MAS and IMAS documents, and on March 22, 2005, the DOJ provided DPD with comments and TA, in addition to a list of questions, regarding these documents.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph U84, the DPD resubmitted the MAS and IMAS documents for DOJ review and approval on May 16, 2005 in response to DOJ's March 22, 2005 letter. The DOJ provided the DPD with a letter on July 11, 2005 granting final approval of the RFP, Review Protocol and the IMAS. The DOJ did, however, indicate that it had a few additional concerns. The DOJ reiterated the concerns with the RFP that were outlined in its March 22, 2005 letter regarding the "System Acceptance" requirement and their previous suggestion to provide additional information on how scanned material is anticipated to interface with the MAS. The DOJ indicated that providing such information regarding systems that will be interfacing together will be useful to vendors.

As noted in the Current Assessment of Compliance for paragraph U84, although the DOJ granted approval of the Review Protocol, it also expressed concern regarding what specific set of actions will be taken if an officer, who is already being monitored reaches another trigger event. Lastly, the DOJ stated that the Review Protocol, Section 8.5 and the IMAS, Section 6.5 should be consistent.

The other modules required by this paragraph, the Report Protocol and Data Input Plan, have not yet received DOJ approval.

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

Paragraph U88d – Risk Management Database Review Protocol

Paragraph U88d requires the DPD to submit the Review Protocol to the DOJ for review and approval by March 30, 2004.

Background

The Monitor last assessed the DPD's compliance with paragraph U88d during the quarter ending February 28, 2005, finding the DPD in non-compliance. The DPD resubmitted documents related to the risk management database to the DOJ on October 24, 2004. On December 10, 2004, the DOJ provided the DPD with a letter with a list of questions on the Review Protocol and other MAS and IMAS documents, and on March 22, 2005, the DOJ provided DPD with comments and TA, in addition to a list of questions, regarding these documents.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph U84, above, the DOJ provided the DPD with a letter on July 11, 2005 granting approval of the Review Protocol with some additional comments and concerns. Although this approval was not received by March 30, 2004, as required by this paragraph, the Monitor now finds the DPD in compliance with paragraph U88d.

Paragraph U88e – Risk Management Database Selection of Contractor

Paragraph U88e requires the DPD to select the contractor to create the risk management database by May 31, 2004.

Background

The Monitor last assessed the DPD's compliance with paragraph U88e during the quarter ending February 28, 2005, finding the DPD in non-compliance. The DPD has submitted a RFP to DOJ for review and approval on October 25, 2004. The DOJ responded with a list of questions regarding MAS and IMAS on December 10, 2004. A conference call was held with the parties on January 4, 2005. The DOJ then submitted an additional letter outlining their concerns on March 22, 2005. The DOJ was in the process of reviewing the documents as of the end of the quarter.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph U85, above, the DOJ provided the DPD with a letter on July 11, 2005 granting final approval of the RFP. However, the DOJ reiterated concerns with the RFP expressed in its March 22, 2005 letter regarding the "System Acceptance" requirement and their previous suggestion to provide additional information on how scanned material is anticipated to interface with the MAS. The DOJ indicated that providing such information regarding systems that will be interfacing together will be useful to vendors. According to the DPD's Eighth Quarter Status Report, they have not selected a contractor to date.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U88e.

Paragraph U88f – Beta Version of Risk Management Database

Paragraph U88f requires the DPD to have ready for testing a beta version of the risk management database by June 30, 2005. The DOJ and the Monitor shall have the opportunity to participate in testing the beta version using new and historical data and test data created specifically for purposes of checking the risk management database.

Background

Given that the deadline for paragraph U88f was June 30, 2005, this is the Monitor's first assessment of the DPD's compliance with the paragraph.

Current Assessment of Compliance

As of the end of the current quarter, the Monitor has not been afforded the opportunity to participate in testing the beta version of the MAS.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U88f.

Paragraph U89 – Interim Risk Management System

Paragraph U89 states that prior to the implementation of the new Risk Management Database, the DPD must develop an interim system to identify patterns of conduct by DPD officers or groups of officers.

Background

The Monitor last assessed the DPD's compliance with paragraph U89 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that it had not implemented the IMAS to satisfy the requirements of the paragraph.

Current Assessment of Compliance

The DPD resubmitted the proposed IMAS Plan to the DOJ and the Monitor on May 16, 2005. The DOJ granted the DPD approval of the IMAS plan on July 11, 2005.⁸⁰ According to DPD, all

⁸⁰ Although the UOF CJ does not specifically provide that the DOJ has review and approval over paragraph U89, it was agreed by the parties and the Monitor that the DOJ would provide TA regarding and ultimately grant approval of the interim plan, given the fact that the DOJ has review and approval over the risk management database pursuant to paragraph U88.

precincts began using the IMAS on May 1, 2005. The DPD has indicated that since that time over 500 performance indicators, including citizen complaints, injured prisoners and lawsuits, have been entered into IMAS.

In order to test implementation of the IMAS, the Monitor requested and attended a demonstration of the system on July 27, 2005. The DOJ attended the demonstration as well. The current system does not have the ability to identify patterns of conduct by groups of officers as required by the paragraph; however, according to the DPD, it will have that capability in the new version that is being developed. During the demonstration, the DPD also reported that many supervisors were inputting initial performance indicator information into the IMAS, but were not going back to provide subsequent information that is vital to the risk management process. This, along with the fact that the current IMAS does not have a system in place to ensure that supervisors are held accountable for inputting both initial performance indicator information and subsequent relevant information, indicates that the version of the IMAS being presented is vulnerable in the area of supervisor accountability.

According to the DPD, as of July 29, 2005, approximately 184 precinct supervisors had been trained on IMAS during 8-hour training sessions. There are still other supervisors remaining who need to be trained on the system. According to the DPD, executives will be trained on the system in September 2005 and a website to assist in the use of the system will be operational by September 1, 2005.

With the system now operational, the Monitor commends the DPD on the development of the system thus far; however, training must be completed and capabilities enhanced in order for the system to be effective and to meet the requirements of this paragraph.

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

B. PERFORMANCE EVALUATION SYSTEM

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

Paragraph U91 – Performance Evaluation System

Paragraph U91 requires the DPD to ensure that performance evaluations for all DPD employees⁸¹ occur at least annually and include, but are not limited to, consideration of the

⁸¹ The parties proposed a modification to the language of this paragraph stating that it is applicable to all DPD employees below the rank of Deputy Chief. The Court issued an order on October 4, 2004 adopting the proposed modification.

following: civil rights integrity; 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 supervisor's performance in identifying and addressing at-risk behavior in subordinates, including their supervision and review of use of force, arrests, care of prisoners, prisoner processing, and performance bearing upon honesty and integrity.

Background

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

Current Assessment of Compliance

The DPD resubmitted the Performance Evaluation Forms on January 28, 2005. According to the DPD, the directive and forms were disseminated to the field on February 28, 2005 and became effective on March 21, 2005. The Monitor provided the DPD with a memo on June 3, 2005 stating that Directive 401.1 *Performance Evaluation Ratings*, together with related forms, meets the requirements of paragraph U91. However, the Monitor offered recommendations designed to strengthen and improve the policy.

In order to test dissemination of the Directive 401.1 and the Performance Evaluation Forms, during the current quarter the Monitor selected a random sample of officers and requested documentation evidencing their dissemination to the selected officers.⁸² The DPD provided documentation evidencing the receipt of the directive and the forms for only 24, or 25.5%, of the 94 officers selected for review by the Monitor.⁸³

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

⁸² A random, statistical sample of 94 officers was selected out of a population of approximately 3,711 listed officers. The Monitor utilized a confidence level of 95% with an acceptable error rate of +/- four percent.

⁸³ The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of officers acknowledging receipt of policy.

C. OVERSIGHT

This subsection of the UOF CJ (paragraphs U92-99) requires the DPD to establish an internal audit process, to perform annual⁸⁴ audits of all precincts and specialized units on eight aspects of policing,⁸⁵ to perform periodic random reviews of scout car camera videotapes and video recording equipment, and to meet regularly with local prosecutors to identify any issues in officer, shift or unit performance. Each of these oversight provisions requires the DPD to examine a number of issues, but a common theme among them all is the requirement to assess and report on the appropriateness of the police activity being examined.

During the current quarter, the Monitor again assessed the DPD's compliance with paragraphs U92-U98⁸⁶ and continued to provide TA regarding the Audit Protocol and UOF CJ audits that were in progress during this quarter, in addition to providing TA regarding the processes used by the Audit Team (AT) in scheduling, assigning and managing its audits. The results of our current assessments follow.

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 CJ⁸⁷ to ensure the audits occur with sufficient frequency and cover all DPD units and commands.

Background

The DPD's first Audit Protocol was submitted on February 16, 2004. The Monitor withheld a determination of compliance with paragraph U92 for the quarters ending February 29, 2004, May 31, 2004, and August 31, 2004 due to ongoing discussions between the parties regarding the frequency of the audits.⁸⁸

⁸⁴ On October 4, 2004, in response to a Joint Motion from the parties, the Court amended the audit schedule in the UOF CJ by requiring the DPD's UOF CJ audits to be completed annually by August 31, 2004, and every year thereafter.

⁸⁵ Including UOF investigations; prisoner injuries; allegations of misconduct; arrests; stops and frisks; witness identification and questioning; custodial detention practices, and complaint investigations.

⁸⁶ The Monitor did not assess the DPD's compliance with paragraph U99 during the current quarter. This paragraph was last assessed during the quarter ending May 31, 2005, at which time the Monitor found the DPD in compliance. This Monitor is scheduled to again assess compliance with paragraph U99 during the quarter ending November 30, 2005.

⁸⁷ This Audit Protocol must also address the audits required by the COC CJ (paragraphs C65-72).

⁸⁸ The schedule contained in the Audit Protocol was inconsistent with the requirements specified in the original Consent Judgments. As reported in the Monitor's Report for the Quarter Ending November 30, 2004, the Court

On February 28, 2005, the DPD's AT submitted the 2004/2005 AP to the Monitor. The Monitor completed its review of the audit schedule contained therein and determined that it did not schedule all of the audits required by both the UOF CJ and COC CJ with sufficient frequency as required by paragraph U92.⁸⁹ Accordingly, the Monitor found the DPD in non-compliance with paragraph U92 for the quarter ending February 28, 2005.

Current Assessment of Compliance

During the current quarter, the Monitor completed its review of the DPD's final 2005/2006 Fiscal Year Audit Protocol, which was submitted in final form to the Monitor on July 29, 2005.⁹⁰ The Monitor evaluated the Protocol to determine if the audit schedule contained therein met the requirements of the UOF and COC CJs; and whether the Protocol contained adequate standards for conducting and reviewing such audits, sufficient instruction on the content and review process for the DPD's audit reports, and adequate articulation of the competencies and training requirements for the DPD's auditors. As discussed with the DPD's AT, the Monitor determined that the 2005/2006 Audit Protocol adequately addresses all of the requirements of paragraph U92, including the establishment of a regular and fixed schedule that covers all UOF CJ and COC CJ required audits with sufficient frequency. The Monitor noted that the Protocol does not contain specific direction regarding the reporting of findings in a quantitative manner to allow for a comparison throughout the DPD, nor does it identify all of the DPD commands to be evaluated in the audits. These exclusions, however, do not affect the overall compliance of the Audit Protocol but, rather, will be evaluated within each audit report submitted by the DPD.

The Monitor also requested, received, and reviewed documentation supporting the dissemination of the Audit Protocol to all personnel involved in the audit process, as well as signed annual confidentiality declarations from all audit personnel. As described in previous quarterly reports, the DPD's audit personnel attended the LAPD's *Police Performance Auditing* course in January 2005, which meets the training requirements of this paragraph.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U92.

Paragraph U93 – Audit Reporting Requirements

Paragraph U93 requires the DPD to issue a written report on the results of each UOF CJ audit to the Chief of Police and to all precincts or specialized unit commanders. The UOF CJ requires

granted the parties' "Joint Motion to Amend the Consent Judgments" and amended the frequency of the audits in the UOF CJ and the COC CJ on October 4, 2004.

⁸⁹ The Audit Protocol established a schedule listing the audits required by the Consent Judgments; however, the Protocol indicated that 14 of the 26 audits required would not be completed.

⁹⁰ The DPD previously submitted a copy of the 2005/06 Audit Protocol on May 31, 2005, for purposes of receiving TA from the Monitor. This was accomplished during the current quarter.

such audit reports to be completed by August 31, 2004, and annually thereafter. These reports must include an examination of consistency throughout the DPD. The commander of each precinct and specialized unit must review all audit reports regarding employees under his or her command and, if appropriate, take disciplinary or non-disciplinary corrective action.

Background

The Monitor last assessed the DPD's compliance with paragraph U93 during the quarter ending May 31, 2005, finding the DPD in non-compliance because the Stop & Frisk Audit (required by subparagraph U95b) and the Witness Identification & Questioning Audit (required by subparagraph U95c) were not written in quantitative terms, did not contain an adequate analysis or comparison for consistency among the precincts and specialized units, and did not illustrate action or non-action on the part of the COs as required by paragraph U93.

Current Assessment of Compliance

On August 31, 2005,⁹¹ the DPD submitted to the Monitor two audit reports required by the UOF CJ: the Allegations of Misconduct Investigations Audit, required by subparagraph U94c, and the OCI Audit of External Complaints, required by paragraph U97. Upon receiving these audit reports, the Monitor requested documentation to support the transmittal to and actions of the Chief of Police and appropriate COs related to these audits; however, as of the date of writing this report, the Monitor had not yet received such documentation.

Based on the foregoing, the Monitor is withholding a determination of DPD's compliance with paragraph U93.

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

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

Background

The Monitor last assessed the DPD's compliance with paragraph U94 during the quarter ending May 31, 2005, finding the DPD in non-compliance with each subparagraph due to the fact that none of the audits required by this paragraph were submitted as of the end of that quarter.

⁹¹ August 31, 2005 was the final day of the current quarter.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph U93, on August 31, 2005, the DPD submitted the Allegations of Misconduct Investigations Audit, which is required by subparagraph U94c. Due to the timing of submission, the Monitor has not yet completed its evaluation of this audit.

As of the end of the current quarter, the DPD had not submitted a Use of Force Investigations Audit (required by subparagraph U94a) or a Prisoner Injury Investigations Audit (required by subparagraph U94b). According to the DPD, these audits will not be submitted for the period ending August 31, 2005. The DPD intends to conduct and submit a Use of Force Investigations Audit and a Prisoner Injury Investigations Audit during the annual period ending August 31, 2006.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraphs U94a and U94b,⁹² and has not yet evaluated the DPD's compliance with subparagraph U94c.

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

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

Background

The Monitor last assessed the DPD's compliance with paragraph U95 during the quarter ending May 31, 2005, finding the DPD in non-compliance with each subparagraph. The Monitor reviewed two audits submitted for the period ending August 31, 2004: the Investigatory Stop and Frisk Audit (required by subparagraph U95b) submitted to the Monitor on February 18, 2005, and the Witness Identification and Questioning Audit (required by subparagraph U95c) submitted to the Monitor on April 1, 2005, and determined that both of these audits contained deficiencies related to timeliness, sampling, scope, and reporting. The DPD did not submit an audit related to Arrest Practices (required by subparagraph U95a) for the period ending August 31, 2004.

⁹² The Monitor will continue to find the DPD in non-compliance with the requirement to conduct these audits until such time as the required audits have been submitted. When these audits are submitted, the Monitor will evaluate their quality.

Current Assessment of Compliance

The DPD did not submit any of the audits required by paragraph U95 for the period ending August 31, 2005. According to the DPD, no audits of these subjects were conducted.⁹³ The DPD intends to conduct and submit an audit for each of these topics during the annual period ending August 31, 2006.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U95.⁹⁴

Paragraph U96 – Audit of Custodial Detention Practices

Paragraph U96 requires the DPD to conduct regularly scheduled annual audits of the DPD's custodial detention practices, including evaluating the length of detention between the time of arrest and the time of arraignment and the time to adjudicate holds. Such audits must cover all precincts and specialized units.

Background

The Monitor last assessed the DPD's compliance with paragraph U96 during the quarter ending November 30, 2004, finding the DPD in non-compliance due to deficiencies related to timeliness, sampling, scope, and reporting contained within the Custodial Detention Practices Audit submitted to the Monitor on October 21, 2004 (for the period ending August 31, 2004).

Current Assessment of Compliance

The DPD did not submit an audit required by paragraph U96 for the period ending August 31, 2005 during the current quarter. According to the DPD, no audit of this subject was conducted.⁹⁵ The DPD intends to conduct and submit an audit for each of these topics during the annual period ending August 31, 2006.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U96.⁹⁶

⁹³ Paragraph U95 audits reviewed by the Monitor in previous quarters were audits that were due by August 31, 2004.

⁹⁴ The Monitor will continue to find the DPD in non-compliance with the requirement to conduct the audits required by this paragraph until such time as the required audits have been submitted. When these audits are submitted, the Monitor will evaluate their quality.

⁹⁵ The Custodial Detention Practices audit reviewed by the Monitor during the quarter ending November 30, 2004 was due by August 31, 2004.

⁹⁶ The Monitor will continue to find the DPD in non-compliance for this audit until such time as it has been submitted. When this audit is submitted, the quality of the audit will be evaluated.

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

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

Background

The Monitor last assessed the DPD's compliance with paragraph U97 during the quarter ending May 31, 2005, finding the DPD in non-compliance due to the fact that the DPD had not submitted an audit in response to this paragraph as of the end of that quarter.

Current Assessment of Compliance

As described in the Current Assessment of compliance for paragraph U93, above, on August 31, 2005, the DPD submitted the OCI Investigations Audit required by paragraph U97. Due to the timing of submission, the Monitor has not yet completed its evaluation of this audit.

Based on the foregoing, the Monitor has not yet evaluated the DPD's 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.

Background

The Monitor last assessed the DPD's compliance with paragraph U98 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that as of the end of the quarter, the DPD was still in the process of developing a uniform written protocol and a supervisor video review form, which along with Directive 303.3, *In Car Video Cameras*, will address the requirements of U98.

Current Assessment of Compliance

The DPD resubmitted Directive 303.3, *In-Car Video Policy*, to the Monitor on March 18, 2005. The Monitor provided the DPD with a memo dated April 15, 2005 detailing concerns and making recommendations. The DPD resubmitted the directive and related forms on May 10, 2005. The Monitor reviewed the revised policy and on May 16, 2005 informed the DPD, via

email correspondence, that the policy and related forms adequately addressed the policy requirements of paragraph U98. The Monitor was informed that the DPD disseminated the In-Car Video Policy and related forms on August 15, 2005, with an effective date of September 12, 2005.⁹⁷

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U98.

D. USE OF VIDEO CAMERAS

This section comprises paragraphs U100-102. It requires the DPD to develop a policy on the use of video cameras that provides a systematic approach for activation, recording, review and preservation of video cameras and tapes. Additionally, the DPD is required to repair and replace all non-functioning video equipment. Other paragraphs in the UOF CJ and COC CJ that require periodic random reviews of videotapes and periodic random surveys of recording equipment are U98 and C64, 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 last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U100-102 – Non-Functioning Video Cameras; Video Camera Policy; Video Recording Policy

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

Paragraph U101 states that the DPD policy on video cameras shall be revised and augmented to require: activation of scout car video cameras at all times the officer is on patrol; supervisors to review videotapes of all incidents involving injuries to a prisoner or an officer, uses of force, vehicle pursuits and external complaints; and that the DPD retain and preserve videotapes for at least 90 days, or as long as necessary for incidents to be fully investigated.

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

⁹⁷ Given that the effective date of the policy is after the end of the quarter, the DPD did not implement the policy as of the end of the current quarter. The Monitor will test the dissemination of the directive during the quarter ending November 30, 2005.

Background

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending February 28, 2005, finding the DPD in non-compliance. In the DPD's Sixth Quarter Status Report, the DPD indicated that it had developed uniform written policies and procedures that address the requirements of paragraphs U98 and U100-102. However, as of the end of the quarter, the DPD has not submitted a review protocol or written policies and procedures to the Monitor.

Current Assessment of Compliance

The DPD resubmitted Directive 303.3, *In-Car Video Policy*, to the Monitor on March 18, 2005. The Monitor provided the DPD with a memo dated April 15, 2005 detailing concerns and making recommendations. The DPD resubmitted the directive and related forms on May 10, 2005. The Monitor reviewed the revised policy and on May 16, 2005 informed the DPD, via email correspondence, that the policy and related forms adequately addressed the policy requirements of paragraph U100-102. The Monitor was informed that the DPD disseminated the In-Car Video Policy and related forms on August 15, 2005, with an effective date of September 12, 2005.⁹⁸

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U100-102.

E. DISCIPLINE

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

The Monitor last assessed the DPD's compliance with paragraphs U103-105 during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

⁹⁸ Given that the effective date of the policy is after the end of the quarter, the DPD did not implement the policy as of the end of the current quarter. The Monitor will test the dissemination of the directive during the quarter ending November 30, 2005.

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.

Background

The Monitor last assessed the DPD's compliance with paragraph U103 during the quarter ending February 28, 2005, finding the DPD in non-compliance. According to the DPD's Sixth Quarter Status Report, the DPD was still in the process of further refining procedures to meet the requirements of paragraphs U103 and U104. The DPD had made significant progress in closing backlogged disciplinary matters by closing out 751 cases in 2004.

Current Assessment of Compliance

On March 22, 2005, the Monitor received a letter generally describing how the DPD's "newly revised discipline system" includes upgrading the Disciplinary Administration Unit to a Section, and the use of a Pre-Disciplinary Forum and plea negotiations to settle cases. The letter further reiterated that 751 disciplinary cases were closed during 2004 and a total of 61 pre-2004 or backlogged cases were pending adjudication. The correspondence also included a chart entitled "Closed Disciplinary Cases 2004" which indicated the approximate number of Police Trial Boards, Commanders Actions, BOPC actions and plea bargains per month. On August 12, 2005, the Monitor requested more specific information about the resources devoted to the revised disciplinary system and inquired about the status of the sixty-one pre-2004 backlogged cases that the DPD indicated were pending adjudication as of March 2005. As of the end of the quarter, the Monitor had not yet received a response to this request.⁹⁹

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.

⁹⁹ The Monitor had not received a response to this request as of September 30, 2005.

Background

The Monitor last assessed the DPD's compliance with paragraph U104 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that as of the end of the quarter, the DPD was still in the process of revising its policies and procedures to meet the requirements of paragraph U104.

Current Assessment of Compliance

On April 13, 2005, the DPD submitted a document entitled "Disciplinary Process Timelines" which purports to contain the guidelines required by paragraph U104. During the current quarter, the Monitor reviewed the document and found that the guidelines generally dictated maximum timelines between each stage of the disciplinary process, with a couple of exceptions. The Monitor also found that the Disciplinary Administration Section (DAS) paperwork requirements mentioned under the appeals to arbitration section should be included for other areas.

Based on the foregoing, the Monitor has not yet evaluated the DPD's compliance with paragraph U104.¹⁰⁰

Paragraph U105 – Disciplinary Matrix

Paragraph U105 requires the DPD to create a disciplinary matrix that: establishes a presumptive range of discipline for each type of rule violation; increases the presumptive discipline based on both an officer's prior violations of the same rule as well as violations of other rules; requires that any departure from the presumptive range of discipline must be justified in writing; 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 provides that the DPD shall consider whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed.

Background

The Monitor last assessed the DPD's compliance with paragraph U105 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although the DPD indicated that the Disciplinary Matrix had been forwarded to the Monitor and the DOJ for review, neither had received the document as of the end of the quarter.

¹⁰⁰ The Monitor reviewed this document during the current quarter; however, the results of the review were not communicated to the DPD until after the end of the quarter.

Current Assessment of Compliance

On March 2, 2005, the DPD submitted Directive 102.4, *Discipline Policy*, and the Disciplinary Matrix to the Monitor for review. On August 12, 2005,¹⁰¹ the Monitor submitted several questions to the DPD regarding the policy and matrix. One of the Monitor's primary concerns was that many of the paragraphs in the UOF CJ that include disciplinary sanctions do not appear to be included in the policy or on the matrix.¹⁰²

Based on the foregoing, the Monitor withholds a determination of the DPD's compliance with paragraph U105.

¹⁰¹ The Monitor assessed this policy and matrix during the current quarter, which was the next scheduled quarter for assessing compliance with paragraphs 104-105. In most instances, the Monitor will attempt to review policies in the quarter in which the policy is submitted, even if the policy is not scheduled for review; however, this is not always possible.

¹⁰² The DPD resubmitted the Discipline Policy in September 11, 2005, after the end of the quarter.

VII. TRAINING

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

A. OVERSIGHT AND DEVELOPMENT

This section comprises paragraphs U106-111. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2005, finding the DPD in non-compliance with each. Although the DPD submitted UOF Continuum lesson plans to the Monitor and to the DOJ, the majority of UOF and A&D training lesson plans had not yet been completed and the curricula for UOF and A&D training had not yet been submitted to the Monitor. Furthermore, the DPD had not yet submitted a systemic process for curriculum development, review and evaluation. In addition, although the DPD submitted an SOP for In-Service Training Record Keeping Lesson Plans to the Monitor, the DPD indicated that it will be unable to maintain the data required until the MAS, which the DPD plans to use to implement recordkeeping requirements, is up and running. Furthermore, although In-Service Training Protocols were submitted for paragraph U109, the lesson plans on the revised policies were not yet developed and approved. And, although the DPD provided initial consent decree training to a large number of DPD and City employees, the DPD had not yet implemented a program to conduct initial training within 120 days of each UOF CJ provision's implementation and, thereafter, in-service training on the policies contained in the UOF CJ. Lastly, the DPD had not provided the Monitor with documentation demonstrating that the information gleaned from the paragraph U110 meetings had been distributed to risk management and training staff.

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2005.

B. USE OF FORCE TRAINING

This section comprises paragraph U112 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2005, finding the DPD in non-compliance due to the fact that although the Training Division made substantial progress in developing the lesson plans required under this paragraph and submitted lesson plans for training on the UOF

Continuum (subparagraph U112a) and Search Seizure Fundamental for Street Patrol (subparagraphs U112b and U114b), the plans did not meet all of paragraph U112's various requirements.

The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending November 30, 2005.

C. FIREARMS TRAINING

This section comprises paragraph U113 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2005, finding the DPD in non-compliance. Although the Firearms Directive was approved by the DOJ and disseminated to the field, it was unclear whether a firearms training protocol had been developed consistent with the requirements of this paragraph and whether any revisions were made to the firearms training subsequent to the revisions in the Firearms Directive. In addition, the DPD still lacked an appropriate facility for night firearms training.

The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending November 30, 2005.

D. ARREST AND POLICE-CITIZEN INTERACTION TRAINING

This section comprises paragraph U114 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2005, finding the DPD in non-compliance due to the fact that the Search and Seizure Fundamentals for Street Patrol lesson plans developed by the DPD did not meet all of the requirements of paragraph U114.

The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending November 30, 2005.

E. CUSTODIAL DETENTION TRAINING

This section comprises paragraphs U115-117. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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 last assessed the DPD's compliance with paragraph U115 during the quarter ending February 28, 2005, finding the DPD in non-compliance. The Monitor identified a number of deficiencies in the lesson plans submitted in response to this paragraph,¹⁰³ the most significant of which was the absence of the current policies, forms and logs. The Monitor subsequently met with the DPD to provide feedback.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed revised lesson plans submitted by the DPD. Based on this review and subsequent discussions with the DPD training staff, the Monitor determined that the lesson plans do not address the "Custodial Detention Training" requirements of paragraph U115, but rather "Detention Officer Training" as required by COC CJ paragraphs C73 and C75-78. The DPD's intention is to include the Custodial Detention Training requirements of paragraph U115 in the lessons plans that are being designed in connection with paragraph U114, Arrest and Police-Citizen Interaction Training.

The DPD training staff has indicated that the paragraph U114 lesson plans are currently in the final development and review stages and will be submitted prior to the end of the quarter ending November 30, 2005.

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 last assessed the DPD's compliance with paragraph U116 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although Directive 202.1, *Arrests*, contains sections devoted to the Prompt Judicial Review Policy and statements discussing the fact that arraignments shall not be delayed unnecessarily; the examples of unnecessary delays provided within the policy only speak to additional time needed for gathering of evidence, delays motivated by ill will against the arrestee, and delays for delay's sake. Nowhere within the policy

¹⁰³ These lesson plans were for training provided to specific DPD precinct personnel as part of a "train-the-trainer" course.

did it state that delays because of the assignment of the investigation to a specialized unit, the arrest charge(s), the availability of an investigator, or to obtain a confession, are unnecessary and are not to be practiced.

Current Assessment of Compliance

As described in the Monitor's Report for the Quarter Ending February 28, 2005, Directive 202.1, *Arrests*, does not adequately address the requirements of this paragraph.

On August 25, 2005, the DPD submitted a lesson plan entitled "*Prompt Judicial Review Lesson Plan Booklet*" in response to this paragraph. The Monitor conducted an initial review of this lesson plan and subsequently discussed shortcomings identified during the review with the DPD training staff. Specifically, the Monitor noted that the lesson plans contained no instructor notes or correct answers and responses to the materials being presented. The Monitor provided some sample materials to the DPD training staff, and will be submitting a formal offer of TA in order to provide the DPD with further guidance on the structure of adequate lesson plans.

Lastly, the DPD has not yet delivered the lesson plans, including the requirements of paragraph U116, to all DPD recruits, officers and supervisors on an annual basis.

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 last assessed the DPD's compliance with paragraph U117 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although Directive 202.1, *Arrests*, continued to address the requirements of paragraph U117, the DPD had yet to demonstrate that it had effectively disseminated this policy to the field. The DPD was also in the process of addressing TA provided by the Monitor in connection with forms UF-004, *Warrant/Arrest/Arraignment Compliance*, and UF-006, *Detention of Material Witness*.

Current Assessment of Compliance

During the quarter ending May 31, 2005, the Monitor completed its testing of the dissemination of the *Arrests* policy and determined that it had been adequately disseminated. As of the end of the current quarter, the lesson plans that include the requirements of paragraph U117 had not yet

been submitted to the Monitor for review or delivered to all DPD recruits, officers and supervisors on an annual basis. The Monitor has suggested to the DPD training staff that in order to comply with the implementation requirements of this paragraph as it relates to “advising officers,” the specific information related to Material Witnesses required by paragraph U117 be included in either the Custodial Detention lesson plans required by paragraph U115, the lesson plans covering Prompt Judicial Review, described in the Current Assessment of Compliance for paragraph U116, above,¹⁰⁴ or, within documented roll-call training. However, the issuance of policy, alone, does not sufficiently address the requirement of advising officers.

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

F. SUPERVISORY TRAINING

This section comprises paragraphs U118-120. The Monitor last assessed the DPD’s compliance with these paragraphs during the quarter ending February 28, 2005. The Monitor again assessed the DPD’s compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph U118-119 – Training on the Evaluation of Written Reports; Leadership and Command Accountability Training

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.

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 last assessed the DPD’s compliance with paragraphs U118-119 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each because the DPD had yet to develop the curricula for the training required by these paragraphs.

¹⁰⁴ Please see the Current Assessment of Compliance of paragraph U115 for additional information related to the status of the lesson plans.

Current Assessment of Compliance

The DPD had not yet completed the curricula for the training required by these paragraphs as of the end of the current quarter.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U118-119.

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 last assessed the DPD's compliance with paragraph U120 during the quarter ending February 28, 2005, finding the DPD in non-compliance. According to the DPD, commencing August 10, 2004 the Risk Management Bureau began conducting classes for newly promoted supervisors on Implementing Risk Management in a Law Enforcement Agency. The DPD also indicated that the Risk Management training was being entered into the IMAS database. However, this paragraph requires that the training, which must be provided to all supervisors, cover the operation of the MAS, which was neither fully developed nor approved by the DOJ as of the end of the current quarter.

Current Assessment of Compliance

The DPD has not yet submitted a lesson plan to the Monitor for review and assessment of compliance with paragraph U120. In any event, the MAS has not yet been finalized or approved by the DOJ. The Monitor suggests that the DPD submit the lesson plans to the Monitor prior to conducting the training related to the MAS database to avoid unnecessary repetition of the training.

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

G. INVESTIGATOR TRAINING

This section comprises paragraphs U121-122. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs U121 and U122 – Training for Evaluating Credibility; Handling External Complaints

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.

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 the IAD in the process, to all new recruits and as part of annual in-service training.

Background

The Monitor last assessed the DPD's compliance with paragraphs U121 and U122 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each due to the fact that the DPD had not yet provided the training required under these paragraphs.¹⁰⁵

Current Assessment of Compliance

On March 1, 2005 the DPD submitted lesson plans in response to this paragraph. The Monitor conducted an initial review of these lesson plans and subsequently discussed shortcomings identified during this with the DPD training staff. Specifically, the Monitor noted that while the lesson plans contained references to videos of scenarios for role-play purposes, they included no instructor notes or correct answers and responses to the scenarios. The Monitor intends to submit a formal offer of TA to provide the DPD with examples of adequate lesson plans and further assistance, where necessary.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U121-122.

H. FIELD TRAINING

This section comprises paragraph U123 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

¹⁰⁵ The Monitor received the DPD's Investigator Training lesson plan, which also incorporates its External Complaints lesson plan, after the end of that quarter.

Paragraph U123 – Enhancement of Field Training Officer Program

Paragraph U123 requires the DPD to develop, subject to DOJ approval, a protocol to enhance the Field Training Officer (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.

Background

The Monitor last assessed the DPD's compliance with paragraph U123 during the quarter ending February 28, 2005, finding the DPD in non-compliance. The DPD submitted to the Monitor its forty-hour (40) basic certification course for FTOs, including a number of documents designed to address the paragraph's requirements, which the Monitor was reviewing as of the end of that quarter. However, this paragraph requires that the DPD develop a protocol, subject to DOJ approval, to enhance its FTO program. The protocol had not yet been submitted to the DOJ for approval.

Current Assessment of Compliance

On February 11, 2005, the DPD submitted a revised FTO Protocol to the Monitor. However, the protocol was not forwarded to the DOJ for review and approval.¹⁰⁶

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U123.

VIII. MONITORING, REPORTING, AND IMPLEMENTATION

Paragraph U139 is the only paragraph in this section of the UOF CJ for which the Monitor will be assessing compliance. This paragraph requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. During the quarter ending May 31, 2005, the Monitor reviewed OCI and IAS investigative files; although the Monitor pointed out several accomplishments and some deficiencies, the Monitor did not require the DPD to reopen any investigation. The Monitor will report on any activity relative to paragraph U139 during the quarter ending November 30, 2005.

¹⁰⁶ The DPD's Eighth Quarter Status Report states that the FTO Protocols had been submitted to DOJ on February 11, 2005. However, based upon communications between the DOJ and the DPD after the end of the quarter, the DPD discovered that the FTO Protocols were only sent to the Monitor and not to DOJ on February 11, 2005. The DPD has indicated that the FTO Protocols would be forwarded to the DOJ for review.

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

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

As described in previous quarterly report, the organization of the COC CJ paragraphs vary, in that some paragraphs have separate but related "policy"-required paragraphs within the COC CJ,¹⁰⁷ while others do not.¹⁰⁸ These varying formats impact the way in which the Monitor assesses compliance with each paragraph. Specifically, the Monitor's compliance assessments of paragraphs that do not have a separate policy-related paragraph include a review for a written guidance or instruction¹⁰⁹ in order to ensure that the required procedures are mandated by the DPD and appropriate DPD personnel have received the necessary direction to carry out the requirements of the COC CJ.

I. FIRE SAFETY POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C14-19 during the quarter ending November 30, 2004; the Monitor last assessed the DPD's compliance with paragraphs C20-22 during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph C14 and C18 – Life Safety Code Compliance and Interim Fire Safety Measures

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 shall 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.

¹⁰⁷ See, for example, paragraph C39 – Cleanliness of Cells and paragraph C40 – Cleaning Policy.

¹⁰⁸ See, for example, paragraph C45 - Access to Toilets and Potable Water.

¹⁰⁹ As described in the Introduction to *the Methodologies*, this is the Policy Component of compliance.

Paragraph C18 requires the DPD to take immediate interim fire safety measures for all buildings that maintain holding cells including ensuring 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 last assessed the DPD's and City's compliance with paragraph C14 and C18 during the quarter ending November 30, 2004, finding the DPD in non-compliance with each. The Monitor reviewed documentation evidencing the most recent DFD Life Safety Code inspections and determined that although the DFD had completed its required inspections, the results of those inspections revealed numerous Life Safety Code violations (e.g. sprinklers, fire alarms, fire doors, egress routes, fire separators) in all DPD buildings containing holding cells. The DPD had not yet implemented the required "interim" fire safety measures, with the exception of the posting of at least one detention officer inside the cell blocks at all times to allow emergency reporting by prisoners.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed copies of the most recent DFD Life Safety Code inspections of the DPD buildings containing holding cells. The documentation indicated that the inspections were conducted from March 21, 2005 through March 30, 2005, and revealed numerous Life Safety Code violations throughout the DPD precincts. Violations included lack of sprinkler systems; faulty and improper fire alarms; faulty fire doors and problems with egress routes; lack of or insufficient fire separators; excessive accumulation of combustible debris; lack of maintenance logs for all fire equipment, including electrical power back-up systems; problems with visibility of exit signs; and various other fire hazards, such as electrical wiring issues.

The DFD Life Safety Code inspections conducted during this time-period fulfill this paragraph's requirement that the City ensure that the DFD conduct regular and periodic inspections. However, as evidenced by the Life Safety Code violations identified during both the recent DFD inspections and the DOJ-initiated inspections conducted during the quarter ending May 31, 2005,¹¹⁰ the DPD has not complied with the requirement that all holding cells, and buildings that contain them, meet and maintain compliance with the current Life Safety Code, nor has the DPD implemented any additional interim fire safety measures.¹¹¹

¹¹⁰ These inspections are described in the Monitor's Report for the Quarter Ending May 31, 2005.

¹¹¹ The DPD's Eighth Quarter Status Report contains additional information regarding actions that have been taken regarding prisoner safety. However, not all of the actions taken by the DPD are required by paragraph C18, nor have they been confirmed by the Monitor. The Monitor's current assessment contains only the information that is required by paragraph C18 and has been verified by the Monitor during on-site inspections conducted during previous quarters and during the current quarter, as well as a review of relevant documentation.

In its Eighth Quarter Status Report, the City states that the major violations of the Life Safety Code that were found in several DPD precincts will not be remedied, but will be addressed by the construction of a new detention facility.¹¹²

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C14 and C18.

Paragraphs C15-17 – Detection, Suppression and Evacuation Programs; Fire Safety Program Development; Fire Safety Program Implementation

Paragraph C15 requires the DPD to develop and implement a comprehensive fire detection, suppression and evacuation program¹¹³ 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.

Paragraph C16 requires the DPD to develop the 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.

Paragraph C17 requires the DPD to implement the fire safety program within one year of the effective date of the UOF CJ (July 18, 2004). The approved program must be reviewed and approved in writing by the DFD, at a minimum of once per year and prior to any revisions.

Background

The Monitor last assessed the DPD's compliance with paragraphs C15-17 during the quarter ending November 30, 2004, finding the DPD in non-compliance with each because it had neither finalized nor submitted to the DOJ a comprehensive fire detection, suppression and evacuation program for all holding cells, and the buildings that contain them.

Current Assessment of Compliance

The DPD had not submitted a comprehensive fire detection, suppression and evacuation program for all buildings that maintain holding cells as of the end of the current quarter. On February 17,

¹¹² As in our previous quarterly reports, the Monitor notes that even though the new facility may meet the COC CJ requirements, until such time that all DPD buildings containing holding cells either meet the requirements of the COC CJ or are no longer used to confine prisoners, the DPD will be unable to achieve compliance with the COC CJ.

¹¹³ Within the COC CJ and in the Monitor's report, the Comprehensive Fire Detection, Suppression and Evacuation Program is also referred to as the "Fire Safety Program" (paragraph C16).

2005, the DPD requested that the Monitor provide TA in relation to the DPD's further development and completion of its Draft Fire Safety Program (FSP). The Monitor provided such TA, which concluded during the month of June 2005. The Holding Cell Compliance Committee (HCCC) has indicated that the DPD is making progress in incorporating the Monitor's TA into a finalized FSP, and recently estimated that the FSP will be submitted to DOJ for review and approval on or around November 1, 2005 instead of September 1, as previously indicated.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C15-17.

Paragraph C19 – Testing of Fire Safety Equipment

Paragraph C19 requires 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 apparatus.

Background

The Monitor last assessed the DPD's compliance with paragraph C19 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had yet to develop a consistent method for ensuring that all fire safety equipment contained within these facilities was routinely inspected, tested and maintained.

Current Assessment of Compliance

The HCCC has indicated that the paragraph C19 requirement to routinely inspect, test and maintain the fire safety equipment has not yet been addressed by the DPD. During discussions between the HCCC and the Monitor during the course of the TA provided regarding the FSP,¹¹⁴ the Monitor conveyed that the tasks of inspecting, testing, and maintaining fire equipment must be conducted by persons who are qualified to perform such testing. The Monitor suggested that the DPD utilize outside contractors who are certified to conduct the required tasks.

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.

¹¹⁴ Refer to the Current Assessment of Compliance for paragraphs C15-17, above.

Background

The Monitor last assessed the DPD's compliance with paragraph C20 during the quarter ending February 29, 2004, finding the DPD in compliance based on unannounced inspections and visual observations conducted by the Monitor.

Current Assessment of Compliance

During the current quarter, the Monitor conducted random unannounced onsite inspections of DPD buildings containing holding cells. The Monitor determined that the DPD was enforcing its no smoking policy within the cell block areas of the precincts at the time of the inspections.¹¹⁵

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

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 last assessed the DPD's compliance with paragraph C20 during the quarter ending February 29, 2004, finding the DPD in non-compliance because the DPD had not yet developed appropriate protocols for ensuring that flammable liquids are properly stored.

Current Assessment of Compliance

During the current quarter, the Monitor conducted on-site inspections and reviewed the DFD Life Safety Code Inspection documentation.¹¹⁶ As previously reported,¹¹⁷ the DPD purchased and installed flammable liquid storage lockers for all DPD facilities that maintain holding cells. Although the DFD Life Safety Code inspections, described in the Current Assessment of Compliance for paragraphs C14 and C18, above, identified incidents of improper storage of combustible materials, and improper storage of flammable liquids was observed during the DOJ-

¹¹⁵ The inspections were conducted from July 25-29, 2005; no signs of smoking were observed during the inspections.

¹¹⁶ The Monitor conducted these inspections from July 25-29, 2005. Refer to the Current Assessment of Compliance for paragraph C20.

¹¹⁷ Refer to the Monitor's Report for the Quarter Ending February 29, 2004.

initiated inspections conducted during the quarter ending May 31, 2005,¹¹⁸ the Monitor's current inspections indicated that the lockers are being utilized and no evidence of improper storage of flammable liquids was observed. However, the DPD has not yet submitted a policy or protocol containing the requirement and/or procedures for the proper storage of flammable liquids or combustible materials, nor has any training or instruction been provided giving appropriate DPD employees guidance related to the proper storage of combustible materials.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C21.

Paragraph C22 – Removal of Kane Ceiling Tiles

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

Background

The Monitor last assessed the DPD's compliance with paragraph C22 during the quarter ending February 29, 2004, finding the DPD in non-compliance because Kane ceiling tiles were still present in the Fourth and Tenth Precincts.

Current Assessment of Compliance

Based on inspections conducted during the current quarter,¹¹⁹ the Monitor confirmed that all Kane Fiber Ceiling Tiles have been removed from DPD buildings containing holding cells.

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

¹¹⁸ These inspections are described in the Monitor's Report for the Quarter Ending May 31, 2005. Unsanitary amounts of garbage and unsafe storage of cleaning chemicals were located in the basement of the First Precinct. During subsequent inspections of this area, the Monitor noted that the basement has been thoroughly cleaned.

¹¹⁹ The Monitor conducted these inspections from July 25-29, 2005. Refer to the Current Assessment of Compliance for paragraph C20.

II. EMERGENCY PREPAREDNESS POLICIES

This section of the COC CJ comprises paragraphs C23-25. It requires the DPD to develop and implement emergency preparedness plans for all facilities that maintain holding cells. 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 last assessed the DPD's compliance with paragraphs C23-25 during the quarter ending February 28, 2005. The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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.

Background

The Monitor last assessed the DPD's compliance with paragraph C23 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that the DPD was in non-compliance with paragraphs C24-25. As noted by the Monitor, compliance with paragraph C23 cannot occur until the DPD attains compliance with paragraphs C24-25.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraphs C24-25, below, the DPD is currently in non-compliance with these paragraphs. As a result, the Monitor finds the DPD in non-compliance with paragraph C23.

Paragraph C24 – Emergency Preparedness Program Development

Paragraph C24 requires the DPD to develop a comprehensive emergency preparedness program, and requires the written approval of the DFD, for all DPD buildings that contain holding cells. The program must be submitted for the review and approval of the DOJ within three months of the effective date of the COC CJ and implemented within three months of DOJ's approval. The program must include an emergency response plan for each building that contains holding cells in the event of a fire-related emergency, and which identifies staff responsibilities and key control procedures. The program must also require that fire drills be performed and documented for each building that contains holding cells on all shifts once every six months.

Background

The Monitor last assessed the DPD's compliance with paragraph C24 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although, the DPD had submitted its draft emergency preparedness program to the DOJ for review and approval, the DOJ had not yet approved the plan, nor had it been implemented by the DPD as of the end of the quarter.

Current Assessment of Compliance

On March 24, 2005, the DOJ issued a letter to DPD stating that further revisions to the DPD's Draft Emergency Preparedness Program (EPP) were required. According to the HCCC, the precincts are currently making those revisions based on the feedback from DOJ. The HCCC recently estimated that the EPP will be re-submitted to DOJ by November 1, 2005 instead of September 1, as previously indicated. .

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C24.¹²⁰

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.

Background

The Monitor last assessed the DPD's compliance with paragraph C25 during the quarter ending November 30, 2004, finding the DPD in non-compliance. The Monitor determined that the DPD had implemented a system whereby one key operates all of the cell door locks within each building that contained holding cells. The Monitor further determined that Directive 305.4, *Holding Cells Areas*, met the policy requirements of this paragraph. However, as of the end of the quarter, the policy had not yet been disseminated. In addition, the log designed to document the conduct of regular and routine inventory, testing and maintenance of all holding cell keys and locks, which was referenced in the policy, had not yet been finalized.

¹²⁰ Until such time that the Comprehensive Emergency Preparedness Program has been approved by the DOJ and implemented; the DPD will be unable to achieve compliance with paragraph C24.

Current Assessment of Compliance

During the current quarter, the Monitor conducted testing of the dissemination of Directive 305.4, *Holding Cell Areas*, and found that it had not been adequately disseminated.¹²¹ In addition, the HCCC indicated that the DPD intends to revise the previously designed form for documenting the conduct of routine inventory, testing and maintenance of all holding cell keys and locks and include it within the EPP, as required by paragraph C24.

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

¹²¹ The Monitor determined that only 38.3% of the officers sampled had received the policy. Refer to the Current Assessment of Compliance for paragraphs U54-55, above.

III. MEDICAL AND MENTAL HEALTH CARE POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C26-29 and C31-34 during the quarter ending May 31, 2005 finding the DPD in non-compliance, as it had not yet disseminated and implemented all of the policies, auditable logs, and forms necessary for compliance with the requirements of these paragraphs.

During the current quarter, the Monitor completed its testing, commenced during the quarter ending May 31, 2005, of the DPD's dissemination of its Infectious Disease Control policy, which addresses the requirements of paragraph C30. The results of this assessment follow.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C26-34 during the quarter ending November 30, 2005.

Paragraph C30 – Infectious Disease Policy

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

Background

The Monitor commenced an assessment of the DPD's compliance with paragraph C30 during the quarter ending May 31, 2005 but had not yet completed its testing as of the end of that quarter. The Monitor had previously determined that Directive 403.2, *Infectious Disease Control* adequately addressed the policy requirements of the COC CJ; however, the Monitor had yet to determine if the policy had been adequately disseminated.¹²²

¹²² According to the HCCC, this policy was disseminated on April 11, 2005 with an effective date of May 2, 2005.

Current Assessment of Compliance

During the current quarter, the Monitor completed its testing related to the dissemination of Directive 403.2, *Infectious Disease Control*. The Monitor selected a random sample of officers and requested documentation evidencing the dissemination of the directive to the selected officers.¹²³ The DPD provided documentation evidencing the receipt of the directive for all 94 officers selected for testing.¹²⁴ The Monitor also requested and received documentation supporting the review and approval of this policy by qualified medical health professionals.

The Monitor will begin testing the implementation of the Infectious Disease Control policy during the quarter ending November 30, 2005, which is the next scheduled review of paragraph C30.

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

IV. PRISONER SAFETY POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C35-38 during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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.

Background

The Monitor last assessed the DPD's compliance with paragraph C35 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that it had not finalized or implemented the policies and procedures that addressed the requirements of paragraphs C36-38.

¹²³ A random, statistical sample of 94 officers was selected out of a population of approximately 3,810 listed officers. The Monitor utilized a confidence level of 95% with an acceptable error rate of +/- four percent.

¹²⁴ The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of officers acknowledging receipt of policy.

As noted by the Monitor, compliance with paragraph C35 cannot occur until the DPD attains compliance with paragraphs C36-38.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraphs C35-38, below, the DPD is currently in non-compliance with these paragraphs. As a result, 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.

Background

The Monitor last assessed the DPD's compliance with paragraph C36 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that although it had submitted the revised Directive 305.1, *Detainee Intake/Assessment*, to the Monitor, it had not implemented the policy or auditable logs and forms to address the requirements of this paragraph.

Current Assessment of Compliance

Since its last assessment of the DPD's compliance with this paragraph, the Monitor completed its review of the Directive 305.1, *Detainee Intake/Assessment*, and the Detainee Intake Form (DIF), DPD Form 651, in relation to the requirements of this paragraph.¹²⁵ The Monitor identified shortcomings within the DIF related to screening for vulnerable prisoners and provided comments to the DPD on April 5, 2005. The DPD responded to the Monitor's feedback by revising the DIF to include specific language that directs detention officers and supervisors to house prisoners in a single occupancy cell if the prisoner indicates that he or she is fearful of being harmed by another prisoner while in custody, or if a visual observation of the prisoner indicates that they physically appear to be youthful, effeminate, or transgendered, which could indicate a predatory risk.

¹²⁵ On March 22, 2005, the DOJ extended a letter of conditional approval to the DPD related to the CMMHSP, including Directive 305.1 and the DIF as they related to paragraphs C26-34, over which the DOJ has review and approval. This approval did not relate to the requirements of the Prisoner Safety provisions of the COC CJ.

According to the HCCC, the policy and DIF were disseminated on April 18, 2005, with an effective date of May 9, 2005. In order to test the DPD's dissemination of the directive, the Monitor selected a random sample of 94 officers and requested documentation evidencing its dissemination to the selected officers.¹²⁶ The DPD provided documentation evidencing the receipt of the directive for only 42, or 44.7%, of the 94 officers selected.¹²⁷

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C36.¹²⁸

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.

Background

The Monitor last assessed the DPD's compliance with paragraph C37 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that the DPD's policies and forms designed to address the requirements of this paragraph had not been disseminated or implemented.

Current Assessment of Compliance

The DPD submitted Directive 305.1, *Detainee Intake/Assessment*, and Directive 305.4, *Holding Cell Areas*, to address the requirements of this and other paragraphs. The Monitor tested the dissemination of these directives and determined that the DPD had not adequately disseminated either directive¹²⁹

¹²⁶ A random, statistical sample of 94 officers was selected out of a population of approximately 3,711 listed officers. The Monitor utilized a confidence level of 95% with an acceptable error rate of +/- four percent.

¹²⁷ The DPD utilized a listing that identified the policies disseminated and the date disseminated. The listing also contained the signatures of officers acknowledging receipt of policy.

¹²⁸ The Monitor will conduct additional testing of dissemination of the directive and DIF once the DPD indicates that they have been adequately disseminated. The Monitor will commence testing implementation of the directive once the Monitor determines that the directive and DIF have been adequately disseminated.

¹²⁹ Refer to the Current Assessment of Compliance for paragraph C36 for a description of the testing of the dissemination of Directive 305.1. Refer to the Current Assessment of Compliance for paragraphs U54-55 for a description of the testing of the dissemination of Directive 305.4

Intending to address the paragraph C37 requirement to document cell checks, the DPD initially submitted a revised cell check log entitled *Platoon Daily Detainee Summary*, which would be used to record and document the requisite cell checks of the general population every 30 minutes, and the high-risk log, which would be used to document cell checks of high-risk detainees every 15 minutes. However the DPD has since indicated they it has purchased and will be installing an automated time-clock system that will record the time of the requisite cell checks in the buildings containing holding cells.

The Monitor notes that during the recent onsite assessments of buildings containing holding cells, the precincts continue to use individualized methods to record cell checks, such as various types of logs, blotters and/or grease boards, and the specific information collected varies by precinct.

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.

Background

The Monitor last assessed the DPD's compliance with paragraph C38 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that Directive 305.1, *Detainee Intake/Assessment*, and the auditable logs and/or forms referenced therein, which were designed to address the requirements of this paragraph, had not been disseminated or implemented.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph C36, above, the Monitor's testing revealed that the DPD has not adequately disseminated Directive 305.1, *Detainee Intake/Assessment*, which was submitted in response to this paragraph.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C38.¹³⁰

¹³⁰ The Monitor will conduct additional testing of dissemination of the directive once the DPD indicates that it has been adequately disseminated. The Monitor will commence testing implementation of the directive once the Monitor determines that it has been adequately disseminated.

V. ENVIRONMENTAL HEALTH AND SAFETY POLICIES

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 last assessed the DPD's compliance with paragraphs C39-46 during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs C39-40 – Cleanliness of Cells; Development of Cleaning Policy

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

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.

Background

The Monitor last assessed the DPD's compliance with paragraphs C39-40 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each. Based on inspections conducted by the Monitor, it was evident that the precincts were not being maintained in a clean and sanitary manner. In addition, although the DPD submitted Directive 305.4, *Holding Cell Areas*, and the related auditable log for recording the cleaning of the cells to address the requirements of the paragraphs, the directive and log were not implemented as of the end of the quarter.

Current Assessment of Compliance

During the current quarter, the Monitor conducted testing of the dissemination of Directive 305.4, *Holding Cell Areas*,¹³¹ which includes policy that addresses the requirements of paragraphs C39-40, and found that it had not been adequately disseminated.¹³² Additionally, during the current quarter, the Monitor again conducted random unannounced onsite inspections

¹³¹ According to the HCCC, this policy was disseminated on April 18, 2005, with an effective date of May 9, 2005.

¹³² The Monitor determined that only 38.3% of the officers sampled had received the policy. Refer to the Current Assessment of Compliance for paragraphs U54-55, above.

of DPD buildings containing holding cells,¹³³ during which the Monitor interviewed DPD personnel regarding the existence of a regular cleaning schedule and visually inspected each holding cell to determine if the cells were clean. The inspections and interviews revealed that the holding cell areas are being kept relatively clean; in fact, three of the precincts inspected were being power-washed during the Monitor's visit. However, although the DPD personnel interviewed indicated that the power washings occur once per month, they were not aware of the policy to regularly inspect and clean the holding cell area on a daily basis and each time a prisoner vacates a cell, as is required by Directive 305.4.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C39 and C40.¹³⁴

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.

Background

The Monitor last assessed the DPD's compliance with paragraph C41 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that Directive 305.4, *Holding Cell Areas*, had not yet been implemented in DPD buildings that contain holding cells and the Maintenance Log referenced in the policy remained under development.

Current Assessment of Compliance

During the current quarter, the Monitor conducted testing of the dissemination of Directive 305.4, *Holding Cell Areas*,¹³⁵ which includes policy that addresses the requirements of paragraph C41, and found that it had not been adequately disseminated.¹³⁶ The HCCC indicated that the related log, the Cleaning and Maintenance Log, has been placed on the DPD intranet, and is available for use by holding cell personnel. The Monitor will evaluate the use of the log as a part of its testing of the implementation of the policy.

¹³³ The Monitor conducted these inspections from July 25-29, 2005. Refer to the Current Assessment of Compliance for paragraph C20.

¹³⁴ The Monitor will conduct additional testing of dissemination of the directive once the DPD indicates that it has been adequately disseminated. The Monitor will commence testing implementation of the directive, including a review of completed cleaning documentation, once the Monitor determines that it has been adequately disseminated.

¹³⁵ According to the HCCC, the policy was disseminated on April 18, 2005, with an effective date of May 9, 2005.

¹³⁶ The Monitor determined that only 38.3% of the officers sampled had received the policy. Refer to the Current Assessment of Compliance for paragraphs U54-55, above.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C41.¹³⁷

Paragraph C42 – Heating and Ventilation

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

For ease of reporting, the Monitor has split paragraph C42 into the following two components:

- C42a – Adequate Ventilation
- C42b – Adequate Heating

Background

C42a – Adequate Ventilation

The Monitor last assessed the DPD's compliance with C42a during the quarter ending February 28, 2005 finding the DPD in compliance based on information provided in the report issued by Great Lakes Heating and Cooling, dated October 23, 2003, analysis provided by the Monitor's ventilation expert,¹³⁸ and onsite assessments conducted by the Monitor, during which the Monitor considered the climate in the holding cell areas based on a reasonable comfort level. The Monitor noted that the DPD would remain in compliance unless future inspections indicate that the ventilation had changed.

C42b – Adequate Heating

The Monitor last assessed the DPD's compliance with C42b during the quarter ending February 28, 2005 finding the DPD in non-compliance. Although the temperatures of the holding cells were within the range of 66-80 degrees, as specified in Directive 305.4, *Holding Cell Areas*, the directive had not yet been disseminated.

¹³⁷ The Monitor will conduct additional testing of dissemination of the directive once the DPD indicates that it has been adequately disseminated. The Monitor will commence testing implementation of the directive, including a review of completed maintenance documentation, once the Monitor determines that it has been adequately disseminated.

¹³⁸ The Monitor consulted with the Detroit Health and Wellness Promotion, the Michigan Occupational Safety and Health Administration (MIOSHA), and the Monitor's own Subject Matter Expert in an attempt to identify the appropriate standards. Six air exchanges is the standard most often cited when discussing adequate ventilation.

Current Assessment of Compliance

C42a – Adequate Ventilation

During the current quarter, the Monitor conducted unannounced onsite inspections of all DPD buildings containing holding cells to assess the ventilation within the holding cell areas.¹³⁹ Based on the lack of circulated air coming from the vents within the holding cell areas and the high temperatures within the holding cell areas of two precincts,¹⁴⁰ the Monitor considers the level of ventilation to be inadequate. It is when the interior of the holding cell block is at a high temperature (as it was when these inspections were conducted) that the ventilation within the cell blocks becomes even more important. Based on the lack of air emitting from the vents, and the statements regarding the ventilation and temperature conditions within the cell block made by both arrestees and DPD employees during the inspections, the Monitor believes that the ventilation system is no longer working as described in the report issued by Great Lakes Heating and Cooling, dated October 23, 2003, and is no longer operating adequately to meet the requirements of this paragraph. The Monitor suggests that the DPD again hire a professional heating and cooling contractor to assess and repair the ventilation system, as necessary.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph C42a.

C42b – Adequate Heating

Directive 305.4, *Holding Cell Areas*, specifies that the temperatures in the holding cells must remain within the range of 66-80 degrees. During the current quarter, the Monitor conducted testing of the dissemination of the directive¹⁴¹ and found that it had not been adequately disseminated.¹⁴²

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph C42b.¹⁴³

¹³⁹ As described in the Current Assessment of Compliance for paragraph C20, the Monitor conducted these inspections from July 25-29, 2005. During the inspections, the Monitor used a hand-held thermostat to record temperature readings and physically felt for air emitting from within the vents in the holding cell areas.

¹⁴⁰ Specifically, the Third Precinct Misdemeanor Bullpen was over 85 degrees and the entire holding cell area of the Twelfth Precinct was over 80 degrees. Although a designated temperature range is not a specific requirement of the COC CJ, the DPD's Directive 305.4, *Holding Cell Areas*, does specify that the temperatures within the holding cells must remain between 65-80 degrees or prisoners must be transferred to another precinct.

¹⁴¹ According to the HCCC, the policy and log were disseminated on April 18, 2005, with an effective date of May 9, 2005.

¹⁴² The Monitor determined that only 38.3% of the officers sampled had received the policy. Refer to the Current Assessment of Compliance for paragraphs U54-55, above.

¹⁴³ The Monitor will conduct additional testing of dissemination of the directive once the DPD indicates that it has been adequately disseminated. The Monitor will commence testing implementation of the directive, including a

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.

Background

The Monitor last assessed the DPD's compliance with paragraph C43 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Based on physical inspections of 100% of the equipment in the holding cells, the Monitor determined that the DPD had not met the minimum benchmark of at least 94% for the level of compliance required with this paragraph, as outlined in the *Methodologies*.

Current Assessment of Compliance

During the current quarter the Monitor again conducted onsite assessments at all DPD buildings containing holding cells.¹⁴⁴ The Monitor visually inspected the holding cell areas and interviewed DPD personnel regarding the procedures utilized when holding cell fixtures (i.e. toilets, sinks, lighting) are not working properly. The Monitor determined that although the precincts, in total, had a minimum amount of broken equipment (i.e. less than 5%), a cell in the misdemeanor bull pen of the Third Precinct had a broken toilet that was leaking water and creating a puddle on the floor. The one prisoner being held in that cell was required to use the adjacent bull pen for toilet facilities, which required him to walk through the water on the floor in order to reach the toilet that was working. When the Monitor asked the detention officers on-duty at the time of the Monitor's inspection what was being done about the broken toilet and water on the floor, one of them responded by stating, "I'm not a plumber". The Monitor then asked if the broken toilet had been reported for repair and the detention officers stated they did not know.¹⁴⁵

The policy requirements of paragraph C43 are covered under paragraph C41. As described in the Current Assessment of Compliance for paragraph C41, above, the Monitor determined that Directive 305.4, *Holding Cell Areas*, and the finalized auditable log designed to document maintenance requests and responses had not been adequately disseminated. The inadequate dissemination of these documents has an obvious impact on the DPD's compliance with the

review of completed maintenance documentation, once the Monitor determines that it has been adequately disseminated.

¹⁴⁴ The Monitor conducted these inspections from July 25-29, 2005. Refer to the Current Assessment of Compliance for paragraph C20.

¹⁴⁵ This incident was immediately reported to the on-duty desk OIC by the Monitor, who stated that maintenance division had been contacted; however, the date of this contact was not recorded or available.

implementation of paragraph C43, as it appears that not all DPD detention officers are aware of how to properly handle a situation in which holding cells have broken equipment.

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

Background

The Monitor last assessed the DPD's compliance with paragraph C44 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that the precincts do not maintain the capability of meeting the 20 foot-candle standard required by paragraph C44. The DPD had indicated that the lighting requirements would not be addressed until the retrofitting of the holding cells occurred, as the lighting must be coordinated with the installation of sprinkler systems and the removal of suicide hazards. The Monitor expressed additional concerns regarding the lack of lighting in holding cells, as many cells were so dark that detention officers are unable to visually observe prisoners.

Current Assessment of Compliance

As stated in the Monitor's Report for the Quarter Ending February 28, 2005, the City and the DPD contend that the central detention facility planned under Proposal S¹⁴⁶ will comply with all of the physical requirements contained within the COC CJ, including the 20 foot-candle lighting standard required by paragraph C44. However, construction of this facility will take approximately 24 months to complete. Until such time that all buildings that contain holding cells either meet the COC CJ's lighting requirements or are no longer used to confine prisoners, the DPD will be unable to achieve compliance with paragraph C44.

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

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.

¹⁴⁶ Proposal S was approved by City voters on November 2, 2004.

Background

The Monitor last assessed the DPD's compliance with paragraph C45 during the quarter ending February 28, 2005, finding the DPD in non-compliance due to the fact that it had not yet disseminated Directive 305.4, *Holding Cell Areas*, to ensure that all appropriate DPD personnel have received written direction and procedures that they are to provide prisoners with reasonable access to toilets and water 24 hours a day.

Current Assessment of Compliance

During the current quarter, the Monitor conducted onsite assessments at all DPD buildings containing holding cells,¹⁴⁷ during which the Monitor verified that the DPD was continuing its practice of having at least one detention officer present at all times in the holding cell area. However, the Monitor also conducted testing of the dissemination of Directive 305.4, *Holding Cell Areas*,¹⁴⁸ which specifies that water must be provided to all prisoners upon request, and found that it had not been adequately disseminated.¹⁴⁹

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C45.¹⁵⁰

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.

Background

The Monitor last assessed the DPD's compliance with paragraph C46 during the quarter ending February 28, 2005, finding the DPD in compliance. The Monitor verified during onsite inspections that all Hepa-Aire filtration systems remain removed.

¹⁴⁷ The Monitor conducted these inspections from July 25-29, 2005. Refer to the Current Assessment of Compliance for paragraph C20.

¹⁴⁸ According to the HCCC, the policy was disseminated on April 18, 2005, with an effective date of May 9, 2005.

¹⁴⁹ The Monitor determined that only 38.3% of the officers sampled had received the policy. Refer to the Current Assessment of Compliance for paragraphs U54-55, above.

¹⁵⁰ The Monitor will conduct additional testing of dissemination of the Directive 305.4 once the DPD indicates that it has been adequately disseminated. The Monitor will commence testing implementation of the directive once the Monitor determines that it has been adequately disseminated.

Current Assessment of Compliance

During the quarter, the Monitor verified during onsite inspections¹⁵¹ that all Hepa-Aire filtration systems remain removed.

Based on the foregoing, the Monitor continues to find the DPD in compliance with paragraph C46.

¹⁵¹ The Monitor conducted these inspections from July 25-29, 2005. Refer to the Current Assessment of Compliance for paragraph C20.

VI. POLICIES CONCERNING PERSONS WITH DISABILITIES

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

The Monitor last assessed the DPD's compliance with paragraphs C47-48 during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph C47 – Accommodations for Persons with Disabilities

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

Background

As reported in the Monitor's Report for the Quarter Ending February 29, 2004, the DPD designated the Fifth and Sixth Precincts as "handicapped accessible" holding cell facilities, and the Eleventh and Twelfth Precincts as back-up locations, which were determined to be adequately accessible to prisoners with disabilities.

The Monitor last assessed the DPD's compliance with paragraph C47 during the quarter ending February 28, 2005, finding the DPD in non-compliance. The Monitor requested documentation regarding all prisoners who had been conveyed and/or housed at the Fifth and Sixth Precincts due to disabilities; however, the DPD provided tracking logs that contained information detailing the usage of the DPD wheelchairs only.¹⁵² The Monitor explained that in order to demonstrate its compliance with the requirements of paragraph U47, the DPD must track all prisoners who have any type of disability, not just prisoners who require the use of a wheelchair.

Current Assessment of Compliance

During the current quarter, the Monitor again requested a listing of all prisoners who had been conveyed to the Fifth, Sixth, Eleventh, or Twelfth Precincts because they required accommodations for any type of disability. The DPD provided a document that listed seven

¹⁵² The logs provided indicate that during the period February 2, 2005 to March 17, 2005, no prisoners required the use of a wheelchair.

prisoners arrested between April 15, 2005 and June 25, 2005 who were held at either the Fifth or Sixth Precincts; the report also detailed the prisoners' various physical disabilities.

During the onsite inspections of all DPD buildings containing holding cells conducted this quarter,¹⁵³ the Monitor interviewed detention officers and/or the Desk OICs at each precinct to determine if DPD personnel were aware of the DPD's procedures regarding the handling of handicapped prisoners. During these interviews, the Monitor asked the on-duty detention officer(s) what they would do if a prisoner came in who was disabled and required special handling. In all cases, the detention officers either correctly articulated that the prisoner would be conveyed to one of the designated precincts or indicated that the Desk OIC would be notified to make the appropriate decision. In the latter cases, the Monitor then followed-up with the Desk OIC and asked the same question. In one case the on-duty supervisor was not sure where the prisoner should be housed, but did indicate that the prisoner would probably be sent to DRH and evaluated. The Monitor then asked the detention officers and desk OICs how they would handle a mentally disabled arrestee. In all cases, the responses were "I don't know"; however, after discussing the issue with the personnel being interviewed, they all came to the conclusion that the person would most likely be sent to DRH and evaluated. The decision of whether to house a mentally handicapped prisoner would then be made by the DRH personnel.¹⁵⁴

During the on-site inspections, the Monitor also specifically checked the cells at the Fifth, Sixth, Eleventh, and Twelfth Precincts to determine if those cells were indeed available for disabled prisoners. These inspections revealed that the two designated holding cells at the Fifth Precinct had inoperable doors and could not be used. Both the detention officer and Desk OIC on-duty indicated that the cells have been broken for at least 4-5 months and for that reason the Fifth precinct has not been housing handicapped prisoners. The Monitor attempted to clarify this inconsistency between the information provided by the DPD on the listing of disabled prisoners (as described above) and the information received at the Fifth Precinct by asking the HCCC; however, no additional information has been received by the Monitor as of the date of this report.

Based on the foregoing, the Monitor finds the DPD in non-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

¹⁵³ The Monitor conducted these inspections from July 25-29, 2005. Refer to the Current Assessment of Compliance for paragraph C20.

¹⁵⁴ There does not appear to be a consistent policy for the detention officers or OICs to follow in this instance. This scenario is not addressed in the DPD medical and mental health policies (paragraphs C26-34) or any other policy that the Monitor is aware of. As discussed below in paragraph U48, the Monitor is seeking clarification as to whether both physical and mental disabilities are covered by the COC CJ in paragraphs C47-48.

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.

Background

The Monitor last assessed the DPD's compliance with paragraph C48 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although the DPD submitted to the Monitor a revised Directive 305.1, *Detainee Intake/Assessment*, which is meant to address the requirements of paragraph C48, it had not been implemented in DPD buildings that contain holding cells as of the end of the quarter.

Current Assessment of Compliance

During the current quarter, the Monitor completed its evaluation of revised Directive 305.1, *Detainee Intake/Assessment*, and on July 22, 2005, requested further documentation to support the requirements that this policy be approved in writing by qualified medical and mental health professionals and reviewed and approved in writing by qualified medical and mental health professionals at least every year and prior to any revisions to the program. In July 2005, the Monitor received documentation in response to the above request. The Monitor reviewed the documentation¹⁵⁵ and is satisfied that the policy was reviewed by appropriate persons as required by this paragraph; however, during the Monitor's review of the policy it was clear that only prisoners with physical disabilities had been addressed. The Monitor subsequently initiated discussions with the City, the DPD and the DOJ regarding this issue. The Monitor has not received any clarification as to whether the definition of disability as it appears in this paragraph applies to both physical and mental disabilities or just physical ones. Furthermore, the Monitor raised the issue of whether the policy provides adequate guidance to officers on identifying a disability.

In any event, as described in the Current Assessment of Compliance for paragraph C36, above, the Monitor's testing revealed that the DPD has not adequately disseminated Directive 305.1.¹⁵⁶

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

¹⁵⁵ The documentation depicts review and approval via signatures of the Department physician, Richard Miles, M.D. and the consulting Department Psychologist, LaMaurice Gardner, Jr., Ph D, dated July 25, 2005.

¹⁵⁶ According to the HCCC, the policy and DIF were disseminated on April 18, 2005, with an effective date of May 9, 2005. The Monitor determined that only 44.7 percent of the officers sampled during testing had received the policy.

VII. FOOD SERVICE POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending May 31, 2005, finding the DPD in non-compliance. The Monitor reviewed the DPD Audit related to food service implementation and the DPD's Food Service Policies and determined that the policies were inadequate and that the food was not being properly stored.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C49-50 during the quarter ending May 31, 2006.

VIII. PERSONAL HYGIENE POLICIES

This section of the COC CJ comprises paragraph C51 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2005, finding the DPD in non-compliance based on the findings from the Food Service Program audit conducted by DPD AT and personnel from the Detroit Department of Health and Welfare, which was submitted on January 31, 2005. The audit identified several areas of non-compliance, including depleted supplies of personal hygiene kits in two precincts, precinct personnel unaware that new safety combs had been made available, and two precincts without adequate supplies of feminine hygiene products.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C51 during the quarter ending May 31, 2006.

IX. USE OF FORCE AND RESTRAINTS POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C52-54 during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs C52-54 – Use of Force on Prisoners in Holding Cells Policies; Prisoner Policies; Prisoners in Handcuffs; Prisoners Use of Force Investigations

Paragraph C52 states that the DPD shall require that any use of force on prisoners in holding cells complies with the DPD's use of force policies and procedures.

Paragraph C53 states that the DPD shall revise and augment its policies regarding prisoners.

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

Background

The Monitor last assessed the DPD's compliance with paragraphs C52-54 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each. Although the DPD had revised Directive 305.4, *Holding Cell Areas*, it had not yet been disseminated to the field. Additionally, although the policy did state that detainees must not be handcuffed to a fixed object for longer than three hours, the Monitor found that this was, in fact, taking place in the First Precinct.

The DPD also resubmitted Directive 304.2, *Use of Force*, and Training Directive 04-07, *Use of Force Reporting*, on February 24, 2005. On March 25, 2005, the DOJ submitted a letter to the DPD offering additional recommendations regarding the Use of Force Policy. The DPD resubmitted the policy on March 26, 2005. The DPD resubmitted Training Directive 04-07 in a letter dated March 22, 2005.

Current Assessment of Compliance

During the seventh quarter, the DPD finalized Directive 305.4, *Holding Cell Areas*, and disseminated it to the field on April 18, 2005.¹⁵⁷ However, as described in the Current Assessment of Compliance for paragraphs U54-55, above, the DPD provided documentation evidencing the receipt of this directive for only 38.3% of the officers selected for testing by the Monitor.

Directive 305.4 is accompanied by many corresponding forms. The DPD has indicated that some of the forms had been finalized, disseminated and posted on the DPD website for implementation, including UF-008, Restriction Violations of Policy; DPD 700, Restriction Log; Holding Cell Cleaning and Maintenance Log; and the Daily Detainee Mean and Hygiene Items Log. However, since the dissemination of Directive 305.4, the DPD has made further edits to some of these forms, including changing their names and/or intended use.¹⁵⁸ The DPD has stated that once finalized, a teletype will be posted on the DPD's intranet along with the correct titles and form numbers of the new forms.¹⁵⁹

In addition, as described in the Current Assessment of Compliance for paragraphs U27-30 and U32-33, above, the disseminated Directive 304.2, *Use of Force*, after receiving approval from the DOJ and the BOPC; however, the DPD provided documentation evidencing the receipt of the directive for only 23.4% of the officers selected for testing by the Monitor.

The DPD also resubmitted Training Directive 04-07 on May 17, 2005 and again on July 11, 2005. The Monitor provided the DPD with a memorandum on June 9, 2005 outlining specific areas within the Training Directive that the Monitor indicated should be revised. The DOJ responded with a letter on July 11, 2005, providing the DPD with additional comments and recommendations. The DPD resubmitted the revised Training Directive 04-07 on August 2, 2005. To date, Training Directive 04-07 has not been disseminated.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C52-54.

¹⁵⁷ The directive became effective on May 9, 2005 and was posted on the internet for use on May 17, 2005.

¹⁵⁸ For example, the DPD no longer intends to use the Platoon Daily Detainee Summary Log to document cell checks.

¹⁵⁹ Once the DPD has adequately disseminated Directive 305.4, the Monitor will begin testing the implementation of the forms.

X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW

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

The Monitor last assessed the DPD's compliance with paragraphs C55-57 during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs C55-57 – Prisoners Use of Force Investigations; Use of Force on Prisoners in Holding Cells Investigations; Prisoner Injuries

Paragraph C55 states that the DPD shall require that all uses of force, injuries to prisoners and in-custody deaths occurring in the DPD holding cells are investigated in compliance with the DPD's general incident investigation policies.

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

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.

Background

The Monitor last assessed the DPD's compliance with paragraphs C55-57 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each. The Monitor found that although the revised Directive 305.4, *Holding Cell Areas*, did meet the requirements of paragraphs C56 and C57, it had not been disseminated or implemented. Additionally, the forms and logs that are mentioned in the policy had not yet been finalized.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraphs U54-55, above, although the DPD indicated that it had disseminated Directive 305.4, *Holding Cell Areas*, the DPD provided documentation evidencing it receipt for only 38.3% of the officers selected for testing by the Monitor. In addition, as described in the Current Assessment of Compliance for

paragraphs C52-53, above, the DPD has not finalized the Platoon Daily Detainee Summary Log, which accompanies the directive.

As also described in the Current Assessment of Compliance for paragraphs C52-54, above, although the DPD indicated that it had disseminated Directive 304.2, *Use of Force*, the DPD provided documentation evidencing it receipt for only 23.4% of the officers selected for testing by the Monitor.

Finally, the DPD resubmitted a revised Training Directive 04-07 on August 2, 2005 after receiving comments and recommendations from the DOJ. To date, Training Directive 04-07 has not been disseminated.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C55-57.

XI. EXTERNAL COMPLAINTS

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

The Monitor last assessed the DPD's compliance with paragraphs C58-59 during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraphs C58-59 – Acceptance of External Complaints–Holding Cells; Investigation 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.

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.

Background

The Monitor last assessed the DPD's compliance with paragraphs C58-59 during the quarter ending February 28, 2005, finding the DPD in non-compliance with each due to the fact that as of the end of the quarter, the DPD was still in the process of revising the Directive 102.6, *Citizen Complaints*, to address recommendations made by the Monitor. On March 14, 2005, the DPD resubmitted Directive 102.6 and the Monitor provided additional recommendations.

Current Assessment of Compliance

The DPD again resubmitted Directive 102.6, *Citizen Complaints*, on April 28, 2005. The Monitor provided the DPD with a memo on May 31, 2005 outlining concerns and recommendations. The DPD resubmitted a revised directive on June 22, 2005 and again on July 30, 2005 addressing the recommendations made by the Monitor in the May 31, 2005 memo. On August 12, 2005, the Monitor informed the DPD that the policy meets the requirements of the relevant paragraphs of the UOF CJ. This policy had not been disseminated to officers or the OCI as of the end of the current quarter.

As described in the Current Assessment of Compliance for paragraphs U54-55, above, although the DPD indicated that it had disseminated Directive 305.4, *Holding Cell Areas*, the DPD

provided documentation evidencing it receipt for only 38.3% of the officers selected for testing by the Monitor.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C58-59.

XII. GENERAL POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C60-61 during the quarter ending November 30, 2004. The Monitor reviewed Directive 404.1, *Definitions*, and concluded that, with the exception of the unresolved issue regarding an acceptable definition of probable cause, the remainder of the directive adequately addresses the requirements of paragraph C60. However, the Monitor withheld a determination of the DPD's compliance with the paragraph until the probable cause issue is resolved. In addition, the written protocol for the receipt of citizen comment submitted by the DPD did not address all of paragraph C61's requirements.

The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 20, 2005.

XIII. MANAGEMENT AND SUPERVISION

This section of the COC CJ (paragraphs C62-72) requires the DPD to operate its holding cells in compliance with its comprehensive risk management plan and to routinely evaluate the operation of the holding cells to minimize the risks to its staff and prisoners. The DPD must evaluate such operations through the use of video cameras and via regularly scheduled semi-annual¹⁶⁰ audits that assess and report on issues affecting the safety and well-being of DPD personnel and prisoners in the DPD's holding cells.¹⁶¹

The Monitor last assessed the DPD's compliance with paragraphs C65-66 and C68-72 during the quarter ending May 31, 2005; the Monitor last assessed the DPD's compliance with paragraphs C62-64 and C67 during the quarter ending February 28, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter, and continued to provide TA to the members of the HCCC regarding COC CJ audits that were in progress.

The results of our current assessments follow.

Paragraph C62 – 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.

Background

The Monitor last assessed the DPD's compliance with paragraph C62 during the quarter ending February 28, 2005, finding the DPD in non-compliance. During the quarter ending August 31, 2004, the DPD submitted a draft plan in response to a request for documents related to this paragraph; however, in its Sixth Quarter Status Report,¹⁶² the DPD stated that compliance with this paragraph was attained with the creation of the HCCC since the committee's goals are to "assure continued compliance with the provisions of the COC CJ." It further states that "CRD personnel have and will continue to conduct audits and inspections to evaluate the operation of the holding cells to ensure minimal risk of harm to staff and prisoners." The Monitor had also been informed that the plan had been implemented by Field Duty Officers on August 30, 2004

¹⁶⁰ On October 4, 2004, the Court amended the audit schedule in the COC CJ by requiring the DPD's COC CJ audits to be completed semi-annually with the first and second audits due by January 31 and August 31, 2004, and subsequent audits due by January 31, 2005 and every six months thereafter.

¹⁶¹ The topics covered by these audits include: UOF; injuries to prisoners and allegations of misconduct in holding cells; fire detection, suppression and evacuation; emergency preparedness; medical/mental health; detainee safety; environmental health and safety; and food service.

¹⁶² For the quarter ending February 28, 2005.

and introduced briefly for Executive Duty Officers in January and February of 2005. The Monitor noted that it was unclear if the field duty inspection reports required under the plan were being completed on a daily basis, and whether they were being reviewed in order to evaluate the risk of harm to staff and prisoners as required by paragraph C62.

Current Assessment of Compliance

The DPD provided the Monitor with a copy of the field duty inspection form on March 28, 2005. The DPD indicated that the form was being prepared on a daily basis at the time it was submitted to the Monitor. However, the DPD indicated that they no longer have permanent weekday (Monday – Friday, 7:00pm- 3:00am) Field Duty Officers. Currently, the DPD only has weekend (Saturday – Sunday, 7:00pm – 3am) Field Duty Officers. The DPD also stated that in order to maintain the current procedure of weekday inspections, the HCCC and CRD took on some of the responsibility. The reports are being submitted to and reviewed by the Assistant Chiefs and the Chief of Police.

In contrast, the DPD's Eighth Quarter Status Report indicates that the DPD attained compliance with this paragraph with the creation of the HCCC. The DPD stated that the HCCC meets on a weekly basis and its goals include assuring compliance with the provisions of the COC CJ. The DPD stated that the HCCC conducts inspections to ensure compliance with paragraph C62. There is no mention of Field Duty Officers or inspection reports in connection with paragraph C62 in the DPD's quarterly report.

The Monitor still does not have enough consistent information to evaluate the DPD's compliance with this paragraph. Despite the inconsistent information, the Monitor will request a sample of the daily inspection reports to determine whether the DPD is in compliance with this paragraph.

Based on the foregoing, the Monitor has not yet evaluated the 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 (discussed in paragraphs U79-90);
- b. the performance evaluation system (discussed in paragraph U91);
- c. the auditing protocol (discussed in paragraph U92);
- d. regular and periodic review of all DPD policies; and
- e. regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.

Background

The Monitor last assessed the DPD's compliance with paragraph C63 during the quarter ending February 28, 2005, finding the DPD in non-compliance, as it had not addressed the requirements of subparagraphs a-e. In order to achieve compliance with subparagraphs C63a-c, the DPD must be in compliance with the requirements of the UOF CJ paragraphs that are related to each respective subparagraph. Because the DPD was in non-compliance with these corresponding paragraphs, the Monitor found the DPD in non-compliance with subparagraphs C63a-c.

To address the requirements of subparagraph C63d, the DPD submitted draft Directive 101.1, *Directive System*, which provides a system for the regular and periodic review of all DPD policies. As of the end of the quarter, the Monitor had not received documentation that the directive had been disseminated or implemented.

Finally, the DPD indicated in July 2004 that the regular meetings among DPD management that are required by subparagraphs U78d and C63e would be covered by the meetings being conducted pursuant to paragraph U110. However, the Monitor noted that the paragraph U110 meetings are for the DPD management to meet with the City Law Department concerning the conclusion of civil lawsuits alleging officer misconduct, while the purpose of the subparagraph U78d / C63e meetings are for DPD management to evaluate patterns of conduct that could increase the DPD's liability in any area, not just misconduct.

Current Assessment of Compliance

In order to achieve compliance with paragraph C63, the DPD must develop and implement a comprehensive risk management plan and address each of the requirements of subparagraphs C63a-e.

Subparagraph C63a

The DPD's risk management database has not yet been fully developed.¹⁶³

¹⁶³ See paragraphs U84, 85, 88d-e and U89 herein.

Subparagraph C63b

The DPD's has revised its performance evaluation system including the evaluation forms. The policy and forms have been disseminated. The Monitor is currently evaluating the DPD's training and implementation efforts for this paragraph.¹⁶⁴

Subparagraph C63c

As described in the Current Assessment of Compliance for paragraph U92, above, during the current quarter, the Monitor completed its review of the DPD's final 2005/2006 Fiscal Year Audit Protocol. The Monitor evaluated the Protocol and determined that it adequately addresses all of the requirements of paragraph U92. Accordingly, the Monitor found the DPD in compliance with paragraph U92. Furthermore, as evidenced by the submission of a compliant audit by the HCCC,¹⁶⁵ the DPD is implementing the protocol.

Subparagraph C63d

The DPD has stated that it will not commence with the regular and periodic review of all DPD policies until all policies have been developed and/or revised and disseminated.

Subparagraph C63e

As described in the Background section for this paragraph, the DPD has responded to previous document requests by submitting a draft plan and the Monitor has stated in previous quarterly reports that paragraph U110 meetings are not sufficient to meet the requirements of paragraph C63e and the DPD has failed to provide any information on subparagraphs C63d and e. Despite this, the DPD's most recent statement in its Eighth Quarter Status Report indicates that the DPD Senior Management Team meets to review patterns of conduct that increase liability. Without further details, the Monitor does not have sufficient information to evaluate this subparagraph.

Based on the assessments of the subparagraphs outlined above, the DPD has not yet fully developed a comprehensive risk management plan, although some of the elements are in place.

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

Paragraph C64 – Video Cameras – Holding Cells

Paragraph C64 states that the DPD policy on video cameras shall be revised and augmented to require:

¹⁶⁴ See paragraph U91 herein.

¹⁶⁵ Refer to the Current Assessment of Compliance for paragraph C70, below.

- 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.

Background

The Monitor last assessed the DPD's compliance with paragraph C64 during the quarter ending February 28, 2005, finding the DPD in non-compliance. Although the DPD indicated that a protocol had been developed to address the review and capture of video, the Monitor had not received it.

Current Assessment of Compliance

The DPD submitted the Video Review Protocol, along with Directive 303.3, *In-Car Video Policy*, and related forms, to the Monitor on March 18, 2005. The Monitor provided the DPD with a letter on April 26, 2005 outlining its concerns and recommendations. The DPD resubmitted the Video Review Protocol on May 10, 2005. The Monitor informed the DPD on May 16, 2005, via email, that the resubmitted protocol met the requirements of paragraph C64. The Monitor was informed that the DPD disseminated the Video Review Protocol, In-Car Video Policy and related forms on August 15, 2005, with an effective date of September 12, 2005.¹⁶⁶

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C64.

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

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

¹⁶⁶ Given that the effective date of the policy is after the end of the quarter, the DPD did not implement the policy as of the end of the current quarter. The Monitor will test the dissemination of the directive during the quarter ending November 30, 2005.

holding cells. The first and second of these audits were due by January 31, 2004 and August 31, 2004, respectively, and subsequent audits are due by January 31, 2005 and every six months thereafter.

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

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

Background

The Monitor last assessed the DPD's compliance with subparagraphs C65a-c during the quarter ending February 28, 2005, finding the DPD in non-compliance. No audits related to uses of force or allegations of misconduct in holding cells were submitted as of the end of that quarter, and the DPD's first audit¹⁶⁷ related to prisoner injuries in holding cells contained deficiencies related to its population and scope.

Current Assessment of Compliance

C65a – Holding Cells Use of Force Investigations Audit

On July 31, 2005, the DPD submitted to the Monitor its Holding Cells Use of Force Investigations Audit report. The Monitor reviewed the audit report, but did not review audit planning or working papers related to this audit.¹⁶⁸ The Monitor's findings, which have been discussed with the DPD's AT, are highlighted below:

- The AT submitted the audit in a timely manner compared to the dates of the incidents examined in the audit.¹⁶⁹ However, the audit report was submitted in draft form, was unfinished,¹⁷⁰ did not adequately address all the audit objectives, and contained numerous deficiencies. Many findings sections were blank, with notes to insert text, and contained

¹⁶⁷ This audit was due August 31, 2004 but was not submitted until January 31, 2005.

¹⁶⁸ This audit was completed prior to formal training provided to the DPD AT by the Monitor's staff and the LAPD in December 2004 and January 2005, respectively, and consequently contained deficiencies similar to those described in the Monitor's Report for the Quarter Ending November 30, 2004.

¹⁶⁹ The audit was submitted on July 31, 2005 and related to incidents from September 1, 2004 through February 28, 2005. Therefore, the audit population was not stale.

¹⁷⁰ The DPD AT Management was aware of the flaws within this audit report and opted to submit the report on its required due date. This decision was made in order to receive feedback from the Monitor as quickly as possible and apply that feedback to the next audit of this topic.

blank and incorrect tables. The audit report contained no Introduction, Executive Summary, or Table of Contents, and the pages were not numbered.

- The audit report did not identify the audit population's time period or the total number of investigations in the population, nor did it identify the sample time-period or the sample size.¹⁷¹
- The audit report did not identify the problems the AT had in determining the entire population of use of force incidents occurring in holding cells.
- The AT performed extensive testing related to ensuring the completeness of the population; however, based on the findings, in which at least 17 additional incidents were identified, the audit report should have clearly stated that the population was incomplete.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph C65a.

C65b – Holding Cells Prisoner Injuries Investigations Audit

The DPD did not submit a Holding Cells Prisoner Injury Investigations Audit required by subparagraph C65b during the current quarter. According to the DPD, no audit of Holding Cells Prisoner Injury Investigations was conducted for the semi-annual period ending July 31, 2005. The DPD intends to submit an audit of this topic during the semi-annual period ending January 31, 2006.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph C65b.¹⁷²

C65c – Allegations of Misconduct Investigations in Holding Cells Audit

On July 31, 2005 the DPD AT submitted the audit required by subparagraph C65c, Allegations of Misconduct Investigations in Holding Cells.¹⁷³ The Monitor reviewed the audit planning and working papers and conducted a limited assessment of the audit fieldwork related to this audit. The Monitor noted a significant improvement in the audit report, planning processes and related documents from audits previously submitted by the DPD AT.

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

¹⁷¹ The Monitor obtained information regarding the audit population and sample during meetings with the DPD AT.

¹⁷² The Monitor will continue to find the DPD in non-compliance for each audit until such time as the required audits have been submitted. When such audits are submitted, the quality of such audits will be evaluated.

¹⁷³ On September 16, 2005, after an initial meeting with the Monitor regarding this audit, the DPD AT submitted a written response to a number of questions and concerns raised by the Monitor during the initial meeting.

- The audit report was submitted on July 31, 2005, and included 14 investigations that closed from September 1, 2004 through February 28, 2005, one investigation conducted by IAS and 13 conducted by the OCI.¹⁷⁴ Although the Monitor has suggested that the AT use more recent incidents and gather this audit population based on the date the incident occurred, rather than the date the investigation closed, this audit population is not considered stale.
- The audit population for this audit is a subset of the entire population of allegations of misconduct and complaint investigations, and consists of three basic sub-populations: OCI, Internal Affairs Section (IAS), and Command investigations.¹⁷⁵ Because the entire population is not tracked or categorized by the DPD in a manner that allows for the identification of incidents that occur in a holding cell, the AT manually reviewed each file to determine if the underlying incident occurred in a holding cell. Consequently, all misconduct and complaints investigations had to be identified in order to identify the subset.
- The Monitor identified substantial deficiencies in the methodologies used by the AT to identify the total population of Command investigations¹⁷⁶ and the sample population of those incidents that occurred in a holding cell, as well as the AT's reporting relative to these efforts. Although not stated within the report, based on a review of the audit working papers and follow-up discussions with the AT, the Monitor confirmed that the AT was unable to identify a total population of Command investigations. The lack of automated systems and/or tracking processes for Command investigations made the process of identifying Command investigations difficult, if not impossible, to ensure a complete population. This information should have been presented in the audit report as a significant audit finding and the report should have contained recommendations to remedy the problems, such as a change in policy requiring all DPD entities to maintain logs in a standardized format. This critical information should also have been conveyed to DPD management in order to correct systemic problems in the tracking of complaints that are hindering the DPD's ability to achieve compliance with the Consent Judgments.
- In addition to the Command investigation population, the AT identified a total of 89 IAS Investigations within the audit time period and again reviewed each of these 89 investigation files to identify those incidents that occurred in a holding cell. The DPD identified two investigations, one of which was excluded from the audit findings because the IAS investigator had neglected to address the one allegation that occurred in a holding cell. The

¹⁷⁴ Two IAS investigations were initially identified; however, one investigation involved a federal investigation and was appropriately excluded from the AT's sample for detailed review.

¹⁷⁵ Based on the definition of misconduct contained in the UOF CJ, the entire population of allegations of misconduct investigations includes internal and external complaint investigations, whether criminal or non criminal and involving both sworn and non-sworn employees of the DPD. Investigations are conducted by the OCI, IAS or Command entities depending on the nature of the complaint / allegation (e.g. internal non-criminal complaints are investigated by Command entities, internal criminal complaints are investigated by IAS and external non-criminal complaints are investigated by OCI).

¹⁷⁶ Command investigations include internal precinct and specialized units investigations.

Monitor also reviewed each of the 89 investigation files and identified at least one additional investigation that should have been included in the audit population.¹⁷⁷ The Monitor also noted that the one investigation, although appropriately excluded from the audit population, was excluded for incorrect reasoning.¹⁷⁸

- The AT also indicated that it identified and reviewed a total of 772 OCI investigations, identifying 13 that contained allegations that occurred in a holding cell. Based on the errors described above and the fact that the Monitor concluded the audit was non-compliant, the Monitor did not attempt to replicate this process. However, the Monitor did conduct a review of the AT's evaluation of the OCI investigations in order to ensure that the AT received feedback from the Monitor related to its fieldwork. Although the Monitor identified a few instances of incorrect analysis made during the fieldwork, overall, the Monitor agreed with the AT's evaluation of the investigations.
- The Monitor also noted that the AT's audit planning documents were well thought-out and well-organized, which facilitated their review.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph C65c.

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 semi-annual 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.¹⁷⁹ The first and second of these audits were due by January 31, 2004 and August 31, 2004, respectively, and subsequent audits are due by January 31, 2005 and every six months thereafter.

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

- C66a - HCCC to Assure Compliance with the COC CJ

¹⁷⁷ The Monitor initially identified two additional investigations that the Monitor believed should have been included in the audit population; however, during discussions with the AT, the Monitor determined that these two investigations were subject to interpretation regarding whether or not the incidents occurred in a holding cell; the incidents will be included in the population reviewed by the AT during its general allegations of misconduct audit. The omission of these incidents, therefore, was not considered a compliance issue.

¹⁷⁸ This was the investigation identified by the Monitor as having been conducted by the Federal Government, described above. The AT reported that it was excluded because the IAS investigator had neglected to address the one allegation that occurred in a holding cell. If correct, this alone would not have been an appropriate reason to exclude it from the audit population.

¹⁷⁹ 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.

- C66b - HCCC Fire Safety Audits

Background

The Monitor last assessed the DPD's compliance with subparagraphs C66a and b during the quarter ending May 31, 2005, finding the DPD in non-compliance. Although the HCCC made significant progress relevant to the development and approval of policies required by the COC CJ and submitted 8 COC CJ audits in January 2005, five of these audits were due August 31, 2004, and were therefore submitted late, and the other three were submitted on-time by January 31, 2005, but contained substantial deficiencies. There were an additional two COC CJ audits that were due by August 31, 2004, and another 6 COC CJ audits that were due by January 31, 2005, none of which were submitted.

The Monitor noted that several key policies, such as the medical and mental health policies, were reviewed and approved by the DOJ. According to the HCCC, these policies were disseminated. The Monitor was in the process of testing the dissemination of those policies at the end of the previous quarter.

Current Assessment of Compliance

C66a - HCCC to Assure Compliance with the COC CJ

During the current quarter, the HCCC continued developing the remaining auditable forms, logs and policies relating to and required by the COC CJ, such as those related to fire safety and emergency preparedness. Additionally, the Monitor completed its testing of the DPD's recent dissemination of its policies.¹⁸⁰ As described elsewhere in this report,¹⁸¹ the Monitor concluded that the DPD was non-compliant with the requirement to disseminate its policies.

The HCCC also submitted three COC CJ audits on July 31, 2005, all of which were submitted on a timely basis.¹⁸² However, a total of 23 audits¹⁸³ that should have been submitted during the past two years have now been skipped; six of which were due to be submitted by July 31,

¹⁸⁰ The policies tested were the Foot Pursuit; Definitions; Performance Evaluation; Code of Conduct; Use of Force; Use of Force Continuum; Holding Cell Areas; Detainee Intake and Assessment; Detainee Health Care; Detainee Transportation; and, the Suicide Prevention and Handicap Prisoner training directives.

¹⁸¹ For example, refer to the Current Assessment of Compliance for paragraph C25, in which the Monitor found that Directive 305.4, *Holding Cell Areas*, had not been adequately disseminated.

¹⁸² The three audits that were submitted are the Holding Cell UOF Investigations Audit, the Holding Cell Allegations of Misconduct Investigations Audit, and the Environmental Health and Safety Audit.

¹⁸³ Eleven audits were skipped in 2004 and twelve more audits were skipped in 2005 to date.

2005.¹⁸⁴ Until such time as the HCCC has assured compliance with the COC CJ through the implementation of all relevant policies, procedures and forms, and through the timely completion of the audits required by the COC CJ, it will be unable to achieve compliance with subparagraph C66a.

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

C66b - HCCC Fire Safety Audit

The DPD HCCC did not submit a Fire Safety Audit required by subparagraph C66b for the period ending July 31, 2005.

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

Paragraph C67-69 and C71 – Audits of Emergency Preparedness Programs, Medical/Mental Health Programs and Policies, Detainee Safety, and Food Service Programs and Policies

Paragraphs C67-69 and C71 require the HCCC to conduct regularly scheduled semi-annual audits covering all DPD buildings that contain holding cells of emergency preparedness programs, medical/mental health care programs and policies, detainee safety programs and policies, and the food service program. The first and second of these audits were due by January 31, 2004 and August 31, 2004, respectively, and subsequent audits were due by January 31, 2005 and every six months thereafter.

Background

The Monitor last assessed the DPD's compliance with paragraph C67 and C68 during the quarters ending February 28, 2005 and May 31, 2005, respectively, finding the DPD in non-compliance due to the extent of deficiencies contained within the audits submitted on January 31, 2005 in response to those paragraphs. The Monitor last assessed the DPD's compliance with paragraphs C69 and C71 during the quarter ending May 31, 2005, finding the DPD in non-compliance with each as no audits had been submitted for the period ending January 31, 2005.

Current Assessment of Compliance

The DPD HCCC did not submit any audits related to the topics required by these paragraphs for the semi-annual period ending July 31, 2005.

¹⁸⁴ The following six July 31, 2005 audits were skipped: C65b Prisoner Injuries in Holding Cells Audit, C66b Fire Safety Audit, C67 Emergency Preparedness Audit, C68 Medical/Mental Health Audit, C69 Detainee Safety Audit, and the C71 Food Service Audit.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C67-69 and C71.

Paragraph C70 – Audit of Environmental Health and Safety

Paragraph C70 requires the HCCC to conduct regularly scheduled semi-annual audits covering all DPD buildings that contain holding cells of environmental health and safety programs. The first and second of these audits were due by January 31, 2004 and August 31, 2004, respectively, and subsequent audits were due by January 31, 2005 and every six months thereafter.

Background

The Monitor last assessed the DPD's compliance with paragraph C70 during the quarter ending May 31, 2005, finding the DPD in non-compliance due to the fact that no audit of environmental health and safety programs had been submitted as of the end of that quarter.

Current Assessment of Compliance

On July 31, 2005, the DPD submitted the audit of Environmental Health and Safety Programs required by paragraph C70. The Monitor reviewed the audit report, selected DPD AT work papers, including the audit work plan, completed audit matrices, crib sheet, cell block cleaning schedules, and other related documents.

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

- The AT submitted the report on a timely basis; however, as evidenced by the lack of a cover page, typographical errors, and editorial comments contained within the audit report, it was not submitted internally in a timeframe that allowed for an adequate review process to occur. See related recommendation below.
- The audit report addressed each of the required paragraph C70 audit objectives and all paragraphs related to the Environmental Health and Safety Program. The AT appropriately found the Department out of compliance for paragraphs C34 (removal of all suicide hazards); C39 (ensure holding cells are maintained in clean and sanitary conditions); C40 (ensure cleaning logs are maintained and reflect scheduled performance of required tasks); C41 (review of maintenance logs to ensure they are properly maintained and reflect the scheduled performance of task); C42 (ensure the DPD provides adequate heating and ventilation); C43 (ensures DPD repairs all broken or malfunctioning lighting toilets, sinks and windows in holding and observation cells); and, C44 (ensure lighting in all cell block areas is sufficient to reach 20 foot candles of illumination). The AT appropriately found the Department in compliance for paragraphs C45 (access to potable water and toilets) and C46 (ensure Hepa-Aire purifiers comply with the MIOSHA standards).

- The audit work plan, matrix and supporting documentation were prepared in accordance with the audit protocol and provided sufficient information to aid the Monitor's review and assessment of the work completed by the AT and the audit report.
- The Monitor noted that the AT used a variety of sampling techniques for selecting the audit populations used to assess each audit objectives, including judgmental sampling and random sampling. While the Monitor commends the AT for using a variety of sampling techniques, the Monitor identified several areas in which the sampling could be improved. See related recommendation below.
- The Monitor identified some errors in the calculation of the sample size for reviewing the cleaning logs; however, as the sample size was rounded up, there was no impact on the overall sample size for each precinct.
- The Monitor commends the AT for using a variety of alternative audit techniques in order to assess the Department and provide feedback to the Department when the original audit techniques could not be completed as a result of a lack of documentation.
- While reconciling the detailed working papers to the compliance rates in the audit report, the monitor identified several discrepancies.¹⁸⁵ While these discrepancies did not impact the AT's overall compliance findings, it did highlight the need for developing a quality control process. See related recommendation below.
- The Monitor also identified that the methodology used to report the cleanliness of areas outside the holding cells was not the same as the methodology used to summarize results in the detailed working papers. While for some precincts this difference did not matter, as all the areas were clearly in or out of compliance, for those precincts where the detailed findings were mixed, the results could not be reconciled to the report.
- The Monitor believes the AT could use more accurate methods of assessing whether or not there is adequate ventilation or adequate lighting. Since the AT found the Department out of compliance for these measurements, the methodology used was sufficient for this audit but may not be sufficient if the DPD attains compliance with the ventilation and lighting requirements of the COC CJ.¹⁸⁶

Based on the foregoing, the Monitor finds the DPD in compliance with subparagraph C70.

¹⁸⁵ Examples where the information in the detailed matrices did not agree with information in the audit report included an instance in which the working papers identified a holding cell that was not clean, but this was not included in the report findings, and the findings for five precincts in the working papers were not included in an appendix to the audit report.

¹⁸⁶ In assessing whether there was adequate ventilation, the AT relied upon a report that is over a year old, and tested by assessing whether AT personnel could breathe comfortably. In assessing adequate lighting, the AT measured the lighting at the entrance to the cells, rather than at desk level or on personal grooming areas as required by the COC.

Recommendations

As described above, the Monitor identified errors in the calculations of the audit sample, as well as discrepancies between the summary of results in the audit working papers and the audit report itself. While these were not sufficient to hold the report out of compliance, they are indicative of the need to develop a process to review the work completed by the AT. The Monitor recommends that this process include a combination of peer review and supervisory review, and that it is scheduled so that the AT has sufficient time for resolution of issues and correction of errors before the audit due date. An added benefit is that if more time is dedicated to evaluating the audit, the AT will be able to increase the number and quality of its recommendations.¹⁸⁷

While the Monitor commends the AT for using a variety of sampling techniques, the Monitor recommends that when inspecting the precincts, the AT randomly select the dates for conducting inspections, rather than judgmentally selecting five days in a row, as was done on this audit. This will provide better coverage during the audit period and help to ensure surprise inspections that allows for a more accurate assessment of the Department's compliance. Additionally, to complete the assessment of whether or not the Department maintains cleaning logs, the Monitor recommends that the AT choose a sample that reflects the semi-annual audit period rather than reviewing logs from a prior audit period.

Paragraph C72 – Audit Reporting Requirements

Paragraph C72 requires the results of each of the COC CJ audits to be submitted via a written report to the Chief of Police and all precinct and specialized division commanders. Paragraph C72 also requires commanders to take disciplinary or non-disciplinary corrective action, when appropriate, regarding employees under their command.

Background

The Monitor last assessed the DPD's compliance with paragraph C72 during the quarter ending May 31, 2005, finding the DPD in non-compliance because the audit reports and related documentation submitted to the Chief of Police during that quarter did not adequately convey the results of each audit nor did they illustrate "action or non-action" on the part of the COs, as required by the paragraph.

Current Assessment of Compliance

On July 31, 2005, the DPD submitted to the Monitor three audit reports for audits required by the COC CJ: the Holding Cell Use of Force Investigations Audit required by subparagraph C65a; the

¹⁸⁷ The AT made a few recommendations for the Department to assist the Department in achieving compliance.

Holding Cell Allegations of Misconduct Investigations Audit required by subparagraph C65c; and the Environmental Health and Safety Audit required by paragraph C70. Upon receiving these audits reports, the Monitor requested documentation, in the form of a reminder to submit it per the Monitor's standing request for such documentation, to support the transmittal to and actions of the Chief of Police and appropriate COs; however, as of the end of the current quarter, the Monitor had not yet received the supporting documentation nor had it completed its evaluation of these audits.

The above audits and related documents did not evidence their submission to the Chief of Police or the precinct and specialized division commanders, nor did they evidence the required disciplinary or non-disciplinary corrective actions, when appropriate, by COs for employees under their command.

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

XIV. TRAINING

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.¹⁸⁸

The Monitor last assessed the DPD's compliance with paragraphs C73-78 during the quarter ending August 31, 2004, finding the DPD in non-compliance with each. The DPD had not developed comprehensive pre-service and in-service training as of the end of the quarter. For many of the training paragraphs, the underlying policies that are to be the subject of the training had not yet been developed; the Monitor noted in its report that training curricula could not effectively be developed prior to the development of the underlying policies.¹⁸⁹

Paragraph C73, C76-78 Training of Detention Officers in Medical/Mental Health Screening, Detainee Safety and Environmental Health and Hygiene

Paragraph C73 requires the DPD to provide comprehensive pre-service and in-service training to all detention officers.

Paragraph C76 requires the DPD to provide all detention officers, supervisors and members of the HCCC with annual training in the medical/mental health screening programs and policies. Such training must include and address the following topics:

- a. prisoner intake procedures and medical and mental health protocols, including protocols for transferring or housing prisoners with infectious diseases, disabilities and/or requiring increased monitoring;
- b. recording, updating and transferring prisoner health information and medications;
- c. the prescription medication policy, including instructions on the storage, recording and administration of medications; and
- d. examples of scenarios faced by detention officers illustrating proper intake screening and action in response to information regarding medical and mental health conditions.

¹⁸⁸ Refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

¹⁸⁹ This included the DPD's emergency preparedness, medical/mental health screening, prisoner safety, environmental health and safety and hygiene programs and policies.

Paragraph C77 requires the DPD to provide all detention officers, supervisors and members of the HCCC with annual training in detainee safety programs and policies. Such training must include and address the following topics:

- a. the security screening program, including protocols for identifying and promptly and properly housing suspected crime partners, vulnerable, assaultive or special management prisoners;
- b. protocols for performing, documenting and obtaining supervisory review of holding cell checks;
- c. protocols concerning prisoners in observation cells, including protocols for direct and continual supervision, for spotting potential suicide hazards and providing appropriate clothing; and
- d. examples of scenarios faced by detention officers illustrating appropriate security screening, segregation and monitoring techniques.

Paragraph C78 requires the DPD to provide all detention officers, supervisors and members of the HCCC with annual training in environmental health and safety and hygiene. Such training must include and address the following topics:

- a. cellblock cleaning and maintenance protocols; and
- b. sanitary food preparation and delivery protocols.

Background

The Monitor last assessed the DPD's compliance with paragraphs C73 and C76-78 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that comprehensive pre-service and in-service training had not been developed for detention officers as of the end of the quarter.

Current Assessment of Compliance

In early January 2005, the DPD submitted its first draft of lesson plan materials related to detention officer training. The lesson plans were designed to cover all of the training of detention officers, supervisors of detention officers and members of the HCCC required by paragraphs C76-78.¹⁹⁰ The Monitor reviewed those lesson plans and subsequently met with

¹⁹⁰ The DPD utilized the lesson plans to conduct a Train-the-Trainer course in early January 2005, prior to submitting the lessons plans to the Monitor for review. The Monitor attended that training and determined that it was well presented; however, the lesson plans had not yet been evaluated by the Monitor and several shortcomings were noted as described in the above text. This training was also discussed in the Monitor's Report for the Quarter Ending February, 28, 2005; in relation to paragraph U115.

members of the DPD's Training Division on March 2, 2005 to discuss the content of the materials. During that meeting the Monitor provided specific feedback related to shortcomings identified during the Monitor's review, some of which related to policies and related auditable forms that were mentioned in the lesson plans but were not available during the training, as they had not yet been completed and/or approved, and some of which related to specific requirements of paragraphs C76-78 that were not adequately addressed in the training. The Monitor also identified scenarios that needed to be augmented and revised in order to provide more realistic situations for training detention officers on the proper procedures to follow.

As a result of the feedback provided by the Monitor, the DPD's Training Division revised the lesson plans and utilized some of the materials in these revised lesson plans during training of the HCCC members.¹⁹¹ The Monitor attended that training which was held during the month of July 2005; a total of 22 people were in attendance, including the HCCC members, a representative from the City of Detroit's Law Department, City Health Department personnel, and DFD personnel. The training consisted of a 4-hour block of instruction on *Preventing Disease Transmission*. For the first two hours, the DPD used a lesson plan provided by the American Red Cross, and each attendee was given a Red Cross manual to use during the class. The second 2-hours were devoted to select COC CJ auditable forms and the proper review of those forms. However, no forms were available for dissemination during the training. In summary, although the training was well-presented, it did not comprehensively cover any specific COC CJ paragraphs.

During the current quarter, the DPD re-submitted the revised lesson plans to the Monitor for review. The Monitor has completed its review and determined that except for a few minor revisions to update the lessons plans to reflect the most recently disseminated cleaning and maintenance logs¹⁹² and the correct cell check forms,¹⁹³ the lesson plans adequately address the training requirements of paragraphs C76-78.

¹⁹¹ DPD training personnel indicated to the Monitor that the DPD's Eighth Quarter Status Report erroneously stated that this training was provided to prisoner and facility detention officers and their supervisors, and that it covered detainee safety, environmental health and safety, medical and mental health, emergency preparedness, policies, and related forms and logs. The DPD advised the Monitor that no additional training relative to COC CJ requirements has been conducted, other than the train-the-trainer course conducted in January 2005 and the HCCC training in July 2005.

¹⁹² The lesson plans contain a previous version of the cleaning and maintenance logs which are no longer being used by the precincts.

¹⁹³ In relation to cell check documentation required by paragraph C37, the lesson plans will need to be updated once the DPD has installed the automated time-clock system that will record the requisite cell checks, as described in the Current Assessment of Compliance for paragraph C37. Until then, the lesson plans must reflect the current method of recording cell checks. The Monitor understands that the log titled Platoon Daily Detainee Summary is used to record cell checks of the general population every 30 minutes and the high-risk log is to be used to document cell checks of high-risk detainees and detainees who require one-on-one supervision every 15 minutes.

Despite the progress made by the Training Division in connection with the lesson plans, as described above, as of the end of the current quarter, the DPD has not yet provided comprehensive pre-service and in-service training to all detention officers, nor provided annual training on the topics of emergency preparedness, medical and mental health screening, detainee safety, and environmental health and safety.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C73 and C76-78.

Paragraph C74 – Training Records

Paragraph C74 requires the DPD to create and maintain individual training records for all detention officers, documenting the date and topic of all pre-service and in-service training completed for all training completed on or after the effective date of the COC CJ.

Background

The Monitor last assessed the DPD's compliance with paragraph C74 during the quarter ending August 31, 2004, finding the DPD in non-compliance. As of the end of that quarter, the DPD's Training Division was in the process of entering required information into the Michigan Commission on Law Enforcement Standards (MCOLES) database and adding training records to the CRISNET system, which allows tracking of civilian training.

Current Assessment of Compliance

The DPD has indicated that it has not yet completed entering historical training records, dating back to the effective date of the COC CJ, into the MCOLES database. In addition, as described in the Current Assessment of Compliance for paragraphs C73 and C75-78, the DPD is still in the processing of developing lesson plans for detention officers that adequately address the training requirements of the COC CJ, the retraining of instructors who will conduct training is not yet completed, and the training of detention officers has not yet begun.

Based on the foregoing, the Monitor is finds the DPD in non-compliance with paragraph C74.

Paragraph C75 – Emergency Preparedness Training

Paragraph C75 requires the DPD to provide all detention officers, supervisors of detention officers and members of the HCCC with annual training in emergency preparedness. Such training must include drills and substantive training in the following topics:

- e. emergency response plans and notification responsibilities;
- f. fire drills and use of fire extinguishers and other fire suppression equipment;

- g. key control drills and key control policies and procedures; and
- h. responding to emergency situations, including scenarios detention officers likely will experience.

Background

The Monitor last assessed the DPD's compliance with paragraph C75 during the quarter ending August 31, 2004, finding the DPD in non-compliance due to the fact that the emergency preparedness training required by paragraph C75 had not been developed for detention officers.

Current Assessment of Compliance

As described in the Current Assessment of Compliance for paragraph C26, above, the DPD has not yet submitted its finalized EPP.¹⁹⁴ As the Monitor noted in previous quarterly reports, training curricula cannot be effectively developed prior to the development of the underlying policies.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C75.

XV. MONITORING AND REPORTING

Paragraph C94 is the only paragraph in this section of the COC CJ for which the Monitor will be assessing compliance. This paragraph requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. In the Monitor's Report for the Quarter Ending May 31, 2005, the Monitor noted that it had not yet reviewed any investigative files under the COC CJ, as the DPD has not yet adequately disseminated or implemented many of its COC CJ policies. The Monitor will report on any activity relative to paragraph C94 during the quarter ending November 30, 2005.

¹⁹⁴ This program is subject to DOJ approval.

CONCLUSION

During this quarter, the City and the DPD continued to make progress toward achieving compliance with the Consent Judgments by revising and disseminating various policies and obtaining the DOJ's approval on several policies and other documents. The Monitor also commends the DPD for being receptive to the technical assistance provided by the Monitor with regard to scheduling of future audits. There are challenges, however, particularly related to adequate policy dissemination and continued overdue or skipped audits. These two areas, like many others, are essential to the City and the DPD achieving compliance with the Consent Judgments.

The Monitor looks forward to seeing what, if any, impact the recently-announced restructuring of the DPD's precincts and personnel will have on the City and the DPD's ability to achieve compliance overall but particularly with the COC CJ paragraphs related to the buildings that contain holding cells.

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October 17, 2005

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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.

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

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

IAS	Internal Affairs Section
ICD	Internal Controls Division
IMAS	Interim Management Awareness System
JIST	Joint Incident Shooting Team
MAS	Management Awareness System
MCOLES	Michigan Commission on Law Enforcement Standards
MIOSHA	Michigan Occupational Safety and Health Administration
MITN	MCOLES Information and Tracking System
OCI	Office of the Chief Investigator
OIC	Officer in Charge
PAB	Professional Accountability Bureau
PAIR	Police Action Incident Report
PCR	Preliminary Complaint Report
PDO	Police Detention Officer
PSA	Public Service Announcement
RFP	Request for Proposals
RMB	Risk Management Bureau
RMG	Risk Management Group
SME	Subject Matter Expert
SMT	Senior Management Team
SOP	Standard Operating Procedure(s)
TA	Technical Assistance



USAO	United States Attorney's Office
UOF	Use(s) of Force
UOF CJ	Use of Force and Arrest and Witness Detention Consent Judgment
WCPO	Wayne County Prosecutor's Office
WIQD	Witness Identification and Questioning Documentation