

REPORT OF  
THE INDEPENDENT MONITOR  
FOR THE  
DETROIT POLICE DEPARTMENT



**Kroll**

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

REPORT FOR THE QUARTER ENDING  
MAY 31, 2006

ISSUED JULY 17, 2006

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

During the eleventh quarter, which ended on May 31, 2006, the Monitor examined a total of 73 paragraphs or subparagraphs (54 paragraphs or subparagraphs of the UOF CJ and 19 paragraphs or subparagraphs of the COC CJ). Of these, the City and the DPD complied with 10 and failed to achieve compliance with 39; the Monitor has not yet completed its evaluation of 23 paragraphs or subparagraphs<sup>5</sup> and withheld its determination of the DPD's compliance with one paragraph.<sup>6</sup> In addition to these, there are nine paragraphs or subparagraphs (seven from the UOF CJ and two from the COC CJ) for which the Monitor's previous findings of compliance carried forward to the current quarter.<sup>7</sup>

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

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

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

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

<sup>5</sup> The paragraphs for which the Monitor has not yet completed its evaluation are generally "implementation" paragraphs, for which the DPD has now complied with the related policy requirements. The Monitor's testing of implementation has generally been deferred in these instances to allow the DPD time to implement the policies that have been disseminated.

<sup>6</sup> For each of these paragraphs, the Monitor's review and findings as of the end of the quarter are included in this report. The Monitor is mindful that this report is issued some 45 days after the end of the quarter. Therefore, for paragraphs assessed during the current quarter, the Monitor will make every effort to mention significant developments that occurred after the end of the quarter in footnotes throughout the report. For those paragraphs that were not assessed during the current quarter, developments that occurred during the current quarter or after the quarter's end will generally be fully reported on in the next quarter in which the applicable paragraph is under review.

<sup>7</sup> These paragraphs are related to the paragraphs that were scheduled to be assessed during the current quarter; however, these nine paragraphs were not re-assessed during this quarter due to a previous finding of compliance. The DPD will remain in compliance with them unless some specific event (e.g. a revision to policy) triggers an additional compliance assessment by the Monitor. Paragraph U42, below, is an example of such a paragraph. The

As described fully in this report, the City and the DPD continued to make progress in the following areas during the quarter:<sup>8</sup>

- This quarter reflects the DPD's compliance with the policy components of the vast majority of paragraphs that are under review as a result of the successful dissemination of policies (as reported in the Quarter Ending February 28, 2006). The Monitor commends the DPD for this noteworthy achievement. This significant accomplishment is critical in the City and the DPD's quest to achieve substantial compliance under the Consent Judgments. The Monitor will continue to evaluate the DPD's implementation of the policies in this and in future reports.
- In the Monitor's first testing of the DPD's compliance with the implementation of arrest policy, although the sample reviewed was insufficient resulting from issues involving the DPD Roster,<sup>9</sup> for those arrests reviewed, the Monitor calculated a commendable compliance rate of 85.7%. Notably, most of the non-compliance issues were administrative in nature.
- DPD personnel attended and participated in a technical assistance session on the proper development of lesson plans given by the Monitor on May 4, 2006.
- The Monitor noted significant improvement in the cleanliness of the holding cells and the maintenance of the equipment within the holding cells.
- On April 11, 2006, the DOJ granted conditional approval of the Field Training Officer (FTO) lesson plans and associated materials required by paragraph U123.<sup>10</sup>
- On May 23, 2006, the DOJ issued its approval of the DPD's Emergency Preparedness Plans and Fire Safety Plan. The Monitor commends the DPD for this accomplishment.

Major areas of concern identified during the quarter ending May 31, 2006 include the following:

- The Monitor continues to be concerned with the resource issues regarding the DPD's Audit Team and Training Division which inhibit the DPD's ability to conduct and complete its audits in a timely manner and its ability to develop adequate lesson plans.

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nine paragraphs also include paragraphs U44 and U46, which are compliant based on the correction described in this report.

<sup>8</sup> Throughout this report, the Monitor will refer to various submissions by the DPD to DOJ and the Monitor by the date of the cover letter or by the date that the Monitor received the document. It is noted that there is often a difference between the cover letter date and the postmark date, ranging usually from several days to a week. The cover letter date is not meant to indicate when the DOJ or the Monitor actually received the submissions. The DPD is now making a number of its submissions by email.

<sup>9</sup> As described in the focus issue entitled *Deficiencies in DPD Roster Impacting Compliance Testing*, below.

<sup>10</sup> The DOJ expressed a few remaining concerns regarding FTO Selection and Evaluation criteria and a segment of the visual training materials. The DOJ also offered recommendations by way of technical assistance in a few areas.

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## SECTION ONE: INTRODUCTION

### I. BACKGROUND

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On June 12, 2003, the DOJ and the City filed two Consent Judgments with the United States District Court for the Eastern District of Michigan. The Consent Judgments were negotiated and agreed to by the parties. On the same date, the parties filed a motion indicating the joint selection of an Independent Monitor, subject to the Court's approval, to "review and report on the City and the DPD's implementation" of the Consent Judgments. On July 18, 2003, the Court entered both Consent Judgments. On July 23, 2003, after hearing testimony concerning qualifications, the Honorable Julian A. Cook, Jr., U.S. District Court Judge, appointed Sheryl Robinson Wood, with the assistance of Kroll, Inc.,<sup>11</sup> as the Independent Monitor in this matter. This is the eleventh report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor<sup>12</sup> outlined the history of the DOJ investigation, the Technical Assistance (TA) letters and the DPD's reform efforts. The Monitor also summarized the complaint filed against the City and the DPD and the overall content of the Consent Judgments.<sup>13</sup> The Monitor's duties and reporting requirements were also described.

As the Consent Judgments require that the DPD achieve and maintain substantial compliance for a specified period of time,<sup>14</sup> the Monitor will review the paragraphs on a periodic schedule over

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<sup>11</sup> The primary members of the Monitoring Team are Joseph Buczek, Jerry Clayton, Penny Cookson, Hazel de Burgh, Ronald Filak, Thomas Frazier, Marshall Johnson, Denise Lewis, Terry Penney, Jeffrey Schlanger, David Schoenfeld, and Sherry Woods.

<sup>12</sup> The word "Monitor" will be used to describe both the Monitor and the Monitoring Team throughout this report.

<sup>13</sup> Complaint, Case no. 03-72258. The complaint, Consent Judgments and TA letters are publicly available at [http://www.usdoj.gov/crt/split/documents/dpd/detroit\\_cover\\_2.html](http://www.usdoj.gov/crt/split/documents/dpd/detroit_cover_2.html).

<sup>14</sup> Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance. Paragraphs U149 and C106.

the life of the Consent Judgments.<sup>15</sup> The paragraphs that were scheduled for review during the eleventh quarter, which ended on May 31, 2006, are assessed in this report.<sup>16</sup>

## II. MONITOR'S ROLE

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The Monitor's role is to conduct compliance assessments,<sup>17</sup> make recommendations, provide TA and report on the DPD's progress toward substantial compliance with the Consent Judgments on a quarterly basis. The Monitor carries out this role with a healthy respect for the critical role the Department plays in enforcing the law and the significant risks taken by DPD officers each day. The Consent Judgments, which are orders of the Court, are meant to improve the overall policing in the City of Detroit by remedying the unconstitutional conduct alleged by the DOJ in its complaint filed against the City and the DPD. The Consent Judgments can only be modified by court order.

## III. EFFORTS TOWARD COMPLIANCE

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During the eleventh quarter, the Monitor began to test the DPD's implementation of the policies that it has successfully disseminated. The DPD is commended for its accomplishments in those areas where implementation is taking place in a significant manner even if substantial compliance has not yet been achieved.<sup>18</sup>

Regarding the COC CJ, the Monitor's evaluation also found that the DPD is keeping its holding cells clean and repairing its equipment, which is an improvement over the findings in the DPD's *Environmental Health and Safety Audit* conducted in September 2005. Furthermore, the DOJ approved the DPD's Emergency Preparedness Plan (EPP) and Fire Safety Plan (FSP) during this quarter on May 23, 2006. The DPD is commended for this accomplishment. In order to achieve

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<sup>15</sup> The initial duration of the COC CJ was eight quarters. As previously reported, on December 27, 2004, the Court issued an order granting the City's motion for a two-year extension of the COC CJ; however, the Court did not extend the internal deadlines required under the COC CJ. The Monitor 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 affect the due dates mandated by the Consent Judgments for the City and the DPD.

<sup>16</sup> As previously mentioned, for the paragraphs under review for this quarter, the Monitor makes every effort to report on significant matters that have taken place after the end of the quarter, although this is not possible in every instance. These occurrences appear in footnotes throughout the report.

<sup>17</sup> Paragraphs U138 and C93 require that the Monitor regularly conduct compliance reviews to ensure that the City and the DPD implement and continue to implement all measures required by the Consent Judgments. The Monitor shall, where appropriate, employ sampling techniques to measure compliance.

<sup>18</sup> See *Current Assessment of Compliance* under paragraph U43.



substantial compliance with the COC CJ, if detainees continue to be held in DPD buildings, the City and the DPD will have to expend funds to retrofit the holding cells in the districts.<sup>19</sup>

#### IV. METHODOLOGIES

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The *Methodologies to Aid in Determination of Compliance with the Consent Judgments* (the *Methodologies*) generally outline the methods that will be employed by the Monitor to determine compliance by the City and the DPD with each substantive provision of the Consent Judgments. The Monitor has submitted final copies of the *Methodologies* for both Consent Judgments to the parties. Any future modifications to the methodologies will generally be made on a paragraph-by-paragraph basis.

Under the *Methodologies*, the DPD will generally be assessed as compliant when either a reliable audit has been submitted that concludes compliance or at least 94% compliance is achieved for a statistically valid random sample<sup>20</sup> of incidents from as recent a period as is practicable.

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

#### V. REPORT CARD

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As a tool to assist the reader of this report, the Monitor is attaching as Appendix B a "Report Card," which provides a "snapshot" of the DPD's compliance with each of the substantive provisions of the Consent Judgments. It also serves as a tool to summarize the DPD's progress in complying with those provisions. Specifically, the Report Card summarizes the *overall* grade of compliance with each paragraph and subparagraph<sup>21</sup> of the Consent Judgments for the five most recent quarters, including the current quarter, in which compliance has been assessed.<sup>22</sup>

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<sup>19</sup> The City and the DPD have indicated that they are exploring several options in order to come into compliance with the COC CJ including joining in a new regional facility and arranging for pre-arraignment transfers to the Wayne County Sheriff's Department.

<sup>20</sup> If the total population of incidents is so small that the process of selecting a statistically valid random sample would take longer to perform than to evaluate 100% of the incidents in the population, 100% testing will be performed.

<sup>21</sup> Although subparagraphs are often specifically identified in the Consent Judgments, the Monitor has split certain paragraphs that include more than one topic. The purpose of this is to facilitate the future evaluation of and reporting on each sub-topic.

<sup>22</sup> The Monitor emphasizes that the Report Card provides summary information and should be read in conjunction with this report so that the reader may obtain a thorough understanding of the level and nature of the DPD's compliance with the provisions of the Consent Judgments.

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

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### A. DPD'S LESSON PLAN DEVELOPMENT

In the City and the DPD's Eleventh Quarter Status Report to the Monitor (for the Quarter Ending May 31, 2006), the DPD indicated that the redundancy in deficiencies that the Monitor has identified in the DPD's lesson plans "is more attributable to the consequences of the delay in receiving feedback from the Monitor on lesson plans, [rather] than any inherent process deficiencies of the DPD." The Monitor has determined that the DPD's lack of resources and failure to draft effective lesson plans are the primary reasons that there have been repeated issues with its lesson plans.

The DPD did not provide the Monitor with clear information regarding the paragraphs that the lesson plans were meant to cover and, in several instances, did not incorporate the most recent policies and forms in the lesson plans. This delayed the Monitor's review of several lesson plans. In order to remedy this issue, during the quarter ending November 30, 2005, the Monitor requested a listing of all lesson plans completed, with references to the Consent Judgment paragraph(s) that each lesson plan is intended to address. The DPD provided this information on December 9, 2005. The Monitor has repeatedly indicated to the DPD that all of the lesson plans must be revised, as 1) the plans do not fully incorporate the requirements of the applicable Consent Judgment paragraphs and 2) the training materials did not include all of the elements of an effective lesson plan. In fact, due to the Monitor's concerns over the deficiencies in the DPD's lesson plan development, on March 28, 2006, the Monitor offered to provide TA to the DPD. This offer was accepted and on May 4, 2006, the Monitor provided this TA.<sup>23</sup>

The following chart outlines the current status of the Monitor and DOJ's review of the DPD's lesson plans. It should be noted that the Monitor has not received revised lesson plans for the majority of those where feedback has been provided to the DPD.

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<sup>23</sup> On January 17, 2006, the Monitor provided TA on the creation of an organizational matrix to track the development, review and approval processes of all UOF and A&D lesson plans.

LESSON PLAN (LP)	DPD SUBMITTAL DATE <sup>24</sup>	IM RECEIVED DATE	STATUS
<b>Use of Force</b>			
Firearms Marksmanship Training & Qualification	01.07.05	07.21.05	Independent Monitor (IM) submitted memo to DPD on 05.19.06
Firearms Tactical Training and Qualification	11.29.05	11.30.05	IM submitted memo to DPD on 05.19.06
PR-24	03.25.05	03.28.05	Approved by the IM on 11.30.05
Use of Force Continuum	4.15.05	04.18.05	IM provided feedback to DPD in Q7 report and in Q9 by email and DOJ provided feedback in a letter dated 07.11.05
Use of Force	11.29.05	11.30.05	IM's review not yet complete <sup>25</sup>
Foot Pursuit	11.29.05	11.30.05	IM submitted memo to DPD on 03.21.06
Chemical Spray	11.29.05	11.30.05	IM submitted memo to DPD on 02.17.06
<b>In-Service Training</b>			
In-Service Training Protocols	4.15.05	04.18.05	DPD resubmitted a revised Protocol on 07.21.05; IM supplied feedback to DPD in Q7 report
SOP for In-Service Training Record Keeping			Refer to In-Service Training Protocols (above)
Verbal Judo Booklet	07.20.05	07.21.05	IM provided verbal feedback during 01.17.06 TA Session
Selection and Training of DPD Trainers	11.29.05	11.30.05	IM has not provided feedback
Supervisor Report Writing	no date	11.30.05	IM submitted memo to DPD on 03.14.06
Field Training Officer	02.11.05	n/a	DOJ issued letters on 4.20.04 and 04.11.06 outlining its concerns. The DPD submitted its revised plan on 10.05.05 and provided additional information on 01.06.06.
<b>Arrest and Detention</b>			
Prompt Judicial Review	08.22.05	08.24.05	IM provided feedback to DPD in the Q8 and Q10 reports
Mechanics of Arrest (now Arrest Concepts)	04.15.05	07.21.05	IM provided feedback to DPD in the Q9 report

<sup>24</sup> These dates are from the DPD's Eleventh Quarter Status Report to the Monitor (for the Quarter Ending May 31, 2006).

<sup>25</sup> On June 30, 2006, after the end of the quarter, the Monitor issued a memorandum to the DPD on the UOF lesson plan.

<b>Witness Identification and Questioning</b>			
Confinement of Material Witness	07.20.05	07.21.05	IM submitted memo to DPD on 03.23.06
Search & Seizure: Fundamental of Street Patrol	04.15.05	04.18.05	IM provided feedback to DPD in the Q9 report
<b>External Complaints</b>			
External Complaints	01.07.05	03.01.05	IM provided verbal feedback in Q8 and made written comments to DPD in the Q8 and Q10 reports; LP was submitted before Citizen Complaint policy was finalized.
<b>Conditions of Confinement</b>			
Detention Officer	01.07.05	03.01.05	DPD resubmitted a revised LP on 07.21.05; IM submitted memo to DPD on 05.31.06 regarding the PDO Training Class (which IM attended but does not have current LP for). DPD indicates LP was revised. IM does not have current LP.
Supervisor's Leadership and Command Accountability Training	n/a	n/a	not submitted to IM
Risk Assessment	n/a	n/a	not submitted to IM
Investigator's Training	n/a	n/a	not submitted to IM

Since the TA session on lesson plan development was delivered by the Monitor, the DPD is moving in the right direction with regard to the development and resubmission of lesson plans. The Monitor is encouraged by the steps that are being taken by the DPD and looks forward to providing additional feedback once the revised plans are resubmitted.

## B. DEFICIENCIES IN DPD ROSTER IMPACTING COMPLIANCE TESTING

In the Monitor's Report for the Quarter Ending November 30, 2005, in a Focus Issue entitled *DPD Process for Disseminating Policies and Related Issues*, the Monitor reported inconsistencies and inadequacies in the DPD's policy dissemination efforts. These inconsistencies and inadequacies have since been resolved by the DPD; however, a specific concern described in that focus issue remains at issue. The Monitor reported that the roster submitted by the DPD and used by the Monitor to select samples contained out-dated information and did not capture officers' current assignments or badge numbers for comparison.<sup>26</sup> This hampered the Monitor's ability to test and assess implementation and, unless expeditiously resolved, would continue to do so.

<sup>26</sup> On numerous occasions, the Monitor's random selections have included officers from the listing who are retired, terminated, suspended, or otherwise reassigned.

During the current quarter, the Monitor utilized a roster provided by the DPD, dated January 20, 2006, to select samples of officers to test compliance with implementation requirements of a number of paragraphs. However, the Monitor found that the most current roster continues to contain outdated and insufficient information and does not provide officers' detailed assignments (e.g. scout car duties, investigations, desk duties, detention officer, etc.). On one occasion, the deficiencies in the roster prevented the Monitor from obtaining a sufficient sample, which resulted in a finding of non-compliance for the DPD.<sup>27</sup> The Monitor also met with the DPD during this quarter in an attempt to resolve the issue.

The Monitor reiterates that it is in the best interests of the DPD and the City to ensure that the Monitor and the DPD's Audit Team (AT) receive accurate and updated officer status information.<sup>28</sup>

## VII. MONITOR'S PLEDGE

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

To that end, we have provided the parties with interim assessments of compliance throughout each quarter, including the quarter ending May 31, 2006. The Monitor has also made numerous recommendations and provided TA to the DPD as part of its ongoing efforts to assist the DPD in achieving compliance with the Consent Judgments. Furthermore, a draft copy of this report was made available to the parties at least 10 days prior to final publication in order to provide the parties with an opportunity to identify any factual errors,<sup>29</sup> and to provide the parties with an opportunity to seek clarification on any aspect of compliance articulated in this report.

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<sup>27</sup> Refer to the Current Assessment of Compliance for paragraph U43.

<sup>28</sup> After the end of the current quarter, the Monitor and Office of Civil Rights staff met again in an effort to resolve this concern.

<sup>29</sup> As required by paragraphs U142 and C97.

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

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This section contains the Monitor's compliance assessments of the UOF CJ paragraphs scheduled for review during the quarter ending May 31, 2006.

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

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

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

This section comprises paragraphs U14-19. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2005.<sup>30</sup> The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

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

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

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<sup>30</sup> Throughout this report, for those paragraphs assessed and reported on during the current reporting period ("current quarter"), information regarding the Monitor's most recent compliance assessments, and the basis for those assessments, can be found in the "Background" sections of the respective paragraphs.

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

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

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

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

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

### ***Background***

The DPD received final DOJ approval of Directive 304.2 on April 14, 2005 after which the DPD had three months to implement the revised policy.

The Monitor last assessed the DPD's compliance with paragraphs U14-19 during the quarter ending May 31, 2005, withholding a determination of compliance with each. The DPD had not yet effectively disseminated Directive 304.2, *Use of Force*, and was not yet required to have implemented the policy pursuant to paragraph U18.

As reported in the Monitor's Report for the Quarter Ending February 28, 2006, although compliance assessments of paragraphs U14-19 were not scheduled for that quarter, the Monitor tested the DPD's dissemination of Directive 304.2, *Use of Force*. The DPD provided documentation evidencing the receipt of the directive for 92, or 97.9%, of the 94 officers selected for testing. As a result, the Monitor reported that the DPD is now in compliance with the policy requirements of paragraphs U14-19, among others.

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

As described above, the DPD is now in compliance with the policy requirements of paragraphs U14-19. Due to the recent date of effective dissemination, the Monitor will test implementation during the quarter ending November 30, 2006.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of paragraphs U14-19 and the Monitor has not yet evaluated the DPD's implementation of the paragraphs. As a result, the Monitor has not yet evaluated the DPD's overall compliance with paragraphs U14-19.

## B. USE OF FIREARMS POLICY

This section comprises paragraphs U20-23. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2005, finding the DPD in non-compliance with each.<sup>31</sup> The Monitor found that the DPD effectively disseminated revised Directive 304.1, *Firearms*, which was approved by the DOJ on March 23, 2005 and which had an effective date of May 2, 2005. The Monitor received the firearms training protocol required by paragraph U113. The Monitor noted that it does not address all of the requirements of the paragraph and further noted that it was 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.<sup>32</sup> Finally, the DPD indicated that it was developing an internal audit process 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 Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2006.

## 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, 2005, finding the DPD in non-compliance. The Monitor found that the DPD effectively disseminated Directive 304.4, *PR-24 Collapsible Batons*,<sup>33</sup> which was approved by the DOJ on March 23, 2005. However, the Monitor had not yet received a copy of the roll-out plan for the intermediate force device. According to the DPD, a Train-the Trainer course was being developed to roll out the PR-24 and to ensure that certifications for current instructors are up-to-date. In addition, the Monitor found that the DPD had not effectively disseminated Training Directive 04-03, *Use of Force Continuum*, which was

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<sup>31</sup> Throughout this report, for those paragraphs not assessed during the current quarter, the Monitor will include a brief description of the basis for its previous compliance assessments. The Monitor will generally 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. However, we have made an exception to this procedure in this and prior reports in connection with the testing of dissemination of policy for paragraphs not scheduled for assessment.

<sup>32</sup> Refer to the Current Assessment of Compliance for paragraph U113, below, for additional information regarding this issue.

<sup>33</sup> At the DOJ's suggestion, the DPD changed Training Directive 04-06, *Intermediate Use of Force Policy*, to Directive 304.4, *PR-24 Collapsible Batons*.



also approved by the DOJ on March 23, 2005.<sup>34</sup> The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2006.

#### 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, 2005, finding the DPD in non-compliance with each. The Monitor found that the DPD effectively disseminated revised Directive 304.3, *Chemical Spray*, which was approved by the DOJ on March 23, 2005 and which had an effective date of May 2, 2005. The Monitor also noted that Training Directive 04-07 and its related form, UF-002-A, *Supervisor's Investigation Report (SIR)*, are referred to in Directive 304.3 and are relevant to the reporting and investigation of the use of chemical spray. These documents had not yet been disseminated.<sup>35</sup> The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending August 31, 2006.

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<sup>34</sup> Although a compliance assessment of paragraph U24 was not scheduled, the Monitor retested the DPD's dissemination of Training Directive 04-03 during the quarter ending November 30, 2005. After the end of the quarter (on December 15, 2005), the DPD submitted supplemental documentation evidencing the dissemination of the directive to 89, or 94.68%, of the 94 officers selected for testing. As a result, the DPD is now in compliance with the policy requirements of this paragraph. The Monitor will test implementation during the next regularly scheduled compliance assessment.

<sup>35</sup> According to the DPD, Training Directive 04-07 was disseminated on October 29, 2005, with an effective date of November 21, 2005. Although compliance assessments of paragraphs U25-26 were not scheduled, the Monitor retested the DPD's dissemination of the training directive during the quarter ending February 28, 2006. The DPD provided documentation evidencing the receipt of the directive for 93, or 98.9%, of the 94 officers selected for testing. The DPD has now met the requirements for effective dissemination of the policy. As a result, the DPD is now in compliance with the policy requirements of these paragraphs. The Monitor will test implementation during the next regularly scheduled compliance assessment.

## II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

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This section of the UOF CJ (paragraphs U27-41) requires the DPD to make significant changes to its policies related to general investigations of police action and to investigations of UOF, prisoner injury, critical firearms discharges and in-custody deaths. In addition to various changes in general investigatory procedures, reports and evaluations, the UOF CJ requires that the DPD develop a protocol for compelled statements<sup>36</sup> and develop an auditable form<sup>37</sup> 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, 2006, finding the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of each paragraph. As a result, the Monitor found the DPD in overall non-compliance with each paragraphs. Although the Monitor was able to determine that policy addressing the requirements of these paragraphs had been adequately disseminated, continuing problems encountered with the DPD's roster hampered the Monitor's ability to complete the testing of dissemination and prevented the Monitor from commencing the testing of the implementation of policy during that quarter.

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

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<sup>36</sup> Paragraph U31 requires the DPD and the City to develop a protocol for when statements should (and should not) be compelled pursuant to Garrity v. New Jersey, 385 U.S. 492 (1967).

<sup>37</sup> The UOF CJ defines an auditable form as a discrete record of the relevant information maintained separate and independent of blotters or other forms maintained by the DPD.

## B. UOF AND PRISONER INJURY INVESTIGATIONS

This section comprises paragraphs U34-36. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2005. The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

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

- a. officers to notify their supervisors following any UOF or prisoner injury;
- b. that upon such notice, a supervisor must respond to the scene of all UOF that involve a firearm discharge, a visible injury or a complaint of injury. A supervisor must respond to all other UOF on a priority basis. Upon arrival at the scene, the supervisor must interview the subject(s), examine the subject(s) for injury, and ensure that the subject(s) receive needed medical attention;
- c. the supervisor responding to the scene to notify the Internal Affairs Division (IAD)<sup>38</sup> of all serious UOF, UOF that result in visible injury, UOF that a reasonable officer should have known were likely to result in injury, UOF where there is evidence of possible criminal misconduct by an officer or prisoner injury; and
- d. IAD to respond to the scene of, and investigate, all incidents where there is evidence of possible criminal misconduct by an officer, a prisoner dies, suffers serious bodily injury or requires hospital admission, or involves a serious UOF, and to permit IAD to delegate all other UOF or prisoner injury investigations to the supervisor for a command investigation.

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

- a. command UOF preliminary and final investigations to be completed within 10 and 30 days of the incident, respectively; such investigations must include a synopsis of the incident, photographs of any injuries, witness statements, a canvas of the area, a profile of the officer's prior UOF and allegations of misconduct, and a first-line supervisory evaluation;

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<sup>38</sup> The DPD refers to this entity as the Internal Affairs Section (IAS).

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U34-36 during the quarter ending November 30, 2005, finding the DPD in non-compliance with each. The Monitor determined that the DPD's finalized policies addressed the requirements of these paragraphs, but not all policy had been adequately disseminated.

As reported in the Monitor's Report for the Quarter Ending February 28, 2006, although compliance assessments of paragraphs U34-36 were not scheduled for that quarter, the Monitor tested the DPD's dissemination of Directive 304.2, *Use of Force*, and Training Directive 04-07, *Use of Force Reporting and Investigating*, and determined that the DPD had adequately disseminated both. As a result, the Monitor reported that the DPD had achieved compliance with the policy requirements of a number of paragraphs, including paragraphs U34-36.

### *Current Assessment of Compliance*

As described above, the DPD is now in compliance with the policy requirements of paragraphs U34-36. Due to the recent date of effective dissemination, the Monitor will test implementation during the quarter ending November 30, 2006.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements but has not yet assessed the DPD's compliance with the implementation requirements of paragraphs U34-36. As a result, the Monitor has not yet evaluated the DPD's overall compliance with paragraphs U34-36.

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

This section comprises paragraphs U37-41. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2005. The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessments follow.

**Paragraph U37-41 – Creation of Shooting Team; Protocol for Investigations of Critical Firearms Discharges; Command Level Force Review Team; Time Limits for Command Level Force Review Team; Aggregate Review;**

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

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

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

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

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

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

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

- a. complete its review of critical firearms discharges that result in injury and in-custody deaths within 90 days of the resolution of any criminal review and/or proceedings and all other

critical firearms discharges within 60 days and require the Chief of Police to complete his or her review of the team's report within 14 days;

- b. comply with the revised review of investigations policies and procedures;
- c. interview the principal investigators; and
- d. prepare a report to the Chief of Police in compliance with the revised investigatory report and evaluation protocol.

Paragraph U41 requires the Chair of the CLFRT to annually review critical firearms discharges and in-custody deaths in aggregate to detect patterns and/or problems and report his or her findings and recommendations, including additional investigative protocols and standards for all critical firearms discharge and in-custody death investigations, to the Chief of Police.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U37-40 during the quarter ending November 30, 2005 finding the DPD in non-compliance with each. The Monitor determined that Directive 304.5, *Board of Review*, adequately addressed the policy requirements of these paragraphs. However, the Monitor was unable to test the dissemination of the directive, as it was disseminated close to the end of that quarter.

As reported in the Monitor's Report for the Quarter Ending February 28, 2006, although compliance assessments of paragraphs U37-41 were not scheduled for that quarter, the Monitor tested the DPD's dissemination of Directive 304.5 and determined that the DPD had adequately disseminated it. As a result, the Monitor reported that the DPD had achieved compliance with the policy requirements of a number of paragraphs, including paragraphs U37-41.

The Monitor last assessed DPD's compliance with paragraph U41 during the quarter ending November 30, 2005, finding the DPD in non-compliance. The Monitor last reviewed the Force Investigations Section (FIS) 2004 Annual Critical Incident Report, finding that the investigations did not include recommendations relative to detecting overall patterns and/or problems, a number of incidents took six months or longer for FIS to investigate, many had not yet been forwarded to the Chief of Police for review, and those that had been forwarded did not indicate the final disposition.

### *Current Assessment of Compliance*

As described above, the DPD is now in compliance with the policy requirements of paragraphs U37-41.

The Monitor was not able to test implementation of Directive 304.5 during the current quarter. As the effective date of Directive 304.5 is January 25, 2006, there has not been enough time for

DPD's investigative and internal review process to be fully implemented. The Monitor will test implementation of Directive 304.5 during the quarter ending August 31, 2006.

With regard to paragraph U41, the Monitor requested additional information regarding the majority of the investigations listed in the Force Investigation Section 2004 Annual Critical Incident Report on November 22, 2004. On April 12, 2006, the DPD responded with an inter-office memorandum listing the current status of the investigations. However, the information received from DPD did not adequately detail the current status of these investigations. The only information given was either "Forwarded for Executive Review" or "Closed."<sup>39</sup>

On May 5, 2006, the Monitor requested a copy of the paragraph U41 annual report for 2005. As of the end of the quarter, the Monitor had not received a response to this request.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of paragraphs U37-41. The Monitor has not yet evaluated the DPD's compliance with the implementation requirements of paragraphs U37-40 and finds the DPD in non-compliance with the implementation requirements of paragraph U41. As a result, the Monitor has not yet evaluated the DPD's overall compliance with paragraphs U37-40 and finds the DPD in overall non-compliance with the requirements of paragraph U41.

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<sup>39</sup> The Monitor sent a follow-up document request on June 15, 2006, after the end of the quarter, asking for additional information to include the date each matter was closed and the disposition. On July 13, 2006, the DPD provided the information requested.

### III. ARREST AND DETENTION POLICIES AND PRACTICES

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

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

#### A. ARREST POLICIES

This section comprises paragraphs U42-43. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 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 – Arrest Policies and Review of 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 supervisory review must be made at the time an arrestee is presented at the precinct or specialized unit and memorialized within 12 hours of the arrest. For those arrests in which adequate probable cause does not exist, or for which the DPD does not request a warrant, the DPD is required to generate an auditable form memorializing such circumstances within 12 hours of the event.



## *Background*

The Monitor last assessed the DPD's compliance with paragraphs U42 and U43 during the quarter ending November 30, 2005. The Monitor reviewed Training Directive 05-07, *Probable Cause*, and determined that it complied with the policy components of paragraphs U42 and U43. The DPD indicated that it intended to disseminate the training directive with other approved policies in early January 2006. As a result, the Monitor elected to withhold a compliance determination pending the dissemination of Training Directive 05-07.

As reported in the Monitor's Report for the Quarter Ending February 28, 2006, although compliance assessments of paragraphs U42-43 were not scheduled for that quarter, the Monitor tested the DPD's dissemination of Training Directive 05-07. The DPD provided documentation evidencing the receipt of the directive for 92, or 97.9%, of the 94 officers selected for testing. As a result, the Monitor reported that the DPD is now in compliance with the policy requirements of paragraphs U42-43. The Monitor also reported that it would commence testing the implementation of these policies during the next regularly scheduled review of paragraphs U42-43.

## *Current Assessment of Compliance*

As described above, the DPD has adequately disseminated policy that addresses the requirements of paragraphs U42-43. As a result, the DPD is now in compliance with paragraph U42, which is a "policy-only" paragraph.

During the current quarter, in order to assess the DPD's compliance with paragraph U43, which contains the requirements for the implementation of policy, the Monitor selected a sample<sup>40</sup> of 94 officers and requested that the DPD provide the Monitor with access to the arrest documentation (Preliminary Complaint Reports, or PCRs, and any related auditable forms) for the first three arrests made by each officer that occurred during the month of February 2006. Upon review of the personnel roster provided by the DPD from which the Monitor selected its sample, it was evident that the roster continues to contain outdated information and does not provide officers' detailed assignments (e.g. scout car duties, investigations, desk duties, detention officer, etc.).<sup>41</sup> Nonetheless, the Monitor selected and formally submitted a sample requesting additional information. The Monitor reviewed the DPD's response and determined that a significant number of officers selected were not in assignments that might produce arrest data for

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<sup>40</sup> A required, random, statistical sample of 94 officers and investigators was selected out of a population of approximately 3,508 listed officers, utilizing a confidence level of 95% with an acceptable error rate of +/- 4. The Monitor requested supporting information for an additional 16 randomly selected officers in the event that any of the initial 94 officers were deemed non-responsive.

<sup>41</sup> The roster problems have been described in previous Monitor's reports. The most recent roster provided by the DPD, dated January 20, 2006 did not accurately reflect officer employment status of many DPD personnel.

review.<sup>42</sup> The Monitor, nonetheless, reviewed 56 arrests, noting that all arrests articulated sufficient probable cause. The Monitor also noted the following:

- For three arrests the Monitor determined that supervisory review occurred but the reviews were not time documented. The Monitor was unable to determine whether the supervisory review occurred within the mandated 12-hour period.
- For another arrest, the supervisory review occurred nearly 24 hours after the arrest.
- For two arrests, no arrest warrant was sought and an auditable form documenting the circumstances was not generated.
- For two arrests, no arrest warrant was sought and although an auditable form was generated, the reviewing supervisor did not document a date or time of review. Consequently, the Monitor was unable to determine whether the supervisory review occurred with 12 hours.

This was the Monitor's first assessment of compliance with the implementation requirements of paragraph U43. Although the sample reviewed was insufficient, of the 56 arrests reviewed, the Monitor determined that eight were non-compliant largely due to administrative requirements. This translates into a commendable compliance rate of 85.7%.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U42<sup>43</sup> and in non-compliance with paragraph U43.

## B. INVESTIGATORY STOP POLICIES

This section comprises paragraphs U44-45. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

Paragraph U44 requires the DPD to revise its investigatory stop and frisk policies to define investigatory stop and reasonable suspicion as those terms are defined in the Consent Judgment. The policy must specify that a frisk is authorized only when the officer has a reasonable

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<sup>42</sup> Specifically, of the 94 officers selected, 26 had made from one to three arrests resulting in a total of 56 arrests for review. On April 27, 2006, the Monitor discussed this issue with DPD Office of Civil Rights personnel and subsequently initiated a supplemental document request on April 28, 2006 in an effort to increase its sample of arrests. On June 12, 2006, after the end of the current quarter, the DPD submitted additional arrest data from which the Monitor will attempt to draw a supplemental sample for review and assessment.

<sup>43</sup> The DPD will remain in compliance with paragraph U42 until the policy directly responsive to the paragraph is revised. Revisions to policy will trigger an additional compliance assessment by the Monitor.

suspicion to fear for his or her safety and that the scope of the frisk must be narrowly tailored to these specific reasons.

Paragraph U45 mandates written documentation of all investigatory stops and frisks by the end of the shift in which the police action occurred. The DPD must review all investigatory stops and frisks and document on an auditable form those unsupported by reasonable suspicion within 24 hours of receiving the officer's report.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U44-45 during the quarter ending November 30, 2005 finding the DPD in non-compliance with each.<sup>44</sup> In order to assess compliance with the implementation requirements of the paragraphs, the Monitor reviewed a sampling of officer's logs and determined that the officers did not adequately articulate reasonable suspicion for all stops conducted.

### *Current Assessment of Compliance*

After further review of the requirements of paragraph U44, the Monitor has determined that paragraph U44 is a "policy-only" paragraph. The related implementation requirements are included in paragraph U45. During the quarter ending May 31, 2005, the Monitor determined that revised Directive 202.2, *Search and Seizure*, and revised Auditable Form UF-003, *Stops & Frisks*, adequately address the policy requirements of paragraphs U44 and U45, and the DPD effectively disseminated the directive. As a result, the DPD was in compliance with paragraph U44 for the quarter ending May 31, 2005, and this compliance finding carried forward to the quarter ending November 30, 2005 and to the current quarter.<sup>45</sup>

During the current quarter, in order to assess the DPD's compliance with paragraph U45, which contains the requirements for the implementation of policy, the Monitor selected a random sample<sup>46</sup> of 94 officers (including investigators) and reviewed the logs in an effort to identify

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<sup>44</sup> As described in the Current Assessment of Compliance, the Monitor is amending its finding in connection with paragraph U44.

<sup>45</sup> The DPD will remain in compliance with paragraph U44 until the policy directly responsive to the paragraph is revised. Revisions to policy will trigger an additional assessment by the Monitor. Because the compliance finding carries over, the Monitor is not assessing compliance with paragraph U44 during the current quarter. However, the compliance finding for the paragraph is included as a compliant paragraph as described in Footnote 7 in the Executive Summary to this report

<sup>46</sup> A random, statistical sample of 94 officers and investigators was selected out of a population of approximately 3,508 listed officers, utilizing a confidence level of 95% with an acceptable error rate of +/- 4%. The Monitor requested supporting information for an additional 16 randomly selected officers in the event that any of the initial 94 officers were deemed non-responsive. As described in the Current Assessment of Compliance for paragraphs U42-43, the roster provided by the DPD was not current and precluded the selection of an adequate sample. As a result, the Monitor requested documentation for the first three working days for each of 110 officers under the

written documentation of stops and frisks and the articulation of the related reasonable suspicion. The Monitor also requested all auditable forms completed during this time period.

Of the 110 officers randomly selected, 38 were assigned to an administrative detail, had resigned, retired or been terminated, or otherwise had not completed an activity log during the selected time period. For one of the remaining 72 officers selected, no log was provided. For the remaining 71 officers, the DPD provided the activity and/or investigator logs for the first three working days in February 2006 as requested by the Monitor.

The Monitor reviewed logs for 21<sup>47</sup> of the 71 officers in an effort to identify “stops and/or frisks” or other “activities” requiring the articulation of reasonable suspicion. In total, the Monitor reviewed 62 logs containing 31 applicable activities. Six of the 31 activities did not articulate reasonable suspicion for the activity contained in the log, which were completed by two of the officers sampled.<sup>48</sup> In these cases, the officers did not include adequate information regarding the reason a person had been detained and investigated. Additionally, no auditable forms were completed as required by paragraph U45. This resulted in a compliance rate of 80.1% (25 of 31 activities).

During its review of the activity logs the Monitor also noted the following:

- The Monitor again was unable to read certain written information within the activity logs due to illegibility.
- No frisks were specifically articulated within the 62 logs reviewed. Given that the review involved the policing activities of 21 officers over a three day period, the Monitor questions whether frisks are being documented.
- Many of the activity logs contained different uses of various types of activity codes.<sup>49</sup> For example, in some cases, officers used the code “M/A” (Miscellaneous Activity) to log traffic stops and non-radio-call-initiated investigations, while other officers used “T/S” (Traffic Stop) to log traffic stops and used the M/A code for logging their lunch periods, conducting personal business, or fueling the scout car.

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assumption that not all of the officers would be assigned to a detail that would normally conduct stops and/or frisks or, although an officer might conduct a stop or frisk, such policing activity did not occur during the days selected.

<sup>47</sup> Due to the replacement of officers who were assigned to an administrative detail, had resigned, retired or been terminated, or otherwise had not completed an activity log, the Monitor actually reviewed the first 30 officers in the order selected.

<sup>48</sup> Following the Methodologies, although the minimum sample size of officers required to determine compliance on a population of 3,508 is 94, 16 officers were initially reviewed, as this is the sample size necessary to achieve a confidence level of 95% with an acceptable error rate of +/- 10%.

<sup>49</sup> During its review the Monitor obtained from the DPD a description of the acronyms used by officers to document the type of activity described in the logs. These acronyms include “INV” for Investigated, “M/A” for Miscellaneous Activity, and “T/T” for Talked To.

- Fourteen of the 62 logs reviewed did not contain a signature in the supervisory review box. Additionally, many of the signatures were illegible and/or no badge number was present for review and comparison. As a result, the Monitor was not able to confirm that it was a supervisor who actually signed the activity logs in question. This impeded the Monitor's ability to confirm that a review of the stops and frisks had been conducted as required by paragraph U45.<sup>50</sup>

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U45.

### *Recommendation*

The DPD should use codes in a consistent manner and code officer-initiated activities and/or detentions of individuals in a manner that enables supervisors to focus on those entries during their reviews.

## C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES

This section comprises paragraphs U46 through U48. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2005. The Monitor again assessed the DPD's compliance with paragraphs U46 and U48 during the current quarter.<sup>51</sup> The results of our current assessments follow.

### *Paragraphs U46 and U48 – Revision of Policies and Documentation of Interviews and Interrogations*

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

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<sup>50</sup> As of the end of the current quarter, the Monitor had not received a response from the DPD in connection with its request for all stop and frisk auditable forms completed during the time period selected for review.

<sup>51</sup> Paragraph U47 requires the DPD to develop revised witness identification and questioning policies within three months of the effective date of the UOF CJ. The revised policies must be submitted for review and approval of the DOJ. The DPD must then implement the revised witness identification and questioning policies within three months of the review and approval of the DOJ. The Monitor found the DPD in compliance with paragraph U47 during the quarter ending May 31, 2005, as it had secured the DOJ's approval on this policy and the policy was disseminated within three months of DOJ's approval. Paragraph U47 is viewed as a policy only paragraph. The DPD will remain in compliance until such time as the policy directly responsive to paragraph U47 is revised. Revisions to policy will require additional review and approval by the DOJ and trigger an additional assessment by the Monitor. The Monitor will assess compliance with implementation of witness identification and questioning policies via paragraph U48.

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U46 and U48 during the quarter ending November 30, 2005, finding the DPD in non-compliance with both paragraphs<sup>52</sup> based on the DPD's inability to provide the Monitor with current and accurate personnel information to facilitate the Monitor's testing.

### *Current Assessment of Compliance*

After further review of the requirements of paragraph U46, the Monitor has determined that the paragraph is a "policy-only" paragraph. The related implementation requirements are included in paragraph U48. During the quarter ending May 31, 2005, the Monitor determined that revised Directive 203.9, *Custodial Questioning*, revised Directive 203.1, *Crime Scene Investigation*, and revised Auditable Form UF-005, *Interviews, Interrogations and Conveyances*, adequately address the policy requirements of paragraphs U46 and U48, and the DPD effectively disseminated the directives. As a result, the DPD was in compliance with paragraph U46 for the quarter ending May 31, 2005, and this compliance finding carried forward to the quarter ending November 30, 2005 and to the current quarter.<sup>53</sup>

In order to assess the DPD's compliance with paragraphs U46 and U48 during the current quarter, the Monitor utilized the same sample of officers selected to test compliance with paragraphs U44-45. For the investigators and officers sampled, the Monitor assessed the documentation of interviews, interrogations and conveyances and the articulation of reasonable suspicion, probable cause or consent. As with paragraph U45, the Monitor was again unable to review the minimum sample size of "officers" to determine if DPD personnel are adhering to the DPD's policies. However, the Monitor noted the following in relation to the activities of the 71 officers' and/or investigators' logs reviewed:

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<sup>52</sup> As described in the Current Assessment of Compliance, the Monitor is amending its finding in connection with paragraph U46.

<sup>53</sup> The DPD will remain in compliance with paragraph U46 until the policy directly responsive to the paragraph is revised. Revisions to policy will trigger an additional assessment by the Monitor. Because the compliance finding carries over, the Monitor is not assessing compliance with paragraph U46 during the current quarter. However, the compliance finding for the paragraph is included as a compliant paragraph as described in Footnote 7 in the Executive Summary to this report

- The circumstances of two interrogations were documented within two investigators logs; however, neither log was signed by a supervisor demonstrating a review. The Monitor requested that the DPD provide the documentation of the interrogations to determine whether their content had been documented and whether their review had occurred within the requisite 12 hours. The Monitor has not yet received the documentation; however, DPD Office of Civil Rights (OCR)<sup>54</sup> staff indicated to the Monitor that the process to ensure timely, documented supervisory review of interrogations has not yet been implemented.
- Three interviews were documented within two investigators logs. The Monitor requested and the DPD provided the three witness statements that clearly document the content of the witness statements; however, the statements contained no supervisory review as required by this paragraph.
- Although no conveyances of witnesses were documented, appropriate explanations were articulated for seven conveyances of victims contained within the logs.
- Although the Monitor does not believe that the UOF CJ requirement for documentation and review of interviews includes routine conversations or discussions with every contact made by officers in the field; the Monitor reiterates that unless articulated in a manner that clearly explains otherwise, the activity logs' description of a person being "investigated" or "talked to" during what is described as a "miscellaneous activity," rather than a directed police run, may constitute an interview.
- In total, 38 of the 208 logs were not signed by a supervisor, two of which documented conveyances and two of which documented the two interrogations, indicating that the supervisory review of these incidents did not occur within 12 hours of the incident. As described above, although the DPD policy that requires this review has been disseminated, the process to ensure the reviews occur has not yet been implemented.
- Some of the written information on the activity logs was illegible.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U48.<sup>55</sup>

#### 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, 2006. The Monitor withheld a

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<sup>54</sup> The DPD's Civil Rights Division (CRD) is now known as the OCR.

<sup>55</sup> The Monitor's determination of non-compliance with paragraph U48 is based in part, on the DPD's inability to provide the Monitor with current and accurate personnel information to facilitate the selection of an adequate sample of officers for the Monitor's testing. As described in the Monitor's Report for the Quarter Ending November 30, 2005, under the Current Assessment of Compliance for paragraphs U46 and U48, the Monitor will continue to conclude non-compliance until such information is provided to the Monitor and testing can be accomplished.

determination of compliance with paragraph U49 pending a review of the DPD's revised  *DPR* and Instruction Sheet, which the Monitor received electronically near the end of that quarter. The Monitor found the DPD in non-compliance with paragraphs U50-51, as the DPD has not yet addressed the requirement to develop a systematic process to ensure prompt judicial review. Once the DPD achieves compliance with paragraph U49 by establishing a systematic process, the Monitor will begin testing the DPD's compliance with paragraphs U50-51, which require implementation.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U49-51 during the quarter ending August 31, 2006.

## 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, 2006, finding the DPD in compliance with paragraph U52 and in non-compliance with paragraph U53. The DPD complied with the requirements of paragraph U52 by adequately disseminating Directive 305.4. The Monitor requested a listing of all holds for the period November 1, 2005 through December 31, 2005 in order to assess the DPD's compliance with paragraph U53. The DPD provided the requested listing on February 20, 2006, identifying a total of 490 detainees with holds. As it took nearly seven weeks for the DPD to provide this listing and it was provided toward the end of the reporting period, the Monitor was not afforded sufficient time to review it and select a sample for testing.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U53<sup>56</sup> during the quarter ending August 31, 2006.

## 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, 2006, finding the DPD in compliance with paragraph U54 and withholding a determination of compliance with paragraph U55. The DPD complied with the requirements of paragraph U54 by adequately disseminating Directive 305.2. The Monitor requested a listing of all detainee restrictions for the period November 1, 2005 through December 31, 2005 in order to assess the DPD's compliance with paragraph U55. The DPD responded that there were no restrictions placed on any detainee during this period. The Monitor also requested a detailed listing of any citizen complaints alleging a violation of the DPD's restriction policy for the same time period. Although two

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<sup>56</sup> Paragraph U52 is viewed as a "policy-only" paragraph; implementation of policy is tested under paragraph U53. The DPD will remain in compliance until such time as the policy directly responsive to paragraph U52 is revised. Revisions to policy will trigger an additional assessment by the Monitor.



complaints were identified, the Monitor was unable to review them as they remain pending investigation.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U55<sup>57</sup> during the quarter ending August 31, 2006.

## 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 February 28, 2006, finding the DPD in compliance. The DPD complied with the requirements of paragraph U56 by adequately disseminating Directive 202.1, *Arrests*, and Training Directive 04-01, *Material Witness*. The Monitor last assessed the DPD's compliance with paragraph U57 during the quarter ending November 30, 2005, finding the DPD in non-compliance, as the DPD did not generate an auditable form for a material witness, as required.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U57<sup>58</sup> during the quarter ending August 31, 2006.

## H. DOCUMENTATION OF CUSTODIAL DETENTION

This section comprises paragraph U58. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2005, at which time the Monitor found the DPD in non-compliance. The DPD indicated its decision to incorporate paragraph U58 requirements into the new version of Live Scan, eliminating the need for the original software that was to be purchased as a module for the DPD's CRISNET system. Although the Live Scan system was operational, the DPD, via its contracted vendor, had not yet modified the system to include all elements of paragraph U58. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending May 31, 2006.

## I. COMMAND NOTIFICATION

This section comprises paragraph U58. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2005. The Monitor again assessed the

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<sup>57</sup> Paragraph U54 is viewed as a "policy-only" paragraph; implementation of policy is tested under paragraph U55. The DPD will remain in compliance until such time as the policy directly responsive to paragraph U54 is revised. Revisions to policy will trigger an additional assessment by the Monitor.

<sup>58</sup> Paragraph U56 is viewed as a "policy only" paragraph; implementation of policy is tested under paragraph U57. The DPD will remain in compliance with paragraph U56 until such time as the policy directly responsive to the paragraph is revised. Revisions to policy will trigger an additional assessment by the Monitor.

DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

**Paragraph U58 – Revision of Policy**

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

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

***Background***

The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2005, at which time the Monitor found the DPD in non-compliance. Although the DPD decided to incorporate paragraph U58's requirements into the new version of Live Scan, the Live Scan system had not yet been modified to include all elements required by the paragraph.

***Current Assessment of Compliance***

During the current quarter, the Monitor again discussed with DPD personnel the progress of the Live Scan system and the incorporation of the information required by paragraph U58. The Monitor also requested and attended a demonstration of the current Live Scan system and the proposed revisions thereto. The OCR staff was very accommodating and provided a thorough explanation and demonstration of the Live Scan system, which included a description of the paragraph U58 requirements currently present and requiring entry into the system and those to be incorporated into the updated version of Live Scan.<sup>59</sup> The OCR staff also explained that due to

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<sup>59</sup> The DPD has requested feedback on a proposed protocol to be used by DPD personnel when entering information into the Live Scan system. The Monitor is currently reviewing the proposed protocol and will provide a response upon completion of its review.

the contract with the vendor, the updated version of Live Scan is unavailable until the end of September 2006. As a result, the DPD had not completely addressed the requirements of paragraphs U58 as of the end of the current quarter.

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

## I. COMMAND NOTIFICATION

This section comprises paragraphs U59-60. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2006, finding the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of each paragraph. The DPD was unable to provide timely and appropriate information, which prevented the Monitor from commencing the testing of the implementation of policy during that quarter.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U60 during the quarter ending August 31, 2006. The Monitor again assessed the DPD's compliance with paragraph U59 during the current quarter. The results of our current assessment follow.

### *Paragraph U59 – Commanding Officer Review*

Paragraph U59 requires all DPD Commanders of a precinct and, if applicable, of the specialized unit to review in writing all reported violations of DPD arrest, investigatory stop and frisk, witness identification and questioning policies and all reports of arrests in which an arraignment warrant was not sought. The commander's review must be completed within 7 days of receiving the document reporting the event, and must include an evaluation of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending November 30, 2005, at which time the Monitor withheld a determination of the DPD's compliance with the paragraph. As of the end of that quarter, the DPD had not responded to the Monitor's request for all auditable forms completed within the selected time period.

### *Current Assessment of Compliance*

During the current quarter, in order to assess the DPD's compliance with paragraph U59, the Monitor reviewed the arrest documentation and related auditable forms utilized in connection with the testing of compliance with paragraph U43. The Monitor noted that for two of four arrests in which a warrant was not sought, although the auditable form was completed, the reviewing Commander did not document the date and time of review. The Monitor was unable to determine whether the review occurred within the mandated seven-day period. With respect

to Commander review of stops and frisks and witness identification, the DPD had not responded to the Monitor's request for auditable forms as of the end of the quarter.

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

## IV. EXTERNAL COMPLAINTS

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This section of the UOF CJ (paragraphs U61-69) requires the DPD to revise its policies and procedures regarding the intake, tracking, investigation and review of external complaints. There are specific requirements relative to the roles and responsibilities of the Office of the Chief Investigator (OCI) and the DPD, including the development and implementation of an informational campaign and the review and evaluation of each allegation in an external complaint investigation.<sup>60</sup>

Section IV's introductory section comprises paragraphs U61-63. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2005. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

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

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

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U61 during the quarter ending November 30, 2005, finding the DPD in non-compliance. The Monitor determined that Directive 102.6, *Citizen Complaints*, meets the requirements of paragraph U61, among others, but was not adequately disseminated as of the end of that quarter. Upon being informed of these results, on December 15, 2005 (after the end of that quarter), the DPD submitted supplemental documentation evidencing the dissemination of the directive to additional officers. The Monitor reviewed this documentation and determined that the DPD had adequately disseminated the policy. As a result, the Monitor reported that the DPD had achieved compliance with the policy requirements of paragraph U61.

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<sup>60</sup> The OCI reports to the BOPC and is responsible for conducting external complaint investigations.

### *Current Assessment of Compliance*

As described above, the DPD has adequately disseminated policy that addresses the requirements of paragraph U61. As a result, the DPD is now in compliance with the policy requirements of the paragraph.

The DPD's AT is scheduled to conduct an audit of external complaint investigations, which will include the requirements of this paragraph, by August 31, 2006. The Monitor will test implementation of the requirements of paragraph U61 during the quarter ending November 30, 2006.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements of paragraph U61. The Monitor has not yet evaluated the DPD's compliance with the implementation requirements of this paragraph. As a result, the Monitor has not yet evaluated the DPD's overall compliance with paragraph U61.

### *Paragraph U62 – Informational Campaign*

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

- a. informing persons they may file complaints regarding the performance of any DPD employee;
- b. distributing complaint forms, fact sheets and informational posters at City Hall, OCI, all DPD precincts, libraries, on the internet and, upon request, to community groups and community centers;
- c. broadcasting public service announcements (PSA) that describe the complaint process; and
- d. posting permanently a placard describing the complaint process, with relevant phone numbers, in the lobby of each DPD precinct.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U62 during the quarter ending November 30, 2005, finding the DPD in compliance with subparagraphs U62b, c and d.

### *Current Assessment of Compliance*

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

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

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

The Monitor, accompanied by OCI personnel, conducted inspections of Libraries, Neighborhood City Halls and District Stations on April 24-26, 2006 and May 10, 2006. The inspections revealed that 20 of the 25<sup>61</sup> libraries, three of the six neighborhood city halls, and all of the district stations had all the materials required by paragraph U62b.<sup>62</sup> During these inspections, OCI provided replacement materials to each location, as needed.

OCR conducted inspections of Libraries and Neighborhood City Halls during the period of May 3-10, 2006. Of the 25 Libraries inspected, 22 had all the required materials. OCR replenished the materials as needed and also supplied other Libraries with extra materials per their request.

OCR conducted inspections at nine Neighborhood City Hall locations. Of the nine inspected, three had been permanently closed and two were missing materials, which were replenished by the inspectors. The remaining four Neighborhood City Halls had all the required materials.

Although OCR did replenish the materials for some of the Libraries and Neighborhood City Halls, many of the relevant personnel are unaware of the system that is supposed to be place for reordering or refilling depleted stock of the materials.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph U62b.

*Subparagraph U62c Complaint Process Broadcasts*

The DPD submitted a copy of the PSA that is broadcast on Comcast Cable. According to DPD, the broadcast is aired continuously in a daily loop. As previously reported, the PSA meets the minimum requirements of describing the complaint process.

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

*Subparagraph U62d Informational Campaign Placards*

On April 24-26, 2005 and May 10, 2006, the Monitor conducted inspections of all Districts and found that the DPD continues to have permanent placards posted in the lobby of each of District.

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

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<sup>61</sup> As described below, one of the 25 libraries was permanently closed.

<sup>62</sup> Although each district station had all the required materials, two stations had voided citizen complaint forms in the book. DPD policy indicates that all completed complaint forms must be sent to OCI (this includes voided forms) since OCI tracks all Citizen Complaint Reports (CCRs) which are numbered for that purpose. During the inspections, it was apparent that the supervisors questioned were not aware of this policy requirement.

## *Recommendations*

The DPD and the OCI should provide additional training to personnel at neighborhood city halls and libraries and continue to conduct periodic inspections to ensure that an adequate supply of informational campaign material is available. Recently, there are a number of new managers at neighborhood city halls and new librarians at the City's libraries. These individuals must receive information regarding the ongoing replenishment of materials. There is clearly a breakdown in the system since OCI provided replacement materials at several locations prior to OCR's inspection and yet OCR's inspection still indicated that materials were missing.

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

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

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U63 during the quarter ending November 30, 2005, finding the DPD in non-compliance. The Monitor determined that Directive 102.6, *Citizen Complaints*, meets the requirements of paragraph U63, among others, but was not adequately disseminated as of the end of that quarter. Upon being informed of these results, on December 15, 2005 (after the end of that quarter), the DPD submitted supplemental documentation evidencing the dissemination of the directive to additional officers. The Monitor reviewed this documentation and determined that the DPD had adequately disseminated the policy.

## *Current Assessment of Compliance*

As described above, the DPD has adequately disseminated policy that addresses the requirements of paragraph U63. As a result, the DPD is now in compliance with the policy requirements of the paragraph.

In order to assess the DPD's compliance with the implementation requirements of paragraph U63, on April 25, 2006 the Monitor conducted spot checks at the DPD's Northeastern and Northwestern Districts to determine if officers were carrying their Citizen Complaint Brochure/Contact forms in their vehicles, as required by the paragraph. The Monitor was able to contact four officers at the Northeastern District, all of whom had the required materials in their



vehicles. At the Northwestern District, the Monitor was able to contact five officers, all of whom had the required materials in their vehicles.

OCR conducted inspections of the DPD Districts during the period of May 17-21, 2006 to determine if officers were carrying their Citizen Complaint Brochures/Contact Forms, as required by paragraph U63. OCR randomly checked units from each district and determined that all 53 officers interviewed did have the required materials in their vehicles.

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

## A. INTAKE AND TRACKING

This section comprises paragraphs U64-66. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs U64-66 – Policies Regarding Intake and Tracking; Factual Account by Intake Officer; Unique Identifier*

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

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U64-65 during the quarter ending November 30, 2005, finding the DPD in non-compliance. The Monitor determined that Directive 102.6, *Citizen Complaints*, meets the requirements of paragraphs U64-66, among others, but was not adequately disseminated as of the end of that quarter. Upon being informed of these results, on December 15, 2005 (after the end of that quarter), the DPD submitted supplemental documentation evidencing the dissemination of the directive to additional officers. The Monitor reviewed this documentation and determined that the DPD had adequately disseminated the policy.

The Monitor last assessed the DPD's compliance with paragraph U66 during the quarter ending November 30, 2005, finding the DPD in compliance.<sup>63</sup>

### *Current Assessment of Compliance*

As described above, the DPD has adequately disseminated policy that addresses the requirements of paragraphs U64-66. As a result, the DPD is now in compliance with the policy requirements of the paragraphs.

As described in the Current Assessment of Compliance for paragraph U61 above, the DPD's AT is scheduled to conduct an audit of external complaint investigations, which will include the requirements of these paragraphs, by August 31, 2006. The Monitor will test implementation of the requirements of paragraphs U64-66 during the quarter ending November 30, 2006.

Based on the foregoing, the Monitor finds the DPD is in compliance with the policy requirements of paragraphs U64-66. The Monitor has not yet evaluated the DPD's compliance with the implementation requirements of these paragraphs. As a result, the Monitor has not yet evaluated the DPD's overall compliance with paragraphs U64-66.

## **B. EXTERNAL COMPLAINT INVESTIGATION**

This section comprises paragraphs U67-69. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraph U67-69 – Revision of External Complaint Investigations Policy; External Complaint Review Process Time Limits; External Complaint Dispositions*

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

- a. provide that all complaints be referred for investigation and resolution by OCI or, if the complaint alleges potentially criminal conduct by an officer, by IAD;
- b. permit informal resolution of complaints alleging only inadequate service or the complainant's innocence of a charge and require the investigation and resolution of all other complaints;

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<sup>63</sup> The Monitor found the City and the DPD in compliance with paragraph U66 despite the fact that the policy was not adequately disseminated. The Monitor will now test implementation following the effective dissemination of the policy, as required by the methodologies.

- c. refer all complaints to appropriate agency within five business days;
- d. require complainant be periodically kept informed of complaint status;
- e. develop written criteria for IAD and OCI investigator applicants;
- f. implement mandatory pre-service and in-service training for all IAD and OCI investigators;
- g. require IAD and OCI to complete all investigations within 60 days of receiving the complaint; and
- h. upon completion of investigation, the complainant shall be notified of its outcome.

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

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

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

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

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U67-69 during the quarter ending May 31, 2005, finding the DPD in non-compliance. The Monitor determined that Directive 102.6, *Citizen Complaints*, meets the requirements of paragraphs U67-69, among others, but was not been disseminated as of the end of that quarter. Upon being informed of these results, on December 15, 2005 (after the end of that quarter), the DPD submitted supplemental documentation evidencing the dissemination of the directive to additional officers.

The Monitor reviewed this documentation and determined that the DPD had adequately disseminated the policy.

### *Current Assessment of Compliance*

As described above, the DPD has adequately disseminated policy that addresses the requirements of paragraphs U67-69. As a result, the DPD is now in compliance with the policy requirements of the paragraphs.

The DPD's AT is scheduled to conduct an audit of external complaint investigations, which will include the requirements of these paragraphs, by August 31, 2006. The Monitor is scheduled to test implementation of the requirements of paragraphs U67a-e, g-h, U68-69 during the quarter ending November 30, 2006.

Subparagraph U67f requires the DPD to implement mandatory pre-service and in-service training for all IAD and OCI investigators. The only lesson plan that has been submitted on this topic was sent prior to the completion of the policy revisions. To date, this training has not occurred.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph U67f. The Monitor finds the DPD in compliance with the policy requirements of subparagraphs U67a-e and g-h, and paragraphs U68-69. The Monitor has not yet evaluated the DPD's compliance with the implementation requirements of these paragraphs. As a result, the Monitor has not yet evaluated the DPD's overall compliance with subparagraphs U67a-e and g-h and paragraphs U68-69.

## **V. GENERAL POLICIES**

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

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

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

The Monitor last assessed the DPD's compliance with paragraphs U72-77 during the quarter ending February 28, 2006 finding the DPD in overall non-compliance with each. The Monitor found the DPD in compliance with the policy requirements of paragraphs U72 and U74 but in non-compliance with the implementation requirements of these paragraphs. Continuing issues with the DPD's roster hampered the Monitor's ability to complete the testing of dissemination and prevented the Monitor from commencing the testing of the implementation of policy.

Regarding paragraph U73, the Monitor reviewed daily attendance records for all 27 District station and specialized unit platoons for the period December 28- 30, 2005 and calculated an overall compliance rate of 73.2%. Regarding paragraph U75, the Monitor had not yet received requested documentation from the DPD in connection with the DPD's training on the requirements of paragraph U75 and the implementation of relevant policy.<sup>64</sup>

The Monitor also found the DPD in compliance with the policy requirements of paragraphs U76 and U77 but in non-compliance with the implementation requirements of these paragraphs. The Monitor was unable to assess compliance with the implementation requirements of several subparagraphs of paragraph 76. The DPD provided partial responses to document requests submitted by the Monitor and failed to provide a listing of all UOF, integral to the Monitor's compliance assessment.<sup>65</sup> Regarding paragraph U77, although the Monitor was encouraged that the DPD appears to be documenting foot pursuits that involve a UOF, documentation requested was provided nearly seven weeks after it was requested and it was provided toward the end of the reporting period. In addition, the DPD had not delivered instruction or training to its members on this topic.<sup>66</sup>

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U72-77 during the quarter ending August 31, 2006.

The Monitor last assessed the DPD's compliance with paragraphs U70 and U71 during the quarter ending November 30, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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<sup>64</sup> On March 1, 2006 the DPD submitted an email response to the Monitor's request for training documentation, stating that no training has yet been conducted in relation to the requirements of this paragraph.

<sup>65</sup> The DPD represented that insufficient resources prevented it from providing a full document response. The DPD has since indicated that it will be in a position to provide such a listing when requested as part of the next regularly scheduled compliance assessment.

<sup>66</sup> On November 30, 2005, the DPD submitted a lesson plan titled "Foot Pursuit" in response to paragraph U77. The Monitor recently reviewed this lesson plan, finding it in non-compliance with the requirements of the paragraph. The Monitor forwarded a memo to the DPD detailing its findings after the end of the quarter on March 21, 2006. Also, on March 1, 2006, the DPD submitted an email response to the Monitor's request for training documentation, stating that no training has yet been conducted in relation to the requirements of this paragraph.

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

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

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U70 during the quarter ending November 30, 2005, at which time the Monitor withheld a determination of the DPD's compliance. The Monitor determined that Directive 404.1, Definitions, had been effectively disseminated. However, in order to comply with the implementation requirement of paragraph U70, the DPD must also establish procedures to identify terms requiring clear definitions and institute a process to prepare definitions for review and inclusion in manuals and other documents. The Monitor noted its intention to review the processes the DPD has in place in this area pending the testing of the dissemination of Training Directive 05-07.

As reported in the Monitor's Report for the Quarter Ending February 28, 2006, although a compliance assessment of paragraph U70 was not scheduled for that quarter, the Monitor tested the DPD's dissemination of Training Directive 05-07. The DPD provided documentation evidencing the receipt of the directive for 92, or 97.9%, of the 94 officers selected for testing. As a result, the DPD is in compliance with the policy requirements of paragraph U70.

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

As noted above, in order to comply with the implementation requirement of paragraph U70, the DPD must establish procedures to identify terms requiring clear definitions and institute a process to prepare definitions for review and inclusion in manuals and other documents. During the current quarter, the DPD established a Policy Focus Committee whose responsibilities include reviewing newly established policy or policy revisions to ensure that all required terms are clearly and consistently defined. This committee is comprised of officers of various ranks throughout the Department. The protocol to be used by the committee is not yet finalized. The committee's first meeting occurred on April 5, 2006. It is envisioned that once protocol is finalized, this committee will meet on a semi-annual basis.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraph U70. As a result, the Monitor finds the DPD in overall non-compliance with paragraph U70.

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

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

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U71 during the quarter ending November 30, 2005, finding the DPD in non-compliance. The Monitor determined that the revised written protocol provided by the OCR addressed many but not all of the concerns previously expressed by the Monitor.

## *Current Assessment of Compliance*

The Monitor has requested additional information from the DPD concerning the protocol. The requested information had not been submitted by the DPD as of the end of the current quarter.<sup>67</sup>

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

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<sup>67</sup> On June 12, 2006, after the end of the quarter, the DPD provided the additional information requested. The Monitor will review and report on the information provided during its next regularly scheduled compliance assessment, which is currently slated for the quarter ending November 30, 2006.

## **VI. MANAGEMENT AND SUPERVISION**

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

The Monitor last assessed the DPD's compliance with paragraph U78, the introductory paragraph to section VI., during the quarter ending February 28, 2006, at which time the Monitor found the DPD in non-compliance. The DPD remained in non-compliance with a majority of the paragraphs related to the Risk Management Database (subparagraph U78a) and the Audit Protocol (subparagraph U78c). The DPD had complied with the policy requirements of paragraph U91 and the Monitor will commence implementation testing during the quarter ending May 31, 2006. (subparagraph U78b). The information the Monitor requested regarding the DPD's compliance efforts in connection with subparagraphs U78d and e had not been received by the end of that quarter.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U78 during the quarter ending August 31, 2006, in conjunction with its assessment of paragraph C63, which is the corresponding paragraph of the COC CJ.

### **A. RISK MANAGEMENT DATABASE**

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

The Monitor last assessed the DPD's compliance with paragraphs U85, subparagraphs U88e, f and g, and paragraph U89 during the quarter ending February 28, 2006, finding the DPD in non-compliance with each. The DOJ granted approval of the Request for Proposals (RFP), Review Protocol, Report Protocol, and the documents describing the Interim Management Awareness System (IMAS). However, the DPD had not received the DOJ's approval on its Data Input Plan as of the end of that quarter.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U84-85, subparagraphs U88e and f, and paragraph U89 during the quarter ending August 31, 2006.



The Monitor last assessed the DPD's compliance with paragraphs U79-83 and U86-87 and subparagraphs U88a.-c. during the quarter ending November 30, 2005. The Monitor again assessed the DPD's paragraphs U79-82 and U86-87 and subparagraphs U88a and c during the current quarter.<sup>68</sup> The results of our current assessments follow.

**Paragraph U79-82, U86-87 – Expansion of Risk Management Database; Risk Management Database Information Requirements; Identifying Information for Officers and Civilians; Data Input Plan; Common Control Number; Information Maintained in Database;**

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

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

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

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<sup>68</sup> During the quarter ending November 30, 2005 the Monitor concluded that the DPD was in compliance with paragraph U83 and subparagraph U88b, as the DOJ had approved the Report Protocol. The Monitor is not assessing compliance with this paragraph and subparagraph during the current quarter, as the DPD will remain in compliance with them until the Report Protocol is revised. Revisions to the document will require additional review and approval by the DOJ and trigger additional compliance assessments by the Monitor.

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

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

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

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

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U79-82 and U86-87 during the quarter ending November 30, 2005, finding the DPD in non-compliance with each. Although the DPD had received approval on the RFP, Report Protocol and Review Protocol, it had not yet received the DOJ's approval of the Data Input Plan.<sup>69</sup>

### *Current Assessment of Compliance*

As reported in the Monitor's Report for the Quarter Ending November 30, 2005, the DPD submitted the Data Input Plan on November 22, 2005. The DOJ provided the DPD with a letter, dated February 17, 2006, outlining the DOJ's concerns with the Data Input Plan. The letter also expressed the DOJ's concerns regarding the DPD's use of its internal Information Technology Services (ITS) for converting the IMAS to MAS, as opposed to an outside vendor. During the quarter, the parties participated in additional discussions of this issue, and the DOJ provided conditional approval of DPD's proposal to use internal resources to do the IMAS to MAS conversion near the quarter's end.

The concerns regarding the Data Input Plan were not resolved and the plan was not approved as of the end of the current quarter. As a result, the Management Awareness System (MAS) has not been fully developed and is not operational.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U79-82 and U86-87.

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<sup>69</sup> The DPD submitted the Data Input Plan to DOJ for review and approval on November 22, 2005. The DOJ was in the process of reviewing the documents as of the end of that quarter.

### *Subparagraphs U88a - c - Schedule for Database Development*

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

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

### *Background*

The Monitor last assessed the DPD's compliance with subparagraphs U88a-c during the quarter ending November 30, 2005, finding the DPD in compliance with subparagraph U88b and in non-compliance with subparagraphs U88 a. and c. Although the DPD received the DOJ's approval of the Report Protocol (subparagraph U88b), it had not yet received approval of the Data Input Plan (subparagraph U88a) nor had it issued a RFP (subparagraph U88c).

### *Current Assessment of Compliance*

In regards to subparagraph U88a, as reported in the Monitor's Report for the Quarter Ending November 30, 2005, the DPD submitted the Data Input Plan on November 22, 2005. The DOJ provided the DPD with a letter, dated February 17, 2006, outlining the DOJ's concerns with the Data Input Plan. These concerns were not resolved and the plan was not approved as of the end of the current quarter.

In regards to subparagraph U88c, the DOJ outlined its concerns regarding the DPD's use of its internal ITS for converting the IMAS to MAS as opposed to an outside vendor in the letter dated February 17, 2006. During the quarter, the parties participated in additional discussions of this issue, and the DOJ provided conditional approval of DPD's proposal to use internal resources to do the IMAS to MAS conversion near the quarter's end.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraph U88a and is withholding a determination of compliance with subparagraph U88c.<sup>70</sup>

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<sup>70</sup> As described in the introduction to this section, the Monitor is not assessing compliance with subparagraph U88b during the current quarter, as the DPD is in compliance with the subparagraph and will remain so until the Report Protocol is revised.

## B. PERFORMANCE EVALUATION SYSTEM

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

The Monitor last assessed the DPD's compliance with paragraph U91 during the quarter ending August 31, 2005, finding the DPD in non-compliance. The Monitor had previously found that Directive 401.1, *Performance Evaluation Ratings*, together with related forms, meets the requirements of the paragraph. However, 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.<sup>71</sup>

The Monitor is scheduled to again assess the DPD's compliance with paragraph U91 during the quarter ending August 31, 2006.

## C. OVERSIGHT

This subsection of the UOF CJ (paragraphs U92-99) requires the DPD to establish an internal audit process, to perform annual<sup>72</sup> audits of all precincts and specialized units on eight areas of policing,<sup>73</sup> to perform periodic random reviews of scout car camera videotapes and video recording equipment, and to meet regularly with local prosecutors to identify any issues in officer, shift or unit performance. Each of these oversight provisions requires the DPD to examine a number of issues, but a common theme among them all is the requirement to assess and report on the appropriateness of the police activity being examined.

The Monitor last assessed the DPD's compliance with paragraph U92 during the quarter ending August 31, 2005, finding the DPD in compliance. The Monitor last assessed the DPD's compliance with paragraphs U93, U95-97 and U99 during the quarter ending November 30, 2005, finding the DPD in non-compliance with all but paragraph U99. The Monitor last assessed

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<sup>71</sup> Although paragraph U91 was not scheduled for assessment during the quarter ending November 30, 2005, the Monitor retested the DPD's dissemination of Directive 404.1 that quarter. The DPD provided documentation evidencing the receipt of the directive for 91, or 96.81%, of the 94 officers selected for testing. Accordingly, the DPD has now met the requirements for effective dissemination of the policy. The Monitor will test implementation during the next regularly scheduled compliance assessment for this paragraph.

<sup>72</sup> On October 4, 2004, in response to a Joint Motion from the parties, the Court amended the audit schedule in the UOF CJ by requiring the DPD's UOF CJ audits to be completed annually by August 31, 2004, and every year thereafter.

<sup>73</sup> Including UOF investigations; prisoner injuries; allegations of misconduct; arrests; stops and frisks; witness identification and questioning; custodial detention practices, and complaint investigations.

the DPD's compliance with paragraphs U94 and U98 during the quarter ending February 28, 2006, finding the DPD in non-compliance with each.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U92 and U94-U98 during the quarter ending August 31, 2006 and with paragraph U93 during the quarter ending November 30, 2006.

During the current quarter, the Monitor again assessed the DPD's compliance with paragraphs U94a and b and U99. The results of our current assessments follow.

### **Paragraph U94 – Audits of UOF, Prisoner Injuries Investigations 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 subparagraphs U94a and b during the quarter ending February 28, 2006, finding the DPD in non-compliance with both, as neither a UOF investigations audit (required by subparagraph U94a) nor a prisoner injury investigations audit (required by subparagraph U94b) was submitted as of the end of that quarter.

The Monitor last assessed the DPD's compliance with subparagraph U94c during the quarter ending November 30, 2005, finding the DPD in non-compliance. The Monitor reviewed the *Allegations of Misconduct Investigations Audit* report, submitted on August 31, 2005, and noted that all aspects of this audit, from planning through reporting, had improved compared to audits previously submitted by the DPD AT; however the Monitor identified several deficiencies that caused the audit to be non-compliant.<sup>74</sup>

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

The DPD did not submit a UOF Investigations Audit or a Prisoner Injury Investigations Audit during the current quarter. These audits were due by August 31, 2005. The next audits required by these subparagraphs are expected to be submitted by August 31, 2006.

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<sup>74</sup> The Monitor did not assess compliance with subparagraph U94c during the current quarter, nor was an assessment scheduled, as the next *Allegations of Misconduct Investigations Audit* is not due until the quarter ending August 31, 2006.

Based on the foregoing, the Monitor finds the DPD in non-compliance with subparagraphs U94a and b.<sup>75</sup>

### **Paragraph U99 – Regular Meetings with Prosecutors**

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

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U99 during the quarter ending November 30, 2005, finding the DPD in compliance. Through review of documents and discussions with participants, the Monitor determined that the DPD and local prosecutor's office discussed issues identified in officer, shift and unit performance as required by paragraph U99.

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

The DPD and the Wayne County Prosecutor's Office (WCPO) continue to meet quarterly to identify issues in officer, shift or unit performance. During this quarter, the meeting was held on May 11, 2006. The Monitor attended the meeting and observed that the WCPO and DPD discussed pertinent issues and there was an active exchange of information and agreement to follow up on the issues that were identified.

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

## **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.

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<sup>75</sup> The Monitor will continue to find the DPD in non-compliance with subparagraphs U94a and b until the required audits have been submitted. When an audit is submitted, the quality of the audit will be evaluated.

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending February 28, 2006, finding the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of each. The Monitor determined that the DPD adequately disseminated Directive 303.3. Although the DPD indicated that it had completed its protocol for implementing the requirements of paragraphs U100-102, it was in the process of incorporating the protocol into its related training as of the end of that quarter.<sup>76</sup>

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U100-102 during the quarter ending August 31, 2006.

## 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, 2006. The Monitor found the DPD in compliance with paragraph U103, as it had eliminated its backlog of disciplinary cases. The Monitor found the DPD in non-compliance with paragraph U104, as the Monitor had not received a response from the DPD on comments from its review of Disciplinary Process Timeline and the DAS paperwork requirements. Finally, the Monitor found the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraph U105. Although the Monitor determined that the DPD adequately disseminated policy that addressed the paragraph's requirements, the documentation required to test the dissemination of the policy was not received until the last day of that quarter, preventing the Monitor from commencing the testing of the implementation of policy.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U103-105 during the quarter ending August 31, 2006.

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<sup>76</sup> Although the Monitor is scheduled to conduct implementation testing during the quarter ending August 31, 2006, on February 27 and 28, 2006, members of the Monitor's team conducted ride-alongs in two separate Districts. In both instances, the Monitor noted that the patrol units being utilized by DPD officers contained either no video recording equipment or inoperable video recording equipment. Conversations with various sworn personnel at both Districts confirmed that maintenance backlogs often result in officers being assigned to patrol units with either inoperable equipment or no equipment at all.



## VII. TRAINING

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

### A. OVERSIGHT AND DEVELOPMENT

This section comprises paragraphs U106-111. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending November 30, 2005, finding the DPD in non-compliance with each. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U106 during the quarter ending November 30, 2005, finding the DPD in non-compliance. Though the DPD's development of lesson plans was to include a best practices research process and a review by the training executive staff, the Monitor was concerned that the effort within the training division was not adequate, not coordinated, and did not include evaluations for the quality and consistency of the lesson plans. In addition, as of the end of the quarter, the DPD had not yet submitted any reports of its reviews of UOF and A&D training to the Monitor and the DOJ, as the majority of the lesson plans in these areas had not yet been fully completed.

On December 2, 2005 the Monitor extended a formal offer of TA to the City to provide guidance on the creation of an organizational matrix to track the development, review and approval processes of all UOF and A&D lesson plans. The DPD formally accepted the Monitor's offer of TA on December 14, 2005. The Monitor conducted this TA, which consisted of a meeting and presentation of the aforementioned organizational matrix, on January 17, 2006.

### *Current Assessment of Compliance*

During the current quarter, the Monitor submitted a request for the DPD's documented process for ensuring a coordinated review of the quality, consistency and compliance with applicable law and DPD policy of UOF and A&D training, as well as a report on its regular reviews (to ensure quality, consistency and compliance with applicable law and DPD policy), which is required to be prepared for the Monitor and DOJ pursuant to paragraph U106.

The DPD's response indicated that the training staff has established a Training Committee, which is responsible for "*lesson plan development, performance objective development, instructional techniques, testing and evaluation techniques, and resource availability and use*" and included a listing of appropriate committee members, such as members of the DPD executive training staff, lesson plans developers, OCR, and the City of Detroit Law Department.

The DPD's response also indicated that the protocol for review and approval of all DPD lesson plans will consist of a review by the Training Committee, approval of the Commanding Officer (CO) of Curriculum Development and Accreditation Training, and final approval by the Training Committee Chairperson, who is the Director of Training. According to the response "*the Training Committee will meet as necessary to review incoming lesson plans.*"

The Monitor is confident that, once implemented, this process will assist the DPD in effectively implementing the requirements of this paragraph. However, the DPD's response did not include any reports of such reviews as required, but rather an internal memorandum written by a training staff member that listed the lesson plan objectives. The memorandum did not illustrate that any assessments of the lesson plans had occurred. Additionally, all lesson plans that have been previously submitted have not included any documentation evidencing such review and approval.

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

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

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

- a. ensure the quality of all UOF and A&D training;
- b. develop UOF and A&D training curricula;
- c. select and train DPD officer trainers;
- d. develop, implement, approve and oversee all training and curricula;
- e. establish procedures for evaluating all training curricula and procedures; and

- f. conduct regular needs assessments to ensure that training governing UOF and A&D are responsive to the knowledge, skills and abilities of the officers being trained.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U107 during the quarter ending November 30, 2005, finding the DPD in non-compliance. As of the end of the current quarter the Monitor has not received all of the lesson plans, training materials and other documentation in response to each of the requirements in the subparagraphs of U107.

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

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

During the current quarter, the Monitor submitted a request for the DPD's documented process for overseeing the development, implementation and approval of all lesson plans to ensure their quality; the documented procedures for evaluating all training curricula; and, the documented procedures for conducting regular needs assessments of the training to ensure that such training is responsive to the knowledge, skills, and abilities of officers being trained. The DPD responded to that request by stating that its review and approval process, as described in the Current Assessment of Compliance for paragraph U106, is sufficient to address the requirements of this paragraph. However, the DPD's response did not adequately document or demonstrate its compliance with the type of management approach that is required by paragraph U107.

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

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

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

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U108 during the quarter ending November 30, 2005, finding the DPD in non-compliance. Although some recording of current training had been entered into the Michigan Commission on Law Enforcement Standards (MCOLES) Information Tracking Network (MITN), the DPD plans to use the MAS to address

the requirements of this paragraph.<sup>77</sup> However, the MAS was not yet operational. As a result, the DPD is not yet maintaining individual training records for all officers, documenting the date and topic of all pre-service and in-service training.

### *Current Assessment of Compliance*

According to the DPD, training records continue to be entered into the MITN system and the DPD still intends to use the MAS to address the requirements of this paragraph. However, as of the end of the current quarter, the MAS was not yet fully developed or operational; therefore, the DPD was not yet maintaining individual training records for all officers, documenting the date and topic of all pre-service and in-service training.

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

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U109 during the quarter ending November 30, 2005, finding the DPD in non-compliance. The Monitor requested a listing of all lesson plans completed, with references to the Consent Judgment paragraph(s) that each lesson plan is intended to address. The DPD provided this information on December 9, 2005, after the end of that quarter. The Monitor also noted that the DPD must provide all lesson plans currently being taught, the documentation supporting the internal approval of these lesson plans, and a schedule for the delivery of the related training to applicable DPD personnel. Only then can the Monitor review and assess the completed documentation, observe the training in-progress, and assess the instructors of that training to determine if instructors are engaging the students as required by this paragraph.

### *Current Assessment of Compliance*

Based on the consistent deficiencies noted during the Monitor's review of many of the lesson plans submitted by the DPD, and the shortfalls observed by the Monitor in actual training delivered, the Monitor provided TA to the DPD related to adequate lesson plan development on

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<sup>77</sup> Paragraphs U79-U88, and U90 pertain to the MAS. These paragraphs are evaluated under the Management and Supervision section of this report.

May 4, 2006. However, as of the end of the quarter, the DPD had not yet submitted any revised lesson plans, nor had they notified the Monitor of specific training dates that will enable the Monitor to further assess compliance with the requirements of this paragraph.

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

### **Paragraph U110 – Civil Lawsuits**

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

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U110 during the quarter ending November 30, 2005, finding the DPD in non-compliance. The Monitor found that although quarterly meetings being held between the DPD and the City's Law Department meet many of the requirements of this paragraph, the DPD was not distributing information from these meetings to staff of the Risk Management and Training Bureaus as required. Although several Risk Management Bureau and Training supervisors attend the meetings, unless otherwise interpreted, the information must still be distributed to the other staff members.

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

On May 24, 2006, the DPD held its quarterly meeting with the City Law Department. The Monitor attended this meeting. Information regarding civil lawsuits concerning the DPD and its officers was discussed at the meeting. On May 29, 2006, the DPD issued its Risk Management Newsletter, which contains the information discussed at the meeting, to DPD risk management and training staff in accordance with the requirements of paragraph U110. In addition, the DPD has indicated that the newsletter was posted on the Department's Intranet on May 30, 2006.

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

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

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

## ***Background***

The Monitor last assessed the DPD's compliance with paragraph U111 during the quarter ending November 30, 2005, finding the DPD in non-compliance. The DPD indicated that it had provided training to non-DPD City employees whose job responsibilities are affected by the UOF CJ, including members of the HCCC, Detroit Police Reserve and the managers of the Neighborhood City Halls. The Monitor was provided with the sign in- rosters for the training; however, the Monitor was not able to ascertain what City offices the individuals were from.

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

The Monitor has requested additional information from the DPD in order to evaluate whether non-DPD City employees who fall within the requirements of this paragraph have been trained. The information previously provided did not adequately identify which agency the non-DPD City employees were from. On June 22, 2005, the DPD provided additional information indicated that the non-DPD City employees who were trained were managers of the Neighborhood City Halls. However, as previously indicated, there are personnel from other city agencies whose job responsibilities are affected by the UOF CJ. The Monitor has not yet received any information that any other non-DPD City employees have been trained.

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

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

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

This section comprises paragraph U112 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2005. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

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

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

- a. the DPD's UOF continuum; proper UOF; decision making; and the DPD's UOF reporting requirements;
- b. the Fourth Amendment and other constitutional requirements, including recent legal developments;

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

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U112 during the quarter ending November 30, 2005, finding the DPD in non-compliance. The Monitor was in the process of reviewing the most recent lesson plans submitted by the DPD at the end of the quarter.<sup>78</sup> As discussed previously, the Monitor also requested the DPD to produce a listing of all completed lesson plans referencing the relevant Consent Judgment paragraph(s). The Monitor received this information from the DPD on December 9, 2005, after the end of the quarter.

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

During the current quarter, the Monitor reviewed various lesson plans submitted by the DPD in response to this paragraph and submitted memorandum detailing various deficiencies identified

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<sup>78</sup> The training documentation received by the Monitor on November 30, 2005, which appears to be in response to some of the requirements of U112, are: *Use of Force In-Service*; *Foot Pursuit In-Service*; *Chemical Spray (SABRE) In-Service*; and *Firearms Tactical Training and Qualification In-Service*.

during its review of certain lesson plans.<sup>79</sup> The majority of the lesson plans did not address all of the requirements of the paragraphs for which they were submitted. The lesson plans also had various qualitative shortfalls, including:

- Lack of a systematic approach that follows a standardized format.
- Lack of detail that is critical for an instructor who has never taught the course to follow the lesson plan.
- Lack of instructor notes and background information.
- Power Point visuals without narrative support.
- No glossary of terms.
- No opportunity for the participants to be involved in the learning process (i.e. question and answer format).
- Lack of a logical sequence so that the students could easily follow along.

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

### C. FIREARMS TRAINING

This section comprises paragraph U113 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending November 30, 2005. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

#### Paragraph U113 – Firearms Training Protocol

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

- a. ensures that all officers and supervisors complete the bi-annual firearms training and qualification;
- b. incorporates professional night training, stress training (i.e., training in using a firearm after undergoing physical exertion) and proper UOF decision making training in the bi-annual in-service training program, with the goal of adequately preparing officers for real life situations;

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<sup>79</sup> The Memorandums covered the following lesson plans: *Chemical Spray, Confinement of Material Witness, Firearms Marksmanship Training and Qualification, Firearms Tactical Training and Qualification Supervisor Report Writing, and Prisoner Detention Officer Training, and Foot Pursuit.*



- c. ensures that firearms instructors critically observe students and provide corrective instruction regarding deficient firearms techniques and failure to utilize safe gun handling procedures at all times; and
- d. incorporates evaluation criteria to determine satisfactory completion of recruit and in-service firearms training, including: maintains finger off trigger unless justified and ready to fire; maintains proper hold of firearm and proper stance; and uses proper UOF decision making.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U113 during the quarter ending November 30, 2005, finding the DPD in non-compliance. The Monitor had not yet completed its review of the DPD's *Firearms Tactical Training and Qualification In-Service* lesson plan, which was received on November 30, 2005. The Monitor noted its encouragement by the apparent emphasis placed on firearms qualification by the DPD. However, firearms qualification at the firing range is but one of this paragraph's requirements; night training, stress training, UOF decision-making with the goal of preparing officers for real life situations, and requirements of other paragraphs pertaining to situational and simulation exercises are also necessary but had not been addressed.

### *Current Assessment of Compliance*

In its Ninth Quarter Status Report, the DPD stated that the original intent of the parties (including the City and the DOJ) was to utilize night goggles, which are currently being utilized to meet the night training requirements of subparagraph b. During the current quarter, in a letter dated May 23, 2006, the DOJ clarified its position by acknowledging that the parties agreed during negotiation of the Consent Judgments that the DPD could use goggles or lenses to simulate night firearms training in order to comply with paragraph U113. Notwithstanding this agreement, both the DOJ and the Monitor have expressed concerns regarding the inadequacy of night lenses as a substitute for actual nighttime firearms training.

During the current quarter, the Monitor reviewed lesson plans entitled *Marksmanship Training and Qualification* and *Tactical Training and Qualification* and attended firearms training and qualification process on March 22, 2006. On May 19, 2006, the Monitor forwarded a written memorandum to the DPD detailing its review and describing its observations and findings, including:

- Although the "goals and objectives" and "outline" pages in the lesson plans include some of the requirements of paragraph U113, the information is too general and does not include a high enough degree of specificity to ensure that the instructor(s) will clearly understand what is to be covered during the training class. For example, the learning objective states: "*demonstrate effective decision making.*" Although this objective may refer to the use of force decision-making requirement of subparagraph U113d(iii), the lesson plan must incorporate additional detail to sufficiently address this requirement. As another example; the objectives "*demonstrate safety and handling while achieving a qualifying score with the*

*primary on duty sidearm under stressful conditions*” may be intended to cover subparagraph U113b (stress training – using a firearm after undergoing physical exertion); again, however, the objective and content of the lesson plan does not provide adequate detail to ensure that proper instruction is delivered in the classroom and on the firing range.

- During the actual training, the instructors did not follow either of the lesson plans that were submitted to the Monitor.
- Although a handout entitled “Department Deadly Force Policy” was distributed to the students, neither the classroom instruction nor the actual shooting activities covered proper use of force decision-making.
- No stress training was included with the training provided.<sup>80</sup>
- Professional night training was not addressed in the lesson plan.
- The firearms instructors did critically observe students and provided immediate corrective instruction regarding any deficiencies noted.
- The firearms qualification process (sequence and distance of fire and required score) is consistent with best practices of police qualifications courses.
- The firearms training as delivered adequately covered weapons inspections, safe handling of weapons, proper hold and stance, and maintains finger off the trigger until ready to fire.

The Monitor’s memorandum also included additional comments that were noted during the review related to best practices for lesson plan and course development.

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

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

This section comprises paragraph U114 only. The Monitor last assessed the DPD’s compliance with this paragraph during the quarter ending November 30, 2005. The Monitor again assessed the DPD’s compliance with this paragraph during the current quarter. The results of our current assessment follow.

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

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

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

### *Background*

The Monitor last assessed the DPD’s compliance with paragraph U114 during the quarter ending November 30, 2005, finding the DPD in non-compliance. The Monitor reviewed both the *Search and Seizure Fundamentals for Street Patrol* and *Arrest Concepts: Fundamentals for Street Patrol* lesson plans,<sup>81</sup> noting that both have similar structural deficiencies in lesson plan construction and instructor notes. The Monitor provided verbal feedback to the DPD training staff. The DPD indicated that revised lesson plans would be resubmitted in the near future.

### *Current Assessment of Compliance*

As of the end of the current quarter, the DPD had not yet re-submitted revised lesson plans in response to this paragraph.

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

## **E. CUSTODIAL DETENTION TRAINING**

This section comprises paragraphs U115-117. The Monitor last assessed the DPD’s compliance with these paragraphs during the quarter ending February 28, 2006, finding the DPD in non-compliance with each. The DPD training staff had indicated that the requirements of this

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<sup>81</sup> The Monitor reviewed the *Search and Seizure Fundamentals for Street Patrol* lesson plan during the quarter ending May 31, 2005. The DPD submitted the *Arrest Concepts: Fundamentals for Street Patrol* lesson plan to the Monitor on July 21, 2005. Both plans were discussed in the Monitor’s Report for the Quarter Ending November 30, 2005.

paragraph would be included in the paragraph U114 lesson plans. As of the end of that quarter, the Monitor had not received revised lesson plans for paragraph U114 or a lesson plan specifically addressing paragraph U115 requirements. Although the DPD's Tenth Quarter Status Report to the Monitor stated that Directive 202.1, *Arrests*, and the *Prompt Judicial Review Lesson Plan Booklet* address the requirements of paragraph U116, these documents do not address all of the specific requirements of the paragraph. As of the end of the current quarter, the DPD had not yet submitted a revised lesson plan, or any other documentation to address all of the requirements of this paragraph. Finally, the Monitor determined that the Confinement of Material Witness-In Service lesson plan submitted by DPD in response to this paragraph U117 contains the advisement required by the paragraph; however, the lesson plan contained various qualitative shortcomings, which were described by the Monitor.

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

## 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, 2006, finding the DPD in non-compliance with each. The Monitor determined that the *Supervisors' Report Writing Guidelines and Report Evaluation* lesson plan and accompanying materials, submitted by the DPD in response to paragraph U118, did not adequately meet the requirements of the paragraph. In addition, the DPD had not submitted lesson plans required by paragraphs U119<sup>82</sup> and U120. The DPD has indicated that it began training supervisors on the IMAS in November 2005.<sup>83</sup> As previously suggested by the Monitor, the DPD should submit this lesson plan to the Monitor before conducting the training, so that any issues can be identified prior to delivery. The DPD should also notify the Monitor when such training is being conducted, so that the Monitor may attend it for purposes of evaluation.

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

## 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, 2006, finding the DPD in non-compliance with each. The DPD's *External Complaints Process* and *The Office of the Chief*

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<sup>82</sup> As of the end of the current quarter, the Monitor has not received the lesson plan.

<sup>83</sup> As described in the Current Assessment of Compliance for paragraph U79 and related paragraphs, above, the Risk Management Database (MAS) has not yet been finalized or approved by the DOJ.

*Investigator In-Service* lesson plans do not address all of the specific requirements of paragraph U122. As of the end of that quarter, the DPD had not yet submitted a revised lesson plan or any other documentation to address all of the requirements of this paragraph.

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

## 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, 2006, finding the DPD in non-compliance. The DPD submitted its 40-hour basic certification course for FTOs (FTO Protocol) to the DOJ for review and approval.<sup>84</sup> On January 3, 2006, the DOJ requested copies of additional documents that were mentioned in the protocol but not submitted with it. According to DOJ personnel, the DOJ received the requested forms on January 6, 2006. Until such time that the FTO Protocol is approved by DOJ and delivered to appropriate DPD personnel, the DPD will be unable to achieve compliance with this paragraph.<sup>85</sup>

The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending August 31, 2006.

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<sup>84</sup> The DPD submitted the FTO Protocol to the DOJ on February 12, 2004 for review and approval. The DOJ provided the DPD with a letter on April 20, 2004 with comments and recommendations. The DPD re-submitted the FTO protocol to the DOJ on October 3, 2005.

<sup>85</sup> The DOJ responded to the DPD in a letter sent April 11, 2006, granting conditional approval of the FTO lesson plans and associated materials.

## VIII. MONITORING, REPORTING, AND IMPLEMENTATION

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Paragraph U139 is the only paragraph in this section of the UOF CJ for which the Monitor will be assessing compliance. This paragraph requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. Due to the fact that most of the UOF CJ policies have not yet been effectively implemented and training has not occurred, the Monitor has not yet considered investigations at a stage where they could be subject to reopening. The Monitor will do so at an appropriate time during a future quarter.

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

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This section of the report contains the Monitor's compliance assessments of the COC CJ paragraphs scheduled for review during the quarter ending May 31, 2006.

As described in previous quarterly reports, the organization of the COC CJ paragraphs vary, in that some paragraphs have separate but related "policy"-required paragraphs within the COC CJ,<sup>86</sup> while others do not.<sup>87</sup> These varying formats impact the way in which the Monitor assesses compliance with each paragraph. Specifically, the Monitor's compliance assessments of paragraphs that do not have a separate policy-related paragraph include reviews for written guidance or instruction<sup>88</sup> 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**

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

The Monitor last assessed the DPD's compliance with paragraphs C14-21<sup>89</sup> during the quarter ending February 28, 2006, finding the DPD in compliance with paragraph C20 (smoking policy) but in non-compliance with the remaining paragraphs. There were no changes to DPD buildings, nor were there changes in the status of the DPD's compliance with the Life Safety Code since the Monitor's previous assessment of non-compliance. The City was considering whether to retrofit the existing buildings, wait until the construction of a new regional detention facility, or and/utilize the Wayne County Sheriff's jail facilities to house felony detainees. In addition, as of the end of that quarter, the DPD had not submitted a comprehensive FSP for all buildings that maintain holding cells, not had the DPD submitted a policy or protocol containing the requirements regarding and/or procedures for the proper storage of flammable liquids or

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<sup>86</sup> See, for example, paragraph C39 – Cleanliness of Cells and paragraph C40 – Cleaning Policy.

<sup>87</sup> See, for example, paragraph C45 - Access to Toilets and Potable Water.

<sup>88</sup> As described in the Introduction to the Methodologies, this is the Policy Component of compliance.

<sup>89</sup> During the quarter ending August 31, 2005, the Monitor found the DPD in compliance with paragraph C22, as the Monitor confirmed that all Kane Fiber Ceiling Tiles had been removed from DPD buildings containing holding cells. The DPD will remain in compliance with paragraph C22 unless it begins using buildings that contain Kane Fiber Ceiling Tiles to detain prisoners.

combustible materials and no training or instruction been provided giving appropriate DPD employees guidance related to the proper storage of combustible materials.<sup>90</sup> The HCCC also indicated that the paragraph C19 requirement to routinely inspect, test and maintain the fire safety equipment had not yet been addressed by the DPD. Finally, during random unannounced onsite inspections of DPD buildings containing holding cells, the Monitor ascertained that the storage lockers are being utilized to store flammable liquids; however, in several Districts, the Desk OIC was unable to locate the key to the storage cabinets.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C14-21 during the quarter ending November 30, 2006.

## II. EMERGENCY PREPAREDNESS POLICIES

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This section of the COC CJ comprises paragraphs C23-25. It requires the DPD to develop and implement emergency preparedness plans for all facilities that maintain holding cells. 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, 2006. The Monitor found the DPD in non-compliance with paragraph C23 and withheld a determination of compliance with paragraphs C24-25. The DPD re-submitted its draft Comprehensive EPP to the DOJ for review and approval and was awaiting feedback as of the end of the quarter.<sup>91</sup> The Monitor is scheduled to again assess the DPD's compliance with paragraphs C23-25 during the quarter ending November 30, 2006.

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<sup>90</sup> On March 16, 2006, after the end of that quarter (i.e. the quarter ending February 28, 2006), the DPD resubmitted a FSP to the DOJ for review and approval. On May 23, 2006, the DOJ granted approval of the DPD's FSP.

<sup>91</sup> On May 23, 2006, the DOJ granted approval of the DPD's EPPs.



### III. MEDICAL AND MENTAL HEALTH CARE POLICIES

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This section of the COC CJ comprises paragraphs C26-34. It requires the DPD to develop and implement a medical and mental health care program, which includes a series of policies, procedures and protocols. These policies and procedures must be designed and developed to ensure that the DPD is adequately identifying and responding to the medical and mental health care conditions and needs of its prisoners. The policies and procedures must be approved by a qualified medical and mental health professional. The comprehensive medical and mental health screening program (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 C31-33 during the quarter ending November 30, 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.<sup>92</sup> Also during the quarter ending November 30, 2005, the Monitor elected to defer its assessment of the DPD's compliance with paragraph C30.

The Monitor last assessed the DPD's compliance with paragraph C34 during the quarter ending November 30, 2005 finding the DPD in compliance. The Monitor determined that there were no suicide hazards in any holding cells being utilized by the DPD to hold detainees.<sup>93</sup>

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C26-34 during the quarter ending August 31, 2006.

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<sup>92</sup> During the quarter ending November 30, 2005, the Monitor retested the dissemination of Directive 305.4, *Holding Cell Areas*. As reported in the Report for the Quarter Ending November 30, 2005, the Monitor determined that it had been adequately disseminated *after* the end of that quarter. Accordingly, the DPD is now in compliance with the policy requirements for paragraphs C26-33. The Monitor will test implementation of the directive for these paragraphs during their next regularly scheduled compliance assessment.

<sup>93</sup> For those holding cells that the Monitor identified during previous inspections as containing suicide hazards, the DPD had either removed the suicide hazards or was no longer using the holding cells to hold prisoners.

## V. PRISONER SAFETY POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C35-38 during the quarter ending February 28, 2006, finding the DPD in overall non-compliance with each, although the Monitor did find the DPD in compliance with the policy requirements of paragraphs C36-38. The Monitor began testing the implementation of Directive 305.1, *Detainee Intake/Assessment*, and the Detainee Intake Form (DIF), DPD Form 651 and identified deficiencies in the prisoner screening process. In addition, the Monitor determined that while the required cell checks may be occurring, the documentation of these cell checks was not sufficient. Finally, while the DPD appeared to be complying with most requirements regarding observation cells, it was not conducting continual direct or onsite remote observation of all "observation cells" while they were occupied because there were times when they were only conducting 15 minute cell checks.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C35-38 during the quarter ending November 30, 2006.

## V. ENVIRONMENTAL HEALTH AND SAFETY POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C39-46 during the quarter ending August 31, 2005. The Monitor again assessed the DPD's compliance with paragraphs C39-45<sup>94</sup> during the current quarter. The results of our current assessments follow.

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<sup>94</sup> Paragraph C46 requires the DPD to ensure that all Hepa-Aire purifiers comply with the Michigan Occupational Safety and Health Agency standards. The Monitor concluded that the DPD was in compliance with this paragraph during the quarter ending August 31, 2005 (and during prior assessments), as all Hepa-Aire purifiers had been removed from DPD buildings containing holding cells. The Monitor will not assess compliance with paragraph C46 again unless Hepa-Aire purifiers are re-installed in buildings containing holding cells.

### Paragraph C39 – Cleanliness of Cells

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

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph C39 during the quarter ending August 31, 2005, finding the DPD in non-compliance. Although the holding cells areas were clean during the Monitor's onsite inspections; Directive 305.4, *Holding Cell Areas*, had not been adequately disseminated and the Monitor's interview of DPD holding cell personnel revealed that they were not aware of the directive's requirement to regularly inspect and clean the holding cell areas on a daily basis and each time a prisoner vacates a cell.

As reported in the Monitor's Report for the Quarter Ending February 28, 2006, although compliance assessments of paragraphs C39 were not scheduled for that quarter, the Monitor tested the DPD's dissemination of Directive 305.4, *Holding Cell Areas* and determined that the DPD has adequately disseminated the policy.

#### *Current Assessment of Compliance*

As described above, the DPD has adequately disseminated policy that addresses the requirements of paragraph C39, among others. As a result, the DPD is now in compliance with the policy requirements of the paragraphs.

In order to assess the DPD's compliance with the implementation requirements of paragraph C39 during the current quarter, the Monitor conducted random unannounced onsite inspections<sup>95</sup> of DPD buildings containing holding cells. During these inspections the Monitor visually inspected each holding cell and the surrounding areas for cleanliness. At the time of the Monitor's inspections all of the holding cell areas were clean.

The Monitor notes that in one District, the DPD personnel did not permit the Monitor to inspect the holding cell area within a reasonable period of time after arriving at the District.<sup>96</sup> The DPD must ensure that during future onsite inspections by the Monitor, in which the assessment relies solely on physical inspections, the Monitor must be permitted to inspect the holding cells without unreasonable delays. Failure to provide the Monitor such access may adversely impact the DPD's compliance.

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<sup>95</sup> The Monitor conducted these inspections on April 25-26 and May 10, 2006.

<sup>96</sup> The Monitor and an inspector from the OCI arrived at the Northwestern District at 11:45 am and were not permitted to inspect the holding cell area until 12:55 pm; over an hour later.

During the current quarter, the Monitor also reviewed the *Environmental Health and Safety Audit* submitted on January 31, 2006,<sup>97</sup> which is the most recent HCCC audit related to this topic. The audit, which the Monitor found to be in compliance, appropriately concluded that the DPD was non-compliant with paragraph C39. The audit found that 42% of the holding cells were not clean at the time of the audit inspections.<sup>98</sup> The Monitor notes that based on the Monitor's most recent inspections, the DPD has significantly improved the cleanliness of the holding cells since the time of the HCCC audit inspection.

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

### **Paragraph C40 – Development of Cleaning Policy**

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

### ***Background***

The Monitor last assessed the DPD's compliance with paragraphs C40 during the quarter ending August 31, 2005, finding the DPD in non-compliance for the reasons described in the Background section of paragraph C39, above. As also described in the Background section of paragraph C39, although a compliance assessment of paragraph C40 was not scheduled for the quarter ending February 28, 2006, the Monitor tested the DPD's dissemination of Directive 305.4, *Holding Cell Areas* and determined that the DPD had adequately disseminated it.

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

As described above, the DPD has adequately disseminated policy that addresses the requirements of paragraph C40, among others. As a result, the DPD is now in compliance with the policy requirements of the paragraph.

In order to assess the DPD's compliance with the implementation requirements of paragraph C40 during the current quarter, the Monitor conducted random unannounced onsite inspections<sup>99</sup> of

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<sup>97</sup> Refer to the Current Assessment of Compliance for paragraph C70 in the Monitor's Report for the Quarter Ending February 28, 2006 for further details relating to this audit.

<sup>98</sup> Given that the inspections and review of documentation within the HCCC audit occurred in September 2005, the Monitor cannot rely on the audit findings to assess the DPD's compliance during the current quarter. Please refer to the Current Assessment of Compliance for paragraph C65b for further discussion on the timeliness of the DPD audits.

<sup>99</sup> The Monitor conducted these inspections on April 25-26 and May 10, 2006.

DPD buildings containing holding cells. During these inspections the Monitor interviewed DPD personnel regarding the existence of a regular cleaning schedule and knowledge of the policy (Directive 305.4), reviewed the most recent entries for the cleaning log to determine if the cleaning schedule is being documented, and visually inspected each holding cell and the surrounding areas for cleanliness. At the time of the Monitor's inspections all of the holding cell areas were clean; however, two of the members interviewed at one of the buildings containing holding cells could not locate the holding cell area cleaning log, nor did they know that the log was required to be completed to document the cleaning of the cells.<sup>100</sup> No entry regarding the cleaning of the holding cells during the current and prior shifts had been logged.

As described above, during the current quarter, the Monitor also reviewed the *Environmental Health and Safety Audit* submitted on January 31, 2006,<sup>101</sup> which is the most recent HCCC audit related to this topic. The audit, which the Monitor found to be in compliance, appropriately concluded that the DPD was non-compliant with paragraph C40. Similar to the Monitor's inspections, the audit found that the cleaning logs were not being completed consistently or accurately, and in some cases were missing.<sup>102</sup>

The Monitor is aware that the DPD has recently begun training holding cell area personnel. As part of this process, the DPD must address the problem of assigning members to work the holding cell areas who are not trained in or familiar with the policies and procedures. The lack of training in the holding cell area policies and procedures has an obvious impact on the DPD's compliance with the implementation of paragraph C40.

The Monitor will conduct further evaluations of the documentation relating to this paragraph and report on its findings during its regularly scheduled review of this paragraph.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements but has not yet completed its evaluation of the DPD's compliance with paragraph C40.

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<sup>100</sup> These members, a detention officer and a desk OIC at the Southwestern District, indicated they had never worked that particular District prior to the date of the Monitor's inspection and, in fact, they had not been assigned to work a holding cell area for years.

<sup>101</sup> Refer to the *Current Assessment of Compliance* for paragraph C70 in the Monitor's Report for the Quarter Ending February 28, 2006 for further details relating to this audit.

<sup>102</sup> Given that the inspections and review of documentation within the HCCC audit occurred in September 2005, the Monitor cannot rely on the audit findings to assess the DPD's compliance during the current quarter. Please refer to the *Current Assessment of Compliance* for paragraph C65b for further discussion on the timeliness of the DPD audits.

### **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 paragraphs C41 during the quarter ending August 31, 2005, finding the DPD in non-compliance. Although Directive 305.4, *Holding Cell Areas*, had been approved, it had not been adequately disseminated. Additionally, the Monitor's inspections revealed broken equipment within the holding cell areas, and interviews of DPD detention officers indicated that they were not aware of how to properly handle a situation in which holding cells have broken equipment.

Although a compliance assessment of paragraph C41 was not scheduled for the quarter ending February 28, 2006, the Monitor tested the DPD's dissemination of Directive 305.4, *Holding Cell Areas*, and determined that the DPD had adequately disseminated it.

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

As described above, the DPD has adequately disseminated policy that addresses the requirements of paragraph C41, among others. As a result, the DPD is now in compliance with the policy requirements of the paragraph.

In order to assess the DPD's compliance with the implementation requirements of paragraph C41 during the current quarter, the Monitor conducted random unannounced onsite inspections<sup>103</sup> of DPD buildings containing holding cells. During these inspections the Monitor interviewed DPD personnel regarding the expected action to take when maintenance problems occur and/or when holding cell equipment becomes broken as required in DPD's policy (Directive 305.4, *Holding Cell Areas*). The Monitor also reviewed the most recent entries for the maintenance log to determine if the maintenance schedule is being documented, and visually inspected each holding cell and the surrounding areas for broken toilets, sinks, lighting and windows.

The Monitor observed no broken toilets, sinks, or windows during its inspections; however, the lighting fixtures within two of the holding cells were not working in one District and the pertinent maintenance log was not current and did not indicate that the lighting problem had been reported to the appropriate DPD entity for repair. Additionally, a detention officer and a desk OIC interviewed at another District could not locate the holding cell area maintenance log, nor

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<sup>103</sup> The Monitor conducted these inspections on April 25-26 and May 10, 2006.

did they know that timely performance of routine maintenance, as well as all maintenance requests and responses, are required to be documented on the maintenance log.<sup>104</sup>

As described above, during the current quarter, the Monitor also reviewed the *Environmental Health and Safety Audit* submitted on January 31, 2006,<sup>105</sup> which is the most recent HCCC audit related to this topic. The audit, which the Monitor found to be in compliance, appropriately concluded that the DPD was non-compliant with paragraph C41. Similar to the Monitor's inspections, the audit found that the maintenance logs were not being completed consistently, accurately, and in some cases were missing.<sup>106</sup>

As described above, the Monitor is aware that the DPD has recently begun training holding cell area personnel. As part of this process, the DPD must address the problem of assigning members to work the holding cell areas who are not trained in or familiar with the policies and procedures. The lack of training in the holding cell area policies and procedures has an obvious impact on the DPD's compliance with the implementation of paragraphs C41.

The Monitor will conduct further evaluations of the documentation requirements and report on its findings during its regularly schedule review of this paragraph.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements but has not yet completed it evaluation of the DPD's compliance with paragraph C41.

### *Paragraph C42 – Heating and Ventilation*

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

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

- C42a – Adequate Ventilation
- C42b – Adequate Heating

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<sup>104</sup> As described in the Current Assessment of Compliance for paragraph C40, the officer and OIC indicated that they had not been assigned to work a holding cell area for years and had never worked that particular District before.

<sup>105</sup> Refer to the Current Assessment of Compliance for paragraph C70 in the Monitor's Report for the Quarter Ending February 28, 2006 for further details relating to this audit.

<sup>106</sup> Given that the inspections and review of documentation within the HCCC audit occurred in September 2005, the Monitor cannot rely on the audit findings to assess the DPD's compliance during the current quarter. Please refer to the Current Assessment of Compliance for paragraph C65b for further discussion on the timeliness of the DPD audits.

## ***Background***

### ***C42a – Adequate Ventilation***

The Monitor last assessed the DPD's compliance with C42a during the quarter ending August 31, 2005 finding the DPD in non-compliance 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.

### ***C42b – Adequate Heating***

The Monitor last assessed the DPD's compliance with C42b during the quarter ending August 31, 2005, finding the DPD in non-compliance. Although the temperatures in 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.

Although a compliance assessment of paragraph C42 was not scheduled for the quarter ending February 28, 2006, as described in the Current Assessment of Compliance for paragraph C39, the Monitor tested the DPD's dissemination of Directive 305.4, *Holding Cell Areas*, and determined that the DPD had adequately disseminated it.

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

### ***C42a – Adequate Ventilation***

As described above, the DPD has adequately disseminated policy that addresses the requirements of paragraph C42, among others. As a result, the DPD is now in compliance with the policy requirements of the paragraph.

In order to assess the DPD's compliance with the implementation requirements of paragraph C42 during the current quarter, the Monitor conducted unannounced onsite inspections of all DPD buildings containing holding cells and assessed the ventilation within the holding cell areas.<sup>107</sup> The Monitor also reviewed the ventilation report issued by LA Mechanical Contractors, dated January 16, 2006, and the *Environmental Health and Safety Audit* submitted on January 31, 2006, which is the most recent HCCC audit related to this topic.

The Monitor's inspections revealed that all of the buildings appeared to be well ventilated and were clean-smelling. The ventilation report stated that the ventilation systems within the buildings containing holding cells have been repaired and are functioning properly.

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<sup>107</sup> The Monitor conducted these inspections on April 25-26 and May 10, 2006 and physically felt for air emitting from within the vents in the holding cell areas.



Based on the foregoing the Monitor finds the DPD in compliance with subparagraph C42a.<sup>108</sup>

### **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 paragraphs C43 during the quarter ending August 31, 2005, finding the DPD in non-compliance with each. Although Directive 305.4, *Holding Cell Areas*, had been approved, it had not been adequately disseminated. Additionally, the Monitor's inspections revealed broken equipment within the holding cell areas, and interviews of DPD detention officers indicated that they were not aware of how to properly handle a situation in which holding cells have broken equipment.

Although a compliance assessment of paragraph C43 was not scheduled for the quarter ending February 28, 2006, as described in the Current Assessment of Compliance for paragraph C39, the Monitor tested the DPD's dissemination of Directive 305.4, *Holding Cell Areas*, and determined that the DPD had adequately disseminated it.

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

As described above, the DPD has adequately disseminated policy that addresses the requirements of paragraph C41, among others. As a result, the DPD is now in compliance with the policy requirements of the paragraph.

In order to assess the DPD's compliance with the implementation requirements of paragraph C43 during the current quarter, the Monitor conducted random unannounced onsite inspections<sup>109</sup> of DPD buildings containing holding cells. During these inspections the Monitor visually inspected each holding cell and the surrounding areas for broken toilets, sinks, lighting and windows.

Other than the lighting fixtures within two of the holding cells in one District that were not working, the Monitor observed no evidence of broken toilets, sinks, or windows during its inspections.

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<sup>108</sup> The Monitor did not assess the DPD's compliance with subparagraph C42b during the current quarter. Based upon the dissemination of Directive 305.4, the DPD is in compliance with the policy requirements of the subparagraph. The Monitor will conduct an assessment of adequate heating during the winter months and report those findings during the next regularly scheduled review of this paragraph.

<sup>109</sup> The Monitor conducted these inspections on April 25-26 and May 10, 2006.

As described above, during the current quarter, the Monitor also reviewed the *Environmental Health and Safety Audit* submitted on January 31, 2006,<sup>110</sup> which is the most recent HCCC audit related to this topic. The audit found that some of the holding cells had broken toilets, sinks, and lighting at the time of the audit inspections.<sup>111</sup> The Monitor notes that based on its most recent inspections, the DPD has significantly improved the maintenance of the equipment within the holding cells since the time of the HCCC audit inspection.

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

### **Paragraph C44 – Lighting**

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

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C44 during the quarter ending August 31, 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 be addressed when the central detention facility planned under Proposal S<sup>112</sup> was completed. However, as of the end of that quarter, plans for this new facility had not yet begun and many cells were so dark that detention officers are unable to visually observe prisoners.

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

During the current quarter, the Monitor met with the HCCC to discuss the status of compliance with the lighting requirements of this paragraph. The HCCC indicated that with the advent of the restructuring, most of the buildings containing holding cells with lighting problems were closed and the majority of the remaining buildings meet the lighting requirements. For those that do not yet meet the 20 foot-candle standard, the DPD is currently installing additional lighting. The HCCC stated that by the next scheduled review, all buildings with holding cells will meet the lighting standards.

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<sup>110</sup> Please see the Current Assessment of Compliance for paragraph C70 in the Monitor's Quarterly Report for the period ending February 28, 2006 for further details relating to this audit.

<sup>111</sup> Given that the inspections and review of documentation within the HCCC audit occurred in September 2005, the Monitor cannot rely on the audit findings to assess the DPD's compliance during the current quarter. Please refer to the Current Assessment of Compliance for paragraph C65b for further discussion on the timeliness of the DPD audits.

<sup>112</sup> Proposal S was approved by City voters on November 2, 2004.

The Monitor also reviewed the *Environmental Health and Safety Audit* submitted on January 31, 2006, which is the most recent HCCC audit related to this topic. The audit, which the Monitor found to be in compliance, appropriately concluded that the DPD was in non-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.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C45 during the quarter ending August 31, 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.

Although a compliance assessment of paragraph C45 was not scheduled for the quarter ending February 28, 2006, as described in the Current Assessment of Compliance for paragraph C39, the Monitor tested the DPD's dissemination of Directive 305.4, *Holding Cell Areas*, and determined that the DPD had adequately disseminated it.

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

As described above, the DPD has adequately disseminated policy that addresses the requirements of paragraph C45, among others. As a result, the DPD is now in compliance with the policy requirements of the paragraph.

In order to assess the DPD's compliance with the implementation requirements of paragraph C45 during the current quarter, the Monitor conducted onsite assessments at all DPD buildings containing holding cells.<sup>113</sup> During these inspections 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 and that water is available to the prisoners either through sinks in the individual holding cells or by having cups and water available to the prisoners upon request.

The Monitor also reviewed the *Environmental Health and Safety Audit* submitted on January 31, 2006, which is most recent HCCC audit related to this topic. The audit, which the Monitor found

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<sup>113</sup> The Monitor conducted these inspections on April 25-26 and May 10, 2006.

to be in compliance, appropriately concluded that the DPD was in compliance with paragraph C45.

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

## VI. POLICIES CONCERNING PERSONS WITH DISABILITIES

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

The Monitor last assessed the DPD's compliance with paragraphs C48 during the quarter ending November 30, 2005, finding the DPD in non-compliance as Directive 305.1, *Detainee Intake and Assessment*, had not been adequately disseminated as of the end of that quarter.<sup>114</sup>

The Monitor also commenced, but had not completed, its assessment of the DPD's compliance with paragraph C47. The Monitor was continuing its assessment of the DPD's ability to demonstrate through documentation that it is ensuring that persons with disabilities are provided with reasonable accommodations.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C52-54 during the quarter ending August 31, 2006.

## VII. FOOD SERVICE POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending 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.

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<sup>114</sup> As described in the Report for the Quarter Ending November 30, 2005, the Monitor determined that the directive had been adequately disseminated based upon information provided by the DPD after the end of that quarter.

**Paragraphs C49-50 – Food Storage and Service, Development and Implementation of Food Service Policies**

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

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

***Background***

The Monitor last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending May 31, 2005, finding the DPD in non-compliance with each because the Food Service Policy submitted by DPD was inadequate and did not meet all of the requirements of the paragraph.

***Current Assessment of Compliance***

On January 11, 2006, the DPD submitted a newly developed policy, Directive 305.8, *Food Service Directive*, as well as documentation evidencing the review and approval of the policy by a qualified sanitarian and dietician in response to these paragraphs. The Monitor reviewed the directive and related documentation, and determined that the policy adequately addresses the requirements of the paragraphs.

Although compliance assessments of paragraphs C49-50 were not scheduled for the quarter ending February 28, 2006, the Monitor tested the DPD's dissemination of Directive 305.8, *Food Service Directive*, during that quarter and determined that the DPD adequately disseminated the policy.<sup>115</sup> As a result, the DPD is now in compliance with the policy requirements of paragraph C49-50.

In order to assess the DPD's efforts to implement the Food Service policy during the current quarter, the Monitor conducted onsite inspections at all DPD buildings containing holding

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<sup>115</sup> The DPD provided documentation evidencing the receipt of the directive for 89, or 94.7%, of the 94 officers selected for testing.

cells.<sup>116</sup> During these inspections, the Monitor conducted reviews of the food service logs, the expiration dates of the food in the refrigerators, and the temperature of the refrigerators in which the food is stored.

The Monitor's inspections found that the specified schedule of food service to prisoners, as described within the Food Service policy, is not being followed. Specifically, the policy requires that detainees be provided meals at 6:00 am, 12:00 pm, 6:00 pm, and 10:00 pm. While it is not reasonable for the logs to reflect these exact times; the timing of the service of meals should be relatively close in proximity to the timing required by the DPD policy. However, the logs reviewed indicate that the times allotted for meal service are not being adhered to on a consistent basis, and in some cases the 10:00 pm meal service is skipped. The logs do indicate that prisoners who were held more than six hours had been provided with meals. In addition, the Monitor did not identify any food that had exceeded the expiration date and determined that the internal temperatures of the refrigerators were within the range required by the policy.

The Monitor also reviewed the *Food Service Audit* submitted on January 31, 2006, which is the most recent HCCC audit related to this topic. The audit, which the Monitor found to be non-compliant, appropriately concluded that the DPD was non-compliant with paragraphs C49-50.<sup>117</sup> Consistent with the Monitor's findings, the HCCC audit found that food service was not being documented consistently or accurately and two precincts did not provide meals to the detainees at the 10:00 pm time schedule; and detainees did not immediately receive a meal within the required feeding time schedules for two precincts. The audit also found that problems with the food delivered to the precincts resulted in the temperature of the sandwiches upon delivery exceeding the required temperature of 41° F, as required by the Food Service policy.

The Monitor is aware that the DPD has recently begun training holding cell area personnel. The lack of training in the holding cell area policies and procedures has an obvious impact on the DPD's compliance with the implementation of paragraphs C49-50.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraphs C49-50. As a result, the Monitor finds the DPD in overall non-compliance with the paragraphs.

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<sup>116</sup> The Monitor conducted these inspections on April 25-26 and May 10, 2006.

<sup>117</sup> Refer to the Current Assessment of Compliance for paragraph C71 in the Monitor's Report for the Quarter Ending February 28, 2006 for further details regarding this audit.

## VIII. PERSONAL HYGIENE POLICIES

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This section of the COC CJ comprises paragraph C51 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2005. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

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

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C51 during the quarter ending May 31, 2005, finding the DPD in non-compliance. Although the Monitor determined that Directive 305.4, *Holding Cells Areas*, adequately addressed the requirements of the paragraph, the Monitor had not yet completed its testing of the dissemination of the policy. Additionally, the HCCC audit of this topic found that the DPD supplies of personal hygiene kits in two precincts were completely depleted and the DPD stockroom was also out of the supplies.

Although a compliance assessment of paragraph C51 was not scheduled for the quarter ending February 28, 2006, as described in the Current Assessment of Compliance for paragraph C39, the Monitor tested the DPD's dissemination of Directive 305.4, *Holding Cell Areas*, and determined that the DPD had adequately disseminated it.

### *Current Assessment of Compliance*

As described above, the DPD has adequately disseminated policy that addresses the requirements of paragraph C51, among others. As a result, the DPD is now in compliance with the policy requirements of the paragraph.

In order to assess the DPD's compliance with the implementation requirements of paragraph C51 during the current quarter, the Monitor conducted onsite inspections<sup>118</sup> of all DPD building containing holding cells to determine if adequate supplies of the requisite personal hygiene items were available to prisoners. During these inspections, the Monitor interviewed holding cell area personnel to determine if the personnel are aware of the requirements of the DPD policy regarding personal hygiene items. The Monitor's inspections and interviews found that in one

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<sup>118</sup> The Monitor conducted these inspections on April 25-26 and May 10, 2006.

District, the members assigned to the holding cell areas could not locate the personal hygiene items, including the feminine hygiene products,<sup>119</sup> and were not aware of the requirement to provide these items to prisoners.<sup>120</sup>

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements but has not yet completed its assessment of the DPD's overall compliance with paragraph C51.

## IX. USE OF FORCE AND RESTRAINTS POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C52-54 during the quarter ending February 28, 2006. The Monitor found the DPD in compliance with the policy requirements of the paragraphs. However, continuing problems encountered with the DPD's roster hampered the Monitor's ability to complete the testing of dissemination and prevented the Monitor from commencing the testing of the implementation of policy during the quarter. As a result, the Monitor found the DPD in non-compliance with the implementation requirements and, therefore, overall non-compliance with the paragraphs.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C52-54 during the quarter ending August 31, 2006.

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<sup>119</sup> The Monitor notes that at the time of the Monitor's inspections, there were female prisoners being held. With the Monitor's assistance, the supply of personal hygiene items was eventually located.

<sup>120</sup> As described in the *Current Assessment of Compliance* for paragraph C40, the officer and OIC indicated that they had not been assigned to work a holding cell area for years and had never worked that particular District before.



## X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW

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

The Monitor last assessed the DPD's compliance with paragraphs C55-57 during the quarter ending February 28, 2006. The Monitor found the DPD in compliance with the policy requirements of the paragraphs. However, continuing problems encountered with the DPD's roster hampered the Monitor's ability to complete the testing of dissemination and prevented the Monitor from commencing the testing of the implementation of policy during the quarter. As a result, the Monitor found the DPD in non-compliance with the implementation requirements and, therefore, overall non-compliance with the paragraphs.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C55-57 during the quarter ending August 31, 2006.

## XI. EXTERNAL COMPLAINTS

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

The Monitor last assessed the DPD's compliance with paragraphs C58-59 during the quarter ending August 31, 2005, finding the DPD in non-compliance with each. Although the Monitor found that Directive 102.6, *Citizen Complaints*, meets the policy requirements of these paragraphs, among others, it had not been disseminated to officers or the OCI as of the end of that quarter. In addition, the DPD provided documentation evidencing the receipt of Directive 305.4, *Holding Cell Areas*, for only 38.3% of the officers selected for testing by the Monitor.<sup>121</sup> The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2006.

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<sup>121</sup> The Monitor retested the DPD's dissemination of Directives 102.6 and 305.4 during the quarter ending November 30, 2005. As described in the Report for the Quarter Ending November 30, 2005, the Monitor determined that the directives had been adequately disseminated based upon information provided by the DPD after the end of that quarter. As a result, the DPD is now in compliance with the policy requirements of paragraphs C58-59. Implementation will be tested during the next regularly scheduled compliance assessment for these paragraphs.

## XII. GENERAL POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C60-61 during the quarter ending November 30, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraph C60 – General Policies*

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

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C60 during the quarter ending November 30, 2005, at which time the Monitor withheld a determination of the DPD's compliance. The Monitor determined that Directive 404.1, Definitions, had been effectively disseminated. However, in order to comply with the implementation requirement of paragraph C60, the DPD must also establish procedures to identify terms requiring clear definitions and institute a process to prepare definitions for review and inclusion in manuals and other documents. The Monitor noted its intention to review the processes the DPD has in place in this area pending the testing of the dissemination of Training Directive 05-07.

### *Current Assessment of Compliance*

As noted above, in order to comply with the implementation requirement of paragraph C60, the DPD must establish procedures to identify terms requiring clear definitions and institute a process to prepare definitions for review and inclusion in manuals and other documents. During the current quarter, the DPD established a Policy Focus Committee whose responsibilities include reviewing future newly established policy or policy revisions to ensure that all required terms are clearly and consistently defined. This committee is comprised of officers of various ranks throughout the Department. The protocol to be used by the committee is not yet finalized. The committee's first meeting occurred on April 5, 2006. It is envisioned that once protocol is finalized, this committee will meet on a semi-annual basis.

Based on the foregoing, the Monitor finds the DPD in compliance with the policy requirements but in non-compliance with the implementation requirements of paragraph C60. As a result, the Monitor finds the DPD in overall non-compliance with paragraph C60.

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

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

***Background***

The Monitor last assessed the DPD's compliance with paragraph C61 during the quarter ending November 30, 2005, finding the DPD in non-compliance. The Monitor determined that the revised written protocol provided by the OCR addressed many but not all of the concerns previously expressed by the Monitor.

***Current Assessment of Compliance***

The Monitor has requested additional information from the DPD concerning the protocol. The requested information had not been submitted by the DPD as of the end of the current quarter.<sup>122</sup>

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

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<sup>122</sup> On June 12, 2006, after the end of the quarter, the DPD provided the additional information requested. The Monitor will review and report on the information provided during its next regularly scheduled compliance assessment, which is currently slated for the quarter ending November 30, 2006.

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

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This section of the COC CJ (paragraphs C62-72) requires the DPD to operate its holding cells in compliance with its comprehensive risk management plan and to routinely evaluate the operation of the holding cells to minimize the risks to its staff and prisoners. The DPD must evaluate such operations through the use of video cameras and via regularly scheduled semi-annual<sup>123</sup> audits that assess and report on issues affecting the safety and well-being of DPD personnel and prisoners in the DPD's holding cells.<sup>124</sup>

The Monitor last assessed the DPD's compliance with paragraphs C62-72 during the quarter ending February 28, 2006, finding the DPD in compliance with subparagraph C65c, paragraph 67 and paragraph 70, and in non-compliance with the remaining paragraphs. The Monitor is scheduled to again assess the DPD's compliance with paragraph C65-C71 during the quarter ending August 31, 2006.

The Monitor again assessed the DPD's compliance with paragraph C72 during the current quarter. The results of our current assessment follow. In addition, the Monitor has included below detailed findings in connection with its review of the *Prisoner Injury Investigations Audit Report* submitted by the DPD in response to paragraph C65b.<sup>125</sup>

#### **Subparagraph C65b – Audit of Prisoner Injuries in Holding Cells**

Subparagraph C65b 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 prisoner injuries in holding cells.

#### ***Background and Current Assessment***

The Monitor last assessed the DPD's compliance with paragraph C65b during the quarter ending February 28, 2006, finding the DPD in non-compliance because the audit due by January 31,

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<sup>123</sup> On October 4, 2004, at the request of the parties, the Court amended the audit schedule in the COC CJ by requiring the DPD's COC CJ audits to be completed semi-annually with the first and second audits due by January 31 and August 31, 2004, and subsequent audits due by January 31, 2005 and every six months thereafter.

<sup>124</sup> The topics covered by these audits include: UOF; injuries to prisoners and allegations of misconduct in holding cells; fire detection, suppression and evacuation; emergency preparedness; medical/mental health; detainee safety; environmental health and safety; and food service.

<sup>125</sup> As described below, this audit was submitted late and was assessed as non-compliant during the quarter ending February 28, 2006. The Monitor conducted a review of the audit report to provide the DPD AT with feedback and is including the findings from its review in this report.

2006 was submitted late on February 15, 2006.<sup>126</sup> Although the audit was submitted late and was therefore non-compliant, the Monitor conducted a review of the audit report to provide the DPD AT with feedback. The Monitor's findings, which have been discussed with the DPD's AT, are highlighted below.<sup>127</sup>

- The AT selected February 1, 2005 through July 31, 2005 as the audit time period, stating that this date was necessary because the AT began the audit fieldwork in August 2005. Considering the audit report was originally submitted on January 31, 2006 and re-submitted on February 15, 2006, the information involving the quality of prisoner injury investigations occurring in February 2005 through June 2005 is stale.
- The AT selected only those prisoner injury investigations that were closed during the selected time period, thus limiting its population and excluding investigations that had not closed but should have been. The AT should ensure that future audits include a review of the timing of open investigations.
- The AT was diligent in its population completeness testing, identifying five additional prisoner injury incidents that occurred within the Districts that were neither identified nor included in the original population of three.<sup>128</sup> However, while attempting to gather the documentation related to the eight District incidents, the AT discovered that rather than prisoner injury investigations, all eight incidents involved detainees being transported to the Detroit Receiving Hospital (DRH) for medical treatment for varying types of illnesses, such as upset stomach, as recorded on DIFs. The AT decided to include these "illnesses" in the audit population of prisoner injury investigation based on the definition of an "injury" that is included in the COC CJ.<sup>129</sup> However, including illnesses in the population of prisoner injuries does not appear to be the intent of the COC CJ. The intent of the language in this paragraph should be further explored prior to the conduct of any future audits of this topic.

### **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.

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<sup>126</sup> The DPD originally submitted the Prisoner Injury Investigations Audit Report to the Monitor on the required due date of January 31, 2006. However, the DPD submitted a second report on February 15, 2006, stating that the original report was incomplete.

<sup>127</sup> Because this audit was non-compliant based on its late submission, the Monitor neither utilized the audit working papers nor assessed the audit fieldwork during its previous review of this audit.

<sup>128</sup> The AT also identified two attempted suicide incidents that were investigated by the Force Investigation Section, bringing the total population to ten.

<sup>129</sup> Paragraph I., 1., o. states that the term "injury" means any impairment of physical condition or pain.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph C72 during the quarter ending February 28, 2006, finding the DPD in non-compliance. Although the HCCC had submitted a series of audit reports in July 2005, as of the end of the quarter, no documentation had been submitted evidencing the distribution of those reports to the Chief of Police and the COs or any corrective action taken by the COs, as required by the paragraph.<sup>130</sup>

## *Current Assessment of Compliance*

The DPD submitted a series of audits in connection with the COC CJ on January 31, 2006. On April 20, 2006, in response to the Monitor's request, the DPD submitted documentation in connection with the requirements of this paragraph. The documentation evidenced the distribution of audit synopses (via email) to the Chief of Police and District Commanders. The audit synopses included the audit findings and recommendations; however, the documentation did not demonstrate that any corrective action (disciplinary or non-disciplinary) was taken by the COs regarding employees under their command, even though the audit results clearly indicate that in many cases corrective action was required.

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

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<sup>130</sup> In order to allow sufficient time for the DPD and respective COs to take action relating to the audit findings, the Monitor will conduct its review of the DPD's compliance with the requirements of this paragraph in each quarter subsequent to the quarter in which the DPD submits required audit reports.

## XIV. TRAINING

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This section of the COC CJ (paragraphs C73-78) requires the DPD to provide all detention officers with comprehensive training, maintain individual training records, provide training in key areas such as emergency response, intake and medical protocols, safety programs, maintenance protocols, and food preparation and delivery protocols.<sup>131</sup>

The Monitor last assessed the DPD's compliance with paragraphs C73 and C75-78 during the quarter ending August 31, 2005 and with paragraph C74 during the quarter ending November 30, 2005. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraph C73, C75-78 Training of Detention Officers in Emergency Preparedness, 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 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:

- a. emergency response plans and notification responsibilities;
- b. fire drills and use of fire extinguishers and other fire suppression equipment;
- c. key control drills and key control policies and procedures; and
- d. responding to emergency situations, including scenarios detention officers likely will experience.

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;

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<sup>131</sup> Refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

- 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.

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 C75-78 during the quarter ending August 31, 2005, finding the DPD in non-compliance with each. Although the DPD's Training Division made considerable progress in developing lesson plans designed to cover the training of detention officers, supervisors of detention officers and members of the HCCC required by paragraphs C75-78, the DPD had not yet provided comprehensive pre-service and in-service training to all detention officers, nor had it provided annual training on the topics of emergency preparedness, medical and mental health screening, detainee safety, and environmental health and safety.



## *Current Assessment of Compliance*

During the current quarter, the Monitor held meetings with the DPD training staff, DPD OCR personnel and the HCCC members to discuss the progress of necessary revisions to the related lesson plans designed to cover these paragraphs.<sup>132</sup> The DPD personnel have indicated that additional revisions are currently being incorporated into the lesson plans including, training on the most recent DOJ-approved emergency preparedness plans. Although these lesson plans have not yet been found to be in compliance, the DPD has opted to begin delivering this training to holding cell personnel in an effort to expedite the implementation of the many procedures included within these lesson plans and related paragraphs.

The Monitor attended the training on March 21-22, 2006 to evaluate its delivery. The Monitor subsequently met with DPD OCR staff to provide verbal feedback of its observations of the training, and on May 31, 2006, the Monitor forwarded to the DPD a written memorandum providing observations on the training and recommendations to address qualitative deficiencies in the training and related lesson plans, including:

- The materials<sup>133</sup> provided to the Monitor indicated that the training was intended to cover only paragraph U115; however, the lesson plans previously submitted by the DPD indicated that it was meant to cover paragraphs C76-77. As a result, it was unclear which specific UOF CJ and/or COC CJ requirements the DPD intended to cover with this training.
- During the actual training, the instructors did not follow either of the lesson plans previously submitted to the Monitor.
- The instructors were unprepared to teach the content of the class. For example, on numerous occasions both instructors would literally read the text from the training materials without interacting with or actively engaging the students.
- The lesson plan did not address all of the specific compliance requirements. It should be redeveloped to ensure the specific compliance requirements are addressed in the training.
- The Monitor recommends that the following items be developed and/or revised as part of the training delivery:
  - Plan of Instruction (*Lesson Plan*)
  - Instructor Guide

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<sup>132</sup> On March 1, 2005, the DPD submitted the DPD lesson plans designed to cover these paragraphs. The Monitor reviewed this version and provided feedback for necessary revisions. On June 21, 2005, the DPD resubmitted a revised lesson plan; however, the Monitor's subsequent review indicated that many of the most recently approved holding cell area policies and forms needed to be incorporated into the lesson plans. The Monitor provided such feedback and is currently awaiting a resubmission.

<sup>133</sup> The Monitor was told that a copy of the lesson plan was not available, but was provided with a copy of the Student Manual at the beginning of the class.

- Student Manual
- Visuals
- Group Activities
- Job Aids (Internal reports, departmental forms, etc.)

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C73 and C75-78.

### **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 November 30, 2005, finding the DPD in non-compliance. Although some recording of current training had been entered into MITN, the DPD plans to use the MAS to address the requirements of this paragraph; however, the MAS was not yet operational as of the end of the quarter. As a result, the DPD was not yet maintaining individual training records for all detention officers, documenting the date and topic of all pre-service and in-service training.

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

According to the DPD, training records continue to be entered into the MITN system and the DPD still intends to use the MAS to address the requirements of this paragraph. However, as of the end of the current quarter, the MAS was not yet fully developed or operational; therefore, the DPD was not yet maintaining individual training records for all officers, documenting the date and topic of all pre-service and in-service training.

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

## **XV. MONITORING AND REPORTING**

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Paragraph C94 is the only paragraph in this section of the COC CJ for which the Monitor will be assessing compliance. This paragraph requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. Due to the fact that most of the UOF CJ policies have not yet been effectively implemented and training has not occurred, the Monitor has not yet considered investigations at a stage where they could be subject to reopening. The Monitor will do so at an appropriate time during a future quarter.

## CORRECTIONS TO PRIOR QUARTERLY REPORTS

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### Paragraph U44 – Revision of Investigatory Stop and Frisk Policies and Paragraphs U46 – Revision of Witness Identification and Questioning Policies

#### *Background*

In its Report for the Quarter Ending May 31, 2005, the Monitor reported that the DPD had adequately disseminated policy that addressed the paragraphs' requirements. However, because the Monitor was unable to commence testing of the implementation of that policy, the Monitor indicated that it had not yet evaluated the DPD's compliance with paragraphs U44 and U46. In its Report for the Quarter Ending November 30, 2005, the Monitor found the DPD in non-compliance with paragraphs U44 and U46 based upon implementation testing conducted during that quarter.

After further review of the requirements of paragraphs U44 and U46, the Monitor has determined that the paragraphs are "policy-only" paragraphs.<sup>134</sup> As a result, because the Monitor determined that the DPD had adequately disseminated policy that addressed the requirements of paragraphs U44 and U46 during the quarter ending May 31, 2005, the DPD should have been found in compliance with the paragraphs for the quarter ending May 31, 2005. In addition, because these are "policy-only" paragraphs, the DPD will remain in compliance with the paragraphs until the policy directly responsive to them is revised. Revisions to policy will trigger an additional assessment by the Monitor. As a result, these compliance findings should also have carried forward to the quarter ending November 30, 2005 and to the current quarter.

#### *Corrections to be Applied*

The conclusions for paragraphs U44 and U46 contained in the Monitor's Report for the Quarter Ending May 31, 2005 should have indicated that the DPD was *compliant* with each paragraph, rather than indicating that the Monitor had not yet evaluated the DPD's compliance with the paragraphs.

The Monitor's Report for the Quarter Ending November 30, 2005 should not have included compliance assessments for paragraphs U44 and U46, as the compliance findings from the quarter ending May 31, 2005 remain in effect until a revision to the pertinent policies triggers a new compliance assessment.<sup>135</sup>

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<sup>134</sup> The related implementation requirements are included in paragraphs U45 and U48, respectively.

<sup>135</sup> Because these compliance findings carry over, the Monitor is not assessing compliance with paragraphs U44 and U46 during the current quarter. However, the compliance findings for the paragraphs that result from these

The Report Card attached as Appendix B to this report has been corrected to reflect the above changes.

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corrections are included as a compliant paragraph as described in Footnote 7 in the Executive Summary to this report.

## CONCLUSION

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After finding that the vast majority of the policies and training directives that have been revised have been effectively disseminated, the DPD has now complied with the policy requirements of the vast majority of the paragraphs containing such requirements in the Consent Judgments. The DPD is commended for this significant accomplishment. The DPD continues to be actively engaged in the process of training and implementation. The Monitor's initial evaluations indicate that the DPD is making every effort to implement the various forms and logs into its daily procedures.

With regard to the COC CJ, significantly, the City and the DPD received approval from the DOJ on the Fire Safety Plan and Emergency Preparedness Plan. Furthermore, improvements have been made, in that the holding cells were found to be clean and equipment is in good repair.

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Independent Monitor

July 17, 2006

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## APPENDIX A:

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

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

<b>ACRONYM</b>	<b>DEFINITION</b>
A&D	Arrest and Detention
AT	Audit Team
BOPC	Board of Police Commissioners
BRT	Board Review Team
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
IM	Independent Monitor
IMAS	Interim Management Awareness System
ITS	Information Technology Services
JIST	Joint Incident Shooting Team
LP	Lesson Plan
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
OCR	Office of Civil Rights
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



SIR	Supervisor's Investigation Report
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