

REPORT OF
THE INDEPENDENT MONITOR
FOR THE
DETROIT POLICE DEPARTMENT



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

REPORT FOR THE QUARTER ENDING
AUGUST 31, 2004

ISSUED OCTOBER 18, 2004

EXECUTIVE SUMMARY

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

During the fourth quarter, which ended on August 31, 2004, the Monitor examined 62 paragraphs or subparagraphs of the UOF CJ and 41 paragraphs or subparagraphs of the COC CJ. Of these, the City and the DPD complied with 2 and failed to achieve compliance with 96; the Monitor withheld its determination of the DPD's compliance with the remaining 5 paragraphs.⁴

The Monitor recognizes the progress that the City and DPD have made in the following areas, among others:⁵

- Several DPD policies and training directives were approved by the Chief of Police and the Board of Police Commissioners (BOPC) during the fourth quarter,⁶ including the Holding

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

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

³ The "effective date" of the Consent Judgments.

⁴ For each of these paragraphs, the Monitor's review and findings, to date, are included in this report.

⁵ In general, there may be some efforts toward compliance that the DPD has made that are not included in this report although the Monitor has made an effort to mention progress with paragraphs that are not scheduled to be evaluated this quarter (e.g., policy submissions). As explained in the Introduction section to this report, the Monitor is scheduled to review certain paragraphs during certain quarters. Throughout the report, the schedule for the Monitor's review is outlined. The Monitor's assessment schedule does not affect the due dates that the DPD and the City must adhere to that are outlined in the Consent Judgments.

⁶ The Monitor understands that these policies and training directives have not yet been disseminated to DPD personnel. 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. 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.

Cell Areas,⁷ Detainee Transportation,⁸ Detainee Intake/Assessment,⁹ Detainee Suicide Prevention,¹⁰ Detainee Property,¹¹ Detainee Health Care,¹² Search and Seizure,¹³ PR-24 Baton Training,¹⁴ Crime Scene Investigation,¹⁵ Code of Conduct¹⁶ and Citizens Complaints¹⁷ Policies. The Monitor evaluated the Holding Cell Areas Policy and identified several deficiencies, as discussed herein. The Monitor also evaluated the Foot Pursuit Policy, submitted by the DPD during the third quarter, and is scheduling a meeting with the DPD to discuss the assessment. The Monitor is in the process of reviewing several of the other policies. Several of the policies or portions of the policies, as well as the Risk Management Database, are subject to DOJ review and approval under the terms of the Consent Judgments. The DOJ provided the DPD with technical assistance (TA) on these policies and the Risk Management Database (including the Interim Risk Management Database). The Monitor is pleased that the DPD developed a number of policies this quarter, as the Monitor has previously expressed concerns about the DPD's failure to develop and issue effective policies that adhere to the requirements of the Consent Judgments.

⁷ The Holding Cell Areas Policy (Directive 305.4) was submitted to the DOJ and the Monitor with a cover letter dated June 15, 2004. The directive was approved by the Chief of Police and then by the BOPC on May 27, 2004.

⁸ The Detainee Transportation Policy (Directive 305.7) was submitted to the DOJ and the Monitor with a cover letter dated July 16, 2004. The directive was approved by the Chief of Police and then by the BOPC on June 10, 2004.

⁹ The Detainee Intake/Assessment Policy (Directive 305.1) was submitted to the DOJ and the Monitor with a cover letter dated July 16, 2004. The Chief of Police approved the policy and then the BOPC approved it on June 24, 2004.

¹⁰ The Detainee Suicide Prevention Training Directive (04-05) was approved by the Chief of Police and then by the BOPC on July 1, 2004. The Monitor and the DOJ received Training Directive 04-1, entitled Detainee Suicide Prevention: Managing the Risk as an appendix to the DPD's Third Quarter Status Report issued on May 31, 2004. The Monitor recently requested and received an updated copy.

¹¹ The Detainee Property Policy (Directive 305.3) was submitted to the DOJ and the Monitor with a cover letter dated September 17, 2004. The Chief of Police approved the policy and then the BOPC approved it on July 15, 2004.

¹² The Detainee Health Care Policy (Directive 305.4) was submitted to the DOJ and the Monitor with a cover letter dated August 13, 2004. The Chief of Police approved the policy and then the BOPC approved it on July 22, 2004.

¹³ The Search and Seizure Policy (Directive 202.2) was submitted to the DOJ and the Monitor with a cover letter dated August 16, 2004. The Chief of Police approved the policy and then the BOPC approved it on July 22, 2004.

¹⁴ According to the DPD, the PR-24 Baton Training Directive (04-06) was approved by the Chief of Police and then the BOPC approved it on July 22, 2004.

¹⁵ According to the DPD, the Crime Scene Investigation Policy (Directive 203.1) was approved by the Chief of Police and then by the BOPC on July 22, 2004.

¹⁶ The Code of Conduct Policy (Directive 102.3) was submitted to the DOJ and the Monitor with a cover letter dated August 16, 2004. The Chief of Police approved the policy and then the BOPC approved it on July 22, 2004.

¹⁷ The Citizens Complaints Policy (Directive 102.6) was submitted to the DOJ and the Monitor with a cover letter dated September 3, 2004. The Chief of Police approved the policy and then the BOPC approved it on August 5, 2004.

- On August 22, 2004, the DPD established a Curriculum Research and Development function. According to the DPD, this entity will develop competency-based curriculum that includes specific learning objectives, measurable outcomes and scenario-based lesson plans.
- The DPD officially closed the Fourth Precinct on July 7, 2004. The Monitor notes the significance of this, as concerns have previously been expressed regarding the DPD's ability to bring the 3rd and 4th precincts into compliance with the COC CJ.
- The DPD submitted an interim risk management system plan to the DOJ and the Monitor with a cover letter dated August 5, 2004. Since the DOJ has review and approval of the Risk Management Database pursuant to paragraph U88, the DOJ also reviewed and provided TA to the DPD on the interim system. The Risk Management Database is essential to the DPD's efforts to evaluate the performance of officers, promote civil rights and implement best practices. Therefore, the DPD's ability to implement an interim system as soon as possible is imperative.
- The DPD is implementing the new digital video capture system, *Insight Digital Video System*, in the prisoner processing areas of each precinct. The Monitor reviewed the system at the pilot precinct and found its capabilities impressive. Once implemented Department-wide, this digital system will solve the storage problems related to storing videotapes pursuant to paragraph U101.

Major areas of concern identified during the quarter ending August 31, 2004 include the following, among others:

- The Monitor is concerned about the general lack of significant progress in bringing the holding cells used by the DPD into compliance with the COC CJ. The City and the DPD must make decisions regarding how to accomplish this task. Specifically, a plan must be developed to address physical remediation of the holding cells.
- The Monitor is concerned that the DPD has failed to complete any of the audits required by the Consent Judgments by August 31, 2004. The Monitor's concerns are further elaborated in the Focus Issues section of the Introduction.
- The Monitor's concerns about communication issues between the Monitor and the City and the DPD are also discussed in the Focus Issues section of the Introduction of this report.

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APPENDICES:

- A. Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor
- B. “Report Card” Summarizing the Monitor’s Evaluation of Compliance with the Consent Judgments as of the Quarter Ending August 31, 2004

SECTION ONE: INTRODUCTION

I. BACKGROUND

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

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor¹⁹ outlined the history of the DOJ investigation, the 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.²⁰ 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,²¹ the Monitor will review the paragraphs on a periodic schedule over the life of the Consent Judgments.²² The paragraphs that were scheduled for review in the fourth quarter, which ended on August 31, 2004, are assessed in this report.

¹⁸ The primary members of the Monitoring Team are Joseph Buczek, Ronald Davis, Hazel de Burgh, Ronald Filak, Thomas Frazier, Christi Gullion, Eric Higgs, Denise Lewis, Jeffrey Schlanger, David Schoenfeld, and Sherry Woods.

¹⁹ The word "Monitor" will be used to describe both the Monitor and the Monitoring Team throughout this report.

²⁰ 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.

²¹ 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.

²² The minimum duration of the COC CJ is eight quarters. The minimum duration of the UOF CJ is twenty quarters. The Monitor's review schedule does not effect the due dates mandated by the Consent Judgments for the City and the DPD.

II. MONITOR'S ROLE

The Monitor's role requires us to conduct compliance assessments, make recommendations, provide TA and report on the DPD's compliance with the Consent Judgments. 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 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.

III. EFFORTS TOWARD COMPLIANCE

Currently, the DPD is non-compliant with the majority of the provisions in the Consent Judgments. It is noted that the DPD continues to make progress in various areas, as described throughout this report. As mentioned in our previous reports, one of the most prevalent challenges facing the Department is policy development, which must take place in an effective manner before many of the other reforms can be achieved. It was noted that during the fourth quarter the DPD developed a significant number of policies and submitted various policies to the DOJ for review and approval. The DPD is currently in the process of revising many of these policies based upon recommendations from the DOJ and the Monitor.

The one-year anniversary date of the Consent Judgments occurred during the fourth quarter, on July 18, 2004. The COC CJ could have terminated two years after its effective date²³ if the City and the DPD had achieved substantial compliance with each of the provisions of the COC CJ by the one year anniversary date.²⁴ Then the City and the DPD would have had to maintain substantial compliance for at least one year. Instead, the City filed a Motion to Extend the COC CJ on July 19, 2004, in which it acknowledged that it and the DPD had failed achieved substantial compliance with each paragraph of the COC CJ.²⁵ Judge Cook held a hearing on the motion to extend on August 25, 2004. The City then filed a Supplemental Motion to Extend the COC CJ on September 10, 2004.²⁶ The Court's decision is pending.

²³ July 18, 2003 is the effective date of the Consent Judgments.

²⁴ Paragraph C106.

²⁵ In accordance with the schedule established by the Court, the DOJ submitted questions regarding the City's motion on July 27, 2004. The City responded to these questions on August 4, 2004, and the DOJ filed its response to the City's motion on August 10, 2004.

²⁶ The DOJ filed a response to the supplemental motion on September 24, 2004.

IV. METHODOLOGIES

The Monitor resubmitted its “Methodologies to Aid in Determination of Compliance with the Consent Judgments” (the Methodologies) for the UOF CJ to the parties on July 30, 2004.²⁷ 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 City and the DPD have the Monitor’s draft Methodologies for the majority of the paragraphs in the COC CJ. The Methodologies for the COC CJ will be resubmitted during the quarter ending November 30, 2004. In the meantime, the Monitor has offered to discuss its Methodologies for any given paragraph at any time. Furthermore, the Monitor is currently operating under the Methodologies and provides monthly updates on our monitoring activities during monthly meetings with the parties.

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

V. REPORT CARD

As a tool to assist the reader of this report, the Monitor is attaching as Appendix B a “Report Card,” which provides a “snapshot” of the DPD’s compliance with each of the substantive provisions of the Consent Judgments. It also serves as a tool to evaluate the DPD’s progress in complying with those provisions. Specifically, the Report Card summarizes the *overall* grade of compliance with each paragraph and subparagraph²⁸ of the Consent Judgments for each of the four quarters in which compliance has been assessed.²⁹ 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. This is an estimate based on available information at the date of issuance of this Monitor’s report and Report Card. These estimates are subject to change as information develops and circumstances change.

²⁷ The DOJ provided the Monitor with additional comments on the Methodologies in a letter dated September 14, 2004.

²⁸ 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.

²⁹ 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.

VI. FOCUS ISSUES

A. AUDITS

As of August 31, 2004, the DPD did not complete any of the audits required by either the UOF CJ or the COC CJ.³⁰

Annual audits were required to be completed by August 31, 2004 for each of the following eight topics: UOF investigations; prisoner injuries; allegations of misconduct; arrests; stops and frisks; witness identification and questioning; custodial detention practices; and complaint investigations. None were completed.

Semi-annual audits were required to be completed by January 31 and August 31, 2004 for each of the following eight topics affecting the safety and well-being of DPD personnel and prisoners in the DPD's holding cells: UOF and injuries to prisoners; 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. None were completed by either January 31 or August 31, 2004.

All of these audit topics are critical to effective oversight of the DPD, and are central to the Department's reform efforts. Essentially, the audits are meant to be a tool for management to make decisions about the operating practices of the DPD. They are specifically meant to:

- “determine if the DPD and its holding cells conform to the policies and procedures required by the Consent Judgments;
- identify incidents suggestive of inappropriate behavior/conditions;
- suggest improvements to remedy/prevent inappropriate behavior/conditions in the future; and
- provide practical recommendations to improve policing operations.”³¹

Until these audits are completed, the DPD will remain in non-compliance with each of the paragraphs requiring the submission of audits, and the DPD's ability to evaluate its operations, address concerns and make improvements will be significantly hampered.

³⁰ On October 4, 2004, the Court amended the audit schedule in the CJs requiring the UOF CJ audits to be completed annually by August 31, 2004, and every year thereafter, and requiring the COC CJ audits to be completed semi-annually by January 31 and August 31, 2004, and every six months thereafter.

³¹ These are the objectives as stated in the DPD's Audit Protocol issued February 16, 2004.

B. COMMUNICATION ISSUES

The Monitor is concerned that communication issues between the City/DPD, the DOJ and the Monitoring Team may hinder the ability of the parties to resolve compliance-related disputes in a timely and effective manner, and to establish a more positive, productive relationship. The parties and the Monitor have been actively exploring ways to improve and promote communication.

The Monitor encourages all parties to directly address with the Monitor issues and concerns as they arise, with personal meetings and telephone conversations being the most efficient means of communication. Similarly, the Monitor will adhere to the same requirements by keeping open the lines of communication with the parties. This underscores the court's expectation that the parties will communicate and make every reasonable effort to resolve issues as they inevitably will arise. The leadership of the City, the DPD, the DOJ and the Monitor have affirmed their commitment to effectively address this issue.

C. FIRST PRECINCT REVIEW

The City and DOJ have engaged in discussions regarding whether the DPD maintains a holding cell in the First Precinct. In order to gather information that would assist in the resolution of this matter, on May 4, 2004, the DOJ requested that the Monitor conduct a three-month focused review and evaluation of the processing of arrestees at the DPD's First Precinct, including, but not limited to: 1) the time each Arrestee was taken into DPD custody; 2) the time each arrestee arrived at the First Precinct; 3) the time the Officer in Charge evaluated whether there was probable cause for the arrest; and 4) the time each arrestee was lodged at another precinct. The DOJ also requested that the Monitor track and evaluate the number of arrestees processed each day during the three-month evaluation period. The City and the DPD agreed to the DOJ's request for a three-month review by the Monitor. Subsequently, the DOJ also requested that the Monitor report on whether the conditions of the First Precinct meet the requirements of the COC CJ. The Monitor agreed to conduct the review during the fourth quarter.

During the quarter, the Monitor conducted on-site inspections and compiled data from documentation provided by the DPD. The Monitor requested documentation (consisting of arrests reports, detainee intake forms, copies of the desk blotter and logs³²) for each arrestee processed by the First Precinct for specified periods of time.

The arrest reports, detainee intake forms, and blotters received by the Monitor were dated from June 1, 2004 through July 9, 2004. However, a review of these documents indicated that they do not provide all of the information the Monitor requires to conduct the review.

The DPD began completing the logs on July 26, 2004. The Monitor has received the first set of logs, which were completed by First Precinct supervisors and dated from July 26, 2004 through

³² The logs were created by the Monitor and provided to the DPD in order to capture all of the relevant information required for the focused review.

August 12, 2004. In an effort to augment and substantiate the information contained in the first set of logs, the Monitor will review copies the First Precinct processing area video recording to correspond with the dates and times of the arrests. The Monitor received the second set of logs, dated from August 13, 2004 through September 13, 2004, on September 29, 2004, after the end of the quarter. The Monitor has not yet completed its analysis of these logs.

On September 13, 2004, the Monitor provided the DPD with a listing of First Precinct arrestees including the respective dates and times of arrival and departure as documented by the First Precinct supervisors. The Monitor requested the DPD to provide copies of the First Precinct processing area video recording to correspond with the listing of arrestees provided by the Monitor. As of the date of this report, this information has not yet been received by the Monitor. The DPD has indicated that its Technical Support Division is compiling the video data; however, it is a lengthy process.

The Monitor will continue its focused review and provide the parties with a written analysis of the documentation and corresponding video recording once the remaining information has been provided by the DPD and the Monitor completes its assessment.

VII. MONITOR'S PLEDGE

Finally, the Monitor continues to be dedicated to making this process a transparent one. To that end, we have provided the parties with assessments of compliance throughout the fourth quarter. The Monitor has also attempted to increase avenues of communication by having meetings or conference calls to discuss the Monitor's assessment of DPD policy. Such a discussion was held on September 1, 2004, regarding the Holding Cell Areas Policy. The Monitor has also made numerous recommendations and provided TA to the DPD regarding compliance with the Consent Judgments. Furthermore, a draft copy of this report was made available to the parties to provide an opportunity to identify factual errors.³³ The Monitor hopes that it is recognized and acknowledged by the City, the DPD and the DOJ that the Monitoring Team 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.

³³ As required by paragraphs U142 and C97.

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

This section contains the Monitor's compliance assessments of the UOF CJ paragraphs scheduled for review during the quarter ending August 31, 2004.

I. USE OF FORCE POLICY

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

A. GENERAL USE OF FORCE POLICIES

This section comprises paragraphs U14-19. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004. The Monitor found the DPD in non-compliance with each due to the fact that the policies required by the paragraphs were not formally submitted to the DOJ for review and approval as of the end of the quarter.³⁴

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U14-19 during the quarter ending May 31, 2005.

B. USE OF FIREARMS POLICY

This section comprises paragraphs U20-23. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending February 29, 2004.³⁵ The Monitor again assessed the DPD's compliance with paragraphs U20-23 during the current quarter. The results of our current assessments follow.

³⁴ Throughout this report, for those paragraphs not assessed during the current reporting period ("current quarter"), the Monitor will include a brief description of the basis for its previous compliance assessments.

³⁵ Throughout this report, for those paragraphs assessed and reported on during the current quarter, information regarding the Monitor's previous compliance assessments, and the basis for those assessments, can be found in the "Background" sections of the respective paragraphs.

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

Paragraph U20 requires the DPD to revise its use of firearms policies to provide that officers must successfully qualify with their Department-issued firearm and any other firearm they are authorized to use or carry on-duty on a bi-annual basis, as described in paragraph U113.

Paragraph U21 states that officers who fail to re-qualify shall be relieved of police powers and relinquish immediately all Department-issued firearms. Those officers who fail to re-qualify after remedial training within a reasonable time shall be subject to disciplinary action, up to and including a recommendation for termination of employment.

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

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

Background

The Monitor last assessed the DPD's compliance with paragraphs U20-23 during the quarter ending February 29, 2004, finding the DPD in compliance with paragraph U22,³⁶ but in non-compliance with paragraphs U20-21 and U23. The findings of non-compliance were due to the fact that existing policies did not meet the requirements of the paragraphs and the DPD had not issued proposed or revised policies that met their requirements.

Current Assessment of Compliance

After retracting proposed policy on November 25, 2003, the DPD resubmitted to the DOJ proposed Directive 304.1, Firearms, which is meant to address the requirements of paragraphs U20-23. The DOJ reviewed the policy and provided TA to the DPD on July 13-14, 2004.³⁷ As of the end of the quarter, the DPD was revising this policy to include the comments and recommendations from the DOJ.

³⁶ In its Report for the Quarter Ending February 29, 2004, the Monitor reported that the DPD was in compliance with paragraph U22 based upon existing policy. Since that time, the parties have agreed that the DOJ has review and approval of all paragraphs in the UOF section of the UOF CJ (paragraphs U14-26). Therefore, the DPD's compliance with paragraph U22 will initially depend upon the DOJ's approval of the policy.

³⁷ There are references to the DOJ providing TA to the DPD throughout this report. The DOJ has provided TA to the DPD on compliance issues related to various paragraphs for which the DOJ has review and approval, primarily by reviewing the policies submitted by the DPD and providing recommendations from the DOJ's subject matter consultants. For example, paragraph U18 provides the DOJ review and approval of the use of force policy. The parties have agreed that 'use of force policy' includes paragraphs U14-26.

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

C. INTERMEDIATE FORCE DEVICE POLICY

This section comprises paragraph U24. The Monitor assessed the DPD's compliance with this paragraph for the first time during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with paragraph U24 during the current quarter. The results of our current assessment follow.

Paragraph U24 – Intermediate Force Device Policy

Paragraph U24 requires the DPD to select an intermediate force device, which is between chemical spray and firearms on the force continuum, that can be carried by officers at all times while on-duty. The DPD must develop a policy regarding the intermediate force device, incorporate the intermediate force device into the force continuum and train all officers in its use on an annual basis.

Background

The Monitor last assessed the DPD's compliance with paragraph U24 during the quarter ending February 29, 2004, finding the DPD in non-compliance due primarily to the fact that it had not issued proposed or revised policy that met the requirements of the paragraph.

Current Assessment of Compliance

According to the DPD, the PR-24 has been selected as its intermediate force device. Training Directive 04.6, PR-24 Collapsible Baton, was initially approved by the BOPC on July 22, 2004. The DPD is in the process of revising its UOF policies, including Directive 304.2, Use of Force, and Training Directive 04.3, Use of Force Continuum, both of which are meant to address, among other things, the requirements of paragraph U24.³⁸ In addition, the Monitor understands that a roll-out plan for the intermediate force device is being developed which, according to the DPD, will include information concerning the UOF continuum, procurement, training and integration.

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

³⁸ In accordance with paragraph U18, Directive 304.2 must be submitted to the DOJ for review and approval in order to comply with the requirements of this paragraph. The DOJ reviewed the policy and provided TA to the DPD on July 13-14, 2004. The DPD's revisions should incorporate the TA provided by the DOJ.

D. CHEMICAL SPRAY POLICY

This section comprises paragraphs U25-26. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with paragraphs U25-26 during the current quarter. The results of our current assessment follow.

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

Paragraph U25 states that the DPD shall revise its chemical spray policy to require officers to: provide a verbal warning and time to allow the subject to comply prior to the use of chemical spray, unless such warnings would present a danger to the officer or others; provide an opportunity for decontamination to a sprayed subject within twenty minutes of the application of the spray or apprehension of the subject; obtain appropriate medical assistance for sprayed subjects when they complain of continued effects after having been de-contaminated or they indicate that they have a pre-existing medical condition that may be aggravated by chemical spray and if such signs are observed the subject shall be immediately conveyed to a local hospital for professional medical treatment; and obtain the approval of a supervisor any time chemical spray is used against a crowd.

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

Background

The Monitor last assessed the DPD's compliance with paragraphs U25 and U26 during the quarter ending February 29, 2004, finding the DPD in non-compliance with each due to the fact that it had not issued proposed or revised policies that met the requirements of the paragraphs.

Current Assessment of Compliance

The DPD resubmitted proposed Directive 304.3, Chemical Spray, to the DOJ for review and approval on May 26, 2004. This policy is meant to address the requirements of paragraphs U25 and U26. The DOJ reviewed the policy and provided TA to the DPD on July 13, 2004. As of the end of the quarter, the DPD was revising the policy to include the comments and recommendations from the DOJ.

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

II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

This section of the UOF CJ (paragraphs U27-41) requires the DPD to make significant changes to its policies related to general investigations of police action and to investigations of UOF, prisoner injury, critical firearms discharges and in-custody deaths. In addition to various changes in general investigatory procedures, reports and evaluations, the UOF CJ requires that the DPD develop a protocol for Garrity statements³⁹ and develop an auditable form to document any prisoner injury, UOF, allegation of UOF and instance where an officer draws a firearm and acquires a target. The DPD Shooting Team must respond to and investigate all critical firearms discharges and in-custody deaths, and the DPD must develop a protocol for conducting investigations of critical firearms discharges. The DPD's Internal Affairs Division 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 (CLFRT) 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 assessed the DPD's compliance with paragraph U27 during the quarter ending November 30, 2003; the Monitor assessed the DPD's compliance with paragraphs U28-33 for the first time during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with paragraphs U27-33 during the current quarter. The results of our current assessment follow.

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

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

Paragraph U28 states that the DPD and the City shall ensure that investigations are conducted by a supervisor who did not authorize, witness or participate in the incident and that all investigations contain the criteria listed in this paragraph.

³⁹ 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).

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

Paragraph U30 states that the DPD and the City procedures for all investigatory interviews shall prohibit the use of leading questions that improperly suggest legal justifications for the officer's(s') actions when such questions are contrary to appropriate law enforcement techniques; and the use of interviews via written questions when it is contrary to appropriate law enforcement techniques.

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

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

Background

The Monitor last assessed the DPD's compliance with paragraph U27 during the quarter ending November 30, 2003, and with paragraphs U28-30 and U32-33 during the quarter ending February 29, 2004. The Monitor found the DPD in non-compliance with each of these paragraphs due to the fact that it had not issued the relevant protocol and proposed or revised policies that met the requirements of the paragraphs.

Current Assessment of Compliance

The DPD submitted proposed Directive 304.2, Use of Force, to the DOJ for review and approval. Along with Directive 304.2, the DPD also submitted Training Directive 04-07, Use of Force Reporting. According to the City of Detroit's Fourth Quarter Status Report to the Independent Monitor, for the Quarter Ending August 31, 2004 (hereinafter referred to as the City's or the DPD's "Fourth Quarter Status Report"), this training directive is meant to address, among other things, the requirements of paragraphs U27-30 and U32-33. The DOJ reviewed the policy and training directive and provided TA to the DPD on July 13-14, 2004. As of the end of the quarter, the DPD was revising the policy and training directive to include the comments and recommendations from the DOJ. The Monitor will review the training directive for compliance with paragraph U27 when it is resubmitted by the DPD.

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

Paragraph U31 – Protocol for Garrity Statements

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

Background

The Monitor last assessed the DPD's compliance with paragraph U31 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not issued proposed or revised policy that met the requirements of the paragraph.

Current Assessment of Compliance

The Risk Management Bureau (RMB) of the DPD has developed a protocol for paragraph U31 that specifies the conditions under which statements should and should not be compelled pursuant to *Garrity v. New Jersey*, 385 U.S. 493. The protocol was under review by the DPD as of the end of the current quarter.

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

B. UOF AND PRISONER INJURY INVESTIGATIONS

This section comprises paragraphs U34-36. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004. The Monitor found the DPD in non-compliance with these paragraphs due to the fact that the policies required by the paragraphs were not finalized as of the end of the quarter.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U34-36 during the quarter ending November 30, 2004.

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

This section comprises paragraphs U37-41. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, finding the DPD in non-compliance with each due to the fact that the various policies, protocol and reports required by the paragraphs were not finalized as of the end of the quarter.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U37-41 during the quarter ending November 30, 2004.

III. ARREST AND DETENTION POLICIES AND PRACTICES

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

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

A. ARREST POLICIES

This section comprises paragraphs U42-43. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, finding the DPD in non-compliance with each due to the fact that Directive 202.1, which included revised arrest policy, did not meet all of the paragraph U42's requirements, the DPD's preliminary auditable form did not adequately address the requirements of paragraph U43, and the form could not be finalized until the DPD's policy is finalized.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U42-43 during the quarter ending November 30, 2004.

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 May 31, 2004, finding the DPD in non-compliance with each due to the fact that the DPD had not issued policy and guidance regarding the requirement that all investigatory stops and frisks be documented by the end of the shift in which the police action occurred and the auditable form used to document stops and frisks not supported by reasonable suspicion required further revisions.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U44-45 during the quarter ending November 30, 2004.⁴⁰

C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES

This section comprises paragraphs U46-48. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, finding the DPD in non-compliance with each due to the fact that the DPD's revised witness identification policy had yet to be provided to the BOPC for review and comment, posted to the DPD's website for public review and comment, or submitted to the DOJ for review and approval. The DPD also had not implemented the auditable form UF-005 entitled Witness Identification and Questioning.⁴¹

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U46-48 during the quarter ending November 30, 2004.

D. PROMPT JUDICIAL REVIEW POLICIES

This section comprises paragraphs U49-51. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending November 30, 2003. The Monitor again assessed the DPD's compliance these paragraphs during the current quarter. The results of our current assessments follow.

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

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

Background

The Monitor last assessed the DPD's compliance with paragraph U49 during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that it had not finalized policy that addressed the requirements of the paragraph. The DPD submitted proposed Directive 202.1 to the Monitor and DOJ for review in October 2003, but later retracted the proposed directive, as it required additional revisions.

⁴⁰ During the current quarter, the Chief of Police and the BOPC approved Directive 202.2, Search and Seizure, which is meant to address the requirements of several paragraphs, including paragraphs U44-U45. This Directive has not yet been disseminated to the field. The policy was submitted to the Monitor and the DOJ with a cover letter dated August 16, 2004. The Monitor has since commenced its preliminary review.

⁴¹ During this quarter, the Monitor provided TA on the auditable forms developed under the UOF CJ.

The Monitor recognized that in order for the DPD to be in compliance with the prompt judicial review requirement, it would need to consult with and secure the assistance of the Wayne County Prosecutor's Office and the Detroit City Court. Much to the DPD's credit it initiated this process. As of January 1, 2004 the court docket was expanded to accommodate additional arraignments during the afternoon Monday through Friday. Verbal representations by the DPD indicate this has aided, significantly, in the timely presentation of detainees for arraignment.

Current Assessment of Compliance

On July 30, 2004, the DPD issued its finalized version of Directive 202.1, entitled Arrests. This directive was approved by the BOPC on March 18, 2004 and signed by the Chief of Police on April 5, 2004. Directive 202.1 is meant to address, among other things, the DPD's responsibility with regard to the UOF CJ prompt judicial review requirements.

The Monitor reviewed the directive and determined that Section 202.1 – 3.11 properly defines prompt judicial review as required by the UOF CJ and places emphasis on the fact that officers have up to, but not to exceed, 48 hours to present an arrestee absent extraordinary circumstances.⁴² Additionally, Section 202.1 – 8 of this directive requires that for all arrests the arrestee shall be brought before a judicial officer for a prompt judicial review (arraignment) without unnecessary delay.

Paragraph U49 also requires that the DPD establish a timely and systematic process for all arrestees to be presented for prompt judicial review or to be released. Directive 202.1 partially addresses this requirement by requiring an arrestee to be released immediately should a warrant request be denied by the prosecutor's office. However, this directive neither delineates nor references any other systematic process to ensure that most, if not all, arrestees will be arraigned within 48 hours.

Within Directive 202.1 the DPD references three auditable forms, one of which, form UF-004, relates to prompt judicial review and warrant request requirements. As of quarter end, the revised auditable form had not been implemented.⁴³

Lastly, when discussing prompt judicial review, the DPD references probable cause. However, the definition of probable cause included in the Definition Section of the directive does not conform to the definition required by the UOF CJ.⁴⁴

⁴² The DPD cited specific examples of unnecessary delays, including a delay for the purpose of gathering additional evidence to justify the arrest, a delay to give the investigator additional time to interrogate the person or a delay motivated by ill will against the arrested individual.

⁴³ On June 25, 2004, the Monitor provided TA on the auditable forms developed under the UOF CJ. The DPD has indicated that the forms are being revised based on the Monitor's TA.

⁴⁴ In the Monitor's Report for the Quarter Ending May 31, 2004, in connection with the assessment of the DPD's compliance with paragraph U42, the Monitor noted that the definition of probable cause included in proposed Directive 202.1 failed to "adequately address the definition of probable cause as defined by the UOF CJ at paragraph U1, subparagraph hh." This issue has been raised with the parties on a number of occasions, with the Monitor's recommendation that both parties discuss the issues at hand and reach an agreement. The Court has established a

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

Paragraph U50 – Requirement of Warrant Request

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

Background

The Monitor last assessed the DPD's compliance with paragraph U50 during the quarter ending November 30, 2003, finding the DPD in non-compliance largely due to its failure to establish and issue policy that addressed the requirements of the paragraph.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed DPD Directive 202.1⁴⁵ to determine whether it addresses paragraph U50's requirement to request a warrant within 24 hours of an arrest. The Monitor determined that Section 202.1 – 8 of this directive adequately addresses this policy requirement. However, the Monitor has not yet assessed whether the directive has been adequately disseminated to the field, which is a prerequisite for compliance with the paragraph.

Based on the foregoing, the Monitor withholds its determination of the DPD's compliance with paragraph U50 pending an evaluation of the dissemination of Directive 202.1. The Monitor will report on the dissemination of Directive 202.1 and the DPD's compliance with the paragraph in its Report for the Quarter Ending November 30, 2004.⁴⁶

Paragraph U51 – Documentation of Late Request for Arraignment Warrants and Late Arraignments

Paragraph U51 requires the DPD to document on an auditable form all instances in which an arraignment warrant is submitted more than 24 hours after the arrest, and all instances in which an arrestee is not presented for arraignment within 48 hours of arrest in which extraordinary circumstances delayed the arraignment. The documentation must occur by the end of the shift in which there was:

1. A failure to request an arraignment warrant within 24 hours;

procedure for handling any proposed changes or interpretation issues related to the CJs. According to the DOJ, it has suggested that the City and the DPD make a written request to the DOJ and/or file a motion with the Court for a modification of the definition of probable cause in the UOF CJ.

⁴⁵ As described in the Current Assessment of Compliance for paragraph U49, above, the DPD issued Directive 202.1 on July 30, 2004 with the intention of addressing a number of UOF CJ requirements.

⁴⁶ Once an adequate policy has been disseminated, the Monitor will assess whether the policy is being implemented, which is also a prerequisite for compliance with the paragraph.

2. A failure to comply with the prompt judicial review policy, or
3. An arraignment delayed because of extraordinary circumstances.

Background

The Monitor last assessed the DPD's compliance with paragraph U51 during the quarter ending November 30, 2003, finding the DPD in non-compliance primarily due to the fact that it had not finalized policy that met the requirements of the paragraph and deficiencies were identified in DPD Auditable Form UF-004.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed Directive 202.1⁴⁷ to determine whether it addresses the DPD's prompt judicial review obligations. Section 202.1 – 8.1, subtitled *Documentation*, specifically addresses the written requirements of paragraph U51 via the use of a Warrant/Arraignment Compliance Form UF-004. As noted above, the Monitor provided TA with regard to the UOF CJ auditable forms on June 25, 2004. The Monitor identified numerous problems with UF-004 and made specific recommendations for revisions. The DPD has indicated that they are revising the forms based on the Monitor's TA and to meet the requirements of the paragraph. However, as of the end of the current quarter, the revised form, along with others required by the UOF CJ, had not been implemented.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U51.

E. HOLD POLICIES

This section comprises paragraphs U52-53. The Monitor assessed the DPD's compliance with these paragraphs for the first time during the quarter ending November 30, 2003. The Monitor again assessed the DPD's compliance these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph U52 – Revision of Hold Policies

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

⁴⁷ As described in the Current Assessment of Compliance for paragraph U49, above, the DPD issued Directive 202.1 on July 30, 2004.

Background

The Monitor last assessed the DPD's compliance with paragraph U52 during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that it had not finalized policy that addressed the requirements of the paragraph.⁴⁸

Current Assessment of Compliance

Although the DPD has drafted a revised Directive 305.2, Detainee Registration, this directive remains in draft form and is still within the DPD's review process.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U52.

Paragraph U53 – Documentation of all Holds

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

Background

The Monitor last assessed the DPD's compliance with paragraph U53 during the quarter ending November 30, 2003, finding the DPD in non-compliance primarily due to the fact that it had not issued any proposed or revised policy that addressed the requirements of the paragraph, and existing policy did not meet all of the paragraph's requirements.⁴⁹

Current Assessment of Compliance

During the current quarter, the Monitor requested and received a listing of all holds for the period June 1 through June 30, 2004. The DPD provided a listing of 316 arrestees for which at least one hold was identified.⁵⁰ Using the accepted sampling method⁵¹ a random sample of 74 holds were identified for which the Monitor requested additional supporting documentation.

⁴⁸ In a letter dated October 23, 2003, the DPD submitted to the DOJ and the Monitor proposed policy, Directive 305.1, which addressed portions of this paragraph's requirements. One area of concern addressed by the Monitor and presented to the DPD during status conferences was that Directive 305.1 did not define a "timely and systematic process for persons in DPD custody who have holds." Recognizing that proposed policy required additional clarification, the DPD subsequently withdrew its submission.

⁴⁹ Paragraph U53 has been deemed by the Monitor to be an implementation paragraph dependent upon the issuance of adequate policy pursuant to paragraph U52. Under the Methodologies employed by the Monitor in assessing compliance, until the policy requirements are addressed pursuant to paragraph U52, the DPD will not be able to comply with paragraph U53.

⁵⁰ This listing was generated by the DPD on or about July 30, 2004 and provided to the Monitor shortly thereafter. The DPD provided an amended response, generated on or about August 23, 2004 that included a total of 615 holds. Neither production identified holds for the 7th, 11th or 13th precincts. It should be noted that the Monitor's sample

The DPD subsequently provided supporting documentation that consisted of copies of arrest logs, detainee intake forms, arraignment logs and arrest reports.⁵² The Monitor reviewed supporting documentation for 27 of the 74 detainees with holds. For all but four holds the Monitor was unable to determine whether the detainee was presented within 24 hours, as dates and/or times were frequently omitted.⁵³ The Monitor also noted that multiple entries in desk blotters often resulted in the use of either a quotation mark or a check mark to indicate duplicate information despite the entries not always being documented in succession.

Other areas of concern identified were as follows:

- In two separate instances⁵⁴ holds for detainees were not processed for approximately 24 hours and 19.5 hours, respectively, even after the underlying charges for the arrest, separate and apart from the holds, were not pursued by the prosecutor.
- In two instances, notations in reports that the detainee was transported to the Detroit Receiving Hospital (DRH) for treatment and evaluation were not documented in the corresponding desk blotter. In a third instance an entry in the blotter that a detainee was transported to the DRH was struck with no explanation or indication of the individual responsible for editing the entry.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U52.

Recommendations

The Monitor recommends that the DPD reiterate to Departmental employees the importance of legible and complete documentation. Sworn and non-sworn employees should be urged, regardless of the redundancy of information, to enter information in all fields required to eliminate confusion should documentation become separated.

was taken from an incomplete population that was provided by the DPD. Therefore, the Monitor could not have found the DPD to be in compliance with this paragraph since a complete population was not provided.

⁵¹ The Monitor utilized a one-tailed test with a 95% confidence level and an acceptable error rate of +/- 4% for the selection of the random sample. To determine whether the entire sample required review, the Monitor first assessed 27 randomly selected holds for adequate documentation that the hold was processed. The Monitor did not review the remaining holds in the sample of 74, as the 27 that were reviewed were not in compliance (in addition, as noted above, the population was not complete to begin with). However, this review should provide the DPD with information regarding implementation issues related to this paragraph.

⁵² Documentation provided was not consistent either within or among precincts. For example, one precinct provided only copies of arrest logs while another precinct provided copies of arrest logs and arrest reports. Another precinct also included copies of detainee intake forms. In some instances the copies were of poor quality and/or the individual's handwriting was illegible.

⁵³ For those that appear to extend beyond a 24-hour period the DPD's production did not include auditable forms. It should be noted that auditable forms have not yet been implemented relative to this paragraph.

⁵⁴ One instance was identified as having occurred in the Second Precinct and the other in the Sixth Precinct.

The Monitor also recommends that the DPD implement paragraph U58, which requires that a single record or file contain “accurate and auditable” information regarding each arrest, including when holds were lodged and cleared, as soon as practicable..

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 29, 2004. The Monitor again assessed the DPD’s compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph U54 – Restriction Policies

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

Background

The Monitor last assessed the DPD’s compliance with paragraph U54 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not issued any proposed or revised policy that addressed the requirements of the paragraph, and existing policy did not meet all of the paragraph’s requirements.

Current Assessment of Compliance

During April 2004, the DPD finalized and approved Directive 305.4, Holding Cell Areas, which is meant to address, among other things, the policy requirements of paragraph U54. The Monitor reviewed the policy and determined that, although there may be some terms that need to be defined, it generally addresses:

- Detainee access to telephones and any related restrictions;
- Detainee access to visitors and any related restrictions;
- Detainee access to attorneys clearly indicating that no restrictions regarding attorney access are permitted.

However, the policy is currently being revised and therefore had not been disseminated to the field as of the end of the current quarter.⁵⁵

⁵⁵ As noted in the Current Assessment of Compliance for paragraphs C52-54 below and elsewhere, the Monitor provided the DPD with its assessment of the Holding Cell Areas Policy on September 1, 2004. The Monitor understands that the policy is being revised to address issues raised by the Monitor. Furthermore, the forms and logs related to this policy are still under development.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U54.⁵⁶

Paragraph U55 – Documentation of Restrictions

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

Background

The Monitor last assessed the DPD's compliance with paragraph U55 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not issued any proposed or revised policy that addressed the requirements of the paragraph and existing policy did not adequately address detainee restrictions. Furthermore, the applicable auditable form had not yet been fully developed or implemented.

Current Assessment of Compliance

During the current quarter, the DPD finalized and approved Directive 305.4, Holding Cell Areas, which is meant to address, among other things, policy related to detainee access to telephones, visitors and attorneys, as well as privilege restrictions for detainees and the procedures for documenting and clearing such restrictions. The Monitor reviewed the policy and determined that it generally addresses the requirements of paragraph U55. However, there may be some additional terms that must be defined and the DPD has yet to issue Form UF-008, which is designed to address the documentation of restrictions and reportable violations of policy.⁵⁷

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

G. MATERIAL WITNESS POLICIES

This section comprises paragraphs U56-57. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with paragraphs U56-57 during the current quarter. The results of our current assessments follow.

⁵⁶ The training, audit and implementation requirements for paragraph U54 are evaluated at paragraphs U55, U111, U115, U116 and U96, respectively.

⁵⁷ The Monitor provided TA on this and other auditable forms related to the UOF CJ on June 25, 2004.

Paragraph U56 – Revision of Material Witness Policies

Paragraph U56 requires the DPD to revise existing material witness policies to define a material witness as a witness subpoenaed to testify in a criminal case.⁵⁸ Furthermore, the DPD must remove the term “police witness” from all DPD policy and procedure.

Background

The Monitor last assessed the DPD’s compliance with paragraph U56 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to definitional deficiencies in its existing policy. Subsequent to this reporting period the DPD issued Directive 202.1, Arrests, along with Training Directive 04-1, Confinement of a Material Witness, to address the requirements of this paragraph.

Current Assessment of Compliance

As previously described, the DPD issued Directive 202.1 and Training Directive 04-1 to the field on July 30, 2004. During the current quarter, the Monitor reviewed DPD Directive 202.1 and related Training Directive 04-1 to determine if they address the requirements of paragraph U56. The Monitor determined that Directive 202.1 accurately defines a material witness and verbiage contained within the directive clearly provides instruction that “No material witness shall be taken into DPD custody without a member first obtaining a court order.”

Training Directive 04-1 provides guidance to officers and provides specific examples of when a material witness can be taken into custody and subject to further confinement.

The Monitor has not yet assessed whether Directive 202.1 and Training Directive 04-1 have been adequately disseminated to the field, as is required for compliance with the paragraph.

It is the Monitor’s understanding that Directive 202.1 supersedes policy included in the current version of the DPD’s Manual that was issued during early 2003. The Manual, as previously reported, uses the term “police witness.” Traditionally the DPD issues a new manual at the beginning of every calendar year that incorporates any policy changes enumerated in Directives. A new manual was not issued at the beginning of 2004. However, the City of Detroit’s Fourth Quarter Status Report indicates that the term “police witness” has been removed from all pertinent DPD policy and procedure directives. The Monitor has not yet determined how these changes were disseminated to DPD personnel.

Based on the foregoing, the Monitor withholds its determination of the DPD’s compliance with paragraph U56 pending an evaluation of the dissemination of the directives and modifications described above. The Monitor will report on the DPD’s compliance with this paragraph in its Report for the Quarter Ending November 30, 2004.

⁵⁸ Paragraph 1aa of the Use of Force Consent Judgment defines a material witness.

Paragraph U57 – Requirement to Obtain a Court Order

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

Background

The Monitor last assessed the DPD's compliance with paragraph U57 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that its existing policy did not define "material witness" in accordance with paragraph U56 and the relevant auditable form was not yet finalized.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed DPD Directive 202.1 and Training Directive 04-1 to determine if they address the requirements of paragraph U57. The Monitor determined that Directive 202.1 and Training Directive 04-1 address many of the substantive requirements of paragraph U56. In addition to adequately documenting a material witness in accordance with the UOF CJ, Directive 202.1 requires the completion of a Detention of Material Witness Form (UF-006) and the attachment of a copy of the court order to this form. However, as noted above, the Monitor provided TA with regard to the UOF CJ auditable forms on June 25, 2004 identifying numerous problems with UF-006 and making specific recommendations for revisions. The DPD has indicated that it is revising the form based on the Monitor's TA. However, as of the end of the current quarter, the revised form, along with others required by the UOF CJ, had not been implemented.

During the current quarter, the Monitor requested and received a listing of all material witnesses on record for the month of June 2004. One such individual was identified by the DPD. The Monitor requested supporting documentation for this individual. Neither a court order nor an appropriate auditable form was included with the documentation provided.

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

H. DOCUMENTATION OF CUSTODIAL DETENTION

This section comprises only paragraph U58. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that the DPD was not adequately capturing all of the information required under the paragraph. As of the end of the quarter, the DPD was in the process of revising the relevant auditable form(s) pursuant to recommendations provided by the Monitor.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U58 during the quarter ending November 30, 2004.

I. COMMAND NOTIFICATION

This section comprises paragraphs U59-60. The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that the DPD's Arrest Policy did not include all of the requirements of paragraph U59 and the DPD had not finalized other policies that may be relevant to the commander's review under the paragraph, including the investigatory stop and frisk and witness identification and questioning policies. The Monitor is scheduled to again assess the DPD's compliance with paragraph U59 during the quarter ending November 30, 2004.

The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U60 – Daily Reporting Requirements

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

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

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

Background

The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that the underlying policies that specifically address the requirements of the paragraph had not yet been implemented.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed Directive 202.1⁵⁹ to determine whether it addresses the requirements of paragraph U60. The Monitor determined that it did not meet all of the requirements of the paragraph.

⁵⁹ As described in the Current Assessment of Compliance for paragraph U49, above, the DPD issued Directive 202.1 on July 30, 2004.

Within Directive 202.1 the DPD references three auditable forms, all of which must be reviewed by the Commander of the respective precinct or, if applicable, of the specialized unit.⁶⁰ The revised auditable forms had not been implemented as of the end of the current quarter.

Section 202.1 – 3.3 of the Directive specifically defines the Commander’s Daily Review Report.⁶¹ However, the definition excludes the evaluation of corrective action requirement that is required by paragraph U60.

Section 202.1 – 4.4 discusses in detail the DPD’s policy regarding a Material Witness.⁶² Inclusive is a section requiring the Commander to review all exceptions to the DPD’s material witness policy on a daily basis AND that such review shall include actions taken to correct exception and whether any corrective or non-disciplinary action was taken. Although the definition section did not include this latter requirement, this section, as far as Material Witness reviews are concerned, adequately addresses the requirement.

Sections 202.1 – 7 and 202.1 - 8 provide guidance with regard to arrests and the DPD’s prompt judicial review policy. Inclusive are references to the Commander’s Daily Review Report that mirror Section 202-1 – 3.3 of the directive and address the first component of paragraph U60. However, these sections do not include the requirement that the Commander include an evaluation of corrective action.

In addition to material witness and prompt judicial review policies, paragraph U60 requires the Commanding Officer’s review of Holds and Restrictions. These topics are not addressed in Directive 202.1; however, according to the DPD, they will be addressed in other directives yet to be issued, including Directive 305.2, Detainee Registration and Directive 305.4, Holding Cell Areas.. Similarly, although Directive 202.1 references the auditable form used to document violations of the prompt judicial review policy (Form UF-004), the Monitor understands that the revised version of this auditable form has not yet been issued to the field. Furthermore, the other auditable forms that would be used to document holds, restrictions and material witness detention, pursuant to the UOF CJ, are being revised.⁶³

Although the DPD has made some progress in addressing the policy requirements of the paragraph, based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U60.

⁶⁰ On June 25, 2004, the Monitor provided TA on all of the auditable forms developed under the UOF CJ. The DPD has indicated that the forms are being revised pursuant to the Monitor’s TA.

⁶¹ The DPD responded to paragraph U60 by creating a separate auditable form entitled Commander’s Daily Review Report; this form is not required by the UOF CJ.

⁶² Please refer to the Current Assessment of Compliance for paragraph U56, above.

⁶³ The Monitor provided TA on this and other UOF CJ auditable forms on June 25, 2004. The DPD has indicated that the forms are being revised based on the Monitor’s TA.

IV. EXTERNAL COMPLAINTS

This section of the UOF CJ (paragraphs U61-69) requires the DPD to revise its policies and procedures regarding the intake, tracking, investigation and review of external complaints. There are specific requirements relative to the roles and responsibilities of the 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.⁶⁴

Section IV's introductory section comprises paragraphs U61-63. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, finding the DPD in non-compliance with each. Non-compliance with paragraph U61 was attributable to the fact that the external complaint policy required by paragraph U61 was to be included in Directive 102.6, Citizen Complaints, which was under revision as of the end of the quarter. Non-compliance with paragraphs U62 and U63 was attributable to the DPD's failure to address all of the requirements for developing and implementing an informational campaign regarding external complaints, and related materials.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs U61-63 during the quarter ending November 30, 2004.

A. INTAKE AND TRACKING

This section comprises paragraphs U64-66. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, finding the DPD in non-compliance with paragraphs U64 and U65, and in compliance with paragraph U66. Non-compliance with paragraphs U64 and U65 was based on the fact that the policies required by the paragraphs were to be included in the Directive 102.6, Citizen Complaints, which was under revision as of the end of the quarter, and the DPD had not yet provided written policy or procedure to its intake officers regarding the requirements of paragraph U65.

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

B. EXTERNAL COMPLAINT INVESTIGATION

This section comprises paragraphs U67-69. The Monitor last assessed the DPD's compliance with paragraphs U67 and U68 during the quarter ending May 31, 2004,⁶⁵ finding the DPD in

⁶⁴ The OCI reports to the BOPC and is responsible for conducting all external complaint investigations.

⁶⁵ The Monitor commenced its assessment of paragraph C69 during the same quarter. Although the Monitor determined that completed OCI investigations were resolved by using one of the four dispositions required by



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non-compliance primarily due to the fact that policy required by the paragraphs was to be included in Directive 102.6, Citizen Complaints, which was under revision as of the end of the quarter, and the DPD had not yet implemented a review of external complaints by the Chief of Police, as required.

The Monitor is scheduled to assess the DPD's compliance with paragraphs U67-69 during the quarter ending November 30, 2004.

paragraph U69, the Monitor had not yet evaluated whether the dispositions were appropriate in light of the facts of each investigation that was reviewed.

V. GENERAL POLICIES

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

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

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

The Monitor last assessed the DPD's compliance with paragraphs U70-71 during the quarter ending May 31, 2004. The Monitor found the DPD in non-compliance with paragraph U70 due to the fact that the majority of the policies and procedures required under the UOF CJ had yet to be finalized. The Monitor found the DPD in non-compliance with paragraph U71 due to the fact that the protocol for identifying, addressing and responding to citizen comments, while it appeared to be an adequate approach for making proposed policy revisions available to the community, was not memorialized in writing. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2004.

The Monitor last assessed the DPD's compliance with paragraphs U72-77 during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with paragraphs U72 and U74-77 during the current quarter.⁶⁶ The results of our current assessments follow.

Paragraph U72 – Police Action in Violation of DPD Policy

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

Background

The Monitor last assessed the DPD's compliance with paragraph U72 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that the DPD was unable to demonstrate that all of its officers are effectively notified of new policies. The Monitor noted

⁶⁶ The Monitor is scheduled to again assess compliance with paragraph U73 during the quarter ending November 30, 2004.

concern that certain categories of officers may not learn of new communications crucial to the performance of their job as mandated by the Consent Judgment.⁶⁷

Current Assessment of Compliance

During the current quarter the DPD and the BOPC approved Directive 102.3 Code of Conduct. This directive had not been disseminated to the field as of the end of the current quarter.

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

Paragraph U74 – Officers to Report Misconduct

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

Background

The Monitor last assessed the DPD's compliance with paragraph U74 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that teletype 04-00791, "Department of Justice Consent Decree Use of Force, Paragraph 74," dated February 13, 2004, did not disclose any enforcement mechanisms to determine whether officers are properly reporting misconduct or disciplinary consequences for violations of this mandate. In its Second Status Report, dated March 31, 2004, the DPD indicated that its Risk Management Plan would further address the requirements of this paragraph.

Current Assessment of Compliance

In its Fourth Quarter Status Report, the DPD reported that Directives 304.1; Firearms; 202.1, Arrests; and 102.3, Code of Conduct, addressed the requirements of paragraph U74. As of the end of the quarter, the Arrests Directive was approved and issued to the field; however, the Code of Conduct Directive, although approved by the Chief of Police and the BOPC had yet to be issued to the field⁶⁸ and the Firearms Directive was under revision.⁶⁹

The Monitor reviewed Directive 102.3, Code of Conduct and determined that the DPD recognizes that "...any action taken in violation of any laws, regulations, procedures, commands or contrary to DPD policy, shall subject an officer to possible criminal prosecution, civil liability and/or disciplinary action, which may result in reprimand, suspension, forfeiture of pay,

⁶⁷ For example, officers working undercover or those returning to work after an extended leave, sickness, suspension or furlough probably will not have had the opportunity to participate in roll calls, to review administrative messages or teletypes posted on bulletin boards or filed in pinchbacks, which were the existing communication methods.

⁶⁸ This directive is discussed in the Current Assessment of Compliance for paragraph U72, above.

⁶⁹ The "Firearms" Directive was forwarded to the DOJ for review and approval on May 26, 2004. The DOJ subsequently provided TA on this policy on July 13, 2004.

dismissal, or any other penalty the Chief of Police may lawfully direct...” The directive further states that “Officers...who fail to report the misconduct of officers to a supervisor, whether on or off duty, shall be subject to disciplinary action...”

Although Directive 102.3 requires the reporting of misconduct, it falls short in describing how the DPD will achieve the core requirement of the paragraph – enforcement. The Monitor is unaware of any additional existing document which describes how the DPD will enforce its current policies that require officers to report such conduct and that allow for discipline for violating these policies.

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

Recommendation

The DPD must amend Directive 102.3 or issue additional instruction outlining the steps to be taken for enforcement.⁷⁰

Paragraph U75 – Off-Duty Police Action

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

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

Background

The Monitor last assessed the DPD’s compliance with paragraph U75 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not yet finalized policy that addressed the requirements of the paragraph.

⁷⁰ For example, the DPD may implement a review process for complaint investigations, force investigations or prisoner injury investigations. A component of review could be to determine whether other officers were in a position to witness alleged misconduct and whether such officers actually timely reported the misconduct. This is known as a “knew or should have known” situation. It is the Monitor’s understanding that the DPD is in the process of developing checklists to be completed by supervisors who review administrative investigations and video tapes that include an evaluation of misconduct not reported by officers who knew or should have known.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed Directive 202.1 to determine whether it addresses the policy requirements of paragraph U75.⁷¹ The Monitor determined that the directive adequately addresses the paragraph's requirements. However, the Monitor has not yet assessed whether the directive has been adequately disseminated to the field, as is required for compliance with the policy requirements of the paragraph. In addition, the Monitor has not yet assessed whether the policy is being effectively implemented.

Based on the foregoing, the Monitor withholds its determination of compliance with paragraph U75 pending an evaluation of the dissemination and implementation of Directive 202.1. This work is expected to be completed during the quarter ending February 28, 2005.

Paragraph U76 – Handling of Prisoners

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

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

Background

The Monitor last assessed the DPD's compliance with paragraph U76 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that proposed revised policy was not approved by the Chief of Police or submitted to the Monitor as of the end of the quarter.

⁷¹ As described in the Current Assessment of Compliance for paragraph U49, above, the DPD issued Directive 202.1 on July 30, 2004. Now that the policy has been issued and possibly implemented during the fourth quarter, the Monitor will begin testing for implementation compliance (for example, formally requesting supporting documentation after obtaining a population and selecting a sample). This will take a significant amount of time and effort; therefore, the Monitor expects that the testing will be reported on during the quarter ending February 28, 2005.

Current Assessment of Compliance

During the current quarter, the Monitor reviewed DPD Directive 305.4, Holding Cell Areas, to determine whether it addresses the policy requirements of paragraph U76.⁷² The Monitor determined that the directive adequately addresses sections (b) and (c) of paragraph U76. However, it does not address section (a), which requires officers to summon emergency medical services to transport prisoners when the restraints employed indicate the need for medical monitoring.⁷³

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

Paragraph U77 – Foot Pursuit Policy

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

- a. Requires officers to consider particular factors in determining whether a foot pursuit is appropriate, including the offense committed by the subject, whether the subject is armed, the location, whether more than one officer is available to engage in the pursuit, the proximity of reinforcements, and the ability to apprehend the subject at a later date;
- b. Emphasizes alternatives to foot pursuits, including area containment, surveillance, and obtaining reinforcements;
- c. Emphasizes the danger of pursuing and engaging a subject with a firearm in hand; and
- d. Requires officers to document all foot pursuits that involve a UOF on a separate, auditable form,⁷⁴ such as the UOF report.

Background

The Monitor last evaluated the DPD's compliance with paragraph U77 during the quarter ending February 29, 2004, finding the DPD in non-compliance largely due to the fact that the then-current DPD policy regarding foot pursuits did not address all of the requirements of paragraph U77.

⁷² As described in the Current Assessment of Compliance for paragraph U54, above, the DPD issued Directive 305.4 in April 2004.

⁷³ According to the DPD's Fourth Quarter Status Report, on August 19, 2004, the DOJ provided TA on the part of the Detainee Transportation Directive pertaining to medical care. The DPD is currently being revised to incorporate the recommended changes.

⁷⁴ 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.

Current Assessment of Compliance

In order to assess the DPD's compliance with paragraph U77, the Monitor reviewed the DPD's Foot Pursuit Policy Directive 303.4, which was approved by the Chief of Police on March 17, 2004 and by the BOPC on April 28, 2004. The Monitor determined that the directive did not fully address the requirements of the paragraph. The most significant issue identified by the Monitor is that the definition of probable cause utilized in the foot pursuit policy is not consistent with the required UOF CJ definition.⁷⁵ The Monitor has completed its final assessment of this policy and has attempted and will continue to attempt to discuss its final assessment of this policy with the DPD.

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

⁷⁵ The DPD also included the definition from Directive 202.1, the revised arrest policy. In the Monitor's Report for the Quarter Ending May 31, 2004, in connection with the assessment of the DPD's compliance with paragraph U42, the Monitor noted that the definition of probable cause included in Directive 202.1 did not "adequately address the definition of probable cause as defined by the UOF CJ at paragraph U1, subparagraph hh."

VI. MANAGEMENT AND SUPERVISION

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

The Monitor last assessed the DPD's compliance with paragraph U78, the introductory paragraph to section VI., during the quarter ending May 31, 2004. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U78 – Development of Risk Management Plan

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

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

Background

The Monitor last assessed the DPD's compliance with paragraph U78 during the quarter ending February 29, 2004, finding the DPD in non-compliance due primarily to the fact it had not met the requirements and deadlines included in the UOF CJ paragraphs related to subparagraphs a-c, above.

Current Assessment of Compliance

In order to achieve compliance with the requirements of paragraph U78, the DPD must meet the requirements and adhere to the deadlines included in UOF CJ paragraphs related to each of the respective subparagraphs, a. through c., as described above. Because the DPD is in non-compliance with the majority of these paragraphs, it is also currently in non-compliance with

subparagraphs U78 a-c. Furthermore, the DPD must develop a mechanism for conducting regular and periodic reviews of all DPD policies and must conduct regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.⁷⁶

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

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 and U89 during the quarter ending February 29, 2004, finding the DPD in non-compliance with each. The Monitor last assessed the DPD's compliance with paragraphs U79-83, U86-87, and U88a-c during the quarter ending May 31, 2004, finding the DPD in non-compliance with each. The Monitor concluded that the DPD was in non-compliance with these paragraphs due to the fact that the data to be collected and recorded and the appropriate identifying information for the new Risk Management Database required by these paragraphs was to be included in the Comprehensive Risk Management Plan, which was not finalized as of the end of the quarter.

During the current quarter, the Monitor again assessed the DPD's compliance with paragraphs U79, U85 and U89, and assessed the DPD's compliance with paragraphs U84, U88d and U88e for the first time.⁷⁷ The results of our current assessments follow.

Paragraph U79 – Expansion of Risk Management Database

Paragraph U79 requires the DPD to enhance and expand its risk management system to include a new computerized relational database for maintaining, integrating and retrieving data necessary for supervision and management of the DPD. The DPD must ensure that the Risk Management

⁷⁶ The requirements of paragraph 78e differ from the requirements of paragraph U110, which refers to meetings that the DPD should hold with the City Law Department specifically concerning the conclusion of civil lawsuits alleging officer misconduct. Certainly, information from the U110 meetings can be used in the U78e meetings; however, the U78e meetings are among DPD management and evaluate patterns of conduct that could increase the DPD's liability in any area (not just officer misconduct).

⁷⁷ The Monitor is not scheduled to assess compliance with paragraphs U88f and g until 2005, as the deadlines for compliance with these paragraphs are June 30, 2005 and December 31, 2005, respectively. However, if the DPD makes significant progress on an accelerated schedule, the Monitor will report on it. Paragraph U90 has no specific deadline; the Monitor will assess the DPD's compliance with this paragraph on an as-needed basis, as the DPD's actions pursuant to it are driven by the availability of relevant new technology and its experience with the operational Risk Management Database.

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.

Background

The Monitor last assessed the DPD's compliance with paragraph U79 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it was in non-compliance with many of the UOF CJ paragraphs related to the Risk Management Database.⁷⁸

Current Assessment of Compliance

As described in the paragraphs that follow (through paragraph U88), the DPD is currently developing a Risk Management Database. Various documents, including the Data Input Plan, Report Protocol, Request for Proposal (RFP) and Review Protocol, have been submitted and/or resubmitted to the DOJ for review and approval.⁷⁹ On July 13-14, 2004, the DOJ provided TA to the DPD regarding the risk management plan. The DPD is revising the documents based upon comments and recommendations from the DOJ.

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

Paragraphs U84 and U88d –Risk Management Database Review Protocol

Paragraph U84 requires the DPD to prepare, for the review and approval of the DOJ, a Review Protocol for using the Risk Management Database that addresses data analysis, supervisory assessment, supervisory intervention, documentation and auditing.

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

Background

The Monitor has not previously assessed the DPD's compliance with paragraphs U84 and U88d.

⁷⁸ Paragraphs U80-88.

⁷⁹ The DOJ has review and approval pursuant to paragraph U88.

Current Assessment of Compliance

The DPD submitted the Review Protocol, which is meant to address the requirements of paragraphs U84 and U88d, to the DOJ for review and approval with a cover letter dated July 6, 2004.⁸⁰

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U84 and U88d.

Paragraph U85 – Risk Management Database Modules

Paragraph U85 requires the DPD to seek to ensure that the Risk Management Database is created as expeditiously as possible. As part of this effort, the DPD, in consultation with the DOJ, must organize the Risk Management Database into modules in developing the Data Input Plan, the Report Protocol, the Review Protocol and the Request for Proposals and in negotiating with contractors, such that difficulties with one aspect of the Risk Management Database do not delay implementation of other modules.

Background

The Monitor last assessed the DPD's compliance with paragraph U85 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not submitted the final Data Input Plan and Report Protocol to the DOJ for review and approval.

Current Assessment of Compliance

The DPD resubmitted the proposed Data Input Plan, Report Protocol and RFP to the DOJ for review and approval with cover letters dated June 29, 2004, July 1, 2004 and May 19, 2004, respectively. These documents are meant to address the requirements of paragraph U85. The DOJ provided TA on the Risk Management Database on July 13-14, 2004. The documents are currently being revised by the DPD to include the comments and recommendations from the DOJ.

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

Paragraph U88e – Risk Management Database Selection of Contractor

Paragraph U88e requires the DPD to select the contractor to create the Risk Management Database by May 31, 2004.

⁸⁰ On July 13-14, 2004, the DOJ provided TA to the DPD on the Risk Management Database. As of the end of the quarter, the DPD was revising the documents related to the database based upon comments and recommendations from the DOJ.

Background

The Monitor has not previously assessed the DPD's compliance with paragraph U88e.

Current Assessment of Compliance

The DPD resubmitted RFP to the DOJ for review and approval with a cover letter May 19, 2004. The DOJ provided TA on developing the Risk Management Database on July 13-14, 2004. The RFP is currently being revised by the DPD to include the comments and recommendations from the DOJ. As of the end of the current quarter, the DPD had neither issued an RFP nor selected a contractor to create the Risk Management Database, as required by paragraph U88e.

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

Paragraph U89 – Interim Risk Management System

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

Background

The Monitor last assessed the DPD's compliance with paragraph U89 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not implemented an interim risk management system to satisfy the requirements of the paragraph.

Current Assessment of Compliance

The DPD submitted the proposed Interim Management Awareness System Plan to DOJ and the Monitor with a cover letter dated August 5, 2004. The Interim Management Awareness System Plan is meant to address the requirements of paragraph U89. The DOJ reviewed the plan and provided TA to the DPD on August 25, 2004 and September 8, 2004.⁸¹ The DPD is revising the interim risk management system to include the comments and recommendations from the DOJ. According to the DPD, the revised plan will be resubmitted as a part of a complete package, along with the Data Input Plan, Report Protocol, Review Protocol and the RFP.

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

⁸¹ Although the DOJ does not have review and approval over paragraph U89, it was agreed that the DOJ would provide TA regarding the interim plan given the fact that the DOJ has review and approval over the risk management database pursuant to paragraph U88.

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 assessed the DPD's compliance with paragraph U91 for the first time during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

Paragraph U91 – Performance Evaluation System

Paragraph U91 requires the DPD to ensure that performance evaluations for all DPD employees⁸² occur at least annually and include, but are not limited to, consideration of the following: civil rights integrity; adherence to law, including performing duties in a manner consistent with the requirements of the Fourth and Fifth Amendments to the Constitution and the Civil Rights laws of the United States; and supervisor's performance in identifying and addressing at-risk behavior in subordinates, including their supervision and review of use of force, arrests, care of prisoners, prisoner processing, and performance bearing upon honesty and integrity.

Background

The Monitor last assessed the DPD's compliance with paragraph U91 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to a number of deficiencies identified in the Performance Evaluation Forms being utilized.

Current Assessment of Compliance

As of the end of the quarter, the DPD was revising the Performance Evaluation Forms to address the requirements of paragraph U91.

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

⁸² The parties proposed a modification to the language of this paragraph stating that it is applicable to all DPD employees below the rank of Deputy Chief. The Court issued an order on October 4, 2004 adopting the proposed modification.

C. OVERSIGHT

This subsection of the UOF CJ (paragraphs U92-99) requires the DPD to establish an internal audit process, to perform annual⁸³ audits of all precincts and specialized units on eight aspects of policing,⁸⁴ 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 paragraphs U92 and U99 during the quarter ending May 31, 2004. The Monitor withheld a determination of the DPD's compliance with paragraph U92 and concluded that the DPD was in compliance with paragraph U99. The Monitor last assessed the DPD's compliance with paragraphs U93-98 during the quarter ending February 29, 2004. During the current quarter, the Monitor again assessed the DPD's compliance with paragraphs U92-98⁸⁵ and provided TA to members of the Audit Team (AT) as requested by the DPD to assist with the planning for certain of the DPD's audits. The results of our current assessments follow.

Paragraph U92 – Audit Protocol

Paragraph U92 requires the DPD to develop an Audit Protocol to be used by all personnel when conducting audits. The Audit Protocol must establish a regular and fixed schedule for all audits required by the UOF CJ⁸⁶ to ensure the audits occur with sufficient frequency and cover all DPD units and commands.

Background

The DPD's AT submitted its finalized Audit Protocol on February 16, 2004.⁸⁷ The Monitor initiated its review of the Audit Protocol during the quarter ending February 29, 2004, and completed its review during the quarter ending May 31, 2004. The Monitor concluded that the Audit Protocol adequately addressed most of the topics that the Monitor believed should be

⁸³ On October 4, 2004, 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.

⁸⁴ Including UOF investigations; prisoner injuries; allegations of misconduct; arrests; stops and frisks; witness identification and questioning; custodial detention practices, and complaint investigations.

⁸⁵ The Monitor is scheduled to again assess the DPD's compliance with paragraph U99 during the quarter ending November 30, 2004.

⁸⁶ This Audit Protocol must also address the audits required by the COC CJ (Paragraphs C65-72).

⁸⁷ The DPD's failure to meet the October 16, 2003 deadline required by Paragraph U145 resulted in a finding of non-compliance for the quarter ending November 30, 2003. Because the Audit Protocol was finalized and submitted during the quarter ending February 29, 2004, the October 2003 deadline had no bearing on compliance for that and subsequent quarters.

addressed in the Audit Protocol, with the exception of the frequency of the audits, which was the subject of ongoing discussions between the parties. The Audit Protocol essentially set out an annual/semi-annual timetable for the completion of its audits; this was generally consistent with the timetable being considered by the parties, but was inconsistent with the requirements specified in the Consent Judgments. In addition, neither the Audit Protocol nor the DPD's quarterly status reports to May 31, 2004 adequately addressed the need for the DPD to "...provide periodic audit status reports to the [Chief of Police] summarizing the DPD's overall compliance and progress on each of the audits listed in the Audit Protocol for the recent fiscal year," as described in the Methodologies. Accordingly, the Monitor withheld a determination of compliance with paragraph U92 for the quarters ending February 29, 2004 and May 31, 2004.

Current Assessment of Compliance

For several months, the City and the DPD have been involved in ongoing discussions and written correspondence with the DOJ regarding the quarterly audit requirements stipulated in both Consent Judgments. On October 4, 2004, the Court granted the parties' "Joint Motion to Amend the Consent Judgments" and amended⁸⁸ the frequency of the audits in the UOF CJ and the COC CJ as follows:

- The audits required by the UOF CJ would be required on an annual rather than a quarterly basis, with the first audits being due by August 31, 2004.
- The audits required by the COC CJ would be required on a semi-annual rather than a quarterly basis, with the first audits due by January 31, 2004, and the second audits due by August 31, 2004.

The Audit Protocol sets out the following timetable for the completion of the DPD's audits:

- The audits required by the amended UOF CJ were due on an annual basis, with certain audits due by May 15, 2004,⁸⁹ and others due by August 15, 2004,⁹⁰ thereby meeting the annual audit requirements of the amended UOF CJ.
- The semi-annual audits of holding cell uses of force, prisoner injuries and allegations of misconduct required by Paragraph C65 of the amended COC CJ were to be included within the scope of similar Department-wide UOF CJ audits due by August 15, 2004, thereby *not* meeting the requirement that such audits be completed semi-annually by January 31 and August 31, 2004.
- Certain other semi-annual COC CJ audits were due by May 15, 2004,⁹¹ and others were due by May 15, 2004 and August 15, 2004,⁹² thereby *not* meeting the requirement that such audits be completed semi-annually by January 31 and August 31, 2004.

⁸⁸ All of the audit paragraphs in the UOF CJ and COC CJ were amended, and are hereinafter referred to as the "amended UOF CJs" and "amended COC CJ".

⁸⁹ The following three UOF CJ audits were due by May 15, 2004: stops and frisks; arrests; and custodial detention practices.

⁹⁰ The remaining UOF CJ audits were due by August 15, 2004: witness identification and questioning; uses of force and prisoner injuries; and complaints/misconduct allegations.

Accordingly, the audit timetable set out in the Audit Protocol dated February 16, 2004 meets the requirements of the amended UOF CJ, but it does not meet the requirements of the amended COC CJ. As described later in this report, the DPD has not completed *any* of the audits required by either the amended Consent Judgments or the Audit Protocol. The DPD's Fourth Quarter Status Report includes information summarizing the status of the DPD's progress on each of the audits required, but does not identify that such audits are overdue, nor does it provide any reasons for the delay in issuance of such audits.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U92 of the amended UOF CJ.

Paragraph U93 – Audit Reporting Requirements

Paragraph U93 requires the DPD to issue a written report on the results of each audit⁹³ to the Chief of Police and to all precincts or specialized unit commanders. The amended UOF CJ requires such audit reports to be completed by August 31, 2004 and annually thereafter. These reports must include an examination of consistency throughout the DPD. The commander of each precinct and specialized unit must review all audit reports regarding employees under his or her command and, if appropriate, take disciplinary or non-disciplinary corrective action.

Background

The Monitor last assessed the DPD's compliance with paragraph U93 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that no audit reports were submitted to the Chief of Police as of the end of that quarter.

Current Assessment of Compliance

The Audit Protocol submitted by the DPD pursuant to paragraph U92 requires draft audit reports to be submitted to the Deputy Chief of CRIB, and then to the Chief of Police for review and comment. Once the Chief of Police has approved each audit report, they must be distributed to all Precinct or Specialized Unit Commanders for their action, and a copy of each audit report must be submitted to the BOPC and the Monitor.

Although the DPD completed its audit fieldwork and draft audit reports for several of the audits required by the UOF CJ and submitted them for approval to the Chief of Police, as of August 31, 2004, the Chief of Police had not completed her review and the audit reports had not been submitted to the Precinct and Specialized Unit Commanders, the BOPC or the Monitor.

⁹¹ The following three COC CJ audits were due by May 15, 2004: fire detection, suppression and evacuation program; emergency preparedness; and medical/mental health programs and policies.

⁹² The following three COC CJ audits were due by May 15, 2004 and August 15, 2004: detainee safety programs and policies; environmental health and safety programs; and food service program.

⁹³ Annual audits are required to be completed by paragraphs U94-97 of the amended UOF CJ.

Furthermore, as of the end of the quarter, the DPD had not submitted any report(s) that included an examination of consistency throughout the DPD to the Chief of Police or to the Monitor.

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

Paragraph U94-97 – Audits of UOF, Prisoner Injuries and Misconduct Investigations; Probable Cause, Stops and Frisks and Witness Identification and Questioning Documentation; Custodial Detention Practices and OCI Audit of External Complaints and Investigations

Paragraphs U94-96 of the amended UOF CJ require the DPD to conduct regularly scheduled annual audits of UOF, prisoner injuries, allegations of misconduct, arrests, stops and frisks, witness identification and questioning documentation, and custodial detention practices. Such audits must cover all precincts and specialized units.

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

These audits are due by August 31, 2004, and annually thereafter.

Background

The Monitor last assessed the DPD's compliance with paragraphs U94-97 during the quarter ending February 29, 2004, finding the DPD in non-compliance with each due to the fact that no audits required by these paragraphs were submitted as of the end of the quarter.

Current Assessment of Compliance

As of the end of the current quarter, the DPD had not submitted any of the audits required by these paragraphs. According to the DPD's AT, the audits of stops and frisks, arrests and custodial detention practices were submitted to the Chief of Police and are in various stages of review. The remaining audits are either in the planning stages, or formal planning has not yet begun. During this quarter the Monitor provided the DPD AT with TA relating to the planning of the Witness Identification and Questioning Audit (paragraph U95c).

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U94-97.⁹⁴

⁹⁴ The Monitor will continue to find the DPD in non-compliance for each audit until such time as the required audits have been submitted. When such audits are submitted, the quality of such audits will be evaluated.

Paragraph U98 – Random Reviews of Videotapes and Recording Equipment

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

Background

The Monitor last assessed the DPD's compliance with paragraph U98 during the quarter ending February 29, 2004, finding the DPD in non-compliance based on a number of deficiencies identified in the existing policies and processes for reviewing videotapes.

Current Assessment of Compliance

As of the end of the quarter, the DPD was developing a uniform written protocol and a supervisor video review form, which, along with Directive 303.3, In Car Video Cameras, will address the requirements of paragraph U98.⁹⁵ According to the DPD, this written protocol will also incorporate the new digital video capture system, *Insight Digital Video System*, which is in the process of be implemented throughout every precinct.⁹⁶

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

D. USE OF VIDEO CAMERAS

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

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

⁹⁵ As noted in the Report for the Quarter Ending February 29, 2004, the version of the In-Car Video Camera policy that was previously issued did not define "periodic" and "random." These terms must be clearly defined in the policy.

⁹⁶ Additional information regarding the Insight Digital Video System can be found in the assessment for paragraph C64.

The Monitor assessed the DPD's compliance with paragraphs U100-102 for the first time during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph U100 – Non-Functioning Video Cameras

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

Background

The Monitor last assessed the DPD's compliance with paragraph U100 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that several precincts had non-functioning video equipment that was in the process of being repaired or replaced, and several precincts had non-functioning microphones.

Current Assessment of Compliance

The Monitor met with several members of CRIB and precinct supervisory officers regarding procedures to repair or replace all non-functioning video cameras. The DPD currently has no uniform written procedures or protocols in place for the process of repairing or replacing non-functioning video cameras. The Monitor determined that the precincts follow different procedures regarding officer notification for repair or replacement of video equipment, and that the majority of the precincts do not keep consistent documentation regarding which scout cars have working equipment and which scout cars have equipment that needs to be repaired or replaced.

In addition, the Monitor requested and received a list of scout cars that had video camera equipment that was repaired or replaced during the period March 1, 2004 through May 31, 2004. The Monitor also requested the work orders for each of the repairs and replacements made during this time period. The DPD provided the Monitor with a list from Emergency Communications Division (ECD) of the data for those scout cars that had video equipment repaired or replaced and the work orders, or "requests for service," maintained by the Communications Systems Unit (CSU) for all video camera equipment repaired or replaced.

The Monitor compared the information on the list from ECD to the requests for service by CSU and identified several deficiencies. Of the total number of requests for service that were sent to the vendor for repair or replacement of video equipment, 14% were not included on the scout car video camera repair or replacement list maintained by the ECD. In addition, of the total number of scout car video camera repairs or replacements on the list maintained by the ECD that were sent to the vendor, 33% did not have a corresponding request for service in the documentation that was provided to the Monitor. Based on the information provided, the Monitor was unable to determine whether the sample requested was the total population of those scout cars receiving repairs or replacements of video equipment or whether paperwork was not completed for all of the requests and repairs or replacements.

According to the DPD, it is in the process of implementing the new digital video capture system, *Insight Digital Video System*, throughout every precinct, which will change the process for repair or replacement of video cameras. In addition, DPD is developing uniform written policies and procedures regarding this new digital video system, and therefore may need to develop procedures that address paragraph U100 utilizing the new digital video system.

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

Paragraph U101 – Video Camera Policy

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

Background

The Monitor last assessed the DPD's compliance with paragraph U101 during the quarter ending February 29, 2004, finding the DPD in non-compliance due primarily to the fact that it was not consistently implementing the policies and procedures for in-car video cameras across all precincts.

Current Assessment of Compliance

The DPD is currently developing uniform written policies and procedures to address the requirements of paragraph U101. These written policies and procedures will also incorporate the new digital video capture system, *Insight Digital Video System*, which is in the process of being implemented throughout every precinct. In addition, the Monitor previously identified deficiencies in Directive 303.3, In-Car Video Cameras, as it relates to paragraph U101. The Monitor is unaware of any revisions that have been made to the policy.

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

Paragraph U102 – Video Recording Policy

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

Background

The Monitor last assessed the DPD's compliance with paragraph U102 during the quarter ending February 29, 2004, finding the DPD in overall non-compliance due to the fact that some precincts did not have an adequate number of functioning video cameras.

Current Assessment of Compliance

As described in the Monitor's Report for the Quarter Ending February 29, 2004, the Monitor determined that the revised Directive 303.3 includes the basic requirements of paragraph U102, but does not adequately address the requirements of paragraphs U98 and U101. Currently, the DPD is implementing the new digital video capture system, *Insight Digital Video System*, which is in the process of being implemented throughout every precinct. In addition, the DPD is developing uniform written policies and procedures which will address the requirements of U98 and U100-102 in response to the new digital video system. Until these procedures are implemented and officers are receiving adequate training on its provisions, the DPD cannot meet the overall requirements of this paragraph.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U102.

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 assessed the DPD's compliance with paragraphs U103-105 for the first time during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph U103 – Backlog of Disciplinary Cases

Paragraph U103 requires the City to ensure that adequate resources are provided to eliminate the backlog of disciplinary cases and that all disciplinary matters are resolved as soon as reasonably possible.

Background

The Monitor last assessed the DPD's compliance with paragraph U103 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not issued policy that met the requirements of the paragraph. As noted in the Monitor's Report for the Quarter Ending February 29, 2004, the DPD elevated what was originally the Disciplinary

Administration Unit to the Disciplinary Administration Section (DAS) and placed an Inspector in charge of the section.

Current Assessment of Compliance

The DPD is developing policy that will include a process for scheduling disciplinary hearings, trials, and appeals at appropriately frequent intervals, and will establish guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process. The Monitor understands that this policy will incorporate the requirements of this paragraph, as previously reported, and that it is currently under internal review by the DPD.

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

Paragraph U104 – Guidelines for Disciplinary Process

Paragraph U104 requires the DPD to schedule disciplinary hearings, trials, and appeals at appropriately frequent intervals, to prevent a disciplinary backlog from developing. As part of determining how often to schedule such hearings, the DPD must establish guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process.

Background

The Monitor last assessed the DPD's compliance with paragraph U104 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not established guidelines that met the requirements of the paragraph.

Current Assessment of Compliance

According to the DPD's Fourth Quarter Status Report, "[i]n January of 2004, the number of outstanding or backlogged cases totaled 544, which included both current and previous year disciplinary cases pending a hearing date.⁹⁷ As of June 30, 2004, based upon the 'pre-disciplinary' review board's review, there were only 280 disciplinary cases pending. This amounts to a 62% reduction in the number of disciplinary cases over a six-month period." Nevertheless, the DPD has not issued any guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process.⁹⁸ According to the DPD's Fourth Quarter Status Report, the applicable policy is under development.

⁹⁷ The DPD defines backlogged caseload as disciplinary cases pending a hearing date that were received by DAS in a previous calendar year(s).

⁹⁸ On August 10, 2004, the Monitor requested an up-to-date list of all misconduct cases currently in the DAS, including those with pending trial boards. On August 25, 2004, the DPD provided the total number of pending police trial boards (147) and the total number of closed misconduct cases (326). The Monitor has not yet received a listing of all pending matters.

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

Paragraph U105 – Disciplinary Matrix

Paragraph U105 requires the DPD to create a disciplinary matrix that: establishes a presumptive range of discipline for each type of rule violation; increases the presumptive discipline based on both an officer's prior violations of the same rule as well as violations of other rules; requires that any departure from the presumptive range of discipline must be justified in writing; provides that the DPD shall not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline; and provides that the DPD shall consider whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed.

Background

The Monitor last assessed the DPD's compliance with paragraph U105 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that the final draft of the disciplinary matrix was under internal review as of the end of the quarter.

Current Assessment of Compliance

According to the DPD, the Disciplinary Matrix has been developed and was forwarded to the City's Law Department for review and comment. On August 26, 2004, the matrix was returned to the DAS for additional revisions.

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

VII. TRAINING

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.

In previous reports, the Monitor noted that a substantial portion of the training required under the UOF CJ is based on Departmental policy, which was still under revision, and that effective training curricula development must include consultation with the affected commands and with the individuals assigned to draft and/or revise the underlying policies.

On August 22, 2004, the DPD established the Curriculum Research and Development (CRD) function to develop a competency-based curriculum that includes specific learning objectives, measurable outcomes and scenario-based lesson plans. The CRD process is commanded by a police Inspector, who holds a PhD in Education. He has identified a group of in-house subject matter experts to develop curriculum under his guidance.

A. OVERSIGHT AND DEVELOPMENT

This section comprises paragraphs U106-111. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2004, finding the DPD in non-compliance with each. Generally, the Monitor concluded that the DPD was in non-compliance due to the fact that revised policies had not been finalized as of the end of the quarter, precluding the DPD from effectively developing the lesson plans required by these paragraphs. Furthermore, since the revised training has not yet been developed, the DPD had not yet developed a method of coordinating and reviewing the training and producing reports; ensuring consistency with Michigan law and Michigan Law Enforcement Officers Training Council Standards; creating individual training records for all training completed since July 18, 2003; approving lesson plans; and training relevant City and DPD employees within 120 days of each provision's implementation. The DPD has held paragraph U110 meetings with the City Law Department since this paragraph was last assessed; these meetings will be reviewed during the quarter ending November 30, 2004.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs 106-111 during the quarter ending November 30, 2004.

B. USE OF FORCE TRAINING

This section comprises paragraph U112 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that the revised general UOF Policy had not been approved by the DOJ as of the end of the quarter, precluding the DPD from effectively developing the relevant training.⁹⁹

The Monitor is scheduled to again assess the DPD's compliance with paragraph U112 during the quarter ending November 30, 2004.

C. FIREARMS TRAINING

This section comprises paragraph U113 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that the revised Firearms Policy had not been approved by DOJ as of the end of the quarter, precluding the DPD from effectively developing the relevant training.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U113 during the quarter ending November 30, 2004.

D. ARREST AND POLICE-CITIZEN INTERACTION TRAINING

This section comprises paragraph U114 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that the policies pursuant to paragraphs U42-48 had not been revised,¹⁰⁰ precluding the DPD from effectively developing the relevant training curricula.

The Monitor is scheduled to again assess the DPD's compliance with paragraph U114 during the quarter ending November 30, 2004.

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 29, 2004. The Monitor again assessed

⁹⁹ The DPD promulgated its revised Chemical Spray and Firearms policies during the third quarter and submitted them to the DOJ for review and approval with a cover letter dated May 26, 2004. The DPD also submitted its revised Use of Force policy to the DOJ for review and approval. The DOJ has provided the DPD with TA regarding these policies. The DPD is currently revising its use of force policies to incorporate DOJ's recommendations and comments.

¹⁰⁰ As noted above, the DPD promulgated its Arrest Policy during the third quarter and submitted it to the Monitor and the DOJ with a cover letter dated April 28, 2004; however, other relevant arrest and detention policies were not completed or implemented at that time.

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

Paragraph U115 – Annual Custodial Detention Training

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

Background

The Monitor last assessed the DPD's compliance with paragraph U115 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that DPD policies regarding arrest, arraignment, holds, restrictions, material witness and detention records had not been revised and/or developed as of the end of the quarter. As the Monitor noted in previous reports, the DPD cannot effectively develop a lesson plan on custodial detention until DPD policies regarding arrest, arraignment, holds, restrictions, material witness and detention records are completed and approved, as required by paragraphs U42-58.

Current Assessment of Compliance

The DPD's Training Bureau has conducted a national best practices review of custodial detention training. Monitor has submitted to CRIB a document request for the relevant documents. The Training Bureau is in the process of developing the training related to this paragraph.

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

Paragraphs U116 and U117 – Advise Officers not to Delay Arraignment; Advise Officers that Material Witness Designation is a Judicial Determination

Paragraph U116 requires the DPD to advise officers that the DPD arraignment policy shall not be delayed because of the assignment of the investigation to a specialized unit, the arrest charge(s), the availability of an investigator, the gathering of additional evidence or obtaining a confession.

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

Background

The Monitor last assessed the DPD's compliance with paragraphs U116 and U117 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact the DPD's

Arrest Policy, which is intended to meet the requirements of the paragraphs, was under revision as of the end of the quarter.¹⁰¹ The Monitor noted that paragraph 116 could not be effectively implemented until the prompt judicial review policies under paragraphs U49-51 are completed, approved and implemented¹⁰² and paragraph 117 could not be effectively implemented until the material witness policies under paragraphs U56-57 are completed, approved and implemented.

Current Assessment of Compliance

As previously mentioned, on July 30, 2004, the DPD issued its finalized version of Directive 202.1, Arrests. This directive, which was approved by the BOPC on March 18, 2004 and signed by the Chief of Police on April 5, 2004, is meant to address the requirements of a number of UOF CJ paragraphs, including paragraphs U116 and U117. The Monitor's review of the policy revealed that all of the requirements of U116 are not included in the Arrest Policy. The requirements of U117 are included in the policy; however, the relevant forms discussed below must be finalized and issued. In a June 25, 2004 letter to the DPD, the Monitor recommended various revisions to the relevant auditable forms.¹⁰³ The CRIB Audit Team is currently developing new auditable forms that incorporate the recommended changes. Once the finalized policy that meets the requirements of these paragraphs is issued, the Monitor will assess the custodial detention training which is to be provided by the DPD pursuant to paragraphs U115-117.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U116 and U117.

F. SUPERVISORY TRAINING

This section comprises paragraphs U118-120. The Monitor last assessed the DPD's compliance with paragraphs U118 and U120 during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with paragraphs U118-120 during the current quarter. The results of our current assessments follow.

Paragraph U118 – Training on the Evaluation of Written Reports

Paragraph U118 requires the DPD to provide supervisors with training in the appropriate evaluation of written reports, including what constitutes a fact-based description, the

¹⁰¹ As previously mentioned, the Arrest Policy (the "Arrest" Directive 202.1) was approved by the BOPC after the end of the quarter, on March 18, 2004. It was signed by the Chief of Police on April 5, 2004.

¹⁰² It is noted that the DPD, in conjunction with the 36th District Court, has developed a Night Felony Arraignment system. According to the DPD, this system commenced on January 5, 2004. The availability of night arraignments was communicated to the Department by Teletype #03-0746/7, issued on December 12, 2003. According to the DPD, the implementation of evening arraignments is critical to supporting the mandates of U116.

¹⁰³ The relevant auditable forms are UF-004, Warrant/Arrest Compliance and UF-006, Detention of Material Witness.

identification of conclusory language not supported by specific facts and catch phrases, or language that so regularly appears in reports that its inclusion requires further explanation by the reporting officer.

Background

The Monitor last assessed the DPD's compliance with paragraph U118 during the quarter ending February 29, 2004, 2004, finding the DPD in non-compliance due to the fact that it had not developed the curriculum for supervisor training that addressed the paragraph's requirements as of the end of the quarter.

Current Assessment of Compliance

According to the DPD, the Training Bureau is continuing to conduct a best practices review for supervisor training in the appropriate evaluation of written reports as of the end of the current quarter. The DPD has indicated that revised policies will be forwarded to the newly-established CRD in order to facilitate the development of lesson plans and curriculum. However, the DPD had yet to develop the curriculum as of the end of the quarter.

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

Paragraph U119 – Leadership and Command Accountability Training

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

Background

The Monitor attempted to assess the DPD's compliance with paragraph U119 during the quarter ending February 29, 2004. The Monitor was not provided with the lesson plans for leadership command and accountability training and techniques that had taken place.¹⁰⁴ The Monitor noted that in order to conclude on compliance, the Monitor must review these lesson plans and attend and/or interview supervisors who attended the training sessions to ensure that the requirements of paragraph U119 are satisfied.

Current Assessment of Compliance

Although the DPD has developed Sergeants and Lieutenants "Leadership Development" courses, additional lesson plans are currently under development by the Training Division to comply with the requirements of this paragraph.

¹⁰⁴ Training took place February 16 - March 19, 2004 for Sergeants and February 9 – 20, 2004 for Lieutenants.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph U119.

Paragraph U120 – Risk Assessment Training

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

Background

The Monitor last assessed the DPD's compliance with paragraph U120 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that neither the Risk Management Database nor the training had been developed as of the end of the quarter.

Current Assessment of Compliance

The Risk Management Database is currently under development.¹⁰⁵ According to the DPD, the curriculum for training on risk assessment and management for all DPD supervisors, including the operation of the Risk Management Database, will be based on the approved plan and procedures. However, neither the Risk Management Database nor the training had been developed as of the end of the current quarter.

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

G. INVESTIGATOR TRAINING

This section comprises paragraphs U121-122. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with paragraphs U121-122 during the current quarter. The results of our current assessments follow.

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

Paragraph U121 requires the DPD to provide training on appropriate burdens of proof, interview techniques and the factors to consider when evaluating officer, complainant or witness credibility to all officers who conduct investigations to ensure that their recommendations regarding dispositions are unbiased, uniform and legally appropriate.

Paragraph U122 requires the DPD to provide all supervisors charged with accepting external complaints with appropriate training on handling external complaints that emphasizes interpersonal skills. The DPD must provide training on the DPD external complaint process,

¹⁰⁵ The development of the Risk Management Database is covered by paragraphs U79-90.

including the role of the OCI and the Internal Affairs Division (IAD) in the process, to all new recruits and as part of annual in-service training.

Background

The Monitor last assessed the DPD's compliance with paragraphs U121 and U122 during the quarter ending February 29, 200, finding the DPD in non-compliance with each due to the fact that the policy / protocol on conducting investigations that will address paragraph U121 requirements and the training curricula for supervisors and new recruits that will address paragraph U122 requirements were not finalized as of the end of the quarter.

Current Assessment of Compliance

According to the DPD, the investigative training curriculum that will address the requirements of paragraphs U121 and U122 is still under development. As noted in the Report for the Quarter Ending February 29, 2004, the Monitor will review the policy / protocol, related lesson plans / curriculum, training delivery methodologies and pre- / post-comprehension testing once they are completed and approved.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs U121 and U122.

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 29, 2004. The Monitor again assessed the DPD's compliance with paragraph U123 during the current quarter. The results of our current assessment follow.

Paragraph U123 – Enhancement of FTO Program

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

Background

The Monitor last attempted to assess the DPD's compliance with paragraph U123 during the quarter ending February 29, 2004. However, the Monitor withheld a determination of compliance with the paragraph pending the DOJ's review of the DPD's protocol to enhance its FTO program, which was received by the DOJ on February 12, 2004.

Current Assessment of Compliance

As of the end of the current quarter, the DPD was revising the protocol to enhance its FTO program based upon analysis and recommendations provided by the DOJ. The DPD has not resubmitted the revised protocol to the DOJ for approval.

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

VIII. MONITORING, REPORTING, AND IMPLEMENTATION

Paragraph U139 is the only paragraph in this section of the UOF CJ for which the Monitor will be assessing compliance. This paragraph requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. As reported in its Report for the Quarter Ending May 31, 2004, the Monitor had not yet reviewed investigations under paragraph U139 since the DPD had not yet revised the majority of the policies and investigatory procedures under the UOF CJ. The Monitor is scheduled to again review DPD activity in connection with paragraph U139 during the quarter ending November 30, 2004.

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

This section of the report contains the Monitor's compliance assessments of the COC CJ paragraphs scheduled for review during the quarter ending August 31, 2004.

It is important to note that the structures of the COC CJ paragraphs vary, in that some paragraphs have separate but related "policy"-required paragraphs within the COC CJ (e.g. paragraph C39 – Cleaning of holding cells; C40 – Cleaning policy requirement); while others do not (e.g., paragraph C45 - Reasonable access to toilets and water). These varying structures impact the way in which the Monitor assesses compliance with each paragraph. Specifically, the Monitor's compliance assessments of paragraphs that do not have a separate policy-related paragraph include a review for a written guidance or instruction (or *Policy Component*, as described in the Introduction to the Methodologies). This review for a written guidance or instruction is included to ensure that the required procedures are mandated by the DPD and appropriate DPD personnel have received the necessary direction to carry out the requirements of the COC CJ.

I. FIRE SAFETY POLICIES

This section of the COC CJ comprises paragraphs C14-22. It requires the DPD to develop, implement, and provide training on specific fire safety policies and procedures and develop and implement a comprehensive fire safety program in all DPD facilities that maintain holding cells.¹⁰⁶

The Monitor last assessed the DPD's compliance with paragraphs C15-C16 and C18-22 during the quarter ending February 29, 2004. The Monitor concluded that, with the exception of paragraph C20, the DPD was in non-compliance with each¹⁰⁷ due to the fact that, as of the end of the quarter, it had not completed a comprehensive remediation and implementation plan, nor had it developed a consistent method for ensuring that all fire safety equipment contained within these facilities was routinely inspected, tested and maintained. Additionally, the Interim Fire Safety Measures required by paragraph C18 had not been implemented. The Monitor determined that the DPD was enforcing its No Smoking Policy as required by paragraph C20.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C15, C16, C18 and C19, and assess compliance with paragraphs C14 and C17 for the first time, during the

¹⁰⁶ The term "holding cell" is defined in the Definitions section of the COC CJ (Section I, Paragraph k) to include any room or area in which individuals in DPD custody are confined, including cells at the DPD precinct stations, specialized units, and the Detroit Receiving Hospital (DRH).

¹⁰⁷ Paragraphs C14 and C17 have not yet been assessed, as their deadlines for compliance are "within one year of the effective date" of the COC CJ. The Monitor is scheduled to assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2004.

quarter ending November 30, 2004. The Monitor is scheduled to again assess the DPD's compliance with paragraphs C20-22 during the quarter ending August 31, 2005.

II. EMERGENCY PREPAREDNESS POLICIES

This section of the COC CJ comprises paragraphs C23-25. It requires the DPD to develop and implement emergency preparedness plans for all facilities that maintain holding cells. The COC CJ requires that the plan 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 assessed the DPD's compliance with paragraphs C23 and C25 for the first time during the quarter ending February 29, 2004, finding the DPD in non-compliance with each. While the DPD had made progress in developing emergency preparedness policies for the facilities that maintain holding cells, it had not developed, trained or implemented the new policies and procedures required.

The Monitor last assessed the DPD's compliance with paragraph C24 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that a Department-wide Emergency Response Plan had not been fully development and implemented the end of the quarter.¹⁰⁸

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C23-25 during the quarter ending November 30, 2004.

¹⁰⁸ Prior to implementation, the emergency preparedness program must be approved by the DOJ.

III. MEDICAL AND MENTAL HEALTH CARE POLICIES

This section of the COC CJ comprises paragraphs C26-34. It requires the DPD to develop and implement a medical and mental health care program, which includes a series of policies, procedures and protocols. These policies and procedures must be designed and developed to ensure that the DPD is adequately identifying and responding to the medical and mental health care conditions and needs of its prisoners. The policies and procedures must be approved by a qualified medical and mental health professional. The comprehensive medical and mental health screening program required by paragraph C27 must include specific intake screening procedures and medical protocols (paragraphs C28-29) and must be reviewed and approved by the DOJ prior to implementation.

The Monitor last assessed the DPD's compliance with paragraphs C26-34 during the quarter ending May 31, 2004, finding the DPD in non-compliance with each. The findings of non-compliance were generally attributable to the fact that, as of the end of the quarter, the policies that will address the requirements of various paragraphs were not submitted to or approved by the DOJ, and written guidance or instruction in connection with various paragraphs had not been developed. In addition, relevant procedures were not fully implemented, and training on them had not taken place or a training bulletin, protocol, directive or procedural guide had not been issued. Also, various deficiencies were identified in the Interim Detainee Intake form (DPD 651 (rev10-03)). Finally, the 3rd and 4th precincts remained open and the DPD had not addressed the suicide hazards that exist throughout the holding cells, Department-wide, such as exposed pipes, radiators and overhead bars.

The Monitor is scheduled to again assess the DPD's compliance with paragraphs C26-34 during the quarter ending November 30, 2004.

IV. PRISONER SAFETY POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C35-38 during the quarter ending February 29, 2003. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph C35 – Ensure Safety Level

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

Background

The Monitor last assessed the DPD's compliance with paragraph C35 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not finalized or implemented new policies and procedures that addressed the requirements of paragraphs C36-38.

Current Assessment of Compliance

Compliance with paragraph C35 is contingent upon the DPD attaining compliance with paragraphs C36-38.

Based on the non-compliant status of paragraphs C36-38, below, the Monitor finds the DPD in non-compliance with paragraph C35.

Paragraph C36 – Security Screening of Prisoners

Paragraph C36 requires the DPD to develop and implement a prisoner security screening program for all buildings containing holding cells. At a minimum, this program must establish protocols based upon objective, behavior-based criteria for identifying suspected crime partners, vulnerable, assaultive or special management prisoners who should be housed in observation cells or single-occupancy cells; and require that security screening information is documented and communicated between consecutive shifts.

Background

The Monitor last assessed the DPD's compliance with paragraph C36 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not finalized or implemented new policies and procedures that addressed the requirements of paragraph C36. The Monitor noted that the DPD was planning on utilizing its Detainee Intake Form as part of the screening process, was looking at developing a more detailed intake process that would include a formalized procedure for dealing with potential threats posed by criminal partners, assaultive and special management prisoners, and was developing a program based on a 'packet system' for presenting important information to detention, transport and medical officers who may interact with a prisoner following the initial screening process. However, the DPD had not yet completed its development of these new policies and procedures as of the end of the quarter.

Current Assessment of Compliance

To address the requirements of paragraph C36, on September 10, 2004 the DPD submitted Directive 305.1, Detainee Intake/Assessment, as an appendix to its Fourth Quarter Status Report which was dated August 31, 2004.¹⁰⁹ According to the HCCC, this policy, and the auditable logs and forms referenced therein, has not yet been disseminated or implemented in DPD buildings that contain holding cells.¹¹⁰

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

Paragraph C37 – Cell Check Policies

Paragraph C37 requires the DPD to develop and implement procedures for the performance, documentation and review of routine cell checks in all holding cells to ensure safe housing. At a minimum, these procedures will require that cell checks on the general population are performed at least twice per hour and that cell checks on prisoners in observation cells and DRH holding cells are performed every 15 minutes, unless constant supervision is required, and that detention officers document relevant information regarding the performance of cell checks in an auditable log.

Background

The Monitor last assessed the DPD's compliance with paragraph C37 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not yet

¹⁰⁹ The Monitor has not yet evaluated this policy, as it was received after the end of the quarter.

¹¹⁰ The Monitor has been informed that the DPD has revised this policy to address the TA provided by DOJ. The Monitor requested the revised policy on October 6, 2004.

completed its development of standardized auditable cell check logs, and related procedures, as of the end of the quarter.¹¹¹

Current Assessment of Compliance

On June 21, 2004, the Monitor received Directive 305.4, Holding Cell Areas, which was submitted by the DPD in response to this paragraph. The Monitor completed its review of this policy and determined that the policy meets the criteria established in this paragraph with the exception of the requirement for constant monitoring. The DPD has advised the Monitor that the requirements regarding constant supervision are contained in the Detainee Intake/Assessment Policy (305.1).¹¹² The requirement to identify the specific actions to take in relation to intensive monitoring is also evaluated in paragraph C29a (Medical Protocols).¹¹³ The Monitor also notes that the Holding Cell Areas policy does not provide adequate specific direction for performing cell checks; however the Monitor expects that the DPD will ensure adequate and specific direction is provided to the appropriate personnel via the training required by paragraph C77.

The Monitor requested a copy of the *Holding Cell Logbook* referenced in the Holding Cell Areas policy, the HCCC indicated that the form for documenting the cell checks was still under development and that the Holding Cell Areas Policy had not yet been implemented.¹¹⁴

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

Paragraph C38 – Observation Cell Policy

Paragraph C38 requires the DPD to record in a written policy and implement a procedure that requires detention officers to provide continual direct or on-site remote observation of all observation cells while they are occupied.

Background

The Monitor last assessed the DPD's compliance with paragraph C38 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that current policy did not

¹¹¹ Based on the Monitor's visual observations of the precinct's documentation and/or grease boards, the DPD was conducting cell checks every half-hour for the general population, and every 15 minutes for those individuals placed in observation cells. However, each precinct had its own methodology for recording the cell checks and the information collected varied by precinct. According to the HCCC, the DPD was developing standardized, auditable cell check logs and procedures, which would be included in the new Cell Block Policy that was under development.

¹¹² The Monitor has confirmed that the constant supervision requirement is contained in the Detainee Intake/Assessment policy; however, the Monitor has not completed its evaluation of that policy.

¹¹³ The medical protocols are required to be contained in the Comprehensive Medical and Mental Health Program (paragraph C27), for which DOJ has review and approval.

¹¹⁴ The Monitor met with the DPD on September 1, 2004 to discuss the Monitor's evaluation of the policy and the status of the policy and the cell check logs. The DPD indicated that the policy will not be implemented or disseminated until the form(s) are completed.

meet the requirements of paragraph C38 and the DPD had not yet completed its development of a new Cell Block Policy that would meet the requirements of the paragraph.

Current Assessment of Compliance

According to the HCCC, Directive 305.1, Detainee Intake/Assessment, and the auditable logs and/or forms referenced therein, has not yet been disseminated or implemented in DPD buildings that contain holding cells.¹¹⁵

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

V. ENVIRONMENTAL HEALTH AND SAFETY POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C39-46 during the quarter ending February 29, 2003. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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 February 29, 2004, finding the DPD in compliance. The Monitor reviewed the DPD's efforts to ensure that all holding cells were cleaned immediately and then maintained in a sanitary manner by conducting random unannounced inspections. The Monitor also conducted interviews with various members of each precinct holding cell area to determine the precinct cleaning schedule and to determine if the cells were being cleaned on a regular basis. The Monitor determined that the DPD had cleaned all the cells within the cell block areas.

¹¹⁵ The DPD submitted this policy as an appendix to its Fourth Quarter Status Report on September 10, 2004. As this policy was received after the end of the quarter, the Monitor has not yet evaluated it for compliance with paragraph C38. The Monitor is currently providing the DPD with TA in relation to one of the auditable logs referenced in the policy titled "High Risk/Suicide Risk Monitoring Log".

Current Assessment of Compliance

During the current quarter, the Monitor reviewed the DPD's efforts to ensure that all holding cells were cleaned and maintained in a clean and sanitary manner. The Monitor conducted unannounced inspections of precincts 1 through 13 and the DRH.¹¹⁶ During these inspections, the Monitor visually inspected each holding cell to determine if the cells were clean and verbally interviewed DPD personnel regarding the existence of a regular cleaning schedule and cleaning documentation, and inquired as to who is responsible for cleaning the cells and with what cleaning instruments.

The cell block inspections revealed that the holding cells were clean at the time of the inspections. The personnel interviewed were not aware of a written cleaning directive or policy but in most cases stated that the cells are cleaned on a daily basis and/or after a prisoner is discharged. All but one person interviewed stated that the documentation of cleaning is recorded in a logbook.¹¹⁷ The Monitor visually checked the logbooks in the precincts and it appeared as though the holding cells were being regularly cleaned. However, the precincts did not record similar information and there were several different types of logbooks in which it was recorded, resulting in inconsistent information being recorded.

In order to test whether the DPD is regularly cleaning and maintaining cells at a compliance level of 94% or greater,¹¹⁸ the Monitor subsequently requested copies of the holding cell logbooks that it had inspected. The HCCC responded to that request by stating that although most of the precincts are documenting the cleaning in individual logbooks, the DPD intends to use a Holding Cell Cleaning Log, which is still under development, rather than logbooks to record cell cleanings.¹¹⁹

Although, based on the Monitor's inspections and visual observations, it appears that holding cells are being regularly cleaned, the Monitor was unable to obtain an adequate sample of cleaning documentation to ensure that cleaning is taking place on a regular basis.¹²⁰

Based on the foregoing, the Monitor is withholding a determination of the DPD's compliance with paragraph C39.

Recommendations

The Monitor recommends that the DPD implement the Holding Cell Cleaning Logs in all DPD buildings containing holding cells as soon as possible to ensure the existence and uniformity of

¹¹⁶ The Monitor conducted these site assessments on June 15 and 16, 2004.

¹¹⁷ The one exception was a detention officer who said that the cleaning was not documented.

¹¹⁸ This is the minimum benchmark outlined in the Methodologies.

¹¹⁹ The Monitor is currently providing the DPD with TA in connection with this auditable log.

¹²⁰ Policy related to paragraphs C39 is addressed by paragraph C40. Please refer to the Current Assessment of Compliance for paragraph C40, below, for additional information.

the documentation, as the lack of documentation will affect future compliance with this paragraph.

Paragraph C40 – Cleaning Policy

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

Background

The Monitor last assessed the DPD's compliance with paragraph C40 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not developed a cleaning policy for holding cells that addressed the requirements of the paragraph.

Current Assessment of Compliance

On June 21, 2004, the Monitor received Directive 305.4, Holding Cell Areas, which was submitted to address the requirements of paragraphs C39 and C40, among various other paragraphs. The Monitor reviewed this policy and determined that it meets the criteria established in this paragraph, including the supervisory inspections. As described in the Current Assessment of Compliance for paragraph C39, above, the HCCC has indicated that although most precincts are documenting the cleaning of cells in individual logbooks, the DPD intends to utilize the *Holding Cell Cleaning Log*, which is still under development, for this purpose. The HCCC further indicated that the Holding Cell Areas Policy will be amended to include a reference to the proper log (*Holding Cell Cleaning Log* rather than *Holding Cell Cleaning Logbook*), and the policy has not yet been implemented.¹²¹

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

Paragraph C41 – Maintenance Policy

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

¹²¹ On September 1, 2004, the Monitor met with the DPD regarding the Monitor's evaluation of the Holding Cell Areas Policy. The HCCC indicated that the DPD will not disseminate or implement the policy until the log is finalized. Additionally, on September 10, 2004 the Monitor received documentation relating to the steam cleaning of the holding cells, as an appendix to the DPD's Fourth Quarter Status Report. As this documentation was received after the end of the quarter, the Monitor has not yet evaluated it in relation to paragraph C39. Also, as stated above, the Monitor is currently providing the DPD with TA regarding the development of the Holding Cell Cleaning Log.

Background

The Monitor last assessed the DPD's compliance with paragraph C41 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not yet developed a maintenance policy to address the requirements of the paragraph.¹²²

Current Assessment of Compliance

On June 21, 2004, the Monitor received Directive 305.4, Holding Cell Areas, which was submitted to address the requirements of paragraph C41, among various other paragraphs. The Monitor reviewed this policy and determined that the language in the policy does not meet the criteria established in the paragraph, which require the timely performance of routine maintenance. Furthermore, the policy refers to "Security" inspections, rather than maintenance inspections. Although the policy does mention "sanitation and emergency equipment considerations," the policy does not reference other items in holding cells such as toilets, sinks, lights or other equipment that may need maintenance.¹²³

During the review of the policy, the Monitor requested copies of the *Holding Cell Inspection Log*. This log is referenced in the policy as the document where maintenance and repair requests and responses related to holding cells equipment will be recorded. The HCCC responded to the request by stating that the DPD intends to utilize a log entitled "Weekly Holding Cell Maintenance Log," which is still under development, rather than the log referenced in the policy (*Holding Cell Inspection Log*). The HCCC indicated that the Holding Cell Areas Policy will be amended to include a reference to the proper log (*Weekly Holding Cell Maintenance Log* rather than *Holding Cell Inspection Log*) and that the policy has not yet been implemented.¹²⁴

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

Paragraph C42 – Heating and Ventilation

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

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

- C42a – Adequate Ventilation

¹²² Site assessments of all the DPD facilities that maintain holding cells and the DRH indicated that the DPD did not maintain a standardized tracking system for maintenance requests and responses; each precinct had its own methodology, and none of the precincts maintained an auditable log or form to follow these requests.

¹²³ Repair of these items is addressed in paragraph C43.

¹²⁴ On September 1, 2004, the Monitor met with the DPD regarding its evaluation of the policy and maintenance log. The HCCC indicated that it will not implement or disseminate this policy until all processes and logs referenced in the policy are finalized. Also, the Monitor is currently providing the DPD with TA in relation to the Weekly Holding Cell Maintenance Log.

- C42b – Adequate Heating

Background

The Monitor commenced its first assessment of the DPD's compliance with paragraph C42 during the quarter ending November 30, 2003. As reported in the Monitor's Report for the Quarter Ending November 30, 2003, the Monitor determined that in order to meet the requirements of this paragraph, the DPD must ensure that each facility that maintains holding cells achieves a minimum of six (6) air exchanges per hour and ensure that the temperature in the cell blocks does not drop below 64 degrees Fahrenheit.¹²⁵ In mid-February 2004, the DPD provided the Monitor with a report issued by Great Lakes Heating and Cooling, dated October 23, 2003, which indicated that following the remediation efforts undertaken by Great Lakes Heating and Cooling, the DPD had established a minimum of six air exchanges per hour in each of the facilities that maintain holding cells. The report provided details on all remediation efforts undertaken by the DPD to establish the mandated six air exchanges per hour; it also provided measurements for each cell block facility, the amount of air necessary to affect six air exchanges per hour for each cell block, and the total air handling capacity of precincts air handling equipment.

During the quarter ending May 31, 2004, the Monitor corresponded with DPD and requested additional information necessary for determining compliance with this paragraph. As of May 31, 2004, the Monitor had not received the additional information. As a result, the Monitor withheld a determination of the DPD's compliance with paragraph C42.

Current Assessment of Compliance

C42a – Adequate Ventilation

During the current quarter, the DPD submitted the additional information regarding the credentials of and testing processes used by Great Lakes Heating and Cooling, as requested by the Monitor. Based on the information provided, the Monitor is satisfied that the DPD is providing adequate ventilation in the buildings containing holding cells. Based on the Monitor's ventilation expert, there is no reason to believe that the ventilation would change without affirmative action by the DPD; however, if there is any indication during future onsite inspections that the ventilation is not functioning within the guidelines outlined in the report, the Monitor will perform additional tests.

C42b – Adequate Heating

The DPD submitted Directive 305.4, Holding Cell Areas, on June 21, 2004 to address the heating requirements of paragraph C42. The Monitor reviewed this policy and determined that it

¹²⁵ The Monitor consulted with the DHWP, the Michigan Occupational Safety and Health Administration (MIOSHA), and the Monitor's own independent expert in an attempt to identify the appropriate standards. Six air exchanges is the standard most often cited when discussing adequate ventilation.

does not adequately address the requirements of the paragraph, as it does not adequately specify acceptable temperatures. Although the policy states that holding cells should be kept at a reasonable and comfortable temperature, it directs supervisors to notify Building Maintenance if the temperature “falls outside of an acceptable range”. It also directs that detainees be transferred to another facility if the climate becomes “inhospitable”. Both of these terms should be defined in the revised policy in order to prevent potential inconsistencies in practice or violations of the requirements of the COC CJ.¹²⁶

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C42.

Recommendations

The Monitor recommends that the Holding Cell Areas Policy either reflect MIOSHA workplace standards that each facility ensure that the temperature in the cell blocks does not drop below 64 degrees Fahrenheit or the DPD should determine what the humane and acceptable temperature ranges for prisoners are by contacting other detention facilities in the area and the State of Michigan to assess best practices.

Paragraph C43 – Cell Block Repairs

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

Background

The Monitor last assessed the DPD’s compliance with paragraph C43 during the quarter ending February 29, 2004, finding the DPD in compliance. The Monitor determined that the DPD had repaired all of the malfunctioning lights, toilets and sinks (where present) in all of its operational cells and cell blocks. The Monitor also identified a number of non-operational cells throughout the precincts that had various maintenance problems. The Monitor determined that these non-operational cells were not being utilized.

Current Assessment of Compliance

During the current quarter, in order to assess the DPD’s compliance with paragraph C43, the Monitor again conducted onsite inspections of all precincts (1 through 13 and DRH.).¹²⁷ The inspections revealed that 2.2% of the total number of toilets inspected were either leaking or not

¹²⁶ On September 1, 2004, the Monitor met with the DPD regarding its evaluation of the policy. The DPD accepted the Monitor’s evaluation and recommendations and indicated that the policy would be revised.

¹²⁷ The Monitor conducted these site assessments on June 15 and 16, 2004. During the inspections, the Monitor physically checked for adequate water flow in sinks and toilets by testing the faucets and flushing the toilets. Although the Fourth Precinct was inspected, it was closed on July 7, 2004 and information from this precinct was not used in calculating compliance.

working,¹²⁸ 1.6% of the total number of sinks had water dripping,¹²⁹ and 2.3% of the total number of lighting fixtures in holding cells, including hallway fixtures that illuminate cells with no fixtures, had burned-out light bulbs.¹³⁰ Those details were provided to the HCCC.

In summary, the Monitor's inspections and visual observations of 100% of the equipment in the holding cells, revealed that the DPD met the minimum benchmark of at least 94% for the level of compliance required with this paragraph, as outlined in the Methodologies.

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

Recommendations

The Monitor recommends that the Holding Cell Areas policy be amended to include regular supervisory "maintenance inspections" of specific equipment such as toilets, sinks and lighting, rather than "security inspections" (the current language as discussed in paragraph C41), to ensure that broken equipment is repaired immediately and on an ongoing basis, as lack of immediate repairs could affect future compliance with this paragraph.

Paragraph C44 – Lighting

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

Background

The Monitor last assessed the DPD's compliance with paragraph C44 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that only one of four precincts assessed during the quarter maintained the capability of meeting the 20 foot-candle standard required by paragraph C44.

Current Assessment of Compliance

During the current quarter, the Monitor discussed the progress of lighting within the holding cells with the HCCC, who indicated that the lighting requirements will be addressed once the retrofitting of the holding cells occurs, as the lighting must be coordinated with the installation of sprinklers systems and the removal of suicide hazard issues.

¹²⁸ The non-working or leaking toilets were located in the Second, Third and Eighth Precincts. Two of the toilets that were not working are within cells that the DPD has said are not used to house prisoners due to the non-working plumbing. Although it appears that these cells are indeed not being used, paragraph C43 requires the repair of equipment in all holding cells, not just those that are currently being used.

¹²⁹ The Thirteenth Precinct had water dripping from three sinks.

¹³⁰ The Sixth and Twelfth Precincts had burned out light bulbs in some lighting fixtures within holding cells.

Although it is apparent that significant funds must be made available to the DPD to physically remediate the holding cells facilities, the Monitor continues to be concerned about the lack of lighting, as it represents a clear danger to the officers who work within these precincts and the prisoners who are detained within the holding cells.

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

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 February 29, 2004, finding the DPD in non-compliance due to the fact that it had not yet developed written instruction for providing prisoners with 24-hour access to toilets and potable water.¹³¹

Current Assessment of Compliance

During the current quarter, the Monitor conducted onsite inspections of all precincts (1 through 13 and DRH)¹³² to determine if the DPD has implemented its stated practice of having at least one detention officer present at all times in the holding cell area to ensure that prisoners have reasonable access to water and/or use of a toilet. The onsite inspections revealed that in all precincts, a detention officer was present in the holding cell area and had water and disposable drinking cups available for prisoners.

Although the COC CJ does not include a separate "policy"-related paragraph for C45, the Monitor's compliance assessment of this paragraph includes a review of a written guidance/instruction (or policy component), and its dissemination, that documents required procedures, thereby ensuring that all prisoners are provided with reasonable access to toilets and potable water 24 hours-a-day.

On June 21, 2004, the DPD submitted Directive 305.4, Holding Cell Areas, which adequately addresses the policy component of this paragraph. In its Fourth Quarter Status Report, the DPD

¹³¹ The Monitor noted that approximately fifty percent of all DPD holding cells do not have built-in toilet/sink facilities. For those precincts that did not have built-in toilets or drinking facilities within the individual cells, prisoners were required to ask a detention officer for access to a toilet or a cup of water. Questions posed to both the detention officers and prisoners at the time of the inspection, indicated that the prisoners are being provided access when requested.

¹³² The Monitor conducted these site assessments on June 15 and 16, 2004.

indicated that this policy has been drafted and approved by the Chief of Police and the BOPC. The HCCC indicated that the Holding Cell Areas Policy has not yet been disseminated or implemented. Until such time that the above policy has been disseminated and implemented, demonstrating 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, the DPD will be unable to achieve compliance with paragraph C45.

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

Paragraph C46 – Hepa-Aire Purifiers

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

Background

The Monitor last assessed the DPD's compliance with paragraph C46 during the quarter ending February 29, 2004, finding the DPD in compliance. The Monitor determined that, according to the manufacturer, the Hepa-Aire purification systems installed in a number of the DPD cell blocks were incorrectly installed. Due to health concerns, the systems needed to be either re-installed correctly or deactivated. The Monitor visually inspected the filtration systems in each precinct and determined that all Hepa-Aire filtration systems were unplugged and non-operational. The Monitor recommended that the DPD remove the Hepa-Aire filtration systems from the holding cell areas, thereby ensuring that they are not accidentally turned on. The DPD informed the Monitor that it intended to remove the filtration systems.

Current Assessment of Compliance

During the quarter, the DPD submitted receipts supporting the documented removal of all Hepa-Aire filtration systems within the precincts. The Monitor also conducted onsite inspections to confirm that all Hepa-Aire filtration systems had been removed.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C46.

VI. POLICIES CONCERNING PERSONS WITH DISABILITIES

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

The Monitor last assessed the DPD's compliance with paragraphs C47-48 during the quarter ending February 29, 2003. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

Paragraph C47 – Accommodations for Persons with Disabilities

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

Background

As reported in the Monitor's Report for the Quarter Ending February 29, 2004, the DPD designated the 5th and 6th precincts as handicapped accessible holding cell facilities. When a determination is made that a prisoner has disability and needs a handicapped accessible holding cell, the prisoner is to be transferred to the 5th or 6th precincts. The Monitor assessed both the 5th and 6th precincts and determined that the holding cell areas are accessible to prisoners with disabilities. The Monitor also intended to evaluate how the DPD identifies persons with disabilities and whether they were transported to the designated precincts in a timely manner. However, as of the end of the quarter, the Monitor had not yet completed its assessment of the DPD's compliance with the paragraph.

Current Assessment of Compliance

During the current quarter, the Monitor conducted on-site inspections of DPD precincts (1 through 13 and DRH) and interviews of at least one detention officer at each facility to determine if the 5th and 6th precincts were adequately equipped for prisoners with disabilities and if detention officers were aware of the procedures to transfer prisoners who need accommodations to either the 5th or 6th precincts. The Monitor inspected for the presence of Telecommunication Devices for the Deaf (TDD), in the 5th and 6th precincts. However no tests of those devices were performed during the current quarter. The Monitor will conduct tests of the TDD's during the next scheduled evaluation. The Monitor also queried the detention officers about their procedures re: sight impaired persons and was satisfied with the verbal responses that persons with visual impairments are also accommodated (detention officers will orally read anything that needs signature, etc.). The inspections revealed that the designated precincts (5th and 6th) have wheelchairs and other accommodations (low telephones, sinks and handicapped toilet facilities)

for prisoners with disabilities. All detention officers interviewed were aware of the procedures to transfer prisoners who need accommodations to either the 5th or 6th precincts; however, none of them were aware of the DPD Special Order “*Handicap Prisoner Housing and Procedures*”, No. 03-28, dated June 16, 2003, which was submitted by DPD to the Monitor on February 27, 2004. The Monitor also asked the detention officers what documentation could be requested by the Monitor to gather specific identifying information regarding arrestees that were conveyed to the 5th or 6th precinct due to disabilities. All detention officers interviewed stated that information regarding disabled prisoners is not tracked.

To determine whether the DPD has implemented the above procedures, the Monitor submitted a document request for a list of all arrestees sent, transferred, conveyed or otherwise housed at the 5th and 6th precincts **due to disabilities** from July 16, 2003 through July 16, 2004.¹³³ The DPD responded to that request by stating they are unable to provide the above information because they do not track disabled prisoners or the conveyance of those prisoners to the designated precincts. Although paragraph C47 does not require the tracking of disabled prisoners, the Monitor will be unable to determine compliance until the DPD can establish that all disabled arrestees are sent, transferred, conveyed or otherwise housed at the 5th and 6th precincts. The DPD has indicated that they intend to develop a method to track disabled prisoners so that future compliance assessments can be accomplished.

Based on the foregoing, the Monitor is withholding a determination of the DPD’s compliance with paragraph C47.

Paragraph C48 – Detention of Persons with Disabilities

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

Background

The Monitor last assessed the DPD’s compliance with paragraph C48 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not finalized new policies regarding the handling and detention of persons with disabilities.

Current Assessment of Compliance

The DPD and the BOPC have approved Directive 305.1, Detainee Intake/Assessment, which is meant to address the requirements of paragraph C48. However, according to the HCCC, this

¹³³ This request was made after the end of the fourth quarter on September 13, 2004.

policy has not yet been disseminated or implemented in DPD buildings that contain holding cells.¹³⁴

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

VII. FOOD SERVICE POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending May 31, 2004, finding the DPD in non-compliance with each due to deficiencies in its Food Service Policy. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2004.

VIII. PERSONAL HYGIENE POLICIES

This section of the COC CJ comprises paragraph C51 only. The Monitor last attempted to assess the DPD's compliance with this paragraph during the quarter ending May 31, 2004. The DPD submitted its Holding Cell Area Policy, which contains references to Prisoner Personal Hygiene Kits, to the Monitor and the DOJ after the end of the quarter. As a result, the Monitor did not have an opportunity to review the policy for that reporting period. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending November 30, 2004.

¹³⁴ On September 10, 2004, the Monitor received the DPD's appendices to its Fourth Quarter Status Report including the Detainee Intake/Assessment Policy (305.1) and copies of approval memoranda signed by Drs. Blessman and Gardner (dated April 4, 2003) in response to this paragraph. As this policy and accompanying documentation was received after the end of the quarter, the Monitor has not yet evaluated the documents for compliance.

IX. USE OF FORCE AND RESTRAINTS POLICIES

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

The Monitor assessed the DPD's compliance with paragraphs C52-54 for the first time during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

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

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

Background

The Monitor last assessed the DPD's compliance with paragraphs C52-54 during the quarter ending February 29, 2004, finding the DPD in non-compliance with each due to the fact that the policies that addressed the requirements of the paragraphs had not been submitted as of the end of the quarter.

Current Assessment of Compliance

The DPD developed Directive 305.4, Holding Cell Areas, which was approved by the BOPC on July 22, 2004. This policy is meant to address the requirements of a number of paragraphs, including paragraphs C52-59. The Monitor reviewed this directive and determined that it includes language that adequately addresses the requirements of paragraphs C52 and C53. However, although the directive states that "members shall not handcuff detainees to fixed objects for longer periods of time than are necessary," it does provide guidance as to what period of time is acceptable. As a result, it fails to adequately address the requirements of paragraph C54.

The Monitor provided comments and recommendations from its review of Directive 305.4 to the DPD on September 1, 2004. The DPD is currently revising the directive to address the

deficiencies identified and the Monitor's recommendations. The Monitor understands that the DPD will not be disseminating the directive to DPD personnel until these revisions have been completed. Because the directive was not disseminated as of the end of the quarter, the DPD did not comply with any of the paragraphs meant to be addressed it.

In addition to the above, as of the end of the quarter, the DPD was revising Directive 304.2, Use of Force, and Training Directive 04-07, Use of Force Reporting, which address the related use of force policies and procedures required by most of these paragraphs.

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

X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW

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

The Monitor assessed the DPD's compliance with paragraphs C55-57 for the first time during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

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

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

Background

The Monitor last assessed the DPD's compliance with paragraphs C55-57 during the quarter ending February 29, 2004, finding the DPD in non-compliance with each due to the fact that the policies that addressed the requirements of the paragraphs had not been submitted as of the end of the quarter.

Current Assessment of Compliance

The Monitor reviewed Directive 305.4¹³⁵ during the current quarter to determine whether it addresses the requirements of paragraphs C55-57. The Monitor determined that this directive includes language that adequately addresses the requirements of paragraph C55. However, the directive failed to adequately address the requirements of paragraphs C56 and C57. Furthermore, because the directive was not disseminated as of the end of the quarter, the DPD did not comply with any of the paragraphs meant to be addressed by it.¹³⁶

In addition to the above, as of the end of the quarter, the DPD was revising Directive 304.2, Use of Force, and Training Directive 04-07, Use of Force Reporting, which address the related use of force policies and procedures required by most of these paragraphs.

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

XI. EXTERNAL COMPLAINTS

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

The Monitor assessed the DPD's compliance with paragraphs C58-59 for the first time during the quarter ending February 29, 2004. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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

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

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

¹³⁵ As described in the Current Assessment of Compliance for paragraph C52-54, above, the DPD developed Directive 305.4, Holding Cell Areas, to address the requirements of a number of paragraphs, including paragraphs C52-59.

¹³⁶ Please refer to the Current Assessment of Compliance for paragraphs C52-54 for additional information regarding the status of Directive 305.4.

Background

The Monitor last assessed the DPD's compliance with paragraph C58-59 during the quarter ending February 29, 2004, finding the DPD in non-compliance with each due to the fact that the policies that addressed the requirements of the paragraphs had not been submitted as of the end of the quarter.

Current Assessment of Compliance

The Monitor reviewed Directive 305.4¹³⁷ during the current quarter to determine whether it addresses the requirements of paragraphs C58-59. The Monitor determined that this directive addresses the requirements of both paragraphs. However, because the directive was not disseminated as of the end of the quarter, the DPD did not comply with any of the paragraphs meant to be addressed by it.¹³⁸

In addition to the above, as of the end of the quarter, the DPD was revising Directive 102.6, Citizen Complaints, which is meant to address the related external complaint policies, investigations and review as required by these paragraphs.¹³⁹

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

XII. GENERAL POLICIES

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

The Monitor last assessed the DPD's compliance with paragraphs C60-61 during the quarter ending May 31, 2004, finding the DPD in non-compliance with each due to the fact that most policy and procedure addressing the requirements of the COC CJ had yet to be finalized as of the end of the quarter, and it had not yet addressed the policy and training requirements of paragraph C61.

¹³⁷ As described in the Current Assessment of Compliance for paragraph C52-55, above, the DPD developed Directive 305.4, Holding Cell Areas, to address the requirements of a number of paragraphs, including paragraphs C52-59.

¹³⁸ Please refer to the Current Assessment of Compliance for paragraphs C52-54 for additional information regarding the status of Directive 305.4.

¹³⁹ Paragraphs C58 and C59 reference Directive 102.6, Citizen Complaints Policy, which was submitted to the DOJ and the Monitor with a cover letter dated September 3, 2004. The Monitor will review this directive during the quarter ending November 30, 2004 to determine whether it adequately addresses the requirements of these paragraphs.

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

XII. MANAGEMENT AND SUPERVISION

This section of the COC CJ (paragraphs C62-72) requires the DPD to operate its holding cells in compliance with its comprehensive risk management plan and to routinely evaluate the operation of the 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 audits¹⁴⁰ that assess and report on issues affecting the safety and well-being of DPD personnel and of the prisoners in the DPD's holding cells.

The Monitor last assessed the DPD's compliance with paragraphs C66-72 during the quarter ending May 31, 2004 and with paragraphs C63 and C65 during the quarter ending February 29, 2004. During the current quarter, the Monitor assessed the DPD's compliance with paragraphs C62 and C64 for the first time, and again assessed the DPD's compliance with paragraphs C63 and C65-C72. The Monitor is currently providing TA to the members of the HCCC regarding the auditable forms and logs required by various paragraphs of the COC CJ. The results of our current assessments follow.

Paragraph C62 –Evaluation of Holding Cells

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

Background

The Monitor has not previously assessed the DPD's compliance with paragraph C62.¹⁴¹

Current Assessment of Compliance

The Monitor requested written procedures or protocols from the DPD regarding routine evaluations of the operation of the holding cells that address the requirements of paragraph C62. The DPD provided the Monitor with a draft plan, which proposed, among other things, that a "command level officer complete a standardized, specific and detailed inspection report of the conditions of the holding cells at DPD facilities." However, given that the plan was a draft, the

¹⁴⁰ This was originally a quarterly requirement, which was changed to a semi-annual requirement on October 4, 2004 via an Order from the Court amending the audit frequency requirements. 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.

¹⁴¹ The Monitor deferred its assessment of paragraph C62 during the quarter ending February 29, 2004, pending the development of additional information pertaining to the DPD's efforts to comply with its requirements.

DPD has neither developed nor implemented a plan that addresses the requirements of paragraph C62.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C62.

Paragraph C63 – Risk Management Plan

Paragraph C63 requires the DPD to operate the holding cells in compliance with the DPD's comprehensive risk management plan including implementation of:

- a. the Risk Management Database (discussed in paragraphs U79-90);
- b. the performance evaluation system (discussed in paragraph U91);
- c. the auditing protocol (discussed in paragraphs 92-99; C65-72);
- d. regular and periodic review of all DPD policies; and
- e. regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.

Background

The Monitor last assessed the DPD's compliance with paragraph C63 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that it had not yet complied with any of the requirements delineated in subparagraphs a. through e.

Current Assessment of Compliance

In order to achieve compliance with the requirements of paragraph C63, the DPD must meet the requirements and adhere to the deadlines included in the various paragraphs described in subparagraphs, a. through c., above. Because the DPD is in non-compliance with the majority of these paragraphs, it is also currently in non-compliance with subparagraphs C63 a-c.

Furthermore, the DPD has yet to develop a mechanism for conducting regular and periodic reviews of all DPD policies, as required by subparagraph d., or conduct regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability, as required by subparagraph e.

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

Paragraph C64 – Video Cameras – Holding Cells

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

- a. the installation and continuous operation of video cameras in all prisoner processing areas of DPD holding cells within one year of the effective date of the COC CJ;
- b. supervisors to review videotapes of all incidents involving injuries to a prisoner or an officer, UOF and external complaints;
- c. that the DPD retain and preserve videotapes for at least 90 days, or as long as necessary for incidents to be fully investigated; and,
- d. that the DPD conduct and document periodic random reviews of prisoner processing area camera videotapes for training and integrity purposes and conduct periodic random surveys of prisoner processing area video recording equipment to confirm that it is in proper working order.

Background

The Monitor has not previously assessed the DPD's compliance with paragraph C64.

Current Assessment of Compliance

The DPD is in the process of implementing the new digital video capture system, *Insight Digital Video System*, in the prisoner processing areas of each precinct. The 12th Precinct was chosen as the pilot precinct for this new digital video capture system. The Monitor took a preliminary look at the operation of this system on August 16, 2004, noting that the 12th precinct has operational cameras in the prisoner processing areas, and supervisors have been trained on the system and are currently using it in an oversight capacity. The Monitor's initial impression of the technology and capability of the new digital video system was quite positive.

In addition to the pilot program described above, the DPD is developing uniform written policies and procedures regarding this new digital video system, which are to include policies and procedures to comply with the requirements for paragraph C64. However, the video system and related policy were not implemented as of the end of the quarter.¹⁴²

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

¹⁴² The DPD was required to revise and augment its policy on video cameras in accordance with this paragraph cells within one year of the effective date of COC CJ, which was July 18, 2004.

Paragraphs C65 and C67-71 – Audits of Holding Cell UOF, Injuries and Misconduct Investigations; HCCC Audits of Emergency Preparedness, Medical/Mental Health, Detainee Safety Programs and Policies, Environmental Health and Safety Programs and audits of the Food Service Program

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

Paragraphs C67-71 of the amended COC CJ require the HCCC to conduct regularly scheduled semi-annual audits of emergency preparedness, medical/mental health, detainee safety programs and policies, environmental health and safety programs, and the food service program. Such audits must cover all DPD buildings that contain holding cells.

These audits were due by January 31, 2004 and August 31, 2004, and every six months thereafter.

Background

The Monitor last assessed the DPD's compliance with paragraph C65 during the quarter ending February 29, 2004, finding the DPD in non-compliance due to the fact that no audits required by this paragraph were submitted as of the end of that quarter. The Monitor similarly found the DPD in non-compliance with the requirements of paragraph C67-71 during the quarter ending May 31, 2004 because no audits were submitted by the end of that quarter.

Current Assessment of Compliance

As of August 31, 2004, the DPD had not yet submitted any of the semi-annual audits required by paragraphs C65 or C67-71 of the amended COC CJ. The DPD AT has indicated that the planning for the Misconduct Investigations Audit has just commenced and no planning has begun for the UOF or Prisoner Injuries Audits. The DPD has advised that the audits required by paragraphs C67-71 are currently in the final review and approval process.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraphs C65 and C67-71.¹⁴³

Paragraph C66 – Holding Cell Compliance Committee Responsibilities

Paragraph C66 requires the DPD to form a HCCC that is responsible for assuring compliance with the relevant provisions of the COC CJ. This paragraph also requires the HCCC to conduct

¹⁴³ The Monitor will continue to find the DPD in non-compliance for each audit in each quarter until such time as the required audits have been submitted. When such audits are submitted, the quality of such audits will be evaluated.

regularly scheduled semi-annual audits of all facilities that house holding cells to evaluate and report upon compliance with the fire detection, suppression and evacuation program as detailed in the COC CJ. The scope of such audits must include an evaluation of the smoke detectors and sprinklers, the back-up power systems, and the DPD's fire equipment and must be completed by January 31, 2004 and August 31, 2004, and every six months thereafter.

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

- C66a - HCCC to Assure Compliance with the COC CJ
- C66b - HCCC Fire Detection, Suppression & Evacuation Audits.

Background

As reported by the Monitor in the quarter ending May 31, 2004, the DPD formed a HCCC in the fall of 2003 with responsibility for assuring compliance with the relevant provisions of the COC CJ. Although the HCCC made significant progress relevant to the development of policies required by the COC CJ and completed the fieldwork and draft report for the Fire Detection, Suppression and Evacuation Audit, the final audit report had not yet been submitted to the Chief of Police and the policies had not been implemented. Accordingly, the Monitor found the DPD in non-compliance with paragraph C66a-b.

Current Assessment of Compliance

C66a - HCCC to Assure Compliance with the COC CJ

During this quarter the HCCC created and submitted numerous policies relating to and required by the COC CJ. Although the HCCC has made progress in complying with the requirements of the COC CJ, the holding cells policies have not yet been implemented and the HCCC has not yet submitted any audits.

C66b - HCCC Fire Detection, Suppression & Evacuation Audit

As of the end of the current quarter, the DPD had not submitted the Fire Detection, Suppression and Evacuation Audit required by January 31, 2004 and August 31, 2004. According to the DPD's AT, this audit is in the final stage of the review process.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C66.

Paragraph C72 – Audit Reporting Requirements

Paragraph C72 requires the results of each of the HCCC audits to be submitted via a written report to the Chief of Police and all precinct and specialized division commanders. The amended COC CJ requires such audits to be completed by January 31, 2004 and August 31, 2004 and every six months thereafter. Paragraph C74 also requires commanders to take disciplinary or non-disciplinary corrective action, when appropriate, regarding employees under their command.

Background

The Monitor last assessed the DPD's compliance with paragraph C72 during the quarter ending May 31, 2004, finding the DPD in non-compliance due to the fact that no audit reports on the conditions in the DPD's holding cells were submitted by the DPD / HCCC to the Chief of Police as of the end of that quarter.

Current Assessment of Compliance

The Audit Protocol submitted by the DPD requires draft audit reports to be submitted to the Deputy Chief of CRIB, and then to the Chief of Police for review and comment. Once the Chief of Police has approved each audit report, they must be distributed to all precinct or specialized unit commanders for appropriate action, and a copy of each audit report must be submitted to the BOPC and the Monitor.

Although the amended COC CJ required such audits to be completed by January 31, 2004 and August 31, 2004, the DPD's Fourth Quarter Status Report indicates that as of August 31, 2004, the reports on the results of the COC CJ audits were being reviewed by responsible officials, including the Chief of Police. However, no final audits were completed and issued to the Monitor as of August 31, 2004.

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

XIV. TRAINING

This section of the COC CJ (paragraphs C73-78) requires the DPD to provide all detention officers with comprehensive training, maintain individual training records, provide training in key areas such as emergency response, intake and medical protocols, safety programs, maintenance protocols, and food preparation and delivery protocols.¹⁴⁴

As noted previously in this report, on August 22, 2004, the DPD established the CRD function to develop a competency-based curriculum that includes specific learning objectives, measurable outcomes and scenario-based lesson plans. The CRD process is commanded by a police Inspector, who holds a PhD in Education. He has identified a group of in-house subject matter experts to develop curriculum under his guidance.

The Monitor assessed the DPD's compliance with paragraphs C73-78 for the first time during the quarter ending November 30, 2003. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

¹⁴⁴ Please refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

Paragraph C73 – Training of Detention Officers

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

Background

The Monitor assessed the DPD's compliance with paragraph C73 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that the Police Detention Officer (PDO) lesson plan was not finalized as of the end of the quarter.

Current Assessment of Compliance

The DPD's Training Bureau has conducted a national best practices review of custodial detention training. The Monitor has submitted to CRIB a document request for the relevant documents.

As mentioned above, the DPD established the CRD function to facilitate the development of curriculum, lesson plans, and in-service training programs. However, comprehensive pre-service and in-service training had not been developed as of the end of the quarter.¹⁴⁵

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C73.

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 assessed the DPD's compliance with paragraph C74 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that, among other issues, training on the Michigan Identification Training Number (MITN) system was not complete as of the end of the quarter.¹⁴⁶

¹⁴⁵ The training curricula cannot effectively be developed prior to the development of the underlying policies.

¹⁴⁶ As described in the Monitor's Report for the Quarter Ending November 30, 2004, the Michigan Commission on Law Enforcement Standards (MCOLES) has provided its database system to the DPD. The Monitor understands that this statewide automated training tracking system will be utilized by the DPD to meet the requirements of paragraph C74.

Current Assessment of Compliance

According to the DPD, all training for sworn officers, including detention officers, will be tracked utilizing the MCOLES database. The Training Division has developed and disseminated a training “sign-in” roster which includes a unique MITN for each trainee. The Training Division is entering this information into the MCOLES database, where pre-service and in-service training completed is retained in individual training records for all detention officers.¹⁴⁷

In addition, training records are being added to the CRISNET system, which allows tracking of civilian training.

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

Paragraph C75 – Emergency Preparedness Training

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

- 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.

Background

The Monitor assessed the DPD’s compliance with paragraph C75 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that the PDO lesson plan, which was to include includes the emergency preparedness topics required by paragraph C75, was not finalized as of the end of the quarter.

Current Assessment of Compliance

As mentioned above, the DPD established the CRD function to facilitate the development of curriculum, lesson plans, and in-service training programs. However, as the DPD’s emergency

¹⁴⁷ With a cover letter dated September 13, 2004, the DPD submitted additional materials on the MITN system and the DPD’s training records. As this information was submitted after the end of the quarter; the Monitor will report on this material, as it relates to compliance with paragraph C74, during the quarter ending November 30, 2004, although the next scheduled assessment of compliance with this paragraph is the quarter ending August 31, 2005. The corresponding UOF CJ paragraph U108 will be assessed during the quarter ending November 30, 2004.

preparedness program has not yet been fully developed or implemented,¹⁴⁸ its emergency preparedness training cannot yet be developed.

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

Paragraph C76 – Medical/Mental Health Screening Program Training

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

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

Background

The Monitor assessed the DPD's compliance with paragraph C76 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that the PDO lesson plan, which was to include a curriculum on medical and mental health training, was not finalized as of the end of the quarter.

Current Assessment of Compliance

As mentioned above, the DPD established the CRD function to facilitate the development of curriculum, lesson plans, and in-service training programs. However, as the DPD's medical/mental health screening program has not yet been fully developed or implemented,¹⁴⁹ its medical/mental health screening program training cannot yet be developed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C76.

¹⁴⁸ This program is subject to DOJ approval.

¹⁴⁹ This program is subject to DOJ approval.

Paragraph C77 – Detainee Safety Training

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.

Background

The Monitor assessed the DPD's compliance with paragraph C77 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that the lesson plans for this training were not finalized as of the end of the quarter.

Current Assessment of Compliance

As mentioned above, the DPD established the CRD function to facilitate the development of curriculum, lesson plans, and in-service training programs. However, as the DPD's prisoner safety policies under paragraphs C35-38 have not yet been fully developed or implemented, its prisoner safety training cannot yet be developed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C77.

Paragraph C78 – Environmental Health and Hygiene Training

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 assessed the DPD's compliance with paragraph C78 for the first time during the quarter ending November 30, 2003, finding the DPD in non-compliance due to the fact that the PDO lesson plan, which was to contain the DPD's protocols for the storage, handling and distribution of prisoner meals and maintenance of refrigerators, was not finalized as of the end of the quarter.

Current Assessment of Compliance

As mentioned above, the DPD established the CRD function to facilitate the development of curriculum, lesson plans, and in-service training programs. However, as the majority of the DPD's environmental health and safety and hygiene programs and policies have not yet been fully developed and/or implemented, its environmental health and hygiene training cannot yet be developed.

Based on the foregoing, the Monitor finds the DPD in non-compliance with paragraph C78.

XV. MONITORING AND REPORTING

Paragraph C94 is the only paragraph in this section of the COC CJ for which the Monitor will be assessing compliance. This paragraph requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. As reported in its Report for the Quarter Ending May 31, 2004, the Monitor had not yet reviewed investigations under paragraph C94 since the DPD had not yet revised the majority of the policies and investigatory procedures under the CJs. The Monitor is scheduled to again review DPD activity in connection with paragraph C94 during the quarter ending November 30, 2004.

CONCLUSION

The Monitor can once again proclaim, as in the last quarter, that this quarter marks the most significant progress that the City and the DPD have made thus far in the area of policy development. The City and the DPD approved a significant number of policies and training directives during this quarter. The Monitor is encouraged by this demonstration of progress. The DPD is now in the process of disseminating, implementing and developing training on these policies. In some instances additional revisions to the policies must also be made. The City and the DPD have also received technical assistance and recommendations from the DOJ and the Monitor that will assist in the development of additional policies and related logs and forms. Although these efforts may not yet equal substantial compliance, they certainly demonstrate forward movement. At the same time, the quarter also marks the end of the first year since the Consent Judgments were entered in the U.S. District Court for the Eastern District of Michigan. This is particularly significant because all paragraphs of the two-year COC CJ must be in substantial compliance for one year before it will end. At this point, the City and the DPD must decide how they are going to achieve compliance with the COC CJ, which is tied to deciding how physical remediation of the holding cells will be accomplished.

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Independent Monitor

October 18, 2004

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APPENDIX A:**Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor for the DPD**

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

ACRONYM	DEFINITION
A&D	Arrest and Detention
AG	Audit Group
AT	Audit Team
BOPC	Board of Police Commissioners
CALEA	Commission on Accreditation for Law Enforcement Agencies
CCR	Citizen Complaint Report
CI	Chief Investigator
CLBR	Command Level Board of Review
CLFRT	Command Level Force Review Team
CLO	Compliance Liaison Officer
CMMHSP	Comprehensive Medical and Mental Health Screening Program
COC CJ	Conditions of Confinement Consent Judgment
CRIB	Civil Rights Integrity Bureau
CSU	Communications Systems Unit
DAS	Disciplinary Administration Section
DDOH	Detroit Department of Health

DFD	Detroit Fire Department
DHWP	Detroit Health and Wellness Promotion
DOJ	Department of Justice
DPD	Detroit Police Department
DRH	Detroit Receiving Hospital
ECD	Emergency Communications Division
FIS	Force Investigation Section
GAS	Government Auditing Standards
HCCC	Holding Cell Compliance Committee
IAD	Internal Affairs Division
MCOLES	Michigan Commission on Law Enforcement Standards
MIOSHA	Michigan Occupational Safety and Health Administration
MITN	Michigan Information and Tracking System
OCI	Office of the Chief Investigator
OIC	Officer in Charge
PAB	Professional Accountability Bureau
PCR	Preliminary Complaint Report
PDO	Police Detention Officer
PSA	Public Service Announcement
RFP	Request for Proposals
RMB	Risk Management Bureau



Office of the Independent Monitor
of the Detroit Police Department

REPORT OF THE INDEPENDENT MONITOR
FOR THE QUARTER ENDING AUGUST 31, 2004
ISSUED OCTOBER 18, 2004

RMG	Risk Management Group
SMT	Senior Management Team
SOP	Standard Operating Procedures
USAO	United States Attorney's Office
UOF	Use of Force <i>or</i> Uses of Force
UOF CJ	Use of Force and Arrest and Witness Detention Consent Judgment
WIQD	Witness Identification and Questioning Documentation