

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiffs,

v.

Case No. 03-CV-72258
HONORABLE JULIAN ABELE COOK

CITY OF DETROIT,

Defendant.

_____ /

FOURTH QUARTERLY REPORT OF THE NEW INDEPENDENT MONITOR FOR THE
DETROIT POLICE DEPARTMENT ISSUED OCTOBER 15, 2010

Fourth Quarterly Report
of the
Independent Monitor
for the
Detroit Police Department



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October 15, 2010



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SECTION ONE: INTRODUCTION

This is the fourth quarterly report of the Monitoring Team in the case of United States of America v. City of Detroit (Case no. 03-72258). The report is based on our site visit of July 19, through July 23, 2010, and our subsequent analyses of relevant data. As with our previous reports, we assess compliance with all 175 of the requirements of the combined Use of Force (110 requirements) and Conditions of Confinement (65 requirements) Consent Judgments.

Based on our review of the Use of Force requirements, the Department is in Phase 1 compliance with 108 (98%) of the 110 requirements. This is an improvement by one requirement from the last report. We found the Department in Phase 1 and Phase 2 compliance (full compliance) with 68 (62%) of the 110 requirements, up from 49% during the third reporting period.

Based on our review of the Conditions of Confinement requirements, the Department is in Phase 1 compliance with all 65 (100%) of the requirements, up from 95% during the third reporting period. We found the Department in Phase 1 and Phase 2 compliance (full compliance) with 33 (51%) of the 65 requirements. That is a decline of two requirements from the third reporting period, when the Department was in full compliance with 53% of the COC paragraphs.

Overall, for this report we have concluded that the Detroit Police Department is in Phase 1 compliance with 173 (99% and unchanged) of the 175 monitored requirements. We found the Department to be in full compliance (that is, both Phase 1 and Phase 2 compliance) with 101 (58%) of the 175 monitored requirements of the applicable paragraphs of both Consent Judgments, up from 51% during our third reporting period. We also found the Department to be in pending Phase 2 compliance with an additional three requirements. One finding (U123) is deferred. As noted previously, we continue to observe the Department's improvement in compliance levels across our visits.

Executive Summary

This is our fourth quarterly report in the case of United States of America v. City of Detroit (Case no. 03-72258). The report is based on our site visit, which took place from July 19, through July 23, 2010, and our subsequent analyses of relevant data. Consistent with the practice we established in our first review, we continue to consider the totality of the requirements of both active Consent Judgments. This includes 110 requirements in the Use of Force Judgment, and an additional 65 requirements in the Conditions of Confinement Judgment. In this executive summary, I will review the levels of compliance found for the quarter and highlight what the Monitoring Team believes are some of the more significant findings, trends, patterns, and concerns that arose as a result of our evaluation.

During our fourth quarterly site visit, we continued our processes of review, including data collection and analysis, and interviews with key members of the Detroit Police Department. We appreciate the assistance of personnel throughout the Department as we work to complete our mission. We are especially grateful to the DPD Civil Rights Integrity Bureau (CRIB) for its diligence as our requests grow in volume and complexity, and as we spend increasing time conducting onsite observations and inspections in the field.

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The majority of this document is dedicated to the reporting of the assessment of compliance with the requirements of the Consent Judgments. Based on our review of the Use of Force requirements, the Department is in Phase 1 compliance with a total of 108 (98%) of the 110 requirements. This is an increase of one requirement found in compliance since the last report, although we found some shifts in compliance levels across other requirements, and we will discuss them below. We found the Department in Phase 1 and Phase 2 compliance (full compliance) with 68 (62%) of the 110 requirements, up from 49% during our second reporting period.

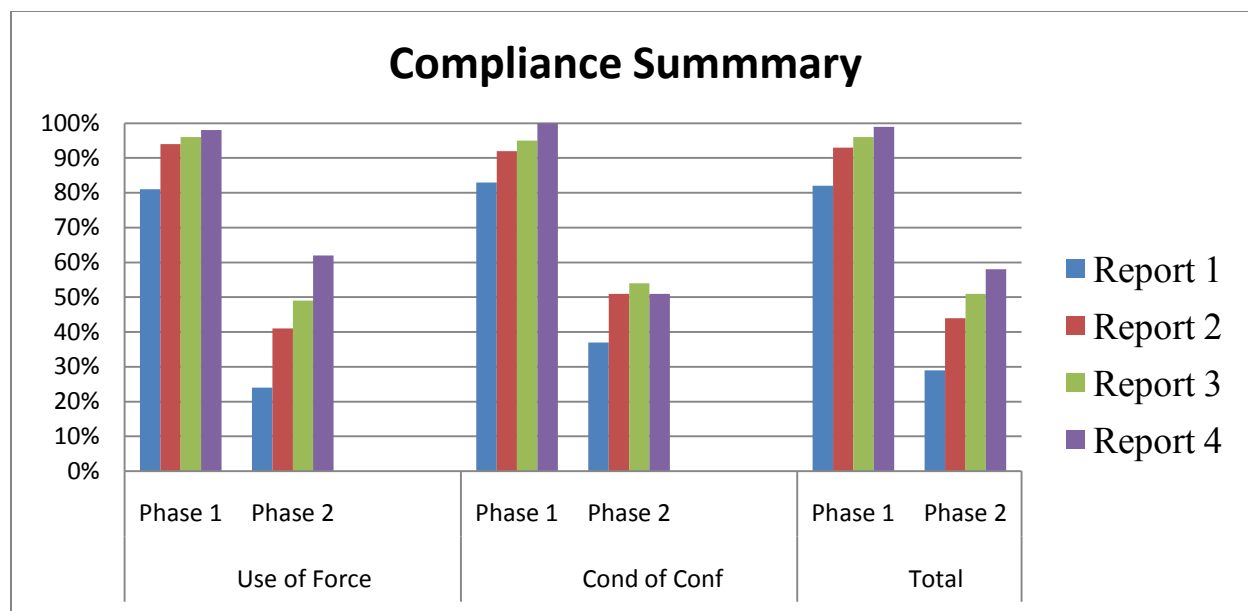
Based on our review of the Conditions of Confinement requirements, the Department is in Phase 1 compliance with all (100%) of the 65 requirements, up from 95% during the third reporting period. We found the Department in Phase 1 and Phase 2 compliance (full compliance) with 33 (51%) of the 65 requirements. This is two requirements lower than our last report and a matter that should not be taken lightly. These figures are reported in the table below.

	Fourth Quarterly Report Summary					
	Use of Force		Cond of Conf		Total	
	Phase 1	Phase 2	Phase 1	Phase 2	Phase 1	Phase 2
Paragraph Numbers	14-123		14-78			
Number of Requirements	110	110	65	65	175	175
Pending Compliance	0	3	0	0	0	3
Not in Compliance	2	38	0	32	3	70
Deferred	0	1	0	0	0	1
In Compliance	108	68	65	33	173	101
Percent in Compliance	98%	62%	100%	51%	99%	58%

Overall, the DPD is in Phase 1 compliance with 173 (99%) of the 175 monitored requirements. This is an improvement by four requirements from the previous quarter. We found the Department to be in full compliance (that is, both Phase 1 and Phase 2 compliance) with 101 (58%) of the 175 monitored requirements of the applicable paragraphs of both Consent Judgments, up from 51% during the third reporting period. We also found the Department to be in pending Phase 2 compliance with an additional three requirements, or 2% of the total; these requirements include U40 (review of critical firearm discharges), U100 (video camera repair/replacement), and U107 (coordinated training policy). The chart below illustrates the levels of compliance achieved on both Judgments and across all four reporting periods.

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As the chart above shows, we have reported increases in compliance with each visit and in almost all categories. For this, our fourth visit, however, we see a small decline in compliance status in one category. That is for the Phase 2 compliance with the Conditions of Confinement category, which fell from 54% to 51%.

These overall charts, however, may benefit from a more detailed discussion. As seen below, in all, 19 advanced in the desirable direction. Five showed movement away from compliance.

Summary of Forward Movement Quarter 3 to Quarter 4			
	Requirements	Phase 2 last vist	Phase 2 – Current status
U of F 74	Enforce misconduct reporting requirements	Not in Compliance	In Compliance
76	Revise prisoner-related policies	Pending	In Compliance
77	Develop foot pursuit policy	Not in Compliance	In Compliance
76	Revise prisoner-related policies	Pending	In Compliance
77	Develop foot pursuit policy	Not in Compliance	In Compliance
107	DPD will meet state training standards	Not In Compliance	Pending Compliance
111	Distribute and training on the agreement	Not In Compliance	In Compliance
112	Annual use of force training required	Not In Compliance	In Compliance
114	Annual arrest, citizen interaction training	Not In Compliance	In Compliance
115	Annual training on custodial detention	Not In Compliance	In Compliance
116	Prohibition of arraignment delays	Not In Compliance	In Compliance
117	Material witness custody	Not In Compliance	In Compliance
118	Supervisory training-report evaluation	Not In Compliance	In Compliance
119	Supervisory training-leadership	Not In Compliance	In Compliance
120	Supervisory training-risk management	Not In Compliance	In Compliance
121	Investigator training-procedures	Not In Compliance	In Compliance
122	Supervisory training-external complaints	Not In Compliance	In Compliance
123	Enhance the FTO program	Not In Compliance	Deferred
COC 36	Prisoner security screening program	Not In Compliance	In Compliance
63	Operate cells in compliance with risk plan (phase 1)	Not In Compliance	In Compliance

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Summary of Reverse Movements Quarter 3 to Quarter 4			
	Requirements	Phase 2 last visit	Phase 2 – Current status
UofF 53	Documentation of all holds	In Compliance	Not in Compliance
25	Implementation of key control policies	In Compliance	Not in Compliance
47	Reasonable accommodation for disabled	In Compliance	Not in Compliance
48	Detention of persons with disabilities	In Compliance	Not in Compliance

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

Quarterly Report			Percent in Compliance			
	Use of Force		Cond of Conf		Total	
	Phase 1	Phase 2	Phase 1	Phase 2	Phase 1	Phase 2
Report 1	81%	24%	83%	37%	82%	29%
Report 2	94%	41%	92%	51%	93%	44%
Report 3	96%	49%	95%	54%	96%	51%
Report 4	98%	62%	100%	51%	99%	58%

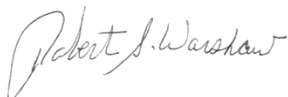
While we have observed the Department's improvement in compliance levels across our four site visits, we also find reason to be concerned about potential missteps away from compliance and, of course, we remain mindful that this is the seventh year of this undertaking. The Department's work towards excellence cannot be abated by complacency. The resolve of the Mayor, Deputy Mayor, new Chief of Police, and his command staff are the essential catalysts for organizational change within the Detroit Police Department.

In this report, as with our previous reports, we considered the compliance status of each of the requirements laid out in the Consent Judgments. We provided our assessments of compliance levels and the justifications for our findings. We also highlighted issues that we considered to be critical to the continued progress of the Department, especially in areas that we believe are of substantial seriousness and importance to the DPD's efforts to achieve compliance. Further, the Court's interest and concern in both the MAS system and the backlog of investigations in the Office of the Chief Investigator is noteworthy. Our hope is that DPD will heed these concerns, and remove barriers that thwart its compliance progress.

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This will complete my first full year as Monitor in this important project. The progress that the Department has made in the past twelve months has been statistically significant but equally delinquent when compared with the seven year duration of these judgments. Nonetheless, the City's amenability to technical assistance and its willingness to move forward with an enthusiastic resolve have proven important in its overall standing.



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

III. USE OF FORCE POLICY

This section of the Consent Judgment, containing paragraphs U-14 through U-26, requires that the DPD review and revise its general use of force, firearms, and chemical spray policies; select an intermediate impact device and develop guidelines on its use; and provide appropriate training relating to the use of force. To determine compliance with this section's various requirements, we verify that the DPD has both developed the required policy and effectively implemented the policy, including providing any necessary and appropriate training.

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

To assess implementation of these policies for this and our previous reporting periods, we visited police districts, precincts, and other commands; met and discussed operational activities with command, supervisory, and training staff; observed training classes; reviewed arrest, use of force, and related police reports; and reviewed investigations of force, detainee injuries, and allegations of force. As previously reported, we find that the DPD needs to strengthen its command staff review and oversight of the uses of force.

In previously reports, we noted that our review of historical data indicated the probable underreporting of uses of force.¹ We also acknowledged the DPD initiatives to address this issue, including stringent reviews of Crisnet arrest reports and requiring a declarative statement by officers regarding whether or not they used force. However, during this reporting period, we noted a 23% reduction in use of force reports from the previous reporting period, which indicates a need for continued review to determine whether this reduction is due to a decrease in the uses of force or merely a decrease in the reporting of uses of force.

Similar to our findings in previous reporting periods, our review of use of force reports and Force Investigations for this reporting period indicated that officers were making efforts to de-escalate encounters where force was considered or deemed necessary, but that the reports continued to lack specificity, and most were silent on disengagement details. We find it

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

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encouraging however, that there were several instances where officers made arrests in difficult situations without relying on the use of force.

In our prior reports, we also noted that while a significant number of officers completed the required firearm training, a significant number also failed to report for, or successfully complete, required firearms training. As a result of measures taken by the DPD, including enforcement of its policy to remove firearms and police authority from officers who fail to qualify, we found considerable improvement.

During previous reporting periods, we also reviewed documentation for three events wherein officers fired at moving vehicles. The investigations conducted by Force Investigations (FI) appropriately determined the officers' conduct to be inconsistent with policy, and recommended referral for corrective action in two cases. However, in the third case, while FI noted a deviation from policy, it cited exigent circumstances and found the officer's firing at the moving vehicle reasonable. We agreed that the use of deadly force was reasonable and that exigent circumstances were present in this case; however, we found the policy to be absolute with no exceptions for exigencies, and therefore did not concur with FI's finding. We suggested that the DPD review its policy to either affirm or modify the absolute prohibition of firing at moving vehicles. The DPD is reviewing this recommendation.

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

The DPD selected the PR-24 collapsible baton as its impact device and has provided training on its use to 99% of its personnel during this fiscal year. There were no strikes to the head noted during this quarter.

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

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

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A. General Use of Force Policy

CJ Requirement U14

The DPD shall revise its use of force policies to define force as that term is defined in this Agreement.

Comments:

To assess compliance with these requirements, we met with DPD staff, observed operational activities, and reviewed applicable DPD directives and completed investigations of the use of force. In our previous reports, we noted our review of applicable DPD directives found that they defined force consistent with the Phase 1 compliance requirements of this paragraph.² We also noted that our review of historical use of force data indicated the probable underreporting of uses of force; this precluded our finding the DPD in Phase 2 compliance.³ In our more recent reports, we acknowledged the efforts of DPD to identify problems and initiate appropriate modifications to the Department's reporting process, including stringent reviews of Crisnet arrest reports and the inclusion of a declarative statement by officers regarding whether or not they used force.

In addition, the DPD implemented bi-weekly meetings that are attended by all DPD executives. These meetings focus on findings of the Inspection Section and the corrective actions taken in response to the findings. The commanders and inspectors report on whether each identified finding was due to an employee's failure to comply with policy and, if so, what disciplinary action has been, or is being, taken against the member.

These efforts resulted in a 34% increase of use of force reports during the prior reporting period and in our judgment a Phase 2 compliant finding; however during this reporting period the number decreased from 370 to 300 (23%). We are unable to definitively determine whether this change is due to an actual decrease in uses of force or merely a decrease in the reporting of uses of force; therefore we are concerned that oversight of the reporting process may not be sufficiently robust to ensure complete and consistent reporting of all uses of force.

We acknowledge without reservation the right and necessity for police officers to appropriately use force from time to time to effect arrests and/or to protect citizens and themselves from bodily harm; however we are also mindful that the use of force by a police officer is a serious act that must be engaged in with restraint and reported in detail. DPD remains in Phase 2 compliance at this time, however, we will require assurances and evidence that continued reductions in reported uses of force are not due to reporting deficiencies in order for the DPD to remain compliant with the requirements of this paragraph as well as paragraphs U15-17 and 19.

² DPD Directive 304.2, Use of Force, effective June 27, 2005, defines the following actions by an officer as force; "any physical strike or instrumental contact with a person; any intentional attempted physical strike or instrumental contact that does not take effect; or any significant physical contact that restricts the movement of a person. The term includes the discharge of firearms; the use of chemical spray, choke holds or hard hands; the taking of a subject to the ground; or the deployment of a canine. The term does not include escorting or handcuffing a person, with no or minimal resistance. Use of force is lawful if it is objectively reasonable under the circumstances and the minimum amount of force necessary to affect an arrest or protect the officer or other person is used."

³ DPD data indicates 1,200 uses of force, detainee injuries, and allegations of force in year 2007. These records were manually maintained at that time. DPD reports that this recordkeeping was automated in August, 2008. Our review indicated that there were 568 such incidents from November, 2008, through October, 2009.

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Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U15:

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

- a. identifies when and in what manner the use of lethal and less than lethal force are permitted;*
- b. relates the force options available to officers to the types of conduct by individuals that would justify the use of such force; and*
- c. states that de-escalation, disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements or calling in specialized units are often the appropriate response to a situation.*

Comments:

To assess compliance with this Consent Judgment paragraph, we previously reviewed applicable DPD directive(s) and found that force was defined consistent with Phase 1 compliance requirements of this paragraph.⁴⁵ We also reviewed use of force reports and found they lacked sufficient documentation or specificity with regards to de-escalation and details of actual disengagement to make a definitive determination regarding Phase 2 compliance.⁶

To assess compliance for this reporting period, we verified the existence of applicable policy and again reviewed reports to determine the extent to which policy requirements noted here are reflected in practice. We verified that the use of force reports justified the uses any of force under the policy, described the conduct of individuals against whom force was used, and described the efforts at de-escalation or avoidance that the officers employed. We found that in 94% of the 179 use of force reports (UF002) we reviewed, officers attempted to de-escalate their encounters with verbal commands prior to resorting to force. However, again, the reports lacked sufficient documentation or specificity with regards to de-escalation efforts and any details of actual disengagement.

⁴ DPD Directive 304.2, Use of Force, effective June 27, 2005, defines the following actions by an officer as force: “any physical strike or instrumental contact with a person; any intentional attempted physical strike or instrumental contact that does not take effect; or any significant physical contact that restricts the movement of a person. The term includes the discharge of firearms; the use of chemical spray, choke holds or hard hands; the taking of a subject to the ground; or the deployment of a canine. The term does not include escorting or handcuffing a person, with no or minimal resistance. Use of force is lawful if it is objectively reasonable under the circumstances and the minimum amount of force necessary to affect an arrest or protect the officer or other person is used.”

⁵ DPD Directive 304.2 Use of Force, effective June 27, 2005, Section 5.2 and DPD Training Directive 04-3, Use of Force Continuum, effective May 5, 2005, sets forth the requirements of this paragraph.

⁶ Report of the Independent Monitor, issued July 15, 2010.

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As in the past, we also reviewed Disorderly Conduct, Resisting a Police Officer, Obstruction, and Assault on Police Officer reports to verify that any use of force was appropriately reported and to gauge officers' efforts to de-escalate and disengage from potential use of force situations.⁷ While we were once again encouraged to find officers making arrests in difficult situations without relying on force, the reports do not yet meet the >94% standard required in the Judgment. DPD is making progress towards that end.⁸

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U16

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

Comments:

In our previous reports, we found the applicable DPD directive(s) defined force consistent with the Phase 1 compliance requirements of this paragraph.⁹ The DPD remains in Phase 1 compliance.

During the first three reporting periods, our reviews of use of force reports (UF002) found that officers used verbal commands and provided an opportunity for subjects to submit to arrests prior to a use of force at a rate of 93, 95 and 96% respectively.¹⁰

To assess compliance for this reporting period, we reviewed 179 use of force reports and found that 177 (98%) included verbal commands and an opportunity to submit to arrest prior to the use of force or a reason why the verbal command was not given.¹¹

⁷ This number includes 110 in April, 132 in May, and 144 in June.

⁸ In 78 of the 386 cases of Disorderly Conduct, Resisting a Police Officer, Obstruction, and Assault on Police Officer reports we reviewed, force was used and a corresponding report was prepared; in 17 of the cases, force was used and a corresponding report was not prepared. That leaves 291 cases, or 75% of the total, in which arrests of individuals in stressful situations were made with no force used. CRIB sent Corrective Action Memo (CAM) reports on these 17 cases to the respective commands for corrective action.

⁹ DPD Directive 304.2, Use of Force, effective June 27, 2005, Section 5.2, and Training Directive 04-3, Use of Force Continuum, effective May 5, 2005, set forth the requirements of this Consent Judgment paragraph.

¹⁰ Quarterly reports of the Independent Monitor issued January 15, April 15, and July 15, 2010.

¹¹ There were 12 cases during which verbal commands were not given. Seven were K-9 cases with no contacts/apprehensions, three were forms from the same incident in which the subjects' aggressiveness precluded time for the warning, and two were cases were from incidents in which a warning could have been given but was not.

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We find DPD in Phase 2 compliance with the requirements of this Consent Judgment paragraph.¹²

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U17

The use of force policy shall prohibit the use of choke holds and similar carotid holds except where deadly force is authorized.

Comments:

In our previous reports, we noted that the DPD implemented a directive consistent with the Phase 1 compliance requirements of this paragraph.¹³ The DPD remains in Phase 1 compliance with this paragraph.

Our previous reports also noted our review of use of force reports and investigations found one case in which a choke hold may have been applied during a struggle in an effort to force a subject to release a choke hold he had on an officer. The UF002a did not indicate this case was treated as a deadly force case. However, while the cases we reviewed were indicative of implementation compliance with this Consent Judgment paragraph, we withheld this finding until there was a resolution to the underreporting concerns outlined in the U14 section, above.

To assess compliance for this reporting period, we reviewed 179 use of force reports, 97 completed supervisory investigation reports (SIRs), and 10 completed FI investigations.¹⁴ There were no reported uses of a choke hold in any of the cases reviewed.

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

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¹² We previously noted that our concern regarding the extent to which incidents consistent with the required definition of force were not reported has been minimized with the provision of 370 use of force reports for the third quarter report sample. The fourth quarter number has dropped to 300; consequently, we will continue to monitor the number of force reports submitted to insure we have not returned to an underreporting of force cases.

¹³ DPD Directive 304.2, Use of Force, effective June 27, 2005, Section 4.3, prohibits the use of the described holds.

¹⁴ Many of the command-level investigations contained multiple uses of force forms, and three additional cases were subsequently assumed by Force Investigations.

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CJ Requirement U18

The DPD shall develop a revised use of force policy within three months of the effective date of this Agreement. The policy shall be submitted for review and approval of the DOJ. The DPD shall implement the revised use of force policy within three months of the review and approval of the DOJ.

Comments:

In our previous reports, we noted that the DPD issued, and DOJ approved, an appropriate directive for Phase 1 compliance with this requirement.¹⁵ Phase 2 compliance will rely on the effective field implementation of the requirements contained in paragraphs U14-17 and U19. We have found the DPD in Phase 2 compliance with U14, U16, U17, and U19, but not in compliance with U15. Accordingly, the DPD is not in Phase 2 compliance with the requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U19

The use of force policy shall provide that a strike to the head with an instrument constitutes a use of deadly force.

Comments:

In our three previous reports, we noted that the DPD implemented a directive consistent with the Phase 1 compliance requirements of this paragraph.¹⁶ Our review of use of force reports and FI-completed cases for the first three reporting periods noted one instance of an *accidental* strike to the face with a PR-24 collapsible baton.

To assess compliance with these requirements for this reporting period, we reviewed 179 use of force reports and 10 completed FI cases. We found no instances of a strike to the head documented in any of the reports. DPD is in compliance with the requirements of this paragraph.

¹⁵ DPD Directive 304.2, Use of Force, effective June 27, 2005, and approved by DOJ, April 14, 2005, is in compliance with this requirement.

¹⁶ DPD Directive 304.2, Use of Force, effective June 27, 2005, Section 4.2.4, provides that “a strike to the head of any person with an instrument constitutes a use of deadly force.”

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Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

B. Use of Firearms Policy

CJ Requirement U20

The DPD shall revise its use of firearms policies to provide that officers must successfully qualify with their department-issued firearm and any other firearm they are authorized to use or carry on-duty on a bi-annual basis, as described in paragraph 113.

Comments:

In our previous reports, we observed that DPD implemented a directive consistent with the Phase 1 compliance requirements of this paragraph.¹⁷

While a significant number of officers completed the required firearm training, a significant number also failed to report for required training.

Training data for 2009 was not available for review due to apparent automation issues. Accordingly, we were unable to find the DPD in compliance with these requirements.

Training data for the period July 1, through December 31, 2009 revealed that the DPD trained 2,755 (99%) of its 2,781 officers; therefore, the Department was in full compliance with these requirements for that reporting period.

As of June 30, 2010, 2,879 Department members at the rank of lieutenant or below were on the DPD roster for Fiscal Year 2010. Of those Department members, 130 were serving in limited duty status and were not available to receive training, leaving 2,749 members available to receive training. During the first six months of Fiscal Year 2010, 99% of DPD officers who were available to be trained attended firearms training and qualified with their Department-issued firearm. During the second six-month period, 2,713 (99%) of the 2,749 officers who were available to be trained also attended firearms training and qualified. Of the 36 who did not qualify, 19 were already serving in “no gun” status in which they were not assigned to handle duties requiring police powers. The remaining 17 officers failed to show up for firearms training and qualification, or failed to qualify, and were placed in “no gun” status until they attended firearms training and qualified.

DPD remains in Phase 2 compliance with U20.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¹⁷ DPD Directive 304.1, Firearms, effective May 25, 2005, Section 8.1, provides that “All members are required to train and qualify with their primary on duty firearm and any other on duty or off duty DPD issued or approved firearm bi-annually.”

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CJ Requirement U21

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

Comments:

In our previous reports, we noted that the DPD implemented a directive consistent with Phase 1 compliance requirements of this paragraph.¹⁸ In our last report, we noted that our review of applicable training documentation found that the DPD had implemented the policy of removing firearms and police authority from officers who fail to qualify, as required. The officers who failed to qualify during their initial shoots were all re-qualified at a later time.

As noted in U20, 17 officers failed to attend training and/or qualify. Five of these officers subsequently qualified; 12 did not and were placed in “no gun” status.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U22

The firearm policy shall prohibit firing at or from a moving vehicle. The policy shall also prohibit officers from intentionally placing themselves in the path of a moving vehicle.

Comments:

In our three previous reports, we noted that the DPD implemented a directive consistent with the Phase 1 compliance requirements of this paragraph.¹⁹ The DPD remains in Phase 1 compliance. Our review of use of force reports (UF002) and completed FI cases for the applicable reporting periods found three instances where officers fired at moving vehicles, one of which we determined to be problematic from a policy perspective. FI conducted a thorough investigation of the event and concluded that the officer’s firing at a moving vehicle was reasonable. Investigators and reviewers appropriately noted the firing at a moving vehicle was a deviation from DPD policy, but cited the presence of exigent circumstances. We agreed that, under such exigent circumstances, the use of deadly force was reasonable. However, we found the policy to be absolute with no exceptions for exigencies; therefore, we did not concur with the finding. We recommended that the DPD review its policy to either affirm or modify the absolute prohibition of firing at moving vehicles. The DPD has initiated its review of this recommendation.

¹⁸ DPD Directive 304.1, Firearms, effective May 25, 2005, Section 8.1, provides that “All members that fail to qualify with their duty weapon shall relinquish their DPD issued firearms and be relieved of their police powers.”

¹⁹ DPD Directive 304.1, Firearms, effective May 2, 2005, Section 5.3, provides that “Firing at, or from a moving vehicle is prohibited...Moreover, officers shall not intentionally place themselves in the path of a moving vehicle.”

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Our review of 179 use of force reports, 97 SIRs, and 10 FI investigations for this reporting period found no instances in which officers fired at or from a moving vehicle, nor any cases in which an officer intentionally placed him/herself in front of a moving vehicle; however the DPD must address the policy relating to the firing at moving vehicles discussed above to achieve full compliance with this paragraph. The Monitor expected that the DPD would address this issue for inclusion in this report; however, it remains under DPD review.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U23:

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

Comments:

In our previous report, we noted that the DPD implemented a directive consistent with the Phase 1 compliance requirements of this paragraph.²⁰

We found officers to be carrying authorized weapons and ammunition in each case.

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

To assess compliance for this requirement, we reviewed the DPD 27th Quarter Status Report, dated June 30, 2010; met with staff regarding the firearms training and transition to the new weapon; reviewed training data; and observed use of force training.

Our review of training data verified that 2,713 (99%) of the 2,749 officers available to be trained attended firearms training and qualified with their firearms, which means that the same number have had their weapons and ammunition inspected and replaced. Accordingly, we find the DPD in compliance with these requirements.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

²⁰ DPD Directive 304.1, Firearms, effective May 25, 2005, Section 4, effective May 2, 2005, complies with the requirements of this paragraph.

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C. Intermediate Force Device Policy

CJ Requirement U24

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

Comments:

In our three previous reports, we noted that the DPD implemented a directive consistent with the Phase 1 compliance requirements of this paragraph. This continues to be the case.²¹

In our second report, we noted that the DPD provided PR-24 training to 45% of its eligible personnel; in our third report, we noted that the DPD provided this training to 70% of its eligible personnel.

Our review of 194 use of force reports and 17 FI Investigations found two instances of use of the PR-24. In both instances, the use of the PR-24 was consistent with the training provided.

Our review of personnel and training data for this report found that staffing levels had fallen from the 2,771 reported in the third reporting period to the current staffing level of 2,749. DPD provided PR-24 training to an additional 788 members during this quarter, bringing the fiscal year totals to 2,728 trained (or 99% of eligible personnel). DPD has informed us that the 21 members who did not attend PR-24 training will receive the training at a later date. We will follow up on that training during our next site visit.

DPD is in Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

D. Chemical Spray Policy

CJ Requirement U25

The DPD shall revise its chemical spray policy to require officers to:

- a. provide a verbal warning and time to allow the subject to comply prior to the use of chemical spray, unless such warnings would present a danger to the officer or others;*

²¹ DPD Directive 304.2, Use of Force, effective June 27, 2005, Section 6.3; DPD Directive 304.4, PR-24 Collapsible Batons, effective July 1, 2008, and DPD Training Directive 04-3, effective May 9, 2005, identify the PR-24 as the authorized DPD impact device offering a less lethal method for apprehending and subduing violent and/or actively resisting subject(s), relate the PR-24 to the force continuum, and set forth training requirements for all officers.

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- b. provide an opportunity for decontamination to a sprayed subject within twenty minutes of the application of the spray or apprehension of the subject;*
- c. obtain appropriate medical assistance for sprayed subjects when they complain of continued effects after having been de-contaminated or they indicate that they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis or heart ailment) that may be aggravated by chemical spray and if such signs are observed the subject shall be immediately conveyed to a local hospital for professional medical treatment; and*
- d. obtain the approval of a supervisor any time chemical spray is used against a crowd.*

Comments:

In our three previous reports, we noted that the DPD implemented a directive consistent with the Phase 1 compliance requirements of this paragraph.²² We also noted our review of use of force reports (UF002) for each of the three reporting periods wherein officers documented the deployment of chemical spray in 41 instances. Officers indicated the provision of appropriate warnings in 27 (66%) and decontamination efforts in 29 (71%) of the deployments.²³ We also noted that several of the cases we reviewed contained no information on how the decontamination was accomplished, and others indicated that decontamination was not accomplished within the 20-minute requirement. In our more recent report, we noted that none of the UOF reports articulated the existence of danger as the reason for not providing warnings. In addition, we noted that appropriate medical attention was provided where required and that there were no reported instances of an officer spraying an unruly crowd.

To assess compliance for this reporting period, we reviewed 179 use of force reports and found 15 deployments of chemical spray, with warnings or danger articulated in 10 (66%) of the 15. No warning nor was danger articulated in the remaining five cases. In 11 (73%) of the 15 cases, decontamination was reported to have occurred within the 20 minutes allotted. In the 11 cases, nine indicated how the decontamination occurred.²⁴ Officers noted in all cases that windows were rolled down to allow for proper ventilation during the transport of subjects. Medical assistance was provided to six of the 15 subjects who were sprayed. There were no reported instances of an officer spraying an unruly crowd.

We continue to emphasize that the DPD should require the thorough documentation of where, when, and how the decontamination or flushing of the subject's eyes was accomplished.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

²² DPD Directive 304.3, Chemical Spray Device, effective July 2, 2008 is in compliance with the requirements of this paragraph.

²³ Officers documented the deployment of chemical spray in 13, 17, and 11 instances during our previous three reporting periods; they reported the provision of warnings in six (46%), 12 (70%) and nine (82%) respectively.

²⁴ Water bottles were provided by officers, the Medic Unit on scene, neighbors, and at the district station.

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CJ Requirement U26

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

Comments:

In our three previous quarterly reports, we noted that the DPD implemented a directive consistent with the Phase 1 compliance requirements of this paragraph.²⁵ We also noted that our review of use of force reports (UF002) identified no reported instances of the deployment or allegations of the deployment of chemical spray against a subject in a police vehicle. Neither did our review identify any reported instances or allegations where officers placed or kept subjects in a face-down position after being sprayed. We did note that when sprayed individuals are transported in scout cars, officers generally indicate the lowering of windows to provide ventilation beneficial to the subject.

To assess compliance with these requirements for this reporting period, we reviewed 179 use of force reports. We found one reported instance of the deployment of chemical spray against a handcuffed subject who was trying to slip out of a scout car through a broken window, feet first. He was partly in and partly out of the car. No subjects were placed in a face-down position in a police vehicle after being sprayed.

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

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

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

Critical Issues

Previously, DPD took appropriate measures to assure us that uses of force are being captured appropriately. The Department has created inspection teams that critically review Crisnet reports to ensure that force is documented properly when used. The teams conduct audits of MAS to locate missing and overdue SIRs. It is critically important that DPD maintain this pressure to ensure the proper reporting and documenting of uses of force, not simply to satisfy the Monitor and the Federal Courts, but to assure the citizens of Detroit that the Police Department can properly monitor itself on how it interacts with the citizens it serves. During our review of use of force reports for this reporting period, we received documentation for 300 use of force incidents from which to draw our sample. This represents a 23% decrease from the 370 provided for the third reporting period. We strongly encourage the DPD to continue to monitor the preparation and submission to MAS of all uses of force to prevent the underreporting which was of concern during the first two reporting periods.

²⁵ DPD Directive 304.3, Chemical Spray, effective July 2, 2008, Sections 5.1 and 6.1(6) prohibits the use of chemical spray on a handcuffed subject in a police vehicle or placing in a face-down position.

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We have recommended that the DPD review Directive 304.1, which prohibits “the firing at or from a moving vehicle,” and determine whether it intends to continue the absolute prohibition and hold officers accountable for adherence to it or revise the policy to provide an allowance for specified exigent circumstances. The Monitor expected that the DPD would address this issue for inclusion in this report; however, it remains under DPD review.

Next Steps

The Monitoring Team would like to meet with command staff, especially the district/precinct commanders, to discuss steps that they can take to further improve the preparation and review of the use of force reports and the SIRs.

¶	Requirements	Phase 1 – Policy	Phase 2 – Implementation
14	Revise use of force policies	In Compliance	In Compliance
15	The use of lethal, less lethal force	In Compliance	Not in Compliance
16	Opportunity to submit to arrest	In Compliance	In Compliance
17	Prohibit choke holds	In Compliance	In Compliance
18	Approval of policy	In Compliance	Not in Compliance
19	Strike to the head-deadly force	In Compliance	In Compliance
20	Bi-annual firearms qualification	In Compliance	In Compliance
21	Failure to qualify with firearms	In Compliance	In Compliance
22	Prohibit firing at vehicles	In Compliance	Not in Compliance
23	Selection of ammunition	In Compliance	In Compliance
24	Intermediate force device	In Compliance	In Compliance
25	Chemical spray policy	In Compliance	Not in Compliance
26	Spraying handcuffed subjects	In Compliance	In Compliance

IV. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW

A. General Investigations of Police Action

CJ Requirement U27

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

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Comments:

We reported the implementation of applicable directives consistent with the Phase 1 requirements of this paragraph in our first three quarterly reports.²⁶ We also reported on our review of completed command-level, FI, IAD, and OCI investigations. To assess compliance for this reporting period, we verified the existence of the required directives; met with relevant staff; assessed command-level, FI, IAD, and OCI investigations completed during this reporting period; and reviewed the DPD 27th Quarter Status Report, dated June 30, 2010, which sets forth some of the corrective measures initiated by the DPD to improve compliance.²⁷

Command-level Investigations: During the first reporting period, we noted that only 55% of the use of force reports (UF002) requiring reviews were appropriately submitted, and in some cases, those submitted were lacking required information. As a result, we recommended that the DPD conduct and document more comprehensive, thorough, and detailed command-level investigations. We also recommended that the DPD review its accountability system and available training to determine if they are sufficient to provide DPD personnel, especially supervisory and command staff, with a thorough understanding of the requirements and responsibilities set forth in the Judgment and DPD policy.

Our review of second reporting period Reports found that only 78% of the uses of force were investigated as required; furthermore, there was no documentation demonstrating the remaining use of force events were investigated at any level.

During the third reporting period, we reviewed 194 use of force reports, which resulted in the completion of 86 investigations.²⁸ There were 175 use of force reports distributed among the 86 SIRs.²⁹ The remaining 19 uses of force were not investigated at any level. We noted no instances where a SIR was closed simply because a subject or complainant was unavailable, unwilling, or unable to cooperate, including a refusal to provide medical records or proof of injury.

²⁶ Reports of the Independent Monitor, issued January 15, April 15, and July 15, 2010. DPD Directives 102.4, Standards of Conduct, and 102.6 Citizens Complaints effective July 1, 2008; DPD Directive 304:2, Use of Force, effective June 27, 2005; Training Directive 04-7, Use of Force/Detainee Injuries or Allegations of Injuries Reporting and Investigating; Force Investigations, Standard Operating Procedures, revised November, 2009; Internal Affairs Division Standard Operating Procedures, Section 5; and the Office of the Chief Investigator, Standard Operating Procedure (Rev 2008) are individually and/or collectively in compliance with the requirements of this and other paragraphs contained in this section of the Judgment.

²⁷ During this quarter, the guide was revised and improved after the DPD received comments from the Monitor. The guide, now referred to as the *Use of Force Evaluations – Supervisory Requirements*, has been redistributed to the executives of the DPD and is provided to all attendees at the *Supervisory, Leadership, and Accountability* training course.

²⁸ Many of the command-level investigations contained multiple use of force forms, and three additional cases were subsequently assumed by Force Investigations.

²⁹ The terms Supervisory Investigative Report (SIR) and command-level investigation are used interchangeably throughout this report.

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During this reporting period, we reviewed 179 use of force reports resulting in 97 SIRs.³⁰ There were no instances where a SIR was closed simply because a subject or complainant was unavailable, unwilling, or unable to cooperate, including a refusal to provide medical records or proof of injury. We noted three cases in which the Department did not expend sufficient efforts to resolve material inconsistencies, or in which too many witnesses were not interviewed. We brought these cases to the attention of the DPD CRIB Unit.

Force Investigations: In our previous reports, we noted that our reviews of FI and JIST investigations, which included critical firearm discharges, pursuits, and allegations of excessive force, found these investigations sufficiently detailed to support the findings relating to the conduct of the officer(s) in each case. In addition, no investigations were closed because the subject or complainant was unavailable, unwilling, or unable to cooperate. We noted the lack of detail or required specificity in cases completed during the first and second reporting periods; however, the cases we have reviewed since that time have shown continued improvement, which may be attributed to strengthened supervision and the initiation of periodic in-service training.

Internal Affairs Division Investigations: To assess compliance for our first three reports, we reviewed completed cases for consistency with the procedures contained in applicable DPD directives and generally accepted law enforcement techniques – specifically relating to procedural fairness, timeliness, confidentiality, and the meticulous reporting of facts and results of an investigation. We noted that the facts contained in the investigations were generally complete. With few exceptions, the investigations developed sufficient facts to support a determination that justified or did not justify the actions of the officer(s). However, many did not contain a clear and consistent pattern with regards to the conduct and reporting of investigative activity. In our most recent report, we noted in several cases that elements of the complaint were either overlooked or not reported on in the investigative summary and we recommended that case reviewers carefully examine complainants' statements, transcripts, and/or recordings to verify investigative activities.

During the current reporting period, we reviewed 50 cases that were closed in April, May, and June, 2010. These cases were initiated during the period of 2009 to 2010. We found that with the exception of one case, the cases contained complete data and that all elements of the allegations were investigated.

Office of Chief Investigator: Our review of completed cases during for our first two reports noted that although there were problems with some of the submitted data – including duplicate, missing, and voided cases – the case files *generally* contained sufficient facts to support a determination that justified or did not justify the actions of the officer(s). However, there were several cases containing insufficient information to make a determination of CJ compliance, and instances where OCI investigators were inconsistent in determining the factual basis for conclusions and findings. In addition, several cases appeared to be missing clear and consistent direction on the conduct and reporting of investigative activity. We also noted a number of cases containing incorrect findings or that were administratively closed contrary to CJ and policy requirements.

³⁰ Many of the command-level investigations contained multiple use of force forms. K-9 tracks with no contact and cases assumed by FI were removed from the numbers reported as SIR investigations.

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Our review of completed cases for our third report found that the facts contained in the investigations were generally complete; however, perhaps due to efforts to clear overdue cases, there appeared to be no distinct and consistent pattern with regards to the conduct and reporting of investigative activity.³¹ We again noted that OCI was inconsistent in determining its factual basis for conclusions and findings.

To assess compliance for this report, we reviewed 102 randomly sampled cases from the 672 cases that were closed in April, May, and June 2010. With the exception of two cases, the investigations established sufficient facts to support a determination that justified or did not justify the actions of the officer(s) or non-sworn member of the Department. The inconsistency in determining the basis for conclusions and findings described above has been addressed. Additionally, we found that the efforts of the staff to eliminate the backlog of overdue cases are showing positive results, and that the investigators assigned to complete these cases are producing investigations that are more thorough and accurate than in the past.

The loss of information due to the unavailability of complainants and witnesses, and separation of officers from the Department, continue to be evident in the Department's inability to make determinations other than not sustained in many of the investigations.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U28³²

The DPD and the City shall ensure that investigations are conducted by a supervisor who did not authorize witness or participate in the incident and that all investigations contain:

- a. documentation of the name and badge number of all officers involved in or on the scene during the incident and a canvas of the scene to identify civilian witnesses;*
- b. thorough and complete interviews of all witnesses, subject to paragraph 31 below and an effort to resolve material inconsistencies between witness statements;*
- c. photographs of the subject's(s') and officer's(s') injuries or alleged injuries; and*
- d. documentation of any medical care provided.*

Comments:

Our assessment of compliance with the requirements of this paragraph included a review of applicable directives, interviews with relevant staff, and a review of command-level investigations and closed FI cases.³³

³¹ These were investigations of complaints received during the period of 2007-2010.

³² This requirement is not applicable to IAD/OCI.

³³ See U27 for all directives applicable to the requirements of this paragraph.

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

To assess compliance for this report, we reviewed 97 command-level investigations and found the following:

- There was only one instance in which the supervisor conducting the investigation authorized, witnessed, or participated in the incident.³⁴
- Ninety-one (94%) cases contained the names of all of the officers involved or on the scene during the incident in the report. In 87 (90%) cases, the investigating supervisor conducted a canvass to identify civilian witnesses or explained why a canvass was not conducted. This is an improvement over our previous finding of 77%, but DPD remains below the >94% standard for this requirement.
- As we previously noted, the thoroughness and completeness of interviews of all witnesses continues to be an issue for DPD. Thorough and complete interviews were conducted in 70 (72%) cases. We have previously described the issues that continue to plague the DPD in its efforts to achieve compliance. For instance, the restatement of information from an officer's Crisnet or use of force report does not constitute an interview; in addition, referring a reader to a Crisnet report or the circumstances section of a SIR does not constitute an interview. All officers present at a use of force incident and who may have witnessed the incident or who are involved in an incident should be interviewed.
- Twelve (12%) cases contained material inconsistencies; the Department attempted to resolve the inconsistencies in three (23%) of these. In one of the unresolved cases, the report states that the subject was transported to the Detroit Receiving Hospital (DRH) for an asthma condition; however, the DRH report states that the subject had contusions. There was no effort made to resolve this inconsistency at any level in the review.³⁵ In another case, there was an inconsistency between the officer's use of force report and the SIR regarding why a PR-24 was not used to subdue a subject. The officers stated it was dropped during the foot pursuit; the SIR states it was due to close quarters. In the three cases which were resolved, the supervisors attempted to examine the subject(s) for evidence of alleged injuries or to further question officers about the role they may have played in an apprehension. As we previously commented, it is incumbent on individuals

³⁴ In this case, the involved supervisor conducted interviews of the officers and the subject at the scene. A lieutenant was subsequently assigned to complete the investigation, but failed to interview the sergeant, who had provided many of the interview materials.

³⁵ This information, like other issues with inconsistencies, has been forwarded to CRIB for its attention and action as it may deem appropriate.

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involved in the command-level review to question material inconsistencies which are not addressed by the investigator and to take the appropriate corrective actions.

- Fifty-six cases could have included photos taken of officer or subject injuries. The Reports noted that photos were taken in only 22 (39%) of these.
- Forty-six cases should have included documentation of medical care in the file. We found documentation for 42 (91%) of these 46 cases.

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

To assess compliance for this reporting period, we reviewed 10 force investigations.³⁶ The case files included complete documentation of the name and badge number of all officers involved in or on the scene of the various incidents, canvasses for civilian witnesses in all applicable cases, and any medical care that was provided. The investigations also contained witness interviews, both written and recorded; however, two cases contained inconsistencies between statements of witnesses that went unresolved, and three investigations contained neither photographs nor documentation verifying that the required photographs were taken.

These investigations continue to demonstrate improved and consistent canvassing for witnesses; however as previously noted, the DPD needs to strengthen the interview process. While we acknowledge that the interviews generally cover many pertinent issues, we also note that they should be more in-depth, probative, and detailed given the seriousness of these events. This shortcoming suggests a need for additional training on interviewing techniques, especially for officers interviewing officers.

The DPD is making progress with strengthening the investigative process through supervision and the initiation of specific, in-service training; however, the absence or lack of completeness of command reviews is problematic. Until the issue of reviews is resolved, these areas will continue to present problems for DPD.

DPD is not in compliance with these requirements.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

³⁶ These investigations included four non-fatal shootings, one unintentional discharge, one pursuit resulting in serious injury, and four complaints of excessive force.

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CJ Requirement U29

The DPD and the City shall revise their procedures for all investigatory interviews to require:

- a. officers who witness or are involved in an incident to provide a timely statement regarding the incident (subject to paragraph 31 below);*
- b. whenever practicable and appropriate, interviews of complainants and witnesses be conducted at sites and times convenient for them, including at their residences or places of business; and*
- c. that all IAD, OCI and Critical Firearm Discharge Investigations shall also include in-person video or audio tape-recorded interviews of all complainants, witnesses, and involved DPD officers and prohibit group interviews. In cases where complainants/witnesses refuse in-person video or audio tape recorded interviews, written statements shall be taken and signed by the complainant/witness along with a signed refusal statement by the complainant/witness.*

Comments:

Our assessment of compliance with the requirements of this paragraph included a review of applicable directives; interviews with relevant DPD staff; and a review of closed command-level, FI, IAD, and OCI cases.³⁷

Command-level investigations: Our reviews of command-level investigations for the first and second reporting periods found that more than 80% of the interviews of officers involved in or witnessing use of force events were timely. We also noted in some cases, an inclination, in some cases, by investigating supervisors to simply refer to the related Crisnet reports, rather than conduct separate interviews; this practice is contrary to sound investigative procedures. We continue to recommend the institution of a formalized procedure requiring follow-up contact with these individuals. Even though such a requirement may not result in improvement with the level of cooperation by the individual, it would demonstrate DPD efforts to complete a thorough investigation.

We also discussed the requirement for the interview of subjects, noting that in most instances an effort to interview a subject at the scene or at the District is met with hostility. We continue to recommend the institution of a formalized procedure requiring follow-up contact with these individuals.³⁸

Our interviews and review of documents to assess compliance for the third reporting period found that timely statements were taken in only 47 (55%) of the 86 cases we reviewed, a reduction from our previous findings of 80%. We attributed this drop to the large number of older cases included in our sample. There were 20 older cases – the oldest dating back to May 2009 – included in this review, most of which were found as a result of recent audits of the MAS. In the same reporting period, we found that the interviews of complainants and witnesses were conducted at sites and times convenient for them in 68 (79%) cases, a small improvement

³⁷ See U27 for all directives applicable to the requirements of this paragraph.

³⁸ This follow-up contact might consist of a telephone call, letter, or other personal contact some days after the incident.

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over the previous quarter's 75%, but one which is noteworthy, given that 20 of the cases were delayed investigations.

Our review for this report found that in 81 (84%) of the 97 cases we reviewed, timely statements were taken from officers who were involved or who witnessed the incident. This percentage is more similar to the compliance rates we found in the first two reporting periods. As with those two reports, the cases reviewed for this reporting period were all current to the quarter being evaluated.

We also found that the interviews of complainants and witnesses were conducted at sites and times convenient for them in 91 (94%) of the 97 cases we reviewed, a substantial improvement over last quarter's 55%.

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

To assess compliance with these requirements for this reporting period, we reviewed 10 closed FI cases, including four non-fatal shootings, one unintentional discharge, one pursuit resulting in serious injury, and four compliance of excessive force. We found much the same as described above. Statements were generally taken at sites and times convenient for the person(s) being interviewed. Statements of non-police witnesses were generally taken in a timely manner, except in one case involving an allegation of excessive force where there was nearly a seven-month delay. However, several statements that were taken from involved and witness officers under the provisions of Garrity were unnecessarily delayed.

Delays with interviews of involved officers in the critical firearm discharge cases ranged from approximately 43 to 144 days from the date of the event. This is an improvement from the last reporting period, where the interview delays were between 106 to 205 days of the event, but clearly less than desirable. Except for the case of an unintentional firearm discharge, which was handled immediately, delays with the Garrity interviews in the remaining cases ranged from approximately 113 to 318 days. Garrity interviews of witness officers ranged from 22 to 218 from the date of the event.

As previously noted, these delays have been, and continue to be, attributable primarily to the DPD adopted practice of awaiting the receipt of prosecution declinations from the District Attorney. The receipt of the DA declinations during this reporting period ranged from

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approximately 21 to 302 days from the date of the event.³⁹ This compares with a range of 40 to 204 days from the date of the event during the last reporting period.

Investigators conducted the required Garrity interviews in a timeframe of 13 to 72 days from the date of the above-cited DA declinations. This compares with a range of from one to 81 days from receipt of the DA declination during the previous reporting period, but also clearly less than desirable.

The interviewing of involved and witness officers is a critical component of the investigative process. Delays raise a host of issues, not the least of which is credibility. Officers' recollections of the facts, weeks and months after an event, particularly one involving the use of deadly force, are externally and perhaps significantly affected by news accounts and their interactions with friends, family, and colleagues, and thus, often altered. While we recognize the concerns the DPD may have with interviewing involved officers prior to receipt of the DA declination; this practice mitigates the accuracy and credibility of the information provided by these officers. In addition, there should be no such concerns with conducting interviews of witness officers.

FI investigators take officers' statements consistent with the provisions of Garrity (U-31). Except in one case where the recording device failed, FI recorded interviews of officers and other witnesses as required. We note, however, the continued failure of Homicide members assigned to the JIST to take written statements when investigating critical firearm discharge cases. The DPD previously represented that the resolution of this issue was imminent. This was not the case in the critical firearm discharge cases that we reviewed for this reporting period.

Internal Affairs Division Investigations: For our first two reporting periods, we reviewed 68 external complaints and misconduct investigations conducted by IAD. Our reviews found that the DPD directive requiring timely statements from officers during these investigations was inconsistently applied. Interviews of officers were often delayed with little justification other than unavailability. There were notable exceptions involving pending criminal proceeding against officers in two cases. The investigations reflected that when complainants or witnesses were interviewed, investigators interviewed them at a time and place selected by the individuals. All interviews were conducted individually and appropriately recorded.

To assess compliance with requirements for the last reporting period, we reviewed 34 completed IAD investigations. Each case contained the proper documentation, including information relating to locations and recording of complainant and witness interviews. There was one case in which the officer was interviewed four months after the complaint was received.

For the current reporting period, we reviewed 50 completed cases. With the exception of two cases where the cases were routed through or held at OCI, and one officer was on military leave, all officers were interviewed within reasonable timeframes. Witness were interviewed at a time and place selected by the individuals. All interviews were appropriately recorded.

Office of Chief Investigator: During the first two reporting periods, we reviewed 653 external complaints and misconduct investigations conducted by OCI. Our reviews found that the DPD directive requiring timely statements from officers during these investigations was inconsistently

³⁹ Except for the one case where the DA declination was received approximately 302 days from the date of the event, the DA declination letters were received from approximately 21 to 114 days of the event.

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applied. While OCI investigators made timely requests to conduct interviews with involved officers, rarely did the interviews occur within the 90-day time limit established for investigation completion. Interviews of officers were often delayed with little justification other than unavailability.

Several cases indicated that complainants or witnesses were interviewed at a time and place selected by them, but contained no documentation regarding interviews. All interviews were conducted individually and appropriately recorded, and in instances where the complainant refused to provide a recorded statement, investigators obtained appropriate written and signed statements as required. The cases we reviewed also included documentation relating to locations of complainant and witness interviews.

During the last reporting period, we reviewed 140 randomly sampled OCI investigations. As with our previous reviews, we found that the DPD directive requiring timely statements from officers during these investigations was inconsistently applied. Again, in the one 2007 case and the 2008 and early 2009 cases in our sample, OCI investigators made timely requests to conduct interviews with involved officers, but rarely did the interviews occur within the 90-day time limit established for investigation completion. Interviews of officers were often delayed with little justification other than unavailability. The investigations reflected that when complainants or witnesses were interviewed, investigators interviewed them at a time and place selected by the individual. All interviews were conducted individually and appropriately recorded. There were two instances involving written and signed statements where the complainant's refusal to record an interview was documented.

During this reporting period, we reviewed 102 randomly sampled investigations. The date range for these cases was 2008 to 2010. Thirteen cases were opened in 2008, and three of those cases were administratively closed and then reopened pursuant to a Court order. The remainder of the 2008 cases remained dormant for as long as one year without DPD making any attempts to interview officers. In these and other cases, the officers were no longer available, either due to separation from the Department or long-term disability leaves. Witnesses and complainants were no longer available in many cases, and the CCR was used as the complainants' statements. However, when witnesses were interviewed, the interviews were conducted individually, at a location of their choice and were recorded.

While we find continued progress with FI and IAD investigations, we again emphasize that the Department needs to address the problematic issues relating to command-level and OCI investigations. DPD is not in compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

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CJ Requirement U30

The DPD and the City procedures for all investigatory interviews shall prohibit:

- a. the use of leading questions that improperly suggest legal justifications for the officer's(s') actions when such questions are contrary to appropriate law enforcement techniques; and*
- b. the use of interviews via written questions when it is contrary to appropriate law enforcement techniques.*

Comments:

Our assessment of compliance with the requirements of this paragraph included a review of applicable directives; interviews with relevant staff; and a review of closed command-level, FI, IAD, and OCI cases.⁴⁰

Command-level investigations: Our reviews of command-level investigations for the first two reporting periods found no documentation of recorded interviews, written statements, records of questions asked during interviews, or other evidence that leading questions that improperly suggested legal justifications for the actions of the officer(s) were used. During the third reporting period, we noted one case in which written questions were provided to officers during the SIR of an incident in a cell block. There were no leading questions, nor were the interviews via these written questions contrary to appropriate law enforcement techniques.

Our review for this reporting period found several cases in which a question-and-answer format was used to document officer interviews in the SIR. There was no evidence that the questions that were asked were contrary to appropriate law enforcement techniques.

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

To assess compliance for this reporting period, we reviewed written statements contained in 10 FI cases and found them to be brief, but absent of leading questions. A delay in the receipt of requested recorded interviews prevented a review of those interviews for this report.

Internal Affairs Division Investigations: During the first reporting period, our review of closed IAD investigations found that investigators asked leading questions in 16% of the randomly selected interviews we reviewed. However, during the second reporting period, investigators did not ask leading questions in the interviews.

To assess compliance with requirements for this reporting period, we reviewed three audiotaped Garrity interviews of police officers, and determined that investigators did not ask any leading questions to support previous information or facts that were discovered.

Office of Chief Investigator: During the first reporting period, we noted that investigators asked leading questions in 15% of the selected interviews we reviewed, and a large number of cases

⁴⁰ See U27 for all directives applicable to the requirements of this paragraph.

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contained no documentation regarding interviews. We reviewed no OCI case statements or recordings for compliance with this paragraph for subsequent reporting periods. We have been advised by OCI staff that they are currently developing training for investigators in interviewing techniques. We will monitor the progress of this training during the next period.

DPD is not in compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U31

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

Comments:

Our prior three reports noted Phase 1 compliance with this paragraph.⁴¹ We also noted that our reviews of command-level, FI, IAD, and OCI investigations found supervisors and investigators consistently and meticulously compliant with applicable Garrity requirements. Our reviews of the above investigations for this reporting period reflected similar adherence to Garrity requirements.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U32

The DPD shall revise its policies regarding all investigatory reports and evaluations to require:

- a. a precise description of the facts and circumstances of the incident, including a detailed account of the subject's(s') or complainant's(s') and officer's(s') actions and an evaluation of the initial stop or seizure;*
- b. a review of all relevant evidence, including circumstantial, direct and physical evidence;*
- c. that the fact that a subject or complainant pled guilty or was found guilty of an offense shall it justify discontinuing the investigation;*

⁴¹ DPD Training Directive 04-4, Garrity Protocol, dated February 9, 2006 and revised October 24, 2009, is in compliance with the requirements of this paragraph. The directive provides criminal and administrative guidelines for investigators and supervisors regarding when statements should and should not be compelled from officers during internal investigations. The protocol requires that all officers sign a Certificate of Notification of Constitutional Rights - Departmental Investigations prior to any interview.

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- d. reasonable credibility determinations, with no automatic preference given to an officer's statement over a non-officer's statement or discounting of a witness's statement merely because the witness has some connection to the subject or complainant*
- e. an evaluation of whether an officer complied with DPD policy;*
- f. an evaluation of all uses of force, including the officer's tactics, and any allegations or evidence of misconduct uncovered during the course of the investigation;*
- g. all administrative investigations to be evaluated based on a preponderance of the evidence standard;*
- h. written documentation of the basis for extending the deadline of a report and evaluation and provide that the circumstances justifying an extension do not include an investigator's vacation or furlough and that problems with investigator vacations or workload should result in the matter being reassigned; and*
- i. any recommended non-disciplinary corrective action or disciplinary action be documented in writing.*

Comments:

Our assessment of compliance with the requirements of this paragraph included a review of applicable directives; interviews with relevant staff; and a review of closed command-level, FI, IAD, and OCI cases.⁴²

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

We found no indications that a subject's guilty plea or guilty finding regarding an offense as evidence of whether a DPD officer engaged in misconduct, nor that this information was used to justify discontinuing the investigation. We noted cases wherein credibility determinations were made, and found no evidence of the discounting of a witnesses statement merely because the witness had some connection to the subject or complainants.

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

In the third reporting period, we examined 86 SIRs and found that 54 (63%) contained the level of descriptions required by U32a with respect to the precise descriptions of the facts and

⁴² See U27 for all directives applicable to the requirements of this paragraph.

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circumstances of the incidents and the actions of the officers, complainants, and subjects. In only 12 of the investigations, however, was there an attempt to evaluate the initial stop or seizure. We also found 46 (53%) of the cases we reviewed in compliance with the requirement that all relevant evidence, including circumstantial, direct, and physical evidence be reviewed.

None of the 86 cases we reviewed disclosed any evidence that the fact that a subject or complainant pled guilty or was found guilty of an offense was considered as evidence of whether a DPD officer engaged in misconduct. There was also no evidence that this information was used to justify discontinuing the investigation. In 58 (67%) of the investigations we reviewed there was evidence that reasonable credibility determinations, with no automatic preference given to an officer's statement over a non-officer's statement, were made to reach conclusions regarding the investigations. There was no evidence of the discounting of a witnesses statement merely because the witness had some connection to the subject or complainants. In only 21 (24%) of the 86 cases we evaluated was there evidence of an evaluation of whether or not an officer(s) complied with DPD policy. DPD evaluated force in 82 (95%) of the 86 SIRs we examined; again, we note that some of the evaluations were better than others, with some supervisors continuing to rely on a Supreme Court statement as the basis for justification of the use of force, and other supervisors detailing the progression in force levels to the point where the force that was used allowed for the arrest of the subject.

There were 24 (28%) instances in which the investigating supervisor made an effort to evaluate the tactics of the officer(s). There was one allegation of misconduct uncovered during the investigations we reviewed; the file indicated appropriate corrective disciplinary action. Fifty-two (60%) of the cases we reviewed reflected a reliance on the preponderance of evidence standard to reach a determination. In 22 of the cases, we found written documentation of the basis for extending the deadline of a report, to include problems with inputting information into MAS, to reports lost in MAS, to witnesses being on furlough. In three cases, DPD granted extensions as a result of an investigator's vacation or furlough. We found non-disciplinary/disciplinary corrective actions documented in 13 of the investigations we reviewed; these actions ranged from re-instruction in the preparation of reports, to distribution of training materials to entire units, to actual disciplinary action.

During this reporting period, we examined 97 SIRs and found that 78 (80%) contained the level of descriptions required by U32a with respect to precise descriptions of the facts and circumstances of the incidents; and the actions of the officers, complainants, and subjects. In 46 (47%), investigators attempted to evaluate the initial stop or seizure. In 43 of the cases, all relevant evidence, including circumstantial, direct and physical evidence, was reviewed. We also found a review of all relevant direct, circumstantial and physical evidence had been completed in only 43 (44%) of the cases included in our assessment. None of the 97 cases we reviewed disclosed any evidence that the fact that a subject or complainant pled guilty or was found guilty of an offense was considered as evidence of whether a DPD officer engaged in misconduct. There was also no evidence that this information was used to justify discontinuing the investigation.

Ninety-three (95%) investigations contained evidence that reasonable credibility determinations, with no automatic preference given to an officer's statement over a non-officer's statement, were made to reach conclusions regarding the investigations. There was no evidence of the

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discounting of a witnesses statement merely because the witness had some connection to the subject or complainants.

Sixty-nine (71%) investigations contained evidence of an evaluation of whether or not an officer(s) complied with DPD policy. In most instances, the investigators commented on the relationship of the use of force as it was applied in the case they reviewed. As we mentioned in our previous reports, we do not believe that compliance with DPD policy is limited to compliance with DPD use of force policy. We assert that in this context, the Judgment requires compliance with all applicable DPD policy. This requirement presents an opportunity for supervisors to evaluate the performance of their subordinates in the field as it relates to their compliance with policy, and in instances where there may be some deviation, to use the situation to re-instruct their subordinates on the prescribed method for performing the task at hand. During our review, we found several instances of supervisors re-instructing. In one instance, an officer did not park his scout car as prescribed for traffic stops, and the subject was able to strike the officer's car with his; in another case, the officer was not informed on the requirements for supervisory notification, and the supervisor took the opportunity to not only re-instruct the individual, but to also offer a session on supervisory notifications at his roll calls.

Investigators evaluated force in 93 (96%) of the 97 SIRs we examined. As previously noted, some of the evaluations are better than others: some supervisors continue to rely on a Supreme Court statement as the basis for justification of the use of force. On the whole, most supervisors use sections of the policy as it relates to force and point out the instances of the application conforming to the policy.

There were 77 (79%) instances in which an investigating supervisor made an effort to evaluate an officer's tactics. While in some of those instances the effort was merely a rehashing of the use of force, an increasing number of supervisors reviewed the actual tactics such as the willingness of officers to call for reinforcements when they recognize the volatility of a situation and the appropriate use of less than lethal tools to quickly disarm a situation, while also reducing danger to the officers and the subjects.

There was one allegation of misconduct uncovered in the investigations we reviewed. The file indicated that appropriate corrective disciplinary action was taken.

Eighty-four (86%) of the cases we reviewed reflected a reliance on the preponderance of evidence standard to reach a determination. In 38 of the 58 cases that required extensions, we found written documentation of the basis for extending the deadline of a report, to include problems with inputting information into MAS, to reports lost in MAS, to witnesses being on furlough. There were three cases where extensions were as a result of an investigator's vacation or furlough.

We found non-disciplinary/disciplinary corrective actions documented in three of the investigations we reviewed, ranging from re-instruction in the immediate notification of a subject's injury to a supervisor, to distribution of training materials to entire units on how to deal with subjects who may consider attempting suicide in a holding area data room at the station.

Force Investigations: Our review of completed FI cases for our three previous reports found them in partial compliance with the investigative requirements of this paragraph. Case files contained a description of the event, but did not consistently evaluate the initial stop and/or seizure. For the most part, FI evaluated direct and physical evidence, but the files did not contain

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sufficient circumstantial evidence. There were no instances where a subject's court-related appearances had any effect on the outcome of investigations. The files contained little reference to credibility determinations. Investigations contained reviews of tactics and identified officers' unrelated conduct violations, and referrals for intervention and findings were based on a preponderance of evidence standard. In addition, any requested extensions of deadlines for reports were documented. During the last reporting period, the supervisor commenced the practice of extending the deadline for a specified period of time, usually 15-30 days. There were no instances where extensions were requested due to an investigator's vacation or furlough.

To assess compliance for this reporting period, we examined 10 completed case files and noted the continued inclusion of a detailed account of the facts of the event.⁴³ Investigators evaluated the initial stop/contact in each case, finding in one that officers made an improper entry into the subject's apartment; in a second case, however, investigators made no mention of a questionable frisk. Investigators evaluated direct and physical evidence, but the files remained largely silent on the presence or absence of any circumstantial evidence. There were no instances where a subject's court-related appearances had any effect on the outcome of investigations. The files contained little reference to credibility determinations; we understand, however, that FI will be more thoroughly addressing this element in future cases. Investigations contained reviews of tactics and identified officers' unrelated conduct violations. Findings were based on a preponderance of evidence standard, and recommended referrals for disciplinary intervention were documented.

We note that requested extensions of deadlines for reports were documented. For the most part, extensions were granted for a specified period of time, usually 15-30 days. This is a positive practice; however, the practice of granting multiple extensions is problematic. We noted multiple requests for extensions of report deadlines (34 in eight of the 10 investigations), 10 of which were due to delays in receiving DA declination letters. The remaining 24 extensions were requested for reasons unrelated to the DA declination. For example, an extension was granted to re-canvass the area 10 months after the event; to obtain the officer's complaint history in two cases, 10 and 12 months after the events; and to locate witnesses five months after the event. This practice mitigates the need to expeditiously resolve these cases and DPD should address it.

Office of Chief Investigator: We noted in our first two reports that a significant number of OCI cases were not completed within the prescribed 90-day timeframe. Again, the reason asserted for the delays was the unavailability of witnesses, complainants, and officers for interviews. We also noted that requests for the extensions of deadlines, documented and approved by supervisory staff, were, for the most part, subsequent to the 90-day time limit and were not based on investigative necessity. However, we judged the reports to be factual and complete. All investigations were based on evidence of misconduct, regardless of charges filed against the complaining individual after an evaluation of officer and witness statements and evidence using the preponderance of evidence standard.

To assess compliance with these requirements for the last reporting period, we reviewed 140 random selected OCI cases, and found that only 19 were completed within the prescribed 90-day

⁴³ These investigations included four non-fatal shootings, one unintentional discharge, one pursuit resulting in serious injury, and four complaints of excessive force.

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timeframe. Again, the common reason asserted for the delays in the remainder of the cases was the unavailability of witnesses, complainants, and officers for interviews. However, the requests for the extensions, documented and approved by supervisory staff, were, for the most part, subsequent to the 90-day time limit and were not based on investigative necessity. In many of these cases, most, if not all, of the interviews had been completed, the investigators had secured evidence, and the cases needed to be finalized and submitted for review. In some of the cases, complainants and witness needed to be interviewed; subsequently, many of these persons were not found due to the passage of time.

During the current reporting period, we reviewed 102 randomly selected cases. The date range of the cases was 2008 to 2010. We found that of these, 24 cases were completed within the 90-day time limit. The majority of the cases were part of the longstanding backlog that existed in the Office of the Chief Investigator and were now being expedited as a result of a recent Court order. Consequently, the activity logs in many of the cases indicated that the cases had remained unaddressed for various amounts of time and with no documented reasons for the delays.

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

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U33

The DPD shall revise its policies regarding the review of all investigations to require:

- a. investigations to be reviewed by the chain of command above the investigator;*
- b. the reviewing supervisors to identify any deficiencies in those investigations and require the investigator to correct any deficiencies within seven days of the submission of the report and evaluation to the reviewing supervisor;*
- c. the reviewing supervisors to recommend and the final reviewing authority to refer any incident with training, policy or procedural implications to the appropriate DPD unit;*
- d. appropriate non-disciplinary corrective action and/or disciplinary action when an investigator fails to conduct or reviewing supervisor fails to evaluate an investigation appropriately; and*
- e. a written explanation by any supervisor, including the Chief of Police, who disagrees with a finding or departs from a recommended non-disciplinary corrective action or disciplinary action, including the basis for the departure.*

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Comments:

Our assessment of compliance with the requirements of this paragraph included a review of applicable directives; interviews with staff; and a review of closed command-level, FI, IAD, and OCI cases.⁴⁴

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

Our assessment for this reporting period found that in 84 (87%) of the 97 SIRs, there was a chain of command review above the investigator. All but six of the cases included signatures. The command review identified deficiencies in 36 cases which were sent back for corrections. In 25 of those cases, DPD corrected the deficiencies within seven days.

There were two cases in which DPD identified issues with training, policy, or procedural implications; and there was one case in which the final reviewing authority made a referral to an appropriate DPD unit. There was one instance of corrective action and/or disciplinary action recommended when an investigator failed to conduct the investigation appropriately.

We identified no cases in which the investigation was not evaluated appropriately by the reviewing supervisor; consequently, there were no recommendations for non-disciplinary or disciplinary actions. There were no disagreements with a finding or a departure from a recommended non-disciplinary corrective action or disciplinary action.

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

To assess compliance for this reporting period, we reviewed 10 completed FI cases and noted the completion of appropriate chain of command reviews. The case files also included supervisors' requests for additional information and/or corrections although these requests continued to be non-specific and were not always corrected within seven days. FI staff informed us that this process will be strengthened through ongoing training that has been and will continue to be afforded staff. We are also satisfied that there were no cases requiring disciplinary action during this reporting period.

Internal Affairs Division: Our previous reviews of IAD for compliance with the requirements of this paragraph indicated that IAD supervisors infrequently used the case supervision sheets for the intended purpose of documenting case supervision and managing the investigative efforts of subordinate personnel. Supervisors typically reviewed and commented on these sheets late in the investigative process.

⁴⁴ See U27 for all directives applicable to the requirements of this paragraph.

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To assess compliance with these requirements for the last reporting period, we reviewed 34 closed IAD cases. Because the cases we reviewed covered 2007 to 2009 cases, as well as 2010 cases, we continued to find instances where IAD supervisors did not comply with the requirements of this paragraph and DPD directives with regards to the maintenance of Case Supervision Sheets. These sheets chronicle each investigative action taken to further the case by date. In the late 2009 and 2010 cases, there is more evidence of supervisorial oversight and documentation in the sheets.

During this reporting period, we reviewed 50 IAD cases and found that the IAD supervisors are reviewing the progress of the cases more frequently than in our past reviews and providing valuable direction to the investigators. Our review for this reporting period found no cases where the IAD commander made referrals for training, policy, or procedural issues.

Office of Chief Investigator: Our previous reviews of OCI to determine compliance with the requirements of this paragraph noted that supervisors were not conducting or documenting reviews of completed cases for deficiencies and/or requiring corrective action within seven days. Further, there was no documentation demonstrating the final reviewing authority taking appropriate non-disciplinary corrective action, or disciplinary action when an investigator failed to conduct an appropriate investigation. We noted in particular that the great majority of cases submitted for closure did not comply with the timeline requirement, yet there were no indications in the case files indicating supervisory intervention to improve investigative quality or timeliness.

To assess compliance with these requirements for the last reporting period, we reviewed 140 randomly selected closed OCI investigations. The investigations included 2007 to 2009 cases, as well as 2010 cases; our review revealed that supervisors did not comply with the requirements of this paragraph and directives.

OCI policy requires that supervisors review completed cases for any deficiencies, and requires the investigator to correct any deficiencies noted within seven days of evaluating the report. We continued to find no evidence that the supervisors were complying with this policy. Supervisors did not routinely document investigations returned for correction, or identify and record recommendations to the final reviewing authority regarding appropriate non-disciplinary corrective action or disciplinary action when an investigator failed to conduct an appropriate investigation. Several of the cases we reviewed were returned to OCI from the reviewing member of the Board of Police Commissioners with directions to the investigators or requests for clarity. The great majority of cases submitted for closure during the third, as in the previous two, reporting periods, did not comply with the timeline requirement. In our third review, there was some indication in the case folders that indicated timely supervisory intervention to improve investigative quality, but since the majority of the cases were grossly overdue, the issue of timeliness was not a factor. In order to process cases efficiently and in a timely fashion, we recommended that the OCI develop and use a reliable case tracking system. The Chief Investigator and final reviewing authority did not document when, or if, supervisors failed to properly or timely evaluate an investigation or monitor the performance of assigned supervisors or investigators.

For the current reporting period, we reviewed a random sample of 102 closed investigations. Because the cases ranged from 2008 to 2010, we found the same deficiencies as during earlier reviews. There was no indication of the reasons for delays in case processing. A "To

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Investigator-Concerns” rubber stamping is the only indication that a case requires additional clarification. There is no explanation of the problems that need to be addressed, and consistently, there is no required return date. There still is no reliable case tracking system in place.

DPD is not in compliance with this requirement.

(See U67 and U68 regarding OCI.)

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

B. Use of Force and Prisoner Injury Investigations

CJ Requirement U34

The DPD shall revise its reporting policies to require officers to document on a single auditable form any prisoner injury, use of force, allegation of use of force, and instance in which an officer draws a firearm and acquires a target.

Comments:

In our three previous reports, we reviewed and found the applicable DPD directive in compliance with the requirements of this paragraph.⁴⁵ The DPD remains in Phase 1 compliance with this paragraph. We also discussed the findings of our review of Auditable Forms (UF002), and in the most recent of our reports, our review of Crisnet reports detailing arrests for assault on a police officer, disorderly conduct, and interfering with a city employee. These reviews found that the required Auditable Forms were not consistently prepared as required. We also noted the completion of the forms where targets were acquired, and the appropriate referral of firearm discharge events to FI for investigation. Our review of FI cases found that the forms were rarely completed as required.

To assess compliance with these requirements for this reporting period, we reviewed 179 Auditable Forms (UF002), as well as the DPD 27th Quarter Status Report, dated June 30, 2010. The 27th Quarter Status Report did not describe any improvements which may have been effected beyond those of the last quarter and detailed in the DPD 26th Quarter Status Report.⁵⁴ This review found that 146 (81%) of the 179 forms were prepared correctly, documenting the 002 prisoner injuries, uses of force, and allegations of uses of force. The forms include four cases which were referred to FI.⁴⁶

⁴⁵ DPD Directive 304.2, Use of Force, effective June 27, 2005.

⁴⁶ One case involved an accidental discharge occurring to an officer when he was in Flint, Michigan; another involved an incident in which the officers stopped while en route to the district, and the subject ended up with a lip injury; another involved the tragic death of an officer; and another was a case in which the subject ended up with a bloody nose and missing teeth.

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As an additional control, during this reporting period, we reviewed 386 Crisnet reports that detailed arrests for assault on a police officer, disorderly conduct, and interfering with a city employee.⁴⁷ We were once again encouraged by the fact that officers are making arrests in difficult situations without relying on a use of force. The reports do not yet meet the >94% standard required in the Judgment, but DPD is making progress towards that end.⁴⁸

Our review of FI investigations cases found that Auditable Forms were included in six of the eight cases requiring them. Investigators identified the absence of the form in one case, but did not note the deficiency in the second.

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

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U35

The DPD shall revise its policies regarding use of force and prisoner injury notifications to require:

- a. officers to notify their supervisors following any use of force or prisoner injury;*
- b. that upon such notice, a supervisor shall respond to the scene of all uses of force that involve a firearm discharge, a visible injury or a complaint of injury. A supervisor shall respond to all other uses of force on a priority basis. Upon arrival at the scene, the supervisor shall interview the subject(s), examine the subject(s) for injury, and ensure that the subject(s) receive needed medical attention;*
- c. the supervisor responding to the scene to notify IAD of all serious uses of force, uses of force that result in visible injury, uses of force that a reasonable officer should have known were likely to result in injury, uses of force where there is prisoner injury; and*
- d. IAD to respond to the scene of, and investigate, all incidents where a prisoner dies, suffers serious bodily injury or requires hospital admission, or involves a serious use of force, and to permit IAD to delegate all other use of force or prisoner injury investigations to the supervisor for a command investigation⁴⁹*

⁴⁷ This number includes 110 in April, 132 in May, and 144 in June.

⁴⁸ In 78 of the cases, force was used and a corresponding report was prepared; in 17 of the cases, force was used and a corresponding report was not prepared. That leaves 291 cases, or 75% of the total, in which arrests of individuals in stressful situations were made with no force used. CRIB sent CAM reports on these 17 cases to the respective commands for corrective action.

⁴⁹ Consent Judgment amendment, September 15, 2008.

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Comments:

In our three previous reports, we reviewed and found the applicable DPD directive in compliance with this paragraph.⁵⁰ We also assessed whether subjects were interviewed at the scene, in the cell block, or at the station; the provision of needed medical attention; the notification and response of supervisors; the proper completion of required forms and reports; and appropriate referrals to FI. We determined that, taken together, the majority of these reports did not meet the required standards.

In the third reporting period, we found that in 75 (87%) of the 86 cases we reviewed, a supervisor was notified following a use of force or prisoner injury. Supervisors responded to a total of 73 incidents, including 21 incidents in which a firearm was discharged, there was a visible injury, or there was a complaint of injury; and an additional 52 incidents on a priority basis.

In 48 of the reports we reviewed, a subject was interviewed at the scene, in the cell block, or at the station. In the instances where the supervisor interviewed the subject, supervisors ensured that subjects needing or requesting medical attention were provided that service in 40 of the cases. We determined that responding supervisors notified IAD in 39 of the 86 cases, an improvement over the last report, when we were only able to determine that 29 notifications were made.

Our assessment for this reporting period found that in 90 (93%) of the 97 cases we reviewed, a supervisor was notified following a use of force or prisoner injury. Supervisors responded to a total of 78 incidents, including 17 incidents in which a firearm was discharged, there was a visible injury, or there was a complaint of injury; and an additional 61 incidents on a priority basis.

In 58 of the reports, a subject was interviewed at the scene, in the cell block, or at the station. In the instances where the supervisor interviewed the subject, supervisors examined the subjects for injury and insured that medical attention was provided in 42 of the cases where it was required. We determined that responding supervisors notified IAD in 26 of the 38 cases, meeting the criteria for 35c.

Force Investigations appropriately assumed responsibility for eight applicable cases, including four shooting incidents, three involving the use of force, and one pursuit.

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

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

⁵⁰ DPD Directive 304.2, Use of Force, effective June 27, 2005.

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CJ Requirement U36

The DPD shall revise its use of force and prisoner injury investigation policies to require:

- a. command use of force preliminary investigations to be completed within 10 days of the incident. These investigations shall include a synopsis of the incident, photographs of any injuries, witness statements, a canvass of the area, and a profile of the officer's prior uses of force and allegations of misconduct, and a first-line supervisory evaluation. The final command use of force investigation shall be completed within 30 days of the incident;*
- b. IAD investigations to be completed within 90 days of the incident; and*
- c. copies of all reports and command investigations to be sent to IAD within 7 days of completion of the investigation.*

Comments:

In our three previous reports, we found the applicable DPD directive in compliance with this paragraph.⁵¹ This continues to be the case.

Command-level investigations: Previously, we reviewed completed UF002a and found that the majority did not meet the 10-day time limit for completion of the preliminary investigation, and none included photographs of injuries to subjects or officers. Most, but not >94%, contained the required synopsis of the event.⁵² Although a majority of the reports included documentation of a canvass of the area and witness statements, those that did not provided no explanation of the reason for the failure to do so. The reports generally did not include profiles of the officers' prior uses of force and allegations of misconduct.

To assess compliance for the third reporting period, we reviewed the 86 completed UF002as, command-level investigations, and found that 22 (25%) preliminary investigations were completed within 10 days of the event. Eighty-three (96%) contained the required synopsis of the event. One of the cases included photographs of injuries to subjects or officers. There were several other investigations that reflected that evidence technicians took injury photographs, but the photographs were not in the files.

At that time, we found that 47 (55%) cases documented a canvass of the area and witness statements. One investigative supervisor noted that a canvass was unnecessary as there had been no injuries, which is not a criterion for determining when to conduct a canvass. Fifty-two (60%) cases included the profile of the officer's prior uses of force and allegations of misconduct. Thirty (35%) cases were submitted within the 30-day timeframe, nearly the same percentage reported during the prior reporting period.

To assess compliance for this reporting period, we reviewed the 97 completed UF002as, command-level investigations, and found 22 (23%) preliminary investigations completed within

⁵¹ DPD Directive 304.2, effective June 27, 2005.

⁵² DPD supervisors use the term "circumstance" in place of "synopsis."

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10 days of the event. Eighty-eight (91%) contained the required synopsis of the event. Four of the 22 cases that had photographs taken included the photos in the file.

In 82 (84%) cases, the canvass and witness information was included in the file. Officers' prior uses of force and allegations of misconduct were included in 87 (90%) cases. There were 82 signature blocks for first-line supervisors in the SIR forms, with 18 missing signatures. More importantly, however, is the fact that none actually contained evaluations of the investigations. We have previously commented on the problem DPD faces with respect to chain of command evaluation of investigations and, with a few exceptions, this trend continued during this quarter. The final command use of force investigations were completed within 30 days in 55 (57%) cases.

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

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

To assess compliance for this reporting period, we reviewed 10 completed FI cases.⁵³ Each included a synopsis of the event and applicable witness statements; however, the files did not contain photographs of injuries in all cases as required.

We noted the continued efforts of FI investigators to obtain officers' prior histories/profiles, but still apparently more to satisfy the requirements of this paragraph rather than as a sound investigatory practice. Equally important, we identified a significant problem with the efficacy of MAS/risk management system. For example, we noted instances where the Disciplinary Command replied to FI requests for officers' histories with a "no contact" response; however, replies from IAD and OCI to similar inquiries for the same officers revealed significant and pertinent histories, in two cases indicating histories of 16 and 21 complaints lodged with OCI. The DPD must address this deficiency as it strengthens its risk management system.

Five of the FI cases reviewed involved critical firearm discharges, one of which was an unintentional discharge that was promptly investigated and appropriately closed. The remaining four were completed within a timeframe of approximately nine to 11 months.⁵⁴ The delays were due, in part, to the policy regarding Garrity interviews discussed earlier in this report. (Refer to U29-31.) The remaining cases were completed within a timeframe of approximately 11 to 13 months, with the average taking approximately 12 months.

⁵³ These investigations included four non-fatal shootings, one unintentional discharge, one pursuit resulting in serious injury, and four complaints of excessive force.

⁵⁴ Consent Judgment paragraph U-38 requires the completion of critical firearm investigations within 30 days of the event, except where a Garrity interview is required. In those cases, the completion may be deferred until 30 days following the declination or completion of the criminal prosecution.

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We acknowledge the issues relating to delays in receipt of DA declinations; however, we suggest that the DPD closely evaluate investigatory process and related issues such as staffing and case management to identify the means to more expeditiously complete these investigations.

Reports submitted to IAD: Commanders are required to forward copies of command-level investigations to IAD within seven days of completion. Our previous review of the IAD log and process for receiving these reports found over 50% included no case closure dates or were turned back to command for signature or further investigation. However, the data was not sufficiently detailed for us to determine whether the reports were sent and received within the required seven days; therefore we approached our assessment of compliance for this reporting period from two perspectives.

First, using the IAD due date as the controlling date for compliance purposes, we found 21 of the cases reviewed were transmitted to IAD within the established timeline. In addition, we reviewed the applicable dates on 161 reports completed by the various commands and found that IAD received 116 (72%) within the required seven days.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

C. Review of Critical Firearm Discharges and In-Custody Deaths***CJ Requirement U37***

The DPD has created a Shooting Team, composed of officers from the Homicide Section and IAD. The Shooting Team shall respond to the scene and investigate all critical firearms discharges and in-custody deaths.

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁵⁵ We also reviewed completed FI critical firearm discharge investigations, and found the DPD in compliance with these requirements, as well.

To assess compliance for this reporting period, we reviewed five critical firearm discharge investigations, including four non-fatal shootings and one unintentional discharge completed during this reporting period. JIST was notified and responded as required in the four non-fatal shootings.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

⁵⁵ DPD Standard Operating Procedures and DPD Training Directive 04-07 provide guidelines for the Joint Shooting Team (JIST) and Force Investigations (FI) and compliance with requirements of this and subsequent paragraphs.

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CJ Requirement U38

The DPD shall develop a protocol for conducting investigations of critical firearm discharges that, in addition to the requirements of paragraphs 27-36, requires

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

Comments:

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

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

To assess compliance with these requirements for this reporting period, we reviewed five completed cases, including four non-fatal shootings and one unintentional firearm discharge. The four non-fatal shootings involved confrontations between officers and suspects. In three cases, the suspects were armed with firearms; in the fourth, the suspect threatened the officer's safety by swinging a metal pole. The unintentional discharge occurred when a shotgun jammed as an officer was attempting to make it safe.

We again noted discrepancies among the number of shots believed to have been fired, the number of shell casings recovered, and the ammunition count in two of the four cases. There were no indications of equipment malfunctions. The reports generally described the locations of the officers; however, the diagrams that were included did not specifically locate them nor did they indicate the findings of any bullet trajectory tests. In the case involving the alleged assault on the officer with the metal pole, investigators unsuccessfully attempted to lift fingerprints, but

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conducted no DNA analysis, which may have either verified or discounted the officer's and/or the subject's completely contradictory versions of the event. In the same case, investigators did not collect a trash can that later became a subject of contradiction, for fingerprints or DNA tests. In cases where ballistic tests were required, we again noted significant delays in responses from the MSP.

These cases were closed in a timeframe of nine to 11 months, clearly outside of the 30-day requirement. All of the cases included Garrity interviews; however, only one of the four completed the Garrity interviews within 30 days of the declination.

FI staff has made considerable progress strengthening the investigative process of these most serious cases; however, our findings suggest that FI needs to address specifically the issues relating to ballistics, evidence collection, and laboratory analyses to achieve compliance.

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

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U39

The DPD shall require a Command-level Force Review Team to evaluate all critical firearm discharges and in-custody deaths. The team shall be chaired by the Deputy Chief who directly supervises IAD. The DPD shall establish criteria for selecting the other member of the team.

Comments:

We previously found that DPD Special Order 09-13, issued March 2, 2009, established the Command-Level Force Review Team (CLFRT) to evaluate all critical firearm discharges and in-custody deaths, but did not establish selection criteria for Team members, and was therefore not in compliance with CJ requirements. This Special Order expired on December 31, 2009, but was renewed with replacement policy, Special Order 10-11, effective January 1, 2010. This General Order specifies the members of the Team by rank and position who are determined by the Chief of Police to "have the qualifications to perform the executive level evaluation of the investigations of critical firearm discharges and in-custody deaths." The Team is chaired by the Commander, Internal Affairs/Force Investigations, and includes Deputy Chiefs, the Training Commander, and a specified Chief of Police designee.

The DPD is in compliance with this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

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CJ Requirement U40

The DPD policy that defines the Command-level Force Review Team's role shall require the team to:

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

Comments:

The DPD continues to be in compliance with the Phase 1 requirements of this paragraph.⁵⁶ However, our previous reviews of Phase 2 compliance requirements found that the DPD needs to include interviews of principal investigators as part of the CLFRT process.

To assess compliance with these requirements for this report, we examined the five completed CLFRT Reports on critical firearm discharges, including four non-fatal shootings and one unintentional firearm discharge. We noted the documented participation of investigating officers in the meetings. However, we also noted that the timeframe between the DA declination and the CLFRT review on the non-fatal shootings ranged from approximately 124 to 253 days, clearly in excess of the 90-day requirement. The review for the unintentional discharge case occurred 102 days after the event, which is in excess of the 60-day requirement.

The CLFRT assessments included a review of officers' compliance with DPD directives, but generally indicate agreement with the recommendations of FI, rather than the CLFRT promulgating its own recommendation(s). In addition, the CLFRT made no note of the various ballistics and evidence issues cited above; rather, the reports appear to represent a perfunctory, rather than a critically important, role in the investigative process. The Chief signed off on each report within the required 14 days without comment.

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

Compliance Status:

Phase 1: In Compliance

Phase 2: Pending Compliance

⁵⁶ DPD Special Order 09-13 issued March 2, 2009 expired on December 31, 2009 and was replaced with DPD Special Order 10-11, effective January 1, 2010.

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CJ Requirement U41

The Chair of the Command Level Force Review Team shall annually review critical firearm discharges and in-custody deaths in aggregate to detect patterns and/or problems and report his or her findings and recommendations, including additional investigative protocols and standards for all critical firearm discharge and in-custody death investigations, to the Chief of Police.

Comments:

The CLFRT Chair previously prepared an annual report and critique of critical firearm discharges and in-custody deaths. These reports are due by May of the year following the year under review. Accordingly, the DPD has been in compliance with this paragraph.⁵⁷

We received the 2009 Annual Report during this reporting period as required. The report, prepared by Force Investigations, is comprehensive, including a description of investigative processes, case summaries and various analyses of fatal and non-fatal firearm discharges, in-custody deaths, and pursuits. The report indicates a downward trend in critical firearm discharges during the latest five-year period. After peaking at 59 in 2006, the DPD recorded 38 critical firearm discharges in 2009. There were no fatal shootings in 2009 after peaking at nine in 2006. The most common encounter involved armed subjects.

Although this report is comprehensive and includes voluminous data, it does not include an analysis of the data to detect patterns or problems, or the absence thereof, nor does it contain any findings or recommendations from the CLFRT Chair to the Chief as required. However, DPD has advised us that this will be addressed. Accordingly we find the DPD in continued compliance at this time, but we await a supplementary report containing the above information.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

Critical Issues:

As previously noted, the most critical component to this investigative process is a critical review of the work product by the chain of command. DPD provides training and guides to help investigators conduct investigations. However, commanders must improve how they evaluate these investigations and then re-instruct investigators on implementing appropriate techniques and practices that conform with DPD policies. This will, accordingly, yield compliance with the Judgments. There are some among the command staff who have taken a greater interest in the conduct of these investigations; DPD should consider utilizing their talents to assist commanders who may be experiencing more difficulty in evaluating their subordinates' performance.

⁵⁷ On January 28, 2009, the Court amended this paragraph to require the DPD provide the Monitor with a copy of the annual review and critique of critical firearm discharges within five months after the end of the year reported on.

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Next Steps:

We will continue to review compliance with particular attention to meeting the specific detailed elements prescribed in these requirements. Of particular concern is the thoroughness and completeness of investigations and their review by supervisors.

¶	Requirements	Phase 1 – Policy	Phase 2 – Implementation
27	Revise investigative policies	In Compliance	Not in Compliance
28	Investigation by uninvolved supervisor	In Compliance	Not in Compliance
29	Procedures for investigative interviews	In Compliance	Not in Compliance
30	Leading questions prohibited, etc.	In Compliance	Not in Compliance
31	Garrity protocol required	In Compliance	In Compliance
32	Revise investigatory report policies	In Compliance	Not in Compliance
33	Chain of command reviews	In Compliance	Not in Compliance
34	Auditable form required	In Compliance	Not in Compliance
35	Notification of supervisors etc	In Compliance	Not in Compliance
36	Completion of command investigations	In Compliance	Not in Compliance
37	Joint Incident Shooting Team	In Compliance	In Compliance
38	Protocol for critical discharge investigations	In Compliance	Not in Compliance
39	Command Level Force Review Team	In Compliance	In Compliance
40	Review critical firearm discharges	In Compliance	Pending Compliance
41	Command-level force review requirements	In Compliance	In Compliance

V. ARREST AND DETENTION POLICIES AND PRACTICES

The arrest and detention policies and practice requirements are a critical component of this Agreement. The policies prohibit an officer from making an arrest without probable cause, and the existing policy requires supervisory review within 12 hours of the arrest. It further requires that for an arrest that is unsupported by probable cause or a warrant that is not sought, an auditable form must document the circumstances within 12 hours of the event.

The DPD revised its investigatory stop-and-frisk policies to appropriately define investigatory stops and reasonable suspicion. DPD also revised its witness identification policies to comply with the revised arrest and investigatory policies. Policy also establishes that a material witness can only be taken into custody by obtaining a Court order prior to such taking.

The revised policies and procedures in this area require significant documentation and reviews by supervisors. Command notification is required in all instances where there exists a reported violation of DPD arrest, investigatory stop-and-frisk, witness identification and questioning policies, and all reports in which an arraignment warrant is not sought. Compliance review in this area thus draws heavily on the detailed records required in this section.

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A. Arrest Policies***CJ Requirement U42***

The DPD shall revise its arrest policies to define arrest and probable cause as those terms are defined in this Agreement and prohibit the arrest of an individual with less than probable cause.

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁵⁸ Phase 2 compliance is linked to and dependent upon the implementation of U43.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U43

The DPD shall review all arrests for probable cause at the time the arrestee is presented at the precinct or specialized unit. This review shall be memorialized in writing within 12 hours of the arrest. For any arrest unsupported by probable cause or in which an arraignment warrant was not sought, the DPD shall document the circumstances of the arrest and/or the reasons the arraignment warrant was not sought on an auditable form within 12 hours of the event.

Comments:

We reviewed the previous Arrest Audit Reports that were conducted at the Northeastern, Northwestern, Eastern, and Southwestern Districts during the third reporting period. The results of that review are consistent with the results of our review for this report. We noted in both cases that the commanders from the districts responded to the audits with a plan of action to remedy the deficiencies identified in the audit. DPD has been in compliance with this paragraph for the previous three reporting periods.

To assess compliance with these requirements for this reporting period, we reviewed a random sample of 105 case files. We reviewed Crisnet reports, Detainee Input Sheets, DPD Warrant Verification Logs, officers' Daily Activity Logs, Arraignment Verification Logs, and Detainee File Folders. In the cases we reviewed, sufficient probable cause for the arrest was present in all but two cases, and supervisory approval occurred within 12 hours of the arrest. In one of the two cases, an arrest was clearly made without probable cause.

When an officer is not seeking an arraignment warrant, the Department is required to complete Auditable Form U004. We reviewed 13 completed Auditable Forms in the random sample reviewed for this reporting period. Ten of these forms were completed in a timely fashion and submitted for supervisory review. In one case, although the Auditable Form was completed, the officer who completed the form did not indicate the date or time the arraignment warrant was not

⁵⁸ DPD Directive 202.1, Arrests, effective July 1, 2008.

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sought. (DPD policy requires an Auditable Form to be completed within 12 hours of the event). In two cases where sufficient probable cause for the arrest did not exist (also warrant not sought), there should have been an Auditable Form prepared. An Auditable Form (UF001) was not prepared in both these cases for an arrest unsupported by probable cause. In one of these two, an Auditable Form was completed for an arraignment warrant not sought. In several cases, we had to revert to the Detained Persons Detail Page to retrieve this information. On Form U004, the person submitting the form (usually the OIC) is required to place the date and time on the form by his/her signature and, in the box provided, the reasons why the warrant was not sought and the date and time the form was generated. This verifies the reason the arraignment warrant was not sought and that the form was completed in a timely fashion.

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

The next DPD full agency internal audit covering arrests, detention, and witness identification will be forthcoming on August 31, 2010 and we will review and assess its findings.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

B. Investigatory Stop Policies

CJ Requirement U44

The DPD shall revise its investigatory stop and frisk policies to define investigatory stop and reasonable suspicion as those terms are defined in this Agreement. The policy shall specify that a frisk is authorized only when the officer has reasonable suspicion to fear for his or her safety and that the scope of the frisk must be narrowly tailored to those specific reasons.

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph. The DPD reinforced existing policies during this reporting period with roll call training, however Phase 2 compliance is linked to and contingent upon implementation of U45.⁵⁹

Compliance Status:

Phase 1: In Compliance

Phase 2: Not In Compliance

⁵⁹ DPD Directive 202.1, Arrests, effective July 1, 2008. The DPD issued an Administrative Message, titled Roll Call Training Stop and Frisk, on March 19, 2010, with instructions that it be read at roll calls from March 20, 2010 through March 26, 2010. The Message emphasized the following actions: (1) recording the investigatory stop and frisk, (2) documentation of supervisory review, (3) supervisory documentation of all investigatory stops and/or frisks within 24 hours and (4) identification of stops/frisks unsupported by reasonable suspicion.

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CJ Requirement U45

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

Comments:

In our three previous reports, we determined that DPD was not in compliance with the provisions of this paragraph. Our reviews showed that officers did not articulate reasonable suspicion with frisks, and that supervisors did not properly check the officers' Daily Activity Log entries.

To assess compliance for this report, we reviewed 317 officers' Daily Activity Logs completed on three randomly selected dates.⁶⁰ Each district provided the logs requested, which included traffic stops and other situations where officers made investigatory stops of individuals who were not in vehicles.

This review yielded 61 investigatory stops, of which 48 indicated a lawful purpose and the remainder failed to describe the reasons for the investigation. Of the 13 instances where the reason for the stop was not articulated, 11 occurred by one team of three officers on the same date. DPD's compliance rate for investigatory stops only (excluding frisks and traffic stops) this reporting period is 79%, which although a substantial improvement over the previous quarter, fails to meet the standard for reporting and/or justifying these serious interactions with the community.

The Logs included 97 traffic stops, and our review indicated that eight did not contain sufficient information to justify the stop, which is a basic requirement. For example, there were situations where the officer issued a summons for driving without a license or proper insurance without providing any additional information describing what violation occurred or what investigatory purpose was necessary for the initial stop. Supervisors reviewed all 97 traffic stops in a timely fashion with signatures, and dates and times of review. Although the DPD has made progress with requiring officers to more consistently articulate reasonable suspicion for traffic stops, we continue to find the Daily Activity Log entries difficult to read or understand. DPD's compliance rate for traffic stops is 91%.

The Logs also included 134 frisks under "Recap of Activity" on the face sheet of the Daily Activity Logs. However, we could only locate 123 frisks in the narratives. Officers are required to fill in the Recap of Activity portion of the log to indicate their total daily activities and to complete the narrative portion of the form to indicate each individual activity. In 11 cases, the officers marked a frisk in the summary but did not mark the appropriate "frisk" box in the narrative. In each of the 11, we scrutinized every entry and could not locate a frisk.

Eighty-seven of the frisks contained sufficient information to articulate reasonable suspicion. Thirty-six frisks did not contain the required information, and 11 could not be located. For example, in one incident where officers conducted frisks, the officers listed the reason for the frisks as subjects "walking in street" without any other descriptive phrase to indicate reasonable

⁶⁰ For this review, we selected Officer's Daily Activity Logs completed on April 9, May 4, and June 12, 2010.

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suspicion. In another incident, officers conducted frisks after routine stops for minor traffic violations.

We also found two instances where frisks occurred and the officers used the term “furtive gestures” to justify their reasonable suspicion for the frisk. This phrase does not adequately define the requirement for a Terry stop, and should not be used by officers unless they describe in detail the actions of the offender that led to the search (pat down).⁶¹

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

We found that all frisks were documented by the end of the officers’ shifts. In two of the Daily Activity Logs, supervisory reviews did not occur; and in two cases, the supervisory review was more than 24 hours late, and in another, three days late. There was one Daily Activity Log that contained a supervisor’s signature, but not the date or time indicating that the review was conducted within policy.

There were no Investigatory Stop and Frisk Exception Forms (Auditable Form UF003) included in the case report packets. We inquired with DPD to learn if there were any Auditable Forms relating to this paragraph that were completed for this reporting period. Although there is evidence of some progress with articulating reasonable suspicion by DPD officers, the Department’s compliance rate for frisks this quarter is 64%. The DPD remains out of compliance with these requirements.

We reviewed the DPD’s Corrective Action Notices of March 9, 2010 that were generated in response to a previous internal audit submitted for the Sixth/Eighth Precincts and the follow-up by those commands. We met with Audit Team personnel to discuss the Team’s findings and methodology. We reviewed with the Team several Daily Activity Logs that contained frisks and were completed during the current reporting period, and we were in agreement with those in or out of compliance. The Audit Team recommended a number of steps to ensure compliance with the Department’s stop-and-frisk policies that include retraining officers and reviewing all stop-and-frisk situations by supervisors and command personnel in a timely fashion. We have not received any Auditable Forms from supervisors indicating that they have challenged an improper investigatory stop-and-frisk during any of our previous reviews. We noted that there was corrective action/discipline taken as a response to the audits.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

⁶¹ Terry v. Ohio 332 US 1 (1968) Police may perform a quick surface search (pat down) of the persons outer clothing for weapons if they have reasonable suspicion the person is armed (officer safety).

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C. Witness Identification and Questioning Policies

CJ Requirement U46

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

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁶² Phase 2 compliance for this Consent Judgment paragraph is dependent on the implementation of U48.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U47

The DPD shall develop the revised witness identification and questioning policies within three months of the effective date of this Agreement. The revised policies shall be submitted for review and approval of the DOJ. The DPD shall implement the revised witness identification and questioning policies within three months of the review and approval of the DOJ.

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁶³ Phase 2 compliance is dependent on the implementation of U48.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

⁶² DPD Directive 203.9, Custodial Questioning, effective July 1, 2008.

⁶³ DPD Directive 203.9, Custodial Questioning, effective July 1, 2008.

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CJ Requirement U48

The DPD shall document the content and circumstances of all interviews, interrogations and conveyances during the shift in which the police action occurred. The DPD shall review in writing all interviews, interrogations and conveyances and document on an auditable form those in violation of DPD policy within 12 hours of the interview, interrogation or conveyance.

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁶⁴

For our previous reporting period, we reviewed interviews, interrogations, and conveyances from the Homicide Command, the Sex Crimes Command, and the Narcotics Unit. The Homicide Command has adhered to established policy and followed the guidelines effectively in all our previous reviews.

To assess compliance with these requirements for this reporting period, in addition to Homicide, Sexual Crimes Command and Narcotics, we have expanded our review to include the Southwestern District/Precinct's Investigative Operations Unit (IOU). We reviewed 54 Homicide Command case files, which contained 151 witness/interrogation interviews and 19 conveyances. All of the witness interviews and interrogations were conducted within reasonable timeframes and followed prescribed policy with few exceptions. Of the 151 interviews/interrogations conducted by the Homicide Command, one contained no ending time for the interview, and the supervisor did not list the date or time when the review was approved. In another case that contained three witness interviews, the supervisor approved the interview more than 24 hours after the event. All 19 conveyances were properly documented. The Homicide Command's compliance rate for this requirement is 97%.

We also reviewed 37 Sex Crimes Command case files, which contained 47 witness/interrogation interviews. Forty-one cases met the requirement and contained the proper documentation and supervisory review within prescribed timeframes. In one case, there was no supervisory review; and in four other cases, the supervisory review did not occur in a timely basis. The Sexual Crimes Command's compliance rate for the previous quarter was 60%. The command made adjustments during the current quarter to address the lack of timeliness in supervisory review and its compliance rate improved to 87%.

In addition, we reviewed 21 Narcotics Unit case files, and found nine cases involving 10 interrogations. In our previous report, none of the Narcotics interrogations were conducted on the approved form. All the interrogations were conducted on the interrogation sheet and not on the approved Statement Form (DPD 103, Revised February 9, 2009). We found that six of the 10 Narcotics interrogations were in compliance. Four of the interviews were conducted on the interrogation sheet, which personnel have been directed not to use due to its incomplete format. The Narcotics Unit has made progress in this area; however its compliance rate is 60%.

⁶⁴ DPD Directives 203.3, Notifications, effective July 1, 2008 and 203.9, Custodial Questioning, effective July 1, 2008.

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We reviewed 26 case files from the Southwestern District Investigative Operations Unit (IOU) and found 19 interviews conducted on the proper form. Of these 19, four did not contain the ending time of the interview, and none contained supervisory review. In seven cases, the officers utilized the previous version of the form, which does not contain the necessary information to document the interview. None of the forms, current or outdated, contained a supervisory review. Southwestern District is not in compliance with this requirement.

Homicide Command has been in compliance with this requirement for the past three reporting periods. We have observed that both the Sexual Crimes Command and the Narcotics Unit have made substantial progress since our initial review. Southwestern District did not have any supervisory reviews of its interviews/interrogations, and listing the interview ending times was problematic. DPD is not in compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not In Compliance

D. Prompt Judicial Review Policies

CJ Requirement U49

The DPD shall revise its policies to require prompt judicial review, as defined in this Agreement, for every person arrested by the DPD. The DPD shall develop a timely and systematic process for all arrestees to be presented for prompt judicial review or to be released.

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁶⁵ Phase 2 compliance is dependent on the implementation of U50.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U50

The DPD shall require that, for each arrestee, a warrant request for arraignment on the charges underlying the arrest is submitted to the prosecutor's office within 48 hours of the arrest.

Comments:

We reviewed DPD's last-reported custodial detention audits of the Southwestern District, the Eastern District, and the Northeastern District during the previous reporting period. The scope of

⁶⁵ DPD Directive 202.1, Arrests, effective July 1, 2008.

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the audits covered U49 through U58 and U60. The results of DPD's conclusions were consistent with our findings in our previous and this reporting period. The audits identified four main issues that were addressed by the Audit Team, and we concur with their recommendations. The issues are: (1) the time it takes to identify and clear holds/warrants; (2) Auditable Forms not being prepared for failing to provide prompt judicial review; (3) all pertinent information not being entered into Livescan; and (4) Auditable Forms not being prepared for violation of holds/warrants policies. We also found that, on occasion when Warrant Tracking Forms are prepared, the OIC fails to place the date and time the form was completed and/or fails to mark the appropriate box on the form.

Due to a few case reports involving traffic, probation violations, and warrant arrests that are handled by other means, or where the arrestee is taken directly to court, we reviewed 84 case reports that eventually were submitted to the Prosecutor's Office for arraignment. The documentation supporting this review included Crisnet reports, Warrant Verification Logs, Arraignment Sheets, Detainee Input Sheets, and Warrant Tracking Hold Forms, and in some cases, Officer's Daily Activity Logs. Of the 84 cases we reviewed, all but one met the 48-hour requirement, resulting in a 99% compliance rate.

In 26 cases, the arraignment was not completed within the 48-hour timeframe. However, the warrants were submitted to the prosecutor prior to the 48-hour requirement in all but one instance.

DPD is in compliance with these requirements.

As we noted previously, on January 11, 2010, the Chief Judge of the 36th District Court of the State of Michigan announced the discontinuance of evening felony arraignments. This has, in effect, burdened DPD's ability to have detainees arraigned timely.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U51

The DPD shall document on an auditable form all instances in which the request for an arraignment warrant is submitted more than 48 hours after the arrest. The DPD shall also document on an auditable form all instances in which it is not in compliance with the prompt judicial review policy and in which extraordinary circumstances delayed the arraignment. The documentation shall occur by the end of the shift in which there was: 1) a failure to request an arraignment within 48 hours, 2) a failure to comply with the prompt judicial review policy, or 3) an arraignment delayed by extraordinary circumstances.

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Comments:

We previously found the DPD in compliance with this paragraph. To assess compliance with these requirements for this reporting period, we reviewed the same documents referenced in U50.

Of the 105 arrest case reports we reviewed, there were 44 that began at the initial arrest and concluded in arraignment. Cases that were excluded include warrant arrests, juvenile arrests, some traffic cases, and situations where the offender was able to post bond. In 22 cases, the arrest occurred during a domestic violence event, and we have found that the prosecutor typically denies the arraignment due to insufficient evidence to proceed or the victim refuses to prosecute.

There were 26 cases where the arraignment occurred after 48 hours from the time of the initial arrest. In 23 cases, an Auditable Form was completed, including four that were due to those involving extraordinary circumstances. In three cases, we could not locate an Auditable Form in the case packets. DPD's compliance rate with this requirement for the current reporting period is 93%. Previously, the Department has been in compliance with the requirements, and the failure to comply with the requirements this reporting period will not take the Department out of compliance.

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

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

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

E. Hold Policies

CJ Requirement U52

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

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Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁶⁶ Phase 2 compliance is dependent on the implementation of U53.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U53

The DPD shall document all holds, including the time each hold was identified and the time each hold was cleared. The DPD shall document on an auditable form each instance in which a hold is not cleared within 48 hours of the arrest. The documentation shall occur within 24 hours of each instance of a hold not being cleared.

Comments:

In our first two reporting periods, DPD was in compliance with this paragraph; in the third reporting period, the Department's compliance rate was 70%.

To assess compliance with these requirements for this reporting period, we reviewed 105 Detainee Input Sheets, and found a total of 44 holds/warrants listed on the forms. In two cases, the hold exceeded 48 hours prior to being cleared. An Auditable Form for the violation was not included in either of the case packets. DPD is required to complete an Auditable Form when a hold/warrant is not cleared within 48 hours of the time it is identified. There are two separate and distinct parts to this particular Judgment. With few exceptions, the majority of the Detainee Input Sheets did not indicate a "date cleared" in the appropriate location (box), although the actual time of release (hold/warrant cleared) is indicated in Section (3), Final Charging, and Disposition and Release portion of the form which indicates when the detainee is released from custody. As mentioned in our previous reports, the lack of DPD personnel properly indicating the date and time holds/warrants are identified and cleared continues to be a problem for the Department. DPD's compliance rate for this requirement is 91%.

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

⁶⁶ DPD Directive 305.2, Detainee Registration, effective September 12, 2005.

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Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

F. RESTRICTION POLICIES

CJ Requirement U54

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

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁶⁷ Phase 2 compliance is dependent upon the implementation of U55.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U55

The DPD shall require that such restrictions be documented and reviewed at the time the restriction is issued and reevaluated each day in which the restriction remains in effect. The DPD shall document on an auditable form any violation of the restriction policy by the end of the shift in which the violation occurred.

Comments:

We previously determined the DPD to be in compliance with this paragraph.

To assess compliance with these requirements for this reporting period, we reviewed 105 case files and found three restrictions. The proper form was completed in all three cases, and each was documented as an investigative necessity. In one case, the arrestee was held for three days and the "restriction" should have been reviewed daily, but this did not occur. In this case, the commanding officer failed to conduct the required review. The restriction remained in effect for three days without review. DPD personnel advise us that restricting a detainee's access to visitors, attorneys, and the use of telephone privileges rarely occurs. A telephone restriction may arise when a detainee makes threatening or harassing calls to individuals outside the facility. There are payphones in each holding facility for the detainee's use. Due to one of the three

⁶⁷ DPD Directive 305.2, Detainee Registration, effective September 12, 2005.

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restrictions not being in compliance with the policy and an Auditable Form not being prepared for violating telephone “Restrictions,” DPD’s compliance rate with this paragraph is 66%. DPD has previously been in compliance with this requirement, and this one out of compliance finding will not take them out of compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

G. Material Witness Policies

CJ Requirement U56

The DPD shall revise its material witness policies to define material witness as that term is defined in this Agreement and remove the term “police witness” from DPD policies and procedures.

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁶⁸ Phase 2 compliance is dependent on the implementation of U57.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U57

The DPD shall obtain a court order prior to taking a material witness into DPD custody. The DPD shall document on an auditable form the detention of each material witness and attach a copy of the court order authorizing the detention.

Comments:

We previously found the DPD in compliance with the requirements of this paragraph.

To assess compliance with these requirements for this reporting period, we reviewed all of DPD’s requests to the Court for taking a material witness into custody for the period of April 1, through June 30, 2010. The Auditable Form, approved by a supervisor, was attached to the Court order in each of the three cases. The Court orders were all issued by a Judge in the 36th District Court of the State of Michigan prior to the witness’ detention. DPD is in full (100%) compliance with these requirements.

⁶⁸ DPD Directive 202.1, Arrests, effective July 1, 2008.

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Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

H. Documentation of Custodial Detention

CJ Requirement U58

The DPD shall revise its arrest and detention documentation to require, for all arrests, a record or file to contain accurate and auditable documentation of:

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

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁶⁹

To assess compliance with these requirements for this reporting period, we reviewed a random sample of 74 case files that contained information from the initial arrest through the submittal of an arraignment warrant. Of these 74 cases, 44 went to arraignment. The contained documents included Detainee Input Sheets, Warrant Verification Logs, Arraignment Logs, and Livescan forms. In all instances, the: (a) individual's personal information; (b) crime[s] charged; (c) date and time of arrest and release; (d) time and date the arraignment was submitted; (f) time and date of arraignment, if applicable; (g) time and date each warrant was lodged and cleared; and (h) individual's custodial status were listed on one of the applicable forms.

In the review of U58e, the Judgment requires that "the name and badge number of the officer who submitted the arraignment warrant" be documented; we found that in 19 of 74 cases, although the officer's name was listed, the officer failed to include his/her badge number on the Warrant Verification Log. Of the 19 cases where an officer failed to place his/her badge number on the form, two officers accounted for a substantial portion of the violations. In another case, there was no name or badge number on the form indicating which officer submitted the warrant.

We found that supervisors typically signed their name in the lower left-hand corner of the log, yet failed to note the submitting officer's badge number that was not listed in the space provided.

⁶⁹ DPD Directive 305.2, Detainee Registration, effective September 12, 2005.

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We tested the 74 cases for compliance with eight individual requirements, and found an overall compliance rate of 97%, accounting for the issue noted above.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

I. Command Notification

CJ Requirement U59

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

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁷⁰ However, in our previous reports, we did not find the DPD in compliance with the implementation requirements, noting the lack of Auditable Forms, the lack of documented reasonable suspicion for frisks, and an inadequate supervisory review of Officer's Daily Activity Logs.

In our review of 105 arrests, we determined that two of the arrests lacked probable cause and brought both of these incidents to the Audit Team's attention. Neither unsupported arrest had an Auditable Form completed or a review by a commanding officer.

To assess compliance with these requirements for this reporting period, we reviewed Officer's Daily Activity Logs, investigatory stop-and-frisk, and checked for the presence of Auditable Forms. We found no completed Auditable Forms for 36 of the 123 frisks that lacked documented reasonable suspicion. We also found an inadequate supervisory review of Officer's Daily Activity Logs to ensure that reasonable suspicion existed prior to the frisks.

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

⁷⁰ DPD Directive 202.1, Arrests, effective July 1, 2008.

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Our review of traffic stops determined that officers' abilities to accurately describe the actions that led to the stop vastly improved over the previous two reporting periods; however, there were no Auditable Forms generated for the eight traffic stops in which a form was required to be completed. Commanders are not receiving the forms due to supervisors not completing them.

There were 61 investigatory stops (excluding frisks and traffic stops), of which 48 were based on a documented investigatory purpose. Thirteen of the stops did not articulate reasonable suspicion. We were unable to locate any Auditable Forms.

There were 13 cases where documentation was completed that indicated an arraignment warrant was not sought. In three of the 13 cases, the commanding officer failed to approve the form and attach his/her signature.

There were no violations of witness identification and questioning policies that would have required an Auditable Form to be completed. Due to the large number of frisks and investigatory stops that did not articulate reasonable suspicion nor contained an Auditable Form, DPD is not in compliance with the requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U60

The DPD shall require the commander of the precinct, and, if applicable, of the specialized unit, to review in writing all violations of DPD prompt judicial review, holds, restrictions and material witness policies on a daily basis. The commander's review shall include an evaluation of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁷¹

To assess compliance with these requirements for this reporting period, we reviewed 105 arrest case reports, of which 84 were submitted to the Prosecutor's Office and 44 went to arraignment. There were 26 cases where the arraignment occurred more than 48 hours after the arrest. In all cases but one, the request for the warrant was submitted in a timely fashion. In four cases, the late arraignment was due to extraordinary circumstances; and in another, the officer failed to submit the warrant request to the prosecutor within 48 hours. In three cases, an Auditable Form was not generated. In four cases from the same specialized unit, there was no commander's review. DPD's compliance rate for this portion of the requirement is 73%.

⁷¹ DPD Directives 202.1, Arrests, effective July 1, 2008 and 305.4, Holding Cell Areas, effective May 9, 2005.

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Of the 44 hold/warrants we identified, there were two holds that were not cleared within the required 48 hours. An Auditable Form was not generated for either of the two holds; therefore, the commander was unable to conduct a review.

There was one violation of detainee restrictions where the commanding officer did not complete the required review.

DPD is not in compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

Critical Issues:

As we previously noted, on January 11, 2010, the Chief Judge of the 36th District Court of the State of Michigan announced the discontinuance of evening felony arraignments conducted at the 36th District Court. This will, in effect, further burden DPD's ability to have detainees arraigned and to meet the requirement that arraignment occur within 48 hours of arrest. In addition to this edict from the District Court, the cutoff time for submitting prisoner information to the Court has been moved back to 10:30 a.m., restricting DPD's ability to provide prompt judicial review.

Additionally, we are concerned that officers do not always follow the detailed requirements needed for compliance and, perhaps more importantly, that supervisors do not always exhibit the willingness and ability to exercise the roles required of them. For instance, as noted above, we found that officers often failed to record complete information (badge numbers, times, and dates) concerning arrests and detentions; and that supervisory review of their reports was often deficient. Likewise, DPD policy requires written documentation of all investigatory stops and frisks, but our review indicated that the officers often fail to articulate "reasonable suspicion." Supervisory monitoring of stops and frisks has also been an ongoing issue since the beginning of the Consent Judgments.

During our site visits at district/precinct or specialized unit locations, and when conferring with DPD personnel, we are occasionally advised that information is not trickling down to personnel in the districts. For example, two separate supervisors in different commands have advised us that they have not been told to utilize the correct form (DPD-103 [02-09]) relating to witness interviews. DPD issued an Administrative Message on March 19, 2010 specifically addressing this issue. All out of date DPD forms should be removed from the Districts/Precincts to ensure compliance.

When an arrest is made, personnel who typically prepare the warrant request for the Prosecutor's Office need to present it in a timelier manner. We have reviewed cases where an arrest is made early on a Monday morning and the warrant request is not submitted until Wednesday. While the request is made within 48 hours of the arrest, it delays the arraignment more than 48 hours. By preparing the request promptly, there will be fewer arraignments over 48 hours and thus fewer Auditable Forms generated and preventable commander reviews.

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Next Steps:

During our next site visit, we will meet with DPD's Audit Team to discuss probable cause reviews and our stop-and-frisk concerns. Completeness, accuracy, and timeliness of all reports and auditable forms continue to affect field units and the quality of administrative review. We will also review other investigative units in various districts/precincts to determine their compliance with interrogations, interviews, conveyances, and material witness policies. We will again observe the personnel who are responsible for the detainee booking process, and interview them regarding their process and procedures for detailing detainee information, including completing the Livescan form, and how they can assist in the probable cause review as a back-up for the probable cause verification normally completed on the Crisnet report.

We will also discuss with Department personnel the dilemma that occurs when a hold has been previously placed on an arrestee, and the warrant request to the Prosecutor's Office on the current charge has been denied. The concern for DPD in these instances creates a delay in presenting the hold for arraignment within 48 hours only on the basis of the hold.

	Requirements	Phase 1 Policy	Phase 2 Implementation
42	Define and prohibit arrest without probable cause	In Compliance	In Compliance
43	Review all arrests for probable cause	In Compliance	In Compliance
44	Revise investigatory stop and frisk policy	In Compliance	Not in Compliance
45	Written account of stops and frisks	In Compliance	Not in Compliance
46	Revise witness policies	In Compliance	In Compliance
47	Revise above in three months	In Compliance	In Compliance
48	Document content, etc. of interviews, etc.	In Compliance	Not In Compliance
49	Arrests receive prompt judicial review	In Compliance	In Compliance
50	Charges to prosecutor within 48 hours	In Compliance	In Compliance
51	Document of late warrant requests	In Compliance	In Compliance
52	Revise hold policies	In Compliance	In Compliance
53	Documentation of all holds	In Compliance	Not in Compliance
54	Policy for restricting phone access	In Compliance	In Compliance
55	Document and review such restrictions	In Compliance	In Compliance
56	Define material witness	In Compliance	In Compliance
57	Custody of material witnesses-court order	In Compliance	In Compliance
58	Arrests and detention record requirements	In Compliance	In Compliance
59	Required written review of violations	In Compliance	Not in Compliance
60	Required written review of violations	In Compliance	Not in Compliance

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VI. EXTERNAL COMPLAINTS

The Internal Affairs Division (IAD) states that its mission is to ensure the public's trust and confidence in the Detroit Police Department (DPD) by conducting thorough and impartial investigations into allegations of criminality and serious misconduct lodged against members of the Department, as well as other City of Detroit employees. Consistent with this obligation, the Internal Affairs Division accepts information from any source; and requires that all officers and employees document all complaints filed in writing, verbally, in person, by mail, by telephone, by facsimile, or by electronic mail.

During our most recent site visit, we examined the investigative procedures employed by IAD for consistency in the application of procedural fairness, timeliness, confidentiality, and the meticulous reporting of facts and results of an investigation. We noted that the reports were generally well-written, clear, concise, factual, and complete. The investigations were conducted in accordance with DPD policy and IAD Standard Operating Procedures (SOP).

The Office of the Chief Investigator (OCI) is the investigative arm of the Board of Police Commissioners (BPC). The OCI is responsible for investigating non-criminal external complaints. The Board has plenary authority over citizen complaints. The OCI operates independently of the Detroit Police Department and is led by a civilian Chief Investigator who is appointed by the BPC. The OCI is staffed with a combination of civilian and sworn investigators who assist in the investigation of citizen complaints. The OCI's mission is to provide meaningful and objective investigations of citizen complaints of police misconduct.

The OCI investigates non-criminal allegations of misconduct against Detroit Police Department personnel for the following: Arrest; Demeanor; Entry; Harassment; Force; Procedure; Property; and Search and Seizure. OCI employees are required to accept complaints from any source and by any method of communication including in writing, verbally, in person, by mail, by telephone, by facsimile, or by electronic mail. Members of the public may also file complaints at the BPC office or at BPC meetings.

During our most recent site visit, we examined the investigative procedures employed by the OCI for thoroughness of investigative effort, inclusion of information from all sources, and the development of pertinent facts of the incident. Consistent with our last review, we found most closed and completed investigations well-written, clear, concise, factual, and complete. With the exception of incorrect case closure, and some issues regarding timely supervisory/management oversight and case investigation noted below, all investigations were conducted in accordance with the OCI Policy established by the Board of Police Commissioners.

CJ Requirement U61

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

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agencies shall exchange information, including complaint referrals and information about sustained complaints.

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁷² IAD is charged with the prevention, discovery, and investigation of criminal allegations and allegations of serious misconduct against Department members and City employees who are assigned within the DPD. The DPD IAD is responsible for all external complaints alleging possible criminal misconduct. The OCI investigates non-criminal allegations of misconduct against DPD personnel in the following categories: Arrest; Demeanor; Entry; Harassment; Force, as it relates to threats; Property; Search; and Service.

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

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

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U62

The DPD and the City shall develop and implement an informational campaign regarding external complaints, including:

- a. informing persons that they may file complaints regarding the performance of any DPD employee;*

⁷² DPD Directive, 102.6, Citizen Complaints, effective July 1, 2008, IAD Standard Operating Procedures, Section 1 and 3, and OCI Standard Operating Procedure, effective July 24, 2003 (revised April 29, 2004) establish the jurisdictional responsibility of the DPD (Internal Affairs Division) and OCI.

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- b. distributing complaint forms, fact sheets and informational posters at City Hall, OCI, all DPD precincts, libraries, on the internet and, upon request, to community groups and community centers;*
- c. broadcasting public service announcements that describe the complaint process; and*
- d. posting permanently a placard describing the complaint process, with relevant phone numbers, in the lobby of each DPD precinct*

Comments:

During our first site visit, we inspected Police Headquarters; the Northeastern, Eastern, Southwestern, and Central Districts; the Tenth and Twelfth Precincts; and the Office of the Chief Investigator for compliance with the requirements of this paragraph. All locations displayed in a prominent location in the lobby of the district stations permanent placards that described the complaint process. All desk personnel were able to produce citizen complaint brochures immediately, and were aware that they should not discourage citizen from filing a complaint.

To assess compliance for last reporting period, we inspected the Northeastern and Eastern Districts, and the Office of the Chief Investigator, for compliance with the requirements of this paragraph. The district stations displayed in a prominent location in the lobby permanent placards describing the complaint process. However, we noted the absence of a placard in the lobby of the building where OCI is located and advised OCI staff that the posting a placard in the lobby would be beneficial to persons who went there to file complaints, even though there is a placard on another floor where their offices are located. All desk personnel were able to produce citizen complaint brochures immediately, and were aware that they should not discourage citizens from filing a complaint. We also inspected four City library branches: Bowen; Neighborhood City Hall; Campbell Brown; and Conely. All locations had visible citizen complaint procedure posters, fact sheets, report forms, and brochures. The library staff was conversant in all areas and knew how to replenish supplies when necessary.

During this site visit, we inspected the Sixth and Eighth Precincts (formerly Northwestern District), the Twelfth Precinct, and the Central District. We found the appropriate citizen complaint posters, forms, and brochures in place.

We contacted desk officers who were able to provide the appropriate citizen complaint forms and brochures.

Both DPD and OCI perform community outreach programs designed to inform citizens of the complaint process and the procedures for filing complaints. The Board of Police Commissioners' website allows the public to file complaints against the police online. The City of Detroit broadcasts public service announcements that describe the complaint process. (See U61 for additional information.)

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

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CJ Requirement U63

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

Comments:

During our first site visit, we reviewed the audit conducted by the DPD Office of Civil Rights, dated November 20, 2009, regarding citizen complaint informational brochures and contact forms carried in police vehicles. We also randomly selected officers from the Northeastern, Eastern, Southwestern, and Central Police Districts, and asked them to provide the brochures and forms for review. Each officer who we contacted provided the documents upon our request, and was aware of the requirements of the DPD policy concerning citizen complaints. Additionally, we selected at random several patrol officers from the Tenth and Twelfth Precincts; these officers were also able to produce the required materials from their patrol vehicles during our visit.

To assess compliance with these requirements for the last reporting period, we inspected the Northeastern and Eastern Districts. We selected at random individual officers to produce citizen complaint brochures and they, including a plain-clothes detective, all complied.

During this review, we did not contact any officers in the field.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

A. Intake and Tracking

CJ Requirement U64

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

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁷³ In addition, our past reviews of IAD and OCI external

⁷³ DPD Directive, 102.6, Citizen Complaints, effective July 1, 2008, IAD Standard Operating Procedures, Section 1 and 3, and OCI Standard Operating Procedure, effective July 24, 2003 (revised April 29, 2004) establish the jurisdictional responsibility of the DPD (Internal Affairs Division) and OCI. DPD Directive 102.6, Citizen

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complaint investigations determined that the complaints were filed using all of the communication facilities identified in this paragraph.

To assess compliance for the last reporting period, we reviewed 34 IAD and 140 OCI investigations, and noted again that the complaints were filed using all of the methods identified in this paragraph. Most external complaints involved non-criminal police actions and were referred to the OCI for investigation.

For this reporting period, we reviewed 50 IAD and 102 OCI investigations, and found again that complaints were filed using all of the communication methods identified in this requirement.

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

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U65

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

Comments:

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

Our last review of 34 IAD and 140 OCI external complaint investigations for this report found no instances where personnel accepting complaints reported any opinions regarding the mental capacity or veracity of the complainant

We reviewed 50 IAD and 102 OCI cases for this report. We again, found no instances where personnel accepting complaints reported any opinions regarding the mental capacity or veracity of the complainant

DPD and the City are in compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

Complaints, effective July 1, 2008, IAD Standard Operating Procedures, Section 3 and OCI Policy Section 8 describe the intake and tracking policy as defined by the Consent Judgment.

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CJ Requirement U66

The DPD and the City shall assign all complaints a unique identifier, which shall be provided to the complainant, and a description of the basis for the complaint (e.g., excessive force, discourtesy or improper search).

Comments:

During the first quarter, we reviewed 37 IAD and 409 OCI closed external complaint investigations. Each investigative file contained a City of Detroit Citizen Complaint Report (CCR) and a letter acknowledging the receipt of the complaint with the name of the assigned investigator and the office contact number.

To assess compliance with this requirement for the last reporting period, we reviewed 34 IAD and 140 OCI external complaint investigations that were closed during this reporting period. Each investigative file contained a City of Detroit Citizen Complaint Report (CCR) and a letter acknowledging the receipt of the complaint with the name of the assigned investigator and the office contact number.

For this period, we reviewed 50 IAD and 102 OCI investigations. All investigations contained all of the required information.

The letters also provided a case specific identifier for the complainant to reference when contacting either IAD or OCI. DPD and the City are in compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

B. External Complaint Investigations

CJ Requirement U67

The DPD and the City shall revise its policies regarding external complaint investigations to:

- a. provide that all complaints shall be referred for investigation and resolution by OCI or, if the complaint alleges potentially criminal conduct by an officer, by IAD;*
- b. permit the informal resolution of complaints alleging only inadequate service or the complainant's innocence of a charge and require the investigation and formal resolution of all other complaints;*
- c. refer all complaints to the appropriate agency within five business days of their receipt;*
- d. require that the complainant shall be periodically kept informed regarding the status of the investigation;*
- e. develop written criteria for IAD and OCI investigator applicants, including the applicant's complaint and disciplinary history and investigative experience;*

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- f. implement mandatory pre-service and in-service training for all IAD and OCI investigators, including intake, investigations, interviews and resolutions of external complaints;*
- g. require IAD and OCI to complete all investigations within 90 days of receiving the complaint and*
- h. require that: (1) upon completion of the investigation by a command other than OCI, the complainant shall be notified of its outcome and, if the complaint is sustained, whether disciplinary or non-disciplinary corrective action has been recommended; and (2) upon completion of an investigation by OCI the complainant shall be notified of its outcome and, if the complaint is sustained, its referral to the Chief of Police for appropriate disciplinary or non-disciplinary corrective action.⁷⁴*

Comments:

We previously found DPD and the City in Phase 1 compliance with these requirements; however, we found them out of Phase 2 compliance with these requirements. Although we found many of the investigative processes to be in compliance, both OCI and IAD exceeded the 90-day time limit for completing investigations in several instances. In addition, we noted OCI administratively closed several cases contrary to DPD policy.

To assess compliance for the last reporting period, we reviewed 34 IAD and 140 OCI investigations that were closed during this reporting period. These cases were investigated within the jurisdictional authority of each entity and in accordance with the requirements of this paragraph.

IAD Standard Operating Procedures do not specifically permit or encourage informal resolution due the nature of their investigative jurisdiction of alleged criminality and/or serious misconduct lodged against Department personnel. Accordingly, IAD investigates and makes findings in each case.

OCI Policy (Section 8.1) permits the informal resolution of complaints alleging inadequate service or the complainant's innocence of criminal charges. Policy does not permit OCI to pursue informal resolution if not agreed to by the complainant; however, we identified only one of 20 administratively closed cases that had the acknowledgement of the complaining party. This is inconsistent with the requirements of OCI policy.

IAD Standard Operating Procedures and OCI Policy require that all complaints be referred to the appropriate agency within five business days of their receipt. All cases reviewed were appropriately referred as required. Our review of 140 OCI cases found the majority of these cases were referred within five days or filed directly at OCI; however, a significant number of these cases either did not meet the filing time requirement or indicate the time received at OCI. We conclude they were not filed in a timely fashion.

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

⁷⁴ Consent Judgment amendment, September 15, 2008.

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letters of notification to complainants as required, we noted in cases requiring prolonged investigative activity, OCI provided appropriate but not timely advisement.

Finally, we found the appropriate notification correspondence in each of the 34 IAD and 140 OCI completed and closed investigations. (See 67d.)

For this reporting period, we reviewed 50 IAD and 102 randomly selected OCI cases. These cases were investigated within the jurisdictional authority of each entity. OCI administratively closed 12 cases under the appropriate provisions, but only had the acknowledgement of the complaining party in one case.

OCI untimely referred three cases to IAD; one had been excessively delayed. A significant number of cases referred from the districts or precincts were received at OCI in excess of five days, sometimes as late as two weeks.

In cases of prolonged investigations, we found that IAD provided timely updated case status letters to complainants. In the 102 cases from OCI, we continued to find that status update letters were mailed to complainants, however not timely, with many of them returned undelivered because of relocation of complainant. The letters were not sent concurrently with the acknowledged delay in the investigation.

We did find that in both the IAD and OCI cases, there were consistent efforts to notify the complainants of the closure and resolution of the investigations.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U68

The DPD and the City shall review and evaluate the external complaint review process to require:

- a. the Chief Investigator or his/ her designee to complete review of OCI investigations within 7 days of completion of the supervisor's review;*
- b. the Board of Police Commissioners to complete review of OCI investigations within 45 days of completion of the Chief Investigator's review;⁷⁵ and*
- c. the Chief of Police or his or her designee to complete his or her review of external complaints within 7 days of completion of the BPC's review.*

Comments:

During this review, as in the past reviews, the external complaint review process was completed within the appropriate timeframes.

⁷⁵ Consent Judgment amendment July 18, 2003.

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Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U69

In addition to the investigatory report and evaluation requirements, each allegation in an administrative external complaint investigation shall be resolved by making one of the following dispositions:

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

Comments:

During our previous assessment of compliance with these requirements, we found that 36 of 37 IAD cases were resolved with the stated dispositions based on the findings of the investigator. At the same time, 155 of 409 OCI cases included inappropriate dispositions.

To assess compliance for the last reporting period, we reviewed 34 closed IAD cases, including internal and external complaints, and determined that all cases contained the required policy disposition noted above; however, one determination was inappropriate. We also reviewed 140 complaints investigated by the OCI, and determined that 15 included inappropriate findings, resulting in 91% compliance. Overall, we found 159 (92%) of the completed cases in compliance with these requirements.

For the current reporting period, we reviewed 50 IAD cases, including internal and external complaints. All contained the required dispositions. We determined two dispositions to be inappropriate. We reviewed 102 randomly selected OCI cases and determined three to be inappropriate and one to be questionable. (There was not sufficient data in the investigation to resolve the question.)

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

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

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Critical Issues:

We examined 50 closed and completed cases for the period of April 1, through June 30, 2010. Our review disclosed that the following issues continue to require immediate attention:

Inadequate IAD Case Management: DPD needs to implement a reliable case tracking system that alerts the supervisors to deadlines and extended deadlines for cases.

Inadequate OCI Case Management: Our examination of 102 completed cases for this reporting period revealed that the OCI does not use efficient and effective case management for the monitoring of investigative activity by assigned personnel. OCI policy requires that investigators maintain an Investigator Activity Log whereupon they record all investigative action taken related to the particular case. A failure to maintain this log subjects the investigator to disciplinary action. There is, however, no requirement by policy or practice for the supervisor to review the investigative activity documented on the log. There is no formalized process of determining investigative accomplishments with greater frequency. OCI does not have a reliable case tracking and management system. OCI advised us that it intends to contract with the City's Information Technology Unit to enhance its current system. We will follow up on the progress of this endeavor for our next report.

Next Steps:

We will review documentation regarding the supervision of the investigative process. Our review will examine: 1) IAD and OCI case tracking; 2) OCI case assignment procedures to reduce assignment delays; 3) revised OCI SOP if approved to ensure its compliance with the Consent Judgment; 4) the OCI process to reduce backlog cases; 5) procedures for administratively closed cases; 6) closed cases for July 1, through September 30, 2010; and 7) steps to improve supervision of the investigative process.

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
61	Revise external complaint policies	In Compliance	In Compliance
62	Information campaign re complaints	In Compliance	In Compliance
63	Officers carry information/contact forms	In Compliance	In Compliance
64	Policy to define complaint intake/track	In Compliance	In Compliance
65	Permit factual account, no opinion	In Compliance	In Compliance
66	Unique identifier for complaints	In Compliance	In Compliance
67	Revision of complaint investigations	In Compliance	Not in Compliance
68	Time limits for review of investigations/complaints	In Compliance	In Compliance
69	Required finding categories specified	In Compliance	Not in Compliance

VII. GENERAL POLICIES

This section of the Consent Judgment addresses a variety of issues in general terms. It seeks to ensure that when the DPD develops policies, all the terms used are clearly defined, and that prior

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to making policy revisions, the DPD posts the proposals on the DPD website to inform the community of the proposed revisions. It requires DPD to advise all of its officers that taking police actions in violation of DPD policies shall subject them to a variety of possible actions, to include disciplinary, criminal prosecution, or civil liability. This section also requires officers to report acts of misconduct by other officers, whether on- or off-duty. Additionally, this section required DPD to revise its policy regarding police actions by off-duty officers; and to revise the policies on how DPD handles prisoners, to include summoning first aid as necessary, summoning assistance if required, and prohibiting the accompanying of prisoners to the holding cell area. This section also required DPD to develop a foot pursuit policy and to plan for adequate distribution of manpower.

In all instances, DPD has developed the appropriate policies and is taking steps to achieve implementation.

CJ Requirement U70

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

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁷⁶ In addition, we noted that the DPD formed a Policy Focus Committee (PFC) to concentrate on policy issues. During this reporting period, there were no changes to these policies. The DPD informed us that there have been no meetings of the PFC since May 12, 2009. DPD remains in Phase 1 and Phase 2 compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U71

The DPD shall continue to make available proposed policy revisions to the community, for their review, comment and education. Such policy revisions shall also be published on the DPD's website to allow comments to be provided directly to the DPD.

⁷⁶ DPD Directive 101.1, Directive System, effective July 1, 2008, establishes the process to be used by the Department to manage its written directive system. It clearly defines the following terms: Directives; Legal Advisor Updates; Personnel Orders; Policy; Special Orders; Standard Operating Procedures; Teletypes (Investigative Information); Teletypes (Administrative); and Training Bulletins. DPD Directive 404.1, Definitions, effective July 1, 2008, includes a comprehensive list of terms frequently used within the Department, from "Actively Resisting" and ending with "Writ of Restitution."

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Comments:

The DPD has developed three documents that govern the process to be followed to ensure compliance with this requirement.⁷⁷ In our previous reports, we noted a concern with the Department's reliance on Special Orders that may be issued by the Chief for a period not to exceed one year. The Monitoring Team understands the need for Special Orders to address unanticipated situations and/or to quickly address problem areas. Our concern is based solely on the fact that these Special Orders do not require the prescribed review and approval process. To assess compliance with this requirement for this reporting period, we again examined the process for the implementation of policies and reviewed comments contained in the DPD 27th Quarter Status Report, dated June 30, 2010.⁷⁸ The comments contained in the Status Report indicate the DPD's continued effort to make proposed policy changes available to the community, but also note that the Department has not received any citizen comments.

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

We again caution DPD to ensure that Special Orders are not used in a way that infringes on the community's ability to provide input. In instances where a Special Order is used for a substantial matter, the DPD should ensure that the appropriate documents are simultaneously submitted to the BPOC and placed on the DPD website for appropriate vetting.

DPD remains in compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U72

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

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁷⁹

⁷⁷ The DPD established a Protocol for Proposed Policy Revisions; an SOP outlining procedures for posting proposed policies to the website; and a flow chart (Visio-DPD Policy Flow Chart) that tracks the movements of proposed policy revisions through the Department and through the public review. In addition, DPD Directive 101.1, Directive System, effective July 1, 2008, provides a process for the issuance of Special Orders and guidance on their use.

⁷⁸ "The DPD shall continue to make available proposed policy revisions to the community, for their review, comment, and education. Such policy revisions shall also be published on the DPD's website to allow comments to be provided directly to the DPD."

⁷⁹ DPD Directive 102.3, Code of Conduct, is in compliance with the requirements of this paragraph.

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To assess compliance with these requirements for this reporting period, we reviewed the DPD 27th Quarter Status Report, dated June 30, 2010, and training data, and noted that the DPD commenced its annual in-service training on taking police action to its members, which is inclusive to the Use of Force Lesson Plan. Training data covering the entire fiscal year showed that 2,730 of 2,749 eligible members (99%) received use of force training, which incorporates Code of Conduct material. DPD is in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U73

The DPD and the City shall develop a plan for ensuring regular field deployment of an adequate number of supervisors of patrol units and specialized units that deploy in the field to implement the provisions of this agreement.

Comments:

An agreed-upon 1:10 ratio of supervisors to officers in patrol and specialized units is memorialized in electronic mail dated November 6, 2007.⁸⁰ This information was immediately communicated to applicable commanding officers and reinforced via a Roll Call Administrative Message in November 2009.

We have previously expressed concerns relating to the former group assignment practice wherein sergeants were not assigned responsibility for the conduct or performance of specific officers, nor were officers accountable to a specific sergeant. We emphasized that this practice did not provide appropriate accountability mechanisms, especially in the areas of reporting and documenting uses of force and other policing activities, conducting complete and meaningful annual performance evaluations, and intervening by supervisors in matters of general conduct and discipline. The DPD addressed our concerns with the issuance of Special Order 10-03, which will be incorporated into a policy directive at a later time. This Special Order sets forth the ratio requirements and specifically requires the assignment of each officer to a specific sergeant; accordingly sergeants are accountable for the conduct and performance officers assigned to them and for preparing the required performance evaluations. The DPD reinforced these requirements through a Roll Call Training Bulletin.⁸¹

Nevertheless, our field inquiries have found the implementation of these requirements inconsistent at best. Although some sergeants reportedly supervise the same cadre of officers on

⁸⁰ Section I, Paragraph pp of the Use of Force Consent Judgment defines a supervisor as a sworn DPD employee at the rank of sergeant or above and non-sworn employees with oversight responsibility for DPD employees.

⁸¹ The DPD issued Teletype 10-00617 containing Roll Call Training 10-05 – Span of Control – Supervision: To Be Read at All Roll Calls From Platoon One, Saturday, February 13, 2010 through Platoon Three, Friday, February 19, 2010.

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a day-to-day basis, others do not; the Department seems focused merely on the 1:10 ratio or “span of control,” rather than supervisory consistency.

During this reporting period, we also reviewed DPD compliance inspection reports/evaluations regarding staffing ratios, and found some lacking sufficient information to determine compliance with the requirements of this Consent Judgment paragraph; however, we did find the DPD staffing levels at the 15 commands on varying days did not meet the >94% compliance requirement. During the last reporting period, we found that between 11 and 12 (separate days) of the 15 commands we reviewed met the required staffing levels. To assess compliance for this reporting period, we again reviewed the staffing levels of the 15 commands for randomly selected days during the three months under assessment.⁸² We found the eight field-deployed commands reviewed nine times (for a total of 72) met the requirements without the need for corrective action at a rate of 88%. The seven specialized commands met the requirements at a rate of 76%. The DPD is not in full compliance with these requirements.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U74

The DPD shall enforce its policies requiring all DPD officers to report any misconduct committed by another DPD officer, whether committed on-duty or off-duty.

Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁸³ To assess compliance with these requirements for this reporting period, we reviewed training data covering the entire fiscal year. This data indicates that 2,730 (99%) of 2,749 eligible members received use of force training, which incorporates Code of Conduct material. There were no cases in which a DPD officer reported misconduct on the part of another DPD officer brought to our attention. DPD is in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U75

The DPD shall revise its policies regarding off-duty officers taking police action to:

⁸² We selected April 6, 23, and 27; May 23, 24 and 31; and June 15, 20, and 27, 2010 for review.

⁸³ DPD Directive 102.3, Code of Conduct.

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

Comments:

DPD Directive 102.3, Code of Conduct, is in compliance with the requirements of this paragraph. Our review of use of force reports for this reporting period found one incident in which an officer experienced an accidental discharge of his firearm while in Flint, Michigan. The incident was reported to FI and FI has assumed responsibility for the investigation.

We previously reported on our review of a joint communication issued by the Parties wherein they agreed that the DPD had complied with the policy creation, dissemination, and training requirements of this paragraph. The Parties further agreed that the Monitor should assess the implementation of the requirements of this paragraph by reviewing investigative files and responses to the Chief's letter to the Michigan Association of Chiefs of Police requesting any member agencies report any off-duty action by DPD officers to the DPD IAD.⁸⁴

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U76

The DPD shall revise its policies regarding prisoners to:

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

⁸⁴ The Chief of Police sent the required letter to the MACP on April 21, 2010.

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Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁸⁵

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

As noted previously, our reviews of UF002 and UF002a Reports detailed in U15 through U36 continue to cite examples of aid being rendered to subjects who are injured in the course of their arrests. Medical treatment is provided for incidents ranging from shootings to flushing the eyes of subjects who have been sprayed with chemical spray carried by officers. Officers routinely request assistance when dealing with subjects who offer resistance, including summoning a supervisor.

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

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U77

The DPD shall develop a foot pursuit policy to:

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

⁸⁵ DPD Directive 304.2, Use of Force, effective June 27, 2005; Training Directive 04-7, effective November 21, 2005; and Directive 305-1, Detainee Intake/Assessment, effective May 9, 2005, are in compliance with the requirements of this paragraph.

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Comments:

We previously reviewed the applicable DPD directives and found them in compliance with the requirements of this paragraph.⁸⁶ The preparation of a Foot Pursuit Evaluation Form (DPD 699), previously required by DPD directives, is no longer a requirement. Effective August 15, 2009, the DPD requires that members document foot pursuits resulting in a use of force or detainee injury on a Use of Force Auditable Form (UF-002). DPD's 27th Quarter Status Report, dated June 30, 2010, reflects that on July 6, 2009, the DPD commenced its second consecutive annual in-service training, which includes the requirements of this paragraph. The report states that the training period ended in June, 2010, with 99% of the DPD members receiving the training. The Monitoring Team has verified this with our independent review of the training data.

In our previous reports, we encouraged DPD to initiate the necessary revisions to DPD Directive 202.7, Foot Pursuits, effective July 1, 2008, adhering to the requirements of U71 by posting the changes at the DPD website and submitting the change to the BPOC. DPD advised us that the policy directive has been revised and is pending internal reviews prior to submission to the Board of Police Commissioners. DPD further advised us that it would present the revision to the BOPC in May 2010, but it did not. The Special Order under which the change in procedure was implemented has a one-year limit and will expire during the next reporting period. We will once again review this issue during our next site visit to determine whether the DPD has taken the necessary steps to remain in compliance with the requirements of this paragraph.

Our review of the use of force reports for this reporting period found that there were 14 documented foot pursuit cases. In one of the cases, reinforcements were requested; two of the cases were pursuits of armed individuals, both of whom discarded their weapons during the chase.

With the completion of the required training and the appropriate documentation of foot pursuits on an Auditable Form, DPD is in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

Critical Issues:

DPD is making progress toward full compliance in this area, and we see no major issues that suggest concerns about continued progress in this area. DPD must, of course, continue to ensure that all staff members receive the necessary training related to the requirements. The Department must also ensure that the controlling policy for documenting foot pursuits is vetted in conformity with the Judgment and DPD policy requirements.

Next Steps:

We will continue to monitor relevant policy changes, including efforts to address the public's interest in policy. Likewise, we will continue to heed the training requirements inherent in

⁸⁶ DPD Directive 202.7, Foot Pursuits, effective July 1, 2008.

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policy development in this area. Finally, we will review correspondence with the Michigan Chiefs and review the revision to the foot pursuit policy.

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
70	Clear definitions in policies	In Compliance	In Compliance
71	Proposed policy changes open to comm.	In Compliance	In Compliance
72	Advise officers policy violations disciplined	In Compliance	In Compliance
73	Adequate officer/supervisor ratio	In Compliance	Not in Compliance
74	Enforce misconduct reporting requirements	In Compliance	In Compliance
75	Revise policies regarding off-duty officers	In Compliance	In Compliance
76	Revise prisoner-related policies	In Compliance	In Compliance
77	Develop foot pursuit policy	In Compliance	In Compliance

VIII. MANAGEMENT AND SUPERVISION

A. Risk Management Database

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

The development of the risk management system continues to receive considerable attention from all Parties. The initial test of the early iteration of the system during our first site visit met with limited success. Since that time, the Department has reworked, revised, and tweaked various system components. The system's technical dimensions, including its data collection and storage, and its overall usability, including the quality of the user interface, have improved as a result. During this review period, there were several important developments.

As noted above, the initial test of MAS identified significant problems. This prompted an order from the Court to examine alternative approaches to system development, including a review of products by other vendors and a review of systems in other jurisdictions.

In response to the Court order, DPD has advised that they have had consultations with a vendor on improvements in MAS, and also continues to explore purchase of a case management system to augment MAS.

On the recommendation of the Monitor, representatives of DPD, including command staff, visited the San Francisco and Oakland, California Police Departments. The Oakland visit in particular, provided valuable illustrations of a useful and accommodating user interface. The San Francisco visit provided useful examples of system outputs, including a variety of reports that can be valuable for the day-to-day management of the Department.

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Finally, during our most recent site visit, DPD demonstrated the advancements and revisions of MAS that had occurred since our last site visit. The demonstration was conducted by command staff overseeing the development of MAS and attended by representatives of all Parties. The DOJ subject expert who had, over a year ago, provided a very critical review of MAS was also available via telephone during the demonstration.

The demonstration made it evident that considerable progress on the system had occurred since the prior test noted above. Collection and storage of data has improved, as has the ability to retrieve data when needed.

With the end of this reporting period, the Monitoring Team is optimistic that the development of MAS is moving in the direction of achieving compliance with the requirements of the Consent Judgment. DPD must now provide the Parties with more complete materials and more thorough testing to verify its progress.

Below we will provide compliance assessments with each of the relevant requirements of the Consent Judgment. As in earlier reports, we recognize Phase 1 or policy compliance with the requirements of this section. However, we also note that given the significant changes that continue to occur with MAS, policy compliance including the acceptance of the key policy documents will need to be revisited in the future.

CJ Requirement U78

The DPD shall devise a comprehensive risk management plan, including:

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

Comments:

The compliance status with regard to this requirement remains as it has been in our first two reports. This paragraph provides a summary of requirements detailed in paragraphs 79-99. Each of the system's components is evaluated separately in the materials that follow. Policy requirements in the area are incorporated into the documents that are mandated as part of the risk management plan. We have deemed the Data Input Plan, Report Protocol, and Review Protocol sufficient since they were developed under the previous monitor, although they may need to be revisited as MAS continues to be revised. The implementation of these requirements is moving forward with the work on MAS and the exploration of how other systems may be combined with it.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

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CJ Requirement U79

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

Comments:

Compliance with this requirement remains as it has been in our previous reports. DPD's development of its own risk management system has proceeded with some notable successes and also some problems that have been discussed in our prior reports. As noted above, the Department is currently expending considerable effort to develop a system that complies with the requirements of the Consent Judgment, and there are clear indicators of its progress.

As described in current documentation, when fully operational, the planned system is consistent with the requirements of this paragraph. Implementation problems, however, have supported a search for alternative and supplementary system development. Although these issues remain unresolved, we continue to find the Department in Phase 1 compliance in this area, but we will need to revisit this in the future if major revisions of the system occur. Phase 2 compliance requires full implementation, which the Department has not yet achieved.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U80

The new risk management database shall collect and record the following information:

- a. *all use of force reports and use of force investigations;*
- b. *all canine deployments;*
- c. *all canine apprehensions;*
- d. *all canine bites;*
- e. *all canisters of chemical spray issued to officers;*
- f. *all injured prisoner reports and injured prisoner investigations;*
- g. *all instances in which force is used and a subject is charged with "resisting arrest," "assault on a police officer," "disorderly conduct" or "interfering with a city employee;"*
- h. *all firearm discharge reports and firearm discharge investigations;*
- i. *all incidents in which an officer draws a firearm and acquires a target;*

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

Comments:

Compliance with this paragraph has not changed since our earlier reports. As indicated above, the requirements addressing risk management have largely satisfied Phase 1 standards, but are unlikely to meet Phase 2 standards until the system is completely functional. The information requirements noted in this paragraph are included in the documentation developed for the Management Awareness System (MAS), and are part of the computerized system in its present form. This is sufficient for meeting policy-related requirements. In fact, with regard to moving toward Phase 2 compliance, there may be some value in the Parties reexamining some of these

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information requirements to verify their value in a powerful but parsimonious system. A careful item-by-item analysis is under consideration.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U81

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

Comments:

Compliance with this requirement remains unchanged. The mandated identifying information is included in the documentation developed for the Management Awareness System (MAS) and is part of the computerized system in its present form. Based on our test of MAS, the system does not currently appear to link effectively with the Department's human resources data, and therefore, key data elements are not easily reportable. These problems indicate that DPD has not yet achieved Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U82

The DPD shall prepare, for the review and approval of the DOJ, a Data Input Plan for including appropriate fields and values of new and historical data into the risk management database and addressing data storage. The Data Input Plan shall:

- a. detail the specific fields of information to be included and the means for inputting such data (direct entry or otherwise);*
- b. specify the unit responsible for inputting data, the deadlines for inputting the data in a timely, accurate, and complete manner;*
- c. specify the historical time periods for which information is to be input and the deadlines for inputting the data in an accurate and timely fashion; and*
- d. requires that the data be maintained in a secure and confidential manner.*

Comments:

Compliance with this requirement remains unchanged. With the prior acceptance of the Data Input Plan by DOJ, requirements regarding policy development have been met for this paragraph. We note, however, that Phase 1 compliance should be considered tentative until a final decision about whether an alternative or addition to MAS will be considered. A significant

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change in the risk management system would necessitate renewal of the Data Input Plan. Implementation issues limit consideration of Phase 2 compliance at this time. The compliance status of this requirement is unchanged from our first three reporting periods.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U83

The DPD shall prepare, for the review and approval of the DOJ, a Report Protocol for the risk management database that details the types of routine reports the DPD shall generate and pattern identifications the DPD shall conduct. The Report Protocol shall:

- a. require the automated system to analyze the data according to the following criteria:*
 - i. number of incidents for each data category by individual officer and by all officers in a unit;*
 - ii. average level of activity for each data category by individual officer and by all officers in a unit; and*
 - iii. identification of patterns of activity for each data category by individual officer and by all officers in a unit;*
- b. establish thresholds for the numbers and types of incidents requiring a review by an officer's supervisor of whether the officer or group of officers is engaging in at-risk behavior (in addition to the regular reviews required by paragraph 84); and*
- c. require the database to generate reports on a monthly basis describing the data and data analysis and identifying individual and unit patterns.*

Comments:

As is true of many of the risk management-related requirements, the level of compliance in this report is the same as in our previous reports. On this requirement, DPD compliance continues to be similar to that in paragraph 82, which addresses the Data Input Plan. Under the previous monitor, the Report Protocol was accepted by DOJ. The document meets the policy-related requirements of the Consent Judgment. It should also be noted that Phase 1 compliance must be considered tentative until a final decision about whether an alternative or addition to MAS is considered. That may necessitate the revision of relevant policies. The issues that we raised in our last report, following the test of MAS, remain unresolved; thus, implementation problems preclude Phase 2 compliance at this time. It is, however, worth noting, that as described above, DPD continues to address system problems, and is making progress even as it examines other system issues.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

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CJ Requirement U84

The DPD shall prepare, for the review and approval of the DOJ, a Review Protocol for using the risk management database that addresses data analysis, supervisory assessment, supervisory intervention, documentation and auditing. The Review Protocol shall require:

- a. that when an officer or group of officers pass a threshold established in the Report Protocol the officer's(s') supervisor shall review all information in the risk management database regarding the officer(s), together with other relevant information;*
- b. the reviewing supervisor to document whether he or she took non-disciplinary corrective action or recommended disciplinary action, the basis for this decision, and what corrective action was taken, if any;*
- c. supervisors to review, on a regular basis but not less than quarterly, database reports, together with other relevant information, to evaluate individual officer and unit activity for at-risk behavior;*
- d. precinct and unit commanders to review, on a regular basis but not less than quarterly, database reports, together with other relevant information, to evaluate individual supervisor's assessment and analysis of information in the risk management database and the corrective action taken by supervisors;*
- e. appropriate DPD supervisors to review and evaluate, on a regular basis but not less than quarterly, police performance citywide, using all relevant information from the risk management database and other relevant information and to evaluate and make appropriate comparisons regarding the performance of all DPD units in order to identify any significant patterns or series of incidents;*
- f. commanders and supervisors conducting such periodic reviews to take non-disciplinary corrective action when appropriate for individual officers, supervisors or units and document any such action in writing;*
- g. that the information in the database be accessible to commanders, supervisors and the BPC;*
- h. that the information in the database is considered when evaluating a DPD employee for transfer or promotion;*
- i. commanders and supervisors to promptly review records of all officers recently transferred to their sections and units;*
- j. commanders and supervisors to be evaluated on their ability to use the risk management database to enhance effectiveness and reduce risk;*
- k. that a designated DPD unit be responsible for managing and administering the database, including conducting quarterly audits of the system to ensure action is taken according to the process described above; and*
- l. that aggregated information from the risk management database be shared on a regular and periodic basis with training and policy planning staff.*

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Comments:

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

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U85

The DPD shall seek to ensure that the risk management database is created as expeditiously as possible. As part of this effort, the DPD, in consultation with the DOJ, shall organize the risk management database into modules in developing the Data Input Plan, the Report Protocol, the Review Protocol and the Request for Proposals and in negotiating with contractors, such that difficulties with one aspect of the risk management database do not delay implementation of other modules.

Comments:

As noted above, DPD has moved forward on each of the three required policy documents. The Department has also taken critical steps toward implementation. In doing so, the Parties to this Judgment have recognized problems and DPD has actively begun to address them by reviewing alternative and supplemental systems while also working to strengthen MAS. In its current condition, we recognize the efforts made as consistent with the policy requirements for Phase 1 compliance. Since this requirement lays out an essential problem solving process, and since DPD is now taking significant steps to address key problems, we also recognize Phase 2 compliance. This is consistent with our finding in the previous report. We do, however, provide one caveat to our Phase 2 finding. We will continue to expect forward progress on the MAS system. Any evidence of slowed progress could risk the finding for this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U86

Where information about a single incident is entered into the risk management database from more than one document (e.g., from a complaint form and a use of force report), the risk management database shall use a common control number or other equally effective means to

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link the information from different sources so that the user can cross-reference the information and perform analyses.

Comments:

The compliance status of this requirement remains unchanged. The Management Awareness System, which has been developed as the risk management database by DPD, does not use a common control number for linking reports associated with a common incident. Instead, the system links reports by using multiple data points, including dates and times. The sufficiency of this method was not conclusively established during the initial test of MAS. However, in its exploration of alternative and supplemental systems, DPD is considering systems, such as AIMS, which do incorporate a common control number. Such a system would have advantages over the current method of triangulation. The use of a common control number, or conclusive evidence supporting an alternative, would allow findings of Phase 1 and Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: Not in Compliance

Phase 2: Not in Compliance

CJ Requirement U87

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

Comments:

There is no change in compliance status with this requirement. The information requirements noted in this paragraph are included in the documentation developed for the Management Awareness System (MAS), including the Data Input Plan. This was accepted by the previous monitor as sufficient for meeting policy-related requirements. DPD is thus continued in that status. Our test of MAS, however, revealed that links to the Department's personnel database are not completely functional. In particular, our queries over dates and lengths of employment were unsuccessful. Thus, DPD is currently not in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U88

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

- a. *By January 24, 2008, the City shall have ready for testing a beta version of the risk management database consisting of: 1) server hardware and operating systems installed,*

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configured and integrated with the City and DPD's existing automated systems; ii) necessary database software installed and configured; iii) data structures created, including interfaces to source data; and iv) the information system completed, including historic data. The DOJ and the Monitor shall have the opportunity to participate in testing the beta version using new and historical data and test data created specifically for the purposes of checking the risk management database.

- b. *The risk management database shall be operational and fully implemented by July 24, 2008.*
- c. *The parties and the independent monitor shall meet on a monthly basis to discuss what actions have been taken during the previous month toward development of the new risk management database.*
- d. *The defendant shall present to the plaintiff and the independent monitor, on a monthly basis, evidence of satisfactory progress sufficient to justify a conclusion that completion of the new risk management database by August 11, 2008 remains feasible. If at any time the plaintiff concludes that successful completion of the project within the time frames described in this paragraph is unlikely, the plaintiff shall so notify the Court and the defendant. Within sixty days after receipt of such notice, the defendant shall issue an RFP to develop or complete development of the new risk management database as was required by 88c. of this Consent Judgment before it was amended. In that event, the requirements of paragraphs 88.d., 88.e., 88.f., and 88.g. of this Consent Judgment before it was amended shall be enforced, with dates adjusted as follows: the Review Protocol (paragraph 88.d.) shall be issued within five months after issuance of the RFP; the defendant shall select the contractor (paragraph 88.e) within seven months after issuance of the RFP; the beta version (paragraph 88.f) shall be ready for testing within fifteen months after issuance of the RFP; and the risk management database shall be operational (paragraph 88.g) within twenty-six months after issuance of the RFP.⁸⁷*
- e. *By May 31, 2004, the DPD shall select the contractor to create the risk management database.*
- f. *By June 30, 2005, the City shall have ready for testing a beta version of the risk management database consisting of: i) server hardware and operating systems installed, configured and integrated with the City and DPD's existing automated systems; ii) necessary database software installed and configured; iii) data structures created, including interfaces to source data; and iv) the information system completed, including historic data. The DOJ and the Monitor shall have the opportunity to participate in testing the beta version using new and historical data and test data created specifically for purposes of checking the risk management database.*
- g. *The risk management database shall be operational and fully implemented by December 31, 2005.*

⁸⁷ Consent Judgment amendments, November 9, 2007, and July 22, 2008.

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Comments:

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

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

Compliance Status:

Phase 1: Not in Compliance

Phase 2: Not in Compliance

CJ Requirement U89

Prior to implementation of the new risk management database, the DPD shall develop an interim system to identify patterns of conduct by DPD officers or groups of officers. The interim system shall require periodic reviews of relevant information, but no less than monthly, and evaluations of whether an officer or group of officers is engaging in at-risk behavior. This interim system shall collect and analyze the following information: citizen complaint reports and investigations; use of force investigations; shootings; vehicle chases; injured prisoner investigations; traffic collisions; canisters of chemical spray issued to officers; firearms qualifications; training; prompt judicial review; disciplinary action; arrest without probable cause; all reports regarding investigatory stops and/or frisks unsupported by reasonable suspicion; and all reports regarding interviews, interrogations or conveyances in violation of DPD policy in a format that facilitates entry into the final risk management database, to the fullest extent possible.

Comments:

There is no change in compliance status with this requirement since the last reporting period. The Management Awareness System (MAS) was originally developed to serve as an interim system that would be in compliance with this requirement. Although our review of the system has identified significant concerns, the system continues to function in a manner consistent with the originally envisioned interim system. That is, needed documentation exists, data are being entered and stored in the system, and reports are being generated and provided to supervisors and administrators, as required. Despite identified problems then, the system can be said to be meeting the expectations of the interim system established in this paragraph. We thus continue DPD in Phase 1 and Phase 2 compliance with this requirement, as we reported following our previous site visit.

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Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U90

Following the initial implementation of the risk management database, and as experience and the availability of new technology may warrant, the DPD may propose to subtract or modify data tables and fields, modify the list of documents scanned or electronically attached, and subtract or modify standardized reports and queries. The DPD shall submit all such proposals for review and approval by the DOJ before implementation.

Comments:

As with other MAS-related requirements, compliance with this paragraph is unchanged from the prior reporting period. This paragraph describes the requirement for revision of the risk management system following its initial implementation. Documentation of the system in the Review Protocol includes descriptions of the process of using the system and its updating and revision, thus meeting the requirements of Phase 1 compliance. Since initial implementation is underway but not complete, we do not find DPD in Phase 2 compliance with this paragraph at this time.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

B. Performance Evaluation System

CJ Requirement U91

*DPD shall ensure that performance evaluations for all DPD employees below the rank of Deputy Chief occur at least annually and include, but are not limited to, consideration of the following:*⁸⁸

- a. *civil rights integrity;*
- b. *adherence to law, including performing duties in a manner consistent with the requirements of the Fourth and Fifth Amendments to the Constitution and the Civil Rights laws of the United States; and*
- c. *supervisor's performance in identifying and addressing at-risk behavior in subordinates, including their supervision and review of use of force, arrests, care of prisoners, prisoner processing, and performance bearing upon honesty and integrity.*⁸⁹

⁸⁸ Consent Judgment amendment, October 4, 2004.

The Court issued an order on October 4, 2004 adopting a proposed modification by the Parties making these requirements applicable to DPD employees below the rank of Deputy Chief.

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Comments:

DPD achieved Phase 2 compliance with this requirement in the last reporting period. We had recognized Phase 1 compliance with this paragraph during the first reporting period. DPD Directive 401.1, Performance Evaluation Ratings, effective July 1, 2008, meets the requirements of Phase 1 compliance. The directive requires yearly ratings for those holding the rank of inspector and commander, and twice each year for other ranks. The rating periods are established as May 1, through October 31; and November 1, through April 30. It also establishes completion dates of November and May, respectively.

To consider Phase 2 compliance, we requested random samples totaling 198 employee evaluations drawn equally from the duty rosters of the Tenth District, and the Twelfth District. In all, five evaluations were not available due to retirements, suspension, or extended leave. Three officers drawn for the sample were in probationary status. DPD could not locate two additional evaluations; these particular officers were reported as in transition between assignments. We were, therefore, able to examine 191 (99%) out of the 193 potentially available forms. Our examination of all available performance reviews showed that all were individually completed with original narratives, references to “no change in status,” or references to material in MAS. All were signed off by the person being reviewed, the reviewer, and commanders, when appropriate. Based on the policy documents and our review of the sample of performance evaluations, DPD is in full compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

C. Oversight

CJ Requirement U92

*The DPD shall develop a protocol for conducting annual audits to be used by each officer or supervisor charged with conducting audits. The protocol shall establish a regular and fixed schedule to ensure that such audits occur with sufficient frequency and cover all DPD units and commands. The annual audit period for conducting the audits required by paragraphs 93 to 97 for the first year shall end on August 31, 2004. The subsequent annual periods shall end on July 17, 2005, and every year thereafter.*⁹⁰

Comments:

In the previous reporting periods, we found DPD in compliance with this requirement. That status is continued for this reporting period. During our most recent site visit, we confirmed that the new audit protocol, which had been completed, reviewed, and approved by the CRIB Commander as noted in our last report, was now governing the audits which are underway. We also confirmed that all of the required audits were in progress, and that the DPD had established the required schedules with July, or August, 2010 completion dates. We reviewed the schedule of the assigned audits including auditors and completion dates and found it to be complete. Our

⁹⁰ Consent Judgment amendment, October 4, 2004.

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next site visit will include a review of completed audits and an assessment of their compliance with the oversight requirements.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U93

The DPD shall issue a report to the Chief of Police on the result of each audit and examine whether there is consistency throughout the DPD. The DPD shall also provide the reports to each precinct or specialized unit commander. The commander of each precinct and specialized unit shall review all audit reports regarding employees under their command and, if appropriate, shall take non-disciplinary corrective action or disciplinary action.

Comments:

The status regarding this requirement remains unchanged. We found DPD in compliance after not meeting this standard during the first reporting period. New audits are scheduled for completion in July and August of this year. Audit procedures, as well as audits that were completed in October, 2009, make it clear that the results of the audits reach the Chief of Police and each precinct or specialized unit commander, as required. During our last site visit, we received Corrective Action Reports for the required audits. These reports from precinct supervisors or commanders to the Commander of the Civil Rights Integrity Bureau (CRIB) provide specific responses to concerns raised in the audits. The responses are organized with reference to individual audit report paragraphs, and include information related to disciplinary or non-disciplinary action taken in connection with the audits. This information satisfies the requirements for Phase 2 compliance with this paragraph. Additionally, DPD has developed and implemented a process of biweekly command compliance review meetings, which engage commanders in the compliance review process and provide feedback. The results are also reported to the Chief. Prior to the recent changes in Departmental leadership, these meetings were chaired by the current Chief.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U94

The DPD shall conduct regularly scheduled annual audits, covering all DPD units and commands that investigate uses of force, prisoner injuries, and allegations of misconduct. The audits shall include reviewing a statistically valid sample of command, IAD, and Homicide Section investigations; evaluating whether the actions of the officer and the subject were

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*captured correctly in the investigative report; and evaluating the preservation and analysis of the evidence and the appropriateness of the investigator's conclusions.*⁹¹

Comments:

Consistent with our findings during the previous reporting periods, DPD remains in compliance with this paragraph. The DPD revised the audit protocol, and it governs current audits. Annual audits are required, and appropriate reporting dates are set. The required audits are being conducted according to the set schedule, and the relevant Corrective Action Reports provide evidence that the audit findings and recommendations have been acted upon.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U95

*The DPD shall conduct regularly scheduled annual audits covering all precincts and specialized units that review a statistically valid sample of findings of probable cause, stop and frisk reports and witness identification and questioning documentation. The audits shall include evaluating the scope, duration, content, and voluntariness, if appropriate, of the police interaction. The audits shall include a comparison of the number of arrests to requests for warrants and a comparison of the number of arrests for which warrants were sought to judicial findings of probable cause.*⁹²

Comments:

We found DPD in Phase 1 and Phase 2 compliance with this requirement in the last reporting period. At that time, we determined that the specifically mandated audit requirements were being met. Additional audits that are consistent with this requirement are expected to meet the July 2010 due date, and we will review them for compliance at the appropriate time.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U96

*The DPD shall conduct regularly scheduled annual audits covering all precincts and specialized units that examine custodial detention practices. The audits shall include reviewing the length of detention between arrest and arraignment and the time to adjudicate holds.*⁹³

⁹¹ Consent Judgment amendment, October 4, 2004.

⁹² Ibid.

⁹³ Consent Judgment amendment, October 4, 2004.

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Comments:

We found the DPD in full compliance with this paragraph during the three previous reporting periods. That status remains unchanged for this reporting period. New custodial detention audits are due for completion on August 31, 2010. We will review them at the appropriate time.

Audits in this area require complex analyses, including proper definitions of the “time between arrest and arraignment” and the time to “adjudicate holds.” Past audits identified circumstances of compliance, partial compliance, and lack of compliance. The reports that were provided detailed information on cases and noted the need for “corrective action” where appropriate. We will continue to expect such high-quality analyses in upcoming audits.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U97

*The Chief Investigator of OCI shall designate an individual or entity to conduct regularly scheduled annual audits that examine external complaints and complaint investigations. The audit shall include reviewing a statistically valid sample of complaints that were resolved informally, reviewing a sample of OCI investigations of complaints, and contacting the complainants to evaluate whether the actions and views of the complainant were captured correctly in the complaint report and/or investigation. The Chief Investigator shall review all audit reports regarding officers under OCI command and, if appropriate, shall take non-disciplinary corrective action or disciplinary action.*⁹⁴

Comments:

After a reexamination of the last available audit, we found DPD in compliance with this requirement during the last reporting period. The new audit protocol, which governs current audits, reflects the requirements of this paragraph. We will again review compliance with this requirement following completion of the required audits scheduled for August 31, 2010.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U98

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

⁹⁴ Consent Judgment amendment, October 4, 2004.

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Comments:

Consistent with findings from our previous site visits, DPD remains in Phase 1 compliance with this paragraph.⁹⁵ DPD directives require that DPD supervisors perform periodic random reviews of in-car videos and related equipment to ensure that proper procedures are being followed and that the equipment is in working order.

As we noted in our last report, DPD recently overcame the severe technical difficulties it encountered, and the Department has made dramatic progress in MVS implementation. The DPD has equipped 240 cars with workable MVS systems.

When a precinct or district is 75% operational, the Deputy Chief for Information Technology visits and meets with the precinct commander and the sergeant overseeing Consent Judgment issues. He explains the capabilities of the new systems and the responsibilities of supervisors and commanders to ensure that the system remains in working order and is used.

The DPD currently has 240 MVS units installed and operational. The Department is proceeding to equip 300 cars with operational MVS systems. Until MVS operational equipment is extended throughout the Department, we will not be able to measure full compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U99

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

Comments:

Members of the DPD and the Wayne County Prosecutor's Office meet on a quarterly basis, as required, as well as when needed to address case-related issues. Our reviews of the minutes of the various meetings collectively reflect discussions related to the performance of DPD, including the dismissal of cases due to officers failing to appear for court, photo line-ups, investigative operations, the in-car video system, and other applicable issues.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

⁹⁵ DPD Directive 303.3, In Car Video, effective June 21, 2004, revised February 22, 2010.

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D. Use of Video Cameras***CJ Requirement U100***

The DPD shall repair or replace all non-functioning video cameras.

Comments:

We previously found that the DPD had modified applicable directives to comply with the requirements of this Consent Judgment paragraph.⁹⁶ DPD officers in precincts where operational MVS systems have been placed are required to ensure that the audio/video equipment is working properly at the beginning of their shift, check the equipment, and record the results of their inspection on the Officer's Daily Activity Log. The order directs that any vehicles with non-functioning MVS equipment be transported to the Lyndon Garage facility where the equipment is to be repaired or replaced. The Department is in Phase 1 compliance with this requirement.

The DPD has made substantial progress in repairing its non-functioning MVS equipment. The Department estimates that it has about 300 MVS units that it can successfully repair, and it has completed work on 240 (80%) of the available MVS units.

In addition, the DPD has completed work on assessing the bids to provide new, upgraded MVS equipment to the Department. It expects that the new systems will be more durable and will provide enhanced management support to enable DPD supervisors to more effectively monitor the use of the equipment.

When the installation of the MVS equipment on hand is relatively complete, we will measure the efficacy of DPD's system for identifying and repairing broken MVS units.

Compliance Status:

Phase 1: In Compliance

Phase 2: Pending Compliance

CJ Requirement U101

The DPD policy on video cameras shall be revised and augmented to require:

- a. activation of scout car video cameras at all times the officer is on patrol;*
- b. supervisors to review videotapes of all incidents involving injuries to a prisoner or an officer, uses of force, vehicle pursuits and external complaints; and*
- c. that the DPD retain and preserve videotapes for at least 90 days, or as long as necessary for incidents to be fully investigated.*

⁹⁶ Directive 303.3, In Car Video, effective June 21, 2004, revised February 22, 2010.

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Comments:

Consistent with our findings from our previous site visits, DPD remains in Phase 1 compliance with this paragraph.⁹⁷ The primary directive requires that officers activate video cameras at all times while on patrol, supervisors conduct reviews prescribed in U101, and the Department preserves all tapes.

To date, DPD has equipped of its 240 vehicles with video cameras. The capabilities of MVS have now been extended throughout the Department. Systems are set to operate all the time when the officer is on patrol; systems are set to record one frame per second during routine operations, and to accelerate to full video when traffic stops or other events to be recorded occur.

Video tapes, or more accurately, digital recordings are retained longer than 90 days.

The DPD cannot actually achieve compliance with this requirement until MVS is implemented fully throughout the Department. As noted above, DPD has about 240 of its 300 MVS units operational.

Further, the TSB has determined that MVS equipment does not operate if the mobile computer in the car is not turned on. The operation of car computers is to be monitored by DPD dispatchers, and this is expected to further enhance the level of recording produced.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement U102

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

Comments:

Consistent with findings from the previous two visits, DPD remains in Phase 1 compliance with this Consent Judgment paragraph.⁹⁸ Directives require that DPD officers activate video cameras at all times on patrol and to specifically record all motor vehicle stops, consent searches of vehicles, and deployments of drug detection canines.

Inasmuch as only 240 of its 300 MVS systems are operational, the DPD is not yet in Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

⁹⁷ Ibid.

⁹⁸ DPD Directive 303.3, In Car Video, effective June 21, 2004, revised February 22, 2010.

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E. Discipline***CJ Requirement U103***

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

Comments:

Additional staff and improvements to the physical space of the unit, including the addition of hearing rooms, led to findings of Phase 1 and Phase 2 compliance with this requirement in our last two quarterly reports. The staff of the unit continues to include one lieutenant, three sergeants, three police officers, and one non-sworn employee.

Summary statistics continue to show that the unit is expending significant efforts to address the volume of cases on its books. This quarter, 125 cases were closed while 193 new cases were opened. This is the first of the past three quarters in which new cases outnumbered closures. Despite a strong effort at closing cases, this is not inconsistent with monthly and quarterly fluctuations in changes in case intakes.

It is also noteworthy that command staff in the Disciplinary Unit continue to address older cases. As noted in our last report, the unit's review of the case backlog identified a significant number of cases from 2008 and 2009 in which there was little evidence of progress for a wide variety of reasons outside of the control of DPD. For example, personnel may have retired or left employment with DPD through other ways. The Disciplinary Unit is now working with the Department's legal counsel to find appropriate ways to close such cases.

The unit has also identified other strategies, such as bundling cases with similar issues for scheduling on the same day, or identifying and moving forward on cases grouped by the need for similar processing, for example through Commander's Disciplinary Actions or Police Trial Boards. Command staff have also expedited the disciplinary process by using transcripts from trial board hearings rather than requiring Commanders to prepare additional separate statements.

Both in its day to day operations and through strategic planning the Disciplinary Unit is moving forward in addressing the problem of backlogged cases.

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

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U104

The DPD shall schedule disciplinary hearings, trials, and appeals at appropriately frequent intervals, to prevent a disciplinary backlog from developing. As part of determining how often to

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schedule such hearings, the DPD shall establish guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process.

Comments:

After deferral in our first report, we reported this requirement as in compliance in our subsequent reports. It continues in that status for this reporting period. DPD manages disciplinary cases with reference to its Disciplinary Process Timelines, revised August 29, 2006, for review. These guidelines comply with the intent of this paragraph.

As noted above, DPD opened 193 new disciplinary cases and closed 125 during the quarter covered by this report. We reviewed the cases closed by the Disciplinary Unit during this time period. That included 36 closed in April, 40 in May, and 49 in June, for a total of 125. Only five of the cases, all closed in May, fell outside of the expected timeline. Among those cases, four were late because the required command reviews were late; in one, there were delays in receipt of a signed plea agreement. These factors all lay outside the control of the Disciplinary Unit. Based on existing policy and our review of cases, DPD is in both Phase 1 and Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U105

The DPD shall create a disciplinary matrix that:

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

Comments:

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

DPD directives are in compliance with the requirements of this paragraph.⁹⁹ These documents set forth complete, understandable procedures that include a presumptive range of discipline based upon both an officer's prior violations of the same rule as well as other violations. We examined all 125 cases closed during the current reporting period, and found that all discipline

⁹⁹ DPD Directive 102.4 Discipline, effective July 1, 2008, and the DPD Discipline Matrix (DPD22a).

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decisions fell within guidelines described in policy. Penalties were all consistent with policy regarding expected severity of sanctions.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

Critical Issues:

Risk management and the status of MAS: Incremental improvements in MAS continue. The Department's recent demonstration was encouraging to all Parties. Now, however, under a revised schedule of rigorous testing, the Parties must reach agreement on the project's status and, in particular, whether larger scale changes are needed.

In-car video progress: During the past year, the DPD made progress in its implementation of MVS. The Department has shown improvement from December, 2009, when *The Detroit Free Press* carried an article headlined, "Police Car Cameras Fail City - Millions Wasted on System that Leaves Detroit Vulnerable to Lawsuits." The article described a multi-million dollar investment that experts said the Department should "tear...out at the roots in order to start from scratch." The DPD has worked diligently to salvage its investment and equip 240 cars with operational MVS systems that can support its officers in the field.

During each of our four site visits, we had hoped to begin an audit of the DPD management practices that relate to the MVS requirements. However, measuring compliance with such requirements as supervisory random review of videos, and determining what percentages of traffic stops have been recorded, make little sense until the equipment is generally available throughout the Department. Until then, we could not reasonably expect the DPD to meet the standard of >94% that we require. The DPD has now made 80% of its MVS equipment operational, and is expected to complete its initial installation of repaired systems. During our next site visit, we will concentrate on the management practices that support the MVS requirements.

Next Steps:

Risk management: By our next site visit, DPD should have completed its vigorous testing of the system that will allow the Parties to judge whether the appropriate path forward will be through further development or wholesale revision. In our next site visit, we will continue to assess compliance on all requirements relating to the risk management system.

In-car video: Each month, the DPD TSB will produce a spreadsheet identifying the traffic stops, pursuits, canine deployments, injuries to officers, injuries to prisoners, uses of force, and searches that occurred in the previous month. The TSB will send the spreadsheet to the Monitoring Team electronically, and we will select a sample of incidents to be audited during the next review period.

Discipline: We will continue to monitor the disciplinary process with consideration of the timeframes involved, and the process of reducing the backload of cases; we will also examine the consistency of discipline as it relates to presumptive disciplinary steps. We will meet with OCI personnel and review the current process for efficiencies.

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¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
78	Comprehensive Risk Management Plan	In Compliance	Not in Compliance
79	Improve risk management system	In Compliance	Not in Compliance
80	Database requirements (a-z)	In Compliance	Not in Compliance
81	Database to include officer information	In Compliance	Not in Compliance
82	Data Input Plan (a-d)	In Compliance	Not in Compliance
83	Report Protocol for database (a-c)	In Compliance	Not in Compliance
84	Review Protocol for database (a-l)	In Compliance	Not in Compliance
85	Use modules to ensure work progress	In Compliance	In Compliance
86	Common control number required	Not in Compliance	Not in Compliance
87	Data retention	In Compliance	Not in Compliance
88	Database schedule (expired)	Not in Compliance	Not in Compliance
89	Interim database (rescinded)	In Compliance	In Compliance
90	Change process needs DOJ approval	In Compliance	Not in Compliance
91	Annual officer review criteria specified	In Compliance	In Compliance
92	Protocol for conducting audits	In Compliance	In Compliance
93	Audit results to Chief and commanders	In Compliance	In Compliance
94	Quarterly audits-use of force	In Compliance	In Compliance
95	Quarterly audits-probable cause/stop-and-frisk	In Compliance	In Compliance
96	Quarterly audits-detention practices	In Compliance	In Compliance
97	Quarterly audits-external complaints	In Compliance	In Compliance
98	Random reviews of in-car camera videos	In Compliance	Not in Compliance
99	Regular meeting with local prosecutors	In Compliance	In Compliance
100	Replace/repair video cameras	In Compliance	Pending Compliance
101	Revision of video camera policy	In Compliance	Not in Compliance
102	Record all vehicle stops, searches etc.	In Compliance	Not in Compliance
103	Elimination of disciplinary case backlog	In Compliance	In Compliance
104	Scheduling of disciplinary cases	In Compliance	In Compliance
105	Disciplinary matrix of responses/sanctions	In Compliance	In Compliance

IX. TRAINING

During this site visit, we visited the Detroit Police Training Center and interviewed the Deputy Chief recently appointed to oversee risk management, including Departmental training; the current Commander of Training; and a lieutenant assigned to Training. We also reviewed a

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variety of memoranda and policy material and the seven lesson plans used in recruit and in-service training.

DPD Training was reorganized following our first visit. In November, 2009, two divisions that previously had separate responsibility for recruit and restoration training and in-service training were merged and placed under the command of a single officer with the rank of commander.¹⁰⁰

Our interviews with the current Deputy Chief and Commander reveal their understanding of training as fundamental to the Chief's effort for Departmental reform. From our initial reviews to now, the instructional process has made progress in the development of training policy, the association of DPD training needs to what is taught, and the methodology of instruction. In our discussions with field personnel, we are beginning to see the effects of instruction based on sound policy. We have seen improvement in the manner and content of training, in general, and in recordkeeping in support of training.

A. OVERSIGHT AND DEVELOPMENT

CJ Requirement U106

The DPD shall coordinate and review all use of force and arrest and detention training to ensure quality, consistency and compliance with applicable law and DPD policy. The DPD shall conduct regular subsequent reviews, at least semi-annually, and produce a report of such reviews to the Monitor and the DOJ.

Comments:

To assess compliance with this paragraph for this reporting period, we reviewed DPD policies and met with the Deputy Chief of Risk Management and the Commander and staff of the Training Center. DPD policies require the training of all members "by qualified instructors in any authorized lethal or less lethal weapon they carry...and that all sworn members attend mandatory annual training on use of force, laws of arrest, search and seizure, the PR-24 Baton and bi-annual firearms use."¹⁰¹ The responsibility for the coordination, development, approval, and delivery of all use of force, arrest, and detention training rests with the Commander of Training. Directives also require that semi-annual evaluations of training be conducted.

The DPD audited use of force instructional classes by training managers and produced a report, *Training Oversight and Development Report, June 2010*, that addresses Requirement U106. This report is the second such report issued for this operational year and contains the evaluation of use of force, arrest, and detention training and covers all elements of this requirement. The DPD is in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¹⁰⁰ Restoration training is the refresher training afforded to an officer returning to service who was previously trained but had a lapse in service.

¹⁰¹ DPD Directive 304.2 – Section 6.1 and Special Order 20-02, Training, dated December 30, 2009.

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CJ Requirement U107

The DPD, consistent with Michigan law and the Michigan Law Enforcement Officers Training Council standards, shall:

- a. ensure the quality of all use of force and arrest and detention training;*
- b. develop use of force and arrest and detention training curricula;*
- c. select and train DPD officer trainers;*
- d. develop, implement, approve and oversee all training and curricula;*
- e. establish procedures for evaluating all training curricula and procedures; and*
- f. conduct regular needs assessments to ensure that training governing use of force and arrest and detention are responsive to the knowledge, skills and abilities of the officers being trained.*

Comments:

The DPD is in Phase 1 compliance with the requirements of this paragraph.¹⁰²

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

- a. During our previous site visit, we found that the DPD lesson plans (Use of Force, July 3, 2009; Arrest and Search and Seizure, May 14, 2007; Detention Officer Training, May 30, 2007) addressed this requirement. Our review of those plans during our most recent site visit indicated that they remain consistent with the Consent Judgments. We were advised by the DPD Training executives that the Michigan Commission on Law Enforcement Standards (MCOLES) does not require in-service training for police officers in Michigan. As noted previously, we confirmed this with the Commission following our initial site visit; the in-service training standard has not changed since that time. The in-service training program that the DPD has implemented fully covers the requirements of the Consent Judgments.
- b. The DPD has developed use of force and arrest and detention training curricula that outlines the subjects taught in use of force and arrest and detention training.
- c. The DPD process for the selection of new training personnel under the existing collective bargaining contracts for sergeants and lieutenants requires that trainers be selected on the basis of seniority, rather than ability, instructional ability, or expertise. There is, however, an allowance for the screening out personnel applying for these positions on the basis of certain disciplinary issues.¹⁰³ This process significantly

¹⁰² DPD Special Order 20-02, issued January 16, 2010.

¹⁰³ Section 23, A2 of the lieutenants' and sergeants' union contract states, "Whenever openings occur in precincts, sections or units, the most senior employee on the list shall be transferred. Seniority is defined by Article 18 of this Agreement."

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mitigates the ability of DPD to select trainers who can provide the training required by contemporary policing standards, and more importantly, by police officers working in large cities or metropolitan areas. The selection of non-ranking member candidates for trainer positions are not so limited by a collective bargaining contract and a more involved process for their selection is in place. No personnel were added to Training during the past quarter.

- d./e. DPD policy curricula and lesson plans address these provisions. A second evaluation report for this operational year (dated June 2010) of the Department's training was produced by the Training Committee chaired by the Commander of Training. Members of the Training Committee are identified below.
- f. The DPD Training Committee met on April 16, 2010 to implement its plan to complete the Department's assessment of training needs for the next operational year. The Training Committee is headed by the Commander of Training and includes the Deputy Chief who oversees Internal Affairs, the Commander of the Criminal Investigations Bureau, the Commander of Risk Management, the Commander of Police Medicine, the Police Legal Advisor, and three members from the Patrol Operations Bureau (rank unspecified). The committee completed reviews of audits; Internal Affairs cases; police legal issues; contemporary national best police practices; and internal training needs surveys, conducted by a first-line supervisor of field personnel regarding use of force, arrest, and detention, as well as other operational issues to gain field perspectives and surface any unknown training deficits. At the time of our most recent site visit, the Department was refining and analyzing the field perspectives aspect of the surveys.
- g. The DPD Training Committee met on April 16, 2010 to implement its plan to complete the Department's assessment of training needs for the next operational year. The Training Committee is headed by the Director of Training and includes the Deputy Chief who oversees Internal Affairs, the Commander of the Criminal Investigations Bureau, the Commander of Risk Management, the Commander of Police Medicine, the Police Legal Advisor, and three members from the Patrol Operations Bureau (rank unspecified). The committee completed reviews of audits; Internal Affairs cases; police legal issues; contemporary national best police practices; and internal training needs surveys, conducted by a first-line supervisor of field personnel regarding use of force, arrest, and detention, as well as other operational issues to gain field perspectives and surface any unknown training deficits. At the time of our most recent site visit, the Department was refining and analyzing the field perspectives aspect of the surveys.

When completed, the comprehensive training assessment will identify the Department's needs for training for 2010-11. While the Department has learned from this exercise, and made some amendments to its training curricula, the committee has not yet completed the required needs assessment report of its findings, and therefore, the findings cannot guide the DPD's training during the first quarter of the new training year. Furthermore, we have not yet completed our review of the proposed changes to the curricula. Despite this, based on the Department's good progress, we find DPD in pending Phase 2 compliance with this requirement.

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Compliance Status:

Phase 1: In Compliance

Phase 2: Pending compliance

CJ Requirement U108

The DPD shall create and maintain individual training records for all officers, documenting the date and topic of all pre-service and in-service training completed for all training conducted on or after the effective date of this agreement.

Comments:

During our first site visit, we learned that the DPD had no policy or order requiring compliance with the requirements of this paragraph; the DPD subsequently issued Special Order 10-02, effective January 16, 2010, to correct this deficiency. This Special Order places responsibility for creating and maintaining training records on the Training command. The Special Order was disseminated as an important high-level distribution which requires that it be conveyed to every member of the DPD, and that every member signs to signify s/he has received it.

In our initial review, we found no real evidence of the Department's progress implementing a contemporary training record system. During this most recent and prior site visits, we learned that the Department committed to recording training data in the MITN System, a part of the Michigan Commission on Law Enforcement Standards (MCOLES) data system. We were advised that since December 1, 2009, DPD has entered data on all of its training into the MITN System. In addition, the Department has begun retroactively entering training records for all of its members, in an effort to electronically store records dating to the beginning of the Consent Judgment. To date, the Department has archived all of its members' training records, except for years 2003, 2004, and 2008. This shows considerable progress, though not yet compliance.

The DPD has also captured data relating to its in-service training and recorded it on a spreadsheet. Since the spreadsheet is used by the Department to determine if all of its officers have attended the required in-service training sessions, we conducted an audit of its accuracy. We randomly selected 100 officers who were listed on the spreadsheet as having received in-service training. There are five sessions recorded on the sheet (PR-24, Firearms, Use of Force, Report, and Legal). Of the 500 records recorded, the DPD was able to locate sign-in sheets reflecting sign-ins for 496 (99%) of the records. This continues the Department's progress from the last quarter, when it achieved 98%.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in compliance

CJ Requirement U109

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

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Comments:

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

During the first reporting period, we found that the DPD training directive and lesson plans properly direct and instruct on the relevant provisions of the Consent Judgment.¹⁰⁴ Our review of the actual lesson plans and curricula documents indicated that they were sufficiently crafted to meet the requirements of the Consent Judgment. However, the local scenarios required by U109 had not yet been developed. In the second reporting period, we found that the DPD had developed five scenarios utilizing Internal Affairs incidents, and accepted them for incorporation into use of force training. Since that time, five additional scenarios, for a total of 10 scenarios, were incorporated into mandated training. In addition, the DPD developed another 12 scenarios and currently awaits their incorporation into training curricula. Our review of training curricula, lesson plans, and scenarios show that they properly instruct and convey the requirements of the Consent Judgment and DPD policy. The Department is now in Phase 2 compliance with this paragraph. However, based on findings of the training needs assessment which is nearing completion, there will likely be some changes to training policy and curricula. We will review future changes and report on their compliance in coming quarterly evaluations.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U110

The DPD shall meet with the City Law Department on a quarterly basis concerning the conclusion of civil lawsuits alleging officer misconduct, information gleaned from this process shall be distributed to DPD risk management and training staff.

Comments:

The DPD met with the City Law Department pursuant to this requirement on May 27, 2010. Meetings are held quarterly. The DPD remains in compliance with U110.

Compliance Status:

Phase 1: In compliance

Phase 2: In compliance

CJ Requirement U111

The City and the DPD shall distribute and explain this Agreement to all DPD and all relevant City employees The City and the DPD shall provide initial training on this Agreement to all City

¹⁰⁴ See Training Oversight and Development Report, Summer, 2009.

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and DPD employees whose job responsibilities are affected by this Agreement within 120 days of each provision's implementation. Thereafter, the DPD shall provide training on the policies contained in this Agreement during in-service training.

Comments:

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

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

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

B. Use of Force Training

CJ Requirement U112

The DPD shall provide all DPD recruits, officers, and supervisors with annual training on use of force. Such training shall include and address the following topics:

- a. The DPD's use of force continuum; proper use of force; decision making; and the DPD's use of force reporting requirements;*
- b. The Fourth Amendment and other constitutional requirements, including recent legal developments;*
- c. Examples of scenarios faced by DPD officers and interactive exercises that illustrate proper use of force decision making, including the use of deadly force;*
- d. The circumstances in which officers may draw, display, or point a firearm, emphasizing:*
- e. Officers should not draw their firearm unless they reasonably believe there is a threat of serious bodily harm to the officer or another person;*
- f. The danger of engaging or pursuing a suspect with a firearm drawn; and*

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

Comments:

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

During our second site visit, we reviewed training policy directives, curricula, lesson plans, Special Orders, and Teletypes, among other materials purported to address the requirements of U112.¹⁰⁵ Our review and analysis showed that the course content requirements of U112 and all of its subparagraphs were met for all recruits. Appropriate training and instruction for some tenured members was presented at in-service training; however, the Department was not yet in compliance since it had not yet trained >94% of its members.

In the third reporting period, we found that 70% of officers had attended UOF training during 2010 in-service training, as compared to 59% of officers for the prior year. Our current review found that 2,730 members (99%) of 2,749 available were trained in uses of force for this training

¹⁰⁵ For our assessment, we reviewed lesson plans, instructor guides, student guides, handouts, and other materials as follows: Firearms Lesson Plan and associated guides and materials, dated January 24, 2008; PR-24 Basic Course Lesson Plan, dated February 1, 2008; Supervisory Leadership and Accountability Lesson Plan and associated guides, dated August 27, 2007; Standard Operating Procedures Manual, FTO Program, Revised 2007; Internal Affairs Lesson Plan and associated guides and materials; dated September 12, 2008; Use of Force Lesson Plan and associated guides and materials, dated July 3, 2009; Detention Officer's Training Lesson Plan and associated guides and materials, dated May 30, 2008; and Law of Arrest and Search and Seizure Lesson Plan and associated guides and materials, dated May 14, 2007.

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year.¹⁰⁶ It is evident that the Department continues to increase its pace of training and has met the 94% or greater requirement, and therefore the Department has achieved Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

C. Firearms Training

CJ Requirement U113

The DPD shall develop a protocol regarding firearms training that:

- a. Ensures that all officers and supervisors complete the bi-annual firearms training and qualification;*
- b. Incorporates professional night training, stress training (i.e., training in using a firearm after undergoing physical exertion) and proper use of force decision making training in the bi-annual in-service training program, with the goal of adequately preparing officers for real life situations;*
- c. Ensures that firearm instructors critically observe students and provide corrective instruction regarding deficient firearm techniques and failure to utilize safe gun handling procedures at all times; and*
- d. Incorporates evaluation criteria to determine satisfactory completion of recruit and in-service firearms training, including:*
- e. Maintains finger off trigger unless justified and ready to fire;*
- f. Maintains proper hold of firearm and proper stance; and*
- g. Uses proper use of force decision making.*

Comments:

During our first site visit to the Training Center, we found the DPD in Phase 1 compliance with U113. (See Teletype 09-02385.) During our next review, we determined that the training policy codified in the new Special Order 10-02 articulates a longstanding DPD policy. This policy directs that officers who do not attend firearms training and qualify bi-annually have their firearms removed and be relieved of their police powers until they attend a firearms training session and qualify.

During the last reporting period, we found that during the previous six months (July 1, through December 31, 2009), for the first time, the DPD enforced its policy of removing the firearms and police authority of officers who failed to qualify. With this enforcement, the DPD was able to train all of its officers during that period. During the bi-annual firearms training covering the period of January 1, through March 31, 2010, 1,071 (39%) of 2,771 officers attended training as

¹⁰⁶ At this time, there were 2,879 Department members at the various ranks through lieutenant, of which 130 were listed as not available to be trained due to illness/injury or other non-duty status during the reporting period.

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compared to 632 (22%) for the prior year's same period. Following the period of April 1, through June 30, 2010, which completes this first bi-annual period of the calendar year, 2,713 members (99%) of 2,749 members were trained. In view of the Department's ability to sustain the greater than 94% training rate, the DPD remains in compliance.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

D. Arrest and Police-Citizen Interaction Training

CJ Requirement U114

The DPD shall provide all DPD recruits, officers and supervisors with annual training on arrests and other police-citizen interaction. Such training shall include and address the following topics:

- a. The DPD Arrest, Investigatory Stop and Frisk and Witness Identification and Questioning Policies;*
- b. The Fourth Amendment and other constitutional requirements, including:*
- c. Advising officers that the "possibility" that an individual committed a crime does not rise to the level of probable cause;*
- d. Advising officers that the duration and scope of the police-citizen interaction determines whether an arrest occurred, not the officer's subjective, intent or belief that he or she affected an arrest; and*
- e. Advising officers that every detention is a seizure, every seizure requires reasonable suspicion or probable cause and there is no legally authorized seizure apart from a "Terry stop" and an arrest; and*
- f. Examples of scenarios faced by DPD officers and interactive exercises that illustrate proper police-community interactions, including scenarios which distinguish an investigatory stop from an arrest by the scope and duration of the police interaction; between probable cause, reasonable suspicion and mere speculation; and voluntary consent from mere acquiescence to police authority.*

Comments:

The DPD is Phase 1 compliance with the requirements of this paragraph.¹⁰⁷

The Department has split the use of force, search and detention training into an eight-hour block on use of force; and a four-hour block on arrest, search, and detention. Annual training is provided by DPD in its in-service training program for officers and supervisors. During the period of July 1, 2009, through June 30, 2010, the Department trained 2,734 members (99%) of 2,749 available to be trained. Therefore, the Department is in compliance with this paragraph.

¹⁰⁷ Special Order 10-02, effective January 16, 2010.

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We note, however, that although the DPD is in compliance for properly training its members on the legal requirements to stop, frisk, and search citizens, there appears to be an operational disconnect. As reported in U45, the Department is not yet in compliance with the requirement that each member who makes a stop or frisk document, in writing, the factors leading to such action illustrating the legal justification. Nor have supervisors conducted effective report review to address a lack of information documentation or correct an improper action. Though this is primarily a supervisory issue, we will discuss the training aspect with the Training Commander during our next visit.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

E. Custodial Detention Training**CJ Requirement U115**

The DPD shall provide all DPD recruits, officers and supervisors with annual training on custodial detention. Such training shall include DPD policies regarding arrest, arraignment, holds, restrictions, material witness and detention records.

Comments:

DPD policy directs sworn members of the Department to attend in-service training where these critical subjects are taught. We found that 2,709 (99%) of 2,749 members met all of these requirements, while 35 members completed some of the training, and five members failed to appear.

In our previous review, we found that the DPD had developed appropriate policies and lesson plans to comply with this provision, as well as a protocol to train all recruits, sworn members, confinement officers, investigators, and supervisors.¹⁰⁸ It should be noted that officers who serve in the detention cell areas are required to receive additional annual detention officer training, which is more specifically related to detention responsibilities (see C73). Our review found that DPD in-service training afforded to all officers meets the requirements of U115. DPD is in compliance with this paragraph of the CJ.

¹⁰⁸ Law of Arrest and Search and Seizure Lesson Plan and associated guides and materials, dated May 14, 2007; Detention Officer Training Lesson Plan, dated May 30, 2008.

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Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U116

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

Comments:

DPD Special Order 10-02 and lesson plans on arrest, search and seizure, and detention previously referenced address this requirement. The Department is in Phase 1 compliance with this paragraph.

Our review found that the DPD is meeting its training obligation and has trained greater than 94% of its members during this training year. During our previous review, we observed records indicating that 68% of the members had been trained through March 31 of this Fiscal Year. Substantial progress has been made, in that the Department has developed training that meets the requirements of U116 and has trained >94% of its members. We verified that 2,734 members (nearly 100%) of 2,749 members available for training through June 30, 2010 have been trained on the requisite policy. Accordingly, the Department is in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U117

The DPD shall advise officers that whether an individual is a material witness and whether that material witness should be committed to custody is a judicial determination.

Comments:

In our prior site visits, we found the DPD to be in Phase 1 compliance with U117. We continue to find the Department in Phase 1 compliance this requirement during this reporting period.¹⁰⁹

As reported previously, these policies provide guidelines and procedures for making lawful arrests, and detaining material witnesses; requiring a supervisory review of arrests for probable cause; and requiring prompt judicial review of arrests. In addition, the policy clearly states that "only a court has the authority to decide whether an individual is a material witness, and whether that material witness should be committed to jail pending his or her testimony."

¹⁰⁹ DPD Directive 202.1, effective July 1, 2008.

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Throughout the past year, DPD has conducted in-service training and detention officer training that addresses the requirements of U117. The DPD gained compliance by having 99% of its officers attend in-service use of force training where these guidelines and procedures are taught.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

F. Supervisory Training***CJ Requirement U118***

The DPD shall provide supervisors with training in the appropriate evaluation of written reports, including what constitutes a fact based description, the identification of conclusory language not supported by specific facts and catch phrases, or language that so regularly appears in reports that its inclusion requires further explanation by the reporting officer.

Comments:

During the previous reporting period, we found that DPD training policies specify that in-service training include “appropriate evaluation of written reports, including what constitutes a fact based description.” The DPD is in Phase 1 compliance with this paragraph.

The DPD strove to fulfill Consent Judgment Requirements U118-U122 through its annual in-service training for supervisors. Accordingly, it would come into Phase 2 compliance with this paragraph only when it trained >94% of its supervisors in their annual in-service training program.

During the fiscal year 2009 (July 1, 2008, through June 31, 2009), DPD trained 578 (84%) of its 689 available supervisors (lieutenants, investigators, and sergeants). On June 30, 2010, at the end of Fiscal Year 2010, the DPD had trained 650 (99%) of its current complement of 652 supervisors. DPD is in Phase 2 compliance with U118.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U119

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

Comments:

During the last reporting period, we found that the DPD had issued a revised policy directing that “members of the rank of investigator and above shall attend and successfully complete the following training course within thirty (30) days of assuming their rank and thereafter shall

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attend the course on an annual basis.”¹¹⁰ Accordingly, we found the Department in Phase 1 compliance with this paragraph.

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

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U120

The DPD shall provide training on risk assessment and risk management to all DPD supervisors, including the operation of the risk management database.

Comments:

During the previous reporting period, we noted that the DPD had revised its policy to address this requirement.¹¹¹ Accordingly, we found the DPD in Phase 1 compliance with this paragraph.

The Department’s in-service training addresses this requirement. The Department trained 99% of its supervisors in the past year through its annual supervisory and leadership in-service training. The DPD is in Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

G. Investigator Training

CJ Requirement U121

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

Comments:

We previously determined the DPD policies to be in Phase 1 compliance with these requirements.¹¹²

¹¹⁰ Ibid.

¹¹¹ Ibid.

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The training required by U121 is delivered in the DPD supervisory and leadership in-service. The DPD delivered this training to 99% of its supervisors. The Department is in Phase 2 compliance with U121.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement U122

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

Comments:

Newly revised DPD policies direct that the in-service training include “DPD’s external complaint process, including the role of the Office of the Chief Investigator and Internal Affairs/Force Investigation in the process.”¹¹³ The DPD is Phase 1 compliance with this paragraph.

The Department trained 99% of its supervisors in the past year in both its leadership and supervisory in-service training, which addresses handling external complaints; and in its use of force in-service training, which addresses the role of the OCI. The Department is in Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

H. Field Training

CJ Requirement U123

The DPD shall develop, subject to DOJ approval, a protocol to enhance the FTO program within 120 days of the effective date of this Agreement. The protocol shall address the criteria and method for selecting and removing the FTOs and for training and evaluating FTOs and trainees.

Comments:

During the last reporting period, we found that the Department developed and implemented a protocol to enhance the FTO Program. The Standard Operating Procedures Manual Field

¹¹² Ibid.

¹¹³ Ibid.

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Training Program (revised 2007) reflects the DPD FTO Program as it was approved by the DOJ. The procedures are designed to enhance the FTO Program, and address the criteria and methods for selecting, removing, training, and evaluating FTOs. We determined the DPD to be in Phase 1 compliance with this paragraph.

The DPD has not selected or trained any additional FTOs. The Department has an adequate number who are trained and ready to assume FTO responsibilities.

Compliance Status:

Phase 1: In Compliance

Phase 2: Deferred

Critical Issues:

During this reporting period, we found excellent Training management efforts towards gaining compliance. After the first reporting period, the DPD training managers quickly adopted policies to address the various requirements relating to training. Of 17 Consent Judgment requirements addressing training, the Department has been in Phase 1 (policy) compliance with 16. During this reporting period, we found that the Department had adopted appropriate policies, and the driving force in DPD Training is now to comply with Departmental policies. When we discussed training with DPD managers, they referred to the Department's policies and not policies that were imposed by the Consent Judgment. This is a positive development.

During our most recent site visit, we observed a supervisor instruct a class of officers in use of force. She delivered the information clearly, persuasively, and with no apologies. Her lecture and her leadership during the subsequent question-and-answer session were effective in presenting the DPD use of force policies and procedures.

Several of the requirements relating to training were found to be in compliance because the DPD trained over 99% of its personnel in each of the areas of annual in-service training. The chart below reflects the Department's accomplishments:

Course	Available	Attended	Pct.	No Show	No Gun
Use of Force	2749	2730	99%	19	
PR-24 / Report Writing	2749	2728	99%	21	
Laws of Search and Seizure	2749	2734	99%	15	
Range 2010 (First Half)	2749	2713	99%	17	19
Supervisory Leadership	652	650	99%	2	

During the training cycle for Fiscal Year 2010, only 40 available officers did not complete all of their in-service training requirements. Of this number, 35 attended some in-service training, and five failed to appear.

Year to Date: In-Service Block		
Complete	2709	98.54%

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Partial Complete	35	1.27%
Failed to Appear	5	0.18%

In-service training during the past year was comprehensive. As a consequence of its training efforts, the DPD is now in compliance with 10 additional training-related requirements.

Next Steps:

During our next site visit, we will review:

- New or revised policy directives that have been developed for the Consent Judgment requirements relating to training.
- The list of officers selected to serve as trainers, and the documentation regarding their selection and training as trainers.
- The training record system and any training needs assessment that has been conducted.
- A random sample of officers who have attended in-service training to determine if the training is documented in training records.
- Documentation of the development of scenarios derived from local incidents used in instruction.
- Documentation of meetings with the City Law Department.
- Documentation that the City and the DPD distributed the Consent Judgments to all DPD and all relevant City employees, and trained them on its content.
- A list of officers and supervisors who have attended in-service for Fiscal Year 2010 as of June 30, 2010, to determine if the DPD is in compliance (>94% attendance) with the several Consent Judgment training requirements.
- A random sample of officers, supervisors, and, if appropriate, detention personnel who are required to be trained in several subjects (see requirements U114, U115, U116, U117, U118, U119, U120, U121, and U122), and their training records to determine if they, in fact, received the training set forth in these requirements.
- A list of all supervisors, and a count of supervisors, who have completed supervisor training during Fiscal Year 2010 as of June 30, 2010, which we will compare against the number who attended supervisory training during Fiscal Year 2008 as of June 30, 2009.
- A list of all supervisors promoted during the past quarter and the dates they received the training required by the Consent Judgment.
- A list of all officers who conduct investigations. From this list, we will randomly select a sample and compare it to the lists of officers who have actually received the training required by U121.
- Documentation of field training officer selection and training. (JW/MH)

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In addition, we will observe any training sessions, if available; and discuss with Training personnel Training and operational disparity regarding stops and frisks will be discussed as a training need for both line officers and supervisors.

¶	Requirements	Phase 1 - Policy	Phase 2 - Implementation
106	Coordination and review of training	In Compliance	In Compliance
107	DPD will meet state training standards	In Compliance	Pending Compliance
108	Maintain individual training records	In Compliance	Not in Compliance
109	Train from approved objectives and plans	In Compliance	In Compliance
110	Quarterly meetings with Law Department	In Compliance	In Compliance
111	Distribute and training on the agreement	In Compliance	In Compliance
112	Annual use of force training required	In Compliance	In Compliance
113	Develop firearms training protocol	In Compliance	In Compliance
114	Annual arrest, citizen interaction training	In Compliance	In Compliance
115	Annual training on custodial detention	In Compliance	In Compliance
116	Prohibition of arraignment delays	In Compliance	In Compliance
117	Material witness custody	In Compliance	In Compliance
118	Supervisory training-report evaluation	In Compliance	In Compliance
119	Supervisory training-leadership	In Compliance	In Compliance
120	Supervisory training-risk management	In Compliance	In Compliance
121	Investigator training-procedures	In Compliance	In Compliance
122	Supervisory training-external complaints	In Compliance	In Compliance
123	Enhance the FTO program	In Compliance	Deferred

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

This Consent Judgment sets forth procedural and operational requirements relating to the confinement facilities maintained and operated by the Detroit Police Department. The Judgment requires the revision and implementation of policies and practices that are safe, respectful, and constitutional in the areas of fire safety, emergency preparedness, medical and mental health, prisoner safety, environmental health and safety, persons with disabilities, food service, and personal hygiene. In addition, the Judgment sets forth requirements relating to the use of force in detention facilities, as well as procedures for the investigation of the use of force and complaints relating to other events occurring in these facilities. The Judgment also establishes requirements for management and supervision, the auditing of internal practices, and the training of personnel who are assigned detention responsibilities.

We made our first site visit in November, 2009, and reviewed required directives, supporting logs, forms, and documentation relating to the operation of the detention facilities. Accompanied

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by key members of the DPD Office of Civil Rights personnel, we conducted our first tour of the Detroit Police Department's holding cells in the Northeastern, Eastern, and Southwestern Districts; Sixth and Twelfth Precincts; and Detroit Receiving Hospital. During our tour, we interacted with available command and key detention staff at each facility. However, due to time limitations, it was not possible for us to thoroughly inspect the operations and practices at each facility.

During our second and third site visits in January, and April, 2010, we met with key CRIB command staff, Audit Team personnel, and the designated health care professional to conduct a thorough review of all requirements, DPD directives, forms, logs, and documentation relating to and required by this Judgment. During the January visit, we noted in particular the need for the Department to revise its Infectious Disease Control, Detainee/Intake Assessment, and Detainee Health Care Directives; and to have them reviewed and approved by a health care professional. In addition, we met with DPD Training staff to discuss and ascertain the Department's progress with required training. As a result, CRIB initiated revisions to these directives, which were reviewed and approved by a health care professional.

We also visited and inspected each of the five districts/precincts that maintain holding cells.¹¹⁴ We were accompanied by CRIB staff, and assisted by the cell block supervisors and compliance officers on these inspections, which included our entering and examining every holding cell, interviewing detention staff, and reviewing forms and logs.

Although we had concerns with the fire safety practices during our first site visit, we found significant improvement in the implementation of these practices, including the conducting of required fire drills, during our last two site visits. For example, the fire drills were conducted with greater frequency than required. We also found that the DPD addressed concerns with regard to facility key control, but we note that the Department needs to revise the directive to ensure consistency with Departmental practice.

We also reviewed several of detainee file folders during and in between our visits for compliance with medical and health screening and other required procedures. We continue to note clerical errors and missing documentation relating to medical referrals, medication logs, staff signatures, and supervisory reviews. We are particularly concerned with the lack of an exchange of information relating to health and other significant issues among shifts. We are also concerned with the lack of effective, consistent, and required observation checks.

The cleanliness and sanitary condition of the holding cells and adjacent areas are concerns in every detention facility, and the DPD facilities are no exception. DPD directives require these areas to be maintained in a clean and sanitary condition at all times. They also require appropriate inspections to ensure that the required cleanliness and sanitary conditions are maintained. During our second site visit inspection, we noted a high degree of compliance with regard to the conducting and documentation of the required inspections, but the actual cleanliness and sanitary conditions of the facilities did not meet those standards. Our inspection found the condition of three facilities unsatisfactory, one marginal, and one (Twelfth) satisfactory. Our third site visit inspection reflected a significant level of improvement in four out of five districts/precincts.

¹¹⁴ Facilities with holding cells are located in the Northeastern, Eastern, and Southwestern Districts; Sixth and Twelfth Precincts; and the Detroit Receiving Hospital.

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The DPD has made progress with regard to directive and policy guidance; however the DPD must effectively implement and adhere to these directives. This requires training and competent supervision. In addition, the DPD should ensure that the directives and policies, particularly those relating to health care, are reviewed annually and revised as required. The DPD must also provide detention personnel with ongoing in-service training to ensure the maintenance of required standards of performance.

The details of our findings are included in the following sections.

III. FIRE SAFETY POLICIES

CJ Requirement C14

The DPD shall ensure that all holding cells, and buildings that contain them, achieve and maintain compliance with the Life Safety Code within one year of the effective date of this Agreement. The City shall ensure that the Detroit Fire Marshal conducts regular and periodic inspections to evaluate whether the conditions in DPD holding cells, and buildings that contain them, are in compliance with the Life Safety Code.

Comments:

During the first reporting period, we found the DPD in compliance with regard to policy, but in pending compliance with regard to practice due to the lack of documentation of this requirement. That matter was resolved, as was noted in our second quarterly report. The DPD continues to be in full compliance with this paragraph during this reporting period.

The DPD Comprehensive Emergency Preparedness Plan (CEPP) includes a Fire Safety Plan (FSP), which requires compliance with the Life Safety Code and inspections. The FSP was developed in consultation with the Detroit Fire Marshal. DOJ approved the FSP on May 23, 2006. The Fire Marshal annually reviews the FSP; the most recent review was conducted on June 5, 2010. The Fire Marshal also conducts regular and periodic (annual) inspections of holding cells; the most recent review was conducted in October, and November, 2009. The inspecting captain appropriately documented these inspections on the DPD audit form in each district/precinct. Accordingly, we find the DPD in full Phase 2 compliance with this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C15

The DPD shall develop and implement a comprehensive fire detection, suppression and evacuation program for the holding cells, and buildings that contain them, in accordance with the requirements of the Life Safety Code and in consultation with the Detroit Fire Department.

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Comments:

During the first reporting period, we found the DPD in Phase 1, but not in Phase 2, compliance with this paragraph because required fire drills and fire extinguisher inspections were not conducted at an acceptable level. This problem was resolved during the next quarter, which resulted in full compliance. The DPD has maintained that record during the current reporting period.

The DPD developed the required Fire Safety Plan.¹¹⁵

During this reporting period, to assess implementation of the FSP, we examined the Fire Extinguisher Monthly Inspection/Inventory Reports (DPD 716). They were completed at each district/precinct for April, May, and June of 2010, resulting in a 100% compliance rate. It should be noted, however, that 21 extinguishers at one district were listed as “expired;” however, during our inspection, all extinguishers were current.

If every district/precinct followed the practice of the Sixth Precinct, there would be no question about the status of the extinguishers. The Sixth Precinct lists the expiration date of each instrument in the Remarks section of the DPD 716 Form. The Fire Safety Plan also requires that each shift holds fire drills twice annually. During the past year, every district/precinct has conducted two or more fire drills on each, as required. This effort is reflected in the 100% compliance rate evident in our analysis of the DPD 703 documentation.

The DPD has achieved compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C16

The fire safety program shall be developed in consultation with, and receive written approval by, the Detroit Fire Department. As part of developing the fire safety program, the Detroit Fire Department shall evaluate the need for and, if necessary, the DPD shall install: fire-rated separations, smoke detection systems, smoke control systems, sprinkler systems and/or emergency exits for the holding cells and building that contain them. The fire safety program shall be submitted for review and approval of the DOJ within three months of the effective date of the Agreement.

Comments:

We found the DPD in Phase 1 compliance in the first, second and third reporting periods. The Department maintains that status during this quarter.

The DPD developed the required Fire Safety Plan.¹¹⁶

¹¹⁵ The Detroit Police Department Comprehensive Emergency Preparedness Plan (CEPP) includes a Fire Safety Plan (FSP) requiring compliance with the Life Safety Code and inspections. The FSP was developed in consultation with the Detroit Fire Marshal. DOJ approved the FSP on May 23, 2006. The Fire Marshal annually reviews the FSP; the last review was conducted on June 5, 2010.

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Following the development of the FSP, the DPD made required structural changes to districts/precincts' holding facilities, including the updating and/or installation of sprinkler systems, fire alarm systems, and fire-rated doors. During our inspection of the district/precinct holding cells, we found the presence of all three. Our interviews with supervisory staff in each of the districts/precincts determined that they were appropriately familiar with the operations of each of the systems.

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

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C17

The DPD shall implement the fire safety program within one year of the effective date of this Agreement. Thereafter, the program shall be reviewed and approved in writing by the Detroit Fire Department at least every year, or prior to any revisions to the plan.

Comments:

We found the DPD in Phase 1 compliance with this paragraph in our first, second, and third quarterly reports.

The DPD has developed and implemented the required Fire Safety Plan, and is in continued full Phase 2 compliance with this Consent Judgment paragraph.¹¹⁷

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C18

The DPD shall take immediate interim fire safety measures in all buildings that contain holding cells. At a minimum, these interim measures shall:

- a. Ensure that the activation of any individual smoke alarm sounds an alarm throughout the building;*

¹¹⁶ The Detroit Police Department Comprehensive Emergency Preparedness Plan (CEPP) includes a Fire Safety Plan (FSP) requiring compliance with the Life Safety Code and inspections. The FSP was developed in consultation with the Detroit Fire Marshal. DOJ approved the FSP on May 23, 2006. The Fire Marshal annually reviews the FSP; the last review was conducted on June 5, 2010.

¹¹⁷ The Detroit Police Department Comprehensive Emergency Preparedness Plan (CEPP) includes a Fire Safety Plan (FSP) requiring compliance with the Life Safety Code and inspections. The FSP was developed in consultation with the Detroit Fire Marshal. DOJ approved the FSP on May 23, 2006. The Fire Marshal annually reviews the FSP; the last review was conducted on June 5, 2010.

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- b. ensure that prisoners in holding cells have an adequate means of reporting emergency conditions to DPD staff immediately;*
- c. ensure that automated back-up power systems exist for all buildings containing holding cells that are capable of providing immediate power for emergency lighting, exit signs, fire alarm and smoke detection systems in the event of an electrical power failure through batteries or an emergency generator; and*
- d. reduce the likely spread of smoke and fire throughout the buildings by means of stairwells, garages, hazardous rooms and exposed pipes, such as ensuring that fire doors in stairwells are closed.*

Comments:

We found the DPD in full Phase 2 compliance with this paragraph during the first, second, and third reporting periods.

As previously noted, we visited each district/precinct that maintains holding cells and determined that the DPD has made the required structural, electronic, and mechanical upgrades within the facilities. We also noted that Fire Systems of Michigan and the Fire Marshal conducted and documented inspections of suppression systems in October, and November, 2009. We also acknowledge the DPD assignment of three staff members to the holding cells on each shift, which serves to ensure that detainees have a means of notification in the event of an emergency. The DPD is in continued full compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C19

The DPD shall ensure that fire safety equipment is routinely tested, inspected and maintained, including the sprinkler systems, fire alarm systems, manual fire extinguishers, emergency lighting and exit signs, and self-contained breathing apparatuses.

Comments:

We found the DPD in Phase 1, but not Phase 2, compliance with this paragraph in the first reporting period. In the second and third reporting periods, we found the DPD in Phase 2 compliance with this paragraph following our review of supplemental documentation regarding routine testing of systems and equipment.

The Fire Safety Plan places responsibility for ensuring the required testing, inspections, and maintenance of the various systems, fire extinguishers, emergency lighting and signs, and equipment with the DPD Office of Facilities Management.

Fire Systems of Michigan and the Fire Marshal conduct the required inspections, which were last conducted in October, and November, 2009. The weekly testing of emergency generator power supply systems is documented on Form 715 (Evaluation of the Operation of Holding Cells) which is supported by the printouts of weekly testing completed and generated by DTE Energy.

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

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C20

The DPD shall enforce immediately its no-smoking policy in the holding cells or provide ash trays and ensure that all holding cell areas are constructed and supplied with fire-rated materials.

Comments:

We found the DPD in Phase 1 compliance with this paragraph in our first, second, and third quarterly reports.

DPD Directive 305.4, Holding Cell Areas, Section 5-3, effective February 1, 2008, and the Fire Safety Plan (FSP) prohibit smoking in the district/precinct holding cells.¹¹⁸ During our inspection of the holding cell areas, we found no trace of smoking in the facilities. A close examination of the cells revealed that they did not contain combustible materials. The DPD is in continued full compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C21

The DPD shall insure immediately that all flammable and combustible liquids in holding cell areas and the attached and nearby DPD buildings are stored properly.

Comments:

We found the DPD in full Phase 1 compliance with this paragraph in our first, second, and third quarterly reports.

The Fire Safety Plan sets forth guidelines for the storage of flammable materials.¹¹⁹ Our inspection of the holding facilities found that each district/precinct was equipped with at least

¹¹⁸ The Detroit Police Department Comprehensive Emergency Preparedness Plan (CEPP) includes a Fire Safety Plan (FSP) requiring compliance with the Life Safety Code and inspections. The FSP was developed in consultation with the Detroit Fire Marshal. DOJ approved the FSP on May 23, 2006. The Fire Marshal annually reviews the FSP; the last review was conducted on June 5, 2010.

¹¹⁹ The Detroit Police Department Comprehensive Emergency Preparedness Plan (CEPP) includes a Fire Safety Plan (FSP) requiring compliance with the Life Safety Code and inspections. The FSP was developed in consultation with

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one yellow storage cabinet, located in the garage area, for flammable and combustible liquids. We checked the cabinets and found flammable materials and gas storage containers. As stated in our last report, we found evidence dated October 16, 2008 in a cabinet at the Eastern District. The evidence had not been removed as of our inspection on July 21, 2010. The DPD is in continued full compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C22

The DPD shall remove immediately all highly-combustible kane fiber ceiling tiles from buildings that contain holding cells.

Comments:

The DPD has been in continued compliance with this Consent Judgment paragraph since 2005 when it closed some of the facilities where kane fiber ceiling tiles were in place, and it removed the tiles from the remaining facilities. We reviewed an invoice dated February 2, 2004, wherein the required modification to the holding cells is documented. The DPD is in continued full compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¶	Requirements	Phase 1 – Policy	Phase 2 – Implementation
14	Holding Cell Life Safety Code compliance	In Compliance	In Compliance
15	Fire detection, suppression, and evacuation	In Compliance	In Compliance
16	Fire Department consultation and evaluation	In Compliance	In Compliance
17	Implementation of fire safety program	In Compliance	In Compliance
18	Immediate interim fire safety measures	In Compliance	In Compliance
19	Routine testing of fire safety equipment	In Compliance	In Compliance
20	Enforce no smoking in holding cells	In Compliance	In Compliance
21	Proper storage of flammable liquids	In Compliance	In Compliance
22	Remove combustible cane fiber tiles	In Compliance	In Compliance

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

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IV. EMERGENCY PREPAREDNESS POLICIES***CJ Requirement C23***

The DPD shall ensure a reasonable level of safety and security of all staff and prisoners in the event of a fire or other emergency.

Comments:

In our first quarterly report, we found the DPD in full Phase 1 compliance, and in pending Phase 2 compliance, with this paragraph because documented fire drills were recorded at less than the required 94%. We found the DPD in full Phase 2 compliance with this paragraph in our second and third quarterly reports.

The DPD developed and published a Comprehensive Emergency Preparedness Program (CEPP) addressing safety and security, as required. The CEPP includes an emergency response plan for each district/precinct (see C24) and a key control system requirement (see C25).

The DPD conducted and documented fire drills, as required. We reviewed the fire drills for each of the five districts/precincts during the previous year, and found that two or more were conducted on each shift in each district/precinct as required. We also noted that, based on the recommendation that we made during our first site visit, the number of key sets was increased from three to five at each district/precinct. Three were assigned to the cell block staff, one was designated for the front desk/lobby, and one was placed in the emergency key locker in the lieutenants'/sergeants' office. Our physical examination of each key set during this site visit revealed that there are, in fact, five sets of keys at the Eastern and Northeastern Districts, but six sets at the Twelfth and Sixth Precincts, and only four at the Southwest District. As previously noted, DPD Directive 305.4, Section 6-7, effective May 9, 2005, does not reflect this practice, and therefore must be brought in line with the actual practice in order to avoid a noncompliant finding; however we are finding the DPD in continued compliance with the requirements of this paragraph at this time.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C24

The DPD shall develop a comprehensive emergency preparedness program that is approved in writing by the Detroit Fire Department. This program shall be submitted for review and approval of the DOJ within three months of the effective date of this Agreement. The DPD shall implement the programs within three months of DOJ's review and approval. Thereafter, the program shall be reviewed and approved in writing by the Detroit Fire Department at least every year, or prior to any revisions to the plan. At a minimum, the emergency preparedness program shall:

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- a. include an emergency response plan for each building that contains holding cells identifying staff responsibilities in the event of fire-related emergencies and other emergencies, including notification responsibilities, evacuation procedures and key control procedures (discussed below); and*
- b. require performance and documentation of fire drills for all buildings containing holding cells on all shifts every six months (documentation shall include the start and stop times of each drill, the staff members who participated in the drill, a summary of the drill, and an evaluation of the success of the drill).*

Comments:

We found the DPD in compliance with policy (Phase 1) but not practice (Phase 2) in the first reporting period because fire drills were not conducted at a level greater than 94%. The DPD achieved full compliance in the second and third reporting periods because it increased the frequency of fire drills to the 100% level.

The DPD developed the required Comprehensive Emergency Preparedness Plan (CEPP).¹²⁰ The CEPP identifies staff responsibilities in the event of a fire emergency to include notifications, evacuation, and key control procedures. The Department has also conducted and documented fire drills, as required (see C15). Accordingly, the DPD is in continued full Phase 2 compliance with this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C25

The DPD shall develop and implement key control policies and procedures that will ensure that all staff is able to manually unlock all holding cell doors in the event of a fire or other emergency. At a minimum, the key control policies and procedures shall:

- a. provide for emergency identification of keys by touch;*
- b. and require routine inventory, testing and maintenance of keys and locks.*

Comments:

In our first, second, and third quarterly reports, we found that the DPD had achieved Phase 1 compliance with this paragraph because Directive 305.4, Holding Cell Areas, Section 6-7, effective May 9, 2005, specifies the key control policy. However, we noted in our first quarterly report that the DPD had not achieved Phase 2 compliance with this paragraph, due to a lack of documentation regarding maintenance and operational testing of the keys. The DPD

¹²⁰ The Detroit Police Department Comprehensive Emergency Preparedness Plan (CEPP), developed in consultation with the Detroit Fire Marshal, was approved by DOJ on May 23, 2006. The Fire Marshal annually reviews the FSP; the last review was conducted on June 5, 2010.

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subsequently achieved Phase 2 compliance in this area, as we noted in our second and third quarterly reports. In both of those reports, we stated that Directive 305.4 and DPD form 715 (Evaluation of the Operation of the Holding Cells) needed to be updated to reflect current practice. To date, that has not been done.

During our first site visit, we recommended that each officer working in a cell block be issued a complete set of keys. As a result, we were informed that two extra sets of keys were distributed to each district/precinct with holding cells, bringing the total at each to five – three in the cell block, one with the sergeant assigned to the public lobby, and one in the emergency key box in the lieutenants’/sergeants’ office. This change in practice needs to be incorporated into Directive 305.4 and the 715 form.

During our most recent site visit, we physically examined every set of keys after it became apparent that some CRIB staff conducting their monthly inspections, and CLOs conducting their daily inspections, of the holding cells, were not properly accounting for all keys in block 24 of the 715 form. Our inspection revealed:

- Two districts/precincts had five sets of keys, two had six sets, and one had only four sets.
- Some key sets were not on a ring.
- Some key sets have no emergency exit keys.
- None of the key sets are labeled or numbered so that they can be uniquely identified.
- Staff (the CBS and CLO) at one district were unable to identify which door a particular key (on the set) operated.
- One district has exit doors on the north and south sides of the cell block that are keyed differently, and no key on the sets opens the south door.

While these discrepancies are serious, they can be easily rectified. We expected that by this reporting period, the Department would update Directive 305.4 and the DPD form 715, and standardize key sets on uniquely identified rings; however, these changes did not occur. Accordingly, the DPD is not in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
23	Ensure reasonable safety in emergency	In Compliance	In Compliance
24	Develop comprehensive emergency preparedness program	In Compliance	In Compliance
25	Implementation of key control policies	In Compliance	Not in Compliance

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V. MEDICAL AND MENTAL HEALTH CARE POLICIES***CJ Requirement C26***

The DPD shall ensure the appropriate identification of, and response to, prisoner's medical and/or mental health conditions.

Comments:

During the first and second reporting periods, we found that the DPD Directives 305.1, Detainee Intake Assessment; 305.5, Detainee Health Care; and 403.2, Infectious Disease Control Plan had not been reviewed and approved on an annual basis by a qualified medical and mental health professional. Effective February 5, 2010, the DPD revised and updated Directives 305.1, 305.5, and 403.2, integrating the use of the Livescan system at the detainee intake and assessment process. In addition, a qualified medical and mental health professional completed an extensive review, incorporating necessary revisions, and approved the aforementioned directives. As a result of these actions, we found the Department in Phase 1 compliance with this paragraph.

During the third reporting period, we found that the DPD Directives 305.1, Detainee Intake Assessment; 305.5, Detainee Health Care; and 403.2, Infectious Disease Control Plan were reviewed and approved on an annual basis by a qualified medical and mental health professional, effective February 5, 2010. In addition, a qualified medical and mental health professional completed an extensive review, incorporating necessary revisions, and approved the aforementioned directives. The DPD continues in Phase 1 compliance with this paragraph for the current reporting period.

During the current reporting period, we reviewed a random sample of 375 detainee file folders from the five districts/precincts that maintain holding cells, and found that 75% were in compliance with this Consent Judgment paragraph. While not yet in Phase 2 compliance with this paragraph, this shows an improvement from the third reporting period, when we found that only 65% of the detainee file folders were in compliance.

Though we continue to see improvements in staff adhering to procedures, we continue to identify clerical errors, incomplete or missing documentation of medical referral and medication logs, missing signatures, missing documentation of required supervisory reviews, and the lack of a documented exchange of health information between consecutive shifts. Our inspections of detainee file folders and observation of staff in the districts/precincts reveal that staff are still not properly implementing these procedures in accordance with the DPD directives.

Due to the revisions of the applicable directives mentioned above, we continue to find the DPD in Phase 1 compliance for this reporting period; however, full compliance with the requirements of this Consent Judgment paragraph and DPD directives is dependent upon correct and complete implementation and documentation of detainee health assessments, with appropriate responses to detainees' medical and mental health needs.¹²¹ DPD remains out of Phase 2 compliance with this paragraph.

¹²¹ See CJ 30, 31, and 32.

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Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C27

The DOD shall develop a comprehensive medical and mental health screening program (CMMHSP) that shall be approved in writing by qualified medical and mental health professionals. This program shall be submitted for review and approval of the DOJ within three months of the effective date of this Agreement. The DPD shall implement the program within three months of DOJ's review and approval. Thereafter, the program shall be reviewed and approved by qualified medical and mental health professionals at least every year and prior to any revisions to the programs. At a minimum, the comprehensive medical and mental health screening program shall include prisoner screening procedures and medical protocols.

Comments:

Our first and second quarterly assessments of DPD Directives 305.5 through 305.5-9, effective May 9, 2005, along with the forms and logs that comprise the Comprehensive Medical and Mental Health Screening Program (CMMHSP), found the DPD to be in compliance with the requirements of this paragraph; however, at that time we were unable to determine whether the directives were reviewed and approved by a qualified medical and mental health care professional as required.

Our third quarterly review revealed that CRIB initiated revisions to Directive 305.1 relating to the Medical and Mental Health Screening Process. Effective February 5, 2010, the DPD had revised and updated Directives 305.1 and 305.5. A qualified medical and mental health professional completed an extensive review, made revisions, and approved the directives listed above.

During this reporting period, we met with the CRIB staff who are responsible for updating all policies/directives on a continual basis, and requested documentation of any new/updated policies/directives that were completed since our last site visit. We have received no such documents; however we continue to find disparities between Directive 305.1-7.3-5, Handicapped Detainees, and actual DPD practice, which have been verified during our field inspections. The DPD must update its policies when practices/procedures change in the field, and rectify the Policy 305.1-7.3-5 disparity within the next reporting period to avoid a finding of non-compliance. The DPD, at a minimum, has implemented a comprehensive detainee screening process with medical protocols. Despite this, we find the DPD in Phase 1 and 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

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CJ Requirement C28

The prisoner screening procedure, at a minimum, shall;

- a. enable the DPD to identify individuals with medical or mental health conditions, including infectious diseases, chronic conditions, including disabilities, ambulatory impairments, mental health conditions, and drug/alcohol withdrawal;*
- b. identify persons who are at risk of committing suicide, persons who have been on heightened observation for suicide risk at any time during a past incarceration and persons who have any medical contraindications for the use of chemical sprays,*
- c. require that the DPD follow a standard intake procedure for each individuals entering DPD custody;*
- d. require that intake screening be conducted within two hours of intake and through a verbal exchange between the DPD and prisoners; and*
- e. incorporate all health information pertaining to a prisoner acquired by the arresting or transporting officers.*

Comments:

Our first and second quarterly assessments of DPD Directives 305.1, Detainee Intake/Assessment, and 403.2, Infectious Disease Control, effective May 9, 2005, found that they contain the required detainee screening procedures. The DPD revised Directives 305.1 and 403.2, effective February 5, 2010, and therefore maintains its Phase 1 compliance status with this paragraph during this reporting period.

During the first, second, and third reporting periods, we found deficiencies in the staff's ability to consistently implement the requirements of this Consent Judgment paragraph, and thus, we determined that the DPD was not in Phase 2 compliance with this requirement.

During this reporting period, we reviewed a random sample of 375 detainee file folders from the five districts/precincts that maintain holding cells. Our review found many of the same deficiencies that we found in past reviews: clerical errors; missing signatures of police detention officers and supervisors; supervisors using rubber stamps in place of their signatures; and incomplete or incorrect completion of Detainee Intake Form 651. In addition, several detainee file folders were missing Medical Care Referral Form 660, Detainee Treatment Medication Log 664, Hospital Prisoner Form 127B, and DRH discharge instructions. Although we saw some improvement in this area, overall, since our last review, only 75% of the detainee file folders we reviewed were in compliance with this requirement.

Our current review of the DPD forms 659a, Platoon Daily Detainee Summary, found 95% in compliance. This is the first time that the recorded figure has been >94%, as required. The most common discrepancy we found was still the failure of the oncoming shift to sign for receipt. There were no documents received for the DRH.

Our inspection found that police detention officers are still inconsistent in recording all of the information required on the Detainee Information Form 651(DIF). While onsite, we also examined of DPD forms 659a, Platoon Daily Detainee Summary, and found that in several cases, the forms were missing information on detainees with health issues; in some cases, the

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information was not recorded between shifts. We also found continued deficiencies with proper documentation of detainee health information on the Platoon Daily Detainee Summary.

In addition, our review revealed discrepancies between the information contained on the Detainee Intake Form 651 and the Detainee Input Sheet 667 relating to detainees' medical and mental health issues; the incorrect completion of Medical Treatment/Medication Logs, wherein medication dosages and required signatures were not included; Medical Referral Forms 660 missing from detainee file folders; and several cases where detainees should have been referred to DRH in accordance with DPD directives, but were not. The Department should implement a process whereby when a detainee's medical or mental health status changes, personnel update Livescan accordingly.

The DPD remains out of Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C29

The medical protocols, at a minimum, shall;

- a. identify the specific actions the DPD shall take in response to the medical information acquired during prisoner screening or detention, including the need for emergency care, hospitalization, prescription medication and/or intensive monitoring; and*
- b. require prior supervisory review and written approval, absent exigent circumstances, of all decisions made in response to acquired medical information.*

Comments:

During the second reporting period, we met with CRIB staff and reviewed directives and supplementary documentation required for compliance with this requirement. As a result of our discussions, CRIB revised Directive 305.1. The directive was updated and approved by a qualified medical and mental health profession, and issued with an effective date of February 5, 2010. CRIB further revised this directive during the third reporting period. Based on these revisions and the approval by the qualified medical and mental health professional, we found DPD to be in Phase 1 compliance with the requirements of this paragraph. However, we found the Department not in Phase 2 compliance with these requirements.

During the current reporting period, to assess compliance with these requirements, we reviewed a sample of 375 detainee file folders, and conducted inspections at the Detroit Receiving Hospital and each of the districts/precincts that maintain holding cells. Our assessments found instances where staff deviated from the policy in the following areas:

- Timely referral, or lack of referral, of detainees in need of medical or mental health care to DRH;
- Required red medical alert stickers missing from detainee file folders;

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- Medical referrals not completed correctly;
- Medication Logs missing the required dosing information;
- Medical referral forms missing from detainee file folders;
- Medical information not being placed in confidentiality envelopes, as required;
- Supervisors' signatures missing on forms regarding the health information of detainees requiring medical care;
- Supervisors using a stamp in place of a permanent signature;
- Hospital Prisoner Form not completed properly;
- DRH discharge instructions missing.

DPD remains out of Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C30

The DPD shall develop and implement policy regarding infectious disease control (IDC) in consultation with medical health professionals. The policy shall be reviewed and approved in writing by qualified medical health professionals at least every year after implementation and prior to any revisions to the policy. At a minimum, the policy shall;

- a. establish appropriate housing for prisoners believed to have infectious diseases; and*
- b. mandate measures the DPD shall take to prevent the spread of infectious diseases, including proper handling and disposal of bio-hazardous material.*

Comments:

During the previous reporting period, we met with CRIB staff and reviewed directives and supplementary documentation required for compliance with this paragraph. CRIB staff subsequently prepared revisions to DPD Directive 403.2, Infectious Disease Control Plan. The directive was reviewed, updated, and approved by a qualified medical and mental health professional, and issued with an effective date of February 5, 2010. DPD is in Phase 1 compliance with this paragraph.

During our first site visit, we visited the Detroit Receiving Hospital and all five DPD facilities that maintain holding cells. At that time, we found poor levels of sanitation in all five DPD facilities; the Detroit Receiving Hospital (DRH) sanitary conditions were satisfactory. During our second site visit, we again inspected each of the holding cell areas in the facilities. At that time, we found poor sanitation conditions in three locations; one location was marginal; and one location was satisfactory. The Detroit Receiving Hospital cells continued to be satisfactory. Accordingly, DPD was not in Phase 2 compliance with this requirement.

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Our third inspection revealed that four of the districts/precincts that maintain holding cells had expended efforts to come into Phase 2 compliance with this paragraph. Many of the cells were freshly painted, and the floors were recently washed and polished. There was marked improvement in four of the five holding cell facilities; however, the Twelfth Precinct did not improve or even maintain the level of sanitation noted in the last reporting period as it had regressed. The Personal Protective Equipment (PPE) kits in each facility contained most of the items listed on the PPE kit inventory list that is outlined in Directive 403.2-4.3. All of the PPE kits in all holding cell facilities contained the required inventory checklist. Our inspection also found that first aid kits in four of the five facilities were not properly stocked. We found only one facility that had a first aid kit that was complete, and it had been recently purchased. Though the DPD had improved in this area during the third reporting period, we again found the Department out of Phase 2 compliance with this paragraph.

Per Directive 403.2-4.4-1, Care and Storage of PPE Kit, each shift, each day, at the district/precinct should receive and inspect the contents of the PPE kits to ensure that it contains all the required equipment. During the current reporting period, although we found that each district/precinct had Personal Protective Equipment (PPE) kits that were inventoried and in order, we did not find any documentation that this practice takes place on all shifts. We recommend that CRIB develop a procedure to implement this practice. We continue to find that not all facilities have properly stocked first aid kits.

Our inspection revealed that sanitation conditions, while improved, are still not at an acceptable level. The Detroit Receiving Hospital holding cell area and cells were unexpectedly dirty. The DRH holding cell area and cells were also not clean, and air ducts in one of the cells were blocked with toilet paper. The holding cell area's stainless sink had dirt encrusted in and around the sink area. The floor under the counters was full of clutter and dirty.

When we asked the police detention officers for specific documents for our review, they could not locate them. When the officers opened the cabinets to look for the documentation we requested, there were logs and forms thrown in the cabinets in a haphazard way, and some of the documents were missing. In our review of the documentation that was available, there was information missing on several of the Hospital Prison Forms (127b) and Platoon Daily Detainee Summary Forms (659a).

During this past visit, we were disturbed to observe that detainees are still permitted to discard their garbage, uneaten food, and drink containers in the holding cell corridors outside the cells. Over time, these leftovers build up, causing scum to form and resulting in unsanitary conditions in the cell block corridors. Though many of the districts/precincts were newly painted during the last quarter, we note for this reporting period that the conditions are deteriorating once again. We attribute some of the poor sanitation conditions to the aforementioned practice. Though the staff sweeps up the garbage after every meal, inevitably crumbs, juice, and other types of garbage remain on the floors. We again advise DPD that to maintain the sanitary improvements in the holding cell areas, staff should collect the excess food, garbage, and packaging in a garbage bag after every meal to keep the floors clean of excess debris.

DPD Directive 403.2-5-1-8, Precaution Strategies, requires that staff do not eat, drink, smoke, apply cosmetics or lip balm, handle contact lenses, or store food or drink in work areas where there is a reasonable likelihood of significant exposure to infectious diseases. Our inspections reveal that there is food and drink being brought in by staff in the holding cell areas. We

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recommend that the Department send out a memo to all districts/precincts and DRH reminding detention staff of this policy.

Our review of the Holding Cell Maintenance Log (DPD702) revealed that sanitation appears to be satisfactory on paper, but our inspections continue to show that conditions, while improved, are still unacceptable. (Refer to U39-41.) Based on insufficiency in the implementation of a DPD Infectious Disease Control policy, and our observations of conditions, the DPD is not in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C31

The DPD shall develop and implement a protocol for updating and exchanging prisoner health information. At a minimum, this protocol shall;

- a. require that prisoner's health information is recorded at intake and thereafter immediately readily available to all relevant medical and transporting personnel in a manner consistent with the relevant federal and state confidentiality statutes;*
- b. require that prisoner health information is continually updated to incorporate any additional relevant information acquired during his or her detention;*
- c. require that relevant prisoner health information is documented and communicated between consecutive shifts, such as whether a prisoner is taking medication or has a medical condition; and*
- d. require that prisoner health information travel with prisoners who transferred to another facility.*

Comments:

During the second reporting period, we met with CRIB staff and reviewed directives and supplementary documentation required for compliance with this paragraph. Effective February 5, 2010, the DPD revised and updated Directive 305.5, Detainee Health Care. A qualified medical and mental health professional completed an extensive review, incorporating necessary revisions, and approved the aforementioned directives. Accordingly, DPD is in Phase 1 compliance with this paragraph.

During the first and second reporting periods, our reviews of DPD form 661, Mental Health High Risk Log; form 661a, Medical Health High Risk Log; and form 659a, Platoon Daily Detainee Summary Form, indicated that required detainee health information – such as whether a detainee is taking medication or has a medical condition – was not being documented and communicated between consecutive shifts. Other errors included missing dates, times, names of the officers in charge authorizing the watch, and reasons for the detainee's removal from the cell.

During the third reporting period, our onsite review of the DPD form 659a, Platoon Daily Detainee Summary, logs for the districts/precincts that maintain holding cell facilities revealed that the Twelfth District left a detainee who was on medication for a health condition off of a log

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for four consecutive shifts. In another example, we found the health information for a detainee in the Northeastern District missing from the log for three consecutive shifts. These findings indicate that sharing relevant health information between shifts, as required by this paragraph, remains inconsistent. This practice is critical to ensure that the detainees' health needs are met, and for the purposes of staff safety. This information must be documented, updated, and communicated between the initial shift receiving the detainee and the subsequent shifts until the detainee is released.

Our current review found that the DPD achieved 95% compliance on DPD form 659a, Platoon Daily Detainee Summary. Though we did not receive this documentation for the DRH, this is the first time that the recorded figure has been 94% or greater, as required. The most common discrepancy was still the failure of the oncoming shift to sign for receipt. Our review indicated that there are still detainees with health issues that are not being communicated between shifts.

During this reporting period, we also reviewed DPD form 661, Mental Health High Risk Log. This form is used when a detainee is placed in an observation cell for mental health reasons. Forms were submitted on behalf of 107 individuals for the period of April 1, through June 30, 2010. The individuals were incarcerated from a few hours to four days. Forty-one were classified as suicide watches, of which 14 were logged for constant supervision and 22 for monitoring every 15 minutes. Inexplicably, in five cases, both the "constant supervision" and "15 minute" monitoring blocks were checked. Unfortunately, there is no way to determine whether or not constant supervision is actually being conducted because all entries on the forms are in 15-minute increments.

It is also apparent from our review that the DPD is monitoring an increasing number of detainees for mental health reasons. The number of 661 forms submitted for review has increased each quarter during the past year. DPD has not yet achieved compliance in this area because in 46 of the 107 cases that were submitted for review, the document did not include a reason for, or time of, removal from the watch. That equates to only a 57% compliance rate.

Other discrepancies noted on the forms include the following:

- No signature authorizing the watch;
- No signature associated with the reason for removal from the watch;
- Both the 661 and 661a forms used on the same watch; and
- Unexplained gaps in the 15-minute well-being notations.

We reviewed 15 661a forms, Medical Health High Risk Log, for the period of April 1, through June 30, 2010. Five of the cases were missing documentation reflecting authorization for the watch. That equates to only a 67% compliance rate.

Other discrepancies noted on the forms include the following:

- An unexplained two-hour-and-twenty-minute gap on a suicide watch;
- Both the 661 and 661a forms used on the same watch; and
- A full shift missing in the logs of two detainees.

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As we reported last quarter, the DPD is still in the process of developing one form which will replace the 661 and 661a documents. This change should eliminate confusion over which form to use.

Our review of detainee file folders, logs, and forms disclosed innumerable deficiencies in the documentation of important health information, clerical errors, incomplete or missing documentation for Medical Referral Form and Medication Logs, missing signatures, missing documentation of required supervisory reviews, and the lack of a documented exchange of health information between consecutive shifts. (Refer to C35-38.) Based on these findings, DPD remains out of Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C32

The DPD shall develop a prescription medication policy in consultation with qualified medical and mental health professionals that ensures prisoners are provided prescription medication as directed. The policy shall be approved in writing by qualified medical and mental health professionals and shall be submitted for review and approval of the DOJ within three months of the effective date of this Agreement. The DPD shall implement the policy within three months of the DOJ's review and approval. Thereafter, the policy shall be reviewed and approved in writing by qualified medical and mental health professionals at least annually and prior to any revisions to the program. At a minimum, the policy shall:

- a. indicate when the DPD shall convey prisoners taking prescription medication to the DRH or other treating hospital for evaluation;*
- b. require the DPD distribute to prisoners only medications that have been prescribed at the DRH or other treating hospitals;*
- c. require that the DPD distribute medications as prescribed and not rely on inmates to identify their need for medication;*
- d. require that all prisoner medications be stored in a secure location near the holding cells and travel with prisoners that are transferred;*
- e. require the DPD to record relevant information regarding the administration of prescription medication on an auditable form;*
- f. require that injected medications are administered as prescribed and in a safe and hygienic manner; and*
- g. require that unused medications prescribed at the DRH or other treating hospitals are provided to prisoners upon their release.*

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Comments:

Our previous reviews of DPD Directive 305.5, Detainee Health Care, effective May 9, 2005, determined that it was not in compliance with this paragraph. DPD was unable to provide documentation verifying that the directives pertaining to prescription medication policies were developed in consultation with, and reviewed annually, by a medical and mental health professional.

During the second reporting period, we met with CRIB staff and reviewed directives and supplementary documentation required for compliance. CRIB prepared revisions to Directive 305.5, Detainee Healthcare. As a result of that effort, we placed the Department in pending Phase 1 compliance status.

The directive was subsequently reviewed, updated, and approved by a qualified medical and mental health professional, and issued with an effective date of February 5, 2010. Consequently, we found the DPD in Phase 1 compliance with this paragraph.

During our first and second inspections of the five districts/precincts that maintain holding cells, we found multiple Medication Logs missing essential detainee and staff information. Detainee dosages, dosing times, signatures, and the names of the persons administering the medications and prescription release information were missing. As a result, we found the DPD out of Phase 2 compliance with this paragraph.

In the third reporting period, our review of 375 detainee file folders revealed that the DPD continued to miss recording essential detainee and staff information. We also found that that DPD was not obtaining medications from the pharmacies in a timely manner, resulting in detainees missing their scheduled dosing of medications. Several detainees on medications did not have a medication log, which could contribute to medication errors. We also found that there was no documentation of pertinent health information for detainees in some of the logs. In one facility, Shift 1 did not pick up detainee medications from the pharmacy, placing that burden on Shift 2. As a result, several detainees at that facility did not receive their medications according to the physician's orders. When we asked for the keys to inventory the medication cabinet in the Northeastern District, the police detention officer/cell block supervisor did not know where the keys were, and did not have a second set of keys. In the Southwestern District, we found that the CBS did not follow the established procedure regarding where medication logs were kept. The CBS placed the medication logs directly into the detainee file folders, keeping that information from the centralized medication log. This practice can result in dosing errors, particularly if a shift misses recording dosing information on the Platoon Daily Summary.

During the current reporting period, we reviewed 375 detainee file folders and observed some improvement from the previous reporting period; however, we continued to find essential detainee and staff information missing. For instance, some of the files did not contain detainee medication logs; detainee health/medication information recorded on the Platoon Daily Summary; and signatures of PDOs and detainees when medications was administered, and PDOs and detainees when detainees on medications are released from custody. It appeared that DPD did not always obtain medications from the pharmacies in a timely manner, resulting in detainees missing their scheduled dosing of medications. In addition, we found that detainees on medications who were held longer than expected did not have their prescriptions refilled, resulting in detainees missing their dosage of medications prescribed by DRH. As a result, DPD remains out of Phase 2 compliance with this paragraph.

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Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C33

The DPD shall provide appropriate clothing, such as paper gowns or suicide smocks, to all prisoners placed under suicide precautions.

Comments:

Our previous reviews determined that DPD Directive 305.1, Detainee Intake Assessment, effective May 9, 2005, had not been reviewed and approved on an annual basis by a qualified medical and mental health professional as required; however, this was subsequently achieved with the required medical and mental health review and the issuance of a revised Directive 305.1, effective February 5, 2010. The DPD is in Phase 1 compliance with this paragraph.

During the last reporting period, we found that the detention staff was generally knowledgeable about their responsibilities and duties regarding high-risk detainees with mental health issues. However, we found some deficiencies regarding 15-minute cell checks, which violated the DPD directive and placed the detainees at risk for serious harm. During our current review, we found that the DPD has not effectively implemented staff and inmate safety measures, which we discuss in C37-38. In addition, while we found that the districts/precincts had an ample supply of clothing such as suicide smocks, we were unable to determine whether they were issued as required. Accordingly, the DPD is not yet in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C34

The DPD shall remove or make inaccessible all suicide hazards in holding cells including exposed pipes, radiators and overhead bars. DPD does not have a policy regarding this paragraph of the COC CJ.

Comments:

During our previous site visits, we conducted comprehensive inspections of each of the five districts/precincts and the Detroit Receiving Hospital cells, and confirmed that the DPD was in full compliance with the requirements of this paragraph. During this reporting period, we also confirmed in our inspection that the DPD continues to be in Phase 1 and 2 compliance with this paragraph.

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Phase 2: In Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
26	Prisoners' medical/mental health conditions	In Compliance	Not in Compliance
27	Medical/mental health screening program	In Compliance	In Compliance
28	Medical/mental health screening procedures	In Compliance	Not in Compliance
29	Medical protocols	In Compliance	Not in Compliance
30	Infectious disease policy required	In Compliance	Not in Compliance
31	Prisoner health information protocol required	In Compliance	Not in Compliance
32	Prescription medication policy required	In Compliance	Not in Compliance
33	Clothing-suicide prevention	In Compliance	Not in Compliance
34	Removal of suicide hazards	In Compliance	In Compliance

VI. PRISONER SAFETY POLICIES

CJ Requirement C35

The DPD shall ensure a reasonable level of safety of staff and prisoners through the use of appropriate security administration procedures.

Comments:

In our first, second, and third quarterly reports, we found the DPD in Phase 1, but not Phase 2, compliance with this paragraph.

DPD Directive 305.4, Holding Cell Areas, effective February 1, 2008, addresses policy requirements relating to the safety of staff and prisoners/detainees. The directive is supplemented by related DPD Directives 305.1, Detainee Intake; 305.2, Detainee Registration; 305.3, Detainee Personal Property; 305.5, Detainee Health Care; 305.7, Transportation of Detainees, all effective May 9, 2005; and 305.8, Detainee Food Service and Hygiene, effective February 9, 2006.

Our review finds these directives in compliance with the requirements of this Consent Judgment paragraph. As noted above, the DPD is in Phase 1 compliance with this paragraph. However, the DPD has not yet achieved effective implementation of the policy requirements due to staff and inmate safety measures that do not meet the required threshold as further articulated in C36, C37, and C38.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

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CJ Requirement C36

The DPD shall develop and implement a prisoner security screening program for all buildings containing holding cells. At a minimum, the program shall:

- a. establish protocols based upon objective, behavior-based criteria for identifying suspected crime partners, vulnerable, assaultive or special management prisoners who should be housed in observation cells or single-occupancy cells; and*
- b. require that security screening information is documented and communicated between consecutive shifts.*

Comments:

In our first, second, and third quarterly reports, we found the DPD in Phase 1, but not Phase 2, compliance with this paragraph.

DPD Directive 305.1, Detainee Intake, effective May 9, 2005, sets forth a prisoner security screening program that meets the requirements of this paragraph; however, our review of associated logs revealed significant discrepancies. The DPD designed and implemented the Platoon Daily Detainee Summary (Form 659a) to ensure the effective communication of screening information between consecutive shifts. Our review of these forms from each of the five districts/precincts for this reporting period reflected a 95% compliance rate. This is the first time that the DPD has achieved greater than 94% compliance. It should be noted, however, that the most common discrepancy is still due to the oncoming shift's failure to document receipt for the forms appropriately.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C37

The DPD shall develop and implement procedures for the performance, documentation and review of routine cell checks in all holding cells to ensure safe housing. At a minimum, the procedures should:

- a. require that cell checks on the general population are performed at least twice per hour and that cell checks of prisoners in observation cells and DRH holding cells are performed every 15 minutes, unless constant supervision is required; and*
- b. require detention officers to document relevant information regarding the performance of cell checks in an auditable log.*

Comments:

In our first, second, and third quarterly reports, we found the DPD in Phase 1 compliance with this paragraph. In the first reporting period, we found the DPD in pending Phase 2 compliance; in our second and third reporting periods, we found the DPD not in Phase 2 compliance with this paragraph.

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DPD Directive 305.4, Holding Cell Areas, Sections 4.2 and 4.3, effective February 1, 2008, establishes the duties of the cell block supervisors (CBS) and detention officers relating to well-being checks. Supervisors are required to walk through the holding cell areas four times per shift to check on the well-being of the detainees. Detention Officers are required to make similar visual checks every 30 minutes (or every 15 minutes for high risk detainees). Their observations are documented on the Detention Cell Check Log (DPD 659).

At the Detroit Receiving Hospital, 15-minute well-being checks are entered on the DPD 659 form when holding cells are occupied. General population well-being checks are entered on the DPD 659 Form every 30 minutes at the districts/precincts. Detainees held in observation cells are monitored every 15 minutes on either the DPD 661 (Mental Health High Risk Monitoring) or the DPD 661a (Medical Health High Risk Monitoring Log).

Our review of DPD 659 Forms for the period of April 1, through June 30, 2010 reflected a 93% compliance rate. This compares to 94% during the third reporting period and 99% during the second reporting period. The decrease is attributed to the failure of a supervisor to sign/initial for his required checks.

The Mental Health High Risk Log (DPD 661) is used when a detainee is placed in an observation cell for mental health reasons, and personnel maintain a 15-minute watch. Even if a detainee is under constant supervision, staff are required to make notations on the log every 15 minutes. Forms were submitted on a total of 107 cases for the period of April 1, through June 30, 2010. While the 15-minute entries were made, the date, time, and reason for removal from the cell were recorded in only 46 of the 107 cases, resulting in a 57% compliance rate. The reason for the watch in 45 of the 107 cases was suicide-related – a past history, attempts, or current ideations – yet only 14 of them were under constant watch. DPD policy (Directive 305.1-7.4, effective May 9, 2006) requires that DPD personnel maintain a constant watch on a suicidal detainee.

The Medical Health High Risk Log (DPD 661a) is used when a detainee is placed in an observation cell for medical reasons, and staff maintain a 15-minute watch. Forms were submitted on a total of 15 cases during the period of April 1, through June 30, 2010. In five cases, there was no documentation of the name of the officer in charge authorizing the watch or the date, time, and reason for the individual's removal from the watch. This resulted in a 67% compliance rate.

It should be noted that DPD staff continue to use the 661 and 661a forms interchangeably, even to the point of using both forms on one detainee throughout the duration of his watch. The DPD is in the process of developing one form that will replace the 661 and 661a documents. This should help to alleviate some of the confusion.

As was previously reported, the DPD should revise its directives to reflect current practice to maintain Phase 1 compliance. Should this not occur during the next reporting period, the DPD will not be in Phase 1 compliance with this paragraph. The DPD has not achieved Phase 2 compliance due to the significant discrepancies noted on DPD 661 and DPD 661a forms.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

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CJ Requirement C38

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

Comments:

In our first, second, and third quarterly reports, we found the DPD in Phase 1, but not Phase 2, compliance with this paragraph. That status continues for the current reporting period.

DPD Directive 305.4, Holding Cell Areas, Section 4.3, effective February 1, 2008, is in compliance with the requirements relating to direct and/or onsite remote observation of occupied observation cells. However, Directive 305.1-3.8, effective May 9, 2005, specifies that constant supervision is required when a detoxification/safety cell (observation cell) is used to house a suicidal detainee. Directives 305.1-3.16 authorize the use of any single cell as an observation cell to house a suicidal detainee, and it requires constant supervision.

As previously noted, the DPD continues to be out of compliance with its own policies in that detainees on suicide watches are often not placed on constant supervision. Of the 41 DPD 661 and 661a forms that we reviewed during this reporting period (that were maintained on suicide watches), 14 specified “constant supervision,” 22 specified a 15-minute watch and, as noted above, inexplicably, five specified both constant supervision and 15-minute monitoring. In addition, the matter of general population detainees being housed in observation (detoxification/safety) cells is still unresolved. As we noted in our second quarterly report, DPD policy does not provide for such use of those cells; therefore, modification of Directive 305.1 is required. Until such time as these two issues are resolved, we will continue to find the DPD out of compliance with regard to practice with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
35	Security procedures to ensure safety	In Compliance	Not in Compliance
36	Prisoner security screening program	In Compliance	In Compliance
37	Procedures for cell checks required	In Compliance	Not in Compliance
38	On-site remote observation of cells	In Compliance	Not in Compliance

VII. ENVIRONMENTAL HEALTH AND SAFETY POLICIES

CJ Requirement C39

The DPD shall ensure that all holding cells are cleaned immediately and thereafter are maintained in a clean and sanitary manner.

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Comments:

In our first, second, and third quarterly reports, we found the DPD in Phase 1, but not Phase 2, compliance with this paragraph.

DPD Directive 305.4, Holding Cell Areas, Section 5, effective February 1, 2008, establishes sanitation and cleaning procedures for the district/precinct holding cells. In our last report, we noted that the Twelfth Precinct did not meet the high standard that it set during the previous reporting period. During our most recent inspection, we found that the Twelfth Precinct once again set the benchmark against which the other districts/precincts can check their progress. Overall, graffiti is almost non-existent throughout the facilities, and we observed trash in only six cells. The least satisfactory areas were offices in the cell blocks where detainees are not housed. The accumulation of dirt in those spaces is attributable to staff. The Detroit Receiving Hospital was uncharacteristically dirty and cluttered; air ducts in the cells were blocked with toilet paper.

The DPD is in continued Phase 1 compliance, but has still failed to achieve Phase 2 compliance, with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C40

The DPD shall design and implement a cleaning policy for all holding cells. The policy shall require routine cleaning and supervisory inspection of the holding cells and nearby areas.

Comments:

In our first, second, and third quarterly reports, we found the DPD in Phase 1, but not Phase 2, compliance with this paragraph. That status continues in this reporting period.

DPD Directive 305.4, Holding Cell Areas, Section 5, effective February 1, 2008, establishes cleaning and inspection standards for holding cell areas. Cell block supervisors are required to conduct inspections at the beginning of their shifts and to correct any noted discrepancies. Holding cell areas must be cleaned daily and documented in the Holding Cell Cleaning Log (DPD 701). Detention officers must clean cells immediately after they are vacated.

Our review of the DPD 701 Forms for April 1, through June 30, 2010 reflected a compliance rate of 99%. The only discrepancy that we noted on the forms was a sergeant's repeatedly stamped name instead of his actual signature. Sanitation appears to be satisfactory on paper, but our inspection revealed that conditions, while improved, are still unacceptable. Representative problems included the following:

- No soap dispenser or broken soap dispenser and no paper towel dispenser at the staff counter and sink in the processing area. This was noted in two districts/precincts (Eastern District and Sixth Precinct).
- Mustard on the wall.
- Cell camera lenses obscured by toilet paper.

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- A buildup of crusted dirt in stainless steel toilet fixtures that has accumulated over a lengthy time (weeks or months, not days).

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C41

The DPD shall design and implement a maintenance policy for all holding cells that requires timely performance of routine maintenance and the documentation of all maintenance requests and responses in an auditable log.

Comments:

In our first, second, and third quarterly reports, we found the DPD in Phase 1, but not Phase 2, compliance with this paragraph. There is no change for this reporting period.

DPD Directive 305.4, Holding Cell Areas, Section 6.6, effective February 1, 2008, establishes procedures for the maintenance of the holding cells. The Platoon 1 Cell Block Supervisor is responsible for conducting a weekly maintenance inspection and for documenting discrepancies in the Holding Cell Maintenance Log (DPD702). The Platoon 1 Cell Block Supervisor is required to submit repair orders by e-mail to the Maintenance Department.

Our review of DPD 702 Forms (Weekly Cell Maintenance Log) for the period of April 1, through June 30, 2010 reflected a 92% compliance rate, as opposed to 73% in the previous quarter. As stated in each of our previous reports, the form has no utility because, among other issues, it does not track corrective action. Four out of five districts/precincts have each platoon complete the form even though only Platoon 1 is required to do so. Only the Eastern District follows the written procedures. A revised maintenance tracking form is due to be implemented in July.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C42

The DPD shall provide adequate heating and ventilation for all buildings containing holding cells.

Comments:

We found the DPD in full Phase 1 and Phase 2 compliance with this paragraph in our first, second, and third quarterly reporting periods. The Department remains in full compliance for this reporting period.

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DPD Directive 305.4, Holding Cell Areas, Section 6.6, effective February 1, 2008, establishes the policy regarding heating and ventilation (temperature ranges) within the holding cells. During our inspections of the facilities, we found the temperature in each cell block well within established limits (between 66 and 80 degrees). Our interviews with cell block supervisors revealed that they checked the temperature upon assuming the shift. Based on our review of the above-referenced directive and our observations of practice, the DPD is in full compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C43

The DPD shall repair all broken or malfunctioning lighting, toilets, sinks and windows in holding cells and observation cells.

Comments:

In our first, second, and third quarterly reports, we found the DPD in Phase 1, but not Phase 2, compliance with this paragraph.

DPD Directive 305.4, Holding Cell Areas, Section 6.6, effective February 1, 2008, sets forth Departmental policy with regard to the repairs as required. As we noted in C41, the DPD is in the process of implementing a more effective maintenance repair tracking system; however, this system is not yet functional. Accordingly, the DPD remains in Phase 1 compliance, but has not achieved Phase 2 compliance, with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C44

The DPD shall ensure that lighting in all cell block areas is sufficient to reach 20 foot candles of illumination at desk level and in personal grooming areas.

Comments:

We found DPD in full compliance with regard to policy and practice in our first, second, and third quarterly reports.

We inspected the various district/precinct holding cells, and found that supplemental lighting has been retrofitted at each location. The DPD Facilities Management Staff conducted light level tests between October 5-30, 2009 in the five districts/precincts that maintain holding cells, and at the Detroit Receiving Hospital. In each case, the light levels in the cells and adjacent areas exceeded 20-foot candles at desk level. The DPD is in continued full compliance with the requirements of this Consent Judgment paragraph.

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Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C45

The DPD shall provide all prisoners with reasonable access to toilets and potable water 24 hours-a-day.

Comments:

We found the DPD in full compliance with regard to policy and practice in our first, second, and third quarterly reports.

Directive 305.4, Holding Cell Areas, Section 7, effective February 1, 2008, requires that detainees have access to toilets and potable drinking water 24 hours per day. Our inspection of the district/precinct holding cells determined that all prisoners had access to toilets and potable water at all times. Based on the published directive and our observed conditions of the physical plant in the district/precinct holding cells, the DPD is in full compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C46

The DPD shall ensure that all Hepa-Aire purifiers comply with the Michigan Occupational Safety and Health Agency standards.

Comments:

We found the DPD in full compliance with regard to policy and practice in our first, second, and third quarterly reports.

The DPD staff advised, and our inspections of the district/precinct holding cells confirmed, the removal of all Hepa-Aire purifiers. The DPD is in full compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
39	Clean and maintain holding cells	In Compliance	Not in Compliance

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40	Holding cell cleaning policy required	In Compliance	Not in Compliance
41	Holding cell maintenance policy required	In Compliance	Not in Compliance
42	Provide adequate heating and ventilation	In Compliance	In Compliance
43	Repair broken/malfunctioning cell elements	In Compliance	Not in Compliance
44	Insure sufficient cell lighting	In Compliance	In Compliance
45	Provide reasonable access to toilets and water	In Compliance	In Compliance
46	Hepa-Aire purifiers comply with standards	In Compliance	In Compliance

VIII. POLICIES CONCERNING PERSONS WITH DISABILITIES

CJ Requirement C47

The DPD shall ensure that persons with disabilities are provided with reasonable accommodations

Comments:

The DPD developed a Comprehensive Medical and Mental Health Screening Program (CMMHSP) effective May 9, 2005. Policy 305.1, Detainee Intake and Assessment, and Policy 305.5, Detainee Health Care, were updated and approved in writing by a qualified medical and mental health professional on February 5, 2010.

We found in the first, second, and third reporting periods that the DPD was in Phase 1 compliance with this paragraph.

DPD Directive 305.1-7.3-5 has not been updated to reflect current practice pertaining to Telecommunications Devices for the Deaf (TDD). Current policy states that certain districts are equipped with TDD, and that detainees who are hearing impaired should be transferred to a district that has a TDD. Currently, all districts/precincts have new TDDs. Accordingly, the DPD must update this policy within the next reporting period to avoid a future Phase 1 non-compliance finding.

In reference to the above policies, detainees who require the use of a wheelchair are to be transported and housed at the Northeastern District. The Northeastern District is equipped with two commodes that are compliant with the Americans with Disabilities Act (ADA). During our last onsite assessment, we interviewed staff at all five districts regarding detainees who required the use of a wheelchair. The holding cell staff was aware of the directives and procedures relating to the transfer of all detainees in need of wheelchair accessibility to the Northeastern District.

During our most recent inspection of the Northeastern District to assess compliance with the requirements relating to persons with disabilities, we found that the two cells that have been equipped and designated for the holding of persons with disabilities were clean, properly equipped, and in good working order. During our current visit, there were no detainees who required the use of a wheelchair who were housed in the facility.

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In addition, we inspected all five districts and precincts that maintain holding cells and found that they all had TDD equipment. Our previous inspections found the DPD in compliance with directives prescribing the use of the TDD equipment; however, our findings during our last two visits differed. On our last visit, we interviewed one of the cell block supervisors regarding the TDD equipment, and found that he was not aware that the district had the device until he asked one of his officers. Furthermore, the staff at four of the five districts/precincts were unable to make the equipment function. At the fifth location, there was one officer who knew how to operate the equipment, but the rest of the staff were unfamiliar with it. Accordingly, we stated in our last report that the DPD must rectify this within the next reporting period to avoid a finding of non-compliance.

Our most recent inspection of all five districts and precincts that maintain holdings cells found that all had TDD equipment. When we asked the police detention officers to show us that the devices were functional, PDOS at two of the five districts/precincts could not get a dial tone on the equipment. Two other PDOs were able to get a dial tone, but no one was able to connect a call to another TDD machine to determine whether or not the system works. The fifth PDO did not know where the equipment was located. When we interviewed detention staff on the use of the TDD equipment, we found that they were not trained in how to operate the devices. The staff noted that they had not been trained, stating that it was DPD's position that the directions were straightforward, and did not require training. We recommend that the DPD amend its procedure and require each district/precinct to call another district/precinct and initiate a typed conversation, TDD to TDD, to test the system to make sure that the systems work and that every PDO has hands-on experience in using the equipment.

We continue to observe inconsistency in the use of the TDD device by detention staff. To date, the staff have not been trained on the use of the equipment; therefore, we find DPD not in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C48

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

Comments:

DPD Directive 305.1, Detainee Intake/Assessment, effective May 9, 2005, was last revised February 5, 2010, in consultation with a qualified medical and mental health professional from the Detroit Department of Health and Wellness Promotion (DHWP). Accordingly, the DPD is in Phase 1 compliance with this requirement.

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During the third reporting period, we visited the five districts/precincts that maintain holding cells, and found a number of disparities between practice and policy regarding the TDD equipment and suggested the need to rectify them to avoid a non-compliant finding. During this current quarter review, we continue to see the disparities on training and practice of detention staff. We continue to find DPD out of Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not In Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
47	Reasonable accommodation for disabled	In Compliance	Not in Compliance
48	Detention of persons with disabilities	In Compliance	Not in Compliance

IX. FOOD SERVICE POLICIES

CJ Requirement C49

The DPD shall ensure food is stored and served in a sanitary manner and in compliance with state and local health codes.

Comments:

DPD Directive 305.8, Detainee Food Service, effective May 9, 2005, requires that detainee meals are stored properly and served in a sanitary manner in accordance with state and local health codes. This directive was developed in consultation with a dietician and sanitation specialist from the Detroit Department of Health and Wellness Promotion (DHWP). DPD Directive 305.8, Detainee Food Service, was last reviewed and signed by DHWP on February 4, 2010. We find the DPD in Phase 1 compliance with this paragraph.

During our third site visit, we inspected the five holding cell area sites, and found the refrigerator temperatures were adequate and clean to ensure safe storage of food products.

During this current reporting period, we reviewed a sample of DPD forms 655, Refrigeration Log, and found 98% in compliance with these requirements. According to CRIB staff, a new form will be implemented by the next reporting period. The Sixth Precinct began using a draft version of the form in May, 2010.

In addition, we observed the distribution of food to detainees in four of the five districts. The police detention officers' distribution of food to detainees confirmed that the meal services delivery was in compliance with the requirement of this paragraph and DPD directives.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

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CJ Requirement C50

The DPD shall develop and implement a food service policy that shall be approved in writing by a qualified sanitarian. At a minimum, the food service policy shall:

- a. require that the meal plan is initially approved in writing by a qualified dietician and , hereafter, is reviewed and approved in writing by a qualified dietician at least every year, or prior to any revisions to the program;*
- b. require that all food is stored and handled in a sanitary manner;*
- c. ensure that all prisoners are provided with an alternative meal if they are unable to eat the standard meal for religious or dietary reasons; and*
- d. ensure that food service is provided to all prisoners who are held over six hours.*

Comments:

The DPD is required to provide us with documentation that a registered dietician and sanitation specialist from the Detroit Department of Health and Wellness Promotion (DHWP) has completed an annual review and approved Directive 305.8. During our most recent site visit, we received documentation that an annual review of Directive 305.8, Detainee Food Service, was completed on February 4, 2010. Accordingly, we find the DPD is in Phase 1 compliance with this paragraph.

During the third reporting period, we found that 98% of Detainee Meal and Hygiene Logs for each of the districts/precincts were in compliance with this paragraph.

During the current reporting period, we reviewed Detainee Meal and Hygiene Logs for each of the districts/precincts, and found that 99% were in compliance. That figure would have been 100%, except for the fact that one sergeant at the Eastern District used a stamp to place his name in the required spaces instead of signing his name. During our inspection, we brought this to the attention of the commander and compliance liaison officer (CLO) to eliminate this practice.

In addition, we reviewed DPD log 655, Refrigeration Log, and found that 98% were in compliance with this paragraph.

During our most recent site visit, we inspected all five districts/precincts' refrigerators to make sure that food was stored properly. The refrigerator temperatures and expiration dates on the food was acceptable. We also observed four out of five districts/precincts' PDOs distributing food to detainees, and found that this was completed in a sanitary manner. The DPD is in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

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¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
49	Ensure sanitary food storage and service	In Compliance	In Compliance
50	Food service policies and practices	In Compliance	In Compliance

X. PERSONAL HYGIENE POLICIES

CJ Requirement C51

The DPD shall ensure that personal hygiene items should include; soap, toothbrushes, toothpaste, toilet paper, a comb, deodorant, and feminine hygiene products. The DPD shall implement this provision within one month of effective date of this Agreement.

Comments:

DPD Directive 305.8, Detainee Food Service and Hygiene Items, effective May 9, 2005, is in Phase 1 compliance with this paragraph. In addition, the DPD developed and employs the Daily Detainee Meal and Hygiene Items Log (DPD form 663) to document that hygiene items are provided to each detainee on a daily basis.

During the third reporting period, we found DPD in Phase 2 compliance with this paragraph, with a 98% compliance rate.

During the current reporting period, we found that 99% of DPD forms 663, Detainee Meal and Hygiene Log, were in compliance with this paragraph. That figure would have been 100%, except for the fact that one sergeant at the Eastern District used a stamp in place of his signature. During our inspection, we brought this to the attention of the commander and compliance liaison officer (CLO) to eliminate this practice.

With the exception of the sergeant described above, the police detention officers fully completed the logs with the required signatures in place. During our inspections, we continued to observe police detention officers distributing hygiene kits to detainees during meal service. We find DPD in full Phase 2 compliance with this paragraph for this reporting period.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
51	Make available personal hygiene items	In Compliance	In Compliance

XI. USE OF FORCE AND RESTRAINTS POLICIES

CJ Requirement C52

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

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Comments:

We found the DPD in Phase 1 compliance with this paragraph in the first, second, and third reporting periods; however, we found the DPD in deferred Phase 2 compliance with this paragraph in the first, and not in compliance in the second and third, reporting periods.

DPD Directives 305.4, Holding Cell Areas, Section 6.2, effective February 1, 2008, and 304.2, Use of Force, effective June 27, 2006, set forth the required use of force guidance.

We reviewed six use of force events that occurred (or, the investigation of the event was completed) during this reporting period: one in the Northeast District; two in the Southwest District; two in the Sixth Precinct; and one in the Twelfth Precinct. It is noteworthy that video was not requested or reviewed in any of the six cases. This failure to follow procedure makes it impossible to determine whether appropriate force was used. Accordingly, the DPD is not in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C53

The DPD shall revise and augment its policies regarding prisoners to require that:

- a. Officers utilize appropriate precautions when interacting with a prisoner who has previously demonstrated he or she is recalcitrant or resistant, including: summoning additional officers; summoning a supervisor; and using appropriate restraints;*
- b. absent exigent circumstances, officers notify a supervisor before using force on a prisoner who is confined to a cell; and*
- c. the supervisor assesses the need to use force on a prisoner who is confined to a cell, direct any such use of force and ensure the incident is videotaped.*

Comments:

We found the DPD in Phase 1 compliance with this paragraph during the first, second, and third reporting periods; however, we found the DPD in deferred Phase 2 compliance status during the first reporting period, and not in Phase 2 compliance during the second and third reporting periods.

DPD Directive 305.4, Holding Cell Areas, Sections 6.2 and 6.3, effective February 1, 2008, establishes the required procedures for this paragraph. All districts/precincts that maintain holding cells are equipped with videotaping/digital recording equipment that is linked to an extensive camera system that monitors hallways and common areas as well as most, but not all, cells. Our interviews with detention staff during our initial inspection of district/precinct holding cells revealed that there are no handheld video cameras to record a planned use of force in a cell. Staff explained that such incidents occurred so infrequently that the procurement and maintenance of handheld video equipment was not warranted. However, during subsequent meetings with detention staff, we learned of DPD's plans to purchase handheld video equipment for the districts/precincts. We will report on the acquisition of this equipment when it occurs.

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As was noted above (see C52), supervisors do not take advantage of existing fixed cameras when conducting an investigation. Accordingly, the DPD is not in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C54

The DPD shall not handcuff prisoners to benches for longer periods of time than are necessary.

Comments:

We found the DPD in Phase 1 compliance during the first, second, and third reporting periods. We found the DPD in deferred Phase 2 compliance status during the first reporting period, and in Phase 2 compliance during the second and third reporting periods.

DPD Directive 305.4, Holding Cell Areas, Section 6.1, effective February 1, 2008, provides that detainees will not be handcuffed to benches or fixed objects longer than is necessary (no longer than three hours). There are no records or logs available to assist us in these compliance determinations; however, we observed no detainees handcuffed to fixed objects during any of our inspections of the holding cells. The DPD is in full Phase 2 compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
52	Use of force policies	In Compliance	Not in Compliance
53	Revise policy re use of force with prisoners	In Compliance	Not in Compliance
54	Handcuffing of prisoners to benches	In Compliance	In Compliance

XII. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW

CJ Requirement C55

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

Comments:

We found the DPD in Phase 1, and out of Phase 2, compliance with this paragraph during the first, second, and third reporting periods.

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DPD Directive 305.4, Holding Cell Areas, Section 6.6, effective February 1, 2008, requires the appropriate thorough investigation of all uses of force, injuries to detainees, and in-custody deaths that occur in holding cells. We reviewed six use of force reports documenting events that occurred (or, the investigation of the event was completed) during this reporting period.

We found that the investigative packages were not thorough and complete. We noted significant discrepancies and omissions in each. These include the following:

- No signature by a supervisor.
- No supervisory review above the rank of lieutenant.
- No video requested in all six cases.
- No video reviewed in all six cases.
- No photographs taken.

Accordingly, the DPD is not in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C56

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

Comments:

We found the DPD in Phase 1 compliance with this paragraph in the first, second, and third reporting periods; however, we found the DPD in deferred Phase 2 compliance with this paragraph during the first reporting period, and not in compliance with this paragraph during the second and third reporting periods.

DPD Directive 305.4, Holding Cell Areas, Section 6.2, effective February 1, 2008, requires the reporting of all uses of force. Accordingly, the DPD is in Phase 1 compliance with this paragraph. However, the DPD has still not implemented this practice. (See C55.)

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C57

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

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Comments:

We found the DPD in Phase 1, but not Phase 2, compliance with this paragraph in the first, second, and third reporting periods.

DPD Directive 305.4, Holding Cell Areas, Section 6.2, effective February 1, 2008, requires the reporting and investigation of all injuries. There were no detainee injury reports submitted for review during this reporting period; therefore, the DPD remains not in Phase 2 compliance with this paragraph.

The DPD remains out of Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

¶	Requirements	Phase 1 – Policy	Phase 2 – Implementation
55	Use of force investigations	In Compliance	Not in Compliance
56	Use of force investigations	In Compliance	Not in Compliance
57	Injury to prisoner investigations	In Compliance	Not in Compliance

XIII. EXTERNAL COMPLAINTS

CJ Requirement C58

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

Comments:

We found the DPD in Phase 1 and Phase 2 compliance in the first, second, and third reporting periods.

DPD Directives 305.4, Holding Cell Areas, Section 6.2, effective February 1, 2008, and 102.6, Citizen Complaints, effective July 1, 2008, require the acceptance and processing of external complaints regarding incidents occurring in the holding cells. The Department did not receive any external complaints regarding incidents occurring in holding cells during this reporting period; therefore, the DPD is in continued full compliance with the requirements of this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

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CJ Requirement C59

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

Comments:

We found the DPD in Phase 1 compliance with this paragraph during the first, second, and third reporting periods. However, we found the DPD in Phase 2 compliance with this paragraph during the first reporting period, but not so during the second and third reporting periods. That finding resulted from unsatisfactory investigative reports as noted in our second quarterly report.

DPD Directives 305.4, Holding Cell Areas, Section 6.2, effective February 1, 2008, and 102.6, Citizen Complaints, effective July 1, 2008, require the investigation and review of all external complaints regarding incidents occurring in the holding cells. There were no external complaints received regarding incidents occurring in holding cells for this reporting period, therefore, the DPD is in continued non-compliance with this Consent Judgment paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

¶	Requirements	Phase 1 – Policy	Phase 2 – Implementation
58	Receipt of external complaints	In Compliance	In Compliance
59	Investigation of external complaints	In Compliance	Not in Compliance

XIV. GENERAL POLICIES

CJ Requirement C60

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

Comments:

We found the DPD in both Phase 1 and Phase 2 compliance in the first, second, and third reporting periods. That status continues in this reporting period.

DPD Directive 404.1, Definitions, effective July 1, 2008 clearly explains frequently used terms, as required. The DPD has incorporated these terms in various directives and other official documents throughout the term of this Agreement.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

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CJ Requirement C61

The DPD shall continue to make available proposed policy revisions to the community, for review, comment and education. Such policy revisions shall also be published on the DPD's website to allow comments to be provided directly to the DPD.

Comments:

We found the DPD in both Phase 1 and Phase 2 compliance with this paragraph in the first, second, and third reporting periods.

DPD Directive 101.1 Written Directive System, effective July 1, 2008, sets forth the procedure for developing, publishing, distributing, and updating policy and procedures within the DPD. The directive does not contain provisions for public input on proposed policy revisions. However, our review of the DPD website revealed that a system/format is in place for the public to comment on proposed/updated policies. Although at the time of our review, no proposed policies were posted for review, and no public commentary was noted, the website does provide a means for the public to do so. The DPD is in continued compliance with the requirements of this Consent Judgment paragraph; however, the fact that no policies have been posted for public review for the past year (see our first, second, and third quarterly reports) is cause for concern. Policies, procedures, and directives should be updated annually; and we have documented the need for specific revisions in our reports (see C34 and C38). Continued Phase 2 compliance must be supported by the actual posting of policy revisions on the DPD website so that the public has an opportunity to comment.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¶	Requirements	Phase 1 – Policy	Phase 2 – Implementation
60	Clearly define all terms in policies	In Compliance	In Compliance
61	Policy changes available to community	In Compliance	In Compliance

XV. MANAGEMENT AND SUPERVISION

CJ Requirement C62

The DPD shall routinely evaluate the operation of the holding cells to minimize harm to staff and prisoners.

Comments:

Our previous review of Directive 305.4, Holding Cell Areas, effective May 9, 2005, found that it comports with this requirement; consequently, we found DPD in Phase 1 compliance with this requirement. We also found the Department in Phase 2 compliance with this requirement.

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The directive requires that DPD conduct monthly inspections to evaluate the operations of each district/precinct (that maintains holding cells) and the Detroit Receiving Hospital. The CRIB Audit Team staff conducts these inspections. During the second reporting period, we found that the appropriate evaluations were completed 100% of the time in all of the relevant facilities, except for the DRH. As a result, we found the Department in Phase 2 compliance with this paragraph.

During the third reporting period, we did not receive DPD 715 Forms for the evaluation of the operation of holding cells for our review, and were thus unable to determine compliance.

During the current reporting period, the DPD provided us with the 715 Forms for the evaluation of the operation of holding cells for our review. The monthly inspection of the holding cells by CRIB staff was completed during each month for this quarter for a compliance rate of 100%. However, we did not receive any documents for the DRH. In addition, the inspection forms were not signed by the inspecting officer for the months of April and May; each inspection form was signed for the month of June.

The respective CLO is now required to inspect his/her district/precinct on a daily basis using the 715 form. DPD completed 91% of the forms during this reporting period. The Department would have achieved a compliance rate of 100% were it not for the discrepancies noted at the Eastern District.

We find the DPD in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C63

The DPD shall operate the holding cells in compliance with DPD's comprehensive risk management plan including implementation of:

- a) the risk management database;*
- b) the performance evaluation system;*
- c) the auditing protocol;*
- d) regular and periodic review of all DPD policies; and regular meetings of the DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.*

Comments:

This requirement applies relevant material from the Management and Supervision section of the Use of Force requirements to the operation of the holding cells; much of the documentation required to assess Phase 1 compliance with this requirement is found in response to the material already previously described.

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The requirements of the risk management system are detailed in U78-U90, which describes its data requirements and documentation regarding its operation. This paragraph ensures that the materials relates to the operation of the holding cells, although the DPD documentation does not explicitly mention those areas. In this reporting period and the prior two reporting periods, we found DPD in Phase 1 compliance with regard to the risk management system. That conclusion also applies to this requirement. As noted above, the development of MAS is proceeding, though its application does not yet support a finding of Phase 2 compliance.

As noted in reference to U91 regarding the performance evaluation system, DPD Directive 401.1, Performance Evaluation Ratings, effective July 1, 2008, meets the requirements of Phase 1 compliance for part of this paragraph. The directive requires annual ratings for those holding the rank of inspector and commander, and twice yearly for other ranks. The rating periods are established as May 1, through October 31; and November 1, through April 30. The directive also establishes completion dates of November and May, respectively. During our next visit, we will draw a sample of detention officers' performance evaluations to assess Phase 2 compliance with this paragraph.

During our previous compliance assessments, we determined that the DPD conducted the required audits consistent with standards articulated in the DPD 2008-2009 Audit Protocol issued in August, 2008. During our most recent site visit, we confirmed that the new Audit Protocol which had been completed, reviewed, and approved by the Commander of CRIB, as noted in our last report, was now governing the audits which are currently underway. We also confirmed that all required audits were in progress, and that DPD had established the required schedules, with July or August completion dates. We reviewed the schedule of the assigned audits, including auditors and completion dates, and found it to be complete. During our next site visit, we will review the completed audits and assess their compliance with the oversight requirements.

The final portion of this requirement involves DPD regular management review of holding cell issues. Comprehensive reviews of holding cell issues are covered as part of the risk management, performance evaluation and auditing protocols. Such a review is also part of the comprehensive compliance review processes of CRIB, which currently includes regular compliance assessment meetings.

As noted above, DPD is in Phase 1 compliance with this paragraph. Phase 2 compliance in this area depends on successful implementation of the same material. The status of the risk management system is currently a significant limitation in this area.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C64

The DPD policy on video cameras shall be revised and augmented to require:

- a. the installation and continuous operations of video cameras in all processing areas of the DPD holding cells within one year of the effective date of this Agreement;*

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- b. supervisors to review videotapes of all incidents involving injuries to a prisoner or an officer, uses of force and external complaints;*
- c. that the DPD retain and preserve videotapes for at least 90 days, or as long as necessary for incidents to be fully investigated; and*
- d. that the DPD conduct and document periodic random reviews of prisoners processing area camera videotapes for training and integrity purposes and conduct periodic random surveys of prisoners processing area video recording equipment to confirm that it is in proper working order.*

Comments:

During our previous inspections of holding cells, we found that the DPD was in Phase 1 compliance, but not yet in Phase 2 compliance, with this paragraph. We observed the operation of video cameras in all processing areas. However, DPD did not provide us with documentation to confirm that video cameras were in continuous operation in all holding cell areas.

Specifically, during our previous quarterly inspections, we found operational cameras in all holding cells and evidence indicating the supervisory reviews of videotapes, but only when a use of force incident occurred; supervisors did not conduct random reviews of the videotapes, as required by this paragraph. Of specific note was that even though cameras were operational in the processing areas of each district/precinct, we found that 15 of the 19 cameras were not functioning in the Eastern District and staff advised that these cameras had been out of order for several months.

During this reporting period, we reviewed DPD forms 702, Weekly Cell Maintenance Log, for the period of April 1, through June 30, 2010, and found that 92% were in compliance with this paragraph, as opposed to 73% in the previous quarter. As noted previously, form 702 has no utility because it does not track corrective action. Four out of five districts/precincts have each platoon complete the form even though only Platoon 1 is required to do so. A revised maintenance tracking form was due to be implemented in July, 2010, but to date, we have not seen documentation that this has been done. (See CJ41.)

We also conducted inspections of the districts/precincts that maintain holding cells, and continued to find discrepancies between what we observed and what is listed in the logs. The logs do not note where cameras are not functioning, nor do they reflect how long the cameras have been out of commission. (See C41, 52-59.)

DPD remains out of Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

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CJ Requirement C65

The DPD shall conduct regularly scheduled semiannual audits, covering all DPD units and commands that investigate uses of force, injuries to prisoners and allegations of misconduct in holding cells, including;

- a. reviewing a statistically valid sample of command, IAD, and Homicide Section investigations;*
- b. evaluating whether the actions of the officer and the subject were captured correctly in the investigative report;*
- c. evaluating the preservation and analysis of the evidence;*
- d. examining whether there is consistency in use of force and injured prisoner investigations throughout the DPD;*
- e. evaluating the appropriateness of the investigator's conclusions; and*
- f. issuing a written report regarding the findings of the audit.¹²²*

Comments:

During the first reporting period, we found that the DPD, using generally accepted government auditing standards (GAGAS), developed an Audit Protocol in accordance with the requirements of U92. The protocol, effective August 31, 2008, established an audit schedule; described the audit terms; specified the roles and responsibilities of Audit Team members; described the various audits, including the one required by this paragraph; and described the reports required.¹²³ This protocol was reviewed and updated, effective February 5, 2010. Accordingly, DPD remains in Phase 1 compliance with this paragraph.

The Civil Rights Integrity Bureau (CRIB) Audit Team conducted the required Combined Uses of Force Investigations Audits for the periods ending July 31, 2009, and January 31, 2010.¹²⁴ We

¹²² Amended to reflect the below stipulated language contained in the Court order of April 15, 2009:

The audits required by paragraphs 65 to 71 in this Agreement shall be submitted on a semiannual basis with the first and second semiannual periods ending on January 31 and August 31, 2004. Subsequent semiannual periods shall end on January 31, 2005, and every six months thereafter. Each of these audits may be conducted on an annual rather than a semiannual basis when the Monitor concludes that the most recently submitted audit for the same topic is compliant, and the remaining requirements of this paragraph have been met for the prior audit of that topic. The DPD shall issue all audit reports to the Chief of Police and also provide copies to each precinct or specialized unit commander. The commander of each precinct and specialized unit shall review all audit reports regarding employees under their command and, if appropriate, shall take nondisciplinary corrective action or disciplinary action.

¹²³ The Audit Protocol, effective August 31, 2008, governs the audits discussed in this report; however, a revised Audit Protocol, effective February 5, 2010, will govern the conduct of future audits.

¹²⁴ The Civil Rights Integrity Bureau (CRIB), headed by a Deputy Chief was established in 2003. Upon the retirement of the Deputy Chief holding that position, the command was changed to the Office of Civil rights (OCR) headed by a Commander. In November 2009, CRIB was re-established, again headed by a Deputy Chief. OCR is presently a sub-unit within CRIB. The acronyms CRIB and OCR are used interchangeably in this report.

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found that the Audit Team conducted thorough and comprehensive audits regarding uses of force, injuries to prisoners, and allegations of misconduct in holding cells; identified several deficiencies; and outlined recommendations for corrective action.

The CRIB Audit Team expects to complete and issue its next Combined Use of Force Investigations Audit during the next reporting period.¹²⁵ Accordingly, we find the DPD in Phase 2 compliance with these requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C66

The DPD shall create a Holding Cell Compliance Committee that is responsible for assuring compliance with requirements of this Agreement. The Holding Cell Compliance Committee shall conduct regularly scheduled quarterly audits in all buildings containing holding cells to evaluate compliance with fire detection, suppression and evacuation program, including:

- a. testing a sample of smoke detectors and sprinklers;*
- b. testing the back-up power systems;*
- c. reviewing a sample of fire equipment testing and maintenance records; and*
- d. issuing a written report regarding the findings of the audit.*

Comments:

The DPD has established an active Holding Cell Compliance Committee that collaborates with the CRIB Audit Team to conduct the audits required by this paragraph. The DPD Audit Protocol sets forth requirements for conducting the audits.¹²⁶ DPD remains in Phase 1 compliance with this paragraph.

We previously reviewed the Fire Safety Practices and Policies audits conducted by the HCCC and the CRIB Audit Team for the periods ending July 31, 2009 and January 31, 2010. We found the audits to be comprehensive, robust documents that determined that the DPD met the requirements of C14-18 and C20-21, but did not meet the requirement of C19.

During our visits to the various districts/precincts that maintain holding cells, we independently examined the policies and practices related to the Fire Safety Practices and Policies. Our findings are discussed above in C14-22.

¹²⁵ The audit will cover the period ending July 31, 2010.

¹²⁶ The Audit Protocol, effective August 31, 2008, governs the audits discussed in this report; however, a revised Audit Protocol, effective February 5, 2010, will govern the conduct of future audits.

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The CRIB Audit Team expects to complete and issue its next audit of the Fire Safety Practices and Policies during the next reporting period.¹²⁷ Accordingly, we find the DPD in compliance with these requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C67

The Holding Cell Compliance Committee shall conduct regularly scheduled audits in all buildings containing holdings cells to evaluate emergency preparedness, including;

- a. reviewing a sample of key and fire equipment maintenance and inventory records; interviewing selected detention officers about their participation in fire drills and on their responsibilities under emergency preparedness program and testing their ability to identify keys necessary to unlock all holding cell doors; and*
- b. issuing a written report regarding the findings of the audit.*

Comments:

The DPD has established an active Holding Cell Compliance Committee that collaborates with the CRIB Audit Team to conduct the audits required by this paragraph. The DPD Audit Protocol sets forth requirements for conducting the audits.¹²⁸ DPD remains in Phase 1 compliance with this paragraph.

We previously reviewed the Comprehensive Emergency Preparedness Program audit conducted by the HCCC and the CRIB Audit Team for the period ending January 31, 2010. We found the audit to be a comprehensive, robust document that determined the DPD met the requirements for performance and documentation of requirements of this paragraph, but not the requirements of C24(a). C14-18 and C20-21, but did not meet the requirement of C19.

During our visits to the various precincts/districts with holding cells, we independently examined the policies and practices related to the Emergency Preparedness Program. Our findings are discussed above in C23-25.

The CRIB Audit Team expects to complete and issue its next audit of the Emergency Preparedness Program during the next reporting period.¹²⁹ Accordingly, we find the DPD in compliance with these requirements of this paragraph.

¹²⁷ The audit will cover the period ending July 31, 2010.

¹²⁸ The Audit Protocol, effective August 31, 2008, governs the audits discussed in this report; however, a revised Audit Protocol, effective February 5, 2010, will govern the conduct of future audits.

¹²⁹ The audit will cover the period ending July 31, 2010.

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Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C68

The Holding Cell Compliance Committee shall conduct regularly scheduled quarterly audits in all buildings containing holding cells to evaluate the medical/mental health programs and policies, including:

- a. reviewing a sampling of hospitals referral forms in comparison to prisoner intake forms to evaluate the accuracy of the intake screening and whether appropriate action was taken;*
- b. observing intake screening interviews to assess thoroughness;*
- c. reviewing a sampling of the prescription medication log to ensure that medications were administered as prescribed and that their distribution was accurately recorded; and*
- d. issuing a written report regarding the finding of the audit.*

Comments:

The DPD has established an active Holding Cell Compliance Committee that collaborates with the CRIB Audit Team to conduct the audits required by this paragraph. The DPD Audit Protocol sets forth requirements for conducting the audits.¹³⁰ DPD remains in Phase 1 compliance with this paragraph.

We previously reviewed the Medical and Mental Health Program and Policies Audits conducted by the HCCC and the CRIB Audit Team for the periods ending July 31, 2009, and January 31, 2010. Both contained detailed accountings of the Audit Team's findings. The latter audit was command-specific, identified specific deficiencies, and made recommendations for corrective action and accountability at the command level. We found these audits to be thorough and note that the identification of specific deficiencies and the inclusion of recommended corrective action are positive steps.

We also visited the various precincts/districts that maintain holding cells and examined the policies and operational practices related to the Medical and Mental Health Program. Our findings are discussed above in C26-34.

The CRIB Audit Team expects to complete and issue its next audit of the Medical and Mental Health Program and Policies during the next reporting period.¹³¹ Accordingly, we find the DPD in compliance with these requirements of this paragraph.

¹³⁰ The Audit Protocol, effective August 31, 2008, governs the audits discussed in this report; however, a revised Audit Protocol, effective February 5, 2010, will govern the conduct of future audits.

¹³¹ The audit will cover the period ending July 31, 2010.

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Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C69

The Holding Cell Compliance Committee shall conduct regularly scheduled quarterly audits in all buildings containing holding cells to evaluate detainee safety programs and policies, including;

- a. reviewing a sampling of security screening records, including written supervisory approvals, to ensure that prisoners are being properly screened and housed;*
- b. reviewing a sampling of the cell checks logs to ensure that checks are being accurately and regularly performed and that cell checks logs are receiving supervisory review and written approval; and*
- c. issuing a written report regarding the findings of the audit.*

Comments:

The DPD has established an active Holding Cell Compliance Committee that collaborates with the CRIB Audit Team to conduct the audits required by this paragraph. The DPD Audit Protocol sets forth requirements for conducting the audits.¹³² DPD remains in Phase 1 compliance with this paragraph.

We previously reviewed the Detainee Safety Program and Policies Audits for the periods ending July 31, 2009 and January 31, 2010. The latter audit was command-specific, identified specific deficiencies, and made recommendations for corrective action and accountability at the command level. We found these audits to be thorough, and note that the identification of specific deficiencies and the inclusion of recommended corrective action are positive developments. We also independently reviewed the operational implementation of policies and practices related to the Detainee Safety Program during our visits to the various districts/precincts. Our findings are discussed above in C35-38.

The CRIB Audit Team expects to complete and issue its next audit of the Detainee Safety Program during our next reporting period.¹³³ Accordingly, we find the DPD in compliance with these requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

¹³² The Audit Protocol, effective August 31, 2008, governs the audits discussed in this report; however, a revised Audit Protocol, effective February 5, 2010, will govern the conduct of future audits.

¹³³ The audit will cover the period ending July 31, 2010.

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CJ Requirement C70

The Holding Cell Compliance Committee shall conduct regularly scheduled quarterly audits in all buildings containing holding cells to evaluate the environmental health and safety programs, including:

- a. inspecting holding cells and surrounding areas to ensure that they are clean and clear of debris and that the lighting, sinks, and toilets are operable;*
- b. reviewing a sampling of cleanings and maintenance logs to ensure they are properly maintained and reflected the scheduled performance of the requisite cleaning and maintenance tasks;*
- c. reviewing the systems in place for assuring that all prisoners have reasonable access to potable water and toilets 24 hours a day;*
- d. observing whether holding cells are free of any potential suicide hazards; and*
- e. issuing a written report regarding the findings of the audit.*

Comments:

The DPD has established an active Holding Cell Compliance Committee that collaborates with the CRIB Audit Team to conduct the audits required by this paragraph. The DPD Audit Protocol sets forth requirements for conducting the audits.¹³⁴ DPD remains in Phase 1 compliance with this paragraph.

We previously reviewed the Environmental Health and Safety Program Audit for the period ending January 31, 2010. This audit was command-specific and focused on identifying deficiencies within commands and outlining recommended corrective action. We also independently reviewed the operational implementation of policies and practices at the various districts/precincts. Our findings are discussed above in C39-46.

The CRIB Audit Team expects to complete its next audit of the Environmental Health and Safety Program during our next reporting period. Accordingly, we find the DPD in compliance with these requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C71

The Holding cell Compliance Committee shall conduct regularly scheduled semiannual audits of all building containing holding cells to evaluate the food service program, including:

¹³⁴ The Audit Protocol, effective August 31, 2008, governs the audits discussed in this report; however, a revised Audit Protocol, effective February 5, 2010, will govern the conduct of future audits.

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- a. reviewing a statistically valid sample of food service documentation to evaluate whether prisoners who are held over six hours receive regular and adequate meals;*
- b. assuring that food is handled in a sanitary manner; and*
- c. issuing a written report regarding the findings of the audit.*

Comments:

The DPD has established an active Holding Cell Compliance Committee that collaborates with the CRIB Audit Team to conduct the audits required by this paragraph. The DPD Audit Protocol sets forth requirements for conducting the audits.¹³⁵ DPD remains in Phase 1 compliance with this paragraph.

We reviewed the various audits conducted by the DPD Audit Team and described them in our previous reports as “comprehensive, robust documents that address the requirements articulated in the Judgment(s).” We commented specifically on the July 31, 2010 audit of the food service program and hygiene practices, which was command-specific and should result in a more focused identification of deficiencies, required corrective action, and accountability at the command level. We found the audits to be thorough, and the assignment for corrective action to the commands to be a positive development.

In addition, we visited the various precincts/districts that maintain holding cells and independently examined implementation of the policies and practices related to the food service program and hygiene practices. Our findings are discussed in C49-50.

The CRIB Audit Team expects to complete and issue its next audit of the food service program and hygiene practices during our next reporting period.¹³⁶ Accordingly, we find the DPD in compliance with these requirements of this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: In Compliance

CJ Requirement C72

The audits required by paragraphs 65 to 71 in this Agreement shall be submitted on a semiannual basis with the first and second semiannual periods ending on January 31 and August 31, 2004. Subsequent semiannual periods shall end on January 31, 2005, and every six months thereafter. Each of these audits may be conducted on an annual rather than a semiannual basis when the Monitor concludes that the most recently submitted audit for the same topic is compliant and the remaining requirements of this paragraph have been met for the prior audit of that topic. The DPD shall issue all audit reports to the Chief of Police and also provide copies to each precinct or specialized unit commander. The commander of each precinct and specialized

¹³⁵ The Audit Protocol, effective August 31, 2008, governs the audits discussed in this report; however, a revised Audit Protocol, effective February 5, 2010, will govern the conduct of future audits.

¹³⁶ The audit will cover the period ending July 31, 2010.

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*unit shall review all audit reports regarding employees under their command and, if appropriate, shall take non-disciplinary corrective action or disciplinary action*¹³⁷

Comments:

During the first reporting period, we found that the DPD developed an Audit Protocol in accordance with the requirements of U92. Consistent with generally accepted government auditing standards (GAGAS), the Protocol, effective August 31, 2008, established an audit schedule; described the audit terms; specified the roles and responsibilities of Audit Team members; described the various audits, including the one required by this paragraph; and specified the reports required.¹³⁸ This protocol was reviewed and updated effective February 5, 2010 and now required that commanders take appropriate disciplinary or non-disciplinary action where appropriate. Accordingly, DPD remains in Phase 1 compliance with this paragraph.

The CRIB prepares written reports for the Chief and specified Commanders; however, based on our review of various reports and field observations during our site visits, we were not satisfied that these reports were receiving sufficient attention. Our interviews with CRIB staff confirmed that they also perceived the lack of attention as a continuing issue. The CRIB conducted a review of the audit process, and concluded the problem may have been that the audits were Department-wide rather than Command specific. CRIB changed the audit process to focus on individual Commands. These Command-specific audits are expected to result in clearer Command accountability and increased responsiveness to issues that are identified through the audit process.

The CRIB completed the required audits for the period ending January 31, 2010. During this reporting period, we reviewed the effectiveness of the revised process to ensure that appropriate corrective action was taken in response to the deficiencies identified during the audits. We received the command-specific Corrective Action Plans (CAP) from the five districts/precincts and DRH for all of the audits except two (DRH, Environmental Health and Safety; and Southwest District, Detainee Food Service and Personal Hygiene Practices). In addition, we did not receive CAPs for the following semiannual audits: Fire Safety Practices and Policies; Allegations of Misconduct in Holding Cells and Uses of Force in Holding Cells Combined; and Comprehensive Emergency Preparedness Program.

Our review of the command-specific CAPs found missing signatures on employee reprimands and no consistency in the format of a CAP. Some commands use an inter-office memorandum, while others use a Correction Action Plan form. We also found it difficult to ascertain the course of action taken by the commander in correcting the findings in the audits.

We continue to recognize the work performed by the DPD Audit Team and the HCCC during the course of the Consent Judgments. We reviewed the various audits, and described them in our previous report as “comprehensive, robust documents that address the requirements articulated in the Judgment.” We strongly recommend that the commanders of the districts/precincts that maintain holding cells and the DRH staff write more comprehensive responses to the CAPs that outline specifically what corrective actions are being taken, and also document who will be held

¹³⁷ Consent Judgment amendment, April 15, 2009.

¹³⁸ The Audit Protocol, effective August 31, 2008, governs the audits discussed in this report; however, a revised Audit Protocol, effective February 5, 2010, will govern the conduct of future audits.

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accountable/responsible for making those corrections. We would also like to see a standardized Correction Action Plan template created to assist the commanders in more comprehensively addressing the deficiencies identified in the command-specific audits.

CRIB expects to complete and issue its next audit during the next reporting period.¹³⁹

To date, we have not received the following:

- Command-specific Corrective Action Plans;
- Documentation with signatures that the Chief of Police, required command staff, and specialized unit commander received copies of the audits; and
- Documentation that the commander of each precinct and specialized unit reviewed all audit reports regarding employees under their command and, if appropriate, that non-disciplinary corrective action or disciplinary action was taken.¹⁴⁰

DPD remains out of Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

¶	Requirements	Phase 1 – Policy	Phase 2 – Implementation
62	Evaluation of holding cell operation required	In Compliance	In Compliance
63	Operate cells in compliance with risk plan	In Compliance	Not in Compliance
64	Augment policy regarding video cameras	In Compliance	Not in Compliance
65	Quarterly audits required	In Compliance	In Compliance
66	Fire safety audits required	In Compliance	In Compliance
67	Emergency preparedness audits required	In Compliance	In Compliance
68	Medical/mental health program audit required	In Compliance	In Compliance
69	Detainee safety audits required	In Compliance	In Compliance
70	Environmental health/safety audits required	In Compliance	In Compliance
71	Food service program audits required	In Compliance	In Compliance
72	Audit results to Chief and Commanders	In Compliance	Not in Compliance

¹³⁹ The audit will cover the period ending July 31, 2010.

¹⁴⁰ Consent Judgment amendment, April 15, 2009.

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XVI. TRAINING***CJ Requirement C73***

The DPD shall provide comprehensive pre-service and in-service training to all detention officers.

Comments:

The DPD developed Special Order 10-02, approved December 30, 2009, which specifically provides that *before* “performing duties relative to detainees in DPD holding cells, a DPD member must have attended and successfully completed the Detention Officer Course” (emphasis added). The policy also requires that “Sworn members of the DPD assigned to perform detention duties, Senior Detention Facility Officers (SDFO), Detention Facility Officers (DFO) and Holding Cell Compliance Committee members must attend the annual Detention Officer training course.” Additionally, on September 24, 2009, DPD issued Teletype 09-3481, which declared, “[E]ffective immediately, only those members that have attended and completed the annual Prisoner Detention Officer Training shall be assigned to perform prisoner detention duties.”

During our April, 2010, site visit, we conducted a survey to determine the comprehensiveness of training afforded detention officers, and the Department's compliance with its policies requiring that officers who handle detention duties have been afforded detention training. We found that three (14%) of 22 supervisors, and 21 (24%) of 89 officers, who worked in detention on the selected days, were not trained in detention. In other words, 78% of the 111 supervisors and officers who served in detention duties were trained as required.

We conducted a similar random survey during this review and found better results. We randomly selected two days (April 16, 2010, and May 22, 2010) during the previous quarter, and DPD identified the officers who handled detention duties on those days in the districts/precincts with detention facilities. We then verified if the officers who were identified had received detention training. We found that of 107 officers who served in detention duties on the days selected, 97 (91%) had received detention training and 10 had not.

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SUPERVISORS			
District/Precinct	Number Served	Number Trained	Number Untrained
12	5	4	1
6	5	5	0
ED	3	2	1
NED	5	5	0
SWD	5	4	1
TOTAL	23	20	3
DETENTION OFFICERS			
District/Precinct	Number Served	Number Trained	Number Untrained
12	13	13	0
6	17	16	1
CD	11	11	0
ED	14	10	4
NED	16	15	1
SW	13	13	0
TOTAL	84	78	6

DPD is not in compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C74

The DPD shall create and maintain individual training records for all detention officers, documenting the date and topic of all pre-service and in-service training, completed for all training completed on or after the effective date of this agreement.

Comments:

DPD Special Order 10-02, Training, effective December 30, 2009, requires that the Training Section “maintain a record of all training participated in by each individual DPD officer, senior detention facility officer, and detention facility officer.” The DPD is in Phase 1 compliance with the requirements of this paragraph.

As noted in U108, the DPD has made progress in capturing and automating this information. Since the effective date of the Consent Judgments, all years except 2003, 2004, and 2008 have been entered into the Michigan MITN system.

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Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C75

The DPD shall provide all detention officers, supervisors of detention officer and members of the Holding Cell Compliance Committee with annual training in emergency preparedness. Such training shall include drills and substantive training in the following topics:

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

Comments:

DPD Special Order 10-02, Training, effective December 30, 2009, addresses the requirements of this Consent Judgment paragraph. The DPD is in Phase 1 compliance with this paragraph.

As noted in C73, we learned that DPD continues to use officers and supervisors who have been untrained in detention duties. Since the topics addressed in this requirement are taught in detention officer training, the Department cannot be said to have provided “all detention officers, supervisors and members of the Holding Cell Compliance Committee” with the required annual training in emergency preparedness. Approximately 9% of the DPD officers who served in detention duties on the days of our random survey were not trained in detention. We could not, therefore, verify that all, or >94%, of DPD detention personnel had received the required training. DPD is not in Phase 2 compliance with this paragraph.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C76

The DPD shall provide all detention officers, supervisors and members of the Holding Cell Compliance Committee with annual training in the medical/mental health screening programs and policies. Such training shall include and address the following topics:

- a. prisoner intake procedures and medical and mental health protocols, including protocols for transferring or housing prisoners with infectious diseases, disabilities and/or requiring increased monitoring;*
- b. recording, updating and transferring prisoner health information and medications*

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- c. the prescription medication policy, including instructions on the storage, recording and administration of medications; and*
- d. examples of scenarios faced by detention officers illustrating proper intake screening and action in response to information regarding medical and mental health conditions.*

Comments:

DPD Special Order 10-02, Training, effective December 30, 2009, fully addresses the requirements of this Consent Judgment paragraph. The DPD is in Phase 1 compliance with this paragraph.

This requirement addresses training to be afforded to “all detention officers, supervisors and members of the Holding Cell Compliance Committee.” Our random review of training files showed that less than 94% of the officers serving in detention duties received this training; therefore the DPD is not in compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C77

The DPD shall provide all detention officers, supervisors and members of the Holding Cell Compliance Committee with annual training in detainee safety programs and policies. Such training shall include and address the following topics:

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

Comments:

Newly issued DPD Special Order 10-02, Training, effective December 30, 2009, fully addresses the requirements of this Consent Judgment paragraph. The DPD is in Phase 1 compliance with this paragraph.

Our analysis of training records of officers assigned to detention outlined above in C73 revealed that DPD is not in Phase 2 compliance with this requirement.

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Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

CJ Requirement C78

The DPD shall provide all detention officers, supervisors and members of the Holding Cell Compliance Committee with annual training in environmental health and safety and hygiene. Such training shall include and address the following topics:

- a. cell block cleaning and maintenance protocols; and*
- b. sanitary food preparation and delivery protocols.*

Comments:

Newly issued DPD Special Order 10-02, Training, effective December 30, 2009 fully addresses the requirements of this Consent Judgment paragraph.

Our review of training received by officer in detention (seeC73) revealed that DPD is not in Phase 2 compliance with this requirement.

Compliance Status:

Phase 1: In Compliance

Phase 2: Not in Compliance

¶	Requirements	Phase 1 - Policy	Phase 2 – Implementation
73	Pre-service/in-service training required	In Compliance	Not in Compliance
74	Maintenance of individual training records	In Compliance	Not in Compliance
75	Emergency preparedness training required	In Compliance	Not in Compliance
76	Medical/mental health training required	In Compliance	Not in Compliance
77	Detainee safety screening training required	In Compliance	Not in Compliance
78	Environmental health/safety training required	In Compliance	Not in Compliance

Critical Issues:

During the past year we have observed, measured, and reported on the progress of the DPD in complying with the terms of the Conditions of Confinement Consent Judgment. The DPD is generally in Phase 1 (policy) compliance with these requirements, and is improving in its percentage of Phase 2 compliance (practice). It is apparent, however, that the DPD is not adequately addressing some of the admonitions and recommendations that we have specified in our quarterly reports:

- We are particularly concerned with the Department's failure to update directives, policies, and forms on a routine (annual) basis, and in response to changes in practice. It is not enough to merely update or revise a procedure; Departmental policy must be revised so that policy and practice coincide, and actual compliance with that policy is

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essential. We also note that during the past year, no new or revised policies have been posted on the agency's website for public input.

- We have addressed sanitation standards in each of our quarterly reports. Overall, the DPD is making progress in this area, but the Department's efforts are inconsistent, both among the districts/precincts and over time. During our most recent inspection, though it was not the norm, we found that conditions at the Detroit Receiving Hospital were less than satisfactory. In addition, the Twelfth Precinct, which had previously set the standard for sanitation, but slipped during the last reporting period, returned to its previous form during this reporting period.
- Our inspections and reviews of detainee folders continue to reveal major issues. The deficiencies include clerical mistakes; the lack of documentation for medical referrals; medication logs not filled out correctly or missing; appropriate staff signatures missing; supervisory reviews that did not take place; and the lack of health information being exchanged between consecutive shifts. This last issue is particularly problematic in the Platoon Daily Detainee Summary. Although its primary purpose is to facilitate the transfer of critical detainee information from shift to shift, the primary reason that the DPD continues to be out of compliance with the requirements related to this form is that supervisors regularly neglect to sign for receipt of the document that was completed by the preceding shift.

We will continue to examine policies and procedures for their conformance with the requirements of the Conditions of Confinement Consent Judgments.

Next Steps:

During our next site visit, we will:

- Review any updated Departmental directives, policies, and forms.
- Verify standardization of the key set issuance and accountability system, and request that staff at each district/precinct demonstrate familiarity with the TDD hearing impaired telephone system by physically communicating among DPD facilities.
- Discuss with relevant Department personnel the possibility of implementing a comprehensive risk management plan for holding cell compliance, as the Management Awareness System is not efficient for this purpose.
- Examine ways that DPD can resolve the issues surrounding unsanitary conditions in the holding cell areas that can place staff and detainees at risk for exposure to infectious diseases.
- Discuss with relevant Department personnel the issues around updating detainee medical and mental health information in the Livescan system.
- Conduct another, broader survey of detention assignments to identify employees who have actually worked in detention, and compare the list developed with the list of those who have received detention training.

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Appendix: History and Methods

An historical overview and methodological review will be repeated as an appendix in all of our reports.

On October 5, 2009, the Honorable Julian Abele Cook, Jr., United States District Court Judge for the Eastern District of Michigan, Southern Division, issued an order appointing me to serve as the Independent Monitor of the Use of Force and Conditions of Confinement Consent Judgments resulting from the case of United States of America v. City of Detroit (Case no. 03-77758). I, along with my distinguished colleagues, am honored by the trust and confidence that the Court has vested in us.

Our assembled Team consists of exceptional law enforcement, corrections, consulting, and research expertise. The full Team conducted its first site visit from November 16, through November 20, 2009; our second visit from January 25, through January 29, 2010; and our third site visit from April 19, through April 23, 2010. Our fourth site visit, connected with this report, occurred between July 19th and July, 23rd, 2010.

Our compliance review efforts benefit from the experience of the Department and the many people who have worked diligently to bring the Department into compliance with the Consent Judgments. We also recognize the Department's recommitment to this undertaking evidenced by some significant developments that have taken place since our engagement in this process. The Detroit Police Department's staff, especially the men and women of the Civil Rights Integrity Bureau, has contributed greatly to our understanding of the Department as we complete our assessments. With regard to the requirements of the Consent Judgments, our plan for our quarterly reports is to consider, to the extent possible, the compliance status of the entire collection of requirements. This includes a total of 110 requirements in the Use of Force Judgment, and an additional 65 requirements in the Conditions of Confinement Judgment. These numbers do not include subsections. In later reports, we may append our protocols and instead focus special attention on particular areas of the Judgments.

As with our earlier reports, the body of our report is comprised of our assessments of compliance with the individual requirements of the Consent Judgments. We begin the report of our analyses with a narrative statement for each of the major areas of the Use of Force Judgment. In the Conditions of Confinement Judgment, there shall be only one introductory narrative statement at the beginning of that portion of our report.

The introductory narratives are followed by each of the requirements in the section, as specified in the Judgments. Each requirement is followed by comments regarding the current status of compliance, and then by a summary notation of Phase 1 and Phase 2 compliance. As the Department achieves and maintains Phase 1 and Phase 2 compliance, we will move a description of the requirement to the Appendix of the report.

A statement of "Critical Issues" follows the reviews of the requirements in each major section of the Judgment. A brief statement of "Next Steps" follows in which we describe a plan of work for the next visit including a discussion of the data we plan to review. Finally, a table summarizes the compliance finding for that particular section of the Judgment.

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The major task of the Monitor is to determine the status of the Detroit Police Department's compliance with the requirements of the Use of Force and Conditions of Confinement Consent Judgments. Our experience in previous monitorships reflects our commitment to the collection and analyses of data and to the reasonable interpretation of the requirements specified in the Consent Judgments.

To accomplish this, the Monitoring Team makes quarterly visits to Detroit to work with the Department's compliance team, known as the Civil Rights Integrity Bureau (CRIB), and other staff of the agency, in their field offices, on the streets, or at the offices that the Monitoring Team occupies when onsite in the City. We use these visits to collect and evaluate material, prepare for work to be done between visits, and inform the Parties and the Court with status information when meetings or hearings for that purpose are convened. Team members also interview key participants and observe Departmental practices. Throughout the process, we review agency policies and procedures, and collect and analyze data using appropriate sampling and analytic procedures. The results of the compliance examinations are reported quarterly to the Court and the Parties.

Our Team determines compliance through an examination of policies and implementation of practices that support each requirement in the Consent Judgments. Compliance is measured by first determining if a policy or set of procedures has been established to support each Consent Judgment requirement. Having determined that an appropriate policy has been established, we then determine if that policy has been effectively implemented.

Based on this process, we report the degree of compliance with Consent Judgment requirements on two levels. We first report if policy compliance has been met. Compliance with policy requirements is known as **Phase 1 compliance**. We also report the extent to which required policies have been implemented. Implementation-level compliance is reported as **Phase 2 compliance**.

In general, to achieve full compliance requires that both Phase 1 and Phase 2 compliance are achieved; that is, an appropriate policy must be both adopted and effectively implemented. We recognize, however, that some areas of the Consent Judgments require substantial work and time to achieve implementation and we, therefore, believe that it is appropriate to recognize when substantial progress towards implementation has occurred. Accordingly, under some limited circumstances, a third level of compliance, "Pending Compliance" may be appropriate.

- **In Compliance** – This is reported when policy requirements are met (Phase 1) or effective implementation of a requirement has been achieved (Phase 2).
- **Pending Compliance** – This is reported when it cannot be said that compliance has been achieved, but substantial progress toward compliance has been made. A requirement will be given this status for only two successive quarters at which time the status shall be changed to "Not in Compliance," unless compliance has been achieved.
- **Not in Compliance** – This finding is reserved for circumstances where compliance has not been achieved and substantial progress has not been made.

Many parts of the Consent Judgments require the analysis of multiple instances of activity, cases, or observations. In those circumstances, analysis is based on a review of all cases or data, or, when appropriate, on statistically valid samples of the population. To reach conclusions based

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on analyses of cases, a minimal standard must be met. To achieve compliance based on these analyses, we have determined that more than 94% of relevant indicators must conform to the provisions articulated in the agreement.

While the >94% standard is reasonable under almost all circumstances, we recognize that there are conditions under which it may not accurately demonstrate the Department's compliance-related work. We appreciate the value of circumstances where corrective measures have been initiated through the command and supervisory structure, but may not yet be fully reflected in the data being analyzed. There are also circumstances where the number of events to be analyzed is limited, and a 6% error rate may overly influence the statistical result. Under these and similar instances, we may report a finding of "Pending Compliance" with the expectation that the limiting conditions will be rectified for future reviews.

This methodology supports a sound and rigorous review of the Department's compliance with the requirements of the Consent Judgments. We recognize, however, that the high demands of this methodology may not be fully realized in all elements of all reviews. There will be circumstances in which we will be unable to fully determine the compliance status of some requirement due to a lack of data, incomplete data, or other reasons which do not support completion of our work in a manner consistent with timely reporting. Under such circumstances we will opt not to compromise our methodology by forcing a conclusion regarding compliance levels. Instead, we will report a finding as **"Deferred."** This finding is not intended to reflect negatively on the agency or to otherwise imply insufficient progress. It is intended to ensure that the process is data-driven, but at all times, is conducted fairly. It is also expected that a more complete assessment of compliance in the area in question will be determined in the next report. Our compliance assessment methodology directs the Monitoring Team in its work and underlies the findings presented in this report. We fully expect that this methodology will govern our work throughout our tenure in this project. Any consideration of revision or change of this methodology will, of course, be presented to the Parties and the Court.

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APPENDIX A: Acronyms

The following is a listing of acronyms frequently used in our quarterly reports.

ACRONYM	DEFINITION
AT	Audit Team
BOPC	Board of Police Commissioners
CBS	Cell Block Supervisor
CCR	Citizen Complaint Report
CDDT	Curriculum Design and Development Team
CEPP	Comprehensive Emergency Preparedness Program
CFD	Critical Firearm Discharge
CI	Chief Investigator
City	City of Detroit
CJ	Consent Judgment
CLBR	Command Level Board of Review
CLFRT	Command Level Force Review Team
CLO	Compliance Liaison Officer
CLI	Command Level Investigation
CME	Confidential Medical Envelope
CMMHSP	Comprehensive Medical and Mental Health Screening Program
CO	Commanding Officer
COC CJ	Conditions of Confinement Consent Judgment
CRIB	Civil Rights Integrity Bureau
DCCL	Detention Cell Check Log
DDHWP	Detroit Department of Health and Wellness Program
DDMHIL	Daily Detainee Meal and Hygiene Items Log
DFD	Detroit Fire Department
DFE	Detainee File Folders
DFO/PDO	Detention Facility Officer
DHWP	Detroit Department of Health and Wellness Promotion

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DIF	Detainee Intake Form
DOJ	Department of Justice
DPD	Detroit Police Department
DRH	Detroit Receiving Hospital
EPP	Emergency Preparedness Program
ERP	Emergency Response Plan
FI	Force Investigation (interchangeable with FIS)
FIS	Force Investigation Selection
FSP	Fire Safety Program
FSPP	Fire Safety Practices and Policies
GAS	Government Auditing Standards
HCCC	Holding Cell Compliance Committee
IA	Internal Affairs
IAD	Internal Affairs Division
IMAS	Interim Management Awareness System
ITS	Information Technology Services
JIST	Joint Incident Shooting Team
MAS	Management Awareness System
MCOLES	Michigan Commission on Law Enforcement Standards
MITN	MCCOLES Information and Tracking System
OCI	Office of the Chief Investigator
OCR	Office of Civil Rights
OIC	Officer in Charge
PDDSL	Platoon Daily Detainee Summary Log
PDO	Police Detention Officer
PEERS	Performance Evaluation and Enhancement Review Session
PFC	Policy Focus Committee
PI	Performance Indicator
PSA	Public Service Announcement
RFP	Request for Proposals
RMB	Risk Management Bureau

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SIR	Supervisor's Investigation Report
SME	Subject Matter Expert
SMT	Senior Management Team
SOP	Standard Operating Procedure(s)
TA	Technical Assistance
UOF CJ	Use of Force and Arrest and Witness Detention Consent Judgment
UOF	Use(s) of Force
USAO	United States Attorney's Office
WCPO	Wayne County Prosecutor's Office
WCJ	Wayne County Jail

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APPENDIX B: Monitoring Team

Robert S. Warshaw, *Monitor*

Chief (Ret.) Charles D. Reynolds, *Deputy Monitor*

Evaluates compliance with U14-19, General Use of Force Policy; U22, Use of Firearms Policy; U24, Intermediate Force Device Policy; U25-26, Chemical Spray Policy; U27-33, General Investigations of Police Action; U34-36, Use of Force and Prisoner Injury Investigations; U37-41, Review of Critical Firearm Discharges and In-Custody Deaths; U73, General Policies; and U99, Oversight.

Division Chief (Ret.) Rachel M. Burgess

Evaluates compliance with U27-33, General Investigations of Police Action; U34-36, Use of Force and Prisoner Injury Investigations; U61-63, External Complaints; U64-66, Intake and Tracking; and U67-69, External Complaint Investigations.

Elizabeth F. Gondles, Ph.D.

Evaluates compliance with C26-34, Medical and Mental Health Care Policies; C47-48, Policies Concerning Persons with Disabilities; C490-50, Food Service Policies; C51, Personal Hygiene Policies; C62-72, Management and Supervision; and C73-78, Training.

Chief (Ret.) Eduardo Gonzalez

Evaluates compliance with U14-19, General Use of Force Policy; U22, Use of Firearms Policy; U24, Intermediate Force Device Policy; U25-26, Chemical Spray Policy; U27-33, General Investigations of Police Action; U34-36, Use of Force and Prisoner Injury Investigations; and U70-72 and U74-77, General Policies.

Chief (Ret.) Melvin C. High

Evaluates compliance with U98, Oversight; U100-U102, Use of Video Cameras; U106-111, Oversight and Development; U112, Use of Force Training; U113, Firearms Training; U114, Arrest and Police-Citizen Interaction Training; U115-117, Custodial Detention Training; U118-120, Supervisory Training; U121-122, Investigator Training; and U123, Field Training.

John M. Klofas, Ph.D.

Evaluates compliance with U78-90, Risk Management Database; U91, Performance Evaluation System; U92-97, Oversight; and U103-105, Discipline.

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Colonel (Ret.) David M. Parrish

Evaluates compliance with C14-C22, Fire Safety Policies; C23-25, Emergency Preparedness Supplies; C35-38, Prisoner Safety Policies; C39-46, Environmental Health and Safety Policies; C52-54, Use of Force and Restraints Policies; C55-57, Incident Documentation, Investigation, and Review; C58-59, External Complaints; and C60-61, General Policies.

Chief (Ret.) Billy R. Riggs

Evaluates compliance with U42-43, Arrest Policies; U44-45, Investigatory Stop Policies; U46-48, Witness Identification and Questioning Policies; U49-51, Prompt Judicial Review Policies; U52-53, Hold Policies; U54-55, Restriction Policies; U56-57, Material Witness Policies; U58, Documentation of Custodial Detention; and U59-60, Command Notification.

Asst Director (Ret.) Joseph R. Wolfinger

Evaluates compliance with U20-21 and U23, Use of Firearms Policy; U98, Oversight; U100-U102, Use of Video Cameras; U106-111, Oversight and Development; U112, Use of Force Training; U113, Firearms Training; U114, Arrest and Police-Citizen Interaction Training; U115-117, Custodial Detention Training; U118-120, Supervisory Training; U121-122, Investigator Training; and U123, Field Training.

Robin Busch-Wheaton, *Editor*