

# **City of Cincinnati Independent Monitor's Second Quarterly Report**

**July 1, 2003**

Quarterly Report regarding compliance with and implementation of the Memorandum of Agreement between the United States Department of Justice and the City of Cincinnati and the Cincinnati Police Department and the Collaborative Agreement between the Plaintiffs, the Fraternal Order of Police and the City of Cincinnati

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# **CITY OF CINCINNATI INDEPENDENT MONITOR'S SECOND QUARTERLY REPORT**

## **EXECUTIVE SUMMARY**

This is the second report of the Independent Monitor under the MOA and CA. The period covered is from January through April 1, 2003, though we also review some materials from 2002, and more recent activities from April through June 30.

On April 12, 2001, the City of Cincinnati entered into a Memorandum of Agreement (MOA) with the United States Department of Justice resolving allegations of police misconduct. The MOA calls for police reforms in the areas of police use of force, citizen complaints, risk management, and training. On the same date, the City of Cincinnati signed a Collaborative Agreement (CA) with the Cincinnati Black United Front, the American Civil Liberties Union of Ohio Foundation Inc., and the Fraternal Order of Police. The Collaborative Agreement calls for the implementation of Community Problem Oriented Policing (CPOP), mutual accountability and evaluation, bias-free policing and the establishment of the Citizen Complaint Authority (CCA). The CA was entered by the United States District Court for the Southern District of Ohio after a Fairness Hearing was held on August 5, 2001.

Despite a number of setbacks and disagreements at the beginning of this quarter, the City and the Parties have made significant progress in meeting the requirements of the MOA and the CA. They have reached agreement on a number of difficult and important issues. That said, there are still reforms that need to be made and policies that need to be fully implemented before the City and the Parties are in full compliance with the Agreements. Accomplishing the goals of the Agreements and improving the relationship between the police and the community will take the continued commitment, effort and good faith of all of the Parties.

## **MEMORANDUM OF AGREEMENT**

### **General Policies**

The MOA requires the Cincinnati Police Department (CPD) to establish a cadre of specially trained officers to respond to incidents involving persons who are mentally ill. In compliance with the MOA, the CPD has created the Mental Health Response Team (MHRT), provided multi-disciplinary training for these officers with an emphasis on de-escalation, and revised its policies on dealing with the mentally ill. In response to concerns raised by our First Report, the CPD has developed

new procedures to track the availability of MHRT officers, to ensure that MHRT officers are on hand to handle incidents involving the mentally ill. The CPD is also developing a continuing in-service training program for MHRT officers.

The CPD also adopted a foot pursuit policy that complies with the MOA. The Department incorporated aspects of the new policy into its Tactical Patrol Guide, which the CPD recently issued to all officers. Having the policy in place, the CPD must now focus on training officers on the risks of foot pursuits, the need for communications with partners and Dispatch, and consideration of alternative means of apprehension. CPD supervisors must also begin monitoring and reviewing their officers' decisions on foot pursuits.

### **Use of Force Policies**

In this quarter, the City and the Department of Justice (DOJ) agreed upon a CPD Use of Force policy that complies with the MOA. The new policy addresses the areas of concern we noted in our First Report. It now defines "force" as required in the MOA and it contains a use of force continuum that relates an officer's force options to the actions of the suspect.

The new Use of Force policy also limits the use of chemical spray to situations where force is necessary; limits the use of chemical spray against restrained individuals; and requires supervisory approval for use of chemical spray against a crowd. These changes comply with the MOA provisions. Our review of a sample of chemical spray investigations indicates that CPD officers appear to be using chemical spray appropriately in most instances. However, CPD must ensure that officers provide a verbal warning to subjects that chemical spray will be used if they do not comply, and document that warning in the use of force report. The criterion for the use of beanbag shotguns was also revised to comply with MOA provisions. Beanbag shotguns now may only be used to subdue or incapacitate an individual to prevent imminent physical harm to the officer or to others.

The Monitor Team continued its detailed review of CPD's use of canines for locating and apprehending suspects. CPD issued its revised Canine policy and new Canine forms on April 29, 2003. These policies have been approved by the Department of Justice and meet the requirements of the MOA. We reviewed CPD's investigations of canine bites from the 4<sup>th</sup> quarter of 2002 and the 1<sup>st</sup> quarter of 2003. There were only seven canine bites in this six month period, and the bite ratio (the number of canine bites compared to the total number of apprehensions involving canines, both with and without a bite) was below 11 percent. However, the individual circumstances of the canine bites did raise concerns regarding CPD's implementation of MOA

requirements regarding canine announcements, handler control, and the investigation of canine bites. CPD has told the Monitor that it will examine its practices and training regarding canine announcements and handler control during running apprehensions and canine tracks.

### **Incident Documentation, Investigation, and Review**

Reporting and investigating use of force incidents was one of the final items resolved between the DOJ and the City of Cincinnati. The DOJ agreed to a modification of the way lower levels of use of force, specifically the use of “hard hands” and takedowns, would be reported and investigated. Where these tactics do not result in injury or a complaint of excessive force, the officer will notify his or her supervisor of the incident and complete a form describing the incident, which will be reviewed by the supervisor and by CPD’s Inspections Section. CPD must now develop training on the new reporting policies. The new procedures will be implemented for a six month period, during which the Monitor will review the use of force reports. The procedures will be revisited at that time if the review raises any concerns.

The Monitor Team also reviewed a sample of use of force investigations to gauge implementation of CPD’s policies. We found that officers and supervisors generally are complying with the requirements the MOA. Supervisors are responding to the scene and conducting investigations, including taped interviews with officers, witnesses and the subject of the use of force. We found, however, that some investigations were conducted by supervisors who had authorized the use of force or participated in the incident, and that other investigations were not as complete as they needed to be.

### **Citizen Complaint Process**

The Monitor Team spent significant time reviewing complaint investigations from the last few quarters. We found that the Citizen Complaint Resolution Process (CCRP) is working as it was designed to do. Minor allegations of improper service or demeanor complaints are being investigated and adjudicated by District supervisors, and corrective action (usually counseling and an ESL notation) has been taken where appropriate. Our review did reveal problems with the investigation of more serious complaints, including excessive-force allegations. In some investigations, we noted concerns about the completeness of the investigation. In others, the investigator did not make sufficient efforts to resolve inconsistencies between the officer’s version of events and the complainant’s, resolving the complaint with a “not sustained” finding because the versions differed. Another concern we raise is that most of the excessive force complaints are being investigated by District supervisors with no review by CPD’s Internal Investigations Section (IIS). Not only is IIS required by the MOA to conduct these investigations, but

the delay in getting the investigations to IIS while they are being reviewed by the Patrol Bureau chain of command also results in a delay in the referral of these complaints to the CCA.

### **Management and Supervision**

The City of Cincinnati finalized a contract and statement of work for a computerized risk management system that tracks data on officer activities. The system, as designed, covers the requirements of the MOA, and compliance with the MOA will depend on the successful implementation of the system. In addition, the City needs to submit for Department of Justice approval a detailed protocol describing how the system will operate, what reports it will generate, what threshold will be used for identifying officers, supervisors and units for review, and what actions will be taken when officers, supervisors and units are identified by the system.

### **Training**

The Monitor Team visited the Academy and the Firearms Range to assess training efforts. The Monitor Team found that the Basic Recruit use of force training at the Academy is consistent with the use of force model in the MOA and CPD policies. Decision-making is also emphasized as part of scenario-based training. Now that the Use of Force and Canine policies have been finalized, CPD training needs to be revised to reflect the changes made, including those relating to reporting use of force. The Field Training Officer (FTO) program is another area where additional attention needs to be paid. While the CPD now has FTO policies that comply with the MOA, we found that those policies had not begun to be implemented, especially with respect to the criteria for selecting new FTOs and recertifying current FTOs. With respect to firearms training, the activities observed indicate that firearms training is being conducted consistent with the provisions of the MOA.

## **COLLABORATIVE AGREEMENT**

### **CPOP**

During this quarter, the Parties have made substantial progress on a number of important areas within the CA. We particularly commend CPD's work on the pilot CPOP website. The website is designed to track problems, offer research on specific crime and safety problems, identify resources and serve as a platform for collaborative problem solving. There has also been significant progress made among the City Manager's Office, the CPD and the Plaintiffs in defining roles and relationships regarding collaborative problem solving. The Parties have agreed to an action plan for City-wide implementation of CPOP, and they have agreed on the general outlines of a work plan for the Community Partnering

Center.

More work remains to be done, however, before the Parties are in full compliance with the requirements of ¶29. The areas where the Parties and/or the City are not yet in compliance include: providing joint CPOP training for community members; establishing a structured dialogue with various segments of the community; providing problem solving training to CPD officers and units; having CPD commanders prepare quarterly reports detailing problem solving activities; and reviewing and revising CPD policies and procedures, including job descriptions, staffing, and performance evaluation standards, to be consistent with CPOP. We recognize that implementation of the Community Partnering Center and the CPOP website will aid the Parties in accomplishing these tasks, and we expect there to be significant progress on these matters in the coming quarter.

### **Evaluation Protocol**

On June 17, 2003, the City published a Request For Proposal (RFP) for an "Evaluator." The contractor chosen will assist the Parties in tracking progress in achieving the goals of the CA. The Evaluation Protocol requires surveys of citizens and officers; observation of meetings, problem solving activities, and the complaint process; data collection and annual statistical compilation; and an annual report. Before the RFP was issued, the Parties addressed several concerns raised by the Monitor in our First Report. Bids are due by August 1, 2003.

Although the RFP has been issued, and the Parties are meeting to agree on a selection process for the Evaluator, implementation of an Evaluation Protocol is a long way off. The Parties are not in compliance with the Evaluation provisions of the CA at this time.

### **Pointing Firearms Complaints**

CPD established the required expedited process for investigating complaints of improper pointing of firearms. The Parties also compiled and forwarded to the Monitor complaints and investigations of improper pointing of firearms from March 31, 2000 to November 2002. We will forward this data to the Conciliator for his determination of whether there is a pattern of improper pointing of firearms at citizens. If he determines there is such a pattern, CPD officers will be required to report each time they unholster and point their firearm at a person.

Our review of the gun pointing investigations found that CPD did not always forward the investigations to its Pointing of Firearms Review Group, that the investigations were not always completed within the 30 days required, and that some of the investigations were not complete. We noted, however, that recent cases were investigated more thoroughly

and promptly than earlier cases. We conclude that there is not sufficient information to determine whether a pattern of improper firearms pointing exists, and we recommend that the Conciliator defer that decision until additional information is gathered.

### **Fair, Equitable and Courteous Treatment**

The City's data collection efforts are still hamstrung by the same flaws we noted in our First Report, notably a lack of a system to ensure accurate and timely data entry. An analysis of traffic stop data from 2001 being conducted by Professors Liu and Eck should be completed and released in September 2003, but analysis of data since then will have to await the selection of an Evaluator, accurate entry of the data, and agreement on the method of analysis.

The CPD has implemented some training on bias-free policing and policies requiring officers, when a citizen is stopped or detained and then released, to explain to the citizen in a professional, courteous manner why he or she was stopped.

### **Citizens Complaint Authority**

In our First Report, we noted that the City and the Parties made significant progress in establishing the CCA. This progress has continued, with the CCA hiring new investigators and initiating independent investigations in 115 complaints since January 1. CPD and the CCA need to develop a protocol for complaints that will be concurrently investigated both internally and by CCA. In addition, the recent resignation of the CCA executive director poses another challenge for the Parties.

### **Individual Actions**

During this quarter, negotiations among the Parties regarding the individual litigation matters listed in the CA resulted in a global settlement of the claims. The City will pay \$4.5 million into a settlement fund and the Plaintiffs will decide how those funds will be allocated among the claimants. We believe this settlement is a major step forward in establishing a better working relationship between CPD and the community.

## **Conclusion**

The Parties have made strides in implementing the Agreements and reaching accord on important issues. In the process, the Parties have gradually increased their cooperation and trust. This cooperation and trust will be needed as the Parties face the continued challenges of working to accomplish police reforms and enhanced police community relations. We look forward to working with them.

# **INDEPENDENT MONITOR'S SECOND QUARTERLY REPORT APRIL 1, 2003**

## **Chapter One. Introduction**

In the introduction to the First Quarterly Report, we described witnessing serious growing pains during the first three months of our monitoring. These growing pains, and the associated turmoil, carried over to the early stages of the second quarter. The Black United Front withdrew as class representative; the Fraternal Order of Police petitioned to withdraw from the Collaborative; disputes flared between the plaintiffs and the City over CPOP and the Partnering Center; and the DOJ and the City wrangled over a Use of Force policy. Despite these challenges, the Parties have overcome some major differences, reached accord on significant issues, and the City and CPD have made important progress on compliance.

As the second quarter came to a close we are able to note:

- The City and DOJ have agreed on a Use of Force Policy and force reporting procedures. CPD has also made progress on addressing other policy issues raised in the Monitor's First Report.
- The individual litigation matters identified in the Collaborative Agreement have been settled through a global settlement.
- Agreement has been reached on the general outlines of the Community Partnering Center work plan.
- The Parties have agreed to an action plan for City-wide implementation of CPOP.
- The City, working with the Regional Computer Center, has developed a pilot CPOP website that, once populated, forms a database of problem solving activities. The pilot CPOP website has been provided to Plaintiffs for review.
- The Plaintiffs have developed an advisory board of community representatives to assist in working on CA issues.

These developments augur well for the future. Concerns about the unraveling of the Collaborative and the prospect of a lawsuit over the MOA proved premature. Signs of a "can do" attitude among the Parties have started to emerge. But continued progress is necessary. The CPD's new policies and procedures must be implemented, which means proper dissemination, training and continued supervision. CPD must continue to improve its investigations of use of force and citizen complaints. Also,

despite agreement on the action plan for city-wide implementation of CPOP and the development of a CPOP website, a number of issues related to CPOP implementation remain to be addressed. The procedures for forming CPOP teams and undertaking problem solving activities are only the outlines of what needs to take place. In actually implementing CPOP in the communities, the Parties will undoubtedly encounter difficulties and unanticipated challenges. Significant work also remains to be done on the evaluation protocol, and in implementing the mutual accountability and bias-free policing components of the CA.

From the start of our work as Monitor, we have stressed the importance of participation by all the Parties in the collaborative process. Although this Report notes significant progress in MOA and CA implementation, we have observed a fall-off in the Plaintiffs' and the FOP's participation in the collaborative process this quarter. Although some of the Plaintiff's inactivity may be attributable to the withdrawal of the Black United Front as class representative, and the need to develop and substitute the ACLU Advisory Panel, progress in implementing a shared vision of CPOP will only be accomplished through the active, steady participation of all the Parties.

The resignation of CCA Executive Director Nate Ford, at the close of the second quarter, illustrates the fact that there will be continuing challenges to the Parties as they work to implement the Agreements. The trust that the Parties have started to kindle during this second quarter must continue to be built, reinforced and strengthened.

In the Report that follows, we address the City's and the Parties' progress in meeting the requirements of the MOA and the CA. As in our First Quarterly Report, we first summarize the requirements of each section of the MOA or CA, then list the efforts of the Parties during this past quarter to comply with those requirements, and then provide our assessment of whether the City and/or the Parties are in compliance with the provisions of the Agreements. A significant focus of our monitoring activities this quarter was our review of a sample of CPD investigations of use of force incidents and citizen complaints. We include in Chapter Four summaries of a number of the investigations we reviewed. Although their inclusion adds to the length of the Report, we also hope that their inclusion will add to the reader's understanding.

## **Chapter Two. The Memorandum of Agreement**

We are pleased to report on the City's reinvigorated effort to implement the MOA, and the City's actions to address the concerns and recommendations of the Monitor's First Quarterly Report. We are especially heartened by the public commitment of the Mayor and Chief of Police to come into full compliance with the MOA.

As discussed more fully below, the Justice Department and the City have resolved their dispute over CPD's Use of Force policy. The changes made to the policy regarding when and how force may be used are now consistent with the MOA. In addition, the DOJ and the City have agreed on a modification of MOA requirements regarding how certain force incidents will be reported and investigated. The Monitor especially commends Rita McNeil, the City Solicitor, and attorneys for the Civil Rights Division for their willingness to engage in discussions attended by the Monitor, when it appeared that the issue might be heading toward litigation.

In addition to the revised Use of Force policy, CPD adopted new policies in other areas to comply with various MOA requirements. Policy compliance is only half the job, however. Now it is CPD's charge to train officers on the new policies and implement them in a comprehensive and effective fashion.

## **I. General Policies**

### **A. Mental Health Response Team [MOA ¶ 10]**

#### **1. Requirement**

CPD is required to create a "cadre of specially trained officers available at all times to respond to incidents involving persons who are mentally ill." These officers will be called to the scene and assume primary responsibility for responding. Training for these officers shall include multi-disciplinary intervention training, with a particular emphasis on de-escalation strategies, as well as instruction by mental health practitioners and alcohol and substance abuse counselors. CPD also shall implement a plan to partner with mental health care professionals, to make such professionals available to assist CPD officers on-site with interactions with mentally ill persons.

#### **2. Status**

As we noted in our First Report, CPD has created the Mental Health Response Team (MHRT). Ninety CPD officers were selected in June 2002 and provided a 40 hour training course that included the following topics:

- Review of mental illness
- The mental health system
- Orientation/shadowing a mental health professional
- Police hotline and state mental hold
- MHRT interface with SWAT and Crisis Negotiation Teams

- Review of non-lethal force options
- Special populations
- Role of Mobile Crisis Team
- Suicide
- Legal issues
- Mediation
- Problem solving and community resources

The CPD also revised its policy on dealing with the mentally ill, Procedure 12.110, to incorporate the availability of the MHRT. MHRT officers are assigned to regular patrol, but they are specifically designated in the Police Communications System. When dispatchers get a call involving a mentally ill person they review the unit roster to determine which MHRT officers are available in that district to respond to the scene.

#### **a. Availability of MHRT Officers**

In response to comments in our First Report, the CPD has initiated two new procedures to track the availability of MHRT officers: a daily tracking procedure to record where and when MHRT officers are deployed, and a process to track the number of MHRT officers assigned to the Patrol Bureau.

To ensure that MHRT officers are dispatched on calls involving mentally ill individuals, the Police Communications Section (PCS) has implemented the following procedures:

- Effective May 1, 2003, PCS has changed the dispatch code for incidents involving persons suspected of having a mental illness from Code 9/Code 9V to MHRT/MHRTV. This will further remind dispatchers to send MHRT units on those types of incidents.
- The current Standard Operating Procedure (SOP) for the PCS requires that MHRT officers be dispatched to MHRT and MHRTV calls. If no MHRT unit is available in the district, PCS will dispatch a MHRT unit from another district.
- The dispatcher will make an entry in the miscellaneous field for MHRT and all MHRT calls will indicate one of the following dispositions:

**MHD** – A MHRT unit was dispatched to the call

**MHNA** – A MHRT unit was not dispatched because all MHRT units citywide were busy

**MHNW** – There were no MHRT units working in the

city

- PCS has disseminated a training bulletin regarding the duties of dispatchers in handling MHRT incidents.
- With the addition of the miscellaneous field, PCS can perform a query indicating the percentages of MHRT calls handled by district MHRT officers, out of district officers, or non-MHRT units. These reports will be forwarded to the Patrol Bureau administration office.
- PCS will perform an internal query on the miscellaneous field to ensure dispatchers are properly coding MHRT calls.

In addition, each Police District will:

- Record on the daily lineups the number of MHRT officers deployed for each shift. Each morning this information will be relayed to the Patrol Bureau administration office, where it will be entered into a database for tracking purposes.
- Ensure the MHRT officers are equally divided among the three shifts.
- Ensure the MHRT officers are equally divided among the various off-day groups.

### **b. Continuing MHRT Training**

CPD is developing an in-service training program for established MHRT officers. Police Academy staff are working with the Mental Health Association to design the training. As part of this process, the existing MHRT officers have been surveyed for their views on the effectiveness of prior training and to recommend additional training. The survey results are attached as Appendix 1. The projected date for the in-service training program is July-August 2003.

## **3. Assessment**

The CPD policy for handling incidents involving mentally ill individuals complies with the requirements of the MOA.<sup>1</sup> We continue to

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<sup>1</sup> Given the tracking and dispatch procedures described above, it appears that CPD is complying with the MOA requirement that MHRT members be “available at all times to respond to incidents involving persons who are mentally ill.” Therefore, we have recommended to CPD that it revise the language of Procedure 12.110 that states: “Mental Health Response Team (MHRT) officers will be the first responders, *when available*, on all runs involving suspected mentally ill individuals.”

be impressed with the City's commitment to this program, and positive comments about the program from persons outside the Department reinforce this view. The Monitor Team has not yet had the opportunity to observe MHRT training, or to observe MHRT officers in the field, but the information we have reviewed to date indicates that MHRT officers are being dispatched to calls involving mentally ill individuals, as required by the MOA.

## **B. Foot Pursuits [MOA ¶11]**

There are inherent risks to a police officer when he or she engages in a pursuit of a fleeing suspect on foot, especially in chasing a suspect into a wooded area, building, or confined space. The need for law enforcement agencies to address policy and training in this area was recently reinforced by the International Association of Chiefs of Police (IACP), which issued a model policy and background paper on foot pursuits in February 2003. The stated purpose of the IACP model policy is "to establish a balance between protecting the safety of the public and police officers during police pursuits on foot and law enforcement's duty to enforce the law and apprehend suspects." The Monitor forwarded the IACP policy and background paper to CPD in May 2003. The IACP model policy and background paper are attached in Appendix 2.

### **1. Requirements**

The MOA requires CPD to develop and adopt a foot pursuit policy. The policy must require officers to consider particular factors in determining whether a foot pursuit is appropriate.

### **2. Status**

On May 20, 2003, CPD implemented its revised foot pursuit policy. The policy was included in the May 20, 2003, CPD Staff Notes, and was effective immediately.

The new procedure requires officers to make a "quick risk assessment" before initiating a foot pursuit. They must evaluate the risk involved to themselves, other officers, the suspect, and the community, versus what would be gained from pursuing the suspect. Officers are to consider the following factors when initiating pursuits: whether the suspect is armed, the offense committed, the location, the ability to apprehend the suspect at a later date, communications capabilities, and the availability of backup. Officers should also consider area containment, surveillance and calling for backup before beginning a pursuit.

If a pursuit is initiated, the officer must notify the Police Communications Section and coordinate with other officers. Under

Procedure 12.536, officers are to terminate the pursuit (and supervisors are to order termination), if the danger to the pursuing officers or the public outweighs the necessity for immediate apprehension of the suspect.

Aspects of the CPD foot pursuit policy are included in a “Tactical Patrol Guide” that CPD recently issued to all its members. In particular, the Patrol Guide notes that if an officer suspects that the subject being pursued is armed, the officer should wait for back-up before pursuing, and consider other options such as setting up a perimeter, calling canine, or using the county helicopter. It also instructs officers that the dynamics of the foot pursuit change if the suspect runs into a building. Additional assessment should be done, and officers should wait for back-up before proceeding. These are important lessons that are now being incorporated into CPD’s recruit training and in-service training, according to Training Academy Staff.

CPD has also informed the Monitor that supervisors will evaluate the appropriateness of a foot pursuit when an incident involving a foot pursuit is being investigated; for example, if a use of force was involved. This has been evident in a few of the investigations that the Monitor Team reviewed, but in most of the investigations, no analysis of the foot pursuit appeared to have taken place.

### **3. Assessment**

The CPD foot pursuit policy complies with the MOA provision. We will continue to assess CPD’s compliance with training and implementation of the policy.

## **II. Use of Force**

Use of Force policies and training are at the heart of the MOA. The MOA required CPD to adopt new policies governing the definition of force; the documentation, review, and investigation of use of force incidents; and use of force training. As noted in our First Report, CPD implemented a new Use of Force policy, Procedure 12.545, on September 9, 2002. However, this policy did not comply with a number of MOA provisions. After a number of discussions between DOJ and the City, correspondence, and several versions of a revised Use of Force policy, the City and DOJ agreed on a Use of Force policy on May 15, 2003. The details of that policy are discussed below.

### **A. General Policies [MOA ¶¶ 12-13]**

#### **1. Requirements**

Under the MOA, Cincinnati is required to revise its Use of Force

policy. The revised policy must do the following:

- It must clearly define the terms used in the policy (para. 12.a)
- The term “force” must be defined as it is defined in the MOA (12.b)
- It must incorporate a “use of force model” that relates the officer’s responses and use of force options to the actions of the subject, and teaches that disengagement, area containment, or calling for reinforcement may be an appropriate response to a situation (12.c)
- Whenever possible, individuals should be allowed to submit to arrest before force is used (12.d)
- Advise against excessive force (12.e)
- Prohibit choke holds (12.f)
- The term “restraining force” must be removed from CPD’s policy (12.g)
- CPD’s revised Use of Force policy must be published on CPD’s website and be disseminated to community groups (13)

## **2. Status**

On May 27, 2003, CPD included its revised Use of Force policy in its Staff Notes, with an effective date of June 1, 2003.<sup>2</sup> The new policy addresses each of the areas of concern that were noted in the Monitor’s First Report.

- The policy’s definition of “force” now matches exactly the MOA definition of “force,” as required by MOA Paragraph 12(b);
- The policy contains a use of force continuum that relates the force options available to officers to the actions of the subject;
- The policy contains clearly defined terms and is organized in a concise and understandable fashion.

In addition, the CPD Policy and Procedure Manual is posted on the Cincinnati Police Department’s website, and is thus publicly available as required by the MOA. The website is located at [www.cincinnati-police.org](http://www.cincinnati-police.org). Visitors to the website are able to register any comments, suggestions or questions. The Departmental Staff Notes, a weekly publication which notifies all CPD personnel of policy and procedure changes and other departmental news, is also posted on the website.

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<sup>2</sup> Because the June 1 policy inadvertently did not include some of the policy changes agreed to by CPD and the DOJ, a new policy, dated June 10, 2003, was drafted. The June 10 policy includes the required changes. To date, the June 10 policy has not been disseminated through the Department Staff Notes or posted on the CPD website.

### **3. Assessment**

CPD's Use of Force policy, Procedure 12.545, now complies with the requirements of paragraphs 12 and 13 of the MOA.

#### **B. Chemical Spray [MOA ¶¶ 14-19]**

The CPD uses chemical irritant spray as a low-level use of force for defense or to assist in effecting an arrest. Its use in policing has reduced the need for other, more serious types of force. Still, officers need to limit their use of chemical spray to situations where force is needed, and not in situations where individuals are complying with an officer's commands, or as a threat to gain compliance, or for the dispersal of non-violent persons. For the 1<sup>st</sup> quarter of 2003, there were 122 incidents where officers used chemical spray, compared to 117 incidents in the 4<sup>th</sup> quarter of 2002. There were no situations in which chemical spray was used on a crowd in the 1<sup>st</sup> quarter of 2003.

##### **1. Requirements**

CPD must revise and augment its chemical spray policy to do the following:

- Clearly define terms (14.a)
- Limit use of spray, including against crowds, to only those cases where force is necessary to effect the arrest of an actively resisting person, protect against harm, or prevent escape (14.b)
- Provide that chemical spray may be used only when verbal commands would be ineffective (14.c)
- Require supervisory approval for use of chemical spray against a crowd, absent exigent circumstances (14.d)
- Require a verbal warning and the opportunity to comply before using a chemical spray, unless doing so would be dangerous (14.e)
- Require officers to aim at the subject's face and upper torso (14.f)
- Provide guidance on duration of bursts and recommended distance (14.g)
- Require officers to offer to decontaminate sprayed individuals (14.h)
- Request medical response for complaining subjects (14.i)
- Prohibit keeping sprayed subjects in a face down position any longer than necessary (14.j)
- Prohibit use of spray on a restrained person, except to protect against harm or escape (14.k)
- Use of spray against restrained persons must be

investigated, including tape recorded statements of officers and witnesses. Investigations of these incidents must be reviewed by CPD's Inspections Section. (15)

- Provide restraining equipment in CPD squad cars (16)
- Provide In-service training on chemical spray (17)
- Account for chemical spray canisters (18)
- Periodically review research on chemical spray (19)

## **2. Status**

CPD policies relating to chemical spray are contained in the CPD's general Use of Force policy, Procedure 12.545. As noted above, CPD implemented a new Use of Force policy effective June 1, 2003.

### **a. Criteria for Chemical Spray Use**

The new chemical spray policy addresses the areas of noncompliance that we noted in our First Quarterly report.

First, it limits the use of chemical spray to situations where verbal commands would be ineffective. The policy now provides: "Personnel may only use chemical irritant to control a resisting subject when verbal commands and other techniques that do not require the use of force would be ineffective..." Second, the policy limits the use of chemical spray on persons who are restrained: "Officers may only use chemical irritant on a restrained individual when the restrained individual or another person is likely to suffer injury or to escape, absent the use of chemical spray." Third, the language of the policy is consistent with MOA provisions limiting the use of chemical spray against crowds.

### **b. Chemical Spray on Restrained Individuals**

The MOA requires CPD to ensure that its cars have sufficient equipment to properly restrain subjects, and to train officers to use that equipment when needed. The Monitor's First Report noted a concern about the number of instances where chemical spray was used on handcuffed individuals being transported because those individuals became violent and/or were able to defeat the restraint equipment available in the cars. CPD cars are equipped with shoulder and lap belts, as well as a restraining bar. In the 1<sup>st</sup> quarter of 2003, 26 individuals were sprayed with chemical irritant after being handcuffed.<sup>3</sup> This compares to 15 in the 4<sup>th</sup> quarter of 2002, and 24 in the 3<sup>rd</sup> quarter of 2002.

CPD's May 12, 2003, MOA Status Report states that in March and April of 2003, the Police Academy provided a two-hour training block on

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<sup>3</sup> This number does not include persons who were sprayed after being restrained because they were suspected of swallowing contraband; see subsection B.2.c below.

CPD's new 2003 Ford Crown Victorias that included a review of the operation of the restraint bar. This training was provided to all CPD officers. CPD stated, however, that "restraining an extremely combative individual through lap belts and/or the restraining bar . . . is a tactical decision left to the judgment of the individual officer. The primary purpose of the restraining bar is less to restrict movement than to hold a compliant individual in place, preventing sliding on the plastic seat as the car turns or stops." While use of the restraining bar is left to the officer's discretion, CPD's own policy states that seat belts will be used when transporting prisoners. We do not minimize the risks posed to officers attempting to secure combative individuals in these devices. However, if officers are not comfortable using the existing equipment to restrain arrestees during transport, CPD should consider what other equipment or additional training might help address this concern. CPD has also stated that it will begin tracking instances where arrestees are able to defeat a cruiser's restraining equipment.

### **c. Chemical Spray on Persons Swallowing Drugs**

In our First Report, we noted that CPD's policy for dealing with persons in custody attempting to swallow drugs or other contraband is to use chemical irritant to get the individual to spit out the drugs. These individuals are then taken to the hospital. We stated our view that this use of chemical spray was not consistent with best practices in the police profession. In meetings with the Monitor, CPD has agreed to conduct additional research on the effects of chemical spray as a deterrent to individuals attempting to swallow or hide contraband while under police control or custody. Should such research indicate that use of chemical spray in such instances is not beneficial and appropriate, Procedure 12.600 should be revised.<sup>4</sup>

The Monitor reviewed all of the Injury to Prisoner reports from the 4<sup>th</sup> quarter of 2002 and the 1<sup>st</sup> quarter of 2003 in which arrestees were reported to have swallowed drugs. There were 22 cases in this six month period. Of these, chemical spray was not used in 10 incidents, most likely because the individuals had already swallowed the contraband. In 7 incidents, arrested subjects were sprayed with chemical irritant and spit out (or vomited) the drugs, and in 5 incidents, arrested individuals were sprayed, but either the chemical spray had no effect, or the chemical spray report did not report its effect.

### **d. Research on Chemical Spray**

The MOA also requires that CPD "periodically review current research regarding the choice of chemical spray." CPD uses a chemical

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<sup>4</sup> In addition, we recommend that Procedure 12.600 either repeat or cross-reference provisions elsewhere (a) limiting use of chemical spray on restrained individuals (MOA paragraph 14.k); and (b) requiring, when practical, use of MVR equipment for incidents in which a prisoner being transported is being violent.

irritant known as CS gas, which is a form of tear gas. The City reports that the Inspections Section recently received information regarding a new alternative to the current chemical irritant used by CPD. The Inspections Section will consider its effectiveness and include the findings in its August 2003 Status Report. In addition, the Monitor has provided the Inspections Section with additional information and research on both CS spray and the use of OC spray (oleoresin capsicum, or pepper spray) as a chemical irritant.

### **3. Assessment**

#### **a. Chemical Spray Policy**

Procedure 12.545 complies with the MOA policy requirements regarding the use of chemical spray. In future quarters, the Monitor will review CPD's training on the use of chemical spray. Implementation of the Chemical Spray policy is discussed below.

#### **b. Review of Sample Investigations**

The Monitor team reviewed a sample of chemical spray reports from the 4<sup>th</sup> quarter of 2002 and the 1<sup>st</sup> quarter of 2003. As noted in our First Report, the information provided in the supervisor's use of force report (Form 18CI) is often limited, and it is difficult to assess compliance with CPD policy and the MOA provisions regarding chemical spray. Having said that, in many of the cases we reviewed, the descriptions of the incidents in the force reports suggest that the use of chemical spray was appropriate, and that verbal commands either were not, or would not have been, effective. It also appears that officers are deploying chemical spray from the proper distance and aiming the spray at the subject's face and upper torso, as provided in CPD policy and the MOA, although this information is often not included in the use of force report.

The Use of Force reports do report whether the person sprayed is offered an opportunity to wash his or her face. The reports indicate that this is done routinely, and in only two cases we reviewed did the arrested subjects complain that they were not allowed to wash their faces or given access to fresh air.

The MOA and CPD policies require that officers warn subjects that they will be sprayed if they do not comply with the officer's verbal commands, unless the warning would pose a danger to the officer or others. In most of the Use of Force reports, it is not clear whether officers issued a warning before using chemical spray; nor is there a reason given for not issuing a warning. While the current chemical spray form (18CI) has check boxes for whether the officer "asked," "told," or "demanded" compliance, it does not specify whether the officer told the

subject that force would be used if compliance was not obtained.<sup>5</sup> Thus, compliance with this provision could not be assessed.

Our review included a number of instances where restrained persons were sprayed with chemical irritant. The MOA requires that the use of force investigation in such incidents include taped statements of the subject, the involved officers, and any witnesses. It also requires a written review of the investigation by the Inspections Section. In those cases where chemical spray was used because the arrested individual refused to comply with officers' commands to get into the police car, or became violent in the police car, the investigations did usually include taped statements and a written Inspections Section review. However, the incidents where chemical spray was used because the arrested subject attempted to swallow contraband are also instances of chemical spray on restrained individuals. In most of these cases, there were no taped interviews and no written review of the investigation by the Inspections Section.

### **C. Canines [MOA ¶20]**

The Monitor's First Report examined in some detail the CPD's use of canines for locating and apprehending suspects. We continue that examination in this quarter. Trained law enforcement canines are a valuable supplement to police manpower because of their superior sense of smell and hearing. The use of canines in a search for a potentially armed individual also protects against harm to a police officer who might otherwise be making that search. The Cincinnati canine unit has ten officers and ten dogs. In the 3<sup>rd</sup> quarter of 2002, there were 29 apprehensions and five bites. In the 4<sup>th</sup> quarter of 2002, there were 31 canine apprehensions and five canine bites. In the 1<sup>st</sup> Quarter of 2003, there were 36 apprehensions and two canine bites. For the six month period of November 1, 2002 to April 30, 2002, CPD calculated the bite ratio (the number of bites compared to the number of total apprehensions involving a canine, with and without a bite) for the canine unit to be 10.8 percent.<sup>6</sup>

#### **1. Requirements**

The MOA requires the CPD to revise and augment its canine policies, subject to DOJ's review and approval. The CPD is to make continued improvements in its canine operations, including the introduction of an "improved handler-controlled alert curriculum" and the use of new canines. Specifically, the new canine policy must:

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<sup>5</sup> The revised Use of Force forms will now include a check box "Subject warned that force would be used."

<sup>6</sup> The number of apprehensions in this 6 month period (65) is slightly different than the number reported for the 4<sup>th</sup> quarter of 2002 and first quarter of 2003 combined (67), due to the difference in dates.

- Limit off-leash deployments to searches of commercial buildings or for suspects wanted for a violent offense or reasonably suspected of being armed.
- Require approval of a supervisor before deployment, except for on-leash deployments.
- Provide for a loud and clear announcement, warning of the canine deployment, and require officers to allow the suspect time to surrender.
- Handlers shall not allow their canines to bite a person unless the person poses imminent danger, or is actively resisting or escaping.
- Where the canine does bite a person, the dog shall be called off at the first moment the dog can safely be released. The policy shall prohibit canines from biting nonresistant subjects. Also, immediate medical attention must be sought for all canine related injuries.
- CPD shall track deployments and apprehensions, and calculate bite ratios. These bite ratios shall be included in the Risk Management System.

## **2. Status**

CPD adopted a new canine policy, approved by the DOJ, on April 29, 2003. The revised policy was published in the Department Staff Notes and took effect at that time. All CPD personnel were required to review the Staff Notes and accompanying procedure. As a result of the revisions, new reporting forms were developed to document canine deployments and/or canine bites:

Form 18C – Canine Bite Report  
 Form 18CD – Canine Deployment Report.

The Canine Unit is currently entering the information captured from these reports into a Canine Tracking Database. The bite ratios will be derived from that database. This information will eventually be entered into the new Risk Management System.

Under the MOA, Cincinnati must review the performance of any handler or canine whose bite ratio exceeds 20% for a six month period. CPD calculated individual bite ratios for its handlers and dogs for the six month period from November 2002 through April 2003. Three of its handlers had bite ratios of over 20%. According to a June 12, 2003 memo to the Chief of Police from the Commander of the Parks Unit, CPD

conducted a review of the activities of the three handlers during this period, including the incidents involving canine bites. CPD's Use of Force policies were reviewed with each officer and alternative methods of arrest were discussed with each officer. CPD will recalculate the bite ratios each month for all of the handlers in the Unit, to determine if any additional reviews are necessary.

### **3. Assessment**

#### **a. Canine Policy**

CPD's new Canine Policy complies with the MOA. Training on the policy is reviewed in Section VI. CPD's compliance in implementing these requirements is discussed below.

#### **b. Review of Sample Investigations**

The Monitor reviewed investigations of four canine bites that occurred during the 4<sup>th</sup> quarter of 2002 [see Chapter 4]. All four involved tracking apprehensions. We have not yet been provided with the investigation of a fifth canine bite from the 4<sup>th</sup> quarter 2002. There were two canine bites that occurred in the 1<sup>st</sup> quarter of 2003, but those investigations have not been completed and provided to the Monitor.

We do not draw definitive conclusions from our review because of the small number of bites, especially without also reviewing a sample of apprehensions where there were no bites, a task which we will undertake in the next quarter. However, several observations can be made.

In three of the four of the incidents, the canine bite was investigated by the same supervisor who authorized the deployment of the canine. This is contrary to the requirements of the MOA and of CPD policy. In two of these instances, the investigating supervisor was directly involved in the apprehension, in addition to authorizing the deployment. See Section III.B.3, below.

In two of the four apprehensions, there was no warning or canine announcement made either before or during the search. Section A.4 of the canine policy requires a loud and clear announcement when a canine team is deployed for tracking, unless the supervisor authorizing the deployment reasonably believes that the suspect is armed or the verbal warning will cause unnecessary danger to the officers. In one instance, the handler cited the belief that the suspect was armed as the reason for not using a canine announcement. There was no reason given in the second incident.

Three of the four canine bites involved suspects reported to be hiding from the police. In such cases, the handler should not allow a

bite if alternatives using a lower level of force reasonably could be expected to lead to the apprehension of the suspects. The importance of handler control is elevated in these situations. If the dog is too far out in front of the handler, the handler will likely not be able to prevent a canine bite. This gains even more relevance given the fact that in at least three of the incidents we have reviewed over the last two quarters, the person bitten was not the suspect officers thought they were pursuing.

The Monitor has discussed these issues with CPD officials. The Canine Unit will examine its practices and training regarding announcements for canine tracks, and develop a procedure for how and when to make those announcements. Where canine announcements are not feasible or appropriate, CPD will ensure that the reason no warning was given is fully explained in its investigations. CPD also will consider strategies for keeping tighter control of canines while on lead, such as recalling the dog when it gets too far out in front, and then letting the dog out again.

Finally, we note our belief that the investigations of canine bites could be more thorough. In several investigations, investigating supervisors did not ask questions about why there was no announcement; whether alternative means for apprehension were available other than a canine bite; how much time elapsed between any announcement and the canine bite; or about the handler's control of the dog, including recall of dog after the bite. Nor did they ask the subject about whether the canine was quickly recalled. While each investigation included photos of the suspects and their injuries, there are no photos of the scene or diagrams, nor documentation of any canvass for witnesses.

#### **D. Beanbag Shotguns [MOA ¶¶ 21-23]**

Beanbag shotguns are weapons that fire a small non-lethal beanbag round. They offer a non-deadly alternative to assist in apprehending violent individuals while maintaining officer safety. For example, beanbag shotguns are often used in situations where police officers are faced with mentally ill individuals who may have a weapon such as a knife. There were no incidents in which beanbag shotguns were used in the 4<sup>th</sup> quarter of 2002; there was one beanbag incident in the 1<sup>st</sup> quarter of 2003.

##### **1. Requirements**

The MOA requires CPD to revise its policies on the use of beanbag shotguns and forty millimeter foam rounds in the following manner:

- Clearly define terms
- Weapons only to be used to subdue or incapacitate subjects to

- prevent imminent physical harm to officers or others
- Prohibit the use of weapons for prevention of theft or minor vandalism
- Prohibit use of weapons against crowds, absent an ability to target a specific individual who poses an imminent threat of physical harm
- Advise officers that the use of the weapon may be inappropriate even if not using it allows the suspect to escape
- Require supervisory approval, absent exigent circumstances
- Continue CPD policy that limits simultaneous deployment of beanbag shotguns/foam rounds against a single individual
- Use of force reports will include the estimated distance between the officer and the subject
- Require verbal warnings, where feasible

## **2. Status**

As noted above, the CPD adopted a new Use of Force policy effective June 1, 2003. In that policy, CPD changed the criteria for use of beanbags to be consistent with the MOA provisions:

- The use of beanbag shotguns is now limited to subduing or incapacitating subjects to prevent imminent physical harm to the officer or others.
- The policy advises officers that use of the beanbag weapon may be inappropriate even in cases where not using it might allow the suspect to escape.

## **3. Assessment**

The Use of Force policy now complies with the MOA provisions regarding beanbag shotguns. In the next quarter, we will examine the training provided to supervisors, officers, and recruits regarding the new policy, and any incidents in which beanbags were used.

## **III. Incident Documentation, Investigation**

Proper management of a police agency involves the documentation, review and investigation of use of force, to ensure that officers are using force appropriately. This review also allows the department to analyze use of force incidents, trends and patterns to determine if any revisions to tactics, training or procedures are advisable.

### **A. Documentation [MOA ¶¶ 24-25]**

#### **1. Requirements**

- All uses of force are to be reported. The use of force form shall indicate each use of force and require evaluation of each use of force. Use of force reports will include the supervisor's and officer's narrative description, and the officer's audio taped statement.
- CPD will implement an automated data system allowing supervisors access to all use of force information.
- CPD will implement a Canine deployment form.
- If the gun pointing requirement is triggered under the Collaborative Agreement, data reported shall be included in the risk management system.

## **2. Status**

### **a. Use of Force Reporting**

Reporting and investigating use of force incidents was one of the final items resolved between the DOJ and the City of Cincinnati. The MOA, as initially agreed upon, required that all incidents now classified as uses of force under the MOA be investigated the way that the CPD has traditionally investigated what it considered to be a use of force: i.e., a supervisor was to be called to the scene and conduct an investigation, including taking taped statements from the subject of the use of force, the officer(s) who used force, witness officers, and any other witnesses. The supervisor would then complete a Use of Force report (Form 18). The City of Cincinnati requested a modification of these procedures, especially for lower levels of use of force, and the DOJ agreed to the modification. The modification for reporting lower levels of force will be implemented for a six month period, during which the Monitor will review the use-of-force reports. Should the Monitor's review determine that the new procedures raise concerns, the procedures will be revisited at that time.

The new procedures for reporting lower levels of use of force are outlined in an April 25, 2003, letter from City Solicitor Rita McNeil to the DOJ, and are reflected in the Use of Force Reporting chart contained in CPD's new Use of Force policy.

For the use of "hard hands" (leverage displacement, joint manipulation, pain compliance, pressure point tactics) and "takedowns," where there is neither an injury to the subject, a complaint of injury, nor an allegation of excessive force, the following procedure now applies:

- The officer is required to notify his or her supervisor of the incident.
- The officer must document the subject's resistance and the officer's actions in a narrative in the arrest report.
- The officer must complete a new form – Officer's Report of Non-Compliance.
- A supervisor must review the Officer's Report of Non-Compliance and provide written comments on the appropriateness of the officer's tactics.
- The Inspections Section will review the report for tactical errors, legal issues, policy and training issues, and issues relating to the supervisor's review of the report.

Where a "takedown" or use of "hard hands" does result in an injury, complaint of injury, or an allegation of excessive use of force, the regular reporting procedures apply: a supervisor must be summoned to the scene and conduct a use of force investigation, including taking taped statements.

The CPD Use of Force policy also describes the reporting requirements for other uses of force. For chemical spray, supervisors are to respond to the scene, conduct an investigation, and complete a use of force form (Form 18CI). Taped statements are required only if the chemical spray occurs after the person was restrained in handcuffs. For physical strikes or use of weapons (impact weapons, beanbag, foam round, taser, pepper-ball), supervisors must conduct an investigation including taped statements. For "serious uses of force," a term that is now defined in CPD's Use of Force policy, and for canine bites causing serious injury, IIS and the Criminal Investigation Section will respond to the scene and investigate.

#### **b. Use of Force Forms**

Our First Report noted a number of observations regarding the CPD's Use of Force forms. We suggested that the existing forms did not collect sufficient information for the chain of command to assess whether the use of force complied with CPD's policies and with the provisions of the MOA. We also expressed reservations about the "check boxes" for "Subject's Noncompliance" and "Subject's Pre-attack Posture." Third, we noted that the forms in some cases did not allow for the separate evaluation of different types of force used in the same incident.

In response to our Report, CPD requested that we provide them with recommendations for changes to the Use of Force forms. On May 7, 2003, we provided our recommendation to the City. On June 3, 2003, CPD provided the Monitor with revised use of force forms that

incorporate many of the Monitor's suggestions. Appendix 3 contains the Monitor's suggested changes to CPD's use of force forms.

### **3. Assessment**

The City and the DOJ have agreed on the CPD policy for reporting use of force incidents. The policy is thus in compliance. In future quarters, the Monitor Team will review CPD's training on the new requirements.

The Monitor Team has noted one anomaly regarding force reporting, which we have raised with CPD. The requirements in CPD's Use of Force policy for investigating the use of tasers are internally inconsistent. The use of force reporting chart requires taped statements for taser incidents, but section K.2 of the policy states that taped statements are not required. The two taser investigations we reviewed this quarter did not include taped statements. The MOA does not have an exception to the requirement for taped statement for incidents involving tasers, and the correspondence between the City and the DOJ also suggest that investigations for tasers will include taped statements. Therefore, the Monitor recommends that the Use of Force policy be amended to revise Procedure 12.545, section K.2 and confirm that taped statements are required for investigations involving the use of a taser.

With respect to an automated data system allowing supervisors access to all use of force information, CPD currently enters use of force data into an automated data base in the Inspections Section. However, the database is not accessible to all CPD supervisors. Supervisors will have access to this database when the CPD's Employee Tracking Solution (ETS) system comes on line. The City is in partial compliance with this requirement.

## **B. Investigation [MOA ¶¶ 26-31]**

### **1. Requirements**

- Officers to notify supervisor following any use of force, or allegation of excessive force. Supervisor to respond to scene. Incident not to be investigated by officer who used force or who authorized force.
- CPD supervisors will investigate each use of force incident, with evaluation of compliance with CPD policies and of tactics, including basis of any stop or seizure.
- IIS will respond to scene of all "serious uses of force" and all canine bites with serious injuries. Inspections Section will review all investigations of canine bites, beanbags, foam rounds and baton

uses.

- Investigators prohibited from asking leading questions. Investigators to consider all relevant evidence and make credibility determinations. No automatic preference for officer's statement over citizen's; nor discount statement of witness with connection to complainant. CPD to resolve material inconsistencies. CPD will train investigators on factors to consider in investigations.
- Investigators to ensure that all witness officers provide statement. Supervisors will ensure that reports list all officers involved or on scene, and document any medical treatment or refusal of medical care.
- Lieutenant or higher will review each investigation conducted by CPD supervisors and identify any deficiency and require corrections. CPD supervisors to be held accountable for quality of investigations. Appropriate non-disciplinary or disciplinary action will be taken if investigations are not thorough, properly adjudicated, or where appropriate corrective action is not recommended.

## **2. Status**

The new Use of Force policy adopted on June 1, 2003, addresses one of the concerns listed by the Monitor in our First Report. The policy now requires notice to a supervisor upon any allegation of excessive force. CPD also finalized its policy on Securing, Handling and Transporting Prisoners, Procedure 12.600, and published it in the Department Staff Notes on May 20, 2003. This procedure requires statements from all officers witnessing a use of force.

## **3. Assessment**

### **a. Policy**

Procedures 12.545 and 12.600 comply with the MOA provisions relating to investigation of use of force incidents. Our review of implementation is below.

### **b. Review of Sample Force Investigations**

We reviewed a sample of use of force investigations from the 4<sup>th</sup> quarter 2002 and the 1<sup>st</sup> quarter of 2003 involving physical use of force, tasers, chemical sprays and canine bites (see Chapter 4). We also requested additional files from the 1<sup>st</sup> quarter of 2003 that have not yet been provided.

The following are observations from our reviews:

- CPD officers are complying with the requirement to notify supervisors of force incidents, and supervisors are responding to the scene. Our review also indicates that supervisors are examining subjects for signs of injury and ensuring that needed medical attention is provided. We have not identified any instances where a need for medical attention was ignored.
- Supervisors are investigating and completing Use of Force reports (Form 18), and reviewing each incident for compliance with policy and evaluating the tactics of the officers.
- CPD has not always complied with the requirements of MOA ¶ 26, which states that supervisors involved in the use of force incident or authorizing the use of force shall not also investigate the incident. Several of the use of force investigations were conducted by supervisors who were involved in the use of force incident, or who authorized the use of force. The City notes that CPD recently adopted procedures reiterating the MOA requirement that investigating supervisors not have participated in the incident or authorized the use of force. The changes in policy, the City states, should resolve this issue in future quarters.
- As a general matter, we have found that the investigations have included a description of the facts and circumstances of the incident and a review of the basis for the initial stop or seizure.
- Investigators have not generally asked leading questions in an attempt to elicit information justifying the use of force. However, in some investigations, the extent of questioning is more limited than it should have been. Investigators did not ask follow-up questions of the subject or officers, and relevant areas of questioning were left unexplored.
- Generally, all officers witnessing force have been identified on the use of force reports and interviewed. However, witnesses to actions prior to the use of force (both officer and civilian witnesses) are often not interviewed. These interviews would have provided additional information regarding the tactics of the officers and the basis for the initial approach or stop.
- The MOA requires investigations of use of force to consider all relevant evidence. In some cases we reviewed, additional documentation would have been helpful. This includes photographs of officers, where the officers have been

injured; photos of the scene or a scene diagram; and medical records.<sup>7</sup>

We note another positive aspect of our review. Several investigations have included supplemental memos by the District Commander or a supervising Lieutenant. These reviews are often detailed and thoughtful, and indicate that the file has been sent back for additional investigation. They also document, where relevant, counseling of officers and supervisor on tactical issues, as well as discussions with investigating supervisors regarding appropriate investigation. Thus, our review indicates compliance with Paragraph 31 of the MOA.

### **C. Review of Critical Firearms [MOA ¶¶ 32-34]**

Firearm discharges are of specific concern to the community, and their careful review is crucial to the management of any police agency. Thus, the MOA includes special requirements for firearms discharges. There were no critical firearms discharges in the 4<sup>th</sup> quarter of 2002. In the 1<sup>st</sup> Quarter of 2003, there was one fatal firearms discharge, as well as two accidental firearms discharges.

#### **1. Requirements**

- Critical Firearms Discharges. CPD investigations will account for all shots, and locations of officers discharging their firearm. CPD will conduct appropriate ballistics or crime scene analysis, including gunshot residue or bullet trajectory tests.
- A Firearms Discharge Board (FDB) shall review all critical firearms discharges; review IIS and CIS investigation for policy compliance, tactical and training implications. The FDB will prepare a report to the Chief of Police. The FDB will determine (a) whether all uses of force during encounter were consistent with CPD policies and training; (b) whether the officer(s) used proper tactics; (c) whether lesser force alternatives reasonably were available.
- The policy for the FDB shall include: a review within 90 days from the end of the criminal investigation; FDB to act as quality control; authorize recommendations to the Chief of Police; require annual review for patterns, with findings to the Chief of Police.

#### **2. Status**

CPD's policy on firearms discharges, Procedure 12.550, was finalized and published in the Department Staff Notes on May 20, 2003.

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<sup>7</sup> Medical release forms and request for records are often included in the files, but the medical records themselves have not been included in any of the files we reviewed, nor is there documentation of whether copies of medical records have been released to CPD.

With the officer-involved shooting on Feb 9, 2003, and the closing of the criminal investigation of that case, IIS has initiated an administrative investigation of the shooting. A Firearms Discharge Board has been convened to review that investigation, and the recommendations of the Firearms Discharge Board are now pending with the Chief of Police. The two accidental firearms discharges are still being investigated administratively, and will be submitted to the Firearms Discharge Board when those investigations are completed.

### **3. Assessment**

CPD has created the FDB in compliance with the MOA and provided for its operation. In the next quarter, the Monitor will review the firearms discharge investigations and the work of the FDB.

## **IV. Citizen Complaint Process**

### **A. Openness of Complaint Process [MOA ¶¶ 35-38]**

#### **1. Requirements**

- Publicity program for complaint process
- Availability of complaint forms, informational brochure
- Complaints may be filed in any form; intake officers not to opine on veracity or mental capacity. Complaint form completed for every complaint
- Every complaint to be resolved in writing
- Each complaint gets a unique identifier that will be provided to the complainant, and each complaint is tracked by the type of complaint
- Copies of allegations filed with the Citizen's Police Review Panel (CPRP), the Office of Municipal Investigations (OMI), CCA, Human Relations Commission referred to IIS within 5 days

#### **2. Status**

In its May 12, 2003, Status Report, CPD reports the following activities to publicize the complaint process:

- Citizen complaint forms have been prominently placed in the lobby of the Internal Investigations Section (IIS).
- Citizen complaint forms are taken to each Citizen Complaint Authority (CCA) meeting and a member of the IIS staff is present to take any complaints citizens wish to file.
- The IIS Commander was a panelist at a forum hosted by the Women's City Club on citizen complaints and the role of CPD and the CCA, scheduled for May 14, 2003.

- An overview of the Citizen Feedback Program for the first quarter of 2003 was published in the Department Staff Notes dated April 29, 2003.
- CPD has designed a process to track the availability of forms. Implementation of these processes will be achieved by making revisions to Procedures 12.170 (Civil Disturbance Operation Procedure), 12.190 (Police Substations), and 15.100 (Citizen Complaints). Those revisions are currently in progress.

In addition, CPD has implemented an inspection process to ensure that CPD vehicles are equipped with a supply of complaint forms and informational materials. The Vehicle Inspection Report (Form 427) documents the bi-weekly inspection and inventory process.

With respect to documenting and tracking complaints, CPD enters the complaint information into a database maintained by IIS when the complaint is received. Each complaint is assigned a unique tracking number, as required by MOA ¶137. In addition, IIS has developed a case tracking cover sheet, which will be attached to each case when assigned to the investigator. This sheet will document the complainant notification information, including whether the complainant was provided the complaint tracking number. IIS has also distributed to all units a standardized cover sheet for all CCRP complaints as well. To facilitate the sharing of complaint information, IIS and CCA are currently working on enhancing the IIS Microsoft Access database. Once completed, both investigative bodies will have ready access to the other's complaint information.

### **3. Assessment**

CPD's policies are in compliance with these provisions of the MOA. Our review of a sample of complaint investigations files indicates that CPD is implementing these provisions, with only a few exceptions.

Our review did not reveal barriers to the filing of complaints. There were only two incidents where the complainant alleged he or she was discouraged from filing a complaint. In one case, a complainant alleged that a CPD officer discouraged a complaint and was rude over the phone to the complainant. The complainant called a second time to complain about the call taker, and the allegation was investigated properly. The officer was disciplined for rude language in taking the complaint. In the second case, a complainant was given a feedback form when he asked for a complaint form. The officer was counseled on the proper procedures for handling complaints.

A second issue that arose from our review was how CPD district supervisors handle use of force investigations where the subject of the

use of force does not affirmatively make a complaint or allegation of excessive force, but does state that he or she complied with the officer's commands (and thus that the force used was unnecessary.) In several situations, the supervisor properly generated a complaint form and prepared a supplement to the Use of Force report (Form 18) that addressed the allegations. In a number of others, however, the supervisor responded to the subject's statements in the Use of Force report, but did not prepare a complaint form.

## **B. Investigation of Complaints [MOA ¶¶ 39-50]**

### **1. Requirements**

- Preponderance of evidence standard; City will develop appropriate training
- Officers who used spray or force, or authorized the conduct at issue, may not investigate the incident
- All relevant evidence to be considered
- No automatic preference of officer's statements; investigators will attempt to resolve inconsistencies; no leading questions; all officers on the scene are required to provide a statement
- All relevant police activity, including each use of force, will be investigated; searches and seizures will be evaluated; investigations are not to be closed simply because a complaint has been withdrawn
- Conviction of the complainant will not be used as evidence of the appropriateness of the action of the CPD officer
- Complainant to be kept informed
- IIS to investigate complaints of force, pointing firearms, searches, discrimination
- Citizen Complaint Resolution Process (CCRP) complaints will be fully investigated
- CCRP complaints will be investigated by chain of command, with report. District or unit commander will evaluate investigation
- For IIS Investigations:
  - a. tape all interviews with complainants, involved officers, and witnesses
  - b. interviews at convenient times
  - c. prohibit group interviews
  - d. notify supervisors of complaints
  - e. interview all appropriate CPD officers, including supervisors
  - f. collect and analyze all appropriate evidence, canvass scene for witnesses, obtain medical records
  - g. identify material inconsistencies
- Report on investigation to include a summary, proposed findings and analysis
- Investigation to be complete within 90 days, absent exceptional

circumstances.

## **2. Status**

In our First Report, we noted a concern regarding how complaints are allocated between IIS and Patrol supervisors in the field. The MOA requires that IIS make the determination of whether a complaint should be handled through the Citizen Complaint Resolution Process (CCRP) by a district supervisor, or whether the seriousness of the complaint requires that it be investigated by IIS. The language of CPD's policy on citizen complaints, Procedure 15.100, instead states that "the district or unit commander will ... make the final determination of how the complaint is routed."

In a meeting with the Monitor this quarter, CPD officials clarified that there are additional steps to the assignment process that are not reflected in Procedure 15.100. When a resident makes a complaint at a District station or to a patrol officer, a citizen complaint form is prepared. While a district supervisor will initially determine how the complaint will be routed, a copy of the complaint form is sent to IIS and to the Administrative Bureau Commander within 48 hours of being taken. IIS then reviews the assignment of the complaint and can reassign the complaint to an IIS investigator if appropriate. The Administrative Bureau Commander has the final say over how the complaint will be investigated. According to CPD, Procedure 15.100 will be revised to reflect this process.

A second area of concern discussed in our First Report was the fact that the investigative standards required by the MOA were not included in either CPD's complaint procedures or IIS's SOPs. In its May 12, 2003 Status Report, the City reports that it has taken the following steps to address this concern:

- IIS standard operating procedures #103.20, Investigator Duties, and #104.12, Investigation of Complaint, have been revised to specifically delineate investigator and case investigation duties. These new SOPs, in draft form, are attached as appendices to the City's May 12 Status Report.
- IIS investigators have attended the Reid Basic and Advanced Interview and Interrogation courses. Ten out of the eleven unit investigators have attended the Internal Investigations 40-hour course offered by the Institute for Police Technology and Management. The final member will attend that course later this year. Various unit members have also attended additional training seminars on internal investigation.

### **3. Assessment**

#### **a. Policies**

The City is in partial compliance with these MOA requirements. CPD's Citizen Complaint Procedures and IIS SOPs incorporate most of the requirements of the MOA. If CPD revises Procedure 15.100 as proposed, and finalizes the draft IIS SOPs included in its Status Report, its policies would comply with the requirements of the MOA provisions.

#### **b. Review of Sample Complaint Investigations**

The Monitor Team reviewed complete IIS complaint files from the 3<sup>rd</sup> quarter of 2002 (including tapes); IIS files from the 4<sup>th</sup> quarter of 2002 (some without tapes); and CCRP files from the 4<sup>th</sup> quarter of 2002 and the 1<sup>st</sup> quarter of 2003. Summaries of this review are contained in Chapter 4.

We found that CPD properly allocated the complaints between IIS and the CCRP process; there were no serious misconduct complaints investigated through the CCRP process. There was only one CCRP case that involved an allegation of excessive use of force. The investigations also were generally completed within 90 days.

For the most part, we found the complaint investigations to be balanced. IIS investigations included taped statements of witnesses and officers. With some investigations, however, we noted concerns regarding the completeness of the investigation, and whether "all relevant evidence" was considered. There were other investigations where the investigator did not make sufficient efforts to make credibility determinations and resolve inconsistencies between the complainant's and officer's versions of events, but instead recommended a finding of "not sustained" because the versions differed. We will continue our review of complaint investigations files, and in future quarters may return files to CPD for additional investigation if we believe it appropriate to do so.

One aspect of the complaint investigation process that raises our concern is the handling of complaints of excessive force when those complaints arise during the District supervisor's force investigation. As noted above, if the subject of a use of force alleges that the force used was excessive or unnecessary, the District supervisor investigating the use of force should complete a complaint form (Form 648). The current CPD practice is for the District supervisor to complete the force investigation and Use of Force Report (Form 18) and prepare a

supplemental memo addressing the subject's allegations, including recommended findings. This memo and the accompanying investigation is then reviewed up the chain of command through the Patrol Bureau and approved by the Chief of Police before it is sent to IIS. At that point, IIS assigns the file a complaint investigation number for tracking purposes, and then immediately closes the file based on the District supervisor's investigation and the review by the Patrol Bureau and the Chief of Police. No additional review or investigation by IIS is conducted.<sup>8</sup> It is also unclear whether the complainant (the subject of the use of force) is kept informed of the status of the investigation or notified of its outcome, as required by MOA ¶43. Not only does this process mean that IIS is not investigating excessive force complaints, it also appears to result in significant delays before CCA is notified of these complaints (see Section IV.D.2 below).

We also identified a small number of complaint investigations where, although the allegations made in the complaint appear to have been properly handled, other apparent policy violations (not originally alleged in the complaint) were not identified and addressed.

### **C. Adjudication of Complaints [MOA ¶¶44-45]**

#### **1. Requirements**

- Every allegation to be resolved with one of four determinations – unfounded, sustained, exonerated, not sustained
- Unit commanders to evaluate each investigation to identify problems and training needs

#### **2. Status**

In its May 12, 2003, Status Report, the City reiterates that the determination of whether an officer acted in accordance with CPD policy and procedures is a separate question from whether the complainant participates in, or was satisfied by, a resolution meeting between the officer and the complainant as part of the CCRP process. According to the City:

Investigation and disposition of the complaint occurs before the complainant is asked to engage in the resolution meeting process. If the officer's behavior is found not to have met Department standards, the investigating supervisor, in accordance with the Disciplinary Matrix, has the ability to initiate the following courses of action: oral counseling; written counseling; corrective action;

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<sup>8</sup> Indeed, because the original file of the use of force investigation is retained in the Inspections Section, the file that goes to IIS does not contain the taped interviews, photos, or MVR tapes if any. It is not clear whether the IIS file contains the Inspections review of the investigation, if any.

request initiation of the disciplinary process; if applicable, request reassignment of the matter to IIS for investigation and disposition.

CPD also conducted additional training on the CCRP process for field supervisors at District staff meetings. According to the May 12 Status Report, this review focused on CPD's "commitment to conduct thorough inquiries, properly adjudicate, and if necessary, take appropriate action, when investigating incidents involving alleged misconduct."

The City has also agreed to revise the CCRP process so that the MOA complaint closure terms [sustained, not sustained, unfounded, exonerated] will be applied to complaints adjudicated through the CCRP process. The investigating supervisor will continue to determine whether the officer's actions "met" or "didn't meet" CPD standards. However, the Bureau Commander reviewing the CCRP file will determine which of the closure terms is appropriate prior to the file being sent to the Police Chief for final review. Procedure 15.100, Citizen Complaints, will be revised to reflect this change

### **3. Assessment**

The City will be in compliance with these provisions when it revises its procedures as described above.

Our review of CCRP files revealed that CPD district supervisors were complying with the MOA provisions requiring that CCRP cases be fully investigated; that a determination be made of the appropriateness of the officer's actions; and that the investigation be concluded prior to, and be independent of, the resolution meeting.

### **D. Investigations by the CCA [MOA ¶¶ 51-56]**

As stated in the May 2003 CCA Policies and Guidelines, the mission of the Citizens Complaint Authority (CCA) "is to investigate allegations of misconduct by police officers, including but not limited to shots fired, deaths in custody and major uses of force. The CCA shall review and resolve all citizen complaints in a fair, impartial, efficient, and timely manner. The CCA shall act independently, consistent with its duties and responsibilities with the ultimate goal of addressing citizen concerns and improving citizen perceptions of quality police service in the City of Cincinnati."

The CCA is an independent city agency directed by a board of citizens and staffed by a professional executive director and a minimum of five professional investigators. CCA investigations are conducted independent of the police department and the results of its investigations and recommendations are forwarded to the City Manager at the same

time as those of the Chief of Police.

## **1. Requirements**

- CCA to assume all of the responsibilities of the OMI within 120 days from the date of the agreement
- Copies of all complaints, no matter with which office they are filed, will be directed to the CCA. The CCA is to have jurisdiction over complaints of excessive force, pointing firearms, unreasonable search or seizure, or discrimination. CCA shall have sufficient number of investigators, with a minimum of five
- CPD officers must answer CCA questions. CCA director to have access to CPD files and records
- City to develop procedures to coordinate parallel investigations
- City will take appropriate action on CCA completed investigations
- CCA will complete investigations within 90 days. City Manager to take appropriate action within 30 days of CCA completion of investigation

## **2. Status**

The CCA began initiating independent investigation of all complaints within its jurisdiction on January 6, 2003. It has also completed most of the outstanding citizen complaints previously being investigated by the Office of Municipal Investigations (OMI). In May 2003, the CCA adopted Policies and Guidelines governing its operations.

According to the CCA, between January 1 and May 31, 2003, CCA received 221 complaints. Of these, 115 were assigned to a CCA investigator. Of these 115 complaints, 49 involve allegations of excessive force. Eleven of the 49 cases have been completed and submitted to the CCA Board for summary disposition. There has been one request for a CCA Board hearing, but the Board denied the request. The Board approved all eleven of the Executive Director's recommended findings. So far, seven of these cases have been submitted to the City Manager for her review. The City Manager agreed with the CCA Executive Director's recommendations in six cases, and the seventh is still under review. So far, there have not been any cases where the CCA has recommended sustaining an allegation in a complaint where the CPD concluded its investigation with an exonerated, unfounded or not sustained finding.<sup>9</sup>

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<sup>9</sup> There have been two complaints where the CCA recommended a "not sustained" finding and the CPD recommended an "unfounded" finding. In those cases, the City Manager accepted the CCA's recommended finding.

Four full time, permanent CCA investigators were put in place by April 7, 2003. CCA has retained two acting investigators until full staffing levels are reached. CCA anticipated hiring a fifth investigator by July 1, 2003.

The CCA Executive Director has established a regular meeting session with the Commander of IIS, as designated by the Police Chief, to review and discuss case flow issues to assure that complaints, excluding criminal investigations, are directed to the CCA in a timely manner. For many of the excessive force complaints, however, because IIS does not receive the complaint file until after the field investigation has been completed and reviewed by the Patrol Bureau and the Chief, the complaint has not been referred to the CCA until several weeks after it was filed. This has created difficulty for the CCA in timely investigating the complaint and in completing its investigation within 90 days. The City reports that CPD is working with CCA to develop a protocol for complaints that will be concurrently investigated both internally and by the CPD.

### **3. Assessment**

The City is in compliance with the provisions of the MOA that require the creation of the CCA. The CCA Policies and Guidelines also are consistent with the MOA requirements relating to investigating complaints.

There is still ambiguity regarding the 90 day provision for completion of CCA investigations and when a CCA investigation ought to commence, however. For example, the MOA and CA state that CCA will complete its investigation “within 90 days of the filing of the complaint,” whereas the CCA Policies and Guidelines state that CCA will complete its investigation “within 90 days of its receipt of the complaint from a complaining citizen or the CPD.” Where the CPD delays in providing CCA with the complaint, the difference between the two 90 day periods could be substantial. Also, as discussed more fully in Chapter 3, Section V, of this Report, there is still some controversy over CCA’s ability to begin an investigation, and gain access to documents from the CPD and the county prosecutor, in cases where a criminal investigation into the officer’s conduct is also being conducted.

In the next quarter, we will review a sample of CCA investigations to determine if they comply with the investigative standards of the MOA.

## **V. Management and Supervision**

### **A. Risk Management [MOA ¶¶ 57-64]**

The MOA requires the City to take a variety of measures to better

identify and manage at-risk behavior of officers. The principal aspect of the management and supervision section of the MOA is a computerized system (the Risk Management System) to track data on police activities.

## **1. Requirements**

Under the MOA, CPD is required to enhance and expand its risk management system by creating a new “computerized, relational database.” CPD is to use the data in this system “to promote civil rights and best practices, manage risk and liability, and evaluate the performance of CPD officers.”

- The information in the Risk Management System is to include:
  - uses of force
  - canine bite ratio
  - canisters of chemical spray used
  - injuries to prisoners
  - resisting arrest, assault on a police officer, and obstruction charges, where a use of force has occurred
  - critical firearms discharges
  - complaints, dispositions
  - criminal and civil proceedings against officers
  - vehicle pursuits
  - pointing of firearms (if added)
  - disciplinary actions
- The data in the RMS I also include identifying information and demographics for officers and civilians
- CPD must develop a plan for inputting historic data now in existing databases, within 90 days (Data Input Plan)
- CPD must develop a protocol for using the risk management system, subject to DOJ approval, within 90 days
- The protocol will include the following elements:
  - data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation, and audit
  - the system will generate monthly reports
  - CPD commanders, managers and supervisors must review, at least quarterly, system reports and analyze officer, supervisor, and unit activity
  - CPD commanders and managers must initiate intervention for officers, supervisors or units, based on appropriate “activity and patter assessment” of the information in the

## RMS

- intervention options include counseling, training, action plans; all interventions must be documented in writing and entered into the system
  - the data in system must be accessible to CPD commanders, managers and supervisors; they must review records of officers transferred into their units
  - CPD will conduct quarterly reviews of performance citywide
- Schedule for system development and implementation:
    - 90 days from April 12, 2002, issuance of RFP, with DOJ approval
    - 210 days from RFP, selection of contractor
    - 12 months from selection of contractor, beta version ready for testing
    - 18 months from selection of contractor, computer program and hardware to be “operational and fully implemented.”

## **2. Status**

On May 30, 2003, the City of Cincinnati finalized and signed a contract and statement of work with MEGG Associates (dba CRISNet) for the risk management system called for in the MOA. A copy of the draft contract and statement of work was provided to the Monitoring Team for its review and was subsequently discussed during a conference call on May 2, 2003. Comments and questions from the Monitoring Team were addressed and certain modifications were made to the contract. According to the City's May 12, 2003, Status Report, the project kick-off will take place on June 2, 2003.

The Statement of Work contains some of the information required in a “data input plan” and the detailed “protocol” set out in the MOA. However, the City has not yet submitted a data input plan or protocol to the Department of Justice for approval, as required by the MOA. According to the City's Status Report, “CPD will begin to work on the ‘Data Input Plan’ as well as a detailed ‘Protocol’ as the solution is being developed and implemented.”

While the City is working to implement the Employee Tracking Solution (ETS), CPD is using its current databases as part of a Department Risk Management System, or DRMS. The Inspections Section prepares a monthly risk management report identifying individual officers based on a matrix of factors. Officers identified by the system are subject to an administrative review by their supervisors and an action plan. The action plan can include temporary reassignment with an experienced officer, tactical review training at the Academy, a conference with the police psychologist, counseling, monitoring by

supervisors, or no further action. The matrix covers weapons discharges, use of force, vehicle pursuits, injury to prisoners, and citizen complaints. If an officer garners over 20 points or more in a 12 month period, he or she is put on the list for review. Officers can also be put on the list for a spot review by supervisors even if they have not accumulated 20 points.

### **3. Assessment**

The City is in partial compliance with these requirements. It has issued an RFP for the risk management system and selected a contractor. The statement of work for the contract covers the requirements of the system as laid out by the MOA. However, the City has not yet obtained DOJ approval for a protocol describing how the system will operate, what reports it will generate, how supervisors will use the system, what thresholds will be used for identifying officers, supervisors or units, and what actions will be taken when officers, supervisors or units are identified. The City needs to submit the protocol to the DOJ for its approval. In addition, the City has not yet obtained approval for a data input plan for entering into the new system historical data contained in the City's current databases. The Monitor will work with CPD and the Department of Justice to set a reasonable timeframe in the next quarter for the submission of these documents to the DOJ.

The MOA also requires CPD to use its existing databases and resources to the fullest extent possible, prior to the creation of its new risk management system, to identify patterns of conduct by CPD officers or groups of officers. Based on our review of the DRMS system, it appears that the CPD is complying with this requirement.

## **B. Audit procedures [MOA ¶ 67-69]**

### **1. Requirements**

- CPD to develop a protocol for audits
- Regular audits of the citizen complaint process and Integrity audits of IIS investigations
- Meetings with prosecutors to identify officer performance issues

### **2. Status**

CPD has assigned responsibility for audits under the MOA to the Inspections Section. The Inspections Section has adopted new SOPs 1.54 and 2.42 for quarterly audits of the citizen complaint process, semi-annual audits of IIS investigations, and bi-monthly meetings with local prosecutors.

Pursuant to the Inspections SOP, the IIS audit will include the

review of one completed case of each investigator from the previous six month period. At least one case will be an excessive force case and one case will be a criminal complaint allegation. The review will include an assessment of the reliability and completeness of IIS's canvassing and interviewing of witnesses; preservation of the incident scene; analysis of the scene, if applicable; and the appropriateness of the IIS conclusions.

In January 2003, Inspections conducted its second semi-annual audit of IIS investigations. The audit examined nine investigations, including two excessive force cases. The audit found that "all documents, taped interviews and final reports were in compliance" with CPD standards and procedures. The audit report contained no details other than this conclusion. The next IIS audit is scheduled for July, 2003.

CCRP audits are to review: each District's or Section's database,, matching the cases in the database with hard copies; random selection from each district, section or unit of 30% of the cases closed through complainant participation and 30% from cases closed without participation. The case review will examine: whether all documents required are in file; whether documents are complete; whether case was appropriate for CCRP process. The auditor also contacts the complainant to determine if the complainant participated, was given an opportunity to express his or her views, and was satisfied with the results of the meeting. The quarterly CCRP audit was scheduled to be completed by April 10, 2003, and the Inspections Section issued its findings to the Chief of Police on April 16, 2003.

The CPD has also adopted a policy requiring bi-monthly meetings between the Inspections Section and members of the County Prosecutor's office and the City Prosecutor's and Solicitor's offices. Members of the Inspections Section met with local prosecutors on February 12, 2003 and April 1, 2003, and documented the meetings in memos.

### **3. Assessment**

The City has partially complied with these requirements. The Inspections Section has established appropriate procedures for conducting audits, and has prepared two so far. To assess the completeness of the audits of IIS investigations, the Monitor Team will review some of the same investigative files reviewed by the Inspections auditor.

With respect to meetings with the Prosecutor's office, the CPD did hold the required meetings, but the discussions at those meetings

appeared to be limited to an assessment of officer case preparation (rather than a broader discussion of officer performance, including accountability issues). Also, where one of the assistant prosecutors did raise a concern regarding the case preparation for one officer, CPD initiated a CCRP resolution meeting between the prosecutor and the officer.

## **C. Video Cameras [MOA ¶¶ 70-72]**

### **1. Requirements**

The MOA requires that all patrol cars be equipped with mobile video recorders (MVR).

- Mandatory activation of MVR for all traffic stops
- Recording of consent to search, deployment of drug sniffing canines, and vehicle searches
- Recording of violent prisoner transport, where possible
- Supervisors to review all tapes where there are injuries to prisoners, uses of force, vehicle pursuits, citizen complaints
- CPD to retain and preserve tapes for 90 days, or as long as investigation is open
- If stop is not recorded, officer to notify shift supervisor
- Periodic random reviews of videotapes for training and integrity purposes; supervisors are to keep a log book of these reviews
- Random surveys of equipment

### **2. Status**

CPD has made revisions in the following procedures to meet the MVR requirements of the MOA

- Procedure 12.205 -- Traffic Stops
- Procedure 12.535 -- Emergency Operation of Police Vehicles and Pursuit Driving
- Procedure 12.537 -- Mobile Video Recording Equipment

These policies require CPD officers to activate the MVR cameras in all traffic stops and pursuits and, where practical, for incidents in which the prisoner being transported is being violent. These policies also require supervisors to review tapes in incidents of injuries to prisoners, use of force, vehicle pursuits and citizen complaints.

Procedure 12.537 standardizes the review process. The relief Officer in Charge (OIC) is to randomly review tapes twice per week and note these reviews in his or her daily rounds. All supervisors are to conduct random reviews and document those reviews in the Mobile Video

Recorder logbook.

Currently, approximately two thirds of CPD's cars are equipped with MVR cameras. Although plans to equip the remaining third of the fleet with cameras have been considered, advances in the camera technology have caused CPD to reevaluate the options available. Digital technology promises significant improvement in the following areas: image clarity; range of camera angles; durability; storage retrieval. With digital recording, it would also be possible to attach the image electronically to the related incident report, once the ETS system is put in place. Therefore, according to the City's Status Report, as resources become available, CPD will look toward equipping the fleet with digital technology.

Although not all CPD vehicles have camera equipment, Procedure 12.537 provides that camera-equipped vehicles are fielded whenever possible:

*D.1.d. [All District supervisors will] Assign police vehicles with faulty MVR equipment only as a last resort.*

*D.1.d.2 Supervisors will note in their rounds why equipment without functioning MVR equipment was used.*

### **3. Assessment**

The City is in partial compliance with these provisions. The required policies are in place.

The Monitor will review with CPD plans to fully equip the remainder of cars. We will work with the City to establish a date by which it will decide whether to move to digital camera. We will also assess whether supervisors are reviewing MVR tapes as part of pursuit, complaint, and force investigations, and whether the MVR cameras in patrol cars are kept in working order.

## **D. Police Communications Section [MOA ¶¶ 73-74]**

### **1. Requirements**

- City to provide resources for Police Communications Section's technology
- Written protocol or checklists to guide PCS operators

### **2. Status**

As part of its plans to upgrade technology in the CPD, Cincinnati plans to implement an 800 MHz communications System, replace its 911 phone system, and replace its Computer Aided Dispatch (CAD) system. In addition, CPD has developed a Call Takers Response Guide for Communications personnel. The guide describes the proper procedures and protocol for handling various types of reported incidents.

Since the Monitor's First Report, CPD has taken further steps to upgrade police communications technology.

- Motorola is in the process of completing the infrastructure necessary to support a new radio system. The new system is projected to come on line during the third quarter of 2004.
- Replacement of the current 911 phone system with a state of the art computer-based system is currently underway. An RFP was issued review of the system requirements by a selection committee of police and fire communications personnel. The selection committee chose Cincinnati Bell/Palladium as the vendor. On March 26, 2003, the Police Department signed a contract with the selected vendor. The City has allocated \$650,017.42 towards this project.
- The Police Department has requested City funds to upgrade the current CAD system. The City has placed the CAD replacement on the Capital Improvement Program and has allocated \$2,492,200 over three years beginning in 2003. Communications Section is currently researching CAD replacement technology. The CAD RFP will be sent out in conjunction with CPD's Records Management System RFP later this year.

### **3. Assessment**

The city is in compliance with these MOA provisions.

## **E. Discipline [MOA ¶ 75-76]**

### **1. Requirements**

- CPD to revise disciplinary matrix to increase penalties for serious misconduct violations, such as excessive use of force and discrimination
- Where matrix indicates discipline, it should be imposed absent exceptional circumstances. CPD shall also consider non-disciplinary corrective action, even where discipline is imposed

## **2. Status**

As noted in the Monitor's First Report, CPD revised its disciplinary matrix to comply with the MOA. In addition, CPD recently has created the position of Disciplinary Advocate. The Disciplinary Advocate is a lieutenant responsible for monitoring and reviewing the overall effectiveness, efficiency and fairness of discipline and corrective action taken within the Department.

## **3. Assessment**

The disciplinary matrix adopted by CPD complies with the MOA. In future quarters we will evaluate the discipline actually imposed to assess implementation of the MOA provision. In doing so, we hope to work closely with CPD's Disciplinary Advocate.

## **VI. Training**

### **A. Use of Force—Management Oversight and Curriculum [MOA ¶¶ 77-81]**

#### **1. Requirements**

The MOA requires the CPD to coordinate and oversee all use of force training to ensure that it complies with applicable laws and CPD policies. More specifically, the Academy Director is designated as being responsible for the quality of this training, the development of the curricula, the selection and training of instructors and trainers, establishing evaluation procedures, and conducting regular (semi-annual) assessments to ensure that the training remains responsive to the organization's needs. Annual use of force training must be provided to all sworn officers, supervisors and managers.

#### **2. Status**

According to the City's May 12th Status Report and interviews with staff, the Director of the Police Academy, the Assistant Director of the Police Academy and Police Academy supervisors regularly review all training. The Training Committee members also discuss future training needs and the training staff are responsible for responding to mandates, legislative changes and new court decisions. All use of force training is pre-approved by the Academy Director and the Police Chief. Academy staff also monitors the training to ensure compliance with relevant laws and CPD policies.

The Ohio Peace Officer Training Academy (OPOTA) training standards, as well as requirements for instructors, can be found in the

State Administrative Code 109:2-1-06(A) and (B). All OPOTA certified instructors are required to complete a basic 40-hour Instructor's Course. In addition to the basic course, specialty courses may be required based on areas of expertise or unique needs. For example, an OPOTA certified Firearms Instructor would have to complete the basic 40-hour course plus an additional 32-hour course in firearms training.

Police Academy instructors are selected as the need arises through a competitive process that involves a review of their experience, supervisory ratings, background examination and a personal interview. Once selected, all members of the training staff are required to complete the necessary OPOTA courses and any other training deemed necessary.

The CPD Curriculum Committee conducted the most recent review of the training curriculum on January 7, 2003. Partial minutes of the meeting were provided to the Monitor Team.

Training in the use of force is provided beginning with the Basic Academy. The CPD updates and reinforces this training through in-service training courses, roll call training and other training activities. This training covers both general and specific issues related to the use of force. The use of force policy is also reviewed in concert with the firearms training that is provided. Decision making in training is emphasized as part of scenario-based reviews during roll call training and this is also an integral part of the FATS training. The Monitor Team observed use of force training at the Basic Academy and found that the training is consistent with the the use of force continuum and use of force model contained in the MOA and CPD's Use of Force policy. The training on use of chemical spray also was consistent with the MOA provisions.

Fourth Amendment requirements are incorporated into the written policy and are reinforced in discussions related to the roll call scenarios. The FATS training provides interactive exercises in use of force. Proper usage of chemical spray is also discussed in roll call training and is being addressed during firearms training. De-escalation techniques, including those listed in the Agreement, have been incorporated into the Department's Use of Force policy.

In 2002, the Police Academy began providing additional training on vehicle stops that includes extracting subjects from vehicles. Threat assessment is reviewed as part of the roll call training program and reinforced in FATS training. Scenarios dealing with the mentally ill are also included in the roll call training program. Factors affecting the initiation or continuation of pursuits are also being reinforced in the roll call training program.

### **3. Assessment**

The CPD has made progress in this area and is in partial compliance with ¶¶77-81. The Use of Force Policy is now in compliance with the MOA. CPD's training now needs to be revised to address the changes that have recently been made to the policy, especially with respect to reporting use of force incidents. The CPD also should establish a formal method and procedures by which they can identify and assess use of force training to ensure the training provided is responsive to the needs of the officers being trained. CPD must also establish a method and process for evaluating all training curriculum and procedures. The Monitor Team has reviewed documents and training activities that support the progress cited by the CPD in the May 12<sup>th</sup> Status Report. The Team will continue to observe classroom instruction and interview students in subsequent quarters to validate CPD's progress.

## **B. Handling Citizen Complaints [MOA ¶82]**

### **1. Requirements**

The MOA requires the CPD to provide training on the handling of citizen complaints for all officers charged with accepting these complaints. The training must emphasize interpersonal skills so that citizen concerns and fears are treated seriously and respectfully. This training must address the roles of the CCRP, IIS, CCA and CPRP so that complaint takers know how and where to make referrals. For the supervisors who investigate and determine outcomes of citizen complaints, their training must include how to establish appropriate burdens of proof and evaluate factors related to establishing complainant and witness credibility. The objective is to ensure that their recommendations regarding the disposition of complaints are unbiased, uniform, and legally appropriate.

### **2. Status**

Training in the handling of citizen complaints is provided as part of new supervisors' training, and lesson plans have been developed in support of this. The City's May 12 Status Report stated that a presentation from CCA personnel was included in the 2003 New Supervisor's Training Program that was conducted in January 2003. However, the training agenda provided to the Monitor Team did not reflect this and no lesson plan was found in the training files that were supplied to the Monitor Team that would support this statement.

Recruit training does include a review of citizen complaints, and staff from IIS conduct that training. Although the CCA was not in existence at the time of the last recruit training, a presentation by CCA is scheduled to be included in the upcoming recruit class.

### **3. Assessment**

The CPD has not yet fully complied with this requirement. The Monitor Team will observe future training and/or interview students who attend the New Supervisor's Training Program in subsequent quarters to validate that a documented plan for training has been fully implemented.

## **C. Leadership/Command Accountability [MOA ¶83]**

### **1. Requirements**

The MOA requires that CPD Supervisors will continue to receive training in leadership, command accountability and techniques designed to promote proper police practices. Within 30 days of assuming supervisory responsibilities, all CPD sergeants will receive this training, and it will be made part of the annual in-service training. This requirement acknowledges the important role leaders at all supervisory levels play in ensuring that appropriate demeanor, behaviors, and tactics are used in the operations of the agency.

### **2. Status**

CPD Supervisor's Training is provided prior to or immediately after promotion. CPD also sends supervisors to various police command and leadership schools outside the CPD. These programs include: Southern Police Institute; Federal Bureau of Investigation National Academy; Police Executive Leadership College; and Northwestern University's School of Police Staff and Command.

The Monitor was provided with a list of promotions to sergeant since January 1, 2002, with the dates for promotions and the dates for supervisory training. All officers promoted to sergeant in the last quarter received supervisor's training prior to their promotion or within 30 days after their promotion.

### **3. Assessment**

The CPD is complying with the requirement to provide leadership and supervisory training for new supervisors. There is also a requirement to provide ongoing, annual in-service training in this area. That requirement must be monitored on an ongoing basis to ensure continuing compliance.

## **D. Canine Training [MOA ¶84]**

### **1. Requirements**

The MOA requires the CPD to modify and augment its training program. This includes the complete development and implementation of a canine training curricula and lesson plans that identify goals, objectives and the mission of the Canine Unit specified in the MOA. Formal training on an annual basis for all canines, handlers, and supervisors is also required, as is annual re-certification and periodic refresher training with de-certification resulting when the requirements are not met. Within 180 days of the MOA, the CPD was required to certify all in-house canine trainers.

## **2. Status**

In its May 12<sup>th</sup> Status Report, the CPD outlined the training requirements that are in place for canine trainers:

- Trainers must have been a canine handler for a minimum of five years and have graduated from a police canine course.
- Trainers must be a member of the United States Police Canine Association (USPCA).
- Trainer standards must meet all local and area requirements and conform to the standards set forth by the USPCA.

Additionally, the standards required of canine handlers require:

- Recertification every two years by the State of Ohio and annually by the USPCA
- Regular In-Service Training and maintenance of corresponding training logs

CPD anticipates having one USPCA Level 1 trainer and two USPCA Certified Regional Trainers in the Canine Unit.

## **3. Assessment**

CPD is in partial compliance with these requirements. Based on our review to date, it appears that CPD has developed a canine training program that meets the general criteria in the MOA for an improved handler controlled alert methodology. CPD also asserts that the Canine Unit has certified its trainers as required by the MOA. What continues to be needed is the development of training specifically to address those aspects of canine handling that have been raised by the Monitor's reports: in particular, canine announcements and handler control during running apprehensions and tracks, consistent with the CPD's new canine policy.

### **E. Scenario Based Training [MOA ¶85]**

## **1. Requirements**

The MOA requires that the CPD ensure that training instructors engage students in meaningful dialogue regarding scenarios, preferably taken from actual incidents involving CPD officers, so that lessons learned regarding legal and tactical issues are transmitted to the students.

## **2. Status**

Since the inception of the Roll Call Training Program administered by the Training Section, scenarios have been developed that are based on actual encounters and incidents experienced by CPD officers. Scenarios based on the experiences of officers from other agencies have also been developed and presented to field officers for review and critique. The scenarios are discussed among officers and supervisors to consider the available legal and tactical options.

Roll call training sessions cover administrative topics two days a week; the other days involve scenarios that include high-risk situations, and discussions regarding legal and tactical considerations. The Academy prepares sample questions that emphasize problem solving for supervisors to use during the roll call sessions. One or two days per month (e.g., March 2002 Roll Call Training schedule) are devoted to Beat Problems. Each district prepares a monthly training report reflecting the number of officers participating, the time committed, and the number of scenarios used. Each relief has a training sergeant responsible for roll call training. To get the effort off the ground in late 2001, each unit was asked to identify and send a training sergeant to the Academy to participate in an 8-hour session on facilitation. The Academy keeps a master roster of training sergeants. Every month, the Academy provides a monthly training report.

## **3. Assessment**

The Monitor is satisfied that significant progress is being made in an effort to comply with ¶85. It will be necessary for the Monitor Team to conduct on-site observations of the training in future quarters to establish full compliance with this requirement.

## **F. Revised Training Based on Review of Civil Lawsuits Pertaining to Officer Misconduct [MOA ¶86]**

### **1. Requirements**

The MOA requires that the CPD periodically meet with the Solicitor's Office to glean information from the conclusion of civil lawsuits alleging officer misconduct with the purpose of using the information to

develop or revise training. This requirement is related to ¶85.

## **2. Status**

CPD has designated the Planning Section to be responsible for this MOA requirement. Planning Section SOP 400.40 requires these meetings to be held quarterly. The meetings should include the following personnel: Administration Bureau Commander; Planning Section Commander; Training Section Representative; Chief Counsel of Litigation. The first meeting was held in April 2003. As a result of this meeting, CPD will be conducting a four-hour block of training on civil liability for all officers. The training will focus on §1983 liability, search and seizure, use of force, and proper case management. Supervisors will be trained in July 2003 and officers will be trained starting in September 2003. The Law Department and CPD also will develop a shared database reflecting the status of civil litigation.

## **3. Assessment**

The CPD has made progress in complying with this requirement. During an on-site visit this quarter, the Monitor Team suggested that consideration be given to a role for the Training Committee in reviewing these lawsuits, since a member of the Solicitor's Office is on the Training Committee and the goal is to identify training and policy issues that warrant attention. In addition, plaintiffs have volunteered to provide their perspective on lawsuits alleging officer misconduct.

## **G. Orientation to the MOA [MOA ¶87]**

### **1. Requirements**

The MOA requires the City and the CPD to provide copies of the MOA and explain it to all CPD and relevant City employees. Initial training for employees affected by the MOA was to be accomplished within 120 days of each provision's implementation. The CPD will continue to provide training to meet this requirement during subsequent in-service training.

### **2. Status**

Initial training was conducted in July 2002 and this included the dissemination of the MOA. As new policies are being adopted to comply with the MOA, the CPD includes them in Staff Notes and implements them through in-service training.

### **3. Assessment**

The City complied with its initial requirement to disseminate and

train on the MOA. We will review the City's compliance with ongoing training requirements as part of our review of training on newly implemented policies, such as the new Use of Force policy.

## **H. FTO Program [MOA ¶ 88-89]**

### **1. Requirements**

The MOA requires the CPD to develop a protocol to enhance the FTO program by addressing the criteria and method for selecting FTOs, setting standards requiring appropriate assessment of an officer's past complaint and disciplinary history prior to selection, and establishing procedures for reappointment and termination of FTOs. FTO appointments and reappointments are made at the discretion of the Training Academy Director. District Commanders will also have discretion in removing officers from the FTO program after consulting with Training Staff. FTOs will be reviewed at least bi-annually with their re-certification dependent on satisfactory prior performance and feedback from the Training Academy.

### **2. Status**

The FTO Review Board is comprised of the FTO Coordinator, Academy Director, a district commander, an FTO supervisor, an FTO, and the Police Psychologist. The FTO Board evaluated Policy 13.100, *Field Training Officer Program*, in 2002 to ensure the development of a protocol to enhance the FTO Program. Section I of that procedure contains the "Criteria and Method for Selecting FTOs." Standards by which the criteria for selection or decertification will be evaluated have not been developed although this task is planned as part of the agenda in the July 2003 meeting of the FTO Review Board.

The FTO Review Board is scheduled to meet two times per year, once for selection reviews for new FTOs, and once for certification reviews for incumbents. The intent is to review all FTO incumbents within a two-year period, which will fulfill the requirement of the MOA. The FTO Review Board will reconvene in July to screen new applicants and, as mentioned above, to discuss standards by which to measure the criteria for recertification established in Procedure 13.100. The Board will also review the discipline and complaint history of FTOs who are scheduled to attend the July in-service re-certification training.

CPD may establish a PIT (Performance Improvement Team) of officers and sergeants as subject matter experts (SMEs) to set the standards by which applicants and incumbents in the FTO program will be measured. The PIT will be a subject of discussion for the FTO Review Board, who would then make a recommendation to the Chief of Police. The FTO Coordinator will conduct a preliminary screen of all FTOs desiring to attend the July training prior to the review of incumbent

FTOs by the FTO Review Board.

The Monitor Team reviewed the “Employee Course Attendance Reports” for Course 1527, the 40 hour FTO course conducted by the Training Section. Sixty-six names appeared on the roster with 40 of those identified as being new FTOs. From the list of 40, the Monitor Team randomly selected 15 names to review past complaint and disciplinary histories. While on site, the Monitor Team reviewed complaint and disciplinary histories for 12 of these individuals. This included their IIS Files, Evaluation Supplemental Logs (ESL) from the districts, and the Citizen Complaint Resolution Process (CCRP) records. Although no standards have yet been established to govern the selection and recertification of FTOs, the Monitor Team agreed that seven of the 12 FTO records reviewed were highly problematic and would warrant further scrutiny. These findings were then reviewed and discussed with CPD staff from Training and IIS.

The current selection process begins with a District Commander sending his or her list of preferred candidates for FTO to the Training Section. The FTO Coordinator then schedules those candidates for FTO training. The Training Section does not currently review complaint and disciplinary history for each candidate, and it would appear that the District Commanders are also not reviewing this history. Although the FTO Review Board will be responsible for ensuring the selection of appropriate candidates for FTO leadership with final approval by the Training Academy Director as stated in the MOA, the CPD should consider either completing a review of complaint and disciplinary history at the District level prior to the District Commander forwarding nominations to the Training Section, or having the District Commander’s nominations routed to IIS for a review before sending the names to the FTO Coordinator.

The District Commander is also in the best position to monitor and evaluate emerging problems involving incumbent FTOs, as the Training Academy staff is not likely to be aware of evolving problems and complaints until the bi-annual review. From the Monitor’s perspective, the current collateral duties of the FTO Coordinator make it difficult for that position to exercise adequate oversight of this vital function.

### **3. Assessment**

Although progress is being made, CPD is not yet in compliance with §§88-89. CPD has adopted Procedure 13.100 to govern the operation of the FTO program, but these policies have not yet been implemented. In July 2003, the FTO Review Board is scheduled to develop or recommend to the Chief of Police standards for the criteria by which FTO applicants and incumbents will be measured. At the July meeting, the FTO Review Board is also scheduled to review FTO applicant

and incumbent histories for complaints and discipline.

The Monitor is concerned about the level of staffing for FTO coordination and oversight in the Training Section and recommends that the CPD examine comparable cities to evaluate FTO staffing and program requirements.<sup>10</sup>

During this reporting period, the Monitor Team was unable to review FTO protocols and practices at the district level. This will be a focus for the Monitor in future reporting periods.

## **I. Firearms Training [MOA ¶¶ 90-91]**

### **1. Requirements**

The MOA requires all CPD sworn personnel to complete mandatory annual re-qualification firearms training to include: satisfactorily completing all re-qualification courses plus achieving a passing score on the target shooting trials, professional night training and stress training to prepare for real-life scenarios. CPD is required to revoke the police powers of those officers who fail to satisfactorily complete the re-certification.

The MOA also requires firearms instructors to critically observe students and provide corrective instruction regarding deficient firearm techniques and failure to utilize safe gun handling procedures at all times. CPD is required to create and implement an evaluation criteria checklist to determine satisfactory completion of recruit and in-service firearms training. For each student, the firearms instructors will complete and sign a checklist verifying satisfactory review of the evaluation criteria.

### **2. Status**

During this quarter the Monitor Team visited the CPD range facilities, observed classroom activities and live-fire training at the range, and met with range and training staff to discuss and assess training programs, tactics and policies. The discussions and activities observed during this time indicate that firearms training is being conducted in a manner that is consistent with the provisions and expectations of the MOA.

During the next reporting period, records will be reviewed to ascertain whether (1) a checklist has been developed to evaluate criteria that will determine whether officers are satisfactorily completing firearms

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<sup>10</sup> For example, Denver PD has six sergeants assigned to the Training Division who oversee the FTO program and who have some responsibility for collateral duties. The Portland Police Bureau has one supervisory sergeant with collateral duties and two full-time officers who oversee the FTO program out of its Training Division.

training requirements, and (2) CPD officers who fail to satisfactorily complete re-certification requirements are being dealt with consistent with state laws and OPOTA standards.

### **3. Assessment**

The CPD is in compliance with those elements of ¶¶ 90-91 that the Monitor Team was able to observe during this quarter. However, there are additional elements that must be evaluated in future site visits and through other auditing activities.

## **Chapter Three. Collaborative Agreement**

As noted in the previous Monitor's Report, through the Collaborative Agreement (CA) the Parties endorsed community problem-oriented policing (CPOP) as the framework for policing in the city of Cincinnati. The Parties are jointly accountable under the CA for implementing CPOP.

During this quarter, the Parties have made substantial progress on a number of important areas within the CA. We particularly commend the CPD in its work on the CPOP website. A significant amount of time and energy clearly has been put into designing the website. Our recommendations for the website do not take away from the work done so far. Creating a workable website that tracks problems, offers research on specific crime and safety problems, identifies resources and serves as a platform for collaborative problem solving is not a simple task. The fact that the difficult events of this quarter did not derail the Parties' efforts is worth noting.

There has also been significant progress made among the City Manager's Office, the CPD and the Plaintiffs in defining roles and relationships regarding collaborative problem solving.

There remain parts of the CA that now require quick and dutiful attention. The Plaintiffs, with the support of the other Parties, must fulfill their responsibility to obtain funding for the Community Partnering Center. In addition, the Plaintiffs should make every effort to attend the next SARA [**S**can, **A**nalyze, **R**esponse, **A**ssessment] train-the-trainer class, as progress on CPOP training will be stalled without input from the Plaintiffs regarding the training content.

We also expect CPD to increase its diligence on portions of the CA where responsibility is principally assigned to the City, such as quarterly reports from district commanders and special unit managers (as described in 29(k)) and in developing a review process for staffing

decisions (as described in 29(n)). We believe that training in the upcoming quarter is crucial, as it can increase the capacity among CPOP team members, crime analysts, and Street Corner Narcotics members to engage in quality problem solving.

## **I. Implementation of CPOP [CA ¶29]**

### **1. Requirement 29(a)**

The City, in consultation with the Parties, shall develop and implement a plan to coordinate the work of City departments in the delivery of services under CPOP. The CA established October 5, 2002, as the deadline for plan development and November 5, 2002, for plan implementation.

### **2. Status**

In the first Monitor's Report, we asked the City and the Parties to research the inter-agency collaboration efforts of other cities. Inter-agency teamwork is key to successfully resolving some of the crime and safety problems experienced by community members.

In this quarter, there has been substantial progress on a framework for inter-agency collaboration related to CPOP. The City Manager has established quarterly meetings for an inter-agency collaboration initiative supporting CPOP. The first of these meetings was held on March 4, 2003. The City and the Parties have developed a draft plan for coordinating the CPOP activities. As part of that process, the City identified and reviewed information from several police agencies (Aberdeen, MD; Concord, CA; and Louisville, KY) that rely on an inter-agency approach to community policing.

The City Manager, Chief Streicher and Lt. Colonel Janke briefed City Council members on the City's draft plan for CPOP coordination. They also previewed a demonstration of the draft CPOP website, which will be coming on line in the next quarter.

On June 17, 2003, the Parties agreed to formally adopt the CPOP coordination plan, entitled the "City of Cincinnati Plan for Community Problem Oriented Policing." Under this plan, Problem Coordinators will be assigned to each CPOP case. Problem Coordinators will be police officers assigned by their District Commander to coordinate the SARA problem solving process for a given crime problem. The assigned Problem Coordinator will chair meetings, coordinate the delivery of city services to the community, and document the SARA process on the CPOP web site. The Partnering Center will also assign a staff person when a problem is identified, and the Police Department and Partnering Center staff will work together with the community to form a CPOP team.

As part of this process, the Departments of Buildings and Inspections, Public Services, Community Development and Planning and Health have identified specific point persons for their respective departments. Contact numbers for the liaisons can be found in the pilot CPOP web. The selection of liaisons for these particular departments is an important step, since many urban problems require coordinated action from these particular departments. Other city agencies that play important roles in improving neighborhood safety and that also should soon have liaisons include the Transportation and Engineering, Recreation, Parks and Fire Departments.

As CPOP begins to be implemented, the City and the Parties may want to consider crime and safety related performance measures for individual city department heads, in recognition of the role their departments play and as a means to ensure accountability for their contribution to safety issues.

### **3. Assessment**

The City is moving towards compliance with this CA requirement. Significant progress has been made in establishing a forum for inter-agency accountability for CPOP. As CPD proceeds towards CPOP and collaborative problem-solving begins, it will be clearer whether the process defined in the draft plan produces safety improvements in a timely fashion.

#### **1. Requirement 29(b)**

The Parties will develop a system for regularly researching and making publicly available a comprehensive library of best practices related to CPOP. The CA established October 5, 2002, as the deadline for plan development and November 5, 2002, for plan implementation.

#### **2. Status**

The CPD, in collaboration with the Regional Computer Center has developed a CPOP website at <http://cagisperm.hamilton-co.org/cpop>. This website is expected to serve as the system by which CPOP-related best practices are made publicly available, as well as the system for tracking Cincinnati's CPOP efforts required under section 29(m) of the CA. The website will be populated with appropriate resources and forms to support CPOP and will then be started on a pilot basis.

The website appears easy to use with many pull-down menus, resources, contact lists, and crime statistics. Overall, the design of the website offers a significant contribution to the field of problem-solving and community policing and can become a model for use by other policing agencies. The website's development is a significant step in

building the Parties' institutional capacity to effectively impact and track community safety problems.

Once Cincinnati's CPOP website is up and running, community members will be able to access it from different locations. The Parties report that they will reach out to libraries, universities, recreation centers, and community council offices to make access to the website readily available. This is consistent with the requirements under section 29(b) of the Collaborative Agreement.

One area not addressed by the Parties is the content of research resources that will be available to officers and community members in impacting crime. Our First Report noted that the library currently housed in CPD's Training Academy has a number of excellent sources of best practices that can improve the chances that collaborative partners can impact crime. We also suggested that the Parties consult with University of Cincinnati faculty to determine which publications would be best suited to link to the website.

Currently, the draft website contains links to the U.S. Department of Justice Problem-Oriented Policing (POP) guidebooks covering a range of crime and safety topics. Each of the POP guides contains problem-specific questions local jurisdictions should ask and answer before selecting, designing, and tailoring solutions to the local problem. Another link is to the National Criminal Justice Reference Service, a depository of federal research and reports on crime. This too should prove useful for the Parties. The website also has a link to the Police Executive Research Forum's POPNet. While POPNet may include useful examples of crime strategies used by other cities, as we noted in our First Report, there is no screening of the POPNet entries to determine whether the projects have been successful. We believe that some sifting and quality control is necessary to identify what are truly "best practices."

The Parties may also want to consider adding a link to the new Center for Problem-Oriented Policing at <http://www.popcenter.org>. The POP Center is free and contains resources, tools, research, and a searchable database containing Herman Goldstein International Award for Problem-Solving submissions, POP guides with clickable new downloads not contained in the COPS Office website, and other relevant publications (all with searchable text), including Tackling Crime and Other Public Safety Problems, situational crime prevention case studies, and Home Office crime-specific publications from the U.K.

### **3. Assessment**

The Parties have moved toward compliance with a great deal of work this quarter in developing a system. Compliance will depend on how quality control is maintained in the system and on use of the system

in effective problem solving.

### **1. Requirement 29(c)**

The City, in consultation with the Parties, shall develop a continuous learning process concerning problem solving, made public, and also a continued emphasis on problem solving in field and in-service training. The CA established October 5, 2002, as the deadline for plan development and November 5, 2002, for plan implementation.

### **2. Status**

The Parties' June 5, 2003, Status Report states that additional training, as part of a continuous learning process, will be conducted once the CPOP website is on-line. While it makes sense that some training will be delayed until the website is up and running, there is training that could, and should, occur now that will anchor effective problem solving. In particular, we would identify three areas on which training would be extremely beneficial. These are: training police CPOP team members in researching best practices for different problem types; training crime analysts in hot-spot analysis and problem analysis; and training for narcotics detectives, supervisors and managers on impacting street level drug hot-spots. These courses could also be useful for the incoming staff of the Community Partnering Center.

#### Training Police CPOP Team Members in Researching Best Practices

Researching best practices is a skill that can be acquired. There is a great deal of information available on crime and safety problems, but to make the research useful, training in how to maneuver through the research is extremely helpful. Each of the CPOP team members within the CPD might benefit from this type of training, as it will make their job easier, and increase the likelihood that solutions developed by the collaborative teams are consistent with research on how to impact a problem. While not all crime or safety problems have been researched, *there is* information about many types of crime and safety problems. A short training course on researching best practices could be developed by the Training Academy in collaboration with criminal justice staff from the University of Cincinnati.

#### Training for CPD Crime Analysts in hot-spot analysis and problem analysis

CPD crime analysts are very good and have an interest in best practices related to crime analysis. A short class on different ways to conduct hot-spot analysis could be extremely beneficial in identifying hot-spots for specific types of offending and specific types of victimization. This type of training would allow CPD to generate crime

statistics that would enable it to better identify crime trends and patterns. The more complete and understandable a picture of crime patterns and safety issues community members have, the better informed they will be to prioritize crime problems to address.

Training for Street Corner Narcotics Unit detectives, supervisors, and managers in analyzing and impacting street level drug hot-spots

On several occasions since January 2003, the Street Corner Narcotics Unit has conducted sweeps in drug and prostitution areas producing several hundred arrests. While these sweeps are in response to community complaints, they may not have a long-term impact. There is a significant amount of research on street level drug hot-spots, including the limited effectiveness of intensive enforcement on drug hot-spots, the conditions that seem to accompany illegal street retail markets, best practices in analyzing drug hot-spots, and the different approaches to impact the different types of street drug markets. A two or three day class specific to this topic may help shape the strategies that CPD uses in addressing these hot spots.

**3. Assessment**

The City remains out of compliance on this section of the CA. We encourage the City to refocus on the type of problem-solving training that fully equips the CPD to be effective partners in analyzing, tailoring solutions to, and assessing the impact of responses to common crime problems Cincinnati residents experience in different neighborhoods.

**1. Requirement 29(d)**

The Parties will research best practices related to problem solving from other police agencies, and other professions engaged in analogous processes. The CA established October 5, 2002, as the deadline for plan development and November 5, 2002, for plan implementation.

**2. Status**

The Parties' June 5, 2003, Status Report states that the CPD and the Community Partnering Center "will collaborate on conducting research to identify a wide range of problem solving activities and practices, and accessing journals and web sites." During this quarter, CPD reviewed the inter-agency collaboration material on-line from at least three police agencies: Aberdeen, MD, Concord, CA, and Louisville, KY.

**3. Assessment**

The Parties are in partial compliance with this section of the CA. For example, the Status Report does not reflect research conducted by the Plaintiffs or the FOP. While future collaboration on research between the Partnering Center and CPD will undoubtedly be beneficial, the Parties need to undertake research efforts now to be in compliance.

### **1. Requirement 29(e)**

The Parties, consistent with the Community Partnering Center, will conduct CPOP training for the community and jointly promote CPOP. The CA established October 5, 2002, as the deadline for plan development and November 5, 2002, for plan implementation.

### **2. Status**

The City has established pilot problem-solving teams in the neighborhoods of Madisonville, Evanston, Walnut Hills, Over-the-Rhine, Avondale and West End. Thus far, Cincinnati Community Action Now (CCAN) is still the main partner. CCAN ensures participation of neighborhood stakeholders and coordinates the six-hour community training sessions on the SARA model.

The Parties' June 5, 2003, Status Report states that CPD's representatives are actively involved in the problem-solving teams in these communities. According to the Status Report, these pilot teams may be transitioned to "CPOP Teams" as the Plaintiffs and the City define roles and responsibilities.

While the Parties have yet to adopt an agreed-upon curriculum for CPOP training, the Monitor hopes that this will be accomplished over the summer. In the meantime, the Cincinnati Police Academy conducted two 8-hour "SARA Train the Trainer" courses for a cadre of officers. Training on the SARA approach to problem solving has been conducted by the CPD in the pilot neighborhoods, and an ambitious training schedule for an additional 15 neighborhoods across several police districts is planned for the upcoming quarter. We strongly encourage the Plaintiffs and the FOP to attend the next train-the-trainer sessions and participate in the community SARA training.

As of yet, no joint training on the CPOP process has been delivered. However, a number of meetings and discussions among the Parties have brought the Parties close to agreement on how CPOP would be implemented. The issues in contention were complicated, but important: establishing the parameters for initiating a CPOP project and defining the roles and responsibilities of the CPD and the Community Partnering Center in collaborative engagement over crime, safety and other problems.

Clearly, these issues need to be resolved to the satisfaction of the

Parties, since a collaborative CPOP process cannot develop without the Community Partnering Center. At the Parties' June 19, 2003, meeting with the Monitor, the Parties informed the Monitor that agreement has been reached on an action plan for the Partnering Center, that the Center's first Board meeting will be held on July 1, 2003, where officers will be selected, and that funding activities for the Center are on track to meet the Center's requirements. In addition, Greg Baker was assigned to be the City's ex-officio member on the Partnering Center's Board, and Board members were selected by the Plaintiffs to replace the Board members initially selected by the Black United Front.

### **3. Assessment**

Significant progress has been made in getting the Community Partnering Center underway. In addition, the City has conducted SARA training for neighborhood residents in a number of neighborhoods. However, the joint CPOP training that the CA requires has not yet been started. Therefore, the Parties are not yet in compliance with this requirement.

#### **1. Requirement 29(f)**

The Parties shall establish on-going community dialogue and structured involvement by CPD with segments of the community, including youth, property owners, businesses, tenants, community and faith-based organizations, motorists, low income residents, and other city residents on the purposes and practices of CPOP. The CA established October 5, 2002, as the deadline for training and informational materials related to the dialogue and structured involvement and November 5, 2002, for plan implementation.

#### **2. Status**

The Parties have not developed or agreed upon a joint curriculum, nor developed specific curriculum segments for the groups mentioned in 29(f). The Monitor recognizes that a functioning Partnering Center, with staff, is key to progress on the outreach and community dialogue called for by the CA. This will depend, among other things, on obtaining the funding for the Partnering Center that the Plaintiffs have committed to secure.

### **3. Assessment**

The Parties are not yet in compliance with 29(f).

#### **1. Requirement 29(g)**

The Parties shall establish an annual award recognizing CPOP

efforts of citizens, police, and other public officials. The CA established December 5, 2002, as the deadline for completion of the award(s) design and February 5, 2003, for implementation.

## **2. Status**

The Parties' June 5, 2003, Status Report states that the City has begun researching best practices for recognition programs. The preliminary research has garnered information on selecting a recognition program, determining criteria for selection, marketing the program, hosting the event and evaluating the program. The Status Report states that the City will share this information with the Parties and begin planning discussions.

## **3. Assessment**

The CA established December 5, 2002, as the deadline for completion of the award(s) design and February 5, 2003, for implementation. The Parties are currently out of compliance, but we note that some progress has been made. We also recognize that much work has to be done before awards are given out and that other items in the CA currently take precedence.

## **1. Requirement 29(h)**

The City, in consultation with the Parties, shall develop and implement a communications system for informing the public about police policies and procedures. In addition, the City will conduct a communications audit and a plan for improved external communications. The communications strategy must be consistent with Ohio Law. The CA established October 5, 2002, as the deadline for developing a communications system and December 5, 2002, for implementation of the system, along with a communications audit.

## **2. Status**

CPD policies and procedures are accessible from the City website and will also be available on the CPOP website. As for the communications audit, a draft report was delivered to the CPD. The Monitor awaits a copy of the audit report.

## **3. Assessment**

The City is in partial compliance with this section of the CA. Policies and procedures are available to the public on the website and once joint training with the community occurs, questions about specific

police policies can be answered in that forum as well. The Monitor will report upon the results of the communications audit in the next Monitor report.

**1. Requirement 29(i)**

The CPD will create and staff a Community Relations Office to coordinate CPD's CA implementation. The CA established October 5, 2002, as the deadline for creation of the office.

**2. Status**

In the last Monitor Report, we noted the establishment and staffing of a Community Relations Unit (CRU). The CRU is a division of the Police Relations Section. The CRU Manager reports to the Executive Manager of Police Relations, S. Gregory Baker. Mr. Baker's responsibilities include being the Compliance Coordinator for the MOA and for implementation of the CA. The CRU Manager assists Mr. Baker in coordinating the implementation of the CA.

**3. Assessment**

The City is in compliance with this requirement. Full implementation of the CA will be the CRU's measure of success.

**1. Requirement 29(j)**

The Parties shall describe the current status of problem solving throughout the CPD through an annual report. Each Party shall provide information detailing its contribution to CPOP implementation. The CA established August 5, 2003, as the deadline for completion of the annual report.

**2. Status**

In anticipation of the August deadline, the Monitor Team in its last report requested that CPD provide a narrative on the status of CPOP up to August 5, 2002. This would be used as a baseline to compare the extent of efforts begun before and after the Fairness Hearing. The Parties' June 5 Status Report states that "[t]he preparation of the annual report will require further discussion among the Parties."

**3. Assessment**

The Monitor is unable to assess compliance on the annual report, as it is not due until August 5, 2003. We reiterate, however, our belief that it is important to establish a baseline from which the Parties and the Monitor can evaluate the progress made since the Fairness Hearing. We are also concerned that the Parties have not yet discussed how they will

compile the report due in August, or what its contents should be. As we stated in our First Report, we expect the Parties to meet the required deadline of August 2003, even though the report may document less than they hoped would be achieved.

### **1. Requirement 29(k)**

CPD district commanders and special unit commanders or officials at comparable levels shall prepare quarterly reports detailing problem-solving activities. The CA established November 5, 2002, as the deadline for completion of these reports.

### **2. Status**

The Parties', June 5 Status Report states that the City will document, track and report problem-solving activities through the CPOP website. However, because problem solving through the formation of CPOP teams and the use of the CPOP method and website have not begun, the City has not required its district commanders or other unit commanders to prepare quarterly problem solving reports.

The Monitor believes that the City's approach to this requirement is too limited. Certainly once the CPOP process is underway, a large percentage of CPD's problem-solving activities will be undertaken by the CPOP teams. However, problem solving within CPD should not be limited to the CPOP process, nor should it be limited to officers involved in CPOP teams.

In January 2003, the Monitor Team advised the City that it would expect quarterly problem-solving reports from special unit officials in Street Corner Narcotics, Vice, Planning, Crime Analysis, and Criminal Investigations Section (covering activities of homicide, personal crimes, major offenders, financial crimes units), Youth Services, Downtown Services Unit, Special Services Section (covering park unit, traffic unit), as well as the District Commanders. This is because problem solving is a Department-wide approach to addressing crime, and as we noted in our last Report these units are integral to CPOP success.

As we noted in the last Monitor Report, the website, when it comes online, will provide a good vehicle for the publication of each of these quarterly reports. In the meantime, the reports still need to be prepared and provided to the Monitor. Even if these quarterly reports document preliminary use of the SARA model on specific crime and safety problems by these units, we believe this is a start towards building proficiency in problem solving throughout the CPD, consistent with the CA.

### **3. Assessment**

The Parties are not in compliance with this CA requirement.

**1. Requirement 29(l)**

The Parties will review and identify additional courses for recruits, officers and supervisors about the urban environment in which they are working. The CA established November 5, 2002, as the deadline for completion of the review and design, and December 5, 2002, for implementation.

**2. Status**

The Parties June 5 Status Report states that CPD's Training Section anticipates working with the Community Partnering Center in the future to review and identify new Academy courses. It also reports that the Plaintiffs have been invited to and attended police recruit training courses.

**3. Assessment**

While the Parties are not in compliance with this section of the CA, the Monitor expects that progress will be made on this requirement before the end of 2003. In the interim, we believe the training cited in 29(c) will be an important first step towards progress on this requirement.

**1. Requirement 29(m)**

The Parties, in conjunction with the Monitor, shall develop and implement a problem tracking system for problem-solving efforts. The CA established February 5, 2003, as the deadline for system development and April 5, 2003, for implementation of the system.

**2. Status**

As noted above, the City has developed a CPOP website and database, in draft form, that will track problem solving efforts. The Parties agree that the tracking software will be adapted and evolve as the Parties gain experience and CPOP problem solving efforts are implemented.

**3. Assessment**

The Parties have made substantial progress during this quarter towards compliance with this requirement.

**1. Requirement 29(n)**

The City shall periodically review staffing in light of CPOP. The CA requires ongoing review of staffing rather than a review by a certain deadline.

## **2. Status**

The CPD reports that it regularly reviews staffing requirements in order to match workload requirements with resources. However, it has not provided any details of how it does these reviews, or what the results were of these reviews.

The City also states that the proposed Record Management System (RMS), once it is fully developed and operational, will facilitate systematic reviews of staffing requirements, in line with CPOP requirements. According to the Parties' Status Report, the Records Management System will be designed to allow the timely analysis of crime, track CPOP solutions, and staff deployment. Utilization of the RMS will enable managers to rightly align problem solving resource requirements with the necessary staffing.

## **3. Assessment**

The City is not in compliance with this CA requirement.

### **1. Requirement 29(o)**

The City shall review, and where appropriate, revise police department policies, procedures, organizational plans, job descriptions, and performance evaluation standards consistent with CPOP.

## **2. Status**

According to the Parties' Status Report, reviews of CPD policies and practices will be conducted "as determined by success and failures of problem solving efforts, community input, problem response evaluations and changes in statutory and case law."

As we noted in our First Report, the City should consider revising CPD's performance evaluation standards as a means of anchoring CPOP in the CPD. Over the last 15 years, a number of jurisdictions revised their police agency performance evaluation standards, as the prior standards in place were inconsistent with a community and problem-oriented policing approach.

## **3. Assessment**

The City is not in compliance with this CA requirement.

### **1. Requirement 29(p)**

The City shall design and implement a system to easily retrieve and routinely search (consistent with Ohio law) information on repeat victims, repeat specific locations, and repeat offenders. The system shall also include information necessary to comply with nondiscrimination in policing and early warning requirements. The CA established February 5, 2003, to complete the request for proposal for the system. The implementation deadline is to be determined by the Monitor.

### **2. Status**

The City contemplates meeting this provision through the acquisition of a new Records Management System (RMS). The City has selected a vendor, Gartner Consulting, to develop the RFP for a new RMS system. Gartner has completed the first round of focus groups within CPD and has submitted a draft report for review. Currently, the contract scope is being considered for expansion to include the CAD system. The City believes that the RMS RFP will be finalized for publication within the next 3 to 6 months.

### **3. Assessment**

In our First Report, we requested that CPD provide a detailed description of the capabilities of the present system. We have yet to receive this, and also await the draft RMS RFP for review. The City is not in compliance with this CA requirement.

### **1. Requirement 29(q)**

The City shall secure appropriate information technology so that police and city personnel can access timely, useful information to problem-solve (detect, analyze, respond, and assess) effectively. The CA established February 5, 2003, as the deadline for development of a procurement plan, April 5, 2003, to secure funding, August 5, 2003, to procure systems, and August 2004 to implement any new purchases.

### **2. Status**

The Police Department is in the process of securing a record management system to collect data and allow effective access, use and analysis. A consultant has been selected to develop an RFP for inviting bids to create and implement the RMS. The RFP is expected to be published in 3-6 months.

### **3. Assessment**

The City has not met the deadlines in the CA for compliance with

this requirement.

## **II. Evaluation Protocol [CA ¶¶30-46]**

The CA calls for a system of evaluation to track attainment of CA goals. This tracking serves as a “mutual accountability plan.” According to the CA, “[t]he term ‘mutual accountability plan’ is defined as a plan that ensures that the conduct of the City, the police administration, members of the Cincinnati Police Department and members of the general public [is] closely monitored so that the favorable and unfavorable conduct of all is fully documented and thereby available as a tool for improving police-community relations under the Agreement.” The evaluation system is to be developed “in consultation with the advice of expert consultants and under the supervision of the Monitor.” The Parties also must plan to shift portions of the evaluation oversight from the Monitor’s supervision to a “successor agency” before the end of Agreement so that ongoing evaluation efforts can continue.

### **1. Requirements**

The Collaborative Agreement sets out the following components of the Evaluation Protocol:

- Protocol will include: schedule; costs; who is responsible; data collection methods, forms and procedures; guidelines for analysis and reporting; levels of statistical confidence and power
- Protocol to include: periodic surveys; periodic observations of programs; and annual statistical compilations of police interactions
- Probability samples surveys, with response rate of 70%
  - of citizens, for satisfaction and attitudes
  - of citizens with police encounters (neighborhood meetings, stops, arrests, problem-solving interactions), for responsiveness, effectiveness, demeanor
  - of officers and families, for perceptions and attitudes
  - of officers and citizens in complaint process, re fairness and satisfaction with complaint process
- Periodic observations of meetings, problem-solving projects, complaint process; with description of activity and effectiveness
- Periodic reporting of data to public, without individual ID, but by age, race, gender, rank, assignment and other characteristics
- Compilations by 52 neighborhoods, for arrests; crimes; citations;

stops; use of force; positive interactions; reports of unfavorable interactions; injuries to citizens; complaints

- Data recording for problem solving projects
- Sampling of in-car camera and audio recordings; database of sampled recordings; study of how people are treated by police
- Examination of hiring, promotion and transfer process
- Periodic reports with data from above (broken down by age, race, gender, area, rank, assignment). These reports should answer a number of questions, including:
  - Is safety improving?
  - Is use of force declining, and is it distributed equally?
  - Is the complaint process fair?
  - Do officers feel supported?
  - Is problem solving successful?
  - Are police-community relations improving?
  - Is progress being made on issues of respect, equity and safety?

## **2. Status**

In our First Report, we noted several concerns regarding the Parties' stated plans for accomplishing the Evaluation requirements of the CA. First, we questioned whether it was appropriate for the Parties to rely on a single outside contractor to accomplish all of the requirements contained in the Evaluation Protocol. Some aspects of the Evaluation, such as the annual reports, should be undertaken by the Parties themselves. In addition, it was not certain that a capable organization would be found that would undertake all of the facets of the Evaluation Protocol. Second, we stated that the draft RFP did not appear to provide potential bidders with sufficient information about CPD's practices and data systems, and the requirements of the project. Third, we expressed concern that the monetary cap placed on bids for the project might not be sufficient. Last, we emphasized a need to address how disputes would be worked out among the Parties regarding the Evaluation Protocol and the selection of an Evaluator.

On April 17, 2003, the Evaluation Committee of the Collaborative Implementation Team convened a conference call with the Deputy Monitor and the consultant hired by the Parties to draft the RFP and assist in selecting an Evaluator. The Monitor's concerns were addressed as follows:

- The Parties determined that there are a number of entities capable

and willing to accomplish the requirements of the project. In addition, the Monitor has provided the Parties with suggestions for organizations to which to send the RFP.

- The Parties will be responsible for preparing and submitting the annual report required by the CA. The Evaluator will report its findings and answer the questions posed by the Agreement, which will then be used by the Parties as a basis to prepare the annual report and evaluation.
- An appendix to the RFP will be added to include:
  - List of internal data sources
  - Declaration of the extent that CPD will collect, automate, and make data available to the Evaluator
  - Definition of the data sources that will become the responsibility of the Evaluator, such as survey process and responses
  - Declaration that data analysis will become the responsibility of the Evaluator
  - Description of data that is currently being captured electronically by CPD
  - Notation that the data collection systems are subject to change.
- The RFP will not include a monetary cap on bids submitted. The RFP will, however, direct potential contractors to provide a detailed cost breakdown for the project. This will give the Parties the ability to control project costs.
- Lieutenant Colonel Combs has been added to the Evaluation Committee to coordinate CPD IT projects with the evaluation component.
- Ralph Renneker will be the primary point of contact with the Evaluator to provide the Evaluator factual information and answer questions. Where substantive decisions need to be made, they will be referred to the Evaluation Committee. The Monitor's role will include dispute resolution, technical assistance and reviewing the work of the contractor and survey methodology.

On June 17, 2003, the RFP for an Evaluator was released and published in the City Bulletin. A copy of the RFP was also mailed to a number of identified potential bidders. Bids are due by August 1, 2003.

### **3. Assessment**

There has been significant progress in moving forward with the Evaluation RFP and agreement among the Parties on how the evaluator selection process should work. However, implementation of these provisions is a long way off. The Parties are not in compliance with the Evaluation provisions at this time.

### **III. Pointing Firearms Complaints [CA ¶48]**

The Collaborative Agreement noted that the Parties were unable to agree on the issue as to whether CPD officers should have to report when they draw their firearm. However, in an effort to settle the matter, the Parties agreed to the following protocol, which is outlined in ¶48 of the Collaborative Agreement:

#### **1. Requirements**

- CPD will develop an expedited process for handling citizen complaints based on pointed firearms.
- Any person who believes an officer unnecessarily pointed a firearm on or after March 31, 2000, can file a complaint with Plaintiffs' organizations, the CPD or other civilian complaint processes. Cases previously investigated and adjudicated since March 31, 2000, will be sent to the Monitor.
- A select team of CPD officers selected by the Chief shall immediately investigate these complaints.
- The investigator(s) shall make a determination on each complaint within 30 days of the time it is received and file the determinations with the Parties, the complainant and the Monitor.
- After six months, all of the complaints and determinations will be provided to the Monitor, who will then compile the data and forward it to the Conciliator.
- The Conciliator shall review the information, and if he determines that a pattern exists of improper pointing of firearms at citizens, the CPD will require officers to report all instances in which they point their weapons at or in the direction of a citizen.

#### **2. Status**

The CPD has established an expedited process for the investigation of complaints involving allegations of improper pointing of firearms. (IIS SOP 104.03, issued July 1, 2002) The IIS conducts these complaint investigations and then forwards them to a Review Panel consisting of two members from the City Solicitor's office, a lieutenant in Tactical Planning, and a sergeant from the Training Section. The findings of this team are then forwarded to the Police Chief for his review and approval.

During this quarter, the Monitor received from the CPD a binder containing a total of 46 complaints/investigations involving allegations of inappropriate gun pointing by officers. These complaints involved incidents that occurred between April 2000 and November 2002. Several of these complaints were received as a result of the efforts undertaken by the Parties to seek out these types of complaints and forward that information to CPD (consistent with the provisions in ¶48 of the CA).

Community outreach efforts were conducted throughout the City between October 12 and November 23 of 2002 to receive such complaints from community members.

It should also be noted that not all of the investigations into these incidents were the result of externally (or community) generated complaints. Some were found to have been initiated as a result of actions taken by CPD personnel that were based on perceived officer misconduct or a failure to follow established procedures.

The review of these cases revealed that the allegations are being consistently evaluated in light of CPD's procedure that governs an officer displaying their firearm (Procedure 12.550) and/or the Manual of Rules & Regulations (Section 1.25; formerly Section 1.53) which relates to using or handling weapons in a careless or imprudent manner. Of the 46 incidents reviewed, there were findings that officers were in violation of either Procedure 12.550 or Section 1.53 in six instances. Of the remaining cases, there were six others in which an allegation of misconduct was sustained, but those allegations were not related to the issue of pointing a weapon.

On June 26, 2003, the Plaintiffs submitted to the Monitor Team their analysis of the gun pointing complaints. In addition to noting the number of sustained findings, Plaintiffs also note that the majority of incidents took place in African American neighborhoods and involved young African American males. Many of the incidents involved misidentification of the subjects. Plaintiffs also note that a number of the incidents involve weapons allegedly being pointed at juveniles.

In reviewing these cases, the Monitor Team did note a general improvement in the quality and thoroughness of the investigations conducted subsequent to the implementation of the MOA and CA (in April, 2002). Of the 46 investigations, 28 were conducted prior to the CA being signed. The majority of these cases were adequately investigated and the documentation was sufficient to appropriately evaluate both the investigation and reasons for the findings. However, there were also several cases in this group that were found to lack adequate documentation or supporting information to establish how the supervisor arrived at his or her findings. Two cases were missing pages from the file, one had no investigation attached at all, and several others presented concerns because of investigative deficiencies (not identifying or questioning witnesses, failure to pursue seemingly obvious questions, etc.).

With regard to those cases investigated after April of 2002, these more recent investigations were generally found to be more complete than the earlier set. With one exception, all had IIS case numbers provided, which enables case tracking and analysis of relevant data to be

more easily accomplished. These cases were reviewed to determine whether they were being forwarded to and reviewed by the "Pointing of Firearms Review Panel." They were also reviewed to determine whether the investigations were being completed within 30 days.

Of the 18 investigations that occurred after April 2002, the reports showed that eight of those cases were forwarded and reviewed by the Pointing of Firearms Review Panel. Five of the remaining investigations (02113, 02138, 02144, 02162 and 02209) revealed that the cases were not forwarded, and this appears to have been based on statements from independent witnesses or involved complainants that exonerated the officers or unfounded the allegation. There were three complaints filed in which the complainant never responded to CPD efforts to pursue these investigations (03043, 03044 and 03045). In another case, there was no report or other investigation attached (02294). And in the final case, the officer involved resigned prior to the case being closed.

With regard to the timeliness of the investigations, since April 2002 only three of the 14 investigations that could be pursued (02179, 02162 and 02279) were completed within the 30-day time frame required by ¶48.

### **3. Assessment**

The actions taken by the CPD subsequent to the signing of the CA do reflect substantial progress, but not complete compliance, with the requirements of ¶48. As required, CPD has established an expedited process for processing these complaints and committed additional resources to conducting these investigations. The Parties and the CPD made a concerted effort to obtain and investigate any complaints involving gun-pointing incidents that have occurred since March 31, 2000. The previously investigated cases and newly obtained complaints were also forwarded to the Monitor for review and evaluation. However, the CPD did not always follow its revised procedures, in that not all of the new investigations were reviewed by the Review Panel.

CPD investigators also have not been able to complete the majority of their investigations and make a determination within the 30-day time frame provided. A study of the time that elapses between the filing of the case and submittal of the report by the investigators appears to indicate a favorable trend, however. While the CPD is generally not yet meeting the 30-day time requirement, the more recent cases appear to require less time to process on average than the earlier cases did.

The Monitor will forward the complaints and investigations to the Conciliator, as required by the CA, along with the Plaintiffs' submission,

for his determination of whether there exists a pattern of improper pointing of firearms at citizens. If he determines that there is such a pattern, the requirement for reporting pointing of firearms is triggered.

Given the materials we have reviewed to date, we do not believe there is sufficient information to ascertain whether there is a pattern of improper pointing of firearms. While there have been six sustained allegations, this amounts to slightly more than 13% of the total cases in this category. Simply put, there is insufficient data available at this time to draw any clear conclusions. While the CA contemplates that the Conciliator will make his determination based on the complaints and investigations compiled after six months from implementation of the CA, we recommend that the Conciliator consider deferring his decision until additional information is gathered.<sup>11</sup>

In the meantime, it is the Monitor's recommendation that CPD continue its current practice of investigating these complaints, assess the impact of training and intervention measures employed, capture relevant data that will be helpful in establishing whether other measures are needed, and share the results of those efforts with the community. While the CA provides for a six month period to collect data on pointing firearms complaints, the CA provision requiring an expedited process for investigating these complaints is not limited to just this six month period. Having established the expedited investigatory process, including submission of investigations to the Review Panel, it does not make sense, nor is it consistent with the CA, to abandon the process.

#### **IV. Fair, Equitable and Courteous Treatment**

The CA requires the Parties to collaborate in ensuring fair, equitable and courteous treatment for all, and the implementation of bias-free policing. Data collection and analysis are pivotal to tracking compliance, and training is essential to inculcate bias-free policing throughout the ranks of CPD. The Monitor, in consultation with the Parties, is required to include detailed information regarding bias-free policing in all public reports. The collection and analysis of data to allow reporting on bias-free policing is to be part of an Evaluation Protocol developed with the advice of expert consultants. The RFP for selection of the consultant ("Evaluator") was published on June 16, 2003.

##### **A. Data Collection and Analysis [CA ¶¶ 38-41, 51, 53]**

###### **1. Requirements**

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<sup>11</sup> In addition, the new procedures for investigating these complaints were not effective until July 1, 2002. Six months of complaint investigations under the new procedures would take us to January 2003. The complaints in the Parties' notebook, however, only cover the period through November 2002.

As part of the Evaluation Protocol, CPD is required to compile the following data to be analyzed, by percentage attributable to each of the City's fifty-two neighborhoods:

- Arrests
- Reported crimes and drug complaints
- Citations of vehicles and pedestrians
- Stops of vehicles and pedestrians without arrest or issuance of citationUse of force
- Citizen reports of positive interaction with members of the CPD by assignments, location, and nature of circumstance
- Reports by members of the CPD of unfavorable conduct by citizens in encounters with the police
- Injuries to officers during police interventions
- Injuries to citizens during arrests and while in police custody
- Citizen complaints against members of the CPD

Paragraph 40 requires that the City provide to the Monitor incident-based data so that the nature, circumstances and results of the events can be examined.

Paragraph 51 references Ordinance 88-2001, which identifies required data to be reported and analyzed to measure whether there is any racial disparity present in motor vehicle stops by CPD. The local ordinance requires the following information be gathered:

- the number of vehicle occupants
- characteristics of race, color, ethnicity, gender and age of such persons (based on the officer's perception)
- nature of the stop
- location of the stop
- if an arrest was made and crime charged
- search, consent to search, probable cause for the search; if property was searched, the duration of search
- contraband and type found and
- any additional information.

Paragraph 53 of the Collaborative Agreement requires the Monitor, in consultation with the Parties, to include in all public reports, detailed information of the following:

- racial composition of those persons stopped (whether in a motor vehicle or not)
- whether the person stopped was detained, searched or arrested
- whether the person stopped was involved in a use of force with a member of the CPD and
- the race of the officer stopping the person

## 2. Status

We note here deficiencies outlined in the First Quarterly Report and the current status of data collection and analysis requirements:

- (a) Data collection efforts were hampered by the absence of a system to ensure timely and accurate data entry. As a result there was no data to include in the first report.
  - There is still no system to ensure timely and accurate data entry. Again, there is no data to include in this report. CPD's Information Technology Management Section (ITMS) has contacted the Scantron Company to assess the feasibility of collecting stop data on a card that can be scanned into a database. In the meantime, however, data collected on the contact card is still being entered by hand at CPD's Records Section.
- (b) Professors Eck and Liu of the University of Cincinnati were selected to analyze traffic-stop data for the period May 1, 2001 – December 1, 2001. Much of their time had been spent checking accuracy of data. No one has been selected to analyze data collected after December 1, 2001.
  - Data corrections have been made to the 2001 data. There still has not been anyone selected to analyze data collected after December 1, 2001. However, a RFP for an evaluator was published June 17, 2003.
- (c) The Contact Card, Form 534, was developed as the tool for officers to record data from traffic stops and field investigative stops. The Contact Card does not require collection of whether force was used during the stop, or the race of the officer making the stop.
  - The CA Status Report states that use of force data can be combined with the Contact Card information. The Report also explained that the race of an officer can be derived from the officer's badge number, which appears on the Contact Card. CPD has also stated that the Contact Card is in the process of being redesigned.
- (d) There were insufficient policies and procedures in place to insure Contact Cards are filled out completely and accurately, and that the data they contain is entered into a database and analyzed as required by the CA.
  - The CA Status Report states that Contact Cards require supervisory audit and review to ensure they have been properly completed, and that incomplete cards are returned

for correction.

- (e) CPD plans to use a Mobile Data Computer system known as COPS MART to collect stop data. However, specific vendor details and vendor-specific software components weren't made available at the time of the Monitor's First Report.
  - Implementation of COPS MART to collect stop data is not imminent. As noted above, use of Scantron equipment and software to facilitate data entry is under consideration.
  
- (f) CPD is required to collect data from citizens on positive interactions with police officers, as well as encourage citizens and city employees to report such favorable police actions. A feedback form had been developed, but it was unclear how the data was being compiled, the information used, or the form disseminated.
  - The Citizen Feedback Form is available at police facilities, and information from the feedback forms has been included periodically in CPD's Staff Notes. However, the City's efforts to publicize the process for reporting positive interactions with the police and disseminate these forms have not been documented and provided to the Monitor. The FOP has scheduled a meeting with City and CPD representatives to discuss these issues and provide suggestions on the form and its dissemination.
  
- (g) The Parties had not implemented the required "[r]eporting by members of CPD of unfavorable conduct by citizens in encounters with police."
  - The Plaintiffs and the FOP continue to discuss the language to be used on the form for collecting data on unfavorable citizen contact. While the Parties are close to agreement, a final form has not been developed, and thus the Parties have not yet been able to implement this provision of the CA. The Monitor will work with the Parties to finalize the form and how the information collected will be used.

### **3. Assessment**

The City's data collection effort is still hampered by the absence of a system to ensure timely and accurate data entry. As a result, there is no data on bias-free policing to include in this second report. Data entry for the period May 1 to December 1, 2001, is complete, and the data has been checked for accuracy. On May 28, 2003, Professors Eck, Liu and Bostaph presented an overview of the project to representatives from the CPD, FOP, Plaintiffs and City of Cincinnati. They explained the scope and limitations of the project, and sought input on how to announce and

disseminate the results. It is expected that a final report on the 2001 data will be completed in September 2003.

The Personnel data base to extract the race of the officer making a stop and the use of force written report are not currently being used to satisfy the requirements of paragraph 53 of the CA. The City will need to demonstrate that the use of these two sources of information can satisfy the requirements of paragraph 53.

An additional concern raised by the CA Status Report is that it indicates officers have discretion whether to complete a Contact Card for Terry stops, if charges are not ultimately sought. The CA requires data on all traffic and pedestrian stops. Failure to complete a Contact Card after a Terry stop that does not result in a charge does not comply with the requirements of the CA.

The City remains out of compliance with the data collection and analysis requirements of the CA.

## **B. Training and Dissemination of Information**

### **1. Requirement**

The Collaborative Agreement requires that all Parties cooperate in the ongoing training and dissemination of information regarding the Professional Traffic Stops/Bias-Free Policing Training Program.

### **2. Status**

In 2001, CPD included a four-hour class on Professional Traffic Stops as part of the Police Academy basic training course. The Professional Traffic Stops training included a segment on bias-free policing. CPD also included this training in its 2002 In-service Training for Police Officers and Specialists, which included a four-hour session on professional traffic stops.

The bias-free policing training was developed in conjunction with Ohio Chiefs of Police. It was conducted for in-service training in 2001 for all officers up to captain; and also included in management training in 2001 for captains and above. For two years it has been added to recruit training. Thus every officer has undergone this training at least once. While in-service training on bias-free policing has not been repeated since July 2002, CPD reports that aspects of bias-free policing training have been incorporated into other training, such as use of force training and roll call scenario training.

### **3. Assessment**

Given the information we have to date, we are unable to determine compliance with these provisions of the Collaborative Agreement. We have not had the opportunity to observe the training.

## **C. Professional Conduct**

### **1. Requirement**

Paragraph 54 of the CA requires that when providing police services, officers conduct themselves in a professional, courteous manner, consistent with professional standards. Except in exigent circumstances, when a citizen is stopped or detained and then released as a part of an investigation, the officer must explain to the citizen in a professional, courteous manner why he or she was stopped or detained. An officer must always display his/her badge on request and must never retaliate or express disapproval if a citizen seeks to record an officer's badge number. These provisions are to be incorporated into written CPD policies.

### **2. Status**

This provision has now been incorporated into procedures 12.205 and 12.554, and put into effect. CPD's Manual of Rules and Regulations also generally mandates courteous, fair treatment of all.

### **3. Assessment**

Based on the information we have to date, the City is in compliance with the professional conduct provision of the CA.

## **V. CCA**

### **A. Establishment of CCA and CCA Board**

#### **1. Requirements**

- City will establish Citizen Complaint Authority
- CA will replace CPRP and investigative functions of OMI. CCA will investigate serious interventions by police including shots fired, deaths in custody, major uses of force, and will review and resolve citizen complaints
- Board of seven citizens, Executive Director, and professional investigators. Board to be diverse
- Board and Executive Director to develop standards for board

members, and training program, including Academy session and ride-along

- Board and Executive Director will develop procedures for CCA
- CCA to examine complaint patterns
- CCA to develop a complaint brochure, as well as information plan to explain CCA workings to officers and public
- CCA to issue annual reports
- City Council to allocate sufficient funds for CCA

## **2. Status**

As noted in Chapter 4, the CCA was created by City Ordinance on May 13, 2002, and came into operation on January 6, 2003. It has a fully operating Board and staff, and has been allocated a budget by the City. We would note that the CCA has only one City vehicle, which makes it difficult for the investigators to work efficiently, according to the CCA Director.

## **3. Assessment**

The Parties have complied with these provisions of the CA.

### **B. Executive Director and Staff**

#### **1. Requirements**

- City Manager shall appoint Executive Director; the Executive Director is responsible for the operations of the CCA
- City Manager and other city officials are prohibited from interfering with individual investigations

#### **2. Status**

Nathaniel Ford was appointed as Executive Director on January 22, 2003. All of the Parties participated in the executive director search and interviews for the position, and agreed to his selection.

On June 18, 2003, Nate Ford informed the CCA Board that he would be resigning as Executive Director of the CCA. This unexpected development will prove one more challenge to the Parties in implementing

an effective CCA process.

### **3. Assessment**

The Parties have complied with these provisions of the CA.

## **C. CCA Investigations and Findings**

### **1. Requirements**

- Officers must give compelled statements to CCA. Board has power to subpoena other witnesses
- At least 5 professional investigators
- All citizen complaints referred to CCA. CCA to notify CPD of any complaints received. CCA to open its own investigation upon complaint of serious misconduct or allegations of serious police intervention
- CCA will assign investigator within 48 hours. CPD to notify CCA of serious police intervention and CCA investigator to go to scene to monitor work of CPD at scene
- CPD may conduct its own parallel investigation, and will conduct all internal investigations
- CPD officers to submit to CCA questions; CCA to have access to CPD records
- The Chief of Police and the CCA Executive Director shall develop written procedures for coordination of their respective investigations
- CCA investigations are to be completed within 90 days, with extensions possible
- CCA investigative reports, with proposed findings and recommendations, will be forwarded to the CCA Board; the Board may hold a hearing or make a summary disposition
- The purpose of a CCA Board hearing on an individual complaint is review, not reinvestigation; the Board hearings are to be non-adversarial. Hearings can be in closed sessions, with written record kept
- Board to approve or disapprove Executive Director's findings; Board's decision to be submitted to the Chief of Police and City

Manager. The City Manager shall agree or not; if not, with reasons

- CCA and CPD shall create a shared electronic database to track citizen complaints. This database shall be integrated into the Risk Management System

## **2. Status**

The CCA Ordinance requires officers to provide statements to the CCA. A Policy and Guidelines Manual for the CCA has been drafted and approved by the CCA Board. This manual establishes procedures for CCA meetings, the obligations of the Executive Director and CCA Board members, complaint intake and review, investigative standards, and hearing procedures.

As we note in Chapter Two the CCA has hired its own investigators and has begun handling complaints independently. On June 16, the CCA announced its findings in the first investigation it has conducted involving an officer-involved shooting. The CCA examined both the officer's initial decision to engage in a foot pursuit and the officer's use of deadly force, finding both decisions to be justified. The Monitor will review the CCA's investigation of this incident in the next quarter.

The CCA Executive Director has begun discussions with the Chief of Police regarding dual investigations, but these discussions are ongoing, and there is as yet no written plan for coordination. One issue that has been raised with the Monitor is the access by the CCA and its investigators to documents and other sources in cases where there is a criminal investigation of officer conduct, as well as an administrative investigation.<sup>12</sup> There are two rationales for limitation of CCA investigations. First, if information garnered through a compelled statement of the involved officer in the administrative investigation is revealed to those engaged in the criminal investigation, the criminal prosecution is tainted. A second concern is that information from the administrative investigation could become public under Ohio's public records laws while the criminal investigation is proceeding. While concern for the criminal investigation is warranted, there are steps that can be taken that would allow CCA to proceed with its responsibilities to investigate, while at the same time protecting the criminal investigatory process.<sup>13</sup> We would urge the CCA and the CPD to meet with the county prosecutor to work out those arrangements.

## **3. Assessment**

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<sup>12</sup> For example, the CCA had difficulty obtaining the autopsy report from the Coroner in the officer-involved shooting.

<sup>13</sup> For example, CCA could agree not to take any compelled statement from an involved officer without the approval of the prosecutor. CCA, CPD and the prosecutor could also agree on procedures for a speedy determination at the beginning of an investigation of whether or not there is a potential for a criminal charge.

The Parties are in partial compliance with these requirements. The CCA is in place and has begun to conduct its investigations. It has hired new investigators. Moreover, its jurisdiction is clear regarding which cases it will take as mandatory investigations. However, there are still problems relating to when CCA is informed of complaints, and when CCA investigators can begin their investigation.

The Parties need to work through these issues. In future reports, we will assess the completeness and quality of CCA investigations through a review of a sample of CCA investigative files.

## **VI. Individual Actions**

Paragraph 116 of the CA states that the Parties agree to develop, within 30 days of approval of the Agreement, an expedited arbitration process for the individual litigation matters listed in the CA.

Negotiations among the Parties regarding the individual litigation matters resulted in a proposed settlement agreement for sixteen separate claims. That settlement agreement was conditionally accepted by the Federal District on May 21, 2003. Pursuant to that agreement, the City will pay \$4.5 million into a settlement fund. Once the fund has been fully funded, all claims against the City filed by the complainants will be dismissed with prejudice. The Plaintiffs will then decide how those funds will be distributed among themselves.

The Parties have expressed the hope that the settlement of these individual claims will eliminate a major impediment to establishing a better working relationship between the Cincinnati Police Department and the community. We share that hope and believe that this settlement is a major step forward for the Parties.

## **Chapter Four. Review of Sample Investigations**

### **I. Canine Investigations**

20020776

11/15/02

Summary: Officers respond to an aggravated robbery at a grocery store. The store videotape shows a black male subject with a handgun, and also a four-door white Cadillac. Plainclothes officers locate the car parked several blocks away, and observe three subjects get in the car and drive off. A uniformed officer attempts a traffic stop, and the car stops briefly, but then takes off at a high rate of speed. After a short vehicle pursuit, the car crashes and the three subjects bail out of the

car. One is apprehended after a short foot pursuit, while the other two elude the officers. Canine is called for and a containment area is set up. A canine handler responds to the scene and gets authorization to deploy. He begins a track with a 25 foot lead and a second officer as cover. The canine tracks for 40 yards along a hillside, and then the canine turns into a wooded area with underbrush. The dog then engages one of the suspects under wooden crates, biting him on the back of his left hip area. He struggled with the canine and tried to push the dog off. The handler ordered the subject to stop fighting with the dog, and then recalled the dog. The other subject was lying next to the one who was bitten. He was ordered to come out from under the crates and lie prone by the cover officer, which he did. Both subjects were then handcuffed by assisting officers. A gun was recovered from the car.

### Compliance

1. Policies: The deployment met the MOA/CPD criteria for deployment of a canine, and supervisory authorization was obtained. While there was no canine announcement or warning, the canine handler and cover officer stated in their interviews that an announcement was not required because the subjects were believed to be armed and were close by, and an announcement might have endangered the officers. With respect to the bite, the subjects were hiding, rather than escaping or actively resisting, although the officers did believe that they were armed, and thus posed a risk of imminent danger. While the new canine policy states that in the case of concealment, handlers will not allow their canines to bite if a lower level of force could reasonably be expected to allow for apprehension, in this case, the handler did not know that the subjects were concealed, and the subjects made no noise or effort to surrender.

2. Investigation: The investigation was conducted by the supervisor who authorized the canine deployment. Under paragraph 26 of the MOA, officers who were involved in a use of force or who authorized a use of force should not investigate the incident. The investigation is fairly complete. However, because the supervisor investigating the incident was the one who authorized the deployment, there is no statement from him. There are taped interviews of the canine handler, the cover officer, the physician, and the bitten subject, who will only say that there are no warrants out for his arrest. The other subject found by the canine refused to give a statement. There are photographs of the bitten subject, as well as arrest reports, a trial preparation report, and a vehicle pursuit report. There is also a Use of Canine Review memo by the lieutenant in the Parks Unit. While there are no medical records, there is a medical release form and a hospital discharge form, as well as an interview with the attending physician. The Parks Unit lieutenant notes that the investigating supervisor used leading questions in some of his interviews, and discusses this issue with the supervisor. The Monitor agrees that open ended questions should be used, but we note that in this case the questions related to issues of the lack of a warning and

whether the subjects had an opportunity to surrender, which were appropriate areas of inquiry.

3. Inspections: The Inspections Section reviewed the investigation and assessed the documentation, tactics and investigation, and concluded that the canine use was in compliance with CPD policy.

20020837  
12/12/2002

Summary: A canine officer and lieutenant were patrolling a neighborhood as part of a robbery task force in search of a suspect wanted for aggravated robbery (theft of a gun from a Knollwood police officer). The officers saw the subject, matching the description of the wanted suspect, at a bus-stop. The officers circled the block and when they returned, the subject fled across the street. The lieutenant exited the car and began a foot pursuit, while the canine officer continued in his vehicle; the canine officer parked in a parking lot close to where the subject ran and exited with his canine partner. The canine officer commanded the subject to stop or he would release his canine. The subject continued to flee and the officer deployed his canine. The subject ran between two houses into the rear yard of one of the houses. The officer followed but lost sight of the subject. The canine officer then directed his dog to find the subject, and the dog ran into the adjoining yard and engaged (bit) the subject, who was lying face-down among some shrubs and lawn furniture. The officer recalled the dog and began to handcuff the subject; the subject rolled to the side to get away from the dog, and the dog reengaged. The handler then recalled the dog and put the dog back on lead, and handcuffed the subject. The subject was initially bitten on the right bicep, but because he was wearing a heavy jumpsuit, the skin was not broken; on the second bite, the dog only bit the subject's jumpsuit.

In his taped interview, the subject says that he told the officer "I'm right here" when he was lying in the yard. In a second interview, requested by the Inspections Section, the canine officer states that the subject did not make that statement, and did not in any way indicate that he was surrendering. The subject was not the suspect wanted for aggravated robbery, but he was on probation. He states that he ran because he thought he might have been wanted on a parole violation. The subject was charged with disorderly conduct, obstructing a law enforcement officer, jaywalking and drug possession. A plastic baggie with marijuana was found on the ground at the bus stop after the arrest.

#### Compliance

1. Policies: The deployment meets the MOA criteria for

deployment, and there was authorization from a supervisor, as the canine officer was riding with a lieutenant when the pursuit began. The officer did announce the canine deployment and warn the subject to stop. This is a situation, like several referenced in our First Quarterly Report, where the subject was hiding from the police and the canine bit the subject before the officer could get to the scene and take the subject into custody. What is not clear in these situations is whether a lower level of force could have been used to make the arrest. The officer was under the belief that the subject might be armed, which justified the initial deployment. The canine did not alert to the subject before engaging him, so there was no opportunity for the subject to surrender without a bite [as discussed below, the subject states that he did indicate where he was to the officer, though the officer denies this], although the subject was warned at the beginning of the pursuit and could have given up then.

2. Investigation: The investigation and 18C report was completed by the lieutenant who was riding with the canine officer. This is the same individual who was involved in the initial pursuit and who is listed as authorizing the deployment. Under paragraph 26 of the MOA, officers who were involved in the use of force or who authorized the use of force should not investigate the incident. A resulting problem with this practice is that there is no statement or interview with the lieutenant. The investigation includes taped statements of the canine handler and the subject, but the investigator does not ask follow-up questions regarding the subject's statement that he yelled to the canine officer "I'm right here." The investigation also does not include an interview with a woman inside the house behind which the arrest took place. (After the arrest, this person gave the handler the address of the house.) She may not have seen the search and apprehension, but she should have been interviewed to find out. There is no indication in the investigative file whether any efforts were made to assess whether there were civilian witnesses. The investigative file also does not include a copy of the photo of the initial suspect wanted for aggravated robbery. While the taped statement of the canine handler describes that person and states the subject matched the description, including the photo would have allowed supervisors to better assess whether the initial pursuit was justified.

3. The Inspections Section properly notes several issues regarding the incident and returns the investigation to Patrol for additional action: (a) the second canine engagement was not documented on the Form 18C; (b) rather than attempt to handcuff the subject and try to control his canine at the same time (and thus allowing for the second canine bite), a better tactic would have been for the canine officer to hook the canine on a lead, have the subject remain prone and request a second officer to respond and handcuff the subject; (c) the investigator did not clarify with the suspect or the canine officer the suspect's statement that he yelled "I'm over here" to the canine officer. When returned to Patrol, a second interview was conducted with the canine officer regarding whether the subject attempted to surrender, and the canine officer was counseled on

completing Form 18C and on tactics for apprehending suspects at the end of a canine search.

2020838  
12/13/2002

Summary: State parole officers and CPD officers approached an apartment to serve a warrant for a parole violation of aggravated robbery. After being refused entry by a female in the apartment, officers saw the subject first on the porch, and then on the roof of the building. The subject jumped off the roof and after landing, ran into a wooded area. The officers lost sight of the subject and requested a canine unit. A canine officer and a canine trainer responded to the scene and got authorization to begin a canine search from the Lieutenant on the scene. The canine tracked the subject through the woods on a 30 foot lead for approximately 1 1/2 mile. At that point, the officer saw the subject on a path 40 yards ahead, and ordered the subject to stop and get on the ground. According to the canine officer and the trainer, the officer warned the subject that he would release the dog if the subject did not stop; instead, the subject turned away from the officer and began to run. The canine was released and bit the subject on the back of his right calf. The officer recalled the dog, and the trainer handcuffed and arrested the subject. According to the subject, he got down on the ground as soon as he was told to by the officer, but was bit by the dog anyway.

### Compliance

1. Policies: The canine deployment meets the MOA/CPD policy deployment criteria; the canine officer also obtained a supervisor's authorization for the deployment. The canine officer did not issue a warning on starting the search, but did issue a warning when he saw the subject in the woods. It is unclear how much time elapsed between the warning and the release of canine. If, in fact, the suspect did refuse to comply and fled, the canine bite meets the MOA/CPD policy criteria. After the canine bite, the dog was immediately recalled, as required by the MOA.

2. The allegation by the subject that he complied with the officer's command and got on the ground, but the canine was released anyway, is a complaint of excessive force. It should have been treated as a complaint, investigated as such, and been reviewed by IIS.

3. Field Investigation: The investigation included taped interviews with the relevant witnesses (officers and subject), and proper questions were asked. Medical records were not included in the file (despite a voluntary release of records), which might have provided additional information about the severity of the injuries.

4. Inspections: The Inspections Section properly reviewed the incident and assessed the criteria for deployment, tactics, and

compliance with CPD policies. It also reviewed the subject's allegation, crediting the officers' statements, given the subject's efforts to evade the police throughout the incident, and the location of the bite on the subject.

20030119  
01/02/03

Summary: At 2:30 am on January 2, 2003, several officers responded to a traffic accident with a critically injured motorist. A sergeant approached a car near the scene that he believed was involved in the accident. Two males fled from the car. The sergeant did not pursue the individuals, but returned to the accident scene. Several residents or pedestrians stated that they thought there were shots fired before the accident. Based on this information, the officers decided to request a canine unit to search for the two who had fled from the car, and a canine deployment was authorized. A canine officer and canine supervisor began a track that led to a yard behind a residence. The canine went along the right side of a detached garage, behind the garage and then back up the left side of the garage. As the handler was moving behind the garage, the lead went slack and he heard a scream. The canine had entered a small shed where the two subjects were lying on the ground, and bit the jacket shoulder of one of the subjects. That subject lunged forward, and the canine disengaged and then bit the second subject on the left leg. The subject pulled away and the dog re-bit the subject's leg. In the meantime, the handler approached the entrance to the shed and issued commands for the subjects to show their hands and stop moving. When the subjects raised their hands, the dog was recalled, and the subjects were arrested.

As it turned out, the subjects were not involved in the accident, and there were no shots fired (the accident occurred when the driver struck the curb, then lost control of the car and the car ran into a utility pole). The subjects did have outstanding misdemeanor capiases, however. They were charged with obstructing official business, misdemeanor traffic and drug possession capiases, and drug possession (one of the subjects had a small baggie of marijuana in his pocket). The dog bite was a minor one; the treating physician stated that the bite barely broke the skin, and that a tetanus shot and cleaning was the only treatment necessary.

### Compliance

1. Policies: The deployment was consistent with CPD policy and the MOA, given the belief that the individuals were involved in a "shots fired" incident. The deployment was also authorized by a supervisor. No canine announcement was made or warning given, and no explanation for the lack of warning was provided in the investigative file. Under the new Canine policy, the handler should not allow the canine to bite the

subjects if it reasonably appears that the subjects can be apprehended using less forceful means. In this case, the subjects were hiding from police inside a shed. There may have been no warning given or opportunity to surrender because the canine had already found and bitten the subjects before the handler was aware that the canine found them and before he could get to the shed. If that is the case, it appears that the handler may not have had sufficient control over canine on the lead.

2. Investigation: The investigation was conducted by the canine supervisor who accompanied the handler on the track and participated in the arrest. In a Use of Canine Review memo, the Commander of the Special Services Section notes this conflict and states that the supervisor “should not report a use of force in which he was a party. Another Special Services Section supervisor or an uninvolved District 5 supervisor should have investigated and reported this incident.” The issue was discussed with the supervisor and the memo states that the Special Services Section SOP “will also be revised to include this standard.” The investigative file did have taped statements from the canine handler, the supervising officer (with the interview done by a lieutenant), the two subjects, and the treating physician. However, there was no report or interview with the sergeant who initially approached the subjects’ car and who took the reports of shots fired from residents or pedestrians in the area. Thus, there is no record of who those witnesses are. Also, the file does not contain photos of the subject whose jacket was bitten, documenting that there was no bite to the person; nor were there photos or a diagram of the scene, which would help reviewers assess the incident.

3. Inspections: Inspections concluded that the use of the canine was in compliance with CPD policies. It noted that the commanding officer addressed the propriety of the supervisor conducting the investigation after being involved in the search. It also sent the file back to Patrol because a separate Form 18C was not completed for the subject whose jacket was bitten. A decision was subsequently made, however, that when a canine engages a subject by biting clothing only and not biting any part of the body, the incident will be documented on a Canine Deployment form rather than a Form 18C.

## **II. Taser Investigations**

20020818

12/31/02

Summary: The subject had attempted to commit suicide by hanging when he was discovered by his family and cut down. Later, when the police were called, he held a knife to his throat and threatened to kill himself (“I just want to die”). A sergeant armed with a taser (and covered by two officers with handguns) ordered the subject to drop the knife and place his hands behind his back. The subject refused and the

taser was deployed. Only one of the two barbs made contact so the round had no effect [both barbs have to make contact with the subject or his clothing for the electric charge to work]. The subject still had the knife to his throat and a second taser round was deployed. The subject moved and again only one barb made contact. However, after the second taser shot, the subject dropped the knife and was taken into custody.

### Compliance

1. Policy: The use of the taser was consistent with the MOA and CPD policy. In addition, in this incident, a sergeant who was a member of the MHRT was dispatched to the scene.

2. Investigation: The investigation was conducted by a sergeant who responded to the scene of the incident (although not the one deploying the taser). It is unclear whether the sergeant participated in the incident or authorized the use of force, or simply arrived on scene after the use of force to investigate. There are no taped interviews with the subject, the involved officer or witness officers. While the MOA requires taped interviews, CPD policy appears not to require them. Without taped statements, however, the only documentation of the statements of the witness officers is that their statements corroborate the statement of the officer using force, without any details. There is no documentation of an attempt to interview the subject. The investigating supervisor appropriately reviewed the sergeant's tactics and explained why there is no photo of one of the subject's injuries.

3. Inspections: Inspections reviewed the use of force and noted two documentation issues to be clarified by Patrol. The investigative file was approved after these issues were addressed.

20030043

01/08/03

Summary: Officers were dispatched on a family trouble run called in by the subject's mother. The mother also informed officers that her daughter had behaved violently with the police in the past. When the daughter was told that the police wanted to talk to her she fled downstairs to the garage. One officer was positioned to the subject's left side carrying chemical spray, a second officer was in front of the subject, armed with a taser, and a third officer was moving to the right as a cover officer. As the officers approached, the subject picked up a razor from the floor and tried to cut her left wrist. The officer in front deployed the taser and applied a 6 second charge, which immobilized the subject, who was then taken into custody.

### Compliance

1. Policies: The use of the taser was consistent with the MOA and CPD policies. The CAD printout reflects that this run was characterized as a code 99 run (involving person suspected with mental illness) from the beginning. An MHRT member did respond to the scene as backup,

but was not dispatched as the initial responder.

2. Investigation: The interviews conducted by the investigating supervisor are not taped. There is also no documentation of attempts to interview the subject or the attending physician.

3. Inspections: Inspections does an excellent job of noting deficiencies in the documentation, which are then corrected by the Patrol Bureau. Inspections also notes the prohibition on using chemical spray at the same time as the taser [this prohibition may be based on the fact that the some CS sprays use a solvent (MIBK) that is potentially flammable and could ignite with an electric charge from the taser.]

### **III. Physical Force Investigations**

20020690

10/30/02

Summary: Two officers responded to location for a wanted juvenile. They observed subject, matching description of the wanted person, moving to the back of the house. One officer went around to the back door and ordered the subject to stop. When the subject did not stop, the officer grabbed his shirt and then tried to take the subject to the ground. According to the officer's statement, the officer felt the subject pulling on the officer's holstered gun, and the officer hit the subject on the face with an open palm strike. Both the officer and the subject went to the ground. A second officer assisted and tried to get the subject's arms behind his back; the subject bit the second officer, and the first officer again struck the subject in the face with a palm strike. Two additional assisting officers arrived and the subject was taken into custody. According the subject's interview, the officer struck him with a closed fist and kicked him. He also alleges that after he was handcuffed, the officers put him against a car and his face hit the car.

#### Compliance

1. Policy: If the incident occurred according to the officers' statements, the use of force is consistent with CPD policy. The District Commander notes that the officers involved in the use of force should not have been the officers to transport the subject to the Hamilton County Youth Center. At the Youth Center, the subject threatened the officer, which resulted in an additional charge, which might have been avoided if a neutral officer had transported him.

2. Investigation: The investigating supervisor did not attempt to reconcile the conflicting versions of events of the officers and the subject, either through follow-up questions in the taped interviews or in his write-up of the investigation. There are no photos of the hand of the officer bitten. The District Commander, in a supplemental use of force report, states that chemical spray would have been a preferable option once the subject was taken to the ground, and that the use of spray might have prevented the second officer from being bitten and the need for additional

hand strikes. Also, the District Commander states that there were several discrepancies between the narrative in the original Form 18F and the taped statements, that that the 18F form was returned to the investigator for corrections.

3. Inspections: The Inspections Section notes the issues raised by the District Commander, which the District Commander discussed with both the involved officers and the investigating supervisor.

20020772  
11/03/02

Summary: Officers were dispatched to a Domestic Violence call. They met the girlfriend of the subject outside the house, who alleged that the subject assaulted her. The subject, who had been drinking, locked the house and would not come out. Officer called the Fire Department to assist in getting in the house. Subject was in second floor bedroom and blocked the door with his body. The officers were able to push the door open slightly and spray chemical irritant into the room; they then were able to pry the door open. Once inside, the subject was uncooperative and struggled with officers who attempted get his arms behind his back. At one point, an officer was pushed by subject to the ground and hurt his head and neck. Before officers were able to handcuff him, the subject was sprayed with chemical spray, one officer applied two elbow strikes to his shoulder and neck and two knee strikes to his side, a second officer delivered three knee strikes to his ribcage, and a third officer struck subject in the arm with a PR24 and delivered knee strikes to his upper back.

#### Compliance

1. Policy: It is not clear who transported the subject to jail. Also, subject alleges in his interview an hour after the incident that he is still handcuffed and has not been able to wash off the chemical spray from his face.

2. Investigation: There are taped interviews with the subject and involved officers. An interview with the girlfriend, although she did not witness the use of force, might have provided additional information about what she heard, and the subject's uncooperativeness. There were no photos of the injured officer. The District Commander prepared a use of force supplement addressing tactics and compliance with policy.

20020700  
11/16/02

Summary: Officer sees subject in a parked car with engine running and asks for ID. Officer runs a computer check and subject is wanted on traffic warrants. Second officer responds to radio traffic as back up. Both officers approach car and ask subject to exit, and put his

hands behind his back. Subject stands up on the car floorboards and then pulls away from officers. When subject is in the middle of the street, he squirms out of his jacket, which the officers are holding. One officer then grabs subject's legs and the second officer grabs the subject from behind and the officers and subject go to the ground. The officers are able to hold subject, who continues to struggle, until backup officers arrive. Subject is sprayed with chemical spray and then is handcuffed without further incident.

#### Compliance

1. Policy: There are no policy issues raised with this incident.
2. Investigation: The investigation is complete. The District Commander notes that the subject was transported to the Justice Center by a neutral officer, and that the MVR tape was reviewed by the investigating supervisor (although the MVR tape was not included in the investigative file provided to the Monitor).

20020844  
12/13/2002

Summary: Undercover officers were meeting subject in KFC parking for drug buy (they had bought drugs from subject previously that evening). As subject approached officers' car, the officers exited and announced that they are police officers and told subject he is under arrest. The subject backed away and one officer, then the second, grabbed the subject. The subject struggled and in doing so hit one of the officers in the nose with his elbow, knocking the officer backwards. The second officer continued to struggle with subject. A sergeant arrived and assisted in taking subject to the ground. According to the officers, the subject refused to comply with demands that he put his arms behind his back and one officer punched him two to three times in the shoulder or back to get the subject to release his arm. The officer then struck subject on the left side of the subject's head. At the same time, the sergeant delivered a knee strike to subject's midsection and then a kick to subject's midsection. According to the sergeant, these strikes weakened the subject sufficiently to allow the officers to pull subjects' hands from his waistband and handcuff him. According to the subject, the officers punched and kicked him, as well as using chemical spray. He alleges that he did not assault the officer and that the force was "uncalled for."

#### Compliance

1. Policy: The use of force complaint was not investigated by IIS, as required by ¶46 of the MOA.
2. Investigation: The investigating sergeant properly characterizes subject's interview as a complaint of excessive force and completed a citizen complaint form (Form 648). The sergeant determined that the allegation of use of chemical spray was unfounded, and that the use of

force was appropriate and necessary to make the arrest, and thus the allegation was exonerated. The investigation includes taped statements of the officers and the subject. The investigating sergeant states that a canvass of the area revealed no independent witnesses (although the incident took place on a Friday afternoon in a KFC parking lot). Photos of the subject were included, but not of the officer who was hit in the nose. The District Commander reviewed the incident and counseled the sergeant involved in the incident regarding the need for backup uniformed officers during undercover drug operations; also that team members should be properly equipped with handcuffs and chemical irritant.

3. Inspections: Inspections Section noted several documentation issues with the file, and returned the file to Patrol for review and action. The copy provided to the Monitor does not reflect the corrections, nor the final review by the Chief of Police.

20020822

12/23/02

Summary: Officer, working off duty detail in uniform at Kroger's grocery, observed subject (through one way security mirror) stealing products from the store. Officer approached subject outside the store and directed him to come back into the store and that he was under arrest. Subject started to go back, but then pushed the officer and tried to run. The officer grabbed the subject and was able to spin him onto the ground. The officer straddled the subject, holding his arms, until a store employee came out and assisted the officer in turning the subject over on his stomach, and the officer handcuffed the subject. Neither the subject nor the officer was injured.

#### Compliance

1. Policy: There were no policy issues regarding this incident.
2. Investigation: The investigation was complete and consistent with the MOA. The investigating sergeant also raised tactical issues regarding the need for the officer to notify Police Communications Section before approaching the subject to arrest him, and whether the officer should have disengaged and "allowed for a reactionary gap" that might have allowed for the use of chemical spray.

20020664

01/09/03

Summary: Two officers were responding as cover to a domestic call when they were flagged down on the street by the live-in boyfriend of the subject. The subject was 8 months pregnant. The boyfriend told police that he and the subject had been having an argument and that the subject had a history of mental problems and had not been taking her medication. As the officers were talking to the boyfriend, the subject

came up to him and began arguing with him. She then grabbed him by the shirt and would not let go. After telling the subject to back away, without success, one of the officers grabbed her hand and pulled it away from the boyfriend. He then told the subject she was under arrest and tried to put her arm behind her back. The second officer tried to grab the subject's other arm, but the subject pulled away and hit or choked the second officer. When the two officers were able to take hold of both arms, the subject tried to kick the officers. The officers then lowered the woman to the ground to handcuff her, the woman spit on the officers. After the subject was handcuffed, the officers picked her up to put her in the scout car; as they did, she kicked one of the officers in the groin. After being placed in the squad car, the subject again tried to kick at the officers.

#### Compliance

1. Policy: The use of force in this instance did not raise any policy issues.

2. Investigation: The investigating supervisor did an excellent job of conducting taped interviews with the involved officers, civilian witnesses (including a 12 year old boy who witnessed the incident), and the subject. The investigative file included the relevant documents, except for a CAD printout. The District 1 Commander prepared a use of force review addressing relevant issues, including why the involved officers, rather than other neutral officers, transported the subject to University Hospital.

3. Inspections reviewed the investigative file and addressed documentation, tactics and compliance with policy.

#### **IV. Chemical Spray Investigations**

Because the information contained in chemical spray investigations generally is limited, these investigations are presented in summary fashion.

- 20030646 (10/14/02). A suspect who was believed to have been involved in a recent crime was approached for arrest and fled. After being pursued on foot, the suspect was arrested and failed to comply with officer's commands to put his arms behind his back. The officer used chemical spray and suspect was handcuffed.
- 20020670 (10/26/02). Officers observed the suspect chasing someone and when the suspect caught the person, he began punching him in the face. Officers told the offender to stop punching the individual and when he failed to comply, officers utilized chemical spray.
- 20020745 (11/18/02). Officer stopped the suspect for a pedestrian traffic violation of crossing on a "Don't walk" signal. Suspect told to

sit on the curb while the officers ran his name. The suspect had a juvenile arrest warrant. While the suspect was being handcuffed and searched, he actively resisted arrest by tensing his arms, flailing his body and kicking at the officers, saying that he did not want to be searched. Officer administered a two-second burst of chemical irritant, which caused the suspect to comply. The suspect alleged he was not jaywalking and the light was red. He also alleged that the officers improperly started to search him, and told him that they had a warrant, but never showed him a warrant. The suspect claims that he did not resist arrest and was cooperative. Taped statements were taken and Inspections Section reviewed the investigation, but the suspect's allegations were not handled as a complaint.

- 20020783 (11/28/02). Officers responded to a domestic violence call that was made by a neighbor in the apartment complex in which the subject lived. An officer responded to the scene and arrested both the subject and her boyfriend, who were both present in the apartment. Both individuals had injuries. The subject had a swollen right eye and a knot on her left eye. The boyfriend had scratches on his left wrist and right forearm. Officers allege that the subject, after being handcuffed and while being escorted out of the apartment, started to pull one of the officers down the stairs and then attempted to hit her head on a window in the stairwell. When the officer tried to pull the subject back from the wall, the subject went to her knees and would not get up. The second officer then sprayed her with chemical spray and she complied. The subject alleges that she was sitting down on the stairwell because the female officer made her to put handcuffs on. She says she was maced for no reason and that the second officer told her to stand up only after she was sprayed. She could not stand up because of the spray. The investigations included taped interviews of the subject and officers, but not of the boyfriend. Also, no complaint form was completed. The dual arrest of both individuals in the domestic violence call also seems problematic, as it appears that the boyfriend was the aggressor in the situation, especially given the injuries to the subject.
- 20020753(11/30/02). A patron of a restaurant who was alleged to be mentally ill refused to pay the bill. When officers went to arrest her, she spat at them and chemical spray was used.
- 20030018 (01/10/03). Officers arrested suspect for drunk driving. After arrest, suspect was placed in the patrol car and began banging his head into the partition. Officer ordered the suspect to stop three times, but the suspect continued. Officer used chemical spray. Suspect discontinued his behavior. Taped statements, required because this was a chemical spray on a restrained person, were not taken.
- 20030026 (01/24/03). Officers responded to a bar fight and ordered two individuals to stop fighting. When they did not heed the officers' commands, chemical spray was used.

- 20030094 (02/13/03). Officers responded to a person refusing to leave a bar. When officers told the suspect to leave, he took a fighting stance and an officer used chemical spray to the subject's face.
- 20030150 (03/13/03). Officers responded to a domestic violence call and when arresting the suspect, he became unruly. Officers used chemical spray and the arrest was completed.
- 20030175 (03/17/03). Officers responded to a breaking and entering in progress and the suspect approached officers with a rake, ignoring officer's commands to stop walking away and to put the rake down. Officers tried to take the suspect into custody and he resisted. An officer responded with chemical spray, which did not work. Eventually the suspect was handcuffed.
- 20030136 (03/09/03). Officers observed an individual walking from the rear of a building. Officers knew the location to be prevalent for drug sales, and had previously arrested the subject for felony drug possession. Officers asked the subject why he was behind the building. The subject fled and threw an unidentified object from his pocket onto the sidewalk. As officers approached to arrest the subject, he attempted to break free, throwing elbows and violently thrashing his body. Officers sprayed him with chemical irritant. Four officers were called to the scene to arrest the subject. The Arrest Report and the 18CI do not articulate sufficient facts to demonstrate either probable cause to arrest or reasonable suspicion to investigate subject.

## **V. Injury to Prisoner Investigations**

The instances in which a suspect placed narcotics in his or her mouth and chemical spray was used were found in report numbers:

- 20020680 (10/26/02). The suspect was observed in a drug transaction. When approached, the suspect ran. Once the suspect was caught, the suspect began talking and spit a piece of crack cocaine out of his mouth. The suspect had more crack in his mouth and refused to spit it out. The suspect was told he would be sprayed if he did not spit out the cocaine. He did not and was sprayed with chemical irritant. The suspect spit out the cocaine and was taken to the hospital for treatment. The investigation included taped interviews.
- 20020705 (11/01/02). The suspect tried to sell an undercover officer crack cocaine. When he realized that he sold crack to police officers, the suspect fled on foot. While being handcuffed, the suspect swallowed crack cocaine. He was advised to spit it out and failed to do so. He was sprayed with chemical irritant and taken to the hospital. The 18I Report does not state whether the suspect was restrained when he was sprayed. There were no taped interviews taken.

- 20020707 (11/05/02). The suspect was observed drug trafficking on the street. When officers approached to arrest him, the suspect fled on foot and fell to the ground. When officers tried to handcuff him, they observed the suspect placing crack cocaine into his mouth. An officer advised him to spit out the crack cocaine and the suspect began to use his fingers to shove the contraband down his throat. At this time, the officer used chemical spray and the suspect spit out approximately 12 grams. The suspect became compliant. He was transported to the hospital for treatment.
- 20020758 (11/27/02) (second page of the report is missing). Suspect was observed trafficking in drugs. The suspect was placed into custody. When the suspect was speaking his speech sounded strange and the officer asked him to lift his tongue. Suspect began to chew a white substance that was determined to be crack cocaine. The suspect was sprayed with chemical irritant and spit and vomited. He was transported to the hospital, where additional crack cocaine was recovered. Taped statements were taken.
- 20020816/20020817 (11/27/02) (both second pages of the 18I reports are missing and the Arrest and Investigation Report is illegible). Members of the Vice Enforcement Unit and District One arrested the suspect who was charged with soliciting, loitering to solicit, resisting arrest and two counts of assault on a police officer. After being handcuffed and while being walked from one patrol car to another, the suspect broke free and attempted to run. She was immediately caught and put in the rear of the second police car until she could be searched. According to the arresting officers, while she was searched, the suspect became belligerent, kicking and flailing her head backward and forward, striking her face on the trunk of the police car and sustaining an abrasion on her chin and lower lip. She then spit at officers and continued to struggle. An officer sprayed the suspect with chemical irritant. While being transported to the Justice Center, the transporting officer saw the suspect swallow drugs and she was sprayed with chemical irritant a second time while in the back of the police car (it turned out the drugs were prescription medicine). This resulted in a second Injury to Prisoner report. The suspect complained of excessive force, stating she was injured after being “thrown against the car and beat up.” The investigation was conducted by a sergeant in the Pharmaceutical Diversion Squad, not by IIS. Taped statements were taken from the officers and the subject, although the subject’s interview was unintelligible. The sergeant recommended a finding of “not sustained,” but he did raise tactical concerns regarding the ability of the suspect to break free of officers while handcuffed and flee for a short distance, and about the fact that the search of the suspect did not reveal the prescription medication in the suspect’s pocket, which she ingested in the patrol car.
- 20020759 (12/01/02) (the second page of the 18I report is missing).

There is no legible report regarding the circumstances of the use of chemical spray. On the first page of the 18I report, it is evident that the officers used chemical spray because of the subject's non-compliance.

- 20020799 (12/02/02). The Arrest and Investigation Report states that the suspect was driving a vehicle and the arresting officer knew that he did not have a driver's license. The officer conducted a stop and when he approached the vehicle he noticed the suspect had something in his mouth. The officer asked the suspect to open his mouth and saw a piece of crack. The suspect refused to spit it out after he was ordered to do so. The assisting officer sprayed the suspect with chemical irritant and the suspect spit out the cocaine. The 18I report states that the suspect was sprayed while he was handcuffed and under arrest. Taped interviews were conducted of the suspect and the two officers who were involved. The tapes were unintelligible, however, because they were copied at the wrong speed.
- 20030035 (01/28/03). A passenger in an auto that was being investigated was observed chewing and swallowing crack and did not obey commands to stop. Chemical spray was used. The suspect swallowed some of the crack and spit some of it out. Suspect taken to hospital.
- 20030074 (02/7/03) (the second page of the report is missing). The suspect swallowed powdered cocaine and officers utilized chemical spray. The subject was taken to the hospital and refused treatment.
- 20030143 (02/27/03). The suspect spit out heroin when the officer used chemical spray. Because the suspect stated he had not swallowed any of the heroin, he was not taken to hospital. Investigating sergeant was counseled that all persons who put contraband in their mouths must be taken to the hospital.
- 20030228 (04/02/03). The suspect was arrested for attempting to sell crack cocaine to undercover officers. When officers were approaching to arrest the suspect, he placed crack cocaine in his mouth. The suspect was ordered to spit it out and refused to do so and continued to ingest the substance. Officers used chemical spray and the suspect was transported to the hospital and refused treatment.
- 20030230 (04/04/03). The suspect conducted a drug transaction with undercover officers. When officers moved to arrest the suspect, he placed crack cocaine in his mouth and tried to swallow it. Officers demanded that the suspect remove it from his mouth. Officers used a chemical irritant which caused the suspect to spit out the crack cocaine.

The instances in which the suspect put narcotics in his or her mouth and chemical spray was not used were found in the following report numbers:

- 20020634 (10/01/02) (the second page of the 18I report is missing). The Arrest and Investigation Report states that the subject was arrested on an open warrant and while in custody in the police car the suspect flipped his handcuffs under him and pulled crack onto the car seat and began eating it. The suspect was taken to the hospital for treatment.
- 20020636 (10/03/02)(the second page of the 18I report is missing). The Arrest and Investigation report states that the suspect was being investigated for standing on the street corner in a high drug area. The suspect consented to a pat down search and the officers found contraband. When the suspect was talking to the police, the officer observed crack fall from the roof of his mouth. The officer told him to spit it out but the suspect disobeyed the command and attempted to swallow it. He choked on the cocaine and spit it out on the sidewalk. It was found to be 2 grams.
- 20020637 (10/07/02)(the second page of the 18I report is missing). The Arrest and Investigation Report states that the suspect was arrested in a drug transaction and admitted to swallowing heroin. She was taken to the hospital for treatment.
- 20020638(10/09/02) (the second page of the 18C report is missing). The Arrest and Investigation Report indicates that the suspect was observed by undercover officers to be involved in a drug transaction. The arresting officer approached the suspect who was found to be in the possession of heroin. The suspect placed the heroin in his mouth and swallowed it. The suspect spit out 2 bindles and was taken to the hospital where two more bindles were recovered.
- 20030030 (01/07/03). The suspect, a passenger in a car, swallowed marijuana after placing it in his mouth. He was taken to hospital for treatment.
- 200030053 (01/23/03). A suspect sold crack cocaine to an undercover officer and fled. Officers believed that the suspect swallowed narcotics and took him to hospital for treatment.
- 20030123 (02/23/03). The suspect was arrested for possession of narcotics and during the booking process reported that she swallowed crack cocaine. She was taken to the hospital for treatment.
- 2003125 (02/27/03). The suspect was arrested in a vehicle identified as being involved in an armed robbery. After the arrest and while the suspect was seated in the patrol car, the suspect admitted to ingesting crack cocaine prior to being placed under arrest. The suspect was treated at the hospital.
- 20030232 (04/8/03). The suspect was approached for drug investigation and placed crack cocaine in his mouth after the stop. The officer grabbed the suspect's right arm as he was attempting to place the cocaine into his mouth. The suspect opened his mouth and said he swallowed the crack. Chemical spray was not used because the suspect became cooperative. The suspect was transported to hospital for treatment.

## **VI. IIS Complaint Investigations**

02139

03/07/02

Summary: Complainant applied for job at a day school; employees found subject suspicious and contacted police. Police ran name and the run returned a person with a similar name, similar physical description and a birthday that was one year off, who was a sex offender on parole. A school employee contacted a Personal Crimes Unit (PCU) officer when complainant returned. PCU officer responded and requested backup officers. Two District 2 officers responded, and were told by the PCU officer that the complainant needed to be ID'd and fingerprinted for a fraud investigation. Complainant was seen on street by the two officers, who approached him and told him that they needed to speak to him. They told the complainant that they were going to handcuff him and that he should put his hands behind his back. According to the officers, complainant became belligerent and disorderly, stiffened his body and tensed up. Officers tried to grab his arms to put them behind his back, ended up fighting and falling to the ground. Complainant refused to put hands behind his back and comply, so one officer sprayed him with chemical spray, but with no effect. Two plainclothes officers also arrived to assist in gaining control of complainant. The officer who used mace then delivered two knee strikes to subject's back, and then one open palm strike to his head, and the officers were able to gain control and handcuff complainant. As it turned out, the complainant was not the person officers were seeking, and was not wanted on any warrants.

Complaint Investigation: This file was a complicated one. A district supervisor responded to the scene to investigate the use of force. He completed a use of force report, finding that the force used was in accordance with CPD policy. He also reported that the officers involved in the use of force complained that the PCU officer did not assist the patrol officers in attempting to control the subject. In a separate interview with a lieutenant in the Personal Crimes Unit, the PCU officer stated that she believed the use of force could have been avoided if the district officers had used better tactics in approaching the subject, rather than trying to handcuff him. The results of these memos were that the PCU officer was counseled for not providing assistance to the district officers. When the force investigation was reviewed by the Inspections Section, Inspections explored the basis for stop, and reviewed the file with CPD's legal advisor. The legal advisor determined that the officers did not have a basis to legally detain the subject. Separately, the subject brought a complaint of excessive force to OMI. By the time the complaint was reviewed by IIS, the Inspections review was completed. Yet, IIS did not address any of Inspection's findings regarding the initial stop and the PCU officer's lack of investigation; rather it simply confirmed the

conclusion of the District supervisor and exonerated the use of force.<sup>14</sup>

Another concern is that IIS did not address misconduct not alleged in complaint. While use of force might have been justified if officers had a right to detain individual, their initial approach was improper, as confirmed by the Legal Advisor. Nor did IIS address the PCU officer's failure of investigation (to determine that the individual was not the same as the one wanted) and flawed briefing of District officers.

02107, 02108, 02109, 02110  
05/05/02

Summary: These four complaints involved the deployment of beanbag shotguns on Stratford Street after several parties (on Cinco de Mayo) got out of control and bonfires were lit in the street. According to the one of the two officers who deployed the beanbag shotguns, police were called for noise complaints on Saturday evening, May 4. He and another unit responded, but advised his supervisor that there were too many individuals in the street, along with a fire, and they needed backup. A sergeant gathered personnel at a staging area (Hughes High School) – two other sergeants, the night chief (an assistant chief), and several other officers. They approached the crowd, which he estimated at 200-300, southbound on Stratford from McMillan, forming a straight-line formation. Bottles were thrown at them and at the Fire Department, who had responded to put out the fire. The night chief ordered them to withdraw and called for standby units. At that point, the officers brought shields and helmets, and he and one of the sergeants were assigned beanbag shotguns. The Asst. Chief advised them that before deploying the beanbags, they needed to identify specific targets who were either engaged in assault, destroying property, committing theft, or in self defense. Approximately 10 officers began advancing down Stratford, where persons in the crowd were throwing bottles and jumping on cars. In a taped statement on the night of the incident and in the 18 BTFP Use of Force reports, the officer reports discharging 13 rounds and hitting 9 individuals. The sergeant deploying the other beanbag shotgun reports hitting five individuals.

Complainant 02110. He lives close to Stratford and his roommates told him of the crowds, so we went to see what was happening at about midnight, Saturday evening. He saw about six police officers and two firemen in the street; they then retreated. He was halfway down Stratford, in an alleyway/driveway on the side of a friend's house, talking to another friend who was on the porch. The police then came back and were telling people to get in the house or clear the street. There were about 40 people on the side of the house, who could not go out through the back of the driveway because there was a locked gate. Complainant states that the police fired three beanbag shots, and people panicked. A

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<sup>14</sup> Also, the tape of the complainant was recorded at the wrong speed and is unintelligible.

fourth beanbag was fired and hit the wall of the house on the other side of him, just above a girl's head. They had nowhere to go, so he came down the driveway with his hands up yelling at the police that they were trapped there; when he got halfway down the driveway, he was shot with a beanbag, which hit his chin and then his chest. He fell to the ground and states that then officers yelled at him to go to the end of the street, where he was taken by ambulance to the hospital. Two friends of complainant also state that they were close to him, that he did not throw bottles at the police and that they saw him try to tell the officers that people were stuck in the alleyway.

The officer states that he saw a person with a yellow sweatshirt (what complainant was wearing) throwing a bottle from behind a bush, and shot him in the center mass with a beanbag. The person fell down and hit his chin. Other officers then told the person to go to the end of the street, because they did not have enough officers to form an arrest team. He could not positively identify the person struck as complainant 02210. IIS finds the complaint "not sustained" because the officer could not identify the complainant as the one shot, the complainant could not identify the officer, and the tape did prove complainant's account.

Complainant 02109. Complainant was interviewed at the hospital on 05/05/03, where he had a laceration to the top of his head. (IIS left telephone messages and wrote to him, but he did not respond.) He was standing on the sidewalk, just for a few minutes. He saw 10-15 officers, with long guns. He was shot from about 60 feet away, and could not see what the weapon was. After he was shot, other kids took him back away from the crowd. He did not hear any police commands. He does say that people were throwing beer cans at the cops. IIS determines complaint "not sustained" as they could not confirm complainant was struck with a beanbag, and the officers state they only shot identifiable targets posing a threat, and could not identify complainant as one of the subjects shot.

Complainant 02108. Complainant was interviewed the morning of 05/05/03 by a Lieutenant, who filled out a complaint form. (IIS could not reach him by phone later). He is from another town in Ohio and was visiting his friend who lives on Stratford; he was standing on the porch that evening when he was shot with a beanbag. He is not certain it was a beanbag, but one of his friends told him that's what police were firing. He has a circular bruise on his side. One of the roommates at the house states that he was on the side of that house and at least two beanbag shots were fired over his head. The witness picked up a few of the beanbags. The friend whom complainant was visiting was across the street, and states that he saw police firing at random at people in the street. IIS closes the case as "unfounded" because complainant could not positively identify that it was a beanbag that struck him.<sup>15</sup>

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<sup>15</sup> The investigator's report recommends an "unfounded" finding, and the letter to the complainant states that is the outcome of the complaint; however, the letter to the officers and an IIS case log state that the complaint was "not sustained."

Complainant 02107. Complainant 02107 was also visiting the same friend on Stratford from out of town. He states that he was on the front porch for only a few minutes when he was shot by a beanbag. He did not see what struck him or see the police fire at him. He saw many police in the street, but there was a lot of noise and he didn't hear what the police were saying, or see what weapons they had. The friend whose house it was says he saw complainant in front of the house doing nothing wrong and then get struck and grab his shoulder.<sup>16</sup> IIS closes the case as "not sustained" because it was unable to determine if complainant was struck by a beanbag."

Concerns:

- The investigations were not complete. There were identified witnesses who were not interviewed (including the friend with whom complainant 02110 was talking). There were relevant officers who were not interviewed (including the incident commander, the sergeant using the bullhorn, the officer authorizing beanbag deployment, and officers who allegedly saw complainant 02110 throwing a bottle at the police). There was no attempt to canvas for additional witnesses or to follow-up on other videotapes. Medical records were not included in the files. There were no diagrams or usable photos of the scene.
- The sergeant who deployed one of the beanbag shotguns was the one who interviewed the other officer deploying the second shotgun for the use of force investigation.
- The instructions for deployment were not consistent with the MOA. Although this incident took place before DOJ and CPD agreed on a CPD Use of Force policy complying with the MOA, the MOA does not allow for deployment against persons committing theft or destroying property unless those persons pose a threat of injury to officers or others.
- The patrol officer states that he deployed the beanbag against one subject because the subject threw a log onto the fire in the street. Supervisors find this deployment appropriate, even though it did not even meet the CPD policy at the time or the commander's instructions.
- Complainant 02110 tells IIS that he has a videotape showing the officer shooting the beanbag, and showing that he was shooting from behind a bush and couldn't see what he was shooting at. IIS states that it has a videotape showing persons throwing bottles at the police, persons asking for empty bottles, a police sergeant telling the crowd

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<sup>16</sup> This information comes from interviews the next morning from a lieutenant taking the complaint, and IIS was unable to contact complainant after leaving several phone messages and sending complainant a letter.

they need to disperse or they will be shot with a beanbag, and persons in the crowd responding “go ahead.” The one tape in the file shows officers in formation and shows the bonfire; it is not clear enough to show any bottles being thrown and there is little audio, so police commands and crowd response are not audible.

- The sergeant deploying the beanbag completed an incident report stating he was hit by bottles and beer cans. However, in his IIS interview he states that he was not hit by bottles or anything thrown, but was splashed by a bottle that broke in front of him.
- In some cases, IIS does not appear to have reviewed the Use of Force investigation. Also, IIS does not make sufficient efforts to resolve inconsistencies and make credibility determinations. For example, it seems clear from the photos and witness statements that complainants 02107 and 02108 were hit by beanbags.

02244  
09/20/02

Summary: Officer stopped subject for a traffic violation. Subject fled the car and ran into an apartment complex. He then climbed the stairs to the third floor, where he exited a window and climbed down the fire escape ladder into the building’s courtyard. There he was confronted by officers who commanded him to stop. Subject tried to elude three officers but they grabbed him, struggled with him, took him to the ground and then took him onto custody. The subject alleges that he was punched at least twice in the mouth, and he has a minor cut inside his lip. He states that he did try to run when the officers first grabbed him but that one of the punches came after he gave up and put his hands behind his back the way the officers told him to. One of the officers states that he did strike subject twice in the abdomen with his PR24. The other officers deny hitting or striking subject. Two independent witnesses whose apartments face into the courtyard were also interviewed by the investigating supervisor. One stated that the subject was hit by one officer with a night stick while he was still standing, and that several other officers punched and kicked the subject, even after the subject said “I give up” and fell to the ground. The second also stated that she saw one officer hit the subject with a stick (PR24) while other officers held him, and that several officers hit the subject when he was on the ground. She reports that the subject yelled “I’ll stop” and “You’all got me” but does not remember hearing officers’ statements.

Investigation. The investigator recommends a “not sustained” finding because the subject’s statement was different than the statements of the independent witnesses. Complainant only says that he

was punched in the mouth, while they say he was punched and kicked and hit with a PR24.

IIS closes file based on District investigation, without any review; there are no tapes or photos included in IIS file.

02002  
01/03/02

Summary: A friend of complainant's had been arrested for domestic violence on New Year's Eve. During that encounter, the complainant was put in handcuffs for interfering with the officer making the arrest, but was then let go and driven home by a second officer. Complainant stated to the second officer "You better tell your boy never to do that to me again." Also, according to District 3 officers, an anonymous call was made to District 3 in which the caller stated "if you arrest my boy, you guys are goin' down." Officers believe complainant made this call. On January 3, three officers went to complainant's apartment to talk to complainant about what they viewed as a threat to a police officer. The officers knocked on the door, and asked complainant to come out of the apartment. They walked the complainant into the laundry room of the apartment building, the light of which was not working. The complainant alleges that one of the officers knocked his head into the laundry room wall. He also alleges that the officer stated "I'm not going to take this shit" and that the complainant was "as dirty as ever." The complainant alleges that the officer also stated that if he ever had to "come down here again, I'm gonna' put a bullet in your head." The officers state that they did accompany complainant to laundry room, but did not threaten complainant or hit complainant. Complainant's girlfriend was in the apartment when the officers arrived, and states that the officers pushed the complainant towards the laundry room. She also states that she too heard some of the threats to complainant. A second friend of complainant also corroborates complainant's claims. However, a third person in the apartment, the individual arrested for domestic violence, told investigators that the complainant made up the allegations. According to this individual, the complainant came back from the laundry room and stated that he was going to get the officers into trouble. Complainant then had the other friend punch him in the chest, to make a red mark.

Investigation: IIS determined the allegations are unfounded, given conflicting stories of officers and complainant, and the statement by complainant's friend that complainant said he was going to make up the allegation. Two concerns are raised by the investigation: even if no physical altercation took place, IIS did not address whether it was proper for officers to go to complainant's apartment to confront him. Also the IIS investigators added gratuitous statements in their interviews with officers, including negative statements about the complainant.

02332  
12/02/02

Summary: Unknown officer would not stop after complainant asked for assistance. Officer stated: "Do I look like I have fucking time to stop." There is no evidence of barrier to complaint. However, complainant wouldn't view lineup; and there was no way to identify the officer from the complainant's original description. District investigation closed; completed within 90 days.

03011  
12/17/02

Summary: Complainant called District One front desk to make a complaint about a traffic stop; officer who took the call used rude, profane language, and discouraged complaint. Complainant then called back to complain about the call taker. A patrol sergeant reviewed the tapes of the telephone call to the front desk; recommended that the allegations in the complaint be sustained. The sergeant spoke to and apologized to the citizen. The complaint started as a CCRP, but because this was the officer's second violation for failure of good behavior, an IIS file was opened and a written reprimand was issued.

03100  
03/16/03

Summary: Officers respond to an assault call; during investigation, the complainant was on the scene and disruptive. She was arrested for disorderly conduct and was sprayed when she refused to enter the car. She alleged she was kicked and that she was denied fresh air after being sprayed.

Alleged excessive force was investigated by a District sergeant who was called to scene after the macing. Witness interviews were taped and photos taken. The force report indicates a chemical spray warning before it was used. There is no write-up of IIS's review of the District investigation. There is a notation "Assigned Patrol, Closed Unfounded" on the Citizen Complaint Form, after the Use of Force report and the District write-up went through the Patrol Assistant Chief and then the Chief. Also, as this is a chemical spray on a restrained person, Inspections also should have reviewed the investigation.

03071 (UF#2002-3011)  
02/18/03

Summary: Traffic stop of complainant, who had outstanding warrants. Complainant was sprayed twice; once during officers' attempt

to handcuff, and once during search incident to arrest. Complainant and wife claim he offered no resistance.

A District sergeant conducted taped interviews of the officers, complainant, and his wife. He also reviewed the MVR tape, and states that the MVR refutes complaint and corroborates officers. [From the Monitor's review of the MVR, the resistance appears very slight.] The sergeant recommends that the complaint be closed as "exonerated" in a memo attached to Form 18CI. Because one of the chemical sprays occurred while complainant was handcuffed, it should have been reviewed by Inspections. Also, there is no apparent review by IIS other than signing off on District investigation.

03040  
01/25/03

Summary: Officer was responding to a family trouble run. The complainant was disorderly and arrested for Disorderly Conduct. The complainant alleges the officer bumped his chest into complainant.

A District supervisor was called to scene and took taped statements. He prepared a memo recommending complaint be closed as "unfounded." Taped statements, worksheets, and an MDT printout were attached. There was no apparent IIS review of the District investigation.

03023  
01/09/03

Summary: Citizen called officer and complained that officer showed his RCIC printout to an organization with which the citizen wanted to volunteer. Citizen had been arrested earlier for impersonating an officer.

Officer reported the citizen's phone call, which generated the IIS investigation, even though the citizen, when contacted, did not want to make a complaint and refused to answer questions about the incident. IIS properly conducted an investigation anyway. IIS determined that the officer ran citizen's name through RCIC because another officer told him that the citizen might be wanted (he was not). Also, while the officer did inform the organization, when asked, that the citizen was not a police officer, the officer did not show the organization a printout of the citizen's criminal record. Complaint was closed as "unfounded."

02298  
11/23/02

Summary: Complainant was stopped and issued a traffic ticket for tinted windows. He alleges that his windows were down at the time, as he was smoking, and that he was stopped without cause and a canine

search conducted, because of his race.

IIS interviewed the complainant and the officers involved. The officers, members of the Street Corner Unit, were working an interdiction assignment near an apartment complex. Officers observed complainant go into the apartment complex, and a short time later drive past them. Complainant pled "No Contest" to the tinted glass violation. The IIS investigator credits the officers' story and, based on the plea, recommends the complaint be closed as "unfounded." Given the opposing accounts of the incident, a finding of "not sustained" would appear more appropriate. Also, there is no documentation of whether the investigator reviewed the officers' MVR tape.

02092  
04/08/02

Summary: Allegation that an officer perjured himself at citizen's child visitation hearing, and that officer harbored a person with knowledge that she was wanted for Domestic Violence.

IIS reviewed the recording of the visitation hearing and interviewed the presiding judge. In interviews with both the officer and the woman wanted for Domestic Violence, both stated they were not aware that she was wanted at the time she visited the officer's home. IIS closed the complaint as unfounded.

02294, 02295  
11/18/02

Summary: Complainants were standing on the sidewalk with two other friends when two plainclothes officers and two uniformed officers pulled up with their firearms drawn and ordered the citizens to the ground. One complainant also alleged an improper search.

The officers detained complainants because they believed one of the complainants matched the description of a suspect in an Aggravated Robbery/Felonious Assault in which shots were fired. One of the officers had also viewed a tape of the robbery which showed the clothing and characteristics of the suspect. IIS determined that the officers' actions were proper and the complaint should be closed as "exonerated" because the violation being investigated involved the use of a firearm. There is no documentation whether any MVR tapes were available or reviewed by IIS. The Firearms Review Panel reviewed the allegations and concluded the pointing of firearms was justified.

02261  
11/09/02

Summary: Officers attempted to stop complainant, who was driving a stolen vehicle. After a vehicle pursuit, complainant fled and was chased by an officer. The officer caught up to complainant as he was climbing a fence. Complainant alleges the officer struck him twice with his PR24 as complainant was attempting to escape over the fence. The officer claims only to have pulled complainant off the fence and taken him to the ground.

The officer stated that he carried his PR24 during the foot pursuit because it becomes dislodged when he runs. Thus, he stated the PR24 probably made contact with complainant when he pulled complainant off the fence, but that he did not swing it at complainant before pulling him down. There were no injuries to complainant's leg where one of the strikes allegedly hit. The complaint was closed as "not sustained." The District 1 Commander reviewed the use of force report, photos, tapes, CAD records, vehicle pursuit report, and MVR tapes (which did not show the apprehension). The District supervisor properly opened a complaint investigation, as the complainant's description of the incident "was inconsistent with the force that Officer [deleted] reported using." IIS did not review the District investigation.

02144  
06/22/02

Summary: Officer was dispatched to an apartment building regarding fighting between children. The officer knocked on complainant's door. (Complainant is the half-brother of one of the children who allegedly was fighting). Complainant alleges the officer damaged the door with his PR24, and then pushed complainant down and pulled his gun when the complainant refused to allow a search of the apartment. Complainant also alleges that he called 911 the next day to report an injury to his half-brother and was falsely arrested for Domestic Violence.

Complainant's father states that complainant has psychological problems, and that the damage to the door was done by complainant. Independent witnesses state that the officer knocked on the door with his hand and that complainant was belligerent to the officer when he answered the door. When officers were dispatched the next day for a possible assault on the 8 year old half-brother, the brother told officers that complainant caused the injury to his head. The complaints were determined to be unfounded.

02172  
01/10/02

Summary: Complainant was arrested for Solicitation. While being transported to the Justice Center, she told vice officers she had information about an on duty CPD officer engaging in a sexual act in a downtown bar while on duty.

Complainant states she participated in after-hours parties at the bar where she would disrobe and entertain guests invited by the bar's owner, as well as engage in sexual acts with guests at the owner's request. She alleges on an unknown date in September 2001, before the guests' arrival, two uniformed officers entered the bar. The bar's owner introduced the officers as his friends and paid her \$50 to engage in a sexual act with the officers. The complainant went with one of the officers into the men's room and performed oral sex. She then returned to the bar for the other officer, but the officers received a radio run and left the bar.

IIS interviewed the officers, the bar owner and the bar's doorman/security guard. They deny the allegations. The officer states that a police detail was started at the bar after several disturbances occurred after closing, and that is why he came into the bar. The complaint was closed as "not sustained."

02336 (UF#2002-0497)  
06/28/02

Summary: Complainant was a suspect in a purse snatching; officers pursued on foot and located him under a tree, covered with thick bushes. One officer struck complainant twice on the leg with his PR24 to get the suspect to come out. Complainant alleges that he was complying with the officers and that force was not necessary; he also alleges the officer called him a "motherfucker."

Based on the statements of the officer, a witness officer and the subject, the District supervisor determined that the force was in policy. The allegation of abusive language was handled as a CCRP and closed. The District 3 Commander reviewed the officers' statement that they did not use chemical spray because the bushes that complainant was hiding in were too thick. The IIS file provided to the Monitor did not contain the complaint form, the CCRP forms, or any evidence of review by IIS.

## **VII. CCRP Investigations**

02360  
09/17/02

Summary: Complainant's vehicle was towed; she believes officer was disrespectful to her when she approached him to ask how to retrieve

her vehicle. Officer told her to talk to owner of lot; lot owner and complainant got into a heated argument and afterward officer told complainant to “back off and cool it” and that “this is a civil matter now, but if I hear any more of this language, it could become a criminal matter.”

The District sergeant interviewed complainant and two independent witnesses, and determined the officer did not use derogatory language or profanity towards complainant. The complaint was closed as having met standards; complainant invited to a resolution meeting, but declined.

02363  
09/06/02

Summary: Two officers responded to a call that several juveniles had damaged the truck of complainant at a bar. Complainant had left the bar by the time the officers arrived and officers were unable to locate him. Complainant called the next evening complaining that the officers did not respond. The investigating sergeant made numerous attempts to contact complainant. When he was finally able to reach him, the complainant admitted he left the bar immediately after calling the police. File closed as meeting standards; complainant declined to participate in resolution meeting.

02264  
08/19/02

Summary: Complainant returned home to find her house broken into. Her husband called 911 and requested a police car to respond. He was told the police were busy and would dispatch a car when one became available. He called again one hour later, two hours later, three hours later, and five hours later. She called, and finally an officer responded and apologized for the delay. IIS sent the complaint to the District for CCRP process. Two dispatchers were counseled, which was noted on the employees' ESL records. The complainant was notified of the outcome, and stated that no further action was needed.

02325  
09/12/02

Summary: Complainant alleges that officer harassed him by calling him by his first name. Complainant was concerned the officer might place unnecessary charges on him based on their prior contacts. Complainant did not want neighbors knowing his real first name. The officer's actions were determined to have met CPD standards. This was explained to complainant, who declined to participate in the resolution meeting.

02335  
09/21/02

Summary: Complainant alleges officers embarrassed and harassed her by accusing her of attempting to buy drugs. Officers were dispatched to investigate a robbery being reported by complainant. Complainant claimed the cousin of a co-worker reached into her car and stole money from her purse. According to the officers, when they began asking complainant questions about the details of the robbery, complainant kept changing her story. One of the officers asked complainant if she realized the area was a high drug area and was she down there attempting to buy drugs. The officers state that complainant then became irate. District sergeant attempted to contact complainant by phone four times but was unable to contact her. Officers determined to have met standards.

02315  
11/01/02

Officers were dispatched to complainant's house on a wanted run. The wanted person was complainant's son. Officers spoke to complainant, who denied them consent to enter her house to look for her son. She claims one of the officers stated "don't blame me if something happens to your son while he is being apprehended on the street." She took this to be a threat. The officer does not remember his exact words, but agrees he said something similar. He states he did not mean it as a threat, but that there was less chance of something going wrong if the son was arrested in the house, rather than outside, where he might run. The officer was determined to have met standards, but counseled on his tone of voice and choice of words. Complainant participated in a resolution meeting where she expressed her concerns about the officer's statement and the officer apologized. Complainant stated she was satisfied by the resolution.

02342  
09/29/02

Complainant's car stopped in the middle of a street with several persons around it. Officer pulled up behind and the individuals around the car fled. Complainant exited his vehicle. According to complainant, he approached the police vehicle and asked the officer what the problem was. The officer did not initially respond and had a nasty attitude. Complainant asked for a complaint form, but was given a feedback form; when he later realized that, he went to the district to get the right form, and the officer threatened to harm him and arrest him. According to the officer, the complainant exited his vehicle and began to walk away from it. The officer told him that the car had to be parked legally, which the

complainant then did. The officer ran the car's plates, and cited the car for not having a front license plate. He also found a small baggie of marijuana on the floorboard of the vehicle. The officer states he inadvertently gave the complainant the wrong form, but when the complainant came to the District he used profanity and racial slurs, and the officer told complainant to leave the District or he would be arrested.

The District sergeant's attempts to locate complainant were unsuccessful. The officer's actions were determined to meet standards, but he was counseled on the importance of providing citizens the proper citizen complaint form.

02308  
09/04/02

Officers responded to apartment building on disorderly run, and advised by building manager that complainant had been warned not to return to the property. Complainant was arrested without incident and was escorted by officer to an office in the apartment building to have his picture taken for a trespass list. Complainant states he was choked by one of the officers in the office, and that when he was being taken to the police car, he was pinned up against a door. He was sprayed by chemical spray twice. The officer denies choking complainant and states that when he was escorting complainant to the police car, he refused to walk through a doorway and started to brace himself against the door. The officer sprayed the complainant. The complainant also refused to get in the police car, and was sprayed a second time.

The District sergeant interviewed the officers, the building manager, and another individual who was drinking with complainant and was arrested with complainant. He determined that the officer met department standards. He was unable to locate complainant after his release from the Justice Center to conduct a CCRP meeting.

Because this allegation was of excessive force, it should not have been handled as a CCRP case. Also, there was no 18CI form attached to the report. Because the incident involved chemical spray on a restrained individual, taped interviews should have been taken, though there were no tapes in the file.

02324  
09/16/02

Officers approached complainant, a juvenile, because they thought he might be wanted. Complainant states that the officer knew who he was and had his photograph on a clipboard, and was harassing him. The officer states that complainant was verbally abusive to officers when they approached him. The complainant's mother came over to the officer

to ask why he stopped her son. When complainant's identity was established, he was no longer detained.

The investigator reviewed the MVR tapes, which captured the incident, and determined that the officer met Department standards.

02275  
08/21/02

Officers were dispatched to a location where the complainant's son and the son's girlfriend were fighting. The officers separated the two to conduct an investigation. The complainant attempted to go past one of the officers to get to her son. The officer states that complainant was disorderly and disrupting the investigation. He admits stating "No wonder your son acts like he does when he see you doing it." Complainant alleges officer stated "That's why we do you'all like we do," which she interpreted as directed to her family because of her race and economic status.

The supervisor determined the officer did not meet CPD standards and counseled the officer, which counseling was noted on his ESL.

02374  
10/16/02

Complainant alleged the desk officer was rude and unfriendly when complainant came into the District to file an auto theft report. The District supervisor determined that the officer should have taken the report, rather than dispatching another officer to respond to take the report. An ESL was given for this violation. The supervisor closed the rudeness allegation without further action because of the conflicting witness/officer statements, and no independent witnesses.

0228  
07/04/02

Two officers were working on a curfew [PVO] when they saw three individuals who looked to be under 18. They approached the subjects and asked how old they were. Complainant alleges that one of the officers grabbed his arm, put him against the police car, poked him with his finger, and drove away without providing his name or badge. The officer states that two of the three subjects told the officers they were 18, but the complainant asked the officer "How old are you?" According to the officer, complainant backed up and looked like he was going to flee, so the officer got out of his car and took hold of complainant's arm. Complainant yelled at the officer that the officer was harassing him, but the officer tapped him on the shoulder and told complainant to stop yelling at him. The officer says he verified complainant's name and when

asked, provided complainant with his name and badge number. The district supervisor interviewed both officers, but did not interview the other individuals stopped. The complainant would not speak to the supervisor about the complaint. The officer was determined to have met standards, but advised of the complainant's perceptions.

02355  
11/28/02

Complainant was arrested by officer for assault. He alleges that when he was taken to the Justice Center, he attempted to look at the officer's name on his jacket, and that the officer said "What are you looking at" and "You are in here with me and my boys now." He also alleges that the officer improperly charged him with menacing. The officer states that the complainant stated "You don't know what can happen to your family." The officer took this to be a threat against his family and signed a charge of Aggravated Menacing. A sheriff's deputy was interviewed who heard the complainant's threat to the officer, but did not hear the officer threaten the complainant. The complainant was convicted of Menacing, and the investigating supervisor determined the officer met CPD standards.

02330  
10/30/02

Officers were dispatched to a radio run relating to potential menacing. When they arrived, complainant advised one of the officers that there was an ongoing feud between her family and her ex-son-in-law and his family. Complainant states that the officer knew her son, and told her that her son was the problem, that her son was "rotten" and that she should get a protective order against her son. The officer also tried to get the son-in-law together with the complainant's family to resolve the matter. This made complainant uncomfortable and had a negative result. The officer, complainant and witnesses agree on the facts; the officer states he believed that providing his opinion and trying to mediate the situation was the proper course of action. The supervisor found the officer's conduct did not meet CPD standards. The officer was counseled and given an ESL. The resolution meeting was held and complainant was satisfied with the outcome.

## APPENDIX 1

### MHRT SURVEY RESULTS, APRIL 2003

**1. Based on my experience so far, the MHRT program has been?**

1	2	3	4	5
<b>Very Successful</b>	<b>Somewhat Successful</b>	<b>No Difference</b>	<b>Not Successful</b>	<b>Too early to say</b>
<b>14 (19%)</b>	<b>23 (32%)</b>	<b>27 (38%)</b>	<b>1 (1%)</b>	<b>7 (10%)</b>

**2. What successes have you had in the field as it relates to the MHRT program?**

- Working closer with mobile crisis team.
- Assistance from mobile crisis.
- I can more easily understand where some consumers are coming from.
- None that relate specifically to the MHRT program. I have seen no difference in the quality of service delivered. (already very high).
- Most of the runs I received. There has been an MCT unit respond with me to assist.
- As a MHRT officer one does become familiar with the clients and their needs. This is very helpful.
- In several (albeit rare) instances, I've been able to either actually help someone that truly needed it or able to assist other officers with code 9 situations.
- Assisting a few individuals who were in immediate need of care.
- Ability to maintain records of, and deal successfully with several of the consumers who have repeat contacts. Close working relationship with mobile crisis.
- Experience in dealing with citizens of Cincinnati that have genuine mental health issues. How I can help certain individuals find the personalized help they need in their moments of crisis. De-escalating situations that have a potential to be dangerous instances for the police, the citizen having the crisis, and the general public.
- The training and knowledge. Who can be contact at PES.
- Having all the information on case worker and meds.
- Able to deal with mentally ill individual with a lot more patients.
- One physical altercation since the training. Understanding how some cases of mental illness works makes communications a lot easier.
- Knowledge of difference contacts.
- The names and phone numbers for the many caseworkers and agency.
- I been dispatch to several runs not labeled as code 9, however using the same patience with those subjects help resolve the situation.
- Being able to communicate better do to the amount of code 9 runs that I respond to.
- No comment
- I'm more aware of the various resources.
- Better communication with consumers and a foundation of trust from that.
- More resources
- I am able to resource mental health agencies.
- Considering the number of MHRTs and MHRTvs and my not having had to use any degree of force, just knowledge, training and my gift for talking, I consider these all successes.
- Zero uses of force.

- ❑ People with mental problem talk with you more
- ❑ As an officer, I have more knowledge of some types of mental illness and now I don't have to just take everyone to UC.
- ❑ I haven't had any successes as it relates to the MHRT program.
- ❑ Knowing some of the services that are available has been a big help.
- ❑ MHRT are more understanding of mental health issues and are able to deal more efficiently with mental health consumers.
- ❑ Mental Health hotline number for MHAAP.
- ❑ Helpful with understanding certain diagnosis and how they will react to you.
- ❑ The success I have seen in the field as a MHRT officer is having the resources to contact caseworkers and work with them hand in hand dealing with individuals.
- ❑ Have phone numbers for other available agencies both for consumers and families.

### **3. What problems have you encountered**

- ❑ Code 9's abusing the system for transportation service, tying PO's up on unnecessary radio runs.
- ❑ UC PES acts as though we abuse system.
- ❑ Some health agencies use city officers to take care of difficult consumers or patients.
- ❑ Runs being held for a "trained" officer. Simple transports requiring a "trained" officer.
- ❑ Not having extra equipment (i.e. leg cuffs, bean bag shotgun, pepper ball gun)
- ❑ Not enough MHRT qualified officers in the field. Officers on the scene and being able to handle a situation waiting for a MHRT officer when they could handle themselves. Usually it just transporting a subject to the hospital.
- ❑ Persons that abuse the system. I cannot count the number of persons who get put out of places such as "The Drop Center" and call 911 and know just what to say so that police will take them to PES when the weather is inclement.
- ❑ Return clients misusing current system.
- ❑ Abuse of the mental health system.
- ❑ Often don't have all the necessary tools with me. Taser, beanbag, pepper-ball etc. Need more trained personnel. Often I am only MHRT for the 10:30 p.m. code 9 run.
- ❑ Some subjects experiencing a crisis in their lives will not be willing to talk to an officer and sometimes is very effective in blocking out any form of communication with the MHRT officer or others on scene. Another problem is getting the certain person on scene the subject really wants to talk to or open up to there so it will de-escalate matters in a timely fashion.
- ❑ District radio runs. Running into Code 9.
- ❑ A lot of return runs for the same people. Some of the mental health consumers know exactly what needs to be say in order to be transported. Often times they just wanted food, and people to spend there time around.
- ❑ Unable to reach code 9's caseworker at various hours. The 24 hour mental health hotline is broken!
- ❑ PES procedures have not changed, people are still being released without proper treatment.
- ❑ Other officers feeling as if they can't do anything because they aren't MHRT trained.
- ❑ Juvenile code 9 Children's Hospital policy on transporting and signing them in.
- ❑ Not enough knowledge of the individual's background history.
- ❑ No comment
- ❑ Not everyone is receptive to the easier, gentle approach – some are extremely high

risk and forceful in their actions - not much room for improvement in this area.

- ❑ Not aware of any problems.
- ❑ I have not been able to carry MHRT related equipment (i.e. pepper-ball gun)
- ❑ Recently, I have experienced this problem back to back. I have had to call the consumer’s caseworker for information I needed immediately for on-sight assessment. I had to call an agency a second time and the second agency did not return my call for over an hour. Time is precious, and waiting for over an hour of information is too long. We need something in place that will let the agency/case manager know that a police officer in the field is in contact with one of their consumers and is requesting information. I have found the weekend is not a good time because of the paging system. Many times, the longer we wait, the consumer escalates.
- ❑ Understanding what types of various medications used by the patient. Also not able to contact caseworkers.
- ❑ List and description of symptoms.
- ❑ Access to tools (pepper-ball, etc.)
- ❑ I have not encountered any problems that were not able to be solved.
- ❑ Dealing with juveniles and trying to get them in to Children’s Hospital in a timely manor.
- ❑ Responding on runs and being the only MHRT officer on scene. Other officers think because you are MHRT trained you should have all the answers to the situation. Sometimes job experiences outweighs MHRT training.
- ❑ Other beat officers having a false idea about their responsibilities when handling mental health consumes. They will wait until an MHRT officer is available and ready to take the run.
- ❑ No central coordinator to follow up cases, coordinate work between agencies. There is **NO REWARD** for being MHRT trained. Some officers believe only MHRT officers can deal with code 9’s. Bosses expect outstanding performance on all code 9 runs, but don’t make any comments on monthly evaluations. Code 9’s are not recorded on worksheets, lack of equipment in assigned cars (shield, paintball, taser, etc.); Probate supeonas’s arrive after cases – not done through court control.

**4. Based on your experience use the following scale to rate the topics covered in the MHRT training. ( very helpful- 1, somewhat helpful- 2, just ok –3, not at all helpful-4, no chance to judge-5)**

	1	2	3	4	5	Total
Overview of Mental Illness	21	38	7	5	4	75
Problem Solving Discussion Group	15	31	16	8	4	74
Shadowing Experience	30	17	14	10	3	74
Mediation Skills	16	35	13	7	2	73
Legal Panel	19	25	21	6	3	74
Tactical Training	30	26	12	5	2	75
Special population	15	32	16	8	2	73
Police Hotline	18	26	17	10	2	73
Mental Health System	16	34	16	6	1	73

	<u>Percentage</u>				
Overview of Mental Illness	28%	50%	9%	6%	5%

Problem Solving Discussion Group	20%	41%	21%	10%	5%
Shadowing Experience	40%	22%	18%	13%	4%
Mediation Skills	21%	47%	12%	9%	2%
Legal Panel	25%	33%	28%	8%	4%
Tactical Training	40%	34%	16%	6%	2%
Special population	20%	43%	21%	10%	2%
Police Hotline	24%	35%	23%	13%	2%
Mental Health System	21%	46%	21%	8%	1%

##### **5. What training topics need to be covered in more detail?**

- Taser and pepperball (2)
- Tactical training (5)
- More information on mental illness and medications. (2)
- Training of non-MHRT Sgt.'s to listen to what we MHRT have to say at scenes.
- Mediation and problem solving (3)
- How to handle violent code 9V (2).
- Juvenile issues relating to mental illness.
- Mediation skills (7)
- How to use mobile crisis/when should we call them. (2)
- Family services (2)
- Reason's able to sign hold
- Mental Health System (3)
- Actual behavior diagnosis and ways to deal with each. (3)
- Why we cannot sign a hold on a juvenile.
- Legal Panel (3)
- More detail into characteristics specific to certain illnesses.
- More shadowing, two days is not enough. (4)
- Writing effective mental holds. (2)
- Medications and what type of illness is it prescribed for. At least if the consumer tells us what type of medication they are taking, but refuses to tell us what they are suffering from, we may have a better idea of what we are encountering.
- The role of the crisis team.
- Problem solving skills.
- How to have a consumer tracked more carefully.
- How to find out what agency a consumer uses.
- How to get a probate hearing.
- Role-play a training scenario using some situations that have occurred here and nationwide. (2)
- De-escalation techniques and understanding the person in crisis (mental condition, looking inward, put yourself in there shoes to best of ability) (2)
- Different types of mental illness.
- We need more information on referral agencies.

##### **6. What additional topics should be added?**

- Tactical training
- Writing a hold (2)
- Emphasis on talking to mentally ill in violent situations, mediation, counseling, etc.
- Veteran issues

- ❑ Mediation
- ❑ Children's Hospital policy on juvenile code 9's.
- ❑ Communication skills
- ❑ Working with case managers
- ❑ How to cope with numerous code 9 runs and how to have premise history established on subject.
- ❑ Dealing with juveniles.
- ❑ Different de-escalation techniques.
- ❑ Why was the procedure at UC PES with people under 18, but older than 13 changed without telling Cincinnati Police (2).
- ❑ More speakers, consumers videos on mental health.
- ❑ Juvenile issues relating to mental illness.
- ❑ How to use the stretcher and use of the straps that hold them.
- ❑ Crisis negotiation
- ❑ Testifying at Summit.

**7. What topics would you like to see covered in a re-certification class?**

- ❑ Tactical training (11)
- ❑ Less lethal weapons (2)
- ❑ More contact with mental health professionals and more networking with caseworkers so they can handle the problems. (3)
- ❑ Further training in diagnosis of different illnesses. (2)
- ❑ Handling situations with the violent mentally ill. (2)
- ❑ Updated phone numbers and programs. (2)
- ❑ Veteran issues and how the VA can help.
- ❑ Mediation skills (greater depth). (5)
- ❑ Medications and their use. (3)
- ❑ Legal issues. (4)
- ❑ Mental health system. (3)
- ❑ Scenario training.
- ❑ 24 hour crisis team
- ❑ Dealing with juveniles and holds (2)
- ❑ Family services
- ❑ Shadowing experience and special population's (2).
- ❑ Have officer go out with mobile crisis more than a half-a-day.
- ❑ Crisis Negotiations

**8. Additional comments or suggestions regarding the MHRT program?**

- ❑ Allow MHRT officers a database to help track code 9's.
- ❑ This is a good program. We need more officers involved if not the entire Department.
- ❑ I believe the mobile crisis teams in the Districts have been of great benefit. The social workers have been very helpful. Their expertise has been useful. I truly believe the MHRT program delays our effective delivery of quality police service to those suffering a mental crisis. Trained experienced officers and supervisors stand around waiting for a "trained" officer to arrive. It is ridiculous! My suggestion is to train all patrol officers and expand the mobile crisis teams. This could keep police in our role and social workers in their role.
- ❑ I see no difference in how Code 9's are handled, except that we are over burdened

- with code 9 runs/transportations since only a few cops can respond on these runs.
- ❑ My experience has been that there is absolutely no difference in the way these code 9 runs are handled, except that a mobile crisis team member sometimes respond.
  - ❑ Reference the shadowing program, officers that went to the same places did not have the same experiences.
  - ❑ Reactions from medications.
  - ❑ I think everyone should be trained, thereby eliminating the need to dispatch just MHRT officers to these types of runs.
  - ❑ Create a MHRT car for each district that is equipped with a taser, beanbag shotgun, pepperball gun and a manual with phone numbers to reach case managers and the CPD procedure on dealing with code 9's. (4)
  - ❑ Until PES does a better job of assisting patients, the program will not be truly successful.
  - ❑ It has gone pretty well overall. I think things have progressed well for the amount of time the program has been in operation.
  - ❑ Keep up the good work with the training. (2)
  - ❑ MCTI should be response on Code 9 first. Unless they have history of being violent.
  - ❑ MHRT program is a new program for me personally and I believe in its potential to alleviate some of the issues we have in the downtown area. Being that the mental health community are aware of the MHRT officers and we are aware of the citizen with their special needs. Together we can make a difference and help each other learn.
  - ❑ If there is not a pay increase to be MHRT why isn't the whole Department trained to be MHRT officers? Usually if there is not a MHRT working in the District another beat officer will just handle it.
  - ❑ It's ok to send more than one MHRT officer if more is available for the run.
  - ❑ I feel things never changed, I have been doing the same thing before this class.
  - ❑ More about probate court/and who can get someone probated.
  - ❑ This program really has not changed anything in fact. But, if it makes the mental health community feel better, I guess it is a good thing.
  - ❑ This program is pretty much what we did prior to the training. However, we are asked to do more, and shoulder more responsibility without any further consideration. We are off the air attempting to handle these runs better, more than before yet we are still expected to produce like always.
  - ❑ We need one phone number to give to people that will get them connected to the right place. We can't have a bunch of "useless" numbers.
  - ❑ When we call mobile crisis to respond they tell us to transport the code 9 to the hospital because they can't respond.
  - ❑ Everybody is MHRT trained who went to the Academy. There was no additional, helpful information given in the class. We are very short and they cannot afford to have people detailed for a week for sympathy training.
  - ❑ Just to have better equipment for violent code 9.
  - ❑ Mobile crisis teams need to have access to our radio air. What good is it to give them a radio and they can't say in route. They need to be able to talk on radio for everyone's safety.
  - ❑ I feel the employees at PES do not want to take these people. I feel every time I walk in there with someone that I am bothering them. They are never friendly. One time I brought in a lady who had no clothes on and as soon as we get in the door she became violent. As I was fighting with this lady the employees stood and wanted to know

why I had brought her in there and wanted to know who she was instead of helping me. They get very upset with me because I was busy fighting with this lady instead of answering their questions.

## APPENDIX 2

# IACP National Law Enforcement Policy Center FOOT PURSUITS MODEL POLICY February 2003

### I. PURPOSE

The purpose of this policy is to establish a balance between protecting the safety of the public and police officers during police pursuits on foot and law enforcement's duty to enforce the law and apprehend suspects.

### II. POLICY

Foot pursuits are inherently dangerous police actions. It is the policy of this department that officer and public safety shall be the overriding consideration in determining whether a foot pursuit will be initiated or continued. Foot pursuits occur in a wide variety of circumstances. Therefore, this policy is intended to provide overall direction and guidance to officers when deciding if such pursuits are warranted and how they should be conducted.

### III. DEFINITIONS

*Foot Pursuit:* An incident where an officer chases (on foot) a person who is evading detention or arrest.

### IV. PROCEDURES

#### A. Deciding Whether to Pursue

Although it is an officer's decision to initiate a stop, it is the suspect or violator who decides to precipitate a foot pursuit by fleeing. An officer's decision to pursue on foot shall be made with an awareness of and appreciation for the risk to which the officer and others will be exposed. No officer or supervisor shall be criticized or disciplined for a decision not to engage in a foot pursuit if, in the officer's assessment, the risk exceeds that reasonably acceptable under the provisions of this and related department policy and training.

1. Where necessary, an officer may pursue persons who he or she reasonably believes have committed an act that would warrant a stop, investigative detention, or arrest.
2. In deciding whether or not to initiate a pursuit, an officer shall consider the following alternatives to foot pursuit:
  - Aerial support
  - Containment of the area

- ❑ Canine search
  - ❑ Saturation of the area with patrol personnel
  - ❑ Apprehension at another time and place when the officer knows the identity of the subject or has other information that would likely allow for later apprehension
- 3. In deciding whether to initiate or continue a foot pursuit, officers shall also consider risk factors whenever officers are
  - ❑ acting alone,
  - ❑ in an unfamiliar area,
  - ❑ in an area that is hostile, such as a notorious drug trafficking location,
  - ❑ pursuing suspects who are known to be or suspected of being armed,
  - ❑ pursuing more than one person,
  - ❑ unable to obtain backup in a timely manner,
  - ❑ not in adequate physical condition to conduct a foot pursuit,
  - ❑ unable to establish and maintain contact with the communications center (EOC), or
  - ❑ pursuing in inclement weather, darkness, or reduced visibility conditions.

**B. Initiating Officer's Responsibilities**

1. Officers initiating foot pursuits shall be in field command and shall bear operational responsibility for the foot pursuit unless circumstances dictate otherwise or until relieved by a supervisor. Pursuing officers are reminded that voice transmissions while running and in other field tactical situations may be difficult to understand and may have to be repeated.
2. The officer initiating a foot pursuit shall, as soon as practical, provide the following information to EOC:
  - ❑ Unit identifier
  - ❑ Reason for the foot pursuit
  - ❑ Officer location and direction of pursuit
  - ❑ Number of suspects and description
  - ❑ Whether or not the suspect(s) is armed

**C. Foot Pursuit Coordination**

1. The primary (initiating) officer shall immediately coordinate—directly or indirectly through the EOC—with secondary officers to establish a perimeter in the area to contain the suspect(s).
2. Generally, the primary officer shall not try to overtake the fleeing suspect but shall keep him in sight until sufficient manpower is available to take him into custody.
3. Assisting officers shall immediately attempt to contain the pursued suspect. Such officers shall not respond to the primary officer's location unless the suspect has been stopped and the primary officer requests assistance to take the suspect into custody.
4. When two or more officers are in pursuit, they shall
  - a. not separate unless they remain in sight of each other and

- b. maintain communication, but they shall allow the lead officer to concentrate on the suspect's actions while the second officer provides backup and maintains communications with dispatch and other assisting officers.

**D. Guidelines and Restrictions**

1. The pursuing officer shall terminate a pursuit if so instructed by a supervisor.
2. Unless there are exigent circumstances such as an immediate threat to the safety of other officers or civilians, officers shall not engage in or continue a foot pursuit under the following conditions:
  - a. If the officer believes the danger to pursuing officers or the public outweighs the necessity for immediate apprehension.
  - b. If the officer becomes aware of any unanticipated circumstances that substantially increase the risk to public safety inherent in the pursuit.
  - c. While acting alone. If exigent circumstances warrant, the lone officer shall keep the suspect in sight from a safe distance and coordinating containment.
  - d. Into buildings, structures, confined spaces, or into wooded or otherwise isolated areas without sufficient backup and containment of the area. The primary officer shall stand by, radio his or her location, and await the arrival of officers to establish a containment perimeter. At this point, the incident shall be considered a barricaded or otherwise noncompliant suspect, and officers shall consider using specialized units such as SWAT, crisis response team, aerial support, or police canines.
  - e. If the officer loses possession of his firearm.
  - f. If the suspect's identity is established or other information exists that allows for the suspect's probable apprehension at a later time and there is no immediate threat to the public or police officers.
  - g. If the suspect's location is no longer known.
  - h. If primary officers lose communications with EOC or communication with backup officers is interrupted.
  - i. If an officer or third party is injured during the pursuit who requires immediate assistance and there are no other police or medical personnel able to render assistance.
  - j. If the officer loses visual contact with the suspect.
  - k. If the officer is unsure of his or her own location or direction of travel.
3. When the pursuing officer terminates the pursuit he or she shall notify EOC with his or her location and request any assistance deemed necessary.
4. **Supervisor's Responsibilities**  
Upon becoming aware of a foot pursuit, the supervisor shall decide

as soon as possible whether pursuit should continue.

- a. The supervisor should allow the foot pursuit to continue if:
  - ❑ there at least two officers working in tandem and there is a reasonable belief that the suspect has committed an act that would permit the officer to detain the suspect, or
  - ❑ there is a reasonable belief that the suspect poses an immediate threat to the safety of the public or other police officers, or
  - ❑ the pursuit does not violate provisions of this or related department policy, procedures, or training.
- b. The supervisor shall terminate a foot pursuit at any time he or she concludes that the danger to pursuing officers or the public outweighs the necessity for immediate apprehension of the suspect.
- c. The supervisor shall take command, control, and coordinate the foot pursuit as soon as possible.
  - ❑ As in any tactical incident, the supervisor does not have to be physically present to assert control over the situation.
  - ❑ Once the foot pursuit has concluded, the supervisor shall proceed to the terminus of the pursuit to assert post-pursuit discipline and control as needed.

#### **E. EOC Responsibilities**

1. Upon being notified that a foot pursuit is in progress, communications personnel shall immediately notify the field supervisor and provide all available information.
2. Communications personnel shall carry out the following responsibilities during a foot pursuit:
  - a. Receive, record, and immediately report incoming information on the pursuit, the officers involved and the suspect.
  - b. Control all radio communications and clear the radio channels of all nonemergency traffic.
  - c. Coordinate and dispatch backup assistance and air support units under the direction of the field supervisor.

<p><b>IACP National Law Enforcement Policy Center</b> <b>FOOT PURSUITS</b> <b>Concepts and Issues Paper</b></p>
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**February 2003**

## **I. INTRODUCTION**

### **A. Purpose of Document**

This paper is designed to accompany the Model Policy on Foot Pursuits established by the IACP National Law Enforcement Policy Center. This paper provides essential background material and supporting documentation to provide a greater understanding of the developmental philosophy and implementation requirements for the

model policy. This material will be of value to law enforcement executives in their efforts to tailor the model to the requirements and circumstances of their community and their law enforcement agency.

## **B. Background**

The scenarios in which foot pursuits are initiated are repeated daily. A speeding motor vehicle abruptly turns off the highway or becomes disabled. The suspects—often pursued for vehicle theft, suspicion of drug possession, or fleeing a potential drunk driving or related violation—bail out of the vehicle and begin to run. In other situations, suspects may flee on foot at the sight of police approaching, or turn and run when officers attempt to place them into custody. The situations that precipitate foot pursuits are innumerable and it is beyond the scope of this document to treat them individually. What can be examined here are some of the principles and rules that should be remembered when determining whether to initiate or terminate a pursuit and the procedures to follow during pursuits.

## **II. PROCEDURES**

### **A. Prevention/Detection of Foot Pursuits**

No officer wants to become engaged in a foot pursuit if it can be avoided. While officers cannot totally prevent suspects from fleeing if the suspects choose to make the attempt, officers can make it more difficult or reduce the likelihood of flight by taking simple preventive measures. For example, always stay on guard by remembering that escape is an option that most suspects have on their mind, regardless of the circumstances. Officers should always look for early signs of escape. The suspect may glance at a potential escape route or may move a foot in one direction or shift his weight when deciding whether or not to flee. If the suspect is standing with both feet pointed in one direction away from the officer, it should be considered a sign that the suspect is considering flight.

If an officer is on foot and preparing to make a *Terry* stop or field inquiry, whenever possible the officer should approach the subject when the subject is situated in front of a barrier such as a store front, a fence, high hill or drop off, or similar location that diminishes the options for flight. Approaching a suspect standing in an open area, such as an alley or field, provides him with an unnecessary flight advantage.

Officers often have even more discretion in selecting a site for stopping motorists. The principles of limiting the possibilities and avenues for flight pertain here as well. In addition, officers should be careful when stopping vehicles in potentially hostile environments (such as notorious street drug markets) where the subjects temptation to flee may be increased based on a belief that it will provide safe haven. Stopping the vehicle next to a fence, Jersey barrier, or other natural or manmade encumbrance will reduce the potential avenues for flight.

Once the suspect has stopped, an officer can often sense whether the suspect is motivated to flee by paying close attention to his body language. Glancing to one side and then another, leaning one's body in a given direction, remaining on the balls of the feet rather than standing flat footed with arms dangling—all can signal the intent or potential of flight.

## **B. Deciding Whether to Pursue**

An officer has the authority to stop any person with or without a warrant when there is reasonable suspicion to believe that the person has committed, or is about to commit, a criminal offense or the officer otherwise has lawful grounds to detain or arrest the subject. It should be remembered however, that flight alone does not constitute sufficient legal justification to detain or arrest an individual. Flight must be coupled with one or more other factors that together provide sufficient justification to support reasonable suspicion to support a temporary investigative detention.<sup>17</sup>

The decision to pursue a fleeing suspect should not be regarded as a required or even prudent action in all instances. The safety of the pursuing officer(s), fellow officers who may respond, and the public is the primary concern. It is often better that a suspect should escape than that an officer should take unnecessary risks that could pose unreasonable danger to officers and others. Internal studies conducted in one of the nation's largest police departments reveal a pattern of personal injuries up to and including death that are associated with foot pursuit.

In addition, between 1990 and 1999, nearly 75 percent of officers feloniously killed died within a 10-foot radius of the offender.<sup>18</sup> This fact raises the issue of planning and strategy, for once an officer comes within close radius of the suspect on foot he or she must have a plan for subduing the suspect. Tackling a seemingly unarmed suspect, for example, is inherently dangerous, and rushing into close proximity of the suspect to make the arrest—an action that is typical of police officers—can result unnecessarily in hand-to-hand or armed combat. These are among the many factors that must be considered if a decision is made to initiate a foot pursuit. Because of the inherent and demonstrated dangers involved in foot pursuits, it should be a matter of agency policy that officers should not be criticized or sanctioned for making a rational and professionally informed decision not to engage in or to terminate a foot pursuit.

Even though the decision to pursue must normally be made quickly, officers should develop a plan for conducting a foot pursuit that includes a number of factors such as alternatives to foot pursuit and an assessment of unreasonable dangers and risks. Officers should continue to assess and reevaluate the propriety of the foot pursuit as it progresses.

***Alternatives to Foot Pursuit.*** Officers should consider—given the location, surroundings, seriousness, and urgency of the situation—whether there are reasonable alternatives to foot pursuit at their disposal.

For example, if aerial support is available, it may be better to request such assistance in a variety of situations, such as pursuing persons in and around neighborhoods, in wooded areas, after dark, and in related situations where cover is readily available and the chances of ambush more likely.

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<sup>17</sup> <sup>17</sup> See *Illinois v. Wardlow*, 528 U.S. 119, 120 S. Ct. 673 (2000)

<sup>18</sup> Department of Justice, Federal Bureau of Investigation, Uniform Crime Reporting Program, *Law Enforcement Officers Killed and Assaulted, 1999* (Washington DC, 2000), p. 10-15.

In other situations the use of area containment may be more advisable than foot pursuit. For example, in situations where the suspect flees into a nonpublic building, securing the building with backup officers followed by a systematic search would generally be preferable. Suspects who flee into such buildings generally have a good understanding of their surroundings and are at a distinct advantage. In many instances, officers pursuing individuals in these environments have encountered booby traps and other prearranged threats and obstacles.

In the foregoing situation and in others, the use of a canine is another alternative that should not be overlooked. Building searches, open field searches, contained areas such as junkyards and related locations that provide cover and concealment options for suspects are often best suited for use of a canine. In these and related situations, officers may classify the situation as a barricaded or otherwise non-compliant subject and follow protocols for containment and the call out of specialized services such as SWAT.

Another alternative is the use of saturation patrol. Saturating a neighborhood or other area with officers provides the opportunity to contain the suspect, block his paths of escape, and intercept him through coordination of officer movements.

Finally, if the officer can identify the suspect and there is reason to believe that he can be located at a later time, it may be more prudent not to attempt to catch the suspect on foot. Of course, decisions such as these depend in part on the seriousness of the offense and the potential for harm should the suspect be allowed to flee.

***Risk Factors.*** There are a number of risk factors that officers should consider when deciding whether to initiate or continue a foot pursuit. These include but are not limited to the following.

- Acting alone

Normally, conducting a foot pursuit alone is far too dangerous an undertaking to be permissible. Here, as in other situations, however, it is difficult to state categorically that officers acting alone should not conduct foot pursuits, and an overriding rule may be applied. That is, in the officer's professional judgment, the foot pursuit should not be conducted if the officer believes that the danger to the pursuing officer or the public outweighs the need for immediate apprehension.

- Area familiarity

Officers who are unfamiliar with the area in which the pursuit will be conducted are also at a serious disadvantage to the suspect. In these situations there is a greater likelihood that the suspect will be able to take advantage of obstacles, hiding places, terrain, and other factors that the officer cannot anticipate and plan for. In these environments, officers are more likely to be led into clotheslines, over fences, or into other obstacles, such as booby traps known only to the suspect. If the officer should become disabled, particularly while acting alone, the situation can become life-threatening.

- Area hostility

Some locations, such as those in which known drug dealing is prevalent, are inherently more dangerous to officers on foot. Persons fleeing in these areas have the advantage of being on their own turf and recognize that members of the community will typically not provide officers with any meaningful cooperation or may even assist the suspect or intervene on his behalf if the officer attempts to

place him under arrest. Officers who are on foot pursuit in such areas are at a significant strategic disadvantage.

- Armed suspect

Chasing an armed suspect is intrinsically more dangerous than chasing one who is not. However, officers cannot always be certain that a suspect is not armed just because no weapon is visible. Additionally, foot pursuit of a fleeing suspect who is visibly armed with a handgun has significant bearing on the tactics that officers should use during the pursuit and the need to take greater advantage of cover. Such added risks provide greater support to exploring alternatives to foot pursuit.

- Multiple suspects

The risks presented when dealing with multiple suspects mandate the use of backup officers and other options. The initial dilemma is which of the fleeing suspects to pursue and the added concern that other suspects who are not pursued may ambush the officer or come to the aid of their colleague once that person is subdued.

- Available backup

Normally, officers working alone, and particularly those working in rural environments who cannot expect ready backup assistance or support, should not engage in foot pursuits. Again, this admonition must be weighed in the context of the situation given a reasonably trained and experienced officer. Take for example the scenario in which an officer conducts a traffic stop for a minor moving violation. Once the suspect vehicle stops, the operator immediately exits the vehicle and flees on foot. If the officer's vehicle is equipped with video recording equipment, it is after dark, and there is no immediate back up, a foot pursuit would not be advisable. This decision is reinforced by the fact that the suspect may have been recorded on video when exiting the vehicle. If, on the other hand, there was reason to believe that the suspect operator posed a significant threat to the officer or the community, requests for backup alternatives such as aerial support and coordinated ground search with canines may be warranted.

- Officer fitness levels

Engaging in a foot pursuit creates a tremendous strain on even the more physically fit officers. Typically an officer is at a disadvantage wearing soft body armor, pounds of equipment attached to the duty belt, slacks, and duty shoes as often compared to a young suspect wearing shorts, running shoes, and a T-shirt. This disadvantage can be accentuated in hot weather and the fact that the officer(s) most often begin a foot pursuit spontaneously, all of which makes overexertion more likely and more rapid. Under these and other conditions an officer can become exhausted running even short distances at a sprint and then find himself or herself in a precarious physical position when having to subdue and secure the suspect or, even worse, if the suspect attempts to overcome the officer. Officers who are seriously out of condition are not typically capable of conducting foot pursuits and even officers who are in good physical condition should be aware of the added risks that they face due to the equipment they must carry and wear.

- Communications

Maintenance of constant communication with dispatchers and other members of the foot pursuit operation is absolutely essential for officer safety and effectiveness of the pursuit. Officers need to maintain ongoing communication of their location and circumstances for their safety and the safety of other responding

officers. Where multiple officers are conducting foot pursuit and search operations, tactical communications between these officers will allow them to better organize the search, rapidly respond to changes on the ground, and help ensure that officers are not misidentified for the suspect or caught in crossfire situations. Where communication is lost between dispatch and officers involved in foot pursuit, the pursuit should be terminated.

- Weather and darkness

Inclement weather and darkness can become another risk factor that should be weighed by officers. Obviously, reduced visibility is a primary concern during foot pursuits as it provides more opportunity to hide and evade capture or to create an ambush for the officer(s). Inclement weather also makes it more difficult to maneuver and maintain one's footing.

Unless there are exigent circumstances, such as an immediate threat to the safety of other officers or civilians, officers should not normally engage in or continue foot pursuits in the following situations.

- While acting alone—although, if exigent circumstances warrant, the lone officer should consider keeping the suspect in sight and/or confined from a safe distance until backup personnel can be coordinated to effect containment
- Into buildings, structures, confined spaces, or wooded or otherwise isolated areas without sufficient backup and containment of the area
- If the officer believes the danger to pursuing officers or the public outweighs the necessity for immediate apprehension
- If the officer loses possession of his or her firearm
- If the suspect's identity is established where the suspect may be apprehended at a later time with a warrant and there is no immediate threat to the officers or the public
- If the suspect's location is no longer known
- If communication is lost between officers or with central dispatch
- If there is a person injured during the pursuit and there are no police or medical personnel able to render assistance
- If the officer becomes aware of unanticipated circumstances that substantially increase the risk to public safety inherent in the pursuit
- If the officer loses visual contact with the suspect or is unsure of his location or direction of travel

### **C. Foot Pursuit Coordination**

The officer who initiates the pursuit should immediately contact the communications center and directly or indirectly through dispatch coordinate with a secondary officer to establish a perimeter to contain the suspect. Generally, the primary officer should not try to overtake the fleeing suspect but should keep him in sight until sufficient manpower is available to take him into custody.

In the event that the suspect enters a building, structure, confined space, or wooded or otherwise isolated area, the primary officer should stand by, radio his or her location, and wait for the arrival of backup officers to establish a perimeter around the area. Officers should not pursue suspects into such confined or isolated areas alone. In these instances, the situation should be regarded as a barricaded or otherwise

noncompliant suspect and consideration should be given to using specialized units such as special weapons and tactics teams, crisis response teams, aerial support, canines, or other additional services.

Officers responding to the location of a foot pursuit should attempt to contain the suspect where appropriate rather than try to immediately locate the primary officer in the pursuit. Backup officers should not join the primary officer unless the suspect has been stopped and the primary officer requests assistance to make an arrest. Where two officers initiate a foot pursuit together, they should not separate unless they remain in sight and in communication. One officer should take the lead in the pursuit while the other provides backup and maintains communication with dispatch and other assisting officers who may be arriving to provide backup.

#### **D. Initiating Officer Responsibilities and Tactics**

Should an officer or officers decide that a foot pursuit is warranted and prudent under the circumstances, they place themselves in a field command situation and bear operational responsibility for the pursuit unless circumstances dictate otherwise or until relieved by a supervisor.

As soon as it is practical, initiating officers should provide the following information to the department's communications center:

- Unit identifier
- Reason for the foot pursuit
- Officer location and direction of travel
- Suspect(s) and descriptions
- Whether the suspects are armed

Pursuing officers should update their location and situation as frequently as possible and make requests for backup as required. They should keep in mind that while running and in other tactical situations communications may not be understood and may have to be repeated.

No foot pursuit is "routine." Persons who run from the police do so for many reasons but a large number do so because they know that their capture will probably result in incarceration for the incident offense and/or other crimes as yet unknown to the pursuing officer. This warrants a high level of caution for police officers engaged in such pursuits. On the other hand, many persons flee simply because they panic. It is not uncommon for so-called joy riders to bail out of stolen vehicles for this reason. Even otherwise upstanding adults may panic for fear of the impact an arrest—often for drunken driving or possession of drugs—will have on their family, their reputation, or their employment. With this in mind, officers should consider, when deciding to engage in a foot pursuit, if the known offense justifies this action. There have been situations in which pursuits for minor offenses have escalated into more serious confrontations, resulting in serious injury or death to the officer and the suspect. For example, there have been instances in which suspects being pursued for minor offenses have barricaded themselves and taken hostages in a frantic and irrational attempt to evade the police. Others who would not normally be considered dangerous have similarly engaged officers in physical confrontations.

This is not to suggest that officers should not engage in foot pursuits simply because the basis for the initial stop involved a seemingly minor offense. Many persons

run because they have something as serious or even more serious to hide. It is meant to say that foot pursuits—like vehicular pursuits— can spiral and have spiraled into situations with far more serious consequences for officers and suspects alike than the original basis for the stop. Foot pursuits are adrenaline-filled, highly charged events that can result and have resulted in charges against officers of excessive force, either because of the officer's overreaction or because of the physical resistance of the suspect. And, as with some vehicular pursuits, it is often the more prudent action to back off or terminate the pursuit rather than risk unnecessary injury to officers, suspects, or innocent bystanders.

When a suspect flees he may or may not know the territory in which he is running. It is more likely that he does if he was on foot at the time of initiating the stop. Whether he does or not, the pursuing officer should attempt to follow the suspect's path of flight so that in case there are hidden objects or obstacles the suspect will be the first to encounter them. The exception to this rule is when the subject enters closed area such as tunnels or alleys where the potential exists for officers to be trapped in what is commonly referred to as the "fatal funnel." In these and similar situations, officers should attempt to parallel the path of the subject so that he will not know the pursuing officer's exact location.

Officers should use good safety strategies such as assessing, selecting, and moving from cover to cover as he or she pursues the suspect. Similarly, the officer should use distance from the suspect as a protective barrier and increase or decrease the distance as the pursuit ebbs and flows.

When climbing fences and walls officers should consider using a spot other than that where the suspect climbed over and ensure by sight or sound that the subject is not laying in wait on the other side for an ambush. When rounding the corners of buildings officers should be particularly careful. Generally, taking a wide sweeping turn around corners will allow an officer an advantage and more reaction time should the suspect be waiting on the other side.

Nighttime foot pursuits are inherently more dangerous because of the reduced visibility. Engaging in a foot pursuit under such conditions requires greater justification. For example, the suspect should normally be deemed a danger to officers or others if allowed to escape and there should be a reasonable likelihood of capture in a relatively short period of time. Nighttime or low-light pursuits require aerial support for safety and effectiveness and generally the additional assistance of backup officers for containment. Pursuit in low light or nighttime conditions also creates the added potential of injury due to falls over unseen objects such as lawn sprinkler heads, clotheslines, or numerous other objects, some of which might be known to the suspect who leads the officer into them. If a flashlight must be used, this also creates a convenient tip-off to the suspect of the officer's location and an easier target should the suspect be armed. For these and other reasons, pursuit in low-light and nighttime conditions requires significant justification and extreme caution.

Carrying a handgun while pursuing a suspect on foot can be problematic but the choice is dependent on the circumstances. If the suspect is a known violent felon or is known to be armed, ready availability of the firearm may be essential, particularly if the

officer and suspect are in relatively close proximity. However, when running, a handgun creates an imbalance to the officer, it can more easily discharge causing harm to the officer or others, can be dropped if the officer falls, and can be a disadvantage if the officer needs to jump obstacles or climb fences or walls, among other actions. Where a suspect appears unarmed and there is no other reliable information to determine the danger he presents, it is generally best to keep the handgun securely holstered until or unless needed to effect the arrest.

As previously noted, many foot pursuits take place during the stop of motor vehicles for driving infractions or vehicular theft. This reemphasizes the importance of keeping offenders in the vehicle unless a roadside sobriety check is necessary or occupants are ordered out of the vehicle for search or for the officer's safety. If the operator flees, officers should ensure that there are no other accomplices in the vehicle before pursuing the suspect to ensure that they don't set up an ambush. Also, officers should take the police vehicle's keys to guard against the suspect's doubling back and stealing the vehicle.

By the time the officer has caught up with the suspect, he or she should have developed a plan of action. As noted, some officers tend to rush in to apprehend suspects, sometimes with serious consequences. So, in many instances, it is safer to find cover a short distance away and determine whether the suspect will respond to verbal commands. It is generally best to wait for backup officers to respond before affecting the physical arrest and restraint of the suspect. An officer's physical strength can be significantly depleted following a foot pursuit and this can also affect cognitive abilities. So, if the situation allows, officers should take a moment to regain their composure and strength, survey the situation and determine how best to approach the subject.

If the suspect does not respond to verbal commands it may indicate that he remains confrontational or combative or that he will offer either active or passive resistance to arrest. Just as the officer experiences a significant adrenaline rush during foot pursuits, so do suspects being pursued. And, when cornered, even seemingly benign suspects can become dangerous under these conditions. Officers may even choose to extend the distance between them and the suspect until backup arrives rather than risk entering what is referred to as the "killing zone."<sup>19</sup> This is important if the suspect is or may be armed with a firearm or other weapon, has demonstrated violent behavior or martial arts training, or appears to be of such physical prowess to suggest that the laying on of hands to restrain the suspect could trigger an aggressive response.

#### **E. Supervisor Responsibilities**

When becoming aware of a foot pursuit, supervisors should decide as soon as possible whether the pursuit should be continued. Generally, the foot pursuit should be allowed to continue if there are at least two officers working together and there is a reasonable belief that (1) the suspect has committed an offense or violation that would permit the officer to detain the suspect or (2) there is reasonable belief that the suspect poses an immediate threat to the safety of the public or other police officers.

The supervisor should terminate a foot pursuit at any time he or she concludes that it violates agency policy or accepted training and tactics or that the danger to the

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<sup>19</sup> Pinizzotto, Davis, and Miller, "Escape from the Killing Zone," *FBI Law Enforcement Bulletin*, March, 2002.

pursuing officers and the public outweighs the necessity for immediate apprehension of the suspect.

The supervisor should take command and control of the foot pursuit as soon as possible and coordinate the efforts of responding personnel in cooperation with information communicated from the officer(s) in pursuit. As in other tactical situations, the supervisor does not have to be physically present to assert control over the situation. Once the pursuit has concluded, the supervisor should proceed to the arrest or terminus site and supervise post-event arrest, reporting, and debriefing activities as required.

**F. Dispatch/Communications Responsibilities**

Communications and dispatch personnel play an important part in conducting effective foot pursuits and supporting the safety of involved officers. It is important for example that the emergency operations center (EOC) operator remain in close contact with the pursuing officer or the officer's partner in the pursuit and backup police personnel. If not otherwise provided by the officer the EOC operator should solicit important information from the officer(s) involved. This includes the reason for the pursuit, suspect description, location, and direction of travel. They should ensure that unclear radio transmissions are repeated for clarity, and where appropriate, rebroadcast essential information to assisting personnel.

Communications personnel should notify the field supervisor and provide him or her with all available information. Backup assistance such as air support or canines should be dispatched where necessary and appropriate under direction of the field supervisor. The communications operator should control all radio communications and clear the radio channel of all nonemergency communications traffic.

## APPENDIX 3

### Recommended Changes to Forms

#### 1. Form 18

- The Monitor's Report notes a concern regarding the fields listed under the headings "Subject Noncompliance" and "Subject's Pre-attack Posture," in that they appeared to us "shaded in a way to justify force." The heading "pre-attack posture" for example, presupposes that there was an attack by the subject on the officer, when in fact there may or may not have been one. As we noted in our report, we recognize the benefits of collecting specific data, in addition to a narrative report. In particular, we recognize the importance of documenting the subject's level of resistance or noncompliance. For example, it is important to note whether the subject was armed, or assaulted the officer. Therefore, we recommend that the revised form (and consequently, the ETS system) track the categories of subject resistance listed in the Use of Force Continuum in proposed Procedure 12.545. We recommend deleting the category of "Subject's Pre-attack Posture."
- Where physical force is used along with another type of force (e.g., taser, or beanbag round), Form 18F allows the investigating supervisor to note that the other type of force was used. However, other questions that are asked on the forms specific to the other uses of force are not asked on 18F (e.g., for a beanbag round, questions relating to effectiveness, number of rounds fired, location of strike and estimated distance, etc., are asked on 18TBFP, but not on 18F). It is our understanding that this issue will be addressed by the ETS system, in that the forms will be combined, so that if the investigating supervisor notes a beanbag round use, the system will prompt responses to fields related to beanbags; if chemical spray is used, chemical spray related fields will need to be completed; and so on. Similarly, if the Injury to Prisoner form also will be combined with the other Form 18s, any force used will be documented even where the injury to the prisoner is unrelated to the force used.
- Form 18F requires the investigating supervisor and the District/Section Commander to evaluate whether the initial police contact is consistent with Police Department policy. The other force forms (18CI, 18BTPF) do not contain this query. The combined form should include this question, as it is relevant for all force incidents.

- Form 18 requires the investigating supervisor and the District/Section Commander to evaluate whether the force used was consistent with Police Department policy. Where there is more than one instance or type of force used in an incident, the form should accommodate a review for each use of force, not just one overall evaluation. This is true for all of the Form 18s.
- We recommend that Form 18 also include a field for the investigating supervisor to note any comments on the tactics used or recommendations for training.
- We are assuming that the narrative field will expand to fit the narrative, when the form is being filled out electronically.
- In the “Injuries” section of Form 18, the form should include a field for “Medical treatment refused.”
- Form 18 contains fields under the heading “verbalization.” These categories document verbal commands given by the officer, but they do not reflect whether any warnings were given that force (such as CI spray) will be used if the subject does not comply. We suggest either that a field be added for “Warning That Force Would Be Used” or that the fields be changed to (1) “Verbal Commands” (2) “Warning That Force Would Be Used.”
- A field should be added “MVR Tape Available/Reviewed.”

## **2. Chemical Spray Form**

- As noted above, it would be helpful if the form documented whether a warning was given that CI spray would be used, and not just that verbal commands to comply were given.
- A field should be added asking, if a crowd situation, did a supervisor’s authorize the spray. If not, the form should prompt an explanation.
- Including a field for whether the person sprayed was restrained will help in CPD recordkeeping.
- Distance from subject when CI spray was used can also be helpful information.

## **3. Taser/Beanbag/Pepperball/Foam Form**

- A field should be added to document whether a supervisor approved use of weapon.
- The form (as noted above) should reflect whether a warning was given.

#### **4. Canine Form**

There are two forms that CPD has provided: an 18CD for all deployments without a bite, and an 18C, which appears to be for all canine deployments, including those where a person is bitten. The first page of 18CD is to be filled out for all deployments whether or not there is a bite, and duplicates all of the information requested on the Form 18CD. If this is the case, we do not understand the reason for a separate Form 18CD. If, however, only the 18CD will be filled out for canine deployments without a bite, we note the following:

- Canine Deployment Announcement fields, now contained on page 2 of Form 18C, should be filled out for all deployments, not just those where a bite occurred. They should be added to Form 18CD.
- There should be a field on Form 18CD for the reviewing supervisor to note whether the officer's use of the canine is consistent with Police Department training and in conformance with Police Department policies, procedures, and state law, (as there is for investigating supervisors on Form 18C, page 3, for deployments with a bite).
- For both forms, if the search is on-lead, it is helpful to note the length of lead (a 6 foot lead is very different than a 30 foot lead).
- As noted above, we recommend that a field be added for the reviewing supervisor to note any comments on officer tactics and control, or training recommendations.