

**FOURTH STATUS REPORT FOR THE AUDIT OF THE STIPULATION OF  
SETTLEMENT BETWEEN THE MARYLAND STATE CONFERENCE OF NAACP  
BRANCHES, ET.AL. AND THE BALTIMORE CITY POLICE DEPARTMENT, ET.AL.**

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**CHARLES F. WELLFORD  
AUDITOR  
JUSTICE ASSESSMENT AND EVALUATION SERVICES  
October 31, 2013**

## **INTRODUCTION**

This is the fourth report of the Auditor for the settlement between the Maryland State Conference of the NAACP Branches, et.al. and the Baltimore Police Department (the Department), et.al. (hereinafter the Voluntary Agreement). It covers the period of January 1, 2013 to June 30, 2013. The Auditor was selected by the parties to the agreement and notified of his selection in October of 2010. The Auditor submitted a required work plan and detailed auditors manual that were approved by March of 2011. The contract for the services of the auditor was issued at the end of July 2011. The Auditor submitted to the parties, for their approval, staff who would work on the audit. The Auditor was notified of staff approval in March of 2011. The first audit report was submitted April 30, 2012; the second report was submitted October 31, 2012; the third audit report was submitted April 30, 2013<sup>1</sup>.

As in the first three reports, this report uses the methods approved in the Audit Manual to assess the extent of compliance with each of the auditable tasks contained in the voluntary agreement. The audit has determined that the Baltimore Police Department is in compliance with 17 of the tasks (48%), in material compliance with 16 of the tasks (46%), and in noncompliance with 2 (6%) of the tasks. These levels of compliance are unchanged from the first three audit

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<sup>1</sup> Copies of previous reports are available from the Auditor.

reports. While the Department continues to make progress in complying with tasks that address policies and procedures, to date the Baltimore Police Department has not achieved compliance with the task that measures behavioral changes in arrests for Quality of Life Offenses. Since the last report the Department has fully implemented the required system to track citizen complaints and has implemented a way to use that system to identify officers who may need more training and supervision<sup>2</sup>.

## **TASK AUDIT**

**Task 1.** Within thirty days of the effective date of this Agreement, the Department shall issue a policy stating that the Department does not support a policy of Zero Tolerance Policing. Quality of Life Offenses<sup>3</sup> committed in an officer's presence may be enforced by several means, including but not limited to: Counseling, verbal warning, written citation or arrest.

## **STATUS: COMPLIANCE**

The Department issued a Police Commissioners Memorandum on July 29, 2010 (PC Memorandum 11-10) that contains all of the elements required by this task.

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<sup>2</sup> The Voluntary agreement requires that this report append the comments of the Department. They are contained in Appendix A.

<sup>3</sup> In the Voluntary Agreement, Quality of Life Offenses are defined as including the following offenses: "loitering, trespassing, public defecation/urination, open container, disorderly conduct (particularly "failure to obey" and disturbing the peace), hindering, and littering.

**Task 2.** Within 30 days of the Effective Date of this Agreement, the Department shall issue a written directive or directives enumerating the elements of each Quality of Life Offense and providing guidance on appropriately identifying and reacting to conduct that does and does not amount to a Quality of Life Offense, including guidance on conduct that is protected by the First Amendment to the U.S. Constitution.

**STATUS: COMPLIANCE**

The Department issued a Police Commissioners Memorandum on July 29, 2010 (PC Memorandum 13-10) that contains all of the elements required by this task.

**Task 3.** The written directive or directives concerning Quality of Life Offenses required by Section IV.B.1.a.2 of the Voluntary Agreement shall include a requirement that any time an officer effects a custodial arrest for a Quality of Life Offense, the officer shall record in the incident report and the statement of probable cause the factual basis for his or her decision to effect a custodial arrest, rather than providing counseling, a verbal warning or issuing a citation.

**STATUS: COMPLIANCE**

The Department issued a Police Commissioners Memorandum on July 29, 2010 (PC Memorandum 14-10) that exceeds the requirements of this task.

a. The Auditor shall review a statistically meaningful sample of statements of probable cause required by section IV.B.1.a.2.a to determine whether the factual narrative of the arrest could on its face support a finding of probable cause and that the arrest was in accord with the Policies.

**STATUS: NONCOMPLIANCE**

To assess compliance with this task the Auditor selected a 25% sample of all Quality of Life Offense arrests for the months of January 1 2013 through June 30, 2013. The Department provided copies of the statements of probable cause for these sampled arrests. The attorney assisting the auditor read each of the sampled arrests to determine if they contained acceptable statements of probable cause and if the arrest was in accord with the department's policies noted in Tasks 1-3 above.

During this period the Department provided files on 45,585 arrests of which 2985 (6.5% of all arrests) were for Quality of Life Offenses as defined by the Voluntary Agreement<sup>4</sup>. The random sample of these quality of life offenses totaled 739. Compliance with this task was determined by the analysis of these sampled cases. The Audit Manual stated that to be in full compliance the analysis of the sampled cases would have to result in a level of estimated compliance that included the possibility that 100% of the cases were compliant.

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<sup>4</sup> In our first report we noted that we had also requested and were provided arrest data for April of 2010 and September of 2010. We compared these months to the comparable months in 2011. This analysis showed a decline in arrests and Quality of Life arrests of between 16 and 25%. For the second report we compared April through June of 2011 with the same months in 2012 and found a 3% decrease in total arrests and about a 1.6% increase in quality of life arrests. In 2013 we find a decrease in quality of life arrests for the same period of .5%.

In the first three reports, in reviewing the sampled cases to determine compliance, we encountered two unexpected issues. First, each month a number of the sampled cases of Quality of Life arrests involved arrests for offenses that emerged after the stop for the Quality of Life Offense. For example, an officer approaches a person who is on private property and as the officer approaches, the person of interest drops something that later turns out to be a controlled substance. The officer arrests the person for trespassing and for possession of the controlled substance without indicating in the report that an alternative to arrest was considered. In these instances we determined, after consultation with the parties to the Voluntary Agreement, that as long as the arrest report accurately stated probable cause these arrests would be considered consistent with departmental policy and were compliant for purposes of this audit. In other words, those arrests were counted as compliant even though the probable cause statement did not indicate that an alternative was considered. This issue continued in this reporting period.

The second issue we encountered during the first three reporting periods was a large number of expunged cases for which arrest reports were unavailable. It was explained that pursuant to statute the Department was required to expunge the records of those who were arrested but were released without charges (referred to as RWOC cases). We sought these records because these cases are similar to the

kind of cases that prompted the law suit that resulted in the Voluntary Agreement we are auditing. When the draft report of our first report was reviewed by the representatives of the plaintiffs, they pointed out that while the statute (Md.Code, Crim. Proc. §10-101) requires expungement in these cases, it further requires that the Department retain the record for three years. The Department, in response to our inquiry concerning this, stated that after expungement the records were not available through the Department's management information system. We indicated in our first three reports that during the next reporting period we would continue to seek access to these cases. During the current reporting period there has been a drop in number of these expunged cases. While during the last reporting period there were a total of 119 sampled cases that were expunged, during the current period the number of sampled cases that are reported as expunged totals 27. While in the past we were concerned that the large number of expunged cases would hamper our ability to accurately determine compliance, this concern is minimized as long as the number of expunged cases remains at these levels or lower. Then and now the Department is not compliant with this task no matter how we handle the expunged cases<sup>5</sup>.

The Department continues to contend that even if though they have access to the incident reports for the expunged cases that they cannot give them to us for

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<sup>5</sup> During the current reporting period the Department used our review of cases that were not compliant to develop and offer new educational programs and materials for supervisors and officers in all police Districts.

two reasons: 1) the statement of probable cause in the incident report may be different from the final statement of probable cause; and 2) since the record has been expunged they cannot provide the auditor with a copy of the report that would identify the person arrested because that would violate the purpose of expungement. Specifically, the Department has contended:

Probable cause statements pertaining to the arrest of an individual that has been expunged are not part of the records considered to be in the custody of the Baltimore Police Department. Maryland Code of Criminal Procedure Section 10-103.1 requires that all police records regarding the arrest of a person who is arrested or confined and is released without being charged with the commission of a crime are entitled to an automatic expungement.

The State's Attorney's Office has the discretion to determine which cases to prosecute. An individual may be released without charges for numerous reasons, all of which are within the prosecutorial discretion of the State's Attorney. Consequently, the Auditor is not required by the terms of the Settlement Agreement to speculate on whether there is a direct correlation between someone being released without charges and the absence of probable cause to arrest. Furthermore, any estimation of the rate of compliance with the terms of the Settlement Agreement would be speculative, and is not contemplated within the task language of the Settlement Agreement for this litigation. Accordingly, any reference to said materials is outside of the purview of the Auditor's stated tasks<sup>6</sup>.

We have offered a number of ways to address these concerns but to date the Department contended that they cannot provide to us the information needed to determine whether those arrests are in compliance or not. The Auditor continues to believe that to conduct a complete assessment of compliance with this task that access to the expunged cases is necessary.

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<sup>6</sup> Email from the Office of Legal Affairs, Baltimore Police Department dated 9/11/12.

The review of the sampled cases (not including the expunged cases) determined that the Department complied with this task in 77% of the arrests with a margin of error of +/-3%<sup>7</sup>. The primary reason for non-compliance was the absence of an explanation of why a non-custodial disposition was not appropriate in the case. Therefore, it was determined that the Department was not in compliance (the Auditor's Manual makes clear that for this task material compliance and compliance are treated without distinction).

**Task 4.** Within 30 days of the effective date of this Agreement, the Department shall issue a written directive requiring officers to provide their names and badge numbers to any individual who requests this information.

**STATUS: COMPLIANCE**

The Department issued Police Commissioners Memorandum (14-10) on July 29, 2010 that met all of the requirements of this task.

**Task 5.** The Zero Tolerance Policing policy required by section IV.B.1.a.1 shall not be rescinded or diminished by the Department during the term of this Agreement.

**STATUS: COMPLIANCE**

The Auditor has verified that this policy has not been rescinded.

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<sup>7</sup> As noted above, each month a substantial portion of the quality of life arrests included arrests for other offenses. After consultation with the parties to the agreement, the Auditor decided that as long as probable cause was established these arrests were judged to be compliant. If these arrests were eliminated from the analysis, the compliance rate would be 68% (+/-4%). If the expunged cases were counted as non-compliant and included in the denominator, the compliance rate would be estimated at 63% (+/-3%).

**Task 6.** The written directive or directives required by section IV.B.1.a.2 of the Voluntary Agreement shall not be rescinded or diminished by the Department during the term of this Agreement unless (a) the Department determines, in good faith and upon advice of counsel, that the policies conflict or will conflict with any applicable law, regulation, or court order; or (b) the Department determines in good faith that such rescission or diminishment is necessary for the safety of the public or Department personnel. In the event the Department concludes a modification of the written directive or directives required by section IV.B.1.a.2 is necessary, it will notify Plaintiffs' Counsel of the planned modification and offer a reasonable opportunity for Plaintiffs' Counsel to comment upon it. The Department shall in good faith consider such comments.

THERE IS NO AUDIT FUNCTION ASSOCIATED WITH THIS TASK AND IT WILL NOT BE INCLUDED IN AUDIT REPORTS. HOWEVER, IF CHANGES ARE MADE USING THE PROCESS SPECIFIED THE AUDITOR WILL INCLUDE THOSE CHANGES IN THE AUDIT MANUAL AFTER BEING INFORMED OF THE CHANGES BY THE DEPARTMENT.

**STATUS: NO CHANGES NOTED**

**Task 7.** The Municipal Defendants shall provide the Auditor with access to all officers, employees, documents, and data of the Municipal Defendants that are reasonably necessary to complete the Tasks enumerated in this Agreement.

THERE IS NO AUDIT FUNCTION ASSOCIATED WITH THIS TASK AND IT WILL NOT BE INCLUDED IN AUDIT REPORTS. ALL INSTANCES OF FAILURE TO PROVIDE ACCESS WILL BE NOTED IN RELEVANT SECTIONS OF THE REQUIRED BI-ANNUAL AUDIT REPORTS ALONG WITH AN ASSESSMENT OF HOW SUCH DENIAL MAY HAVE IMPACTED THE AUDIT.

**Task 8.** Within 120 days of the Effective Date of this Agreement, the Department shall develop a document and database retention protocol to maintain and retain all records, including documents and the database described in Section IV.B.1.c of the Voluntary Agreement, documenting compliance with the terms of this Agreement and all documents required by or developed pursuant to this Agreement. The protocol shall be evaluated and reported on by the Auditor.

**STATUS: NON-COMPLIANCE** As of March 2013, the Department fully implemented a data collection and reporting system that provides an automated way to track police officer performance with regards to compliance with Departmental policies. This system is a version of IAPro that incorporates

specific elements to address the requirements of the Collective Agreement. A retention protocol that meets the requirements of this Task and includes the information in IAPro was promulgated on January 31, 2011 (Police Commissioner's Memorandum 05-11).

**Task 9.** Within 180 days of the effective date of this Agreement, the Municipal Defendants shall create and automate a database to track police officer performance.

**STATUS: MATERIAL COMPLIANCE**

As of March 2013, the Department fully implemented a data collection and reporting system that provides for tracking police officer performance with regards to compliance with Departmental policies. This system is a version of IAPro that incorporates specific elements to address all the requirements of the Collective Agreement.

**Task 10.** Within 180 days of the effective date of this Agreement, the Department shall:

a. establish and enforce a policy and procedure requiring shift supervisors to review statements of probable cause for custodial arrests for Quality of Life Offenses to ensure that probable cause in fact existed and that the arrest was in accord with the Policies. If, after this agreement has been in effect for 365 days, the result of the review is a determination that the arrest was in contravention of

the Policies, the supervisor shall refer the matter to his or her command for action consistent with the policy established. If the result of the review is a determination that the arrest is consistent with the Policies, the supervisor shall determine the necessity, if any, for non-punitive counseling.

b. establish and enforce a policy and procedure requiring a line supervisor's review of probable cause statements for custodial arrests for Quality of Life Offenses is reviewed by second-level supervisors on a periodic basis, not to exceed every six months, to ensure that probable cause in fact existed and that the arrest was in accord with the Policies;

c. establish a policy identifying corrective actions, up to and including disciplinary action, as warranted and consistent with established Departmental disciplinary policies, procedures, contracts, memoranda of understanding, and all applicable laws governing the discipline of law enforcement officers, including, but not limited to the Law Enforcement Officer's Bill of Rights. ("LEOBR"), Md. Ann. Code, Public Safety Act, 3-101, et seq., to be taken by the Department when an officer's conduct is deemed to be in contravention of the Policies;

#### **STATUS: MATERIAL COMPLIANCE**

The Department has established policy to require supervisors to review probable cause statements in all quality of life arrests. Furthermore, the Department now requires periodic review by second-level supervisors. Hence

there is already compliance with sections a and b of this task. To date the policy on corrective actions has been drafted but has not been implemented, although an Early Intervention Unit is in place and is identifying officers and imposing non-punitive interventions. Once the draft is approved it will be issued and will be available to the Auditor for review and comment. The purpose of the order is to establish early intervention within the Department, to identify members displaying problematic behavior, and provide them with non-disciplinary corrective guidance. This will be done via the IAPro system and the employee's first line supervisor. The IAPro system will provide an alert when a member reaches a predetermined threshold within a set time frame for the category. The triggering alert will list the date, IAD case number, and BPD central complaint ("CC") number. Additionally, a letter will be sent from the Chief of Internal Affairs to the District Commander indicating that the member has been identified for participation in the early intervention program based upon the number of incidents occurring in the last twelve months. It directs the District Commander to ensure that a supervisor conducts an intervention with the member and thereafter monitor the member's work closely for a thirty day period. At the conclusion of the monitoring the supervisor must complete an administrative report outlining the course of action taken to correct the member's issues. This will also become part of the member's periodic evaluation. This policy should be finalized during the next reporting

period. As soon as it is the Auditor will assess the extent to which the policy is being followed.

**Task 11.** Within 365 days of the effective date of this Agreement, the Department shall develop protocols for use of the database in evaluating compliance with the Policies. Such protocols shall establish reasonable triggering thresholds for review of officer conduct to monitor effective compliance with the Policies. The protocols referred to here are the “triggering points” for the EWS. The Auditor will confirm that each of the protocols required by the Agreement is developed and implemented. The Auditor will also report on the efficacy of the triggering points established by the Department.

**STATUS: MATERIAL COMPLIANCE**

The Voluntary Agreement requires two types of “triggers”, one for complaints involving quality of life offenses and a second for quality of life arrests. The Department has established a policy for Quality of Life complaints that sets the “trigger” at seven complaints in any twelve month period. As these have just been established the Auditor has not had the opportunity to assess their efficacy. However, it is the case that these triggers could allow a substantial number of complaints in an officer’s career before there was a mandated non-punitive intervention. These triggers will be used by the newly created Early Intervention

Unit in the Internal Affairs Section of the Department. This unit will track complaints using IAPro and monitor the delivery of non-disciplinary interventions to improve behavior. Monitoring of officers will occur for 30 days after the end of the intervention. The Department is in the process of developing “triggers” for arrests for each Quality of Life Offense and for overall custodial arrests that will result in additional review of an officers arrests. It is reported that these “triggers” and an accompanying policy will be developed during the next reporting period.

**Task 12.** Within 90 days of the effective date of this Agreement, the Municipal Defendants shall enter all citizen complaints into a database. The database shall include the file number of the complaint (also provided to the complainant); the names of all accused officers, if provided or known; contact information for all complainants, non-accused but related officers, and witnesses, if provided or known; the race and gender of all involved officers and complainants if known or ascertainable by reasonable investigation; a narrative description of the allegations; significant dates; the street address and district of the incident; and the disposition of the complaint (sustained, not sustained, unfounded or exonerated).

#### **STATUS: MATERIAL COMPLIANCE**

Effective March of 2013 the Department deployed their version of IAPro which captures all of the elements required by this task for all citizen complaints. The auditor has carefully reviewed the system and can confirm it is capable of

achieving the requirements of this task. The Audit does not provide for a test of the extent to which all elements are actually entered for all cases.

**Task 13.** Complainants shall be allowed to initiate complaints against an officer in person, by telephone, by mail, by fax, or via the internet. A complainant shall not be required to fill out or sign a form to initiate a complaint. Municipal Defendants may seek from the complainant sufficient information to enable the identification of the involved officers and incident.

**STATUS: COMPLIANCE**

General Order C-07 issued on April 8, 2004 details the process for receiving and processing civilian complaints. In part it states that a citizen cannot be turned away or instructed to go to another office or person to lodge a complaint against a police officer. However, the citizen is given the address and location of other offices where a complaint can be filed. As specified in that document, in a brochure that has been developed by the Department to explain the complaint process, and on the Department's website (in the FAQ section) which was last modified in August of 2011)) complaints can be made in person, by phone, by mail or by e-mail. While they do not provide for fax submission, these procedures are fully compliant with the intent of the task which was to provide multiple ways for the public to file a complaint.

**Task 14.** Complainants shall be permitted to initiate complaints anonymously, in writing or verbally. Third-part complaints shall be allowed.

**STATUS: COMPLIANCE**

In General Order C-07 and the above referenced brochure and website, citizens are informed that they can file complaints in writing or verbally. If a complaint involves allegations of excessive force, discourtesy, or harassment, the Department requires that the complainants put the complaint in writing and swear to its accuracy, but members of the Internal Affairs Division can notarize these complaints. While the Department policy and procedures as described on the website do not specifically include or exclude third party complaints, the Department indicates they are accepted.

- For Tasks 13, 14, 18 – 21, the Settling Parties anticipate that the Auditor will evaluate the Department’s compliance with this task by reviewing a statistically meaningful sample of complaint investigation files and other documentation, if any, identified by the Auditor. Such sample shall include a meaningful percentage of investigation files regarding complaints for false arrest or lack of probable cause for Quality of Life Offenses to satisfy section IV.B.1.b.18 of this Agreement.

**STATUS: MATERIAL COMPLIANCE**

The Auditor requested copies of all citizen complaints involving Quality of Life Offenses for the year 2011. The Department indicated that until their citizen complaint database was operational they could not identify all such complaints. However, they were able to provide those complaints involving false arrests. The Auditor reviewed the case files for the fifty-one cases supplied by the Department and found them to be in compliance with the requirements of Tasks 13, 14, and 18-21. There were no apparent limits on how complaints could be initiated or filed; investigators sought interviews at times convenient to the complainants; updates were provided; investigators understood and sought to use a preponderance of evidence standard; complainants were notified in writing of final determinations. None of the complaints in these cases were substantiated<sup>8</sup>.

**Task 15.** Within 180 days of the Effective Date of this Agreement, a telephone number shall be created to allow for toll free calls to initiate complaints.

The auditor will verify that such a number is created and will on a monthly basis verify that it is operational by calling it with a test report.

**STATUS: COMPLIANCE**

A toll-free number is provided on the BPD website and is operational.

Testing each month demonstrated that the line is operational and being answered.

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<sup>8</sup> In October of 2013 the Department has agreed to provide copies of all Quality of Life complaints that are included in IAPro for review by the Auditor.

**Task 16.** Within 180 days of the Effective Date of this Agreement, the telephone number shall be advertised with the goal that Baltimore residents and visitors should be generally aware of how to initiate a complaint.

The Auditor will verify that the number is advertised by reviewing the advertisement strategies that the Department uses and verifying that the strategies are in fact implemented. There will be no effort to determine the extent to which the advertising effort reaches the intended audiences.

**STATUS: COMPLIANCE**

The number has been included on the website and is contained in a brochure that is available in each district station, at police headquarters, and at other City offices. Printed posters are displayed in each District and in the Office of the Civilian Review Board, the Legal Affairs Bureau, and the Internal Affairs Office. The website and the brochure give clear instructions on how to make a complaint. The Audit does not include an assessment of the success of these strategies.

**Task 17.** Within 365 days of the Effective Date of this Agreement, the Municipal Defendants shall publicize information concerning the purpose and goals of the citizen complaint and resolution process, and the process for initiating a complaint, including publishing and distributing pamphlets describing the complaint and resolution process and holding at least one community meeting in each police district.

The Auditor will verify that the required information is publicized as specified by reviewing the required pamphlet, how the pamphlet is distributed, and the minutes of all community meetings where the information is discussed and/or presented. Compliance will require development of the pamphlet, its distribution, and documentation of at least one community meeting in each police district where the citizen complaint and resolution process is described.

**STATUS: MATERIAL COMPLIANCE**

The Auditor has reviewed the above mentioned brochure and determined that it contains the elements required by this task. The Department has provided minutes of District Council meetings that document the presentation of the complaint and resolution process in all districts..

**Task 18.** Investigators shall attempt to interview complainants and witnesses at their own convenience, but, if necessary, shall offer to conduct interviews during non-business hours or at locations other than Departmental offices.

**STATUS: MATERIAL COMPLIANCE**

General Order C-07 requires and the brochure states that the investigator of civilian complaints is to make every effort to “reasonably accommodate you during the complaint process”. The Auditor requested copies of all citizen complaints involving Quality of Life Offenses for the year 2011. The Department indicated that until their citizen complaint database was operational they could not identify

all such complaints. However, they were able to provide those complaints involving false arrests. The Auditor reviewed the case files for the fifty-one cases supplied by the Department and found them to be in compliance with the requirements of Tasks 13, 14, and 18-21. There were no apparent limits on how complaints could be initiated or filed; investigators sought interviews at times convenient to the complainants; updates were provided; investigators understood and sought to use a preponderance of evidence standard; complainants were notified in writing of final determinations. None of the complaints in these cases were substantiated.

**Task 19.** If conduct in contravention of Departmental policy, other than the conduct alleged by the complainant, is discovered in the course of an investigation, the Department shall investigate such other conduct.

#### **STATUS: MATERIAL COMPLIANCE**

General Order C-08 issued August 26, 2011 specifies the Internal Investigation Division (IID) has responsibility for all investigations of all allegations of misconduct by employees of the Department. This policy does not limit the IID's ability to initiate investigations of instances of conduct in contravention of Departmental policy that is discovered during the course of an investigation. The Department reports it is the practice of the IID to investigate all violations of departmental policy regardless of the manner in which they become

aware of the violation. A review of the 51 cases of citizen complaints of false arrest noted above found no instance where an investigation uncovered another policy violation.

**Task 20.** Upon request, the Department shall provide a complainant reasonable updates on the status of the investigation. Even absent any such request for information, complainants shall be apprised of the status of open complaints every 60 days and promptly upon resolution of the investigation.

### **STATUS: MATERIAL COMPLIANCE**

The policy on investigations and the above referenced brochure provided to the public make clear that the complainants may contact their assigned investigator to get answers to questions about their complaint or to express concerns. The Auditor requested copies of all citizen complaints involving Quality of Life Offenses for the year 2011. The Department indicated that until their citizen complaint database was operational they could not identify all such complaints. However, they were able to provide those complaints involving false arrests. The Auditor reviewed the case files for the fifty-one cases supplied by the Department and found them to be in compliance with the requirements of Tasks 13, 14, and 18-21. There were no apparent limits on how complaints could be initiated or filed; investigators sought interviews at times convenient to the complainants; updates were provided; investigators understood and sought to use a preponderance of

evidence standard; complainants were notified in writing of final determinations. None of the complaints in these cases were substantiated.

**Task 21.** All findings shall be based on the “preponderance of the evidence” standard, and all investigators shall be trained on that standard. Investigators shall be required to state the factual basis for each finding in the final report of each investigation.

### **STATUS: MATERIAL COMPLIANCE**

All investigations are conducted to meet the preponderance of evidence test. This is the burden of proof required by Maryland statute (Md. State Code Ann. § 10-217). Investigators are instructed to use this standard. The Auditor requested copies of all citizen complaints involving Quality of Life Offenses for the year 2011. The Department indicated that until their citizen complaint database was operational they could not identify all such complaints. However, they were able to provide those complaints involving false arrests. The Auditor reviewed the case files for the fifty-one cases supplied by the Department and found them to be in compliance with the requirements of Tasks 13, 14, and 18-21. There were no apparent limits on how complaints could be initiated or filed; investigators sought interviews at times convenient to the complainants; updates were provided; investigators understood and sought to use a preponderance of evidence standard;

complainants were notified in writing of final determinations. None of the complaints in these cases were substantiated.

**Task 22.** The Municipal Defendants shall make final determinations of all citizen complaints, and shall inform each complainant in writing of the final determination on his or her complaint.

**STATUS: COMPLIANCE**

In the 51 false arrest complaints reviewed by the Auditor the complainant was informed in writing of the final determination of their complaint

**Task 23.** When a review of an officer's performance is triggered by a data analysis under Section IV.B.1.c.3 of the Voluntary Agreement, the Department shall notify the appropriate supervisor of the officer or officers in question. This notice shall include the information available from the database (Task 9 above) that triggered the review.

**STATUS: MATERIAL COMPLIANCE**

The Department has developed a general order on performance evaluation. While it has not yet been finalized, the draft contains a requirement for notification of the appropriate supervisor if the EWS identifies an officer who needs intervention. Even though the General Order has not been approved, the newly created Early Intervention Unit is already implementing a system in which supervisors are informed when officers they supervise have met the threshold

indicators and are in need of intervention. The notification includes the indicators that have triggered the need for intervention.

**Task 24.** Once notified, a supervisor shall conduct a reasonable investigation of the performance of the officer in question by reviewing records relative to the conduct that triggered the review (e.g., complaint records, statements of probable cause, incident reports, etc.). The review shall specifically include a determination of the sufficiency of the probable cause underlying each Quality of Life arrest that is associated with the conduct under review. Based upon the review of related records, the supervisor shall determine, based upon a preponderance of the documentary evidence, whether the officer's actions are in contravention of the Policies. If the result of the review is a determination that the officer's actions are in contravention of the Policies, the supervisor shall refer the matter to his or her command for action consistent with the policy established under section IV.B.c.2.c of the Voluntary Agreement. If the result of the review is a determination that the officer's actions are consistent with the Policies, the supervisor shall determine the necessity, if any for non-punitive counseling.

#### **STATUS: MATERIAL COMPLIANCE**

The Department reports and General Order C-08 requires that these procedures are followed. The new General Order on Professional Enhancement Performance Program reinforces this requirement. Under the newly created Early

Intervention Unit (EIU), the responsibility for determining when a non-punitive intervention is required has been shifted from the supervisor to the EIU. It is the EIU that is responsible for setting the threshold and conducting the review to determine the need for non-punitive intervention. These procedures are considerably more stringent than those required by this Task. In future reports, the Auditor will assess how these new policies and procedures are being implemented.

**Task 25.** Upon completion of the review, the investigating supervisor shall provide written documentation of the process and the results of the investigation in the form of a review memorandum. The review memorandum shall specifically document the conduct of the investigation, the outcome of the review and whether the supervisor provided the officer with non-punitive counseling.

#### **STATUS: MATERIAL COMPLIANCE**

The Department reports and General Order C-08 requires that these procedures are followed. The new General Order on Professional Enhancement Performance Program reinforces this requirement. Under the newly created Early Intervention Unit (EIU), the responsibility for conducting the review, determining the need for non-punitive intervention, and monitoring the interventions impact us given to the EIU. It is the EIU that is responsible for setting the threshold and conducting the review to determine the need for non-punitive intervention. These procedures are considerably more stringent than those required by this Task. In

future reports, the Auditor will assess how these new policies and procedures are being implemented.

**Task 26.** When an officer's performance is being reviewed as part of the Department's periodic performance evaluation process, copies of any review memoranda created during the period under review shall be provided to and considered by the reviewing officer in evaluation the subject officer's performance.

**STATUS: MATERIAL COMPLIANCE** The BPD reports and General Order C-08 requires that these procedures are followed. The new General Order on Professional Enhancement Performance Program reinforces this requirement.

Under the newly created Early Intervention Unit (EIU), it is the responsibility of the EIU to inform the supervisor and to make sure a report is placed in the officers file. These procedures are considerably more stringent than those required by this Task. In future reports, the Auditor will assess how these new policies and procedures are being implemented.

**Task 27.** When an officer, who is the supervisor of other officers, is the subject of a review as part of the Department's periodic performance evaluation process, copies of any review memoranda relating to the officer under the subject officer's supervision created during the period under review will be provided to and considered by the reviewing officer in evaluation the subject officer's performance.

## **STATUS: MATERIAL COMPLIANCE**

The Department reports and General Order C-08 requires that these procedures are followed. With the implementation of the IAPro system, the EIU, and the proposed General Order on Professional Performance Enhancement Program the Department will be in compliance with this Task.

**Task 28.** The Municipal Defendants shall monitor citizen complaints related to Quality of Life Offenses to gauge the effectiveness of training and to detect the need for new or further training.

## **STATUS: COMPLIANCE**

It is reported that the BPD Director of Training has revised training curricula in response to information on problems in the probable cause statements in some Quality of Life arrests. In addition, the Director has instituted on-going training to improve report writing generally. As noted earlier additional training on the need to document the consideration of alternatives to arrest has been conducted during this reporting period.

**Task 29.** Except with respect to complaints subject to the statutory requirements of Article 4, section 16-44 of the Public Local Laws of Maryland, the Municipal Defendants shall monitor and be responsible for completing all investigations and shall not have discretion to reject a citizen complaint without investigation if

sufficient information is provided to or obtained by the Municipal Defendants through reasonable investigation.

**STATUS: COMPLIANCE**

Departmental policy (General Order C-07), the essence of which is included on the Department website describing the complaint process, requires that all complaints be investigated. Once the Auditor has access to the sample of complaints and investigations, we will determine the extent to which these policies and statements are followed.

**Task 30.** Within 120 days of the effective date of this Agreement, the Municipal Defendants shall create and maintain individual training records for all police officers, documenting the date and topic of all pre-service and in-service training completed. These records shall also reflect whether the training was completed satisfactorily, as well as the reasons for any mandatory re-training.

**STATUS: COMPLIANCE**

The Auditor inspected the training records maintained by the training academy and verified that individual records were being maintained and that they contained all elements specified in the task.

**Task 31.** Within 180 days of the effective date of the Agreement, the Department shall develop training curricula for pre-service and annual in-service training regarding Quality of Life Offenses, assessing probable cause, rights protected by

the First Amendment to the U.S. Constitution, especially the lawful exercise of those rights on City sidewalks and other public areas, and the appropriate officer response when an individual requests an officer's name and badge number.

**STATUS: COMPLIANCE**

Within 180 days of the signing of the Agreement, the BPD developed training guides for pre-service and in-service training on the policies of the Department concerning zero tolerance policing, the use of arrest in Quality of Life Offenses, the requirement to provide names and badge numbers, and the rights of free speech and assembly. The training curricula were reviewed by the parties to the agreement and the Auditor and were found to contain all elements specified in this task.

**Task 32.** Within 120 days of the effective date of this Agreement, the Department shall provide the training curricula required by section IV.B.1.f of the Voluntary Agreement to the Auditor and Plaintiff's Counsel for comment, to be received no later than 30 days from receipt of the curricula. The Department shall consider in good faith any comments so received, but is not required to make any changes to the curricula based upon the comments.

**STATUS: COMPLIANCE**

As noted above, the training curricula were provided to the Plaintiff's counsel and the Auditor for review and comment. All comments made were addressed by the BPD.

**Task 33.** Pre-service training based upon the training curricula required by this section shall be provided to all incoming classes as of the first incoming academy class after the finalization of the training curricula.

**STATUS: COMPLIANCE**

All pre-service requirements since February 2011 have included the training specified in the task.

**Task 34.** In-service training based upon the training curricula required by this section shall be provided to officers beginning with in-service training that occurs within 90 days of the finalization of the required training curricula, and shall continue for all in-service training sessions provided during the term of the Agreement.

**STATUS: COMPLIANCE**

The in-service training curriculum has been included in all in-service training plans since it was approved.

**Task 35.** Notice of this in-service training shall be disseminated to all officers employed by the Department as of the effective date of this Agreement within 120 days of the effective date of this Agreement.

## **STATUS: MATERIAL COMPLIANCE**

Notice of the in-service requirement was sent to all officers in the BPD on February 2, 2011. This exceeded the requirement of completing this task within 120 days. In-service training continues to include these elements.

Appendix A

RESPONSE FROM THE BALTIMORE POLICE DEPARTMENT

