

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**UNITED STATES  
OF AMERICA,**

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**Plaintiff,**

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**v.**

**CIVIL NO. JKB-17-0099**

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**BALTIMORE POLICE  
DEPARTMENT, et al.,**

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**Defendants.**

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**NOTICE OF SUBMISSION OF FIRST-YEAR OUTCOME ASSESSMENT PROCESS  
AND METHODOLOGY PLAN**

As required by the First-Year Monitoring Plan, *see* ECF No. 91-1, Rows 274 to 277, as modified by this Court’s May 16, 2018 Order, ECF No. 112, the Baltimore Police Department Monitoring Team (“Monitoring Team”) hereby notifies the Court that it has completed the required First-Year Outcome Assessment Plan. The City and the United States, which worked closely with the Monitoring Team on the development of the Plan, have indicated that they approve of the Plan.

The following discussion outlines the Monitoring Team’s initial proposals for what outcome assessments it will begin conducting during the remainder of the first monitoring year. Section I summarizes some general issues relating to the assessments and this notice. Section II addresses the general assessments that the Monitoring Team proposes to conduct, with a general description of methodologies. Section III summarizes requirements of paragraph 459 Outcome Assessments, the Team’s current understanding of data or information available to conduct the assessment, and describes in general terms the contemplated methodologies and timelines for focusing on the various required outcome assessments. Section IV summarizes projected timeframes for the assessments identified to be conducted in Sections II and III.

## **I. GENERAL DISCUSSION OF THE ROLE OF ASSESSMENTS AND THE ROLE OF THIS NOTICE**

The Monitoring Team addresses several overriding issues, cutting across much of the discussion of specific assessments below, at the outset. First, the activities outlined in this memorandum are not the sole or exclusive ways that the Monitoring Team will be gauging BPD's progress. The Monitoring Plan, previously approved by the Court, outlines the many mechanisms by which the Team is providing real-time feedback and technical assistance.

Second, for the various assessments described below – both general assessments and outcome assessments – BPD's baseline performance will be evaluated in light of Consent Decree requirements that the Parties and Monitoring Team know have not yet been implemented and are not part of the First-Year Plan. In the assessments conducted in the remainder of this first year of monitoring, no stakeholder expects that the Department's performance will be where it needs to be under the Decree. The purpose is to identify starting points and a snapshot of where the Department currently is, before or as work begins in earnest on implementing the specific reforms that the Decree requires.

Third, for all assessments outlined below, where the Monitoring Team refers to taking samples; randomly selecting cases, incidents, records, or files; or performing qualitative reviews, the Monitoring Team will work with the Parties to determine processes for sampling and mechanisms for conducting those reviews.

Fourth, the general descriptions of methodologies outlined before are, by design, not exhaustive. As the discussion and schedule provided below indicate, the Monitoring Plan will collaborate with the Parties and BPD in each individual area to determine, and memorialize, a more specific and sufficiently comprehensive methodology. The methods outlined in this notice are subject to change and revision in light of those discussions, as well as updates to policy,

training, and new technology. This document aims to provide a preliminary overview of a “methodology,” but no discussion is intended to be a finalized, comprehensive methodology.

Finally, the projected timetable summarized in Section IV aims to provide concrete milestones and benchmarks for the Parties and Monitoring Team while ensuring the flexibility that all stakeholders need as it works to establish important protocols and methodologies that will be used to gauge progress across the lifespan of the Decree. A structured but dynamic timetable also permits the Team and Parties to delve much more deeply into matters pertaining to data availability, quality, and utility and make final determinations – based on much more detailed information – about the ability to conduct various assessments at the appropriate juncture. The Monitoring Team and Parties are mindful both of the need to provide the Court and public with a clear overview about where BPD is starting from as Consent Decree implementation begins and, at the same time, ensuring sufficient time and capacity to conduct the host of forward-looking policy, training, and implementation tasks that the remainder of the First-Year Monitoring Plan requires.

## **II. GENERAL ASSESSMENTS**

Paragraph 454 requires the Monitor to conduct Compliance Reviews. The purposes of these reviews is “to determine compliance with the Material Requirements of this Agreement” – that is, to identify whether, across the Decree’s substantive paragraphs, BPD has effectively implemented various requirements across time, officers, cases, or incidents. Whereas Outcome Assessments are conducted to determine “whether BPD’s revised practices and procedures are achieving the purposes of this Agreement and are having an overall beneficial effect on policing

in Baltimore,” ¶ 454, Compliance Reviews evaluate whether BPD has in fact fully implemented the required practices and procedures.

In the Monitoring Team’s memorandum to the Court regarding the Monitoring Plan, it described the differences and similarities between Outcome Assessments and Compliance Reviews:

For each “deliverable” BPD must achieve under the Plan, the Monitoring Team will conduct a *compliance review* to determine whether it satisfies the requirements of the Consent Decree. In these reviews, the Monitoring Team will evaluate whether BPD and the City are, in fact, doing what is required under the Consent Decree. For instance, the Monitoring Team will review whether proposed policies on use of force, search and seizure, and officer misconduct investigations adhere to the letter and spirit of the Consent Decree.

The general focus on policies and training development in the first year does not mean that the Monitoring Team will not examine the conduct of BPD officers on the street, or determine how to measure whether BPD is making tangible improvements in its performance, which is the ultimate goal of the Consent Decree. As explained above, the Monitoring Team will conduct preliminary assessments of BPD performance in certain key areas—stops/searches/arrests and impartial policing; use of force; and misconduct investigations. Also, as the Plan indicates, the Monitoring Team will work with BPD and DOJ, as the Consent Decree requires, to develop methodologies for determining whether BPD officers are engaged in constitutional policing and whether BPD, including its internal accountability mechanisms and data collection systems, are functioning in a way that promotes that goal. These *outcome assessments* are qualitative and/or quantitative assessments designed to measure whether the reforms BPD makes actually result in safe, effective, and constitutional policing . . . .

The Consent Decree requires that the Monitoring Plan specifically address when and what Compliance Reviews will be conducted. The Court-approved Monitoring Plan for the first year left determinations of Compliance Reviews to the present collaboration period.

For the first year, the Monitoring Team proposes to conduct four major Compliance Reviews in the areas of use of force; stops, searches, and arrests; misconduct investigations; and sexual assault. In each area, we are conducting the reviews for baseline purposes, not because we

expect the Department to be fully in compliance with Consent Decree requirements. That is, the inquiries will serve as a benchmark for comparing future progress and compliance down the road, when policies and procedures are firmly in place and BPD has provided training on them. The assessments discussed below reflect where the City and BPD are starting. They will not be used by the Monitoring Team as definitive evidence of compliance or the lack of compliance. In this way, the initial round of Compliance Reviews can best be considered as an initial diagnostic.

#### **A. Use of Force**

The first Compliance Review is a qualitative review of use of force investigations. This review will focus on two primary areas: (1) involved officer use of force, and (2) the use of force investigation. Therefore, each case will be analyzed both to make determinations about the performance of involved officers when using force and about the quality and integrity of the subsequent use of force investigation.

The methodology that the Monitoring Team will develop is consistent with accepted best practices for evaluating use of force reports and investigations employed to evaluate use of force reports and investigations in other jurisdictions.<sup>1</sup> “[U]sing methods that gather and represent

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<sup>1</sup> See, e.g., Denise Rodriguez King, et al., Community Oriented Policing Services (COPS) Office, U.S. Department of Justice, *Collaborative Reform Model: A Review of Use of Force Policies, Processes, and Practices in the Spokane Police Department* (2014) at 9, 12 (describing random sampling of use of force reports for analysis “using a 95 percent confidence level and a confidence interval of 5 percent”); George Fachner & Steven Carter, *Collaborative Reform Initiative: An Assessment of Deadly Force in the Philadelphia Police Department*, Community Oriented Policing Services (COPS) Office, U.S. Department of Justice (2015) at 16 (describing “investigative quality evaluation” of officer-involved shootings of “randomly selected . . . case files” using a survey instrument “of ‘yes/no’ and Likert scale (1–5 items)” evaluated by “expert, experienced investigators”); U.S. Department of Justice, Letter to Mayor Richard J. Berry re: Albuquerque Police Department (Apr. 10, 2014) at 3 (“review[ing] a random sample of the department’s use of force reports completed by officers and supervisors”).

human phenomena with numbers (such as standardized questionnaires and structured observation protocols) . . . are classic instances of mixing data gathering and analysis techniques” that are widely used by contemporary social scientists.<sup>2</sup> The use of this approach will allow the Monitoring Team to identify the size or scope of trends over time as BPD and the City make progress toward compliance.

The population of cases to be reviewed will include all reported use of force incidents that occurred during a defined time period, to be developed in consultation with BPD, the City, and DOJ and for which any required force investigation had been completed as of a designated, certain date. For purposes of the study, “cases” or “incidents” refer to investigations of applied force in a given encounter or instance. It does not refer to individual applications of force within those instances. Accordingly, one force “case” or “incident” may involve multiple types or applications of force.

After identifying the universe of force incidents during the selected time period, the Monitoring Team will randomly select a subset of force incidents large enough to ensure, within generally accepted levels of confidence within social science, that the subset was unbiased and representative of the whole set of force incidents.<sup>3</sup> This “random-sampling approach is the best way to ensure that the selected sample represents the population” of all use of force reports and investigations that occurred during the studied period “and that the findings in the sample” of reviewed cases “can be generalized to the population” of all of the force cases “from which the

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<sup>2</sup> Jennifer C. Greene, et al, “Combining Qualitative and Quantitative Methods in Social Inquiry,” *in Research Methods in the Social Sciences*, Bridget Somekh & Cathy Lewins (eds.) 274, 274 (2005).

<sup>3</sup> See Michael S. Lewis-Beck, et al, 3 *SAGE Encyclopedia of Social Science Research Methods* 985 (2004); see also *id.* at 986 (“Simple random sampling is often practical for a population of business records . . .”).

sample was obtained.”<sup>4</sup> Given the comparatively low frequency of Level 3 or equivalent force, it is likely that the sampling scheme will need to ensure that most, if not all, serious uses of force are included in the sample. There may also be other types of force, subject characteristics, or the like that would require either that we stratify the sample – that is, ensuring statistical significance in each of the various buckets that we want to focus on rather than only at the broad universe of force cases – or so-called over-sampling – where more cases are selected among a certain group so that statistical conclusions can be made about that group and the “overage” is accounted for via statistical weighting so that the “overage” does not unfairly skew the results. The Monitoring Team will present specific sampling proposals during the timeline outlined below based on the real numbers of incidents during an identified time period. The sampling proposals will be accompanied by priori statistical power analyses to specify the amount of uncertainty associated with estimates based on the respective samples.

We currently contemplate that six current members of the Monitoring Team, to be identified and assigned at a future time, will review force cases in total. Each individual case will be initially assigned to two members for independent review. Reviewers will review all materials within the investigative file – including written material, video and audio material, and other images.

Reviewers will use a structured, qualitative review instrument. Some elements will include more audit-like functions, asking whether something did or did not occur per a Consent Decree

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<sup>4</sup> Lemuel A. Moye, *Statistical Reasoning in Medicine: The Intuitive P-Value Primer* 30 (2006); Timothy C. Urdan, *Statistics in Plain English* 48 (2001) (“[W]hen we do inferential statistics, we want to know something that we observe in a sample represents an actual phenomenon in the population.”)

requirement. Elements with audit-like functions will have their inter-rater reliabilities assessed.<sup>5</sup> Other elements will include more qualitative or general determinations. Where these broader determinations are required, the Monitoring Team will apply the appropriate standards. For instance, reviewers will make determinations as to whether force in a given incident was reasonable, necessary, and proportional. On the quality of force investigations, they will consider whether, under the totality of the circumstances, the investigation provided sufficiently objective, fair, thorough, and complete information about the force incident to allow a subsequent BPD supervisor to fairly and systematically apply the Consent-Decree-required BPD policy with respect to the officer's performance. The reviewers will also consider whether the supervisor in fact performed a sufficiently adequate review of the force incident. The review instrument itself will be electronically-based.

Results will be aggregated and presented in a report to the Parties for review and comment and, then, to the Court.

## **B. Stops, Searches, and Arrests**

The second Compliance Review will focus on stops, searches, and arrests. Here, subsequent conversations with the Parties during the time period discussed below will be required to determine the appropriate universe of stops – specifically, whether it should include those incidents where there are stop receipts in RMS, incident reports more generally, or some blend of the two approaches. BPD indicates that there currently is a backlog of completed stop receipts awaiting entry, but those receipts are indeed filed by district and date before entry. It notes that

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<sup>5</sup> Pairs of raters will independently code the same items from a subsample of records, and agreement will be assessed.

there is no such backlog of Part I crimes in RMS. Our preliminary thoughts are that focusing solely on stop receipts in RMS would be more efficient and effective – although the limitations, outlined in Section II above, would need to be explained early and often to the Court and public. An area for discussion with the Parties is whether a separate population, focusing just on arrests (whether or not preceded by a stop), is necessary for purposes of paragraphs 60 through 66.

The Team’s general sampling approach and quantitative review process would apply in the area of stops. Because stops occur with greater regularity than use of force, the Monitoring Team will need to review many more stops to make sound conclusions. Approximately half of all sampled stops will be reviewed independently by two of several total Monitoring Team reviewers in order to compute an inter-rater reliability statistic such as Kappa. If that statistic suggests substantial inter-rater agreement on the reviewed case features, the remainder of stops may be reviewed by a single reviewer.<sup>6</sup> If determinations are deviating significantly, stops will be reviewed by two reviewers each.

Reviewers will use a qualitative, structured review instrument, to be discussed with the Parties, keyed to Consent Decree requirements in the area of stops, searches, and arrests.

### **C. Misconduct Investigations**

The third Compliance Review area will focus on misconduct investigations conducted by OPR. In the same way as with the other qualitative reviews, we will identify a universe of misconduct investigations for a defined time period, take a sample, and use a qualitative review mechanism. Four Monitoring Team Reviewers will evaluate misconduct investigations.

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<sup>6</sup> Inter rater reliability statistics like Kappa have suggested guidelines for what amounts to substantial inter-rater agreement. Landis, J. R., & Koch, G. G. (1977). The Measurement of Observer Agreement for Categorical Data. *Biometrics*, 33(1), 159-174.

#### **D. Sexual Assault**

The final Compliance Review will focus on sexual assaults. This will involve a review of a sample of sexual assault investigations during a defined time period and completion of a qualitative review instrument. The Monitoring Team imagines relatively minimal additional effort required to transform the inquiry into a comprehensive Compliance Review, as well.

### **III. OUTCOME ASSESSMENTS**

In addition to the general assessments described in Section, the Monitoring Team will also be engaged in a number of specific outcome assessments. Specifically, paragraph 459 requires that the Monitor conduct a number of identified Outcome Assessments on an annual basis. The Court-approved Monitoring Plan for the first year left detailed determinations about what and when assessments should be conducted to the current collaboration period.

#### **459(a): Community Survey**

The Court-approved Monitoring Plan specifically addresses the timeline for completion of the community survey requirement and the process for stakeholder discussion of methodology.

#### **459(b): Calls for Service**

Consent Decree Requirement: Annual analysis of response times for calls of service, accounting for the type of call, in each police district and different neighborhoods within Baltimore.

Understanding of Data Available: Response times for calls for service is captured in CAD. Currently, there are more than 600 call types, with the 20 most-common call types accounting for more than 80 percent of total call volume.

Although the data are captured, they require substantial cleaning prior to analysis. The Police Foundation has scrubbed data from June 2016 to June 2017. Various map overlays that are necessary to conduct the analysis of call type by neighborhood and district are available.

Two sizable data limitations must be addressed before proceeding. First, there is a substantial problem with missing data on officer arrival times that will require attention. Second, a means of addressing the 20 percent of call volume that is outside of the most common categories will need to be identified.

Additionally, there are important decisions about which period to use for baseline assessment with these data, whether that period will align with corresponding periods for other data sets, and whether to seek additional CFS data in order to extend the baseline assessment frame to a later point.

Further, additional work is required to get updated Census data for Baltimore neighborhoods and BPD districts into these neighborhood and district geographic units.<sup>7</sup>

Baseline Completed in Year One?: Yes.

Overview of Methodology:

1. Final baseline assessment time frame agreed upon.
2. Access already processed data provided by Police Foundation, and/or acquire additional CFS data from BPD.

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<sup>7</sup> It was confirmed in a 5/24/18 meeting at RMS in the BPD that no one in the department, or in City Department of Planning, has allocated current five year American Community Survey estimates to Baltimore neighborhoods or police districts or police posts.

3. Decide whether to focus on select categories, and if so which ones, or all categories.
4. Determine scope and pattern of missing response time data.
5. Determine an approach to missing data. Evaluate different approaches based on pattern and scope of missing response time data. <sup>8</sup>
6. Geo-allocate most current American Community Survey U.S. Census five year census block group level estimates to neighborhood layer, district layer, post layer. Check allocation.
7. Produce racial and ethnic residential composition maps for neighborhoods, districts, and posts.
8. Based on x/y or latitude/longitude fields in the CFS data, attach CFS counts by category to geographic units.
9. Produce maps of select response time features, such as median response time, for all categories, and for select categories.
10. Report (clustered bar charts) median response times by racial and ethnic composition, before and after controlling for residential status and residential stability.

**459(c)(i): Arrests Violating Fourth Amendment, per Supervisors & Court Data**

Consent Decree Requirement: Annual analysis of the rate at which arrests are found to lack probable cause or otherwise violate the 4<sup>th</sup> Amendment by BPD supervisors and in any court commissioner data made available to BPD.

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<sup>8</sup> Multiple imputation approaches might be feasible if the overall volume of missing data is not excessive.

Understanding of Data Available: Currently, BPD does not have uniform, aggregatable data on instances where supervisors have determined that arrests lack probable cause or otherwise violate the Fourth Amendment.

The Monitoring Team and DOJ have begun the process of discussing with the States Attorney's Office how to obtain court commissioner data. BPD has provided the Monitoring Team and DOJ with the Office's table of releases without charges.

Baseline Completed in Year One?: No. BPD-captured data on supervisors is not currently maintained. Work in the area of stops, searches, and arrests will need to ensure that there are systems and protocols in place for supervisor review of arrests and the systematic tracking of instances where supervisors have identified Fourth Amendment issues in the context of reviewed arrests.

The State's Attorneys' Office has provided initial data. It will likely require extensive evaluation. The City, DOJ, and the Monitoring Team should plan to continue discussion with the State's Attorney regarding this data and the need to provide this data in an ongoing manner.

#### **459(c)(ii): OPR and CRB Unlawful Arrest Complaints**

Consent Decree Requirement: Annual analysis of frequency of civilian complaints to OPR and CRB alleging unlawful arrests, the disposition of such complaints, and the quality of BPD's complaint investigations.

Understanding of Data Available: OPR tracks "unlawful arrests" as a complaint type in the IAPro database system.

CRB uses a separate system, referred to in initial discussion with CRB as the “Caseload Manager,” to log received complaints. CRB represents that this system cannot generate reports. Data can be extracted, but it involves transforming information using Notepad to Excel and counting various data points by hand. The Monitoring Team will be following up with CRB to understand more about its intake process and the reliability and validity of data extracted from Caseload Manager. BPD has posted an Excel sheet of calendar year 2018 submitted cases and their disposition date or current status,.

Baseline Completed in Year One?: Yes.

Overview of Methodology: To evaluate the frequency of civilian complaints and dispositions, the Monitoring Team will extract data from IAPro and report findings.

To evaluate the quality of BPD’s investigations of unlawful arrest complaints, the Monitoring Team will pull such complaints (including both those filed with or investigated by OPS and CRB, respectively). The Monitoring Team will use the qualitative review methodology, described in further detail in Section I, above.

#### **459(d)(i): Use of Force Incidents**

Consent Decree Requirement: Annual analysis of use of force incidents, broken down by reportable force type, District, type of arrest; race, ethnicity, age and gender of the subject; and if indicated at the time force was used, the subject’s perceived mental health or medical condition, use of drugs or alcohol, or the presence of a disability.

Understanding of Data Available: The Monitoring Team remains uncertain about the state of captured data. Its understanding is that, to date, data on what would equate to Level 1 and Level 2 force under the eventual Consent-Decree-required force policies is captured in IAPro. For Level

2 investigation purposes, BPD personnel use SharePoint that allows them to attach the documents they need as they investigate. But once an investigation is complete, all forms and documents get attached to IAPRO at the end of the investigation. Information on Level 2 data – either the same data, or different or additional data – is housed in SharePoint. Some minimal Level 3 force data is included in IAPro; however, reviewing the narrative is required to harvest the same information for Level 3 as other-level incidents. The Monitoring Team understands that the head of SIRT has taken information from data and put it into coded fields.

There are some known data limitations within IAPro. It does not currently capture the ethnicity of or mental health information about the subject. Further, with respect to location information, BPD indicates that location is entered into IAPro and can be generated in a separate report. Reports can be exported to Excel and joined by case number.

Baseline Completed in Year One?: Yes. The most significant impediment to conducting the annual baseline analysis is establishing an understanding of data availability, and a methodological protocol, that would allow for “apples to apples” comparisons in coming years.

Two broad and separate but related matters deserve attention. First is the patterning of and circumstances of the use of force incidents themselves. If a baseline year can be selected; if we can agree on a relevant set of indicators to track from the incident reports; if we can agree on a set of exhaustive and mutually exclusive ethnoracial categories for organizing the involved citizens; if all or almost all the incidents can be allocated to neighborhoods, districts and beats; and if, as described above, census data can be allocated to the geographic units of interest, then it may be possible to describe, combining Level 1 and Level 2 incidents, ethnoracial specific counts of these incidents for the entire city, for police districts, and perhaps for neighborhoods. District and address details are also known for Level III uses of force.

The second issue relates to the extent to which officer performance may or may not, as BPD just begins the process of implementing changes to its use force policies and procedures, be adhering to the standards of the Consent Decree. To get at this matter, the Monitoring Team intends to conduct a structured qualitative review of a significant sample of use of force cases – evaluating both the quality of the officer’s performance and the quality of the subsequent force investigation and review in light of Consent Decree requirements. It is possible that, to the extent that the Monitoring Team’s sampling strategy included a substantially significant number of force incidents overall and within relevant sub-categories (force level, District, and potentially others), the data and information manually gleaned from those reviews could inform the more data-driven analysis that paragraph 459(d)(i) requires. That is, rather than relying on IAPro, SharePoint, or some other systems, the data that Monitoring Team reviewers report during the manual reviews of force incident files could be tallied and analyzed.

Overview of Methodology:

*Patterning and Circumstances:* Use of force incidents will be assigned to police districts and neighborhoods. This permits calculating use of force counts and rates at the police district level and the neighborhood level.

At the simplest level these will be district level counts of incidents per calendar year, neighborhood level counts of incidents per calendar year, and city-wide counts per calendar year. Issues that the Parties and the Monitoring Team will need to explore relating to this paragraph, as well as paragraph 459(d)(ii), include:

1. What will that reference calendar year be?
2. How does it propose to control for geographic variation in the population so it can turn counts into rates? Creating rates implies defining a population. This will require

extensive discussion of metrics used in other studies and careful examination of the data available here.

3. When looking at geographic patterning by racial composition of the district or neighborhood, should other factors be controlled? For example, if the UOF rate is significantly higher in neighborhoods that are 70 percent or more Black and non-Hispanic in residential composition, do we want to know whether that significant difference persists after controlling for neighborhood-level reported violent crime rates, or some other crime indicator? In other words, is it desirable to determine, if there is an ethnoracial geographic disparity, whether that disparity shrinks when controlling for associated variations in the crime rates?
4. The CD directs attention to learning about specific incident level differences, for example, the race or ethnicity of the civilian involved. Do the Parties believe that the Monitoring Team should examine these differences just on their own? Or while controlling simultaneously for between-district or between-neighborhood differences? That is, do we want to know about the UOF differences linked clearly just to the civilian feature identified, or do you want to look at the civilian feature while simultaneously taking into account geographic differences in the outcome?

Qualitative Methodology: The qualitative assessment methodology for force incidents is discussed in Section I, above.

#### **459(d)(ii): Use of Force Complaints**

Consent Decree Requirement: Annual analysis of force complaints, including: number of force complaints and rate of complaints compared to reported uses of force, broken down by geographic area, reportable force type, and race, ethnicity, gender, and age of complainant.

Understanding of Data Available: OPR logs information about complaints alleging use of force in IAPro.

Baseline Completed in Year One?: Yes.

Overview of Methodology: As a general matter, the data analysis will evaluate frequency of complaints and analyze them in terms of the various categories and classifications that paragraph 459(d)(ii) outlines. It will likely situate the volume of force complaints in terms of the overall incidence of complaints and the number of reported use of force cases – providing context to a standalone number for a given year. The primary mechanism for charting progress and change, however, will be the changes in the overall frequency of use of force complaints over time. There may also be a mapping component, as well.

#### **459(e): Stops/Detentions Uncovering Evidence of Criminal Activity**

Consent Decree Requirement: Analysis of data showing rate at which officers' stops and detentions uncover evidence of criminal activity.

Understanding of Data Available: Ultimately, this will require new reporting, as current reporting does not allow for easy analysis, as described below. The Monitoring Team met with BPD's current RMS personnel on May 24, 2018. His current understanding, subject to their further input, suggests: (1) investigatory stop rates cannot be calculated; (2) it may be possible to calculate weapons pat down rates and hit rates from weapons pat down rates.

Baseline Completed in Year One?: Maybe, depending on analysis of availability of information within qualitative analysis of stops. The Monitoring Team cannot analyze stop, search, and arrest data by using aggregate data collected in an existing BPD database. In the simplest terms, the problems are the following:

1. If certain consequences ensue from a stop, the standard police citizen contact receipt form is not completed.
2. Depending on the type of stop and subsequent actions, two different forms are involved, either a citizen police contact receipt or an investigative stop form.
3. Entry of pedestrian versions of citizen police contact receipts is backlogged by approximately one year. Data entry for vehicular stops is prioritized because of reporting requirements BPD must meet annually for the Maryland State Police. As of June 2018, vehicular stop receipts are also backlogged.
4. Current stop receipts show stops *not* resulting in arrest for criminal activity, nor do they necessarily reflect weapons pat-downs.

Our current understanding is that different forms are used for different types of stops, and, within one stop type, different forms are used depending on post-stop outcomes (e.g., is there a frisk?; is there an arrest?)

In addition, there are questions about the implementation of the policy about when to use police citizen contact receipts. This system is known by BPD to be simultaneously over- and under-inclusive – failing to capture some unknown subset of incidents and potentially capturing some class of encounters that might be more properly classified as probable cause detentions or voluntary contacts.

Consequently, the Monitoring Team cannot use data currently captured by a BPD's records management system for purpose of this analysis. However, given the importance of the issue, the Monitoring Team's overall assessment of stops, searches, and arrests will entail Team reviewers generating information about a representative sample of stops. This will allow the Monitoring Team to extrapolate from data that it generates about a sample of stops to the whole universe of stops during that time period.<sup>9</sup> Thus, although BPD must develop systems for capturing data on all stops, searches, and arrests and the Monitoring Team must analyze that aggregate data, the Monitoring Team may essentially establish a statistical database for a sample of BPD stops and analyze those for baseline purposes.

Ultimately, the Monitoring Team will need to proceed through the qualitative review to determine whether there is sufficient, reliable information available to use its sample data set to establish a baseline for these purposes.

#### **459(f)(i): Frisks Resulting in Weapon Recovery**

Consent Decree Requirement: Analysis of data showing rate at which frisks result in recovery weapon.

Understanding of Data Available: See data availability discussion for paragraph 459(e).

Baseline Completed in Year One?: Maybe, depending on analysis of availability of information within qualitative analysis of stops. For this area, it may be that the Monitoring Team

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<sup>9</sup> This extrapolation must take sampling error into account. Therefore, the estimates about the whole universe of stops have built-in imprecision. Discussions on forming the sampling plan will include a priori statistical power analyses that will inform how large a sample is drawn. The statistical power of an analysis indicates what the chances are of finding differences of a certain size in the data, and is higher, all else equal, with larger samples.

cannot have requisite confidence that officers are uniformly reporting on when they conduct a frisk and that frisk yields nothing, which the Consent Decree will require them to do. On the other hand, it may be that this is less of a problem than initially anticipated. Only by proceeding through the general qualitative assessment outlined in Section I and/or an analysis of incident reports will the Monitoring Team be able to determine if aggregate data can be used for baseline purposes.

#### **459(f)(ii): Searches Yielding Weapons/Contraband**

Consent Decree Requirement: Analysis of data showing rate searches yield evidence of weapons or contraband.

Understanding of Data Available: See data availability discussion for paragraph 459(e).

Baseline Completed in Year One?: Maybe. See discussion of paragraph 459(f)(i).

#### **459(g)(i): Pedestrian Stops**

Consent Decree Requirement: Analysis of data showing the breakdown of pedestrian stops by race, gender and ethnicity, accounting for the demographics of the individuals residing in the area, crime rates, calls for service, or other relevant facts and circumstances.

Understanding of Data Available: See methodology overview for paragraph 459(e).

Baseline Completed in Year One?: Maybe. The rationale is consistent with that outlined in paragraph 459(e).

#### **459(g)(ii): Pedestrian & Vehicle Stop Outcomes**

Consent Decree Requirement: Analysis of data showing the outcome of pedestrian and vehicle stops, including warnings, citations, and arrests, broken down by race, gender and

ethnicity, for each police district and the City as a whole, accounting for relevant facts and circumstances surrounding officers' decisions to make the stops.

Understanding of Data Available: See data availability discussion in paragraph 459(e). Citations are entered into a Lotus Notes database. As of June 26, 2018, BPD indicates that Central Records was entering April 2018 citations. Meanwhile, arrests are recorded on Incident Reports, not stop receipts.

One difference in this area is that for vehicle stops, police citizen contact receipt form data entry is prioritized within RMS given Maryland State Police reporting requirements. It may be possible to use the Maryland state citation system for analysis of some data relating to vehicle stops.

Baseline Completed in Year One?: Maybe. See discussion of 459(g)(i). For vehicular stops, the Monitoring Team will need to explore and test data during the time period contemplated in Section III.

#### **459(g)(iii): Frisks/Searches Resulting in Contraband**

Consent Decree Requirement: Analysis of data showing the percentage of frisks or searches that result in seizure of contraband, and the nature of the contraband seized, controlling for available data on facts and circumstances surrounding the frisk or search, broken down by race, gender and ethnicity.

Understanding of Data Available: The basic issues underlying using the current stop receipt and incident report data identified for paragraphs 459(e) and 459(f), outlined above, apply here.

Baseline Completed in Year One?: No.

#### **459(g)(iv): Arrests for Misdemeanor Offenses**

Consent Decree Requirement: Analysis of data showing the proportion of arrests for misdemeanor offenses specified in Paragraphs 61 (a)-(f), broken down by race, ethnicity and gender, that result in one of the of following determinations after booking: released without charge, released based on an identity issue; declined to charge; and lack of probable cause. Offenses include obstructing/hindering/resisting an officer; disorderly conduct; failure to obey; gambling; making a false statement to an officer; trespassing offenses.

Understanding of Data Available: The Monitoring Team and Department of Justice are currently in discussion with the State's Attorney's Office regarding these data, which the State's Attorney's Office has provided. It appears that these data are, in fact, maintained by the jails themselves. Information is readily available about the fact of the arrest, where it happened, who the officer was, and the demographics or characteristics of the subject. The more problematic data relates to the determinations after booking.

Baseline Completed in Year One?: No. A final determination depends on what stakeholders conclude regarding the accuracy and reliability of the data. If a baseline cannot be determined, stakeholders will need to codify a plan for ensuring that this data can be reliably tracked and made available to BPD, DOJ, and the Monitoring Team in an ongoing capacity in future years.

#### **459(h)(i): Emergency Petitions**

Consent Decree Requirement: Analysis of data showing the number of people subject to Emergency Petitions who were eligible for community-based services.

Understanding of Data Available: The Monitoring Team is in discussions with BPD about the availability, comprehensiveness, and reliability of data in this area.

Baseline Completed in Year One?: Maybe.

Overview of Methodology: To be determined, pending resolution of data availability.

#### **459(h)(ii): Referrals to Mental Health Services/Hospital Emergency Room**

Consent Decree Requirement: Analysis of data showing the number of people subject to Emergency Petitions who were eligible for community-based services.

Understanding of Data Available: These data are in the Open Lattice system, which captures behavioral health reports. The Monitoring Team has not yet looked at these reports.

Baseline Completed in Year One?: Maybe.

Overview of Methodology: The Team will need to review reports in the Open Lattice system.

#### **459(i): Youth Interactions Resulting in Use of Force**

Consent Decree Requirement: Analysis of the rate of police interactions with Youth, including search, seizures, and arrests, that result in officers using force.

Understanding of Data Available: Use of force data is maintained in some combination of IAPro, SharePoint, and possibly Excel. Data about force used in incidents involving youth is subject to the same limitations as general use of force data. (See discussion of paragraph 459(d)(i), above.)

The current stop receipt database in RMS cannot generate reports based on age. Incident reports would likely include date of birth. Consequently, it is not possible, without manually sifting through incident reports, to know with certainty what incidents involve youth.

Baseline Completed in Year One?: Yes. For the purposes of year one, the Monitoring Team will consider the overall number of force incidents involving youth – and will position that in the context of overall force incidents and the population of subjects of enforcement activity more generally. It will chart this frequency over time.

Separately, the Monitoring Team will evaluate the current departmental uses of services such as diversion and referrals with respect to youth. Although not strictly required by the terms of the paragraph, the Parties and Monitoring Team agree that this will be a useful overall evaluation metric for gauging the quality of services that BPD provides to youth.

**459(j)(i): Citations/Arrests Requiring Supervisory Approval per First Amendment Section of Consent Decree**

Consent Decree Requirement: Analysis of the number of citations and arrests requiring supervisory approval under the 1<sup>st</sup> A section of the CD, broken down by police district and arrest charges.

Understanding of Data Available: These data are not immediately available, as no formalized reporting mechanism is in place to log supervisory approval in this area.

The Monitoring Team should be able, however, to work backward from reports that are logged of First Amendment activity or civil disturbances and find incident reports in RMS or manually that correspond with these disturbances and activities. From there, the Monitoring Team can tally the number of citations and conduct a qualitative review of the nature of the citations and arrests identified.

Baseline Completed in Year One?: Yes.

Overview of Methodology: More details will be specified during the designated, forthcoming collaboration period.

#### **459(j)(ii): Complaints Involving First Amendment Activity**

Consent Decree Requirement: Analysis of complaints in which a person claims to have not been permitted to observe, record or protest police activity, or was retaliated against for such conduct, and the disposition of such complaints.

Understanding of Data Available: The IAPro database features a First Amendment category called “impairing First Amendment rights,” which BPD indicates has been in place as of April 7, 2017. Separately, there is a classification or category available called “recording device complaint.” It is also possible that some officer performance implicating First Amendment activity may be classified as “conduct unbecoming.” Consequently, the Monitoring Team will need to look at both (1) complaints categorized as one of the foregoing, and (2) across misconduct complaints to ensure that mis-classified complaints are included.

Baseline Completed in Year One?: Yes, as part of the general assessment of misconduct complaints.

Overview of Methodology: See Section I for a general overview of the process that the Monitoring Team will use to conduct a review of investigations of complaints generally.

#### **459(k)(i): Sexual Assault Reports**

Consent Decree Requirement: Annual review of number of sexual assault reports made to BPD.

Understanding of Data Available: Weekly year-to-date reports on sexual assault reports are available in Lotus notes. Since these are Part I crimes, they also should be available from RMS.

Baseline Completed in Year One?: Yes.

Overview of Methodology: The Monitoring Team will track the number of reports made to BPD on an annual basis.

#### **459(k)(ii): Victim Participation Rate in Sexual Assault Investigations**

Consent Decree Requirement: Annual review of rate of victim participation in BPD sex assault investigations.

Understanding of Data Available: Weekly year-to-date reports on sexual assault reports are available in Lotus notes.

Baseline Completed in Year One?: Yes.

Overview of Methodology: The Monitoring Team will conduct a qualitative review of the information contained within Lotus Notes regarding sexual assaults. It will determine based on this review, and any and all accompanying file materials, the rate of victim participation in the investigations.

#### **459(k)(iii): Sexual Assault Case Clearance Rate**

Consent Decree Requirement: Annual review of clearance rate in sexual assault cases.

Understanding of Data Available: Information is logged in RMS. A case management system, initially logs this information before being transferred to RMS.

Baseline Completed in Year One?: Yes.

Overview of Methodology: The Team will use RMS records of the number of sexual assaults occurring in a calendar year, and the number of those cases that were cleared by arrest.

#### **459(k)(iv): Sex Assault Case Declination**

Consent Decree Requirement: Annual review of rate of declination of sex assault cases referred to BCSAO for prosecution.

Understanding of Data Available: The Monitoring Team and DOJ are in discussions with the State's Attorney's Office to secure this information.

Baseline Completed in Year One?: No.

Overview of Methodology: Until more is known about data, estimates of how to proceed are not feasible. From the perspective of BPD RMS, "clearance by exception," which includes the State's Attorney's Office declining to prosecute, can happen for any number of reasons that are outside the control of the department. RMS is unable to determine the different types of reasons that might result in an exceptional clearance.

#### **459(l)(i): Training Completion**

Consent Decree Requirement: Annual review of rates of completion of approved training and performance assessments of evaluative aspects of ongoing in-service training for current BPD officers.

Understanding of Data Available: Class instructors maintain Excel spreadsheets, for the last 18 months, that document what officers attended what training. Separately, IST tests given to officers that evaluate various training components are in the PowerDMS platform, although initial discussions did not make clear if PowerDMS houses the documents themselves, individual officer

test results or performance, both, or something else. Going forward, it is likely that BPD will want to adopt a comprehensive learning management platform that will track, in one place, what officers have completed what training over time.

Baseline Completed in Year One?: Yes, for rate of completion of training/performance assessments. The Monitoring Team will compile the various Excel spreadsheets available and compare the logged officer completion of training against overall training requirements for officer types during the relevant time period.

Overview of Methodology: It is not possible to say more about the appropriate methodology until more is known about these data sources.

#### **459(l)(ii): Adequacy of Training (In-Service)**

Consent Decree Requirement: Annual review of qualitative measurements of the adequacy of training, including assessments by officers, feedback from instructors, and evaluations by civilian reviewers.

Understanding of Data Available: Beginning January 1, 2018, surveys to officers that address training are given in Microsoft Word and are compiled in Excel. IST tests can be found in PowerDMS (though it is unclear as to whether it is just the test themselves, officer performance on the tests, both, or something else). FTO evaluation forms are maintained in Word.

Baseline Completed in Year One?: Yes. The Monitoring Team will qualitatively review current BPD training that touches on Consent Decree topics. That will serve as a point of comparison to future training on Consent Decree topics.

### **459(l)(iii): FTO Program**

Consent Decree Requirement: Annual review of qualitative and quantitative assessments of the FTO program, including the availability of sufficient numbers of eligible FTOs and officer complaints filed against FTOs.

Understanding of Data Available: Annual BPD FTO evaluation forms are maintained in Microsoft Word. However, these surveys are long-form narratives, making the harvesting of any aggregateable data challenging. Information on the number of officers who might be eligible to serve as FTOs is also available. General performance information on officers (such as use of force, public complaints, misconduct investigations, and the like) is captured in IAPro and/or other systems, as outlined in other sections of this memorandum.

Baseline Completed in Year One?: Yes. For baseline purposes, the Monitoring Team will determine the number of BPD officers who are eligible currently to serve as FTOs – to see if more officers become eligible, by virtue of strong performance records, to participate over time. As progress is made, the Monitoring Team will conduct qualitative assessments when the monitoring plan focuses more intensively on the Field Training Officer program.

The Monitoring Team will also identify relevant cohorts of newly-minted officers and report on their aggregate, post-FTO work performance along the dimensions of use of force, complaints, misconduct investigations, and other indicators. It will use a statistical process to control for things like differences in district or assignment activity levels. The Monitoring Team understands that cohorts of new officers can be identified by badge number sequence. This process will help to establish whether the FTO program is making an impact in driving different and better real-world performance over time.

#### **459(l)(iv): Training Deficiencies**

Consent Decree Requirement: Annual review of the frequency that training deficiencies are identified through investigations, internal reviews, complaints, disciplinary proceedings, civilian oversight, and other mechanisms.

Understanding of Data Available: BPD indicates that, if training deficiencies are identified and reported, they are reported through BlueTeam. The Monitoring Team will want to follow up to understand specifically how this occurs (e.g., Is there a module within IAPro for training deficiencies? If not and deficiencies are identified in other modules or incidents, how can these be identified (both within the Department and by the Monitoring Team for assessment purposes) without a manual review)?

Baseline Completed in Year One?: No. It does not appear that there is a systematic way within BPD of identifying, reporting, and logging training deficiencies. Establishing a baseline would require reviewing a statistically significant number of nearly all other reports, investigations, and administrative files generated, which is not feasible.

#### **459(m): EIS**

Consent Decree Requirement: Annual review of number of supervisory interventions initiated through the EIS, and on a sampling basis a qualitative analysis of the quality of those interventions.

Understanding of Data Available: EIS, as it currently exists, is very different from EIS required by the Consent Decree ultimately. BPD indicates, however, that even as the process for identifying individuals who might potentially benefit from early intervention changes, the number

and quality of those interventions is strong. The department currently retains information about what interventions are initiated through EIS and what those interventions entail.

Baseline Completed in Year One?: Yes.

Overview of Methodology: The Monitoring Team will construct and complete a qualitative review of EIS interventions. The Parties and Monitoring Team will also explore evaluating the rate at which officers involved in EIS commit another offense or come to the Department's attention again for problematic performance.

#### **459(n): OPR & CRB Reports**

Consent Decree Requirement: Annual review of the separate OPR and CRB quarterly public reports and underlying data as necessary, examining data on complaints, misconduct allegations, misconduct investigations, and discipline.

Understanding of Data Available: The City will provide these reports as they are completed. A Weekly Commissioner's Report contains similar information. These reports are based on various OPR, CRB, and BPD data systems.

Baseline Completed in Year One?: Yes.

Overview of Methodology: The Monitoring Team will aggregate and report on the overall data on complaints, misconduct allegations, misconduct investigations, and discipline.

### **III. SUMMARY OF PROJECTED TIMELINES**

The following is a projected timeline for completion of all contemplated Outcome Assessments and Compliance Reviews, which includes various internal working milestones to which the Parties have preliminary agreed. Importantly, this chart contains those areas where

initial conversations have led the Monitoring Team, and the Parties, to conclude that conducting an outcome assessments is feasible given the state of available information or data and in light of the various substantive requirements of the Decree and First-Year Monitoring Plan. As noted in Section I, the projected timetable below attempts to provide concrete markers to ensure progress on the assessments while also ensuring that the process has the flexibility to accommodate new information, unforeseen challenges with data or records, and the various complexities inherent in establishing assessment protocols in critical areas and on which the Court and public will in part rely to gauge BPD’s overall progress across time.

	Methodology Proposed by Monitoring Team	Methodology Finalized	Assessment Started	Assessment Concluded	Draft Findings to Parties	Parties Comment on Draft Findings	Findings Complete
<b>GENERAL COMPLIANCE REVIEWS</b>							
Use of Force	12-Sep	12-Nov	13-Nov	13-Feb	30-Mar	15-Apr	30-Apr
Stops, Searches, and Arrests	31-Oct	20-Dec	21-Dec	28-Feb	01-Apr	15-Apr	30-Apr
Misconduct Investigations	20-Aug	19-Oct	22-Oct	31-Jan	15-Feb	01-Mar	15-Mar
Sexual Assault	20-Aug	19-Oct	22-Oct	18-Dec	31-Jan	21-Feb	05-Mar
<b>OUTCOME ASSESSMENTS</b>							
459(b): Calls for Service	23-Aug	24-Oct	27-Oct	30-Nov	9-Jan	31-Jan	15-Feb
459(c)(ii): OPR/CRB Unlawful Arrest Complaints	20-Aug	19-Oct	22-Oct	31-Jan	15-Feb	01-Mar	15-Mar
459(d)(i): Use of Force Incidents	12-Sep	12-Nov	13-Nov	13-Feb	30-Mar	15-Apr	30-Apr
459(d)(ii): Use of Force Complaints	20-Aug	19-Oct	22-Oct	31-Jan	15-Feb	01-Mar	15-Mar
459(i): Youth Interactions	15-Nov	15-Jan	16-Jan	10-Mar	30-Mar	30-Apr	14-May
459(j)(i): Citations/Arrests Requiring Supervisory Approval (1A)	28-Sep	26-Nov	05-Dec	11-Feb	11-Mar	29-Mar	12-Apr
459(j)(ii): Complaints Involving 1A Activity	20-Aug	19-Oct	22-Oct	31-Jan	15-Feb	01-Mar	15-Mar
459(k)(i): Sexual Assault Reports	20-Aug	19-Oct	22-Oct	18-Dec	31-Jan	21-Feb	05-Mar
459(k)(ii): Sexual Assault Investigation Victim Participation	20-Aug	19-Oct	22-Oct	18-Dec	31-Jan	21-Feb	05-Mar
459(k)(iii): Sexual Assault Investigation Clearance Rate	20-Aug	19-Oct	22-Oct	18-Dec	31-Jan	21-Feb	05-Mar

	Methodology Proposed by Monitoring Team	Methodology Finalized	Assessment Started	Assessment Concluded	Draft Findings to Parties	Parties Comment on Draft Findings	Findings Complete
459(l)(i): Training Completion	28-Sep	26-Nov	05-Dec	11-Feb	11-Apr	29-Apr	12-May
459(l)(ii): Training Adequacy	28-Sep	26-Nov	05-Dec	11-Feb	11-Apr	29-Apr	12-May
459(l)(iii): FTO Program	28-Sep	26-Nov	05-Dec	11-Feb	11-Apr	29-Apr	12-May
459(m): EIS	01-Oct	28-Nov	31-Nov	30-Jan	28-Feb	14-Mar	15-Apr
459(n): OPR & CRB Reports	23-Sep	13-Nov	20-Nov	22-Dec	26-Jan	10-Feb	31-Feb

The Monitoring Team will work with the Parties to determine how the ultimate results and findings of the assessments are communicated to the Court and to the public. Depending on the subject matter area, this may take the form of a standalone report filed with the Court or, alternatively, summarized as part of another reporting obligation. This may be determined in consultation with the Parties during the report review time periods specified above.

Respectfully submitted,

/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 9, 2018, copies of the foregoing Notice of Submission of First-Year Outcome Assessment Process and Methodology Plan were served via the Court's ECF system upon all counsel of record.

\_\_\_\_\_/s/\_\_\_\_\_  
Seth Rosenthal