

PROGRESS?

Reporting period: February 1, 2015 through May 31, 2015

*APD Forward's
analysis of the
Federal Monitor's
first compliance
report*



Executive Summary

“Fostering the constitutional use of force is the primary goal of this entire effort . . .”

- James D. Ginger, Monitor’s First Report.

The court approved settlement agreement entered into between the Department of Justice and the Albuquerque Police Department (“APD”) has resulted in a court monitored reform effort specifically undertaken to address APD’s pattern and practice of unconstitutionally applying force against the citizens it is supposed to protect. Underlying the unconstitutional use of force against citizens is a culture of indifference to constitutional policing and systemic deficiencies in oversight, training, and policy.

The independent monitor, Dr. Ginger, issued his first report analyzing APD’s compliance with the settlement agreement in November, 2015. The report, while only covering the early reform efforts during the period from February 1, 2015 through May 31, 2015 (the reporting period), still manages to provide disturbing insight into the attitude of APD regarding the need to reform at all.

APD also submitted a “self-report” detailing its efforts from a more expansive time period covering from November, 2014 through November 2015. APD Forward recognizes that APD’s self-report covers more time than the monitor’s official reporting period. However, some information contained in the monitor’s report touches upon progress after the official reporting period, for example, by noting that as of the November, 2015 date of writing the report, APD still did not have an adequate use of force policy. Information provided to the Court by the monitor during the December status conference also indicated a general attitude that substantial progress was still lacking after the reporting period.

APD appears to be under the impression that its existing policies, procedures, training, and internal oversight will meet the majority of the settlement agreement requirements. APD’s self-report showed that APD believed it had provided the monitor with enough documentation to show it was in compliance with 119 of the 280 requirements, as of November 2015. The monitor’s report did not come close to reflecting that level of compliance---showing full compliance with only 4 of the 280 requirements as of May 31, 2015. It is highly doubtful that

APD's compliance, as determined by the monitor, in the next reporting period (June through September, 2015) will meet APD's self-report numbers.

In order to ensure APD is only using force in a manner consistent with the Constitution, APD requires a coherent and legally accurate policy to direct its officers on the appropriate use of force. APD has failed to develop a policy that is acceptable to the court monitor. The lack of an adequate use of force policy will no doubt delay further reform efforts. APD cannot effectively train its supervisors to scrutinize use of force incidents without such a policy, officers cannot be disciplined for violating a policy which does not yet exist, and APD officers cannot be trained on the proper use of force without an overarching policy to guide the training.

APD still does not appear to be recognizing potential problems with its officers' reported use of force. The monitor documented two incidents of use of force that were particularly concerning: one involving the deployment of a taser to the back of a suspect's head and another involving the possibility of the use of lethal force (a knee on a suspect's neck during the process of handcuffing him). Supervisors at APD did not recognize these incidents as involving any potential problems with the use of force. These were the only two instances of use of force that the monitor fully reviewed out of a reported number of fifty use of force cases.

APD reports that 394 of 416 patrol officers completed Crisis Intervention Training but the monitor found APD's documentation of such training to be inadequate. Most policies related to the requirements of CIT compliance are not yet developed. The lack of adequate policies regarding Crisis Intervention raises concerns as to whether the 394 officers were properly trained at all and suggests that APD is rushing to train officers before doing the necessary groundwork in developing adequate policies and making training compliant with such policies.

The issues highlighted in this summary of the monitor's first report suggest that APD may not be treating the reform effort with the seriousness required for those efforts to be successful. Given the lack of effective policies to guide training and supervision, it is doubtful that APD can come into full compliance with the settlement agreement by the deadlines currently imposed.

Background

On November 14, 2014, the United States Department of Justice (“DOJ”) entered into a settlement agreement with the City of Albuquerque regarding changes the Parties agreed to make in the management and operations of the Albuquerque Police Department (“APD”). The settlement agreement included 280 requirements which essentially cover nine different areas in which much needed change is required:

1. Use of Force;
2. Specialized Units;
3. Crisis Intervention;
4. Policies and Training;
5. Misconduct Complaint Intake, Investigation and Adjudication;
6. Staffing, Management, and Supervision;
7. Recruitment, Selection and Promotions
8. Officer Assistance Programs;
9. Community Engagement and Oversight

Compliance Levels

There are three different levels of compliance for each requirement of the settlement agreement:

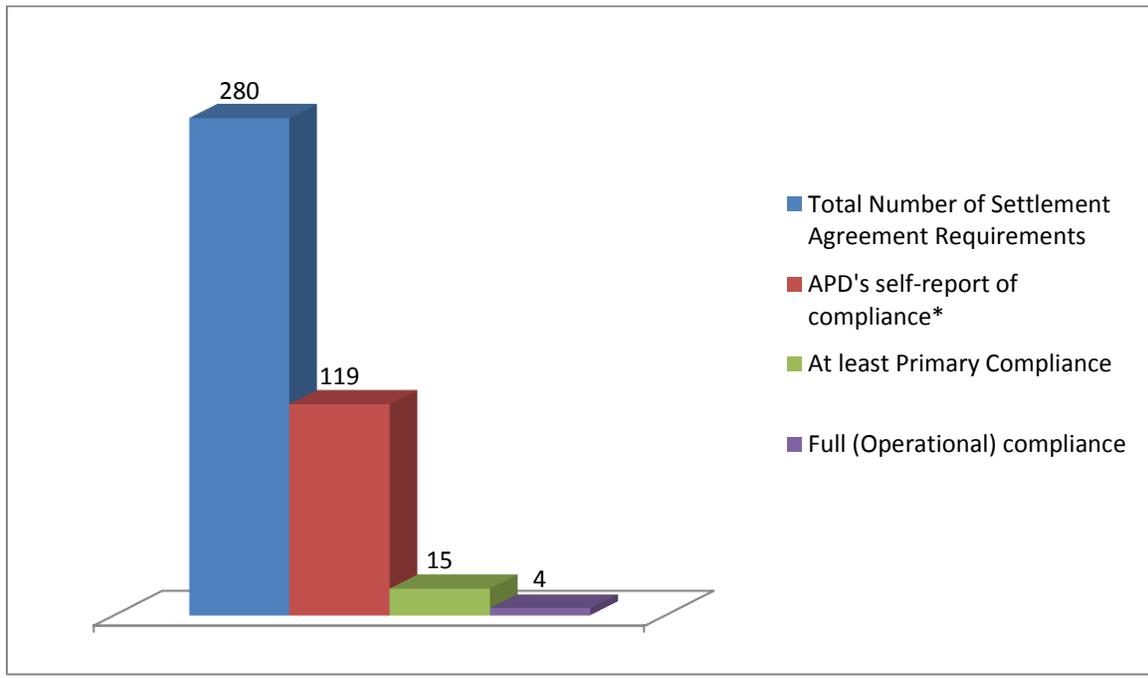
Primary: The “policy” part of compliance. APD must have in place operational policies and procedures designed to guide APD personnel. The policies must be reflective of the requirements of the settlement agreement.

Secondary: APD must have implemented supervisory, managerial and executive practices designed to (and effective in) implementing the policy as written, e.g., sergeants routinely enforce the policies among field personnel and are held accountable by managerial and executive levels of the department for doing so. Documentation is required to show that the policies developed in the first stage of compliance are known to, followed by, and important to supervisory and managerial levels of the agency.

Operational: Attained at the point that the adherence to policies is apparent in the day-to-day operation of the agency as a whole, e.g., line personnel are routinely held accountable for

compliance, not by the monitoring staff, but by their sergeants, and sergeants are routinely held accountable for compliance by their lieutenants and command staff.

Primary Compliance



**APD's self-report covers the period from November, 2014 through November, 2015, therefore including six additional months not covered in the monitor's reporting period.*

The court-approved settlement agreement requires the independent monitor to provide public reports on the City's progress every four months for the first two years of the settlement agreement and then every six months for the subsequent two years. Due to delays in finalizing the contract and funding for the independent monitor, the monitor and his team were unable to begin monitoring efforts immediately and the original deadlines in the settlement agreement were modified. The first report covers the period from February 1, 2015 through May 31, 2015 in which only the two- and three- month deadlines of the settlement agreement expired.

As such, APD is currently "in compliance" with the original two- and three-month deadlines of the settlement agreement. See Monitor's First Report, p. 13-16.

APD is currently in compliance with the following requirements which were due within two and three months:

1. Paragraph 149 of the settlement agreement requiring all officers to be briefed on the settlement agreement.
2. Paragraph 141 requiring that APD develop a process for officers to review and comment on new or existing policies.
3. Paragraph 142 requiring the creation of a Policy and Procedures Review Board. This was completed and thus APD is “in compliance,” though APD apparently hasn’t incorporated a functional assessment method for the PPRB—something that will be addressed in further reports before full compliance is deemed warranted. The monitor’s first report found that only Primary Compliance has been met.

APD also provided the monitor with documentation attesting to compliance in eight other areas of the settlement agreement which had six month deadlines but the monitor reported that just over a quarter of those areas were actually in compliance. Since the deadline for these areas has not passed, APD is not yet in violation of the settlement agreement.

Those areas in some level of compliance are as follows:

- 1) Paragraph 151: Itemized training schedule (does not include 18 month requirement of completing all training): Operational compliance
- 2) Paragraph 164-168: Awareness Program by APD and CPOA (establishing civilian complaint forms, processes and awareness): Primary Compliance
- 3) Paragraph 196 : Anti-Retaliation Policy: Operational compliance

Disparity in Views of Compliance

At a court hearing regarding compliance, the monitor reported that APD was in primary compliance with 15 of 280 requirements and was in secondary and operational compliance with four out of 280 requirements as of May 31, 2015. This conflicts with APD’s self-report, which asserts that it has compiled information to document compliance with approximately 119 of 280 requirements, though APD’s self-report covered a longer period of time from November, 2014 through November, 2015.

1) Use of Force

Pursuant to the settlement agreement requirements, APD is required to create a new use of force policy that “complies with applicable law and comports with best practices.”

Drafts

- APD submitted a new use of force policy, dated December 2014, and this draft was returned for “major re-work, ranging from improved organization, greater

clarity, elimination of redundancies, and full, clear explication of the more restrictive use of force standard required by the settlement agreement.” APD submitted a second draft in September 2015 which had not been fully analyzed to date by the monitor but appeared to have made improvements.

- Existing policy and the first draft of the new policy fail to provide the necessary foundation for training and supervision of use of force by APD officers and is inconsistent with best practices in the field.
- APD cannot train officers on the use of force without this crucial policy, nor can it discipline officers for failing to adhere to a policy which does not yet exist. The entire reform of APD is stalled by this delay.

Specific Issues

- APD did *not* route the first draft of its Use of Force policy through its Policy and Procedures Review Board (PPRB) nor did the agency consult with APD subject matter experts and instructors on the use of force. The involvement of the PPRB is mandated by the settlement agreement.
- The current use of force policy does not require the Chief of Police to notify and consult with the DA’s office, the FBI, and/or the USAO, regarding any use of force indicating apparent criminal conduct by an officer, as required by paragraph 67.

Review of Use of Force Incidents

The monitor reviewed information from 16 random supervisory force investigations between February 1, 2015 and May 31, 2015 from a total of 50 reported cases of use of force that required supervisory review (under current policies).

- Initially, the monitor requested information, including lapel videos, on all 16 incidents but APD only provided the requested information for two of the instances. After a second request from the monitor, APD provided further videos and information on the other 14 incidents but it was still not everything that had been requested and was provided too late for the monitor to thoroughly review.
- Case One:
 - In a darkened rear yard a domestic violence suspect was fleeing police officers on foot. The suspect was struck in the back and the head by the officer’s taser.
 - Intentional use of an ECW targeting a suspect’s head is expressly prohibited by APD policy (dated September, 2015).

- The issue was never identified by the investigator, presumably because policy development and training at APD had yet to “catch up” with the settlement agreement requirements.
- Subsequent reviews up the chain of command also failed to identify the head-strike as an issue.
- Case Two:
 - APD officers were dispatched to a reported armed robbery where a basic physical description of the subject was provided. An APD lieutenant responded to the scene and initiated contact with an individual matching the general description. The suspect fled on foot to a nearby open lot where he stopped, ignored orders to get on the ground, and approached the officer. After warning that he would be tased if he did not comply, the suspect continued to approach the officer at which point the officer deployed his taser.
 - The suspect attempted to pull off the wires and began moving away from the officer. At this time the officer employed a second cycle on the taser.
 - Two officers arrived to assist and ordered the suspect to get on the ground. He did not comply. While attempting to gain custody of the suspect, one of the officers deployed two additional taser cycles (for a total of four used on this suspect).
 - A fourth officer arrived and helped handcuff the suspect, who was face-down on the ground, and “violently resisting” the officers.
 - The monitor notes that it “appeared” as if the officer placed his knee on the man’s neck in such a way that it might have constituted a neck hold, which is categorized by the settlement agreement as lethal force.
 - The investigation by APD did not consider whether lethal force was used and, if so, if it was warranted.
- Other Issues:
 - Few supervisors used their lapel video to record witness statements, as required. One simply handed a statement form to the suspect and told her to drop it off at the station.
 - Officers are still using boilerplate language, in violation of Paragraph 42 of the settlement agreement (“I felt it necessary to deploy my lethal force in preparation...”)
 - Few supervisors analyzed incidents to identify specific behaviors that could be classified as attempts at de-escalation or assess whether the minimum amount of force necessary was used. Both are required by the settlement agreement and APD’s draft use of force policy.

- The “blank sheet” approach to supervisors’ and reviewers’ narratives is deficient and leads to lack of quality in the reports.
- The Use of Force Data Report isn’t clear as to what video evidence should or does exist. The ability of APD to search for, locate, and organize video is limited.

2) Specialized Units

APD’s Special Operations Division consists of the required distinct groups: SWAT, Canine, and Bomb Squad (the Repeat Offender Project was eliminated as required).

APD has appeared to make some progress in meeting the requirements of the settlement agreement related to specialized units:

- APD has disposed of several military surplus vehicles that were not well suited for civilian police operations, has repainted the remaining, better-suited vehicles blue instead of military brown, and has signage on the vehicles indicating “rescue” to distinguish them from military vehicles.
- APD has initiated a search warrant matrix to be used to assess and manage high-risk tactical situations and to avoid having division members providing tactical responses to situations that would require SWAT activation.
- The monitor reviewed 18 deployments of the Specialized Tactical Units. All involved violent crimes and six were resolved directly by crisis-hostage negotiators. Only one involved a warrant and that was an arrest warrant for a “violent felon.” In one case, SWAT withdrew when the subject was exhibiting suicidal behavior to avoid unnecessary risk to the public.

However, there are still a number of issues which need to be dealt with:

- APD has not provided any actual after-action reports, required for specialized tactical units to document after call-outs and deployments. This resulted in minimalist reports from the Force Review Board.
- APD still needs to establish eligibility criteria for the Bomb Squad and K-9 Units, though they appear to have done so for SWAT.

Training

- APD reports that tactical team members have completed the department’s 40-hour Critical Incident Team course. APD provided documentation of the training but the monitor found such documentation to be inadequate proof of effective training on the issue.

- Basic training documents provided to date do not fully comply with settlement agreement requirements.

Policy Development and Implementation

- Current policies for the three groups are disjointed, originating at different organizational levels, and it is unknown whether the policies were ever vetted through the PPRB.
- None of the policy in place for these divisions explains clearly how APD’s use of force policies apply to unit and division operations, a requirement the monitor deems “critically important.”
- Current policies are not being reviewed in a timely fashion. A minimum of annual review is required. SWAT is operating under a procedural order dated 2009.
- Current policies regarding tracking K-9 deployments and bite ratios are muddled—several drafts on the same subject, each with different dates, exist and it is unclear whether the most recent draft is the official working draft.
- Current policies are not clear on the required operational planning prior to deployment of specialized units.
- While APD has a draft policy for tracking tactical deployments, there is no clear indication of how this information is to be analyzed.

3) Crisis Intervention

- Records maintained by APD indicate that “394 of 416 patrol officers at APD have been trained and certified as CIT-capable.” The monitoring team reviewed the training documentation for the trained officers and noted it only consists of a collection of PowerPoint or similar documents that “falls far short of expected documentation.” What was provided was a set of PowerPoint slides depicting a lecture. The monitor notes this is “simply inadequate ‘proof of life’ for a training process.”
- APD is still developing policies to ensure that crisis intervention certified responders or CIU would take the lead on scene in interacting with individuals in crisis. APD still lacks policies related to protocols for response to barricaded or suicidal subjects not posing risk of imminent harm. APD lacks policy to require proactive work to connect individuals with a known mental illness who have a history of law enforcement encounters with mental health service providers. Most policies related to the requirements of CIT compliance are not developed.
- “The monitoring team is concerned about the quantity and quality of training provided by APD pursuant to this task ... the quantity and quality of scenario-based training is

minimal, at best, and during this time-period, APD was 'retooling' applicable policies, thus training 'to policy' was not possible."

- A staffing study to determine needs of staffing was just recently completed and this study will likely impact several of the requirements for the CIT unit requirements.

Mental Health Response Advisory Committee

- Many of the requirements related to this section were not yet due and had therefore not yet been analyzed by the monitor.
- Within six months, APD must establish a Mental Health Response Advisory Committee, which it has done, and the monitor has not reported any particular problems however several problems exist currently in the integration of the committee with APD practices. During the court hearing on the status of APD's progress, it was brought to the court's attention that the MHRAC had been operating for months without the Chief of Police being aware of its activities.

4) Policies and Training

Policy

- "In terms of the policies that APD has drafted so far, they have been difficult to understand, poorly organized, and apparently written piecemeal, without an overarching understanding of the function of policy in guiding officer conduct and forming the basis for APD's training program."
- The monitor gave "failing marks to critical policy elements on their initial reviews, finding fatal flaws in the APD's use of force, internal affairs, supervision, and other policies that made effective training virtually impossible."
- "Major problems with organization, content, and draftsmanship plague the review and approval process."
- The monitor observed a meeting of the Policy and Procedures Review Board (PPRB) and "[f]ound sparse evidence that the group screens for conformance to established pattern and practice in the field, or that it screens for compliance with the settlement agreement."
- "[T]he monitoring team has not seen clear input of PPRB work product ... if the PPRB is actually assessing and actively critiquing and causing change in APD draft policy, it is not reflected in the policies reviewed by the monitoring team." (This applies to other policies including policies for specialized tactical units.)

- “There appears to be no clearing house for policy development, dissemination, revision, and assessment ... the most critical missing piece of the compliance puzzle at this time.”
- The monitor found the existence of multiple and inconsistent versions of policy dealing with the same subject matter (for example, the use of canines for crowd control). The monitor reports that APD’s current policy development process “is in general disarray.”

Training

- APD’s current training system is not based on any clear form of needs assessment that would drive what would be trained or how it would be trained. “Thus the first two critical pieces of any training development, clear and careful needs assessment and effective, clear, well-written policy were missing from the APD’s existing training rubric.”
- Current training on use of force is still lacking and requires more emphasis on de-escalation skills, APD’s higher standard governing the use of force, enhanced use of force reporting and investigation, the management of encounters with those in crisis, and incident management principles.
- While APD has provided a tentative training schedule to comply with the settlement agreement requirements, some training has been delayed until effective policies are approved and in place to serve as the basis for such training.
- Part of the delay in bringing APD’s training practices on line is due to the monitor’s decision to require conformance with national practices prior to initiating training, thus avoiding the need to repeat training when the initial training would not have met settlement agreement standards.

APD’s Self-Report on Policy:

- “Just before the Settlement Agreement effective date, APD undertook the monumental task of reviewing every single departmental standard operation procedure (SOP), upwards of 200, as well as the development of new policies that were required by the agreement.”
- “[T]he review committee and the Policy and Procedures Review Board (PPRB) have been able to update and modernize existing policy, making it more easily understandable and readable, and less redundant; it also allows for the incorporation of the Settlement Agreement directives in a more controlled way; and it gets each policy in front of staff, acting as an SOP refresher course.”

APD's Self-Report on Training:

- “[T]he department’s overall leadership is pleased with the progress made in achieving the directives established in the Settlement Agreement.”
- Since November 14, 2014, APD reports it has “developed new training curricula that are responsive to the Settlement Agreement, including use of force; and have increased the number of officers proficient in Crisis Intervention Training (CIT) to over 90% of total officers.”
- Though APD reported having trained the majority of its officers in crisis intervention training, it also notes that some training required in the Settlement Agreement, including extensive crisis intervention training, would require input from professionals from external vendors.

5) Misconduct Complaint Intake, Investigation, and Adjudication

Internal Affairs Policy

- The monitoring team could not approve current Internal Affairs policy as it was “not responsive to the requirements established by the settlement agreement” and is “difficult to read, understand, and by extension, difficult to train.”

Civilian Complaints

- The APD draft policy regarding civilian complaints against APD was returned to APD as insufficient and requiring a comprehensive rewrite and edit. The monitor notes this is a “common theme with APD.”
- The APD website “can be construed as discouraging civilians from submitting complaints and should be revised.” Under “Steps for Filing a Misconduct Complaint,” APD’s website warns that “Citizens must be aware of the city ordinance which governs false reports and states it is unlawful for any person to intentionally make or file with any law enforcement agency any false, misleading, or unfounded report or statement.”
- The APD website homepage does not directly lead to the Report Police Misconduct window, though the Internal Affairs and Contact the Police windows eventually lead there. The monitor suggests putting the link on the homepage. The website also fails to

specify that complaints may also be made verbally, by mail, telephone, facsimile, and does not allow for the downloading of the form.

- APD has six months from the operational date to train all personnel in handling civilian complaint intake. APD reports 95% (approximately) of its officers have been trained. However, there is a lack of test data demonstrating employee mastery of the training. There also appears to be a data management error that shows officers finishing the training process before they were shown to have started it.

Officer Misconduct Investigations

- Paragraph 191 requires all administrative investigations by the Internal Affairs Bureau (“IAB”) or the Civilian Police Oversight Agency (“CPOA”) to be completed within 90 days of initiation. The review team reviewed two CPOA cases where discipline could not be imposed because of the failure to comply with time requirements. “The monitoring team is concerned regarding the ability of the CPOA to make recommendations of discipline to the Chief within the time periods allowed for imposition of discipline.”
- The monitoring team reviewed a random sample of IAB and CPOA investigations and found one case where all relevant evidence was not considered. Specifically, the minor son of the complainant, who was a witness, was not interviewed. It was not clear to the monitor that this witness was truly unavailable or why he was unavailable.
- IAB is understaffed with at least four Sergeant vacancies and two Detective vacancies. This causes a need to outsource investigations to area commands, potentially impacting the consistency of investigations. “The monitoring team views this as a most serious deficiency in APD’s staffing and personnel distribution system.”
- The monitor reported that in the four-month review period there were 24 investigations completed by the Internal Affairs Bureau and the Civilian Police Oversight Agency. That’s at least one investigation of officer misconduct per week.
- There is no evidence of the required initial and subsequent annual training required for APD personnel conducting misconduct investigations or for the investigators of the CPOA.

6) Staffing, Management, and Supervision

- A staffing assessment and resource study was recently completed. APD has contracted with Dr. Alex Weiss to complete this study and the final version of the report was released in December.
- A review of randomly selected IAB and CPOA investigations revealed one case where progressive discipline was not followed and two cases where the punishment imposed deviated from either the progressive discipline matrix or from

recommended discipline. The monitoring team expects adequate statements of reasons in instances where progressive discipline is not followed and/or punishment differs from the recommendations of Chain of Command.

- APD's policy regarding the disciplinary system needs to be rewritten to comply with the settlement agreement. Currently the policy fails to require APD to consider whether non-disciplinary corrective action is appropriate in a case where discipline has been imposed, fails to set out defined mitigating or aggravating circumstances which could justify deviation from the use of sanctions, and fails to require that APD not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline.

On-Body Recording Devices (OBRD)

- APD has completed its draft of the operative policy, which would presumably meet the settlement agreement guidelines set forth in paragraph 220 but is awaiting final comment from the monitoring team prior to training and implementation.
- Policies and procedures related to training on OBRD use, developing a schedule for testing OBRD devices, supervision of OBRD use, and monthly video review were returned to APD with comments from the DOJ and monitor.

7) Recruitment, Selection and Promotions

- APD has revised its policies and procedure regarding recruitment, selection, and promotion, but no final policies or plans have been submitted to the monitor for review.
- APD is required to consult with community stakeholders, as part of its recruitment plan, to receive recommended strategies to attract applicants. APD has not provided any documentation to show such consultation.
- APD recently completed a staffing study which will help APD review and meet the requirements under this section.

8) Officer Assistance Programs

Nothing listed in the monitor's report address this program, however, these requirements were not yet due at the time of the monitor's first review.

APD's Self-Report on Officer Assistance Programs:

APD reports that it has completed "Implementation of a peer counseling program; five clinicians available through APD's Behavioral Sciences Division for voluntary and supervisory mandated counseling; the clinicians are on call 24 hours a day."

9) Community Engagement and Oversight

- Most of the activity in this area fell outside of the reporting period (occurred after May, 2015).
- Most members of the community policing councils (CPCs) have completed the required ride-along and 25 percent have completed the 12 week citizen's police academy. APD has acknowledged the need to expand the number of voting members to ensure a representative cross section of participants.
- The CPC process is still in the organizational phase. However, information about the settlement agreement and APD's compliance efforts are not yet being shared with the CPCs.
- The City has implemented a civilian police oversight agency via City Ordinance 9-4-1-14. No other policies or procedures were provided to the monitor. The monitor reviewed a randomly selected group of CPOA investigations of civilian complaints and found them to show meaningful and independent review of civilian complaints.
- The Table of Organization for the CPOA shows all positions filled except that of Community Outreach, which appears to be a newly created position. The monitor is unaware of CPOA community outreach efforts during the monitoring period.
- "To date, the monitor has noted several critical incidents involving officer-involved shootings that have been reported in the media since implementation of the settlement agreement that have not been followed up by reports—either in writing or by telephone—from the City or APD. Paragraph 320 requires APD to notify the monitor within 12 hours of any critical firearms discharge, in-custody death, or arrest of any officer." In other words, APD is not reporting critical incidents to the independent monitor as required under the settlement agreement.