

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,)	CASE NO.
)	
Plaintiff)	JUDGE
v.)	
)	<u>SETTLEMENT AGREEMENT</u>
THE CITY OF WARREN, OHIO)	<u>BETWEEN THE CITY OF WARREN</u>
AND THE CITY OF WARREN)	<u>AND THE UNITED STATES OF</u>
POLICE DEPARTMENT)	<u>AMERICA (DEPARTMENT OF</u>
)	<u>JUSTICE)</u>
Defendants.)	

SETTLEMENT AGREEMENT

Noting the general principle that settlements are to be encouraged, particularly settlements between governmental entities, and noting the continued cooperative relationship between the U.S. Department of Justice, Civil Rights Division ("DOJ"), the City of Warren, Ohio ("City"), and City of Warren, Ohio Police Department ("WPD"), and having considered the terms of the measures, set forth herein, the City and WPD agree to the following terms and conditions:

TABLE OF CONTENTS

I. INTRODUCTION..... 3
 A. Background..... 3
 B. General Provisions..... 3
 C. Definitions 5
II. USE-OF-FORCE POLICIES/PRACTICES 6
III. EVALUATION, DOCUMENTATION, AND REVIEW OF USES OF FORCE..... 7
IV. CITIZEN COMPLAINT PROCESS..... 9
 A. Public Information 9
 B. Means of Filing and Tracking of Complaints 10
 C. Investigation of Complaints..... 10
V. MANAGEMENT AND SUPERVISION 13
 A. Risk Management System..... 13
 B. Oversight..... 17
 C. Discipline 17
VI. TRAINING 18
 A. Management Oversight..... 18
 B. Curriculum 19
VII. MONITORING, REPORTING, AND IMPLEMENTATION 20
 A. DOJ Monitoring..... 20
 B. DOJ Monitoring Reports 21
 C. WPD Reports and Records 21
 D. Implementation, Modification, and Termination..... 21

I. INTRODUCTION

A. Background

1. In December 2004, DOJ initiated an investigation of an alleged pattern or practice of excessive force and illegal searches throughout WPD under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”).
2. City and WPD officials met with DOJ officials to facilitate the City’s cooperation with DOJ’s investigation and craft an Agreement addressing all of the Parties’ concerns. The Agreement is the result of a cooperative effort that evinces a commitment to constitutional policing on the part of DOJ; the City; and WPD (collectively, “the Parties”).

B. General Provisions

1. The Parties share a mutual interest in promoting effective and respectful policing. They join together in entering this Agreement to promote police integrity and prevent conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or the laws of the United States.
2. This Agreement is effectuated pursuant to the authority granted DOJ under Section 14141 to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges or immunities secured by the Constitution or federal law.
3. In its investigation of WPD, DOJ, in conjunction with two police practices consultants, conducted a detailed fact-finding review, including: ride alongs, tours of WPD’s facilities, interviews with WPD and City officials, WPD command staff, supervisors, and police officers; and review of numerous documents. In addition, in March 2006, DOJ sent the City a letter providing detailed technical assistance regarding WPD practices and policies in the areas of use of force, citizen complaints, investigations, supervisory oversight, and training.
4. Following DOJ’s provision of technical assistance, the City and WPD represented that they completed substantial revisions of all of WPD’s policies and procedures. WPD presented certain of these policies to DOJ for consultation.
5. In its complaint for the above-captioned action, the United States has alleged that WPD is violating 42 U.S.C. § 14141 by engaging in a pattern or practice of use of excessive force by WPD officers that deprives persons of rights privileges or immunities secured or protected by the Constitution or laws of the United States. The City denies these allegations.
6. This court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1345. The United States is authorized to initiate this action pursuant to 42 U.S.C. §

14141. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. § 1391.

7. The Parties enter into this settlement jointly for the purpose of avoiding the burdens of litigation and to partner in support of vigorous and constitutional law enforcement. Moreover, joint entry of this Agreement is in the public interest because it provides for expeditious remedial activity, promotes the use of the best available policing practices and procedures, and avoids the diversion of federal and City resources to adversarial actions by the Parties.
8. Nothing in this Agreement is intended to alter the lawful authority of WPD to use reasonable and necessary force, effect arrests and file charges, conduct searches or make seizures, or otherwise fulfill its law enforcement obligations in a manner consistent with the requirements of the Constitution and laws of the United States, the State of Ohio, and the City.
9. Nothing in this Agreement is intended to: (a) alter the existing collective bargaining agreements between WPD and the Ohio Patrolmen's Benevolent Association and between WPD and the Fraternal Order of Police/Ohio Labor Council, Inc.; or (b) impair the collective bargaining rights of employees under State and local law. Nothing in this Agreement is intended to amend or supercede any provision of State or local law.
10. This Agreement shall constitute the entire integrated agreement of the Parties. With the exception of correspondence resulting from technical assistance that the United States has provided to WPD, no prior drafts or prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.
11. The Parties agree that prior drafts of this Agreement and prior or contemporaneous communications, whether oral or written, between the Parties leading to this Agreement are subject to Settlement Privilege. By approval of this Agreement by the Court in the above-captioned action, the Court finds that all such prior drafts of this Agreement and prior or contemporaneous communications, whether oral or written, between the Parties leading to this Agreement are subject to Settlement Privilege. In the event the parties disagree about the meaning of this Agreement, in whole or part, the parties agree that Settlement Privilege will not bar the use or admission of parole evidence in proceedings before the Court in the above-referenced action.
12. In the event of any public records request pursuant to Ohio Revised Code §149.43 requesting prior drafts of this Agreement and prior or contemporaneous communications, whether oral or written, between the Parties leading to this Agreement, the Court will maintain continuing jurisdiction over any such request. Further, the Parties agree that they may

assert in any action, motion, subpoena, or request for disclosure of information the ongoing applicability of Settlement Privilege to all such prior drafts or prior or contemporaneous communications, oral or written, between the Parties leading to this Agreement.

13. This Agreement is binding upon the Parties, by and through their officials, agents, employees, and successors. This Agreement is enforceable only by the Parties. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the City and WPD for their conduct or the conduct of WPD officers; accordingly, it does not alter legal standards governing any such claims, including those under Ohio law. This Agreement does not authorize, nor will it be construed to authorize, access to any City, WPD, or DOJ documents, except as expressly provided by this Agreement.
14. The City and WPD agree to be bound, as they are now, by the Constitution and Laws of the United States.

C. Definitions

1. The term "City" means the City of Warren, including its agents, officers and employees.
2. The term "WPD" means the Warren Police Department, its agents and its employees (both sworn and unsworn).
3. The term "DOJ" means the United States Department of Justice and its agents and employees.
4. The term "deadly force" means any use of force likely to cause death or serious physical injury, including, but not limited to, the discharge of a firearm.
5. The term "force" means any physical coercion used to effect, influence or persuade an individual to comply with an order from an officer. The term shall not include ordinary, unresisted handcuffing. The term shall include, but not be limited to: the use of strikes, punches, take downs, or physical pressure other than simple guidance for the safety or direction of the subject; the use of any intermediate weapon including, but not limited to, conductive energy devices, chemical irritants, baton, or telescoping baton; and/or the deployment of a canine.
6. The term "force continuum" refers to the graphical depiction of uses of force that is attached hereto as Appendix A.

7. The term “discipline” means a verbal warning, written reprimand, suspension, demotion or dismissal.
8. The term “non-disciplinary corrective action” refers to action other than discipline taken by a WPD supervisor to enable or encourage an officer to modify or improve his or her performance.
9. The term “police officer” or “officer” means any law enforcement officer employed by WPD, including supervisors.
10. The term “supervisor” means a sworn WPD employee at the rank of Sergeant or above (or anyone acting in those capacities).
11. The term “complaint” means any complaint by a member of the public regarding WPD services, policy or procedure, claims for damages (which allege officer misconduct) or officer misconduct; and any allegation of possible misconduct made by a WPD officer.
12. The term “complainant” means any person who files a complaint against an officer or WPD.
13. The term “implement” or “implementation” means the development or putting into place of a policy or procedure, including the appropriate training of personnel.
14. The term “include” means including, but not limited to.
15. The term “effective date” shall be the date on which the Court approves this Agreement and retains jurisdiction to enforce its terms.

II. USE-OF-FORCE POLICIES/PRACTICES

1. The City shall maintain use-of-force policies that:
 - a. define terms clearly;
 - b. define “force” as that term is defined in this Agreement;
 - c. incorporate a use-of-force model that relates the force options available to officers to the types of conduct by individuals that would justify the use of such force, and that teaches disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements or calling in specialized units as appropriate responses to a situation, and that requires the use of a verbal warning before the use of force, when possible;
 - d. state that, whenever possible, individuals should be allowed to submit to arrest before force is used;

- e. state that the use of excessive force shall subject officers to discipline, possible criminal prosecution, and/or civil liability;
 - f. ensure that sufficient less lethal alternatives are available to all patrol officers; and
 - g. explicitly prohibit the use of choke holds and similar carotid holds except where deadly force is authorized.
2. For the duration of this Agreement, WPD shall ensure that its use-of-force policy meets the above criteria. If notified by DOJ that WPD's policies do not meet the above criteria at any point during the term of this Agreement, WPD shall revise its policies consistent with the above criteria and submit the revised policy to DOJ for approval. DOJ will review and comment on WPD's revised use-of-force policies. WPD shall further revise its use-of-force policies consistent with the DOJ comments, and WPD shall resubmit the revised policies to DOJ for its consideration for approval. WPD shall not implement any revisions to its use-of-force policies unless approved by DOJ. Once the DOJ has approved these policies, WPD shall immediately implement any revisions. Within thirty days of DOJ's approval of WPD's revised use-of-force policies, WPD shall retrain all WPD officers on the revised policies, and shall keep a written record of such training of all existing and new WPD employees as part of each employee's personnel file
 3. WPD represents that every uniformed WPD officer is provided an intermediate force weapon. WPD shall continue to provide every uniformed WPD officer with an intermediate force weapon, which all uniformed officers shall carry on their person at all times while on duty and may be used when appropriate under law and policy. WPD has previously selected the telescoping baton as WPD's current assigned intermediate force device for all sworn officers. WPD may select a different intermediate force weapon, provided that WPD make the selection uniform across all sworn officers. WPD shall incorporate its selected intermediate force weapon into WPD's force policy, and shall continue to train all its sworn officers on an annual basis on the proper use of the selected intermediate force weapon.

III. EVALUATION, DOCUMENTATION, AND REVIEW OF USES OF FORCE

1. WPD requires all uses of force to be documented in writing. Each WPD officer involved in a use-of-force incident shall separately complete a use-of-force report, or a separate addendum to the original use-of-force report. Each officer shall indicate on his or her respective report each and every type of force he or she used or was a party to. Each officer involved in a use-of-force incident shall include in his or her report a narrative description of the events preceding the use of force, a description of the force used, and a description of the care given after force was used. All use-of-force reports shall indicate whether or not the subject on whom force is used was

restrained or not at the time force was used. WPD shall ensure that WPD officers complete and submit all use-of-force reports within twenty-four hours of the end of the shift on which a use of force occurs.

2. Officers shall notify their immediate supervisors following all uses of force or upon the receipt of an allegation of excessive force. Upon such notification, the immediate supervisor of the involved officer(s) shall promptly respond to the scene, examine the subject for injury, interview the subject, and ensure that the subject receives needed medical attention. When a Sergeant is involved in a use of force or an allegation of excessive force, the Lieutenant on duty shall be the immediate supervisor. The Chief of Police, or his or her designee, shall promptly respond to the scene of any use of deadly force.
3. The immediate supervisor shall review, evaluate, and document each use of force in the supervisor's review section of the use-of-force report including his or her determination of whether or not the officer's actions were within WPD policy, and whether or not the force used was objectively reasonable. Any officer or supervisor who used force during the incident, or whose conduct led to an injury, or who authorized conduct leading to the use of force or allegation of excessive force, will not be eligible to review the incident.
4. Supervisors shall conduct a review of all uses of force or an injury resulting from a use of force by any officer under their command. As part of this review, supervisors shall interview all witnesses to a use-of-force incident or an injury resulting from a use of force.
5. Consistent with the requirements of the collective bargaining agreement and/or other applicable authority, supervisors shall ensure that all officer witnesses provide a statement regarding use-of-force incidents. Officers shall not be permitted to see one another's statements prior to submission of their own statement. Supervisors shall ensure that all use-of-force reports identify all officers who were involved in the incident or were on the scene when it occurred. Supervisors shall ensure that all reports indicate whether an injury occurred, whether medical care was provided, and whether the subject refused medical treatment. Supervisors shall ensure that all reports include contemporaneous photographs or videotapes taken of all injuries at the earliest practicable opportunity, both before and after any treatment. Supervisors shall document their review of the use-of-force report in the supervisor's review section of every use-of-force report. Supervisors shall record therein their evaluation of the basis for the use of force, a determination of whether the officer's actions were within WPD policy, and whether the force used was objectively reasonable.
6. The Parties agree that it is improper for WPD personnel conducting reviews of use-of-force incidents to ask officers or other witnesses leading questions

that improperly suggest legal justifications for officers' conduct when such questions are contrary to appropriate law enforcement techniques. In each use-of-force review, WPD shall consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. WPD will make all reasonable efforts to resolve material inconsistencies between witness statements.

7. For each use-of-force incident, a WPD Captain will timely evaluate each use-of-force review supervisors conducted for such incident, identify any deficiencies in those reviews, and require supervisors to timely correct any deficiencies. WPD shall hold supervisors accountable for the quality of their reviews. WPD shall take appropriate non-disciplinary corrective action and/or disciplinary action whenever a supervisor fails to conduct a timely and thorough review of a use of force, or neglects to recommend appropriate corrective action, or neglects to properly implement appropriate corrective action.

IV. CITIZEN COMPLAINT PROCESS

A. Public Information

1. WPD has developed and implemented a program to inform persons that they may file complaints regarding the performance of any officer. The complaint form is presently available at www.warren.org, the City's website. The City also presently makes complaint forms and directions for submitting complaints public available at all governmental properties. The City has proceeded to make the public aware of the complaint form process. During the performance of this Agreement, WPD shall continue to make complaint forms, directions on submitting complaints, and informational materials publically available at government properties including, but not limited to: WPD headquarters, all City public libraries, the Office of the Director of Public Safety, the Internet, and, upon request, to community groups and community centers.
2. Within within 30 days of the effective date of this agreement, WPD shall permanently post in a public space at WPD headquarters a placard describing the complaint process and include the relevant phone numbers. WPD shall require all officers to carry informational brochures and complaint forms in their official vehicles at all times while on duty. If a citizen objects to an officer's conduct, that officer will inform the citizen of his or her right to make a complaint. Officers shall not discourage any person from making a complaint.

B. Means of Filing and Tracking of Complaints

1. WPD shall continue to maintain clear complaint acceptance and complaint resolution policies and procedures. WPD shall ensure that all officers are trained in acceptance of complaints. Training on the complaint acceptance policy and procedure will be a part of in-services to all officers at the implementation of this Agreement.
2. The complaint-acceptance policy shall specify that WPD shall accept complaints in writing or verbally, in person or by mail, telephone (or TDD), facsimile, electronic mail, or drop box. The policy shall require that all WPD employees accept complaints and prompt delivery them to a supervisor. The policy shall state that an employee accepting a complaint may describe facts that bear upon a complainant's demeanor and physical condition but may not express opinions regarding his/her mental competency or veracity. The complaint-resolution policy shall require that WPD resolve each complaint in writing,
3. WPD shall refer copies of allegations of misconduct against WPD to WPD's Internal Affairs Unit ("IA") within three business days of receipt of a complaint. Within 90 days of the effective date of this Agreement, WPD shall institute a centralized numbering and tracking system for all complaints. Immediately upon receipt of a complaint, WPD shall assign each complaint a unique identifier, which WPD shall provide to the complainant. WPD shall track in a database each complaint according to the basis for the complaint (e.g., excessive force, discourtesy, improper search, etc.).

C. Investigation of Complaints

1. WPD shall investigate every complaint of employee misconduct.
2. WPD shall explicitly prohibit from investigating an incident any officer involved in that incident.
3. WPD shall complete all investigations of officer misconduct within 40 days of the earlier of WPD's receipt of a complaint or WPD's discovery of alleged officer misconduct, unless the Chief of Police extends that deadline in writing at the written request of the assigned investigator. The Chief of Police may permit only one extension at a time of no more than 30 days per extension, and shall not permit more than a maximum of two possible extensions. The Chief of Police shall record, as part of the investigative file for the incident, his or her basis for granting or denying the request for extension. WPD shall provide written notice to the complainant of any extensions.
4. Within 90 days of the effective date of this agreement, WPD shall adopt a single policy concerning the investigation of misconduct complaints, regardless of whether the investigation is conducted by IA or a chain-of-

command supervisor. WPD shall apply a preponderance of the evidence standard to the evaluation of all allegations contained in a complaint or collateral misconduct discovered during the course of investigating a complaint.

5. The personnel participating in IA have presently been trained on the factors to consider when evaluating complainant or witness creditability, examination and interrogation of accused officers and other witnesses; identifying misconduct even if it is not specifically named in the complaint; and using the preponderance of the evidence standard as the appropriate burden of proof.
6. IA or chain-of-command investigators assigned to the investigation of complaints shall interview all witnesses to the incident who are capable of being identified through the exercise of reasonably diligent investigation. All interviews of WPD employees regarding the incident shall be recorded (audio or video). All interviews of non-WPD employees regarding the incident shall be recorded (audio or video), unless the interviewee specifically requests not to be recorded. If an interviewee requests not to be recorded, WPD shall secure a written declination of recording executed by the interviewee. An interviewee's refusal to have an interview recorded will not relieve WPD of its obligation to interview all witnesses to an incident giving rise to a complaint. Consistent with the requirements of the collective bargaining agreement and/or other applicable authority, the assigned investigators shall ensure that all officer witnesses provide a statement regarding the incident. Officers shall not be permitted to see one another's statements prior to submission of their own statement. For all allegations involving injury to a person, the assigned investigator shall obtain contemporaneous photographs or videotapes of all injuries at the earliest practicable opportunity, both before and after any treatment, including cleansing of wounds.
7. In each misconduct investigation, WPD shall consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. WPD specifically shall not give an automatic preference for an officer's statement over a non-officer's statement, nor will WPD disregard a witness' statement merely because the witness has some connection to the complainant. WPD will make efforts to resolve material inconsistencies between witness statements.
8. During a misconduct investigation, WPD will continue to investigate all relevant police activity, including each use of force (i.e., not just the type of force complained about). The investigation shall also evaluate any searches or seizures that occurred during the incident. WPD shall not close an investigation simply because the complaint is withdrawn or the alleged victim is unwilling or unable to provide medical records or proof of injury or the complainant will not provide additional statements or written statements;

rather, WPD shall continue its investigation as necessary to determine whether the original allegation(s) can be resolved based on the information, evidence, and investigatory procedures and techniques available. In each investigation, the fact that a complainant pled guilty or was found guilty of an offense will not be considered as evidence of whether a WPD officer used or did not use a type of force, nor will it justify discontinuing the investigation.

9. For each allegation, the assigned investigator shall make a written recommended determination to the Division Commander as to whether: (1) the police action was in compliance with policy, training and legal standards, regardless of whether the complainant suffered harm; (2) the incident involved misconduct by any officer; (3) the use of different tactics should or could have been employed; (4) the incident indicates a need for additional training, counseling or other non-disciplinary corrective measures; and (5) the incident suggests that WPD should revise its policies, training, or tactics. WPD shall ensure that assigned investigators' reports contain a written recommended determination on each of these elements.
10. The misconduct-investigation policy shall require that WPD reach a separate investigative finding for each allegation. WPD shall ensure that a separate recommended investigative finding is reached and recorded in the assigned investigator's report for each allegation of employee misconduct. Each allegation in an investigation shall be resolved by making one of the following investigative findings:
 - a. "Unfounded," where the investigation determines, by a preponderance of the evidence, that no facts to support that the incident complained of actually occurred;
 - b. "Sustained," where the investigation determines, by a preponderance of the evidence, that the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper;
 - c. "Inconclusive," where the investigation determines, by a preponderance of the evidence, that there are insufficient facts to decide whether the alleged misconduct occurred; and
 - d. "Exonerated," where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate WPD policies, procedures, or training.
11. IA shall track and monitor chain-of-command investigations to ensure timely and thorough completion of investigations.
12. Within one week of completion of the IA's review of the investigative file, the Captain in command of the personnel at issue shall, in writing, either

accept or reject the recommended findings, or return the investigative report for further IA investigation, and shall set forth, in the investigative file, his or her basis for doing so unless referred to the Chief of Police for further action.

13. WPD shall keep all non-anonymous complainants informed periodically regarding the status of the complaint investigation. Within one week of the completion of the investigation, WPD shall notify, in writing, all non-anonymous complainants of the investigation's outcome, including an appropriate statement regarding whether any non-disciplinary corrective action or disciplinary action was taken.
14. Subject to the protection against self incrimination in criminal proceedings for statements compelled consistent with *Garrity v. New Jersey*, 385 U.S. 493 (1967), but without withholding non-compelled statements or compelled statements that may be used in a criminal proceeding against a person other than the compelled witness, WPD shall make a written referral of all allegations of criminal misconduct by WPD employees to the City, County, or Federal Prosecuting Attorney or other appropriate agency for possible criminal prosecution, pursuant to that prosecutor's own prosecutorial discretion, as soon as allegations of criminal conduct are reported to IA or are uncovered by the assigned investigator. WPD shall ensure the referral of all allegations of criminal conduct by WPD employees to the appropriate criminal prosecutor within one day of WPD's discovery of those allegations of criminal conduct. The misconduct-investigation policy shall continue to require the completion of an administrative investigation, irrespective of the initiation or outcome of criminal proceedings, with the appropriate coordination with the criminal matter.

V. MANAGEMENT AND SUPERVISION

A. Risk Management System

1. Within 150 days of the effective date of this Agreement, WPD shall develop and implement an early intervention system, i.e., a risk management system, to include either a computerized relational database or paper system for maintaining, integrating, and retrieving information necessary for supervision and management of WPD. WPD will regularly use this data to promote civil rights and best police practices; to manage risk and liability; and to evaluate the performance of WPD officers across all ranks, units, and shifts.
2. The risk management system shall collect and record the following information for each officer:
 - a. all uses of force;
 - b. the number of canisters of chemical spray used by officers;
 - c. all discharges of conductive energy devices;

- d. all injuries to prisoners;
 - e. all instances in which force is used and a subject is charged with "resisting arrest," "assault on a police officer," "disorderly conduct," or "obstruction of official business";
 - f. all firearm discharges, both on- and off-duty, including unintentional discharges, but excluding discharges in planned training exercises or hunting;
 - g. all complaints (and their dispositions);
 - h. all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City and its officers, or agents, resulting from WPD operations or the actions of WPD officers;
 - i. all incidents involving the pointing of a firearm at a person (if any such reporting is required);
 - j. all discipline and non-disciplinary corrective action taken against officers; and
 - k. all positive personnel reviews, commendations, awards, etc.;
3. The risk management system shall include, for the incidents included in the database, appropriate identifying information for each involved officer (e. g., name, badge number, shift and supervisor) and civilian (e.g., race, ethnicity or national origin, if available).
4. Within 210 days of the effective date of this Agreement, WPD shall prepare a protocol for using the risk management system.
5. At a minimum, the protocol for using the risk management system shall include the following provisions and elements:
- a. The protocol is comprised of the following components: data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation and audit.
 - b. The protocol will require the risk management system to analyze the data according to the following criteria: (i) number of incidents for each data category by individual officer and by all officers in a unit; (ii) average level of activity for each data category by individual officer and by all officers in a unit; and (iii) identification of patterns of activity for each data category by individual officer and by all officers in a unit.

- c. The protocol will require the system to generate reports on a monthly basis describing the data and data analysis and identifying individual and unit patterns.
 - d. The protocol will require that WPD Captains, Lieutenants, and supervisors review, on a regular basis but not less than quarterly, system reports, and evaluate individual officer, supervisor, and unit activity.
 - e. The protocol will require that WPD Captains, Lieutenants, and supervisors initiate intervention for individual officers, supervisors and for units based on appropriate activity and pattern assessment of the information contained in the risk management system.
 - f. The protocol will require that intervention options include discussion by Captains, Lieutenants, supervisors, and officers; counseling; training; and supervised, monitored, and documented action plans and strategies designed to correct inappropriate activity.
 - g. The protocol will specify that actions taken as a result of information from the risk management system be based on all relevant and appropriate information, including the nature of the officer's assignment, crime trends and crime problems, and not solely on the number or percentages of incidents in any category of information recorded in the risk management system.
 - h. The protocol will require that WPD Captains, Lieutenants, and supervisors promptly review the risk management system records of all officers recently transferred to their sections and units.
 - i. The protocol will require that WPD Captains, Lieutenants, and supervisors be evaluated on their ability to use the risk management system to enhance effectiveness and reduce risk.
 - j. The protocol will require that the risk management system be managed and administered by IA. IA will conduct quarterly audits of the risk management system to ensure that analysis and intervention are taken according to the process described above.
 - k. The protocol will require regular reviews, at no less than quarterly intervals, by appropriate managers of all relevant risk management system information to evaluate officer performance citywide, and to evaluate and make appropriate comparisons regarding the performance of all WPD units in order to identify any significant patterns or series of incidents.
6. WPD shall maintain all personally identifiable information about an officer included in the risk management system during the officer's employment

with WPD for at least five years. Information necessary for aggregate statistical analysis will be maintained indefinitely in the risk management system. WPD shall enter information into the risk management system in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner. WPD shall input new or changed information, if any new or changed information addressing the aforementioned risk management categories exists, at least on a monthly basis, if not sooner, subject to the confidentiality provisions of Section 149.43 of Ohio Revised Code and current collective bargaining agreements.

7. WPD shall either purchase the risk management system off-the-shelf (and customize the system, if necessary to meet the requirements of this Agreement), or WPD may develop and implement its own risk management system. In either case, WPD shall adhere to the following schedule:
 - a. Within 210 days of the effective date of this Agreement, WPD will submit a protocol for using a risk management system to DOJ for review and approval. WPD will share drafts of this document with DOJ to allow DOJ to become familiar with the document as it develops and to provide informal comments on it. WPD and DOJ will together seek to ensure that the protocol receives final approval within 30 days after it is presented for review and approval.
 - b. Within 270 days of the effective date of this Agreement, WPD shall prepare, for the review by and subject to the approval of DOJ, a plan for including appropriate fields and values of new and historical data into the risk management system (the "Data Input Plan"). The Data Input Plan will identify the data to be included and the means for inputting such data (direct entry or otherwise), the specific fields of information to be included, the past time periods for which information is to be included, the deadlines for inputting the data, and the responsibility for the input of the data. The Data Input Plan will include historical data that is up to date and complete in the risk management system. WPD and DOJ will together seek to ensure that the protocol receives final review and approval within 30 days after it is presented for approval.
 - c. Within 270 days of the effective date of this Agreement, subject to the review and approval of DOJ, WPD will issue a Request for Proposal ("RFP") for the design and implementation of the risk management system consistent with this Agreement, or WPD will set forth parameters for its own development and implementation of a risk management system constructed by WPD.
 - d. Within 360 days of the effective date of this Agreement, or later with the agreement of DOJ, WPD will select the contractor to design and implement the risk management system, or, if WPD has chosen to

construct its own risk management system, WPD will contract for all the necessary components for such an in-house risk management system by this time.

- e. Within 450 days of the effective date of this Agreement, WPD will have ready for testing a beta version of the risk management system consisting of: (i) any necessary hardware and operating systems, configured and integrated with WPD's existing automated systems; (ii) any necessary data base software installed and configured; (iii) data structures created, including interfaces to source data; and (iv) the use-of- force information system completed, including historic data. DOJ will have the opportunity to participate in testing the beta version using use-of-force data and test data created specifically for purposes of checking the risk management system.
 - f. Within 540 days of the effective date of this Agreement, the risk management system will be operational and fully implemented.
8. Prior to implementation of the new risk management system, WPD will continue to use existing databases and resources to the fullest extent possible, to identify patterns of conduct by WPD officers or groups of officers.
 9. Following the initial implementation of the risk management system, and as experience and the availability of new technology may warrant, WPD may propose to add, subtract, or modify data tables and fields, modify the list of documents scanned or electronically attached, and add, subtract, or modify standardized reports and queries. WPD shall submit all such proposals for review and approval by DOJ before implementation.

B. Oversight

1. WPD shall develop a protocol for utilizing the risk management system to conduct audits of all WPD officers' performance and management of risk. Each supervisor charged with conducting audits shall use the protocol. The protocol will establish a regular and fixed schedule to ensure that such audits occur with sufficient frequency, and cover all WPD shifts and units.

C. Discipline

1. The Chief of Police shall have just cause to dispense appropriate discipline when he/she determines, based on the outcome of an administrative investigation, that a preponderance of evidence demonstrates that a violation of WPD policy has occurred.
2. WPD will continue to follow the disciplinary process in place in the collective bargaining agreements ("CBAs"). WPD shall ensure that its disciplinary procedure penalize uses of excessive force, improper searches and seizures, discrimination, or dishonesty, and reflect the seriousness of

those infractions. WPD will impose appropriate punishment for violations when WPD believes the officer's misconduct exhibits a lack of fitness for duty. WPD shall submit this revised process for the review and approval of DOJ.

3. Absent exceptional circumstances, WPD will take disciplinary corrective action when an appropriate disciplinary matrix indicates that imposition of discipline should take place. In a case where discipline has been imposed on an officer, WPD must also consider whether non-disciplinary corrective action also is required. Whenever discipline is warranted, WPD shall impose discipline within the timeframe permitted by WPD's CBAs and applicable statute.

VI. TRAINING

A. Management Oversight

1. WPD shall continue to ensure that its use-of-force training complies with applicable laws and WPD policy. WPD may continue to seek technical assistance from DOJ on the content and conduct of WPD's use-of-force training.
2. WPD's director of training shall, consistent with applicable law and WPD policy:
 - a. ensure the effectiveness of all use-of-force training by implementation of competency-based written examinations covering the use-of-force policies and requiring a minimum passing score of 90% for all WPD officers;
 - b. develop and implement use-of-force training curricula;
 - c. select and train WPD officer trainers;
 - d. develop, implement, approve, and oversee all in-service training;
 - e. in conjunction with the Chief of Police, develop, implement, approve, and oversee a patrol division roll call protocol designed to effectively inform officers of relevant changes in policies and procedures;
 - f. establish procedures for evaluating all training curricula and procedures; and
 - g. conduct regular needs assessments to ensure that use-of-force training is responsive to the knowledge, skills, and abilities of the officers being trained.

3. WPD shall provide training consistent with WPD policy, law, and current best police practices, and will ensure that only mandated objectives and approved lesson plans are taught by instructors. WPD policy requires a minimum of 40 hours per calendar year of training for each sworn officer. WPD will continue to ensure that each officer receives training in use of force and other matters for a minimum of 40 hours per calendar year for each sworn officer. WPD will make best efforts to train each work shift as a team in their use-of- force training.
4. WPD will continue to utilize written records of lesson plans and other training materials, and continue to maintain records of training each officer has received.

B. Curriculum

1. The director of training shall review all use-of-force training and use-of-force policies on at least a semi-annual basis to ensure compliance with applicable laws and WPD policy. The director of training shall produce a written record of this review. The director of training will consult with the City's Law Department on any additions, changes and/or modifications regarding use-of-force training or policies to ensure compliance with applicable law.
2. WPD shall provide all recruits, officers, supervisors, and managers with training on use of force at least annually. Such training shall include and address the following topics:
 - a. WPD's use-of-force policy, as described in this Agreement;
 - b. proper use-of- force decision making;
 - c. WPD's use-of-force reporting requirements;
 - d. the Fourth Amendment and other constitutional requirements;
 - e. examples of scenarios faced by WPD officers that illustrate proper use-of-force decision making;
 - f. interactive exercises that emphasize proper use-of-force decision making;
 - g. de-escalation techniques that encourage officers to make arrests without using force, and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units, or delaying arrest may be the appropriate response to a situation even when the use of force would be legally justified;
 - h. threat assessment; and

- i. appropriate training on conflict management.

VII. MONITORING, REPORTING, AND IMPLEMENTATION

A. Monitoring by DOJ

1. DOJ will monitor the City's and WPD's compliance with this Agreement. At DOJ's sole discretion, DOJ may retain consultants to work with DOJ in monitoring this Agreement. The cost of any such consultants, if any, will be borne by DOJ. DOJ is not required to retain consultants to monitor this Agreement.
2. To monitor and report on WPD's implementation of this Agreement, the DOJ, at its sole discretion, may conduct compliance reviews to ensure that WPD has implemented and continues to implement all measures required by this Agreement. DOJ will provide reasonable notice to WPD prior to conducting any on-site compliance reviews.
3. Subject to the limitations set forth in this paragraph and applicable collective bargaining agreements with bargaining units that are not parties to this Agreement, WPD will reopen for further investigation any use-of-force or citizen complaint investigations that DOJ determines to be incomplete. DOJ will provide written recommendations for completing any investigation determined to be incomplete.
4. In monitoring the implementation of this Agreement, DOJ will maintain regular contact with the Chief of Police and the City's Law Department.
5. DOJ, including its consultants and agents shall have reasonable access to all WPD employees and facilities that DOJ reasonably deems necessary to monitor this Agreement. An attorney or representative from the City's Law Department may be present during interviews of WPD's and the City's control center personnel, defined as WPD officers of the rank of Captain or above, Public Safety Director, and Mayor. DOJ will cooperate with WPD to access people and facilities in a reasonable manner that, to the extent possible, minimizes interference with daily operations.
6. DOJ, including its consultants and agents, shall have reasonable access to all City and WPD documents -- including, but not limited to: criminal investigation files that have been closed by WPD, arrest reports, warrants, and warrant applications whether or not contained in open criminal investigation files -- for monitoring purposes only that DOJ reasonably deems necessary to monitor this Agreement, except any documents protected by the attorney-client privilege. Should the City or WPD decline to provide DOJ with access to a document based on attorney-client privilege, the City shall provide DOJ with a privilege log describing the document and the basis for the asserted privilege.

7. DOJ will provide the City and WPD with reasonable notice of a request for copies of documents. Upon such request, the City and WPD shall provide DOJ with copies (electronic, where readily available) of any documents that DOJ is entitled to under this Agreement. WPD shall bear the costs of producing and shipping such copies to DOJ.
8. All non-public information provided to DOJ, whether by the City or WPD, shall be maintained in a confidential manner, subject to requirements of law. Other than as expressly provided in this Agreement, this Agreement shall not be deemed a waiver of any privilege or right that the City or WPD may assert, including those recognized at common law or created by statute, rule or regulation, against any other person or entity with respect to the disclosure of any document.
9. The parties agree that the provision of documents or information pursuant to this Agreement does not constitute a public disclosure of such documents or information. The parties agree that any requests for information to the City or WPD pursuant to O.R.C. §149.43 shall be subject to Section I.B.13, herein.

B. DOJ Monitoring Reports

1. From time to time DOJ may produce written, public reports detailing the City's and WPD's compliance with and implementation of each substantive provision of this Agreement. These reports shall be written with due regard for the privacy interests of individual officers and the interest of the City and WPD in protecting against disclosure of non-public information. At least 16 business days before filing a report or publically producing such a report, DOJ will provide a copy of the draft to the City and WPD for comment. The City and WPD shall submit to DOJ their comments on the report, if any, within eight business days of receiving the draft report. DOJ will consider the City's and WPD's comments and make changes that DOJ deems appropriate, if any, before issuing the report.

C. WPD Reports and Records

1. During the term of this Agreement, the City's Law Department and WPD shall maintain all records, as applicable, necessary to document their compliance with the terms of this Agreement and all documents expressly required by this Agreement.

D. Implementation, Modification, and Termination

1. WPD shall implement immediately all provisions of this Agreement that involve the continuation of current WPD policies, procedures, and practices. The remaining provisions shall be implemented either by the specified implementation date or, for those provisions that have no specified

implementation date, as soon as is reasonably practicable and no later than 150 days after this Agreement's effective date.

2. In regard to any provision that provides for DOJ review and approval, decisions on approval or disapproval will be announced in a timely fashion provided that WPD action reasonably satisfies the requirements and standards set forth in the relevant provision(s).
3. The City, WPD, and DOJ may jointly stipulate to make changes, modifications, and amendments to this Agreement. The parties shall move jointly for Court approval of agreed upon changes within 30 days of such final agreement.
4. The Parties agree to defend the provisions of this Agreement. The Parties shall promptly notify each other of any court or administrative challenge to this Agreement of which the Party is aware. In the event any provision of this Agreement is challenged in any State of Ohio or local court, the Parties shall seek removal to a federal court.
5. The City and WPD agree to promptly notify DOJ if any term of this Agreement becomes subject to collective bargaining consultation and to consult with DOJ in a timely manner regarding the position WPD and/or the City take in any collective bargaining consultation connected with this Agreement.
6. To ensure that the provisions of this Agreement are properly and timely implemented, the Court shall retain jurisdiction of this action for all purposes during the lifetime of this Agreement and until such time as the City and WPD have fully and faithfully complied with all requirements of this Agreement and maintained such compliance for two years.
7. Either Party may seek to terminate this Agreement. In the case of termination sought by the City and WPD, prior to filing a motion to terminate, the City and WPD agree to notify DOJ in writing when the City and WPD have determined that they are in full and faithful compliance with this Agreement and that such compliance has been maintained for no less than two years. Thereafter, the Parties shall promptly confer as to the status of compliance. If, after a reasonable period of consultation and the completion of any evaluation that DOJ may wish to undertake, including tours of WPD's facilities, document review, and interviews with WPD and City personnel, the Parties cannot resolve any compliance issues, the City and WPD may file a motion to terminate this Agreement. If the City and WPD move for termination of this Agreement, DOJ will have an adequate time after the receipt of such motion to object to the motion. If DOJ does not object, the Court may grant the motion. If DOJ does make an objection, the Court shall hold a hearing on the motion and the burden shall be on the City and WPD to demonstrate by a preponderance of evidence that they have fully

and faithfully implemented all provisions of this Agreement and maintained such compliance for at least two years.

8. The United States acknowledges the good faith of the City and WPD in trying to address the remedial measures that are needed to promote police integrity and ensure constitutional policing in Warren, Ohio. The United States, however, reserves its right to seek enforcement of the provisions of this Agreement if it determines that the City and WPD have failed to fully comply with any provision of this Agreement. The United States agrees to consult with officials from the City and WPD before instituting enforcement proceedings.
9. This Agreement will be posted on the website of the Special Litigation Section of the Civil Rights Division of DOJ.

FOR THE UNITED STATES

ERIC HOLDER
Attorney General





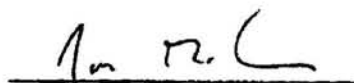
STEVEN M. DETTELBACH
United States Attorney
Northern District of Ohio



MICHELLE HEYER
Assistant United States Attorney
Office of the United States Attorney
United States Court House
801 West Superior Avenue, Suite 400
Cleveland, OH 44113-1852
(ph) (216) 622-3600 / (fax) (216) 522-2404
(email) michelle.heyer@usdoj.gov

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

ROY L. AUSTIN, JR.
Deputy Assistant Attorney General
Civil Rights Division


JONATHAN M. SMITH
Chief
Special Litigation Section
TIMOTHY D. MYGATT
Special Counsel
Special Litigation Section
R. JONAS GEISSLER
Senior Trial Attorney
Special Litigation Section
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Ave., NW
Washington, D.C. 20530
(ph) 202-514-6255 / (fax) 202-514-4883
(email) jonas.geissler@usdoj.gov


Attorneys for the United States

Dated: 1-12-12


FOR THE CITY OF WARREN


Michael O'Brien
Mayor


William "Doug" Franklin
Director of Service-Safety


James E. Sanders, Esq.
Assistant Law Director
City of Warren, Ohio
City Hall
391 Mahoning Ave., N.W.
Warren, OH 44483-4634
330-841-2605 (telephone)
330-841-2906 (facsimile)

FOR WPD:


Tim Bowers
Chief of Police
Warren Police Department
141 South Street, SE
Warren, OH 44481
330-394-2521 (telephone)
330-394-3987 (facsimile)

SO ORDERED this 26th day of January, 2012.

s/ Benita Y. Pearson
Judge, United States District Court for the
Northern District of Ohio