

MEDICAL TREATMENT FOR ARRESTEES



REPORT AND RECOMMENDATIONS OF THE POLICE COMPLAINTS BOARD

TO

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THE COUNCIL OF THE DISTRICT OF COLUMBIA, AND
CHIEF OF POLICE CATHY L. LANIER**

August 8, 2007

POLICE COMPLAINTS BOARD

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I. INTRODUCTION AND OVERVIEW

Over the years, the Office of Police Complaints (OPC) has received complaints in which arrestees with medical issues alleged that Metropolitan Police Department (MPD) officers failed to provide them with medical treatment, dissuaded or attempted to dissuade them from seeking medical treatment, or delayed medical treatment until after the arrestee had spent several hours in detention. The number of these complaints received by OPC is not large, but they do point to policies that are seriously outdated. Revising and updating MPD's existing policies will ensure that officers have current and appropriate guidance in dealing with these important situations, and will limit the potential for serious injuries to arrestees that may expose the city and the officers to significant liability.

One complainant, an arrestee who reportedly received a head injury while being transported to MPD's central cell block for processing, alleged that an MPD officer told him that it would take the complainant longer to get booked and ultimately released from police custody if he were taken to the hospital. Another complainant alleged that an MPD officer failed to obtain treatment for her when she had a diabetic attack in her cell, telling another officer that a diabetic member of his family did not behave in the same manner when experiencing a diabetic episode. A third complainant, who suffered from epilepsy, alleged that she was coerced into signing a form waiving her right to a hearing on the disorderly conduct charge for which she had been arrested. The waiver permitted an early release from police custody when the complainant requested to be transported to the hospital to receive anti-seizure medication.

The way police interact with people with disabilities or injuries is an important aspect of the District's overall commitment to professionalism in providing police service. Although MPD has some policies in place to address medical treatment for arrestees, these policies are vague, outdated, and in need of revision. In addition, the few training materials on the policies are very general, and fail to stress both the importance of transporting arrestees in need of medical treatment promptly, and the danger of officers making their own assessments of arrestees' medical conditions.

To ensure that MPD officers provide quality care and assistance to arrestees in need of medical treatment, the Police Complaints Board (PCB) recommends that MPD update and revise its medical treatment policies and procedures, provide comprehensive in-service and new recruit training on the updated and revised policies and procedures, and implement "best practices" to ensure prompt delivery of medical services to those in police custody.¹

¹ PCB, as the governing board of OPC, is conducting this review pursuant to D.C. Official Code § 5-1104(d), which states that PCB "shall, where appropriate, make recommendations to [the Mayor, the Council, and the Chief of Police] concerning those elements of management of the MPD affecting the incidence of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers." PCB would like to acknowledge the assistance of OPC's staff in preparing this report and accompanying recommendations. OPC's executive director, Philip K. Eure, and deputy director, Thomas E. Sharp, managed the project. OPC's special assistant, Nicole Porter, and *pro bono* attorney, Ali Ahmed, an associate with the Washington, D.C., law firm of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, performed valuable research and assisted in drafting the report.

II. CURRENT MPD POLICY AND TRAINING

MPD General Order 502.7, “Medical Treatment and Hospitalization of Prisoners,” states that when a person being “held in [MPD] confinement facilities . . . claim a need for medical treatment due to any injury or disease, [the person] shall be transported immediately to D.C. General Hospital for examination and treatment.” At a basic level, this General Order, which has been in effect since January 1975, is of limited value to officers because D.C. General Hospital has been closed since 2001 and the order does not identify the new medical facility or facilities to which arrestees should be transported. In addition, the order does not detail any changes in transportation or admittance procedures that have occurred as a result of D.C. General Hospital’s closure.²

General Order 502.7 further states that when a person is brought to a police station and appears to suffer from a recent injury, “the station clerk shall immediately advise the official then in command.” According to the General Order, prior to transporting the detainee to D.C. General Hospital, the station clerk will complete an MPD Form PD 313, Arrestee’s Injury/Illness Report, and forward an original copy of the form to MPD’s Identification and Records Division. The order also states that “upon being notified by the station clerk,” the commanding official will initiate an immediate investigation into how the injury was obtained, and enter this information into the appropriate section of the PD 313. Although the policy illustrates to MPD officers how arrestees with previously undiscovered injuries can obtain treatment, it provides officers with very little guidance on how to provide service to arrestees whose illnesses arise during the course of their confinement. In addition, the policy states that transportation of detainees to the hospital is not necessary unless the detainee requests to be taken or is “obviously in need of medical treatment.” This appears to allow officers some discretion in transporting arrestees to the hospital, and could be the provision that MPD officers rely on in discouraging arrestees with perceived minor injuries from seeking medical treatment.

The PD 313 allows MPD officers to document the date and time an arrestee was transported to the hospital. In 1993, the form was updated to include sections detailing whether the arrestee refused admission to the hospital or treatment, and how the arrestee and officer each perceived that the alleged injury or illness occurred.³ The 1993 revision also added a separate page upon which the supervisory officer can record the results of his or her investigation into how the injury was obtained. In 2003, the PD 313 was revised again to significantly improve the layout of the form. In addition, the new version of the form added spaces to enter investigation numbers assigned to the incident leading to the completion of the form and more clearly indicate how and when the arrestee received treatment.

MPD’s in-service and recruit training handbook has a small section devoted to the medical treatment and hospitalization of detainees. The information contained in the section

² On July 20, 2007, shortly after OPC provided a draft of this report to MPD for its review, MPD issued Teletype #07-055-07. The teletype stated that “it shall be the policy of the department to take prisoners to the nearest hospital when the prisoner is in need of assistance.” MPD also indicated that it is anticipating making other changes consistent with the recommendations in this report.

³ See MPD Special Order 93-28A (effective Dec. 3, 1993).

states that detainees who “claim a need for medical treatment” or who suffer from a recent injury “shall be immediately transported to an area hospital for examination and treatment.” The training information also mentions the updated PD 313 and omits any references to D.C. General Hospital. However, the section provides little additional guidance about the specific procedures that should be performed when detainees become ill shortly after arriving at the station. In addition, other than a sentence stating that a detainee should be transported to the nearest hospital for treatment if his or her condition is “grave,” the training information does not emphasize the importance of seeking medical treatment for sick or injured arrestees promptly, caution against officers conducting their own assessments of arrestees’ medical conditions, or state that officers should not discourage arrestees from seeking hospital care. Other than the general order, the PD 313 and the related special orders, and the information contained in the training handbook, PCB is unaware of any policies, procedures, or materials that specifically address how officers should assist arrestees in MPD custody who are in need of medical treatment.⁴

III. LEGAL FRAMEWORK REGARDING MEDICAL TREATMENT FOR ARRESTEES

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment. Courts have construed the Eighth Amendment as prohibiting inhumane conditions of confinement for sentenced inmates,⁵ and have accordingly held that state and local governments must provide inmates with adequate medical care and treatment. The United States Supreme Court has held that a government’s deliberate indifference to an inmate’s serious medical needs “constitutes ‘the unnecessary and wanton infliction of pain’ proscribed by the Eighth Amendment.”⁶

Although arrestees taken to police stations for processing are not sentenced inmates, but rather persons who have been charged with, but not convicted of, a crime, their rights are protected under the Fourteenth and Fifth Amendments, which ensure that they “retain at least those constitutional rights . . . enjoyed by convicted prisoners.”⁷ Arrestee lawsuits filed in the District and other jurisdictions that allege inadequate medical treatment under the Fifth or Fourteenth Amendments are held to the same “deliberate indifference” standard set forth in Eighth Amendment claims brought by sentenced inmates.⁸

⁴ In researching MPD’s policies, procedures, and materials regarding this issue, OPC contacted MPD’s Office of Organizational Development and its Institute of Police Science.

⁵ See, e.g., *Farmer v. Brennan*, 511 U.S. 825 (1994); *Helling v. McKinney*, 509 U.S. 25 (1993).

⁶ *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976)).

⁷ *Bell v. Wolfish*, 441 U.S. 520, 545 (1979); see also *O.K. v. Bush*, 344 F.Supp.2d 44, 61 n.23 (D.D.C. 2007) (“The standard of care for a pre-trial detainee who has not yet been convicted . . . is governed by the Due Process Clause of the Fifth and Fourteenth Amendments rather than by the Eighth Amendment.”).

⁸ See *Weaver v. Shadoan*, 340 F.3d 398, 410 (6th Cir. 2002) (“The Fourteenth Amendment’s Due Process Clause . . . affords pretrial detainees a right to adequate . . . medical treatment that is analogous to the Eighth Amendment rights of prisoners.”); *Gibson v. County of Washoe, Nevada*, 290 F.3d 1175, 1187 (9th Cir. 2002) (“With regard to medical needs, the due process clause imposes, at a minimum, the same duty the Eighth Amendment imposes”); *Powers-Bunce v. District of Columbia*, 2007 WL 915135 (D.D.C. 2007) (“[P]retrial

In order to make a showing of deliberate indifference, a plaintiff must demonstrate that “a reasonable request for medical treatment has been denied” and the denial “results in undue suffering or the threat of tangible residual injury.”⁹ A plaintiff must also show that at the time of the denial, he or she had a “serious medical need.” Courts have defined a serious medical need as “one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor’s attention.”¹⁰

A subset of arrestees may also allege discrimination on the basis of disability under the Americans with Disabilities Act (ADA), if the arrestee has a disability as defined by the ADA, the officer knew or should have known of the arrestee’s disability, and the officer either: (1) arrested the person for “legal conduct related to his disability”;¹¹ or (2) failed to reasonably accommodate the arrestee’s disability.¹²

IV. COMPLAINTS RECEIVED BY OPC

The following is a sampling of some of the allegations contained in complaints received by OPC. Such allegations are not proof of misconduct by MPD officers; however, they do point to possible issues regarding medical care for arrestees.

- The complainant, a young man, alleged that he had been arrested and was being transported to the central cellblock in the rear of a police van. The officer driving the van slammed on the brakes, causing the complainant’s head and neck to slam against the partition in the van. One of the officers asked if the complainant was injured and whether he needed to go to the hospital. The complainant declined, but the pain worsened once the van reached the cellblock. At that point, the complainant asked to go to the hospital. The officers responded that “if we take you to the hospital, then [it’s] going to take longer for you to get out.” The complainant told the officers that he still wanted to go to the hospital, but his request was denied. Once inside the cellblock, an officer working there asked the complainant if he needed any medical attention. The complainant replied that he did, and the officer told one of the transporting officers to take him to a hospital. The complainant was brought instead to a district station and left inside the van with a transporting officer. When the complainant informed the officer that his handcuffs were too tight and requested that they be loosened, the officer replied that his “handcuffs would have been off if [he] had not decided to go to the hospital.” After a sergeant came to the van and asked the complainant if he was

detainees have an independent due process right under the Fifth and Fourteenth Amendments to be free from prison officials’ ‘deliberate indifference’ to their substantial medical needs.”).

⁹ *Glover v. Jackson*, 1990 WL 179941 (D.D.C. 1990).

¹⁰ *Id.*, 1990 WL 179941 at *2 (quoting *Monmouth County Correctional Inst. Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d. Cir. 1987).

¹¹ *Lewis v. Truitt*, 960 F. Supp. 158, 178 (S.D. Ind. 1997).

¹² *See Gorman v. Barch*, 152 F.3d 907 (8th Cir. 1998) (wheelchair bound arrestee who received injuries when he was transported in police van without wheelchair restraints had cognizable claim under the ADA).

all right, the complainant again requested transportation to the hospital. The officers finally brought the complainant to the hospital.

- The complainant, a middle-aged diabetic, alleged that after being arrested by MPD officers for disorderly conduct, she informed the officers that she was taking medication for diabetes. According to the complainant, the officers assured her that she would receive her medication at the police station, but once the complainant was placed in a holding cell at the station, the officers failed to give her any medication. The complainant began to feel as though she was suffering from a diabetic attack and subsequently collapsed. However, instead of coming to her immediate aid, the officer who witnessed the occurrence allegedly insisted that the complainant was not having the attack because a member of the officer's family suffered from diabetes and did not behave in the same manner as the complainant when having a diabetic attack. According to the complainant, the officer removed her shoes from her feet and threw them at her back. The complainant also alleged that the officer placed his foot on her back. Approximately eight hours after being arrested, the complainant was transported to an area hospital to receive medical attention.
- The complainant, a young woman, was arrested for disorderly conduct by an MPD officer after questioning the officer's refusal to issue her a visitor's parking permit. Shortly after being arrested, the complainant, who has epilepsy, requested to be transported to the hospital to receive epileptic medication. The complainant alleged that she was told by an officer to sign a form waiving a right to a hearing, so that she could be released. The officer stated that it would be better for the complainant to sign the form and go home, instead of going through the burdensome process of being transported to the hospital. According to the complainant, shortly afterward, another officer approached her and also suggested that she sign the form and go home to take her medication. The complainant signed the form waiving her right to a trial and was released.

V. BEST PRACTICES

It is not clear why MPD officers sometimes refuse to provide arrestees with medical treatment, or delay providing treatment, but the allegations contained in some of the complaints received by OPC seem to suggest that these actions may stem from the officers' assessment of the arrestees' medical condition and the officers' determination as to whether treatment is warranted. If this is happening, such an assessment and determination are dangerous, not only because MPD officers are not trained health care or emergency medical professionals and, accordingly, may not recognize serious medical illnesses or injuries, but also because a "misdiagnosis" by MPD could result in an even more serious illness or injury, with resulting liability for the District and the officers. Indeed, municipalities have been sued due to the alleged failure of police officers to provide prompt medical treatment to those in their custody.

In January 2007, for example, a woman filed a wrongful death and personal injury lawsuit against two Kansas City police officers and the Kansas City police department, alleging that the officers failed to obtain medical treatment for her while she was pregnant in and their

custody, despite her assertions that she was bleeding and her repeated pleas for medical assistance.¹³ The officers stopped the woman after they saw her placing a fake temporary tag in the back window of her car.¹⁴ The officers arrested and handcuffed the woman after learning that she had outstanding warrants.¹⁵ During the incident, the woman repeatedly told the officers that she was three months pregnant, bleeding, and needed to go to the hospital, but the officers ignored her requests.¹⁶ Much of the conversation between the officers and the woman was captured on video by the dashboard camera mounted in the officers' police cruiser.¹⁷ Shortly after being released from police custody, the woman delivered a premature baby boy who died immediately after birth.¹⁸ In addition to seeking actual damages exceeding \$25,000, the lawsuit sought unspecified punitive damages "that would punish and deter such conduct in the future."¹⁹

While such a case may appear extreme, it clearly illustrates the risks and possible consequences of having non-health care professionals assess the severity of an arrestee's medical illness and the validity of the complaint. And the possibility of civil liability is a very real concern. As police accountability expert Merrick Bobb, president of the Police Assessment Resource Center, observes in a report evaluating the provision of medical care to inmates at the Los Angeles County Jail, "there is always the specter of litigation, be it by private plaintiffs or by the government."²⁰

One way to address this problem is to have a trained health care or emergency medical professional assess the complainant's medical condition and determine whether hospital transport is required. Such a practice was adopted by the Portland, Oregon, police department in January 2007 after a 42-year-old schizophrenic man was subjected to force by Portland police officers and died while in police custody. According to newspaper reports, in September 2006, Portland police officers arrested and handcuffed the man after seeing him shuffle on a street corner and possibly urinating behind a bush.²¹ During the arrest and handcuffing, the man suffered 16 broken ribs, one of which punctured his lung.²² The officers transported the man to the local county jail, where the jail nurse reportedly refused to accept him and requested that the

¹³ Christine Vendel, *Police Scandal, Action Recommended in High-Profile Case: Firing of 2 Officers Endorsed by Chief*, Kansas City Star, Feb. 21, 2007 at A1.

¹⁴ The Associated Press, *KC Police Board to Review Policy on Handling Injured People*, AP Alert – Kansas, Feb. 3, 2007.

¹⁵ *Id.*

¹⁶ *Id.*; Vendel, *supra* note 13.

¹⁷ The video is available at <http://www.msnbc.msn.com/id/16908366/>.

¹⁸ Christine Vendel, *Premature Birth, Woman Who Was Arrested Says She Sought Aid: Suit Blames Police for Death*, Kansas City Star, Jan. 27, 2007 at B2.

¹⁹ *Id.* (quoting lawsuit).

²⁰ Merrick J. Bobb et al., Los Angeles County Sheriff's Dep't. 9th Semiannual Rep. 4 (June 1998).

²¹ Maxine Berstein, *Files Detail Chasse's Final Days*, The Oregonian, November 10, 2006 at A1; Maxine Berstein, *Portland Shares Ideas To Protect Mentally Ill*, Jan. 8, 2007 at B1.

²² *Id.*

man be taken to the hospital.²³ The officers were transporting the man to the hospital in their police cruiser when he reportedly lost consciousness and died a short time later.²⁴ In February 2007, the man's family filed a civil rights and wrongful death lawsuit against the officers involved, the City of Portland, and several city and county agencies and officials, seeking unspecified economic and punitive damages.²⁵

Portland Police Directive 630.45, "Emergency Medical Custody Transports," prohibits officers from transporting subjects who appear to be seriously ill or injured. According to the policy, the definition of a serious illness or injury includes those people who have: (1) suffered, or claimed to have suffered, a seizure prior to or during a police interaction; (2) shortness of breath, wheezing, or any other respiratory difficulty; or (3) suffered, or claimed to have suffered, loss of consciousness; or suffered obvious signs of head trauma.²⁶ In cases where a subject appears to be seriously ill or injured, the officer must contact Emergency Medical Services (EMS) personnel, who will come to the scene and determine whether the subject requires medical treatment.²⁷ If the subject does require medical treatment, the EMS worker will assess whether the subject requires an ambulance transport to the hospital, or can be taken to the hospital by the police officer. The officer is required to accompany the subject to the hospital during an ambulance transport only if the EMS worker or the officer's supervisor requests it.²⁸

One advantage of MPD adopting a practice similar to Portland's is that it will prevent officers from having to do their own assessments of an arrestee's medical condition, reducing the amount of officer time spent completing paperwork, and, thus increasing the amount of hours that they are on the street conducting patrol activities. It will also minimize the possibility of lawsuits against the District and MPD officers for inadequate medical treatment of arrestees. The disadvantages are the costs and facilities issues associated with having 24-hour trained health care or emergency medical staff available full time or on call to conduct such an assessment. We understand that Chief Cathy Lanier has formed a working group to look into the feasibility of such a practice.²⁹

If having trained health care or emergency medical staff available at all times proves to be too costly, MPD could also consider contracting with a local medical school to have health care professionals available at some or all districts. A similar recommendation was made in the Los Angeles County Sheriff's Department 12th Semiannual Report. The report recommended that the Los Angeles County Jail, which is run by the Los Angeles County Sheriff's Department, cease transporting inmates to a local hospital for emergency, inpatient, and outpatient specialty

²³ *Id.*

²⁴ *Id.*

²⁵ *Chasse v. Humphreys*, No. 3:07-cv-00189 (D. Or. filed Feb. 8, 2007).

²⁶ Portland, Oregon Police Department Directive 630.45, Emergency Medical Transports (effective Jan. 30, 2007).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *See The Dispatch* (Metropolitan Police Department, Washington, DC, Mar. 29, 2007).

visits and instead contract with a local university medical school to allow inmates to be seen on the jail's grounds. According to the report, "[t]he logistical and other difficulties necessitated by the transportation of inmates and coordination between the [Los Angeles Sheriff's Department] and the [Los Angeles County/University of Southern California Hospital] is a source not only of cost but also of potential liability."³⁰

Although the San Francisco Police Department does not have health care professionals on staff to assess an arrestee's condition, it does have specific criteria for refusing to admit an arrestee to a district station holding cell. Section 3 of the San Francisco Police Department's Booking and Detention Manual states that the officer tasked with admitting and booking suspects into the station (the "station keeper") shall not put anyone in a cell who has cuts requiring stitching, medical problems, or is ill or injured.³¹ The manual goes on to state that certain medical conditions, such as diabetes or epilepsy or unresponsiveness, require special medical attention.³² Under the San Francisco Police Department's booking policy, seriously ill persons must be taken to the hospital by ambulance. Officers may transport persons with minor injuries via a police cruiser, however.³³

Regardless of whether the assessment or transport is done by a trained health care professional, EMS worker, or MPD officers, it must be made clear to arrestees that they can obtain medical treatment if needed. In a publication regarding holding facilities, the International Association of Chiefs of Police (IACP) states that "no one should be booked into a lockup or holding facility . . . if he . . . requests medical attention for a serious or potentially serious condition that appears to require immediate medical attention – whether or not that condition can be verified by agency personnel."³⁴ Furthermore, the Commission on Accreditation for Law Enforcement Agencies (CALEA) recommends that police departments post, in areas where arrestees are held, information that fully describes how arrestees can obtain medical treatment for illnesses or injuries.³⁵ According to CALEA, "it is important that detainees know that emergency health care services are available to them."³⁶

³⁰ Merrick J. Bobb et al., Los Angeles County Sheriff's Dep't. 9th Semiannual Rep. 52-53 (June 2000).

³¹ San Francisco Police Department Booking and Detention Manual, DM-12 10-11 (Nov. 2006).

³² *Id.* at 13.

³³ *Id.* at 18.

³⁴ IACP National Law Enforcement Policy Center, "Lockups and Holding Facilities," Concepts and Issues Paper (Oct. 1, 1996).

³⁵ *See* CALEA Standard 72.6.4, "Standards for Law Enforcement Agencies," CALEA (2006).

³⁶ *Id.*

VI. RECOMMENDATIONS

Based on its review of the information and materials described above, PCB recommends that MPD:

1. Issue revised and updated general orders that reflect the Department's current reliance on local medical facilities and that explicitly prohibit officers from discouraging arrestees to seek medical treatment. The revised and updated general order would address the procedures that officers should follow now that D.C. General Hospital is no longer the full service inpatient facility it was when MPD General Order 502.7 was issued. Like the policies of the Portland and San Francisco police departments, the updated general order should also list specific and objective criteria for the transportation of an arrestee to a medical facility. By setting forth in its general order a list of illnesses and injuries that require immediate medical attention, MPD would reduce the likelihood of officers making uninformed assessments of an arrestee's medical state, and would ensure that an arrestee who complains of, or appears to have, a serious injury or medical condition such as chest pains, seizures, or head wounds receives appropriate medical care.
2. Review the MPD Form PD 313, Arrestee's Injury/Illness Report, and make changes where appropriate. Although the PD 313 appears to be adequate, PCB recommends that MPD review the form and make changes to it based on whatever changes are made to General Order 502.7.
3. Provide enhanced in-service and new recruit training to MPD officers. Such training should focus on making sure that officers are aware that arrestees complaining of medical illness or injury should be treated immediately, and that officers do not have the discretion to refuse medical treatment for an arrestee who requests it. In addition, the training should prohibit the practice of dissuading arrestees from seeking medical care, and explicitly inform officers that under no circumstances can they fail to seek medical treatment for those arrestees who appear to have a serious injury or illness.
4. Establish "best practices" and quality assurance mechanisms that would ensure that MPD officers are providing arrestees with prompt access to medical care when needed. Such practices and mechanisms could include cross-checking use of force complaints where the citizen was arrested and alleged an injury with the corresponding PD 313. MPD should also conduct audits of the PD 313s on a regular basis to make sure that the form is being fully and accurately completed by the appropriate officer, that citizens have an opportunity to present on the form their account of how the injury was obtained, and that supervisors are adequately investigating the incident. Finally, MPD should post information at its processing stations explaining to arrestees the procedures for seeking medical treatment if the individual needs it.

5. Explore the feasibility of adopting alternative approaches to MPD's current method of providing medical treatment to arrestees. One possible approach to consider is having a trained health care or emergency medical professional on call, perhaps from the District's Fire and Emergency Medical Services, to assess an arrestee's medical condition and determine the proper mode of transport to a hospital where further medical care is warranted. Another idea would be to staff each district with trained health care or emergency medical professionals who can conduct assessments of arrestees around the clock. A third alternative would be to contract with a local university hospital to have trained health care professionals available and conducting assessments at some or all of the police districts.