

**THE CITY OF NEW YORK**

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**COMMISSION TO COMBAT POLICE CORRUPTION**

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**A FOLLOW-UP REVIEW OF  
THE NEW YORK CITY POLICE DEPARTMENT'S  
PERFORMANCE MONITORING UNIT**

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## I. INTRODUCTION

The New York City Police Department (“NYPD” or the “Department”) recognizes that some police officers will require additional supervision at some point in their careers. Officers who demonstrate behavior problems, fail to complete their assigned duties, or who commit acts of misconduct, require individualized attention so that attempts can be made to improve their performance, or have their employment terminated. The NYPD understands that there are several indicators that signal that prompt intervention may prevent an officer from engaging in further misconduct or continuing to perform his job duties poorly. The NYPD also recognizes that, in some cases, officers can be rehabilitated through greater supervision and attention and, with the Department’s assistance, can become productive members of the service. In response to the need to monitor officers because of sub-standard performance or allegations of misconduct, the NYPD created the Performance Monitoring Unit (“PMU”).

The Commission recognizes that officers who demonstrate the above behaviors may be susceptible to corruption. Therefore, in December of 2001, the Commission published an assessment of the practices and policies of PMU.<sup>1</sup> In that study, the Commission found that there were various areas where improvement was needed in order for PMU to achieve its goals and the Commission made a number of recommendations aimed at improving the overall effectiveness of PMU’s monitoring efforts. Those recommendations included preparing and collecting profiles<sup>2</sup> in a timely manner; regular

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<sup>1</sup> See the Commission’s report: *The New York City Police Department’s Non-IAB Proactive Integrity Programs* (December 2001) at pp. 54-115.

<sup>2</sup> Performance profiles are forms that are completed by the supervisor of an officer being monitored and are forwarded to PMU at specified intervals. Profiles contain information about the officer’s attendance, demeanor, arrest activity, summons activity, and disciplinary matters. These profiles are PMU’s primary

PMU supervisory reviews of case files; collecting paperwork regarding pending disciplinary matters; and increased interaction between PMU staff and a subject officer's command, the Internal Affairs Bureau ("IAB"), and the Department Advocate's Office ("DAO");<sup>3</sup> in appropriate circumstances. The Commission also proposed that PMU should make recommendations in conjunction with commanding officers to improve a monitored officer's performance and prevent further misconduct.

During the Commission's initial study of PMU, a new Commanding Officer was appointed to the unit, and she indicated that many of the Commission's recommendations would be implemented. Because the Commission believes that PMU performs an essential function within the Department, the Commission thought it important to review the progress PMU has made since the Commission's 2001 findings and recommendations.

The Commission provided a draft copy of this report to the Department on February 15, 2006. Included with the report was a letter advising the Department that the Commission intended to release the report in April and any comments the Department wanted included in the report needed to be provided by mid-March. The Commission has not received any response from the Department.

#### **A. PMU**

PMU is a unit of the Performance Analysis Section of the Employee Management Division ("EMD") and was created in order to provide and coordinate increased

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source of information about an officer's progress. For further discussion about profiles, *see* pp. 10-12, *infra*.

<sup>3</sup> DAO is the Department bureau responsible for prosecuting internal disciplinary cases.

supervision of officers who require such attention. PMU was initially created to monitor members of the service who received numerous force complaints.<sup>4</sup> Over the years, PMU's responsibilities have increased, and now PMU serves as a monitor for every member of the service that is in need of close supervision, whether that need arises from force allegations, poor performance, disciplinary troubles, or general acts of misconduct.<sup>5</sup> Once it is determined that a member of the service needs to be monitored, that officer is placed on a particular monitoring list.<sup>6</sup> A member of the service may be placed on monitoring for various reasons, such as consistently receiving negative performance evaluations, receiving charges and specifications,<sup>7</sup> or at the request of a commanding officer. Depending on the nature of an offense, an officer will be placed on a specific level of monitoring with various degrees of scrutiny and requirements that must be met before that officer can be removed from monitoring. When an officer is added to monitoring, PMU, the precinct, and other units in the Department each have specific responsibilities with respect to monitoring that officer's behavior. The main responsibilities are discussed below.

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<sup>4</sup> Force complaints consist of allegations that an officer used excessive or unnecessary physical force against another person.

<sup>5</sup> PMU also provides leadership programs to officers and has recently developed a domestic violence course for officers experiencing domestic issues at home.

<sup>6</sup> For the purposes of this report, we will refer to members of the service who are being monitored as "officers." PMU monitors members of the service from all ranks.

<sup>7</sup> Charges and specifications are used to commence a disciplinary proceeding with DAO. Charges designate the offenses that the officer is alleged to have committed while specifications describe the specific misconduct charged.

## **B. PMU Staffing**

PMU staffing has expanded incrementally over the last four years, although there has been a decrease in the number of supervisory personnel. Currently, PMU is staffed by a Commanding Officer, one lieutenant, nine sergeants, and three police officers. This represents an increase of three sergeants and a decrease of one lieutenant and one police officer over the last four years. The Commanding Officer of PMU directs all activities of the unit and, in conjunction with her staff, maintains contact with the officers on the monitoring lists and their commanders. In addition, she advises supervisors as to the requirements of the monitoring program. The Lieutenant supervises the sergeants in their efforts to collect profiles and ensure that monitored officers and commands are complying with the requirements of each particular monitoring program. The majority of monitoring duties are performed by sergeants. The sergeants are divided by borough and are responsible for keeping files current. Each sergeant must document every action taken on a case and whether any recommendations were made concerning a specific officer. As of August 2005, PMU was monitoring 203 officers on Level II and Level III Monitoring.

## **II. METHODOLOGY**

The Commission staff met with the Director of EMD, the Commanding Officer of PMU, and the Lieutenant from the PMU staff. PMU's Commanding Officer discussed the levels of monitoring and the attendant responsibilities and requirements of each level. PMU staff also spoke about their interactions with the various precincts and other units in

the Department. During this meeting, the changes that PMU has implemented since the Commission's 2001 report on this subject were also discussed.

After this meeting, the Commission reviewed the file of every officer that was on either Level II or Level III Monitoring<sup>8</sup> as of August 2005. This encompassed a total of 203 files. The Commission reviewed all the paperwork contained in the file, including, where available, the Central Personnel Index ("CPI"),<sup>9</sup> disciplinary records, medical history records, and the Civilian Complaint Review Board ("CCRB")<sup>10</sup> history of each officer. The Commission sought to evaluate how PMU carries out its tasks and whether there have been any changes since the Commission's prior report. Given its past comments and recommendations, the Commission focused on whether PMU prepared and collected profiles in a timely manner, performed regular supervisory reviews of case files, collected paperwork regarding disciplinary matters, and increased interaction between PMU staff, the officer's command, and other pertinent Department units. The Commission also attended a Performance Enhancement Training Course which many officers on Level II Monitoring are required to attend, as well as portions of a Tactical Communications Course given to those officers with a high number of CCRB complaints.

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<sup>8</sup> For a further discussion of the various levels of monitoring, *see* pp. 6-10, *infra*.

<sup>9</sup> The CPI describes allegations, disciplinary events, and background checks performed on the subject officer throughout his career.

<sup>10</sup> CCRB is an independent, non-police Mayoral Agency. It is empowered to receive, investigate, hear, make findings, and recommend action on complaints of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language by New York City Police Officers. Investigations are conducted by the CCRB's investigative staff of civilian employees. Dispositions are forwarded to the Police Commissioner and may be accompanied by recommendations for disciplinary measures.

### **III. THE DEPARTMENT'S MONITORING SYSTEM**

#### **A. Levels of Monitoring**

Members of the service can be placed on various levels of monitoring ranging from Level I, with the least supervision, to Level III, with the most intense supervision. While there is a Level I Monitoring system, PMU only maintains files for officers on Level II and III Monitoring.<sup>11</sup> Therefore, the Commission only reviewed Level II and Level III Monitoring. In addition to an increase in supervision, being placed on a monitoring list carries with it further consequences for the officer. The officer may be reassigned, have his tour changed, or he may be transferred. An officer under Level II and III Monitoring will generally not receive a promotion and may receive increased scrutiny from other units in the Department, such as IAB, the Medical Division,<sup>12</sup> and the Absence Control Unit ("ACU").<sup>13</sup> Officers on monitoring are generally not allowed to work the midnight tour. Other assignments may also be denied to them based on their monitoring status.

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<sup>11</sup> Level I Monitoring is performed only at the precinct level and is not entered into the officer's CPI or personnel file. For further information on Level I Monitoring, see the Commission's report: *The New York City Police Department's Non-IAB Proactive Integrity Programs* (December 2001) at pp. 60-62.

<sup>12</sup> The Medical Division is responsible for monitoring officers' sick leave and any physical disabilities, injuries, or serious illnesses that an officer sustains during the course of his career.

<sup>13</sup> One function of ACU is to investigate those officers who are suspected of abusing sick leave. It is Department policy that, absent permission, an officer absent from work due to sickness is expected to be at home. If the officer is found by ACU not to be home, disciplinary action can be taken. To monitor compliance with this policy, ACU, on occasion, telephones an officer's house when he calls in sick for an assigned tour of duty or travels to the subject officer's home to see if he is there. If ACU determines that an officer who is on sick leave is out of his residence without permission, charges and specifications can be brought against that officer or some other form of discipline can be imposed.

## **1. Level II Monitoring**

Level II Monitoring consists of three subcategories: Chronic Force Monitoring, Chronic Discipline Monitoring, and Substandard Performance Monitoring. Each subcategory is designed to address the issue that resulted in the officer's placement on monitoring. To be placed on Chronic Force Monitoring, an officer must have been found guilty of one set of charges and specifications involving force in the previous five years or been the subject of two or more substantiated force, abuse, discourtesy, or offensive language complaints in the previous four years. For an officer to be placed on Chronic Discipline Monitoring, he must have engaged in some form of serious misconduct resulting in a disciplinary penalty including the forfeiture of at least twenty vacation or suspension days. For Substandard Performance Monitoring, an officer must have received two below standards performance evaluations within three years, have continued substandard performance or behavior after a period of Level I Monitoring, or been referred by the First Deputy Commissioner, Chief of Personnel, or Borough Commander. In addition, an officer may be placed directly into Level II Monitoring if PMU or his<sup>14</sup> Commanding Officer makes a determination that the officer requires this level of increased supervision.

When an officer is placed in any category of Level II Monitoring, he will be interviewed not only by his Commanding Officer but also by a PMU supervisor. The PMU supervisor will inform the officer of the requirements of Level II Monitoring, including the length of the monitoring program, how he may be removed from monitoring, and the consequences of not improving his performance or addressing the underlying issues that caused the officer's placement on monitoring.

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<sup>14</sup> For the purposes of this report, the masculine pronoun will be used to refer to all officers.

Because Level II is designed to closely monitor and supervise an officer's behavior and activity, PMU requires Commanding Officers to prepare and submit quarterly performance profiles. Commanding Officers are required to complete performance profiles by including both positive and negative evaluations as well as citing specific instances of behavior and performance. In addition, an officer who has been placed in Level II Monitoring because he has received two below standards annual performance evaluations in a three year period is required to take a two-day Performance Enhancement Training Course. Commanding officers as well as PMU staff can order additional training in various areas if necessary.

A placement in Level II Monitoring is reflected on an officer's CPI and personnel file, but, unlike Level III, if an officer successfully completes Level II Monitoring, any reference to being placed on monitoring will later be removed from his CPI.

## **2. Level III Monitoring**

Level III Monitoring is the most intense form of monitoring and is divided into two subcategories: Dismissal Probation and Special Monitoring System ("SMS"). Both subcategories are reserved for officers who have: committed serious acts of misconduct; have not responded to either Level I or II Monitoring for persistently poor performance or low activity levels; have been subjected to multiple charges and specifications; or have long disciplinary histories.

When an officer has been found guilty of charges and specifications after either a trial or negotiated plea agreement, he may, depending on the seriousness of the misconduct, be placed on Dismissal Probation as part of the imposed penalty. Dismissal

Probation means that an officer is dismissed from the NYPD, but the dismissal is held in abeyance and the officer is placed on probation for one year. During that probationary period, if the officer receives any further allegations of misconduct, he may be dismissed from the NYPD without any additional due process proceedings. Officers who are placed on Dismissal Probation are automatically placed on Level III Monitoring for at least one year. During this time, if the officer is placed on restricted duty or modified assignment, calls in sick, attends jury duty, is suspended, or takes vacation or any other leave of absence, that period tolls the time the officer is on monitoring. Although an officer may have successfully completed his Dismissal Probation, he will remain on Level III Monitoring until removed by the Special Monitoring Committee.<sup>15</sup>

An officer is placed on Level III SMS for a variety of reasons. SMS is comprised of officers who have not positively responded to Level II Monitoring or other efforts to correct their substandard performance or behavior. In addition, members can be placed on SMS due to excessive force complaints or continuous poor discipline or performance. Typically, officers in SMS have long disciplinary histories including the receipt of multiple charges and specifications, administrative transfers, poor sick records, negative evaluations, and/or other disciplinary infractions. Officers are placed on Level III SMS for a minimum of 24 months and are not removed until improvement is noted.

Similar to Level II Monitoring, once an officer is placed on Level III Monitoring, a PMU supervisor meets with the officer and informs him of the requirements of Level III Monitoring. Since Level III Monitoring requires stricter scrutiny, commanding

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<sup>15</sup> The Special Monitoring Committee is a senior level Department committee whose primary function is to determine which officers should be placed in SMS. It is composed of the First Deputy Commissioner, the Chief of Personnel, the Chief of IAB, the Deputy Commissioner of Legal Matters, and the Chief of the Department.

officers who supervise these officers must complete monthly performance profiles and submit them at the end of each month.

#### **IV. FINDINGS**

In its previous report on this subject, the Commission identified various areas that PMU needed to improve in order to carry out its mission in a more proactive and effective manner. During that study, the Department appointed a new Commanding Officer to PMU who stated her intent was to implement many of the Commission's recommendations.<sup>16</sup> While there are some areas that could be further improved, the Commission now finds that overall PMU is monitoring problem officers in a more effective and timely manner than was observed in the Commission's past review. In the seven areas the Commission previously suggested needed enhancement, there has been a general improvement in five and a very slight decline in two.

##### **A. Performance Profiles**

PMU obtains the majority of its information about an officer's progress through performance profiles submitted by the officer's Command. The profiles, which are

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<sup>16</sup> The Commission's main recommendations included that performance profiles should be prepared and collected in a timely manner and paperwork regarding disciplinary matters that arise or are pending during the monitoring period should also be collected promptly. PMU should regularly update CPIs, medical history reports, and CCRB history reports. PMU should regularly obtain all annual and interim performance evaluations that are completed during the monitoring period. PMU should increase its contact with the monitored officer's Command to discuss the officer's progress while on monitoring. PMU should also maintain contact with investigative units when new allegations are reported and when allegations are pending during the monitoring period. PMU staff should document all actions taken in the case folder. There should be regular supervisory reviews of the case folder to ensure that all appropriate actions have been taken, and officers should not be permitted to linger on monitoring lists indefinitely. Finally, the Commission recommended that the Department explore available options to rectify the delay between the misconduct and the officer's placement on monitoring. In this review, the Commission saw some compliance by PMU with its prior recommendations. The degree of this compliance is discussed in the remainder of the text.

signed by the Commanding Officer, contain information about the officer's attendance, demeanor, arrest and summons activity, and other disciplinary matters. For officers on Level II Monitoring, the profiles are submitted quarterly; for those on Level III Monitoring, profiles are submitted every month.

In its previous study, the Commission noted that the performance profiles were not submitted to PMU in a timely manner. PMU often did not make efforts to obtain overdue profiles, and in those instances where the PMU Sergeant did attempt to obtain overdue profiles, those efforts were usually unsuccessful. The Commission's earlier study also reported that the forms contained little substantive information. In this study, the Commission found significant improvement in the timeliness of profiles and in the quality of information provided by the commands.

In this review, the vast majority of PMU files contained officer profiles that were dated and sent in a timely manner. In those cases where profiles were late, the files generally contained documentation of PMU's contact with the Command to obtain the overdue profiles. Further, the majority of the profiles contained substantive information about the officer's performance for that period. There were, however, a few cases where the Command sent the exact same comments on an officer's profile over a several month period. In these cases, PMU did not make an effort to contact the Command. While the Commission recognizes that it may be difficult for a Commanding Officer to vary his comments when an officer is performing well, when profile after profile contains the exact same statements, PMU may not be receiving up-to-date substantive information. In those cases, the Commission recommends that PMU directly contact the Command to speak with the subject officer's supervisors about his progress.

The Commission's previous study noted that PMU did not always make recommendations or confer with the Command when an officer's performance profile documented poor behavior or disciplinary problems. In this study, the Commission found that PMU still needs to improve in this area.

The majority of officers, or 80% of officers on Level II and Level III Monitoring, had very few profiles that evinced negative conduct. The remaining 20%, or 38 officers, had negative information on at least one quarter of their profiles. Despite their unfavorable profiles, PMU conferred with or made recommendations to the officer's Command for only half of those 38 officers. For PMU to be effective, the Commission believes that a higher frequency of contact between PMU and the officer's Command is necessary where the officer's profiles demonstrate conduct in need of correction. According to PMU's Commanding Officer, in the case of continued poor performance, one of PMU's responsibilities is to send an officer for additional training or make recommendations on ways to improve his performance.

## **B. Updated Records**

In its prior study, the Commission noted that PMU was not regularly updating the background paperwork of the officers being monitored, a significant number of files contained outdated CPI, CCRB, and medical history records. When the Commission spoke with the Commanding Officer of PMU for this study, she stated that records were updated every six months. However, the Commission found that the problem persists. Using the semi-annual standard, the Commission found that only 45% of files contained CPI, CCRB and medical records that had been updated at least every six months. The

Commission maintains that it is essential to have regularly updated records, as they are often the means by which PMU staff learns of a new event, such as a new CCRB complaint or IAB investigation, in the officer's history.

### **C. Supervisory Reviews**

During its first study, the Commission found that there were relatively little or no supervisory reviews of case files and there was no consistent manner in which files were reviewed. In fact, the Commission determined that 52% of the case files had no reviews at all and only 5% had regular reviews. When the Commission brought this issue to the Department's attention, PMU informed the Commission that it was going to implement a requirement that PMU supervisors review cases on a monthly basis. When speaking with the Commanding Officer of PMU for this report, the Commission was told that supervisors randomly review files on a quarterly basis.

In this study, the Commission found an improvement in the amount of cases that were reviewed at least once and an increase in the amount of case files that had regular reviews. Unlike the 2001 study, where 52% of the files had no supervisory reviews, this study revealed that only 17% of files did not have any supervisory reviews.<sup>17</sup> Further, 17% of files had quarterly reviews, which is an increase from the 2001 study where only 5% had regular reviews. The Commission recognizes that, at present, PMU is staffed by only two supervisors, including the Commanding Officer, which makes it more difficult to maintain regular supervisory reviews. The Commission does believe, however, that

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<sup>17</sup> Files were considered to be without supervisory review only when they were in excess of six months old and had not been reviewed at any time.

supervisory reviews perform a valuable function and PMU should strive to conduct regular reviews.

#### **D. Coordination with Other Department Units**

PMU monitors members of the service who have allegedly engaged in at least one act of misconduct or have already performed in a substandard manner. As such, it is incumbent on PMU staff to know when a monitored officer commits an additional act of misconduct, is excessively absent or late, or has a physical ailment that affects his performance. When PMU is aware of additional events in a monitored member's record as well as the status of any pending investigation, PMU can better formulate ways to improve a member's performance, decide whether a member should be removed from a monitoring list or be scrutinized at a higher level of monitoring. Once PMU is aware that an officer is the subject of an investigation by IAB, CCRB, the Integrity Control Officer ("ICO")<sup>18</sup> or any other Department unit, that event should be documented in the file and PMU should maintain regular contact with that particular investigative unit or agency in order to stay apprised of the status of the investigation and its outcome. Further, if an officer fails to improve despite placement on monitoring, or continues to engage in misconduct, PMU can coordinate with these units in an effort to expeditiously terminate his employment. According to the Commanding Officer of PMU, her staff often communicates with ACU and the Medical Division; however, they do not stay in contact

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<sup>18</sup> Every precinct has an ICO who is responsible for monitoring the overall integrity of his precinct. For more information regarding the role of the ICO, see the Commission's report, *The New York City Police Department: The Role and Utilization of the Integrity Control Officer* (December 1996).

with IAB unless there is a particular issue with an officer. As for DAO, PMU sergeants are supposed to confer with DAO over more onerous penalties.

In 2001, when the Commission reviewed PMU's coordination with other units and agencies, it found a general lack of contact and exchange of information. The Commission observed that PMU staff communicated with DAO staff in only 40% of the cases where the officer had a matter pending with DAO. In this study, the Commission observed that PMU staff contacted DAO in 50% of the cases where contact with DAO was appropriate.<sup>19</sup> Although there has been an improvement in this area, the Commission believes that PMU should increase its efforts to coordinate with DAO. Such coordination should include PMU input when DAO is deciding to propose a penalty for a monitored officer with a pending case. PMU should also ask DAO to expedite cases in appropriate circumstances as a means to deliver swifter penalties, including termination, to an officer.

The Commission also observed an improvement in PMU's communications with CCRB. Previously, PMU contacted CCRB in 5% of the cases; however, in the present study, PMU conferred with CCRB in 17% of the cases where contact was appropriate.<sup>20</sup> While the Commission observed an increase in PMU's coordination with CCRB, the Commission believes that there is a need for improved communication. The Commission believes that for PMU to perform its function it should not only be aware of CCRB allegations but also know and understand the details of every complaint CCRB receives

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<sup>19</sup> Contact was deemed appropriate in cases where the officer had charges and specifications pending with DAO, where charges were imminent but not yet drafted, or where a consultation was needed as a result of a new disciplinary infraction.

<sup>20</sup> Contact was deemed appropriate where there was a new CCRB allegation, a change in the status of a pending CCRB allegation, or a pending allegation for which PMU had no information or documentation about the underlying claim.

about a monitored officer, especially if the officer is being monitored for excessive force complaints.

The Commission saw a decrease in PMU's interactions with IAB from the previous study. In the 2001 report, the Commission noted that in 50% of cases where there was an IAB allegation pending, PMU and IAB were in contact concerning the officer. In this study, the Commission noted that PMU spoke with IAB in only 33% of the cases where contact was appropriate.<sup>21</sup> The Commission believes that PMU's Commanding Officer should receive regular updates about pending IAB cases where the subject officer is in the monitoring program. In addition, for the officers who fail to improve while on monitoring, the Commission believes PMU and IAB should coordinate efforts to conduct integrity tests on those officers.<sup>22</sup>

Finally, the Commission found a 10% increase in PMU's coordination with ACU from the previous rate of 6%.<sup>23</sup> Because ACU keeps track of when an officer is out sick or absent for other reasons, the Commission encourages PMU to increase its communications with ACU. For those officers who continue to present issues, coordination between PMU and ACU can lead to opportunities to further discipline those officers. For example, if an officer is out of residence without permission while on sick

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<sup>21</sup> Contact with IAB was deemed appropriate where there was a new or pending IAB investigation involving the subject officer.

<sup>22</sup> An integrity test is an artificial situation designed to test a subject officer's adherence to the law and Department guidelines. Undercover IAB officers create typical police encounter scenarios and then monitor the responding officer's behavior. Failure of an integrity test will result in charges and specifications being prepared against an officer. The Commanding Officer told Commission staff that PMU requests integrity tests from IAB; however, the Commission saw no evidence of this type of coordination in its file review.

<sup>23</sup> For the purposes of the statistic, the Commission considered files as requiring ACU contact where the officer had a history of chronic sick leave, was out chronic sick while on monitoring, demonstrated a pattern of sick leave abuse, or where the officer's Command deemed the officer's absence as suggestive of sick leave abuse.

leave, charges may be filed. These charges can then be used to impose more severe penalties, including termination where appropriate.

#### **E. Length of Time on Monitoring**

The Commission noted in its last report that with the exception of Dismissal Probation, there was no specific time period set for an officer to be monitored. As such, officers could linger on a monitoring list indefinitely without any improvement in performance or change in employment status. The Commission found that over one-third of the officers on a particular monitoring list had been on monitoring for at least two years. The Commission recommended that after a specified time in a monitoring program, PMU should make a decision as to the officer's future. Those who improved should be removed, and those who failed to correct their performance should not be allowed to remain on monitoring without further consequences. The Commission recommended that PMU create clear procedural and substantive requirements for monitoring. Since that recommendation, PMU has placed definite time limits on each level of monitoring. Now an officer is considered for removal from Level II after twelve to eighteen months. Similarly, an officer placed on Level III Monitoring may be removed after a minimum of 24 months for SMS and twelve months for Dismissal Probation if he no longer meets the criteria for Level III.

In this study, the Commission observed that PMU was generally not allowing officers to linger on monitoring lists for an unreasonable amount of time. Of the 203 officers on monitoring, the Commission found that only 24% of the officers were monitored longer than the minimum period of time. Of that 24%, PMU was unable to

remove most of those officers from a monitoring list for a number of valid reasons including, restricted duty for an injury, sick leave, or modified assignment. As such, the Commission found that there was significant improvement in PMU's review and determination about whether an officer required continued monitoring.

**F. Time Elapsed Between Offense and Placement on Dismissal Probation**

The Commission's sample included 87 members of the service who were on Level III Dismissal Probation Monitoring. This type of monitoring occurs after an officer pleads guilty to or is convicted of certain disciplinary violations. He is then placed on Dismissal Probation for one year as part of the ultimate penalty for that case. The length of time between the actual offense and placement on Dismissal Probation is dependent on a variety of factors, including the length of the investigation before charges are filed; the timing of charges and specifications; the amount of time required for plea negotiations; the duration of the trial; and the approval of the final penalty.

In its previous study, the Commission observed that there was often a substantial period of delay between the offense and the subject officer's placement on monitoring. The Commission questioned the utility of monitoring when it starts several years after the triggering event. An officer who requires monitoring should not be able to avoid monitoring for a lengthy period of time; nor should an officer who has conformed his behavior to Department standards in the interval between the incident and his placement on monitoring, be subject to monitoring that he does not require. In the 2005 sample, the Commission noted that the majority of officers on Dismissal Probation were placed there well over one year from the date of the offense for which they were being monitored. Of

83 officers on Dismissal Probation,<sup>24</sup> 35% began Dismissal Probation more than two years after the offense. Twenty-seven percent were placed on Dismissal Probation between one and a half to two years after the offense, and for 25%, monitoring commenced between one and one and a half years from the date of the offense. Only 13% of the officers on Dismissal Probation were placed there within one year of the date of the incident that triggered the penalty. The Commission recognizes that there is some measure of delay inherent in the disciplinary system; however, it is important for officers who are being monitored as a result of their conduct to begin that monitoring while that conduct is fairly recent.<sup>25</sup>

## V. CONCLUSION

The Commission has observed an overall improvement in PMU's efforts to execute its responsibilities. During the pendency of the 2001 study, the new Commanding Officer committed to making various improvements in PMU, including better coordination with outside units, improved documentation of all contacts with other units, and a review of updated disciplinary records. The Commission commends the improvement observed in these areas. However, the Commission believes that continued improvement in these areas could be achieved. The Commission recommends that PMU more proactively seek out information about monitored officers from other Department units and CCRB. PMU should also work jointly with these units to recommend ways in

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<sup>24</sup> The Commission examined the files of 87 officers on Dismissal Probation. However, for four of those files, the date of the offense was not available.

<sup>25</sup> As noted on p. 10, fn. 16, *supra*, in its original report, the Commission discussed this issue and recommended that the Department explore options for decreasing the time between the misconduct and the commencement of the officer's monitoring period. In this review, the Commission observed that this was still an issue. This delay, however, is not attributable to PMU but rather is a product of the investigation of allegations and the Department's disciplinary system.

which an officer's performance could be enhanced. Finally, PMU should have greater interaction with DAO and provide substantive feedback. A stronger PMU can significantly enhance the Department's efforts to improve the performance of its officers and help direct the resources of the Department to those most in need of additional supervision.