

Summary – Public Safety Committee Meeting

June 26, 2018

Committee Members Present:

Sharon Bulova (Chairman)
Penelope Gross, Mason District (Vice Chairman)
John Cook, Braddock District (Committee Chair)
John Foust, Dranesville District
Pat Herrity, Springfield District
Catherine Hudgins, Hunter Mill District
Kathy Smith, Sully District
Linda Smyth, Providence District
Daniel Storck, Mount Vernon District

Approved April 3, 2018, Public Safety Committee Meeting Summary, and the June 26, 2018, Meeting Agenda and Meeting Materials:

<https://www.fairfaxcounty.gov/boardofsupervisors/board-public-safety-committee-meeting-june-26-2018>

Link to the June 26, 2018, Public Safety Committee Meeting video:

http://video.fairfaxcounty.gov/MediaPlayer.php?view_id=9&clip_id=1098

The meeting was called to order at 9:34 a.m.

The April 3, 2018, Public Safety Committee meeting summary was approved.

The first topic on the agenda was the 2017 Annual Report by the Independent Police Auditor and Civilian Review Panel.

- Supervisor Cook reiterated the goal to have the Independent Police Auditor and the Civilian Review Panel present their reports on an annual basis, allowing for questions and discussion by the Public Safety Committee.
- Independent Police Auditor Richard Schott stated the Office of Independent Police Auditor officially opened on April 2017, but the first incident it reviewed was an officer-involved shooting in Herndon, which occurred on January 2017. Mr. Schott stressed that during the first incident the Fairfax County Police Department (FCPD) was still adhering to a prior General Order on Use of Force. The new General Order on Use of Force became effective on March 31, 2017, and all subsequent incidents fall under its provisions.

- Mr. Schott stated the January 2017 incident was not included in the 2017 Annual Report because the review was not published until January 2018. The one incident review included in the 2017 Annual Report involved the use of an Electronic Control Weapon (ECW), completed and posted on December 29, 2017. Four subsequent incident reviews, also not included in the 2017 Annual Report, were published and posted to date in 2018.
- Mr. Schott explained that much of his early tenure was spent organizing the newly formed Office of Independent Police Auditor, handling logistical issues, and creating a website for both the Office of Independent Police Auditor and Civilian Review Panel. The Office of the Independent Police Auditor is also responsible for providing administrative and logistical support to the Civilian Review Panel, and Mr. Schott works closely with the Panel by attending meetings and trainings.
- Mr. Schott stated the 2017 Annual Report also contains two recommendations on the FCPD's Use of Force. The first recommendation involves an assessment of whether a use of force was objectively reasonable in a non-criminal context, to include, for example, cases involving persons suffering a mental health crisis. His recommendations are based on a Sixth Circuit Court of Appeals' opinion, moving beyond just the traditional *Graham V. Connor* standards. He recommends three additional factors be considered in non-criminal cases if force has to be used to determine if it was objectively reasonable. The three factors include whether the person was experiencing a medical or mental crisis, whether some degree of force was reasonably necessary to ameliorate the threat, and whether the force used was reasonably necessary under the circumstances. Mr. Schott has presented the recommendation to Colonel Edwin Roessler Jr., Chief of Police, for review.
- The second recommendation is for the FCPD to consider reverting from the current "Less-Lethal" term in department use of force policy back to the former term "Non-deadly" for a more accurate description of the intended purpose for some police equipment or use of force methods. The general debate in policing nationally has been whether to term something based on what is designed to do versus what the potential consequences are in rare cases, to include potentially causing death or serious injury. Mr. Schott recognizes his recommendation may be controversial and that it counters a recommendation made by the Police Executive Research Forum (PERF) in a study for the FCPD, and adopted, but he explained his reasoning. He stated that the focus should be on training, and with an acknowledgement that any "non-deadly" force can sometimes cause death or serious injury and deadly force is not designed to cause death or serious injury as it applies to law enforcement.
- Mr. Schott also highlighted the Independent Police Auditor's website for the Board or public to obtain more information and to access individual incident reviews, findings, or the status of any reviews.

- Supervisor Cook inquired about an estimated completion date for Mr. Schott's review on the potential racial disparity in Use of Force by the FCPD. Mr. Schott anticipates having the review completed by mid-to-late July 2018.
- Former Civilian Review Panel Chairman Adrian Steel introduced current Panel members present. He first briefly explained the Panel's establishment and authority. The Civilian Review Panel's Bylaws and Code of Ethics were drafted, and approved by the Board on July 11, 2017.
- Mr. Steel appreciates the FCPD's orientation training as the Civilian Review Panel (Panel) began, for topics such as its operations and General Orders. Mr. Steel thanked the FCPD's continuing effort in maintaining liaisons between FCPD and the Panel, which allows for Panel members to know who to contact for assistance or questions, and to have some level of comfort. Mr. Steel advised Panel members have also participated in police ride-alongs and conducted mock reviews of FCPD investigations to help them learn and prepare.
- Mr. Steel spoke of public outreach and presentations the Panel has conducted at various community meetings or forums. The Panel also held two joint public forums with the Independent Police Auditor. He outlined some of the consistent questions they received, to include, for example, whether the Panel has any authority over the Fairfax County Sheriff's Office or Immigration Customs Enforcement, how minorities can be assured the Panel will be sensitive to their concerns, why does the Panel not have the power to investigate, and whether the Panel may provide policy recommendations to FCPD. A more complete list of questions received from the public and answers provided by Panel members are included in the Panel's Annual Report.
- The Panel meets routinely with the Independent Police Auditor to discuss and understand the Auditor's recommendation and to relay any community concerns.
- Mr. Steel stated the Panel had received five initial complaints in its first twelve months. Two pre-dated the Panel's jurisdiction, two were related to an arrest made during a October 2017 parade in Annandale, and the last one has been referred to the FCPD for an internal investigation.
- The Panel has conducted two reviews of complaints, and in each case upheld the FCPD actions.
- Current Panel Chairman Rhonda VanLowe stated they had received a higher number of complaints during the initial summer period this year. She explained the Panel has been building process for reviewing complaints, and highlighted they have established a new method in which Panel members are assigned as "review liaisons" to help track any complaint forwarded to the FCPD for investigation, ensure it is being investigated appropriately, and if a review is requested, help shepherd it through the Panel process,

including any seeking any initial legal review, if needed, or any additional information from the FCPD. Chairman VanLowe believes this process has worked well.

- Chairman VanLowe stated the Panel is also in the process of reviewing the Panel's existing bylaws. The Panel has had several vigorous discussions on how their work should be conducted, and the scope of the Panel's authority. Chairman VanLowe expressed this is an ever-changing and ongoing process.
- Chairman VanLowe also emphasized additional community outreach would be a focus for the remainder of the year.
- Supervisor Cook thanked the Panel and the Auditor for all the work done and progress made. He said there had been no guidelines, as the County's processes are unique, and appreciates all that has been done to ensure a thorough complaint review process.
- Supervisor Cook appreciated Mr. Schott's report design and policy recommendations, and reiterated that the committee did not want the Police Auditor to supersede the police chief, but rather, as was being done, to review investigations and make recommendations for consideration and discussion. Supervisor Cook supports Mr. Schott's recommendations, but asked Chief Roessler to first provide the committee with a memorandum on his thoughts regarding the recommendations, and that any requiring further discussion could then be brought back at a later committee meeting.
- Chairman Sharon Bulova echoed Supervisor Cook's appreciation for the work by both the Auditor and the Panel. She too likes the format and thoroughness of the Auditor's reports and the thoroughness of each review.
- Supervisor Pat Herrity also appreciated the Auditor's review reports and recommendations, but still believes the Panel is a solution looking for a problem.
- Supervisor Catherine Hudgins inquired of the Panel how it is carrying out its community outreach efforts to help address concerns or answer questions. Chairman VanLowe stated they are exploring every opportunity, and discussed efforts in creating public service announcements, appearing on local media programming, and creating contacts with local community leaders. With the addition of the new position in the Auditor's office the goal is to expand that outreach. She also highlighted an information brochure regarding the Panel that has been translated into multiple languages to increase awareness efforts. Supervisor Hudgins stated that too often the community has opinions towards public safety that are in some cases, unfortunately, not always factually based. She said that by going out into the community it would create a larger framework for discussion to afford the community opportunities to better understand.
- Supervisor John Foust congratulated both the Auditor and Panel on their progress. He inquired of Mr. Schott about the study on potential racial disparities in the Use of Force reporting, and whether a consultant was being used for the review. Supervisor Cook

advised a vendor or consultant was not being retained by the Auditor for his review, but rather the FCPD for the one they plan to conduct. Chief Roessler elaborated the broad scope for the study he envisions, that the FCPD is working through the procurement process, and that they hope to find an academic institution to conduct the review.

- Supervisor Cook inquired of Chief Roessler if he wished to provide any initial perspective on the Auditor's recommendations. Chief Roessler reiterated that the three additional factors recommended by Mr. Schott be considered in non-criminal cases to determine if force used was objectively reasonable are already incorporated in the new Use of Force General Order, but he will provide a memorandum with further details. As to the recommendation regarding the "less-lethal" term he stated that 11 national and international law enforcement organizations, and accreditation agencies, have accepted and recognize the term, and it is becoming standard within the law enforcement profession. While Chief Roessler understands Mr. Schott's position, he believes the County could be exposed to a greater degree of liability if the term reverts back to "non-deadly."
- Supervisor Cook again requested that Chief Roessler provide a written response to the Board for each of the Auditor's recommendations.

The second topic on the agenda was is the discussion of enabling legislation for firearms and County code considerations.

- At the April 10, 2018, Board meeting the County Attorney's Office and the FCPD were directed to research the adoption of any firearms safety authority granted to localities through current enabling legislation, but not yet adopted by Fairfax County, to include specifically Virginia code section § 15.2-915.2, Regulation of transportation of a loaded rifle or shotgun.
- § 15.2-915.2 allows counties to adopt an ordinance making it unlawful for any person to transport, possess or carry a loaded shotgun or loaded rifle in any vehicle on a public street, road or highway within the county, punishable by a fine. Second Lieutenant Mohammad Oluwa stated § 15.2-915.2 had been brought before the Board during the 1990s; however, the Board did not move forward with any County ordinance.
- Second Lieutenant Oluwa provided a list of law enforcement agencies in the Commonwealth that had adopted a local ordinance based on § 15.2-915.2, and the number of arrests made. The data highlighted relatively few arrests made over the years in the multiple departments.
- Second Lieutenant Oluwa discussed the pros and cons for adoption of an ordinance under § 15.2-915.2. Assistant County Attorney (ACA) John Burton then presented two options for a draft ordinance, with minor language differences, for committee discussion and consideration.

- ACA Burton then presented another current Virginia code section, § 15.2-1209.1, which allows counties to regulate carrying of loaded firearms on public highways and a draft ordinance for committee discussion and consideration. This code section is relative to hunting, which is limited in the County.
- Finally, ACA Burton highlighted Virginia code section § 15.2-916, Prohibiting shooting of compound bows, slingbows, arrowguns, crossbows, longbows, and recurve bows, which was amended with several additions effective July 1, 2018. A current corresponding County code, 6-4-1, was previously adopted, but requires amendment and ACA Burton provided a proposed draft amendment for 6-4-1.
- Supervisor Cook reiterated that the draft ordinances based on § 15.2-915.2 are narrow as they only pertain to the transportation of shotguns and rifles, and have no effect on conceal carry. Supervisor Cook would like outreach efforts to better gauge whether there is any opposition to this effort.
- Chairman Bulova stated if it is best practice to not transport a loaded shotgun or rifle the adoption of an ordinance under § 15.2-915.2 would make sense, and reminded the committee members of the local General Assembly delegation have asked the Board why local ordinances had not been adopted based on the authority provided.
- Supervisor Foust stated support for adoption of the proposed ordinances, highlighting both gun safety and the danger of arrowguns and crossbows. He reiterated that the Board could not keep asking the General Assembly for enabling firearms legislation but ignore existing enabling legislation.
- Supervisor Daniel Storck inquired if Chief Roessler had any concerns regarding the proposed ordinances. Chief Roessler responded he has no concerns, but that any adopted ordinances would require additional officer training and community education. Supervisor Storck supports adoption as a best practice.
- Supervisor Herrity stated the Board should focus on issues other than firearms regulations, and that the focus should instead be on enhanced gun safety education.
- Supervisor Smyth highlighted the loopholes in the ordinance and concerns as to its enforceability as reasons why this legislation had been passed over in the past. She stated the County does not have a history of this issue as it is hunting related, and questioned the reasoning for adopting an ordinance and whether it would be effective. She too suggested a focus on gun safety education might be a better option.
- Supervisor Hudgins similarly stated that public awareness and gun safety education might be more beneficial than an ordinance.
- Supervisor Cook advised the committee appeared to have a difference of opinions on whether or not to bring the draft ordinances before the Board for approval of a public

hearing. Chairman Bulova suggested that the committee did not have to necessarily choose between approving a public hearing for the adoption of any ordinances at a later Board meeting and providing public gun safety awareness training, but could choose to do both.

- Supervisor Foust inquired about FCPD data on the number of firearms reported stolen from vehicles. Second Lieutenant Oluwa responded he did not have the data with him, but that he could obtain it through crime analysts. Supervisor Foust ask that it be provided as he assumes that there are incidents of firearms being stolen from vehicles and it would be preferable that they not be loaded.
- Supervisor Cook stated the majority of the committee had shown interest in a Board item being brought before the Board on July 31, 2018, to seek authorization to advertise a public hearing and staff was so directed. Chairman Bulova also pointed out two Board members were unable to attend this committee meeting and provide their input.

The final topic on the agenda was a presentation of the highlights of the FCPD 2017 Annual Report.

- Chief Roessler gave a brief overview, stating staff would present portions of the report to highlight calls for service, the distribution of staffing, use of force reporting, crime reporting systems, closure rates for investigations of major crimes, the Communities of Trust and the Alternative Accountability Program (AAP).
- Chief Roessler presented the authorized staffing in all district stations. He expressed appreciation for upcoming new district station (South County) and stated FCPD's goal to decrease the size of each district boundary to improve engagement with the community.
- Assistant Director Camie King showed crime comparison of Fairfax County to the Commonwealth of Virginia. Fairfax County had notable decrease in weapons violations and motor vehicle thefts between 2016 and 2017. However, the County and the state have seen a notable increase in narcotics violations during the same timeframe.
- Assistant Director King stated there was an increase in the number of calls for service when comparing 2017 to 2016, but the number of Use of Force incidents have decreased. Assistant Director King highlighted that an overwhelming majority of Use of Force incidents had been generated internally per policy and procedure requirements. FCPD continues to focus efforts on scenario based training in de-escalation, critical decision-making, and crisis intervention training.
- Captain Chantel Cochrane presented Major Crimes Bureau's closure rates and noted that closure rates are influenced by proactive investigative efforts, the use of advanced modern technology, and community trust and engagement. The department's use of the National Incident Based Reporting System (NIBRS) has been extremely helpful in connecting crimes, especially those involving repeat offenders.

- Captain Tonny Kim highlighted the FCPD's outreach efforts with youths through public safety agencies partnership. In 2017, FCPD and the Fire and Rescue Department partnered to focus outreach with elementary school-aged youth through programs such as Public Safety Day, Community Reading program, backpack distribution programs, and Back-to-School initiatives.
- Captain Kim presented Alternative Accountability Program (AAP) statistics, to include the number of youth referred, number of cases referred, number of conferences, and number of youth completing the program.
- Chief Roessler stated the 2017 Annual Report represents the Department's mission and vision to preserve the sanctity of human life, community engagement, and keeping pace with urbanization.
- Supervisor Penny Gross asked for clarification that the majority of death investigations by the Major Crimes Bureau are for unattended deaths or other causes, not homicides. Captain Cochrane responded that Supervisor Gross was correct, and she and Chief Roessler discussed the various types of death investigations conducted include deaths from natural causes, suicide, and drug overdoses. Supervisor Gross wanted to ensure this was clear to the community and not leave an impression that violent crime was high. The FCPD will provide a detailed breakdown of the types of death investigations and data for each.
- Supervisor Herrity stated the police data and closure rates are good, crediting not only community engagement but the quality of the officers and detectives who serve. He understands recruitment is difficult, but wants to ensure the department maintain high standards, and suggested future committee time be set aside to discuss recruitment and standards in the future.
- Supervisor Smyth inquired about the new helicopter facility, the need for two police helicopters, and the total cost. Supervisor Smyth advised questions regarding this issue had come up during her community budget meeting and believes it will be brought up again. Supervisor Cook recommended a budget Q&A be sent to the Board as a response.
- Supervisor Cook noted the July 17 Public Safety Committee meeting will be presentations by the Fairfax County Court Chief Judges and Court Services Unit directors.

Meeting adjourned at 11:01 a.m.