

Summary – Public Safety Committee Meeting

January 29, 2019

Committee Members Present:

Sharon Bulova, Chairman At-Large
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
Jeff C. McKay, Lee District
Kathy Smith, Sully District
Linda Smyth, Providence District
Daniel Storck, Mount Vernon District

The meeting agenda and materials are available at the following link:

<https://www.fairfaxcounty.gov/boardofsupervisors/board-supervisors-public-safety-committee-meeting-jan-29-2019>

Link to this Public Safety Committee meeting video:

http://video.fairfaxcounty.gov/MediaPlayer.php?view_id=9&clip_id=1261

The meeting was called to order at 9:33 a.m.

The meeting summary for the November 27, 2018, Public Safety Committee meeting was approved.

Before the agenda items, Supervisor Cook took an opportunity to share information from the previous evening's (Jan. 28, 2019) quarterly Diversion First Stakeholder meeting about "super utilizers," individuals who call for services frequently, sometimes multiple times in one day, and who often may have other underlying issues to be addressed.

- In 2018, 35 individuals alone accounted for over 2,300 calls to the 911 center.
- Of those, roughly 1,100 resulted in EMS or police dispatches.
- Indicates the critical need to identify and treat the root causes to both help the individuals and to reduce the calls for service.

He further noted that once proper treatment and resources were determined and provided for one small test subgroup there was a 71% decrease in calls for service by them. Although a small sample size it highlights the potential of the efforts underway.

Supervisor Cook also spoke about the benefits and potential of the Supervised Release docket in similarly identifying and addressing root causes to benefit individuals and to reduce recidivism.

As part of an ongoing series by Supervisor Cook to highlight other partner agencies in public safety and the criminal justice system the first formal topic on the agenda was a presentation from the Office of the Public Defender for an overview of her office, its responsibilities, and current issues and challenges.

- Chief Public Defender (CPD) Dawn Butorac shared her background and then provided the legal background of the Public Defender's Office, stating that the purpose of the office's existence dates to the landmark U.S. Supreme Court decision in Gideon v. Wainwright (1963).
- CPD Butorac stated that, statistically, the Public Defender's Office gets better results for defendants than court-appointed attorneys.
- She discussed that the Public Defender's Office was created by statute, specifically 19.2-163.4., and established in 1987. The Public Defender's Office currently has 21 attorneys, three investigators, two mitigation specialists, and six support staff. The 21 attorneys handle over 9,000 cases per year.
- The Public Defender's Office does not handle capital murder offenses, as the Commonwealth has a capital defender unit for the Northern Virginia area.
- The majority of the Public Defender's Office's budget is provided by the Commonwealth, but the County does provide a salary supplement.
- CPD Butorac spoke about mental health diversion, the role of her office, and that they have long recognized the need for diversion programs. The Public Defender's Office is involved in steps 2-5 of the Sequential Intercept Model. She also provided two examples of defendants with high recidivism rates who would have benefited from a mental health diversion program and a mental health docket if they had existed in earlier years, and how her attorneys had tried to help them as best they could.
- CPD Butorac also explained that individuals on the Veterans Docket and in the Drug Court are also ultimately represented by the Public Defender's Office through either court appointed attorneys or Public Defenders. Her office is now partnering with other stakeholders in developing a Mental Health docket.
- As an ongoing challenge, CPD Butorac stated that the Public Defender's Office needs increased supplemental funding from the County to be able to perform effectively.
- Supervisor Cook asked how the salary scale for the Public Defender's Office compares to the Commonwealth's Attorney's Office (CWA). CPD Butorac replied that when she was the Deputy Public Defender with 15 years of experience she was making the same salary as the CWA office manager, and now with the County supplement she still makes less as the Chief Public Defender than the Chief Deputy Commonwealth's Attorney.

- Supervisor Cook asked what the turnover rate was for the Public Defender's Office. CPD Butorac stated that they lose about 1-2 attorneys a year due to high stress, lower pay, and better opportunities in the private sector. Supervisor Cook then highlighted the potential of reducing crime, court caseloads, and stress on the system, as well as benefiting the welfare of the individuals through more effective mental health treatment, diversion, and Mental Health dockets.
- Supervisor Storck stated that the system has improved, but is still inadequate, and that there is much more to learn and to do. He asked how the Public Defender's Office and their current resources work and interact with not only the Diversion First initiative, but with other mental health resources so her attorneys are not acting as the sole first line of defense. CPD Butorac stated that there are some judges who better understand mental health issues and how important resources and treatment are. She stated that it is obvious more resources are needed, but she also stressed her need to hire the right attorneys who can build trust with defendants who may have extensive negative experience with the courts, and help guide them to more positive outcomes.
- Supervisor Storck asked for CPD Butorac's opinion on cash bonds. She stated that they should be abolished. Deputy Chief Public Defender Andrew Elders added that conditions of bond, if appropriate and needed, were a fairer option than cash bonds.
- Supervisor Hudgins asked about the demographics of the clients served by the Public Defender's Office. CPD Butorac stated that her office does not keep statistics on demographics because they represent everyone. She stated the courts may keep track of demographics. She believed though racial disparities exist as perhaps 40% of the jail inmates are black. As an aside, she also stated that the attorneys in her office are predominately white, but that she faces challenges in recruiting diversity.
- Supervisor Foust asked whether there had been any benchmarking comparison surveys for public defenders with surrounding jurisdictions (for public defenders). CPD Butorac replied that the state pays the same base salary to all public defenders, although there is a regional bump provided for those working in Northern Virginia. The only difference would be in the supplemental income provided by each locality, which do not always provide cost-of-living increases. Supervisor Foust asked that staff provide more benchmarking information with surrounding jurisdictions.
- Supervisor Gross stated that she recently had a meeting with the state probation officer regarding similar salary and supplement concerns, so it is an endemic issue. CPD Butorac replied that in 18 years of working with the Public Defender's Office they have had a cost of living pay increase approximately three times.
- Supervisor Cook thanked CPD Butorac for her presentation, and her and her office for their service and efforts to protect their clients.

Supervisor Cook then introduced Ray Morrogh, the Commonwealth's Attorney, and his Chief Deputy, Casey Lingan. He also briefly introduced the concept of prosecutorial discretion as it applies to the Commonwealth's Attorney's unique role in representing the public.

- CWA Morrogh explained his position as an elected Constitutional Officer, and provided some of his career background. He explained that his job is not only to represent the public but to also ensure fair prosecutorial decisions and trials for defendants.
- He stated his support for the development of a Mental Health Docket, as well as his support for the Drug Court and Veterans' docket. He also expressed his support of the County's Diversion First initiative and outlined how his office is involved. He acknowledged these efforts can lead to more effective treatment for defendants and better outcomes, but advocated for additional funding to sustain and grow these programs. He also supports the Supervised Release Program.
- CWA Morrogh stated the cash bond system is complex, and while he supports reform measures, particularly to ensure equitable treatment, he believes it should be done in a deliberative manner with the General Assembly. He also explained the current bail and bond processes.
- CWA Morrogh believes progressive policies, and cross-agency and cross-discipline collaborative efforts, are making the criminal justice system better. But he stated that with only 34 Assistant Commonwealth's Attorneys in Fairfax County his office is challenged by the large and complex caseload of a large jurisdiction.
- He stated that his attorneys start at approximately \$64,000 compared to the \$57,000 for those in the Public Defender's Office, and he supports a supplemental increase for the Public Defender's Office. He also agreed with CPD Butorac as to the difficulty of recruiting and retaining diverse attorneys, citing one of his strategies in inviting minority students to be part of his office's shadow prosecutor program.
- CWA Morrogh stated that he has asked the State Compensation Board for additional staffing, but that staffing is provided based on the number of felony prosecutions in a jurisdiction, not misdemeanors. Some believe that CWA offices should not be involved in the routine prosecution of misdemeanors or traffic charges, to instead allow officers or others to present their own cases to the courts. CWA Morrogh believes strongly that his office should continue to be involved in these prosecutions, as they have been historically, highlighting examples such as domestic violence, Driving While Intoxicated, and a few others. He reiterated his opinion that the Commonwealth does not adequately fund his office or the courts.
- Supervisor Storck asked how the CWA Office balances their available resources and the need to ensure offenders face appropriate consequences against the need and desire to also divert or help those with underlying issues to achieve better outcomes and reduce recidivism. He asked if CWA Morrogh believed if available treatment alternatives or resources were adequate. CWA Morrogh replied that he would prefer to not incarcerate

as many people, particularly those who are non-violent or have mental health or other issues. He stressed the ongoing collaboration across various agencies, including, for example, the CSB, and the connecting of services with defendants and treatment resources. He acknowledged and appreciated the significant investment in mental health treatment the County has made. He believes prosecutors have to take a common-sense approach to cases and balance what is best for the defendant and the public.

- Supervisor Storck asked how prosecutors might best construct criminal charges, when needed, to ensure appropriate consequences and the protection of the public's safety, but still connect defendants with treatment services to get better outcomes and protect their interests as well. CWA Morrogh replied that there is a balancing act between public safety, the defendant, and a victim's interests. Prosecutors have to be fair to all, but they do have to examine the evidence and the law and make informed decisions. He does not believe in "over charging" a defendant hoping for a plea, but said it is more about working collaboratively to craft the best outcome possible, not necessarily crafting a specific charge.
- Chief Deputy CWA Casey Lingan reiterated the importance and benefit of the partners working collaboratively in the courts, and mentioned CSB and their peer support program as beneficial. However, he also stated that one of the biggest challenges for many defendants as they are connected with treatment services is obtaining housing, including some who may not be County residents or otherwise qualify for treatment programs.
- Supervisor Herrity asked CWA Morrogh about the percentage of defendants who are repeat offenders. CWA Morrogh did not have an exact number, but estimated it to be high, perhaps as high as half. Supervisor Herrity replied that knowing that information is important to the discussion, particularly in then assessing root causes, such as mental health, and evaluating alternative approaches. CWA Morrogh replied that he thinks they should be able to provide that number.
- Supervisor Herrity also asked about the slowdown with forensic analysis and how it has impacted the prosecutors and courts. CWA Morrogh replied that the slowdown has had a significant adverse impact. One effect is the additional work his office has to do to comply with the subpoenas from defense attorneys, and the second is the adverse impact on the forensic labs as their staff is pulled away from analysis work to attend court hearings. CWA Morrogh agreed with Supervisor Herrity that more funding is required from the Commonwealth to better support the forensics work and reduce the backlog.
- Chairman Bulova thanked CPD Butorac and CWA Morrogh for their presentations and their work. She stated appreciation for their ongoing recognition that some individuals have needs and for their willingness to work with multiple members of the "whole team," including many other agencies in human service, public safety agencies, and the courts, in a holistic approach to "break the cycle" for those who may be repeat offenders with mental health issues or co-occurring substance abuse issues.

- Supervisor Foust asked about a growing sense that one challenge in implementing a police body-worn camera program will be the high costs associated with a need to increase the staffing in the CWA Office, and asked for CWA Morrogh's opinion as to his staffing needs. CWA Morrogh stated that he favored body-worn cameras, because having video, albeit perhaps not recording all of the circumstances, would better protect everyone's interests. But he said that the estimated costs are still hard to determine based on the evolving assessment, discussions, and guidance. He stressed the one significant challenge is a recent Virginia State Bar opinion that prosecutors have to personally watch all the video associated with a case, instead of simply providing it to defense counsel. This is requiring a significant amount of time during the pilot program, and will be hard to estimate if a full program is implemented. CWA Morrogh further stated that a consequence of a body-worn camera program would be that his office may have to step down its involvement in the prosecution of certain misdemeanors, such as reckless driving, and allow the judges to handle those cases. He stated that he is willing to continue to work with the County in the assessment of a program, and if there is a decision to fully implement, but that the low staffing in his office will present a challenge.
- Supervisor Cook stated he has scheduled a presentation and discussion on body-worn cameras for the June Public Safety Committee meeting and asked that further discussion on that topic be held until then so he could move to the final topic on the agenda.

That final topic was a presentation by Colonel Edwin Roessler Jr., Chief of Police, and his staff, on Electronic Control Weapons (ECW).

- Chief Roessler expressed his gratitude toward both the CWA and Public Defender offices for their work and for their collaboration in co-producing new social justice strategies in Fairfax County.
- He then introduced Major Anthony Matos, Director, Criminal Justice Academy, and subject matter expert, MPO Eric Campbell. Chief Roessler stated that the data presented would show a downward trend in the use of ECW devices (TASERs), following his de-escalation mandate. ECW is a force option, and policies and training have been updated, and are aligned with recommendations of the Ad Hoc Police Practices Review Commission.
- Major Matos stated that the department is following the Chief's mandate in de-escalation tactics and training and focusing on the sanctity of life. The department is pushing forward with more effective scenario-based training and ensuring every operational officer has an ECW available to carry. Officers have also been sent to be certified as ECW master instructors.
- MPO Campbell stated that ECW training is for not only recruit officers, but also as refresher training for incumbent officers. ECW is defined as a less-lethal force option. It is a "tool", like other tools officers have at their disposal, but they are trained in de-

escalation tactics, such as more effective verbal communication, to hopefully prevent situations where use-of-force may be required. Officers are encouraged and trained to not to become over-dependent on ECW.

- MPO Campbell stated that officers are trained to seek alternatives, when possible, to ECW when encountering persons who may be at higher risk of harm if the ECW is used on them, such as known medical conditions, the elderly, and pregnant women, among others.
- MPO Campbell stated that officers are trained to give a verbal warning before use of an ECW, when practical, to give subjects a reasonable opportunity to comply before use, and to use the minimum amount of force necessary to accomplish lawful objectives. Importantly, officers are trained to immediately cease any force once a subject has surrendered or is subdued.
- MPO Campbell stated that the Critical Decision Making Model is used when training officers. Officers are also taught the acronym “PLANE”, meaning proportionate, legal, accurate, necessary, and ethical.
- Chief Roessler concluded by stating that all uses of ECW are documented and reviewed.
- Supervisor Storck asked if there is a typical type of ECW use, or type of case in which it might be used, particularly as some police districts, including his, have higher levels of ECW use than others. Chief Roessler stated there were no particular type of cases, that circumstances vary, but answered, in part, by stating the call for service volume is higher in Mount Vernon and that there are more serious cases there. He reiterated that each of the cases where an ECW is used is documented and reviewed, and that in each situation the officer had to have probable cause for arrest and a justifiable reason to use force, such as the person resisting arrest or becoming combative, or needing to be taken into custody to protect themselves.
- Supervisor Storck stated that he appreciated the answer, but asked again if there were any patterns of use in the Mount Vernon district or elsewhere, or if it was somehow otherwise correlated to other potential activity. Chief Roessler repeated some of his previous answer, and again highlighted the downward trend of ECW use over the past few years. He stated that it is his hope that officers look at alternative methods to de-escalate situations. He also stated that they do track statistics as to use, and benchmark against other police agencies nationally.
- Supervisor Stork reiterated that he was not trying to judge the use, but rather to best understand its use, and whether it was being consistently applied across the County or if there any differences in application that may need to be considered or reviewed to look for any patterns, trends, or profiles. Chief Roessler replied that for each ECW use, there is a review of the facts and circumstances, he and his senior staff review those, as does Major Matos and his staff. Chief Roessler stated that these reviews can lead to

adjustments in policy and training, as can other factors, such as court opinions on use of force.

- Supervisor Herrity asked if ECW deployments are tracked for statistics on application on residents versus non-residents. Chief Roessler stated that he is trying to do that and that he is trying to get an independent academic institution to also evaluate, to more fully assess and understand who force may be used against.
- Supervisor Hudgins then asked about the validity of looking at residents versus non-residents as compared to focusing on the validity or justification of the use-of-force. Chief Roessler stated that each year he publishes the use-of-force data and that there is disproportionality in use-of-force cases. He wants an independent review to determine more about the persons force is used against, including whether they have an address or no fixed address, or where they may be from.
- Supervisor Hodgins then sought to clarify whether or not the department was looking at whether people were citizens or non-citizens. Chief Roessler replied that he was not looking at citizenship, but whether they were or were not domiciled in Fairfax County as crime knows no boundaries. Supervisor Hudgins stated that she would speak with Chief Roessler more about the matter. Deputy County Executive Rohrer also stated that he wanted to clarify the latter points, that the police department does not ask about citizenship status.

Meeting adjourned at 11:06 p.m.