

PROGRESS IMPLEMENTING USE OF FORCE RECOMMENDATIONS

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Use of Force Subcommittee

Ad Hoc Police Practices Review Commission

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Thank you for the opportunity to address the Commission's Use of Force recommendations. I will briefing provide an overview of the process by which use-of-force recommendations were derived, provide a quick review of our recommendations, focus on some key aspects of our recommendations with regard to the deployment of body worn cameras and close with a discussion of implementation and managing the public's expectations of progress.

Process

Before generating its findings and recommendations, the Commission undertook data collection and review of use-of-force and critical-incident policies and practices. It conducted benchmarking and gap analysis against national best practices by studying such reports as the Report of the President's Task Force on 21st Century Policing and the U.S. Department of Justice's reports on various communities' policing practices. The resources we drew upon for this benchmarking and gap analysis are extensive and are listed in the main Commission report.

The Commission considered the Police Department's lethal and non-lethal use of force incidents, including those in which Special Weapons and Tactics (SWAT) teams, military-type equipment, and other high risk tactics were employed. The Commission reviewed written summaries of the 37 FCPD police officer involved shootings over the last 10 years and interviewed Command, detective and internal affairs personnel to discern pertinent policy and practice lessons to be learned from them.

The Commission received and considered detailed Police Department responses to numerous lines of inquiry, which included such topics as use of force reports, data and analyses; use-of-force policy, training and culture; case review and excessive force litigation; the operations of the internal FCPD Use Of Force Committee; SWAT, advanced tactics and the definition of "barricade;" administrative investigations and disciplinary action; body-worn cameras, the use of the choke hold, and the use of conducted energy weapons (ECW, a.k.a. Tasers); the crisis intervention team model; after action reporting and lessons learned; and budget and resources.

We also considered in detail PERF's (Police Executive Research Forum) recommendations in its June 2015 Report, entitled *Use-of-Force Policy and Practice Review of the Fairfax County Police Department*.

Finally, a number of the Commission also took advantage of opportunities to garner on-the-ground understanding of policing in Fairfax by, for example, riding with an officer, visiting the Academy's firing range and engaging with investigators of officer-involved shootings.

Outcomes

The Commission subsequently recommended action on all but one of PERF's 71 recommendations related to use of force. The one exception was PERF's call for discontinuing the use of the Precision Immobilization Technique, used by an officer to stop a moving vehicle. We instead we recommended that this recommendation be studied by the Department, with a report to the BOS for action.

The Commission generated 68 other use-of-force recommendations – some overlapping with those offered by PERF -- organized into the following 9 topical areas:

1. Philosophy underpinning policy, programs and practices
2. Policies and practices
3. Reporting and transparency
4. Body worn cameras
5. Electronic control weapons (ECWs, also referred to as tasers)
6. Strategic weapons and tactics techniques
7. Mobile crisis units
8. Oversight
9. Workforce policies and practices

Let me highlight a few of these.

The Commission offered a set of recommendations that call for a police philosophy and culture that are rigorously protective of our nation's democratic values, reinforce a reverence for the sanctity of human life, safeguard constitutional rights and respect and protect individual dignity.

In these regards, the Commission called upon the Department to assure through its policies and practices that an appropriate balance is maintained between an officer's role as a peacemaker/community guardian and that of a fighter/warrior, able to respond effectively to imminent threats of harm to the officer or to other citizens.

We believed it critical that the Police Department's definition of "use of force" in its General Order 540.1 be replaced with a more comprehensive definition to provide police officers with clear and concise guidance.

One aspect of the revised use-of-force policy should be a clarification and confirmation of the "objectively reasonable" standard that guides the constitutional use of force. In general laymen's terms, we understood objectively reasonable to mean that, if an officer uses force in response to fearing for his life or that of others, other officers would have reacted similarly when confronted with the same circumstances.

The use-of-force policy should also emphasize de-escalation and crisis intervention strategies and should unambiguously prohibit the use of a "choke hold" as a means of controlling a suspect, as well as cover training, investigations, prosecutions, data collection, and information sharing.

Given expressed concerns by the public about the use of weapons in several of the officer involved shootings we reviewed, the Commission offered a number of policy-change recommendations relating to the use of weapons and the provision of medical assistance.

Several Commission recommendations advocate department-wide deployment of body worn cameras to record interactions with the public, which I will discuss further.

The Commission also believed that officers should be assigned an Electronic Control Weapon (ECW/Taser), subject to certain use limitations, as a less lethal option available to them in potentially life threatening situations.

The Commission advocated that Strategic Weapons and Tactics Techniques or SWAT by policy be limited in its use to “high risk” situations with clear lines of approval, responsibility and accountability.

Several of the Commission’s use-of-force recommendations overlapped those specifically focused on communications, mental health, independent oversight and workforce development and performance, each of which has been addressed by the Board – such as Diversion First and – today Communication – or will be – such as independent oversight, which the Board plans to take up in July.

I would note that relative to the later discussion of communication and transparency, and as relates to use of force, we believed that enhanced transparency is essential to sustaining or recapturing the public’s trust in the Police Department. The Commission recommended release of as much detail as is possible on officer-involved shootings, as quickly as possible. We called for greater reporting of demographic information concerning suspects and members of the public who are stopped by officers and timely public reporting on all uses of force. The availability of such data will enable the Department and public to identify any problematic patterns.

In addition to ensuring the recruitment of a representative, vetted and effectively trained workforce, the Department should implement a “hire-to-retain” focus on police officer fitness and establish a process for confirming that, once an officer joins the force, he or she continues to be fit to serve.

Finally relative to use of force, the Commission recommended additional Mobile Crisis Units to support officers in applying the crisis intervention technique and the Commission’s “diversion first” recommendations.

Body Worn Cameras

The Commission’s recommendation to mandate that FCPD police patrol officers employ body cameras to record all interactions with members of the public, contingent on the enactment of

laws, policies and procedures that protect individual privacy.¹ I note in this regard that the Police Department as previously requested that the Board approve piloting such a program.

I note that the legal issues we are concerned about are the application of Freedom of Information Act as relate to the privacy of individual citizens, as well as those of law enforcement officers.

A useful reference source for some of the key the issues of concern are those included in a July, 2015 letter from the Hanover County Attorney to the Commonwealth's Freedom of Information Act Advisory Council, which I attach to this statement.

On a related matter for your attention is the hosting of the repository for the large volume of data collected from both body-worn and dashboard cameras. Who controls the data is becoming an increasingly significant issue nationally as to whether or not an independent body should control access to this sensitive information to both protect the integrity of the evidence, as well as maintain the confidence of the public.

Finally, the prospective costs and legal issues associated with the use of this technology may act as a barrier to deploying this technology in Fairfax. I encourage you to commit to the technology and map out a plan for its ultimate deployment in a reasonable time frame governed by progress by the General Assembly and available resources. The drive to use this technology is ultimately inexorable and I believe its use will be a matter of not whether but when. The County will be better served by taking on these matters now when the issues can be addressed thoughtfully and thoroughly, rather than being driven toward improvised deployment in response to a controversial use-of-force incident.

Implementation Work Plan, Progress Reporting and Managing Expectations

Let me close my remarks with the matter of implementation oversight and communication of progress. I am impressed with the level of commitment demonstrated by the Board, County Staff and Police Department to implementation of the Commission recommendations. Public Safety Committee Chairman Cook publicly committed at the February meeting to Supervisor action on the recommendations within a year. Chairman Bulova is on record supporting the Commission recommendations, as is the Police Chief.

Indeed, progress on the Commission recommendations – and specifically those with regard to use of force – is significant. And yet the public and the media appear to have the impression that the Commission's recommendations are being slow-rolled if not ignored.

Just two weeks ago, I received an e-mail from an active member of our community after he had reviewed the Police Department's progress report, as posted online. He noted that "The interim report does not raise confidence. When the commission's recommendations were released, the police were quick to assert that many were already being implemented. Now, six months later, of the hundreds of recommendations, I count only 11 marked "implemented." The rest are marked "in progress" or "under review". None are marked "rejected" or "unfeasible". Surely,

¹ A key rationale for the use of such cameras is increased community trust, improved evidence collection, positive strides in officer safety, and a decrease in citizen complaints against the officers. Under current FOIA requirements, broad exemptions under the Code of Virginia for law enforcement could undermine the key benefits offered by these new technologies.

some will never be ‘implemented.’ At this pace, we will still be arguing over some of these ten years from now. He closed by asking that we “Please keep up the pressure on this. In the service of transparency and public confidence, disposition of these recommendations needs to move forward much more quickly in the next six months.”

Indeed, a study of the implementation progress report online shows that since the October 8, 2015 Commission report, only 7% of all Commission recommendations have been implemented, while 59% are still under review, i.e., these recommendation need “more review or need approval by the BOS before the implementation process can begin.”

Since this report is the only publicly available metric of progress against the Commission recommendations, is it any wonder that the community is left with the false impression – in my judgment -- that the County may not be committed to implementing the Commission and PERF recommendations?

AD HOC COMMISSION PROGRESS REPORT SUMMARY²				
Status³	UOF Recommendations		All Recommendations	
Implemented	11 ⁴	16%	14	7%
In Progress	31	21%	69	34%
Under Review	53	36%	119	59%
Total	68	100%	202	100%

To mitigate against these misimpressions, I recommend that the County make a concerted effort to manage the public’s expectations by crafting and making publicly available a realistic and traditional project plan that provides the following -- at a minimum – for each recommendation or packaged set of recommendations:

1. A task description
2. Steps required to achieve the task
3. An estimated and realistic schedule for task completion
4. Who is assigned responsibility for task completion

My experience is that such information not only helps the public gauge progress more accurately, but also helps it understand more completely the implementation complexities. I also support Chairman Bulova’s commitment to maintaining the Commission leadership to oversee and support implementation.

In closing, I thank the Board for your attention, your commitment to addressing the recommendations of the Police Commission generally -- and specifically those the address use-of-force -- and for your service to our community.

² As of 05/09/2016: <http://www.fairfaxcounty.gov/policecommission/progressreport.htm#>

³ **KEY:**

- **Implemented** Recommendation successfully implemented.
- **In Progress** Recommendation accepted and in the implementation process.
- **Under Review** Recommendation needs more review or approval by the BOS before the implementation process can begin.

⁴ At least four other recommendations related to reconstituting the internal Police Department’s Use of Force Committee have been considered and implemented, bringing the total to 15 or 22%. The progress report should be updated regularly.