AD HOC POLICE PRACTICES REVIEW COMMISSION

October 8, 2015

Final Report

Michael Hershman, Chairman

Subcommittees:

Merni Fitzgerald – Communications

Shirley Ginwright – Recruitment, Diversity and Vetting

Jack Johnson – Independent Oversight and Investigations

Phillip Niedzielski-Eichner – Use of Force

Del. Marcus Simon – Mental Health and CIT

Members, Speakers and Presenters:

Citizen
• Jeff Stewart, Resident, Chantilly
• Adrian Steel, Resident, McLean
• Nicholas Beltrante, Virginia Citizens Coalition for Police Accountability
    ◦ John Lovaas, Resident, Reston (Alternate)
• Tim Thompson, President, Fairfax County Federation of Citizens Associations
    ◦ Daniela Cockayne, Federation Public Safety Chair (Alternate)
• Shirley Ginwright, Chairman, Communities of Trust Committee, President, Fairfax County NAACP
• Sal Culosi, Resident
• Michael Kwon, Resident
• Robert Cluck, National Alliance on Mental Illness
• Phillip Niedzielski-Eichner, Former Fairfax County School Board
• Jim Diehl, FCPD Citizens Advisory Committee, Reston
• Del. Marcus Simon, Member, General Assembly
• Kevin Bell, Fairfax County Human Services Council

Police
• Det. Sean Corcoran, Fairfax Coalition of Police Local 5000
• Det. John Wallace, Fairfax County Police Association
• Brad Carruthers, Fairfax Fraternal Order of Police, Lodge 77
• Greg Fried, Southern States Police Benevolent Association
• Lt. Gervais Reed, Fairfax Black Law Enforcement Officers Association
• Lucy Caldwell, civilian public information officer
• Lt. Col Tom Ryan
    ◦ Maj. Joe Hill (alternate)
• Maj. Ron Kidwell, Fairfax County Sheriff's Office
• Hassan Aden, International Association of Chiefs of Police

Legal
• Douglas R. Kay, Fairfax Bar Association president-elect
• Joseph Cammarata, Chaikin, Sherman, Cammarata, Siegel, P.C.
• Eric Clingan, The NOVA Law Firm
• Robert Horan, former Commonwealth's Attorney

Academic/Consultant
• Amy Dillard, University of Baltimore, Associate Professor of Law
• Jack L. Johnson, PricewaterhouseCoopers, public sector practice

Media/PR
• Mary Kimm, Connection Newspapers
• Merni Fitzgerald, former director of public affairs (retired)
• Pete Earley, Author, Blogger
• Dave Statter, Public Safety Blogger

Ex-Officio
• David Rohrer, Deputy County Executive for Public Safety
• Tony Castrilli, Director, Office of Public Affairs

Speakers and Presenters
• Det. Chris Flanagan, FCPD, Criminal Investigations of Officer-Involved Shootings
• Capt. Bob Blakely, FCPD, Administrative Investigations of Officer Involved Shootings
• Maj. Joe Hill, FCPD, Officer Vetting
• Ray Morrogh, Commonwealth's Attorney, Prosecutorial Decisions in Officer-Involved Shootings
• Chuck Wexler, Executive Director, Police Executive Research Forum, Use-of-Force Policy and Practice Review of FCPD
• Dr. Steve Band, Consultant, Officer Reactions to Shooting Incidents
• Christian Klossner, Member, NACOLE Board of Directors, Deputy Director, District of Columbia's Office of Police Complaints, Community Review and Advisory Boards and What NACOLE Can Do For Communities
• Julie Parker, Director, Prince George's County Police Department Media Relations
• Kay Fair, CSB Division Director for Emergency Services, Mobile Crisis Units
• 2nd Lt. Derrick Ledford, Sheriff's Office, Adult Detention Center, CIT and the CSB
• Lt. Ryan Morgan, FCPD, CIT Training at FCPD

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Ad Hoc Police Practices Review Commission

FINAL REPORT

EXECUTIVE SUMMARY

The Ad Hoc Police Practices Review Commission was created by Chairman Sharon Bulova and endorsed by the Fairfax County Board of Supervisors on March 3, 2015. The purpose of the Commission was to engage the community in an open and transparent process to recommend changes that the Commission feels would help Fairfax County to achieve its goal of maintaining a safe community, ensuring a culture of public trust and making sure county policies provide for the fair and timely resolution of police-involved incidents. The Commission was tasked with:

- Reviewing existing policies, practices and programs regarding police-community relations;
- Reviewing existing policies, practices and laws regarding police-involved incidents, including;
    - History of recent use-of-force (lethal and non-lethal) incidents involving FCPD and subsequent public release of information;
    - FCPD use-of-force training policies;
    - FCPD threat assessment policies;
    - FCPD Internal Affairs Bureau policies.
- Reviewing the policies, practices and laws regarding the public release of information, including:
    - Relevant provisions of the Virginia Freedom of Information Act and statutory and case law;
    - Roles of Police Public Information Officers and the Office of Public Affairs;
    - Roles and relationships among the FCPD, the Office of the County Attorney, and the Office of the Commonwealth's Attorney.

In announcing the creation of the Commission, Chairman Bulova wrote that Fairfax County is the safest jurisdictions of its size due in no small part to the hard work and dedication of the County's public safety personnel. The Fairfax County Police Department has long served and protected the Fairfax County community, and through a model of community policing has built and maintained the public trust and confidence. The Police Executive Research Forum (PERF) in its report, conducted concurrently with the Commission's work, found that "[i]n general, [Fairfax County Police Department] officers are knowledgeable and well trained when it comes to use-of-force practices, and the FCPD places a strong emphasis on de-escalation in its training programs. Overall, PERF found that the county's training program has knowledgeable instructors and provides valuable training in a number of areas, including emergency vehicle operations and critical incidents." The Commission agrees with this statement and acknowledges the need for improvement.

Chairman Bulova appointed Michael Hershman to serve as chairman of the Commission. Mr. Hershman is a member of the Board of Supervisors' Audit Committee. Mr. Hershman, president and CEO of The Fairfax Group, is an internationally recognized expert on matters relating to transparency, accountability, governance, litigation and security. His firm has been retained by governments, corporations, law firms and international financial institutions to assist on matters relating to the conduct of senior-level officials and/or the entities with which they do business.

Commissioners were selected to serve on the Commission by Chairman Bulova in consultation with Mr. Hershman. Commissioners were selected based on their experience in the following areas: law enforcement, legal, academic, media, and citizen, a category of interested citizens who may or may not have specifically

related experience. In addition to the original 40 members of the Commission, an additional 30 County residents were selected to serve alongside Commissioners on the five subcommittees: Communications; Recruitment, Diversity and Vetting, Independent Oversight and Investigations, Use of Force, and Mental Health and Crisis Intervention Team (CIT). In all, the Commission and its five subcommittees held 40 meetings over six months to develop the recommendations contained in this report.

In addition to the reports, documents and policies listed in this report's bibliography, and a number of presentations of policies and practices by FCPD officials, the Commission and its subcommittees solicited presentations from outside experts on topics such as use of force, Crisis Intervention Training, the psychology of an officer involved shooting, civilian oversight of police departments, and other relevant topics. The Commission heard from PERF Executive Director Chuck Wexler, former FBI agent and behavioral science consultant Dr. Steve Band, and National Association for Civilian Oversight of Law Enforcement board member and Deputy Director, District of Columbia's Office of Police Complaints, Christian Klossner. The Commission also held two public hearings where it received testimony from dozens of individuals.

County staff from multiple departments supported the Commission's work, including the Police Department, the Sheriff's Office, the Office of Public Affairs, the Office of the County Executive, and the Office of Chairman Sharon Bulova. Deputy County Executive for Public Safety David M. Rohrer and Director of Public Affairs Tony Castrilli acted as ex-officio members of the Commission. Clayton Medford, Chairman Bulova's chief of staff, acted as the lead staff support for the Commission. The Commission wishes to acknowledge the cooperation and involvement of FCPD throughout this process. Many of the recommendations presented in this report are already being implemented by department leadership. Chief Roessler has dedicated staff to review and, when directed, implement the changes recommended by the Commission as well as those included in the PERF Report.

This report includes the reports of each subcommittee in full, as well as each subcommittee's recommendations beginning on page 12. Overarching recommendations include:

- **Communications**: Improve and update policies, procedures, personnel and tools to state-of-the-art best practices and effect a change to the agency-wide culture to embrace a predisposition to disclose information.
- **Recruitment, Diversity and Vetting**: FCPD should expand current recruitment efforts with the goal of increasing diversity, establish diversity goals for command staff and train recruits on effects of implicit bias, reduce length of time needed to conduct background investigations, and the Board of Supervisors should ensure FCPD pay is competitive.
- **Mental Health and CIT**: Fairfax County should fully implement the Memphis Model for CIT which includes two main goals: improving the safety of officers and persons with mental illnesses and redirecting individuals with mental illnesses from the judicial system into the health care system. Full implementation would require, at a minimum, the opening of strategically located crisis assessment sites, mobile crisis units, and the creation of a mental health court docket by the judiciary.
- **Use of Force**: FCPD policies and practices must continue to reinforce the values of policing in a democratic society, such as the sanctity of human life and the need for robust and transparent reporting of information, particularly as relates to police officer use of force. A more unified, clearer and more concise use of force policy is warranted, as is constant attention to FCPD's policing culture, limits on the use of SWAT and introduction of police-worn technologies.
- **Independent Oversight and Investigations**: Fairfax County should establish the Office of Independent Police Auditor and a Civilian Review Panel. The Auditor shall determine the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of Death or Serious Injury Cases conducted by the Internal Affairs Bureau and all Use of Force investigations by IAB which are the subject of a public complaint made to the Police Department or the Auditor. The Civilian Review Panel will review civilian complaints regarding "abuse of authority" or "serious misconduct" by a Fairfax County police officer.

Section I
Summaries of Subcommittee Reports

COMMUNICATIONS

Executive Summary

The Communications Subcommittee was chaired by retired Fairfax County Director of the Office of Public Affairs Merni Fitzgerald. Its members included representatives from local media outlets, current Fairfax County public information officials, Fairfax County Police Department officials, and members of the local legal community. The subcommittee found a negative perception of FCPD created in part by inadequate and untimely release of information regarding high-profile use-of-force and critical incident cases. Their recommendations focus on creating a culture of transparency at FCPD, by utilizing state-of-the-art best practices and adopting a predisposition to disclose information.

> "Civilized communities grant special powers and entrust extra authority to law enforcement agencies to keep the peace and protect the lives of everyone. In response, the public expects and deserves a culture of transparency and accountability. Police departments should provide maximum disclosure of information (balanced against endangering people, due process or law enforcement efforts) with minimum delay, to ensure these powers are responsibly and humanely used with proper respect for the sanctity of human life. Timely, accurate, culturally appropriate information dissemination via numerous communication and news tools and platforms is essential to keep the community informed, change negative perceptions, narratives and visuals and ensure a culture of public trust." – *Final Report and Recommendations, Communications Subcommittee*

The subcommittee delivered 38 recommendations, which are provided in full in the next section and in Appendix A. Among them are timeframes, content and methods for providing information and the adoption of a predisposition to disclose rather than withhold information. The subcommittee recommends proactive rather than reactive engagement and continued support of existing community outreach programs like the Citizen Advisory Committees and Citizen's Police Academy. The subcommittee recommends overhauling the FCPD public information office, developing processes and policies for more transparent, timely and culturally sensitive release of information including the declassification of information, and shortening the time it takes to close officer-involved shooting cases. The subcommittee recommends methods for more timely and thorough information release, especially following a high profile case. The subcommittee recommends public dissemination of crime statistics and departmental policies and procedures. Finally, the subcommittee recommends the Board of Supervisors set dates for open community forums to review progress made in implementing the recommendations of the Commission.

Members	
• **Merni Fitzgerald, Chair**	• Mary Kimm
• Tom Ryan	• John Wallace
• Eric Clingan	• Tony Castrilli
• Lucy Caldwell	• Darryl Drevna*
• Tim Thompson	• Patrick Smaldore*
• Doug Kay	• Jose Santos*
• Daniela Cockayne	• Brennan Murphy*
• Dave Statter	• Darryl Dennis*
	* *Non-commissioner Member*

RECRUITMENT, DIVERSITY AND VETTING

Executive Summary

The Recruitment, Diversity and Vetting Subcommittee was chaired by NAACP Fairfax County Chapter President Shirley Ginwright. Its members included citizens interested in increasing the diversity of the police department and improving the department's recruiting efforts. The subcommittee found laudable diversity goals and a need for greater accountability and responsibility for meeting those goals.

The work of the subcommittee included reviewing current FCPD policies and practices on officer recruitment, diversity, background vetting, and retention. The subcommittee reviewed: the current diversity of FCPD including race, ethnicity, sex, national origin, religion, sexual orientation and gender identify; FCPD diversity recruiting programs and the effectiveness of such programs; and best practices in other jurisdictions on police recruitment, diversity and background vetting.

> "Recruitment and selection of our police force is a key component to embracing a mindset in building communities of trust and legitimacy. We must ensure our department's workforce is reflective of the county it represents, one that contains a wide range of diversity including race, gender, language, life experience, and cultural background. These factors help to improve understanding and effectiveness in dealing with all communities in Fairfax County."
> – *Recruitment, Diversity and Vetting Subcommittee Report*

The subcommittee delivered 16 recommendations, which are provided in full in the next section and in Appendix B. On **recruitment**, the subcommittee recommends: FCPD should provide a referral incentive for recruiting; develop and implement a marketing plan for all programs and vacancies; expand the Explorer and Cadet programs to include a diverse pool of participants; enter into a recruitment agreement with all Cadets to include reimbursement of educational expenses if they do not successfully transition to a full time Officer; collaborate and build recruitment-oriented partnerships with key segments of the Fairfax County community to further diversify both the applicant pool and workforce to more closely reflect the Fairfax County community; identify ways to reduce the time from application to hiring; formalize the selection process by putting certain standards and processes into writing; ensure written directives are kept up to date; and create a diverse Selection Review Committee that includes community leaders. On **diversity**, the subcommittee recommends: FCPD should establish a diversity goal for each commander, making them responsible for enhancing the diversity within the department; FCPD should educate and train recruiting and selecting officers about implicit bias and the impact on both individual and organizational selection decision. On **vetting**, the subcommittee recommends: FCPD should increase resources in order to reduce length of time it takes to conduct background investigations and polygraphs; and formalize the officer selection process. On **retention**, the Board of Supervisors should continue to work with the Pay and Benefits Committee to ensure the FCPD is competitive, in salary and benefits, in order to secure and maintain a diverse workforce.

Members	
• **Shirley Ginwright, Chair**	• Burnette Scarboro*
• Greg Fried	• Bernard Thompson*
• Gervais Reed	• George Alber*
• Dave Rohrer	* *Non-commissioner Member*
• Joe Hill	
• Chio Stokes*	

MENTAL HEALTH AND CIT

Executive Summary

The Mental Health and Crisis Intervention Team (CIT) Subcommittee was chaired by Virginia Del. Marcus Simon. Its members included mental health advocates, individuals with personal experience with the mental health system, representatives from the Fairfax County Sheriff's Office and the Police Department, staff from the Community Services Board, and two members of the Virginia General Assembly. The subcommittee received presentations from the Community Services Board and the Police Department, and reviewed best practices from around the country. The subcommittee concluded the two models from Bexar County, TX and Memphis, TN should be implemented in Fairfax County.

> "The subcommittee's review of best practices shows that the Memphis Model approach can better use tax dollars, reduce police shootings and use of force, reduce officer injuries, help restore public trust in law enforcement, treat those with mental illness in a more appropriate and humane manner, and help ease unnecessary suffering." – *Mental Health and CIT Subcommittee Report*

The subcommittee delivered 26 recommendations, which are provided in full in the next section and in Appendix C. For the **Police Department**, the subcommittee recommends: establish the Memphis Model for CIT training as adopted by the Virginia Essential Elements of CIT; create incentives to make serving on a CIT attractive; identify CIT officers to the public; have them form teams with related non-police staff; make CIT training required for certain command assignments; empower CIT officers to be proactive; and give all dispatchers at least eight hours of training. For the **Sheriff's Office and the CSB**, the subcommittee recommends: implement the national initiative "Stepping Up" as well as the Fairfax County initiative Diversion First; collect data to establish metrics for success; increase language and cultural competency; provide CIT training to jail and custodial personnel; establish strategically located CIT assessment sites; reorganize CSB to focus on most needed services; expand Mobile Crisis Unit program; increase CSB jail clinician hours; increase release planning and re-entry; and review pharmacy policies. For the **judiciary**, the subcommittee recommends implement mental health dockets and encourage mental health awareness training for judicial personnel including magistrates. The subcommittee recommends a more thorough implementation of Virginia CIT Essential Elements through: establishment of standing mental health "units;" institution of plain clothes mental health officers; a refocusing of training at Criminal Justice Academy on mental health; clarification of mental health protocol for first responders; and the involving of peer support whenever possible. Finally, the subcommittee recommends a public outreach program to increase awareness of steps that may be taken prior to the time of possible interaction.

Members: **Del. Marcus Simon, Chair** • Robert Cluck • Pete Earley • Ron Kidwell • Kevin Bell • Jim Diehl • Darryl Washington • Bob Vernola* • Del. Vivian Watts*	• Michael B. Buckler, Jr.* • Gary Ambrose* • Claudette Pilger* • Kevin Pittman* • Daria Akers* • Michael Pendrak* • Chris Cavaliere* • Ryan Morgan* * *Non-Commissioner Members*

USE OF FORCE

Executive Summary

The Use of Force Subcommittee was chaired by Phillip Niedzielski-Eichner, former school board member and chairman. Its members included citizens with personal experience with law enforcement uses of force current, as well as current and former law enforcement officers and officials and attorneys. The Use of Force Subcommittee received presentations from multiple command level staff of FCPD including Chief Edwin Roessler. The public was invited to address the subcommittee at each of its nine meetings. Additionally, the subcommittee undertook a thorough data collection and review, reviewed of use-of-force and critical-incident policies and practices at FCPD and the 37 officer-involved shootings at FCPD over the last 10 years, and a benchmarking and gap analysis of FCPD policies and practices against national best practices.

> "We believe that the philosophy underpinning Fairfax County Police policy and practice must be founded upon issues, concepts, and values of policing in a democratic society. Noteworthy among these: the mission and role of the police in protecting constitutional rights; the sanctity of human life; de-escalation and crisis intervention strategies; and a duty to intervene if an officer sees another officer using excessive force." – *Use of Force Subcommittee Report*

The subcommittee delivered 40 recommendations, which are provided in full in the next section and in Appendix D. On **philosophy**, the subcommittee recommends: policies and practices founded on concepts and values of policing in a democratic society. On the **PERF Report**, the subcommittee recommends adopting all but #54 (PIT maneuver), which FCPD should analyze. On the **use of force policies and practices**, the subcommittee recommends: a comprehensive and integrated use of force policy and definition of use of force; multiple changes to General Order 540.1; policies should be benchmarked with similar jurisdictions; restrict vehicle pursuits based on crime and threat to public. On **transparency**, the subcommittee recommends: greater reporting of demographic information of suspects; public reporting of all uses of force resulting in death or serious injury; annual report to Department of Justiceand the public of all use of force and in-custody deaths; the release of specific information on officer-involved shootings within 72 hours. On **body cameras**, the subcommittee recommends all patrol officer be required to record interactions with the public. On **ECWs**, such weapons should be classified as "less lethal," be carried by all uniformed officers and in the vehicles of plain clothes officers, only in certain circumstances be used on restrained, frail or elderly person, children, or pregnant women, "excited delerium" should be replaced with a more descriptive term, among other changes. On **SWAT**, use should be limited to "high risk" situations and numerous other changes. The subcommittee also recommended additional **Mobile Crisis Units, improved oversight**, and improved **workforce policies** such as a "hire-to-retire" focus.

Members: **Phillip Niedzielski-Eichner, Chair** • Adrian Steel • Brad Carruters • Sal Culosi • Joe Cammarata • Mary Kimm • Hassan Aden • Randy Sayles*	• George Becerra* • Joseph P. Smith* • Michael Shumaker* • William Moncure* • Jodi Shlesinger* • Bernard Thompson* • Ralph Cooper* * *Non-commissioner Members*

INDEPENDENT OVERSIGHT AND INVESTIGATIONS

Executive Summary

The Independent Oversight and Investigations Subcommittee was chaired by Jack Johnson, who leads the national security practice at PriceWaterhouseCoopers. Its members included current and former law enforcement officers and officials, attorneys, a journalist, advocates for civilian oversight of police, a former Commonwealth's Attorney, and concerned residents with and without personal experience with police. The subcommittee received presentations from the Commonwealth's Attorney, the Fairfax County Attorney's Office, and multiple command level staff of FCPD including Chief Edwin Roessler. Additionally, the subcommittee undertook a thorough data collection and review, including analysis of civilian oversight boards around the country.

> "[For the purpose of] building and maintaining public trust in FCPD and its officers in a period of general loss of public confidence in many institutions, our Subcommittee also recommends the creation of an Office of Independent Police Auditor, and a Civilian Review Panel, appointed by the Board of Supervisors. The Independent Police Auditor would report directly to the Board of Supervisors and would provide oversight in cases of police use of force that lead to serious injury or death, including officer involved shootings. The Civilian Review Panel would respond to community concerns or complaints about alleged incidents of abuse of authority by FCPD." – *Independent Oversight and Investigations Subcommittee Report*

The subcommittee delivered 24 recommendations, which are which are provided in full in the next section and in Appendix E. On **investigations**, the subcommittee recommends: no changes to criminal investigations; funding of two additional investigators for the Commonwealth's Attorney's Office; IAB should conduct its investigation concurrently with criminal investigation; questioning of involved officer should commence as soon as reasonable, as allowed under the Virginia Law Enforcement Officers Procedural Guarantee Act; officers shall await direction from investigators prior to speaking to those involved. The **prosecution** shall remain with the Commonwealth Attorney unless he/she determines it should be handled by a counterpart jurisdiction's Attorney. The Board of Supervisors should request timely reports from Commonwealth's Attorney when no charges are filed. On **independent review**, an Office of Independent Police Auditor and a Civilian Review Panel shall be established. The authority and duties of the Auditor and the Panel are described above.

Members: **Jack Johnson, Chair** • Nick Beltrante • Jeff Stewart • Sean Corcoran • Bob Horan • Amy Dillard • John Lovaas • Adrian Steel • John Wallace • Sal Culosi	• Michael Kwon • Mary Kimm • Robert Sarvis* • Bob Callahan* • Marc Harrold* • David Stover* • James K. Stewart* • Sara-Ann Determan* • George Becerra* • Ben Getto* * *Non-commissioner Members*

Section II
Recommendations

RECOMMENDATIONS

Communications

Maximum Disclosure, Minimum Delay

1) Provide accurate, timely and actionable information using redundant forms of communication communicating both good and bad news.
2) Adopt a "predisposition to disclose" approach, with public records presumed to be public and exemptions strictly and narrowly construed.
3) Share and regularly update news and details of all officer-involved shootings in multiple ways. Publicly disclose the process and obligation of every party in the aftermath of the police shooting to include timelines and diagrams where specific events, common to all police-involved shootings, are discernable.
   a) Provide the name of the officer(s) as soon as possible but preferably within a week. If a decision is made not to release the name within a week, publicly share specific information that illustrates the reason the name is being withheld.
   b) In cases where a suspect is deceased as a result of an officer-involved shooting, make available immediately upon FOIA request all body-camera, in-dash camera or audio recordings of responding officers to an incident.
   c) In officer-involved shootings where a suspect is shot but not deceased, provide a citizens' committee (a communications advisory committee appointed by either the Board of Supervisors or the Police Chief to carry out this function) access to the recordings for a recommendation on release which should balance public and private interest. This committee's recommendation would be submitted to the Chief of Police who would factor it into a final decision.
   d) All officer-involved shooting investigations should end with the public release of all digital recordings of the incident.
4) Annually report on the demographics of the subjects in all use-of-force incidents including race, gender, age, whether mental health status was a factor, previous involvement with FCPD and other demographic data.
5) Devote more effort to sharing day-to-day information of police activity with the public. FCPD should facilitate unfettered access to blotter-type information, moving beyond what is currently provided in the daily blog to include a list of every incident and call with the basic who/what/when/where/how information.
6) Include incident based reporting (IBR) categories of statistical crime information for Fairfax County broken down by FCPD district stations and provided quarterly in accessible, comprehensive online reports, so that it is available to the general public as well as to homeowners associations, citizen associations, parent/teacher associations, nonprofits, faith groups, community-based organizations and businesses. Also provide quarterly information by district for all use-of-force and officer involved shootings, CIT calls for service, traffic and pedestrian accidents.

Community Engagement

7) Embrace and practice increased, proactive community engagement.
   a) Communicate with key community leaders as soon as bad news breaks.
   b) Hold community meetings early and often.
   c) Continue cross-district command meetings to increase situational awareness, spot trends and provide a centralized forum to identify and coordinate responses to emerging community issues.
   d) Create a "Community Engagement Team" within FCPD to respond to community concerns and manage programs that create community trust and engagement. Team members should be fluent in the language and knowledgeable of the customs of the particular community they serve, and the team should reflect the diversity of Fairfax County in order to best serve as liaisons between the community and FCPD.
8) Continue supporting Citizen Advisory Committees (CAC); the Chief's Citizens Advisory Council; and Citizen's Police Academy (CPA) classes.

a) Expand promotion of these valuable public forums.
b) Improve and expand CAC and Chief's Citizens Advisory Council succession planning and online information.
c) Increase the meeting frequency of the Chief's Citizens Advisory Council from four meetings per year to 10 monthly meetings to be in line with the 10 monthly CAC meetings.
d) The structure of the eight CACs and the Chief's Citizens Advisory Council should facilitate a two-way flow of information about police services.
e) Expand the CPA program by offering a compact, three-hour version in addition to the current 10-session program and include in the CPA training the best practices and reports discussed at meetings of the Ad Hoc Police Practices Review Commission and subcommittee meetings.
f) The CPA should be designed and structured in such a way to be understood by all in the diverse communities of Fairfax County.

Policies, Procedures and Personnel

9) Hire a civilian public information officer (a professional communicator knowledgeable of best communication practices and experienced in the practice and ethics of media and journalism) to lead the FCPD public information office, and have that position and function report directly to the Police Chief.
10) Fund and employ 24/7 PIO staff in the central public information office; additionally, PIO staff should be assigned to each district station.
11) Have the Police Chief be the official spokesperson for officer-involved shootings.
12) Develop a policy statement regarding FCPD PIO release of information for critical events. This would include the relationship with the Office of Public Affairs and the process for a hand off to OPA in certain situations.
13) FCPD should prioritize a realignment of resources to take the steps necessary to ensure more transparency, and become the trusted and valued source of information for Fairfax County.
14) FCPD should develop a continuous process of information declassification, to help ensure proactive information release for cases that are no longer active or are closed.
15) New improved general orders should acknowledge today's communications paradigm by promoting more community engagement and direct information dissemination to the community.
16) Shorten the current 6-20 month timeframe to internally investigate and close officer-involved shooting cases, and throughout the shortened period be responsive to questions and concerns about the incidents by the public, news media and elected officials.
    a) We recommend the Board of Supervisors take an active approach throughout the investigative stage by periodically requesting and receiving updates on such incidents in a public forum.
17) Update policies (with the assistance of FCPD Community Engagement Team members) and mandate usage of language day-to-day that is culturally appropriate and respectful, acknowledging the very diverse communities calling Fairfax County home.

Freedom of Information Act

18) The Board of Supervisors should publicly adopt a resolution (and forward it to the County's delegation in the General Assembly) to revisit FOIA laws with an eye toward expanding instead of limiting the public release of information related to police-involved shootings and other police practices and procedures related to official police activities.
19) The County Executive should establish a countywide FOIA policy and procedure through issuance of a new procedural memorandum that would replace former County Executive Griffin's memo regarding FOIA compliance, which currently guides county staff.
    a) The new policy should encourage transparency and accountability by establishing a culture of disclosure. It should give guidance to all county staff custodians of public records to lean automatically toward releasing all public records upon request, changing the current practice of automatically withholding all exempt records.

20) Where possible, release police reports with redactions where necessary, rather than creating a summary document.
21) Develop FCPD administrative guidelines for FOIA, even in the absence of FOIA reform at the state level.
22) Move the function and personnel for responding to requests for public records under the VA Freedom of Information Act out of FCPD Internal Affairs and into the FCPD Public Information Office.
23) Stop the current blanket approach to Freedom of Information Act (FOIA) requests.
    a) When records are withheld, an explanation should be provided without merely claiming the blanket exemption.

Culture of Transparency

24) The department should make proactive statements to the community it serves, communicating with the public on all aspects of police procedure, policy and actions.
    a) Especially when there is a police involved shooting or other high-profile incident involving use of force, numerous communications channels should be utilized to explain what happened, what is known at the time, what is revealed over time, and lessons learned and perspective after the fact.
25) Fairfax County should adopt the more enlightened release of information practices and policies that govern most states.
26) Create and utilize written standards and criteria to govern the day-to-day release of information from FCPD's public information office, in order to standardize information flow.
27) Get "buy-in" and cooperation from all levels of the FCPD to improve communications and expand information release.
28) Basic requests for information should be addressed in a timely manner by openly providing orderly and routine information about incidents, activities, calls, investigations (internal and external) with unfettered public access.
29) Endorse and implement the recommendations of the President's Task Force on 21st Century Policing Final Report that are related to communications, which call for such actions as making all department policies available for public review, clearly stating what types of information will be released, when and in what situation after serious incidents and communicating swiftly, openly and neutrally while respecting areas where the law requires confidentiality.
30) We recommend a change management process be undertaken to change the FCPD culture and facilitate the successful implementation of the improved and enlightened policies.
31) Endorse and implement communications-related recommendations contained in the report of the U.S. Conference of Mayors Working Group of Mayors and Police Chiefs, "Strengthening Police-Community Relations in America's Cities."
32) Endorse and implement communications-related recommendations from PERF's use-of-force policy and practice review of the Fairfax County Police Department.

Open Data

33) FCPD should develop an open data policy and process to improve transparency of FCPD actions. This will also reduce the cost of responding to FOIA requests, since data and reports will be published online making FCPD more efficient and serving community needs more effectively.
34) Provide more specificity and detail in crime stats and information that is released by the district stations.
35) Make all department policies and procedures available for public review online, updating them as needed.

Moving Forward

36) The Board of Supervisors should publicly set dates for community forums to revisit the recommendations of the Ad Hoc Police Practices Review Commission and the progress made toward their implementation.

a) These reviews should take place in April 2016, October 2016, April 2017 and annually thereafter. Other methods should also be used to update the public, possibly an online 'report card' that is continually updated.

37) We ask that this communications subcommittee continue its service beyond presentation of its final report, in order to meet with the PERF contractors leading the review of the county's communications practices and review and comment on the PERF report and recommendations when they are finally submitted.

38) Anticipating a proposal for an independent citizen oversight group emerging from the Investigations and Oversight Subcommittee, we ask that any group established be mandated to provide robust communications in a transparent process that keeps the community informed and ensures a culture of public trust.

Recruitment, Diversity and Vetting

Recruitment

1) Provide a referral incentive for officers and/or cadets who are successful in recruiting personnel into the department.
2) Develop and implement a marketing plan for all programs and vacancies to include:
   a) Email blasts to interfaith organizations.
   b) Employ the assistance of School Career Centers in recruitment efforts.
3) Expand the Explorer and Cadet programs to include a diverse pool of participants.
4) Enter into a Recruitment Agreement with all Cadets to include reimbursement of educational expenses for breach of contract.
5) Collaborate and build recruitment-oriented partnerships with key segments of the Fairfax County community to further diversify both the applicant pool and workforce to more closely reflect the Fairfax County community.
6) Identify ways to reduce the time from application to hiring.
7) Formalize the selection process by putting certain standards and processes into writing (PERF).
8) Ensure written directives are kept up to date (PERF).
9) Create a diverse Selection Review Committee that includes community leaders (PERF).

Diversity

10) Establish a diversity goal for each commander, making them responsible for enhancing the diversity within the department.
    a) The progress toward achieving this goal should be reflected in the performance management system.
11) Educate and train recruiting and selecting officers about implicit bias, which the current neuroscience research shows can occur even in people with no-prejudiced attitudes, and the impact on both individual and organizational selection decision.

Vetting

12) Increase resources in order to reduce length of time it takes to conduct background investigations and polygraphs.
13) Formalize the officer selection process (PERF).

Retention

14) The Board of Supervisors should continue to work with the Pay and Benefits Committee to ensure the FCPD is competitive, in salary and benefits, in order to secure and maintain a diverse workforce.

Mental Health and CIT

Fairfax County Police Department

1) Establish Memphis Model/Virginia CIT Essential Elements
   a) FCPD should immediately establish the Memphis Model for Crisis Intervention Team training as adopted by the Virginia Essential Elements of CIT, with specially-trained teams as well as base-level training for all officers.
2) Attract the Right Officers
   a) FCPD should create incentives to make serving on a Crisis Intervention Team attractive to potential volunteers.
3) Identify Crisis Intervention Team Trained Officers to the Public
   a) The subcommittee recommends that the FCPD create a CIT uniform pin.
4) Make CIT a Requirement for Selected Command Assignments
   a) The subcommittee recommends that FCPD leadership consider CIT training and experience in selections to certain command positions, for instance in the patrol division.
5) Form Teams
   a) The subcommittee recommends that officers detailed to Crisis Intervention Teams maintain their regular patrol duties, but also form partnerships with mental health workers and community partners trained and experienced in dealing with residents living with mental illness.
6) Be Proactive
   a) The subcommittee recommends that Crisis Intervention Teams be empowered to work proactively to help persons with mental illness obtain treatment and take other steps to manage their illness, diverting them from the criminal justice system and the courts.
7) Integrate Dispatch Personnel
   a) The subcommittee recommends 100% of all dispatchers continue to receive at least eight hours of CIT training.

Fairfax County Sheriff's Office and the Fairfax-Falls Church Community Services Board

8) Implement "Stepping Up"
   a) The Board of Supervisors, the CSB, the Judiciary, State legislators, and the Sherriff's Office should work together to implement a community-wide system of care overhaul using the BOS-endorsed national initiative known as "Stepping Up."
9) Fully Implement Diversion First
   a) The subcommittee recommends Fairfax County develop a mechanism for oversight of systems of mental health/substance use/justice services – a diversion-oriented system of care collaborative stakeholder group now known as Diversion First.
10) Identify and Collect Pertinent Data to Establish Metrics for Success
    a) The subcommittee strongly emphasizes the importance of data collection and its intimate linkage to measuring the progress and impact of CIT programs.
11) Increase Language and Cultural Competency
    a) The subcommittee recommends that Fairfax County increase services to special populations to include cultural competency to better serve non-English-speaking justice-involved individuals.
12) Provide CIT Training to Jail and Custodial Personnel
    a) The subcommittee recommends that the Sheriff's Office provide the forty-hour Crisis Intervention Team training course to Deputies detailed to courtroom security and Deputies working inside the adult detention center.
13) Establish Strategically Located CIT Assessment Sites
    a) The subcommittee recommends that Fairfax County establish strategically located 24-hour assessment sites staffed and operated by CSB, FCPD and the Sheriff's Office collaboratively.
14) Reorganize CSB to Provide Services When They Are Needed Most
    a) The subcommittee recommends that the CSB should reorganize both forensic and community-based teams to expand capacity to provide mental health services at each point in the criminal/community

mental health continuum where there is an opportunity to provide preventive services rather than mete out punishment.

15) Expand Mobile Crisis Unit Program to Strategic Locations in Fairfax County
    a) The Mobile Crisis Unit (MCU) program is an emergency mental health program of the Fairfax-Falls Church Community Services Board that provides on-scene evaluation, treatment, and crisis intervention in the community.
16) Increase CSB Clinician Hours Inside the Jail
    a) Inside the Adult Detention Center (ADC) there is a lack of 24/7 medical personnel trained in behavioral health issues.
17) Increase Release Planning & Reentry
    a) The subcommittee recommends that more CSB staff resources be devoted to release planning inside the Adult Detention Center (ADC).
18) Review Pharmacy Policies Inside the Jail
    a) The subcommittee recommends that the CSB and ADC medical staff review medication policies, especially for psychotropic medications, to ensure that inmates are being administered the most effective medications relative to their conditions and personal medication histories by January 1, 2016.

The Judiciary and Mental Health Dockets

19) Implement Mental Health Dockets
    a) The subcommittee recommends that Fairfax County work with the judges and Clerk of the Court to establish a Mental Health Docket for both adults and juveniles by January 1, 2016.
20) Encourage Mental Health Awareness Training for Judiciary
    a) The subcommittee recommends that appropriate mental health awareness training be developed and deployed for judges, magistrates, probation and parole officers, and other officials who may come into contact with offenders who are living with mental illness by January 1, 2016.

More Thorough Implementation of the Virginia CIT Essential Elements

21) Establish Standing Mental Health Units
    a) As noted in our introduction, several members of this subcommittee and Sheriff Kincaid toured San Antonio/Bexar County in mid-July to take a look at what many agree is the "gold standard" in how a community addresses the needs of its most vulnerable citizens.
22) Institute Plain Clothes Mental Health Unit Officers
    a) Mental Health Unit officers in Bexar County wear civilian clothing and use unmarked vehicles during the course of their duties.
23) Re-focus Mental Health Training at the Criminal Justice Academy
    a) As noted above, the Essential Elements states that all law enforcement agencies must be involved as stakeholders for CIT programs to be a success.
24) Clarify Mental Health Protocol For First Responders
    a) The Fairfax County Fire and Rescue respond to more than 50,000 calls on an annual basis.
25) Involve Peers Whenever and Wherever Possible
    a) According to Virginia's Essential Elements program guide for CIT, dynamic community involvement should reflect the composition of the local community, with particular emphasis on the inclusion of persons with mental illness.

Greater Community and County Involvement in Mental Health Awareness and a More Developed Public Outreach Program

26) Develop Public Outreach Program
    a) The subcommittee recommends that the FCPD work with the CSB to develop materials for delivery to the public, to increase awareness of steps that may be taken prior to the time of possible interaction.

Use of Force

Philosophy Underpinning FCPD Policy, Programs and Practices

1) Ensure that FCPD's philosophy, policies and orders: promote treating citizens respectfully and are protective of their dignity; maintain an appropriate balance between an officer's role as a guardian/warrior or peacemaker/fighter; reinforce a reverence for the sanctity of human life.
2) Adopt policies, programs and practices that:
    a. Require officers to identify themselves by their full name, rank, and command (as applicable) and provide that information, when practicable, on a business card to individuals they have stopped;
    b. For policing mass demonstrations, continue to employ a continuum of managed tactical resources that are designed to be protective of officer safety and promote de-escalation of tensions; minimize the appearance of a military operation; and avoid provocative tactics, equipment, and language that might heighten tensions.
    c. Continue and strengthen opportunities for patrol officers to regularly interact with neighborhood residents, faith leaders, and business leaders;
    d. Reward officers for their efforts to engage members of the community and the partnerships they build and make this part of the performance evaluation process, placing an increased value on developing such partnerships;
    e. Ensure deployment schedules provide sufficient time for patrol officers to participate in problem solving and community engagement activities.
    f. Infuse a renewed commitment to community policing throughout the FCPD culture and organizational structure.
3) Commit and assure in G.O. 201.6 - PRESERVATION OF PEACE AND PROTECTION OF LIFE AND PROPERTY – that medical assistance will be provided to anyone who is injured, alleges an injury, or requests medical assistance, as follows:
    a. It shall be the duty of each sworn officer of the Department to: preserve the public peace; protect life and property; assure medical assistance; and enforce and uphold the laws of the Commonwealth of Virginia and the Ordinances of the County of Fairfax.
4) Review policies on use of physical control equipment and techniques to assure that they address any unique requirements of vulnerable populations—including children, elderly persons, pregnant women, people with physical and mental disabilities, limited English proficiency, and others deemed appropriate by the on-scene officer(s).

Police Executive Research Forum (PERF) *Recommendations*

5) Implement all recommendations but #54 of the Police Executive Research Forum (PERF) and complete a publicly available and periodically updated action plan that assigns responsibility by name or position and target date for completion of each recommendation. For PERF Report recommendation #54, which calls for the termination of the precision immobilization technique (PIT) for stopping a vehicle pursuit, FCPD should complete an analysis for approval by the Board of Supervisors on whether or not to maintain or restrict PIT use.

Use of Force Policies and Practices

6) Establish a comprehensive and integrated policy on use of force to include training, investigations, prosecutions, data collection and information sharing. This policy must be clear, concise, and openly available for public inspection.
7) Consistent with the PERF Report, replace the current definition of use of force with a more comprehensive definition as identified below:
    a. The current definition in General Order 540.1 is, "Use of Force: Any physical contact above the level of a 'guiding' or 'escort' hold between an officer and another person, or the use of lethal or

non-lethal weapons, which further the officer's intent to establish or maintain control or custody or to defend themselves or another person."

b. Proposed new language: "Force means the following actions by a member of the department: any physical strike or instrumental contact with a person, or any significant physical contact that restricts movement of a person. Force includes the use of firearms, Electronic Control Weapons (ECWs), chemical spray, bean bag shotgun, PepperBall gun and hard empty hands; the taking of a person to the ground; the use of vehicles; or the deployment of a canine; and excludes escorting or handcuffing a person who is exhibiting minimal or no resistance."

8) Amend General Order 540.1 -- USE OF FORCE -- to address the following:

a. Establish "sanctity of life" clearly and unambiguously as a philosophy and value system that remains paramount in the mind of every officer.

b. Maintain "objectively reasonable" as the standard to be followed by an officer when determining whether to use force and all references to "reasonable" must therefore be understood to mean "objectively reasonable."

c. Include as the definition of "reasonable: "...use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against his or her responsibility to protect public safety, as well as the suspect's civil liberties."

d. Reword, II. POLICY as follows: "A police officer shall employ only such force in discharge of his or her duty as is objectively reasonable in all circumstances. The use of force is to be generally considered by an officer as a last resort after discussion, negotiation or persuasion have been found to be ineffective or inappropriate in light of the situation. While the use of force is occasionally unavoidable, every police officer will refrain from unwarranted infliction of pain or suffering and will never engage in cruel, degrading or inhumane physical or verbal treatment of any person."

e. In revising the General Order, and while first and foremost meeting the criteria specified by the Supreme Court, consider the Customs and Border Patrol's definition with regard to "Objectively Reasonable and the Totality of Circumstances," which is as follows:

   i. The reasonableness inquiry for an application of force is an objective one: the question is whether the officer's actions are objectively reasonable in light of the totality of facts and circumstances confronting him or her, without regard to underlying intent or motivation.

   ii. In determining whether a use of force is "objectively reasonable" an officer must give careful attention to the totality of facts and circumstances of each particular case, including:

      1. Whether the suspect poses an imminent threat to the safety of the officer/agent or others;
      2. The severity of the crime at issue;
      3. Whether the suspect is actively resisting seizure or attempting to evade arrest by flight;
      4. Whether the circumstances are tense, uncertain and rapidly evolving; and
      5. The foreseeable risk of injury to involved suspects and others.

   iii. Totality of circumstances refers to all factors existing in each individual case. In addition to those listed in subsection e.ii., these factors may include (but are not limited to) the:

      1. training, mental attitude, age, size and strength of the officer;
      2. training, mental attitude, age, size and perceived strength of the suspect;
      3. weapon(s) involved;
      4. presence of other officers, suspects or bystanders; and
      5. environmental conditions.

f. Institute the following use of firearms requirements, by establishing or clarifying that:

   i. the act of a police officer placing his or her weapon "in a ready gun position" at a suspect will be a reportable action [NOTE: Un-holstering his or her weapon, pointing downward toward the ground next to an officer's leg, with finger on frame of weapon, is not to be a reportable action in the context of this policy as officers may do so when they

reasonably believe or know suspects are nearby, i.e., entering a dark building, alley, other location of concern.];

ii. the "ready gun" position is defined as pointing the weapon, with finger on the frame of the weapon, so the officer can see the suspect's hands and waist.;

iii. the officer must announce "Police!" after and not before attaining the "ready gun" position and if feasible followed by simple, specific and clear direction to the suspect;

iv. the "ready gun" position will be utilized in the specific circumstance where it is necessary to establish control and gain compliance through the pointing of a firearm;

v. the pointing of the firearm will be considered non-deadly use of force in this circumstance if the weapon is not aimed at center of mass, which is normally the chest; and

vi. an officer's finger should be moved from the frame to the trigger of a weapon only if the use of deadly force is authorized under the objectively reasonable standard, which would exclude pointing a weapon at center of mass simply for control and compliance under the "ready gun" position addressed in iv. above.

g. Requirements for assuring medical assistance should be instituted consistent with the following:

i. State in Section II that "[i]n all situations, medical assistance shall be provided promptly to any person who is obviously injured, alleges an injury, or requests medical assistance."

ii. Incorporate a separate implementation section, including a requirement that an operational and implementation plan be created and incorporated in the General Order.

iii. Assure that any such plan includes ECW (Taser) non-lethal incidents and specifies the officer's medical action requirements in the event that an ECW deployment is taken against a suspect.

h. A requirement should be established with regard to the state of the officer at the time of an officer involved death or serious injury per the following: Drug and steroid testing will be conducted on police officers involved in incidents that result in death or serious injury as soon as possible after the incident but not longer than "T" hours, where "T" is determined by medical experts at the time to detect whether drugs or steroids were present in the officers at the time of the incident.

9) Benchmark FCPD policies and practices with those of five urban jurisdictions that are comparable in their economic base, population density, and population demographics to Fairfax County.

10) Restrict vehicle pursuit to only those situations where there is a reasonable suspicion that a violent felony has been committed and that there is a potential for imminent risk to public safety and/or injury to individuals if pursuit is not initiated.

Use of Force Reporting and Transparency

11) Engage in robust public reporting on the demographics of the suspects in all use of force incidents and in-custody deaths, including for each incident: race, gender, age; any indicators of homelessness and of mental illness and CIT response; any previous involvement with FCPD; the type of weapon, if any, in the suspect's possession; police use of force; and resulting death/injury.

12) Collect and publicly report online all uses of force that result in death or serious injury; specifically for purposes of determining (a) whether the actions taken or not taken conformed to FCPD policies and procedures; (b) prior employment of use of force by the officer(s) involved and determination of its appropriateness; and (c) opportunities for officer, supervisor, and commander training. (Note: Release of use of force data does not necessarily have to include names of officers or victims until cases are concluded.)

13) Annually report to the U.S. Department of Justice through the FBI's Uniform Crime Reporting System, all use of force and in-custody deaths, and disseminate such data to the public.

14) Assure that timely and consistent information is presented for all officer involved shootings and lethal incident synopses should be made available within 72 hours, to include the following:

a. A narrative of the incidents and aftermath, updated in real time, including all UOF events that result in death or serious injury, not just shootings.

b. The details available in all press releases, updates and other public information should be integrated into the summaries, including names suspects and officers and links to press releases and their updates provided.
c. Demographic information: race, age, gender, whether the call included concerns about a mental health crisis, whether the suspect was homeless.
d. Information on what special teams were involved, if any.
e. Appropriate information about whether/what discipline was administered in cases with policy violations.
f. Any changes of policy or training that result from review and lessons learned from the use of force incidents.

Body Cameras

15) Mandate that FCPD police patrol officers employ body cameras to record all interactions with members of the public, contingent on the following:
    a. The enactment of laws, policies and procedures that protect individual privacy.
    b. Police patrol officers being consulted, with feedback provided as to how their concerns and recommendations were considered.
    c. Implementing a training program not only for all police officers, but the wide-ranging personnel who will oversee, process and manage the digital data, as well as prosecutors who will use the data in criminal prosecutions.

Electronic Control Weapons (Tasers/ECWs)

16) Reclassify Electronic Control Weapons as "less-lethal weapons" rather than "non-deadly weapons" per the recommendation by the 2011 Electronic Control Weapons Guidelines and the PERF Report.
17) Mandate that all uniformed officers in enforcement units carry an ECW on their duty belt (or elsewhere on their person if necessary) when on patrol. Our recommendation in this regard relative to the execution of the mandate is contingent on police officers being consulted on how best to implement the all-carry requirement and that feedback be provided to them as to how their concerns and recommendations were considered.
18) Mandate that all detectives and plainclothes officers, regardless of rank, carry an ECW in their vehicles when on duty. Our recommendation in this regard relative to the execution of the mandate is contingent on police officers being consulted on how best to implement the all-carry requirement and that feedback be provided to them as to how their concerns and recommendations were considered.
19) Regarding the term "excited delirium," define in the General Order 540.1 – USE OF FORCE – replace all use of "excited delirium" with a more medically and physiologically descriptive term and provide an explanation for the appearance of a suspect's lack of physical response to ECW use on them.
20) Prohibit use of an ECW on a handcuffed, or otherwise restrained individual, who is actively resisting, unless an objectively reasonable officer concludes that the resistance could result in serious injury to him- or herself or others and less severe force alternatives have been ineffective or are deemed unacceptable for the situation.
21) Prohibit use of an ECW on a frail or elderly person, child or a pregnant woman unless deadly force would otherwise be justified, since they face an elevated risk from ECWs.
22) Absent exigent circumstances, require supervisory approval for ECW use on a suspect in excess of three cycles.
23) Treat each ECW cycle as an independent application of the device, thus requiring its own justification, since multiple or prolonged ECW shocks may increase the risk of adverse effects on the heart or respiratory system.

Strategic Weapons and Tactics Techniques

24) Employ SWAT and the use of other advanced tactics only in situations where there is a high risk of violence, resistance, or harm to the officers involved, the public or the suspect as defined by set of "high risk" factors that are captured in the recent modifications to the Warrant Risk Assessment Matrix.
25) Consolidate FCPD policies and protocols, including threat assessment, supervisory approval, training and post-use review and lessons learned, for the use and documentation of SWAT and other advanced tactics.
26) Require that all police divisions, most notably the Narcotics Division, employ the same risk assessment procedures as SWAT for planning any high-risk operation.
27) Ensure that there is broad community understanding of FCPD SWAT capabilities and how and when SWAT can be deployed.
28) Ensure that SWAT SOPs and the recently updated threat assessment process are clear in their requirement for approval by a single designated command officer who will bear overall responsibility for each use of SWAT.
29) Adopt – or reinforce those already adopted -- the following as FCPD SWAT "best practices" –
    a. Establish policies and practices that ensure SWAT is deployed proportional to the unique needs of each individual incident.
    b. Include a trained crisis negotiator with every SWAT deployment.
    c. Require SWAT officers to wear body cams during every deployment.
    d. Require that every SWAT deployment results in a post-deployment report that documents the following, in a manner that allows for the data to be readily compiled and analyzed for lessons learned:
        i. the purpose of the deployment;
        ii. the specific reason for believing that the situation for which the SWAT team was being deployed presented an imminent threat to the lives or safety of civilians and/or police personnel;
        iii. whether forcible entry or a breach was conducted and, if so, the equipment used and for what purpose;
        iv. whether a distraction device was used and, if so, what type and for what purpose;
        v. whether an armored personnel carrier was used and, if so, for what purpose;
        vi. the race, sex, ethnicity and age of each individual encountered during the deployment, whether as a suspect or bystander;
        vii. whether any civilians, officers, or domestic animals sustained any injury or death;
        viii. a list of any controlled substances, weapons, contraband, or evidence of crime that is found on the premises or any individuals; and
        ix. a brief narrative statement describing any unusual circumstances or important data elements not captured in the list above.

Mobile Crisis Units

30) Establish as a budget priority the immediate funding of a second Mobile Crisis Unit, in support of the Mental Health Subcommittee recommendation No. 15; and over the appropriate budget cycles, but no later January 1, 2017,the funding of two additional Mobile Crisis Units, for a total of four units, one for each human services district, to be staffed and operated seven days a week around the clock.

Oversight

31) Implement independent investigative oversight and civilian review of UOF incidents. Consistent with the findings of the White House Task Force and the recommendations of NACOLE, independent oversight and civilian review will provide public accountability, trust and confidence, education of both the public and

the police, and a positive, ongoing feedback loop that would result in the reduction of both UOF incidents and complaints.

32) Establish a police legal advisor position within FCPD who would not only advise the department on legal issues but also ensure implementation of recommendations and timely implementation of policy changes.
33) Collect and analyze data, and publish an annual statistical report, covering all FCPD stops, frisks, citations, arrests, and use-of force incidents by police station and magisterial district. Include the race, gender, and ethnicity of the individual in the data collected; and note whether the suspect is homeless and if a mental health crisis is suspected or a factor in the suspect being frisked, cited, arrested, and/or subjected to force. The data should also include the race, gender and ethnicity of the FCPD personnel conducting the stop, frisk, citation, arrest, and/or use-of-force and whether the interaction was initiated by FCPD or by the suspect. Finally, document the outcome of each incident and regularly report the collected data to the Board of Supervisors and the public and post the data and analysis online.
34) Reconstitute the existing FCPD Use of Force Committee to review selective use of force events, to include the decision to employ UOF, the use of de-escalation and alternatives, compliance with applicable law and FCPD policies and practices, as well as administrative, training, supervisory and tactical issues.
    a. The UOF Committee should receive and consider after action reports (AARs) on each selected UOF event, identify lessons learned, and make recommendations as to any needed changes in policy or practice. The UOF Committee should meet on a regular basis (no less than semi-annually) with the Independent Auditor and the Civilian Review Panel to identify and address issues of concern arising out of UOF incidents and FCPD policies and practices.
    b. At least two members of the public should be appointed to the UOF Committee to ensure that the police and public can mutually benefit from their respective views about a use of force situation and contribute to any lessons that might be learned in the process. The policies and procedures guiding the appointment and role of the civilian appointees should be developed with public review and input and should protect against real or perceived conflicts of interest and assure that they are bound by the level of confidentiality that will protect candid and honest assessments, which is at the core of an effective continuous improvement process, as well as related criminal investigations.
    c. Experts and representatives from other law enforcement agencies should be invited to attend UOF Committee meetings to provide critical external perspective, insight and expertise on a permanent or ad hoc basis.
35) The Board of Supervisors should review the Police Chief's determination in all lethal UOF cases and go on record with approval or disapproval of the action.

Workforce Policies and Practices

36) Give emphasis in police officer basic and in-service training to:
    a. The distinction in the use of “ready gun” and muzzle pointing in the conduct of a building search and room clearing.
    b. Skill development in the use of de-escalation, tactical retreat and verbal interaction as alternatives to use of force.
    c. The expected and effective use of Crisis Intervention Training.
    d. Tactical and operational training on lethal and nonlethal use of force, with emphasis on de-escalation and tactical retreat skills.
37) Establish a “hire-to-retire” focus on police officer fitness to serve, particularly in relation to any propensity for being overly aggressive in the conduct of duty. This focus should be a key component in (a) recruitment, vetting and selection; (b) ensuring that the Early Identification System is sufficiently robust in-monitoring of OISs, excessive use of force incidents, and complaints of abuse of power; (c) monitoring through basic officer training and in-service training and as a part of each officer’s annual evaluation for other known and understood risk factors to ensure that they maintain the right personality and temperament for policing in a community policing framework; (d) reinforcing the “duty-to-intervene” by

fellow officers to be protective of the public and fellow officers; and (e) providing services, as appropriate, to assist officers who may need attention or treatment.

38) Conduct a study of the relationship of the supervisor to the patrol officers, including the current ratio as a potential factor in strengthening the leadership direction provided to patrol officers in non-routine situations, particularly as it relates to the potential for use of force.
39) Conduct a workforce climate survey and publish summary results on a biennial basis to monitor FCPD's operating culture, including police officer attitudes about their work, leadership and equipment; or any perceived barriers to their ability to perform their responsibilities consistent with FCPD's values, philosophy and policies. Use the detailed survey results broken down by organizational unit as a basis for dialogue between and among police officers, supervisors and the command structure.

Use of Force Subcommittee Charter

40) The charter for the UOF subcommittee should be extended beyond the completion of the Ad Hoc Commission's report and presentation to the Board of Supervisors to (a) meet its charge to "…review the roles of and relationships between the FCPD, the Office of the County Attorney, and the Office of the Commonwealth's Attorney in connection with use of force and critical incident responses; (b) follow up on open issues, such as the internal FCPD UOF Committee charter; and (c) support implementation of any of the UOF recommendations for which UOF Subcommittee participation would be beneficial.

Independent Oversight and Investigations

Investigations

1) Criminal investigations of Fairfax County law enforcement officers involved in shootings, in-custody deaths, and any use of force incident in which an individual is killed or seriously injured as defined in General Order 540.1 ("Death or Serious Injury Cases" or "Cases") should continue to be conducted by the Major Crimes Division ("MCD") of the FCPD. An exception to this policy would occur when the Chief of Police, in consultation with the Commonwealth's Attorney, determines that the criminal investigation of a particular incident should be conducted by criminal investigators from another Northern Virginia jurisdiction police department or from the Virginia State Police, by agreement with that jurisdiction or with the State Police.
2) Funds should be appropriated to the Commonwealth's Attorney's office to allow for the fulltime employment of two (2) independent experienced criminal investigators who will report to and be used at the discretion of the Commonwealth's Attorney in connection with criminal investigations of Death or Serious Injury Cases and other investigations within the scope of the responsibilities of the Independent Police Auditor.
   a) Such investigators shall participate in MCD criminal investigations of Cases as the Commonwealth's Attorney may direct and may be used in connection with other criminal investigations, time permitting.
   b) The Independent Police Auditor shall monitor MCD criminal investigations of Cases and other criminal investigations within the scope of the responsibilities of the Independent Police Auditor.
3) FCPD Internal Affairs Bureau ("IAB") investigations should be conducted concurrently with the criminal investigation to the extent practicable, provided that the Constitutional and statutory rights of any potential subject of the criminal investigation are fully protected.
4) The right of FCPD officers under the Virginia Law Enforcement Officers Procedural Guarantee Act to be "questioned at a reasonable time and place" shall continue to be preserved, but the questioning should commence as soon as reasonable, under all of the relevant facts and circumstances, as determined by the Commonwealth's Attorney in consultation with the Chief of the FCPD.
5) All FCPD officers shall be required to abstain from speaking (i) to other officers involved in or witnessing any conduct subject to a MCD or IAB investigation within the scope of the responsibilities of the Independent Police Auditor, or (ii) to any third parties involved in or witnessing such conduct until advised by MCD or IAB that they may do so.

Prosecution

6) The prosecution, including the decision whether to charge an FCPD officer with a crime arising out of a Death or Serious Injury Case, or other case within the scope of the responsibilities of the Independent Auditor, should continue to be handled by the Commonwealth's Attorney for Fairfax County unless the Commonwealth's Attorney determines that the prosecution, including the decision to charge, should be handled by the Commonwealth's Attorney of another Northern Virginia jurisdiction by agreement with that jurisdiction.
7) The Commonwealth's Attorney should be requested to issue timely and comprehensive public reports in any case involving Death or Serious Injury when no criminal charges are filed. The reports should describe the investigation conducted by the FCPD, any additional investigation or consultation undertaken by the Commonwealth's Attorney, and the basis for the conclusions reached by the Commonwealth's Attorney.

Office of the Independent Auditor

8) The Fairfax County Board of Supervisors shall establish the Office of Independent Police Auditor ("Auditor").
   a) The Auditor shall be appointed by and report directly to the Board of Supervisors.
   b) The Auditor shall have experience in, inter alia, public safety, public program auditing, the investigation of police operations and use of force incidents. In order to ensure the Independent

Auditor is perceived as truly independent, the Auditor shall have never been employed by Fairfax County.

c) The Auditor shall review (i) all investigations of Death or Serious Injury Cases conducted by the IAB;; and (ii) all UOF investigations by IAB which are the subject of a public complaint made to the FCPD or the Auditor.
d) The Auditor shall have full access to the MCD criminal investigation file as well as full access to the IAB file, including any administrative action taken, for each investigation reviewed. The Auditor shall be entitled to receive copies of any portion(s) of such files.
e) The Auditor shall determine with respect to each such MCD and IAB investigation its thoroughness, completeness, accuracy, objectivity and impartiality.
f) The Auditor shall be appointed by the Board of Supervisors for a term not less than 2 years and not more than 5 years, with a goal of maintaining continuity and independence, subject to dismissal only for good cause.

9) The Auditor shall participate in and monitor IAB investigations within its scope of responsibilities.
   a) The County Executive or his/her designee shall require, subject to discipline up to and including termination, the attendance and testimony of any Fairfax County employee, including all Fairfax County law enforcement officers, whose appearance at the interview is requested by the Auditor, and shall also require the production of any documents or other materials in the possession of the FCPD or other County offices and departments.
10) If the Auditor determines that an IAB investigation was deficient or that IAB's conclusions as to the relevant facts were incorrect or unsupported by the evidence, the Auditor may request further investigation by IAB or the Auditor may conduct such further investigation.
11) Absent good cause, the Auditor shall issue a public report with respect to each reviewed investigation within sixty (60) days of the Auditor's access to the complete IAB file.
12) The FCPD shall provide a public report quarterly to the Auditor on the disposition of all citizen complaints made against the FCPD. The Auditor shall be provided such additional information as the Auditor may deem necessary to enable him/her to determine that the FCPD is properly responding to and investigating complaints in a timely manner.
13) An individual may file a complaint concerning alleged misconduct by a Fairfax County law enforcement officer involving a Death or Serious Injury Case, the use of force, or the death of an individual with the FCPD for investigation.
   a) The citizen may instead file the complaint with the Auditor, who shall immediately forward the complaint to the FCPD for investigation, who will report on the disposition of the complaint within 30 days.
14) If the Auditor disagrees with the results or conclusions of the IAB in Death or Serious Injury Cases, the Auditor shall advise the FCPD Chief of Police who shall resolve the disagreement and make the final decision. The Chairman of the Board of Supervisors shall be informed of the Auditor's disagreement and the ultimate resolution. The Chief's decision shall be made in a public statement that sets forth the basis for the Chief's resolution of the disagreement.
15) The Auditor shall make public recommendations to the FCPD Chief of Police, with copies to the Chairman of the Board of Supervisors, concerning the revision of FCPD policies, training, and practices based on the Auditor's reviews. The Auditor shall also issue a public report annually concerning the thoroughness, completeness, accuracy, objectivity and impartiality of the IAB investigations reviewed by the Auditor.
16) The Auditor shall have an adequate budget and a trained staff to meet his/her responsibilities. The Auditor's office shall be separate and apart (physically and administratively) from those of the FCPD and the Commonwealth's Attorney.
17) Any findings, recommendations and actions taken by the Auditor shall reflect the Auditor's independent judgment. No person shall use his/her political or administrative position to attempt to unduly influence or undermine the independence of the Auditor, or his/her staff or agent, in the performance of his/her duties and responsibilities.
   a) The Auditor's office shall be separate and apart (physically and administratively) from those of the FCPD and the Commonwealth's Attorney.

Civilian Review Panel

18) Fairfax County shall establish a Civilian Review Panel ("Panel") to review civilian complaints concerning alleged FCPD misconduct.
    a) Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel.
    b) The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.
    c) Factors to be considered in appointing Panel members include, inter alia, community and civic involvement; diversity; law enforcement and/or criminal investigative experience, reputation in the community and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).
    d) The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.
19) An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor.
    a) "Abuse of authority" and "serious misconduct" shall be defined by the Panel and may include, inter alia, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, ethnicity, gender, sexual orientation or other bases; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.
    b) The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.
    c) Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.
20) Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation.
    a) The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the panel.
    b) Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.
21) The Panel review of the investigation shall be completed and a public report issued within sixty (60) days of the filing of a request for review.
    a) If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.
22) The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed.

23) The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work.

Follow Up

24) Fairfax County should establish an Ad Hoc Police Practices Review Commission every five (5) years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.

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Section IV
Appendices

Ad Hoc Police Practices Review Commission

Communications Subcommittee

Final Report and Recommendations

Civilized communities grant special powers and entrust extra authority to law enforcement agencies to keep the peace and protect the lives of everyone. In response, the public expects and deserves a culture of transparency and accountability. Police departments should provide maximum disclosure of information (balanced against endangering people, due process or law enforcement efforts) with minimum delay, to ensure these powers are responsibly and humanely used with proper respect for the sanctity of human life. Timely, accurate, culturally appropriate information dissemination via numerous communication and news tools and platforms is essential to keep the community informed, change negative perceptions, narratives and visuals and ensure a culture of public trust.

Every interaction with the Fairfax County Police Department (FCPD) creates a personal reaction, perception and memory, contributing to the overall experience one has with the agency. Public perceptions of the FCPD based on these individual experiences impact belief in the legitimacy of police actions. Communications is the key – the more information provided about police cases, actions, policies and procedures, the better one is able to assess the legitimacy of the agency. When the public determines police actions are legitimate, it leads to increased support and trust in the dedicated public servants who risk their lives every day for our benefit and safety.

Communications in recent high-profile use-of-force and critical incident cases were mishandled, inadequate and untimely, leading to loss of public trust and questions about the legitimacy of police actions. A well- informed community is well served; these recent communication lapses lowered the level of service in Fairfax County. Our community deserves better.

Looking to the future, these challenges can be addressed and communications improved through a two-pronged approach: first, by improving and updating policies, procedures, personnel and tools to state-of-the-art best practices and second, effecting a change to the agency-wide culture to embrace a predisposition to disclose information. The Fairfax County Police Department (FCPD) should recognize the public's 21st century digital capabilities which allow everyone to see, hear and assess police actions in real time.

The failures in both communications and its FOIA (Freedom of Information Act) policies have created this crisis of confidence for FCPD. If the department had policies that fostered real transparency, it's unlikely the controversies in recent years would have lasted so long and there likely would not have even been a call to form this Commission.

If the Board of Supervisors expects to get out from under the negative perception hindering the good work of the men and women in FCPD, there must be significant change coming from the leadership of the County and the Fairfax County Police Department. No longer can they just pay lip service to the idea of transparency. Real change is needed – now.

The Board of Supervisors must insist on policies that lean toward releasing information as soon as possible whether it's in the department's daily communications, during a significant event or through a Freedom of Information Act request. There are now examples across the country of large, metropolitan area police departments operating in this manner, making those agencies both more efficient and more effective in serving their communities. It is well past time for the Fairfax County Police Department to start providing timely, honest and effective communications with everything it does. We deserve nothing less.

After many hours of discussion, research, speakers and public meetings, the subcommittee's recommendations to improve police communications and public dissemination of information for use-of-force and critical incident situations are listed below.

Maximum Disclosure, Minimum Delay

- Provide accurate, timely and actionable information using redundant forms of communication (both traditional media as well as social media), communicating both good and bad news. Constant "happy talk" breeds suspicion, while being direct and clear about mistakes and failures as well as accomplishments results in increased credibility.

- Adopt a "predisposition to disclose" approach, with **public records presumed to be public** and exemptions strictly and narrowly construed. Commit to not withholding information, providing key details and news before being asked for it by the public and media. Better balance privacy and the public interest.

- Share and regularly update news and details of all officer-involved shootings in multiple ways: via news conferences, media releases, text alerts, website postings and social media - explaining not only the facts of a particular incident, but also the procedures and timing. Publicly disclose the process and obligation of every party in the aftermath of the police shooting to include timelines and diagrams where specific events, common to all police-involved shootings, are discernable.

    A) Provide the name of the officer(s) as soon as possible but preferably within a week, while maintaining the integrity of the criminal investigation and balancing the welfare and safety of the involved officer(s) and their families with the public's right to be kept informed. This is standard practice in most jurisdictions; the national average is 48 hours. If a decision is made not to release the name within a week,

publicly share specific information that illustrates the reason the name is being withheld.

B) In cases where a suspect is deceased as a result of an officer-involved shooting, make available immediately upon FOIA request all body-camera, in-dash camera or audio recordings (i.e., digital recording of any type) of responding officers to an incident.

C) In officer-involved shootings where a suspect is shot but not deceased, provide a citizens' committee (a communications advisory committee appointed by either the Board of Supervisors or the Police Chief to carry out this function) access to the recordings for a recommendation on release which should balance public and private interest. This committee's recommendation would be submitted to the Chief of Police who would factor it into a final decision.

D) All officer-involved shooting investigations should end with the public release of all digital recordings of the incident. These records should be carefully logged for preservation as part of the initial stages of an investigation. This date should not exceed 6 months.

- Annually report on the demographics of the subjects in all use-of-force incidents including race, gender, age, whether mental health status was a factor, previous involvement with FCPD and other demographic data.

- Devote more effort to sharing day-to-day information of police activity with the public. FCPD should facilitate unfettered access to blotter-type information, moving beyond what is currently provided in the daily blog to include a list of every incident and call with the basic who/what/when/where/how information.

- Include incident based reporting (IBR) categories of statistical crime information for Fairfax County broken down by FCPD district stations and provided quarterly in accessible, comprehensive online reports, so that it is available to the general public as well as to homeowners associations, citizen associations, parent/teacher associations, nonprofits, faith groups, community-based organizations and businesses. Also provide quarterly information by district for all use-of-force and officer involved shootings, CIT calls for service, traffic and pedestrian accidents.

Community Engagement

- Embrace and practice increased, proactive community engagement.
    - Communicate with key community leaders as soon as bad news breaks.
    - Hold community meetings early and often.

- Continue cross-district command meetings to increase situational awareness, spot trends and provide a centralized forum to identify and coordinate responses to emerging community issues.
- Create a "Community Engagement Team" within FCPD to respond to community concerns and manage programs that create community trust and engagement. The team members should be fluent in the language and knowledgeable of the customs of the particular community they serve, and the team should reflect the diversity of Fairfax County in order to best serve as liaisons between the community and FCPD.

- Continue supporting Citizen Advisory Committees (CAC); the Chief's Citizens Advisory Council; and Citizen's Police Academy (CPA) classes.

  - Expand promotion of these valuable public forums.
  - Improve and expand CAC and Chief's Citizens Advisory Council succession planning and online information.
  - Increase the meeting frequency of the Chief's Citizens Advisory Council from four meetings per year to 10 monthly meetings to be in line with the 10 monthly CAC meetings.
  - The structure of the eight CACs and the Chief's Citizens Advisory Council should facilitate a two-way flow of information about police services.
  - Expand the CPA program by offering a compact, three-hour version in addition to the current 10-session program and include in the CPA training the best practices and reports discussed at meetings of the Ad Hoc Police Practices Review Commission and subcommittee meetings.
  - The CPA should be designed and structured in such a way to be understood by all in the diverse communities of Fairfax County.

Policies, Procedures and Personnel

- Communications is a management function, requiring professional communicators and an appropriate place in the FCPD organizational hierarchy. Hire a civilian public information officer (a professional communicator knowledgeable of best communication practices and experienced in the practice and ethics of media and journalism) to lead the FCPD public information office, and have that position and function report directly to the Police Chief.

- Fund and employ 24/7 PIO staff in the central public information office; additionally, PIO staff should be assigned to each district station.

- Have the Police Chief be the official spokesperson for officer-involved shootings.

- Develop a policy statement regarding FCPD PIO release of information for critical events. This would include the relationship with the Office of Public Affairs and the process for a hand off to OPA in certain situations.

- FCPD should prioritize a realignment of resources to take the steps necessary to ensure more transparency, and become **the** trusted and valued source of information for Fairfax County.

- FCPD should develop a continuous process of information declassification, to help ensure proactive information release for cases that are no longer active or are closed.

- The current general order on the release of information overemphasizes the media. FCPD is not dependent on the media but should use its own platforms and tools to share information directly with the public. New improved general orders should acknowledge today's communications paradigm by promoting more community engagement and direct information dissemination to the community.

- Shorten the current 6-20 month timeframe to internally investigate and close officer-involved shooting cases, and throughout the shortened period be responsive to questions and concerns about the incidents by the public, news media and elected officials. We recommend the Board of Supervisors take an active approach throughout the investigative stage by periodically requesting and receiving updates on such incidents in a public forum.

- Words have meanings, language matters. Update policies (with the assistance of FCPD Community Engagement Team members) and mandate usage of language day-to-day that is culturally appropriate and respectful, acknowledging the very diverse communities calling Fairfax County home. This will help to eradicate any perceived biases in communications and improve everyone's experience with FCPD.

Freedom of Information Act

- The Board of Supervisors should publicly adopt a resolution (and forward it to the County's delegation in the General Assembly) to revisit FOIA laws with an eye toward expanding instead of limiting the public release of information related to police-involved shootings and other police practices and procedures related to official police activities.

- The County Executive should establish a countywide FOIA policy and procedure through issuance of a new procedural memorandum that would replace former County Executive Griffin's memo regarding FOIA compliance, which currently guides county staff. The new policy should encourage transparency and accountability by establishing a culture of disclosure. It should give guidance to all county staff custodians of public records to lean automatically toward releasing all public records upon request, changing the current practice of automatically withholding all exempt records.

- Where possible, release police reports with redactions where necessary, rather than creating a summary document.

- Develop FCPD administrative guidelines for FOIA, even in the absence of FOIA reform at the state level.

- Move the function and personnel for responding to requests for public records under the VA Freedom of Information Act out of FCPD Internal Affairs and into the FCPD Public Information Office.

- Stop the current blanket approach to Freedom of Information Act (FOIA) requests. The Code of Virginia allows discretionary release of public records, except where such disclosure is prohibited by law. Limited and judicious use of redaction should allow for the release of significant amounts of information, while safeguarding information essential to the accomplishment of the law enforcement mission. A culture change is needed to guide analysis of how to release the most information possible, by revising expectations of staff and through redacting and adjusting files to release as much information as possible. When records are withheld, an explanation should be provided without merely claiming the blanket exemption.

Culture of Transparency

- FCPD's goal should be to become one of the most transparent and publicly accountable police departments in the nation. The department should make proactive statements to the community it serves, communicating with the public on all aspects of police procedure, policy and actions. Especially when there is a police involved shooting or other high-profile incident involving use of force, numerous communications channels should be utilized to explain what happened, what is known at the time, what is revealed over time, and lessons learned and perspective after the fact.

- Fairfax County should adopt the more enlightened release of information practices and policies that govern most states, since FCPD's current practice on releasing information on officer involved shootings and the involved officer's name is not aligned with the practices of agencies located outside the Commonwealth of Virginia.

- Create and utilize written standards and criteria to govern the day-to-day release of information from FCPD's public information office, in order to standardize information flow. This will necessarily eliminate current practice which allows individuals to choose the degree of transparency and amount of information provided to the public. This centralized approach will embrace a robust model of professional communications, providing for increased transparency and accountability.

- Get "buy-in" and cooperation from all levels of the FCPD to improve communications and expand information release.

- FOIA governs public record disclosure. Basic requests for information are not governed by FOIA and should be addressed in a timely manner by openly providing orderly and routine

information about incidents, activities, calls, investigations (internal and external) with unfettered public access.

- Endorse and implement the recommendations of the President's Task Force on 21st Century Policing Final Report that are related to communications, which call for establishing a culture of transparency and accountability to build public trust and legitimacy through such actions as making all department policies available for public review, clearly stating what types of information will be released, when and in what situation after serious incidents and communicating swiftly, openly and neutrally while respecting areas where the law requires confidentiality.

- The President's task force also noted in its final report that rules and policies will fail if they conflict with the existing culture. FCPD will probably review and revise general orders and SOPs in response to the ad hoc commission's recommendations. We recommend a change management process be undertaken to change the FCPD culture and facilitate the successful implementation of the improved and enlightened policies.

- Endorse and implement communications-related recommendations contained in the report of the U.S. Conference of Mayors Working Group of Mayors and Police Chiefs, "Strengthening Police-Community Relations in America's Cities."

- Endorse and Implement communications-related recommendations from PERF's use-of-force policy and practice review of the Fairfax County Police Department.

Open Data

- Open data is a movement among governments to share public information with the community in formats that meet particular common standards, which allows not only self-service of information but encourages the public to consume information to see emerging trends in their community. FCPD should develop an open data policy and process to improve transparency of FCPD actions. This will also reduce the cost of responding to FOIA requests, since data and reports will be published online making FCPD more efficient and serving community needs more effectively.

- Provide more specificity and detail in crime stats and information that is released by the district stations.

- Make all department policies and procedures available for public review online, updating them as needed.

Moving Forward

- The Board of Supervisors should publicly set dates for community forums to revisit the recommendations of the Ad Hoc Police Practices Review Commission and the progress made toward their implementation. These reviews should take place in April 2016, October 2016, April 2017 and annually thereafter. Other methods should also be used to update the public, possibly an online 'report card' that is continually updated. It's important for both transparency and accountability to show ongoing progress to the community, to ensure the recommendations are not 'put on the shelf' and forgotten in upcoming years, especially if there are changes in the County's political representation, executive management and/or agency leadership.

- The unfortunate delay of contract for an independent report on communications resulted in this subcommittee's inability to review the consultant's work before completion of our final report and recommendations. We ask that this communications subcommittee continue its service beyond presentation of its final report, in order to meet with the PERF contractors and review and comment on the PERF report and recommendations when they are finally submitted.

- Anticipating a proposal for an independent citizen oversight group emerging from the Investigations and Oversight Subcommittee, we ask that any group established be mandated to provide robust communications in a transparent process that keeps the community informed and ensures a culture of public trust.

Submitted by the Communications Subcommittee on July 27, 2015

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Ad Hoc Police Practices Review Commission

Recruitment, Diversity and Vetting Subcommittee Report

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I. Executive Summary

Recruitment and selection of our police force is a key component to embracing a mindset in building communities of trust and legitimacy. We must ensure our department's workforce is reflective of the county in which it represents. One that contains a wide range of diversity including race, gender, language, life experience, and cultural background. These factors help to improve understanding and effectiveness in dealing with all communities in Fairfax County.

The "Recruitment, Diversity, and Vetting" Sub-committee of the Ad Hoc Police Practices Review Commission was one of five sub-committees established to accomplish the goals and objectives of the Commission. The scope of this sub-committee was to:

1. Review current FCPD policies and practices on officer recruitment, diversity and background vetting, including:

    a. Review the current diversity of all types (race, ethnicity, sex, national origin, religion, sexual orientation and gender identify) in the FCPD.

    b. Review current FCPD diversity recruiting programs and the effectiveness of such programs.

2. Review "best practices" in other jurisdictions on police recruitment, diversity and background vetting, including:

    a. Policies for recruitment, training and outreach to improve diversity as well as the cultural and linguistic responsiveness.

    b. Policies which provide that hiring and promotion selection procedures include an objective process that employs reliable and valid selection devices that comport with federal and state anti-discrimination laws.

    c. Policies which provide that, in the case of lateral hiring, candidates' prior training and qualifications records, as well as complaint and disciplinary history, are reviewed.

    d. Policies which implement validated pre-employment screening mechanisms to ensure temperamental and skill-set suitability for policing.

3. Based on the review of existing FCPD policies and practices and a review of the policies and practices of other jurisdictions and other resources, develop proposed

recommendations for changes and/or next steps to the Board of Supervisors for consideration by the Commission.

Although not a part of its scope, the sub-committee also looked into "retention," as this is an important piece of maintaining a diverse department.

The Police Executive Resource Forum (PERF) published their report in June 2015 on "Use-of-Force Policy and Practice Review of the Fairfax County Police Department."

There were several recommendations on police recruitment, diversity and vetting. PERF's recommendations are included in this report (Appendix B). The PERF's task was very similar to that given to the Commission and sub-committees. Many of the police departments that we contacted did not respond (Dallas, Las Vegas, Los Angeles). After reading the PERF report, they had already been contacted and we would have been asking for the same information and/or same questions that had already been provided. Some documents were not reviewed because they had been reviewed by the PERF and recommendations were made based upon their analysis. The subcommittee found agreement with the recruitment and vetting recommendations in the PERF Report and offer additional recommendations. The PERF recommendations are also included, as a part of this report.

II. Membership

The sub-committee consisted of a diverse group of community leaders and citizens, some who were also Commissioners (noted by *). Members were:

Shirley Ginwright, Chair*
Greg Fried*
Dave Rohrer*
Joe Hill*
Gervais Reed*
Chio Stokes
Burnette Scarboro
Robert C. Fisher
George Alber
Clayton Medford (Recorder)

III. Recruitment

Recruitment and selection are the keys to creating the FCPD of the future. Recruitment opens the door to making the Department more diverse and creates the foundation for both the core and leadership of the Department. Recruitment and selection are critical tools for change

management.

The department has several programs (Explorer and Cadet) to engage youth in learning about and working with the department. The Cadet Program ranges from age 18-21. During this time the Cadet works, full-time, for the County. Currently there are 7 budgeted positions for Cadets. Participants from the Cadet program usually enter into the Police Academy. These programs are advertised through the police website and magazine, which limits the applicant pool, but neither are widely advertised. The school resource centers are also a resource for recruitment. The department does not use the resource centers. If there were more visibility on these programs, it could result in more interest in the Department or other public safety positions. Most participants learn of the program from family members or other officers and are referred to as "legacy kids".

Interns are also used within the department. These are unpaid positions and are normally held by college students. It is, however, another entry into the police department.

The Commander, Administrative Support Bureau has the sole responsibility for recruitment and is measured for its success, aside from the Chief who has a measurement in the strategic plan. Every officer should have a recruitment role which is included in their performance standards. A referral incentive should be provided to assist in the recruitment of new police recruits and/or cadets.

According to the Best Practices Guide published by the International Association of Chiefs of Police (IACP), the most effective recruitment technique available is Employee Referral Systems. Much of the success is attributed to the officer prescreening an individual before approaching them or making a recommendation to their department. Research shows that those recruited through an ERS process are more likely to advance through the application process and succeed. The internet and newspapers are among the most popular techniques for advertising and recruitment. Advertising is expensive, especially when using the media. This method has been used; however, the cost outweighed the benefits. Public Service Announcements have also been used, again, with no positive results.

Other factors impact the recruitment and retention of new recruits. Although the department's retirement system seems to be better than other areas, some applicants withdraw because of the annual salary. Additionally, the department is in constant competition with federal law enforcement agencies, such as the FBI, whose salary and benefits are greater than FCPD currently offer. Others withdraw their application because of the lengthy hiring process.

College/University campuses as well as military bases are great sources for recruitment. Other recruitment efforts used by the department include public service announcements, radio, career fairs, word of mouth, county website, police magazines and the Chief's Diversity Council.

The FCPD should extend their recruitment outreach efforts to all nearby colleges, universities and military bases.

The interfaith community is an excellent outlet for recruitment. The county has access to all interfaith organizations via email. The FCPD should utilize this resource which could lead to the diversity they are hoping to obtain.

The FCPD does not have a plan for marketing programs or job vacancies, nor is the task assigned to one specific individual. A plan will help to define where their recruitment efforts should be and how.

Recruitment Recommendations

1. Provide a referral incentive for officers and/or cadets who are successful in recruiting personnel into the department.

2. Develop and implement a marketing plan for all programs and vacancies to include:
   a. Email blasts to interfaith organizations.
   b. Employ the assistance of School Career Centers in recruitment efforts.

3. Expand the Explorer and Cadet programs to include a diverse pool of participants.

4. Enter into a Recruitment Agreement with all Cadets to include reimbursement of educational expenses for breach of contract.

5. Collaborate and build recruitment-oriented partnerships with key segments of the Fairfax County community to further diversify both the applicant pool and workforce to more closely reflect the Fairfax County community.

6. Identify ways to reduce the time from application to hiring.

7. Formalize the selection process by putting certain standards and processes into writing (PERF).

8. Ensure written directives are kept up to date (PERF).

9. Create a diverse Selection Review Committee that includes community leaders (PERF).

IV. Diversity

"Diversity means not only race and gender but also the genuine diversity of identity, experience, and background that has been found to help improve the culture of police departments and build greater trust and legitimacy with all segments of the population." (*21st Century Policing Final Report*, p. 31.)

Upon selection as the Fairfax County Chief of Police, Chief Roessler established a Chief of Police Diversity Council. The council's membership consists of community leaders representing the county's diversity. Its mission is to assist in recruitment and outreach efforts. Council members inform the Chief of any opportunities, within their respective communities, where recruitment can take place, or an opportunity to speak on employment with the FCPD. This initiative has proven effective as seen with the increased diversity of the June 2015 Police Academy class.

The department's strategic plan does not have a measurement for the number of diverse recruits per year. A copy of the current diversity scorecard is included as Attachment C.

Diversity Recommendations

1. Establish a diversity goal for each commander, making them responsible for enhancing the diversity within the department.

    a. The progress toward achieving that goal should be reflected in the performance management system.

2. Educate and train recruiting and selecting officers about implicit bias, which the current neuroscience research shows can occur even in people with no-prejudiced attitudes, and the impact on both individual and organizational selection decision. (See the 21st Century Policing Final Report pp. 24-25 for a discussion about implicit bias).

V. Vetting

Ensuring an applicant is physically, morally and mentally suitable for employment with the department is crucial. The Department has an extensive and lengthy vetting process which leads to some applicants withdrawing from the process. The PERF report detailed the FCPD vetting process. The following paragraphs are taken from the PERF report.

- Applicants are classified as "Highly Qualified" (HQ, the highest ranking), "Better Qualified" (BQ), or "Denials." The classification decision is made exclusively by the

Personnel Services Division commander. Decisions are generally made within 48 hours of submission of information by the applicant.

- Applicants classified as either "Better Qualified" or "Denials" do not proceed and are sent status letters. "Better Qualified" applicants may re-apply after one year.

- Applicants classified as "Highly Qualified" proceed to the next step of the selection process. PERF interviews with FCPD personnel indicate that approximately two-thirds of all those who apply move forward to the next step of the process.

- HQ applicants are sent a link to a Personal History Statement and Conditional Job Offer. They complete the Personal History Statement and then bring it and the Conditional Job Offer to the Personnel Services Division. The Conditional Job Offer is signed by the applicant in the presence of a division member.

- The Personal History Statement is reviewed by a recruitment officer and the division commander. The division commander and recruitment officer determine whether the applicant will move to the next step in the process, the Physical Agility Test (PAT).

- The Physical Agility Test consists of a weapons manipulation test (trigger pull and slide manipulation) and two obstacle courses. Those who fail the PAT are dropped from the process. Those who pass are then scheduled for a polygraph examination.

- The polygraph examiner reviews the polygraph results with the polygraph supervisor. The information is then shared with the division commander. Together, they determine whether the applicant continues in the process, is retested in the polygraph with a different examiner, or is dropped from consideration. For those who move forward, the background investigator then gets the applicant's file.

- Typically the background investigator gets the applicant's file after the applicant has passed the PAT and polygraph. This could happen earlier in the process if the applicant is from outside the Fairfax County area. In these cases, accommodations are made to schedule different stages of the process in closer succession, while the applicant is in the area.

- The background check includes both a records check and a personal interview. Background investigations detectives check applicant references.

- Reference checks for local employers, spouses, and parents are conducted via face-to-face meetings with an investigator. Other references are contacted via mail or phone. Generally, references are sought from employers going back as far as 10 years, depending on the age of the applicant.

- Background investigations detectives schedule medical and psychological examinations.

- During psychological examinations, approximately 2% of applicants are not recommended for hire because of a mental health concern. And 17.5% are not recommended for hire due to evidence of deception discovered during the polygraph, which was subsequently not resolved during the psychological exam process.

- Background investigations detectives then provide a recommendation for selection.

- The entire file is reviewed by the assistant commander and then the commander of the Personnel Resources Division. PERF was told in FCPD staff interviews that the recommendations of the background investigations detectives are almost always accepted.

- The Personnel Resources commander and assistant commander interview the most highly qualified applicants, and typically employment offers are made at this stage. PERF's interviews with division staff indicate that due to overall staffing shortages in the FCPD, nearly all applicants who make it to this stage in the process are offered a recruit position—a trend that has occurred for the last several years.

Vetting Recommendations

1. Increase resources in order to reduce length of time it takes to conduct background investigations and polygraphs.

2. Formalize the officer selection process (PERF).

VI. Retention/Attrition

"Fairfax County has ongoing retention and recruiting challenges due to the competitive law enforcement jobs in the National Capitol Region. This region is home to a number of large police department and countless federal law enforcement agencies. All of these agencies including Fairfax County are not only working hard to recruit and retain the best candidates but they are all striving to recruit a diverse workforce. The best candidates have their pick when it comes to law enforcement careers and Fairfax County needs to do better to recruit and retain the best employees.

Since February 2014, The Justice Department and the Department of Homeland Security have been aggressively recruiting to fill over 4,000 law enforcement job openings. Not only do federal LE jobs pay more, but they have a 20 year retirement vs. 25 years in Fairfax County. Many officers with 6 or less years with Fairfax County have many incentives to switch to a federal LE career without having to work longer to reach

retirement eligibility. Additionally, many LE careers and local LE agencies give their employees take home vehicles which is an added incentive.

After 4 years of service, officers are eligible to compete in promotional processes. Due to a very compressed pay scale, there is no financial incentive to get promoted to Sergeant or Second Lieutenant. Both ranks are currently at 91% of the market. Many officers find themselves supervising employees who earn more than they do. This is a turn off for many as can be seen in the small percentage of officers who take the promotional process. More officers may stay on the Department if they pursued the supervisory/management route.

Lastly, in the FY16 Budget Guidelines, the Board of Supervisors has direct County Staff to work with the police department in reviewing the Department's organizational structure. Members of the Department are currently looking at a Police Officer 4 position that will help greatly with retention. The PO4 position would be a technical career path similar to what is seen in the federal government and private sector. As officers start out in their LE career, after several years they would have the option of pursuing either a supervisory/management or a technical career path. In a technical career path, they would specialize in a specific area of police work and be recognized and compensated for their expertise without having to take on a management role. This would greatly help with retention as the 3-6 year officers will have more doors open to them which would encourage them to remain with the agency."

Retention Recommendation

The Board of Supervisors should continue to work with the Pay and Benefits Committee to ensure the FCPD is competitive, in salary and benefits, in order to secure and maintain a diverse workforce.

APPENDIX A

References

Best Practices Guide, Recruitment, Retention, and Turnover in Law Enforcement, International Association of Chiefs of Police, Dwayne Orrick, Director of Public Safety – City of Cordele, Georgia

Use-of-Force Policy and Practice Review of the Fairfax County Police Department, Police Executive Research Forum (PERF), June 2015 Final Report

Final Report of the President's Task Force on 21st Century Policing, May 2015

APPENDIX B
PERF Recommendations

RECOMMENDATION #1: Formalize the officer selection process.
Benchmark Comparison: Recommendation #1

PERF's Recommendation #1 is in line with the model policies of the Virginia Law Enforcement Accreditation Program Manual, published by the Virginia Law Enforcement Professional Standards Commission (VLEPSC). Specifically, VLEPSC recommends that agencies have a written directive which requires that all elements of the selection process be conducted in a uniform manner. It specifically adds as commentary that "[a]ll elements of the selection process should be clearly set forth and carried out identically for all candidates for each particular position."

Similarly, the Commission on Accreditation for Law Enforcement Agencies (CALEA) has similar standards. Standard 32.1.3 states, "A written directive requires that all elements of the selection process for all personnel be administered, scored, evaluated and interpreted in a uniform manner within the classification."

The FCPD Personnel Resources Division should make the first hiring status determination after review of applications/initial screening guides based on a defined set of standards identified in a departmental written directive. In addition, the division should consider including other Personnel Resources Division staff in the initial review process, and the decision-making process should be formalized in the written directive.

Even prior to January 2014, when there was a change in the command structure, the initial decision concerning classification was generally made by one person. That decision could be made with the assistance of additional staff including the recruitment director, the polygraph supervisor, or background investigations detectives.

The current commander has taken over sole responsibility of this function to ensure continuity. While the move toward continuity is a step in the right direction, there is no current written policy describing the guidelines used to make classification decisions. The criteria currently applied in making classification decisions are stricter than the February 27, 2013, memorandum provided to PERF. Further, the guidelines currently utilized were described in department interviews as a "moving matrix."

Therefore, initial classification determinations are made by one individual without updated or otherwise well-defined criteria. While some flexibility is common in hiring decisions, to the extent possible, selection decisions should be the result of written, well-defined criteria.

Despite the best efforts of the department, it would be difficult to ensure that classification decisions are uniform when written criteria are not current or not strictly adhered to. It is also not clear what criteria are being applied during later stages when classification decisions are made

RECOMMENDATION #2: Update written directives on officer selection.

The FCPD should ensure that written directives applying to the Application Section and Recruiting and Testing Section are kept up to date. The criteria currently being used are not reflected in written directives. Updating the directives would also provide an opportunity to update information for a matrix used for classification determinations.

Benchmark Comparison: Recommendation #2

The Virginia Law Enforcement Accreditation Program Manual states in PER.01.01 that "A written directive requires that all elements of the selection process be conducted in a uniform manner." CALEA standard 32.1.1 also requires that "written directives describe all elements and activities of the selection process for all full-time personnel." Additionally, many modern police organizations make clear, concise, and up-to-date versions of their policy available online.

The FCPD should ensure that the flow diagram that describes the applicant selection process is updated. The most recent version provided to PERF was created on February 20, 2013. Based upon information given to PERF in staff interviews, this diagram needs to be updated. For example, the use of NEOGOV and the processes it controls should be noted. Moreover, it would appear from interviews that the background investigator involvement begins after the Physical Agility Test. However, the current flow diagram illustrates involvement of the investigator after medical and psychological examinations. Any other updates should be included in the revisions.

RECOMMENDATION #3: Create a Selection Review Committee.

The FCPD should consider establishing a diverse Selection Review Committee composed of four department members of four different ranks, plus one or two community members, to evaluate and rate future police applicants in the final stage of the selection process. The group should review all eligible applicants in a formal process and identify the best candidates for the agency. The committee's selections would go to the chief of police for final review and approval. Use-of-Force Policy and Practice Review of the Fairfax County Police Department.

The inclusion of community members on the committee brings diversity of perspective and transparency to the process. Community representation should be a volunteer position approved by the department, and community representatives should be available to serve for at least a one- or two-year term. The FCPD has hired nearly all "Highly Qualified" (HQ) applicants who pass each stage of the process over the last several years, so the final review is largely a formality. However, even when all applicants who reach the final stage are hired, there are benefits to including department members of different ranks and a qualified community volunteer in the hiring process. (Note: FCPD reports that it is implementing this recommendation and will select a community representative from the Chief's Diversity Council.)

A Final Note on Officer Selection

Like most police agencies, the FCPD has no single, specific safeguard in its selection and hiring process designed to screen out candidates who might use unnecessary or excessive force in citizen encounters. FCPD's background investigation process does employ a combination of elements, including polygraph testing and the psychological exam, to identify and reject candidates who demonstrate an issue with impulse control and anger management. PERF uncovered no information that indicated any use-of-force issues resulting from weaknesses in the selection process.

DATA AND ANALYSIS
OTHER JURISDICTIONS

Jurisdictions	FY2010 Total Increase	FY2011 Total Increase	FY2012 Total Increase	FY2013 Total Increase	FY2014 Total Increase Proposed (updated 3/15/13)	5 years Total
Alexandria	0.00%	3.35%	3.35%	3.35%	3.35%	13.40%
Arlington	1.00%	2.50%	2.50%	2.80%	2.80%	11.60%
District of Columbia*	6.78%	0.00%	0.00%	2.78%	TBD	9.56%
Loudoun**	0.00%	0.00%	3.00%	0.00%	3.00%	6.00%
Montgomery County***	3.50%	0.00%	0.00%	0.00%	6.75%	10.25%
Prince Georges County****	0.00%	0.00%	0.00%	0.00%	1.50%	1.50%
Prince William County	0.00%	0.00%	2.00%	3.00%	2.00%	7.00%
Average	1.61%	0.84%	1.55%	1.70%	3.23%	8.47%
Fairfax	0.00%	0.00%	2.00%	4.68%	0.00%	6.68%

* *Union negotiations are drivers in determining proposed increase amounts*

** *Loudoun provided 2% performance-based bonus in 2013 (not included in Base Pay)*

*** *Montgomery provided $2000 as a lump sum on 7/1/12*

**** *PG provided bonus payment in lieu of COLA and merit increase: $1000 in FY12, and $1250 in FY13; PG Total increase is 2% but with up to 5 unpaid furlough days. After furloughs, net increase is 1.5%.*

ATTRITION

- Compensation impact on recruiting, hiring, and retention
- Current Status
  - 1336 sworn positions/64 vacancies (5%)
  - Attrition model: Increase in March 2015 to 86 vacancies (6%)
- 2013 had the highest number of retirements since at least 1997, and a 76% increase over 2012, and a 122% increase over 2011
- In 2014, it is projected that there will be 84 separations from the Department, of which 21 are facing a scheduled DROP end date
- This projected attrition rate represents a 6% decrease in the authorized sworn strength of the Department
- ***Total separations*** from the Department increased in 2013
- Since 2011, there has been a significant increase in the number of sworn employees leaving the Department
  - 27% increase from 2011 to 2012
  - 62% increase from 2012 to 2013
  - Anticipated 11% increase from 2013 to 2014
- Although the percentage increased from 2013 to 2014 lessens, the expected separation of 84 employees in 2014 is an historic high

ATTRITION (2012-2013)

- Of the 123 officers that separated from the Police Department in 2012-2013, 27 voluntarily resigned for personal reasons, to join another law enforcement agency, or to seek a different career path
- Rank of the 27 officers who voluntarily resigned:
  - Police Officer II: 22 ⟶ the average years of service was ***6.4 years***
  - Police Officer III: 1
  - Police Officer I: 4

APPENDIX C

29% of sworn employees reside in Fairfax County (392/1336)

Animal Control Officer I	1
Animal Control Officer II	6
Chief of Police	1
Deputy Chief of Police	2
Police Captain	8
Police Lieutenant	5
Police Major	4
Police Officer I	55
Police Officer II	265
Police Second Lieutenant	27
Police Sergeant	17

0-3 years - 62
4-6 years – 29
7-10 years - 79
11-15 years – 69
15-20 years – 64
20+ years - 89

ATTRITION SUMMARY REPORT:

In terms of attrition in the Fairfax County Police Department from 1998 to YTD 2014, 991 officers have separated from the Police Department. Of these, 73 have resigned for personal reasons, 105 resigned to join another law enforcement agency, 300 resigned to begin a career outside of law enforcement, 8 were placed on disability, 460 retired, 13 died while still employed, and 32 were dismissed based on disciplinary or performance issues. The average attrition rate of the Police Department during this time is 4.54%.

The current vacancy rate in the Department is 64 positions, with the current sworn strength 1272 of the authorized strength of 1336. This represents a 5% sworn vacancy rate. It is projected through historical and projected analysis that the sworn vacancy rate will increase to 6% in March 2015, with 86 vacancies.

The ability of the Police Department to address these vacancies with recruiting/hiring efforts have been challenging, with the April 2014 Session 62 Academy Session consisting of 25 recruits in a class that was projected to seat 54 recruits. Despite intensive recruiting and hiring efforts, the ability of the Department to only fill 46% of its available vacancies represents the difficulty encountered in attracting qualified applicants for the Police Department. The Department processed several thousand applications and polygraphed 427 of the most qualified applicants, to arrive at the 25 in Academy Session 62. This represents 6% of the applicants who were polygraphed for Academy Session 62.

Establishing a continuous source of qualified applicants is essential to maintaining the authorized strength of the Department. Normal attrition rates continuously detract from the authorized strength at an average annual level of 5%. Of particular note in terms of attrition, 2013 had the highest number of retirements since at least 1997, and a 76% increase over 2012, and a 122% increase over 2011. In 2014, it is projected that there will be 84 separations from the Department, of which 21 are facing a scheduled DROP end date. This projected attrition rate represents a 6% decrease in the authorized sworn strength of the Department.

In addition to the increase in retirements, 2013 also saw an increase in the total separations from the Department. Since 2011, there has been a significant increase in the number of sworn employees leaving the Department. There was a 27% increase from 2011 to 2012, a 62% increase from 2012 to 2013, and an expected 11% increase from 2013 to 2014. Although the percentage increase from 2013 to 2014 appears to lessen, the expected separation of 84 employees in 2014 is a historic high.

What is most concerning is the anticipated increase in the separation of employees beyond the statistically supported attrition rate. These sworn employees are those with 4 to 6 years of service and of the Police Officer First Class (P-II) rank. These employees have been denied merits for all but one year of their employment with the Police Department and as a group, P-II's with 4 to 6 years of service are 89% below the market average for midpoint pay. These are the officers that historically are most vulnerable to voluntary separation from the Department for other law enforcement agencies, career change, or personal reasons. There are 102 sworn P-II's in the Department with 4 to 6 years of service, and any departure of these officers would add to the unprecedented expected attrition of sworn employees in 2014. The increase in attrition, combined with the inability of the Department to attract enough qualified candidates presents significant staffing challenges for the coming years.

Of the 123 officers that separated from the Police Department in 2012 and 2013, 27 were officers who voluntarily resigned for personal reasons, to join another law enforcement agency, or to seek a different career path. 22 of the 27 officers who resigned were P-II rank, while 1 was a Master Police Officer (P-III) and 4 were Police Officer I.

The average years of service for the P-II's who resigned was 6.4 years.

As the County continues to urbanize and increase it's great diversity, the Police Department's attrition rates and inability to recruit due to a lack of being an employer of choice based upon non-competitive compensation, also greatly hinders our ability to change the diversity of the Department to reflect that of the community. The Chief of Police has created a Council on Diversity Recruiting comprised of diverse community leaders. However, without a competitive compensation package it is extremely difficult to attract minority applicants whom already live in our County and the region as our compensation does not afford new recruits and early career officers the ability to reside in the County. This is reflective in the fact that only 29% of our sworn staff resides in the County and the majority is tenured employees who are the current factors in attrition rates (they are retiring).

APPENDIX D
Diversity Score Card

Fairfax County Police Department Sworn Diversity Score Card November 8, 2013 Through June 5, 2015				
Fairfax County Police Department Racial / Ethnic Composition			**Fairfax County Census Information Racial / Ethnic Composition**	
	November 2013		American Community Survey Data 2012	
	Number	Percentage		
White	1125	83.27%	White	62.8%
Black	107	7.92%	Black	9.0%
Asian/Pacific Islander	54	4.00%	Asian/Pacific Islander	18.0%
Hispanic (may be of any race)	63	4.66%	Hispanic (may be of any race)	16.1%
American Indian/Alaska Native	2	0.15%	American Indian/Alaska Native	0.2%
			Other Race / Multi-Racial	10.0%
Total =	1351			
Vacant=	53			
	June 2015		American Community Survey Data 2013	
	Number	Percentage		
White	1147	83.24%	White	63.6%
Black	102	7.40%	Black	9.7%
Asian/Pacific Islander	61	4.43%	Asian/Pacific Islander	18.4%
Hispanic (may be of any race)	67	4.86%	Hispanic (may be of any race)	16.2%
American Indian/Alaska Native	1	0.07%	American Indian/Alaska Native	0.2%
			Other Race / Multi-Racial	8.1%
Total =	1378			
Vacant=	47			

	Change in Diversity		
White	-0.03		
Black	-0.52		
Asian/Pacific Islander	+0.43		
Hispanic (may be of any race)	+0.20		
American Indian/Alaska Native	-0.08		

APPENDIX E
Materials Review

- Standard Operating Procedure – Applicant Section
- Standard Operating Procedure – Recruiting and Testing Section
- Fairfax County Police Department Sworn Diversity Score Card
- 2005-2015 Police Officer Hires*

Sample of Responses to Job Announcements*

- Job 14-01216 – Police Officer 1
- Job 14-01893 – Police Officer 1
- Job 14-00598 – Police Officer 1
- Reconciling Higher Educational Standards and Minority Recruitment: The New York City
- A Problem-Oriented Approach to Preventing Sex Discrimination in Police Recruitment
- Recruitment and Retention Best Practices Update, California Commission on Peace Officer Standards and Training
- Strategies for Improving Officer Recruitment in the San Diego Police Department
- Law Enforcement Recruitment Toolkit
- Best Practices Guide: *Recruitment, Retention, and Turnover*
- Minority Recruitment: *Mobilizing the Community for Minority Recruitment and Selection*
- IACP National Policy Summit on Community-Police Relations
- IACP National Model Policy Center
- Final Report of the President's Task Force on 21st Century Policing
- Innovations in Police Recruitment and Hiring — Hiring in the Spirit of Service
- Police Recruitment and Retention for the New Millennium

Ad Hoc Police Practices Review Commission
Mental Health and CIT Subcommittee
Final Report and Recommendations

INTRODUCTION

Police officers have increasingly become the first responders when a citizen is in the midst of a psychiatric crisis. This is certainly true in Fairfax County, where the Police Department responds annually to over 5,000 calls for service related to individuals living with a mental illness who need assistance. According to the National Alliance on Mental Illness (NAMI), up to 40% of adults who experience serious mental illness in their lifetime will come into contact with the police and the criminal justice system at some point in their lives.[1] The vast majority of these individuals will be charged with minor misdemeanor and low-level felony offenses that are a direct result of their psychiatric illnesses - the most common being trespassing or disorderly conduct.

Despite the minor nature of these crimes, encounters between persons with mental illness and the police can escalate, sometimes with tragic consequences. Nearly half of all fatal shootings by law enforcement locally and nationally involve persons with mental illnesses. A poignant example of a fatal encounter between the Fairfax Police and an individual in crisis is the January 2010 fatal shooting by Fairfax Police of David Masters, a 52 year-old man with mental illness who'd been accused of taking flowers from the front of a business.

Jails and prisons have become the largest psychiatric facilities in our nation. There are nearly fourteen times as many people with mental illnesses in jails and prisons in the United States as there are in all state psychiatric hospitals combined. Each year, roughly 2.2 million people experiencing serious mental illnesses are arrested and booked into jails nationwide. Jails are not designed or adequately equipped and staffed to provide the treatment those individuals need.

On any given day, 500,000 people with mental illnesses are incarcerated in jails and prisons across the United States, and 850,000 people with mental illnesses are on probation or parole in the community.[2] In July of 2013, Virginia's local and regional jail systems reported 6,346 incarcerated persons with mental illness, of which 56% qualified for a diagnosis of serious mental illness.[3] The recent death of an inmate with schizophrenia in the Fairfax County Adult Detention Center has focused a spotlight in our county on this troubling reality.

According to Fairfax County Sheriff Stacey Kincaid, nearly half of all Fairfax County Jail inmates at any given time have mental health and/or co-occurring substance abuse disorders. Nationally, persons with mental illnesses remain incarcerated four to eight times longer than

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[1]NAMI Public Policy Research Institute document, "Spending Money in all the Wrong Places: Jails & Prisons", Page 1. http://www2.nami.org/Content/NavigationMenu/Inform_Yourself/About_Public_Policy/Policy_Research_Institute/Policymakers_Toolkit/Spending_Money_in_all_the_Wrong_Places_Jails.pdf

[2] 2014 Virginia Office of State Inspector General's Report "A Review Of Mental Health Services In Local And Regional Jails", Page 1. http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/attachment-1.pdf

[3] 2014 Virginia OSIG Report, Page 2.

those without mental illnesses for the exact same charge and at a cost of up to seven times higher, making their incarceration a financial burden for taxpayers, as well as, a social/health/justice issue.[4]

The importance of appropriate responses to helping individuals in mental health crises and to diverting individuals who might be arrested into treatment programs cannot be overstated.

The Task of The Mental Health and CIT Subcommittee

The subcommittee was asked to review current policies and practices of the Fairfax County Police Department and the Fairfax County Sheriff's Office that involve their personnel's interactions with persons in physical or mental health crisis and/or those with intellectual disabilities, and to develop recommendations to propose to the full Ad Hoc Police Practices Review Commission to be included in the Commission's Report to the Fairfax County Board of Supervisors and the Fairfax County Sheriff.

The subcommittee was specifically asked to review Crisis Intervention Team training for law enforcement officers, which helps law enforcement officers recognize, evaluate, and de-escalate encounters with individuals in mental distress.

The "gold standard" for Crisis Intervention Team training was established by the Memphis City Police Department in 1988 after a police officer fatally shot a man who was mentally ill. Since implementation, Memphis has dramatically reduced fatal police shootings, officer injuries and costly lawsuits. It has also greatly improved police/community relations. The Memphis Model has been widely accepted and implemented throughout the United States.

Of special interest to this Commission, the subcommittee believes that continuing the move to the Memphis Model will have a positive impact on every police interaction with the public in Fairfax County, not just those residents who suffer from mental illness. In the City of Memphis, the change in approach has resulted in an attitudinal shift within the police department as it relates to all of their encounters with the community, a shift from military/aggressive or warrior mentality to a community/service or guardian one.

The Memphis Model requires forty hours of training for law enforcement officers. However, this model is not simply a forty hour training program for law enforcement officers. Rather, according to its chief architect, retired Major Sam Cochran, the so-called "Father of CIT" the

[4] Testimony from Miami Dade County Judge Steve Liefman before the U.S. Senate.
"Several years ago, the Florida Mental Health Institute at the University of South Florida completed an analysis examining arrest, incarceration, acute care, and inpatient service utilization rates among a group of 97 individuals in Miami-Dade County identified to be frequent recidivists to the criminal justice an acute care systems. Nearly every individual was diagnosed with schizophrenia…Over a five year period, these individuals accounted for nearly 2,200 arrests, 27,000 days in jail, and 13,000 days in crisis units, state hospitals, and emergency rooms. The cost to the community was conservatively estimated at $13 million with no demonstrable return on investment in terms of reducing recidivism or promoting recovery. Comprising just five percent of all individuals served by problem-solving courts targeting people with mental illnesses, these individuals accounted for nearly one quarter of all referrals and utilized the vast majority of available resources."

Model emphasizes broad Crisis Intervention Team training. Cochran explained in an email, "Police training is great, but training without supportive state, county, and local support and participation is a cosmetic approach: a Band-Aid approach at best."[5]

The Memphis Model requires law enforcement, citizens, mental health providers, and the judicial system to work together to achieve two core goals: "(1.) Improving officer and consumer (persons with mental illnesses) safety and (2.) Redirecting individuals with mental illnesses from our judicial system into our health care system." (Underline added by subcommittee for emphasis.)[6]

Fairfax Police Chief Edwin C. Roessler, Jr. and Fairfax Sheriff Stacey A. Kincaid have endorsed the Memphis Model and it is fully supported by the Community Services Board. However, Fairfax County has not yet implemented all of the necessary elements of the supportive collaborative network required to take full advantage of the Memphis Model and go beyond the "Band-Aid" stage.

How It's Done – Best Practices

One nationally recognized example of the Memphis Model can be found in Bexar County, Texas, home of San Antonio, which was visited by three subcommittee members and Sheriff Kincaid among others on a recent fact-finding tour.

Using a Crisis Intervention Team training approach, Bexar County diverts more than 4,000 individuals in mental health crises into appropriate services at a savings of at least $5 million annually in jail costs and $4 million annually by preventing inappropriate admissions to emergency rooms. Estimated total savings since adopting their variation of the Memphis Model eight years ago exceed fifty million dollars.[7] As importantly, subcommittee members learned on their fact-finding tour that the use of force in Bexar County inside the jail has gone from fifty incidents per year, to three incidents in six years, according to Bexar County officials.

A key component of the Crisis Intervention Team training approach in Bexar County is the operation of an assessment site where persons in crisis can be taken by police rather than being booked into jail or transported to an emergency room. At this 24-hour center, new arrivals are evaluated by mental health professionals and, when possible, diverted from the criminal justice system into community mental health care.

In Bexar County, individuals who face criminal charges have the option of appearing before a mental health court judge who can direct them into appropriate treatment programs and monitor their compliance rather than a regular district court judge who would sentence them to jail terms where their conditions often worsen and from which they are eventually discharged untreated.

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[5] Email notes from Sam Cochran. *http://www.peteearley.com/2010/02/23/a-lecture-from-a-hero-of-mine/*
[6] Crisis Intervention Team Core Elements, Page 3. http://www.cit.memphis.edu/information_files/CoreElements.pdf
[7] Blueprint for Success: The Bexar County Model, Page 1. http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/jail-diversion-toolkit.pdf

These court involved diversions have proven effective at, in the vast majority of cases, ending repeated arrests.

How and When To Implement in Fairfax County

Here in Fairfax County, the average annual cost of incarcerating an individual in the County jail is estimated to be approximately $50,000. By comparison, the subcommittee learned that the average cost for the CSB to serve someone in an intensive case management program is approximately $7,500 per year. The opportunity to realize significant savings similar to what Bexar County has experienced certainly exists here and Fairfax County already has some of the required infrastructure in place.

Crisis training for law enforcement, crisis assessment sites, and mobile crisis units are considered "best practices" in a diversion program and recommended/endorsed by the federal government and state government. The Virginia Department of Behavioral Health and Disability Services (DBHDS) has issued grants to local communities to establish the Memphis Model. It has set aside $1.8 million to add six crisis assessment sites to the eighteen already operating in the Commonwealth.[8]

In addition, Virginia currently has mental-health dockets in four jurisdictions, with one most recently established in Prince William County. A study by Old Dominion University found that the Norfolk mental-health docket translated into fewer repeat offenders, less jail time, improved mental health through treatment, and a jail-costs savings of $1.63 million over eighteen months. Similarly, in Petersburg's mental health docket, only four of fifty people (8%) in the program re-offended, in sharp contrast to the 60% to 75% recidivism rate through the normal court process.[9] At the August 3, 2015 initial meeting of the Diversion First program established by Chairman Bulova, Judge Thomas Mann, of the Juvenile and Domestic Relations District Court, advised that he would commence a mental health docket in Fairfax County.

Fairfax County officials recently requested a $1.4 million state grant to improve Crisis Intervention Team/Jail Diversion services. Part of this grant would have helped fund the opening of a Merrifield crisis assessment site. The Fairfax/Falls Church Community Services Board has space allocated at its new Merrifield facility for a crisis assessment site, but cannot utilize the space until funding is found.

The Virginia Department of Criminal Justice Services approved only $140,000 of the request because Fairfax's CIT programs did not fully meet the state's standards for the essential elements of a CIT program, i.e. the Memphis Model. The funds that Fairfax did receive were ear-marked for the hiring of a CIT coordinator to assist the County in meeting those standards by overseeing training and helping Fairfax create a more effective jail diversion program. That CIT Coordinator has been appointed.

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[8] Compensation Board Mental Illness in Jails Report, Page 25. http://www.dbhds.virginia.gov/library/document-library/ofo%20-%202014%20scb%20mental%20illness%20in%20jails%20report.pdf

[9] Virginia Association of Community Services Board – Response to 2014 OSIG Report, Page 4. http://sfc.virginia.gov/pdf/Public%20Safety/2014/011714_Comments2_VACSB.pdf

The County Executive has recommended the use of Carryover FY15 funds to:

- Provide an increase of $800,000 and 6 FTE positions to support a second Mobile Crisis Unit providing crisis intervention and assessment services to individuals in psychiatric crisis.
- Provide an appropriation of $500,000 from fund balance reflecting "bridge" funding to further enhance the crisis intervention services in the County.[10]

The subcommittee strongly and unanimously recommends that Fairfax County make implementation of the Memphis Model of Crisis Intervention Team training a priority. Full implementation would require, at a minimum, the opening of strategically located crisis assessment sites, mobile crisis units, and the creation of a mental health court docket by the judiciary.

The subcommittee's review of best practices shows that the Memphis Model approach can better use tax dollars, reduce police shootings and use of force, reduce officer injuries, help restore public trust in law enforcement, treat those with mental illness in a more appropriate and humane manner, and help ease unnecessary suffering.

No community would send its officers onto the streets without providing them with firearms training. Yet many officers retire without ever firing their weapons in the line of duty. By contrast, most officers encounter persons with severe mental illnesses many times during their careers. Learning how to de-escalate these encounters must be a priority for county law enforcement. But, as already stated, depending entirely on police training alone is insufficient. To implement the Memphis CIT/Jail Diversion Model in the most optimal manner, Fairfax County must develop a collaborative community approach. This will require bringing to the table: law enforcement, the Community Services Board, mental health providers, the Commonwealth Attorney's Office, public defenders, Fairfax judges, the Board of Supervisors, state legislators, families with loved ones with mental illnesses, consumers, community organizations, hospitals, faith communities, and residents to work together collaboratively to improve public safety and end tragedies that should and can be prevented.

The subcommittee has outlined a number of specific recommendations that it believes, when implemented, will move Fairfax County much closer to achieving these outcomes.

BACKGROUND

Scope of Work

On May 28, 2015 the Chair of the Fairfax County, Virginia (the "County") Ad Hoc Police Practices Review Commission (the "Commission") directed the Mental Health and CIT Subcommittee (the "Subcommittee") to:

[10] Fairfax County FY2015 Carryover Package, Page 88.
http://www.fairfaxcounty.gov/dmb/carryover/fy2015/fy2015-carryover-package.pdf

"…undertake a review of the current policies and practices of the Fairfax County Police Department (the "FCPD") and the Fairfax County Sheriff's Office (the "FCSO") with regard to their interaction with persons in physical or mental health crisis or those with intellectual disabilities, and develop recommendations to propose to the full Commission to forward to the Fairfax County Board of Supervisors (the "Board") and the FCSO." The Commission asked the subcommittee to "specifically:"

- Review both past and current FCPD and FCSO Crisis Intervention Training (CIT) policies and practices, including the rationale for those policies.
- Evaluate the quality and curriculum of Fairfax County's programs when compared with other jurisdictions in Virginia as well as national models.
- Review what statistics and data other jurisdictions collect regarding their interaction with vulnerable individuals and how do they use that data to refine and improve their policies.
- Review models that involve not only diversion of vulnerable individuals to treatment rather than criminal justice, but also those models that have a process for transferring individuals out of the Criminal Justice context and into treatment.

Members

Members of the Subcommittee included seven individuals who are also members of the Commission and nine individuals who are not; in total, they are:

- **Del. Marcus Simon, Chair** – Mr. Simon is a Member of the Virginia House of Delegates where he serves on the House Militia, Police and Public Safety Committee.
- **Daria Akers*** - Mrs. Akers is a mother of 2 who is successfully living with Bipolar disorder. In 2010, during a manic event, she was arrested and sent to Fairfax ADC.
- **Gary Ambrose*** - Mr. Ambrose is a retired Air Force brigadier general and former IBM executive. He is the Board Chairman of the Fairfax-Falls Church Community Services Board, Chairman of Fairfax County's "Diversion First" jail diversion initiative, and a member of Concerned Fairfax, a local mental health advocacy group.
- **Kevin Bell** – Mr. Bell is the Chair of the Fairfax County Human Services Council and is the Senior Associate General Counsel For Dispute Resolution for the Securities Investor Protection Corporation in Washington, D.C..
- **Michael B. Buckler, Jr.*** - Mr. Buckler is a management consultant with Manler Partners in Alexandria, Virginia.
- **Chris Cavaliere*** - TBF
- **Robert Cluck** – Mr. Cluck is the immediate Past President of NAMI Virginia and the immediate Past Treasurer and Board Member of NAMI Northern Virginia. He also is a family member presenter for Fairfax CIT training and occasionally for Arlington.
- **Jim Diehl** –Mr. Diehl is a member of the Fairfax County Police Dept Citizens' Advisory Council and is a retired Marine infantry officer.

- **Pete Earley** - Mr. Earley is a journalist and author of thirteen books, including the New York Times bestseller, *The Hot House*, and the 2007 Pulitzer Prize finalist, *Crazy: A Father's Search through America's Mental Health Madness*.
- **Ron Kidwell** – Mr. Kidwell is a Major in the Fairfax County Sheriff's Office, assigned as the Commander of the Adult Detention Center. Major Kidwell has spent twenty-seven years working as a law enforcement officer.
- **Ryan Morgan*** - A Lieutenant with the Fairfax County Police Department who has served since 1994, Lt. Morgan was recently appointed the County's CIT coordinator.
- **Michael Pendrak*** - TBF
- **Claudette Pilger*** - TBF
- **Kevin Pittman*** - Mr. Pittman is President of the Fairfax County Deputy Sheriffs Union, an Executive Board Member of Virginia's Department of Criminal Justice Services, and a nineteen-year veteran of the Fairfax County Sheriff's Office.
- **Bob Vernola*** - Mr. Vernola is a former Fairfax County Corporal and is now a northern Virginia business owner. His granddaughter is currently a member of the Fairfax County Police Department.
- **Darryl Washington** - A licensed clinical social worker, Mr. Washington is the Deputy Director of the Fairfax-Falls Church Community Services Board.
- **Del. Vivian Watts***- Ms. Watts is a Member of the Virginia House of Delegates where she serves on the House Courts of Justice Mental Health Subcommittee and on the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the Twenty-First Century. She has also served as Virginia Secretary of Public Safety.

* Subcommittee members not also on the Commission.

During its work, the subcommittee received assistance and support from Claudia Arko, Gordon Dean, and Clayton Medford from the County's professional staff.

Meetings

All meetings were open to the public, held at the Fairfax County Government Center (FCGC), and conformed to the applicable sections of the Commonwealth of Virginia Code. The Subcommittee met at 7:30 p.m. on the following dates in 2015: May 14 in FCGC room 8; May 28, June 10, July 8, 23, and 30, and August 6 in FCGC room 232. Minutes from these meetings are available on the Subcommittee's webpage.

The initial meetings of the subcommittee were devoted to defining the tasks necessary to meet its Scope of Work and receiving presentations from the FCPD, FCSO, and the Fairfax-Falls Church Community Services Board (CSB) to determine the current state of the County's crisis intervention and mental health programs.

Materials Reviewed

During its meetings, the subcommittee reviewed and discussed the following documents, which are available on its webpage.

- FCPD General Order 603.3 – Emotionally Disturbed Persons Cases

- The Stepping Up Initiative – Overview
- Crisis Intervention Training: Fairfax Implementation Facts
- Authorization to Apply for Crisis Intervention Team Assessment Site Grant (Page 51, Approved by the Board of Supervisors on April 28, 2015)
- Sequential Intercept Models from the county police departments in Arlington, Fairfax, and Prince William
- CIT Essential Elements
- The Bexar Model
- "Cross Systems Mapping Statewide Initiative 2008-2013: Final Report," Office of Forensic Services, Virginia Department of Behavioral Health and Developmental Services (the "VA DBHDS")
- Transforming Services for Persons with Mental Illness in Contact with the Criminal Justice System, Final Report, Fairfax County/Fairfax City, 2011
- CIT Assessment Grant Application
- June 9, 2015 Letter from Lt. Ryan Morgan, FCPD, Planning & Research Bureau
- FCPD Release on CIT Training
- CIT Assessment Site Reporting Guide
- Gap and Resource Analysis – "Assessment of Status of Cross-System Mapping: Mental Health, Substance Use & Justice"
- Sample CIT Training Schedule
- County Jails at a Crossroads – National Association of Counties Report
- Miami-Dade County, Florida Mental Health Judicial Project
- Standard Operating Procedure 430 – Pharmaceuticals
- Cost-Benefit Knowledge Bank for Criminal Justice: A Guide to Calculating Justice-System Marginal Costs Justice (Report, Fact Sheet, and Article)
- Four States (Memphis, Virginia, Florida, Ohio) CIT Essential Elements
- Calls for Service, Emotionally Disturbed Persons, March-July 2015
- Mobile Crisis Unit Service Data, April-May 2015
- Emergency Custody Orders Data
- 2014 Virginia Inspector General's Report "A Review Of Mental Health Services In Local And Regional Jails" ("OIG Report")
- Compensation Board Mental Illness in Jails Report
- The Final Report of the Police Executive Research Forum Use-of-Force Policy and Practice Review of the Fairfax County Police Department (the "PERF Report")

Presentations Received

During its meetings, the subcommittee received presentations from:

- Kay Fair, CSB Division Director for Emergency Services regarding the County's single mobile crisis unit, the services it was designed to provide, and the limitations of having a single unit to serve the entire county with staffing for limited hours of operation.

- 2nd Lieutenant Derrick Ledford, FCSO, about the office's then current CIT training regimen.
- Lt. Ryan Morgan, FCPD, on CIT Training then being given at the Police Academy.

SPECIFIC RECOMMENDATIONS

The subcommittee has a number of Specific Recommendations. These Recommendations are presented in five parts:

I. Fairfax County Police Department
II. Sheriff's Office & CSB
III. The Judiciary and Mental Health Dockets
IV. More Thorough Implementation of the Virginia CIT Essential Elements
V. Greater Community and County Involvement in Mental Health Awareness and A More Developed Public Outreach Program

Part I. Fairfax County Police Department

Recommendation 1 – Establish Memphis Model/Virginia CIT Essential Elements

The subcommittee agrees with and adopts recommendation #67 from the Final Report of the Police Executive Research Forum Use-of-Force Policy and Practice Review of the Fairfax County Police Department (the "PERF Report") presented to the full Commission in June of 2015.

The subcommittee recommends that the FCPD should immediately establish the Memphis Model for Crisis Intervention Team training as adopted by the Virginia Essential Elements of CIT, with specially-trained teams as well as base-level training for all officers.

The subcommittee approves of the Police Chief's current goal to provide a 40-hour course, which meets the requirement of the Virginia Essential Elements of CIT, to enough officers to ensure that an adequate number of trained CIT patrol officers are available on 24/7 basis. This subcommittee also endorses the PERF Report's recommendation to implement the best practice of forming specialized Crisis Intervention Teams. In implementing this best practice, FCPD should establish the goal of: (1) ensuring each patrol squad has at the very minimum one CIT trained officer (with CIT being a specialty designation); and, (2) creating a squad of select CIT trained officers who would work closely with the Community Services Board (perhaps even be assigned to CSB) and would coordinate with mobile crisis units and also assist with transfer of custody.

The subcommittee agrees that these Crisis Intervention Teams should be made up of volunteers best suited to Crisis Intervention Teams. It should be noted that the U.S. Justice Department's Civil Rights Division specifically opposed the general training of all officers in its 2012

"findings letter" prior to entering a settlement agreement with Portland, OR Police Bureau (PPB).[11]

Recommendation 2 – Attract the Right Officers

In addition to the recommendations found in the PERF Report, the subcommittee recommends that the FCPD create incentives to make serving on a Crisis Intervention Team attractive to potential volunteers. The incentives could include, for example, flexible shift hours to coincide with peak hours for calls involving individuals in mental health crisis and issuance of temporary detention orders (TDOs).

Recommendation 3 – Identify Crisis Intervention Team Trained Officers to the Public

The subcommittee recommends that the FCPD create a CIT uniform pin. This is common among many law enforcement agencies that have implemented Crisis Intervention Team training and would be a visible sign to members of the community that the officer has specialized training in dealing with complex situations.

Recommendation 4 – Make CIT a Requirement for Selected Command Assignments

The subcommittee recommends that FCPD leadership consider CIT training and experience in selections to certain command positions, for instance in the patrol division. The subcommittee leaves it to the discretion of the Chief to identify the specific command opportunities for which CIT training should be a requirement. Making this a requirement underscores the priority of CIT training in the Police Department.

Recommendation 5 – Form Teams

Regarding the deployment of CIT trained officers, the subcommittee recommends that officers detailed to Crisis Intervention Teams maintain their regular patrol duties, but also form partnerships with mental health workers and community partners trained and experienced in dealing with residents living with mental illness. These teams of police and mental health experts should be available to be dispatched to identified mental health crisis events or to be dispatched to calls for CIT assistance from any responding officer.[12] CIT trained officers could monitor and watch for calls-for-service meeting a certain criteria, assist mobile crisis when back-up is required, and respond to scenes if a police supervisor determines the service of a CIT trained officer is appropriate. CIT trained officers have the knowledge, skills, and abilities to perform all other levels of day-to-day police work but require the latitude to respond if their assistance is requested.

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[11] USDOJ Findings Letter to the Mayor of Portland, Page 1. http://www.clearinghouse.net/chDocs/public/PN-OR-0001-0003.pdf

[12] CIT Essential Elements Page 18-19. http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/va-cit-essentialelements.pdf

Recommendation 6 – Be Proactive

The subcommittee recommends that Crisis Intervention Teams be empowered to work proactively to help mentally ill persons obtain treatment and take other steps to manage their illness, diverting them from the criminal justice system and the courts.

Recommendation 7 – Integrate Dispatch Personnel

The subcommittee recommends 100% of all dispatchers continue to receive at least eight hours of CIT training. Call takers and dispatchers are two security layers that can recommend CIT trained officers be immediately deployed as appropriate. As call takers receive calls they can gauge an appropriate level of concern and advise the dispatcher who can find the most appropriate police resources available. (Note: Dispatch is working on training separate from PD training, which is in line with Virginia Essential Elements program.)

Fairfax County already emphasizes awareness and training of its call taking and emergency dispatch personnel in how to handle behavioral crisis events. However, as the FCPD expands its training of patrol officers and creates specialized Crisis Intervention Teams, the County's call takers and dispatchers will need additional training to understand and effectively support the police department's enhanced response to these situations.

Part II. Sheriff's Office & CSB

In addition to developing recommendations for the Fairfax County Police Department to train and deploy officers using the Memphis Model for Crisis Intervention Team training as adopted by the Virginia Essential Elements of CIT, the subcommittee undertook to develop recommendations for a more comprehensive approach to Crisis Intervention that included the Sheriff's Office and the Community Services Board (CSB).

While it is important for Sheriff's Deputies working in the jail to be properly trained to deal with inmates living with mental illness, current best practices, as underscored by initiatives such as "Stepping Up," [13] emphasize the importance of keeping people living with mental illness out of jails to the maximum extent possible. Doing so saves money for communities and produces improved outcomes for mentally ill individuals who come in contact with law enforcement. Crisis Intervention Team training and jail diversion programs using the Sequential Intercept Model are among the most often-cited tools to achieve those results.

In October of 2011, the Fairfax County Community Criminal Justice Board held a Cross-Systems Mapping workshop based on the Sequential Intercept Model (SIM) developed by Patty

[13] The Stepping Up Initiative is a national effort to divert people with mental illness from jails and into treatment. The campaign brings together a powerful coalition of national organizations, including NAMI, the Council of State Governments Justice Center, the National Association of Counties, the American Psychiatric Foundation and numerous law enforcement associations, mental health organizations, and substance abuse organizations. See more at: http://www.nami.org/About-NAMI/Partners/The-Stepping-Up-Initiative#sthash.VE0WCeBw.dpuf

Griffin and Mark Munetz for the National GAINS Center.[14] Workshop participants included twenty-nine individuals representing multiple stakeholder systems: mental health, substance abuse treatment, human services, consumers, law enforcement, state and local probation, Office of the Commonwealth Attorney, Office of the Public Defender, and the Courts. However, assignments were made to just a handful of participants, many of whom no longer work in the county. Most assignments went unfulfilled.

CSB Deputy Director for Clinical Operations Daryl Washington, Assistant Deputy Director Lyn Tomlinson (who oversees Emergency Services), Assistant Deputy Director Jean Hartman (who oversees Forensic Services), and Executive Director Tisha Deeghan conducted a review of the workshop in which they identified a number of gaps and recommendations.

The subcommittee adopts the following key recommendations and, given that they were first made in 2011, encourages the Board of Supervisors to make implementation of these particular overarching recommendations a top priority.

Recommendation 8 – Implement "Stepping Up"

The Board of Supervisors (BOS), the CSB, the Judiciary, State legislators, and the Sherriff's Office should work together to implement a community-wide system of care overhaul using the BOS-endorsed national initiative known as "Stepping Up;"

Recommendation 9 – Fully Implement Diversion First

The subcommittee recommends Fairfax County develop a mechanism for oversight of systems of mental health/substance use/justice services – a diversion-oriented system of care collaborative stakeholder group now known as Diversion First. This recommendation is consistent with "Stepping Up" and terms of the DBHDS Assessment Site grant that Fairfax County applied for with limited success. The first step in this implementation occurred on August 3, 2015 with the initial meeting of Diversion First.[15]

Recommendation 10 – Identify and Collect Pertinent Data to Establish Metrics for Success

The subcommittee strongly emphasizes the importance of data collection and its intimate linkage to measuring the progress and impact of CIT programs. Deputy County Executives for Public Safety and Human Services Dave Rohrer and Pat Harrison emphasized the importance of data

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[14] The Sequential Intercept Model is a framework for understanding how people with mental illness interact with the criminal justice system. The model, which was described by Mark Munetz and Patricia Griffin in 2006 in Psychiatric Services, presents this interaction as a series of points where interventions can be made to prevent a person from entering the justice system or becoming further entangled. The points of interception include law enforcement and emergency services; initial detention and hearing; jails, courts, forensic evaluation and forensic hospitalizations; reentry from jails, prisons and hospitalization; and community supervision and community support services. According to the model, at each of these points, there are unique opportunities to assist a person in getting appropriate services and preventing further justice involvement.

[15] Diversion Oriented System of Collaborative Care Inaugural Meeting. http://www.fairfaxcounty.gov/csb/diversion-first/2015-08-03-doscc-presentation.pdf

collection at the initial meeting of Diversion First on August 3, 2015 but cautioned that there are serious obstacles that must be overcome to achieve successful data collection metrics. The subcommittee urges that the obstacles be obliterated.

In Virginia, CIT programs are required to develop capacity to implement a statewide data collection process targeting the key statutory concerns in mental health-related calls: 1) how CIT Officers are linked to such calls; 2) how long a CIT Officer remains involved in the call; 3) the number of injuries involved, if any; and 4) the final disposition of the call.[16]

Recommendation 11 – Increase Language and Cultural Competency

The subcommittee recommends that Fairfax County increase services to special populations to include cultural competency to better serve non-English-speaking justice-involved individuals. De-escalation and diversion require the ability to effectively communicate with those who come into contact with the criminal justice system.

Recommendation 12 – Provide CIT Training to Jail and Custodial Personnel

The subcommittee recommends that the Sheriff's Office provide the forty-hour Crisis Intervention Team training course to Deputies detailed to courtroom security and Deputies working inside the adult detention center. In its CIT Program Development Guidance document, the Virginia Department of Criminal Justice Services and Department of Behavioral Health and Developmental Services recommends Crisis Intervention training for jail and custodial personnel, stating:

> While CIT was originally created as a law enforcement based first responder program, there is a large population of incarcerated persons with mental illness in Virginia jails who are not appropriate for jail diversion through CIT. Utilization of the 40-hour core CIT training curriculum for jail and custodial staff can have a positive impact for local jails. CIT training and utilization of de-escalation techniques for local jail personnel may diminish the risk of injuries to consumers and jail staff as well as reducing the incidence of persons receiving additional charges as a result of symptomatic behaviors.

Recommendation 13 – Establish Strategically Located CIT Assessment Sites

The subcommittee recommends that Fairfax County establish strategically located 24-hour assessment sites staffed and operated by CSB, FCPD and the Sheriff's Office collaboratively. These should be secure crisis assessment sites staffed by officers capable of processing and receiving individuals who would otherwise need to be taken to the Jail for a transfer of custody. It is important to note that, although Fairfax County has the facilities in the Community Services Board's Merrifield Center to accommodate a secure assessment site, no staffing has been identified to operate the site. The County Executive has proposed funds to begin to address this budget shortfall in the Advertised FY2015 Carryover Budget.

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[16] CIT Essential Elements, Page 13. http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/va-cit-essentialelements.pdf

Admission to state hospitals coupled with absence of sufficient forensic beds in Fairfax County hospitals leads to excessive time spent by FCPD officers waiting idly while CSB attempts to find forensic beds. Having CIT officers permanently assigned to assessment sites to ease transfer of custody would save money spent on overtime and allow the patrol officers to get back on the street faster, thereby reducing the burden on FCPD and the Sheriff's Office.

The subcommittee recommends the funding of five FTE Deputy Sheriffs to immediately staff an assessment site in Merrifield with 24/7 coverage by one deputy per shift, at an annual cost of $1.4 million.[17] These positions would allow for the transfer of custody from the FCPD to Sheriff's Office, getting patrol officers back on the street faster, and transferring the responsibility back to the agency (Sheriff's Office) that possesses the most authority in civil matters.

Recommendation 14 – Reorganize CSB to Provide Services When They Are Needed Most

The subcommittee recommends that the CSB should reorganize both forensic and community-based teams to expand capacity to provide mental health services at each point in the criminal/community mental health continuum where there is an opportunity to provide preventive services rather than mete out punishment. Using the "Sequential Intercept Model" these are known as intercept points and include 1) initial contact with police and/or emergency Services, 2) initial detention/first appearance before a court 3) first time in jail and/or court system 4) at re-entry after a stay in jail or a mental health facility and 5) community corrections/ community support. This would likely include release planning staff, diversion staff, emergency housing, transportation, and other needs.

Recommendation 15 – Expand Mobile Crisis Unit Program to Strategic Locations in Fairfax County

The Mobile Crisis Unit (MCU) program is an emergency mental health program of the Fairfax-Falls Church Community Services Board that provides on-scene evaluation, treatment, and crisis intervention in the community. The MCU specializes in providing these services to individuals who are experiencing a mental health emergency and who need, but are unwilling or unable to seek, mental health treatment. In many of these situations there is concern that, as a result of a psychiatric condition, the person may be a danger to themselves or others or may not be caring for themselves.

While the goal of the MCU is to enlist the individual's cooperation and develop the least restrictive treatment options, the MCU is authorized to recommend and facilitate involuntary hospitalization and treatment when necessary. The MCU also specializes in responding to referrals from the Police, Fire and Rescue Service, and other public safety agencies on cases where mental health consultation and intervention are needed. In many situations, the MCU is able to assume responsibility for the case; enabling first-responder personnel to quickly clear the scene to resume their other duties. MCUs are complementary to the Jail Diversion Program (CIT, Assessment Site, and Mental Health Dockets).

[17] FY2015 Carryover Package, Page 13, http://www.fairfaxcounty.gov/dmb/carryover/fy2015/ca_att_b.pdf

The CSB has one MCU for the entirety of Fairfax County. That has been the fact since its establishment in 1995 when Fairfax County had a smaller population. That one MCU has hours of operation from 8:00am to midnight.

The subcommittee recommends that the CSB immediately set up one additional strategically located MCU with an annual cost of $800,000 per MCU (as proposed by County Executive in the Third Quarter FY 15 Carryover Board item/adopted by the Board of Supervisors) with a goal to stand up at least two additional MCUs by January 1, 2017. The CSB should immediately assess the optimal MCU coverage model (daily hours of coverage) and adjust coverage as necessary by January 1, 2016.

Recommendation 16 – Increase CSB Clinician Hours Inside the Jail

Inside the Adult Detention Center (ADC) there is a lack of 24/7 medical personnel trained in behavioral health issues.

The subcommittee recommends that the CSB and the Sheriff's Office should explore an increase in behavioral health clinician hours of availability. Clinicians need not be available in person. The CSB and Sheriff's Office should consider the use of tele-psychology and other uses of video conference and telepresence to assist the personnel inside the jail or other lock-up facilities in the County.[18]

It's not clear that simply adding CSB staff to the ADC is the solution. The CSB and the Sheriff's Office should evaluate which CSB services are required in the ADC versus those available. Staffing recommendations should be based upon the result of this review by January 1, 2016.

Recommendation 17 – Increase Release Planning & Reentry

The subcommittee recommends that more CSB staff resources be devoted to release planning inside the Adult Detention Center (ADC). At the Criminal Justice Board Cross-Systems Mapping workshop participants note that release planning was not systematic or well-coordinated. This is especially challenging for inmates who are not residents of Fairfax County. The CSB and the Sheriff's Office should develop formal policies, such as routine release planning, that support successful reentry by January 1, 2016.

The subcommittee recommends that the Fairfax County Department of Family Services make available resources required to initiate the eligibility process to determine whether inmates qualify for benefits such as SSI/SSDI Outreach, Access and Recovery (SOAR), Medicaid, etc. while those inmates are still in the ADC. This would speed up the process of initiating benefits to those individuals when they are released and provide them with economic resources necessary to continue treatment successfully by January 1, 2016.

[18] 2014 OIG Report, Pages 21-23
http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/attachment-1.pdf

Recommendation 18 – Review Pharmacy Policies Inside the Jail

The subcommittee recommends that the CSB and ADC medical staff review medication policies, especially for psychotropic medications, to ensure that inmates are being administered the most effective medications relative to their conditions and personal medication histories by January 1, 2016.

According to the 2014 OSIG Report, medication management is the primary form of mental health treatment in local and regional jails. The OSIG Report noted that challenges caused by the emphasis on medication cost containment, vary in jail formularies.

This appears to be true in Fairfax County. Fairfax County Policy currently limit delivery of inmates' medications by family members to a 5-day supply in an original container with no option to refill when the 5-day supply is depleted. In order to compensate for specific prescription medications (e.g. psychotropic drugs prescribed by a non-ADC psychiatrist) that would otherwise be supplied by inmates' families, current practices include shifting inmates to substitute medications. This appears to be done without regard to the actual effectiveness of the substitute medications or the inmates' clinical histories that led to prescription of a specific medication (i.e., the medications delivered by the families were those that were proven over time to have positive benefit for the inmates).

The currently 5-day policy should be included in the overall review of pharmacy and medication policies.

Part III. The Judiciary and Mental Health Dockets

Review of successful diversion programs, such as the one in Bexar County, Texas, underscores the critical roles played by judges and magistrates. In those successful jurisdictions, judges, and magistrates who receive CIT-related training and are active participants in the process. Currently, Virginia judges and magistrates do not receive CIT-related training. In addition, other Virginia officials, such as probation and parole officers who may come into contact with offenders living with mental illness, receive limited training. The subcommittee recommends that judges and magistrates be encouraged to receive CIT-related training.

Recommendation 19 – Implement Mental Health Dockets

The subcommittee recommends that Fairfax County work with the judges and Clerk of the Court to establish a Mental Health Docket for both adults and juveniles by January 1, 2016. The absence of specialty dockets (other than the recently convened Veterans Docket) precludes effective use of Sequential Intercepts 2 and 3 as tools to reduce the population of people in jail living with mental illness.

Recommendation 20 – Encourage Mental Health Awareness Training for Judiciary

The subcommittee recommends that appropriate mental health awareness training be developed and deployed for judges, magistrates, probation and parole officers, and other officials who may come into contact with offenders who are living with mental illness by January 1, 2016.

The subcommittee recommends that the Board of Supervisors emphasize the importance of diversion with judges and magistrates. The Board of Supervisors could, for instance, request that the State judicial education department and judicial education committee include a mental health and criminal justice training among education modules for judges and magistrates. Specifically, a four hour interactive training, "Judicial Work at the Interface of Mental Health and Criminal Justice," was created by judges and psychiatrists working in partnership with the American Psychiatric Foundation and the Council of State Governments, Justice Center, with input from the National Judicial College and SAMHSA's GAINS Center for Behavioral Health (attached). It is designed to educate all judges who hear criminal cases in their role in achieving better outcomes for individuals with behavioral health needs in their jurisdictions.

Part IV. More Thorough Implementation of the Virginia CIT Essential Elements

Recommendation 21 – Establish Standing Mental Health Units

As noted in our introduction, several members of this subcommittee and Sheriff Kincaid toured San Antonio/Bexar County in mid-July to take a look at what many agree is the "gold standard" in how a community addresses the needs of its most vulnerable citizens. Recognizing that the San Antonio/Bexar Model in its current state has evolved over the last eight years, there are key components that were deemed essential at the inception of their program and that the subcommittee recommends be adopted in Fairfax County sooner rather than later. Chief among these is the establishment of standing Mental Health Units that emulate those created by the Bexar County Sheriff's Office and the San Antonio Police Department.

A standing Mental Health Unit in Bexar County is staffed by full time police officers and deputy sheriffs tasked with responding to individuals experiencing a mental health crisis that come into contact with law enforcement. These police officers/deputy sheriffs are highly trained and specialized in dealing with this vulnerable demographic and are serve their agencies as a training resource for CIT/Mental Health Awareness. These units are staffed by volunteer officers/deputies and selected after undergoing a thorough interview and competitive selection process.

This selective process is designed to ensure that officers/deputies responding to individuals in crisis not only have the training, but also the demeanor to successfully de-escalate. The effectiveness of these units is evidenced by the dramatic reduction in instances where force is used in responding to mental health crisis situations.

Recommendation 22 – Institute Plain Clothes Mental Health Unit Officers

Mental Health Unit officers in Bexar County wear civilian clothing and use unmarked vehicles during the course of their duties. When someone is experiencing a mental health crisis, being confronted by a uniformed officer can unintentionally escalate an already tense situation. As this would be a voluntary assignment with a comprehensive selection process, candidates seeking

assignment to the Mental Health Unit would understand that it is a different way of policing which requires a different and perhaps non-traditional approach. The subcommittee recommends that standing CIT units be equipped with unmarked police vehicles and "softer-looking" attire, which may reduce situational anxiety issues.

Recommendation 23 – Re-focus Mental Health Training at the Criminal Justice Academy

As noted above, the Essential Elements states that all law enforcement agencies must be involved as stakeholders for CIT programs to be a success. The Fairfax County Criminal Justice Academy provides training for the FCPD, the Sheriff's Office, as well as police recruits from the Town of Vienna, the Town of Herndon and other agencies with arrest powers.

The subcommittee recommends disability and mental health awareness training for all new law enforcement officers at the training academy; however, the subcommittee also recommends that this training not be labeled CIT to avoid confusion and to be compliant with the DBHDS standards for CIT programs.

Recommendation 24 – Clarify Mental Health Protocol For First Responders

The Fairfax County Fire and Rescue respond to more than 50,000 calls on an annual basis. Although many of those individuals don't have a medical condition, they must be taken to an emergency room rather than a mental health facility. At the present time, this is a requirement in the Code of Virginia. The subcommittee recommends that the Fairfax County Board of Supervisors consider supporting a bill that would allow first responders to transport individuals whose primary condition is a mental health issue directly to a mental health facility once the individual has been medically cleared by the EMT.

Recommendation 25 - Involve Peers Whenever and Wherever Possible

According to Virginia's Essential Elements program guide for CIT, dynamic community involvement should reflect the composition of the local community, with particular emphasis on the inclusion of persons with mental illness. The ideal practices for therapeutic assessment sites include 24/7 availability of peer support for individuals awaiting evaluation or transportation to dispositional options. The subcommittee recommends that the County work hard to involve peers and peer support at every step in the criminal justice/diversion process. This could include having peers serve in standing mental health units, staffing the secure assessment sites, being part of the mobile crisis units, and being available inside the jail.

Part V. Greater Community and County Involvement in Mental Health Awareness and A More Developed Public Outreach Program

Community Effort

According the Virginia Essential Elements for CIT Document, "Central to the formation and ongoing success of Crisis Intervention Team programs is the creation of fully integrated, collaborative community partnerships." At a minimum these partnerships need to include representatives from local police departments, sheriffs' offices and other relevant law enforcement agencies and other first responders; local community services boards, educators and

private providers within the mental health treatment and provider community; and members of the community with particular emphasis on the inclusion of persons with mental illness. Involvement of all other appropriate community partners is highly suggested, to include but not limited to: judges, magistrates, special justices, attorneys, emergency department directors, psychiatric hospitals, local human rights organizations, etc.

Up to this point, the subcommittee recommendations have been focused on discrete public agencies to facilitate their prompt implementation. The following recommendations will be more challenging to implement as they involve multiple agencies and require a level of coordination and cooperation that is a step beyond what Fairfax County currently provides.

Recommendation 26 – Develop Public Outreach Program

The subcommittee recommends that the FCPD work with the CSB to develop materials for delivery to the public, to increase awareness of steps that may be taken prior to the time of possible interaction. This handout should describe available resources, use of advance directives, and provide contact information. As Supervisor Cook emphasized at the initial Diversion First meeting on August 3, 2015, Fairfax County must deploy its Public Information Officers to inform the citizens of Fairfax County of the resources available to them.

Report of the Use of Force Subcommittee

AD HOC POLICE REVIEW COMMISSION

September 14, 2015

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PREFACE

Fairfax County Board of Supervisors (BOS) Chairman Sharon Bulova established an Ad Hoc Police Practices Review Commission on February 20, 2015; this action was ratified by the full Board on March 3, 2015. Commission Chairman Michael Hershman established subcommittees to facilitate the efficient conduct of the Commission's work within the limited time available prior to delivering a report to the BOS by October 20, 2015. The Use of Force Subcommittee is one of five Commission subcommittees chartered by Mr. Hershman, with the others being Communications; Mental Health and Crisis Intervention Training; Recruitment, Diversity and Vetting; and Independent Oversight and Investigations.

The Commission is charged with recommending changes, consistent with Virginia law, that the Commission feels would help Fairfax County achieve its goal of maintaining a safe community, ensuring a culture of public trust and making sure our policies provide for the fair and timely resolution of police-involved incidents.

The Use of Force (UOF) Subcommittee was charged with developing proposed recommendations after completing a review of the Fairfax County Police Department's (FCPD) use of force, critical incident response and training policies and practices, specifically with regard to:

- The Police Executive Research Forum (PERF) Report *Use-of-Force Policy and Practice Review of the Fairfax County Police Department*.
- 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.
- A comparison with "best practices" of other jurisdictions and those cited in various national reports, including the use of body and dashboard cameras.
- Threat assessment, de-escalation and incident avoidance policies and practices.
- The provision of medical treatment and other assistance to individuals injured as the result of the use of force.
- The roles of and relationships between FCPD, the Office of the County Attorney, and the Office of the Commonwealth's Attorney in connection with use of force and critical incident responses.
- The potential for establishing an internal police department Serious Incident Review Board to review cases involving officer involved shootings and other serious incidents to identify any administrative, supervisory, training, tactical, or policy issues that need to be addressed.

The Use of Force Subcommittee's scope and charge is limited to a review of the Fairfax County Police Department and does not include the Sheriff's Department and its operation of the Fairfax County Detention Center. This is of particular note as a report by the Commonwealth's Attorney, as well as a video, were recently released that address the tragic death of an inmate, Ms. Natasha McKenna, while in the custody of the Sheriff's Department and after being subjected to four cycles of an Electronic Control Weapon (ECW) or Taser.

While the publicly available information about this event were factored into our deliberations, the factors in Ms. McKenna's death did not inform our findings or recommendations. Our review was limited to FCPD's use of force policies and practices (and therefore did not include the Sheriff's Department) and, on a practical level, the Commonwealth Attorney's report would not have been available to us in sufficient time to consider it, even if her death was within our scope.

This noted, we anticipate that many of our recommendations on use of force may well be applicable to the Sheriff's Department, as are those recommendations made in the Police Executive Research Forum's Report, which will be discussed later in this report. Of note in this regard will be those recommendations related to restrictions on the deployment and use of an ECW.

The Subcommittee's Work Plan is attached as Appendix A and is broken into five activities: (1) data collection and review; (2) use of force and critical-incident policies and practices review; (3) benchmarking and gap analysis against best practices; (4) organizational roles, responsibilities and relationships; and (5) findings and recommendations. The UOF Subcommittee was not able to explore sufficiently the matter of organizational roles and responsibilities to be able to offer a fully robust set of findings and recommendations. Should the Subcommittee's charge be extended beyond the completion of this report, as is recommended, then these relationships can be studied more completely.

This Report is conveyed to the Ad Hoc Police Practices Review Commission to support the completion of the Commission's report to the Board of Supervisors. The Use of Force Subcommittee's findings and recommendations were generated following intense exploration of the Fairfax County Police Department's use of force policies, programs and practices, both in terms of its performance against community norms and in relation to national best practices.

The residents of Fairfax County are diverse in culture, color, faith and in life and professional experiences. They are educated and talented and expect high-performing local government services. Many residents are willing to invest time and energy in service to the community, in the spirit of improving and sustaining a high quality of life for all.

The members of the Use of Force Subcommittee are exemplars of the talented and committed community members from which Fairfax County is able to draw to help address matters important to Fairfax County and its future. The following is a listing and brief biographies of the fifteen Subcommittee members, which include seven Commission members; the distinction between Commission and non-commission members was not relevant to the conduct of the Subcommittee's work:

- Phillip A. Niedzielski-Eichner, Chair – Mr. Niedzielski-Eichner is a Fairfax County resident since 1988 and an energy and national security executive with over 35 years of public sector and corporate leadership experience. He has held senior executive service appointments in the U.S. Department of Energy, National Nuclear Security Administration and Nuclear Regulatory Commission and has served as a member of the Fairfax County School Board, Park Authority Board, and Environmental Quality Advisory Board.

- George Becerra* – Mr. Becerra is a current 16-year federal employee and a Fairfax County resident since 1984. He has been an Economic Statistician and Operations Research Analyst for the Dept. of the Army (Dept. of Defense - Pentagon) and Dept. of Homeland Security (Immigration and Customs Enforcement - Headquarters). He has served the community as Chair of the Fairfax County School Board Minority Student Achievement Oversight Committee; as a member of the community selection panel for the current school superintendent and the SCYPT (Joint Board of Supervisors and School Board taskforce); and as an election officer for 4 years. He is a Citizen Police Academy 2006 graduate and alumni member, and member of several civic organizations.

- Joseph Cammarata – Mr. Cammarata is a partner in the law firm of Chaikin, Sherman, Cammarata & Siegel, P.C. He is a board certified trial attorney whose practice is devoted to representing persons injured through no fault of their own, including due to abuses of any kind by those who exceed their authority. Mr. Cammarata has been practicing law for over 30 years, and is President of the Trial Lawyers Association of Metropolitan Washington, D.C. Mr. Cammarata was formerly the Chairman of the Criminal Justice Advisory Board and the Community Initiative to Reduce Youth Violence. He is a member of the Board of Directors of the Fairfax Water Authority.

- Brad Carruthers – Mr. Carruthers is President of the Fairfax Fraternal Order of Police, Lodge 77. He has been a Fairfax County Police officer for 22.5 years, during which he worked patrol, neighborhood patrol unit and gangs. For the past 12 years he has been in firearms training and tactics. He has a BA in criminology from Indiana University of Pennsylvania.

- Ralph Cooper* – Mr. Cooper is a concerned citizen with over 20 years of volunteer, committee member and leadership of various Fairfax County organizations. He has been active with the local Fairfax County Council of PTA, College Partnership Program, Fairfax Partners for Youth, various positions of responsibility in NAACP Fairfax County (Legal Redress, Education, Civic Engagement Chairman) and NAACP Virginia State Conference plus other community organizations. He is presently a member of the Fairfax County School Board Minority Student Achievement Oversight Committee and Lions Club. Notably, he is author of the Advocate Handbook for Parents (AHBP), the objective of which is to provide parents a one stop document to secure information or identify where information can be located to be able to ask the right questions!

- Sal Culosi – Mr. Culosi is a retired civil servant who was a member of the Senior Executive Service in the Department of Defense and has accrued over 45 years of experience as a Defense manager and analyst in planning, programming and budgeting for an annual Defense logistics program of over $70B, applying quantitative methods to resolve complex issues of logistics support and resource allocation. His son, Salvatore J. Culosi, was an optometrist who in 2006 was killed by a FCPD SWAT team in the process of executing a document search, related to gambling, using an aggressive vehicle takedown process, which was reserved for high risk situations but was nonetheless employed even after FCPD SWAT official risk assessment judged him to be low risk.

- Mary Kimm – Ms. Kimm is Editor and Publisher of the Connection Newspapers, a chain of 15 weekly newspapers including 12 hyper-local editions in Fairfax County, where she has worked since 1989. Ms. Kimm's editorials have been cited in local efforts to end homelessness and increase government transparency. She also serves on the Governing Board of the Fairfax County Office to Prevent and End Homelessness.

- William Moncure* – Mr. Moncure is an Investigator for Code Compliance and a certified Trainer in Property Maintenance Inspections for the State of Virginia, Department of Housing and Community Development. He has over 42 years' of Public Sector enforcement experience in civil and criminal liability, developing and deploying operational plans that addressed violations with positive results, is regularly sought out for input, guidance and recommendations dealing with conflict resolution for Zoning and Law Enforcement with the Fairfax County government. His prior experience as a lead firearms instructor for the Fairfax County Criminal Justice Academy provided institutional knowledge in firearms training, electronic control weapons and the development of some of the existing policies and procedures.

- Randy K. Sayles* – Mr. Sayles is a retired Denver uniform Police Officer, Detective and Federal Agent, Deputy Assistant Administrator, US Drug Enforcement Administration (DEA); with 35 1/2 years of cumulative experiences in use of force incidents in which he fired his weapon, more than once, and/or was fired upon; while also using all other authorized use of force equipment, of today's police forces, except the Tasers, during assignments nationally and internationally.

- Jodi Shlesinger* – Ms. Shlesinger has been a resident of Fairfax County for 33 years where she resides with her husband, children and elderly parents. She has served on the board at her local pool for the past 10 years, worked with the board of her Home Owners Association to form the by-laws and currently works as a librarian and special events coordinator at a private school in Springfield, Virginia.

- Michael Shumaker* – Mr. Shumaker has over 13 years of award-winning, anti-terrorism expertise at US Coast Guard Headquarters. His policies successfully deterred domestic maritime terrorism since 9/11 while protecting civil liberties. Served 20 years as a Navy officer. As Executive Officer of a ship with a mixed-gender crew of 1,400, his duties included supervising the legal office, ship's police force, and jail. During his tenure no complaints were filed against the ship's law enforcement team.

- Joseph P. Smith* – Mr. Smith, a FBI Supervisory Special Agent with extensive, in-depth experience in internal affairs investigations, retired after 30 years of service. A member of DC Bar & VA Bar for 46 years, he has practiced law for 15 years. He is a former member of the International Association of Chiefs of Police, Panel Counsel/ National Fraternal Order of Police, and former Member of and Counsel to the Board of Directors, Virginia Coalition for Open Government.

- Adrian L. Steel, Jr. – Mr. Steel is a partner with the law firm Mayer Brown LLP. Prior to joining Mayer Brown, he was a Special Assistant to Director William H. Webster at the Federal Bureau of Investigation where he handled criminal and counterintelligence matters. Mr. Steel recently served as a member of a commission led by Judge Webster which reviewed the FBI's actions in connection with the 2009 shootings by Major Nidal Hasan at Fort Hood, Texas.

- Bernard E. Thompson* – Mr. Thompson, Esq., is an attorney and a retired FBI Supervisory Special Agent with over 21 years with the FBI, having served as a Unit Chief at FBI Headquarters and as a Trial Attorney for almost a decade with the FBI's Office of the General Counsel. He is a military veteran who served as a Platoon Sergeant in a combat unit in Vietnam. He served in management positions in the private sector for over ten years prior to his government service. He has presided over a Homeowners Association for over 15 years, and he was ordained in the Baptist Church over 16 years ago.

* Subcommittee members not also on the Commission.

The subcommittee received assistance and important support from Clayton Medford, Chief of Staff to Chairman Bulova, and from the Fairfax County Police Department, with particularly significant contributions from Deputy Chief Tom Ryan and Second Lieutenant David White.

EXECUTIVE SUMMARY

The Use of Force (UOF) Subcommittee of the Ad Hoc Police Review Commission is charged with completing a review of FCPD use of force, critical incident response and training policies and practices.

Before generating its findings and recommendations, the Subcommittee 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. Per its assigned scope of work, the Subcommittee considered FCPD 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 Subcommittee reviewed written summaries of the 37 FCPD police officer involved shootings (OIS) 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 Subcommittee received and considered detailed FCPD 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); crisis intervention team model; after action reporting and lessons learned; and budget and resources.

We believe that the philosophy underpinning Fairfax County Police Department policies and practices must be founded upon issues, concepts, and values of policing in a democratic society. Noteworthy among these: the sanctity of human life; protecting constitutional rights; de-escalation and crisis intervention strategies; maintaining order and our quality of life; and a duty to intervene if an officer sees another officer using excessive force.

Further, transparency and communication are the foundations of trust between a police department and the community, all the more so in matters of police use of force. "It is critical that police departments be as open, transparent, and informative as possible about police operations and practices, especially when it comes to police use of force."[1] Transparency and communication on these matters provide the community with confidence that the police force is practicing procedural justice.[2]

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[1] *Use-of-Force Policy and Practice Review of the Fairfax County Police Department*, Police Executive Research Forum Final Report (p. 85), June 2015.

[2] Procedural justice can be viewed in terms of four issues. First, people want to have an opportunity to explain their situation or tell their side of the story to a police officer. Second, people react to evidence that the authorities with whom they are dealing are neutral. Third, people are sensitive to whether they are treated with dignity and politeness, and to whether their rights are respected. Finally, people focus on cues that communicate information about the intentions and character of the legal authorities with whom they are dealing (their "trustworthiness"). *Legitimacy and Procedural Justice: A New Element of Police Leadership*, Police Executive Research Forum (PERF), March 2014.

On a related basis, it is a national best practice to collect, maintain, analyze and report robust demographic data on all detentions and use of force.[3] Collection of this data is essential to enable the Board of Supervisors and the FCPD leadership to ensure FCPD personnel act in a way that is consistent with the principles of policing in a democracy.

The Subcommittee's work was substantially augmented and facilitated by the June 2015 Report issued by the Police Executive Research Forum (PERF) entitled *Use-of-Force Policy and Practice Review of the Fairfax County Police Department*. PERF conducted a review of FCPD's policies, procedures, directives, and training materials and curricula related to UOF. The PERF Report found that "…in several areas, including many aspects of training, emphasis on de-escalation and handling of emotionally disturbed persons, and critical incidents, the FCPD is doing a commendable job and meeting or exceeding national best practices."

PERF did find a number of areas where improvements could be made and sets forth 71 recommendations for change to existing FCPD policies and practices. After a review of the report, discussions with FCPD representatives, including Police Chief Edwin Roessler, and after consideration of public comments, the Subcommittee supports all of the report's recommendations with the exception of the recommendation calling for discontinuing the use of the Precision Immobilization Technique (PIT). The Subcommittee recommends instead that PIT be studied by the FCPD, with a report to the BOS for action as to whether or not its use should be continued.

The PERF recommendations should be implemented pursuant to a publicly available and periodically updated action plan that assigns responsibility and target dates for completion of each recommendation. The necessary resources for full implementation should be provided, and quarterly reports to the public on progress should be made.

We acknowledge that Chief Roessler sought out PERF to conduct its review, with the intent of becoming more effective. He has not only committed to implementing the PERF recommendations, but he also intends to pursue accreditation by the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA).[4] Further, he told this Subcommittee that he aspires to having FCPD known as <u>the</u> best in the nation. This aspiration is consistent with community expectations that our local government continue to strive to be the best.

This noted, Chief Roessler sets a very high bar for Fairfax County Police and our findings and recommendations are offered in the spirit of helping FCPD achieve this prominent position.

The Subcommittee found, as did PERF, the need for a more unified, clearer and more concise use of force policy. In this spirit, we propose a new, more specific definition. We also call for (a) an unambiguous "sanctity-of-life" philosophy to underpin all UOF-related policy, programs and practices; (b) infusing a renewed commitment to community policing throughout the FCPD culture and organizational structure; (c) establishing "objectively reasonable" as the standard to be followed by an

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[3] Final Report of the President's Task Force on 21st Century Policing, May 2015.

[4] For perspective, it is worth noting that, while Chief Roessler believes CALEA accreditation raises the bar for FCPD, some believe that the Department is already performing substantially above CALEA standards.

officer when determining whether to use force; (d) clarifying requirements with regard to pointing an "unholstered" firearm; (e) restricting vehicle pursuit to only those situations where there is a reasonable suspicion that a violent felony has been committed and there is an imminent risk to the public safety or of injury; and (f) assuring that medical assistance is provided to any person who is obviously injured, alleges an injury, or requests medical assistance.

We recommend that the use of SWAT and other advanced tactics be limited to situations where there is a high risk of violence, resistance, or injury or harm to the officers involved, the public or the suspect as defined by set of "high risk" factors. We support the modifications to the Warrant Risk Assessment Matrix that were devised by FCPD in the midst of our review, which establish criteria for the use of SWAT and establishes responsibility for the granting or denying of authority for the SWAT's use.

We believe that FCPD police patrol officers should employ body cameras to record all interactions with members of the public, contingent on (a) the enactment of laws, policies and procedures that protect the privacy of citizens; and (b) patrol officers being consulted, with feedback provided as to how their concerns and recommendations were considered. The Subcommittee also believes that all police officers should maintain Electronic Controlled Weapons (ECW) or Tasers on their person while on duty, again with patrol officers being consulted and feedback provided as to how their concerns and recommendations were considered. Finally, we assessed PERF's recommendation to prohibit without exception the use of a "choke hold" as a means of controlling a suspect, and we support an unambiguous policy declaration prohibiting its use.

The Subcommittee recognizes that effective recruitment, training and ongoing monitoring of police officer performance are essential and fundamental to FCPD being able to ensure that use of force is applied in an objectively reasonable and responsible manner. We therefore recommend the FCPD maintain a "hire-to-retire" focus on police officer fitness to serve, particularly in relation to any propensity to be overly aggressive in the conduct of duty.

We also recommend that FCPD conduct a biennial workforce climate and culture survey to monitor FCPD's operating culture, including police officer attitudes about all aspects of their work, including the use of force; leadership and equipment; or any perceived barriers to their ability to perform their responsibilities consistent with FCPD's values, philosophy and policies.

Police officers have increasingly become the first responders when a citizen is in the midst of a mental health crisis. Because of the impact of mental health crisis on incidents of use of force, the Subcommittee recommends expansion of Mobile Crisis Units in the County by adding three additional mobile crisis units, one for each human services district.

Independent oversight will provide public accountability and confidence relating to UOF, education of both the public and the police, and a positive, ongoing feedback loop that would result in the reduction of both UOF incidents and complaints. We believe therefore that it is a critical component of an effective UOF policy that external independent oversight be instituted.

We also considered four other aspects of oversight and call for (a) FCPD and its officers to receive specialized legal advice on UOF and other critical issues unique to policing; (b) FCPD to collect, analyze, and publish a comprehensive statistical report covering all FCPD stops, frisks, arrest and UOF incidents; (c) revitalizing the existing internal FCPD Use of Force Committee; and (d) the Board of Supervisors to review the Chief of Police's determination in all lethal UOF cases and that the Board issue a public report as to its approval or disapproval of the Chief's determination.

INTRODUCTION AND METHODOLOGY

Fairfax County is one of the safest jurisdictions of its size; it is also one of the safest places to serve as a police officer. The County is annually ranked in the top few wealthiest counties in the nation. It is a county of highly educated, highly engaged residents with very high expectations for its police force.

The department has 1,339 sworn employees. Approximately 980 are assigned to patrol. This number fluctuates throughout the year due to attrition and vacancy rates but this is the base level.

The Use of Force (UOF) Subcommittee of the Ad Hoc Police Review Commission was charged with completing a review of the FCPD use of force, critical incident response and training policies and practices.

As PERF noted in both its written report and its oral presentation to the Commission, Fairfax County Police Department is regarded as one of the best in the nation, and has the ability and responsibility to serve as a national leader in policy. Indeed, Chief of Police Edwin Roessler told this Subcommittee that he aspires to having FCPD known as the best in the nation. Further, as will be discussed, Chief Roessler has committed to implementing 70 of 71 recommendations made by the Police Executive Research Forum (PERF) in a report released as the Subcommittee conducted its work. Finally, Chief Roessler indicates that he also intends to secure accreditation by CALEA.

These aspirations are consistent with community expectations that our local government continue to strive to be the best. Chief Roessler sets a very high bar for Fairfax County Police in this regard, and our findings and recommendations are offered in the spirit of helping FCPD achieve this prominent position.

Relative to police use of force in Fairfax County, PERF noted that "(d)ischarging of firearms remains a relatively rare occurrence in FCPD." It found that just over 5% of the total use of force incidents in 2013, the latest year included in the review, involved officers pointing a firearm and that officers discharged a firearm in 6 cases (about 0.3% of the total). Between 2008 and 2013, PERF noted that pointing of firearm incidents declined by more than 59% (from 229 to 93), and ECW discharges dropped by 35% (from 186 to 120). Further, PERF found that the annual number of firearm discharges during the ten-year period of its review declined from 15 in 2008 to 7 or fewer in each of the next five years. Finally of note, FCPD is completing the third quarter of CY2015 without a firearm discharge.[5]

The UOF Subcommittee convened for the first time on May 6, 2015, and met in ten meetings open to the public. An opportunity was provided at the end of each meeting for the public to offer comments and feedback to the Subcommittee. Formal minutes were maintained for each meeting, as were audio recordings. Both are available online for Commission and public review, as may be of interest.[6] It is worth noting that our recommendations were approved by majority action within Roberts Rules of

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[5] Ibid. PERF, pp. 24-25.
[6] Electronic links to the minutes of the ten UOF Subcommittee meetings and the primary and secondary resources used by the Subcommittee to inform our findings and recommendations can be found at http://www.fairfaxcounty.gov/policecommission/subcommittees/use-of-force.htm.

Order. Our minutes are sufficiently detailed to identify agreements and disagreements and in what magnitude.

Before generating its own findings and recommendations, the Subcommittee undertook data collection and review; review of use of force and critical-incident policies and practices; and 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. Per its assigned scope of work, the Subcommittee considered FCPD 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 Subcommittee reviewed written summaries of the 37 FCPD police officer involved shootings (OIS) 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 Subcommittee completed an information matrix from these summaries that offers a brief overview of each case. This matrix is attached as Appendix B.

The Subcommittee unfortunately did not have an opportunity to review original documents regarding those incidents, despite assurances that the same access as was provided PERF would be accorded the Subcommittee. Notwithstanding this lack of direct document access, the Subcommittee is confident that it has gained sufficient insight to support the generation of our policy and practices recommendations.

We find that constraints on transparency represent perhaps the greatest risk to sustained confidence in FCPD. In short, we believe that there will be a mutual benefit to both the police and the public with greater openness and communication.

We in this regard must reinforce the position taken by the Communications Subcommittee that "(c)ommunications is the key – the more information provided about police cases, actions, policies and procedures, the better one is able to assess the legitimacy of the agency. When the public determines police actions are legitimate, it leads to increased support and trust in the dedicated public servants who risk their lives every day for our benefit and safety." We would add that the inverse can also be true: where there is less transparency by a police agency, public trust is likely diminished and the level of cooperation that will exist between the public and police will ultimately suffer.

The UOF Subcommittee completed an extensive review of FCPD policies and standard operating procedures, as well as studied a lengthy list of reports, papers and research to discern "best practices" against which we compared FCPD. The listing of these resource documents is provided as Appendix C.

The Subcommittee also received and considered detailed FCPD responses to its numerous lines of inquiry, which included the following topics: use of force reports, data and analyses; use of force policy, training and culture; case review and excessive force litigation; the operations of the 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); crisis intervention team model; after action reporting and lessons learned; and budget and resources (see Appendix D).

Subcommittee members were offered the opportunity to ride with police officers during their shifts, which gave those able to do so first-hand, albeit on a time-limited basis, unique insight into the nature of the officers' day-to-day responsibilities. Members were also afforded the opportunity to participate in use of force practicals at the Fairfax County Criminal Justice Academy and tour the Firing Range, where they experienced the training officers undergo using the PRISM simulator.

The remainder of this Report will offer the Use of Force Subcommittee's findings and recommendations relative to its charge to complete a review of the FCPD's use of force, critical incident response and training policies and practices. In the course of its work, the Subcommittee generated many prospective findings and recommendations that were, under their charter, more appropriately considered by one of the other subcommittees. These ideas have been conveyed to them for their potential use and consideration.

As a final introductory note, the UOF Subcommittee was not able to explore sufficiently the matter of organizational roles and responsibilities to be able to offer a fully robust set of findings and recommendations. Should the Subcommittee's charge be extended beyond the completion of this report, as is recommended, then these relationships can be studied more completely.

FINDINGS AND RECOMMENDATIONS

Philosophy Underpinning FCPD Policy, Programs and Practices

The philosophy underpinning Fairfax County Police policy and practice must be founded on issues, concepts, and values of policing in a democratic society. Noteworthy among these: the mission and role of the police in protecting constitutional rights; the sanctity of human life; de-escalation and crisis intervention strategies; and a duty to intervene if an officer sees another officer using excessive force.

Having participated ourselves in a dialogue on how to best articulate a set of principles and policies we believe should underpin and guide FCPD's use of force, we understand and value the national dialogue taking place that juxtaposes a police officer's role as guardian with that of a warrior. A recently published article captures effectively the dynamic tension that exists between (a) a police culture grounded in the belief that it will most effectively protect the innocent and law abiding by being integral to and integrated with the community; and (b) one that believes that effective use of force is the principal means by which the community is protected from the criminal and potentially violent population.

The authors note that "(i)n some communities, the friendly neighborhood beat cop — community guardian — has been replaced with the urban warrior, trained for battle and equipped with the accouterments and weaponry of modern warfare. Armed with sophisticated technology to mine data about crime trends, officers can lose sight of the value of building close community ties." [7] The Subcommittee is concerned in this regard about the over-militarization of law enforcement in this country and seeks to emphasize that Fairfax must continue to avoid moving in this direction

We are fortunate, for example, that Fairfax has avoided some of the most egregious aspects of this evolution, such as not pursuing or arming its officers with surplus post-war military equipment. Yet, we believe that constant attention to FCPD's policing culture is warranted. We understand that community-based policing is the FCPD practice, mission, vision, policy, procedures, practices and officer performance must all be aligned with community policing as its predominant focus.

We recognize fully that police officers must be prepared to respond to threats of violence, but we also strongly believe that our community safety and security – and an effective and trusting mutually beneficial relationship – will be best protected by a police force that is engaged with the community beyond the occasional traffic stop or more extreme circumstances.

The importance of such a philosophical underpinning of police policy is reinforced by how officers spend their time. Most of their time is spent in the community. FCPD officers, for example, respond to more than 5,000 calls a year in response to mental health crises. Most FCPD officers will never fire their

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[7] *From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals,* New Perspectives in Policing, Harvard Kennedy School and National Institute of Justice, April 2015 | https://www.ncjrs.gov/pdffiles1/nij/248654.pdf

service weapons as part of any use of force. In 10 years, only 37 use-of-force incidents in the 1,300 member force have involved firing a weapon, even counting cases in which no one was struck by a bullet or a weapon was fired by mistake. While several officer involved shooting deaths have been the subject of intense community concern, the numbers reinforce the need for sustained emphasis of effective community-involved policing.

We considered in the Use of Force Subcommittee how best to characterize the essential role performed by the police in Fairfax. We, for example, explored the role of a police officer in the oft-used two-dimensional paradigm, the dominant dimension of being a "guardian" and the necessary but less frequently called upon "warrior" dimension. Using this paradigm, the officer must be trained to perform well as both a guardian and a warrior and to be able to discern how to act along the spectrum between the two. In any matter of imminent threats of harm to the officer or to other citizens, we expect the officer to be able to make the correct judgment in a split second.

The warrior dimension has come under greatest scrutiny because of the associated militaristic connotations. Another option is characterizing the police officer as a peacemaker — a person who is trained and experienced in settling problems; and as a fighter — a person who is trained and experienced in responding to hostile encounters.

Our Subcommittee, however, did not invest time in reconciling the matters of clarifying roles and culture. We do challenge FCPD to work with the community to update and redefine as needed, the respective definition of roles and relative policing emphasis.

To expand the vision along the guardian/warrior or peacemaker/fighter spectrums, it is clear that police and civilians see the world through very different lenses. The more that police and the community spend time together, review policy together, and review incidents and expectations together, the more they will understand why they sometimes see things differently and the more common ground there will be. Police must embrace and seek civilian input at every possible level, and civilians should have more opportunity to interact with police on what they want and expect from their police department.

Recommendation 1. Ensure that FCPD's philosophy, policies and orders: promote treating citizens respectfully and are protective of their dignity; maintain an appropriate balance between an officer's role as a guardian/warrior or peacemaker/fighter; and reinforce a reverence for the sanctity of human life.

Recommendation 2. Adopt policies, programs and practices that:

a. Require officers to identify themselves by their full name, rank, and command (as applicable) and provide that information, when practicable, on a business card to individuals they have stopped;

b. For policing mass demonstrations, continue to employ a continuum of managed tactical resources that are designed to be protective of officer safety and promote de-escalation of tensions; minimize the appearance of a military operation; and avoid provocative tactics, equipment, and language that might heighten tensions.

c. Continue and strengthen opportunities for patrol officers to regularly interact with neighborhood residents, faith leaders, and business leaders;

d. Reward officers for their efforts to engage members of the community and the partnerships they build and make this part of the performance evaluation process, placing an increased value on developing such partnerships;

e. Ensure that deployment schedules provide sufficient time for patrol officers to participate in problem solving and community engagement activities; and

f. Infuse a renewed commitment to community policing throughout the FCPD culture and organizational structure.

Recommendation 3. Commit and assure in G.O. 201.6 - PRESERVATION OF PEACE AND PROTECTION OF LIFE AND PROPERTY – that medical assistance will be provided to anyone who is injured, alleges an injury, or requests medical assistance, as follows:

a. It shall be the duty of each sworn officer of the Department to: preserve the public peace; protect life and property; assure medical assistance; and enforce and uphold the laws of the Commonwealth of Virginia and the Ordinances of the County of Fairfax.

Recommendation 4. Review policies on use of physical control equipment and techniques to assure that they address any unique requirements of vulnerable populations—including children, elderly persons, pregnant women, people with physical and mental disabilities, limited English proficiency, and others deemed appropriate.

Police Executive Research Forum (PERF) Recommendations

As noted, PERF conducted a review of FCPD's policies, procedures, directives, and training materials and curricula related to UOF. PERF's report sets forth 71 recommendations for change to existing FCPD policies and practices. We have reviewed each of the PERF recommendations; discussed those recommendations with FCPD; and received and reviewed comments from the public, including suggestions made by the American Civil Liberties Union in a letter to Chairman Hershman.

We have concluded that the PERF recommendations should be implemented pursuant to a publicly available and periodically updated action plan that assigns responsibility and target date for completion of each recommendation. The necessary resources for full implementation should be provided, and quarterly reports to the public on progress should be made. Chief Roessler has stated that this is the intent of the FCPD and his personal intent. He has said that he will advocate for the budgetary resources to ensure full implementation. We expressly confirm the Subcommittee's support for PERF Recommendation No. 48 which recommends the prohibition of choke holds and neck restraints.

We understand that FCPD will use a senior leadership committee to undertake implementation of PERF recommendations. As to Recommendation No. 54, which calls for the termination of the precision immobilization technique (PIT) for stopping a vehicle pursuit, we believe that FCPD should complete an analysis for consideration by the Board of Supervisors on whether or not to maintain PIT.

Recommendation 5. Implement all recommendations except No. 54 of the Police Executive Research Forum (PERF) Report and complete a publicly available and periodically updated action plan that assigns responsibility by name or position and target date for completion of each recommendation. For PERF Report recommendation No. 54, which calls for the termination of the precision immobilization technique (PIT) for stopping a vehicle pursuit, FCPD should complete an analysis for approval by the Board of Supervisors on whether or not to maintain or restrict PIT use.

Use of Force Policies and Practices

During our review of current FCPD policies and practices on the use of force as set forth in General Order 540.1, we identified a number of changes to those policies and practices that we believe are important to the effective and balanced use of force by FCPD, and we recommend that these changes be made. Our conclusions are based on our review of multiple sources including the White House Task Force Report, the PERF Report, and various U.S. Department of Justice reports; input received from a number of FCPD officers and personnel; comments from the public; and the experiences and knowledge of our Subcommittee members.

While we believe that all of our recommendations are important, there are several that warrant particular attention. First, we believe that the establishment of a comprehensive and integrated UOF policy is critical. This policy should cover training, investigations, prosecutions, data collection, and information sharing. Second, we suggest that, as recommended by PERF, the current FCPD definition of "use of force" in General Order 540.1 should be replaced with a more comprehensive definition to provide FCPD officers with clear and concise guidance. Third, one aspect of the revised UOF policy should be a clarification and confirmation of the "objectively reasonable" standard that guides the constitutional use of force. Fourth, given the concerns by the public and by our Subcommittee about the use of weapons in several of the OISs we reviewed, we set forth a number of recommendations relating to the use of weapons and the provision of medical assistance to suspects in OISs.

Fifth, USA Today recently reported numerous cases of police pursuits resulting in either the vehicle being pursued or the police vehicle crashing and causing death or serious injury to suspects, innocent bystanders or the officers involved.[8] It reports that "(a)t least 11,506 people, including 6,300 fleeing suspects, were killed in police chases from 1979 through 2013, most recent year for which NHTSA [National Highway Traffic Safety Administration] records are available. That's an average of 329 a year — nearly one person a day." Findings such as this have caused some jurisdictions to rule out vehicular pursuit altogether.

While we heard justifications for maintaining more flexible pursuits inside Fairfax County boundaries,[9] we have determined on balance that all vehicle pursuits should be limited to situations where there is a

[8] http://www.usatoday.com/story/news/2015/07/30/police-pursuits-fatal-injuries/30187827/

[9] The case is made by some in FCPD, for example, that Fairfax County has a reputation among the region's criminal element of quickly responding to crimes, whether petty or felonious, and being willing to give chase to fleeing suspects. Such a reputation is believed to serve as a deterrent, causing potential criminals to avoid Fairfax County.

reasonable suspicion that a violent felony has been committed and that there is an imminent risk to public safety and/or injury to individuals. We understand the FCPD is already considering modifications to the current vehicular pursuit policy.

Finally, we recommend that the FCPD's UOF policies be benchmarked during implementation of the Commission's recommendations and going forward to those of five comparable urban jurisdictions to ensure that FCPD is considering and adopting "best practices."

Recommendation 6. Establish a comprehensive and integrated policy on use of force to include training, investigations, prosecutions, data collection and information sharing. This policy must be clear, concise, and openly available for public inspection.

Recommendation 7. Consistent with the PERF Report, replace the current definition of use of force with a more comprehensive definition as identified below:

a. The current definition in General Order 540.1 is, "Use of Force: Any physical contact above the level of a 'guiding' or 'escort' hold between an officer and another person, or the use of lethal or non-lethal weapons, which further the officer's intent to establish or maintain control or custody or to defend themselves or another person."

b. Proposed new language: "Force means the following actions by a member of the department: any physical strike or instrumental contact with a person, or any significant physical contact that restricts movement of a person. Force includes the use of firearms, Electronic Control Weapons (ECWs), chemical spray, bean bag shotgun, PepperBall gun and hard empty hands; the taking of a person to the ground; the use of vehicles; or the deployment of a canine; and excludes escorting or handcuffing a person who is exhibiting minimal or no resistance."

Recommendation 8. Amend General Order 540.1 — USE OF FORCE — to address the following:

a. Establish "sanctity of life" clearly and unambiguously as a philosophy and value system that remains paramount in the mind of every officer.

b. Maintain "objectively reasonable" as the standard to be followed by an officer when determining whether to use force and all references to "reasonable" must therefore be understood to mean "objectively reasonable."

c. Include as the definition of "reasonable: "...use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against his or her responsibility to protect public safety, as well as the suspect's civil liberties."

d. Reword, II. POLICY as follows: "A police officer shall employ only such force in discharge of his or her duty as is objectively reasonable in all circumstances. The use of force is to be generally considered by an officer as a last resort after discussion, negotiation or persuasion have been found to be ineffective or inappropriate in light of the situation. While the use of force is occasionally unavoidable, every police officer will refrain from unwarranted infliction of pain or suffering and will never engage in cruel, degrading or inhumane physical or verbal treatment of any person."

e. In revising the General Order, and while first and foremost meeting the criteria specified by the Supreme Court, consider the Customs and Border Patrol's definition with regard to "Objectively Reasonable and the Totality of Circumstances," which is as follows:[10]

i. The reasonableness inquiry for an application of force is an objective one: the question is whether the officer's actions are objectively reasonable in light of the totality of facts and circumstances confronting him or her, without regard to underlying intent or motivation.

ii. In determining whether a use of force is "objectively reasonable" an officer must give careful attention to the totality of facts and circumstances of each particular case, including:

1. Whether the suspect poses an imminent threat to the safety of the officer/agent or others;
2. The severity of the crime at issue;
3. Whether the suspect is actively resisting seizure or attempting to evade arrest by flight;
4. Whether the circumstances are tense, uncertain and rapidly evolving; and
5. The foreseeable risk of injury to involved suspects and others.

iii. Totality of circumstances refers to all factors existing in each individual case. In addition to those listed in subsection e.ii., these factors may include (but are not limited to) the:

1. training, mental attitude, age, size and strength of the officer;
2. training, mental attitude, age, size and perceived strength of the suspect;
3. weapon(s) involved;
4. presence of other officers, suspects or bystanders; and
5. environmental conditions.

f. Institute the following use of firearms requirements, by establishing or clarifying that:

i. the act of a police officer placing his or her weapon "in a ready gun position" at a suspect will be a reportable action [NOTE: Un-holstering his or her weapon, pointing downward toward the ground next to an officer's leg, with finger on frame of weapon, is not to be a reportable action in the context of this policy as officers may do so when they reasonably believe or know suspects are nearby, i.e., entering a dark building, alley, other location of concern.];

ii. the "ready gun" position is defined as pointing the weapon, with finger on the frame of the weapon, so the officer can see the suspect's hands and waist.;

iii. the officer must announce "Police!" after and not before attaining the "ready gun" position and if feasible followed by simple, specific and clear direction to the suspect;

iv. the "ready gun" position will be utilized in the specific circumstance where it is necessary to establish control and gain compliance through the pointing of a firearm;

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[10] "Objectively Reasonable and the Totality of Circumstances" can be found in I.B.1-3 (p. 2) in the *Use of Force Policy, Guidelines and Procedures Handbook*, Office of Training Development, HB 4500-01C of the U.S. Customs and Border Protection.

v. the pointing of the firearm will be considered non-deadly use of force in this circumstance if the weapon is not aimed at center of mass, which is normally the chest; and
vi. an officer's finger should be moved from the frame to the trigger of a weapon only if the use of deadly force is authorized under the objectively reasonable standard, which would exclude pointing a weapon at center of mass simply for control and compliance under the "ready gun" position addressed in iv. above.

g. Requirements for assuring medical assistance should be instituted consistent with the following:

i. State in Section II that "[i]n all situations, medical assistance shall be provided promptly to any person who is obviously injured, alleges an injury, or requests medical assistance."
ii. Incorporate a separate implementation section, including a requirement that an operational and implementation plan be created and incorporated in the General Order.
iii. Assure that any such plan includes ECW (Taser) non-lethal incidents and specifies the officer's medical action requirements in the event that an ECW deployment is taken against a suspect.

h. A requirement should be established with regard to the state of the officer at the time of an officer involved death or serious injury per the following: Drug and steroid testing will be conducted on police officers involved in incidents that result in death or serious injury as soon as possible after the incident but not longer than "T" hours, where "T" is determined by medical experts at the time to detect whether drugs or steroids were present in the officer's system at the time of the incident.

Recommendation 9. Benchmark FCPD UOF policies and practices with those of five urban jurisdictions that are comparable in their economic base, population density, and population demographics to Fairfax County.

Recommendation 10. Restrict vehicle pursuit to only those situations where there is a reasonable suspicion that a violent felony has been committed and that there is a potential for imminent risk to public safety and/or injury to individuals if pursuit is not initiated.

Use of Force Reporting and Transparency

The UOF Subcommittee believes that transparency and communication are the foundations of trust between a police department and the community; and all the more so in matters of police use of force. PERF agrees by stating that "(i)t is critical that police departments be as open, transparent, and informative as possible about police operations and practices, especially when it comes to police use of force."[11]

[11] Ibid. PERF, p. 85.

We have learned that it is a national best practice to collect, maintain, analyze and report robust demographic data on all detentions and use of force. We believe that collection of this data is essential to enable the Board of Supervisors and the FCPD leadership to determine if FCPD personnel are acting in a way that is consistent with the principles of policing in a democracy. Transparency and communication on these matters provide the community with confidence that the police force is practicing procedural justice. (President's Task Force on 21st Century Policing).

We are told that, informally, both police officers and members of the public would describe procedural justice in action as being a "good cop and doing the right thing." More formally, procedural justice focuses on perceived impartiality during interactions between police and the communities they serve, participation from the public during these interactions, fairness, and consistency of treatment.[12]

In August, FCPD published synopses of Officer Involved Shootings over the past 10 years. A notable first step, the information contained in these synopses is limited, and we make recommendations to guide these public communications in the future.

Our review of the data in the synopses indicates that a significant percentage of officer involved shootings involved homeless individuals. Nationally, as many as 50 percent of individuals shot by police are in mental health crisis, with similar data evident in Fairfax County.[13] This finding is the cause of our recommendation that demographic data collected include information on homelessness and possible mental health crisis in all detentions and police use of force.

FCPD leadership knows that more transparency about use of force incidents and other police matters is urgently needed, but the power of inertia and FCPD's historical culture are powerful forces against change. This is a process, but reticence about sharing information will be among the most challenging tasks for FCPD in response to the work of the Commission.

In its report to the full commission, the Communications Subcommittee cited FCPD lack of transparency as the major source of current scrutiny: "Communications in recent high-profile use of force and critical incident cases were mishandled, inadequate and untimely, leading to loss of public trust and questions about the legitimacy of police actions. … The failures in both communications and its Freedom of Information Act policies have created this crisis of confidence for FCPD."

Recommendation 11. Engage in robust public reporting on the demographics of the suspects in all use of force incidents and in-custody deaths, including for each incident: race, gender, and age; any indicators of homelessness and of mental illness and CIT response; any previous involvement with FCPD; the type of weapon, if any, in the suspect's possession; police use of force; and resulting death/injury.

Recommendation 12. Collect and publicly report online all uses of force that result in death or serious injury; specifically for purposes of determining (a) whether the actions taken or not taken conformed to FCPD policies and procedures; (b) prior employment of use of force by the officer(s) involved and

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[12] Ibid. *From Warriors to Guardians*
[13] Ad Hoc Police Review Commission Mental Health and CIT Subcommittee Final Report, Aug. 17, 2015.

determination of its appropriateness; and (c) opportunities for officer, supervisor, and commander training. (Note: Release of use of force data does not necessarily have to include names of officers or victims until cases are concluded.)

Recommendation 13. Annually report to the U.S. Department of Justice through the FBI's Uniform Crime Reporting System, all use of force and in-custody deaths, and disseminate such data to the public.

Recommendation 14. Assure that timely and consistent information is presented for all officer involved shootings and lethal incident synopses should be made available within 72 hours, to include the following:

a. A narrative of the incidents and aftermath, updated in real time, including all UOF events that result in death or serious injury, not just shootings.

b. The details available in all press releases, updates and other public information should be integrated into the synopses, including names suspects and officers and links to press releases and their updates provided.

c. Demographic information: race, age, and gender, whether the call included concerns about a mental health crisis, and whether the suspect was homeless.

d. Information on what special teams were involved, if any.

e. Appropriate information about whether/what discipline was administered in cases with policy violations.

f. Any changes of policy or training that result from review and lessons learned from the use of force incidents.

Body Cameras

The Use of Force Subcommittee believes that the FCPD would benefit from formally adopting a program for the use of Body Worn Cameras (BWC) by its police officers while conducting police activities. We find that the following primary benefits can be gained by the use of BWC:

- Increased community trust and a decrease in the variety of problems that currently stem from interactions between police departments and community members.

- Improved evidence collection, positive strides in officer safety, and a decrease in citizen complaints against the officers. The latter may bring with it a sharp decrease in the total costs usually associated with citizen complaints, to include time spent on such cases by both prosecution and police personnel.

- Decreased numbers of complaints against police officers in various police departments, both within the USA and internationally. There has also been an observed rise in civility when BWC are worn.

One additional advantage is the so-called "civilizing effect" that results from the use of a body camera. Statistics have clearly shown a decrease in use of force encounters, and in the resultant number of complaints by civilians against the local police departments once those departments employ BWC. The

reduction in complaints and the level of violence from both law enforcement officers and civilians with whom they interact daily perhaps serves as the greatest motivation for FCPD to begin using the cameras.

A recent New York Times article offers a caution, however, by noting that "(e)xperts say that cameras probably change for the better how the police and the public treat each other, but they do not know how much. … Recent studies showed that when officers in Rialto, Calif., and in Mesa, Ariz., wore body cameras, complaints against the police fell sharply. But body camera advocates and skeptics alike say they do not know how much that reflects a real decline in police misconduct, and how much was a drop in spurious civilian complaints; it may be that both groups behave better when they are on camera."[14]

Regardless, a prerequisite to FCPD adopting the use of BWC is that patrol officers and other "stakeholders" must be provided the opportunity to provide meaningful input into the initial implementation of the pilot program. This program of inclusion should result in improved participation and acceptance of the BWC by the officers and management personnel, as well as members of the community in general.

Other police departments have, for example, found success in the implementation phase of their BWC programs when they engaged their police personnel from the very beginning of their BWC program. In this manner, police officers not only came to appreciate the rationale for the cameras, but they also embraced the technology once they discovered the potential benefits of using the video feed to accurately depict what occurred during their encounters with citizens, as opposed to allegations initially lodged against them by members of the community.

Similarly, public acceptance will be greater if the community is: (a) advised of the impending use of BWC; (b) given an opportunity to express its comments, concerns and ideas from a fresh perspective, i.e., a non-law enforcement viewpoint; and (c) given the time to prepare for and adapt to seeing the officers wearing the cameras.

An important consideration in the design of laws, policies and practices with regard to BWC implementation is protection of personal privacy and the related impact on citizen engagement if they understand that interaction with police officers will be recorded. We believe a privacy-protective and public-access-to-information balance can be struck in this regard and it may well be that current laws governing publicly available information may already provide the necessary protections with regard to video footage.[15]

FCPD should create a system that allows it to periodically evaluate the efficacy and to create statistical data regarding the use of the videos. This will allow a sense of transparency, promote public confidence in the program, and allow the agency to periodically evaluate whether departmental goals are being met with regard to the use of the cameras. Such data should also be made available to the public on a

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[14] *Glare of Video Is Shifting Public's View of Police*, New York Times, July 30, 2015; or http://nyti.ms/1DdxstP.

[15] The Hanover County Attorney addressed this matter in a July 14, 2015 letter to Maria J.K. Everett, the Executive Director of the FOIA Advisory Council [see _____]

periodic basis. One major advantage to such evaluative studies will be the ability to demonstrate how much a department will save, financially or otherwise, by using the videos.
Concluding, the use of Body Worn Cameras seems to be a wise and timely decision by the Fairfax County Police Department. The potential rewards from such a program should instill a strong sense of community trust in the FCPD and its police officers and should, in turn, offer important benefits to the officers themselves. We note that FCPD has proposed a BWC program and has begun community meetings on the proposed program. [16]

Recommendation 15. Mandate that FCPD police patrol officers employ body cameras to record all interactions with members of the public, contingent on the following:

a. The enactment of laws, policies and procedures that protect individual privacy.
b. Police patrol officers being consulted, with feedback provided as to how their concerns and recommendations were considered.
c. Implementing a training program not only for all police officers, but the wide-ranging personnel who will oversee, process and manage the digital data, as well as prosecutors who will use the data in criminal prosecutions.

Electronic Control Weapons (Tasers/ECWs)

ECW, also known as Conducted Energy Weapons, are most commonly known by the manufacturer's trade name "Taser." ECWs inflict large charges of electric shock. ECWs are viewed by proponents as a critical tool for use in avoiding the escalation of a situation into one in which deadly force or another less-lethal type of force becomes necessary. Opponents believe ECWs can be relied upon too heavily by some police officers when lesser methods of subduing person may be available. Furthermore, this concern has been heightened by the recent incident in the Fairfax County Adult Detention Center and news stories about persons who have died as a result of the use of an ECW.

Current FCPD policy on the use of ECWs is set forth in General Order 540.1.G.3 and implemented through SOP 06-605. That policy classifies ECWs as "Non-Deadly Use of Force" and requires that only officers trained in the use of ECWs may employ them. We understand that all FCPD officers are being trained in the use of ECWs and that the FCPD has a sufficient number of ECWs to allow all patrol officers to have an ECW when on patrol.

The principal focus of our review of the use of ECWs was whether the FCPD should adopt an "all-carry" requirement. We heard from FCPD patrol officers and training personnel with various perspectives on such a requirement. Some believe that an all-carry requirement is a critical component of a proper UOF policy, while others note that having an ECW available detracts from the consideration of ways in which to de-escalate a situation. Concerns were also expressed as to space available for ECWs on the belts of smaller officers.

[16] See http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2015/public-safety-body-camera-memo.pdf].

On balance, we believe that an all-carry policy should be implemented for patrol officers and detectives and plainclothes officers when on duty. With qualifying initial training and periodic in-service training, officers should be able to properly de-escalate a situation without inappropriately relying on their ECWs. Alternatively, officers will have the ECWs available to use appropriately in lieu of other significant, more lethal, use of force.

The Philadelphia DOJ report recommends required-carry, as does the Cleveland settlement agreement.[17,18] The DOJ Ferguson Report asserts that officers should view ECWs as one tool among many, and "a weapon of need, not a tool of convenience;" while not depending on ECWs, or any type of force, "at the expense of diminishing the fundamental skills of communicating with subjects and de-escalating tense encounters."[19]

As with BWCs, it is essential that patrol officers as well as detectives and plainclothes officers be consulted concerning the implementation of the all-carry requirement and that feedback be provided to them as to how their concerns and recommendations were considered.

Because an ECW can in certain circumstances be lethal, we believe that ECWs should be classified as less-lethal weapons rather than non-deadly weapons, a change promoted by PERF's 2011 Electronic Control Weapons Guidelines and PERF's recent report to FCPD.[20]

We note that current FCPD SOP 06-025 provides in Section IV.D.1 that only one ECW deployment should be used against a suspect, but that subsequent cycles may be used to achieve the desired result if reasonably necessary. Consistent with both the Philadelphia and Cleveland DOJ reports, we believe that supervisory approval should be required for ECW use in excess of three cycles on a suspect absent exigent circumstances.

We have made several other recommendations based on practices recommended in the materials we reviewed as well as suggestions made to the Subcommittee, including those from the ACLU. In addition, we fully endorse the recommendations made in the PERF Report.

Recommendation 16. Reclassify Electronic Control Weapons as "less-lethal weapons" rather than "non-deadly weapons" per the recommendation by the 2011 Electronic Control Weapons Guidelines and the PERF Report.

Recommendation 17. Mandate that all uniformed officers in enforcement units carry an ECW on their duty belt (or elsewhere on their person if necessary) when on patrol. Our recommendation in this regard relative to the execution of the mandate is contingent on police officers being consulted on how

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[17] Philadelphia U.S. Department of Justice (DOJ) Report, Recommendation 8.3.
[18] Cleveland DOJ Settlement Agreement, Paragraph 62.
[19] Ferguson DOJ Report, p. 31.
[20] Police Executive Research Forum (PERF) Electronic Control Weapon Guidelines, 2011, p. 11; and PERF Use-of-Force Policy and Practice Review Report, June 2015, Recommendation #30.

best to implement the all-carry requirement and that feedback be provided to them as to how their concerns and recommendations were considered.

Recommendation 18. Mandate that all detectives and plainclothes officers, regardless of rank, carry an ECW in their vehicles when on duty. Our recommendation in this regard relative to the execution of the mandate is contingent on detectives and such police officers being consulted on how best to implement the all-carry requirement and that feedback be provided to them as to how their concerns and recommendations were considered.

Recommendation 19. Regarding the term "excited delirium," as referenced in the General Order 540.1 – USE OF FORCE – replace all use of "excited delirium" with a more medically and physiologically descriptive term.

Recommendation 20. Prohibit use of an ECW on a handcuffed, or otherwise restrained individual, who is actively resisting, unless an objectively reasonable officer concludes that the resistance could result in serious injury to him- or herself or others and less severe force alternatives have been ineffective or are deemed unacceptable for the situation.

Recommendation 21. Prohibit use of an ECW on a frail or elderly person, child or a pregnant woman unless deadly force would otherwise be justified, since they face an elevated risk from ECWs.

Recommendation 22. Absent exigent circumstances, require supervisory approval for ECW use on a suspect in excess of three cycles.

Recommendation 23. Treat each ECW cycle as an independent application of the device, thus requiring its own justification, since multiple or prolonged ECW shocks may increase the risk of adverse effects on the heart or respiratory system.

Strategic Weapons and Tactics Techniques

FCPD currently uses a three step process together with a threat assessment in determining whether to employ SWAT.[21] There is no decision-making flow chart, but FCPD uses a non-public six page Risk Assessment and Mitigation Form. The Subcommittee was provided with a one page form for public dissemination.

FCPD is considering pulling all of the pertinent policies and guidance on the use of SWAT together into one general order. A draft general order for the use of the Warrant Risk Assessment Matrix and the Tactical Analysis Worksheet has been prepared and provided to the Subcommittee, but the draft general order does not collect all SWAT policies and protocols.

[21] Presentation by Commander David Moyer, Operations Support, at the May 20, 2015 UOF Subcommittee meeting.

It is not clear to the Subcommittee what situation presents "high risk" nor does there appear to be guidance as to how to balance the various factors to make the required "high risk" determination. We believe it is essential that a definitive list of factors be formally established for making a "high-risk" determination, as well as assuring that a decision to use SWAT is ultimately the responsibility of a single commander.

Recommendation 24. Employ SWAT and the use of other advanced tactics only in situations where there is a high risk of violence, resistance, or harm to the officers involved, the public or the suspect as defined by set of "high risk" factors that are captured in the recent modifications to the Warrant Risk Assessment Matrix.

Recommendation 25. Consolidate FCPD policies and protocols, including threat assessment, supervisory approval, training and post-use review and lessons learned, for the use and documentation of SWAT and other advanced tactics.

Recommendation 26. Require that all police divisions, most notably the Narcotics Division, employ the same risk assessment procedures as SWAT for planning any high-risk operation.

Recommendation 27. Ensure that there is broad community understanding of FCPD SWAT capabilities and how and when SWAT can be deployed.

Recommendation 28. Ensure that SWAT SOPs and the recently updated threat assessment process are clear in their requirement for approval by a single designated command officer who will bear overall responsibility for each use of SWAT.

Recommendation 29. Adopt – or reinforce those already adopted – the following as FCPD SWAT best practices:

a. Establish policies and practices that ensure SWAT is deployed proportional to the unique needs of each individual incident.
b. Include a trained crisis negotiator with every SWAT deployment.
c. Require SWAT officers to wear body cameras during every deployment.
d. Require that every SWAT deployment results in a post-deployment report that documents the following, in a manner that allows for the data to be readily compiled and analyzed for lessons learned:
    i. the purpose of the deployment;
    ii. the specific reason for believing that the situation for which the SWAT team was being deployed presented an imminent threat to the lives or safety of civilians and/or police personnel;
    iii. whether forcible entry or a breach was conducted and, if so, the equipment used and for what purpose;
    iv. whether a distraction device was used and, if so, what type and for what purpose;
    v. whether an armored personnel carrier was used and, if so, for what purpose;
    vi. the race, sex, ethnicity and age of each individual encountered during the deployment, whether as a suspect or bystander;
    vii. whether any civilians, officers, or domestic animals sustained any injury or death;

viii. a list of any controlled substances, weapons, contraband, or evidence of crime that is found on the premises or any individuals; and
ix. a brief narrative statement describing any unusual circumstances or important data elements not captured in the list above.

Mobile Crisis Units

Police officers have increasingly become the first responders when a citizen is in the midst of a mental health crisis. This is certainly true in Fairfax County, where the Police Department responds annually to more than 5,000 calls for service related to individuals living with a mental illness who need assistance. It appears that this year that number might climb to over 7,000 calls, with such calls averaging 20 a day.[22]

A review of the last 10 years of FCPD OISs undertaken by this Subcommittee revealed that at least 40 percent of the shootings involve calls for service to address a mental health crisis. Mental health crises are likely implicated in a similar percentage of all use of force incidents. "Nearly half of all fatal shootings by law enforcement locally and nationally involve persons with mental illnesses."[23] Because of the impact of impact of mental health crises on incidents of use of force, we believe expansion of Mobile Crisis Units in the county is warranted.

Recommendation 30. Establish as a budget priority the immediate funding of a second Mobile Crisis Unit, in support of the Mental Health Subcommittee recommendation No. 15; and over the appropriate budget cycles, but no later January 1, 2017, the funding of two additional Mobile Crisis Units, for a total of four units, one for each human services district, to be staffed and operated seven days a week around the clock.

Oversight

Independent oversight will provide for public accountability and confidence relating to the use of force; education and insights for both the public and the police; and a positive, ongoing feedback loop that could result in the reduction of both UOF incidents and complaints. We believe therefore that independent oversight is a critical component of an effective UOF policy. This belief is consistent with the position taken by the President's Task Force on 21st Century Policing (Recommendation 2.8), the National Association for Civilian Oversight of Law Enforcement (NACOLE), as well as recent DOJ reports.

We also considered four other aspects of oversight. First, we believe that it is important that FCPD and its officers receive specialized legal advice on UOF and other critical issues unique to policing and, therefore, believe that a police legal advisor should be established within FCPD. The police legal advisor

[22] The Mental Health and Crisis Intervention Subcommittee Final Report, Aug. 17, 2015.
[23] Ibid, Mental Health and CIT

would provide advice and training on UOF and other legal issues and would also be responsible for ensuring the timely implementation of changes to policy and practices. It is worth noting that the FBI has had for over 30 years similar legal advisors in its field offices where they can provide direct advice and training as needed to agents on critical issues involving the legality of techniques and operations.

Second, we heard concerns from the public and Subcommittee members as to the need to ensure that the use of force is not being employed by FCPD in a manner that is discriminatory on the basis of race, gender, ethnicity, homelessness, or mental health conditions. We learned that FCPD lacks comprehensive data that would enable us to evaluate such concerns, and we therefore believe that FCPD should collect, analyze, and publish a comprehensive statistical report covering all FCPD stops, frisks and arrests and UOF incidents. Such data will enable the Board of Supervisors and FCPD to monitor and identify any discrimination or other concerns in FCPD's use of force and to take corrective action as may be needed.

Third, the Subcommittee learned that the existing internal FCPD Use of Force Committee addresses primarily administrative and tactical issues. It generally does not address substantive issues such as the decision to employ UOF and de-escalation and alternatives that were applied as well as supervisory, training, or policy issues that need attention.

The 2007 Rohrer report to the community on the Salvatore Culosi shooting referred to plans to enhance responsibilities for the Committee, and Chief Roessler has indicated his concurrence with the need for an enhanced Committee. We have not yet, however, seen the charter for the enhanced UOF Committee. Should the Subcommittee's charge be extended beyond the completion of this report, as is recommended, then we would be in a position to review and comment on the charter for the enhanced Committee.

We note that the DOJ Cleveland settlement agreement provides for the establishment of an internal police department Force Review Board and sets forth the composition, responsibilities, and activities of the FRB.[24] We believe that FCPD should consider these paragraphs as it enhances the role and responsibilities of the FCPD Committee.[25]

We further believe that at least two members of the public should be added to the internal UOF Committee to ensure that the police and public can mutually benefit from their respective views about a UOF situation and contribute to any lessons that might be learned in the process. The policies and procedures guiding the appointment and role of the civilian appointees should be developed with public review and input; should protect against real or perceived conflicts of interest; and should assure that civilian members are bound by the level of confidentiality that will be protect candid and honest assessments, which is at the core of an effective continuous improvement process, as well as related criminal investigations.

We believe also that it is important that the internal Committee receive and consider after action reports and that it meet regularly with the Independent Auditor and the Civilian Review Panel (no less

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[24] Ibid. DOJ Cleveland, paragraphs 124 -130.
[25] *See also* White House Task Force Action Item 2.2.6 concerning the establishment of Serious Incident Review Boards.

than semi-annually) to discuss any concerns relating to the use of force by FCPD and any changes in policy or practices that may be warranted.
Finally, we believe that the significance of a police officer's lethal use of force demands a review independent of FCPD and that the Board of Supervisors is best positioned to review and issue a public report on the Chief of Police's determination in all lethal UOF cases on the community's behalf.

Recommendation 31. Implement independent investigative oversight and civilian review of UOF incidents. Consistent with the findings of the White House Task Force and the recommendations of NACOLE, independent oversight and civilian review will provide public accountability, trust and confidence, education of both the public and the police, and a positive, ongoing feedback loop that would result in the reduction of both UOF incidents and complaints.

Recommendation 32. Establish a police legal advisor position within FCPD who would not only advise the department on legal issues but also ensure implementation of recommendations and timely implementation of policy changes.

Recommendation 33. Collect and analyze data, and publish an annual statistical report, covering all FCPD stops, frisks, citations, arrests, and use of force incidents by police station and magisterial district. Include the race, gender, and ethnicity of the individual in the data collected; and note whether the suspect is homeless and if a mental health crisis is suspected or a factor in the suspect being frisked, cited, arrested, and/or subjected to force. The data should also include the race, gender and ethnicity of the FCPD personnel conducting the stop, frisk, citation, arrest, and/or use of force and whether the interaction was initiated by FCPD or by the suspect. Finally, document the outcome of each incident and regularly report the collected data to the Board of Supervisors and the public and post the data and analysis online.

Recommendation 34. Reconstitute the existing FCPD Use of Force Committee to review selective use of force events, to include the decision to employ UOF, the use of de-escalation and alternatives, compliance with applicable law and FCPD policies and practices, as well as administrative, training, supervisory and tactical issues.

a. The UOF Committee should receive and consider after action reports (AARs) on each selected UOF event, identify lessons learned, and make recommendations as to any needed changes in policy or practice. The UOF Committee should meet on a regular basis (no less than semi-annually) with the Independent Police Auditor and the Civilian Review Panel to identify and address issues of concern arising out of UOF incidents and FCPD policies and practices.

b. At least two members of the public should be appointed to the UOF Committee to ensure that the police and public can mutually benefit from their respective views about a use of force situation and contribute to any lessons that might be learned in the process. The policies and procedures guiding the appointment and role of the civilian appointees should be developed with public review and input and should protect against real or perceived conflicts of interest and assure that they are bound by the level of confidentiality that will protect candid and honest assessments, which is at the core of an effective continuous improvement process, as well as related criminal investigations.

c. Experts and representatives from other law enforcement agencies should be invited to attend UOF Committee meetings to provide critical external perspective, insight and expertise on a permanent or ad hoc basis.

Recommendation 35. The Board of Supervisors should review the Police Chief's determination in all lethal UOF cases and go on record with approval or disapproval of the action.

Workforce Policies and Practices

The Subcommittee recognizes that effective recruitment, training and ongoing monitoring of police officer performance are essential and fundamental to FCPD being able to ensure that use of force is applied in an objectively reasonable and responsible manner. We support in this regard, the Recruitment, Diversity and Vetting Subcommittee's position that "(e)nsuring an applicant is physically, morally and mentally suitable for employment with the department is crucial." We would add that maintaining these suitability standards throughout a police officer's tenure is equally important, particularly as relates to officer discretion in the use of force.

We note, for example, that a President's Task Force panel on Officer Safety and Wellness considered the spectrum of mental and physical health issues faced by police officers. The spectrum ranged from the day-to-day stress of the job and its likely effect on an officer's physical health; the need for mental health screening; traffic accidents, burnout, suicide, and how better to manage these issues to determine the length of an officer's career. The wellness and safety of law enforcement officers is critical not only to themselves, their colleagues, and their agencies but also to public safety. An officer whose capabilities, judgment, and behavior are adversely affected by poor physical or psychological health may not only be of little use to the community he or she serves but also a danger to it and to other officers.[26]

Of note in this regard, CALEA has established a mandatory standard for all police agencies that calls for an emotional stability and psychological fitness examination be conducted of each candidate prior to appointment to probationary status, using valid, useful, and nondiscriminatory procedures.[27]

Courts have also held that an agency may be responsible for its officer's violent behavior if it knew or should have known that the officer was so inclined. For example, in the case of *Bonsignore v. City of New York*, an officer shot his wife and then killed himself. The city was found negligent because, in part, the officer "was never identified as a problem officer, despite his displaying many of the signs that should have flagged him as having mental or emotional problems…."[5] The court held that a law enforcement department must take reasonable precautions to hire and or retain officers who are psychologically fit for duty. The doctrine of official immunity may not be invoked to protect an agency from allegations of vicarious liability, including negligent retention.[28]

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[26] See http://www.cops.usdoj.gov/pdf/taskforce/Interim_TF_Report.pdf.
[27] CALEA, 32.6.6.
[28] See http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=2449&issue_id=82011.

While the Subcommittee found no empirical evidence to support or dispute our belief, anecdotal information from our engagement with police officers suggest that in-service training opportunities are limited in the current fiscally constrained environment.

We recommend in this overall context that FCPD conduct a biennial workforce climate and culture survey to monitor FCPD's operating culture, including police officer attitudes about all aspects of their work, including the use of force; leadership and equipment; or any perceived barriers to their ability to perform their responsibilities consistent with FCPD's values, philosophy and policies.

Recommendation 36. Give emphasis in police officer basic and in-service training to:

a. The distinction in the use of "ready gun" and muzzle pointing in the conduct of a building search and room clearing.

b. Skill development in the use of de-escalation, tactical retreat and verbal interaction as alternatives to use of force.

c. The expected and effective use of Crisis Intervention Training.

d. Tactical and operational training on lethal and nonlethal use of force, with emphasis on de-escalation and tactical retreat skills.

Recommendation 37. Establish a "hire-to-retire" focus on police officer fitness to serve, particularly in relation to any propensity for being overly aggressive in the conduct of duty. This focus should be a key component in (a) recruitment, vetting and selection; (b) ensuring that the Early Identification System is sufficiently robust in monitoring of OISs, excessive use of force incidents, and complaints of abuse of power[29]; (c) monitoring through basic officer training and in-service training and as a part of each officer's annual evaluation for other known and understood risk factors to ensure that they maintain the right personality and temperament for policing in a community policing framework; [30] (d) reinforcing the

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[29] The April 2013 Police Department Administrative Investigation Process Audit Final Report states: "The FCPD did not utilize an early identification system or formal monitoring process to identify, train and work with members for whom data indicators suggest a relatively high number of complaints, or other patterns of behavior, which should be reviewed. However, management has advised and is taking steps to establish the Early Identification System (EIS) using IAPro, beginning July 1, 2012. It is our understanding that the IAB will maintain the EIS and present a monthly report to the chief of police…." (p. 2)

[30] We acknowledge and give due credit to FCPD's commitment to holding officers accountable for their engagement with the community. While we advocate for a renewed commitment to community policing, we commend FCPD for including as a performance dimension of "community orientation" in the standard offer performance evaluation. The following listing of community-focused expectations are taken directly from the current Police Officer's Evaluation form and addresses the **Community Relations Performance Dimension:**

- Effectively and professionally liaisons with the public. This includes initiating contact when appropriate, being available or responding in a timely manner, showing compassion and empathy when appropriate, exercising interpersonal and problem solving skills, and willingly giving information and assistance.
- Seeks out knowledge to enhance understanding of community issues.
- Sees issues from community's perspective.
- Comfortably and equitably deals with diversity.
- Demonstrates and fosters respect for individual differences.
- Maintains community awareness, responds to and schedules meetings with community.

"duty-to-intervene" by fellow officers to be protective of the public and fellow officers; and (e) providing services, as appropriate, to assist officers who may need attention or treatment.

Recommendation 38. Conduct a study of the relationship between supervisors and patrol officers, including the current supervisor/patrol officer ratio as a potential factor in strengthening the leadership direction provided to patrol officers in non-routine situations, particularly as it relates to the potential for use of force.[31]

Recommendation 39. Conduct a workforce climate survey and publish summary results on a biennial basis to monitor FCPD's operating culture, including police officer attitudes about their work, leadership and equipment; or any perceived barriers to their ability to perform their responsibilities consistent with FCPD's values, philosophy and policies. Use the detailed survey results broken down by organizational unit as a basis for dialogue between and among police officers, supervisors and the command structure.

[31] PERF Review recommendation No. 17 states in part, "…supervisors and commanders must not only read and review these reports, but also must question report writers when they see inconsistent statements or generic, boilerplate language in these reports. Furthermore, supervisors should be required to review any available video or audio recordings and seek out any possible witnesses to the incident for verification of facts." PERF also notes, "it is important for the FCPD to recognize that the on-duty supervisor…plays a critical role, not only in ensuring that the use of less-lethal force is properly reported after the fact, but also in responding to any high-risk incident in which injury or the complaint of injury is possible. Based on information provided by the responding officers and dispatchers, the sergeant should attempt to get to all high-risk scenes as quickly as possible in an attempt to "slow the situation down" and look for opportunities to de-escalate as much as possible." (p. 49)

CONCLUSION

With the completion of this Report, the Use of Force (UOF) Subcommittee has largely completed its charge from the Ad Hoc Police Review Commission to undertake a review of FCPD's use of force, critical incident response and training policies and practices. Our review resulted in 40 recommendations organized under ten topical headings.

The bulk of our recommendations focus on policies, practices and initiatives we recommend after a review of national best practices and considering the PERF analysis and recommendations. Clearly improvements can be made to standard operating procedures and general orders – the policy framework within which police officers must operate – particularly with regard to use of force and SWAT. We have also concluded that staffing and technology enhancements in the areas of body worn cameras, electronic control weapons, and mobile crisis units will reduce the use of force incidents.

We believe that the philosophy underpinning Fairfax County Police Department policies and practices must continue to be founded upon issues, concepts, and values of policing in a democratic society. We discussed, but did not reconcile, how best to characterize the essential roles played by FCPD police officers in the conduct of their responsibilities to protect our community. We also believe that a key step to sustained confidence and trust in FCPD is greater openness and transparency, particularly with regard to an officer involved use of force that leads to serious injury or death. A broader community discussion of this nature would be timely and welcomed.

Regardless of how the community comes to clarify and understand the role of the police officer in today's times – as guardian and warrior or peacemaker or fighter, as examples -- FCPD must continue to inculcate within the police force a commitment to the sanctity of human life and protection of constitutional rights; and give emphasis to de-escalation and crisis intervention strategies over use of force.

Thank you for the opportunity to be of service to the Commission and for being able to serve our community.

Use of Force Subcommittee Charter

While we have largely completed our charge, time and the demands of our task have left some work still to be completed. Further, we believe that maintaining our Subcommittee will benefit FCPD implementation of our recommendations.

Recommendation 40. The charter for the UOF subcommittee should be extended beyond the completion of the Ad Hoc Commission's report and presentation to the Board of Supervisors to (a) meet its charge to "…review the roles of and relationships between the FCPD, the Office of the County Attorney, and the Office of the Commonwealth's Attorney in connection with use of force and critical incident responses;" (b) follow up on open issues, such as the internal FCPD UOF Committee charter; and (c) support implementation of any of the UOF recommendations for which UOF Subcommittee participation would be beneficial.

Appendix A

UPDATED: Use of Force Subcommittee Work Plan

Activity	Tasks	Assignment	Meetings
Data Collection and Review	1. Recent use of force incidents (lethal and non-lethal) involving FCPD. 2. Data summarizing FCPD use of force interactions, officer involved shootings resulting in death or injury, and in-custody deaths from 2005 to 2015. 3. Incidents in which SWAT teams, military-type equipment, and other high risk tactics were employed 4. Use of Force Committee	FCPD	• May 20th and June 3rd
Understand Policies and Practices Review FCPD use of force and critical incident response policies and practices	1. General Orders and SOP 12-045; other policies and practices	All Members	NA | ASAP
	2. Training	FCPD	June 17th
	3. Threat assessment, de-escalation and incident avoidance	FCPD	June 17th
	Observations and Findings	All Members	June 17th
Benchmarking a) Review "best practices" on <u>use of force and critical incident response</u>. b) Determine how FCPD compares. Recommend changes to close any identified tasks.	1. Police Executive Research Forum Report	PERF & FCPD	July 1st
	2. DOJ reports on Cleveland police department	Sal Culosi	July 15th
	3. DOJ report on Ferguson police department	Randy Sayles	July 15th
	4. DOJ report on Philadelphia police department	Mary Kimm	July 15th
	5. The Report of the President's Task Force on 21st Century Policing	Hassan Aden	July 15th
	6. The March 2011 "Electronic Control Weapons Guidelines" published jointly by the Police Executive Research Forum and the U.S. Department of Justice Office of Community Oriented Policing Services.	Joe Smith	July 15th
	7. Policies on the use of **body cameras and dashboard cameras**, including when they are required to be used, the	Bernard Thompson	July 15th

	retention of the video, the public release of and public access to the video, how best to respect individual privacy interests, and the administrative burdens associated with the use of such cameras		
	8. Policies on the provision of **medical treatment** and other assistance to individuals injured as the result of the use of force	Joseph Becerra	July 15th
	Observations, Findings, Recommendations	All Members	July 22nd
Organizational Roles, Responsibilities, and Relationships Review the roles and relationships in connection with use of force and critical incident responses	1. FCPD and the Office of the County Attorney	FCPD & County Att.	July 29th
	2. FCPD and Office of the Commonwealth's Attorney	FCPD & Comm. Att.	July 29th
	Observations, Findings, Recommendations on Organizational Responsibilities _____ Review & Clarify All Recommendations	All Members	July 29th
Findings and Recommendations Based on the review of existing FCPD policies and practices and a review of the policies and practices of other jurisdictions and the cited and other resources, develop proposed recommendations to the Board of Supervisors for changes and/or next steps for consideration by the Commission	Ranking of Recommendations	All Members	August 12th
	Approve Report Outline and Writing Assignments	Chair	August 12th
	First Draft Completed	Chair and Members	August 19th
	Approve Report to Commission	All Members	August 26th

Appendix B

CASE NUMBER	DATE	DISTRICT TOWN	SUBJECT NAME	AGE	RACE	INJURY	MENTAL HEALTH?	ARMED?	CHARGES	OFFICER NAME	Notes	CRIMINAL?	POLICY VIOLATION?
5014000912	1/14/2005	Franconia	Roderick D. Jordan	34		wounded		gun	Attempted Capital Murder of Officer, Attempted Robbery, Use of Firearm in Felony.	Not given		no	no
5141000102	5/21/2005	McLean	Stacy Darrell Smith			none		no	Malicious Bodily Injury to Officer, Possession of Marijuana & Cocaine, Hit & Run, Disregarding Officer's Command to Stop	Not given		no	no
5188002654	7/7/2005	W. Springfield	not given			wounded	X	knife	none reported	Not given		no	no
5227000367	8/15/2005	Franconia	Antonio Hill	23		grazed? officer shot in foot	X	no	Malicious Wounding and Abduction.	Not given	officer wounded by police weapon	no	no
5279002956	10/6/2005		none			none			none reported	Not given	unintentional discharge	no	yes
5302001305	10/29/2005	Franconia	Joseph Oliver	56		wounded	X	guns	Attempted Capital Murder of Officer, Use of Firearm in Felony	not given		no	no
5335002676	12/1/2005	McLean	Philip Luther Moore	23		wounded		no	Attempted Malicious Wounding of a Law Enforcement Officer and Grand Larceny.	not given		no	yes
6003000806	1/3/2006	Mount Vernon	Jonathan White	29		wounded		BB gun	Possession of Stolen Property (vehicle) and Felony Speed to Elude	not given	PIT questions	no	no
6024002994	1/24/2006	Fairfax	Salvatore Culosi Jr.	37	white	fatal		no	none	Deval Bullock	SWAT	no	yes
6128001916	5/8/2006	Sully	Michael Kennedy	18	white	fatal		heavily	deceased	2 officers killed	2 officers killed	no	no
6250002596	9/7/2006	Falls Church	Marlon Ian McDougal	24		wounded		no	carjacking and burglary with the intent to commit robbery	not given	pursuit, stopped by sheriff deputy car striking	no	no
6347001041	12/13/2006	Mount Vernon	Edward R. Agurs Jr.	39		fatal		no	deceased	not given	bank robbery	no	no

6357000168	12/23/2006	Falls Church	Peter Zabdiel Gomez	22		none		no	Attempted Malicious Wounding of a Law Enforcement Officer	not given	officer fired weapon, missed	no	no
7143002806	5/23/2007	Mount Vernon	Randall Leroy Rollins	28		fatal		gun	deceased	not given		no	no
7254000214	9/7/2007	Herndon	Rocky L. King	26		wounded		guns	Attempted Capital Murder of Officer, Use of a Firearm in Felony	not given		no	no
7304000270	10/31/2007	Burke	Edward Connor	71		fatal	X	guns	deceased	not given		no	no
7339000061	12/5/2007	Fairfax	not given	27		wounded		gun	Possession with Intent to Sell Marijuana and Possession of a Firearm in Felony	not given		no	no
8011002473	1/11/2008	Franconia	Brent Shorter	51		fatal	X	knife	deceased	not given	homeless	no	no
8033000305	2/2/2008	Franconia	Jeffrey Scott Koger	38	white	wounded		shotgun, knife	Attempted Capital Murder of Officer, Use of a Firearm in Felony, Aggravated Malicious Wounding	not given	bizarre case	no	no
	2/12/2008	Mount Vernon	Ashley McIntosh		while	fatal car accident		none	not OIS	Amanda Perry	car accident	no	yes
8187003076	7/5/2008	Oakton	David Michael Przewlocki	54		fatal	X	BB gun replica	deceased	not given		no	no
8320001172	11/15/2008	McLean	Dean Martinez	34		wounded	X	gun	Carrying a Concealed Weapon, Carrying a Concealed Weapon into an Establishment that Serves Alcohol, and Brandishing a Firearm	not given		no	no
8345001390	12/10/2008	Ended in Arlington	Brook Hailu Beshah	19	black	fatal		plastic replica BB gun	deceased	not given	"Based on the man's injuries,	no	no
8355003077	12/20/2008	Springfield	Zeeshan Sarwar	30		no injury			Driving While Intoxicated, Refusal to Submit to a Breath or Blood Test, Assault on Officer, Speed to Elude, Hit and Run	not given		no	no

9103000080	4/13/2009	Fairfax	Vincent Ramon Jones	46		fatal		knives	domestic violence call	not given		no	no
20093170191	11/13/2009	Mount Vernon	David Masters	52	white	fatal	X	none	deceased	David Scott Ziants		no	yes
20100360039	2/4/2010	Herndon	Not Given?	25		wounded	X	BB airgun	none stated	not given	Currently in litigation.	no	no
20103090016	11/4/2010	Falls Church	Joseph Lawrence Michel	50		wounded		no	Felonious Assault, Attempted Malicious Wounding of a Police Officer, Grand Larceny	not given	Pursuit and PIT	no	no
20111120173	4/22/2011	Springfield	Joseph Anthony Croft	49		fatal	X	knife	deceased	PFCJohn Parker		no	no
20112020046	7/21/2011	Sully	Ricardo Leon	34		fatal	X	shotgun, knife	deceased	PFC Jonathan Keitz; PFC Stephen Sylces		no	no
20121410040	5/19/2012	Springfield	Gray Alan Combs Jr.	22		fatal	X	samurai sword	deceased	PFC J. Kevin Clarke	homeless	no	no
20121490124	5/28/2012	Mount Vernon	Stephen P. Collier	61		wounded	X	knife	Destruction of Property and Assault on a Law Enforcement Officer	PFC Stephen Copp.		no	no
20121910022	7/8/2012	Mount Vernon	Nicholas Allen Kaelber	21		fatal		handgun	deceased	PFC Edward Carpenter		no	no
20130990188	4/9/2013	Franconia	Maxwell Scott Eisenman	37		wounded	X	plastic replica	Assault on a Law Enforcement Officer.	PFC Shannon Sams, PFC Robert Marshall. PFC Eric Runkles		no	no
20132410240	8/29/2013	Springfield	John Geer	46	white	deceased			deceased	Officer Adam Torres		yes	yes
20133030280	10/30/2013	Mount Vernon	James Bryant	28		deceased	X	officer's baton	deceased	PFC Mohammed Oluwa	litigation pending; homeless	no	no
20142510203	9/8/2014	Franconia	not named	60s		wounded	X	handgun	none identified	Sgt. Joseph Furman, PFC Gene Taitano	suicidal	no	TBD
20143060056	11/2/2014	Sully	not named			no injury		no	none identified	not named	pursuit	no	TBD

Appendix C

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Appendix D

Lines of Inquiry & Answers to Questions

Use of Force Subcommittee Members
Ad Hoc Police Practices Review Commission
Edited and Organized for Final Report

Question	Answer
Use of Force Reports, Data & Analyses	
1. Provide details on all deadly use of force cases since 2006, and all criminal and IAD investigations since 2009.	Synopsis for all officer involved shootings for the period of 2005-2013 are posted on the Chief's Page at www.fairfaxcounty.gov/police. Discharging a firearm towards animals are not included.
2. Provide the number of uniformed officers in FCPD per each year in the report?	The department has 1,339 sworn employees. Approximately 980 are assigned to patrol. This number fluctuates throughout the year due to attrition and vacancy rates but this is the base level.
3. Explain why the yearly totals of discipline cases was so small out of the total number of UOF cases (e.g., in 2010 three discipline cases out of 408). http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/use-of-force-statistical-summary.pdf	Use of force incidents are unique to the circumstances the officer(s) were presented at the time of the calls for service. Both General Order 301 and 540.1 describe what is expected of an officer regarding the use of force. The vast majority of UOF incidents involve unambiguous officer compliance with these orders and hence not subject to administrative review. In this light, the use of force numbers will fluctuate and not all use of force incidents generate an administrative investigation.
4. Explain why the above report shows UOF incidents numbering over 400 in 2010-13 but page 6 of http://www.fairfaxcounty.gov/policecommission/materials/2013-iab-annual-report.pdf shows UOF for 2009-2013 ranged from 84-102 (the same upward trend as in #3 above) then p. 11 shows the same years ranged from 539 to 443?	In the 2013 IAB Annual Report, page 6 "Use of Force" refers to the number of administrative investigations that were conducted where the use of force by an officer was investigated. Not all use of force incidents are investigated as an administrative investigation. For example, if an individual who is being arrested but is resisting, the officer then utilizes a physical control technique to gain control is considered a use of force. However, that physical control technique does not necessarily generate an administrative investigation. Use of Force complaints which are investigated as an administrative investigation generally are generated by citizens, by injuries to the individual, and/or by officer/department. Therefore, the numbers on page 6 will differ from the numbers located on page 11. The numbers on page 11 describe the overall use of force Incidents reported where the numbers on page 6 are the use of force incidents investigated as an administrative investigation.
Use of Force Policy, Training & Culture	
5. Based on the list of SOPs how can the UOF subcommittee gain access to: ▪ 06-024 CEW ▪ 06-025 PepperBall System ▪ 06-026 Citizen Reporting System ▪ 08-034 Patrol Rifle Program ▪ 12-045 Investigation of Deadly Force Deployment 01-01-12 ▪ 12-046 Early Identification System 11-05-12	Sent as attachments. SOP 06-025 CEW was previously provided. SOP 13-048, Special Operations Hostage/Barricaded Persons, will not be provided. A new General Order 520.3 about Hostage/Barricade Persons is and has been provided to the Subcommittee.

Question	Answer
▪ 13-047 Police Response to Bomb Threats and 01-01-13 Bomb Incidents ▪ 13-048 Special Operations Hostage/Barricaded 04-01-13 Persons ▪ 13-049 Marine Patrol 04-01-13 ▪ 13-050 Mandatory and Specialized Training 04-01-13 ▪ 13-051 Civil Disturbance Unit 04-01-13	
6. What metrics does FCPD employ for UOF comparable to those used in the "Final Report of the President's Task Force on 21st Century Policing?" (see page 19)	For statistical purposes and analysis, the FCPD does not assign any values or metrics to the different types of use of force.
7. "Communities should support a culture and practice of policing that reflects the values of protection and promotion of the dignity of all, especially the most vulnerable." (see p. 45 - 4.4, Final Report of the President's Task Force on 21st Century Policing). How does FCPD do this?	The FCPD's mission is to protect ALL persons and property by providing public safety services and the fair and impartial enforcement of the laws of the Commonwealth of Virginia in the County of Fairfax, while promoting community involvement, as well as stability and order through service, assistance and visibility. (derived in part from the Department's mission statement)
8. Does FCPD have a similar Law Enforcement Code of Conduct that includes UOF to that of Sheriff David Clarke, Jr., of Milwaukee Co, WI? That is: "A police officer will never employ unnecessary force or violence and will use only such forces in discharge of duty as is reasonable in all circumstances. The use of force should be used only after discussion, negotiation and persuasion have been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every police officer will refrain from unnecessary infliction of pain or suffering and will never engage in cruel, degrading or inhuman treatment of any person."	The FCPD does have a policy statement regarding use of force but it is not the same as Milwaukee. The policy is written as the policy statement of General Order 540.1. "II. POLICY It is the policy of the Police Department that force is used only to the extent reasonably necessary to defend oneself or another, to control a person during an investigative detention or mental detention, and to effect arrest. In all situations, medical assistance shall be provided to any person who is obviously injured, alleges an injury, or requests medical assistance."
9. Does FCPD have use of force continuum from non-lethal to lethal? I don't see that in Gen'l Order 540.1	In General Order 540.1, Section VI is the use of force model which is a use of force continuum from non-lethal to lethal.
10. What is the FCPD definition of defense of self and defense of others?	Officers are legally allowed to defend themselves and others from the threat of serious bodily injury or death. General Order 540.1, Section IV Regulations, Subsection A, Deadly Force reads as follows:

Question	Answer
	In any situation where an officer is otherwise acting lawfully, the use of deadly force is justified in the defense of the officer's life or other person's life. Also, the use of deadly force is justified in protecting the officer or public from serious injury. In addition, self-defense and in the defense of others were discussed in the meeting on June 3, 2015 and the discussion is captured in the meeting minutes.
11. Are officers taught only to shoot to kill? Why?	Any application of deadly force is to stop an aggressive action by a subject who poses a clear and immediate threat of death or bodily injury to the officer or another party. Officers are not instructed in any phase of training that the intent of discharging a firearm is to shoot to kill.
12. How often do FCPD officers review UOF guidelines? Is there a written and practical (simulator) exam? How often? Do any fail? How are they remediated?	Beginning in the Academy, officers are consistently reviewing use of force guidelines; whether it is in roll calls, inservice, academy classes, or academy training. During the Academy, officers are tested extensively on use of force. Recruits have to pass written exams, which covers use of force. In addition, recruits have to pass practical exercises in the use of force tools such as Tasers, Batons, firearms, hands on, etc. As for any written test and proficiency test, recruits have only three attempts to either answer questions correctly or demonstrate proficiency. If after three attempts the recruit fails to answer a question correctly or demonstrate proficiency, the recruit is either dismissed from the Academy or assigned to attend the next Academy class. Officers are required to meet the minimum standards as directed by the Department of Criminal Justice Services. However, the Department's standards not only include the Department of Criminal Justice Services standards, but are even more stringent. By having more stringent standards, the Academy and the Department are a national leader in training recruits. Beyond the Academy, officers are trained in and review use of force through numerous methods. Officers are required to participate in two inservice training days a year which includes use of force. Officers who attend an elective class reference use of force have use of force policies reviewed. All squads have roll call training where

Question	Answer
	use of force is discussed and in many instances, squads conduct their own practicals. During inservice, the Academy conducts refresher training in batons, handcuffing, and on hand cuffing techniques. Though there are no written exams for the refresher training, the Academy staff monitors each officer for proper technique and proficiency. Officers are not allowed to carry or use a Taser unless they complete and pass a Taser class. During that class, there is a written exam that the officer's must pass as well as a practical exercise.
13. What UOF training do officers receive when others, including fellow officers, are in the line of fire.	During firearms training and inservice training (twice a year), the cardinal rules of safety are discussed. One rule is to know your target and what is beyond to include pedestrians, buildings, vehicles, other officers, etc. Officers, during their training scenarios, are taught to be cognizant on cross fire and whether others are present and where they are located (not just for firearms, but also for other forms of use of force such as OC, baton, Tasers). Cross fire situations are sometimes inevitable but are to be avoided when possible. Officers who are rifle qualified are instructed on the speed and penetrating power of their round and to be extremely cognizant of what is beyond their target when discharging their weapon. The requirement to qualify twice a year at the firearms range, as well as the encouragement to practice at the range is essential to ensuring that officers place their rounds only on the intended target.
14. Is there an SOP for a Sgt to arrive at the scene and take charge?	Certain individual calls or situations require supervisor presence, action or oversight but there is no universal policy regarding a supervisor response, as there is only one or two supervisors per district with 12-15 units under their supervision. They cannot be everywhere at all times so some discretion and flexibility is required. The department utilizes Master Police Officer's to supplement police supervisors, as they are senior officers with proven leadership and knowledge/skills/abilities that are in a non-supervisory role but who can assist junior officers with scene management.
15. What is the minimum proficiency that must be achieved on the pistol range for a cadet in the	Recruits/cadets fire a Tactical Qualification Course and must shoot a passing score of at least 188 out of 250 (75%) which is 5% higher than DCJS requires.

Question	Answer
Academy before said cadet is allowed on the street carrying a pistol?	
16. What are the minimum proficiency (marksmanship) a non-cadet must maintain on an annual basis when renewing his/her Firearm endorsement?	Incumbent officers fire a Tactical Qualification Course and must shoot a passing score of at least 188 out of 250 (75%) which is 5% higher than DCJS requires.
17. Does FCPD require "sworn membership" of FCPD to qualify and receive certifications from the VA DCJS?	The Fairfax County Police Department's Academy trains, qualifies, and certifies individuals from member agencies. Those member agencies are the Fairfax County Sheriff's Office, the Vienna Police Department, the Herndon Police Department, and the Fairfax County Fire Department (only fire marshals). The Fairfax County Police Department only allows for recruits from member agencies and the Fairfax County Police Department, current member agencies law enforcement officers and current Fairfax County Police Department law enforcement officers, and law enforcement retirees from member agencies and the Fairfax County Police Department to use the range for qualification and certification with DCJS. The range is not open to the public for an individual to obtain qualification (DCJS purposes) or continue to be recertified (retirees from other agencies and other agency law enforcement officers).
18. What is the number of FCPD sworn officers from patrol to leadership that was involved in more than one of the 37 officer involved shooting (OIS) incidents?	There were four officers involved in two officer-involved shootings. No officers have been involved in three or more officer-involved shootings.
19. What are the policies, standard operating procedures, concerning giving chase?	The pursuit policy is in General Order 501.1 that is posted on the Commission web site.
20. How do officers and supervisors evaluate the risk to the public when chasing a suspect? Can there be any real time feedback? What about drawing guns in traffic/public/when people are present? Lunchtime on Richmond Highway seems like a circumstance where you would give chase or draw guns only in extreme circumstances, like the kidnapping of a child. This is a screenshot from the video:http://www.connectionnewspapers.com/photos/2015/may/13/74239/	Factors to be considered when pursuing a suspect in a vehicle are outlined in General Order 501.1. In addition, officers receive regular training in emergency vehicle operation at the Fairfax County Police Emergency Vehicle Operation Center.
21. Who is making the choices about how the police department and the county communicate with families of people who have been affected by police use of force? Written policy vs discretion?	Detectives from the Major Crimes Division (MCD) handles the most serious use of force cases and an officer involved shooting is a good example. There is no written policy that specifically dictates how this is to be handled and has always been done at the discretion of the lead detective, with supervisory

Question	Answer
	oversight. This is because each case is different, dynamics of those involved are unique and the lead detective is in the best position to determine timing. They take their role very seriously in regards to communicating with families and attempt to do so even under the most difficult circumstances. The reasons for communicating with the family are numerous and are done to help explain the investigative process, answer any questions the family may have in general, keep them abreast of the status of the investigation and gather additional information. Some families are more receptive than others, but it is our duty to maintain contact with them for the reasons listed above. In select cases over the years, detectives have been directed not to have contact with family members for different reasons at different points during the investigative process. This direction did not come from MCD and was usually in regards to a potential civil law suit or other legal matter. The closest related policy is under GO 501.2 Investigative Responsibilities which states: Section IV B: *Periodic contact shall be made with crime victims to determine if any further information can be learned and to notify them of any changes in case status. Contacts may be made either by telephone or in person. Notification of a change in case status should coincide with the status change. All contacts shall be documented in the incident reports and supplements.* Section VI. A. 2. *The term "victim" shall also mean a spouse or child of such a person, a parent or legal guardian of such a person who is a minor, or a spouse, parent, or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent, child, spouse, or legal guardian who commits a felony or other enumerated criminal offense against a victim as defined in this section.*
22. Who does the Chief of Police report to? Under what circumstances does he need to communicate with superiors about use of force and the ongoing investigation? What did the Board of Supervisors know and when did they know it?	The Chief of Police reports to the County Executive (CE) and the Deputy County Executive (DCE) for Public Safety. Methods of communicating with the Board of Supervisors (BOS) include direct emails, phone calls, awareness emails from the Police Public Information

Question	Answer
	Office (PIO) or the Office of Public Affairs (OPA). When directed by the County Attorney, the Chief of Police attends closed session meetings with the BOS. All Officer involved shooting cases are communicated to the BOS, CE, and DCE methodically as the event unfolds through emails, phone calls and often alerts from the Police Liaison Commander at the Department of Public Safety Communications. The affected station commander will contact the BOS member whose district the OIS occurred. This is in addition to the Chief of Police, PIO and/or OPA making notifications as well.
23. What is the UOF culture within FCPD?	The matter of UOF culture was raised by the UOF Subcommittee with the Academy instructors at the June 3, 2015 meeting. FCPD's UOF culture is indirectly addressed through its recruitment and training programs and through the oversight and accountability provided by its management and supervisory leaders. A key to maintaining a responsible UOF culture within the police ranks is the quality of its officers. The Academy staff noted that only 4% of applicants make it to Academy. Every officer is trained to understand that when a weapon is drawn someone may die, either by intentional firing of the weapon or by accident. Academy training stresses that the firearm will not injure someone when it is in holster. Finally, the goal of training officers on defensive tactics is restraint in the use of force and to create a culture of safety and a clear understanding of officers' responsibility to serve their community. This training originally focused on compelling people to comply with the officer's direction. But the focus has been changed to controlling the circumstances, through voluntary or involuntary compliance. They now look at defensive tactics as a means of control and are changing "defensive tactics" to "control tactics." Recruits are trained, for example, to seek to prevent subjects from becoming emotionally out of control, through body language, contact, expressions, and voice tone and inflection. Two related issues were raised by Subcommittee members at the meeting. Department-wide climate surveys have been previously conducted, but there is no program for the annual conduct of such a survey. Climate surveys are, however, informally conducted by individual subunits of the Department.

Question	Answer
	Finally, an observation was made that the only recruitment photo on the FCPD website shows an officer a police officer firing a gun, not interacting with public. The Department understands the observation, but believes that officers are attracted to the work because of the opportunity to serve the community and to help people.
24. Is there is annual FCPD climate survey to monitor the operating culture, including police officer attitudes about their work or if there are issues about which they are concerned?	Department-wide climate surveys have been previously conducted, but there is no program for the annual conduct of such a survey. Climate surveys are, however, informally conducted by individual subunits of the Department. The Department also receives formal feedback on a routine basis from all the employee groups, the Employee Quality Improvement Program, and the Supervisors Employee Quality Improvement Program, and when Departmental leaders visit roll calls and speak with officers.
25. Can FCPD post its policies regarding officers going out on or staying on patrol who are experiencing stress in their domestic life that could impact their performance on patrol?	The FCPD does not have a policy reference officers experiencing stress in their private life. However, when officers display signs of stress which are recognized by other officers, supervisors, or department staff, supervisors discuss the signs of stress with the employee. There are resources that are available to officers such as the Employee Assistance Program (different programs available such as counseling), Peer Support, Police Psychologists, Police Chaplains, and other county programs. In some instances, the supervisor, through their chain of command, can seek a Fit for Duty examination. (Example: A supervisor hears an officer making comments such as "The world would be better without me." or "No one will miss me if I am not here." Fearing the officer is suicidal, the supervisor immediately relieves the officer of duty and secures their weapon. The supervisor then recommends a fit for duty (as officer is not able to perform their job) via their commander. The commanders will determine whether a fit for duty examination is appropriate based on known and unknown information. Once the determination is made, the requests is processed through the Administrative Support Bureau and then to the Chief of Police for final approval.) Fit for Duty examinations are coordinated through the Administrative Bureau. All medical, including psychological diagnoses, are protected by confidentiality laws, including HIPAA unless there is a risk of harm to self or others, or there is a suspicion of child or elderly abuse, or if the employee signs a release form, or in response to a court order. Please refer to General Order 430.4, Incident Support Services for more information and

Question	Answer
	Fairfax County Policies and Procedures Memorandum No. 32, Employee Assistance Program for more information.
26. How many FCPD officers are married or related to attorneys in the Commonwealth Attorney's office?	Unknown; this information is not collected.
Case Review & Excessive Force Litigation	
27. Provide those cases and similar ones back to 2006 which is the period specified in our Scope of Work.	It is being prepared for the Chief's page of the FCPD website.
28. A list of all police involved incidents that resulted in death or injury that includes the date of the incident, a summary of the events and outcome (since 2006).	The Chief of Police has posted on the Department website a synopsis and other information regarding the Department's officer involved shootings.
29. A timeline of information released, plus an explanation of why certain kinds of information were and weren't released.	The media releases for each of these events were posted on the ad hoc commission website. An explanation of what was or was not released is vague but would be willing to answer specific questions on this.
30. What is the policy for how information is made public, in general. History and epistemology of the FCPC communications policy. Exactly what is it?	General Order 401 and 401.1 have the media release policy of the department and are posted on the ad hoc commission website.
31. It would be very helpful to have the presentation we had at the last meeting, but about a specific case and the details involved. In the case of David Masters, it appears the case is closed and it would be appropriate to understand the investigation step by step through this particular case.	A presentation of a closed case from our Criminal Investigation Bureau from the criminal perspective is possible. This would not include the administrative investigation. An entire meeting would be required for this and no documents would be handed out.
32. Can we see everything involved in at least one closed case, the incident reports, the investigation reports, etc. all of the documents that parallel the documents ordered released in the Geer case. What video exists? Other evidence? Again, it appears the Masters case might be a good case study. What can we see?	The Chief of Police has posted a synopsis and other information regarding the Department's officer involved shootings but will not be releasing any case reports, files or documents from the criminal or administrative case.
33. Was the video released in the Masters case the only video? It appeared that another patrol car would have had a better view of the final moments of the event.	The video that was released was the only video the Department had of the incident. The other patrol vehicles involved were not equipped with in car video cameras.
34. The issue of access by the Subcommittee (and the full Commission) to the IAB and CIB reports for the closed "high visibility" UOF incidents which have been identified needs to be resolved in a way that is consistent with the VFOIA but still allows us to fully understand what happened in those situations so that we can evaluate whether polices changes should be considered and recommended.	In reference to Dr. Culosi's case, please see "Report to the Community" dated January 11, 2007. http://www.fairfaxcounty.gov/police/news-releases/special-reports/pdf/community-report-salvatore-culosi.pdf

Question	Answer
As I mentioned, the example of Dr. Culosi could provide valuable information on the decision to use SWAT and the manner in which weapons were held as the attempted service of the warrant proceeded. I spoke with Deputy Chief Ryan about the issue after the meeting, and he said that he would look into how we could resolve the issue and provide access, but we need to follow up timely. Maybe, if the full reports can't be made available, then redactions could be made as necessary to protect confidential sources and the like before release. These are all closed cases so there would be no administrative or criminal proceedings that would still be ongoing. Synopses of the reports are not sufficient.	
35. Provide details of the Annual Comparison by Type of Litigation 2009-2013 for years 2010-13 involving the six Excessive Force (see p. 27).	The Department does not maintain the case files for each lawsuit. The Department receives notification of the lawsuit which is then logged and forwarded to the County Attorney. All documents associated with the lawsuits are maintained by the County Attorney's office or the court in which the lawsuit was filed. Therefore, for details on each court case, please refer to the case, docket number, and appropriate court: 2010: Campbell vs Fairfax County, VA, et. al (United States District Court for Eastern District of Virginia, 1:10CV1245) The Department was advised that the case was tried before a jury, and the jury ruled in favor of the involved officers, finding that they did not arrest the plaintiff without probable cause, or use excessive force in effectuating the arrest. 2010: Walls v Sepehri (Circuit Court of Fairfax County, CL-2009-0018394 then case was transferred to the Eastern District of Virginia, 1:10cv44). The Department was advised that the plaintiff dismissed her own lawsuit prior to trial. 2010: Blondell v Amos, Wyatt, and Wright (United States District Court for Eastern District of Virginia, 1:10CV249) The Department was advised that the case was tried before a jury, and the jury ruled in favor of the involved officers, finding that they did not arrest the plaintiff without probable cause, or use excessive force in effectuating the arrest. 2012: Lodhi v Fairfax County Police Department (United States District Court for Eastern District of Virginia,

Question	Answer
	1:12CV485) The Department was advised that this matter was dismissed by the Court based upon finding that the plaintiff failed to show any evidence upon which a jury could find that the involved officer had used excessive force in the arrest of the plaintiff. 2013: Akowuah v County of Fairfax, Fairfax County Police Department, and Waked (United States District Court for Eastern District of Virginia, 1:13CV83) The Department was advised that this matter was dismissed by the Court based upon finding that the plaintiff failed to show any evidence upon which a jury could find that the involved officer had used excessive force in the arrest of the plaintiff. 2012 is listed as having two lawsuits referencing excessive use of force. The Department received a notice of claim (not a lawsuit) in 2012 which was captured as a lawsuit in the Internal Affairs Bureau 2013 Annual Statistical Report. The notice of claim was associated with the 2013 lawsuit, Akowuah v County of Fairfax, Fairfax County Police Department, and Waked. Therefore, the statistics for 2012 should be 1 instead of 2.
36. Will the FCPD and Commonwealth's Attorney explain to the UOF subcommittee why the FCPD officer who killed Mr. Geer on Aug. 29, 2013, has not been charged or exonerated 20 months after the fatal shooting and remains on paid administrative leave?	The Commonwealth Attorney has convened a grand jury in this case to be held in July 2015. The Commission Chairman directed that the Commission members exclude the Geer case from their deliberations.
37. Question about the statement that accompanied the release of the name of the officer who shot John Geer. In January 2015, this statement still asserts the explanation of the shooting officer, even though documents ordered released by the court show that four other officers agreed with each other and disagreed with the shooting officer. Why does the statement repeat the assertion that Geer lowered his hands?	The Commission was instructed to avoid discussion of the Geer case.
38. In November 2011, Officer Oluwa was the subject of a civil rights lawsuit after Oluwa and another officer beat James Darden. Per p. 30 of the minutes of the 4/10/12 Board of Supervisors' meeting, business discussed in recess/closed session included: "*James Darden v. Colonel David M. Rohrer, Officer Christian J. Chamberlain, Officer Mohammed S. Oluwa, and Fairfax County*, Case No. 1:11cv828 (E.D. Va.)." Was the homeless man	The case documents can be viewed at the United States District Court for the Eastern District of Virginia under docket 1:2011cv00828. Synopsis: Officers were watching a hotel off of Jefferson Davis Highway in the Mount Vernon District Station for narcotics activity. Mr. Darden was stopped and the officer's believed Mr. Darden was attempting to swallow crack cocaine. The officer's employed a physical control technique to prevent Mr. Darden from swallowing the

Question	Answer
beaten in the face? Was a baton used? How did such a beating comport with General Order 540.1?	narcotic. Mr. Darden was subsequently drive stunned by another officer utilizing the Taser. The force used was in compliance with the Department's policies. The case was tried before a jury in the aforementioned civil litigation, and the jury ruled in favor of both involved officers, finding that they did not use excessive force against Mr. Darden.
39. In a 2005 incident, did Officer Oluwa employ UOF with a man described in the media as potentially suicidal? How did such a UOF comport with General Order 540.1? What UOF was used during this incident? Reporting indicated that the young man resisted being grabbed. "Oluwa distracted him through conversation while Buisch got close enough to grab the man. Though he resisted, the officers, together with a U.S. Park Police officer, managed to get him back from the river and into their police cruiser." Source: http://www.connectionnewspapers.com/news/2005/mar/02/mount-vernons-heroes-celebrated/	Officers were called for a suicidal subject who might be armed with a handgun (per subject's father). The subject was found near the river and there was concern the subject might jump in. Officer Oluwa distracted the subject while other officers were able to grab the subject and get him away from the river. The use of force used (hands on by grabbing the subject, bringing him away from the shore, and securing the subjects hands) was utilized to protect the individual from harming themselves and was in compliance with the Department's policies.
FCPD Use of Force Committee	
40. Why did FCPD allow its internal Use of Force Committee to become dormant circa 2012? Who and on what date decided to revive it? Why? When will it be revitalized?	The FCPD is in process of returning, through revisions to departmental policy, the UOF Committee to a prominent means for learning lessons from significant UOF incidents.
41. What is the written Commonwealth or County directive that made past internal Use of Force Committee written reports "sensitive" and in need of "a determination made of how much, if anything, can be provided to the Subcommittee for review" according to Mr. Ryan? Are there Use of Force Committee written reports we can't see? Who made that determination? By what and whose authority would anything be redacted that's given to us? The answer is not responsive to the questions. What is the written Commonwealth or County directive? The first sentence is a clear case of the ambiguity inherent in passive voice: "they have historically always been considered internal-use documents to support officer training and to identify gaps in FCPD practices that needed closure or action." Who historically ruled they were internal use docs? Why can't the UOF subcommittee view	Previous UOF Committee reports are sensitive because they have historically always been considered internal-use documents to support officer training and to identify gaps in FCPD practices that needed closure or action. Participation by officers in UOF Committee deliberations has been voluntary after good-faith assurances have been provided that information provided would only be internally available. In light of these assurances, FCPD is obligated to seek officer concurrence to publicly share the reports. Chief Roessler has subsequently provided the three UOF Committee reports to the Subcommittee, the total number that were generated.

Question	Answer
them? Officers talking to the internal UOF Committee are being given immunity without calling it that. Will the reconstituted internal UOF Committee continue giving such assurances? Why?	
SWAT & Advanced Tactics	
42. Which individual cases prompted SWAT to create the Warrant Risk Assessment Matrix and how each case would have scored had the matrix existed at the time? Are Warrant Risk Assessment Matrix and Threat Assessment Form one and the same?	The Culosi case prompted the development of the Threat Assessment Form. The threat assessments have not and currently do not provide a "score". It is unlikely that if SWAT would be utilized today that same case were run through our current risk assessment matrix, there is no way to accurately recreate a past case (e.g., Culosi case) on the new form. Several of the detectives, supervisors and commanders are no longer available to provide the information they knew, or was available to them, at that time. The best the Department can provide is a statement that based on the information we have at this time, high risk tactics would not have been authorized based on today's threat assessment form. The Warrant Risk Assessment is the same as the Threat Assessment Form. For continuity, the Department is only using the term "threat assessments" and is no longer using the term "risk assessments". In the past, both terms were used interchangeably. The new form being piloted now (the one shared with the subcommittee) was not prompted by any case.
43. Which of the individual cases caused FCPD to employ UOF and what type(s)?	See above response – no additional cases.
44. Did any of the cases before use of the Matrix result in problems?	No.
45. When did use of the Matrix become mandatory?	2008
46. What are details of each case for which use of the Matrix resulted in SWAT being deployed and employed UOF?	Since 2008, SWAT has not utilized deadly force in a search warrant situation since the adoption of threat assessment.
47. Can we see the completed Matrix so that we can see EINs to see if there are any patterns at all levels in the chain of command?	The Matrix, over the years, has almost always been completed by the same command level officers. The majority of SWAT cases start in Organized Crime and Narcotics (see Risk Assessment Statistical Summary) and their commander will sign the initial request. The Special Operations Division commander will then review the request. These are the same commanders for several years until they are promoted, they are transferred, or they retire. Therefore, yes there would be patterns

Question	Answer
	because of organizational assignments and the chain of command required for approval. There is not a compiled spreadsheet tracking all approvals to provide, even if there was there would be patterns because of the business process cited above, in short it is certain commanders jobs to review and sign the matrix.
48. At one of our subcommittee meetings, FCPD mentioned its Threat Assessment (TA). Does the TA equal the Warrant Risk Assessment Matrix? If not, can FCPD provide a copy of a blank TA & a completed TA from an actual situation for our review?	The FCPD Threat Assessment equals the Warrant Risk Assessment Matrix. Individual Subcommittee members are invited to review the Tactical Threat Assessment Form in its entirety, since only an abridged version can be made publicly available, as posted on June 18th. Those interested should reach out to Major David Moyer at David.Moyer@fairfaxcounty.gov.
49. What is the definition of "advanced tactics"? Is it SWAT? [see http://www.fairfaxcounty.gov/policecommission/materials/statistical-summary-risk-assessments.pdf "illustrate[s] the event types where advanced tactics were recommended.	There is no nationally recognized definition of advanced tactics. However, the Department believes that advance tactics is training outside of the basic recruit academy for specialized situations (hostage rescue, high risk search warrant, high risk vehicle intercept/takedown, etc.) and may utilize equipment not available to the standard patrol officer or detective.
50. Where advanced tactics were recommended, which & how many events were accepted for their use?	Accepted versus rejected was not tracked. All search warrants will require the new risk assessment form so in the future we will be able to determine total risk assessments versus those where SWAT was approved.
51. As to SWAT, some have questioned why SWAT was used recently in Great Falls in connection with a gambling situation involving a high stakes poker game. I don't think that we have ever asked about that, and it seems that we should understand why SWAT was used given that it would appear to be a low risk situation in terms of possible violence or resistance.	Previously, the Organized Crime and Narcotics conducted a search warrant using SWAT on a high stakes poker game in Great Falls which involved hundreds of thousands of dollars. The organizer hired armed security who were armed with high power rifles and handguns. There were 60 individuals participating in the poker game and 6 of those individuals were armed with handguns. In the referred case, Organized Crime and Narcotics conducted a search warrant using SWAT on a high stakes poker game in Great Falls which involved hundreds of thousands of dollars. Some hands were $10,000 buy-ins. SWAT was used because: • An individual in the previous investigation was participating in this poker game. That individual was one of the 6 armed individuals. • With the expectation of large amounts of cash, there was concern that the participants would be armed (as in the previous case) and there would be armed security present.

Question	Answer
	• In cases of high stakes poker games, the advertisement for such games tends to be word of mouth. Since word of mouth cannot be controlled, there is a possibility that individuals who want to commit a robbery are either participating in the poker games or will arrive to commit a robbery. In this particular case, the poker game was by invitation only. However, the concern for unknown individuals participating and/or arriving was high. • The size of the house was approximately 10,000 square feet. Executing the search warrant on that size of residence was beyond the capabilities of Organized Crime and Narcotics.

52. How many of each type of case occurred in the same period but didn't require "advanced tactics"?

RISK ASSESSMENT SUPPLEMENT Cases not Requiring Advanced Tactics*	2013		2014	
	Total Cases	Adv. Tactics	Total Cases	Adv. Tactics
Burglary	1071	3	914	4
Gang Participation Charges**	28	1	62	0
Grand Larceny	13,677	1	13,162	0
Narcotics	5,041	25	4,449	34
Narcotics/Gang Participation	***	1	***	0
Robbery	411	3	400	2
Sex Offense	326	1	264	0
Gambling	17	0	11	1
Sovereign Citizen (fraud-type case)	2,970	0	3,748	1
Human Trafficking Investigations**	22	0	40	1

*The above numbers are located here:
http://www.fairfaxcounty.gov/police/crime/statistics/2013/20132014groupaibroffensesstatisticalreport.pdf.
**The Gang Participation Charges and Human Trafficking numbers were obtained from the specific divisions who investigate those crimes. FCPD only began collecting human trafficking statistics in October 2013.
***The data base does not collect information on how many gang participation and narcotics cases overlapped.

53. Can FCPD provide a table showing entities (Patrol Bureau thru Organized Crime/Narc) and all event types and numbers for each event by entity with totals?

FAIRFAX COUNTY RISK ASSESSMENT SUPPLEMENT	2013	2014
ORGANIZED CRIME AND NARCOTICS	25	31
Event:		
1. Narcotics	25	30
2. Gambling	0	1
PATROL BUREAU	4	7
Events:		
1. Burglary	3	4
2. Grand Larceny	1	-
3. Robbery	0	2
4. Narcotics	0	1
CRIMINAL INVESTIGATIONS BUREAU	4	1
Events:		
1. Robbery	3	0
2. Sex Offense	1	0

Question	Answer

3. Human Trafficking	0	1
CRIMINAL INTELLIGENCE DIVISION (GANG UNIT)	2	4
Events:		
1. Gang Participation	1	0
2. Gang Participation/Narcotics	1	0
3. Narcotics	0	3
4. Sovereign Citizen	0	1

Barricade	
54. Provide definition of barricade situation	The newly released GO 520.3 - HOSTAGE / BARRICADED PERSON - defines a barricaded person as: A person who uses any shelter, conveyance, structure, building, open field, or other location as a barrier against law enforcement, and refuses to exit and submit to lawful authority.
55. There were no barricade cases in 2013. Is that true or which UOF situations are not in this report? Where are they?	All use of force incidents are included in FCPD reporting; there were no barricade cases in 2013.
56. Sounds like the definition of barricade would permit SWAT action short of a known, unarmed suspect in the open. ▪ As defined by SWAT: BARRICADE "A person who uses any shelter, conveyance, structure, or building as a barrier against law enforcement and refuses to exit and submit to lawful authority. A person who is known or believed to be armed and in a position of hiding and refuses to submit to lawful authority." ▪ Does standing behind a closed screen door inside one's home constitute a "barrier" under the definition of "barricade"?	Proposed Barricaded Person's definition: Any person who uses any shelter, conveyance, structure, building, open field, or other location as a barrier against law enforcement and refuses to exit and submit to lawful authority.

Question	Answer
▪ If a person doesn't open the door to someone who claims to be FCPD, but is unknown to the person, is he/she a barricade candidate?	A barricade is not defined by the obstacle with which an individual is standing behind. In fact, a barricade can exist without any obstacles present. The "barricade", in context, is related to the totality of the circumstances to include threats made, perceived or potential weapons, environment, charges, etc., and not just the obstacle with which a person may or may not be standing behind.
▪ How is "lawful authority" defined for a barricade and where?	The dictionary definition does not, in this instance, define what a "barricade" is. A barricade in law enforcement is not simply a "thing," such as a barrier, fortification, or blockage, but a "situation." This situation is one in which the person is using a shelter, conveyance, structure, building, open field, etc, as a barrier to law enforcement and refuses to exit and submit to lawful authority when instructed to do so. A screen door is a barricade if the person is standing behind it and refuses to exit and submit to lawful authority. However, the term barricade does not in any way mandate a specific response by the officers nor does it automatically require advanced tactics. In fact, the overwhelming number do not, as indicated by the low frequency of a SWAT response to barricade situations. The response or actions of the officers will depend, as stated, on the totality of the circumstances known to or encountered by the officer(s), to include threats made by the subject, actual, perceived or potential weapons, environment, charges, etc.
	If the person doesn't open their door and is unsure it is the police, the officers will ensure that the person clearly knows they are the police. They will have DPSC call the home, utilize the PA system, knock repeatedly on the door if safe to do so and yell to identify themselves as police officers. This is routinely done. In any action where the potential to arrest exists or a search warrant will be executed, the department will always have a uniform presence so that there is no mistake on the part of the person that they are dealing with the police. So while someone may initially not know who they are dealing with, the department has measures in place to ensure that they know exactly who is at their door. Could this eventually result in being considered a barricade situation by the police if it's a person who claims they did not know that they were the police? Highly unlikely that they would not know that they were dealing with the police based on the measures utilized as

Question	Answer
	mentioned above, but if they refuse to open the door and the police have legal authority to issue the lawful commands, then it could be considered a barricade. However, just because it is considered a barricade, it doesn't in any way mean that advanced tactics (SWAT) would be deployed. It would depend on the totality of the circumstances as to whether advanced tactics would be warranted. There is no specific definition for legal authority as it relates to a barricade. Rather, law enforcement officers are granted legal authority by the Code of Virginia. VA Code 15.2-1704 states:
▪ 1st sentence is mute on weapon. So, if a person doesn't open the door to someone who claims to be FCPD, but is unknown to the person, is he/she a barricade candidate? 2nd sentence mentions being armed. Does being armed make a difference? ▪ What constitutes being armed in the barricade definition? Does a knife constitute being armed? If so, then any person who refuses to exit their home or allow FCPD entry could be considered potentially armed, i.e., knives in kitchen and therefore justify SWAT. ▪ The definition of "barricade" in the SWAT SOP is different than the one used in the draft GO distributed at the 06/03/15 meeting; which is operable? ▪ For example, "open field" is in the draft GO, but not the SWAT SOP. How can a barricade situation be in an open field? ▪ Sect. IV of GO 520.3 contradicts with the above hypothetical scenario: "In the event of a <u>single person barricade</u>, and based on the priority of life,	A. The police force of a locality is hereby invested with all the power and authority which formerly belonged to the office of constable at common law and is responsible for the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, the preservation of peace and the enforcement of state and local laws, regulations, and ordinances. B. A police officer has no authority in civil matters, except (i) to execute and serve temporary detention and emergency custody orders and any other powers granted to law-enforcement officers in § 16.1-340, 16.1-340.1, 37.2-808, or 37.2-809, (ii) to serve an order of protection pursuant to §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1, (iii) to execute all warrants or summons as may be placed in his hands by any magistrate serving the locality and to make due return thereof, and (iv) to deliver, serve, execute, and enforce orders of isolation and quarantine issued pursuant to §§ 32.1-48.09, 32.1-48.012, and 32.1-48.014 and to deliver, serve, execute, and enforce an emergency custody order issued pursuant to § 32.1-48.02. A town police officer, after receiving training under subdivision 8 of § 9.1-102, may, with the concurrence of the local sheriff, also serve civil papers, and make return thereof, only when the town is the plaintiff and the defendant can be found within the corporate limits of the town.

Question	Answer
entry into the shelter, conveyance, structure, building, open field, or other location should be avoided."	
	Situations that officers respond to are complex and often rapidly evolving, and they must take into account the totality of circumstances known to them at that time. Individual situations depend on the totality of circumstances and situational assessments are conducted routinely by officers and supervisors on scene. The assessments include facts and circumstances known and unknown.
	They are different as the draft general order has a new definition which will be the governing definition.
	As stated in the draft General Order, an open field can mean an individual who is in the open, not actively using a structure, conveyance, shelter, building or other structure as a barrier against law enforcement and refuses to exit and submit to lawful authority. Example: Officers respond to a call for service for a suicidal subject sitting in the middle of a soccer field, armed with a rifle, refusing to submit to lawful authority. The individual is considered in an "open field." This distance and lack of cover provide an impediment to police safely making an arrest.

Question	Answer
Administrative Investigations & Disciplinary Action [Ref: FCPD Internal Affairs Annual Report http://www.fairfaxcounty.gov/policecommission/materials/2013-iab-annual-report.pdf**]**	
57. Explain why only 20% of UOF cases result in admin investigation and the sustained rate is 1-4/year and why "all reported use of force incidents do not require an administrative investigation" [see the second figure on p. 11].	Use of force incidents are unique to the circumstances the officer(s) were presented at the time of the calls for service. As such, the use of force numbers will fluctuate and not all use of force incidents generate an administrative investigation. For further information, refer to General Order 540.1 and General Order 301. General Order 540.1, Use of Force, Section IV, Regulations, Subsection H. http://www.fairfaxcounty.gov/policecommission/materials/5401-general-order.pdf H. Reporting the Non-Deadly Use of Force and Investigation of Injuries 1. Officers who use non-deadly force shall immediately inform their on-duty supervisor of the use of force incident. Unless circumstances exist which prohibit the notified supervisor from responding, the supervisor shall respond to the scene of any use of force incident where injury results, or a vehicle, CEW, or PepperBall System is utilized. The notified supervisor shall review the circumstances surrounding the use of force incident and notify the duty officer or appropriate commander of the occurrence of: a. Any non-deadly use of force, accidental injury, or any other situation resulting in serious injury or death to any person. b. Any medical treatment provided by EMS, Department personnel approved by OMD, or medical facility resulting from the non-deadly use of force, accidental injury, or any other situation resulting in medical treatment to any person. c. Any use of the Precision Immobilization Technique (PIT). 2. The duty officer or the appropriate commander will determine if an injury is to be designated a serious injury. This determination will be based, in part, on information from medical personnel. At the earliest opportunity, the duty officer or commander will notify the appropriate bureau commanders of all injuries designated serious. 3. The on-duty supervisor shall ensure that the use of all non-deadly force is documented on an Incident Report in I/LEADS. Self-inflicted and/or accidental injuries and all non-deadly force that involves the complaint of injury or medical treatment shall be documented in I/LEADS on a Use of Force Supplement, and investigated as follows:

Question	Answer
	a. Serious injury or death to any person resulting from the use of non-deadly force, self-inflicted and/or accidental injury, or any other situation: ▪ Investigative Authority: The Major Crimes Division and the Internal Affairs Bureau. ▪ Investigative Format: CIB Criminal Investigation and Internal Affairs Bureau Administrative Investigation. ▪ Documentation Review: The commander of the Internal Affairs Bureau shall review the administrative investigation and forward the investigation to the appropriate bureau commander. b. Medical treatment for non-serious injuries, provided by medical facility personnel resulting from the use of non-deadly force, self-inflicted and/or accidental injury, or any other situation to any person: ▪ Investigative Authority: The on-duty supervisor. ▪ Investigative Format: Administrative investigation and a Use of Force Supplement in I/LEADS detailing the incident, describing the type of force used, extent of injuries, and type of medical treatment provided. ▪ Documentation Review: The on-duty supervisor shall review all investigation reports and forward copies of the incident reports and administrative investigation to the division commander for approval and subsequent forwarding to the appropriate bureau commander and to the Internal Affairs commander. c. Medical treatment for non-serious injuries provided by EMS personnel, Department personnel approved by OMD, or refusal of treatment by any person who has obvious non-serious injuries or alleges a non-serious injury resulting from the use of non-deadly force, self-inflicted and/or accidental injury, or any other situation: ▪ Investigative Authority: The on-duty supervisor or above. ▪ Investigative Format: Use of Force Supplement in I/LEADS detailing the incident, describing the type of force used, extent of injuries observed or the complaint of injuries, and the fact that medical treatment was administered or refused by the injured person. ▪ Documentation Review: The on-duty supervisor shall review all investigation reports and forward copies to the division commander for approval and subsequent forwarding to the appropriate bureau commander and to the Internal Affairs Bureau commander. 4. The on-duty supervisor shall ensure that the use of all non-deadly force that does not involve the complaint of

Question	Answer
	injury or medical treatment shall be documented and investigated as follows: a. Use of non-deadly force which involves striking a person, discharging a chemical agent or CEW, or utilizing a vehicle to contact a vehicle or person, to include use of the PIT: ▪ Investigative Authority: The on-duty supervisor or above. ▪ Investigative Format: Use of Force Supplement in I/LEADS detailing the incident, describing the type of force used, the fact that no injuries were observed or the fact that no complaint of injuries were made. ▪ Documentation Review: The on-duty supervisor shall review all investigation reports and forward a copy to the division commander for approval and subsequent forwarding to the appropriate bureau commander and to the Internal Affairs Bureau commander. b. Use of non-deadly force which involves pointing a firearm in response to the actions of a subject, physical control techniques to establish control and gain compliance, or vehicle incident techniques that do not involve contact with a person or object: ▪ Investigative Authority: The on-duty supervisor or above. ▪ Investigative Format: Incident Report completed by the involved officer, detailing the incident, describing the type of force used, the fact that no injuries were observed or the fact that no complaint of injuries were made. ▪ Documentation Review: The on-duty supervisor shall review all investigation reports and forward a copy to the division commander for concurrence and subsequent forwarding to the appropriate bureau commander and to the Internal Affairs Bureau commander.
58. What is the definition of PIT (Precision immobilization technique)?	Precision Immobilization Technique (PIT): The intentional act of using a police vehicle to physically force a fleeing vehicle from a course of travel in order to stop it. The Precision Immobilization Technique is a specific, technical maneuver that requires advanced practical training prior to use. The use of the Precision Immobilization Technique is considered non-deadly force.
59. In 2013, were there 66 investigated UOF cases (p. 2, par 6) OR were there 102 Administrative Investigation cases for UOF (p. 6 bottom table)?	There were 66 administrative investigations involving 102 employees. The number 443 is the total number of use of force incidents reported during 2013 which include both citizen generated complaints (15) and internally generated documentation (428). The 442 use of force

Question	Answer
	incidents are inclusive of the 66 administrative investigations that involved 102 employees.
60. Explain why as the number of criminal cases dropped by 11% from 2010 to 2013, the UOF cases rose by 8.5%?	A more appropriate data indicator for comparison/possible explanation of increase in use of force in the two specific years 2010 and 2013 is the increase in number of arrests. Use of Force incidents increased from 408 to 443, an increase in 35 incidents in the four year period. Arrests increased from 49,568 to 53,269, an increase in 3,701 during this same period. The Use of Force cases increased by 8.5% during this period, while the number of arrests increased by 7.5%. As there is a definite correlation between use of force and arrest, it is likely that the increase of 35 Use of Force incidents is the result of the increase of 3,701 arrests during this same period. The Use of Force incidents (35) represent an increase of less than one percent of the total increase in the number of arrests during this time period (3,701).
61. Explain both reports where UOF is mentioned and explain the data so the Subcommittee can do some data analysis. How could Internal Affairs be the subject of UOF incidents (slide 12) and how does IAD investigate its own?	The table "Use of Force Reports by Assignment (Investigative Office)" (provided on page 12) refers to the entities that investigated/recorded any use of force incidents. In order to know where employees who were involved in an administrative investigation were assigned, please refer to the attached table titled "Employee Assignments " which can also be found on page four, "Employees Involved in Administrative Investigations by Assignment".

62. For 2006-15, how many UOF cases resulted in each type of Administrative Discipline shown across the top of the table on p. 8? Please add a column showing for 2006-15, how UOF incidents there were each year and how many were investigated by IAD.

Use of Force Incidents*	2006	2007	2008	2009	2010	2011	2012	2013
Total	386	446	515	539	408	482	417	443
Administrative Investigations	60	63	77	85	78	72	56	66
Conducted by IAB	**	**	**	14	13	14	6	4
Resulting in Disciplinary Action	2[2,2]	1[1]	0	0	3[2,3,4]	7[1,1,1,1,1,1,3]	5[1,1,1,2,3]	2[2,3]

* The Internal Affairs Bureau Annual Statistics report has not been completed for 2014 and 2015.

**Unknown, was not recorded

1. Oral
2. Written
3. Suspension
4. Disciplinary transfer

63. All reported use of force incidents do not require an administrative investigation (see p. 11 under the 2nd table). Who decides that an administrative investigation is N/A?	Policy determines whether an administrative investigation is conducted by either a supervisor or the Internal Affairs Bureau. See General Order 540.1, Use of Force, Section V., "Use of Force Reporting by Type of Force Employed and Injury/Treatment". The table is provided as an attachment, "Table GO 540.1".
64. How is it decided that an administrative investigation is N/A? What GO or SOP applies?	General Order 301 and 540.1 outlines this process. They are posted on the Commission website.

Question	Answer
65. Which UOF incidents require documentation? What's the reference?	General Order 301 and 540.1 outlines this process. They are posted on the Commission website.
66. Use of Force Investigative Outcome histogram: 2012 "Not sustained" bar is too short (see p. 11); it should be 52 per the table above that figure.	The bar should be at the 52 mark and has since been corrected.
67. Why does the above report state on p. 2 that there were 10 suspensions in 2013, but the table on pp. 8-9 shows a total of 20? Perhaps the answer is the * on p. 9. If so, it indicates that some suspended officers violated UOF in 2 or more categories.	On page 2, there were 10 suspensions in 2013 yet on page 8/9, it shows there were 20 suspensions. The 20 listed suspensions include every violation an employee was suspended for. There were 10 officers suspended for a total of 20 violations (administrative cases had multiple sustained violations).
68. Explain the second table on p. 9. Is it saying one civilian was suspend for UOF? What are the details as to why one officer was terminated?	The table is saying that a civilian was suspended for a sustained violation which was not for use of force. The officer was not terminated but rather resigned prior to termination (see question 24).
69. Provide details on all "discharge firearm" cases shown on p. 13? The # of discharges went from 2 in 2009 upward every year until 6 in 2013.	All officer involved shootings synopsis (2005 – 2013) will be posted on the Chief's Page at www.fairfaxcounty.gov/police. Discharging a firearm towards animals will not be included.
70. The asterisk on p. 13 shows discharge firearm includes against 2 animals. Provide the data for firearm discharges only against people in 2009-2012.	All officer involved shootings synopsis (2005 – 2013) will be posted on the Chief's Page at www.fairfaxcounty.gov/police. Discharging a firearm towards animals will not be included.
71. Does an officer under investigation retain his firearm?	Refer to SOP 12-045, Investigation of Deadly Force Deployment, Section D, Subsection 3.
72. For FCPD, explain the benefit to the taxpayers and appropriateness of "retirement in lieu of discipline" vs. "termination."	This action is not taken as any benefit to the taxpayers and without consideration of appropriateness as any employee vested in the system has the right and option to retire at any point they are eligible. The department has no legal standing to prevent an employee from retiring, even in lieu of termination. There is no disciplinary action that can legally be taken which could impact retirement benefits. Retired personnel are subject to criminal prosecution but are not subject to internal disciplinary action.
Body-Worn Camera	
73. Would body worn camera have expedited investigation of any officer-involved shootings in Fairfax? How?	It is unknown if a body worn camera would have expedited any investigation involving an officer-involved shooting and an answer would require speculation that may or may not address the unique circumstances involved in each shooting incident. This noted, FCPD is proposing a pilot program for introducing body-worn cameras into patrol officer use to generate just this type of information for evaluation.
74. Attached is a PDF copy of an article from the Sunday, May 31, 2015 Outlook Section of the Washington Post called "Five Myths" regarding	The Department is aware of the experiences of other departments as outlined in the article. As a result, the Department is preparing to initiate a pilot body camera

Question	Answer
use by police of body cameras. Does FCPD agree or disagree with the claims made in this article?	program. During and after the pilot program is complete, the Department will evaluate all aspects of the program.
75. Are all police cars equipped with dashboard cameras at this point? How is the video triggered? Does it run continuously? When is it reviewed?	All patrol cruisers are equipped with ICV cameras, (to include k-9 vehicles). 650 ICV units were purchased. The ICV cameras can be triggered by following: ▪ Activation of Emergency lights ▪ Officers can manually trigger a recording either from the camera or their belt worn Mic ▪ There is also a G-FORCE sensor in the car that will trigger a recording in an accident or if the vehicle experiences high G forces The cameras are running continuously and capturing data. However, the Video Processing Unit (VPU) does not store this data (A/V) until ICV has been activated. Once activated, the system records 30 seconds of data prior to the activation. The video data can be reviewed on the MCT prior to being uploaded or can be reviewed in the back end client after being uploaded. The New GO has the following section under Supervisor Responsibilities: A. Supervisors should review their officers' recordings for the purposes of gathering information that may be useful in preparing employee evaluations or establishing training needs. A supervisor may request a DVD of the video for training purposes. When a recording is burned to DVD for training purposes, a copy may also be forwarded to the Criminal Justice Academy for inclusion in their training files.
Choke Hold	
76. Provide a copy of its recent order banning choke holds. I searched for "choke hold" and "chokehold" on the Fairfax Co. website and found only GO 540.1 which wasn't "recently issued" (see below); it came out 1/1/13. Background: P. 62 of the PERF report states: RECOMMENDATION #48: Prohibit "choke" holds in policy. The FCPD should prohibit "choke" holds and neck restraints as a use-of-force option. (Note: The Fairfax County Police Department has recently issued an order to implement this recommendation.)	General Order 540.1 IV. G. 1. c. states "a choke hold is prohibited except…threat of serious physical injury or death) and the academy does not teach recruits or incumbent officers to use the carotid restraint as a primary control hold. What the academy did teach was how to escape the hold if it was ever put on them while in the field, but in so doing the recruits have to apply the carotid restraint so that their partner can escape from it. The academy also discussed with officers, that as a last resort, they could use the carotid restraint in situations where deadly force is justified and they have no other options available. They did not however, teach the carotid restraint to be a standard or effective tool for

Question	Answer
	officers. In addition, the academy was complying with Department of Criminal Justice Services (DCJS) mandated teaching objectives in teaching the carotid restraint, as DCJS requires that it be taught in order to complete the academy and be certified as a law enforcement officer. The PERF review looked at what the Department was doing and said that technically, even though the Department doesn't teach it to use it, demonstrating how it is done is considered teaching it and therefore, if it is taught it becomes policy. Their recommendation was that all demonstrations of it be stopped, which the Department immediately did. Colonel Roessler also issued an order based on the PERF report to further emphasize his commitment that the Department does not teach the carotid restraint. To comply with the DSCJS mandate, the instructors during academy training will demonstrate the carotid restraint on each other but no recruit will demonstrate or use or attempt the carotid restraint.
77. Provide the DCJS Requirement on choke-holds and Colonel Roessler's order regarding teaching the carotid restraint.	DCJS requirement is as follows: **Performance Outcome 6.14.** Use touch pressure or striking pressure to control a person. **Training Objectives Related to 6.14.** A. Given a written, audio-visual, or practical exercise, identify body pressure points. B. Given a practical exercise, demonstrate pressure point control techniques. **Criteria:** The trainee shall be tested on the following: 6.14.1. Identification of body pressure points a. identify carotid choke hold as deadly force 6.14.2. Demonstration of pressure point control techniques a. touch b. strike **Lesson Plan Guide:** The lesson plan shall include the following: 1. Identification of body pressure points a. identify carotid choke hold as deadly force 2. Demonstration of pressure point control techniques 115 of 270 VIRGINIA CRIMINAL JUSTICE TRAINING REFERENCE MANUAL **2012** a. touch b. strike _____

Question	Answer
	Colonel Roessler's order, "Choke Hold Prohibition," dated May 28, 2015, is attached. The essence is captured in the following excerpts: "The Fairfax County Police Department's Criminal Justice Academy shall immediately cease teaching, demonstrating, training, and using the carotid artery restraint (choke hold)…. 'Choke' holds and neck restraints as a use of force option are not sanctioned by the Fairfax County Police Department." "In a situation wherein it is necessary for an officer to protect himself or others from imminent threat of death or serious bodily injury, and the officer's most appropriate tools and training have not worked or are not available, the officer may as a last resort turn to other tools and defensive tactics to save themselves or others."
Use of Conducted Energy Weapons | Tasers Gen'l Order 540.1 - "Conducted Energy Weapons are designed to offer the police officer an alternative to physical force in many situations. The use of the CEW is regulated by SOP 06-025."	
78. Can FCPD clarify whether conductive energy devices (CED) = Conducted Energy Weapons (CEW)? Can FCPD provide a copy of SOP 06-025?	Yes, Conducted Energy Weapons and Conducted Energy Devices is the same as Tasers. A copy of SOP 06-925 is provided on the Subcommittee website.
79. Why does FCPD uniformly distribute Tasers to all stations rather than those with the most incidents of UOF? Why does FCPD not require that all Tasers at each station that can be issued on each shift are issued?	As was presented in the June 3, 2015 meeting, each officer who is trained in using a Taser has the opportunity, at each shift, to have a Taser. Each station has approximately 33 Tasers for patrol and at no point is there more than 33 officers on patrol in a district at the same time. There are no shortages of Tasers at the stations. This matter was discussed further with Chief Roessler at the Subcommittee's July 1st meeting.
Crisis Intervention Team Model	
80. Does FCPD have CIT? How many? Crisis Intervention Team (CIT) model was first developed in Memphis in 1988 following a tragic incident in which a Memphis police officer shot a mentally ill man. The police department teamed up with local mental health experts, advocates, and academics to design a comprehensive plan for police training and policies for managing individuals with mental illness. The model was successful, and other police departments began implementing their own CIT programs.	Yes. The Department has an extensive and robust CIT program, with approximately 400 patrol officers and approximately 100 non-patrol officers (supervisors, detectives, command staff) certified, which is modeled after Memphis and been in effect since 2007. The Community Services Board in Fairfax County partners with the Police Department in this effort. Since the formation of the program in 2007, we have trained as follows: ▪ 2007- 1 class with approximately 30 officers (total 30 officers) ▪ 2010- 1 classes with approximately 30 officers (total 30 officers) ▪ 2011- 2 classes with approximately 40 officers each (total 80 officers) ▪ 2012- 4 classes with approximately 40 officers each (total 160 officers) ▪ 2013- 3 classes with approximately 40 officers each (total 120 officers) ▪ 2014- 2 classes with approximately 40 officers each (total 80 officers)

Question	Answer
	The total number of officers based on the listing is actually 500
After Action Reporting | Lessons Learned [See attached "Preparedness Cycle] Without collecting AARs and taking corrective action (11 o'clock on the figure), an organization or system never improves and keeps making the same errors. AARs are crucial feedback to prepare officers for incidents as demonstrated in the preparedness cycle.	
81. Does FCPD have a formal, written after action report (AAR) system for UOF cases? Does it address what went right and what didn't and identify the persons and supervisors responsible for good and bad decisions?	Yes, as has been discussed with the Subcommittee at its June 17, 2015 meeting, an internal UOF Committee has been convened in the past for this explicit purpose. An example of a Use of Force Committee report has been provided to the Subcommittee. FCPD is in process of revising this process in order to be able to make lessons learned public to the extent possible.
82. Has the Chief of Policy shared UOF lessons learned from the deaths caused by FCPD officers within FCPD to prevent recurrence? Which shootings? What lessons were implemented from each case? How quickly did officers receive those lessons?]	From many officer involved shootings, the Department has learned lessons which have helped develop training courses such as tactical decision making for supervisors and officers, shoot/don't shoot scenarios, sympathetic response, etc. In addition, there have been use of force reports produced which analyzed the incident and provided recommendations. The administrative investigations associated with officer involved shootings also provides recommendations which, in many instances, are implemented. Also, in the Culosi report to the community, there were recommendations that were provided and also implemented. Some recommendations that were implemented were risk assessments and the appropriate entities to review the risk assessments. Plus, the lessons learned included training in sympathetic response, command oversight and review of high risk incidents, and required training before engaging in high risk tactics. The Department expanded first aid training and issued equipment is a lesson learned from officer involved incidents. Lessons learned and new training, equipment, and discussions come from all different cases, incidents, and events. Lessons learned are not exclusively generated by officer involved shootings.
83. Does the PD have a separate unit whose function it is to follow the needed changes and evaluate policies after they have been adopted by FCPD? For example, the FBI has a Critical Incident Response Division which, among other things, evaluates critical incidents in terms of tactics; the	While FCPD performs the functions characterized in Mr. Shumaker's chart, it does not maintain a separate unit that is uniquely assigned these functions.

Question	Answer
Bureau (at least used to) an Office of Planning & Evaluation which looked more at what I think is the type of planning to which Mr. Shumaker refers. It is this latter function to which I refer as to whether the FCPD has an office for such evaluation.	
84. "Mr. Ryan said psychological effects on involved officers of seeing the public retelling of the event is a factor in considering release of this information." Weren't most of the UOF cases reported in open source media which suggests the psychological effects have already been experienced? How will the officer in the report know we're looking at a report about him? Why does he right (to what exactly?) trump the right of the public to know? Is there a law barring the UOF subcommittee or public from seeing them? Does the public have a right to know what its employees are doing?	The matter of psychological impact on officers of mortally wounding another human being was explored in depth at the June 22, 2015 Ad Hoc Commission meeting. The slide set used by Dr. Steve Band is located on the Commission's website and is informative in this regard.
Resources	
85. From the 05/20th meeting, "Are there parts of the PD that have staffing shortages?" The answer is "No response offered." Can we get a response to this?	FCPD actively participates in the Fairfax County annual budgeting process by making funding recommendations to the County Executive, who must make a determination of the FCPD priorities in relation to other service demands on County resources. The County Executive proposes his priorities and funding profile to the Board of Supervisors for its consideration. FCPD actively participates in the BOS considerations by answering questions posed to it. Relative to staffing, at any moment in time, there are numerous vacancies on the Department. Vacancies that occur from retirements, resignations, deaths, or terminations tend to take, at a minimum, 1 year to fill. There is consistently a 5-6% vacancy rate. See www.fairfaxcounty.gov/dmb/fy16-fy20-public-safety-staffing-plan.pdf for more information.
86. Related to the above question is a two part question: How many officers are assigned to the unit (whatever its name) responsible for investigation of police shootings (I'm assuming obviously that there is one) and what is their usual length of assignment there? How many officers are assigned to Internal Affairs and what is the usual length of assignment there?	Answer: Internal Affairs Staffing: 1 Major (Commander) 1 Captain (Commander of Investigations) 1 Lieutenant (Commander of Inspections) 6 Second Lieutenants (1 assigned to Inspections) 2 Sergeants The average length of assignment is 2 years. Cold Case Unit Staffing

Question	Answer
	1 Second Lieutenant 4 Detectives Not considering promotions, temporary assignments, and transfers, the average length of assignment is 5 – 8 years.
87. Address the types and quantity of Dept of Defense equipment it has received, how it has used it, which equipment was involved in UOF incidents? Can FCPD explain whether it has returned DOD equipment?	The FCPD used to participate in the federal 1033 program. However, the FCPD has not obtained any federal equipment in over 15 years and any such equipment is no longer in inventory. The federal 10-33 program is which allowed law enforcement agencies to acquire property for bona fide law enforcement purposes that assist in their arrest and apprehension mission (see www.dispositionservices.dla.mil/leso/pages/1033programfaqs.aspx) Any equipment the FCPD acquired is no longer in service or used. The FCPD, when it participated in the 1033 program, obtained small scale items such as helmets, night vision, and rifles. The rifles were used to begin the FCPD's Patrol Rifle Program after the LA bank robbery shoot out (see www.dailynews.com/general-news/20120227/north-hollywood-shootout-15-years-later) The Department is currently researching whether any equipment obtained through the 1033 program was used in a use of force incident.

INDEPENDENT OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE

Final Report and Recommendations

Jack Johnson, Chair

October 8, 2015

Executive Summary

The Fairfax County Board of Supervisors established an Ad Hoc Police Practices Review Commission on March 3, 2015. Commission Chairman Michael Hershman established five subcommittees to complete the Commission's work in the limited time before delivering a report to the Board of Supervisors by October 20, 2015.

The Independent Oversight and Investigations Subcommittee, chaired by Jack Johnson, is one of the five Commission subcommittees, with the others being Communications; Mental Health and Crisis Intervention Training; Recruitment, Diversity and Vetting; and Use of Force.

The Commission is charged with recommending changes, consistent with Virginia law, that the Commission believes would help Fairfax County achieve its goal of maintaining a safe community, enhancing a culture of public trust, and ensuring our policies provide for the fair and timely resolution of police-involved incidents.

The **Scope of Work** for the Independent Oversight and Investigations Subcommittee, set in June, 2015, is as follows:

I. Review current Fairfax County policies and practices on investigation of police involved shootings and use of deadly force, as well as critical incident response situations, including review of FCPD Internal Affairs Division policies and practices.

- A. Policy on commencement of Internal Affairs investigation only after criminal process has ended.
- B. Policy on not interviewing officers involved in a shooting until two days after the event.
- C. Policy on FCPD responses to citizen complaints regarding use of force and allegations of misconduct.
- D. Should there be a study of the community's attitudes toward the police force, perhaps with the help of George Mason University personnel (assuming no such study exists). If such a study exists, the results should be provided to this Subcommittee.

II. Review of "best practices" for investigations of serious police-involved use of force and critical incident response situations to ensure transparency and accountability, including:

- A. Review of "best practices" by police departments that are similar in size and demographics, and to the extent possible that can be determined, have a similar number of police involved shootings/use of deadly force.
- B. Models different from current Fairfax County practice and procedures.
  1. Independent auditor with citizen/public involvement.
  2. Retention by the prosecutors of an independent investigator.
- C. The use of an independent special prosecutor and/or investigative body in other jurisdictions and when such a prosecutor and/or investigator is used.
- D. Review by the Fairfax County Board of Supervisors of police involved shootings and use of deadly force.

III. Review of citizen oversight boards in other jurisdictions of similar size and demographics to evaluate whether such a board should be established in Fairfax County, including:

- A. Should this review board be comprised of police officers and citizens to timely review all officer involved shootings and other serious incidents to identify and address as needed any administrative, supervisory, training, tactical or policy issues?
- B. What conduct should such a board investigate (e.g., allegations of police abuse, misconduct, negligence, etc.)?

C. What investigative powers should such a board have (e.g., subpoena power, ability to interview individuals involved and witnesses)?
D. To which authority should such a board report (e.g., the Chief of Police and/or the Board of Supervisors)?
E. What weight (binding or advisory) should such a board's findings and recommendations have (e.g., recommendations as to discipline, and changes to policy and practice changes)?
F. What would the estimated annual costs be of such a board that would conduct these independent reviews and investigations?

IV. Based on the review of existing FCPD policies and practices and a review of the policies and practices of other jurisdictions and the cited publications and other resources, develop proposed recommendations for changes and/or next steps to the Board of Supervisors for consideration by the Commission.

The full Independent Oversight and Investigations Subcommittee met nine times, while several working groups held additional meetings. All meetings were open to the public, and public comments and statements were allowed. Minutes and other documents from Subcommittee meetings and research are available at the Independent Oversight and Investigations Subcommittee webpage http://www.fairfaxcounty.gov/policecommission/subcommittees/indpendent-oversight-investigations.htm

Presentations by Commonwealth's Attorney Ray Morrogh, Deputy County Attorney Peter Andreoli and Chief of Police Edwin Roessler informed our research. Other presentations before the Subcommittee included Major Crimes Division Detective Chris Flanagan and Internal Affairs Bureau Commander, Major Michael Kline, as well as other IAB officials.

Individual members of the Subcommittee and three working groups engaged in extensive research about best practices and models of investigations and oversight around the nation. A list of resources consulted appears in Appendix A.

Members

Jack Johnson, Chair
Mr. Johnson is a Partner with the firm of PricewaterhouseCoopers, LLP (PwC) in the U.S. Public Sector Practice and leads the National Security Practice, which includes all elements of the US Department of Defense, NATO and other related entities. He is a nationally and internationally recognized expert with over 35 years experience in the areas of investigations, law enforcement, security and risk management and intelligence related matters. Mr. Johnson previously had served in a series of positions of increasingly responsibility within the US Government, culminating in his appointment as a Deputy Assistant Director with the United States Secret Service, and as the first Chief Security Officer for the newly formed Department of Homeland Security.

George Becerra*
Mr. Becerra is a current 16-year federal employee and a Fairfax County resident since 1984. He has been an Economic Statistician and Operations Research Analyst for the Dept. of the Army (Dept. of Defense - Pentagon) and Dept. of Homeland Security (Immigration and Customs Enforcement - Headquarters). He is a Citizen Police Academy 2006 graduate and alumni member. Also a member of several civic and community organizations.

Bob Callahan*
Mr. Callahan retired from the Fairfax CountyPolice Department in August, 2006 after 29 years of service. His assignments included supervisory andmanagement positions in criminal investigations and internal affairs. Following his retirement from the FCPD, Mr.Callahan has held positions in public sector performance management andemployee relations.

Sean Corcoran
Mr. Sean Corcoran is a member of the Fairfax County Police Department. He is a Detective in the Major Crimes Division. He also serves as the President of the Fairfax Coalition of Police Local 5000, International Union of Police Associations.

Sal Culosi
Mr. Culosi is a retired civil servant who was a member of the Senior Executive Service in the Department of Defense and has accrued over 45 years of experience as a Defense manager and analyst. His son, Salvatore J. Culosi, was an optometrist who was killed in 2006 by a FCPD SWAT team in the process of executing a document search, related to gambling, using an aggressive vehicle takedown process, which was reserved for high risk situations but was nonetheless employed even after FCPD SWAT official risk assessment judged him to be low risk.

Sara-Ann Determan*
Ms. Determan is a retired lawyer; Fairfax County resident for 46 years; former President D. C. Bar; former chair of DC Area ACLU, Lawyers' Committee for Civil Rights and Urban Affairs, Washington Area Ronald McDonald House, Lake Barcroft Association, and Lake Barcroft Watershed Improvement District; American Bar Association activist; founding member National Partnership for Women and Families; member and former trustee, Unitarian Universalist Church of Arlington.

Amy Dillard
J. Amy Dillard is an Associate Professor of Law at the University of Baltimore School of Law where she teaches criminal law and constitutional criminal procedure. She is an active member of the Virginia Bar who had a first career as Deputy Public Defender for the City of Alexandria, Virginia. Professor Dillard

recently served, at the invitation of the Police Commissioner, on an Independent Review Panel, which assessed the facts surrounding a death-in-custody of a suspect and subsequent investigation by the Baltimore City Police Department.

Ben Getto*
Mr. Getto is a Senior Associate in Booz Allen Hamilton's federal energy consulting business. A former federal employee at the Treasury and Energy Departments, Mr. Getto most recently served as Deputy Chief of Staff to the Secretary of Energy with a portfolio that included agency-wide programmatic, policy and communications oversight.
Marc Harrold*

Robert Horan, Jr.
Robert F. Horan, Jr. served more than 40 years as the Commonwealth's Attorney of the County of Fairfax and the City of Fairfax. He was appointed in 1967 and was re-elected every four years until retiring in September 2007. He is an avid trial lawyer and prosecuted jury trials every year he was in office.

Mary Kimm
Ms. Kimm is Editor and Publisher of the Connection Newspapers, a chain of 15 weekly newspapers including 12 hyper-local editions in Fairfax County, where she has worked since 1989. Ms. Kimm's editorials have been cited in local efforts to end homelessness and increase government transparency. She also serves on the Governing Board of the Fairfax County Office to Prevent and End Homelessness.

Michael Kwon
Mr. Kwon has been living in Fairfax County since 1977 and has served in numerous community service organizations including United Way, Mason District Council of Civic Associations, and Fairfax County Human Rights Commission, as well as being active in the Korean-American community where he currently serves as the chairman of the Korean American Society of Virginia. For his community service, he was honored as the 2003 Citizen of the Year by the Annandale Chamber of Commerce and 2011 Lord Fairfax by the Board of Supervisors. For his work in Korean unification issues, he received a presidential commendation from the president of the Republic of Korea.

John Lovaas
John Lovaas is a retired U.S. AID Senior Foreign Service Officer and a former Assistant to the Publisher of the Connection Newspapers. He and his wife Fran Lovaas have lived in Reston since his retirement and now reside at Lake Anne. He is active in the Reston community, having served as President of the Reston Citizens Association, the Alliance for a Better Community and the Washington Plaza Cluster Association; and as a member of the boards of the Reston Association and the Reston Community Center. He has worked in Reston community television as the Host and Producer of Reston Impact, a public affairs program, since 2001. Also, he authors a biweekly column and occasional OpEds in metro area community newspapers. In 1998, Mr. Lovaas founded the Reston Farmers Market, sponsored by the Fairfax County Park Authority and now co-managed by himself and Mrs. Lovaas.

Robert Sarvis*
Mr. Sarvis is an attorney, businessman, politician and software developer. While attending law school, he was the co-founder and editor-in-chief of the NYU Journal of Law & Liberty; he also clerked for Judge E. Grady Jolly on the U.S. Court of Appeals for the Fifth Circuit. In addition, he has been a

software developer, being named by Google as a Grand Prize Winner for their Android Development challenge.

Adrian L. Steel, Jr.
Mr. Steel is a partner with the law firm Mayer Brown LLP. Prior to joining Mayer Brown, he was a Special Assistant to Director William H. Webster at the Federal Bureau of Investigation where he handled criminal and counterintelligence matters. Mr. Steel recently served as a member of a commission led by Judge Webster which reviewed the FBI's actions in connection with the 2009 shootings by Major Nidal Hasan at Fort Hood, Texas.

Jeff Stewart*
Mr. Stewart is Chief Executive Officer of WeatherTite Inc. and has been a Fairfax County resident for over 30 years. He witnessed the shooting death of his close friend John Geer by a Fairfax County police officer on Aug. 29, 2013.

David Stover*
A career United States Park Police (USPP) Officer, David Stover retired as Deputy Chief in 2008. During his 35 years on the force, Mr. Stover served in several USPP law enforcement capacities and administrative positions, including Major in charge of the Office of Professional Responsibility (OPR), a position that oversaw the Internal Affairs Unit and Audits and Evaluations. In the OPR, Mr. Stover was charged with reviewing officer as well as civilian misconduct and issuing appropriate discipline. In cases that met the threshold for removal from the force he made recommendations to the Chief.

John Wallace
Detective John A. Wallace began his career with the Fairfax County Police Department in 1986 and has worked in patrol, Organized Crime and Narcotics, DEA Task Force, Sex Crimes, Cold Case and Homicide. Detective Wallace received a Bachelor of Applied Science in Human Resource Management and Leadership from University of Richmond in 2008. Detective Wallace has been the President of the Fairfax County Police Association for the past three years. The mission of the Fairfax County Police Association is one of a benevolent organization.

* Subcommittee members who are not also members of the full Commission.

Introduction

The Ad Hoc Commission was formed in response to growing concerns about the lack of accountability and transparency of law enforcement in Fairfax County. By reviewing police practices and policies and taking action now, such as those being recommended here and by other subcommittees, our community can improve an already solid police force and build a framework to recognize and address future challenges.

Independent investigation, oversight and civilian participation in reviewing police use of force, officer involved shootings and citizen complaints can play a vital role in maintaining Fairfax County Police Department's reputation as being one of the very best law enforcement organizations in the nation.

The work of the Independent Oversight and Investigations Subcommittee benefitted from a growing body of experience, including the Police Executive Research Forum (PERF) Review of the Fairfax County Police Department's use of force policies, the President's Task Force on 21st Century Policing and the work of the National Association for Civilian Oversight of Law Enforcement (NACOLE). We researched oversight models in use around the country and their experiences to date. We consulted with a member of the NACOLE Board of Directors, who was also a guest speaker before the Ad Hoc Commission.

Our recommendations for the Fairfax County model focus on three areas: 1) strengthening the independent investigative capacity available to the Commonwealth's Attorney in cases of officer involved shootings, in-custody deaths, or cases involving death or serious injury; 2) establishing an Independent Police Auditor to review investigations of officer involved shootings, in-custody deaths and death or serious injury cases conducted by the Internal Affairs Bureau of the FCPD and use of force investigations by IAB; and, 3) establishing a Civilian Review Panel to respond to community concerns or complaints about alleged incidents of abuse of authority by the FCPD.

"Strong, independent oversight builds legitimacy and trust through increased transparency and accountability to the public. There is growing recognition of oversight's important role in today's professional policing. The President's Task Force on 21st Century Policing recommends establishing civilian oversight to strengthen trust with the community.

"Oversight is a process, and like policing, it is complex. There are more than 200 oversight entities across the United States. No two are exactly alike. There are civilian review boards, monitors, police auditors, and inspectors general, among other models. Citizen review is not an advocate for the community or for the police. This impartiality allows oversight to bring stakeholders together to work collaboratively and proactively to help make policing more effective and responsive to the community.

"By fostering accountability through independent investigations or auditing of police misconduct complaints, oversight can also identify needed changes in police practices and training, and provide a meaningful voice or forum for the public. Effective oversight leads to more effective policing. An investment in oversight is an investment in the police."

Source: National Association for Civilian Oversight of Law Enforcement

This approach to oversight will provide for public confidence in investigations of use of force incidents that result in serious injury or death, including officer involved shootings through the Independent Police Auditor, as well as a powerful mechanism to address community concerns through increased citizen involvement.

This Subcommittee did not begin its review and deliberations with a preconceived belief in the need for independent oversight, but rather through research, presentations and discussion, concluded that the best model for Fairfax County includes retaining the current investigative structure but with added checks and balances in accordance with national best practices to provide for public trust.

All of the Subcommittee's recommendations are made unanimously. Early in the process, the Subcommittee determined that, if any recommendation were not unanimous, we would forward both majority and minority recommendations. However, we were able to reach full consensus on the recommendations contained here.

We also recommend that the charter for the Independent Oversight and Investigations Subcommittee should be extended beyond the completion of the Ad Hoc Commission's report and presentation to the Board of Supervisors to follow up on open issues that may remain going forward and to support and assist implementation of any of the recommendations for which IOI Subcommittee participation would be beneficial.

FINDINGS AND RECOMMENDATIONS
Part 1: Investigations and Prosecution

It is of critical importance to building and maintaining public trust and confidence in a community's police department that the criminal and administrative investigations of officer involved shootings (OIS's) and other police use of force incidents in which an individual is fatally or seriously injured are perceived to be, and are in fact, thorough, accurate, objective and impartial. In most jurisdictions, as in Fairfax County, these investigations are conducted by members of the police department in which the officer involved in the shooting is a member. In Fairfax County, the Major Crimes Division (MCD) of the FCPD Criminal Investigation Bureau (CIB) conducts the criminal investigations of OIS's involving FCPD officers while the FCPD Internal Affairs Bureau (IAB) conducts the corresponding administrative investigations.

The Commonwealth's Attorney for Fairfax County makes the decision to charge in an OIS based on the FCPD investigations and oversees any prosecution that may arise. Both the FCPD and the Commonwealth's Attorney indicate that they will recuse themselves if there is a conflict of interest and will refer the OIS investigation and prosecution to the police department and Commonwealth's Attorney in a neighboring jurisdiction.

After considering the information obtained and reviewing practices in other jurisdictions, we recommend that the current investigative and prosecutorial practices should continue.

Given this recommendation, the Subcommittee considered models of independent auditors and civilian review boards that will be discussed in subsequent sections. We also call for the addition of two independent experienced investigators to the staff of the Commonwealth's Attorney's office to provide an independent view of OIS's or serious use of force, and ensure that the MCD investigation addresses any questions or leads identified by the Commonwealth's Attorney.

Some question whether investigators who are members of the same police department as the officer being investigated can objectively and fairly investigate "one of their own." Those expressing such concerns do not generally question the integrity or professionalism of the investigators. Rather, they see a potential inherent subjective bias that may color the outcome of a given investigation. In like fashion, others question whether a prosecutor who has a close and often long term relationship with a police department and who works on a daily basis with the department can objectively and fairly make a determination to bring criminal charges against an officer who is involved in a shooting which has led to the death of or serious injury to an individual. In reality, across the nation at other major law enforcement agencies up to and including the US Department of Justice, the investigations are in fact conducted internally and in many instances are successfully prosecuted by organizations that have long standing relationships with those law enforcement organizations.

Some jurisdictions have addressed these concerns by arranging for the criminal investigations of OIS's involving their police officers to be conducted by investigators from a neighboring jurisdiction on either an ad hoc or permanent basis. Others have considered the establishment of a regional task force of criminal investigators which would investigate OIS's, with the task force investigator(s) from the involved police department recused. Similar arrangements between prosecutors have been proposed or adopted to provide for the decision to charge and the prosecution of OIS's to be undertaken by a prosecutor from a neighboring jurisdiction.

Our Subcommittee considered these various alternatives. We heard directly from FCPD Major Crimes Division and Internal Affairs Bureau concerning their investigations of OIS's. Commonwealth's Attorney for Fairfax County Raymond Morrogh, spoke to us concerning prosecution of OIS's. We also reviewed a limited number of documents from past investigations of OIS's (including the 2013 John Geer fatal shooting) conducted by Major Crimes Division and spoke with individuals familiar with those investigations. After considering the information obtained and reviewing practices in other jurisdictions (such as the recently reported investigation and prosecution agreements between Montgomery and Howard Counties in Maryland), we determined that the current investigative practices should continue. Mr. Morrogh indicated that he has never had any dissatisfaction about the criminal investigations conducted by MCD and noted that any questions or requests for further investigation have been promptly resolved. In addition, Fairfax County's criminal investigative resources are among the best, if not the best in Virginia, and the MCD investigators are very experienced. As for the prosecutions, Mr. Morrogh expressed his view that, absent a conflict of interest, the Commonwealth's Attorney should make the decision to charge and prosecute OIS's that occur in Fairfax County since that is the duty which the Commonwealth's Attorney is elected and legislatively mandated to perform. Both Mr. Morrogh and his predecessor, Mr. Robert Horan, cited instances where they had charged and successfully prosecuted Fairfax County Police officers for a variety of criminal incidents over the years. During those internal police investigations and subsequent prosecutions, Messrs. Morrogh and Horan advised that the performance of the Fairfax County Police Department and Internal Affairs Bureau was complete, thorough and above reproach.

While we have recommended that the current investigative and prosecutorial practices continue, we have included in our recommendations language which proposes that the Chief of Police and the Commonwealth's Attorney affirmatively consider whether in each OIS the criminal investigation and/or the decision to charge and prosecute should be conducted by criminal investigators and/or the Commonwealth's Attorney of a neighboring jurisdiction, respectively. By doing so, a measure of protection against the concerns raised relating to actual or perceived bias will become part of the process in each OIS.

In addition to recommending that the FCPD and the Commonwealth's Attorney affirmatively consider the referral of each OIS, we are recommending that two independent experienced investigators be added to the staff of the Commonwealth's Attorney's office. These investigators would report to, and be used at the discretion of, the Commonwealth's Attorney in connection with criminal investigations of OIS's. By participating in OIS investigations, the two Commonwealth's Attorney investigators will provide an independent view of the OIS and help to ensure that the MCD investigation is timely, comprehensive, and addresses any issues that the Commonwealth's Attorney believes need to be resolved.

We also addressed several procedural aspects of OIS investigations as directed by the Subcommittee charter. First, a concern was raised that IAB investigations are not initiated until the MCD criminal investigation is completed and a decision to charge made by the Commonwealth's Attorney. We learned that IAB effectively conducts a parallel investigation alongside the MCD investigations. IAB is, however, limited in its ability to interview the officer(s) involved by the U.S. Supreme Court decision in *Garrity v. New Jersey* in order to protect the officer's Constitutional rights. IAB cannot therefore take a compelled interview of the officer until the criminal process is complete. Given those considerations, we have recommended that an IAB OIS investigation be conducted concurrently with the criminal investigation to the extent practicable, provided that the Constitutional and statutory rights of any potential subject of the criminal investigation are fully protected.

Second, we heard that the MCD interviews of the officer(s) involved in an OIS were being delayed by an informal "waiting period" of up to 48 hours. The purpose for any such delay was reported to us to be that experience and certain studies indicate that more complete and accurate information is obtained if interviews are delayed until after a person who is involved in or witnesses an event such as an OIS has had one or two sleep cycles. In recognition of that input, but with concerns about the perception of differing treatment of police officers and civilians involved in an OIS (including the subject), we recommend that the right of FCPD officers under the Virginia Law Enforcement Officers Procedural Guarantee Act to be "questioned at a reasonable time and place" should continue to be preserved. However, the questioning should commence as soon as reasonably possible, under all of the relevant facts and circumstances, as determined by the Commonwealth's Attorney in consultation with the Chief of the FCPD without a specified waiting period.

Third, given that there may be a delay in the questioning of the officer(s) involved in or witnessing an OIS, and to ensure the integrity of the investigation, we have recommended that the current FCPD practice of issuing what is called a "confidentiality order" be formally adopted. Such an order requires all involved officers to abstain from speaking to other officers involved in or witnessing any conduct subject to a MCD or IAB investigation, and to abstain from speaking to any third parties involved in or witnessing such conduct until advised by MCD or IAB that they may do so.

Finally, in order to provide the public with an understanding of the investigative process, the time-lines of the investigation, and the basis for the Commonwealth's Attorney's decision, we have recommended that the Commonwealth's Attorney issue timely and comprehensive public reports on the criminal investigations of OIS's when no criminal charges are filed. We recommend that the reports describe the investigation conducted by the FCPD, any additional investigation or consultation undertaken by the Commonwealth's Attorney, and the basis for the conclusions reached by the Commonwealth's Attorney. Mr. Morrogh's September 2015 report on his conclusion that no crime was committed in the in-custody death of inmate Natasha McKenna is an example of such a report. We learned that the Commonwealth's Attorney for the City of Alexandria issues such reports. We believe that similar reports by the Fairfax County Commonwealth's Attorney on future OIS's would greatly enhance the public's understanding of, and confidence and trust in, the investigative and prosecutorial processes and the resulting decisions.

Recommendations: Investigations

1. Criminal investigations of Fairfax County law enforcement officers involved in shootings, in-custody deaths, and any use of force incident in which an individual is killed or seriously injured as defined in General Order 540.1 ("Death or Serious Injury Cases" or "Cases") should continue to be conducted by the Major Crimes Division ("MCD") of the FCPD. An exception to this policy would occur when the Chief of Police, in consultation with the Commonwealth's Attorney, determines that the criminal investigation of a particular incident should be conducted by criminal investigators from another Northern Virginia jurisdiction police department or from the Virginia State Police, by agreement with that jurisdiction or with the State Police.

2. Funds should be appropriated to the Commonwealth's Attorney's office to allow for the fulltime employment of two (2) independent experienced criminal investigators who will report to and be used at the discretion of the Commonwealth's Attorney in connection with criminal investigations of Death or Serious Injury Cases and other investigations within the scope of the responsibilities of the Independent Police Auditor.

a. Such investigators shall participate in MCD criminal investigations of Cases as the Commonwealth's Attorney may direct and may be used in connection with other criminal investigations, time permitting.
b. The Independent Police Auditor shall monitor MCD criminal investigations of Cases and other criminal investigations within the scope of the responsibilities of the Independent Police Auditor.

3. FCPD Internal Affairs Bureau ("IAB") investigations should be conducted concurrently with the criminal investigation to the extent practicable, provided that the Constitutional and statutory rights of any potential subject of the criminal investigation are fully protected.

4. The right of FCPD officers under the Virginia Law Enforcement Officers Procedural Guarantee Act to be "questioned at a reasonable time and place" shall continue to be preserved, but the questioning should commence as soon as reasonable, under all of the relevant facts and circumstances, as determined by the Commonwealth's Attorney in consultation with the Chief of the FCPD.

5. All FCPD officers shall be required to abstain from speaking (i) to other officers involved in or witnessing any conduct subject to a MCD or IAB investigation within the scope of the responsibilities of the Independent Police Auditor, or (ii) to any third parties involved in or witnessing such conduct until advised by MCD or IAB that they may do so.

Recommendations: Prosecution

6. The prosecution, including the decision whether to charge an FCPD officer with a crime arising out of a Death or Serious Injury Case, or other case within the scope of the responsibilities of the Independent Auditor, should continue to be handled by the Commonwealth's Attorney for Fairfax County unless the Commonwealth's Attorney determines that the prosecution, including the decision to charge, should be handled by the Commonwealth's Attorney of another Northern Virginia jurisdiction by agreement with that jurisdiction.

7. The Commonwealth's Attorney should be requested to issue timely and comprehensive public reports in any case involving Death or Serious Injury when no criminal charges are filed. The reports should describe the investigation conducted by the FCPD, any additional investigation or consultation undertaken by the Commonwealth's Attorney, and the basis for the conclusions reached by the Commonwealth's Attorney.

Part 2: Independent Review

In addition to the recommendations outlined above, and for the same reasons of building and maintaining public trust in FCPD and its officers in a period of general loss of public confidence in many institutions, our Subcommittee also recommends the creation of an Office of Independent Police Auditor and a Civilian Review Panel, appointed by the Board of Supervisors.

The Independent Auditor would report directly to the Board of Supervisors and would provide oversight in cases of police use of force that lead to serious injury or death, including officer involved shootings.. The Civilian Review Panel would respond to community concerns or complaints about alleged incidents of abuse of authority by FCPD.

While the Subcommittee finds no evidence that there are serious or widespread issues of FCPD personnel abusing their authority in use of force incidents, we did hear from individuals who felt that their complaints about abuse of authority were not taken seriously. “Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community,” according to the President’s Task Force on 21st Century Policing (May 2005 http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf). “Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community.”

While the Subcommittee has set forth proposed time periods for the issuance of reports on a case, it is not the intention of the Subcommittee to unnecessarily prolong investigations and review. Accordingly, it would be appropriate to study and coordinate the timing of review and reports by the Office of the Independent Police Auditor and by the Civilian Review Panel during implementation. This research should include review of policies and practices on coordination of investigation, review and discipline in other jurisdictions that have implemented independent review, and could be an appropriate task under the recommended extended charter of this Subcommittee.

Office of Independent Police Auditor

We believe that the Auditor’s involvement in and review of IAB’s investigations, together with mandatory public reporting, will ensure that the investigations are thorough, accurate, objective and impartial, and that the public can have confidence in the results of IAB’s investigations. In order to ensure that the Auditor can fully fulfill his/her responsibilities, we have recommended that the Auditor should have full access to both the MCD criminal investigative files as well as the complete IAB files.

We also recommend that the Auditor have the authority to interview any Fairfax County employee (including FCPD personnel) and receive any documents or other materials in the possession of the FCPD or other Fairfax County offices and departments in carrying out his/her responsibilities. Based on our interviews with National Association for Civilian Oversight of Law Enforcement representatives, this authority is critical to the effective functioning of an independent police auditor.

To ensure the independence of the Auditor, in both perception and reality, we recommend that the person selected shall have relevant experience but shall not have been a Fairfax County employee. The Auditor’s office should be both administratively and physically apart from the office of the FCPD.

We recommend that the Auditor will have the following primary functions:

- Participate in and monitor all IAB investigations of Fairfax County law enforcement officer involved shootings, in-custody deaths, and use of force cases in which an individual is killed or seriously injured; to seek further IAB investigation or to perform such further investigation if the Auditor determines that the IAB investigation was deficient; to issue a public report with respect to each reviewed investigation; and to consult with the FCPD Chief of Police concerning any disagreement with the IAB results or conclusions and, if no agreement between the Chief and the Auditor is reached after such consultation, report such disagreement to the Chairman of the Board of Supervisors. The Chief of the FCPD should issue a public statement that sets forth the bases for the Chief's decisions (which are final) in all cases as to which the Auditor disagrees.

- Review quarterly FCPD reports on the disposition of complaints of other cases of alleged police misconduct to ensure proper and timely FCPD responses.

- Make public recommendations concerning revisions of FCPD policies, training and practices based on the Auditor's reviews.

- Make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and, if established, at the request of the Civilian Review Panel, to meet with the Panel for further review of the Auditor's report and work.

- In order to address concerns that our Subcommittee heard expressed, we recommend that an individual may file a complaint of serious law enforcement use of force for investigation with either the FCPD or the Auditor. In that event the complaint is filed with the Auditor, it would immediately be forwarded to the FCPD for investigation.

Recommendations: Office of Independent Police Auditor

8. The Fairfax County Board of Supervisors shall establish the Office of Independent Police Auditor ("Auditor").
    a. The Auditor shall be appointed by and report directly to the Board of Supervisors.
    b. The Auditor shall have experience in*, inter alia*, public safety, public program auditing, the investigation of police operations and use of force incidents. In order to ensure the Independent Auditor is perceived as truly independent, the Auditor shall have never been employed by Fairfax County.
    c. The Auditor shall review (i) all investigations of Death or Serious Injury Cases conducted by the IAB;; and (ii) all UOF investigations by IAB which are the subject of a public complaint made to the FCPD or the Auditor.
    d. The Auditor shall have full access to the MCD criminal investigation file as well as full access to the IAB file, including any administrative action taken, for each investigation reviewed. The Auditor shall be entitled to receive copies of any portion(s) of such files.
    e. The Auditor shall determine with respect to each such MCD and IAB investigation its thoroughness, completeness, accuracy, objectivity and impartiality.
    f. The Auditor shall be appointed by the Board of Supervisors for a term not less than 2 years and not more than 5 years, with a goal of maintaining continuity and independence, subject to dismissal only for good cause.

9. The Auditor shall participate in and monitor IAB investigations within its scope of responsibilities.

   a. The County Executive or his/her designee shall require, subject to discipline up to and including termination, the attendance and testimony of any Fairfax County employee, including all Fairfax County law enforcement officers, whose appearance at the interview is requested by the Auditor, and shall also require the production of any documents or other materials in the possession of the FCPD or other County offices and departments.

10. If the Auditor determines that an IAB investigation was deficient or that IAB's conclusions as to the relevant facts were incorrect or unsupported by the evidence, the Auditor may request further investigation by IAB or the Auditor may conduct such further investigation.

11. Absent good cause, the Auditor shall issue a public report with respect to each reviewed investigation within sixty (60) days of the Auditor's access to the complete IAB file.

12. The FCPD shall provide a public report quarterly to the Auditor on the disposition of all citizen complaints made against the FCPD. The Auditor shall be provided such additional information as the Auditor may deem necessary to enable him/her to determine that the FCPD is properly responding to and investigating complaints in a timely manner.

13. An individual may file a complaint concerning alleged misconduct by a Fairfax County law enforcement officer involving a Death or Serious Injury Case, the use of force, or the death of an individual with the FCPD for investigation.
    a. The citizen may instead file the complaint with the Auditor, who shall immediately forward the complaint to the FCPD for investigation, who will report on the disposition of the complaint within 30 days.

14. If the Auditor disagrees with the results or conclusions of the IAB in Death or Serious Injury Cases, the Auditor shall advise the FCPD Chief of Police who shall resolve the disagreement and make the final decision. The Chairman of the Board of Supervisors shall be informed of the Auditor's disagreement and the ultimate resolution. The Chief's decision shall be made in a public statement that sets forth the basis for the Chief's resolution of the disagreement.

15. The Auditor shall make public recommendations to the FCPD Chief of Police, with copies to the Chairman of the Board of Supervisors, concerning the revision of FCPD policies, training, and practices based on the Auditor's reviews. The Auditor shall also issue a public report annually concerning the thoroughness, completeness, accuracy, objectivity and impartiality of the IAB investigations reviewed by the Auditor.

16. The Auditor shall have an adequate budget and a trained staff to meet his/her responsibilities. The Auditor's office shall be separate and apart (physically and administratively) from those of the FCPD and the Commonwealth's Attorney.

17. Any findings, recommendations and actions taken by the Auditor shall reflect the Auditor's independent judgment. No person shall use his/her political or administrative position to attempt to unduly influence or undermine the independence of the Auditor, or his/her staff or agent, in the performance of his/her duties and responsibilities.
    a. The Auditor's office shall be separate and apart (physically and administratively) from those of the FCPD and the Commonwealth's Attorney.

Civilian Review Panel

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With the recommendation for an Independent Auditor to review and assess FCPD investigations into OIS and use of force incidents that involve serious injury or death, this Subcommittee recommends the establishment of a Civilian Review Panel to respond to community concerns or complaints about alleged FCPD incidents of abuse of authority.

While some feel that the superior quality of our police department is fair argument against the need for civilian oversight, police departments and certainly one of the finest departments in the nation should welcome the scrutiny of their practices and procedures by the public they serve and protect. The recommendations related to creation of a Civilian Review Panel by this Subcommittee are intended not as an intrusion but as an opportunity to provide additional transparency and visibility, while building police and community relations.

The review of the various resource materials which the Subcommittee undertook established that some form civilian review is a national best practice. The list of the largest police departments in the country which Christian Klossner of National Association for Civilian Oversight of Law Enforcement (NACOLE) prepared for us showed that all but a handful have some sort of independent review, with many of those involving civilian review.

Civilian Review Panels offer a method of public involvement in accountability that is external to the department. This independence from the agency or the sworn chain of command that it seeks to hold accountable allows it to address a wide range of concerns without any actual or perceived bias, and to ensure that policing is responsive to the needs of the community.
The experiences from other communities with civilian oversight have shown that strong, independent oversight builds legitimacy and public trust through increased police transparency and accountability to the public served. Oversight provides a meaningful voice or forum for the public and forms a crucial bridge between the public and the police. Increased transparency, trust, and communication between the police and the public can lead to greater community cooperation in achieving the ultimate goal of decreased crime and increased public safety.

This Subcommittee recommends establishing a Civilian Review Panel to review FCPD's investigations of alleged FCPD misconduct. The Panel would not review the cases of serious use of force that are referred to the Independent Auditor. The Board of Supervisors would appoint seven panel members to three year terms, with the ability to serve two consecutive terms. We recommend that the Panel be authorized to retain a criminal investigative consultant.

Our recommendations allow for any individual to file a complaint with the Panel requesting a review of the FCPD investigation of an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The panel would not review incidents being reviewed by the Independent Auditor. The Panel will define "Abuse of authority" and "serious misconduct" and may include the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, ethnicity, gender, sexual orientation or other bases; the reckless endangerment of a detainee or person in custody; and violations of Fairfax County or FCPD policies or procedures.

The Panel will issue a public report at the end of its review of each FCPD investigation. The Panel would meet with the Auditor periodically at the Panel's request concerning the findings and conclusions of the Auditor as to serious use of force cases so that the Panel can provide its views to the Board of Supervisors and the Chief of Police as to policy and practices changes that may be warranted. The

Panel could also hold periodic public forums around the county to gather information and suggestions about the FCPD, public perceptions and recommendations for policy and procedure, involving other police advisory committees and members of the Board of Supervisors as appropriate.

Recommendations: Civilian Review Panel

18. Fairfax County shall establish a Civilian Review Panel ("Panel") to review civilian complaints concerning alleged FCPD misconduct.
    a. Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel.
    b. The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.
    c. Factors to be considered in appointing Panel members include*, inter alia,* community and civic involvement; diversity; law enforcement and/or criminal investigative experience, reputation in the community and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).
    d. The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.

19. An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor.
    a. "Abuse of authority" and "serious misconduct" shall be defined by the Panel and may include*, inter alia*, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, ethnicity, gender, sexual orientation or other bases; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.
    b. The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.
    c. Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.

20. Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation.
    a. The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the panel.
    b. Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not

taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.

21. The Panel review of the investigation shall be completed and a public report issued within sixty (60) days of the filing of a request for review.
    a. If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.

22. The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed.

23. The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work.

Follow Up

24. Fairfax County should establish an Ad Hoc Police Practices Review Commission every five (5) years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.

Appendix

Citizen Review of Police: Approaches and Implementation (Finn, Peter; March 2001, *U.S. Department of Justice, Office of Justice Programs, National Institute of Jusitce*) https://www.ncjrs.gov/pdffiles1/nij/184430.pdf

Models of Civilian Oversight in the United States: Similarities, Differences, Expectations and Resources (Quinn, Sue; National Association for Civilian Oversight of Law Enforcement) https://nacole.org/resources/models-of-civilian-oversight-in-the-united-states-similarities-differences-expectations-and-resources/

Review of National Police Oversight Models for the Eugene Police Commission (February 2005; Police Assessment Resource Center) http://nacole.org/wp-content/uploads/Review-of-National-Police-Oversight-Models-Feb.-2005.pdf

Examples of Civilian Oversight

Virginia Beach

- Investigation Review Panel (IRP) http://www.vbgov.com/government/departments/human-resources/pages/investigation-review-panel.aspx
- Policy http://www.vbgov.com/government/departments/human-resources/IRP/IRP%20Policy%202012%20rev.pdf
- Resolution Establishing IRP http://www.vbgov.com/government/departments/human-resources/IRP/1991%20Resolution.pdf

Washington, DC

- Office of Police Complaints http://policecomplaints.dc.gov/
- Regulations http://policecomplaints.dc.gov/sites/default/files/dc/sites/police%20complaints/publication/attachments/occr_regulations.pdf

Prince George's County, MD

- Citizen Complaint Oversight Panel http://www.princegeorgescountymd.gov/sites/ExecutiveBranch/About/BoardsCommissions/Pages/Citizen-Complaint-Oversight-Panel.aspx
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EXECUTIVE SUMMARY

In July 2014, Fairfax County, Virginia contracted with the Police Executive Research Forum (PERF) to conduct a policy and practice review of the Fairfax County Police Department (FCPD). The review concentrated on the department's policies, procedures, directives, and training materials and curricula related to police use of force.

This report contains 71 recommendations organized into various topic areas.

In this Executive Summary, PERF would like to highlight 5 key recommendations first:

A. Comprehensive Use-of-Force Training

PERF recommends that FCPD provide comprehensive use-of-force training that includes discussion of, and scenario-based role-playing exercises that address, the various issues that can come together in a use-of-force incident, including:

- Legal and constitutional issues regarding the use of force;
- Lethal force, less-lethal force, and other options for disarming a person or making an arrest;
- Crisis intervention strategies for responding effectively to persons with mental illness, mental or developmental disabilities, or other conditions that can cause them not to understand or respond reasonably to what an officer is saying;
- Protocols for better understanding the phenomenon of "suicide by cop"; and
- De-escalation strategies, such as tactics for "slowing a situation down" in order to provide more time to assess a situation and summon assistance.

This training should be holistic in nature, combining different topics in a single curriculum in order to more realistically address situations that officers encounter in the field. For example, an incident involving a mentally ill person on the street brandishing a knife can involve issues of crisis intervention training, de-escalation strategies, legal issues regarding use of force, weapons and tactics for disarming a person, and other issues.

It is difficult for officers to grasp how to apply all of these concepts simultaneously if they are taught separately as stand-alone training topics.

B. Department-Wide Training

PERF recommends that FCPD conduct department-wide training for all sworn personnel regarding the changes put into place as a result of this review.

This new training should be provided department-wide to all officers on a one-time basis, and also should be incorporated into existing recruit training and in-service training programs.

C. Decision-Making Model to Help Officers Analyze Situations

PERF recommends that the FCPD consider developing and adopting an innovative decision-making model to guide officers as they approach a whole range of situations, and in particular the difficult circumstances in which the use-of-force may be necessary – or may be avoided.

Police in the United Kingdom have been applying a "National Decision Model" (NDM) to provide officers with more useful guidance about how to approach situations that might involve use-of-force.

In a decision-making model, officers learn how to analyze a situation; assess risks; consider options; develop a working strategy for responding; take action; review the results; and if necessary, begin the process again.

For example, if an officer responds to a call about a person on the street behaving erratically and brandishing a length of pipe, instead of moving immediately against the subject in order to neutralize the potential threat, the NDM prompts officers to try to "slow the incident down" in order to provide time to assess the situation and consider options.

Officers are trained to ask themselves a series of questions, such as: "What exactly is happening here? Is this situation a threat to public safety? Is this a policing issue, or a medical emergency? If there is a threat, what are my options for stopping it? Am I the best person to handle it, or are there others who are better trained and equipped for it? Are there other resources I can summon?"

PERF believes that this type of decision-making model has great potential for police agencies in the United States.

D. Begin recruit training with the most important concepts in policing.

Currently, the FCPD teaches new recruits the mechanics of shooting in the first weeks of the academy. Firearms instruction is 10 days, consisting of 80 to 100 hours on pistol and shotgun training. The academy provides instruction in firearms skills and emergency vehicle operations (EVOC) early in the process, because recruits most often fail or drop out of the academy during firearms and EVOC training.

PERF believes it is important to change this approach. Rather than beginning recruit training with the mechanics of firing a gun, FCPD can take a new approach that will make it a national leader: The first days and weeks of recruit training should focus on the most significant issues, concepts, and values of policing in a democratic society. These issues may include the mission and role of the police in protecting constitutional rights; the sanctity of human life; overall use-of-force policies, de-escalation, and crisis intervention strategies; a duty to intervene if an officer sees another officer using excessive force; and the decision-making model to teach officers how to analyze complex situations and devise effective responses.

By focusing on the most important issues first, the FCPD can send an important message to new recruits about the department's priorities, about the nature of the profession, and about what is expected of them.

E. Response to Emotionally Disturbed Persons

The FCPD should continue to work toward its goal of increasing the number of officers who have received 40 hours of training in crisis intervention. More than 40% of patrol officers have already received this training, with a targeted goal of 100% of officers.

In addition to providing this basic level of crisis intervention training to all patrol officers, the FCPD should go a step further and provide more advanced training for officers who would volunteer to be part of the department's Crisis Intervention Team (CIT). CITs pair specially trained officers with mental health workers to provide a more experienced and expert response to incidents involving persons with mental illness or other conditions that can cause them to behave unpredictably and dangerously.

Crisis Intervention Teams are increasingly recognized as a national best practice. The U.S. Justice Department's Civil Rights Division specifically addressed the advantages of Crisis Intervention Teams (as opposed to limiting the response to general training of all officers) in its 2012 "findings letter," prior to entering a settlement agreement with the Portland, OR Police Bureau (PPB).[1] CITs not only respond to critical incidents, but also work to help mentally ill persons obtain treatment and other services. By addressing the underlying problems and getting to know the people involved, CIT teams can achieve better outcomes in crisis situations, and also can reduce repeat calls for service.

Following are other recommendations made in this report:

Police Officer Selection

In many respects, FCPD's hiring process follows the leading best practices of other large police departments. PERF recommends that the FCPD formalize its process by putting certain standards and processes into writing, and that the department ensure that written directives are kept up to date. PERF also recommends that the FCPD consider creating a Selection Review

1 "Findings Letter" from DOJ Civil Rights Division to Portland Mayor Sam Adams. Sept. 12, 2013. http://www.justice.gov/crt/about/spl/documents/ppb_findings_9-12-12.pdf

Committee, to include community representation**,** in order to bring more diversity to the process of making final selections of police officer candidates.

Use-of-Force Policy

PERF recommends a number of changes designed to strengthen the FCPD's use-of-force policy, in many cases by clarifying definitions, explicitly emphasizing de-escalation, and specifying control tactics appropriate for different situations. For example, references to "non-deadly" devices should be changed to "less lethal," in order to make sure that officers understand that while some weapons, such as Electronic Control Weapons (Tasers™), are designed to be less lethal than firearms, they sometimes do result in death.

PERF also recommends that the FCPD adopt a policy statement creating a duty to intervene if one officer observes another officer using force that is clearly beyond what is objectively reasonable under current legal standards. This intervention should include interceding to stop the use of excessive force, as well as reporting the incident to a supervisor.

While the FCPD does a good job of emphasizing de-escalation of incidents in its officer *training,* PERF recommends that the department adopt strong *policy* language describing the importance of officers de-escalating tensions in confrontations when possible—for example, by calling a supervisor to the scene of a contentious or difficult encounter, or summoning a Crisis Intervention Team to handle a person in a mental health crisis.

Another PERF recommendation calls for improving the FCPD's definitions of the types of resistance that persons use against officers, and the different levels of control tactics that may be used for each type of resistance. PERF also recommends that the FCPD modify language on the reasonableness of use of force, in order to bring its policy in line with the U.S. Supreme Court's landmark 1989 use-of-force case, *Graham v. Connor.*

Finally, PERF recommends that the FCPD make explicit a policy against officers shooting at or from a moving vehicle, unless deadly force is being used against the police officer or another person by means other than the vehicle itself (e.g., if a person in a fleeing vehicle is firing a gun at the officer).

Reporting the Use of Deadly Force and Investigation of Injuries

PERF recommends a change in defining when a use of deadly force must be investigated. All incidents in which deadly force is used should be investigated in the same way, regardless of whether the officer hit his or her target. The investigative focus must be on the officer's intent to use deadly force and whether that decision was objectively reasonable, and should not depend on the officer's marksmanship or other factors affecting whether the subject was hit or injured.

The FCPD should provide direction to officers barring the use of "boilerplate" language to justify a use of force. Rather, officers should be told to describe what happened in language that is specific to the incident at issue.

Policies on Electronic Control Weapons

While this review did not uncover serious operational issues with respect to Electronic Control Weapons (such as Tasers™), PERF recommends a number of changes to strengthen FCPD polices in this area. To begin with, PERF recommends that in its written directives the FCPD change the name of such weapons from "Conducted Energy Weapons" to "Electronic Control Weapons" (ECWs). This is the industry-standard term used by PERF and the U.S. Department of Justice, and it recognizes that ECWs are indeed weapons whose use should be closely managed and monitored. In addition, FCPD policies on ECWs, which are currently in two different sections of policy documents, should be consolidated into one General Order in order to make it easier for officers to understand what is required of them. Policy also should clarify that ECWs should not be used against passive subjects, handcuffed subjects, persons driving a car or other vehicle in motion, and in certain other situations.

Policy should be strengthened on the risks of repeated applications of an ECW**.** Officers who are allowed to use ECWs should be certified as having completed ECW training successfully. And PERF recommends that the FCPD consider adopting brightly colored ECWs, to reduce the possibility that a secondary unit will mistake the ECW for a firearm.

A number of other recommendations are made to bring FCPD policy into accordance with national guidelines on ECWs that were produced in 2011 by PERF and the Justice Department's COPS Office. Finally, PERF recommends that the FCPD enhance its training to provide officers with sufficient time to go over possible scenarios regarding ECW deployment and to discuss practical, "what if" questions with officers who have deployed ECWs and those who have not done so. Training should also emphasize how to properly complete ECW use-of-force reports.

PepperBall System

PERF recommends that FCPD require that officers who use the less-lethal PepperBall tool be certified in its use, ensuring that officers are not only trained but also tested in the use of this tool.

Single Policy on Use of Force

Having a clear, comprehensive, and up-to-date policy for officers to follow is essential to a department's management of use-of-force issues. PERF recommends that the FCPD delete certain specified sections of its use-of-force policies that are out of date or difficult to understand, and that the department create a single policy that includes all directives and information pertaining to the use-of-force. (PERF offers a suggested outline for reorganizing existing policies while incorporating the changes to certain policies that have been detailed in this report.) Having a single, comprehensive directive will make it easier for officers to access and understand use-of-force policies.

Prohibit choke-holds

PERF recommends that the FCPD prohibit "choke holds" and neck restraints as a use-of-force option.

Police Pursuits

PERF recommends that the FCPD consolidate its policies on police pursuits. Currently, policies are split between two General Orders. PERF also recommends that the FCPD discontinue use of the Precision Immobilization Technique (PIT), and that officers be required to file a less-lethal use-of-force report when a spike strip tire deflation device or a boxing-in maneuver is used.

Response to Critical Incidents

PERF recommends that the FCPD provide more detail in its policies on bomb threats and incidents, with respect to defining terms and detailing the roles and responsibilities of patrol officers, supervisors, and command personnel. Policy on hostage/barricaded person situations also should be expanded to include definitions of legal authority, the command post, immediate action team, staging area, and other key terms. Given the critical role played by the first on-scene supervisor at hostage/barricades person incidents, a new section on this supervisor's responsibilities should be added to the policy.

FCPD policy should also require the timely notification of the Special Operations Division and the establishment of a news media staging area, when a hostage/barricade incident occurs. Finally, an after-action review and report should be required for all hostage/barricaded person incidents, as both an operational and training tool.

--- END EXECUTIVE SUMMARY ---