



County of Fairfax, Virginia

MEMORANDUM

DATE: August 23, 2023

TO: Board of Supervisors

Bryan Hill
County Executive

Tom Arnold
Deputy County Executive for Safety and Security

FROM: Richard G. Schott
Independent Police Auditor

SUBJECT: Independent Police Auditor Input on PERF Recommendations
Made to the FCPD

In February 2023, because of an increase in officer-involved shooting incidents, the Fairfax County Police Department (FCPD) requested the assistance of the Police Executive Research Forum (PERF) to conduct an independent assessment of existing Department trends, practices, or policies that may have inadvertently contributed to these particular events. The PERF review focused on seven officer-involved shootings, one of which occurred in 2021 and 6 of which occurred in 2022. Following its review, PERF made several recommendations to the FCPD (available at [perf fcpd final.pdf \(fairfaxcounty.gov\)](#)).

The purpose of this memorandum is to provide my input to the BOS on 5 of the 15 recommendations for which I think it is appropriate to provide such input.

PERF Recommendations

PERF Recommendation #6: *FCPD should add “proportionality” to the definitions in its use-of-force policy.*

IPA Input: I agree that “proportionality” should be defined in G.O. 540 because, as PERF points out in its report, the FCPD intersperses the word ‘proportionality’ throughout its policy”

Depending on the outcome of PERF Recommendation 7, I would also recommend adding a definition of “necessary” if the FCPD ultimately adopts the “necessary and proportional” standard when analyzing a use of force. With that said, however, the difficulty in defining when force is “necessary” is a major reason why I **disagree** with PERF’s Recommendation 7 to replace the “objective reasonableness” standard with the “necessary and proportional standard. When trying to define “necessary,” it seems to me you have to come right back to “objective reasonableness.” For example, the DOJ deadly force policy (revised in May, 2022) reads: “Law enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, *when the officer has a **reasonable belief** that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.*” To me, that definition of “necessary” sounds like “objective reasonableness.”

The alternative would be to define “necessary” force by saying that force is only “necessary” if a reasonable officer would find it to be “necessary” under the circumstances in which it is used. Again, to me, that seems to be interchangeable with “objective reasonableness.”

PERF Recommendation #7: *FCPD should update its use-of-force policy to indicate that force may not be used against a person unless, under the totality of the circumstances, that force is necessary and proportional.*

IPA Input: I disagree with this recommendation - See my explanation above, for PERF Recommendation 6.

PERF Recommendation #8: *FCPD should update its policy on shooting into vehicles.*

IPA Input: I disagree with this PERF recommendation. The PERF report elaborates on its recommendation by describing the current FCPD policy as vague and unclear, and by suggesting that the FCPD adopt language such as: “[Officers] SHALL NOT: Discharge their firearms at or from a moving vehicle unless deadly physical force is being used against the [officer] or another person present, *by means other than [the]*

moving vehicle. FCPD already prohibits shooting at, into, or from a moving vehicle unless there is a threat of serious injury or death to the officer or another person. The current FCPD language is superior to the language PERF suggests because the FCPD language contemplates the threat of serious injury or death coming from either a person using a weapon from within the vehicle, OR from a person using the vehicle itself as the weapon. In either situation, deadly force should be authorized. Furthermore, unlike PERF, I do not find FCPD's current policy to be vague or unclear.

PERF Recommendation #10: When conducting an administrative investigation of a PSI, Internal Affairs detectives should examine all related actions to determine whether personnel acted according to departmental policy.

IPA Input: Current FCPD policy is to do exactly what PERF is recommending in Recommendation #10. I have reviewed numerous investigations involving a use(s) of force, and the IAB investigation has consistently examined all aspects of the incident, not only the actual use of force. In several of the investigations I have reviewed, an officer has been faulted for a separate policy violation despite being in compliance with G.O. 540 USE OF FORCE.

PERF Recommendation #14: FCPD should adopt a foot pursuit policy.

IPA Input: I agree with PERF's recommendation for the FCPD to adopt a foot pursuit policy, and I do not agree that FCPD's new Regulation 203.8 (effective March 14, 2023) satisfies the contemplated policy. Although the IACP has not issued a Model Policy for foot pursuits, it has published guidance (in a "Considerations" document and in a "Concepts and Issues" document) that should be incorporated into a comprehensive policy. For example, the IACP discusses a Purpose, a Policy Statement, Definitions, and Procedures, all of which should be included in a standalone FCPD General Order covering Foot (and possibly Bicycle) Pursuits.

(See also, e.g., [539.01 Foot Pursuits - Arlington County Police Department - PowerDMS](#) (Arlington County PD) and [Title \(mpdconline.com\)](#) (Washington D.C. Metropolitan PD)).