FAIRFAX COUNTY
BOARD OF SUPERVISORS
October 16, 2018

ADDENDUM
to
AGENDA

10:00	Presentation of the Final Report on Fairfax County Police Reform, Ad Hoc Police Practices Review Commission, Implementation Group

Board Agenda Item
October 16, 2018

10:00 a.m.

Presentation of the Final Report on Fairfax County Police Reform, Ad Hoc Police Practices Review Commission, Implementation Group

PRESENTED BY:
Philip Niedzielski-Eichner, Implementation Group

ENCLOSED DOCUMENTS:
Attachment 1: Press Release dated October 10, 2018
Attachment 2: "Final Report on Fairfax County Police Reform", dated October 10, 2018

Major progress by Fairfax County Police, but there's more to be done

Independent Citizen Group Assesses Progress Five Years after John Geer Shooting

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Release Date: **October 10, 2018**
Attached (pdf file): ***Final Report on Fairfax County Police Reform***
Contact: **Phillip Niedzielski-Eichner | Implementation Group**
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The report of the Fairfax County Ad Hoc Police Practices Review Commission (Commission) could have remained on the shelf since its release three years ago. Instead, Fairfax County has to date implemented 179 of the 202 (or 88 percent) recommended actions. A review by seven former members of the Commission, informally known as the *Implementation Group*, highlights the significant progress made by the Fairfax County Police Department, but recognizes more is both possible and necessary.

The numerous major reforms, listed in the accompanying summary, will increase police accountability, divert those who suffer from mental illness into treatment rather than incarceration, reduce use of force injuries and death, open public access to incident information, and maintain public confidence in the Police Department.

"Police Departments are not known for embracing change," stated Phillip Niedzielski-Eichner, a member of the citizen Implementation Group, "but we've seen Fairfax County and its Police Department achieve substantial and meaningful reform. Still, we believe more is possible to further build and maintain community trust."

The *Implementation Group* urges Chief Roessler and his Commanders to sustain FCPD's reform efforts and – in particular -- to unfailingly meet the "predisposition to release information" standard with regard to openness and transparency and to commit to respond to findings from the Independent Police Auditor and the Civilian Review Panel. An accompanying summary lists additional *Implementation Group* follow-on recommendations.

The original Commission was formed after the controversial 2013 shooting of John Geer by a Fairfax County police officer. After completing the Commission's work,[1] the seven former Commissioners were asked by Board of Supervisors Chairman Sharon Bulova to assist and advise the County and Police Department as Commission recommendations were assessed and implemented.

While all recommendations do not need to be implemented for police reform to be declared a success, more can and should be done. "Continued successes and improvements will depend on Chief Roessler, his Commanders and continued meaningful collaboration with citizens engaged in implementation," emphasized Randy Sayles.

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[11] This link connects to the Ad Hoc Commission's original October 2015 Report: https://www.fairfaxcounty.gov/policecommission/sites/policecommission/files/assets/documents/pdf/adhoc-final-10.8.15.pdf.

SUMMARY
Fairfax Police Reform Implementation to Date

1. **"Diversion First,"** which offers alternatives to incarceration for people with mental illness or developmental disabilities.

2. Revisions to FCPD's ***Use of Force General Order*** to enshrine sanctity of human life as an organizing principle, with de-escalation as the strategy of first resort when confronted with a threat rather than the use of deadly force.

3. An **Independent Police Auditor** who reviews the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of death or serious injury cases.

4. A **Civilian Review Panel** that reviews the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of civilian complaints regarding "abuse of authority" or "serious misconduct" by a police officer.

5. An office of **Media Relations Bureau** led by a civilian professional who reports directly to the Police Chief.

6. Revisions to ***information-related general orders that*** provide for increased public visibility into the Department's daily activities and performance, with a pre-disposition to disclose information, regardless of incident controversy.

7. Revisions to the policies governing **vehicle pursuit and the precision immobilization technique**, a method for stopping fleeing vehicles, that constrains their use and strengthens supervisory oversight; and

8. Recruitment of **high-caliber personnel that better reflects Fairfax County's population diversity**.

A number of recommendations are approved but are still in process of being implemented. Of particular note are recommendations calling for **full deployment of body-worn cameras** (BWCs) and a patrol officer **"all carry" policy for electronic control weapons** (ECW) or "tasers," as a less-lethal alternative to the use of a fire arm.

SUMMARY
Additional Topics Warrant County and Police Consideration

1. FCPD should be directed to formally respond to findings and recommendations from the Independent Police Auditor and the Civilian Review Panel.

2. The public should be provided with an opportunity to comment and be heard on Auditor and Panel findings and recommendations.

3. The FCPD vehicle *Pursuit Review Committee* should be expanded to include civilian representation.

4. The Auditor's responsibilities should be expanded to include:
   - monitoring and reviewing investigations of Sheriff Deputies involved in shootings, in-custody deaths, and any use of force (UOF) incident resulting in death or serious injury;
   - auditing the FCPD's use of BWCs and providing an annual report to the Board and the public setting forth the Police Auditor's findings and recommendations; and
   - participation on the FCPD UOF Technical Review and the Vehicle Pursuit Review Committees

5. A data-driven monitoring program should be instituted that fully leverages FCPD's UOF and other data now being collected in response to the Commission's recommendations.

6. The Chief of Police and his Command leadership should maintain a neutral public posture pending an investigation of a police-involved UOF incident.

Final Report on Fairfax County Police Reform

Ad Hoc Police Practices Review Commission Implementation Group

Fairfax County, Virginia

October 10, 2018

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October 10, 2018

The Honorable Sharon Bulova, Chairman
Fairfax County Board of Supervisors
12000 Government Center Parkway
Fairfax, Virginia 22035

Dear Chairman Bulova:

We write to convey to you our independent assessment of the progress achieved by the County after evaluating over two hundred recommendations of the *Ad Hoc Police Practices Review Commission* (Commission) which were conveyed to the Board of Supervisors in October 2015.

In all, 179 of the 202 recommended actions (or 88 percent) are approved as recommended or as modified and are either in process of being implemented or are implemented. For example, full deployment of body-worn cameras (BWC) is approved in concept, but implementation is measured, as a pilot study is completed and funds for BWC acquisition are identified. Another example is the, as of yet, incomplete assignment of electronic control weapons or "Tasers" to each patrol officer, as is the case with guns. Compliance with the Police Department's "all carry" policy will need Command's continued attention.

Five recommendations (or 3 percent) are still under review, and 18 (or 9 percent) will not be implemented. The most notable recommendations not implemented involve information-sharing and transparency. Also notable, civilian oversight will be supported by Fairfax police internal affairs investigators, as the County believes independent civilian investigators are not allowed by state statute.

While not endorsing all the changes advocated by the Commission, Fairfax County embraced both the spirit and intent of the Commission's recommendations. Significant Fairfax County Police Department (FCPD) reforms are underway that will increase police accountability, divert those who suffer from mental illness into treatment rather than incarceration, reduce use of force injuries and death, open public access to incident information, and engender renewed public confidence.

Regarding open access, the County's Freedom of Information (FOIA) regulations and FCPD's General Order need to be closely aligned and the circumstances where information is withheld must be carefully prescribed. While Virginia FOIA exempts certain law enforcement information from being released, the

County can limit the use of these exemptions. Not to do so risks a loss of the public's trust regained through these police reform initiatives.
Additional topics came to light subsequent to the Commission's October 2015 Final Report. We believe the following warrant County consideration, all of which are addressed further herein:

1. The Fairfax County Police Department (FCPD) should be directed to formally respond to findings and recommendations from the Independent Police Auditor and the Civilian Review Panel.
2. The public should be provided with an opportunity to comment and be heard on Auditor and Panel findings and recommendations.
3. The FCPD vehicle *Pursuit Review Committee* should be expanded to include civilian representation.
4. The Auditor's responsibilities should be expanded to include:
   - monitoring and reviewing investigations of Sheriff Deputies involved in shootings, in-custody deaths, and any use of force (UOF) incident resulting in death or serious injury;
   - auditing the FCPD's use of BWCs and providing an annual report to the Board and the public setting forth the Police Auditor's findings and recommendations; and
   - participation on the FCPD UOF Technical Review and the Vehicle Pursuit Review Committees
5. A data-driven monitoring program should be instituted that fully leverages FCPD's UOF and other data now being collected in response to the Commission's recommendations.
6. The Chief of Police and his Command leadership should maintain a neutral public posture pending an investigation of a police-involved UOF incident.

The report contributors are all former members of the Commission who, at your behest, continued our involvement as an informal "implementation group." We worked closely over the last three years with your Office, the Board of Supervisor's Public Safety Committee and the Police Department.

We acknowledge the work of the Policy & Directives Change Team charged by Police Chief Edwin Roessler to assess and implement the Ad Hoc Commission recommendations. The Change Team was commanded by Major Richard J. Perez and, later, by Captain Tonny Kim. The Change Team members are to be commended for their diligent and effective efforts.

We spent many hours working with this group of professionals and have only praise to offer for their competence, the seriousness with which they undertook their charge, their openness to the change promoted by the Commission and their embrace of a significant number of our ideas as we worked together on implementation. Chief Roessler coined the phrase "co-production," and we concur with this characterization of many of the changes incorporated into FCPD directives, with the *Use of Force General Order* being particularly notable.

Should you or the Board of Supervisors have any questions concerning the content of this report, please do not hesitate to let us know. We are honored to work so closely with the Board and FCPD on police reform and are proud to represent our community in the process.

Very truly yours,

/on behalf of…

The Ad Hoc Commission Implementation Group

PREFACE

This assessment was undertaken by former members of the *Ad Hoc Police Practices Review Commission* who have continued their involvement as an informal "implementation group" formed by Fairfax County Board Chairman Sharon Bulova. The collaborators in the production of this report are Phillip Niedzielski-Eichner, who Chaired the Use of Force Subcommittee; Mary Kimm, of the Use of Force, Communication, and Independent Oversight and Investigations Subcommittees; Randy Sayles, of the Use of Force Subcommittee; Dave Statter, of the Communication Subcommittee; Adrian Steel, of the Use of Force and Independent Oversight and Investigations Subcommittees; Shirley Ginwright, Chair of the Recruitment, Diversity and Vetting Subcommittee; and Marcus Simon, Chair of the Mental Health and Crisis Intervention Subcommittee. In addition to the overall monitoring of Fairfax County's implementation of the Commission's recommendation, we have individually or collectively been active in the review of and commenting on (a) the Police Department's revisions to the Use of Force General Order; (b) the Department's Release of Information, Records and Documents General Order; (c) the Department's body worn camera pilot project design and policy; (d) the establishment of the Independent Police Auditor (IAB); and (e) the formation of the Citizen Review Panel (CRP) of which Randy Sayles and Adrian Steel are currently charter members; with Steel being the CRP's inaugural chairman. Full professional biographies are provided in the Appendix.

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OVERVIEW

Fairfax County maintains an excellent police department, and we are fortunate to have high-caliber police personnel protecting us day-in and day-out. However, even the best organizations require renewal and reform to sustain high performance levels.

Often it is a use of force incident, with attendant widespread community concern, that will be a catalyst for action and generate calls for a review of a police department's policies and practices. Such an incident led the Chairman Sharon Bulova of the Fairfax County Board of Supervisors to form the *Ad Hoc Police Practices Review Commission* (Commission) in March 2015.[1]

The Commission was tasked to assess the Fairfax County Police Department's overall performance against national best practices and offer recommendations for how a well-functioning department could achieve even higher performance levels. As it executed against this charge, the Commission indeed found areas where Fairfax County police practices and performance could be improved. The Commission also advocated for urgent action to strengthen public trust and confidence in the Department.

Forming a commission is a time-honored tool by public officials to delay action -- or avoid it altogether -- since there are always significant barriers to achieving change to deep-rooted organizational practices, traditions and culture. The Public Safety Committee of the Fairfax County Board of Supervisors, Chaired by Supervisor John Cook, and the Police Department, particularly Chief Edwin Roessler and his command leadership, are to be commended for ensuring that the Commission's work did not sit on the shelf gathering dust. Indeed, the County and Police Department have many policing reforms of which to be proud.

The Commission's work was augmented by a June 2015 Report Chartered by Police Chief Roessler and issued by the Police Executive Research Forum (PERF) entitled *Use-of-Force Policy and Practice Review of the Fairfax County Police Department*. Chief Roessler also committed to seek -- and then received -- accreditation for the Department by the Commission on Accreditation for Law Enforcement Agencies, Inc. (aka CALEA).

This *Final Implementation Report* provides an independent assessment of the progress achieved by the County after evaluating more than two hundred Commission recommendations over the past three years. While not endorsing all the changes advocated by the Commission, information-sharing and transparency being the most notable, Fairfax County policymakers and Police Department (FCPD) leadership embraced the spirit and intent of the Commission's recommendations.[2]

[1] The August 2013 shooting death of Mr. John Geer by a Fairfax County police officer was the catalyst for the Commission's formation. Mr. Geer was unarmed and standing in his doorway with arms raised when he was shot. The officer who shot Mr. Geer was successfully prosecuted. The investigation of the incident, however, took months to conduct with little information available to the public throughout.

[2] In summary, 179 of the 202 recommended actions (or 88%) are approved as recommended or as modified and are either in process of being implemented or are implemented; 5 (or 3%) are still under review; and 18 (or 9%) will not be implemented.

Significant reforms are underway that will increase police accountability, divert those who suffer from mental illness into treatment rather than incarceration, reduce use of force injuries and death, open public access to incident information, and engender renewed public confidence.

The numerous major reforms include the following:

1. **"Diversion First,"** which offers alternatives to incarceration for people with mental illness or developmental disabilities.

2. Revisions to FCPD's ***Use of Force General Order*** to enshrine sanctity of human life as an organizing principle, with de-escalation as the strategy of first resort when confronted with a threat rather than the use of force. Also, a use of force lessons-learned committee, known as the Use of Force *Technical Review Committee*, is chartered and has been convened under the direction of the Police Training Academy Commander.

3. An **Independent Police Auditor** who reviews the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of death or serious injury cases.

4. A **Civilian Review Panel** that reviews the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of civilian complaints regarding "abuse of authority" or "serious misconduct" by a police officer.

5. An office of **Media Relations Bureau**, with civilian leadership and reporting directly to the Police Chief.

6. Revisions to the ***Release of Information, Records and Documents General Order*** providing for increased public visibility into the Department's daily activities and performance, with a pre-disposition to disclose information, regardless of incident controversy. The revisions also establish that the names of officers involved in critical incidents, including officer involved shootings, will be disclosed within 10 days, with extension as needed to investigate if a credible threat to the officer exists.

7. Revisions to the policies governing **vehicle pursuit and the precision immobilization technique**, a method for stopping fleeing vehicles, that constrain their use and strengthen supervisory oversight; and

8. Recruitment of **high-caliber personnel that better reflect Fairfax County's population diversity**.

A number of recommendations are approved but are still in process of being implemented. Of particular note are recommendations calling for deployment of body-worn cameras (BWC) and electronic control weapons (ECW) or "tasers."

BWC deployment requires careful study and diligent attention to complex legal, privacy, operational and cost details. We commend the County for taking an appropriately measured response to meeting this recommendation by implementing a pilot BWC project. Video and audio data that captures in "real-time" police officer engagement with the public has the potential for profoundly changing law enforcement. The expectation is for this change to be positive. But the risks to individual privacy and,

perhaps paradoxically, to the loss of confidence in FCPD must be mitigated. Additionally, BWC technology and the associated data storage needs will have a substantial price tag that, if full deployment is approved by the Board, will require a few budget cycles to fully implement.

The Commission recommended full BWC deployment. We fully expect the pilot project to provide substantive insights that will strengthen the technology's effectiveness and privacy protections. We also note that, as was stated in a recent Independent Police Auditor public report that "…body-worn cameras may prove to be a valuable tool in identifying problematic behavior (based on race or otherwise) in the years ahead."[3] We urge the Board, after due consideration of the results of the pilot project and with the opportunity for public participation, to implement the Commission's recommendation.

Furthermore, in order to ensure transparency and compliance with FCPD policy and directives, we recommend that the Independent Police Auditor be instructed by the Board of Supervisors to audit the FCPD's use of BWCs (including random review of BWC footage as PERF has recommended) and to provide an annual report to the Board and the public setting forth the Auditor's findings and recommendations.

Regarding ECWs, the Commission recommended that all uniformed officers in enforcement units be mandated to "…carry an ECW on their duty belt (or elsewhere on their person) while on patrol." The rationale for this recommendation is that ECWs are a less-lethal use of force and can be an effective alternative to a firearm. FCPD instituted an ECW "all carry" policy, but relies on shared use of ECWs across three shifts. Further, anecdotal observation suggests the "all carry" policy is not yet fully adhered to by patrol officers.

As shared use can lead to equipment reliability and maintenance issues, FCPD plans to equip each officer with his or her own ECW. Like BWCs, this will be an additional significant expenditure that will need to be implemented over several budget cycles. In the interim, Commanders are still expected to ensure that all officers are trained in ECW use and that substations maintain sufficient operational ECWs to equip each police officer during every shift.

Vehicle pursuit policy is now more restrictive, but does not – as the Commission recommended -- limit officer discretion to pursue only fleeing vehicles where reasonable suspicion exists that a violent felony has been committed. A significant refinement is that supervisors are more explicitly required to assume supervisory control of any vehicle pursuit as soon as he/she can do so safely and to independently confirm that the need for immediate apprehension outweighs the risks of potential harm arising from the pursuit.

Importantly, the Police Training Academy's Emergency Vehicle Operations Center has reviewed every pursuit on a monthly basis since October of 2017. Also, per a new Pursuit General Order, the Academy held its first in-depth pursuit review with a newly chartered *Pursuit Review Committee*. The Committee recently reviewed seven randomly selected pursuits for lessons that can be learned and translated into improved training and tactical operations.

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[3] *A Review of the Disparity in FCPD Use of Force Incidents by Race in 2015* (p. 15), Fairfax County Independent Police Auditor, July 25, 2018 [see: https://www.fairfaxcounty.gov/policeauditor/sites/policeauditor/files/assets/reports/oipa%20disparity%20uof%202015.pdf]

However, consistent with openness challenges we believe remain for FCPD overall, we are concerned that the Department is not providing robust public reporting on vehicle pursuits. Transparency and accountability will be of paramount importance once the new Pursuit General Order becomes effective in 2019. Under this Order, a pursuit can be justified only if the "immediate need" for apprehension outweighs the danger the pursuit poses to the public, officers, and offender, including passengers. Detailed data on pursuits will help validate that this FCPD policy is being followed and is working as expected.

All Commission recommendations do not need to be implemented for police reform to be a success. Indeed, we value the extent to which the County leadership thoughtfully and methodically considered the Commission's recommendations and have worked to implement the vast majority of them.

Acknowledging this success, we believe, that more is required by FCPD to achieve the level of transparency and information sharing to meet the "predisposition to release information" standard the Police Chief sets in revisions to the *Release of Information, Records and Documents General Order*.

While FCPD has valid reasons for withholding information that might undermine an active investigation or for public safety reasons, it also has an obligation in a free society to be predisposed toward releasing information; *i.e.,* the default is release and withholding must be justified. There is no more significant lesson to be learned from Mr. Geer's shooting and the subsequent months of County silence on the status of the investigation.

In our view, the County's FOIA regulations and FCPD's General Order need to be closely aligned and the circumstances where information is withheld from the public must be carefully prescribed. Virginia FOIA broadly exempts certain law enforcement information from being released. The County can, however, limit the use of these exemptions and, when applying them, do so consistently. The County risks losing the public's trust, which it has so diligently and effectively sought to regain through implementing the Commission's recommendations, without more clearly delineating when and why information can be withheld.

On one hand, as an example of its commitment to openness, Fairfax County police released -- after three months -- dashboard camera digital footage of a November 2017 shooting by the U.S. Park Police of McLean resident Bijan Ghaisar following a pursuit on the George Washington Memorial Parkway. While not an FCPD investigation, Police Chief Roessler noted that the video "does not provide all the answers," but indicated he released the video in an effort at transparency.

On the other hand, as a contrary example, significant information – including dashboard camera digital footage – is being withheld from public release because of litigation regarding the December 2017 vehicle pursuit by Fairfax County Police on Centreville Road that resulted in , which ended in an accident that injured six family members. As noted earlier, the litigation rationale was used to withhold information for months following the shooting of Mr. Geer, a key error that greatly impacted the image of the County and FCPD.

With regard to the Commonwealth Attorney's Office (CWA), the Board should specifically request that the CWA formally evaluate the Commission's recommendation that two independent investigators be hired to support criminal investigations within the scope of the Independent Police Auditor. The Commission believed that the two independent CWA investigator positions would further promote

impartiality and objectivity in Major Crimes Bureau investigations. The matter has not received Board consideration, as these positions were not requested by the CWA.

Additional topics came to light as the Commission's recommendations were evaluated and implemented. We believe the following warrant County consideration:

1. FCPD should be directed to formally respond to findings and recommendations from the Independent Police Auditor and the Civilian Review Panel. The Commission assumed, but did not explicitly recommend, this expectation. We understand that FCPD does not believe it is obligated to respond. Only the Board can clarify this difference of understanding and should do so if it expects the Independent Police Auditor and the Civilian Review Panel to establish and have credibility within the community.

2. The Board should establish a process that provides the public with an opportunity to comment and be heard on Auditor and Panel findings and recommendations, including the FCPD's responses to the findings and recommendations. Public participation in the process is critical to building and ensuring community trust in the FCPD and the independent oversight established by the Board.

3. The Auditor should be authorized to monitor and review investigations of Sheriff Deputies involved in shootings, in-custody deaths, and any UOF incident resulting in death or serious injury.

4. In order to ensure transparency and compliance with FCPD policy and directives, the Auditor should be instructed by the Board to audit the FCPD's use of BWCs and to provide an annual report to the Board and the public setting forth the Auditor's findings and recommendations.

5. A data-driven monitoring program should be instituted that fully leverages FCPD's UOF and other data now being collected in response to the Commission's recommendations. The data should be updated on a more regular basis than annually. As important, the data should be subjected to analysis and a process put in place that engages the public to address any issues the analysis may bring to light. Finally, the monitoring program should fully leverage the capacities of the Auditor and Civilian Review Panel.

6. The Chief of Police and his Command leadership should maintain a neutral public posture pending an investigation of a police-involved UOF incident. Rather than be perceived as prematurely justifying a police response, a public-trust building response would be to indicate that the incident will be thoroughly investigated and related information will be released as soon as possible.[4] Also, because suspects are innocent until proven guilty, neutral language is also the best policy when discussing the basis for a suspect's arrest.

[4] An August 10, 2018 Report by the Independent Police Auditor addressed this issue of a neutral public posture. The Report stated: "The chief's quick defense of his officers' actions certainly could have made it difficult for an IAB investigator to conclude that those same officers acted inappropriately….While it is understandable that Chief Roessler wanted to defend his officers following this controversial situation, concern that his bold statements defending those officers would prohibit a thorough review is also understandable." See https://www.fairfaxcounty.gov/policeauditor/sites/policeauditor/files/assets/reports/oipa%20public%20report%2010-28-17.pdf.

7. The newly chartered FCPD vehicle *Pursuit Review Committee,* directed to be established under a new *Pursuit General Order* to review case examples for lessons learned, should be expanded to include civilian representation, as is the case for the UOF Technical Review Committee. Both Committees should include the Auditor as a member.

In closing, sustained high performance by organizations requires a commitment to continuous improvement and to ensuring that policies and practices evolve to meet the ever-changing world in which we live. The challenges to sustained reform are both daunting and are not to be underestimated. Sustaining and "institutionalizing" the changes in the County's police practices of the magnitude underway requires continued rigorous commitment to reform by the Police Chief, Commanders and Supervisors. As important will be the continued buy-in by rank-and-file police personnel and continued community participation, monitoring and oversight.

INTRODUCTION

This Final Implementation Report supplements the County's final progress report on implementing the Commission's recommendations[5] and represents an independent assessment of where Fairfax County police reform stands today, nearly three years since the October 2015 delivery of the Commission's Final Report to the County.

The authors are all former members of the Commission who, at the request of Chairman Bulova, have continued their involvement as an informal "implementation committee." Each member contributed to the recommendation implementation process.[6] The authors' involvement ranged from "co-producing" FCPD's revised Use of Force policy[7] to advising the FCPD on the deployment of BWCs as a pilot project.

The history section provides background on the Commission's formation and discusses the progress made to date implementing its recommendations. The implementation section provides a high-level summary of progress and closes with observations, both about the barriers to achieving full implementation and lessons learned that might help sustain the significant progress made since 2015.

This Final Implementation Report is a supplement to the Commission's 2015 Final Report and will only broadly reference its discussion, findings and recommendations. While the implementation progress report maintained by the County will also be referenced, its level of detail is also not captured in this Report.

In short, the Commission's original report and the County's implementation progress report will be required reading by those who desire a more granular background understanding of the Commission's work and the subsequent 30-month implementation period.

[5] See: https://www.fairfaxcounty.gov/policecommission/progress-report. The final progress report is posted and will not be updated further.

[6] See Appendix A for a listing of this Final Implementation Report's authors and their respective backgrounds.

[7] "Co-production" is a term coined by FCPD's Chief Roessler to characterize the active and detailed citizen involvement in, for example, drafting the revised General Order 540 on Use of Force.

HISTORY

The Commission was chartered in March 2015. Commissioners were selected based on their law enforcement, legal, academic, media, and community service experiences. In addition to the 40 appointed Commission members, 30 other County residents volunteered to augment -- as non-voting members -- the Commissioners on five subcommittees.

These subcommittees were (1) Communications; (2) Recruitment, Diversity and Vetting; (3) Mental Health and Crisis Intervention; (4) Use of Force; and (5) Independent Oversight and Investigations.

The Commission was tasked with engaging in an open and transparent process to review existing policies, practices and programs regarding police-involved incidents, with emphasis on the use of force; police-community relations; and public release of information. The Commission was expected to recommend changes that would further the goals of maintaining a safe community, ensuring a culture of public trust, and ensuring that County policies provide for the fair and timely resolution of police-involved incidents. As the Commission executed against this charge, it identified both areas for improvement and mechanisms the Commissioners believed would strengthen the public's trust and confidence in the Department.

The August 2013 shooting death of John Geer by a Fairfax County police officer was the catalyst for the Commission's formation. Mr. Geer was unarmed and standing in his doorway with arms raised when he was shot. The officer who shot Mr. Geer was prosecuted and pleaded guilty to manslaughter. The investigation of the incident, however, took months to conduct with little information available to the public throughout.

Also informing consideration and discussion of law enforcement reform at the time was the February 8, 2015 death of an inmate, Ms. Natasha McKenna, while in the Fairfax County Adult Detention Center in the custody of the Sheriff's Department. Ms. McKenna, a woman who had experienced serious mental illness for much of her life, died several days after being subjected to four ECW cycles as Sheriff's Deputies attempted to transport her to Alexandria. However, since the Commission's review was limited specifically to FCPD's use of force policies and practices, the Commission did not address the incident in its Final Report.

More broadly, the Commission did not address practices of the Fairfax County Sheriff's Office or those of the Commonwealth's Attorney (CWA), as both are stand-alone constitutional offices that are not directly accountable to the Board of Supervisors.

While the factors in Ms. McKenna's death were not addressed in the Commission's findings or recommendations, the circumstances of her death did inform the Commission's work, particularly with regard to the use of ECWs. The Commission believed that the Sheriff's Office should consider any recommendations relevant to the Office's responsibilities and authorities in a timely and public manner. The Sheriff's Office did embrace recommendations leading to the implementation of Diversion First.

Regarding the CWA, the Commission expressed the position that County law enforcement would benefit from a review of the respective roles of -- and inter-relationships among -- FCPD, the Office of the County Attorney, and the Office of the CWA regarding the management of -- and communication about – use of force incidents.

The Commission and its subcommittees held 40 meetings over six months, all of which were open to the public. Additionally, the Commission held two public hearings in May and September 2015 at which dozens of individuals offered testimony and shared their perceptions of law enforcement in Fairfax County, which included concerns about the Police Department's use of deadly force and lack of transparency and accountability.

In addition to the multitude of reports, documents and policies reviewed 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, for example, from the Executive Director of the Police Executive Research Forum (PERF), a former FBI agent and behavioral science consultant, and a National Association for Civilian Oversight of Law Enforcement board member.

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 the Board Chairman. The Commission also heard from the CWA.

The Commission delivered its Final Report to the Board of Supervisors on October 8, 2015, setting forth 202 recommendations that the Commission believed would bring needed reform to Fairfax County and the Fairfax County Police Department and would mitigate the then-existing crisis of public confidence.[8]

The Commission recommendations are summarized as follows:

- **Communications**: The Commission made 52 communications recommendations, finding that Fairfax County should improve and update policies, procedures, personnel and tools to state-of-the-art best practices and effect a change to the FCPD culture to embrace a predisposition to disclose information.

- **Recruitment, Diversity and Vetting:** The Commission made 14 recruitment, diversity and vetting recommendations, finding that 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, and reduce the length of time needed to conduct background investigations. The Commission also recommended that the Board of Supervisors should ensure FCPD pay is competitive.

- **Mental Health and Crisis Intervention**: The Commission made 26 mental health and crisis intervention recommendations, finding that Fairfax County should fully implement the Memphis

[8] The Final Report can be found at: https://www.fairfaxcounty.gov/policecommission/sites/policecommission/files/assets/documents/pdf/adhoc-final-10.8.15.pdf.

Model for Crisis Intervention Teams (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**: The Commission made 68 use of force recommendations, finding that 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 and collection and analysis of data, particularly as it relates to use of force by police. 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:** The Commission made 42 independent oversight and investigation recommendations, finding that Fairfax County should establish an Office of Independent Police Auditor and a Civilian Review Panel. The Auditor would 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 would review the thoroughness, completeness, accuracy, objectivity and impartiality of investigations of civilian complaints regarding "abuse of authority" or "serious misconduct" by a Fairfax County police officer.

The Commission's review was augmented by the June 2015 Report issued by PERF entitled *Use-of-Force Policy and Practice Review of the Fairfax County Police Department*. PERF found that "…FCPD is doing a commendable job and meeting or exceeding national best practices," but also offered a number of recommendations for improvements, all but one of which were endorsed by the Commission, Police Chief and Board. The exception pertained to the termination of the use of the precision immobilization technique (PIT) for terminating a vehicular pursuit.

As noted in the Introduction, the County has periodically updated a progress report that lists each of the Commission's recommendations in a tabular format. The most recent posting will not be updated again and is the last progress report the County will generate.

IMPLEMENTATION

This section describes the process by which the County has considered and implemented the Commission recommendations. A high-level summary of progress is also offered by topical area. The implementation section closes with observations about the barriers to achieving full implementation.

A. Process

Upon receipt of the Commission's Final Report in October 2015, the Board of Supervisors' Public Safety Committee (PSC) assumed responsibility for reviewing the Report and assessing the Commission's recommendations. The PSC, which is chaired by Supervisor John Cook and is composed of all Board members, held a series of meetings for these purposes. Members of the Commission subcommittees as well as various stakeholders participated in this policy review.

The PSC generated draft items for Board deliberation and action. With few exceptions, which will be detailed, the recommendations were approved by the Board. The Board assigned FCPD responsibility for implementing the majority of the approved recommendations, with oversight provided by the Deputy County Executive for Public Safety.

As noted earlier, various members of the Commission participated in a policy "co-production" process[9] – particularly with respect to the recommendations on communications, diversion first, use of force and independent oversight. Other co-production initiatives focused on body worn cameras, pursuit and vehicle stopping techniques, and police recruitment and training (under the aegis of the Communities of Trust).[10]

B. Progress

This progress summary is organized according to the topical areas addressed by the Commission. Each discussion includes a table conveying the total number of recommendations for the topical area and how the recommendations are dispositioned according to the decisions and actions taken by the County, as follows:

1. Adopted and implemented; or adopted, with implementation still underway ("implemented")
2. Modified before being implemented ("implemented, with modifications")
3. Assessment of recommendation is still underway
4. Not adopted ("not implemented")

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[9] Co-production is a term coined by the Chief of Police to describe a joint effort by FCPD and community representatives to craft revisions to FCPD policies.

[10] In January 2015, Chairman Bulova created the *Communities of Trust Committee* to advance collaboration, partnerships, and outreach between public safety agencies and the communities they serve. The Committee consists of a diverse citizen group focused on strengthening and building positive relationships. [See: https://www.fairfaxcounty.gov/police/chief/messages/communitiesoftrustcommittee]

COMMUNICATIONS

The Commission advocated in strong terms for building and sustaining public trust and confidence in FCPD by instituting information-sharing reforms to include timeliness, completeness and transparency.

Table 1 reflects that the County adopted many Commission recommendations regarding communications, but also rejected others, some of which we believe to be significant.

Table 1. Communications Recommendation Implementation

Total	Implemented	Implemented (with Modifications)	In Progress	Under Review	Not Implemented
52	36	7	4	1	4

Implemented

- The majority of the communication-related recommendations are approved by the Board and are either already officially implemented or in process of being implemented.

- The most significant change to date on communications is the hiring a civilian and highly qualified public affairs professional to serve as the Media Relations Bureau (MRB) director, who reports directly to the Police Chief.

- The policy is now established that the names of officers involved in critical incidents, including officer involved shootings, will be disclosed within 10 days, allowing for extension of that time as needed to investigate a credible threat to the officer involved.

- FCPD's *Release of Information, Records and Documents General Order* is completed, approved and operational and should engender agency-wide culture changes, including the continuous declassification of information; shortening the time it takes to release information about officer-involved shootings; and public dissemination of demographically organized crime statistics.

- We are encouraged by the Police Chief's approval of recommendations to create a culture of transparency at FCPD by applying law enforcement best practices and adopting a culture that is predisposed to disclose information rather than withhold it. If implemented as envisioned by the Commission, information-sharing policies and processes will result in more transparent, timely and culturally sensitive information releases.

Under Review

- The Board of Supervisors is still considering as part of its annual legislative review whether 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.

Not Implemented

Several recommendations will not be implemented, at least at the scale and scope advocated by the Commission.

- The Commission called upon the Board of Supervisors and County Executive to revisit the County's implementation of the Virginia FOIA provisions with an eye toward eliminating the blanket use of exemptions for public release of information related to police-involved shootings and other official police activities. To our knowledge, FCPD intends to continue to apply the allowed for exemptions at the discretion of the Police Chief, without further clarifying the circumstances that warrant the withholding of such information.
- The Commission recommended releasing actual police reports, with redactions as may be required. FCPD will only provide report summaries of felonies.
- The called for release of information about all incidents was not implemented due to technology and practical considerations. As such, the MRB releases information about a small percentage of incidents. FCPD declined to clarify criteria on what information would be released, *e.g.,* reportable uses of force and pursuits. As a result, the public will not know what information will be released and will not be informed about most police activity.
- FCPD has declined to make closed case files available or to provide criteria for possible declassification.
- 24-7 information staffing will not be implemented, although the MRB has reorganized itself and assigned specially trained officers to allow for 24-7 coverage as incidents require.

RECRUITMENT, DIVERSITY AND VETTING

The Commission believed that police officer recruitment and selection are two keys to building and sustaining community trust in FCPD by ensuring that its workforce is reflective of the diversity of the Fairfax County population, including race, gender, language, life experience, and cultural background. The Commission therefore encouraged FCPD to expand its recruitment efforts to grow diversity to match the County population; establish diversity goals for Command staff; train recruits on effects of implicit bias; reduce the length of time needed to conduct background investigations; and ensure that FCPD pay is competitive. As Table 2 captures, the County adopted all but one of the Commission recruitment, diversity and vetting recommendations.

Table 2. Recruitment, Diversity and Vetting Recommendation Implementation

Total	Implemented	Implemented (with Modifications)	In Progress	Under Review	Not Implemented
14	12	1	0	0	1

Implemented

The Commission recruitment and diversity-related recommendations are approved by the Board. These include building recruitment-oriented partnerships with key segments of the Fairfax County community, such as interfaith organizations and School Career Centers; expanding the Explorer and Cadet programs to include a more diverse pool of participants; developing referral incentives for current employees; training recruitment and selection officers about implicit bias; creating a diverse Selection Review Committee that includes community leaders; and increasing resources to reduce length of time required to conduct background investigations and polygraphs. The officer selection process should be more rigorously attentive to transparency, fairness and equity. Finally, the Board is expected to continue to ensure the competitive salaries and benefits needed to secure and maintain a diverse workforce.

Not Approved or Implemented

The County will not seek to enter into recruitment agreements with Cadets.

MENTAL HEALTH AND CRISIS INTERVENTION

The County has adopted numerous Commission recommendations with regard to mental health and crisis intervention. Police officers have increasingly become the first responders when a citizen is experiencing a mental health crisis. Because of the historical interrelationship of such emergencies and use of force incidents, the Commission recommended de-escalation techniques and the diversion of individuals who are experiencing such crises into treatment rather than incarceration and prosecution.

As Table 3 reflects, the County adopted the Commission the preponderance of the recommendations regarding mental health and crisis intervention.

Table 3. Mental Health and Crisis Intervention Recommendation Implementation

Total	Implemented	Implemented (with Modifications)	In Progress	Under Review	Not Implemented
26	8	2	13	2	1

Implemented

- Fairfax County is fully implementing the “Memphis Model” for mental health crisis intervention. Known as "Diversion First," the initiative has 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.

- Instead of incarceration, the Fairfax-Falls Church Community Services Board now operates the Merrifield Crisis Response Center (MCRC) where police are able to transfer custody of nonviolent offenders who may need mental health services to a police officer or deputy sheriff who are trained in crisis intervention (CIT). In less than a year, Fairfax County went from having a limited diversion process to launching MCRC, mostly by leveraging existing resources.

- A team of law enforcement officers are based in the MCRC 24 hours a day, seven days a week to accept custody of a person experiencing a crisis so that the patrol officer can get back on the street quickly. Co-locating Fairfax County Police Officers and Fairfax County Deputy Sheriffs in this setting has set a countywide precedent of collaboration.

- Though not yet fully implemented, hundreds of people experiencing a mental health crisis have been transported to the Merrifield Crisis Response Center where police are able to transfer custody of nonviolent offenders needing mental health services rather than incarcerate them.

- CIT training is aimed at changing the way law enforcement and the judicial system interact with people who have intellectual or developmental disabilities. Fairfax County police officers and deputy sheriffs receiving 40 hours of state-certified training to learn about the challenges of living with a mental illness and how to de-escalate crisis situations, both in the community and in the jail. 100% of all dispatchers receive at least eight hours of CIT training.

- CIT trained public safety personnel are 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.

- The County is deploying the Fairfax-Falls Church Community Services Board (CSB) Mobile Crisis Unit (MCU) to strategic locations in Fairfax County. The MCU provides emergency mental health programming and on-scene evaluation, treatment, and crisis intervention. One MCU is deployed and a second will soon be added to further the county's capacity in the field to provide emergency mental health services.

- The BOS, CSB, Judiciary, General Assembly, and Sheriff's Office are collaborating to implement a community-wide system of care overhaul using the national initiative known as "Stepping Up." FCPD maintains a public outreach program and materials to increase public awareness.

- A mechanism has been devised for oversight of mental health/substance use/justice services — *i.e.,* metrics for success are being devised and pertinent supporting data are being collected to effectively measure the progress and impact of CIT programs.

Under Review

- Fairfax County is still evaluating the recommendation to increase language cultural competency to better serve non-English speaking justice-involved individuals.

- While approved for partial funding, full implementation of the opening of strategically located crisis assessment sites, mobile crisis units, and the creation by the judiciary of mental health adult and juvenile court dockets will require future budgetary considerations.

Not Implemented

- Mental Health Unit officers will not wear civilian clothing and use unmarked during the course of their duties to avoid unintentionally escalating a mental health crisis.

USE OF FORCE

The Commission found that FCPD use of force policies should be consolidated, clearer and more concise, and reinforce the sanctity of human life and constitutional limits of policing in a democratic society. Further, the Commission called for reforms related to equipment, practices and culture and increased accountability in the use of SWAT.

As Table 4 reflects, the County adopted a significant majority of the Commission recommendations regarding UOF policies, programs and practices, but also rejected several of them.

Table 4. Use of Force Recommendation Implementation

Total	Implemented	Implemented (with Modifications)	In Progress	Under Review	Not Implemented
68	49	6	5	1	7

Implemented

- Specific changes to FCPD UOF policies and practices are now incorporated, and officers are being trained and evaluated against these updated standards and expectations. The revised policy raises the bar on the permissible use of force by requiring that it not only be "reasonable" but "objectively reasonable." "Objectively reasonable" means that another police officer, if standing in the shoes of the officer applying force, would also reasonably perceive the need to apply a comparable level of force in the same circumstance. The revised policy also reinforces a measured use of force by resorting, where feasible, to first use of less-lethal and non-lethal weapons, such as the ECW.

- Other approved changes to FCPD practices address the training of officers in the use of firearms; incorporate into police officer basic and in-service skill development the use of de-escalation, tactical retreat and verbal interaction as alternatives to use of force, as well as crisis-intervention; direct the design of threat assessment checklists for planning of SWAT and other high-risk operations; require the conduct of post-incident reporting and lessons-learned analysis; direct the collection and analysis of incident data; specify when medical treatment is to be provided; strengthen community policing; direct how to work with vulnerable populations (such as children and the elderly); promote a "duty-to-intervene" organizational culture; and maintain "hire-to-retire" assessments of officers' fitness to serve.

- One of the most far-reaching Commission UOF recommendation is to deploy BWCs for use by all police officers and SWAT members. These cameras are to complement the dashboard cameras now mounted in each Fairfax County police patrol vehicle. While a potential aid to criminal prosecution, a BWC's equally important contribution is to foster greater transparency and the accountability of all parties during the interactions of the police with the public. The County is methodically evaluating the potential use of body worn camera technology, including conducting a pilot project that deployed cameras in three of the County's nine magisterial districts. Key considerations are legal and operational protocols, privacy, data security and cost.

- We urge the Board, after due consideration of the results of the pilot project and with the opportunity for public participation, to implement the Commission's recommendation.

- Furthermore, in order to ensure transparency and compliance with FCPD policy and directives, we recommend that the Independent Police Auditor be instructed by the Board of Supervisors to audit the FCPD's use of BWCs (including random review of BWC footage as PERF has recommended) and to provide an annual report to the Board and the public setting forth the Auditor's findings and recommendations.

- Vehicle pursuit policy is now more restrictive, but does not – as the Commission recommended -- limit officer discretion to pursue only fleeing vehicles where reasonable suspicion exists that a violent felony has been committed. A significant refinement is that supervisors are more explicitly required to assume oversight of any vehicle pursuit as soon as he/she can do so safely and to independently confirm that the need for immediate apprehension outweighs the risks of potential harm arising from the pursuit. Further, the Police Training Academy's Emergency Vehicle Operations Center has reviewed every pursuit on a monthly basis since October of 2017. Also, per a new *Pursuit General Order*, the Academy held its first in-depth pursuit review with a newly chartered *Pursuit Review Committee*. The Committee recently reviewed seven randomly selected pursuits for lessons that can be learned and translated into improved training and tactical operations. However, we are concerned about continued lack of public transparency regarding the vehicle pursuits undertaken by police officers.

- After a Departmental study and review by the Board, the precision immobilization technique, which uses a police vehicle to end a pursuit, will continue to be a permitted use, but only by officers who have been trained and achieved a demonstrated competency in its use.

- The demographic data about the suspects in all use of force incidents and in-custody deaths will be collected and publicly reported 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.

- Data will be collected and publicly reported online for all uses of force that result in death specifically for purposes of determining (a) whether the actions taken or not taken conformed to FCPD policies and procedures; (b) prior instances of use of force by the officer(s) involved and determination of appropriateness; and (c) opportunities for training.

- Timely and consistent information will be reported for all officer involved shootings and lethal incidents, to include 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.

- Data will be collected and an annual statistical report will be published that covers all stops, frisks, citations, arrests, and use of force by district station and magisterial district -- including the race, gender, and ethnicity of the individual involved and note whether the suspect is homeless and/or if a mental health crisis is a factor. The data will include the race, gender and ethnicity of the FCPD officer involved and whether the interaction was initiated by FCPD or by the suspect. The outcome of each incident will be documented and regularly reported to the Board and the public, with the data posted online.

- The FCPD UOF Technical Review Committee, which includes civilian representation, is reconstituted to review selective use of force events, to include the decision to employ UOF, use of de-escalation and alternatives, compliance with law and regulations, as well as administrative, training, supervisory and tactical issues.

Under Review

- FCPD and the CWA are still evaluating whether drug and steroid testing should be required for police officers involved in incidents that result in death or serious injury. The tests should be conducted as soon as possible after the incident but not longer than the time after the incident that drugs or steroids can be detected.

Not Implemented

- Because of privacy concerns, the County will not, on a blanket basis, release disciplinary action information regarding a violation of the UOF policy in a police officer-involved shooting.
- Out of operational concern, the County will not mandate that all detectives and plainclothes officers carry an ECW in their vehicles when on duty.
- The term "excited delirium" has been cleared by the County's medical officer as a medically and physiologically descriptive term and therefore continues to be maintained in the Use of Force General Order 540.
- Testing officers involved in serious use of force incidents for drugs and steroids will not be mandatory.
- A legal advisor position within FCPD will not be established.
- Finally, the Board of Supervisors will not review the Police Chief's determination in lethal UOF cases and go on record with approval or disapproval of the action.

INDEPENDENT OVERSIGHT AND INVESTIGATIONS

The Commission found that civilian oversight promotes public trust and confidence in FCPD, particularly when the use of force by a Fairfax County police officer leads to death or serious injury or with regard to complaints regarding "abuse of authority" or "serious misconduct."

Table 5 reflects that the County adopted the key set of the independent oversight and investigations recommendations, but also rejected a few of them.

Table 5. Independent Oversight and Investigations Recommendation Implementation

Total	Implemented	Implemented (with Modifications)	In Progress	Under Review	Not Implemented
42	22	14	0	1	5

Implemented

- The County approved and implemented Commission recommendations to establish an Independent Police Auditor and a Civilian Review Panel.

- The Board established the position of Independent Police Auditor on September 20, 2016. After an extensive search process, the Board appointed the Auditor in April 2017.

- The Civilian Review Panel was established by the Board on December 6, 2016. The nine members of the Panel were appointed by the Board on February 28, 2017, after a selection process which provided all interested persons and organizations with the opportunity to nominate individuals for the Panel. The Panel drafted bylaws which were approved by the Board, with modifications, on July 11, 2017, and accepted by the Panel on August 3, 2017.

- The Commission assumed that FCPD would formally respond to recommendations from the Auditor and Civilian Review Panel. We understand that FCPD does not believe it has an obligation to do so.

- The Auditor and Panel both have websites with links to complaint forms for use by the public.

Under Review

- The recommendation that the CWA's Office be funded to hire two independent investigators to support criminal investigations within the scope of the Independent Police Auditor has not yet been acted upon. These positions will not receive Board consideration unless requested by the CWA.

Not Implemented

- The Board did not appoint the Auditor to a fixed term of 2 to 5 years. Virginia Code requires that appointments to positions such as that of the Auditor be at will, *i.e.,* the appointment can be terminated with or without cause.

- Further, it is not clear under the Virginia Code whether the Board has the discretion to delegate authority to non-police personnel to conduct criminal investigations. The Auditor will, however, have full access to completed criminal investigations conducted by the Major Crimes Bureau (MCB) for the CWA's Office. The Auditor will also monitor and review IAB investigations within its scope and can request that FCPD provide additional information and materials as may be needed to ensure the thorough completion of administrative investigations.

- Because of similar concerns regarding delegation of authority, the Civilian Review Panel will not investigate complaints, but will instead hold public meetings (rather than public hearings) to review FCPD investigations and will not accept evidence or receive testimony at those public meetings held to review an investigation. The complainant can appear at such meetings to state the reasons for the request for review and can answer the Panel's questions, and representatives of FCPD will appear to review and answer questions about their investigation. The FCPD will conduct any further investigation that the Panel deems necessary.

- Finally, the Board did not approve the Commission's recommendation that an Ad Hoc Police Practices Review Commission be established every five years.

IMPACT OF RECOMMENDATIONS NOT APPROVED

All Commission recommendations do not need to be implemented for the County to be able to declare police reform a success. Indeed, we value the extent to which the County leadership thoughtfully and methodically considered the Commission's recommendations.

We do believe, however, that more is required of FCPD to achieve the level of transparency and information sharing required to meet consistently the "predisposition to release information" standard the Police Chief sets in revisions to the Release of Information, Records and Documents General Order.

On one hand, as an example of its commitment to openness, Fairfax County police released -- after three months -- dashboard camera digital footage of a November 2017 shooting by the U.S. Park Police of McLean resident Bijan Ghaisar following a pursuit on the George Washington Memorial Parkway. While not an FCPD investigation, Police Chief Roessler noted that the video "does not provide all the answers," but indicated he released the video in an effort at transparency.

On the other hand, as a contrary example, significant information – including dashboard camera digital footage – is being withheld from public release because of litigation regarding the December 2017 vehicle pursuit by Fairfax County Police on Centreville Road, which ended in an accident that injured six family members.

FOIA provides the County and FCPD overly broad and categorical discretion to withhold police use of force and police-involved shooting incident-related digital data from cameras, documents and other information. FCPD will have valid reasons for withholding information that might undermine an active investigation or for public safety reasons. But FCPD also has an obligation in a free society to be predisposed toward releasing information; *i.e.,* the default must be to release information, while justification is required to withhold it. There is no more significant lesson to be learned from the Mr. Geer's shooting and the subsequent months of County silence on the status of the investigation.

In our view, the County's FOIA regulations and FCPD's General Order need to be closely aligned and the circumstances where information is withheld from the public must be carefully prescribed. Virginia FOIA broadly exempts certain law enforcement information from being released. The County can, however, limit the use of these exemptions and, when applying them, do so consistently. The County risks losing the public's trust, which it has so diligently and effectively sought to regain through implementing the Commission's recommendations, without more clearly delineating when and why information can be withheld.

Finally, the Board of Supervisors should request that the CWA's Office formally evaluate the Commission's recommendation that two independent investigators be hired to support criminal investigations within the scope of the Independent Police Auditor, including participation in MCB criminal investigations. Because these positions were not requested by the CWA, the matter has not received Board of Supervisor consideration. The Commission believed that the two independent CWA investigator positions would further promote impartiality and objectivity in MCB investigations.

FINAL THOUGHTS & CONCLUSION

The following additional topics warrant County consideration:

1. FCPD should be directed to formally respond to findings and recommendations from the Independent Police Auditor and the Civilian Review Panel. The Commission assumed, but did not explicitly recommend, this expectation. We understand that FCPD does not believe it is obligated to respond. Only the Board can clarify this difference of understanding and should do so if it expects the Independent Police Auditor and the Civilian Review Panel to establish and have credibility within the community.

2. The Board should establish a process that provides the public with an opportunity to comment and be heard on Auditor and Panel findings and recommendations, including the FCPD's responses to the findings and recommendations. Public participation in the process is critical to building and ensuring community trust in the FCPD and the independent oversight established by the Board.

3. The Independent Police Auditor should be authorized to monitor and review investigations of Sheriff Deputies involved in shootings, in-custody deaths, and any UOF incident resulting in death or serious injury.

4. In order to ensure transparency and compliance with FCPD policy and directives, the Independent Police Auditor should be instructed by the Board to audit the FCPD's use of BWCs and to provide an annual report to the Board and the public setting forth the Auditor's findings and recommendations.

5. A data-driven monitoring program should be instituted that fully leverages FCPD's UOF data now being collected in response to the Commission's recommendations. The data should be updated on a more regular basis than annually. As important, the data should be subjected to analysis and a process put in place that engages the public to address any issues the analysis may bring to light. Finally, the monitoring program should fully leverage the capacities of the Independent Police Auditor and Civilian Review Panel.

6. The Chief of Police and his Command leadership should maintain a neutral public posture pending an investigation of a police-involved UOF incident. An incident occurred in the past year, for example, that a bystander captured on video that appeared to involve a number of officers violently subduing an individual at a parade. The video had wide-distribution, as did the Police Chief's press conference in which he asserted that the officers' use of force had followed policy and was justified. A more public-trust building response would be to indicate that the incident would be thoroughly investigated and related information would be released as soon as possible. Because suspects are innocent until proven guilty, neutral language is also the best policy when discussing the basis for a suspect's arrest.

7. The recently chartered internal *Pursuit Review Committee*, directed to be established under a new *Pursuit General Order*, should be expanded to include civilian representation, as is the case for the UOF Technical Review Committee. The *Pursuit Review Committee* will review case examples for lessons learned to inform training and tactical operations. Both Committees should include the Auditor as a member.

With our seven-month Commission experience and two years' focus on implementation, we can state that, while not endorsing all the changes advocated by the Commission, both the letter and spirit of the Commission's recommendations have been embraced by Fairfax County.

Sustained high performance by organizations requires a commitment to continuous improvement and to ensuring that policies and practices evolve to meet the ever-changing world in which we live. The challenges to sustained reform are both daunting and are not to be underestimated. Sustaining and "institutionalizing" the changes in the County's police practices of the magnitude underway requires continued rigorous commitment to reform by the Police Chief, Commanders and Supervisors. As important will be the continued buy-in by rank-and-file police personnel and continued community participation, monitoring and oversight.

APPENDIX
Ad Hoc Commission Implementation Group Biographies

- Shirley A. Ginwright – Ms. Ginwright retired from the Federal government as a senior manager in information technology and cyber security and became a substitute teacher for Fairfax County Public Schools. She served four years as President of the *Fairfax County NAACP* and is a member of the *Fairfax County Chief of Police Diversity Council for Recruitment*. Ms. Ginwright served on the *Fairfax County Ad Hoc Police Practices Review Commission* and chaired its Subcommittee for Recruitment, Diversity, Vetting and Retention. She has subsequently contributed to an *Implementation Group* arranged by the Chair of the Board of Supervisors. She is a member of the *Fairfax County Criminal Justice Advisory Board*; Chair of the *Fairfax County Communities of Trust Committee*; former Chair of the *Virginia State Conference NAACP Criminal Justice Committee*; and past member of the Board of Directors for the *Virginia National Organization for the Reform of Marijuana Laws* (NORML). She was recently appointed by the Governor of Virginia to the *Commonwealth Commission for Diversity, Equality and Inclusion*. She has received the 2015 Martha Pennino Community Service Award, 2016 Citizen of the Year Certificate of Merit, 2016 Lady Fairfax award, and the 2016 FBI Director's Community Leadership Award. Ms. Ginwright is a native of Montgomery, Alabama and holds a Bachelors in Legal Studies and completed work on a Master's Degree in Criminal Justice.

- Mary Kimm – Ms. Mary Kimm is Editor and Publisher of the *Connection Newspapers*, a chain of 15 weekly newspapers and related websites, including 12 hyper-local print editions in Fairfax County, where she has worked in various roles since 1989. Ms. Kimm served on the *Fairfax County Ad Hoc Police Practices Review Commission*, and on three of its five subcommittees, Use of Force, Communications and Independent Oversight and Investigations. She has subsequently been an active contributor to an *Implementation Group* arranged by the Chair of the Board of Supervisors. Her papers won the 2016 Virginia Press Association Award for Journalistic Integrity and Community Service, VPA's top award, for reporting and editorials on police reform. The judges noted, "The [papers] covered the complex issue of police reform from February through December 2016, sparked by the shooting of an unarmed man by a Fairfax County police officer. … The papers focused community attention on the case, particularly on the efforts of citizens and representatives of law enforcement agencies working together on reforming police practice…." Ms. Kimm's editorials have been cited in local efforts to end homelessness, support for nonprofits in the community and increase government transparency on many levels. She also serves on the Governing Board of the *Fairfax County Office to Prevent and End Homelessness*.

- Phillip A. Niedzielski-Eichner – Mr. Niedzielski-Eichner is an energy and national security executive with over 40 years of public sector and corporate leadership experience. He held senior executive service appointments in the U.S. Department of Energy, National Nuclear Security Administration and Nuclear Regulatory Commission and is President of Governmental Dynamics, a benefit corporation. Mr. Niedzielski-Eichner served on the Fairfax County *Ad Hoc Police Practices Review Commission* and chaired its Subcommittee on Use of Force; he has subsequently been an active contributor to an *Implementation Group* arranged by the Chair of the Board of Supervisors. He currently serves on the *Fairfax County Planning Commission* and was twice-elected to the *Fairfax County School Board*. He also served on the *Fairfax County Park Authority Board* and the *Environmental Quality Advisory Council*. He was designated a Fairfax County "Lord Fairfax" in 2017 for his community service. Mr. Niedzielski-Eichner is a 30-year resident of Fairfax County. Originally from Columbus, he received his Masters of Public Administration from Ohio State University.

- Randy K. Sayles -- Mr. Sayles is a retired Denver uniformed police officer and detective and a federal agent. He served as Deputy Assistant Administrator for the US Drug Enforcement Administration. He has over 35 years of cumulative experiences in use of force, both domestically and internationally. As a law enforcement officer, he has both fired his weapon and has been fired upon. He is experienced with the use of all authorized use of force equipment in use by today's police forces, except electronic control weapons or "tasers." He is an active member of the *Fairfax County NAACP*. Mr. Sayles served on the Fairfax County *Ad Hoc Police Practices Review Commission*, including on the Use of Force and Independent Oversight and Investigations Subcommittees, and has subsequently been an active contributor to an *Implementation Group* arranged by the Chair of the Board of Supervisors. He is a member of the *Fairfax County Civilian Review Panel* established by the Board of Supervisors. Mr. Sayles was a recipient of the Fairfax County 2016 Environmental Excellence Award and was honored at *Fairfax County NAACP*'s 100th anniversary celebration for his lifetime of service.

- Marcus Simon -- Delegate Simon is a lifelong resident of Fairfax County. Early in his public service career, Delegate Simon served as an officer in the U.S. Army Judge Advocate General's Corps, earning the rank of Army Captain and serving as a prosecutor and also as a part time Special Assistance United States Attorney. He is a co-founder the Law Firm of Leggett, Simon, Freemyers & Lyon and EKKO Title, a real estate settlement, title, and escrow company. First elected to the House of Delegates in 2013, Delegate Simon won re-election last year for another two-year term. He currently serves on the *House Committee on Courts of Justice, the House Committee on Militia, Police, & Public Safety, and the House Committee on Science & Technology*. The 53rd House District, which he represents, includes the entire City of Falls Church and parts of Fairfax County. Delegate Simon served on the *Fairfax County Ad Hoc Police Practices Review Commission* and chaired its Subcommittee on Mental Health and Crisis Intervention; he has subsequently been a contributor to an *Implementation Group* arranged by the Chair of the Board of Supervisors.

- David Statter – Mr. Statter runs STATter911 Communications, LLC. STATter911 Communications focuses on strategies for handling reputation issues and crisis communications. He was a reporter for 25 years at WUSA-TV in Washington, D.C. Mr. Statter is also a principal at EventC2, LLC, a Delaware based emergency planning and event management consulting group and is also a partner in First Arriving Emergency Services Network. Mr. Statter served on the *Fairfax County Ad Hoc Police Practices Review Commission* and its Communication Subcommittee and has subsequently been an active contributor to an Implementation Group arranged by the Chair of the Board of Supervisors

- Adrian L. Steel, Jr. – Mr. Steel is a Senior Counsel with the law firm Mayer Brown LLP in Washington DC. 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, including the ABSCAM investigation. 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. The commission made recommendations to then-FBI Director Robert Mueller for enhancements to the FBI's policies and practices in countering international and domestic terrorism consistent with the public's Constitutional and individual privacy rights. Mr. Steel served on the *Fairfax County Ad Hoc Police Practices Review Commission* and on two of its five subcommittees, Use of Force and Independent Oversight and Investigations; he has subsequently been an active contributor to an Implementation Group arranged by the Chair of the Board of Supervisors. As its first chairman, he led the effort to stand-up the newly established *Fairfax County Civilian Review Panel* authorized by the Board of Supervisors. Mr. Steel is a 40-year resident of Fairfax County. Originally from St. Louis, he is a graduate of the University of Missouri and the University of Michigan Law School.