

**ITEMS FOR CONSIDERATION**  
**IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM**  
**2019 VIRGINIA GENERAL ASSEMBLY**

**October 23, 2018**

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## **HUMAN SERVICES – PEDIATRIC MENTAL HEALTH ACCESS**

### PROPOSAL:

Support the establishment of a pediatric mental health access program in Virginia.

### SOURCE:

Fairfax-Falls Church Community Policy and Management Team  
August 2018

Fairfax-Falls Church Community Services Board  
August 2018

### BACKGROUND:

According to the Centers for Disease Control, it is estimated that as many as 20 percent of children experience a mental disorder in a given year, and an estimated \$247 billion is spent each year on treatment and management of childhood mental disorders. Because of their impact on children, families, and communities, children's mental disorders are an important public health issue. Early treatment is particularly critical, as it can help address a child's current difficulties and can also help prevent more serious problems in the future.

Unfortunately, according to the 2018 State of Mental Health in America report, Virginia ranks 47<sup>th</sup> nationally in mental health services for children under 18. In fact, 55,000 Virginia children experienced a major depressive episode and did not receive mental health treatment. This is true even though mental health issues that affect individuals throughout their lifespan often begin in childhood – approximately 50 percent of psychiatric illnesses begin by age 15 and 75 percent begin by age 24. This challenge is exacerbated by the fact that Virginia faces a significant shortage of child psychiatrists, with only 13 child psychiatrists per 100,000 children. Additionally, many primary care providers (PCPs) have limited knowledge of behavioral health care, making identifying and treating a mental health issue extremely difficult.

The development of a pediatric mental health access program in Virginia could enhance the ability of PCPs to address such issues by providing access to care coordination and behavioral health consultation services. In September 2018, the Virginia Department of Health (VDH) was awarded a federal grant to develop a pediatric mental health access program (\$485,000 per year for five years, with a 20 percent match requirement per year), though additional funding may be needed in future years.

The federal grant will allow VDH to establish the Virginia Mental Health Access Program (VMAP), creating a network of mental health teams to support PCPs providing pediatric care. Five regional VMAP teams (including psychiatrists, psychologists, social workers, and care coordinators) that are affiliated with academic pediatric training programs at regional institutions (including the Inova Kellar Center in Fairfax) have agreed to

participate. The VMAP teams will provide telephone, video, and e-consults when a child or adolescent presents with mental health concerns. Individuals with more complex needs requiring a non-urgent in-person evaluation will be able to make appointments through the system, and care coordination services will be provided to PCPs to help them identify and obtain accessible mental health services for pediatric patients and families. It appears that VDH is planning to roll out this program sequentially, likely starting in Southwest Virginia, so implementation in Northern Virginia may not occur in the early stages of the program.

Similar pediatric access programs, such as the Massachusetts Child Psychiatry Access Project (MCPAP), have shown that enhancing collaboration between PCPs and pediatric mental health specialists substantially improves access to pediatric mental health care. A survey of PCPs participating in MCPAP found that the percentage of PCPs who agreed or strongly agreed that there was adequate access to a child psychiatrist increased dramatically (from 5 percent to 33 percent), as did the percentage of PCPs who agreed or strongly agreed that they were able to meet the needs of children with psychiatric problems (from 8 percent to 63 percent) after the program was initiated.

RECOMMENDATION:

Direct staff to monitor the Commonwealth's implementation of this program and any related legislative or budget items that are considered by the 2019 General Assembly, in order to bring items to the Board for consideration during the session.

## **TRANSPORTATION – STORMWATER FACILITIES**

### **PROPOSAL:**

Evaluate initiatives to ensure that the Virginia Department of Transportation (VDOT) accepts and maintains innovative stormwater facilities for urban and redevelopment areas, particularly in Fairfax County.

### **SOURCE:**

Fairfax County Board of Supervisors  
October 2018

### **BACKGROUND:**

Enhancing opportunities for redevelopment and investment in older commercial areas has long been a Fairfax County priority. The County's commercial revitalization districts and areas were created to encourage the improved economic viability, appearance and function of these areas through quality new development, rehabilitation, and/or redevelopment, which often requires the use of innovative strategies.

Transportation projects are vital components of such redevelopment efforts, including improving traffic, enhancing transit options, and increasing pedestrian and bike facilities, in order to provide a variety of safe, reliable, effective, and interconnected transportation modes. Such projects also require significant attention to stormwater, as the drainage of stormwater away from travel lanes keeps roadways safe, helps protect investments in the transportation network, and provides substantial environmental and sustainability benefits. In Virginia, VDOT is responsible for road construction and maintenance, including the stormwater management facilities in most counties, including Fairfax County, and VDOT is required to implement a stormwater management (SWM) program that protects the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from roadway projects.

However, to address stormwater as part of a transportation project, VDOT often relies on traditional facilities (such as large, fenced retention ponds) that can be unsightly, particularly in revitalization areas that are being redesigned as more urban, welcoming, and bustling communities. Fortunately, as stormwater management has evolved, so too have stormwater facilities, often yielding higher quality water treatment in a facility that is more visually appealing. When VDOT is managing a transportation project, they occasionally utilize such innovative stormwater facilities if other options are not available. However, if the County is managing the transportation project, VDOT will not accept these same facilities for maintenance, preferring to construct fewer different types of facilities throughout the Commonwealth, regardless of visual impact to a particular community.

Exacerbating the potential unsightliness of placing such a facility in a redevelopment area is the fact that VDOT does not provide substantial maintenance to traditional retention ponds and other approved facilities. This is also the case for VDOT maintenance across the board – from pavement conditions on secondary roads to infrequent grass cutting. In Northern Virginia, the challenge is even greater, as VDOT’s Northern Virginia transportation district does not generally receive an adequate level of funding from the Highway Maintenance and Operations Fund, which can result in substandard road conditions and other deficiencies that discourage the use of all available transportation components (including sidewalks and bike trails). In addition, the lack of regular maintenance leads to unsightly stormwater management facilities that results in the entire corridor appearing distressed.

The 2010 General Assembly acknowledged that an urban area like Fairfax County often necessitates different transportation design standards when it passed HB 222 (Watts), which directed VDOT to work with the County and the Department of Rail and Public Transportation to develop new secondary road design standards for urban development areas. The County then successfully collaborated with the Commonwealth to create urban street standards for Tysons, which have now been incorporated as options for other parts of the County and the Commonwealth. A similar approach could be used for the creation of more flexible urban stormwater facility design and maintenance techniques, particularly because VDOT is already required (when practicable) to meet a locality’s criteria for stormwater treatment if that locality has adopted more stringent SWM technical criteria than what is required by state regulations. The County currently has several areas undergoing development or redevelopment, including Embark Richmond Highway, which could benefit substantially from such an approach.

RECOMMENDATION:

Direct staff to research options for improving urban stormwater facility design and maintenance standards and coordination with the Commonwealth, including potential legislative options, for discussion with the Board of Supervisors at the November Legislative Committee meeting.

## **PUBLIC SAFETY – PROTECTIVE ORDERS AND WEAPONS**

### PROPOSAL:

**Proposal A:** To further protect victims of domestic violence and sexual assault, support actions to clarify current code and recommend new language to Virginia Code § 18.2-308.1:4 to require the immediate surrender of firearms (in addition to current concealed gun permits) directly to law enforcement while subject to a protective order (PO). Current law permits PO respondents to surrender their firearms to a family member or friend within a day's time rather than directly to law enforcement. *Adopted by the DVPPCC in July 2018*

**Proposal B:** Extend the prohibition on knowingly possessing a firearm while subject to a PO to include victims beyond intimate partners, family members and members of the same household.

**Proposal C:** Allow for greater judicial discretion in granting an increase in the time period of POs beyond the current two years to victims of domestic and sexual violence, assault and battery, and stalking.

**Proposal D:** Strengthen the legal mechanisms for surrender of firearms by family abuse PO respondents.

### SOURCE:

Domestic Violence Prevention, Policy, & Coordinating Council (DVPPCC)  
July 31, 2018

Fairfax County Board of Supervisors  
August 27, 2018

### BACKGROUND:

#### *Overview of Protective Orders*

A protective order (PO) is a civil order issued by a magistrate or judge to protect the health and safety of an abused or threatened person and his/her family or household members (pressing criminal charges is not required to obtain a PO). The person needing protection and filing for a PO is the "petitioner," and the person the PO is filed against is the "respondent." A family abuse PO is issued on the basis of family abuse, while a non-family abuse PO addresses people who are not in a family or household relationship. The non-family abuse PO used to address only cases of stalking, but it is now available to anyone who meets the statutory requirements. POs involving family abuse or a party under 18 are filed through the Juvenile and Domestic Relations District Court (JDRDC), and requests for non-family abuse POs are made through the General District Court (GDC). Both types of POs can be issued as emergency (EPO), preliminary (PPO), or for

up to two years (Two-Year PO). EPOs expire at 11:59 p.m. on the third day following issuance if the court is in session or, if the court is not in session, at 11:59 p.m. on the next day that the court is in session. PPOs are in effect for up to 15 days from the date of issuance. A Two-Year PO (sometimes called a “final” or “permanent” PO), as its name suggests, is issued for a specified period of time up to a maximum of two years, but may be extended an additional two years at the petitioner’s request if a judge deems it necessary – there is no limit to the number of extensions that can be granted by a judge.

In Fairfax County, the Sheriff’s Office is the primary law-enforcement agency responsible for serving POs and entering them into the Virginia Criminal Information Network (VCIN), with the exception of EPOs obtained by Fairfax County Police Department (FCPD) officers. FCPD becomes involved when an FCPD officer makes an arrest for assault against a family or household member, or when an officer has probable cause to believe that a danger of family abuse exists. The officer then submits a petition for an EPO to a magistrate (pursuant to FCPD General Order 601.4) – if approved, the officer attempts to serve the respondent as quickly as possible. Though FCPD primarily serves EPOs, FCPD may also serve PPOs or Two-Year POs.

Once a PO has been served, the respondent is responsible for abiding by the terms of the order, which may contain provisions prohibiting the respondent from visiting the petitioner’s property, contacting the petitioner, and/or committing further acts of violence, among others. Respondents are also prohibited from purchasing or transporting any firearm while the order is in effect, and those with a concealed handgun permit are prohibited from carrying concealed firearms during the order (their permit must be surrendered to the court entering the order) – violations are a class 1 misdemeanor. Additionally, a respondent who violates any provision of a PO while armed with a firearm or other deadly weapon is guilty of a Class 6 felony.

### *2016 General Assembly Compromise*

Numerous bills on this topic have been considered by the General Assembly (GA) over the years, typically with little success, as has been the case with gun control legislation overall. However, the 2016 GA reached a bipartisan compromise on gun legislation, which included the addition of a provision prohibiting respondents to family abuse Two-Year POs from knowingly possessing firearms (with an exception for the 24 hours after being served, to allow the respondent to sell or transfer any firearms to a person who is not otherwise prohibited by law from possessing such firearm) – a violation constitutes a Class 6 felony (**HB 1391** (Murphy)/**SB 49** (Howell)). During the 2016 GA, some advocacy groups raised concerns that **HB 1391/SB 49** did not set forth a process for the surrender of firearms.

To implement this legislation (which took effect July 1, 2016), a Fairfax County staff work group developed a process, including a form for JDRDC to provide to family abuse Two-Year PO respondents, which notifies respondents that they may surrender their firearms to the Sheriff’s Office to meet the terms of the PO (the Sheriff’s Office has developed a form as well). From July 2016 – August 2018, the Sheriff’s Office has received a total of

26 firearms surrendered by a respondent to a family abuse PPO (pursuant to a judge's order) or Two-Year PO. It is important to note that data is not available on the number of firearms transferred or sold to other entities, as the law provides no mechanism to capture such information.

#### *Other Legislation Related to Protective Orders*

In recent years, the GA has studied and considered numerous bills relating to POs. Following a 2010 Virginia State Crime Commission study, the 2011 GA passed legislation making POs issued by GDC more similar to those issued by JDRDC and eliminating the requirement that a criminal warrant be issued to obtain a PO, among other provisions. More recently, the 2018 GA considered numerous bills relevant to the aforementioned proposals. **HB 1335** (Bourne)/**SB 952** (Stuart) would have provided authority for the court, after finding a person guilty of certain felonies including murder and rape, to enter a PO for any period of time, including for the lifetime of the defendant. A pair of identical bills (**HB 651** (Murphy)/**SB 797** (Howell)) would have applied the prohibition on knowingly possessing a firearm to non-family abuse Two-Year PO respondents. All measures were unsuccessful.

Another bill considered by the 2018 GA sought to address concerns voiced by stakeholders about gaps in the 2016 law and different implementation approaches throughout the state – **SB 811** (Marsden) would have codified a process for family abuse PO respondents' surrender of firearms. The bill would have required the court to order a family abuse Two-Year PO respondent to surrender their firearms to local law enforcement, or sell or transfer their firearms to a dealer or any other person not prohibited from possessing firearms, including providing a written certification once they were no longer in possession of any firearms. Local law-enforcement agencies would have been required to keep surrendered firearms for the duration of the order. Senate Courts of Justice Committee members expressed concern about this approach, and sent the bill to the Committee on District Courts for study – that Committee is scheduled to hear a staff briefing in October 2018.

#### *Fairfax County Cases*

To further shed light on the issue of PO violations and possession of firearms, data from other Fairfax County agencies is helpful, although the existing data has significant limitations.

- FCPD identified three cases (one related to family abuse, one related to child protective services, and one unknown) from July 2016 – August 2018 involving an active PO prohibiting possession or transportation of a handgun and a respondent in possession of a handgun.
- Fairfax County JDRDC recorded 12 preliminary PO violations of all types from January – July 2017 (the number of total firearm-related violations is unknown), with an additional complaint recorded under the prohibition related to firearms and PO respondents.

- Fairfax County GDC identified a total of 75 PO violations from August 5, 2015, through mid-September 2018 – five were for purchasing and transporting a firearm (violations for possession of a firearm are not included, as there is no prohibition on possession of firearms for non-family abuse Two-Year PO respondents).

Update for October 23, 2018, Legislative Committee

Staff conducted some initial outreach and further analysis on Proposals A, B, and C, and updates on these proposals and the staff work group are provided below.

**Proposal A:** Removes the family abuse Two-Year PO respondent's ability to sell or transfer their firearm(s) to anyone legally allowed to possess firearms within 24 hours, instead requiring that respondents immediately surrender firearms (in addition to current concealed gun permits) directly to law enforcement.

**Update:** As previously mentioned, during the 2018 GA session, the GA sent a bill on this topic (**SB 811**) to the Committee on District Courts for study. On October 16, 2018, that Committee approved sending a report to the Senate that analyzes the bill from an implementation perspective, highlighting some challenges that should be addressed for the bill to move forward. Additional strategies to improve implementation of the 2016 law prohibiting family abuse Two-Year PO respondents from knowingly possessing firearms are expected to be considered by the 2019 GA.

During the September 18, 2018, Legislative Committee meeting, the Board asked staff to explore options to address the logistical challenge of requiring immediate surrender of firearms. One possibility would be to require that firearms be surrendered directly to law enforcement as soon as practicable as determined by the court, but no later than 24 hours after the PO is served – this would provide judges the ability to decrease the 24-hour time window based on the circumstances of individual cases, while also providing guidance for law enforcement seeking to carry out the court order.

Staff also looked to the requirements of other states in considering these questions, though some of these approaches could be difficult to implement in Virginia. For example, New York provides authority for the court to require the immediate surrender of firearms owned or possessed by the respondent upon finding that the respondent poses a substantial risk to the petitioner, and Hawaii has a requirement that law enforcement apply for a search warrant to seize the respondent's firearms if law enforcement is unable to locate firearms registered to the respondent or known to the petitioner. However, it is important to note that New York has a hand gun registry and requires registration of pre-ban assault weapons, while Hawaii requires registration of all firearms – since Virginia does not have such a registry, the courts and law enforcement would not necessarily know what firearms a PO respondent owns.

Finally, staff have identified some possible strategies to improve implementation of the 2016 law that do not require legislation, such as checking the Virginia State Police's firearms database to see if any records suggest that the respondent

possesses a firearm. While the database has significant limitations (it only includes one year of data on firearms purchased from a Federal Firearms Licensed dealer), it could be a helpful starting point, providing a basis for law enforcement to follow up with PO respondents about the disposition of any firearms they own.

**Proposal B:** Extend the prohibition on knowingly possessing a firearm while subject to a PO to include victims beyond intimate partners, family members and members of the same household.

**Update:** Analysis of case law on legislation and regulation of firearms suggests that such a law may face legal challenges, requiring the government to provide evidence that the law is necessary to achieve a substantial government objective. Such evidence is available to support the 2016 law prohibiting family abuse Two-Year PO respondents from knowingly possessing firearms, but it is not clear if similar evidence is available for non-family abuse Two-Year POs, particularly because non-family abuse POs cover diverse relationships (including workplace and neighbor relations). As previously mentioned, the GA has considered this proposal in previous years; at present, it is unclear if bills on this topic will be introduced in the 2019 GA.

**Proposal C:** Allow for greater judicial discretion in granting an increase in the time period of POs beyond the current two years to victims of domestic and sexual violence, assault and battery, and stalking.

**Update:** Fairfax County data on cases in which multiple extensions have been sought is not readily available. Anecdotally, staff report that few extensions have been sought in GDC since the law allowing for extensions took effect in 2010. Staff anticipate that bills on this topic will be introduced in the 2019 GA, which could be brought to the Board of Supervisors for consideration during the session.

**Staff Work Group:** As previously discussed, Fairfax County staff are re-convening the work group that was formed after the passage of the 2016 law to identify non-legislative strategies to improve implementation. The work group will start meeting this fall to consider opportunities for process improvements and explore administrative “fixes” to firearm surrender protocols. The work group also will work to strengthen data collection, as directed by the Legislative Committee on September 18, and other process improvements, and will provide updates at future meetings of the Board of Supervisors’ Public Safety Committee.

Recommendation:

Direct the staff work group to analyze incorporating the Virginia State Police’s firearms database into the County’s process for implementing the 2016 law, and to review resources available on other states’ implementation of similar laws, and provide updates at future meetings of the Board of Supervisors’ Public Safety Committee. Also, direct staff to monitor for introduction of specific legislation in 2019, in order to bring related bills to Legislative Committee for consideration by the Board of Supervisors. Finally, direct

staff to add language on protective orders (see yellow highlighting below) to the Domestic and Sexual Violence position in the Human Services Issue Paper.

*Domestic and Sexual Violence*

**Support additional state funding to increase the capacity for communities to implement prevention and intervention services to eliminate domestic and sexual violence. Also support legislation to strengthen family abuse protective orders, particularly the implementation and enforcement of the law prohibiting abusers from knowingly possessing firearms.**

Research shows that domestic and sexual violence are major public health problems with serious long-term physical and mental health consequences, as well as significant social and public health costs. Witnessing domestic violence is considered an adverse childhood experience and can be extremely problematic for children, leading to depression, anxiety, nightmares, and academic disruptions; both female and male adults with lifetime victimization experience are significantly more likely to report chronic issues (including headaches, pain, and sleep problems) as well as long-term health problems (including asthma, diabetes, anxiety, depression, and alcohol/drug abuse). The cost of intimate partner violence exceeds \$8.3 billion per year, including \$5.8 billion spent on medical services and \$2.5 billion attributed to lost productivity. In FY 2018, Fairfax County's Domestic Violence Action Center served 998 victims, but the impacts were even more profound, as they also brought with them their 1,365 children, mostly under the age of 12. Unfortunately, the demand for services exceeds available resources, and 142 households in need of emergency shelter as a result of domestic violence were turned away in FY 2018. Furthermore, in Fairfax County there were 95 families (including 187 children) who were homeless due to domestic violence on the night of the 2018 Point in Time Count.

Protective orders for domestic and sexual violence victims can be an important tool in preventing perpetrators from further abusing or threatening victims and their family members. In 2016, the GA enacted legislation to strengthen the effectiveness of family abuse protective orders by prohibiting abusers from knowingly possessing a firearm for the duration of the order; however, additional legislative changes to improve implementation and enforcement would be helpful.

Additionally, intervention services help families rebuild their lives, and prevention services help break the intergenerational cycle of violence in families. Although the state has increased funding for such services in recent years, additional funding is necessary to meet the need for services including:

- Therapeutic and psycho-educational interventions for children, and parenting classes for both victim and offender parents;
- Community-based advocacy and counseling services for victims of sexual and domestic violence; and,
- Sexual violence prevention programs, especially those targeted to K-12 students to educate youth on consent and healthy relationships.

*(Updates and reaffirms previous position.)*