

**Summary of the Board of Supervisors’
Public Safety Committee Meeting
May 10, 2016**

Members in Attendance:

Chairman Sharon Bulova, Chairman
Supv. Penelope Gross, Mason District (Vice Chairman)
Supv. John C. Cook, Braddock District (Committee Chair)
Supv. John W. Foust, Dranesville District
Supv. Pat Herrity, Springfield District
Supv. Catherine M. Hudgins, Hunter Mill District
Supv. Jeff C. McKay, Lee District
Supv. Kathy L. Smith, Sully District
Supv. Linda Q. Smyth, Providence District
Supv. Daniel G. Storck, Mount Vernon District

County Executives:

Edward L. Long, Jr., County Executive
David M. Rohrer, Deputy County Executive

Agenda:

<http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2016/may-10-public-safety-committee-meeting-agenda.pdf>

The meeting was called to order at 10:06 A.M. by Supervisor John Cook, Committee Chair.

Use of Force Policy and Recommendations Discussion

Two documents that were part of the discussion on this issue are linked here:

<http://www.fairfaxcounty.gov/bosclerk/board-committees/meetings/2016/perf-review.pdf>

<http://www.policeforum.org/assets/30%20guiding%20principles.pdf>

- Tom Wilson, Police Executive Research Forum (PERF), discussed national trends in police Use of Force related matters. Sanctity of life and de-escalation are two of 30 defining principles PERF has developed. Fairfax County is at the forefront of this issue. Have been some issues to work through. Example: implementing proportionality. Use of critical decision model is also noted. Next steps – creating training and guidelines. Hope to share Fairfax experience with agencies across the nation. The statements listed below are sourced from Mr. Wilson’s presentation.

➤ In March 2016, PERF released *30 Guiding Principles on Use of Force*.

- Thirteen of the principles deal with embracing the sanctity of human life, adopting de-escalation as agency policy, establishing a duty to intervene with officers who may be using excessive force, prohibiting firing at moving vehicles, and documentation and reporting requirements for use-of-force incidents.
- Eleven of the principles relate to training and tactics regarding use of force. Focus is on de-escalation strategies (especially communications); using distance, cover, and time when appropriate; ensuring a strong supervisory response; and training police officers as teams when possible.
- Four of the principles pertain to equipment, in particular re-examining departmental use of less-lethal options such as chemical spray and Electronic Control Weapons. PERF also recommends that agencies make greater use of personal protection shields to increase officer safety during de-escalation efforts.
- The last two *Guiding Principles* involve training for call-takers and dispatchers, who are critical to every police response, and educating family members of people with mental illness on what to report when they call 9-1-1.
- Challenge to develop policies, practices and training on use of force that go beyond the minimum legal requirements of the 1989 US Supreme Court case *Graham v. Connor* that set the standard for objective reasonableness.
- PERF recommends the concept of proportionality - using only the force necessary to mitigate the threat, ensure (safety permitting) the review of other options, and consider if officer response is appropriate based on the totality of the situation.
- The guide stresses the implementation of a Critical Decision-Making Model and process into an agency's training and practices. PERF's five-step Critical Decision-Making Model is designed to meet the needs of police agencies seeking a better way to teach officers how to think critically about various situations and how to make decisions that are more effective and safe.
- PERF favorably recognizes that information regarding use of force, officer involved shootings, and complaints against officers can all be reviewed by the public on the Department's web page to maintain community trust.

Brief Update of Re-engineering of Police Department Use of Force Philosophy, Training, and Policies

Chief Roessler briefly discussed his re-engineering effort regarding the Department's Use of Force philosophy, training and policies. Highlighted accomplishments since last Public Safety Committee meeting. Training is ongoing – focusing on sanctity of life - and initial wave will be complete within a few weeks. This training will be done on an annual basis. The Department had an on-site accreditation review by CALEA, and we hope to be awarded national accredited status this July at the CALEA conference. The 2015 Annual Report was posted on the Chief's

web site and the report contains additional information as recommended by the Ad Hoc Commission. The Policy and Directives Change Team is in place and reports directly to the Chief. The team is working to ensure implementation of PERF, Ad-Hoc etc. The Chief presented an overview including radio communications of one recent case where the philosophy of the new training was successful.

Ad Hoc Use of Force Subcommittee Recommendations

Phillip Niedzielski-Eichner, subcommittee chair, discussed the Ad Hoc Commission's Use of Force Subcommittee recommendations. Provided a written copy of his comments to the committee. Discussed committee process and outcomes in nine topical areas. A more comprehensive definition of use of force was recommended and he noted the Chief's work in this area. Also noted the committee's recommendation in support of body worn cameras, but also the significant privacy and legal issues as well as cost implications in this area. Also notes recommendation of additional mobile crisis units. Impressed with level of commitment to implementing the Commission's recommendations. Does not share public perception that implementation is being delayed or deferred. Recommends a concerted effort to lay out a specific project implementation/work plan, detailing complexity of this type of change. The statements listed below are sourced from Mr. Niedzielski-Eichner's comments prepared for his presentation to the Committee.

- The Commission offered a set of recommendations that call for a police philosophy and culture that are rigorously protective of our nation's democratic values, reinforce a reverence for the sanctity of human life, safeguard constitutional rights and respect and protect individual dignity.
- The Commission called upon the Department to assure through its policies and practices that an appropriate balance is maintained between an officer's role as a peacemaker/community guardian and that of a fighter/warrior.
- One aspect of the revised use-of-force policy should be a clarification and confirmation of the "objectively reasonable" standard that guides the constitutional use of force.
- The use-of-force policy should also emphasize de-escalation and crisis intervention strategies and should unambiguously prohibit the use of a "choke hold."
- Several use-of-force recommendations overlapped those specifically focused on communications, mental health, independent oversight and workforce development and performance, each of which has been addressed by the Board such as Diversion First and Communication or will be, such as Independent Oversight, which the Board plans to take up on July 19.
- Relative to the later discussion of communication and transparency, and as it relates to use of force, the subcommittee believed that enhanced

transparency is essential to sustaining or recapturing the public's trust in the Police Department.

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

Officers' Perspective on Use of Force Recommendations

- Det. Sean Corcoran shared an officer perspective. Use of force situations are not always pretty/often chaotic. Need to be careful in crafting policies, and he noted the issue of proportionality being very difficult. Overall frameworks in place are solid. Training is important but much of it is rehashing fundamentals, with similar themes part of the Department's training for 15 years.

Committee Members' Questions and Comments

- Chairman Bulova noted Delegate Vivian Watts in attendance. Also thanked the subcommittee chairs of the Ad-hoc Commission, to include for their continued involvement. Thanked Mr. Niedzielski-Eichner for his comments pertaining to public perception and laying out a specific project plan.
- Supervisor Gross noted that implementation needs to be phased and planned. She commented that Chief Roessler used the term “perishable skills” to emphasize the need for recurrent training. She asked a question about the cost of training in terms of dollars and time, and whether that could be summarized, including backfill, etc. Chief Roessler noted that the PD is operating within funding from the PD's baseline budget.
- Supervisor Herrity noted that this all has a fiscal impact. Either provide the funding or something else will not be done. Expressed concern that the PD does not have enough resources.
- County Executive Long noted 29 new officers and Diversion First funds included in FY 2017 Adopted Budget Plan.
- Supervisor Hudgins asked about the training and whether it takes into account the concerns of minority and community groups that do not feel they have a voice. Chief Roessler responds about the fundamentals of the training. It is a core foundation, and community members helped develop the training syllabus.
- Supervisor McKay stated that a majority of the recommendations in the chart do not have a fiscal impact and many are already being done. Supervisor Cook noted that on June 21, following the scheduled Board of Supervisors' meeting, a lot of the use of force related recommendations should be able to be marked as completed, and he explained the process.
- Supervisor Foust noted that he has seen positive change, and commended Chief Roessler and the department. He asked Supervisor Cook about some specifics on the list that he would like to discuss.
- Supervisor Storck noted that increased communication to the public is desirable.

- Supervisor Cook discussed the draft Action Item. He asked the Board to review over the next week, and to provide comments, revised language, etc. He termed this as similar to the practice of drafting “draft budget guidance.” He plans to have on Board agenda for June 21 for discussion and a vote.

Communications and Information Release Discussion

Supervisor Cook outlines three issues for this topic for the Board to consider as this discussion ensued. First: When/If names of officers are released in Use of Force (UOF) cases. Second: When/if a factual summary of evidence is to be released after a UOF incident. Third: Does FCPD internal/administrative investigation start prior to prosecutorial determination by Commonwealth’s Attorney?

- Tom Wilson, PERF, briefly discussed the recommendations of PERF’s recently completed study, *Review of Information Release Policies and Procedures of the Fairfax County Police Department*.
 - PERF recommends that the Department strive to adopt a culture of transparency and operate under a general presumption that accurate and detailed information should be released to the public and news media as soon as possible following events that occur in the community. The Department should adopt a policy favoring disclosure even it is not necessarily required by Virginia’s FOIA law.
 - During the first 24-48 hours immediately following an officer-involved shooting or other serious incident, the Department should publicly disclose, as soon as possible preliminary facts about the incident, preliminary facts about the officer(s), and an estimated time frame for how and when further information will be released.
 - Within two to five days following an officer-involved shooting or other serious incident, the FCPD should publicly disclose the name of the involved officer unless there are extenuating circumstances, such as credible threats to the officer’s safety.
 - The two-to-five-day period is recommended to give the Department time to conduct a full threat assessment to determine whether publicly releasing the officer’s name would put the officer and/or family members at risk of harm.
 - If the department decides that a credible threat against the officer precludes releasing the officer’s name, it should promptly release a statement that clearly explains the basis for this decision. And it should consider promptly releasing information about the officer’s history, including any prior involvement in an officer-involved shooting, without naming the officer.
 - At the conclusion of an investigation into an officer-involved incident (i.e., after all court proceedings have concluded, or, if there are no legal

actions taken in the case, after the Department's investigation is closed) the Department should publicly release the police reports and supplemental police reports from the criminal investigation, after redacting information as necessary to address privacy concerns.

- The Department should release the findings from administrative or Internal Affairs investigations, but it should not release the full administrative or Internal Affairs investigative files or reports.
- Merni Fitzgerald, chair of the Communication subcommittee provided comments. Transparency and openness must be guiding principles in use of force cases. Favors maximum disclosure with minimum delay.

Prosecutors' Perspective on Information Release

- Raymond Morrogh, Commonwealth's Attorney, provided his perspective on the issues Supervisor Cook raised above. Noted what a prosecutor can and cannot release while a case is open. Allowed to discuss things that are released as part of the public record, no details, no witness statements etc. It is a difficult balancing act.
- It can be problematic to run internal/administrative affairs investigation at same time of criminal case. Noted specific case law in this area, but willing to discuss collaboratively on a case by case basis, while exercising due diligence and caution.
- Would be concerned about setting a specific limit of days before an investigation should be completed. An artificial deadline does not always work, and no decision can be made until all the evidence, facts, and circumstances have been gathered, documented, and considered. Need to be fair to all sides.
- Acknowledged desire to get information out as soon as possible and a carefully worded factual summary may be appropriate to be released.

Officers' Perspective on Information Release

- Det. Sean Corcoran noted the challenges. Getting information out is important, but does not understand why the name release is so critical. Non-identifying information he understands; however, once a name is out, there is a lot that goes along with that (online threats etc.). Transparency is not something that ends at a press conference. Transparency is having contacts in the community etc., and concurs with Supervisor Herrity's comment of earlier about not having enough resources at times to accomplish this.
- MPO Brad Carruthers, FOP, commented on the incredible complexity officers face in use of force situations. Sometimes memory recall is not clear in the immediate aftermath. It is not uncommon for an officer to need three consecutive eight hour sleep cycles for memory of a traumatic incident to gel. Acknowledges that officers are held to a higher standard, but many factors need to be considered including the impact to their families.

Committee Members' Questions and Comments

Supervisor Cook framed the discussion. For the Board's consideration, he offered a 10 day timeframe for decision to release name of officer(s). Proposed summary information be released as soon as possible. When possible, the Office of the Commonwealth's Attorney and Police Department should work closely to allow internal/administrative investigations to simultaneously occur while a prosecutorial determination is being made by the Commonwealth's Attorney.

- Supervisor Gross noted a concern about name release. She asked for information pre and post Geer case of the timeframe between a critical police incident and name release. She also asked for information on the length of an Internal Affairs (IA) investigation considering the impact of having officers on restricted duty has on the officer and the district station's staffing.
- Supervisor Foust asked Tom Wilson and Merni Fitzgerald about their perspective on name release. They are generally consistent, Mr. Wilson summarizing that in today's world, an officer cannot expect to use deadly force and not have their name released.
- Supervisor McKay asked for information on the "risk assessment" completed before the release of an officer's name. Wants to ensure fairness to the officer and the public.
- Supervisor Smith expressed concern about the proposed 10 days when PERF recommends 2-5 days. Information will get out one way or the other.
- Supervisor Storck asked about the standard for use of force. Chief Roessler noted that deadly force is any level of force that is likely to cause death or serious injury, and less-lethal force is that which may result in death or serious injury. Any use of non-deadly force that results in death or injuries that are deemed to be life threatening are investigated as a use of deadly force.
- Supervisor Smith asked why the two draft Board Review of subcommittee recommendations documents that are to be voted on June 21 were not provided earlier. Supervisor Cook explained why these documents were provided at the meeting today and explained the process moving forward.
- Supervisor Bulova noted that this is important work and it requires appropriate time, but acknowledged that some feel the Board is not moving fast enough. It is important to find the right balance.
- Supervisor Cook plans to provide information to the Board about the auditor and independent review functions by approximately June 22 for their review prior to the scheduled July 19 committee meeting.

NOTE - The next meeting of the Public Safety Committee was scheduled for July 19, 2016 from 1:00-3:00 PM, with the scheduled topic a discussion of the Independent Police Auditor and Citizen Review Panel recommendations. That meeting is still scheduled, but on May 17th the Board requested another Public Safety Committee meeting be scheduled to continue the discussion on the issues above. It has been scheduled for May 24, 9 - 10 a.m.

The meeting adjourned at 12:20 P.M.