



2020 Fairfax County Commonwealth's Attorney Resources Report

Bringing our justice system
into balance.



Presented on
Sept 22, 2020 by
Fairfax County
Commonwealth's
Attorney
Steve Descano

This Presentation Explores:

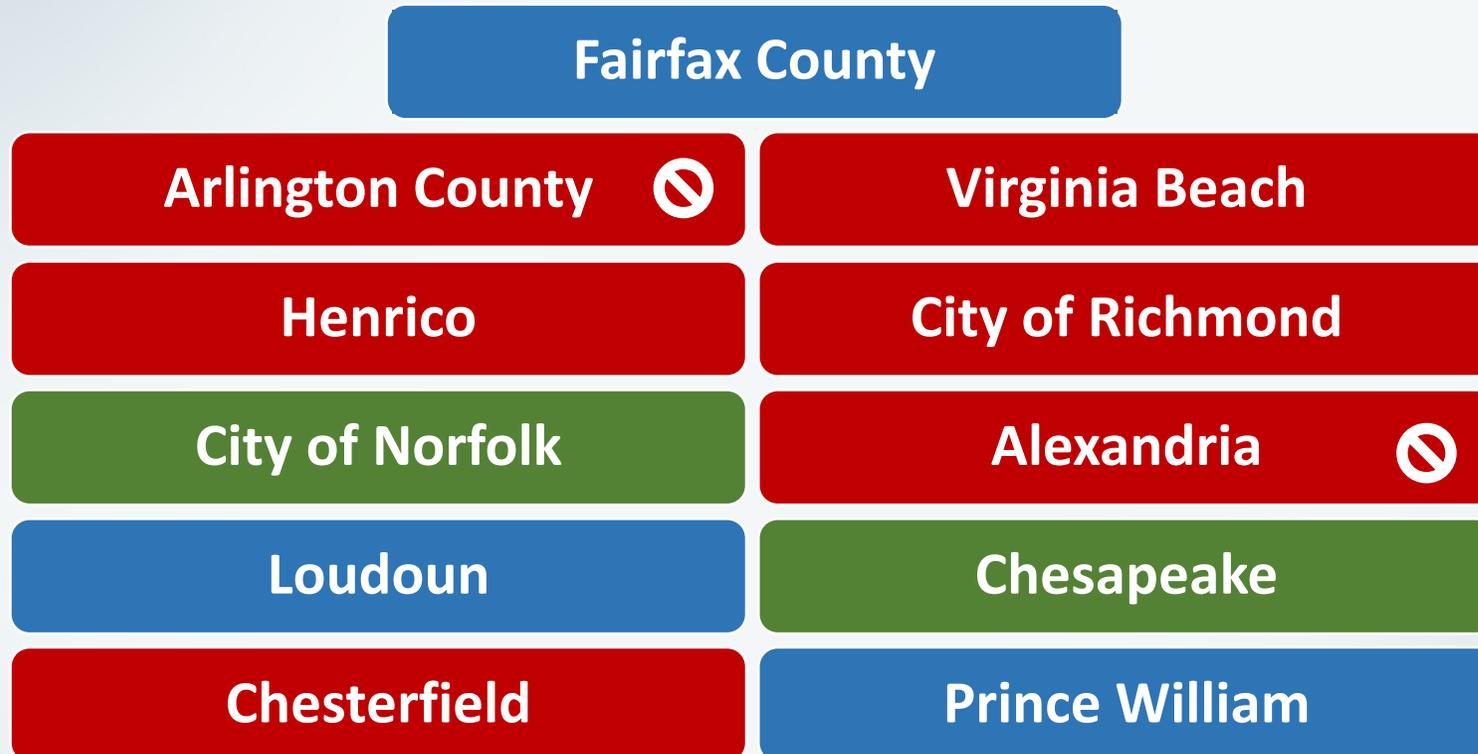
- Comparables with other jurisdictions.
- The unsettling reality of our lack of resources.
- A positive path forward.

We're Facing a Crisis

- When our prosecutor's office doesn't have the resources it needs to do its work, the result is a broken system: prosecutors not meeting their ethical obligations, potentially innocent defendants going to jail, and victims not receiving justice.
- For too long, we've been misled by prior leadership of the Commonwealth's Attorney's office that this organization was well-equipped, well-managed, and doing its job.
- **To be clear: this office does not currently have the fundamental resources necessary to perform the services our community expects, and that we are ethically obligated to provide.**
- Every comparable we've found makes that fact inescapably evident.

Caseload Comparison

Types of Cases Done by a Jurisdiction*:



Historically, Fairfax County's CWA Office has been involved with all types of cases. However, now we know they were not able to do so properly, thoroughly, or ethically. CWA's are only required to handle felony cases and certain misdemeanor appeals. Although it's an uncomfortable admission, other prosecutors' offices have been honest for decades about their casework and what they can or cannot cover. That's why it's important to note casework of differing jurisdictions and how they compare to ours. This apples-to-apples comparison demonstrates the clear mismanagement of expectations that's been projected from this office in the past.

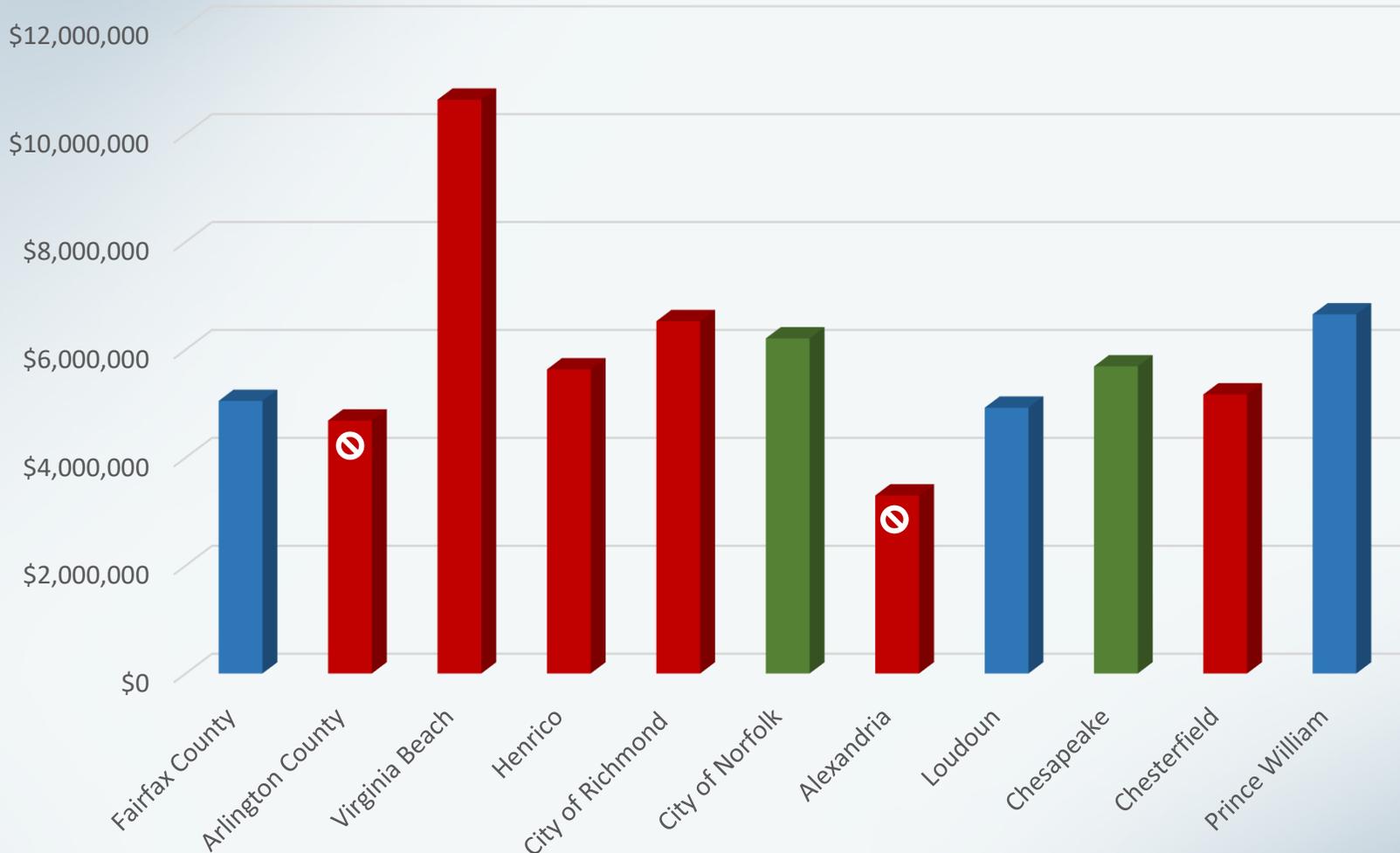
* CWA Offices are already required to handle all felony cases as well as some misdemeanor appeals from Juvenile and Domestic Relations Court.

= no body-worn-camera program

Total Budget Comparison

Total Investments Into Different CWA Offices

FY 2021 Budgets



Compared to the largest jurisdictions in Virginia, along with our immediate neighbors, Fairfax County's CWA Office has one of the lowest total budgets.

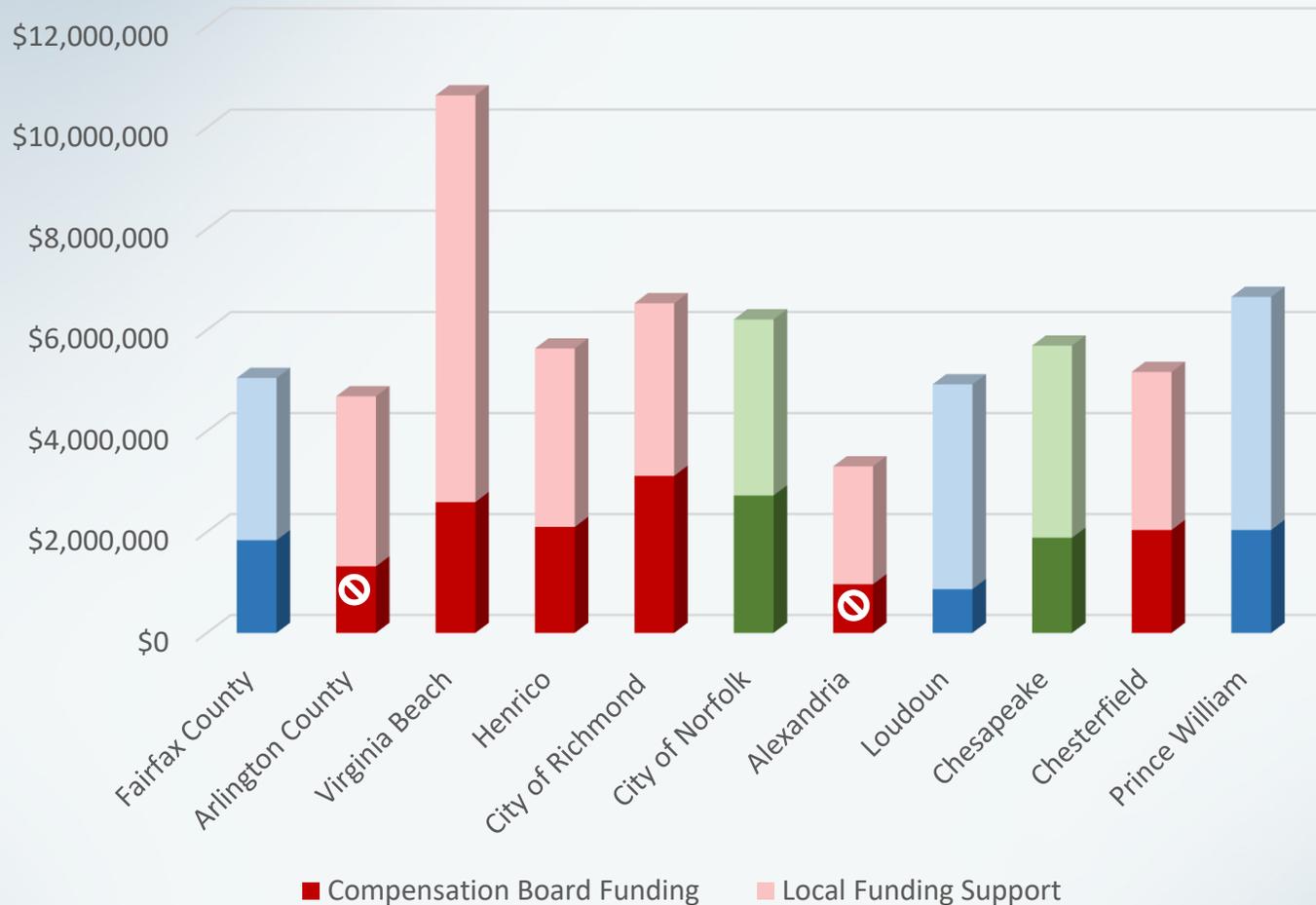
Jurisdiction	Budget (FY21)
Fairfax County	\$5,049,457
Arlington County	\$4,686,029
Virginia Beach	\$10,633,965
Henrico	\$5,633,999
City of Richmond	\$6,528,099
City of Norfolk	\$6,208,701
Alexandria	\$3,298,138
Loudoun	\$4,923,696
Chesapeake	\$5,690,147
Chesterfield	\$5,169,600
Prince William	\$6,653,538

Locality Investment Comparison

Breakdown of Investments for CWA Offices

Current Virginia Compensation Board Funding is a flawed system that penalizes Fairfax County for being a large jurisdiction. However, fixing that formula would not address the current crisis. The main support a prosecutor's office gets always comes from its locality.

Local Support vs Comp Board Support (FY21)

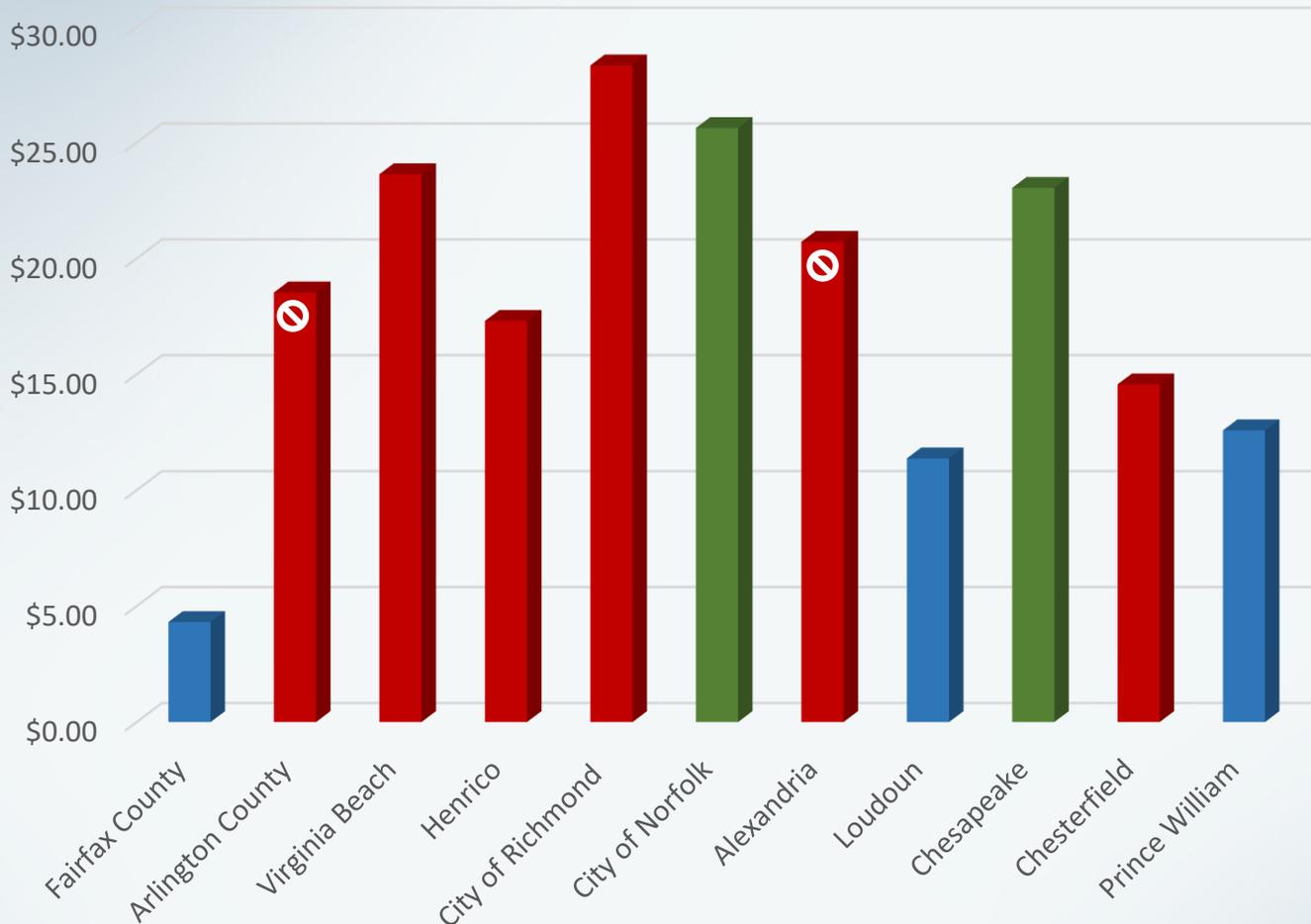


Jurisdiction	Comp Board Funding	Local Funding
Fairfax County	\$1,836,705	\$3,212,752
Arlington County	\$1,318,280	\$3,367,749
Virginia Beach	\$2,590,812	\$8,043,153
Henrico	\$2,099,720	\$3,534,279
City of Richmond	\$3,110,044	\$3,418,055
City of Norfolk	\$2,721,730	\$3,486,971
Alexandria	\$963,686	\$2,334,452
Loudoun	\$866,969	\$4,056,727
Chesapeake	\$1,885,760	\$3,804,387
Chesterfield	\$2,038,594	\$3,131,006
Prince William	\$2,038,594	\$4,614,944

Total Per Capita Comparison

Total Per Capita Investments for CWA Offices

Total Per Capita Support (FY21 Budget)



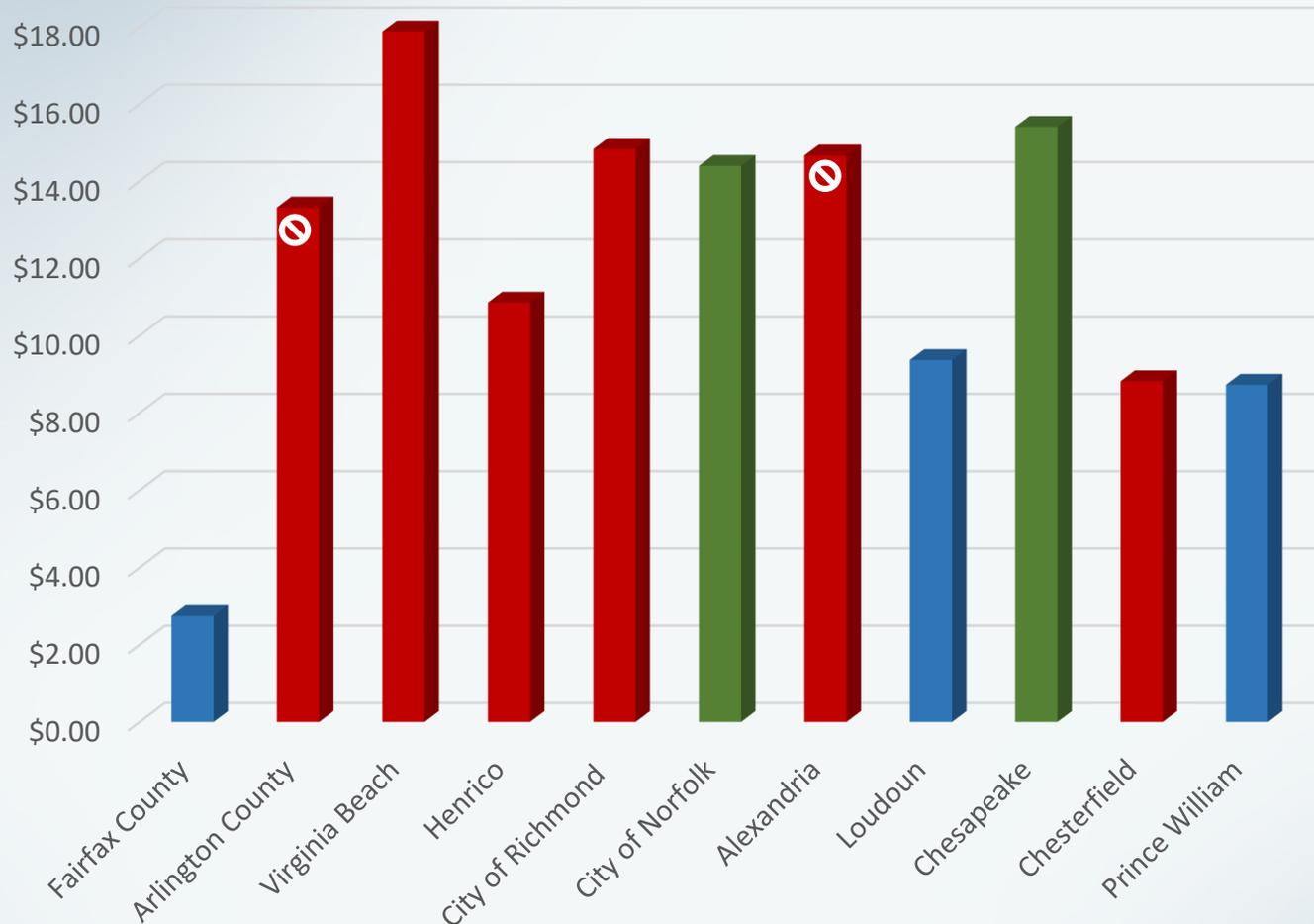
Our investments represent our priorities, and it is time that we prioritize our justice system. Fairfax County's prosecutor's office has not grown in the past half century to keep pace with its growing workload as evidenced by this disturbing per capita investment comparison with other jurisdictions.

Jurisdiction	Population	Per Capita Investment
Fairfax County	1,171,551	\$4.31
Arlington County	252,917	\$18.53
Virginia Beach	449,974	\$23.63
Henrico	325,642	\$17.30
City of Richmond	230,436	\$28.33
City of Norfolk	242,272	\$25.63
Alexandria	159,200	\$20.72
Loudoun	433,065	\$11.37
Chesapeake	246,912	\$23.05
Chesterfield	355,000	\$14.56
Prince William	528,898	\$12.58

Local Per Capita Comparison

How Much Localities Invest Per Capita

Local Per Capita Support (FY21 Budget)



This disparity becomes more jaw-dropping when considering purely local investments. A resident of Fairfax County spends more money on a gallon of milk than on the prosecution of crime. That’s why right now we have a prosecutor’s office incapable of doing the work it previously projected it could handle, let alone the reforms our community is calling for.

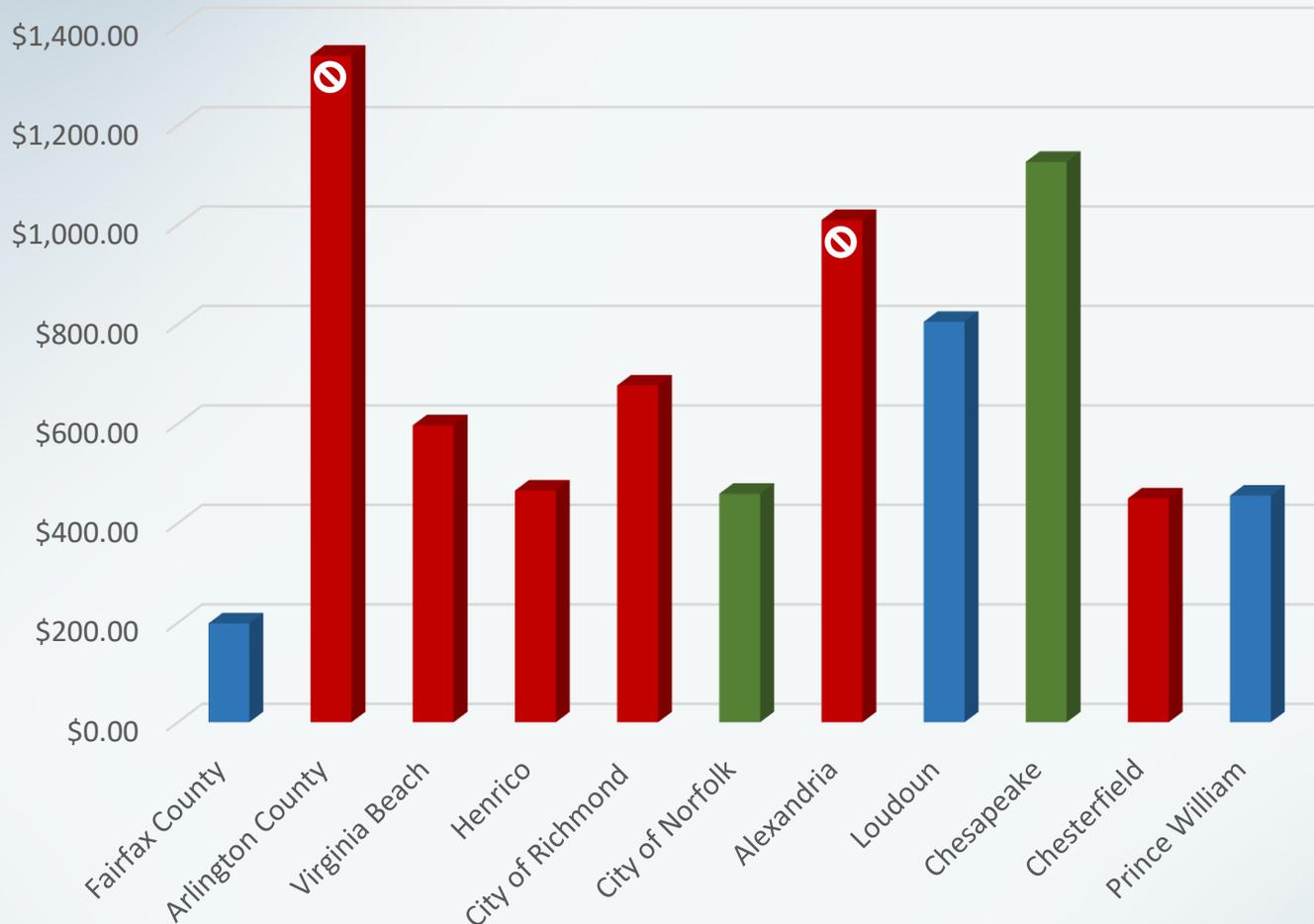
Jurisdiction	Population	Local Per Capita Investment
Fairfax County	1,171,551	\$2.74
Arlington County	252,917	\$13.32
Virginia Beach	449,974	\$17.87
Henrico	325,642	\$10.85
City of Richmond	230,436	\$14.83
City of Norfolk	242,272	\$14.39
Alexandria	159,200	\$14.66
Loudoun	433,065	\$9.37
Chesapeake	246,912	\$15.41
Chesterfield	355,000	\$8.82
Prince William	528,898	\$8.73

Capacity for Justice Per Arrest

Resource Availability for CWA Workloads

Ultimately, this is about dedicating the appropriate amount of time to criminal charges. These charges, by and large, stem from arrests. When considering the investment of time per arrest, Fairfax County continues to fall short on justice.

Per Arrest Support (FY21 Total Budget)

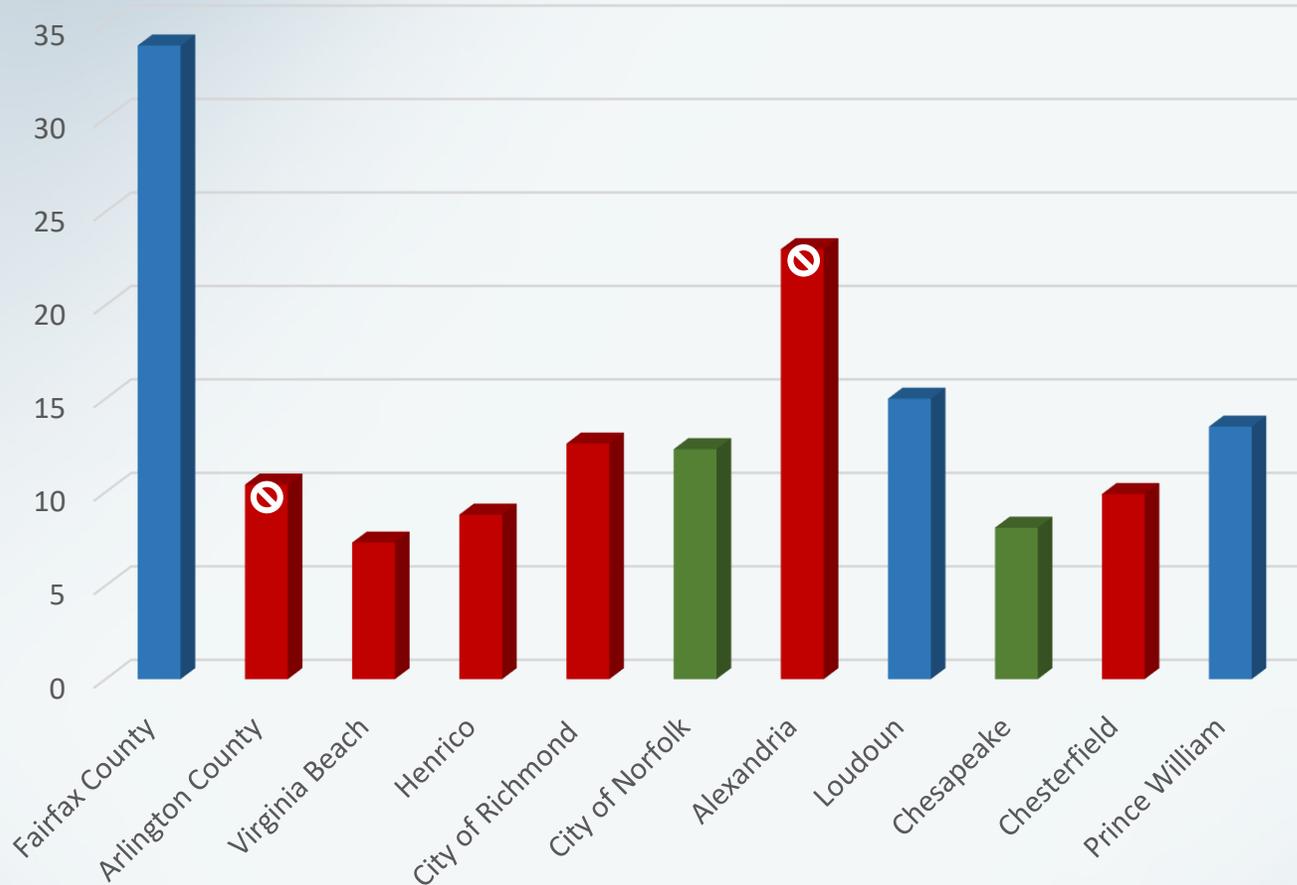


Jurisdiction	Arrests (2017-19 Average)	Per Arrest Investment
Fairfax County	25,416	\$198.67
Arlington County	3,496	\$1,340.40
Virginia Beach	17,813	\$596.98
Henrico	12,095	\$465.81
City of Richmond	9,642	\$677.05
City of Norfolk	13,518	\$459.29
Alexandria	3,266	\$1,009.84
Loudoun	6,116	\$805.05
Chesapeake	5,050	\$1,126.76
Chesterfield	11,487	\$450.04
Prince William	14,601	\$455.69

Justice System Parity Analysis

Uniformed Officer to CWA Staff Ratio

Officers per CWA Staff



When determining a general sense of volume of work for a Commonwealth's Attorney's office, a comparison of CWA staff to uniformed police officers is a good indicator. Sworn law enforcement officers generate the office's cases and CWA staff must be ready and able to handle them appropriately.

Jurisdictions	Officers per CWA Staff
Fairfax County	33.9
Arlington County	10.4
Virginia Beach	7.3
Henrico	8.8
City of Richmond	12.6
City of Norfolk	12.3
Alexandria	23
Loudoun	15
Chesapeake	8.1
Chesterfield	9.9
Prince William	13.5

What Does This Mean?

Resources = Staff

Staff = Time

Justice takes time.

What Does This Mean?

By never coming to terms with our resource shortage, our system left *us no time for justice*.



Looking Forward

As elected officials, as a county, and as a community we need to act now. That's why we have prepared the following actionable items for the consideration of the Board of Supervisors.

PLEASE NOTE:

- **The comparables you just saw were not used to assess our particular workflow.**
- **We did not determine potential recommendations based off of the numbers of other jurisdictions.**
- **These findings are a result of months of observations, discussions, data gathering, and analysis.**
- **Our recommendations are specifically tailored to our office, its workload, and our courthouse.**

There's a Positive Path Ahead

Armed with this information and through a thoughtful, modest investment, our County can now fix a broken criminal justice system and provide our community with ethical, effective prosecution.

This Plan Includes:

- Immediate coverage of all cases of violent crime.
- A forward-looking, scalable, sustainable office structure.
- Improved services to victims, law enforcement, and defense.
- An emphasis on transparency and accountability.
- Ethical prosecution.
- Full implementation of the body-worn-camera program.
- The prosecution of *all* non-traffic misdemeanor cases.
- An option for the prosecution of all traffic cases.

Our Current Status

Upon realizing this crisis, we had to act quickly as our court system was beginning to open back up. We had many discussions with our partners in the justice system. After much consideration, there was a widely agreed-upon determination of the maximum, priority cases this office can currently handle with current staffing levels. As a point of reference, these are the cases we are currently handling at the current level of work present in the courthouse:

- All Felonies
- DWI (GDC and Circuit)
- Intimate partner domestic violence (IPDV) (JDR and Circuit)
- Stalking (JDR, GDC, and Circuit)
- Sexual battery (JDR, GDC, and Circuit)
- Violation of protective orders issued in stalking & IPDV cases (JDR, GDC, and Circuit)
- Traffic fatalities (JDR, GDC, and Circuit)
- Possession of marijuana with an offense date prior to July 1, 2020 (GDC and Circuit)
- Violations of §18.2-308.1:6 arising out of noncompliance with a substantial risk order issued pursuant to §§19.2-152.13 or 19.2-152.14 (JDR, GDC, and Circuit)
- Misdemeanor cases attached to felony cases to the extent such cases are part of the same incident and have been consolidated with the felony case(s) for preliminary hearing. (JDR, GDC, and Circuit)
- Misdemeanor cases covered by VA Code 16.1-232 appealed from JDR to Circuit.
- Veterans Treatment Docket
- Mental Health Docket
- Offenses relating to failure to register under, or providing materially false information to, the Sex Offender and Crimes Against Minors registry. (GDC and Circuit)
- Cases pertaining to statutory duties under §3.2-6507.6 with respect to the enforcement of Article 2.1 under the Comprehensive Animal Care Act. (GDC and Circuit)
- Criminal violations of election law, such as voter intimidation or interference and disturbance or disruption of polling places.
- Any case of significance or public importance as determined by the Commonwealth's Attorney.
- Misdemeanor cases that the Commonwealth's Attorney's Office entered into prior to announcing this status change.

Our Current Status

We are here now.



What We Can Do Under This Scenario

- Current Status (including DUIs and traffic fatalities)

What We Cannot Do Under This Scenario

- Non-DUI Traffic Cases
- Full BWC Implementation
- Thefts
- Property Crimes
- Quality of Life Crimes
- Obstruction of Justice
- Resisting Arrest
- Peeping
- Assault
- Non-Intimate Domestic Violence
- Much of Juvenile and Domestic Relations Court
- All Animal Cruelty

Felony Trials Resume in November

We are here now.



What We Can Do Under This Scenario

- Current Status (including DUIs and traffic fatalities)

What We Cannot Do Under This Scenario

- Non-DUI Traffic Cases
- Full BWC Implementation
- Thefts
- Property Crimes
- Quality of Life Crimes
- Obstruction of Justice
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Felony Trials Resume in November

We are here now.



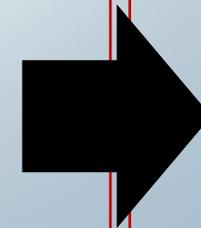
Immediate action is necessary. Felony trials will begin resuming in November. Without additional resources by then, we would have to reduce caseloads even further.

What We Can Do Under This Scenario

- *Possibly only what we are statutorily obligated to do*

What We Cannot Do Under This Scenario

- Non-DUI Traffic Cases
- Full BWC Implementation
- Thefts
- Property Crimes
- Obstruction of Justice
- Resisting Arrest
- Peeping
- Assault
- Non-Intimate Domestic Violence
- Cases in Juvenile and Domestic Relations Court
- All Animal Cruelty
- - *Possibly Remainder of Misdemeanors*



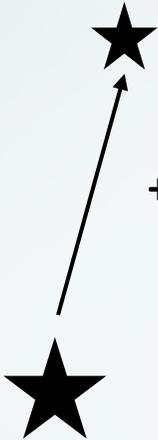
IMMEDIATE PRIORITY:

Addressing all cases of violent crimes, sex crimes, and related offenses.

- We can all agree on the necessity of having trained, professional prosecutors overseeing cases of violent crime.
- Together, we can make that happen again now.
- We are well short of where we need to be.
- However, at this moment we can leverage a small influx of staff to address a wide array of needs.

Step 1: Covering all sex crimes and majority of violent crimes.

Date Needed: ASAP

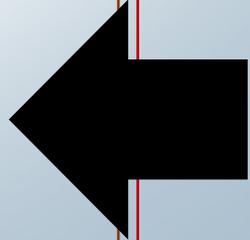


+15 (already proposed in carry over)

Total Staff Added Thus Far:
15

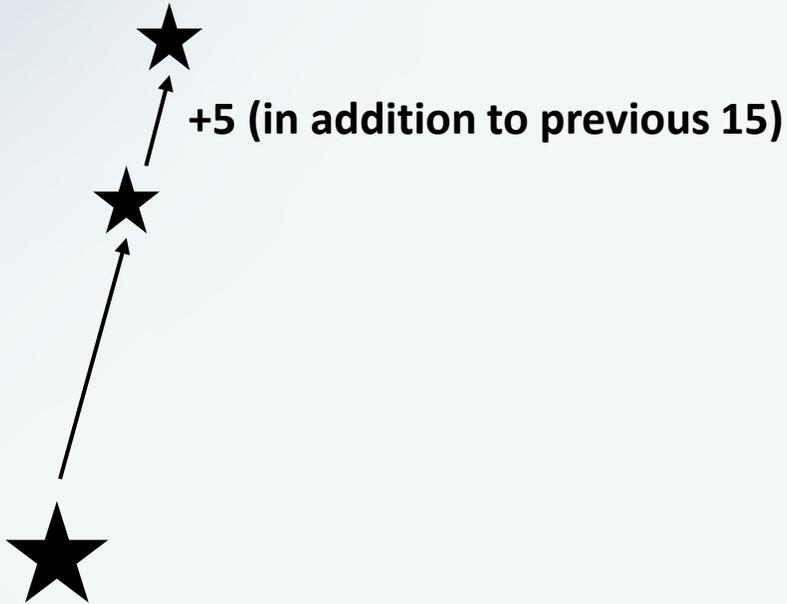
- What We Can Do Under This Scenario**
- Current Status (including DUIs and traffic fatalities)
 - + *Every case in Juvenile and Domestic Relations Court*
 - + *Non-Intimate Domestic Violence*
 - + *All Animal Cruelty*
 - + *Peeping*
 - + *Obstruction of Justice*
 - + *Resisting Arrest*

- What We Cannot Do Under This Scenario**
- Non-DUI Traffic Cases
 - Full BWC Implementation
 - Thefts
 - Property Crimes
 - Quality of Life Crimes
 - Destruction of Property
 - Assault



Step 2: Covering all remaining violent crimes.

Date Needed: Also ASAP

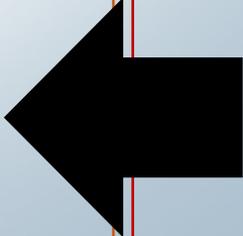


**THIS
COVERS ALL
CRIMES OF
VIOLENCE,
SEX CRIMES,
& RELATED**

Total Staff Added Thus Far:
20

- What We Can Do Under This Scenario**
- Current Status (including DUIs and traffic fatalities)
 - Non-Intimate Domestic Violence
 - Every case in Juvenile and Domestic Relations Court
 - All Animal Cruelty
 - + *Peeping*
 - + *Obstruction of Justice*
 - + *Resisting Arrest*
 - + *Assault*

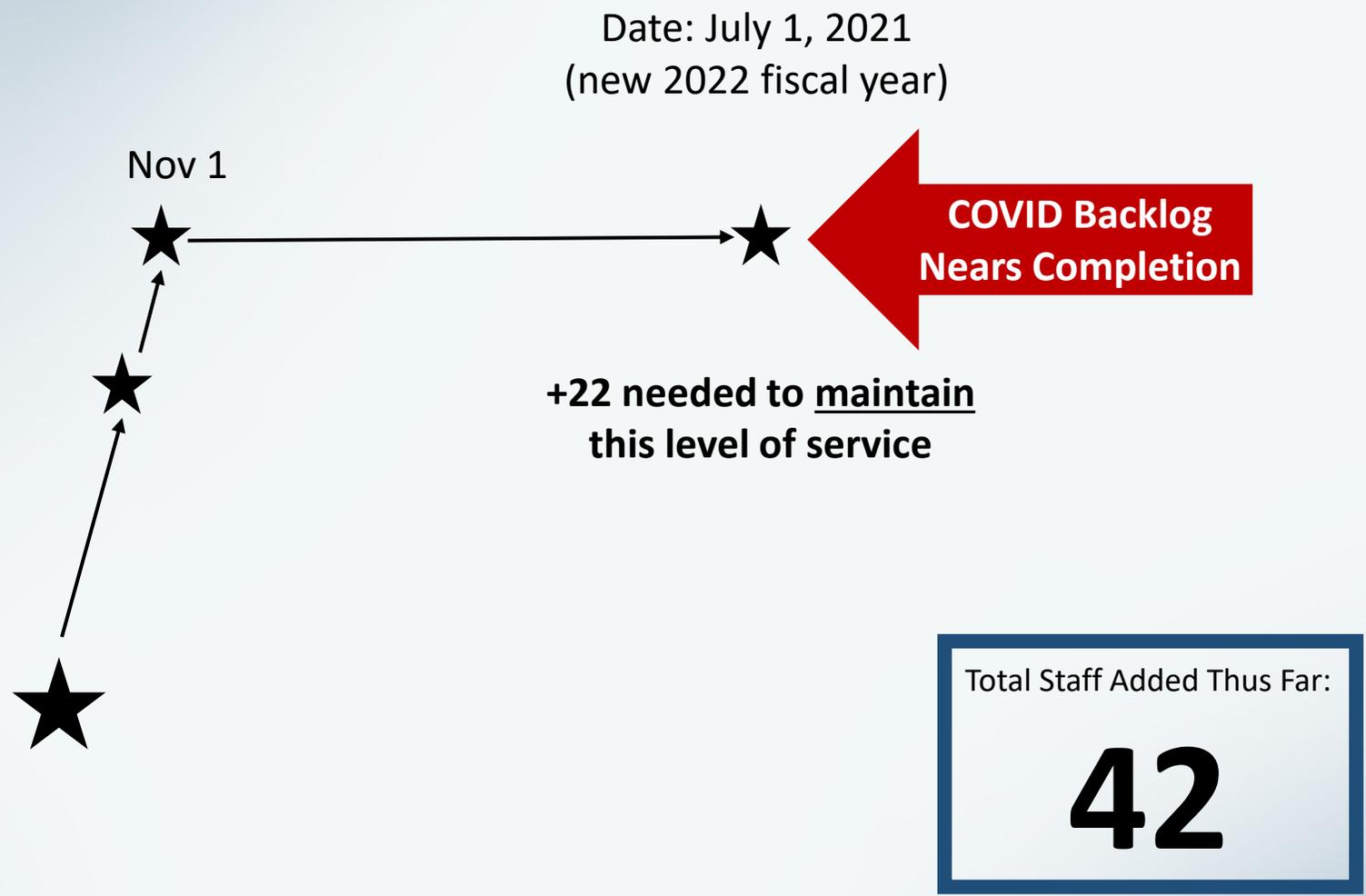
- What We Cannot Do Under This Scenario**
- Remainder of Traffic Cases
 - Full BWC Implementation
 - Thefts
 - Property Crimes
 - Quality of Life Crimes



Step 3: Maintaining prosecution of violent crimes, sex crimes, and related offenses.

- Normally, 20 new positions would not have this profound of an effect.
- However, because the COVID-19 pandemic paused felony jury trials for seven months, we have a pre-prepped backlog of jury trials that will resume in November.
- The fact that these cases have already been prepared allows us to stretch our resources further than normal as we work through the COVID-19 backlog.
- That backlog will be completed in the summer of 2021.
- Without additional resources by the end of that backlog, our caseload would then have to be reduced as a response to increased new work.

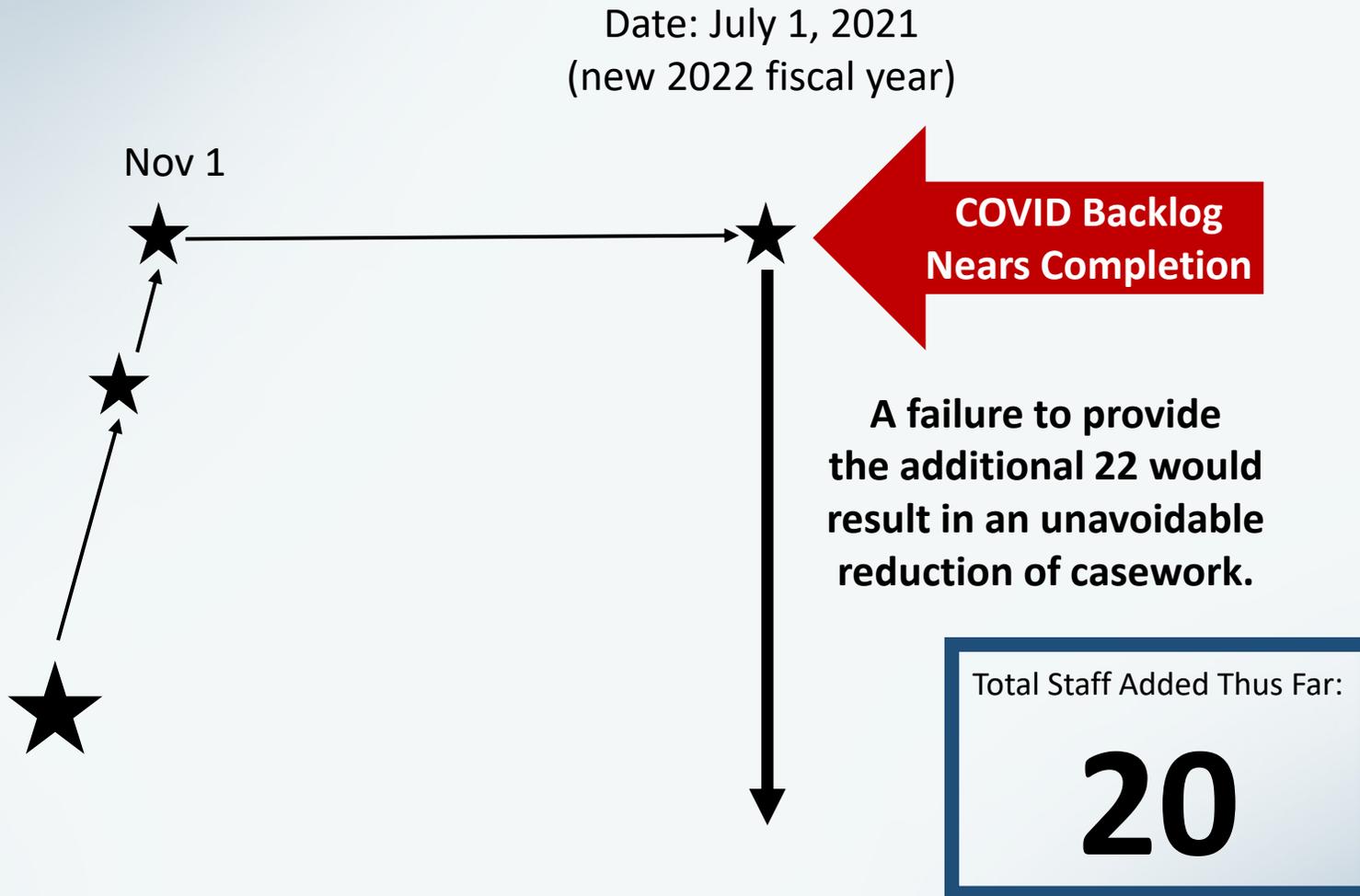
Step 3: Maintaining prosecution of violent crimes, sex crimes, and related offenses.



- ### What We Can Do Under This Scenario
- Current Status (including DUIs and traffic fatalities)
 - Non-Intimate Domestic Violence
 - Every case in Juvenile and Domestic Relations Court
 - All Animal Cruelty
 - Peeping
 - Assault
 - Obstruction of Justice
 - Resisting Arrest

- ### What We Cannot Do Under This Scenario
- Remainder of Traffic Cases
 - Full BWC Implementation
 - Thefts
 - Property Crimes
- Two thick black horizontal bars are positioned at the bottom of this column.

Step 3: Maintaining prosecution of violent crimes, sex crimes, and related offenses.



What We Can Do Under This Scenario

- Current Status (including DUIs and traffic fatalities)

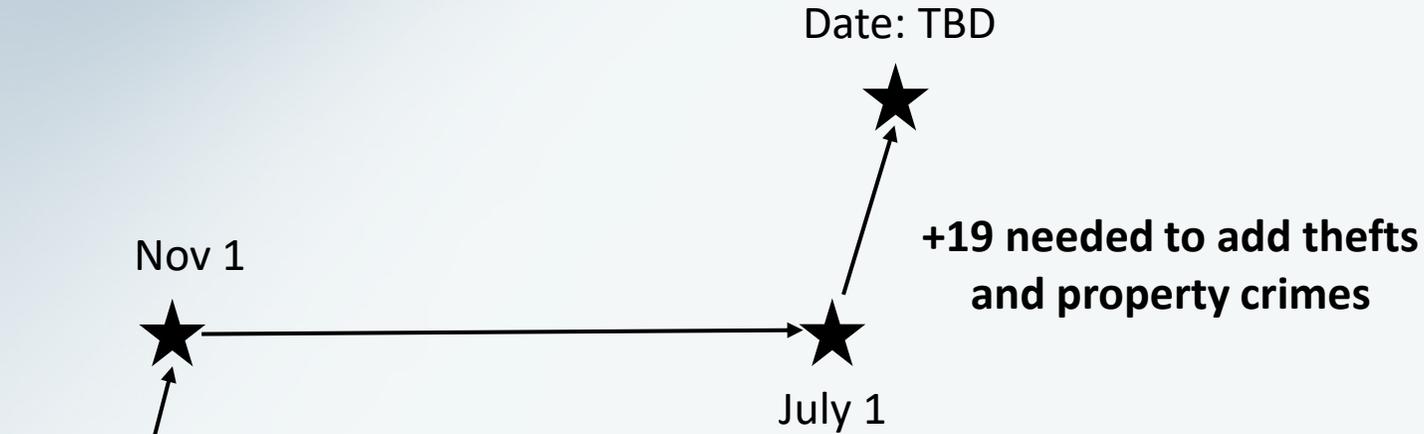
What We Cannot Do Under This Scenario

- Non-DUI Traffic Cases
- Full BWC Implementation
- Thefts
- Property Crimes
- - *Obstruction of Justice*
- - *Resisting Arrest*
- - *Peeping*
- - *Assault*
- - *Non-Intimate Domestic Violence*
- - *Much of Juvenile and Domestic Relations Court*
- - *All Animal Cruelty*

Step 4: Adding thefts, property, and quality of life crimes.

- The prosecution of violent crimes is and should be a top priority for our justice system.
- Another priority should surely be the professional prosecution of thefts, property, and quality of life crimes.

Step 4: Adding thefts, property, and quality of life crimes.



Total Staff Added Thus Far:

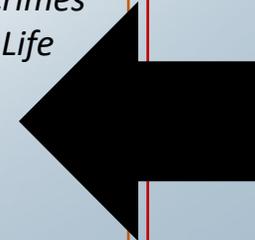
61

What We Can Do Under This Scenario

- Current Status (including DUIs and traffic fatalities)
- Non-Intimate Domestic Violence
- Every case in Juvenile and Domestic Relations Court
- All Animal Cruelty
- Peeping
- Assault
- Obstruction of Justice
- Resisting Arrest
- + *Thefts*
- + *Property Crimes*
- + *Quality of Life Crimes*

What We Cannot Do Under This Scenario

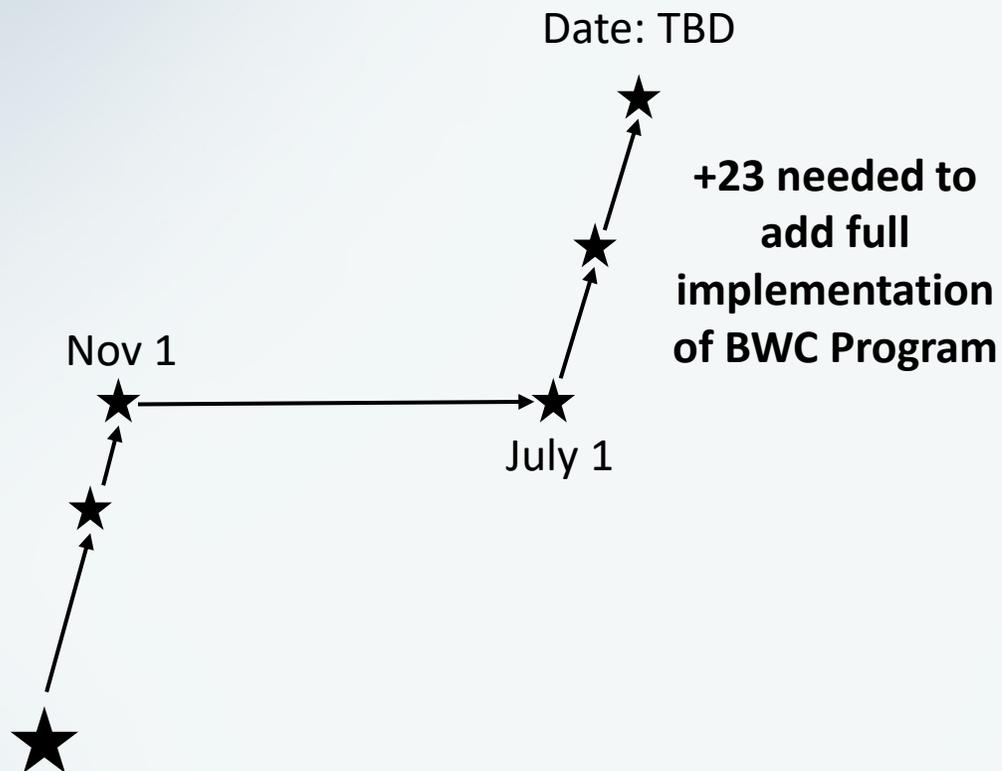
- Remainder of Traffic Cases
- Full BWC Implementation



Full implementation of body-worn-cameras.

- Body-worn-cameras have proven to be an essential tool for efficient, effective justice.
- Body-worn-cameras mean increased accountability and public trust.
- It's not enough to simply have body-worn-camera footage—you must watch, review, redact, distribute, and utilize the footage.
- Prosecutors have ethical obligations to review body-worn-camera footage.
- Furthermore, the prosecutor who ultimately brings the case to court must be the one to review the footage.
- There cannot be any dedicated positions solely assigned to watching BWC videos.
- This burden must be distributed across all prosecutors and thus effectively making all positions body-worn-camera positions.
- This cannot occur until after our pre-existing resource deficits are addressed.

Full implementation of body-worn-cameras.



Total Staff Added Thus Far:

84

What We Can Do Under This Scenario

- Current Status (including DUIs and traffic fatalities)
- Non-Intimate Domestic Violence
- Every case in Juvenile and Domestic Relations Court
- All Animal Cruelty
- Peeping
- Assault
- Obstruction of Justice
- Resisting Arrest
- Thefts
- Property Crimes
- *+ Full BWC Implementation*

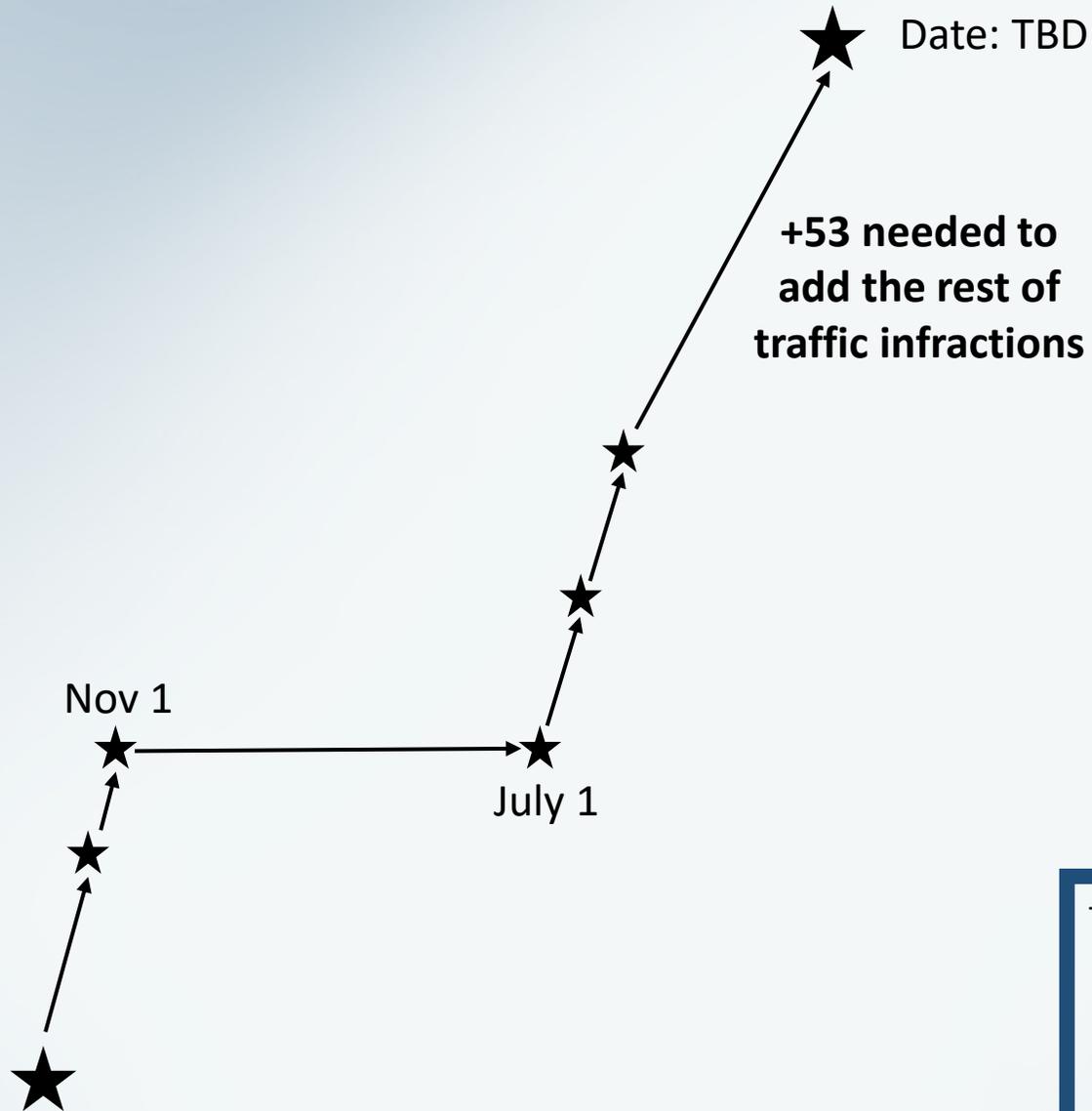
What We Cannot Do Under This Scenario

- Remainder of Traffic Cases

Handling all traffic misdemeanors.

- In-cruiser-videos are a significant driver of footage and thus evidence in traffic cases.
- This visual evidence represents a massive amount of work and time—the same ethical obligations that apply to BWC footage apply to ICV footage.
- Although it is possible to have these prosecutions go forward without the involvement of prosecutors, it's our recommendation that the work of these cases be absorbed by the Commonwealth's Attorney Office.
- Police have enough to do and should not be asked to fulfill the role of a prosecutor.
- Judges, defense counsel, and defendants should be able to expect a professional process with prosecutors involved in traffic cases.
- It is important that the community's values are represented through the accountable actions of the Commonwealth's Attorney Office in all matters.

Handling all traffic misdemeanors.

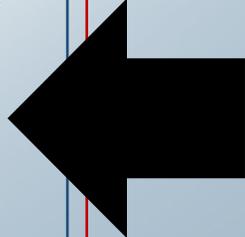


Total Staff Added Thus Far:

137

- ### What We Can Do Under This Scenario
- Current Status (including DUIs and traffic fatalities)
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 - Peeping
 - Assault
 - Obstruction of Justice
 - Resisting Arrest
 - Thefts
 - Property Crimes
 - Full BWC Implementation
 - + Remainder of Traffic Cases

What We Cannot Do Under This Scenario



What Would This Mean Moving Forward?

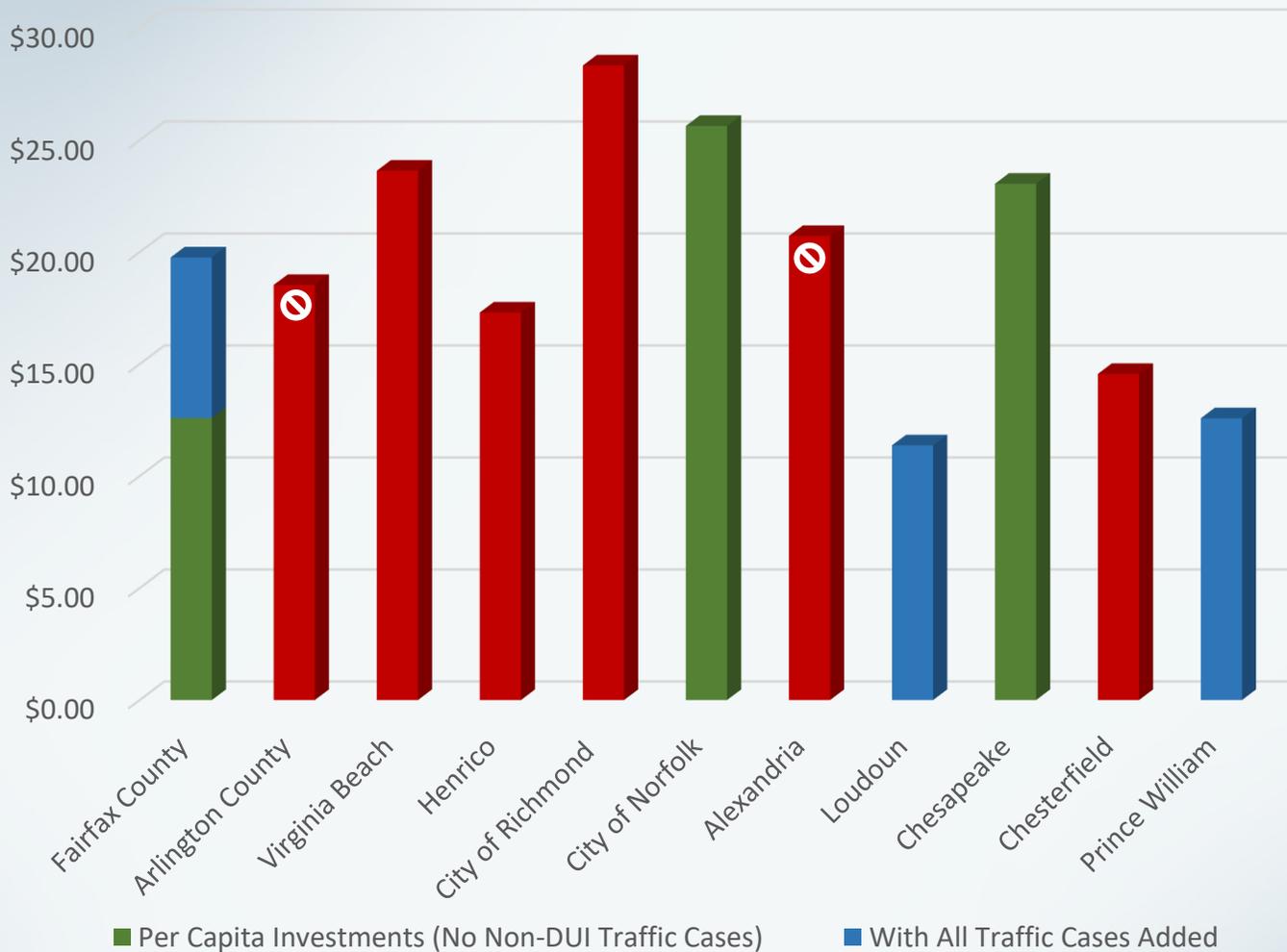
After coming to terms with our resource shortage and addressing it, *justice will have a chance in our County for the first time in decades.*

- Prosecutors will be reviewing evidence and meeting their ethical obligations.
- Police officers will experience efficient organization and consistent professionalism when interacting with the office.
- An independent, comprehensive review of the facts will occur in all cases.
- Resolutions will be driven by the facts of the case and the needs of the community instead of a desire to clear dockets.
- Cases will be handled ethically and with care, ensuring appropriate outcomes.
- Victims and defendants will be provided the timely resolutions they deserve.
- Victims and witnesses will feel respected, listened to, and gain greater trust in our criminal justice system.

How Fairfax County *Would* Compare

Total Per Capita Investments:

Projected Per Capita Investments Comparison



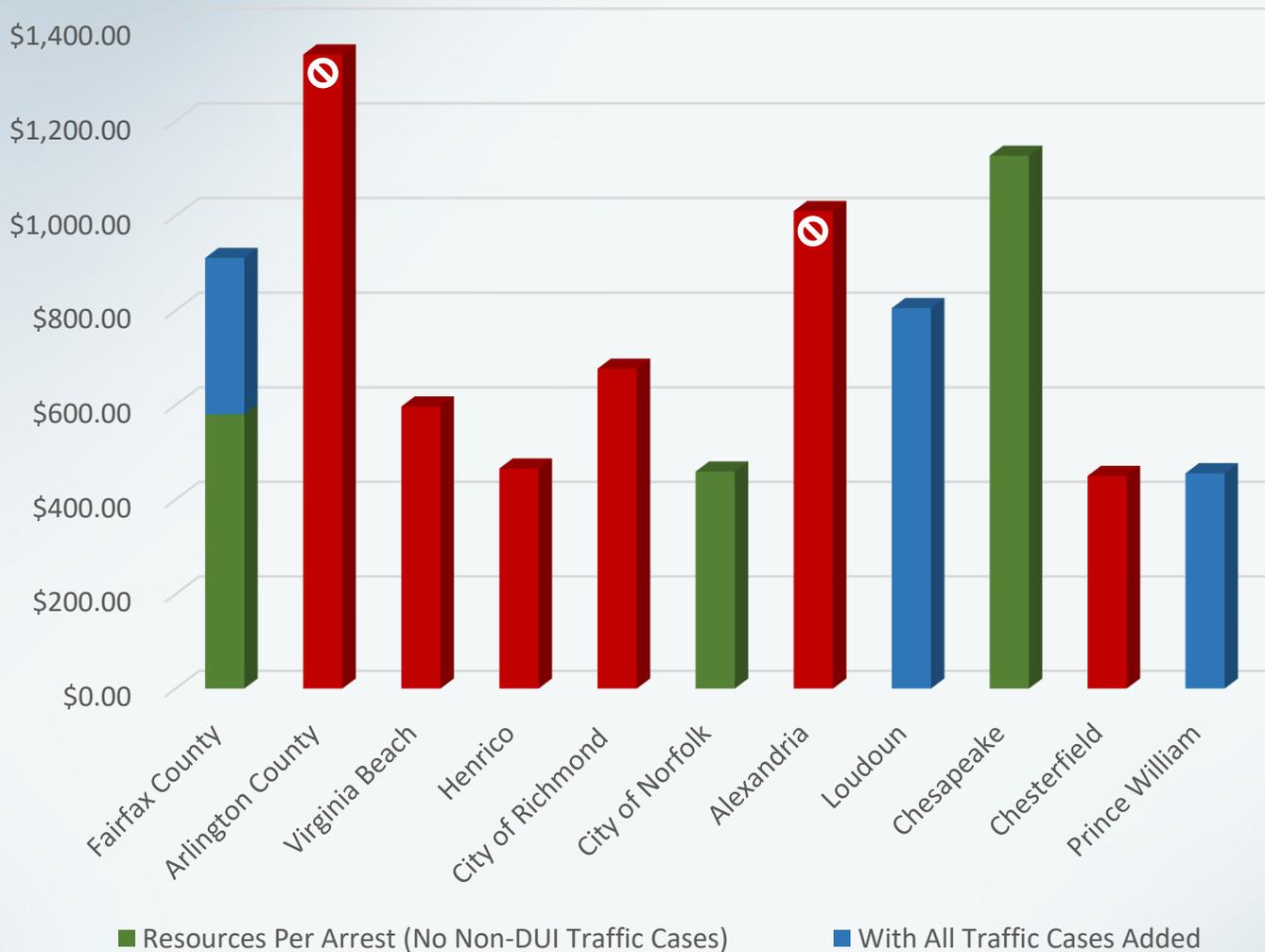
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Virginia Beach	449,974	\$23.63
Henrico	325,642	\$17.30
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Chesterfield	355,000	\$14.56
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SOURCE: Projected budget figures provided by Fairfax County Budget Office

How Fairfax County *Would* Compare

Resources per Arrest Breakdown:

Projected Resources Per Arrest Comparison



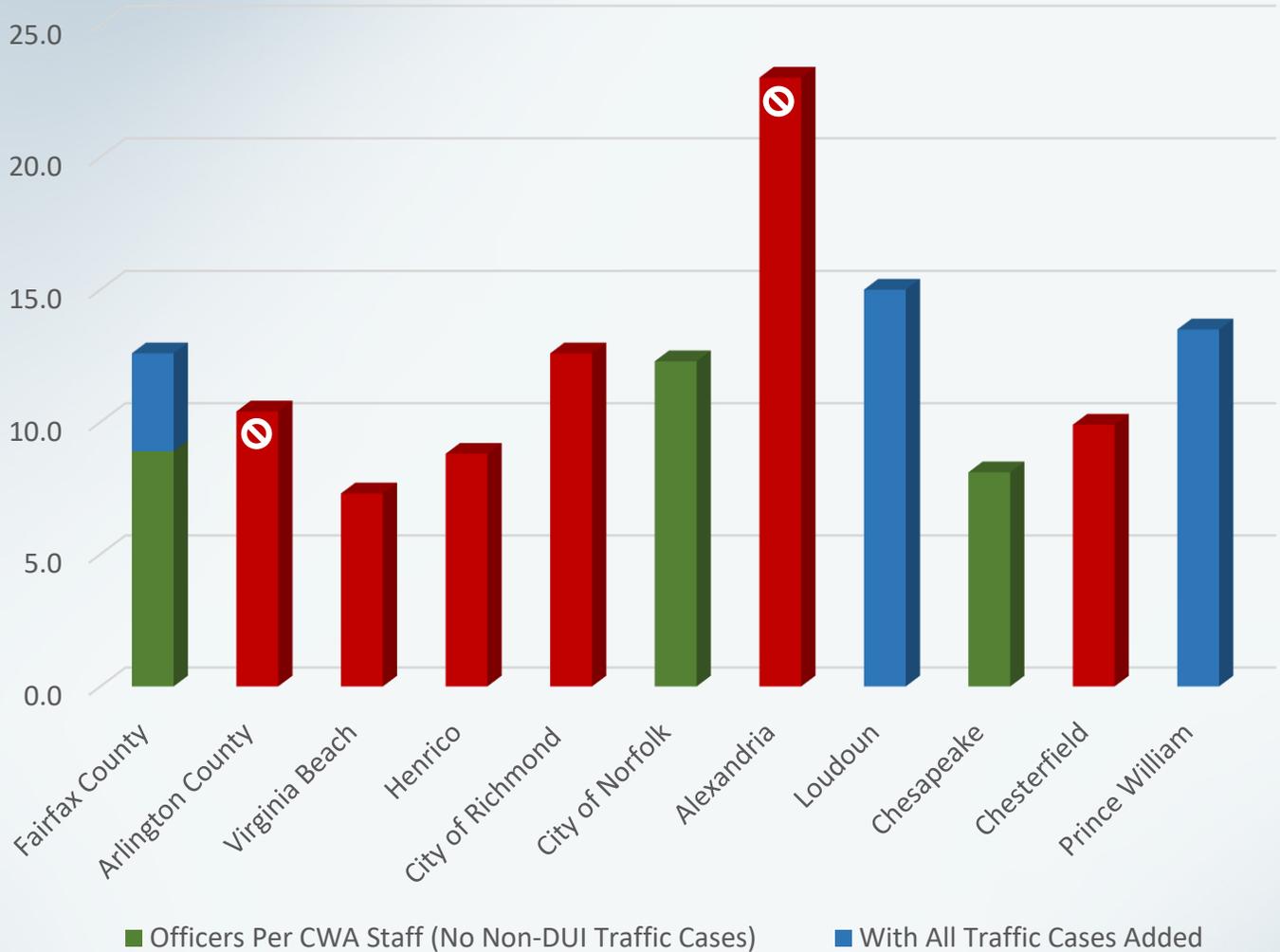
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How Fairfax County *Would* Compare

Uniformed Officer to CWA Staff Ratio:

Projected Per Capita Investments Comparison



Jurisdictions	Officers per CWA Staff
Fairfax County (incl BWC)	12.6 (8.9 w/ traffic)
Arlington County	10.4
Virginia Beach	7.3
Henrico	8.8
City of Richmond	12.6
City of Norfolk	12.3
Alexandria	23
Loudoun	15
Chesapeake	8.1
Chesterfield	9.9
Prince William	13.5

What's the Overall Ask?

- **ASAP: +15** suggested in carry over **+5** additional (**+20 total**) to cover all violent crimes, sex crimes, and related offenses.
- **July 1, 2021: +22** additional positions to maintain coverage as the COVID-19 backlog comes to an end.
- **At Board's discretion: +19** additional positions for thefts and property crimes.
- **As soon as possible after meeting other deficits: +23** for full implementation of body-worn-cameras.
- **When possible thereafter: +53** to cover all traffic cases.
- That's a total of **+84** new positions to do all case types other than non-DUI traffic cases (**+137** total new positions to include all traffic cases) to fix a broken system and bring Fairfax County in line with the services our community expects.

For more information:

www.FairfaxCounty.gov/CommonwealthAttorney



Prepared by
the Office of
Fairfax County
Commonwealth's
Attorney
Steve Descano

