

Commonwealth of Virginia

COUNTY OF FAIRFAX

4110 CHAIN BRIDGE ROAD, ROOM 114

FAIRFAX, VIRGINIA 22030-4047

STEVE DESCANO
COMMONWEALTH'S ATTORNEY

COMMONWEALTH'S ATTORNEY PROCEDURE MEMORANDUM

Date: 8/14/2020

Policy Title: Identification and reporting of: (i) use of force incidents, (ii) vehicle stopping incidents, and (iii) improper conduct and discrimination.

Summary: This policy ensures that the Commonwealth's Attorney's Office fulfills its oversight role in the criminal justice system. As this office reviews evidence and observes defined incidents, the guidelines established herein will ensure that such conduct has been, or will be, memorialized and reported for investigation within the respective police agency.

Authorizing Signature:



Reviewing video evidence is central to the oversight role the Commonwealth's Attorney's Office fulfills in the criminal justice system and is an important part of serving the community. Assistant Commonwealth's Attorneys (ACA) review all evidence in cases to ensure that criminal charges are justified and supported by such evidence. As part of this assessment, ACAs review in-cruiser video (ICV) and body worn camera (BWC) footage. ACAs must be mindful of a prosecutor's stewardship of the criminal justice system as they complete this task. This requires reviewing such evidence with an eye towards the responsibility this office has in ensuring all actors in the criminal justice system are living up to their obligations. In recognition of this oversight role, it shall be the duty of every prosecutor in the Fairfax County Commonwealth's Attorney's Office to adhere to the following procedures when reviewing video.¹

1. IDENTIFICATION AND REPORTING OF USE OF FORCE & VEHICLE STOPPING INCIDENTS

It shall be the duty of every prosecutor to identify use of force incidents, as defined in General Order 540 of the Fairfax County Police Department (FCPD), and vehicle

¹ This policy does not govern the Commonwealth's Attorney's review of criminal investigations involving the improper or excessive use of force. Rather, this policy represents a proactive effort to identify incidents observed on video and confirm that such incidents were reported and reviewed pursuant to police policy.

stopping incidents, as defined in General Order 505, and ensure they have been documented by the officer in an incident report or supplement.

Use of force is defined by General Order 540 to include:

- Less-lethal force (empty-hand tactics such as strikes, kicks, or takedowns; Oleoresin Capsicum (OC), baton, electronic control weapon (ECW), pepperball system, patrol dog, and kinetic energy impact systems);
- Pointing a firearm or less-lethal system; and
- Discharging a firearm.

A vehicle stopping incident is defined by General Order 505 to include:

- Use of a stop stick tire deflating device;
- Use of a rolling or stationary roadblock;
- Use of the precision immobilization technique;
- Tactical vehicle intercept; and
- Vehicle incident (when an officer uses a police cruiser to make intentional contact with another vehicle, object, or person).

General Orders 540 and 505 provide for the investigation and reporting of incidents defined therein. Each ACA must review General Order 540 and General Order 505.

As prosecutors in this office handle cases, they will necessarily review the related ICV, BWC footage, police incident reports and supplements, and other evidence. While reviewing such evidence, if an ACA observes a use of force or vehicle stopping incident, the assistant shall confirm the event was documented in the officer's incident report or supplement.² If an ACA determines that the event was not documented in the officer's incident report or supplement, the ACA shall not make contact with the officer in question. Rather, the ACA shall report the event in writing to a designated member of the leadership team within 24 hours. The report shall: (i) describe the nature of the event, (ii) provide the name of the officer deploying the force or initiating the vehicle stopping incident, (iii) identify the police agency the officer is employed by, (iv) provide the names of any officers present, (v) provide the name of the defendant involved, (vi) identify the date of the incident, (vii) identify the type of video (ICV or BWC) where the incident was observed, and (viii) provide any additional information necessary to locate such evidence (including the time stamp on the video where the incident can be

² ACAs shall also follow this procedure with respect to cases handled by the Virginia State Police, Vienna Police Department, City of Fairfax Police Department, Herndon Police Department, Metropolitan Washington Airports Authority Police Department, George Mason Police Department, Northern Virginia Community College Police Department, and any other police agency (collectively, "Non-FCPD Police Agencies"). While the use of force policies utilized by Non-FCPD Police Agencies vary, any use of force should be memorialized in an incident report.

observed). The designated member of the leadership team will then confirm with the Station Commander that the incident was documented and reported internally for investigation.

If the Station Commander indicates the incident was documented, the designated member of the leadership team shall request and obtain a copy of such report or supplemental report documenting the incident. The report or supplemental report shall be provided to the ACA handling the related case. If it is determined that the incident was not documented, the designated member of the leadership team shall report the incident, including the information detailed in (i) through (viii) above, to the Station Commander.

2. IMPROPER CONDUCT AND DISCRIMINATION

General Order 201 establishes a code of conduct for officers. General Orders 201.14 and 201.22 prohibit, among other things:

- Using racial, ethnic, sexual, religious, or sexual orientation slurs;
- Engaging in racial discrimination, sexual harassment, racial profiling, bias-based policing, or any other form of unlawful discrimination;
- the “unjust and prejudicial application of law enforcement authority to an individual person or group of people on the basis of their race, color, ethnicity or national origin”;
- the “use of innuendo, disparaging comments, slurs, or jokes which degrades or offends individuals on the basis of their race, color, ethnicity or national origin”;
- the “display or distribution of objects, pictures, photographs, graphic illustrations, or other visual or printed material which degrades or offends individuals on the basis of their race, color, ethnicity or national origin”;
- the use of race/ethnicity “as the sole basis for probable cause or reasonable suspicion.”

Each ACA must review General Orders 201.14 and 201.22 in their entirety.³ As video and other evidence is reviewed, it shall be the duty of every prosecutor to identify any instances of discrimination or improper conduct based on race, ethnicity, sex, religion, or sexual orientation. If an ACA observes such conduct the ACA shall not make contact with the officer in question. Rather, the ACA shall report the incident in writing to a designated member of the leadership team within 24 hours. The report shall: (i) describe the nature of the improper conduct, (ii) provide the name of the officer responsible for the conduct, (iii) identify the police agency the officer is employed by, (iv)

³ ACAs shall also follow this procedure with respect to cases handled by Non-FCPD Police Agencies.

provide the names of any officers present, (v) provide the name of the case in which the conduct was observed, (vi) identify the date of the conduct, (vii) identify the type of video (ICV or BWC) or other evidence where the conduct was observed or memorialized, and (viii) provide any additional information necessary to locate such evidence (including the time stamp on the video where the incident can be observed). The designated member of the leadership team shall then report such conduct to the Station Commander and/or the Internal Affairs Bureau.