

CASE STUDY



A CASE STUDY

Impact of Fairfax County's Misdemeanor Prosecution Policy Change on Victims of Simple Assault

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COUNCIL TO END
DOMESTIC VIOLENCE

Fairfax County Council to End Domestic Violence

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INTRODUCTION

The achievement of One Fairfax is an ongoing effort that requires all agencies and departments within Fairfax County to examine their policies, practices, and procedures and the ways in which they impact the people they serve. In our quest to achieve equitable outcomes, we have an ethical obligation to critically examine our systems for any unintended consequences of policy decisions to avoid similar mistakes in the future.

In February 2021, the Council to End Domestic Violence had the opportunity to look at one policy and how it impacted victims and survivors, particularly women and people of color. This report walks us through the implications of that policy decision to identify lessons learned. Hopefully, it can also provide a model for how to proactively examine policy decisions, implications, and the consequences of those decisions on people who are impacted by them.

The Council to End Domestic Violence is dedicated to continuous systems' improvement and expresses its sincere gratitude to the Office of the Commonwealth's Attorney for participating in this process and for reversing its policy when implications became clear. This report is published as a reminder that policy decisions can be complex and often carry unintended consequences for those we serve.

EXECUTIVE SUMMARY

Charge

In April 2020, the Fairfax County Office of the Commonwealth’s Attorney (OCA) announced that beginning July 1, 2020, the office would only assign staff to selected misdemeanor cases, as it did not have the staffing to thoroughly examine and ethically prosecute each case. In May 2021, as a result of OCA being allocated more staffing resources by the Board of Supervisors, OCA reversed this policy and resumed staffing all misdemeanor cases with an indication of violence, including all cases that were pending while the policy was in effect but had not yet gone to trial.¹ This report represents an analysis of the impact of the OCA’s July 2020 policy change for cases that:

- ▶ qualified as misdemeanors, involving victims and survivors of interpersonal violence;
- ▶ were not attached to a felony;
- ▶ were not covered under the categories OCA automatically staffed;
- ▶ were not granted staffing through the stakeholder-request process; and
- ▶ did not fall under Virginia’s definition of intimate partner domestic violence (IPDV)².

Shortly after the July 2020 OCA policy change, domestic violence advocates working in Fairfax County began reporting that victims were experiencing negative impacts due to lack of OCA involvement, such as fear of facing the respondent in court alone and ensuing re-traumatization from being unrepresented in court. These anecdotal reports were the impetus for the Council to End Domestic Violence (CEDV), through its Leadership Team, to request an analysis of the impact of the OCA’s July 2020 policy change on victims of misdemeanor assaults whose cases were not covered under the IPDV definition. The concern of the CEDV centered around the impact of the policy change on persons in dating relationships, children, and older adults involved in cases that did not meet any of the OCA’s criteria. While the OCA’s policy change may have had other implications or impacts, this report focuses primarily on the issues that align with the work of the Council.

Although this policy decision was reversed in May 2021, the CEDV Leadership Group still wished to understand the impacts and any potential legacy of the policy on victims who were not covered under the IPDV definition. The CEDV also wanted to understand if specific subsets of the population were disproportionately impacted, such as women and people of color, and whether inequities related to gender, race, and ethnicity stood out. The findings of this report serve as a reminder that when formulating policy, equity considerations on who will be impacted, what the unintended consequences might be, who benefits and who is burdened must be considered to avoid creating and perpetuating systemic disparity. This extends not only to the decision made by the OCA, but also to all policy decision-making, including resources and infrastructure used to carry out a policy.

Literature Review

There is extensive evidence that intimate partner domestic violence is a predictor of homicide, with certain types of abuse having a greater predictive power of lethality. For instance, the use of a weapon³ in a prior incident of intimate

1 As of July 2021, OCA has staffed all misdemeanor cases in which a defendant is represented by counsel, including all cases that were pending while the staffing policy was in effect but had not yet gone to trial

2 Intimate Partner Domestic Violence victims are those whose relationship with their offender fall under the following categories (per Code of Virginia § 16.1-228- Definition of Family or Household Member): Spouse (regardless of whether the victim/offender reside in the same home), former spouse, victim-offender have a child in common, and victim-offender are dating and cohabitating. This definition excludes victims who are dating but not cohabitating with their offender and familial relationships.

3 Use of a weapon during a domestic assault would nearly always present facts such that it would be a felony offense in Virginia.

partner domestic violence increases the probability of intimate partner homicide 18.5 times. The literature concludes that prosecuting intimate partner domestic violence cases is a form of homicide prevention.

The research emphasized the criticality of prosecutorial discretion in systems where there is minimal judicial review of misdemeanor cases. In Virginia, state law is such that Commonwealth's Attorneys' Offices are not required to staff misdemeanor prosecutions and the Commonwealth allows for a judge-led prosecution model as a method of prosecuting misdemeanors. While the former policy of the OCA to not staff a prosecutor to some misdemeanors is not unique to Fairfax County, the resulting judge-led prosecution model takes the form of police officers or private criminal complainants appearing before judges. Qualitative data revealed some victims' discomfort with this system. A victim's perception of how their complaint is handled impacts the perception of government as a resource in aiding the victim's ability to seek safety and recourse through legal remedies.⁴

In addition, it was extremely difficult to find any information on other jurisdictions' experiences, whether good or bad, with choosing not to staff a prosecutor for non-IPDV charges or any violent misdemeanor charges under the judge-led-prosecution model.

Data Analysis

Upon request by the CEDV, the Department of Family Services (DFS) Data Analytics Unit (DAU) conducted research and analysis on data from the Department of Criminal Justice Services and the Supreme Court of Virginia and made the following findings:

- ▶ Non-Intimate Partner Domestic Violence (non-IPDV) victims potentially affected by the OCA policy change were disproportionately more likely to be female, Hispanic, and Black/African American compared to the general population, and even the IPDV population. Non-IPDV victims were also more likely to be younger than the IPDV population.
- ▶ Between July and December 2020, after the implementation of the OCA's policy, the percentage of non-IPDV simple assault arrests dropped in Fairfax County but not in comparable jurisdictions or the rest of Virginia.
- ▶ During the same period, the percentage of non-IPDV cases for Assault and Battery and Assault and Battery Against a Family or Household Member that ended in a Nolle Prosequi disposition dropped considerably in Fairfax County but not in comparable jurisdictions or the rest of Virginia, an indicator of the possible volume of cases not being staffed by the OCA's Office during that period.

Study Limitations

Data acquisition for this project presented many challenges. Data regarding rates of simple assault incidents and arrests was obtained through a request to the Department of Criminal Justice Services (DCJS). Data regarding the disposition of Fairfax County Court cases was ultimately obtained from the Supreme Court of Virginia. As neither data set contained personally identifiable information, there is no way to connect these data sets to follow individual cases through the court lifecycle (from incident to disposition). Therefore, *Findings—Incident and Arrest Data* and *the section analyzing disposition data* were analyzed independent of one another. As a result, we cannot make a definitive statement as to whether the OCA's policy change was the cause of changes reported in the findings. Additionally, the data from DCJS on simple assault incidents and arrests contain inconsistencies across Virginia for 2018.

4 _____ Epstein, Deborah, et al. "Transforming Aggressive Prosecution Policies: Prioritizing Victims' Long-Term Safety in the Prosecution of Domestic Violence Cases." *American University Journal of Gender Social Policy and Law* 11, no. 2 (2003): pgs. 465-498.

Recommendations

The CEDV leadership team endorsed the following recommendations based on the available data and the literature review:

- 1. When making policy or practice changes related to the prosecution of misdemeanors, consider who benefits and who is burdened by those changes. Specifically, ensure all misdemeanors with an indication of violence are assigned a prosecutor and prioritize violent misdemeanors over non-violent misdemeanors.***
- 2. Equity-focused and data-informed policies should consider the disproportionately impacted populations; specifically, women, people of color, etc.***
- 3. Partner agencies of the CEDV should collect data in a manner that allows for system-level analyses to effectively make data-informed policy decisions.***

OFFICE OF THE COMMONWEALTH'S ATTORNEY'S (OCA) MISDEMEANOR POLICY CHANGE

Impact on Victims of Simple Assault Not Covered

INTRODUCTION

In April 2020, the Fairfax County OCA announced that beginning July 1, 2020, the office would no longer staff all misdemeanor cases, as the office did not have the capacity to thoroughly examine and ethically prosecute each case. Instead, it would rely on Virginia's statutory judge-led prosecution model for some misdemeanor cases. The OCA posted its *policy on staffing misdemeanor cases on its website* as follows:

The Commonwealth's Attorney's Office has analyzed its current resources and determined the following:

FELONY CASES

The Commonwealth's Attorney's Office will be involved in **all felony cases** in the Juvenile and Domestic Relations District Court (JDR), General District Court (GDC), and Circuit Court (Circuit). This includes felony probation violations and attendant programs such as Drug Court.

MISDEMEANOR CASES

With respect to **misdemeanor cases**, the Commonwealth's Attorney's Office is currently handling the following matters:

- ▶ 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

PLEASE NOTE: If an individual is charged with a misdemeanor offense not listed here (including traffic infractions), although the Commonwealth’s Attorney’s Office may not be involved in a case, the prosecution of that case will still proceed by other means. That individual is still required to appear in court and follow the prescribed actions related to their charge.

The Council to End Domestic Violence (CEDV) had concerns about this policy, centering on some vulnerable victims’ cases being prosecuted through the judge-led-prosecution model, for example: those in dating relationships who don’t cohabitate (often young people), children, and elderly victims. The Leadership Team of the CEDV requested that the DFS Division of Domestic and Sexual Violence Services, using the services of the DFS Data Analytics Unit, attempt to collect data to document the possible impact of this policy change on victims and the community.

Many of these types of cases directly align with the work of the CEDV:

- ▶ Intimate partner domestic violence
- ▶ Stalking
- ▶ Sexual battery
- ▶ Violation of protective orders issued in stalking & IPDV cases
- ▶ 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.

The concern of the CEDV centers around the definition of intimate partner domestic violence (underlined) as it created a situation in which two categories of cases were not automatically staffed by a prosecutor:

- ▶ Cases of dating violence where the individuals involved were not cohabitating;
- ▶ Cases of misdemeanor violence toward a cohabitating non-intimate-partner family member that was neither child abuse (which is a felony) nor felony elder abuse.

Following the Fairfax County Board of Supervisors’ passage of the FY 2022 budget (on May 4, 2021), which included increased funding and positions for the Fairfax County Commonwealth’s Attorney’s Office, the OCA announced the office would assign prosecutors to all misdemeanors with an indication of violence. Additionally, starting in July 2021, the OCA resumed assigning a prosecutor to any misdemeanor case when the respondent is represented by an attorney.⁵ While the update to the policy ensured the aforementioned two types of cases would have OCA staff assigned to them, the CEDV remained concerned about the potential impact this policy had on victims while it was in place.

This report will review literature and analyze retrospective data to identify the impact the policy change had on victims while it was in place. In the development of this report, the DAU spoke or corresponded with the Fairfax Police Department’s Victim Services Division, a Fairfax Police Department Crime Analyst, the Criminal Justice Research Center, Virginia Department of Criminal Justice Services, the Fairfax General District Court, Fairfax Mental Health Docket, Legal Services of Northern VA, the Office of the Secretary, Supreme Court of VA, Fairfax County Domestic and Sexual Violence Services, and Aequitas. The DAU also reached out to the OCA.

⁵ According to the OCA, it has typically been the practice of the OCA to not assign prosecutors to cases in which the defendant is not represented by counsel. Those cases have always been prosecuted through the judge-led-prosecution model.

On June 21, 2021, the DFS DAU sent questions to the OCA on behalf of the CEDV Leadership Group. The questions were answered on July 14, 2021, by Benjamin Shnider, Deputy Chief of Staff and Public Information Officer for the OCA. A second set of questions was sent August 4 and answered on October 5. The CEDV asked what data was used to select the misdemeanors that would not have prosecutors automatically staffed. The OCA's office responded that they relied on the Police Department and the assessment of prosecutors to project the scale of common offenses based on prior years. Furthermore, the OCA stated that they relied on the experiences of prosecutors to determine the amount of time necessary to fully prepare and prosecute each offense type. The OCA noted that estimates were necessary because at the time of the policy's implementation, the Police Department was putting Body-Worn-Cameras (BWC) into service and prosecutors have a responsibility to review evidence from those BWCs. (The Police Department estimated that more than 89,000 hours of evidence per year would be created by the BWC program.) The OCA also noted that a limiting factor was the failure of previous OCA offices to create both a data and a case management system.

In March 2022, a draft of this report was provided to the OCA for review. They responded with a memo detailing their overall concerns about the first draft (included as Appendix A), as well as extensive edits, suggestions, and comments on the draft report. Following a review by the Data Analytics Unit, some of their edits and suggestions were incorporated into this final version of the report.

LITERATURE REVIEW

In looking at the background of the Commonwealth’s Attorney’s decision not to automatically assign a prosecutor to staff misdemeanor cases of physical disputes between family members that do not fall under the umbrella of Intimate Partner Domestic violence, there were several areas of interest to focus on within the research that has already been done on these topics. First, we explain what the court process is, how the system works, and what goes into prosecutorial discretion. The literature supports the classification of the prosecution of misdemeanor Intimate Partner Domestic Violence cases as a form of homicide prevention.

It is important to highlight how difficult and traumatizing it can be for victims of abuse trying to navigate the justice system during an already fragile and scary time. Additionally, it is important to note that persons that commit domestic violence (DV) offenses are shown to have a much higher likelihood of reoffending⁶. Some light was shed on the often-overlooked group of victims of teenage dating violence and how this abuse can set the stage for partner abuse later in life, making it crucial to address even at a young age. And finally, the research addresses how family violence is both an increasingly prevalent and complex problem with families wanting to protect family members and their image, as well as highlighting the distinct vulnerability of elder abuse victims.

Court Process and the Choice to Prosecute Misdemeanors

When a person is arrested on misdemeanor offense charges, typically they are either held to appear in front of a judicial officer or they are issued a summons to appear in court at a future date. In Virginia, the arresting officer and the magistrate make the decision on whether and which charges to file, and a court date is set. The locally elected Commonwealth’s Attorney, also known as the prosecutor, gets involved once the case goes to its initial court appearance, and that is when it is decided on whether they will staff the case themselves. Otherwise, the case is routed through the judge-led prosecution model. However, having a Commonwealth’s Attorney involved in a case can make a difference, since the decisions they make have a meaningful impact. They can make decisions on “what charges to bring, make immunity and plea bargain determinations, as well as making other critical choices that impact the criminal justice system, on both an individual and aggregate level.”⁷

The former policy of the OCA not to automatically assign a prosecutor to staff all misdemeanors is not unique to Fairfax County. “In many places in Virginia, misdemeanors are prosecuted not by commonwealth’s attorneys, but by city or county attorneys, police officers, private criminal complainants, or rarely, by private attorneys appointed as special prosecutors.” According to Virginia statutory law, it is not a requirement for commonwealth’s attorneys to prosecute or even be present for misdemeanor cases.⁸ Police officers or private complainants will present cases pro-se when there is no appearance by a commonwealth’s attorney or a municipal attorney, with the judge shepherding the case along. Typically, the complaining witness is not allowed to act as a prosecutor.⁹ There was a study done earlier this year on the impact of non-prosecution of misdemeanors from 2004-2018 in Suffolk County, Massachusetts, on future criminal justice system contact. The study focused only on non-violent misdemeanors, such as: disorderly conduct, disturbing the peace, possession of small quantities of prohibited substances, trespassing, and driving without a license or insurance. The study concluded that for the marginal respondent, non-prosecution of a nonviolent misdemeanor offense leads to large reductions in the likelihood of a new criminal complaint over the

6 Herring, Mark R. 2018 Annual Report: Domestic and Sexual Violence in Virginia. Office of the supreme court, Domestic Violence Initiatives (2019): pgs.10-18

7 Safstrom, Jennifer. “The Decisions Commonwealth’s Attorneys Make Matter. Here’s Why.” ACLU of Virginia (2019). <https://acluva.org/en/news/decisions-commonwealths-attorneys-make-matter-heres-why>

8 Code of Virginia, <https://law.lis.virginia.gov/vacode/15.2-1627/>

9 Perritt Jr, Henry H. “Pro-Se Prosecution in Virginia.” Virginia Lawyer vol. 69 (2020): pgs. 30-33.

following two years with no corresponding increase in the local crime rate. The choice to focus only on non-violent misdemeanors is reflective of the difficulty we had in finding any scholarly articles discussing not staffing prosecutors to violent misdemeanors. The authors mention that there have been some district attorneys across the country investigating various alternatives to prosecuting non-violent misdemeanors because they believe pushing minor nonviolent misdemeanor cases — trespassing, shoplifting, driving infractions, and so on — through the criminal legal system appears to do more harm than good.¹⁰ However, as mentioned previously, it was extremely hard to find any information on other jurisdictions’ experiences, whether good or bad, with choosing not to staff violent misdemeanor cases.

Misdemeanor Intimate Partner Domestic Violence (DV) Prosecution Is Homicide Prevention

Literature indicates that intimate partner homicide is often the result of a history of violence and abusive dynamics within a couple. Those who commit domestic and dating violence offenses often continue to offend. Domestic/ dating violence is often related to one person’s need to control another; and will likely continue if left unchecked. When a person that commits an act of violence is arrested, the abuse is curtailed, and the person being harmed and the person causing harm are better off. Victims who follow through with prosecution are less likely to experience subsequent violence.¹¹ Arrest and criminal prosecution send a powerful message, to the person causing harm and to the larger community, that the civil justice system cannot replicate.¹² Every time a person is held accountable for violent behavior, chances are better that the victim will be safer.¹³

For young males with a less extensive criminal history, police contact may represent a particularly important point of intervention that can redirect DV trajectories before they become entrenched. Coupled with informal social controls, the arrest may serve as a wake-up call that motivates this group to change their behaviors.¹⁴

There is extensive evidence that intimate partner violence is a predictor of homicide. The Lethality Assessment Protocol was developed in response to this research. For example, one study looked retroactively at homicide cases over a 4-year period and found 197 women were murdered in one jurisdiction. The proportion of women killed by intimate or ex-intimate partners was 39.6%. Police had been in contact with the victim of intimate partner femicides for a domestic violence complaint in 91% of cases in the 3 years before the femicide (44.9% resulted in arrest), with an average of 6.2 visits per contacted victim.¹⁵ This study highlights that there are often many opportunities to intervene, to prevent homicide, that may be lost if violent misdemeanor cases are not prosecuted.

Other research points out that there are types of abuse with a greater predictive power of lethality; for instance, the probability of intimate partner homicide increases 18.5 times when a victim of IPV is threatened with a weapon, 11.36 times with any kind of threat, 10.57 times with a death threat, 6.7 times with a previous strangulation attempt, 5.83

10 Agan, Doleac, and Harvey. “Misdemeanor Prosecution.” National Bureau of Economic Research, NBER Working Paper Series, Working Paper 28600 (2021): pgs. 2-7

11 Matias, Andreia, et al. “Intimate partner homicide: A meta-analysis of risk factors.” *Aggression and violent behavior*, Volume 50 (2020): 101358.

12 Epstein, Deborah, et al. “Transforming Aggressive Prosecution Policies: Prioritizing Victims’ Long-Term Safety in the Prosecution of Domestic Violence Cases.” *Journal of Gender, Social Policy & the Law*, Volume 11, Issue 2 (2003): pgs. 6-20

13 Epstein, Deborah. “Effective intervention in domestic violence cases: Rethinking the roles of prosecutors, judges, and the court system.” *Yale JL & Feminism*, Volume 11, Issue 3 (1999): p. 2

14 Broidy, Lisa, Danielle Albright, and Kristine Denman. “Deterring Future Incidents of Intimate Partner Violence: Does Type of Formal Intervention Matter?” *Violence Against Women*, Volume 22.9 (2016): pgs. 1113-1133.

15 Koppa, Vijetha, and Jill Theresa Messing. “Can justice system interventions prevent intimate partner homicide? An analysis of rates of help seeking prior to fatality.” *Journal of Interpersonal Violence* (2019): pgs. 3-29

times in the presence of controlling behaviors, 3.74 times if the victim is abused during pregnancy, 3.14 times in cases of physical violence, and 2.79 times in the presence of stalking.¹⁶ If misdemeanors in any of the above categories are not prosecuted, opportunities to break the cycle of violence may be lost.

The Relationship of Victims and the Justice System

An issue that came up several times in the research was the strain often put on victims when trying to navigate the justice system, especially with the court process itself being confusing and intimidating.¹⁷ Being heard, understood, and treated with fairness and respect is critical for a victim to feel safe and have confidence in the system should they need to seek government assistance in the future. Significant data show a strong link between a person's perception of receiving fair treatment and their trust in the legitimacy of government authority.¹⁸ One study found "many women, particularly those from minority racial or ethnic groups, distrust the criminal justice system and assume that their involvement in it will be unpleasant and possibly damaging... [they are] wary of losing control of the process, experiencing racism, encountering victim-blaming attitudes, or even facing criminal charges themselves."¹⁹

There are several factors at play when the victim is considering coming forward, such as fear of retaliation by their partner, the social stigma often associated with being a victim, and whether reporting the abuse will lead to a positive outcome for the victim. It's no surprise, then, that less than half of IPV crimes is ever reported to the police. However, simply reporting crimes of violence to the police is not always enough. One study reported that while more than half of sheltered women contacted police, less than a quarter of those contacts led to an arrest, and another study reported that even though "more than 60% of cases involved physical injury to the victim... only 28% resulted in arrest." What makes these numbers more alarming is that there are higher reporting rates among victims whose abuse is "severe and frequent," and that, in fact, the two are positively correlated – the more frequent/severe the abuse, the higher the likelihood there is police contact.²⁰ So, those who are reaching out to police are often the ones being abused the most, and yet there are still such low arrest rates. Victims are already scared when seeking assistance from the justice system; once they enter the system, that fear is often justified.

Evidence shows victims of violence face unique problems when seeking help through the court, especially when they know the person that harmed them. Carol E. Jordan, executive director of the University of Kentucky Office for Policy Studies on Violence Against Women, put it this way, "Court systems are, by their nature, adversarial. Through civil and criminal rules of procedure, they set out legal proceedings that give little control to a victim and expose [them] directly to [the person that caused them harm]."²¹ To further show the impact of this issue, Ford and Regoli's study found just under a third of persons arrested due to the victim coming forward ended up assaulting them again before their trial.²²

16 Matias, et al. (2020)

17 Fairfax County provides abuse victims with services through the Victim Services Division (VSD) to help them navigate the justice system, separate from the OCA, however, victims served by VSD still had issues following the OCA policy change (see case examples in the *Qualitative Data* section). The VSD was one of the entities that brought these issues to the attention of the CEDV.

18 Epstein, Deborah, et al. "Transforming Aggressive Prosecution Policies: Prioritizing Victims' Long-Term Safety in the Prosecution of Domestic Violence Cases." *American University Journal of Gender Social Policy and Law* 11, no. 2 (2003): pgs. 465-498.

19 Epstein, Deborah, et al. (2003), p. 19

20 Jordan, C.E. "Intimate partner violence and the justice system: An examination of the interface." *Journal of Interpersonal Violence*, 19, (2004): 1412-1434. <http://jiv.sagepub.com/content/19/12/1412>, pgs. 5-7

21 Jordan, C.E. (2004), p. 4

22 Ford, D. A., & Regoli, J. (1998). The Indianapolis Domestic Violence Prosecution Experiment. In American Bar Association & U.S. Department of Justice (Eds.), *Legal interventions in family violence: Research findings and policy implications* (NCJ-171666, pp. 62-64). Washington, DC: U.S. Government Printing Office.

Repeat Offenders

According to data from the Domestic and Sexual Violence in Virginia 2018 Annual Report, 33% of 8,471 aggravated assault offenses in Virginia in 2017 were committed against family members or dating partners. It has been estimated that three-fifths of people with a DV conviction are arrested again within two years, and of those who are re-arrested, nearly two-thirds of them will repeat DV offenses.²³ In Virginia in 2017, 23,634 arrests were made for assault and battery against a family or household member. Of the charges filed, 4,886 (20%) resulted in convictions. Of these convictions, 1,051 (or 20%) were for third or subsequent offenses of assault and battery against a family or household member.²⁴

Teen Dating Violence

According to the Centers for Disease Control and Prevention (CDC), “nearly 1 in 11 female and approximately 1 in 14 male high school students report having experienced physical dating violence in the last year” and “26% of women and 15% of men who were victims of... physical violence...by an intimate partner in their lifetime first experienced these or other forms of violence by that partner before the age of 18.” Some teen groups are at greater risk of violence than others, specifically [marginalized] sexual and racial/ethnic groups.²⁵ Additionally, one of the dangers specific to adolescents is that due to their inexperience, they may not have the maturity or proper skills to handle intense feelings or complex relationship problems and may not have the ability to recognize when a relationship is abusive. An article from the California Law Review points out that “one reason that a teen may not see her relationship as abusive is that she may interpret the violence as a sign of jealousy and then misinterpret this jealousy as a sign of love.”²⁶

Most domestic violence statutes exclude minors due to the requirement that complainants be married, cohabitating, or simply an adult, as is the case in Virginia. Different studies define “dating” and “courtship” differently, but in a recent study published by Suarez, she defines it as “a dyadic interaction that emphasizes mutually rewarding activities that can enhance the likelihood of future interaction, emotional commitment, and/or physical intimacy.” Suarez suggests that because teens are still exploring their sexuality, their relationships may be characterized by “exaggerated role playing” with males being dominant and females being submissive, which creates an environment for abuse. According to her extensive research efforts on the topic, she concluded that “intimate violence among teenagers is a social problem of epidemic proportion that has remained largely unrecognized by the domestic violence movement and by lawmakers.” In fact, at the time of her report, there was nothing in place that legally specifically protected teenage dating violence (TDV) victims. At the very least, she argues, they should be afforded the same protections as an adult.²⁷

It is important to set a precedent that TDV is wrong, unacceptable behavior, and will not be tolerated, especially since, according to a 2009 study published in the *Journal of Early Adolescence*, a quarter of sixth graders thought it was acceptable for boys to hit their girlfriends, and more than a quarter of the boys with girlfriends admitted to being physically aggressive (punching, slapping) toward their girlfriend.²⁸ Currently, according to data from the National Conference of State Legislatures (NCSL), there are laws in at least 23 states that mainly put the responsibility

23 Bird et. al. The Impact of Proposition 47 on Crime and Recidivism. Public Policy Institute of California (2018)

24 Herring, Mark R. (2019), pgs. 10-18

25 Centers for Disease Control and Prevention. “Preventing Teen Dating Violence Fact Sheet.” National Center for Injury Prevention and Control, Division of Violence Prevention (2021): pgs. 1-2

26 Suarez, Kathryn. “Teenage Dating Violence: The Need for Expanded Awareness and Legislation.” *California Law Review*, Inc. (1994): pgs.6-7

27 Suarez, Kathryn. (1994): pgs. 1-9.

28 U.S. Department of Education (2015).

in the hands of school boards to incorporate policies and education around TDV. While addressing it at the school level is important considering that almost half of students experiencing TDV reported some of the violence taking place at school,²⁹ the school can only do so much, and there appears to be a shortfall in addressing these issues within the justice system.

Young victims of TDV are shown to be more likely than their peers to smoke; use drugs; drink alcohol; engage in unhealthy dieting; engage in risky sexual behaviors; experience symptoms of depression and anxiety; exhibit antisocial behaviors such as lying, theft, bullying, or hitting; and are more likely to consider or attempt suicide.^{30, 31} Finally, there is evidence teen dating violence occurs at similar rates as that of spousal violence.³²

Family Violence

“Family violence” is really an umbrella term used to refer to violent behaviors between any variety of family relationships such as: parents and children, current or former intimate partners (spouse/ex-spouse/cohabiting partners/coparents), adults and older adults, and siblings.³³ While the intimate partner relationships listed were covered and guaranteed prosecutor staffing by the OCA’s policy, the rest were not, which is why the focus of some of the research efforts is on the prevalence of other types of domestic violence.

FBI research reveals an astonishing amount of violence within American families, especially repeat offenses.³⁴ The Bureau of Justice Statistics’ Criminal Victimization report showed there were 469,480 victimizations of domestic violence that were *not* intimate partners in 2019, and roughly half of the victimizations were reported to police.³⁵ One reason the FBI gave for why this type of violent behavior was allowed to continue unseen within family units was because family remains an “important cultural ideal” in America to this day.³⁶ Additional Department of Justice statistics revealed the most cited reason (34%) family violence victims didn’t report incidents to police was that it was considered a private or personal matter, while another 12% said they wanted to protect the [the family member that caused harm].³⁷ That notion of trying to protect the family image can be a dangerous one, especially with 3,500-4,000 children witnessing fatal family violence annually,³⁸ and why family violence in general can be a very complex and sensitive issue.

29 U.S. Department of Education. “Teen Dating Violence in the United States: A Fact Sheet for Schools.” U.S. Department of Education, Office of Safe and Healthy Students (2015): <https://www2.ed.gov/about/offices/list/oese/oshs/teendatingviolence-factsheet.html>

30 Centers for Disease Control and Prevention (2021): p. 2

31 U.S. Department of Education (2015).

32 Suarez, Kathryn. (1994): p. 8

33 Loseke, Donileen R., Richard J. Gelles, and Mary M. Cavanaugh. *Current Controversies on Family Violence*. Sage Publications (2005): p. 35

34 Loseke, Donileen R., Richard J. Gelles, and Mary M. Cavanaugh. (2005): p. 36

35 Morgan, Rachel E., Ph.D., and Jennifer L. Truman, Ph.D. “Criminal Victimization, 2019.” U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2020): p. 5 and 8

36 Loseke, Donileen R., Richard J. Gelles, and Mary M. Cavanaugh. (2005): p. 36

37 Durose, Matthew R., et. al. “Family Violence Statistics: Including Statistics on Strangers and Acquaintances.” U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2005): p. 6

38 The Center for Family Justice. “Statistics.” Center for Family Justice (2021): <https://centerforfamilyjustice.org/community-education/statistics/>

An especially vulnerable population within family violence are victims of elder abuse. Elder abuse crimes are extremely underreported. It is estimated that only 1 in 24 cases of elder abuse are reported.³⁹ This is far less than child abuse crimes, where 1 in 3 victimizations are typically reported.⁴⁰ In the U.S., it is estimated that about 11% of the population has suffered some form of violence within the past year,⁴¹ a statistic that will only become a more prevalent issue with Americans living longer. One researcher emphasized that “even if the proportion of elders in the population who are abused remained constant, the sheer numbers can be expected to increase.”⁴² Two different articles spoke to the finding that elder abuse does not only cause unnecessary injury and illness, but triples the risk of premature death within three years of the traumatic event.^{43,44} Thus, it is critical to highlight that the Elder Justice Roadmap, used as a strategic planning guide by the Department of Justice, specifically states to “designate more prosecutors and prosecution units dedicated to pursuing elder abuse” as one of their Direct Services Action Items.⁴⁵

39 Connolly, Marie-Therese, Bonnie Brandl, and Risa Breckman. “The Elder Justice Roadmap: A Stakeholder Initiative to Respond to an Emerging Health, Justice, Financial and Social Crisis.” U.S. Department of Justice, Department of Health and Human Services (2014): p. 7

40 Brownell, Patricia J. *Family Crimes Against the Elderly: Elder Abuse and the Criminal Justice System*. Routledge Taylor and Francis Group (2013): p. 3

41 Lino VTS, et. al. “Prevalence and factors associated with caregiver abuse of elderly dependents: The hidden face of family violence.” *Ciencia & Saude Coletiva* (2019): p. 6

42 Brownell, Patricia J. (2014): p. 3

43 Connolly, Marie-Therese, et. al. (2014): p. 8

44 Lino VTS, et. al. (2019): p. 6

45 Connolly, Marie-Therese, et. al. (2014): p. 14

QUALITATIVE DATA

The Department of Family Services' Division of Domestic & Sexual Violence Services provided real-life stories from four cases gathered from domestic violence advocates working in organizations under the Domestic Violence Action Center (DVAC) partnership. Specific case details were intentionally omitted to protect confidentiality. None of the cases received staffing from the OCA, and while each story is uniquely the experience of the victim, there are many common themes. Sharing these stories is intended to illustrate the impact of lack of representation on victims when navigating the complicated justice system feeling scared and alone. Case examples should not be interpreted as representative of the experiences of all victims seeking legal redress through the court system.

Case 1: Lack of Representation and Fear of Court

A Victim Services Division (VSD) advocate spoke with the client who had reached out to The Women's Center for assistance. The client shared she has a protective order (PO) hearing on Friday of that week and a criminal hearing. Two months into the client's six-month relationship, her boyfriend physically assaulted her five to six times (every time she tried to leave the relationship). This included strangulation, sexual abuse, and threats of killing her.⁴⁶

The client filed charges against her now ex-boyfriend and had been in touch with VSD. The client was advised she would have to represent herself for the criminal hearing as her ex-boyfriend was not the father of the client's two children and they never lived together and therefore the case did not meet the definition of domestic violence. She would also have to represent herself in General District Court (GDC) since Legal Services of Northern Virginia (LSNV) could not represent her at the time.

The client was not working at the time due to COVID-19 but was attending school. The client reported she could barely afford an attorney for either hearing, and was petrified to face the respondent alone in court, especially since he would have a lawyer representing him. Upon learning she would have to represent herself in both cases (especially the criminal one), the client reported seriously considering dropping everything and taking her chances with her ex, even though the two-week period after obtaining a preliminary protective order (PPO) had been the only time she had felt safe since leaving him. The advocate was able to get the client to feel a bit more confident for the PO hearing, but the client was still stressed and afraid about representing herself, especially in the criminal hearing.

Case 2: Establishing Venue

An older couple reported an assault by their adult son. The client did not know until shortly before the hearing that his case wasn't assigned a prosecutor by the OCA, but the son would have a defense attorney. The criminal case was dismissed because the defense attorney stated the client did not explicitly say the assault occurred in Fairfax County and the judge agreed. Eventually, the client was able to obtain a protective order for two years in the civil case but was understandably upset about the outcome of the criminal case (dismissed due to a technicality).

Case 3: Language Barriers

A client who previously reported being a victim of domestic violence, physical assault, emotional abuse, financial abuse, verbal abuse, and stalking was granted an emergency protective order at the police station after an incident

⁴⁶ These examples of abuse were from previous incidents in the relationship and not part of the current charge in which the OCA was not involved.

and a civil PPO was granted by Fairfax GDC in late September. The civil PO hearing was scheduled for early October. However, the client could not continue the report process because of a language barrier and no interpretation services had been offered to the client.

After the client's advocate intervened on her behalf, it was confirmed that the OCA would not be involved. Instead, the police officer who assisted the client with the initial report would present the case to the judge with the client as a victim and a witness in the hearing. Since the client could not afford to hire an attorney in absence of the OCA, the advocate believes the client was unfairly disadvantaged at the hearing since the respondent had legal representation and the client did not.

In similar cases before the policy change, the OCA has sought a "victimless prosecution," which gives the client peace of mind knowing her case of domestic violence and assault is prosecuted without testimony from the client. With OCA representation, an independent witness who saw the assault could have testified, providing a more compelling case to prosecute the respondent for violation of PPO, harassment, and domestic abuse charges. However, in this case that was not possible as the case was not staffed.

The client reportedly did not obtain legal advice and did not feel prepared for the hearing. The respondent's legal representation was able to negotiate a PO in the civil case and criminal charges were dropped. The client was not called to testify and evidence of visible injury, ripped clothing, etc. (with photo evidence), were not presented. The defense attorney requested a simplistic PO without a specific distance restriction. Only one day after the PO criminal hearing, the respondent was physically present at the client's work, causing the client more anxiety and frustration with the legal system.

Case 4: Failure to Get Protective Order and Lack of Trust in Justice System

A client who was assaulted by her boyfriend and whose case was not staffed by the OCA reportedly was also denied her PO hearing in GDC. The respondent had a lawyer and although the client did obtain a lawyer, she felt the lawyer did not represent her well. Reportedly, the judge stated that the respondent was "not a good guy" and told the respondent repeatedly to leave the client alone but did not grant the PO.

The client was advised about the appeal process by an advocate and was encouraged to reach out to LSNV for possible assistance. Fortunately, the client was not alone at the hearing, as the VSD was there. The VSD worker assisted the client in getting in touch with LSNV for help with the appeal process. However, the client was reluctant to continue with legal remedies because of how the court hearing went. She expressed fear about proceeding in the criminal hearing because of her experience. The client stated she no longer trusts the justice system.

The advocate created a safety plan with the client and encouraged her to reach out to VSD to help prepare for the criminal hearing. The advocate also reminded the client that no matter her decision, the advocate would provide her with support, information, and resources.

Qualitative Summary

One of the biggest takeaways from these real-life stories is how powerless these victims felt after their experiences. The stories reflect the victims' sense of being grossly unprepared to handle these situations without guidance. Victims reported feeling retraumatized, defeated, and alone. Other sentiments from victims included:

- ▶ Considering dropping their case because they did not feel they had adequate support.
- ▶ Reporting a lack of information about court protocol.
- ▶ Reporting feeling a lack of confidence and trust in the criminal justice system.
- ▶ Feeling they received inadequate legal representation when from marginalized and/or disadvantaged groups.

The justice system's response can influence victims' perceptions of its accessibility and effectiveness in helping them access remediation and feel safer in their homes. It is clear from the case studies presented that these victims did not feel safe, protected, and cared for at a time when they needed it the most. If cases like these fall through the cracks, it puts victims at greater risk of future violence.

QUANTITATIVE DATA

The concerns of the CEDV centered around the potential impacts of the OCA policy change on two distinct areas: changes in the rates of incidents/arrests and changes in the rates of court dispositions. Incident/arrest data was obtained from the Criminal Justice Research Center at the Virginia Department of Criminal Justice Services (DCJS). Court disposition data was obtained from the Supreme Court of Virginia.⁴⁷

Findings—Incident and Arrest Data

Changes in the Number of Simple Assault Incidents

The Data Analytics Unit was asked to investigate if the number of simple assault incidents and arrests had changed for populations whose cases were no longer guaranteed to be staffed by the OCA. We looked at whether the OCA policy change could have led to an increase in the rate of non-IPDV simple assaults. The concerns center around a lack of accountability for violent behaviors resulting in further non-IPDV assaults after cases were being dismissed due to a lack of staffing by the OCA.⁴⁸

In the analysis of incidents and arrests, this analysis only focused on victims who have a domestic or intimate partner relationship with the respondent and whose cases were no longer guaranteed to be staffed by the OCA due to not fitting the state’s definition of IPDV as per the policy change. This population will be referred to as non-intimate partner domestic violence (non-IPDV) victims. It is important to note that some of the non-IPDV victims may have been guaranteed staffing by the OCA due to: (a) having a child in common with the respondent (and therefore fitting the state’s definition of IPDV); (b) the case involving stalking; (c) the case involving the violation of a protective order issued in a prior stalking case; (d) the case involving a violation of a protective order issued in a prior IPDV case; (e) the case being part of the same incident as a felony matter (e.g., strangulation, certain death threats, qualifying elder abuse, etc.) Additionally, cases could be flagged for consideration for prosecution by criminal justice partners. However, the data from DCJS did not identify when these situations occurred.⁴⁹

TABLE 1: Number of Simple Assault Non-IPDV Victims in Fairfax County

	2016	2017	2018	2019	2020
Number of Simple Assault Non-IPDV Victims (Total intimate partners, minus spouse/ex-spouse, plus total family)	2,138	2,130	1,856	2,147	2,223

The years 2016, 2017, 2019, and 2020 all have remarkably close volumes of non-IPDV victims, between 2,130 and 2,223 victims – a range of only 93. The year 2018 deviates from this range considerably with 1,856 non-IPDV victims; however, the contact at DCJS stated there are inconsistencies in the data across Virginia for 2018. These inconsistencies likely explain why the data shows fewer victims in 2018. While not an accurate measure of the number of incidents, the 2018 total has been kept in the report for full transparency.

Our findings did not provide a definitive causal relationship between the slight rise in the number of incidents in 2020 and the OCA policy change (i.e., these incidents occurring more frequently because they were prosecuted by means other than OCA staffing) as other mitigating factors may account for this slight uptick. For example, researchers identified an increase of incidents of domestic violence related to the COVID-19 pandemic. “We find that

47 Supreme Court data were treated as a FOIA records request and cost \$400, which was paid for by DSVS.

48 Testimonials can be found in the *Qualitative Data* section.

49 Data from DCJS is used throughout the following section: *Findings—Incident and Arrest Data*

layoffs, loss of income, extended domestic stays, and exposure to habits due to stay-at-home orders are driving up the incidents of domestic violence.⁵⁰

While the COVID-19 pandemic is impacting all of Virginia in a similar manner, the changes to the OCA policy only affected Fairfax County. Therefore, data from other jurisdictions in Virginia, including neighboring/similar jurisdictions, can be used as comparison points to analyze whether the number of reported non-IPDV crimes has increased at similar rates to other jurisdictions that did not have misdemeanor prosecution policy changes.

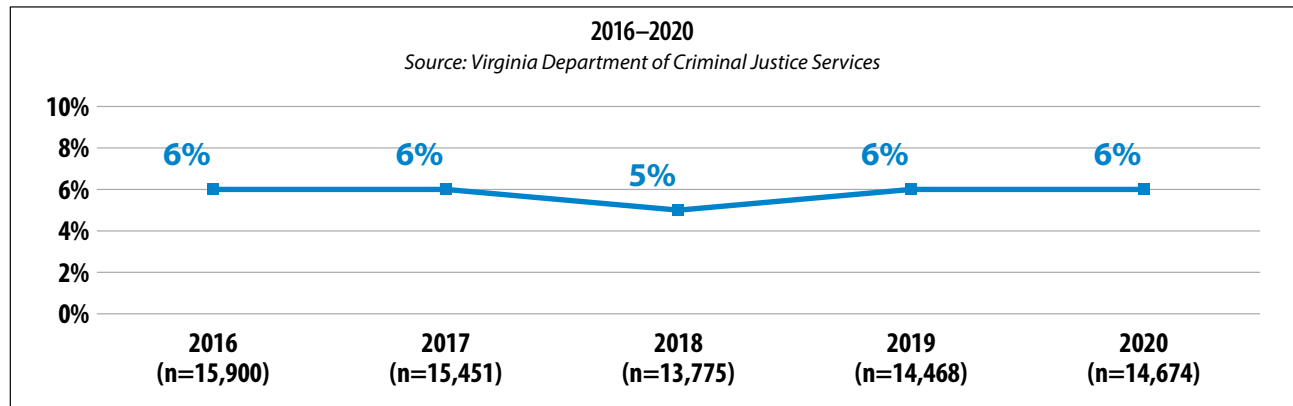
TABLE 2: Number of Non-IPDV Simple Assaults from 2019 to 2020 (Fairfax, Virginia, and Comparable Jurisdictions)

	2019	2020	# Change	% Change
Virginia (not including Fairfax, Loudoun, or Prince William counties)	28,186	28,913	+727	+2.6%
Fairfax County	2,147	2,223	+76	+3.5%
Loudoun County	702	751	+49	+7.0%
Prince William County	1,450	1,305	-145	-10.0%

Table 2 demonstrates that reported non-IPDV simple assaults increased by 2.6% in the state of Virginia (not including Fairfax, Loudoun, or Prince William counties) from 2019 to 2020. The percent increase of reported non-IPDV simple assaults in Fairfax County from 2019 to 2020 is higher but still comparable with the rest of Virginia at an increase of 3.5%. Additionally, the neighboring jurisdictions of Loudoun County had a 7% increase in the number of reported non-IPDV simple assaults from 2019 to 2020, which is higher than the increase felt in Fairfax County. Prince William County showed a 10% reduction in reported non-IPDV simple assaults from 2019 to 2020. Prince William County deviates from the increases seen in Fairfax, Loudoun, and the rest of Virginia

Another way we attempted to account for the impact of the COVID-19 pandemic was to look at the percentage of Virginia reported non-IPDV simple assault cases that come from Fairfax County over time. If the percent is consistent over time, one can assume there has not been a major impact on the frequency of reported incidents coming from Fairfax County. *Appendix B* contains a table highlighting the percentage of Virginia victims with a reported incident in Fairfax County by relationship.

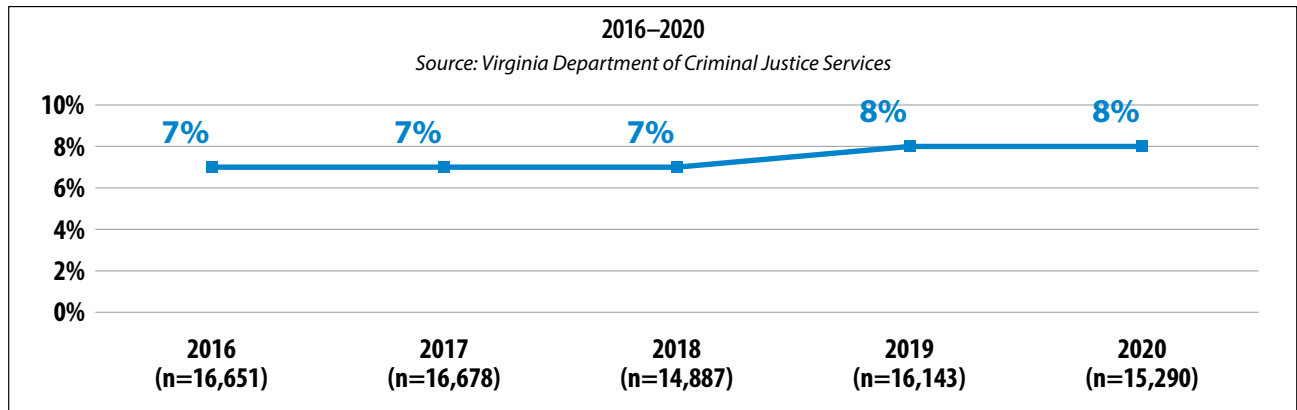
CHART 1: Percent of Virginia Boyfriend/Girlfriend Reported Simple Assault Incidents from Fairfax County



The percentage of Virginia boyfriend/girlfriend simple assaults coming from Fairfax County stayed consistent at about 6% from 2016 to 2020.

50 Sharma, A. & Borah, S. B. "COVID-19 and Domestic Violence: An Indirect Path for Social and Economic Crisis." *Journal of Family Violence*. (2020): 1-7. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7386835/>

CHART 2: Percent of Virginia Family Member Reported Simple Assault Incidents from Fairfax County



Additionally, the percentage of Virginia non-IPDV family member simple assaults coming from Fairfax County remained consistently between 7% and 8%. The data in Charts 1 and 2 as well as *Appendix B* reflect consistency in the incidence of simple assaults reported from Fairfax County.

In conclusion, the data from Chart 2 does point toward a slight increase in reported non-IPDV simple assaults in Fairfax County in 2020 but does not point to this increase as Fairfax specific. If the increase had a relationship with a local change, one would expect to see the increase in reported non-IPDV simple assaults from Fairfax outpacing the increase in the rest of Virginia along with all comparable jurisdictions. The data have shown:

- ▶ Fairfax County and the rest of Virginia have comparable increases in non-IPDV simple assaults (3.5% vs. 2.6% respectively).
- ▶ Loudoun County, a neighboring jurisdiction without any sort of change in the policy toward prosecuting non-IPDV misdemeanors, had a larger increase in non-IPDV assaults than Fairfax County (7.0% vs. 3.5% respectively).

Based on Charts 1 and 2, the percent of reported Virginia non-IPDV simple assaults reported for Fairfax County has stayed consistent (i.e., the increase of reported non-IPDV simple assaults reported from Fairfax County have stayed proportional to the increase of reported non-IPDV simple assaults in Virginia)

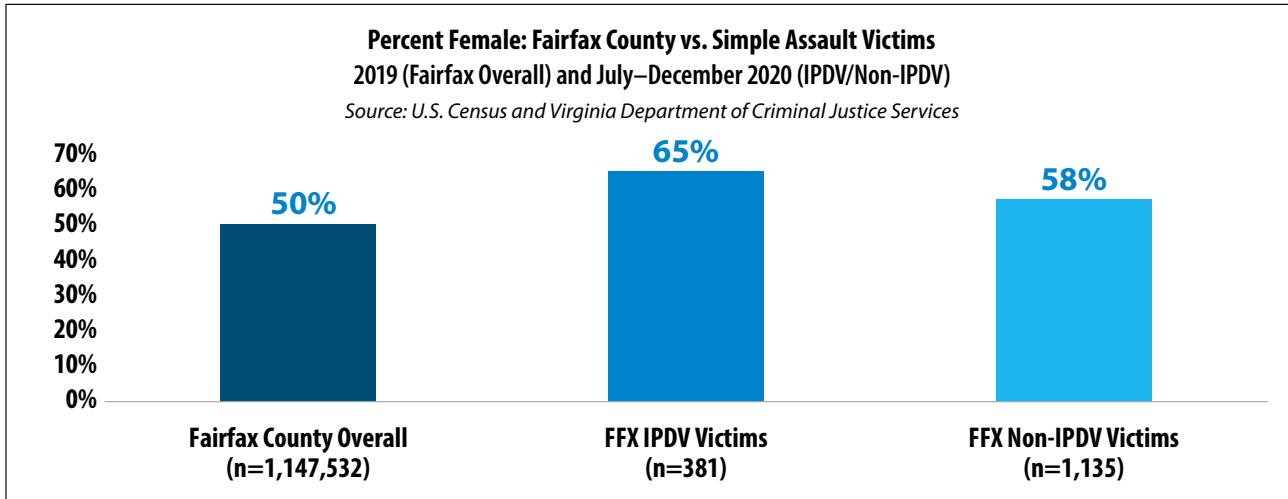
Fairfax County’s increase in the numbers of reported non-IPDV simple assaults do not appear to be explained by local changes (such as the OCA’s policy change) but rather may be due to an increase in the overall number of reported simple assaults in Virginia (according to the research, this is tied to hostile environments created by COVID-19 restrictions).⁵¹

51 Sharma, A. & Borah, S. B. “COVID-19 and Domestic Violence: An Indirect Path for Social and Economic Crisis.” *Journal of Family Violence*. (2020): 1-7. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7386835/>

Victim Demographic Data

To determine which populations were potentially more impacted by the OCA policy change, demographic disparities between IPDV and non-IPDV victims from July to December 2020 were compared⁵² against overall demographic data for Fairfax County.⁵³ Additionally, demographics for all IPDV Simple Assault victims from the same time frame also were summarized. See [Appendix C](#) for the full breakdown of each demographic category by number and percentage.

CHART 3: Percent Female, Fairfax County Compared to Simple Assault Victims (Both IPDV and Non-IPDV)

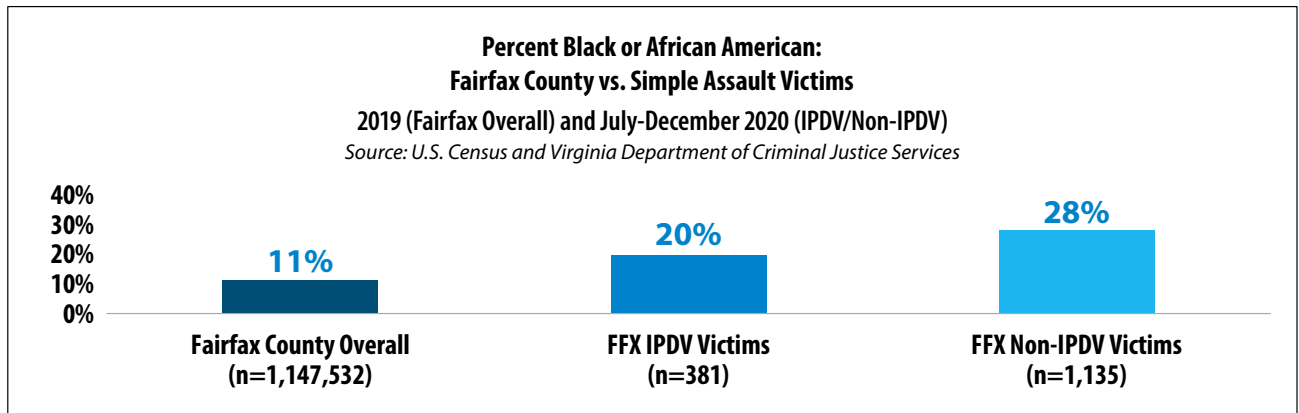


According to the U.S. Census Bureau, 50% of Fairfax County Residents (n=1,147,532) were female in 2019. By comparison, 58% of the non-IPDV victims and 65% of IPDV victims were female, higher proportions than Fairfax overall. Victims of either type of violence are more likely to be female when compared to county demographics.

52 Non-IPDV relationships are defined as: Boyfriend/Girlfriend, Ex-Relationship, Homosexual Relationship, and any Family category (Child, Parent, Sibling, etc.). A number of Boyfriend/Girlfriend, Ex-Relationship, and Homosexual relationships may be categorized as IPDV due to cohabitation or sharing a child in common.

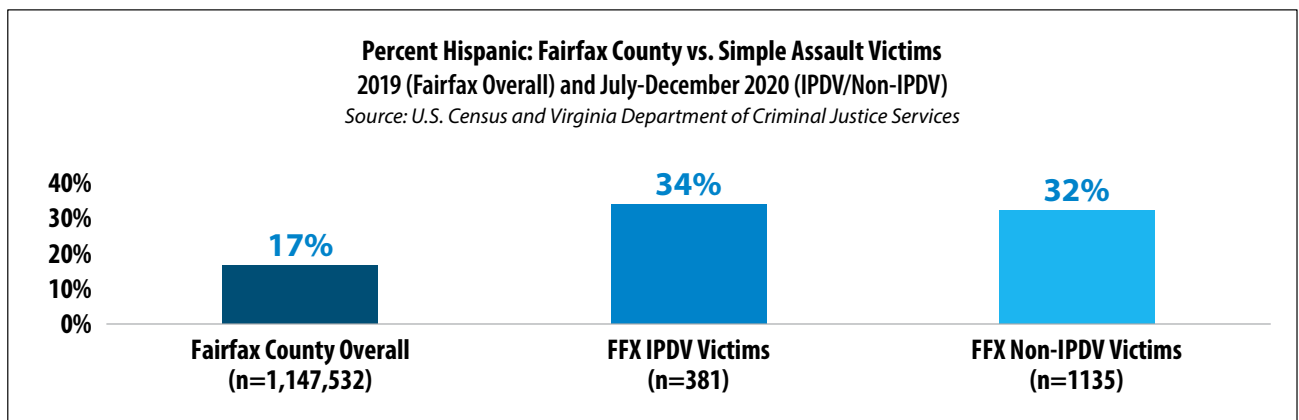
53 Data for Overall Fairfax County Demographics was taken from 2019 U.S. Census Bureau Data.

CHART 4: Percent Black or African American, Fairfax County Compared to Simple Assault Victims (Both IPDV and Non-IPDV)



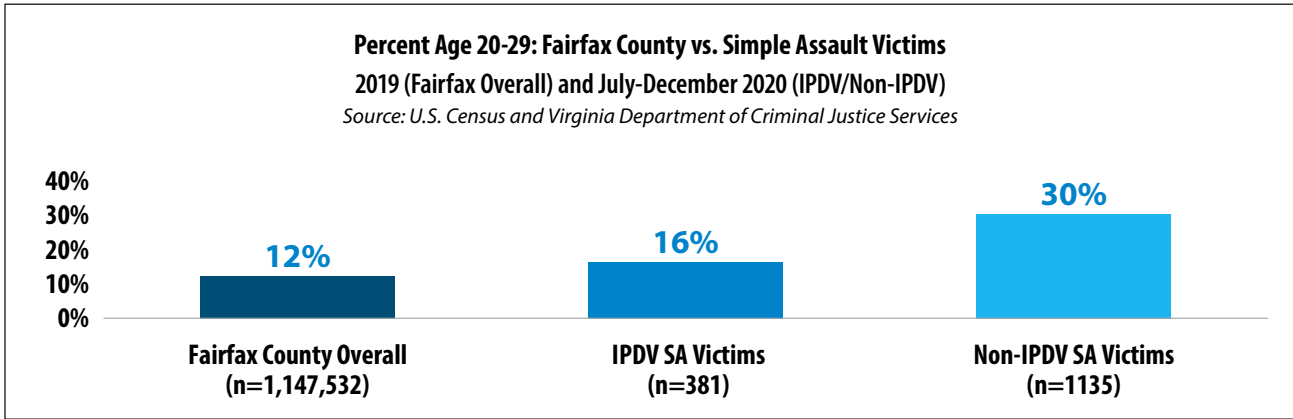
There is a disproportionate number of Black or African American victims of domestic violence. IPDV victims have a little less than two times the percentage of Fairfax County at 20%, compared to 11%. There are almost two and a half times the percentage of Black or African American non-IPDV victims compared to the percentage of Black or African American residents in Fairfax County (28% vs. 11% respectively). As seen in Appendix C, the remaining racial categories are comparable, except for Asian, which was underrepresented in the victims' groups. This data tells us that those victims experiencing simple assault incidents (specifically simple assault incidents that, if taken to court, are not guaranteed to be staffed by the OCA, as per the policy change), are disproportionately Black or African American.

CHART 5: Percent Hispanic, Fairfax County Compared to Simple Assault Victims (Both IPDV and Non-IPDV)



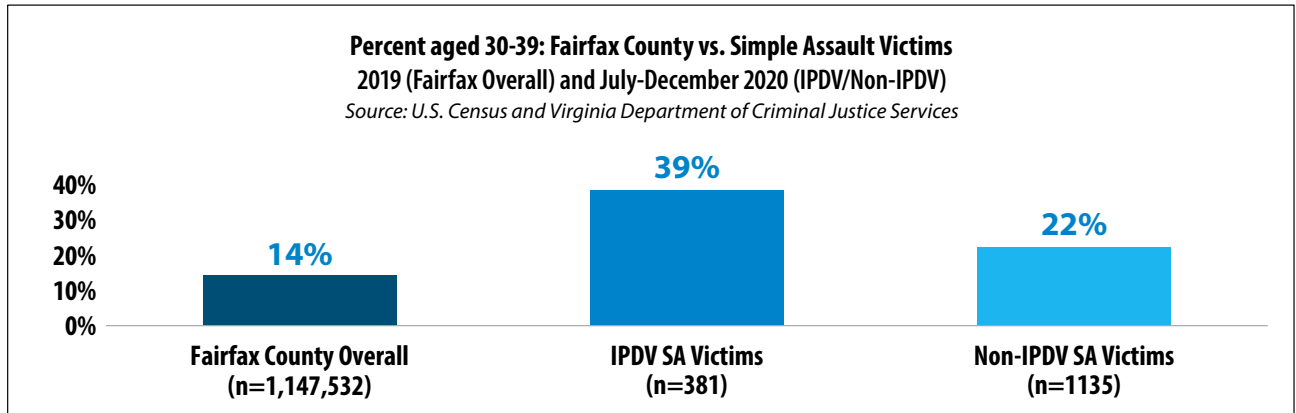
Ethnicity was analyzed as a separate variable and showed a disproportionality as well, with both non-IPDV (32%) and IPDV (34%) victims having about double the proportion of Hispanics than that of Fairfax County's numbers overall (17%). Victims of either type of simple assault are more likely to be Hispanic when compared to the demographics of the county.

CHART 6: Percent Age 20-29, Fairfax County Compared to Simple Assault Victims (Both IPDV and non-IPDV)



Finally, when looking at the age groupings, the most significant impact shown is that of 20- to 29-year-olds (Chart 6) and 30- to 39-year-olds (Chart 7). Thirty percent of Non-IPDV victims are aged 20-29, whereas Fairfax County numbers show that 20- to 29-year-olds make up only 12% of the population. At 30%, victims of non-IPDV are almost twice as likely to be between the ages of 20-29 when compared to victims of IPDV at 16%.

CHART 7: Percent Age 30-39, Fairfax County Compared to Simple Assault Victims (Both IPDV and non-IPDV)



Thirty-nine percent of IPDV victims are aged 30-39, whereas Fairfax County numbers show 30- to 39-year-olds make up only 14% of the population. At 39%, victims of IPDV are almost twice as likely to be between the ages of 30-39 when compared to victims of non-IPDV at 22%. In short, the victims of non-IPDV that were not guaranteed to be staffed by the OCA, are more likely to be younger, between the ages of 20-29. While victims of IPDV are more likely to be slightly older, between the ages of 30-39.

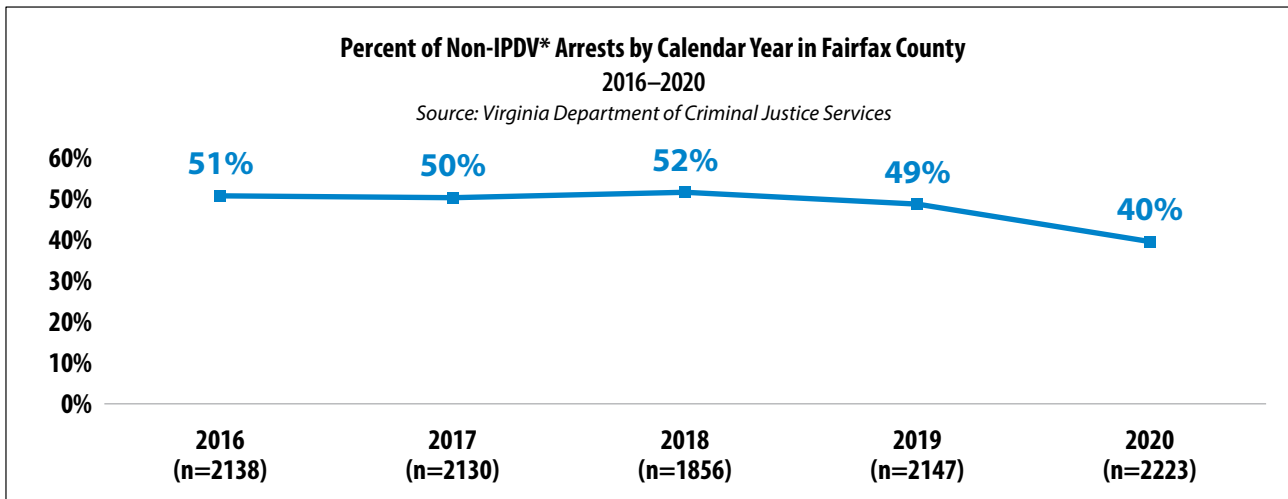
Again, it is not possible to identify which incidents developed into a case that went to court and therefore may not have taken advantage of the resources provided by the OCA. Regardless of whether the incidents developed into a case, this section does outline key demographic differences between the victims not impacted by the OCA policy change (IPDV victims) and victims who were potentially impacted by the OCA policy change (non-IPDV victims).

Changes in Simple Assault Arrests⁵⁴

The Data Analytics Unit was asked to investigate if the rate of simple assault arrests had changed for populations whose cases were no longer guaranteed to be staffed by the OCA. The CEDV had concerns the OCA policy change could have led to a decrease in the rate of non-IPDV simple assault arrests as, following the policy change, police officers were aware that cases were not going to be staffed by the OCA, which they believe would result in dismissals. Additionally, concerns were raised that arrests would decrease as police officers felt they would also need to assume the additional responsibility of presenting these cases.⁵⁵ While the OCA has no direct control over the police department, the concerns of the CEDV center around the unintended impacts of declining arrests due to the OCA policy change.

Calendar year 2020 saw a notable reduction in the percentage of arrests for both IPDV and non-IPDV simple assaults in Fairfax County. *Appendix D* contains a table highlighting the changes in the percentage of arrests for each relationship of interest. From 2019 to 2020 the percent of arrests decreased by 9% for all non-IPDV simple assault relationships. During that same year (2019-2020), the percentage of arrests for all IPDV simple assault victims fell by a comparable amount (10%), going from 57% to 47%.

CHART 8: Percent of Non-IPDV Arrests by Calendar Year in Fairfax County



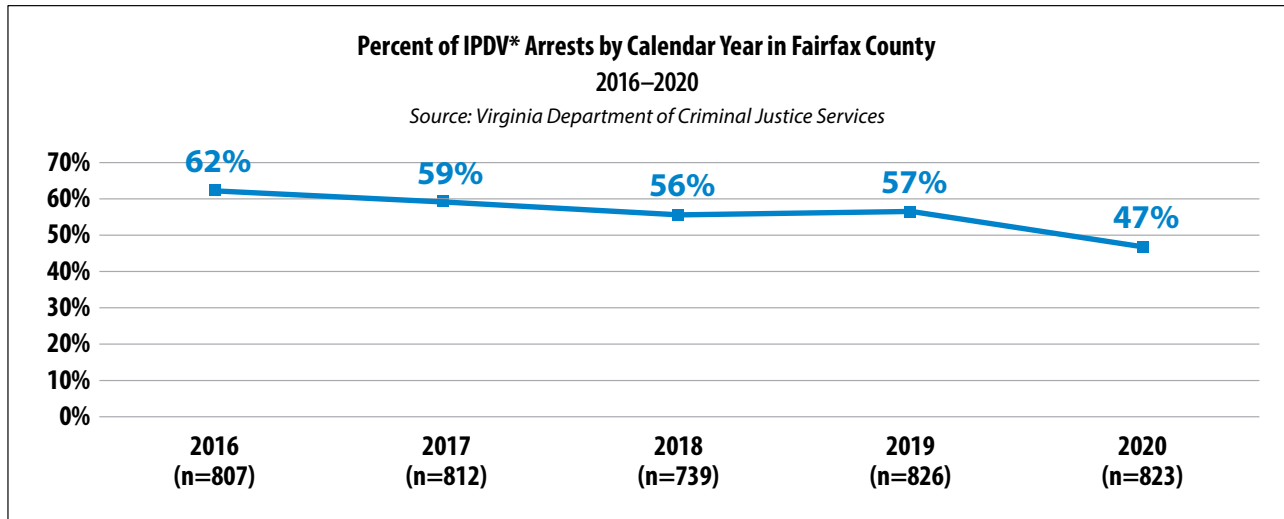
*Non-IPDV includes the following Relationships, where the victim is: Boyfriend/Girlfriend, Ex-Boyfriend/Girlfriend, Homosexual Relationship, Child, Child of Boyfriend/Girlfriend, Grandchild, Grandparent, In-Law, Other Family Member, Parent, Sibling, Stepchild, Stepparent, Stepsibling.⁵⁶

54 The data provided by DCJS is focused on simple assault incidents and arrests. Data regarding summons, which also begins the criminal case for prosecution, was not included in this analysis.

55 Testimonial on police officers presenting a case can be found in the Qualitative Data section

56 A number of Boyfriend/Girlfriend, Ex-Relationship, and Homosexual relationships may be categorized as IPDV due to cohabitation or sharing a child in common. The data did not outline when this occurred.

CHART 9: Percent of IPDV Arrests in Fairfax County by Calendar Year



* IPDV includes the following Relationships where the victim is: common law spouse, ex-spouse, or spouse.

Between the years 2016 and 2019, the average percent of arrests of non-IPDV simple assaults has consistently stayed at around 50%. In 2020, the percent of persons arrested in non-IPDV simple assaults decreased to 40%. Between the same years, the average percent of arrests of IPDV simple assaults has consistently stayed at around 59%. In 2020, the percentage of persons arrested in IPDV simple assaults decreased to 47%. Neither decline is unexpected as the COVID-19 pandemic introduced restrictions on formal processes, police procedure included.

Police procedures are notable to this discussion because the decision to make an arrest for any type of domestic violence incident is wholly within the discretion of the responding police officers. Unlike most states, Virginia vests the discretion on whether to arrest (or issue a court summons, which also starts a criminal prosecution) wholly within the police department. Therefore, prosecutors’ offices—Fairfax OCA included—do not typically learn of incidents unless the police department makes an arrest or issues a court summons, which is an available option for misdemeanor cases. As a result, any change in arrest rates is primarily driven by on-the-street decisions made by police officers and the directives given those officers by the police departments that employ, supervise, direct, and hold them accountable.

The data provided by DCJS allow us to take a month-by-month view of simple assault incidents and arrests throughout 2020. To better understand changes following both the COVID-19 pandemic and the OCA policy change, the year can be divided into three parts: Pre-pandemic (January- February), Pandemic/pre-OCA policy change (March-June), and Pandemic/OCA Policy Change (July-December). March has been categorized as the beginning of the Pandemic as Governor Northam’s Executive Order Fifty-One *Declaration of a state of emergency due to novel coronavirus (COVID-19)* was issued on March 12, 2020.

The three parts of the year are not equal in length of time; however, this issue is mitigated through the use of percentages. Chart 10 on the next page shows the percent of non-IPDV simple assaults that resulted in arrests, organized by time periods.

CHART 10: Percent of Non-IPDV Arrests in Fairfax County Throughout the Year (2020)

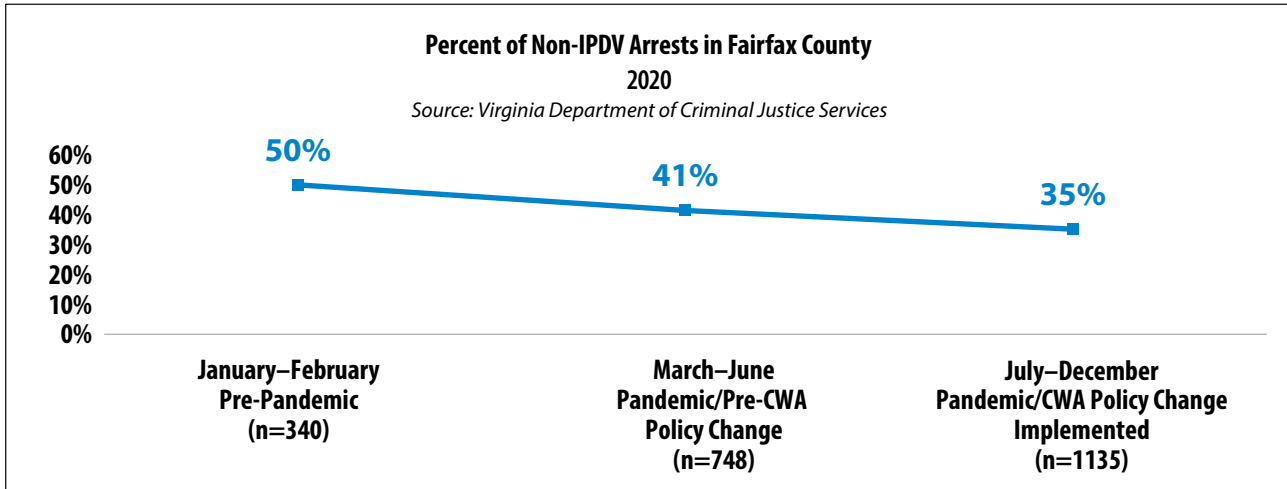


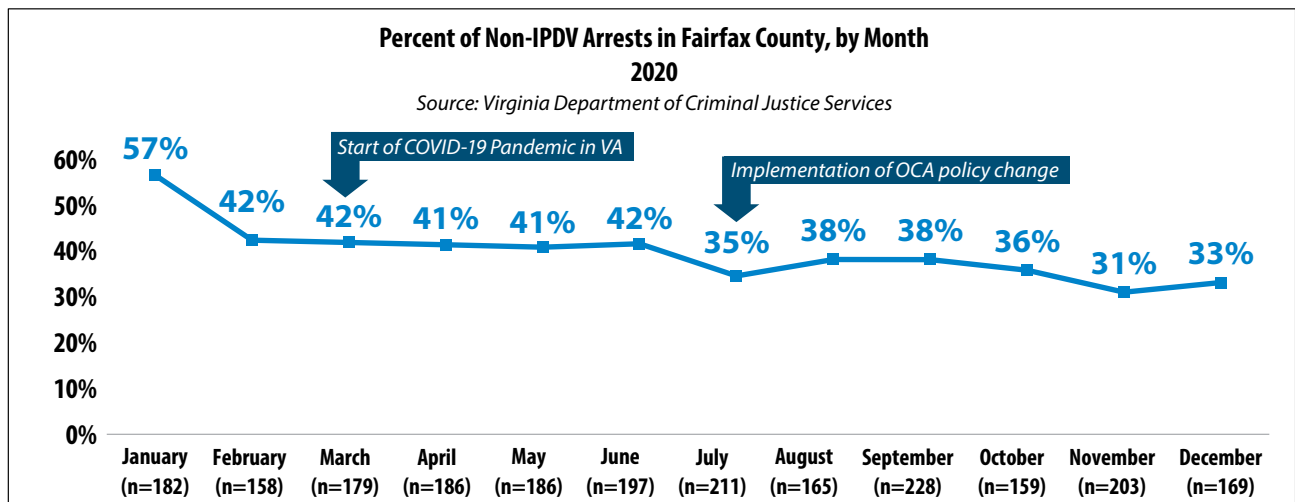
Chart 10 shows that in the two months prior to the COVID-19 pandemic, on average, 50% of non-IPDV simple assaults ended in arrests. This is in line with the findings detailed in Chart 8, where the percentage of arrests typically stayed near 50% for the four years prior to 2020. As expected, in the months where the COVID-19 pandemic began impacting daily functioning, the percent of non-IPDV simple assault arrests was reduced. Between the months of March and June (during the COVID-19 pandemic but prior to the OCA policy change), 41% of non-IPDV simple assaults ended in arrests. Between July and December of 2020, during which time the pandemic was ongoing, and the OCA's policy was in place, the percent of non-IPDV simple assault arrests was further reduced to 35%.

Without a controlled setting, it is not possible to prove causation. The decreased percentage of arrests does raise the question of whether lower rates of arrests for crimes not prosecuted are related to the OCA policy change. To improve the analysis, other possible explanations for this decline must be examined. If the explanations are proved false, the argument that lower rates of arrests for crimes that are not guaranteed to be prosecuted are related to the OCA policy change is that much stronger. Below are some of the possible explanations behind the decline in non-IPDV simple assault arrests and the data that either supports or contradicts these explanations.

Possible explanation 1: The decline in non-IPDV arrests following the implementation of the OCA policy change is a part of a gradual consistent decline that is potentially an extension of changes started by the COVID-19 pandemic.

To support or contradict this explanation, one must look at the data in more detail. If arrests gradually and steadily declined on a month-to-month basis, this would be an indicator that the decline is a natural extension of continuously decreasing arrests (potentially an extension of the COVID-19 pandemic). Similarly, if arrests declined sharply in the months following the OCA policy change, this can be seen as potential evidence that there is a relationship between arrests and a change implemented in July.

CHART 11: Percent of Non-IPDV Arrests in Fairfax County, by Month (2020)



As Chart 11 shows, there was a 15-percentage point drop in arrest rates between January and February—the largest month-to-month change in the entire data set. There is not an event we are aware of between January and February that would explain this drop. Between February and June of 2020, the percent of arrests remained consistent and steady at 41%, with only a deviation of 1%. Starting in July, the percent of arrests was further reduced by 7 percentage points to 35%.

Given that the percent of arrests had reached consistency before July and yet experienced a notable drop in July, there is the possibility of a relationship between non-IPDV arrests and something that began in July. A gradual decline could be a reflection of the ongoing impact of COVID-19. However, the decline in non-IPDV arrests following the implementation of the OCA policy was not gradual. It could indicate a change resulting from the OCA policy. However, as we cannot explain the Jan-Feb change, it may not be related to the OCA policy.

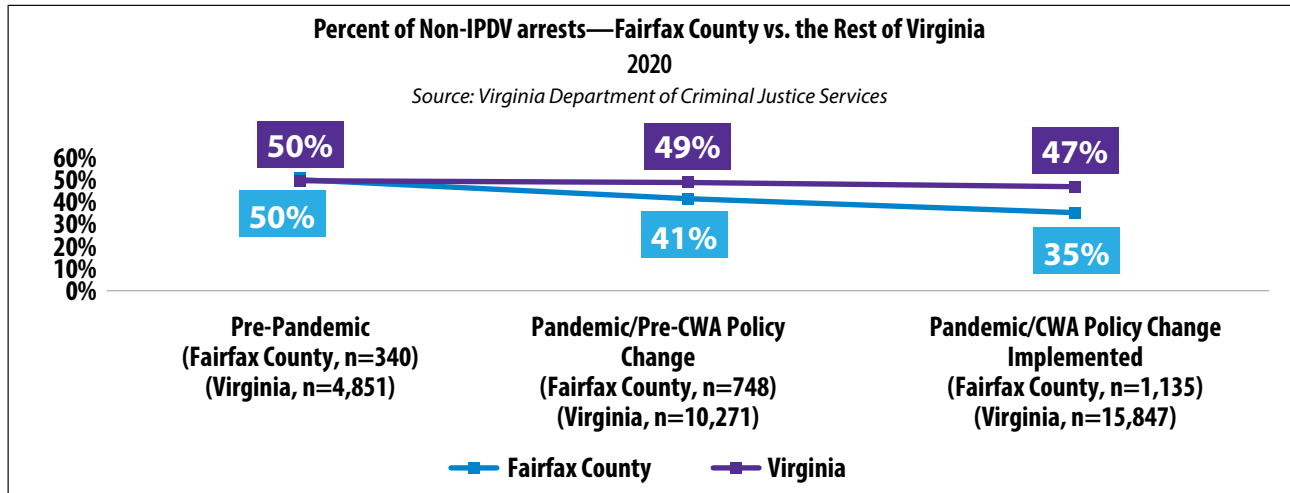
Possible Explanation 2: The decline in non-IPDV arrests is consistent in both neighboring jurisdictions and across the state.

The decline in non-IPDV arrests may not be specific to Fairfax County. If the trend of declining non-IPDV arrests is consistent throughout the state, it may be an indication that Fairfax County’s trends are reflective of overarching state or national changes. If the trend of declining non-IPDV arrests is consistent with neighboring jurisdictions, it may be an indication of a change in the Northern Virginia area, and not tied specifically to anything specific to Fairfax County.

Fairfax County Trends Compared to Virginia

According to the Census Bureau,⁵⁷ Fairfax County makes up 13% of the population of Virginia. To compare Fairfax County to Virginia, the incidents/arrests that occurred in Fairfax County must be removed from the totals reported for Virginia. By doing so, the comparison becomes Fairfax County compared to the rest of Virginia. If the trends between Fairfax County and the rest of Virginia align, this may be an indication of trends influenced by overarching state or national changes, not the OCA policy change.

CHART 12: Percent of Non-IPDV Arrests-Fairfax County Compared to the Rest of Virginia (2020)



As evidenced by Chart 12, in the months prior to the pandemic, the percent of arrests for non-IPDV were comparable between Fairfax County and the rest of Virginia. About half of all incidents of non-IPDV simple assault in both Fairfax County and the rest of Virginia ended in arrests. In the months of the pandemic/pre-OCA policy change, the percent of arrests significantly decrease (by nine percentage points) in Fairfax County. During the same period, the percent of non-IPDV arrests only decreases by 1% for the rest of Virginia (49%).

During the July-December period, the percent of non-IPDV arrests in Fairfax County decreased by five percentage points (from 41% to 36%). During the same period, the percent of arrests in the rest of Virginia decreased by only 2%.

The arrests for non-IPDV assaults in the rest of Virginia slightly decline throughout calendar year 2020, while the percent of non-IPDV arrests in Fairfax County decreased more quickly during that year. These trend lines show that although Fairfax County and the rest of Virginia both experienced a decrease in arrest rates for non-IPDV incidents, Fairfax County’s decrease was more pronounced.

57 U.S. Census Bureau QuickFacts: Fairfax County, Virginia

Fairfax County Trends Compared to Neighboring Jurisdictions

Prince William County and Loudoun County were chosen as comparison jurisdictions to Fairfax County. Both Prince William County and Loudoun County are adjacent jurisdictions to Fairfax County, Prince William County to the southwest and Loudoun County to the Northwest. Both comparison jurisdictions are within Virginia and are thus subject to the same state-level policies. While Fairfax County is the jurisdiction with the largest population in Virginia, Prince William County is the second most populated jurisdiction in Virginia. While Fairfax County has the second highest median household income of any county-level jurisdiction, Loudoun County has the highest. These facts make Prince William County and Loudoun County the closest comparable jurisdictions.⁵⁸

CHART 13: Percent of Non-IPDV Arrests in Fairfax, Loudoun, and Prince William Counties (2020)

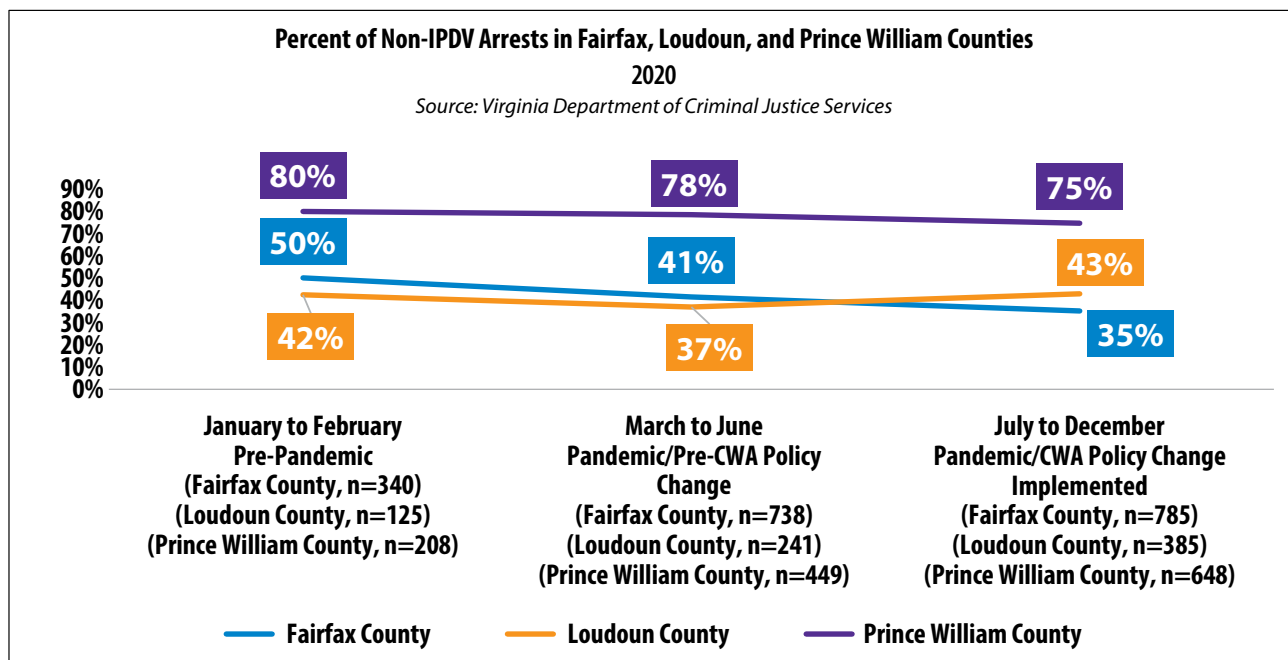


Chart 13 shows Fairfax County, as designated by the blue line, saw a substantial drop in the percent of arrests for non-IPDV. The percent of arrests dropped from 50% in the pre-pandemic months (January-February) to 41% in the months of the pandemic/pre-OCA policy change (March-June). Additionally, in the months of the pandemic/OCA policy change implemented (July-December), the percent of arrests fell even further to 35%.

In Prince William County, as designated by the green line, the percent of arrests fell only by a difference of two percentage points (from 80% to 78%) from pre-pandemic months to the months of the pandemic/pre-OCA policy change. This is a large deviation from Fairfax, where the percentage fell by nine percentage points. Additionally, in the months of the pandemic/OCA policy change implemented, Prince William County’s percent of arrests fell to 75%, a change of three percentage points, which is less than the decrease experienced in Fairfax County. While both counties have experienced a decrease in the percent of arrests, the total percent decrease of Fairfax County is much larger than Prince William County (15 percentage points in calendar year 2020 for Fairfax County vs. 5 percentage points for Prince William County); this fact, coupled with the consistently much higher rates of non-IPDV simple

⁵⁸ Upon review of the first draft of this report the OCA commented that there are also differences that are important to highlight. “For example, Loudoun does not have a police force answerable to its Board of Supervisors. It has an elected sheriff who oversees arrests. Prince William has a different economic demographic that could impact the response to the pandemic with regards to working from home, income insecurity, etc.”

assault arrests, emphasizes that Prince William and Fairfax counties had different short-term trends in 2020 when it comes to non-IPDV arrests.

Loudoun County’s non-IPDV arrest rate was completely different from both Fairfax and Prince William counties’ rates. In Loudoun County, as designated by the orange line, the percent of arrests fell by five percentage points (from 42% to 37%) from pre-pandemic months to the months of the pandemic/pre-OCA policy change. While the decrease in arrests for the same period does align with Fairfax County, Fairfax County had the larger decrease. In Loudoun County, during the months of the pandemic/OCA policy change implemented, the percent of arrests increased by six percentage points to 43%; this is a large deviation from Fairfax County, where the percent of arrests further decreased by six percentage points. The distinctly different trends highlight that Fairfax County and Loudoun County have very different trends when it comes to non-IPDV arrests.

The decline in non-IPDV arrests in Fairfax County is not consistent in both neighboring jurisdictions and across the state, which supports the idea that declining misdemeanor simple assault arrests in Fairfax County cannot be attributed to changes being implemented across the state or region.

Possible Explanation 3: The decline in non-IPDV arrests after July is expected and happens yearly.

In calendar year 2020, the percent of arrests for non-IPDV crimes in Fairfax County decreased considerably following the start of the OCA policy change on July 1, 2020, (from 41% to 35%) and stayed at a lower percentage throughout the rest of the year.

To compare similar periods of time, Table 3 below highlights the rate of arrests during the three time periods of interest over the course of five years. To simplify the explanation of this section’s analysis, the period from January to February (in 2020, known as pre-pandemic) will be referred to as period 1, March to June (in 2020, pandemic/pre-OCA policy change) will be referred to as period 2, and July to December (in 2020, pandemic/OCA policy change) will be referred to as period 3.

If a similar decrease in the non-IPDV arrest rate is experienced consistently from period 2 to period 3, one can say a yearly decrease is expected and the reduction in 2020 may not be directly related to a change implemented in July. For ease of comparison, the last column in Table 3 will highlight the change from period 2 to period 3 for all years analyzed.

TABLE 3: Change in Percentage Points of Non-IPDV Simple Assault Arrests from Period 2 to Period 3 Over the Last 5 Years (Fairfax County)

	Period 1 (January to February)	Period 2 (March to June)	Period 3 (July to December)	Change in percentage points from Period 2 to Period 3
2016	54%	53%	48%	-5
2017	52%	49%	50%	+1
2018	50%	53%	51%	-1
2019	47%	51%	47%	-4
2020	50%	41%	36%	-6

The analysis provided in Table 3 shows the six-percentage point reduction in non-IPDV arrests starting in July had not happened before; however, other years have come close. A five-percentage point reduction in non-IPDV arrests starting in July took place in 2016 and another decrease of four percentage points occurred in 2019.

The data supports the idea that the six-percentage point decrease in arrests in 2020 starting in July in the rate of arrests from period 2 to period 3 is not unique; however, the data does not show that this reduction in arrests is consistently expected. The data does not support that this would be an annual expectation during this time frame.

Possible explanation 4: Officers in the Fairfax County Police Department “de-policed” due to dissatisfaction with department leadership.

Upon their review of the draft version of this report, the Office of the Commonwealth’s Attorney offered an additional possible explanation: “de-policing.” The OCA reported that:

Members of the Fairfax County Police Department, including their union representative, stated that officers began “de-policing” in July 2020. The genesis of this “de-policing” was the June 2020 arrest of a FCPD officer “after authorities said he used a stun gun on a Black man who was disoriented and did not appear combative as he paced on a street in the Mount Vernon neighborhood”⁵⁹ In early July, the Fairfax Fraternal Order of Police wrote to the Chief of Police that as a result of this incident, “. . .officers on the street have been limiting their interaction with the public. . . .”⁶⁰ This backdrop could explain why the monthly data shows the arrest rate, which is determined by officers’ decisions, dropped 7% from June to July—the largest monthly decrease in the entire “during-covid” data set.

The “de-policing” could be a cause of the decline in arrest rates being studied. On October 13, 2019, there were 396 traffic stops as opposed to 18 traffic stops on October 13, 2020”—a decline which could be attributed to “de-policing.”⁶¹ As arrest decisions are the province of officers, and not prosecutors, “de-policing” is a potential explanation for the arrest-rate change. Although this analysis is not conclusive, this explanation cannot be dismissed as impossible.

It is important to note that “de-policing” as an explanation will have influenced the arrest rate for all crimes, not just crimes impacted by the OCA policy change. Possible Explanation 5 assesses whether arrests for both IPDV and non-IPDV misdemeanor simple assaults in 2020 have decreased at similar rates. If this is the case, it would provide further evidence for the “de-policing explanation.”

59 “Fairfax County police officer charged after using stun gun on Black man without provocation, police say,” Washington Post, June 7, 2022, available at https://www.washingtonpost.com/local/public-safety/fairfax-county-police-officer-charged-after-using-stun-gun-on-black-man-without-provocation-police-say/2020/06/07/4e7b4a90-a858-11ea-b619-3f9133bbb482_story.html

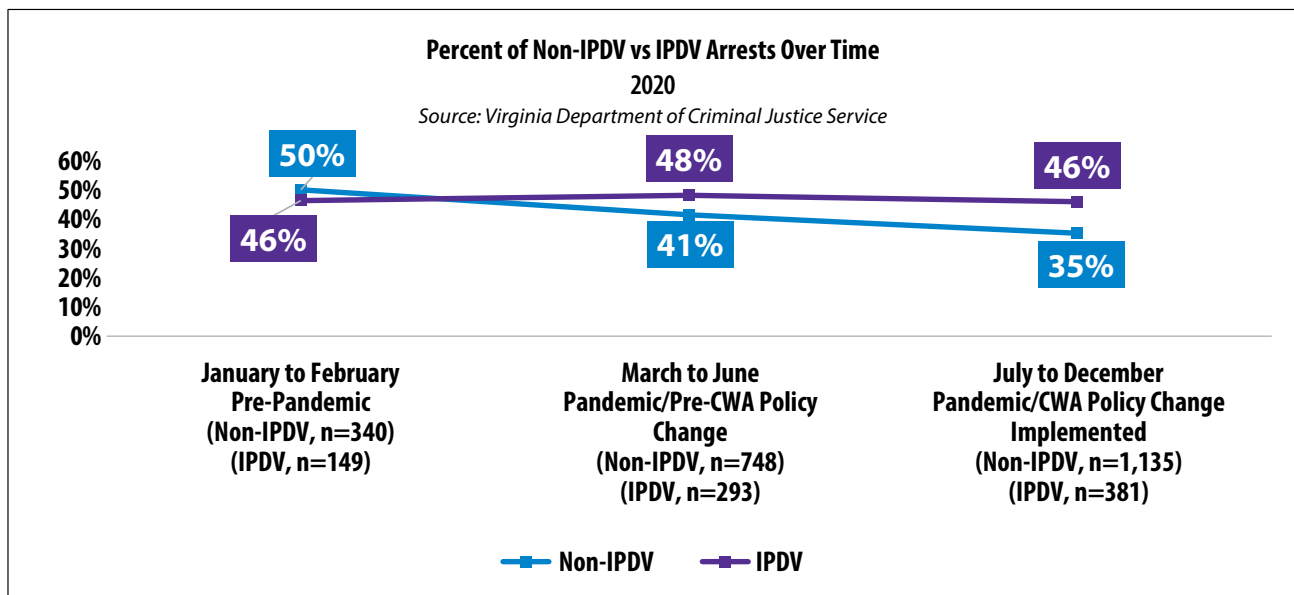
60 July 13, 2020, letter from Fairfax FOP, available at <https://www.facebook.com/fairfaxfop77/posts/2956198041156301>.

61 *Id.*

Possible Explanation 5: Arrests for both IPDV and non-IPDV misdemeanor simple assaults in 2020 have decreased at similar rates, indicating that declining arrests are not specific to crimes impacted by the OCA policy change.

A fifth possible explanation for the decrease in non-IPDV misdemeanor arrests is that the decline in arrests is occurring in both IPDV and non-IPDV simple assaults and is not specific to crimes impacted by the OCA policy change. To analyze this possible explanation, the percentage of non-IPDV arrests must be compared to the percentage of IPDV arrests for the same period. If the trends are similar, the decrease in arrests is not specific to non-IPDV victims. If the decline in arrests is specific to non-IPDV victims (victims whose cases are not guaranteed to be staffed by the OCA), this adds additional support to the idea that the OCA policy change is related to the decrease in the percent of arrests.

CHART 14: Percent of Non-IPDV vs. IPDV Arrests in Fairfax County Over Time (2020)



As seen in Chart 14 as 2020 progressed, the percent of arrests for non-IPDV arrests (in blue) declined. For non-IPDV victims, 50% of incidents prior to the pandemic ended in arrests, 41% of incidents during the pandemic (but prior to the OCA policy change) ended in arrests and 35% of incidents during the pandemic and following the implementation of the OCA policy change ended in arrests.

In contrast, for IPDV victims (in orange), the percent of arrests remained consistent throughout the year. For IPDV simple assault arrests, the percentage of arrests starts off as comparable to non-IPDV and then deviates significantly. For IPDV simple assaults, 46% of incidents prior to the pandemic ended in arrests, 48% of incidents during the pandemic but prior to the OCA policy change ended in arrests, and 46% of incidents during the pandemic and following the implementation of the OCA policy change ended in arrests.

The trends for IPDV and non-IPDV arrests differ with the percent of IPDV arrests remaining consistent and the percent of non-IPDV arrests declining. This finding indicates that trends in non-IPDV arrests are related to changes occurring between March and June (likely due to the COVID-19 pandemic) and further by changes that occurred beginning in July. The data contradicts the idea that arrests for both IPDV and non-IPDV misdemeanor simple assaults have decreased at similar rates. The data supports the idea that declining misdemeanor simple assault arrests are specific to non-IPDV relationships.

Findings—Court Case Disposition Data

In addition to looking at the potential relationship to arrests, we also examined the impact the Commonwealth’s Attorney’s policy change had on the court system as victims of domestic or intimate partner violence who don’t fit the state’s definition of IPDV no longer had their cases automatically staffed by the OCA. This section attempts to determine if the implementation of the OCA policy change coincided with changes in dispositions or the outcomes of cases. To analyze the impact of the OCA policy change on victims of violence, we first identified the specific misdemeanor crimes with a victim (per the Code of Virginia⁶²) that were no longer guaranteed to be staffed by the OCA, with particular attention paid to crimes that include vulnerable populations of interest.⁶³ Following a review of the Code of Virginia, six crimes were identified as fitting the criteria for analysis. The following crimes involve the populations of interest (those in dating relationships, children, and older adults) and can be charged as misdemeanors. If the crimes were charged as misdemeanors and the relationship did not fit the state’s definition of IPDV (spouse, ex-spouse, cohabitating, or child in common), then the case was not guaranteed to be prosecuted by the OCA.

TABLE 4: Violent Misdemeanor Crimes Not Guaranteed to Be Staffed by the OCA in Fairfax County

Virginia Code Number	Crime
§18.2-55.1	Youth Gang-Hazing
§18.2-56	Hazing Unlawful
§18.2-57	Assault and Battery
§18.2-57.2	Assault and Battery Against a Family or Household Member
§18.2-369	Abuse and Neglect of Incapacitated Adults
§18.2-371.3	Tattooing or Body Piercing of Minors

Data on these crimes and the subsequent dispositions were requested from the Supreme Court of Virginia for the entire state. To keep the analysis consistent, the parameters of the data request to the Supreme Court of Virginia aligned with the data request to the Virginia Department of Criminal Justice Services:

- ▶ Data for all charged crimes of interest for all of Virginia
- ▶ Crimes charged and disposed of in the last five calendar years (2016-2020)
- ▶ To include, but not limited to, the following fields: jurisdiction, court, code section, case type, amended flag, final disposition, etc.

A comparison of the changes in dispositions with similar jurisdictions, as well as a comparison with the rest of the state, will identify whether changes in dispositions are specific to Fairfax County or if they are in line with trends experienced outside of Fairfax County.

⁶² <https://law.lis.virginia.gov/vacode/title18.2/chapter4/>

⁶³ It is possible the same person could have been charged for multiple crimes, including multiple crimes listed in Table 4.

Frequency and Defining the Crimes of Interest

The data from the Supreme Court of Virginia highlight that certain violent crimes occur at much higher rates. Table 5 shows a breakdown of the occurrence of the misdemeanor crimes of interest in Fairfax County between 2016 and 2020.

TABLE 5: Frequency of Misdemeanor Crimes of Interest in Fairfax County (2016-2020)⁶⁴

2016-2020 Charge Code	Count	Percent of Total
Assault and Battery against a family or household member (§18.2-57.2)	7,419	69%
Assault and Battery (§18.2-57)	3,324	31%
Abuse and Neglect of incapacitated adults (§18.2-369)	3	<1%
Hazing unlawful (§18.2-56)	2	<1%
Youth Gang-Hazing	0	0%
Tattooing or Body Piercing of Minors	0	0%
Total	10,748	100%

To focus on the crimes that impact the greatest number of victims, this analysis will delve deeper into *Assault and Battery Against a Family or Household Member (§18.2-57.2)* and *Assault and Battery (§18.2-57)*. These two charges make up almost 100% of the violent crime cases.

Caveat: A portion of the misdemeanor cases charged as *Assault and Battery Against a Family or Household Member (§18.2-57.2)* would have been guaranteed prosecution by the OCA as some of these cases fall under the state's definition of IPDV (Spouse, Ex-Spouse, Child in Common). Due to a lack of reported relationships within the court data, it will not be possible to separate cases of *Assault and Battery Against a Family or Household Member (§18.2-57.2)* staffed by the OCA. Additionally, some cases under the two selected charges may have been staffed by the OCA if they involved stalking, violation of a protective order issued in a prior stalking case, violation of a protective order issued in a prior IPDV case, associated with a charged felony, or flagged for OCA prosecution by criminal justice partners. The data did not indicate when these cases occurred.

Changes in Fairfax County Court Dispositions Over Time

Two outcomes we considered to determine the potential impact of the OCA policy was the percent of cases that had a disposition of nolle prosequi and those that were dismissed/denied. Nolle prosequi is Latin for "we shall no longer prosecute" and is a declaration made to the judge by the prosecutor that the prosecutor does not wish to continue to prosecute the case. In Virginia, only the Commonwealth's Attorney acting as a prosecutor can make a motion for a nolle prosequi. In contrast, both a judge and a prosecutor can initiate a dismissal; a prosecutor can make a motion to dismiss, and a judge can unilaterally dismiss a case.

Contextually, it is important to clarify that for the entirety of calendar year 2020, a nolle prosequi and dismissal were functionally the same action. Prior to May 2019, there was a general understanding in Virginia law that nolle prosequi cases were distinct from dismissals. However, in May 2019's *In Re: Underwood* (Record Nos. 190497 and 190498), the Supreme Court of Virginia upended that understanding by ruling that "there is no material distinction between a Commonwealth's Attorney's 'motion to dismiss a charge without prejudice' and a 'nolle prosequi.'" In response to that ruling, the Virginia General Assembly amended Virginia Code Section 19.2-265.6 to distinguish a nolle prosequi and a dismissal. However, that change did not go into effect until March 1, 2021. The only real difference between a nolle prosequi and a dismissal (without prejudice) is that only a prosecutor can initiate a nolle prosequi. Thus,

⁶⁴ All crimes of interest are crimes of violence.

between March 2019 and March 2021, both terms were regularly used interchangeably when beginning from a prosecutor’s motion.

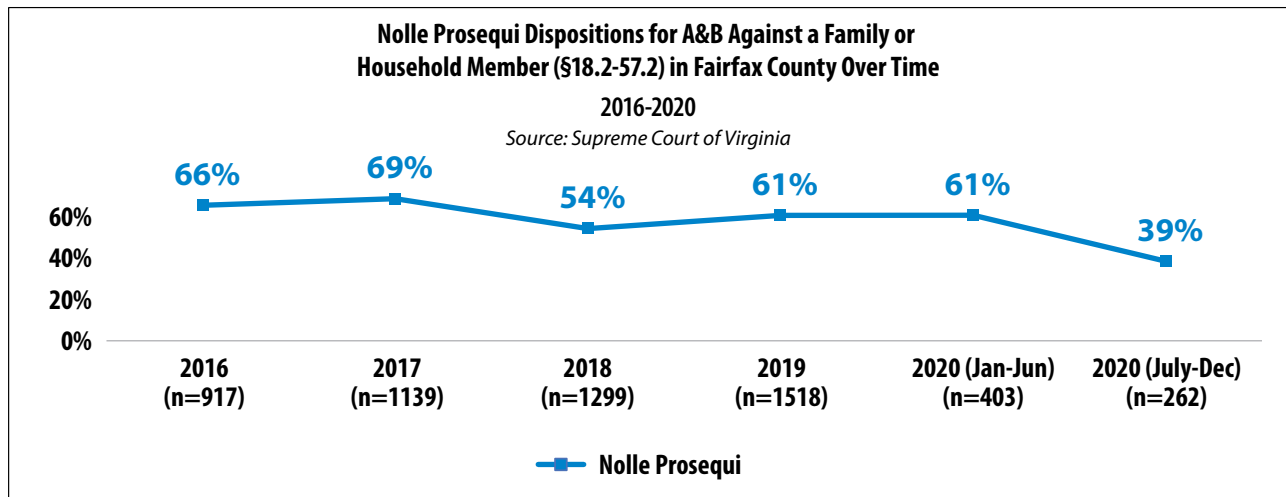
Unfortunately, the differing interpretations of dispositions at different points in time undercuts the ability to conduct an analysis of the change in dispositions over time. As nolle prosequi and a dismissal (without prejudice) were functionally the same after May 2019, it was suggested we analyze the impact of the changes in dispositions by focusing on the combined percentage of cases that have either disposition. However, as the two dispositions had distinct interpretations prior to May 2019, the proposed analysis would not be comparing analogous outcomes.

As only the Commonwealth’s Attorney can motion for a nolle prosequi, a disposition of nolle prosequi serves as a verified indicator the OCA was involved. Therefore, this report will analyze the change in the percent of cases in which it is verified the OCA was involved, using the percent of nolle prosequi dispositions as a proxy measure.

Assault and Battery Against a Family or Household Member (§18.2-57.2)

Appendix E contains a table that highlights the changes in misdemeanor dispositions of *Assault and Battery Against a Family or Household Member (§18.2-57.2)* over time in Fairfax County. This specific charge includes victims who may have the following relationships with the respondent: spouse, former spouse, child in common, parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents, and grandchildren, regardless of whether such persons reside in the same home with the respondent. Additionally, it could include a person’s mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law who reside in the same home with the respondent. Cases where the relationship is spouse, former spouse, cohabitating boyfriend/girlfriend, and parent with a child in common regardless of cohabitation status fall under the state’s definition of IPDV and their cases were guaranteed to be staffed by the OCA. To highlight the potential impact of the OCA policy change, the year 2020 has been split into two halves, before (January to June) and after (July to December) the policy change occurred.

CHART 15: Changes in the Percent of Nolle Prosequi Dispositions for Assault and Battery (A&B) Against a Family or Household Member (§18.2-57.2) Over Time in Fairfax County



Within Fairfax County, prior to the OCA Policy change, the majority of *Assault and Battery Against a Family or Household Member* cases ended in a disposition of nolle prosequi. Chart 15 shows that in 2019 and in the first half of 2020, 61% of cases ended in a disposition of nolle prosequi. Following the second half of 2020, 39% of cases ended in nolle prosequi, showing a change of 22 percentage points.

Considering that only prosecutors may initiate a nolle prosequi, this data shows that prior to the policy change,

the OCA staffed at least 61% of cases charged under *Assault and Battery Against a Family or Household Member*, and following the policy change, the OCA staffed at least 39% of cases. With that said, it is important to note many of the cases charged under this code would have been guaranteed staffing from the OCA due to the relationship status (spouse, former spouse, cohabitating boyfriend/girlfriend, and parent with a child in common regardless of cohabitation).

Similar to Fairfax County, and as evidenced in Appendices G, H, and I, the most common disposition for *Assault and Battery Against a Family or Household Member* cases in Prince William County, Loudoun County, and Virginia as a whole (excluding Fairfax County) was nolle prosequi. It is important to note that for the three jurisdictions of interest, the percent of nolle prosequi dispositions for *Assault and Battery Against a Family or Household Member* (§18.2-57.2) increased from the first half of the year 2020 to the latter half. As a summary of nolle prosequi dispositions:

TABLE 6: Changes in the Percent of Nolle Prosequi Dispositions for Assault and Battery (A&B) Against a Family or Household Member (§18.2-57.2) in Jurisdictions of Interest (2020).

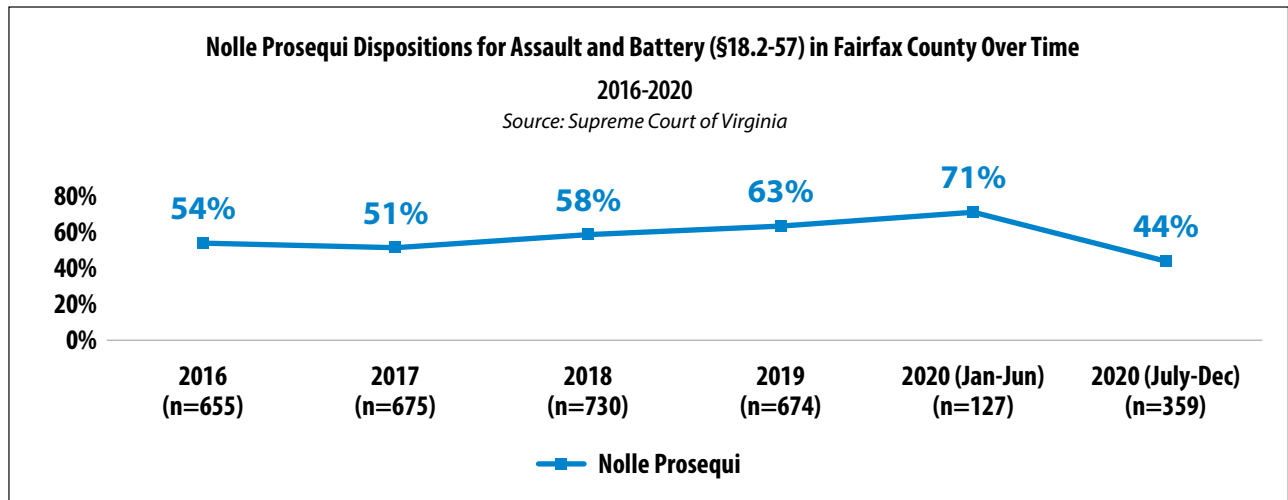
Jurisdiction	Percent of nolle prosequi dispositions (January to June)	Percent of nolle prosequi dispositions (July to December)	Percentage point change
Prince William County	55%	69%	+14 percentage points
Loudoun County	49%	52%	+3 percentage points
Virginia (Excluding Fairfax County)	37%	41%	+4 percentage points
Fairfax County	61%	39%	-22 percentage points

In conclusion, the increase in the percentage of nolle prosequi dispositions experienced in Fairfax County following the OCA policy change does not align with the trends experienced in comparable jurisdictions (Prince William County and Loudoun County), nor do they align with trends experienced across the state of Virginia. Out of the jurisdictions analyzed, only Fairfax County had a notable decrease in nolle prosequi dispositions for *Assault and Battery Against a Family or Household Member* (§18.2-57.2), highlighting that, following the policy change, the OCA staffed fewer cases of misdemeanor *Assault and Battery Against a Family or Household Member*.

Assault and Battery (§18.2-57)

A similar trend over time is seen in dispositions for misdemeanor *Assault and Battery* (§18.2-57). This charge includes victims who may be in a dating relationship, ex-dating relationship, or any other known/unknown relationship (i.e., acquaintance, employee, friend, neighbor, etc.). As these relationships do not fall under the state’s definition of intimate partner domestic violence, the OCA did not guarantee staffing of these cases after July 1, 2020. Some cases charged under *Assault and Battery* may have been staffed by the OCA if the case involved a dating couple cohabitating or sharing a child in common, stalking, a violation of a protective order issued in a prior stalking case, a violation of a protective order issued in a prior IPDV case, associated with a charged felony, or flagged for OCA prosecution by criminal justice partners. The table in *Appendix F* displays the dispositions over time in Fairfax County for cases charged under code §18.2-57.

CHART 16: Changes in the Percent of Nolle Prosequi Dispositions for Assault and Battery (§18.2-57) Over Time in Fairfax County



Within Fairfax County, prior to the OCA Policy change, most *Assault and Battery* cases ended in a disposition of nolle prosequi. Chart 16 shows that between 2017 and 2019, the percent of *Assault and Battery* cases ending in a disposition of nolle prosequi steadily increased. By the first half of 2020, 71% of cases ended in a disposition of nolle prosequi, indicating the OCA staffed a minimum of 71% of *Assault and Battery* cases prior to the policy change. Following the policy change, the OCA staffed at least 44% of *Assault and Battery* cases (as indicated by cases ending in nolle prosequi), showing a change of 27 percentage points

Similar to Fairfax County, and as evidenced in Appendices J, K and L, typically, the most common disposition for *Assault and Battery* cases in Prince William County, Loudoun County, and Virginia as a whole (excluding Fairfax County) was nolle prosequi.⁶⁵ It is important to note that for the three jurisdictions of interest, the percent of nolle prosequi dispositions for *Assault and Battery* (§18.2-57) increased from the first half of the year 2020 to the latter half. As a summary of nolle prosequi dispositions:

TABLE 7: Changes in the Percent of Nolle Prosequi Dispositions for Assault and Battery (A&B) (§18.2-57) in Jurisdictions of Interest (2020).

Jurisdiction	Percent of nolle prosequi dispositions (January to June)	Percent of nolle prosequi dispositions (July to December)	Percentage point change
Prince William County	52%	65%	+13 percentage points
Loudoun County	51%	63%	+12 percentage points
Virginia (Excluding Fairfax Co.)	34%	37%	+3 percentage points
Fairfax County	71%	44%	-27 percentage points

In conclusion, the increase in the percentage of nolle prosequi dispositions experienced in Fairfax County following the OCA policy change does not align with the trends experienced in comparable jurisdictions (Prince William County and Loudoun County), nor do they align with trends experienced across the state of Virginia. Out of the jurisdictions analyzed, only Fairfax County had a notable decrease in nolle prosequi dispositions for *Assault and Battery* (both §18.2-57 and §18.2-57.2), highlighting that, following the policy change, the OCA staffed less cases of misdemeanor *Assault and Battery*.

⁶⁵ When analyzing Virginia, in 2017 the most common disposition for *Assault and Battery* (§18.2-57) was dismissed/denied at 33% followed by nolle prosequi at 31%. Additionally, this same pattern occurred again in 2018.

Alignment with Similar Policies

In Fairfax County, most *Assault and Battery* (both §18.2-57 and §18.2-57.2) cases ended in a disposition of nolle prosequi. This disposition is also the most common in the comparable jurisdictions studied and typically the most common⁶⁶ in the state of Virginia. The city of Norfolk was recognized as a jurisdiction that has a long-standing comparable policy to OCA policy to not automatically staff non-IPDV misdemeanors. For the past 15 years, the city of Norfolk has not prosecuted misdemeanor simple assaults that do not fit the definition of domestic violence.

On March 29, 2021, the Deputy Commonwealth’s Attorney, Krista Fulton explained:

“In brief, I can tell you that currently, our office does not prosecute misdemeanor assault (or violation of protective order) cases that do not fit the definition of domestic violence.

With the opening of our Norfolk Family Justice Center, we have had the opportunity to identify some of the gaps in our services to victims and explore ways to fill those gaps. In the past month, my team and I have been discussing the fact that we are seeing victims come through the Center that are victims of interpersonal violence and could/should benefit from having a prosecutor on the case.

I have a member of my team currently researching how many misdemeanor assaults (and violation of protective orders) are coming in to our General District Court that would qualify as dating violence or some other type of interpersonal violence but not fit the definition of domestic violence because the relationship did not meet the definition of a family member. (Side note: non “family member” assaults and “family member”/domestic violence assaults are tried in different courts here.)

I have informed our local Criminal Justice Board that we are researching this and that our office will likely have a change in policy regarding our handling of these cases in the near future, once we get the internal procedures worked out. The reaction has been positive.”

The data presented in Tables 8 and 9 highlight the dispositions for *Assault and Battery* (both §18.2-57 and §18.2-57.2) in the city of Norfolk.

TABLE 8: Changes in the City of Norfolk Assault and Battery Against a Family or Household Member (§18.2-57.2) Dispositions Over Time (2016-2020)

City of Norfolk §18.2-57.2 Dispositions	2016 (n=959)	2017 (n=1,281)	2018 (n=1,516)	2019 (n=1,562)	2020 (Jan-Jun) (n=354)	2020 (July-Dec) (n=808)
Nolle Prosequi	29%	27%	31%	26%	29%	33%
Dismissed/Denied	29%	34%	30%	34%	38%	40%
Guilty	23%	24%	23%	25%	19%	13%
Not Guilty	15%	11%	11%	11%	10%	6%
Other	3%	4%	6%	5%	3%	8%

TABLE 9: Changes in the City of Norfolk Assault and Battery (§18.2-57) Dispositions Over Time (2016-2020)

City of Norfolk §18.2-57 Dispositions	2016 (n=169)	2017 (n=786)	2018 (n=981)	2019 (n=898)	2020 (Jan-Jun) (n=255)	2020 (July-Dec) (n=402)
Nolle Prosequi	15%	11%	14%	15%	14%	13%
Dismissed/Denied	38%	60%	63%	59%	67%	62%
Guilty	35%	18%	15%	16%	12%	13%
Not Guilty	6%	8%	4%	6%	5%	2%
Other	6%	4%	4%	3%	2%	8%

⁶⁶ In 2017 the most common disposition for *Assault and Battery* (§18.2-57) was dismissed/denied at 33% followed by nolle prosequi at 31%. This same pattern occurred again in 2018.

As can be seen in Tables 8 and 9, a small percentage of cases of misdemeanor *Assault and Battery* (both §18.2-57 and §18.2-57.2) in Norfolk end in a disposition of nolle prosequi. This is true for all years analyzed and contrasts the experienced trends in Fairfax (and elsewhere as described above) in which nolle prosequi is the most common disposition.

As seen in Fairfax, the decrease in dispositions of nolle prosequi is higher for cases of *Assault and Battery* (§18.2-57) when compared to the decrease seen in dispositions for cases of *Assault and Battery Against a Family or Household Member* (§18.2-57.2). This is explained by the fact that cases charged under *Assault and Battery* (§18.2-57) had less relationship types that fit the state's definition of IPDV, and therefore fewer situations that guaranteed OCA staffing. In parallel fashion, the city of Norfolk OCA does not staff cases of assault that do not fit the state's definition of domestic violence, meaning they are more likely to staff cases charged under *Assault and Battery Against a Family or Household Member* (§18.2-57.2) than those charged under *Assault and Battery* (§18.2-57). The data on nolle prosequi in the city of Norfolk show this as, in the latter half of 2020, 33% of cases charged under *Assault and Battery Against a Family or Household Member* (§18.2-57.2) ended in a disposition of nolle prosequi. During this same period, 13% of cases charged under *Assault and Battery* (§18.2-57) ended in a disposition of nolle prosequi.

The disposition of nolle prosequi greatly decreased in Fairfax County but not in comparable jurisdictions following the implementation of the OCA policy. Additionally, the data on the city of Norfolk shows nolle prosequi dispositions are less common in a jurisdiction with a similar policy as the OCA. This finding supports the idea that the decrease in nolle prosequi dispositions in Fairfax County is directly related to the OCA policy change.

FINAL RECOMMENDATIONS

Recommendation 1:

If changes are made to policy or practice related to the prosecution of misdemeanors, consider who benefits and who is burdened by those changes. Specifically, ensure all misdemeanors with an indication of violence are assigned a prosecutor and prioritize violent misdemeanors over non-violent misdemeanors.

We recognize Commonwealth's Attorneys' Offices are not required to staff misdemeanor cases. While it is not uncommon for Commonwealth's Attorneys to exercise prosecutorial discretion in Virginia not to assign a prosecutor to certain misdemeanor crimes for public safety reasons, no examples were found in the background research of other jurisdictions choosing not to staff non-intimate partner violence misdemeanor cases.

Some of the qualitative data indicate the OCA-staffing model may work to alleviate some of the stress and trauma victims face when navigating the justice system, and may be more responsive to the vulnerabilities, complexities, and dangers some victims may face. For these reasons, Virginia Commonwealth's Attorneys making resource and staffing decisions for misdemeanor cases should prioritize misdemeanors of violence wherever possible.

Recommendation 2:

Ensure equity-focused and data-informed policies consider disproportionately impacted populations, specifically, women, people of color, etc.

After reviewing the DCJS demographic data on victims of violence for both IPDV and non-IPDV crimes, as well as U.S. Census demographic data for Fairfax County as a whole, some inequities stood out related to gender, race, and ethnicity. Victims of either type of violence (IPDV and non-IPDV) are more likely to be female when compared to the demographics of the county. The percentage of Hispanic victims of IPDV and non-IPDV is almost double the percentage of Hispanic residents in the county, highlighting a large overrepresentation. IPDV victims are almost twice as likely to be Black or African American as the general population, while non-IPDV victims are more likely to be Black or African American and are twice as likely to be younger (20-29) than IPDV victims.

The non-IPDV victims that potentially could have been affected by the OCA policy change were disproportionately more likely to be female, Hispanic, and Black/African American than the general population and more likely to be younger and Black/African American than the IPDV population. The One Fairfax policy recommends county agencies consider who may be inequitably affected by policies and to be proactive about addressing those inequities.

Recommendation 3:

Partner agencies of the CEDV should collect data in a manner that allows for system-level analyses to effectively make data-informed policy decisions.

Data acquisition for this project presented many challenges. In correspondence with the OCA, the representative was asked if their office collected any data about misdemeanor intimate partner or domestic violence, including dating relationships that are not categorized as domestic incidents. They responded that their office has "lacked a data or case management system for decades. We are in the process of rectifying that and aim to have more such data going forward." Data about the disposition of Fairfax County court cases was obtained from the Supreme Court of Virginia. The police department does have access to extensive data that is reported to the Virginia Department of Criminal Justice Services (DCJS). Data for this report was obtained through a request to DCJS.

If Fairfax County partner agencies of the CEDV collected and stored local data in a manner that allowed for regular system-level analyses, it would provide them with a clearer picture of the impact of policy decisions and assist them to make data-informed policy decisions effectively.

APPENDICES

Appendix A: Response Memo from the Office of the Commonwealth's Attorney to Draft Report

**MEMO****DATE:** June 15, 2022**TO:** Toni Zollicoffer, Domestic and Sexual Violence Services Director; Michael Becketts, Director of the Department of Family Services**FROM:** Ben Shnider, Chief of Staff, Office of the Commonwealth's Attorney**SUBJECT:** Draft CEDV Report re: Past CWA Misdemeanor Policy

On Thursday, April 21 CA Descano and other representatives of our senior team were pleased to meet with the team from the Department of Family Services Data Analytics Unit and others who assisted in the drafting of the Council to End Domestic Violence's report on our office's sunsetted misdemeanor policy. We shared several concerns about the accuracy of the report, from both a legal and analytical perspective. We committed to compiling our detailed feedback by June 15 so that the drafters of the report might account for it in a final version. Attached please find a marked-up version of the draft report that encompasses our team's comprehensive feedback.

Our feedback falls predominantly into three principal categories:

- 1) Inaccurate depictions of how the legal system functions: This draft includes numerous flawed descriptions of how the legal system functions in Virginia. One example of such a misrepresentation is the repeated faulty assertion that cases that were not assigned a CWA prosecutor were not prosecuted, which ignores the existence of Virginia's judge-led prosecution system.
- 2) Reliance on flawed metrics: The draft also relies on numerous flawed metrics to draw conclusions about the impact of the policy in question, implying linkages between the policy and outcomes that have not – in fact – been substantiated. A primary example is the use of arrest data in the "Quantitative Data" section without credibly theorizing why such data is the appropriate method by which to evaluate a CWA policy change, and not more likely to be driven by FCPD policy when that agency is the actor directly involved.
- 3) Not controlling for cases assigned a prosecutor: During the term of the policy in question, as the draft report itself acknowledges at its outset, the CWA continued to staff numerous categories of non-IPDV misdemeanors. This analysis fails to control at any point for the likely over half of such cases that the office staffed. An example of this structural flaw is the "Victim Demographic Data" section, which implies that individuals whose cases were not assigned a prosecutor were more likely to be minority community members through a surface-level comparison of IPDV to non-IPDV simple assault cases with no effort to distinguish between those that were in fact assigned to a prosecutor and those that were not.

We appreciate this opportunity to share our detailed feedback. As we discussed in our April meeting, we share a commitment to ensuring our community is as informed as possible about the workings of its justice system. We hope our input, therefore, assists in adhering to this shared principle and assuring that any published product is accurate.

###

Appendix B: Percent of Virginia Victims with a Reported Incident in Fairfax County by Relationship Type

	2016	2017	2018	2019	2020
Total for the year	8% (n=77,639)	8% (n=77,120)	8% (n=75,027)	9% (n=75,309)	9% (n=68,620)
Intimate Partners (potentially not covered by IPDV policy)					
Boyfriend/Girlfriend	6% (n=15,900)	6% (n=15,451)	5% (n=13,775)	6% (n=14,468)	6% (n=14,674)
Ex-Relationship (Ex-bf/gf)	--	--	--	0% (n=1,736)	0% (n=3,228)
Homosexual Relationship	7% (n=635)	8% (n=672)	4% (n=653)	9% (n=138)	--
Family Members (potentially not covered by IPDV policy)					
Family Member Total	7% (n=16,651)	7% (n=16,678)	7% (n=14,887)	8% (n=16,143)	8% (n=15,290)
Child	6% (n=3,646)	6% (n=3,634)	6% (n=3,316)	7% (n=3,552)	7% (n=3,273)
Child of Boyfriend/Girlfriend	3% (n=563)	4% (n=493)	1% (n=515)	5% (n=335)	5% (n=374)
Grandchild	4% (n=203)	2% (n=203)	4% (n=171)	3% (n=221)	3% (n=206)
Grandparent	4% (n=333)	4% (n=357)	5% (n=355)	4% (n=403)	4% (n=364)
In-Law	8% (n=492)	10% (n=464)	11% (n=399)	10% (n=414)	9% (n=487)
Other Family Member	5% (n=2,493)	5% (n=2,279)	6% (n=1,956)	7% (n=2,171)	8% (n=1,976)
Parent	9% (n=4,637)	9% (n=4,732)	9% (n=4,264)	10% (n=4,674)	10% (n=4,569)
Sibling	8% (n=3,347)	9% (n=3,573)	8% (n=3,091)	10% (n=3,517)	10% (n=3,239)
Stepchild	4% (n=440)	4% (n=443)	5% (n=400)	5% (n=403)	6% (n=360)
Stepparent	6% (n=389)	4% (n=404)	7% (n=329)	4% (n=358)	6% (n=367)
Stepsibling	8% (n=108)	3% (n=96)	5% (n=91)	13% (n=95)	11% (n=75)

*Greyed out areas are places where these types of relationships are not reported.

Source: Virginia Department of Criminal Justice Services

Appendix C: Fairfax County Demographic Breakdown for July to December 2020 (since start of the OCA Policy Change)

	Fairfax County Overall*		IPDV SA Victims		Non-IPDV SA Victims	
	N	%	N	%	N	%
Total N (denominator)	1,147,532		381		1135	
Sex						
Male	569,456	49.6%	132	34.6%	481	42.4%
Female	578,076	50.4%	249	65.4%	654	57.6%
Race						
Asian	257,102	22.4%	29	7.6%	53	4.7%
Black/African American	131,100	11.4%	75	19.7%	319	28.1%
Native**	13,125	1.1%	0	0%	0	0%
White	729,767	63.6%	271	71.1%	748	65.9%
Unknown/Other	69,503	6.1%	6	1.6%	15	1.3%
Ethnicity						
Hispanic	189,515	16.5%	129	33.9%	364	32.1%
Non-Hispanic	958,017	83.5%	234	61.4%	727	64.1%
Unknown	--	--	18	4.7%	44	3.9%
Age						
0-9	141,125	12.3%	0	0%	13	1.1%
10-19	154,204	13.4%	1	0.3%	143	12.6%
20-29	140,980	12.3%	62	16.3%	343	30.2%
30-39	165,476	14.4%	147	38.6%	276	24.3%
40-49	159,625	13.9%	96	25.2%	153	13.5%
50-59	155,269	13.5%	48	12.6%	115	10.1%
60-69	122,441	10.7%	17	4.5%	66	5.8%
70-79	72,020	6.3%	8	2.1%	16	1.4%
80-89	36,032	3.1%	2	0.5%	7	0.6%
90-older			0	0%	1	0.1%
Unknown	--	--	0	0%	2	0.2%

*Taken from U.S. Census Bureau ACS Demographic and Housing Estimates for Fairfax County 2019 and Sex by Age for Fairfax County 2019

**Includes: American Indian, Alaska Native, Native Hawaiian, and Other Pacific Islander

Source: U.S. Census Bureau and Virginia Department of Criminal Justice Services

Appendix D: Percentage of Fairfax County Incidents that Resulted in an Arrest by Relationship Type

	2016	2017	2018	2019	2020
IPDV Total*	62% (n=807)	59% (n=812)	56% (n=739)	57% (n=826)	47% (n=823)
Non-IPDV Total	51% (n=2,138)	50% (n=2,130)	52% (n=1,856)	49% (n=2,147)	40% (n=2,223)
Intimate Partners (potentially not covered by IPDV policy)					
Intimate Partner Total	51% (n=997)	49% (n=927)	50% (n=767)	44% (n=813)	35% (n=941)
Boyfriend/Girlfriend	51% (n=951)	49% (n=871)	51% (n=738)	44% (n=801)	35% (n=941)
Ex-Relationship (Ex-bf/gf)	--	--	--	0% (n=0)	0% (n=0)
Homosexual Relationship	41% (n=46)	43% (n=56)	38% (n=29)	58% (n=12)	--
Family Members (potentially not covered by IPDV policy)					
Family Member Total	51% (n=1,141)	51% (n=1,203)	53% (n=1,089)	51% (n=1,334)	43% (n=1,282)
Child	56% (n=215)	55% (n=230)	48% (n=203)	45% (n=248)	42% (n=226)
Child of Boyfriend/Girlfriend	47% (n=19)	39% (n=18)	71% (n=7)	38% (n=16)	65% (n=17)
Grandchild	63% (n=8)	20% (n=5)	71% (n=7)	67% (n=6)	17% (n=6)
Grandparent	31% (n=13)	57% (n=14)	63% (n=19)	56% (n=18)	38% (n=16)
In-Law	41% (n=39)	26% (n=46)	42% (n=43)	43% (n=42)	36% (n=42)
Other Family Member	35% (n=118)	34% (n=106)	42% (n=115)	35% (n=153)	29% (n=150)
Parent	57% (n=398)	58% (n=440)	62% (n=396)	57% (n=455)	49% (n=458)
Sibling	45% (n=280)	47% (n=309)	50% (n=252)	57% (n=347)	41% (n=316)
Stepchild	42% (n=19)	88% (n=16)	42% (n=19)	67% (n=21)	45% (n=20)
Stepparent	74% (n=23)	75% (n=16)	26% (n=23)	50% (n=16)	57% (n=23)
Stepsibling	56% (n=9)	0% (n=3)	40% (n=5)	17% (n=12)	25% (n=8)

*Includes Spouse, Ex-Spouse, and Common Law Spouse

Source: Virginia Department of Criminal Justice Services

The lavender highlighted cells in Appendix D indicate when the percent of arrests for by relationship type decreased from 2019 to 2020. Additionally, cells in Appendix D are only highlighted if the total number of incidents (or the *n*) is greater than 50, ensuring highlighted cells are not easily skewed by a few incidents. From 2019 to 2020 the percent of arrests decreased for all non-IPDV simple assault relationships that had an *n* higher than 50.

Appendix E: Changes in Fairfax County Assault and Battery Against a Household or Family Member (§18.2-57.2) Dispositions Over Time (2016-2020)

Fairfax County §18.2-57.2 Dispositions	2016 (n=917)	2017 (n=1139)	2018 (n=1299)	2019 (n=1518)	2020 (Jan-Jun) (n=403)	2020 (July-Dec) (n=262)
Nolle Prosequi	66%	69%	54%	61%	61%	39%
Dismissed/Denied	8%	5%	21%	19%	24%	49%
Guilty	18%	19%	18%	15%	13%	10%
Not Guilty	6%	5%	4%	3%	1%	1%
Other⁶⁷	2%	2%	3%	2%	2%	2%

Source: Supreme Court of Virginia

Appendix F: Changes in Fairfax County Assault and Battery (§18.2-57) Dispositions Over Time (2016-2020)

Fairfax County §18.2-57 Dispositions	2016 (n=655)	2017 (n=675)	2018 (n=730)	2019 (n=674)	2020 (Jan-Jun) (n=127)	2020 (July-Dec) (n=359)
Nolle Prosequi	54%	51%	58%	63%	71%	44%
Dismissed/Denied	14%	11%	14%	12%	9%	34%
Guilty	22%	26%	21%	18%	13%	11%
Not Guilty	6%	6%	3%	3%	0%	8%
Other	5%	6%	4%	3%	7%	4%

Source: Supreme Court of Virginia

Appendix G: Changes in Prince William County Assault and Battery Against a Family of Household Member (§18.2-57.2) Dispositions Over Time (2016-2020)

Prince William County §18.2-57.2 Dispositions	2016 (n=704)	2017 (n=1,093)	2018 (n=1,521)	2019 (n=1,440)	2020 (Jan-Jun) (n=474)	2020 (July-Dec) (n=798)
Nolle Prosequi	72%	76%	67%	64%	55%	69%
Dismissed/Denied	8%	9%	16%	18%	28%	16%
Guilty	15%	9%	12%	13%	13%	10%
Not Guilty	2%	2%	1%	1%	1%	1%
Other	2%	4%	3%	4%	4%	4%

Source: Supreme Court of Virginia

⁶⁷ Other dispositions include: fugitive file, transferred to another juris/court, certified to grand jury, other, and guilty in absentia

Appendix H: Changes in Loudoun County Assault and Battery Against a Family of Household Member (§18.2-57.2) Dispositions Over Time (2016-2020)

Loudoun County §18.2-57.2 Dispositions	2016 (n=268)	2017 (n=376)	2018 (n=448)	2019 (n=512)	2020 (Jan-Jun) (n=233)	2020 (July-Dec) (n=295)
Nolle Prosequi	60%	49%	45%	50%	49%	52%
Dismissed/Denied	10%	18%	26%	30%	36%	29%
Guilty	15%	20%	16%	14%	10%	9%
Not Guilty	12%	9%	8%	4%	2%	6%
Other	4%	3%	5%	3%	3%	3%

Source: Supreme Court of Virginia

Appendix I: Changes in Virginia (excluding Fairfax County) Assault and Battery Against a Family of Household Member (§18.2-57.2) Dispositions Over Time (2016-2020)

Virginia (Excluding Fairfax) §18.2-57.2 Dispositions	2016 (n=15,555)	2017 (n=21,784)	2018 (n=24,841)	2019 (n=26,342)	2020 (Jan-Jun) (n=9,081)	2020 (July-Dec) (n=14,012)
Nolle Prosequi	42%	40%	38%	37%	37%	41%
Dismissed/Denied	21%	24%	29%	30%	34%	29%
Guilty	21%	22%	20%	20%	18%	16%
Not Guilty	11%	10%	8%	8%	6%	7%
Other	4%	5%	5%	5%	5%	6%

Source: Supreme Court of Virginia

Appendix J: Changes in Prince William County Assault and Battery (§18.2-57) Dispositions Over Time (2016-2020)

Prince William County §18.2-57 Dispositions	2016 (n=507)	2017 (n=511)	2018 (n=567)	2019 (n=582)	2020 (Jan-Jun) (n=145)	2020 (July-Dec) (n=321)
Nolle Prosequi	45%	51%	53%	59%	52%	65%
Dismissed/Denied	17%	16%	15%	10%	25%	16%
Guilty	25%	20%	21%	20%	15%	13%
Not Guilty	7%	4%	3%	4%	1%	2%
Other	6%	9%	8%	7%	6%	5%

Source: Supreme Court of Virginia

Appendix K: Changes in Loudoun County Assault and Battery (§18.2-57) Dispositions Over Time (2016-2020)

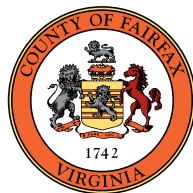
Loudoun County §18.2-57 Dispositions	2016 (n=235)	2017 (n=263)	2018 (n=254)	2019 (n=293)	2020 (Jan-Jun) (n=103)	2020 (July-Dec) (n=146)
Nolle Prosequi	57%	50%	44%	42%	51%	63%
Dismissed/Denied	13%	19%	24%	19%	15%	15%
Guilty	20%	22%	22%	31%	26%	14%
Not Guilty	6%	5%	7%	4%	3%	2%
Other	3%	3%	4%	5%	5%	6%

Source: Supreme Court of Virginia

Appendix L: Changes in Virginia (Excluding Fairfax Co.) *Assault and Battery* (§18.2-57) Dispositions Over Time (2016-2020)

Virginia (Excluding Fairfax) §18.2-57.2 Dispositions	2016 (n=15,555)	2017 (n=21,784)	2018 (n=24,841)	2019 (n=26,342)	2020 (Jan-Jun) (n=9,081)	2020 (July-Dec) (n=14,012)
Nolle Prosequi	32%	31%	31%	33%	34%	37%
Dismissed/Denied	32%	33%	33%	30%	34%	32%
Guilty	22%	23%	22%	22%	19%	18%
Not Guilty	8%	8%	8%	8%	6%	6%
Other	5%	5%	6%	7%	7%	7%

Source: Supreme Court of Virginia



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