

# Public Report

A Review of the Disparity in FCPD  
Use of Force Incidents by Race in 2015



Richard G. Schott  
Fairfax County  
Independent Police Auditor



# A Review of the Disparity in FCPD Use of Force Incidents by Race in 2015

A Public Report by the  
Fairfax County Independent Police Auditor

Publication Date: July 25, 2018



A Fairfax County, Va., Publication

Office of the Independent Police Auditor  
12000 Government Center Parkway, Suite 233A  
Fairfax, VA 22035  
[www.fairfaxcounty.gov/policeauditor](http://www.fairfaxcounty.gov/policeauditor)

Contact Us: [IPAPoliceAuditor@fairfaxcounty.gov](mailto:IPAPoliceAuditor@fairfaxcounty.gov)

To request this information in an alternate format, call 703-324-3459, TTY 711.



# TABLE OF CONTENTS

<b>Introduction</b> .....	2
<b>Analysis</b> .....	4
<b>Results</b> .....	5
Table 1: Characteristics of FCPD Use of Force Incidents in 2015 by Race .....	6
Why Force was Used.....	7
What Force was Used.....	8
Other Incident Information.....	8
Auditor Findings .....	9
<b>Discussion</b> .....	11
Need for Additional Data Review Over Time .....	11
Importance of Other Data in Understanding Racial Disparities .....	12
Critical Questions for Understanding Use of Force Disparities.....	13
County Efforts to Support Further Use of Force Evaluation .....	14
Changes in Police Policies and Practices to Address Implicit Bias .....	16
<b>Conclusion</b> .....	17

## INTRODUCTION

Statistics released by the Fairfax County Police Department (“FCPD”) revealed that 222 (41%) of the 539 individuals involved in a use of force by one or more FCPD officers during 2015 were African-American.<sup>1</sup> African-Americans made up approximately 9% of Fairfax County’s population in 2015.<sup>2</sup> The FCPD statistics also revealed that 282 (52%) of the 539 individuals involved in a use of force by one or more FCPD officers were White. In 2015, Whites comprised approximately 62% of the county’s population.<sup>3</sup> On the surface, these statistics suggest that a disproportionate number of incidents during which force was deployed by FCPD officers in 2015 involved African-Americans.

During the Fairfax County Board of Supervisors (“BOS”) meeting on April 4, 2017, Supervisor, and Public Safety Committee Chairman, John C. Cook recognized this racial disparity in the numbers of use of force incidents involving FCPD officers during 2015. Supervisor Cook acknowledged that while there may be a number of potential reasons for the racial disparity, he wanted it examined further. Ultimately, the Board voted to direct Independent Police Auditor Richard Schott to review the statistical disparity between the level of African-American use of force incidents and the African-American population in the County, and to report on his findings and any necessary recommendations.<sup>4</sup>

Fairfax County is certainly not the only jurisdiction confronting racial disparities in use of force statistics. The Center for Policing Equity analyzed use of force incidents reported by 12 law enforcement departments in geographically and demographically diverse jurisdictions across the U.S. Based on the data provided by the agencies participating, and population figures from the 2010 Census, the Center reported that the overall mean use of force rate was 108 incidents

---

<sup>1</sup> Fairfax County Police Department (2016). *IAB 2015 Administrative Investigation and Use of Force Data Report*. Retrieved from: <https://www.fairfaxcounty.gov/police/chief/reports/iab2015>.

<sup>2</sup> Estimate is based on Department of Neighborhood and Community Services 2014 and 2016 data. See: Demographic Reports 2015, p. II-6 and Demographic Reports 2016, p. II-6. Retrieved from: <https://www.fairfaxcounty.gov/demographics/recent-reports>.

<sup>3</sup> *Id.* at p. II-6.

<sup>4</sup> Although the Office of the Independent Police Auditor was established by the Fairfax County Board of Supervisors in September, 2016, it began operation on April 17, 2017. For more information, see the Clerk’s Board Summary of the meeting, found online at <https://www.fairfaxcounty.gov/boardofsupervisors/sites/boardofsupervisors/files/assets/meeting%20materials/board/2017/april04-board-summary.pdf>.

per 100,000 residents. The rate for African-American residents was 273 per 100,000 residents, which is 2.5 times higher than the rate for all races, and 3.6 times higher than the rate for White residents (76 per 100,000).<sup>5</sup> Notably, they found that racial disparities in police use of force persisted, even when controlling for racial distribution of local arrest rates.<sup>6</sup> In other words, the results suggested that differential participation rates in crime was not the primary driver of racial disparities, but that a thorough understanding of the situational factors that led to the use of force (e.g., citizen resistance, drug and alcohol use, officer perceptions of dangerousness) was necessary to explain racial disparities. In the researcher's words, "a thorough understanding of police use of force is not possible without a thorough account of the interaction that produced it."<sup>7</sup>

Roland G. Fryer, Jr., Department of Economics at Harvard University, recently conducted a study for the National Bureau of Economic Research on police use of force to identify racial differences in its application.<sup>8</sup> He found that African-Americans were more likely than Whites to have non-lethal force used on them, and that this trend held as the level of force increased (i.e., from putting hands on to striking with a baton), but did not hold for officer-involved shootings. He reported that "there [were] racial differences – sometimes quite large – in police use of [non-lethal] force, even after accounting for a large set of controls designed to account for important contextual and behavioral factors at the time of the police-civilian interaction."<sup>9</sup> In spite of these findings, Fryer pointed out that the study suffered from a number of common limitations in studies of police behavior, including a lack of available data, the unreliability of the data (i.e., that it is often based entirely on officer perceptions), and the fact that race cannot be randomly assigned. He concludes that "[t]he importance of our results for racial inequality in America is unclear."<sup>10</sup> Fryer's findings emphasize the difficulty in isolating the presence of racial bias in complex interactions between the police and the community.

---

<sup>5</sup> Center for Policing Equity, "The Science of Justice – Race, Arrests, and Police Use of Force," July, 2016, at p. 15. Available at [http://policingequity.org/wp-content/uploads/2016/07/CPE\\_SoJ\\_Race-Arrests-UoF\\_2016-07-08-1130.pdf](http://policingequity.org/wp-content/uploads/2016/07/CPE_SoJ_Race-Arrests-UoF_2016-07-08-1130.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at p. 7.

<sup>8</sup> Fryer, Jr., Roland G., "An Empirical Analysis of Racial Differences in Police Use of Force," July, 2016. This study used four separate datasets described on pp. 7-16. The report can be accessed at <http://www.nber.org/papers/w22399>.

<sup>9</sup> *Id.* at p. 39.

<sup>10</sup> *Id.* at p. 40.

The conduct of an empirical analysis like those conducted by the Center for Policing Equality and Mr. Fryer, Jr. is beyond the scope of this review. Nevertheless, the noted recommendations to examine the context or situational factors that precede use of force incidents to better understand racial disparities provides support for the methods used in this review.

## ANALYSIS

This review included all incidents involving a use of force by FCPD officers during 2015. The purpose of this review was to determine whether there were any observable reasons or causes for the racial disparity in the use of force statistics reported by the FCPD in 2015.

The Office of the Independent Police Auditor (OIPA) coordinated with FCPD's Internal Affairs Bureau to identify and retrieve the data elements needed for a closer examination of the racial disparity in the 2015 data. For this review, a hard copy document was made available to OIPA, which included descriptive data such as case number, station, date, time of day, subject gender, and subject race for use of force incidents occurring in 2015. Race information was missing for 55 incidents. In addition to descriptive data, a summary of the narrative information entered by the officer involved was available for all except 80 of the incidents.<sup>11</sup> OIPA included in its review all incidents where the race was identified and a narrative summary was provided. Tactical vehicle intercepts<sup>12</sup> were excluded from this review as race was not often captured for these incidents<sup>13</sup> and the narrative describing their use was often very brief and not informative for purposes of this review. Use of the Precision Immobilization Technique (PIT),<sup>14</sup> on the other hand, was included in this review.

OIPA was limited in its ability to conduct quantitative analyses on the use of force data because the data was provided in hard copy (not in an electronic format). Rather, a content analysis was employed to identify significant characteristics present in the use of force incidents. The narrative summary was closely examined for each use of force incident for characteristics

---

<sup>11</sup> In early 2016, FCPD discovered a loss of computer data which impacted the number of narrative summaries available in their data management system starting in late September, 2015.

<sup>12</sup> Defined as "[a]n advanced tactic that utilizes a designed, coordinated, and intentional deployment of police vehicles to physically immobilize a suspect vehicle." DRAFT FCPD General Order 504.1 I.G.

<sup>13</sup> Out of the 51 incidences of tactical vehicle intercepts, only 13 had a race category identified.

<sup>14</sup> Defined as "[t]he intentional act of using a police vehicle to physically force a fleeing vehicle from its course of travel in order to stop it." DRAFT FCPD General Order 504.1 I.C.



related to the type of resistance posed by the subject, the presence of weapons, and the type of force used by officers. Some narrative summaries did not include information about what led up to the use of force. Some incidents involved multiple uses of force by officers, or multiple types of resistance/flight exhibited by the subject of the force. In this analysis, the Hispanic category was counted in instances when the subject's ethnicity was identified in the narrative description of the incident.<sup>15</sup> Other information extracted from the incident data included whether there were drugs or alcohol present (or their use was noted) and whether the interaction involved an individual characterized by the officer as an Emotionally Disturbed Person.<sup>16</sup>

## RESULTS

A summary of the characteristics found in the review of the use of force incidents by race that occurred during 2015 is provided in Table 1.

Given the public interest in the disparity of use of force incidents involving African-Americans and Whites relative to their populations in Fairfax County in 2015, the findings discussed below are limited to these two race categories. In total, 193 uses of force in this review included a subject identified as African-American and 179 uses of force in this review included a subject identified as White.

---

<sup>15</sup> In 2015, community member demographics were recorded by FCPD officers based on 5 race categories used by the Census Bureau and therefore did not include a category for Hispanic ethnicity.

<sup>16</sup> G.O. 603.3 I describes Emotionally Disturbed Persons or EDPs as "persons displaying symptoms of a mental disorder."

<b>TABLE 1: CHARACTERISTICS OF FCPD USE OF FORCE INCIDENTS IN 2015 BY RACE*</b>							
		<i>Race**</i>					
		<b>Black</b>	<b>White</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Unknown</b>	<b>Totals</b>
<b>Subject Resistance Type</b>	<b>Flight</b>	69	39	11	4	0	<b>123</b>
	<b>Active</b>	55	42	10	4	0	<b>111</b>
	<b>Passive</b>	23	22	5	2	1	<b>53</b>
<b>Subject Weapon Type</b>	<b>Personal</b>	31	48	7	3	0	<b>89</b>
	<b>Spit</b>	7	11	3	0	0	<b>21</b>
	<b>Bite</b>	4	7	1	0	0	<b>12</b>
	<b>Knife</b>	3	3	2	1	0	<b>9</b>
	<b>Firearm</b>	2	2	0	0	0	<b>4</b>
	<b>Other</b>	1	3	0	0	0	<b>4</b>
	<b>Vehicle</b>	0	1	0	0	1	<b>2</b>
<b>Officer Force Type</b>	<b>Takedown</b>	58	49	11	5	0	<b>123</b>
	<b>Use of Electronic Control Weapon</b>	33	35	9	2	0	<b>79</b>
	<b>Ripp Hobble</b>	25	42	4	3	0	<b>74</b>
	<b>Brandish Firearm</b>	26	14	3	2	0	<b>45</b>
	<b>Physical Strikes</b>	16	8	1	1	0	<b>26</b>
	<b>K-9</b>	11	8	1	2	0	<b>22</b>
	<b>OC Spray</b>	6	10	1	0	0	<b>17</b>
	<b>Spit Mask</b>	6	5	3	0	0	<b>14</b>
	<b>Baton</b>	5	3	2	0	0	<b>10</b>
	<b>PIT</b>	6	2	0	0	1	<b>9</b>
<b>Other</b>	1	3	0	1	0	<b>5</b>	
<b>Other Incident Information</b>	<b>Alcohol</b>	20	58	11	2	0	<b>91</b>
	<b>Emotionally Disturbed Person</b>	18	19	1	2	0	<b>40</b>
	<b>Drugs</b>	8	12	2	0	0	<b>22</b>

*\*Characteristics identified in a content review of uses of force by FCPD officers in 2015.*

*\*\*The FCPD 2015 database did not include a Hispanic ethnicity category. In this analysis, the Hispanic ethnicity category includes instances when the subject's Hispanic ethnicity was explicitly stated in the narrative description of the incident.*

## Why Force was Used

Common reasons for force to be deployed against all races during 2015 were to overcome either “passive” or “active” resistance (53 and 111 incidents, respectively),<sup>17</sup> or to subdue a fleeing subject (123 incidents). For example, the number of passively resisting subjects upon whom force was used was 23 African-Americans and 22 Whites. Some amount of force was used on actively resisting African-American subjects in 55 reviewed cases; and on actively resisting White subjects in 42 reviewed cases. Force was used on fleeing African-American subjects in 69 reviewed cases; force was used on fleeing White subjects in 39 reviewed cases. Because this review only included incidents when force *was* used, the number of incidents during which resistance or flight was not overcome with force was not identified. In other words, situations when force *could have been used*, but the officer(s) chose a non-force option instead (e.g., verbal commands which succeeded in gaining compliance), is unknown.

Another factor present in many of the use of force incidents reviewed was the possession or use of a weapon by the subject of the police force. Force was used by FCPD officers in response to African-Americans utilizing “personal”<sup>18</sup> weapons in 31 reviewed incidents; they used force in response to Whites utilizing “personal” weapons in 48 reviewed cases. The subject of police force possessed a knife in 3 incidents involving African-Americans and 3 incidents involving Whites. A firearm was possessed by 2 African-Americans and 2 Whites upon whom force was deployed. Officers used force on 4 African-Americans who attempted to or did bite an officer, and on 7 Whites who did the same. Officers used force on 7 African-Americans and 11 Whites who spit at them. Finally, there were no incidents in which an African-American utilized a vehicle as a weapon; force was used on one White subject who attempted to use a vehicle as a weapon. Again, what cannot be gleaned from this review is whether there were incidents

---

<sup>17</sup> Definitions contained in FCPD General Order 540.4 I A. 1. and 2 were used to distinguish between active and passive resistance. The G.O. defines “Passive Resistance” as “[w]here an individual poses no immediate threat to an officer but is not complying with lawful orders and is taking minimal physical action to prevent an officer from taking lawful action;” and, “Active Resistance” as “[w]here an individual’s verbal and/or physical actions are intended to prevent an officer from taking lawful action, but are not intended to harm the officer.” Situations “[w]here an individual displays the intent to cause injury, serious injury, or death to others, an officer, or themselves and prevents the officer from taking lawful action,” which is described in FCPD General Order 540.4 I. A. 3. as “Aggressive Resistance,” is encompassed in the “Active Resistance” category. G.O. 540.4 took effect on March 31, 2017.

<sup>18</sup> A body part used as a weapon – e.g., punches and kicks.

involving subjects who possessed or utilized a weapon upon whom force *could have been deployed*, but upon whom no force was used.

### **What Force was Used**

The most frequently employed type of force deployed by FCPD officers against all races in 2015 was going “hands on” to gain control of someone, to include the use of a “takedown” technique (123 incidents). This type of force was utilized against African-Americans 58 times and against Whites 49 times. The next most frequent type of force used was the Electronic Control Weapon: used 33 times on African-Americans and 35 times on Whites. A Ripp Hobble restraint device<sup>19</sup> was utilized on 25 African-American subjects, and on 42 White subjects. Officers brandished a firearm at African-Americans 26 times, and brandished a firearm at Whites 14 times.<sup>20</sup> Physical strikes (as opposed to control techniques without actual strikes) were used 16 times on African-Americans and 8 times on Whites. Use of a patrol canine (whether or not a bite occurred) was noted in incidents involving 11 African-Americans and 8 Whites. Oleoresin Capsicum (“OC”) spray was utilized in 6 incidents involving African-Americans and 10 incidents involving Whites. A spit mask was placed on 6 African-Americans and 5 Whites. Officers deployed a baton on 5 occasions involving African-Americans and 3 occasions involving Whites. Finally, the PIT maneuver was used on 6 African-American subjects and on 2 White subjects in the incident narratives reviewed.

### **Other Incident Information**

African-Americans were involved in 20 use of force incidents in which alcohol was present (or consumption was noted) and Whites were involved in 58 such instances. Use of force incidents with drugs present (or use noted) occurred 8 times for African-Americans and 12 times for Whites. Eighteen (18) African-Americans characterized as emotionally disturbed

---

<sup>19</sup> A belt-like restraint device often used to prevent an individual being transported from kicking.

<sup>20</sup> Throughout 2015, FCPD G.O. 540.1 IV. A. 2. provided that “[t]he pointing of a firearm in response to the actions of a subject to establish control and gain compliance shall be considered non-deadly use of force.” This provision was modified by the Use of Force policy revisions which became effective on March 31, 2017, but the revised policy continues to treat “[t]he pointing of a firearm at a human to gain control and compliance [as] a reportable action . . .” and “[t]he notification and investigation of the pointing of a firearm will be conducted in accordance with General Order 540.7, Less-Lethal Force Notification and Investigation.” G.O. 540.20 III. A. and B.

persons and 19 Whites characterized as emotionally disturbed persons were involved in a use of force incident.

### Auditor Findings

The OIPA was charged with reviewing the disparity in use of force incidents during 2015 involving African-Americans and Whites relative to their populations in Fairfax County. Based on this review of FCPD use of force incidents generated by internal reporting and citizen complaints, and the narrative summaries available, there was no discernable difference found in the amount of force deployed against African-Americans versus that deployed against Whites when engaged in similar conduct. However, the narratives revealed some variation in the type of conduct engaged in by African-Americans and Whites, as well as in the force techniques employed by FCPD officers between these two groups. When force was used in incidents involving African-Americans, there were a total of 195 instances of the subject fleeing or resisting (either actively or passively), and/or using, attempting to use, or being in possession of some type of weapon (including “personal” weapons and spitting). Likewise, there were 178 total instances of White subjects fleeing or resisting (either actively or passively), and/or using, attempting to use, or being in possession of some type of weapon (including “personal” weapons and spitting) when officers used force on them. While more African-Americans than Whites were subject to physical control/takedowns, were physically “struck,” were subjected to brandished firearms, and were subject to patrol canine use, more Whites than African-Americans had an electronic control weapon used on them, were sprayed with OC, and were immobilized by a Ripp Hobble device. Based on the available data from 2015, officers responded to similarly-situated individuals with similar force options (although in varying numbers) regardless of the race of the person against whom force was used. Notably, this review fails to find incidents occurring in 2015 in which the force used on African-Americans and Whites was not objectively reasonable; therefore, the uses of force were justified under the law and allowed by departmental policy.

This conclusion should not be interpreted as conclusive proof that race did not play a role in FCPD officers’ decisions to use or not use force against Fairfax County citizens in 2015. This review was conducted with limitations like those noted in the aforementioned Fryer study. Additionally, the data available in this review did not include instances in which force was *not*

used (when, in fact, it would have been objectively reasonable) on both African-Americans and Whites. Finally, the data examined was self-reported by FCPD officers involved in the incidents and therefore reflects their perspectives on the incidents.<sup>21</sup>

Perhaps the most significant barrier to forming conclusions about the presence or absence of racial bias in FCPD officers' use of force is in the comparison of the rate of use of force incidents to population rates in the County for a particular racial group, which is not a widely-accepted method for identifying racial bias. Fryer states that while it is a "simple – and often used – method ... to compare the fraction of blacks involved in interactions with police with their proportion in the population ... many social scientists have argued against this approach."<sup>22</sup> He points out that the nature and frequency of law violating behaviors are not the same across racial groups. Likewise, the Center for Policing Equity describes the process of benchmarking to population rates as "a crude method for estimating disproportionality" as it does not account for a larger presence of racial groups in individual neighborhoods and the subject's behavior just prior to the use of force.<sup>23</sup>

Adding to the challenge in making comparisons between uses of force against African-Americans and Whites is that the FCPD did not have a distinct classification for Hispanics or Latinos in the 2015 data, conflating racial or ethnic groups involved in these encounters. Fortunately, for future analysis FCPD has since added a distinct Hispanic ethnicity category to its data collection methods (beginning in 2016).

---

<sup>21</sup> FCPD officers are required to internally report all uses of force. In 2015, 97% of use of force incidents (524 out of 539) were only reported internally by the officer; less than 3% were reported by a community member. During the 5-year span between 2012-2016, only 2% (61 of the 2464) of the use of force investigations conducted by the FCPD were subject of a complaint made by a community member. The remaining 98% (2403 of the 2464) were investigated based only on the self-reported use of force by the officers involved. All use of force incidents are reviewed by a supervisory FCPD officer and/or by the FCPD Internal Affairs Bureau.

<sup>22</sup> Fryer, *supra* note 8 at 17.

<sup>23</sup> Center for Policing Equity, *supra* note 5 at 16.

## DISCUSSION

The OIPA's inability to either rule out or prove racial bias in use of force incidents will likely leave County stakeholders who are seeking answers to the racial disparity in the 2015 data dissatisfied. It simply was not possible, unfortunately, to gain a thorough enough understanding of FCPD officer interactions with African-American citizens in Fairfax County in 2015 to reach a definitive conclusion.

### Need for Additional Data Review Over Time

Criminologists have noted the importance of reviewing data collected over a large period – as opposed to a snapshot in time – to gain a better picture of police use of force. For example, experts have recently analyzed data, which shows a downward trend in the number of unarmed African-Americans who have been shot by police nationwide over the past three and a half years.<sup>24</sup> According to the data, there was a drop from 36 unarmed African-American men killed by police in 2015, to 18 and 19 unarmed African-American men killed by police during the following two years. The authors of a recent Washington Post article discussing this data pointed out that “some experts called the trends encouraging but cautioned that it is hard to draw conclusions without additional years of data and more detailed and comprehensive information about each shooting and overall police use of force.”<sup>25</sup> Other academics agreed “that the decline in the shootings of unarmed people is important,” but pointed out that “any racial analysis is fraught without more data over time.”<sup>26</sup> While use of force data in the County is not as rare as the officer-involved shootings described above, there is still benefit to evaluating trends in use of force incidents that span many years to better identify the presence or absence of racial bias and whether it changes over time.

---

<sup>24</sup> Geoff Alpert, a criminology professor at the University of South Carolina, and Justin Nix, a criminologist at the University of Nebraska in Omaha, used the Washington Post database and demographic data to examine the racial disparities in unarmed shootings from 2015 – May, 2018. The Washington Post database contains records of fatal officer-involved shootings in the United States since January 1, 2015. Available at: [https://www.washingtonpost.com/graphics/2018/national/police-shootings-2018/?utm\\_term=.3fa7f656f668](https://www.washingtonpost.com/graphics/2018/national/police-shootings-2018/?utm_term=.3fa7f656f668).

<sup>25</sup> Sullivan, John; Tate, Julie; Jenkins, Jennifer, “Police Shootings of Unarmed Are Down,” The Washington Post, May 8, 2018, p. A11.

<sup>26</sup> *Id.*

## Importance of Other Data in Understanding Racial Disparities

In addition to looking at use of force data over many years, analyzing other types of data (e.g., calls for service, arrests, traffic stops) might also help to provide a more comprehensive understanding of FCPD officer interactions with community members. For instance, there was also a racial disparity in arrest figures in Fairfax County during 2015. While the FCPD responded to 452,269 calls for service in 2015, a small percentage of those resulted in an arrest, and only 1.1% of all arrests included a use of force. For that year, 30% (14,630) of the 48,545 arrests made by FCPD officers were of African-Americans, while Whites accounted for 63% (30,596) of the total arrests.<sup>27</sup> To reiterate, African-Americans comprised 9% and Whites made up 62% of the county's population in 2015. While 1.1% of all arrests included a use of force (539 of the total 48,545), 1.5% of African-American arrests included a use of force (222 of the 14,630 arrests), and 1% of White arrests included a use of force (282 of the 30,596 arrests). Therefore, determining the cause(s) for the racial disparity in arrests may be as important as determining the cause(s) of racial disparities in the use of force. This may be equally difficult, however, insofar as "there is a strong likelihood that arrest data would be biased in the same manner as use of force data" as they "are compromised by the very nature of who makes arrests."<sup>28</sup>

Other jurisdictions have been challenged when using arrest data to explain racial disparities. For instance, data from 96,000 public schools shows that "Black students accounted for 15 percent of the student body in the 2015-2016 school year but 31 percent of arrests."<sup>29</sup> The data also shows that suspension and expulsion rates are greater for African-American students than for White students. But, "[e]xperts and advocates disagree sharply on the roots of the differences in discipline rates."<sup>30</sup> Another recent study revealed that for the first three months of 2018, 93 percent of the New York Police Department's ("NYPD") marijuana-related arrests involved people of color. Critics believe the NYPD is disproportionately targeting African-

---

<sup>27</sup> Fairfax County Police Department, *2015 Black Community Members Use of Force Analysis*.

<sup>28</sup> Center for Policing Equity, *supra* note 5 at 5.

<sup>29</sup> Balingit, Moriah, "Racial Disparities in School Discipline Are Growing, Federal Data Shows," *The Washington Post*, April 26, 2018, p. A2.

<sup>30</sup> *Id.*



American and Latino residents, while the police department contends that it is merely responding to complaints from residents about people smoking pot.<sup>31</sup>

Finally, a review of the empirical literature, such as the Center for Policing Equity's study, indicates that even when accounting for differential arrest rates among racial groups, disparities in use of force remain. This emphasizes the need to move beyond a simple comparison of numbers to more closely examine the situational factors present in these incidents. Examining situational factors in other policy activity, such as traffic stops made by FCPD, may also provide a useful data point for future examinations of racial bias. In 2015, of the total combined warnings and citations (136,057), 19% (25,422) were issued to African-Americans; 72% (97,578) were issued to Whites. While 24% of warnings (5,853) and 17% of citations (19,569) went to African-Americans, Whites were the recipients of 67% (16,121) of warnings and 73% (81,457) of citations.<sup>32</sup> However, what is not included in this dataset is whether individuals who were issued citations or warnings were asked for consent to search at a disproportionate rate. It may be beneficial in the future to examine whether a higher percentage of African-American drivers are being asked, either during or at the conclusion of traffic stops, for consent to search their vehicle compared to White drivers who are subjects of similar traffic stops. This data is already being recorded by the FCPD, including requests for consent to search which are denied.<sup>33</sup>

### **Critical Questions for Understanding Use of Force Disparities**

The questions yet to be examined regarding the use of force by FCPD are whether there are situations when *similarly situated* individuals could have had action (the use of force) taken against them, but did not, AND whether that decision by an officer not to take the action was driven by race. Answering these difficult questions is analogous to trying to prove the proverbial "driving while black" occurrence. If an officer has probable cause to believe a driver has committed a traffic infraction, that officer has the legal authority under the Fourth Amendment to

---

<sup>31</sup> Annese, John, "NYPD Ripped for 'Racially Biased Practices After Stats Show Cops Still Targeting Minorities for Pot Arrests,'" New York Daily News, April 27, 2018, accessed online.

<sup>32</sup> Fairfax County RMS System, provided to the OIPA by the FCPD.

<sup>33</sup> FCPD G.O. 601.7 V.C.1. reads: "Consent Searches: Officers requesting consent to search a vehicle shall document their request. The denial of consent to search by the person in control of the vehicle, and any property seized or confiscated, shall also be documented."

seize the individual driver, regardless of the driver's race. If that same officer seizes African-Americans drivers for violating traffic laws and the officer deliberately does not enforce the law against White drivers committing the same infractions, even though he has probable cause to seize them as well, then he is treating *similarly situated* individuals differently AND it is based on the driver's race.

Likewise, to determine the role that racial bias plays in the use of force context, further study is needed to determine whether there are situations where force is NOT being utilized against individuals of one race (i.e., Whites) under circumstances where force is justified, but in similar circumstances force IS being used on members of another race (i.e., African-Americans). This type of analysis requires the collection of additional data and is, therefore, beyond the scope of the current review. For this data to even be available, officers would have to include in their reports that individuals presented resistance (justifying a use of force), and that the officer chose not to use force despite that resistance. If this type of data could be made available, a more sophisticated empirical study would be best conducted by a university or research organization that can employ the necessary standardized statistical methods to evaluate these critical questions.

### **County Efforts to Support Further Use of Force Evaluation**

Several new efforts are underway in the County that hold promise for increasing data and information available to further examine racial disparities in police practices. For example, the OIPA<sup>34</sup> and the Fairfax County Police Civilian Review Panel ("CRP") were established by the BOS based on the recommendation of the Ad Hoc Police Practices Review Commission to accept and review public complaints of FCPD use of force, abuse of authority, or serious misconduct. Because the OIPA and the CRP began operations in 2017, there has been a limited number of incidents reviewed to date. However, the limited anecdotal evidence at this point does not indicate that FCPD officers are improperly using force along racial lines or treating individuals differently based on their race.

---

<sup>34</sup> In creating the OIPA, the BOS mandated that FCPD investigations of officer involved shootings, in-custody deaths, and a use of force resulting in death or serious injury would automatically be reviewed by the IPA. Investigations of all other uses of force are only reviewed if there is a public complaint about the force used.

The Police Auditor has completed, or is currently conducting, a review of investigations into eight incidents involving the use of force by FCPD officers. Five of those reviews were initiated by the Auditor automatically because of the nature of the incident: three involved an officer-involved shooting (one involving a domesticated animal), and two have involved a use of non-deadly force which resulted, at least initially, in serious injury. One of the five situations (use of the PIT) subject to automatic review involved an African-American; none was accompanied by a public complaint. None of the remaining three incidents that were initiated by a public complaint involved an African-American having force used on them.

The CRP has authority to review allegations of “serious misconduct” or “abuse of authority,” which include “the use of abusive, **racial**, ethnic or sexual language or gestures” and “harassment or discrimination based on **race, color**, gender, sexual orientation, religion, national origin, marital status, age, familial status, immigration status, or disability.”<sup>35</sup> While none of the reviews conducted to date by the CRP has involved a racial bias allegation, citizens may bring forward such allegations in the future if they feel they have been treated differently by the FCPD because of their race. The OIPA and the CRP will continue to track complaints received, and reviews conducted, to identify whether a pattern of discrimination against African-Americans emerges over the coming years.

Another County effort that will likely provide additional data on this topic is the recently implemented body-worn camera pilot program. This pilot is a collaborative effort between the FCPD and researchers from American University to determine the effect of body-worn cameras on both officer and community member behavior in three district stations (Mason, Mt. Vernon and Reston). Body-worn cameras may prove to be a valuable tool in identifying problematic behavior (based on race or otherwise) in the years ahead.

Perhaps most significant is the FCPD’s ongoing commitment to data collection and analysis to improve policy and practice. For instance, the FCPD implemented a new data management system in July, 2017, which may increase officer reporting and provide additional data on police-citizen interactions for further analysis. In addition, FCPD Chief Edwin Roessler

---

<sup>35</sup> Police Civilian Review Panel Bylaws, p. 6 (emphasis added). Available at: <https://www.fairfaxcounty.gov/policecivilianreviewpanel/sites/policecivilianreviewpanel/files/assets/documents/pdf/police-civilian-review-panel-bylaws.pdf>

Jr. has stated an interest in working with research institutions to conduct further analysis of racial disparities in police interactions with community members, including use of force.<sup>36</sup> In April, 2018, FCPD released a Request for Information from entities interested in evaluating FCPD Use of Force data to gather cost estimates and proposed methodologies for conducting such an evaluation. The purpose of this evaluation would be to “specifically identify correlations or causations of any disproportionate use of force against African-American males, and to provide a holistic view of the FCPD’s Use of Force policies and its effectiveness.”<sup>37</sup>

### **Changes in Police Policies and Practices to Address Implicit Bias**

Police departments nationwide are beginning to acknowledge the notion that “implicit bias” affects human behavior, to include police officer behavior. The Ohio State University’s Kirwan Institute for the Study of Race and Ethnicity describes the phenomenon of implicit bias as follows: “Also known as implicit cognition, implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual’s awareness or intentional control.”<sup>38</sup> The Institute also points out that “[i]mplicit biases are pervasive. Everyone possesses them, even people with avowed commitments to impartiality such as judges.”<sup>39</sup> The FCPD, like many departments<sup>40</sup> (as well as private businesses<sup>41</sup>) across the country, is taking steps to alert officers that all human beings have implicit biases that can affect their decision-making, to include when deciding whether to use force and how much force to use. FCPD addresses this subconscious factor of implicit bias in at least three different aspects of its training that all officers receive: 1) in Ethics training when the discretionary enforcement of laws is considered; 2) in the context of Proactive Policing when

---

<sup>36</sup> Fairfax County Times, *FCPD Report Shows Blacks Disproportionately Involved in Use-of-Force Incidents*. Dec. 8, 2017. Retrieved from: [http://www.fairfaxtimes.com/articles/fcpd-report-shows-blacks-disproportionately-involved-in-use-of-force/article\\_f41b0c7c-db7a-11e7-a808-b3bdf3757545.html](http://www.fairfaxtimes.com/articles/fcpd-report-shows-blacks-disproportionately-involved-in-use-of-force/article_f41b0c7c-db7a-11e7-a808-b3bdf3757545.html)

<sup>37</sup> *Request for Information: Evaluation of Fairfax County Police Department’s (FCPD) Use of Force Data*. April 25, 2018, p. 1.

<sup>38</sup> <http://kirwaninstitute.osu.edu/>, accessed on July 11, 2018.

<sup>39</sup> *Id.*

<sup>40</sup> Baker, Al, “Confronting Implicit Bias for Everyone’s Safety,” *The New York Times*, July 16, 2018, p. A16.

<sup>41</sup> See, for example, Siegel, Rachel and Horton, Alex, “Starbucks CEO Calls for Bias Training,” *The Washington Post*, April 17, 2018, p. A2.

factors potentially contributing to biased policing are discussed; and 3) in Traffic Stop training when the possibility of biased-based stops are examined.

Additionally, the FCPD has incorporated into its most recent Use of Force policy and training that the sanctity of human life is paramount, and that de-escalation techniques<sup>42</sup> should always be considered before resorting to the use of force. Dr. Justin Nix, a criminologist at the University of Nebraska in Omaha, pointed out that because agencies have only begun implementing bias awareness and de-escalation training, “[w]e haven’t had a chance to determine their effectiveness, but it’s possible this has all had a cumulative effect on officers.”<sup>43</sup> Likewise, the desired results of new FCPD policy and training may not be recognized until many iterations of the training are completed so that recognition of implicit bias, and the principles of sanctity of life and de-escalation, have been ingrained in officers.

Time will tell whether these recent initiatives in Fairfax County (i.e., the creation of the OIPA and the CRP, the body-worn camera implementation program, the new data management system, the request for a holistic study to be conducted, and the implicit bias and sanctity of life/de-escalation training) will have a positive impact on officer use of force and police-citizen interactions.

## CONCLUSION

After examining all incidents where a use of force was reported in 2015, and focusing on those incidents where the race of the subject of the force was identified, the OIPA was unable to discern an apparent deviation by race in the subsequent level of force deployed on individuals in Fairfax County. Although the type of conduct engaged in by African-Americans and Whites and the force techniques used on these groups varied, a clear pattern did not emerge where the level of force was disproportionate to the level of resistance posed by the subject, regardless of race.

The OIPA intends to review the use of force statistics in the years following 2015, alongside any other reviews or evaluations that others may conduct. Of interest are the statistics released on officer use of force in Fairfax County during 2016, which revealed that 198 (39%) of

---

<sup>42</sup> De-escalation strategies are defined as “a combination of communication, tact, empathy, instinct, and sound officer tactics” with the goal of achieving “a positive outcome by reducing the need for force.” G.O. 540.2 I. A.

<sup>43</sup> Sullivan, Tate, and Jenkins, *supra* note 25 at A11.

the overall 507 individuals involved in a use of force were African-American, and an identical 198 (39%) of the individuals on whom force was used were White.<sup>44</sup> On the surface, there was little change in the percentage of use of force incidents involving African-Americans between 2015 and 2016 (i.e., 41% versus 39%, respectively). The OIPA will seek to identify whether there are common situational factors in the use of force data from both years.

Fairfax County has in recent years put into place certain measures designed to identify and address policy concerns as well as problematic or discriminatory officer behavior. As these efforts are still in the early stages of implementation, the data needed to better understand racial disparities in the use of force have yet to be produced. However, it is anticipated that the measures currently undertaken by the County will yield useful data to inform future changes and improvements to FCPD policy and practice, particularly those related to the treatment of citizens from different racial groups in the County.

The Center for Policing Equity recognizes the importance of reviewing troubling patterns in use of force data as it “supplies courageous leaders with the opportunity to address a potentially wide-reaching problem proactively – the goal of any evidence-led approach to public safety.”<sup>45</sup> In this vein, it is recommended that the FCPD and its County partners continue to review and reflect on an array of data sources (e.g., arrest data, traffic stop data, body-worn camera pilot) alongside use of force incident data in an effort to understand the role that race plays in these encounters.

---

<sup>44</sup> Fairfax County Police Department Internal Affairs Bureau (2017). *2016 Annual Statistical Report*. Retrieved from: <https://www.fairfaxcounty.gov/police/sites/police/files/assets/images/chief/reports/iab2016useofforcedata.pdf>

<sup>45</sup> Note 5, *supra*, at 27.



