

ACTION – 17

Establishment of a Police Civilian Review Panel, as Recommended by the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission

ISSUE:

Board of Supervisors approval of the recommendations of the Independent Oversight and Investigations Subcommittee of the Ad Hoc Police Practices Review Commission to establish a Police Civilian Review Panel (“the Panel”), reporting to the Board of Supervisors (“Board”), for the purpose of building and maintaining public trust between the Police Department, the Board of the Supervisors and the public, and police legitimacy. The Civilian Review Panel will request and review completed Police Department internal administrative investigations of civilian complaints concerning allegations of abuse of authority and serious misconduct.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors establish a Civilian Review Panel based on recommendations of the Ad Hoc Police Practices Review Commission, as modified.

TIMING:

Board action is requested on December 6, 2016, so the Board can move forward with establishment and implementation.

BACKGROUND:

The Ad Hoc Police Practices Review Commission was created by Chairman Sharon Bulova and endorsed by the Board on March 3, 2015. The purpose of the Commission was to engage the community in an open and transparent process to recommend changes to help the Board and the Police Department achieve the goals of maintaining a safe community, ensuring a culture of public trust, providing for the fair and timely resolution of police-involved incidents and information release, and reviewing Crisis Intervention Training (CIT) and police responses for cases involving mental health.

On October 20, 2015, the Ad Hoc Police Practices Review Commission submitted its final report and recommendations to the Board of Supervisors. On November 17, 2015, the Board of Supervisors approved a process for assigning, prioritizing, reviewing, tracking, and considering the 202 Commission recommendations.

On November 17, 2015, the Board also directed an annual report and a final summary report on the status and implementation of all of the Commission's recommendations. The first annual report shall be presented to the Board by December 13, 2016.

This Action Item is specifically related to the implementation and furtherance of the recommendations of the Independent Oversight and Investigations Subcommittee for the establishment and scope of a police Civilian Review Panel, consistent with the presentations and discussion at the October 25, 2016, Public Safety Committee meeting and other meetings and presentations.

Fundamental to the recommendations of the Independent Oversight and Investigations Subcommittee is that the Board adopt recommended changes, consistent with the Code of the Commonwealth of Virginia and County policies, that will help the County achieve its goals of maintaining a safe community, enhancing a culture of public trust, and ensuring that policies provide for the fair and timely resolution of police-involved incidents. These recommendations are aimed at building and maintaining public trust in the Police Department and its officers by the establishment of a Police Civilian Review Panel, a function in line with the recommendations of the Final Report of the President's Task Force on 21st Century Policing, May 2015. Recommendation 2.8 of that report states, "Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."

Commission Recommendation

In its final report, the Commission's Independent Oversight and Investigations Subcommittee made 24 overall recommendations. Seven of those recommendations, numbers 18 – 24 as in the Commission report, were specific to the establishment of the Police Civilian Review Panel and its scope and are listed below as presented in the report:

- 18) Fairfax County shall establish a Civilian Review Panel ("Panel") to review complaints concerning alleged FCPD misconduct.
 - a) Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal only for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel.
 - b) The Panel shall be composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.
 - c) Factors to be considered in appointing Panel members include: community and civic involvement; diversity; law enforcement and/or

criminal investigative experience, reputation in the community and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current or former employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD).

d) The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities.

19) An individual may file a complaint with or request a review of a completed internal FCPD investigation by the Panel concerning an alleged "abuse of authority" or "serious misconduct" by a Fairfax County police officer. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

a) "Abuse of authority" and "serious misconduct" shall be defined by the Panel and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.

b) The Panel shall refer any complaint within its scope that it receives to the FCPD for review and handling. Absent good cause, the FCPD shall provide a public report to the Panel within sixty (60) days after receipt of the complaint with respect to its review and handling of the complaint.

c) Any request for review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.

20) Absent good cause, within forty-five (45) days of receipt of the FCPD investigation report (if any) relating to the alleged misconduct or within forty-five (45) days of the receipt of the FCPD report if there was no IAB investigation, the Panel may schedule a public hearing to review the FCPD investigation.

a) The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to personally present evidence, statements, and arguments to the Panel.

b) Command staff and IAB investigators shall appear before the Panel upon request to answer any questions from the Panel as to the investigation and action taken or not taken. The County Executive or his/her designee shall produce any documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel. At the Panel's discretion, further investigation by IAB may be requested.

- 21) The Panel review of the investigation shall be completed and a public report issued within 60 days of the filing of a request for review.
 - a) If the Panel disagrees with the findings of the investigation, the Panel shall publicly advise the Chairman of the Board of Supervisors who shall refer the Panel's conclusion to the Chief of Police for further consideration.
- 22) The Panel shall issue an annual report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors and the Chief of Police, including revisions to FCPD policies, training, and practices that the Panel concludes are needed.
- 23) The Auditor shall make quarterly reports on its review of IAB investigations and its other work during the preceding quarter, and meet with the Panel at the Panel's request for further review of the Auditor's report and work.
- 24) Fairfax County should establish an Ad Hoc Police Practices Review Commission every 5 years to review and, as needed, make recommendations concerning FCPD policies and practices, and those of the Independent Police Auditor and the Civilian Review Panel.
- 25) The Board has the right to review the workload of the Citizen Review Panel and make any necessary adjustments.

These recommendations are also listed on the Ad Hoc Police Practices Review commission Report Recommendations Assignment and Tracking Spreadsheet (Attachment 1) as IOV&I (Independent Oversight & Investigations) 18 through 24, inclusive.

Recommended Action by the Board of Supervisors

Based on a review of the Commission recommendations, Board discussion, staff review, and legal review, it is recommended that the Board establish a Civilian Review Panel, based on the recommendations of the Ad Hoc Commission, with modifications as outlined in this Action Item.

a. Composition of the Panel (Recommendation 18)

Panel members shall be appointed by the Board of Supervisors for terms of three (3) years. Panel members will serve at the pleasure of the Board. A Panel member may be appointed to no more than two (2) consecutive terms. The terms of the Panel members shall be staggered. The Panel members shall elect one of their members to serve as Chair of the Panel, with the exception of the first Chair, who shall be appointed by the Board of Supervisors.

The Panel shall be composed of nine (9) members, and each should be a resident residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities.

The Board of Supervisors shall seek to create an independent and fair body for the Panel. The Board of Supervisors shall consider the following factors, among others it may choose, in appointing members of the Panel: community and civic involvement; diversity; law enforcement and/or criminal investigative experience; reputation in the community; geographical representation; and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current employee of Fairfax County, a current or former member of the Fairfax County Police Department or the Fairfax County Sheriff's Office, have a relative (i.e., an immediate or extended family member) who is a member of FCPD or FCSO, hold public office, or be a candidate for public office. At least one (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD or FSO).

In order to assist it in appointing a Panel representing the full diversity of Fairfax County, the Board of Supervisors shall invite organizations and individuals to nominate candidates for the Panel to the Board. The Board may ask business, civic, civil rights, legal, and other organizations to nominate candidates. The Board shall also accept into the pool of candidates self-nominated individuals.

The Board of Supervisors shall select Panel members from those nominated by considering those factors set forth in this Action Item, and any other factors that the Board deems appropriate.

The Office of the Police Auditor shall provide staff support to the Panel. Panel members shall complete recommended trainings to be determined.

b. Jurisdiction and Process (Recommendation 19)

The Panel shall have jurisdiction to review complaints of "abuse of authority" or "serious misconduct" by a Fairfax County Police Officer. The Panel shall define "abuse of authority" and "serious misconduct" in its bylaws, which will be subject to approval by the Board of Supervisors. There are two avenues by which a Complaint or Request for Review, concerning alleged abuse of authority or serious misconduct, could reach the Panel. First, an individual may file a Complaint with the Panel. Second, an individual may Request Review by the Panel of an already-completed internal FCPD investigation. If a Complaint or Request for Review within the jurisdiction of the Panel is filed with the Auditor to the Police, the Board of Supervisors, or other county agency outside of the FCPD, that agency shall forward it to the Panel. The Panel shall not review alleged misconduct that is subject to review by the Auditor.

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- 1) "Abuse of authority" and "serious misconduct" shall be defined by the Panel in its bylaws and may include, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, color, sex, religion, national origin, marital status, age, familial status, or disability; the reckless endangerment of a detainee or person in custody; and serious violations of Fairfax County or FCPD policies or procedures.
- 2) The Panel shall refer any Complaint within its scope that it receives to the FCPD for review and handling, including any necessary investigation.
- 3) Absent good cause, the Panel shall not consider any Complaint filed more than one (1) year after the date of the incident that is the subject of the Complaint, nor regarding any incident that occurred prior to the passage of this Action Item establishing the Panel. The Panel shall not consider any Request for Review of any investigation of any incident that occurred prior to the passage of this Action Item.
- 4) Any Request for Review of a completed FCPD investigation shall be filed, absent good cause as determined by the Panel, within sixty (60) days of the requester being notified of the completion of the internal FCPD investigation.

All Complaints to and Requests for Review by the Panel of a completed FCPD investigation shall be in writing. Requests for Review shall state the specific reason(s) for the request. Upon receiving a Complaint or Request for Review, the Panel shall determine if the Complaint or Request concerns matters which are the subject of pending criminal proceedings or pending or anticipated civil proceedings. If it does, then the Panel shall defer the matter pending resolution of the criminal or civil proceedings. The Panel shall notify the Complainant and the Board of Supervisors, in writing, of any such deferrals. The Panel may request the assistance of Counsel, the Auditor, or the Chief of Police, or the County Attorney in making its determination. The Panel shall track any deferred matter and notify the complainant and the Board once the criminal or civil proceedings are closed and the request for review may proceed.

For any Complaint filed with the Panel and sent to the FCPD for investigation, the FCPD shall provide a report back to the Panel within sixty (60) days with respect to its review and handling of the complaint. The Panel shall provide an extension if requested by the Chief of Police in order to protect an ongoing criminal or internal administrative investigation, or for other good cause, with notice also provided to the complainant and the Board of Supervisors. Absent good cause provided by the Police Department for production of the report within a reasonable time period, the Panel may report any delay in the handling of the matter to the Board of Supervisors. The Board may direct the Chief of Police to ensure completion of the investigation, or to report on the reasons for delay and an expected completion date.

If the complainant is not satisfied with the Police Department's investigation or findings for any allegation made within the scope of the Panel, the complainant may then request a Panel review of the completed Police Department internal administrative investigation.

c. Timing and Meetings (Recommendation 20)

Absent good cause, for any request for review, within forty-five (45) days of receipt of the completed police department internal administrative investigation, the Panel may, at its discretion, schedule a public meeting to review the FCPD investigation. The Panel shall send notification of the date and time of the meeting to Panel members, Police Department Internal Affairs Office, the County Attorney's Office, and the complainant. The meeting shall be noticed on the County's Public Meetings Calendar and otherwise advertised as appropriate.

At any meeting held to review an investigation, the Panel shall not take testimony or receive factual evidence of the underlying matter that is the subject of the investigation. However, the complainant shall have the opportunity to state his or her reason(s) for the request for review, and the Panel may ask questions of the complainant as to those reasons. Upon completion of the complainant's statement, the Police Department representative(s) knowledgeable of the investigation shall review and answer questions from the Panel about its investigation, including all findings of fact, evidence collected and received, witness statements and action taken or not, subject to the following limitations:

1. The statement of any police officer required by the Department to give a statement under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967) shall not be disclosed in public. The Panel shall have confidential access to the entire statement for the purpose of its review. The Police Department representative(s) presenting information to the Panel may publicly state only that the officer admitted or denied the allegation, unless the officer consents to the public release of the entire statement.
2. The Panel may convene in private to deliberate; however, any deliberations by the Panel which do not address the alleged improper conduct or performance of duties of an officer shall be conducted in an open public meeting. Neither the police department representative, nor any Panel member shall reveal the identity of any victim of sexual assault, unless authorized to do so by the victim, or of any juvenile.

The County Executive or his/her designee shall require the attendance of any County employee, other than the involved officer(s), whose appearance is requested by the Panel unless such required attendance violates any statutory or constitutional right of the employee. The County Executive shall also require the submission of any relevant documents or other materials in the possession of the FCPD or other County offices and departments as requested by the Panel, including the full FCPD internal administrative investigative case file, unless legal privilege to withhold exists and is not waived. At the Panel's discretion, further investigation by the Police Department may be requested and the Police Department shall conduct such further investigation and provide a supplemental public report to the Panel with respect to the further investigation.

During the Panel's review of a completed FDPD investigation where it is necessary for Panel members to review an officer's personnel record reflecting discipline or a Police Department internal administrative investigative case file, each Panel member who is provided the opportunity to review that record or case file shall be required to sign a Notice of Confidentiality, affirming that the file and case record is deemed a personnel record and shall not be disclosed nor shall copies be provided to the public. If a file contains information concerning an identifiable juvenile, the file shall first be forwarded to the County Attorney's Office, which shall redact information that identifies a juvenile in conformance with the requirements contained in Code of Virginia § 16.1-301, or any successor provision.

Panel review meetings shall be recorded and records maintained in accordance with the Library of Virginia Records Retention and Disposition schedule.

The Panel shall draft Bylaws to govern more specifically its functions. Such bylaws, and any amendments thereto, must be approved by the Board of Supervisors before taking effect.

d. Panel findings (Recommendation 21)

The Panel review of the investigation shall be completed and a public written report issued within 60 days of the filing of a request for review unless good cause exists for an extension, such as a delay due to a pending criminal or internal administrative investigation or the unavailability of a key witness. A delay and the cause shall be reported to the Board of Supervisors.

Upon completion of its review, the Panel, in its findings, may:

1. Concur with the findings and determination of the Police Department investigation.
2. Advise the Board of Supervisors that the findings are not supported by the information reasonably available to the Police Department and recommend further review and consideration by the Chief of Police.
3. Advise the Board of Supervisors that in its judgment the investigation is incomplete and recommend additional investigation.
4. Conclude that the complaint is not appropriate for review by the Panel.

Upon a finding by the Panel under provisions 2 and 3, the Board may direct the Chief of Police to take further action as it deems appropriate.

e. Panel reports (Recommendation 22)

The Panel shall issue an annual written report to the public describing its activities for the reporting year, including recommendations to the Board of Supervisors, Auditor, and the Chief of Police, including any recommendations for revisions to FCPD policies, training, and practices that the Panel concludes are needed. These annual reports shall be delivered to the Board through the Auditor and the Chair of the Board's Public Safety Committee, and then released to the public.

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The Panel shall have the authority to conduct public meetings on issues within its jurisdiction and on law enforcement policies and practices to assist it in making recommendations for policy and practice changes to the Chief of Police and the Board of Supervisors. The Panel may meet periodically with the Independent Police Auditor concerning the findings and recommendations of the Auditor as to use of force cases so that the Panel can provide its view to the Board of Supervisors and the Chief of Police as to policy and practice changes that may be warranted.

The Board may conduct a review of the Civilian Review Panel at any time in the future, but to ensure a timely assessment of this important measure and to make any desired or needed procedural or other changes one shall be conducted within six months of receipt of the Panel's first annual report. This would allow sufficient time to select and train members, draft and approve bylaws, conduct some reviews, and present the first annual report.

FISCAL IMPACT:

The Civilian Review Panel will be supported primarily by staff of the Office of Independent Police Auditor. Other associated costs will primarily include as of yet undetermined Police Department and County Attorney's Office, independent counsel, staff time and any required materials and supplies for the Panel.

ENCLOSED:

Attachment 1: Ad Hoc Police Practices Review Commission Report Recommendations Assignment and Tracking Spreadsheet

STAFF:

David M. Rohrer, Deputy County Executive
Colonel Edwin C. Roessler Jr., Chief of Police