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# Police Civilian Review Panel

## Meeting Agenda

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Location: Conducted electronically due to COVID-19 Pandemic

Date: November 12, 2020

Time: 7:00 pm

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### Agenda details:

#### I. Call to Order

#### II. Agenda Items

- a. Motions to Conduct Electronic Meeting
- b. Approval of October 22 Meeting Summary
- c. Approval of Subcommittee Initial Review Report for CRP-20-29
- d. Approval of Review Report for CRP-19-19
- e. Presentation by the Independent Police Auditor
- f. Panel Consideration of Good Cause for CRP-20-31
- g. Four-year Review Action Plan

#### III. New Business

#### IV. Adjournment

## Police Civilian Review Panel Meeting

### Electronic Meeting Housekeeping Rules

- Attendees have entered the meeting in listen only mode.
- Panelists must remain in “Mute” when not speaking. Please unmute yourself when you have been recognized to speak by the Chair, when you are making a motion, seconding a motion, or casting your vote.
- For Panelists to be recognized to speak, please use the raise hand function by clicking on the hand icon which is found in the bottom right corner of the “Participant Pane.” When you are finished speaking, please mute yourself and lower your hand by clicking the on the hand icon again.
  - To access the “Participant Pane,” please click on the icon depicting a person which is found on the icon menu at the bottom of your screen.
- The Meeting Materials Packet will be uploaded to WebEx. To scroll through the packet, please use the sidebar menu to page up or down. Meeting materials are also available on the Panel’s website at [www.fairfaxcounty.gov/policecivilianreviewpanel](http://www.fairfaxcounty.gov/policecivilianreviewpanel)
- If the Panel recesses into closed session, Panel Members must mute themselves and disable their webcams on WebEx. Panel Members will use a dedicated conference line and security code for closed session. When closed session concludes, please enable your webcam on WebEx to return to open session.
- This meeting is being recorded and the audio recording will be posted to the Panel’s website.

Police Civilian Review Panel

October 22, 2020

Conducted Electronically due to COVID-19 Pandemic

Meeting Summary

Panel Members Present:

Hansel Aguilar  
Jimmy Bierman  
Bob Cluck  
Hollye Doane, Panel Chair  
Frank Gallagher  
Doug Kay  
Shirley Norman-Taylor  
Sris Sriskandarajah, Panel Vice-Chair  
Rhonda VanLowe

Others Present:

Gentry Anderson, OIPA  
Captain Hanson, FCPD  
Major Lay, FCPD  
Anita McFadden, Interim Counsel  
Rachelle Ramirez, OIPA  
Richard Schott, Independent Police Auditor

NOTE: The Panel's October 22<sup>nd</sup> meeting was conducted electronically due to the COVID-19 Pandemic. The electronic meeting was hosted on WebEx and allowed for members of the public to virtually attend via WebEx or conference call.

The Panel's business meeting was called to order at 7:00 p.m. and all Panel Members were present.

Ms. Doane welcomed everyone to the Panel's October 22<sup>nd</sup> meeting and noted a few housekeeping rules.

Motions to Conduct Electronic Meeting: Ms. Doane took roll call to verify a quorum of the Panel was present and to ensure each Panel Member's voice could be heard clearly. She asked each Panel Member to state their name and the location from which they were participating.

Mr. Aguilar was present; however, he experienced a technical difficulty and was unable to provide his location at this time.

Mr. Bierman was present and participated from McLean, Virginia.

Mr. Cluck was present and participated from Reston, Virginia.

Ms. Doane was present and participated from Oakton, Virginia.

Mr. Gallagher was present and participated from Burke, Virginia.

Mr. Kay was present and participated from Fairfax, Virginia.

Ms. Norman-Taylor was present and participated from Lorton, Virginia.

Mr. Sriskandarajah was present and participated from Fairfax, Virginia.

Ms. VanLowe was present and participated from Reston, Virginia.

Ms. Doane moved that each member's voice may be adequately heard by each other member of this Panel. The motion was seconded by Mr. Bierman and it carried by a vote of eight with Mr. Aguilar unable to cast his vote due to technical difficulties.

Ms. Doane moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the Panel to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, FOIA's usual procedures, which require the physical assembly of this Panel and the physical presence of the public, cannot be implemented safely or practically. She further moved that the Panel may conduct this meeting electronically through a dedicated WebEx platform and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 1-844-621-3956 and entering access code 173 017 5480 as noted in the Public Meeting Notice. Mr. Sriskandarajah seconded the motion and it carried by a vote of eight with Mr. Aguilar unable to cast his vote due to technical difficulties.

Ms. Doane moved that all matters addressed on the agenda are necessary to continue operations and the discharge of the Panel's lawful purposes, duties, and responsibilities. Mr. Sriskandarajah seconded the motion and it carried by a vote of eight with Mr. Aguilar unable to cast his vote due to technical difficulties.

#### Approval of October 8 Meeting Summary:

Ms. VanLowe moved approval of the Panel's October 8 meeting summary. Mr. Bierman seconded the motion and it carried by a vote of eight with Mr. Aguilar unable to cast his vote due to technical difficulties.

#### Approval of Subcommittee Initial Review Reports for CRP-20-19 and CRP-20-27:

Ms. Norman-Taylor presented the subcommittee's recommendations for complaints CRP-20-19 and CRP-20-27. She informed the Panel that the Subcommittee voted to recommend that the Panel undertake a review of CRP-20-19 and that she and Mr. Kay voted to recommend that the Panel undertake a review of CRP-20-17. Mr. Sriskandarajah made clear for the record that he abstained from participating in the initial review of CRP-20-27 because he did not have an opportunity to review that specific FCPD investigation file prior to the subcommittee meeting.

Mr. Gallagher moved that the Panel accept the subcommittee's recommendations and undertake a review of both CRP-20-19 and CRP-20-27. The motion failed to get a second. Ms. VanLowe asked why a large time gap existed from the time the incident occurred to when the complainant requested a review and whether the subcommittee thought it was an issue. Ms. Norman-Taylor acknowledged that the complainant first filed CRP-20-19 and later filed CRP-20-27 and that the subcommittee did not find the lapse in time to be problematic.

Mr. Kay moved that the Panel undertake a review of complaints CRP-20-19 and CRP-20-27. Mr. Gallagher seconded the motion and it carried by unanimous vote.

Mr. Aguilar resolved the technical difficulty he experienced and announced that he was participating from the Braddock District.

Ms. Doane informed the Panel that Ms. Norman-Taylor and Mr. Sriskandarajah told her that the files are extensive. She announced that due to the length of the files, the Panel would conduct both reviews at the Panel's meeting scheduled for December 10.

#### Approval of Review Report for CRP-19-29:

Ms. Doane thanked Mr. Bierman for his assistance in drafting the Review Report and noted that this is the first time that the Panel has not ultimately concurred with the findings of the FCPD's investigation. The Panel will send the approved Review Report to the Board of Supervisors with the Panel's finding that the investigation is incomplete, and it is then up to the Board of Supervisors to decide if further investigation is necessary. She explained that complaint CRP-19-29 included allegations of racial profiling and racial bias, and that many Panel Members believed that the FCPD should consider new ways to investigate these allegations and adopt mitigation strategies to prevent implicit bias. She asked that the Panel first discuss the substance of the Review Report and then consider each recommendation individually before taking a final vote on the Review Report. Ms. VanLowe expressed appreciation for how comprehensive and thorough the report was and thanked the authors. Many Panel Members echoed this sentiment.

Mr. Gallagher suggested that the FCPD could have been given more credit in the Review Report for the work they did to satisfy the request for additional investigation by the Panel. Ms. Doane replied that she believed the report gave the FCPD credit by pointing out the additional investigation conducted by the FCPD and summarizing the discussion held at the Review Meetings. Mr. Bierman noted his agreement with Ms. Doane. Panel Members did not have any edits or additional comments related to the body of the Review Report.

The Panel then considered each of the nine recommendations found in Part VII of the Review Report. Ms. Doane explained that the recommendations were written to be declarative sentences so that they can easily be incorporated to the Panel's recommendations matrix.

*Recommendation 1:*

Ms. VanLowe suggested that the FCPD should not only consider criteria but processes as well when it comes to evaluating allegations of bias and that the Panel's recommendation should not be overly prescriptive to allow for the FCPD to determine what is appropriate based on best practices. The Panel agreed to edit the recommendation by inserting "and processes" after "criteria" and replacing "should" with "may." Ms. Doane asked Mr. Aguilar to explain the terms "bivariate" and "multivariate." Mr. Aguilar replied that the terms are related to research methodology and design specific to identifying how more than one variable affects an outcome.

Ms. VanLowe moved that the Panel adopt recommendation one as amended. The motion was seconded by Mr. Kay and it carried by unanimous vote.

*Recommendation 2:*

Mr. Kay moved that the Panel adopt recommendation two. The motion was seconded by Mr. Sriskandarajah and it carried by unanimous vote.

*Recommendation 3:*

Mr. Sriskandarajah moved that the Panel adopt recommendation three. The motion was seconded by Ms. VanLowe and it carried by unanimous vote.

*Recommendation 4:*

Mr. Bierman moved that the Panel adopt recommendation four. The motion was seconded by Mr. Kay and it carried by unanimous vote.

*Recommendation 5:*

Mr. Kay moved that the Panel adopt recommendation five. The motion was seconded by Mr. Sriskandarajah and it carried by unanimous vote.

*Recommendation 6:*

Mr. Cluck noted his concern with recommendation 6 and cautioned the Panel from micromanaging the FCPD. He expressed his belief that the Panel should consider a different approach and work cooperatively with the FCPD rather than including a recommendation that embodies something the FCPD is already doing or working on implementing. Mr. Bierman replied that he was unaware of an independent review of FCPD policies by an implicit bias expert. Ms. VanLowe explained that the FCPD would have the opportunity to respond to each recommendation in the Panel's recommendations matrix to inform the community. She added that it is the Panel's responsibility to submit recommendations to the FCPD for their consideration. Panel discussion ensued regarding the Panel's recommendations matrix and the discussion at quarterly meetings related to Panel recommendations. Mr. Kay suggested the

recommendation be amended to read “The FCPD should retain...” and Panel Members agreed with the amendment. Mr. Cluck said he did not disagree with the Panel making recommendations and explained that he sees the Panel as a very important player in affecting change, but that a different approach should be taken when the Panel recommends steps that are already being taken by the FCPD. Ms. VanLowe added that the Panel’s recommendations matrix bolsters transparency and informs the public on what the FCPD is doing.

Mr. Sriskandarajah moved that the Panel adopt recommendation six as amended. The motion was seconded by Ms. VanLowe and it carried by a vote of eight with Mr. Cluck abstaining.

*Recommendation 7:*

Mr. Gallagher echoed the concern that Mr. Cluck had with Recommendation 6 and expressed his belief that the Panel should not explicitly direct how the FCPD conducts its training. Panel members agreed and Ms. Norman-Taylor suggested that the second sentence of the recommendation be removed.

Mr. Bierman moved that the Panel adopt recommendation seven as amended. The motion was seconded by Mr. Sriskandarajah and it carried by a vote of eight with Mr. Cluck abstaining.

*Recommendation 8:*

Ms. Norman-Taylor recalled Panel Members expressing concerns about the standardization of making community contacts. She suggested that the word “consider” be replaced with “should.” Ms. Doane expressed that she felt strongly about this recommendation and noted that other departments across the country have developed community contact checklists to help officers make better decisions before engaging with a member of the community. Mr. Sriskandarajah noted his concern that the recommendation would be too prescriptive if “consider” is replaced with “should.” Panel discussion ensued regarding the broad nature of this recommendation and what types of recommendations the Panel should make in its reports. Mr. Kay suggested that if the Panel does not feel comfortable making this recommendation, it should be raised in the future after further consideration.

Mr. Sriskandarajah moved that the Panel table recommendation eight. The motion was seconded by Mr. Gallagher and it carried by unanimous vote.

*Recommendation 9:*

Panel Members discussed potential amendments to the recommendation and concerns with the reference to “hyper-vigilant practices.” Mr. Sriskandarajah and Mr. Kay suggested that the Panel table the recommendation for further consideration before including it in a review report.

Mr. Kay moved that the Panel table recommendation nine. The motion was seconded by Mr. Sriskandarajah and it carried by a vote of eight with Mr. Aguilar voting “Nay.”

Mr. Bierman moved that the Panel adopt the Review Report for CRP-19-19 with the seven recommendations as discussed by the Panel. Mr. Sriskandarajah and Ms. VanLowe jointly seconded the motion and it carried by a vote of eight with Mr. Cluck voting “Nay.”

Panel Consideration of Ethics Procedure: Ms. Doane reminded the Panel that Mr. Gallagher and Mr. Kay worked together to develop a procedure for the Panel to process complaints made against Panel Members. Mr. Kay informed the Panel that several different methods were considered, and that Independent Legal Counsel and the Independent Police Auditor were consulted during the process. Mr. Kay and Mr. Gallagher considered employing the Independent Police Auditor to handle these complaints but the Action Item establishing the Independent Police Auditor did not provide for this charge. The procedure calls for the Panel to review its own behavior and make a recommendation for the Board of Supervisors to consider. Mr. Gallagher added that he consulted with the National Association for Civilian Oversight of Law Enforcement (NACOLE), but the organization was unaware of other oversight bodies with a similar procedure. Ms. Doane referred to her experience on Capitol Hill and noted that the House of Representatives handled member misconduct internally.

Mr. Aguilar asked if the procedure was intended to be a short-term solution or if the Panel envisioned a different process for the long-term. Mr. Kay replied that the Panel should use the procedure as guidance as it processes its first complaint against a Panel Member and revise it as needed. Mr. Aguilar noted his appreciation for Mr. Kay and Mr. Gallagher drafting the procedure but that he believed that the Panel should take advantage of the hybrid oversight system in place and have the Independent Police Auditor review these types of complaints. Ms. VanLowe asked that the procedure be reviewed in two years so that the Panel can evaluate the process and make changes if necessary.

Ms. VanLowe moved that the Panel adopt the proposed procedure and that it be reviewed by the Panel in two years. Mr. Sriskandarajah seconded the motion and it carried by unanimous vote.

New Business:

Ms. Doane asked Mr. Bierman to provide a summary to the Panel regarding the General Assembly’s special session and its potential impact on the Panel and policing. Mr. Bierman reported that Senate Bill 5035 was passed by the Virginia House of Delegates and the Senate and it is awaiting the Governor’s signature. The legislation would be effective July 1, 2021. It gives localities the ability to create an oversight body within their jurisdiction and allows wide latitude in terms of constituting it. He is unsure as to whether Fairfax County would provide the Panel with more authority. Mr. Bierman pointed out that the legislation restricts prior members of Virginia Law Enforcement entities to serving on oversight bodies in an ex officio capacity. Mr. Aguilar asked if the legislation defines the term “retired law enforcement officer.” Mr. Bierman replied that it does not define the term specifically but that the legislation points to certain parts of the Virginia Code that defines “Law Enforcement” based on employment



with a Virginia police force. He added that there is no answer as to how long one would need to serve in a Virginia police force to constitute proper retirement from law enforcement duties. Ms. Doane asked how this legislation could impact the Panel's four-year review. Mr. Bierman replied that the legislation creates the potential for the Board of Supervisors to expand the scope of the Panel.

Ms. Doane informed the Panel that a Review Meeting was previously scheduled for the Panel's meeting on November 12 but that it will be rescheduled as the FCPD reopened its investigation into the complaint. She asked that the Panel consider topics to be included in the four-year review report at that meeting. She also informed the Panel that she asked the Independent Police Auditor to present to the Panel his own four-year review related to incidents he has reviewed and recommendations he has made. Mr. Bierman informed the Panel that a draft of the four-year review report will not be ready for the meeting on November 12 but that he and Mr. Aguilar will provide an outline.

*Ms. Doane reminded Panel Members to inform Ms. Anderson of their availability for meeting dates in 2021.*

Ms. Doane would like for the Panel to have a discussion on the Independent Police Auditor's past Annual Reports. She noted her desire for the Panel to act upon a provision in the Bylaws to allow for the Panel to comment on use of force issues. Ms. VanLowe explained she was receptive to the idea and sees it as being important to comment on the Independent Police Auditor's reports as the Panel is the voice of the community. Mr. Aguilar agreed and noted his appreciation for the work that the Independent Police Auditor puts into his reports. He explained that this discussion is important for the Panel to be informed of the work of its counterpart in oversight.

Ms. Doane recognized Ms. Ramirez to present to the Panel on the FCPD's newly released data dashboard. Ms. Ramirez explained that the public data dashboard includes data related to arrests, traffic warnings, and traffic citations that individuals can filter by year, police district, magisterial district, gender, race, residency status, and location. She added that the FCPD created a working group which included the Independent Police Auditor and representatives from ACLU People Power, the Anti Defamation League, Justice Forward Virginia, and the Fairfax NAACP. The data dashboard appears to be a work in progress and the working group has recommended that the FCPD publish data immediately and make improvements moving forward. Ms. Ramirez said that the data dashboard webpage includes a link to information on police reform. Mr. Aguilar asked if the committee was formed by the County or FCPD specifically and whether there was representation from the Panel on the committee. Ms. Ramirez replied that the working group was organized by the FCPD and she did not believe there was Panel representation. Ms. Doane recognized that the data dashboard as a great step forward and encouraged members of the public to utilize it.

Adjournment:

Mr. Kay moved to adjourn the meeting. Mr. Bierman seconded the motion and it carried by unanimous vote.

The meeting adjourned at 9:03 p.m.

Next Meeting: The Panel's next meeting will be held on Thursday, November 12 at 7:00 p.m. The meeting will be conducted electronically and information for public access will be included in the public meeting notice.

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# Fairfax County Police Civilian Review Panel Subcommittee Initial Review Report

## Request for Review – Basic Information

**CRP Complaint Number:** CRP-20-29

**Subcommittee Meeting Date:** November 9, 2020

### Subcommittee Members:

- Jimmy Bierman, Subcommittee Member
- Hollye Doane, Subcommittee Chair (Panel Chair)
- Frank Gallagher, Subcommittee Member

**Complaint Submission Date:** October 9, 2020 (Incident Date: January 7, 2020. Initial Complaint submitted to Panel: March 10, 2020. FCPD Disposition Letter date: September 16, 2020)

This report is subject to Federal and Virginia Freedom of Information Acts. Panel members will maintain to the greatest extent possible under the law and in accordance with the Bylaws all sensitive and confidential information not intended for a public release.

## Purpose

The Subcommittee Initial Review Report sets forth the Subcommittee's recommendation on whether the Complainant's allegation(s) meet the standard for review provided in the Panel's Bylaws. The Panel may accept or not accept the Subcommittee's recommendation on whether to review a complaint.

## Findings

The Panel's review authority states in Article VI (A)(1) of its Bylaws: "The Panel shall review Investigations to ensure their thoroughness, completeness, accuracy, objectivity and impartiality where (1) the subject matter of an Investigation is an allegation of 'abuse of authority' or 'serious misconduct' by a FCPD officer, and (2) a Review Request is filed."

The subject matter of this investigation concerns an allegation by the Complainant that FCPD officers provided false testimony to a magistrate; failed to properly document an investigation; recover evidence of a crime, and provide exculpatory evidence; deprived the complainant of his constitutional right to bear arms; falsely arrested him; and used reckless policing tactics. The Subcommittee finds that the subject matter of the investigation, as stated in the allegations, does not meet the threshold requirement for "abuse of authority" and "serious misconduct."

## Recommendation

The Subcommittee recommends that the Panel not undertake a review of CRP-20-29 because the complaint does not meet the scope of review criteria set forth in its Bylaws.

## Panel Bylaws Abuse of Authority and Serious Misconduct Checklist

Criteria Met?	Abuse of Authority and/or Serious Misconduct	Complainant Details*
No	Use of abusive racial, ethnic or sexual language or gestures.	
No	Harassment or discrimination based on race, color, sexual orientation, gender, religion, national origin, marital status, age, familial status, immigration status or disability.	
No	Acting in a rude, careless, angry, retaliatory or threatening manner not necessary for self-defense.	
No	Reckless endangerment of detainee or person in custody.	
No	Violation of laws or ordinances.	
No	Other serious violations of Fairfax County or FCPD policies or procedures, including the FCPD Cannon of Ethics, that occur both on or off duty.	

**\*Confidential and sensitive information shall not be disclosed in this document. Contact the Chair or Panel Legal Counsel for questions and/or additional information.**

Police Civilian Review Panel

November 9, 2020

Conducted Electronically due to COVID-19 Pandemic

Initial Disposition Subcommittee – CRP-20-29

Members Present:

Jimmy Bierman, Review Liaison

Hollye Doane, Subcommittee Chair

Frank Gallagher, Review Liaison

Others Present:

Rachelle Ramirez, OIPA

Richard Schott, Independent Police Auditor

NOTE: The Panel’s subcommittee meeting was conducted electronically due to the COVID-19 Pandemic. The electronic meeting was hosted on WebEx and allowed for members of the public to virtually attend via WebEx or conference call.

The Initial Disposition Subcommittee was called to order at 5:30 p.m.

Motions to Conduct Electronic Meeting: Ms. Doane took roll call to verify a quorum of the Panel’s subcommittee was present and to ensure each subcommittee member’s voice could be heard clearly. She asked each subcommittee member to state their name and the location from which they were participating.

Mr. Bierman was present and participated from McLean, Virginia.

Ms. Doane was present and participated from Oakton, Virginia.

Mr. Gallagher was present and participated from Burke, Virginia.

Ms. Doane moved that each member’s voice may be adequately heard by each other member of this Panel. The motion was seconded by Mr. Bierman and it carried by unanimous vote.

Ms. Doane moved that the State of Emergency caused by the COVID-19 pandemic makes it unsafe for the subcommittee to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, FOIA’s usual procedures, which require the physical assembly of this Panel and the physical presence of the public, cannot be implemented safely or practically. She further moved that the subcommittee may conduct this meeting electronically through a dedicated WebEx platform and audio-conferencing line, and that the public may access this meeting by using the WebEx attendee access link or by calling 1-844-621-3956 and entering access code 173 481 9002 as noted in the Public Meeting Notice. Mr. Gallagher seconded the motion and it carried by unanimous vote.

Ms. Doane moved that that all matters addressed on the agenda are necessary to continue operations and the discharge of the Panel's lawful purposes, duties, and responsibilities. Mr. Bierman seconded the motion and it carried by unanimous vote.

Completion of Initial Review Report for CRP-20-29:

Ms. Doane initiated a discussion on the complainant's allegations that one officer, referred to as Officer A, failed to properly document her investigation and provided false testimony. Discussion ensued on whether the allegations met the threshold for abuse of authority or serious misconduct. Mr. Gallagher stated that the officer's failure to record details of an investigation in a report may violate certain FCPD General Orders, but he does not believe it rises to the level of serious misconduct. Ms. Doane and Mr. Bierman agreed with this notion. Mr. Bierman and Ms. Doane both noted that there was no evidence in the investigative file that the officer conspired to provide false testimony.

Ms. Doane stated that the file indicated that there was a sustained violation of a different officer at the McLean District station. However, the complainant did not make any allegations against this officer in his complaint or request for review, so the subcommittee will not consider it.

Next, the subcommittee considered the allegations that the complainant was not served properly by officers, specifically that there should not have been three officers present to serve him and the police should not have stepped in front of his car. Ms. Doane stated that an improperly served warrant is a serious allegation but there is no evidence that the police acted improperly. She said the police did not seem to violate any procedures in serving the warrant. Mr. Gallagher and Mr. Bierman agreed that the allegation does not rise to the level of serious misconduct.

Mr. Bierman stated he would like the Panel to have a discussion on how they should deal with malicious prosecution allegations. Ms. Doane suggested that they consider if there is any evidence to substantiate the allegation. If the answer is no, then they ask whether the investigation into the allegation is complete. And if the answer is yes, then the Panel would not review it. Mr. Bierman and Mr. Gallagher expressed their agreement with this proposal.

The subcommittee reviewed each of the criteria in the Initial Review Report checklist and found that none of the complainant's allegations met the criteria for abuse of authority or serious misconduct.

Mr. Gallagher moved that the subcommittee recommend to the full Panel that it not review the Complaint filed by the complainant. Mr. Bierman seconded the motion and it carried by unanimous vote.

Mr. Gallagher moved to adjourn the meeting. Mr. Bierman seconded the motion and it carried by unanimous vote.

The meeting adjourned at 5:52 p.m.

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# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** 11/12/2020

**TO:** Fairfax County Board of Supervisors  
Col. Edwin C. Roessler, Jr., Chief of Police  
Mr. Richard G. Schott, Independent Police Auditor

**FROM:** Fairfax County Police Civilian Review Panel

**SUBJECT:** Report of Panel Findings for Complaint CRP-19-19

### I. Introduction

The Fairfax County Police Civilian Review Panel (Panel) held a public meeting on October 8, 2020, to review a complaint submitted to the Panel on April 18, 2019.<sup>1</sup> The Complainant alleged that several incidents of serious misconduct and abuse of authority by Fairfax County police officers occurred from October 2015 to December 2018. The complaint was investigated by the Fairfax County Police Department (FCPD). Following the investigation, the Complainant was notified that the officers' actions were in compliance with FCPD policies and regulations. The Complainant requested that the Panel review the investigation.

The Panel determined that the investigation relating to several allegations in the complaint could not be reviewed by the Panel because they were not timely filed by the Complainant. However, the Panel also found that two allegations in the complaint were timely filed, and the Panel reviewed the investigation pertaining to those allegations. Seven Panel members voted that the investigation was complete, thorough, accurate, objective and impartial. One Panel member dissented, and one Panel member abstained.

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<sup>1</sup> As explained later in this report, the delay in the Panel's review process was due to pending litigation that concerned matters in the Complaint.



## II. Background Facts

On June 27, 2018, a community member reported to the Mount Vernon District Police Station that there had been a physical fight between several people in a neighborhood earlier that day. A FCPD officer was assigned to investigate the altercation. The officer interviewed witnesses and viewed a video of the altercation that had been sent to him.

The Complainant said the fight occurred in front of the house of her daughter. It involved several family and community members, some of whom were minors. A portion of the incident was recorded on cell phone video by a witness at the scene. Another witness observed the Complainant at the fight holding what appeared to be a metal rod over her shoulders. The witness alleged that the Complainant struck multiple people who were involved in the fight or who were attempting to break up the fight. One witness reported that the Complainant struck him on the head, and that he had suffered headaches as a result of the assault. The video reportedly did not show that the Complainant hit anyone with the rod, but it did indicate that the Complainant was armed with a weapon and was attempting to prevent others from stopping the fight.

Based on witness interviews and the cell phone video, the officer sought warrants for the Complainant's arrest for malicious wounding and contributing to the delinquency of a minor. The officer presented probable cause testimony to a local magistrate, who issued the warrants, and the Complainant was arrested.

## III. Procedural Background, Allegations and Investigation Findings

The Complainant filed a complaint with the Panel on April 18, 2019. She alleged that the FCPD officer falsely charged her with malicious wounding and contributing to the delinquency of a minor and that he harassed her. The Panel referred the complaint to the Internal Affairs Bureau (IAB) for investigation.

IAB investigators interviewed the Complainant and reviewed the video. The Complainant admitted to holding what she said was a "slim pole," but denied hitting anyone with it. She said no one was hurt and that she was attempting to protect her daughter, who was involved in the fight. "I was like, okay, okay, let them fight, but I was making sure nobody jumped in," she told the FCPD investigator.

IAB investigators also interviewed the officer and reviewed the witness statements and the video. The investigation found that the officer's decision to seek warrants was based entirely on statements from the involved parties, as well as the video. Also, members of the community, not the officer, initiated the investigation of the Complainant's actions that led to the issuance of the warrants. The officer supplied his probable cause testimony to the Magistrate who issued the warrants, and there was no indication that the charges were excessive. The investigators noted that

magistrates are independent third parties who exist as checks to prevent reckless, excessive and unethical actions by police officers. In this case, the Magistrate found that the charges were based on probable cause.

As for the harassment charge, the investigators found that the officer had never met the Complainant prior to the incident. Therefore, he did not single out the Complainant for harassment. The investigation found that there was no evidence to support the Complainant's allegations. It also found that the officer was in compliance with all FCPD policies and regulations. A disposition letter was sent to the Complainant on June 20, 2019, informing her of the findings of the investigation and notifying her that she could request a review from the Panel.

On August 7, 2019, the Complainant requested that the Panel review the investigation. A week later, on August 14, 2019, the Panel received notice from the Office of the County Attorney that the Complainant had commenced litigation associated with allegations in the complaint. A subcommittee of the Panel met on September 16, 2019 and voted to recommend to the full Panel that it defer consideration of the review until resolution of the litigation. The Panel voted to accept the recommendation of the subcommittee on October 7, 2019, and deferred its review in accordance with Article VI, Section D (1) of its Bylaws.<sup>2</sup>

The Complainant informed the Panel in June 2020 that litigation associated with the complaint was no longer pending. The Office of the County Attorney confirmed that the litigation had concluded. A subcommittee of the Panel met virtually on August 20, 2020 to consider whether the panel had authority to review the complaint.

As stated earlier, some of the allegations in the complaint involved incidents that had occurred prior to December 6, 2016. The Panel's Bylaws prohibit the Panel from reviewing any investigation relating to an incident that occurred before that date.<sup>3</sup> The subcommittee determined that four specific allegations fell into this category and could not be reviewed by the Panel. These allegations were as follows: (1) FCPD officers falsely accused the Complainant of robbery at gunpoint; (2) FCPD officers improperly searched the Complainant's car; (3) FCPD officers issued a defective search warrant pertaining to the Complainant; and (4) FCPD officers falsely accused the Complainant of distributing cocaine and marijuana.

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<sup>2</sup> Article VI, Section D (1) of the Panel's Bylaws provides: "If at any point in the review process the Panel learns that the matters of a Review Request are the subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or filed complaint), or any administrative proceeding, the Panel shall (a) suspend its review; (b) defer the review pending resolution of the criminal, civil or administrative proceeding by the trial court; (c) notify the complainant and the Board of Supervisors, in writing, of any deferrals; and (d) track any deferred matter and notify the complainant and the Board of Supervisors once the proceedings are closed and the request for review may proceed."

<sup>3</sup> Article VI, Section A (1) (b) states that the Panel shall not review any complaint related to an incident that occurred before December 6, 2016.

Six other allegations in the complaint were submitted to the Panel more than one year after the date of the incident. In such cases, the Panel may review the investigation of allegations if the Complainant provides the Panel with good cause.<sup>4</sup> Good cause was not shown. The subcommittee noted that the Complainant had not provided reasons for missing the filing deadline. These allegations were as follows: (1) a FCPD officer intimidated the Complainant in a text message; (2) a FCPD officer extorted the Complainant by charging her with felony distribution of marijuana; (3) a FCPD officer lied to the housing authority that the Complainant was selling drugs from her home; (4) FCPD officers unlawfully searched the Complainant's car; (5) a FCPD officer lied under oath during the Complainant's trial; and (6) The Complainant was falsely incarcerated and harassed while in jail.

As discussed previously, two allegations in the complaint were timely filed. The complainant alleged that she was falsely accused and arrested on charges of malicious wounding and contributing to the delinquency of minors by an FCPD officer and that she was harassed and charged with serious crimes by the officer.

One member of the subcommittee expressed her belief that the Panel did not have authority to review the investigation because the allegations were not substantiated with evidence in the investigation file. She also expressed concern that the allegations involving charges of malicious wounding and contributing to the delinquency of minors had been previously adjudicated and considered by a magistrate and a judge. She said that it is not the Panel's job to second guess a court's decision. The other two members disagreed, stating that the Panel's Bylaws specifically allow the Panel to review an investigation where prior litigation concerning the matter had concluded. One subcommittee member commented that legal determinations of probable cause by a court are different from the Panel's review standards for abuse of authority and serious misconduct of a police officer. The subcommittee agreed that the issue was worthy of further discussion by the Panel.

The Panel subcommittee voted 2-1 to recommend that the full Panel review the allegations that had been timely filed. They suggested that the Panel send a letter to the Complainant requesting an explanation as to why the filing deadline was not met for those allegations where the complaint was filed more than one year after the date of the incidents. The Panel sent the letter, but the Complainant did not provide a response showing good cause for missing the deadline.

On August 27, 2020, the Panel considered the subcommittee's recommendations and voted not to review the allegations where the incidents occurred prior to December 6, 2016. The Panel also voted that there was not good cause to extend the filing deadline for those allegations where the complaint was filed more than

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<sup>4</sup> Article VI, Section A (1) (c) provides that the Panel shall not review an Initial Complaint that is filed more than one year after the date of the incident that is the subject of the investigation (unless the Panel determines that there is good cause to extend the filing deadline).

one year after the date of the incidents.<sup>5</sup> However, the Panel voted to review the two remaining allegations that had been timely filed.<sup>6</sup> The Panel discussed whether prior litigation on the criminal charge of malicious wounding should preclude review by the Panel. A majority of the Panel agreed that the Bylaws do not prohibit Panel reviews of a police investigation where a court has previously addressed issues associated with allegations in a complaint. The Panel majority also agreed that the Panel's role in reviewing a police investigation is distinct from a court's role in adjudicating criminal proceedings.

#### IV. Panel Meeting

The Panel Review Meeting was held virtually on October 8, 2020. All Panel members had reviewed the investigation file prior to the meeting, and the Complainant was present at the meeting. In her statement to the Panel, the Complainant stressed that no one was hurt, and that everyone had willingly participated. "I could not stop it," she said. "It was out of my control, but I was there to protect my daughter who was in the fight, and I told her that it wasn't a good idea, but that's what they chose to do." She said parents of children who participated in the fight lied when they said she struck others with the pole. She said that the charge of malicious wounding was excessive, reckless and false, and that it was later dropped. She added that she lost her job and her housing as a result of the charges, and she had experienced financial pain, loss and distress. She said that she felt like she was a "target" of the police.

The Complainant was asked during questioning whether she thought all the witnesses were interviewed by the IAB. She indicated that everyone was interviewed and that she was certain that the investigators had seen the video.

The FCPD presented their investigation findings to the Panel and concluded by saying that the officer practiced "evidenced-based policing" in this case and adhered to all FCPD policies and regulations. It was also revealed that one witness sought and obtained a protective order against the Complainant independent of the FCPD and its investigation.

Panel members were concerned that during their review of the investigation file, the video was not in the file. One Panel member said that this was a vital piece of evidence that made his review of the investigation incomplete. Captain Alan Hanson, who represented the FCPD at the meeting, said that the video should have been in the file and offered to provide it to any Panel member who wanted to view it. Several Panel members pointed out that while the video should have been in the file, other evidence in the file suggested that it did not show the Complainant hitting anyone. Further, the video corroborated other accounts from witnesses that the

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<sup>5</sup> One Panel member abstained from voting on the motion to not review the allegations.

<sup>6</sup> Six members of the Panel voted to review the two timely filed allegations, and two Panel members voted not to undertake the review. One Panel member did not vote because of technical difficulties during the virtual meeting.

Complainant was armed and was threatening others. Several members commented that although the video was important, it was not the determinant factor in the officer's decision to seek warrants.


Members of the Panel pointed out that the officer was thorough in his interviews of witnesses and that he considered all the evidence provided to him from community members. Also, he could not have harassed the Complainant because he did not know her previously. Finally, a magistrate also considered the evidence, concurred with the testimony of the officer, and issued the warrants.

The Panel voted that the investigation was thorough, complete, accurate, objective and impartial, with one Panel member voting nay and another abstaining.

An audio recording of the October 8, 2020 Panel Review Meeting may be reviewed here: <https://soundcloud.com/fairfaxcounty/police-civilian-review-panel-meeting-october-8-2020>

On November 12, 2020, the Panel discussed the Review Report. An audio recording of that meeting may be reviewed here: [\[link will be inserted when available\]](#)

CC: Complainant



FAIRFAX COUNTY  
VIRGINIA

# Independent Police Auditor

Police Civilian Review Panel Meeting

Richard G. Schott, Independent Police Auditor

November 12, 2020

1

## Use of Force

- The Supreme Court has ruled that uses of force by law enforcement officers are analyzed under the Fourth Amendment: “The right of the people to be secure in their persons . . . against unreasonable searches and **seizures**, shall not be violated.”
- Constitution requires LEOs to be **reasonable**; does not require them to be “right.”

2

## Use of Force

- Graham v. Connor, 490 U.S. 386 (1989).
  - The right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.
  - Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, its proper application requires careful attention to the facts and circumstances of each particular case.

3

## Use of Force

- Graham v. Connor, 490 U.S. 386 (1989).
  - The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.
  - Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers violates the Fourth Amendment.

4

## Use of Force

- Graham v. Connor, 490 U.S. 386 (1989).
  - The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.

5

## Use of Force

- Graham v. Connor, 490 U.S. 386 (1989).
  - The reasonableness inquiry in an excessive force case is an objective one: whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.
  - Threat assessment is the key to the reasonableness inquiry.

6



## Use of Force

- The Reactionary Gap:
  - LEOs are trained to respond to the *threat* of violence, not to the *actual* violence.
  - Simply put, Action always beats Reaction.

7

## Determining “Reasonableness”

- LEOs must choose a reasonable option; no requirement to employ the “least intrusive alternative.”
  - Force continuums.
- Unreasonable uses of force occur when there is no longer a threat, or the force used in response to a threat is clearly in excess of what is reasonable.
- An unreasonable use of force is conduct that no objectively reasonable LEO would select.

8

## FCPD Policy

- G.O. 540 (effective March 31, 2017): Force is to be used only to the extent it is objectively reasonable to defend oneself or another, to control an individual during an investigative or mental detention, or to lawfully effect an arrest.
- Force should be based upon the totality of the circumstances known by the officer at the time force is applied, without regard to the officer's intent or motivation, and weighs the actions of the officer against their responsibility to protect public safety as well as the individual's civil liberties.
- Force shall not be used unless it is reasonably necessary in view of the circumstances confronting the officer.

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## FCPD Policy

- G.O. 540.1 I. L. - Objectively Reasonable: The level of force that is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same set of circumstances.
- Objective reasonableness is not analyzed with the benefit of hindsight, but rather takes into account the fact that officers must make rapid and necessary decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations.

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## FCPD Policy

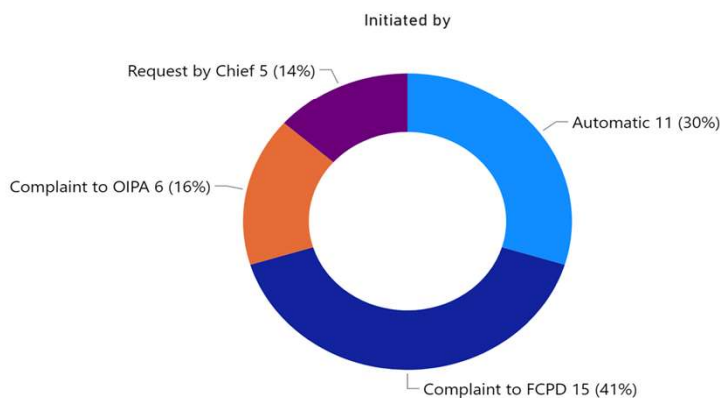
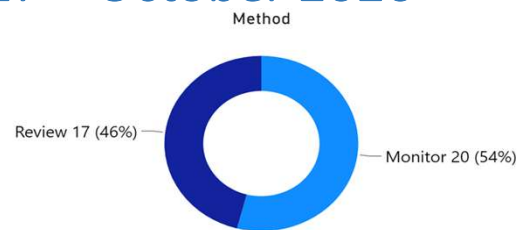
- G.O. 540.5: In determining whether force is objectively reasonable, an officer must give careful attention to the totality of circumstances in each particular case including:
  - Whether the individual poses an immediate safety threat to the officer or others
  - The severity of the crime
  - Whether the individual is actively resisting or attempting to evade arrest
  - Weapon(s) involved
  - Presence of other officers or individuals
  - Training, age, size and strength of the officer
  - Training, age, size and perceived strength of the individual
  - Environmental conditions

11

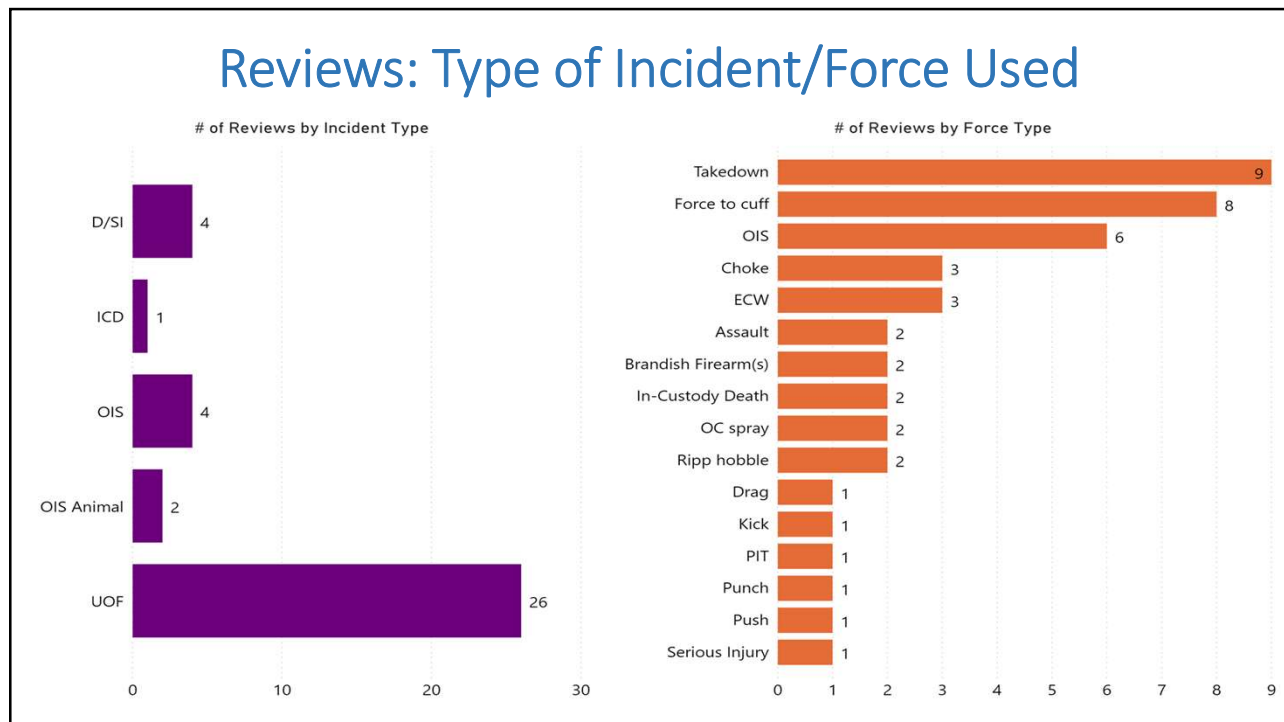
## IPA Reviews: April 2017 – October 2020

**37**  
Incident Reviews to Date

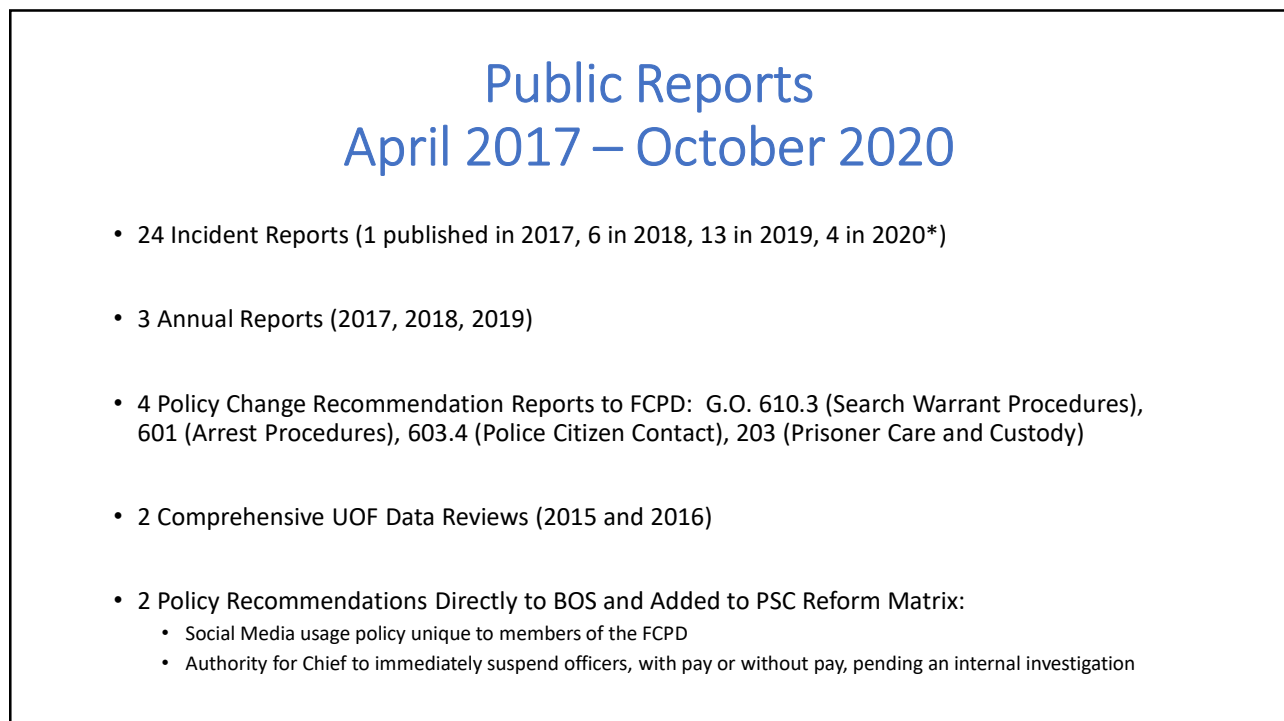
Incident Year	# Reviews
2017	7
2018	14
2019	12
2020	4



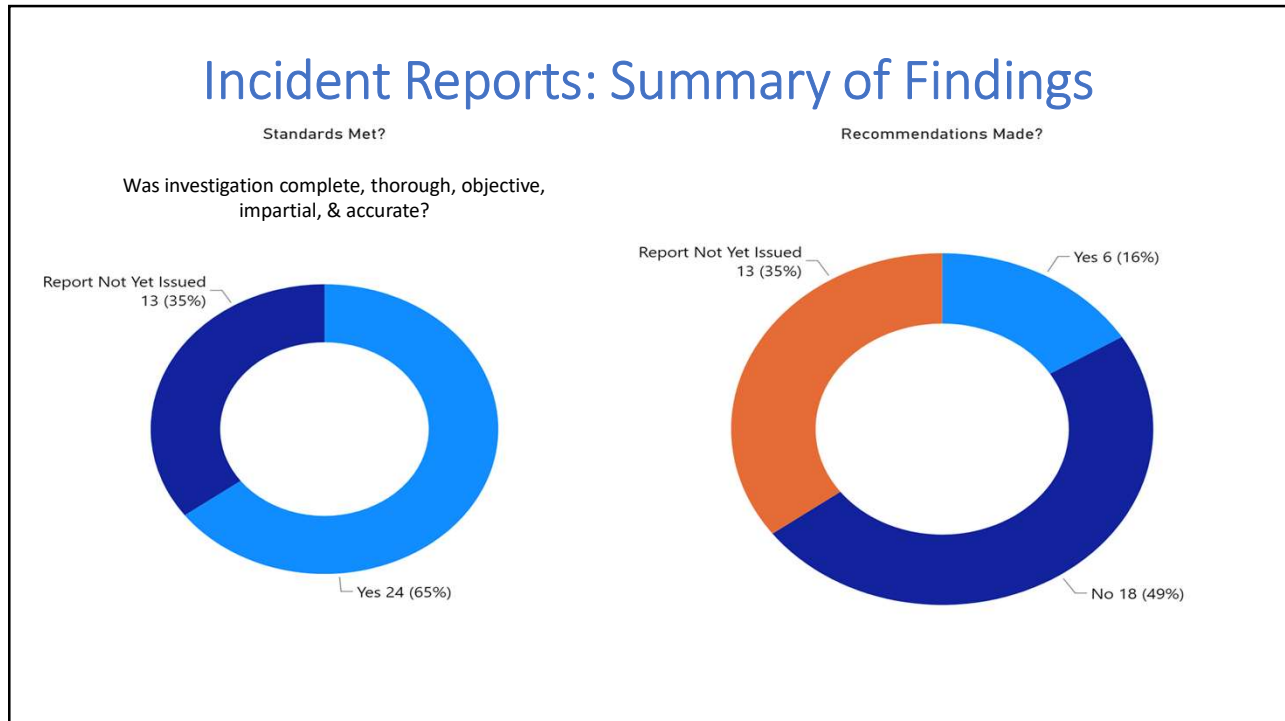
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## OIPA Recommendations

Incident Date	Report Date	Recommendation	Status
4/14/2017	12/31/2017	New reasonableness factors for UOF on an individual not engaged in criminal activity	Implemented with modifications
1/16/2017	1/26/2018	Use term "non-deadly" rather than "less-lethal" force	Not implemented
1/16/2017	1/26/2018	More "less lethal" options to each patrol shift	Implemented with modifications
1/16/2017	1/26/2018	100% full-time and 50% supplemental SWAT members be equipped with multilaunch "less-lethal" options	Implemented with modifications
6/22/2017	3/2/2018	Revise "Vehicle Stopping Techniques" policy: provide prior notification, when feasible, that officer intends to use the PIT	Implemented with modifications New G.O. 505 (effective 1-1-19)

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## OIPA Recommendations

Incident Date	Report Date	Recommendation	Status
6/23/2017	6/19/2018	Officers request a CIT officer/Mobile Crisis Unit to engage person in crisis, obtain voluntary commitment	Currently being implemented (G.O. 603 Revision, continuing CIT training of officers)
6/23/2017	6/19/2018	Officers seek information from family members and witnesses about past behavior of person in crisis	Currently being implemented (G.O. 603 revision)
N/A	12/11/2018	Policy changes to General Order 610.3 Search Warrant Procedures	Implemented Revised G.O. 610.3 (effective 7-1-19)
6/2/2018 6/26/2018	4/24/2019 4/30/2019	Review department training on the use of the Ripp Hobbie and language in SOP 07-029	Implemented New SOP 07-029 (effective 7-20-20)
N/A	3/11/2020	The FCPD should take steps to collect and publish data on other kinds of police activities by subject race, such as traffic stops, consents to search, arrests, and citations.	In process: data dashboards on arrests and citations published in June/July 2020

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## OIPA Recommendations

Incident Date	Report Date	Recommendation	Status
N/A	5/26/2020	Policy changes to G.O. 603.4 POLICE CITIZEN CONTACT, including clarifying elements of reasonable suspicion and making the reasonable suspicion standard consistent throughout the G.O.	In process
N/A	5/26/2020	Policy changes to G.O. 203 REGULATIONS to ensure consistency with the G.O. on ARREST PROCEDURES.	In process
N/A	5/26/2020	Policy changes to G.O. 601 ARREST PROCEDURES, including to recognize the full extent of and limitations on the lawful search incident to arrest.	In process
N/A	6/12/2020	Social Media usage policy unique to members of the FCPD	Under BOS Consideration
N/A	6/12/2020	Authority for Chief to immediately suspend officers, with pay or without pay, pending an internal investigation	Under BOS Consideration

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## 2015 Use of Force Data Review

- Factors: race, resistance, weapons, drugs/alcohol, EDP, UOF
- Findings:
  - Some variation in type of conduct engaged in by – and force techniques used on – African-Americans and Whites
  - No discernable difference in level of force used against individuals in these groups *when engaged in similar conduct*
  - Force was objectively reasonable and in accordance with law and FCPD policy
- Recommended additional study of data to identify factors contributing to disparity in incidents involving African-Americans

Continuing annual review of UOF data by race and common situational factors

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## 2016 Use of Force Data Review

- Summarizes frequency of force incidents by subject race
- Compares situational factors in incidents that occurred in 2015 and 2016
- Outlines key differences in force used on black and white subjects exhibiting similar behavior in 2016

Continuing annual review of UOF data by race and common situational factors

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## Academic Research Study on UOF Disparity

May 2019 - BOS directed OIPA to identify an academic or research entity to conduct a comprehensive examination of UOF data in the County

- Recommended team representing University of Texas at San Antonio (UTSA) and the University of Cincinnati
- Facilitating the data collection and transfer from FCPD to UTSA

### Anticipated Outcomes:

- Identification of potential reasons or causes for racial disparity in UOF incidents
- Recommendations for improved data collection and analysis
- Report and presentation to the BOS in mid 2021

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## Other Activities

- Review IAB complaint status to ensure timely and adequate responses to complainants
- Independent intake venue for complaints against the FCPD
- Administrative support to the Police Civilian Review Panel
- Outreach and media events

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## Other Activities

- Monitored body-worn camera pilot and participated in the co-production of policy
- Professional development of OIPA and Panel
- Member of 2 International Association of Chiefs of Police (IACP) Working Groups:
  - Bias Free Policing
  - Alternatives to Arrest

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## Looking Back/ Looking Ahead

- Initial Start Up of Office/Staff
- New/Additional Staffing - Executive Director Functions
  - Panel Support – Turnover/Training
- Data – UTSA Recommendations

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QUESTIONS?

## **Four Year Review Action Plan**

### **Objectives**

- Outline the history and evolution of the Police Civilian Review Panel over the last four years.
- Analyze strengths and weaknesses of the Panel.
- Provide insight to the Panel and Board of Supervisors regarding how to increase the Panel's efficacy with respect to improving police accountability and improving the relationship between the community and the Fairfax County Police Department.

### **Sources to be Consulted**

Written:

- Annual Reports.
- Complaint tracking documents.
- Foundational documents (bylaws + Action Item).
- Recommendation Matrix.
- Procedural guidance documents.
- Review Reports.
- Policy Recommendations.
- Meeting Minutes.
- Public meeting write ups/notes.

Recorded:

- Meeting Recordings.

Oral:

- Interviews with current and past panel members.
  - Interviews to be conducted and scheduled in the next six weeks.
  - Standardized interview questions to be used.

### **Outline**

#### **INTRODUCTION**

- Background and objectives of the Four Year Review.

#### **NARRATIVE (Chronological with rough topics)**

- The creation of the panel.
  - Ad Hoc Committee.
  - Action Item.
  - Bylaws.
- 2017: Public input and first complaints.
  - Initial public meetings.
- 2018: Creation of standardized procedures.
  - Subcommittee process.
  - Intake procedures.

- 2019: Steady stream of complaints and review reports.
  - NACOLE involvement.
  - Training.
- 2020: COVID and national conversation on police reform.

#### ANALYSIS

- How have the Panel's procedures changed?
- How has the Panel's role in the community evolved?
- What have been the biggest challenges the Panel has faced?
- What have been the Panel's contributions to policing in Fairfax County?
  - What Panel recommendations have been adopted?
  - What Panel recommendations have *not* been adopted?
- How has the Panel improved (or not improved) police accountability?
- How has the Panel improved (or not improved) the relationship between the police and the public?

#### RECOMMENDATIONS

- What needs to change to help the Panel more successfully improve police accountability?
- What needs to change to help the Panel more successfully improve the relationship between the police and the public?

#### CONCLUSIONS