ITEMS FOR CONSIDERATION

IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM

2020 VIRGINIA GENERAL ASSEMBLY

November 26, 2019

INDEX

ITEMS FOR INITIAL CONSIDERATION

ITEMS FOR FURTHER CONSIDERATION

HUMAN SERVICES – PEDIATRIC MENTAL HEALTH ACCESS

PROPOSAL:

Support budget amendments to continue the implementation of a pediatric mental health access program in Virginia.

SOURCE:

Fairfax-Falls Church Community Services Board
August 2019

BACKGROUND:

According to the National Institute for Mental Health, 50 percent of youth aged 13 to 18 have or have had a mental disorder (22 percent of them experienced significant impairment). Because of their impact on children, families, and communities, children's mental disorders are an important public health issue. According to the Centers for Disease Control, 17 percent of children aged two to eight years old have a mental, behavioral, or developmental disorder. In the 2018-2019 Fairfax County Youth Survey, 28 percent of high school students and 24 percent of sixth-grade students reported depressive symptoms (feeling sad or hopeless for two or more weeks in a row); 37 percent of high school students and 15 percent of sixth-grade students reported experiencing a high level of stress; and, 15 percent of high school students reported considering attempting suicide. Early treatment is critical, in order to address a child's current difficulties and prevent more serious problems in the future.

According to the 2019 State of Mental Health in America report, 48,000 Virginia children (63 percent) experienced a major depressive episode without receiving mental health treatment. This is particularly alarming because mental health issues that affect individuals throughout their lifespan often begin in childhood – approximately 50 percent of psychiatric illnesses begin by age 15; and, 75 percent begin by age 24. Adding to this challenge, Virginia faces a significant shortage of child psychiatrists, with only 13 child psychiatrists per 100,000 children, and many primary care providers (PCPs) have limited knowledge of behavioral health care, making identifying and treating a mental health issue extremely difficult for children in Virginia.

In Virginia, a provider survey further highlighted the difficulties faced by PCPs who treat children and youth with mental health challenges – only 2 percent of respondents agreed or strongly agreed that there is adequate access to child psychiatry for their patients; 9 percent agreed or strongly agreed that there is adequate access to other child mental health services for their patients (aside from psychiatry, such as therapy); 15 percent agreed or strongly agreed that with existing resources, they are usually able to meet the needs of children with mental health problems; and, 5 percent agreed or strongly agreed that when they need a child psychiatric consultation (corridor or phone), they are able to receive one in a timely manner. Pediatric access programs, such as the Massachusetts

Child Psychiatry Access Project (MCPAP), have demonstrated that enhancing collaboration between PCPs and pediatric mental health specialists substantially improves access to pediatric mental health care. A survey of PCPs participating in MCPAP found that the percentage of PCPs who agreed or strongly agreed that there was adequate access to a child psychiatrist increased dramatically (from 5 percent to 33 percent), as did the percentage of PCPs who agreed or strongly agreed that they were able to meet the needs of children with psychiatric problems (from 8 percent to 63 percent) after the program was initiated.

In September 2018, the Virginia Department of Health (VDH) was awarded a federal grant ($445,000 per year for five years, with a 20 percent match requirement per year), to develop a pediatric mental health access program, which will create a network of mental health teams to support PCPs providing pediatric care in Virginia, and help to address Virginia's shortage of child/adolescent mental health professionals. The Commonwealth is using that funding to implement a Virginia Mental Health Access Program (VMAP) – the 2019 General Assembly (GA) appropriated $1.23 million to the Department of Behavioral Health and Developmental Services (DBHDS) for FY 2020. VMAP has also received $189,818 in in-kind support.

VMAP is a pediatric-driven consultation and referral model, which is designed to increase capacity for PCPs who provide health care for children and adolescents to treat and respond to common mental health conditions like anxiety, depression, and attention deficit hyperactivity disorder (ADHD). VMAP is designed to enhance screening and integrate behavioral health into primary care settings. The program has four main objectives: education for PCPs, PCP telephonic/video consults with regional VMAP teams, telehealth visits, and care navigation. When fully funded and implemented, VMAP will consist of five regional hubs (including psychiatrists, other mental health providers, and a care navigator) – each will be responsible for providing services for its own region. The VMAP teams will provide telephone consults with pediatric PCPs when a child or adolescent presents with mental health concerns. Individuals with more complex needs requiring a non-urgent in-person evaluation will be referred to community mental health providers. Care navigation services will be provided to PCPs to help them identify and obtain accessible mental health services for their pediatric patients and families.

Currently, VMAP's psychiatric line is open, but it is serving the entire state, which is not sustainable long-term. Funding in FY 2020 will allow VDH and DBHDS to incrementally build VMAP infrastructure, develop the regional hubs, and hire people to staff the call center. Additional funding will be needed to fully implement VMAP statewide (based on data from other states that have implemented similar programs, it is estimated that $5 million will be needed to fully implement VMAP). Psychiatric consultation for pediatricians and care navigation services will roll out sequentially, with implementation of psychiatric consultation in Northern Virginia early in FY 2020 and partial implementation of care navigation in FY 2021. Though initial indications were that each of the five regions was to receive $35,000 in federal funding for psychiatric consultation services, the state ultimately decided to pool the funding in order to stand up the Northern Virginia service

first. Northern Virginia funds one half-day shift per week, with the remainder funding another 2.5 days (including some pro bono work).

Fairfax County provided $135,000 in funding to the state to help accelerate the implementation of psychiatric consultation services. This investment from Fairfax County will allow for an additional two days per week of psychiatric consultation, for a total of five days per week covered statewide.

RECOMMENDATION:

The Board has previously supported the concept of a pediatric mental health access program. Direct staff to continue monitoring the Commonwealth's implementation of this program and any related budget items that are considered by the 2020 GA, in order to bring relevant items to Legislative Committee for consideration.

PERSONNEL – PAID FAMILY AND MEDICAL LEAVE

PROPOSAL:

Support paid family and medical leave legislation during the 2020 Virginia General Assembly (GA) session.

SOURCE:

Fairfax County Board of Supervisors
July 16, 2019

Fairfax County Commission for Women
July 11, 2019

BACKGROUND:

The federal Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Thirteen states and many cities have required mandatory paid sick days, while eight states and the District of Columbia have created paid family and medical leave programs. Virginia does not require employers to offer paid family and medical leave, and even unpaid leave under FMLA is inaccessible to approximately 55 percent of working Virginians, either because they are ineligible for FMLA or cannot afford to take leave without pay.

According to the National Alliance for Caregiving's 2015 *Caregiving in the U.S.* research report, 49 percent of caregivers went to work late, left early or took time off; 15 percent took a leave of absence; 14 percent reduced work hours or took a less demanding job; 7 percent received a warning about their performance or attendance; 6 percent left the workforce; 5 percent turned down a promotion; 4 percent retired early; and, 3 percent lost job benefits. Because women are more likely to act as caregivers (60 percent of caregivers nationwide are women), lack of paid family leave has a particular effect on women. The 2011 *MetLife Study of Caregiving Costs to Working Caregivers* (conducted by the MetLife Mature Market Institute, National Alliance for Caregiving, and Center for Long Term Care Research and Policy – New York Medical College), provided some insight into the conflicting demands – more than one-third of caregivers providing care to older adults leave the workforce or reduce hours worked, and women are more likely to leave their jobs once they begin care than to reduce the hours they work.

In the 2016, 2017, 2018, and 2019 Virginia GA sessions, several bills seeking to provide paid family and medical leave benefits were introduced for consideration, but most failed to pass the GA. In 2018, Governor Northam issued Executive Order 12, which authorizes the creation of a paid parental leave plan for state employees. To be eligible, an employee must have been employed by the Commonwealth for at least twelve

consecutive months. Eligible employees will receive eight weeks of parental leave, which must be taken within six months following the birth, adoption, or foster placement of a child younger than 18 years of age. Legislation to codify this policy into law passed the 2019 GA (**HB 2234** (Robinson)/**SB 1581** (Suetterlein)).

After the 2019 session, the Paid Family and Medical Leave Study (comprised of special subcommittees of the House and Senate Commerce and Labor Committees) met to examine issues related to paid family and medical leave legislation introduced during the 2019 GA session. The study committee received testimony from a variety of groups on both sides of the issue.

According to paid leave advocates and workers' groups, the benefits of paid leave proposals outweigh the costs – such programs could reduce the spread of disease by encouraging employees to stay home from work when sick and to keep sick children home from school. A study by the Center for Economic and Policy Research (CEPR found that overall, employers had positive experiences with the paid family leave program established in California:

- Approximately 93 percent reported that paid family leave had a positive or neutral effect on employee turnover;
- Approximately 89 percent reported positive or neutral effects on productivity;
- Approximately 91 percent reported positive or neutral effects on profitability/performance; and,
- Approximately 99 percent reported positive or neutral effects on employee morale.

CEPR noted that employers raised significant concerns prior to implementation about abuse of the program, but 91 percent of respondents to the employer survey said they were not aware of any instances in which employees they were responsible for abused the state paid family leave program. Additionally, one year after Rhode Island's paid family leave law went into effect, a U.S. Department of Labor study found that a majority of small employers reported they were in favor of the program (56 percent of employers with 10-19 employees and 59 percent of employers with 20-49 employees). Paid family leave is also associated with health benefits, including better physical and mental health for mothers, a reduction in infant and child mortality, faster recoveries and shorter hospital stays for sick children, and increased time for adults to manage acute and chronic health conditions.

Business groups shared varying opinions on the proposals – according to the Main Street Alliance, a group representing small businesses, 66 percent of Virginia small business owners support paid family and medical leave. They also indicated that a universal program would reduce costs and help make paid leave a realistic option for small businesses. Conversely, the National Federation of Independent Business (NFIB) and Virginia Retail Federation expressed concerns. NFIB noted that requiring paid family leave or creating a state-run insurance program funded through payroll taxes would increase labor costs; take away business owners' flexibility to accommodate their employees' needs (and might result in owners' reducing other optional benefits, such as health insurance, retirement programs, or wage increases); and, significantly impact

productivity and operations. The Virginia Retail Federation also emphasized that their members' value the current law's flexibility and would oppose a mandate. The Northern Virginia Chamber of Commerce (NOVA Chamber) discussed the potentially unintended consequences of paid leave legislation, stating that many companies in Northern Virginia already offer generous family leave benefits, and mandating participation in a state program could cause companies to reduce or eliminate existing benefits to offset the costs. Furthermore, creating a new state-run insurance program funded through a payroll tax would increase business costs and reduce take home pay for employees. Lastly, the NOVA Chamber asserted that the proposal under consideration was too expansive (not adequately tailored to the varying needs of new mothers, returning veterans, adults caring for aging parents, and parents caring for adult children), and could also affect Virginia's reputation as a business-friendly state.

Additionally, the Virginia Employment Commission (VEC) completed an analysis of two bills on this topic considered by the 2019 GA. **HB 2120** (Carroll Foy) and **SB 1639** (Boysko) would have required the VEC to establish and administer a paid family and medical leave program with benefits beginning January 1, 2022. VEC estimated that the start-up administrative costs would be approximately $70 million to develop and implement the required IT systems and staffing for such a program, with ongoing operational costs of approximately $33.5 million annually. The projected expenditures for benefit payments (assuming maximum benefit and duration) were estimated at $1.29 billion for FY 2022 and $1.44 billion for FY 2023.

Ultimately, the Paid Family and Medical Leave Study adjourned without reaching a consensus on how to proceed. Given recent changes at the GA, it is likely that bills addressing paid family and medical leave will be considered by the 2020 GA.

RECOMMENDATION:

Recommend monitoring for the introduction of legislation in order to bring related bills to Legislative Committee for consideration by the Board of Supervisors.

PUBLIC SAFETY – MARIJUANA DECRIMINALIZATION

PROPOSAL:

Discuss issues relating to the possible decriminalization of marijuana possession by the Virginia General Assembly (GA).

SOURCE:

Fairfax County Board of Supervisors
September 27, 2019

BACKGROUND:

According to a recent Pew Research Center study, public opinion about marijuana use and criminal penalties has changed significantly in recent years. Two-thirds of Americans now say the use of marijuana should be legal, reflecting a steady increase over the past decade. The share of U.S. adults who oppose legalization has fallen from 52 percent in 2010 to 32 percent today. Meanwhile, an overwhelming majority of U.S. adults (91 percent) say marijuana should be legal either for medical and recreational use (59 percent) or that it should be legal just for medical use (32 percent). Only eight percent prefer to keep marijuana illegal in all circumstances. These changing attitudes, coupled with concerns about the disproportionate impact of drug related criminal penalties on young men of color, have led to a national conversation about whether marijuana should continue to be treated similarly to other drugs (like cocaine and heroin), or whether it should instead be treated more like alcohol.

The growth in public support for legal marijuana has come as a growing number of jurisdictions have legalized marijuana for medical or recreational purposes. Eleven states and the District of Columbia have legalized the drug for recreational purposes. Meanwhile, 33 states – plus the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands – have comprehensive medical marijuana programs. Marijuana remains illegal under federal law, though there have been discussions about decriminalization of marijuana at the federal level as well.

It is important to note that decriminalizing possession of marijuana for personal use is not the same as legalizing marijuana. Legalizing marijuana means enacting laws and policies that make possession and use of marijuana legal under state law. Decriminalizing marijuana means enacting laws and policies to reduce penalties for possession and use of small amounts of marijuana from criminal sanctions to fines or civil penalties.

Under current Virginia law (§18.2-250.1), first offense possession of marijuana is punishable by up to 30 days in jail and a maximum $500 fine. Subsequent offense possession of marijuana is punishable as a Class 1 misdemeanor by up to 12 months in jail and a maximum $2,500 fine. Legislation to decriminalize marijuana has been introduced in the Virginia GA since at least 2010. The issue gained traction in 2017 when

the GA asked the Virginia State Crime Commission (VSCC) staff to study marijuana decriminalization. Data analysis conducted as part of that study found that: males, young adults, and Blacks/African Americans are overrepresented in the total number of arrests for possession as compared to their overall general population; the majority of possession of marijuana charges are filed and concluded in general district courts (and the vast majority of these charges are for first offense possession of marijuana); and, an extremely low number of offenders serve jail time solely for possession of marijuana offenses, as such cases are typically diverted for a first offense.

The study also found that any legislation that amends the current penalty structure and decriminalizes marijuana will impact numerous other areas of Virginia law, including punishment, enforcement, trial procedures, and administrative processes relating to possession of marijuana. Such legislation may require consideration of other policy matters, including, but not limited to: the creation of a central repository to store records of civil violations; quantity limits for personal use and punishments for possession over those limits; development of weight measurement standards; evaluation of which forms of marijuana to decriminalize; whether possession in vehicles, other areas, or public use should remain criminal; trial-related issues, such as the burden of proof and how to assess prior marijuana convictions; whether to suspend a person's driver's license as a result of a civil conviction; possible amendments to Virginia's first time drug offender statute; possible modifications to Virginia's firearm and concealed handgun permit statutes; and, possible amendments to Virginia's DUI statutes.

The VSCC study identified three policy options for lawmakers to consider: 1) maintain the status quo, 2) remove the jail sentence as punishment for possession of marijuana, or 3) decriminalize possession of small amounts of personal use of marijuana. When the study concluded in fall 2017, VSCC members did not endorse a particular approach, signaling a lack of consensus on a preferred policy. As a result, there was no VSCC legislative recommendation introduced in the 2018 GA session. However, individual GA members did introduce marijuana-related bills that session. The bill that advanced the farthest was **SB 954** (Norment), which would have: removed the jail sentence as a punishment for possession of marijuana, leaving intact the misdemeanor fine of not more than $500; made a first offense violation that had been deferred and dismissed eligible for expungement; and, assessed a fee of $300 for individuals seeking expungement of such offense (half would have been paid into the Heroin and Prescription Opioid Epidemic Fund, created by the bill, and the other half would have been credited to the Virginia State Police). Though the bill passed the Senate, a House Courts of Justice subcommittee passed it by indefinitely. In the 2019 GA session, all marijuana-related bills failed to make it out of committee in their chamber of origin. However, the Senate budget included language identical to Senator Norment's 2018 bill, though that language was not included in the final budget conference report.

Given the change in party control of the GA after the November 2019 election, efforts towards marijuana decriminalization may be more successful in the 2020 session. Governor Northam also recently reiterated his support when outlining his priorities for the 2020 GA session. It is unclear what form legislative proposals will take,

as the 2018 and 2019 GA bills on this topic differed in a number of ways, including: the amount of the civil penalty that would be imposed; the state fund to which those fees would be credited; whether operating a vehicle while consuming marijuana or public consumption of marijuana would be a criminal offense; and, the application of driver's license suspensions. It is also possible that proposals considered by the 2020 GA could contain additional provisions not previously discussed in 2018 or 2019.

In Fairfax County in 2018, about 4,300 arrests involved marijuana first or subsequent possession charges, with about 25 percent of those arrests involving multiple charges. Decriminalizing marijuana would change how such offenses are handled throughout the criminal justice system, and could impact a wide range of County operations and programs, including: public safety (i.e., the crime rate, traffic accidents, number and type of field tests needed to ascertain whether a product contains marijuana, etc.); the County Attorney's office (if a local Commonwealth's Attorney declines to prosecute marijuana possession cases and legislation gives the County Attorney authority to prosecute such cases, policy and resources questions would need to be considered); substance use disorder services; jail and court operations (i.e., the Alcohol Safety Action Program, which provides probation services for court-referred clients charged with, or convicted of, driving under the influence of alcohol and/or other drugs); social service programs (i.e., fewer parents may be separated from children due to marijuana charges or convictions, impact on referrals to substance abuse programs, and need for outreach and education campaigns on health risks of marijuana use); and, personnel matters, among others.

There are also a number of equity considerations, particularly related to expungement of prior marijuana convictions (which disproportionately affect people of color and low-income populations), among others. Additionally, if going forward marijuana possession were decriminalized, there would need to be consideration given to how to deal with people convicted for that offense prior to the legal change if expungement is not part of the legislation.

RECOMMENDATION:
Direct staff to continue analysis of potential impacts of marijuana decriminalization on County operations, programs and residents to prepare for Board consideration of legislation at Legislative Committee during the 2020 GA.

ENVIRONMENT — VEHICLE EMISSIONS STANDARDS

PROPOSAL:

Add a position to the state legislative program in support of legislation that would reduce emissions from the transportation sector in Virginia by adopting the California Low Emissions Vehicle (LEV) and Zero Emissions Vehicle (ZEV) standards.

SOURCE:

Environmental Quality Advisory Council (EQAC)
August 19, 2019

BACKGROUND:

Under the federal Clean Air Act (CAA), since 1970, California has had authority to set vehicle emissions standards more strict than federal standards, if the federal government has issued California a waiver. California was granted this authority because, prior to the enactment of the CAA, the state had been developing innovative laws and standards to address its unique air pollution problems, particularly the dangerous smog in the Los Angeles air basin caused by enclosed topography, a rapidly growing population and a warm climate. The CAA does not allow other states to set their own standards. As of March 2019, thirteen states and the District of Columbia had adopted the California standards in whole or in part, either by an affirmative vote of their state legislature or an executive order – Virginia has not yet adopted the California standards.

California has received numerous federal waivers over the years, and most recently updated their standards in 2012 with a package of regulations referred to as the Advanced Clean Cars (ACC) program, which was developed in coordination with the Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA). The ACC includes the Low Emission Vehicle (LEV) III Criteria (a fuel economy standard), the LEV III GHG (a greenhouse gas emissions standard), and the Zero Emission Vehicle (ZEV) standard (a requirement that all manufacturers selling vehicles in the state offer a specific number of ZEV for sale).

States that do not elect to follow the California standard must comply with the federal standards for vehicle emissions. During the Obama Administration, the federal standards began to more closely resemble the California standards, and in 2012 the federal government finalized fuel economy (also known as Corporate Average Fuel Economy, or CAFE) and greenhouse gas (GHG) standards that were substantially similar to California's ACC for 2017-2025 model year passenger vehicles and light trucks (the federal government did not adopt a ZEV standard). By harmonizing the federal and California standards, automakers were able to design and manufacture vehicles to a single target. In 2017, the EPA affirmed that these standards were appropriate based on extensive data.

However, the Trump Administration has taken a different view of emissions standards, and in April 2018 the EPA reversed course, announcing that the federal standards for model year 2022-2025 vehicles were too stringent, and initiating a joint process with NHTSA to develop new GHG emissions and CAFE standards. Subsequently, 18 states (including Virginia) and the District of Columbia sued the EPA in May 2018 over its proposed rollback of the federal standards (this lawsuit is still pending). In August 2018, the EPA and NHTSA announced the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule which would retain the model year 2020 CAFE and GHG emissions standards through model year 2026 (the below chart compares the 2012 federal emissions standards to the 2018 proposed standards). Part of the proposed SAFE Rule included two actions aimed at ensuring one program for CAFE and GHG standards: withdrawing California's waiver and issuing regulatory text that explicitly declares that federal law preempts state and local tailpipe GHG emissions standards and ZEV mandates. The Trump Administration contends that the proposed SAFE Rule will result in safer and more affordable cars for consumers, arguing that the more stringent standards set by the Obama Administration raised the cost and decreased the supply of newer, safer vehicles.

	Federal Emissions Standards, 2012*	**Proposed SAFE Rule, 2018***
CAFE Standard	54.5 MPG fleetwide average fuel economy by 2025; impacts model years 2017-2025.	37 MPG average fuel economy by 2020; impacts model years 2021 – 2026.
GHG Emissions Standard	Require 163 grams/mile of carbon dioxide (CO_2) in model year 2025.*	Locks in GHG emissions standards (213 grams/mile of CO_2) at 2020 levels for model years 2021-2026.

**Figures represent averages for combined cars and trucks.*

In September 2019, the EPA and NHTSA took the first step toward finalizing the SAFE Rule by announcing the One National Program, a final rule advancing the two aforementioned actions related to preemption, which will take effect in November 2019 (a final rule regarding federal CAFE and GHG standards has not been issued yet). The Trump Administration cited the July 2019 agreement between California and four automakers to increase average fuel standards for new vehicles to nearly 50 miles per gallon by model year 2026 as evidence of the rule's necessity. The Department of Justice also opened an antitrust investigation into California's agreement with the automakers, as tensions have escalated between California and the Trump Administration (which has also threatened to withhold highway funding from California if the state fails to improve its plan to address air pollution).

A coalition of attorneys general (including Virginia Attorney General Mark Herring) have filed a lawsuit challenging the federal preemption regulation, and the ability of states to adopt the California standards will likely be decided by the judiciary. Despite that, the Governors of Minnesota and New Mexico recently announced their intention to adopt the California standards in 2020 or later (such action requires approval by the respective state legislatures, which has yet to occur in both states). In Virginia, the legislature has not

considered this issue to date, but the Northam Administration expressed support for adopting the California standards in Virginia's Energy Plan (which was released in October 2018, prior to the issuance of the final federal preemption rule).

Similarly, EQAC's proposal to add support for adopting California's standards to the state legislative program was submitted before the final federal preemption rule was issued. It is unclear whether such legislation will come before the General Assembly (GA) in 2020 given the recent events at the federal level.

Update for November 26, 2019, Legislative Committee Meeting

Update on EQAC's Position

During the October 8, 2019, Legislative Committee meeting discussion of this item, Board members directed staff to ask EQAC if their position on this issue changed following the federal government's issuance of the One National Program Rule. EQAC continues to believe that the adoption of the California standards would be a valuable tool to protect Virginia against the rollback of the federal vehicle emissions and efficiency standards. However, EQAC learned that attorneys representing plaintiffs challenging the One National Program Rule are advising states against the adoption of the California standards during the course of their litigation. There is concern that the adoption of the California standards by additional states could result in a split decision across courts, negatively impacting the current lawsuit. Based on this information, EQAC believes it would be counterproductive for Virginia to adopt the California standards during the 2020 GA session, and recommends that the Board of Supervisors refrain from promoting this legislation in the upcoming GA session.

Additional Information on the CAFE and GHG Standards

The CAFE and GHG standards define annual corporate average targets for fuel economy (in miles per gallon) and CO_2 emissions (in grams of CO_2 per mile), respectively, for each automaker's fleet of cars and trucks. The targets are specific to each automaker and are based on the mix of vehicles each automaker produces (the automaker's fleetwide targets are based on standards assigned to each vehicle within the automaker's fleet). Because every automaker's average fleet size and model mix differs, every automaker's CAFE and GHG targets differ, reflecting the vehicles it chooses to produce. An automaker's targets can change from year to year, as the vehicles they produce vary each year in response to consumer preferences. Automakers' compliance with their respective targets is based on the type and number of vehicles sold, not produced, as well as the vehicles' fuel economy and emissions. That compliance has been based on vehicles sold nationally since 2012, when the federal CAFE and GHG standards became substantially similar to the California standards. Additionally, automakers can use other factors, such as use of flex-fuel vehicles, and credits and civil penalties to comply with the CAFE and GHG standards.

Impact on Local Auto Dealers

During the October 8, 2019, Legislative Committee meeting, questions were raised about how Virginia's adoption of the California standards would impact local auto

dealers. Given the federal preemption rule and aforementioned cautions about additional states adopting the California standards while litigation is pending, it is unlikely that Virginia will pursue adoption of the standards in the short-term. However, in the future, if states regain the authority to adopt the California standards and Virginia considers doing so, outreach could be done to local auto dealers to get their feedback on how adoption of the California standards would impact their sales. Concerns about individuals purchasing vehicles from states with less stringent standards could possibly be addressed through legislation or regulations. For example, in 2005 when California had more stringent standards than the national standards, California passed a law to discourage California residents from purchasing out-of-state vehicles by requiring such vehicles be certified to meet California's standards for smog equipment (this requirement included exceptions for vehicles owned by individuals moving into California, inherited vehicles, and others).

RECOMMENDATION:
Fairfax County has historically supported efforts to reduce GHG emissions through Cool Counties and related initiatives, including the draft Global Climate Change/Environmental Sustainability Initiatives position in the legislative program and a 2007 request that the Commonwealth consider adopting the California car standards (which California has since updated). Direct staff to monitor this issue, including opportunities for public comment, and provide updates to the Board of Supervisors as they become available.

HOUSING – ADDING PROTECTED CLASSES TO THE VIRGINIA FAIR HOUSING LAW – SEXUAL ORIENTATION AND GENDER IDENTITY

PROPOSAL:

Initiate legislation to add sexual orientation and gender identity to the list of unlawful discriminatory housing practices in the Virginia Fair Housing Law.

SOURCE:

Fairfax County Human Rights Commission
July 29, 2019

BACKGROUND:

The Virginia Fair Housing Law prohibits discriminatory housing practices. Virginia Code § 36-96.4 (A) provides that it is unlawful for any person or entity (including lenders) to discriminate against a person in a protected class in real estate-related transactions, including making or purchasing loans and selling, brokering, insuring, or appraising residential property. Currently, the protected classes are "race, color, religion, national origin, sex, elderliness, familial status, or handicap."

The Fairfax County Human Rights Commission recommends that the County initiate a bill to add a protected class to Va. Code § 36-96.4 (A), seeking to make it unlawful for a person to be discriminated against in a real estate-related transaction because of his or her sexual orientation or gender identity. Since 2001, when the County first sponsored an initiative in response to a report from the Human Rights Commission on the need to add sexual orientation protections to the Fairfax County Human Rights Ordinance, the County's legislative program has included support for authority to prohibit discrimination in housing and real estate transactions on the basis of sexual orientation. In 2017, this position was modified to also include support for authority to prohibit discrimination in housing and real estate transactions on the basis of gender identity. The County initiatives in the 2001 through 2009 General Assembly (GA) sessions unsuccessfully sought authority for Fairfax County to prohibit discrimination in housing, real estate transactions, employment, public accommodations, credit, and education on the basis of sexual orientation. In addition to these County initiatives, the County has supported numerous bills which sought to make discrimination based on sexual orientation or gender identity illegal. All such bills have been unsuccessful in the GA, as was legislation considered in the 2016, 2017, 2018, and 2019 GA sessions to amend the Virginia Fair Housing Law to include sexual orientation and/or gender identity as protected classes. The Board supported **HB 971** (Guzman) and **SB 423** (Wexton) in 2018, and **HB 1823** (Convirs-Fowler) in 2019.

On June 20, 2017, the Board passed a resolution re-affirming the County's commitment to promoting a culture of openness, inclusiveness, and acceptance for all persons in Fairfax County, and opposing discrimination based on sexual orientation or gender

identity. On November 21, 2017, the Board of Supervisors adopted One Fairfax, a joint racial and social equity policy with Fairfax County Public Schools, which commits the County and schools to intentionally consider equity when making policies or delivering programs and services.

Update for November 26, 2019, Legislative Committee

As a result of the change in the GA after the November 2019 election, the potential for success of legislation including sexual orientation and gender identity as protected classes is substantially improved. The County pursued initiatives on this topic for many years, but all were unsuccessful.

RECOMMENDATION:

Initiate. The existing position in the legislative program addresses discrimination broadly, though it includes housing, and the new GA provides an opportunity to address this issue overall. A revised draft initiative section for the legislative program is included below for the Board's consideration.

Sexual Orientation

Initiate legislation to permit the County to prohibit discrimination in the areas of housing, real estate transactions, employment, public accommodations, credit, and education on the basis of sexual orientation and gender identity. Though existing state enabling legislation has allowed Fairfax County to take actions to prohibit discrimination on the basis of race, color, religion, sex, pregnancy, childbirth, and disability, the County does not have explicit authority to prohibit discrimination on the basis of sexual orientation and gender identity.

HOUSING – ADDING PROTECTED CLASSES TO THE VIRGINIA FAIR HOUSING LAW – SOURCE OF INCOME

PROPOSAL:

Initiate legislation to add "source of income" as a protected class to the list of discriminatory housing practices in the Virginia Fair Housing Law.

SOURCE:

Fairfax County Human Rights Commission
July 29, 2019

BACKGROUND:

The Virginia Fair Housing Law prohibits discriminatory housing practices. Virginia Code § 36-96.4 (A) provides that it is unlawful for any person or entity (including lenders) to discriminate against a person in a protected class in real estate-related transactions, including making or purchasing loans and selling, brokering, insuring, or appraising residential property. Currently, the protected classes are "race, color, religion, national origin, sex, elderliness, familial status, or handicap."

The Fairfax County Human Rights Commission recommends that the County initiate legislation to add a protected class to Va. Code § 36-96.4 (A), seeking to make it unlawful to discriminate against a person in a real estate transaction based on a person's source of income (i.e., housing vouchers). Families using rental assistance programs may face discrimination when searching for housing because owners or landlords may not want to rent housing units to families who plan to use housing vouchers, or other forms of public rental assistance, to pay some or all of the rent. Nearly 218,000 people in 106,000 Virginia households use federal rental assistance to afford modest housing – 68 percent are seniors, children, or people with disabilities. Bills introduced in the 2007, 2008, 2013, 2014, 2018, and 2019 General Assembly (GA) sessions sought to add "lawful source of income" or "source of funds" as a protected class in the Virginia Fair Housing Law declaration of policy (Va. Code § 36-96.1). The Fairfax County Board of Supervisors supported many of these bills, including **HB 1408** (Bourne) and **SB 909** (McClellan) in the 2018 GA, and **HB 1645** (Bourne) in the 2019 GA. All such bills have been unsuccessful in the GA. Additionally, the Virginia Housing Commission studied this issue in recent years and elected not to support legislation.

Update for November 26, 2019, Legislative Committee Meeting
Following the discussion of this item during the September 17, 2019, Legislative Committee meeting, a statement in support of prohibiting housing discrimination based on source of income was added to the Affordable Housing and Homelessness Prevention human services priority, which is included in both the legislative program and human services issue paper. Legislation that adds "source of income" as a protected class to the list of discriminatory housing practices in the Virginia Fair Housing Law may fare better

in the 2020 session, given the change in party control of the GA. One bill on this topic has already been introduced, and other related proposals may also be introduced in the coming weeks.

RECOMMENDATION:

Recommend monitoring for the introduction of legislation in order to bring related bills to Legislative Committee for consideration by the Board of Supervisors.

PROCUREMENT – BEST VALUE DEFINITION

PROPOSAL:

Initiate legislation to revise the definition of best value for procurement in the Code of Virginia.

SOURCE:

Department of Procurement and Material Management
September 3, 2019

BACKGROUND:

In Virginia, public purchasing is governed by the Virginia Public Procurement Act (VPPA), which requires public bodies in the Commonwealth to: obtain high quality goods and services at reasonable cost; ensure that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety; allow all qualified vendors to have access to public business; and, ensure that no offeror be arbitrarily or capriciously excluded. The VPPA also requires that competition be sought to the maximum feasible degree.

Virginia public bodies are allowed to consider best value concepts when procuring goods and non-professional services. The VPPA defines best value as the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs. The criteria, factors, basis, and process for the consideration of best value must be stated in the procurement solicitation. As currently defined, best value can only include factors and criteria directly related to the goods and services being procured – for example, quality and price. However, best value may not include factors of environmental, socioeconomic and community benefit value. For example, considerations of best value cannot include: the participation of local workers; the participation of marginalized workers; or, the inclusion of solutions which support environmental sustainability and reduce negative impact to human health and natural resources. It is important to note that such factors could be difficult to assess during the procurement process.

The General Assembly (GA) has been reluctant to allow localities additional authority to consider such issues in the past. In 2018, the GA went further by trying to prohibit localities from requiring contractors to pay a living wage by passing **HB 375** (Davis). HB 375 would have prohibited local governing bodies from establishing provisions related to procurement of goods, professional services, or construction that would require a wage floor or any other employee benefit or compensation above what is otherwise required by state or federal law to be provided by a contractor to one or more of the contractor's employees as part of a contract with the locality. Though the bill passed both the House and Senate, it was ultimately vetoed by Governor Northam.

Additionally, the 2018 GA passed **SB 652** (McPike), which established a workgroup under the Secretary of Administration to examine and make recommendations regarding public employment of individuals with significant disabilities. The report by the Secretary of Administration was due to the Governor and GA by July 1, 2019. The results of the study would seem to be particularly informative in assessing this issue; however, the status of the study and any report remains unclear at present.

Update for November 26, 2019, Legislative Committee

In conversations with legislative staff, Senator McPike confirmed that the study included in **SB 652** was never conducted, and he expressed a continued interest in this topic. Additionally, changes to the GA as a result of the November 2019 election make it more difficult to predict how this issue would fare in the 2020 GA.

RECOMMENDATION:
Board discussion.

PUBLIC SAFETY – CRIMINAL SENTENCING REDUCTIONS

PROPOSAL:

Add to the state legislative position on Dangerous Weapons support for the concepts included in **HB 4014** (Yancey) (2019 General Assembly (GA) Special Session).

SOURCE:

Fairfax County Board of Supervisors
September 17, 2019

BACKGROUND:

During the 2019 GA Special Session on gun legislation, Delegate Yancey (Newport News) introduced **HB 4014**, which would expand the instances in which a Virginia sentencing court may reduce a convicted person's sentence. Under current Virginia law, upon motion by the Commonwealth's Attorney, a sentencing court may reduce an offender's sentence if the offender, after sentencing, provides substantial assistance in investigating or prosecuting another person for the following offenses: murder, mob crimes, kidnapping, malicious assault or bodily wounding, robbery, carjacking, felony sexual assault, certain arson crimes, or certain drug distribution charges. If the motion is made more than one year after entry of the final judgment order, a sentencing reduction can only be granted if the offender's assistance involved information that either: was not known to the offender until more than one year after sentencing (for example, pertaining to a crime unrelated to the charge for which the offender was sentenced); did not become useful to the Commonwealth until more than one year after sentencing; or, its usefulness could not have been anticipated by the offender until more than one year after sentencing. This law was enacted by the 2018 GA (**HB 188** (Collins)/**SB 35** (Stanley)), and was an initiative of the Virginia Criminal Justice Conference (a group of prosecutors and defense attorneys) to incentivize convicted persons to share information with prosecutors.

HB 4014 (Yancey) (2019 GA Special Session) would allow a convicted person's sentence to be reduced if the sentencing court determines that the person provided substantial assistance in the investigation or prosecution of a case involving stolen firearms, criminal street gang participation, or recruitment for criminal street gangs. **HB 4014** is intended to incentivize individuals with knowledge of crimes to come forward with information and curb the supply of stolen firearms, which would not be affected by legislation pertaining to the legal purchase of firearms, such as limiting handgun purchases to one a month.

At the federal level, a broader version of this law may be used in federal cases involving persons who provide substantial assistance to the federal government's

investigation or prosecution of others. Federal Rule of Criminal Procedure 35(b) permits a federal court, upon the government's motion, to impose a new, reduced sentence that takes into account post-sentencing substantial assistance – that new sentence may be lower than the recommended guideline range and any statutory mandatory minimum penalty, and the rule is not charge or crime specific. Additionally, at the federal level, there are other mechanisms through which sentences can be reduced at the time of sentencing, and at the state level in Virginia, opportunities for sentencing reductions at the time of a guilty plea or sentencing hearing are also available.

Related legislation introduced during the 2019 GA Special Session includes **SB 4028** (Stanley), which is identical to **HB 4014**, and a more narrow proposal, **SB 4027** (Stanley), which would allow a Virginia sentencing court to reduce a convicted person's sentence if the person provides substantial assistance in the investigation or prosecution of cases involving criminal street gang participation or recruitment. All firearm-related legislation introduced during the 2019 Special Session, including the proposals related to sentence reductions, were referred to the Virginia State Crime Commission (VSCC) for further study. The VSCC convened in August for a two-day meeting during which Commissioners received a number of presentations and public comment, and legislators presented their bills. The Commission is scheduled to receive a presentation on mass killings and gun violence at their November 12, 2019, meeting, and will subsequently submit a report to the GA. The VSCC also will adopt a legislative package at their December 11, 2019, meeting.

Update for November 26, 2019, Legislative Committee

Following the November 5, 2019, elections and change in party control of the GA, Governor Northam announced his intention to re-introduce in the 2020 GA eight bills addressing gun violence that he proposed during the 2019 GA Special Session. Those bills include: universal background checks; a ban on assault weapons to include suppressors and bump stocks; a ban on high-capacity magazines; restoration of a state law, repealed in 2012, to restrict handgun purchases to one a month; tougher penalties for leaving a loaded gun near a child; "extreme risk" protective orders to remove guns from people deemed a risk to themselves or others; a requirement to report stolen or lost guns within 24 hours; and, authority for localities to regulate firearms within their jurisdictions, including banning them in government buildings.

Additionally, the VSCC November 12, 2019, meeting was cancelled, and the November 18 GA Special Session was *pro forma* and no legislation was considered. The VSCC issued a brief report on mass killings and gun violence that found that "inconclusive evidence exists to develop recommendations…. The absence of recommendations should not be interpreted as a finding that no changes to Virginia's laws are necessary. Any changes to these laws are policy decisions which can only be made by the [GA]." The report did not address

individual legislative proposals, and did not provide analysis of the substantial assistance bills introduced by Delegate Yancey or Senator Stanley during the 2019 GA Special Session. Data gathered by the Fairfax County Police Department indicates that over 90 firearms have been stolen in Fairfax County in 2019 as of 10/23/2019 (151 in 2016, 181 in 2017 and 114 in 2018) – **HB 4014/SB 4028** could be another public safety tool to address such crimes. Additionally, though Delegate Yancey did not win re-election, it is possible that similar proposals could be introduced in the 2020 GA by other GA members. An alternative to **HB 4014** could be a broader proposal to make a sentence reduction under § 19.2-303.01 available to all felony investigations or prosecutions, rather than adding specific crimes to the existing statute (the Virginia Association of Commonwealth's Attorneys suggested this broader approach in comments they provided to the VSCC).

RECOMMENDATION:
Direct staff to bring bills addressing gun violence to Legislative Committee for consideration by the Board of Supervisors.