



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** August 23, 2023

**TO:** Board of Supervisors

Bryan Hill  
County Executive

Tom Arnold  
Deputy County Executive for Safety and Security

**FROM:** Richard G. Schott  
Independent Police Auditor

**SUBJECT:** Independent Police Auditor Input on Police Reform Matrix Work Group Action Plan Recommendations Presented to the Board of Supervisors (“BOS”)

During the Safety and Security Committee Meeting on May 12, 2023, members of the Police Reform Matrix Work Group (“Work Group”) presented to the BOS its “*Community Recommendations for More Equitable Policing in Fairfax County: A Recommended Action Plan.*”

The Action Plan included numerous recommendations for the BOS to consider, broken down into the following categories:

1. Rethinking Police
2. Use of Force Policy and Accountability\*
3. Independent Oversight\*
4. Community Engagement and Participation
5. Transparency, Data Reporting, and Data Analysis\*
6. Police Officer Excellence
7. Specialized Police Units\*
8. Monitoring and Evaluating Program Progress

Although I was a non-voting, ex-officio member of the Work Group, the purpose of this memorandum is to provide my input to the BOS on several, but not all, of the recommendations made by the Work Group, in 4 of the 8 categories listed above (identified by the \*).

## Use of Force Policy and Accountability

1. **Working Group:** Follow through on Use of Force Community Advisory Committee Recommendations. FCPD should either adopt the complete CAC recommendations as written or explain to the BOS and the public why a recommendation should be revised or not implemented. A deadline for response, e.g., July 1, 2023, should be set, and a mechanism for co-production and BOS review of FCPD responses should be established. If FPCD believes legally it is prohibited from adopting a recommendation, the BOS should ask the Office of the County Attorney to advise whether legislative action would be required to implement the change.

**IPA INPUT:** None.

2. **Working Group:** Direct Staff to Address Issues Known to Require Legal Clarification. The CAC believed the following action could be taken without legislative action. County staff disagrees with the CAC's position. As such, we recommend that the County pursue legislative revision of these standards. Any such revisions would be designed to allow police departments to adopt standards that are more stringent than those underlying constitutional caselaw.

Principles Underlying the “Necessary and Proportional Legal Standard”

- a) UTSA and CAC recommended that the UOF General Order 540 be revised to state that “A police officer may not use force against a person unless under the totality of the circumstances, said force is necessary and proportional.”
- b) The current “objective reasonableness” standard as applied has focused on the reasonableness of the action at the moment force was used.
- c) That standard should be revised to be consistent with the principles underlying the UTSA/CAC recommendation and with further explanation to make clear that force used must be proportional to the risk of harm to the officer or others; and events leading up to the force, including the nature and severity of the underlying crime or event, are to be taken into account.

**IPA INPUT:** I do not agree with replacing the “objective reasonableness” standard with a “necessary and proportional” standard, even if it can be done under Virginia law. The CAC, and now the Reform Matrix Work Group, has recommended that “necessary and proportional” should be the use of force policy standard in G.O. 540. A major concern for the Work Group is that the “objective reasonableness” standard focuses on the moment the force was actually used, and it discounts (or does not consider at all) the police conduct leading up to the force, and that the “objective reasonableness” standard has been unduly deferential to officers.

While I agree that conduct leading up to a use of force should be evaluated, I disagree that the “objective reasonableness” standard should be replaced with “necessary and

proportional” to judge the actual use of force. My reasoning here is the same as my reasoning for disagreeing with UTSA’s recommendation to allow only the “minimum” amount of force (see IPA INPUT for Working Group’s Recommendation #5). Police departments—to include the FCPD—should strive for and train officers to utilize a minimal (or proportional) amount of objectively reasonable force when justified, but I do not agree that the written policy should be overly restrictive. Plus, it should be noted that using the “objectively reasonable” standard to judge whether force was reasonable or excessive does allow the person who is judging to consider “the relationship between the need for the use of force and the amount of force used,” as well as “any effort made by the officer to temper or to limit the amount of force.” Therefore, if the amount of force used during an incident is disproportionate to the need for it, then the force itself should be deemed objectively unreasonable.

If pre-force conduct is determined to be unsatisfactory, the faulty conduct should be addressed and remedial action should be taken. Of course, improper pre-force conduct should not be condoned; but, I agree with courts that continue to treat the actual use of force as a separate issue to be examined at a particular moment in time. In County of Los Angeles v. Mendez, the United States Supreme Court disagreed with the Ninth Circuit Court of Appeals’ so-called “provocation rule.” According to the Ninth Circuit, its provocation rule comes into play after a forceful seizure has been judged to be reasonable under Graham v. Connor. Once a court has made that determination, the rule instructs the court to ask whether the law enforcement officer violated the Fourth Amendment in some other way *in the course of events leading up to the seizure*. If so, that separate Fourth Amendment violation may “render the officer’s otherwise reasonable defensive use of force unreasonable as a matter of law.” In Mendez, however, the Supreme Court held that the Ninth Circuit’s provocation rule “is incompatible with our excessive force jurisprudence” and that “[t]he rule’s fundamental flaw is that it uses another constitutional violation to manufacture an excessive force claim where one would not otherwise exist.”

The Fourth Circuit Court of Appeals has also considered whether pre-force conduct of officers should be considered when determining whether the ultimate force used was reasonable or excessive. In Greenidge v. Ruffin, a three-judge panel for the Fourth Circuit held that an alleged violation of standard police procedure preceding a use of force was “not probative of the reasonableness” of the force used. Again, this is not to say that pre-force conduct should not be examined or that improper pre-force conduct should not be addressed and remediated; only that, in my opinion, the two analyses should remain separate and distinct.

There is also the problem of trying to define when force is “necessary.” If the FCPD were to adopt the suggested “necessary and proportional” standard when analyzing a use of force, it would have to provide a definition of “necessary.” When trying to define “necessary,” it seems to me you have to come right back to “objective reasonableness.” For example, the DOJ deadly force policy (revised in May, 2022) reads: “Law enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, *when the officer has a reasonable*

*belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.”* To me, that definition of “necessary” is synonymous with “objective reasonableness.” An alternative definition for “necessary” force might be accomplished by stating that force is only “necessary” if a reasonable officer would find it to be “necessary” under the circumstances. But again, that seems to be synonymous with “objective reasonableness.”

3. **Working Group:** To be considered necessary, force must not continue longer than is required to accomplish a legitimate law enforcement objective, and officers must have taken reasonable non-force steps to gain compliance and de-escalate conflict if possible. The standard should apply to both deadly and non-lethal force, modified as appropriate.

**IPA INPUT:** The Working Group’s recommendation appears to pre-suppose that “necessary” will be part of a new policy standard used by the FCPD. I have already stated my disagreement with replacing “objective reasonableness” with “necessary and proportional,” but I will address my disagreement with this recommendation (Working Group #3) regardless.

The FCPD already recognizes that unnecessary force is excessive and that de-escalation efforts are always expected, which seems to fulfill the objective of this Working Group’s recommendation. Because the term “necessary” is used throughout FCPD’s current G.O. 540, it may be beneficial for the FCPD to define “necessary.” However, the difficulty in defining when force is “necessary” is a major reason why I **disagree** with replacing the “objective reasonableness” standard with the “necessary and proportional” standard. See **IPA Input** to Working Group #2, above.

4. **Working Group:** CAC recommended that pointing a gun and any other threatened weapon use should be reportable as a use of force and included in the definition of force. Currently, pointing a gun is considered a separate reportable action, but not subject to a use of force investigation. [General Order 540.H].

**IPA INPUT:** I do not feel strongly one way or the other on this recommendation, but I lean toward not changing the current practice employed by the FCPD, which is to treat the pointing of a firearm as a “reportable action” (but not an actual use of force), and to conduct an investigation into the pointing of the firearm. Having recently completed a review of a “brandished firearms” investigation (see, [oipa incident report ipa-22-09r.pdf \(fairfaxcounty.gov\)](#)), I think that treating the pointing of a firearm as an actual *use* of force would not change anything from an administrative or investigative perspective. And because the department already records all instances of officers pointing their firearms, making the recommended change is unnecessary. Finally, if classifying the pointing of a firearm as an actual use of force were to discourage officers from pointing their firearms—when it is appropriate to do so—there could be catastrophic consequences. As the Ninth Circuit Court of Appeals pointed out in a recent firearm-pointing case (Hopson v. Alexander, No. 21-16706 (9<sup>th</sup> Cir. 2023)), while “[p]olice must be cautious not to point guns at people in haste when the circumstances

do not warrant it [because] [s]uch conduct can lead to accidents or violent escalations that might not otherwise have occurred . . . , police officers must have some latitude in relying on their judgment and experience to anticipate criminal conduct that may be about to occur. Officers are allowed to be proactive. And when they have a basis for intervening, they are not inevitably required to use only the most minimal force and hope for the best.”

5. **Working Group:** Assess and Strengthen Key Program Reforms Already Being Implemented

Revise the de-escalation standards in GO 540 IV. E. to clarify that de-escalation be used to reduce both the need for and the level of force required and to emphasize that officers must use only the minimum amount of force reasonably needed to overcome resistance. Make companion changes to reporting and training.

**IPA INPUT:** The FCPD’s policy on de-escalation already includes the principles suggested by the Working Group in this recommendation. I will, however, address the provision in the Group’s recommendation that says “. . . *officers must use only the **minimum** amount of force reasonably needed to overcome resistance.*

I previously responded to a similar recommendation made by UTSA to the FCPD to incorporate the following into G.O. 540: “If force is required, officers will use only the **minimum amount of force** reasonably needed to overcome an individual’s resistance and to gain control.” I expressed my disagreement to that earlier recommendation with the following explanation:

My disagreement is merely with trying to assign the minimum amount of force allowed in a given situation. While I agree that police departments should strive for and train officers to use a minimal amount of objectively reasonable force when justified, I do not agree that the written policy should be so restrictive. Rather, I agree with the Bureau of Justice Assistance (a component of the United States Department of Justice) when it points out that “there may be more than one way to resolve an encounter that is ‘tense, uncertain, and rapidly evolving,’ and while one option may be better than another, the Graham test does not demand that only one option be found objectively reasonable.”

Furthermore, some experts argue that the notion that there is only one “least” or “minimum” amount of force in any given situation is an inherently flawed idea. These experts contend that there is no such thing as a “least” amount of force. My recommended alternative to UTSA’s recommendation (and to this Working Group’s recommendation as well), therefore, is for FCPD’s revised General Order 540 on USE OF FORCE to state: “If force is required, officers should attempt to use only a minimal amount of force reasonably needed to overcome an individual’s resistance and to gain control, and officers will receive training on various techniques which constitute less-lethal force or lethal force.”

6. **Working Group:** Clarify levels of civilian resistance that can justify the use of force and link each to the corresponding force permitted (continuum of force).

**IPA INPUT:** This Working Group recommendation should clarify that there may not be only one force technique or level of force to respond to any one level of resistance. As PERF stated in its 2015 report – *“Use-of-Force Policy and Practice Review of the Fairfax County Police Department”* – “some agencies still have language about a “force continuum” which matches specific use-of-force weapons or tools to specific levels of suspect resistance. A continuum may be helpful as a training technique, but the best policy is designed to reflect the Supreme Court’s statement that “reasonableness” cannot be defined precisely or applied mechanically.” For that reason, I disagree with the notion of a strict force continuum. Officers need to be trained on and equipped with a variety of force techniques and tools, and be able to choose an objectively reasonable option in any number of situations. But, officers do not have to choose one particular force option, or even the least intrusive option, when deploying force. Rather, to comply with the Fourth Amendment, the officer must choose a reasonable option.

FCPD G.O. 540 IV. H. Levels of Resistance, includes the notion of force options when it states: “Officers who encounter individuals displaying varying degrees of resistance to their efforts to take lawful police action should consider that the individual may not understand their directions or commands due to underlying medical or mental health issues, disabilities, substance abuse concerns, or language and/or cultural differences. Department-sanctioned levels of control in these cases include (1) Low-Level Control tactics, (2) Less-Lethal Force, or in the most extreme circumstances, (3) Deadly Force. Officers should consider and transition to different force options in these cases, to include escalation or de-escalation techniques, based upon the varying degrees of a resisting individual’s actions.”

7. **Working Group:** Eliminate threats of self-harm from the definition of aggressive resistance. While force may be a legitimate option to prevent self-harm under some circumstances, threats of self-harm are not “aggressive resistance.”

**IPA INPUT:** None.

8. **Working Group:** Strengthen the duty to intervene and reporting, including stronger anti-retaliation protection and performance standards rewarding intervention and reporting.

**IPA INPUT:** None.

9. **Working Group:** Set or improve standards for particularly fraught force practices such as prone restraints, chokeholds, strip searches and ketamine, and expressly prohibiting others such as spit hoods.

**IPA INPUT:** None.

10. **Working Group:** Direct that a foot pursuit policy be established with community participation. Adopt a foot pursuit policy to help reduce force and injuries to officers and suspects. FCPD recently announced it will develop such a policy with input from PERF, a well-regarded organization. However, the proposed policy should be subject to co-production with the community to ensure local concerns are addressed. Consideration should also be given to the inclusion of a bike pursuit policy.

Adopt in the short term (30-45 days) an interim foot pursuit policy developed in consultation with the community through the issuance of a Standard Operating Procedure (as was done for BWCs) that would limit foot pursuits, pending the development of a General Order after the receipt of the PERF report.

**IPA INPUT:** I agree that a foot pursuit policy should be implemented by the FCPD. The addition of Regulation 203.8 FOOT PURSUITS to the General Order addressing “Prisoner Care and Custody” does not suffice. The new Regulation begins with, “Officers who engage in a foot pursuit of a fleeing suspect are expected to exercise sound judgment throughout the length of the chase, and balance their obligation to promote the safety of the general public with the need to apprehend offenders and/or persons in need of immediate mental health or medical treatment.” That is a good beginning, but a new policy needs to provide officers with more guidance. For example, a fleshed out general order should provide guidance on situations which would typically not justify a foot pursuit, and the factors to consider before initiating and/or continuing (or discontinuing) a foot pursuit. (See, e.g., [539.01 Foot Pursuits - Arlington County Police Department - PowerDMS](#) (Arlington County PD) and [Title \(mpdconline.com\)](#) (Washington D.C. Metropolitan PD)).

The Working Group’s statement that the FCPD should “[a]dopt a foot pursuit policy to **help reduce force**,” is misguided in that it conflates the issues of force with foot pursuits. All uses of force are governed by FCPD’s General Order 540, whether or not the force is part of a foot pursuit.

The confusion (conflation) is likely caused, at least partly, by the FCPD’s own policy language in G.O. 540 VII. B., which reads, in part: “Deadly force shall never be used to apprehend a fleeing misdemeanor (unless they pose an imminent threat of serious physical harm or death to the officer or others), and may only be used to apprehend a fleeing felon where: 1. The officer has probable cause to believe that the individual committed a felony involving violence, and 2. All other means to effect an arrest have been exhausted, and 3. The felon’s escape poses a significant threat of serious injury or death to the officer or others.” After the February, 2023, fatal FCPD officer shooting of a shoplifting suspect outside of the Tysons Corner shopping mall following a foot pursuit, this policy provision was often referred to in arguing that the shooting clearly violated this provision. To alleviate the confusion and conflation caused by such language, I agree with the research team from the University of Texas at San Antonio, which provided the following recommendation

to the FCPD when presenting its report on “AN INVESTIGATION OF THE USE OF FORCE BY THE FAIRFAX COUNTY POLICE DEPARTMENT” in July, 2021:

“We strongly urge the FCPD to amend GO 540.8 to incorporate an imminency requirement in all cases of deadly force. A policy such as this eliminates the need for a separate “fleeing felon” provision altogether. Under this approach, officers are permitted to use deadly force to protect themselves or others from what is reasonably believed to be an imminent threat of death or serious injury. While some agencies permit the use of deadly force to apprehend fleeing violent felons who also pose an imminent threat to human life (see LMVP PO-035-20 XII.4.), such a provision is not necessary because it is merely a specific application of the general rule and thus is subsumed by it. Moreover, this recommended policy approach is clear, simple, easy to train on, and consistent with recommendations from professional police organizations and legal scholars. It is also consistent with evolving community standards on deadly force that increasingly expect police to use deadly force only under the narrowest of circumstances.”

### **Independent Oversight**

1. **Working Group:** Strengthen the role of CRP and IPA by assigning them the full authority permitted under VA Code § 9.1-601.
  - i. The CRP and IPA should be directed to develop coordinated plans, with community participation, for implementation of their respective new responsibilities for the BOS's approval by a date certain (e.g., July 1, 2024). Any differences between the plans will be presented to the BOS as part of the approval package.
  - ii. CRP and IPA coordinated plans should include a delineation of circumstances in which the CRP and/or the IPA would monitor FCPD investigations or conduct independent ones; the CRP's role in use of force investigations and whether the IPA's authority in use of force would extend beyond cases involving serious injury or death; and whether the CRP and/or IPA should impose or recommend disciplinary actions. The plan should also include a preliminary estimate of resources needed e.g., to hire additional investigatory staff and/or an analyst expert in racial bias and statistical analysis of police data.

The CRP should be immediately authorized to:

- I. Clarify its standard for review to include a determination whether FCPD's internal administrative decision and/or key findings are correct, and if not, recommend reversal to FCPD or the BOS.
- II. Provide for automatic CRP review of all FCPD administrative investigations involving allegations of bias or profiling;



- III. Provide contemporaneous input to the IPA through the CRP Executive Director on the IPA's monitoring and review of use of force that results in serious injury or death and as to in-custody deaths.

**IPA INPUT:** At this time, I disagree with the Working Group's recommendation to "Strengthen the role of CRP and IPA by assigning them the full authority permitted under VA Code § 9.1-601." My understanding is that the Working Group's primary motivation for this recommendation is to provide for investigative authority (and to a lesser extent disciplinary authority), to the Panel and the Auditor. Based on the quality of FCPD investigations that I have reviewed over the past 6+ years, I believe the FCPD should continue to conduct its own internal investigations.

Should the BOS decide to grant investigative authority to the Panel and the Auditor, however, several issues will have to be resolved:

- 1) What types of cases will each entity investigate? For example, will the Panel investigate all allegations of serious misconduct and abuse of authority, or only a subset of those allegations (e.g., bias allegations)?
- 2) Who will investigate – the volunteer Panel members cannot possibly be expected to investigate cases. Therefore, a cadre of investigators will have to be vetted, hired, trained, funded, etc.
- 3) Will the FCPD's IAB conduct concurrent investigations to those conducted by the Panel and Auditor? If so, how will divergent conclusions be treated?

I also believe that discipline should remain within the purview of the Chief of Police. This allows for consistency in discipline. Plus, a Chief who lacks disciplinary authority, in my opinion, may be perceived by the officers working for him as lacking the authority necessary to run the department.

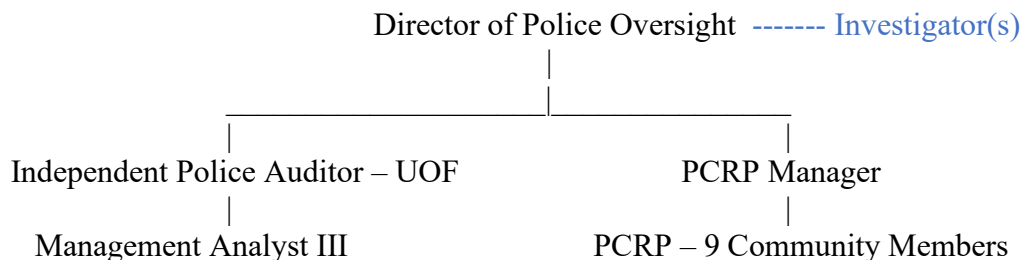
In assuming that the Panel and Auditor will be afforded greater authority (see above), the Working Group further put forth that "*The CRP and IPA should be directed to **develop coordinated plans, with community participation, for implementation of their respective new responsibilities** for the BOS's approval by a date certain (e.g., July 1, 2024). Any differences between the plans will be presented to the BOS as part of the approval package.*"

Although I disagree with the premise (greater authority, i.e., investigative power for the Panel and Auditor) which calls for the CRP and IPA to develop *coordinated plans*, I will take this opportunity to share my thoughts for modifying the existing structure of civilian oversight in Fairfax County to improve oversight and to make it more beneficial to the community members of Fairfax County, to the BOS, and to the FCPD. First, the OIPA and the OPCR should be consolidated and placed under a newly created "Office of Civilian Oversight of Police." That office should be led by a Director of Police Oversight ("Director"). Directly under that individual should be the Independent Police Auditor ("Auditor"), who should continue to review FCPD investigations of uses of force which result in death or serious injury, in-custody deaths,

officer-involved shootings, and complaints made about other uses of force. The Management Analyst III position should be retained to assist the Auditor in conducting reviews, data studies, and trend analyses.

Also reporting directly to the Director should be the Manager of the CRP (“Manager”), who will provide all necessary support to the all-volunteer, 9-member Police Civilian Review Panel. The Manager will perform all duties previously assigned to the Panel’s Executive Director. The organizational structure for this new office is set out below:

**OFFICE OF CIVILIAN OVERSIGHT OF POLICE**



This structure maintains the independence of the PCRCP (from the FCPD and from the Auditor) while providing it with the support it needs to accomplish its mission; and, it more clearly puts the Panel on equal footing with the Auditor.

It also eliminates an agency head position and consolidates two separate budgets into one.

Finally, if in the future the BOS does decide to approve investigative authority for the Auditor and the Panel, this new structure lends itself to incorporating that new responsibility because there are already individuals (the Auditor and the PCRCP Manager) in place who could conduct a limited number of investigations before determining if additional investigators will be needed. Any new investigators would report to the Director and could conduct either type of investigation currently reviewed by the Auditor (UOF) and the Panel (serious misconduct or abuse of authority)(see blue font in the org chart above).

2. **Working Group:** Independent criminal investigations of Fairfax County police officers.

Authorize the Independent Police Auditor to make a recommendation to the Commonwealth’s Attorney when he/she deems it necessary that criminal investigations of FCPD officer involved shootings and in-custody deaths be handled by independent investigators retained by Commonwealth’s Attorney and funded by the County.

**IPA INPUT:** At this time, I disagree with the Working Group’s recommendation to “*Authorize the Independent Police Auditor to make a recommendation to the Commonwealth’s Attorney when he/she deems it necessary that criminal investigations*

*of FCPD officer involved shootings and in-custody deaths be handled by independent investigators retained by Commonwealth's Attorney and funded by the County. Based on the quality of FCPD investigations (those conducted by either the Major Crimes Bureau or the IAB) that I have reviewed over the past 6+ years, I believe the FCPD should continue to conduct the criminal investigations into its' officers conduct on behalf of the Commonwealth Attorney's Office.*

If, however, the BOS does recommend (and fund?) independent investigators retained by the Commonwealth Attorney's Office, I would recommend that the Commonwealth Attorney determine when it is "*necessary that criminal investigations of FCPD officer involved shootings and in-custody deaths be handled by [his/her] independent investigators.* I do not think the Auditor should be called upon to decide when to mobilize investigators who are employed by the Commonwealth Attorney's Office.

### **Data Reporting, Analysis and Transparency**

1. **Working Group:** Provide public access to demographic data through an online searchable database and annual reports for all key police actions, to include pedestrian and traffic stops, frisks, searches, citations and warnings, summons, custodial arrests, and uses of force.

Standardize use of a combined race/ethnicity categories (Hispanic/Latino individuals of all races together) to better reflect proportionality, consistent with the practice of Virginia Community Policing Act and Fairfax demographic dashboards.

**IPA INPUT:** I agree with the Work Group's initial recommendation – for the FCPD to provide public access to demographic data through an online searchable database and annual reports for all key police actions, to include pedestrian and traffic stops, frisks, searches, citations and warnings, summons, custodial arrests, and uses of force. And, it appears this information is already available on the department's own Open Data Portal for arrests, citations, and warnings. Use of Force data (and demographic breakdown) is also available in UOF reports available on the Open Data Portal.

I would like to see two additional categories of data recorded and broken out by demographics of those involved:

- 1) all requests for consent to search (not just actual searches conducted), whether during a consensual encounter, traffic stop, investigative detention, or arrest (beyond the search incident to arrest); and
- 2) incidents in which force would have been justified by law and policy, but during which no force was used (possibly avoided because of effective de-escalation techniques being utilized).

The collection of this data may reveal whether or not similarly-situated individuals of different races are being treated differently (i.e., being asked for consent to search, or having force used on them).

2. **Working Group:** Work with community members to identify minor offenses linked to behavioral and mental health issues and those with significant disparity in arrest rates for people of color. Monitor the reduction in arrest rates and disparity of identified offenses, noting year over year changes.

**IPA INPUT:** None.

3. **Working Group:** For each encounter involving the use of force, capture all interaction between the civilian(s) and officer(s) sequentially, in the order in which they occurred. This includes for each officer, preliminary interactions such as a consensual or investigatory stop, each force tactic or weapon used, each non-force tactic used by each officer (verbal warnings, de-escalation measures such as time, cover and distance), each action taken by each civilian, and any efforts to intervene in excessive force.

**IPA INPUT:** While the Working Group’s recommendation seems overly broad, I agree with the concept of capturing each act of civilian resistance and each officer use of force—sequentially—for any incident during which force is used.

The Working Group’s recommendation appears to mimic a recommendation provided by the research team from UTSA in its “AN INVESTIGATION OF THE USE OF FORCE BY THE FAIRFAX COUNTY POLICE DEPARTMENT” that it presented to the Board of Supervisors in 2021. That full recommendation is reproduced here:

“As noted, the FCPD uses BlueTeam to capture all force and resistance levels utilized in a particular encounter, but the data are not sequenced. FCPD supervisors enter all force types used by an officer (e.g., force to hold/restrict, takedown) during an encounter, but those use of force tactics are not captured in a sequential manner that allows for an analysis of which tactic was used in what order or in response to potentially differing levels of civilian resistance. In the use of force data provided to the UTSA research team, citizen resistance was captured inconsistently, and in some years, resistance was captured only as a static measure – one type of resistance per encounter (e.g., tensed body, flee, advanced at officer) – even though suspects often escalate and de-escalate their resistance throughout encounters with the police. In fact, previous research (Kahn et al., 2017; Alpert et al., 2004) has established that police-citizen use of force encounters often escalate and de-escalate over the course of the encounter, and FCPD policies on the use of force require officers to use only reasonable levels of force to overcome resistance and to de-escalate force if civilian resistance diminishes. During any given police-civilian encounter involving force, officers may use multiple force tactics in an attempt to control a resistant civilian, and likewise, the civilian may offer different levels of resistance as the encounter unfolds. Ideally, a use of force data collection system should accommodate this reality and allow for the capture and sequencing of all levels of force and resistance. Likewise, in encounters that involve multiple officers and/or civilians, the system should allow for the identification of which civilians exhibited which levels of resistance in approximately which order and what

different levels of force were used in response by which officers and against whom. Untangling the sequential nature of use of force events can be challenging in complex cases involving protracted events and multiple officers and civilians, but in the significant majority of cases, it is not difficult. FCPD supervisors already conduct preliminary investigations into use of force events and have primary responsibility for entering data into BlueTeam. With appropriate training and data systems that allow for the capture of sequential information, the FCPD can capture better and more precise data on the use of force. Ideally, an improved use of force data collection system would allow supervisors to assign levels of resistance and levels of control to civilians and officers in the order they transpired during use of force events. [Table omitted]. Collecting use of force data in this manner allows for greater accuracy and precision in documenting how levels of resistance and control may escalate and de-escalate during force-involved encounters. Combined with other data captured in an improved data collection system (see recommendations below), sequential force and control data allow analysts to investigate factors that predict escalation and de-escalation and correlate with injuries. With this approach, and over time, the FCPD will develop a more realistic understanding of how use of force encounters unfold, which will allow for improvements in training, policy-making, or supervision with the ultimate goal of reducing the need for force, levels of force within encounters, and injuries to officers and civilians.”

4. **Working Group:** Conduct annual or biannual follow-up analyses with enhanced use of force data to evaluate whether observed disparities diminish or change over time.

**IPA INPUT:** None.

5. **Working Group:** Analyze all police stops that evolve from a minor violation into a use of force; identify and flag police officers whose interactions reflect a pattern of escalation.

**IPA INPUT:** None.

6. **Working Group:** Multi-year Disparity Analysis on Major Topics

Publish annually a multi-year disparity analysis of major police actions such as stops, arrests and use of force, developing benchmarks in consultation with community and experts.

Contract for an independent study by expert researchers of disparity in police stops.

**IPA INPUT:** For the second part of this recommendation—to contract for an independent study by expert researchers of disparity in police stops—I would point out that the recent UTSA study focused only on use of force incidents. A second study to examine myriad police activity—to include stops—may be worthwhile.

7. **Working Group:** Digital Data Access, Release, and Analysis

Adopt a policy that provides for the mandatory release of all officer BWC footage within 10 days of any incident in which FCPD officer(s) use deadly or serious force (subject to consent by the victim or the victim's family after review of the footage). The Chief of Police may, by public notice, extend the time for release up to a maximum of 30 days, but only to the extent that additional time is required for due process, e.g., to maintain the integrity of the investigation.

**IPA INPUT:** When an officer uses deadly force, there will be both a criminal and an administrative investigation into that use of force. The officer who used deadly force will be interviewed (cannot be compelled to provide answers in the criminal investigation) as part of both investigations. This may not occur within 10 days of the incident. For this reason (and others, e.g., the time needed to conduct a safety assessment), I do not agree with this recommendation. I think the 30-day release requirement is sufficient for the purpose of transparency to the community while maintaining the integrity of the investigations into the use of force and affording officer(s) their rights under the United States Constitution and the Virginia Law-Enforcement Officers Procedural Guarantee Act.

8. **Working Group:** Establish a Data Control Board made up of representatives from FCPD, Commonwealth Attorney, and the public to oversee access to digital data collected from dashboard and body-worn cameras.

**IPA INPUT:** None. If implemented, this will have to be coordinated with VFOIA experts.

9. **Working Group:** Utilize body-worn camera footage to evaluate racial/ethnic disparities in treatment by FCPD, force escalation or de-escalation, accuracy of characterization of the community member's race and other factors relevant to equitable treatment.

**IPA INPUT:** None.

10. **Working Group:** Access to a Summary of Officer Misconduct Complaints and Disposition

Make accessible to the public, to the extent permissible, a database showing when officers are found to have violated FCPD policy or the law, committed official misconduct or resigned under investigation for these offenses.

**IPA INPUT:** None. If implemented, this will have to be coordinated with VFOIA experts. To the extent possible, a publicly accessible anonymized version of the recommended information may be useful.

11. **Working Group:** FOIA Reform to Promote Less Restricted Information Release

Adopt a "predisposition to disclose" approach with FCPD public records, with any exceptions strictly and narrowly construed.

**IPA INPUT:** None.

12. **Working Group:** Revise County and Department FOIA regulations to significantly narrow the Chief's discretion to withhold officer personnel records and administrative investigative materials absent an adverse investigatory effect. To implement, the Department needs to develop a formal policy, through co-production with the community, on the release of such records and the definition of "adverse investigatory effect."

**IPA INPUT:** None.

13. **Working Group:** Key Training Programs and Schedules Publicly Available

Include key training topics and schedules in General Orders, specifying which training is mandatory and which is recommended, to provide transparency to the community. Identify proportion of officers who have received training, and year-to-year variations in training requirements, in public documents that reference the standards in the General Orders.

**IPA INPUT:** None.

### **Specialized Police Units**

1. **Working Group:** Evaluate the roles and responsibilities of each specialized police unit. Identify, in consultation with impacted community member representatives, units of potential concern, including reason for formation, criteria used to target suspects, how officers are selected, trained, and rewarded for participation, and the ratio of supervisor (sergeant) to patrol officers compared to regular patrol units.

**IPA INPUT:** I am currently on an International Association of Chiefs of Police ("IACP") working group whose charge is to draft a Model Policy and a "Concepts and Issues" paper for "Specialized Units." The products generated by the IACP will not apply to any specific specialized unit, but will provide guidance to law enforcement agencies whenever setting up any type of specialized unit. Topics being addressed by the working group include development, selection criteria, training, and supervision of specialized units. I will inform the FCPD when the working group has completed its work and the IACP has promulgated the documents.

2. **Working Group:** Limit role of School Resource Officer criminal investigations to serious violent offenses not appropriate for resolution through a school's disciplinary procedures.

**IPA INPUT:** None.

3. **Working Group:** Report demographic and disparity data on key police actions by each specialized unit identified as being of potential concern including use of force for each identified unit, including with regard to stops, frisks, searches, consents (written and oral), arrests and uses of force.

**IPA INPUT:** I am currently on an International Association of Chiefs of Police (“IACP”) working group whose charge is to draft a Model Policy and a “Concepts and Issues” paper for “Specialized Units.” The products generated by the IACP will not apply to any specific specialized unit, but will provide guidance to law enforcement agencies whenever setting up any type of specialized unit. Topics being addressed by the working group include development, selection criteria, training, and supervision of specialized units. I will inform the FCPD when the working group has completed its work and the IACP has promulgated the documents.