

**Fairfax County Board of Supervisors Criminal Justice/Police Reform
for the 2020 General Assembly Special Session**

1. **Adequate Funding of Courts, Public Defenders, and Commonwealth’s Attorneys** – To ensure a functioning and equitable judicial branch, you should seize the opportunity to reverse the Commonwealth’s historic underfunding of the criminal justice system. Short-staffed and poorly-compensated public defenders, Commonwealth’s Attorneys, court personnel, probation officers, and magistrates are significant drivers of unjust and inequitable outcomes.

The 2020-2022 biennium budget approved by the General Assembly during the special session includes funding for several public safety items, including \$6.4 million for a body-worn camera equipment grant program, and \$6 million to address the fiscal impacts associated with the new criminal justice/police reform initiatives that were enacted at the special session. The GA also reappropriates funds that were previously unallotted due to COVID-19, such as \$6.6 million for additional public defender positions for the Indigent Defense Commission, and funding for the new judgeship for the 19th judicial district. Although these funds will assist with implementing the new mandates, the appropriations are not nearly enough to reverse the Commonwealth’s continued underfunding of the criminal justice system.

2. **Establish a Statewide Database for Officer Misconduct** – Localities across the Commonwealth need to know that the officers they hire do not have a history of serious misconduct or use of force violations in another jurisdiction. While we do thorough background checks on our police hires in Fairfax County, a statewide standard for data collection could provide benefits for all police departments as they make hiring decisions.

HB 5051 (Simon) requires any sheriff, chief of police, or agency administrator to notify the Criminal Justice Services Board in writing within 48 hours of becoming aware that any certified law-enforcement or jail officer currently employed by his agency has been terminated for engaging in misconduct, as set forth in the bill. The bill requires the Board to initiate decertification proceedings against any current or former law-enforcement or jail officer who has engaged in such activities. The bill also requires any sheriff, chief of police, or agency administrator to notify the Board and a civilian review panel, if one has been established, if any certified law-enforcement or jail officer currently employed by his agency has received three complaints of excessive use of force in the previous five years, and any recommendations made by the civilian review panel concerning such complaints shall be forwarded to the Board. The bill passed the House 57-41, and reported out of Senate Judiciary with a substitute 10-2. The substitute conforms the House bill to the Senate’s version contained in the Senate’s omnibus reform bill (**SB 5030**).

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Although this bill does not establish a statewide database for officer misconduct, it does seek to promote transparency by requiring the chief law-enforcement officer to notify the

Criminal Justice Services Board if a certified law-enforcement officer has been terminated for engaging in misconduct. The bill also requires the Board to adopt statewide professional standards of conduct applicable to all certified law-enforcement officers, certified jail officers, and appropriate due process procedures for decertification based on serious misconduct in violation of those standards.

The House adopted the Senate substitute, and the bill was passed by both bodies. The Governor has until October 28, 2020, to act on the legislation.

HB 5104 (Price) provides that any sheriff or chief of police, the director or chief executive of any agency or department employing deputy sheriffs or law-enforcement officers, and the Director of DCJS shall disclose to a prospective law-enforcement or jail employer any information (i) related to an arrest or prosecution of a former police officer, deputy sheriff, or jail officer, including expunged information; (ii) related to a civil suit regarding a former police officer's, deputy sheriff's, or jail officer's employment or performance of his duties; (iii) obtained during the course of any internal investigation related to a former police officer's, deputy sheriff's, or jail officer's alleged criminal conduct, use of excessive force, or other official misconduct in violation of the state professional standards of conduct; and (iv) related to a former police officer, deputy sheriff, or jail officer's job performance that led to dismissal, demotion, suspension, or transfer. The bill further provides that no police officer, deputy sheriff, or jail officer may be employed by another law-enforcement agency or jail until the requested information is received from all prior employing agencies in the Commonwealth. The bill passed the House 54-42, and was referred to Senate Judiciary where it reported with a substitute 10-2. The substitute conforms the House bill to the Senate's version, contained in the Senate's omnibus reform bill (**SB 5030**).

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Although this bill does not establish a statewide database for officer misconduct, it does seek to promote transparency by requiring the disclosure of officer misconduct to prevent an officer terminated for misconduct from moving to a different department. However, the bill is written fairly broadly and could require the release of a wide range of information, potentially beyond the intended scope of the bill's purpose, including information related to civil suits, automobile claims, or cases where an officer was improperly charged or determined not to be at fault.

The House rejected the Senate amendments, and the bill went into conference. The conference committee added a provision permitting psychological examinations for candidates for employment. The conference committee also added a provision requiring the Department of Criminal Justice Services to establish guidelines for such examinations. Both bodies agreed to the conference report and passed the bill. The Governor has until October 28, 2020, to act on the legislation.

HB 5133 (Bell) provides that any sheriff or chief of police, the director or chief executive of any agency or department employing deputy sheriffs or law-enforcement officers, and the Director of the Department of Criminal Justice Services (DCJS) shall disclose to a

prospective law-enforcement or jail employer any information (i) related to an arrest or prosecution of a former police officer, deputy sheriff, or jail officer; (ii) related to a civil suit regarding a former police officer's, deputy sheriff's, or jail officer's employment or performance of his duties; and (iii) obtained during the course of any internal investigation related to a former police officer's, deputy sheriff's, or jail officer's alleged criminal conduct or use of excessive force. The bill further provides that no police officer, deputy sheriff, or jail officer may be employed by another law-enforcement agency or jail until the requested information is received from all prior employing agencies in the Commonwealth within the last two years. The bill also requires the sheriff, chief of police, or agency administrator to notify the Criminal Justice Services Board in writing within 48 hours of becoming aware that any certified law-enforcement or jail officer currently employed by his agency has been dismissed because of the use of force or who has resigned subsequent to a complaint against such employee for the use of force or in advance of being dismissed because of the use of force. Upon receiving such notice, the Board shall decertify such law-enforcement or jail officer. The bill also allows the Board to initiate decertification proceedings against any former law-enforcement or jail officer whom the Board has found to have been dismissed from a law-enforcement agency because of the use of force. This bill was referred to the House Public Safety Committee.

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Although this bill does not establish a statewide database for officer misconduct, it does seek to promote transparency by requiring the disclosure of officer misconduct to prevent an officer terminated for misconduct from moving to a different department. The bill also requires the Criminal Justice Services Board to decertify a law-enforcement officer who was dismissed or resigned because of a use of force complaint. However, the bill is written fairly broadly and could require the release of a wide range of information, potentially beyond the intended scope of the bill's purpose, including information related to civil suits, automobile claims, or cases where an officer was improperly charged or determined not to be at fault.

The House Public Safety Committee did not hear the bill, so it is no longer being considered.

HB 5136 (Avoli) requires the Criminal Justice Services Board (the Board) to adopt statewide professional standards of conduct applicable to all law-enforcement officers. The bill requires any chief of police, sheriff, or agency administrator to notify the Board in writing within 48 hours of becoming aware that any law-enforcement officer currently employed by his agency has been found to have engaged in serious misconduct. The bill authorizes the Board to initiate decertification proceedings against any current or former law-enforcement officer who has engaged in serious misconduct as defined in such statewide professional standards of conduct. The bill provisions regarding decertification proceedings have a delayed effective date of October 1, 2021. This bill was referred to the House Public Safety Committee.

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Although this bill does not establish a statewide database for officer misconduct, it does seek to promote transparency by requiring the disclosure of officer misconduct to prevent an officer terminated for misconduct from moving to a different department. The bill also requires the Criminal Justice Services Board to initiate decertification proceedings against a law-enforcement officer found to have engaged in serious misconduct. The bill requires the Criminal Justice Services Board to adopt statewide professional standards of conduct applicable to all law-enforcement officers, including a definition of serious misconduct. The bill has a delayed effective date of October 1, 2021, to allow for the Board to adopt those standards.

The House Public Safety Committee did not hear the bill, so it is no longer being considered.

SB 5030 (Locke) is the Senate's omnibus police reform bill and contains the following provisions:

- Adds law-enforcement officers to the list of persons guilty of a Class 6 felony if they are in a position of authority and carnally know any inmate, parolee, probationer, arrestee, detainee, or pretrial defendant or posttrial offender.
- Eliminates no-knock warrants and requires that search warrants be executed during the daytime unless authorized by a judge.
- Requires the Criminal Justice Services Board to adopt statewide professional standards of conduct applicable to all certified law-enforcement officers and certified jail officers.
- Requires disclosure to a potential law-enforcement employer any information relating to arrest or prosecution of the officer, any information concerning a civil suit against the officer for the performance of his duties, and any information obtained in an internal investigation concerning the use of excessive force or other official misconduct.
- Requires training in de-escalation techniques and places restrictions on the use of deadly force and prohibits the use of neck restraints and firing into a moving vehicle.
- Expands the required law-enforcement data collection for motor vehicle stops to include all investigatory stops and pedestrian stops and removes HB 599 funding from any locality refusing to provide the data.
- Prohibits law-enforcement agencies from acquiring certain military property.
- Requires every chief police officer to provide to the attorney for the Commonwealth access to all records relating to wrongful arrest or use of force complaints, or other complaints concerning the deprivation of rights made against a law-enforcement officer when that officer has a matter before the court.
- Changes the membership of the Criminal Justices Services Board and permits the Committee on Training to appoint review committees and allow public comment for any proposed changes to training standards.
- Requires DCJS to develop uniform curriculum and lesson plans to be employed by criminal justice training academies when conducting training.

The bill passed the Senate 21-19 and was referred to House Courts of Justice where it awaits a hearing.

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*Like **HB 5104**, the Senate omnibus reform bill contains provisions requiring disclosure to potential law-enforcement employers of incidents of officer misconduct. Although the bill does not require the establishment of a statewide database, it does seek to promote transparency and to prevent the ability of bad law-enforcement officers to move to other jurisdictions for employment. This bill also contains a number of provisions that raise possible concerns, including those related to the procedures for internal affairs records and DCJS training materials, which are historically slow to be updated, among others.*

The House amended the Senate's omnibus bill to conform it to several different individual House bills. The bill went to conference, where provisions requiring training in recognizing implicit biases and permitting psychological examinations for candidates for employment were added. The conference report also expands the required law-enforcement data collection for motor vehicle stops to include all investigatory stops and pedestrian stops and no longer removes HB 599 funding from any locality refusing to provide the data. The conference report was adopted, and the bill passed both bodies. The Governor has until October 28, 2020, to act on the legislation.

SB 5112 (McDougle) requires the sheriff, chief of police, or agency administrator to notify the Criminal Justice Services Board in writing within 48 hours of becoming aware that any certified law-enforcement or jail officer currently employed by his agency has been placed on a Brady list because such officer committed acts that compromise an officer's credibility, integrity, honesty, or other characteristics that constitute exculpatory or impeachment evidence in a criminal case. The bill states that, upon receiving such notice, the Criminal Justice Services Board may decertify such law-enforcement or jail officer. The bill also allows the Criminal Justice Services Board to initiate such decertification proceedings. This bill was passed by indefinitely by the Senate Judiciary Committee.

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Although this bill does not establish a statewide database for officer misconduct, it does seek to promote transparency by requiring the disclosure of officer misconduct related to credibility, integrity, or honesty. The bill would allow the Criminal Justices Services Board the ability to decertify a law-enforcement officer placed on a Brady list.

- 3. Improve Data Transparency** – Fairfax County is one of, if not the only, jurisdiction in the Commonwealth that reports use of force, arrest, and citation data by race. The Virginia State Police should do the same and other jurisdictions, particularly those with smaller Sheriffs and Police Departments, should be given the tools to do so. Frankly, a statewide standard for data collection would be the most clear, thorough, and equitable way to track data.

HB 5081 (Price) requires every law-enforcement agency and correctional facility to report to DCJS certain information regarding the death of any person who is detained, under arrest or in the process of being arrested, en route to be incarcerated, incarcerated, or otherwise in the custody of such law-enforcement agency or correctional facility. The bill provides that any law-enforcement agency or correctional facility that fails to comply may, at the discretion of DCJS, be declared ineligible for state grants or funds. The bill also requires DCJS to analyze the submitted data to (i) determine the means by which such information can be used to reduce the number of such deaths and (ii) examine the relationship, if any, between the number of such deaths and the actions of management of such law-enforcement agencies and correctional facilities. The Director of DCJS shall annually report the findings and recommendations resulting from the analysis and interpretation of the data to the Governor, the General Assembly, and the Attorney General beginning on or before July 1, 2022, and each July 1 thereafter. This bill was referred to the House Committee on Public Safety, where it did not receive a hearing.

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HB 5091 (Rasoul) requires that whenever a law-enforcement officer (i) discharges a firearm or (ii) uses a stun gun or chemical irritant on a person resulting in death or serious bodily injury, any video or audio recording that relates to such incident produced or obtained by a law-enforcement officer shall be open to inspection and available for release and posted on a website that is maintained by the law-enforcement agency or on any other website on which the law-enforcement agency generally posts information and that is available to the public or that clearly describes how the public may access such data within 15 days of the incident. The bill includes exceptions to such release. The bill was referred to the House Committee for Courts of Justice where it did not receive a hearing.

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This bill does not create a statewide standard for data collection; however, it would require each law enforcement agency to post any video or audio recording of certain use of force incidents on a website maintained by the agency.

SB 5030 (Locke) is the Senate's omnibus police reform bill, which was mentioned previously (see page 1).

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This bill includes provisions that would expand the required law enforcement data collection for motor vehicle stops to include all investigatory stops and pedestrian stops and removes HB 599 funding from any locality refusing to provide the data. However, the bill also has provisions that raise some concerns, as mentioned above.

4. **Support and Fund Strong Civilian Review Panels** – Fairfax County's Police Civilian Review Panel is an important accountability tool. We stand ready to work with you to strengthen the tools available to review panels and encourage you to consider state funding

for such panels, which would help other localities in their efforts to create them and, importantly, help ensure their independence.

HB 5055 (Herring) requires localities, on or before July 1, 2021, to establish law-enforcement civilian review panels to enhance the accountability and transparency of local law-enforcement agencies using guidelines developed by DCJS. **HB 5055** reported out of House Courts with a substitute. That substitute essentially conformed the House bill to the Senate version, except that the House bill remains mandatory and applies to sheriffs as well as police departments. The bill passed the House 53-45. Senate Judiciary reported the bill with a substitute 7-2. The substitute conforms the bill to the Senate version of the bill **SB 5035**.

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SB 5035 (Hashmi) authorizes a locality to establish a law-enforcement civilian review board that may (i) receive, investigate, and issue findings on complaints from civilians regarding conduct of law-enforcement officers and civilian employees; (ii) investigate and issue findings on incidents, including the use of force by a law-enforcement officer, death or serious injury to any person held in custody, serious abuse of authority or misconduct, allegedly discriminatory stops, and other incidents regarding the conduct of law-enforcement officers or civilian employees; (iii) make binding disciplinary determinations in cases that involve serious breaches of departmental and professional standards; (iv) investigate policies, practices, and procedures of law-enforcement agencies and make recommendations regarding changes to such policies, practices, and procedures; (v) review all investigations conducted internally by law-enforcement agencies and issue findings regarding the accuracy, completeness, and impartiality of such investigations and the sufficiency of any discipline resulting from such investigations; (vi) request reports of the annual expenditures of law-enforcement agencies and make budgetary recommendations; (vii) make public reports on the activities of the board; and, (viii) undertake any other duties as reasonably necessary for the board to effectuate its lawful purpose to effectively oversee the law-enforcement agencies as authorized by the locality. The bill provides that a law-enforcement officer who is subject to a binding disciplinary determination may file a grievance requesting a final hearing pursuant to the locality's local grievance procedures. The bill also repeals the Law-Enforcement Officers Procedural Guarantee Act in a locality that creates a civilian review panel. The bill passed the Senate 20-15 and was referred to the House Committee on Public Safety where it was conformed to HB 5055.

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The Senate bill (SB 5035) provides optional local authority whereas the House version (HB 5055) requires localities to establish civilian review panels. Both bills would allow the Board of Supervisors to provide additional authority to the County's existing civilian review panel, including some authority to review cases that the County's auditor currently reviews, but whether or not to grant that additional authority to the County's panel would be at the Board's option. However, the bills would grant civilian review panels the ability to request subpoenas from the Circuit Court, and localities would be required to pay for

counsel representing the panels – the granting of subpoena power and paying for outside counsel would not be optional, but would instead be required. Finally, the bills raise some questions about implications for disciplinary issues and the elimination of the Law Enforcement Procedural Guarantee Act.

*The bills went to conference, and the conference committee recommended a substitute which largely reflects the language in **SB 5035** – the ability to establish civilian review panels remains optional local authority and sheriffs are not included. The conference report does not allow a retired law-enforcement officer to serve on a civilian review panel except as an advisory, non-voting ex-officio member. The bill has a delayed effective date of July 1, 2021. The conference report was adopted, and the bill passed both bodies. The Governor has until October 28, 2020, to act on the legislation.*

5. **Body-Worn Cameras** – Police body-worn cameras are a necessary tool for accountability, and we are working to accelerate the roll-out of our program across Fairfax County. But woefully inadequate state funding for courts, public defenders, Commonwealth’s Attorneys, and a funding process that discriminates against Fairfax County, makes the expansion of this program very difficult.

HB 5135 (Bell) requires all law-enforcement agencies having jurisdiction over criminal law enforcement or regulatory violations to implement and operate a body-worn camera system and to require officers responsible for the prevention and detection of crime and the enforcement of penal, traffic, or highway laws to be equipped with a body-worn camera system. The bill also states that the written policy law-enforcement agencies are required to adopt prior to the operation of a body-worn camera system shall include requirements, listed in the bill, for when such system shall be activated. This bill was referred to the House Committee on Public Safety but never received a hearing.

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SB 5052 (Reeves) creates a special non-reverting fund to be known as the Body-Worn Camera System Fund to assist state or local law-enforcement agencies with the costs of purchasing, operating, and maintaining body-worn camera systems. Creates a special non-reverting fund to be known as the Body-Worn Camera System Fund to assist state or local law-enforcement agencies with the costs of purchasing, operating, and maintaining body-worn camera systems. This bill passed the Senate 35-0 and was referred to the House Committee on Appropriations.

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Although this bill would establish the Body-Worn Camera System Fund, there is no money allocated for the fund at this time.

The House Appropriations Committee did not hear the bill, so it is no longer being considered.