

Investigations

1. Criminal investigations of FCPD officers involved in shootings, in-custody deaths, and any use of force incident in which an individual is killed or seriously injured (“Death or Serious Injury Cases” or “Cases”) should continue to be conducted by the Major Crimes Division (MCD) of the FCPD unless the Chief of Police, in consultation with the Commonwealth’s Attorney, determines that the criminal investigation of a particular incident should be conducted by criminal investigators from another Northern Virginia jurisdiction police department or from the Virginia State Police, by agreement with that jurisdiction or with the State Police.
2. Funds should be appropriated to the Commonwealth’s Attorney’s office to allow for the fulltime employment of two (2) independent experienced criminal investigators who will report to and be used by the Commonwealth’s Attorney in connection with criminal investigations of Death or Serious Injury Cases and other investigations within the scope of the responsibilities of the independent Auditor as the Commonwealth’s Attorney may direct. Such investigators shall participate in and monitor all MCD criminal investigations of Cases and may be used in connection with other criminal investigations time permitting. In the event the two investigators are not employed as provided, then the Independent Auditor shall participate in and monitor MCD criminal investigations of Cases and such other criminal investigations.
3. FCPD Internal Affairs Bureau (IAB) investigations will be conducted concurrently with the criminal investigation to the extent practicable, and necessary safeguards will be established and maintained to ensure that the Constitutional and statutory rights of any potential subject of the criminal investigation are fully protected.
4. The right of FCPD officers under the Virginia Law Enforcement Officers Procedural Guarantee Act to be “questioned at a reasonable time and place” shall be preserved. The questioning shall commence as soon as reasonable, under all of the relevant facts and circumstances, as determined by the Commonwealth’s Attorney in consultation with the Chief of the FCPD.
5. All FCPD officers shall be required to abstain from speaking to other officers involved in or witnessing any conduct subject to a MCD or IAB investigation of a Case or of such other criminal investigations or to any third parties involved in or witnessing such conduct until advised by MCD or IAB that they may do so.

Prosecution

6. The prosecution, including the decision whether to charge a FCPD officer with a crime arising out of a Death or Serious Injury Case or such other cases, will be handled by the Commonwealth’s Attorney for Fairfax County unless s/he determines that the prosecution, including the decision to charge, should be handled by the Commonwealth’s Attorney of another Northern Virginia jurisdiction by agreement with that jurisdiction.

Oversight/Citizen Review

7. A. The Fairfax County Board of Supervisors shall appoint an outside independent auditor (the “Auditor”) with experience in, *inter alia*, public safety, public program auditing, the investigation of police operations and use of force incidents in order to review all investigations of Cases conducted by

the IAB (including IAB investigations of Cases involving the Fairfax County Sheriff's Office). The Auditor will also review all IAB investigations involving FCPD officers in which an individual is killed and all UOF investigations which are the subject of a citizen complaint made to the FCPD or the Auditor. The Auditor will receive a complete copy of the MCD criminal investigation file as well as a complete copy of the IAB file, including any administrative action taken, for each investigation so reviewed. The Auditor will determine with respect to each such MCD and IAB investigation its thoroughness, completeness, accuracy, objectivity and impartiality. The Auditor shall be appointed for a term of three (3) years, subject to dismissal for good cause.

B. The Auditor shall participate in and monitor IAB investigations and may, subject to the enactment of any required legislation, compel testimony and/or the production of documents or other evidence from any person in furtherance of the Auditor's responsibilities. All Fairfax County employees, including all employees of the FCPD, shall be subject to interview, testimony and document production at the request of the Auditor. The Auditor may conduct a hearing (or hearings) in connection with the review of any IAB investigation, which hearing(s) shall be open to the public subject to the protection of the identities of victims of sexual assault and juveniles.

C. Absent good cause, the Auditor shall issue a public report with respect to each reviewed investigation within sixty (60) days of the Auditor's receipt of the complete IAB file.

D. If the Auditor determines that an IAB investigation was deficient or that IAB's conclusions as to the relevant facts were incorrect or unsupported by the facts, the Auditor may request further investigation by IAB or the Auditor may conduct such further investigation. If such investigation is conducted after the initial public report, the Auditor shall issue a supplemental public report concerning the further investigation within thirty (30) days of the completion of such further investigation, absent good cause.

E. The FCPD shall provide a public report quarterly to the Auditor on the disposition, collectively and not individually, of all other citizen complaints received by the FCPD in a mutually agreed format. The Auditor shall be provided such additional information as the Auditor may deem necessary to enable him/her to determine that the FCPD is properly responding to and investigating such citizen complaints in a timely manner.

F. A citizen may file a complaint concerning alleged misconduct by a Fairfax County police officer involving a Death or Serious Injury Case, the use of force, or the death of an individual with the FCPD for investigation. The citizen may instead file the complaint with the Auditor, who shall immediately forward the complaint to the FCPD for investigation. An IAB investigation of alleged misconduct by a Fairfax County police officer involving a Death or Serious Injury Case, the use of force, or the death of an individual may not be closed without the concurrence of the Auditor. If there is no investigation by the IAB of an incident associated with a citizen complaint, the complaint shall be referred by the Auditor to the Citizen Review Panel.

G. The Auditor shall make public recommendations to the FCPD Chief of Police, with copies to the Chair of the Board of Supervisors, concerning revision of FCPD policies, training, and practices based on the Auditor's reviews. The Auditor shall issue a public report annually concerning the thoroughness, completeness, accuracy, objectivity and impartiality of the IAB investigations reviewed by the Auditor.

H. The Auditor shall have an adequate budget and a trained staff to meet his/her responsibilities as outlined herein. The Auditor's office shall be separate and apart (physically and administratively) from those of the FCPD and the Commonwealth Attorney.

8. A. Fairfax County shall establish a Citizen Review Panel composed of seven (7) citizens and two (2) alternates residing in Fairfax County with expertise and experience relevant to the Panel's responsibilities. Factors to be considered in appointing Panel members include, *inter alia*, community and civic involvement; diversity; law enforcement and/or criminal investigative experience, reputation in the community and other factors designed to ensure a balanced Panel representative of Fairfax County. No Panel member shall be a current employee of Fairfax County, shall hold a public office, or shall have a relative who is a member of the FCPD. One (1) of the Panel members shall have prior law enforcement experience (other than as a member of the FCPD). Panel members shall be appointed by the Chairman of the Board of Supervisors, with the approval of the Board, for a term of three (3) years, subject to dismissal for good cause. A Panel member may be appointed to no more than two (2) consecutive terms. The Panel shall be authorized to retain a criminal investigative consultant to assist it with the fulfillment of its responsibilities. The Board of Supervisors shall ensure that funds are provided for the retention of such a consultant.

B. A citizen may file a complaint with the Panel concerning an alleged "abuse of authority" or "serious misconduct" (other than a Death or Serious Injury Case, a use of force, or an incident in which an individual was killed) by a Fairfax County police officer. "Abuse of authority" and "serious misconduct" shall be defined by the Panel and shall include, *inter alia*, the use of abusive, racial, ethnic or sexual language; harassment or discrimination based on race, ethnicity, gender, sexual orientation or other basis; the unjustified use, display or brandishing of force or weapons or the unnecessary escalation of charges; the reckless endangerment of a detainee or person in custody, the violation of laws or ordinances, and other serious violations of Fairfax County or FCPD policies or procedures. Any complaint shall be filed, absent good cause as determined by the Panel, within ninety (90) days of the alleged FCPD conduct. If the complaint concerns matters that are the subject of a pending criminal or civil proceeding, the complaint shall be held in abeyance until the completion of such proceeding(s).

C. Within forty-five (45) days of its receipt of the complete IAB file (if any) relating to the alleged conduct or within forty-five (45) days of the receipt of the a complaint if there was no IAB investigation, the Panel shall hold a public hearing to review the alleged FCPD misconduct. The complainant and the FCPD (including the involved FCPD officers) shall be afforded the opportunity to present evidence, statements, and argument at the hearing. The County Executive or his/her designee may require the attendance and testimony of any Fairfax County employee, including all employees of the FCPD, whose appearance at the hearing is requested by the Panel and may also require the production of any documents or other materials in the possession of the FCPD or other County offices and departments. The Panel may convene in executive session to deliberate concerning the alleged misconduct.

D. The Panel shall, within thirty (30) days of the conclusion of the public hearing, issue its findings and recommendations in a public report. In so doing, the Panel may advise the Chairman of the Board of Supervisors: (i) that the allegations set forth in the complaint are founded or unfounded; or (ii) that the Panel is unable to reach a conclusion as to whether the allegations set forth in the complaint are founded or unfounded. If the Panel determines that it is unable to conclude whether the allegations in the complaint are founded or unfounded, the Panel shall request that the Independent Auditor review

the case, conduct such additional investigation as may be required, and provide a report to the Panel as to the Auditor's conclusions upon the completion of such investigation. The Panel will thereafter have thirty (30) days to issue final findings and conclusions.

E. The identity of any victim of sexual assault, unless authorized by the victim, or of any juvenile shall not be revealed by any Fairfax County employee or by the Panel at any hearing held by the Panel or in any public report issued by the Panel.

F. The Panel may in a public report recommend to the Board of Supervisors and the Chief of Police revisions to FCPD policies, training, and practices that the Panel concludes are needed.

9. A. Fairfax County shall establish an Ad Hoc Police Practices Review Commission every five (5) years to review and, as needed, make recommendations concerning FCPD policies and practices on use of force and critical incident response and to review complaints and investigations of alleged FCPD misconduct involving the use of force, abuse of authority or other serious misconduct, taking into consideration the reports of the FCPD, the Independent Auditor, and the Citizen Review Panel.