

Summary – Public Safety Committee Meeting

April 3, 2018

Committee Members Present:

Sharon Bulova (Chairman)
Penelope Gross, Mason District (Vice Chairman)
John Cook, Braddock District (Committee Chair)
John Foust, Dranesville District
Pat Herrity, Springfield District
Catherine Hudgins, Hunter Mill District
Jeff McKay, Lee District
Kathy Smith, Sully District
Linda Smyth, Providence District
Daniel Storck, Mount Vernon District

Approved January 30, 2018, Public Safety Committee Meeting Summary and the April 3, 2018, Meeting Agenda and Meeting Materials:

<https://www.fairfaxcounty.gov/boardofsupervisors/board-public-safety-committee-meeting-april-3-2018>

Link to the April 3, 2018, Public Safety Committee Meeting video:

http://video.fairfaxcounty.gov/MediaPlayer.php?view_id=9&clip_id=1021

The meeting was called to order at 1:32 p.m.

The minutes from the January 30, 2018, Public Safety Committee meeting were approved.

The first topic on the agenda was Agency Coordination involving Regional Gang Task Force and Immigration and Customs Enforcement (ICE).

- The committee had invited Russell Hott, Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement to speak. He was not able to attend. Chairman Bulova did not agree with the substitute speaker and topic proposed by ICE so that speaker slot was dropped from the agenda.
- Supervisor Herrity stated ICE should be able to participate as they are law enforcement partners, but respected the decision of the chairs.
- Sheriff Stacey Kincaid discussed her decision and rationale to terminate the Intergovernmental Service Agreement (IGSA) with ICE effective May 23, 2018. She stated that the Office of the Sheriff continues to enjoy an excellent working relationship with all state, local, and federal partners. Her decision was made through a thorough and

measured process over twelve months, and included meeting with ICE and other meetings and forums with various stakeholders and the community. Sheriff Kincaid stated the IGSA is not necessary as 122 out of 123 sheriffs within Virginia do not have such an agreement, and the Northern Virginia Regional Gang Task Force Coordinator had expressed there would be no impact to the task force as a result of her decision on the IGSA. She stated that her department would continue to comply with all relevant state codes, and stressed she would not make a decision that would put Fairfax County's public safety at risk. She wants to ensure a safe and welcoming community.

- Colonel Douglas Keen, Chief, City of Manassas Police, and chair of the Northern Virginia Regional Gang Task Force, provided a brief history on the formation of the task force and its mission. The task force actively looks for non-profit partners and grants to help fund its education component, acknowledging that enforcement and arrests alone will not resolve gang issues. Chief Keen also noted the task force focuses solely on criminal investigations, not civil immigration violations.
- Supervisor Foust thanked Sheriff Kincaid for terminating the IGSA.
- He then inquired if ICE agents are specifically assigned on the Regional Gang Task Force, and, if so, what their role would be. A recent task force case in Herndon was also mentioned by him and others in the ensuing discussion.
- Chief Keen clarified that ICE is not a member of the task force, it is a state and local partnership. Chief Keen explained ICE has two divisions, one criminal and one civil, and the task force only works with the criminal division. The ICE criminal division is in some cases requested to assist, just as police departments make requests for assistance of the FBI, DEA, and other federal agencies. Captain Lance Schaible, Police Department, further responded that ICE is a tool and provides additional investigative flexibility, resources, and intelligence when they are requested to support a criminal investigation.
- Supervisor Foust acknowledged he was clear on the criminal nexus, but asked if ICE agents conduct non-criminal arrests while participating in the task force for a criminal matter.
- Deputy County Executive of Public Safety David Rohrer noted through conversation with the task force coordinator, ICE has not made any arrest of individuals not the target of a criminal investigation while operating with the task force. Deputy County Executive Rohrer also noted task force police chiefs have requested the task force coordinator to craft policy to prohibit civil enforcement by ICE while participating on the task force.
- Chief Keen acknowledged there is a meeting in the coming weeks with all participating members of the task force in developing a clear policy guideline on prohibiting civil enforcement.
- Chief Roessler noted the Police Department does not enforce civil immigration processes and the existing General Order allows only for the enforcement of criminal violations. He

also noted he does not want any public perception that the task force is using a criminal nexus to enter a home and allow ICE agents to conduct civil enforcement on individuals not the target of the criminal investigation.

- Chief Roessler explained about a year ago, when the civil division of ICE was active along the Route 1 corridor, the Police Department requested ICE to contact the Department of Public Safety Communication and Police Liaison Commander whenever they are conducting civil enforcement within Fairfax County just for awareness. Chief Roessler noted ICE is within their authority in their criminal or civil enforcement, and he cannot override this federal authority.
- Supervisor McKay was supportive of, and commended, Sheriff Kincaid for her decision to terminate the IGSA. He then inquired if it would impact the operation of the task force, and Chief Keen replied there would be little to no impact to the task force as a result of the IGSA termination. Supervisor McKay emphasized this, stating it was important that correct information be shared with the community for the vital importance for maintaining community trust of local law enforcement to help fight and solve crimes. Supervisor McKay stated that misinformation being disseminated regarding Sheriff Kincaid's decision is making that harder, and that no one should suggest that she or anyone would somehow place the reputation of Fairfax County as one of the safest jurisdictions in the country in peril.
- Supervisor Herrity noted his two ride-along experiences with the task force, and that he had observed that they only dealt with criminal enforcement.
- Supervisor Herrity also inquired how many gang-related homicides had occurred within Fairfax County in the last year. Chief Roessler responded with data on gang-related homicides from the past 4 years: 2017 – 3, 2016 – 1, 2015 – 8, 2014 – 7. Supervisor Herrity noted he knows of approximately 64 arrests as a result of the task force's investigation into these homicides, confirmed by Chief Roessler.
- He then inquired what happens when individuals pose as gang members when posting through social media or when a gang member attempts to leave a gang. Captain Schaible responded that gangs do not take kindly to either circumstance.
- Supervisor Herrity inquired where an identified gang member, if taken into custody, would be taken. Chief Keen responded officers or detectives would transport the arrested to the appropriate regional or local jail, including our ADC, for a criminal violation.
- Supervisor Herrity then asked for clarification if there was no criminal violation or warrant. Chief Keen stated they would not take them into custody without a criminal violation or warrant.
- Supervisor Herrity inquired where ICE would now transport an identified gang member in their custody. Chief Keen and Sheriff Kincaid responded that the City of Alexandria Sheriff's Office is still under the IGSA and would house those individuals there.

- Supervisor Herrity inquired further if the City of Alexandria Sheriff's Office were to terminate their IGSA where would ICE take then take identified gang members. Sheriff Kincaid suggested the question would have to be directed to ICE representatives.
- Supervisor Herrity stated his concerns that the impact of the termination of the IGSA is or will be significant on the task force.
- Supervisor Herrity inquired if FCPD has access to all databases accessible by ICE. Chief Roessler responded they do not.
- Supervisor Herrity noted a mobile fingerprint device he had observed during his ride-alongs, allowing ICE agents to identify the true background of an individual. He suggested we should seek access to that technology to get criminals off the streets. He also stressed the need to protect the immigrant communities from gangs, and he believes we should continue to cooperate with ICE to the fullest extent. Supervisor Herrity was disappointed that ICE representatives in attendance were not allowed to speak. He also noted his belief that terminating the IGSA is harmful to law enforcement.
- Sheriff Kincaid responded briefly, to include noting that any individual will continue to be held at the Fairfax County ADC provided there is an appropriate criminal violation.
- Supervisor Gross echoed other supervisors in thanking Sheriff Kincaid for her decision to terminate the IGSA. She then inquired what efforts are still being done through district stations and School Resource Officers (SROs) in addressing gang issues. Chief Roessler noted the foundation of community policing is to prevent crime and this is done through education and awareness. Officers are permanently assigned patrol areas to establish relationships with residents and children in helping them channel their energy into something positive, and highlighted several programs. SROs also have the opportunities to have one-on-one interaction with students to help guide and support them, and be part of a school community and build trust.
- Supervisor Gross noted that unlike the initial police gang unit, the combination of assets, resources, and duties has now permeated into the normal patrol officer's role, allowing them to address the issue more quickly. Chief Roessler acknowledged her comments and added that each district station has its own gang coordinator to aid in the gathering and sharing of intelligence.
- Supervisor Hudgins appreciated the clarity in the Office of the Sheriff's role, and the tools explained by Chief Roessler. Supervisor Hudgins noted concerns of ICE agents being on school campuses, and asked how we balance the sensitivity of a school campus and environment. Chief Roessler spoke of the General Order that addresses arrests and detention at certain facilities, including school campuses, which are the last location it is hoped officers would have to engage in physical contact or arrests, except for active shooters or other violent or serious incidents. Chief Roessler noted the preference to not disrupt the school, and to try to find another time and place to conduct an investigation or

make an arrest. Chief Roessler has also requested ICE not to go into schools for any of their routine enforcement.

- Supervisor Hudgins inquired if a situation has been identified as criminal and requiring ICE response, would FCPD officers go with ICE onto school campuses. Chief Roessler pointed to the Herndon case involving a dangerous MS-13 gang member where officers did respond onto a school bus to take the individual into custody. Chief Roessler stressed the operation was conducted discretely based on the officer's judgement.
- Supervisor Hudgins inquired if juveniles who are gang members or associates are afforded the same opportunity as non-gang members to enter diversion programs to help them with corrective action, and if there is existing policy that differentiate the two. Chief Roessler explained an array of programs to include Police Explorers, Road Dawg camp, and the Alternative Accountability Program (AAP), and the intent to offer appropriate support, intervention, or diversion for all as appropriate, regardless of any gang association. He wants to avoid any perception that FCPD is creating a school to prison pipeline.
- Robert Bermingham, Director of Court Services, Juvenile & Domestic Relations Court, confirmed they do not rule juveniles out of AAP because of any affiliation with gangs. He stated that 718 juveniles have gone through the AAP with an 85% success rate, meaning they have not returned. Supervisor Hudgins appreciates the work done by Court Services and believes this is a distinction to be shared with the community.
- Supervisor Stork noted the AAP has won awards because of the commitment made to prevent juveniles from any further criminal behaviors. He also appreciated Sheriff Kincaid's decision. He then inquired what percentage of gang members are truly undocumented, noting gang issues are not new. Sheriff Kincaid answered that there were currently 80 validated gang members held within the Fairfax ADC, including 30 MS-13 gang members held in Fairfax ADC, and half being residents of our community and the other undocumented.
- Supervisor Stork noted our issues go beyond just ICE, but to our local efforts to lock up gang members and stop their recruitment of new members, regardless of immigration status. Supervisor Stork was pleased to hear of all the programs and efforts being made.
- Sheriff Kincaid wanted to clarify that no matter an individual's immigration status, if the arrested is convicted and sentenced to time to serve, they are not being released back into the community. They serve their sentence either at the ADC or after transfer to the Virginia Department of Corrections.
- Chairman Bulova thanked Sheriff Kincaid for speaking and was supportive of her decision to terminate the IGSA. This does not mean the Office of the Sheriff will not continue to work with ICE on issues of criminal nature or that criminals are being released back into the community. Chairman Bulova noted Fairfax County is the safest jurisdiction of our size because of the trust that exist between our communities and law

enforcement, and that it confuses and scares people when they mistake ICE officers/agents with local police.

- Chairman Bulova further stressed it is important for people to feel comfortable to come forward with information to law enforcement when members of a minority community are afraid. She referenced previous increases in gang activity that were proactively addressed through prevention and intervention of juveniles from gang recruiters.
- Supervisor Cook concluded by noting the difficulty of this issue and the limitation of time, and that he tries to build agendas that provide topics for robust discussion. He noted the creation of an agenda can at times be difficult, and that it was unfortunate an agreement regarding federal participation during this meeting could not be reached.

The second topic on the agenda was a follow-up/update discussion on the Police Pursuit Policy and the Precision Immobilization Technique (PIT) maneuver.

- Chief Roessler recapped the previous Public Safety Committee meeting and noted revisions have been made to the initial draft Pursuit and PIT policy. He stated language was enhanced in the purpose and policy section, to address previous concerns raised by Board members.
- Chief Roessler first noted that the purpose statement of the revised General Order governing pursuits balancing the need of apprehension with the danger created by the pursuit, as all human life is of paramount, has been moved up in the policy to make it clear it is the key factor in the decision-making process.
- Chief Roessler advised overresponse to a pursuit can pose unnecessary risk and it shall be continuously monitored by the pursuit controlling supervisor. He stressed danger to officer primarily comes when responding and attempting to catch up to the pursuit.
- Chief Roessler added language regarding providing medical aid, where officers have a duty to ensure immediate medical aid to those injured as a direct result of the pursuit.
- Chief Roessler noted previous Board concern with the long list of factors to be considered when determining to pursue or not. Officers are not required to articulate those factors through the police radio when engaging in a pursuit, but rather they and supervisors need to be aware of them and make decisions accordingly based on their knowledge at the time. Officers will be required to attend refresher training every 36 months on these lists of factors.
- Chief Roessler advised edits have been made to the three-prong test for a pursuit to occur. Operation plans for the apprehension of a felon will determine whether a vehicle is involved, and if so, stopping techniques such as mini stop sticks are incorporated in the

plan to prevent a vehicle pursuit. Operation plans will have determination for preapproval of a pursuit incorporated.

- Chief Roessler presented data for the years of 2015, 2016, and 2017 on pursuits, PIT, and the injuries associated with each. He noted that all PITs were used during a pursuit and it is a vehicle stopping technique.
- Supervisor Cook stated his concern that the policy was still vague regarding the three-prong test, with attention to the third paragraph addressing the need for immediate apprehension outweighing the danger created to the public, particularly if officers can obtain license plate information to determine the owner as part of an investigation, with the goal that those not involved in a violent crime or innocent bystanders get hurt. Chief Roessler explained the three-prong test represents the best practices and if an officer is unable to meet all three tests, the pursuit is terminated.
- Supervisor Cook inquired as to the training criteria for police officers and supervisors for the third prong in particular, the need for immediate apprehension and the danger created by the pursuit. Chief Roessler explained that through scenario training, if it is only a traffic offense, and the violator drives off, but their driving behavior does not pose a danger to the public the pursuit will be terminated.
- Supervisor Cook inquired if there will be examples during the training and not just providing the three-prong test policy narrative. Chief Roessler confirmed it will be scenario based training with examples and it will be mandated that refresher training be done every 36 months. Chief Roessler advised Board members may view the training or materials, as some members have participated in the police vehicle operation training already.
- Supervisor Herrity noted it is the people, training, and policy that make Fairfax County the safest jurisdiction of its size. He agreed with Supervisor Cook that some of the language is vague, and stressed the importance of training, but also questioned how the revised policy may affect officers and the behavior of criminals.
- Supervisor Herrity asked how many of the 149 reported pursuits in 2017 might not have occurred under this revised policy. Chief Roessler expressed high confidence that the actions of officers and supervisors already embody the spirit and intent of the revised policy so the numbers may not have been much lower. He also stressed that the revised policy has been under development since 2015 following the PERF recommendations and reflect best practices across the country.
- Supervisor Herrity appreciated Chief Roessler's comments and hopes the revised policy delivers a clear message to criminals that police will continue efforts to apprehend them. He did ask that the County Attorney's Office have an opportunity to review the draft before implementation.

- Chairman Bulova mentioned her opportunity to attend the police vehicle operation training and PIT. She noted PIT requires good judgement and sound training, and that is what she observed while attending the training. Chairman Bulova acknowledged Fairfax County developed the PIT and it is a safe maneuver that should be continue to be utilized.
- Supervisor Cook noted that he still does not like the PIT maneuver.
- Supervisor Foust has no doubt how good FCPD are with PIT, but the risk is always present, and he inquired what defines an unsuccessful PIT. Chief Roessler explained it is when an officer attempts to perform a PIT but the vehicles were not aligned properly and the driver was able to regain control of the vehicle.
- Supervisor Foust noted slightly half of total PIT were successful, but to achieve 24 successful PITs, 14 people were injured as a result. He pointed out that the ratio of injured versus successful PITs are too high to justify continuing PIT. Supervisor Foust also noted that in three years 42 people were injured in a pursuit and believes pursuit should be limited to violent crimes only.
- Supervisor Stork noted the increase in the number of pursuits in the last three years and inquired if it is anticipated to continue increasing or were there factors that contributed to the last two years being unique. Chief Roessler explained when looking at the overall numbers that as Fairfax County continues to urbanize, there will be more people and criminals traveling within the county. He believes that based on the data, if PIT had not been used to stop a pursuit, additional injuries could have resulted.
- Similar to Supervisor Herrity, Supervisor Stork inquired if a retrospective review of this draft revised policy was in place in previous years would the numbers of pursuits be the same. Chief Roessler again stated that based on increasing urbanization, analysis of traffic data, and analysis and internal review of past pursuits the numbers would likely remain consistent, but that this memorializes best practices for the Department to help bolster safety and to hold officers and supervisors accountable.
- Supervisor Cook requested that a memorandum be submitted to the Board with information on how many people who were pursued were charged and convicted of crimes other than the pursuit itself.
- Supervisor Stork also inquired as to any follow-up investigations and resulting arrests and convictions of persons who may have escaped during a pursuit or unsuccessful PIT. He is not advocating FCPD not pursue, wants offenders charged and prosecuted, but wants to ensure officers are pursuing for the right reasons and that follow-up, when needed, is done. Chief Roessler noted staff are collecting the data requested as previously mentioned by Supervisor Stork. Chief Roessler clarified that some unsuccessful PITs have resulted in the driver getting away or the termination of the pursuit for safety reasons.

- Supervisor Stork again inquired if follow up investigations on those who escaped resulted in prosecutions. Chief Roessler acknowledged some have resulted in prosecutions because of in-car video technology capturing license plate information or from other cameras.
- Supervisor Cook requested the Police Department, following implementation of the new policy, begin tracking pursuits and PITs so that over the next few years data can be reviewed by the Public Safety Committee.
- Supervisor McKay understood the concerns of some, but stated that when looking at the data, with the numerous hours that officers spend on the road compared to the number of pursuits and PITs that is relatively insignificant statistically. The pursuit data suggests the good judgement made by officers. He also noted being in a district adjacent to two other jurisdictions with a no pursuit policy that we may never know how many crimes were prevented in Fairfax County because the criminals know these tools and policies are available to our officers. Supervisor McKay stated crimes are more prominent around jurisdictional boundaries because criminals want to get in and out of the county quickly, realizing FCPD will work hard to apprehend them, including to pursue. He believes removing this tool for officers would be a mistake as this is a crime prevention tool as well.
- Supervisor Cook noted the Board approves the policy moving forward, but again reiterated the need for the Department to establish baseline data and collect data over the next few years for the Board to review and do comparison analysis.

Meeting adjourned at 3:10 P.M.