

Summary – Public Safety Committee Meeting

July 17, 2018

Committee Members Present:

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

The meeting was called to order at 1:30 p.m. by Committee Chairman John Cook.

COMMITTEE MATTERS

The summary for the June 26, 2018, Public Safety Committee meeting was approved. A copy of the approved summary, and the July 17, 2018, Meeting Agenda and materials are available at:

<https://www.fairfaxcounty.gov/boardofsupervisors/board-public-safety-committee-meeting-july-17-2018>

The video of the July 17, 2018, Public Safety Committee Meeting, is available at:

http://video.fairfaxcounty.gov/MediaPlayer.php?view_id=9&clip_id=1113

AGENDA

A discussion on the courts' role in public safety, court services and probation, supervised release, Diversion First, efforts to bring equity to bail and sentencing, and the Veteran's Docket and Mental Health Docket.

- Supervisor Cook reported that he had attended the National Association of Counties (NACo) meeting to participate in the Diversion First presentations and workshops regarding diversion efforts across the country. He announced that NACo selected Fairfax County, along with three other jurisdictions in the country, to participate in the Advancing Cross Systems Partnerships Leadership Lab to further focus on the diversion effort. He explained that Fairfax County, with the support of NACo over the next year,

will be focusing on risk factors for future incarceration, homelessness, and alcohol use and previous incarceration history. Supervisor Cook said Fairfax County would be developing ways to package these services together and then track the success rate and outcomes for this group. At the end of the year, the results will be presented along with the other jurisdictions.

- Chief Judge Bruce D. White, Circuit Court, announced that the National Center for State Courts released a study depicting data relating to the efficiency of courts in the United States. This study, which included 75 courts in 22 different states, ranked the Fairfax County Circuit Court as one of the most efficient courts in the country.
- Chief Judge White explained that while judges do have some discretion, the court takes into consideration state code requirements, legal precedent, an individual's prior history, and public safety in bond and bail hearings, and in setting any conditions for supervised release. Judges do have discretion too in sentencing, but there are guidelines and they rely on a Presentence Investigation Report.
- Judge Penny S. Azcarate, Circuit Court, explained the Veterans Treatment Docket, which is modeled on drug courts and is a post-conviction, problem-solving, jail diversion docket which meets twice per month. It focuses on treatment and services for veterans. She presented the docket's procedures and processes, discussed some of the unique challenges facing our veterans, and noted too that there are 76,000+ veterans currently reside in Fairfax County. The program is only offered to veterans who have been honorably discharged and are charged with non-violent offenses. The timeline for participation has spanned between one to three years based on an individual's needs and treatment required. She said the docket focuses on issues such as substance abuse, mental health, housing, employment/job-training, the establishment of Veterans Administrative (VA) services, and peer mentors. Judge Azcarate made note that the participation of the peer mentors has been integral to the program. Since the initiation of this program three years ago, she stated that there had been a total of 47 applicants, 33 were accepted into the program, 17 are currently enrolled, 10 graduated, 4 voluntarily terminated participation, 2 were terminated for cause, 2 died (drug overdose), with 5 pending applications. Fairfax courts were the lead in the Commonwealth for the establishment of Veterans Treatment Dockets.
- Judge Azcarate briefly spoke on the Drug Court, which was applied for and approved as required by proscribed by the Code of Virginia, and will operate as a post-judgment, felony probation violation court as an alternative to incarceration. Training has already occurred and it is hoped that participant applications will begin to be accepted in the fall of 2018.
- Chief Judge Lisa A. Mayne, General District Court (GDC), went over the court's involvement in public safety by making informed bond decisions with judicial oversight, resolution of cases in a timely manner, and sentencing. Her presentation focused on four new initiatives put into place to assist in those areas: the Supervised Release Program

(SRP) violation review docket, DWI Arraignment and Information on Attorney dates, Felony Preliminary Hearing Updates, and SRP Reports.

- The SRP program is a method to divert defendants to treatment pending trial. Chief Judge Mayne said the SRP program had faced issues such as defendants not following through with treatment referrals, failing drug tests, or not following up with Community Service Board (CSB) recommendations or meetings. Beginning in August 2018, the court will address these issues by piloting a docket for judicial oversight of some SRP violations. It is expected to be held twice a month, and court services, with judicial oversight, will work with the CSB to issue show cause summons and mandate a defendant's appearance to address the violation. She noted that more serious violations affecting public safety would continue to be addressed by immediate issuance of a warrant for arrest and bond revocation.
- Chief Judge Mayne said the courts were attempting to resolve cases faster and more effectively with the addition of administrative hearings on DWI Arraignment and Information on Attorney dates, reducing the number of hearing dates for DWIs from three dates to two in most cases.
- Chief Judge Mayne stated that a strategy, following stakeholder input, has also been developed to limit the number of preliminary hearings needed for felony cases and to accommodate and facilitate a fair plea bargain process for all involved. Excluding drug cases, these measures have also reduced the number of preliminary hearing dates down from three or more hearing dates to two or less in most instances.
- Chief Judge Mayne then spoke on SRP summary reports, which are now constructed for defendants placed into SRP, and allows both defense and prosecution attorneys to have more information before trial or preliminary hearing, leading to more informed discussions, court arguments, or sentencing agreements, allowing better outcomes for all.
- Mr. Colin McDonald, GDC Court Services Unit Director, provided an overview on pretrial services including intake, records checks, and case management. He explained that record checks provide 24-hour services to the court, magistrate, and police which help increase officer safety and decrease the amount of time and number of stops an officer must make when bringing a defendant before the magistrate. Mr. McDonald also spoke about how pretrial services provide information to assist with the provision of services and coordination with Diversion First. There have been over 500 placements in CY 2017.
- Mr. McDonald stated that probation is another way the GDC impacts public safety; many offenders placed on probation require mental health counseling, substance abuse treatment, or restitution. The Driving on Suspended program functions similarly to diverted disposition cases, giving defendants the opportunity to pay all past fines and

restore their ability to drive with the DMV and have the charge dismissed. The program does not reward repeat offenders but does provide those with a financial or administrative hardship the ability to make amends. Also, the Court Services Unit handles the case management portion of the Veterans Treatment Docket which is an intensive supervision program.

- Mr. McDonald stated the Alcohol Diversion Program is a first stage intervention program which allows young adults to avoid a criminal record for a minor isolated infraction by giving back to the community through a community service requirement and offered to receive treatment at an early stage if needed.
- Mr. McDonald stated some other public safety related services provided by the GDC Unit are the management of the court-appointed attorney system and interpreter services. In addition, there is a volunteer and intern program which connects the community to the court.
- Mr. McDonald said equity in bail and sentencing is another public safety related area in which the Unit contributes. They offer the judiciary alternatives to incarceration. In the pretrial program, they offer judges and magistrates the ability to order supervision versus remaining incarcerated. Probation allows judges to fashion sentences where jail is not the only option. The use of these programs allows the court to let individuals maintain community ties, family, and work obligations while meeting court-ordered obligations.
- Mr. McDonald further stated that the use of the Virginia Pretrial Risk Assessment Instrument and other like tools, which are validated as being race and gender neutral, promote equity by removing subjectivity from the process of determining a defendant's risk to re-offend or fail to appear in court. The use of instruments which add objectivity to the pretrial process helps remove biases in the criminal justice system which has traditionally punished minorities and the poor.
- Mr. McDonald noted that, concerning trends in the court, Fairfax County has a very informed and involved judiciary. Judges and magistrates are always open to improving processes. Evidence based practices and risk assessment tools help to remove subjectivity in the bail process and get to the root of what that actual risk is. Validated supervision tools address actual needs avoiding a one-size fits-all approach. These tools also outline appropriate supervision needs and guidelines. Diversion First has improved outcomes and lowered recidivism, and that trend is expected to continue.
- Mr. McDonald said the challenges for the courts are staffing, treatment options, office space, and unfunded state mandates.
- Chief Judge Todd Petit, Juvenile and Domestic Relations District Court (JDRDC), stated the most significant impact the court has faced in the last six months is related to a study conducted two years ago, which reported to the legislature that the Fairfax County JDRC courts needed 8.8 judges. Eight of the positions have been funded by the General

Assembly, however, due to issues in Richmond, candidates to be appointed to judge could not be agreed upon, and the JDRDC is currently down to six judges. As a result, the number of civil cases heard on a weekly basis has been reduced and the number of criminal cases heard per week has been increased. Each judge has added one additional criminal date per week to their docket because the law mandates criminal cases are given deference and moved through the courts with greater expediency. This impact means that civil matters such as custody, visitation, and child support have all been pushed back. The court hopes that the two judgeship slots will be filled which will resolve these matters.

- Chief Judge Petit then provided a general overview of the JDRDC jurisdiction. In Fairfax County, the JDRDC deals with all cases related to juveniles (those under the age of 18) where a juvenile is a victim or offender, as well as cases for domestic violence or other family matters, except divorce, and protective orders. He also discussed the organization of the JDRDC and its Court Services Unit.
- Chief Judge Petit discussed the validated risk assessment tools used by the JDRDC to assess the risk to re-offend. These tools are used to disperse funds and services appropriately to those who need it most. As a result, those juveniles who have a higher risk to re-offend assessment will be provided the appropriate level of services needed and low-risk to re-offend juveniles will not be over-serviced or over-supervised. Data illustrates that the implementation of these tools has decreased recidivism and the number of juveniles housed in the Juvenile Detention Center (JDC). He further outlined that the juveniles held in the JDC are those who, through proper assessment, have been determined as high risk and need to be held.
- Chief Judge Petit stated that for community supervision, the number of juvenile supervision placements have been decreasing. He further spoke to the positive impact of diversion efforts, particularly the Alternative Accountability Program (AAP), which he hopes will be expanded. Even if a juvenile is not placed into the AAP program, they may be placed into other juvenile diversion programming at intake.
- Chief Judge Petit spoke about adult pre-trial services, highlighting that Diversion First is used every day by the courts. He presented some of the preliminary data as this program is newer, and also stated that while juveniles were a primary focus for their diversion efforts they were also focusing on adults with a similar goal of better outcomes.
- Chief Judge Petit stated that other promising practices being worked and improved upon by the JDRDC were mediation services (which have been successful for civil matters), gang prevention coordination, trauma informed services, and language access. The court is also working on family engagement and racial and ethnic disparities, recognizing the still too high rates of disproportionality of incarceration by race and ethnicity. On a positive note, he reiterated that the JDC once housed 100-135 juveniles, and now it detains approximately 30-35.
- Bob Birmingham, Juvenile and Domestic Relations District Court Services Unit Director, stated public safety is enhanced by handling offenders in developmentally appropriate

ways. He emphasized that new practices are not soft on crime or offenders, but are rather “smarter” practices. Ten years ago, the majority of the juveniles held at the JDC were low risk to re-offend juveniles, and it drove the number of juveniles held in the JDC much higher. Presently the approximately 30 juveniles housed in the JDC are there because they have been assessed as high risk. He noted that the new practices are effective as the crime rates in Fairfax County have continued to decrease. Individuals are held accountable for their actions, but just in smarter, more appropriate ways.

- Supervisor Cook stated that the courts are doing an excellent job, noting his agreement with Mr. Birmingham’s statement that the recidivism rate is a key metric.
- He also pointed out that the legislature package needs to state that the two vacant JDRDC judgeships need to be appointed by Richmond, and that our local delegation needs to be informed and educated on the negative impact the vacancies are having on the court. Data is needed to show how long cases are being delayed.
- Supervisor Cook asked the judges and court services unit directors about any legal challenges they may be experiencing as to information sharing and gathering policies and practices, such as HIPPA rules, as are being experienced by Diversion First partner agencies, or if they were receiving the relevant information they require to make the best decisions about diversion. Chief Judge Petit replied that he believes the courts do receive appropriate information and that the Commonwealth’s Attorney’s Office and defense attorneys are working together appropriately, particularly in mental health cases, to try and reach the best outcomes, and that he and other judges are comfortable in seeking more if they believe they need to do so to make an informed decision.
- Chairman Bulova said it was a new day when it comes to restorative justice and diversion. She noted that she has had an opportunity to observe the Veterans Treatment Docket and was impressed with the mentorship aspect of the program. She then asked the panel if there was a mentorship element in the Drug Court. Judge Azcarate replied the Drug Court was still in the process of being developed, but that there will be a peer aspect included, with volunteers to be peer sponsors. She said the CSB has been pivotal in helping set up that aspect of the program. Chairman Bulova noted that the inclusion of a peer aspect is crucial in success, and Judge Azcarate agreed.
- Chairman Bulova then encouraged the juvenile court to take their approach to juvenile justice “on the road,” to demonstrate to more people the positive changes and the successes the court has had. Chief Judge Petit agreed. Chairman Bulova stated she had heard community concerns, including from the NAACP, of a school to prison pipeline. She stated that many valuable changes had been made in how young people are treated in school as well as in court. She suggested that some speaking engagements may be found. Chief Judge Petit replied that Judge Carr is the liaison with Fairfax County Public Schools (FCPS), and has been instrumental in arranging those.
- Referring to the Veterans Treatment Docket, Supervisor Cook stated in Maricopa County, Arizona, a peer mentor system has been connecting people with mental health

challenges to others who have been successful in overcoming their mental health challenges with positive results.

- Supervisor Hudgins stated it was refreshing to see the progress from each of the courts. She expressed concerns about diversity on the bench, and that she hoped the judges selected to fill the two available spaces in JDRDC would add diversity to the current judges in Fairfax County.
- Supervisor Gross asked the panel whether the court system had enough qualified interpreters available. Mr. Birmingham replied that they did not have enough in JDRDC, and in order to meet their needs they use volunteers to try to fill the gap. Chief Judge White followed up by saying that in Circuit Court the challenge was the same, there are not enough interpreters, and it tended to hold up hearings and cases from moving forward while waiting for interpreters.
- Supervisor Gross commended Judge Azcarate for her efforts and initiative in creating the Veterans Treatment Docket. She then asked whether the three years has been enough time to track data from the Veterans Treatment Docket and to determine any trends yet for those who completed the docket. Judge Azcarate acknowledged that three years was not yet enough data, but that preliminary data is positive. She also pointed out too that only one female has been placed on the Docket, so there are some data gaps, but there have been a variety of ages in the placements.
- Supervisor Gross followed up to express concerns as to whether employment was an issue faced by many of the veterans who were placed into the Veterans Treatment Docket, stressing that there was a lot of work being done in the region concerning employment for veterans. Judge Azcarate said that employment and housing were both big issues for the veterans involved with the program. She noted that the Veteran's Administration housing that is provided for homeless veterans was located in Washington, D.C.; therefore, that does not resolve the issues for homeless veterans in Fairfax. She also explained that many of the veterans facing employment challenges are impacted by having felony convictions.
- Supervisor Storck expressed concern about the level of wrap-around services for the youths and adults experiencing mental health issues or other concerns. He asked what wrap-around services was provided to juveniles along with any housing options available to them. Mr. Birmingham stated there was wrap-around services available, but noted there were challenges such as not enough child psychologists who were willing to treat juveniles without insurance coverage. Mr. Birmingham said the housing was being used with the "right child, right place, right dose" approach. He explained that both the boys' and girls' probation houses were not full; therefore, they are looking at uses or reallocating those resources to the best advantage.
- Chief Judge Petit made a further comment that when speaking with judges from other jurisdictions there were many regions that did not have the benefit of the variety and types of services that Fairfax provides.

- Supervisor Storck followed up by asking about when the Drug Court expected to start placements. Judge Azcarate responded that they have already had their state training and were gearing up for their national training. She further commented that state probation has already provided a probation officer to be assigned to the court. They were looking at high risk, high need individuals and plan to start assessments in approximately a month, with the expectancy that applications will soon follow and the doors to open in the fall.
- Supervisor Storck inquired whether the Drug Court will be modeled off the Veterans Treatment Court. Judge Azcarate stated it is based on a Drug Court model with five phases, and a focus on co-occurring mental health treatment, housing, jobs, and family connections. Supervisor Storck questioned if it was a “yo-yo” concept. Judge Azcarate replied in the negative and stated that it is an intensive supervision program with multiple phases to be progressed through, and that participants will be held accountable throughout.
- Supervisor Herrity also appreciated the courts’ efforts as a partner in public safety and Mr. Bermingham’s comments that the approaches are smart, not soft, on crime. He also commended the Veterans Treatment Docket, and echoed the comments that more job training is needed.
- He asked about the opioid crisis, and inquired into the time between release from jail and entry into treatment. He also asked whether there has been an increase in caseload due to the opioid crisis. Chief Judge White replied that in the sentencing dockets there is probably a 50% nexus to the opioid crisis or other drug-related offenses. Judge Azcarate added that there had been an increase in the issue, not only at sentencing but also at probation violations. Chief Judge Mayne added that she has seen approximately two-thirds of her dockets for bond motions have a nexus to substance abuse.
- Supervisor Cook stated that data is needed and could be gathered regarding drug uses impact on the court docket for resource allocation.
- Supervisor Cook inquired as to what services or changes are needed so that judges can send people to the appropriate diversion and treatment options. Judge Azcarate replied that finding residential bed space for people without insurance is a major challenge that needs to be overcome. Mr. McDonald stated that transportation from the jail to the bed space is another hurdle because the Sheriff’s Department cannot transport them once released from incarceration. Supervisor Cook stated that the transportation from jail to the bed space could be a key issue, and may require the allocation or reallocation of funds or resources to accomplish it.
- Chief Judge White inquired about the master plan for the Massey Complex, citing the benefits of having many of the facilities and services on the courthouse campus rather than further away. He opined that the needs of the courts and the placement and location

of ancillary services and programs, such as treatment services, bed space, etc., should be at least considered during the planning process and input gathered from appropriate stakeholders. Chairman Bulova and Supervisor Cook concurred.

- Supervisor Herrity stated the Sheriff's Office had visited the Chesterfield jail regarding an opioid treatment program there, and requested an update from the Sheriff's Office on their ongoing and planned opioid treatment efforts. The Sheriff's Office will provide an update.

Meeting adjourn at 3:01 p.m.

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