

**Ad Hoc Police Practices Review Commission
Use of Force Subcommittee
June 17, 2015, 7:00PM
Room 232, Fairfax County Government Center**

Subcommittee members present:

George Becerra
Joe Cammarata
Brad Carruthers
Sal Culosi
Mary Kimm
William Moncure
Phil Niedzielski-Eichner
Randy Sayles
Jodi Shlesinger
Michael Shumaker
Joe Smith
Adrian Steel
Bernard Thompson

Not present:

Hassan Aden
Ralph Cooper
Gervais Reed

Others present:

Clayton Medford
Katie Boyle
Matt Graham
Tom Ryan
John Piper
David Wright
Anita Culosi
Gordon Dean
Tom Jackman
John Lovaas

Mr. Niedzielski-Eichner opened the meeting at 7:04pm by welcoming members and the public.

The minutes of the June 3, 2015 minutes were considered. Mr. Steele moved for approval with Mr. Moncure seconding the motion. Mr. Sayles moved, seconded by Mr. Shumaker, to amend the main motion to have the minutes better capture an exchange he had with the representatives from the FCPD Training Academy regarding use and availability of tasers. Specifically, Mr. Sayles wanted reference made to the limited number of Tasers assigned to each FCPD station and that carrying Tasers by officers was not mandatory. Mr. Sayles believes that each officer should be required to carry a taser as a less lethal force alternative to the more deadly use of force by weapon. The amendment to the main motion passed unanimously, as did approval of the main motion, as amended.

Mr. Niedzielski-Eichner asked for a show of hands for who would like to experience the firearms training simulator at the FCPD shooting range facility on Stonecroft Blvd and eleven members gave indication of their interest.

Mr. Niedzielski-Eichner summarized the agenda of tonight's meeting. He also invited interested individual members to review the Tactical Threat Assessment Form in its entirety, since only an abridged version can be made publicly available, as posted on June 18th. Those interested should reach out to Major David Moyer at David.Moyer@fairfaxcounty.gov.

Mr. Shumaker discussed the National Incident Management System and National Preparedness Cycle. He highlighted the final step, taking corrective action, as particularly important. All organizations should be learning organizations.

Mr. Becerra asked that the Subcommittee's deliberations minimize the potential duplicating other County initiatives such as Communities of Trust.

Mr. Ryan said FCPD is trained in the NIMS and follows the Preparedness Cycle and agreed it could be a good idea to apply it to use of force. On Communities of Trust, it is a separate initiative but there is some intersection. Mr. Ryan said involving community leaders would be a key component if there were a Ferguson or Baltimore type incident.

Mr. Ryan introduced Major John Piper, who is in charge of an FCPD initiative to integrate general orders and standard operating procedures where they address use of force. Major Piper said indicated that the number of orders and procedures will be reduced in number, but will not be integrated into one. They will better facilitate officer training and will be easier to update and for officers and the public to read. Major Piper the Precision Immobilization Technique (PIT), which involves controlled use of a vehicle to support capture, could be considered, for example, a use of force but it is currently addressed under police vehicle operation general order. His group is also looking at releasing as much of what is now not released publicly (SOPs and GOs). On use of SWAT, he doesn't know if his group will look at that, but there is a new pending SOP being developed. Barricade will also not be included in use of force.

Mr. Shumaker asked if the county has something like a security classification guide to address when FCPD information can be protected from disclosure and when it must be released. Major Piper indicated that the Release of Information GO governs this matter. Mr. Smith indicated that the Virginia Freedom of Information Act may also play a role and that release decisions are my by the Chief at his discretion, though a rationale specified in Virginia Statute must be provided. The Chief's decision on whether or not to release such information is not judicially reviewable.

Mr. Smith asked of 1360 officers, how many are on street at a given time? Mr. Ryan indicated that that as many as 150 officers are on duty during shift overlap, but as few as 77 may be on the street at any one time depending on day of week, time of shift, and status of incidents.

Mr. Moncure sought clarification that the content of current SOPs, which are not publicly available, would still be protected if by their release the safety of the public or the integrity of investigation would be potentially jeopardized. Mr. Piper confirmed that these would be criteria guiding GO and SOP integration.

Mr. Culosi asked if in this process, changes will be made to GOs? Mr. Piper said that is possible. The PERF report and the Ad Hoc recommendations will be important factors.

The meeting transitioned into a discussion of preliminary findings and recommendations crafted by Messrs. Steel, Shumaker and Culosi following the completion of the Subcommittee's "data collection and review" activities to date. The three sets of findings and recommendations were available to the Subcommittee as a single integrated document that accompanies these minutes.

Mr. Steel summarized his recommendations and highlighted their purpose and rationale.

Mr. Shumaker highlighted the purpose of and summarized his recommendations, and clarified that his recommendations from the White House Task Force Report were done jointly with Mr. Sayles.

Mr. Culosi highlighted the purpose of and summarized his recommendations.

Mr. Culosi said in reviewing the publicly available and abridged Tactical Threat Assessment Form, it appears SWAT can be deployed for any vice case. Mr. Ryan said threat assessment is used to carefully consider how SWAT capability is deployed and there are rare vice-related circumstances where prudence in the protection of others would call for SWAT support.

Subcommittee discussion moved to Review of General Order 540.1-Use of Force

- I. Purpose – no comments
- II. Policy – no comments
- III. Definitions

Mr. Shumaker asked about definition of “guiding” or “escort.” Mr. Steel cautioned against being too specific. Mr. Smith discussed definition of reasonable. Mr. Cammarata said “reasonable” is determined by the facts of the case. Mr. Shumaker argued for raising the standard from “reasonable” to “objectively reasonable.” Mr. Carruthers said “reasonable” is a subjective term but the definition in the GO conforms to Graham V. Connor (in reference to Mr. Shumaker’s printed comments on the General Order).

Mr. Shumaker disagrees that the General Order conforms to Graham v. Connor and noted the ruling provided three examples of criteria for “objectively reasonable.”

Mr. Niedzielski-Eichner cautioned that the purpose of this agenda item is to develop an understanding of the GO, but not debate at this time the merits of prospective changes to GO 540.1. He noted that recommended changes can be offered by members, but that they will be considered when the Subcommittee moves to the task of making its report to the Commission.

Mr. Smith asked why less-lethal and non-deadly force are two separate definitions. Mr. Ryan indicated that this is a good question and anticipates that it will be addressed in the forthcoming PERF Report.

- IV. Regulations

Mr. Culosi made suggestions regarding ready gun, verbal warning, unholstering, pointing of firearm.

A discussion was held on difference between criminal and administrative investigations, the difference between compelled statements and criminal interrogations under “Garrity,” a court case that clarifies how information developed in an administrative internal affairs investigation can be used in a potential criminal prosecution of an officer.

Mr. Shumaker asked why other instruments, such as a baton, are not listed under deadly force. Major Piper said if deployed properly, a baton should not result in serious bodily injury or death.

Mr. Steel asked about chokeholds. Mr. Ryan said FCPD does not train officers how to use chokeholds as a method of force, but how to respond to one if subjected to it by an assailant. The use of a chokehold is not taught at the Academy, Officers are not allowed to practice it and its use by an officer is prohibited.

V. Investigative Stop, Frisk and Search Beyond the Person, for detailed procedures regarding investigative stops

Mr. Steel asked about reporting standards on the chart in the GO.

VI. Use of Force Model

Mr. Steel asked how matrix in GO is used. Mr. Ryan said it is used to match threat to use both before and after incident.

VII. Training

VIII. Legal Reference

The Subcommittee moved to a discussion of how it wants to meet its charge under its Scope to:

Review (not investigate) recent use of force incidents (lethal and non-lethal) involving FCPD as well as review any existing data summarizing all FCPD use of force interactions, officer involved shootings resulting in death or injury, and in-custody deaths from 2005 to 2015, including identification and review of incidents in which SWAT teams, military-type equipment, and other high risk tactics were employed

Mr. Ryan relayed the department's offer to have a detective present a criminal case to the subcommittee. He called attention to the FCPD's Use of Force Committee's report on the April 2009 shooting, which is also posted on the Subcommittee's website.

Mr. Culosi questioned the need to have a presentation on a specific case since the charge is to make recommendations on SOPs and GOs and an oversight committee would be able to tell the public when officers act in line with those policies. Mr. Steel disagreed and said there is in fact value. Mr. Becerra and Mr. Sayles agreed with Mr. Steel.

Mr. Smith asked if the subcommittee would get a presentation on an internal affairs investigation as well. Mr. Ryan said the presentation of a criminal case will not include the administrative side. Mr. Smith said a summary would be helpful (in deference to officer privacy). Mr. Ryan confirmed personnel records are not public.

Mr. Sayles that any case presented should have a nexus with the Subcommittee's charge in relation to use of force. Mr. Carruthers said there is a tight schedule and the subcommittee needs to focus on the PERF Report before the subcommittee reviews a case. Mr. Steel said the subcommittee needs to focus on use of force and not investigative process. Ms. Schlesinger said a brief overview of a case would be helpful but her concern is that all uses of force are not reported. Mr. Moncure said the near-term focus should be on PERF.

Mr. Moncure made a motion to not request a detective presentation until after the PERF Report is released, Mr. Culosi seconded. Mr. Smith suggested that the motion should be to table the request until the subcommittee has held discussion on the PERF Report. It was accepted as a friendly amendment.

Mr. Niedzielski-Eichner opened the motion for discussion. Mr. Cammarata asked how asking a detective helps the subcommittee. Mr. Niedzielski-Eichner said an example would give the subcommittee a sense of how incidents are handled, while acknowledging that the Subcommittee's charge is to focus on policy and best practices. Ms. Kimm said she has learned a lot from her work with the Subcommittee and a specific example would help her and the Subcommittee understand how orders and operating procedures are followed.

Ms. Kimm also asked if the Subcommittee would receive other Use of Force Committee reports. Mr. Ryan said only the officers involved in the 2009 report agreed to its release.

Mr. Steel called the question. The motion passed, with only Ms. Kimm casting a no vote.

Mr. Niedzielski-Eichner opened the floor to the public and no comments were offered.

Mr. Cammarata moved to adjourn with multiple members offering a second. The motion was approved unanimously by voice vote.

The meeting concluded at 9:15

Minutes prepared by Clayton Medford, Office of Chairman Sharon Bulova
[Clayton.medford@fairfaxcounty.gov], with support from Mr. Niedzielski-Eichner.