



JEFFREY C. MCKAY
CHAIRMAN

COMMONWEALTH OF VIRGINIA
County of Fairfax
BOARD OF SUPERVISORS

SUITE 530
12000 GOVERNMENT CENTER PKWY
FAIRFAX, VIRGINIA 22035-0071

TELEPHONE: 703-324-2321
FAX: 703-324-3955
TTY: 711

chairman@fairfaxcounty.gov

July 14, 2020

Dear Members of the Fairfax County Delegation:

On behalf of the Fairfax County Board of Supervisors, I am writing to you in advance of the special session of the Virginia General Assembly to share with you some of the County's priorities as you consider legislation related to systemic racism and police reform.

The senseless murder of George Floyd sparked thousands in Fairfax County to stand up against persistent racial injustice in our nation. Mr. Floyd's violent and wrongful death is sadly all too familiar. We are all grieving for the Floyd family, the families of those who have experienced similar pain, and the many who have died in similar acts of violence. As the elected representatives of Fairfax County's 1.1 million residents, we want to clearly state that Black Lives Matter.

As you know, in Fairfax County we lead the Commonwealth on important issues, including criminal justice reform and police accountability. We would like to share with you today some information about the progress we have made in these areas in recent years, the work we still have to do in these areas, and the vital assistance we need from you as our state partners to ensure success in achieving our shared goal of a more just and equitable Commonwealth. Attached to this letter is thorough information on many of the topics of this letter.

Fairfax County Actions to Date

Fairfax County's approach to public safety and police reform has been to engage our community in an open and transparent process to ensure a culture of public trust and to establish county policies that provide for accountability. To that end, in 2015 Fairfax County created an Ad Hoc Police Practices Review Commission that produced a detailed report with dozens of recommendations to improve our practices. That report led to:

- Creation of an independent Police Civilian Review Panel and Independent Police Auditor;
- A three-year phased-in police body-worn camera program; and,
- Implementation of Diversion First, an award-winning program that diverts from incarceration those with mental illness, developmental disabilities, and substance use disorders.

In addition, the Fairfax County Police Department uses a co-production of policing model whereby all community and local government stakeholders develop policing practices and policies that improve public safety, enhance public trust, and preserve the sanctity of all human life, including:

- Use of force policies that require de-escalation, duty to intervene, and use of force continuum;
- Ban on the use of chokeholds and carotid artery restraints;
- Use of force, arrest, and citation data releases;

- No purchase of military equipment (through the U.S. Department of Defense 1033 program);
- Crisis Intervention Team training (CIT);
- Mandatory mental health checks and wellness program for officers;
- Vehicle pursuits that require the need for immediate apprehension to outweigh the danger posed by the pursuit to preserve the sanctity of all life;
- One Fairfax policies that utilize an equity lens to ensure fair access and equitable treatment;
- Working group with other County agencies to establish alternative diversion for non-law enforcement calls for service which can be handled by subject matter experts from other agencies;
- Comprehensive reporting and review of use of force cases;
- Prohibition against shooting at moving vehicles; and,
- Warning required, when possible, before using deadly force.

While Fairfax County is the only jurisdiction in the Commonwealth of Virginia to establish this package of reform and accountability measures, we know that our work has only just begun. As you prepare to help other jurisdictions, and perhaps the Virginia State Police, improve transparency and accountability measures, we stand ready to offer our assistance and lessons learned.

2020 Virginia General Assembly Special Session

Public safety is a core service for the Commonwealth of Virginia, as it is for localities. Protecting the Commonwealth's residents and ensuring the equitable operation of the justice system requires appropriate state funding. Substantial state cuts in recent years, in addition to the underfunding that already existed, place an increased burden on localities and serve to drive disproportionate and inequitable outcomes. Even with all of the resources and reforms listed above in place, in Fairfax County we still see disproportionality in our police statistics.

We applaud the work done in this year's General Assembly session to begin reforming an antiquated and punitive criminal justice system that disproportionately harms low-income communities of color. In particular, legislation passed to decriminalize possession of small amounts of cannabis was a major step forward, as arrests for simple possession of marijuana are one of the most significant drivers of disproportionate policing and incarceration. Our Board of Supervisors was pleased to support this measure and looks forward to working with you to build on it.

As you consider reforms in advance of the special session that will help build on what we have created here in Fairfax County, we would like to submit the following areas for your consideration:

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.
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.

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.
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.
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. We hope you will work with us and interested stakeholders, including Fairfax Commonwealth’s Attorney Steve Descano, to address this urgent issue.

In summary, Fairfax County has come a long way on police reform and criminal justice issues. But we know there is much work left to be done. Guided by our One Fairfax policy, we are committed to bold action to address racial injustice in the criminal justice system. We thank you for your commitment to this joint effort and look forward to working with you to build a stronger Commonwealth. Please do not hesitate to call on us, invite us down to testify, or provide more information about our own experiences and needs as you deliberate over these important issues.

Sincerely,



Chairman
Jeffrey C. McKay

Attachments

- cc: Members, Fairfax County Board of Supervisors
Bryan J. Hill, County Executive
Elizabeth Teare, County Attorney
Tisha Deeghan, Deputy County Executive
Dave Rohrer, Deputy County Executive
Claudia Arko, Legislative Director
Edwin C. Roessler, Jr., Chief of Police

Public Safety/Courts Funding Issues and Police Body-Worn Cameras

Public safety is a core service for the Commonwealth, as it is for localities. Protecting the Commonwealth's residents and ensuring the successful operation of all aspects of the justice system requires appropriate state funding for this state-local partnership, including law enforcement, the courts, and jails/corrections. Continued and substantial state cuts in recent years, in addition to the underfunding that already exists, have placed an increased burden on localities to fund these state responsibilities. To that end, Fairfax County supports reversing this trend through adequate state funding.

Funding Issues for Commonwealth's Attorneys' Offices

The Commonwealth's Attorney is a Constitutional officer of the Commonwealth, elected by the voters of Fairfax City and Fairfax County, and is not an officer or employee of the County. The formula used by the state to fund Commonwealth's Attorneys' offices must be updated to reflect the goal of improving policing. The current formula combines the number of felony defendants who are indicted into Circuit Court and the number of felony sentencing events in Circuit Court and divides that by caseload size. Using the number of felony indictments and sentencing events in Circuit Court as a major factor in funding is antithetical to the goal of increasing diversion programs and utilizing specialty dockets (such as the ones used in Fairfax courts for mental health and veterans), which are aimed at keeping people out of the criminal justice system or keeping them from felony sentencing consequences. While diversion programs and specialty dockets require significant prosecutorial resources, often more than are required for convictions, a Commonwealth's Attorney's office does not receive state funding for that work because the formula does not account for it – in fact, the current formula essentially discourages such efforts. When considering the factor of caseload size, localities are categorized as small, medium, large, or super – Fairfax County is the only jurisdiction in the state categorized as “super,” which further disadvantages the County in the funding formula. The caseload of the Fairfax office is substantial and is one of the highest per prosecutor in the Commonwealth.

It is essential that the state provide sufficient state funding for Constitutional officers and other state judicial offices to review police body-worn camera footage, including funding for such reviews for Commonwealth's Attorneys' offices and public defenders' offices. Fairfax County estimated costs for its phased police body-worn camera program based on the ratio required by the General Assembly of one Assistant Commonwealth's Attorney for every 75 body-worn cameras to be approximately \$6.2 million per year; however, the Fairfax Commonwealth's Attorney's Office is now requesting 87 additional attorney positions and 50 additional staff positions prior to any expansion of the program, leaving 122 additional positions for consideration and approval, at a cost of \$16.7 million per year. Though this additional funding request is not solely due to implementation of a body-worn camera program, it is a reflection of the chronic state underfunding of the Commonwealth's Attorney's office.

Funding Issues for Public Defenders' Offices

It is critical to substantially increase funding for public defenders' offices – Fairfax County is one of five jurisdictions that provide a supplement for the public defenders, though funding court personnel is a critical state responsibility. At present, the County spends over \$470,000 annually on such supplements.

Fairfax County Diversion First/Mental Health

Diversion First

In 2016, Fairfax County announced a new collaborative initiative, Diversion First. This award-winning program diverts from incarceration those with mental illness, developmental disabilities, and substance abuse disorders. Diversion First represented the culmination of many months of research and discussion to change the way the criminal justice and behavioral health systems interact, as jails across our state and nation had become de facto housing for people with mental illness and often co-occurring substance use disorders. The County also opened the Merrifield Crisis Response Center (MCRC), and diversion in lieu of arrest became a new reality with the assignment of police officers and sheriff's deputies to MCRC. Patrol officers could now take a person experiencing a mental health crisis to MCRC, so that simply bringing someone to jail would no longer be the default option. Since 2016, there have been over 1,900 diversions from potential arrest, and the County has greatly expanded opportunities to divert after arrest. Diversion First offers alternatives to incarceration for people with mental illness, developmental disabilities and co-occurring substance use disorders who come into contact with the criminal justice system for low-level offenses. The program aims to prevent repeat encounters with the criminal justice system, improve public safety, promote a healthier community, save public dollars and — most importantly — help people who are in crisis recover and take control of their lives.

Crisis Intervention Team Training (CIT)

A critical aspect of this plan is Crisis Intervention Team training (CIT), a critical skill set for police officers serving in the 21st Century. The training provides law-enforcement officers with a better understanding and deeper appreciation for individuals suffering from a mental health crisis. The Fairfax County Police Department (FCPD) recognizes the crucial importance of CIT and is committed to ensuring that every sworn officer receives this training. Currently, more than 400 police officers assigned to the Patrol Bureau have attended CIT courses, which include 40 hours of instruction, simulation and practical exercises. This figure represents approximately 43 percent of FCPD patrol officers who respond to unpredictable, and often risky, calls for service every day in Fairfax County. To further our efforts, current and future police recruit classes attending the Fairfax County Criminal Justice Academy will also receive a similar Crisis Intervention curriculum, designed to enhance the capabilities and awareness important to new officers.

State Funding for Community Services Boards (CSBs)

A critical aspect of success in decriminalizing mental health is ensuring that state funding for Community Services Boards (CSBs) is commensurate with the number of individuals they serve — despite serving a population of more than 1.1 million people the Fairfax-Falls Church CSB continues to receive inadequate state funding. Fairfax County would strongly oppose the use of a local ability to pay factor in the distribution of CSB funds. Local funding for the Fairfax-Falls Church CSB in FY 2019 exceeded \$139 million — nearly 50 percent of the local funding provided by all CSBs combined, and more than the local match provided by the next five localities combined (Arlington, Loudoun, Alexandria, Virginia Beach, and Prince William Counties). The Fairfax-Falls Church CSB only receives \$9 million dollars annually in funding from the Virginia Department of Behavioral Health and Developmental Services (DBHDS), which equates to 5.5 percent of its budget. Sustaining such a high level of local funding while receiving inadequate support from the state, at a time that state mandates continue to grow, is becoming increasingly untenable. Localities that make funding these vital services with local dollars a priority should not be penalized for their efforts. Investments in mental health services and treatment can be critically important in reducing unnecessary police interactions.

Fairfax County Police Civilian Review Panel and Fairfax County Independent Police Auditor**Fairfax County Police Civilian Review Panel Mission**

The nine-member Police Civilian Review Panel's mission is to enhance police legitimacy and to build and maintain trust between the citizens of Fairfax County, the Board of Supervisors, and the Fairfax County Police Department (FCPD) by reviewing certain FCPD investigations to ensure the accuracy, completeness, thoroughness, objectivity and impartiality of the investigation. It is appointed by, and reports directly to, the Board of Supervisors. The Panel is governed both by the bylaws approved by the Board of Supervisors and a code of ethics adopted by the Panel.

Fairfax County Police Civilian Review Panel Website

<https://www.fairfaxcounty.gov/policecivilianreviewpanel/>

Fairfax County Police Civilian Review Panel Member Biographies***Hansel Aguilar, Fairfax***

Mr. Aguilar, originally from Honduras, has resided in the County for 10 years. For the better part of the past decade, he has put his studies in sociology and criminal justice to use by serving some time as a former police officer at the George Mason University Police Department and as a civilian investigator of police misconduct at the D.C. Office of Police Complaints. Additionally, he worked as a case manager and internal investigator for Youth for Tomorrow. In the County, his service also includes managing the volunteer program at Vinson Hall Retirement Community in McLean and serving as a volunteer with the Fairfax County Office for Women and Domestic and Sexual Violence Services. Mr. Aguilar is a native Spanish speaker and believes that oversight is an important tenet of maintaining justice and equality in a democratic society. He is one of the inaugural panelists serving out his last year.

James Bierman, McLean

Mr. Bierman is a resident of McLean, where he grew up, and is a litigator who represents clients in complex litigation such as antitrust, securities, pharmaceutical defense, false advertising, trade secrets, copyright infringement, trademark infringement, commercial paper, and domestic matters in federal and state courts across the country as well as before federal administrative agencies. Mr. Bierman also maintains a large pro bono practice in which he has represented undocumented immigrants in wage disputes against predatory employers, disabled individuals in Social Security benefit matters, and criminal defendants in state court at both the trial and appellate levels. Further, he advises nonprofits and community organizations in disputes with state and local governments. Mr. Bierman previously served as a law clerk to the Honorable Beverly B. Martin of the U.S. Court of Appeals for the Eleventh Circuit. Aside from his practice, Mr. Bierman is a leader in the Washington legal community and beyond where he serves as an Associate Trustee of the Washington Lawyers' Committee for Civil Rights and Urban Affairs, and serves on the Board of the Washington, D.C. Chapter of the American Constitution Society.

Robert Cluck, Reston

Mr. Cluck has resided in Fairfax County for 40 years. He was on the Fairfax County Ad Hoc Police Practices Review Commission. He served in the US Army and worked for the federal government for over 30 years in finance and administration. Since retirement, he has been active with the National Alliance on Mental Illness (NAMI), including as a member and officer of the Board of the State level organization and as a volunteer in many capacities for the Northern Virginia affiliate. Over a period of six years, he gave family member presentations to Fairfax and Arlington County police officers as part of their Crisis Intervention Team training. He is strongly committed to helping enhance public trust between the public and the Police Department.

Frank Gallagher, Burke

Mr. Gallagher is a U.S. Army veteran and a retired FBI Agent with over 32 years of service. He first moved to Fairfax County in 1977 and was transferred out of the area several times. During his time in the FBI, Mr. Gallagher served as the Deputy Assistant Director of the Criminal Division, Special Agent in Charge of a Field Office and as the Chief Inspector for the FBI. He has lived continuously in Fairfax County for the past 19 years. After his retirement from the FBI, he worked for a major global management and information technology consulting firm for 11 years. Subsequent to that he served for two years as the Chairman of the DC Chapter of the Society of Former Special Agents of the FBI. He is a graduate of the FBI's National Executive Institute (NEI) and was on the Board of Directors of the NEI Associates for five years. For the past four years he has been the Braddock District representative on the Fairfax County Criminal Justice Advisory Board.

Shirley Norman-Taylor, Lorton

Ms. Norman-Taylor has resided in Fairfax County for the past 21 years. She is licensed to practice as an attorney in Virginia and Washington, D.C. The focus of her practice includes Domestic Relations and Criminal and Traffic Defense, however, her greatest joy comes from representing children who are in the Abuse and Neglect system as their Guardian ad litem (GAL). Ms. Norman-Taylor also serves on the Fairfax County School Board's Minority Student Achievement Oversight Committee (MSAOC). Ms. Norman-Taylor is a former military officer and served as a Commander during Operations Desert Shield/Desert Storm.

Sris Sriskandarajah, Fairfax (Vice-Chair)

Mr. Sriskandarajah is a resident of Fairfax, Virginia. Everybody calls him "Sris". He has lived in Fairfax since 2006 and has his law firm in the City of Fairfax. He assists clients with criminal defense and family law cases. He is licensed to practice before the state and federal court of Virginia and Maryland. He is also licensed to practice in DC. Mr. Sris is the legal advisor to the Valluvan Tamil Academy on a pro bono basis. He is also on the panel of listed attorneys for ASHA – a pro bono organization that helps South Asian women in Virginia who are victims of domestic violence or sexual violence. Aside from his practice, Mr. Sris is the father of two children who attend school in Fairfax County. Mr. Sris is a native Tamil speaker and is an active member of the Indian community in Virginia and Maryland.

Rhonda VanLowe, Reston

Ms. VanLowe was appointed to the Governor's Taskforce for Improving Mental Health Services and Crisis Response and served on the Public Safety workgroup. She has devoted much of her community service work to serving those with unique physical, mental, emotional, intellectual or cognitive backgrounds. Ms. VanLowe practiced law in law firm and corporate settings, served as Board Chair of The Northern Virginia Therapeutic Riding Program, Inc., and received the National Women of Color Special Recognition Award at the 2008 STEM Conference. Ms. VanLowe is a 36-year resident of Fairfax County and looks forward to working together with members of the Panel to develop procedures that will set the foundational tone and tenor for the work of the Panel.

Douglas Kay, Fairfax

Mr. Kay is a trial lawyer who has handled civil litigation, criminal defense and personal injury cases for over 25 years. He currently focuses his practice on commercial litigation matters. As a criminal defense attorney, he has represented individuals charged with everything from simple traffic matters to the most serious felony offenses in state and federal courts. Mr. Kay previously served as a judge advocate in the U.S. Navy and Assistant Commonwealth's Attorney for Fairfax County. A lifelong Fairfax County resident, Mr. Kay attended Fairfax County Public Schools, coaches his son's youth basketball team, and served on Fairfax County's Ad Hoc Police Practices Review Commission. Mr. Kay was nominated to serve on the Civilian Review Panel by the South Fairfax Chamber of Commerce and the Fairfax Bar Association. Mr. Kay has served on the Panel since its inception.

Hollye Doane, Oakton (Chair)

Ms. Doane is a retired attorney who spent most of her career in government relations and regulatory law. She has also been an advocate for the disability community for more than 30 years. Her experience as a government regulator and as a journalist prior to attending law school gave her an appreciation for the importance of government transparency. After her retirement, Ms. Doane trained as a mediator and pastoral care lay minister. She has resided in Fairfax County for 33 years and has served on the Panel since its inception.

Fairfax County Independent Police Auditor Mission

The Independent Police Auditor was established with a mission to bolster trust between the citizens of Fairfax County and the FCPD by providing accountability, fairness, transparency, and trust in the complaint system and investigative process. The Independent Police Auditor also provides an accessible, safe, impartial, and responsive intake venue for complaints against the FCPD and its employees. The Independent Police Auditor: monitors and reviews internal investigations of FCPD officer-involved shootings, in-custody deaths and use of force cases in which an individual is killed or seriously injured; monitors and reviews administrative investigations of public complaints of use of force; issues public reports for each reviewed internal/administrative investigation and produces annual reports of those reviews; and, makes public recommendations concerning revisions of FCPD policies, training and practices.

Fairfax County Independent Police Auditor Website

<https://www.fairfaxcounty.gov/policeauditor/>