

# **Use-of-Force Policy and Practice Review of the Fairfax County Police Department**

## **Final Report**

**June 2015**

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## **EXECUTIVE SUMMARY**

In July 2014, Fairfax County, Virginia contracted with the Police Executive Research Forum (PERF) to conduct a policy and practice review of the Fairfax County Police Department (FCPD). The review concentrated on the department's policies, procedures, directives, and training materials and curricula related to police use of force.

This report contains 71 recommendations organized into various topic areas.

In this Executive Summary, PERF would like to highlight 5 key recommendations first:

### ***A. Comprehensive Use-of-Force Training***

PERF recommends that FCPD provide comprehensive use-of-force training that includes discussion of, and scenario-based role-playing exercises that address, the various issues that can come together in a use-of-force incident, including:

- Legal and constitutional issues regarding the use of force;
- Lethal force, less-lethal force, and other options for disarming a person or making an arrest;
- Crisis intervention strategies for responding effectively to persons with mental illness, mental or developmental disabilities, or other conditions that can cause them not to understand or respond reasonably to what an officer is saying;
- Protocols for better understanding the phenomenon of "suicide by cop"; and
- De-escalation strategies, such as tactics for "slowing a situation down" in order to provide more time to assess a situation and summon assistance.

This training should be holistic in nature, combining different topics in a single curriculum in order to more realistically address situations that officers encounter in the field. For example, an incident involving a mentally ill person on the street brandishing a knife can involve issues of crisis intervention training, de-escalation strategies, legal issues regarding use of force, weapons and tactics for disarming a person, and other issues.

It is difficult for officers to grasp how to apply all of these concepts simultaneously if they are taught separately as stand-alone training topics.

### ***B. Department-Wide Training***

PERF recommends that FCPD conduct department-wide training for all sworn personnel regarding the changes put into place as a result of this review.

This new training should be provided department-wide to all officers on a one-time basis, and also should be incorporated into existing recruit training and in-service training programs.

***C. Decision-Making Model to Help Officers Analyze Situations***

PERF recommends that the FCPD consider developing and adopting an innovative decision-making model to guide officers as they approach a whole range of situations, and in particular the difficult circumstances in which the use-of-force may be necessary – or may be avoided.

Police in the United Kingdom have been applying a “National Decision Model” (NDM) to provide officers with more useful guidance about how to approach situations that might involve use-of-force.

In a decision-making model, officers learn how to analyze a situation; assess risks; consider options; develop a working strategy for responding; take action; review the results; and if necessary, begin the process again.

For example, if an officer responds to a call about a person on the street behaving erratically and brandishing a length of pipe, instead of moving immediately against the subject in order to neutralize the potential threat, the NDM prompts officers to try to “slow the incident down” in order to provide time to assess the situation and consider options.

Officers are trained to ask themselves a series of questions, such as: “What exactly is happening here? Is this situation a threat to public safety? Is this a policing issue, or a medical emergency? If there is a threat, what are my options for stopping it? Am I the best person to handle it, or are there others who are better trained and equipped for it? Are there other resources I can summon?”

PERF believes that this type of decision-making model has great potential for police agencies in the United States.

***D. Begin recruit training with the most important concepts in policing.***

Currently, the FCPD teaches new recruits the mechanics of shooting in the first weeks of the academy. Firearms instruction is 10 days, consisting of 80 to 100 hours on pistol and shotgun training. The academy provides instruction in firearms skills and emergency vehicle operations (EVOC) early in the process, because recruits most often fail or drop out of the academy during firearms and EVOC training.

PERF believes it is important to change this approach. Rather than beginning recruit training with the mechanics of firing a gun, FCPD can take a new approach that will make it a national leader: The first days and weeks of recruit training should focus on the most significant issues, concepts, and values of policing in a democratic society. These issues may include the mission and role of the police in protecting constitutional rights; the sanctity of human life; overall use-of-force policies, de-escalation, and crisis intervention strategies; a duty to intervene if an officer sees another officer using excessive force; and the decision-making model to teach officers how to analyze complex situations and devise effective responses.

By focusing on the most important issues first, the FCPD can send an important message to new recruits about the department's priorities, about the nature of the profession, and about what is expected of them.

### ***E. Response to Emotionally Disturbed Persons***

The FCPD should continue to work toward its goal of increasing the number of officers who have received 40 hours of training in crisis intervention. More than 40% of patrol officers have already received this training, with a targeted goal of 100% of officers.

In addition to providing this basic level of crisis intervention training to all patrol officers, the FCPD should go a step further and provide more advanced training for officers who would volunteer to be part of the department's Crisis Intervention Team (CIT). CITs pair specially trained officers with mental health workers to provide a more experienced and expert response to incidents involving persons with mental illness or other conditions that can cause them to behave unpredictably and dangerously.

Crisis Intervention Teams are increasingly recognized as a national best practice. The U.S. Justice Department's Civil Rights Division specifically addressed the advantages of Crisis Intervention Teams (as opposed to limiting the response to general training of all officers) in its 2012 "findings letter," prior to entering a settlement agreement with the Portland, OR Police Bureau (PPB).<sup>1</sup> CITs not only respond to critical incidents, but also work to help mentally ill persons obtain treatment and other services. By addressing the underlying problems and getting to know the people involved, CIT teams can achieve better outcomes in crisis situations, and also can reduce repeat calls for service.

### **Following are other recommendations made in this report:**

#### ***Police Officer Selection***

In many respects, FCPD's hiring process follows the leading best practices of other large police departments. PERF recommends that the FCPD formalize its process by putting certain standards and processes into writing, and that the department ensure that written directives are kept up to date. PERF also recommends that the FCPD consider creating a Selection Review

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<sup>1</sup> "Findings Letter" from DOJ Civil Rights Division to Portland Mayor Sam Adams. Sept. 12, 2013.  
[http://www.justice.gov/crt/about/spl/documents/ppb\\_findings\\_9-12-12.pdf](http://www.justice.gov/crt/about/spl/documents/ppb_findings_9-12-12.pdf)

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Committee, to include community representation, in order to bring more diversity to the process of making final selections of police officer candidates.

***Use-of-Force Policy***

PERF recommends a number of changes designed to strengthen the FCPD's use-of-force policy, in many cases by clarifying definitions, explicitly emphasizing de-escalation, and specifying control tactics appropriate for different situations. For example, references to “non-deadly” devices should be changed to “less lethal,” in order to make sure that officers understand that while some weapons, such as Electronic Control Weapons (Tasers™), are designed to be less lethal than firearms, they sometimes do result in death.

PERF also recommends that the FCPD adopt a policy statement creating a duty to intervene if one officer observes another officer using force that is clearly beyond what is objectively reasonable under current legal standards. This intervention should include interceding to stop the use of excessive force, as well as reporting the incident to a supervisor.

While the FCPD does a good job of emphasizing de-escalation of incidents in its officer training, PERF recommends that the department adopt strong policy language describing the importance of officers de-escalating tensions in confrontations when possible—for example, by calling a supervisor to the scene of a contentious or difficult encounter, or summoning a Crisis Intervention Team to handle a person in a mental health crisis.

Another PERF recommendation calls for improving the FCPD's definitions of the types of resistance that persons use against officers, and the different levels of control tactics that may be used for each type of resistance. PERF also recommends that the FCPD modify language on the reasonableness of use of force, in order to bring its policy in line with the U.S. Supreme Court's landmark 1989 use-of-force case, *Graham v. Connor*.

Finally, PERF recommends that the FCPD make explicit a policy against officers shooting at or from a moving vehicle, unless deadly force is being used against the police officer or another person by means other than the vehicle itself (e.g., if a person in a fleeing vehicle is firing a gun at the officer).

***Reporting the Use of Deadly Force and Investigation of Injuries***

PERF recommends a change in defining when a use of deadly force must be investigated. All incidents in which deadly force is used should be investigated in the same way, regardless of whether the officer hit his or her target. The investigative focus must be on the officer's intent to use deadly force and whether that decision was objectively reasonable, and should not depend on the officer's marksmanship or other factors affecting whether the subject was hit or injured.

The FCPD should provide direction to officers barring the use of “boilerplate” language to justify a use of force. Rather, officers should be told to describe what happened in language that is specific to the incident at issue.



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***Policies on Electronic Control Weapons***

While this review did not uncover serious operational issues with respect to Electronic Control Weapons (such as Tasers™), PERF recommends a number of changes to strengthen FCPD policies in this area. To begin with, PERF recommends that in its written directives the FCPD change the name of such weapons from “Conducted Energy Weapons” to “Electronic Control Weapons” (ECWs). This is the industry-standard term used by PERF and the U.S. Department of Justice, and it recognizes that ECWs are indeed weapons whose use should be closely managed and monitored. In addition, FCPD policies on ECWs, which are currently in two different sections of policy documents, should be consolidated into one General Order in order to make it easier for officers to understand what is required of them. Policy also should clarify that ECWs should not be used against passive subjects, handcuffed subjects, persons driving a car or other vehicle in motion, and in certain other situations.

Policy should be strengthened on the risks of repeated applications of an ECW. Officers who are allowed to use ECWs should be certified as having completed ECW training successfully. And PERF recommends that the FCPD consider adopting brightly colored ECWs, to reduce the possibility that a secondary unit will mistake the ECW for a firearm.

A number of other recommendations are made to bring FCPD policy into accordance with national guidelines on ECWs that were produced in 2011 by PERF and the Justice Department’s COPS Office. Finally, PERF recommends that the FCPD enhance its training to provide officers with sufficient time to go over possible scenarios regarding ECW deployment and to discuss practical, “what if” questions with officers who have deployed ECWs and those who have not done so. Training should also emphasize how to properly complete ECW use-of-force reports.

***PepperBall System***

PERF recommends that FCPD require that officers who use the less-lethal PepperBall tool be certified in its use, ensuring that officers are not only trained but also tested in the use of this tool.

***Single Policy on Use of Force***

Having a clear, comprehensive, and up-to-date policy for officers to follow is essential to a department’s management of use-of-force issues. PERF recommends that the FCPD delete certain specified sections of its use-of-force policies that are out of date or difficult to understand, and that the department create a single policy that includes all directives and information pertaining to the use-of-force. (PERF offers a suggested outline for reorganizing existing policies while incorporating the changes to certain policies that have been detailed in this report.) Having a single, comprehensive directive will make it easier for officers to access and understand use-of-force policies.

***Prohibit choke-holds***

PERF recommends that the FCPD prohibit “choke holds” and neck restraints as a use-of-force option.

***Police Pursuits***

PERF recommends that the FCPD consolidate its policies on police pursuits. Currently, policies are split between two General Orders. PERF also recommends that the FCPD discontinue use of the Precision Immobilization Technique (PIT), and that officers be required to file a less-lethal use-of-force report when a spike strip tire deflation device or a boxing-in maneuver is used.

***Response to Critical Incidents***

PERF recommends that the FCPD provide more detail in its policies on bomb threats and incidents, with respect to defining terms and detailing the roles and responsibilities of patrol officers, supervisors, and command personnel. Policy on hostage/barricaded person situations also should be expanded to include definitions of legal authority, the command post, immediate action team, staging area, and other key terms. Given the critical role played by the first on-scene supervisor at hostage/barricades person incidents, a new section on this supervisor’s responsibilities should be added to the policy.

FCPD policy should also require the timely notification of the Special Operations Division and the establishment of a news media staging area, when a hostage/barricade incident occurs. Finally, an after-action review and report should be required for all hostage/barricaded person incidents, as both an operational and training tool.

**--- END EXECUTIVE SUMMARY ---**

## **INTRODUCTION**

When Fairfax County, Virginia, contracted with the Police Executive Research Forum (PERF) in July 2014 to review the county Police Department's use-of-force policies and practices, few could have anticipated how the issue of police use-of-force would come to dominate the national conversation in the coming months.

PERF commenced its review of the FCPD one month before the fatal police shooting of Michael Brown in Ferguson, Missouri, an event that not only sparked large-scale demonstrations across the country and even around the world, but also shone a bright spotlight on policing practices throughout the United States. In the months that followed, uses of force in other cities, including New York, Cleveland, and many others, brought even more attention to the policing profession and a closer examination of how and when police officers use force. Not since the civil rights and anti-war protests of the 1960s have the actions of America's police officers come under as much scrutiny as they are today.

PERF's review of Fairfax County was not prompted or swayed by events in Ferguson or elsewhere. PERF's mission was to focus on the Fairfax County Police Department—how it is managing use-of-force, and how the FCPD could enhance its policies and practices to become more effective in this area. Even so, this review by necessity now becomes part of the larger, national discussion of policing and police-community relations.

One of the first recommendations in this report calls for the FCPD to adopt a policy stating that a respect for the sanctity of human life must be a guiding principle for the department's use-of-force policies, procedures, and training. A number of other police agencies nationwide have adopted such policies.

The goal of a "sanctity of life" policy is to ensure that police policies and training are designed to protect the lives of *everyone*. Often, police must respond to situations in which it is difficult to differentiate between a person who needs mental health care and a criminal offender who poses a serious threat. Across the nation, there have been demonstrations by people who believe the police have been too quick to use deadly force against persons who were not posing a threat, with tragic consequences. Tragedy also can strike the police, as the FCPD experienced in 2006 when a carjacker, armed with seven guns, drove into a police station parking lot and killed two officers. By calling for a reverence for the sanctity of human life, effective use-of-force policies and training are intended to ensure that officers can protect the public and also protect themselves.

## **Basic Facts about the FCPD**

Fairfax County is a large urban/suburban county located just west of Washington, DC. The county is roughly 400 square miles and as of 2013, had a population of 1,111,620.<sup>2</sup> The FCPD is composed of 1,385 sworn officers, and is divided into eight service districts. The agency's vision statement is "to provide ethical leadership to engage with the community to prevent and fight crime, increase the culture of safety, and to keep pace with urbanization." Furthermore, the FCPD's mission is to "protect persons and property by providing public safety services and the fair and impartial enforcement of the laws of the Commonwealth of Virginia in the County of Fairfax, while promoting community involvement, as well as stability and order through service, assistance and visibility."

The FCPD is the largest police department in the Commonwealth of Virginia with the exception of the Virginia State Police.<sup>3</sup> FCPD was the first agency in Virginia to become accredited under the Virginia Law Enforcement Professional Standards Commission (VLEPSC) program.<sup>4</sup> The agency has recently renewed its partnership with the Commission on Accreditation for Law Enforcement Agencies (CALEA), a national law enforcement accreditation process designed to increase the professionalism of law enforcement agencies. The FCPD plans to be re-accredited in 2016.

All FCPD training is conducted at the Fairfax County Criminal Justice Academy. The FCPD provides oversight of the academy, which also serves the Fairfax County Sheriff's Office, the towns of Herndon and Vienna, and the Fairfax County Fire Marshal's Office. An FCPD police major is assigned command of the academy, which is comprised of experienced staff from the FCPD, the Sheriff's Office, and towns of Herndon and Vienna.

## **Scope of Services**

For this assessment, the PERF team conducted a review of the department's policies, procedures, training, and curricula and conducted extensive on-site interviews and observations. PERF also obtained and analyzed information on use-of-force incidents over the past decade. *PERF did not conduct a detailed review of individual cases; that was not within the scope of the project.* This

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<sup>2</sup> <http://www.fairfaxcounty.gov/demogrph/gendemo.htm>

<sup>3</sup> Virginia Law Enforcement Professional Standards Commission Assessment Report, 2013.

<sup>4</sup> Ibid.

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report describes the findings of PERF's assessment and presents 71 recommendations in a range of areas.

PERF's review consisted of 13 main tasks:

1. Review of the hiring process of the Fairfax County Police Department.
  2. Review of all use-of-force policies and procedures, directives, training curricula, and any other materials directly or indirectly pertaining to FCPD's use of force, including deadly and less-lethal force options. FCPD's training in use of force, use of less-lethal tools, crisis intervention, self defense, firearms, and other related topics was assessed and compared to 10 other law enforcement agencies similar in size and mission to the FCPD. This assessment included FCPD's core training of new police recruits, field training, in-service training, and specialized training programs.
  3. Assessment of the training and certification process for all use-of-force instructors.
  4. Examination of policies and procedures, directives, and training curricula related to initial response to critical incident calls, and assessment of the role of first responders, first-line supervisors, commanders, and special units.
  5. Examination and assessment of the knowledge of FCPD members regarding use-of-force policies and procedures.
  6. Interviews with instructors for recruit, in-service, and special unit use-of-force training to determine consistencies between policies and practice.
  7. Comparison of the FCPD's policies and procedures, directives, and training curricula against national standards and Virginia accreditation and training standards, national best practices, and policies and guidelines from a variety of progressive law enforcement sources.
  8. Benchmarking of the Fairfax County policies, procedures, and training curricula described above against 10 comparable U.S. law enforcement agencies to identify best practices and discuss differences among the agencies on each dimension benchmarked.
  9. Interviews to identify FCPD's strengths, assets, and deficiencies in the implementation of use-of-force policies, procedures, and training.
  10. Identification of positive aspects of existing policies and practices.
  11. Identification of areas needing improvement.
  12. An on-site visit to discuss findings and recommendations.
  13. Compilation of a draft report for review and comment by the department and county.
- This final report incorporates comments and reviews, as appropriate.

## **Methodology**

PERF used three primary methodologies for the collection of information:

1. Personal interviews with county and FCPD officials and community stakeholders
2. Collection, review, and analysis of available data
3. Personal on-site observations.

Documents provided by the county and the FCPD, and reviewed by PERF, included the following:

- All relevant written directives
- The department's organizational chart
- Department standards (rules) of conduct
- The department's mission, vision, and values statement
- Departmental directives that govern the use of force
- Departmental directives that describe the process, roles, and responsibilities for the review of use-of-force incidents
- Departmental directives that describe how use-of-force incidents are reported
- Departmental directives regarding emergency response to critical incidents
- Forms for reporting use-of-force incidents
- Departmental directives that describe care options for officers after they have been involved in a use-of-force incident
- Departmental directives that cover the issue, use, and training for all weapons, both lethal and less-lethal
- Departmental directives that cover the use and training for empty-hand use-of-force tactics
- Departmental directives that cover the use and training of canines
- Departmental directives that cover police pursuits and emergency vehicle operations
- Recruit training curricula for the last three years
- In-service training curricula for the last three years
- Supervisory and command level training curricula for the last three years
- Specialized training curricula for the last three years (i.e., lethal and less-lethal weapons)
- Specialized training for any tactical response units (e.g., SWAT)
- All relevant documents and directives related to the recruitment and officer selection process
- Departmental directives describing supervisory responsibilities for each rank
- Contracts and MOUs with employee associations

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- Virginia Law Enforcement Professional Standards Commission assessment reports
- Police audit reports since 2004
- The department's strategic plan with updates/progress reports
- FCPD Annual Reports from 2009 through 2013
- Department staffing roster that identifies teams/units/platoons/sections/divisions/etc., which would indicate reporting relationships and span of control.

***Comparison to Other Departments and Accreditation Agencies***

In addition to the documents provided by the FCPD, PERF reviewed use-of-force policies, procedures, and training materials from 10 other police departments, as well as two accreditation agencies that evaluate law enforcement agencies on the state and national levels. The 10 agencies were chosen to provide a cross-section of police departments across the United States. All are large urban/suburban departments that face many of the same crime, disorder, and operational challenges as the FCPD:

1. Anne Arundel County, MD, Police Department
2. Cincinnati Police Department
3. Fort Worth, TX, Police Department
4. Las Vegas Metropolitan Police Department
5. Los Angeles Police Department
6. Miami Beach, FL, Police Department
7. Minneapolis Police Department
8. Montgomery County, MD, Police Department
9. Nassau County, NY, Police Department
10. Seattle Police Department (whose use-of-force policy was updated effective January 2014 to comply with a settlement agreement with the U.S. Justice Department's Civil Rights Division).

The two accreditation agencies are:

1. Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA)
2. Virginia Department of Criminal Justice Services (DCJS)

***General Orders and Standard Operating Procedures***

The Fairfax County Police Department uses a combination of General Orders (GOs), department-wide Standard Operating Procedures (SOPs), and more specific division SOPs. The

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department's GOs are available on the FCPD website for the public to review.<sup>5</sup> More specific department-wide and division-specific SOPs often describe sensitive police procedures and tactics, and are not available to the public.

During the course of this review, PERF staff members had to compare and contrast FCPD's GOs and SOPs to fully understand the department's policy regarding certain topics, such as the use of Electronic Control Weapons and police pursuits. Although many police agencies have similar formats in which policy on a given issue is found in several different documents, the FCPD would better serve its officers with more direct, clear, and simple access to department policy.

Specifically, the FCPD should work to simplify the manner in which it states and explains policy by using General Orders for all department-wide policies, and Standard Operating Procedures only for division-specific policy and procedures. The FCPD should continue to make its General Orders publicly available through its website, with the exception of departmental procedures or tactics that are sensitive in nature and not appropriate for public disclosure (for example, physical locations checked during heightened security threats or specific police tactics used in undercover police operations). In addition, to promote accountability and communication among its personnel, the FCPD should move away from a paper-based system of updating and distributing policy and toward an automated software system such as PowerDMS.

This overall approach to policy directives is both a best practice and in keeping with standards of the Commission on Accreditation for Law Enforcement Agencies (CALEA). Specifically, Section 12.2, "Written Directives," of CALEA standards states that "The agency should establish a formal written directive<sup>6</sup> system to provide employees with a clear understanding of the constraints and expectations relating to the performance of their duties. The written directive system should permit rapid access to individual policies, procedures, rules and regulations, and should differentiate types of directives, e.g., general order, special order, personnel order."

### ***Current Strengths and Areas for Improvement***

PERF's review found that in several areas, including many aspects of training, emphasis on de-escalation, and handling of emotionally disturbed persons and critical incidents, the FCPD is doing a commendable job and meeting or exceeding national best practices. The FCPD was the first agency in Virginia to become accredited under the Virginia Law Enforcement Professional Standards Commission (VLEPSC) program. And the fact that Fairfax County sought out PERF,

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<sup>5</sup> <http://www.fairfaxcounty.gov/police/inside-fcpd/generalorders/>

<sup>6</sup> A written directive is a broad and general term used to describe police department policy. For the purposes of this report, the term "General Orders" in the FCPD is synonymous with the term "written directives."



before police use-of-force because a national flashpoint, to take a comprehensive, independent look at its use-of-force policies and practices demonstrates its willingness to take a critical look at how it can improve upon its practices.

PERF identified a number of areas—in policy, training, officer selection, and operations—where improvements can be made. This report contains 71 detailed recommendations that, if implemented, would significantly enhance the FCPD’s internal operations and its ability to serve the community in ways that build trust and cooperation, while increasing the professionalism with which use-of-force incidents are handled in the county.

### ***Toward a Use-of-Force Decision Making Model***

Beyond the individual recommendations contained in this report, PERF is also recommending that the FCPD take one other bold step: consider developing and adopting a new and innovative decision-making model to guide officers as they approach a whole range of situations, and in particular the difficult circumstances in which the use-of-force may be necessary – or may be avoided.

Police in the United Kingdom have been applying a “National Decision Model” (NDM) to provide officers with more useful guidance about how to approach situations that might involve use-of-force. The National Decision Model has been used by police agencies in the UK for years in other contexts, such as planning for major demonstrations or providing a structure for the response to spontaneous critical incidents. In recent years, police have been applying the NDM to teaching officers about use of force.

For example, if an officer responds to a call about a person on the street behaving erratically and brandishing a knife, instead of moving immediately against the subject in order to neutralize the potential threat, the NDM prompts officers to try to “slow the incident down” in order to provide time to assess the situation and consider options. Officers are trained to ask themselves a series of questions, such as: “What exactly is happening here? Is this situation a threat to public safety? Is this a policing issue, or a medical emergency? If there is a threat, what are my options for stopping it? Am I the best person to handle it, or are there others who are better trained and equipped for it? Are there other resources I can summon?” (See pp. 21-23 for details on the UK’s National Decision Model.)

PERF believes that this type of decision-making model has great potential for police agencies in the United States. And in Fairfax County as well as in other police departments nationwide, PERF is calling for retraining of officers on use-of-force issues in a holistic, integrated, scenario-based way. This new training should include an emphasis on de-escalation strategies, as well as

on effective responses to incidents involving persons with mental illness, disabilities, or other conditions that can cause them to behave erratically and dangerously.

***Helping Officers Respond to Incidents Involving Emotionally Disturbed Persons***

PERF believes a decision-making model could be especially helpful to officers who frequently deal with emotionally disturbed persons and those seeking to commit so-called “suicide by cop.” PERF’s review of the FCPD found that in about half of the officer-involved shootings over the last decade, the person was suffering from a mental health crisis at the time of their encounter with the police. Fairfax County is not unique in this regard; thousands of police agencies across the country are confronting the public safety challenges associated with mental illness on a daily basis. A decision-making model could prompt agencies and individual officers to look at these situations differently and help them approach these encounters with new and different perspectives and tactics.

## **USE-OF-FORCE: A BROADER PERSPECTIVE**

While this report focuses on the policies and practices of the Fairfax County Police Department, it is important to put the issue of police use of force into a broader context. Exploring and understanding this issue from national and international perspectives can help officials in individual jurisdictions such as Fairfax County to be more effective in their own reform efforts.

### **Re-examining Police Use of Force: National Trends**

Like the FCPD, many police departments in the United States have begun reviewing their use-of-force policies, practices, and training. Some reviews have been triggered by local events. Others are the result of scrutiny of police practices resulting from nationally publicized events such as those in Ferguson, MO, Staten Island, NY, and Cleveland. Federal consent decrees that prescribe use-of-force procedures in cities such as Pittsburgh, Cincinnati, Seattle, New Orleans, Albuquerque, NM, and Portland, OR, have prompted other cities to become more vigilant about ensuring that their use-of-force policies, practices, and training mirror best practice. In still other agencies, forward-looking leaders have determined that use-of-force reviews are a hallmark of progressive police agencies and have undertaken their own re-examinations.

#### ***The Standard of “Objective Reasonableness”***

Typically, a use-of-force review covers a range of topics and areas. Many of the examinations begin with a use-of-force policy review to ensure that the policies are guided by the “objective reasonableness” standards articulated by the U.S. Supreme Court in *Graham v. Connor* 490 U.S. 386 (1989). Some agencies still have language about a “force continuum” which matches specific use-of-force weapons or tools to specific levels of suspect resistance. A continuum may be helpful as a training technique, but the best policy is designed to reflect the Supreme Court’s statement that “reasonableness” cannot be defined precisely or applied mechanically. Thus, officers should have an understanding of the underlying principles.

In *Graham*, the Supreme Court stated, “[A]ll claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard, rather than under a ‘substantive due process’ approach....Determining whether the force used to effect a particular seizure is ‘reasonable’ under the Fourth Amendment requires a careful balancing of the ‘nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake. ...*Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, ... its proper application requires careful attention to the facts and*

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*circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.*” (Emphasis added.)

The Supreme Court added, “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the ‘20/20 vision of hindsight.’” And further, “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”

Adjusting FCPD policy language to comport with the “objective reasonableness” standard articulated in *Graham v. Connor* is a fundamentally important recommendation in this report.

A second area that many departments are reviewing is their policy, training, and practice around the concept of “de-escalation.”<sup>7</sup> The goal of de-escalation is to reduce the “temperature” of an encounter between a police officer and a resident from hostile to compliant, *without having to use physical force*. In some instances, de-escalation involves verbal techniques and a general approach designed to prevent a subject from becoming hostile or uncooperative in the first place. For example, a person with mental illness may be more likely to respond well if an officer gently asks questions, rather than loudly issuing orders. In situations where an officer does apply force, de-escalation can involve gradually reducing the amount of physical force applied as the situation comes under the officer’s control.

The well-publicized 2009 encounter between Cambridge, MA, Police Sergeant James Crowley and Harvard Professor Henry Louis Gates, Jr., demonstrated “how a police officer and a member of the community can clash if they do not share a sense of responsibility about cooperating toward the common goal of a positive encounter that results in increased public safety.”<sup>8</sup> The report on the episode states that:

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<sup>7</sup> See *An Integrated Approach to De-Escalation and Minimizing Use of Force*, Police Executive Research Forum, August 2012.

[http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf)

<sup>8</sup> “Missed Opportunities, Shared Responsibilities: Final Report of the Cambridge Review Committee,” June 15, 2010, p 4.

[http://www.cambridgema.gov/CityOfCambridge\\_Content/documents/Cambridge%20Review\\_FINAL.pdf](http://www.cambridgema.gov/CityOfCambridge_Content/documents/Cambridge%20Review_FINAL.pdf)

Police officers, as well as community members, should strive to de-escalate the level of tension in their encounters with each other. Officers should be trained in interpersonal communication skills in order to de-escalate encounters—after they have satisfied themselves that they have control of the situation and risks have been mitigated. In some cases, de-escalation also can be a tool for helping to reduce danger by calming a person who is upset or unstable.<sup>9</sup>

### ***Accurate Reporting and Review of Incidents***

Use-of-force reviews by PERF and other organizations also examine how use-of-force incidents are reported, reviewed, and investigated for appropriateness. Emphasis is being placed on accurate and authentic use-of-force reporting, with officers being able to articulate the circumstances of a use of force without resorting to boilerplate language or commonly used phrases. Best practices state that officers should avoid language that provides conclusions instead of facts—for example, concluding a suspect was “assaultive” instead of stating the facts, such as “the suspect assumed a fighting stance and said he was going to punch me.” When officers provide straightforward, fact-based reports, supervisors reviewing the use of force can have a clearer picture of the incident and justification for the use of force.<sup>10</sup>

Use-of-force investigations should be checked to make sure they are comprehensive and thorough at each supervisory and management level, and not merely rubber-stamped. In many departments, focus is being placed on ensuring that deadly force investigations receive the same rigorous reviews, regardless on their outcome (i.e., the level of suspect injury). For example, best practice holds that all officer-involved shooting investigations should focus on the officer’s intention, not on his or her marksmanship. A shooting by an officer in which no one was injured should not receive a less careful review than a shooting in which a suspect was injured or killed, because the level of injury often is a matter of chance.

### ***Making Policies More Open and Transparent***

Police departments are also working to make their use-of-force policies and practices more open and transparent to the communities they serve. These efforts require careful balancing against the need to ensure that all investigations are performed fairly.

Other use-of-force areas that agencies across the country are assessing include the following:

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<sup>9</sup> Ibid., p. 8.

<sup>10</sup> “Use of Force Report Writing Guide.” <http://www.aele.org/uof-rep-guide.pdf>

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- Policies, practices, and training governing the police response to incidents involving persons with behavioral health issues. Departments are striving to train patrol officers in crisis intervention techniques, and to create specially trained teams of officers and mental health workers, to prevent unnecessary uses of force resulting from a lack of understanding about the behavior of persons in crisis.
- Policies on shooting at or from moving vehicles. There is an increasing consensus that officers should never shoot at a moving vehicle when the vehicle itself is the only “weapon” being used against the officers, because the risk to everyone on the scene does not decrease if a speeding vehicle’s driver is disabled.
- Firearms training that moves beyond mere marksmanship. Departments are increasingly ensuring that both recruit and in-service officers receive practical, scenario-based training about whether force should be used, and whether other options are available, through computer-based firearms training simulators, simunitions<sup>11</sup> training, or paintball exercises. Ideally, use-of-force training combines training in various weapons with training about use-of-force legal issues, de-escalation strategies, the response to persons with mental illness, and other elements, because these multiple factors often come together in a single incident.
- Policies, training, and practices regarding Electronic Control Weapons (such as Tasers™). The best practices identified in *2011 Electronic Control Weapons Guidelines* by PERF and the U.S. Justice Department’s Office of Community Oriented Policing Services provides a starting point for these assessments.

***Body-Worn Cameras and the Importance of Police Tactics***

These extensive policy reviews are leading agencies across the country to investigate body-worn cameras for their officers as part of an approach to become more open and transparent. Body-worn cameras raise a number of issues that need to be dealt with as part of implementation. PERF describes these issues in its recent publication on the subject.<sup>12</sup>

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<sup>11</sup> Simunition is a trademark name for a frequently used “paintball” type ammunition used in police training—see <http://simunition.com/en/>.

<sup>12</sup> *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned.*

[http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf](http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf)

In addition, use-of-force policy reviews are prompting police agencies to take a new and closer look at police tactics. At PERF's national conferences of police chiefs to address these issues, chiefs say that in some cases, departments should train officers in new tactics, but in other cases, officers use excessive force because they have not adhered to longstanding training on tactics – such as instructions that an officer keep his or her distance from a person brandishing a knife until the officer has a strategy for disarming the person safely.

### ***Police Legitimacy and Procedural Justice***

Much of the effort that police agencies across the United States are undertaking with regard to use-of-force policies, practices, and training relates to broader issues of police legitimacy and procedural justice. Recent events in Ferguson, Baltimore, and elsewhere have demonstrated one thing very clearly: the experiences of individuals in police encounters, and the collective experiences of members of the community about whether a police practice is fair and administered even-handedly, have a great deal to do with the extent to which police actions are considered to be legitimate.

The concept of legitimacy is especially critical when it comes to the use of force. If there is a widely held view in the community, or in certain neighborhoods, that the police use excessive force, the police will be viewed as illegitimate. Conversely, if the police are viewed as using force only as a last resort, then the police are more likely to be viewed as legitimate in the eyes of the community. Because legitimacy strikes at the heart of the relationship between police and residents, and because how and when police use force influences whether the community views the police as being legitimate, it is critical for agencies to review their use-of-force policies, practices, and training.

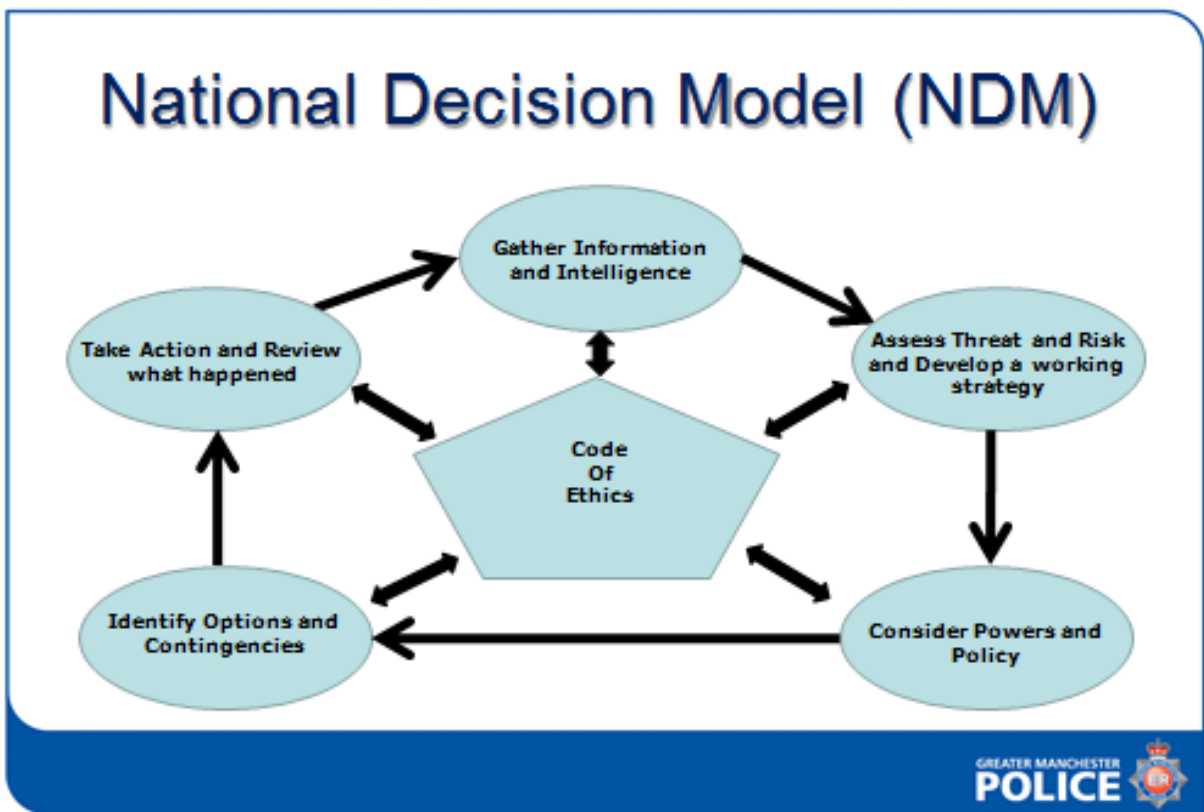
## **An International Perspective on Police Use of Force**

Over the past year, there has been an intense focus on police agencies' use of force in the United States. Use of force also has been an issue for police departments around the world, and many agencies outside the United States are focusing on reforms as well. In the United Kingdom, these efforts have centered around an innovative approach called the National Decision Model, pioneered by Police Scotland and other agencies.

As described by the Greater Manchester Police, “The National Decision Model is a system put into place to assist police officers with making informed decision in difficult circumstances.”

The NDM also serves as a tool “to help officers evaluate their decisions that have had a successful outcome, as well as the small proportion that do not.”<sup>13</sup> The NDM has been used for many years to give police an organized, systematic approach to complex situations, such as planning the police management of major demonstrations or critical incidents such as natural disasters. In recent years, the NDM also has been used to provide officers with an organized thought process for handling incidents that may require use of force – or in some cases, may be resolved without use of force if the officers make good decisions.

The NDM has six key elements, each providing the officer with an area for focus and consideration:



- **Gather information and intelligence.** This includes information the officer sees, hears, smells, and touches, as well as intelligence from police systems (often relayed by call takers and dispatchers), prior local knowledge, or tips from colleagues or members of the public.

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<sup>13</sup> “The National Decision Model,” Greater Manchester Police, Power Point Presentation.



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- **Assess threat and risk, and develop a strategy.** The threat assessment involves accurately assessing such impact factors as the person, the place, and any objects or weapons that may be in play. Officers are encouraged to work through possible ways for dealing with the incident and considering multiple options as they are processing this information.
- **Consider powers and policy.** When faced with different sets of circumstances, officers are encouraged to consider what powers they have available to them, through both the law and department policy.
- **Identify options and contingencies.** This is where officers make decisions about the tactical options available to them—everything from communication and negotiation up to deadly force. Under the model, officers must be able to rationalize why a particular force option was used and why they did not use another option involving less force.
- **Take action and review what happened.** Officers' actions are measured against a four-part test: whether they are proportionate, lawful, accountable, and necessary.
- **Follow the code of ethics.** Officers' decisions at each stage of the NDM should be consistent with the agency's code of ethics.

In practice, UK police officials have said at PERF meetings that the NDM involves teaching officers to ask themselves questions during a potential use-of-force situation, such as: “What am I dealing with here? What exactly is happening? What is the nature of the threat? Am I the right person to deal with this? Do I need to deal with it *now*? Do I have the right equipment to deal with it? Is the police department the primary agency for this, or is this primarily a medical emergency? What are my options if I do use force? Is the subject much larger and stronger than I am? Can I obtain cover or concealment and give myself more space and time to consider options? What other resources can I summon to this scene?”

In implementing the NDM, police departments in the United Kingdom recognize that in a fast-moving incident, it will likely be impossible to methodically work through each phase of the model. In any given situation, an officer is likely to apply the NDM both consciously and subconsciously. The model is designed to provide officers with both structure and flexibility in their decision making, with the overarching priority being the safety of themselves, their colleagues, and members of the public.

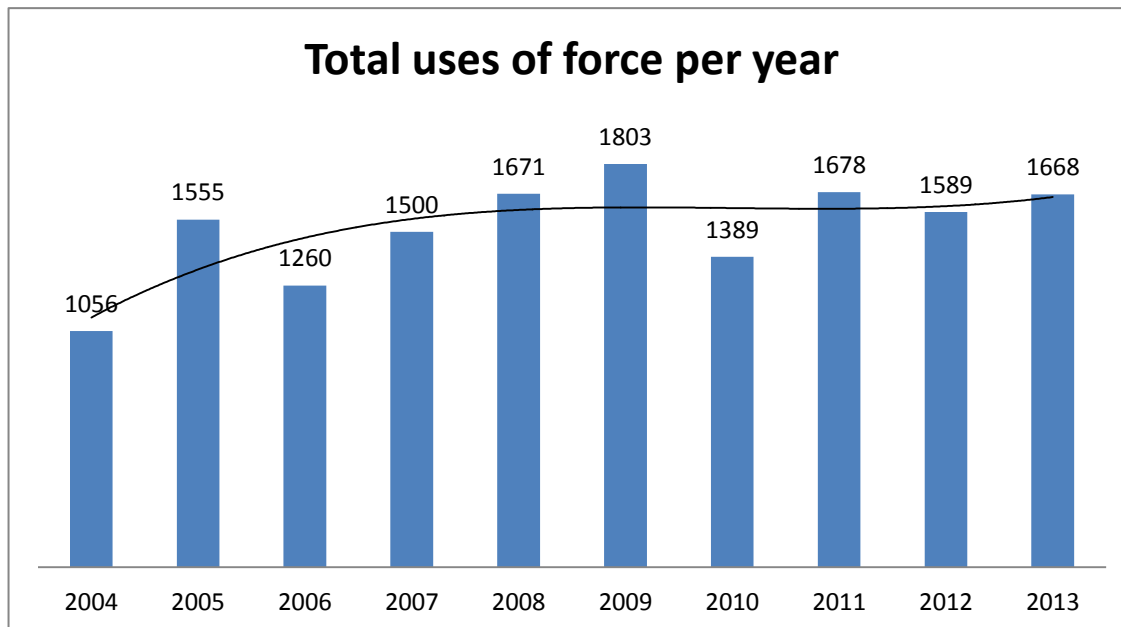
PERF recommends that U.S. agencies study the UK model and begin to look at adapting the NDM to their own circumstances and their own policies. PERF believes that, in conjunction with the other reforms contained in this review, the Fairfax County Police Department would be well positioned to be among the first agencies in the United States to experiment with the model.

## USE-OF-FORCE DATA ANALYSIS

This report focuses on a review of the Fairfax County Police Department’s policies, procedures, and training related to the use-of-force. To provide context for this examination, PERF obtained data on use-of-force incidents in the county from 2004 to 2013 (the latest year for which data are available). This information comes from a yearly Use-of-Force Report prepared by the FCPD. The purpose of this analysis was not to dissect individual cases, but rather to identify any trends or issues that might help inform this policy review.

### 10-Year Trend Analysis

Overall, the annual number of incidents, including all use of use-of-force instruments, generally increased from 2004 to 2009, and plateaued in recent years. However, these aggregate totals mask some important considerations and trends that are revealed from a more detailed examination.



For example, the vast majority of use-of-force incidents—between 69% and 80% in any given year—involve the use of “hands on” the subject. In 2013, 79% of the reported use-of-force incidents were “hands on.” This should not be considered a negative finding; hands-on tactics in many situations may be less forceful than other options.

The next highest total—120 incidents, or about 7% of the annual total—involved discharge of an Electronic Control Weapon (i.e., TASER™).

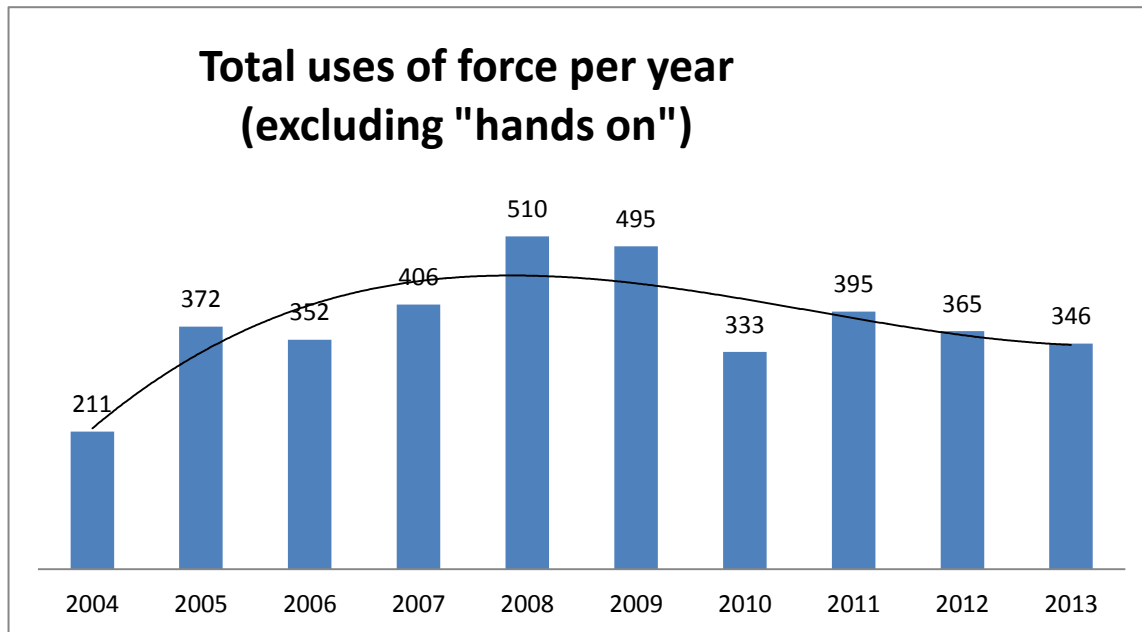
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Just over 5% of the total incidents in 2013 involved officers pointing a firearm. Officers discharged a firearm in 6 cases (about 0.3% of the total). The annual number of firearm discharges declined from 15 in 2008 to 7 or fewer in each of the next five years. Discharging of firearms remains a relatively rare occurrence in the FCPD.

<b>Instrument</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>O/C</b>	88	105	82	57	38	51	28	25	26	32
<b>Hands on</b>	845	1183	908	1094	1161	1308	1056	1283	1224	1322
<b>Baton/Asp/blunt object</b>	22	20	9	11	9	11	12	18	15	15
<b>Bean bag</b>	1	3	0	0	1	0	0	1	1	0
<b>Canine</b>	10	11	7	10	16	9	9	12	9	15
<b>PIT</b>	5	9	14	6	11	12	14	11	11	10
<b>Lit/pointed ECW</b>						15	10	23	29	24
<b>ECW discharge</b>	10	69	99	127	186	191	127	165	146	120
<b>Point firearm</b>	50	136	120	181	229	190	92	78	78	93
<b>Discharge firearm</b>	2	13	13	12	15	2	3	7	4	6
<b>Spit mask</b>						1	3	11	16	18
<b>Tactical vehicle intercept</b>						6	32	41	24	10
<b>Spike strips</b>						3	2	0	3	2
<b>Intentional vehicle contact</b>						4	1	3	3	1
<b>Other</b>	23	6	8	2	5					
<b>Total uses of force</b>	1056	1555	1260	1500	1671	1803	1389	1678	1589	1668
<b>Total uses of force (excl. "Hands on")</b>	211	372	352	406	510	495	333	395	365	346
<b>Percent of incidents that are "Hands on"</b>	80%	76%	72%	73%	69%	73%	76%	76%	77%	79%

The following chart removes those use-of-force reports that involved “hands on” only and presents the annual total of all other instances combined. The examination reveals that “non-hands on” use-of-force incidents have generally declined since 2008, driven largely by reductions in instances in which officers pointed their firearms, discharged an Electronic Control Weapon, or deployed OC spray. Between 2008 and 2013, pointing of firearms incidents declined by more than 59% (from 229 to 93), and ECW discharges dropped by 35% (from 186 to 120).



## Officer-Involved Shootings

Another part of the data analysis involved looking specifically at officer-involved shooting incidents (i.e., firearms discharges that hit their targets). Given the relatively small number of cases over the past decade, it is difficult to discern specific trends. The analysis revealed the following:

- PERF examined 25 officer-involved shooting cases from 2006 through 2014.
- In roughly half of the officer-involved shooting incidents, the subject had a gun or a realistic-looking “weapon” such as a BB-gun or other toy gun. The other cases involved knives, swords, or no weapon.
- Approximately half of the officer-involved shootings over the 10-year period could be viewed as involving emotionally disturbed persons (EDP) at the time of the event. This finding clearly supports the need for additional training on EDPs, and the need for broader awareness to recognize signs of a mental health crisis, including “suicide by cop” incidents.
- It took roughly 6-20 months to internally investigate and close these cases. Lengthy investigations can damage public perceptions of a department, especially if the department seems unresponsive to questions and concerns about the incident by the public or the news media.

## **FINDINGS AND RECOMMENDATIONS**

The remainder of this report consists of PERF’s findings and 71 recommendations, organized by nine topics:

- Police Officer Selection
- Use-of-Force Policy
- Use-of-Force Training
- Police Pursuits
- Academy Standards
- Instructor Training and Certification
- Response to Critical Incidents
- Public Information and Transparency
- Department-Wide Training.

Recommendations include suggested actions and background information explaining the rationale behind the recommendation. Where specific policy language is recommended, it is identified in a different font and labeled “Suggested Language.” Many recommendations also have “Benchmark Comparison” sidebars, which provide sources of further information from various police departments or other organizations.

As noted earlier, PERF compared applicable FCPD policies and practices to those of the 10 comparable agencies across the country (see page 9), as well as to the standards of the Virginia Department of Criminal Justice Services (DCJS) and the Commission on Accreditation for Law Enforcement Agencies (CALEA). Recommendations in this report also are based on PERF’s extensive experience in conducting previous research and studies of this nature.

Many of PERF’s recommendations are quite detailed and technical in nature, including instances where specific language is proposed for certain policies. Other recommendations are more general suggestions for policy or training improvements. In some instances, the recommendations are designed to formalize in writing policies and practices that the FCPD is already following, and to more fully align the department with current legal standards and best practices of the profession. In other cases, the recommendations are intended to build upon the foundation that the FCPD has already built, in areas such as training and an emphasis on de-escalation. Implementing this range of recommendations will enhance the overall professionalism of the FCPD and enable the department to serve the community and support its officers.

Following is a listing of PERF’s 71 recommendations. In the remaining pages of this report, each recommendation is described in detail, with background information and supporting data.

### **POLICE OFFICER SELECTION**

- Recommendation #1:** Formalize the Officer Selection Process .....
- Recommendation #2:** Update Written Directives on Officer Selection .....

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**Recommendation #3:** Create a Selection Review Committee.....

**Use-of-Force Policy**

**Recommendation #4:** Add a "Sanctity of Life" Statement to Department Policy.....

**Recommendation #5:** Add a "Duty to Intervene" Statement to Department Policy.....

**Recommendation #6:** Include De-escalation in FCPD Written Policy.....

**Recommendation #7:** Strengthen the Definition of "Use of Force".....

**Recommendation #8:** Strengthen the Definition of "Objectively Reasonable Force".....

**Recommendation #9:** Use the Term "Less-Lethal," Not "Non-Deadly".....

**Recommendation #10:** Expand the Definition of "Less-Lethal Force".....

**Recommendation #11:** Reorganize and Streamline Department Directives Related to  
Police Pursuits.....

**Recommendation #12:** Improve the Definitions of Different Types of Resistance.....

**Recommendation #13:** Use the Term "Objectively Reasonable" in Use-of-Force Policies.....

**Recommendation #14:** Tighten the Restriction on Shooting at or from a Vehicle.....

**Recommendation #15:** Create a New General Order on Pursuits and Vehicle Techniques.....

**Recommendation #16:** Ensure Every Use of Deadly Force Incident, Regardless of  
Outcome, Is Thoroughly Investigated.....

**Recommendation #17:** Ensure the Integrity of Use-of-Force Reports by Eliminating  
"Boilerplate" Language and Ensuring Supervisory Review.....

**Recommendation #18:** Revise Policy Language on Less-Lethal Force.....

**Recommendation #19:** Revise Policy Language on Reporting the Use and Investigation  
of Less-Lethal Force.....

**Recommendation #20:** Require Training on Use of the Baton.....

**Recommendation #21:** Require Training on Use of OC.....

**Recommendation #22:** Strengthen the Justification for Use of OC.....

**Recommendation #23:** Provide Additional Guidance on the Use of OC.....

**Recommendation #24:** Adopt the Term "Electronic Control Weapon (ECW)" in all  
Department Policies.....

**Recommendation #25:** Consolidate Policy on ECWs.....

**Recommendation #26:** Use Brightly Colored ECWs.....

**Recommendation #27:** Clarify that ECWs Should Not Be Used against Passive Subjects.....

**Recommendation #28:** Clarify Risk of ECWs to Visibly Frail Persons.....

**Recommendation #29:** Implement Additional ECW Restrictions.....

**Recommendation #30:** Replace the Term "Non-Deadly" with "Less-Lethal" Force.....

**Recommendation #31:** Clarify In-Service Training Schedules.....

**Recommendation #32:** Certify Officers in ECW Use.....

**Recommendation #33:** Tighten Policy to Acknowledge Risks Regarding Repeated  
Use of ECWs.....

**Recommendation #34:** Clarify that Risks of ECWs and OC Are Not Equal.....

**Recommendation #35:** Warn Subjects Before ECW Use.....

**Recommendation #36:** Advise Other Personnel of Imminent ECW Use.....

**Recommendation #37:** Expand Policy against ECW Use for Pain Compliance.....

**Recommendation #38:** Strengthen Policy on Officer Protection.....

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- Recommendation #39:** Notify EMS of Potential ECW Use.....
- Recommendation #40:** Require Medical Evaluation Following ECW Exposure.....
- Recommendation #41:** Provide Sufficient Training Time for Officers to Explore  
ECW Use In-Depth.....
- Recommendation #42:** Train Officers to Provide Detailed Information in All ECW Reports .....
- Recommendation #43:** Require Certification in PepperBall Use .....
- Recommendation #44:** Consolidate Department Policy on Reporting Non-Deadly  
Use of Force and Investigation of Injuries .....
- Recommendation #45:** Delete Outdated "Use-of-Force Model" from the Use-of-Force Policy.....
- Recommendation #46:** Delete References to Techniques That Are Not Defined in Policy .....
- Recommendation #47:** Create a Single Policy on Use of Force .....

**Use-of-Force Training**

- Recommendation #48:** Prohibit "Choke" Holds in Policy.....
- Recommendation #49:** Provide Substantial Scenario-Based Recruit Training in the  
Use of Force, and Strategies for Reducing the Use of Force.....
- Recommendation #50:** Begin Recruit Training with the Most Important Concepts in Policing. ....
- Recommendation #51:** Provide In-Service, Scenario-Based Training At Least Annually on the  
Issues Cited in Recommendation #49 .....

**Police Pursuits**

- Recommendation #52:** Consolidate Policies on Police Pursuits .....
- Recommendation #53:** Use the DCJS Model Policy as the Basis for a Stand-Alone  
FCPD Police Pursuit Policy.....
- Recommendation #54:** Discontinue Use of the PIT Maneuver.....
- Recommendation #55:** Require Reporting of Use-of-force Events during  
Police Pursuits .....

**Academy Standards**

- Recommendation #56:** Consider Expansion of Scenario-Based Training .....
- Recommendation #57:** Continue In-Service Training on De-escalation of Incidents .....
- Recommendation #58:** Provide an Annual Firearms Course that is Scenario-Based and  
Tactically Oriented .....

**Instructor Training and Certification**

- Recommendation #59:** Plan for Continuity of Training Expertise .....

**Response to Critical Incidents**

- Recommendation #60:** Create a Separate Special Operations Division Policy .....
- Recommendation #61:** Provide More Detail in the Policy on Bomb Threats and Incidents .....
- Recommendation #62:** Add Definitions to Hostage/Barricaded Persons Policy .....
- Recommendation #63:** Add Policy on the Responsibilities of the First Supervisors  
on the Scene .....
- Recommendation #64:** Add Policy about the Timely Notification of a Hostage/Barricade  
Incident to the Special Operations Division .....
- Recommendation #65:** Add Policy on Working with the News Media.....

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**Recommendation #66:** Add Policy on After-Action Reviews .....

**Recommendation #67:** Establish the "Memphis Model" for Crisis Intervention.....

**Recommendation #68:** Obtain DCJS Approval of the Department's CIT Course .....

**Recommendation #69:** Fully Integrate Dispatch Personnel into the  
Crisis Intervention Response .....

**Public Information and Transparency**

**Recommendation #70:** Publish Annual Use-of-Force Statistical Information on the  
FCPD Website .....

**Department-Wide Training**

**Recommendation #71:** Provide Department-Wide Training to Address Policy Changes  
Outlined in this Report.....



## **POLICE OFFICER SELECTION**

Effectively evaluating candidates and selecting the right individuals to serve as police officers are essential building blocks for any successful community-oriented police agency. The officer selection process involves many steps, often including a written exam,<sup>14</sup> physical agility test, oral interview, drug screen, background investigation, polygraph, and medical and psychological screening. The process can take months to complete before candidates are offered a position in an agency's training academy.

Ensuring a fair, impartial, valid, and reliable process that attracts diverse and qualified individuals is critical to building and maintaining a professional law enforcement agency. The process should specifically include safeguards designed to screen out those who might have a tendency to use force unnecessarily or excessively.

### ***Fairfax County Selection and Hiring Process***

The Fairfax County Police Department's Personnel Resources Division is responsible for managing the hiring process. The captain of the Personnel Resources Division (who serves as the division commander) reports to the major in the Administrative Support Bureau, who reports to the deputy chief for administration, who reports to the chief of police.

In many respects, FCPD's hiring process is similar to those of other major law enforcement agencies. However, FCPD's Personnel Resources Division has recently undergone several important changes. In 2010, the FCPD stopped using a written exam as part of the hiring process. Following discussions with the department's legal advisers, the FCPD eliminated the written test as a screening tool, because almost all candidates were passing the test anyway. In January 2014, the Personnel Resources Division came under the direction of a new commander. Since approximately June 2014, the department has employed an online application/initial screening system called NEOGOV. NEOGOV is used by many state and local government agencies to automate the entire hiring and performance evaluation processes.

Today, FCPD's selection process involves the following steps:

- Submission of application/initial screening guide with 50-60 questions via the Internet-based NEOGOV system.

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<sup>14</sup> As discussed below, the FCPD no longer utilizes a written exam as part of its hiring process.

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- Classification Review:
  - Applicants are classified as “Highly Qualified” (HQ, the highest ranking), “Better Qualified” (BQ), or “Denials.” The classification decision is made exclusively by the Personnel Services Division commander. Decisions are generally made within 48 hours of submission of information by the applicant.
  - Applicants classified as either “Better Qualified” or “Denials” do not proceed and are sent status letters. “Better Qualified” applicants may re-apply after one year.<sup>15</sup>
  - Applicants classified as “Highly Qualified” proceed to the next step of the selection process. PERF interviews with FCPD personnel indicate that approximately two-thirds of all those who apply move forward to the next step of the process.
- HQ applicants are sent a link to a Personal History Statement and Conditional Job Offer. They complete the Personal History Statement and then bring it and the Conditional Job Offer to the Personnel Services Division. The Conditional Job Offer is signed by the applicant in the presence of a division member.
- The Personal History Statement is reviewed by a recruitment officer and the division commander. The division commander and recruitment officer determine whether the applicant will move to the next step in the process, the Physical Agility Test (PAT).
- The Physical Agility Test consists of a weapons manipulation test (trigger pull and slide manipulation) and two obstacle courses.<sup>16</sup> Those who fail the PAT are dropped from the process. Those who pass are then scheduled for a polygraph examination.
- The polygraph examiner reviews the polygraph results with the polygraph supervisor. The information is then shared with the division commander. Together, they determine whether the applicant continues in the process, is retested in the polygraph with a different examiner, or is dropped from consideration.
- For those who move forward, the background investigator then gets the applicant’s file.
  - Typically the background investigator gets the applicant’s file after the applicant has passed the PAT and polygraph. This could happen earlier in the process if the applicant is from outside the Fairfax County area. In these cases, accommodations are made to schedule different stages of the process in closer succession, while the applicant is in the area.
  - The background check includes both a records check and a personal interview.
  - Background investigations detectives check applicant references.

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<sup>15</sup> Fitzpatrick Jr., R. *Classification Criteria* [Memorandum]; February 27, 2013.

<sup>16</sup> See <http://www.fairfaxcounty.gov/police/jobs/092414patforwebpage.pdf>.

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- Reference checks for local employers, spouses, and parents are conducted via face-to-face meetings with an investigator. Other references are contacted via mail or phone. Generally, references are sought from employers going back as far as 10 years, depending on the age of the applicant.
- Background investigations detectives schedule medical and psychological examinations.
- During psychological examinations, approximately 2% of applicants are not recommended for hire because of a mental health concern. And 17.5% are not recommended for hire due to evidence of deception discovered during the polygraph, which was subsequently not resolved during the psychological exam process.
- Background investigations detectives then provide a recommendation for selection.
- The entire file is reviewed by the assistant commander and then the commander of the Personnel Resources Division. PERF was told in FCPD staff interviews that the recommendations of the background investigations detectives are almost always accepted.
- The Personnel Resources commander and assistant commander interview the most highly qualified applicants, and typically employment offers are made at this stage. PERF's interviews with division staff indicate that due to overall staffing shortages in the FCPD, nearly all applicants who make it to this stage in the process are offered a recruit position—a trend that has occurred for the last several years.

PERF interviews indicated that personnel assigned to the Personnel Resources Division have the necessary experience and training for this important function. The commander and assistant commander both have experience as investigators within the division, and the background investigators have extensive law enforcement investigatory experience.

FCPD utilizes a pre-hire status, in which job offers are extended to candidates even if the next academy class is not full and ready to start. This allows the department to hire and retain highly qualified applicants for whom the FCPD has already invested considerable time and resources, and not lose them to other departments simply because of a gap in time before the next academy class begins. Additionally, during this pre-hire period, officer candidates are able to gain some familiarity with the FCPD as an employee assigned to a variety of non-sworn roles in the department, as they await the start of the next academy class.

**RECOMMENDATION #1: Formalize the officer selection process.**

The FCPD Personnel Resources Division should make the first hiring status determination after review of applications/initial screening guides based on a defined set of standards identified in a departmental written directive. In addition, the division should consider including other Personnel Resources Division staff in the initial review process, and the decision-making process should be formalized in the written directive.

Even prior to January 2014, when there was a change in the command structure, the initial decision concerning classification was generally made by one person. That decision could be made with the assistance of additional staff including the recruitment director, the polygraph supervisor, or background investigations detectives.

The current commander has taken over sole responsibility of this function to ensure continuity. While the move toward continuity is a step in the right direction, there is no current written policy describing the guidelines used to make classification decisions. The criteria currently applied in making classification decisions are stricter than the February 27, 2013, memorandum provided to PERF. Further, the guidelines currently utilized were described in department interviews as a “moving matrix.”

Therefore, initial classification determinations are made by one individual without updated or otherwise well-defined criteria. While some flexibility is common in hiring decisions, to the extent possible, selection decisions should be the result of written, well-defined criteria.

Despite the best efforts of the department, it would be difficult to ensure that classification decisions are uniform when written criteria are not current or not strictly adhered to. It is also not clear what criteria are being applied during later stages when classification decisions are made (for example, after the polygraph

**Benchmark Comparison:  
Recommendation #1**

PERF’s Recommendation #1 is in line with the model policies of the Virginia Law Enforcement Accreditation Program Manual, published by the Virginia Law Enforcement Professional Standards Commission (VLEPSC). Specifically, VLEPSC recommends that agencies have a written directive which requires that all elements of the selection process be conducted in a uniform manner. It specifically adds as commentary that “[a]ll elements of the selection process should be clearly set forth and carried out identically for all candidates for each particular position.”

Similarly, the Commission on Accreditation for Law Enforcement Agencies (CALEA) has similar standards. Standard 32.1.3 states, “A written directive requires that all elements of the selection process for all personnel be administered, scored, evaluated and interpreted in a uniform manner within the classification.”

The Anne Arundel County, MD, Police Department describes its selection process in a policy which can be found at the following link.

<http://www.aacounty.org/Police/Rules/Regs/Sections07-10/0700.4Selection.pdf>

examination). Similarly, documentation does not clearly identify the criteria applied by the background investigators at the point that selection recommendations are provided to the assistant commander and commander. Detailed, well-defined criteria should be written for each stage of the process.

**RECOMMENDATION #2: Update written directives on officer selection.**

The FCPD should ensure that written directives applying to the Application Section and Recruiting and Testing Section are kept up to date. The criteria currently being used are not reflected in written directives. Updating the directives would also provide an opportunity to update information for a matrix used for classification determinations.

The FCPD should ensure that the flow diagram that describes the applicant selection process is updated. The most recent version provided to PERF was created on February 20, 2013. Based upon information given to PERF in staff interviews, this diagram needs to be updated. For example, the use of NEOGOV and the processes it controls should be noted. Moreover, it would appear from interviews that the background investigator involvement begins after the Physical Agility Test. However, the current flow diagram illustrates involvement of the investigator after medical and psychological examinations. Any other updates should be included in the revisions.

**Benchmark Comparison:  
Recommendation #2**

The Virginia Law Enforcement Accreditation Program Manual states in PER.01.01 that “A written directive requires that all elements of the selection process be conducted in a uniform manner.” CALEA standard 32.1.1 also requires that “written directives describe all elements and activities of the selection process for all full-time personnel.” Additionally, many modern police organizations make clear, concise, and up-to-date versions of their policy available online.

**RECOMMENDATION #3: Create a Selection Review Committee.**

The FCPD should consider establishing a diverse Selection Review Committee composed of four department members of four different ranks, plus one or two community members, to evaluate and rate future police applicants in the final stage of the selection process. The group should review all eligible applicants in a formal process and identify the best candidates for the agency. The committee’s selections would go to the chief of police for final review and approval.

The inclusion of community members on the committee brings diversity of perspective and transparency to the process. Community representation should be a volunteer position approved by the department, and community representatives should be available to serve for at least a one- or two-year term. The FCPD has hired nearly all “Highly Qualified” (HQ) applicants who pass each stage of the process over the last several years, so the final review is largely a formality. However, even when all applicants who reach the final stage are hired, there are benefits to including department members of different ranks and a qualified community volunteer in the hiring process. (Note: FCPD reports that it is implementing this recommendation and will select a community representative from the Chief’s Diversity Council.)

**A Final Note on Officer Selection**

Like most police agencies, the FCPD has no single, specific safeguard in its selection and hiring process designed to screen out candidates who might use unnecessary or excessive force in citizen encounters. FCPD’s background investigation process does employ a combination of elements, including polygraph testing and the psychological exam, to identify and reject candidates who demonstrate an issue with impulse control and anger management. PERF uncovered no information that indicated any use-of-force issues resulting from weaknesses in the selection process.

## **USE-OF-FORCE POLICY REVIEW**

This section provides recommendations based on PERF’s review of the Fairfax County Police Department’s written directives pertaining to the use of force. A primary focus was “Use-of-Force, General Order (GO) 540.1,” as well as documents pertaining to the department’s use of Electronic Control Weapons (currently referred to as “Conducted Energy Weapons” in FCPD policy), including Standard Operating Procedure (SOP) 06-025 (Conducted Energy Weapon) and recruit training curricula regarding CEWs. Other materials examined are cited in the analysis below. Recommendations are based on PERF’s extensive work on use-of-force directives and on best practices in comparable progressive U.S. police agencies.

### ***Use-of-Force Policy***

Section II of GO 540.1 (Use-of-Force) is a statement of policy. The guiding philosophy behind this policy should be enhanced with the following two additions.

#### **RECOMMENDATION #4: Add a “sanctity of life” statement to department policy.**

The FCPD should make it clear at the beginning of GO 540.1 that sanctity of human life is a guiding principle of its use-of-force policies, procedures, and training. The following language is adapted from the Fort Worth, TX, Police Department use-of-force philosophy statement:

*Suggested Language: A reverence and respect for the dignity of all persons and the sanctity of human life shall guide all training, leadership, and procedures, as well as guide officers in the use of force.*

#### **RECOMMENDATION #5: Add a “duty to intervene” statement to department policy.**

The FCPD should add to the second paragraph of GO 540.1 a policy statement similar to the following:

*Suggested Language: Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall safely intercede to prevent the use of such excessive force. Officers shall promptly report these observations to a supervisor.*

The FCPD policy should clearly indicate that officers have a positive duty to act if they see a fellow officer use unnecessary force. An officer who witnesses excessive

#### **Benchmark Comparison: Recommendation #5**

This recommendation is a progressive police practice as identified in the Las Vegas Metropolitan Police Department (LVMPD) use-of-force policy, from which the suggested language is adopted. The LVMPD policy was crafted as a result of a collaborative reform process between the LVMPD and the U.S. Department of Justice.

force used by another officer but fails to intervene should be subject to disciplinary action.

### **De-escalation**

In its July 2013 report titled *Civil Rights Investigations of Local Police: Lessons Learned*,<sup>17</sup> PERF found that police use of force has been one of the primary issues in U.S. Justice Department investigations of local police departments for civil rights violations. Mandates regarding use-of-force policies have been included in many recent DOJ consent decrees. One of the key aspects identified by DOJ's Civil Rights Division is the use of de-escalation techniques. De-escalation strategies help officers to prevent situations from developing in which they would need to use additional force. Instead, the goal is to gain voluntary compliance and reduce the level of force required in a situation, and prevent any use of force if possible.

De-escalation includes the use of verbal skills to bring a peaceful conclusion to a potentially confrontational event. This can be especially critical when dealing with subjects who exhibit erratic or dangerous behavior due to mental illness or disabilities, medical impairments, or the influence of alcohol or drugs. Based on PERF's review, it is clear the FCPD, through instruction at the Fairfax Criminal Justice Academy, is doing an effective job of stressing de-escalation and law enforcement communication techniques. PERF recommends that de-escalation be emphasized in FCPD policy as well.

### **Recommendation #6: Include de-escalation in FCPD written policy.**

The FCPD should include language in GO 540.1 (Use-of-force) that describes the importance of de-escalation.

In 2012, PERF hosted a Critical Issues in Policing conference on "An Integrated Approach to De-

#### **Benchmark Comparison: Recommendation #6**

Written directives for the Minneapolis, Cincinnati, Seattle, and Las Vegas Metropolitan Police Departments address the importance of de-escalation as part of their use-of-force policies. In addition, the August 2012 agreement between the U.S. Department of Justice and the Portland, OR, Police Bureau mandates language in Portland's policy requiring officers to use disengagement and de-escalation techniques where possible in order to reduce the need for force.

[http://www.justice.gov/crt/about/spl/documents/ppb\\_proposedsettle\\_12-17-12.pdf](http://www.justice.gov/crt/about/spl/documents/ppb_proposedsettle_12-17-12.pdf)

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<sup>17</sup> *Civil Rights Investigations of Local Police: Lessons Learned*. Police Executive Research Forum, July 2013.  
<http://policeforum.org/library/critical-issues-in-policing-series/CivilRightsInvestigationsofLocalPolice.pdf>



Escalation and Minimizing Use of Force.”<sup>18</sup> Police executives, mental health experts, and others discussed best practices for de-escalation of encounters. Strategies include the following:

- “Slowing the situation down” by stepping back and calling for assistance, and especially getting a police supervisor to the scene.
- Using Crisis Intervention Teams, in which police officers work with mental health experts to resolve a situation and in some cases, take proactive steps to help mentally ill persons obtain health care and other services.
- Avoiding overreliance on weapons such as Electronic Control Weapons.

These types of de-escalation strategies should be reflected in the FCPD’s use-of-force policy.

### ***Use-of-Force Definitions***

Use-of-force definitions are identified in Section III of GO 540.1. *The FCPD can improve GO 540.1 by adding better, more precise definitions of several key terms.* For example, the general policy states that “only reasonable, necessary force is justified.” This policy defines force appropriately, but may leave several unanswered considerations. For example, what is “reasonable” force, and what is “necessary” force? In addition, there is no language about suspect threats or the relationship between threat and force, and there is no direction for officers to determine which types and levels of force are reasonable under a given set of circumstances. Additional, more specific language in this section will give officers a better understanding of the policy, which in turn must be supported through frequent discussion and training. The following recommendations are provided to improve and strengthen existing policy language.

### **RECOMMENDATION #7: Strengthen the definition of “use of force.”**

The FCPD should replace the current definition of use of force with a more comprehensive definition as identified below. The current definition in GO 540.1 is, “Use of Force: Any physical contact above the level of a ‘guiding’ or ‘escort’ hold between an officer and another person, or the use of lethal or non-lethal weapons, which further the officer’s intent to establish or maintain control or custody or to defend themselves or another person.”

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<sup>18</sup> *An Integrated Approach to De-Escalation and Minimizing Use-of-force.* Police Executive Research Forum, August 2012.

[http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf)

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***Suggested Language:** Force means the following actions by a member of the department: any physical strike or instrumental contact with a person, or any significant physical contact that restricts movement of a person. The term includes, but is not limited to, the use of firearms, Electronic Control Weapons (ECWs)<sup>19</sup>, chemical spray, bean bag shotgun, PepperBall gun, hard empty hands, the taking of a person to the ground, use of vehicles, or the deployment of a canine. The term does not include escorting or handcuffing a person who is exhibiting minimal or no resistance.*

**RECOMMENDATION #8: Strengthen the definition of “objectively reasonable force.”**

The FCPD should improve the current definition of reasonable use of force with a more comprehensive definition. The current definition in GO 540.1 is, “The use of any force—deadly or not—in the course of an arrest, investigatory stop, or other seizure that is ‘reasonable’ in light of the facts and circumstances confronting the officer, without regard to the officer’s underlying intent or motivations.” It should be replaced with a more comprehensive definition, similar to the following:

***Suggested Language:** Objectively Reasonable Force is that level of force that is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same circumstances. Objective reasonableness is not analyzed with hindsight, but will take into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations. This policy guideline applies to all uses of force, not only*

**Benchmark Comparison:  
Recommendation #8**

Comparable police agencies, such as those in Las Vegas, Cincinnati, and Minneapolis, use similar language based on case law stemming from *Graham v. Connor, 490 US 386 (1989)*. Many of the Las Vegas Metropolitan Police Department’s policy changes followed a collaborative reform effort with the U.S. Department of Justice.

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<sup>19</sup> In 2011, PERF and the U.S. Department of Justice’s Office of Community Oriented Policing Services released *2011 Electronic Control Weapon Guidelines*, which provides guidance on policy, training, use, medical considerations, reporting and accountability, and public information and community relations. The publication specifies the change in terminology from Conducted Energy Device and other terms to Electronic Control Weapon (ECW), in order to clarify that Tasers™ and similar equipment are, in fact, weapons.  
[http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Use\\_of\\_Force/electronic%20control%20weapon%20guidelines%202011.pdf](http://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/electronic%20control%20weapon%20guidelines%202011.pdf)

*the use of deadly force. U.S. Supreme Court, Graham v. Connor, 490 U.S. 386 (1989).*

**RECOMMENDATION #9: Use the term “less-lethal,” not “non-deadly.”**

The FCPD should improve its current terminology on force by consistently substituting the term “less-lethal” for “non-deadly.” This change would reflect the fact that even “less-lethal” weapons or uses of force can sometimes result in serious physical injury or death. For example, an Electronic Control Weapon is considered “less lethal,” but it can cause a person to fall and suffer a fatal head injury.

**RECOMMENDATION #10: Expand the definition of “less-lethal force.”**

The FCPD should improve the current definition of “less-lethal force” with a more comprehensive definition. Current FCPD policy defines less-lethal force as “Force which may result in death or serious injury. When properly used, less-lethal weapons significantly reduce the probability of such outcomes.” The policy should be revised to eliminate the distinction between less-lethal and non-deadly force. The definition of non-deadly force should be deleted, because almost any use of force can sometimes result in serious physical injury or death.

*Suggested Language: **Less-lethal Force** is any use of force other than that which is considered deadly force. Less-lethal force is distinguishable from deadly force in that it is not intended or reasonably likely to result in death or serious injury in most cases. Less-lethal devices include OC spray, ECWs, PepperBall gun, bean bag shotgun, and the baton.*

*(See also Recommendation #18, on page 44, for suggested revisions to the specific policy language on less-lethal force.)*

**RECOMMENDATION #11: Reorganize and streamline department directives related to police pursuits.**

The FCPD should remove the definitions of “G. Vehicle Incident” and “H. Precision Immobilization Technique (PIT)” from GO 540.1. Although these actions are a use of force, they are specific to police pursuit situations and should be moved to a new general order titled “Police Pursuits” (see Recommendation #51).

**RECOMMENDATION #12: Improve the definitions of different types of resistance.**

The FCPD should consider improving its descriptions of physical resistance and levels of control with the following definitions and suggested language, based in part on the Las Vegas Metropolitan Police Department's use-of-force policy.

Suggested Language:

**Types of Resistance**

*It is important that officers are aware that there may be many reasons a suspect may resist arrest. The individual may not be capable of understanding the gravity of the situation as a result of a medical, mental, physical, language, or hearing impairment. This may not make the individual any less dangerous. However, if officers recognize the situation for what it is, they may be able to use more effective tactics without jeopardizing officer safety. Various types of resistance are identified below:*

**Compliant:** *A person who follows lawful orders and offers no passive or active resistance, aggressive resistance, or aggravated aggressive resistance.*

**Passive Resistance:** *A person who is not complying with an officer's commands and is uncooperative, but is only taking minimal physical action to prevent an officer from placing the subject in custody and taking control. Examples include standing in a stationary position and not moving when directed to, refusing to move under their own power, and locking arms to another during a protest or demonstration.*

**Active Resistance:** *A person whose verbal or physical actions are intended to prevent an officer from placing the subject under control and in custody, but are not intended to harm the officer. Examples include walking or running away and breaking away from the officer's grip to flee.*

**Aggressive Resistance:** *A person who displays the intent to harm the officer, the person himself or herself, or another person and prevent an officer from placing the person under control and in custody. Examples include a person taking a fighting stance, punching, kicking, striking, and attacking with weapons or other actions which present an imminent threat of physical harm to the officer or another.*

**Benchmark Comparison:  
Recommendation #12**

Comparable police agencies often define examples of suspect resistance. The suggested language for Recommendation #12 mirrors closely that of the Las Vegas Metropolitan Police Department. The department's policy became effective in 2012 following an extensive collaborative effort with the U.S. Department of Justice's Office of Community Oriented Policing Services on use-of-force. The policy can be reviewed online at:

<http://www.lvmpd.com/Portals/0/OIO/GO-021-12%20Use%20of%20Force%20Signe d%20Copy.pdf>

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**Aggravated Aggressive Resistance:** *A person whose actions are likely to result in death or serious bodily harm to the officer, the person himself or herself, or another person. Examples include the use of a firearm, use of blunt or bladed weapon, and extreme physical force.*

**Levels of Control in Response to Resistance**

*When use of force is necessary, officers will assess each incident, based on policy, training, and experience, to determine which use-of-force options are appropriate for the situation and bring it under control in a safe manner. Officers must use only the amount of force that is objectively reasonable to overcome resistance in order to take lawful action. Levels of control include the following:*

**Low-Level Control:** *The level of control necessary to interact with a person who is Compliant or displaying Passive or Active Resistance. This level of control is not intended to cause injury and has a low probability of actually causing injury. Examples include handcuffing a compliant arrestee or placing the suspect in a prone position during a high-risk vehicle stop. This level of control does not traditionally require use-of-force reporting, and includes but is not limited to:*

1. Officer presence,
2. Verbal communication,
3. Handcuffs or other approved restraint device.

**Less-lethal Force:** *The level of force necessary to compel compliance by a subject displaying Aggressive Resistance, which is neither likely nor intended to cause death. This level of force does require use-of-force reporting. This level of force includes but is not limited to:*

1. Empty hand tactics such as strikes, kicks, or takedowns,
2. Impact weapons such as the baton,
3. OC spray,
4. Electronic Control Weapon, and
5. Bean-bag shotgun.

**Deadly Force:** *That degree of force which is likely to cause death or serious bodily injury. Deadly force is not limited to the use of a firearm; deadly force can also result from another force option being improperly applied.*

*Use-of-force incidents often require the officer to transition to differing degrees or types of force, including attempts to de-escalate the situation, based on the suspect's actions and responses. Officers must modify and control their level of control and force in relation to the amount of resistance offered by the subject.*

### ***Deadly Force Definition Enhancement***

“Deadly force” is described in GO 540.1. The following recommendation is designed to enhance the definition and to make officers more aware of the consequences of using force that is not objectively reasonable. The recommendation substitutes the term “objectively reasonable” for “reasonably necessary” and defines “imminent threat.” These changes would bring FCPD policy in line with the U.S. Supreme Court decision in *Graham v Connor*.

#### **RECOMMENDATION #13: Use the term “objectively reasonable” in use-of-force policies.**

The FCPD should strengthen and clarify its use-of-force policy by introducing the concept of “objectively reasonable” force.

The first paragraph of GO 540.1, Section IV, A. Deadly Force, currently states: “Deadly force shall not be used unless it is reasonably necessary. It shall be the officer’s belief based on the totality of circumstances known to the officer at the time that imminent threat of death or serious injury to any person exists and that all other methods of force to control the subject(s) would be or have already proven to be ineffective. Any use of deadly force which is not reasonably necessary in view of the circumstances confronting the officer is prohibited.”

PERF recommends that this paragraph be rewritten with the following suggested language.

*Suggested Language: Deadly force shall not be used unless it is objectively reasonable. Any use of deadly force which is not objectively reasonable in view of the circumstances confronting the officer is prohibited, and officers using deadly force which is not objectively reasonable will be subject to discipline, possible criminal prosecution, and/or civil liability. The use of deadly force shall be based on the totality of circumstances known to the officer at the time indicating that an imminent threat of death or serious injury to any person exists and that all other methods of force to control the subject(s) would be or have already proven to be ineffective. An imminent threat refers to an impending violent act or resistance that an officer reasonably believes will occur, based on the totality of the circumstances. Thus, a subject may pose an imminent danger even if he or she is not at that very moment pointing a weapon at an officer.*

### ***Deadly Force: Firearms—Shooting at Moving Vehicles***

Sections 4 and 5 of GO 540.1, Section IV, A. Deadly Force, address shooting at and from moving vehicles. Under current policy, an officer must attempt to move out of the way, but can discharge a weapon if he or she is still in fear of being hit by the vehicle. There is no language in current policy about the potential consequences of shooting the driver of a moving vehicle and other likely outcomes. If an officer is afraid that he or she is about to be run down, shooting the

driver will not necessarily offer a greater degree of safety. A dead or incapacitated driver at the wheel of a vehicle speeding at the officer is no less dangerous, and could potentially increase the risk to officers and other bystanders.

**RECOMMENDATION #14: Tighten the restriction on shooting at or from a vehicle.**

The FCPD policy should include an absolute prohibition on shooting at or from a moving vehicle when the vehicle itself is the only “weapon” being utilized against the officer. This is a best practice in American policing.

*Suggested Language: Officers shall not discharge their firearms at or from a moving vehicle unless deadly physical force is being used against the police officer or another person present **by means other than a moving vehicle.***

***Vehicle Incident and Precision Immobilization Technique (PIT)***

FCPD policy includes sections pertaining to “Vehicle Incidents” (use of a police vehicle to immobilize another vehicle) and the Precision Immobilization Technique (PIT), a technique used to terminate a vehicle pursuit through intentional contact with the suspect vehicle. Although both techniques would be a use of force, they most often pertain to police pursuit situations. Most agencies maintain a separate department policy regarding police pursuits or the use of a police vehicle to immobilize a suspect’s vehicle. All reporting with regards to PIT is discussed later in the report and should be included in the recommended new General Order on police pursuits.

**Benchmark Comparison:  
Recommendation #14**

Prohibiting shooting at a moving vehicle unless force is being used against the officer or other persons by means other than the vehicle itself is a national best practice and should be incorporated into all agencies’ use of deadly force policies. The New York City Police Department has had this policy in place since 1972. The police departments in Nassau County, NY; Washington, DC; Seattle; and Fort Worth, TX, all have effective language prohibiting shooting at moving vehicles.

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**RECOMMENDATION #15: Create a new General Order on pursuits and vehicle techniques.**

The FCPD should move all matters regarding police pursuits and vehicle techniques to the recommended new General Order specifically devoted to these topics. (See pages 65-67 for specific recommendations on police pursuits, emergency vehicle operations, and use of the PIT maneuver.)

**Benchmark Comparison:  
Recommendation #15**

Of the agencies compared, the Seattle and Las Vegas Metropolitan Police Departments make reference to the PIT maneuver and vehicle-related use-of-force tactics in their use-of-force policy. The Washington, DC Metropolitan PD has a cross reference section in its use-of-force policy (GO-RAR-901.07) that refers the reader to the department's separate pursuit policy (GO-OPS-301.03).

***Reporting the Use of Deadly Force and Investigation of Injuries***

FCPD policy regarding the reporting of the use of deadly force and the investigations of such incidents is defined in GO 540.1 (Section IV.B) and SOP 12-045 (Investigation of Deadly Force Deployment).

GO 540.1 Section IV.B of Reporting the Use of Deadly Force and Investigation of Injuries provides for the investigation of unintentional firearms discharges and, primarily, intentional discharges that result in injury or death. There is little coverage in the current General Order of intentional firearm discharges that do not result in injury or death.

SOP 12-045 (Investigation of Deadly Force Deployment) states in Section II, Policy: "The Police Department shall thoroughly investigate, both criminally and administratively, all incidents that involve the use of deadly force." However, Section IV, D, 2, Criminal Investigations Bureau (CIB) states, "The Major Crimes Division (MCD) of CIB is responsible for conducting the criminal investigation of all officer-involved deployments of deadly force *when injury or death results.*" [Emphasis added.] The same directive states, "Detectives from IAB will respond to all police shootings and other significant events where a form of deadly force was deployed *resulting in serious injury and/or death.*" [Emphasis added.]

**To comply with the initial policy statement that all incidents involving the use of deadly force shall be investigated, references to injury or death should be eliminated, so it is clear that all use of deadly force incidents, regardless of the outcome, will be treated the same.**

**RECOMMENDATION #16: Ensure every use of deadly force incident, regardless of outcome, is thoroughly investigated.**



FCPD policy should clearly state that any use of deadly force will be investigated in the same rigorous manner, both criminally and administratively, regardless of whether the suspect was killed or wounded. Furthermore, FCPD should merge SOP 12-045 into GO 540.1 to provide clear and complete information regarding use-of-force reporting in a single policy directive. The focus of FCPD policy must be on the officer's intent to use deadly force. The investigation should be the same regardless of whether the shot or other use of deadly force met its target.

### ***“Boilerplate” Language in Use-of-Force Reports***

When reviewing use-of-force cases in other law enforcement agencies, PERF has frequently found “boilerplate” language included in use-of-force justifications that does not appear to be specific to the particular incident discussed. Although reviewing specific cases in detail was not part of this review, the matter of having precise and germane language in use-of-force reports is important to ensuring transparency and accuracy in the review process.

### **RECOMMENDATION #17: Ensure the integrity of use-of-force reports by eliminating “boilerplate” language and ensuring supervisory review.**

The FCPD should provide clear policy direction prohibiting officers from using boilerplate language to justify a use of force. Officers should avoid language that merely cites a general fear for their safety or fear of serious injury.

Additionally, supervisors and commanders must not only read and review these reports, but also must question report writers when they see inconsistent statements or generic, boilerplate language in these reports. Furthermore, supervisors should be required to review any available video or audio recordings and seek out any possible witnesses to the incident for verification of facts.

### ***Less-Lethal Force***

### **RECOMMENDATION #18: Revise policy language on less-lethal force.**

The FCPD should eliminate Section IV.G. “Use of Non-Deadly Force” from GO 540.1, and improve the Less-Lethal Force Section IV.E. of GO 540.1 by adopting the following suggested language.<sup>20</sup>

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<sup>20</sup> This suggested language is adapted from the FCPD's current policy and modified to address the change in terminology to “less-lethal force.”

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*Suggested Language:* *Instances where the use of less-lethal force may be effective would include, but not be limited to:*

- *Effecting an investigative stop or arrest;*
- *Preventing escape from lawful custody;*
- *Defending oneself or another person from injury or assault;*
- *Establishing custody for a temporary detention order; and*
- *Restoring institutional integrity in a detention facility.*

*Officers may use the force that is objectively reasonable (e.g., moderate pressure to stop, turn, or guide a subject) to conduct an investigative stop without converting the stop into an arrest. Increased levels of force may be used if it is reasonable under the circumstances. See General Order 540.2, V. Investigative Stop, Frisk and Search Beyond the Person, for detailed procedures regarding investigative stops.*

*Voluntary field contacts may be utilized by an officer who wants to speak to someone or obtain a person's identification. Officers may not use any force to conduct a voluntary field contact. See General Order 540.2, IV. Voluntary Field Contacts, for detailed procedures regarding voluntary stops.*

*Only the level of less-lethal force that is objectively reasonable (e.g., physical control techniques, pointing a firearm, bean bag shotgun, striking with a baton or other instrument, discharging OC, ECW, or PepperBall System) to establish control and gain compliance shall be used in response to opposing force. Officers shall escalate or de-escalate their use-of-force in direct response to the opposing person's actions.*

*Officers who use less-lethal force on persons exhibiting symptoms of mental health crisis or drug intoxication should give particular consideration that these persons may be experiencing or are at an increased risk of developing excited delirium. Excited delirium should be strongly suspected in subjects who exhibit extreme paranoia, physical symptoms (profuse sweating, foaming at the mouth, seizures, shaking, inability to breathe, etc.), violent resistance to arrest, little or no reaction to pain, unusual strength, and/or extreme aggression toward objects. Excited delirium is a potentially fatal acute medical condition. Subjects who are exhibiting signs or symptoms of excited delirium shall be evaluated at a medical facility.*

*Handcuffed persons resisting arrest or assaulting officers present a unique use-of-force decision. Officers may use only that amount of force reasonably necessary to ensure safe custody or to overcome the person's resistance to a lawful arrest. Striking instruments, OC spray, and the ECW shall not be used on a handcuffed person unless the person continues to pose a threat to the officer, to others, to the person himself and/or other force alternatives have been ineffective or deemed unacceptable for the situation.*

*Less-lethal strategies may also be used against an animal that is attacking or threatening to attack a person or another animal. Instruments of less-lethal force (e.g. striking instruments,*

*chemical agents, or ECW) are intended to reduce the likelihood of serious injury or death to the animal and to provide a more humane and less traumatic conclusion to the incident.*

### ***Reporting the Use of Less-Lethal Force and Investigation of Injuries***

#### **Recommendation #19: Revise policy language on reporting the use and investigation of less-lethal force.**

The FCPD should replace language in current Section IV.F., “Reporting the Use of Less-Lethal Force and Investigation of Injuries” in GO 540.1 with revised language from Section IV.H., in GO 540.1, “Reporting the Non-Deadly Use-of-force and Investigation of Injuries.”

The following suggested language was taken from the department’s current policy and modified to address the change indicated above. All sections regarding reference to non-deadly force are being eliminated and moved to areas involving less-lethal force. This language should be incorporated into Section IV.F.

In considering these policy revisions, it is important for the FCPD to recognize that **the on-duty supervisor (typically a sergeant) plays a critical role, not only in ensuring that the use of less-lethal force is properly reported after the fact, but also in responding to any high-risk incident in which injury or the complaint of injury is possible.** Based on information provided by the responding officers and dispatchers, the sergeant should attempt to get to all high-risk scenes as quickly as possible in an attempt to “slow the situation down” and look for opportunities to de-escalate as much as possible.<sup>21</sup>

#### ***Suggested Language: Reporting the Less-Lethal Use of Force and Investigation of Injuries.***

1. *Officers who use less-lethal force shall immediately inform their on-duty supervisor of the use-of-force incident. Unless circumstances exist which prohibit the notified supervisor from responding, the supervisor shall respond to the scene of any use-of-force incident **where injury or the complaint of injury results**, or a police vehicle, ECW, or PepperBall System is utilized. The notified supervisor shall review the circumstances surrounding the use-of-force incident and notify the duty officer or appropriate commander of the occurrence of:
  - a. *Any less-lethal use of force, accidental injury, or any other situation resulting in serious injury or death to any person.**

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<sup>21</sup> For further discussion of the critical role played by on-duty supervisors in managing high-risk incidents, see *An Integrated Approach to De-Escalation and Minimizing Use-of-force*. Police Executive Research Forum, August 2012. [http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf)



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- b. *Medical treatment for non-serious injuries, provided by medical facility personnel resulting from the use of less-lethal force, self-inflicted and/or accidental injury, or any other situation to any person:*
- *Investigative Authority: The on-duty supervisor.*
  - *Investigative Format: Administrative investigation and a Use-of-Force Supplement in I/LEADS detailing the incident, describing the type of force used, extent of injuries, and type of medical treatment provided.*
  - *Photographs will be taken of all injuries by the investigative authority.*
  - *Any video and/or audio recordings of the incident will be reviewed and preserved for the investigation.*
  - *Documentation Review: The on-duty supervisor shall review all investigation reports, photographs, and any video/audio recordings of the incident and forward copies of the incident reports, other related investigative materials and administrative investigation to the division commander for approval and subsequent forwarding to the appropriate bureau commander and to the Internal Affairs commander.*
- c. *Medical treatment for non-serious injuries provided by EMS personnel, Department personnel approved by OMD, or refusal of treatment by any person who has obvious non-serious injuries or alleges a non-serious injury resulting from the use of less-lethal force, self-inflicted and/or accidental injury, or any other situation:*
- *Investigative Authority: The on-duty supervisor or above.*
  - *Investigative Format: Use-of-Force Supplement in I/LEADS detailing the incident, describing the type of force used, extent of injuries observed or the complaint of injuries, and the fact that medical treatment was administered or refused by the injured person.*
  - *Photographs will be taken of all injuries by the investigative authority.*
  - *Any video and/or audio recordings of the incident will be reviewed and preserved for the investigation.*
  - *Documentation Review: The on-duty supervisor shall review all investigation reports, photographs, and any video/audio recordings of the incident and forward copies to the division commander for approval and subsequent forwarding to the appropriate bureau commander and to the Internal Affairs Bureau commander.*
4. *The on-duty supervisor shall ensure that the use of all less-lethal force that **does not involve the complaint of injury or medical treatment** shall be documented and investigated as follows:*

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- a. *Use of less-lethal force which involves physical control techniques to establish control and gain compliance, striking a person, discharging a chemical agent or ECW.*
  - *Investigative Authority: The on-duty supervisor or above.*
  - *Investigative Format: Use-of-Force Supplement in I/LEADS detailing the incident, describing the type of force used, the fact that no injuries were observed or the fact that no complaint of injuries was made.*
  - *Documentation Review: The on-duty supervisor shall review all investigation reports, as well as any video/audio recordings of the incident and forward copies to the division commander for approval and subsequent forwarding to the appropriate bureau commander and to the Internal Affairs Bureau commander.*
  
- b. *Use of less-lethal force which involves pointing a firearm in response to the actions of a subject.*
  - *Investigative Authority: The on-duty supervisor or above.*
  - *Investigative Format: Incident Report completed by the involved officer, detailing the incident.*
  - *Documentation Review: The on-duty supervisor shall review all investigation reports, as well as, any video/audio recordings of the incident and forward copies to the division commander for concurrence and subsequent forwarding to the appropriate bureau commander and to the Internal Affairs Bureau commander.*

***Baton (Striking Instruments)***

**RECOMMENDATION #20: Require training on use of the baton.**

FPCPD policy on the baton should include language requiring that all officers must successfully complete training requirements in the use of the baton.

The current department policy reads as follows:

1. Baton (Striking Instruments)
  - a. Batons shall be issued or approved in accordance with SOP 04-002 (Police Uniforms, Personal Equipment and Civilian Clothing). Only those batons issued or authorized by the Fairfax County Police Department shall be used by Department employees.

*Suggested Additional Language:*

- b. *Only officers who have completed all training in the use of the baton shall be permitted to carry and use it.*

### ***Oleoresin Capsicum (OC)***

#### **RECOMMENDATION #21: Require training on use of OC.**

FCPD policy on Oleoresin Capsicum (OC) should include language requiring that all officers must successfully complete training requirements in the use of OC.

The current department policy reads as follows:

2. Oleoresin Capsicum (OC)
  - a. Only those Oleoresin Capsicum dispensers issued by the Police Department shall be used by Department employees.

#### **Suggested Additional Language:**

- b. Only officers who have completed all training in the use of Oleoresin Capsicum shall be permitted to carry and use it.*

#### **RECOMMENDATION #22: Strengthen the justification for use of OC.**

FCPD policy on the justification for use of OC spray should be improved by incorporating the “Objective Reasonableness” standard as described in Recommendation #8 (see page 39).

#### **Recommendation #23: Provide additional guidance on the use of OC.**

The FCPD should enhance its policy on OC with additional examples of situations in which OC would not be appropriate due to the “totality of circumstances.” These could include factors such as the seriousness of the offense, location of bystanders, large crowds, and an enclosed environment.

### ***Electronic Control Weapons (ECW)***

PERF reviewed the FCPD’s policies on the use of Conducted Energy Weapons, specifically General Order 540.1 (Use-of-force) and SOP 06-025 (Conducted Energy Weapon). The following policy recommendations are designed to enhance the department’s current general orders and standard operating procedures.

#### **Recommendation #24: Adopt the term “Electronic Control Weapon (ECW)” in all department policies.**

The FCPD should amend the term used to describe the “Taser™” from the currently used “Conducted Energy Weapon” to “Electronic Control Weapon (ECW).”

In 2011, PERF and the U.S. Department of Justice’s Office of Community Oriented Policing Services released the *2011 Electronic Control Weapons Guidelines* publication.<sup>22</sup> The report provides extensive guidelines for all agencies regarding policy, training, use, medical considerations, reporting and accountability, and public information and community relations. The publication specifies the change in terminology from “Conducted Energy Device” and other similar terms to “Electronic Control Weapon,” in order to “reflect the reality that these tools are less-lethal weapons that are meant to help control persons who are actively resisting authority or acting aggressively.”<sup>23</sup>

*Note: From this point forward, this report will utilize the term “Electronic Control Weapon (ECW),” unless specifically quoting portions of the FCPD’s current policy.*

**RECOMMENDATION #25: Consolidate policy on ECWs.**

The FCPD should incorporate relevant language from SOP 06-025 (Conducted Energy Weapons) into General Order 540.01 (Use-of-force) with the goal of eliminating SOP 06-025, thereby having one directive that defines, controls, and specifies the guidelines for ECW use.

**RECOMMENDATION #26: Use brightly colored ECWs.**

The FCPD should consider adopting the brightly colored (e.g., yellow) ECWs for officers assigned to patrol. The use of brightly colored ECWs may reduce the risk of escalating a use-of-force situation, as they are plainly visible and thus will decrease the possibility that a secondary unit responding to a scene will mistake the ECW for a firearm.

**Benchmark Comparison:  
Less-lethal Weapon  
Recommendations**

While many of the comparable law enforcement agencies reviewed for this study address the use of ECWs, chemical sprays, and batons/impact weapons in their main use-of-force policy, it is not uncommon for the protocols governing the use of these weapons to be further described in separate policies for each weapon. To simplify the policy and enhance officer understanding, it is recommended that the FCPD’s use-of-force policy specifically describe and address each individual less-lethal weapon. Doing so will avoid confusion, as officers will not have to reference multiple documents should they have a question about a given weapon’s use.

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<sup>22</sup>[http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Use\\_of\\_Force/electronic%20control%20weapon%20guidelines%202011.pdf](http://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/electronic%20control%20weapon%20guidelines%202011.pdf)

<sup>23</sup> Ibid, p. 8.



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**RECOMMENDATION #27: Clarify that ECWs should not be used against passive subjects.**

The FCPD should reword language in General Order 540.1, Section 3d, to expressly prohibit use of ECWs against subjects who are passive.

Current FCPD policy (GO 540.1, Section 3d) states that an ECW “may be used to resolve potentially violent situations when an officer reasonably believes any of the following conditions exist...,” with one of those conditions being “attempts to gain compliance by verbal commands or physical control are likely to be ineffective or have been ineffective in the situation.”

However, Section 3b states that ECWs should be used “as a weapon of need, not a tool of convenience.” These potentially contradictory policy statements could lead some officers to assume they could transition to an ECW after verbal orders have been ignored, which conflicts with the department’s philosophy as stated in Section 3b. Therefore, the FCPD should replace the language in General Order 540.1, Section 3d with the following:

*Suggested Language: ECWs should be used only against subjects who are exhibiting active aggression or who are actively resisting in a manner that, in the officer’s judgment, is likely to result in injuries to themselves or others. ECWs should not be used against a passive subject.*

**RECOMMENDATION #28: Clarify risk of ECWs to visibly frail persons.**

The FCPD should reword language in General Order 540.1, Section 3f to include “visibly frail persons” in the list of those at risk of secondary injuries from the use of ECWs.

**RECOMMENDATION #29: Implement additional ECW restrictions.**

The FCPD should add the following language after General Order 540.1, Section 3f, to become the new Section 3g (with subsequent subsections renumbered accordingly):

- *Suggested Language: Fleeing should not be the sole justification for using an ECW against a subject. Personnel should consider the severity of the offense, the subject’s threat level to others, and the risk of serious injury to the subject before deciding to use an ECW on a fleeing subject.*
- *Suggested Language: ECWs should not be used on handcuffed subjects unless doing so is necessary to prevent them from causing serious bodily harm to themselves or others and if lesser attempts of control have been ineffective.*
- *Suggested Language: ECWs should not be used against subjects in physical control of a vehicle in motion (e.g., automobiles, trucks, motorcycles, ATVs, bicycles, scooters).*

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***SOP 06-025 Conducted Energy Weapon***

Recommendation #25 suggests that the FCPD incorporate relevant language from SOP 06-025 (Conducted Energy Weapons) into General Order 540.01 (Use of Force) with the goal of eliminating SOP 06-025 and having a single, consistent directive that defines, controls, and specifies the guidelines for ECW use. In the meantime, however, the following provides specific recommendations for improving SOP 06-025, with the intent of having these changes reflected in the revised, consolidated policy.

**RECOMMENDATION #30: Replace the term “non-deadly” with “less-lethal” force to describe ECWs.**

The FCPD should replace all references to the ECW as “non-deadly” force to “less-lethal” force to correspond with previous recommendations eliminating the use of the term “non-deadly” force.

**RECOMMENDATION #31: Clarify in-service training schedules.**

The FCPD should specify calendar year versus every 12 months in references to in-service training. This simplifies the accountability and tracking process for supervisors and training personnel.

**RECOMMENDATION #32: Certify officers in ECW use.**

The FCPD should use the term “certified” rather than “trained” throughout its ECW policy. The term “certified” indicates that the officer completed the training and passed all course requirements in the use of this weapon.

**RECOMMENDATION #33: Tighten policy to acknowledge risks regarding repeated use of ECWs.**

The FCPD should strengthen the language in SOP 06-025, Section D, subsection 1, to reflect risks from repeated use of ECWs.

Currently, the SOP states that “Additionally, officers should only use the number of CEW applications necessary to bring the suspect into compliance with lawful commands.” The following language should be inserted into FCPD’s ECW policy

*Suggested Language: Personnel should use an ECW for one standard cycle (five seconds) and then evaluate the situation to determine if subsequent cycles are necessary. Personnel should consider that exposure to the ECW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury.*

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*Any subsequent applications should be independently justifiable, and the risks should be weighed against other force options.*

**RECOMMENDATION #34: Clarify that risks of ECWs and OC are not equal.**

The FCPD should delete Section IV.D.2 in SOP 06-025, which attempts to equate ECW use to OC spray use. The risk for potential injuries to subjects is greater with an ECW than with OC spray.

**RECOMMENDATION #35: Warn subjects before ECW use.**

The FCPD should add language requiring that warnings be given to a subject prior to activating the ECW unless doing so would place any person at risk. Warnings may be in the form of verbalization, display, laser painting, arcing, or a combination of these tactics.

**RECOMMENDATION #36: Advise other personnel of imminent ECW use.**

The FCPD should add language requiring that, when feasible, an announcement should be made to other personnel on the scene that an ECW is going to be activated. This can reduce the risk of multiple officers activating ECWs simultaneously against one person.

**RECOMMENDATION #37: Expand policy against ECWs for pain compliance.**

The FCPD should rewrite Section IV.D.3 in SOP 06-025 to reflect that the “drive stun” mode should be used only to supplement the probe mode to complete the incapacitation circuit, or as a countermeasure to gain separation between officers and the subject so that officers can consider another force option. Drive stun should **not** be used as a pain compliance technique.

**RECOMMENDATION #38: Strengthen policy on officer protection.**

The FCPD should change the wording of the second sentence in SOP 06-025, Section IV. E (Reporting Requirements) that currently says officers “should wear” protective gloves. Given the risk of blood borne pathogens (stated in this section), the wording needs to be more restrictive.

*Suggested Language: When removing these probes, the officer shall wear protective gloves.*

**RECOMMENDATION #39: Notify EMS of potential ECW use.**

The FCPD should add language stating that, when possible, emergency medical personnel should be notified when officers respond to calls for service in which they anticipate an ECW application may be used against a subject.

**RECOMMENDATION #40: Require medical evaluation following ECW exposure.**

The FCPD should add the following language to its policy regarding medical evaluation after an ECW exposure:

*Suggested Language: All subjects who have been exposed to ECW application should receive evaluation by emergency medical responders in the field or at a medical facility. Subjects who have been exposed to prolonged application (i.e., more than 15 seconds) should be transported to an emergency department for evaluation. Personnel conducting the medical evaluation should be made aware that the suspect has experienced ECW activation, so they can better evaluate the need for further medical treatment.*

**ECW Training**

The Fairfax County Criminal Justice Academy provides ECW training to all of its officers. All instruction pertaining to the department-authorized Electronic Control Weapon (ECW) is per the TASER “User Certification Course TASER X2 Conducted Electrical Weapon Version 19 Released April 2013” manual. This instruction is used for all FCPD officers. After receiving initial training, all officers are required to take the annual re-certification course.

The FCPD’s current version of training covers the cardiac risks associated with the ECW and does advise to avoid targeting the chest. In addition, it identifies the need to avoid multiple or continuous application of the weapon, and cites the 2011 Electronic Control Guidelines released by PERF and the U.S. Department of Justice’s Office of Community Oriented Policing Services.

**RECOMMENDATION #41: Provide sufficient training time for officers to explore ECW use in depth.**

The FCPD should, during all ECW training opportunities, explore different scenarios on ECW use and encourage “what-if” questions and practical discussions among officers who have deployed ECWs and those who have not.

In addition to time spent on the technical and policy aspects of ECWs, trainers should always allow time for discussion regarding recent research findings and local or national trends and issues. **Trainers should also focus on the decision making process.** Officers should be trained not to turn to the ECW too early in an encounter, to remember that each exposure must be independently justified with no longer than 15 seconds of total exposure, and to consider circumstances that do not justify this use of force at all. The 2011 PERF/COPS guidelines are detailed and specific, and create an appropriate starting point for these discussions.

### ***ECW Reporting Requirements***

#### **RECOMMENDATION #42: Train officers to provide detailed information in all ECW reports.**

The FCPD should ensure during each annual re-certification that the specific information needed in an ECW use-of-force report is presented and discussed. For example, ECW use-of-force reports should include sufficiently detailed information on why force was necessary, the nature of the threat, how the threat was perceived, what actions were taken to resolve the threat, the sequence of events that led to the resistance and resultant force, and other information pertaining to the people, situation, and environment. This information is important not only for evaluating individual ECW events, but also for documenting trends, scenarios, and outcomes that can be used in developing and refining ECW training.

### ***PepperBall System***

The PepperBall System is a less-lethal tool that is used by the FCPD and described in the department's use-of-force policy.

#### **RECOMMENDATION #43: Require certification in PepperBall use.**

The FCPD should enhance Section 4 (PepperBall System) of its use-of-force policy to include the requirement that officers be trained **and certified** in the use of the PepperBall System. Adding a certification requirement helps ensure officers are not just trained but also tested as part of the training process. The current wording of the policy is as follows: "Only those PepperBall Systems issued by the Fairfax County Police Department shall be used by officers who are trained by the Fairfax County Criminal Justice Academy to use the PepperBall System."

*Suggested Language: Only those PepperBall Systems issued by the Fairfax County Police Department shall be used by officers who are trained and certified by the Fairfax County Criminal Justice Academy to use the PepperBall System.*

### ***Reporting the Non-Deadly Use of Force and Investigation of Injuries***

#### **RECOMMENDATION #44: Consolidate department policy on reporting non-deadly use-of-force and investigation of injuries.**

The FCPD should delete Section IV.H on "Reporting the Non-Deadly Use of Force and Investigation of Injuries" in General Order 540.1 (Use-of-force). The appropriate language should be included in the section of the Use of Force policy called "Reporting the Less-Lethal Use of Force and Investigation of Injuries."

### ***Use-of-Force Model***

The FCPD includes a “Use-of-Force Model” at the end of GO 540.1 (Use of Force). It is described in the policy as “The Use-of-Force Paradigm for Law Enforcement and Corrections.”

#### **RECOMMENDATION #45: Delete outdated “Use-of-Force Model” from the use-of-force policy.**

The FCPD should remove the “Use-of-Force Model” from General Order 540.1. The model is outdated and difficult to understand.

#### **Benchmark Comparison: Recommendation #45**

Very few comparable agencies include any type of use-of-force matrix or model like the one seen in the FCPD’s current use-of-force policy. In the few agencies that do include some type of matrix or model, each varies considerably, and no particular model was easy to understand. The FCPD “Use-of-Force Model” can continue to be used as a training tool, but training emphasis must remain focused on the concept of “objective reasonableness.” As an example, the Los Angeles Police Department stresses objective reasonableness in both its policy (556.10) and training.

#### **RECOMMENDATION #46: Delete references to techniques that are not defined in policy.**

The FCPD includes in General Order 540.1 charts summarizing “Use-of-Force Reporting by Type of Force Employed and Injury/Treatment.” The FCPD should remove these charts from its use-of-force policy **because the charts do not reflect current FCPD policy.** They contain techniques such as “Ripp Hobble” and “Pressure Points” that are part of the training curricula but are not defined in the use-of-force policy. These techniques do not need to be defined in the policy since they are covered under the broader definition of less-lethal force.

### ***Use of Force: GO 540.1 Reorganization***

#### **RECOMMENDATION #47: Create a single policy on use of force.**

The FCPD should develop a single, logically structured policy which includes all directives and information pertaining to the use of force.

PERF found that many aspects of the FCPD’s policies on use of force are progressive and effective. This report recommends changes designed to strengthen certain policies. In addition, PERF recommends that the FCPD’s policies on use of force be reorganized for greater clarity, understanding and ease of access.

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The following outline structure should be considered for reorganizing General Order 540.1 and expanding it to include all directives and information pertaining to the use of force (e.g., separate SOP on ECWs).

Suggested Structure:

*Use-of-force: GO 540.1*

- I. Purpose*
- II. Policy*
- III. Definitions*
- IV. De-escalation*
- V. Deadly Force*
  - A. Use of Deadly Force*
  - B. Reporting the Use of Deadly Force and the Investigation of Injuries*
  - C. Deadly Force Against Animals*
  - D. Reporting the Use of Deadly Force Against Animals*
- VI. Less-Lethal Force*
  - A. Use of Less-Lethal Force*
  - B. Reporting the Use of Less-Lethal Force and the Investigation of Injuries*
- VII. Use-of-Force Tools*
  - A. Firearms*
  - B. Bean Bag Shotgun*
  - C. Baton (Striking Instrument)*
  - D. Oleoresin Capsicum (OC)*
  - E. Electronic Control Weapon (ECW)*
  - F. Pepper Ball System*
- VIII. Training*
- IX. Legal Reference*
- X. Accreditation Standards Reference*

## **USE-OF-FORCE TRAINING**

All use-of-force training for the FCPD is conducted at the Fairfax County Criminal Justice Academy. The academy has a dedicated staff with expertise related to defensive tactics and firearms training. As part of the review process, PERF conducted interviews with several staff members assigned to both the defensive tactics and firearms units.

### ***Defensive Tactics – FCPD’s Current Training Practices***

For recruit officers, defensive tactics training begins during the first week of the academy. It begins with an outline of the department’s general orders and related standard operating procedures. Interviews indicate that instructors focus specifically on relevant case law and objective reasonableness, thoroughly defining both. Interviews further indicated that instructors stress the importance of de-escalation and communication skills. This was personally observed by PERF staff during on-site visits and on-site review of recruit and in-service training.

During the academy, instructors spend two weeks of training covering defensive tactics topics, including personal weapons, handcuffing, weapon disarming, ground defense, baton drills, pressure points, and weaponless controls. Instructors said they use essentially the same lesson plans for both recruit and in-service training to ensure that all officers receive the same information. As part of the defensive tactics training process, both recruit and in-service officers receive both lecture and practical application training and testing.

As part of the current in-service training process, instructors provide specific training regarding communication skills and de-escalation. This was also observed while reviewing a variety of FCPD defensive tactics lesson plans.

### **RECOMMENDATION #48: Prohibit “choke” holds in policy.**

The FCPD should prohibit “choke” holds and neck restraints as a use-of-force option. (***Note: The Fairfax County Police Department has recently issued an order to implement this recommendation.***)



***Comprehensive, Scenario-Based Training on Use of Force and De-escalation***

**RECOMMENDATION #49: Provide substantial scenario-based recruit training in the use of force, and strategies for reducing the use of force.**

The FCPD should ensure that recruit officers receive substantial tactical scenario-based training in the use of force and de-escalation skills as part of the academy curriculum. This should be included even if the time in the academy must be extended, as it involves the development of critical decision-making skills.

This training should include discussion of, and scenario-based role-playing exercises that address, the following:

- Legal and constitutional issues regarding the use of force;
- Lethal force, less-lethal force, and other options for disarming a person or making an arrest;
- Crisis intervention strategies for responding effectively to persons with mental illness, mental or developmental disabilities, or other conditions that can cause them not to understand or respond reasonably to what an officer is saying, such as deafness, Autism, and drug or alcohol addictions;
- Protocols for better understanding the phenomenon of “suicide by cop”;
- De-escalation strategies, such as tactics for “slowing a situation down” in order to provide more time to assess a situation and summon assistance;
- Use of a decision-making model similar to the National Decision Model (NDM) used by police agencies in the United Kingdom. In a decision-making model, officers learn how to analyze a situation, assess risks, consider options, develop a working strategy for responding, take action, review the results, and if necessary, begin the process again.

(Note: FCPD reports that the Chief of Police has initiated steps to implement this recommendation.)

**RECOMMENDATION #50: Begin recruit training with the important concepts in policing.**

The FCPD teaches new recruits the mechanics of shooting in the first weeks of the academy. Firearms instruction is 10 days, consisting of 80 to 100 hours on pistol and shotgun training. The academy currently splits the academy class into two groups, with one group detailed first to firearms instruction while the other is detailed to emergency vehicle operations training (EVOC).

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At the completion of each block of training, the two groups switch curricula. The academy provides instruction in these skills early in the process because recruits most often fail or drop out of the academy during firearms and EVOC training.

PERF believes it is important to change this approach. Rather than beginning recruit training with the mechanics of firing a gun, FCPD can take a new approach that will make it a national leader: The first days and weeks of recruit training should focus on the most significant issues in policing, such as:

- The mission and role of the police in a democratic society;
- The sanctity of human life policy;
- Overall use-of-force policies, de-escalation, and crisis intervention strategies described in Recommendation #49; and
- The decision-making model to teach officers how to analyze complex situations and devise effective responses;

By focusing on the most important issues first, the FCPD can send an important message to new recruits about the department's priorities, the nature of the profession, and what is expected of them.

**RECOMMENDATION #51: Provide in-service scenario-based training at least annually on the issues cited in Recommendation #49.**

The FCPD should ensure that officers receive tactical scenario-based firearms training at least one time per year as part of the department's in-service training requirements. Scenario-based training will be well received by officers and is critical to ensuring that the department is preparing its officers for critical incidents, including active shooter situations, potential cross-fire situations, or use of concealment and cover.

In the past, FCPD has provided in-service training regarding tactical exercises and "shoot/don't shoot" scenarios. At one point, this was even provided to recruits after they came back to the academy from field training. However, due to staff and time limitations, the in-service shooting course had not been consistently offered. The department has begun to re-institute this training but needs to ensure that it becomes routine practice. Previously, five to seven weeks were set aside for this training so all officers could attend.

**In addition to restoring in-service scenario-based firearms training, FCPD should identify ways to provide officers with in-service training on de-escalation, crisis intervention, decision-making skills, and other issues cited in Recommendation #49.**

## **POLICE PURSUITS**

The FCPD describes policy on police pursuits in General Order 501.1, Operation of Police Vehicles. This General Order is not specific to police pursuits, but covers all aspects of vehicle operations, including routine patrol operation, rules against modifying a vehicle, police escorts, use of emergency equipment, crashes involving police vehicles, pursuit of violators, and special purpose vehicles. The policy itself is 30 pages long, with information pertaining to pursuits located more than halfway through the document.

In addition to the policy described above, General Order 540.1, Use of Force, describes “Vehicle Incidents,” which can include high-risk vehicle stops and take-downs, as well as boxing in and trapping vehicles, and additional information regarding the precision immobilization technique.

### **RECOMMENDATION #52: Consolidate policies on police pursuits.**

The FCPD should have a single policy titled “Police Pursuits” that covers all aspects of police pursuits, including use of the Precision Immobilization Technique (PIT) and blocking vehicles.

### **RECOMMENDATION #53: Use the DCJS model policy as the basis for a stand-alone FCPD police pursuit policy.**

As the basis for a new stand-alone policy on police pursuits as recommended by PERF, the FCPD should use the model police pursuit policy, titled “Vehicle Pursuits and Emergency Operations” from the Virginia Department of Criminal Justice Services.

### ***Recruit Training for Emergency Vehicle Operations***

The Fairfax County Criminal Justice Academy provides 80 hours of training over 10 days for each recruit regarding the operation of emergency vehicles. Training is a combination of classroom and practical application. This training segment occurs near the beginning of the academy process. Instruction is extensive and provides the recruit with techniques from proper seat and hand position while driving to high-speed emergency maneuvers.

Recruit officers practice their learned skills on both low- and high-speed courses, a track designed to teach vehicle control in the event of a skid, off-road recovery, crash avoidance, and the use of officer-deployed tire deflation devices. The recruit training does not cover the Precision Immobilization Technique (PIT) or blocking vehicles. Interviews indicate that instructors thoroughly cover the police department’s general orders regarding operation of police vehicles and pursuit. Recruits are evaluated on all courses as well as with written classroom tests.

**The emergency vehicle operations recruit training, conducted at a state-of-the-art driving facility, is similar to what is found in most large U.S. police agencies and is of high quality. No changes are recommended in this training.**

***In-Service Training for Emergency Vehicle Operations***

All FCPD officers are required to take a general emergency vehicle operations refresher class every three years. It is an eight-hour course and provides a refresher on topics covered in the recruit training class. Officers must demonstrate their skills on both the low- and high-speed courses. PERF has no recommendations for changes in this course of instruction or the time period at which it is scheduled. Because of the time commitment and resources necessary for emergency vehicle training, the general refresher course once every three years is commonly found in U.S. police agencies.

**The emergency vehicle operations in-service training is similar to that of most large U.S. police agencies and is of high quality. No changes are recommended.**

***Specialized Training: PIT and Vehicle Blocking***

The Fairfax County Criminal Justice Academy offers a one-day training certification class on the use of the Precision Immobilization Technique (PIT) and vehicle blocking. The class is highly recommended by the department for all patrol officers, with instructors estimating that 70-75% of patrol officers have taken the course. Officers receive both classroom and practical driver training that includes practicing both techniques. **Although discussed in the course and identified in policy, officers are not taught any techniques with regards to stationary roadblocks.**

The PIT is taught to officers on both straight and curved roadways with practice conducted from each side of the police and suspect vehicles. Officers must demonstrate a minimum of eight successful PIT attempts to pass. Officers are taught to use the technique at a maximum of 45 mph. Supplied departmental data since 2009 show the PIT was used 12 or fewer times per year.

In addition to the PIT, the course teaches officers to block in a vehicle using a three car technique. The technique is designed to assist officers in strategically moving a vehicle in the direction the officers want it to go, utilizing one police vehicle in front, one behind, and one beside the suspect vehicle. Timing is critical in this type of high-risk maneuver.

**Once officers have completed this one-day course, there is no recertification or refresher class requirement.** The academy offers a two-hour refresher course several times a year.

Officers who are certified can, and are encouraged by academy staff to, take this refresher course every few years.

***Recent Research on the PIT***

The National Institute of Justice (NIJ) Weapons and Protective Systems Technology Center of Excellence (WPSTC) partnered with the Michigan State Police (MSP) Precision Driving Unit (part of the state police academy) to characterize vehicle dynamics during the use of the PIT maneuver. The primary issue was the interaction of vehicles equipped with electronic stability control technology. The key finding of the research was that suspect vehicles equipped with stability control technology behaved in a much less predictable manner when subject to a PIT maneuver than vehicles without electronic stability control. This was especially observed at the low speeds used by most agencies for safe PIT maneuvers.

**RECOMMENDATION #54: Discontinue use of the PIT maneuver.**

For a number of reasons—including how relatively infrequently the PIT maneuver is used by FCPD officers, the increased prevalence of vehicles with electronic stability control, and the model police pursuit policy established by the Virginia Department of Criminal Justice Services (DCJS)<sup>24</sup>—the FCPD should discontinue the use of the PIT maneuver.

The DCJS model policy states, “Officers shall not intentionally ram, bump, or collide with a fleeing vehicle nor shall officers pull alongside such vehicles in an attempt to force them off the road or into an obstacle.” FCPD should adopt this standard.

***Reporting the Use of Force in Police Pursuits***

**RECOMMENDATION #55: Require reporting of use-of-force events during police pursuits.**

The FCPD should require officers to file a use of less-lethal force report when a spike strip tire deflation device<sup>25</sup> or a boxing-in maneuver is utilized. The processes for deadly force reporting and investigation should be used if a stationary roadblock is utilized.

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<sup>24</sup> <http://www.dcjs.virginia.gov/cple/sampleDirectives/index.cfm?code=29>

<sup>25</sup> Portable tire deflation device that is deployed onto a roadway by officers to deflate a suspect vehicle’s tires.

## **ACADEMY STANDARDS**

The Fairfax County Criminal Justice Academy (CJA) serves the Fairfax County Police Department, the Fairfax County Sheriff's Office, the towns of Herndon and Vienna Police Departments, and the Fairfax County Fire Marshal's Office.

The CJA is a certified training academy established in 1985. According to information obtained through interviews and document review, its training objectives align with the objectives listed in Virginia's Administrative Code, including the optional objective of physical training. A general review of training topic areas and hourly requirements indicates that FCPD is in compliance with, and in some cases exceeds, Virginia laws related to compulsory training.

In addition to having dedicated staff assigned to the recruit training, range (firearms), in-service training, and emergency vehicle operations training, there is also a Law Enforcement Training Unit (LETU). LETU is charged with determining the content of refresher or mandated training that is required based upon the current needs of the FCPD. These hours are counted toward the 40 hours of in-service training that FCPD officers are required to complete every two years. LETU conducts training at various FCPD police facilities.

As mandated by Virginia state law, the CJA is required to meet the training standards established by the state Department of Criminal Justice Services (DCJS). The specific standards are listed as part of Virginia's Administrative Code. Based on interviews and review of policy and practice, PERF found that the CJA meets or exceeds state mandates regarding basic academy, field, and in-service training standards. The following provisions apply to compulsory minimum training for law enforcement officers.

### ***Academy Training (Categories 1-9)***

Virginia State law mandates a minimum of 480 hours of academy training must be provided in the following categories (with the exception of Category 9, Physical Training, which is optional).<sup>26</sup>

- Category 1 - Professionalism
- Category 2 - Legal Issues
- Category 3 - Communications
- Category 4 - Patrol
- Category 5 - Investigations

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<sup>26</sup> 6VAC20-20-21

- Category 6 - Defensive Tactics/Use of Force
- Category 7 - Weapons Use
- Category 8 - Driver Training
- Category 9 - Physical Training (optional)

The CJA exceeds the state mandated training hours, conducting a 1,088 hour-long training academy, more than double the state mandate for recruit training.

### ***Field Training (Category 10)***

Virginia state law requires a minimum of 100 hours of field training. The FCPD well exceeds the minimum state field training requirement, providing approximately 42 days of field training for each recruit.

### ***In-Service Training***

The following are the compulsory in-service training standards applicable to all Virginia law-enforcement officers:

- A. Law-enforcement officers: minimum of 40 hours every two years
  1. Cultural diversity training: minimum 2 hours.
  2. Legal training: minimum 2 hours.
  3. Career development/elective training: 34 hours  
(The remaining courses to be provided are at the discretion of the academy director and shall be designated as legal training).

With regards to firearms training, no more than eight hours of firearms training shall be approved as elective subjects. Firearms training shall be applied as follows:

1. No more than four hours applied to firearms qualification as provided in 6VAC20-30-80<sup>27</sup>, and
2. Remaining hours eligible for situational or decision-making training.<sup>28</sup>

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<sup>27</sup> Reference is to annual range qualifications.

<sup>28</sup> VA State Administrative Code 6VAC20-30-30

Based on PERF's overall review of the CJA, the following recommendations are made:

**RECOMMENDATION #56: Consider expansion of scenario-based training.**

The FCPD should revisit the use of simulation/scenario-based training. Academy staff in recent years has decreased the use of simulation/scenario-based training because of the amount of time it takes to process the number of recruit officers currently in each academy class. However, simulation/scenario-based training can be an effective tool in providing practical training, and can also be a valuable assessment tool during academy training.

**RECOMMENDATION #57: Continue in-service training on de-escalation of incidents.**

The FCPD should continue to include in-service training specific to the topic of de-escalation and minimizing the use-of-force.

A 2013 PERF publication titled *Civil Rights Investigations of Local Police: Lessons Learned*<sup>29</sup> found that police use of force has been one of the primary issues cited in U.S. Department of Justice investigations of local police departments for civil rights violations. One of the key aspects of the reforms resulting from these investigations is the use of de-escalation techniques. De-escalation strategies help officers to prevent situations from developing in which they would need to use force. Instead, the goal is to gain voluntary compliance, reduce the level of force required in a situation, and prevent any use of force if possible. De-escalation includes the use of verbal skills to bring a peaceful conclusion to a potentially confrontational event. This can be critical when dealing with subjects who exhibit erratic or dangerous behavior due to mental illness or disabilities, medical impairments, or the influence of alcohol or drugs.

The FCPD also should develop training in a decision-making model similar to the National Decision Model, used by police agencies in the UK. This type of training provides officers with a structure for analyzing a situation, assessing risks, considering options, and developing a working strategy for responding when the counter a complex incident. British policing authorities report that the NDM helped to reduce their overall use of force while providing officers with effective guidance in how to think about and respond effectively to difficult situations.

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<sup>29</sup> *Critical Issues in Policing Series, Civil Rights Investigations of Local Police: Lessons Learned*. Police Executive Research Forum, July 2013. <http://policeforum.org/library/critical-issues-in-policing-series/CivilRightsInvestigationsofLocalPolice.pdf>



**The FCPD already does a good job of stressing de-escalation during training. PERF encourages the department to maintain and, where possible, expand this focus. See Recommendation #49.**

**RECOMMENDATION #58: Provide an annual firearms course that is scenario-based and tactically oriented.**

The FCPD currently provides one annual firearms qualification course that focuses largely on marksmanship and technique. The department should institute a second yearly course that is scenario-based and tactically oriented.

Scenario-based training will be well received by officers and is critical to ensuring that the department is continually reviewing its use-of-force policy and preparing its officers for critical incidents, including active shooter situations, potential cross-fire situations, and use of concealment and cover.

## **INSTRUCTOR TRAINING AND CERTIFICATION**

Most instructors at the CJA are assigned full-time. The academy uses part-time instructors with specific expertise to assist in training as needed. Academy commanders and staff members told PERF that all CJA instructors are certified in accordance with applicable regulations, including instructor re-certification which is required every three years. While the instructors vary in how they present material, all are required to follow the same CJA lesson plans. The CJA utilizes instructor personnel from the FCPD, the Fairfax County Sheriff's Office, and the towns of Herndon and Vienna.

During PERF's interviews of academy staff members, many of the instructors expressed the importance of safety, de-escalation, and respect for all individuals, and this was also evident during PERF's observations of training sessions.

### ***State Instructor Certification/Re-Certification Mandates***

All instructor certification is mandated by the Virginia Department of Criminal Justice Services (DCJS), and information about certification can be found in the Virginia Criminal Justice Training Reference Manual. The state provides for several types of instructor certification, including a Provisional instructor, General instructor, Firearms Specialty instructor, Defensive Tactics Specialty instructor, Driver Training Specialty instructor, and Speed Measurement Specialty instructor.

All categories of sworn instructors must meet several minimum qualifications, including two years of experience in a criminal justice agency, successful completion of a state-approved instructor development course (usually 40 hours), and an apprenticeship (within 12 months of successfully completing the instructor development course) with a certified instructor who has a minimum of three years of experience. Instructor certification must be updated every three years and includes several additional hours of refresher training.

The CJA has previously developed general and specialty instructor certification classes that received approval from the DCJS. Although hours vary, most provide a minimum of 40 hours of instructor training. Each academy director is responsible for ensuring that all instructors, whether general or specialty, are up to date with instructor certifications and are listed in the DCJS records management system.

**The CJA is adhering to Virginia state mandates regarding instructor training, certification, and re-certification, and its policies and practices in these areas are similar to those of other progressive police agencies.**

**RECOMMENDATION #59: Plan for continuity of training expertise.**

The FCPD should ensure it has provided succession planning with regard to academy instructors. This type of continuity planning is especially critical in the areas of firearms and use-of-force training. By many accounts, the premier subject matter expert at the academy on use-of-force training, specifically control tactics, is a Master Police Officer who is eligible to retire.

As part of this continuity planning, it is critical that all instructors—seasoned veterans as well as the next generation of trainers who will succeed them—remain up-to-date on national best practices in the policing profession. This is particularly important in the areas of use-of-force and officer decision making.

## **RESPONSE TO CRITICAL INCIDENTS**

Several types of situations are considered “critical incidents” in policing. These include natural disasters such as earthquakes; terrorism or other “man-made disasters;” planned and unplanned large-scale events, such as political demonstrations, international conferences, and sporting events; and major criminal incidents, including mass shootings, barricade situations, and riots or civil disturbances.

The initial response by police patrol officers can significantly impact the outcome of critical incidents. Strong policies and training, along with effective command and control, are critical elements of an effective response. PERF’s review in this area focused on specific FCPD general orders or standard operating procedures related to critical incidents. In addition, the review examined current department-wide training and specialized training for units such as Special Weapons and Tactics.

The PERF team reviewed training lesson plans and modules related to officers’ response to critical incidents, including active shooter response, provided at the recruit, in-service, and specialized levels. The FCPD’s critical response training includes responding to EDP matters, barricaded subjects, and suicidal subjects.

The common theme in the FCPD training approach is helping officers to better *understand* the people they are faced with during critical incidents, and how best to communicate with them. Effective communication is stressed throughout the training. Most of the lesson plans include classroom instruction and practical exercises. Examples of lesson plans reviewed included suicide intervention, active shooter response, emotionally disturbed persons, and law enforcement communication.

Two PERF publications could help department leaders and training personnel review and evaluate training on critical incidents:

- *Managing Major Events: Best Practices from the Field*<sup>30</sup>
- *Critical Issues in Policing Series: The Police Response to Active Shooter Incidents.*<sup>31</sup>

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<sup>30</sup>[http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/managing%20major%20events%20-%20best%20practices%20from%20the%20field%202011.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/managing%20major%20events%20-%20best%20practices%20from%20the%20field%202011.pdf)

<sup>31</sup>[http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/the%20police%20response%20to%20active%20shooter%20incidents%202014.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/the%20police%20response%20to%20active%20shooter%20incidents%202014.pdf)

## **Identified Policies**

The FCPD identifies its response to specific critical police incidents in several different directives. Each directive is discussed below along with PERF's recommendations.

### **RECOMMENDATION #60: Create a separate Special Operations Division policy.**

The FCPD should create a distinct and comprehensive Special Operations Division policy for inclusion in General Order 530, Specialized Units, describing the division's functions, procedures, and officer selection criteria.

The new policy should describe each component of the Special Operation Division, and the components' functions and procedures. As cited in the Commission on Accreditation for Law Enforcement Agencies manual (Section 46.2), each agency should have a policy that "establishes procedures for special operations activities including: a. the responsibilities that agency personnel are to assume until assistance arrives; b. deployment of tactical team to supplement other operational components; and c. coordination and cooperation between tactical teams and other operational components."

In addition, the policy should establish criteria for the selection of officers assigned to the Special Operations Division and ensure that personnel assigned to the division are provided with and trained in the necessary specialized equipment. This new policy should discuss the circumstances under which the resources and skills of the Special Operations Division would be utilized. This should include any life-threatening situation that requires skills or resources not typically available or practiced by patrol personnel, such as high-risk arrests or search warrants, hostage/barricaded person situations, active shooter situations, dignitary protection or escorts, security during special events, and high-risk surveillance operations.

### ***SOP 13-047, Police Response to Bomb Threats and Bomb Incidents***

The FCPD's policy for response to bomb threats or incidents is detailed in SOP 13-047. The policy clearly identifies the Explosive Ordnance Disposal (EOD) unit as being responsible for handling bomb-related critical incidents, as well as delineating the differences between police and fire department command responsibilities. The policy provides direction to Public Safety Communication personnel, the initial responding officers, search personnel, and EOD technicians.

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In 2007, PERF published *Critical Issues in Policing Series: Patrol-Level Response to a Suicide Bomb Threat: Guidelines for Consideration*.<sup>32</sup> This publication summarizes lessons learned from national and international policing partners and provides guidelines for agencies to consider when implementing their policies and programs. In light of continued domestic and international threats, this publication would serve as a good review for FCPD leaders and training staff.

**RECOMMENDATION #61: Provide more detail in the policy on bomb threats and incidents.**

The FCPD should consider adding a definitions section and a supervisor/commander responsibilities section to SOP 13-047. The definitions section would add clarity to a number of terms used in the SOP. In addition, describing the roles and responsibilities of patrol and Explosive Ordnance Disposal (EOD) supervisors, as well as command personnel, should be incorporated into response plans and specified in the policy as well.

**SOP 13-048, Special Operations:  
Hostage/Barricaded Persons**

The FCPD's response to hostage situations or barricaded subjects is contained in SOP 13-048. It was most recently updated in April 2013. The policy stresses that all hostage or barricaded person responses should utilize the capabilities of the Special Operations Division, including the Special Weapons and Tactics (SWAT) unit and Crisis Negotiation Team (CNT), unless immediate response is necessary to protect life. The SOP generally restricts the patrol response to containment of the incident.

**Benchmark Comparison:  
Recommendation #60**

Although comparable agency policies on bomb threats vary widely in specificity, most provide a section on definitions and describe supervisor and command responsibilities. The District of Columbia Metropolitan Police "Bomb Threat and Explosive Devices" policy, GO-HSC-905.04, is a good example of defining the many responsibilities of responding officers and supervisors.

**RECOMMENDATION #62: Add definitions to hostage/barricaded persons policy.**

The FCPD should add a definitions section to SOP 13-048 that includes clear definitions of a hostage situation, barricaded person situation, legal authority, command post, immediate action team, staging area, inner and outer perimeters, and other key terms.

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<sup>32</sup> [http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/patrol-level%20response%20to%20a%20suicide%20bomb%20threat%202007.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/patrol-level%20response%20to%20a%20suicide%20bomb%20threat%202007.pdf)

**RECOMMENDATION #63: Add policy on the responsibilities of the first supervisors at the scene.**

The FCPD should add a section to SOP 13-048 specifying the responsibilities of the first on-scene supervisor when responding to the scene of a hostage/barricaded persons incident. This section should be separate from the responsibilities of first responding patrol officers.

For example, this new section should include verifying legal authority, obtaining all available information from responding officers, evaluating the need for additional personnel and Special Operations personnel, establishing a staging area, establishing scene perimeters, determining any need for evacuation, and briefing responding command units. (Patrol officer responsibilities should be a separate section that includes establishing legal authority to become involved in the situation, securing the scene, gathering intelligence, etc.)

**RECOMMENDATION #64: Add policy about the timely notification of a hostage/barricade incident to the Special Operations Division.**

The FCPD should add a section under supervisor responsibilities that requires the supervisor to make timely notifications of hostage/barricade incidents. Supervisors need to be responsible for ensuring the situation is not unnecessarily prolonged before requesting the Special Operations Division or consulting with a SWAT commander. The policy should include FCPD Communications dispatchers setting an event timer at the request of the first on-scene supervisor to periodically alert them how long the situation has been occurring. This will help a supervisor determine if an incident is in need of additional resources to help bring it to a safe conclusion.

**RECOMMENDATION #65: Add policy on working with the news media.**

The FCPD should add a section to SOP 13-048 on the establishment of a news media staging area during all hostage/barricaded persons situations. The policy should also identify who is responsible for handling media-related matters on the scene, including coordination with FCPD public information personnel.

**RECOMMENDATION #66: Add policy on after-action reviews.**

The FCPD should add a section to SOP 13-048 mandating an after-action review and report for all hostage/barricaded persons situations. The reviews should cover the responses of both patrol and Special Operations personnel. These reports should be reviewed via the chain of command, to include the chief of police.

### **GO 603.3, Emotionally Disturbed Persons (EDP) Cases**

Many police chiefs and sheriffs across the country have noted that law enforcement officers encounter persons with mental illness on a frequent basis, and that these incidents often end with controversial uses of force.<sup>33</sup> Sound policies, effective training, and capable response mechanisms have proved successful in reducing the likelihood that these encounters will result in a use of force, and many police agencies have taken leadership roles in helping emotionally disturbed persons to receive mental health care and other services.

The FCPD has a well defined response to emotionally disturbed persons, detailed in General Order 603.3. The policy addresses the importance of resolving matters involving emotionally disturbed persons using non-arrest resolutions whenever possible. The policy clearly defines the law and processes involved in both voluntary and involuntary admissions to mental health facilities. The policy describes the county mobile crisis unit, which is composed of mental health professionals capable of responding to mental health matters anywhere in the county.

#### ***EDP Training***

Approximately 43% of the FCPD's patrol force is currently trained in crisis intervention through the Virginia Department of Criminal Justice Services. This is a 40-hour course of instruction. The department also offers its own in-house crisis intervention training program that has not yet been approved by the DCJS. The department continues to send some

#### **Benchmark Comparison: Emotionally Disturbed Persons Policy**

Nearly all comparable police agencies reviewed for this study have policies to address the response to emotionally disturbed persons. Most policies, like FCPD's, are very specific to the jurisdiction's laws and response capabilities. The Seattle Police Department's Crisis Intervention policy stands out as useful for other departments. Made effective in October 2014 following the department's consent decree with the U.S. Department of Justice, the policy clearly describes the importance of the police response, the use of Crisis Intervention Teams, training, partnerships with mental health providers, and officer and supervisor responsibilities. The policy, "Seattle Police Department Manual, Title 16, Section 16.110, Crisis Intervention," is available online at: [http://www.seattle.gov/police/publications/manual/16\\_110\\_Referring\\_Subjects\\_Crisis\\_Solutions\\_Center.html](http://www.seattle.gov/police/publications/manual/16_110_Referring_Subjects_Crisis_Solutions_Center.html)

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<sup>33</sup> See, for example, [An Integrated Approach to De-Escalation and Minimizing Use-of-force](#). Police Executive Research Forum, 2012.

[http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf)



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officers to a state-approved crisis intervention training program, while it determines how to enhance the department’s internal course to meet DCJS requirements.

Crisis intervention training, originally developed by the Memphis Police Department, is designed to provide first responding police officers with the skills, knowledge, and abilities to deal with individuals exhibiting behavioral health issues. Such issues are often the result of drug and substance abuse or temporary or long-term mental incapacitation. By teaching officers to recognize the symptoms of such conditions, and providing them with the skills necessary to de-escalate, police can increase the likelihood that encounters with emotionally disturbed persons will be resolved without use of force and in a way that may help the person to receive treatment and services.

**RECOMMENDATION #67: Establish the “Memphis Model” for crisis intervention, with specially trained teams as well as base-level training for all officers.**

The FCPD should continue to work toward its goal of increasing the number of officers trained in crisis intervention (40-hour curriculum approved by the state). Approximately one-third of patrol officers have already received this training, with a targeted goal of 100% of officers.

In addition to providing this basic level of crisis intervention training to all patrol officers, the FCPD should go a step further and provide more advanced training for officers who would volunteer to be part of the department’s Crisis Intervention Team. These team members would maintain their regular patrol duties, but would also form partnerships with mental health workers, and these teams of police and mental health experts would be dispatched during crisis events to provide specialized assistance to responding officers. This is the essence of the “Memphis Model” that is being considered and implemented in other jurisdictions across the country.

This type of dual approach—providing basic crisis intervention training to all patrol officers, plus more advanced training to a cadre of volunteers who would serve as specialized Crisis Intervention Team members—is becoming recognized as a best practice. Encouraging officers to voluntarily apply to be CIT members helps to ensure that the teams are staffed with officers who have an interest in mental health issues, and the CIT team members over time become familiar not only with the issues and strategies, but also with the persons with mental illness who are

**Benchmark Comparison:  
Recommendation #66**

As part of its settlement agreement with the U.S. Department of Justice, the Portland, OR, Police Bureau agreed to establish the “Memphis Model” for crisis intervention. The department’s crisis intervention team is composed of officers who volunteer to receive additional, specialized training. Team members retain their regular patrol duties, but can be dispatched to the scene of a crisis event to assist responding officers.

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repeatedly the subjects of calls for service, and their particular needs and mental health issues. Crisis Intervention Teams also can work proactively to help mentally ill persons obtain treatment and take other steps to manage their illness.

The U.S. Justice Department's Civil Rights Division specifically addressed the advantages of Crisis Intervention Teams, as opposed to general training of all officers, in its 2012 "findings letter" prior to entering a settlement agreement with the Portland, OR Police Bureau (PPB):

PPB provides all of its officers with an initial 40 hours of crisis intervention training and dedicates a portion of its annual in-service training to this topic. PPB does not, however, have a specialized CIT team that consists of officers who have expressed a desire to specialize in crisis intervention and have demonstrated a proficiency at responding to individuals in mental health crisis. While we commend PPB for training all officers on crisis matters, this approach assumes incorrectly that all PPB officers are equally capable of safely handling crisis situations and fails to build greater capacity among qualified officers. Certainly circumstances will arise when a specialized crisis intervention officer is not immediately available, or when despite the training and experience, a specialized crisis intervention officer is unable to de-escalate a situation sufficiently to prevent the need of a significant use of force. However, there is growing evidence that a crisis team response is likely to result in a better outcome and reinforce public confidence in policing.

First, not every officer is well suited to effectively deal with people with mental illness.... In addition, the 40-hour crisis intervention training curriculum is not what makes a specialized crisis intervention officer an expert in handling mental illness calls. Expertise requires vast field experience developed by CIT officers as they are dispatched to mental illness crisis calls.<sup>34</sup>

The Los Angeles Police Department also recently received credit for adopting this approach.<sup>35</sup>

As noted earlier, approximately half of the officer-involved shootings in Fairfax County over the past decade involved persons suffering from a mental health crisis (see page 26). Many of these types of cases, locally and across the country, involve individuals who wish to commit so-called "suicide by cop."

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34 "Findings Letter" from DOJ Civil Rights Division to Portland Mayor Sam Adams. Sept. 12, 2013. [http://www.justice.gov/crt/about/spl/documents/ppb\\_findings\\_9-12-12.pdf](http://www.justice.gov/crt/about/spl/documents/ppb_findings_9-12-12.pdf)

35 "In Los Angeles, a national model for how to police the mentally ill." The Christian Science Monitor. June 15, 2015. <http://www.csmonitor.com/USA/Justice/2015/0615/In-Los-Angeles-a-national-model-for-how-to-police-the-mentally-ill>

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Based on its history and experience, the FCPD already places a strong emphasis in its training on emotionally disturbed persons and “suicide by cop” scenarios. Adoption of the Memphis Model should help make the department more effective in this area. By providing all of its patrol with the basic training and tools needed to better recognize these situations and provide an effective initial response, and by creating teams of officers with even more specialized and advanced training to help them address these often complicated situations, the FCPD should be able to resolve more of these incidents peacefully, minimizing the need to use force and preventing injuries to both officers or members of the public.

**Recommendation #68: The FCPD should continue requesting DCJS approval of the department’s crisis intervention course.**

The FCPD should continue to request DCJS certification of the department’s crisis intervention course for recruits. The FCPD has a goal to train 100% of its sworn personnel in crisis intervention by training all recruits, using the same course materials, syllabus, and certified trainers who teach the crisis intervention course for active officers. However, DCJS will not certify new recruit officers as having received this training because it requires 2 to 3 years of on-the-job experience before they can take the certification course. The FCPD should continue working with other law enforcement agencies in the state to address this issue.

**Recommendation #69: Fully integrate dispatch personnel into the crisis intervention response.**

Fairfax County’s emergency dispatch personnel do not work directly for the police department; however, the FCPD and the county should work to ensure that 9-1-1 call takers and dispatchers are fully integrated into the crisis intervention regimen. Call takers and dispatchers play a critical role in the response to incidents involving mental health crises. These personnel need to be trained in how to recognize a call from an emotionally disturbed person, to ask the right questions and develop more information about the crisis event, and to quickly relay the appropriate information to responding officers.

The importance of dispatch personnel was demonstrated in an April 2015 case in New Richmond, Ohio. An officer who was following a murder suspect was informed by dispatchers that the suspect may seek to commit “suicide by cop” and that he had a gun under the seat of his car. When the officer stopped the suspect’s vehicle, the suspect approached the officer, repeatedly shouting “shoot me.” With his weapon drawn, the officer engaged in a tactical retreat, verbally commanding the suspect to stop and get down on the ground. In less than a minute, with other units in the process of responding, the suspect surrendered. Without the up-front warning about a possible suicide-by-cop encounter, this incident easily could have ended differently.

Fairfax County already emphasizes awareness and training of its call taking and emergency dispatch personnel in how to handle behavioral crisis events. However, as the FCPD expands its training of patrol officers and creates specialized Crisis Intervention Teams, the county's call takers and dispatchers will need additional training to understand and effectively support the police department's enhanced response to these situations.

## **PUBLIC INFORMATION AND TRANSPARENCY**

In today’s policing environment—with community members paying close attention to police practices, and posting video recordings of police officers on social media networks that transmit information and images instantaneously—it is critical that police departments be as open, transparent, and informative as possible about police operations and practices, especially when it comes to police use of force.

National best practices call for police departments to have policies, procedures, and personnel in place to work cooperatively with the news media on the scene of critical incidents, including officer-involved shootings. Increasingly, police departments also are developing their own mechanisms for disseminating information about critical incidents directly to the public, through social media. Twitter can be used to share information on a minute-by-minute basis, and community members and the news media increasingly realize that following a police department on Twitter and Facebook can be the best way to obtain the latest information quickly during a critical incident.

Police departments also need to provide timely updates on individual cases (respecting the integrity of any ongoing investigations) and to make available to the public statistical information on police use-of-force.

Providing this type of information to the public not only demonstrates transparency but also can help members of the community better understand the issue of police use of force and better evaluate department performance. For example, members of the Fairfax County community might be surprised to learn that FCPD officers draw and point their firearms relatively infrequently, and that this number has been declining in recent years (see page 25). In the long run, openness and transparency support the larger goal of increasing perceptions of police legitimacy in the eyes of the community.

**RECOMMENDATION #70: Publish annual use-of-force statistical information on the FCPD website.**

**Benchmark Comparison:  
Recommendation #69**

Many police departments publish annual use-of-force reports on their departmental websites. One example is the Anne Arundel County, MD, Police Department, which provides detailed annual use-of-force reports online at:  
<http://www.aacounty.org/Police/ForceStats.cfm>.

The FCPD’s Internal Affairs Bureau also publishes an annual statistical report. That was the source of the information contained in the “Data Analysis” section of this report. The FCPD should package this statistical information and make it available on the department’s website. In addition, the FCPD should make other, non-law enforcement sensitive information about its use-

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of-force policies and procedures readily available to the public. (The department already publishes most of its written directives online.)

## **DEPARTMENT-WIDE TRAINING**

The 70 recommendations detailed above call for a number of significant changes to the FCPD's policies and practices. The recommendations address the need for more precise and enhanced policies in a number of areas, as well as additional tactical and scenario-based training, additional firearms training, and a continued emphasis on de-escalation of incidents when possible. PERF also recommends new and more comprehensive approaches to training officers in responding to emotionally disturbed persons, including "suicide by cop" incidents.

To be effective, these training enhancements must be carried out in a comprehensive manner, as they affect all sworn personnel within the agency (and, in the case of dispatch, even some personnel outside the police department). Any significant changes within a department's policies and practices, as this report recommends, should be presented and explained to all department personnel. PERF has found that simply changing policy is not enough to produce the changes in practices and department "culture" that are needed for true reform. Departments must be prepared to invest the time and resources to explain the new policies to their personnel and to train them in how to effectively implement those policies. That is what this final recommendation is all about:

### **RECOMMENDATION #71: Provide department-wide training to address policy changes outlined in this report.**

The FCPD should conduct department-wide training for all sworn personnel regarding the changes to policies and practices implemented as a result of this review. This training must be comprehensive and should stress de-escalation, should include both scenario-based exercises and additional tactical and firearms training, and should be designed to combine different topics in order to address, in a practical and holistic manner, those situations that officers frequently encounter in the field.

For example, a situation in which an officer encounters a mentally ill person brandishing a knife involves policies regarding police use of force tactics, de-escalation skills, and best practices for handling emotionally disturbed persons. Ideally, training should combine all of these topics in order to teach officers how best to respond in a manner that protects the safety of everyone and minimizes the need for force. This training should be conducted over the course of the next year and should be supported with frequent reminders in roll-call briefings.

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This training should include discussion of, and scenario-based role-playing exercises that address, the following:

- Legal and constitutional issues regarding police authority and use of force;
- Lethal force, less-lethal force, and other options for disarming a person or making an arrest;
- Crisis intervention strategies for responding effectively to persons with mental illness, mental or developmental disabilities, or other conditions that can cause them not to understand or respond reasonably to what an officer is saying, such as deafness, Autism, and drug or alcohol addictions;
- Protocols for better understanding the phenomenon of “suicide by cop”;
- De-escalation strategies, such as tactics for “slowing a situation down” in order to provide more time to assess a situation and summon assistance;
- Use of a decision-making model similar to the National Decision Model (NDM) used by police agencies in the United Kingdom. In a decision-making model, officers learn how to analyze a situation, assess risks, consider options, develop a working strategy for responding, take action, review the results, and if necessary, begin the process again.
- The department’s “sanctity of human life” policy as recommended in this report.
- A duty to intervene if an officer witnesses another officer using excessive or unnecessary force.

The FCPD is already moving in this direction by planning to incorporate department-wide training provided by Polis Solutions, with a focus on developing practical skills and habits that improve officer safety and decision-making on the street.

Finally, as training personnel devise and update future lesson plans, they should review the PERF publications and other resources cited throughout this report. They provide guidelines, lessons learned, and best practices and experiences of law enforcement agencies from across the United States and abroad.



## **CONCLUSION**

2014 was a watershed year for American policing. Events in Ferguson, Staten Island, Cleveland, Baltimore, and many other communities have put the entire policing profession in the United States under a microscope. Residents, community leaders, members the news media, and others are demanding greater openness, accountability, and procedural justice from their police departments, especially when it comes to the use of force by officers. Progressive, forward-looking police departments are responding to this increased scrutiny by taking a hard look at their organizations, how they function, and how they can improve.

It was in this spirit that Fairfax County asked the Police Executive Research Forum to conduct a comprehensive review of the county police department's use-of-force policies and procedures, directives, and training curricula. The review also covered the hiring and selection process for new recruits, the department's directives covering critical incident response, and a comparison of the department to similar agencies with regard to use-of-force. While this project began a month before the fatal encounter between Ferguson Police Officer Darren Wilson and Michael Brown and the demonstrations and riots that followed, it took on added importance and urgency following the events in Ferguson and the many other controversies regarding police use of force nationwide in 2014 and 2015.

This review revealed a number of strengths within the Fairfax County Police Department. In general, its officers are knowledgeable and well trained when it comes to use-of-force practices, and the FCPD places a strong emphasis on de-escalation in its training programs. Overall, PERF found that the county's training program has knowledgeable instructors and provides valuable training in a number of areas, including emergency vehicle operations and critical incidents. To its credit, the FCPD asked PERF for assistance in advancing to the next level.

With respect to areas for improvement, PERF offers 71 specific recommendations. While some of these are relatively minor and pertain to enhanced wording and clarifying definitions in certain written directives, others are more substantive and need major focus. Some of the most important recommendations are summarized below:

### ***Aligning Policy with Training and Practice***

In some areas, the FCPD's practices and training are more advanced than its policies. For example, PERF staff members observed portions of the recruit training and found that de-escalation techniques are stressed as part of use-of-force training. This is an excellent practice that is consistent with progressive police departments nationwide. Similarly, training appropriately teaches officers to make use-of-force decisions based on the "objective

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reasonableness” legal standard set forth by the U.S. Supreme Court in the 1989 landmark case, *Graham v. Connor*. This also is a best practice. However, both de-escalation and objective reasonableness need to receive more emphasis in FCPD’s policies as well as its training.

***Enhancing Use-of-Force Policy and Training***

**Strengthen the use-of-force policy statement:** PERF recommends two important enhancements to the FCPD use-of-force policy statement: add “sanctity of life” and “duty to intervene” statements at the beginning of General Order 540.1. The addition of these statements will help further clarify the philosophical foundation of the department’s use-of-force policy.

**Eliminate references to “non-lethal” tools:** FCPD should reduce and simplify the types of force it defines in policy, from three categories (deadly, less-lethal, and non-deadly) to two categories: deadly and less-lethal. There is a growing understanding in the policing profession that many tactics or tools that traditionally were called non-deadly have resulted in death in a number of cases. Thus, policies and labels should not give officers a mistaken impression that certain weapons or techniques are always non-lethal. Most of the guidance in FCPD policies offered on non-deadly force can be folded into the discussions about less-lethal force.

**Tighten restrictions on shooting at vehicles:** In keeping with best practice through the United States, the FCPD should tighten its policy to ban shooting at moving vehicles when the vehicle is the only weapon being used against the officer.

**Conduct investigations regardless of the outcome of an incident:** The FCPD’s use-of-force policy should be unambiguous that investigations of officer use of deadly force will be conducted under the same rigorous protocols regardless of whether the subject suffered any injuries. When an officer shoots at someone, the investigation needs to be focused on the officer’s intent, not on his or her marksmanship or the chance conditions that determined whether or not the subject was hit.

**Update policies on Electronic Control Weapons:** In 2011, PERF and the U.S. Justice Department’s Office of Community Oriented Policing Services produced a set of national guidelines on the use of Electronic Control Weapons (ECW), such as Tasers™. These guidelines were developed through a careful process involving the participation of hundreds of police leaders from across the country, and they provide strong guidance to prevent excessive use of ECWs and to recognize their limitations. FCPD should bring its policies and procedures in full alignment with these guidelines.

**Crisis intervention training:** FCPD should continue to work toward its goal of providing crisis intervention training to all officers, and should also develop Crisis Intervention Teams (CIT). CITs are made up of officers who have volunteered to receive additional training in mental

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health issues, and who work with mental health workers to provide a better response – not only to crisis situations, but also to helping persons with mental illness to receive treatment and other services.

**Provide realistic, scenario-based training:** PERF recommends that recruits receive comprehensive, scenario-based training on the entire range of use-of-force options and strategies, including use of firearms and other weapons and tactics, de-escalation strategies, crisis intervention and the response to emotionally disturbed persons, a decision-making model to help officers analyze and respond effectively to complex situations, and related issues.

This training should be holistic in nature, combining different topics in a single curriculum in order to more realistically address situations that officers encounter in the field. For example, a single incident involving a mentally ill person on the street brandishing a knife or a piece of pipe can involve issues of crisis intervention training, de-escalation strategies, legal issues regarding use of force, a number of weapons and tactics for disarming a person, and other issues. It is difficult for officers to grasp how to apply all of these concepts simultaneously if they are taught separately as stand-alone training topics.

PERF recommends that FCPD conduct department-wide training for all sworn personnel regarding the changes put into place as a result of PERF’s review. This new training should be provided department-wide to all officers on a one-time basis, and also should be incorporated into existing recruit training and in-service training programs.

**Begin recruit training with the important concepts of policing in a democratic society:**

Currently, the FCPD teaches new recruits the mechanics of shooting in the first weeks of the academy. Firearms instruction is 10 days, consisting of 80 to 100 hours on pistol and shotgun training. The academy provides instruction in these firearms skills, along with emergency vehicle operations training (EVOC), early in the process, because recruits most often fail or drop out of the academy during firearms and EVOC training.

PERF believes it is important to change this approach. Rather than beginning recruit training with the mechanics of firing a gun, FCPD has an opportunity to adopt a new approach that will make it a national leader: The first days and weeks of recruit training should focus on the most significant issues, concepts and values of policing in a democratic society. These issues may include the mission and role of the police in protecting constitutional rights; the sanctity of human life policy; overall use-of-force policies, de-escalation, and crisis intervention strategies;

the decision-making model to teach officers how to analyze complex situations and devise effective responses; and crisis intervention and responding to incidents involving mental illness. By focusing on the most important issues first, the FCPD can send an important message to new recruits about the department's priorities, the nature of the profession, and what is expected of them.

### ***Toward a Use-of-Force Decision Model***

As challenging as these times are, they are also a time of great opportunity—a chance for police agencies to take bold steps to enhance their effectiveness. That is why PERF is urging that the FCPD, in addition to implementing the specific recommendations in this report, also consider adopting a decision-making model for officers facing a variety of different and difficult situations. This type of model is increasingly common in the United Kingdom, and PERF believes that it can work in the United States as well.

In PERF's estimation, the FCPD is ideally situated to take a thorough look at the UK's National Decision Model and to adapt its concepts and processes to the needs of the FCPD and Fairfax County. During this review, PERF interviewed several members of the FCPD from various ranks about the department's use-of-force training and practices. Almost without exception, the FCPD members were found to be knowledgeable about the department's policies on using force, the force options available to them, and the process by which such incidents are handled when they occur. There was consensus that patrol officers, in particular, are aware of use-of-force policies and what is expected of them when making force decisions.

It is this foundation of awareness and knowledge that places the FCPD in a strong position to adopt, refine, and experiment with the concept of a use-of-force decision making model. PERF hopes the FCPD takes on this challenge, both to improve its own operations and to further the development of use-of-force best practices throughout the United States.