

**WORKING GROUP ON CIVIL RIGHTS OF THE
ARLINGTON COUNTY CIVIC FEDERATION (ACCF)
LEGISLATION COMMITTEE**

PRELIMINARY REPORT ON FINDINGS

October 5, 2020

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I. EXECUTIVE SUMMARY

The Civil Rights Working Group was formed by the Legislation Committee of the Arlington County Civic Federation (ACCF) over the summer and fall of 2020. The Legislation Committee has been monitoring and discussing various civil rights issues now prominent in the public discourse as a result of intense media coverage of policing. Local scrutiny has resulted in Arlington County government appointing a Police Practices Group and funding an external review of the Police Department. The purpose of the Working Group is to share information learned with ACCF membership and the public, and to develop appropriate recommendations. This is a report on preliminary findings.

The Working Group has undertaken research, pulling together information about current county initiatives, publicly reported use of force incidents in Arlington, and allegations of civil rights violations against county agencies or their employees or agents. In addition, the Working Group conducted research on the issue of qualified immunity, and is recommending that the Legislation Committee consider a resolution on the issue of immunity. Appendices A-D provide additional information, including links to source materials. While the Working Group encourages all delegates and alternates to the ACCF to read this report in its entirety, a summary of findings is included in this Executive Summary.

This is not an in-depth report. For the purposes of this report, research was limited to the 21st century, with most of the incidents and allegations referenced taking place within the last decade. As a result of our research, the Working Group has

identified 14 examples* so far of use of force by Arlington County Police Department officers, as reported in the news media:

- Eight instances of taser use, of which two (2) instances, both in 2010, resulted in fatalities and one (1) resulted in a police officer being accidentally tased and rendered unconscious while another officer was attacked after having used the taser;
- Four (4) fatalities, of which three (3) involved the use of tasers and one the use of a firearm;
- Three (3) instances of firearm use, of which one (1) resulted in a fatality and two (2) resulted in wounding;
- Three (3) instances involved people described as naked or partially undressed in public;
- Three (3) instances involved people described as drunk in public;
- Three (3) instances of physical force, of which one (1) resulted in a non-fatal injuries to police officers;
- Two (2) instances involved outstanding warrants, of which one resulted in a fatality and one in a wounding, both from firearms;
- Two (2) instances involved persons who are described as armed, one with a knife and another with a firearm; and
- One (1) confirmed instance of use of a chemical agent and one (1) allegation of use of a chemical agent on peaceful protesters.

**Nota bene: These do not add to 14 due to overlapping factual circumstances.*

The Arlington County Police issued an Office of Professional Report for 2019 that includes data on use of force. It indicates that of all use of force incidents, members of the public were the persons injured in 73% of incidents, and that of those 33% required hospital care. <https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/11/2020/06/2019-OPR-Annual-Report.pdf> In addition to the 14 use of force incidents summarized above, the Working Group explored in this report the use of solitary confinement, seclusion, and different types of restraints used in a variety of institutional settings, including in Arlington Public Schools. Use of force and morbidity and mortality is discussed in Section IV.A. below with source information in Appendix A. Additional resources on restraint and seclusion appear in Appendix D.

The Working Group identified the following allegations of civil rights violations against Arlington County agencies or their agents since 2000, several of which involved investigations and findings by federal or state agencies:

- A 2020 federal lawsuit alleging violations of the First and Fourth Amendments rights of peaceful protesters by officers of the Arlington County Police Department at Lafayette Square, among others;
- A 2019 Department of Justice investigation resulted in a settlement with Arlington Public Schools after finding APS violated the rights of English Language Learners;
- A 2019 corrective action plan was issued to Arlington Public Schools by the Virginia Department of Education for violating a student's rights under the Individuals with Disabilities Act;
- A 2018 Habeas Corpus Petition challenging juvenile immigration detention at the Northern Virginia Juvenile Detention Center named the Executive Director Johnitha McNair as a defendant; filing the petition resulted in release of the teen to a sponsor;
- A 2017 Department of Education investigation resulted in a resolution agreement with Arlington Public Schools after finding APS violated the rights of a student with disabilities;
- A 2016 Department of Justice investigation resulted in a settlement agreement with the Office of the Sheriff, ordering payment of \$250,000 to a deaf prisoner and other remedial action;
- A 2014 corrective action plan was issued to Arlington Public Schools by the Virginia Department of Education for violating a student's rights under the Individuals with Disabilities Act;
- A 2012 Section 1983 claim filed against an Arlington police officer and an Arlington assistant commonwealth's attorney was dismissed, citing qualified immunity and absolute immunity;
- A 2008 Habeas Corpus Petition challenged excessive sentencing of a person who is severely mentally ill; the petition was denied on procedural grounds.

Alleged civil rights violations are discussed Section IV.B. below with source information in Appendix B. A review of sovereign immunity and qualified immunity are discussed in Section IV.C. below, with source information in Appendix C.

The next steps of the Civil Rights Working Group are discussed at the end of this report in Section VII.

II. BACKGROUND

The Legislation Committee has been monitoring and discussing various civil rights issues now prominent in the public discourse as a result of intense media coverage of policing. On May 25, 2020, George Floyd died while restrained by police officers in Minneapolis, Minnesota. The restraints were both physical and mechanical (handcuffs). A number of witnesses communicated with police during the incident - strongly voicing their objections to the treatment of Mr. Floyd, while Mr. Floyd repeatedly stated that he could not breathe and that they were killing him. Police ignored a request to check his vitals as Floyd became unresponsive, continuing to place body weight upon his neck, back and legs while he was face down. The killing was captured on multiple cameras, including police body cameras and the cameras of bystanders. Afterward, peaceful protests erupted across the United States. Subsequently, three Minneapolis police officers were charged with murder for the death of George Floyd.

On June 1, 2020, seven days after the killing of George Floyd by Minneapolis Police, officers of the Arlington County Police Department participated in clearing peaceful protesters from Lafayette Square in Washington, DC, pursuant to a mutual aid agreement with the U.S. National Park Service.

Following these two major events, numerous peaceful protests were held in Arlington. Several community groups have already engaged our local government. For example, the Arlington branch of the National Association of Advancement for Colored People (NAACP Chapter 7047) is seeking numerous reforms. Justice Forward, Arlington for Justice, Black Parents of Arlington, La ColectiVA are also advocating for change.

Community concerns around civil rights are now front and center. At this moment it is prudent to take a comprehensive look at the status of civil rights in Arlington County.

It is the view of the Civil Rights Working Group that community conversations should be well-informed about the status of civil rights in Arlington County. The Legislation Committee is uniquely suited to add some insight to these serious issues, having collected significant information concerning practices in Arlington County. The purpose of this report is to present our preliminary findings.

III. FORMATION OF THE CIVIL RIGHTS WORKING GROUP

Over the summer, the Legislation Committee met and raised concerns with ACCF leadership about the need to form a working group on the status of civil rights in Arlington. The goal of the Civil Rights Working Group is to increase public awareness, promote well-being, and encourage development of policies and practices that will improve local outcomes. The purpose of the Working Group is to share information learned with ACCF membership and the public, and to develop appropriate recommendations. This is a natural extension of work the Legislation Committee has completed over the last several years in the area of criminal justice reform.

As of the date of this report, the following delegates are participants in the Civil Rights Working Group: Ronald Haddox, Mike Hemminger, Juliet Hiznay, Nicole Merlene, John O'Hara, Jackie Snelling, Julia Tanner and Tina Worden. The Working Group has identified an initial scope of work, and is prioritizing issues raised by members of the committee.

Several county initiatives are presently under way. It is expected that significant data will become available as an external review of police practices by the county is completed. The Civil Rights Working Group encourages the county to share this data with the Police Practices Group (PPG), which was recently convened, and with the community at large.

The Legislation Committee expects that some topics reviewed by the Working Group will be of interest to other Civic Federation committees, and in particular the Schools Committee and Public Services Committee. In assessing priorities, the Working Group is mindful of the schedule of county and state efforts that address civil rights.

IV. LOCAL GOVERNMENT EFFORTS ON CIVIL RIGHTS

Our local government has important initiatives underway concerning civil rights and law enforcement practices. These include: Restorative Arlington, Police Practices Group, an external review of police policies and practices, Arlington Public Schools' review of the role of School Resources Officers and the launch of a Behavioral Healthcare Docket in General District Court. While these efforts are laudable, significant gaps remain.

A. Restorative Arlington

In January 2020, the County Manager launched Restorative Arlington.

<https://topics.arlingtonva.us/restorative-arlington/> According to the program

brochure:

The Restorative Arlington initiative is bringing people together to seek solutions built on an approach that uses powerful practices to build community and respond to conflict and harm. When practiced with

fidelity, restorative practices can help us move toward equitable treatment of all members of our community.

Liane Rozell, a Senior Policy Associate at the Annie E. Casey Foundation, which is based in Baltimore, MD, is on loan to the County Manager for the 2020 calendar year. The first community meeting, hosted by Arlington Mental Health & Disability Alliance was held on January 7, 2020, which was well attended by county and school agencies. Ms. Rozell has organized three subcommittees (legal, schools and community) focused on restorative practices. Ms. Rozell presented a status report to the County Board on July 21, 2020, reporting that committees had contributed over 1,000 hours to the project this year. The program brochure is available online.

<https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/21/2020/08/RA-Prospectus.pdf>

B. Police Practices Group

Responding to community concerns, the County Manager appointed a Police Practices Group in July 2020 to assess police policies and practices. The Police Practices Group is expected to complete work by early 2021.

<https://departments.arlingtonva.us/cmo/police-practices-work-group/>.

The Police Practices Group is co-led by Marcia Thompson and Julie Shedd. Marcia Thompson is Vice President of Law Enforcement Consulting at Hillard Heintze, based in Chicago. Julie Shedd is an Associate Dean and Associate Professor at the School of Conflict Analysis and Resolution at George Mason University. Police Practices Group meetings have begun, and a few community sessions have been held. The Police Practices Group does not include an appointee from the Arlington County Civic

Federation, although some delegates are monitoring public meetings. As of this report, aside from the community sessions, meetings of the PPG are not currently public, nor are the schedules posted on their webpage.

The Police Practices Group charge is quite extensive. However, it is notable that the charge specifically excludes a number of pressing issues. These include the issue of qualified immunity, the presence and role of School Resource Officers in Arlington Public Schools, and the use of technology by the Arlington County Police Department. These are issues of considerable interest to the Civil Rights Working Group.

C. External Review of Police Policies and Practices

In addition to convening the Police Practices Group, the county has hired legal consultants to conduct an external review that will look at use of force, training and supervision, cameras, recruitment and retention, internal affairs, and data and statistics. It is unclear to what extent that data will be shared with the public or with the Police Practices Group. Internal audits carried out by law firms often are not shared and might be treated as attorney-client privileged. It is possible that some of the information will be withheld. The Civil Rights Working Group strongly supports transparency in this process. The Working Group supports public release of the external review findings.

D. Arlington Public Schools - The Role of School Resource Officers

On September 3, 2020, the School Board held a work session on the role of school resources officers, who are presently stationed on site at school buildings. The School Board made a decision to form a working group by December 2020, which would provide recommendations by June 2021. It is unclear if the ACCF will be represented in the APS group.

The Legislation Committee intends to assess the landscape that applies to School Resource Officers to determine if legislative recommendations are appropriate in the form of an ACCF resolution. In particular, whether police officers should have a constant presence at school or be participating in non-law enforcement activities, such as school discipline and mentoring programs, should be examined. Given the resources involved, it is paramount to evaluate whether a constant police presence at schools improves school safety.

E. Behavioral Health Docket for Minor Criminal Cases in General District Court

Arlington's General District Court is in the process of rolling out a behavioral health docket, which was recently approved by the Virginia Supreme Court and is scheduled to begin in September 2020. The purpose of this docket is to divert adult traffic and minor criminal cases against Arlington residents with diagnosed mental health disorders or developmental disabilities. The goal is to address underlying needs through treatment, a research-based approach to improving community safety. The docket will not address traffic cases or criminal matters that involve minors or family conflicts, as those matters are within the jurisdiction of the Juvenile and Domestic Relations Court. On a case-by-case basis, felony cases for adults normally heard by the Circuit Court may be approved for participation.¹

During 2019, the Public Defender's Office and advocates with the Arlington Mental Health & Disability Alliance successfully advocated for expanding eligibility to the docket, to include eliminating a guilty plea requirement, including individuals

¹ <https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/5/2020/03/Behavioral-Health-Docket-Proposal-Final.pdf>

diagnosed with developmental disabilities and providing for opportunity for those charged with felonies to participate in the program.²

The Sheriff's Office has added a staff member to its pre-trial team to support the docket as has Arlington's Department of Human Services (DHS) and the General District Court. The docket is limited to 10 participants at any given time during its first year. Participants are likely to be court-involved for one year, meaning the docket will serve about 10 individuals its first year. Staff estimate that even in future years, participants are unlikely to exceed 20-25 per year.

The Working Group consulted with Naomi Verdugo, a support group leader for National Alliance on Mental Illness in Arlington who also served on the Community Services Board. Arlington has limited availability of alternatives to incarceration at the present time. Although some diversion programs exist, there are significant gaps, particularly for children. Even for adults, the number of people diverted is small.

Further, Arlington has surprisingly poor access to treatment in the county to address severe or acute mental health needs or substance use requiring crisis intervention or residential treatment. The gap in services is particularly problematic for children, who the Virginia Hospital Center does not treat, except for emergency room visits and infant care associated with obstetrics services. DHS does not provide residential treatment for substance abuse for minors, and though medication is now provided for opioid addiction as an Evidence Based Treatment, it is not offered by

² Due to the role of police officers in crisis intervention, those with behavioral health needs are at high risk of being charged with felony assault on a police officer under Virginia Code section 18.2-57C. The code section includes a mandatory minimum sentence. During 2020 Special Session I, Senate Bill 5032 attempted to address this issue. SB 5032 passed the Senate but did not make it out of Courts of Justice Committee in the House of Delegates. <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+SB5032>

Arlington for minors or adults. A more basic service is “engagement.”³ Engagement may involve frequent contact over months or even a year to build trust and encourage an individual to participate in treatment. Arlington DHS does not provide this critical service. Arlington DHS heavily relies upon police to respond to individuals in crisis.

V. CIVIL RIGHTS WORKING GROUP PRIORITIES

The Civil Rights Working Group has identified as priorities issues that are not being addressed by the Police Practices Group, or that present complexity. Numerous issues are being discussed locally, such as commitment to funding body-worn cameras (BWC’s) by Arlington County Police officers. The Virginia General Assembly convened a special session in August 2020, and promulgated several changes to state law relating to police practices. Recommendations will be developed as work is undertaken. New subjects may be taken up as local issues arise. The following topics are currently the top priorities identified by the Civil Rights Working Group:

- A. Review injuries and deaths (morbidity and mortality) associated with reported use of force by Arlington law enforcement within the past two decades (see Appendix A);
- B. Identify publicly reported allegations of civil rights violations made against Arlington County government agencies, Arlington officials, or their agents within the past two decades (see Appendix B);

³ “Engagement” means staff work with people who are in need of mental health services to encourage them to participate. A feature of many mental illnesses is “anosognosia” which affects the brain and prevents the individual from having insight into or recognizing that he or she has an illness. Without this awareness they are unlikely to elect and continue treatment.

C. Research what role sovereign immunity and qualified immunity plays when civil rights violations by the government, government officials, or its agents are asserted (see Appendix C);

D. Review current law associated with the role of police officers at public schools in Arlington;

E. Identify the risks associated with breaches of data privacy and data security and the need to address data discrimination concerns relating to law enforcement practices in Arlington.

This preliminary report on findings addresses items A-C only, as listed above. Item D remains a high priority for the Working Group. It would be helpful to have access to the APS working group process to inform our work. As for item E, the Civil Rights Working Group has identified serious concerns relating to the use of various databases and data sharing practices between Arlington law enforcement and federal and state agencies. Among these are the license plate reader program, the use of Next Door, the proposed use of Ring data, and the use of social media and embedded facial recognition software, and the potential vulnerabilities of these systems. This is a very complex subject matter that cannot be adequately addressed prior to the October ACCF meeting.

The Working Group hopes to continue its work to deliver additional information and recommendations in the near future.

VI. PRELIMINARY WORKING GROUP FINDINGS

A. Use of Force / Morbidity and Mortality

Following public outcry over the killing of George Floyd and the clearing of peaceful protesters at Lafayette Square, the Civil Rights Working Group began to conduct online research relating to reports of injuries or fatalities (morbidity and mortality) involving the use of force by Arlington government agencies, officials or their agents. The scope of research is time-limited to the first two decades of this century. The research is not comprehensive, and has not included any data requests by the Civil Rights Working Group. As part of this inquiry, the Working Group included research on incidents reported in the news media of use of force by police on members of the public. Thus, it is based upon online research from publicly available sources, without the use of any freedom of information requests. Comprehensive collection of data to support risk management decisions does not appear to be reported by law enforcement agencies. The Working Group notes that neither the public nor the police have had the benefit of body worn cameras to help assess the nature of confrontations involving law enforcement.

Preliminary Review of Arlington County Police Use of Force Incidents

Based upon online research, which has been limited in scope, use of force incidents reported in the news media appear to fall into four major categories (1) injuries and fatalities involving the use of tasers, a form of electronic restraint, or firearms; (2) police encounters with individuals under the influence of alcohol; (3) police encounters with individuals with signs of mental illness; (4) police encounters with individuals who are housing insecure, and (5) attempts to arrest individuals with outstanding warrants. In many instances these categories overlap. The Working Group

makes no independent assertions relating to use of force incidents involving the Arlington County Police Department. More detailed information about each of these incidents in the chart below is available in Appendix A.

Examples of Use of Force by Arlington Law Enforcement As Reported in News Media			
Year	Use of Force Outcome	Circumstances	Agency Involved
01.17.2010	Fatality in Arlington	Taser use; investigation shoplifting; individual unarmed.	Arlington County Police Dept.
04.30.2010	Fatality in Arlington	Taser use; response to report of psychiatric crisis; individual unarmed.	Arlington County Police Dept.
10.16.2014	Not Reported	Taser use; response to report of naked man doing push-ups in street, individual unarmed.	Arlington County Police Dept.
05.19.2015	Fatality in Arlington; police non-fatal injury	Taser use followed by firearm use; response to domestic call from neighbor; language barrier; psychiatric crisis; person attacked police with a household item causing police injury following taser use by police.	Arlington County Police Dept.
03.14.2017	Not Reported	Taser use; response to report of stolen bicycles	Arlington County Police Dept.
05.17.2017	Not Reported	Taser use; shoplifting investigation	Arlington County Police Dept.
11.07.2017	Fatality in Arlington; police non-fatal injury	Firearm use; traffic stop to execute arrest warrant for misdemeanor charge; police officer hit by vehicle when person attempted to leave the scene.	Arlington County Police Dept.
05.04.2018	Wounding in Arlington	Firearm use; traffic stop – passenger with outstanding warrant.	Arlington County Police Dept.
08.29.2019	Wounding in Arlington	Firearm use; report of domestic situation; suspect reportedly armed with firearm	Arlington County Police Dept.
10.5.2019	Not Reported	Physical force; taser use; report of trespassing at leasing office in residential building	Arlington County Police Dept.
03.30.2020	Transported Medical assessment	Chemical agent (pepper spray) followed by taser use; individual described as drunk in public and partially undressed.	Arlington County Police Dept.
06.01.2020	Lawsuit filed; injuries	Physical force and chemical agents used to clear protesters from Lafayette Square, DC	Arlington County Police Dept. and other agencies

	reported in DC		
08.19.2020	Transported Medical assessment	Taser use; reported naked and drunk in public; individual reportedly dropped knife prior to being tased.	Arlington County Police Dept.
09.08.20	Transported Medical assessment; police injury	Physical force; reported unarmed individual refused service; described as drunk and of no fixed address; injuries to police officers.	Arlington County Police Dept.

The Civil Rights Working Group also researched public reports of fatalities and injuries to police officers. The Working Group was unable to find any reports of law enforcement officers killed in the line-of-duty as a result of on the job violent encounters, since 1977. Information about police deaths in the line of duty is reported by the police department on its Hall of Honor webpage. <https://police.arlingtonva.us/about/hall-honor/> Of the four (4) incidents listed where police officers were killed, all four (4) were shot. Three of the four occasions when police officers were shot and killed in the line of duty occurred in a five-year period from 1972 to 1977.

The Working Group has not yet conducted research on police injuries in the line of duty. The police did report non-life-threatening injuries to three officers on September 8, 2020 during the arrest of a person described as drunk and having “no fixed address.” The limited data available at this time suggests that police encounters resulting in injuries to either the members of the public or to officers frequently involve encounters with people are drunk in public, are experiencing a mental health crisis or who are housing insecure. This raises a concern that unmet human services needs may be contributing to poor criminal justice outcomes in our community.

Additional information would be needed from officials to determine the extent to which complaints or investigations of excessive use of force have been made, as well as any associated morbidity or mortality, including to law enforcement officers. It is not clear whether such information about officer injuries would be provided, as it most likely would be considered confidential and not subject to disclosure under the Virginia Freedom of Information Act. The 2019 Office of Professional Responsibility (OPR) Annual Report from Arlington County Police Department, dated March 18, 2020, is posted on the ACPD website. <https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/11/2020/06/2019-OPR-Annual-Report.pdf>

The OPR 2019 Annual Report indicates that 67 use of force investigations were processed by the Office of Professional Investigation, which represented the highest number over the past 5 years.⁴ The OPR 2019 Annual Report notes that reporting requirements on use of force were changed effective July 1, 2019, although it is not stated how. Of these 67 investigations, only one use of force investigation was determined not to be within department policy. The report lists the types of force used and percentage of use of force incidents by police department section. However, the report does not provide data on risk of injury associated with types of force used or other circumstances.

⁴ A memo dated March 18, 2020 from Chief Farr states that 150 officers were involved in use of force incidents in 2019 and that there are currently 347 officers on the force. The Office of Professional Responsibility investigated 67 instances of use of force incidents in 2019. The report goes on to list the types of force used and 'other' is listed as being used 28 times in 2019. More information will be needed to understand the implications of this information. ACPS also note reporting requirements for use of force data were changed effective July 1, 2019. More information is needed to understand the impacts of the changes in reporting requirements.

Persons Injured	Percent injured in use of force incidents	Percent of injuries requiring hospital care
Public	73%	33%
Officer(s)	39%	12%

The OPR 2019 Annual Report indicates that there were seven civil actions filed against Arlington County Police Department personnel.

The OPR 2019 Annual Report notes that certain information is exempt from mandatory disclosure under Virginia Code section 2.2-3706(B)(9) and that the use of deadly force is reported to the Virginia State Police. However, review of the Uniform Crime Report indicates only that officer involved shootings are included. No officer involved shootings were reported in the state data for 2019 for Arlington County, although local media reports confirm that at least one officer involved shooting did occur on August 28, 2019. Additionally, a memo from Chief Farr dated March 20, 2020 indicates two instances occurred in 2019 where use of force involved a firearm from law enforcement. It is unclear why these incidents were not included in the state report.

https://www.vsp.virginia.gov/downloads/Crime_in_Virginia/Crime%20In%20Virginia%202019.pdf The Virginia Mercury reported earlier this year that there are gaps in state data. <https://www.virginiamercury.com/2020/06/15/almost-all-major-police-shootings-in-virginia-since-2016-were-ruled-justified-but-states-data-has-big-gaps/>

Use of Restraints, Solitary Confinement & Seclusion

The facts and circumstances of the killing of George Floyd and the forceful removal of peaceful protesters from Lafayette Square raise general questions about the safe and appropriate use of force by law enforcement as a general matter, particularly with regard to restraints. The use of restraint in the United States and in Virginia is a subject that

has been studied as a human rights concern, along with seclusion and solitary confinement. Restraints are used in many settings, and not just by law enforcement. Among these are institutional settings, such as jails, prisons, hospitals, nursing facilities, residential treatment centers and schools.

Several types of restraints are regularly used by law enforcement or in institutional settings to immobilize or otherwise incapacitate a person: physical (e.g. chokeholds or sitting on a person), mechanical (e.g. fasten handcuffs or ties), chemical (e.g. release tear gas), pharmacological (e.g. administer sedative), and electronic (e.g. use a tasers). The use of restraints can result in injuries and fatalities. Based upon initial review of use of force incidents and other publicly available information about practices, at least four of the five of these restraint methods are confirmed or suspected to be used by Arlington law enforcement. No requests for information on restraint, seclusion or solitary confinement practices have been issued by the Working Group to any Arlington government agency yet. In 2015, the General Assembly mandated that the Virginia Board of Education adopt regulations on restraint and seclusion practices in Virginia public schools. The regulations will come into effect on January 1, 2021.

Physical and Mechanical Restraints

Physical and mechanical restraints are commonly used for a number of purposes. For example, mechanical restraints are used when a person is arrested or transported by Arlington law enforcement. Mechanical restraints are routinely used to safely transport patients by ambulance. Mechanical restraints can also be used to immobilize a person in other ways, such as strapping them to a bed, or a chair. When a person is in a wheelchair and not provided movement opportunities or medically necessary repositioning, this

can qualify as a mechanical restraint. The Working Group would require additional information from Arlington Public Schools to determine the extent to which restraint and seclusion are being used our school district.⁵

In 2011 and 2012, Arlington Delegate Patrick Hope introduced legislation attempting to prohibit correctional facilities from using any restraints on pregnant women. He did so after learning that there were multiple complaints filed regarding the practice of restraining women state prisoners while they were in labor. House Bill 1488 (2011) and House Bill 836 (2012). Although the 2012 bill had bipartisan sponsorship, it was defeated in the Public Safety subcommittee.

The Virginia General Assembly recently took steps to protect incarcerated women who are pregnant or postpartum from being mechanically restrained, passing Va. Code section 53.1-40.12 and 53.1-40.13. Although regulations had been passed in 2012 to regulate the use of waist chains on pregnant women incarcerated in Virginia, members of the General Assembly found it necessary to revisit this issue in 2020.

Electronic Restraints

The Working Group found frequent reports of the use of tasers by Arlington County Police documented in the press. Taser use is a type of electronic restraint because it can incapacitate or immobilize the subject. There is data to suggest that the use of tasers by Arlington County police can result in injury or death to subjects, and may raise the risk of injuries to police officers when performing their duties. Working Group recommends that the county's external review includes analysis of injuries and

⁵ The last available federal data is for the 2015-16 school year. It is unclear how APS collects its data or whether it has more recent data to share.

fatalities associated with taser use, and this analysis should be shared with the Police Practices Group.

Chemical Restraints

Chemical agents were used on peaceful protesters on June 1, 2020 at Lafayette Square in DC. Allegations relating to the use of chemical agents are included in a lawsuit pending in federal court, in which Arlington police officers are included as defendants. For more details about the lawsuit, additional source information is included in Appendix A.

Pharmacological Restraints

The Working Group has not found any public reports of Arlington government agencies using pharmacological restraints. Medications are sometimes used without patient consent in medical and psychiatric emergencies, particularly when the patient is unconscious. Virginia law permits the use of medications, for therapeutic purposes, when prisoners are incapable of giving consent. Va. Code section [53.1-133.04](#). There are reports of law enforcement use of pharmacological restraints resulting in fatalities, such as in the death of Elijah McClain in Aurora, Colorado, who was unarmed and committed no crime.

Use of pharmacological restraints is regulated under Virginia law as a general matter. For example, no medications can be administered to students by a school nurse without a current order from the student's treating physician. The Working Group requires additional information from local agencies to determine whether pharmacological restraints are being used by county agencies.

Solitary Confinement

Solitary confinement has been defined under the Virginia Code 53.1-40.11 as “isolation of a prisoner from the general population through confinement to a cell or other place for 22 or more hours within a 24-hour period.” The Arlington County jail has solitary confinement cells in each unit. All cells at the Northern Virginia Juvenile Detention Center are single occupancy cells. The Working Group requires additional information from local agencies to determine the extent to which solitary confinement is in use at Arlington detention centers.

Restraint and Seclusion in Public Schools

Under regulations issued by the Virginia Board of Education, which will come into effect on January 1, 2021, seclusion is defined as “the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.” Restraint is defined as “a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.” Arlington Public Schools has not adopted any guidance or policy with regard to restraint and seclusion. A report from the Virginia Commission on Youth indicates that Arlington had 11 incidents of restraint and 0 incidents of seclusion in the 2015 civil rights data reported to the federal government. The Working Group requires additional information from Arlington Public Schools to determine the extent to which restraint and seclusion are in use in our schools or whether APS is collecting reliable data on these practices.

B. Alleged Civil Rights Violations

Members of the ACCF Legislation Committee have been tracking allegations of civil rights violations for a number of years. The Legislation Committee has brought forward

a number of resolutions meant to address some underlying problems in state criminal law. Some of the issues are state law based. Neither Virginia nor Arlington has systems in place to adequately ensure the protection of civil rights. Limited complaint options and legal and practical barriers, such as cost, are an issue. Some alleged civil rights violations are publicly disclosed. However, it is difficult to know the full scope of violations occurring in our community.

The Civil Rights Working Group conducted online research relating to allegations of civil rights violations brought against Arlington government agencies, officials, or their agents. The scope of research is time-limited to the first two decades of this century. The research is not comprehensive. It is based upon online research from publicly available sources, without the use of any freedom of information requests to date. Some of this information is based on government records. Other information is sourced from press articles. The Working Group makes no independent assertions relating to these reported incidents.

Federation Investigations Resulting in Settlement Agreements

Three federal investigations of Arlington government agencies resulted in settlement agreements in 2016, 2017 and 2019, two by the United States Department of Justice and one by the United States Department of Education.

In 2016, the Department of Justice investigated allegations by a deaf man that the Arlington County Sheriff's Office denied him auxiliary aids and services in violation of the Americans with Disabilities Act. Abreham Zemedagegehu, described as homeless at the time of his arrest, asserted that he was held in jail for six weeks without the ability

to effectively communicate or to even understand the charges against him in violation of his civil rights under the Americans with Disabilities Act. Mr. Zemedagegehu also alleged that he was given medical treatment without informed consent. In addition to implementing remedial actions prescribed by DOJ, \$250,000 was paid to Abreham Zemedagegehu by the Arlington County Sheriff's Office as part of the settlement agreement. The settlement entered into effect on November 17, 2016. Arlington County Sheriff Beth Arthur recently provided a summary of corrective actions taken since the settlement agreement to Arlington For Justice, which has been shared with the ACCF Legislation Committee.

In 2017, Office of Civil Rights of the Department of Education found that Arlington Public Schools failed to implement a student's individualized education plan in violation of Section 504 of the Rehabilitation and also violated Title II of the Americans with Disabilities Act by failing to meet the ADA's requirement to provide effective communication and equal opportunity to participate in the educational program. Arlington Public Schools entered into a resolution agreement requiring compensatory education, remedial action and reporting requirements. Additional information is available in Appendix B.

In 2019, the Department of Justice found that Arlington Public Schools failed to comply with the requirements of the Equal Education Opportunities Act in its treatment of English Language Learners. The investigation included barriers to communication. The DOJ settlement agreement required remedial action by Arlington Public Schools. Additional information is available in Appendix B.

Section 1983 Claim for Violation of Civil Rights

In 2012, Officer Stephanie Rodriguez of the Arlington County Police Department charged a couple with fraud after Costco reported them as having obtained a refund to which they were not entitled, in error. Although Costco quickly corrected the mistake, Officer Rodriguez took no procedural steps or actions to withdraw the arrest warrants for Jan Eshow and Fadwa Safar. Months later, Mr. Eshow was pulled over and arrested on the outstanding arrest warrant. Although his criminal case was dismissed by the prosecutor, no steps were taken to withdraw the outstanding warrant for Fadwa Safar. When the couple applied for citizenship in 2013, Ms. Safar was arrested on the outstanding arrest warrant and incarcerated for three days before being released. Her criminal case was also dismissed.

Mr. Eshow and Ms. Safar filed a civil claim under Section 1983 of the Civil Rights Act for violation of their civil rights against Officer Rodriguez and Liz Tingle, Assistant Commonwealth's Attorney. All claims were dismissed by the trial court on the basis of immunity. The Fourth Circuit Court of Appeals affirmed the trial court's decision. Safar v. Tingle, 859 F.3d 241 (4th Cir. 2017)

The case against Officer Rodriguez was dismissed under qualified immunity on the basis that there was no "established duty to act." Failure to act resulted in invalid arrest warrants being enforced, both Mr. Eshow and Ms. Safar were arrested, and Ms. Safar suffered a loss of liberty and inability to care for her children while she was still breastfeeding.

The case against Ms. Tingle was dismissed on the basis of absolute immunity, since she was acting within the scope of her duties as a prosecutor.

Corrective Action Ordered Under the Individuals with Disabilities Education Act

Two Virginia Department of Education investigations of Arlington Public Schools resulted in corrective action plans in 2014 and 2019, respectively

In 2014, the Virginia Department of Education (VDOE) investigated a special education complaint filed under the Individuals with Disabilities Education Act and issued a corrective action plan to Arlington Public Schools (APS). The VDOE found that the school district had (1) failed to fully implement the student’s individualized education plan, and (2) implemented a change in placement not authorized under the special education regulations, removing the student to a more restrictive educational placement without parental consent.

In 2019, the Virginia Department of Education investigated a special education complaint filed under the Individuals with Disabilities Education Act and issued a corrective action plan to Arlington Public Schools. VDOE found that the individualized education plan for the student was “facially defective” and “fundamentally flawed” and that Arlington Public Schools had failed to implement the individualized education plan as written. The VDOE ordered Arlington Public Schools to provide compensatory education to the student.

Habeas Corpus Petitions on Excessive Sentencing and Due Process

The Writ of Habeas Corpus is enshrined in the United States Constitution. A habeas corpus petition is filed by an individual to challenge the legality of physical detention by

the government. For example, habeas corpus petitions have been filed by prisoners who are held without charge or trial, such as those held in Guantanamo Bay, Cuba, or by individuals held in institutions without their consent, such as mental hospitals, prisons, or in immigration detention. The Working Group found two instances of habeas corpus petitions filed against Arlington County agents.

Excessive Sentencing Alleged in Sharikas Case

In 2008, Christopher Sharikas filed a habeas corpus petition in federal court challenging a criminal sentence that did not conform with sentencing guidelines. Mr. Sharikas was 17 years old at the time, and reportedly had been diagnosed with schizophrenia at the age of 15. Although the offenses were serious in nature (robbery and malicious wounding), the sentencing guidelines called for between 7 and 11 years in prison for the offenses, to which Mr. Sharikas pled guilty.

At Mr. Sharikas' sentencing hearing, Arlington Circuit Court Judge Paul Sheridan departed from Virginia's sentencing guidelines. Judge Sheridan indicated on the record that he did not believe Mr. Sharikas would respond to treatment, and imposed two life sentences plus 30 years. Although he was represented by an attorney, Sherman William Everlof, Jr., the competence of his defense has been questioned. Mr. Everlof's license to practice law was revoked by the Virginia State Bar in 1999. Arlington County established a Public Defender's Office in 2005 following adoption of an ACCF Resolution in its favor in 2004.

Mental health advocates have been seeking Mr. Sharikas' release to a residential treatment program. They state that Mr. Sharikas never received treatment and was still

delusional and untreated when at his hearing. His mother reports that he is vulnerable and has been raped and beaten in prison. Advocates indicate that his case is one of only a handful in the entire United States where a person has been sentenced for a juvenile offense to life for crimes that do not involve kidnapping, rape or homicide.

In addition to the irregularities in sentencing and questions about the quality of Sharikas' representation, the victim was working as an intern in the Commonwealth's Attorney's Office at the time of the offense, which advocates indicate may have influenced the handling of the matter. Although there does not appear to be a direct conflict of interest, legal ethics rules and judicial canons require Commonwealth's Attorneys and judges to avoid the appearance of impropriety. Specifically, a judge "shall not allow . . . relationships to influence the judge's judicial conduct or judgment." See Commentary under Judicial Canon 5A.

The habeas corpus petition was dismissed on procedural grounds. After Mr. Sharikas' petition was dismissed, the United States Supreme Court ruled in Miller v. Alabama, 567 U.S. 460 (2012), that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole, even for juvenile homicide offenders. This is not a mandatory minimum case or a homicide case, but it is a case where the departure from the guidelines was significant.

Habeas Corpus Petition Relating to Juvenile Immigration Detention at NVJDC

In 2018, the Legal Aid Justice Center filed a habeas corpus petition in the United States District Court for the Eastern District of Virginia, alleging violations of due process rights for a minor being held in immigration detention at Arlington's juvenile jail, the

Northern Virginia Juvenile Detention Center. J.E.C.M. v. Lloyd, 352 F.Supp.3d 559 (E.D. Va. 2018). Johnitha McNair, the current executive director of the Northern Virginia Juvenile Detention Center was named individually in the lawsuit, among other defendants. The minor being held at the jail was released to a family sponsor less than a week after the court filing.

Public reporting of this matter led members of the Legislation Committee to examine the practice of the Northern Virginia Juvenile Detention Commission of entering into federal contracts to provide immigration detention of children. Based upon financial records, it is clear that this practice significantly enhanced detention center revenues. In response to Arlington County Board members, the Commission released some contracting and budget records to the Legislation Committee.

Immigration detention was purportedly terminated as of September 2018. When the Legislation Committee learned that children were still being held at the detention center in immigration detention in 2019, the Committee introduced a resolution on the need to release records and the need for greater oversight. Upon request, Arlington County released additional records, including internal financial, budget and auditing records to the Legislation Committee.

The Legislation Committee has been waiting for the public release of the Moss Report before revisiting the adequacy of Arlington County Board oversight of the Northern Virginia Juvenile Detention Commission. The consultant's report is expected to provide recommendations to participating localities (Arlington County, City of Alexandria, and City of Falls Church) relating to the future uses of the juvenile detention center. The report was initially scheduled for release in January of 2020.

During the 2020 regular session, the Virginia General Assembly passed Va. Code section 66-10.2 which requires the state Board of Juvenile Justice to establish regulations regarding youth detained in juvenile detention pursuant to federal contracts. The legislation was sponsored by Arlington Senator Adam Ebbin. Senate Bill 20 (2020). Among other requirements, the legislation requires that federal contracts provide for access by the Department of Behavioral Health and Developmental Services.

Lawsuit Relating to June 1, 2020 Incident at Lafayette Square in DC

Arlington County Police (ACPD) participated in clearing peaceful protesters from Lafayette Park in Washington, DC, on June 1, 2020. On June 4, 2020, a lawsuit was filed by Black Lives Matter DC and several individual plaintiffs, asserting violations of the First and Fourth Amendments of the United States Constitution. Amended three times, the complaint now has eight individual plaintiffs. The plaintiffs are being represented by the American Civil Liberties Union (ACLU) of DC, Washington Lawyers' Committee for Civil Rights and Urban Affairs, Lawyers' Committee for Civil Rights Under Law, and the law firm of Arnold & Porter. Plaintiffs claim that:

“Without provocation, the federal and Arlington County Defendants fired (or ordered to be fired) tear gas, pepper spray capsules, rubber bullets, and flash bangs into the crowd and physically charged at the protestors to shatter the peaceful gathering, forcing demonstrators to flee the area. Demonstrators who fled west away from the Square quickly encountered a formation of Defendant officers of the District of Columbia Metropolitan Police Department, who likewise fired tear gas at demonstrators as they fled. Many peaceful demonstrators were injured, some severely, by this coordinated and unprovoked attack.

Page 5, Third Amended Complaint, Black Lives Matter DC, et al v. Trump et al., Case No. 1:20-cv-01469-DLF (US District Court for the District of Columbia).

[https://www.acludc.org/sites/default/files/field_documents/bl_mdc v trump - 3rd amended complaint.pdf](https://www.acludc.org/sites/default/files/field_documents/bl_mdc_v_trump_-_3rd_amended_complaint.pdf)

The presence of ACPD officers for the operation at Lafayette Square was approved by Police Chief Murray “Jay” Farr. ACPD officers participated in the police action pursuant to a 2018 mutual aid agreement with the U.S. Park Police.⁶ According to police records, the cost of this operation was not reimbursed by the Park Police. County Manager Mark Schwartz and the County Board Chair, Libby Garvey reportedly were informed of the operation, and concurred.

Defendants to the lawsuit are President Trump, Attorney General Barr and other Trump administration officials, the US Park Police, the DC Metropolitan Police and Arlington County Police Captain Wayne Vincent, who is being sued in his individual capacity, along with other Arlington County Police officers, names unknown.

The incident raises questions about who should have authority to enter into mutual aid agreements, and the circumstances under which police operations are

⁶ [1] Members of the Legislation Committee inquired into the memoranda of understanding between the Arlington County Police Department and other law enforcement agencies. Several data sharing provisions exist in these memoranda. Significant amounts of personally identifiable information on the general public is currently collected by local law enforcement agencies, which raises additional privacy concerns. Existing local law enforcement data include biometric data, and information about immigration status, which are shared with the state police and federal law enforcement agencies. The License Plate Reader program captures images of all passing vehicles. This data is being stored and later used for criminal investigation without a warrant. It is unknown whether adequate security measures are in place to prevent unauthorized access or disclosure of personally identifiable information. The frequency of reported successful hacks of private and public data suggests that all databases remain vulnerable. Upon request, the Arlington County Police Department has provided public access to a police database that holds memoranda of understanding. Some records have been withheld as not subject to mandatory disclosure under Virginia FOIA.

approved. Years ago, former county manager Ron Carlee delegated authority to the Chief of Police all decisions about deployment of police officers pursuant to mutual aid agreements. It is not clear if this delegation of authority has been withdrawn.

Independent of the June 1, 2020 incident, the Arlington County Manager announced a nationwide search to fill the vacancy for the Police Chief. The Working Group encourages the County Manager to seek community input during the selection process.

C. Immunity from Lawsuits

Immunity from lawsuits means that a person cannot sue for a wrongful act regardless of how strong the case may be. The need to reform the law of sovereign immunity and qualified immunity has long been under discussion in American legal circles. Reform of qualified immunity is supported by people from across the political spectrum. The United States Supreme Court recently declined to take up qualified immunity cases in Baxter v. Bracey, https://www.supremecourt.gov/opinions/19pdf/18-1287_09m1.pdf.

Sovereign immunity protects governments from being sued at all. It is a form of absolute immunity. This is a legal doctrine from English law which predates the founding of the United States. If a person tries to bring a lawsuit against the government, and sovereign immunity applies, the case will be dismissed by the court. Sovereign immunity is a doctrine that is recognized under the state law of the Commonwealth of Virginia. Sovereign immunity can prevent a person from suing government agencies and government officials acting in their official capacity, no matter what conduct is at issue. The scope of sovereign immunity is limited under both federal and state law.

Governments can choose to waive sovereign immunity, but any waiver must be explicit. Examples of waivers include the Americans with Disabilities Act (42 USC § 12101), Section 1983 of the Civil Rights Act of 1871 codified at 42 USC § 1983, and the Virginia Tort Claims Act (Va. Code § 8.01-195.1). The choice to waive sovereign immunity is directly connected to the expansive powers wielded by government agencies. Waiving immunity for discriminatory acts and other wrongful conduct is an attempt to prevent misconduct, and to make those who are injured whole.

Qualified immunity is a form of immunity that applies to government officials, employees or agents. This is legal doctrine under federal law. Technically, Virginia has not adopted qualified immunity, but since it is a useful term to distinguish between who is being sued (a government agency versus an individual official), the Working Group will use the phrase as shorthand. In Virginia, immunity applies to government officials and employees only for official duties. To successfully bring a tort claim (such as personal injury) against the government or a government employee acting in the scope of employment, one must also prove gross negligence. This is a far higher standard than what is required to bring a claim against a private person or a business. This standard operates as a barrier to nearly all cases.

When immunity applies, any exceptions must expressly state that an individual has the right to sue the government or its agents. Civil rights violations are a traditional area of law where immunity has been waived. Waivers of immunity are codified in law. For example, immunity is waived under Virginia law when a police officer conducts an illegal search. Virginia Code section 19.2-59.

The Civil Rights Working group conducted legal research to determine the nature and scope of sovereign immunity and qualified immunity in Virginia. This area of law can involve complex analysis. However, case law can offer significant insight into the way in which sovereign immunity and qualified immunity are applied in Virginia.

In Virginia v. Reinhard, 568 F.3d 110 (4th Cir. 2009), the Fourth Circuit Court of Appeals applied absolute sovereign immunity, barring a case brought by the Virginia Office for Protection and Advocacy (VOPA), which became the disAbility Law Center, independent of the state.⁷ VOPA was seeking records relating to three persons who died or were injured in facilities for the mentally ill. The records were sought from another state agency, the Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services, since renamed the Virginia Department of Behavioral Health and Developmental Service. Virginia opposed VOPA in the case.⁸ The court found that a case brought against state officials in their official capacity could not proceed since none of the exceptions to sovereign immunity applied (abrogation where the federal government strips immunity from the state, waiver where the state explicitly consents to be sued, and the ex parte Young doctrine where a state can sue a state official in federal court). Thus, the case was dismissed. The Fourth Circuit Court of Appeals decision was reversed by the United States Supreme Court in Virginia Office for Protection v. Stewart, 563 U.S. 247 (2011) (finding that the Ex parte Young doctrine applied when suing a sister state agency).

⁷ <https://dlcv.org/wp-content/uploads/2016/08/press-release-SCT.-word.pdf>

⁸ The lack of independent investigative authority was a concern for an agency that was the primary non-federal enforcer of the disability rights statutes. <https://www.dlcv.org/>

In a very recent case, the Virginia Supreme Court ruled in favor of a plaintiff in a section 1983 action asserting a classic case of illegal search and seizure, excessive use of force, false imprisonment, and false arrest by a police officer. Cromartie v. Billings, 837 S.E.2d 247 (2020).

On February 12, 2015, Monica Cromartie, a small middle-aged Black woman, was driving her car and was stopped by a Petersburg, Virginia police officer. Officer Billings assaulted her, dragging her out of her car and slamming her to the ground causing her multiple injuries. Officer Billings then shackled Ms. Cromartie by the legs and placed her on the side of the road under the supervision of another officer while he conducted multiple illegal searches of her vehicle. Officer Billings then charged her with possession of marijuana and obstruction of justice.

After the prosecutor agreed to dismiss the criminal charges against her, and Ms. Cromartie paid a speeding ticket, she sued Officer Billings for two Fourth Amendment violations under § 1983 for excessive force and false arrest, as well as for a statutory violation of Virginia Code section 19.2-59 for an illegal search, and state tort claims of assault, battery, false imprisonment and malicious prosecution.

After a full day of trial, the jury awarded her a verdict for assault, battery, false imprisonment, and malicious prosecution and civil damages of \$23,499. However, the trial court judge dismissed her civil rights claims under section 1983 and Virginia Code section 19.2-59, citing qualified immunity and sovereign immunity. The consequence of the dismissing the section 1983 and Virginia Code section 19.2-59 claims was significant. It meant that Ms. Cromartie could not get punitive damages or recover attorney fees, even though her claims met all the legal standards and the jury had found

all the necessary facts in her favor. Ms. Cromartie's appeal to the Virginia Supreme Court was successful, but it delayed justice. The Virginia Supreme Court reversed the Circuit Court and remanded to the Circuit Court for a jury trial on damages only. This win for Ms. Cromartie came five (5) years after the incident in question - and it still required her to go back to trial so a new jury could determine damages.

The Virginia Supreme Court reviewed this case exhaustively and relied upon the findings of the jury below as the "law of the case." Some of the key facts in the case demonstrate how difficult it is to successfully bring a civil rights claim to court. In ruling for Cromartie, the Virginia Supreme Court found as a matter of law that (1) Officer Billings lied to a magistrate when obtaining a warrant for Ms. Billings' arrest, (2) Officer Billings provided a false excuse for searching her vehicle and her belongings, (3) the search of her vehicle and his use of force exceeded simple negligence, (4) no reasonable officer could find that Ms. Cromartie's delay in responding to him justified his use of force, (5) the severity of the crime - in this case speeding, an infraction - did not pose an "immediate threat" to the safety of officers or others, (6) Cromartie was 100 lbs and disabled, and posed no immediate physical threat nor did she make any verbal threats, (7) the officer had no reason to believe she was armed, (8) Cromartie's car engine was off and she did not flee or resist arrest and (9) pulling her arm away did not justify Officer Billings throwing her to the pavement after he grabbed her without warning.

The court cited several cases with similar fact patterns, and found that because "settled, indisputable law" forbade Officer Billing's actions under the Fourth Amendment, he was not immune. What is clear, however, from this opinion and other immunity cases cited by the Virginia Supreme Court, is that the size of a person, gender,

physical strength, whether a person runs from the police, and even whether the encounter with law enforcement occurs in a “high crime” area can be used to bar a civil rights claim, since those facts and circumstances play a role in the analysis of immunity.

Claims against government employees for misconduct and abuses whose fact patterns have not previously been found in prior court cases to be civil rights violations are barred under qualified immunity. The conduct at issue must be “clearly established” or “settled, indisputable law” to prove that the defendant knew the conduct was a civil rights violation. In *Cromartie*, the court found that excessive force accompanied by an unlawful search and arrest by a police officer violated section 1983. This fact pattern was clearly established as a civil rights violation in Virginia federal and state precedent. Even so, *Cromartie* lost at trial on this issue, which delayed her ability to obtain a timely remedy.

Qualified immunity is applied even when wrongdoing is proven, because of the lack of prior legal authority with the same fact pattern. A horrific example from the Fourth Circuit is instructive. In *Doe ex rel. Johnson v. South Carolina, Soc. Serv.*, 597 F.3d 163 (4th Cir. 2010). In that case, the social worker placed a child into foster care knowing the child would be at risk of being sexually abused. The court found that state officials had a duty to refrain from placing her in a known, dangerous environment in deliberate indifference to her right to personal safety and security. However, the case against the individual social worker was dismissed. The Fourth Circuit found that qualified immunity applied because no prior decision established that a foster care placement made in deliberate indifference to a known danger would violate the substantive due process rights of a child in foster care.

A recent section 1983 case from Arlington was dismissed in 2017, citing sovereign and qualified immunity. In that case, a police officer's failure to withdraw arrest warrants known to be invalid had terrible consequences for an immigrant couple applying for citizenship. For a description of Safar v. Tingle, 859 F.3d 241 (4th Cir. 2017), see Appendix B.

Based upon a review of Virginia Supreme Court and Fourth Circuit cases, including Cromartie v. Billings, Virginia v. Reinhard and Doe v. South Carolina, legitimate allegations of serious civil rights violations are being dismissed in Virginia on the basis of qualified immunity. Dismissing claims often prevents juries from hearing the facts, or awarding damages, punitive damages and attorneys' fees, and challenging a dismissal causes significant delays and can require new trials. The Working Group recommends that the Legislation Committee consider a resolution on reforming immunity law in Virginia.

VII. NEXT STEPS

The Working Group has identified several examples of allegations of civil rights violations that have resulted in private legal actions and federal and state investigations, including several cases resulting in federal- or state-mandated settlements. Some themes seem to emerge in use of force incidents, such as repeated instances of death and injury of marginalized persons. On the basis of its work so far, the Working Group is unable to draw a full picture of the vulnerabilities of our government systems with respect to civil rights. Investment by local government to explore these concerns is to be commended. To strengthen trust in the community, the Working Group calls on

government agencies to be fully transparent in their findings. To be most effective, the Working Group will need county agencies and other organizations to work collaboratively with us.

Based upon the Working Group research, the need to protect civil rights extends into all government functions that we have examined so far. Accountability matters at every level of the criminal justice system and in the schools. Many of the cases reveal a failure on the part of agencies to effectively communicate or to address barriers to communication for individuals with disabilities or language barriers. In the case of use of force incidents, a lack of access to health and human services seems to be a contributing factor. Although the Working Group cannot yet identify any trends based upon this review, vulnerable persons such as those who are housing insecure and those with mental illness and substance use disorders appear to have more frequent escalated encounters with law enforcement. Further, state agencies may lack funding, jurisdiction or the independence to pursue inquiries into allegations of civil rights violations, as is the case for the Virginia Department of Education.

Due to the breadth of the issues presented, broader efforts to reform systems, such as Restorative Justice, creation of specialized court dockets, improved crisis intervention and reliable systems to investigate civil rights violations will be at least as important as addressing police policies and practices. As this work advances, there are likely to be some budget and capital investment implications.

The Working Group has identified several areas where additional information is needed (1) the extent to which complaints or investigations of excessive use of force have been made, as well as any associated morbidity or mortality, including to law

enforcement officers; (2) data is needed to analyze use of force incidents, and particularly to determine the proportion of injuries and fatalities associated with individuals who are impaired due to alcohol or drugs, in acute mental health crisis or housing insecure; (3) whether pharmacological restraints are being used by county agencies; (4) the extent to which solitary confinement is in use at Arlington's adult and juvenile detention centers and (5) the extent to which restraint and seclusion are being used in Arlington Public Schools. Based upon the Working Group's preliminary review of the status of civil rights in Arlington, additional study is warranted on use of force practices in the County.

In light of these preliminary findings, the Working Group (1) calls on government agencies to be fully transparent in their findings relating to police practices and data (2) has determined that the county's external review should include an analysis of injuries and fatalities associated with taser use, and that analysis should be shared with the Police Practices Group and the public; (3) encourages the County Manager to seek community input during the selection process for the new police chief; and (4) recommends that the Legislation Committee draft a resolution on reforming immunity law in Virginia.

This report on preliminary findings has been limited in scope. A number of potential subjects for review have been raised by members of the Working Group, which we may wish to pursue. Among these are disproportionality based upon race and ethnicity in law enforcement and in schools, reforming state law that criminalizes minors in the sex trade and victims of sex trafficking, housing discrimination, disability

discrimination, *de facto* segregation, LGBTQ discrimination, and systemic failures to treat those with mental illness or substance use rather than to criminalize.

Moving forward, the Civil Rights Working Group will continue to explore concerns regarding data privacy and data security, and the need to address data discrimination concerns relating to law enforcement practices in Arlington. The Civil Rights Working Group will also monitor the status of Arlington's juvenile detention center, the use of school resources officers in schools, reform measures introduced by the state legislature and changes to state law to determine what further measures might be needed.

VIII. LIST OF APPENDICES

Appendix A: Use of Force / Morbidity & Mortality

Appendix B: Allegations of Civil Rights Violations

Appendix C: Select Case Law on Immunity from Lawsuits

Appendix D: Resources on Restraint, Seclusion & Solitary Confinement

END OF DOCUMENT

**WORKING GROUP ON CIVIL RIGHTS
OF THE ARLINGTON COUNTY CIVIC FEDERATION LEGISLATION COMMITTEE**

October 5, 2020

**APPENDIX A TO PRELIMINARY REPORT
REPORTS OF USE OF FORCE BY LAW ENFORCEMENT IN ARLINGTON**

A note regarding sourcing: This is a list of news reports that include statements made by witnesses and police. The summaries are drawn from news reports, and in some instances from government statements or investigative records, relating to incidents that occurred in Arlington County, Virginia, or in the District of Columbia involving Arlington County Police Department Officers. The Civil Rights Working Group does not have direct knowledge of the facts and circumstances of each cases mentioned in the Appendix. This is not intended to be a comprehensive listing of reported incidents of use of force by law enforcement in Arlington County, VA. This list does not include alleged use of force incidents involving state or Federal agencies, with the exception of the Lafayette Square incident that occurred on June 1, 2020.

2010

Several news outlets reported that William Bumbrey III, a shoplifting suspect, died in custody after he was tased by Arlington County Police Department officer(s).

<https://www.nbcwashington.com/news/local/tasered-suspects-family-takes-legal-action/1891135/>

<https://fcnp.com/2010/01/22/arlington-police-respond-to-claims-of-possible-excessive-force-in-suspect-death/>

<https://www.foxnews.com/story/police-investigate-death-of-man-stunned-by-officers>

2010

Several news outlets reported that a naked 32-year-old man, Adil Jouamai, died of cardiac arrest after being tased by Arlington County Police Department officer(s). Police were called to his home in response to a psychiatric emergency.

<https://www.arlnow.com/2010/04/30/breaking-news-man-dies-after-taser-incident/>

<https://www.nbcwashington.com/news/local/naked-man-dies-after-taser-incident/1866816/>

<https://fcnp.com/2010/04/30/man-dies-after-struggle-with-police-friday/>

2014

The Patch reported that Arlington County Police Department officers tased Timothy Lowe, who police reported was naked while doing push-ups in the street.

<https://patch.com/virginia/arlington-va/arlington-police-taser-suspect-who-was-doing-push-ups-street-while-naked>

2015

Several news outlets reported the death of Alfredo Rials-Torres, a man with schizophrenia, was shot and killed by an officer of the Arlington County Police Department. The police were called by a neighbor. Alicia Torres, a Spanish-speaking elderly woman and Mr. Rials-Torres' mother, answered the door. The police were unable to communicate with her in English. An officer deployed a taser against Mr. Rials-Torres when he tried to close the door and the taser hit a fellow police officer. According to the Commonwealth's Attorney's report, Mr. Rials-Torres picked up a metal stick and attacked the police officer who suffered a laceration who then shot Mr. Rials-Torres multiple times. The shooting was deemed justified. According to Ms. Torres, her son did not attack the police. As reported in the Commonwealth's Attorney's report, the medical examiner found that two of the three shots entered Mr. Rials-Torres' back, the third bullet entered the back of his arm, and a prong from a taser was embedded in his abdomen.

<https://www.wusa9.com/article/news/local/alexandria/man-killed-in-arlington-police-involved-shooting-idd/203388087>

https://www.washingtonpost.com/local/crime/four-people-including-two-police-officers-injured-in-arlington/2015/05/19/3170f43c-fe39-11e4-8b6c-0dcce21e223d_story.html

https://www.washingtonpost.com/local/public-safety/officer-cleared-in-fatal-shooting-in-arlington/2015/11/13/128fa6b8-8a51-11e5-9a07-453018f9a0ec_story.html

<https://wtop.com/arlington/2015/05/multiple-people-injured-in-arlington-co-shooting/>

<https://www.arlnow.com/2015/11/16/report-use-of-deadly-force-in-officer-involved-shooting-justified/>

<https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/35/2015/11/Report051915.pdf>

2017

The Patch reported that Arlington County Police tased Larry Fortune, who police suspected of stealing bicycles. The man was charged with assault on a police officer, resisting arrest, and possession of drug paraphernalia.

<https://patch.com/virginia/arlington-va/bike-thiefs-clothes-thwart-police-officers-taser-police>

2017

NBC4 reported that Arlington County Police fatally shot Daniel George Boak. Mr. Boak was reportedly wanted on an outstanding warrant on a misdemeanor charge. Police conducted a traffic stop after Mr. Boak's vehicle was identified through the use of an automated license plate reader. After being stopped, Mr. Boak reportedly attempted to flee and hit and injured one of the investigating officers with his vehicle.

<https://www.nbcwashington.com/news/local/one-shot-officer-injured-in-arlington/15313/>

WJLA reported that Arlington County Police tased Denarmbi Marshall, who police suspected of shoplifting. The man was charged with petit larceny, obstruction, and assault on a police officer.

<https://wjla.com/news/local/police-use-taser-in-arresting-dc-man-in-pentagon-row-for-theft-assault-on-officers>

2018

The Washington Post reported that Arlington County Police shot and wounded Steven Best, of no fixed address, during a traffic stop. Mr. Best was driving a car with a passenger who had an outstanding warrant on suspicion of a parole violation. Police reported that while trying to drive away, Mr. Best struck two police vehicles. Two officers opened fire, wounding Mr. Best. Police located Mr. Best and provided him medical care until paramedics arrived and he was transported to Fairfax Inova Hospital.

https://www.washingtonpost.com/local/public-safety/man-shot-by-arlington-police-drove-van-into-2-squad-cars-then-fled-officials-say/2018/05/04/a440fe12-4fad-11e8-b966-bfboda2dad62_story.html

2018

The Patch reported that Arlington County Police tased Masakela Blackmon at a restaurant in Clarendon. He was charged with two counts of assault and battery of police, one count of trespassing, and obstruction of justice.

<https://patch.com/virginia/arlington-va/man-threatens-restaurant-diners-gets-tasered-arlington-police>

2019

Several news outlets reported on a shooting at an office building. Arlington County Police responded to a report of a possible domestic situation involving a firearm. During this incident, both an ACPD officer and the suspect reportedly discharged weapons. Mumeet Muhammad, the suspect, and a female victim sustained gunshot wounds. A restraining order was in place. Warrants for aggravated malicious wounding, felon in possession of a firearm, and use of a firearm in the commission of a felony were issued.

Mr. Muhammad had a prior murder conviction from 1992 in Arlington. The criminal case is still pending as of September 1, 2020.

<https://newsroom.arlingtonva.us/release/police-identify-suspect-in-crystal-city-shooting/>

<https://wtop.com/local/2019/10/crystal-city-shooting-suspects-case-transferred-to-domestic-court/>

<https://wtop.com/arlington/2019/09/crystal-city-shooting-suspect-arraigned-in-arlington-co-court/>

https://www.washingtonpost.com/local/public-safety/crystal-city-assault-suspect-was-convicted-murderer-also-facing-charges-in-dc/2019/08/30/52499f56-cb2b-11e9-a1fe-ca46e8d573c0_story.html

https://www.insidenova.com/news/arlington/witness-describes-shooting-scene-in-crystal-city-office/article_afce5c60-cac3-11e9-8df9-fbf8536e6062.html

<https://wjla.com/news/local/details-emerge-crystal-city-shooting>

<https://wtop.com/local/2020/05/suspect-in-2019-crystal-city-workplace-shooting-faces-new-dc-charges/>

<https://wtop.com/arlington/2020/09/suspect-in-2019-crystal-city-workplace-shooting-indicted/>

2019

ArlNow reported that Arlington Police tased Amro Ali, who was reportedly trespassing at a leasing office of a residential building. The man was charged with two counts of felony assault on a police officer.

<https://www.arlnow.com/2019/10/08/man-tased-in-pentagon-city-after-allegedly-punching-two-police-officers/>

2020

ArlNow reported that Arlington Police tased Kenneth Archer, who was described as partially undressed drunk and disorderly man. Mr. Archer was charged with public drunkenness, obstruction of justice, and indecent exposure.

<https://newsroom.arlingtonva.us/release/crime-report-march-31-2020/>

<https://www.arlnow.com/2020/03/31/police-partially-naked-man-tased-after-being-unfazed-by-pepper-spray/>

2020

International, national, and local news outlets reported that Arlington County Police participated in forcibly clearing protesters from Lafayette Park in Washington, DC on

June 1, 2020. The ACPD was present pursuant to a mutual aid agreement with the U.S. Park Police. Their presence was approved by the Chief of Police and the County Manager and the Chair of the County Board was reportedly informed of the operation and concurred. A National Guardsman testified that protesters could not hear verbal warnings, that he saw tear gas on U.S. Park Police, and that he saw spent tear gas canisters on the ground. The Park Police denied that tear gas was used, but later confirmed that smoke canisters and pepper balls were used. The Park Police did not record the operation although it is reportedly standard practice of the Park Police to audio record the commands during operations. The U.S. Park Police and ACPD do not have body cameras. A journalist and cameraman from a news agency were attacked and camera equipment was damaged during the incident. The White House and Attorney General Barr have confirmed that AG Barr issued the order to push back the security perimeter at Lafayette Park. Protesters were cleared from the area before a city curfew went into effect.

<https://www.arlnow.com/2020/06/03/county-leaders-defend-acpd-officers-who-were-recalled-from-d-c-protests/>

<https://www.npr.org/2020/06/29/884609432/scared-confused-and-angry-protester-testifies-about-lafayette-park-removal>

<https://www.foxnews.com/us/park-police-walk-back-tear-gas-denial-in-lafayette-park-clearing>

<https://wtop.com/congress/2020/06/congress-scrutinizes-use-of-force-against-lafayette-square-protesters/>

<https://www.washingtonpost.com/dc-md-va/2020/07/28/park-police-chief-says-he-knew-trump-was-coming-lafayette-square-clearing-was-unrelated/>

<https://theintercept.com/2020/07/28/dc-lafayette-square-protesters-congress-hearing/>

<https://www.foxnews.com/us/national-guard-officer-to-invoke-whistleblower-protection-to-recount-lafayette-square-protester-clearing>

2020

ArlNow reported that Arlington Police tased a man described as undressed and drunk. He was transported for evaluation and a summons was issued for being drunk in public. No name was provided.

<https://www.arlnow.com/2020/08/19/police-drunk-naked-man-tased-twice-on-lee-highway/>

2020

The Patch reported that three Arlington County Police officers were injured while arresting a man, reportedly drunk and disorderly after he was refused service. The man,

who is described as having “no fixed address,” was charged with two counts of malicious wounding on law enforcement, assault and battery on police, and two counts of assault and battery. He is being held without bond.

<https://patch.com/virginia/arlington-va/3-police-officers-injured-while-attempting-arrest-suspect>

**WORKING GROUP ON CIVIL RIGHTS OF THE ARLINGTON COUNTY CIVIC
FEDERATION (ACCF) LEGISLATION COMMITTEE**

**APPENDIX B TO PRELIMINARY REPORT
ALLEGATIONS OF CIVIL RIGHTS VIOLATIONS BY GOVERNMENT AGENCIES IN
ARLINGTON COUNTY**

October 5, 2020

A note regarding sourcing: This is a list of alleged violations of civil rights by government agencies, quasi-governmental agencies, or government employees of Arlington County, VA. This information is based upon government records in addition to news reports, including legal actions filed and settlement agreements pursuant to Federal investigation entered into by county agencies. The Civil Rights Working Group does not have direct knowledge of the facts and circumstances relating to these allegations. This is not intended to be a comprehensive listing of alleged civil rights violations by Arlington County, VA. This list does not include alleged civil rights violations by Federal or state agencies.

2014 - Virginia Department of Education Corrective Action Plan issued November 7, 2014 to Arlington Public Schools

In 2014, the Virginia Department of Education (VDOE) investigated a special education complaint filed under the Individuals with Disabilities Education Act and issued a corrective action plan to APS. The VDOE found that the school district had (1) failed to fully implement the student's individualized education plan, and (2) implemented a change in classroom placement not authorized under special education regulations, removing the student to a more restrictive educational placement without parental consent in violation of state regulations.

2016 -- Department of Justice (DOJ) Settlement with Arlington County Sheriff's Office

On November 18, 2016, the DOJ announced a \$250,000 settlement agreement under the Americans with Disabilities Act (ADA) with the Arlington County Sheriff's Office (ACSO) that it failed to provide appropriate auxiliary aids and services to an individual who was deaf.

<https://www.justice.gov/usao-edva/pr/arlington-county-sheriff-s-office-agrees-settle-ada-claim>

Under the settlement, ACSO agreed to pay \$250,000 to Abreham Zemedagegehu, a deaf man who was homeless at the time and charged with a felony for stealing an IPAD.

The DOJ, settlement agreement required the Arlington County Sheriff's Office to take remedial steps to bring itself into compliance with the ADA, including:

- the appointment of an ADA Coordinator who is familiar with the ADA's requirements;
- providing ADA training to its staff;
- adopting specific policies and procedures to ensure that auxiliary aids and services are provided promptly to individuals who are deaf or hard of hearing;

- procuring telecommunication devices usable by individuals who are deaf including videophones;
- providing hearing aid and cochlear implant processor batteries in the detention facility; and
- ensuring that the Arlington County Sheriff's Office respond promptly to disability related needs of its inmates; and adopting other policies consistent with the ADA.

The Department of Justice noted that the Arlington County Sheriff took several steps to improve ADA compliance prior to finalizing the settlement agreement.

According to news reports, Abreham Zemedagegehu was actually innocent, as the person who reported the theft later found the IPAD in question and recanted his statement. Mr. Zemedagegehu reportedly indicated that in 2014 he was held in the Arlington County Detention Center for six weeks without being able to effectively communicate with anyone about his case. He indicated that he was administered a tuberculosis shot without his consent, often went hungry because he couldn't hear alerts for mealtime, and was unable to call friends or an attorney because of inadequate [hearing impaired] technology in the jail.

https://www.washingtonpost.com/local/deaf-man-says-he-was-held-incommunicado-for-six-weeks/2015/03/19/5b798c44-ce5a-11e4-a2a7-9517a3a70506_story.html?utm_term=.4568b5c021b9

https://www.washingtonpost.com/local/public-safety/deaf-man-wins-250000-settlement-from-arlington-jail/2016/11/18/f44f6fce-adc9-11e6-8b45-f8e493fo6fcd_story.html?utm_term=.75b433ec31c8

https://www.washingtonpost.com/local/public-safety/deaf-man-wins-250000-settlement-from-arlington-jail/2016/11/18/f44f6fce-adc9-11e6-8b45-f8e493fo6fcd_story.html?utm_term=.75b433ec31c8

https://www.washingtonpost.com/local/deaf-man-says-he-was-held-incommunicado-for-six-weeks/2015/03/19/5b798c44-ce5a-11e4-a2a7-9517a3a70506_story.html?utm_term=.e4c13af4352d

2017 – Section 1983 Civil Rights Claim Filed Against Assistant Commonwealth's Attorney and Arlington County Police Office

In 2012, Officer Rodriguez of the Arlington County Police Department charged a couple with fraud after Costco reported them as having obtained a refund to which they were not entitled, in error. Although Costco quickly corrected the mistake, Officer Rodriguez took no steps to withdraw the arrest warrants for Jan Eshow and Fadwa Safar. Months later, Mr. Eshow was pulled over and arrested on the outstanding arrest warrant. Although his case was dismissed by the prosecutor, no steps were taken to withdraw the outstanding warrant for Fadwa Safar.

When the couple applied for citizenship in 2013, Ms. Safar was arrested on the outstanding arrest warrant and incarcerated for three days before being released. Her case was also dismissed. The couple then filed a section 1983 claim for violation of their civil rights. The case against Tingle was dismissed on the basis of absolute immunity, since she was acting within the scope of her duties as a prosecutor. The case against Officer Rodriguez was dismissed under qualified immunity on the basis that there was no "established duty to act," even though failure

to act resulted in invalid arrest warrants being enforced, both Mr. Eshow and Ms. Safar were arrested. Ms. Safar suffered a loss of liberty and inability to care for her children while detained. At the time she was still breastfeeding her youngest child. *Safar v. Tingle*, 859 F.3d 241 (4th Cir. 2017). <https://caselaw.findlaw.com/us-4th-circuit/1863502.html>

2017 -- Department of Education (DOE) Settlement with Arlington County Public Schools

In 2017, the Office of Civil Rights of the Department of Education found that Arlington Public Schools failed to implement a student's individualized education plan in violation of Section 504 of the Rehabilitation and also violated Title II of the Americans with Disabilities Act by failing to meet the ADA's requirement to provide effective communication and equal opportunity to participate in the educational program. Arlington Public Schools entered into a resolution agreement requiring compensatory education, remedial action and reporting requirements. https://jdhiznay.com/wp-content/uploads/2015/09/OCR_decision_071217.pdf

2018 - Habeas Corpus Petition - Immigration Detention at Arlington's Juvenile Detention Center

The Legal Aid Justice Center filed a habeas corpus petition in the United States District Court for the Eastern District of Virginia alleging violations of due process rights for a minor being held at the Northern Virginia Juvenile Detention Center, among others. *J.E.C.M. v. Lloyd*, 352 F.Supp.3d 559 (E.D. Va. 2018). A review of a November 15, 2018, judicial order indicates that the minor was apprehended at the U.S. border and initially placed in a "shelter" in San Diego, CA. Although he had no criminal record, the minor was later transported to a "secure" Office of Refugee Resettlement (ORR) detention center in Washington state. Although he was scheduled for release to a family member, after an altercation with a staff member, he was classified as a runaway from that setting and then sent to a high security ORR facility, the Northern Virginia Juvenile Detention Center.

Johnitha McNail, the current executive director of the Northern Virginia Juvenile Detention Center was named individually in the lawsuit. The minor being held at the jail was released at the request to a family sponsor less than a week after the filing. Nevertheless, Judge Brinkema has certified two classes of minors in the class action lawsuit, which is still pending.

The Northern Virginia Juvenile Detention Commission is managed by Commissioners appointed by elected officials for participating jurisdictions: Arlington County, City of Alexandria, and City of Falls Church. The current commission chair, Alfred O. Taylor, is an Arlington County Board appointee.

The Civil Rights Working Group has conducted further research into the practice of the Northern Virginia Juvenile Detention Commission to enter into contractual arrangements with Federal agencies for juvenile immigration detention. This research revealed a long-standing practice of holding minors in immigration detention under contracts worth millions of dollars. The last signed contract was executed in September 2017, with reimbursements totaling \$3,970,512. The program is referred to as the "Golden Doors Secure Program." After a public uproar in Alexandria, the contract was not renewed when it expired in September 2018;

however, a contract with the U.S. Marshall's Service continued to result in immigrant children being detained at the jail during 2019.

Since the juvenile detention center began to receive more scrutiny, Arlington County has taken some additional steps in reviewing contractual arrangements. The Arlington County Board appointed Earl Conklin, Director of Juvenile Court Services, to the Commission.

The Arlington County Manager's Office responded to a request for financial records regarding revenues and expenditures for juvenile detention. The Northern Virginia Juvenile Detention is designed to hold approximately 70 children but has been mostly underutilized for several years based on reduced referrals from Arlington County, City of Alexandria, and City of Falls Church. Contractual arrangements with Federal and state agencies appear to have been a financial decision. Records indicate that 327 Federal admissions occurred from FY14 through FY19 associated with the immigration detention program. The concerns first raised by community members in the City of Alexandria after it was reported in 2018 led to a broader discussion about the future of the detention center and the conditions at the jail.

2019 - Department of Justice Settlement with Arlington Public Schools

On June 3, 2019, the Department of Justice's Civil Rights Division and the U.S. Attorney's Office for the Eastern District of Virginia announced a settlement agreement with Arlington Public Schools. The agreement resulted from an investigation under the Equal Educational Opportunities Act of 1974.

According to the Department of Justice, Arlington Public School agreed to:

- Properly identify and place English Learner students when they enroll in the district's 34 schools, and communicate with parents about program offerings and other essential information in a language they understand;
- Provide English as a Second Language instruction to all English Learner students, including students with disabilities, so that they can become proficient in English;
- Adequately train middle school core content teachers of English Learner students so that these students can meaningfully access grade-level curricula;
- Train secondary school principals on how to evaluate teachers of English Learner students and support effective teaching strategies;
- Ensure that English Learner students are timely and appropriately evaluated for special education services; and
- Properly monitor and evaluate the effectiveness of its English Learner programs over time.

<https://www.justice.gov/opa/pr/united-states-reaches-settlement-arlington-public-schools-ensure-equal-opportunities-english>

<https://www.justice.gov/crt/case-document/arlington-public-schools-settlement-agreement>

2019 - Virginia Department of Education Corrective Action Plan issued June 3, 2019 to Arlington Public Schools

The Virginia Department of Education (VDOE) investigated a special education complaint filed under the Individuals with Disabilities Education Act and issued a corrective action plan to Arlington Public Schools on June 3, 2019, finding that the individualized education plan for the student was “facially defective” and “fundamentally flawed” and that Arlington Public Schools also failed to implement the individualized education plan. The VDOE ordered Arlington Public Schools to provide compensatory education to the student.

2020 – Lawsuit Relating to June 1, 2020 Incident in Washington, DC at Lafayette Square

Arlington County Police participated in forcibly clearing protesters from Lafayette Park in Washington, DC, on June 1, 2020. The ACPD was present pursuant to a mutual aid agreement with the U.S. Park Police. Their presence was approved by the Chief of Police and the County Manager and the Chair of the County Board was reportedly informed of the operation and concurred. <https://newsroom.arlingtonva.us/release/media-alert-arlington-withdraws-police-from-district-of-columbia/>

The Washington Lawyers’ Committee for Civil Rights and Urban Affairs filed a lawsuit on June 4, 2020, associated with this event alleging violations of the First and Fourth Amendments to the United States Constitution. <https://www.washlaw.org/wp-content/uploads/2020/06/Press-Release-Final.pdf>. The complaint has since been amended, most recently on September 1, 2020. The amended complaint now names Captain Wayne Vincent of the Arlington County Police Department in his individual capacity. https://www.acludc.org/sites/default/files/field_documents/blmdc_v_trump_-_3rd_amended_complaint.pdf

Members of the Legislation Committee previously inquired about memoranda of understanding between the Arlington County Police Department and other law enforcement agencies. The Arlington County Police Department maintains a public portal where numerous agreements of this nature can be found under the “Memorandums” folder. <https://powerdms.com/public/ARLVAPD/tree/documents/15>, including a Memorandum of Understanding with the U. S. Park Police.

Criminalization of those Living with Mental Illness and Addiction

Advocates have long been concerned about how courts in Arlington County treat the mentally ill and those with substance use disorders. The Arlington County Police Department and the Arlington Sheriff’s Office have been left to react to crisis situations. Arlington law enforcement agencies have developed training programs to help officers learn to interact with those who are in crisis. <https://newsroom.arlingtonva.us/release/arlington-recognizes-outstanding-crisis-intervention-work/> This is a reactive model that does not address the underlying need of individuals. Systemic problems exist and are being resolved when opportunities arise. For example, Arlington County lacks adequate treatment beds for treating both mental illness and addiction. Currently, there are no treatment beds for youth in Arlington County for either category. <https://www.arlnow.com/2020/02/27/whats-next-need-for-better-mental-health->

[services/](#) The Arlington County Board failed to address the lack of youth beds for treating mental illness and addiction when it approved the expansion of Virginia Hospital Center.

Arlington County has begun to divert those with substance use disorders to treatment rather than sentencing them, although the criteria for its drug court severely limits who is allowed to participate. This has the impact of preventing participation in diversion programs for those who most need a treatment model. <https://courts.arlingtonva.us/circuit-court/drug-court-program/eligibility/>

In 2019, the United States Circuit Court of Appeals for the Fourth Circuit struck down Virginia's habitual offender law – a law permitting “civil commitment” in jail literally for the status of being a habitual substance user - as unconstitutionally vague, and a cruel and unusual punishment under the Eighth Amendment. Manning v. Caldwell for City of Roanoke, 930 F.3d 264 (4th Cir. 2019). The challenge to the law was brought by homeless alcoholics. Arlington County was making use of the habitual offender law up until this ruling in 2019, although many other jurisdictions in Virginia had ceased doing so. <https://www.arlnow.com/2019/01/16/arlington-habitual-drunkards-prosecutors-embrace-a-controversial-tactic-impacting-the-homeless/>

A behavioral health docket is launching this year in Arlington which will help with diversion of some cases. <https://commissions.arlingtonva.us/community-services-board/arlington-behavioral-health-docket/> The docket was delayed when residents and officials requested a public process. <https://www.arlnow.com/2019/07/19/residents-officials-ask-for-more-time-to-review-mental-health-court-program/> Among other changes, the docket will no longer require a person to plead guilty in order to participate. <https://www.arlnow.com/2019/11/14/county-nixes-guilty-plea-requirement-for-behavioral-health-docket-after-community-concern/> There remain significant gaps in the system here as well. For example, the behavioral health docket is available to adults only, and only in General District Court. Also, it will not address past injustices.

Christopher Shakiras, a man with schizophrenia who was 17-years old at the time of his prosecution was sentenced to two life sentences plus 30 years. He remains in jail rather than in treatment. The sentence imposed by Arlington Circuit Court Judge Sheridan was inconsistent with sentencing guidelines, which called for incarceration of 7 to 11 years. Advocates have been working for several years to get Mr. Shakiras out of jail and into treatment.

https://www.washingtonpost.com/opinions/local-opinions/a-mentally-ill-man-is-wrongfully-incarcerated-in-virginia/2020/01/24/ac477d82-3c9d-11ea-b90d-5652806c3b3a_story.html

<https://www.petearley.com/2018/05/22/treatment-advocacy-center-joins-campaign-to-get-christopher-sharikas-out-of-prison-into-treatment/>

<http://www.noonecaresaboutcrazypeople.com/2017/11/10/628/>

In 2008, Mr. Shakiras filed a habeas corpus petition which was dismissed on procedural grounds.

<https://www.govinfo.gov/content/pkg/USCOURTS-ca4-08-06738/pdf/USCOURTS-ca4-08-06738-0.pdf>

WORKING GROUP ON CIVIL RIGHTS
OF THE ARLINGTON COUNTY CIVIC FEDERATION LEGISLATION COMMITTEE

October 5, 2020

APPENDIX C TO PRELIMINARY REPORT
SELECT CASE LAW ON IMMUNITY FROM LAWSUITS

Citations are to reported cases on qualified immunity from the Virginia Supreme Court, the United States Supreme Court, and the US Court of Appeals for the Fourth Circuit. These are select cases and are not meant to be considered a comprehensive list of all cases on qualified immunity and sovereign immunity.

Trump v. Vance, 591 U. S. ____ (2020) (Declining to extend absolute immunity to the President of the United States in matter of a subpoena issued during state criminal proceedings).

Viers v. Baker, No. 190222 *slip op.* (Va. May 14, 2020) (Dismissing tort claim against prosecutor on grounds of absolute immunity)

Turner v. Thomas, 930 F.3d 640 (4th Cir. 2019) (Case against Charlottesville police officers relating to stand down order during Unite the Right Rally dismissed on grounds of qualified immunity)

Anderson v. Dillman, 824 S.E.2d 481 (Va. 2019) (Dismissing Section 1983 case on grounds of qualified immunity).

Safar v. Tingle, 859 F.3d 241 (4th Cir. 2017) (Dismissing case against prosecutor on grounds of absolute immunity and against police officer on grounds of qualified immunity where failure to withdraw arrest warrant resulted in a couple known to be innocent of charges to be arrested on two separate occasions).

Wood v. Moss, 572 U.S. 744 (2014) (Affirming dismissal of excessive force case on grounds of qualified immunity).

Tolan v. Cotton, 572 U.S. 650 (2014) (Vacating dismissal on grounds qualified immunity and remanding for further findings).

Virginia v. Reinhard, 568 F.3d 110 (4th Cir. 2009) *reversed in Virginia Office for Protection v. Stewart*, 563 U.S. 247 (2011) (finding that the Ex parte Young doctrine applied when suing a sister state agency to seek documents regarding deaths while in institutional care of the state).

Doe ex rel. Johnson v. South Carolina, Soc. Serv., 597 F.3d 163 (4th Cir. 2010) (Dismissing case against social worker applying qualified immunity analysis where defendant knowingly placed child with sexual predator).

Arizona v. Gant, 556 U.S. 332 (2009)(Declining to apply qualified immunity in matter involving illegal search).

Andrews v. Ring, 585 S.E.2d 780 (Va. 2003) (Dismissing malicious prosecution case on grounds of qualified immunity).

WORKING GROUP ON CIVIL RIGHTS
OF THE ARLINGTON COUNTY CIVIC FEDERATION LEGISLATION COMMITTEE
October 5, 2020

APPENDIX D TO PRELIMINARY REPORT
RESOURCES ON RESTRAINT, SECLUSION & SOLITARY CONFINEMENT

VIRGINIA LAW & ADMINISTRATIVE CODE - RESTRAINT, SECLUSION & SOLITARY CONFINEMENT

Virginia Code - Treatment and Control of Prisoners Known to Be Pregnant
Virginia Code section 53.1-40.11 *et seq.* (2020)

Virginia Regulations of Department of Corrections

Restraint of Pregnant Offenders

<https://law.lis.virginia.gov/admincode/title6/agency15/chapter40/section985/>

Restriction of Physical Force

<https://law.lis.virginia.gov/admincode/title6/agency15/chapter40/section970/>

Restraint equipment 6VAC15-40-980

<https://law.lis.virginia.gov/admincode/title6/agency15/chapter40/section980/>

Virginia Regulations Nursing Facilities

<https://law.lis.virginia.gov/admincode/title12/agency5/chapter371/section330/> Restraint use

Guardianship / Judicially Ordered - Certain actions may not be authorized

Virginia Code section 37.2-1102

<https://law.lis.virginia.gov/vacode/title37.2/chapter11/section37.2-1102/> (involuntary
electronconvulsive therapy)

Virginia Department of Juvenile Justice Regulations

<https://law.lis.virginia.gov/admincode/title6/agency35/chapter101/section1130/> (mechanical
restraint)

<https://law.lis.virginia.gov/admincode/title6/agency35/chapter101/section1090/> (physical
restraint)

<https://law.lis.virginia.gov/admincode/title6/agency35/chapter101/section1150/> (restraint for
medical and psychiatric)

<https://law.lis.virginia.gov/admincode/title6/agency35/chapter101/section1100/> (isolation)

<https://law.lis.virginia.gov/admincode/title6/agency35/chapter101/section1120/> (chemical
agents)

OTHER RESOURCES ON RESTRAINT, SECLUSION & SOLITARY CONFINEMENT

H.R. 7124 Keeping All Students Safe Act, 115th Congress (2017-2018)

Sponsored by Rep. Donald S. Beyer (VA-D)

<https://www.congress.gov/bill/115th-congress/house-bill/7124/text?q=%7B%22search%22%3A%5B%22keeping+all+students%22%5D%7D&r=1>

GAO Report, Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing (May 2013)
<https://www.gao.gov/assets/660/654349.pdf>

School Is Not Supposed to Hurt, National Disability Rights Network (2012)
https://www.ndrn.org/images/Documents/Resources/Publications/Reports/School_is_Not_Supposed_to_Hurt_3_v7.pdf

2012 United States Senate Judiciary Committee Hearings
<https://www.help.senate.gov/hearings/beyond-seclusion-and-restraint-creating-positive-learning-environments-for-all-students>

H.R. 4247 Keeping All Students Safe Act, 111th Congress (2009-2010)
<https://www.congress.gov/bill/111th-congress/house-bill/4247>

Unsafe in the Schoolhouse: Abuse of Children with Disabilities, Jessica Butler, Council of Parent Attorney Advocates (2009)
https://cdn.ymaws.com/www.copaa.org/resource/collection/662B1866-952D-41FA-B7F3-D3CF68639918/UnsafeCOPAAMay_27_2009.pdf

National Association of Mental Health Program Directors: Reducing the Use of Restraint and Seclusion, Part II (2001)
https://www.nasmhpd.org/sites/default/files/Seclusion_Restraint_2.pdf

GAO Report, Improper Restraint or Seclusion Use Places People at Risk (September 1999)
<https://www.gao.gov/assets/230/228149.pdf>

Hundreds of the Nation's Most Vulnerable Have Been Killed By The System Intended to Care for Them, Eric M. Weiss, Hartford Courant (October 11, 1998)
<https://www.courant.com/news/connecticut/hc-xpm-1998-10-11-9810090779-story.html>