

# Identifying and addressing the vestiges of inequity and inequality in Virginia's laws



REPORT *from*

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## The Commission to Examine Racial Inequity in Virginia Law

NOVEMBER 15, 2020



FRONT COVER: Thomas J. O'Halloran, photographer. Students arriving at the Free School #2 in Farmville, Prince Edward County, Virginia (1963).

<https://www.loc.gov/exhibits/brown/brown-aftermath.html>



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## INTRODUCTION

On June 4, 2019, Governor Ralph Northam signed Executive Order Number 32, establishing the Governor's Commission to Examine Racial Inequity in Virginia Law.<sup>1</sup> Later that summer, Governor Northam appointed a number of lawyers, judges, and law professors to this Commission.<sup>2</sup> Governor Northam's Executive Order directed the Commission to identify Virginia laws that "have the effect or could have the effect of enabling or promoting racial inequity or inequality," so that the Commission's findings and recommendations could be distributed to promote best practices in reducing racial inequity in the Commonwealth.<sup>3</sup>

The first task of the Commission was to review numerous old Virginia laws contained in the *Acts of Assembly* that, despite being either explicitly racist and discriminatory in their texts, or clearly intended to perpetuate segregation and discrimination, had never been repealed.

The review of these old laws laid bare what many Virginians already knew or had directly experienced: the Commonwealth's state-sanctioned segregation and racial oppression had been pervasive, far-reaching, intentional, and strategic. Whether it was through creating segregated neighborhoods or imposing poll taxes, assigning segregated schools or providing inferior health care, all branches of Virginia government did all they could to separate races and ensure that White Virginians were advantaged over Black Virginians.

After this troubling, but important, review, the Commission issued a [report](#) to the Governor in December of 2019, detailing the *Acts* it reviewed and recommending broad sections of these *Acts* be repealed. The Governor worked with a number of legislators to submit legislation calling for this repeal, and, during the 2020 legislative session, the General Assembly unanimously passed all of these bills.<sup>4</sup>

Given the Executive Order's directive that the Commission review not only explicitly racist laws but the disparate racial impact of Virginia's existing laws and policies, the Commission's initial report also proposed that during the second phase of its work the Commission begin to examine the lingering effects of the almost four centuries of Virginia's state-approved systemic racism.

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<sup>1</sup> Executive Order Thirty-Two: Commission to Examine Racial Inequity in Virginia Law (June 4, 2019), <https://www.governor.virginia.gov/media/governorviriniagov/executive-actions/EO-32-Establishment-of-the-Commission-to-Examine-Racial-Inequity-in-Virginia-Law.pdf>

<sup>2</sup> Governor Northam Announces Members of the Commission to Examine Racial Inequity in Virginia Law (Press Release), <https://www.governor.virginia.gov/newsroom/all-releases/2019/september/headline-846298-en.html>

<sup>3</sup> *Id.*

<sup>4</sup> *See, e.g.*, HB 857 / SB 874; HB 914 / SB 896; HB 973 / SB 600; HB 1325 / SB 636; HB 1521 / SB 850; HB 1638 / SB 722.

More specifically, the Commission proposed to examine pervasive and negative racial disparities across many areas of life in Virginia and to determine whether there were policy or legislative changes that might help address these disparities.

The Governor endorsed this proposal, amending Executive Order Number 32 in June 2020 to continue the work of the Commission and to direct the Commission to “identify the vestiges of inequity and inequality in Virginia’s laws,” laying a foundation for redefining the Commonwealth’s commitment to each citizen’s success and equitable treatment through proposed recommendations. Accordingly, the Commission’s work over the past calendar year has focused on that task. During multiple meetings over the spring and summer of 2020, with recommendations from individual Virginians and advocacy groups and with considerable research support from students in the State and Local Government Policy Clinic at the University of Virginia School of Law, Commissioners examined racial disparities. This included potential policy solutions to address these inequities, in the areas of housing, education, health, criminal justice, voting, environmental justice, and agricultural equity. The following report details some key research findings in each of those areas and presents the Commission’s policy recommendations to help tackle the damaging and longstanding inequities still facing too many people of color in Virginia.

While the pandemic briefly interrupted the Commission’s work, and required the meetings to be conducted virtually, it has also reinforced in life and death terms the importance of addressing the negative and harmful impact of these racial disparities. Accordingly, some of our recommendations address the specific problems and challenges posed by the pandemic on the education of low-income and minority children in the Commonwealth.

The Commission also recognizes that the Virginia General Assembly has been actively engaged in tackling issues of racial inequity. Appendix A details, by issue category, the various bills aiming to tackle racial disparities that the General Assembly passed and Governor Northam signed during both the 2020 Regular Session and the 2020 Special Session, which contextualizes our recommendations.

It is important to note that the release of this report follows a racially polarized election, a spring and summer of protests sparked by the murder of George Floyd and other Black individuals at the hands of law enforcement, and, as described above, a pandemic which has had a devastating and disparate impact on people of color in Virginia and across the country. During this time, the terms “systemic racism” or “structural racism” have been used by some to describe current conditions in our country and Commonwealth and have been rejected by others as anachronistic and no longer relevant given the legal prohibitions on explicit discrimination.

It is our sincere hope that this report, especially when read together with our first report, not only offers a comprehensive set of policy recommendations to help address persistent racial disparities in Virginia, but also provides a meaningful contribution to this conversation and our collective understanding of the meaning and reality of systemic or structural racism.

While definitions vary, the Aspen Institute has described structural racism as a “system in which public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity...structural racism is not something that a few people or institutions choose to practice. Instead it has been a feature of the social, economic and political systems in which we all exist.”<sup>5</sup>

Indeed, even though *de jure* or explicit discrimination in Virginia has been outlawed for decades, the intended impacts of the preceding state-sanctioned discrimination—most plainly, diminished opportunities and continued subjugation of people of color—have persisted in varying degrees since that time and are apparent in the racial disparities this report documents. As this report details, many people of color in Virginia still live in segregated communities, attend segregated schools, have disparately negative health, economic, and educational outcomes, and represent a disproportionately large share of the Commonwealth’s prison population. And while Virginia has made undeniable progress, these divergent outcomes should come as no surprise; Virginia’s more than 350 years of intentional and systemic racism virtually guaranteed, even sought, this result.

On a national level, things are much the same. For example, although people of color no longer face expressly racially restrictive zoning laws or housing covenants that expressly prohibit the sale of certain housing stock, “over 70 percent of African Americans who live in today’s poorest, most racially segregated neighborhoods are from the same families that lived in the ghettos of the 1970s.”<sup>6</sup> Similarly, though people of color no longer face state-sanctioned “redlining,” a racist practice that allowed U.S. banks to afford prospective White homebuyers preferential treatment while concurrently denying mortgages to equally-qualified Black and Brown families,<sup>7</sup> the Black-White homeownership gap is larger today than it was in 1968 when housing discrimination was legal.<sup>8</sup>

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<sup>5</sup> 11 Terms You Should Know to Better Understand Structural Racism, The Aspen Institute, (July 11, 2016), <https://www.aspeninstitute.org/blog-posts/structural-racism-definition/>.

<sup>6</sup> Patrick Sharkey, *Struck in Place: Urban Neighborhoods and the End of Progress Toward Racial Equality*, The University of Chicago Press (2013) at 9.

<sup>7</sup> Emily Badger, *How Redlining’s Racist Effects Lasted for Decades*, New York Times, (Aug. 24, 2017), <https://www.nytimes.com/2017/08/24/upshot/how-redlinings-racist-effects-lasting-for-decades.html>.

<sup>8</sup> Caitlin Young, *These Five Facts Reveal the Current Crisis in Black Homeownership*, Urban Institute, (July 31, 2019), <https://www.urban.org/urban-wire/these-five-facts-reveal-current-crisis-black-homeownership>.



In the Commission's view, this is what structural racism looks like. Virginia policymakers and other leaders spent centuries building legal and other structures to comprehensively segregate and oppress people of color. While the laws have gone away, the impact of what they built, indeed much of the structure they built, has not. The collective goal of the recommendations contained in this report is to make efforts in specific and effective ways to further dismantle this structure, and to address the lingering and disparate effects of Virginia's segregationist past. These policy ideas, and others like them, will not only help people of color in Virginia, but will help all of us, as well.

As a recent, and acclaimed, text on the history of segregation and discrimination in the United States described:

*As citizens in this democracy, we—all of us, White, Black, Hispanic, Asian, Native American, and others—bear a collective responsibility to enforce our Constitution and to rectify past violations whose effects endure. Few of us may be the direct descendants of those who perpetuated a segregated system or those who were its most exploited victims. African Americans cannot await rectification of past wrongs as a gift, and White Americans collectively do not owe it to African Americans to rectify them. We, all of us, owe this to ourselves. As American citizens, whatever routes we or our particular ancestors took to get to this point, we're all in this together now.<sup>9</sup>*

As a final note, the members of the Commission want to thank Governor Northam for the opportunity to serve in this way. It has been an honor to have the chance to meaningfully and intentionally address these problems that have always plagued the Commonwealth and to take part in worthwhile and long overdue conversations about overcoming the enduring burdens of Virginia's racist past. We look forward to the work ahead.

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<sup>9</sup> Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America*, Liveright Publishing, (May 2017).

## EXECUTIVE SUMMARY

This report proceeds in six main chapters: Housing, Education, Criminal Justice, Health, Environmental Justice, and Agricultural Equity. It concludes with a seventh chapter on institutionalizing the Commission's work. Note that because the General Assembly addressed barriers to voting in the 2020 Regular Session, the Commission makes no specific recommendations in the voting area, with the notable exception of addressing the problem of how Virginia handles the disenfranchisement of people with felony convictions.

Each chapter begins with a brief history of the topics' racial inequities in the Commonwealth followed by an overview of the current data on the disparities Virginians face. After this introduction, each chapter proceeds into topical subsections in which numbered recommendations are presented and explained. To the extent possible, data, reports, and sources relied on by the Commission have been included in footnotes with links for easy access. All images are either original, based on publicly available data, or have been reprinted with permission from their original creators.

The report concludes with recommendations for further work, including subjects that were not covered this year due to time constraints. Lastly, an appendix is attached which (A) details the legislation passed this year on topics of interest to the Commission, and (B) includes the Commission's letter of recommended actions on police reform, that was sent to Governor Northam this summer following the protests after the death of George Floyd in Minneapolis.

*The Commission's Recommendations are as follows:*

### HOUSING

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1. Allow the adoption of more effective inclusionary zoning laws statewide by expanding the ADU program under § 15.2-2304 to all cities.
2. Impose state limits on exclusionary zoning in localities.
3. Add provisions to § 58.1-3965 that require locality foreclosure for tax delinquency within a set time frame on vacant or commercial properties in cities, in order to donate those properties to a community land bank for affordable housing.

4. Incentivize local solutions with state dollars by (1) creating a state subsidy program for affordable housing development, (2) adding more funds to the Virginia Housing Trust Fund, and/or (3) attaching state development dollars to inclusionary zoning and affordable housing actions by localities.
5. Provide building space and staff grants to Richmond and other high-eviction cities to serve as a physical, community-based space for a coordinated eviction prevention program.
6. Request a cost-benefit analysis study on models for providing a right to counsel in eviction cases, from JLARC or another trusted research entity.
7. Revise Virginia's landlord-tenant laws to:
  - Increase pay-or-quit period from 5 to 14 days
  - Decrease allowed judgment use period from 6 months to 30 days
  - Increase number of times a tenant can use the right of redemption
  - Extend the appeal bond period in eviction cases to 30 days, allow waivers for indigency
  - Create stricter consequences for informal evictions
  - Seal/expunge eviction records after two years, or provide a court process for expungement
  - Automatic expungement for eviction cases that are dismissed
  - Treat hotel/motel residents as tenants after 30 days of stay
  - Limit what screening rules landlords may use to exclude poor tenants
  - Clarify that income requirements must be based on tenant's portion of the rent (e.g. for voucher holders)
  - Limit tenancy application fees

1. Repeal § 22.1-25 (A) 1-3 to allow regional solutions to inequity.
2. Incentivize and facilitate integration programs.
3. Add a diversity metric to school accreditation ratings.
4. Eliminate bias by changing course access, counseling, and gifted regulations
5. Invest in educational infrastructure.
6. Reconfigure the funding formula to take account of student need.
7. Advocate for high quality pre-kindergarten programs for all children.
8. Support the Governor's initiative to unify the Pre-K data system and create Pre-K student identifiers.
9. Mandate data collection and reporting on diverse teacher recruitment and retention.
10. Endorse recommendations by the Taskforce on Diversifying Virginia's Educator Pipeline.
11. Establish the Virginia Council to Dismantle the School-to-Prison Pipeline via statute.
12. Limit the presence of School Resource Officers (SRO) in Virginia K-12 schools by reallocating a portion of the resources from the state's SRO program to invest in increased school counselors/mental health supports in schools.
13. Impose stronger statutory limits on out-of-school suspension.
14. Increase support staff funding as an alternative to suspension.
15. The Commission endorses the following guidelines for crisis education spending:
  - a. Federal emergency funds should be distributed proportionally by need.
  - b. When using emergency funds to support education during a crisis, decision makers must consider affordability issues for families.
  - c. Cuts to state spending due to crisis economic conditions should preserve equity efforts.
  - d. Spending restoration after a crisis should prioritize equity funding first.

## CRIMINAL JUSTICE

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1. Require the Sentencing Commission to collect, analyze, and report on sentencing outcomes by race and ethnicity; require courts to publish racial and other demographic data of all low-level offenses.
2. Require the collection of data on the results of pretrial hearings, bail decisions, and pre-trial incarceration, including breakdowns by race.
3. Prevent the Compensation Board from considering the volume of felony cases when calculating Commonwealth Attorney's office resourcing.
4. Propose legislation that addresses the impact that mandatory minimum sentencing laws have on racially disproportionate rates of incarceration.
5. Propose legislation that fosters restorative practices like expungement, clemency, sentence reductions and retroactive sentencing.
6. Abolish or limit felony disenfranchisement by amending or repealing Article II, Section I of the Virginia Constitution.

## HEALTH

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1. Close the gap in healthcare access for immigrants.
2. Exercise the option for 12-month continuous coverage to Medicaid and CHIP for children.
3. Create a pipeline program to support Black college students' preparation for medical school.
4. Require Virginia continuing medical training to include implicit bias training.
5. Increase mental health programming in schools.
6. Direct the Commission Studying Mental Health Services in the 21st Century to specifically address racial disparities in their work.



## ENVIRONMENTAL JUSTICE

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1. Require the Department of Environmental Quality (DEQ) to develop measures designed to ensure meaningful public involvement from environmental justice communities.
2. Direct the Department of Conservation and Recreation to adopt a Statewide Park Equity Mapper to include demographic and health data necessary to inform equitable decision-making.
3. Amend Code § 10.1-200.1 to include access for environmental justice communities as a required consideration in state park master planning.
4. Develop strategies to target residential solar energy development toward environmental justice communities.
5. Establish a Tribal Liaison with DEQ.

## AGRICULTURAL EQUITY

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1. Modify Code § 58.1-3965 to allow an extended redemption period for tax sales involving heirs' property.
2. Sufficiently fund Virginia Cooperative Extension services at Virginia State University (VSU).
3. Create an Office of Small Farms within the Virginia Department of Agriculture and Consumer Services (VDACS) with a duty to consider racial equity in farming.
4. Order state Agencies and Institutions to implement a long-term goal for food procurement from minority producers.

## INSTITUTIONALIZING RACIAL EQUITY

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1. Codify the Commission as an ongoing Commission of the Commonwealth of Virginia.
2. Enact a process that would require examination of proposed legislation with an equity lens.

# RESEARCH METHODOLOGY AND PROCESS

## MEMBERS OF THE COMMISSION

- **Cynthia Hudson** of Richmond, Counsel, Sands Anderson, former Chief Deputy Attorney General of Virginia (Chair)
- **Andrew Block** of Charlottesville, Director of the State and Local Government Policy Clinic, University of Virginia School of Law (Vice-Chair)
- **Henry L. Chambers, Jr.** of Richmond, Professor of Law, University of Richmond School of Law
- **Jill Hanken** of Richmond, Health Attorney, Virginia Poverty Law Center
- The Honorable **Michael N. Herring** of Richmond, Partner, McGuire Woods, former Commonwealth's Attorney for the City of Richmond
- **Carla Jackson** of Chesterfield, Assistant Commissioner for Legal Affairs, the Virginia Department of Motor Vehicles
- The Honorable **Birdie Hairston Jamison** of Richmond, Retired Judge of the General District Court, City of Richmond
- The Honorable **Jerrauld Jones** of Norfolk, Chief Judge, Circuit Court, City of Norfolk
- **Leslie Chambers Mehta** of Chesterfield, Chief of Staff and Counsel to the CEO, Richmond Metropolitan Transportation Authority

## RESEARCH TEAM'S METHODOLOGY

The research team for the Commission collected data from published reports and policy and advocacy organizations, both nationally and within Virginia. In these reports, the team searched for evidence of racial disparities in the Commission's chosen policy areas in Virginia: housing, education, criminal justice, voting, health, environmental justice, and agricultural equity.

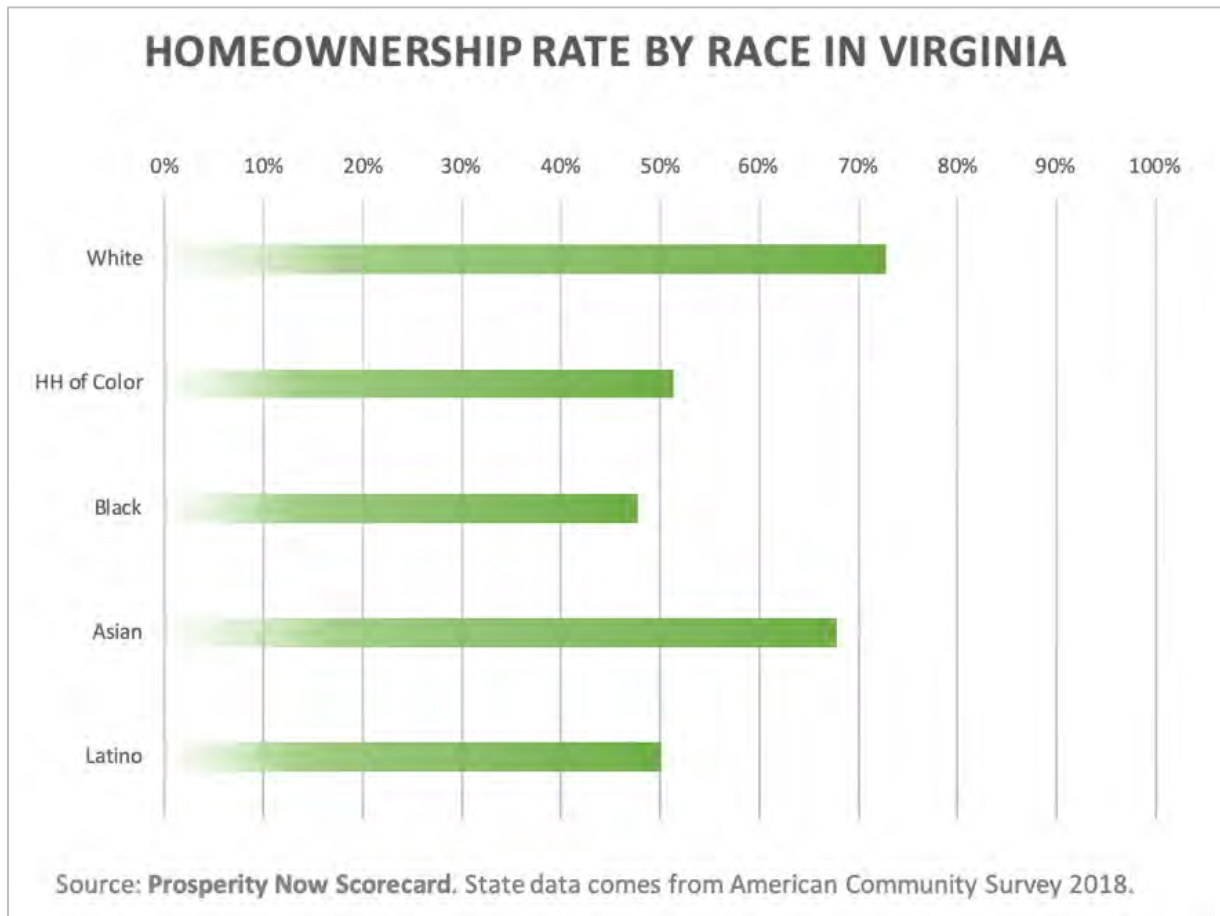
In some cases, it was clear that there was a racial disparity, but it wasn't clear why. In these areas, the research team identified data gaps that could be rectified by statutes or regulations. In other areas, the racial disparity at issue highlighted specific policy focus areas for making substantive policy recommendations based on empirical evidence of effectiveness. Considering these policy areas, the team conducted a review of statutes and regulations currently on the books in Virginia to determine potential language that could be modified to improve racial equity.

Policy recommendations do not generally include budget recommendations, but there are some exceptions when budgetary choices have significant inequity impacts that are not otherwise rectified easily. The Commission then reviewed each proposal through a majority vote process.

Throughout its process, the Commission has received public comment and policy recommendations from various organizations. These organizations include the Virginia Legislative Black Caucus, the Virginia Poverty Law Center, the Commonwealth Institute, the New Virginia Majority, ECHO Virginia, as well as individuals during public comment. The final recommendations approved by the Commission include many of these suggestions.

## HOUSING

Racial disparities in housing are widely acknowledged to be the direct result of government action, including state and local zoning and lending choices. For example, in the 1930s, the Home Owners Loan Association graded neighborhoods by lending risk. These grades were highly dependent upon race -- what is often called redlining. Unfortunately, the legacy of this redlining lives on today.



As a result of these historical practices that denied families of color the chance to participate in homeownership, there are stark disparities in homeownership rates today. While nearly three quarters of White families in Virginia own their homes today, only about half of households of color are homeowners, with Black and Hispanic families being the least likely to own homes.

*Ashted*  
This Deed, made this 17<sup>th</sup> day of June, 1914, by and between WESTHAMPTON HEIGHTS COMPANY, INCORPORATED, a corporation existing under the laws of the State of Virginia, party of the first part, and Clifton Lee Jr party of the second part, Witnesseth, That for and in consideration of the sum of Five hundred (\$500.<sup>00</sup>/<sub>100</sub>) dollars, and also in consideration of the said party of the second part by the acceptance of this deed hereby agreeing to comply with all the restrictions and conditions hereinafter contained as to the property hereby conveyed:

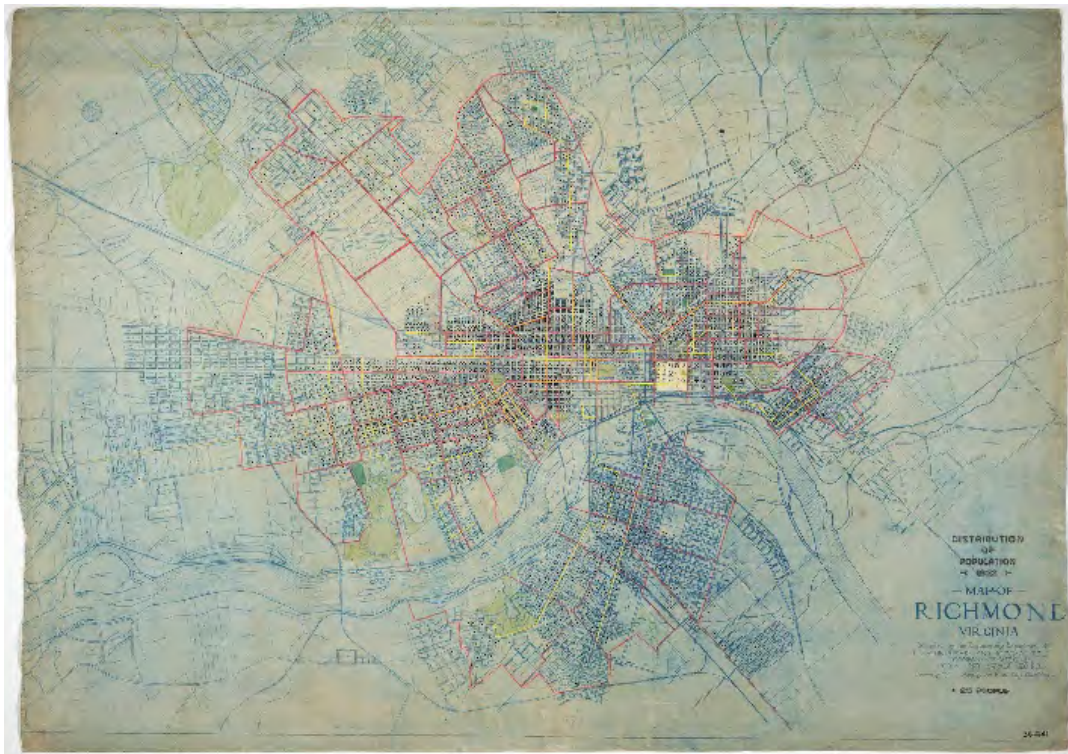
The said WESTHAMPTON HEIGHTS COMPANY, INCORPORATED, doth grant unto the said party of the second part, with GENERAL WARRANTY, the following described lot of land, to-wit: Lot 14 in Block No. 4, described as follows:

*Beginning at a point on the South line of Patterson avenue, Two hundred and Fifty (250) feet East of Hampton avenue, thence running in a easterly direction along and fronting fifty (50) feet to the South line of Patterson avenue, thence running back in a southerly direction and between nearly parallel lines are hundred and seventy five (175) feet to an alley,*

being a part of the property lying in the county of Henrico, Tuckahoe District, about three miles west of the city of Richmond, on Patterson Avenue, near Three Chop Road, and which was conveyed to the said WESTHAMPTON HEIGHTS COMPANY, INCORPORATED, by L. Shere et als. by deed dated May 11, 1910. and recorded in the Henrico Circuit Court Clerk's Office, and for a further description of the said property reference is hereby made to said deed and to a plat of WESTHAMPTON HEIGHTS, recorded in the Henrico Circuit Court Clerk's Office, in Plat Book 9, page 79.

Racial covenants, enforced in Virginia's courts, restricted Black families from purchasing homes in certain neighborhoods and excluded them from the housing market. *Deed between Westhampton Heights Company, Inc. and Clifton Lee, Jr., City of Richmond, Restrictive Covenant example, 1914, from T. Crawford Redd & Bros. (Richmond, Va.), Plats and Surveys, 1786-1952, Business records collection of the Library of Virginia.*



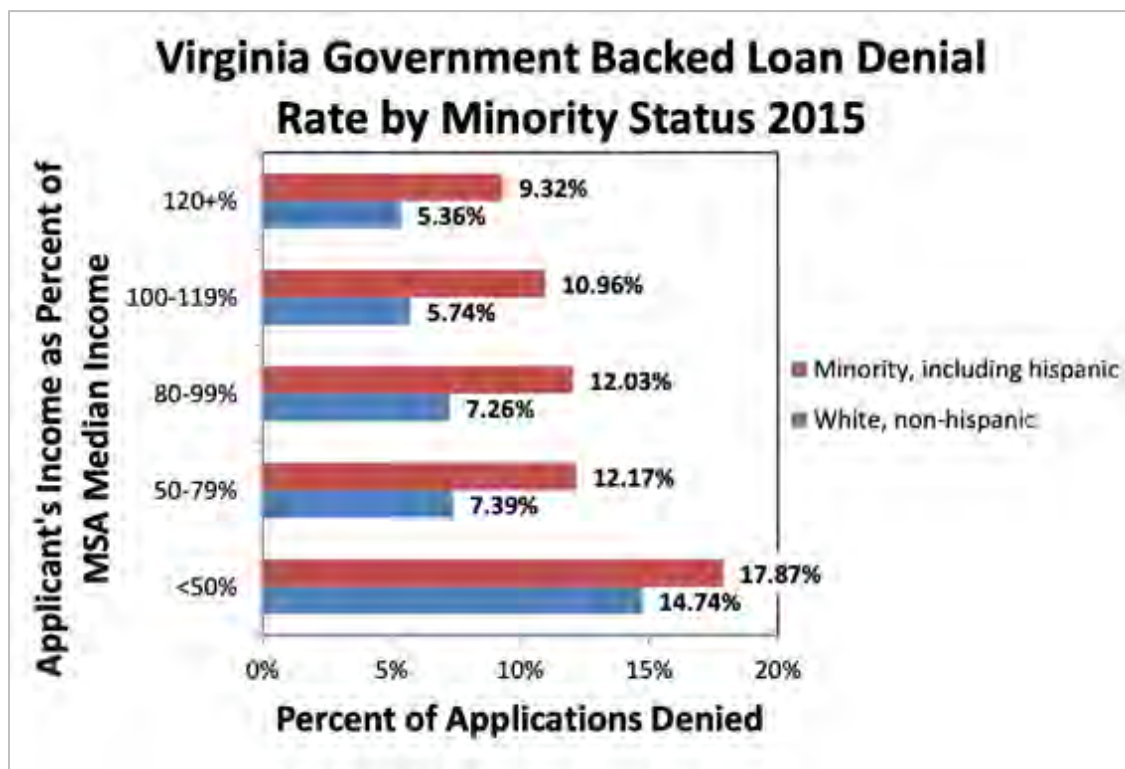


Redlining was a process by which government actors and lenders discriminated against Black families and excluded them from wealth acquisition. *Distribution of population 1922: map of Richmond, Virginia, from the Map Collection of the Library of Virginia.*



Because of exclusion and disinvestment, Black families were often segregated in poor quality housing. *“Section of Big Dump and housing conditions just below Confederate Museum. Strikingly visible from trains into Main Street Station from the North,”* undated, from the Visual Studies Collection of the Library of Virginia.

Lending practices of today have not improved much either. Current data on loan denial rates suggests that, even when controlling for income, families of color are nearly twice as likely to be denied a loan as White families.



Graphic: Department of Housing and Community Development, “Analysis of Impediments to Fair Housing Choice in the Commonwealth of Virginia” (2018). <https://dhcd.virginia.gov/sites/default/files/Docx/consolidated-plan/analysis-of-the-impediments-to-fair-housing.pdf>

Since families of color are overwhelmingly excluded from the financing necessary to participate in homeownership, they are overrepresented amongst renters. This makes the lack of affordable rental units in Virginia particularly concerning.

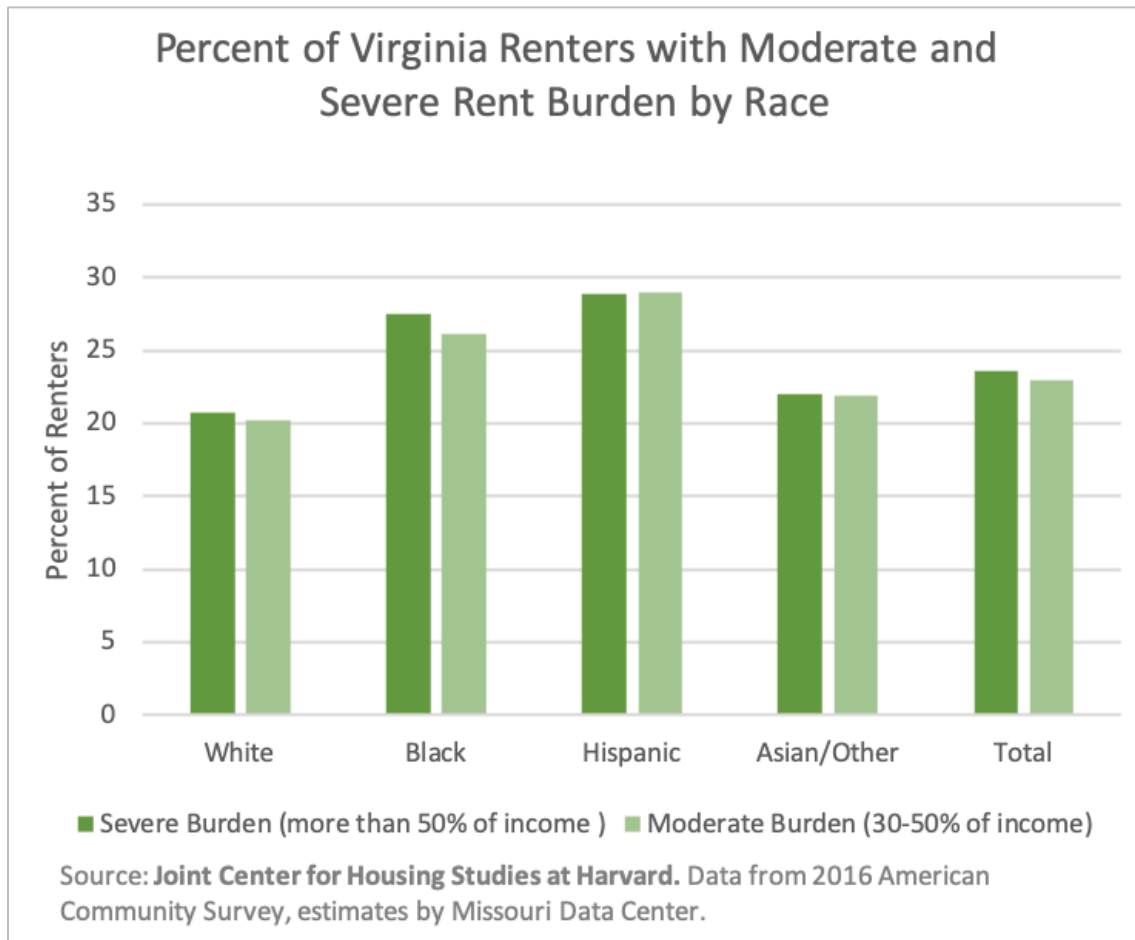
In the last ten years, Virginia’s housing stock for low-income individuals has drastically declined.<sup>10</sup> While Virginia’s rental stock is sufficient for individuals making 80% or higher of their area median income—that is, for the financially secure, the rental stock is significantly lacking for those in lower income brackets.<sup>11</sup> Estimates suggest Virginia needs over 150,000 new rental units for those in the lowest income brackets in order to address the housing crisis.<sup>12</sup>

<sup>10</sup> Joint Center for Housing Studies of Harvard University, The Low-Rent Stock in Most Metros Has Declined Substantially Since 2011, <https://www.jchs.harvard.edu/son-2019-low-rent-units-map>

<sup>11</sup> National Low Income Housing Coalition, Virginia: The Gap Report (2018), <https://reports.nlihc.org/gap/2018/va>

<sup>12</sup> *Id.*

This means that an increasing number of Virginians put far too much of their income towards rent—many times, over half of their earnings go to paying rent, leaving essential expenses like food, clothing, and medication to chance. This high rent burden is experienced at a much greater rate for Black and Hispanic Virginians than other racial groups.



All these factors often lead to evictions, that have devastating and far-reaching impacts for tenants and their families. Virginia’s eviction rate is shockingly high. Half of the top ten cities with the highest eviction rates nationwide are in Virginia.<sup>13</sup> This shameful statistic has severe repercussions because evictions are not merely a consequence of poverty but a cause of it. An eviction solidifies an individual’s impoverishment by throwing their life into disarray; causing psychological, educational, and other harms to members of the individual’s entire family; and excluding them in the future from access to stable housing through strict screening processes. Children in particular suffer severely from evictions, becoming less academically successful and more prone to teenage criminal activity.<sup>14</sup>

<sup>13</sup> Princeton Eviction Lab, *Top Evicting Large Cities in the U.S.* (2016), <https://evictionlab.org/rankings/#/evictions?r=United%20States&a=0&d=evictionRate&lang=en>

<sup>14</sup> See *Evicted* by Matthew Desmond (2016).

Evictions are not equally distributed by race. In fact, race is far more influential than rent burden percentage or income in determining if a family will be evicted.<sup>15</sup> In other words, evictions present a significant issue of racial inequity that the Commonwealth must resolve.

The Commission makes seven recommendations to the Governor. These recommendations have two primary goals: increase Virginia’s affordable housing stock for those earning 30% or less and 50% or less of area median income, and reduce the occurrence of evictions.

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## AFFORDABLE HOUSING AND ZONING

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### BACKGROUND

Exclusionary zoning and historical zoning practices enable cities to exclude certain residents, both contributing to the concentration of low-income individuals of color in poor-quality housing as well as the affordable housing crisis statewide. The National Low Income Housing Coalition estimates that Virginia currently has a shortage of over 150,000 homes for renters.<sup>16</sup> Homes for those in the lowest income brackets—less than 30% of Area Median Income, and less than 50% of Area Median Income—are even more severely lacking.<sup>17</sup> The Governor has already made clear that increasing affordable housing stock is a priority.<sup>18</sup> The Commission endorses the following recommendations to address the lack of affordable housing.

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<sup>15</sup> Benjamin Theresa, RVA Eviction Lab, included with permission. See also Benjamin Theresa, The Geography of Eviction in Richmond: Beyond Poverty, [https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2020/02/RVAEL\\_Geographies-of-Eviction.pdf](https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2020/02/RVAEL_Geographies-of-Eviction.pdf)

<sup>16</sup> National Low Income Housing Coalition, 2020 Virginia Profile, [https://nlihc.org/sites/default/files/SHP\\_VA.pdf](https://nlihc.org/sites/default/files/SHP_VA.pdf)

<sup>17</sup> National Low Income Housing Coalition, Virginia: The Gap Report (2018), <https://reports.nlihc.org/gap/2017/va>

<sup>18</sup> Executive Order Number Twenty-Five: Establishing the Governor’s Affordable Housing Priorities To Address Virginia’s Unmet Housing Needs, Commonwealth of Virginia Office of the Governor (2018), <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-25-Establishing-The-Governors-Affordable-Housing-Priorities-To-Address-Virginias-Unmet-Housing-Needs.pdf>



**RECOMMENDATION 1: The adoption of more effective inclusionary zoning laws statewide by expanding the affordable dwelling units (ADU) program under § 15.2-2304 to all localities.**

Currently, only a few Virginia localities are permitted to mandate their own inclusionary zoning rules to encourage ADUs.<sup>19</sup> Other localities across the commonwealth are only included in the “voluntary” program, which experts admit simply hasn’t worked.<sup>20</sup> Changing zoning laws to encourage ADUs generally requires no public funding. Plus, proper inclusionary zoning regulations ensure that new developments contribute to the solution by making homes more equitably available to low-income families. Additionally, addressing zoning is a racial justice issue.<sup>21</sup> Virginia localities should be allowed more freedom to tackle inclusionary zoning and affordable housing within their own jurisdictions.

**RECOMMENDATION 2: Impose state limits on exclusionary zoning in localities.**

The Commonwealth should also make efforts to increase the density of housing by requiring localities to have a certain percentage of affordable housing, lowering lot size requirements, and/or enacting other statutory or regulatory changes that allow lower income people to move into a locality. HB152 which was left in the House Committee on Counties, Cities, and Towns during the 2020 regular session, is an example of a policy that could have a strong impact on the share of affordable housing. The bill allowed for “middle housing,” or the building of duplexes, townhouses, cottages, and similar structures on all lots zoned for single family housing.

**RECOMMENDATION 3: Add provisions to § 58.1-3965 that require locality foreclosure for tax delinquency within a set time frame on vacant or commercial properties and would automatically donate such properties to any local Community Land Bank (15.2-7500–7512) established for affordable housing.**

One of the lesser-known problems in our housing crisis is the reluctance of local governments to engage in foreclosure for vacant tax delinquent properties, which would move those properties back onto the market where they can be redeveloped. Note that this policy does not refer to the struggling family that has been unable to pay the bills; this change would only address vacant buildings, sitting off the market, with absentee landlords or complex judgments against them in court. If the Commonwealth requires that these properties be foreclosed and put back on the market, we increase our statewide housing stock and improve localities’ resources to continue to invest in affordable housing solutions.

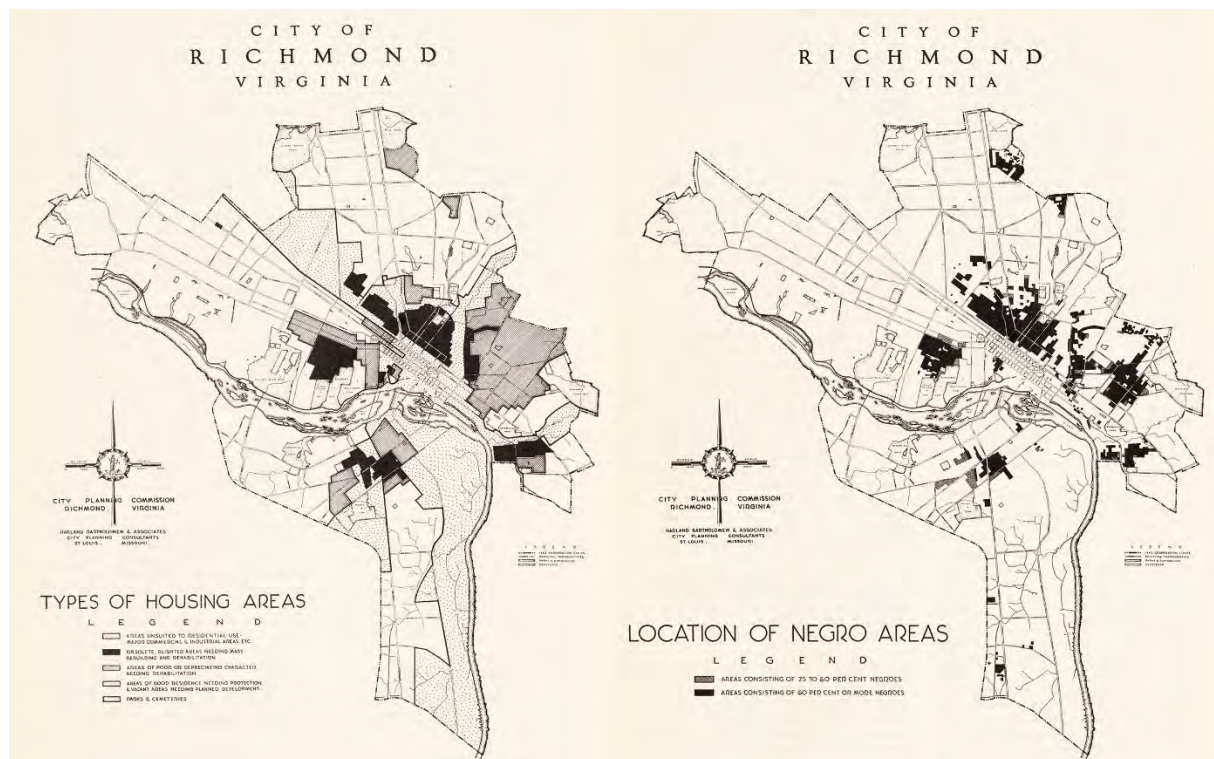
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<sup>19</sup> See HB 832 (2020), which added Charlottesville to the list of cities.

<sup>20</sup> See Solution 1-E, Partnerships for Housing Affordability, Richmond Regional Housing Framework, <https://pharva.com/framework/solutions/#1578339862797-28a37a1d-c767>

<sup>21</sup> Ibraheem Samirah, Zoning for Abundant Housing is a Racial Justice Issue, Richmond Times Dispatch (July 15, 2020), [https://richmond.com/opinion/columnists/ibraheem-s-samirah-column-zoning-for-abundant-housing-is-a-racial-justice-issue/article\\_18a96bf0-9a52-5945-995c-be9dfa0db340.html](https://richmond.com/opinion/columnists/ibraheem-s-samirah-column-zoning-for-abundant-housing-is-a-racial-justice-issue/article_18a96bf0-9a52-5945-995c-be9dfa0db340.html)





During urban revitalization efforts, many policymakers used racial makeup to determine the blighted areas that would be torn down. In the wake of such efforts Black families were displaced and often forced into public housing against their will. *City of Richmond, Types of Housing Areas, Plate 8 and Plate 6, 22 June 1942, from the Map Collection of the Library of Virginia. City of Richmond.*

**RECOMMENDATION 4: Incentivize local solutions with state dollars by (1) creating a state subsidy program for affordable housing development, (2) adding more funds to the Virginia Housing Trust Fund,<sup>22</sup> and/or (3) attaching state development dollars to inclusionary zoning and affordable housing actions by localities.** Increasing the affordable rental unit stock and promoting lower-income home ownership can be accomplished through a variety of methods, including subsidized lending, building efforts, and community land trusts.<sup>23</sup> Many Virginia localities know this, but have little incentive to solve what has become a collective problem that each locality passes on to the next. Virginia should attempt to create statewide incentives for such programs in order to discourage localities from excluding new and low-income residents. Virginia could also attach state development and housing funds to certain inclusionary zoning requirements. For other models, see Denver’s Housing fund, which has subsidized rents, renovated vacant hotels, and helped families in crisis.<sup>24</sup>

<sup>22</sup> Virginia Housing Trust Fund, Department of Housing and Community Development, <https://www.dhcd.virginia.gov/vhtf>

<sup>23</sup> See generally, Partnerships for Housing Affordability, Richmond Regional Housing Framework, <https://pharva.com/framework/solutions/#1578339862797-28a37a1d-c767>

<sup>24</sup> Jon Murray, Denver’s Affordable Housing Fund Covered a Woman’s Rent after a Medical Emergency. Here’s what else \$24 million is accomplishing, Denver Post (Aug. 25, 2018), <https://www.denverpost.com/2018/08/25/denver-affordable-housing-fund-expansion-spending/>

### BACKGROUND

While a number of efforts have been implemented in the last two years,<sup>25</sup> evictions are the clearest area of disparate impact in Virginia's housing. Neighborhoods of color in particular have been devastated. Individuals of color are far more likely to be evicted than their White neighbors, even when income and other circumstances are equal.<sup>26</sup> Matthew Desmond, a national housing scholar based at Harvard University, found that overwhelmingly, nationwide, the people being evicted most are single Black moms with school-age children—an incredibly vulnerable group. Coronavirus has shed new light on the crisis with ongoing debates about rental relief, an eviction moratorium, and the danger of housing instability during a pandemic.

**RECOMMENDATION 5: Provide building space and staff grants to Richmond and other high-eviction cities to serve as a physical, community-based space for a face-to-face coordinated eviction prevention program.** Recent research suggests that one of the reasons for such high eviction rates in Richmond, is not at all a lack of resources, but an inability to connect such resources to the right individuals in a timely fashion.<sup>27</sup> Renters who have been passed from phone call to phone call have repeatedly advocated for an office with friendly faces that they can visit to get help. Providers agree that the disorganization is harmful to their ability to help clients. The staff in this space could coordinate with local nonprofits on rental assistance, rental repair funds, pre- and post- eviction support, and legal advocacy.

**RECOMMENDATION 6: Request a cost-benefit analysis study on models for providing a right to counsel in eviction cases, from JLARC or another trusted research entity.** Research has shown that providing counsel to those facing eviction has a host of community benefits, including reduced ultimate eviction rate (by nearly 80%), help applying for rental assistance and securing alternate housing, improvements in credit and other records consequences, and help negotiating payment options with a landlord.<sup>28</sup> This is an expensive option, but we recommend this topic for further study because of its proven effectiveness in reducing evictions. We suggest a Virginia-based cost-benefit analysis of various models for counsel.

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<sup>25</sup> Central Virginia Legal Aid Society, 7 New Laws that are More Fair, Favorable and Friendly to Tenants, [www.reduceevictions.org/wp-content/uploads/2019/04/new-landlord-tenant-laws-0319.pdf](https://www.reduceevictions.org/wp-content/uploads/2019/04/new-landlord-tenant-laws-0319.pdf).

<sup>26</sup> Kathryn Howell, Eviction and Educational Instability in Richmond, Virginia, RVA Eviction Lab, [https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2020/02/RVAEL\\_Eviction-and-Educational-Instability-in-Richmond.pdf](https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2020/02/RVAEL_Eviction-and-Educational-Instability-in-Richmond.pdf).

<sup>27</sup> Tayla Lockman-Fine and Olivia Rosenthal, Evictions in Richmond: Overview, Current Responses, and Program Proposals (August 2019), <https://pharva.com/wp-content/uploads/Achieving-Coordinated-Access.pdf>

<sup>28</sup> Heidi Schultheis and Caitlin Rooney, A Right to Counsel is a Right to a Fighting Chance, Center for American Progress (Oct. 2, 2019), <https://www.americanprogress.org/issues/poverty/reports/2019/10/02/475263/right-counsel-right-fighting-chance/>

## **RECOMMENDATION 7: Revise Virginia's landlord-tenant laws to:**

- Increase pay-or-quit period from 5 to 14 days
- Decrease allowed judgment use period from 6 month to 30 days
- Increase the number of times a tenant can use the right of redemption
- Extend the appeal bond period in eviction cases to 30 days, allow waivers for indigency like in other civil cases
- Create stricter consequences for informal evictions
- Seal/expunge eviction records after two years, or provide a court process for expungement, similar to Minnesota<sup>29</sup>
- Automatic expungement for eviction cases that are dismissed
- Treat hotel/motel residents as tenants after 30 days of stay
- Limit what screening rules landlords may use to exclude poor tenants
- Clarify that income requirements must be based on tenant's portion of the rent (e.g. for voucher holders)
- Limit tenancy application fees

One of the biggest harms of eviction is its nearly permanent future damage to an individual's chances to get back on their feet. While a landlord may lose a small percentage of profit from unpaid rent, an evicted person may forever be screened from housing and unable to provide their family and children a safe space to live. Landlords use a variety of screening tools, including background checks, credit checks, and former eviction filings, to find ways to keep the poor out of their homes.

The current court process favors landlords over tenants. If we want people to stay in their homes, and our neighborhoods, schools, and economy to flourish, we should balance the process and help all Virginians be safely and stably housed. These recommendations are extensive, but each would help tenants stay in their homes and prevent unnecessary evictions.

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<sup>29</sup> Minnesota Education for Justice Fact Sheet H-27: Expunging an Eviction Case (Fall 2011), [https://www.mncourts.gov/mncourtsgov/media/assets/documents/0/public/Self\\_Help\\_Center/3981H-27-Expunging-Evictions.pdf](https://www.mncourts.gov/mncourtsgov/media/assets/documents/0/public/Self_Help_Center/3981H-27-Expunging-Evictions.pdf)



## EDUCATION

The importance of public education is well-documented in the annals of Virginia state history. On June 12, 1776, the Virginia Declaration of Rights declared:

*That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and that the Commonwealth should avail itself of those talents which nature has sown so liberally among its people by assuring the opportunity for their fullest development by an effective system of education throughout the Commonwealth.*<sup>30</sup>



In July of 1870, the Virginia General Assembly enacted a statute to establish and maintain a uniform system of free public schools. The statute also mandated that this new school system be racially segregated. *"Educational Progress in Virginia, The Schools for Colored Children in Richmond," Frank Leslie's Illustrated Newspaper, July 21, 1883, from the Visual Studies Collection of the Library of Virginia.*

On June 8, 1779, nearly three years after the drafting of Virginia's Declaration of Rights, Thomas Jefferson furthered this declaration by proposing a more detailed plan to educate the citizenry. In his *Bill for the More General Diffusion of Knowledge*, Jefferson aimed to provide three years of state-sponsored education in an array of subject areas that would help to "guard the sacred deposit of the rights and liberties of their fellow citizens."<sup>31</sup> Jefferson's bill languished in the state

<sup>30</sup> Virginia Constitution, Art. I, § 15.

<sup>31</sup> "A Bill for the More General Diffusion of Knowledge" (1779), <https://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0079>

legislature for years until 1796, when a significantly scaled down version was passed.<sup>32</sup> Though his plan to construct a broader system of state-run education in Virginia ultimately failed to meet his expectations, Jefferson's vision for constructing such a system was finally realized nearly 80 years later. On October 8, 1869, the newly-adopted Virginia Constitution established, among other things, the state's first system of free public schools.<sup>33</sup> The central aim of this newly-established system was to, "prevent children [from] growing up in ignorance, or [from] becoming vagrants."<sup>34</sup> Despite this seemingly placid history, public education in Virginia was not meant to be available to all Virginians on equal terms.

Only a few years removed from defeat in the Civil War, Virginia ratified the Thirteenth, Fourteenth, and Fifteenth Amendments, which abolished slavery, guaranteed equal protection of the laws, and protected the right to the franchise, respectively.<sup>35</sup> When Reconstruction failed in 1877, the vestiges of slavery and White racial terror pervaded in Virginia—and much of the south— through "Pig Laws."<sup>36</sup> These restrictive, racist laws were designed by recalcitrant White southerners to subjugate Black Americans to a life of social control, violence, and second-class citizenship.<sup>37</sup> By 1902, school children of different races were constitutionally prohibited from attending the same schools in Virginia, which served as the first instance that the state had expressly required racial segregation in schools.<sup>38</sup> It was not until the seminal *Brown v. Board of Education I* and *II* decisions half a century later that such *de jure* segregation—that is, formal segregation that existed as a result of local mandates—was outlawed. Yet, the era of massive resistance following *Brown* stymied any meaningful progress.

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<sup>32</sup> April Barkes, A Bill for the More General Diffusion of Knowledge, Jefferson's Monticello (April 2009), [https://www.monticello.org/site/research-and-collections/bill-more-general-diffusion-knowledge#footnote2\\_02gn9k1](https://www.monticello.org/site/research-and-collections/bill-more-general-diffusion-knowledge#footnote2_02gn9k1)

<sup>33</sup> Virginia Museum of History and Culture, Education in Virginia, <https://www.virginiahistory.org/collections-and-resources/virginia-history-explorer/education-virginia>

<sup>34</sup> *Id.*

<sup>35</sup> The National Constitution Center, The Reconstruction Amendments, <https://constitutioncenter.org/learn/educational-resources/historical-documents/the-reconstruction-amendments>

<sup>36</sup> Slavery by Another Name: Black Codes and Pig Laws, PBS, <https://www.pbs.org/tpt/slavery-by-another-name/themes/black-codes/>

<sup>37</sup> Ferris State University, Black Code, Jim Crow Museum of Memorabilia, <https://www.ferris.edu/htmls/news/jimcrow/links/misclink/blackcode.htm>; *see also* PBS, Slavery by Another Name: Black Codes and Pig Laws, <https://www.pbs.org/tpt/slavery-by-another-name/themes/black-codes/>

<sup>38</sup> Virginia Museum of History and Culture, Jim Crow to Civil Rights in Virginia, <https://www.virginiahistory.org/collections-and-resources/virginia-history-explorer/jim-crow-civil-rights-virginia>.



EDUCATION - VIRGINIA

# VIRGINIANS!

Protect the rights of your children and yourself by voting FOR the convention on January 9, 1956.

**A vote FOR the Convention is a vote**

**(1) Against enforced MIXED schools**

**(2) For the PRESERVATION of the public school system.**

Do not be confused by the NAACP, the integrationists and the misinformed. A vote FOR the convention is simply a vote against enforced mixed schools. Nothing more.

Both DOCTORS DABNEY S. LANCASTER and DOWELL J. HOWARD, respectively, past and present State Superintendent of Schools, say that

**A VOTE FOR THE CONVENTION IS A VOTE IN THE BEST  
INTEREST OF YOUR PUBLIC SCHOOLS.**

**WORK FOR  
TALK FOR  
VOTE FOR THE CONVENTION**

PAGE 16—OCTOBER 1956—SOUTHERN SCHOOL NEWS

## Virginia's General Assembly Bars State Funds for Mixed Schools

**A** BATTERY of new laws—including one to deny state funds to integrated schools—was enacted by the Virginia General Assembly during its month-long special session, which adjourned Saturday, Sept. 22. They were signed by the governor on Sept. 29.

The legislators adopted a program designed to implement Gov. Thomas B. Stanley's announced policy of "unyielding resistance" to the Supreme Court's anti-segregation decision. (See "Legislative Action.")

The plan provides for creation of a three-member Pupil Placement Board, appointed by the Governor, to take over from the local school boards the full authority to assign pupils to schools.

### **AUTOMATIC CLOSING**

If the races are mixed in any school, that school is automatically closed and removed from the public school system. The governor then takes over, and by the reassigning of pupils or the reorganization of the school, attempts to make it possible to reopen the school on a segregated basis.

If the school cannot be reopened and if the pupils cannot be reassigned to segregated schools, tuition grants are made available to the children so that they can continue their education in nonsectarian private schools.

The big controversy in the Assembly was over the question whether one firm statewide anti-integration policy was to be established, as the governor requested, or whether there was to be local option.

### **NARROW MARGIN**



—Richmond Times-Dispatch

the wholesale. Let's stop kidding ourselves."

Sen. A. S. Harrison Jr. of Lawrenceville—Resistance should be on a statewide basis. "There may come a time when we have to retreat, but now is not the time." Any assignment plan to be valid can't stop at integrating only a few Negro pupils. "And who plays God to decide which superior colored child should be integrated? Local option referendums would turn every locality into 'little battlegrounds' of emotional struggles that would be dangerous. 'There is more affection and more desire to help the Negro in these 140 members of the General Assembly than there is in the entire NAACP.'"

**FAVORING OPTION PLAN**

A person dissatisfied with the placement of a pupil may appeal to the governor, and from the governor to the state courts.

If a court orders a Negro child admitted to a white school, or if local authorities attempt to integrate a school, that school will automatically be closed.

### **Governor Takes Over**

The governor then will take over direct control of that school and by reassigning pupils or reorganization of the school attempt to reopen it on a segregated basis. If that is not possible, he will try to reassign the children to other segregated public schools. Failing in this, the state will offer tuition grants to the children so that they may attend nonsectarian private schools.

In order to make the issue one directly between the state (rather than local officials) and the federal government, the law declares:

"Every action authorized and taken in conformity with the provisions of this act shall be and is hereby declared to be the act of the General Assembly of Virginia and an act of the governor of Virginia and on act taken on behalf of the sovereign commonwealth of Virginia, and if any suit, action or other legal proceedings be instituted relative thereto, the same shall be regarded and is hereby declared to be a suit, action or proceeding against the commonwealth of Virginia, and the commonwealth hereby declines and refuses for the commonwealth of Virginia or the governor of Virginia to be subject to such suit unless it shall be one brought by the attorney general of Virginia to enforce the laws of the commonwealth."

### **SCHOOL BOARDS AND SCHOOLMEN**

The boycott of Surry County's Lebanon Elementary School for Negroes was resumed when schools opened last month.

The boycott started last February when the school board rented a cinderblock building close to Lebanon School and converted it for use as a temporary classroom. At the same time, work was being done on plans for a new \$240,000 12-room school building which is expected to be ready by next fall.

Approximately 30 third-graders were supposed to attend school in the cinderblock building pending completion of the new structure, but their parents kept them home. The parents took the view that the arrangement was not satisfactory.

### **BOYCOTT CONTINUED**

When the fall term began last month, the same children were supposed to return to the cinderblock building, but the boycott was resumed. Miss Helen B. Slade, the teacher, sat in the building and waited in vain for her class.

Two weeks later, however, two of the Negroes returned to the school. Three adult Negroes attempted unsuccessfully to register a group of about 30 Negro children at the all-White Stone Elementary School in Lancaster County when schools opened on Sept. 4.

The children and a number of adults with them waited in eight or 10 automobiles parked outside the school while the three spokesmen talked with the principal, T. Benjamin Hall. The three soon left the school and the entire

Jarnette, who recommended the change, said he felt the month-to-month appropriation was unnecessary for the remainder of the fiscal year since the schools had opened for the fall term "with everybody in his cubbyhole."

### **COMMUNITY ACTION**

Asa Carter, head of the Alabama White Citizens Council, addressed a segregation rally in Charlottesville early last month, at which about 30 persons indicated they would form a Charlottesville branch of the Seaboard White Citizens Council.

Carter said he was willing to shed blood to avoid integration. He said "they don't build a federal government big enough to integrate my children."

### **POLITICAL ACTIVITY**

T. Coleman Andrews, the Richmonder who formerly headed the U. S. Bureau of Internal Revenue, will appear on Virginia ballots as a third party candidate for President.

One of the chief supporters of Andrews in Virginia is Robert B. Crawford of Prince Edward County, president of the Virginia Defenders of State Sovereignty and Individual Liberties, the strongly pro-segregation organization that has been active in the school controversy.

**New Legislation**  
The Virginia General Assembly, in its annual session which adjourns

In 1956, U.S. Senator Harry Byrd infamously stated that Massive Resistance laws were passed to "prevent a single Negro child from entering any White school." *Virginia's General Assembly Bars State Funds for Mixed Schools. Southern School News, October 1956, from the Visual Studies Collection of the Library of Virginia. Virginians! Protect the Rights of your Children, 1956. Library of Virginia Special Collections Broadside.*

Between 1954 and 1970, massive resistance to school desegregation continued virtually unabated. By way of example, only 170 of 204,000 Black students in Virginia were enrolled in formerly White public schools as of 1960.<sup>39</sup> Massive resistance helped bolster White supremacists' cause of preventing school desegregation across the Commonwealth. Massive resistance effectively ended with the Virginia 1971 Constitution's repeal of § 140 of the state's 1902 constitution, which had mandated school segregation.

And yet, the legacy of segregation—be it racial or socioeconomic—lives on in Virginia's schools. Since 2003, the number of racially-isolated, underserved public schools has nearly doubled.<sup>40</sup> Such *de facto* segregation not only undermines the spirit of our laws, but also proves counterintuitive given the overwhelming research finding a net positive relationship for students enrolled in integrated school environments.<sup>41</sup> Students in integrated schools are less likely to drop out, more likely to enroll in college, more likely to earn higher overall test scores, and more likely to develop critical thinking, creativity, and problem-solving skills.<sup>42</sup> Perhaps more critically, students of color and students from lower income families are not the only ones to receive these benefits. Rather, all students benefit from diverse environments.<sup>43</sup> Despite the recognized, collective benefit, Virginia's practices demonstrate that it has not prioritized integration.

In terms of socioeconomic disparities, Virginia's educational funding scheme ranks in the bottom half of states nationwide, creating vastly different low- and high-income school experiences.<sup>44</sup> Worsening this inequity, Virginia's state-level contributions to education rank among the bottom ten states in the nation (#41).<sup>45</sup> Under Virginia's funding scheme, nearly 60% of non-federal school dollars in Virginia come from localities (compared to a 48% national average).<sup>46</sup>

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<sup>39</sup> University of Virginia's Digital Resources for United States History, Virginia's "Massive Resistance" to School Desegregation, [http://www2.vcdh.virginia.edu/xslt/servlet/XSLTServlet?xml=/xml\\_docs/solguide/Essays/essay13a.xml&xsl=/xml\\_docs/solguide/sol\\_new.xsl&section=essay](http://www2.vcdh.virginia.edu/xslt/servlet/XSLTServlet?xml=/xml_docs/solguide/Essays/essay13a.xml&xsl=/xml_docs/solguide/sol_new.xsl&section=essay)

<sup>40</sup> Chris Duncombe and Michael Cassidy, Increasingly Separate and Unequal in U.S. and Virginia Schools, The Commonwealth Institute (2016), <https://www.thecommonwealthinstitute.org/2016/11/04/increasingly-separate-and-unequal-in-u-s-and-virginia-schools/6>

<sup>41</sup> The Century Foundation, The Benefits of Socioeconomically and Racially Integrated Schools and Classrooms (Apr. 29, 2019), <https://tcf.org/content/facts/the-benefits-of-socioeconomically-and-racially-integrated-schools-and-classrooms/?session=1>

<sup>42</sup> *Id.*

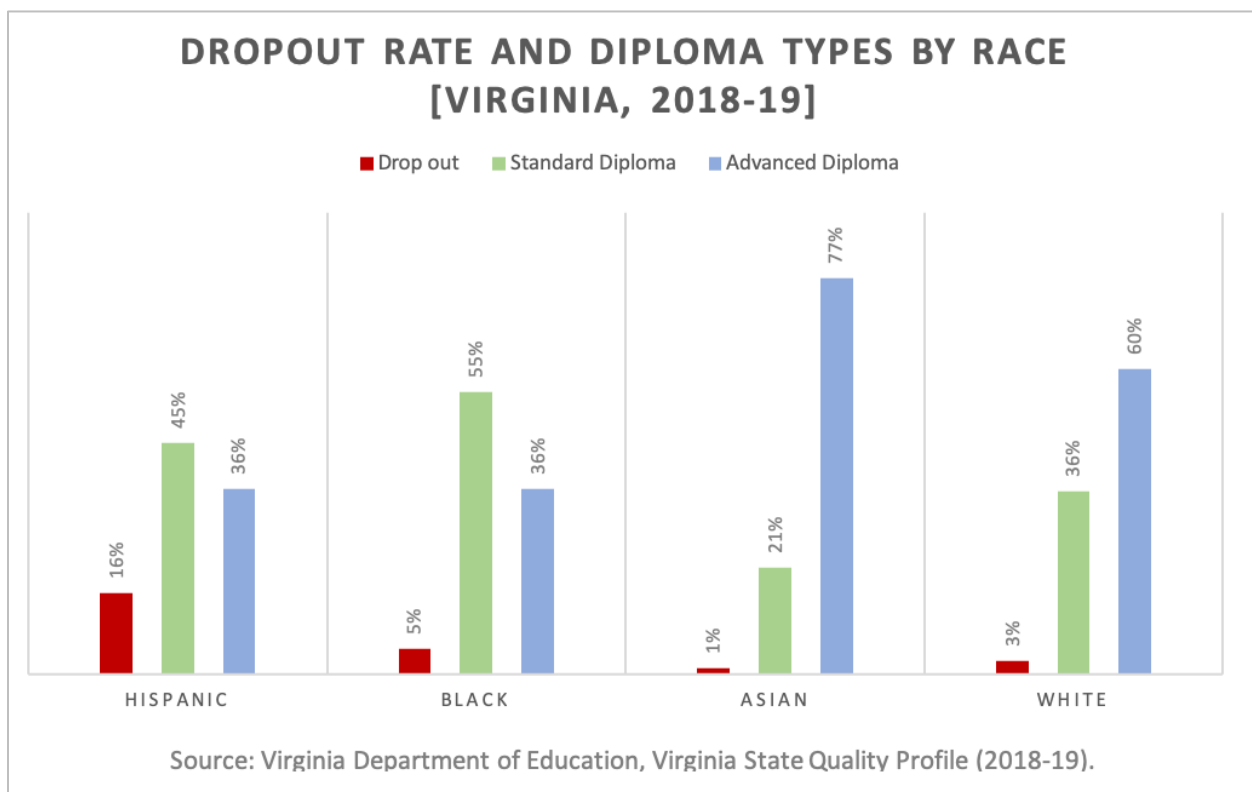
<sup>43</sup> *Id.*

<sup>44</sup> Cary Lou and Kristen Blagg, School District Funding in Virginia, Urban Institute (2018), [https://www.urban.org/sites/default/files/publication/99540/school\\_district\\_funding\\_in\\_virginia\\_3.pdf](https://www.urban.org/sites/default/files/publication/99540/school_district_funding_in_virginia_3.pdf)

<sup>45</sup> National Education Association, Rankings of the States 2019 and Estimates of School Statistics 2020, [https://www.nea.org/sites/default/files/2020-07/2020%20Rankings%20and%20Estimates%20Report%20FINAL\\_0.pdf](https://www.nea.org/sites/default/files/2020-07/2020%20Rankings%20and%20Estimates%20Report%20FINAL_0.pdf)

<sup>46</sup> *Id.*

This is a problem because local funding depends on property values, which align with racial disparities from historical government practices.



These inequities have stark impacts on outcomes. Today, Black and Hispanic students are twice as likely to lack proficiency in reading by third grade compared to their White peers.<sup>47</sup> By graduation, this achievement gap results in wide differences in dropout rates.<sup>48</sup> There is a noticeable disparity between the majority of White students who receive advanced diplomas, and their Black and Hispanic peers who receive standard diplomas.<sup>49</sup> COVID-19's disruption of education, particularly for low-income students, is likely to only worsen these disparities.

This section outlines education proposals adopted by the Commission. Each proposal seeks to address negative racial disparities in Virginia's education system. The Commission prioritized proposals which are shown by empirical data or other research to be effective in achieving equity outcomes and likely to have a large impact.

<sup>47</sup> Virginia Department of Education, Virginia State Quality Profile (2018-19), <https://schoolquality.virginia.gov/virginia-state-quality-profile>

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

*The following topics are addressed in this section:*

- Racial & Socioeconomic Integration
- School Funding Equity
- Early Childhood Education
- Teacher Diversity
- School-to-Prison Pipeline
- COVID-19 Education Recovery and Crisis Spending Guidelines



Region III  
220 7th Street, N. E.  
Charlottesville, Virginia 22901

OFFICE FOR CIVIL RIGHTS

MAR 15 1968

Dear Mrs. Hall:

Dr. Severinson has asked me to thank you for your February 28 letter regarding Henrico County Schools.

Your letter expresses displeasure at a suggestion, evidently published in the newspaper, for the grouping of Ratcliffe and Central Gardens Elementary Schools. We have read the newspaper account of this suggestion and we find it to be as unacceptable as you do. The suggestion did not originate in our office or with any member of our staff. It would be interesting to know just how it did originate and how it got into the newspaper.

Suggestions made by our staff for the desegregation of Henrico County Schools are, in our judgment, educationally sound. At the same time, we have made it clear to Henrico County School officials that this office is not requiring that any particular plan be adopted by school officials in order to comply with the requirements of Title VI of the Civil Rights Act of 1964. We have asked school officials to submit to this office a plan for completing the desegregation process and for removing all vestiges of a racially dual structure of schools. The county is operating illegal, segregated schools and must cease to do this. The procedures by which it eliminates the racial identification of its Negro schools must be determined by local school officials. Our staff will be pleased to give every possible assistance to school officials in their efforts to develop and implement such a plan.

We appreciate your concern for the education of Henrico County students. I am sure the Henrico County Board of Education will welcome any suggestions you may have for helping it to accomplish the purposes and meet the requirements under Title VI.

Sincerely yours,

/s/ W. Kenneth Haddock

W. Kenneth Haddock  
Chief, Education Branch

Mrs. Edmund Hall  
2602 Byron Street  
Richmond, Virginia 23223

In 1956, only 49% of Americans—61% of Northerners and 15% of Southerners— supported school integration efforts.<sup>50</sup> Letter regarding integration of Henrico County Schools, 15 March 1968, from the Virginia. Dept. of Education, School Division, Desegregation files, 1965-1971, Accession 29479, State Government Records of the Library of Virginia.

<sup>50</sup> BROWN v. BOARD: Timeline of School Integration in the U.S., Teaching Tolerance, (2004), <https://www.tolerance.org/magazine/spring-2004/brown-v-board-timeline-of-school-integration-in-the-us>.

## BACKGROUND

Substantial research supports the idea that, in addition to the social benefits of diversity, integration makes a positive difference in student learning outcomes. Students in integrated schools are less likely to drop out, more likely to enroll in college, they have higher overall test scores and smaller achievement gaps. These benefits don't just accrue to minority or poor students: all students benefit from diverse environments.<sup>51</sup> Yet Virginia has not prioritized integration. Schools in Virginia are increasingly isolated by race and socioeconomic status, with the number of highly-segregated, high-poverty schools nearly doubling in the last twenty years.<sup>52</sup>

**RECOMMENDATION 1: Repeal 22.1-25 (A) 1-3<sup>53</sup> to allow regional solutions to inequity.** This statutory language strictly limits the power granted to the Board of Education under the Virginia Constitution to draw school zone lines that “promote the realization of the standards of quality.”<sup>54</sup> Instead, it preserves division lines from the 1970s, after *Milliken v. Bradley*, the Supreme Court decision that forbade integration plans that crossed district lines. This law effectively protects segregation created by families who had moved to avoid integration. The statute prevents regional solutions to school inequality and exacerbates problems caused by housing discrimination. Note that no other statutes currently on the books regulate student assignment or school zone drawing within districts. The Commission recommends the statute's repeal because of its problematic purpose and history.

<sup>51</sup> *Id.*

<sup>52</sup> Chris Duncombe and Michael Cassidy, Increasingly Separate and Unequal in U.S. and Virginia Schools, The Commonwealth Institute (2016), <https://www.thecommonwealthinstitute.org/2016/11/04/increasingly-separate-and-unequal-in-u-s-and-virginia-schools/6>; see also Genevieve Siegel-Hawley, et al., School Segregation by Boundary Line in Virginia: Scope, Significance, and State Policy Solutions, The Center for Education and Civil Rights (Nov. 2020), [https://cecr.ed.psu.edu/sites/default/files/School\\_Segregation\\_by\\_Boundary\\_Line\\_in\\_Virginia\\_Nov\\_2020.pdf](https://cecr.ed.psu.edu/sites/default/files/School_Segregation_by_Boundary_Line_in_Virginia_Nov_2020.pdf) (finding that segregation between schools in the same division is prominent, and that division boundary lines around independent cities in metro areas “are related to higher school segregation.”).

<sup>53</sup> Current Virginia Code § 22.1-25(A) 1-3. How School Divisions Made. ... 1. The school divisions as they exist on July 1, 1978, shall be and remain the school divisions of the Commonwealth until further action of the Board of Education taken in accordance with the provisions of this section except that when a town becomes an independent city, the town shall also become a school division. 2. No school division shall be divided or consolidated without the consent of the school board thereof and the governing body of the county or city ... 3. No change shall be made in the composition of any school division if such change conflicts with any joint resolution ... of the General Assembly ...

<sup>54</sup> The Constitution of Virginia, Article VIII, Section 5(a) reads as follows: Section 5. Powers and duties of the Board of Education. The powers and duties of the Board of Education shall be as follows: (a) Subject to such criteria and conditions as the General Assembly may prescribe, the Board shall divide the Commonwealth into school divisions of such geographical area and school-age population as will promote the realization of the prescribed standards of quality, and shall periodically review the adequacy of existing school divisions for this purpose. (emphasis added)



**RECOMMENDATION 2: Incentivize and facilitate integration programs** such as controlled choice zoning, magnet schools, and metro-wide agreements. There are many models to use. For example, the merged city-suburban school district of Louisville and Jefferson County in Kentucky started controlled choice in the 1990's. The school district has been able to meet diversity goals for the vast majority of its schools while receiving broad support from parents and students. Other examples include Hartford's magnet school programs, which draw suburban students in and send urban students out to nearby districts, and the METCO program in Massachusetts (in which the state covers transportation and other costs for underprivileged students from inner-city Boston to fill empty seats in suburban schools). METCO also provides wraparound services such as social worker counseling and college visits. Another model of regional funding is Omaha's "Common Levy," which helps achieve equity in school funding by sending more money where it is most needed.<sup>55</sup> Virginia could encourage integration through a number of methods, including funding incentives, new laws and policies, and resource incentives. The Commission notes that it is important for such programs to be well-funded, include free transportation, and include sufficient funding for building awareness and enrollment through marketing.

**RECOMMENDATION 3: Add a diversity metric to school accreditation ratings.** Research has shown that diversity is important for the growth of all students, from resource equity and to personal growth and relationship building. Since diversity is necessary for a quality education and adequate workforce preparation, it should be part of the state accreditation process. Adding a diversity metric can be done by the Board of Education, which has authority to set the state accreditation process under the Every Student Succeeds Act.<sup>56</sup>

**RECOMMENDATION 4: Eliminate bias by changing course access, counseling, and gifted regulations.** All children deserve learning experiences that adequately challenge them and prepare them for long-term studies. Yet Virginia's advanced courses disproportionately leave out students of color. White students are 2.1 times more likely to be enrolled in a gifted or Advanced Placement (AP) course than Black students and 1.9 times more likely than Hispanic students.<sup>57</sup> There are several possible reasons. First, students are not being identified or counseled to take

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<sup>55</sup> John Britton, Larkin Willis, and Peter Cookson, *Sharing the Wealth: How Regional Finance and Desegregation Plans Can Enhance Education Equity*, The Learning Policy Institute (Feb. 2019),

[https://learningpolicyinstitute.org/sites/default/files/product-files/Sharing\\_The\\_Wealth\\_REPORT.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/Sharing_The_Wealth_REPORT.pdf)

<sup>56</sup> Genevieve Siegel Hawley, et al., *Confronting School and Housing Segregation in the Richmond Region: Can We Learn and Live Together?* (2017),

<https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1074&context=spcs-faculty-publications>

<sup>57</sup> Lena Groeger, Annie Waldman, and David Eads, *Miseducation: Is there Racial Inequality at Your School?* ProPublica (October 16, 2018), <https://projects.propublica.org/miseducation/>

advanced courses.<sup>58</sup> Second, their families are unable to pay private costs required to advocate through the appeals process.<sup>59</sup> Third, students of color disproportionately attend under-resourced schools that do not offer advanced courses. To respond, we should add cultural sensitivity training to the gifted identification process. Second, we must reform the gifted appeals process. In Northern Virginia in particular, many wealthy families have their children privately identified as gifted (at the cost of at least several hundred dollars), then appeal their school's initial decision, ultimately succeeding in getting their children into advanced programs. But many families cannot afford such expensive exams or appeals processes. If the state offers gifted programming, it must reform the identification and appeals processes to remove the inherent advantage to certain families.<sup>60</sup>

Lastly, there should be checks on bias in career counseling and guidance. Virginia guidance counselors provide career counseling in middle school, and then help students choose the best diploma option for their life and professional goals. Somehow in this process, Black and Hispanic students are ending up with standard diplomas and worse options. According to the New York Times, this may actually be due to biased counseling.<sup>61</sup> The Commission recommends legislation that would require the Board of Education to revise the career counseling and diploma regulations to combat this trend, or direct regulatory reform.<sup>62</sup>

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<sup>58</sup> Steven Vegh, Statistics show a Gap in Gifted Education, *The Virginian-Pilot* (Sep. 19, 2012), [https://www.pilotonline.com/news/education/article\\_9d576f91-7b15-5adc-8bea-9ffd39d0bc7b.html](https://www.pilotonline.com/news/education/article_9d576f91-7b15-5adc-8bea-9ffd39d0bc7b.html)

<sup>59</sup> Matthew Barakat, School System's Appeals Process Leaves Some Minorities Out, *Business Insider* (Feb. 3, 2018), <https://www.businessinsider.com/ap-school-systems-appeals-process-leaves-some-minorities-out-2018-2>

<sup>60</sup> See regulations at 8VAC20-40.

<sup>61</sup> Erica Green and Annie Waldman, "You are still Black": Charlottesville's Racial Divide Hinders Students (Oct. 16, 2018), <https://www.nytimes.com/2018/10/16/us/charlottesville-riots-black-students-schools.html>

<sup>62</sup> See regulations at 8VAC20-131-140. See diploma regulations at 8VAC20-131-51.

### BACKGROUND

According to at least two national research centers, Virginia ranks poorly—near the bottom of the 50 states—in the equity of its state educational funding scheme.<sup>63</sup> In 2015, students in Virginia’s highest-poverty districts received 7% fewer dollars overall than their peers in the lowest-poverty districts, one of the largest of such disparities nationwide.<sup>64</sup> These school funding disparities are more pronounced when assessing race and ethnicity data, with districts serving the most students of color receiving 8% less funding from the state.<sup>65</sup> In addition to an inequitable funding scheme, Virginia’s state-level contributions to education rank in the worst ten states in the nation (#41), leaving nearly 60% of non-federal school dollars in Virginia to come from localities (compared to a 48% national average).<sup>66</sup> This is a problem because local funding is dependent on property values – which align with racial disparities from historical government practices, such as redlining, as previously mentioned. As the Commonwealth’s school-aged population continues to grow and diversify, one of the chief problems for government leaders becomes reassessing how funds are distributed to districts of higher need statewide.

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<sup>63</sup> Cary Lou and Kristen Blagg, *School District Funding in Virginia*, Urban Institute (2018), [https://www.urban.org/sites/default/files/publication/99540/school\\_district\\_funding\\_in\\_virginia\\_2.pdf](https://www.urban.org/sites/default/files/publication/99540/school_district_funding_in_virginia_2.pdf); Bruce Baker, Danielle Farrie, David Sciarra, *Is School Funding Fair? A National Report Card*, Education Law Center with Rutgers School of Education (2018), [https://edlawcenter.org/assets/files/pdfs/publications/Is\\_School\\_Funding\\_Fair\\_7th\\_Edit.pdf](https://edlawcenter.org/assets/files/pdfs/publications/Is_School_Funding_Fair_7th_Edit.pdf). Note that the Education Trust ranks Virginia in the middle of states for funding disparities based on socioeconomic status alone, but ranks Virginia near the bottom in terms of racial disparities. The Education Trust, *The State of Funding Equity in Virginia* (2017), <https://edtrust.org/graphs/?sname=Virginia>.

<sup>64</sup> Andrew Warren and Chris Duncombe, *In Funding High-Poverty Schools, Virginia Gets a Failing Grade*, The Commonwealth Institute: Half Sheet (Aug. 28, 2018), <https://thehalfsheet.org/post/177487398498/in-funding-high-poverty-schools-virginia-gets-a>

<sup>65</sup> The Education Trust, *The State of Funding Equity in Virginia* (2017), <https://edtrust.org/graphs/?sname=Virginia>.

<sup>66</sup> National Education Association, *Rankings of the States 2019 and Estimates of School Statistics 2020*, [https://www.nea.org/sites/default/files/2020-07/2020%20Rankings%20and%20Estimates%20Report%20FINAL\\_0.pdf](https://www.nea.org/sites/default/files/2020-07/2020%20Rankings%20and%20Estimates%20Report%20FINAL_0.pdf)

**RECOMMENDATION 5: Invest in educational infrastructure.** The COVID-19 pandemic has highlighted how important good technology and healthy learning environments are for students in our schools. Yet our state funding scheme generally does not provide funding for school buildings or other capital expenses, expecting cash-strapped municipalities to foot the bill. This means that our poorest districts have the worst buildings, the most outdated software, and the weakest data security, making it even harder for them to provide a quality education and meet the state and federal reporting requirements. It is time for Virginia to recognize that capital expenses are a part of the Commonwealth’s responsibility to our children. The Commission supports using state operating and capital funds to support Virginia’s school infrastructure.

**RECOMMENDATION 6: Reconfigure the funding formula to take account of student need.**

The inequities above are, in part, the result of simple budget language. Virginia should reform the “Local Composite Index” formula to consider levels of need and concentration of need. While the current formula considers a locality’s ability to pay, it generally ignores the proportion of high-needs students the district is educating.<sup>67</sup> This results in major inequities: the districts that most need additional resources aren’t getting them. Note that both the Commonwealth Institute and the Virginia Legislative Black Caucus suggest increasing the At-Risk Add-on as an alternative measure, and the Board of Education has suggested a new line item called the Equity Funding for addressing concentrated poverty. Though the Add-On and Equity Fund are ways to achieve equity that the Commission would also support, the Commission officially recommends changing the foundation formula entirely so that equity does not depend on an annual allocation. As an example, the COVID-19 economic crisis resulted in an unallotment of millions of dollars meant to improve school equity through the Add-On during the spring of 2020.<sup>68</sup> This unallotment—though later restored—shows why it’s better not to leave equity of funding up to a separate line item in the budget. It is important to work equity into the foundational funding system.

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<sup>67</sup> “Virginia could consider ... whether to cap the required local share and at what level, whether the local share of the state’s poor school-age children should be accounted for in sales tax revenue distributions, whether to fund cost of competing adjusted salaries in selected districts, and the size of various funding streams targeting low-income, special education, and other at-risk students.”

[https://www.urban.org/sites/default/files/publication/99540/school\\_district\\_funding\\_in\\_virginia\\_2.pdf](https://www.urban.org/sites/default/files/publication/99540/school_district_funding_in_virginia_2.pdf)

<sup>68</sup> “The funds that were unallotted (but later restored) included \$490 million in aid for early education and K-12 schools. The General Assembly had voted earlier this year to substantially increase Virginia’s At-Risk Add-On program, which directs resources to school divisions with the highest concentration of students from low-income families, to help address Virginia’s long-standing inequity in school funding, and that funding has now been suspended. Other unallotted investments include resources for the Virginia Preschool Initiative (\$91.5 million) and increasing students’ access to school meals (\$10.6 million).” Chris Duncombe and Chad Stewart, Virginia Can Choose Equity for School Funding During Economic Crisis, The Commonwealth Institute (June 8, 2020), <https://www.thecommonwealthinstitute.org/2020/06/08/virginia-can-choose-equity-for-school-funding-during-economic-crisis/>

**BACKGROUND**

According to the Centers for Disease Control and Prevention (CDC), for every \$1 spent on a state or district early childhood education program, \$3 to \$5 worth of benefits follow.<sup>69</sup> Not only do students have better academic outcomes in the first few years of schooling, they have better long-term outcomes, such as reductions in criminal offenses and increased health benefits. Pre-K is also associated with reductions in poverty and increases in parental employment. While Virginia has made progress in recent years on expanding access to early childhood education, challenges in equity and access remain. One problem that can be solved is the lack of data. Because Virginia's early childhood education system is so fragmented—between home-grown daycare, Federal Head Start, Virginia Preschool Initiative (VPI), and private preschools—researchers do not have a clear picture of where disparities are or how to make improvements. In addition, kindergarten teachers lack information on the abilities of their entering students.

**RECOMMENDATION 7: Advocate for high quality pre-kindergarten programs for all children.**

Universal Pre-K is one of the most powerful long-term investments Virginia could make, and increasing both access and quality is essential to the Commonwealth's long-term success. Research suggests such programs should be at least full day, five days a week, and should be available for children at as young an age as possible in order to reap the best benefits in education, public health, and family stability.<sup>70</sup> The Commission encourages further Pre-K access.

**RECOMMENDATION 8: Support the Governor's initiative to unify the Pre-K data system and create Pre-K student identifiers.** Identifying and researching Pre-K disparities is essential to the work of the racial justice. The Commission therefore supports efforts to unify the Pre-K data collection system by assigning student identifiers to younger children, specifically those not in state-run Pre-K programs.<sup>71</sup> This will allow the Commonwealth to know where students are getting Pre-K experiences, what those experiences are like, and how their kindergarten-readiness relates to those experiences.

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<sup>69</sup> Centers for Disease Control and Prevention, Early Childhood Education, <https://www.cdc.gov/policy/hst/hi5/earlychildhoodeducation/index.html>

<sup>70</sup> Kelsey Piper, Early Childhood Education Yields Big Benefits—Just Not the Ones You Think, Vox (Oct. 16, 2018), <https://www.vox.com/future-perfect/2018/10/16/17928164/early-childhood-education-doesnt-teach-kids-fund-it>

<sup>71</sup> Current Virginia Code § 22.1-287.03(B) Unique Student Identification Numbers: ... (B) The Department of Education shall develop a system of unique student identification numbers.... to each student enrolled in a public elementary or secondary school.

**BACKGROUND**

Teacher diversity has a huge impact on student outcomes. Studies have shown that minority students who had a teacher from their own background during elementary school were 7% more likely to graduate from high school and 13% more likely to enroll in college.<sup>72</sup> Teachers of color serve as role models, effective educators, and valuable signals of the importance of education and diversity. While half of Virginia’s students are children of color, nearly 80% of Virginia teachers are White. In fact, while the proportion of students of color continues to rise, the proportion of teachers of color has fallen in recent years. We must reverse this trend. This problem is one of both recruitment and retention. Only a quarter of individuals in Virginia’s teacher preparation programs are individuals of color. In addition, Virginia loses nearly one fifth of its teachers of color every year (compared to 15% of White teachers) due to high turnover. Teachers of color with provisional licenses, particularly Black teachers, are significantly less likely to complete the requirements and remain teachers long term (63% for Black teachers compared to around 75-80% for other races).<sup>73</sup>

**RECOMMENDATION 9: Mandate data collection and reporting on diverse teacher recruitment and retention.** The Commission recommends that VDOE or the Board of Education annually collect and publish district-level data on teacher diversity at each stage of the teacher pipeline, including recruitment, application, hiring, and retention. This can be mandated by statute, for example at § 22.1-290.01(C), where the Teacher Loan program is established. This data will help inform how best to combat the high turnover and poor recruitment of diverse teachers in Virginia, while also incentivizing districts to improve their outcomes.

**RECOMMENDATION 10: Endorse recommendations by the Taskforce on Diversifying Virginia’s Educator Pipeline.** The Commission recommends that VDOE approval of a 4-year Bachelors-to-licensure program and VDOE creation of a model “Grow-Your-Own” program for districts to implement. While not a goal of the Commission, we also include the following recommendations that would require state budgetary changes: increased state funding for teacher compensation in high-needs schools, scholarships for Praxis and other licensure exams, stipends for student teachers, and expansion of the teacher loan program; and state investment in marketing programs to recruit more minority teachers.

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<sup>72</sup> Seth Gershenson, et al., The Long-Run Impacts of Same-Race Teachers, NBER Working Paper 25254 (Nov. 2018), <https://www.nber.org/papers/w25254.pdf> ; *see also* <http://educationnorthwest.org/resources/resources-recruiting-hiring-and-retaining-teachers-color>

<sup>73</sup> Report from the Taskforce on Diversifying Virginia’s Educator Pipeline (Aug. 2017), <https://www.education.virginia.gov/media/governorvirginiagov/secretary-of-education/pdf/final-tdvrep-report.pdf>



**BACKGROUND**

What has come to be called the “School-to-Prison Pipeline” has been confirmed by multiple long-term studies: students overexposed to exclusionary discipline practice—such as out-of-school suspensions, or court referrals for simple school misconduct—are more likely to drop out of school, fall behind academically, and get caught up in the juvenile justice system. By relying on exclusionary discipline for relatively minor classroom misbehavior, school actors aggravate and worsen students’ long-term outcomes.<sup>74</sup> Despite a massive increase in Virginia’s student enrollment numbers, support staff numbers have dropped in the last fifteen years, with a corresponding increase in exclusionary discipline use.<sup>75</sup> The damaging consequences of this trend are overwhelmingly felt by students of color. For example, Virginia’s unusually high use of police officers to manage behavior in classrooms (one of the top 3 states in the nation) falls far more harshly on Black students, who are 2.5 times more likely to have the police called on them from class. Suspensions are also used disparately: as of 2018, Black students were 4.5 times more likely than their White classmates to be suspended from school.<sup>76</sup>

**RECOMMENDATION 11: Establish the Virginia Council to Dismantle the School-to-Prison Pipeline via statute.**

The Commission proposes the creation of the Virginia Council to Dismantle the School-to-Prison Pipeline, a statutorily-established body charged with tracking law enforcement and disciplinary practices within public schools. Creating such a body will build upon efforts from previous administrations, while also establishing a central authority that can continue to effect positive change in this space long after the Northam administration has ended. Specifically, this body will be responsible for (1) studying current disciplinary practices and data trends, particularly as they relate to disparate educational outcomes and justice involvement by racial category within Virginia K-12 schools; and (2) recommending best practices and statutory changes that will lead to safer school environments and more equitable disciplinary practices.

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<sup>74</sup> Emily Morgan, et al., The Council of State Governments Justice Center, The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System (2014), [http://knowledgecenter.csg.org/kc/system/files/The\\_School\\_Discipline\\_Consensus\\_Report.pdf](http://knowledgecenter.csg.org/kc/system/files/The_School_Discipline_Consensus_Report.pdf)

<sup>75</sup> Sherri Egerton, et al., Legal Aid Justice Center, Investing in Student Safety and Success: The Growing Importance of Effective Staffing in Schools (August 2018), <https://www.justice4all.org/wp-content/uploads/2018/08/Investing-in-Student-Safety-and-Success.pdf>

<sup>76</sup> Amy Woolard, et al., Legal Aid Justice Center, Suspended Progress 2018: An Update on the State of Exclusionary Discipline and Alternative Education in Virginia’s Public Schools (October 2018), <https://www.justice4all.org/wp-content/uploads/2018/10/FullSuspendedProgress2018.pdf>

**RECOMMENDATION 12: Limit the presence of School Resource Officers (SRO) in Virginia K-12 schools by reallocating a portion of the resources from the state’s SRO program to invest in increased school counselors/mental health supports in schools.**

A school resource officer (SRO) is a “certified law-enforcement officer hired by a local law enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.”<sup>77</sup> A 2017-2018 School Safety audit, the most recent data available, found that approximately 770 SROs were placed in nearly 1100 schools across the Commonwealth.<sup>78</sup> This total amounts to roughly 55% of all Virginia schools.<sup>79</sup> The presence of SROs in Virginia schools has had a disproportionately adverse effect on children of color.<sup>80</sup> Specifically, though students of color represent approximately 40% of the school-age population, they accounted for nearly 60% of school arrests.<sup>81</sup> According to Justice Forward Virginia, “Black girls make up 17% of the school population,” but were “43% of the students arrested or referred to law enforcement for prosecution.”<sup>82</sup>

The American Civil Liberties Union (ACLU) has recently provided helpful guidance on how to remove police from schools while creating and maintaining a safe school environment.<sup>83</sup> Specifically, the ACLU recommends that states provide additional school-based mental health professionals and counselors, provide trauma-informed training for staff, and ensure accurate data collection so as to better identify and address safety concerns.<sup>84</sup> The President of the Fairfax NAACP, Sean Perryman, recently drafted and sent a letter signed by more than a dozen organizations in Virginia to Governor Northam requesting that \$9 million in state funds be reallocated away from the SRO program during the special session.<sup>85</sup> More than a dozen advocates signed onto the letter, including Delegate Kaye Kory (D-Fairfax).<sup>86</sup> The Commission recommends an action along these lines.

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<sup>77</sup> Virginia Code § 9.1 - 101.

<sup>78</sup> Legal Aid Justice Center, School Resource Officers and Virginia Law (2020), <https://www.justice4all.org/2020/06/05/sro-va-law/>

<sup>79</sup> Jason Langberg and Angela Ciolfi, Protecting Childhood: A Blueprint for Developmentally Appropriate School Policing in Virginia (2016), <https://www.justice4all.org/wp-content/uploads/2016/01/School-Policing-Report-Full.pdf>

<sup>80</sup> Alliance for Educational Justice, We Came to Learn: A Call to Action for Police-Free Schools, <https://wecametolearn.com/>

<sup>81</sup> *Id.*

<sup>82</sup> Justice Forward Virginia, Do Police in Schools Really Make Our Kids Safer? <https://justiceforwardva.com/police-in-schools>

<sup>83</sup> Amir Whitaker, et al., Cops and Counselors: How the Lack of School Mental Health Staff is Harming Students , ACLU, [https://www.aclu.org/sites/default/files/field\\_document/030419-acluschooldisciplinereport.pdf](https://www.aclu.org/sites/default/files/field_document/030419-acluschooldisciplinereport.pdf)

<sup>84</sup> *Id.*

<sup>85</sup> Michelle Murillo, Letter to Governor Northam Pushes for Shift in School Resource Officer Funding, WTOP News, (July 7, 2020), <https://wtop.com/virginia/2020/07/letter-to-gov-northam-pushes-for-shift-in-school-resource-officer-funding/>

<sup>86</sup> *Id.*

**RECOMMENDATION 13: Impose stronger statutory limits on out-of-school suspension.** By relying on exclusionary discipline for relatively minor classroom misbehavior, school actors aggravate and worsen students' long-term outcomes. Due to the devastating effects that out-of-school suspensions can have on students and the racially disproportionate use of such suspension, Virginia, in 2018, reduced the maximum length of long-term suspensions from a full year to 45 days, and limited available suspensions for K-3 students to 3 days. However, Virginia could go further still. New York, for example, has a 20-day limit.<sup>87</sup> The Commission recommends that Virginia impose stronger statutory limits on such suspensions.

**RECOMMENDATION 14: Increase support staff funding as an alternative to suspension.**

Access to quality support staff, where a student is supported academically, socially and emotionally, can lead to positive outcomes in a student's life. Specifically, recent research has found that "just one additional counselor at a school can have nearly a 10 percentage point increase on average in 4-year college attendance rates."<sup>88</sup> For nearly 15 years, however, Virginia's student population has increased by nearly 60,000, but such critical investments—like these social and emotional supports—have decreased.<sup>89</sup> Currently, a Virginia school counselor's average caseload is more than 360 students per counselor. In some jurisdictions, this ratio balloons to more than 1,000 students per counselor.<sup>90</sup> The Commission recommends an increase of state funding to adequately staff schools with such critical counseling and student support services.

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<sup>87</sup> Alex Zimmerman, NYC to Curb Suspensions longer than 20 days, a major victory for discipline reform advocates (June 20, 2020), <https://chalkbeat.org/posts/ny/2019/06/20/nyc-is-capping-suspensions-at-20-days-a-major-victory-for-discipline-reform-advocates/>

<sup>88</sup> Kathy Mendes, Sufficiently Staffed Counselors are Key for Safe and Healthy Schools, The Commonwealth Institute: The Half Sheet (Feb. 7, 2020), <https://www.thecommonwealthinstitute.org/wp-content/uploads/2020/02/Sufficiently-Staffed-Counselors-Are-Key-for-Safe-and-Healthy-Schools.pdf>

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

## BACKGROUND

The COVID-19 pandemic has had a devastating impact on Virginia's public schools. Last March schools closed for the year, and this fall schools across the Commonwealth are experimenting with online coursework, hybrid learning, and limited opening plans. Despite the heroic efforts of educators during this difficult time, new alarming research shows that all these learning disruptions are having a big impact, and one that is disparately harming children of color.<sup>91</sup> Some of this disparity is due to lack of access to computers, quiet spaces at home, good and affordable internet service, as well as stable housing.<sup>92</sup> Other disparities are a result of schools themselves—some schools and school divisions have far more resources to provide engaging face-to-face online learning.<sup>93</sup> Students with special needs in particular are struggling with online learning, which requires high executive functioning and rarely includes the special support and redirection needed from qualified educators in the classroom.<sup>94</sup>

All in all, researchers estimate the learning loss to be significant for all children, but to be most severe for children in low income homes, particularly Black and Hispanic/Latinx children.<sup>95</sup> It will be essential for Virginia to prioritize equity next year as it begins to lay out plans for recovery. Rather than laying out a specific solution, below are several principles the Governor should follow in making choices on spending, budget cuts, and allocation of emergency funds for education during or following a crisis. These guidelines were created in collaboration with The Commonwealth Institute.

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<sup>91</sup> Maya King and Nicole Gaudiano, The Pandemic could widen the achievement gap. A generation of students is at risk. Politico (Sept. 23, 2020), <https://www.politico.com/news/2020/09/23/how-the-coronavirus-is-making-school-segregation-worse-420839>

<sup>92</sup> Dana Goldstein, Research Shows Students Falling Months Behind During Virus Disruptions, New York Times (June 5, 2020), <https://www.nytimes.com/2020/06/05/us/coronavirus-education-lost-learning.html>

<sup>93</sup> *Id.*

<sup>94</sup> Anna North, We Need to Talk About What School Closures Mean for Kids with Disabilities, Vox (Aug. 6, 2020), <https://www.vox.com/2020/8/6/21353154/schools-reopening-covid-19-special-education-disabilities>

<sup>95</sup> Emma Durn, et al., COVID-19 and student learning in the United States: The hurt could last a lifetime, McKinsey & Company (June 1, 2020), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime>

**RECOMMENDATION 15: The Commission proposes the following guidelines for crisis education spending: A. Federal emergency funds should be distributed proportionally by need.** The use of federal recovery funds is essential help in an emergency, but acting as if all schools need the same amount of help ignores the reality of a crisis's effect on education.<sup>96</sup> Crises harm poor and disadvantaged students more severely than their wealthier peers. Thus, to preserve any kind of fairness it is essential that federal funds be distributed based on student need. While the federal CARES funds have largely been allocated, there are ongoing discussions for additional federal assistance. State leaders should allocate any additional federal assistance based on student need.

One way to do this is to allocate assistance based on the previous year's Title I shares similar to the Elementary and Secondary School Emergency Relief funds (ESSER) in the CARES Act. Another way would be to count the ADM (average daily membership) for each district, add an additional ADM number for each child from a family in poverty, and an additional ADM for children with an Individual Education Plan (IEP) or English Language Learner (ELL) status. The resulting 'score' for each school will be proportionally based on the concentration of need, and funds distributed based on these scores will give those who most need help a greater chance of recovery.

**B. When using emergency funds to support education during a crisis, decision makers must consider affordability issues for families.** Since the COVID-19 crisis has thrown much into disarray, state and local leaders have also allocated new resources to important factors outside of the school building that affect education. These include food security, housing stability and evictions, and broadband access or computer ownership for remote learning. All of these are excellent priorities, but it is important to consider not just access to each of these elements, but also affordability. For example, the Commonwealth Institute discovered that despite legislators' focus on broadband expansion, there is actually a huge broadband affordability problem. Therefore, many children of color who live in cities with broadband networks are still excluded from effective online schooling.<sup>97</sup> When state leaders use federal funds or other emergency funds to solve problems like these, it is important for them to consider the issue of affordability for families. For example, Alabama used its CARES Act funding to provide internet credits for students who are recipients of free and reduced-price lunch.<sup>98</sup> Just like housing vouchers can help people pay the rent, internet

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<sup>96</sup> Northam Announces Additional \$220 million in Federal Funds for Schools, NBC4 Washington (Oct. 8, 2020), <https://www.nbcwashington.com/news/local/northam-announces-additional-220m-in-federal-funds-for-schools/2439348/>

<sup>97</sup> Gabriel Worthington et al., Addressing Barriers to Virtual Learning for Virginia Students, The Commonwealth Institute: The Half Sheet (Aug. 21, 2020), <https://thehalfsheet.org/post/627080175386066944/addressing-barriers-to-virtual-learning-for>

<sup>98</sup> Trisha Powell Crain, Alabama to Give \$100 Million in Internet Vouchers for Low-Income Students, Alabama.com (July 31, 2020), <https://www.al.com/news/2020/07/alabama-to-give-100-million-in-internet-vouchers-for-low-income-students.html>

credits can help people purchase the expensive broadband service that has become essential in an emergency. [Note that these are not “vouchers” that would offer alternate private education services but similar to coupons for internet service].

**C. Cuts to state spending due to crisis economic conditions should preserve equity efforts.** Even in a budget shortfall, it is critical to look at the entire budget and preserve equity-based investments. The suspension of new state K-12 funding this spring did not affect all students equally. School divisions with the highest share of students of color and students from low-income households lost significantly more funding on a per pupil basis from the suspension of new state budget spending.<sup>99</sup> Though it appears these funds are being restored under the new special session budget,<sup>100</sup> the initial decision was exactly the reverse of what policymakers should have done, since there is increasing evidence that students of color and students from low income households face major barriers to education at this time. If state spending on education is cut during a crisis, the Governor should preserve the At-Risk Add-On (as has been proposed by the General Assembly) and other equity efforts, while cutting from general education assistance instead. This is a matter of policy effectiveness: losing a dollar in a high poverty school hurts a lot more than losing a dollar in other schools.

**D. Spending restoration after a crisis should prioritize equity funding first.** The Board of Education last year passed new Standards of Quality that not only realistically addressed staffing and resource needs for Virginia’s schools but prioritized equity by creating a brand-new fund for addressing students learning in settings of concentrated poverty—the Equity Fund.<sup>101</sup> The combination of the Equity Fund and the At-Risk Add-On (or alternatively, a recalculation of the Local Composite Index that includes these same factors) should be the first priority of state leaders as soon as the crisis begins to wind down and budgets begin to grow. Recovery requires resources—great teachers, great curriculum, safe buildings, and plenty of support staff. The Commonwealth has the power and capacity to raise funds to provide these things to our high-needs schools. It is essential, in the wake of an educational crisis, to do so.

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<sup>99</sup> Chris Duncombe and Chad Stewart, Virginia Can Choose Equity for School Funding During Economic Crisis, The Commonwealth Institute (June 8, 2020), <https://www.thecommonwealthinstitute.org/2020/06/08/virginia-can-choose-equity-for-school-funding-during-economic-crisis/>

<sup>100</sup> Amy Friedenberger, General Assembly Passes Budget, But it’s Unlikely to Go into Effect for Weeks, The Roanoke Times (Oct. 16, 2020), [https://roanoke.com/news/general-assembly-passes-budget-but-its-unlikely-to-go-into-effect-for-weeks/article\\_3bcf8e07-f040-55e9-bb03-390c550acedf.html](https://roanoke.com/news/general-assembly-passes-budget-but-its-unlikely-to-go-into-effect-for-weeks/article_3bcf8e07-f040-55e9-bb03-390c550acedf.html)

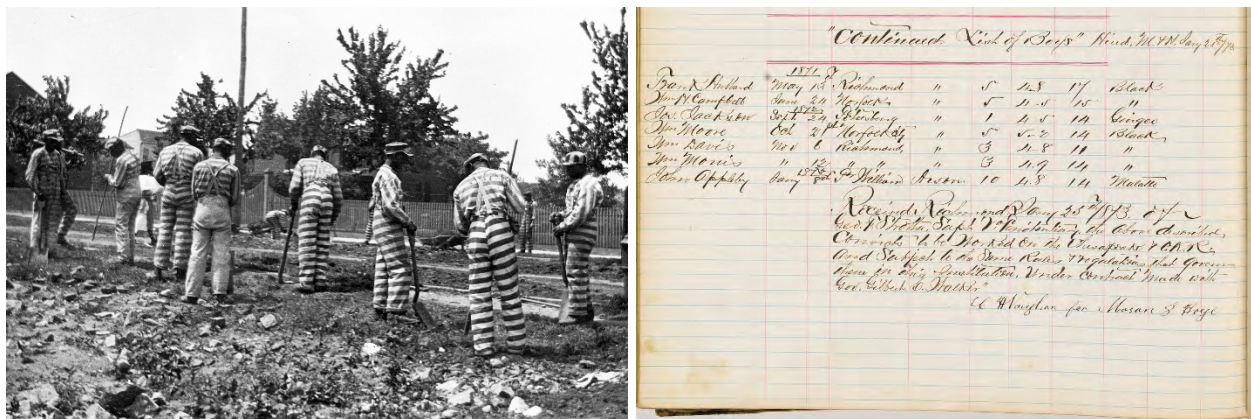
<sup>101</sup> Megan Pauly, Virginia Board of Education Prioritizes Equity in Funding Recommendations, VPM (Oct. 17, 2019), <https://vpm.org/news/articles/7760/virginia-board-of-education-prioritizes-equity-in-funding-recommendations>



## CRIMINAL JUSTICE

Virginia’s criminal justice system, like many institutions in our Commonwealth, has explicitly racist roots.

After the federal Reconstruction Amendments were passed, Virginians quickly sought to suppress Black people in both civic and social life.<sup>102</sup> John Goode, president of Virginia's 1902 Constitutional Convention and former Confederate Colonel, described that Black voters enfranchised during Reconstruction threatened the "purity and inviolability of the ballot."<sup>103</sup> The 1902 Virginia Constitution included a clause disenfranchising Virginians convicted of varied crimes, including "treason or of any felony, bribery, petit larceny, obtaining money or property under false pretenses, embezzlement, forgery, or perjury."<sup>104</sup> The final suffrage article put forward for the 1902 Virginia Constitution, as its drafter, future U.S. Senator and Treasury Secretary Carter Glass described, "d[id] not necessarily deprive a single White man of the ballot, but will inevitably cut from the existing electorate four-fifths of the negro voters."<sup>105</sup>



The Virginia State Penitentiary, a segregated institution, was known for its exploitation of Black labor. The document here lists laborers by their race used to work on a railroad in the 1870s. *Prisoners from the Virginia Penitentiary on a Work Detail, undated, from the Virginia Studies Collection of the Library of Virginia. List of Boys sent to work on the Chesapeake and Ohio Railroad, January 1873, from the Virginia Penitentiary, Prisoner Register No. 2, from the State Records Collection of the Library of Virginia.*

<sup>102</sup> Matt Ford, *The Racist Roots of Virginia's Felony Disenfranchisement*, *The Atlantic* (April 27, 2016), <https://www.theatlantic.com/politics/archive/2016/04/virginia-felon-disenfranchisement/480072/>

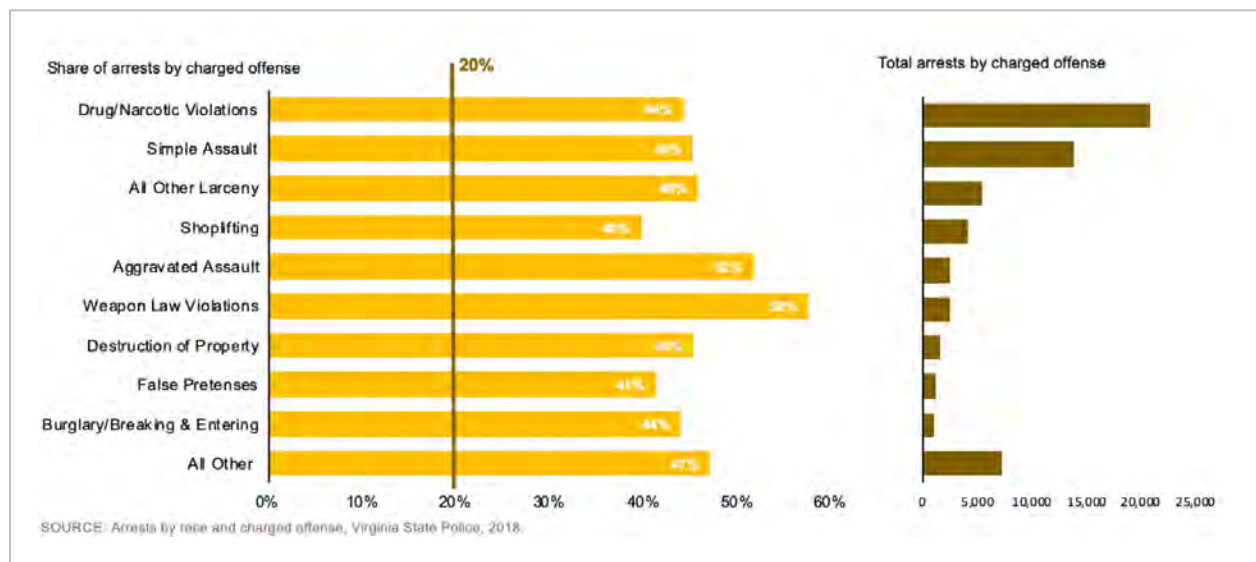
103 *Id.*

104 *Id.*

105 *Id.*

After constitutionalizing felony disenfranchisement (along with poll taxes, voter ‘literacy tests,’ and school segregation), Virginia’s government created a criminal justice system designed to exploit Black labor and exclude Black people from the social world. In the segregated Virginia State Penitentiary, Black children and adults were used as labor for the state.<sup>106</sup> They engaged in life-endangering work, such as working on chain gangs in railroad tunnels and stone quarries. Black Virginians faced harsh punishment, largely designed to promote their further suffering.<sup>107</sup>

The Virginia State Penitentiary remained segregated until the early 1970s.<sup>108</sup> The Black prison was infamous nationwide for its systematic torture of inmates. For example, in 1946, Missouri’s governor refused to extradite an escaped prisoner to Virginia because of Virginia’s torturous treatment of inmates, which included flogging and racks.<sup>109</sup> The women in the state penitentiary were separated from the men, raped by guards, and forced to raise their children behind bars.<sup>110</sup>



In 2018, Black individuals made up 20% of the Virginia population but 45% of all arrests.

<sup>106</sup> Dale Brumfield’s book *Virginia State Penitentiary: A Notorious History*, documents some of the practices that occurred in the segregated facility, which was home to Black men, women, and children. See also, Sandy Hausman, One Man’s Journey Through the Notorious History of the Virginia State Penitentiary, WVTF (Oct. 27, 2017), <https://www.wvtf.org/post/one-mans-journey-through-notorious-history-virginia-state-penitentiary#stream/0> ; Dave Brumfield, Excerpt: A New Book Explores How the Electric Chair Came to Virginia, Style Weekly (Jan. 31, 2017), <https://www.styleweekly.com/richmond/excerpt-a-new-book-about-the-state-penitentiary-explores-how-the-electric-chair-came-to-virginia/Content?oid=2397653>

<sup>107</sup> Richard Foster, A New Book Tells of the Horrors of the Virginia State Penitentiary, Style Weekly (Oct. 24, 2017), <https://www.styleweekly.com/richmond/a-new-book-tells-of-the-horrors-of-the-virginia-state-penitentiary/Content?oid=5378240>

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

This past is not fully behind us. Black men and women continue to face unequal treatment in the Virginia criminal justice system. Although Black individuals make up only 20% of Virginia's population, they make up 45% of arrests and over 50% of prison inmates in the Commonwealth.<sup>111</sup> Black individuals also comprise the majority of those disenfranchised by Virginia's automatic felony disenfranchisement laws.<sup>112</sup> Despite this obvious disparity, the Commonwealth tracks little data on race when it comes to sentencing, pre-trial decision-making, or even bail decisions, making it nearly impossible to know which stage of the process is causing the racial disparity.

Even upon release, an individual continues to face collateral consequences. One study found that Virginia imposes nearly 900 collateral consequences on those convicted of felonies.<sup>113</sup> The most significant of these is permanent disenfranchisement from voting.

The Commission puts forward the following six recommendations, which fall within four main problem areas:

- Data gaps throughout the criminal justice process
- Over-Incarceration
- Inequitable Sentencing Laws
- Constitutional Felony Disenfranchisement

Each topic listed has been shown by research to have a disproportionate racial impact in Virginia.

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<sup>111</sup> Virginia State Police, Crime in Virginia 2018, [https://www.vsp.virginia.gov/downloads/Crime\\_in\\_Virginia/Crime\\_in\\_Virginia\\_2018.pdf](https://www.vsp.virginia.gov/downloads/Crime_in_Virginia/Crime_in_Virginia_2018.pdf); Virginia State Police, Crime in Virginia 2019, [https://www.vsp.virginia.gov/downloads/Crime\\_in\\_Virginia/Crime%20In%20Virginia%202019.pdf](https://www.vsp.virginia.gov/downloads/Crime_in_Virginia/Crime%20In%20Virginia%202019.pdf); Vera Institute, Incarceration Trends in Virginia [dataset], <http://trends.vera.org/rates/virginia>

<sup>112</sup> Chris Uggen et al., Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction, The Sentencing Project (Oct. 30, 2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>; Prison Policy Institute, Virginia Profile, <https://www.prisonpolicy.org/profiles/VA.html>

<sup>113</sup> Ronald Fraser, Life After Prison in Virginia, Roanoke Times (Mar. 24, 2019), [https://www.roanoke.com/opinion/commentary/fraser-life-after-prison-in-virginia/article\\_04129dc0-18b9-588d-83f6-165756045829.html](https://www.roanoke.com/opinion/commentary/fraser-life-after-prison-in-virginia/article_04129dc0-18b9-588d-83f6-165756045829.html)

### BACKGROUND

Virginia lacks adequate data on racial disparities at each step in the criminal justice process, particularly in the pre-trial and sentencing phases. Having this data is essential to making more substantive policy recommendations.

**RECOMMENDATION 1: Require the Sentencing Commission to collect, analyze, and report on sentencing outcomes by race and ethnicity; require courts to publish racial and other demographic data of all low-level offenses.** The Black prison population is vastly overrepresented compared to the general population of Black Virginians. Though the State Police provide a robust data source regarding arrest rates, there is no race-based data about sentencing itself. The Virginia Criminal Sentencing Commission does not use race in the sentencing algorithms it employs, which we commend. But there ought to be room for tracking the race of a sentenced person over time for aggregate data analysis, in order to answer questions like, “Are there offenses for which Black defendants are more likely to receive prison terms than White defendants?” or “How often did a judge depart from the Sentencing Commission’s discretionary sentencing guidelines for White defendants compared to Black defendants?”

§ 17.1-803(10) currently reads:

*[The Commission shall] [r]eport upon its work and recommendations annually on or before December 1 to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia. Such report shall include any modifications to the discretionary sentencing guidelines adopted by the Commission pursuant to subdivision 1 and shall be accompanied by a statement of the reasons for those modifications.*

The Commission recommends adding language to this code section that would require the Sentencing Commission to collect, analyze, and report on sentencing outcomes by race and ethnicity.

**RECOMMENDATION 2: Require the collection of data on the results of pretrial hearings, bail decisions, and pre-trial incarceration, including breakdowns by race.** The Sentencing Commission does not use race, and the Virginia Pretrial Risk Assessment Instrument (VPRAI) prohibits the use of race. Further, magistrates provide little to no data insight regarding the actual use of the VPRAI, as well as bail outcomes, pretrial sentencing, and demographic data related to that sentencing. A new statute requiring magistrate data be made publicly available would act to increase transparency and, hopefully, increase trust between the public and this slice of the criminal justice system. Such data would also inform policy changes on bail decisions and pretrial incarceration.

The Virginia State Crime Commission has taken valuable steps to study pre-trial outcomes through the Virginia Pre-Trial Data Project, which identified and tracked a cohort of 22,993 adult defendants charged with a criminal offense in October 2017.<sup>114</sup> This Project tracked whether defendants were arrested for a new in-state offense punishable by incarceration during the pre-trial period and whether defendants were charged with failure to appear during the pre-trial period. The Project obtained data from seven agencies.<sup>115</sup> The Commission encourages further study in this area.

To address these issues, the Commission recommends introducing a new section in Title 19.2 Chapter 9 that requires all magistrate judges to provide data about each pretrial hearing decision, including bail amounts, recognizance decisions, and whether the defendant is placed in pretrial incarceration. Magistrate reports to DCJS should also include the race and ethnicity of the defendant in each case and any data about the use of the VPRAI in that hearing. In addition, the new code section should include a requirement for DCJS to annually publish this data in aggregate, and to analyze whether such pre-trial decisions are disproportionately falling on racial lines.

The legislature did consider part of this effort with HB922 (2020), which would have required DCJS to collect data relating to bail determinations for any person who is held in custody pending trial or hearing for an offense, civil or criminal contempt or otherwise, in every locality, create a uniform reporting mechanism for criminal justice agencies to submit such data, and submit an annual report on the data collected to the Governor and the General Assembly, as well as publish the annual report on the Department's website. The bill was left in committee.

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<sup>114</sup> Virginia State Crime Commission, Virginia Pre-Trial Data Project Preliminary Findings (Dec. 2019), <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=15a92af3-2ac9-7c2f-c4c8-1666cb4a702f&forceDialog=0>

<sup>115</sup> Alexandria Circuit Court, Fairfax County Circuit Court, Compensation Board, Office of the Executive Secretary of the Supreme Court of Virginia, Virginia Department of Corrections, Virginia Department of Criminal Justice Services, and Virginia State Police. *Id.*



### BACKGROUND

A disproportionate number of Virginia’s prisoners are individuals of color. This means that policies which encourage over-incarceration have a disproportionate effect on communities of color.

### RECOMMENDATION 3: Prevent the Compensation Board from considering the volume of felony cases when calculating Commonwealth Attorney’s office resourcing. The

“Compensation Board Criteria for Allocating New Assistant Commonwealth’s Attorney Positions in Commonwealth’s Attorneys’ Offices” says, “the Compensation Board will use the staffing methodology and weighted three-year average workload criteria developed by the Virginia Association of Commonwealth’s Attorneys (VACA), to determine the appropriate level of Compensation Board assistant Commonwealth’s Attorney support for each office requesting additional positions.”

*That formula is:*

$$\text{\# of Attorneys} = \frac{\text{Workload Total (3yr avg felony defendants + 3yr avg sentencing events)}}{\text{Factor}}$$

The “Factor” shifts the recommended new attorney count based on an assessment of economies of scale in an office of a given size.<sup>116</sup>

Based on this formula, Commonwealth’s Attorneys’ Offices are provided staffing funds based on the number of felonies they try in a given year, incentivizing the felonization (and incarceration) of defendants, while discouraging diversion or sentencing de-escalation. The Compensation Board’s composition and decisions are governed by statute (see § 15.2-1636.5 and § 15.2-1636.8, respectively). The Commission therefore recommends amending § 15.2-1636.8 to prohibit the Compensation Board from considering the number of felony counts pursued by an office or any other criterion that might discourage a Commonwealth’s Attorney from pursuing diversion, in decisions about staffing and funding. The General Assembly did consider a similar reform during the 2020 regular session in HB1035/SB803, but both houses continued the bill to 2021.

<sup>116</sup> “Compensation Board Criteria for Allocating New Assistant Commonwealth’s Attorney Positions...,” amended June 25, 2014, <https://www.scb.virginia.gov/docs/fy19staffstd772.pdf>

### BACKGROUND

A disproportionately high number of incarcerated people in Virginia are Black. Thus, statutes that target formerly convicted individuals or otherwise make incarceration more aggressive will have an inequitable effect on our communities of color.

**RECOMMENDATION 4: Propose legislation that addresses the impact that mandatory minimum sentencing laws have on racially disproportionate rates of incarceration.** There were efforts during the 2020 regular session, such as SJ34, that would have directed the Virginia State Crime Commission to study this issue. The Commission recommends further study, or repeal/reduction of mandatory minimums.

**RECOMMENDATION 5: Propose legislation that fosters restorative practices like expungement, clemency, sentence reductions and retroactive sentencing.** Restorative practices of this nature work to curtail the negative effects of past convictions, allowing a convicted individual to engage with civil, employment, educational, and social opportunities after their conviction.<sup>117</sup> Engaging in such restorative practices currently occurs at the federal level<sup>118</sup> with certain drug offenses, which would be applicable for marijuana convictions in Virginia.

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<sup>117</sup> Deborah Ahrens, Retroactive Legality: Marijuana Convictions and Restorative Justice in an Era of Criminal Justice Reform, *Journal of Criminal Law and Criminology* (Summer 2020), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7671&context=jclc> (p. 425, 439)

<sup>118</sup> United States Sentencing Commission, Retroactivity Analyses and Data Report, <https://www.ussc.gov/research/data-reports/retroactivity-analyses-and-data-reports>

### BACKGROUND

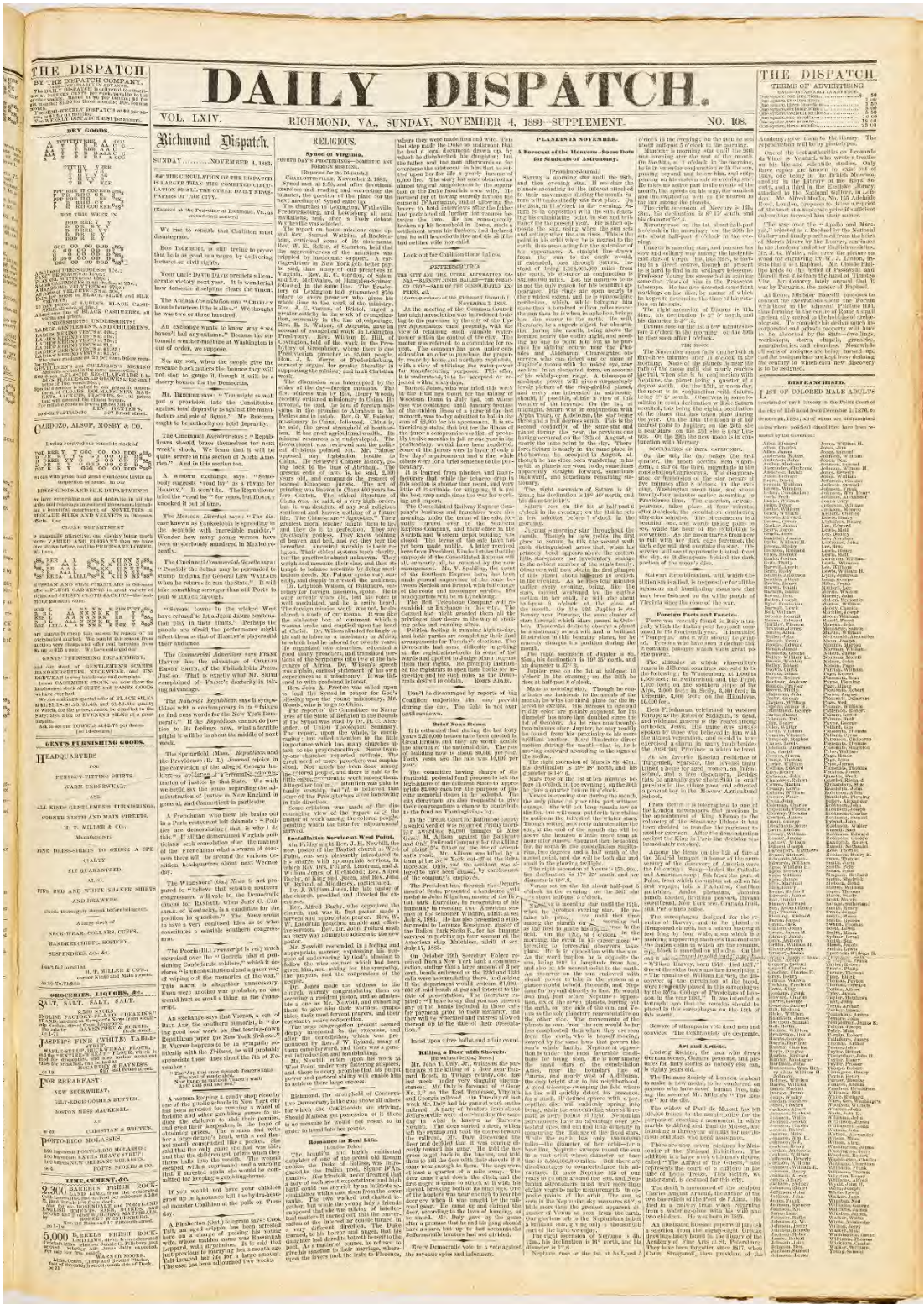
Felony disenfranchisement was used historically as a targeted means to strip Black Americans of their rights to be active civic participants. While modern laws may more broadly impact other racial communities, the Black community still suffers disproportionately under felony disenfranchisement. Many states have moved away from Virginia's strict iteration of such laws, and Virginia should follow suit.

**RECOMMENDATION 6: Abolish or limit felony disenfranchisement by amending or repealing Article II, Section I of the Virginia Constitution.**<sup>119</sup> Virginia's current constitutional rule leaves the opportunity to vote for disenfranchised Virginians at the discretion of whatever governor is in office, which is too great a risk to take considering how integral the right to vote is to a well-functioning democracy. Article II, Section I of the Constitution has gone through a number of changes throughout the years, so changes are definitely possible. The Commission recommends that the Governor propose repealing the provision altogether (leaving disenfranchisement to statute) or draft new constitutional language automatically restoring the rights of those who have completed their sentences. The Commission also expresses concern about the events with Florida's Amendment Four, and recommends provisions that prevent the imposition of required payment of fees or other restrictions on re-enfranchisement.

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<sup>119</sup> Constitution of Virginia, Article II, Section 1: Qualifications of voters. ". . . No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority. . . ."





Virginia was intentional and thorough about disenfranchising Black voters. In this newspaper clipping, a list of Black male voters who have been disenfranchised is publicly displayed on the front page, in order to ensure that neighbors and community members will enforce their status. *List of Colored Male Adults...all of whom are disfranchised...* Richmond Daily Dispatch, 4 November 1883, from the Virginia Newspaper Project of the Library of Virginia.

## HEALTH

Health systems in Virginia have long been plagued by systemic inequities. In fact, Virginia health care institutions were segregated until the latter half of the twentieth century.

Amongst the segregated institutions, the Central State Hospital (previously the Central Lunatic Asylum for Colored Insane), has a particularly troubling history.<sup>120</sup> The institution operated from 1870 until 1970 as Virginia's only facility offering psychiatric treatment for African Americans. In an 1870 report from the hospital, patients were described in troubling terms. Patients were categorized in terms of their "use." Examples include: "useless old harlot," "useless," "very useful," and "learning to work."<sup>121</sup> Over half of the patients with detailed remarks in the 1870 report were described by their work ability, as the Freedmen's Bureau wanted to create a labor force of recently freed African Americans.<sup>122</sup> Juxtaposed with this emphasis on ability for patients to work was a view that patients' insanity came from not wanting to work for free.<sup>123</sup>

The report details patient Godfrey Goffney who "attempts to kill every White man," describing "freedom" as his cause of psychosis.<sup>124</sup> "Freedom" was likewise listed for several other patients.<sup>125</sup> Additionally, another patient was described: "will not work now free."<sup>126</sup> Yet another, Caleb Burton, was described as seeing himself on a "mission to free the world," and suffering from "delusional insanity" of the "freedom-result of war."<sup>127</sup>

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<sup>120</sup> Rachel Nuwar, Psychiatric Records for African American Patients Are Rare, And This Hospital Has a Century's Worth, *Smithsonian Magazine*, Feb. 4, 2014, <https://www.smithsonianmag.com/smart-news/former-hospital-virginia-holds-centurys-worth-rare-african-american-psychiatric-records-180949586/>.

<sup>121</sup> Craig Swenson, Seeking Asylum, Clara Barton Museum, May 17, 2017, <https://www.clarabartonmuseum.org/asylum/>.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*



(Page 2)

Ans About Seven days.

Ques 5<sup>th</sup> Where were they

Ans At Thompson Whites in Fluvanna County Virginia.

Ques 6<sup>th</sup> Does the disease appears to increase?

Ans it happens to yesterday.

Ques 7<sup>th</sup> Are there Periodical Exacerbations Any Lucid Intervals And of What Duration?

Ans the first spell lasted for day and night, then got better for about one day then got Bad again for two days and to day he seems better. dont know how long it may last.

Ques 8<sup>th</sup> is his Amusement on one or two several subjects what are they?

Ans Talk more about his neighborhood than anything else. Also Talk about money with him. After him. Talk about Snakes &c.

Ques 9<sup>th</sup> is the Suspense Cause of disease?

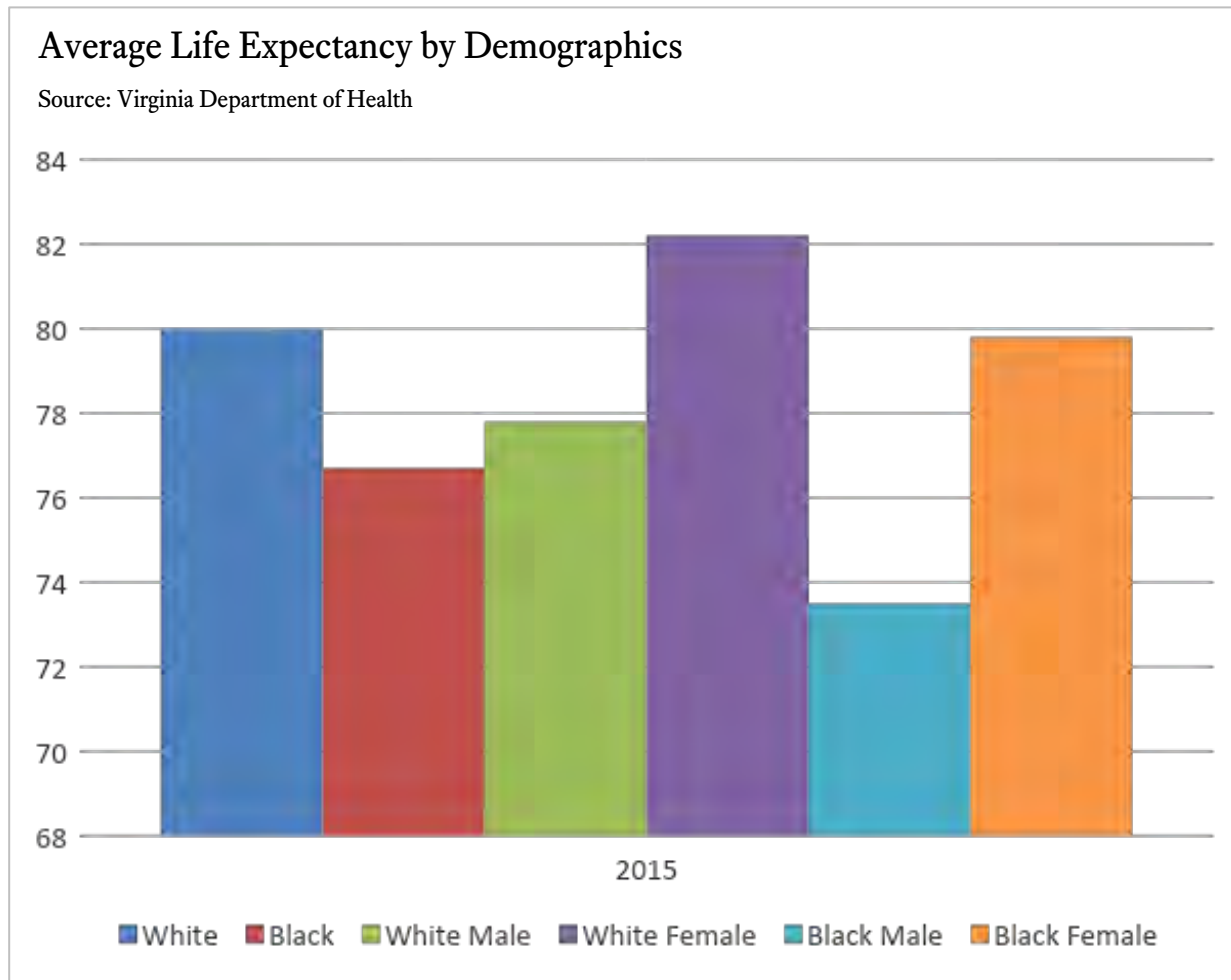
Ans is what I suspect. I have seen drinking a lot of Turpentine Oil and the girl seem to be mind a good deal.

(to be long)



Hiram Steele was a Central State Hospital patient several times throughout his life. After being convicted of a crime, he was found insane and sent to Central State Hospital. The attached document describes the condition of Steele upon his commitment to the institution. *Photograph of Hy Steele, No. 1679, from the Virginia State Penitentiary, Prisoner Records, Photographs and Negatives; Commitment Papers for Hiram Steele, February 1895, from the Central State Hospital, Commitment Orders. State Records Collection of the Library of Virginia.*

Until the mid-1960s, hospital discrimination in Virginia was expressed in a number of ways, including “denial of staff privileges to minority physicians and dentists, refusal to admit minority applicants to nursing and residency training programs, and failure to provide medical, surgical, pediatric, and obstetric services to minority patients.”<sup>128</sup> It took a series of court cases, litigated by the NAACP Legal Defense and Education Fund between 1956 and 1967 to end the overt discrimination in hospitals and professional health care associations.<sup>129</sup> While these lawsuits won some battles, Virginia continues to experience negative racial disparities in health care.



In Virginia, life expectancy varies by both race and gender. White Virginians in 2015 on average lived longer than Black Virginians, with White females having the longest life expectancy and Black males having the shortest.<sup>130</sup>

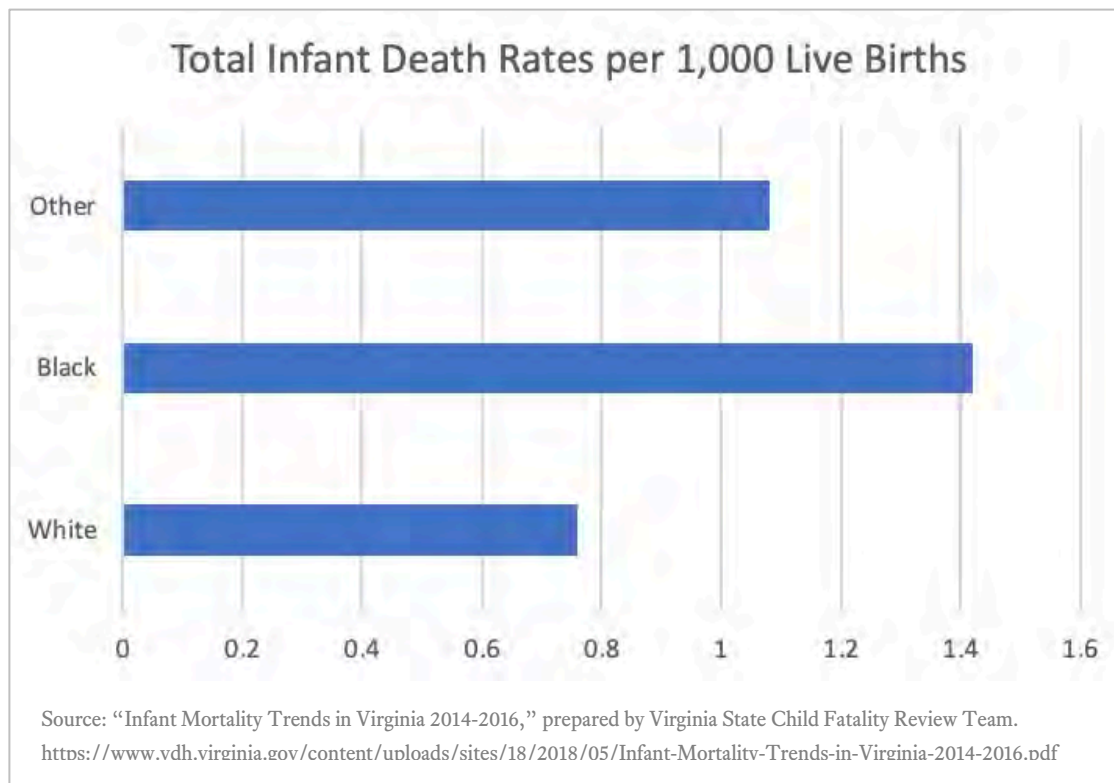
<sup>128</sup> P. Preston Reynolds, Professional and Hospital DISCRIMINATION and the US Court of Appeals Fourth Circuit 1956-1967, Am. J. Public Health, May 2004, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448322/>.

<sup>129</sup> *Id.*

<sup>130</sup> Statistical Reports and Tables, VDH, <https://apps.vdh.virginia.gov/HealthStats/stats.htm>.

Black Virginians are also more likely to deal with health issues related to obesity and diabetes than those of other racial or ethnic backgrounds.<sup>131</sup>

Additionally, infants born to African American women are twice as likely to die in Virginia.<sup>132</sup> Black women in Virginia are three times more likely to die from pregnancy complications than White women.<sup>133</sup>

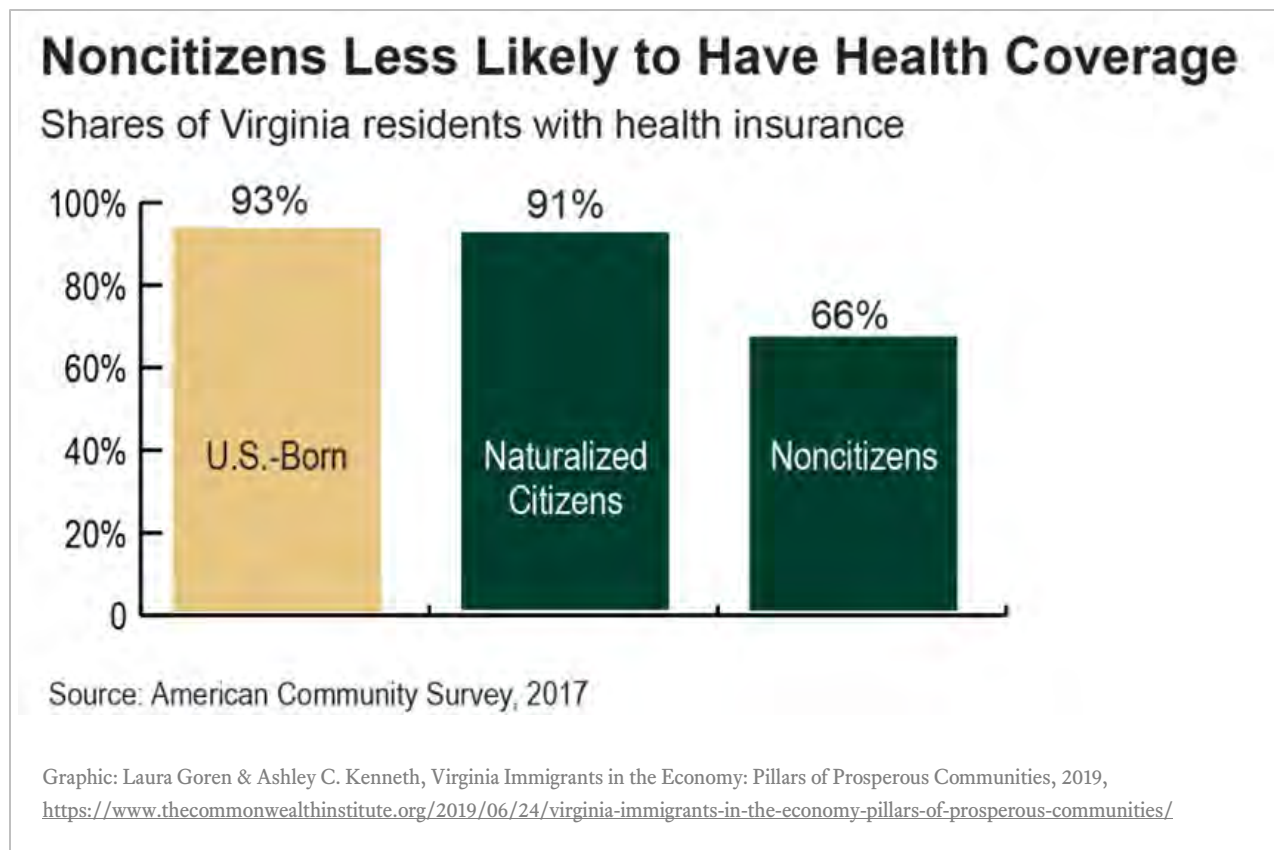


<sup>131</sup> Behavioral Risk Factor Surveillance System (BRFSS) Data from the CDC, <https://www.cdc.gov/brfss/index.html>.

<sup>132</sup> Virginia State Child Fatality Review Team, Infant Mortality Trends in Virginia 2014-2016, 2018, <https://www.vdh.virginia.gov/content/uploads/sites/18/2018/05/Infant-Mortality-Trends-in-Virginia-2014-2016.pdf>.

<sup>133</sup> Megan Pauly, Lawmakers Act to Correct Racial Disparity in Maternal Mortality Rates, VPM NPR News, March 4, 2020, <https://vpm.org/news/articles/11186/lawmakers-act-to-correct-racial-disparity-in-maternal-mortality-rates>.

Black Virginians are also disparately represented in Commonwealth HIV cases. In Virginia, Black, non-Hispanic persons were almost seven times more likely to be living with HIV at the end of 2015 than White, non-Hispanic persons.<sup>134</sup> Hispanic/Latino individuals were around twice as likely to be living with HIV at the end of 2015 than White, non-Hispanic persons.<sup>135</sup> This disproportionate health representation leads to increased risk in terms of Virginia’s criminal HIV laws (Virginia Code §§ 18.2-67.4:1, 18.2-11, 18.2-62, 18.2-346.1).<sup>136</sup>



<sup>134</sup> VDH, Virginia HIV Epidemiologic Profile, 2016, [https://www.vdh.virginia.gov/content/uploads/sites/10/2016/01/HIV\\_Epi\\_Profile\\_2016.pdf](https://www.vdh.virginia.gov/content/uploads/sites/10/2016/01/HIV_Epi_Profile_2016.pdf).

<sup>135</sup> *Id.*

<sup>136</sup> In the future, the Commission aims to further consider the disparities inherent to HIV criminalization laws in Virginia. The Commission recognizes that the American Medical Association, American Nursing Association, National Alliance of State and Territorial AIDS Directors, HIV Medicine Association, Association of Nurses in AIDS Care, U.S. National HIV/AIDS Strategy, Presidential Council on HIV/AIDS, U.S. Conference of Mayors, American Psychological Association, the U.S. Department of Justice, and other public health, legal and public policy organizations have called for an end to HIV criminalization.

In Virginia and nationally, minorities tend to have less health insurance coverage, higher cost barriers to healthcare access, and lower self-rated health.<sup>137</sup> Uninsured Americans have lower cancer survival rates, lower rates of receiving important screening tests, are more likely to have preventable hospitalizations, and are more likely to be diagnosed with diseases at later stages.<sup>138</sup>

Although immigrants may receive emergency-only Medicaid services, their access to comprehensive Medicaid coverage has historically been limited and complex, creating negative health disparities. For years, Virginia imposed a 40-quarter work requirement, by which immigrants must have worked in Virginia for 40 quarters, or ten years, to qualify for Medicaid coverage.<sup>139</sup> However, in November 2020, Governor Northam approved a budget amendment allocating funds for certain noncitizens' health coverage without the 40-quarter barrier, which had been previously passed then unallocated in response to the COVID-19 pandemic.<sup>140</sup>

Additionally, research indicates that people have a higher comfort level and are willing to share more information with a physician who looks like them.<sup>141</sup> Further, physicians' implicit biases can be dangerous for people of color. For example, research has shown that half of White medical trainees believe myths purporting that Black people feel less pain because they have thicker skin or less sensitive nerve endings than White people, prompting inadequate treatment of Black patients' pain.<sup>142</sup> In 2019, of the approximately 45,000 people with a Virginia medical license, only around 8% identified as African American.<sup>143</sup>

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<sup>137</sup> Office of Minority Health & Public Health Policy, Virginia Health Equity Report 2008: Executive Summary, 2008, <https://www.vdh.virginia.gov/content/uploads/sites/76/2016/06/health-equity-report-summary.pdf>; Center on Society and Health, Health Equity in Richmond, Virginia, 2016, <https://societyhealth.vcu.edu/media/society-health/pdf/RVAHealthEquityFINAL.pdf>.

<sup>138</sup> Virginia Health Care Foundation, Profile of Virginia's Uninsured, <https://www.vhcf.org/data/profile-of-virginias-uninsured/>.

<sup>139</sup> Freddy Mejia, A Harsh, Little Known Rule Leaves Many Immigrants Without Health Coverage, The Commonwealth Institute, January 29, 2019, <https://thehalfsheet.org/post/182403343218/a-harsh-little-known-rule-leaves-many-immigrants>; Virginia Immigrants Have to Work 10 Years to Qualify for Medicaid, VPM NPR News, June 25, 2019, <https://vpm.org/news/articles/6073/virginia-immigrants-have-to-work-10-years-to-qualify-for-medicaid>.

<sup>140</sup> Budget Amendments – HB 5005, <https://budget.lis.virginia.gov/amendment/2020/2/HB5005/Introduced/MR/482.20/6h/>.

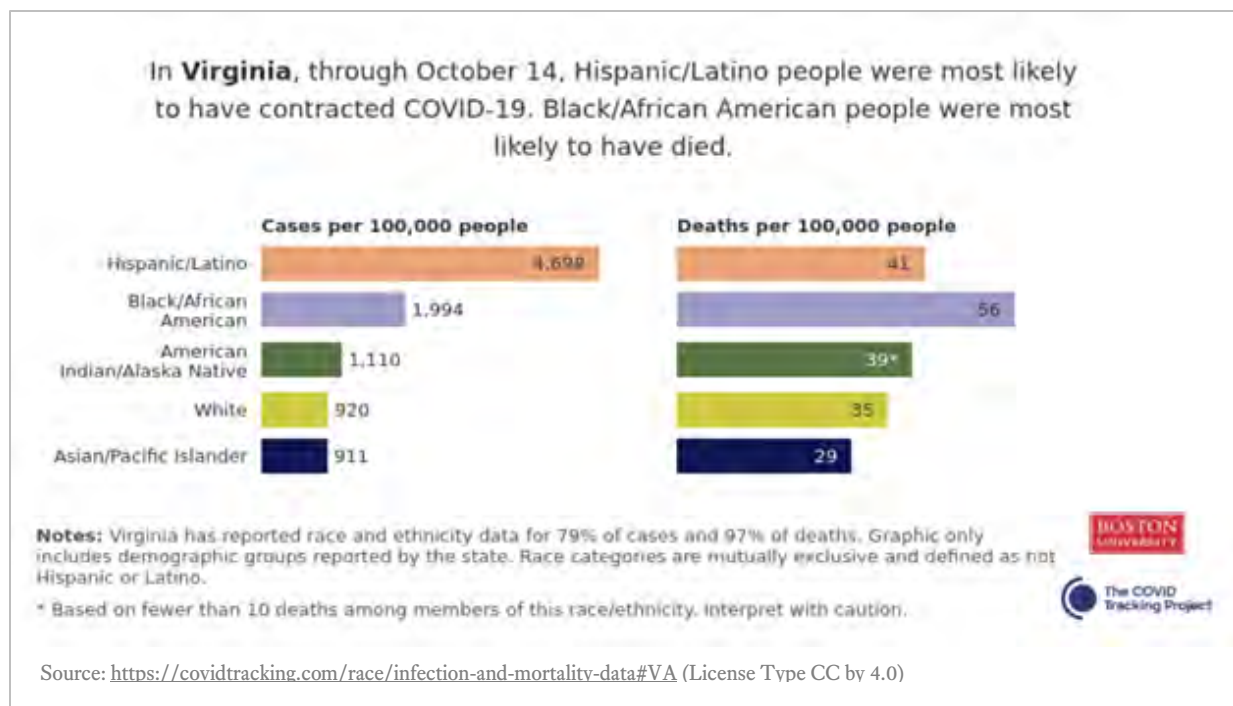
<sup>141</sup> Joseph P. Williams, Why America Needs More Black Doctors, US News, Aug. 31, 2018, <https://www.usnews.com/news/healthiest-communities/articles/2018-08-31/why-america-needs-more-black-doctors>.

<sup>142</sup> Janice A. Sabin, How we fail black patients in pain, AAMC, Jan. 6, 2020, <https://www.aamc.org/news-insights/how-we-fail-black-patients-pain> (discussing 2012 and 2016 studies).

<sup>143</sup> Jason Fuller, Improving the Doctor to Patient Ratio in the African American Community, WVTF, Nov. 14, 2019, <https://www.wvtf.org/post/improving-doctor-patient-ratio-african-american-community#stream/0>.



Research also suggests that Black Virginians are exposed to a higher levels of trauma in their communities than other Virginians. Trauma can affect children's health, development, and functioning later in life, but risk and protective factors play a valuable role in children's long-term outcomes.<sup>144</sup> Black and Hispanic children are more likely to have adverse childhood experiences (ACEs) than their White and Asian peers, which can lead to toxic stress.<sup>145</sup> ACEs have long-term effects, which increase in risk with each additional ACE. Effects include smoking, alcohol, and drug abuse; mental and physical health problems; relationship troubles; suicide; criminal activity; and even early death.<sup>146</sup> However, social support and protective conditions can prevent these repercussions for children with ACEs.<sup>147</sup>



The COVID-19 pandemic has increased focus on health disparities. Black, Hispanic, and Native American coronavirus cases and deaths exceeded their share of the population nationally and in Virginia.<sup>148</sup> Yet, as evidenced in the preceding data, negative health disparities for racial and ethnic minority groups in Virginia are nothing new.

<sup>144</sup> Center on Society and Health, Health Equity in Richmond, Virginia, 2016, <https://societyhealth.vcu.edu/media/society-health/pdf/RVAHealthEquityFINAL.pdf>.

<sup>145</sup> Alysse ElHage, Nearly Half of U.S. Children Have Suffered At Least One Adverse Childhood Experience, Institute for Family Studies, March 1, 2018, <https://ifstudies.org/blog/nearly-half-of-us-children-have-suffered-at-least-one-adverse-childhood-experience>.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> Daniel Wood, As Pandemic Deaths Add Up, Racial Disparities Persist – And In Some Cases Worsen, NPR, Sept. 23, 2020, <https://www.npr.org/sections/health-shots/2020/09/23/914427907/as-pandemic-deaths-add-up-racial-disparities-persist-and-in-some-cases-worsen>.



By calling attention to longstanding health-based inequities, COVID-19 may eventually produce positive changes in health policy. Our recommendations take into account the need to continue policies reducing health-based inequity after the pandemic, recognizing that health inequities run far deeper than just what the statistics present in coronavirus cases.

The Commission puts forward six recommendations, aimed to mitigate inequity in the Commonwealth's health system.

These recommendations fall within three main problem areas:

- Health Care Access
- Medical Professionals Support
- Mental Health

Each topic listed has been shown by research to have a disproportionate racial impact in Virginia.

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## HEALTH CARE ACCESS

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### BACKGROUND

Based on 2018 US Census data, prior to Virginia's Medicaid expansion, which went into effect on January 1, 2019, 10.2% of Virginians under age 65 were without medical insurance, the vast majority of which (64.2%) were part of families with at least one full time worker.<sup>149</sup> Since then, Governor Northam has expanded Virginia's Medicaid program, promoting historic health care disparity reductions.<sup>150</sup> Following the January 2019 Medicaid expansion, more than 450,000 additional individuals were enrolled in Medicaid by August 2020.<sup>151</sup> Even with this progress, however, most immigrants may receive emergency-only Medicaid services. Because their access to comprehensive Medicaid coverage is limited and complex, negative health disparities persist.

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<sup>149</sup> Virginia Health Care Foundation, Profile of Virginia's Uninsured, <https://www.vhcf.org/data/profile-of-virginias-uninsured/>.

<sup>150</sup> Office of the Governor, Governor Northam Announces More than 300,000 Virginians Now Enrolled in Expanded Medicaid Program, July 31, 2019, <https://www.governor.virginia.gov/newsroom/all-releases/2019/july/headline-841926-en.html>.

<sup>151</sup> Louise Norris, Virginia and the ACA's Medicaid Expansion, HealthInsurance.org, Oct. 3, 2020, <https://www.healthinsurance.org/virginia-medicaid/>.

**RECOMMENDATION 1: Close the gap in healthcare access for immigrants.** The following are specific steps that could be taken to close this gap:

**A. Adopt the CHIP Option to provide prenatal care to all children regardless of the expectant mother's immigration status.** For over a decade, this CHIP option has been available to provide prenatal care to pregnant immigrants who can't otherwise get Medicaid, including undocumented immigrants who are not legally residing in the U.S. According to the Kaiser Family Foundation, 17 states have taken this option.<sup>152</sup> In all other states (including Virginia), while the pregnant woman can't get Medicaid during her pregnancy, if she's a state resident and income eligible for Medicaid, the state is required to provide her emergency Medicaid services at the time of her labor and delivery. Of course, the newborn will be a U.S. Citizen and typically deemed eligible for Medicaid for one year. The recommended option enables states to provide the pregnant woman comprehensive prenatal care before the baby is born—a compassionate as well as cost-effective approach to protecting the health of the mother and the baby.

**B. Increase the age that “legally residing” immigrant children can qualify for Medicaid and FAMIS.** “Legally residing” is a broad term that includes any documented immigrant status, including valid visas. Currently, “legally residing” immigrant children in Virginia qualify for coverage until they turn 19 years old. Federal law allows this optional coverage to continue up to age 21. Raising the age threshold would protect continuity of care for these young people.

**C. Expand emergency Medicaid coverage to include COVID-19 testing and treatment.** Immigrants qualify for emergency Medicaid coverage if they are eligible by income but do not meet the Medicaid non-citizen requirements. Emergency Medicaid coverage is only for life-threatening or severe medical needs. Several states have included COVID-19 testing and treatment under emergency Medicaid coverage, and Virginia should follow this example.<sup>153</sup>

**RECOMMENDATION 2: Exercise the option for 12-month continuous coverage to Medicaid and CHIP for children.** Low-income individuals may experience financial ups and downs throughout the year. One month they may be eligible for Medicaid, and the next month they may be slightly over the income line for Medicaid. States have the option to provide children with 12 months of continuous coverage through Medicaid and CHIP, even if their family's income

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<sup>152</sup> Tricia Brooks et al., Medicaid and CHIP Eligibility, Enrollment, and Cost Sharing Policies as of January 2020: Findings from a 50-State Survey, Henry J. Kaiser Family Foundation, March 2020, <http://files.kff.org/attachment/Report-Medicaid-and-CHIP-Eligibility,-Enrollment-and-Cost-Sharing-Policies-as-of-January-2020.pdf>.

<sup>153</sup> Approved State Actions to Address COVID-19, Henry J. Kaiser Family Foundation, Oct. 29, 2020, <https://www.kff.org/coronavirus-covid-19/issue-brief/medicaid-emergency-authority-tracker-approved-state-actions-to-address-covid-19/>.

changes throughout the year.<sup>154</sup> This allows for reliable access to health care for children.<sup>155</sup> Twenty-three states have exercised this option for Medicaid, and twenty-five have adopted it for CHIP.<sup>156</sup> Virginia should follow suit.

## MEDICAL PROFESSIONALS



The vast majority of healthcare workers in Virginia are White, while patients are increasingly diverse. *Nurse interviewing a patient, undated, from the Visual Studies Collection, Library of Virginia.*

## BACKGROUND

In 2019, of the approximately 45,000 people with a Virginia medical license, only around 8% identified as African American.<sup>157</sup> In 2018, the Virginia Department of Health Professions (VDHP) conducted a “Physician Workforce Survey” where over 33,000 physicians responded, and only 1,700 respondents identified as Black or African American, whereas the state’s African

<sup>154</sup> Continuous Eligibility for Medicaid and CHIP Coverage, Medicaid.gov, <https://www.medicaid.gov/medicaid/enrollment-strategies/continuous-eligibility-medicaid-and-chip-coverage/index.html>.

<sup>155</sup> *Id.*

<sup>156</sup> State Adoption of 12-Month Continuous Eligibility for Children’s Medicaid and CHIP, Henry J. Kaiser Family Foundation, <https://www.kff.org/health-reform/state-indicator/state-adoption-of-12-month-continuous-eligibility-for-childrens-medicaid-and-chip/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>; Judith Solomon, Continuous Coverage in Families First Act Prevent Coverage Gaps by Reducing “Churn,” Center on Budget and Policy Priorities, July 16, 2020, <https://www.cbpp.org/research/health/continuous-coverage-protections-in-families-first-act-prevent-coverage-gaps-by>.

<sup>157</sup> Jason Fuller, Improving the Doctor to Patient Ratio in the African American Community, WVTF, Nov. 14, 2019, <https://www.wvtf.org/post/improving-doctor-patient-ratio-african-american-community#stream/0>.

American population exceeds 1.6 million. The Black doctor to Black patient ratio is approximately 1 doctor for every 1,000 patients, while the White doctor to White patient ratio is approximately 1 doctor for every 400 patients.

**RECOMMENDATION 3: Create a pipeline program to support Black college students' preparation for medical school, particularly at Virginia's HBCUs.** This would also work to reduce the number of health provider shortage areas (HPSAs) in Virginia.<sup>158</sup> Similar pipelines have been used for recruiting Black teachers,<sup>159</sup> and specifically STEM educators,<sup>160</sup> in Virginia.

**RECOMMENDATION 4: Require Virginia continuing medical training to include implicit bias training.** California passed a bill with such a requirement in 2019,<sup>161</sup> and Virginia should do the same.

## MENTAL HEALTH

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### BACKGROUND

In general, African Americans appear to have the same or lower incidence of diagnosed mental disorders compared to other racial/ethnic groups, but this may reflect lower access to mental health services, less frequent recognition of mental health needs among African Americans by physicians, and relative exclusion of vulnerable populations from national epidemiological surveys.<sup>162</sup> There is also concern that Black Virginians are exposed to a high level of trauma in their communities, as discussed above.<sup>163</sup>

As of 2013, Virginia had 50 Mental Health Professional Shortage Areas.<sup>164</sup> Since then, legislation has sought to reduce socioeconomic and racial mental health disparities. However, nationally, in 2018, 8.7 percent of African American adults received mental health services compared with 18.6

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<sup>158</sup> Shortage Designations and Maps, VDH, <https://www.vdh.virginia.gov/health-equity/shortage-designations-and-maps/>.

<sup>159</sup> Brian McNeill, VCU School of Education joins national effort to recruit, prepare and retain black teachers, VCU, Oct. 1, 2019, [https://news.vcu.edu/article/VCU\\_School\\_of\\_Education\\_joins\\_national\\_effort\\_to\\_recruit\\_prepare](https://news.vcu.edu/article/VCU_School_of_Education_joins_national_effort_to_recruit_prepare); Report from the Task Force on Diversifying Virginia's Educator Pipeline, Aug. 2017, <https://www.education.virginia.gov/media/governorvirginiagov/secretary-of-education/pdf/final-tdvdp-report.pdf>.

<sup>160</sup> Office of the Governor, Virginia Works to Grow, Diversify STEM Educator Pipeline, Feb. 10, 2020, <https://www.governor.virginia.gov/newsroom/all-releases/2020/february/headline-851715-en.html>.

<sup>161</sup> SB-464 California Dignity in Pregnancy and Childbirth Act, [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB241](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB241).

<sup>162</sup> Center on Society and Health, Health Equity in Richmond, Virginia, 2016, <https://societyhealth.vcu.edu/media/society-health/pdf/RVAHealthEquityFINAL.pdf>.

<sup>163</sup> *Id.*

<sup>164</sup> The Virginia Health Care Landscape, Henry J. Kaiser Family Foundation, May 20, 2014, <https://www.kff.org/medicaid/fact-sheet/the-virginia-health-care-landscape/>.

percent of non-Hispanic White adults; 8.8 percent of Hispanic adults received mental health services compared with 18.6 percent of non-Hispanic White adults.<sup>165</sup> This indicates a need for greater attention on mental health inequities.

**RECOMMENDATION 5: Increase mental health support in schools.** Differences in use of school-based behavioral health services by racial and ethnic groups suggest the need for culturally appropriate support and tailoring of services to increase resource utilization.<sup>166</sup> Reallocating funds previously used for school resource officers (SROs) to hire more school counselors is one way to increase mental health support in schools. School counselors provide direct and indirect mental health services for students and build alliances in school communities.<sup>167</sup> This goes beyond teaching about mental health by encouraging a climate of wellness. However, teaching about mental health could also increase utilization of mental health services.<sup>168</sup> In 2018, legislation passed requiring a review and update of the health Standards of Learning for students in grades 9 and 10 to include mental health. Recognizing the negative effects of trauma in childhood, the health Standards of Learning for younger students should also be reviewed and updated to include mental health. SB1440 and HB2593 would have done so in 2019, but these bills were left in the Appropriations Committee.<sup>169</sup> Additionally, the feasibility of Mental Health First Aid training for relevant school personnel should be considered.<sup>170</sup>

**RECOMMENDATION 6: Direct the Commission Studying Mental Health Services in the 21<sup>st</sup> Century to specifically address racial disparities in their work.** The Commission has considered a variety of topics, including tele-mental health, mental health services in jails, and housing for the seriously mentally ill.<sup>171</sup> This Commission should consider racial disparities in mental health services in one of its upcoming meetings.

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<sup>165</sup> Sofia Carratala & Connor Maxwell, Health Disparities by Race and Ethnicity, Center for American Progress, May 7, 2020, <https://www.americanprogress.org/issues/race/reports/2020/05/07/484742/health-disparities-race-ethnicity/>.

<sup>166</sup> Jill Locke et al., Ethnic disparities in school-based behavioral health service use for children with psychiatric disorders, *J. Sch. Health*, Jan. 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5142755/>.

<sup>167</sup> Ariane Datil, Virginia teachers want school police funding reallocated to mental health, *WUSA9*, June 18, 2020, <https://www.wusa9.com/article/news/education/school-resource-officers-reallocating-funds-for-mental-health/65-d4d9bc7b-282e-469b-9e87-cea7e249da07>; Carol J. Kaffenberger & Judith O'Rourke-Trigani, ASCA, <https://www.schoolcounselor.org/asca/media/asca/ASCAU/Mental-Health-Specialist/Kaffenberger.pdf>.

<sup>168</sup> Lucy Hood, More states requiring mental health education, *Education Dive*, Sept. 3, 2019, <https://www.educationdive.com/news/more-states-requiring-mental-health-education/561250/>.

<sup>169</sup> Ashley Airington, Children's Mental Health: 2019 Session Wrap-Up, *Voices for Virginia's Children*, Feb. 25, 2019, <https://vakids.org/our-news/blog/childrens-mental-health-proposed-legislation-2019-legislative-session>.

<sup>170</sup> See SB 1472, 2019, <https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+SB1472&191+sum+SB1472>

<sup>171</sup> See, e.g., Mental Health Services in the Twenty-First Century, Joint Subcommittee to Study, <https://studies.virginiageneralassembly.gov/studies/341>.

## ENVIRONMENTAL JUSTICE

Racial inequity linked to environmental justice has deep roots in the Commonwealth. In January 2020, the Fourth Circuit vacated a Clean Air permit for a natural gas compressor station in Union Hill and remanded back to Virginia's State Air Pollution Control Board. The Fourth Circuit stated that "[e]nvironmental Justice is not just a box to be checked."<sup>172</sup> The Virginia Environmental Justice Act, which the General Assembly enacted during the 2020 session, defines environmental justice as "the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy."<sup>173</sup> The Act provides for a specific focus on "environmental justice communities" and "fenceline communities," which are defined as "any low-income community or community of color" and "an area that contain all or part of a low-income community or community of color and that present an increased health risk to its residents due to its proximity to a major source of pollution," respectively.<sup>174</sup> The Act's focus on these communities stems from their long history of lower environmental quality due to their being effectively shut out of decision-making processes. By focusing on the fair treatment and meaningful involvement of these communities, the General Assembly has given clearer guidance on how to achieve environmental justice.

Environmental justice should be about giving communities a voice in decision making processes and making sure they are treated fairly, not merely checking a box. These recommendations seek to further these goals in the areas of public involvement, access to outdoor recreational areas, access to clean energy, and tribal consultation.

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<sup>172</sup> *Friends of Buckingham v. State Air Pollution Control Board*, No. 19-1152 at 44 (4th Cir. 2020).

<sup>173</sup> Virginia Environmental Justice Act, Va. Code § 2.2-235, <https://law.lis.virginia.gov/vacode/title2.2/chapter2/section2.2-235/>.

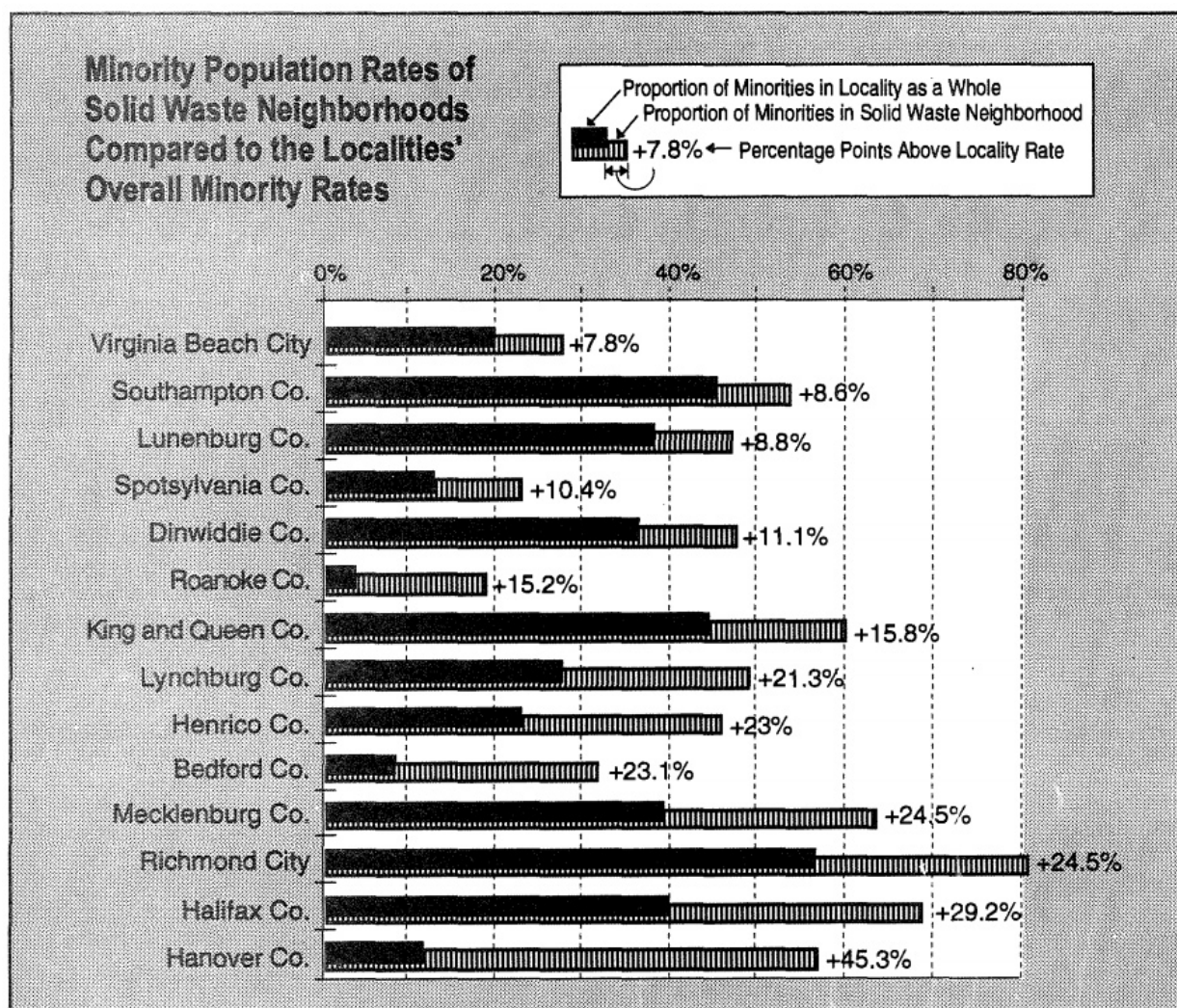
<sup>174</sup> *Id.*





Pollution has negative environmental and health effects on nearby residents. Communities of color disproportionately bear the burden of pollution. *Pollution, undated, from the Visual Studies Collection of the Library of Virginia.*





Source: Joint Legislative Audit and Review Commission of the Virginia General Assembly, *Solid Waste Facility Management in Virginia: Impact on Minority Communities*, 1995, <http://jlarc.virginia.gov/pdfs/reports/Rpt166.pdf>.

The story of Union Hill captures the need for increased attention to environmental justice. In January 2019, the state approved Dominion Energy's plan to site a natural gas compressor station for the Atlantic Coast Pipeline in Union Hill, a historic community founded by freedmen.<sup>175</sup> While Dominion argued that the decision to place the compressor station in Union Hill was a matter of economics and environmental footprint, the Fourth Circuit vacated the air permit a year later.<sup>176</sup> The case highlighted an issue central to environmental justice. Communities of color are often disproportionately burdened by locally undesirable land uses. For example, a 1995 Joint Legislative Audit and Review Commission report found that in Virginia, minorities were

<sup>175</sup> Sarah Vogel song, In Virginia, Union Hill and racial tensions have put environmental justice back on the map, *Virginia Mercury*, Dec. 5, 2019, <https://www.virginiamercury.com/2019/12/05/in-virginia-union-hill-and-racial-tensions-have-put-environmental-justice-back-on-the-map/>.

<sup>176</sup> *Friends of Buckingham v. State Air Pollution Control Board*, No. 19-1152 at 44 (4th Cir. 2020).

disproportionately likely to live in neighborhoods near solid waste facilities.<sup>177</sup> While the placement of these facilities frequently meet technical legal requirements, they can be justified in non-discriminatory terms, this does not make these decisions just. In order to combat these racial disparities, the Commission's first recommendation is to develop measures to ensure the members of the affected communities and meaningfully involved in government decisions to site environmentally harmful facilities.

While meaningful public involvement is a core component of environmental justice, there are other areas of environmental law that should be considered through an equity-oriented lens. While the COVID-19 pandemic has highlighted the importance of ready access to nature and outdoor recreation, a study has found that, nationally, people of color are 51% more likely to be nature deprived than White people.<sup>178</sup> Thus, the Commission's second area of recommendations concern access to outdoor recreational space.

Environmental justice must also consider energy costs. Electricity burden is defined as "the percentage of your household income that is spent on electricity costs."<sup>179</sup> Virginians, on average, experience an electricity burden of 3.1%, which is higher than the national average of 2.7%.<sup>180</sup> It is estimated that low-income households in Virginia have an electricity burden of approximately 8.8%.<sup>181</sup> While it is estimated that a typical set of residential solar panels would meet more than half of a low-income household's electricity needs, much of the growth in residential solar energy in recent decades has benefited middle-class families.<sup>182</sup>

Lastly, the concerns of Virginia's 11 Commonwealth-recognized American Indian Tribes need to be meaningfully included in the decision-making process, as it is important to ensure that their concerns are considered in government decisions.

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<sup>177</sup> Joint Legislative Audit and Review Commission of the Virginia General Assembly, Solid Waste Facility Management in Virginia: Impact on Minority Communities, 1995, <http://jlarc.virginia.gov/pdfs/reports/Rpt166.pdf>.

<sup>178</sup> Jenny Rowland-Shea, Sahir Doshi, Shanna Edberg, and Robert Fanger, The Nature Gap, Center for American Progress, <https://www.americanprogress.org/issues/green/reports/2020/07/21/487787/the-nature-gap/>.

<sup>179</sup> Virginia Poverty Law Center, Affordable Clean Energy Project, <https://vplc.org/electricity-burden-and-the-myth-of-virginias-rate-utopia/>.

<sup>180</sup> *Id.*

<sup>181</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 31, [https://www.naturalresources.virginia.gov/media/governorvirginiagov/secretary-of-natural-resources/pdf/VCEJ-Report-Final\\_July-2020.pdf](https://www.naturalresources.virginia.gov/media/governorvirginiagov/secretary-of-natural-resources/pdf/VCEJ-Report-Final_July-2020.pdf).

<sup>182</sup> *Id.*

Previously existing via Executive Order number 29,<sup>183</sup> SB1042 made the Virginia Council on Environmental Justice a permanent advisory committee.<sup>184</sup> The Council’s 2020 annual report provides a useful list of findings and broad initial recommendations for executive and legislative action; some of the following proposals seek to turn those recommendations into specific changes to the code or regulations. Additionally, the Virginia Department of Environmental Quality (DEQ) has released its report following an 18-month study as part of its Environmental Justice Initiative which details many legislative and executive policy recommendations.<sup>185</sup> The report includes numerous findings and recommendations that would further environmental justice within DEQ.

The Commission puts forward the following five recommendations, aimed to further the objectives of environmental justice, which fall into four categories:

- Public Involvement
- Access to Outdoor Recreational Areas
- Clean Energy Access
- Tribal Consultation

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## PUBLIC INVOLVEMENT

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### BACKGROUND

Meaningful public involvement in decisions that will affect a community’s environmental quality is a central tenet to the concept of environmental justice. For a multitude of reasons, the siting of locally undesirable land uses has historically occurred near low-income communities and communities of color. Because these communities have historically been politically disenfranchised, there is also concern that they are seen as the path of least resistance by private companies in government approval processes.<sup>186</sup>

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<sup>183</sup> Executive Order 29, <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-29-Establishment-Of-The-Virginia-Council-On-Environmental-Justice.pdf>.

<sup>184</sup> HB 1042, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb1042>.

<sup>185</sup> Environmental Justice Study for the Virginia Department of Environmental Quality, October 2020, <https://www.deq.virginia.gov/Portals/0/DEQ/ConnectwithDEQ/EJ/Environmental%20Justice%20Study%20Report%20to%20DEQ.pdf?ver=2020-10-16-102023-147>.

<sup>186</sup> Tamara Deitrich, Pipeline projects draw criticism for “environmental racism,” Bay Journal, June 8, 2020, [https://www.bayjournal.com/news/energy/pipeline-projects-draw-criticism-for-environmental-racism/article\\_99af061e-a98e-11ea-bcdf-33bf50122f39.html](https://www.bayjournal.com/news/energy/pipeline-projects-draw-criticism-for-environmental-racism/article_99af061e-a98e-11ea-bcdf-33bf50122f39.html).

The consequences of this pattern are reflected in public health. A number of studies have shown an association between exposure air pollution and asthma.<sup>187</sup> The distribution of asthma cases in Virginia varies according to race, income, and education. While 16.5% of African American residents have Asthma, only 13.5% of White residents do.<sup>188</sup> Adults in the lowest income bracket (\$15,000 - 24,000) had the highest Asthma prevalence in 2018; those who did not graduate high school were almost 3% more likely to have Asthma than those who have graduated.<sup>189</sup>

**RECOMMENDATION 1: Require the Department of Environmental Quality (DEQ) to develop measures designed to ensure meaningful public involvement from environmental justice communities.** Last session, the General Assembly passed SB1075, which modified the duties of the Air Pollution Control Board, forcing it to meet additional procedural requirements when granting a variance to a regulation or issuing a permit to certain facilities that will “particularly affect” one locality. Something similar could be accomplished at a broader level by adding another section to the DEQ’s general powers in Va. Code § 10.1-1186, which would read “Develop procedures to solicit meaningful involvement from environmental justice communities, particularly when the Boards make determinations affecting such communities.”<sup>190</sup>

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<sup>187</sup> Centers for Disease Control and Prevention, Asthma and the Environment, <https://ephtracking.cdc.gov/showAsthmaAndEnv#:~:text=Important%20asthma%20triggers%20are%3A%201%20environmental%20tobacco%20smoke%2C,high%20humidity%2C%20or%20freezing%20temperatures%3B%20More%20items...%20>.

<sup>188</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 24, [https://www.naturalresources.virginia.gov/media/governorviriniagov/secretary-of-natural-resources/pdf/VCEJ-Report-Final\\_July-2020.pdf](https://www.naturalresources.virginia.gov/media/governorviriniagov/secretary-of-natural-resources/pdf/VCEJ-Report-Final_July-2020.pdf) (data reported to CDC).

<sup>189</sup> *Id.*

<sup>190</sup> The term “Boards” is defined by § 10.1-1186(B)(9) as the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board.





The siting of environmental projects such as pipelines and waste dumps can have inequitable impacts on communities of color. *Images from the Visual Studies Collection, Library of Virginia.*



Examples in other states include Oregon’s requirement that its agencies hold hearings at times and in locations that are convenient for people in affected communities.<sup>191</sup> Tennessee offers an online interactive map that shows public participation opportunities throughout the state.<sup>192</sup> Lastly, the West Virginia Department of Environmental Protection has an Office of Environmental Advocate that responds to citizen requests, guides citizens through Department processes, and helps implement informational workshops and public education forums.<sup>193</sup> DEQ could also alter the general focus of its notice requirements during a proceeding by focusing on input received instead of notice given. For example, DEQ could require a party to show that it received public input from a certain number of interested individuals or contacted a certain number of people instead of the mere showing of something like publication of notice in a newspaper.

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## ACCESS TO OUTDOOR RECREATION AREAS

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### BACKGROUND

Historically, the United States has systematically segregated and excluded people of color from public lands and other natural places. The legacies of this exclusion persist in many forms, including the continued underrepresentation of people of color in hiring at natural resource agencies, as well as in the histories of different groups underrepresented by national parks and public lands.

State parks provide opportunities for families to be outdoors and engage with nature in ways that would otherwise not be available to many. There are concerns that high parking fees at current state parks may limit access for low-income families, and new state parks may not be placed in areas close enough to environmental justice communities to adequately serve them.<sup>194</sup>

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<sup>191</sup> Or. Rev. Stat. § 182.545, <https://www.oregonlaws.org/ors/182.545>.

<sup>192</sup> Tennessee Dep’t of Environment & Conservation, Public Participation Opportunities Map, <https://www.tn.gov/environment/ppo-public-participation.html>.

<sup>193</sup> W. Va. Dep’t of Environmental Protection, Office of Environmental Advocate, <https://dep.wv.gov/Pages/agencydetail.aspx?CustomID=16>; *see also* Environmental Justice Study for the Virginia Department of Environmental Quality at 37, <https://www.deq.virginia.gov/Portals/0/DEQ/ConnectwithDEQ/EJ/Environmental%20Justice%20Study%20Report%20to%20DEQ.pdf?ver=2020-10-16-102023-147>.

<sup>194</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 19.

**RECOMMENDATION 2: Direct the Department of Conservation and Recreation to adopt a Statewide Park Equity Mapper to include demographic and health data necessary to inform equitable decision making.** The current Recreation Access Model does not provide adequate data to reflect the needs of certain communities. The Department should use the Equity Mapper to make planning decisions related to state and local land acquisitions, grant funding opportunities and development of conservation and open space lands for recreation access in communities where those amenities do not exist. The Equity Mapper should include the following data points:

- Census tract data for Race, Age, Education
- Localities without a local Parks and Recreation Agency
- Percent of population below the poverty line
- Percent of population considered obese, with diabetes, or heart disease
- Percent of population within a ten-minute walk of a local park/trail
- Percent of population within a thirty-minute drive of a regional park/trail
- Percent of population within an hour drive of a state park/trail
- Native lands
- Urban heat island data
- All local and state-held lands, trails, and water access points that are open to the public

**RECOMMENDATION 3: Amend Code § 10.1-200.1 to include access for environmental justice communities as a required consideration in state park master planning.** Code § 10.1-200.1 requires the Department of Conservation and Recreation (DCR) to undertake the master planning process (i) for all existing state parks, (ii) following the substantial acquisition of land for a new state park, and (iii) prior to undertaking substantial improvements to state parks.<sup>195</sup> “A master plan shall be considered a guide for the development, utilization and management of a park and its natural, cultural and historic resources and shall be adhered to closely.”<sup>196</sup> This section of the Code should be amended to require DCR to consider access for environmental justice communities, as defined in the Environmental Justice Act, in the state park master planning process.

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<sup>195</sup> Va. Code § 10.1-200.1, <https://law.lis.virginia.gov/vacode/title10.1/chapter2/section10.1-200.1/#:~:text=1-200.1.%20State%20park%20master%20planning.%20A.%20The%20Department,prior%20to%20undertaking%20substantial%20improvements%20to%20state%20parks.>

<sup>196</sup> *Id.*

### BACKGROUND

Virginians experience a higher electricity burden than the national average, and this burden falls heavily on low-income Virginians. Residential solar panels have the potential to meet more than half of the energy needs of an average low-income household, but growth in residential solar energy has largely been confined to middle-class households.

**RECOMMENDATION 4: Develop strategies to target residential solar energy development toward environmental justice communities.** Virginia currently has several programs in place to incentivize residential solar development. These include net metering,<sup>197</sup> the VirginiaSAVES Green Community Program,<sup>198</sup> the Energy Efficient Buildings Tax Exemption,<sup>199</sup> and others.<sup>200</sup> Additionally, the Clean Energy and Community Flood Preparedness Act (HB981/SB1027) will provide funding to reduce the energy burden on low-income customers through efficiency goals and increased clean energy access.<sup>201</sup> Either within the current programs or through a new program, agencies should develop strategies to make solar energy available to those in environmental justice communities.

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## TRIBAL CONSULTATION

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### BACKGROUND

The Council on Environmental Justice has considered Tribal recommendations. Virginia currently has 11 state and federally recognized tribes, each with their own organizational structure, tribal membership, government, staff, landholding, and economic development plans. The Virginia Council on Indians, active from 1988-2012, pursued a mission of education, research, economic development, and tribal recognition. However, in 2011 Governor McDonnell's Commission on Government Reform and Restructuring recommended the

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<sup>197</sup> See Va. Code § 56-594; see also Va. Dep't of Environmental Quality, Net Metering, <https://www.deq.virginia.gov/Programs/PollutionPrevention/VirginiaInformationSourceforEnergy/DistributedGeneration/NetMetering.aspx>.

<sup>198</sup> VirginiaSAVES, Sustainable Energy Solutions, <http://www.vasavesgcp.com/>.

<sup>199</sup> See Va. Code § 58.1-3221.2, <https://law.lis.virginia.gov/vacode/title58.1/chapter32/section58.1-3221.2/#:~:text=1-3221.2.%20Classification%20of%20certain%20energy-efficient%20buildings%20for%20tax,taxation%20separate%20from%20other%20classifications%20of%20real%20property.>

<sup>200</sup> Va. Dep't of Environmental Quality, Incentives for Virginians, <https://www.deq.virginia.gov/Programs/PollutionPrevention/VirginiaInformationSourceForEnergy/FinancialIncentives.aspx>.

<sup>201</sup> Office of Governor Ralph S. Northam, Governor Northam Signs Clean Energy Legislation, <https://www.governor.virginia.gov/newsroom/all-releases/2020/april/headline-856056-en.html>.

elimination of the Virginia Council on Indians, and it was abolished during the subsequent regular session. In 2016, the General Assembly passed a bill allowing the Secretary of the Commonwealth to establish a Virginia Indian Advisory Board, but its activities are limited to matters relating to tribal recognition. Because the 11 tribes have varying organizational structures and administrative capacities, requests for consultation made by state agencies often go unanswered. There is concern among the tribes that agencies interpret this lack of capacity as lack of interest, and their perspectives often go unheard in situations in which they are entitled to be heard.<sup>202</sup>

**RECOMMENDATION 5: Establish a Tribal Liaison within DEQ.** To ensure the meaningful involvement of recognized tribes in decisions affecting environmental quality, the DEQ should establish a Tribal Liaison to commit the Department to effective communication with tribal leaders. The Liaison should consult with leaders from tribal communities to determine the best means of establishing meaningful communicating in Department processes. Pursuant to these initial consultations, the Liaison should ensure that the tribes have adequate information to understand the government action at issue and ensure that the Department receives meaningful input from the affected tribal communities.

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<sup>202</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 52.



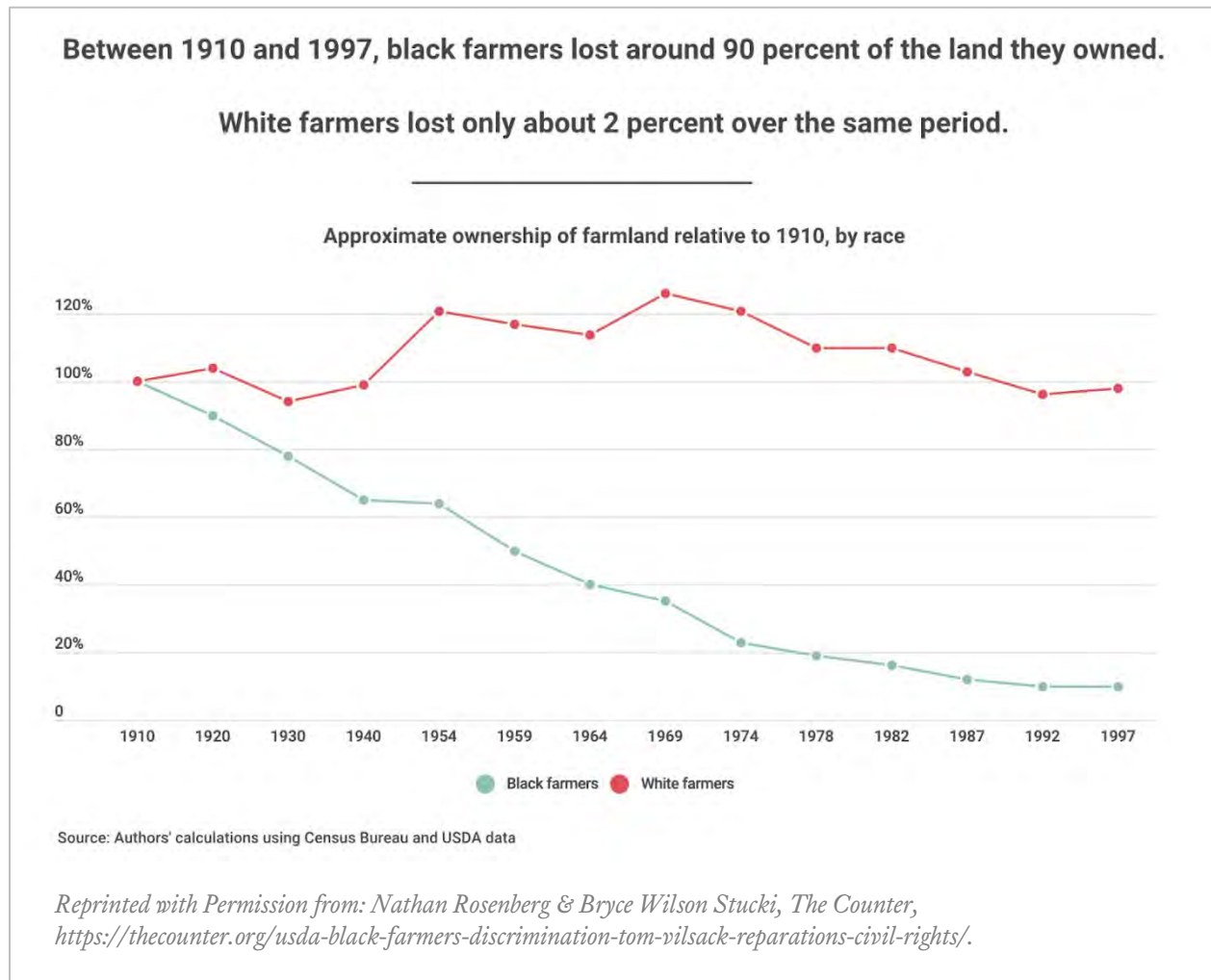


In the early 1900s, Black farm producers constituted a great number of farms in Virginia and throughout the South. However, throughout the twentieth century, Black farmers were systematically dispossessed of their property. *Images from the Visual Studies Collection of the Library of Virginia.*



## AGRICULTURAL EQUITY

Over the last century, African American farmers and landowners have been systematically dispossessed of their property. In 1910, African Americans held title to approximately 16-19 million acres of farmland, and one in seven farmers was Black.<sup>203</sup> However, between 1910 and 2010, 98% of Black farmers were dispossessed through discriminatory practices.<sup>204</sup> Today, of the more than 43,000 farm producers in Virginia, only about 2,400 are people of color.<sup>205</sup>



One historic obstacle for minority-owned farms in Virginia has been the heirs' property system. Land becomes heirs' property when its owner dies without a will, and interests in it are divided among the owner's heirs. Heirs' property has historically been vulnerable to property speculators

<sup>203</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 19.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

who could cause forced sales through partition proceedings.<sup>206</sup> Additionally, owners of heirs' property usually do not qualify for certain U.S. Department of Agriculture loans to purchase livestock or cover the cost of planting.<sup>207</sup> Individual heirs cannot use their land as collateral with banks or other institutions, so they are denied private financing and federal home-improvement loans.<sup>208</sup> Additionally, owners of heirs' property generally are not eligible for disaster relief funds.<sup>209</sup>

The owners of heirs' property are often unaware of the tenuous state of their title, but even when they are, clearing the title can be a costly and complex process, requiring owners to track down every living heir.<sup>210</sup> During the 2020 Regular Session, the General Assembly passed HB1605, which incorporated major parts of the Uniform Partition of Heirs' Property Act, consisting of provisions designed to protect the owners of heirs' property during partition proceedings. Even with these protections for heirs' property owners, minority farmers are faced with systemic problems that limit their access to financing, consultation, and education services.

The Commission puts forward the following four recommendations, aimed at equitably serving minority farmers and mitigating systemic inequities.

**RECOMMENDATION 1: Modify Code § 58.1-3965 to allow an extended redemption period for tax sales involving heirs' property.** Currently, § 58.1-3965 provides for the "owner's right of redemption" prior to a tax sale. At least 30 days prior to instituting any judicial proceeding for the sale of property at auction for delinquent taxes, the officer charged with collecting taxes must send a notice to several addresses at which the property owner may be located and publish a list of the real estate which will be offered for sale in a newspaper of general circulation. Subsection B provides that "[t]he owner of the property listed may redeem it at any time before the date of the sale by paying all accumulated taxes, penalties, reasonable attorney's fees, interest, and costs thereon." Partial payment is insufficient to abate the sale. However, subsection C provides that the treasurer "may suspend any action for sale ... upon entering into an agreement with the

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<sup>206</sup> Samantha Willis, Growing forward: Facing historic and modern challenges, Virginia's black farmers look to bolster ranks and grow their communities, *Virginia Mercury*, Dec. 4, 2018, <https://www.virginiamercury.com/2018/12/04/growing-forward-facing-historic-and-modern-challenges-virginias-black-farmers-look-to-bolster-ranks-and-grow-their-communities/>.

<sup>207</sup> Lizzie Presser, Their Family Bought Land One Generation After Slavery. The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It, *ProPublica*, July 15, 2019, <https://features.propublica.org/black-land-loss/heirs-property-rights-why-black-families-lose-land-south/>.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.* In the aftermath of Hurricane Katrina, approximately 25,000 families around New Orleans applied for rebuilding grants for their heirs' property, leading one attorney to estimate that up to \$165 million of recovery funds were never claimed because of title issues relating to heirs' property.

<sup>210</sup> *Id.*

owner of the real property for the payment of all delinquent amounts in installments over a period which is reasonable under the circumstances, but in no event shall exceed 36 months.”

Historically, many heirs’ property owners are unaware of the state of their title, leading to delinquent property taxes.<sup>211</sup> To the unsuspecting owner, 30 days is likely insufficient to secure the necessary funds to prevent a tax sale. Therefore, the period between notice and sale, during which an owner may redeem the property, should be extended in cases involving heirs’ property. Because of the circumstances unique to heirs’ property, the period over which an owner may set up a payment plan should be extended in these cases as well.

**RECOMMENDATION 2: Sufficiently fund Virginia Cooperative Extension services at Virginia State University.** The Cooperative Extension services from Virginia’s land grant institutions – Virginia State University and Virginia Tech - provide meaningful education and other support to farmers throughout the Commonwealth. These programs play a vital role in the success of small farms across Virginia, as well as other initiatives within communities. However, Virginia Tech receives almost seven times more funding for its program than Virginia State receives.<sup>212</sup> While this is understandable given some of the different missions of each school’s extension program, Virginia State, which houses the Small Farms Outreach Program, is primarily responsible for serving Black farmers (who often own small farms). More funding is required to serve more communities and more farmers within those communities. Notably, the Small Farms Outreach Program currently lacks the resources to provide services in the Shenandoah Valley and parts of southwest Virginia, but it would be able to serve these communities with more resources.

**RECOMMENDATION 3: Create an Office of Small Farms within the Virginia Department of Agriculture and Consumer Services (VDACS) with a duty to consider racial equity in farming.** Stakeholders have expressed concerns that VDACS does not adequately consider the interests of small farm owners.<sup>213</sup> Compared to large grain farms, those who operate smaller farms face unique challenges. There are currently seven boards and organizations that operate within

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<sup>211</sup> *Id.* See also April Simpson, Racial Justice Push Creates Momentum to Protect Black-Owned Land, Pew, Sep. 21, 2020, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/09/21/racial-justice-push-creates-momentum-to-protect-black-owned-land>. Additionally, communication with Ebonie Alexander, Executive Director of Black Family Land Trust, has conveyed that she is personally aware of these circumstances.

<sup>212</sup> Research into the state budget bill (Chapter 1289, 2020 Acts of Assembly) shows that the appropriation for Virginia Tech’s program is just shy of \$94 million, while Virginia State’s program is around \$14 million. Moreover, while approximately 80% of Virginia Tech’s funds come from the General Fund, only about half of Virginia State’s funds are from the General Fund.

<sup>213</sup> This was revealed through discussions with stakeholders and experts in the areas of agricultural equity and heirs’ property.

VDACS, and none are geared toward addressing issues for small farms or racial equity.<sup>214</sup>

According to the 2017 Agricultural Census, most minority farmers in Virginia operate farms with less acreage while a larger percentage of White farmers operate large farms.<sup>215</sup> Thus, the creation of an Office of Small Farms within VDACS would allow greater consideration for both the needs of small farmers and racial equity. While creating the Office would be the best means of achieving this outcome, an alternative approach is to add the consideration of racial equity and issues facing small farmers to the list of duties assigned to the Board of Agriculture and Consumer Services in § 3.2-109.

**RECOMMENDATION 4: Order State Agencies and Institutions to implement a long-term goal for food procurement from minority producers.** In July 2019, Governor Northam issued Executive Order Number 35, which established a 42% target for food procurement from certified Small, Women- and Minority-owned (SWaM) businesses. The SWaM program creates a preferential track for small businesses owned by women, minorities, and service-disabled veterans.<sup>216</sup> However, those working within the program have found that while it benefits women and veteran-owned businesses, it has largely left out minority farmers who are unable to obtain the required certifications.<sup>217</sup> The administration should take steps, through executive orders or other means, to help minority-owned businesses participate more fully in the procurement process.

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<sup>214</sup> The organizations and boards include the Aquaculture Advisory Board, Board of Agriculture & Consumer Services, Virginia Agricultural Council, Virginia's Agricultural Commodity Boards, Virginia's Charitable Gaming Board, Virginia Specialty Food & Beverage Association, and Virginia Winery Distribution Company.

<sup>215</sup> USDA Agriculture Census, 2017, [https://www.nass.usda.gov/Publications/AgCensus/2017/Full\\_Report/Volume\\_1,\\_Chapter\\_1\\_State\\_Level/Virginia/st51\\_1\\_0062\\_0062.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_State_Level/Virginia/st51_1_0062_0062.pdf)

<sup>216</sup> Va. Dep't of Small Business and Supplier Diversity, Governor Northam Signs Executive Order 35, <https://www.sbsd.virginia.gov/2019/07/11430/>.

<sup>217</sup> This information is derived from communications with those in the field.

As the work of this Commission shows, Virginia spent centuries systematically pursuing racial inequity, oppression, and exclusion. And even today, many policies have failed to account for this history or repair its harms, resulting in the perpetuation of those same inequities. Continuing legal practices end up disadvantaging our communities of color in marked ways, from education funding choices to zoning, from choices about Medicaid and CHIP to choices about where to site undesirable waste or industrial facilities.

These realities have revealed the necessity of elevating the Commission's work to official and permanent status in the Commonwealth of Virginia, so that efforts to address racial inequity in Virginia law extend beyond this moment and this Administration. Therefore, the Commission puts forth the following two recommendations to institutionalize racial equity in Virginia law:

**RECOMMENDATION 1: Codify the Commission as an ongoing Commission of the Commonwealth of Virginia.** The Commission's work so far has barely scratched the surface of a full review of Virginia law and history. Vast swaths of Virginia's policies have yet to be investigated or considered through an equity lens, and the Commission is aware that the work must continue, particularly as the Commonwealth commits to better data collection on many topics. It is therefore recommended that the legislature officially codify the Commission's existence as a permanent Advisory Commission, as defined in §2.2-2100, to outlast any single administration.

**RECOMMENDATION 2: Enact a process that would require examination of proposed legislation with an equity lens.** The Virginia Department of Budget and Planning reviews every potential law in Virginia for its fiscal impact on the Commonwealth. But there is currently no requirement or review process for a law's equity impact. Does a bill disproportionately and negatively impact a racial or ethnic minority community? What unintended consequences might occur? How will a bill's effect either perpetuate or reduce racial disparities? These are questions that our lawmakers should consider with every bill on which they vote, just as they consider a bill's fiscal impact on the budget.



## CONCLUSION AND ACKNOWLEDGMENTS

As described in the introduction, our hope in writing this report and its predecessor is not only to make specific policy recommendations to Governor Northam, but also to contribute to the conversation that Virginians are having about race, equity, and justice. Understanding our past, while at the same time looking clearly at what data and facts tell us about the present, can hopefully move people beyond polarized finger-pointing towards mutual understanding and constructive policy solutions that will make Virginia a fairer and more equitable place for all of our residents.

Despite the breadth of this report and its recommendations, the Commission recognizes that it still has much work to do. The Commission looks forward to planning and executing its 2021 agenda when it hopes to further investigate laws and regulations that contribute directly to inequity in economic achievement and stability. We will review, for example, Virginia's laws and policies on worker rights, consumer protection, debt collection, and other economic areas. As in this work reported here, the Commission will explore these and other areas of statutory and regulatory law that perpetuate racial inequity, and consider specific legislative and policy approaches to addressing identified racial disparities. The Commission will also continue to encourage, welcome, and accept feedback and input from individuals and organizations to help us identify other areas of statutory and regulatory law that perpetuate racial inequity, and require examination and reform.

Lastly, it is important to acknowledge that this report would not have happened without the extraordinary efforts of a number of non-Commission members. In particular, the Commission wants to thank University of Virginia School of Law State and Local Government Policy Clinic students Juliet Buesing, Lukus Freeman, Catherine Ward, and Christopher Yarrell who worked tirelessly on the research and drafting that formed the basis for this report. Your time, effort, and talent made our work easy. In addition, the Commission wants to thanks UVA law students Trust Kupupika, Kelsey Massey, and Wes Williams who contributed to much of the initial research on housing, criminal justice, and voting referenced in this report.

Staff at the Library of Virginia, led by Roger Christman, also worked tirelessly to identify some of the powerful historic images found in the report, including Vince Brooks, Greg Crawford, Kelley Ewing, Mark Fagerburg, Cassandra Farrell, Dale Neighbors, Renee Savits, and Ben Steck. Thank you.

Finally, the Commission wants to thank Governor Northam for appointing us to do this important equity examination of Virginia law, and Grace Kelly, Jessica Killeen, Nathan Dowdy, and James “J.D.” Ratliff, who were the lead staff from the Governor’s office who supported our efforts over the last year.

## APPENDIX A. RELEVANT LEGISLATION

The following bills passed during the regular or special session in 2020, relating to topics of interest to the Commission. By listing them here, we hope to provide additional context to our recommendations above.

### CONFEDERATE MONUMENTS

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[HB1537](#), signed during the 2020 Regular Session, allows localities to remove, relocate, contextualize, or cover any monument or memorial for war veterans on the locality's public property. Since enactment, jurisdictions across Virginia have started to remove a range of confederate monuments.

### VOTING

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Virginia made historic progress in becoming an easier and fairer place to vote:

- [HB1](#): Absentee voting; no excuse required (Permits any registered voter to vote by absentee ballot in any election in which they are qualified to vote). Creates provisions for early voting (“in person absentee” voting).
- [HB108](#) | [SB601](#): Legal holidays; Election Day (Designates Election Day, the Tuesday after the first Monday in November, as a state holiday and removes Lee-Jackson Day as a state holiday).
- [SB65](#): Voter identification; repeal of photo identification requirements (Removes the requirement that voters show a form of identification containing a photograph in order to be allowed to vote).

### HOUSING

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During the 2020 Regular Session, several improvements were made to Virginia's landlord-tenant laws:

- [HB6](#): Preventing source of funds being used as a proxy/basis for discrimination by landlords with a smaller quantity of rental housing. This protects renters who use federal or state programs to finance their housing.
- [HB99](#): Prohibiting discrimination based on a tenant's status as a victim of family abuse.
- [HB519](#): Requiring legal aid information to be included in any termination of tenancy.

- [HB1420](#): Limiting fees for late payment of rent.
- [HB810](#): Creating a stakeholder advisory group to provide recommendations on starting a Virginia housing opportunity tax credit program to fund affordable housing construction.
- [HB1101](#): Allowing certain localities to adopt affordable housing unit dwelling ordinances.
- [SB834](#): Allowing localities to i) establish jurisdiction-wide affordable housing prices ii) establish jurisdiction-wide affordable housing income guidelines, and iii) offer incentives other than density increases to encourage provisions of affordable housing.
- [HB329](#): Requiring legal aid information to be added to lease termination notices.
- [HB393](#): Creating a tenant bill of rights.

The Special Session primarily addressed aspects of the housing crisis brought on by the pandemic:

- [HB5115](#) | [HB5111](#): Bills brought up to pause or limit evictions during the state of emergency
- [HB5119](#) | [HB5120](#): Bills brought up to govern emergency stays in hotels or motels.
- [HB5106](#): Forbids future landlords from considering evictions that occurred during the COVID-19 pandemic against a potential tenant.
- [HB5064](#): Requires landlords to offer a payment plan prior to eviction for overdue rent (only through July 2021)

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## EDUCATION

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Virginia made important progress in addressing injustices in schools this year:

- [HB256](#): Repeal of Disorderly Conduct statute criminalizing classroom misbehavior
- [HB257](#): Repeal of laws requiring principals to report school-based misdemeanors to the police
- [HB697](#) | [698](#) | [703](#): Prohibition on school meal debt discrimination or punishment
- [HB837](#): Creation of guidelines to ensure dress codes are not racially biased
- [HB916](#): Authorization of a Cultural Relevancy Committee to review social history standards

- [HB415](#): Required learning access during suspensions
- [HB1469](#) | [HB1630](#): Certain extensions to provisional license periods for teachers in high-needs areas
- [HB1419](#): Required training for school resource officers
- [HB292](#): Transparency in MOUs between law enforcement and school districts

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## CRIMINAL JUSTICE

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During the 2020 Regular session, bills addressing the following issues were passed:

- [HB35](#) | [SB103](#): Make eligible for parole any offender convicted of an offense as a juvenile who has served 20 years in prison
- [HB995](#) | [SB788](#): Raise the grand larceny value of goods threshold from \$500 to \$1000
- [HB477](#): Raise the age of juvenile transfer to adult courts from 14 to 16
- [HB744](#): Allow a sentencing court to depart from mandatory minimums for juveniles tried as adults
- [HB972](#): Decriminalize simple marijuana possession and provide a civil penalty of no more than \$25
- [HB974](#): Allow for more than one filed writ of actual innocence per case and increases eligibility criteria for filing said writs

During the 2020 Special Session, bills addressing the following issues were passed:

- [SB5007](#): Provides that Courts, rather than juries, shall determine punishment.
- [SB5013](#): Provides that a violation of possession of marijuana by an adult shall be a pre-payable offense.
- [SB5014](#): Minimum training standards for law-enforcement officers; crisis intervention team training.
- [SB5024](#) | [HB5072](#): Authorizes the Attorney General to file a civil suit or otherwise investigate potentially unlawful actions by law enforcement officers or agencies.



- [SB5030](#): Omnibus policing reform bill, including issues of conduct, equipment, and training.
- [SB5033](#) | [HB5062](#): Requires a court in certain circumstances to grant a motion to dismiss made by the Commonwealth's Attorney.
- [SB5034](#): Provides for parole consideration for the terminally ill.
- [SB5035](#) | [HB5055](#): Authorizes a locality to establish a law-enforcement civilian oversight body with binding legal powers.
- [HB5029](#): Requires that any law-enforcement officer intervene with another officer to end the use of excessive force or attempted use of excessive force.
- [HB5043](#): Provides that the Department of Criminal Justice Services (DCJS) and the Department of Behavioral Health and Developmental Services (DBHDS) shall develop and establish a mental health awareness response and community understanding services (Marcus) alert system throughout the Commonwealth.
- [HB5045](#): Adds law-enforcement officers to those persons who are guilty of a felony if they are in a position of authority over and carnally know without force, threat, or intimidation a person detained or arrested by a law-enforcement officer or an inmate, parolee, probationer, juvenile detainee, or pre-trial defendant or post-trial offender.
- [HB5051](#): Provides for officer decertification based on serious misconduct.
- [HB5058](#): Restricts reasons for which an individual can be pulled over for a traffic stop by a law-enforcement officer.
- [HB5069](#): Prohibits a law-enforcement officer from using a neck restraint in the performance of his official duties and provides for disciplinary sanctions on an officer who uses a neck restraint.
- [HB5098](#): Increases the penalty for falsely summoning or giving false reports to law-enforcement officials because of an individual's race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin.
- [HB5099](#): Prohibits any law-enforcement officer from seeking, executing, or participating in the execution of a no-knock search warrant.
- [HB5104](#): Provides for mandatory disclosure to a prospective law-enforcement or jail employer any information related to the prospective officer's prior misconduct or unlawful actions.

- [HB5108](#): Changes the membership of the Criminal Justice Services Board and its Committee on Training by requiring that some members be representatives of a social justice organization, representatives of community interests of minorities, and mental health service providers.
- [HB5109](#): Requires the Department of Criminal Justice Services (the Department) to develop a uniform curriculum and lesson plans for the compulsory minimum entry-level, in-service, and advanced training standards to be employed by criminal justice training academies approved by the Department when conducting training.
- [HB5148](#): Establishes a four-level classification system for the awarding and calculation of earned sentence credits.

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## HEALTH

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During the 2020 Regular Session, a number of bills successfully passed that will aid in reducing health disparities in Virginia. These include:

- [SB903](#): Hospitals; protocols and screening related to substance use disorders and mental health services at emergency department
- [SB818](#): Behavioral health dockets; established.
- [SB280](#): Health insurance; mental health parity; required report.
- [SB279](#) | [HB1549](#): Certificate of public need; criteria for determining need.
- [SB619](#) | [HB74](#): Public schools; mental health awareness training required.
- [SB734](#) | [HB728](#): Residential psychiatric placement and services; SOE, et al., to establish work group.
- [HB1332](#): Statewide Telehealth Plan. Telehealth services; definitions, report.
- [SB172](#) | [HB1251](#): Health insurance; definitions, payment to out-of-network providers, emergency services (banning balance billing; being implemented January 1, 2021)
- [HB42](#): Prenatal and postnatal depression, etc.; importance of screening patients.
- [HB687](#): State-certified doulas; certification, registry.
- [HB826](#): State plan for medical assistance; payment for services provided by certified doulas.

- [HB907](#): Sickle cell anemia; treatment.
- [SB301](#): Medically underserved areas; transporting patients to 24-hour urgent care facilities.
- The Biennial Budget adopted during the regular legislative session included many health initiatives that were “unallotted” in the April 2020 veto session, due to revenue concerns related to COVID-19. However, many of those initiatives were included and re-funded in the budget adopted during the legislature’s 2020 special session. Adopted items that address racial inequity include the elimination of the 40-quarter work history requirement, which limits legal immigrants’ access to Medicaid; the extension of Medicaid and FAMIS post-partum coverage from 60 days to 12 months to address maternal mortality concerns; and a comprehensive Adult Dental Benefit in Medicaid.

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## ENVIRONMENTAL JUSTICE

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The following provides a summary of bills passed by the General Assembly in the 2020 Regular Session:

- [SB406](#) | [HB704](#): Environmental Justice; definitions, agency regulations, Virginia Environmental Justice Act, policy.
- [HB1042](#): Environmental Justice, Virginia Council on; established.
- [HB1162](#): Environmental Quality, Department of; definition of environmental justice.
- [HB1164](#): Environmental Quality, Department of; policy statement.
- [HB1605](#): Partition of property; in partition actions the court shall order an appraisal of property.
- [SB1075](#): Environmental Quality, Department of; public comment.
- [HB572](#) | [SB710](#): Distributed solar & other renewable energy; sales of electricity under third-party agreements.
- [HB528](#): Electric generation facilities; SCC shall determine retirement of facilities.
- [HB981](#) | [SB1027](#): Clean Energy and Flood Preparedness Act; definitions, funds, report.
- [HB1526](#) | [SB851](#): Electric Utility Regulation; environmental goals.
- [HB394](#): Diversity, Equity, and Inclusion, Director of; position created.

- Previously existing via [Executive Order 29](#), [SB1042](#) made the Virginia Council on Environmental Justice (“CEJ”) a permanent advisory committee.

#### AGRICULTURAL EQUITY

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In the 2020 Regular Session, the General Assembly passed [HB1605](#), which incorporated major parts of the Uniform Partition of Heirs’ Property Act, consisting of provisions designed to protect the owners of heirs’ property during partition proceedings.

## **APPENDIX B. COMMISSION'S LETTER ON POLICING**





# *COMMONWEALTH of VIRGINIA*

## *Office of the Governor*

Commission to Examine  
Racial Inequity in Virginia Law

August 6, 2020

The Honorable Ralph S. Northam  
Governor, Commonwealth of Virginia  
1111 East Broad Street  
Richmond, Virginia 23219

Dear Governor Northam:

Per your charge to the Commission to Examine Racial Inequity in Virginia Law on June 11, 2020 that the Commission develop a set of legislative or policy recommendations to facilitate needed reforms of law enforcement practices. The Commission has been hard at work to develop such a set of recommendations. Specifically, with the help of research provided by students from the University of Virginia School of Law, and contributions and public comments received from a range of stakeholders, the Commission,<sup>1</sup> over the course of meetings on June 17, 2020, July 1, 2020, and July 22, 2020, forged a series of legislative and policy recommendations for your consideration. This letter details those recommendations that, in general, fall into the following four categories: (1) Transparency; (2) Accountability; (3) Safety; and (4) Policy/Budget Initiatives.

### **I. INTRODUCTION**

The Commission comes to this task in the aftermath of acts of police violence that, of course, demand a response and re-affirm data showing that African Americans are disproportionately arrested, injured and killed by police compared to white people. The Commission has also approached this work within the broader context of an examination of practices and policies in the Commonwealth that have negatively and disparately impacted people of color across almost all areas of life.<sup>2</sup>

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<sup>1</sup> For the research and analysis supporting these recommendations see materials from the June 17<sup>th</sup>, July 1<sup>st</sup>, and July 22<sup>nd</sup> meetings of the Commission, which is available at the Commission's website:

<https://www.governor.virginia.gov/racial-inequity-commission/>.

<sup>2</sup> See materials from May 21<sup>st</sup> meeting of the Commission, including memo and presentation detailing racial disparities in Virginia in the areas of housing, education, criminal justice, and health, which is available at the Commission's website: <https://www.governor.virginia.gov/racial-inequity-commission/>.

While the responses we propose are, we think, necessary state legislative mandates, rules, and models, the Commission fully appreciates that legislation only goes so far. In addition to the changes proposed below, and others that you and the legislature may consider, the Commission believes necessary change must also come from the personal and professional commitment of each and every law enforcement agency leader and those who elect or appoint them. This change must help their departments rise to the challenge of this moment and transform their role and relationship with the communities they serve from, to paraphrase Bryan Stevenson, an occupying force to trusted “guardians.”

This level of change is cultural and relational, and something that no law can mandate. Therefore, the Commission supports the leadership that some members of the law enforcement community are already taking to realize that kind of change. The Commission also champions various non-legislative efforts to bring this change about. For example, the Commission encourages programs to promote mutual trust by bringing police and residents in heavily-policed communities together in non-enforcement community/social activities; police ride-along programs that better orient community members to the challenges of policing and needs of officers; intensifying efforts to make police forces more diverse in terms of race, ethnicity, gender, cultural background and language; involvement of citizens in policy and strategy development for dealing with crime in high-crime communities; as well as expanding resources for law enforcement officers' emotional and mental health.

## **II. DATA COLLECTION AND TRANSPARENCY**

- 1. Require local law enforcement data reporting on use of force, pedestrian stops, all civilian complaints (amending the Community Policing Act, Va. Code § 52-30.1.), and enact an enforcement mechanism for local agency data reporting requirements.**

Comment: The Commission recommends adding data collection on pedestrian stops to the recently passed Community Policing Act (CPA), as well as requiring the collection of demographic data and narrative information regarding any use of force, and civilian complaints, which may include complaints of unjustifiable stops or searches, harassment, or profiling. The Commission also proposes adding an enforcement mechanism to both incentivize appropriate data collection and hold accountable agencies that fail to follow statutory requirements.

- 2. Establish a public, free database of downloadable data elements from data collected under the Community Policing Act.**

Comment: The CPA makes great strides in improving statewide collection of data and thereby improves transparency in policing. However, under the CPA, this data still goes solely to the Department of Criminal Justice Services (DCJS) and the Virginia State Police. Currently, this data only gets reported out to the public on an annual basis, in a report in which analysis has already been conducted and conclusions already drawn. Researchers

strongly recommend improving public trust, law enforcement research, and police accountability by allowing the public to download and work with police department data directly.

- 3. Create more public transparency regarding law enforcement officer misconduct involving improper use of force and criminal investigations of law enforcement officer conduct.**

Comment: Due to broad records protection laws created by Freedom of Information Act exemptions, Virginians have been effectively barred from accessing internal affairs investigative files, personnel files, and non-active criminal investigative files about law enforcement officers. As a result, Virginia police are generally exempt from ordinary government and public oversight. The Commission recommends legislation to promote greater transparency.

### **III. ACCOUNTABILITY**

- 4. Mandate and empower civilian review boards to investigate and address complaints of misconduct, including the use of professional staff, subpoena power, and authority to make recommendations on discipline.**

Comment: Many advocates and organizations, including many local governments, are currently calling for mandated civilian complaint review boards (CCRBs) with investigative, auditing, and/or disciplinary authority across the Commonwealth. The Commission, when discussing this issue, recognized both the value of citizen engagement and the need for full-time professional staff if CCRBs were to be successful. While acknowledging that there are costs and benefits to any approach, both in terms of fiscal impact and community value, the Commission recommends the establishment of CCRBs across the Commonwealth, with professional staff, subpoena power, authority to investigate civilian complaints, and pre-established agreements with local law enforcement agencies to make discipline recommendations based on the outcomes of those investigations.

- 5. Create civil liability for bias-based profiling, as defined by the Community Policing Act (CPA).**

Comment: The CPA includes a welcome prohibition of racial profiling by law enforcement on the basis of race and ethnicity, as well as age and gender. While the CPA is a good start for Virginia, additional provisions should be added to make the law enforceable, such as creating express civil liability for officers who illegally profile civilians or their employers. Racial profiling laws, when enforceable, can provide important rights to people who are left behind by gaps in federal constitutional enforcement.

**6. Provide additional decertification criteria for law enforcement officers based on repeated or serious misconduct or dishonesty.**

Comment: Virginia law currently provides for the decertification of law enforcement officers who fail to complete training requirements, who are found to use drugs, or who are convicted of certain crimes. It does not provide for the decertification of officers who have been found to violate department policy or regulations, or who have a record of misconduct or integrity violations. Expanding the law to also provide for decertification when officers engage in serious misconduct, or demonstrate dishonesty and lack of integrity, will make it easier for local departments to remove problem officers, and make it harder for such officers to move from department to department and avoid accountability.

**7. Give the Office of Attorney General concurrent jurisdiction to investigate and prosecute serious criminal allegations against law enforcement officers, without the need for consent from the local Commonwealth's Attorneys.**

Comment: Currently, investigation and prosecution of criminal allegations against a police officer are handled by the local prosecutor, who may personally know the involved officer and whose investigation, and prosecution (if any), may be tainted, at a minimum, by the appearance of bias, if not actual bias. To restore public faith in the independence and reliability of such prosecutions, the legislature should grant the Attorney General concurrent, but superseding, authority to investigate and prosecute serious criminal allegations against law enforcement officers.

**8. Strengthen civil liability and limit sovereign immunity protections, for both law-enforcement officers engaged in misconduct and their employers.**

Comment: The doctrine and codification of sovereign immunity can all too often shield law enforcement officers and those who employ them from appropriate civil liability for harm they may cause to members of the public. The Commission recommends, accordingly, that you propose, or support, legislation instituting or permitting some degree of civil legal liability for law enforcement officers, and their employing entities. So as to ensure that abuses of force, physical violence, and intentional tortious actions are met with accountability, and that employers are held accountable for failure to exercise a defined level of care in hiring, training, and retaining officers who abuse their authority to the detriment of the public.

#### **IV. MAKE POLICING SAFER**

- 9. Require development of state model use-of-force policies with minimum requirements to be adopted by law enforcement agencies that address the following: limitations or bans on the use of chokeholds; warnings before shootings; reducing force as a threat subsides; creating duties to intervene to prevent use of excessive force and provide medical aid; and limiting use of force to execute non-violent felony or misdemeanor arrests.**

Comment: The Commission proposes that you recommend legislation requiring DCJS to create a model use-of-force policy for distribution to local law enforcement agencies, and further requiring all law enforcement agencies to adopt a use-of-force policy that includes mandatory provisions addressing the matters set forth in the recommendation above.

- 10. Expand community membership on the Department of Criminal Justice Services (DCJS) law enforcement training committee.**

Comment: Under current law, the membership of DCJS' Training Committee – the body charged with establishing training standards for law enforcement professionals across the Commonwealth – is reserved almost exclusively for law enforcement professionals, with only one seat on the Committee for a “citizen representing community interests.” Adding more diverse community voices to the training committee will better ensure community priorities are reflected in the training requirements for law enforcement officers.

- 11. Further limit the use of no-knock warrants (“Breonna’s Law”).**

The recent shooting of Breonna Taylor, an EMT asleep in her own home, by plain-clothes police officers, has drawn national attention to the problem of the so called ‘no-knock warrant.’ The Commission recommends that you propose or support legislation further limiting the use of such warrants.

- 12. Conduct a comprehensive review of the number and nature of arrestable offenses in Virginia law and recommend reductions in the number of arrestable offenses where the findings warrant.**

Comment: Like no-knock warrants, arrests risk substantial physical harm or injury, indignity, and deprivation of constitutional rights, often for offenses that do not justify this risk. Scholars increasingly argue that many arrests are unnecessary to promote public safety, even when criminal charges may be appropriate as sanctions. Requiring certain low-level offenses to be charged by summons rather than arrest avoids the physical risks of a forceful encounter and encourages police officers to focus their authority on more pressing risks to public safety.



## **V. OTHER TOPICS & NON-LEGISLATIVE CHANGES**

### **13. Study police militarization.**

Comment: Over recent years law enforcement has increasingly obtained military-style equipment and employed military-style tactics during everyday law enforcement. While the Commission recognizes that such equipment and tactics may well be necessary during extreme circumstances, the Commission is also concerned that such equipment and tactics, when available, are deployed, at times, in an unsafe manner. Accordingly, the Commission recommends that the Joint Legislative and Audit Review Commission or other appropriate body study the issue of state funding of the militarization of police in Virginia and make recommendations regarding any necessary changes to current practice.

### **14. Study reallocation of policing funds.**

Comment: Increasingly, law enforcement has been called upon to address social problems such as homelessness, untreated mental illness, or student misbehavior in school. These social problems may be better handled by professionals trained to address those specific problems rather than by a law enforcement officer. The Commission recommends a study of state spending on state and local law enforcement to determine whether and how best to reallocate some portion of those funds to human service interventions better targeted at addressing these underlying community challenges.

### **15. Incentivize Early Warning System pilot programs.**

Comment: Early Warning Systems<sup>3</sup> are highly effective local law enforcement programs that flag problem officers for intervention early in their careers, and ideally before they abuse their positions. This change may be best expressed as a budget item to establish several pilot programs in localities across the state.

### **16. Adjust police training requirements.**

Comment: Given the need for safer and more constructive community and police relations, and the likelihood of new practices, policies, and legal obligations, transforming the training of law enforcement should be an urgent priority.

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<sup>3</sup> For more information on Early Warning Systems see Samuel Walker et al., *Early Warning Systems: Responding to the Problem Police Officer*, *National Institute of Justice* (2001), <https://www.ncjrs.gov/pdffiles1/nij/188565.pdf>.

## **17. Encourage diversity in law enforcement.**

Comment: To build stronger bridges between law enforcement agencies and the communities they serve, the Commission recommends measures to support the recruitment, hiring, and retention of members of those communities as local law-enforcement officers.

## **CONCLUSION**

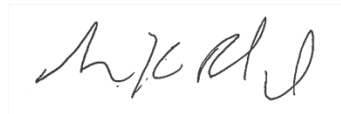
The Commission is grateful for the opportunity to serve you and your administration, and to have the chance to contribute to the important conversations taking place right now about how to better keep our communities safe. The recommendations set forth above result from the Commission's hard, unflinching look at the undisputable facts of racially disparate treatment of citizens at the hands of law enforcement, with the concurrent recognition of the value and need for good, fair, effective policing. The Commission submits that this kind of focus is a critically necessary exercise in the honest confrontation and assessment of the historical racism that continues to influence our laws, our practices, and our community relationships. We look forward to applying this approach to the other areas of racial inequity that continue to impede our progress toward becoming a more fair and just Virginia.

On behalf of the all of the members of the Commission to Examine Racial Inequity in Virginia Law, thank you for your consideration.

Sincerely,



Cynthia Hudson  
Commission Chair



Andrew Block  
Commission Vice-Chair



BACK COVER: BPOS Foundation, Inc. (Be Part of the Solution, Inc.), Fairfield Court Elementary School in Richmond, VA (Feb. 29, 2016).

<http://www.bposfoundation.com/fairfield-court-elementary-school-richmond-va.html>



