
You're Invited: Commission to Examine Racial Inequity in Virginia Law Meeting

John Whaley <jhwhaleyis@gmail.com>

Sat, Jun 20, 2020 at 3:02 PM

To: "Kelly, Grace" <grace.kelly@governor.virginia.gov>

Grace: Thanks for the info re the UTube recording. I found it very interesting and I want to participate. I was struck by Prof. Robinson's observation that the police in the US in a year perform 10,000,000 arrests and only 5% or less involve serious crime. This clearly suggests that police contact with the public almost always occurs in a non-violent setting and underlines the importance of the concept of community policing. Police and community need to understand each other. So this reminds me of police-ride-along opportunities that pair a civilian volunteer with a police officer for broader engagement with the public. A google search of police-ride-along indicates many American cities, including Fairfax County, Richmond and Virginia Beach offer these programs as a way to educate interested citizens on how police do their jobs. Has anyone researched outcomes from these programs? How many members of minority communities have participated? From what I heard in the meeting, based on the slides that informed discussion of problems and proposed solutions, civilian participation involved review of use of force, training academies, police misbehavior and a role for social workers and psychologists. Ride-along plans could provide interaction with individual police officers that help both the officers and the citizen gain a better understanding of their respective roles in establishing a fair, safe and just community. I would appreciate your sharing my thoughts with the chair and members of the commission.

J. Whaley

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Memorandum

Date: July 14, 2020

To: The Commission to Examine Racial Inequity in Virginia Law

From: Kenneth Gilliam, Jr., Policy Director, New Virginia Majority

Re: Identifying Additional Legislative Steps for the 2021 Legislative Session

As an organization that seeks to empower and lift up the voices of some of Virginia's most vulnerable communities, New Virginia Majority (NVM) applauds the work of the Commission to Examine Racial Inequity in Virginia Law (Commission) to create a more equitable and welcoming Commonwealth. We reviewed the Commission's policy recommendations and believe they will move Virginia forward.

Below, are our recommendations in the following areas: Housing, Criminal Justice, Voting Rights, and Health. We also included recommendations for Environmental Justice. Although not a current priority area of the Commission, we strongly believe it should be more thoroughly considered as a policy pathway for improving the health, economic conditions, and climate resilience of low-income communities and communities of color in Virginia.

Housing

Our policy recommendations closely mirror the Commission's. The focus is on data collection, the creation of affordable housing, and eviction prevention. The Commission provides multiple courses of action of note under the respective topics, including subsidized lending. Here are additional measures to consider:

Prohibit Predatory Practices

- **Recommendation:** Prohibit predatory practices from renting companies (including lawsuits, excessive fees) and landlords that unfairly target low income renters and coerce them into vacating or threatening eviction, and codify penalties for such actions.¹²³

Rent Control

- **Recommendation:** Implement rent control policies. The COVID-19 pandemic and economic recession have made housing stability for extremely low- and very low-income renters across the Commonwealth more difficult.⁴ Even before both crises, about 87 percent of extremely low-income renter households⁵ and about 81 percent of very low income households⁶ were cost burdened in Virginia-- spending more than 30 percent of their income on housing and utilities.⁷ Meanwhile, 70 percent of extremely low-income renter households⁸ and about 33 percent of very

¹ <https://www.courthousenews.com/tenants-kushner-owned-real-estate-fight-predatory-fees/>

² <https://theintercept.com/2020/04/04/jared-kushner-real-estate-company-evictions/>

³ <https://richmondbizsense.com/2019/06/20/kushner-enters-richmond-market-98m-apartments-deal/>

⁴ <https://nlihc.org/sites/default/files/Need-for-Rental-Assistance-During-the-COVID-19-and-Economic-Crisis.pdf>

⁵ https://nlihc.org/sites/default/files/SHP_VA.pdf

⁶ https://nlihc.org/sites/default/files/SHP_VA.pdf

⁷ https://nlihc.org/sites/default/files/SHP_VA.pdf

⁸ https://nlihc.org/sites/default/files/SHP_VA.pdf



low-income households⁹ were severely cost burdened-- spending more than half of their income on housing and utilities.¹⁰ Implementing rent control policies can help bring stability to the rental market and reduce mass displacement of low-income renters in quickly gentrifying communities.

¹¹

Criminal Justice

The policy recommendations proposed in the criminal justice section are strong recommendations that New Virginia Majority has agreed with and advocated for this past session. The Commission acknowledged that Virginia's criminal justice has far reaching consequences for people of color and creates negative disparities across multiple stages of the legal process and shares our position that the lack of data is a contributing factor to these disparities. New Virginia Majority invested much effort in support of bills calling for data collection on bail determinations and pretrial detention. The Commission also referenced mandatory minimum sentencing and specifically referenced a defeated bill that called for a study of all mandatory minimum sentences in Virginia's code, which New Virginia Majority also supported. The final recommendation presented is a good recommendation to help remove incentives that detain and criminalize. As mentioned in the memo, this list is not meant to be exhaustive or comprehensive, and in that spirit here are other potential recommendations:

Public Safety and Policing

- **Recommendations:**

- "Ban Warrior Training"- Warrior training teaches police to have a "readiness to kill" and to view community members as threats¹²¹³;
- Implement a Last Resort Use of Force Policy- All police departments should have clearly defined use of force policies that emphasize deescalation tactics, lethal force only as a last option, and a duty to intervene clause, if officers witness their fellow officers' failure to meet the policy standards. Camden County Police Department in New Jersey has a [similar policy](#)¹⁴; and
- Collect and publish data on uses of force (lethal and non- lethal) annually.

For-Profit Jails, Prisons, and Immigration Detention Centers

- **Recommendation:** End the use of for-profit jails, prisons, and immigration detention centers, which incentivizes mass incarceration and exploits the labor of incarcerated individuals.¹⁵

Sentencing

- **Recommendation:** Engage in restorative justice practices like expungement, clemency, sentence reductions and retroactive sentencing that both reflect Virginia's current sentencing guidelines

⁹ https://nlihc.org/sites/default/files/SHP_VA.pdf

¹⁰ https://nlihc.org/sites/default/files/SHP_VA.pdf

¹¹ <https://nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>

¹² <https://harvardlawreview.org/2015/04/law-enforcements-warrior-problem/>

¹³ <https://www.businessinsider.com.au/bulletproof-dave-grossman-police-trainer-teaching-officers-how-to-kill-2020-6>

¹⁴ <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5d5c89c2e3bc4c000192f311/1566345667504/CCPD+UOF+Policy+%288.21.19%29+%28FINAL%29.pdf>

¹⁵ <https://www.nationalreview.com/2017/01/prison-labor-laws-wages/>



and rights past wrongs in the criminal legal system. This occurs on the [federal level](#)¹⁶ with certain drug offenses and would be applicable for marijuana convictions in Virginia.

Voting Rights

The 2020 General Assembly session resulted in multiple bills that ease voting restrictions and increase voter access. The Commission's recommendation of collecting more data and considering broader questions around voting in precincts of color will be important to fully addressing voting inequities. We agree that ending the practice of felony disenfranchisement by passing a constitutional right to vote is an important policy change. Here is an additional measure to consider:

State Preclearance Requirements

- **Recommendation:** Establish a state preclearance requirement to protect voting rights. The passage of the Voting Rights Act (VRA) of 1965 helped ensure that state and local governments could not deny citizens their right to vote based on their race, color, or membership in a minority language group.¹⁷ In *Shelby County v. Holder*, the United States Supreme Court invalidated a key provision of the VRA that required jurisdictions with a history of discrimination to obtain approval before changing voting rules.¹⁸ As a result, it is critically important for Virginia to pass a state-level preclearance requirement to ensure that voters of color are protected, given such uncertainty at the federal level.

Health

Healthcare access in Virginia, no more important than during the current COVID-19 pandemic, has improved with a record enrollment in Medicaid since the March 12th state of emergency declaration [[19](#)]. The recent expansion of Medicaid in Virginia has helped save countless lives to-date, providing coverage to an additional 400,000 Virginians. But, drastically reducing poorer generational health outcomes for low-income individuals and people of color and eliminating existing barriers to consistent, affordable healthcare coverage will not occur in Virginia without a federal or state public health insurance program that benefits all Virginians regardless of employment or immigration status [[20](#)]. Here is an important measure to consider:

Increasing Availability of Health Insurance

- **Recommendation:** Direct the Joint Legislative Audit and Review Commission (JLARC) or a qualified entity to study the feasibility of establishing a state-based universal health care system that provides comprehensive coverage and health benefits to state residents regardless of immigration or employment status and focuses on addressing the racial and income disparities in health outcomes across the Commonwealth. This study is much needed, with Virginia's uninsured rates around 26% and 22% respectively for Latinx and Black nonelderly people [[21](#)]. Nationally,

¹⁶ <https://www.ussc.gov/research/data-reports/retroactivity-analyses-and-data-reports>

¹⁷ <https://www.brennancenter.org/issues/ensure-every-american-can-vote/voting-reform/voting-rights-act>

¹⁸ <https://www.brennancenter.org/issues/ensure-every-american-can-vote/voting-reform/voting-rights-act>

¹⁹ [Virginia sees historic Medicaid enrollment during COVID-19 pandemic](#)

²⁰ [400,000 Virginians Enrolled in Health Coverage Through Medicaid Expansion](#)

²¹ [Virginia: Distribution of the Nonelderly Uninsured by Race/Ethnicity \(2018\)](#)



the Latinx population's higher rates of being uninsured have been linked to their lack of access to employment-based insurance, and undocumented Latinx healthcare seekers are excluded from participating in federally-subsidized insurance plans or purchasing health plans with Medicaid benefits and federal subsidies [22]. During the 2020 legislative session, HB529 would have commissioned a study of the feasibility, merits, and challenges of establishing a state-based universal health care system in Virginia, but it was left in the House Rules Committee.

Environmental Justice

In the absence of federal momentum on climate change and an unprecedented initiative to weaken federal environmental laws led by the federal administration [23], many states, including Virginia, have taken efforts to enact laws on energy generation, transportation infrastructure, building construction, and agricultural production that prioritize climate change mitigation. With the recent passage of the Virginia Clean Economy Act, the Environmental Justice Act, and codification of the state's Virginia Council on Environmental Justice, there is greater statutory foundation than ever before to address and prevent environmental injustices across the state. It is vital for the state to prioritize a *just transition* in its climate change mitigation strategy to ensure that it benefits all Virginians, especially in lieu of the adverse impacts of COVID-19 on Black communities with higher exposures to toxic pollution [24][25][26]. Here are some valuable environmental justice measures worthy of consideration:

Environmental Impact Reports

- **Recommendation:** In alignment with the Virginia Environmental Justice Act and updates to DEQ directives [27], require state agencies, boards, authorities, commissions, and any branches of state government to include potential environmental justice impacts of any major state projects in the development and review of environmental impact reports and within the State Environmental Review Process (SERP)[28] [29]. Environmental justice impacts should also be considered in feedback provided to the federal government on federal projects being reviewed under the National Environmental Policy Act (NEPA). Any significant environmental justice impacts found in proposals for state projects should be addressed and/or mitigated through modification of the projects when feasible. (§ 10.1-1188.)

²²[Key Facts about the Uninsured Population](#)

²³ [The National Environmental Policy Act \(NEPA\)](#), among other historic environmental laws, NEPA has recently been targeted by the administration during the coronavirus pandemic. As of [June 4, 2020](#), the executive administration encouraged federal agencies to identify pathways from “expediting”, via emergency authorities, permitting processes that require environmental reviews that are essential for integrating public review and feedback in the federal decision-making process on major energy and transportation projects. The Executive Order 12898, published by the Clinton Administration in 1994, is a major federal environmental justice protections, as it requires federal agencies to consider environmental justice in all of their activities, and it is specifically operationalized through NEPA’s environmental assessments of federal projects.

²⁴ [Just Transition](#): a climate justice framework that has traditionally argued for a “fair and equitable process of moving towards a post-carbon society” that centers on “promoting a jobs-based solution to the transition to a post carbon society.”

²⁵[Climate Justice Alliance: Just Transition Principles](#)

²⁶[Harvard T.H. Chan School of Public Health: Exposure to air pollution and COVID-19 mortality in the United States \(April 2020\)](#)

²⁷[Dept of Environmental Quality \(DEQ\): With the enactment of HB1162 on July 1, 2020, DEQ’s directives now include a definition of environmental justice and mandate to further it in its statement of policy.](#)

²⁸[Procedures Manual Environmental Impact Review of Major State Facilities \(Oct 2018\)](#)

²⁹[State Environmental Review Process: Via a Memorandum of Agreement \(MOA\), the Secretaries of Natural Resource and Transportation have established the State Environmental Review Process \(SERP\) for review and comment on highway construction projects. \(§ 10.1-1188.\)](#)



Equitable Development of New Green Jobs Workforce

- **Recommendation:** Provide more comprehensive guidance and additional funding to state agencies developing and overseeing job creation, job training, and apprenticeship programs in offshore wind, solar, energy efficiency, and other related “green” fields. Guidance should require examination and elimination of immediate barriers to entry into these emerging industries (*e.g. lack of “shovel ready” jobs, occupational segregation, educational costs, reliable transportation, employment discrimination*) for low-income individuals, people of color, workers from fossil-fuel dependent economies, underserved youth, and returning-citizens. This also means accounting for the relationship between job demand and subsidized workforce training to prevent prolonged unemployment or inconsistent employment [30]. Additionally, this guidance should identify options for prioritizing (*e.g. reserved enrollment slots, industry outreach, hiring practices*) and financially supporting (*e.g. full-tuition, grants, scholarships, housing, transportation, hiring bonuses*) the attainment of credentials, post-secondary education, workforce training, and family-sustaining careers in these fields for the aforementioned populations to increase their completion of job programs and retention of positions [31].
- **Recommendation:** Align eligibility requirements of the Green Jobs Tax Credit with language in the Virginia Clean Economy Act (VCEA) that requires Dominion Energy to consider options for prioritizing the hiring, apprenticeship, and training of local workers, workers from historically economically disadvantaged communities (HEDC), and veterans in the construction of new renewable energy facilities [32] [33]. Requiring businesses that are eligible for the tax credit to prioritize options for hiring workers from these populations in the process of job creation will continue to facilitate the direct inclusion of these workers in these new emerging industries. This criteria will help avert occupational segregation in these sectors and build wealth among populations historically excluded from new economic activity due to prejudiced zoning, employment, and educational practices in the Commonwealth. (§ 1-439.12:05.)

³⁰ [Environmental Law Institute: Environmental Justice, Just Transition, and a Low-Carbon Future for California \(March 2020\)](#)

³¹ [The Virginia Clean Economy Act](#) includes foundations for justly creating green job workforce: (1) directs Department of Mines, Minerals, and Energy (DMME) to allocate 50% of deficiency payment revenues, from utilities that do not meet their renewable portfolio standard targets, to job training programs in Historically Economically Disadvantaged Communities (HEDC), (2) directs the State Corporation Commission (SCC), DMME, and Virginia Environmental Justice Council to develop job training programs and determine the benefits of those programs for HEDC’s, local workers, veterans, and individuals from Virginia’s coal field regions, and (3) directs the phase I utility, in the construction of offshore wind facilities, to develop and submit a workforce development plan to the SCC that outlines job creation and economic development benefits of a project and opportunities to advance the Commonwealth’s workforce and economic development goals; this plan must prioritize benefits to local workers, HEDCs, and veterans.

³² [Green job creation tax credit](#). Sunset date for tax credit was recently extended to January 1, 2025.

³³ [The Virginia Clean Economy Act](#) defines “historically economically disadvantaged community” as (i) a community in which a majority of the population are people of color or (ii) a low-income geographic area. “Low-income geographic area” is defined as any locality, or community within a locality, that has a median household income that is not greater than 80 percent of the local median household income, or any area in the Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.