

Police Oversight and Accountability in Virginia



A Report of the
Virginia Advisory Committee to the
U.S. Commission on Civil Rights

June 2023

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states, the District of Columbia, and five U.S. territories. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. They are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Acknowledgments

The Virginia Advisory Committee (Committee) would like to acknowledge the speakers who presented during the Committee's series of public meetings taking place between July 2021 and May 2022, as the Committee worked to understand broad and diverse perspectives on the civil rights impact of police oversight and accountability in Virginia. The Committee is also grateful to those who contributed to this work during public comment and via written testimony.

Letter of Transmittal

The Virginia Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding police oversight and accountability measures in Virginia. The Committee submits this report as part of its responsibility to study and report on civil-rights issues in the Commonwealth of Virginia. The contents of this report are primarily based on testimony the Committee heard during a series of eight public meetings held via videoconference between July of 2021 and May of 2022. The Committee also includes related testimony submitted in writing during the relevant period of public comment.

This report begins with a brief background of the issues to be considered by the Committee. It then presents primary findings as they emerged from this testimony, as well as recommendations for addressing areas of civil-rights concerns. This report is intended to focus on civil-rights concerns regarding police oversight and accountability in the Commonwealth. Specifically, the Committee sought to examine the role current accountability structures have in ensuring equal protection of the laws and in the administration of justice, and the impact they may have on any disparities in police contact and use of force based on race, color, sex, disability, and national origin. While additional important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil-rights mandate are left for another discussion.

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Statement from the Chair

The women and men of law enforcement have an incredibly difficult yet vitally important job to protect our citizens and maintain good order. They also are the front-line guardians of our liberties. Their service and sacrifice are deserving of our respect, admiration, and appreciation. The overwhelming majority of officers are decent, ethical, and dedicated public servants, which makes it all the more devastating when incidents occur that break the covenant of trust between citizens and law enforcement.

It is for these reasons that every effort must be made to ensure best practices in policing are established, maintained, and followed to avoid these incidents and patterns so as to protect our civil rights and freedoms. The good people of Virginia deserve our collective commitment to a law enforcement system that exists to serve and protect and is devoted to the greatest principles of fairness and equality. The Committee intends that the recommendations put forth in this report are considered by the U.S. Commission on Civil Rights and relevant stakeholders in the Commonwealth in order to fulfill said principles.

Raul Danny Vargas
Chair, Virginia Advisory Committee

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Overview

On February 18, 2021, the Virginia Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) adopted a proposal to undertake a study of police oversight and accountability in the Commonwealth. The focus of the Committee’s inquiry was to examine law enforcement accountability and oversight structures in Virginia to better understand their effectiveness and impact. From a civil rights perspective, the Committee sought to consider the role such accountability structures have in ensuring equal protection of the laws and in the administration of justice, and the impact they may have on any disparities in police contact and use of force based on race, color, sex, disability, and national origin.

As part of this inquiry the Committee heard testimony via videoconference held in a series of eight public meetings that took place between July 2021 and May 2022.¹ The following report results from a review of testimony provided at these meetings, combined with written testimony submitted during this timeframe. It begins with a brief background of the issues to be considered by the Committee. It then identifies primary findings as they emerged from this testimony. Finally, it makes recommendations that address related civil rights concerns. This report focuses on civil rights and police accountability structures in Virginia. While other important topics may have surfaced throughout the Committee’s inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion. This report and the recommendations included within it were adopted by a unanimous vote of the Committee members present at the Committee meeting on May 31, 2023.²

¹ Meeting records and transcripts are available in Appendix A.

Briefing before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, July 16, 2021, (web-based), Transcript (hereinafter cited as “Transcript 1”).

Briefing before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, August 18, 2021, (web-based), Transcript (hereinafter cited as “Transcript 2”).

Briefing before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, November 16, 2021, (web-based), Transcript (hereinafter cited as “Transcript 3”).

Briefing before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, December 14, 2021, (web-based), Transcript (hereinafter cited as “Transcript 4”).

Briefing before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, March 25, 2022, (web-based), Transcript (hereinafter cited as “Transcript 5”).

Briefing before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, April 11, 2022, (web-based), Transcript (hereinafter cited as “Transcript 6”).

Briefing before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, April 27, 2022, (web-based), Transcript (hereinafter cited as “Transcript 7”).

Briefing before the Virginia Advisory Committee to the U.S. Commission on Civil Rights, May 17, 2022, (web-based), Transcript (hereinafter cited as “Transcript 8”).

² See Appendix C for Committee Member Statements.

Background

In 1981, the U.S. Commission on Civil Rights issued a report on police practices in America entitled *Who is Guarding the Guardians?*³ Twenty years later the Commission issued a follow-up report, *Revisiting Who is Guarding the Guardians?*⁴ Both reports raised troubling concerns about police practices that undermine equal protection under the law. The Virginia Advisory Committee itself released a report in 2000 detailing concerns regarding unequal protection of African Americans in the state.⁵ As it relates specifically to police accountability, among the Committee’s findings was a “perception widely spread in the African American community that the internal review of police misconduct is biased and unreliable as an avenue of grievances, further eroding trust in the law enforcement system.”⁶

The U.S. Department of Justice reports that there are approximately 18,000 federal, state, county, and local law enforcement agencies in the U.S., though “the decentralized, fragmented, and local nature of law enforcement in the United States makes it challenging to accurately count the number of agencies and officers.”⁷ Police accountability measures are similarly fragmented and difficult to track. A 2020 investigation by National Public Radio (NPR) into a number of high-profile police killings across the United States found that many of the involved officers had previously been implicated in “two – sometimes three or more – shootings, often deadly and without consequences.”⁸ NPR’s investigation also revealed multiple incidents of officers being hired or retained despite drug use and domestic violence convictions, battery and obstruction charges, multiple citizen complaints, and citations for ethics violations.⁹

Police Accountability in Virginia

The Virginia-Law Enforcement Officers Procedural Guarantee Act lays out a comprehensive list of minimum rights accorded to law enforcement officers in Virginia facing any investigation that could lead to their “dismissal, demotion, suspension, or transfer for punitive reasons.”¹⁰ Minimum guarantees protecting civilians in the case of police misconduct under Virginia state

³ U.S. Commission on Civil Rights, “Who is guarding the guardians?” (October 1981), at: <https://babel.hathitrust.org/cgi/pt?id=uc1.32106015219253&view=1up&seq=6>.

⁴ U.S. Commission on Civil Rights, “Revisiting who is guarding the guardians?” (November 2000), at: <https://permanent.fdlp.gov/lps13614/www.usccr.gov/pubs/guard/main.htm>.

⁵ Virginia Advisory Committee to the U.S. Commission on Civil Rights: “Unequal Justice: African Americans in the Virginia Criminal Justice System” (April 2000), at: <https://www.usccr.gov/pubs/sac/va0400/main.htm>

⁶ Ibid.

⁷ National Sources of Law Enforcement Employment Data: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Program Report (revised October 2016), at: <https://www.bjs.gov/content/pub/pdf/nsleed.pdf>.

⁸ National Public Radio, Special Series: America Recons with Racial Injustice. Fatal Police Shootings of Unarmed Black People Reveal Troubling Patterns. January 25, 2021, available at: <https://www.npr.org/2021/01/25/956177021/fatal-police-shootings-of-unarmed-black-people-reveal-troubling-patterns>.

⁹ Ibid.

¹⁰ Code of Virginia § 9.1-500 et seq. at: <https://law.lis.virginia.gov/vacodepopularnames/law-enforcement-officers-procedural-guarantee-act/>.

law, however, require only that departments with ten or more officers have some procedure for receiving complaints and that they maintain records of those cases.¹¹

Some progress toward independent accountability structures has been made, albeit inconsistently throughout the state. In January 2021, a group of police departments in Northern Virginia announced the creation of the Northern Virginia Critical Incident Response Team to reform how investigations of deadly force are conducted.¹² Currently, investigations in these jurisdictions are conducted by detectives within the same department involved in the incident. With the establishment of this team, a group of detectives from multiple agencies except the agency involved in the incident will conduct the investigations. Participation on the response team is voluntary, however, and some Northern Virginia departments have declined to participate. Alexandria and Loudoun Counties do not participate because they use Virginia State Police to investigate police shooting. Fairfax County uses their own detectives for investigations.¹³

In late October 2020, Virginia Governor Ralph Northam signed a sweeping package of legislative reforms¹⁴ which among other practices:

- places restrictions on the execution of search warrants;
- requires the Criminal Justice Services Board to adopt statewide conduct standards for law enforcement and updates decertification standards for those who violate those standards;
- requires administrators to disclose misconduct information during employment screenings;
- updates training requirements on de-escalation, use of force, cultural sensitivity, and implicit bias;
- places specific restrictions on use of lethal force;
- restricts law enforcement agencies from acquiring certain military weapons;
- requires increased data collection;

¹¹ Code of Virginia § 9.1-600. Civilian protection in cases of police misconduct; minimum standards, <https://law.lis.virginia.gov/vacode/title9.1/chapter6/section9.1-600/>

¹² Wilder, Drew. *Northern Virginia Police Departments Join Forces to Police Themselves*. NBC Washington, News4 Northern Virginia. (January 2021) at: <https://www.nbcwashington.com/news/local/northern-virginia/northern-virginia-police-departments-join-forces-to-police-themselves/2539959/>

¹³ Ibid.

¹⁴ 2020 Special Session I, SB 5030, Policing reform; acquisition of military property, training of officers in de-escalation techniques, at: <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+SB5030>; *See also*: Hargrove, Adriana, *Governor Northam signs laws advancing police, criminal justice reform in Virginia*. NBC12 (October 28, 2020), at: <https://www.nbc12.com/2020/10/28/gov-northam-signs-laws-advancing-police-criminal-justice-reform-virginia/>.

- and requires the Department of Criminal Justice Services to develop and implement mandatory, uniform curriculum and lesson plans for certified law enforcement training academies.

While these reforms remain in effect at the time of this writing, implementation has faced challenges in the law enforcement community, and the legislature has already entertained several bills aimed at repealing some of them.¹⁵

The Committee recognizes the incredibly difficult and often dangerous responsibilities of law enforcement officials. The Committee also recognizes the tremendous authority entrusted to these officials – up to and including the use of deadly force – to maintain order. With this authority comes grave responsibility to use that authority judiciously and with utmost restraint. In this context, the Committee sought to study police oversight and accountability structures in Virginia, and the role they have in ensuring equal protection of the laws and in the administration of justice – particularly in communities of color that often have disproportionately high rates of contact with law enforcement. The Committee worked to identify effective accountability structures with the potential to support the safety of both civilians and law enforcement members, and make policy recommendations to address any identified “gaps” and related areas of concern.

Methodology

As a matter of historical precedent, and in order to achieve transparency, Committee studies involve a collection of public, testimonial evidence and written comments from individuals directly impacted by the civil rights topic at hand; researchers and experts that have rigorously studied and reported on the topic; community organizations and advocates representing a broad range of backgrounds and perspectives related to the topic; and government officials tasked with related policy decisions and the administration of those policies.

Committee studies require Committee members to utilize their expertise in selecting a sample of panelists that is the most useful to the purposes of the study and will result in a broad and diverse understanding of the issue. This method of (non-probability) judgment sampling requires Committee members to draw from their own experiences, knowledge, opinions, and views to gain understanding of the issue and possible policy solutions. Committees are composed of volunteer professionals that are familiar with civil rights issues in their state or territory. Members represent a variety of political viewpoints, occupations, races, ages, and gender identities, as well as a variety of backgrounds, skills, and experiences. The intentional diversity

¹⁵ Coleburn, Caroline. “While some call for change after Tyre Nichols’ death, Virginia Republicans want to get rid of police reforms,” WTVR Local 6 News (January 2023), at: <https://www.wtvr.com/news/local-news/repeal-virginias-police-reform-jan-31-2023>.

of each Committee promotes vigorous debate and full exploration of the issues. It also serves to assist in offsetting biases that can result in oversight of nuances in the testimony.

In fulfillment of Committees' responsibility to advise the Commission of civil rights matters in their locales, Committees conduct an in-depth review and thematic analysis of the testimony received and other data gathered throughout the course of their inquiry. Committee members use this publicly collected information, often from those directly impacted by the civil rights topic of study, or others with direct expert knowledge of such matters, to identify findings and recommendations to report to the Commission. Drafts of the Committee's report are publicly available and shared with panelists and other contributors to ensure that their testimony was accurately captured. Reports are also shared with affected agencies to request for clarification regarding allegations noted in testimony.

For the purposes of this study, **Findings** are defined as what the testimony and other data *suggested, revealed, or indicated* based upon the data collected by the Committee. Findings refer to a synthesis of observations confirmed by majority vote of members, rather than conclusions drawn by any one member. **Recommendations** are specific actions or proposed policy interventions intended to address or alleviate the civil rights concerns raised in the related finding(s). Where findings indicate a lack of sufficient knowledge or available data to fully understand the civil rights issues at hand, recommendations may also target specific directed areas in need of further, more rigorous study. Recommendations are directed to the Commission; they request that the Commission itself take a specific action, or that the Commission forward recommendations to other federal or state agencies, policy makers, or stakeholders.

Findings

In keeping with their duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,¹⁶ the Virginia Advisory Committee submits the following findings to the Commission regarding police oversight and accountability. This report seeks to highlight the most salient civil-rights themes as they emerged from the Committee's inquiry. The complete meeting transcripts and written testimony received are included in Appendix A and B for further reference.

¹⁶ 45 C.F.R. § 703.2 (2018).

Finding I: Racial minorities, people with developmental disabilities, and homeless people continue to face disparities in police contacts and use of force in certain circumstances, including deadly force.

Racial Disparities in Police Contact and Use of Force

Throughout the Committee’s hearings, speakers raised repeated concern regarding police interactions with community members and use of force, most notably in Black communities.¹⁷ Panelist Ashna Khanna of the ACLU of Virginia presented a 2021 analysis of data released by the Virginia State Police which found that Black people make up just 19% of the population of Virginia, yet make up 31% of traffic stops and 43% of vehicle searches.¹⁸ Data from nearly 100 million police interactions and stoppages across the country collected by the Stanford Open Policing Project in 2020 suggests that this disproportionality holds regardless of the likelihood that searches actually turn up contraband.¹⁹ Relatedly, Dr. Rashawn Ray, Research Fellow from the Brookings Institute and Professor of Sociology at University of Maryland College Park presented data demonstrating that despite similar rates of drug use, Black people are more than twice as likely to be arrested, and six times more likely to be incarcerated for drug related charges than White people.²⁰ Ray also cited a recent ACLU analysis of data released by the D.C. Metropolitan Police Department which found that 91% of people who were subjected to police searches that did *not* lead to any ticket, warning, or arrest, were Black.²¹ He concluded: “the people being profiled aren’t the same people who are committing crime.”²² This disproportionality in police contact can have significant consequences beyond the injustice of facing repeated, unwarranted stops and searches.²³ Data also indicate that Black people are more likely to be seen as a threat by police, and even when unarmed are more than 3.5 times as likely to be killed in police encounters.²⁴ The Committee did not receive testimony regarding disparate police treatment of violent crime, or whether there are differing rates of criminality by race.

¹⁷ Tars Testimony, Transcript 6, p. 12 lines 26-37; Rau Testimony, Transcript 3, p. 20 line 3-9; Neily Testimony, Transcript 1, p. 8 lines 32-38; PANEL 1 Presentations, slide 37; Hepler Testimony, Transcript 3, p. 23 line 10-11.

¹⁸ Khanna Testimony, Transcript 6, p. 3 lines 8-11. *See also*: <https://www.wvtf.org/news/2021-07-02/data-appears-to-show-racial-disparities-in-traffic-stops>

¹⁹ Pierson, et.al. A large-scale analysis of racial disparities in police stops across the United States. *Nature Human Behaviour*, 4(7), 736–745.(2020) at: <https://openpolicing.stanford.edu/publications/>.

²⁰ Ray Testimony, Transcript 1, p. 4 lines 23-31; *See also*: Neily Testimony, Transcript 1, p. 8 lines 32-38; Khanna Testimony, Transcript 6, p. 4 lines 22-25. *Data*: Schanzenbach, et.al., Twelve Facts about Incarceration and Prisoner Reentry. The Hamilton Project, Brookings Institute. Economic Facts (October 2016), p. 7 at: https://www.hamiltonproject.org/assets/files/12_facts_about_incarceration_prisoner_reentry.pdf.

²¹ Ray Testimony, Transcript 1, p. 5 line 39 – p. 6 line 4; Khanna Testimony, Transcript 6, p. 4 lines 18-25; Haywood Testimony, p. 16 line 1-12. *See: ACLU-DC & ACLU Analytics: Racial disparities in stops by the D.C. Metropolitan Police Department, June 2020, at*: https://www.acludc.org/sites/default/files/2020_06_15_aclu_stops_report_final.pdf

²² Ray Testimony, Transcript 1, p. 5 line 39 – p. 6 line 4.

²³ Khanna Testimony, Transcript 6, p. 4 lines 16-25.

²⁴ Ray Testimony, Transcript 1, p. 3 lines 2-7 (PANEL 1 Presentations, slide 10); Ray Testimony, Transcript 1, p. 6 lines 8-23 (PANEL 1 Presentations, slide 26). *See also*: Lett et. al., Racial inequalities in fatal U.S. police shootings, 2015-2020. *Journal of Epidemiology & Community Health*, Vol. 75, (4), at:

Panelist Valerie Slater, Executive Director of RISE for Youth Coalition asserted that there is over-policing of Black and poor communities and that this phenomenon is not a series of isolated events, but rather shows a pattern of disparate and biased treatment.²⁵ Slater raised specific concern that data regarding use of force is lacking, and often not public, limiting oversight and accountability efforts.²⁶ While progress has been made, several recent legislative efforts that would have required increased transparency and mandatory citizen review boards have all failed.²⁷ Some panelists urged that this issue must be understood within its historical context. Princess Blanding, Founder of the Justice and Reformation Coalition, who herself lost two of her brothers in police altercations, posited that the current system of policing in the United States began as an organized way of enforcing slavery.²⁸ Alleging a continuation of that kind of dubious legacy, Eric Tars, Legal Director of the National Homelessness Law Center (NHLC) characterized many state laws as “Jim Crow era vagrancy statutes designed to make Black people without jobs criminals so they can be passed through the 13th amendment back into enslavement.”²⁹

Race and Homelessness

Panelist Eric Tars reported that when race and homelessness intersect, people from vulnerable populations become increasingly susceptible to escalated police encounters and police violence.³⁰ He criticized laws such as camping-bans, loitering-bans, prohibitions against sleeping in public, public urination, vagrancy, and laws restricting living in vehicles as effectively criminalizing homelessness and putting homeless people at high risk of increased and often violent contact with police.³¹ Tars pointed out that police encounters with homeless individuals are a significant drain on public resources,³² and receive comparatively little oversight³³ because homeless people often do not have the resources to file complaints after experiencing police

<https://www.bmj.com/company/newsroom/fatal-police-shootings-of-unarmed-black-people-in-us-more-than-3-times-as-high-as-in-whites/> ; Correll et. al., Dangerous Enough: Moderating racial bias with contextual threat cues, *Journal of Experimental Social Psychology*, 2011, 47(1): 184-189, at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3041961/>; Payne, Keith, B. Weapon bias: split-second decisions and unintended stereotyping. *Current Directions in Psychological Science*, vol. 15(6): 269-328 (2006), at: <https://journals.sagepub.com/doi/epub/10.1111/j.1467-8721.2006.00454.x>.

²⁵ Slater Testimony, Transcript 5, p. 5 lines 9-31.

²⁶ Id at p. 5 lines 24-33.

²⁷ Slater Testimony, Transcript 5, p. 5 line 28 – p. 6 line 2. *Note*: further discussion of recent and current legislative efforts regarding police oversight and accountability is included in Finding VII.

²⁸ Blanding Testimony, Transcript 5, p. 9 lines 16-24; p. 12 lines 18-25. See also: Wilayto Testimony, Transcript 6, p. 6 lines 26-42; Brackney Testimony, Transcript 4, p. 2 line 65-67.

²⁹ Tars Testimony, Transcript 6, p. 13 lines 19-28.

³⁰ Id at p. 11 line 35 – p. 12 line 37.

³¹ Id at p. 11 lines 28-34; p. 13 lines 19-28.

³² Id at p. 12 lines 14-19; 38-41.

³³ Id at p. 12 lines 26-38.

violence or harassment from law enforcement.³⁴ He also suggested that the criminalization of homelessness puts law enforcement officers themselves at greater risk.³⁵

A 2019 NHLHC survey of 187 cities across the country³⁶ found that almost every city and state had laws criminalizing aspects of homelessness, “and these laws are on the rise.”³⁷ This study further noted that the criminalization of homelessness disproportionately affects black communities and other communities of color, because “[r]acist housing policies contribute to disproportionate rates of homelessness among people of color, even when controlling for poverty. In total, people of color constitute over 60% of the nation’s homeless population even though they make up only a third of the general U.S. population.”³⁸

Racial disproportionality in police contacts, at least for low-level offenses, combined with the overrepresentation of people of color in the homeless population, puts people of color who are also experiencing homelessness at particularly high risk. Panelist Tars noted that while most national data on law enforcement contact does not include housing status, data do indicate that “Black adults are up to 9.7 times more likely to receive citations for low level non-traffic offenses as white adults. Latinx adults are up to 5.8 times more likely.”³⁹ Panelist Tars told the story of Kurt Andras Reinhold, “one of the too many black men killed unnecessarily by police last year because Orange County sent out law enforcement officers with sidearms predisposed to look at homeless persons as criminals rather than...a person in crisis who just needed help.”⁴⁰ The District Attorney declined to press charges against the officer involved in this killing.⁴¹ Tars argued that system as a whole needs to be held accountable for these deaths, not just individual officers, because “the system never should have sent those officers out in the first place.”⁴² He emphasized that more data is needed in order to truly understand how homelessness can multiply the effects of race in law enforcement encounters.⁴³ His testimony, and the examples described immediately below, paralleled calls for training in de-escalation discussed in Finding VII.

³⁴ Tars Testimony, Transcript 6, p. 12 lines 41-45.

³⁵ Id at p. 14 lines 23-31.

³⁶ See: <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

³⁷ Tars Testimony, Transcript 6, p. 11 lines 28-34 and p. 13 lines 19-28.

³⁸ Housing not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities. December 2019. National Law Center on Homelessness & Poverty, at p. 32. <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

³⁹ Tars Testimony, Transcript 6, p. 11 lines 35-39.

⁴⁰ Id at p. 12 lines 19-25.

⁴¹ Id at p. 12 lines 31-37.

⁴² Id at p. 12 lines 32-37.

⁴³ Id at p. 11 line 35 – p. 12 line 3.

Race, Disability, and Mental Health

Panelist Lucy Beadnell, Director of Advocacy at the Arc of Northern Virginia, shared a 2017 study published in the *American Journal of Public Health*⁴⁴ which found that people with disabilities, especially developmental disabilities, face a significantly elevated risk of police encounters, arrest, and violent victimization.⁴⁵ This study also found that people with disabilities are more likely to have trouble navigating police encounters, and more likely to have difficulty answering questions and knowing their rights than people without disabilities.⁴⁶ These difficulties are particularly concerning, Beadnell explained, because in the event of a police encounter, people with developmental disabilities are more likely than the general population to have complex medical needs and physical anomalies that make things like restraints more dangerous, and even deadly for them.⁴⁷ People with disabilities may also struggle with social cues and complex directions, and may be especially vulnerable to giving false confessions in an effort to please law enforcement or deescalate a situation.⁴⁸ Panelists shared several individual, specific stories regarding encounters between people with disabilities or people experiencing mental health crises and police, particularly black individuals. Some examples include:

- Lucy Beadnell shared the story of Neli Latson,⁴⁹ a young Black man with multiple disabilities, who was arrested for sitting outside a library before it opened.⁵⁰ Someone reported they thought Latson had a gun, but he didn't. When an officer approached Latson, he "felt overwhelmed and did what he had been taught to do when he was overwhelmed, which was quietly walk away. And then when touched, reacted terribly. And then when incarcerated, reacted terribly."⁵¹ Latson was deemed too vulnerable to place in the prison's general population because of his developmental and intellectual disabilities, so he spent more than a year in 24-hour locked solitary confinement before being transferred to a restrictive residential setting under continued criminal justice supervision for another ten years.⁵² Latson's case began in 2010; after more than a decade of struggle he received a full gubernatorial pardon in June of 2021.⁵³

⁴⁴ Erin J. McCauley, "The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender", *American Journal of Public Health* 107, no. 12 (December 1, 2017): pp. 1977-1981.

⁴⁵ Beadnell Testimony, Transcript 7, p. 3 lines 13-30; p. 5 line 32 – p. 6 line 3.

⁴⁶ Id at p. 4 line 18 – p. 5 line 2; p. 5 lines 3-31.

⁴⁷ Beadnell Testimony, Transcript 7, p. 3 line 39 – p. 4 line 6.

⁴⁸ Id at p. 4 lines 34-38.

⁴⁹ Autistic Self Advocacy Network: ASAN calls for Neli Latson's release (November 2014), at: <https://autisticadvocacy.org/2014/11/asan-calls-for-neli-latsons-release/>

⁵⁰ Beadnell Testimony, Transcript 7, p. 5 lines 4-21.

⁵¹ Id at p. 5 lines 7-10.

⁵² Autistic Self Advocacy Network: Advocates Applaud full pardon of Neli Latson, a young black man with disabilities, after decade of injustice (June 2021). At: <https://autisticadvocacy.org/2021/06/advocates-applaud-full-pardon-of-neli-latson-a-young-black-man-with-disabilities-after-decade-of-injustice/>

⁵³ Ibid.

- Princess Blanding described the circumstances surrounding the death of two of her brothers—Marcus Davis Peters and Joshua Mathis—young Black men who were both killed by police in separate incidents in 2018 and 2022, each while experiencing mental health crises.⁵⁴ Peters was killed while completely undressed and obviously unarmed and even though the responding officer was able to immediately recognize that he was experiencing a mental health emergency.⁵⁵ Although Peters’ death was ruled a “justifiable homicide,” it resulted in the institutionalization of a statewide mental health alert system in Virginia, the Marcus Alert.⁵⁶ The Committee heard testimony that the Marcus Alert system has not been sufficiently funded and implementation across various regions has been delayed.⁵⁷ Counties with fewer than 40,000 people are not required to participate.⁵⁸

In addition to people with developmental disabilities and those experiencing mental health crisis, Panelist Tars of the NHLC testified negatively regarding a “recent trend of proposals” at the state level that would explicitly empower law enforcement to refer individuals with mental health or addiction problems for involuntary commitment into mental health or addictions treatment centers for up to two years.⁵⁹ Panelist Tars noted that involuntary commitment denies people their liberty with fewer due process protections than in criminal courts, which has an “obvious” disparate impact on persons with mental disabilities.⁶⁰ He also suggested that “given the racialized history of the misuse of involuntary commitment and overdiagnosis of BIPOC individuals with schizophrenia,” such efforts would also likely have a disparate impact based on race.⁶¹

Panelist Beadnell offered that the American with Disabilities Act⁶² has been used as a tool for both people with disabilities and police, but that many people with disabilities are unaware of the resources or protections available, and often are not able to identify their disabilities and ask for needed accommodations.⁶³ To improve the effectiveness of these protections, the Arc of Northern Virginia has given out free comfort kits to Arlington and Fairfax police, and trained officers in how to use them to help police deescalate and slow down interactions with individuals who may be struggling.⁶⁴ They have similarly developed trainings and resources for people with disabilities and their families to teach them how to navigate police encounters and ask for

⁵⁴ Blanding Testimony, Transcript 5, p. 7 line 3 – p. 9 line 7; p. 12 lines 9-17.

⁵⁵ Id at p. 7 lines 20-23 and 33 – p. 9 line 4.

⁵⁶ Blanding Testimony, Transcript 5, p. 9 lines 5-15; Wilayto Testimony, Transcript 6, p. 6 lines 30-34.

⁵⁷ Jones Testimony, Transcript 7, p. 30 line 43 – p. 31 line 19.

⁵⁸ Id at p. 30 line 43 – p. 31 line 19.

⁵⁹ Tars Testimony, Transcript 6, p. 13 lines 29-43.

⁶⁰ Id at p. 13 lines 33-36.

⁶¹ Tars Testimony, Transcript 6, p. 13 lines 36-43. BIPOC is an acronym for “Black, Indigenous, and People of Color.”

⁶² 42 U.S.C. §12101, et seq.

⁶³ Beadnell Testimony, Transcript 7, p. 6 lines 13-27; p. 12 lines 1-30; p. 13 line 41 – p. 14 line 33.

⁶⁴ Id at p. 6 line 41 – p. 7 line 22.

accommodations.⁶⁵ They continue to host a series of “practice events” where police and people with disabilities pretend to go through a traffic stop, so they can learn to navigate the interaction together.⁶⁶ While it is not possible to practice for every type of potential encounter, Panelist Beadnell shared the successes of some of these efforts. She told the story of a man named Andrew, who was involved in his first-ever car accident just 10 days after participating in one of the “practice” traffic stop sessions. Because Andrew had recently practiced navigating a similar situation in a low-stress environment, he was able to remain calm and respond appropriately instead of having the more typical behavioral challenges that would have normally resulted for him in this situation.⁶⁷

Finding II: Lack of standardization, transparency, and accountability leads to significant differences in policing culture and practices across jurisdictions.

Officer Certification Standards

In a written statement provided for this study,⁶⁸ Director Jackson Miller of the Virginia Department of Criminal Justice Services (DCJS) reported that in the Commonwealth of Virginia, the primary structure for oversight of law enforcement behavior is found in Virginia State Code §15.2-1707.⁶⁹ This code specifies reasons that public safety officers in Virginia could face decertification.⁷⁰ Decertified officers are prohibited from serving as law-enforcement or jail officers anywhere in the Commonwealth of Virginia until their certification has been reinstated.⁷¹ This code also presents the due process protections available to public safety professionals facing decertification.⁷²

Currently, law enforcement or jail officers in Virginia may be decertified if the officer has (subsection A):⁷³

- (i) been convicted of or pled guilty or no contest to a felony or any offense that would be a felony if committed in the Commonwealth;
- (ii) been convicted of or pled guilty or no contest to a Class 1 misdemeanor involving moral turpitude or any offense that would be any misdemeanor involving moral turpitude, including but not limited to petit larceny under §18.2-96, or any offense involving moral turpitude that would be a misdemeanor if committed in the Commonwealth;

⁶⁵ Beadnell Testimony, Transcript 7, p. 7 lines 12-37.

⁶⁶ Id at p. 7 lines 34-45.

⁶⁷ Beadnell Testimony, Transcript 7, p. 7 lines 38-46.

⁶⁸ Miller Written Testimony, Appendix B.

⁶⁹ Va. Code §15.2-1707; Full text available at: <https://law.lis.virginia.gov/vacode/title15.2/chapter17/section15.2-1707/#:~:text=When%20a%20conviction%20has%20not,of%20injury%20or%20damage%20to.>

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Va. Code §15.2-1707 (A).

- (iii) been convicted of or pled guilty or no contest to any misdemeanor sex offense in the Commonwealth, another state, or the United States, including but not limited to sexual battery under §18.2-67.4 or consensual sexual intercourse with a minor 15 years of age or older under clause (ii) of §18.2-371;
- (iv) been convicted of or pled guilty or no contest to domestic assault under §18.2-57.2 or any offense that would be domestic assault under the laws of another state or the United States;
- (v) failed to comply with or maintain compliance with mandated training requirements;
or
- (vi) refused to submit to a drug screening or has produced a positive result on a drug screening reported to the employing agency, where the positive result cannot be explained to the agency administrator's satisfaction.

Officers may also face decertification if the officer (subsection B):⁷⁴

- (i) is terminated or resigns in advance of being convicted or found guilty of an offense set forth in clause (i) of subsection A that requires decertification,
- (ii) is terminated or resigns in advance of a pending drug screening,
- (iii) is terminated or resigns for a violation of state or federal law,
- (iv) is terminated or resigns for engaging in serious misconduct as defined in statewide professional standards of conduct adopted by the Board,
- (v) is terminated or resigns while such officer is the subject of a pending internal investigation involving serious misconduct as defined in statewide professional standards of conduct adopted by the Board, or
- (vi) is terminated or resigns for an act committed while in the performance of his duties that compromises an officer's credibility, integrity, honesty, or other characteristics that constitute exculpatory or impeachment evidence in a criminal case.

The Committee notes that while the Criminal Justice Services Board (the Board) is required to immediately decertify any officer reported for the reasons specified in subsections A or B above,⁷⁵ the Board is also authorized to “waive the requirement for decertification as set out in subsection A for good cause shown.”⁷⁶ Additionally, §15.2-1707 specifies that the Board may decline to decertify any officer who has not received a final conviction for the alleged misconduct.⁷⁷ Any conviction of a misdemeanor that has been appealed, or any finding of misconduct listed in subsection B in which all grievances or appeals have not yet been exhausted, are not considered a conviction for the purposes of required decertification.⁷⁸ Clark Neily of the Cato Institute noted that while certification standards “hold promise” as a

⁷⁴ Va. Code §15.2-1707(B)

⁷⁵ Va. Code §15.2-1707(D).

⁷⁶ Va. Code §15.2-1707(F).

⁷⁷ Va. Code §15.2-1707(E).

⁷⁸ Va. Code §15.2-1707(H).

mechanism for police oversight and accountability, loopholes and exemptions result in a weakened system that is not consistent or uniform enough to fulfill that promise, and falls short of the standards set for other vocations, such as law or medicine.⁷⁹ Illustrating this concern, Chief RaShall Brackney of the Charlottesville police department testified that she submitted the names of seven officers for decertification over the three and a half years she had been at the department, none of whom were ultimately decertified.⁸⁰ Panelist Brackney stated that each of these officers had documented cases of domestic violence, sexual assault, excessive force, and the like.⁸¹ Hilary Rau of the Center for Policing Equity testified that despite the recent expansion in decertifiable offenses, and the accompanying increase in officer decertifications, Virginia still lags far behind other comparable states in these efforts.⁸²

Law Enforcement Training and In-Service Requirements

In addition to managing the decertification of Virginia law enforcement professionals, Miller wrote that DCJS is responsible for “auditing and inspecting” the state system of law enforcement training.⁸³ The state’s minimum training requirements for law enforcement officials as set forth in 6VAC20-20-21 adds that under the direction of the Board, DCJS is charged with establishing the compulsory minimum training standards for full-time and part-time law-enforcement officers.⁸⁴ Importantly, Miller noted that “this training impacts the behaviors of law enforcement professionals.”⁸⁵ Gianina Irlando of the National Association for the Civilian Oversight of Law Enforcement noted that when incidents occur, agencies need to be held accountable for the training, tactical procedures, supervision, and policies that may have contributed to the incident.⁸⁶ Minimum requirements for initial certification include: (1) successfully completing a certified basic law enforcement academy; (2) successfully passing the state law enforcement certification examination; and (3) successfully completing field training of a minimum required 100 hours within twelve months.⁸⁷ Certified law enforcement and corrections officers are required to complete forty hours of compulsory in-service training every two years, including two hours of cultural diversity training, four hours of legal training, and thirty-four hours of

⁷⁹ Neily Testimony, Transcript 1, p. 29 line 39 – p. 30 line 15. *See also*: Khanna Testimony, Transcript 6, p. 3 lines 30-38; Rau Testimony, Transcript 3, p. 21 lines 6-38. *Note*: DCJS declined to respond to these concerns in written or oral testimony.

⁸⁰ Brackney Testimony, Transcript 2, p. 19 lines 21-31.

⁸¹ Brackney Testimony, Transcript 2, p. 19 lines 21-31.

⁸² Rau Testimony, Transcript 3, p. 21 lines 6-38; p. 30 lines 8-25.

⁸³ Va. Code §9.1-102.2; Miller Written Testimony, p. 1, Appendix B.

⁸⁴ Va. Code §[9.1-102.2](#).

⁸⁵ Miller Written Testimony, p. 1, Appendix X

⁸⁶ Irlando Testimony, Transcript 6, p. 15 lines 30-37.

⁸⁷ See: <https://www.dcjs.virginia.gov/law-enforcement/certification-process-and-mandated-service-requirements-le-officer>.

career development training.⁸⁸ Subjects covered under legal and career development training are “at the discretion of the academy director of a certified training academy.”⁸⁹

Despite the apparent authority of DCJS to establish and audit compulsory training standards, Panelist Brackney, former Chief of Police for Charlottesville VA, and retired commander of the Pittsburgh Bureau of Police where she served for more than thirty years, raised concern that in Virginia, individual training academies lack standardization in training, lesson plans, and curriculum.⁹⁰ Panelist Brackney, who was previously charged with writing law enforcement training curriculum for the entire commonwealth of Pennsylvania, expressed shock at the comparative lack of standards in Virginia.⁹¹ She testified that in Virginia, academies are certified without submitting any curriculum or standardized lesson plans: “You just show them outlines of what you’re going to teach at your academy, and that’s good enough.”⁹²

Panelist Brackney testified that she approached DCJS about standardizing at least some of the mandatory curriculum, though was met with resistance. She reported “the pushback was they didn’t think the academies would do it.”⁹³ However, Panelist Brackney noted, as the governing body, DCJS has the authority to require a standardized curriculum regardless.⁹⁴ She reflected, “there’s often a tail wagging the dog mentality that I found in Virginia that doesn’t occur in other states.”⁹⁵ Panelist Brackney emphasized that the nonuniformity across jurisdictions results in a misalignment between rural, suburban, and urban locales, and suggested that standardizing the curriculum would allow for a smoother transition when an officer moves from one agency to another so “values and visions are aligned around training.”⁹⁶ Panelist Brackney called for increased uniformity regarding “what is being taught, which academies are certified, and what curriculum is accredited.”⁹⁷ She noted urgent need for such standardization in Virginia, and suggested that ultimately, national academy standards for law enforcement would be most beneficial.⁹⁸ Panelist Princess Blanding pointed out that consistent standards in training and protocol can literally make the difference between life and death.⁹⁹ She juxtaposed two incidents involving police in Virginia responding to separate mental health crises in neighboring jurisdictions on the same day: “One police department handled one situation, it ended in death.

⁸⁸ Va. Admin Code 6VAC20-30-30; <https://law.lis.virginia.gov/admincode/title6/agency20/chapter30/section30/>.

⁸⁹ Ibid.

⁹⁰ Brackney Testimony, Transcript 2, p. 27 line 34 – p. 28 line 9; Transcript 4, p. 6 line 27 – p. 7 line 22. *Note:* DCJS declined to respond to these concerns in written or oral testimony.

⁹¹ Brackney Testimony, Transcript 2, p. 27 line 34 – p. 28 line 18.

⁹² Id at Transcript 2, p. 28 lines 5-9; Transcript 6, p. 6 line 40 – p. 7 line 11.

⁹³ Id at Transcript 2, p. 28 lines 5-9; Transcript 6, p. 6 line 40 – p. 7 line 11.

⁹⁴ Id at Transcript 6, p. 6 line 40 – p. 7 line 11.

⁹⁵ Id at p. 6 line 40 – p. 7 line 11.

⁹⁶ Id at Transcript 2, p. 28 line 19-25.

⁹⁷ Id at p. 28 line 19-25

⁹⁸ Id at Transcript 6, p. 7 lines 12-22.

⁹⁹ Blanding Testimony, Transcript 5, p. 27 lines 14-26.

Another police department handled the second situation, and that person lived to tell their story.”¹⁰⁰

Transparent Data Collection and Reporting

In addition to improving training and certification standards, panelists noted the critical role that accurate data collection and transparent reporting can play in improving police accountability. Hilary Rau of the Center for Policing Equity, which reportedly maintains the largest collection of police behavior data in the world, testified that “mandatory reporting and consistent analysis of data on police interactions with the public” can create the “foundation of accountability and identify solutions to deeply rooted problems.”¹⁰¹ Panelist Rau argued that through consistent usage of data, agencies and communities can identify patterns of racial disparities, and identify which police contacts are least aligned with public safety.¹⁰² Panelist Rau also noted that “transparent reporting and analysis of data creates a foundation that both police and marginalized communities can trust even when they do not trust each other.”¹⁰³

Despite this importance, DCJS reported that there are currently no data available to monitor patterns of conduct of individual departments and/or individual officers.¹⁰⁴ Discipline records on individual officers are considered confidential personnel records in Virginia (along with 20 other states), and are not accessible to the public.¹⁰⁵ Valerie Slater, Executive Director of the RISE for Youth Coalition, testified that even gathering basic information such as the total number of civilian complaints filed against law enforcement has proven difficult because the reporting is not required.¹⁰⁶ She noted that where limited data do exist, they indicate serious concern regarding both officer accountability and racial disproportionality: cases of civilian complaints are overwhelmingly resolved in favor of law enforcement.¹⁰⁷ Police encounters with youth as young as third grade overwhelmingly involve black children, and at this age many children Slater has worked with have already had so many encounters with police they cannot remember the number.¹⁰⁸ In her testimony, Panelist Slater shared video footage from 2019 in Richmond, VA, where an officer is seen telling a group of black middle school girls standing in front of their school that when they turn 18, they would be his.¹⁰⁹ Panelist Slater cited data from Richmond, VA which found that 98% of all curfew violation Field Interview Reports involved Black youth

¹⁰⁰ Blanding Testimony, Transcript 5, p. 27 lines 14-26. See: https://richmond.com/news/state-and-regional/williams-each-law-enforcement-shooting-erodes-trust-in-a-mental-health-crisis-system/article_c59ccf85-94d7-5f78-b64c-8cbcac297c19.html.

¹⁰¹ Rau Testimony, Transcript 3, p. 19 lines 8-21.

¹⁰² Rau Testimony, Transcript 3, p. 19 line 24-27.

¹⁰³ Rau Testimony, Transcript 3, p. 19 lines 32-34.

¹⁰⁴ Miller Written Testimony, p. 1, Appendix B.

¹⁰⁵ Slater Testimony, Transcript 5, p. 5 lines 19-31; p. 16, lines 3-15. See: <https://project.wnyc.org/disciplinary-records/>; and <https://law.lis.virginia.gov/vacode/title2.2/chapter37/section2.2-3705.1/>

¹⁰⁶ Slater Testimony, Transcript 5, p. 3 line 38 – p. 4 line 15.

¹⁰⁷ Id at p. 3 line – p. 4 line 15.

¹⁰⁸ Id at p. 4 lines 27-37.

¹⁰⁹ Id at p. 4 lines 16-26; 3/27/22 PPTs, Slide 27

– particularly young Black boys..”¹¹⁰ In Norfolk, 86% of use of force cases on juveniles involved black minors.¹¹¹ Panelist Slater testified that this high rate of police contact is pushing young people into the justice system “not because they have specifically done things, but because they’re just being stopped at such a frequent rate.”¹¹² She also noted that rates of police contact are even higher for youth who are both black and disabled.¹¹³

The Committee did not receive testimony about the relative rates of criminality among young people by race, but effective July 2020, Virginia’s Community Policing Act required all law enforcement agencies to begin collecting and reporting expanded data on investigatory traffic stops.¹¹⁴ The law requires agencies to periodically analyze this data to determine the prevalence of bias based profiling.¹¹⁵ The 2021 report found that Black and Latino drivers are disproportionately likely to be stopped by police after accounting for their relative percentage of the population, and that “once stopped, black drivers are more likely than white drivers to be searched.”¹¹⁶ While collecting data on traffic stops is an important first step, Rau asserted that this not sufficient.¹¹⁷ There requires a more in-depth analysis and better quality of data. For example:

- Current data collection guidelines require a Virginia State Police Officer to record if they search someone, but do not require to record if they discovered contraband as a result of that search.¹¹⁸
- Officers must indicate whether they used force on a person, but are not required to report the type of force they used, “so there’s no way to distinguish between whether someone was pushed or whether they were shot.”¹¹⁹
- Officers must record the general reason for the stop, but are not required to identify the particular violation or criminal offense that the person was suspected of committing at the time the stop was initiated – which could include “everything from littering to brandishing a gun.”¹²⁰

¹¹⁰ Slater Testimony, Transcript 5, p. 4 line 38 – p. 5 line 6. *See*: Legal Aid Justice Center’s RTAP Report, https://www.richmondvatap.org/docs/RTAPREPORT_FINAL.pdf

¹¹¹ Id at p. 5 lines 7-9. *See*: <https://www.wavy.com/news/local-news/norfolk/norfolk-police-data-86-of-officers-use-of-force-on-juveniles-involved-black-minors/>.

¹¹² Id at p. 5 lines 1-6.

¹¹³ Ibid.

¹¹⁴ Code of Virginia 52, 6.1 §52-30.1 et seq., at: [; Virginia Open Data Portal,](https://www.data.virginia.gov/stories/s/Virginia-Community-Policing-Act-Data-Collection/rden-cz3h/)

<https://data.virginia.gov/stories/s/Virginia-Community-Policing-Act-Data-Collection/rden-cz3h/>

¹¹⁵ Rau Testimony, Transcript 3, p. 19 line 35 – p. 20 line 2.

¹¹⁶ Rau Testimony, Transcript 3, p. 20 lines 3-9; Virginia Open Data Portal,

<https://data.virginia.gov/stories/s/Virginia-Community-Policing-Act-Data-Collection/rden-cz3h/>

¹¹⁷ Id at p. 20 lines 10-16.

¹¹⁸ Rau Testimony, Transcript 3, p. 20 lines 3-9; Virginia Open Data Portal,

<https://data.virginia.gov/stories/s/Virginia-Community-Policing-Act-Data-Collection/rden-cz3h/>.

¹¹⁹ Id at p. 20 lines 17-22.

¹²⁰ Id at p. 20 line 23-32.

Panelist Rau argued that without this level of detail, “it is much more difficult for researchers and policy makers to accurately identify and address specific patters of police behavior that are discriminatory or that fail to address community interests and needs.”¹²¹

Finding III: Trust and accountability between police and community members is critical to ensuring effective policing and creating safer communities.

Attorney General Jason Miyares began his testimony by acknowledging that “those that serve in law enforcement have the most difficult job in America.”¹²² Officers are often working with people at their worst moments, in situations of high stress, and forced to make high-stakes decisions in a matter of seconds.¹²³ The Attorney General simultaneously noted that police are entrusted with an enormous amount of power, including, with few exceptions, “a monopoly on the use of violence.”¹²⁴ It is critical, therefore, for any elected official or oversight body to recognize both sides of this reality.¹²⁵

Public Trust and Community Safety

Panelist Neily argued that police cannot effectively navigate this difficult and sometimes dangerous role without the support of their communities.¹²⁶ Robert Barnette of the Virginia Conference of the NAACP identified public trust as “the number one critical factor” the Conference found as lacking in public relations with law enforcement.¹²⁷ Despite its critical importance, panelists felt that often times, police do not prioritize building trust with the communities they serve.¹²⁸ Teresa Hepler of the Legal Aid Justice center lamented that the burden to address trust between communities and police is often placed on the community instead of the police who serve the community being charged with changing problematic behavior that undermines trust.¹²⁹

¹²¹ Rau Testimony, Transcript 3, p. 20 lines 28-32. Rau noted that the Center for Policing Equity partnered with the Policing Project at New York University to create a detailed guidebook for stop data collection and analysis recommendations, available online at : <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5f7335d7294be10059d32d1c/1601385959666/COPS-Guidebook+Final+Release+Version.pdf>.

¹²² Miyares Testimony, Transcript 8, p. 2 line 40 – p. 3 line 20.

¹²³ Ibid.

¹²⁴ Miyares Testimony, Transcript 8, p. 2 line 40 – p. 3 line 20.

¹²⁵ Ibid.

¹²⁶ Neily Testimony, Transcript 1, p. 8 lines 1-10.

¹²⁷ Barnette Testimony, Transcript 5, p. 3 lines 1-4.

¹²⁸ Hepler Testimony, Transcript 3, p. 27 lines 3-15. Barnette Testimony, Transcript V, p. 3 lines 1-4; Mastoras Testimony, Transcript 2, p. 11 lines 13-16.

¹²⁹ Hepler Testimony, Transcript 3, p. 27 lines 3-15.

According to a 2020 Gallup report¹³⁰ public confidence in police has dropped from a high of 65 percent in 2004, to just 48 percent in 2020.¹³¹ The report notes this marks the first time in 27 years that this measure has fallen “below the majority level.”¹³² The data also indicate stark racial disparities in the extent to which people report having confidence in the police in their communities. In 2020 just 19 percent of Black adults reported having confidence in police, compared to 56 percent of White adults.¹³³ This gap in confidence is not without reason. Racial disparities in police contact and use of force, often unrelated to actual criminal activity, breeds resentment and exacerbates public trust in affected communities.¹³⁴

Panelists argued this lack of public confidence undermines the effectiveness of police, and makes it more difficult for law enforcement to solve serious crimes in their communities and meet public safety goals.¹³⁵ Rashawn Ray of the Brookings Institute noted that 40 percent of murders, 70 percent of rapes and robberies, and nearly 50 percent of aggravated assaults go uncleared (unsolved) every year.¹³⁶ Panelists pointed to community mistrust in police as directly contributing to such low clearance rates.¹³⁷ Panelist Neily concluded, “Simply put, police have to depend on the communities that they police in order to solve crimes. People will not talk to police if people do not trust police. If they will not interact with police, it becomes very difficult for police to be effective and to solve crimes without the cooperation of individuals in the communities that they’re policing.”¹³⁸ Moreover, as discussed in Finding IV below, under-policing of violent crimes—a real or perceived misallocation of police attention or resources—can also lead to public mistrust.

“Simply put, police have to depend on the communities that they police in order to solve crimes. People will not talk to police if people do not trust police. If they will not interact with police, it becomes very difficult for police

¹³⁰ Gallup News, August 12, 2020, “Amid pandemic, confidence in key U.S. institutions surges,” at: <https://news.gallup.com/poll/317135/amid-pandemic-confidence-key-institutions-surges.aspx>. Hereinafter cited as “August 2020 Gallop Poll.”

¹³¹ Neily Testimony, Transcript 1, p. 8 lines 11-12; Presentation slide 34.

¹³² August 2020 Gallop Poll.

¹³³ Neily Testimony, Transcript 1, p. 8 lines 12-15; *See also*: Gallop News, August 12, 2020: Black, White Adults’ Confidence Diverges Most on Police, at: <https://news.gallup.com/poll/317114/black-white-adults-confidence-diverges-police.aspx>.

¹³⁴ *Id* at p. 8 lines 32-38; *see also*: Discussion of racial disparities in police contacts in Finding 1; Ray Testimony, Transcript 1, p. 4 lines 23-31; Neily Testimony, Transcript 1, p. 8 lines 32-38; Khanna Testimony, Transcript 6, p. 4 lines 22-25; Ray Testimony, Transcript 1, p. 5 line 39 – p. 6 line 4; Khanna Testimony, Transcript 6, p. 4 lines 18-25; Ray Testimony, Transcript 1, p. 5 line 39 – p. 6 line 4.

¹³⁵ Neily Testimony, Transcript 1, p. 11 lines 28-40.

¹³⁶ Ray Testimony, Transcript 1, p. 4 lines 35-39.

¹³⁷ Neily Testimony, Transcript 1, p. 8 lines 11-31; p. 11 line 28 – p. 12 line 25; Ray Testimony, Transcript 1, p. 4 lines 35-40; Mastoras Testimony, Transcript 2, p. 10 lines 32-38.

¹³⁸ Neily Testimony, Transcript 1, p. 8 lines 17-21.

to be effective and to solve crimes without the cooperation of individuals in the communities that they're policing.”

– Clark Neily, Senior Vice President for Legal Studies, Cato Institute

Relationship Building and Restoring Trust

Panelist Attorney General Miyares emphasized the importance of relationship-building, which “empowers victims and people that have witnessed crime to come forward because that is an officer that they trust, that he’s literally walked the neighborhood, he’s built those relationships.”¹³⁹ Chief Kevin Davis of the Fairfax County Police Department described an initiative his department refers to as “Integrating Police and Community” (IPAC) in which after a series of trainings, officers are required to get out of their vehicle at least one time during each shift and have a non-enforcement interaction with another person.¹⁴⁰ Panelist Davis reasoned that “if we want people to know us before they need us, they need to meet us in an environment that is one that’s not crisis driven.”¹⁴¹ Panelist Brackney of Charlottesville similarly began an initiative in her department referred to as “100 conversations,” in which 50 police officers are assigned to pick two people throughout the year that they don’t know, and to have ongoing conversations with them about what they see and what they want in the community.¹⁴² Importantly, Panelists Davis and Brackney both emphasized that true community policing must move beyond optics: it must be ongoing and it must specifically seek to engage those who do not typically engage with police.¹⁴³ Mr. Barnette of the NAACP noted that, some police forces have also made progress with community relations through establishing relationships with faith and other community leaders.¹⁴⁴

Co-Production of Safety

Dimitrios Mastoras, retired master police officer from Arlington County, Virginia, and co-founder of Safe Night LLC¹⁴⁵ spoke extensively about multidisciplinary, authentic community engagement as a way to rebuild broken trust between police and the communities they serve. Panelist Mastoras described this process as distinct from more traditional community policing,¹⁴⁶

¹³⁹ Miyares Testimony, Transcript 8, p. 4 lines 8-17.

¹⁴⁰ Davis Testimony, Transcript 2, p. 25 line 39 – p. 26 line 21.

¹⁴¹ Id at p. 26 lines 6-8.

¹⁴² Brackney Testimony, Transcript 2, p. 25 lines 22-32.

¹⁴³ Davis Testimony, Transcript 2, p. 26 lines 9-21; Brackney Testimony, Transcript 2, p. 25 lines 22-32.

¹⁴⁴ Barnette Testimony, Transcript 5, p. 18 lines 13-19.

¹⁴⁵ See: <https://safe-night.com>

¹⁴⁶ Mastoras Testimony, Transcript 2, p. 10 line 39 – p. 11 line 26. See also: Why community policing is still a good investment: expert says the availability of federal COBS money has been a double edged sword (September 2014), at: <https://nextcity.org/urbanist-news/community-policing-efforts-success-failure>; Gill, et. al, Community-oriented policing to reduce crime, disorder and fear and increase satisfaction and legitimacy among citizens: a systematic review. *Journal of Experimental Criminology* 10, 399-428 (2014). At: <https://link.springer.com/article/10.1007/s11292-014-9210-y>

in that the focus is on “shifting the perspective of police to a coequal member of the community.”¹⁴⁷ Mastoras argued that officers must work consistently to “diffuse the power differential” so that they can understand the concerns of the community.¹⁴⁸ Then, “when a crisis does occur, the police and the community will be better equipped to weather the storm together.”¹⁴⁹ He contended that having police officers play basketball with neighborhood youth and handing out ice cream is not enough if it is not used to conduct collaborative problem solving under a shared umbrella of power.¹⁵⁰ Panelist Mastoras described how much progress he made when he engaged in targeted efforts to get to know “the stakeholders who had no trust in the police or the other county agencies.”¹⁵¹ He reflected, “I needed them more than they needed me, which forced me to reconsider my approach. So, the challenge to my profession is to consider strategies that originate from outside policing to give officers the tools they need to build the very trust that is eroded in many communities.”¹⁵²

Panelist Mastoras cited a UCLA evaluation of Community Safety Partnership (CSP) in Los Angeles, which found that stakeholder trust grew when officers worked collaboratively with residents to prevent dangerous crime.¹⁵³ He testified that the same principles of this partnership have been successfully shown to reduce dangerous conditions like gang violence, as well as chronic social issues like homelessness, or even general management of nightlife.¹⁵⁴ Specific outreach to and inclusion of those community members who do not already trust police, as well as authentic, collaborative, and proactive problem solving (shared power) with those stakeholders, appear to be key themes in restoring community trust and improving public safety.¹⁵⁵

Civilian Oversight Boards

To the end of establishing collaborative, shared responsibility for public safety, recent reform efforts have included discussion of community review, or civilian oversight boards, endowing civilians with a shared responsibility to oversee police practices and law enforcement activity in their communities. As part of the reforms passed during the Virginia Legislature’s 2020 Special

¹⁴⁷ Mastoras Testimony, Transcript 2, p. 13 lines 31-41. See: Gill, C., & Mastoras, M. C. (2021). Proactive alliance: Combining policing and counselling psychology. *Journal of Community Safety and Well-Being*, 6 (3), 11 2 –117. <https://doi.org/10.35502/jcswb.193>.

¹⁴⁸ Ibid.

¹⁴⁹ Id at p. 10 line 26 – p. 11 line 26; p. 13 lines 31-41.

¹⁵⁰ Id at p. 11 lines 5-12.

¹⁵¹ Id at p. 10 lines 26-38.

¹⁵² Id at p. 10 lines 30-38.

¹⁵³ Id at p. 12 lines 32-37. See: Leap, J. (2020). *Evaluation of the LAPD Community Safety Partnership*. UCLA Luskin. http://www.lapdpolicecom.lacity.org/051220/CSP%20Evaluation%20Report%202020_FINAL.pdf.

¹⁵⁴ Mastoras Testimony, Transcript 2, p. 11 lines 24-39.

¹⁵⁵ Mastoras Testimony, Transcript 2, p. 10 – 14. See: Gill, C., & Mastoras, M. C. (2021). Proactive alliance: Combining policing and counselling psychology. *Journal of Community Safety and Well-Being*, 6 (3), 11 2 –117. <https://doi.org/10.35502/jcswb.193>.

Session I, House Bill 5055/Senate Bill 5035 gave localities elective authority to establish civilian oversight bodies.¹⁵⁶ The legislation authorized that established bodies *may*:

- (i.) receive, investigate, and issue findings on complaints from civilians regarding conduct of law-enforcement officers and civilian employees;
- (ii.) investigate and issue findings on incidents, including the use of force by a law-enforcement officer, death or serious injury to any person held in custody, serious abuse of authority or misconduct, allegedly discriminatory stops, and other incidents regarding the conduct of law-enforcement officers or civilian employees;
- (iii.) make binding disciplinary determinations in cases that involve serious breaches of departmental and professional standards;
- (iv.) investigate policies, practices, and procedures of law-enforcement agencies and make recommendations regarding changes to such policies, practices, and procedures;
- (v.) review all investigations conducted internally by law-enforcement agencies and issue findings regarding the accuracy, completeness, and impartiality of such investigations and the sufficiency of any discipline resulting from such investigations;
- (vi.) request reports of the annual expenditures of law-enforcement agencies and make budgetary recommendations;
- (vii.) make public reports on the activities of the law-enforcement civilian oversight body; and
- (viii.) undertake any other duties as reasonably necessary for the law-enforcement civilian oversight body to effectuate its lawful purpose to effectively oversee the law-enforcement agencies as authorized by the locality.

While overall supporting the idea of civilian oversight, panelists noted two significant limitations to this legislation. First, it made establishing oversight bodies optional for localities.¹⁵⁷ Journalist Philip Wilayto raised concern that this limitation would “pretty much guaran[tee] that few of Virginia’s 95 counties and 38 independent cities would develop such boards.”¹⁵⁸ Second, the legislation specifically excluded establishing civilian oversight for sheriff’s departments.¹⁵⁹ John Jones of the Virginia Sheriff’s Association explained that this exclusion was based on the distinction of sheriffs as elected officials.¹⁶⁰ Jones argued that subjecting sheriffs to civilian oversight would open the door for political opponents to use the civilian review process as a political weapon.¹⁶¹ He asserted that elections themselves are the “ultimate citizen review

¹⁵⁶ Virginia Legislature, 2020 Special Session I, HB 5055, SB 5035, at: <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+HB5055>.

¹⁵⁷ Virginia Legislature, 2020 Special Session I, HB 5055, SB 5035, at: <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+HB5055>.

¹⁵⁸ Wilayto Testimony, Transcript 6, p. 7 lines 11-15.

¹⁵⁹ Virginia Legislature, 2020 Special Session I, HB 5055, SB 5035, at: <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+HB5055>; *See also*: Jones Testimony, Transcript 7, p. 26 lines 23-32.

¹⁶⁰ Jones Testimony, Transcript 7, p. 26 lines 23-33; p. 38 line 23 – p. 39 line 3; p. 41 lines 8-23.

¹⁶¹ *Id* at p. 38 line 23 – p. 39 line 3.

board,” whereby the community can remove those who are not serving the public need.¹⁶² This limitation is significant, as the Committee notes that sheriffs are the primary law enforcement agency for 86 of the 95 county-level jurisdictions in the Commonwealth.¹⁶³

The Virginia legislature’s authorization of localities to establish citizen oversight for law enforcement may reflect a step toward the shared responsibility described by many as necessary to restore community/police relations and improve public safety. Gianina Irlando of the National Association for the Civilian Oversight of Law Enforcement postulated that often times where communities have instituted alternatives to police interventions, it has been because community review boards have demanded/instituted it.¹⁶⁴ Panelist Irlando testified that the goals of civilian oversight are to ensure that the complaint process is accessible, investigations are thorough and fair, findings are reasonable, and discipline is appropriate.¹⁶⁵ Ultimately, Panelist Irlando asserted that the goal of independent civilian review is to deter misconduct and reduce legal liability.¹⁶⁶ Panelist Irlando emphasized that these boards can take different forms based on the structure and need of each department or locality, and creating effective oversight agencies requires time, planning, and transparency.¹⁶⁷ Panelist Irlando further stated, “There’s nothing fast about putting together an oversight agency, let alone a whole state full of oversight agencies.”¹⁶⁸ Panelist Irlando noted that progress has been made in Virginia: Fairfax County, Charlottesville, and Arlington County, as well as some other individual members have joined NACOLE’s efforts.¹⁶⁹

Despite this progress, a wide chasm remains between the perspective of law enforcement and many community members regarding what civilian oversight boards should look like, and the powers that they should hold. As a result, Dana Schrad of the Virginia Association of Chiefs of Police noted that Virginia’s movement toward civilian oversight of law enforcement has been limited.¹⁷⁰ Journalist Wilayto testified some municipalities that have established boards have restricted their scope to such an extent that they provided no meaningful community oversight.¹⁷¹ Panelists Barnette and Slater argued that in order to gain community participation and buy-in, people must trust that boards are more than “just making a nice little recommendations that might end up on a shelf.”¹⁷² Boards must have authority, Panelist Slater argued, “that their recommendations are binding, as long as they are in alignment with the law.”¹⁷³ Panelist Neily

¹⁶² Jones Testimony, Transcript 7, p. 26 lines 26-32; p. 41 lines 8-23; p. 25 lines 1-5.

¹⁶³ Id at p. 25 lines 6-16.

¹⁶⁴ Irlando Testimony, Transcript 6, p. 21 lines 7-20.

¹⁶⁵ Id at p. 16 lines 21-24.

¹⁶⁶ Id at p. 16 line 24.

¹⁶⁷ Id at p. 16 line 37 – p. 18 line 38.

¹⁶⁸ Irlando Testimony, Transcript 6 at p. 17 lines 5-19.

¹⁶⁹ Id at p. 16 lines 13-20.

¹⁷⁰ Schrad Testimony, Transcript 7, p. 22 lines 14-20.

¹⁷¹ Wilayto Testimony, Transcript 6, p. 7 lines 17-23.

¹⁷² Barnette and Slater, Transcript 5, p. 14 line 31 – p. 15 line 20.

¹⁷³ Id at p. 14 line 31 – p. 15 line 20; *See also*: Ray Testimony, Transcript I, p. 18 line 25-39.

argued the necessity of the following criteria in order for community oversight boards to be both meaningful and effective:

- the powers and prerogatives of the community oversight boards must not be subjected to collective bargaining on the part of police unions;
- disciplinary measures instituted by the community oversight boards should not be reviewable through arbitration;
- boards must have access to the information necessary to conduct their work, including disciplinary records and the ability to compel testimony.¹⁷⁴

Other panelists noted important additional criteria:

- Dr. Ray of Brookings added the boards must also have independent, stable funding available to conduct their work.¹⁷⁵
- Wilayto suggested that boards must reflect the demographics of the areas in which they function, and members must *not* be appointed by either the police departments or mayors.¹⁷⁶
- Gianina Irlando of the National Association for the Civilian Oversight of Law Enforcement (NACOLE) testified that boards should be independent from the influence of city and county administrations; independent from law enforcement departments themselves; include ongoing review of both sworn agency personnel and policies; and include extensive stakeholder engagement.¹⁷⁷

Panelist Neily concluded, “an oversight board that lacks those kinds of powers is not going to be able to adequately inform itself and come to a clear decision or well-informed decision about what to do in any given incident.”¹⁷⁸

Granting civilian oversight boards this kind of authority has raised significant concern within the law enforcement community, prompting some states to pass preemptive legislation to prohibit localities from establishing them.¹⁷⁹ Panelist Sean McGowan of the Virginia Police Benevolent Association argued anyone responsible for oversight should have practical knowledge and education on the law enforcement profession.¹⁸⁰ Panelist John Jones of the Virginia Sheriff’s Association contended that citizen or community oversight boards should be limited to an “advisory” role, because granting them oversight authority creates management conflicts, and

¹⁷⁴ Neily Testimony, Transcript 1, p. 19 lines 4-21.

¹⁷⁵ Ray Testimony, Transcript 1, p. 18 line 40 – p. 19 line 3; Wilayto Testimony, Transcript 6, p. 10 lines 40-42.

¹⁷⁶ Wilayto Testimony, Transcript 6, p. 10 lines 37-41.

¹⁷⁷ Irlando Testimony, Transcript 6, p. 15 lines 23-29.

¹⁷⁸ Neily Testimony, Transcript 1, p. 19 lines 18-21.

¹⁷⁹ Pfaff Testimony, Transcript 1, p. 19 line 22 – p. 20 line 8; Barnette Testimony, Transcript 5, p. 24 line 32 – p. 25 line 5.

¹⁸⁰ McGowan Testimony, Transcript 7, p. 28 line 42 – p. 29 line 4; lines 30-45.

“you can’t have a chief that has a citizen review board trying to run the police department.”¹⁸¹ Panelist Dana Schrad of the Virginia Association of Chiefs of Police similarly argued that civilian review boards with authority to make discipline, suspension, and termination decisions would threaten to take the place of the actual law enforcement executive. “This communicates distrust of our law enforcement executives to address serious police behaviors and puts civilians without police training in the position to make decisions rather than the agency executive.”¹⁸² Panelist Schrad argued that Police Chiefs already have to go before their county boards every month, and can be fired by the county board or town council at any time, so there is already civilian accountability if chiefs aren’t ensuring proper discipline.¹⁸³ Panelist Schrad additionally argued that civilian review boards with disciplinary powers would open personnel records to public scrutiny, which doesn’t happen with any other public employee.¹⁸⁴ Panelist Schrad advocated instead for citizens to participate in an advisory capacity, to “help direct priorities in the community and hear grievances.”¹⁸⁵

Finding IV: Some structural policies and practices increase the likelihood of problematic interactions between police and community members, undermining police/community relations and public confidence in law enforcement.

CompStat and “Hotspot” Policing

While transparent data collection and reporting is important for accountability purposes, panelists cautioned that the type of data collected and measured has a significant impact on police behavior. For example, the performance and data management system CompStat is widely used by police departments across the country to track, analyze, and map crime data and police performance.¹⁸⁶ However, Panelist Dr. John Pfaff of Fordham University School of Law testified that depending on the measures collected, the CompStat system may actually encourage policing of low-level, nonviolent offenses (such as marijuana possession or traffic enforcement) over the policing of higher-level violent crimes, “because the low-level stuff shows productivity.”¹⁸⁷ In contrast, Panelist Pfaff noted that when police pursue higher-level, violent crimes such as aggravated assault, the reflected increase of these crimes in the data appears poorly for a given district and the police responsible for it.¹⁸⁸ Panelist Pfaff concluded, “we have to think

¹⁸¹ Jones Testimony, Transcript 7, p. 26 lines 18-32.

¹⁸² Schrad Testimony, Transcript 7, p. 21 line 45 – p. 22 line 6.

¹⁸³ Id at p. 39 lines 5-15.

¹⁸⁴ Id at p. 22 lines 7-14; p. 40 line 42 – p. 41 line 7.

¹⁸⁵ Id at p. 22 lines 18-24.

¹⁸⁶ The CompStat Process: Managing Performance on the Pathway to Leadership, International Association of Chiefs of Police, Police Chief Magazine, at: <https://www.policechiefmagazine.org/the-compstat-process-managing-performance-on-the-pathway-to-leadership/>; COMPSTAT: Its Origins, Evolution, and Future in Law Enforcement Agencies. Bureau of Justice Assistance, Police Executive Research Forum (2013), at: <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/PERF-Compstat.pdf>.

¹⁸⁷ Pfaff Testimony, Transcript 1, p. 25 line 28 – p. 26 line 5.

¹⁸⁸ Id at p. 25 line 37-p. 26 line 5.

profoundly carefully about what we measure because the police will adapt, will respond to it as we want them to, but they might not respond to it in the way we think they're going to.”¹⁸⁹

Panelists reported that focusing on policing low-level infractions undermines both police effectiveness and the community's confidence in policing generally.¹⁹⁰ Panelist Neily argued that while as recently as 2019, marijuana arrests for simple possession in Virginia were the highest they have been in 20 years, “it's increasingly clear to most people that this is really not an effective use of law enforcement resources, particularly in an environment where we see fewer than fifty percent of violent crimes getting solved by police and fewer than twenty percent of property crimes.”¹⁹¹ Panelist Mastoras testified that police chiefs' tendency to want to show productivity comes at the expense of community trust and “purposeful use [of] enforcement” without community support.¹⁹² Panelist Mastoras explained that solely using data-driven enforcement, without the support of the community or a real understanding of community concerns, is not an effective way to either displace or reduce crime.¹⁹³

Pretextual Stops

Panelist Brad Haywood, Executive Director of Justice Forward Virginia, defined pretextual policing as “using a minor violation of the law, like a minor traffic violation, to conduct an investigation into other more serious offenses even when there's absolutely no evidence that the person has committed the more serious offense.”¹⁹⁴ Panelists argued these stops disproportionately impact Black motorists, rarely result in any contraband, and as a result, diminish community trust in police.¹⁹⁵ Panelists also emphasized that this form of policing, coupled with focused enforcement on low-level offenses, can quickly escalate to tragic cases of police violence and civilian death.¹⁹⁶

¹⁸⁹ Pfaff Testimony, Transcript 1, p. 25 line 37-p. 26 line 5.

¹⁹⁰ Ibid; Neily Testimony, Transcript I, p.8 line 22-27; p. 8 line34-38; Mastoras Testimony, Transcript 2, p. 12 lines 19-31; p. 24 lines 10-35.

¹⁹¹ Neily Testimony, Transcript 1, p. 8 lines 24-32; See also Ray Testimony, Transcript 1, p. 4 lines 35-40.

¹⁹² Mastoras Testimony, Transcript 2, p. 24 lines 10-35; *See also*: Mastoras Testimony, Transcript 2, p. 10 lines 32-38; Weisburd, D., Telep, C.W., Vovak, H., Zastrow, T., Braga, A.A., & Turchan, B. (2022). Reforming the police through procedural justice training: A multicity randomized trial at crime hot spots. *Proceedings of the National Academy of Sciences*, 119(14). <https://doi.org/10.1073/pnas.2118780119>.

¹⁹³ Mastoras Testimony, Transcript 2, p. 24 lines 10-35. *See*: Weisburd, D., Telep, C.W., Vovak, H., Zastrow, T., Braga, A.A., & Turchan, B. (2022). Reforming the police through procedural justice training: A multicity randomized trial at crime hot spots. *Proceedings of the National Academy of Sciences*, 119(14). <https://doi.org/10.1073/pnas.2118780119>.

¹⁹⁴ Haywood Testimony, Transcript 3 p. 15 line 38 – p. 16 line 1.

¹⁹⁵ Id at p. 16 lines 7-15; p. 15 lines 19-29; Khanna Testimony, Transcript 6, p. 4 lines 18-30.

¹⁹⁶ Haywood Testimony, Transcript 3, p. 16 lines 1-20; Khanna Testimony, Transcript 6, p. 4 lines 26-36.

- Army Lieutenant Caron Nazario, who identifies as African American, had two Virginia police officers point guns at him, pepper spray, and push him to the ground during a traffic stop for what officers believed was a missing license plate on his new SUV.¹⁹⁷
- Juanisha Brooks, African American and an employee of the Department of Defense, was stopped by Virginia state troopers for a taillight. Brooks was reportedly violently pulled from her vehicle and was subsequently arrested for driving under the influence, reckless driving, failure to activate vehicle light, misdemeanor attempting to elude police, and misdemeanor obstruction of justice. A later sobriety test showed that Brooks had no alcohol in her system and subsequent charges were dropped. Fairfax County Commonwealth’s Attorney Steve Descanso reported that review of the dashcam video showed the stop had no legal pretextual basis.¹⁹⁸

Haywood argued that by limiting unnecessary encounters with police, one also necessarily reduces the opportunity for police related violence and misconduct, and by extension, racial disparities in police contact.¹⁹⁹ He noted that the Virginia legislature passed a series of reforms in 2020²⁰⁰ which converted several minor traffic and pedestrian violations from primary offenses into secondary offenses.²⁰¹ Taking effect in March 2021, these changes meant that while officers could still cite individuals for these offenses, they could no longer lawfully stop people for these reasons alone.²⁰²

Also prohibited are stopping an individual solely on the basis of odor of marijuana; jaywalking; or operating a vehicle with expired safety inspection or registration sticker until the first day of the fourth month after the original expiration date.²⁰³ In October 2021, NBC News reported that a public records analysis of police data showed that while Black drivers remained overrepresented in traffic stops, following the implementation of these changes, searches of Black motorists had declined by 40 percent.²⁰⁴

¹⁹⁷ Neily Testimony, Transcript 1, p. 10 lines 4-16; See also: <https://www.cnn.com/2021/04/11/us/windsor-virginia-police-stop-army-lieutenant-lawsuit/index.html>.

¹⁹⁸ Haywood Testimony, Transcript 3, p. 15 line 38 – p. 16 line 6. See also: <https://www.cnn.com/2021/05/10/politics/virginia-woman-state-police-officers-arrest/index.html>.

¹⁹⁹ Id at p.16 lines 16-20.

²⁰⁰ SB 5030 (V.A. 2020) <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+SB5030>.

²⁰¹ Haywood Testimony, Transcript 3 p. 16 line 21 – p. 17 line 6; The bill prohibits any local ordinance establishing a primary offense when the corresponding offense in the Code of Virginia is a secondary offense. It also provides that no evidence discovered or obtained due to an impermissible stop, including evidence obtained with the person’s consent, is admissible in any trial, hearing, or other proceeding.

²⁰² SB 5029 (V.A. 2020) <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=sb5029>; See also: Haywood Testimony, Transcript 3, p. 16 lines 21-42.

²⁰³ Ibid.

²⁰⁴ Haywood Testimony, Transcript 3, p. 16 line 42 – p. 17 line 1; See also: NBC News, “Police face a ‘crisis of trust’ with Black motorists. One state’s surprising police may help.” (October 7, 2021), at: <https://www.nbcnews.com/news/us-news/traffic-stops-are-flashpoint-policing-america-reformers-are-winning-big-n1280594>.

These changes have not come without opposition. Panelist Schrad asserted that fewer traffic stops have resulted in fewer opportunities for police to detect more serious criminal activity such as drug trafficking, human trafficking, and wanted felons.²⁰⁵ Panelist Schrad also argued that these changes have resulted in more dangerous traffic conditions on Virginia roads and highways.²⁰⁶ Panelist Jones of the Virginia Sheriff’s Association cited a recent rise in highway fatalities, attributing the limits on police traffic enforcement as the reason for this increase.²⁰⁷ The panelists also raised concern that these limitations contributed to general disrespect of police, allowing motorists to ignore the law.²⁰⁸ In January 2022, Virginia House lawmakers introduced House Bill 79,²⁰⁹ written to remove the exact restrictions on pretextual policing that were instated in March 2021.²¹⁰ The bill passed the Virginia House in February 2022; it was referred to Committee in the Virginia Senate where it also passed but was not introduced to the full Senate.²¹¹

Law Enforcement and Public Revenue

Panelist Neily argued that relying on police to raise public revenue through civil forfeiture, fines, fees, and traffic citations is counterproductive to both community relations and to public safety.²¹² He emphasized that such activity damages community relations and diverts police attention from solving violent crime and making communities safer.²¹³ As discussed earlier in this report, one way police can increase public trust and legitimacy is to be responsive to community needs—solving serious crimes and improving overall public safety.²¹⁴ Panelist Clark cited a study from the Fines and Fees Justice Center which indicated a statistically significant, negative association between the amount of time and effort that police put into revenue raising and their ability to solve violent crime.²¹⁵ Using U.S. Census data and Uniform Crime Reporting data, the study found that a one percent increase in revenues from fines and fees was associated with a greater than six percent *decrease* in the violent crime clearance rate.²¹⁶ Upon analyzing

²⁰⁵ Schrad Testimony, Transcript 7, p. 23 lines 5-10.

²⁰⁶ Id at p. 23 line 10.

²⁰⁷ Jones Testimony, Transcript 7, Id at p. 25 line 43 – p. 26 line 3; p. 35 lines 24-34; p. 36 lines 9-24.

²⁰⁸ Id at p. 36 lines 9-24.

²⁰⁹ HB 79, (V.A. 2022) <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB79>.

²¹⁰ SB 5029, (V.A. 2020) <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=sb5029>; See also: Rappahannock News, Virginia House bill would reverse law limiting minor traffic stops: February 2022, at: https://www.rappnews.com/news/crime/virginia-house-bill-would-reverse-law-limiting-minor-traffic-stops/article_67d5bc9c-9509-11ec-ae8c-bb83e4fcf874.html.

²¹¹ HB 79 (V.A. 2022) <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB79>.

²¹² Neily Testimony, Transcript 1, p. 8 line 39 – p. 9 line 15; p. 11 line 28 – p. 12 line 7. PANEL 1 Presentations, slide 38.

²¹³ Ibid.

²¹⁴ Neily Testimony, Transcript 1, p. 11 lines 28-35;

²¹⁵ Neily Testimony, Transcript 1, p. 9 line 15-22; See: Goldstein et. al, “Exploitative revenues, law enforcement, and the quality of government service: Courts as revenue centers, public safety.” Fines & Fees Justice Center, August 2016, at: <https://finesandfeesjusticecenter.org/articles/exploitative-revenues-law-enforcement-and-the-quality-of-government-service/> Hereinafter cited as “Fines & Fees Justice Center, 2016 Report”

²¹⁶ Neily Testimony, Transcript 1, p. 9 line 15-22.

5,935 unique municipal governments across the country that have an independent police force, the authors concluded that “managers in police departments facing pressure from city officials to raise revenue encourage officers to devote time to revenue collection rather than investigation.”²¹⁷ The report notes that this effect is primarily driven by small departments in small cities, where police have more discretion about which activities they can pursue—in contrast to departments in major urban centers that typically have specialized teams assigned to specialized tasks and are thus less likely to be reassigned to revenue collection.²¹⁸

In Virginia, Panelist Schrad testified that traffic fines are an income stream that fund regional training academies for law enforcement.²¹⁹ The limitations of pretextual stops implemented in 2021 have caused a 50 percent reduction in this funding, and as a result the Association has faced at least \$500,000 in losses that they are typically able to send to their regions for law enforcement training.²²⁰ Panelist Schrad emphasized that the state legislature has not provided any additional funding to replace this lost revenue.²²¹

Qualified Immunity

The 1871 Civil Rights Act (also known as the Ku Klux Klan Act) allowed individuals “acting under color of State law” to be held personally liable for violating the constitutional rights of another.²²² Now known as “Section 1983” of the U.S. Code, this was a “broad statute designed to ensure that people could seek redress for the violation of their civil rights in federal court.”²²³ In 1982, however, the Supreme Court effectively amended this legislation in the case of *Harlow v. Fitzgerald*, to say that one could not seek redress for deprivation of any constitutional right; instead, one may only seek redress for violation of “clearly established rights.”²²⁴ The insertion of the words, “clearly established” effectively limited Section 1983 protection to cases in which the courts have already ruled an identical, or nearly identical case in the same jurisdiction to be unconstitutional.²²⁵ Using the judicially created defense of “qualified immunity,” law enforcement may petition to have Section 1983 claims dismissed even if a person’s rights are violated, and a judge agrees that that their rights were violated—so long as there was not a

²¹⁷ “Fines & Fees Justice Center, 2016 Report.”

²¹⁸ *Ibid.*

²¹⁹ Schrad Testimony, Transcript 7, p. 23 lines 11-18; p. 31 line 39 – p. 32 line 12.

²²⁰ Schrad Testimony, Transcript 7, p. 23 lines 11-18; p. 31 line 39 – p. 32 line 12.

²²¹ *Ibid.*

²²² Now codified at 42 U.S.C §1983; *More information at:* <https://www.ojp.gov/ncjrs/virtual-library/abstracts/review-civil-rights-act-1871-42-usc-1983-correctional-personnel#:~:text=The%201871%20Civil%20Rights%20Act.the%20constitutional%20rights%20of%20another>.

²²³ 42 U.S.C §1983; Neily Testimony, Transcript 1, p. 9 lines 23-35.

²²⁴ 457 U.S. 800, 818-19 (1982); Neily Testimony, Transcript 1, p. 9 lines 30-37.

²²⁵ *Ibid.*

previous case in the same jurisdiction with matching circumstances in which the courts found the officer’s actions to be unconstitutional.²²⁶

Panelists raised concern that the qualified immunity of law enforcement can significantly impede accountability efforts and undermine public trust in the institution of policing, creating a real or perceived “double standard” between police and public accountability.²²⁷ Panelist Ashna Khanna of the ACLU of Virginia testified that as it stands now, qualified immunity for law enforcement makes it “virtually impossible for victims of police violence to win damages or get justice.”²²⁸ Panelist Neily pointed out that there have been so many cases of egregious conduct that have been dismissed under qualified immunity, that the obscure legal term has become a household name and public campaign slogan for police accountability.²²⁹ Panelists noted that qualified immunity has been repealed in places like New Mexico and Colorado but efforts to repeal it in Virginia have failed multiple times in the face of strong opposition from law enforcement.²³⁰

Panelist Brackney cited a statement of the Fraternal Order of Police on June 21, 2021, which notably asserted “the FOP will not yield in any effort to preserve the existing qualified immunity doctrine.”²³¹ Panelist Brackney noted that the FOP boasts membership in excess of 350,000 across the nation, and as such holds enormous political influence in resisting accountability reforms at the legislative level.²³² Panelist Brackney also noted that qualified immunity has been so difficult to repeal in part because it protects all government officials—cases often arise in the educational context, for example—not just law enforcement.²³³ Panelist Jones, executive Director of the Virginia Sheriff’s Association asserted that if qualified immunity was revoked, “the deputies would leave in droves.”²³⁴ Panelist Jones testified that even the public debate and tone regarding police reforms such as ending qualified immunity caused a turnover in 2021 in some departments approaching 30 percent.²³⁵ He contended that officers would not be willing to do the job if it meant assuming personal liability that could cost them not only their careers, but also their homes.²³⁶

²²⁶ *Harlow v. Fitzgerald*, 457 U.S. 800, (1982); Neily Testimony, Transcript 1, p. 9 line 36 – p. 10 line 3. See also: Whitney K. Novak, Policing the Police: Qualified Immunity and Considerations for Congress, *Congressional Research Service, Legal Sidebar*, Updated June 25, 2020, <https://crsreports.congress.gov/product/pdf/LSB/LSB10492>.

²²⁷ Neily Testimony, Transcript 1, p. 25 lines 19-27; p. 9 line 23 – p. 11 line 21; Khanna Testimony, Transcript 6, p.3 lines 39-42; p. 5 lines 42-46; Brackney Testimony, Transcript 2, p. 3 line 26 – p. 4 line 16.

²²⁸ Khanna Testimony, Transcript 6, p. 3 lines 39-42.

²²⁹ Neily Testimony, Transcript 1, p. 10 lines 17-33.

²³⁰ Id at p. 10 lines 34-40; Khanna Testimony, Transcript 6, p. 5 line 42 – p. 6 line 12; Wilayto Testimony, Transcript 6, p. 7 lines 8-10.

²³¹ Brackney Testimony, Transcript 2, p. 4 lines 4-9. See statement: <https://fop.net/2021/06/statement-from-national-fop-president-regarding-ongoing-discussions-on-criminal-justice-reform/>

²³² Brackney Testimony, Transcript 2, p. 3 line 38 – p. 4 line 4.

²³³ Brackney Testimony, Transcript 4, p. 4 lines 2-10.

²³⁴ Jones Testimony, Transcript 7, p. 27 lines 14-18.

²³⁵ Id at p. 24 lines 14-22.

²³⁶ Jones Testimony, Transcript 7 p. 27 lines 14-18; p. 42 lines 12-15.

Other panelists offered that shifting such protections to department and individual officer liability insurance could help remedy this concern.²³⁷ Panelists pointed out that individual liability insurance policies are in line with standards from other professions; they have the potential to protect officers from personal financial devastation in the event of a lawsuit, while also protecting public taxpayers from being liable for paying out large settlements.²³⁸ Part of any new police-training program that takes into account the issues discussed in previous sections would also need to educate police that, even in the absence of qualified immunity, they would be protected from liability in the normal course of their responsibilities.

Finding V: There are few procedures in place to address inappropriate police workplace culture, or manage officers with aggressive or hostile attitudes toward the communities they police.

Most panelists recognized the difficulties of police work and acknowledged that police officers are charged with a dangerous and difficult job and that they enter the profession with noble intentions to serve their communities. Still, panelists raised concern of cultural norms and standards within many departments that develop and perpetuate problematic behaviors that do not serve community needs nor lend themselves to transparency or accountability.

Orientation Toward the Community

Panelist Barnette of the Virginia NAACP described the police culture in Virginia as fragmented, and “highly militaristic.”²³⁹ Neily of Cato testified that police are trained to see every situation as a potential threat to their safety, and to establish “tactical control over the scene” by insisting everyone follow their orders “immediately and without dissent.”²⁴⁰ Panelist Mastoras, who himself served for 24 years as a police officer in Arlington, Virginia, including 15 years as a field training officer, lamented that not enough attention is paid to culture and subsystems in policing.²⁴¹ Panelist Mastoras cited Dr. Cynthia Lum of the George Mason University Center for Evidence-Based Crime Policy, who has argued that reframing police culture to focus on proactive problem solving and prevention is a much more effective way to improve policing outcomes than focusing on more traditional metrics of training and accountability.²⁴² In reference to the high-profile police killing of George Floyd by Minneapolis Police in 2020, Lum argued that “Floyd’s death partly reflects an overemphasis on crime reaction and arrest for minor

²³⁷ Ray Testimony, Transcript 1, p. 6 line 36 – p. 7 line 13; Brackney Testimony, Transcript 4, p. 4 lines 2-6.

²³⁸ Ray Testimony, Transcript 1, p. 27 lines 2-7; p. 28 line 31 – p. 29 line 18; Brackney Testimony, Transcript 4, p. 4 lines 2-6.

²³⁹ Barnette Testimony, Transcript 5, p. 24 line 32 – p. 25 line 5.

²⁴⁰ Neily Testimony, Transcript 1, p. 27 lines 20-31.

²⁴¹ Mastoras Testimony, Transcript 2, p. 10 lines 7-13 and p.12 lines 9-18.

²⁴² Mastoras Testimony, Transcript 2, p. 11 line 40 – p. 12 line 18; Lum, Cynthia, Perspectives on Policing. Annual Review of Criminology. 2021. 4:19-25, at: <https://www.annualreviews.org/doi/pdf/10.1146/annurev-criminol-093020-023221>. Hereinafter cited as “Perspectives on Policing (2021).”

offenses rather than on problem-solving, prevention, and community engagement in patrol operations.”²⁴³

Panelist Mastoras noted that field training officers have the power to shape the culture of the entire agency.²⁴⁴ Yet, in his years as a field training officer, his focus was simply on training new recruits to handle each call with “no more than what was needed to get to the next call.”²⁴⁵ In his experience, Mastoras explained that most officers become fascinated with “things of the job” that help to build and reinforce identity, like uniforms, weapons, cars, and technology, rather than “soft skills” like community relations.²⁴⁶ Such fascination is reinforced by other officers within the department, along with an emphasis on measures like tickets, reports, and arrests that are used to evaluate performance.²⁴⁷ This system fails to give new officers tools to build relationships in the community and manage complex problems in a collaborative way.²⁴⁸ Panelist Mastoras concluded, “holding officers accountable when they lack the tools needed to build relationships and implement problem-oriented policing is a difficult position for them to be in.”²⁴⁹

Panelists emphasized that lasting change must come from the “co-production” of public safety, with police and community members working together.²⁵⁰ Panelist Mastoras argued that community collaboration can only flourish when police perspective is shifted to that of a “coequal member of the community rather than one that presides over it.”²⁵¹ Yet Panelist Brackney noted this process is difficult to leverage because police often don’t want to share power and authority with the communities they serve.²⁵² Panelist Neily recommended beginning this process with shifting training to encourage police to think of themselves as people who are there to help serve communities and make them safer, rather than thinking of themselves as “warriors.”²⁵³

“Enforcement alone will always be an option available to these officers but challenging them to value the prevention side of crime will build trust, legitimacy, and improve officer morale and efficacy. Officers are capable of so

²⁴³ Perspectives on Policing (2021), p. 20-21.

²⁴⁴ Mastoras Testimony, Transcript 2, p. 12 lines 9-18.

²⁴⁵ Mastoras Testimony, Transcript 2, p. 12 lines 9-18.

²⁴⁶ Id at p. 12 lines 19-25.

²⁴⁷ Ibid.

²⁴⁸ Id at p, 12 lines 9-34.

²⁴⁹ Id p. 12 lines 32-34.

²⁵⁰ Id at p. 12 line 32 – p. 13 line 3. *See Finding 3 for further discussion.*

²⁵¹ Id at p. 13 lines 31-41. *See: Gill, C., & Mastoras, M. C. (2021). Proactive alliance: Combining policing and counselling psychology. Journal of Community Safety and Well-Being, 6 (3), 11 2 –117. <https://doi.org/10.35502/jcswb.193>.*

²⁵² Brackney Testimony, Transcript 2, p. 16 lines 16-25.

²⁵³ Neily Testimony, Transcript 1, p. 27 lines 20-31.

much more if they are given a path that is supported and reinforced by executive leadership and the jurisdictions where they work.”²⁵⁴

-Dimitrios Mastoras, former police officer and trainer

Transparency and Self-Accountability

Panelists described public sentiment that police cannot be trusted to police themselves, tying this lack of trust directly to insufficiencies in police accountability and transparency.²⁵⁵ Panelist Gianina Irlando of the National Association for the Civilian Oversight of Law Enforcement (NAOLE) testified that meaningful accountability must include both oversight of the individual officer, and oversight of the agency as a whole.²⁵⁶ In the case of a police shooting, for example, the officer’s actions must be examined as well as the training, procedures, supervision, and policies of the department that may have led to that shooting.²⁵⁷ Panelist Philip Wilayto chronicled the cases of four Black men fatally shot by Richmond police between 2001 and 2018, each case involving “police killing under controversial circumstances and what, in my view, were systemic coverups that went all the way to the highest ranks of the Richmond Police Department, including the chiefs.”²⁵⁸ Panelists described a “culture of secrecy,” sometimes colloquially known as the “blue wall of silence” that not only shields officers from accountability but can also push out those officers who would attempt to promote integrity.²⁵⁹ Regardless of what actually happened, perception matters and obscurity works against public trust.

Moreover, Panelist Brackney testified that when she joined the department, she found a lot of “hazing and corruption” among field training officers. Panelist Brackney recalled this corruption was very difficult to address because recruits are unlikely to report their own training officers, who are charged with determining whether or not they get to keep their job.²⁶⁰ Lucas Martinez of the League of United Latin American Citizens (LULAC) presented his agency’s 2015 national resolution, including a ten-point plan for police reform.²⁶¹ This plan includes establishing specific protections for officers who promote integrity—eliminating gag rules that prohibit

²⁵⁴ Mastoras Testimony, Transcript 2, p. 14 lines 11-23.

²⁵⁵ Blanding Testimony, Transcript 5, p. 11 lines 13-19; Barnette Testimony, Transcript 5, p. 2 lines 27-37; Neily Testimony, Transcript 1, p. 8 lines 1-10.

²⁵⁶ Irlando Testimony, Transcript VI, p. 15 lines 30-37; see also Tars Testimony, Transcript VI, p. 19 line 38 – p. 20 line 9.

²⁵⁷ Irlando Testimony, Transcript 6, p. 15 lines 30-37.

²⁵⁸ Wilayto Testimony, Transcript 6, p. 7 line 24 – p. 10 line 27; *See also*: Wilayto Written Testimony, Appendix X

²⁵⁹ Pfaff Testimony, Transcript 1, p. 22 lines 19-32; Slater Testimony, Transcript 5, p. 5 lines 25-31; p. 28 lines 19-23; Khanna Testimony, Transcript 6, p. 3 lines 20-25; Brackney Testimony, Transcript 2, p. 24 line 36 – p. 25 line 2; Ray Testimony, Transcript 1, p. 7 lines 22-33; Wilayto Testimony, Transcript 6, p. 25 lines 35-39.

²⁶⁰ Brackney Testimony, Transcript 4, p. 5 lines 3-28.

²⁶¹ Martinez Testimony, Transcript 7, p. 9 line 10 – p. 10 line 22. *See also*: League of United Latin American Citizens, Resolution for establishment of 10-point plan for police reform (2015), at:

https://lulac.org/advocacy/resolutions/2015/resolution_establishment_of_10_point_plan_for_police_reform/. Hereinafter cited as “LULAC 10-Point Police Reform Resolution (2015).”

officers from speaking publicly about police practices and misconduct, and creating independent mechanisms for police to report misconduct confidentially.²⁶²

In addition to protecting individual officers who would report misconduct, panelists cited the need for broader data transparency to promote accountability at the systems level. LULAC's ten-point police reform plan also includes calls for both increased data transparency and increased resources for data collection and reporting enforcement.²⁶³ Panelist Irlando of the NAOLE testified that police cannot be held accountable if procedures, data, investigative and disciplinary processes, and outcomes are held secret.²⁶⁴ Panelist Brackney noted that transparency is key to breaking the blue code of silence.²⁶⁵ To this end, when she became chief, she immediately began publicly posting detailed data on use of force, investigative detentions, response, resistance, and even internal affairs investigations on the Department website for public review—a gesture that satisfied much community concern about the Department's practices.²⁶⁶ Panelist Chief Kevin Davis of the Fairfax County Police department reported similar success with restoring public confidence by making detailed data transparent and readily available to the public.²⁶⁷

Explicit Bias and White Supremacist Affiliation

The Federal Bureau of Investigation (FBI) warned in 2006 of members of white supremacist groups attempting to infiltrate police departments.²⁶⁸ In 2009 the Department of Homeland Security (DHS) similarly warned of white supremacists targeting recruitment among military veterans for their tactical skills and experience.²⁶⁹ Key judgements from the 2006 FBI report outline the multiple threats that such infiltration poses to public safety and to the safety of law enforcement personnel themselves:²⁷⁰

1. The primary threat from infiltration or recruitment arises from the areas of intelligence collection and exploitation, which can lead to investigative breaches and can jeopardize the safety of law enforcement sources and personnel.

²⁶² Martinez Testimony, Transcript 7, p. 10 lines 10-22; Ray Testimony, Transcript 1, p. 7 lines 22-33.

²⁶³ Martinez Testimony, Transcript 7, p. 10 lines 15-32; LULAC 10-Point Police Reform Resolution (2015), points 9 & 10.

²⁶⁴ Irlando Testimony, Transcript 6, p. 16 lines 31-36; *See also*: Hepler Testimony, Transcript 3, p. 26 lines 14-28.

²⁶⁵ Brackney Testimony, Transcript 2, p. 24 line 36 – p. 25 line 21.

²⁶⁶ *Id* at p. 25 lines 3-21.

²⁶⁷ Davis Testimony, Transcript 2, p. 26 lines 22-33.

²⁶⁸ Johnson Testimony, Transcript 3, p. 5 lines 23-30; Federal Bureau of Investigation, Intelligence Assessment, *White Supremacist Infiltration of Law Enforcement* (October 2006), at: <https://www.justsecurity.org/wp-content/uploads/2021/06/Jan-6-Clearinghouse-FBI-Intelligence-Assessment-White-Supremacist-Infiltration-of-Law-Enforcement-Oct-17-2006-UNREDACTED.pdf>. Hereinafter: *White Supremacist Infiltration of Law Enforcement* (October 2006)

²⁶⁹ Johnson Testimony, Transcript 3, p. 5 lines 23-30; U.S. Department of Homeland Security Assessment, *Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment* (April 2009), at: <https://irp.fas.org/eprint/rightwing.pdf>.

²⁷⁰ *White Supremacist Infiltration of Law Enforcement* (October 2006), p. 3

2. White-supremacist presence among law enforcement personnel is a concern due to the access they may possess to restricted areas vulnerable to sabotage and to elected officials or protected persons, whom they could see as potential targets for violence. In addition, white-supremacist infiltration of law enforcement can result in other abuses of authority and passive tolerance of racism within communities served.
3. The intelligence acquired through the successful infiltration of law enforcement by one white-supremacist group can benefit other groups due to the multiple allegiances white supremacists typically hold.

The report notes that historically, white-supremacist groups have made strategic attempts to infiltrate and recruit from law enforcement communities; today however, a majority of infiltration attempts reflect “self-initiated efforts by individuals, particularly among those already within law enforcement ranks, to volunteer their professional resources to white-supremacist causes with which they sympathize.”²⁷¹

Panelist testimony echoed these concerns and illustrated the dangers of failing to address them adequately. Panelist Ray testified that white nationalists, whatever small sliver of society they inhabit, continue to view law enforcement as a place they should infiltrate.²⁷² In 2017, the FBI reported that white-supremacist activity was on the rise more broadly across the country, and posed “a persistent threat of lethal violence.”²⁷³ Panelist Vida Johnson of the Georgetown University Law Center pointed to a 2017 ABC poll which found that approximately ten percent of Americans believe it is acceptable to hold neo-Nazi or white supremacist views, and suggested that as members of the American public themselves, police likely reflect this same demographic.²⁷⁴ Multiple panelists noted that a significant number of the people who participated in the attack on the U.S. Capitol on January 6, 2021 were current and former police officers—some connected with far-right groups like the Oath Keepers, Three Percenters, and Proud Boys.²⁷⁵ Multiple members of the Capitol Police themselves have been charged in connection with the incident, highlighting an obvious security risk to the elected officials they were sworn to protect, exactly as warned against in the 2006 FBI intelligence assessment.²⁷⁶

Panelists acknowledged that the vast majority of officers have noble intentions, while also raising concern that the issue of white supremacy and far-right extremism in policing remains a

²⁷¹ *White Supremacist Infiltration of Law Enforcement* (October 2006), p. 3

²⁷² Ray Testimony, Transcript 1, p. 21 lines 3-8.

²⁷³ Federal Bureau of Investigation and Department of Homeland Security, Joint Intelligence Bulletin, White Supremacist Extremism Poses Persistent Threat of Lethal Violence. FBI/DHS Joint Intelligence Bulletin (May 2017), at: <https://s3.documentcloud.org/documents/3924852/White-Supremacist-Extremism-JIB.pdf>

²⁷⁴ Johnson Testimony, Transcript 3, p. 2 line 35 – p. 3 line 6; p. 5 line 31 – p. 6 line 13; *See also*: Brackney Testimony, Transcript 4, p. 3 lines 15-26.

²⁷⁵ Ray Testimony, Transcript 1, p. 21 lines 3-8; Johnson Testimony, Transcript 3, p. 3 lines 31-41; Davis Testimony, Transcript 2, p. 18 lines 17-25. *See also*: *White Supremacist Infiltration of Law Enforcement* (October 2006), p. 3; and <https://www.lawfareblog.com/policing-and-siege-united-states-capitol>; and: <https://www.voanews.com/a/usa-us-capitol-riot-prompts-fresh-focus-extremism-us-police-ranks/6201251.html>

²⁷⁶ *Ibid.*

pervasive problem that has been inadequately addressed.²⁷⁷ Panelist Brackney testified that when she first came to the Charlottesville Police Department she found text messages and other communications between officers on city-issued devices reflecting violent, racist, and misogynistic behaviors and fantasies—yet the Department had not cleared a single Internal Affairs complaint in three years.²⁷⁸ Panelist Vida Johnson provided specific examples of police officers engaging in racially charged conduct, and of officers with affiliations to white-supremacist groups, in many jurisdictions across the country.²⁷⁹ She cited the work of the Plain View Project, which has documented thousands of Facebook posts containing explicitly racist, homophobic, misogynistic, and Islamophobic content created and shared by law enforcement officers.²⁸⁰ Panelist Neily also referenced the Plain View Project, stating that most of the over 3,500 different police officers identified in the records remain employed, and it does not appear that many were disciplined as a result.²⁸¹ Panelist Neily argued that that most of this content is not at all secret or difficult to find, thus “at a bare minimum” police departments should be expected to conduct a minimal review of social media history before hiring new officers or accepting them into the academy, as many private employers do.²⁸²

Panelist Johnson contended that individuals have the right to hold biased viewpoints and use hateful language, but that they do not have the right to do so while holding law-enforcement positions.²⁸³ She raised concern that such personal affiliations, casual conversations, social-media posts, and the like can translate into actual threats and violence toward targeted communities.²⁸⁴ For example:

- Following a decades-long torture scandal in the City of Chicago, where police tortured more than a hundred Black men in an effort to extract confessions, a 2017 U.S. Department of Justice (DOJ) investigation found that the Chicago Police Department “tolerated racially discriminatory conduct that not only undermines police legitimacy, but also contributes to the pattern of unreasonable force.”²⁸⁵ The report noted a pervasive pattern of discriminatory views expressed including in public and social media forums, which was not adequately addressed by the Department.²⁸⁶
- Similarly, the DOJ found following the high-profile police killing of Michael Brown in Ferguson, Missouri, that, regardless of the question of the propriety of Brown’s killing,

²⁷⁷ Johnson Testimony, Transcript 3, p. 2 line 35- p. 3 line 6; p. 3 lines 31-41; p. 5 lines 23-30.

²⁷⁸ Brackney Testimony, Transcript 4, p. 3 lines 3-26.

²⁷⁹ Johnson Testimony, Transcript 3, p. 3- line 11 – p. 5 line 40; p. 8 lines 23-32.

²⁸⁰ Id at p. 8 lines 23-32.

²⁸¹ Neily Testimony, Transcript 1, p. 21 line 32 – p. 22 line 8.

²⁸² Id at p. 21 line 32 – p. 22 line 8.

²⁸³ Johnson Testimony, Transcript 3, p. 9 lines 18-27.

²⁸⁴ Id at p. 4 line 30 – p. 5 line 22.

²⁸⁵ Johnson Testimony, Transcript 3, p. 4 lines 34-40. *See also*: Investigation of the Chicago Police Department, United States Department of Justice Civil Rights Division and United States Attorney’s Office Northern District of Illinois, (January 2017), p. 15. At: <https://www.justice.gov/opa/file/925846/download>.

²⁸⁶ Ibid.

there was “explicit racial bias in the communications of police and court supervisors,” throughout the Ferguson Police Department.²⁸⁷

- A police officer in Cincinnati OH who shot an unarmed motorist during a routine traffic stop in 2015 was found to have been wearing a shirt bearing a confederate flag under his uniform on the day of the shooting.²⁸⁸
- A police officer in Little Rock Arkansas, who was hired despite having admitted previous attendance at a KKK rally, went on to accumulate a series of misconduct complaints and disciplinary actions before killing an unarmed 15-year-old Black boy while on the force.²⁸⁹

Panelist Johnson concluded: “It’s not that we want to police people’s thoughts, but we worry that those viewpoints may translate into deeds, and we have a lot of reason to be concerned that that’s the case,” even for those who may not identify as far right extremists or white supremacists.²⁹⁰ In its 2006 intelligence assessment, the FBI similarly concluded: “Although the First Amendment’s freedom of association provision protects an individual’s right to join white supremacist groups for purposes of lawful activity, the government can limit the employment opportunities of group members who hold sensitive public sector jobs, including jobs within law enforcement, when their memberships would interfere with their duties.”²⁹¹

“Although the First Amendment’s freedom of association provision protects an individual’s right to join white supremacist groups for purposes of lawful activity, the government can limit the employment opportunities of group members who hold sensitive public sector jobs, including jobs within law enforcement, when their memberships would interfere with their duties.”²⁹²

-FBI Intelligence Assessment, White Supremacist Infiltration of Law Enforcement (2006)

²⁸⁷ Investigation of the Ferguson Police Department, United States Department of Justice, Civil Rights Division (March 2015), p. 63, at: https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

²⁸⁸ Johnson Testimony, Transcript 3, p. 5 lines 5-8; see also: <https://www.10news.com/news/national/white-officer-who-shot-killed-black-man-in-car-was-wearing-confederate-flag-shirt-under-uniform>

²⁸⁹ Id at p. 5 lines 14-22. See: <https://arktimes.com/arkansas-blog/2012/09/07/little-rock-cop-josh-hastings-charged-with-manslaughter-in-suspects-shooting>

²⁹⁰ Id at p. 4 lines 27-33 - p. 5 line 14-22.

²⁹¹ *White Supremacist Infiltration of Law Enforcement* (October 2006), p. 6. <https://www.justsecurity.org/wp-content/uploads/2021/06/Jan-6-Clearinghouse-FBI-Intelligence-Assessment-White-Supremacist-Infiltration-of-Law-Enforcement-Oct-17-2006-UNREDACTED.pdf>. See also: Johnson Testimony, Transcript 3, p. 9 lines 18-27.

²⁹² *White Supremacist Infiltration of Law Enforcement* (October 2006), p. 6. <https://www.justsecurity.org/wp-content/uploads/2021/06/Jan-6-Clearinghouse-FBI-Intelligence-Assessment-White-Supremacist-Infiltration-of-Law-Enforcement-Oct-17-2006-UNREDACTED.pdf>. See also: Johnson Testimony, Transcript 3, p. 9 lines 18-27.

Panelist Davis of the Fairfax PD suggested that officers should undergo background checks and periodic screening, including of their social media accounts, throughout their career and not just at hiring.²⁹³ Panelist Davis lamented, however, that small municipalities often do not have the resources necessary to invest in improved psychological evaluations or behavioral assessments.²⁹⁴ Panelist Brackney reported that most departments are using screening tools from the 1950s.²⁹⁵ Panelist Pfaff of Fordham Law suggested that using automated, actuarial approaches to screening for bias may remove the human element and prevent white-supremacist infiltration of the position responsible for screening out problematic candidates in the first place.²⁹⁶ Panelist Pfaff also argued that any budgetary cuts should be made in such a way as to preserve the inflow of new officers, rather than cutting from incoming classes, because it is much easier to screen and eliminate incoming applicants than it is to remove officers that are already on the force.²⁹⁷

Political Protection

Despite these serious concerns, speakers cited political and structural barriers that tend to reinforce the status-quo, shielding law enforcement from reform and accountability efforts. Panelist Brackney testified that law enforcement has been able to so successfully inoculate itself against reform that many individuals in the profession “believe they are invulnerable to accountability.”²⁹⁸ She explained that police are protected by a political system that lacks authentic accountability—city managers, council members, mayors, congressional members, and governors often rely on police benevolence associations, unions, and fraternities for political endorsement.²⁹⁹ These associations, in turn, use their political influence to oppose reform efforts and to codify protections against accountability reforms in state statutes and collective bargaining agreements.³⁰⁰

Panelist Teresa Helper of the Legal Aid Justice Center noted this dynamic has created a significant “power imbalance with the police where you have police able to orchestrate the removal of people and mechanisms that can affect changes and help community members have a voice.”³⁰¹ Panelist Hepler described the “paternalistic approach” of the city government in Charlottesville that “doesn’t think that there’s anything wrong with the police investigating themselves,” despite repeated community complaints with the process, and documented cases of officers being cleared of wrongdoing by internal affairs only to be later convicted in court after

²⁹³ Davis Testimony, Transcript 2, p. 18 lines 17-25.

²⁹⁴ Ibid.

²⁹⁵ Brackney Testimony, Transcript 2, p. 22 lines 12-17.

²⁹⁶ Pfaff Testimony, Transcript 1, p. 36 lines 1-29.

²⁹⁷ Ibid.

²⁹⁸ Brackney Testimony, Transcript 4, p. 3 lines 3-31.

²⁹⁹ Id at p. 2 lines 22-44; p. 3 lines 25-31.

³⁰⁰ Hepler Testimony, Transcript 3, p. 26 lines 29-34; Brackney Testimony, Transcript 2, p. 3 line 28 – p. 4 line 7.

³⁰¹ Hepler Testimony, Transcript 3, p. 24 line 17 – p. 25 line 15.

significant public organizing for additional investigation.³⁰² Panelist Wilayto opined that throughout history, whenever there has been a fundamental change in society, it's come through "great powerful mass movements" such as the labor movement of the 1930s and the civil rights movement of the 1960s.³⁰³ Wilayto argued that "in the absence of that kind of mass pressure, it's almost impossible to get progressive change through the present political system."³⁰⁴

Diversifying Policing Responsibilities

One effort panelists suggested that may help to shift some of the problematic elements of police culture is creating a multidisciplinary team with more diverse backgrounds within police departments themselves. Panelist Brackney focused many of her efforts on hiring highly trained civilians to fill jobs in such roles as crime analytics, intelligence, computer forensics, evidence technicians, software analytics, software production, and trainers.³⁰⁵ Without civilian employees in the department, officers are often placed in jobs they were not hired to do and do not have the skillset for.³⁰⁶ By expanding the civilian workforce and creating a multidisciplinary team, departments can reduce cost, create a multidisciplinary workforce with a better skillset for the work, save the department money, and free officers up to do the work they were actually trained for.³⁰⁷ Brackney argued that bringing civilians into the workforce can also engage the community and bring in diverse perspectives that can help to dilute "blue culture or blue socialization" within the department.³⁰⁸

Panelists also suggested shifting the way recruitment and hiring is done for police departments. Georgetown's Johnson noted that most recruitment materials currently focus on "militarized" aspects of police work, such as SWAT teams and military style clothing, rather than depicting officers involved in positive community engagement.³⁰⁹ She suggested that more women and people of color would be likely to apply to police departments if this trend were reversed.³¹⁰ Bringing more diversity to police departments and implementing national standards, such as recruitment conducted by outside agencies, may help to address issues related to policing as a somewhat insular group.³¹¹ Particularly in the hiring process, Johnson testified that candidates with a problematic history or affiliations are much more likely to pass background screenings, be given the benefit of the doubt, and assumed to be well-meaning when the hiring committee is composed of people with the same background and identity as themselves.³¹² This may be

³⁰² Hepler Testimony, Transcript 3 p. 25 line 16 – p. 26 line 3.

³⁰³ Wilayto Testimony, Transcript 6, p. 26 line 3 – p. 27 line 12.

³⁰⁴ Id at p. 27 lines 3-9.

³⁰⁵ Brackney Testimony, Transcript 2, p. 35 line 31 – p. 36 line 31.

³⁰⁶ Ibid.

³⁰⁷ Ibid.

³⁰⁸ Ibid.

³⁰⁹ Johnson Testimony, Transcript 3, p. 11 lines 1-11.

³¹⁰ Ibid; Id atp. 13 lines 1-5.

³¹¹ Johnson Testimony, Transcript 3, p. 12 lines 14-28; p. 13 line 18-23.

³¹² Id at p. 12 line 14-28; p. 13 lines 18-23.

especially true in smaller or more rural communities where the candidates may also have personal connections with those responsible for hiring and background screening.³¹³

Finding VI: Recent legislative initiatives in Virginia have sought to increase accountability and curb police abuses in some contexts, though implementation of these efforts has been limited, and has been met with significant resistance from the law enforcement community.

The 2020 death of George Floyd, along with a number of other high-profile police killings around that time set off a series of protests across the country demanding police reform and accountability.³¹⁴ Panelist Brackney testified that this movement provided a moment that made authentic oversight and accountability feel uniquely attainable.³¹⁵ The Justice for George Floyd in Policing Act was introduced in the U.S. House of Representatives,³¹⁶ and the Virginia legislature held a special legislative session³¹⁷ to enact “some of the most progressive police oversight measures to-date.”³¹⁸

Despite that initial flurry of legislative activity, little actual legislation has been enacted. The Justice for George Floyd in Policing Act passed twice in the U.S. House of Representatives, but failed in the Senate, primarily due to disagreement regarding restrictions on qualified immunity.³¹⁹ The omnibus package in the Virginia legislature did pass,³²⁰ though with important concessions such as Community Review Boards being made optional.³²¹ The policy area remains contested. Three years later, in 2023, Virginia lawmakers introduced several bills to reverse a number of the exact reforms that were made in 2020.³²²

Regarding the actual implementation of police-accountability reforms, Panelist Brackney testified that police chiefs most open to reform are leaving or being forced out of their

³¹³ Johnson Testimony, Transcript 3, p. 12 line 14-28; p. 13 lines 18-23.

³¹⁴ George Floyd is killed by police officer, igniting historic protests. May 25, 2020, at History.com: <https://www.history.com/this-day-in-history/george-floyd-killed-by-police-officer>. See also: Wilayto Testimony, Transcript 6, p. 6 line 26 – p. 7 line 23.

³¹⁵ Brackney Testimony, Transcript 4, p. 1 line 27 – p. 2 line 2.

³¹⁶ H.R. 1280 - George Floyd Justice in Policing Act of 2021 <https://www.congress.gov/bill/117th-congress/house-bill/1280>.

³¹⁷ 2020 Special Session 1, Summary as Passed, at: <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+SB5030>; See also: Virginia will hold special legislative session on policing this summer. DCist. (June 2020), at: <https://dcist.com/story/20/06/11/virginia-will-hold-special-legislative-session-on-policing-this-summer/>.

³¹⁸ Brackney Testimony, Transcript 4, p. 1 line 27 – p. 2 line 2.

³¹⁹ Justice for George Floyd in Policing Act of 2021, H.R. 1280, 117th Cong. (2021); What is the George Floyd Justice in Policing Act and is it likely to pass? The Guardian (February 2023), at: <https://www.theguardian.com/us-news/2023/feb/06/george-floyd-justice-in-policing-act-explainer-tyre-nichols>.

³²⁰ SB 5030 (V.A. 2020) <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+SB5030>.

³²¹ Code of Virginia § 9.1-601 at: <https://law.lis.virginia.gov/vacode/9.1-601/>; See also: Wilayto Testimony, Transcript 6, p. 7 lines 1-23.

³²² HB 1380 (V.A. 2023) <https://lis.virginia.gov/cgi-bin/legp604.exe?231+cab+HC10127HB1380+RCHB3>; See also: HB 1401 (V.A. 2023) <https://lis.virginia.gov/cgi-bin/legp604.exe?231+sum+HB1401>; See also: Virginia Democrats defending police reform after death of Tyre Nichols. Capitol Connection. (January 2023), at: <https://www.wric.com/news/politics/capitol-connection/virginia-democrats-defending-police-reform-after-death-of-tyre-nichols/>.

departments, as cities that have been “most aggressive about demanding reform and altering police practices” make it difficult or impossible for chiefs to actually carry out the desired policy changes.³²³ The gaps in leadership that are left behind after frequent turnover of the highest ranks makes it even more difficult to implement reform and “long-lasting cultural change within policing departments.”³²⁴

Amidst this public debate, law enforcement members and leaders have raised concerns regarding officer morale, recruitment, and general respect for management.³²⁵ Panelist Schrad of the Virginia Association of Chiefs of Police testified that 12,000 local law enforcement officers and 1,300 state police and civilian employees have recently left the profession due to these legislative and accountability reform efforts.³²⁶ Panelist Schrad argued that due to the personnel loss, departments have had to scale back on their response to calls for services, and officers fear being attacked or sued: “it’s had a chilling effect on enforcement.”³²⁷ Panelist Sean McGowan, Executive Director of the Police Benevolent Association (PBA), purports recent legislative reform efforts have been “anti-law enforcement” and “cast aside common sense.”³²⁸ Panelist McGowan described the attitude the PBA has taken toward the legislative reform efforts as “pugilistic,” “because of the way we’ve been treated.”³²⁹ He specifically grieved perception that legislative reforms have limited or ignored input from law enforcement representatives.³³⁰ McGowan contended that the PBA generally supports accountability and oversight,³³¹ however, he also asserted that current accountability systems are already in place and are “working well.”³³² McGowan claimed that the current criminal justice system in the United States is working so well in fact, that similar to a well-working septic system, “daily doing the work that protects everyone from some of the unpleasant realities of life,” people have forgotten what it is like not to have that system in place.³³³ The resulting “ignorant bliss” has caused some people to believe they no longer need the system, and has led politicians to move to destroy it.³³⁴

³²³ Brackney Testimony, Transcript 4, p. 2 lines 1-9; *See also*: <https://www.governing.com/now/police-chiefs-most-open-to-reform-are-the-ones-leaving.html>.

³²⁴ Brackney Testimony, Transcript 4, p. 2 lines 10-15. *See also*: <https://www.cnn.com/2021/10/12/us/police-chief-turnover/index.html>.

³²⁵ Schrad Testimony, Transcript 7, p. 21 lines 21-25; p. 42 lines 26-32; Jones Testimony, Transcript 7, p. 42 line 7 – p. 43 line 2; McGowan Testimony, Transcript 7, p. 42 lines 18-41; Hepler Testimony, Transcript III, p. 27 line 29-34; Miyares Testimony, Transcript 8, p. 5 lines 5-20.

³²⁶ Schrad Testimony, Transcript 7, p. 20 line 11 – p. 21 line 9; p. 41 line 38 – p. 42 line 6; Miyares Testimony, Transcript 8, p. 4 line 32 – p. 5 line 4.

³²⁷ Schrad Testimony, Transcript 7, p. 21 lines 8-12.

³²⁸ McGowan Testimony, Transcript 7, p. 28 lines 29-41.

³²⁹ *Id* at p. 33 lines 29-35.

³³⁰ *Id* at p. 28 lines 29-41.

³³¹ *Id* at p. 28 line 13 – p. 29 line 4; lines 30-45.

³³² *Id* at p. 39 line 25 – p. 40 line 2; p. 40 lines 31-41.

³³³ McGowan Testimony, Transcript 7, p. 29 lines 5-18.

³³⁴ *Ibid*.

McGowan concluded by asserting that the system is failing not because it is flawed, but “because of efforts to dismantle it.”³³⁵

Aside from general department morale and public respect, concerns regarding specific recent reforms (or reform proposals) included the following:

- Civilian Review Boards (CRBs) with enforcement or disciplinary authority will undermine the authority of Chiefs as the agency executive and put civilians without police training in the position to make decisions.³³⁶
- Sheriffs should not be subject to civilian oversight because sheriffs are elected, and civilian oversight would become a political issue (political opponents working to get on the CRB, for example).³³⁷
- Opening personnel records to public scrutiny (through the civilian review board process or otherwise) will put officers at risk of their personal safety and the safety of their family, with no assurance that the process will be fair or equitable.³³⁸
- Limiting pretextual traffic stops has lessened the ability of police to detect other criminal activity, and resulted in an increase in speeding, reckless driving, and traffic crashes.³³⁹
- Search warrant restrictions have made it more difficult to serve search warrants, and misaligned hours of service with federal law enforcement, so that now state agents cannot participate on federal task forces that might address things like child abduction, human trafficking, drug trafficking, etc.³⁴⁰
- New data collection can lead to “escalated contact” between police and citizens. Police must either guess at a person’s demographics, or ask, which can be offensive and escalate encounters.³⁴¹ As a result police make fewer stops.³⁴² McGowan recommended that any demographic data to be collected be put on drivers’ licenses so officers do not have to ask.³⁴³
- Eliminating qualified immunity for officers but not any other public employee is a leading reason for officers quitting, leaving them with no protection for their reasonable behavior and crisis decision making. Though this has not actually happened in Virginia, even though the tone/talk of such reforms caused a turnover approaching thirty percent.³⁴⁴

³³⁵ McGowan Testimony, Transcript 7, p. 29 lines 19-34.

³³⁶ Schrad Testimony, Transcript 7, p. 39 lines 5-15; Miyares Testimony, Transcript 8, p. 6 line 12 - p. 7 line 2; p. 9 line 34 – p. 10 line 12.

³³⁷ Jones Testimony, Transcript 7, p. 38 line 23 – p. 39 line 3.

³³⁸ Schrad Testimony, Transcript 7, p. 22 lines 7-14; p. 40 line 42 – p. 41 line 7.

³³⁹ Id at p. 23 lines 5-10.

³⁴⁰ Id at p. 23 lines 19-27.

³⁴¹ Id at p. 23 line 28 – p. 24 line 8.

³⁴² Id at p. 24 lines 1-2.

³⁴³ Id at p. 24 lines 5-8.

³⁴⁴ Schrad Testimony, Transcript 7, p. 24 lines 9-18; Jones Testimony, Transcript VII, p. 27 lines 14-22.

- There is no need to expand officer decertification because decertification is already in place and officers can be decertified for life, which is “much more extreme for police officers than any other public employee.”³⁴⁵

Despite these disagreements, the outlook for unified reform measures and potential areas of collaboration was not entirely bleak. Panelist Schrad noted that in June 2020, the Virginia Association of Chiefs of Police released a series of recommendations to address public concern, including regarding certification, accreditation, and mental health training.³⁴⁶ Panelist Jones of the Virginia Sheriff’s Association voiced strong support for both enhanced accreditation standards and decertification to prevent problematic officers from simply moving from one department to another to avoid discipline.³⁴⁷ Jones also voiced support for recent reforms empowering the Attorney General to investigate patterns of civil rights violations by law enforcement officers.³⁴⁸ The Attorney General recommended expanded/required use of body cameras, and additional funding to expand staffing and allow for more community policing efforts.³⁴⁹ There was additional support for establishing community oversight boards that are advisory in nature, to obtain community perspective and input without actually acting as an enforcement body.³⁵⁰

Finding VII: A much broader system of social and economic supports is necessary to serve the dual purposes of increasing public safety and supporting public servants in law enforcement.

Within discussion of police accountability there exists a broader consideration of the role that police play in communities more generally. There appears to be at least some agreement among both reform advocates and law enforcement professionals themselves that police are often tasked with doing work that is beyond their scope of expertise or training.³⁵¹ It is difficult to expect one person to have the knowledge and expertise necessary to effectively manage crises stemming from homelessness, substance use, domestic violence, mental health, developmental disabilities, poverty, traffic management, criminal investigations, civil conflicts, violent crimes, and more. Panelist Neily analogized “we’ve come to use [police] as a social Swiss army knife. If we don’t know what else to do, we simply send the police and that’s very clearly not always the best

³⁴⁵ Schrad Testimony, Transcript 7, p. 39 lines 16-24.

³⁴⁶ Id at p. 32 line 40 – p. 33 line 5; *See also*: Schrad Testimony, Transcript 7, p. 24 lines 20-24; p. 43 lines 9-20. Recommendations to move Virginia law enforcement forward (June 2020), at:

<https://www.vachiefs.org/files/news/VACP%20Recommendations%20to%20Move%20Virginia%20Law%20Enforcement%20Forward.pdf>.

³⁴⁷ Jones Testimony, Transcript 7, p. 33 lines 6-28.

³⁴⁸ Jones Testimony, Transcript 7, p. 26 lines 32-37; Miyares Testimony, Transcript 8, p. 3 line 39 – p. 4 line 7.

³⁴⁹ Miyares Testimony, Transcript 8, p. 7 lines 9-29; p. 8 line 38 – p. 9 line 32; p. 10 lines 19-30.

³⁵⁰ Id at p. 6 line 12 - p. 7 line 2; p. 9 line 34 – p. 10 line 12; Jones Testimony, Transcript VII, p. 26 lines 21-23; Schrad Testimony, Transcript 7, p. 22 lines 18-24.

³⁵¹ Tars Testimony, Transcript 6, p. 28 lines 31-41; p. 20 lines 34-39; Brackney Testimony, Transcript 2, p. 35 lines 31-36; Beadnell Testimony, Transcript 7, p. 19 lines 1-4.

response.”³⁵² Panelist Brackney testified that municipalities can continue to institute all kinds of interventions, however, “if the demands of the work are going to stay the same, the outcomes...are always going to be the same.” “Until we decide what public safety and public wellness and public wellbeing as part of public safety looks like, we’re going to continue to have these kinds of dialogues, and you’re going to be advising in a way that may not necessarily bring you any satisfactory outcomes.”³⁵³

Alternative Crisis Support

Panelists offered that developing a much broader system of social and economic supports is critical to improving both police/community relations and public safety outcomes.³⁵⁴ Rashawn Ray of Brookings noted that nine of ten calls for emergency service are for nonviolent crises.³⁵⁵ By reallocating calls for services like mental health, law enforcement are freed to focus on solving violent crimes.³⁵⁶ He cited the example of the Support Team Assisted Response (STAR) in Denver, which is dispatched through 911 and sends a team of Emergency Medical Technicians and Behavioral Health Technicians to assist individuals experiencing distress related to mental health, poverty, homelessness, and substance abuse.³⁵⁷ STAR reports that in its first year, responders successfully managed 1,396 calls for service, with no arrests, no injuries, and no need for police backup.³⁵⁸ Notably, Denver has funded its STAR program through its own budget, so as to insulate itself from the potential volatility of state budgets.³⁵⁹ Panelist Pfaff of Fordham Law similarly described alternative programs in jurisdictions across the country that rely on unarmed crisis intervention teams of social workers and other professionals to respond to mental health and homelessness calls without police.³⁶⁰ He referenced violence interrupter programs in some cities that rely on trusted individuals in the community to identify and stop violence before it occurs, and drug treatment and public health programs that have shown substantial evidence of positive outcomes.³⁶¹

Panelist Tars of the NHLC argued that putting resources into housing and social services will ultimately make law enforcement’s job easier, but in order to achieve these goals, “we need to have that bigger idea of what public safety is.”³⁶² He noted that some alternative response

³⁵² Neily Testimony, Transcript 1, p. 11 lines 1-4.

³⁵³ Brackney Testimony, Transcript 2, p. 22 lines 28-40.

³⁵⁴ Neily Testimony, Transcript 1, p. 11 lines 4-10; Ray Testimony, Transcript 1, p. 5 line 6-12; p. 7 line 30-33; Martinez Testimony, Transcript 7, p. 9 lines 1-9; Tars Testimony, Transcript 6, p. 14 lines 23-35.

³⁵⁵ Ray Testimony, Transcript 1, p. 5 lines 6-12.

³⁵⁶ *Ibid.*

³⁵⁷ *Ibid.*; Pfaff Testimony, Transcript 1, p. 40 line 21 – p. 41 line 7; *See:*

<https://www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Public-Health-Environment/Community-Behavioral-Health/Behavioral-Health-Strategies/Support-Team-Assisted-Response-STAR-Program>.

³⁵⁸ <https://www.wellpower.org/star-program/>.

³⁵⁹ Pfaff Testimony, Transcript 1, p. 40 lines 21-25.

³⁶⁰ *Id.* at p. 13 lines 23-36.

³⁶¹ *Ibid.*

³⁶² Tars Testimony, Transcript 6, p. 20 lines 3-39.

programs rely on a “co-responder” model, where police and social service professionals are sent out in teams together.³⁶³ He cautioned that alternative-response teams should focus as much as possible on the social-service aspect of intervention, referencing again the case of Kurt Andres Reinhold, a homeless man killed by two police who were part of a “homeless outreach team” and had been trained in intervention and de-escalation.³⁶⁴

Panelist Pfaff asserted that these alternative crisis interventions are tied directly to considerations of police accountability. Criminology literature demonstrates that effective deterrence of “bad behavior” through after-the-fact punishments or heightened accountability measures is very difficult to achieve.³⁶⁵ Therefore, Pfaff concluded, “perhaps the best way to achieve sort of a kind of accountability is never to be in that situation in the first place.”³⁶⁶ Panelist Pfaff acknowledged that the data on most of these “non-policing” options is “mixed and unclear,” but argued that data on traditional policing practices is also “mixed at best.”³⁶⁷ He lamented, “we demand precise randomized clinical trials to justify the merits of non-policing interventions. We’re generally ok with much less rigorous studies that justify the use of policing.”³⁶⁸ He contended this is particularly problematic because when policing interventions go poorly, there is often a large negative spillover effect in the community compared to when non-policing interventions or alternatives do not go as planned.³⁶⁹

Resource Allocation

While the Committee acknowledges the challenges in (re)determining resource allocations under a more robust conceptualization of public safety, panelists suggested that some expanded diversion services may actually ease municipal budget constraints. Panelist Ray testified that in the top 20 metropolitan areas alone, in the past five years, U.S. taxpayers have contributed to more than two billion dollars in settlements for police misconduct.³⁷⁰ Panelist Ray noted that these civil settlements come from general funds that could be used for infrastructure, education, social services, and healthcare.³⁷¹ Panelist Ray further noted that municipalities that are actually seeing a reduction in violent crime are places that have engaged in more innovative responses to policing, showing that “simply throwing more money, that’s the quantitative boots-on-the-ground response, doing that does not lead to a reduction in the outcomes we want, whether that be crime or racial disparities and police killing.”³⁷² Panelist Tars testified that criminalizing homelessness can cost two to three times as much as simply providing housing. “Continuing to

³⁶³ Tars Testimony, Transcript 6, p. 20 lines 3-39.

³⁶⁴ *Ibid.*

³⁶⁵ Pfaff Testimony, Transcript 1, p. 13 lines 7-22.

³⁶⁶ *Ibid.*; Tars Testimony, Transcript 6, p. 31 lines 5-13.

³⁶⁷ Pfaff Testimony, Transcript 1, p. 13 line 37 – p. 14 line 17; See also: Neily Testimony, Transcript 1, p. 11 lines 4-10.

³⁶⁸ Pfaff Testimony, Transcript 1, p. 13 line 37 – p. 14 line 17.

³⁶⁹ *Id.* at p. 14 lines 22-28.

³⁷⁰ Ray Testimony, Transcript 1, p. 3 lines 28-38; PANEL 1 Presentations, slides 13-14.

³⁷¹ *Id.* at p. 3 lines 31-38.

³⁷² Ray Testimony, Transcript 1, p. 37 lines 13-26.

invest these resources into a law enforcement approach actually harms the whole community by draining the resources we need to solve the underlying housing issues that make people homeless in the first place.”³⁷³

Panelist Schrad described the insufficiency of Virginia’s mental-health system as the number one concern of the Virginia Association of Chiefs of Police.³⁷⁴ She noted that co-response systems that are not adequately resourced are a “set up for failure.”³⁷⁵ People experiencing mental-health crises are held in custody for days and then released without treatment because there were no beds available for them in local hospitals or mental health facilities.³⁷⁶ Panelist Jones remarked that sheriffs run “the biggest mental health system in Virginia” where approximately one in three people in jail have chronic mental illness.³⁷⁷ Reallocating support for a more robust mental-health system may do far more to alleviate stress on police departments and improve public safety than expanding police forces to better manage this load.

Policing Quality

Aligned with the idea that civil society requires a broader emergency response system that does not rely on police to serve as a “social Swiss army knife,” recent public survey data suggests that people are demanding not more or less policing, but rather a qualitatively different kind of policing.³⁷⁸ Panelist Pfaff challenged survey data that appeared to suggest people wanted more police, by noting that the same survey data also found that people do not trust police, and when given the choice would overwhelmingly rather work with alternative responders.³⁷⁹ Panelist Ray testified that Black people and people in low-income neighborhoods want “a qualitatively different relationship with law enforcement. We want the same qualitative relationship that we know exists across town that happens to be more affluent. That oftentimes is predominantly White, but not always.”³⁸⁰ Panelist Ray continued that “part of what people want is more control over what happens in their communities.”³⁸¹ He provided the examples of community oversight boards that are not simply symbolic; the ability of civilian community intervention workers like violence interrupters to trust police for collaboration; and timely 911 responses when calls for service are warranted as examples of areas where qualitative improvements, rather than quantitative (simply hiring more police), are needed.³⁸²

³⁷³ Tars Testimony, Transcript 6, p. 12 lines 14-19.

³⁷⁴ Schrad Testimony, Transcript 7, p. 22 lines 25-39.

³⁷⁵ *Ibid.*

³⁷⁶ Schrad Testimony, Transcript 7, p. 22 line 40 – p. 23 line 4; p. 31 lines 21-28.

³⁷⁷ Jones Testimony, Transcript VII, p. 37 lines 16-33.

³⁷⁸ Ray Testimony, Transcript I, p. 24 lines 11-30; Mastoras Testimony, Transcript II, p. 13 line 23-29; Pfaff Testimony, Transcript I, p. 15 line 6 – p. 16 line 18; p. 17 lines 17-34.

³⁷⁹ Pfaff Testimony, Transcript I, p. 15 line 6 – p. 16 line 18.

³⁸⁰ Ray Testimony, Transcript I, p. 24 lines 11-43; p. 5 lines 23-39; PANEL 1 Presentations, slide 24.

³⁸¹ *Id.* at p. 24 lines 30-32.

³⁸² Ray Testimony, Transcript I, p. 24 lines 27-43.

As discussed throughout much of this report, speakers emphasized the importance of co-equal community collaboration in order to identify and implement the innovative responses necessary to achieve such qualitative improvements. Panelist Mastoras argued that one cannot continue to expect different results if we are not willing to look outside of the policing profession for innovation.³⁸³ Panelist Irlando of the National Association for the Civilian Oversight of Law Enforcement testified that it is difficult to have innovative responses to community needs without civilians being involved in the discussion.³⁸⁴ Panelist Irlando postulated that often times where communities have instituted alternatives to police interventions, it has been because Community Review boards (with power) have demanded/instituted it.³⁸⁵ Panelist Davis of Fairfax similarly acknowledged that it is important to consider strategies that originate from outside of policing to give officers tools necessary to build eroded trust.³⁸⁶

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.³⁸⁷ In keeping with these responsibilities, and given the testimony heard on this topic, the Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should:
 - a. *Urge the U.S. Department of Justice, through its Office on Community Oriented Policing, to engage state and local law enforcement in dialogue concerning the imposition of fines and fees to ensure that policing focuses on law enforcement and is not seen or treated as a revenue-raising function. The U.S. Department of Justice might consider outreach via “Dear Colleague” letters [as was recently done by the U.S. Attorney General](#) in regard to juvenile justice agencies and the imposition of fines and fees.*
2. The U.S. Commission on Civil Rights should issue the following recommendation to the Governor and the General Assembly of the Commonwealth of Virginia:
 - a. *Establish uniform, universal training and certification requirements for all police officers and emergency dispatch in the Commonwealth for purposes of providing crisis intervention to persons with mental illness, and processes to coordinate*

³⁸³ Mastoras Testimony, Transcript 2, p. 14 lines 7-10.

³⁸⁴ Irlando Testimony, Transcript 6, p. 31 lines 14-21.

³⁸⁵ Id at p. 21 lines 7-20.

³⁸⁶ Davis Testimony, Transcript 2, p. 10 line 31-38.

³⁸⁷ 45 C.F.R. § 703.2 (2018).

police interactions with local community mental-health resources to provide on-site or remote consultation and advice to officers in the field.

- b. Establish standards and protocols for the evaluation, treatment and diversion of persons exhibiting mental illness, or those displaying a mental-health crisis in the course of police or first-responder interactions, to appropriate mental-health settings and using appropriate medical and mental-health standards for treatment and evaluation.*
 - c. Restructure the capabilities of the Department of Criminal Justice Services to incorporate a state-wide advisory board focused specifically on the content and adherence of in-service training.*
 - d. Evaluate the funding of state and local law enforcement agencies such that they are not expected or incentivized to engage in policing as a revenue-raising activity.*
3. The U.S. Commission on Civil Rights should commend the Virginia Attorney General for his recent letter urging the state police to undertake antisemitism training for new officers (and expressing a plan to encourage police forces across Virginia to do so) and issue the following recommendations to him:
- a. Recommend that all law enforcement agencies in Virginia strengthen training that prevents actions based on illegal or improper bias relating to protected classes – including, but not limited to, religion, race, sex, sexual orientation, gender identity, and disability – as well as mental health status, to ensure that such training is received periodically by both new officers and those already serving the Commonwealth.*
 - b. Work with state and local law enforcement agencies to strengthen background and personality checks as part of a fulsome evaluation of candidates so people unsuited for law enforcement (because violent, racist, or have other inappropriate characteristics) do not get a badge and gun.*
 - c. Work with state and local law enforcement agencies to ensure that policing focuses on law enforcement and is not seen or treated as a revenue-raising function.*
 - d. Work with state and local law enforcement agencies to train officers on the difference between pretextual stops made largely to explore the possibility of criminal activity and proactive policing that prevents reckless or impaired driving.*

- e. Reevaluate warrant restrictions to the extent they have made it harder for state and local law enforcement officers to properly serve search warrants and participate in federal task forces (on issues like child abduction, human trafficking, and illegal firearms trafficking) as appropriate.*
- 4. The U.S. Commission on Civil Rights should issue the following recommendations to the Joint Legislative Audit & Review Commission of Virginia to:
 - a. Review the pros and cons of qualified immunity in a variety of contexts—including but not limited to law enforcement—where state or municipal officials or employees violate citizens’ constitutional rights.*
 - b. Review the practices of state and local law enforcement agencies to ensure that policing focuses on law enforcement and is not seen or treated as a revenue-raising function.*
- 5. The U.S. Commission on Civil Rights should issue the following recommendation to the Virginia Department of Criminal Justice Services:
 - a. Provide, oversee, and harmonize training across the state to all localities, including an increased focus on de-escalation training.*
 - b. Standardize and require data reporting regarding law enforcement activity.*

Appendix³⁸⁸

A. Hearing materials

- a. Transcript
- b. Agenda
- c. Minutes
- d. Panelist Presentations (PPT)
- e. Other records

B. Written Testimony

- a. Jackson Miller, Department of Criminal Justice Services
- b. Philip Wilayto, Virginia Defenders for Freedom Justice, & Equality
- c. Mary Ottinot, Member of the public

C. Committee Member Statements

- a. Concurring – Ilya Shapiro

Ilya Shapiro, Concurring in Large Part

This report is largely unobjectionable, which is why I voted to approve it, but it also reflects an artificial exercise that’s more akin to journalistic reportage than social-scientific analysis, which is why it’s of limited utility. I’d call the process frustrating if I thought its result mattered much. But it doesn’t, so I write this concurrence more out of bemusement and to warn the reader to take it all with a grain of salt. And to advise Congress that it really ought to rethink the structure and purpose of these state advisory committees, and indeed of the U.S. Commission on Civil Rights itself, whose statutory authority terminated on September 30, 1996,³⁸⁹ even as Congress has continued to pass appropriations.

But don’t just take my word for it; our report itself reveals its own internal weaknesses and contradictions. Most glaringly, Finding #1 purports to find that several categories of people (racial minorities, people with developmental disabilities, and the homeless) “face disparities in police contacts and the use of force in certain circumstances.” And yet, the very first paragraph of that finding concludes, “The Committee did not receive testimony regarding disparate police treatment of violent crime, or whether there are differing rates of criminality by race.” So I suppose the “disparities” in police contacts relate to percentage of population rather than rates of criminality, which means that this finding is of limited criminological use. Indeed, at a time when the United States (including Virginia) faces both inappropriate police interactions and rising crime, which suggests both over- and under-policing—mismatched policing?—it could be

³⁸⁸ All appendix materials are publicly available here:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1ZBL1BvbGljZSBBY2NvdW50YWJpbGl0eQ%3D%3D.

³⁸⁹ See 42 U.S.C. § 1975d (“This chapter shall terminate on September 30, 1996.”).

that there should be *more* police contacts with the categories of people listed, just of a different nature or in different places. Our report does not, and cannot, address these sorts of thorny and sensitive issues, other than to nod at the need to review policies and practices that undermine public confidence in law enforcement.

The other findings have fewer conceptual issues—I'll spare you the parsimonious nit-picking—but suffer from similar methodological flaws. Our committee dutifully executed its charge to convene public hearings and collect copious testimony from assorted stakeholders,³⁹⁰ but didn't engage in the sort of sophisticated policy analysis that would add rigor to our joint endeavor. Not because we didn't want to or thought it irrelevant, but simply because we didn't have the capacity or training on this particular topic—or the time and resources to become even remotely adequate peer reviewers. We're not trained in criminology, econometrics, or other relevant fields. We all have our own areas of experience and expertise, to be sure, but collectively we're a lay volunteer panel of people interested in and familiar with civil rights issues that relies on experts and advocates to present their own views, and then synthesizes them. And, to be honest, some of my fellow committee members absented themselves from our post-hearing deliberations, including the final vote, seemingly running out of gas just as the rubber hit the road. I don't necessarily blame them—the demands on my time and attention crested the last six or eight months of our term—but it just goes further to show the futility of this exercise.

I hasten to add that the narratives that illustrate and explain our report's seven findings are comprehensive and thorough, accurately summarizing the testimony and comments we received and painstakingly footnoting with citations to the hearing transcripts, laws, and other materials raised and discussed in our hearings. I commend the professional staff at the Regional Programs Unit based out of Chicago for their yeoman's work in putting that together—particularly Melissa Wojnaroski, who drafted most of the findings, Victoria Moreno, who helped us finalize the report, and Sarah Villanueva, who coordinated our meetings and handled other important logistics. But all of that good work, done in good faith, still lacks the sort of analytical overlay one would expect from a policy task force.

Then we get to the recommendations, which to my mind are the most important part of the report because they actually suggest that the bodies with authority over its subject matter address some of the weaknesses in law enforcement policies and practices that were revealed from our hearing process. I'm particularly heartened that we agreed on suggestions for reform regarding policing-for-profit, de-escalation training, and qualified immunity (the latter for all government officials, not just police). Of course, these recommendations are all directed to the U.S. Commission, to in turn issue recommendations to the relevant federal and state agencies and officials. It's a lot of establishmentarian hand-waving without realistic hope for action given the political and public-choice dynamics at play.

Which brings me to my conclusion: I'm grateful for the opportunity to serve the people of Virginia, but I'm not sure that the juice was worth the squeeze—for me, but more importantly for the committee as a whole. I'm generally content with the work we did in shaping this report, but I question its worth.

Although our state committee didn't fall prey to the sort of partisan rancor and bureaucratic obstreperousness that has afflicted the national commission—we should all be thankful for that—I'm not sure of its purpose. Indeed, as I was reading up on background about the state advisory structure before I joined this committee, I came across a news story about the battles over the U.S.C.C.R. that began decades ago. Back in 2001, my friend Todd Gaziano, who

³⁹⁰ See 42 U.S.C. § 1975a.

went on to serve on the Commission, was quoted as saying the following: “To a large extent, the commission’s purpose has been superseded by a number of civil rights laws and responsibilities that have been given other executive agencies that have law enforcement authority.”³⁹¹ Indeed, Congress amended the Commission’s authorizing statute in the 1980s so that the body’s focus—and thus presumably that of the state advisory committees—would be on how well these civil rights enforcement agencies operated.³⁹² That’s not how we went about our work, but then we didn’t perform primary research or investigations either. Even when the Commission is functioning well, its reports are of limited value if they aren’t based on rigorous legal and policy analysis. This report, for whatever it’s worth, is a microcosm of that problem.

³⁹¹ Darryl Fears, “A Deepening Divide on U.S. Civil Rights Panel,” *Washington Post*, December 18, 2001, <https://www.washingtonpost.com/archive/politics/2001/12/18/a-deepening-divide-on-us-civil-rights-panel/4d9fdef6-5615-4710-a1c1-a79ed73ae5>.

³⁹² See Pub. L. 98-183, § 5, 97 Stat. 1302 (1983) (codified as amended at 42 U.S.C.A. § 1975a).

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