



# COMMONWEALTH of VIRGINIA

Office of the Governor

## Commission to Examine Racial Inequity in the Law

### AGENDA

Thursday, May 21, 2020

1pm – 3pm

*Via WebEx*

1. Call to Order
2. Public Comment
3. Administrative Items
4. Debrief on legislative Process with for Phase I
5. Remarks and Presentation by Coronavirus Health Equity Leadership Task Force
  - a. Dr. Janice Underwood | Chief Diversity, Equity & Inclusion Officer , Office of the Governor
  - b. Alaysia Hackett | Special Assistant to Chief Diversity, Equity & Inclusion Officer, Office of the Governor
  - c. Sable Nelson-Dyer | Acting Director, Office of Health Equity, VDH
  - d. Curtis Brown | Chief Deputy State Coordinator, VDEM
  - e. Dr. Lauren Powell | Equity Consultant, VDEM
6. Presentation from University of Virginia Researchers
  - a. Juliet Buesing
  - b. Trust Kupupika
  - c. Kelsey Massey
  - d. Paul Williams
  - e. Christopher Yarrell
7. Phase II Process Discussion & Next Steps
8. Adjournment



# COVID-19 Unified Command/VEST Health Equity Task Force

GET INVOLVED AND GET ON BOARD

MAY 6, 2020



# Who We Are: Health Equity Task Force and Working Group

Applying a health equity lens to Virginia's COVID-19 response

## Health Equity Task Force FAQs



The first-of-its-kind in Virginia state history and nationally to exist within an emergency response body, the nearly 60 member HEWG serves as a cabinet-level mechanism to apply a health equity lens to the Commonwealth of Virginia's COVID-19 response by:

- Every other COVID-19 equity task force around the country was built reactively after the VA model. These task forces are intellectual or academic in nature. VA is the only state with an operational task force.
- The VA Equity Task Force meets with all other major states and cities for real time learning and collaboration.



# Who We Are: The Equity Task Force is powered by – Health 360

Utilizing a novel data driven approach to inform Unified Command about at risk populations

## Powered By Health360



230M+

U.S. Adults Scored



Data updated every

1 Month



Contains over

1,500+

variables on lifestyle and other metrics



150+

Advanced predictive algorithms



400+

Variables used in the mortality predictive algorithm



Provides 360° view of a person



Algorithms rebuilt every 2 years



40+

Clients served



# The Equity Leadership Task Force

## What We've Done So Far...

Equity Education	Community Engagement	Internal Collaborations
<p>Health Equity Training/video to all UC agencies, local governments, pilot volunteers</p> <p>Lunch and Learn with Dr. Susan Gooden</p> <p>Access and Function Training</p> <p>Meeting with all public and private diversity officers in higher education</p> <p>Created Equity Pilot Orientation Materials for localities</p> <p>Local and national media requests for interviews routed from the JIC</p>	<p>Richmond and Harrisonburg Pilots completed – considering follow up event</p> <p>Higher Education Health Equity Initiative/Survey/Planning</p> <p>SWAM subgroup in coordination with SBSD</p> <p>Community Engagement/Stakeholder calls - 12,000+ stakeholders reached so far; Surveys and focus groups created to seek HEWG and VA residents feedback</p> <p>Faith Leader Advisory Meetings/Guidance Documents</p>	<p>Weekly meetings with Health 360 team</p> <p>Meeting with agencies to consult on proposals for CARES Act funding that serves the needs of the most marginalized and vulnerable</p> <p>Created language translation service SOP for all unified command agencies and Gov Office</p> <p>Created the Overarching Communications Group – in collaboration with Siddall Consulting; Goodstock LLC, JIC, Gov Comms, VDH, VDEM PIOs – Trend Analysis Report (an internal document)</p>

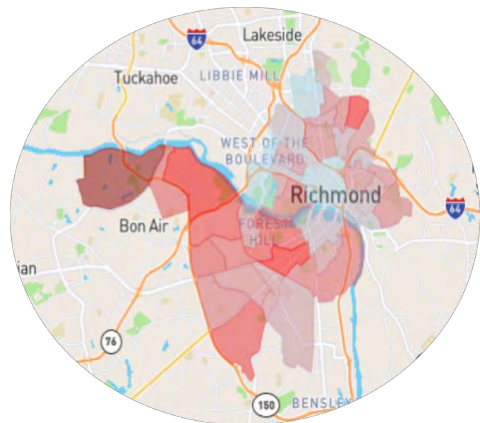
# The Equity Leadership Task Force

## Where We're Headed: VISIBLE Equity...

Equity Education	Community Engagement	Internal Collaborations
<p>Monthly lunch and learn series expanded</p> <p>Collaboration with VCU Wilder School of Government and Public Affairs</p> <p>Facebook townhall</p> <p>Increased participation in local and national interviews routed from the JIC, Siddall</p>	<p>Chesapeake Pilot launch on Friday</p> <p>Meet with each locality in NOVA to review how the Equity Task Force will support vulnerable communities – begins (today) May 14 with PWC</p> <p>Recommendations for statewide community testing locations using VANG</p> <p>Collaborate with 66 local jails; PPE distrib.</p> <p>Additional community engagement calls with military, veterans, faith leaders, NOVA community members, and follow up calls with Gov advisory boards</p> <p>Phase 2-3 guidance documents for faith and business leaders</p>	<p>2-3 weekly meetings with Health 360 team to inform our work</p> <p>Work with JIC and comms teams to robustly and accurately message the work of the equity task force as a priority group</p> <p>Strategic planning with Goodstock – Siddall communications subcontractor</p> <p>Provide equity recommendations from the larger HEWG; weekly memos</p>

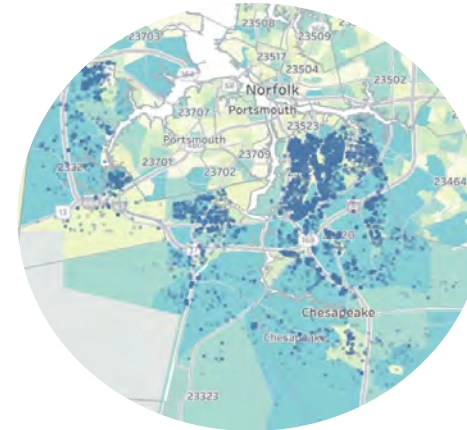
# Health Equity Working Group – Summary of Innovation and Application

## RICHMOND & HARRISONBURG



- Door to door operation
- Distribution of 20,000 masks, hand sanitizer, outreach material, and health equity training

## CHESAPEAKE



- Integrated testing, outreach, and commodity distribution
- Integrating computer and internet allocation to support distance learning in partnership with HR Urban League

## STATEWIDE TESTING with VANG

### Health Risk Factors

- Identification of those with underlying health conditions

### Social Risk Factors

- Identification of social risk variables

### Exposure

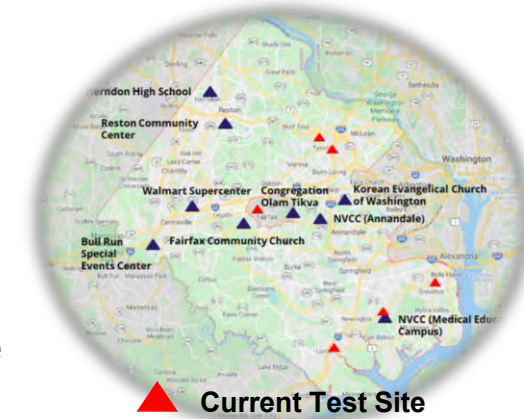
- Rate of COVID-19 positive cases

### Current Testing Locations

- Identification of current locations

### Areas of Engagement

- Community epicenters
- Deploy the NG to areas that promote trust



# Contact Us

To get started, the locality (city official) must contact the

Health Equity Task Force by emailing

[janice.underwood@governor.virginia.gov](mailto:janice.underwood@governor.virginia.gov)

The Equity Leadership Task Force



Governor's Office - Cabinet	VDH	VDEM
<p><b>Janice Underwood, PhD</b>                      Chief Diversity Officer                      Office of Governor                      Ralph S. Northam                      (804) 786-2211  <a href="mailto:DEIDirector@governor.virginia.gov">DEIDirector@governor.virginia.gov</a></p> <p><b>Alaysia Hackett, MPA, EJD</b>                      Special Assistant to the CDO                      Officer of the Governor  <a href="mailto:Alaysia.hackett@governor.virginia.gov">Alaysia.hackett@governor.virginia.gov</a></p>	<p><b>Sable K. Nelson Dyer, JD</b>                      Chair                      Unified Command Health Equity                      Acting Director                      Office of Health Equity                      Virginia Department of Health                      (VDH)</p>	<p><b>Curtis C. Brown</b>                      Chief Deputy State                      Coordinator Virginia                      Department of Emergency                      Management (VDEM)</p> <p><b>Lauren R. Powell, MPA, PhD</b>                      Contractor                      Department of Emergency                      Management (VDEM)</p>



# Presentation to the Governor's Commission to Examine Racial Inequity in Virginia Law

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Professor Andy Block (Commission Vice-Chair)

Juliet Buesing (3L), Kelsey Massey (3L), Trust Kupupika (2L)

Wes Williams (2L), & Chris Yarrell (2L)



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# DISCLAIMER

The ideas and recommendations expressed in this presentation are not those of the University of Virginia, or the University of Virginia School of Law. They are those of the authors of this presentation alone.



1. Introduction
2. Data Review & Policy Recommendations (for detail on recommendations review attached Memo):
  - a) Housing
  - b) Education
  - c) Criminal Justice
  - d) Voting
3. Overview of Racial Disparities in Health and Covid-19 Impact

# VIRGINIA AND STRUCTURAL RACISM

- *Structural Racism*: “A system in which public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity...Structural racism is not something that a few people or institutions choose to practice. Instead it has been a feature of the social, economic and political systems in which we all exist. “( Aspen Institute)
- As documented in the first report of the Commission, the undeniable consequences of Virginia’s lengthy history of intentional and pervasively discriminatory policies and practices - in other words, Virginia’s history of structural racism – are the negative and stark disparities between white people and people of color across nearly all systems and areas of life in the Commonwealth.

# NOTE ON RESEARCH METHODOLOGY

## Research Team's Methodology:

- 1) Collect data from **published reports** and **reputable organizations** on disparities in commission's chosen policy areas in Virginia.
- 2) Identify **data gaps** that could be rectified by statutes or regulations.
- 3) Distill **policy focus areas** for substantive policy recommendations.
- 4) Connect those policy focus areas to **statutes and regulations** currently on the books in Virginia.
- 5) Policy recommendations **do not generally include** budget recommendations.

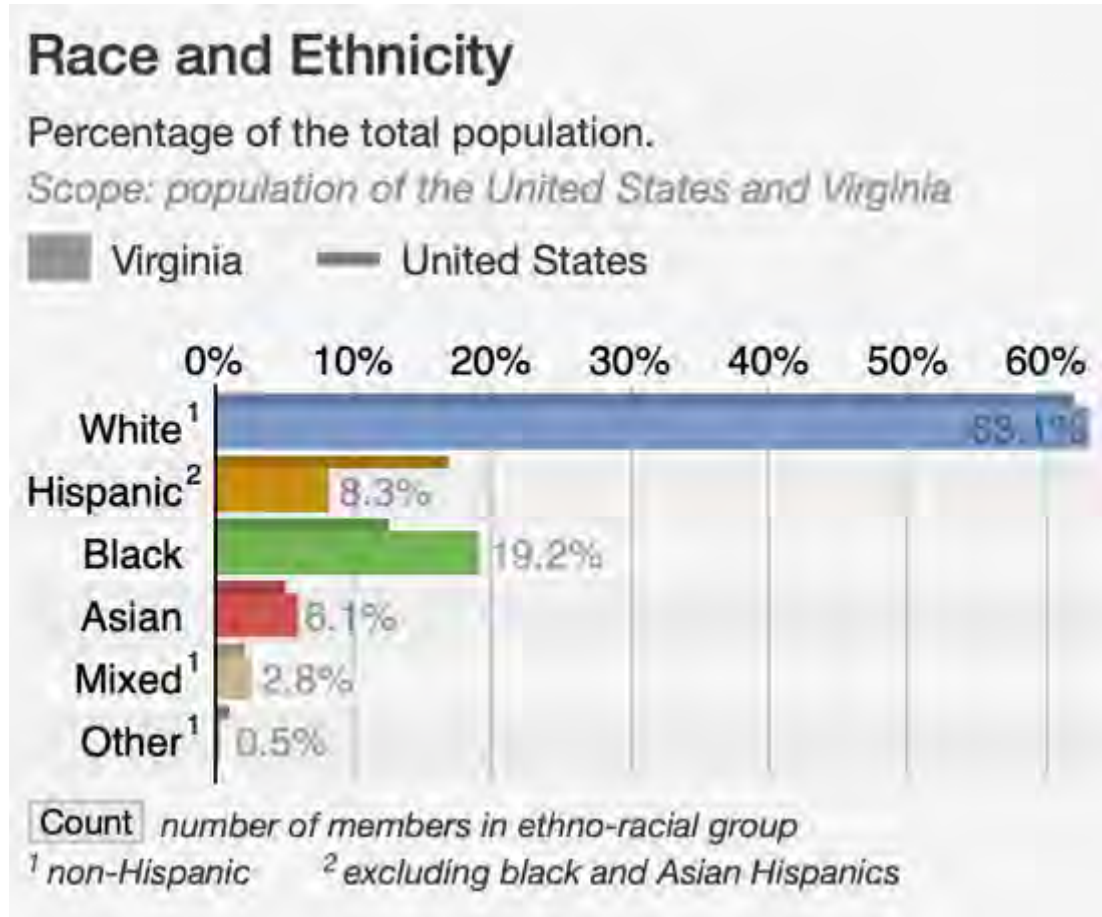
## The Commission's Charge:

Identify current statutes and regulations that have a *disparate impact* on the basis of race, and recommend changes to those statutes or regulations.

## Commission's Current Focus Areas:

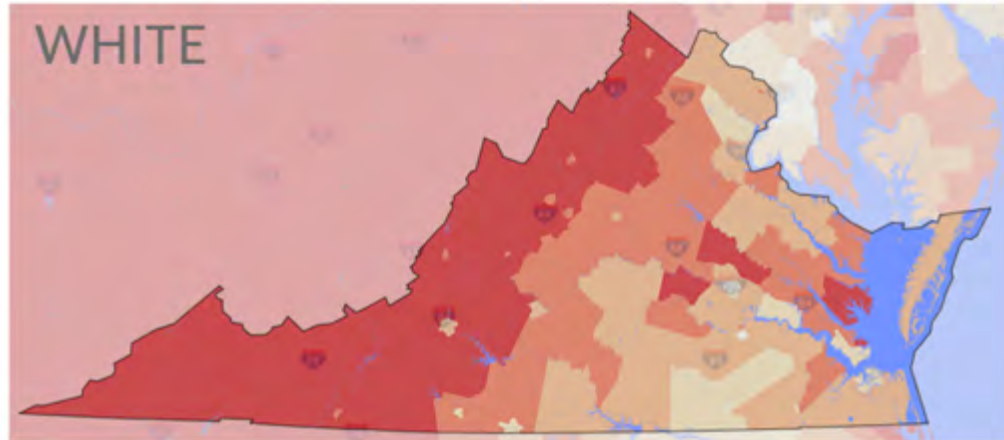
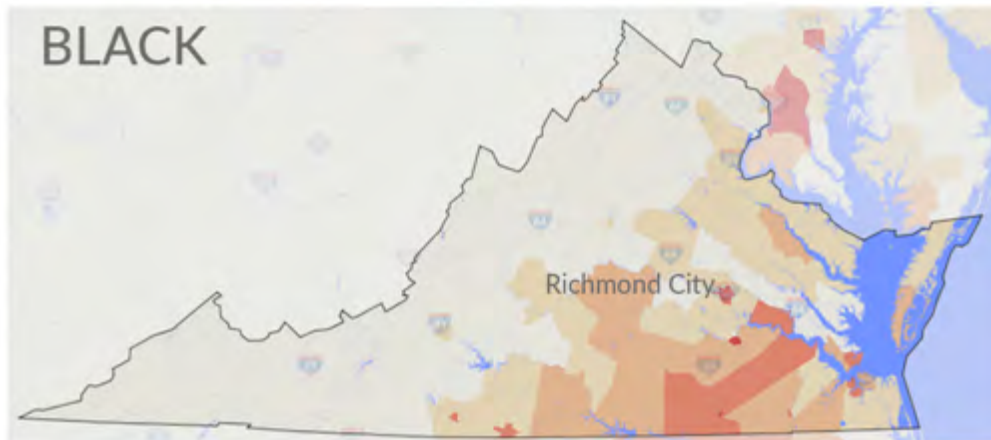
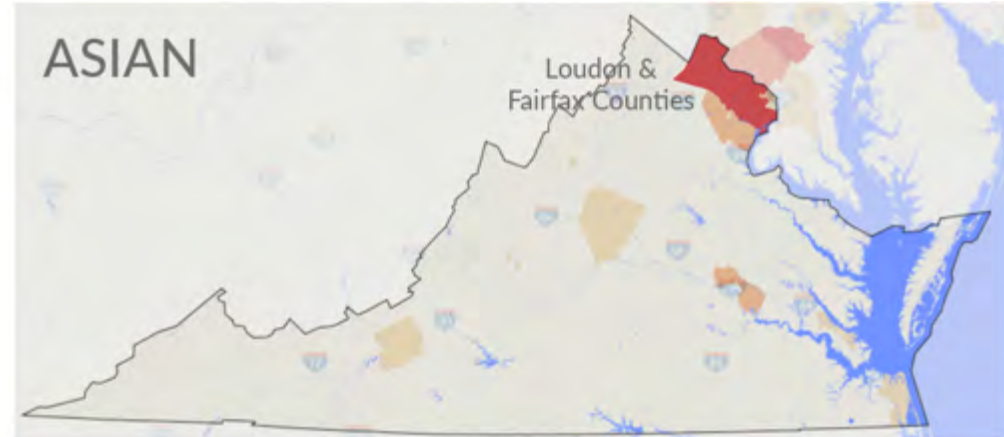
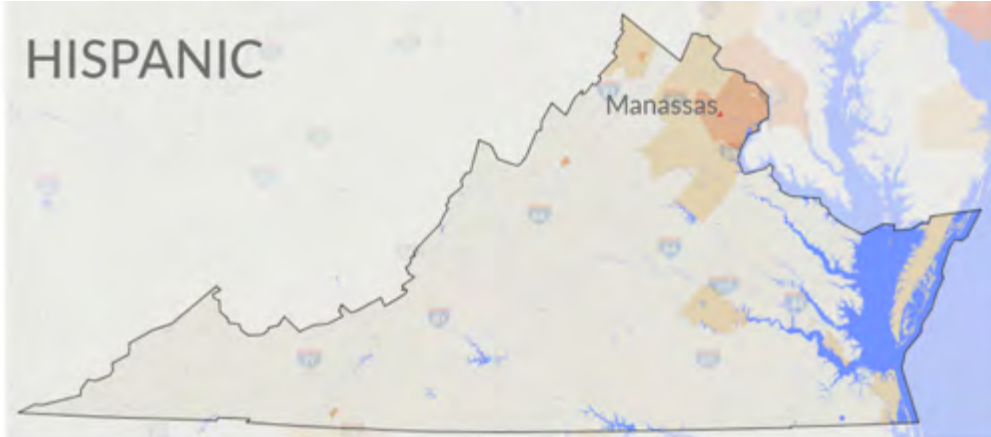
- Education
- Housing
- Voting
- Criminal Justice

# RACIAL MAKEUP



Sources: Statistical Atlas. Data from ACS and the U.S. Census Bureau.

# GEOGRAPHY



Sources: Statistical Atlas. Data from ACS and the U.S. Census Bureau.

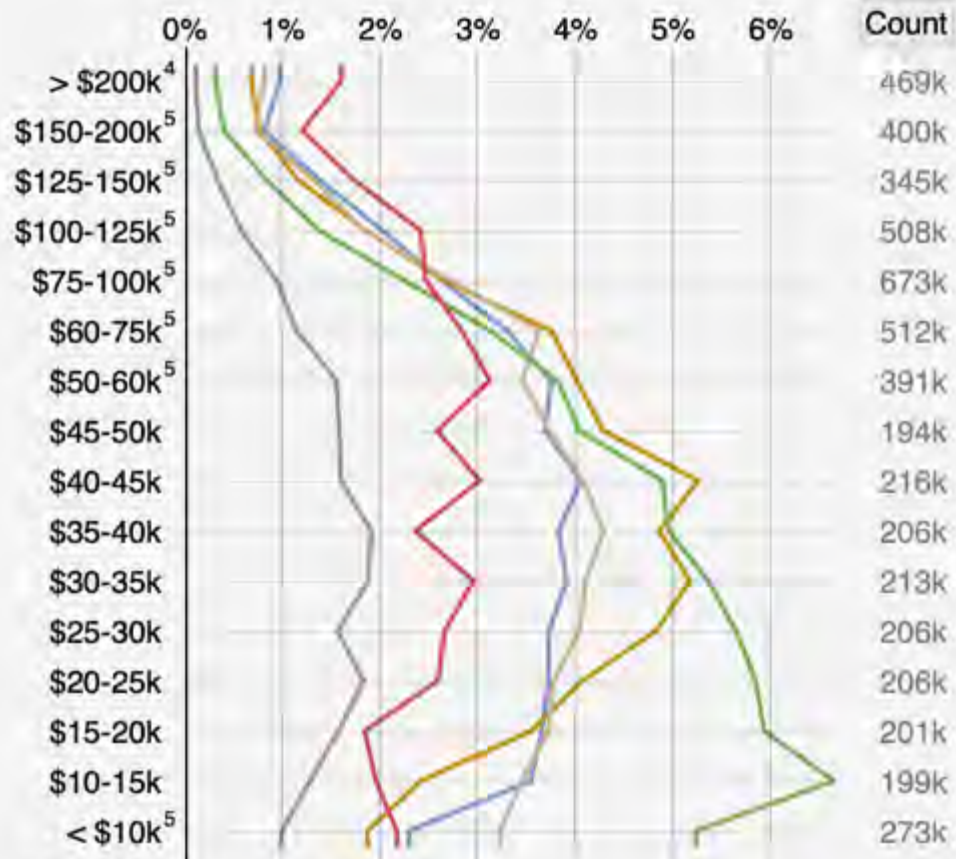
## Household Income Distribution by Race

#9

Independent household income distributions of the given ethno-racial groups, normalized with respect to a standard interval of \$5k.

Scope: households in Virginia

— White<sup>1</sup> — Hispanic<sup>2</sup> — Mixed<sup>3</sup>  
 — Black<sup>3</sup> — Asian<sup>3</sup> — Other<sup>3</sup>



<sup>Count</sup> number of people in interval

<sup>1</sup> non-Hispanic white    <sup>2</sup> white Hispanic    <sup>3</sup> including Hispanic

<sup>4</sup> normalized assuming interval of \$50k    <sup>5</sup> normalized

# INCOME

Note the disproportionate rate of extreme poverty faced by Black Virginians, as compared to other racial groups.

Source: Statistical Atlas. Data from ACS and the U.S. Census Bureau.



# VIRGINIA'S WEALTH

- 10<sup>TH</sup> Wealthiest State (based on 2018 household median income)
- One of the best states to do business (#1 according to CNBC, and # 4 according Forbes Magazine, 2019)
- AAA bond rating

# RACIAL DISPARITIES IN HOUSING

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# ***Contents***

1. Historical segregation and discrimination
2. Lending
3. Exclusionary zoning
4. Homeownership
5. Affordable housing
6. Evictions
7. Fair Housing
8. Policy recommendations

# History and Segregation

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# Racial disparities have been codified through housing laws and practices for decades, creating significant gaps.

CHAP. 157.—An ACT to provide for designation by cities and towns of segregation districts for residence of white and colored persons; for the adoption of this act by such cities and towns, and for penalties for the violation of its terms.

Approved March 12, 1912.

Whereas, the preservation of the public morals, public health and public order, in the cities and towns of this commonwealth is endangered by the residence of white and colored people in close proximity to one another; therefore,

1. Be it enacted by the general assembly of Virginia, That in the cities and towns of this commonwealth where this act shall be adopted in accordance with the provisions of section eleven hereof, the entire area within the respective corporate limits thereof shall, by ordinance, adopted by the council of each such city or town, be divided into districts, the boundaries whereof shall be plainly designated in such ordinance and which shall be known as "segregation districts."

2. That no such district shall comprise less than the entire property fronting on any street or alley, and lying between any two adjacent streets or alleys, or between any street and an alley next adjacent thereto.

3. That the council of each such city or town shall provide for, and have prepared, within six months after such council shall have adopted the provisions of this act, a map showing the boundaries of all such segregation districts, and showing the number of white persons and colored persons residing within such segregation district, on a date to be designated in such ordinance of adoption, but which shall be within sixty days of the

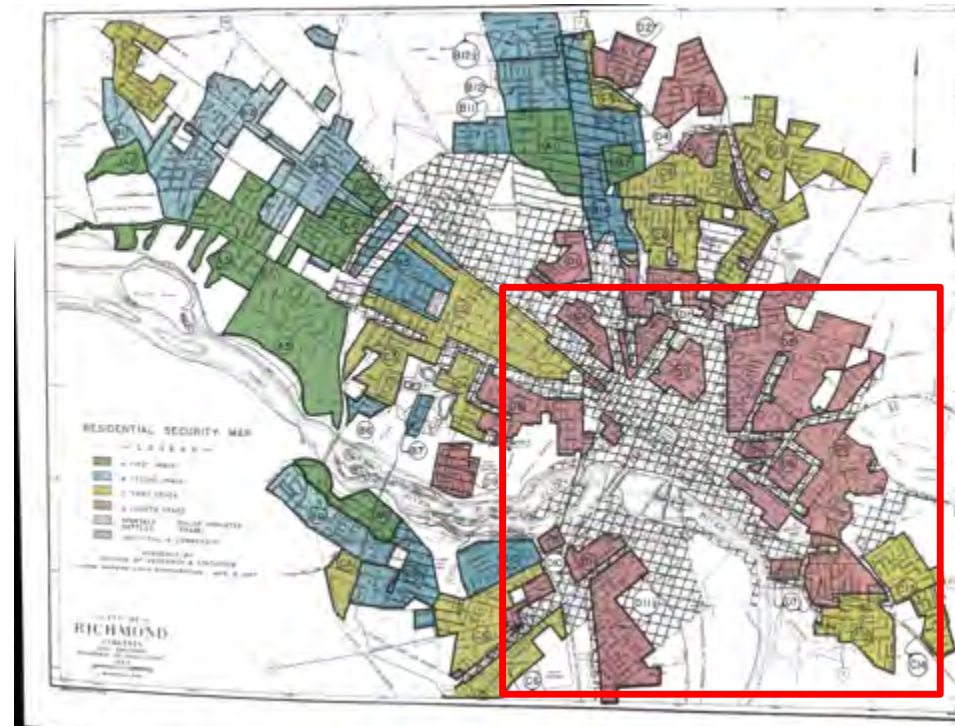
In the 1930s, the Home Owners Loan Association graded neighborhoods by lending risk. These grades were highly dependent upon race and have lasting effects today. At the time of this Richmond map's creation, 100% of people of color lived in Grade D areas (coded in red), making it extremely difficult to secure financing.

**Grade A** = reasonably safe mortgages

**Grade B** = not as desirable but “still good”

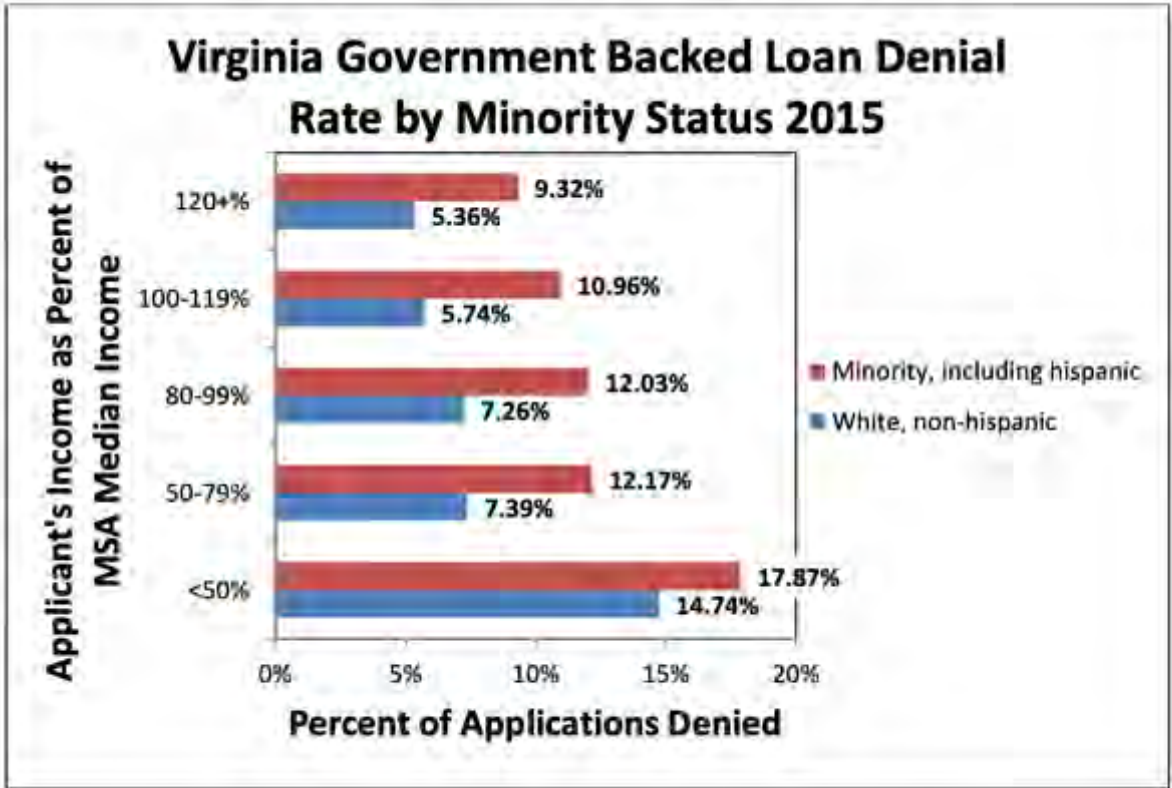
**Grade C** = in decline due to factors in addition to “infiltration of lower grade population.”

**Grade D** = fully declined areas “characterized by detrimental influence in a pronounced degree.”



Source: Mapping Inequality and Redlining Richmond (University of Richmond)

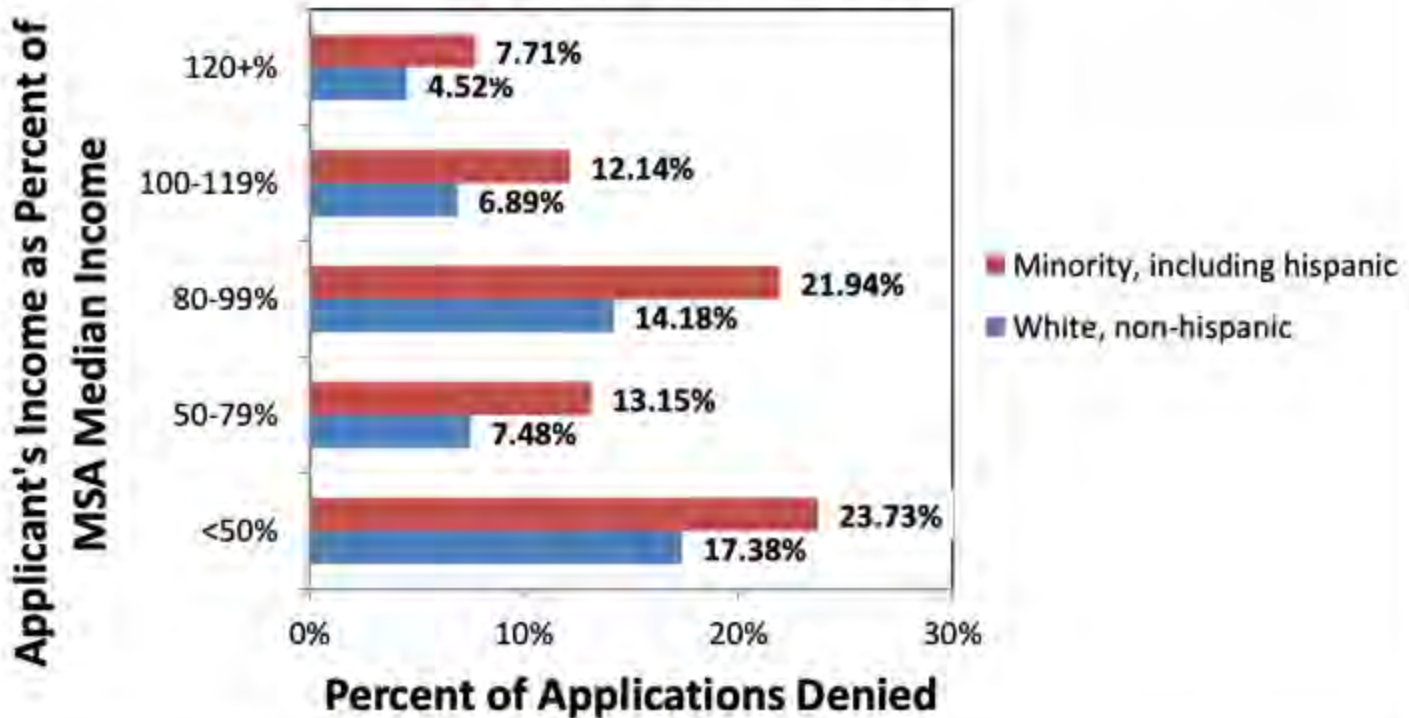
Even when a person of color's income far exceeds the necessary income, they are much more likely to be denied a loan.



Source: HMDA Data, Federal Financial Institutions Examination Council

Source: Virginia Department of Housing and Community Development

## Virginia Conventional Loan Denial Rate by Minority Status 2015

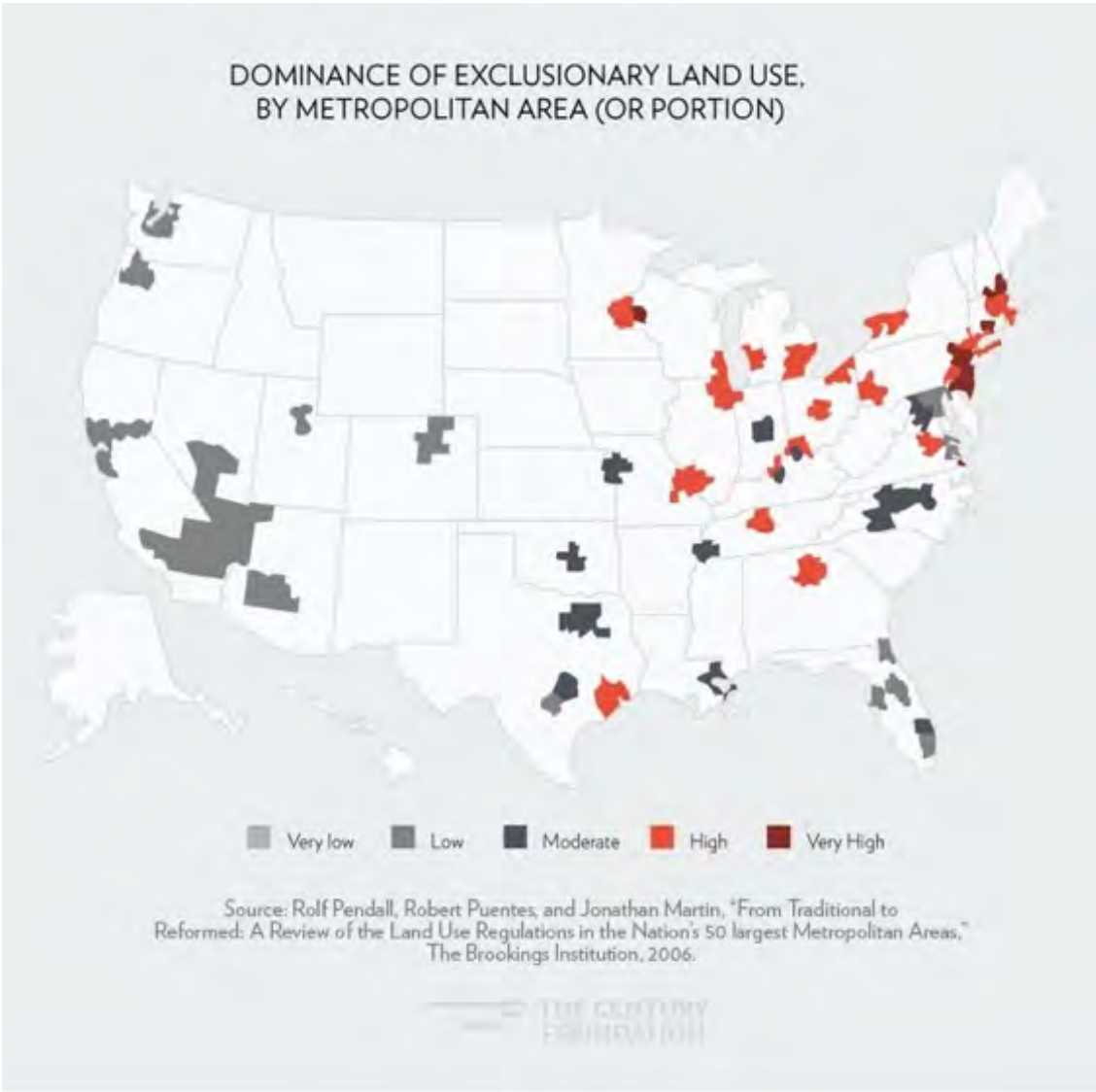


Source: HMDA Data, Federal Financial Institutions Examination Council

Source: Virginia Department of Housing and Community Development

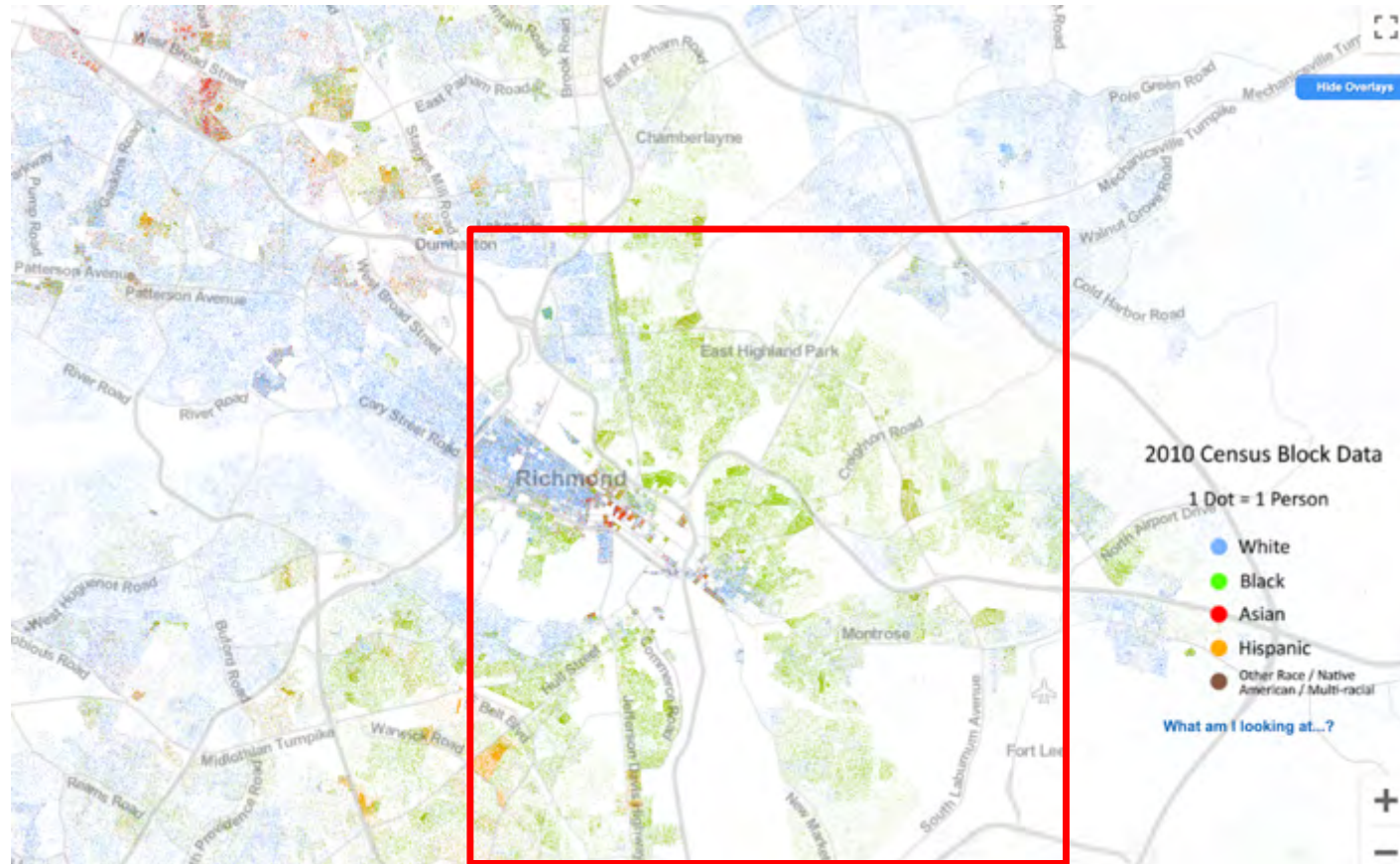


Exclusionary Zoning  
is the act of zoning  
out certain groups,  
usually by income or  
race.



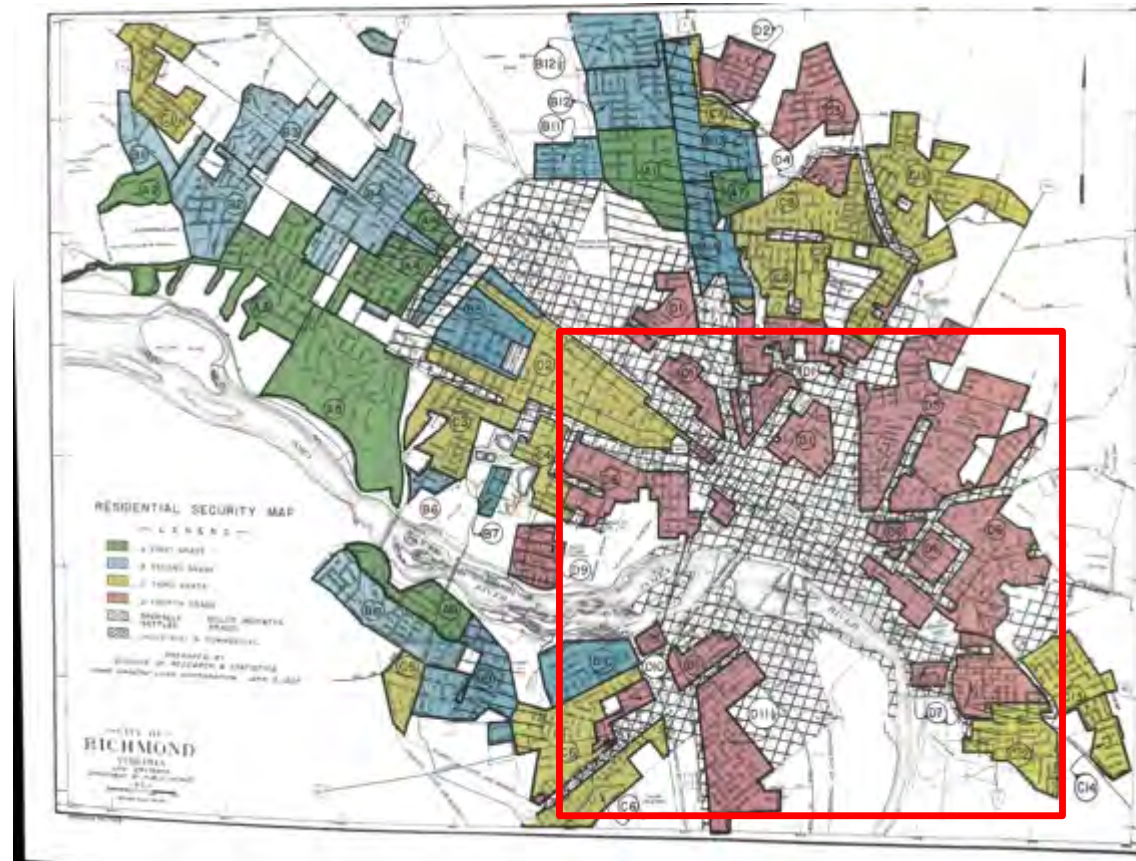
Source: Virginia Department of Housing and Community Development

This dot map shows the modern-day segregation in Richmond.

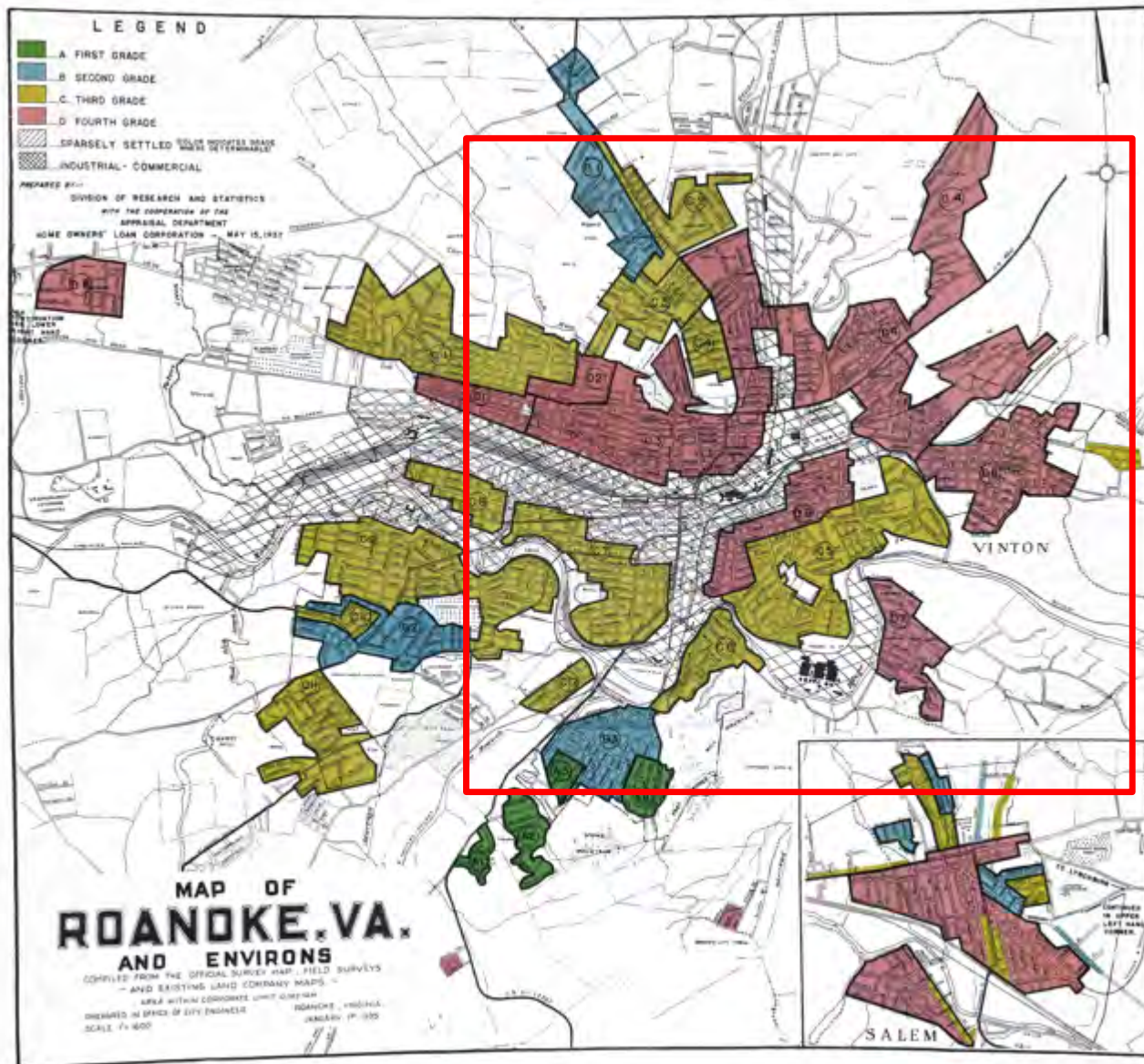


Source: Racial Dot Map, University of Virginia

To compare, the historical HOLC map tracks nearly exactly to segregation seen today.



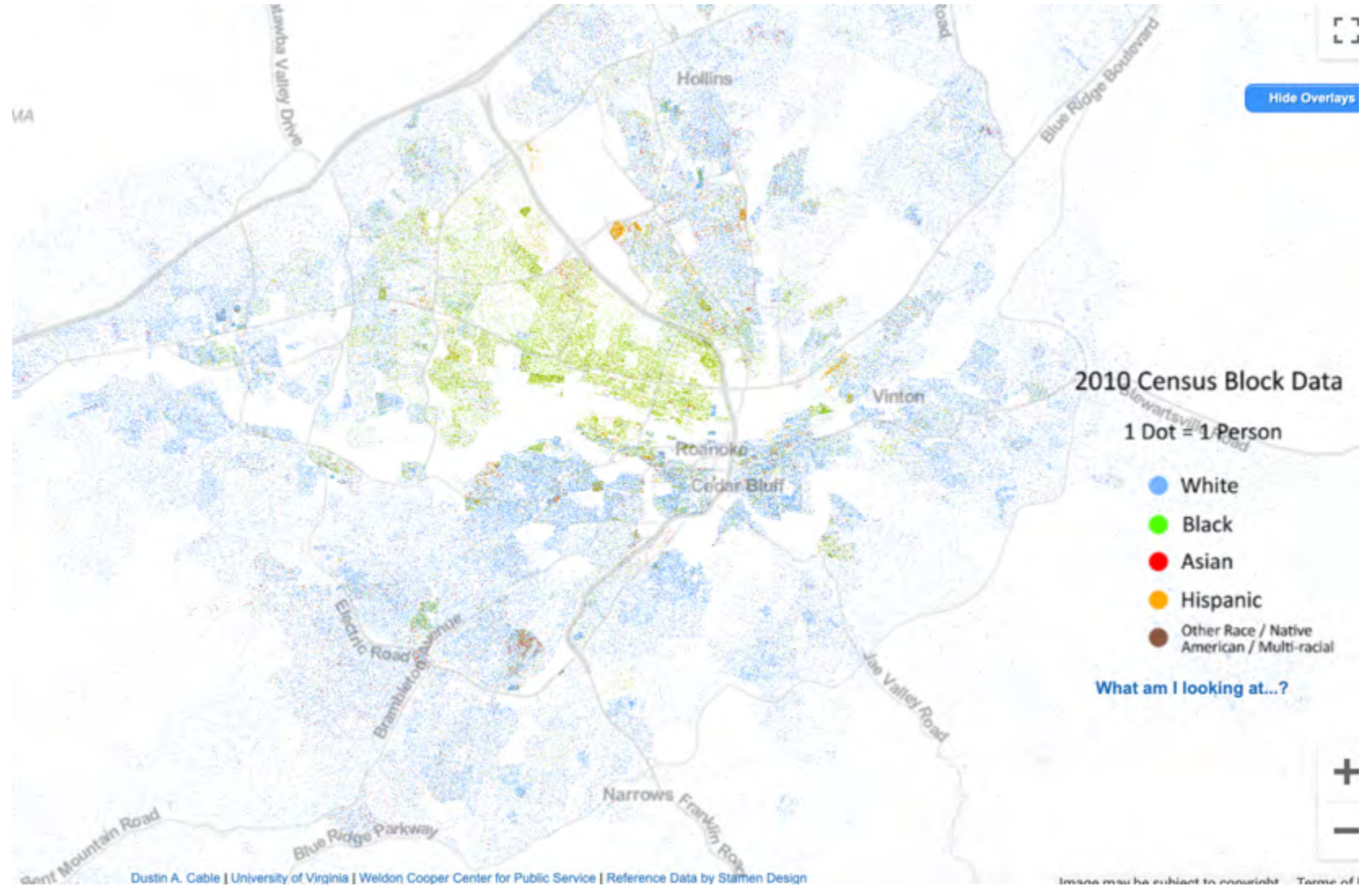
Source: Mapping Inequality and Redlining Richmond (University of Richmond)



Similar segregation patterns can be seen in other Virginia cities such as Roanoke.

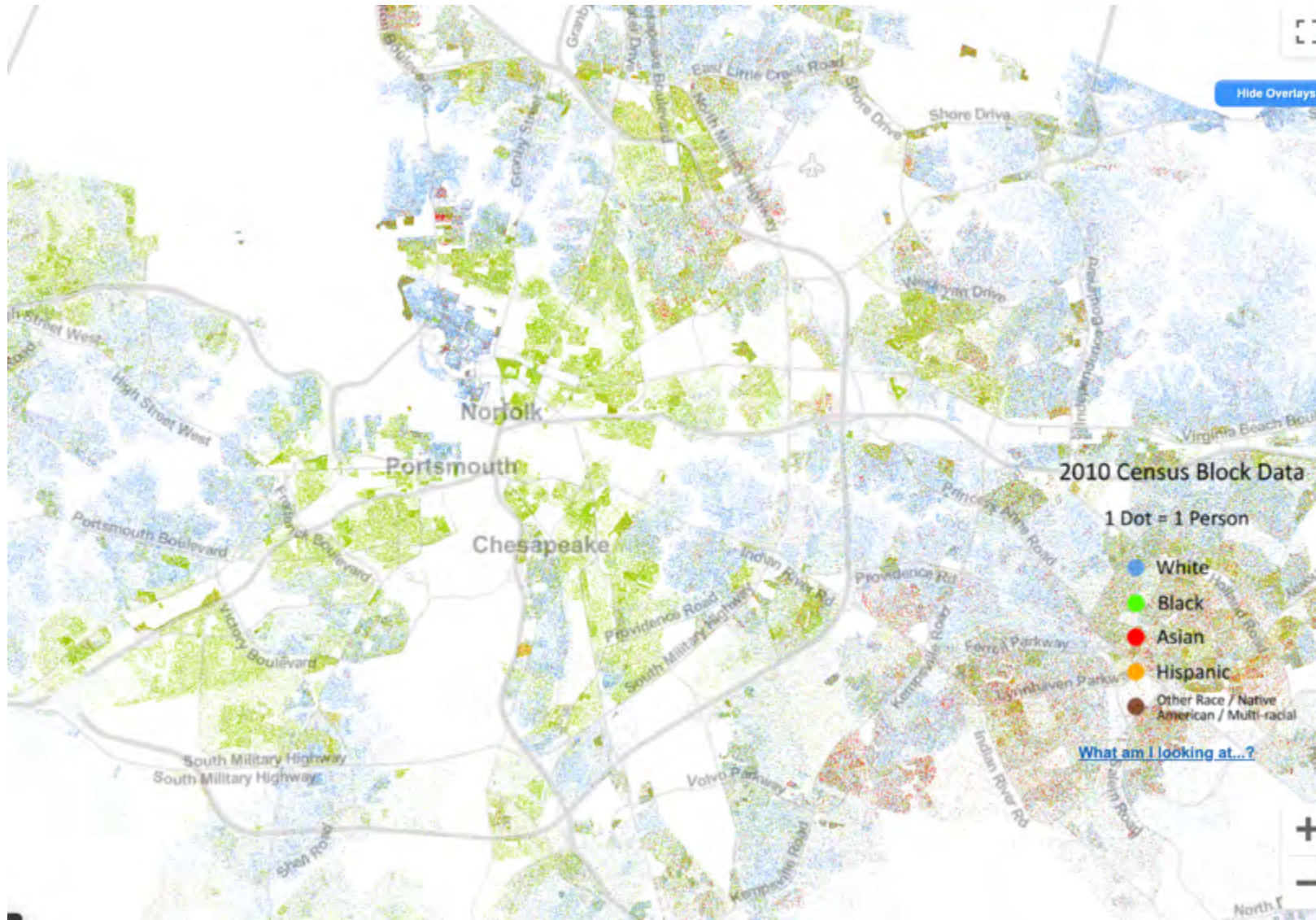
Source: Mapping Inequality

While the HOLC map is not the only cause of lasting segregation, it does indicate how historic housing discrimination has a lasting effect.



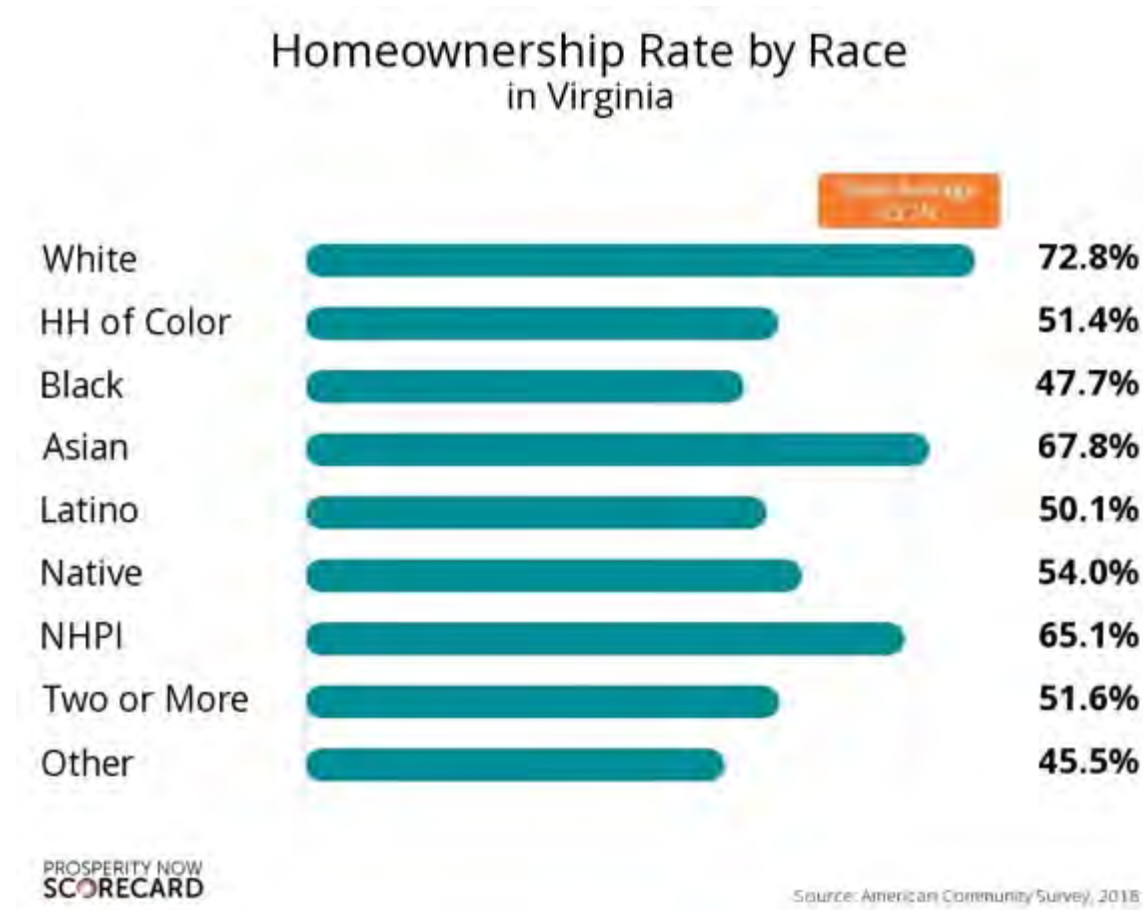
Source: Racial Dot Map, University of Virginia





Source: Racial Dot Map, University of Virginia

Likely because of historical lending and legal discrimination, there is a significant difference in homeownership rates between white Virginians and people of color.



Source: Prosperity Now Scorecard



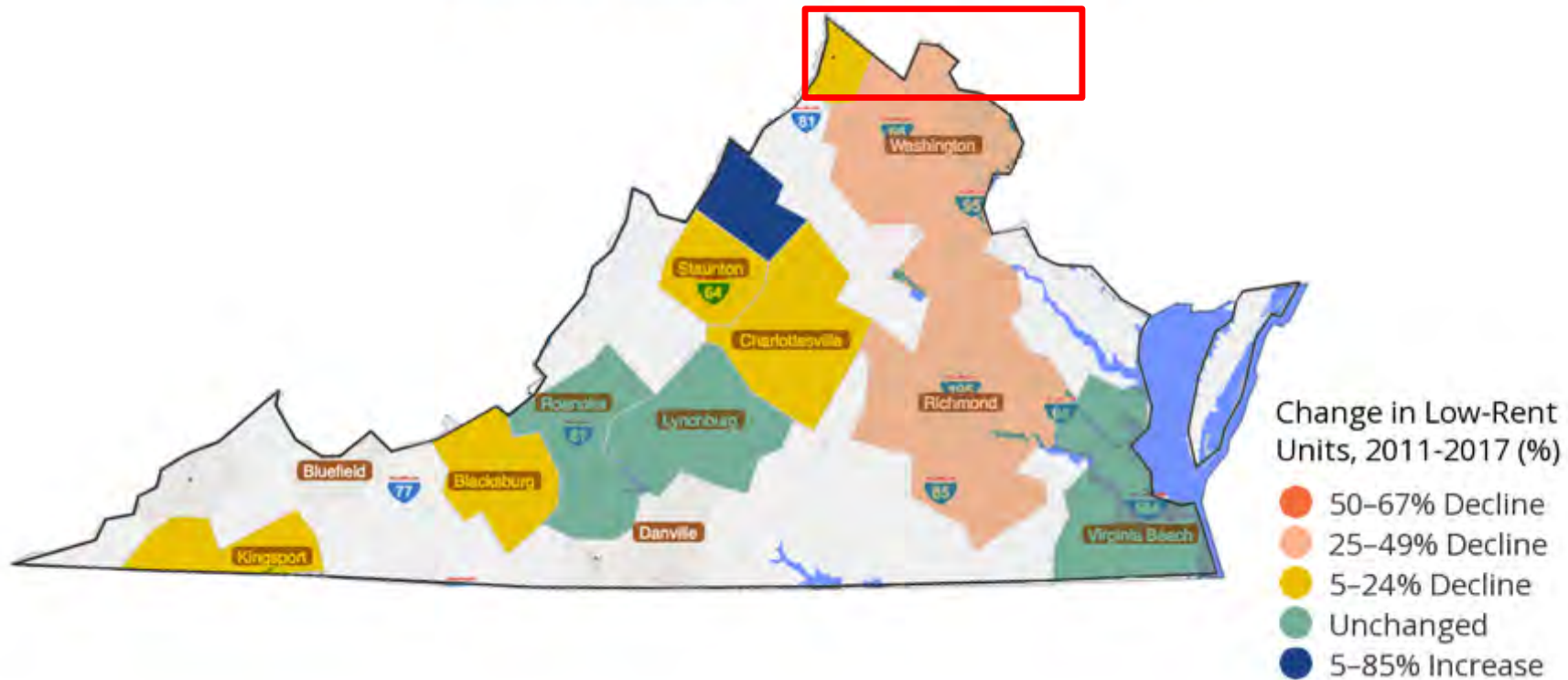
# Renters and Affordable Housing

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## The Low-Rent Stock in Most Metros Has Declined Substantially Since 2011



# Virginia lacks adequate affordable rental housing.

- It would take **128** hours a week at minimum wage to afford an average 2-bedroom rental at FMV (\$1,203) in Virginia without causing rent burden (30% or more of income spent on rent).
- Though estimates vary, the Commonwealth needs at least **140,992** units to alleviate this burden.

Source: National Low Income Housing Coalition

Severe rent burden (over 50%) and moderate rent burden (30-50%) is experienced at much higher rates among people of color.

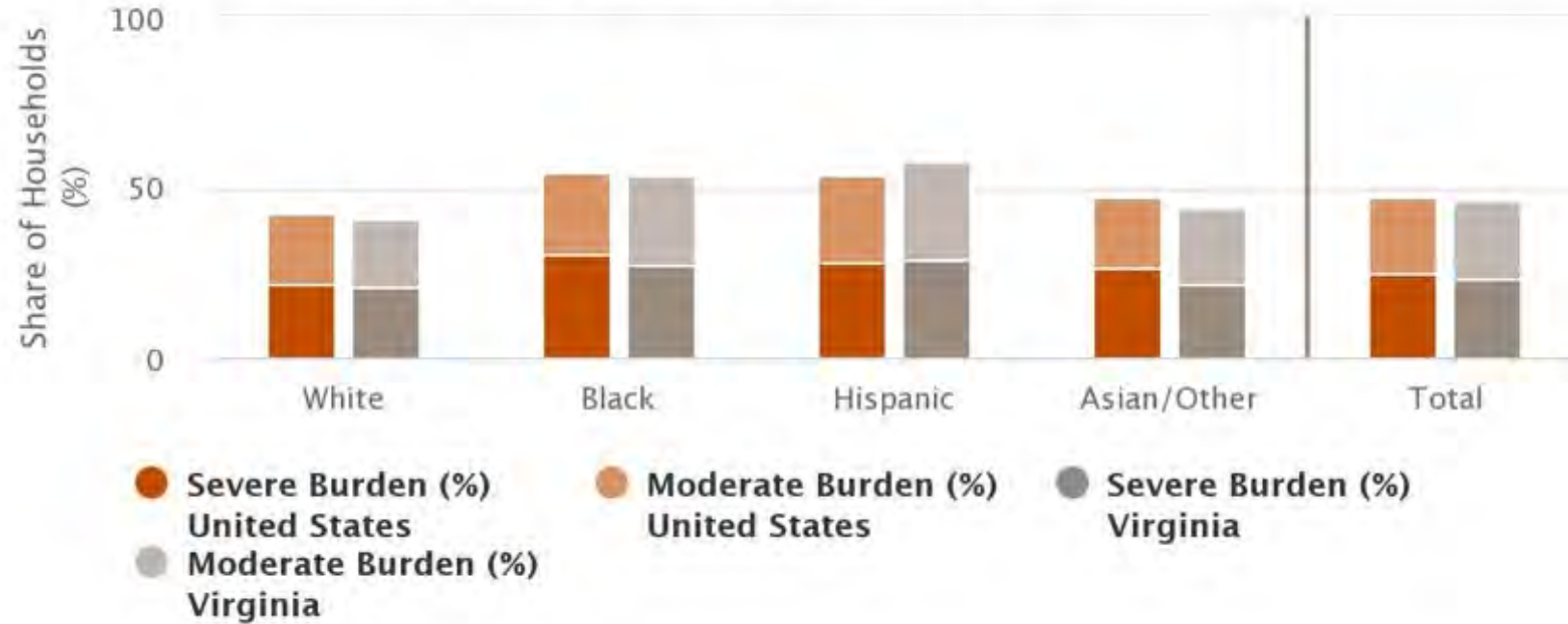
Share of Renters with Cost Burden by Race

	White		Black		Hispanic		Asian/Other	
	Moderately Burdened	Severely Burdened	Moderately Burdened	Severely Burdened	Moderately Burdened	Severely Burdened	Moderately Burdened	Severely Burdened
VA	20.2%	20.7%	26.1%	27.5%	29.0%	28.9%	21.9%	22.0%

Table 1.16

Source: Virginia Department of Housing and Community Development, 2017 data provided by Joint Center for Housing Studies of Harvard

## Renter Cost Burdens by Race and Ethnicity



Notes: Moderately (severely) cost-burdened households pay 30-50% (more than 50%) of income for housing. Households with zero or negative income are assumed to have severe burdens, while households paying no cash rent are assumed to be without burdens. White, black, and Asian/other householders are non-Hispanic. Hispanics may be of any race.  
 Source: JCHS tabulations of US Census Bureau, 2010 American Community Survey 1-year Estimates using the Missouri Data Center MABLE/Geocode14.

# Evictions

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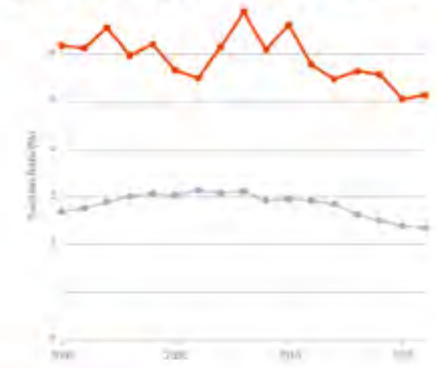


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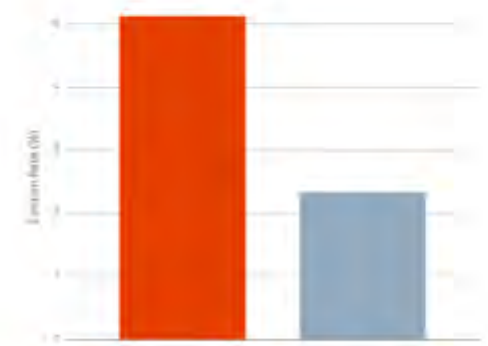
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There is a substantially higher eviction rate in Virginia than nationally.

COMPARISON OF EVICTION RATES OVER TIME

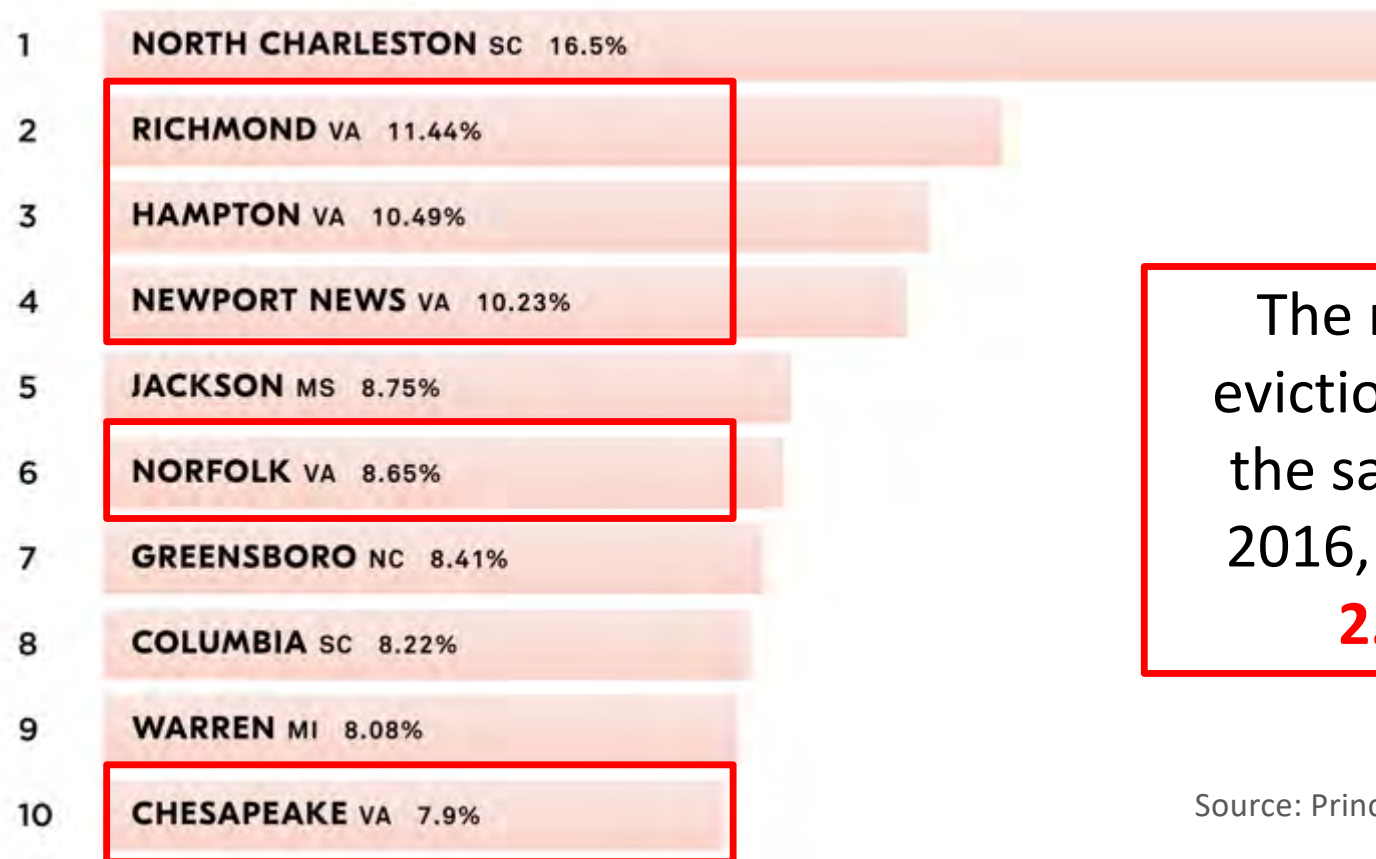


1 Virginia  
2 United States



1 Virginia  
2 United States

## 5 Virginia cities are in the top 10 large cities nationally with the highest eviction rates.

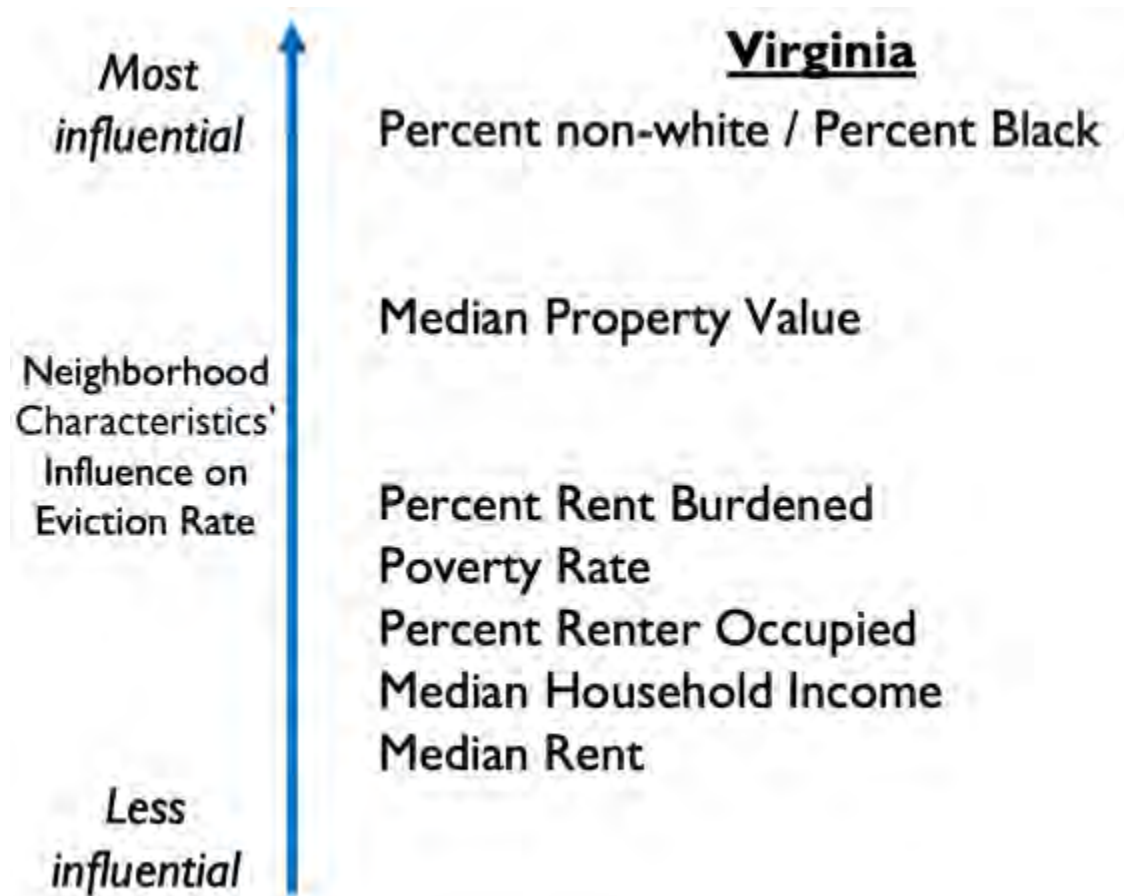


The national eviction rate for the same year, 2016, was only **2.34%**

Source: Princeton Eviction Lab



Race is **two** times more influential on the eviction rate than any other characteristic.



Source: Benjamin Teresa, Co-Founder of the RVA Eviction Lab

Fair housing complaints of race discrimination have risen substantially since 2013.

Virginia Fair Housing Offenses by Protected Class: FY2013-FY2017 Aggregated County/City Dockets								
Year	Race	Religion	Sex	Disability	Familial	National Origin	Elderliness	Total
FY 2013	35	3	9	54	16	7	8	132
FY 2014	34	5	15	70	25	11	18	178
FY 2015	46	2	10	55	17	10	5	145
FY 2016	51	4	13	76	19	8	16	187
FY 2017	50	9	19	77	22	10	23	210
<b>Total</b>	216	23	66	332	99	46	70	852

Source: Virginia Fair Housing Office

Source: Virginia Department of Housing and Community Development

# Housing and COVID-19

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# The Princeton Eviction Lab has Evaluated the Commonwealth's Response to the Pandemic and Given the State a Failing Score

## Protections in Place:

- Eviction hearings were suspended, and eviction orders are stayed through May 17<sup>th</sup>. While it is unclear how localities will respond, no protections appear to be in place.
- Utility companies must suspend involuntary service disconnections during this time.
- Courts are not hearing foreclosure cases.

Source: Princeton Eviction Lab; COVID-19 Housing Policy Scorecard

# The Princeton Eviction Lab Recommends a Host of Further Protections

## Missing Protections:

- Landlords can still post a notice of eviction, file even if the tenant has COVID-19, file for nonpayment of rent, and file for non-emergency reasons. Eviction records are also not sealed.
- Law enforcement are still allowed to enforce orders of evictions for nonpayment or financial hardship due to the pandemic.
- The existing orders do not extend past the state of emergency.
- Landlords can still report tenants to credit agencies and there is no grace period to repay back rent from pandemic-related financial issues.
- Late fees and rent raises for renewed leases are allowed.
- There is no court-provided legal counsel for tenants.

Source: Princeton Eviction Lab; COVID-19 Housing Policy Scorecard

# Missing Data

There are large discrepancies in the narrative that housing advocates tell and what data shows statewide. This is primarily thought to be a result of both a lack of documentation and a lack of analysis on the available data.

1. Home Quality
2. Forms of discrimination in the home buying process.
3. Effects of modern-day zoning
4. Discrimination committed by lenders in Virginia
5. Black landowner (including farmers) land loss and over-assessment of taxes

# Recommendations to the Commission:

- Address **gap** between what stakeholders know to be true in housing discrimination and the available statewide data.
- Review existing zoning laws that are exclusionary instead of inclusionary. Address affordable housing policies and laws to **stem segregation and wealth disparities**.
- Create housing stability through **increased legal protections for renters from evictions**.

# RACIAL DISPARITIES IN EDUCATION

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# ***Contents***

1. Historical Context
2. Present-Day Access & Achievement Gap
3. Recommendations

# Historical Context

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## Race & Education in Virginia



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# A Brief History of Race & Education in Virginia

Relevant U.S. Supreme Court Decisions

**Brown v. Board (1954):**  
School segregation is illegal.

**Green v. County School Board (1968):**  
Schools must be *actually* integrated, without further delay.

**Milliken v. Bradley (1974):**  
Ended court-ordered integration across district lines.

1955



**Massive Resistance:**  
Harry F. Byrd leads the state to defund localities who integrate and shut down schools across the state.

1959

**Freedom of Choice Plans & Pupil Placement Board:**  
State took over all student transfers to limit integration.

1966

**Federal courts** order integration & busing across state.

1971

**Virginia's Constitutional Revision**



Governor Holton oversaw the removal of mandatory segregation from the state constitution.

1978

**Board divested of power to change division lines**

...today



**Textbook Commission:** Statewide mandatory history textbooks exalted white supremacy and called slavery a "comprehensive form of social security." The books weren't voted out until 1971.



# Present-Day

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# Access & Achievement Gap



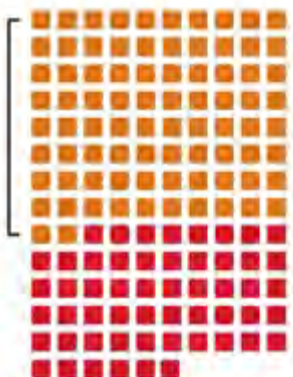
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# SEGREGATION

## Highly Segregated

The number of schools isolated by poverty and race has grown dramatically in Virginia since 2003 and so has their enrollment.

In **2003** Virginia had **82** low-income, high-Black/Hispanic schools with **36,061** students



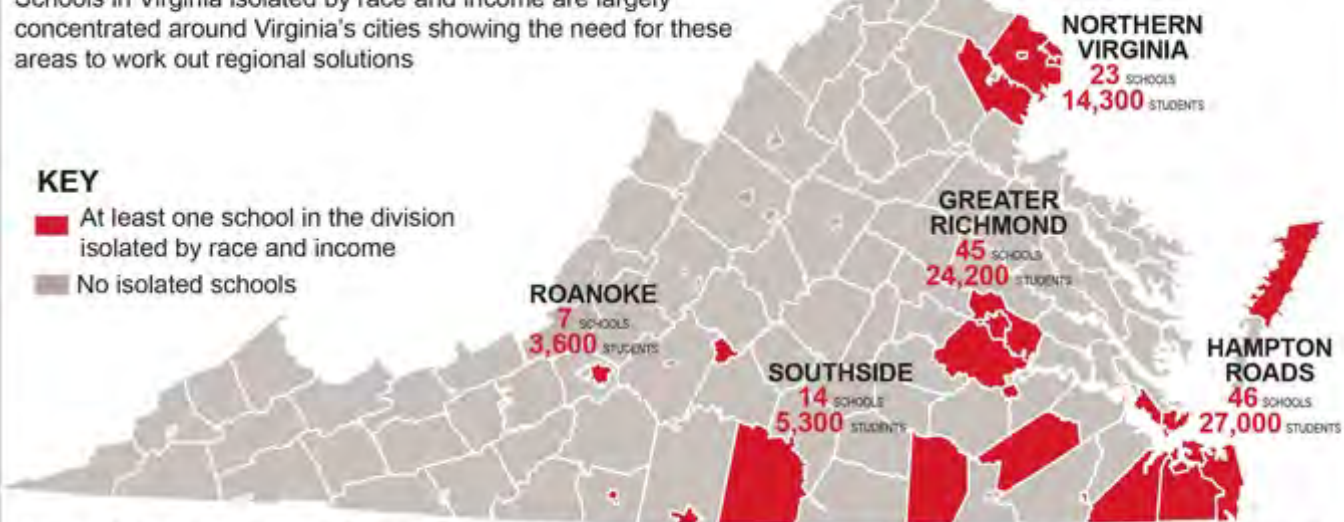
By **2014** that number has grown to a total of **136** low-income, high-Black/Hispanic schools with **74,515** students

Note: Schools are classified as high-poverty, high-Black/Hispanic if 75% or more of their students receive free or reduced lunch and 75% or more are Black or Hispanic.

Source: TCI Analysis of VDOE Student Membership and Free and Reduced Lunch data.

## Clustered Isolation

Schools in Virginia isolated by race and income are largely concentrated around Virginia's cities showing the need for these areas to work out regional solutions



Source: TCI Analysis of VDOE Student Membership and Free and Reduced Lunch data

THE COMMONWEALTH INSTITUTE

# SCHOOL FUNDING BY PROPERTY TAX?

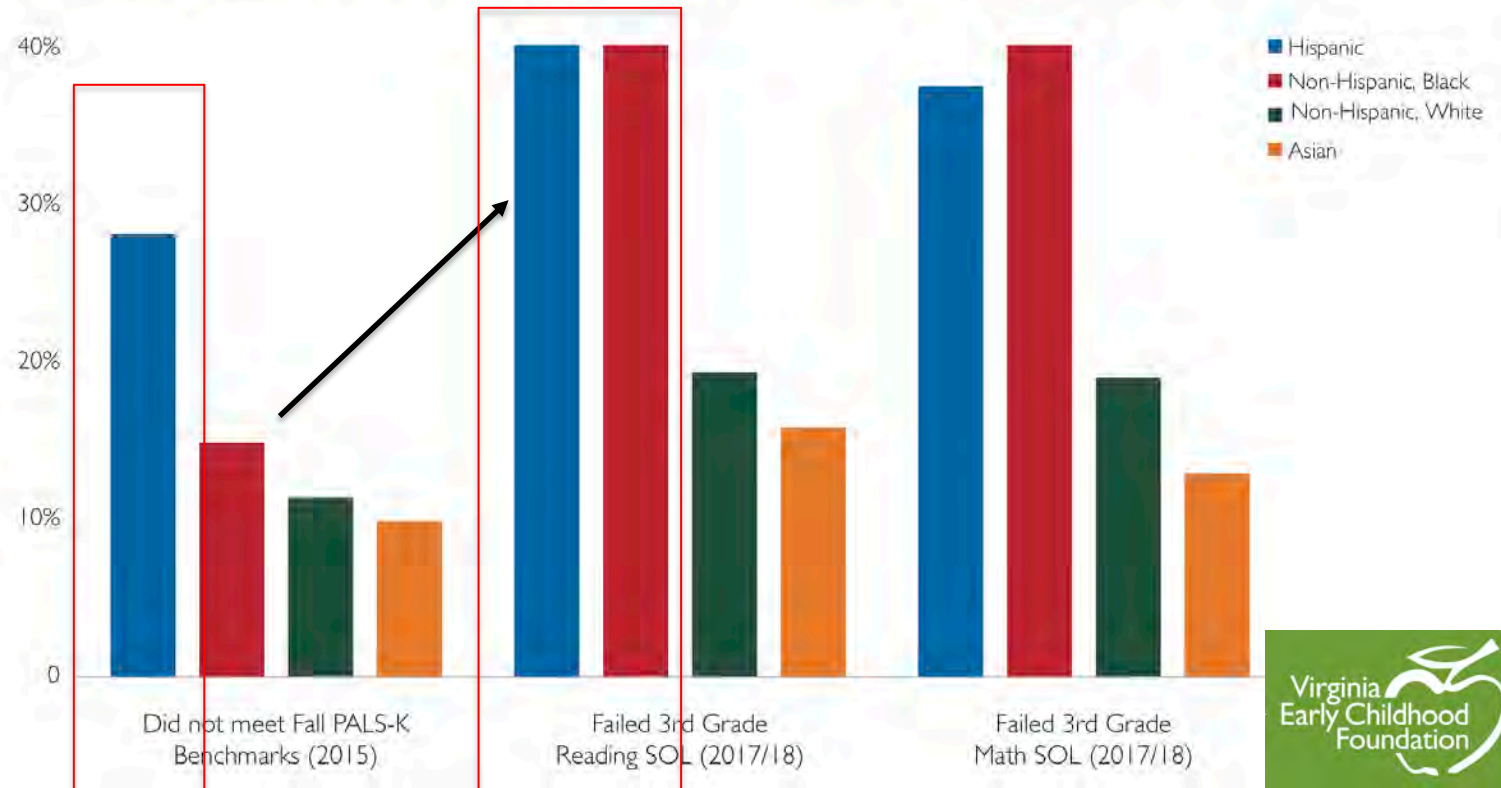
According to the NEA's 2018 Ranking of the States Report:

- Virginia's state-level contributions to education rank in the **bottom ten states in the nation** (#41), leaving nearly 60% of non-federal school dollars in Virginia to come from **localities**. This proportion is significantly higher than the national average.
- This is a problem because local funding is dependent on **property values– which align with massive racial disparities from historical government practices**.

Source: <http://www.nea.org/assets/docs/2019%20Rankings%20and%20Estimates%20Report.pdf>

# DISPARITIES: KINDERGARTEN TO 3RD

Figure 2. Selected indicators of poor school performance by race/ethnicity, Virginia.



Black and Hispanic students who show up Kindergarten-ready fall behind faster than their white and Asian peers.

# DISPARITIES: CURRICULUM & DISCIPLINE

## Access to Advanced Courses

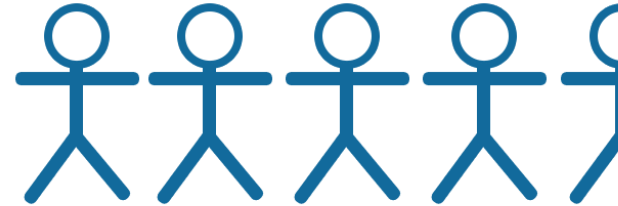


White students are **2.1x** more likely than their Black peers to be enrolled in gifted or AP courses. They are 1.9x more likely than their Hispanic peers.

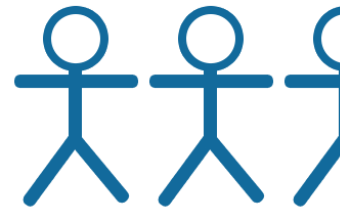
Data from <https://projects.propublica.org/mixeduicetomutate/>

## Discipline Disparities

Black students are **4.5x** more likely than white students to be suspended from school.



Black students are **2.5x** more likely than whites to be referred to law enforcement in school.



Data on law enforcement from "Investing in Student Safety and Success" (2018) on 2015-16 School Year, The Commonwealth Institute with Legal Aid Justice Center. Data on suspensions from 2016-17 School Year: <https://www.justice4all.org/suspension/>



# TEACHER DIVERSITY

“Increasing teacher diversity is a very important strategy ... While white students also benefit by learning from teachers of color, the impact is especially significant for students of color, who have **higher test scores, are more likely to graduate high school, and are more likely to succeed in college** when they have had teachers of color who serve as role models and support their attachment to school and learning.”

Source: The Learning Policy Institute, 2018.

Yet Virginia’s teaching workforce is not representative:

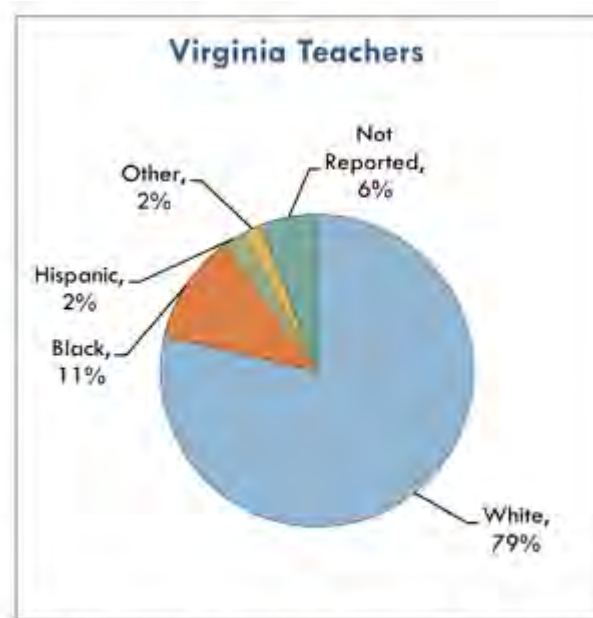


FIGURE 2: LICENSED INSTRUCTIONAL PERSONNEL IN VIRGINIA BY RACE AND ETHNICITY, 2014-15

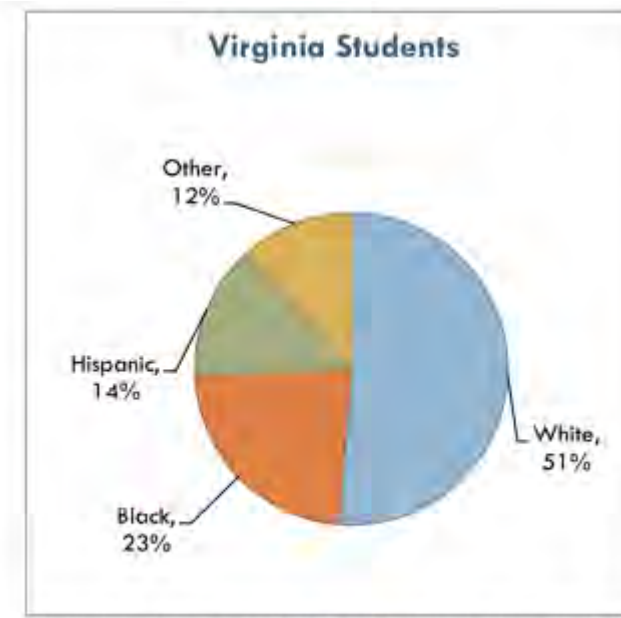
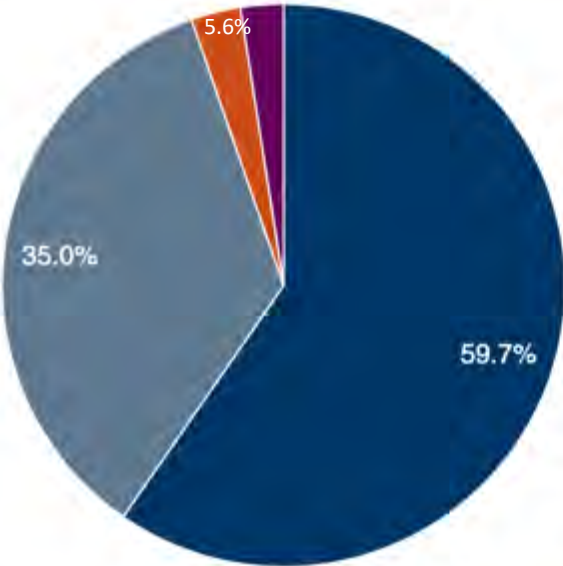


FIGURE 3: VIRGINIA ENROLLED STUDENTS BY RACE AND ETHNICITY, 2014-15

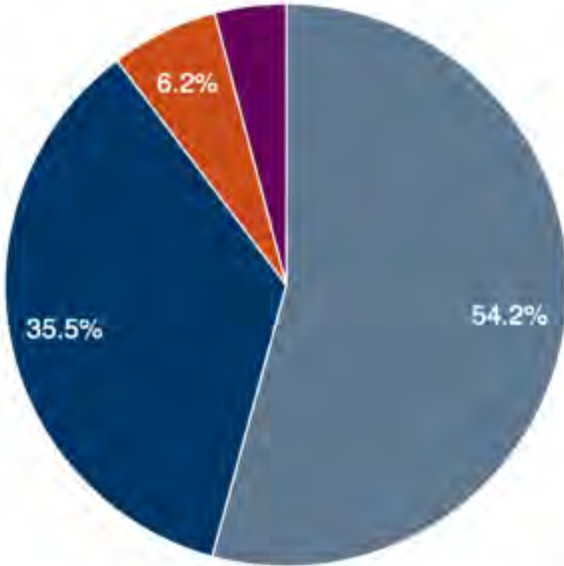
Source: Taskforce on Diversifying Virginia’s Educator Educator Pipeline, 2017.

# DISPARITIES: DIPLOMAS & GRADUATION

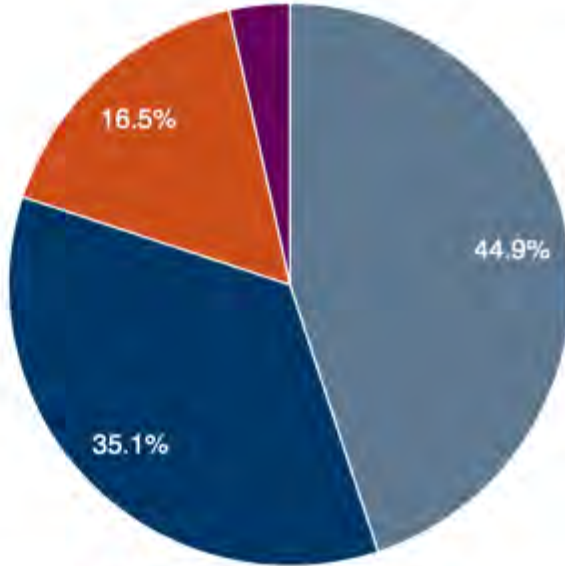
Class of 2019: White



Class of 2019: Black



Class of 2019: Hispanic



■ Advanced Diplomas ■ Standard and Other Diplomas ■ GEDs, Certificates and Other Non-Graduates ■ Dropouts

Data & visuals from Virginia Department of Education

# DISPARITIES: COLLEGE READINESS

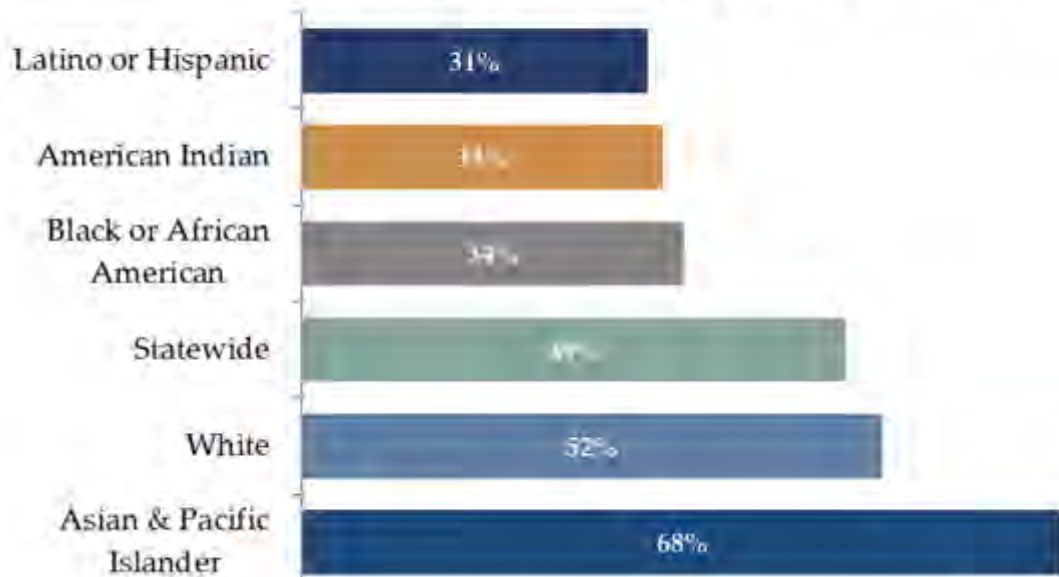
## Average Scores

SAT	1159	972	1070	1250
ACT	24.9	19.1	22.8	27.2
	White	Black	Hispanic	Asian

Sources: <https://reports.collegeboard.org/pdf/2019-virginia-sat-suite-assessments-annual-report.pdf> and <http://www.act.org/content/dam/act/unsecured/documents/cccr-2019/Virginia-CCCR-2019.pdf>

# DISPARITIES: HIGHER EDUCATION

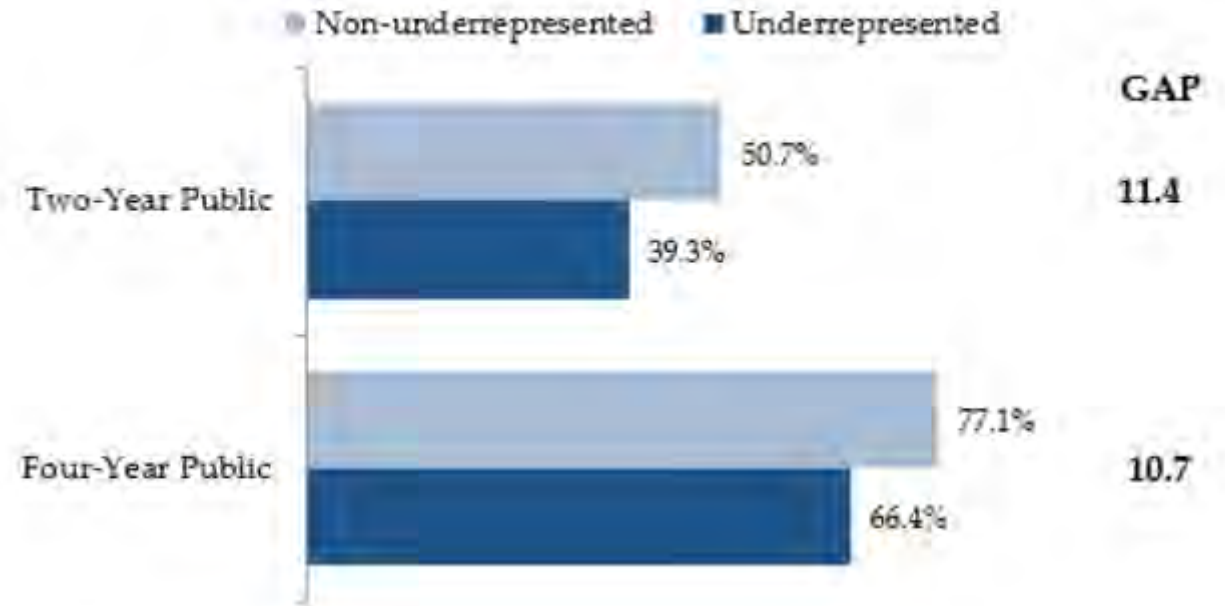
**Population with Associate Degree or Higher by Race & Ethnicity (2017)**



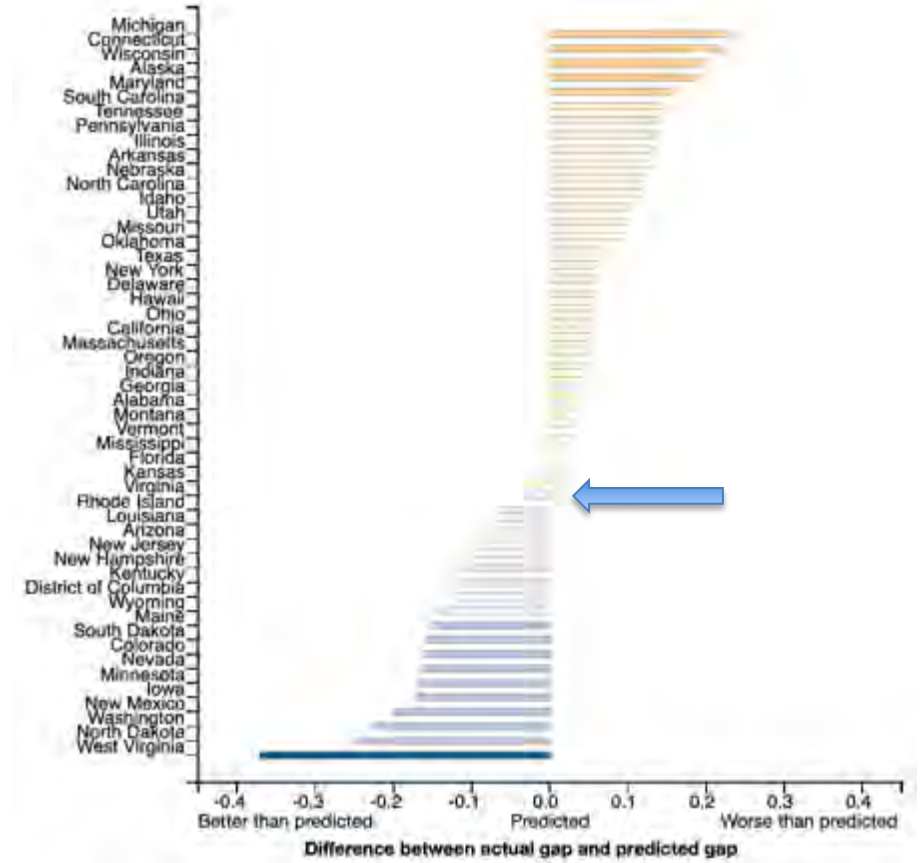
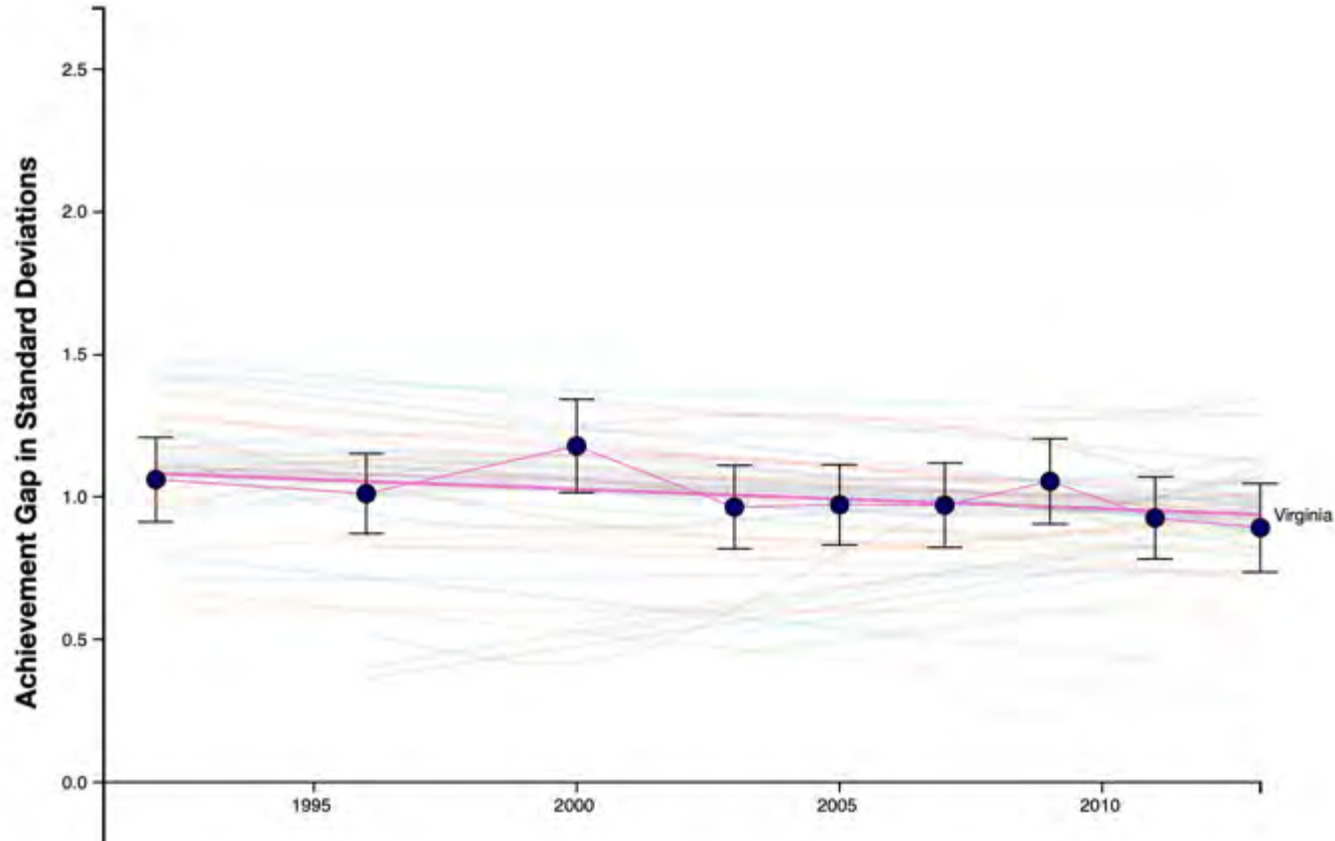
Source: <http://strongemation.luminafoundation.org/report/2019/#nation>



**Success Index for Public Institutions**



# COMPARED WITH OTHER STATES



# Recommendations

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# INTEGRATION

## **Current Code: § 22.1-25 How School Divisions Made**

... 1. The school divisions as they exist on July 1, 1978, shall be and remain the school divisions of the Commonwealth until further action of the Board of Education taken in accordance with the provisions of this section except that when a town becomes an independent city, the town shall also become a school division.

2. No school division shall be divided or consolidated without the consent of the school board thereof and the governing body of the county or city ...

3. No change shall be made in the composition of any school division if such change conflicts with any joint resolution ...of the General Assembly ...

**Challenge:** *Achieving Meaningful Integration*

**Context:** *Virginia not only resisted integration in the past: it still has limits on integration in place today. The Commonwealth has never, in fact, made state-level efforts to encourage integration of schools.*

**Recommendation to the Commission:** *This language should be repealed and replaced with incentives for the Board to integrate schools and districts.*

# TEACHER DIVERSITY

*No specific code section*

**Challenge:** Recruiting and Retaining Teachers of Color

**Context:** Students of color who have teachers who reflect their backgrounds are more likely to graduate and more likely to go to college. Yet, despite half of Virginia students being children of color, Virginia's teaching workforce is 80% white.

**Recommendation to the Commission:** The Board of Education should annually collect and publish data from districts on the recruitment, hiring, and retention of teachers of color. In addition, the commission should support recommendations by the Taskforce on Diversifying Virginia's Educator Pipeline.



# EARLY CHILDHOOD EDUCATION

## **Current Code § 22.1-287.03 (B) Unique Student Identification Numbers:**

... (B) The Department of Education shall develop a system of unique student identification numbers. Each local school board shall assign such a number to each student enrolled in a public elementary or secondary school. No student identification number shall include or be derived from the student's federal social security number. Each student shall retain his student identification number for as long as he is enrolled in a public elementary or secondary school in the Commonwealth.

**Challenge:** Expanding Access to ECE

**Context:** Though one of the most effective investments a state can make, Virginia's early childhood education system is still fragmented. Because of a lack of data, it is hard to know what is working or isn't.

**Recommendation to the Commission:** Support the governor's initiative to create a unified Pre-K data system and to issue student identifiers to children at a younger age— even those not in any kind of state Pre-K program. These early-childhood identifiers could be added into this statute.

# SCHOOL FUNDING

## *HB29 as Enrolled (2020), Item 136 (4a.)*

### 4.a. "Composite Index of Local Ability-to-Pay" -

An index figure computed for each locality.

The composite index is ... multiplied by the local nominal share of the costs of the Standards of Quality of **0.45 in each year.**

The **indices of wealth** are determined by combining the following...: (1) true values of real estate and public service corporations as reported by the State Department of Taxation for the calendar year 2015 - 50 percent; (2) adjusted gross income for the calendar year 2015 as reported by the State Department of Taxation - 40 percent; (3) the sales for the calendar year 2015 which are subject to the state general sales and use tax, as reported by the State Department of Taxation - 10 percent.

**Challenge:** Developing a more equitable funding scheme

**Context:** Virginia is unusually reliant on local revenue to fund schools, and the state funding formula is considered one of the least equitable in the country. Children of color are disproportionately harmed.

**Recommendation to the Commission:** Support increased state funding of schools (increase the current 55% share) and reconfigure the LCI formula to account for concentrated student need, not just local ability to pay.

# CRIMINAL JUSTICE

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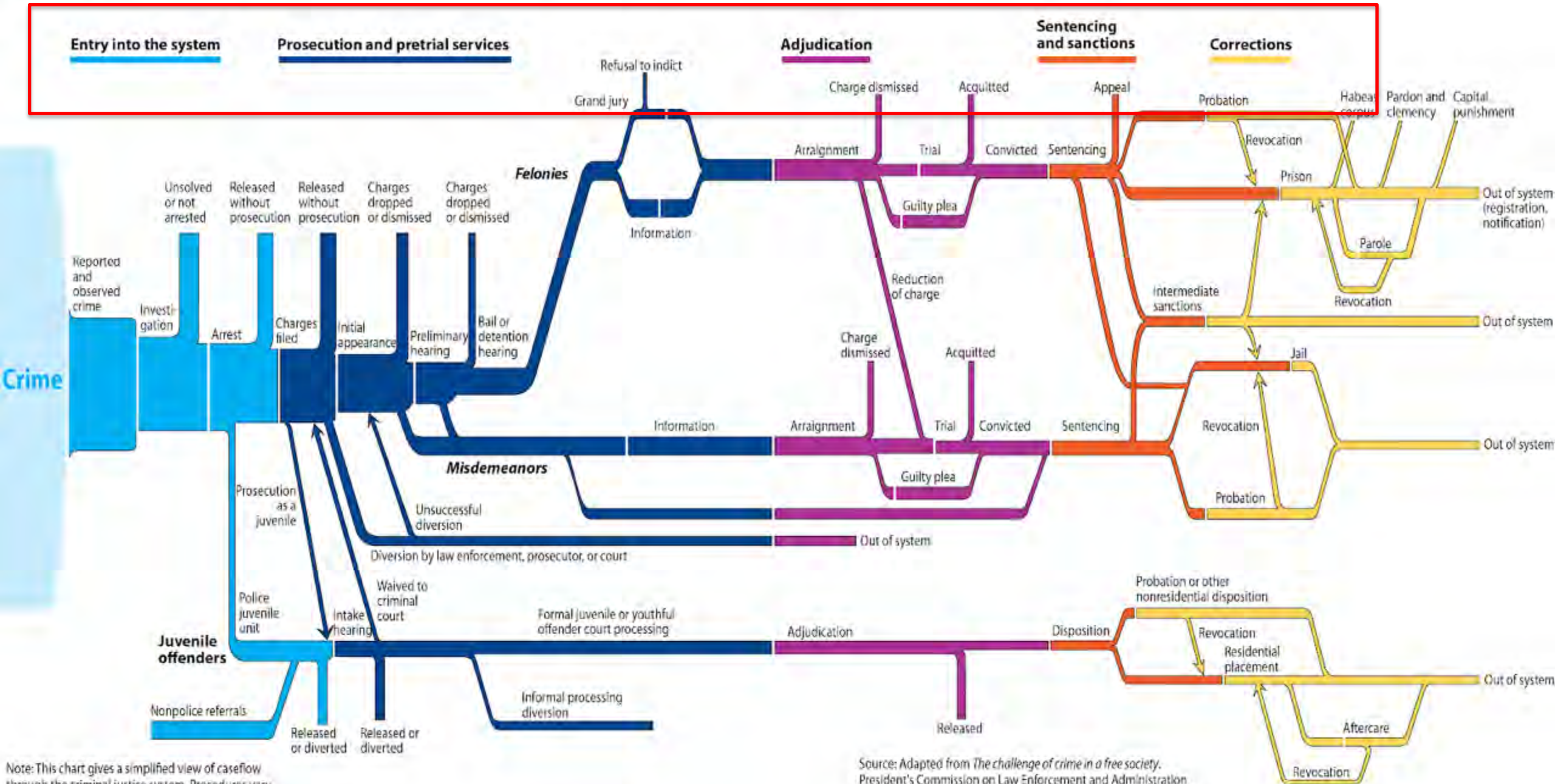
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# ***Contents***

1. The path of an offender
2. What we **don't** know
3. Recommendations

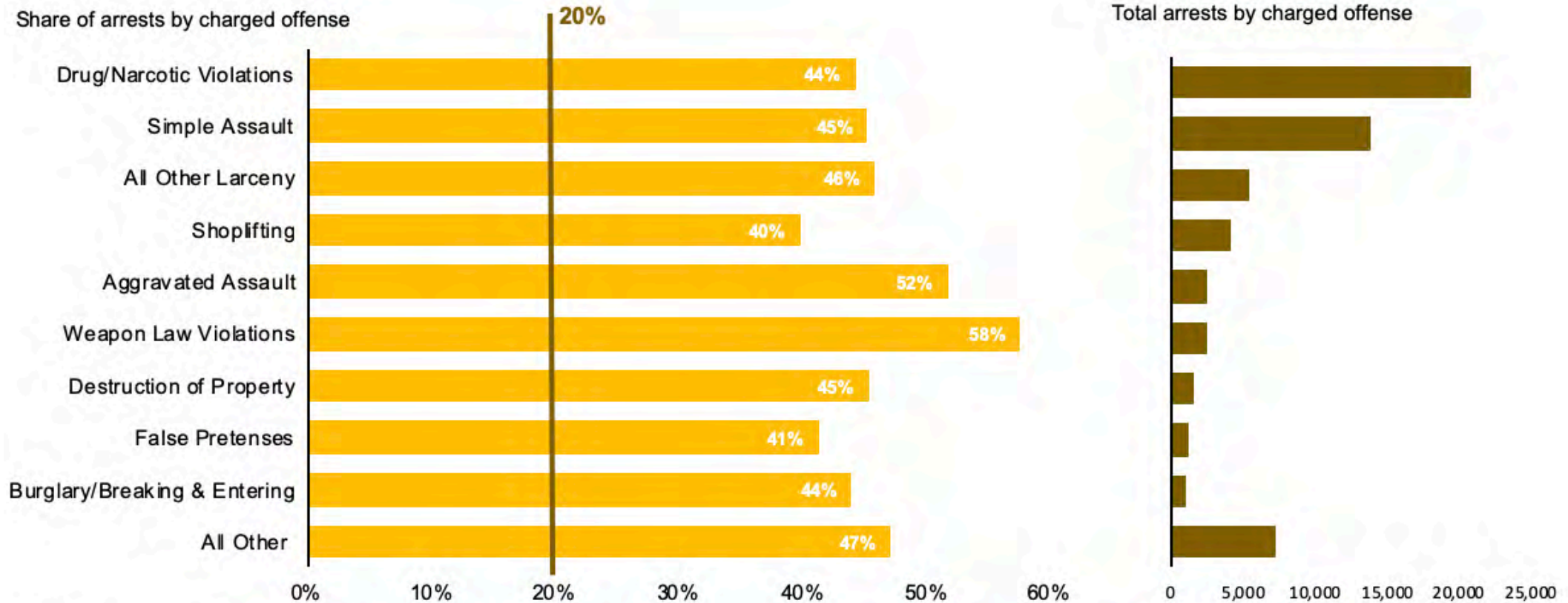
# What is the sequence of events in the criminal justice system?



Note: This chart gives a simplified view of caseload through the criminal justice system. Procedures vary among jurisdictions. The weights of the lines are not intended to show actual size of caseloads.

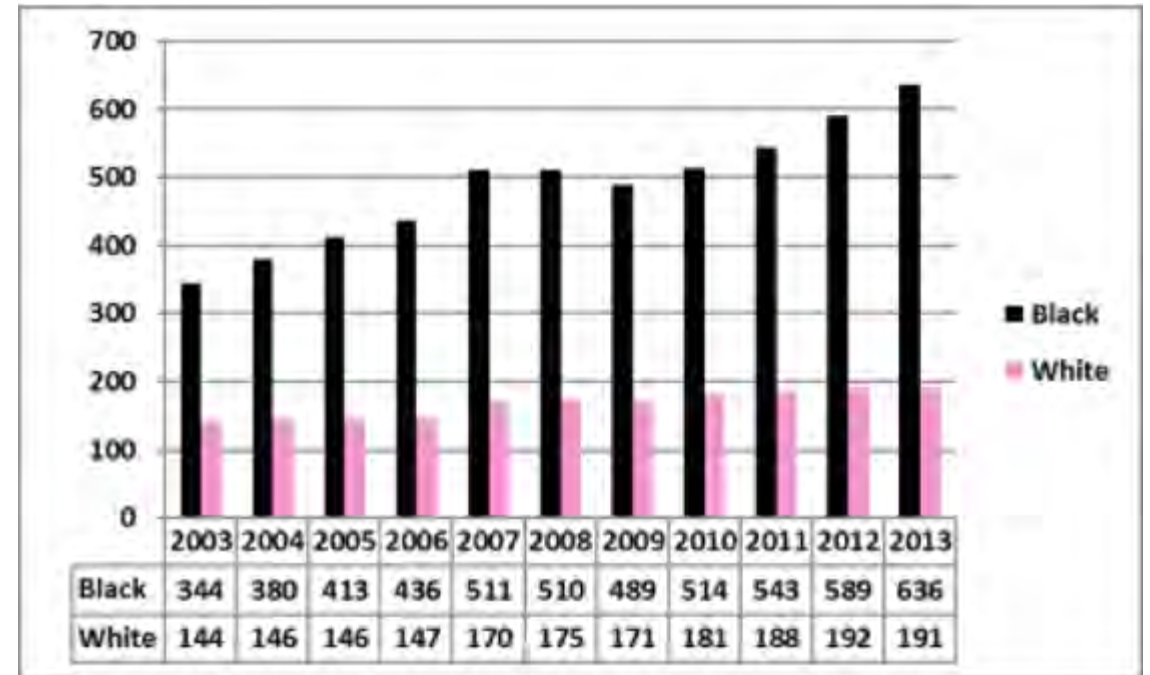
Source: Adapted from *The challenge of crime in a free society*. President's Commission on Law Enforcement and Administration of Justice, 1967. This revision, a result of the Symposium on the 30th Anniversary of the President's Commission, was prepared

In 2018, Blacks made up 20% of the Virginia population but **45%** of all arrests



SOURCE: Arrests by race and charged offense, Virginia State Police, 2018.

Marijuana arrests remain grossly imbalanced, despite public health research demonstrating marijuana use rates being virtually equal across races.



Source: Racial Disparities in Marijuana Arrests in Virginia, Drug Policy Alliance, 2013.

Data on 5 million traffic stops in Virginia from 2006 to 2016 showed little to no apparent disproportionality in the number of traffic stops by race.

**63.9%**

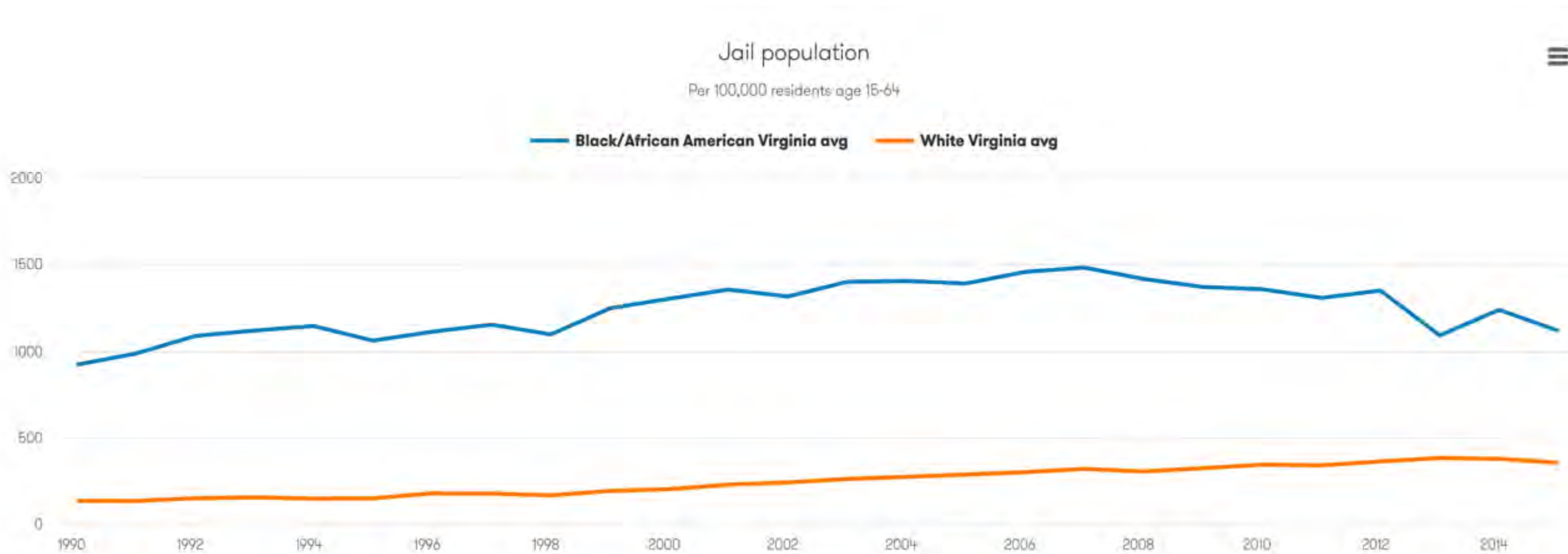
of stopped drivers were white

**24%**

of stopped drivers were black

Source: The Stanford Open Policing Project

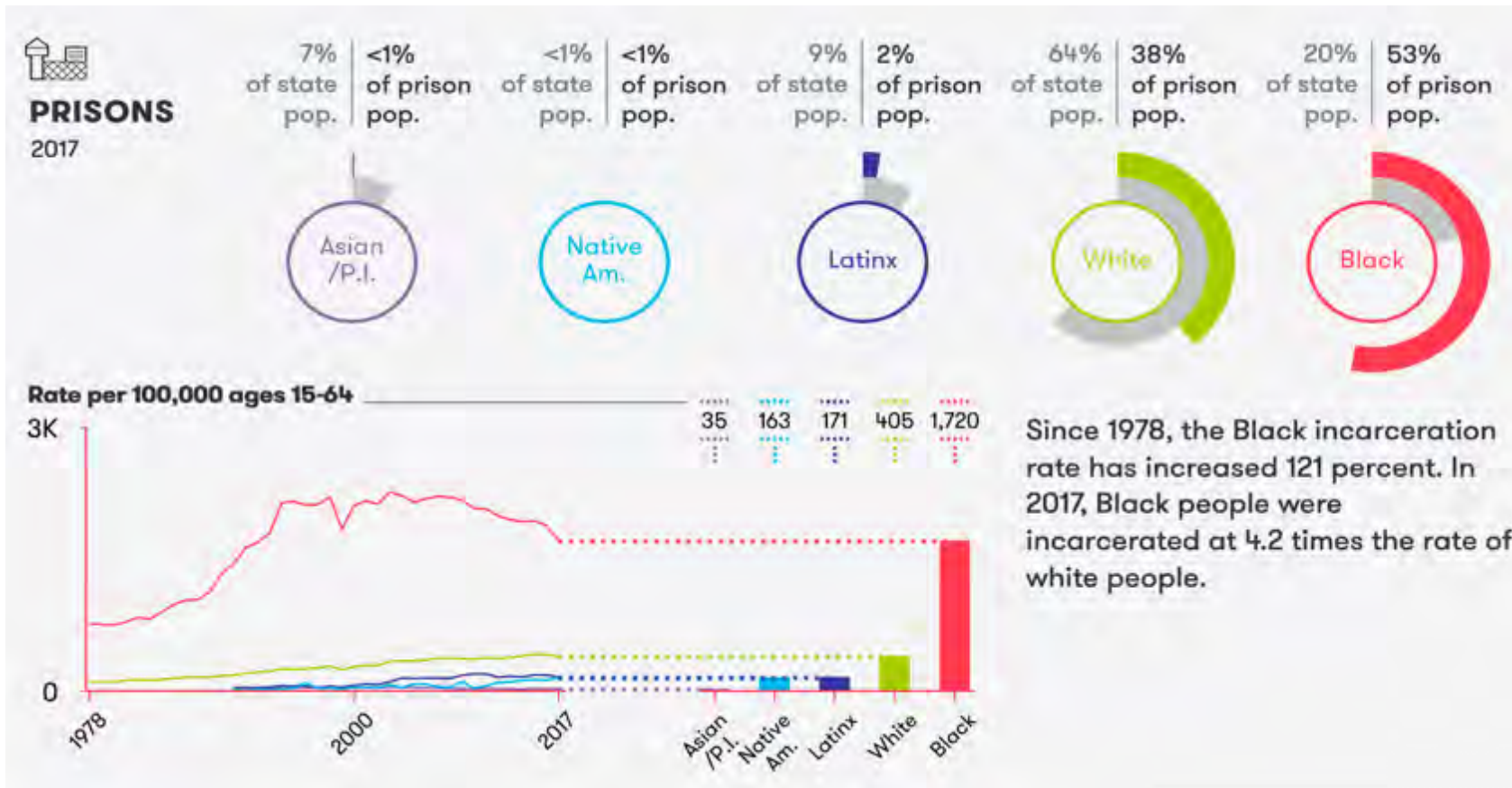




Source: "Incarceration Trends in Virginia", Vera Institute for Justice, December 2019



There is a massive gap in understanding pre-trial and sentencing decisions because of a lack of reporting at both the local and state levels.



Source: "Incarceration Trends in Virginia", Vera Institute for Justice, December 2019

Diversion has a valuable place in efforts to combat recidivism, but studies show it is being applied unevenly.

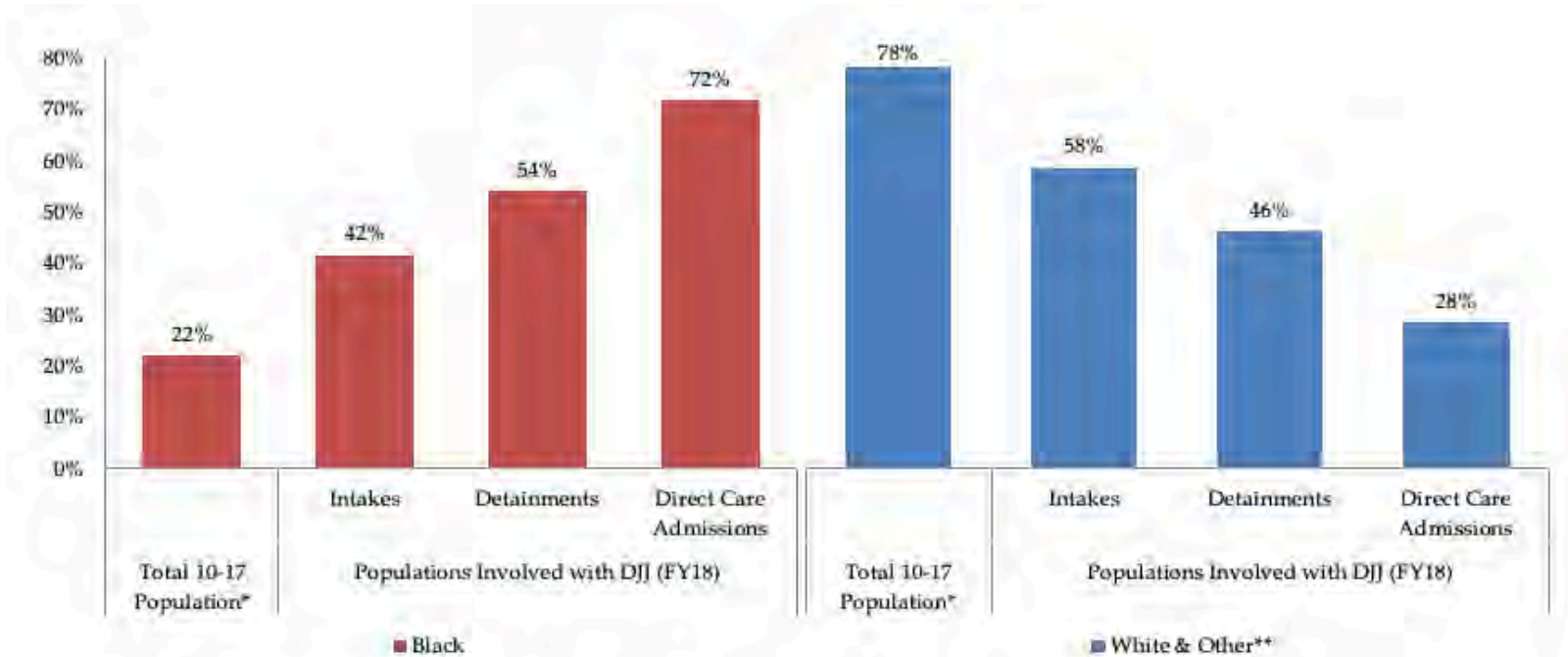
Racial Group	Drug Court Participants	Comparison Group
African American	472 (45.4%)	2088 (64.2%)
Caucasian	554 (53.3%)	1153 (35.4%)
Asian	2 (0.2%)	8 (0.3%)
Other	11 (1.1%)	5 (0.2%)
Total	1156	3254

Source: "Virginia Adult Drug Treatment Courts Impact Study," National Center for State Courts, April 2012

Virginia has **889**  
different collateral penalties  
for convicted persons in the  
Virginia Code, which we know is a  
disproportionately black  
population

Source: National Inventory of Collateral Consequences of Conviction – The Council for State Governments

# JUVENILE JUSTICE



In FY 2018, black youth were overrepresented at every stage of the juvenile justice system.

\* Source: U.S. Census Bureau FY 2015 population estimates

\*\* "White & Other" includes any juveniles not identified as black but excludes juveniles whose race was missing.

Source: Virginia Department of Juvenile Justice

# JUVENILE JUSTICE

Black youth comprise approx. 22% of youth in Virginia, but represent:

- **42%** of intake cases
- **45%** of petitions
- **54%** of detainments
- **72%** of commitments

Source: Virginia Department of Juvenile Justice

# JUVENILE JUSTICE

- 65% of complaints of disorderly conduct in 2018 DJJ were for black youth
- By FY 2018, the petition rate was lower for black youth than for white youth indicating that the petition stage for disorderly conducts reversed some of the disproportionality occurring in intakes



# WHAT WE DON'T KNOW

- Bail decisions
- Pre-trial risk assessment outcomes
- Discretionary sentencing guideline outcomes
- How many Latinx offenders are incarcerated

# RECOMMENDATIONS

The Sentencing Commission doesn't track race, but it can and should.



*“The Commission shall...[m]onitor sentencing practices in felony cases throughout the Commonwealth, including the use of the discretionary sentencing guidelines, and maintain a database containing the information obtained.”* Code of Virginia § 17.1-803

# RECOMMENDATIONS

- Require the Sentencing Commission to report on all sentencing outcomes by race and ethnicity.
- Require magistrate-level and other reporting on all pre-trial decisions, including bail decisions, by race.
- Change Compensation Board policies so that Commonwealth Attorneys are incentivized to divert cases and reduce felony charges

# RECOMMENDATIONS

- Reduce collateral consequences for felons
- Identify and change policies and practices that contribute to disproportionate arrest rates between white and black Virginians
- *Study the role that mandatory minimum sentences play in racial disparities and propose corresponding repeals.*

# RACIAL DISPARITIES IN VOTING

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# Before We Get Started, Important Things to Note

1. Voting in Virginia is Currently Changing
2. Voting's Importance to the Commission
3. Profound lack of Virginia-Specific Data



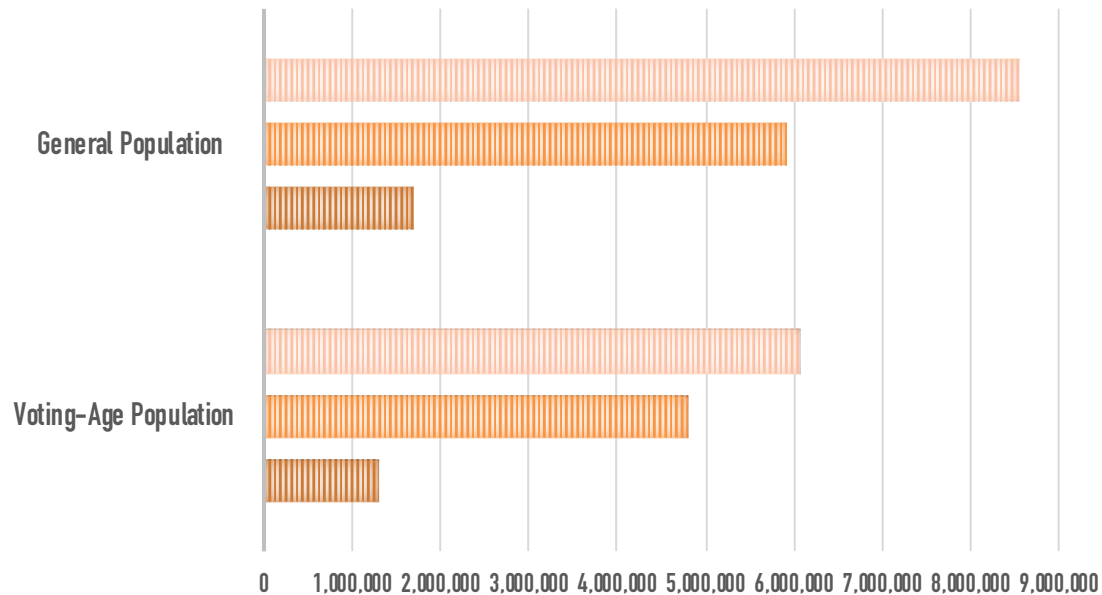
# ***Contents***

1. Overview of Virginia voters
2. Obstacles in registration and at the polls
3. Obstacles regarding felony disenfranchisement
4. Recommendations

# Virginia Voters, Overview

VIRGINIA POPULATION, 2019 ESTIMATES

■ Total Virginians
 ■ White Virginians
 ■ Black Virginians



Source: U.S. Census Bureau, Population Division, Vintage 2019 Population Estimates.

## Virginia's Voting-Age Population (VAP), By the Numbers

Estimated  
**8.5 million**  
Virginians

Estimated  
**1.7 million**  
Black Virginians

Estimated  
**5.7 million**  
Registered Voters  
in Virginia

Estimated  
**6.6 million**  
VAP Virginians

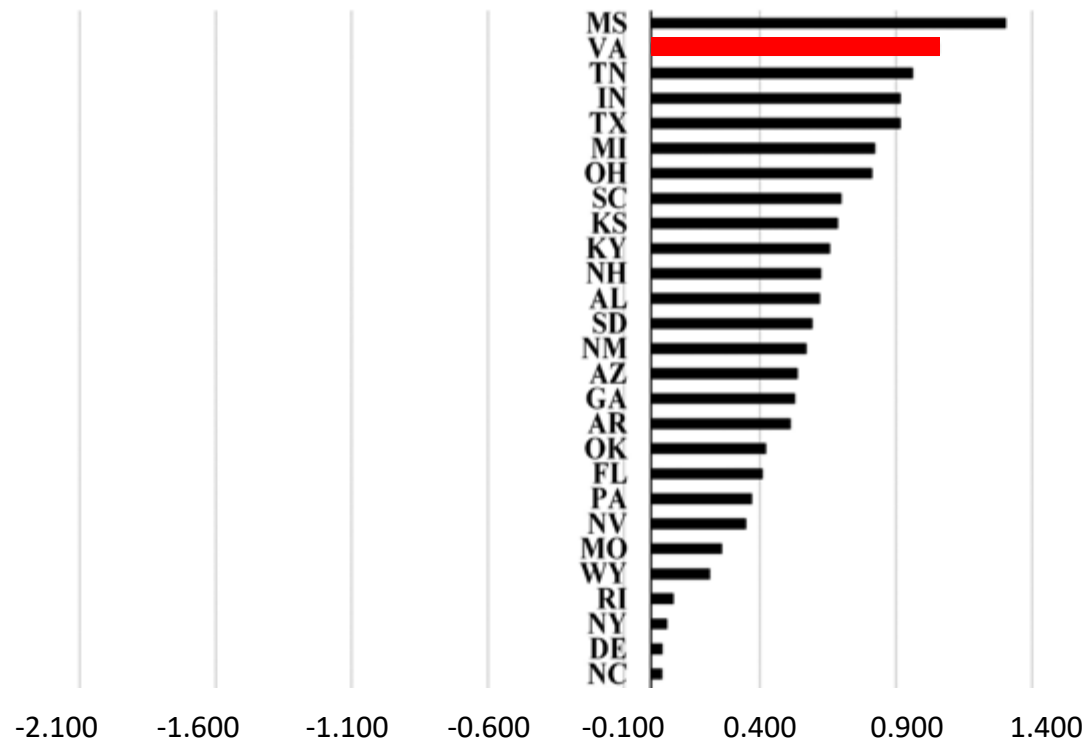
Estimated  
**1.2 million**  
Voting-Age Black Virginians

**?? million**  
Black Registered Voters  
In Virginia



# Obstacles to Voting, Cost of Voting Index

## COST OF VOTING INDEX, 2018



## Areas of Concern

1. Absentee & Early Voting
2. Wait Time at the Polls
3. Photo ID Requirement

1.900

Source: Department of Political Science at Northern Illinois University

# Obstacles to Voting in Virginia

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## Registration and At the Polls

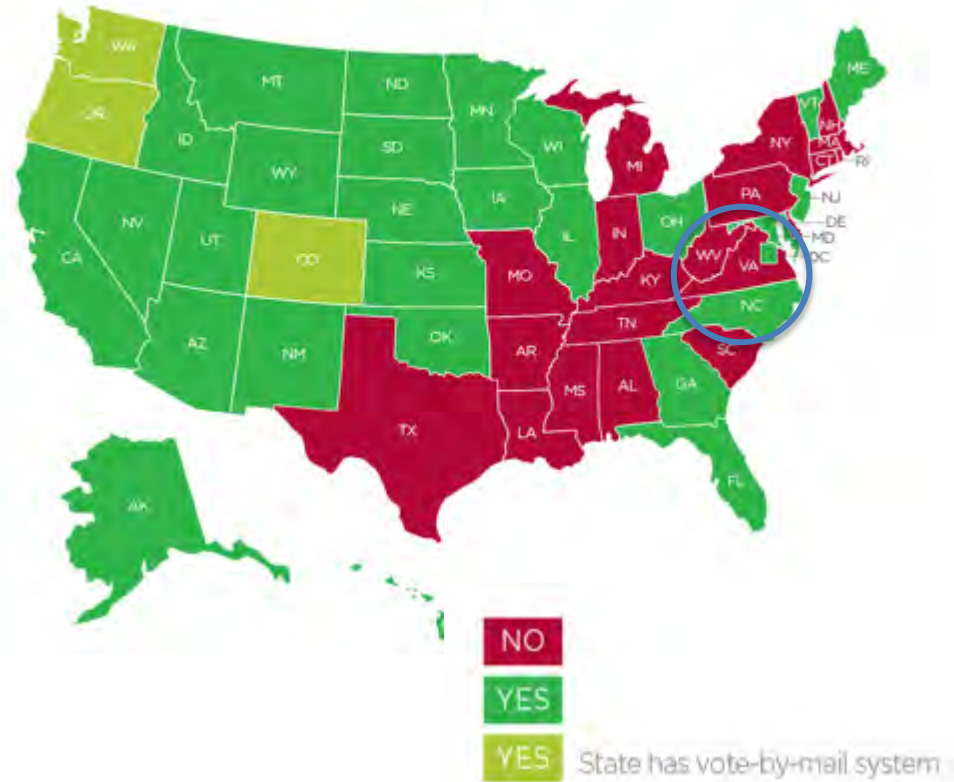


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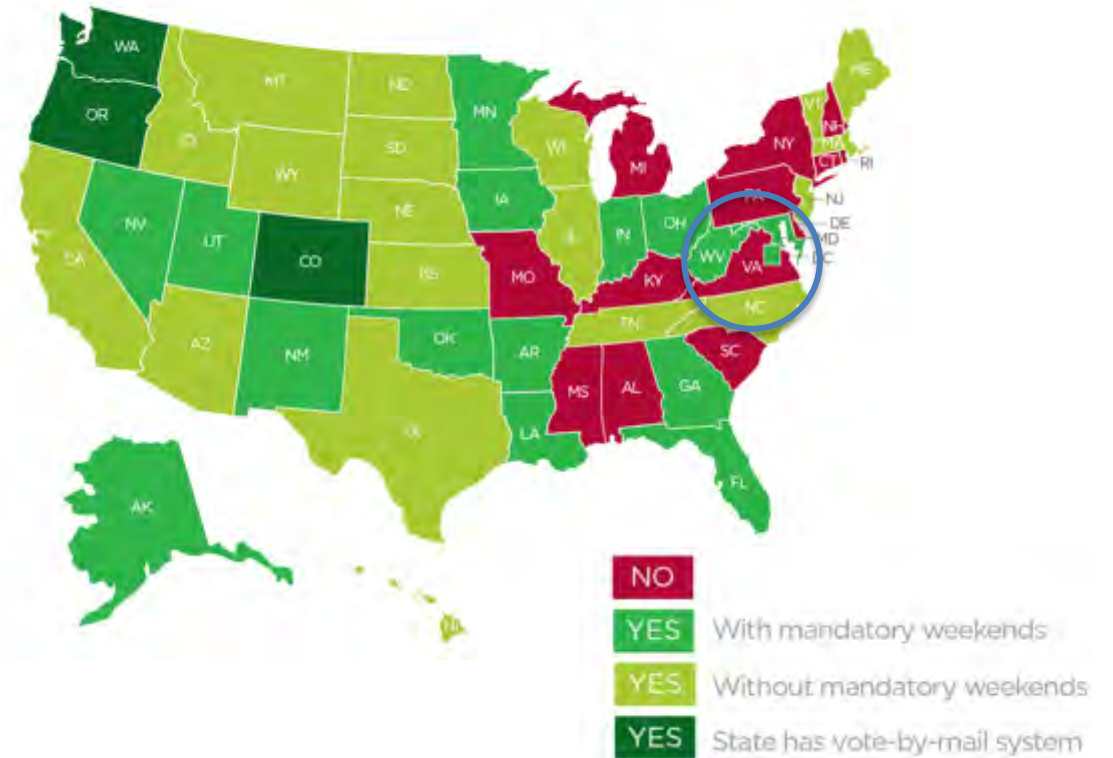
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# Racial Bias in Voting , Absentee and Early In-Person Voting

### Availability of No-Fault Absentee Voting



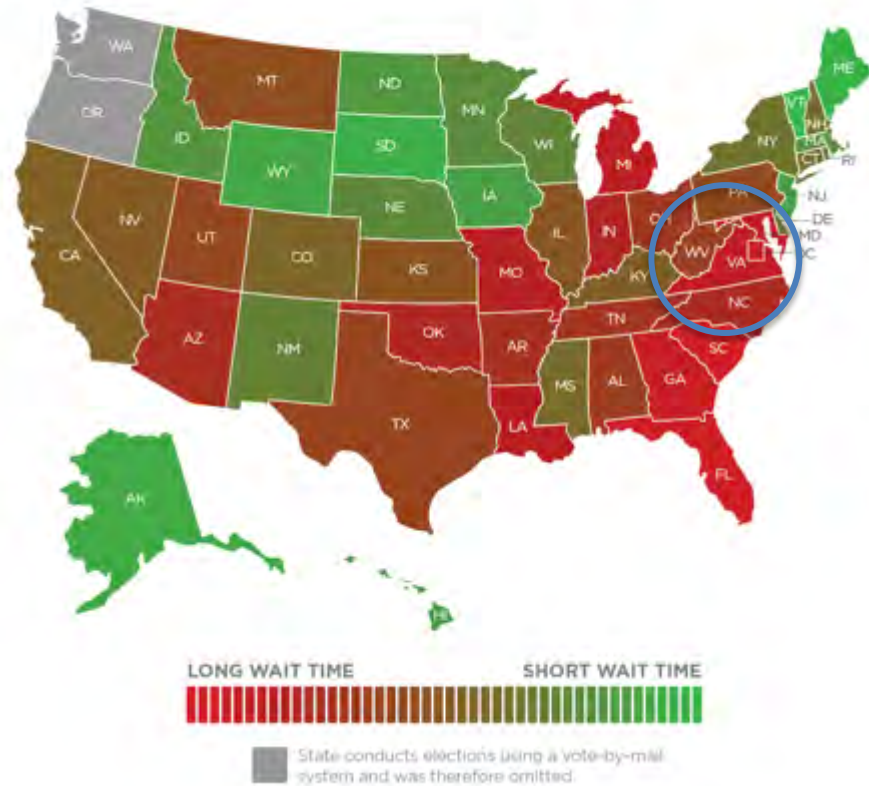
### Availability of In-Person Early Voting



Source: [www.healthofstatedemocracies.org](http://www.healthofstatedemocracies.org)

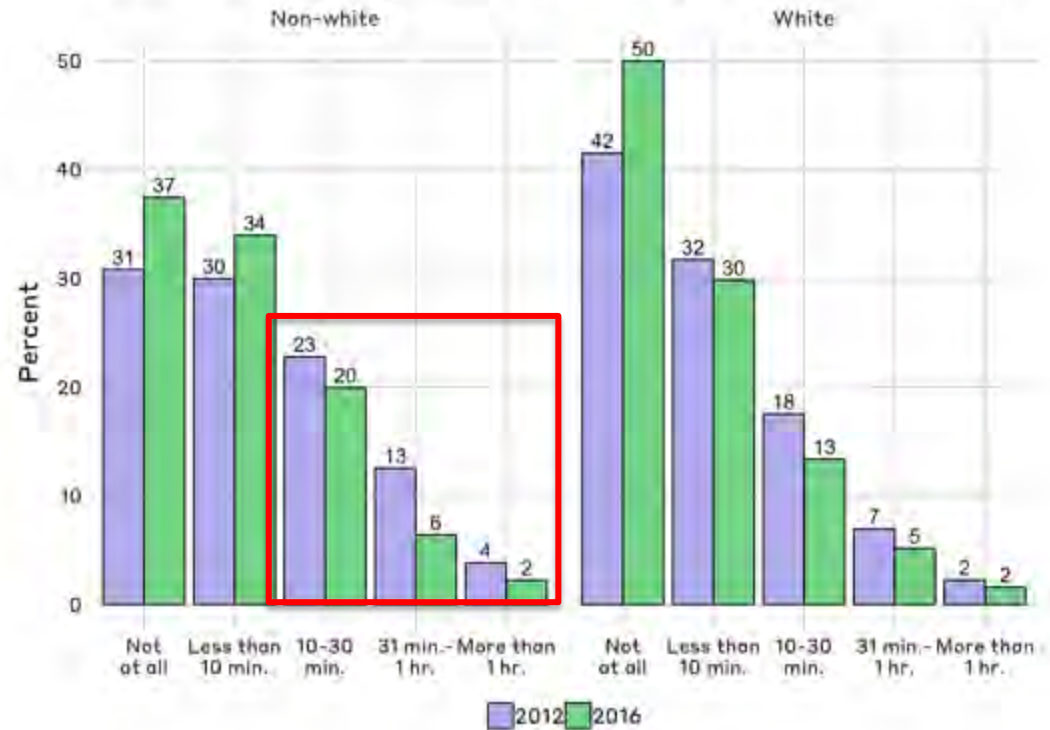
# Racial Bias In The Voting Process, Wait Time

Voting Wait Time, 2008 and 2012



Source: [www.healthofstatedemocracies.org](http://www.healthofstatedemocracies.org)

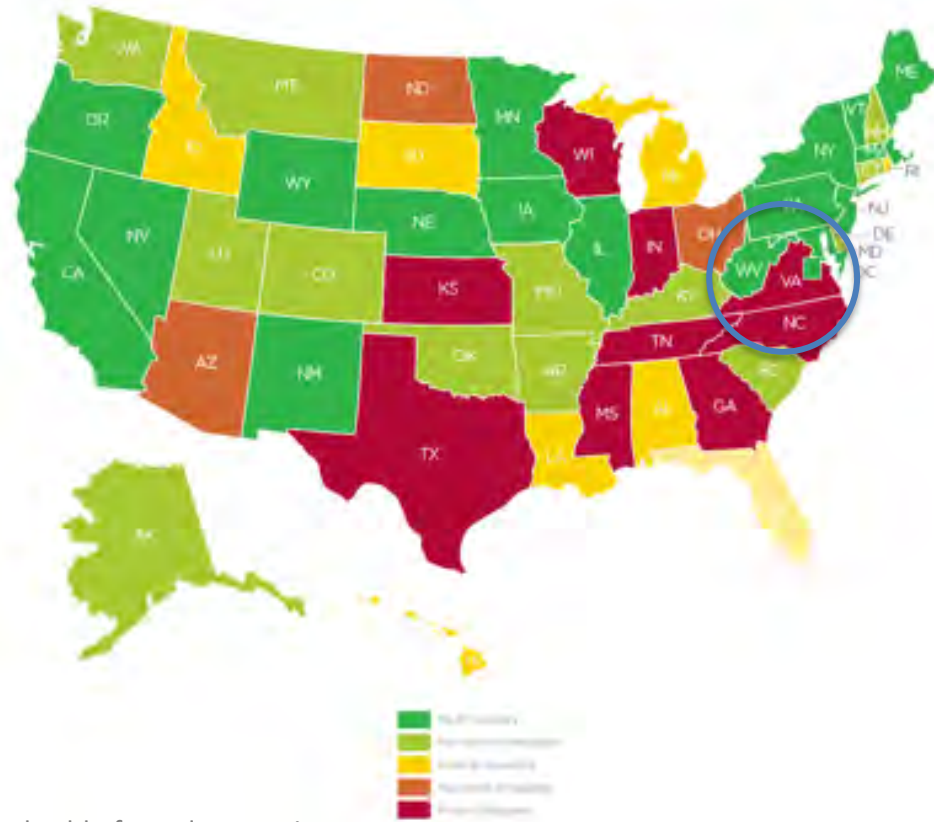
Time Spent Waiting in Line to Vote by Race (2012 and 2016)



Source: MIT Election Data and Science Lab, Elections Performance Index (EPI)

# Racial Bias In The Voting Process, Photo ID

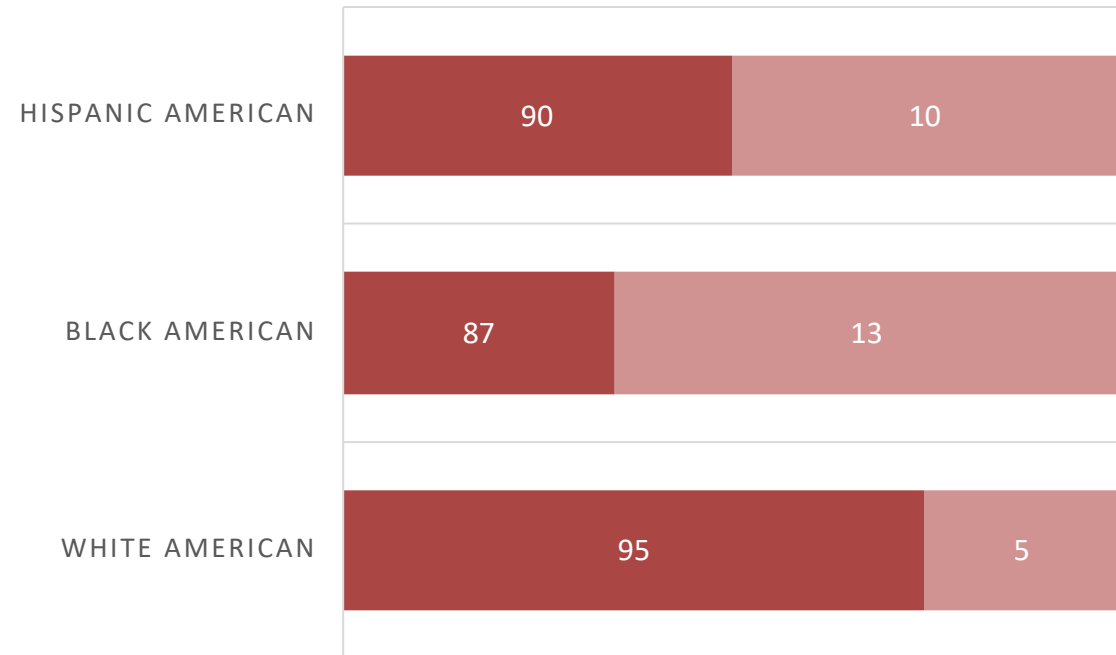
## Voter ID Laws



Source: [www.healthofstatedemocracies.org](http://www.healthofstatedemocracies.org)

## OWNERSHIP OF GOVERNMENT-ISSUED IDs, DEMOGRAPHICS

■ Confirmed ID Ownership    ■ No Confirmed ID Ownership

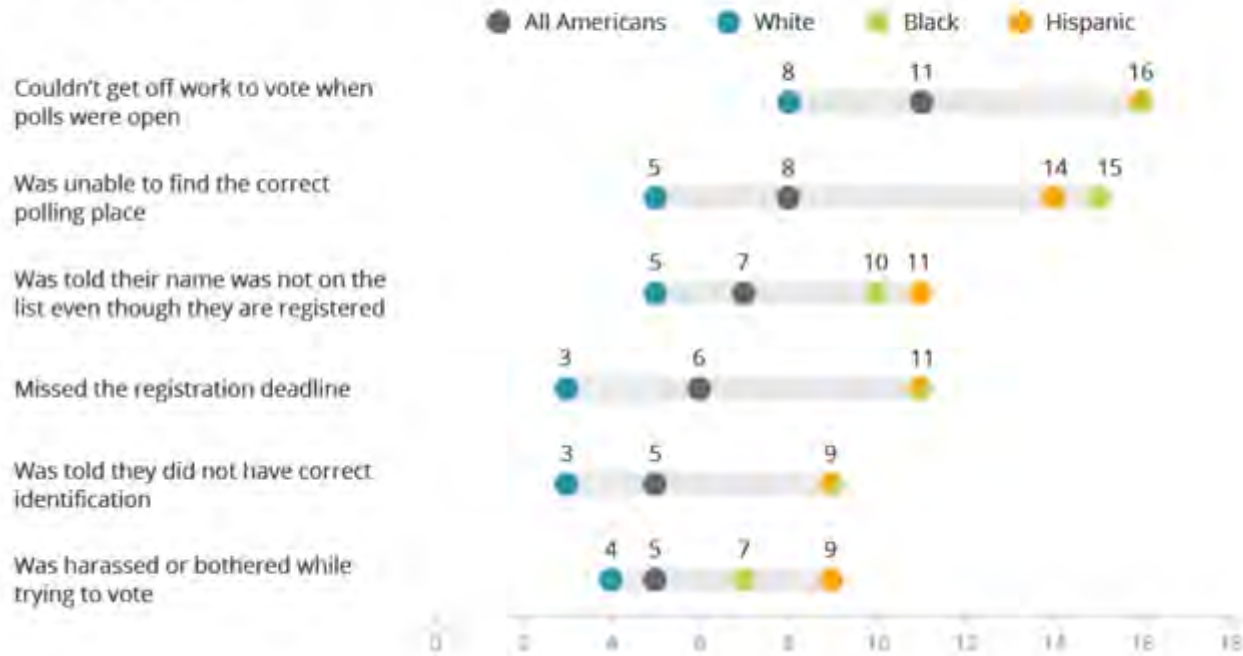


Source: Project Vote 2015 Research Memo

# Racial Bias Throughout the Voting Experience

**FIGURE 3. Black and Hispanic Americans More Likely to Report Experiencing Problems at the Polls**

Percent who report they or someone in their household experienced the following the last time they tried to vote...



Source: PRRI/The Atlantic 2018 Voter Engagement Survey.

## OVERALL TAKE-AWAY

While many obstacles to equity show themselves within the voting experience, there is not sufficient research in these areas.

# Obstacles to Voting in Virginia

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## Felony Disenfranchisement



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# Voter Disenfranchisement, Virginia's Constitution

## Article II. Franchise and Officers

### Section 1. Qualifications of voters

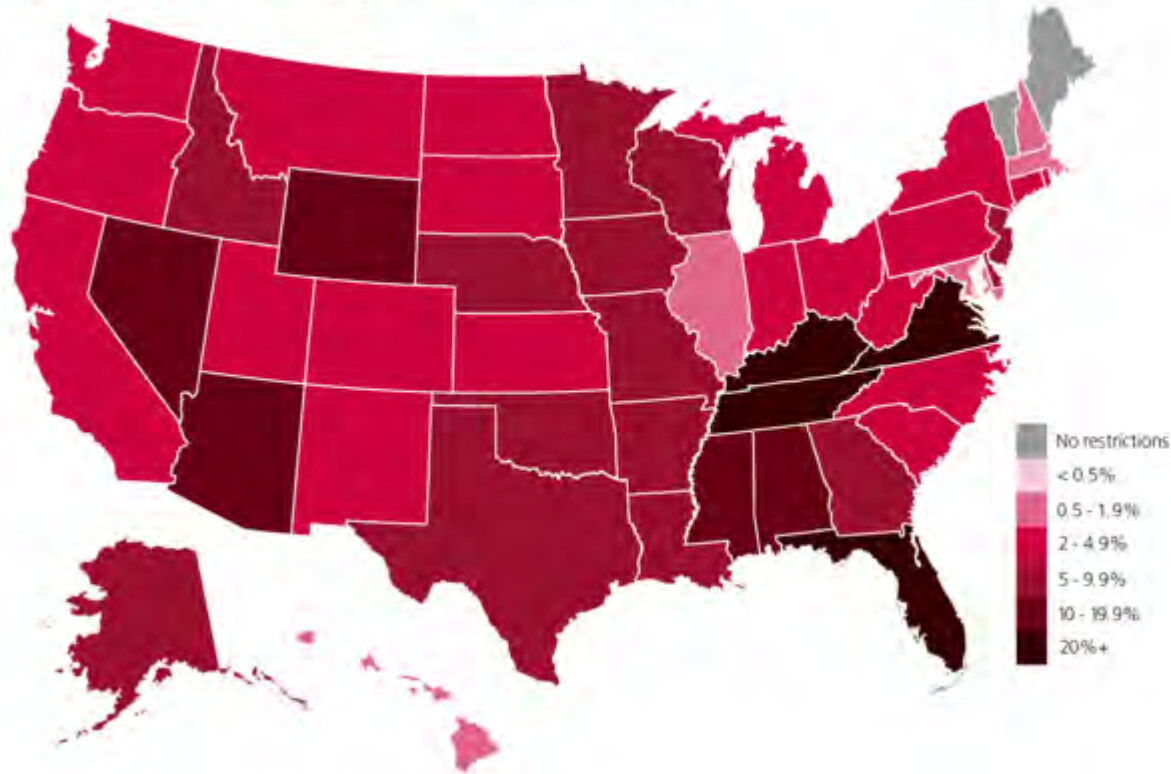
In elections by the people, the qualifications of voters shall be as follows: Each voter shall be a citizen of the United States, shall be eighteen years of age, shall fulfill the residence requirements set forth in this section, and shall be registered to vote pursuant to this article. No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority. As prescribed by law, no person adjudicated to be mentally incompetent shall be qualified to vote until his competency has been reestablished.

Source: [www.law.lis.virginia.gov](http://www.law.lis.virginia.gov)



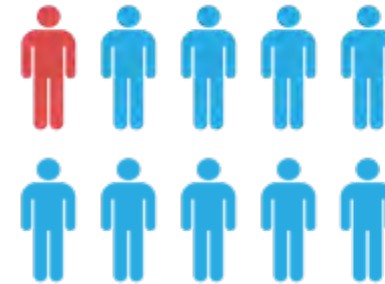
# Voter Disenfranchisement, 2016

Figure 7. African American Felony Disenfranchisement Rates, 2016



**1 out of every 10**

Non-Black Virginians is Permanently Disenfranchised



**1 out of every 5**

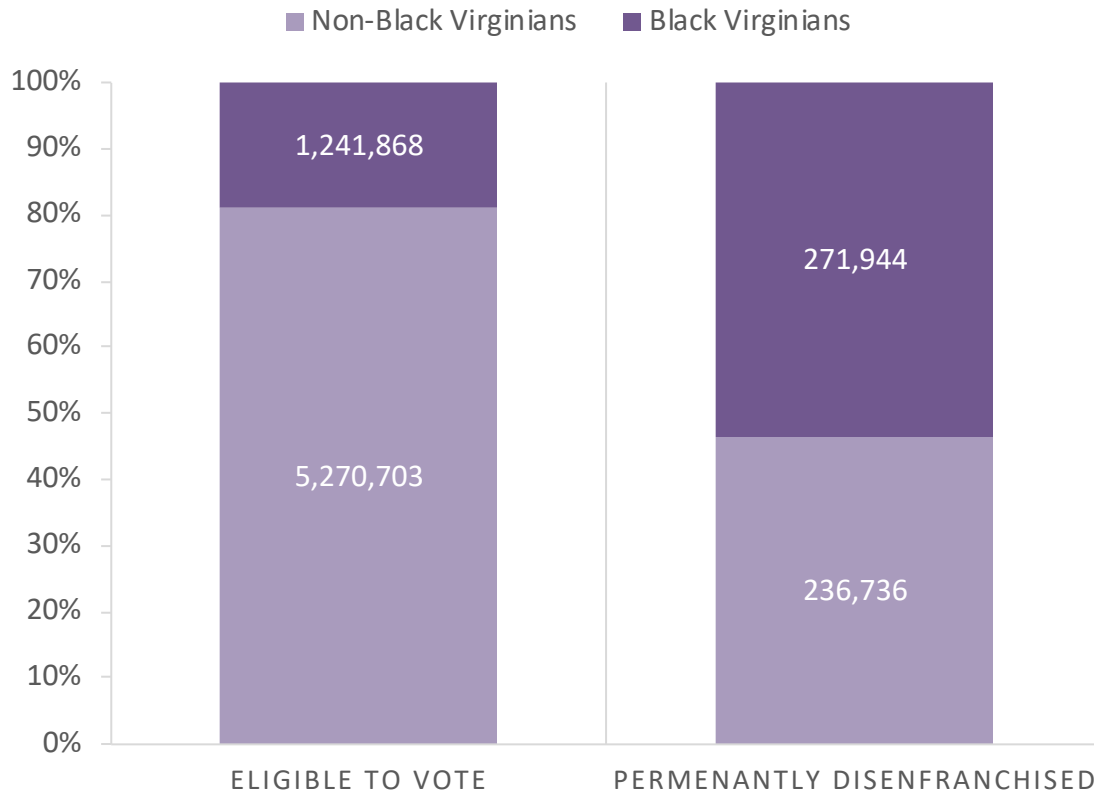
Black Virginians is Permanently Disenfranchised



Source: The Sentencing Project, 6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016

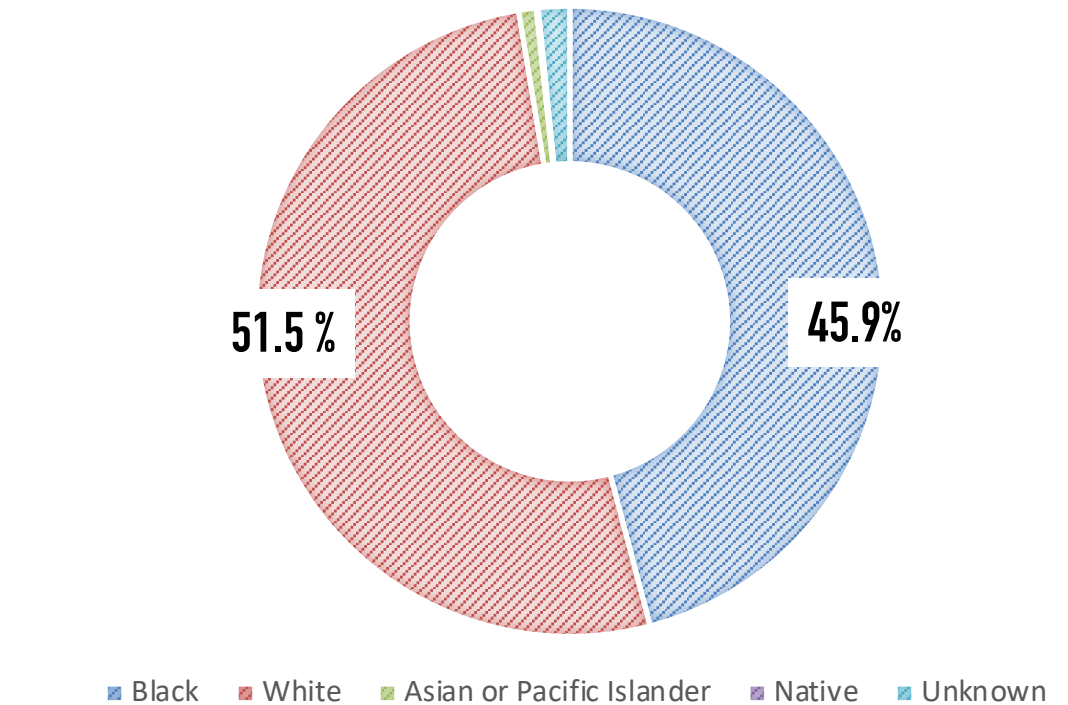
# Voter Disenfranchisement, 2016

VIRGINIA'S VOTING-AGE & DISENFRANCHISED POPULATION, 2016



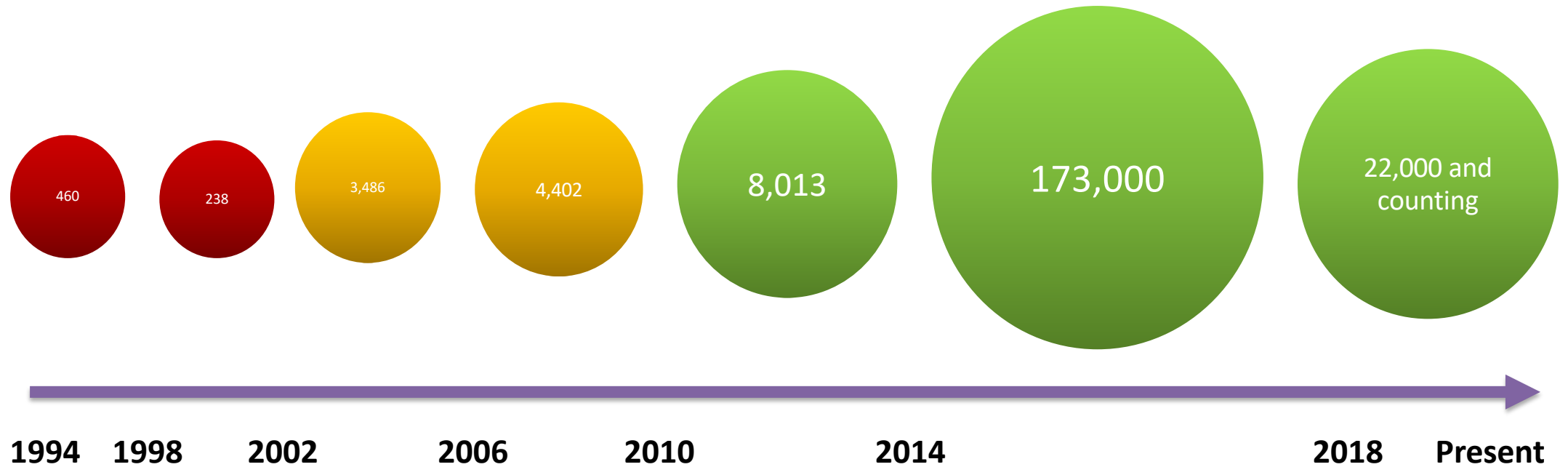
Source: The Sentencing Project

RIGHTS RESTORED BY RACE, 2016



Source: Commonwealth of Virginia, Restoration of Rights Demographics

# Voter Disenfranchisement, Rights Restoration



Source: The Sentencing Project , 6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016

# Recommendations for the Commission

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# Moving Forward

- Amend the Virginia Constitution
- Look to Other States' Examples
- Invest in Virginia-Specific Research

# RACIAL DISPARITIES IN HEALTH AND COVID-19 PANDEMIC

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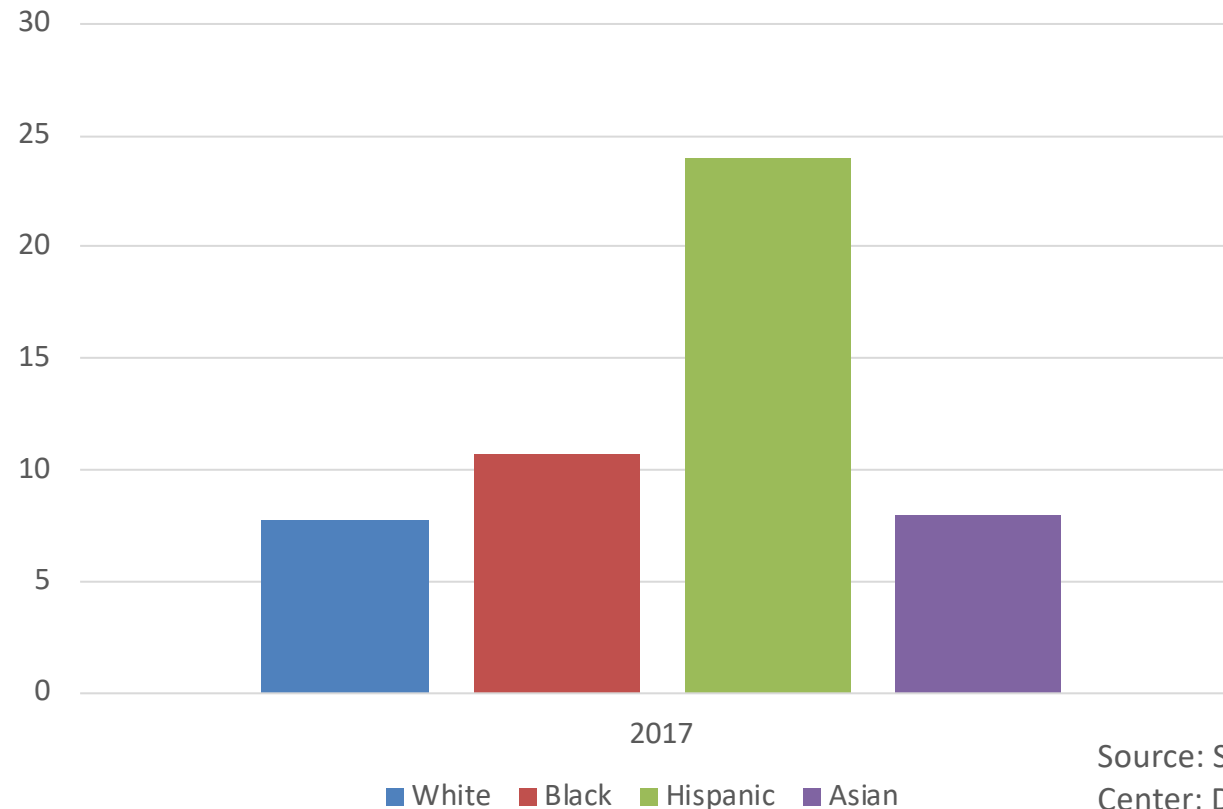


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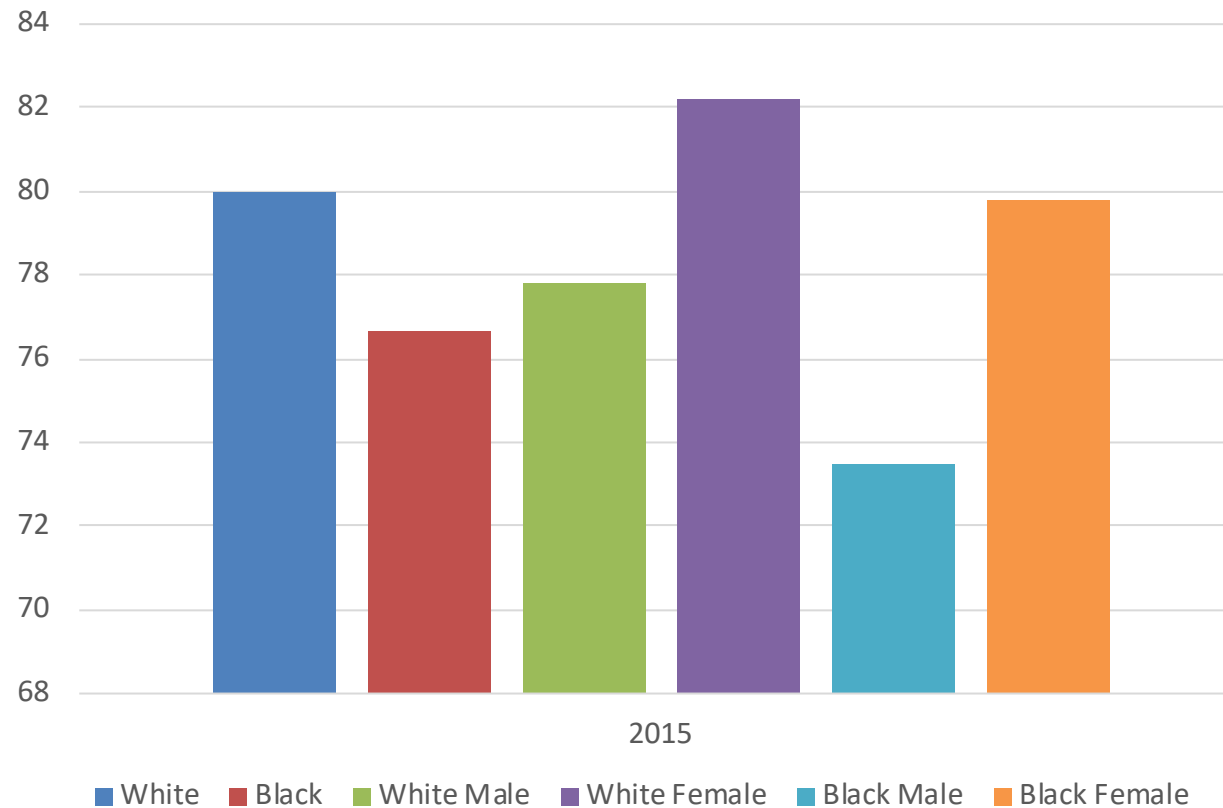
## Percentage of Uninsured for Virginia 2017 (prior to Medicaid expansion)

While we may not know the full effects of COVID-19 yet, existing data shows significant racial inequities in health care. For instance, Hispanic or Latinx Virginians, in addition to black Virginians are much less likely to be insured.



Source: State Health Access Data Assistance Center; Data from the U.S. Census Bureau 2016 and 2017 American Community Surveys

# Life Expectancy in Virginia



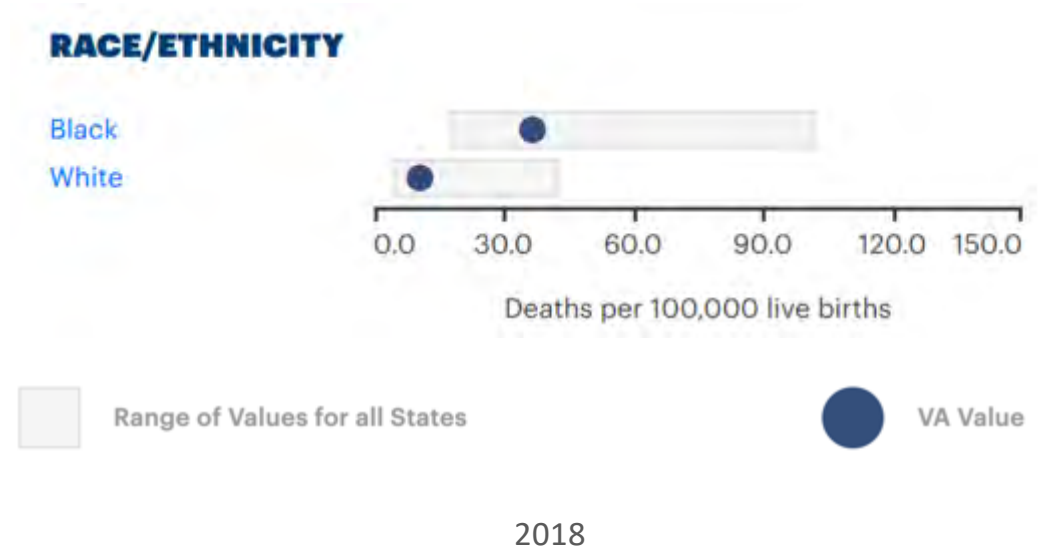
Life expectancy for black Virginians varies both by race and gender. Black males had a life expectancy of 74 years in 2015 compared to 82 years for white females.

Source: Virginia Department of Health



# Mother Mortality

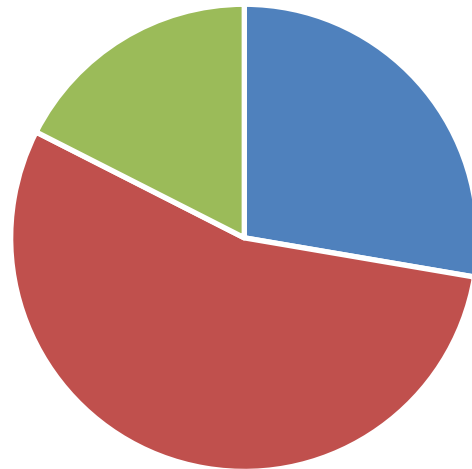
- Black Mothers in Virginia are three times as likely to die during childbirth according to America's Health Rankings.



Source: America's Health Rankings (utilizing U.S. Census ACS data)

# Infant Mortality

Total Infant Death Rates Per  
1,000 Live Births

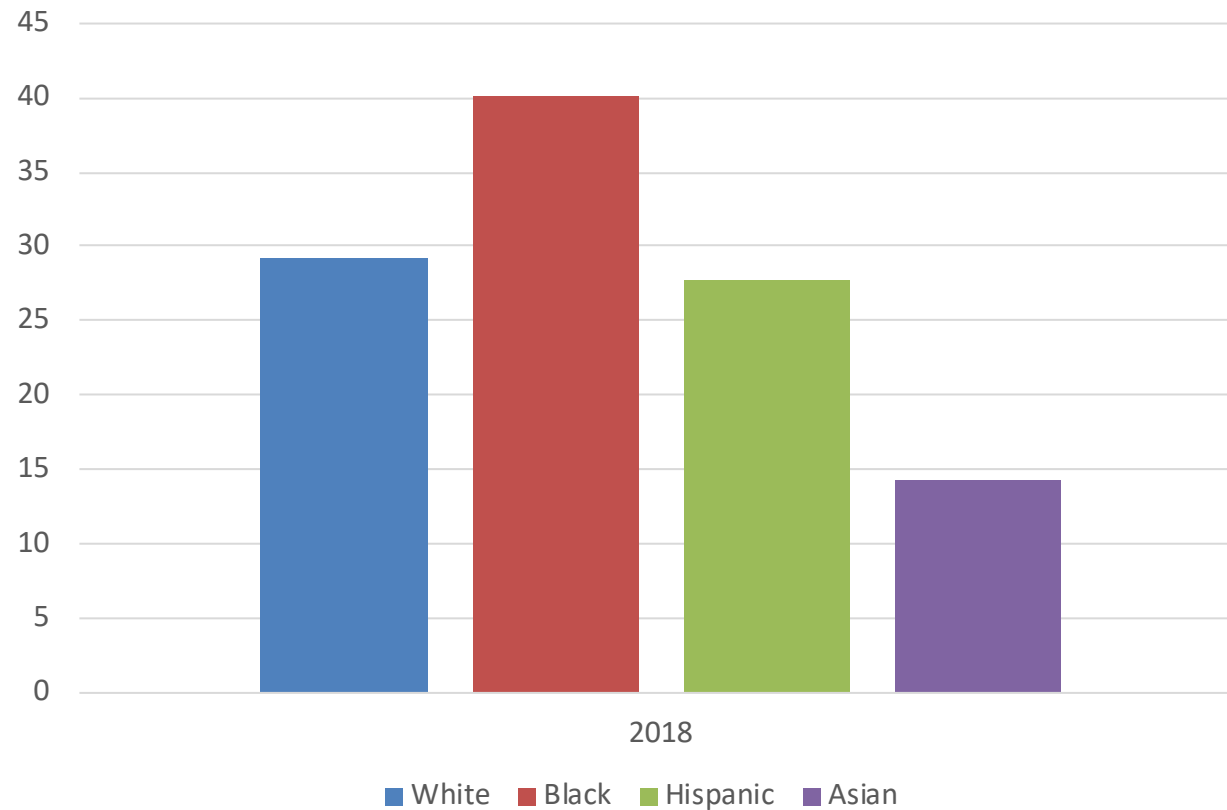


■ White ■ Black ■ Other

- Black infants die at twice the rate as white infants.
- Black infants have a death rate of 9.7 to the white infant death rate of 4.9.

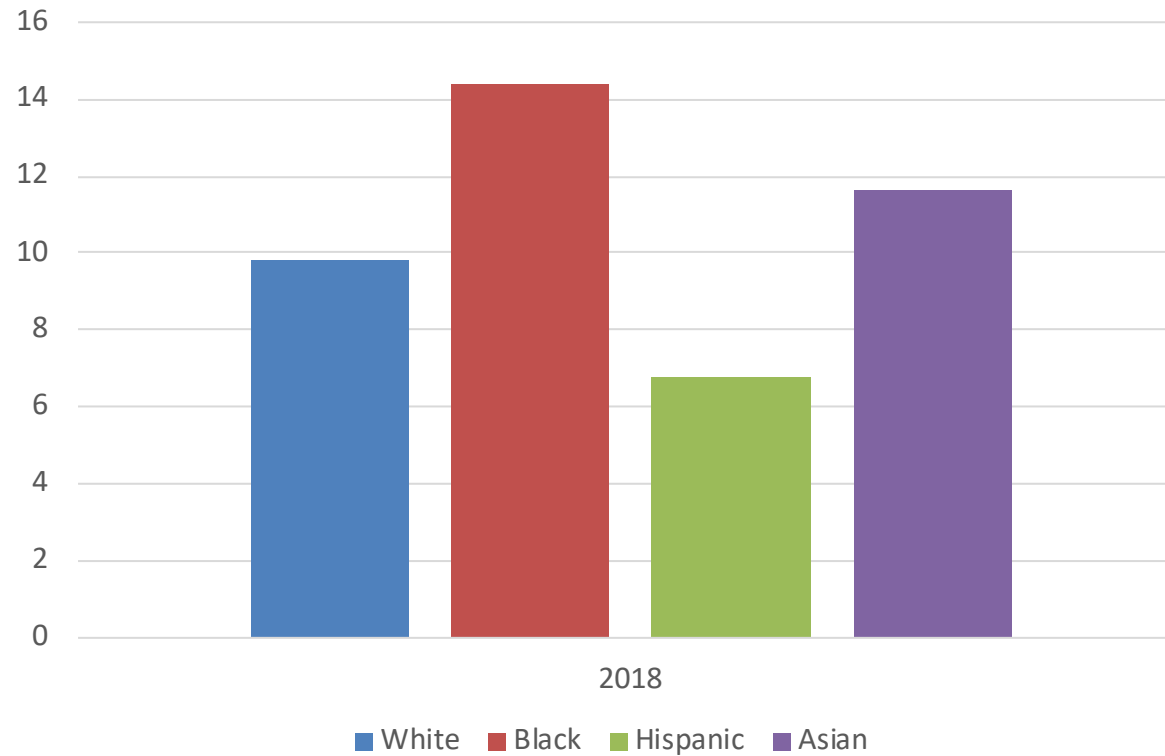
Source: "Infant Mortality Trends in Virginia 2014-2016," prepared by Virginia State Child Fatality Review Team.

# Obesity Percentages in Virginia



Source: Behavioral Risk Factor Surveillance System (BRFSS) Data from the CDC

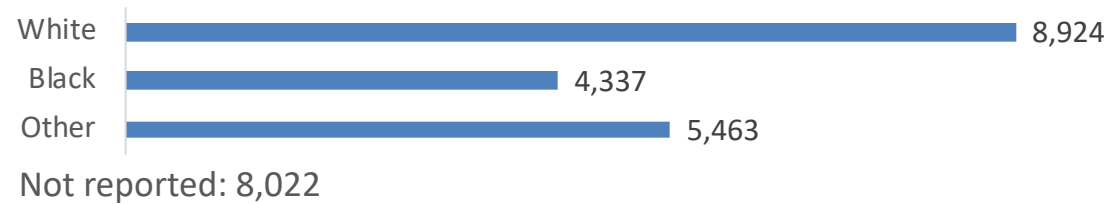
# Percentages of those Diagnosed with Diabetes



Source: BRFSS Data from the CDC

# Virginia and COVID-19: Black and White Residents

## Cases by Race-Virginia

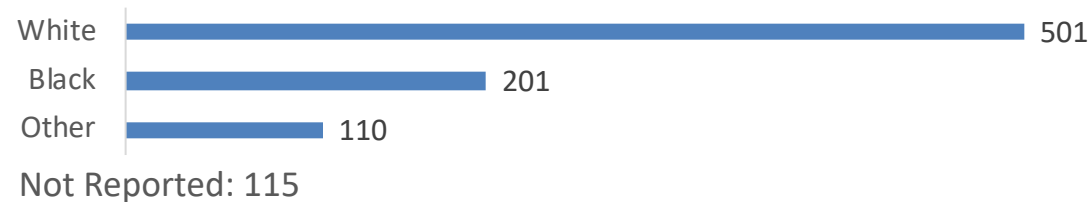


- In Virginia, Black people only account for 20% of the population, but account for 23% of cases, 27% of hospitalizations, and 25% of deaths

## Hospitalizations by Race-Virginia



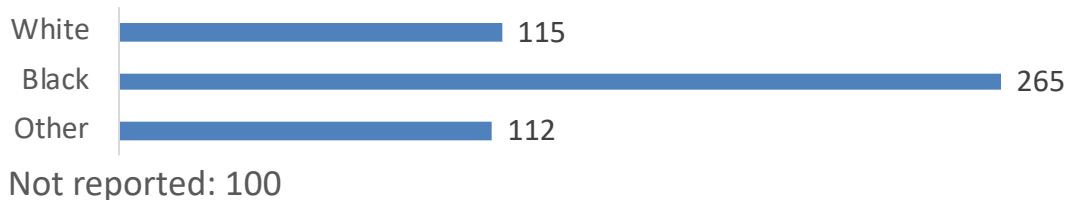
## Deaths by Race-Virginia



Source: Virginia Department of Health

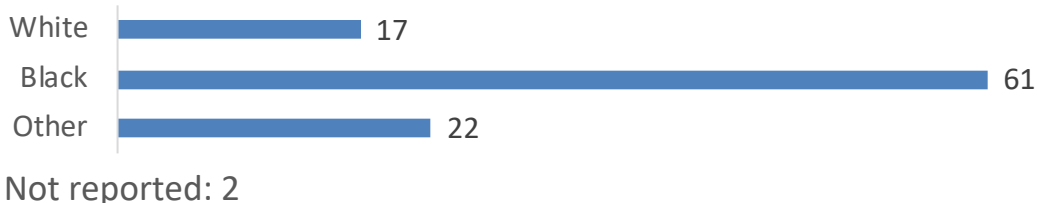
# Richmond and COVID-19: Black and White Residents

### Cases by Race-Richmond



- In Richmond, Black people only account for 48% of the population, but account for 54% of cases, 61% of hospitalizations, and 89% of deaths

### Hospitalizations by Race-Richmond



### Deaths by Race-Richmond



Source: Virginia Department of Health

# Virginia and COVID-19: Latinx Residents

## Cases by Ethnicity-Virginia



## Hospitalizations by Ethnicity-Virginia



## Deaths by Ethnicity-Virginia



- In Virginia, Hispanic or Latinx people only account for **10%** of the total population, but account for **44%** of cases of COVID-19, **34%** of hospitalizations, and **10%** of deaths.

Source: Virginia  
Department of Health

# MEMORANDUM

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**TO:** The Commission to Examine Racial Inequity in Virginia Law

**FROM:** Andrew Block, Kelsey Massey, Juliet Buesing, Christopher Yarrell, Wes Williams, and Trust Kupupika

**RE:** Policy Recommendations for Commission's Consideration

**DATE:** May 19, 2020

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## INTRODUCTION

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This memorandum (“memo”) is intended to supplement the PowerPoint presentation on racial disparities to the Commission to Examine Racial Inequity in Virginia Law (the Commission) by Vice-Chair Andrew Block, and University of Virginia School of Law students Kelsey Massey, Juliet Buesing, Christopher Yarrell, Wes Williams, and Trust Kupupika. It reflects the views of the authors and not those of the University of Virginia, or the University of Virginia School of Law.

These policy recommendations are not exhaustive. For example, given the directive of the Executive Order establishing the Commission to consider changes to laws or regulations, the recommendations mention some potential budget actions when they connect to legislative changes, but otherwise do not include potential budget actions. In addition, we recognize that the 2020 General Assembly session was an active one in many of the areas covered in our presentation. Accordingly, we have tried to list below relevant actions taken this session. Note that a common theme across subject areas is a need for policy makers to have better statewide data about racial and ethnic disparities.

We encourage Commission members to view these policy recommendations as worthy of serious consideration in their own right, but also as illustrative of the kinds of changes that the Commission might propose the Northam administration consider supporting. Indeed, given the subject area expertise of members of the Commission we expect and hope that these recommendations will generate other policy proposals from the Commission members themselves that may go well beyond what is proposed here.

Lastly, we note that the recommendations in this memo do not specifically address the ongoing coronavirus crisis. However, given the disproportionate harm the pandemic is causing communities of color (which we show in the accompanying slides), we recommend that disparities in health generally, and in Covid-19 impact specifically, become additional areas of focus and inquiry for the Commission.



## HOUSING

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This section provides a more detailed look at the recommendations from the housing portion of the presentation. It is useful to note that there is a scarcity of state-wide data to inform policy decisions. There is, however, a plethora of city-specific information that tracks with the overall housing story being told about the region. All policy suggestions here have elements of broadness to account for the nature of the data.

This session many bills **successfully passed** that will aid in reducing housing discrimination, housing supply, and disparate impacts. These statutes include:

- Preventing source of funds being used as a proxy/basis for discrimination by landlords with a smaller quantity of rental housing. This protects renters who use federal or state programs to finance their housing (HB 6).
- Prohibiting discrimination based on a tenant's status as a victim of family abuse (HB 99).
- Requiring legal aid information to be included in any termination of tenancy (HB 519).
- Limiting fees for late payment of rent (HB 1420).
- Creating a stakeholder advisory group to provide recommendations on starting a Virginia housing opportunity tax credit program to fund affordable housing construction (HB 810).
- Allowing certain localities to adopt affordable housing unit dwelling ordinances (HB 1101).
- Allowing localities to i) establish jurisdiction-wide affordable housing prices ii) establish jurisdiction-wide affordable housing income guidelines, and iii) offer incentives other than density increases to encourage provisions of affordable housing (SB 834).
- Requiring legal aid information to be added to lease termination notices (HB 329).
- Creating a tenant bill of rights (HB 393).

## POLICY RECOMMENDATIONS

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### [Address Gaps in Data.](#)

**BACKGROUND:** There are large discrepancies in the narrative that housing advocates tell and what data shows statewide. This is primarily thought to be a result of both a lack of documentation and a lack of analysis on the available data.

**RECOMMENDATIONS:** In particular, these are areas of concern that lack analysis:

- Home Quality
- Forms of discrimination in the home buying process
- Effects of modern-day zoning
- Discrimination committed by lenders in Virginia

- Black landowner (including farmers) land loss and over-assessment of taxes historically

### Change zoning and increase affordable housing share requirements.

**BACKGROUND:** Exclusionary zoning and historical zoning practices are known to enable cities to gentrify and exclude certain residents. This area is lacking legal protections rather than having explicitly discriminatory codified practices. Recent positive steps in this area include Executive Order 25 (2018) which acknowledged the need for affordable housing and created the goals of increasing permanent supportive housing, addressing the shortage of quality affordable housing, and reducing the rate of evictions.<sup>1</sup>

**RECOMMENDATIONS:** This can be mitigated by adopting inclusionary zoning laws. Examples of such legal changes could be increasing the density of housing, requiring localities to have a certain percentage of affordable housing, lowering lot size requirements, and/or enacting other statutory or regulatory changes that allow lower income people to move into a locality. Additionally, affordable rental unit stock issues can be decreased by promoting lower-income home ownership through subsidized lending, building efforts, community land trusts, and other methods. These changes would also mitigate the wealth building discrepancies faced by people of color.

There are various laws and programs in place that can be strengthened or amended to accomplish such purposes. The important factor to consider here is long-term solutions that extend beyond initial subsidies.<sup>2</sup> More specific recommendations include:

- Provide assistance and education to local governments in making effective inclusionary zoning decisions.
- Add affordable housing explicitly to the allowed public uses for exercise of eminent domain. Denver, for example, uses a housing fund to fill vacant apartments with those in need of housing. Other cities have revitalized vacant motels for affordable housing units.
- HB 152, which did not make it through the House this session, is an example of a policy that could have a strong impact on the share of affordable housing. The bill allowed for “middle housing,” or the building of duplexes, townhouses, cottages, and similar structures on all lots zoned for single family housing.
- Similarly, SB 97 was continued until next term by the House but would prohibit any political jurisdiction or its employees from discriminating in land use decisions involving developments with affordable housing shares.
- HB 31 "Commonwealth-wide housing needs; Department of Housing and Community Development to Study" was left in Rules but would be a positive step forward. This bill was written to have DHCD research the existence and quality of affordable housing,

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<sup>1</sup> “Executive Order Number Twenty-Five: Establishing the Governor’s Affordable Housing Priorities To Address Virginia’s Unmet Housing Needs,” Commonwealth of Virginia Office of the Governor, 2018.

<sup>2</sup> A list of important policy solutions has been curated by Partnership for Housing Affordability at [www.pharva.com/framework/solutions/#1578074402301-38e30ab9-a8f8](http://www.pharva.com/framework/solutions/#1578074402301-38e30ab9-a8f8).

review of relevant programs, development a projection of future needs, and make recommendations for the housing policy in the Commonwealth. Bills such as this that require agencies to leverage resources to ensure the best policies are created with adequate information are important to ensure this issue is addressed comprehensively and wisely.

- Finally, Community Land Trusts could be an effective state policy to stem gentrification and provide a pathway to homeownership. These trusts retain ownership to the land but sell the homes on the land at affordable rates. The homes are also required, if they are sold, to be sold at an affordable price through a 99-year ground lease. The Northern Virginia Community Land Trust and Maggie Walker Community Land Trust in Richmond are existing examples of this solution.

### Create housing stability through eviction protections.

**BACKGROUND:** While a number of efforts have been implemented in the last year and this session, evictions are the clearest area of disparate impact in Virginia’s housing.<sup>3</sup> HB 2655 was passed in the 2019 legislative session, creating an eviction diversion pilot program in Danville, Hampton, Petersburg, and Richmond. It goes into effect on July 1, 2020 and is anticipated to be an effective aid to stem evictions.

**RECOMMENDATIONS:** Potentially effective policy suggestions include establishing emergency rental assistance platforms, expanding social worker and case manager support, educating landlords, providing post-eviction support and in-court support, creating or expanding eviction diversion programs, and establishing a rental repair fund.<sup>4</sup> While these are some examples of ways to tackle evictions in the short term, providing affordable housing is likely the most well-accepted long-term solution to stem high eviction rates.

However, to solve the immediate problem and provide equitable treatment, the Commission may consider reconfiguring the broad rights of landlords to evict tenants in the commonwealth and how that places people of color generally in precarious positions. Specifically:

- Increase the access to counsel for those facing eviction.
- Severely limit the fees landlords may impose during an eviction proceeding and create stricter guidelines so it is not as easy to file an eviction proceeding.

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<sup>3</sup> Central Virginia Legal Aid Society, “7 New Laws that are More Fair, Favorable and Friendly to Tenants,” [www.reduceevictions.org/wp-content/uploads/2019/04/new-landlord-tenant-laws-0319.pdf](http://www.reduceevictions.org/wp-content/uploads/2019/04/new-landlord-tenant-laws-0319.pdf).

<sup>4</sup> Tayla Lockman-Fine and Olivia Rosenthal, “Evictions in Richmond: Overview, Current Responses, and Program Proposals,” August 2019.

## EDUCATION

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This section discusses the education policy recommendations offered in the presentation. While these recommendations focus exclusively on education, we are mindful that many factors outside the school house can have a big impact on the classroom success of students.

To begin, we note some of the most important education-related policy changes that **successfully passed the 2020 General Assembly**, including those predicted to be signed by Governor Northam:

- Repeal of Disorderly Conduct statute criminalizing classroom misbehavior (HB 256)
- Repeal of laws requiring principals to report school-based misdemeanors to the police (HB 257)
- Prohibition on school meal debt discrimination or punishment (HB 697, 698, 703)
- Creation of guidelines to ensure dress codes are not racially biased (HB 837)
- Authorization of a Cultural Relevancy Committee to review social history standards (HB 916)
- Required learning access during suspensions (HB 415)
- Certain extensions to provisional license periods for teachers in high-needs areas (multiple bills)
- Required training for school resource officers (HB 1419)
- Transparency in MOUs between law enforcement and school districts (HB 292)

## POLICY RECOMMENDATIONS

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### Facilitate school integration.

**BACKGROUND:** Substantial research supports the idea that, in addition to the social benefits of diversity, integration makes a positive difference in student outcomes. Students in integrated schools are less likely to drop out and more likely to enroll in college. They have higher overall test scores and smaller achievement gaps. And these benefits don't just accrue to minority students: all students benefit from diverse environments.<sup>5</sup> Schools in Virginia are increasingly isolated by race and socioeconomic status, with the number of highly segregated high poverty schools nearly doubling in the last twenty years.<sup>6</sup> In fact, Virginia has never made state efforts toward integration—quite the opposite. Instead, Virginia has both perpetuated and protected segregation in the last 60 years.

### RECOMMENDATIONS:

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<sup>5</sup> <https://tcf.org/content/facts/the-benefits-of-socioeconomically-and-racially-integrated-schools-and-classrooms/?session=1>

<sup>6</sup> <https://www.thecommonwealthinstitute.org/2016/11/04/increasingly-separate-and-unequal-in-u-s-and-virginia-schools/>

1. **Repeal 22.1-25 (A) 1-3.**<sup>7</sup> This statutory language strictly limits the power granted to the Board of Education under the Virginia Constitution to draw school zone lines that “promote the realization of the standards of quality.”<sup>8</sup> Instead, it preserves the boundaries created by division lines in the 1970s, after *Milliken v. Bradley*, the decision that forbade integration plans that crossed district lines, effectively protecting segregation created by families who had moved to avoid integration. The statute prevents regional solutions to school segregation and exacerbates problems caused by housing and wealth inequity. Note that there are no other statutes currently on the books regulating student assignment or school zone drawing within districts.
2. **Incentivize and facilitate integration programs** such as controlled choice zoning, magnet schools, and metro-wide agreements. There are many models to use. For example, the merged city-suburban school district of Louisville and Jefferson County in Kentucky started controlled choice in the 1990’s. The school district has been able to meet diversity goals for the vast majority of its schools while receiving broad support from parents and students. Other examples include Hartford’s magnet school programs, which draw suburban students in and send urban students out to nearby districts, and the METCO program in Massachusetts (in which the state covers transportation and other costs for underprivileged students from inner-city Boston to fill empty seats in suburban schools). METCO also provides wraparound services such as social worker counseling and college visits. Another model of regional funding is Omaha’s “Common Levy,” which helps achieve equity in school funding by sending more money where it is most needed.<sup>9</sup>

### Recruit and retain more teachers of color.

**BACKGROUND:** We know that teacher diversity has a huge impact on student outcomes. One study showed that minority students who had a teacher from their own background during elementary school were 7% more likely to graduate from high school and 13% more likely to enroll in college.<sup>10</sup> Teachers of color serve as role models, effective educators, and valuable signals of the importance of education and diversity. While half of Virginia’s students are children of color, nearly 80% of Virginia teachers are white. In fact, while the proportion of

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<sup>7</sup> Current Virginia Code § 22.1-25(A) 1-3. How School Divisions Made. ... 1. The school divisions as they exist on July 1, 1978, shall be and remain the school divisions of the Commonwealth until further action of the Board of Education taken in accordance with the provisions of this section except that when a town becomes an independent city, the town shall also become a school division. 2. No school division shall be divided or consolidated without the consent of the school board thereof and the governing body of the county or city ... 3. No change shall be made in the composition of any school division if such change conflicts with any joint resolution ...of the General Assembly ...

<sup>8</sup> The Constitution of Virginia, Article VIII, Section 5(a) reads as follows: Section 5. Powers and duties of the Board of Education. The powers and duties of the Board of Education shall be as follows: (a) Subject to such criteria and conditions as the General Assembly may prescribe, the Board shall divide the Commonwealth into school divisions of such geographical area and school-age population as will promote the realization of the prescribed standards of quality, and shall periodically review the adequacy of existing school divisions for this purpose. (emphasis added)

<sup>9</sup> [https://learningpolicyinstitute.org/sites/default/files/product-files/Sharing\\_The\\_Wealth\\_REPORT.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/Sharing_The_Wealth_REPORT.pdf)

<sup>10</sup> <https://www.nber.org/papers/w25254.pdf> ; see also <http://educationnorthwest.org/resources/resources-recruiting-hiring-and-retaining-teachers-color>

students of color continues to rise, the proportion of teachers of color has fallen in recent years. We must reverse this trend. This problem is one of both recruitment and retention. Only a quarter of individuals in Virginia’s teacher preparation programs are individuals of color. In addition, Virginia loses nearly one fifth of its teachers of color every year (compared to 15% of white teachers) in high turnover. Teachers of color with provisional licenses, particularly Black teachers, are significantly less likely to complete the requirements and remain teachers long term (63% for Black teachers compared to around 75-80% for other races).<sup>11</sup>

## RECOMMENDATIONS:

1. **Mandate data collection and reporting.** We recommend that VDOE or the Board of Education annually collect and publish district-level data on teacher diversity at each stage of the teacher pipeline, including recruitment, application, hiring, and retention. This can be mandated by statute, for example at § 22.1-290.01(C), where the Teacher Loan program is established.
2. **Support-recommendations by the Taskforce on Diversifying Virginia’s Educator Pipeline** including: (1) VDOE approval of a 4-year Bachelors-to-licensure program; (2) VDOE creation of a model “Grow-Your-Own” program for districts to implement voluntarily. While not a goal of this presentation, we also include the recommendations that would require state budgetary changes: (3) Increased state funding for teacher compensation in high-needs schools, scholarships for Praxis and other licensure exams, stipends for student teachers, and expansion of the teacher loan program; and (4) state investment in marketing programs to recruit more minority teachers.

## Advocate for expanded early childhood education.

**BACKGROUND:** According to the Center for Disease Control (CDC), for every \$1 spent on a state or district early childhood education program, \$3 to \$5 worth of benefits follow.<sup>12</sup> Not only do students have better academic outcomes in the first few years of schooling, they have better long-term outcomes, including reductions in criminal offenses and increased health benefits. Pre-K is also associated with reductions in poverty and increases in maternal employment. While Virginia has made progress in recent years, and especially this session, on expanding access to early childhood education, challenges in terms of equity and access remain. One of the solvable problems is a lack of data. Because Virginia’s early childhood education system is so fragmented—between home-grown daycare, Federal Head Start, state VPI, and private preschools—researchers do not have a clear picture of where disparities are or how to make improvements. In addition, kindergarten teachers lack information on the abilities of their entering students.

## RECOMMENDATIONS:

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<sup>11</sup> <https://www.education.virginia.gov/media/governorviriniagov/secretary-of-education/pdf/final-tdvrep-report.pdf>

<sup>12</sup> <https://www.cdc.gov/policy/hst/hi5/earlychildhoodeducation/index.html>

Some progress  
in expanding  
this data system  
made in 2020

1. **Support the governor’s initiative to unify the Pre-K data system and create Pre-K student identifiers.** Identifying and researching Pre-K disparities is essential to the work of the Commission. The Commission should therefore support efforts to unify the Pre-K data collection system by assigning student identifiers to younger children, specifically those not in state-run Pre-K programs.<sup>13</sup> This will allow us to know where students are getting Pre-K experiences, what those experiences are like, how much Pre-K they have, and how their kindergarten-readiness relates to those experiences.
2. **Support increased access to high quality pre-kindergarten programs for all children,** and support efforts toward integration in those programs. Universal Pre-K is one of the most powerful long-term investments Virginia could make, and increasing both access and quality is essential.

### Advocate for more equitable school finance reform.

**BACKGROUND:** According to at least two national research centers, Virginia ranks poorly— near the bottom of the 50 states—in the equity of its state educational funding scheme.<sup>14</sup> In 2015, Virginia’s highest-poverty districts students received 7 percent fewer dollars overall than their peers in the lowest-poverty districts, one of the largest of such disparities nationwide.<sup>15</sup> These school funding disparities are more pronounced when assessing race and ethnicity data, with districts serving the most students of color receiving 8 percent less funding from the state.<sup>16</sup> As the Commonwealth’s school-aged population continues to grow and diversify, one of the chief problems for government leaders becomes reassessing how funds are distributed to districts of higher need statewide.

### RECOMMENDATIONS:

1. **Increase state share of education funding.** Virginia’s state-level contributions to education rank in the bottom ten states in the nation (#41), leaving nearly 60% of non-federal school dollars in Virginia to come from localities.<sup>17</sup> This proportion is significantly

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<sup>13</sup> Current Virginia Code § 22.1-287.03(B) Unique Student Identification Numbers: ... (B) The Department of Education shall develop a system of unique student identification numbers. Each local school board shall assign such a number to each student enrolled in a public elementary or secondary school. No student identification number shall include or be derived from the student's federal social security number. Each student shall retain his student identification number for as long as he is enrolled in a public elementary or secondary school in the Commonwealth.

<sup>14</sup> These include **the Urban Institute** ([https://www.urban.org/sites/default/files/publication/99540/school\\_district\\_funding\\_in\\_virginia\\_2.pdf](https://www.urban.org/sites/default/files/publication/99540/school_district_funding_in_virginia_2.pdf)), and the **Education Law Center at Rutgers Graduate School of Education** ([https://edlawcenter.org/assets/files/pdfs/publications/Is\\_School\\_Funding\\_Fair\\_7th\\_Edit.pdf](https://edlawcenter.org/assets/files/pdfs/publications/Is_School_Funding_Fair_7th_Edit.pdf)). Note that the **Education Trust** ranks Virginia in the middle of states (<https://edtrust.org/graphs/?sname=Virginia>) funding disparities based on socioeconomic status alone, but ranks Virginia near the bottom in terms of racial disparities of funding.

<sup>15</sup> <https://thehalfsheet.org/post/177487398498/in-funding-high-poverty-schools-virginia-gets-a>

<sup>16</sup> <https://edtrust.org/graphs/?sname=Virginia>

<sup>17</sup> <http://www.nea.org/assets/docs/2019%20Rankings%20and%20Estimates%20Report.pdf>

higher than the national average. This is a problem because local funding is dependent on property values – which align with massive racial disparities from historical government practices. Virginia should consider taking greater state responsibility for funding, particularly for districts with high need.

2. **Reconfigure the state’s “Local Composite Index”** to calculate levels of need and concentration of need. While the current formula considers a locality’s ability to pay, it generally ignores the proportion of high-needs students the district is educating. The Urban Institute suggests the following:

“Virginia could consider how different measures of prosperity and population are weighted when calculating each district’s composite index, whether to cap the required local share and at what level, whether the local share of the state’s poor school-age children should be accounted for in sales tax revenue distributions, whether to fund cost of competing adjusted salaries in selected districts, and the size of various funding streams targeting low-income, special education, and other at-risk students.”<sup>18</sup>

## Improve school discipline practices.

**BACKGROUND:** What has come to be called the “School to Prison Pipeline” has been confirmed by multiple long-term studies: students overexposed to exclusionary discipline practice—such as out-of-school suspensions, or court referrals for simple school misconduct—are more likely to drop out of school, fall behind academically, and get caught up in the juvenile justice system later. By relying on exclusionary discipline for relatively minor classroom misbehavior, school actors aggravate and worsen students’ long-term outcomes.<sup>19</sup> Despite a massive increase in Virginia’s student enrollment numbers, support staff numbers have dropped in the last fifteen years, with a corresponding increase in exclusionary discipline use.<sup>20</sup> The damaging consequences of this trend are overwhelmingly felt by students of color. For example, Virginia’s unusually high use of police officers to manage behavior in classrooms (one of the top 3 states in the nation) falls far more harshly on Black students, who are 2.5 times more likely to have the police called on them from class. Suspensions are also used disparately: as of 2018, Black students were 4.5 times more likely than their white classmates to be suspended from school.<sup>21</sup>

## RECOMMENDATIONS:

1. **Repeal Classroom Disorderly Conduct Statute.** This law explicitly criminalized classroom misbehavior and was repeatedly used by school actors to send children from classroom to courtroom. While classroom management and school safety are essential, the state

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<sup>18</sup> [https://www.urban.org/sites/default/files/publication/99540/school\\_district\\_funding\\_in\\_virginia\\_2.pdf](https://www.urban.org/sites/default/files/publication/99540/school_district_funding_in_virginia_2.pdf)

<sup>19</sup> [http://knowledgecenter.csg.org/kc/system/files/The\\_School\\_Discipline\\_Consensus\\_Report.pdf](http://knowledgecenter.csg.org/kc/system/files/The_School_Discipline_Consensus_Report.pdf)

<sup>20</sup> <https://www.justice4all.org/wp-content/uploads/2018/08/Investing-in-Student-Safety-and-Success.pdf>

<sup>21</sup> <https://www.justice4all.org/wp-content/uploads/2018/10/FullSuspendedProgress2018.pdf>



must give schools a different tool. This statute was repealed in 2020 and is expected to be signed.

2. **Impose stronger statutory limits on out-of-school suspension.** Up until 2018, Virginia allowed out-of-school suspensions to last an entire year—a massive amount of learning loss. In 2018, limitations on long-term suspensions were shortened to 45 days, and K-3 suspensions were limited to three days.<sup>22</sup> Note that the long-term suspension limit could be shortened even further. New York city, for example, has a 20-day limit.<sup>23</sup>
3. **Develop Standards on In-School-Suspension and Student Resource Centers.** There do not appear to be statutes in Virginia requiring—or even encouraging—schools to provide *In-School Suspension* (ISS), an alternative disciplinary option.<sup>24</sup> Though the quality of In-School Suspension options can vary, as a general policy independent learning continues in a structured setting in the school, and family work patterns are not interrupted, scholars consider ISS a less harmful alternative to out-of-school suspension (OSS). In addition, students generally view ISS as “punishment” rather than “vacation,” which may increase its effectiveness as a sanction. In some states, districts provide district-wide School Resource Centers, which tread a middle ground. At Resource Centers, trained counselors and alternative teachers work with small groups of students who have violated school rules to prepare them to return to the traditional classroom.<sup>25</sup> Requiring these or other interventions as alternatives, and using research to inform or require evidence-based approaches to these alternatives would be a further step to reduce the number of children generally, and children of color specifically, who are pushed out of school.

### Increase course access for all children.

**CONTEXT:** All children deserve enriched learning experiences and curricula that adequately challenge them and prepares them for long term studies. Virginia’s advanced courses, such as gifted and AP courses, disproportionately leave out students of color. White students are 2.1 times more likely to be enrolled in a gifted or AP course than Black students, and 1.9 times more likely than Hispanic students.<sup>26</sup> There are several potential reasons. First, students are not being identified or counseled to take advanced courses in the first place.<sup>27</sup> Second, their families are

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<sup>22</sup> [https://www.richmond.com/news/local/government-politics/northam-signs-student-discipline-reform-bills-as-virginia-schools-still/article\\_ee156e85-43b8-59ce-be13-e767818e9b91.html](https://www.richmond.com/news/local/government-politics/northam-signs-student-discipline-reform-bills-as-virginia-schools-still/article_ee156e85-43b8-59ce-be13-e767818e9b91.html)

<sup>23</sup> <https://chalkbeat.org/posts/ny/2019/06/20/nyc-is-capping-suspensions-at-20-days-a-major-victory-for-discipline-reform-advocates/>

<sup>24</sup> <https://safesupportivelearning.ed.gov/sites/default/files/discipline-compendium/Virginia%20School%20Discipline%20Laws%20and%20Regulations.pdf>

<sup>25</sup> For a useful comprehensive literature review of OSS and ISS studies, visit:

<https://www.healthiersf.org/RestorativePractices/Resources/documents/suspension%20ineffective.pdf>

<sup>26</sup> <https://projects.propublica.org/miseducation/>

<sup>27</sup> [https://www.pilotonline.com/news/education/article\\_9d576f91-7b15-5adc-8bea-9ffd39d0bc7b.html](https://www.pilotonline.com/news/education/article_9d576f91-7b15-5adc-8bea-9ffd39d0bc7b.html)

unable to pay private costs required to advocate through the appeals process.<sup>28</sup> Third, students of color disproportionately attend under-resourced schools that do not offer advanced courses.

#### RECOMMENDATIONS:

1. **Cultural sensitivity training for gifted identification process.** If giftedness shows up in students at about the same rate, regardless of race, then schools are failing to identify about half of Black and Hispanic students. Charlottesville is currently revamping its gifted identification process to resolve this problem. If the city is successful, it may be able to expand its procedure to other cities.
2. **Reform the gifted appeals process.** In Northern Virginia in particular, many wealthy families have their children privately identified as gifted (at the cost of at least several hundred dollars), then appeal the school's initial decision, ultimately succeeding on getting their children into advanced programs. But many families of color often cannot afford such expensive exams or appeals processes. If the state offers gifted programming, it must reform the identification and appeals processes to remove the inherent advantage to certain families. See regulations at 8VAC20-40.
3. **Checks on bias in career counseling and guidance.** Virginia middle schoolers receive career counseling and are expected to build life plans. In addition, guidance counselors in high school help students choose the best diploma option for their life goals. Somehow, in this process, Black and Hispanic students are ending up with worse diplomas and worse options. According to a New York Times expose, this may actually be due to biased counseling.<sup>29</sup> The Board of Education may consider adding language to the career counseling and diploma regulations to combat this trend. See regulations at 8VAC20-131-140. See diploma regulations at 8VAC20-131-51.

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<sup>28</sup> <https://www.businessinsider.com/ap-school-systems-appeals-process-leaves-some-minorities-out-2018-2>

<sup>29</sup> <https://www.nytimes.com/2018/10/16/us/charlottesville-riots-black-students-schools.html>

## CRIMINAL JUSTICE

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As in the education area, the racial disparities in Virginia's criminal justice system are pronounced and pervasive. And, as with education, we recognize that multiple factors and state and local actors contribute to these disparities in a way that poses challenges to simple legislative solutions. These recommendations do not claim to tackle all of the areas where such disparities exist, nor solve all of the problems in the specific areas addressed. They do, however, represent tangible proposals for the Commission to consider that will begin to either directly address some of the identified problems or give policy makers greater tools to take on these issues over time.

This session resulted in multiple encouraging steps forward in criminal justice, steps that may also help reduce some of the existing racial disparities in Virginia's criminal justice system. These legislative changes include statutes that:

- Make eligible for parole any offender convicted of an offense as a juvenile who has served 20 years in prison (HB 35/SB 103)
- Raise the grand larceny value of goods threshold from \$500 to \$1000 (HB 995/SB 788)
- Raise the age of juvenile transfer to adult courts from 14 to 16 (HB 477)
- Allow a sentencing court to depart from mandatory minimums for juveniles tried as adults (HB 744)
- Decriminalize simple marijuana possession and provide a civil penalty of no more than \$25 (HB 972)
- Allow for more than one filed writ of actual innocence per case and increases eligibility criteria for filing said writs (HB 974)

## POLICY RECOMMENDATIONS

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### [Address data gaps throughout the criminal justice process.](#)

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

### **RECOMMENDATIONS:**

1. **Require the Sentencing Commission to collect, analyze, and report on sentencing outcomes by race and ethnicity.** We know that while the black prison population is vastly overrepresented compared to the general population of black Virginians, and the State Police provide a robust data source regarding arrest rates, there is no data about sentencing itself. While there is no statutory ban of the use of race in the sentencing recommendation process, the Virginia Criminal Sentencing Commission has shied away

from using race in the sentencing algorithms it employs, which we commend. But there ought to be room for tracking the race of a sentenced person without using it as a factor in their sentencing guidelines. Without making note of race at all on the sentencing forms used to compile the Sentencing Commission's reports, there is no ability to report on race when asking questions like, "Are there offenses for which black defendants are more likely to receive prison terms than white defendants?" or "How often did a judge depart from the Sentencing Commission's discretionary sentencing guidelines for white defendants compared to black defendants?"

To that end, § 17.1-803(10), currently reads:

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

We propose adding language to require the Sentencing Commission to collect, analyze, and report on sentencing outcomes by race and ethnicity.

- 2. Require the collection of data on the results of pretrial hearings, bail decisions, and pre-trial incarceration, including breakdowns by race.** In the same way that the Sentencing Commission has shied away from using race, the Virginia Pretrial Risk Assessment Instrument (VPRAI) also prohibits the use of race. The Virginia State Crime Commission has taken valuable steps to study pre-trial outcomes through the Virginia Pre-Trial Data Project. We encourage further study of racially-disparate outcomes in particular, as well as expansion of the project to other jurisdictions, which is in line with and in addition to the recommendation of the Pre-Trial Data Project to "request that Crime Commission staff convene stakeholders to develop a plan for statewide data systems integration...." Similar to the above, we encourage this Commission to identify ways that the Virginia Department of Criminal Justice Services can continue to deploy a race-agnostic VPRAI without limiting the ability of DCJS to evaluate equal or unequal VPRAI outcomes based on race.

Further, magistrates provide little to no data insight regarding the actual use of the VPRAI, as well as bail outcomes, pretrial sentencing, and demographic data related to that sentencing. A new statute requiring magistrate data be made publicly available would act to increase transparency and, hopefully, increase trust between the public and this slice of the criminal justice system. It would also allow the Commission to further study the impact of race on bail decisions and pretrial incarceration.

To address both of these goals, we propose introducing a new section in Title 19.2 Chapter 9 that requires all magistrate judges to provide data about each pretrial hearing decision, including bail amounts, recognizance decisions, and whether the defendant is placed in pretrial incarceration. Magistrate reports to DCJS should also include the race and ethnicity of the defendant in each case and any data about the use of the VPRAI in that hearing. In addition, the new code section should include a requirement for DCJS to annually publish this data in aggregate.

The legislature did consider part of this effort with HB 922, which would have required DCJS to collect data relating to bail determinations for any person who is held in custody pending trial or hearing for an offense, civil or criminal contempt or otherwise, in every locality, create a uniform reporting mechanism for criminal justice agencies to submit such data, and submit an annual report on the data collected to the Governor and the General Assembly, as well as publish the annual report on the Department's website.

We encourage the Commission to support a similar effort, and perhaps go a step further, by incorporating explicit references to the need to understand how whether those decisions fall along racial lines.

#### Support increased diversion efforts.

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

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

where the “Factor” shifts the recommended new attorney count based on an assessment of economies of scale in an office of a given size.<sup>30</sup>

What this means in practice is that Commonwealth’s Attorneys’ Offices are provided staffing funds based on the number of felonies they try in a given year, incentivizing the felonization of defendants, while discouraging diversion or sentencing de-escalation. This contributes to overincarceration in Virginia, and given how much incarceration has disproportionately impacted black Virginians, changing this policy might help swing the pendulum in the other direction.

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<sup>30</sup> “Compensation Board Criteria for Allocating New...,” amended June 25, 2014, <https://www.scb.virginia.gov/docs/fy19staffstd772.pdf>

## RECOMMENDATION:

1. **Prevent the Compensation Board from considering the volume of felony cases when calculating Commonwealth's Attorney office resourcing.** While the current criteria for staffing are not statutorily defined, the Compensation Board's composition and general behavior are (see § 15.2-1636.5 and § 15.2-1636.8, respectively). We recommend amending § 15.2-1636.8 to prohibit the Compensation Board from considering the number of felony counts pursued by an office when determining new Assistant Commonwealth's Attorney positions, or any other criterion that might discourage a Commonwealth's Attorney from pursuing diversion for some or all of its caseload. The General Assembly did consider a similar reform this session in HB 1035/SB 803, but both houses continued the bill to 2021.

## Address the impact that mandatory minimum sentencing laws have on racially disproportionate rates of incarceration.

**BACKGROUND:** As detailed in the accompanying PowerPoint presentation, a disproportionately high rate of incarcerated people in Virginia are black. Given the high number of felony offenses carrying mandatory minimum sentences it is important for Virginia to both understand the relationship between mandatory minimum sentences and these disparities and then to take legislative steps to address this problem.

**RECOMMENDATION:** Given the depth of criminal justice experience and expertise among various members of the Commission, we defer from making a specific recommendation at this point. However, we would note that there were efforts this General Assembly Session, such as SJ 34, that would have directed the Virginia State Crime Commission to study this issue, that are worthy of the Commission's review.

## VOTING

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The members of the Commission identified voting as a priority area even while recognizing that this General Assembly session would be an active one for voting rights. Accordingly, our main goals in this section are to: 1) Provide an overview of the some of the major legislative changes this session; 2) Recommend a change to the Virginia Constitution; and in 3) Identify gaps in the available data to uncover areas that may require additional attention in the future.

To begin, we note some of the most important voting changes that **successfully passed the 2020 General Assembly**, including those predicted to be signed by Governor Northam:

- **HB 1:** Absentee voting; no excuse required (Permits any registered voter to vote by absentee ballot in any election in which they are qualified to vote).
- **HB 108:** Legal holidays; Election Day (Designates Election Day, the Tuesday after the first Monday in November, as a state holiday and removes Lee-Jackson Day as a state holiday. This bill is identical to **SB 601**).
- **SB 65:** Voter identification; repeal of photo identification requirements (Removes the requirement that voters show a form of identification containing a photograph in order to be allowed to vote).
- **HJ 615:** Constitutional amendment; Virginia Redistricting Commission (Establishes the Virginia Redistricting Commission, a 16-member Commission tasked with establishing districts for the United States House of Representatives and for the Senate and the House of Delegates of the General Assembly).

However, two important bills did not pass this session:

- **HB 215:** Voter registration; preregistration for persons age 16 or older (permits a person who is otherwise qualified to register to vote and is 16 years of age or older, but who will not be 18 years of age on or before the day of the next general election, to preregister to vote).
- **HB 219:** Voter registration; automatic voter registration. (Provides for the automatic electronic transmission of registration by the Department of Motor Vehicles to the Department of Elections).

## POLICY RECOMMENDATIONS

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### **End constitutional felony disenfranchisement.**

**BACKGROUND:** Felony disenfranchisement has historically been used as a targeted means to strip Black Americans of their rights to be active civic participants. While modern laws may more broadly impact other racial communities, the Black community still suffers disproportionately under felony disenfranchisement. Many states have moved away from Virginia's strict iteration of such laws, and it would be a move in the right direction if Virginia followed suit.

## RECOMMENDATION:

1. **Abolish or limit felony disenfranchisement by amending or repealing Article II, Section I of the Virginia Constitution.**<sup>31</sup> Perhaps the most ambitious recommendation, it is still overwhelmingly necessary considering the immense harm felony disenfranchisement inflicts on the Black community. The current process leaves the opportunity to vote for disenfranchised Virginians at the whim of whatever governor is in office, which is too great a risk to take considering how integral the right to vote is to a well-functioning democracy. Article II, Section I of the Constitution has gone through a number of changes throughout the years, so changes are definitely possible. Some possible changes for the Commission to consider recommending to the Governor include, but aren't limited to: repealing the provision altogether or automatically restoring the rights of those who have completed their prison sentences.

### Pursue further research and address data gaps.

**BACKGROUND:** Access to voting encompasses more than just accessibility on its face – there are various elements that could hinder one's ability to vote that might not be as intuitive to anticipate. Insight into what these obstacles to voting may be, especially for minority communities, would offer a roadmap for Virginia on the type of data it should start to collect.

## RECOMMENDATIONS:

1. **Survey Virginia's minority community.** Using national data, we were able to find specific areas within the voting experience that disparately impacted minority communities beyond specific laws.<sup>32</sup> This type of data is notably missing for Virginia. While much can be learned by following national trends, Virginia has a distinct history with its minority community and, therefore, should seek more targeted reforms. Some offices that could collect more information and aid the research process include, but are not limited to, the following state actors:
  - Virginia Department of Elections
  - Virginia Department of Corrections
  - Local Offices of Elections
2. **Consider broader questions and implications.** Recent legislative advances have addressed many voting obstacles that stem from explicit laws. While laws present their own obstacles, the likely inequity in Virginia's voting process requires broader inquiries into what the full extent of obstacles for minority voters may be. Some possible data points that could be collected to gain better insight are the following:

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<sup>31</sup> Constitution of Virginia, Article II, Section 1: Qualifications of voters. “. . . No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority. . . .”

<sup>32</sup> For a list of policy recommendations that address these national issues, See The Center for Progress Action Fund's The Health of State Democracies Report, pg. 59-65.



- Wait time at polling sites, collected per election
- Feedback regarding polling experience, collected per election
- Travel times to and from polling sites, collected per election
- Cost of traveling to vote, per election
- Racial Demographics of those convicted of felonies, collected annually
- Racial Demographics of those whose voting rights were restored, collected annually

If researchers or government agencies pursue these lines of inquiry we recommend that special priority should be given to recording the minority voting experience.

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