



COMMONWEALTH of VIRGINIA

Office of the Governor

Commission to Examine Racial Inequity in the Law

AGENDA

Wednesday, July 1, 2020

1pm – 3pm

Via [WebEx](#)

1. Call to Order

- a. Cynthia Hudson calls the meeting to order at 1:03 pm and invokes the electronic meeting provisions due to COVID. Public is welcome to attend in accordance with FOIA.

2. Public Comment

- a. Hudson states attendees may submit chat comments, however because that is not normally a feature of an in person meeting, the Commission shall not take up chat matters outside of this section. There were no chat items presently nor any further public comment, so the meeting continues.

Hudson notes that the prior Commission work culminating in legislation passed by the General Assembly during the most recent General Assembly Session becomes effective as of today.

3. Administrative Items

- a. Adopt June 17, 2020 meeting minutes
 - i. Floor moves to adopt the minutes, motion to accept is adopted.
- b. Attendance & Roll Call
 - Members in Attendance:
 - i. Carla Jackson
 - ii. Andrew Block
 - iii. Cynthia Hudson
 - iv. Michael Herring (departed at 2:00pm)
 - v. Jill Hanken
 - vi. Jerrauld Jones
 - vii. Henry Chambers



COMMONWEALTH of VIRGINIA

Office of the Governor

- viii. Birdie Jamison
- ix. Leslie Mehta (arrived at 1:15)

4. Discuss Memorandum regarding Policing Reform Recommendations for Commission's Consideration – Proposals

- a. **Presentation by Prof. Andrew Block** summarizing the key aspects of the [policy memorandum](#) provided to the Commission.

A. Data Collection and Transparency:

- Amend the Virginia Community Policing Act to improve data collection and transparency. This may include creating a new information management system, which would also require a larger financial commitment.
- Expand information in officer involved shooting reports and improve the information included in those reports.
- Data collected regarding use of force cases should be provided and freely available to the public and there needs to be enforcement mechanisms to make sure that it happens.
- This might also include reducing FOIA exemptions that protect criminal investigations of law enforcement where the officers are the subject of the investigation.

B. Accountability: this category builds on the discussions about creating civilian review boards.

- Create regional boards with professional staff and subpoena power and investigatory powers. Add liability language to Virginia's racial profiling statute.
- The Dept. of Criminal Justice Services "DCJS" needs to have purview in reviews for decertification of officers.
- With regard to independent criminal investigations of officers, there should be an independent unit in the OAG to prosecute these matters for serious offenses.
- Last, on the issue of qualified and sovereign immunity: create specific civil liability statutes and civil rights statutes that have specific protections to get past these immunities.

Herring, Comment: need to make the distinction clear whether CRBs will have oversight or sanction authority. Also, regarding OAG independent prosecutions, they should be "authorized" but not "required" in order to ensure their discretion over such prosecutions.



COMMONWEALTH of VIRGINIA

Office of the Governor

Hudson and Block note their agreement.

C. Reducing the Risks of Policing:

- The DCJS should be involved in local agencies adopting use of force policies.
- There should be increased diversification in the membership of the DCJS training committee.
- Should also add banning 'no-knock' warrants, like "Breonna's Law."
- Should reduce the number of arrestable offenses, and instead issue summons to limit direct law enforcement contact which reduces risk of incidents.
- The JLARC should study police militarization. Would include uses of training and tactics as well as equipment.

Herring, Comment: Also need to audit the criminal code to look for low level misdemeanors that can be used as a reason for a seizure that doesn't result in an arrest (that give reasonable suspicion for seizure). Wording might be: "audit of the criminal code of non-violent misdemeanors or felonies to see if they should still be in the law." Needs to eliminate the seizure potential as well as the arrest potential.

D. Other topics and non-legislative change:

- Should look at how police funds might be reallocated
- Incentivize an 'early warning system' pilot program
- Adjust police training requirements
- Encourage diversity in law enforcement.

Jamison, Comment: the use of 'zero tolerance' policies by police should also be looked at as police use this to make stops to a degree that people feel it harasses community members. Perhaps this should be included with Reducing Risk of Policing and any audit of the criminal code.

Block (responding): I think the proposal to expand data collection would allow us to see if there are disparate and discriminatory patterns that might reveal this, and would be the first step in addressing issues with 'zero tolerance' policies.

Hudson, Comment:

1. The categories at the end of the proposals that do not lend themselves to legislative potential now should be revisited another time.
2. It might make sense where studies of issues are involved to have agencies enact those policies instead as they will have to go through their own processes that might be more efficient than having a committee do a study.



COMMONWEALTH of VIRGINIA

Office of the Governor

Question: Have we looked at anything with respect to civil asset forfeiture? Understanding is that there is no data on that now. I think it should be included here.

Block (responding): Not in this report and that is my understanding. Back in May, one of the areas we identified was the problem of collateral consequences in criminal investigations. So there is another set of criminal justice reform recommendations, but I think the asset forfeiture area is problematic and important and we should possibly include it here. I'd support including it here.

b. Group discussion

The Commission next turned to reviewing and voting on each proposal in the memorandum.

A. Data Collection and Transparency:

A1. Require local law enforcement data reporting on uses of force, pedestrian stops, all civilian complaints (amending the Community Policing Act)

Without significant group discussion, the motion to adopt was taken up and passed without objection.

A2. Amend Officer-involved shooting report requirement to include brief narrative and demographic information about the victim

Chambers, Question: What is being added to the report? If the person making the report is thinking about possible liability issues, then the info that gets reported might not be reliable. Perhaps we should include a recommendation that any narrative reporting happens early in the process? Might be some criminal procedure issues with this as well.

Herring, Comment: It might make sense to require reporting by the police department and the commonwealth's attorney to the AG's office. This might increase reliability of the reports.

Block: This is attempting to build on existing code, but this can be included as well. If there is reporting compiled by the OAG, then need reporting requirements for that too.

A motion is put forward and seconded but then the motion is withdrawn by Commissioner Hanken. No recommendation is recorded on A2.

A3. Establish a public, free database of downloadable data elements



COMMONWEALTH of VIRGINIA

Office of the Governor

Hudson asks for a motion to adopt, one is offered and there is a second.

Hudson, Comment: This is a very work intensive proposal and it's uncertain how easily this will be adopted.

Block: This is still high level and can be worked out in the legislative process. The concern is a lack of transparency and hard to have real dialogue without data about police practices. One side cannot have all of the information.

Call to question is made, no objections recorded, motion passes.

A4. Enact an enforcement mechanism for local agency data reporting requirements.

Block: Because law enforcement is so localized, in order to have a level playing field, the state probably needs to make an investment in a comprehensive data system.

Question: Can we just make this as another part of A1?

Block: Sure, I think that would work.

Hanken, Comment: I move to merge A4 with A1.

Hudson: We're voting on the motion as amended to combine #4 with #1.

The members vote on the motion as amended; no objections are recorded; the motion passes.

A1 now reads: Require local law enforcement data reporting on uses of force, pedestrian stops, all civilian complaints (amending the Community Policing Act) and enact an enforcement mechanism for local agency data reporting requirements

A5. Repeal FOIA exemptions that protect police personnel records.

A motion is put forward and seconded to reject A5.

Hanken, Comment: The breadth of this proposal opens too much up to the public and that makes it problematic.

Block: We can partition personnel issues out of this if that helps. I think there is some concern and mistrust with the community at large that there is a lack of prosecution of police officers. It would only be after the investigations have concluded though.



COMMONWEALTH of VIRGINIA

Office of the Governor

Hudson, Comment: I agree this is too broad. Perhaps the Commission can come back to this another time. Can we modify this proposal so that it narrowly suggests legislation for disclosure regarding complaints of excessive force in the last ten years with active officers?

Hanken, Comment: Nothing to stop an individual already requesting this information now using general FOIA requests. Other departments can also request documents.

Jamison, Comment: There are other ways to make police accountable and I agree this is too broad.

Mehta, Comment: Other departments getting records is a different issue than the general public being able to get the records. I agree with the approach that the general public should be getting access to the records, especially for disciplinary records. There should be a way to narrow this down to get the information we want to get out.

DeBoer, Comment: The FOIA Act does not prevent a custodian from releasing information. Remember the Data Collection and Dissemination Act might be the area we want to work in instead. The privacy act gets too little attention.

Block: I understand that this might seem overly broad, but either with this or another means, there is a real appetite for transparency. I might consider proposing another motion that we consider a narrower version of this to apply to disciplinary records and criminal investigations that are closed.

Hudson: First, we should call to question the motion at hand.

Call to question is made; Jones abstains, no objections recorded. The motion passes to REJECT A5.

Block: I would like to motion that it be "Repeal of FOIA exemptions where the investigation is completed and the officer is the subject, and disciplinary records focused on instances of alleged misconduct with members of the public or alleged misconduct involving dishonesty or lack of integrity, of police personnel."

Chairperson Hudson calls for a second on the motion, receiving none, the motion fails.

Jones: There may be implications to this that would affect pending civil and criminal litigation because information contained in the records you're seeking could really cause complications in those matters. I know Chief Boone is particularly sensitive to that. But I am abstaining from the general discussion here.



COMMONWEALTH of VIRGINIA

Office of the Governor

Hudson: Part of the officer's job is a public professional witness; this proposal might start to affect their credibility in that regard.

Jones: I do agree with Block though that the public has an interest in knowing what is going on. The public has a call to shed light on these records. I agree with Andy that something in this area in the public's mind needs to happen. But I share the concerns that this needs to be done very carefully and methodically with regard to the issues at hand.

Hudson: perhaps we suggest to the Governor to "include in his legislative recommendations some means by which the public has more transparency regarding officer misconduct records that covers engagement with citizens."

Jamison moves to adopt this language as part of the Commission's proposals and a second is heard. Call to question is made. Jones abstains. No objections recorded. The motion passes.

The new version of A5 as adopted is: The Commission will recommend the Governor include in his legislative recommendations some means by which the public has more transparency regarding officer misconduct records that cover engagement with citizens.

Accountability

B1. Mandate and empower regional civilian review boards to investigate and address complaints of misconduct.

Question: Why regional and not local?

Block: It would likely cost more money to do this locally than to do this regionally.

Question: Can we say local or regional?

Block: Sure, can do that.

Jones: There is a difference to me of the value received from local or regional. My region has 13 counties and cities; some we have interest with, some not. Local review boards would provide the most value here. Also it might be legally difficult to define 'misconduct' and should be defined somewhere.

Block: I agree with everything you're saying, need to word it in a way that is inclusive and account for community concerns. At least at this level of recommendation that might get too detailed for right now.



COMMONWEALTH of VIRGINIA

Office of the Governor

Jones: I agree, don't need to do that at this point.

Hudson: I imagine that we might go in the same direction that we did to the FOIA exemption, that we have the Governor put forward consideration for some sort of review boards.

Chambers: There are some civilian review boards already right? There isn't a notion of whether the review boards' actions will be made public; will they?

Block: Really depends on how it is structured and that is a policy choice. In NY there is some agreed upon relationship where the board communicates its findings to the chief who then makes decisions based on the matrix that they have. I can find out if what gets communicated there remains private or goes to the public. I'm guessing it is private. My understanding is the stronger you make them, the more effective they are (subpoena and investigatory powers). Not just merely a meeting of citizens.

Jackson: I think these boards would be subject to FOIA protections?

Hudson: Agreed. The jurisdictions that have this have managed to reconcile a number of things that would need to be reconciled at the state level. Remember that we are recommending here purely on a conceptual basis.

Hanken: I think they should have professional staffs, subpoena power and investigative powers. It should be professionally managed and have those authorities.

Motion is put forward for B1 that includes language for professional staff, subpoena power, the power to investigate complaints, and make recommendations on discipline. A second is recorded, no objections are heard, and the motion passes.

B1 as adopted is: Mandate and empower civilian review boards to investigate and address complaints of misconduct, including the use of professional staff, subpoena power, the power to investigate complaints, and to make recommendations on discipline.

B2. Create civil liability for profiling (either disparate impact or intentional), expand profiling protections

Block: There is a state statute for this but it does not include liability provisions. First, need to add other categories of people who should have protections against profiling. Second, should recommending liability for profiling which is currently not part of the statute.



COMMONWEALTH of VIRGINIA

Office of the Governor

Question: This would be a separate private right of action based on the law?

Block: Yes, currently no private right of action, just more of a prohibition.

Hanken: It is a big deal to create a new private right of action, and whether it's appropriate for this Commission to expand that, or the categories of people who are covered.

Block: Notes that Kansas and Rhode Island might have similar provisions to this already adopted.

5. Adjournment

Hudson: Jessica will follow up on a meeting time.

Hudson adjourns the meeting at 3:03