



COMMONWEALTH of VIRGINIA

Office of the Governor

Commission to Examine Racial Inequity in the Law

MINUTES

Wednesday, April 7, 2021

1:30-3:30pm

Via WebEx

1. Call to Order & Roll Call

- a. Cynthia Hudson calls the meeting to order at 1:30 pm. Notes that we are able to meet electronically due to the state of emergency.

Due to the Governor's Declared State of Emergency due to the COVID-19 Pandemic, it is impracticable and unsafe for the Commission to Examine Racial Inequity in Virginia Law to assemble in a single location, so this meeting will be held electronically as authorized by the 2020-2022 Appropriation Act. The purpose of the meeting is to discuss or transact the business statutorily required or necessary to continue operations of the Commission and the discharge of its lawful purposes, duties, and responsibilities. The public is welcome to use the dial-in number and PIN provided in the meeting notice to attend the meeting electronically. The Commission will make available a recording or transcript of the meeting on its website in accordance with the timeframes established in Sections 2.2-3707 and 2.2-3701.1 of the Code of Virginia.

- b. Attendance & Roll Call

Members in Attendance:

- i. Carla Jackson
- ii. Andrew Block
- iii. Cynthia Hudson
- iv. Jill Hanken
- v. Jerrauld Jones
- vi. Birdie Jamison
- vii. Henry Chambers

2. Public Comment

- a. Dr. Cedric Pulliam, Echo VA Coalition: Thank you so much to the commissioners for allowing me to speak today. I want to send my gratitude, first, to the Commission for including HIV criminalization and the racial inequities in the law in the Governor's report. We were very appreciative and it did help with the progress of Senate Bill 1138 that was signed by Governor Northam last Wednesday to decriminalize HIV in the state of Virginia. Just to provide more updates on that, we were able to get a lot of progress on Senate Bill 1138 on the Senate side, but when it got to the House we did see some huge barriers that they wanted to criminalize folks at the felony level who was charged by the updated versions of this law, which is now the language stands as anyone who knowingly and actually infects someone with a sexually transmitted infection should be charged with a Class 6 felony. Of course, this is more jail time than it would be on misdemeanor level and we had been pushing for the misdemeanor level in the Senate and it passed. Then when it got to the House side it was a lot of opposition towards that piece. We worked with the Virginia Legislative Black Caucus and received a lot of push back there. We are very mindful of the re-election campaigns are occurring and the hesitancy on race and religion when it comes to this piece, and how inequities still exist within that component in the nexus of race and religion when it comes to sex or HIV or sexually transmitted infections. As a person working in this field for over a decade, it has always been that way: from the southern belt of Virginia to North Carolina and now Atlanta, Georgia, I've always seen that faith and religion nexus and how it's a negative inequity within this work. So, with that, we will be continuing our work, and we're grateful to Governor Northam for signing this bill. We will continue our work with Equality Virginia, the Positive Women's Network USA, and the Zero Project. In our community and statewide as an advocacy support organization and with our coalition members to really work on next year's legislative session on getting the criminal level reduced and amend the current status of the infected sexual battery law. We also continue to show gratitude and gratefulness to the Commission here to really show how racial inequities do exist within this particular law and the convictions of this particular law. As we know despite 19% of Virginians being Black, over 58% of newly HIV diagnoses in the state of Virginia are Black, and that increased over years and will continue to increase with the inequities in this law. Because of the felony charge, people will continue to be deterred from seeking public health services, HIV testing, and HIV treatment services. As a public health expert myself, I do know that this has happened repeatedly over three decades. As we see criminalization efforts and criminalize public health matters, people will deter from the public health system; and we even see that right now with COVID-19. With all of that, we wish the Commission to continue the efforts on any kind of report on this particular topic the Echo VA Coalition and our partners are happy to support any of the research. We also send gratitude to Andrew Block and Catherine Ward for their work and happy to help with anything.

- b. Deidre Johnson, Echo VA Coalition: Thank you so much commissioner for listening to us last year and also moving forward with what you are all doing. I am the co-founder of ECHO VA and we sincerely want to express our gratitude and thank you so much. We also want to send our condolences to your member in the passing of her family member. Again thank you so much for the opportunity and we really appreciate all of the work that you are doing for us.

3. Administrative Items

- a. Approval of the Meeting Minutes – Nov. 5 meeting

Hudson asks for a motion to adopt. **Hanken** moves for the motion to adopt, **Judge Jones** seconds. No discussion follows. The minutes are adopted (*6 yeas/ 0 nays*).

- b. Governor Northam video to Commissioners

J.D. Ratliff presents a video to the Commissioners from Governor Northam thanking them for their continued work on the Commission.

- c. Student Platform

Students who have helped the Commission over the past year give an update on their future plans after this academic year and their time at the University of Virginia, School of Law.

4. Special Session Update

Nathan Dowdy gives an update on legislation passed during the 2021 General Assembly session that corresponded with the Commission’s official recommendations.

Topic	Bill Number	Patron	Description
Agricultural Equity	HB2165	Del. Hope	Heirs Property
Racial Equity	HB1990	Del. Aird	Criminal justice legislation; racial and ethnic impact statements
Education/ Criminal Justice	HB2312	Del. Herring	Marijuana; legalization of simple possession
Education/ Criminal Justice	SB1406	Sen. Ebbin	Marijuana; legalization of simple possession
Education	HB2105	Del. Bulova	Early childhood education; quality rating and improvement system participation; School Readiness Committee

Criminal Justice	HJ555	Del. Herring	Constitutional amendment; qualifications of voters and the right to vote (first reference)
Criminal Justice	HB2110	Del. Herring	Pretrial data collection; VCSC to collect and disseminate on an annual basis
Criminal Justice	SB1391	Sen. Lucas	Pretrial data collection; VCSC to collect and disseminate on an annual basis
Criminal Justice	HB2263	Del. Mullin	Death penalty; abolition of current penalty
Criminal Justice	SB1156	Sen. Surovell	Death penalty; abolition of current penalty

Topic	Budget Language
Agricultural Equity	\$1.5 million for the cooperative extension at Virginia State University.
Agricultural Equity	\$6.2 million for VSU's Virginia College Affordability Network, an expansion of an intrusive advising early warning.
Education	\$16 million for expanding and improving early childhood education system in FY2022.
Education	\$300,000 to expand the Virginia Kindergarten Readiness Program (VKRP) to all publicly funded Pre-K classrooms.
Education	\$161,000 to create a Deputy Superintendent of Early Childhood at the Department of Education to oversee the newly unified system .
Education	\$30 million in previously un-allotted investments in tuition assistance at Virginia's public institutions of higher education.
Education	\$8.4 million for investments at Norfolk State University and \$6.1 million at Virginia State University, as well as \$5 million for George Mason University and \$5 million for Old Dominion University.
Education	\$500 million to prevent reductions to school division funding due to COVID-19.
Education/ Health Equity	\$27 million in school counselors.
Education/ Health Equity	\$80 million for a two-percent bonus for teachers and support positions.
Criminal Justice	\$13.1 million for the one-time and ongoing costs of implementing and operating an automatic expungement process for certain offenses.

Two bills that are not part of the Commission's official recommendations but do accomplish the goals of the Commission include:

1. HB1993 (Del. Askew) – Requiring state agencies to establish and maintain a comprehensive diversity, equity, and inclusion strategic plan in coordination with the Governor's Director of Diversity, Equity, and Inclusion.
2. HJ537 (Del. Aird) – Resolution that recognizes that racism is a public health crisis in Virginia.

5. Review of Report and Release Process

Jessica Killeen provides an update to commissioners on the release and response to the Commission's Phase II report.

6. Topics for Consideration in Phase III of Commission Work

a. Economic Inequalities

Block, comment: This is the median household income by race in Virginia. You can see that Black Virginians and people of color are at the lowest end of median income compared to other groups, except for Asian Americans. If you think of median income as the ceiling of opportunity' and people of color are not getting close to that. The flip side of the story is that there are way more people 'down in the basement,' if you continue that analogy. I think what our goals as a Commission should be is to ask how to raise the ceiling on people's opportunity, but also how do you raise the floor, so people who are living in total poverty do not have to suffer that reality any longer. As you can see here Black Virginians and Hispanic Virginians, but particularly Black Virginians, are overwhelmingly more likely to live in extreme poverty. The topics we have in this area are minimum wage and unemployment, paid leave and childcare, tax code reform, access to capital, and consumer protection policies.

- **Juliet Buesing Clark** briefs the Commission on minimum wage and unemployment statistics in Virginia.
- **Juliet Buesing Clark** briefs the Commission on paid leave and childcare in Virginia.
- **Lukus Freeman** briefs the Commission on tax code reform in Virginia.
- **Lukus Freeman** briefs the Commission on access to capital in Virginia.
- **Lukus Freeman** briefs the Commission on consumer protection policies in Virginia.

Block, comment: We identify these areas as important, but for purposes of our conversation, they are intended to be conversation starters and to give everybody [an idea] of what is out and will allow us to think of other areas we should be looking at.

Hanken, comment: This is all very weighty and it's topics that have been on the table for quite a long time. I don't know if the Commission wants to include some of the basic public assistance programs we have in Virginia. For example, the TANF program for families [and] the SNAP program for food assistance. I mean, those programs do provide assistance support to very low-income families. The majority of recipients are white, but I think disproportionately people of color. We have been chipping away at TANF and SNAP and there are some important improvements being made as we speak but still could be an area to look at. Also, Juliet, I did have a question about your minimum wage [presentation] on the issue

of how we are the lowest. Our minimum wage is the federal minimum so I think some of the reason we rank so low is that Northern Virginia is one of the highest cost of living areas in the whole nation, so that does skew the data when looking at cost of living versus minimum wage. I hope we can sort of parse through some of that and look at that question regionally, instead of state-wide.

Clark, comment: I think that is certainly true and we can definitely take that into account. The study did everything on a state level and not a regional level.

Hanken, comment: On the tax code, in addition to the EITC: the whole income-based tax code in Virginia is so antiquated that you hit your highest rate of state income tax, and I'm sorry I don't know that details, around twenty thousand dollars. If you have twenty thousand dollars in taxable income in Virginia you're at the highest tax rate. The same tax rate that someone with a two-million-dollar income would pay. Forgive me if I am not correct on those numbers, but it is something as egregious as that. We do not have a progressive tax system in Virginia and the underlying structure is problematic aside from the state EITC. Also, on unemployment even when you qualify. We have the highest criteria to qualify and when you do qualify the benefits you get are among the lowest. So some low incomes workers who lose their jobs and should get unemployment [benefits] do not qualify to get it.

Hudson, comment: Well Jill, I know we are right in the middle of your wheelhouse with respect to these topics and appreciate your very informed input on them. One thing that has occurred to me while looking at these broad subject matters is that don't they already have to be the subject of various bills over session after session that has sought to address some of these matters; and does it behoove us to find what the fate of them has been? Is our approach to devise or contemplate another angle or to just add our voice to the chorus?

Block, comment: I think what we have done with the past issues is during the course of our research is to try to identify what legislative efforts have already been attempted, and what good ideas were left in committee and made it into legislation. So that would be part of the work that we do and I think that whatever the topics are the Commission's work will add that race and equity lens to looking at these problems, which would sometimes cast them in a slightly different posture than they might have been otherwise. I believe that was part of the research approach already with the topics we've covered and I believe we would try to do the same thing.

Judge Jones, comment: Madam Chair and members, I would like to say that the presentation shocks the conscience, it's damning to Virginia. The things we have just been told. The statistical and numerical value of the things we were just been told about. So I have no other reaction if I'm not depressed every day from watching the news, I am even more depressed now after this information. My point is, it seems to me that some of the things we have just been presented upon

lend themselves to a very direct legislative solution. If the will of the General Assembly would be to ultimately do some of the things that can be changed through legislation. The issues Jill Hanken was talking about have legislative remedies to them. That is why in our first phase we talked about the low-hanging fruit. It was easy to go through and repeal some of these old Acts of Assembly because they were blatantly racist. Then as Andy Block kept pushing us to the more subtle things, the more contextual things, and the things that are not noticeable to the naked eye. However, some of the things are so blatantly obvious to the naked eye that we can propose a legislative solution, or at least a legislative change to begin to turn the battleship around. This won't all change overnight or in one legislative session, but we could identify a handful of things that might be bold on our part but the point is to do something. Can't we do something about the tax code and how inequitable it is? Those [tax] rates, she just talked about, are not a hard thing to understand. I guess I'm just ventilating here after hearing and seeing these numbers and hearing these inequities graphically displayed. Who wouldn't be outraged by what we've just been told? My suggestion would be to go for the low-hanging fruit on this and I think there is some.

Judge Jamison, comment: I agree this is very depressing to hear. I think it is something that a lot of us know that there are disparities but when you are actually faced with these statistics and these facts, there is not much you can do. I think awareness of this and make sure that people see these facts, because as Judge Jones said they are irrefutable. And when you put it all together we definitely need to take a stand. I am depressed but I am ready to work.

Hudson, comment: Agree. These are all weighty subjects. Which again is the reason we exist.

Block, comment: I do want to remind you all that the good news Nathan recently originally started with other depressing conversations. You got to look at it is that it is always darkest before the dawn.

Hudson, comment: Correct, and I have to remind myself that what is different, in addition to focusing the racial lens, is that we're in a different time with respect to racial equity matters. I think that is indisputable and I think the effect of the confluence of time that brought about this commission and has only continued to ratchet up during its existence. Perhaps that is what makes all the difference in re-examining and teeing up these issues, and what could and should be done about them from a policy perspective.

Jackson, comment: Madam Chair, I would like to echo something that Jill said. I recommend adding to the list, specifically, the removal of the ban on TANF benefits for persons who have been convicted of drug felonies because there is a huge economic fallout there. I believe it has come up at least thirteen times in the General Assembly that I can remember.

Hanken, comment: I think we are done with that for both TANF and SNAP. That the felony disqualification has been removed. I think that was last year.

Hudson, comment: Is there some synergy between those issues as a matter of state law and as a matter of federal law?

Hanken, comment: These were federal options that Virginia used and then the legislature reversed those choices made.

Hudson, comment: Jill is it also a choice, for instance, in public housing eligibility which can go away if anyone in your house is a convicted drug user. I am not sure if that is a federal or state choice.

Hanken, comment: I do not know the answer to that. I do think that reentry issues are very important. We have been talking a lot about the restoration of voting rights, but what else is Virginia doing to support folks reentering after incarceration? These are all big issues and as people have said a lot of these have been raised. The paid leave conversations have been very painful to watch. Just the proponents of those benefits have compromised in trying to find something that would resonate with enough legislators, and still, I don't know what to say except that these are tough issues. The business community and small businesses community very often come out in opposition to these benefits. Also, yes there is a lot of concern about supporting small businesses. It is the backbone of our economy in many ways but should even a small business be required to give someone who works full time five days of a year if they are sick. That is what it is all about and it has been some very difficult conversations. The minimum wage is also very controversial and a lot of small business advocates are opposed to minimum wage reform. On unemployment, it costs businesses money to pay their trust dollars into the unemployment system. So, I do think we need to acknowledge the previous efforts and even summarize the pros and cons so it reflects what has already been occurred. Then using some new arguments and data to support moving forward on some of these tough issues. We also already have five items on the list and I suggested adding another. Maybe we should limit or pick a few priorities.

Judge Jones left at 2:58 pm

Hudson, comment: Andy are you staffed and able to divide and conquer with respect to all these topics, or do we need to pick our top three?

Judge Jamison left at 3:00 pm

Block, comment: I will have some help during the summer, but not as many students as usual. I believe we can start down this road and then in the fall students in the clinic will continue to work on these topics. I am confident that we can tackle them all, but let you know if we are coming up short. I am reasonably confident that we can get into all of these and potentially look at other issues.

Hudson, comment: Yes, and they are not as directly and immediately economic in terms of their consequences but nonetheless are matters that we'll raise. I also believe we have lost a quorum since Judge Jamison and Judge Jones have left. However, I believe these five topics are in the pack and we may be adding some based on Jill's comments. We will now move onto the next topics on the agenda we have for consideration. These topics are economic inequality; housing; finance and banking; transportation and mobility; diversity and equity issues and education on college campuses. For this was talking in terms of what does or doesn't contribute to your ability to get into a school and prepare you for a particular mode of living and income. Also, the experience that you have there may or may not contribute to your success in getting a degree. That is a huge undertaking but nonetheless something that continued to come up in conversations I was having about people about what the Commission could research.

The next topic is collective bargaining within localities by local governments. This may not immediately appear to be something that is attached to this, but I was reminded that with in connection with the General Assembly's recent allowance of collective bargaining by local government employees. That in the past there is a connection between the prohibition on public employee collective bargaining and the Jim Crow Era. Since so many local government or municipal employees were people of color, there was the notion, during the time, that while collective bargaining would be allowed in the private sector it would not be allowed in the public sector. That it might have been or have been documented to have been one those reasonings. There is a racial component there, but given the very detailed issues that arise to the top here in the list of topics. I am thinking this is something that this or another commission in the future can look at.

Jackson, comment: I think we do need to revisit the TANF issue. The only bill I could find was them increasing the amount. I do not see anything where they removed the ban.

Hudson, comment: Ok. I feel like we have a set preliminary list and we can ask Andy and his students to get started. I also want to check on the idea that we had last year with having commission members team up with different students who are assigned these subject areas. When Andy reaches out with respect to your being liaisons to any particular group or individual looking at an area that you'll step up and be available.

Hank Chambers joined at 3:02 pm

Block, comment: One additional area, with capacity permitting, that might be worth looking at is our inattention to issues of racial equity in rural communities. We received a lot of feedback about this after the report came out about this topic. They have their own kind of unique set of issues that are different from higher population areas in the Commonwealth.

Hudson, comment: If we have the capacity, I think that would be great and we will share with the rest of the Commission the feedback about rural Virginia.

7. Student-Researcher Engagement

Hudson, comment: This is to get more students across the state involved in the fact-gathering and data collection. We have a great partnership with the University of Virginia and the government policy clinic. However, I do get a lot of inquires when the reports come out about “how can we help?” I am not sure about how we necessarily go about it, but have spoken to different administrators at public colleges across Virginia, and they are waiting to see how they can be involved. This is something that staff and I will continue to work on.

Block, comment: Also, one thought since we have students on the line, I’m interested in their thoughts. I know we have spoken about engaging students at HBCUs and there could be some partnering or pairing with undergraduate students with some of the law students in the clinic. It would be an interesting way to get student connections in different places. Also, if there is faculty supervision available at other schools they could be tangential members of the clinic.

Hudson, comment: One idea I had is that we propose this as a special project to BLSA chapters at Virginia law schools. I have spoken to Dean Spencer at William and Mary Law School about such connection and he seemed very interested. Any thoughts you may have on this Hank?

Chambers, comment: The difficulty is meeting the quality of the folks we have on here. The work that has been done at such a high level that bringing additional folks on would be fantastic, but I do think we should be realistic about their ability to ramp up and put out work of that level. However, I am sure there is a lot of talent out that could be added to the project.

Jackson, comment: Madam Chair, I know there is at least one undergraduate organization at Virginia State University for students interested in attending law school. I can contact you with the professor there who reached out to me about this. Also, I want to note the J.D. sent me the Senate bill that resolved the TANF issue.

8. Community Engagement

Hudson, comment: After the Commission finished its Phase III of research, how can we engage with communities across the Commonwealth, share the Commission’s work to date, encourage future public participation, and inspire advocates and students to work towards equity in Virginia? Andy, would you like to speak more on this?

Block, comment: Sure, you know part of the value of the work we have done is unearthing facts and connecting the past to the present. I feel like while we are having a lot more sophisticated conversations about race and equity, and honest conversations than we used to. There are still many people who are calling it ‘labeling’ or what is white supremacy and structural racism and does it relate to me. I believe just sharing both information we gathered to do the first report and some of the information we gathered to do the second report, and connecting those dots would be great for people to hear more about that. It would be great to develop a presentation to present to bar groups, different government groups, and student organizations. I believe this is information that if you are a leader in Virginia you should know.

Hanken, comment: I agree with Andy and chambers of commerce are the ones that need to hear this next phase on economic reform. As I said, earlier, so much of the opposition on these issues are coming from the business community. Even with using the previous two reports and leading into what we are doing this year, and focusing on targeting business leaders would be dramatic and powerful.

Chambers, comment: Has each governor’s campaign been briefed on what the Commission has done, and have all of the candidates been asked whether they will continue the Commission if they win?

Block, comment: I don’t think they have been asked that question but on the democratic side in the first forum the candidates were asked about the Commission’s report and how they address some of the inequities. So, I believe it is getting on people’s radar but we could be more intentional about getting it on their radars as well.

Killeen, comment: One way we could do this is to have it be a CLE for lawyers. I know it is a lot of work to become a CLE but it could be an interesting way to grab a group of people.

Hudson, comment: I think that is a great idea, and since it is an analysis of the law, it would fit right in that entire parade of conferences annually held by bar associations and other professional organizations in law.

Chambers, comment: Let me know how this goes and I can help put one together for us.

Hudson, comment: Andy, sounds like your idea is good and we will begin to figure out an approach. Maybe we start doing this before the completion of the third report.

Block, comment: I feel we do have enough right now to do some of this work. We may not have enough to target chambers of commerce but there is a lot to talk about that is worth people hearing. Maybe we could - once we set the next

meeting and reach out to everyone about their ideas on outreach and what they might be willing to do. Then at our next meeting, we could come up with a plan of how to go about doing this.

9. Adjournment

a. Future Commission Meeting Dates

Hudson informs commissioners that staff will send out dates for a future meeting in May.