

Issue: VA Criminal Justice Reform

Criminal Justice Reform—Democrats Lead the Way

The administration of criminal justice has three main purposes: keeping society free of those who commit criminal acts, making offenders pay for flouting the rules of civilized society, and finally, rehabilitating them, so they can become productive members of society. But the balancing of these three goals had gotten out of kilter in Virginia and in the rest of the country. Prisoners were not adequately rehabilitated and often stayed in prison long after they posed any threat to society.

Starting in the 1990s, and for the quarter-century that Republicans controlled the statehouse, Virginia overemphasized the punitive aspects of justice without a concomitant effort towards rehabilitation. In 1994, the legislature approved a set of comprehensive reforms designed to make punishment assured, consistent, and long-lasting. The result in Virginia was a prison population that grew even as crime rates dropped. Between 2010 and 2015, crime rates dropped 19.5 percent in Virginia, more than the national average of 14.6 percent.¹ But the rate of incarceration per 100,000 people dropped just two percent. Also, Republicans showed little inclination to help former inmates who had served their sentences and completed post-release obligations take up productive lives or to be able to vote.

Since the Democrats gained control of Virginia's General Assembly in 2019, they have undertaken major criminal justice reforms, putting into practice the words of the New York Times columnist Charles Blow, who wrote in February 2021, "many of the most impactful criminal justice reforms can and must be enacted by states, not by the federal government."² During the legislative sessions of 2020 and 2021, the General Assembly, with both the House and Senate under Democratic control for the first time since 1993, passed more than 20 criminal-justice reform bills, "reflecting years of pent-up demand for change..."³

Here are summaries of major new laws covering policing, criminal offenses, courts, incarceration, and juvenile justice.

Policing

In the 2020 special session, following the deaths of George Floyd, Breonna Taylor, and Ahmaud Arbery and the ensuing protests, Virginia's General Assembly met in a special session and passed several bills focusing on police reform. "These are transformative bills," said one sponsor, state Sen. Mamie Locke. They will "make Virginians' lives better, and I'm so proud to see them signed into law."⁴

Forbidding no-knock search warrants (HB 5099, 2020 Special Session 1, Lashrecse Aird (D)-HD63): By passing "Breonna's Law," Virginia became the third state to forbid police from executing a warrant without first knocking and announcing themselves.⁵

Limiting chokeholds (HB 5069, 2020 Special Session 1, Jennifer Carroll Foy (D)-HD2): The new law forbids police from using neck restraints except when they are "immediately necessary to protect the law-enforcement officer or another person." Police officers who violate the law would face administrative decertification. A related bill (HB 5029) requires officers to intervene when possible if they see a colleague using unlawful or excessive force; failure to do so could lead to disciplinary sanctions.⁶

Establishing police officers ‘code of conduct (HB 5051, 2020 Special Session 1, Marcus Simon (D)-HD53): Establishing Virginia’s first statewide code of conduct for police officers, the law requires the Criminal Justice Services Board to define serious misconduct in its standards. It requires local departments to notify the state of serious breaches, triggering a state-level decertification.⁷

Requiring racial bias, de-escalation and crisis intervention training for police (HD 5109, 2020 Special Session 1, Patrick Hope (D)-HD47): Under the law, Virginia’s police academies will share a standardized curriculum. Before an officer is hired, they must undergo a psychological evaluation. A companion bill (HB 5018) requires the inclusion of minority, social justice, and mental health organizations on the committee creating the new standards.⁸

Criminal Offenses

Legalizing marijuana (HB 2312, 2021 Special Session 1, Charniele Herring (D)-HD46; SB 1406 Special Session 1, Adam Ebbin (D)-SD30): This bill legalizes adult possession of less than an ounce of marijuana starting on January 1, 2024. Anything between an ounce and a pound would come with a \$25 fine, and any amount above that could result in a maximum of 10 months behind bars. There would also be a \$25 fine for underage possession of up to a pound.

After difficult negotiations, the House and Senate compromised, but the bill, with its delayed effective date, is not what many advocates had anticipated. Justice Forward Virginia, Marijuana Justice, ACLU Virginia, and RISE for Youth issued a joint statement that said the bill “failed to advance the cause of racial justice in Virginia.”⁹ Robert Barnette, president of the Virginia State Conference NAACP, said waiting until 2024 to repeal penalties could mean continued disproportionate enforcement against communities of color. “Why keep criminalizing marijuana until then, if you plan to say that this is not a crime?”¹⁰

On March 31, 2021, Gov. Northam announced proposed amendments to SB 1406 and HB 2312. The amendments were to change the effective date legalizing adult possession of marijuana to July 1, 2021.¹¹ This required the VA Assembly to reconvene and vote to accept or reject Gov. Northam’s amendments. The House passed easily. In the state Senate the vote was deadlocked 20-20 with Lt. Gov. Fairfax casting the tie breaking vote in favor of the amendment.¹²

Downgrading minor traffic violations to secondary offenses (HB 5058, 2020 Special Session 1, Patrick Hope (D)-HD47): The bill seeks to reduce traffic stops for minor causes, such as an unlighted license plate. These stops had often been used as pretexts for officers suspecting the driver or passengers of other crimes. The goal is to make racial profiling harder. Violations downgraded to secondary offenses include tinted windows, objects dangling from a rearview mirror, smoking in a car with a minor present, or a state inspection less than four months past its expiration date. An amendment proposed by Governor Ralph Northam would allow stops only in cases where more than one headlight or brake light is out.¹³

Increasing felony larceny threshold (HB 995, 2020 Special Session 1, Joseph Lindsey (D)-HD90; SB 788, Jennifer McClellan (D)-SD9): This bill raises the threshold for felony larceny from \$500 to \$1000, two years after the Democrats elected in 2017 ensured it was raised from \$200—one of the lowest levels in the country. After it passed, Gov. Northam said, “While we will continue to hold people accountable for their actions, it’s important that the punishment fit the crime. This bill will bring Virginia in line with the majority of states..., modernizing our law to ensure that one mistake does not define a person’s entire life.”¹⁴

Punishing hate crimes (HB 5098, 2020 Special Session 1, Alex Askew (D)-HD85): This bill increases the penalty for making false 911 calls from a misdemeanor to a felony if a person intentionally gives a false report against another person because of his or her “race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin.”¹⁵

Courts

Reforming criminal sentencing (SB 5007, 2020 Special Session, Joe Morrissey (D)-SD16): This law ends the “jury penalty,” whereby, if a jury hears a case, the jury must impose the sentence. It transfers sentencing authority to judges unless a defendant requests a jury. Advocates predict it will force prosecutors to offer more reasonable and lenient plea bargains.¹⁶ As Morrissey said, “When prosecutors say, ‘We’re gonna demand a jury trial,’ that’s code for jury sentencing, which is code for decades in prison...”¹⁷

Ensuring a right of appeal and expanding the Court of Appeals (SB 1261, 2021 Special Session, John Edwards (D)-SD21): This law adds six judges to Virginia’s 11-member Court of Appeals, expanding the court’s size to accommodate a new guarantee that criminal defendants and civil litigants have an automatic right of appeal from a trial verdict—a right every other state in the country now provides. Before, a criminal defendant had to petition to make an appeal; a single judge on a panel could nix it. This meant that judges in Virginia were reversed less than those in any other state. On the civil side, the only cases granted automatic hearings to the Court of Appeals had involved domestic issues, including workers compensation claims, and administrative law cases. In other civil cases, litigants had to petition the state Supreme Court to hear their appeals. The legislation drew opposition from some Republicans who accused Democrats of “court packing” to push a liberal agenda.¹⁸

Ending debt-based license suspensions (SB 1, 2020 Special Session, Bill Stanley (R)-SD20, Jennifer McClellan (D)-SD9) This bipartisan legislation ends the practice of suspending driver’s licenses for unpaid court fines and fees. As of January 2020, nearly one million suspensions were in effect. The Senate overwhelmingly approved the measure, but 25 House Republicans opposed it. After it passed, Angela Ciolfi, Executive Director of the Legal Aid Justice Center, said: “We hope Virginia will continue to examine all the ways in which reliance on fines and fees to fund the courts punishes people for their poverty, devastates communities of color, and perverts our sense of justice.”¹⁹ A related bill (SB 711) repeals the 10-day mandatory minimum sentence for driving on a suspended license.

Changing Criminal Penalties

Abolishing the Death Penalty (HB 2263, 2021 Special Session 1, Michael Mullen (D)-HD93): With this bill, Virginia, which executed more individuals than any other state, becomes the 23rd state to abolish the death penalty. Democratic legislators argued that the death penalty has been applied disproportionately to people of color, the mentally ill, and the indigent.²⁰

“It is vital that our criminal justice system operates fairly and punishes people equitably. We all know the death penalty doesn’t do that. It is inequitable, ineffective, and inhumane,” Gov. Northam, House Speaker Eileen Filler-Corn, and Senate Majority Leader Dick Saslaw said in a joint statement after the vote.²¹ No Senate Republicans voted for the repeal bill,²² even though the Wason Center for Civic

Leadership at Christopher Newport University released a poll showing 56% of Virginians supported repealing the death penalty. Support was strongest among Democrats (74%), Black voters (72%), and people under 45 (62%). Thirty-six percent of Republican respondents also supported the measure.

Allowing inmate credits to shorten sentences (HB 5148, 2020 Special Session, Don Scott (D)-HD80) The legislation reduces by one-third the prison sentences of inmates not incarcerated for certain violent offenses who have followed prison rules and participated in counseling and education programs. A related bill (SB 5018) expands Virginia’s compassionate release policies, which had been among the most restrictive in the country. Both bills exclude most inmates convicted of violent offenses.²³ Prison officials estimate it would move up the release dates of more than 14,000 inmates.²⁴ Shorter imprisonments can save money and offer “a limited form of relief and hope to people behind bars and signals that Virginia wants rehabilitation to begin once someone enters the prison system.”²⁵

Enfranchising felons (HJ 555, 2021 Special Session 1, Charniele Herring (D)-HD46): The General Assembly agreed on proposed constitutional amendments that would automatically restore voting rights for thousands of Virginians convicted of felonies. The legislature must pass the proposed amendment again next year before it goes to a statewide voter referendum.²⁶ Former Governor Terry McAuliffe stated he would “work tirelessly” to make sure it passes again in 2022 if he’s elected to a second term later this year. “There is no more fundamental right than the ability to participate in our democratic process,” McAuliffe said in a release from his gubernatorial campaign.²⁷

Expunging criminal records (SB 1339, 2021 Special Session, Scott Surovell (D)-SD36): This bill sets up a system to automatically seal nine misdemeanor charges after seven years if the person is not convicted of other crimes during that time. Charges eligible for sealing include underage possession of alcohol, simple larceny, disorderly conduct, trespassing, and possession of marijuana. Supporters say it will remove obstacles to opportunities like employment, housing, and education. House Majority Leader Charniele Herring said it addresses “systematic inequities” to “provide a clean slate for Virginians who have paid their debt to society.”²⁸

Juvenile Justice

Ending collection of child support payments for juveniles in custody (HB 1912, 2021, Patrick Hope (D)-HD47): This bill ends the practice of charging families fines and fees for taking, prosecuting, and incarcerating their children. It also ends the collection of child support while juveniles are in the care of the Department of Juvenile Justice. The practice disproportionately impacted Black, Latino, and indigenous youth.²⁹

Three years of Democrats’ reforms are good, but not enough.

Over the past two years, Democrats, in full control of Virginia’s legislature for the first time since 1993, have passed a significant number of reforms that will have a profound effect on the state’s criminal justice system. In her closing statement following the 2021 special session, House Speaker Eileen Filler-Corn stated, “While there is work still to be done, I believe we have met the moment.”³⁰ There is much to celebrate. However, a number of important reform measures did not pass in either session, including proposed legislation to end solitary confinement, reinstate parole, eliminate mandatory minimum sentences, and ban assault rifles. These proposals have been postponed until next year or sent to the Virginia State Crime Commission for study.³¹ Virginia still has an

incarceration rate of 432 per 100,000—the thirteenth highest in the nation.³² Its juvenile justice system is “costly and wholly ineffective at teaching young people how to be law-abiding citizens.”³³ It is essential for Democrats to retain control of Virginia’s legislature and governorship to meet the demands of the majority of the commonwealth’s voters.

¹ http://www.pewtrusts.org/~media/assets/2017/03/pspp_national_imprisonment_and_crime_rates_fall.pdf

² <https://www.nytimes.com/2021/02/24/opinion/jail-death-penalty-states.html?referringSource=articleShare>

³ <https://www.virginiamercury.com/2020/11/11/every-criminal-justice-reform-that-passed-in-virginia-after-george-floyds-death/>

⁴ <https://www.virginiamercury.com/blog-va/virginia-becomes-third-state-to-ban-no-knock-search-warrants/>

⁵ <https://www.virginiamercury.com/blog-va/virginia-becomes-third-state-to-ban-no-knock-search-warrants/>

⁶ <https://www.virginiamercury.com/2020/11/11/every-criminal-justice-reform-that-passed-in-virginia-after-george-floyds-death/>

⁷ <https://www.virginiamercury.com/2020/11/11/every-criminal-justice-reform-that-passed-in-virginia-after-george-floyds-death/>

⁸ <https://www.virginiamercury.com/2020/11/11/every-criminal-justice-reform-that-passed-in-virginia-after-george-floyds-death/>

⁹ <https://www.wric.com/news/virginia-lawmakers-agree-to-legalize-marijuana-possession-but-sales-face-uncertain-future/>

¹⁰ <https://www.wric.com/news/virginia-lawmakers-agree-to-legalize-marijuana-possession-but-sales-face-uncertain-future/>

¹¹ <https://norml.org/blog/2021/03/30/virginia-governor/>

¹² https://www.washingtonpost.com/local/virginia-politics/virginia-general-assembly-headed-back-to-richmond-to-take-up-marijuana-legalization-other-unfinished-business/2021/04/07/c95c54f8-96e0-11eb-962b-78c1d8228819_story.html

¹³ <https://www.virginiamercury.com/2020/11/11/every-criminal-justice-reform-that-passed-in-virginia-after-george-floyds-death/>

¹⁴ <https://www.nbc12.com/2020/03/05/va-governor-signs-law-double-grand-larceny-threshold/>

¹⁵ <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+HB5098>

¹⁶ <https://apnews.com/article/5ac3b0cb8e38c3151661444df4eee141>

¹⁷ <https://www.dailypress.com/news/crime/dp-nw-sentencing-reform-jury-trials-20200822-5rfzj4xkuzbsxbqnazsdz5wkpu-story.html>

¹⁸ <https://apnews.com/article/legislature-state-governments-virginia-legislation-coronavirus-pandemic-f559e061a3734c85385a11f25ff86c4>

¹⁹ <https://www.virginiamercury.com/2020/11/11/every-criminal-justice-reform-that-passed-in-virginia-after-george-floyds-death/>

²⁰ <https://apnews.com/article/virginia-death-penalty-repeal-governor-c98c16a996037a4d1e1d497787b7e6f1>

²¹ <https://apnews.com/article/virginia-death-penalty-repeal-governor-c98c16a996037a4d1e1d497787b7e6f1>

²² <https://deathpenaltyinfo.org/news/virginia-legislature-votes-to-abolish-the-death-penalty>

²³ <https://www.virginiamercury.com/2020/11/11/every-criminal-justice-reform-that-passed-in-virginia-after-george-floyds-death/>

²⁴ <https://www.virginiamercury.com/2020/11/11/every-criminal-justice-reform-that-passed-in-virginia-after-george-floyds-death/>

²⁵ https://roanoke.com/news/local/new-law-reforms-early-sentence-credit-program-in-virginia/article_24d60fc4-2ea7-11eb-8296-8ffc55f71b15.html

²⁶ https://richmond.com/news/state-and-regional/govt-and-politics/assembly-wrapping-up-with-raises-for-teachers-state-workers-transformation-of-criminal-justice/article_846dd3e6-09e9-5ccc-ac8f-a01508138cc8.html

²⁷ <https://www.virginiamercury.com/2021/01/11/virginia-democrats-push-to-end-constitutional-rule-stripping-felons-of-voting-rights/>

²⁸ <https://apnews.com/article/bills-legislation-virginia-57f06d044d9eb732c24313c1dc09996a>

²⁹ <https://docs.google.com/document/d/1EhaMIYGrXhNNPqGktXHShGLtPCuxCbBr9Zz2vetx8iw/edit>

³⁰ https://richmond.com/news/state-and-regional/govt-and-politics/assembly-wrapping-up-with-raises-for-teachers-state-workers-transformation-of-criminal-justice/article_846dd3e6-09e9-5ccc-ac8f-a01508138cc8.html#tracking-source=home-top-story-1

³¹ <https://apnews.com/article/5ac3b0cb8e38c3151661444df4eee141>

³² <https://worldpopulationreview.com/state-rankings/prison-population-by-state>

³³ <https://www.riseforyouth.org/issues/now-is-the-time/>