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Black Virginians are far more likely to be charged with disorderly conduct

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It's what you're charged with when police can't find anything else — and black Virginians are far more likely to be arrested for disorderly conduct than are whites.

Over half of the more than 2,550 disorderly conduct charges brought last year were filed against blacks, a Daily Press review of district court records from across the state found.

That's more than 2½ times the proportion of Virginia's population that is black.

In contrast, three-quarters of charges for a similar bad behavior crime — public drunkenness — are filed against whites. That's in line with the nearly 70% of the state's population that is white.

And while about one of five people charged with disorderly conduct spend time in jail — more than half of whom never end up being convicted — only three out of 100 of those charged with drunkenness do.

The court data show wide variance between cities in how often people are accused of disorderly conduct. In Norfolk, 112 of every 100,000 residents faces the charge in a year, while the rate is 22 per 100,000 in Virginia Beach. In each city, the percentage of those charged who are black far outpaces the city's black population: 73% vs 42% in Norfolk and 49% vs. 19% in Virginia Beach.

"This is shocking," said Del. Mike Mullin, D-Newport News, a former prosecutor who tried, unsuccessfully, to pass legislation banning students from being charged with criminal disorderly conduct for acting out in school.

The data also suggest prosecutors statewide are less inclined to drop disorderly conduct charges against blacks than whites — while one quarter of whites arrested get this break, only one fifth of blacks do.

Police and prosecutors say looking at aggregate data about arrests, convictions, dropped charges and sentencing is misleading because they consider each charge on a case-by-case basis. They say concerns

that the data point to bias in the system are overblown. They say different disposition of cases often reflects prior records, too.

The disorderly conduct statute is the only one in the Code of Virginia that says it cannot be charged if conduct is punishable by any other state law.

“It is a nebulous charge; just about anything can be disorderly conduct if you describe it eloquently enough — you raise your voice, stand too close to someone, walk down the street yelling,” Mullin said.

House Courts of Justice committee chairman Rob Bell, R-Albemarle, said that while disorderly conduct covers some of the same people who pick up drunk in public charges, the offense is more serious.

“An unconscious drunk person in a pool of his own vomit may be DIP, but not disorderly conduct. Disorderly is a jailable offense, although generally it is not seen as being as serious as an assault and battery. Sometimes where there is a mutual fight, as when two beefing people agree to step outside, they may end up charged with disorderly conduct,” he said.

Virginia’s statute says you can be charged with disorderly conduct for behavior that has “a direct tendency to cause acts of violence,” or that disrupts a funeral, religious service, government meeting or school. It carries a penalty of up to a year in jail.

“My experience, though, is that law enforcement officers and magistrates often only look at the title of the statutes and charge on that basis alone,” said Mike Doucette, executive director of the Virginia Association of Commonwealth’s Attorneys and longtime top prosecutor in Lynchburg.

Other states’ laws are more detailed than Virginia’s.

In Maryland, where the penalty is a sentence of up to 60 days in jail, the law is more specific. It says you can’t block people from a public place, can’t disturb public peace by making an unreasonably loud noise and can’t disobey a police officer’s order to stop disturbing the public peace.

North Carolina’s law is also more detailed, declaring that disorderly conduct is fighting, making a gesture or saying something likely to provoke violence, as well as blocking access to a public building or disrupting school or a funeral or memorial service. The penalty is up to 120 days in jail.

Mullin said Virginia’s open-ended law means it could be enforced very differently in different parts of the state, as the numbers from Virginia Beach and Norfolk show.

“It’s the way to enforce social norms,” Mullin said. “There is a lot of power and discretion that it gives police and prosecutors for such a very vague charge. We need to be able to trust that they handle it right.”

Virginia courts exempt themselves, staff from FOIA

<https://www.dailypress.com/government/dp-nws-scova-foia-20190419-story.html>

New rules issued by the Virginia Supreme Court say court officials around the state aren't subject to the government in the sunshine law and can keep many of their internal records from the public.

The court has said its aim with issuing the rules is to protect Virginia's separation of the judiciary from the legislature and the executive branch, adding that it "supports reasonable and responsible transparency."

Most court case files are still open. But the new rules say the public cannot see:

- Administrative records of judges, magistrates, commissioners in chancery and commissioners of accounts
- Records created by the Office of the Executive Secretary, the General Assembly-created state agency that administers the court system, that involve the operation of the judiciary
- Written communications among court personnel, including those of the Office of the Executive Secretary
- Records entered into any electronic system used to create and issue court orders.

"You could drive a truck through these," said Del. Mike Mullin, D-Newport News, who was one of the bipartisan group of legislators who hammered out a bill requiring the Office of the Executive Secretary to make a database of court case information available to the public.

That bill passed the General Assembly unanimously in 2018. It came after the Supreme Court rejected the Daily Press' argument that the case information database was a public record, subject to release to the public under Virginia's Freedom of Information Act.

The paper battled for two years for access to the database, eventually working with a computer engineer to recreate a copy from the court system's website. Using that recreated database, the Daily Press found patterns suggesting racial bias in how courts handled a variety of crimes.

The 2018 legislation also made clear, for the first time, that the public is allowed to see records of general district courts, which handle misdemeanor cases and civil cases involving claims of less than \$25,000. State law already said higher court records are supposed to be open to the public.

Kristi Wright, spokeswoman for the court, said the new rules would not conflict with the 2018 legislation.

In a written statement, she said the electronic system made secret by the new rules contains information on unserved arrest and search warrants, which are not public. But once the warrants are served, Wright said, they'll be available in case files.

Mullin said there's a 400-year-old body of law that says judges' working papers are private, but that the new rules go far beyond that.

He said he's particularly concerned that it shields information about the court system's finances and administration.

"This is a really broad exemption and they're not giving real reasons for this policy," said Megan Rhyne, executive director of the Virginia Coalition for Open Government.

A look inside the nation's largest treatment-centered prison, which sits in Chesapeake

<https://www.dailypress.com/news/crime/dp-nw-indian-creek-20191113-6oflr3bprd7haill5smqimlpe-story.html>

The prison counselor had finished her group session a few minutes earlier, and now it was time for Indian Creek Correctional Center inmate Lonnie Crowder to step up.

The six dozen men of Building 4, side B, incarcerated in what state officials believe is the largest treatment-oriented prison in the nation, lined up chairs as Crowder set up an easel on one of the unit's game tables, and wrote down "Success and Achievement."

There are 1,000 offenders at Indian Creek, all of whom are in the so-called "Therapeutic Community" treatment program.

Most were sent there against their will when they had about two years left to serve. But many end up buying into the prison's highly structured, intensive program aimed at changing minds and changing behavior.

Crowder's one of the ones who has bought in. Prison officials named him an elder, a leadership and mentoring role prison officials gave him as he nears the end of two decades behind bars.

It helped that Antonio Davis, an offender he'd crossed paths with at another prison, was there to meet him months ago when Crowder stepped into Indian Creek's orientation building. Like many when they first arrive, Crowder was unhappy to be at the Chesapeake prison and not open to the idea that it could set him on a new path.

Davis became one of his "brother's keepers."

Brother's keepers

It's an idea that lies at the heart of Indian Creek's decade-old program, along with a day that begins at 5:30 am and ends at 11 at night, when lights out means lights out and none of that watching TV in your cell as late as you like that is possible at most other prisons.

The brother's keeper idea isn't just having someone you can talk to. It's not a warm and fuzzy kind of thing. That's not the way prison goes, and Indian Creek is definitely a prison.

Along with the brother's keeper idea is what Crowder's fellow elder George Martin calls "about 100 rules." When you break one, it is as likely as not that a fellow offender, acting as your brother's keeper, will write you up.

In fact, there's an expectation you will write up others, since how often you do so is one of the measures Indian Creek staff use to see how you're advancing with the program.

"You're written up, you have to face it, have to apologize, maybe. ... on the street, it's the law. Rules there are misdemeanors, felonies. You break those rules, it's the police," Martin says.

What happens after a write-up is a gathering of chairs in the common area that's at the front of each barn-like housing unit at Indian Creek.

There's one small circle, perhaps of those who witnessed the rule-breaking, and usually also including peers who feel they've got something useful to say. The rest of the unit gathers round in a larger circle to watch.

Sometimes, it gets a bit confrontational. Sometimes there's an explanation. There's usually some back and forth. There's often an apology, and a promise to try to do better.

"Your brother's keeper keeps challenging you, holds you accountable," said Davis, who does it for Crowder. "On the street you see something, you keep it to yourself. You hear something, you keep it to yourself. This isn't being the police, it is having expectations, being accountable, being responsible for what you do.. I'm not trying to be police. But on the street, can't nobody hear 'Hey, can I talk to you for a minute?' It's 'Put your hands behind your back.'"

The accountability goes both ways. Crowder is one of Davis's brother's keepers, too.

Because the main thing Indian Creek's program is about is getting offenders to think about others, about their impact on other people and how to deal with other people's impact on them.

New arrivals

It isn't easy, writing another offender up for the first few times — if, in fact, it ever is.

But it starts, just as the brother's keeper idea does, fairly soon after an offender is sent to Indian Creek, in the orientation units in Building 1.

They feel much more like other Virginia prisons. There's a tense undertone, lots of milling around, unfriendly stares.

It's far from as calm and quiet and well-scrubbed as Building 4, which on a recent autumn weekday sported the blue flag with gold stars that signaled it had, once again, beaten other units for staying clean and sticking with the program.

The payoff for the cooperative effort that goes into winning the flag is being first in line for meals. It may not seem like much, but Indian Creek is, after all, a prison. And the small incentives prisons give — a bit

of extra recreation time, permission to keep TVs on after lights out if there's a big football or basketball game — make a difference, Warden Rick White explains.

Thomas Kufeld could be in Building 4 or one of the other units on the so-called “re-entry” side of Indian Creek. But once named an elder, he volunteered to go back to Building 1.

He felt he had something to tell the new arrivals about isolation. And about it means to live in a community.

“I thought I had figured it out,” Kufeld said. “I was at Greenville. I was a teacher's aide, I was doing good. But I'd spend all day working, doing my job, come back, take a shower and shut the cell door behind me. I wanted to shut it out.”

Keeping your distance is how to make through most prisons.

“At Greenville, you don't open up, because you suppress a lot of feelings. If you don't, you're vulnerable,” Kufeld said.

That attitude stops in Indian Creek's orientation building, though it can take time.

“You can see it, guy sitting there, arms like this,” Kufeld said, crossing his arms in an angry, defensive gesture across his chest. “Stone cold killer, he's not going to say anything.”

Opening up

But the new arrival's got to participate. One of the rules at Indian Creek is no lying in bed, the way you can in other prisons. You're assigned to a team, maybe the one that cleans the unit, maybe the one that organizes the several meetings and groups that fill days blocked off into 90-minute periods, rather like a school. There's no dodging assignments, and no dodging groups.

When a counselor comes for what the prison calls a process group, and a dozen or so offenders have to arrange chairs in a circle and start answering questions and talking to one another, even the most guarded newcomer sees it is possible to talk without fear.

You'll hear stories about drug use. About crimes never punished. About disappointed families. About guilt. About shame.

And you start telling them.

There'll be those double circles — called awareness groups — convened to deal with a write-up. You'll likely be star of the show in some; you'll often end up as one of the peers in the inner circle who thinks he has something to say that can help.

There's nothing else like it anywhere in the Department of Corrections' 30,000-inmate system, except for a smaller program at the women's prison in Gochland County.

“I tell people, it's a way to shake the DoC off of you,” Kufeld said.

Structure

“Out there, if you don’t feel like getting out of bed, you can sleep til noon,” said elder Laquinne Brownlee, talking about life on the outside.

You can do the same at other prisons — even some of the hard-time ones, like Nottaway, where Brownlee’s done time. Officers don’t have to worry about escapes or assaults if an inmate’s staying in bed.

The rules — the real rules — at a place like Nottaway or Greenville aren’t anything like Indian Creek’s either.

“You’re in there with lifers, people who ain’t ever getting out, the rules are different,” Brownlee said.

Those rules: Make sure you don’t irritate anyone; make sure you aren’t disrespected.

But when you’re responsible for yourself, and for others, there’s a chance to learn a new way of life, Brownlee said.

"I found a purpose here," he said. "I found I have a voice. There's power in my voice. I talk a lot, I know."

He’s hoping to find a place in church, as a deacon or preacher when he gets out.

He’s learned this, too:

“Coming here, you find out everybody’s a star in their own way.”

Helping yourself by helping out

Martin, like Kufeld, has volunteered to go back to Building 1 when he didn’t have to.

He’s serving his fourth sentence, and was in line for a plum outside job at another prison when the Department of Corrections assessment identified him as a candidate for Indian Creek.

A big part of the assessment is the offender’s general attitude — and the aim is to target hard cases with a history of substance abuse. The program isn’t meant for everyone, but targets those at the highest risk of re-offending. Although overall figures aren’t tracked, the recidivism rate for sub-set of offenders, about a quarter of Indian Creek’s population, who are sent there directly by a judge’s order is 26%. That’s not quite half the national rate.

Martin had met Lachelle Naar, Indian Creek’s chief of housing and programs, years before at another prison in the DoC system.

“Miss Naar made it perfectly clear that this was mandatory,” Martin recalled. “I said to myself, ‘I’m going to complete this program.’”

Like Crowder, he credits Antonio Davis in his role as a brother’s keeper with helping out, soon after his arrival in Building 1.

"Mr. Davis told me to slow down, telling me it was all going bad if I couldn't," Martin said. (One of the rules at Indian Creek is every man, offenders included, is a Mr. and every female officer a Ms.)

Slow down he did.

That's another big part of the Indian Creek program — reflecting on where you've been and where you're going, and both take time.

As Martin reflected, and finished the three phases of the program, ready to head over to the re-entry side of the prison and prepare for discharge, it came to him that he wanted to help new arrivals. Normally, offenders spend about a year on the re-entry, still going through the program of groups and work, and being one another's brother's keepers.

"I'm here for selling (drugs). The poison I sold — I talk to people in here who use, and I ask where did I go wrong? I'm 47, I'm looking at these younger guys, I want to try to get them to stop," Martin said.

"I got to be straight with myself."

Being honest

As the men Building 4 unit gather for Crowder's group, one, who is due to be released in a couple of days, hands over a final assessment form to another of Indian Creek's elders.

It includes a long list of questions, asking if an offender agrees or disagrees with various notions the program stresses. This offender has mostly ticked off the circles for "neither agree nor disagree" or "disagree somewhat."

It's a form that men in the program will fill out more than once during their stay at Indian Creek and is meant to help staff figure out how well their efforts, and those of the brother's keepers and groups, are working.

The final form will help determine terms of probation for an Indian Creek offender — the prison's term for all of them, by the way, is "returning citizen." The obvious answer to the questions, like the first one about trusting the counselors, is "strongly agree."

But one of the big things Indian Creek's program stresses is being honest, even when it may not seem to your benefit, the elder said.

Does that inmate's honesty mean he'll make it on the outside?

The elder shrugs. Not everyone gets all the lessons the program tries to teach, but he figures at least three quarters will set out on a new path that won't lead them back to prison.

Matthew Smith, who had turned in his form a few days earlier and was set to leave the next day, is feeling good about his prospects.

He's got a job lined up with his brother's construction and pest firm, Hilton Home and Wildlife Services, in King George County.

At Indian Creek, he's learned to confront himself, and what made him drink and mess around with drugs.

And he's learned to be proud of being able to change.

"I've become a leader. I can take a knee, and be a leader from the back, as well as in the front," he said. "Yes, I'm ready."

Success and achievement

Crowder, meanwhile, is asking the men to call out names of successful people.

"Mr. Obama," said one. "Oprah" from another. "Bill Gates."

And:

"Mrs. Scales," said Patrick Scales.

This prompts a question from Crowder:

"Do you have to be rich or wealthy to be successful? Do you have to have a Super Bowl ring or a championship trophy?"

No, said Scales. Mrs. Scales is his mother, and she's successful because she sets goals for herself and then meets them. Then she sets new goals, works to meet them.

"Success isn't something you've done. You keep doing it," Scales said.

"Let's give some love," Crowder says, and the men start clapping.

Scales, too, had volunteered to go back to Building 1 after completing all the phases of the therapeutic community program. For him, it was among other things, a way to feel how well the program took.

"You learn to see that a convict can be good," he said. He learned to see that about himself, and about the others in the community they formed at Indian Creek.

"You need to see Patrick Scales, not Pretty Pat — that's what they called me on the street. I've been learning to recognize myself, who I am, not that Pretty Pat on the street," he said.

Then: "You know, I've never said this. Miss Naar doesn't know this. My great-grandfather was Bojangles Robinson — you know, the dancer," he said.

His father, his brother, the rest of his family have made successes of their lives, he continued.

Naar, sitting nearby, glanced over at him, surprised.

“I ended up on the street,” he said.

But now:

“I want to do better.”