

# Henrico yanks funding for police oversight job after prosecutor hires Black Lives Matter supporter

By **Ned Oliver** - September 30, 2020



*Misty Whitehead was offered a police oversight job by the commonwealth's attorney in Henrico County, but when administrators learned she posts frequently in support of the Black Lives Matter movement on Facebook, they froze funding for the position, effectively eliminating the job. (Ned Oliver/Virginia Mercury)*

Henrico County leaders quietly quashed plans to hire a prosecutor dedicated to investigating complaints of police misconduct after learning earlier this month the lawyer selected for the job made frequent social media posts supporting the Black Lives Matter movement.

The new position would have been the first of its kind in the state, according to Commonwealth Attorney Shannon Taylor, an independently elected constitutional officer who said she was aware of the posts and saw nothing disqualifying about them when she extended the job offer to Misty Whitehead, an Army veteran who has been practicing law in the county for 13 years.

But in an unusual turn of events, Taylor was effectively overruled by County Manager John Vithoukas, who has no formal say in hiring decisions in the prosecutor's office but froze county funding for the position when he was alerted to Whitehead's postings on Facebook, where she wrote about the need for police reform, praised departments working to build bridges with activists and criticized others for their response to protests and demands for change.

"When I saw what I saw I immediately thought, you know, this is not what Shannon Taylor and I discussed," Vithoukas said, calling the writings a clear indication of

anti-police bias. “A county manager can’t tell a commonwealth’s attorney who to hire, but he can recommend whether or not local funds are included to supplement that salary. And in this case, I absolutely will not do it under any circumstances.”

The dispute offers a window into just how contentious and polarizing matters of police reform can become as they filter down from the General Assembly to the local level, raising questions about who will be allowed to serve in new oversight roles state lawmakers plan to create and what perspectives they should bring to their jobs.

In an interview, Whitehead said she considered her life experience and point of view an asset in a position where she would be expected to represent the rights of victims of police misconduct. And she stresses none of her writings are anti-police — just anti-police brutality, calling it troubling that county officials would conflate the two.

“I think what this demonstrates is leadership knows the value of putting the public face forward, making people think reform is happening,” she said. “But when it comes down to the teeth behind the reforms, they’re not willing to commit to that. A lot of folks are pinning hopes on civilian review boards. But once one is created, what teeth is it going to have?”

A native of the Philippines who describes a transient and at times troubled childhood that included giving birth to her first daughter while in the 10th grade, Whitehead joined the Army after graduating to fund her eventual college education. She later enrolled in VCU and attended William and Mary Law School on a full scholarship. After a stint at Williams Mullen, she opened her own practice in Henrico in 2007, where she practices criminal defense and family law.

She says she’s long been passionate about issues of police brutality and social justice and has shared her views frequently and publicly on her Facebook page — a fact she believed would lend her credibility, especially in cases where she decided charges were not appropriate and would have to deliver that news to people making complaints.

Vithoulkas, meanwhile, argues the views she expressed made it clear to him that she would not approach the job objectively and worried her hiring would make it impossible for the county police department to hire and recruit officers. The only post he specifically cited in an interview this week involved photos she shared of herself and her family at the Robert E. Lee monument in Richmond, which was covered in graffiti — much of it anti-police — during a wave of protests following the death of George Floyd in Minneapolis.



The site, which activists have renamed Marcus-David Peters Circle after a high-school teacher shot and killed by a Richmond police officer in 2018 during a mental health breakdown, has morphed into a community gathering place that frequently features dance, music and cookouts drawing a diverse crowd of visitors from around the region and state.

Vithoukas called it a “more innocuous” example, but said he was worried how it would be perceived by police. “If you’re a police officer or a family member of a police officer and you see that, do you come away with any kind of impression?” he said.

*Henrico County Manager John Vithoukas. (Scott Elmquist/ Style Weekly)*

Otherwise, he did not point to any single post she made that he viewed as particularly troubling or concerning. “The whole body of work led me to the conclusion that she could not maintain the objectivity that would be required to do this job,” he said.

In public posts on her Facebook page she sometimes offered sharp criticism of police leadership in other localities. In one, she shared a news story about Richmond Police Chief Gerald Smith opposing a proposal to examine the budget for opportunities to divert police resources to mental health and substances abuse programs. Smith had argued that it would hurt officer morale and imply a “loss of faith and lack of support” for officers, potentially leading to longer response times and police misconduct.

Whitehead chastised the chief’s position, writing, “Honestly, good officers should feel offended that they are being characterized as such petulant toddlers by their own boss. Also — name any other job where your perceived lack of people liking and supporting you gives you the right to not only stop doing your job correctly, but to violate the law and the rights of others???”

She also questioned the differing police responses to racial justice protesters and militia groups that oppose them — a common criticism in the Black Lives Matter movement. She contrasted the friendly exchange between police and gunman Kyle Rittenhouse in Kenosha, Wisconsin, to the city police chief's comments the next day blaming protesters for violating curfew. In a private post visible only to her friends, she condemned officers in Hanover and Goochland for what she viewed as overly familiar interactions between officers and armed groups counterprotesting racial justice events. "The guy is leaning on the squad car, for goodness sake. This is the alliance that is at the root of White supremacy," she wrote. "This is why policing as it stands must go."

In other posts, she delved into legal analyses of alleged misconduct cases. After a grand jury in Kentucky declined to indict officers in the killing of Breonna Taylor, she outlined the conflicting laws at play that in her view made murder charges inappropriate. Instead, she argued the case illustrated the need for further reforms. "I'm right there with y'all, trust," she wrote. "But we have to do this the right way."

And she wrote voicing support for officers and police departments pursuing reforms. After police in Colonial Heights [partnered with a Black Lives Matter activist](#), she wrote "I'm sure both men are catching flak from different sides but kudos to them for recognizing that we must be open to all paths to positive change. The goals of social justice advocates and of law enforcement don't have to be mutually exclusive."

Taylor said the hiring process included a review of her social media accounts and said Whitehead's overall passion figured into her office's ultimate decision to offer her the job. "There was nothing that we saw that said all police are terrible, defund them," she said. "What I saw was thoughtful analysis of the current events we are all living through since George Floyd was murdered and what she was saying was not different than what I had said publicly."

Taylor announced the job on July 1, calling it a "ground-breaking position" that would give county residents the confidence "that if any encounters with police seem wrong and not lawful, the Commonwealth's Attorney's Office will intervene." She listed job duties that included reviewing body camera footage from use-of-force complaints, determining when charges against officers are warranted and serving as a point of contact for citizens and their lawyers to report allegations of misconduct.



*Henrico County Commonwealth's Attorney Shannon Taylor. (Scott Elmquist/ Style Weekly)*

Commonwealth's attorneys' offices are funded by the state and technically independent from the city and county governments where they work. But in practice most local prosecutors look to county officials for extra funds that allow them to pay their employees more than the relatively low base salaries of about \$60,000 a year for an experienced lawyer.

That was the case in the position offered to Whitehead, which would have paid \$121,000 a year through a mix of state and county funds, according to Vithoukaskas, who said he agreed to the new position in concept when Taylor first proposed it to him but grew concerned after someone — he wouldn't say who — alerted him to Whitehead's social media posts.

Though Whitehead had received a formal offer letter on Sept. 1 setting a Sept. 28 start date, on Sept. 17, she received a curt email from the county's human resources department informing her that funding for the position had been frozen.

Taylor said she objected and disagrees with Vithoukaskas' contention that having an aggressive prosecutor for the position would dampen the county's ability to recruit and retain officers. She argued victims of police misconduct deserve the same vigorous representation as any other crime victims.

"Our job is not being the lawyer of the police," she said. "If the community did not feel like they could go and make complaints to the police department directly, then we needed to provide them an avenue to voice their concerns. ... This has been about giving the community confidence that we want to be accountable and transparent in Henrico County's criminal justice system."

Vithoukaskas, meanwhile, said he has no second thoughts about his decision to pull the funding. "I'm absolutely resolute that this is the right decision," he said, adding that Taylor is welcome to hire someone for the job at the base salary without county support.

Taylor says she's still considering her options. "This was a big deal when we made the announcement," she said. "And I want to stay true."

Henrico, a diverse suburb of more than 330,000 outside of Richmond, is governed by a five-member board of supervisors made up of three Republicans and two Democrats, though the county's electorate has leaned Democratic in recent statewide elections. The dispute reflects political tensions that only occasionally emerge in a changing county that prides itself on efficient, drama-free government.

Since George Floyd's death, county leaders have taken symbolic steps to address racial justice issues, removing a Confederate name from a community center and dropping the Rebel mascot from a high school. A proposal to create a civilian review board has drawn more controversy, with some Republican board members [questioning](#) whether independent police oversight is necessary.

Supervisor Tyrone Nelson, a Democrat who represents a majority Black part of the county and proposed the review board in June, called the decision to scuttle Whitehead's position disappointing. He said he reviewed her posts after he was informed the position had been frozen and saw nothing he viewed as an impediment to serving the county in the new role.

"I didn't see anti-police rhetoric," he said. "I just saw somebody who was against police abuse, and I would hope that that's the direction we are going in — not just as a county, but as a country."

GOP members of the board said they backed Vithoukias. "I trust the manager," said Supervisor Pat O'Bannon, a long serving Republican member who is among those who challenged the need for a review board. "He is obviously protecting the county from any future problems. That's his job."

To Whitehead, the episode suggests the county isn't all that interested in police reform.

"The whole role was about police accountability," she said. "Everything I post is about police accountability. If I'm somebody who doesn't meet the bill, he's not looking for somebody that's about police accountability."

*This story has been updated to reflect the content of Whitehead's private Facebook posts, which are visible only to her friends on the platform.*

Ned Oliver

Ned, a Lexington native, has more than a decade's worth of experience in journalism, beginning at The News-Gazette in Lexington, and including stints at the Berkshire Eagle, in Berkshire County, Mass., and the Times-Dispatch and Style Weekly in Richmond. He is a graduate of Bard College at Simon's Rock, in Great Barrington, Mass. Contact him at [noliver@viriniamercury.com](mailto:noliver@viriniamercury.com)



## In one of Richmond's highest crime neighborhoods, a plea for police accountability. 'There's no respect.'

By **Ned Oliver** - July 14, 2020



Leander Vinson, 56, stands outside Gilpin Court, a public housing community in Richmond. (Scott Elmquist/ Style Weekly)

On the outskirts of Gilpin Court in Richmond, Leander Vinson stands tall, carries a cane and wears a revolver on his hip.

The 56-year-old says he's watched as construction crews removed Confederate statues around the city, drawing nationwide attention. But like many residents in the aftermath of George Floyd's death in Minneapolis, he has other things on his mind.

"I understand what the statues symbolize, and I disapprove of that, too," he said. "But I'm more concerned about the way police officers approach men of color. That statue is not yelling and screaming at me. That statue is not throwing handcuffs on me."

With frequent patrols and one of the highest crime rates in the city, the neighborhood's 2,500 residents are more familiar than most with the city's police department, its officers and their approach to fighting crime.

They say they're sick of it.

Residents may disagree on the specifics of reform proposals like defunding the police. But conversation after conversation in the neighborhood returned to a common theme.

“There’s no respect,” Vinson, who moved to Gilpin with his mother when he was six years old, said. “Just because you hang out in the projects, that doesn’t mean everybody is doing drugs, everybody is selling drugs. It’s the neighborhood that I like and the neighborhood that I was raised in.”

Residents complain about aggressive officers approaching friends hanging out outside their apartments. They’re tired of frequent traffic stops made under pretenses they view as flimsy. And they say when crimes that do warrant a fast and decisive response occur, it often feels like police are nowhere to be found.

### **‘Wait ’till your asses turn 18’**

The hostility people in one of Richmond’s low-income, predominantly Black neighborhoods describe is not new, but it rarely makes headlines. One high profile exception came last year, when a city police officer was [filmed](#) threatening a group of children outside a middle school after someone taunted him with an expletive.

“Wait ’till your asses turn 18; then you’re mine,” the officer says before driving away.

Public meetings ensued and promises of discipline and training followed. But the mother of the girl who filmed the encounter, Keisha Curry, said later that nothing about the incident surprised her and initially it didn’t even occur to her to raise a complaint.

“Being that I was brought up and raised in Hillside Court and Highland Park area, I found that officers acted like that on a regular basis,” Curry [said in a subsequent video](#). “I found that to be normal when it came to my area.”



*A police cruiser parked outside a convenience store on the outskirts of Gilpin Court in Richmond. (Ned Oliver/Virginia Mercury)*

The poor relationship is well known to prosecutors, defense attorneys and others who work within the criminal justice system.

The police department has touted its [high homicide clearance rate](#), which it credited in part to community engagement efforts. But before he left office last year, former Richmond Commonwealth's Attorney Mike Herring warned he was seeing a dramatic reduction in cooperation from witnesses and crime victims, making it increasingly difficult to prosecute cases. "Solving crimes and prosecuting crimes are two different things," Herring said of the department's clearance stats. "You can clear a case, but that doesn't say anything about prosecuting it."

The comments came as he pushed city leaders to consider broader causes of crime and develop a response that addressed poverty, housing and education. The effort gained little traction, though Herring, now in private practice, said he's seen renewed interest prompted by widespread protests and calls for reform.

"At some point, communities get over policed," he said in a recent interview. "That's not an epiphany. I'm not sharing a pearl of wisdom about that. ... People are saying, 'Look, I don't need you to be occupying my neighborhoods. I don't need you to be skulking around looking for low level offenders. I need you to help us be a safer community.'"

## **'The police, y'all have earned all this'**

Protesters in Richmond marched every night for a month following George Floyd's death at the hands of police. But while the marches were prompted by a death in



Minnesota, it quickly became clear that the frustration was home grown.

“People protesting right now aren’t really protesting George Floyd anymore,” Councilman Mike Jones told the city’s new police chief, Gerald Smith, when he was introduced to City Council last month. “They’re protesting what’s been going on in Richmond. ... The police, y’all have earned all of this. You really have. You’ve earned it over decades of abuse.”

Smith, who previously worked as a deputy for the Charlotte-Mecklenburg County Police Department in North Carolina, has promised changes to the department, but so far hasn’t delved into specifics. During a conversation with reporters Monday, he began by emphasizing the low morale among officers and asked residents to rally around the department. “If you look across the country, police officers are being vilified,” he said.

Asked about complaints about the department, he said he had heard the issue raised when talking to a community leader and emphasized improving communication between police officers and the public. “Some of those things you’re talking about can probably be solved with very good communication skills,” he said.

Mayor Levar Stoney dismissed the city’s former police chief after a series of conflicts between protesters and police that included the [tear gassing](#) of hundreds of people on Monument Avenue. (His interim replacement, Jody Blackwell, held the position 10 days before stepping down.)

Among the protesters was Gilpin resident Titus Williams. He said he marched for a solid week, stopping only after his legs began to ache from all the walking. Outside his apartment with his seven-month-old son, he said the crowds were no surprise to him or his friends.

“If they see us standing outside or just chilling — we could be congregating with a couple of guys, politicking — and they’ll just pull up, hop out, tell us to stop what we’re doing,” he said. “They just grab you by the arm, grab you by the shirt or something like that, push you up against the car and start checking you.

“It’s regular police brutality, you know what I mean? It’s your average police brutality.”

## Transparency and accountability

Protesters have made an array of demands, ranging from cutting funding to police in favor of other social services to establishing an emergency mental health response system, dubbed the Marcus Alert after Marcus-David Peters, a Black man killed by police in Richmond during a [mental health crisis](#) in 2018.

In Gilpin, residents said the biggest change they want to see is accountability to rein in officers they view as out of control.

“We have some good officers and we have some bad officers,” Padisha Brown said as she walked her dog. Contrary to calls to defund the police, she said she’d actually like to see more police in the neighborhood — not an uncommon sentiment in Gilpin, where there were four homicides so far this year and 67 assaults — but only if the department actually held officers accountable when they mistreat people.

*Protesters call for Governor Ralph Northam to come out and answer their questions outside Capitol Square in Richmond, Va., June 2, 2020. (Parker Michels-Boyce / For the Virginia Mercury)*

“The police and the chief are hiding what the bad officers are doing and it gives them license to do it again,” she said. “And when they do it again, now we’re in the predicament that we’re in now with all the protests going on.”

A majority of City Council members have already endorsed the concept of establishing a police review board with subpoena powers to investigate citizen complaints against the department.

### **‘Police who feel invulnerable’**

Several state lawmakers have proposed creating a similar authority to review local cases at the state level. Claire Guthrie Gastañaga, the executive director of the American Civil Liberties Union of Virginia, suggested the creation of a professional standards board similar to the one currently used to govern lawyers.



“Right now we have police who feel invulnerable,” she said. “They can’t lose their license for misconduct — they have to be convicted of a crime.” And if they get fired by one department, she said, they can simply get hired at an agency next door.

Herring agreed that more transparency could help deter unjustified use of force, but worried that a citizen review board could devolve into a “kangaroo court,” with board members reacting more to public pressure than facts. While in office he said he generally preferred to conduct investigations into police misconduct in-house rather than outsource them to neighboring jurisdictions. That included the investigation into the killing of Peters by police, which Herring ultimately determined [was justified](#), a finding protesters say should be reconsidered.

He acknowledged that reform advocates have generally taken a dim view of allowing prosecutors to investigate allegations of misconduct against police departments with which they have close working relationships. As an alternative, he floated a proposal to create a special detail in the Attorney General’s office dedicated to reviewing and, if necessary, prosecuting police shootings.

Important changes could be made within police departments, too, Herring said. He said the phrase “community policing” has been used a lot in Richmond over the years, but questioned how meaningful its implementation in Richmond has ever been. “If there was robust beat policing, with officers embedded in communities for things other than acute calls for service, I missed it,” he said.

He said the city has also been slow — but still has time — to pursue diversion programs and alternatives to prosecution for low-level offenses, which has meant many people encountering the criminal justice system for low level offenses get punishment rather than help and support.

“Any time where you end up in a community where 60 to 70 percent of residents have had contact with the court system, it’s not a great leap to me that the community is going to resent our presence,” Herring said. “It’s going to lead to this weird disincentive to cooperate. On the one hand people want safer streets, but they don’t want to cooperate with a system that will achieve safety through what they see as harm.

“They see the idea of casting a wide net as more harmful than not, and that’s all we had to offer — a wide net.”

Wherever the debate lands, there’s widespread agreement in Gilpin that the current approach isn’t working. “How many of my friends have had a bad experience with police? Just about all of them, basically,” Vinson said.

Ned Oliver

Ned, a Lexington native, has more than a decade's worth of experience in journalism, beginning at The News-Gazette in Lexington, and including stints at the Berkshire Eagle, in Berkshire County, Mass., and the Times-Dispatch and Style Weekly in Richmond. He is a graduate of Bard College at Simon's Rock, in Great Barrington, Mass. Contact him at [noliver@virginiamercury.com](mailto:noliver@virginiamercury.com)



## In Virginia, records detailing police misconduct and use of force are effectively secret

By Ned Oliver - July 27, 2020

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The White state trooper leaned into the Black driver's car. "You are going to get your ass whooped," he said before pulling the man from the car and making good on his promise.

Virginia State Police Superintendent Gary Settle offered a swift condemnation of the behavior when video of the incident was released earlier this month, promising a criminal investigation.

But otherwise, the department has refused to release details about the trooper, Charles Hewitt, [seen in the footage of the 2019 arrest](#), declining to say whether he's faced other complaints in the past or provide reports detailing them.

In many states, such information would be a matter of public record, including Minnesota, where Minneapolis police quickly disclosed that the officer filmed kneeling on George Floyd's neck had been the subject of 18 prior

complaints, two of which resulted in discipline.

Virginia, however, is one of 23 states in which records of police misconduct are effectively confidential, according to a [nationwide review](#) by WNYC.

Under Virginia public records laws, police agencies can choose to release records detailing complaints. But in practice, they almost never do. Even prosecutors have said they struggle to obtain personnel records from departments when officers face investigations or allegations of misconduct.

It's not just police misbehavior that Virginia law shields from public view. Basic information about how officers use force on a day-to-day basis is hard to come by here. Just 15 percent of the state's law enforcement agencies participate in the FBI's voluntary use-of-force reporting program. And in a survey of the state's 10 largest cities and counties, only one police department provided use of force reports requested by the Virginia Mercury under state open records laws.

Facing questions last week from lawmakers about how troopers are held accountable following complaints, Settle detailed a multi-layered internal review process – variations of which are employed in police departments around the state.

But some lawmakers wondered how those measures square with videos they see of officers brazenly using excessive force or otherwise violating department standards, most recently in the case of Trooper Hewitt.

“Some of the officers look so confident in wrongdoing, it's as though they know that there will be no repercussions,” Del. Don Scott, D-Portsmouth, told Settle. “It looks like the policy and procedure is enough to get rid of folks like that, but nobody does anything about it. ... It looks like no one is enforcing it.”

### **'Watch the show folks'**

In addition to threatening an “ass whooping,” Hewitt is seen describing himself as “a f—ing specimen,” turning to the camera Derrick Thompson was using to [film](#) the interaction and saying, “Watch the show folks.” He then forcefully pulled Thompson, who had been pulled over for an expired inspection sticker, from the car. Officers said they smelled marijuana in the car but found none.

Virginia State Police spokeswoman Corinne Geller issued a blanket denial when asked for information about or copies of complaints Hewitt has faced in the past. Geller cited three exemptions in Virginia's public records laws that she said allowed them to withhold information about Hewitt, saying the department considers them investigative files, personnel records and records of background investigations.

"The department has considered your request," she wrote, "and opted to exercise its statutory discretion ... not to release the documents."

The decision is not exactly surprising. Police in Virginia rarely choose to release such information. Sometimes, information about police misconduct stays under wraps even when prosecutors pursue criminal charges against officers.

This month, Richmond Commonwealth's Attorney Collette McEachin acknowledged that her office and the police department had not been publicly announcing when grand juries handed down indictments for criminal misconduct against officers.

She said that would change going forward, but then refused to provide the name of a city police officer who was recently indicted and is scheduled to be tried next month, meaning for the public to find out about the case, they would have to cross reference hundreds of court records with a roster of the local police department's more than 700 officers — a list of names that is not readily available.

"You're welcome to find it," McEachin [told reporters](#). "The officers name is not hidden, it's on the public indictment. ... Literally, it's in this courthouse."

The Richmond Police Department subsequently [named](#) the officer in response to questions from the Richmond Times-Dispatch, identifying him as Lance Falkena, who is charged with misdemeanor assault and battery.

In other jurisdictions, some commonwealth's attorneys have lamented that not even they can get records of police misconduct from their local departments. Members of the newly formed Progressive Prosecutors for Justice [are backing](#) legislation that would grant them unrestricted access to police reports and disciplinary records.

"One of the things we do not get access to is personnel issues such as complaints for use of force or integrity issues," said Hampton Commonwealth's Attorney Anton Bell. "As the chief law enforcement officer, we want to

be preventative instead of being in a position where we have to respond only after something bad has happened to our communities.”

*A small group of police officers carrying clubs clashed briefly with protesters before leaving the area on Aug. 11, 2018, in Charlottesville, the anniversary weekend of the deadly white supremacist rally that left one dead and dozens injured. (Ned Oliver/Virginia Mercury)*

## **Use-of-force data often shielded**

Residents in some localities have pushed for more transparency not just in misconduct complaints, but how police are using force on a daily basis.

In Norfolk last month, protesters staged a six-day sit-in outside City Hall to demand the city begin releasing reports detailing incidents in which officers shoot, tase, wrestle or otherwise lay hands on someone in the line of duty.

The Virginian-Pilot, which first reported on the city's refusal to release the records, [reported](#) "the secrecy ... makes it impossible to tell whether police use force differently in different parts of the city, or against Black people — or whether any officers have committed a disproportionate number of shootings."

Norfolk is far from alone in its refusal to provide such records. The Virginia Mercury requested documents detailing use of force by police in the 10 largest localities in the state from the weekend of May 29, when protests and civil unrest following Floyd's death spread to cities around the state.

Of the 10 departments queried, only the Fairfax County Police Department provided records in response, disclosing that officers reported using force five times during the time period in question. They released details about three of the incidents, including the names of the officers involved. In the remaining two cases, they provided a general description of what happened but said they were withholding other details because it was part of an ongoing internal affairs investigation.

All of the other departments responded with letters citing exemptions in state public records laws that allow but do not require police agencies to withhold investigative and personnel records. (One agency, the Arlington County Police Department, responded with a denial then wrote four days later to say they actually didn't have any records to provide.)

In Norfolk, city officials responded to the sit-in with a pledge to begin releasing data about police use of force more regularly, though not the reports themselves. "I have reviewed how we release use-of-force data," City Manager Chip Flier [said](#) in a statement. "Releasing this data once a year in the annual report is inadequate. We can and should do better." The city subsequently [committed](#) to spending \$200,000 for an outside analysis of the city's crime and policing data, according to the Pilot.

The city of Richmond began releasing similar data on a monthly basis in 2018 in response to pressure from a coalition of activists who formed a group called the Richmond Transparency and Accountability Project. Members of the group said they began the effort after canvassing and holding town halls with residents of low-income neighborhoods about community problems and repeatedly hearing concerns about the way [police treated residents](#).

Their ultimate goal was to get the city to establish a civilian review board, but that without data documenting the problems, they had trouble convincing city leaders to act. “Unfortunately when the stories from the town hall went to policy makers — people on City Council and the mayor — the response was, ‘Well those are just a few stories and those officers might be bad apples,’” said Eli Coston, a VCU professor who studies policing and anti-LGBTQ hate crimes.

Coston said that, as predicted, the data showed large racial disparities in who officers used force against. But they also found the data was inconsistent and often incomplete, leaving out instances of force that were publicly documented in the press. Most recently, the group found that Richmond police **did not include** any of the numerous uses of tear gas, rubber bullets and pepper spray in response to protests in their June report.

Some experts say they see no downside to compiling and releasing more data about how police do business. In some ways, it would help department leaders more than the public, argues James Hodgson, who directs the criminal justice studies department at Averett University in Danville.

“If I was working at Walmart and people were complaining about me as an employee, as the manager, you’d likely want to know that,” he said. “Corporate America and the private sector have done that for years. It’s called customer service.”

*Protesters calling for police reform rallied outside the Richmond City Jail after George Floyd was killed in Minneapolis earlier this year. (Ned Oliver/Virginia Mercury)*

## Lawmakers debate stronger transparency

Requiring comprehensive use-of-force reporting by all law enforcement agencies in the state is among a range of policy proposals Democrats in the Virginia Senate have said they plan to pursue during the special legislative session scheduled to begin Aug. 18.

Currently the only uses of force police are required to publicly report in Virginia are [shootings that cause death or serious injury](#). But that data, too, is often incomplete, with the Lynchburg News & Advance [reporting last](#)

year that almost 30 percent of major police shootings weren't reported to the state as required under the 2016 law.

The FBI launched a voluntary national reporting project to gather use-of-force data in 2018, but just 76 of the state's more than 400 law enforcement agencies participate, according to the Virginia State Police. That database has its own limitations, only capturing incidents in which someone is hospitalized or killed by an officer.

While Democratic lawmakers have promised to tackle use-of-force data during the coming session, there is less agreement on what kinds of disclosures should be mandatory in the case of misconduct complaints against officers.

Advocacy groups, including the Legal Aid Justice Center, have called on the General Assembly to strike exemptions from the state code that allow police to withhold reports.

But lawmakers say that step is unlikely. Last week, Senate Democrats said they were unable to reach an agreement on proposals to narrow FOIA exemptions that block public access to records detailing officer punishment. Sen. Scott Surovell, D-Fairfax, suggested making the information available to commonwealth's attorneys as an immediate step everyone could agree on.

"Restricting the FOIA exemption is something we talked about as a caucus," he said. "We also talked about having the FOIA commission thoroughly vet that before we explore it on the floor of the legislature. ... We were concerned about the complexity of it overwhelming a special session."

Lawmakers in both chambers are also pursuing legislation empowering local or state-level civilian review boards. Supporters say the bodies would offer due-process to officers accused of misconduct while still bringing sunlight to encounters with police, regardless of whether they're caught on widely-shared video.

Some local governments have already established civilian review boards, but they operate in an advisory-only fashion and members [have sometimes complained](#) that they were provided limited information about complaints and their recommendations were often ignored.

During a hearing earlier this month, Kim Rolla, an attorney with the Legal Aid Justice Center asked lawmakers to pass laws that would allow local governments to give oversight boards teeth, including subpoena power to

compel witness testimony and documents — a proposal backed by at least some in law enforcement, including Richmond’s new police chief, Gerald Smith.

“Civilian oversight when done well ensures that the communities who are most harmed by destructive policing have democratic control over those law enforcement agencies,” Rolla told lawmakers. “But the localities need you to give them the tools to do it well.”

#### **Ned Oliver**

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