



COURTS

Before lawmakers abolished the death penalty, expert public defenders had quietly defeated it themselves

BY: NED OLIVER - MARCH 26, 2021 12:03 AM



📷 Virginia Gov. Ralph Northam, left, looks over a gurney in the death chamber with Warden Larry Edmonds, right, at Greenville Correctional Center prior to signing a bill abolishing the penalty in Jarratt, Va., Wednesday, March 24, 2021. One hundred and two executions were performed at the since the early 1990's. (Pool photo by Steve Helber/AP)

Gov. Ralph Northam signed legislation ending the death penalty in Virginia this week, an outcome that even some of the most ardent abolitionists once doubted they would see in their lifetime.

Behind the scenes, a reform that drew little notice when it came before the legislature almost two decades ago had already made executions a rarity – something lawmakers say helped make this year’s legislative push possible.

The creation of four regional capital defenders offices in 2002 meant low-income people facing a death sentence suddenly had access to an expert team of lawyers. As members of the offices like to put it, they were giving poor people a rich person’s defense.

Only one of their more than 250 clients was ever executed.

“The playing field was leveled, and with a level playing field, the death penalty was going away,” said David Johnson, who directs the Virginia Indigent Defense Commission. “It just changed everything.”

Virginia has executed more people than any other state in the country and, in modern times, was second only to Texas. After the capital defenders office began taking cases, the number of death sentences plummeted. The last was handed down 10 years ago and life sentences are now the default punishment for those found guilty of capital murder, according to state court records.

The office was created by a Republican-controlled General Assembly at a time when capital punishment enjoyed widespread public support. The decision came as the quality of legal representation available to indigent defendants was drawing growing scrutiny nationwide, brought to the forefront by an infamous case out of Texas in which a condemned man’s conviction was reversed because his court-appointed lawyer slept through parts of his trial.

Virginia hadn’t contended with a similarly glaring example of poor representation, though in 1985 it did [come within nine days](#) of executing Earl Washington, who was later exonerated. But then-Sen. Ken Stolle, a Republican from Virginia Beach, told the Washington Post at the time that he proposed the bill to avoid any potential mishaps. The article was one of the few mentions of the reform, which flew under the radar of even longtime opponents of the death penalty in the legislature.

In an interview this week, Stolle, now serving as sheriff in Virginia Beach, said that while he opposes the decision to abolish the death penalty without stronger sentencing laws, he is happy with the impact the capital defenders office had on the criminal justice system. “I think it went a little further than I thought it would,” he said, “but I think a lot of people didn’t realize the problems (with the old system).”

Before the offices were created, indigent defendants facing a capital murder charge were either represented by local public defender offices, which were often overworked and lacked expertise in death penalty cases, or private court-appointed lawyers, who also had limited experience with the cases and had to get the trial judge’s approval for all but the most basic expenditures.

Often, those court-appointed lawyers were reluctant to seek extra time to prepare motions or ask for more funding for outside experts out of concern for upsetting the trial judge, who

could decide whether they would be appointed to represent defendants in future cases, said Douglas Ramseur, a criminal defense lawyer who was among the first hires at the capital defenders office in central Virginia and worked there off and on for 18 years.

“It affects you when you know that judge controls the purse strings,” he said. “If you were putting up a fight that a judge didn’t think was the right fight or you were taking longer than the judge wanted it to, maybe you wouldn’t be appointed in the next case.”



Gov. Ralph Northam signed legislation abolishing the death penalty Wednesday outside Greenville Correctional Center, which houses the state’s execution chamber. (Ned Oliver/Virginia Mercury)

He compared the constraints of the old approach to the outcome in a recent case in Louisa County where his client in a capital case took issue with a life-size portrait of Robert E. Lee in the courtroom. Ramseur filed a motion to have it removed before the trial. “I came in defending my African-American client who said, ‘I don’t think that’s appropriate in this courtroom,’ ” he said. “That’s something that would have been much harder for a local lawyer serving at the pleasure of the judge to do.”

In addition to independence and expertise, the new offices brought more resources, said Johnson, the Virginia Indigent Defense Commission’s director, who oversees the offices.

Each office employed investigators and mitigation specialists, who probed their clients’ backgrounds for information that could be presented in the event of a guilty verdict to help explain the circumstances that led up the crime, for instance childhood trauma or an

intellectual disability. “We had cases where we sent mitigation specialists and defense teams to Central America to villages to see where people grew up in horrific conditions,” Johnson said. “We sent people to Eastern Europe to look into their backgrounds.”

With the information they were able to dig up, he said juries were often unwilling to hand down death sentences. In other cases, it never got to that point because once prosecutors learned what the defense team had, they were willing to take death off the table.

Henrico County Commonwealth’s Attorney Shannon Taylor, who supported the death penalty repeal, agreed that investigative resources in particular made an impact. “Their ability to dig deep into individuals being charged, be it underlying mental health issues or other mitigating factors, meant the community – the jurors listening – have more information to consider,” she said. “When they have more information, it leads to the conclusion the death penalty is not appropriate.”

The anecdotal accounts are backed up by academic reviews. Brandon Garrett, a professor at Duke University School of Law, called the creation of statewide capital defenders the biggest factor in the nationwide decrease, citing a [2019 article](#) he wrote on the subject, which found the establishment of the new offices correlated more strongly to reduced death sentences than other influences, such as a declining homicide rate.

He said the impact was particularly striking in Virginia, where before the office was created, death penalty trials typically lasted just a day or two, with the defense sometimes calling hardly any witnesses. He said that changed after the capital defenders began taking clients, with the defense now bringing the bulk of the experts and witnesses called at sentencing.

“In Virginia, the impact was so clear and dramatic, because prosecutors started to fail to get death sentences when they sought it at trial,” he wrote in an email.

Unlike the creation of the capital defenders office, the death penalty repeal passed this year with almost no Republican support, with GOP lawmakers in the House arguing it should be reserved as an option for the “worst of the worst.” During floor sessions, they rehashed gruesome crimes and held up pictures of crime victims.

Democratic lawmakers countered that the expense of keeping the law on the books – namely the cost of bringing capital defendants to trial and then through a long appeals process – and the possibility of a wrongfully convicted person being executed outweighed any arguments in favor of the punishment, especially when it’s not being used.

At Wednesday’s signing ceremony, Northam stood outside the state prison that houses the death chamber with the bill’s patrons, Del. Mike Mullin and Sen. Scott Surovell, and advocates who have for years pushed for the penalty’s elimination. “It’s the moral thing to do,” Northam said.

Supporters of the step say there’s plenty of credit to pass around, citing activists who have worked on the issue for decades, a political shift in Virginia that gave Democrats unified

control of state government for the first time in two decades, and Northam's endorsement and work behind the scenes to bring along reluctant members of his party.

But Surovell said the work of the capital defenders also played a big role in bringing along some of his more reluctant colleagues, a sentiment shared by other lawmakers at the event.

"I don't think there's any question that the lack of people on death row and the lack of sentences in the last 10 years helped legislators feel that this punishment was out of step with where Virginians are today," he said.

The capital defenders office will close in the coming months as they wrap up their cases, in which prosecutors have all already agreed not to seek the death penalty. The roughly \$3 million in funding that paid for the offices is being shifted to cover the cost of opening a new public defender office in Chesterfield, which is one of the largest localities in the state without an office dedicated to indigent defense. The budget is also being increased to help fund additional defense resources at the appellate level as lawmakers prepare to expand the jurisdiction of the Virginia Court of Appeals.

"These incredibly dedicated people worked themselves out of a job, which is remarkable," Johnson said. "And they knew it would happen some day."

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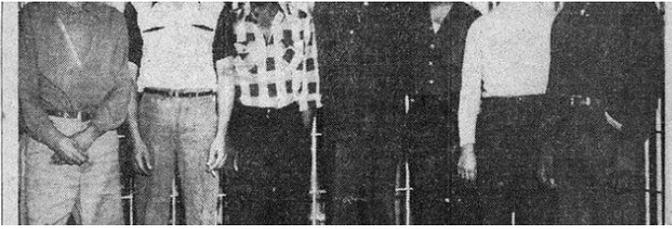


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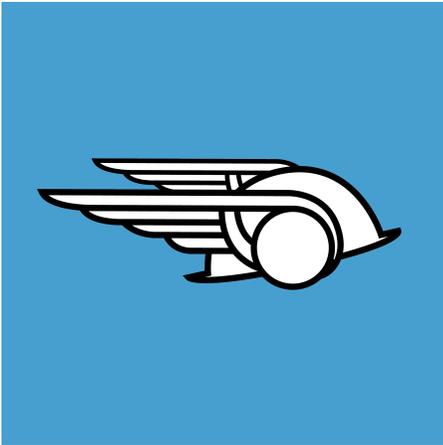
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COVID-19 CRIMINAL JUSTICE + POLICING

Drugs continued to flow into Virginia prisons amid pandemic, raising concerns about corrupt staff

BY: NED OLIVER - MAY 24, 2021 12:02 AM



 The perimeter of Greenville Correctional Center in Jarratt, which is comprised of multiple layers of fencing, razor wire and guard towers. (Ned Oliver/Virginia Mercury)

For years, prison officials in Virginia have focused on visitors as they sought to crack down on the flow of drugs and contraband to incarcerated people.

They [strip-searched children](#), banned menstruating women [from wearing tampons](#) and limited the number of people prisoners could put on their [visitors list](#).

So when the coronavirus pandemic hit, halting all in-person visitation for more than a year, did drugs suddenly become scarce behind bars?

Not really, according to data tracked by the Virginia Department of Corrections. The records show the rate of positive drug tests ticked up while the number of drug seizures and overdoses dipped only slightly.

The results of what was effectively an unplanned experiment come as no surprise to prisoners, advocates and employees in the facilities, who say it's common knowledge within the system that corrupt staffers are largely to blame for the problem.

"The reality is and always has been that the overwhelming majority of contraband that enters prisons comes through staff," said Shawn Weneta, who served 16 years in Virginia prisons before he was conditionally pardoned last year. "It was just a known fact, part of the everyday thing – like speeding on the highway."

Three current and former Department of Corrections employees agreed with Weneta's assessment, pointing to low pay, low morale and lax security screening of staff that makes bringing contraband into facilities both tempting and easy.

"Think about it, basically they send you through a metal detector – a lot of places you don't have to take off your shoes; it's just a pat down. People just tape it somewhere," said a corrections sergeant, who spoke on the condition that he not be named because he feared retaliation by administrators.

Department of Corrections spokeswoman Lisa Kinney did not respond directly to questions about whether administrators share the view that staff members are largely to blame for contraband entering facilities, saying only that the department takes immediate action if an employee is caught or suspected of bringing in drugs.

"If the introduction of contraband is confirmed, the local commonwealth's attorney decides whether to bring criminal charges," Kinney said.

Prosecutors have brought a variety of cases against corrections officers and other staff over the years. A former guard at Red Onion State Prison, a maximum security facility in Wise County, [pleaded guilty](#) earlier this year to bringing tobacco, marijuana, suboxone, MDMA and heroin to inmates. A high-profile bust in 2016 saw three guards at Buckingham Correctional Facility [accused](#) of working with a multi-state gang to smuggle drugs into the facility.

Kinney was unable to provide statistics showing how often staff are disciplined or dismissed for such misconduct. In a series of emails, she emphasized alternative avenues for drugs to enter facilities in the absence of visitation, including the mail. At most facilities, prisoners are provided photocopies of incoming letters and cards, with the originals destroyed – a change that was implemented in 2017 to prevent drug soaked-papers from reaching prisoners. But Kinney said items that can't be photocopied, like books, newspapers and magazines, continue to be a problem. She also said corrections officers have been finding drugs dropped at fences.

Prisoners and staff interviewed for this story said that while drugs do enter facilities in the way Kinney describes, they doubted it would account for most of the illegal drugs behind bars, especially given the requirement that all books and subscriptions be mailed directly from publishers. They also noted it would be impossible to use the method to smuggle bulkier drugs like marijuana, which they said is prevalent enough in some facilities guards turn a blind eye when they smell it among prisoners.

Likewise, everyone interviewed acknowledged that drugs did come into facilities through visitation. But they said it accounts for a relatively small amount of the contraband that's available at any given moment, which in addition to drugs includes cell phones, luxury headphones and cash.

Statistics on drug seizures shared by the Department of Corrections back up that account.

Total drug seizures logged by the department went from 967 in 2019 to 871 last year, when visitation was cancelled 10 weeks into the year as the pandemic began. That represents a 10 percent drop, but it also came as the department saw the number of prisoners it was housing fall nearly 20 percent.



📷 The perimeter of Greenville Correctional Center, which is protected by multiple layers of fencing, razor wire and guard towers. (Ned Oliver/Virginia Mercury)

Drug overdoses logged by the department fell in 2020, but were still relatively consistent with 2018 numbers, going from 49 in 2018 to 87 in 2019 to 45 last year.

Finally, the percentage of positive drug tests ticked up from 2.5 percent to 2.9 percent in the 12 months since visitation was ended, according to the department, although Kinney noted fewer tests were conducted as a result of the pandemic.

While visitation does not appear to be a significant factor in the trends, it has been the overwhelming focus of the department's efforts to crack down on drugs. Advocates say the push has come at the expense of incarcerated peoples' ability to stay connected with family – something studies have found is an [important factor](#) in reducing recidivism.

In 2017, the department implemented a [new policy](#) that required prisoners to be strip searched and change into state-issued underwear and jumpsuits before entering the visitation room. After the visit, they change back into their standard prison clothes and undergo another strip search.

The next year, the department began banning women who were menstruating from wearing tampons, a policy that coincided with the use of new body scanning technology aimed at detecting contraband hidden in body cavities. “There have been many instances in which visitors have attempted to smuggle drugs into our prisons by concealing those drugs in a body cavity, including the vagina,” Kinney [said at the time](#).

Gov. Ralph Northam's administration quickly walked back the policy after it drew national attention, though prison officials have [since said](#) that if a scanner detects a tampon, the visit is only allowed to continue on a no-contact basis, either through a glass partition or video feed.

Beginning last year, the department began limiting each prisoners' visitor list to 10 people, citing concerns that incarcerated people were setting up visits with people they didn't really know with the sole goal of smuggling contraband.

“They're ingenious,” Secretary of Public Safety Brian Moran said when [the policy was announced](#). “Where there's a will, there's a way.”

Later in the year, The Virginian-Pilot revealed prison staff had been [subjecting people](#) visiting loved ones to strip searches, threatening to permanently ban them from seeing their family members unless they consented. The paper reported minors ranging from infants to teenagers had been subjected to the practice.

Lawmakers banned the department from strip searching minors last year. Adults can still be strip searched but the department is prohibited from barring people from future visits if they refuse.

Shannon Ellis, a lawyer with the Legal Aid Justice Center who represents women incarcerated at Fluvanna Correctional Center for Women, said the crackdown on visitation has discouraged prisoners from seeing family members, making it more difficult to maintain relationships she says are critical to her clients' mental health.

“The searches are sometimes so invasive that people will tell family members not to come because they don't want them to be subjected to it,” she said.

She said it's been easy for the state to blame prisoners for the contraband problem and hopes that the experience during the pandemic leads the Department of Corrections to focus on other avenues that don't limit family connections.

"It's a convenient narrative for DOC," she said. "Once drugs get into prison, it's hard to say how they got there. COVID has really changed that."

Weneta, who helped launch a CPR program in response to overdoses before he was released and now works as a legislative liaison for the criminal justice reform group the [Humanization Project](#), framed it as a life-and-death situation.

"People are dying because this contraband is coming in and officers are trying to turn a buck," he said. "It's disappointing and even shameful that DOC isn't taking steps need to clamp down on staff because they're embarrassed by the optics."

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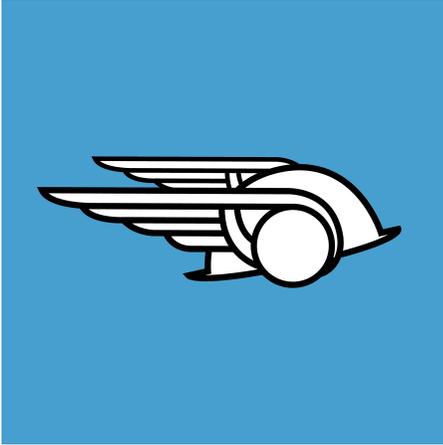
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CRIMINAL JUSTICE + POLICING

New data shows Virginia police are more likely to stop and search Black drivers

BY: NED OLIVER - MAY 19, 2021 12:05 AM



📷 A police car in Richmond, Va. (Ned Oliver/Virginia Mercury)

Black drivers in Virginia are almost two times more likely than White drivers to be pulled over by police and three times more likely to have their vehicles searched, according to data collected under the state's new Community Policing Act.

The records offer a first-of-its-kind look at traffic enforcement in Virginia, even as the disparities they document do not come as a surprise.

“Sadly, the data shows what Black Virginians have known all along,” said Da’Quan Marcell Love, the executive director of the Virginia State Conference NAACP. “We’ve been saying this for years. And the question now becomes, what is the General Assembly going to do about it?”

Virginia launched the mandatory data collection in July, requiring police all over the state to begin documenting demographic data about who they stop and for what reasons. The records also detail whether a search was initiated and any enforcement action taken.

The first six months of data, [published publicly](#) earlier this month, includes details of more than 400,000 traffic stops from nearly every police and sheriff’s department in the state.

While the state’s Department of Criminal Justice Services is tasked with conducting an annual analysis of the records, a preliminary review by the Virginia Mercury shows Black Virginians bore the brunt of roadside traffic enforcement, accounting for 30 percent of traffic stops despite representing just 19 percent of the state’s population.

Hispanic drivers accounted for 9 percent of stops, about equal to proportion of the population they represent.

Non-Hispanic White drivers were less likely to be pulled over, representing 55 percent of stops and 61 percent of the population.

And Asian and Pacific Islanders were the least likely to be pulled over, accounting for just two percent of stops and nine percent of the population.

The data shows police were most likely to single out Black drivers for minor offenses like equipment violations as well as “Terry stops,” which police base on suspicion a driver is engaged in criminal activity. In both categories, Black drivers were twice as likely than White drivers to be pulled over.

Black drivers were also the most likely to have their vehicles searched, though the data suggests those searches were less likely to turn up the contraband police were looking for, with 23 percent of searches involving a Black driver ending in an arrest compared with 27 percent of White drivers.

The patterns [track closely](#) with research conducted in North Carolina, which has required police to collect similar data for years.

Police cautioned that the data is preliminary and the program is new. “It’s a slippery slope to go down, interpreting this,” said Dana Schrad, the executive director of the Virginia Association of Chiefs of Police. “People get stopped for violating the law.”

She argued that it’s often impossible for officers to detect the race of a driver before they are stopped and noted enforcement often follows public complaints about crime, speeding and other problems.

Local police officials also said it was premature to draw conclusions from the data. Police in Prince William County [told the Prince William Times](#) that they are “ready to adjust our traffic enforcement efforts if necessary” but that “it would be misleading and irresponsible to draw any conclusions at this point.” Black and Hispanic drivers accounted for more than 57 percent of stops in the county.

Bryan Kennedy, a public defender in Fairfax, questioned the suggestion that police don’t know the race of a driver when they initiate a stop, noting that while it may be true in some cases, officers also frequently describe in their reports initiating stops because a driver matched a suspect’s description.

But he agreed that the numbers are likely a reflection of where police are choosing to conduct enforcement. “It’s where police are observing people commit these traffic violations, which is communities of color,” Kennedy said.

Community leaders said targeted enforcement doesn’t excuse the disparity.

“It may not be intentional, but if you’re constantly in one community, what happens is you tend to stay in that community and you tend to over fine and fee that community, and then it becomes disproportionate and becomes bias-based profiling,” said the Rev. Keith Savage, a Baptist minister in Manassas who co-chairs Virginians Organized for Interfaith Community Engagement. “People speed everywhere, whether you live in a wealthy community or not.”

Savage said that while the data may not come as a surprise, he hopes it will serve as a jumping off point for further investigation and change.

At the state NAACP, Love was less enthusiastic about the study, saying it would have been cheaper to simply listen to Black people who have for years been complaining about disproportionate stops. But with the data in hand, he said lawmakers need to act immediately to address the problem. “If we cannot as a commonwealth stop or detain drivers equitably, then maybe we don’t need to stop folks at all,” he said. “Is having our public safety officers pull people over because they need to change a light bulb – is that the best use of taxpayer dollars?”

Del. Luke Torian, D-Prince William, who sponsored the Community Policing Act, said he’s not pursuing any immediate legislative changes at this point, but hopes local departments will reflect on the results and pursue change internally. “Now we can hopefully do a better job of policing our community,” he said.

Del. Lamont Bagby, D-Henrico, who chairs the Virginia Legislative Black Caucus, took a similar view, citing his time on the local school board as it grappled with disproportionate arrests of minority students after data made clear the extent of the problem.

He’s hoping for a similar reckoning with traffic stops. “To be frank with you, the data is important so that people will believe us,” he said.



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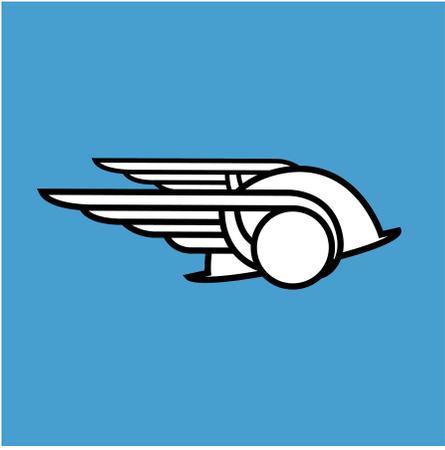
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