**COMPARISON OF POLICE REFORM PROPOSALS**

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| **Topic/Issue Area** | **Senate Democrats (SD)** | **LegislativeBlack Caucus (VLBC)** | **Comments** |
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| **Addressing Racism Generally** |  |  |  |
| Declare racism public health crisis | n/a | yes | “Racism” will have to be defined. Will this be the same type of “public health crisis” that is now in law in which the Governor and Health Commissioner can take unilateral actions by executive order? |
| Uncover racial disparities in all areas of policy and create solutions to bridge the gaps | n/a | Yes | Very broad. Hard to envision the legislation that would be introduced to implement this. |
| Expand hate crimes to include false 911 calls based on race | n/a | Yes | There is not a separate penalty for “hate crimes.” Some offenses, assault, for example, carry an enhanced penalty, or a mandatory minimum sentence, if committed because o f the victim’s race, religion, gender, etc. In current law, falsely summoning police is a Class 1 misdemeanor. |
| **Police Accountability, Training, and Regulation** |  |  |  |
| Civilian review boards | Yes | Yes | Local option under SD proposal. Not sure about VLBC proposal. Sounds good, but there are some complex issues, such as jurisdiction, subpoena power, qualification and training of members, etc. |
| End qualified immunity and amend sovereign immunity | n/a | Yes | Qualified immunity is a doctrine established by U.S. Supreme Court; not sure if state legislature can have any effect on it. State and local sovereign immunity can be modified; complex issues involved. |
| Standardize and reform police administration, training, and accountability | n/a | Yes | The Code currently requires that all law-enforcement officers meet the minimum training standards established by the Criminal Justice Services Board. It is not clear what else the VLBC proposal would entail. The detailed proposals by the Senate Democrats may provide a clue. (See items below.) |
| Increase reporting of incidents | Yes | Yes | SD would require comprehensive reporting of all law enforcement agencies, including use of force data. (Current law requires the State Police to establish a uniform crime reporting system and for all local law-enforcement agencies to enter incidents into that system. State Police is also required by law to report all officer-involved shootings. Other use of force would be an additional requirement and would entail a cost to implement.) VLBC would require courts to publish racial and other demographic data of all low-level offenses. (Getting the courts to publish racial and demographic data of any sort has long been a struggle. To have it done for all “low-level offenses” would be a massive and expensive undertaking.) |
| Police decertification | Yes | Yes | VLBC would expand decertification criteria. SD would establish a decertification procedure. I don’t think there are currently any “certification” requirements for law enforcement beyond complying with minimum training requirements, so a process would need to be established. DCJS would be likely agency to implement such requirements; some additional staff would likely be needed. |
| Establish statewide officer database | n/a | Yes | Dept. of Criminal Justice Services has a database for tracking individual officers’ compliance with training requirements. |
| Prohibit hiring of officers fired or who resigned during use of force investigations | Yes | n/a | This is closely related to the establishment of a decertification process. It would have to be carefully worded to protect the officers’ due process rights. |
| Expand use of body cameras | n/a | Yes | State and local law enforcement may utilize body cameras now and many do so. It is not clear if the VLBC means to mandate the use of body cameras. There are significant policy issues involved, as well as providing for the added expense created by body camera use. |
| Require independent investigation of all police-involved shootings/deaths | n/a | Yes | This would seem to fall under the jurisdiction of the civilian review boards called for. |
| Ban sex with individuals arrested by law enforcement | Yes | n/a | A no-brainer. In an analogous situation, currently it is a crime for a correctional officer to have sex with a prisoner. |
| **Use of force** |  |  |  |
| Define and restrict excess use of force | n/a | Yes | Difficult to accomplish in Code language. The specific SD proposals (to follow) attempt to do this. |
| Ban use of chokeholds | Yes | Yes |  |
| Prohibit no-knock warrants | Yes | Yes |  |
| Require attempts at de-escalation prior to use of force | Yes | n/a | Going to be tough to define what constitutes a sufficient “attempt”. Will yelling, “Stop or I’ll shoot!” be enough? |
| Require warnings before shots fired | Yes | n/a | See previous comment. |
| Require law enforcement to exhaust all other means prior to shooting | Yes | n/a | Nice idea, but going to be tough to implement. Will need to have some contingency language; otherwise a prosecutor or a lawyer suing the officer could probably always point to “other means” the officer could have used. |
| Create duty to intervene by fellow law enforcement officers | Yes | n/a | This is an attempt to crack the Blue Wall of Silence. Sounds good in theory, but could have negative results on police morale. How would this be implemented? Would a police officer who did not intervene or report a use-of-force infraction be charged with a crime or be decertified? |
| Prohibit shooting at moving motor vehicles | Yes | n/a | Probably a good idea, except in cases in which the driver of the motor vehicle is trying to run the officer down. |
| Require departments to use a use-of-force continuum | Yes | n/a | This comes under the heading of police best practices. Good idea. Its usefulness will depend on the details of the continuum. |
| Restrict use of tear gas and militarization tactics and weapons against civilians | n/a | Yes | I assume “civilians” means folks who are not in the act of committing a violent crime. The usefulness or possible harm from this proposal will depend on how far the proposed legislative language goes in defining “restrict”. |
| Cancel 599 funding for localities in which police have had a disproportionate number of use of force incidents | Yes | n/a | This is aiming to hit them where it hurts—in the pocketbook. Of course, it would not really hurt the police, per se, because 599 money goes into the general fund of the local governments. Also, it would do nothing to those counties in which sheriffs may use a lot of force, because they don’t get 599 money. Key will be defining “disproportionate”. Would justified cases of use of force be included in that number? |
| **Reduction of role of law enforcement in certain circumstances** |  |  |  |
| Use mental health professionals to respond to situations involving mental health crises (“Marcus Alert”) | Yes | Yes | VLBC would require mental health professionals to respond. SD proposes establishing a system for reporting acute mental health crisis |
| Reduce the use of police as School Resource Officers and replace with mental health professionals | n/a | Yes |  |
| Divest from law enforcement budgets and invest more in communities | n/a | Yes | Broad aspirational goal. Details not provided. Would have to be done mostly at local level. |
| **Changes in court systems and processes** |  |  |  |
| Make it easier to expunge criminal records | Yes | Yes | VLBC proposes “automatic” expungement. More details needed. SD proposes “enhancing” courts’ ability to expunge charges for dismissed charges, substance convictions, and pardoned offenses. Under current law, the burden is on the individual to petition the court for expungement of records. |
| Reform cash bail process | n/a | Yes | Some Commonwealth’s attorneys (including Richmond) have announced they will no longer request the courts to require cash bail. There has been a national movement to limit the use of cash bail. The GA has requested the Virginia Crime Commission to study this issue. |
| Confirm authority of prosecutors to drop charges | Yes | n/a | See recent [discussion](https://www.baconsrebellion.com/wp/senate-democrat-promises-on-police-reform/) in Bacon’s Rebellion. |
| Make jury sentencing optional for defendant | Yes | n/a | Currently, juries recommend sentences. In setting the sentence, a judge may impose a lesser sentence than recommended by the jury, but not a higher one. Virginia is one of only six states that has jury sentencing (it seems to have originated with Virginia). This is a Virginia tradition whose time to go is now. Juries do not have the information available to judges to make appropriate sentences in individual cases. Judges have the sentencing guidelines, which help bring statewide consistency to sentencing. |
| Eliminate prosecutors’ right to demand jury trial when jury trials suspended for state of emergency | Yes | n/a |  |
| **Racial profiling** |  |  |  |
| Prohibit searches of persons or vehicles based on odor of marijuana without probable cause for other offenses | Yes | n/a |  |
| Prohibit traffic stops for equipment violations not covered by state vehicle inspection | Yes | n/a | It is difficult to understand how this proposal will do much to curtail stops on equipment pretense. Tail lights, brake lights, and rear turn signals are covered by state inspection. |
| Make it a secondary offense for vehicle to have dangling objects, extinguished tag light, illegal tinted windows, or loud exhaust | Yes | n/a | This is related to the previous proposal and the comment is relevant, as well. |
| **Corrections reforms** |  |  |  |
| Earned sentence credits | Yes | Yes | VLBC would increase sentence credits; SD would “allow”. Current law provides that inmates can up to 4.5 days of credit for each 30 days saved (15 percent). |
| Reinstate parole | n/a | Yes | Obviously a controversial and complex issue. The 2020 GA asked the State Crime Commission to study parole. |
| Provide discretion for compassionate release of terminally ill or permanently disabled inmates | Yes | n/a | The Governor currently has authority, under the state constitution, to grant conditional pardons. The Governor’s office has specific criteria for conditional pardons for terminally ill inmates. There is no specific procedure or criteria for permanently disabled inmates, but the Governor, could, under his conditional pardon power, establish such a procedure and grant conditional pardons to such individuals. It is likely that the SD proposal is meant to extend that authority to the Parole Board. |
| **Criminal law changes** |  |  |  |
| Repeal provision that makes it a felony to assault a law enforcement officer ; reduce offense to misdemeanor, which is general classification for assault | Yes | n/a | There has been considerable [discussion](https://www.baconsrebellion.com/wp/blue-lives-dont-matter/) of this proposal on *Bacon’s Rebellion*. |
| Legalize marijuana | n/a | Yes | There has been considerable [discussion](https://www.baconsrebellion.com/wp/virginia-marijuana-reform-outlook-for-2020/) of this proposal on *Bacon’s Rebellion*. |
| **Other** |  |  |  |
| Require agencies to determine cost savings for introduced criminal justice legislation | Yes | n/a | Sometimes fiscal impact statements factor in savings to provide a net cost. However, prospective savings are harder to project, often involving assumptions that may be more open to question. Furthermore, “savings”, while real, can be actually be “cost avoidance” rather than a reduction in current expenses. |