

Thank you, Mister Chair. And good morning, Senators. Thank you for the opportunity to speak with you today.

As Chairman Edwards mentioned, my name is Kim Rolla and I am the interim director of Legal Aid Justice Centers' Civil Rights & Racial Justice program. We are a civil legal aid program, so I imagine some of you may be wondering why we are here discussing the criminal legal system. LAJC believes that we cannot be an effective anti-poverty organization without addressing racism. And we believe that both effective anti-poverty and race equity work require us to address the criminal legal system. First, there is disparity: our low-income clients are more likely to interact with the police and the criminal legal system. Second: that contact is itself often a vector of poverty, destabilizing our clients through the loss of housing, employment, and financial resources.

We have already partnered with many of you on work this area. For example:

- The Senate's historic bipartisan – and nearly unanimous – repeal of the statute suspending driver's licenses for non-payment of court debt, trapping Virginians in a cycle of debt and incarceration. A repeal that led the way for efforts now spreading across the country. We are grateful for both Sen. Stanley and Sen. McClellan's leadership on these issues and the support from many of you on this joint committee.
- We've worked with some of you to address our pretrial system in Virginia: (1) Pushing for uniform statewide data on who is in our jails pretrial and why, as nearly 46% of our jail population is there awaiting trial; (2) fighting to guarantee a meaningful first appearance in court, where those detained have access to lawyer and the ability to present bail arguments the very first time they are before a judge; and (3) attempting to strike presumptions against bail that turn the presumption of innocence on its head. We do this work because we know incarceration for even a few days can cause serious harm, leading to the loss of employment, housing, limited access to medical care, and much more.
- And we have worked with members of these committees to guarantee that no Virginia student will be criminalized in the classroom, on the school bus, or at a school event for "disorderly conduct" that would not be criminal elsewhere.

This is a historic moment to continue that work, an opportunity to boldly advance criminal legal system reform that will improve that lives of all Virginians, but particularly poor Virginians and Virginians of color.

The twin crises of the global COVID-19 pandemic and the murder of George Floyd by a Minneapolis Police Department officer have forced a reckoning with an ugly, old truth: Black Americans face brutal disparities in nearly every U.S. System. Structural racism permeates our healthcare (as evidenced by disparities in COVID-19 deaths), our housing (as evidenced by who will be hit hardest by the coming avalanche of evictions), and – of course – policing. Policing is but one branch of the tree of American violence against Black communities, a tree that has deep historical roots. But it is one we cannot afford to delay action on any longer. LAJC is grateful for the General Assembly's recognition of the need for an expanded special session to address both the emergency of the COVID-19 pandemic and the urgency of criminal legal system reform.

I would like to spend most of my time with you talking about specific legislative priorities that have grown from LAJC's work alongside our client communities. But I would be remiss to not first note that people around this state have been living, talking, and thinking about these issues for a long time. Those directly impacted communities must lead these conversations. They are working on a broader set of

reforms than I could ever cover in fifteen minutes. I want to lift up those partners that are not here presenting today and the importance of their efforts, for example, ending pretextual policing, marijuana reform, and others, some of which you have already begun to take on. LAJC will remain involved in some of those conversations as they move through the General Assembly, following the lead of the communities most impacted by these policies. I extend the offer to connect any of you with the advocates and community members that we are in relationship with. Our legislation will be the better for it.

Now, turning to our work, LAJC's police accountability priorities this special session have grown out of deep work with our client communities at the local level. In the wake of Charlottesville's deadly Unite the Right Rally in August 2017, we helped the community organize for, and eventually succeed in establishing, the 3rd civilian oversight body (or "Civilian Review Board") in the state. That same year, we began working with multiple community organizations in Richmond fighting for civilian oversight of their police department. Just last month, that group succeeded in introducing an ordinance to Richmond City Council to establish civilian oversight in their city. These years of working alongside community members have taught us invaluable lessons about what local communities need from you (their legislature) in order to provide effective community oversight of law enforcement agencies.

The Problem is that localities are not currently explicitly authorized by statute to form civilian oversight bodies. These bodies are advisory-only. They have no clear mechanism to compel witnesses or the production of documents. And they are only able to issue unenforceable "recommendations." After deep listening to communities engaged in these efforts, our proposed Solution is for the General Assembly to pass enabling legislation giving localities three explicit powers to create meaningful police oversight.

1. Explicitly empower localities to establish civilian oversight bodies for the purpose of overseeing a law enforcement agency within their jurisdiction.
2. Enable localities to vest civilian oversight bodies with *subpoena* and *subpoena duces tecum* power permitting them to directly request the Circuit Court in their jurisdiction to compel the appearance of witnesses and the production of documents related to its oversight of a law enforcement agency.
3. Allow localities to give oversight bodies final disciplinary authority regarding certain civilian complaints. To achieve this third objective, the General Assembly must also remove the certain statutory barriers in related grievance procedure laws. I'm happy to talk about exactly what those are if there are questions.

Civilian oversight - when done well - ensures that the communities most harmed by destructive policing have direct democratic control over those law enforcement agencies. But localities need you to give them the tools to do it well. That said, civilian oversight itself is just one step towards addressing a fundamental power imbalance.

Two other issues that we see as deeply connected to our community driven police accountability work - and capable of being addressed in special session - are (1) ensuring public access to law enforcement disciplinary records and (2) reinstating the moratorium on criminal fines and fees' interest accrual and collection efforts.

The problem with the FOIA black box around law enforcement is that due to Freedom of Information Act exemptions, the public currently has no right to access information regarding if and how law enforcement officers are disciplined for specific instances of misconduct (this includes excessive uses of

force and even deadly uses of force) or to identify law enforcement officers who engage in a pattern of such behavior. Our Proposed Solution is to strike the current FOIA exemption for law enforcement disciplinary records. This would provide Virginia residents the ability to access critical information regarding law enforcement officer misconduct. It would also allow civilian oversight bodies to access this information without a subpoena. Those civilian oversight bodies could then also hold public hearings regarding disciplinary issues and patterns and issue public reports on their findings.

Turning to fines and fees, under the Virginia Supreme Court's Declaration of Judicial Emergency, there has been moratorium on interest accruing on court debt and the referral of delinquent accounts to collections. However, this moratorium is set to expire at the end of July, and it appears that the Court does not plan to extend it. As we saw in the Department of Justice's Ferguson report, the use of fines and fees as a revenue generating mechanism can lead to draconian policing of low-level offenses and other abuses. In a time of anticipated revenue short falls, we ask you to ensure that the criminal legal system does not act as a debt collector while many constituents still struggle with financial hardship.

Beyond these special session priorities, I would like to touch briefly on several major issues that we look forward to working on with Virginia State Crime Commission this fall and with the General Assembly in 2021. There may be discrete pieces of these issues that can advance in special session, in recognition of the urgency of these topics and our current circumstance. But that cannot slow efforts to comprehensively address these issues. Between August and next January, we must continue the work to fundamentally transform these systems.

The first is expungement. Criminal records create barriers to employment, professional licensure, housing, education, and many other opportunities. Under current law, only an extremely narrow category of records is eligible to be expunged: charges that prosecutors decide to not pursue and acquittals. And the process for doing so is difficult: requires obtaining numerous certified records, filing a petition, and is expensive. We must create a system of expungement that provides more people a clean slate. That system should: (1) expand eligibility; (2) be accessible (ideally it would eventually be automated) ; and (3) it should not cost money.

The second is parole. In LAJC's over five years of litigating *Scott v. Clarke*, a federal class action challenging the constitutionality of medical care at VDOC's Fluvanna Correctional Center for Women, we have seen what it means to age in prison. COVID-19 has only further highlighted the extensive medical needs of that population and their unique vulnerability. Eleven people in VDOC custody have died since the pandemic began. Virginia has draconian sentences and a myriad of mandatory minimums that take away judicial discretion and lock people in prison for decades. We must take steps to expand release mechanisms that treat people held in our prisons holistically, as human beings. In the short term, this means expanding geriatric parole and compassionate release. But we cannot stop there. We must reexamine Virginia's abolition of parole and create more mechanisms for mercy in our system.

I would like to thank you for the opportunity to speak with you this morning. I believe these committees and your colleagues stand at the threshold of making historic strides towards racial and economic justice. We look forward to taking an active role in working on these issues in the potential special session and beyond. And I am happy to take any questions.