

# **ADVOCACY TOOLKIT:**

## ***Police Practices Reform***





*Dear Activist:*

***Thank you for volunteering for the ACLU of Virginia!*** We are immensely grateful for your support and willingness to advocate for police practice reform in the Commonwealth. It is our hope that this toolkit will empower you to reach out to your family, friends, colleagues, acquaintances and even strangers to raise awareness and activism around these issues. With your help, we can restore trust and accountability to policing across Virginia!

*This toolkit includes our recent report on **Accountability in Policing** and additional material for you to use in your activism. Importantly, we provide a list of recommended action steps, such as meeting with your local government and law enforcement officials and legislators to advocate for changes in policies and practices that will enhance professionalism, transparency and accountability in law enforcement and restore trust in the communities that they serve. Also included is a fact sheet that you can copy to share and leave for others to read.*

*Please report back on actions you choose to take using the form that is available on our website's action center. The form will ask you to provide your name and let us know what action you took and when. It will also allow you to provide feedback and any suggestions you may have for us! Your comments will keep us informed and tell us how we can improve.*

*Again, thank you for your activism! Should you have any questions, do not hesitate to contact us by email at [action@acluva.org](mailto:action@acluva.org).*



# Police Practices Reform Fact Sheet

## Restoring and Enhancing Trust in Law Enforcement Through Transparency and Accountability:

Trust is dependent on the culture within the community and the law enforcement agency. Technology won't solve problems like racial profiling, excessive use of force or police abuse. The primary focus must be on policies and practices that enhance transparency and accountability.

## Community Culture

**Public safety should be seen as a core function and fundamental expense of government, not a revenue stream.**

- Police departments and their jurisdictions (state or local) should not create, facilitate or allow the development of a dependence on financial returns from policing (asset forfeiture, "million dollar mile," red light cameras vs. extended yellow, success measured by increased arrests, tickets, summonses vs. increase safety outcomes). Investigation of the Ferguson Police Department, Civil Rights Division, USDOJ, March 4, 2015, [bit.ly/2oWF9yR](http://bit.ly/2oWF9yR)
- The Commonwealth and its communities must commit to funding public safety as a priority, recognizing that underpaid and undervalued police compromise our safety.

**Public safety/law enforcement cannot solve community problems arising from poverty, drug use and other social ills.**

- We can't arrest our way out of a public health problem or school discipline issue. There must be a holistic approach to education, health care, drug treatment and economic health programs. See, e.g., [The War on Marijuana in Black and White](http://TheWaronMarijuanaInBlackandWhite.com), [bit.ly/WarOnMarijuanaBnW](http://bit.ly/WarOnMarijuanaBnW) See, also, [Right on Crime](http://RightonCrime.com), <http://rightoncrime.com/statement-of-principles/>

## Law Enforcement Culture

**There must be a culture of service.**

- Police department personnel must reflect the communities they serve. Racially Biased Policing: A Principled Response, Police Executive Research Forum (PERF), COPS, 2001, pp. 7-8, [bit.ly/2qkfzVx](http://bit.ly/2qkfzVx)
- Department personnel must see the people not as the "policed" but as the public they serve.

**There must be a culture of transparency.**

- The default posture should be openness vs. secrecy. Police departments should release as

much information as possible, not release as little information as possible.

*o Virginia Freedom of Information Act, §2.2-3700. Policy. The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.*

*o Civil Rights and Law Enforcement Intelligence, [bit.ly/2pJTfaN](http://bit.ly/2pJTfaN)*

- There should be a willingness to engage the public in setting departmental policies on "use of force" and other policies directly affecting the people being served.

**There must be a culture of accountability.**

- Civilian authority should be paramount.
- There should be a willingness to collect and report data that permits departmental and public evaluation of departmental practices, see, e.g., Charlottesville Police Department, [bit.ly/2oWJeDd](http://bit.ly/2oWJeDd)
- There must be openness to independent external public-involved evaluation of outcomes good and bad.

**There must be a culture of constitutionality.**

- Police must see themselves as the guardians of the Constitution.
- Constitutional policing should be the paramount value in hiring, evaluation, training, policies and procedures, including policies on use-of-force, "consent searches," pretextual stops, and use of body-worn cameras and other technologies.



## Talking Points for You to Use

### 1. *Enhance Professionalism of Police and Police Departments*

**We need to look carefully at how we “license” police in Virginia.** Unlike medical doctors and lawyers, people who are certified as qualified to serve as law enforcement officers in the Commonwealth cannot lose their certification for unethical behavior or police “malpractice.” Someone can violate departmental use-of-force policies, get fired, and still maintain the certificate that allows them to be hired at another law enforcement agency. In Virginia, an officer can only lose their certificate if they are convicted of a felony or certain misdemeanors or fail to do mandatory training. It cannot be lost for misconduct. That needs to change.

**To make that possible, however, as is the case with lawyers and doctors, there needs to be statewide conduct and ethical standards for “licensed” law enforcement officers that are uniform across all Virginia jurisdictions.** It is time to come to grips with the reality that there are some principles of policing that cannot and should not vary depending on which side of a jurisdictional line you are on. For example, there should be an accepted set of principles embodied in all use-of-force policies statewide. In addition, there should be uniform rules on the use of body-cams that protect the rights of individuals being policed and the public’s right to know regardless of where one lives or by whom one is policed. Officers who violate these uniform rules should face the possibility of decertification rather than merely discipline at or firing from their current job.

In addition, individual officers are only as professional as the level of professionalism in the agencies in which they serve. **All law enforcement agencies in Virginia should be required to obtain and maintain state or national accreditation.**

### **SOLUTION:**

The “licensing” proposal regarding individual officers requires changes in Section 15.2-1707 Decertification of Law Enforcement Officers of the Virginia Code. So, too, does the adoption of uniform standards on use of force or body-cams require some statewide statutory mandate, although progress can be made by departments choosing to adopt model policies we have recommended. On the other hand, local city councils and county boards of supervisors can require and fund their law enforcement agencies (sheriff’s departments and police departments) to seek departmental accreditation without further state action.



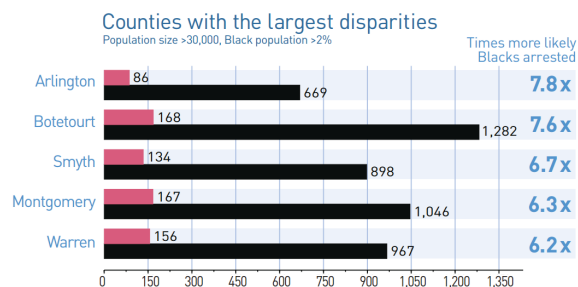


## Talking Points for You to Use

### 2. End Policing of Low-Level Offenses

One lesson of Baltimore, as detailed in the Department of Justice report, is that we must revisit the “holy grail” of zero tolerance or broken windows policing. The experience in Baltimore (and the recent re-examination of stop and frisk in New York City) shows this approach does not keep us safer. It does result in communities of color and impoverished communities experiencing policing differently than other communities and disparate rates of incarceration for low-level offenses like marijuana possession, however. **In Virginia, racial disparities in enforcement of laws governing marijuana offenses are significant (three times greater arrests for black Virginians) and exacerbate poverty when (until July 1, 2017) an automatic six-month driver's license suspension comes with conviction.** It is encouraging to see that the Virginia State Crime Commission intends to study decriminalization of marijuana possession. Enacting decriminalization into law will have a positive effect on decarceration and reducing poverty in communities of color.

#### Racial Disparities In Marijuana Possession Arrest Rates\*



Blacks are **2.8** times more likely than whites to be arrested for marijuana possession

#### Arrest Rates



\*Arrest rates are based on Virginia's total marijuana arrests in 2010.

**ACLU Report: The War on Marijuana in Black and White**

### SOLUTION:

Local law enforcement officials and prosecutors can agree to prioritize higher-level criminal offenses, and, for example, refuse to investigate or prosecute felony larceny of less than \$500 or \$1,000 rather than the current threshold of \$200. In addition, officials can adopt policies that do not encourage officers to use low-level offenses such as loitering to justify actions intended to find evidence of other crimes or provide an excuse for taking someone into custody simply to check their immigration status. Other local officials can begin discussion of alternative responses to status crimes often associated with homelessness or mental illness by developing other means to address public health issues and poverty.



## Talking Points for You to Use

### 3. *Implement Statewide Standards for Use-of-Force and Body-Cam Policies*

The following principles should be mandatory components of all departmental use-of-force policies:

- **Sanctity of Life:** The protection of the public shall be the cornerstones of any use-of-force policy,” meaning preservation of life is paramount in dangerous situations.
- **De-escalation:** Whenever reasonable, police should de-escalate, or slow down, interactions with the public to minimize the use of force. Officers shall be trained to consider what factors may contribute to a lack of compliance, such as language barriers, drug and alcohol use or a mental health crisis.
- **Duty to Intervene:** Officers at a scene where physical force is used must intervene if it is inappropriately applied, or used when it is no longer needed. Officers will be held accountable if they witness inappropriate use of force and do not try to stop it.
- **Duty to Report:** Officers must report misconduct at the scene of an incident, including inappropriate use of force, to their supervisor and Internal Affairs as soon as possible.



In addition, as we said in our report last fall on body-cam policies, “Getting to Win-Win,” there are four areas in which all body-cam policies must be uniform across the Commonwealth:

- Rules governing **when law enforcement officers are recording civilian encounters and what notice requirements govern their deployment**;
- Rules governing **how long data is stored**;
- Rules and laws governing **individual and public access to data collected by body-cams**; and
- Rules governing **consequences of failure to comply with provisions of policies assuring transparency and accountability in the use of body-cams**, including possible decertification as a law enforcement officer.

### SOLUTION:

Law enforcement agencies can voluntarily adopt and implement model policies that will result in greater uniformity across Virginia. Ultimately, however, legislation to mandate the adoption of such policies will be needed to assure all Virginians equal treatment under the law.



## Talking Points for You to Use

### 4. *Abolish Policing for Profit*

The lesson of Ferguson is that it is past time to reconsider Virginia's ever-increasing move to a fee-based criminal justice system. **When fines and forfeitures become a base revenue for agencies and localities, and part of the architecture of law enforcement agency budgets, the inevitable move toward policing for profit has begun.** As the Justice Department found in Ferguson, where fines and costs made up as much as 20 percent of the budget, an emphasis on revenue generation is inherently corrupting. In addition, it leads to jails occupied in significant numbers by people who are there simply because they cannot afford to pay the fines and costs associated with moving violations and other minor offenses.

Localities in Virginia oppose any effort to limit dependence on fines and forfeitures as a revenue source or to reign in civil asset forfeiture. This is in part because the legislature has failed to live up to the promise made when the moratorium on annexation was put in place, that, pursuant to HB 599, 30 percent of the cost of local law enforcement would come from state general fund dollars. Now the amount covered is less than half that. Virginians must accept that public safety should be a general fund priority and we all need to support adequate funding for police not dependent on fines, forfeitures, and costs.

**Taxpayers and law enforcement should come together to demand that communities and the Commonwealth commit to base funding of law enforcement that ensures best practices policing can be implemented across Virginia.** To do otherwise is to accept a model of revenue generation by police that can only lead us away from best practices policing to the kind of intentional deprivations of civil rights that existed in Ferguson. We agree with comments the head of the Virginia State Police Association made in 2011 about proposals to allow local prosecutors to convert state law criminal charges to local charges so the fines would go to localities and not the Virginia Literary Fund: "We are opposed to our enforcement actions being a source of revenue for any operating budget in any local government," said M. Wayne Huggins. "We should not be revenue collectors for any government, including local government."

### **SOLUTION:**

Taxpayers can demand that local governments refuse to allow local law enforcement agencies to fund their activities with revenues gleaned from assets seized and forfeited before a person has been convicted of an offense. In addition, state law can be revised to prohibit forfeiture (selling and cashing out) by the Commonwealth of any property of a person not convicted of a crime.





## Talking Points for You to Use

### 5. *Establish Civilian Authority over Policing*

**Civilians acting through the local governing body (or other agency like the Compensation Board with authority to approve expenditures of public funds) should have a role in reviewing in advance policies that guide the acquisition and deployment of police equipment** (including body-cams and Tasers, military-style weapons and vehicles, drones or surveillance equipment, and new technologies like license plate readers, red light cameras, cell-site simulators or other devices). This prior review should include careful review and authorization of the budget for such materiel acquisitions and the impact their deployment will have on residents.

Civilians should also have a role in advance review of policies and procedures governing the use of force, including by individual officers or teams of officers (e.g., SWAT teams) and the use of body-cameras. Just as the U.S. military must get civilian approval to buy its weapons and implement “rules of engagement,” so, too, should state and local police and sheriff’s offices have to get civilian approval of weapons acquisitions and deployment and “use-of-force” policies.

With respect to after-action review, care must be taken to ensure the effectiveness of any civilian review board or other authority that may be established. Numerous studies show that such entities are ineffective without adequate funds for staffing, and investigative and disciplinary authority.

**The establishment of a civil review board with investigatory and discipline authority can be an effective tool for enhancing trust between law enforcement agencies and the people they serve.** It would do so by making the law enforcement agency more transparent and accountable to the people.



## **SOLUTION:**

Local governments and the law enforcement agencies that they oversee and/or fund can agree to implement policies and procedures that assure that people being policed have a role in both evaluating the policies governing policing and the way that they are implemented. They can also take steps voluntarily to ensure that elected officials approve acquisition and deployment of military hardware and surveillance technologies, using their broad legislatively delegated authority to oversee local procurement. In addition, the legislation can mandate such policies and procedures statewide.





## Talking Points for You to Use

### 6. *Create Independent Prosecutorial Unit*

There can be no question with respect to cases involving deaths or serious injury while in custody that **it is difficult, if not impossible, for local police and sheriff's departments to objectively investigate "their own,"** or for local Commonwealth's Attorneys to maintain their objectivity in evaluating the evidence presented in a case involving people with whom they have a close working relationship and on whom they depend in developing effective prosecutions in other cases.

**It is time for Virginia to recognize that the current system is not working and that change is needed if trust is to be restored.** Given Virginia's size and the relatively few number of cases, establishing a single investigative and prosecutorial team to evaluate these incidents and bring cases where warranted will be cost-effective and assure both independence the public wants and needs and confidence in the professionalism of the team that officers want and deserve.

### SOLUTION:

The legislature should authorize and fund an independent statewide investigative and prosecutorial unit (in the Virginia State Police or Attorney General's Office, or as a multi-jurisdictional entity) to review and prosecute where warranted any case of a death or serious injury in custody. In the meantime, agencies can commit to a policy of asking an outside agency like the State Police to investigate any such incidences. **The advantage of a single unit is that it has both objectivity and developed expertise that a sister jurisdiction's staff may not have.**





## Talking Points for You to Use

### 7. *Require Transparency*

For too long, the default response of law enforcement agencies in Virginia when asked to disclose information about their operations has been an unequivocal “no.” **It is time for state and local law enforcement agencies to move away from a culture of secrecy and toward a culture of transparency where the culture affirms that they should and will release as much information as possible, as soon as possible, rather than defend a decision to disclose as little as possible.**



Pillar One of the six pillars of 21st Century Policing identified in the Report of the President’s Task Force is “building trust and legitimacy.” Without the trust of the policed, policing cannot be effective. Building a culture of transparency and accountability was identified by the Task Force as essential to this goal.

### **SOLUTION:**

Local police departments and sheriff’s offices can decide voluntarily to reverse their culture, policy and practice to one that respects the underlying policy objective of Virginia’s Freedom of Information Act: “The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government.”

Failing voluntary action, it will require a legislative act to reduce the discretion law enforcement agencies currently have to withhold documents and data from the public.

# A Step-by-Step Guide

- 1 **▶ Meet with your local police chief or sheriff and your local prosecutor** to solicit their support for legislative or policy changes needed to implement the seven Proposals for Reform outlined in our report Accountability in Virginia Policing – Agenda for Reform. Identify which proposals they support and ask them to make their views known to elected officials on the local governing board as well as their state delegates and Senators. Ask them which reforms they can and will implement voluntarily. With respect to the proposals that they oppose, identify the basis for their opposition and changes that might be made to gain their support.
- 2 **▶ Meet with elected officials on your county board or town or city council** and solicit their support for legislative and policy changes needed to implement the seven Proposals for Reform outlined in our report Accountability in Virginia Policing – Agenda for Reform. Identify which proposals they support and ask them to make their views known to their colleagues on the local governing board and their state delegates and Senators. With respect to the proposals that they oppose, identify the basis for their opposition and changes that might be made to gain their support.
- 3 **▶ Meet with your member of the House of Delegates and your Senator** and solicit their support for statutory changes needed to implement fully statewide the seven Proposals for Reform outlined in our report Accountability in Virginia Policing -- Agenda for Reform. Identify which proposals they can support and ask them to make their views known to their local governing board and their law enforcement agencies. With respect to the proposals that they oppose, identify the basis for their opposition and changes that might be made to gain their support.
- 4 **▶ Develop opportunities to distribute the Report and educate people in your networks** (at Rotary, your local places of worship, schools, civic organizations) about the seven Proposals for Reform of policing and the reasons why you support them.
- 5 **▶ Write letters to the editor on the proposals** (individually or collectively).
- 6 **▶ Take action to advocate for the proposals online** through social media and emails to your friends and associates.
- 7 **▶ Accept invitations to participate in police-sponsored activities for residents** (training academies, ride alongs, etc.) where you can talk with line officers and their supervisors about the need for reform.
- 8 **▶ Participate in candidate forums and town halls** during which you can ask questions of prosecutors and sheriffs about their support for the seven proposals for reform and distribute the report.



# SAMPLE SOCIAL MEDIA POSTS

## For Twitter:



Friends shouldn't investigate friends. An independent agency should investigate any death or serious injury in custody: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform) #policereformVA



Police should default in favor of transparency not secrecy: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform) #policereformVA



Shouldn't take a felony conviction for a police officer to lose "license" to police: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform) #policereformVA



No conviction. No forfeiture. Police should not be able to keep cash from people not prosecuted and convicted: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform) #policereformVA



Paramilitary police should be subject to civilian oversight: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform) #policereformVA



Police should have to ask for permission from elected officials to buy tanks and other military and surveillance equipment: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform) #policereformVA



You can't achieve goal if you can't measure progress. Collect and report data. End bias in policing: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform) #policereformVA



If you keep secrets, defend lying to win convictions, you can't expect trust in return: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform) #policereformVA

## For Facebook:



It is difficult, if not impossible, for local police and sheriff's departments to objectively investigate "their own." Independent agency should investigate any death or serious injury in custody: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform)



The first step towards accountability is transparency. The police should be more accountable to the public, we have the right to know: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform)



Did you know that in Virginia, an officer cannot lose their certificate for misconduct or bad policing? That simply needs to change: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform)



Policing should be about keeping the public safe—not about officers making money for themselves and their departments. Police should not be able to keep cash from people not prosecuted and convicted: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform)



The police are public servants whose job is to keep communities safe. The public should be involved in reviewing paramilitary police policies: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform)



The police officers on our streets and in our neighborhoods are not soldiers fighting a war. Law enforcement agencies should have to ask for permission from elected officials to buy tanks and other military and surveillance equipment: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform)



You cannot end bias in policing without knowing how common police abuse is and how it is distributed throughout American society. The police should collect and report data. The public has the right to know: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform)



Ruining people's lives for small, nonviolent offenses tied to drug use, drug addiction, or mental illness is not the way to go. Health problems are health problems, not criminal justice problems. Prioritize serious crimes: [bit.ly/VAPoliceReform](https://bit.ly/VAPoliceReform)