



2019 LEGISLATIVE CROSSOVER REPORT

2019 Session Update and What to Watch

Crossover for the 2019 General Assembly session was midnight on Feb. 5. Crossover in the General Assembly is the last day for bills to be heard in the House of Delegates or the Senate before they cross over to the opposite chamber and start the process all over again.

This year, the ACLU of Virginia prioritized bills that would reduce racial disparities in our criminal justice system, eliminate discriminatory voting practices, and support gender equity across the Commonwealth. This report is an update on how our priority legislation fared and the bills we are still watching this session.

CRIMINAL JUSTICE



We supported House Bill 2121 (Bail; data collection and reporting standards, report) and its Senate companion Senate Bill 1687.

Both bills would have shed light on Virginia's pretrial system by requiring certain data be collected relating to bail determinations like sex, race and indigency status. We stood with Legal Aid Justice Center, Southerners on New Ground, Richmond Community Bail Fund, Progress Virginia, the Commonwealth Institute and others to testify in support of HB 2121 but ultimately it failed to report. Senate Bill 1687 also failed to report. We will continue to support efforts to reform our pretrial system and fight to restore the presumption of innocence in Virginia.

We supported Senate Bill 977 (Marijuana; decriminalization of simple marijuana possession; penalty).

This bill would have decriminalized simple marijuana possession and created a civil penalty structure of no more than \$50 for a first violation, \$100 for a second, and \$250 for a third or subsequent violation. It was defeated in Senate Courts of Justice Committee on a 6-3 vote. Decriminalization and legalization bills in the House shared a similar fate.

We supported House Bill 2096 (Forfeiture of property used in connection with commission of crimes; finding of guilt required).

This bill would require a conviction before law enforcement can convert someone's money or property into cash. While this bill sailed through the House last year, this year some legislators expressed concerns that offenders might just skirt the law by putting stolen property under the name of a friend or relative. The bill was rejected this year.

We actively supported House Bill 1642, Senate Bill 1140, and Senate Bill 1085, which would have given us critical data on the use of solitary confinement in Virginia's prisons.

This bill would have, once and for all, defined solitary confinement as the isolation of an inmate from the general population through confinement to a cell or other place for 22 or more hours within a 24-hour period. While this definition is consistent with all accredited authorities, ultimately it was taken out of the final vehicles – House Bill 1642 and Senate Bill 1777, which were authored by the Virginia Department of Corrections (VADOC). It captures a limited amount of data, but without any clear definition of how many hours constitutes solitary confinement, we will have no way of trusting any reports submitted in compliance with this legislation. As of right now, SB 1777 has passed the Senate and been referred to the House Courts of Justice Committee, and HB 1642 passed the House, both unanimously.



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VOTING RIGHTS

We actively supported SJ 261 and HJ 598, which would have put a constitutional amendment to the voters affirming a guaranteed right to vote.



SJ 261 failed to report on the first day of session while HJ 598 was ultimately left in subcommittee. Passing either resolution would have been the first step in a two-year process to amend our state constitution to include a right to vote that belongs to the people. This amendment would have eliminated the felony disenfranchisement clause, which currently deprives close to 22 percent of our African-American voting population.¹ Though both resolutions failed this year, the conversation around voting rights is changing at the assembly. Residents once satisfied with restoration are ready to rewrite the constitution and finally affirm that the right to vote cannot be taken away. People are increasingly anxious to address directly all vestiges of Jim Crow that remain, and felon disenfranchisement is one of them.

EQUALITY & SEX DISCRIMINATION

We actively supported the efforts of the VAratifyERA campaign and other local advocacy groups in their effort to make Virginia the 38th and final state necessary to ratify the Equal Rights Amendment (ERA) in the United States Constitution.

While the ERA saw an early victory in the Senate, ultimately all House resolutions failed to report. SJ 284 passed the Senate early and can still be sent to the House floor for a vote – we will continue to watch and support efforts to ratify the ERA in Virginia.

WHAT WE ARE WATCHING

Criminal Justice

HB 1884 State correctional facilities; visitors wearing tampons or menstrual cups

Patron: Delegate Mark Keam

Status: Passed House 95-3

The ACLU of Virginia is very concerned about VADOC's recent discriminatory treatment of menstruating visitors. Security inside these facilities is important, but it's wrong to limit visitation simply based on what menstrual products a visitor prefers or needs. We are monitoring Delegate Keam's bill and working with grassroots organization such as Bringing Resources to Aid Women's Shelters and Friends of Guest House to ensure this is a bill we can support as it crosses over to the Senate.

SB 1013 Driver's license; suspension for nonpayment of fines or costs.

Patron: Senator Bill Stanley

Status: Passed Senate 36-4; Referred to House Courts of Justice Committee

Senate Bill 1013 would repeal our current law which mandates payment of court costs and fees for reinstatement of your driver's license. The ACLU of Virginia supports repealing laws that suspend a person's driver's license for any reason unrelated to bad driving. These provisions in the law disproportionately affect lower-income drivers and do nothing to improve road safety.



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WHAT WE ARE WATCHING

Voting Rights

SB 1026 | HB 2790 Absentee voting; in-person available beginning on second Saturday immediately preceding election.

Patrons: Delegate Nick Rush and Senator Lionell Spruill, Sr.

Status: SB 1026 Passed Senate 40-Y 0-N; referred to House Privileges and Elections Committee

Status: HB 2790 Passed House 89-Y 10-N

Any legislation on no-excuse absentee voting needs to include in-person and by mail options; otherwise it won't be fair to all Virginia voters. The ACLU of Virginia cannot support SB 1026 or HB 2790 as they currently stand because of both leave in place our current excuse-based system and still discriminate against those who choose to vote by mail, which disproportionately impacts marginalized communities. We will continue to push the legislature to address these concerns and bring true no-excuse voting to Virginia.

SJ 283 Constitutional amendment; qualification of voters, restoration of civil rights.

Patron: Senator Emmett W. Hanger, Jr.

Status: Passed Senate 37-3; referred to House Privileges and Elections Subcommittee #4

The ACLU of Virginia strongly opposes Senate Joint Resolution 283. The proposal is a constitutional amendment that seeks to establish financial conditions on a person's right to vote that are nothing more than an unconstitutional modern-day poll tax. It also invents a new type of felony conviction to which this restoration process would not apply: a "barrier crime." The definition of said "barrier crime" is not provided but is left to the legislature. Codifying something a law so vague into our constitution is dangerous. The proposed amendment stands in direct conflict with our belief that

all Virginians who are U.S. citizens over 18 should be able to vote, period. It does not erase the stain of the Jim Crow-era felon disenfranchisement provision from our constitution.

SB 1038 Voter registration; verification of social security numbers, provisional registration status.

Patron: Senator Mark J. Peake

Status: Passed Senate 20-18; Referred to House Privileges and Elections Sub-committee #1

Senate Bill 1038 would make it easier for registrars to reject voters at the polls and purge voter rolls under the guise of "verification." of social security numbers. SB 1038 would not only unnecessarily disenfranchise voters, but it would give the State Board of Elections access to your social security data in a way that potentially violates federal law. Governor Terry McAuliffe vetoed similar legislation in 2017. The ACLU of Virginia opposes SB 1038 and any law that disenfranchises voters or threatens voter privacy through unauthorized use of social security numbers and information.

Equality & Sex Discrimination

HB 2791 Virginia Personnel Act; appointments, promotion, and tenure based upon merit and fitness.

Patron: Delegate Barry Knight

Status: Passed House 52-Y 47-N

House Bill 2791 would direct the Commonwealth to only consider only "merit and job fitness" when considering people for promotions, appointments or tenure at a state agency, effectively repealing affirmative action policies at state agencies. The ACLU of Virginia opposes this bill and supports affirmative action policies because they are necessary to ensure equal opportunities for all people.

SB 1062 Virginia Fair Housing Law; unlawful discriminatory housing practices.

Patron: Senator Jennifer L. McClellan

Status: Passed the Senate 36-Y 4-N; Referred to House General Laws Committee



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Equality & Sex Discrimination

SB 998 Public employment; prohibits discrimination on basis of sexual orientation or gender identity

Patron: Senator Adam Ebbin

Status: Passed the Senate 28-Y 12-N; Referred to House Rules Committee

The ACLU of Virginia envisions a Commonwealth in which all people are treated fairly and equally without regard to race, sex, religion, gender identity, disability, sexual orientation, or national origin.

Housing and public employment decisions should not be based on your gender identity or sexual orientation. Several bills this session attempted to address discriminatory practices that still exist in Virginia but only SSenate Bill 1062 and SSenate Bill 998 remain as we head into crossover because the House leadership used procedural sleight of hand to keep the House bills from getting a fair hearing or a vote. The ACLU of Virginia strongly supports these bills and stands with Equality Virginia in their efforts to gain passage of these important laws.

Free Speech & Religious Liberty

SB 1502 Public schools; electives on the Hebrew Scriptures/Old Testament and the New Testament

Patron: Senator Charles Carrico, Sr.

Status: Passed Senate 22-Y 18-N; Referred to House Education Committee

SB 1502 would mandates that school divisions offer all students an elective course in which the old and new testaments of the Bible are taught. School divisions

already have authority to offer course work in the history of religion. The ACLU of Virginia believes that when a course focuses on one religious text, such as the Bible, it is exceedingly difficult to implement the class within constitutional structures and therefore opposes this bill.

Reproductive Freedom

SB 1715 Sales and use tax exemption; menstrual supplies; Dignity Act. Exempts menstrual supplies, specifically pads, tampons, and menstrual cups, from sales and use tax

Patron: Senator Jennifer Boysko

Status: Passed 39-Y 1-N; Referred to House General Government & Capital Outlay Appropriations Subcommittee

SB 1715 would makes menstrual products more affordable and accessible. Having a period should not interfere with someone's ability to attend school, go to work, or maintain a dignity. This is would be a win for menstrual equity and help improve access to menstrual products, particularly for people who are poor. The ACLU of Virginia supports this bill and believes that it is a step in the right direction.

HJ 715 Constitutional amendment; abortion, state funding prohibited (first reference)

Patron: Delegate Kathy Byron

Status: Left in House Privileges & Elections Subcommittee #4 but can be voted on at the discretion of the House Privileges & Elections Committee Chair (Del. Mark Cole)

HJ 715 would submits a question to the voters of Virginia as to whether or the state should fund abortion procedures. The ACLU of Virginia opposes HJ 715 and believes that this bill is an attack on basic health care for women. It is a deeply misguided measure that further entrenches discriminatory laws that deny abortion care to women and eliminate insurance coverage for abortion.



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Immigration

SB 1156 Sanctuary policies; policies prohibited that restrict enforcement of federal immigration laws

Patron: Senator Dick Black

Status: Passed Senate 21-Y 19-N; Referred to House Committee on Counties, Cities and Towns.

The ACLU of Virginia opposes SB 1156 and believes it is an unnecessary bill that will make our streets less safe. A combination of the Dillon Rule and existing state mandates make the existence of a sanctuary locality a legal impossibility in the Commonwealth. The language in this bill is also overbroad and vague and it cannot stand up to a constitutional challenge.

HB 2270 Incarcerated aliens, certain; release from jail, notice to Immigration & Customs Enforcement

Patron: Delegate Charles Poindexter

Status: Passed House 51-Y 46-N

The ACLU of Virginia opposes HB 2270, among other similar bills, because it is unnecessary. Virginia law already requires notice to U.S. Immigration and Customs Enforcement (ICE) when a person is arrested and taken into custody, when a person is convicted, and when a person is released on probation or parole. Virginia law also permits release of a person into federal ICE custody up to five days before their release date on state or local charges.

Mandating that sheriffs also notify ICE as soon as a release date is known creates yet another reporting mandate that is further complicated by the fact that some people in local and regional jails are in the

custody of the state, not the sheriff or regional jail superintendent.

Finally, Virginia should be moving away from volunteering local resources to the federal government for immigration enforcement instead of imposing new and unnecessary reporting requirements on local officials.

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