

**ACLU**  
AMERICAN CIVIL LIBERTIES UNION

Virginia

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UNION OF VIRGINIA  
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**SAVE THE DATE!**

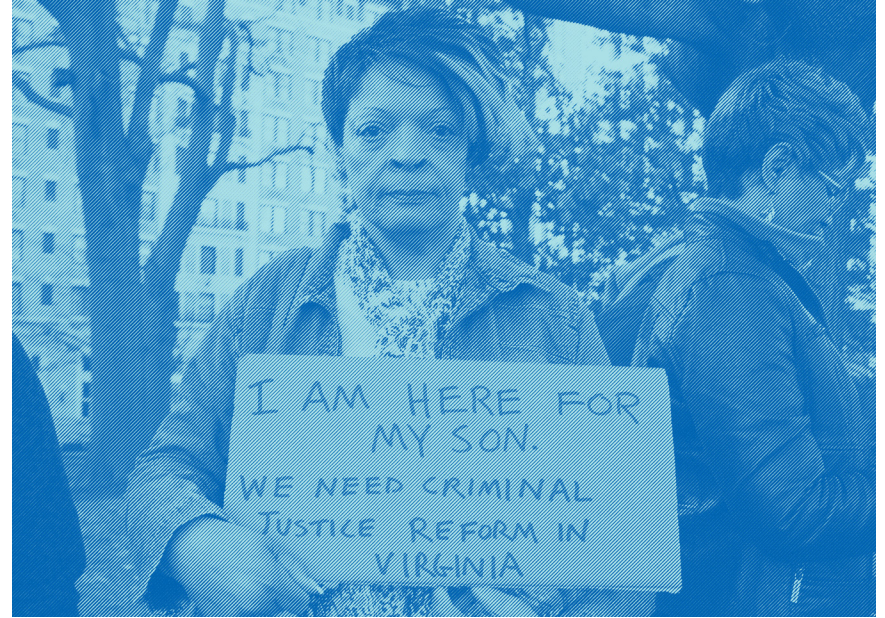
**ACLU of Virginia Annual Meeting &  
Member Forum**

Saturday, Sept. 8, 1-4 p.m.  
Richmond, Va.

This is one of five Member Forums the ACLU of Virginia is conducting across the Commonwealth in 2018. We will share our top priorities for protecting and expanding civil liberties in Virginia for the coming years, and invite you to ask questions and tell us what is important to you in your own communities.

SPRING 2018

# FIGHTING FOR RACIAL JUSTICE IN VIRGINIA



Achieving racial justice is one of the most important goals of the ACLU of Virginia. It is both a specific focus of our work and a goal that informs and affects nearly every aspect of our civil rights and civil liberties mission. Following is a summary of some of the ways in which we are working to achieve racial justice and ensure that access in Virginia to government, education and opportunities in life are equal for everyone.

**ACLU**  
Virginia



## VOTING RIGHTS

In recent years, much attention has been focused in Virginia on the issue of restoration of voting rights for people convicted of felony offenses, and for good reason. Virginia's Constitution was amended in 1870, and again in 1902 to disenfranchise those individuals from voting for the explicit purpose of diminishing the African-American vote. This relic of the Jim Crow era continues to prevent hundreds of thousands of black Virginians from fully participating in our democracy today.

Over the past decade or more, Virginia's governors heeded the ACLU of Virginia's call and exercised their authority to restore voting rights to more and more disenfranchised people. The standards they applied evolved over time until Gov. Terry McAuliffe's effort in 2016 to restore voting rights to all disenfranchised persons who had completed their sentences and probation by an executive order. This effort failed in the Virginia Supreme Court, and the bottom line is and has always been that the right to vote was removed as a punishment, and getting it back was a matter of discretion. The Virginia governor can decide whether to gift it back or not for any reason.



**Here's the thing: the right to vote is yours. It should not be something that the government can take away if you make a mistake – particularly by breaking laws that specifically target people of color, such as certain drug crimes – or to give back to you if you jump through certain hoops and ask nicely.**

That is why the ACLU of Virginia has refocused our energy on advocacy for an amendment to the Virginia Constitution that would positively affirm the right to vote of all Virginia residents who are U.S. citizens over age 18. This is the only way to erase the racial injustice of our current system that magnifies the racial disparities in our policing and our criminal justice system, and the effects of the racialization of mass incarceration.

Some ask, does this mean you want people incarcerated in Virginia's jails and prisons to be able to vote? We say, absolutely. For one thing, people who are jailed for misdemeanor offenses already can vote, while those housed in a cell next to them for a felony offense cannot, even though their circumstance of being incarcerated is the same. Plus, we already count these individuals for purposes of apportionment, meaning they are included when we decide what constitutes the population of local, state, and Congressional districts, yet we deny them the ability to participate in determining who will represent them in elected office and what policies they will pursue.

Amending the constitution is difficult, as it should be, so this will be an uphill battle. In the best case, it would take three years, but the ACLU of Virginia is prepared to dig in and spend a decade or more on this fight if necessary. Racial justice at the ballot box is our top priority.

## SCHOOL-TO-PRISON PIPELINE



In Virginia, black students are disproportionately referred to law enforcement and/or suspended from school compared to their peers. According to the Legal Aid Justice Center's (LAJC) 2017 "Suspended Progress" report, African-American students are suspended 3.8 times more often than white and Hispanic students, most often for minor offenses such as possession of cell phones, minor insubordination, disrespect, and using inappropriate language. For black males who are also disabled, the problem reaches alarming proportions, as those students are nearly 20 times more likely to be suspended than white females without disabilities.

The long-term effects of this disparate treatment are further cause for concern. Students who are suspended are more likely to drop out of school, develop substance abuse problems, and become entangled in the criminal justice system, which itself disproportionately punishes people of color and often taints their long-term ability to obtain meaningful employment and be productive community members.

We believe every student deserves the same chance to succeed, and that no student should be punished more harshly or denied an education because of their background or color of their skin.

That's why we joined with LAJC in 2016 to file a formal complaint with the U.S. Department of Education Office of Civil Rights (OCR) against Richmond City Public Schools (RPS) for its discriminatory policies and practices that harm African-American students.

Our complaint alleges that during the 2014-15 school year, African-American students with disabilities were 12.91 times more likely than white students without disabilities to be short-term suspended, according to data provided by the Virginia Department of Education. New data has surfaced since the complaint's filing indicating that RPS continues to exclude a shocking number of students each school year and that troubling discipline disparities remain.

Even as we await the outcome of the OCR investigation, we are looking to the Virginia General Assembly to enact new laws to prevent racial discrimination in public schools. In 2018, we supported House Bill 445, which would have eliminated a current requirement that school principals must report certain misdemeanor incidents to police, and House Bill 296 and Senate Bill 170, which would have prohibited students in preschool through grade three from being suspended or expelled except for drug offenses, firearm offenses, or other specific criminal acts. We will be vigilant in monitoring post-Parkland school safety initiatives to ensure that they don't become an excuse for even greater criminalization of school children, particularly school children of color.

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## ABORTION ACCESS

Access to abortion care has been substantially restricted in Virginia through opposition efforts to drive providers out of business and otherwise make it harder for people to obtain constitutionally guaranteed care. This affects no other group more directly than African-American women, who, because of various aspects of their circumstances and experiences, are both more likely to seek such services and less likely to be able to access them.

Due to a scheme of medically unnecessary and overly burdensome abortion restrictions designed to impose substantial barriers to women seeking abortion care, 92 percent of Virginia counties lack an abortion provider. Fewer providers means that geographic proximity to clinics is lessened, making it more difficult for people with low-incomes and those without public transportation to get to appointments without overcoming significant financial and logistical burdens.

**The fact is that the lower one's income the harder it is to obtain access to abortion services, and we know that the median income of white households nationally is as much as 20 times higher than that of African-American households.**

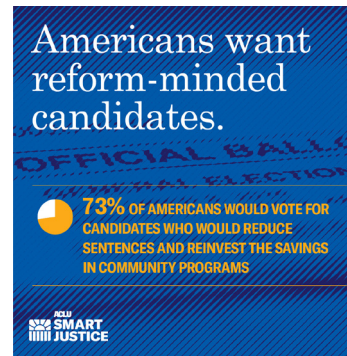
The fact is that the lower one's income the harder it is to obtain access to abortion services, and we know that the median income of white households nationally is as much as 20 times higher than that of African-American households. In addition, African-Americans are less likely to have health insurance and access to healthcare, including birth control, thus increasing the risk of unplanned pregnancies.

We will continue to support passage of the Whole Women's Health Act in Virginia, which would remove nearly all of the state-imposed obstructions to abortion access that disproportionately impact African-American women.



On top of that, Virginia's 24-hour waiting period for informed consent requires all women to attend two appointments to have an abortion if they can't obtain care from a doctor's office and instead must visit a women's health center. That means patients must either stay overnight or travel to a clinic twice, adding additional travel and child care expenses, and possible unpaid time out of work, to the hurdles patients must overcome in Virginia to receive constitutionally protected health care. Adding to these burdens is Virginia's ban on insurance coverage for abortion care, which only applies to low-income residents who are covered by Medicaid or purchase their insurance on the ACA Marketplace.

## PROSECUTORIAL REFORM



Many people don't know this, but the most powerful person in the criminal justice system isn't the judge who enters a verdict against a defendant; it's the local prosecutor who brings the charges against them.

Called Commonwealth's Attorneys, these are locally elected officials who have vast discretion regarding what charges are initially filed, whether a defendant is offered a plea bargain, whether minor offenses such as simple marijuana charges are prosecuted at all, and whether the death penalty is sought and against whom, among many other decisions.

Unfortunately, local prosecutors all too often face no significant scrutiny from the communities they represent or opposition from other candidates who might measure their success by factors other than the number of convictions they obtain. Some Commonwealths' Attorneys in Virginia have retained their offices for multiple four-year terms and even decades without challenge.

At the same time, the Virginia Association of Commonwealth's Attorneys is one of the most powerful lobbying organizations in the state, routinely throwing nails in the road before progressive reform measures such as increasing the felony larceny threshold, ending policing for profit (civil asset forfeiture), ending trial by ambush (criminal discovery reform), and decreasing penalties for minor offenses regardless of how they might impact someone's ability to retain employment and support their families.

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In 2018, we will embark upon a major campaign to raise awareness about the "unparalleled power" of Commonwealth's Attorneys in Virginia, and will encourage all residents to find out where their local prosecutors stand on various criminal justice reform issues, most if not all of which have a significant and disparate impact on people of color.

**REGISTER NOW!**

**2018 ACLU of Virginia Northern Virginia Chapter**

**Crabfest & Annual Meeting**

**Sunday, June 24, 1 p.m. – 4 p.m. (Rain or Shine)**

**Fort Hunt National Park, Area A**

**8999 Fort Hunt Road, Alexandria Va. 22308**

Register online by credit card before noon on **June 15** at [bit.ly/ACLUVACrabFest18](http://bit.ly/ACLUVACrabFest18) or by mail

## DNA COLLECTION



Virginia has the oldest and largest databank of DNA samples in the United States, now comprising the most sensitive, personal information about one in every 20 people in the Commonwealth that was required to be collected following conviction of certain crimes. The ACLU of Virginia has significant privacy and due process concerns about Virginia's practices in this regard, particularly since a conviction isn't even required for some

felony charges, and that the legislature has continued to add to the list of minor crimes for which DNA must be collected.

We support the efforts of law enforcement to solve cold, violent crimes, but disagree that compromising the constitutional rights of hundreds of thousands of Virginians who never have or will commit such an offense is the right way to do it.

We are concerned that as Virginia continues to add more and more people's DNA samples to the databank, the likelihood of racial bias – and of persons of color being falsely accused of crimes – continues to increase. Since Virginia's criminal justice system inherently and disproportionately exposes African-Americans to arrest, samples from that group will certainly continue to comprise a disproportionate percentage of the database compared to the general population, exposing them to a greater degree of lifeline scrutiny by law enforcement whether or not they ever break the law again.

We fought against bills in the 2018 state legislature that expanded the list of crimes for which DNA must be collected to include additional misdemeanors such as trespassing and shoplifting. We also are speaking out against law enforcement's use of new technology based on junk science that purports to be able to predict what a person's face looks like based on their DNA, and will inevitably lead to racial profiling and false arrests.

### 2018 ACLU-VA CRABFEST REGISTRATION FORM

Enclosed is \$.....to reserve places for

..... Adults (at \$25/person)

..... Children, ages 6-12 (at \$5/person)

..... Children, under 6 (free)

Name(s):.....

.....

Phone:.....

Email:.....

Send this form with your check made payable to:

**ACLU of Virginia**  
701 E. Franklin St. Suite 1412  
Richmond, Va. 23219  
Memo: Crabfest

Checks must be received by **June 15.**

**No day-of registration allowed**

Questions?  
703.360.1096  
[novachapter@acluva.org](mailto:novachapter@acluva.org)

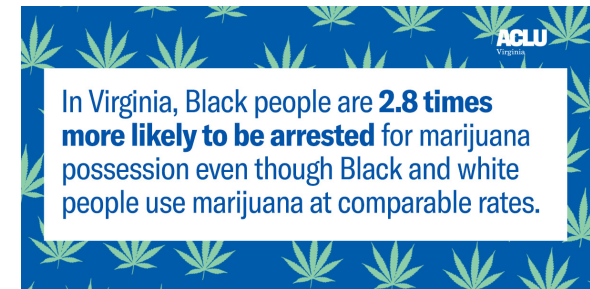
## MARIJUANA DECRIMINALIZATION

**The ACLU of Virginia's support for decriminalization of marijuana is grounded largely in one important reality: the outrageous disparate enforcement of these laws against people of color, and the subsequent, needless and life-long exposure to the criminal justice system that many African-Americans face.**

Many policy discussions about whether to decriminalize marijuana focus on common-sense arguments about fairness and ineffectiveness of the failed war on drugs. Most progressives on criminal justice reform have come to accept, for instance, that drug prohibition simply doesn't work and that marijuana is not, in fact, the gateway to harder drugs. In addition, others have been drawn to reform because they recognize that the costs of enforcing failed criminal marijuana laws in Virginia, exceeding \$70 million a year, are exorbitant, unjustifiable and would be better invested in addressing other pressing social needs such as the inadequacy of mental health programs and the growing opioid crisis.

The ACLU of Virginia's support for decriminalization of marijuana is grounded largely in one important reality: the outrageous disparate enforcement of these laws against people of color, and the subsequent, needless and life-long exposure to the criminal justice system that many African-Americans face.

According to the ACLU's 2010 report, "Marijuana in Black and White," African-Americans are 2.8 times more likely on average in Virginia to be arrested for simple marijuana possession than whites. In some localities, the ratio is an astonishing nearly eight-to-one (Arlington County). An average of 10,000 people are charged with possession in Virginia each year, according to statistics compiled by the Virginia Crime Commission as part of a 2017 study on the decriminalization.



The penalties for those arrested for such a minor offense face are harsh. Under current law, possession of a small amount of marijuana is punishable by up to 30 days in jail and a \$500 fine. In fact, many people actually serve time in jail for arrest even without a conviction. According to the crime commission, on one day when a statistical snapshot was taken in 2017 there were 127 people jailed in Virginia on simple marijuana possession charges. Of those, about two-thirds had not yet been tried and convicted.

Marijuana decriminalization is not only one of the most important criminal justice reform issues facing the Commonwealth, it is one of the most pressing racial justice issues. During the 2017 and 2018 General Assembly sessions, the ACLU of Virginia was there to support bills that would have addressed this issue, and we will continue to advocate for reform until criminal marijuana laws are repealed.