

2019

# LEGISLATIVE REPORT



Every legislative session, the ACLU of Virginia heads to the Capitol to defend and expand the civil rights of all Virginians. This year, we prioritized bills that would reduce racial disparities in our criminal justice system, eliminate discriminatory voting practices, and achieve gender equity across the Commonwealth. We worked with various grassroots organizations, community members and lawmakers to push these initiatives forward.

We would not be able to do the work that we do without the help of our partners, donors, members and supporters. This End of Session Report is a summary of how our priority legislation and bills we watched fared this General Assembly session.

## BY THE NUMBERS

Days in the 2018 legislative session	45
Legislators in both the House and Senate	140
ACLU lobbyists present in the Statehouse	6
Bills tracked	156
Hearings where ACLU staff testified	30
Key bills ACLU-VA supported	12
Key bills ACLU-VA opposed	7
Numbers of action alerts sent out	8
Numbers of actions taken	5,263
Numbers of letters to the governor	7

## CONSTITUTIONAL RIGHT TO VOTE

The right to vote belongs to the people, not the government we elect.



Virginia is one of only three states to permanently disenfranchise anyone convicted of a felony. The result? One out of every five black Virginians cannot vote - that is 22 percent of the African American population in the

Commonwealth. In Virginia, the lifetime voting ban can be lifted for a disenfranchised person only by the governor acting alone using whatever rules the governor chooses to apply. It is past time for Virginia to amend our constitution to remove this Jim Crow-era limit — one intended to block previously enslaved black people from voting. It is time to end government's control on our right to vote and to amend our constitution simply to say: Every person

18 or over who is a citizen, a Virginia resident and who registers shall have the fundamental right to vote in the Commonwealth, and such right shall not be abridged by law.

Thanks to our bill sponsors, Del. Marcus Simon, Sen. Mamie Locke and Sen. Louise Lucas, HJ 598, SJ 261 and SJ 262 would have amended the state constitution to do just that – guarantee the right to vote.

Unfortunately, SJ 261 and SJ 262 failed to report from the Senate Privileges and Elections Committee during a specially called meeting on the first day of session, and HJ 598 was left in the House Privileges and Elections subcommittee without any action following a hearing. 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 felony disenfranchisement. We testified with many



Has any of you ever made a mistake? Would you like that to be held against you 50 years later? **It's time to give all of us the right to vote back.**"

– Jewel Farley, an advocate with New Virginia Majority, testified in support of SJ 261.

Though these 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 a right to vote that government cannot take away. People are increasingly anxious to address directly all vestiges of Jim Crow that remain, and felon disenfranchisement is one of them. The right to vote is fundamental to our democracy. We are already prepping to be on the ballot in November 2022. This is long journey, but one we are committed to continue.

passionate individuals from New Virginia Majority who shared stories of getting their right to vote back after a tirelessly long, dehumanizing journey. There is no good reason to ban people from voting and prevent them from having a voice in society.



**150+** people showed up to our movie screening and panel discussion of "On The Basis of Sex."

on sex only need to be substantially related to a government interest, which is a much lower legal standard.

This year, the Virginia Senate passed a ratification resolution on a 26-14 vote. Despite bipartisan

support in the Senate, the House Privileges and Elections Committee once again refused to let the resolution out of committee for a full House vote. The subcommittee chaired by Del. Margaret Ransone voted 4-2 to pass the ratification resolution by indefinitely, and the full committee chaired by Del. Mark Cole refused to resurrect the resolution.

## EQUAL RIGHTS AMENDMENT

It takes 38 states to ratify a federal constitutional amendment, and 37 have ratified the Equal Rights Amendment (ERA). Virginia could have been the 38th state this year but, instead, a handful of legislators blocked the House of Delegates from having a floor vote on ratification even though it is supported by 81% of Virginians.

The ERA would provide constitutional protection against sex-based discrimination throughout the country, ensuring laws allowing discrimination on the basis of sex face the highest level of scrutiny by courts. This would mean the government would have to show the discriminatory law is the least restrictive means to serve a compelling government interest. Right now, laws that discriminate based

No one should face discrimination on the basis of their sex or gender. Yet, a tiny handful of delegates ignored the overwhelming majority of Virginians who



Photos courtesy of Jay Paul

support ratification, as well as the bipartisan support of their colleagues, and blocked a key step toward true gender equity throughout the country.



## PRETRIAL JUSTICE



It is time to restore the presumption of innocence to our criminal justice system in Virginia and end the practice of holding people in jail who have not been convicted of a crime and are not a demonstrable risk to public safety. Advocates in Virginia have joined together to call on our state to examine its pretrial system to ensure we are not subjecting people to unnecessary and costly pretrial detention. Scrutiny of pretrial practices in Virginia is long overdue. Though little public information exists about statewide pretrial outcomes, what we already know is deeply troubling. This legislative session, a coalition that includes the ACLU of Virginia advocated and testified for pretrial transparency legislation that would have allowed us to better understand the pretrial experiences of everyone involved in the Virginia criminal justice system - from types of release conditions like bond or pretrial services to length of incarceration, including racial and economic demographics.

In a letter at the start of the session, we called on lawmakers and elected government officials to support pretrial justice bills – House Bill 2121 and Senate Bill 1687. The letter was signed and supported by advocacy organizations, as well as the Attorney General’s Office and the Legislative Black Caucus. Del. Jennifer Carroll Foy and Sen. Jennifer McClellan patroned this important legislation. Advocates from across the state drove hours to testify at the Senate and House Courts of Justice Committee hearings on the bills. Many shared personal stories of injustice faced when they were denied bond or held in jail because they were unable to pay high bond amounts. Others testifying were experts who came to speak on the ineffectiveness of the pretrial system urging Virginia to start collecting aggregated data. Unfortunately, both committees voted against reporting the bills to the floor of the House or Senate for a vote, killing the bills for this year.

These bills would have promoted an unparalleled level of pretrial transparency and accountability in the state’s criminal justice system and armed policymakers, researchers and everyday people with pertinent information about the issues that are plaguing the system.

Passage of pretrial transparency legislation will only strengthen efforts to provide support to the many Virginians who are criminalized instead of provided the support they need to live healthy, productive lives. We will continue to work with lawmakers and community advocates to chart a successful strategy on this issue for the 2020 session.

At least **26%** of Virginians are denied bond after their arrest, in a system where **40%** of those charged are black (while accounting for only 19% of the population).

# DEFENDING OUR RIGHTS

## SOLITARY CONFINEMENT



This year we worked as part of the Virginia Coalition on Solitary Confinement for the passage of a law requiring the Virginia Department of Corrections (VDOC) to collect and report data on the practice of solitary confinement in state prisons. Currently, there are no data or reporting requirements on the use of solitary confinement in Virginia. As a result, we know very little about the scope of this harmful and inhumane practice, except that it is far more prevalent than the VDOC has been willing to admit. With meaningful reporting, we can hold the VDOC accountable for the inhumane treatment of hundreds of people in our state prisons.

As introduced this session, HB 1642, sponsored by Del. Patrick Hope, SB 1085, sponsored by Sen. David Marsden, and SB 1140, sponsored by Sen. Barbara Favola, would have required the VDOC to collect and report data on how many people are held in solitary confinement at which institutions, why they were placed there, for how long, and whether they have a history of psychiatric hospitalization or may be mentally ill, have a developmental or intellectual disability, or are members of certain vulnerable populations.

“I’m a mother and that’s why I’m here today. I’m here for my son who has suffered solitary confinement. These bills would keep the public informed and enable accountability.”

– **Kimberly Snodgrass**, advocate with Interfaith Action for Human Rights, urged lawmakers to shine a spotlight on solitary confinement in Virginia.

As the bills moved through the legislative process, hard negotiations resulted in final passage of legislation that did not include all data points addressed in the original draft. As part of the Virginia Coalition

on Solitary

Confinement, we told the governor the legislation, as passed, is flawed and likely will be ineffective in accomplishing the goal of real transparency. We believe the definition could be written to a higher and less vague standard and requested that the governor amend the bill to restore to the reporting requirements as originally proposed, such as to keep count of incidents of self-harm or suicide that occur in “restrictive housing.” We also believe the VDOC should be required to collect data for each facility, not just in the aggregate for the entire prison system – something the final legislation does not require.

Unfortunately, the governor signed HB 1642 into law as passed by the legislature without recommending the amendments we sought. Nonetheless, passage of even this version of the bill is a significant achievement that we can build on. This is the first time the VDOC has been required by law to publish information related to its use of solitary confinement. We are eager to start to receive data on solitary confinement and will use that data in advocating for more transparency and changes in practices, including a true end to the use of solitary confinement in state prisons, during the 2020 legislative session.

# ACLU of Virginia

## 2019 Legislative Report Card

### 1 **Voting Rights** SJ 283 (Hanger) - Qualification of Voters, Restoration of Rights

#### KEY POINTS:

- We strongly opposed SJ 283, which proposed a constitutional amendment that would not remove the Jim Crow-era felon disenfranchisement provision from the Virginia constitution but would impose financial conditions on restoration of a person's right to vote that amount to an unconstitutional modern-day poll tax.
- It also gave the legislature the authority to create a "good felon"/"bad felon" standard for reenfranchisement by allowing them to define a lifetime ban for those convicted of a "barrier crime."
- The definition of said "barrier crime" was not provided but is left to the legislature. Codifying something so vague into our constitution would have been dangerous.

**WIN**
**ACLU opposed**
**Failed to report out of committee**

### 2 **Voting Rights** SB 1038 (Peake), Social Security Verification

#### KEY POINTS:

- We opposed SB 1038, which had potential to disenfranchise Virginia voters on the basis of typos or other minor discrepancies between information on their voter registration form and information about them in government databases. Unfortunately, this bill passed both houses in the legislature.
- We wrote to the governor opposing SB 1038 and any law that disenfranchises voters or threatens voter privacy through unauthorized use of social security numbers and information.

**WIN**
**ACLU opposed**
**Passed House & Senate**
**Vetoed by Governor Northam**

### 3 **Voting Rights** SJ 261 (Locke), SJ 262 (Lucas), and HJ 595 (Simon and Keam) - Constitutional Right to Vote

#### KEY POINTS:

- We actively supported SJ 261 and HJ 598, which would have put a constitutional amendment to the voters affirming a guaranteed right to vote that cannot be abridged by law. 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.
- Though both resolutions failed this year, the conversation around voting rights is changing at the assembly. People are increasingly anxious to directly address all vestiges of Jim Crow that remain, and felon disenfranchisement is one of them

**LOSS**
**ACLU supported**
**Died in Senate & House**

## 4

**Voting Rights** SB 1026 (Spruill, Dance, Howell, and Locke) and HB 2790 (Rush) - No-Excuse Absentee Voting

## KEY POINTS:

- We oppose any voting legislation that privileges some voters over others as does our current excuse-based absentee voting law.
- Absentee voting should be available by mail or in person to any registered voter. Sen. Lionel Spruill introduced SB 1026 which would have codified true no-excuse absentee voting as would have SB 1672 introduced by Sen. Locke and HB 1641 introduced by Del. Charniele Herring. We strongly supported these bills which would have brought fairness and equity to absentee voting.
- We could not, however, support either SB 1026 or HB 2790 as they were approved because 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.
- In addition, the seven-day window offered for in-person, no-excuse voting amounts to a voting privilege ticket for voters who can take time off during the last week before an election, have transportation to get to the registrar's office or other location or who are not disabled from voting except by mail.
- As passed and signed by the governor, the seven-day law does not take effect until the 2020 election, and we will continue to push the legislature to bring true no-excuse voting to Virginia during the 2020 legislative session.

**LOSS**

**ACLU opposed  
legislation signed by  
Governor Northam**

## 5

**Criminal Justice** HB 2528 (Hugo and Miyares) - Felony Homicide

## KEY POINTS:

- We oppose HB 2528 which would have expanded the law to allow someone to be charged with felony homicide for supplying a drug to another adult who takes the drug voluntarily and overdoses.
- This bill takes Virginia backward to the incarceration-focused policies of the War on Drugs that have been shown to be expensive and ineffective in addressing the root causes of this public health crisis.
- We worked to prevent this legislation from passing alongside a coalition of organizations and individuals, including Saara Of Virginia, Legal Aid Justice Center, McShin Foundation, Virginia State NAACP Criminal Justice Committee, Disability Law Center of Virginia, Interfaith Action for Human Rights, Virginia CURE, CARITAS, VOCAL, The Chris Atwood Foundation, Social Action Linking Together, Del. Jennifer Carroll Foy, and Sen. Jennifer McClellan.

**WIN**

**ACLU opposed  
Passed House  
& Senate  
Vetoed by Governor  
Northam**



## 6

**Criminal Justice** SB 1013 (Stanley, Ebbin, and Edwards) - Drivers' License Suspension

## KEY POINTS:

- Sen. Bill Stanley introduced SB 1013, which repealed current Virginia law that mandates suspension of drivers' licenses for nonpayment of court costs and fines, and requires payment of those fines and fees and a hefty additional fee for reinstatement of a suspended license. The bill passed the Senate with bipartisan but was killed on a 4-3 vote in a subcommittee of the House Courts of Justice Committee.
- We oppose policies and practices that use license revocation as a means to enforce laws that have nothing to do with safe driving and joined this effort led by the Legal Aid Justice Center.
- After the Assembly adjourned, however, the governor recommended language in a budget amendment that would end the practice of suspending Virginia drivers' licenses based on failure to pay court costs and fines. The budget amendment passed, which means that more than 627,000 people will get their licenses back.
- This new law will go into effect July 1, 2019, and the budget amendment expires on July 1, 2020. We hope in the next legislative session to work with coalition partners to pass this important legislation.

**WIN****ACLU supported****Put into budget by Governor Northam****Passed House & Senate**

## 7

**Criminal Justice** HB 2121 (Foy) and SB 1687 (McClellan) - Pretrial Justice

## KEY POINTS:

- 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 indigent 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 and SB 1687, but ultimately both died in committee.
- We will continue to support efforts to reform our pretrial system and fight to restore the presumption of innocence in Virginia.

**LOSS****ACLU supported****Died in Senate and House Courts of Justice Committee**

## 8

**Criminal Justice** SB 997 (Ebbin) - Marijuana Decriminalization

## KEY POINTS:

- 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.

**LOSS****ACLU supported****Died in Senate & House Courts of Justice Committee**

## 9 Criminal Justice HB 2096 (Freitas) - Civil Asset Forfeiture

### KEY POINTS:

- This bill would have required a conviction before law enforcement could convert someone's money or property into cash.
- While this bill sailed through the House in 2018, this year some legislators expressed concerns that people suspected of a crime might skirt the law by putting stolen property under the name of a friend or relative.
- The bill was tabled in the House Courts of Justice Committee this year.

**LOSS**
**ACLU supported**
**Died in Senate &  
House Courts of  
Justice Committee**

## 10 Criminal Justice SB 1772 (Saslaw), Shackling Pregnant Prisoners

### KEY POINTS:

- Together with a diverse coalition including women's rights organizations, the Catholic Conference and the Family Foundation, we have advocated against the inhumane and unjust VDOC policy of shackling pregnant prisoners since 2011, prompting VDOC to adopt a policy prohibiting this practice in 2011. This year, Sen. Saslaw introduced SB 1772 which would have codified the current policy in statute.
- After the passage of a watered-down bill in the legislature, we requested in a letter that the governor amend SB 1772 back to its original language, rather than sign it in its current form.
- The original language includes the necessary comprehensive protections for pregnant inmates while allowing for considerations of flight and security risks when evaluating the use of restraints.
- Unfortunately, the governor did not amend the bill. We and our coalition partners will need to be vigilant to ensure that the VDOC does not rely on this weak legislation to undercut the current comprehensive policy prohibiting the use of unnecessary restraints on incarcerated pregnant individuals.

**LOSS**
**ACLU supported  
original bill**
**ACLU opposed bill  
signed by Governor  
Northam**

## 11 Criminal Justice HB 2615 (Pillion) and SB 1501 (Carrico) - Capital Murder Mandatory Minimum

### KEY POINTS:

- We oppose the inclusion of mandatory minimum sentences because they generate unnecessarily harsh punishments, tie judges' hands, create racial disparities in sentencing, and empower prosecutors to force defendants to bargain away their constitutional rights. Such mandates are overkill in a state like Virginia with a "no parole" policy that effectively imposes a mandatory minimum of 85% of the imposed sentence on every person convicted of a crime in Virginia.
- HB 2615 would have established life imprisonment without parole as the mandatory minimum sentence for anyone convicted of capital murder, regardless of mitigating circumstances. SB 1501 mandated a mandatory minimum of life without parole for capital murder of a law enforcement or public safety officer.
- The ACLU worked with New Virginia Majority, NAACP, CURE, and The Sentencing Project to oppose this legislation.
- Unfortunately, the governor signed SB 1501 as passed and recommended amendments to HB 2615 to make it consistent with the somewhat more limited SB 1501.

**LOSS**
**ACLU opposed  
Governor Northam  
signed into law**



# 12 **Solitary Confinement** HB 1642 (Hope), SB 1140 (Favola), and SB 1085 (Marsden, Ebbin, McClellan, and Favola) - Data Reporting Requirements for VDOC

## KEY POINTS:

We worked as part of the Virginia Coalition on Solitary Confinement for the passage of the first law requiring the Virginia Department of Corrections (VDOC) to collect and report data on the practice of solitary confinement in state prisons.

- Before this law, there were no data or reporting requirements on the use of solitary confinement in Virginia, but we know that it is far more prevalent than the VDOC has been willing to admit.
- Though the bill as passed is still flawed, now we will be able to hold the VDOC accountable for the inhumane treatment of hundreds of people in our state prisons.

**WIN**

**ACLU supported**  
**Passed House & Senate**  
**Signed by Governor Northam**

# 13 **Gender Equality** HB 1884 (Keam) - Tampons and Visitation at VDOC

## KEY POINTS:

- We object to recent discriminatory treatment of menstruating visitors at Virginia prisons. Security inside these facilities is important, but it's wrong to limit visitation simply based on what menstrual products a visitor needs.
- We worked with Del. Mark Keam, Bringing Resources to Aid Women's Shelters and Friends of Guest House to ensure that this bill passed through the House and Senate.
- This bill only asks that the VDOC draft a policy, and we will continue to advocate that any policy put forth does not discriminate against menstruating people and treats all security issues similarly without regard to the gender or gender identity of the visitor.

**WIN**

**ACLU supported**  
**Passed House & Senate**  
**Signed by Governor Northam**

# 14 **Equality & Sex Discrimination** SB 998 (Ebbin), SB 1109 (McClellan, Ebbin, and Robinson), HB 2067 (Bell and Roem), HB 2677 (Robinson), HB 1823 (Convirs-Fowler), and HB 2421 (Levine) - Protections against anti-LGBTQ Discrimination

## KEY POINTS:

- We envision 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 most bills did not get a fair hearing or a vote. The ACLU of Virginia has strongly supported these bills for years and stands with Equality Virginia in its efforts to gain passage of these important laws.

**LOSS**

**ACLU supported**  
**Died in House Rules Committee**

15

**Immigrants' Rights SB 1156 (Black) - Anti-Sanctuary Cities**

## KEY POINTS:

- We opposed SB 1156, the so-called anti-sanctuary bill, because it is unnecessary legislation 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.
- We and other advocacy organizations urged the governor to veto this bill by both writing a letter and meeting with the governor's staff.

WIN

**ACLU opposed  
Passed House & Senate  
Vetoed by Governor  
Northam**

16

**Immigrants' Rights HB 2270 (Poindexter) - ICE Reporting**

## KEY POINTS:

- We opposed HB 2270 because it is unnecessary. Virginia law already requires notice to U.S. Immigration & 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 in that some people in local and regional jails are in the custody of the state, not the sheriff or regional jail superintendent.
- Virginia should be moving away from volunteering local resources to the federal government for immigration enforcement instead of imposing new, costly, and unnecessary reporting requirements on local officials.

WIN

**ACLU opposed  
Passed House &  
Senate  
Vetoed by Governor  
Northam**

