



## 2017 General Assembly – Cross-Over Report

Cross-over for the 2017 General Assembly session was midnight on Feb. 7, 2017. This means each house may only consider legislation and amendments of the other house, with the exception of the Budget Bill.

Following are bills remaining in the 2017 session that the ACLU of Virginia is actively working to support or oppose.

### Bills We Support

#### Criminal Justice Reform

##### **Senate Bill 796 – Police and Court Records; Expungement of Certain Charges and Convictions**

*Passed Senate Courts of Justice Committee 12-0; passed Senate 40-0.*

Currently, no conviction in Virginia can be expunged. Long after sentences or probation is complete; long after the debt to society has been paid; young people with slight indiscretions are burdened with a constant mark against them forever. This impacts their ability to find jobs, succeed in school, and avoid future run-ins with the criminal justice system. It's past time for Virginia to allow expungement of minor misdemeanors committed by youthful offenders. It's time for Virginia to offer second chances. *The ACLU of Virginia supports this common-sense approach to offering a second chance to youth offenders.*

##### **Senate Bill 816 – Increase Felony Larceny Threshold to \$500**

*Passed Senate Courts of Justice Committee 13-2; passed Senate 28-12.*

The Virginia legislature set a \$200 threshold for felony larceny in 1980, and has not adjusted it since. Proposals have been put forth to raise the threshold to \$500 or \$1,000. While this is a modest start, raising it to \$500 does not even keep up with inflation (\$200 in 1980 is about equivalent to \$585 now) and raising it to \$1,000 is only a modest gain when compared to other states, such as Texas, leading the way on criminal justice reform. Virginia's threshold is the lowest in the country. In 1980, a gallon of gasoline cost 86 cents and iPhones and Air Jordans didn't exist. Today, a gallon of gas can cost \$2.50 and sneakers and phones can cost well over \$200. Because the threshold has been stagnant since 1980, our current felony larceny statute is equal to a felony statute in 1980 of \$68. No one in 1980 would have imagined sending someone to prison and stripping away their voting rights over \$68. Thirty states have set their felony larceny threshold at \$1,000 or more, including Georgia, South Carolina, Texas, Arkansas, Kansas, Mississippi, and North Carolina, and 46 states have set their threshold at \$500 or more. It's time for Virginia to take the term "felony" seriously and raise the dollar threshold to an appropriate level. *The ACLU of Virginia strongly supports this bill.*

##### **Senate Bill 1091 – Remove Automatic Suspension of Driver's License for Marijuana Possession**

*Passed Senate Courts of Justice Committee 14-1; passed Senate 38-2.*

Virginia needs to put the brakes on automatically suspending a person's license for crimes unrelated to driving. License suspension should be an enforcement tool against bad drivers, not for minor, unrelated crimes such as simple drug possession. Recent national reports puts Virginia first in the nation with over 38,000 annual license suspensions for minor, unrelated drug crimes. This record number of suspensions strains limited police resources, wastes tax-payer dollars, and makes our roads less safe. The majority of states have opted out of the archaic "tough on crime" federal mandate and have not lost highway funding. Federal law allows for a simple process to opt out of automatically suspending licenses for drug offenses and it is time for Virginia to join the 38 states that have already done so. *The ACLU of Virginia supports legislation that would repeal automatic license suspensions for minor, unrelated crimes.*

### **Senate Bill 1563 – Discovery Reform**

*Passed Senate Courts of Justice Committee 13-1; passed Senate 39-1.*

It is time to reform Virginia's discovery laws and end the practice of "trial by ambush". Open and uniform criminal discovery laws increase fairness and access to justice and reduce the likelihood of wrongful convictions. Virginia's criminal discovery rules are among the most restrictive in the country and Virginia is one of fourteen states that provide criminal defendants with the least discovery in the nation. SB 1563 will grant access to police reports and require the Commonwealth to disclose its intent to present expert witness testimony. *The ACLU of Virginia supports common-sense reforms to the judicial process.*

### **Reproductive Freedom**

#### **House Bill 2267 – 12-Month Contraception Supply**

*Passed House of Delegates Committee on Commerce & Labor 21-0; passed House 94-1.*

This bill would require any insurance plan that includes coverage for hormonal contraceptives to permit physicians to prescribe a twelve-month supply of oral contraceptives to be dispersed at one time. Dispensing a twelve-month supply of oral contraceptives reduces the rate of unintended pregnancy and abortion, increases contraception continuation rates, and decreases costs per client to insurers by reducing the number of pregnancy tests and unintended pregnancies. *The ACLU of Virginia strongly supports this bill because the ability to plan if and when to have children is protected under the Constitution. For birth control to be effective, consistency is essential. Virginia law should encourage effective contraceptive use, not impede it.*

### **LGBT Rights**

#### **Senate Bill 783 – Public Employment; Prohibits Discrimination on Basis of Sexual Orientation or Gender Identity**

*Passed Senate General Laws & Technology Committee 12-3; passed Senate 25-14.*

This bill would for the first time codify explicit protections against discrimination by state and local agencies, including schools, and constitutional officers based on discriminate in employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, gender identity, or status as a veteran. *The ACLU of Virginia strongly supports this bill.*

#### **Senate Bill 822 – Virginia Fair Housing Law; Unlawful Discriminatory Housing Practices; Sexual Orientation and Gender**

*Passed Senate General Laws & Technology Committee 11-3; passed Senate 25-14.*

The bill defines sexual orientation and gender identity. *The ACLU of Virginia strongly supports this bill that would add discrimination on the basis of an individual's sexual orientation or gender identity to the definition of an unlawful housing practice.*

## Immigrants' Rights

### **House Bill 2020 – Temporary Driver's Licenses, Permits, or Special Identification Cards; Requirements for Issuance**

*Passed House of Delegates Committee on Transportation 12-2; passed House 70-27.*

The ACLU of Virginia supports expansion of driving privileges to all residents of the Commonwealth regardless of immigration or refugee status. Roads are safer when drivers have a means to acquire legal driving privileges. We should welcome newcomers and extend public services such as driving privileges, social services, and educational opportunities to all who call Virginia home. *The ACLU of Virginia strongly supports this bill.*

## **Bills We Oppose**

### Criminal Justice Reform

#### **House Bill 1616 – Expanding Felony Homicide Charges to Include Drug-Dealing**

*Passed House of Delegates Courts of Justice Committee 15-6; passed House 67-28.*

This legislation would create a new felony homicide offense for offenders who sell drugs to another person, which results “in the killing of one accidentally, contrary to the intention of the parties.” The concept of felony homicide laws is to punish someone that commits a violent act that inadvertently causes the death of a person who was not the intended victim (such as accidentally shooting someone during a robbery). Felony homicide was not meant to apply to just any non-violent underlying felony. This legislation is a misplaced relic of the failed War on Drugs. Under § 18.2-248 of Virginia law, drug dealers can already be sentenced up to 40 years for their first offense of manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance listed in Schedule I and II (narcotics and marijuana among others). *The ACLU of Virginia strongly opposes this bill.*

### Reproductive Freedom

#### **House Bill 2264 – Defunding Planned Parenthood**

*Passed House of Delegates Committee on Health, Welfare & Institutions 14-8; passed House 60-33.*

This bill would make Planned Parenthood and any other medical provider (except hospitals) that performs abortion services for any reason other than to save the pregnant woman's life or in cases of rape or incest ineligible to receive state or federal funding for family planning programs—even though none of that funding is used for abortions. This bill is intended to force Planned Parenthood and other women's health providers in Virginia to choose between providing safe, legal abortion services and receiving the funding they need to provide comprehensive family planning services—including access to long-acting reversible contraception (LARC) such as IUDs. Other state versions of this bill have been unanimously struck down as unconstitutional by federal district and appellate courts. *The ACLU opposes this bill because no medical provider should be denied federal funding for family planning programs that have nothing to do with abortion just because they engage in the constitutionally protected activity of providing safe, legal abortions on their premises.*

### Voting Rights

**House Bill 1598 – Voter Registration; Proof of Citizenship Required to Vote in Certain Elections**

*Passed House of Delegates Committee on Privileges & Elections 15-7; passed House 64-33.*

This bill would require persons applying to register to vote in Virginia elections to provide proof of United States citizenship. Federal law prohibits this requirement for registering to vote in federal elections. It is estimated that 5.7 percent, or 11 million Americans do not have a birth certificate or passport to show proof of citizenship. Further, this bill would create a two-tiered, overly bureaucratic and administrative voter registration system in Virginia that would result in chaotic implementation and confusion for election workers and voters. *The ACLU of Virginia strongly opposes this bill because it will inevitably disenfranchise qualified voters.*

**House Bill 1912 – Absentee Voting; Eligibility of Persons Granted Protective Order**

*Passed House of Delegates Committee on Privileges & Elections 21-0; passed House 98-0.*

This bill allows an individual to vote by absentee ballot if the voter has been granted a protective order. The ACLU of Virginia opposes this bill and continues to be concerned about the current excuse-based absentee voting system because it elevates certain classes of voters over others and threatens the privacy of absentee ballot applicants by requiring voters to disclose personal information on their absentee ballot application, which is a public record. In this instance, a person with a protective order, would still have to disclose this reason on their application. *The ACLU of Virginia supports reform that would permit no-excuse absentee voting by both in-person and by-mail methods for all voters.*

**Senate Bill 845 – Absentee Voting; Eligibility of Certain Caregivers**

*Passed Senate Committee on Privileges & Elections 14-0; passed Senate 40-0.*

This bill allows a voter to vote by absentee ballot if the person is unable to go in person to the polls on the day of the election because he is primarily and personally responsible for the care of an ill or disabled individual who is confined at home. Current law states that the absentee voter must be taking care of a family member confined to the home. *The ACLU of Virginia opposes this bill and continues to be concerned about the current excuse-based absentee voting system because it elevates certain classes of voters over others and threatens the privacy of absentee ballot applicants by requiring voters to disclose personal information, such as disability status, on a public record. The ACLU of Virginia supports reform that would permit no-excuse absentee voting by both in-person and by-mail methods for all voters.*

**Senate Bill 872 – Absentee Voting; Applications and Ballots; Photo Identification Required**

*Passed Senate Committee on Privileges & Elections 8-6; passed Senate 20-19.*

**House Bill 1428 – Absentee Voting; Photo Identification Required with Application**

*Passed House of Delegates Committee on Privileges & Elections 14-7; passed House 61-35.*

These bills would require voters casting absentee ballots by mail to provide proof of photo ID for their vote to be counted. Current law does not require an eligible voter to submit proof of a valid photo ID requirement when voting absentee by mail. Voters, such as individuals with disabilities, who cast votes by absentee ballot by mail are less likely to have photo IDs. *The ACLU of Virginia opposes this legislation because it adds another requirement to the already overly burdensome voter photo ID law.*

**Senate Joint Resolution 223 – Constitutional Amendment; Qualification of Voters and Executive Clemency**

*Passed Senate Committee on Privileges & Elections 8-6; passed Senate 21-19.*

This proposal seeks to amend Virginia's Constitution by permitting the legislature to enact rules and regulations in the restoration of rights process under the governor's executive authority, including what offenses are deemed non-violent and violent. Further, all individuals convicted of a felony, regardless of type, would be required to complete all the terms of their sentence including any modification, any period of probation or parole, or suspension of sentence. In addition, individuals convicted of a violent

felony would be required to pay all fines, fees, and restitution and wait at least five years without any new felony convictions or misdemeanor convictions involving moral turpitude (lying, cheating or stealing, or a sex crime) before applying to the governor for the right to vote.

*The ACLU of Virginia strongly opposes this constitutional proposal because it is attempting to constitutionalize voter suppression in disguise of reform. The proposal keeps in place the permanent disenfranchisement of Virginians convicted of a felony, and even worse than the status quo, it seeks to roll-back the reforms of the past three Governors' Administrations by placing permanent barriers in front of the right to vote. Voting is a right, not a privilege to be mortgaged on an individual's ability to pay a modern-day poll tax. The ACLU of Virginia strongly supported SJ 319 (Lucas) (incorporated into SJ 223, or in a practical sense, failed) which would have amended Virginia's Constitution to insert an affirmative right to vote for all qualified voters and repealed the felony disenfranchisement provision.*

## Immigrants' Rights

### **House Bill 1468 – Detaining Immigrants at Local Jails**

*Passed House of Delegates Militia, Police & Public Safety Committee 12-7; passed House 68-31.*

Virginia already has some of the toughest laws regarding compliance with federal immigration law. Everyone's status is checked when arrested and there is a presumption against bail for immigrants with detainers who have been accused of serious crimes. As well, federal courts have already declared that, absent a criminal warrant, people cannot be held in local jails for violation of civil immigration law. This bill also creates a conflict between a judge's order to release someone on bond for a minor crime and the local jail official's refusal to release that person except to federal officials. It is not the job of sheriffs and jail officials to enforce immigration law. *The ACLU of Virginia strongly opposes this unconstitutional, confusing "message" bill.*

### **House Bill 2000 – Sanctuary Policies; Prohibited**

*Passed House of Delegates Courts of Justice Committee 14-6; passed House 63-33.*

### **Senate Bill 1262 – Sanctuary Cities; Liability for Certain Injuries and Damages Caused by an Undocumented Immigrant**

*Passed Senate Committee on Local Government 7-6; passed Senate 40-0.*

Virginia already has some of the strictest laws pertaining to enforcement of federal immigration laws, including status checks for everyone arrested and presumption against bail if there is a detainer placed on an immigrant accused of violent crimes. These type of bills could have an unintended reverse effect of making our communities less safe by forcing local police to void "don't ask" policies relating to crime victims and witnesses in the immigrant community. Virginia should welcome newcomers and promote cooperation between immigrants and local police - not create fear of detention and removal for coming forward to report crimes. *The ACLU of Virginia strongly opposes these bills.*

### **House Bill 2002 – Refugee and Immigrant Resettlements; Reports to Department of Social Services**

*Passed House of Delegates Committee on Health, Welfare & Institutions 12-0; passed House 59-36.*

Refugees already undergo strict screening by Homeland Security and the FBI before resettling to this country. Virginia is constitutionally preempted from imposing additional standards on federal agencies, their contractors, or their public or private subsidiaries. This bill would mandate action by federal service providers - something Virginia does not have the power to do. *The ACLU of Virginia strongly opposes this bill.*