



2017 General Assembly – Pre-Session Report

The 2017 General Assembly Session will be a short session of 46 days beginning on Wednesday, Jan. 11, 2017.

The majority of this session will be occupied with discussion of the state's projected \$1.5 billion budget deficit and how to fix it. Few proposals carrying even minor budgetary implications are likely to receive serious consideration, with the exception of possible pay increases for Virginia State Police troopers and mental health services.

Regardless of the focus on the state's finances, it is clear from bills pre-filed leading up to the 2017 Session that legislators will still find time to debate substantive issues that implicate our civil liberties, both positive and negative.

Below is a summary of key civil liberties issues we anticipate will be under active, serious deliberation by the legislature in 2017.

Criminal Justice Reform

Death Penalty Exemption for Serious Mental Illness

Legislation will be introduced to create an exemption from the death penalty for defendants who have a serious mental illness. The Eighth Amendment already prohibits the execution of juveniles, the intellectually disabled, and defendants who are not competent to understand the punishment about to be inflicted on them. The Constitution also prohibits executing a defendant if that person cannot distinguish right from wrong or if the accused's mind was so impaired by disease that he is totally deprived of the mental power to control or restrain his act. But for those defendants who do not meet any of these strict criteria and yet have serious mental illnesses, the death penalty is permissible. The legislation will represent recommendations made by the American Bar Association during its assessment of Virginia's capital punishment system. The ACLU of Virginia advocates on this issue in coalition as a member of the Virginia Alliance for the Severe Mental Illness Exclusion. ***While the ACLU of Virginia continues to advocate for death penalty repeal, we support legislation designed to ensure better procedural safeguards for seriously mentally ill defendants accused of a capital offense while the death penalty remains in place.***

Civil Asset Forfeiture

Civil asset forfeiture is a process by which law enforcement seizes money or property suspected of use in a crime without a requirement for a conviction or even a warrant. The ACLU of Virginia will lobby in favor of legislation that would require a warrant or conviction, or that would divert assets to the state Literary Fund rather than allowing law enforcement agencies to keep them, thus eliminating the profit incentive. ***The ACLU of Virginia supports legislation that would eliminate "policing for profit."***

Felony Larceny Threshold

Legislation may be introduced that would raise Virginia's felony larceny threshold, which is the lowest in the country. Since 1980, when the threshold was raised from \$100 to \$200, theft of property valued at \$200 or more has been grand larceny, a felony punishable by up to 20 years in prison. Virginia's neighboring states each have a threshold of \$1,500. The impact of this law on mass incarceration and disproportionate felonization of women and young people cannot be understated. ***The ACLU of Virginia strongly supports raising the felony larceny threshold to \$1,500.***

Automatic driver's license suspension for minor, unrelated crimes

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 ceasing the practice of suspending driver's licenses for minor, unrelated crimes.***

Marijuana Decriminalization

Legislation has been introduced to decriminalize marijuana. Previous attempts have not gained traction, but this past year saw advocacy at the local level and the publication of major research papers on the impact of marijuana enforcement that helped raise awareness of the argument for decriminalization. Decriminalization would establish a civil fine rather than criminal punishment for simple possession. Under current law, possession of any amount of marijuana is a misdemeanor punishable by up to 30 days in jail and a \$500 fine, as well as a mandatory six-month driver's license suspension. A second offense is punishable by up to 12 months in jail and a \$2,500 fine. A 2014 ACLU report showed that in 2010, African-Americans were 2.8 times more likely to be arrested for marijuana possession and the associated racial disparities have increased in Virginia since 2010. A 2016 ACLU report estimated Virginia spends \$67 million annual enforcing marijuana laws. House Majority Leader Tommy Norment has said the issue should be studied by the State Crime Commission, of which he is a member. ***The ACLU of Virginia supports legislation that would decriminalize the possession of marijuana.***

Further Enhanced Penalties for Crimes Against Public Safety Officers – On or Off the Job

Legislation introduced this session (SB790) would extend existing Virginia law that establishes higher penalties for anyone who violates our capital murder, malicious wounding and assault statutes by harming or killing a public safety person or first responder while they are engaged in official duties to any incident in which the victim is a public safety officer even if they are not on the job when the incident occurs. The penalties already imposed in Virginia's "hate crimes" penalty enhancement law are significantly higher than those imposed when the victim is not a public safety officer, even when acts are motivated by animus toward the victim because of race, religious conviction, color or national origin. The proposed legislation would remove language requiring proof that the victim was engaged in public safety duties in the Commonwealth before the higher penalties would apply. This change would create a situation in which some people's lives would be classified by law as more valuable simply because of where they work. Under the proposed bill, a bar room brawl involving off duty public safety officers and ordinary persons could result in assault on an officer felony charges against the ordinary person carrying mandatory minimums of 6 months in prison even if the public safety person is not injured, and simple assault charges against the off duty public safety officer which would be a misdemeanor with no required jail time. And, under the proposed law, a person who kills a public safety officer in a domestic situation would be subject to capital murder charges simply because of the job of the victim regardless of where and why the killing occurred. ***The ACLU of Virginia strongly opposes legislation that would implement enhanced penalties for certain***

crimes against people who are public safety workers regardless of whether they are on the job at the time of the alleged crime.

Mental Health in Jails and Prisons

Following the 2015 death of 24-year-old Jamycheal Mitchell from neglect in the Hampton Roads Regional Jail where he was being held for stealing \$5 worth of junk food, advocacy groups including the ACLU of Virginia have been vocal regarding the need for reform of how people with mental illnesses are treated in the criminal justice system. This includes the need for screenings upon intake to jails and prisons, how they are treated while incarcerated, what services are available upon release, and what agencies are authorized to investigate when a tragic incident occurs. ***The ACLU of Virginia strongly supports reforms that would result in increased services and greater oversight for people with mental illness within the criminal justice system.***

Immigration

Virginia needs to be a welcoming state for immigrants and refugees

Legislation has been proposed to unconstitutionally jail immigrants based solely on civil immigration violations. Legislators have also proposed bills to unconstitutionally track refugee resettlement and limit localities from continuing community policing policies which promote cooperation between law enforcement and immigrant victims and witnesses to crimes. Virginia needs to welcome these new arrivals, not promote hate and vitriol. Virginia should expand refugee and immigrant access to social services, enrollment in higher education institutions, and eligibility for driver's licenses. ***ACLU of Virginia supports legislation that welcomes all newcomers to our Commonwealth.***

Equality for All

Anti-LGBT Privacy Proposals

Legislation has been introduced that would prohibit anyone from using a sex-segregated restroom on government property - including schools, state colleges and universities, state parks, the General Assembly Building and hundreds of other buildings unless the gender assigned to them at birth and recorded on their "original" birth certificate matches the sign on the restroom door. This bill is not about privacy. In fact, it would encourage confrontation and harassment of anyone who didn't match someone else's idea of who "belongs" in a particular facility. One would have hoped that Virginia would have learned from our neighbors to the south who have suffered untold damages to their economy and international reputation on top of the embarrassment of having codified discrimination of this nature. We will fight this bill with vigor. ***The ACLU of Virginia strongly opposes discrimination masked as privacy protection.***

Non-Discrimination Acts

LGBT Virginians deserve the same opportunities as everyone else. Two bills have been prefiled that would update Virginia's existing laws governing employment at state and local agencies to include explicit prohibitions against discrimination based on race, religion, color, sex, pregnancy, childbirth or related conditions, age, marital status, disability and sexual orientation and gender identity, and add sexual orientation and gender identity to Virginia's fair housing law. We need clear, comprehensive, and secure nondiscrimination protections in Virginia that eliminate confusion for workers, students, schools, and businesses alike. ***The ACLU of Virginia strongly supports equal opportunity for everyone.***

Privacy and Technology

Police-Worn Body-Cams and Use of Force

Our 2015 comprehensive study, “Getting to Win-Win: the Use of Body-Worn Cameras in Virginia Policing,” found wide discrepancies in policies among 59 law enforcement agencies using BWCs in Virginia. The study revealed that none of the policies fully address issues including the public’s right to know when they are being filmed, the right of data subjects to access the video in which they appear, the right of victims and witnesses and those participating in First Amendment activities not to be filmed, and the data retention and disclosure practices regarding BWC videos. It is imperative that, as use of body-cams continues to proliferate among law enforcement agencies in the Commonwealth, that new, state-wide law (including, possibly, amendments to the Freedom of Information Act) is enacted to govern aspects of their use particularly related to the data they collect and the rights of data subjects. It is also imperative that uniform standard be established for use-of-force policies adopted by local law enforcement agencies that recognize the sanctity of human life as their highest priority. ***The ACLU of Virginia supports legislation that would impose certain uniform statewide limits on use-of-force and the use of body-worn cams.***

Securing Digital Privacy and Limiting Government Surveillance

The ACLU of Virginia continues to work with a broad coalition on legislation that would better safeguard the electronic information of Virginia residents and support innovation in the digital economy by updating state privacy law to match our expanding use of digital information. The Virginia legislature has made strides in recent years toward implementing enhanced statutory protections of individual privacy, e.g., with respect to law enforcement use of drones and stingrays and with respect to data from real-time cell phone tracking. However, the emergence of new technology has left Virginia’s statutory protections behind. We need legislation that enhances protection against “just because” surveillance and warrantless government access to mobile devices, email, text messages, digital documents, metadata, and location information, and provide greater protection than currently afforded by analog era interpretations of federal constitutional protections. ***The ACLU of Virginia supports legislation that creates 21st century protections for Virginians from unnecessary and unauthorized government surveillance and data acquisition using new and emerging technologies.***

Reproductive Freedom

Women’s Rights Under Attack

Women’s access to abortion in Virginia has been under constant attack and this will continue in the 2016 legislature. From repeal of abortion funding for low-income women and punishing pregnant women to regulating fetal tissue donation and disposal, we expect abortion rights to be under fire. Our top priorities this session will be repealing the law establishing Targeted Regulations of Abortion Providers (TRAP), which set cost-prohibitive, hospital-style requirements on abortion clinics for the sole purpose of shutting them down. At our urging, the state Board of Health rolled back TRAP regulations in 2016 but the law still needs to be repealed. Also, we will work to repeal Virginia’s strangulatory informed consent law, which require a woman to wait 24 hours after being provided state-directed counseling and undergoing a mandatory ultrasound before having an abortion. Disturbingly, a bill to ban abortions completely after 20 weeks of pregnancy, which we fought to defeat in committee in 2016, is making a return. The truth is only a very small fraction of abortions are performed after 20 weeks and in most cases the mother’s life is at risk. ***The ACLU of Virginia supports everyone’s right to make informed decisions free from government interference concerning reproduction and whether and when to become a parent.***

Voting Rights

Restoration of Civil Rights

The ACLU of Virginia supports legislation to amend the state constitution to establish and affirm the right of every Virginian to vote without restrictions. Voting is a fundamental, constitutional right and Jim Crow-era laws continue to permanently ban an estimated 350,000 individuals who live, work, and pay taxes in Virginia from voting. Many of Virginia's disenfranchised citizens are African-Americans, who are disproportionately impacted by the law. In recent years, Virginia governors have made several discretionary, progressive reforms to the restoration of rights process, however, the state constitution needs to be amended to permanently fix this injustice. Gov. Terry McAuliffe made an admirable attempt at mass restoration in 2016, as we had urged, but he was rebuffed by the Supreme Court of Virginia. ***The ACLU of Virginia protects the right to register and vote, and promotes racial equality in the electoral process.***

Absentee, No-Excuse Voting

A number of bills have been prefiled that would expand or contract absentee voting, and more could be offered before the filing deadline. The ACLU of Virginia strongly supports legislation that allows all voters to cast absentee ballots for any reason by both in-person and by mail methods. Legislation also has been introduced that would expand the current list of statutory permitted reasons to vote by absentee ballot. It is commendable to expand access to absentee ballot voting and increase participation in our democracy, however, the ACLU of Virginia believes that these proposals elevate certain classes of voters over other qualified voters largely for partisan political reasons. We strongly advocate that all voters should be permitted to vote by absentee ballot, and that no class of voters be given preferential treatment when it comes to exercising the fundamental right to vote.

The ACLU of Virginia strongly supports expanding access to the ballot.

Proof of Citizenship to Vote

A bill has been introduced that would require proof of citizenship before being allowed to vote in certain elections. Because Virginia cannot legally impose this requirement in federal elections, this bill proposes to create a separate system for state and local elections with additional requirements. A two-tiered registration and voting system would be impossible to efficiently administer, cost the taxpayers untold amounts of money to implement, and create confusion and long lines at election time. This is an ill-considered proposal that seeks to put further barriers in the entrance to the voting booth without any reason, basis in fact or thought about the administrative and human costs. It is an effort to further suppress the vote in Virginia. ***The ACLU of Virginia protects the right to register and vote, and promotes racial equality in the electoral process.***