



April 13, 2017

The Honorable Terry McAuliffe  
Governor of Virginia  
Patrick Henry Building  
1111 East Broad Street  
Richmond, VA 23219

**Re: HB1856/SB1285 (indefinite probation until  
payment of restitution)**

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LIBERTIES UNION OF  
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Dear Governor McAuliffe:

I am writing to you to ask that you veto companion bills HB1856 and SB1285, which were returned to you by the General Assembly after rejecting your proposed substitute during the reconvened session held April 5<sup>th</sup>, 2017.

Though purporting to address concerns about the collection and repayment of court-ordered restitution, these bills primarily have the harsh effect of punishing poverty by requiring courts to put persons ordered to pay restitution on indefinite probation. This term of probation ends, in most cases, only when payment of restitution has been made in full, thus codifying wealth-based discrimination in an essential area of criminal justice: whereas people with money can write a check and move on with their lives, indigent people and others who lack the ability to pay have the burdens and risks of probation continually hanging over their heads due solely to their inability to pay.

In addition to this discriminatory restriction on liberty interests, HB1856/SB1285 places unreasonable burdens on defendants' due process rights: under this legislation, a court may dismiss any motion for removal from indefinite probation "summarily without any hearing"; even if a hearing is granted, a defendant must prove such indefinite probation constitutes a "manifest injustice"—an extremely difficult standard to meet; and even if such standard is met, a court may still refuse to accord relief.

Though probation may not be incarceration itself, such a policy would inarguably move the Commonwealth closer to a “debtors’ prison” model; for a Commonwealth committed to due process and equal justice under the law, this legislation is deeply troubling.

Furthermore, the Virginia State Crime Commission in its review of the restitution issue did not consult with stakeholders representing the interests of people who owe restitution, or even criminal defendants more generally, and did not sufficiently analyze whether the legislation’s fiscal impact would be outweighed by any potential benefits of its implementation. As such, this legislation has not been sufficiently vetted, either for its harmful effects on indigent persons, or for its purported efficiency as a debt-collection tool.

In short, HB1856/SB1285 would represent a significant and damaging shift in policy towards restricting liberty and due process interests, while negatively casting the Commonwealth as a state that believes in two justice systems: one for those with financial means, and a separate, more punitive system for those living in poverty.

Respectfully, we ask you to veto HB1856/SB1285.

Very truly yours,



Claire Guthrie Gastañaga