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2017 General Assembly – Post-Session Report

Bills We Supported that Passed

SB1091 - Marijuana offenses; driver's license forfeiture. (Ebbin)

Issue Area: Criminal Justice Reform

SB1091 removes automatic suspension of a driver's license for first offense possession of marijuana. Virginia took a first step in the right direction with the passage of SB1091, but more work needs to be done to stop suspension of driver's licenses for offenses unrelated to bad 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 this 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. ACLU of Virginia will continue to push for legislation that would repeal automatic license suspensions for minor, unrelated crimes.

SB854/HB2386 - Court Payment Plans; Suspension of Driver's License

Issue Area: Criminal Justice Reform

Virginia has taken an important step to fix its unjust practice of automatically suspending a person's license for unpaid court fines. The U.S. Department of Justice issued a brief in 2016 finding that Virginia's automatic suspension law violated due process by not allowing for a proper hearing to determine if lower income defendants are unable to pay court fines. The Virginia Supreme Court also drafted new rules for courts which focus on payment plans instead of license suspensions. With SB854/HB2386, the VA General Assembly has codified a process for indigent defendants to avoid license suspension by entering into a payment plan with the court, but the provisions of suspending a driver's license for failure to pay court costs is still law. The ACLU of VA will continue to press for reform. License suspension should be a punishment for bad driving, not for unrelated crimes or failure to pay court fees.

HB2264 (Filler-Corn) - Twelve Month Contraception Supply

Issue Area: Reproductive Freedom

This bill will 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 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.

Bills We Supported that Failed

HB1522 (Leftwich)/SB1348 (Favola) - Death penalty; severe mental illness.

Issue Area: Criminal Justice Reform

Would have provided that a defendant in a capital case who had a severe mental illness, which is defined in the bill, at the time of the offense is not eligible for the death penalty. The bill established procedures for determining whether a defendant had a severe mental illness at the time of the offense and provides for the appointment of expert evaluators. When the defendant's severe mental illness is at issue, a determination will be made by the jury, or by the judge in a bench trial, as part of the sentencing proceeding, and the defendant bears the burden of proving his severe mental illness by a preponderance of the evidence. Excluding individuals with SMI would have applied only to sentencing, simply expanded current policy, been applied only narrowly, affected only a small percentage of cases, and raised awareness of mental health issues.

Whole Woman's Health Act; performance of abortions. HB2186 (Boysko) & SB 1549 (Wexton)

Issue Area: Reproductive Rights

These bills would have brought Virginia laws governing abortion in line with the U.S. Constitution. In June 2016, the United States Supreme Court in *Whole Woman's Health v. Hellerstedt* reaffirmed that access to abortion is a fundamental constitutional right and held that abortion restrictions are unconstitutional unless the medical benefits they confer outweigh the burdens they impose on access to safe, legal abortion care. The Court also held that states must do more than simply claim an abortion restriction benefits women's health; they must prove it through credible, reliable evidence. Currently, a woman seeking an abortion in Virginia faces mandatory waiting periods, lack of insurance coverage, and a lack of qualified abortion providers and high-quality health clinics due to onerous TRAP laws calculated to close women's health clinics and discourage doctors from providing abortion care to their patients. Leading medical professionals oppose these restrictions, which delay a woman's access to safe, legal abortion care in Virginia. Delays serve no positive medical purpose and, in fact, make health care harder to access and more expensive. HB2186 and SB1549 would have repealed these restrictions and ensured abortion care, like all medical care in Virginia, is driven by evidence-based standards supported by medical professionals- not politics.

HB2210 - Employment; break to express breast milk. (Yancey)

Issue Area: Equality

This bill would have required all Virginia employers to provide employees with reasonable breastfeeding accommodations during work hours unless doing so would unduly disrupt the employer's operations. Under current Virginia law, a nursing mother's right to pump breast milk during work hours depends on how she is paid and/or the type and amount of business her employer conducts, not whether her employer has the resources to accommodate her needs. This bill would have changed that. While not all employers have the resources or facilities to accommodate nursing employees, those that do should be required to provide reasonable accommodations to pump breast milk at work. A woman should not have to choose between keeping her job and nursing her child, and this bill was designed to ensure Virginia's nursing mothers do not have to make that choice.

Abortion; informed written consent. HB2286 (Ward) & SB1424 (Locke)

Issue Area: Reproductive Rights

These bills would have given back to patients their right to true informed consent by allowing them to waive non-medical, ideological, and medically unnecessary state requirements that are not intended to enhance informed consent. Each patient needs to be able to trust her doctor is providing her with timely care, free from judgment and stigma. Virginia law currently requires physicians to communicate biased information about abortion to their patients, perform unnecessary diagnostic testing, and to delay care

for 24 hours against their patient's wishes. These laws violate the basic tenants of informed consent, and delay a woman's ability to access safe, legal abortion care by requiring multiple trips to a clinic for no other reason than to show the state's disapproval of a woman's personal, constitutionally protected medical decision. These bills would have allowed a woman and her doctor to determine which actions and information would add to her ability to make an informed medical decision, not politicians.

HB2295 - Virginia Human Rights Act; pregnancy, childbirth, or related medical conditions; causes of action. (McQuinn)

Issue Area: Equality, Reproductive Rights

Virginia law currently creates a private right of action for employees that have been discharged by their employer for pregnancy, childbirth, or related medical conditions, so long as the employer employs more than five but less than fifteen people. HB 2295 would have extended that right of action to all Virginia employees, regardless of how many people are employed by their employers, and clarified that nursing mothers are protected from employment discrimination on the basis of lactation. This bill would have taken the first step in safeguarding all individuals within the Commonwealth from unlawful discrimination, regardless of the number of persons employed by the employer.

SB783 - Public employment; prohibits discrimination on basis of sexual orientation or gender identity. (Ebbin)

Issue Area: Equality

This bill would have—for the first time—codified explicit protections against discrimination in employment by state and local agencies, including schools, and constitutional officers 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.

SB816 - Grand larceny & certain property crimes; increases threshold amount of money taken, etc., to \$1,000. (Surovel)

Issue Area: Criminal Justice Reform

This bill would have raised Virginia's threshold for felony larceny from \$200 – set in 1980 – and raised it to \$1,000. The bill was amended to raise the threshold to \$500 but still failed. Virginia's threshold is the lowest in the country and significantly lower than our surrounding neighbors which have thresholds of \$1,500. It is a major factor in mass incarceration and over-exposing Virginians to the criminal justice system.

Regulations governing hospitals; facilities performing abortions. SB877 (Favola) & HB1563 (Kory)

Issue Area: Reproductive Rights

This legislation would have brought Virginia law in line with the constitutional standard affirmed and clarified by the U.S. Supreme Court in *Whole Woman's Health v. Hellerstedt*. Abortion is incredibly safe – 99 percent safe, according to the Centers for Disease Control. It is also incredibly common – approximately three in 10 women will have an abortion in their lifetimes, and will need access to safe, legal abortion care. Despite the safety of the procedure, in 2011 the Virginia General Assembly enacted a law that requires abortion providers to follow burdensome and unnecessary regulations designed to close them down and make it harder to access abortion care in Virginia. Leading medical associations and medical professionals have consistently opposed this law because it puts women's safety at risk. In June 2016, the U.S. Supreme Court in *Whole Woman's Health v. Hellerstedt* held that clinic shutdown laws, like Virginia's, that do not benefit women's health are unconstitutional. SB877 would have repealed Virginia's unconstitutional clinic shutdown statute and ensured that no abortion provider in Virginia will be shut down unless that provider poses a bone fide threat to public health.

SJ319 - Constitutional amendment (first resolution); qualifications of voters and the right to vote. (Locke)

Issue Area: Voting Rights

This bill would have started the process for amending the state constitution to affirm the right to vote for any U.S. citizen registered to vote over the age of 18 without restriction. The right to vote is a fundamental right and the government should not have the ability to grant or deny it. This resolution would have also repealed the felon disenfranchisement provision, which permanently bans individuals convicted of a felony from voting.

Bills We Opposed that Passed

Bills We Opposed that Failed

HB1468 - Incarcerated persons, certain; compliance with detainers, U.S. Immigration and Customs Enforcement. (Marshall)

Issue Area: Equality

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 ill-conceived "message" bill would have created 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 local sheriffs and jail officials to enforce immigration law.

HB1473 - Pain-Capable Unborn Child Protection Act; penalty. (LaRock)

Issue Area: Reproductive Rights

This cruel, dangerous and unconstitutional bill posed a serious threat to women's health, ignoring women's health needs and individual circumstances and seeking to ban abortions at 20 weeks. The sponsors of this bill seek to deny a woman the dignity to make personal, private decisions. Every pregnant woman faces her own unique circumstances, challenges, and potential complications. It isn't always possible for a woman to get an abortion as soon as she has made her decision – many things can stand in her way. A woman's health is what should drive important medical decisions – not political agendas.

HB1598 - Voter registration; proof of citizenship required to register to vote in certain elections. (Cole)

Issue Area: Voting Rights

Because Virginia cannot legally impose this requirement in federal elections, this bill sought 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 was an ill-considered proposal that would have placed further barriers in the entrance to the voting booth without any reason, basis in fact or thought about the administrative and human costs. It was an effort to further suppress the vote in Virginia.

HB1612 - Physical Privacy Act (Marshall)

Issue Area: Discrimination, Equality

HB1612 was about invading privacy, not protecting it. Among other things, this bill would have required anyone who wants to avoid harassment or an interaction with a government official to carry a copy of their original birth certificate on their person anywhere they may need to use a restroom on state property. Transgender people need and deserve privacy, too. Their privacy includes being able to use restrooms that conform with their gender identity without confrontation or hassle. We already have criminal laws on the books that protect everyone from violations of their persons and privacy while in public restrooms. This bill does nothing to protect anyone and only

serves to invite public attacks on people using restrooms who do not conform to someone's expectations of what a person of a particular sex or gender looks like. We already have laws on the books that protect parental interests, including the federal law that assures that every parent has access to the school records of their minor children. We would have hoped that Virginia legislators would have learned valuable economic and civil rights lessons from their colleagues in North Carolina, but certain lawmakers seem committed to taking the Commonwealth down the wrong path.

HB1616 - Felony homicide; certain drug offenses constitute second degree murder, penalty. (Lingamfelter)

Issue Area: Criminal Justice Reform

This legislation would have created 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." This legislation was a direct response to a recent Virginia Court of Appeals decision, *Woodard v. Commonwealth*, 61 Va. App. 567 (2013), aff'd, 287 Va. 276 (2014), which held that such individuals could not be convicted of homicide under current state felony homicide law. 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 (it is a felony to steal over \$200 worth of merchandise from a store and if a thief accidentally killed someone as they were stealing such merchandise, by say hitting a pedestrian with their get-away car, the law of felony homicide would not apply - that would be manslaughter). This legislation was 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).

HB1667 - Public contracts; gender identity, civil liability. (Marshall)

Issue Area: Discrimination, Equality

This measure would have authorized discrimination by all public contractors and immunizes all private companies and non-profit organizations and their employees from liability for discriminating against and denying benefits or services to people based on their gender identity or sexual orientation.

HB1723 - Resettlement of refugees; notice to localities, the Sec. of the Commonwealth, and General Assembly. (Anderson)

Issue Area: Equality

Refugees undergo strict screening by Homeland Security and the FBI before resettling to this country. Publicly notifying local politicians of exactly when and where they are resettled is to mark an already vulnerable population for unconstitutional intimidation and harassment. As well, Virginia is constitutionally preempted from imposing additional standards on federal agencies, their contractors, or their public or private subsidiaries. This bill would place state mandates on federal service providers - something Virginia does not have the power to do.

HB1762 - Abortion; informed written consent required, civil penalty. (Marshall)

Issue Area: Reproductive Rights

This bill would have forced physicians to communicate inaccurate and misleading warnings about abortion to their patients for the sole purpose of shaming them and coercing them to change their minds. Even if we disagree about abortion, we can agree that every woman deserves to have medically accurate, unbiased information so that she can make the best choice for her and her family. Women's health providers already provide this information. By forcing medical professionals to share medically inaccurate information with their patients, this bill would have let politicians, not doctors, decide what information a woman receives.

HB2000/ HB2236 - Sanctuary policies; prohibited. (Poindexter/Cline)

Issue Area: Equality

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 would 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.

HB2001 - Higher educational institutions; immigration enforcement. (Poindexter)

Issue Area: Equality

This bill would have required university staff and instructors to cooperate with ICE agents. Those staff are there to teach, not enforce federal immigration law. The bill was vague as to what university officials should do to "cooperate" with immigration enforcement. Such cooperation could violate federal and state laws meant to protect student's privacy.

HB2002 - Refugee and immigrant resettlements; reports to Department of Social Services. (Poindexter)

Issue Area: Equality

Refugees 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 have placed state mandated actions on federal service providers - something Virginia does not have the power to do.

HB2025 (Freitas)/SB1324 (Carrico) - Religious freedom; solemnization of marriage.

Issue Area: Equality

These were identical bills that would have sanctioned discrimination against LGBT Virginians — including by government contractors and grantees in performing publicly funded services and in places of public accommodation — and would have interfere with their fundamental right to marry. If signed by the governor, the legislation would allow religious-based organizations to deny programs and services to people in a same-sex marriage based on a “religious or moral belief that marriage is or should be between one man and one woman.” The governor vetoed a similar bill in 2016. We must continue to reject efforts to use religion as a justification to discriminate against anyone. Freedom of religion is not the freedom to impose your religion on anyone, nor the freedom to be accorded special protections not accorded other beliefs. The ACLU-VA’s opposed this bill along with Americans United for Separation of Church and State, the Anti-Defamation League, and the Jewish Community Relations Council of Greater Washington.

HB2191 - School boards; procedures for handling sexually explicit instructional materials, etc. (Landes)

Issue Area: Freedom of Speech

This bill would have required local school divisions to notify parents anytime educational materials include “sexually explicit content” as defined by the government in this legislation. This language was overly broad, and clearly will result in unconstitutional censorship. This bill would have threatened the ability of local school divisions and teachers to include in the curriculum a wide range of educationally valuable materials. The ACLU of Virginia opposed the bill along with nine other free speech organizations. What advocates of these bills fail to understand is there are parents with different points of view who want their children to have the benefit of a curriculum that is inclusive of this material, and that current rules governing controversial materials offer a balanced approach that respects the rights of all parents equally.

HB2264 - Department of Health; restrictions on expenditure of funds related to abortions and family planning. (Cline)

Issue Area: Reproductive Freedom

This bill was yet another attempt to shut down trusted healthcare providers that provide women with safe, legal abortion services. The attacks on Planned Parenthood and other abortion providers are part of a broad and consistent pattern by anti-abortion extremists to interfere with women’s personal decision-making and block access to abortion and reproductive health care. Planned Parenthood is a critical safety-net provider: one in five women will visit local Planned Parenthood centers for health care during her lifetime, and many low-income women and women of color rely on Planned Parenthood as their primary health care provider. These politically-motivated attacks on women’s health and the providers we rely on are a distraction from the real issues. Across the

country, communities are calling for more access to reproductive health care, not less, greater economic security, and the ability to support and protect their families. Those are the priorities our elected representatives should be focused on.

HJ589 - Unborn children; abortion law and personhood. (Marshall)

Issue Area: Reproductive Rights

This measure would have had wide-ranging, unforeseen, and unconstitutional consequences for a woman's health and for a family's private decision making. This bill would have banned some methods of emergency contraception or prevent couples from using in-vitro fertilization to have a family. It would even have denied a woman life-saving medical treatment for a disease, like cancer, if the treatment might harm her pregnancy or mean that a woman who suffers a miscarriage, and her doctor, could face an investigation and potentially a prosecution simply because an extreme politician thinks a miscarriage might be "suspicious". This bill was too extreme for our state.

SB790 - Crimes against law-enforcement officers, firefighters, and other emergency personnel; penalty.

(Cosgrove)

Issue Area: Criminal Justice Reform

This legislation would have implemented 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. The bill would have extended 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 apply 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 laws 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 have removed language requiring proof that the victim was engaged in public safety duties in the Commonwealth before the higher penalties would apply. This change would have created 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 persons 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. Even worse, 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.

SB 844 - Absentee voting; no-excuse in-person available 21 days prior to election. (Howell, J.)

Issue Area: Voting Rights

The bill would have allowed for any registered voter to vote by absentee ballot in person in any election in which he is qualified to vote without providing a reason or making prior application for an absentee ballot. The bill retained the current provisions for voting an absentee ballot by mail, including the application requirement and the list of statutory reasons. The ACLU of Virginia opposes the excuse-based system and continues to be concerned about its effects and limitations. If Virginia limits no-excuse absentee voting to in-person only, qualified voters may be excluded from participating based upon a lack of readily accessible transportation, geography, income status, and the constraints of modern-day individuals and families. The "excuse-based" absentee voting law also continues to present concerns that certain classes of voters are being elevated. The excused-based system also continues to threaten the privacy of voters who vote by absentee ballot. The law currently requires voters to disclose private and sensitive information in order to vote by absentee ballot. And, this information is being required by a law that provides no assurance that the information will be held confidential and secure, or that it will be available to defend against allegations of absentee ballot fraud, which is a class 4 felony for which there is no statute of limitations. All Virginia voters should have the ability to vote by absentee ballot either by mail or in-person without providing a reason.

SB1055, SB1056, SB1057, SB1058 / HB1791- Enhanced penalties for protesters. (Stuart/Lingamfelter)

Issue Area: Freedom of Speech

Like many other states, Virginia attempted to target protesters with enhanced criminal penalties. Absent a real danger to the community, predicated by increased incidents or actual threats to public safety, there is no need to heighten penalties for non-violent civil disobedience. HB10578 proposed felony charges against protesters who choose to participate in civil disobedience and block a highway (broadly defined as any road in VA). If convicted, protesters could face five years in prison for blocking a road. HB1791 proposed felony charges, with a possibility of 20 years in prison, for organizing a protest that turns riotous towards law enforcement and first responders, even if the organizers did nothing to cause the riot directly. Participants in such a “riot” would only be subject to a misdemeanor charge. Such disparities in criminal charges targeted at organizers would effectively curtail protests and chill free speech.

SJ223 - Constitutional amendment; qualification of voters and executive clemency**Issue Area: Voting Rights**

This measure would have continued to say anyone convicted of any felony at any time can never vote again unless they meet certain criteria and follow certain procedures to ask for their rights back. The right to vote would have been conditioned on full repayment of government fines, costs and user fees (including interest) – a modern day poll tax. In addition, the legislature would have been granted the ability to decide whether a felony is violent or nonviolent and to decide the terms on which people convicted of nonviolent felonies can get their right to vote back. Finally, it would have established specific criteria for the governor to follow in deciding whether to give a person convicted of a violent felony their rights back, including a requirement that a person wait five years after all fines, fees and costs are paid before even asking for their rights back. This resolution sought to constitutionalize previously discarded obstacles on the right to vote.

HB2264: Defunding Planned Parenthood (Cline)**Issue Area: Reproductive Freedom**

This bill, which passed the House and the Senate on party lines and was vetoed by the Governor, would have made Planned Parenthood and any other medical provider (except hospitals) that perform 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—or to enter into any contract with the state. This bill was 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. No medical provider should be denied state or federal funding for family planning programs that have nothing to do with abortion, or the ability to contract with the state for any reason, just because they engage in the constitutionally protected activity of providing safe, legal abortions on their premises.