



2018 General Assembly – Cross-Over Report

Cross-over for the 2018 General Assembly session was midnight on Feb. 13, 2018. 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 2018 session that the ACLU of Virginia is actively working to support or oppose.

Bills We Support

Criminal Justice Reform

House Bill 900 (Freitas) - Forfeiture of property used in connection with commission of crimes; finding of guilt required.

Passed House Courts of Justice Committee 12-6; passed House 81-18.

The ACLU of Virginia supports due process and believes that law enforcement should not be able to seize and keep anyone's property without a criminal conviction. We oppose civil asset forfeiture, also known as policing for profit. This bill would require that a criminal conviction be required for any civil asset forfeiture to take place.

House Bill 1251 (Cline) - CBD oil and THC-A oil; certification for use, dispensing.

Passed House Courts of Justice Committee 18-0; passed House 98-0.

Senate Bill 726 (Dunnavant) - CBD oil and THC-A oil; certification for use, dispensing.

Passed Senate Education and Health Committee 13-2; passed Senate 40-0.

The ACLU of Virginia strongly supports full legalization of marijuana as well as legalization of THC oils for medical use. Doctors in Virginia currently can issue medical marijuana certifications only to people with intractable epilepsy. The new law would let doctors issue certifications to treat any condition.

Senate Bill 105 (Sutterlein) - Grand larceny; increases threshold amount.

Passed Senate Courts of Justice Committee 12-3; passed Senate 36-3.

The ACLU of Virginia supports an increase in the felony larceny threshold. Virginia's current level of \$200 was enacted in 1980 and is the lowest in the nation, causing disproportionate harm to women and people of color, and contributing to mass incarceration and disenfranchisement from voting. This bill would raise the threshold to \$500, which would not even keep pace with inflation from 38 years ago. The ACLU of Virginia would prefer the threshold be increased to at least \$1,500. In addition, we oppose tying passage of this legislation to passage of legislation establishing a new scheme for collecting restitution owed by defendants that involves 10 years of hearings and the possibility of jail time for non-payment of monies owed regardless of ability to pay (see note below).

Senate Bill 181 (Stanley) - Driver's license; suspension for nonpayment of fines or costs.

Passed Senate Courts of Justice 12-2-1; passed Senate 33-6.

The ACLU of VA strongly supports repealing laws that suspends a person's driver's license for any reason unrelated to bad driving. These provisions in the law disproportionately affect lower-income drivers and do nothing to improve road safety. Police have also used Driver's License checkpoints to target minorities and immigrant communities around the Commonwealth, further increasing the disparity of how these provisions in the law are enforced.

Senate Bill 813 (Peake) - Forfeited assets; state or local agency that receives net proceeds of asset from DCJS, etc.

Passed Senate Courts of Justice 14-1; passed Senate 40-0.

The ACLU of Virginia believes that law enforcement should not be able to seize and keep anyone's property without a conviction. We oppose civil asset forfeiture, also known as policing for profit. This bill enhances the public reporting of forfeiture actions and collections to include clear breakdowns of what amounts resulted from pre-conviction seizures and forfeitures and which resulted from postconviction forfeitures. The Department of Criminal Justice Services would add this information to annual report it provides to the governor and legislature.

Juvenile Justice

Senate Bill 170 (Stanley) - Public schools; student discipline.

Passed House Education & Health Committee 11-4; passed Senate 38-0.

The ACLU of VA strongly supports this bill, and other measures, that seeks to address the overwhelming problem Virginia has when it comes to school discipline. Virginia schools leads the nation in suspensions and referrals to law enforcement - with well more than 70,000 school-aged children being suspended in the previous school year. Statistically, these suspensions disproportionately affect minority students and students with disabilities. This bill is a start in the right direction by limiting out of school suspension for very young students. The bill still allows for exceptions in extreme instances. Young students in trouble need more help, not suspensions.

Senate Bill 890 (Wagner) - Juvenile offenders; eligibility for parole.

Passed Senate Courts of Justice Committee 15-0; passed Senate 40-0.

The ACLU of VA supports Senate Bill 890, which seeks to give juveniles convicted of crimes a chance to seek parole. Studies have shown that juvenile's brains, and their ability to distinguish between right and wrong, continue to develop into early adulthood. Juveniles should not be held to the same punishment and accountability as adults. Added to this is the fact that Virginia all but abolished its parole system in 1995. This means that a juvenile, sentenced to decades in prison for an offense for which many would argue they are not fully culpable, would effectively spend their entire life in prison. SB 890 puts a limit of 25 years a juvenile can serve in prison before they are granted a parole hearing. The bill does not release juveniles after 25 years, as they would still have to demonstrate eligibility for parole. It simply gives them a chance at rehabilitation.

Open Government

Senate Bill 336 (Peake) - Virginia Freedom of Information Act; right to speak at open meetings.

Passed Senate Committee on General Laws & Technology 9-0; passed Senate 38-2.

The ACLU of Virginia supports openness, transparency and accountability in government. There currently is no requirement that state and local public bodies in Virginia hold regular open comment periods during public meetings. This bill would require every public body to schedule at least four open

comment periods per year. Elected and appointed boards, councils and commissions should be required to hear from the public whether they want to hear what the public has to say.

Senate Bill 630 (Surovell) - Virginia Freedom of Information Act; civil penalty.

Passed Senate Committee on General Laws & Technology 11-0; passed Senate 31-8.

Elected and appointed members of boards, councils and commissions in Virginia routinely violate Freedom of Information Act (FOIA) requirements concerning how and for what reasons they can hold closed sessions. This bill would impose a civil penalty of \$500 on each individual public official who knowingly violates the closed meeting provisions of FOIA or who intentionally destroys a public record. Virginia's open government law needs teeth to be effective.

Women's Rights

HB 83 (Kory): Feminine hygiene products at no cost to women prisoners or inmates.

Passed House Police, Militia and Public Safety Committee 20-1; passed House 100-0.

The ACLU of Virginia strongly supports HB 83, which would require the Virginia Department of Corrections to adopt and implement a standard for ensuring that women incarcerated in Virginia's prisons and jails are provided feminine hygiene products without charge. Menstruation is a basic biological fact of everyday life for billions of women and girls across the planet. But for women behind bars, having their period can be a living nightmare. Prisons and jails can make maintaining well-being and dignity a monthly struggle. In Virginia's prisons and jails, women receive scant hygiene products at great risk to their health and in violation of their human rights. Women who cannot afford to buy overpriced hygiene products from the prison or jail commissary are often forced to do without. As long as women's menstrual needs are considered a privilege and not a right, and they can be taken away on a whim or used to coerce or humiliate women. HB 83 would be an important first step in ending this degradation and abuse in Virginia's prisons and jails.

Bills We Oppose

Criminal Justice Reform

House Bill 484 (Bell) - Restitution; defendants on probation.

Passed House Courts of Justice Committee 15-3; passed House 79-20.

Senate Bill 994 (Obenshain) - Restitution; defendants on probation.

Sent down and introduced at the request of the Governor.

The ACLU of Virginia strongly opposes these bills, support for which is part of an announced bipartisan compromise between Gov. Ralph Northam and the House Republican leadership to raise the felony larceny threshold by supporting Senate Bill 105 (above). These bills would keep criminal defendants on probation until they've paid back their victims and require probation agencies to monitor the status of payments. We understand the need to fix our system of collecting and distributing restitution but this proposal is heavy-handed and unjust. Many witnesses testifying to HB 484 admitted that some of our clerks, courts, and prosecutors do not even exercise the power they currently have to collect and distribute restitution. Before we institute a new system that is potentially unjust or unconstitutional, we should work to fix the current system of collections. This proposal is not a fix to that system; it creates a new scheme.

House Bill 1249 (Toscano) - DNA; analysis upon conviction of certain misdemeanors.

Passed House Courts of Justice Committee 18-0; passed House 91-7.

Senate Bill 565 (Obenshain) - DNA; analysis upon conviction of certain misdemeanors.

Passed House Courts of Justice Committee 15-1, passed House 34-6.

The ACLU of Virginia has serious privacy and due process concerns about mandatory DNA collection from criminal defendants. Virginia's DNA database is already the largest in the country containing the most sensitive, private information about one in every 20 Virginians. We strongly oppose continued expansion of the list of misdemeanors, or minor crimes, for which collection of DNA is mandatory. There is no correlation between commission of minor crimes and the heinous, violent crimes the databank was created to help clear. Expansion of the database itself increases the likelihood of false matches and ethnic bias, disproportionately exposing people of color to unwarranted scrutiny.

Senate Bill 168 (Stanley) - Electronic transmission of sexually explicit images by minors; penalties.

Passed Senate Courts of Justice 11-4; passed Senate 35-5.

The ACLU of Virginia opposes this bill which would make it a Class 2 misdemeanor for minors to send each other sexually explicit images of themselves via their cell phones. This is to avoid prosecutors charging minors with felony dissemination and possession of child pornography for lack of a lesser, more appropriate charge. While we agree children should not be charged with felonies, establishing a new misdemeanor will actually result in more children facing criminal charges.

Senate Bill 566 (Obenshain) - Arrests; law-enforcement agency to report, etc.

Passed Senate Courts of Justice Committee 15-0; passed Senate 40-0.

This measure is directly tied to SB565 and related to a move to expand the list of minor crimes for which DNA must be collected from anyone convicted.

Senate Bill 644 (McPike) - DNA sample after arrest; certain misdemeanors.

Passed Senate Courts of Justice Committee 13-2; passed House 27-12.

The ACLU of Virginia has serious privacy and due process concerns about mandatory DNA collection from criminal defendants. Virginia's DNA database is already the largest in the country containing the most sensitive, private information about one in every 20 Virginians. We strongly oppose continued expansion of the list of misdemeanors, or minor crimes, for which collection of DNA is mandatory. There is no correlation between commission of minor crimes and the heinous, violent crimes the databank was created to help clear. Expansion of the database itself increases the likelihood of false matches and ethnic bias, disproportionately exposing people of color to unwarranted scrutiny.

Senate Bill 954 (Norment) - Marijuana; reduces penalties for possession to a fine of not more than \$500.

Passed Senate Courts of Justice Committee 15-0; passed Senate 38-2.

The ACLU of Virginia opposes this legislation. This bill is not a decriminalization bill; it is an expungement bill only, and it only offers that option to offenders once, after a 12-month wait, and for those who can afford to pay a \$300 expungement fee. The ACLU of Virginia supports legalization of marijuana. Enforcement of laws against simple marijuana possession, in particular, is costly, ineffective and racially biased. An African-American is three times more likely to be arrested in Virginia than a white person, even though usage rates are the same. In some localities, the ratio is nearly eight-to-one. This results in a disproportionate percentage of blacks being exposed to the criminal justice system and incarcerated. In addition, the Commonwealth spends tens of millions of dollars each year enforcing outdated, failed marijuana laws that better would be directed toward mental health programs and to address the growing opioid problem.

Immigrants' Rights

House Bill 1257 (Cline) - Sanctuary policies; enforcement of federal immigration laws.

Passed House Courts of Justice Committee 9-8; passed House 15-9.

The ACLU of Virginia strongly opposes this legislation that would impose an unfunded mandate on localities to provide resources to the federal government to carry out its enforcement of the nation's broken immigration laws, and prohibit localities from adopting policies that enhance the safety of our communities by creating positive relationships between law enforcement and local governments with foreign born Virginians and immigrant communities.

Reproductive Rights

House Budget Amendment 4-5.04 #1h (LaRock) & Senate Budget Amendment 4-5.04 #1s (Sutterlein) - Banning Public Funding for abortion in the case of fetal anomalies.

The ACLU of Virginia strongly opposes these budget amendments, which would repeal current Virginia law that allows for public funding of abortion services in the event of a fetal anomaly for Medicaid-eligible women in the Commonwealth. Women should not be denied necessary healthcare based upon their ability to pay and health care decisions are best made by individuals and their medical providers.

House Budget Amendment 290 #1h (Cline) - Defunding Abortion Providers

The ACLU of Virginia strongly opposes this proposed budget amendment, which would make Planned Parenthood and any other medical provider (except hospitals) that perform abortion services for any reason other than to save a pregnant person'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 funding to provide comprehensive family planning services—including access to long-acting reversible contraception (LARC) such as IUDs. Other state versions of this funding ban have been struck down as unconstitutional by federal district and appellate courts. 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