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2018 General Assembly – Post-Session Report

Bills We Supported that Passed

HB83 (Kory) - Feminine hygiene products; no cost to female prisoners or inmates.

Issue Area: Ending Sex Discrimination, Criminal Justice Reform

This new law directs the State Board of Corrections and the Director of the Department of Corrections to each adopt and implement a standard to ensure the provision of feminine hygiene products to female prisoners and inmates without charge.

HB458 (Filler-Corn); SB330 (Dunnivant) - CBD oil and THC-A oil; certification for use, dispensing.

Issue Area: Criminal Justice Reform

These bills expand access to cannabidiol (CBD) and THC-A oils, just as the state prepares to issue licenses for what will be Virginia's first dispensaries for medical cannabis products. Under the law, patients are allowed to provide an affirmative defense against prosecution for possession of these oils when in possession of a doctor's note. This expands affirmative defense from being used only for patients with severe epilepsy to any medical condition with a doctor's approval.

SB170 (Stanley) - Public schools; student discipline.

Issue Area: Equality, Criminal Justice Reform

The ACLU of Virginia opposes referral of public school students to law enforcement for behavioral or other minor infractions. This measure prohibits, except for drug offenses, firearm offenses, and certain criminal acts, students in preschool through grade three from being suspended for more than three school days or expelled from attendance at school except under severe circumstances.

Bills We Supported that Failed

HB57 (Lucas); HB1072; (Heretick); SB114 (Locke) - Absentee voting; no excuse.

Issue Area: Voting Rights

The ACLU of Virginia supports allowing all voters the opportunity to vote absentee by mail or in person, and opposes adding additional excuses that will continue to privilege some voters over others.

HB617 (Foy); SB167 (Stanley) – Discovery in criminal cases; duty to provide.

Issue Area: Criminal Justice Reform

The ACLU of Virginia supports reforms to our criminal discovery rules that will assure all defendants access to the evidence against them before they are asked to enter a plea or in time to make informed decisions about their defense at trial and reforms that make prosecutors accountable for unethical and unconstitutional actions in violation of those rules.

HB758 (Leftwich); SB 802 (Favola) - Death penalty; severe mental illness.

Issue Area: Criminal Justice Reform

The ACLU of Virginia supports repeal of Virginia’s death penalty statute. In the interim, however, we also support an exemption at the sentencing phase of trial for persons who have been diagnosed with a severe mental illness.

HB795 (Hope) - Prisons; isolated confinement prohibited, exceptions.

Issue Area: Criminal Justice Reform

The ACLU of Virginia supports ending the practice of solitary confinement in Virginia’s jails and prisons. Forcing people to spend 22-23 hours a day in cramped isolation without human contact is cruel, torturous and causes mental illness. This bill would have prohibited placing members of vulnerable populations – including those who are mentally, physically or developmentally disabled, pregnant, or LGBT – in solitary confinement in Department of Corrections operated prisons. It also would have limited solitary confinement even in the most extreme circumstances to no more than 15 days – an international human rights standard – and would have established a reporting mechanism to collect critical data to inform future advocacy. The reporting portion of the bill was referred with a recommendation for review to the Joint Subcommittee Studying Mental Health Services (“Deeds Commission”).

HB900 (Freitas); SB463 (Reeves); SB341 (Peake) - Forfeiture of property used in connection with commission of crimes; finding of guilt required

Issue Area: Criminal Justice Reform

The ACLU of Virginia opposes allowing the government to seize and forfeit the property of any person who has not been convicted of a crime. While we do not oppose actions to deprive convicted criminals of the financial rewards of their crimes, we oppose taking such action before conviction.

HB953 (Lopez) - Crime victims; immigration status.

Issue Area: Equality, Criminal Justice Reform

The ACLU of Virginia believes that everyone is safer if all residents of Virginia feel comfortable reporting crimes to police and cooperating with police in the prosecution of criminals. A statewide policy that assures Virginians that a cooperating victim of or witness to a crime will not be asked about their citizenship or immigration status unless that’s relevant to the crime being investigated (for example, human trafficking of foreign nationals) will make every community in Virginia safer.

SB 111 (Ebbin) - Marijuana; decriminalization of simple possession, civil penalty.

Issue Area: Criminal Justice Reform

The ACLU of Virginia supports decriminalization of marijuana in order to end the disparate enforcement of failed, outdated drug laws against African-Americans. This bill would have established a civil fine of \$50 for first offense simple marijuana possession, \$100 for second offense, and t\$250 for third offense.

HB1231 (Boysko) - Abortion; a pregnant person has a fundamental right to obtain.

Issue Area: Reproductive Rights

The ACLU of Virginia favors assuring abortion access for all women as a basic element of health care. Also known as the Whole Women’s Health Act, HB1231 would have provided that a pregnant person has a fundamental right to obtain a lawful abortion and that no statute or regulation shall be construed to prohibit the performance of an abortion prior to viability or if necessary to protect the life or health of the pregnant person, and rolled back nearly all of the current statutory restrictions on abortion access in Virginia.

HB1247 (Cline); SB336 (Peake) - Virginia Freedom of Information Act; right to speak at open meetings.

Issue Area: Open Government

The ACLU of Virginia supports openness and transparency in government. Public meetings and government documents should be as accessible to the public as possible. Members of the public should have regular opportunities to address elected officials and other governing bodies. These bills were referred for review by the Virginia Freedom of Information Advisory Council.

SB181 (Stanley) - Driver's license; suspension for nonpayment of fines or costs.

Issue Area: Criminal Justice Reform

The ACLU of Virginia 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.

SB196 (Locke) - Law-enforcement officers; CJSB to adopt statewide professional standards of conduct.

Issue Area: Criminal Justice Reform

The ACLU of Virginia believes that police officers, like other professionals, should be subject to statewide standards of conduct governing issues like use of force and other conduct on the job, and that serious misconduct in violation of such standards should, after an appropriate due process hearing, result in the loss of a police officer's certification by the state that allows them to continue to serve in law enforcement. Currently officers can only lose their certification if they are convicted of a felony or certain misdemeanors, or fail to complete required training.

SB202 (Ebbin); SB423 (Wexton) - Public employment; prohibits discrimination on basis of sexual orientation or gender identity.

Issue Area: Equality

The ACLU of Virginia supports passage of nondiscrimination laws that assure public employees and all Virginians that they won't be victims of discrimination based on sexual orientation or gender identity at work, in housing or in schools.

SB444 (Wexton) - War veterans; removal, relocation, etc., of monuments.

Issue Area: Freedom of Speech

This bill would have amended existing law to authorize localities to remove, relocate, or alter a war monument or memorial within its own borders, regardless of when erected. Such action is currently prohibited under state law.

SJR9 (Locke); SJR12 (Lucas) - Constitutional amendment; qualifications of voters and the right to vote.

Issue Area: Voting Rights

These measures would have taken the first step toward amending the Virginia Constitution to positively affirm a right to vote that cannot be abridged by law. Any citizen and resident of Virginia who is 18 or older should be guaranteed the right to vote.

Bills We Opposed that Passed

HB484 (Bell, Robert); SB994 (Obenshain) - Restitution; probation.

Issue Area: Criminal Justice Reform

These bills require persons who owe restitution to crime victims to remain on indefinite probation under threat of return court dates, contempt of court charges, and additional jail time if they are unable to make full repayment. This will unfairly punish certain people based on their inability to pay, and was part of

the “bi-partisan compromise” that enabled passage of the regressive “increase” to the felony larceny threshold this year (see HB1550 and SB105).

HB1249 (Toscano); SB565 (Obenshain) - DNA; analysis upon conviction of certain misdemeanors.

Issue Area: Criminal Justice Reform

These bills add to the list of misdemeanor crimes for which DNA must be collected after conviction. Virginia’s DNA databank is already the largest in the country, comprising the most sensitive personal information about every one in 20 Virginians. Increasing the size of the database will increase the likelihood of racial bias and false matches.

HB1550 (Adams); SB105 (Suetterlein) - Grand larceny; increases threshold amount.

Issue Area: Criminal Justice Reform

This bill would have increased the threshold for felony larceny from \$200 to \$500. The ACLU of Virginia strongly supports raising this threshold, which has not been increased since 1980, to at least \$1,000. However, raising it to \$500 would be regressive as inflation on \$200 from 1980 would be nearly \$700 and the value of today’s \$500 in 1980 would only be just more than \$60. The ACLU of Virginia may have considered soft support for this measure had not a compromise between the governor and the House leadership tied it to passage of an unrelated bill concerning restitution for crime victims (see HB484 and SB 994).

Bills We Opposed that Failed

HB1257 (Cline) - Sanctuary policies; enforcement of federal immigration laws.

Issue Area: Equality, Criminal Justice Reform

This unnecessary, overbroad measure would do nothing to solve our national immigration crisis and instead would make our Commonwealth less safe by requiring local law enforcement to cooperate with federal immigration officials, thus discouraging victims and witnesses of crimes to come forward. Gov. Ralph Northam vetoed this bill. It also would have prohibited localities from adopting policies to enhance the safety of our communities by creating positive relationships between law enforcement and local governments with foreign-born Virginians and immigrant communities.

SB168 (Stanley) - Electronic transmission of nude or partially nude images of minors by minors; penalty.

Issue Area: Criminal Justice Reform

This bill would have made 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 954 (Norment) - Marijuana; reduces penalties for possession to a fine of not more than \$500.

Issue Area: Criminal Justice Reform

Described by the patron as a marijuana decriminalization measure, this bill was anything but. Instead, 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 in addition to court fines, fees and possible jail time.