



End of Session Review, 2017
ACLU of Vermont
Published June 1, 2017

CRIMINAL JUSTICE REFORM

H. 308 – Racial justice panel / Fair and Impartial Policing

This bill creates a racial justice panel to review and report on racial disparities in the criminal justice system. The panel is made of government agency heads and the Attorney General's office, but requires consultation with advocates and communities of color. Also, the state's model Fair and Impartial Policing policy will be redrafted into one comprehensive policy, from which all Vermont law enforcement agencies will adopt each component, at a minimum. The bill passed both chambers with strong majorities on roll call votes and Governor Scott signed it into law on May 31, 2017.

H. 370 – Restricting solitary confinement

Solitary confinement is a cruel form of punishment that costs too much, does nothing to rehabilitate prisoners, and causes or exacerbates mental illness. H. 370 would help to decrease this practice, prohibiting an inmate with a serious functional impairment from spending more than 24 hours in solitary confinement within a given 7-day period for any reason. The bill awaits consideration by the House Corrections and Institutions Committee.

H. 381 – Prohibiting physical restraints in juvenile detention facilities

H. 381 would prohibit the use of physical restraints on a juvenile except to prevent physical harm to the child or others. Any restraints must be removed after a half hour unless the child is being transported by vehicle and physical restraint is necessary. The bill also prohibits certain types of restraints. The legislation awaits consideration by the House Human Services Committee.

H. 384 – Protecting justice-involved moms

H. 384 creates a Justice-Involved Women Parenting Minor Children Study Committee, which would advise the Vermont General Assembly on issues involving the diversion of women charged with nonviolent offenses and who are custodial parents of minor children to alternative justice programs. This legislation is

supported by the Vermont Criminal Justice Reform Coalition, of which the ACLU is an active member. The bill awaits consideration by the House Corrections and Institutions Committee.

H. 469 – Ending confinement because of lack of housing

H. 469 prohibits holding an inmate in confinement after his or her release date just because the individual lacks appropriate housing. It awaits consideration by the House Corrections and Institutions Committee.

H. 503 – Bail reform / Fentanyl penalties / Electronic monitoring

This bill forbids courts from imposing bail on a person who was cited to court for a misdemeanor in lieu of arrest. Conditions may nonetheless be imposed. This is already common practice and is unlikely to have any meaningful impact.

Unfortunately, the legislature also approved new penalties specific to knowing fentanyl selling or “dispensing,” and expanded the “electronic monitoring” of DOC detainees and certain prisoners. The bill awaits the governor’s signature.

S. 134 – Expanding drug and mental health courts

S. 134 expands court diversion programs to assist non-habitual offenders and adults with substance abuse or mental health treatments needs. The bill also expands pre-trial assessment services. S. 134 awaits the governor’s signature.

H. 74 – Abuse Prevention Order violations / Sexual Assault Survivors Bill of Rights / Sexual assault statute of limitations

It is unfortunately common for individuals to lash out online about a partner or significant other, particularly when they are enmeshed in a court battle. ACLU of Vermont was successful in guarding people’s First Amendment right to free expression by requiring that a person who does so could not be guilty of violating an abuse prevention order unless they posted their comments with the purpose of communicating with the other party. We supported the sexual assault survivors’ bill of rights, which ensures effective and efficient taking and analysis of post-assault evidence from a survivor’s body.

Despite our opposition, in this bill, the legislature removed the statute of limitations for sexual assault. We had proposed raising the statute of limitations, but not eliminating it, because its elimination introduces too much uncertainty into the court process and could slow the already sluggish investigation and prosecution of sexual assault. The bill was signed by the governor on May 23, 2017.

H. 539—Mandatory incarceration for third DUI

H. 539 would require mandatory incarceration for a person convicted of a third DUI, which the ACLU opposes. It awaits consideration by the House Judiciary Committee.

DRUG REFORM

S. 22 – Marijuana legalization

S. 22 takes a step forward in marijuana reform. The Senate had previously passed a bill, H. 167, that would create a taxation and regulation system for marijuana. The House, by contrast, passed H. 170, which would legalize the possession of one ounce of marijuana and the cultivation of two mature and four immature cannabis plants. In a compromise attempt, the Senate attached the language of H. 170 to S.22, and added the creation of a Marijuana Regulatory Commission to the bill. This commission will draft legislation for the taxation and regulation of marijuana to be introduced during the 2018 legislative session. The House and Senate passed this new version of S.22, making Vermont the first state to pass legislation to end criminal prohibitions on adult marijuana possession—an historic accomplishment. Unfortunately, Governor Scott vetoed S. 22 on May 24, but he has indicated that he is willing to work with stakeholders on the issue to create compromise legislation.

H. 511—Marijuana per se limits / saliva testing

We were successful in advocating for the removal of provisions that would have created a special crime for anyone with a blood alcohol level of .05 if there was any amount of THC in their system, even though the blood alcohol level is .08 for everyone else. This is a kind of per se limit that does not take into account the fact that THC, the active substance in marijuana, is metabolized differently for each person and that it can remain in a person's system for long periods of time. Particularly for regular users, such as those with state-issued medical marijuana cards, this would unfairly penalize them for the medicine they use. We were also successful in ensuring that the saliva testing bill never came up for discussion. Regardless, these two bills are likely to come back from the dead as the marijuana legalization discussion continues.

S. 16 – Expanding medical marijuana

S. 16, passed by both the House and Senate, enhances Vermont's medical marijuana program by adding more conditions eligible for treatment (including Crohn's disease, Parkinson's disease, and PTSD), providing more ways for Vermonters to join the program, and expanding the locations where medical marijuana is available. The bill awaits the governor's signature.

H. 167 – Examining lessening drug punishments

H. 167 originally directed the Office of Legislative Council to examine a public health approach to low-level drug possession and use as an alternative to the traditional criminal justice system. The bill was passed by the House, but used as a vehicle for the Senate to pass marijuana taxation and regulation legislation.

H. 200 – Expungement

H. 200 would add ‘a violation of the possession, sale, or dispensation of LSD statute’ to the list of qualifying crimes for expungement. It currently awaits consideration by the House Judiciary Committee.

H. 213 – Expanding access to drug and DUI treatment courts

H. 213 would expand access to drug and DUI treatment courts and create funding mechanisms to aid that expansion. It currently awaits consideration by the House Judiciary Committee.

H. 468 – Expanding addiction treatment in prison

H. 468 would require the Department of Corrections to provide medication-assisted treatment to inmates fighting opioid dependency at state correctional facilities. It awaits consideration by the House Corrections and Institutions Committee.

POLICE ACCOUNTABILITY

H. 22 – Police decertification

After several years in which police reform efforts fell apart at the last-minute, the Legislature has finally passed a bill to put an end to the problem of bad cops hopping from agency to agency. Until now, once law enforcement officers completed training and were certified by the state, their certification could be revoked only in extremely narrow circumstances: a felony conviction or failure to keep up with training requirements. That meant that officers who were fired by one agency for severe misconduct were free to take new positions at other Vermont agencies—agencies that were only too happy to hire them rather than paying to train officers from scratch. But H. 22 will change all that: it significantly expands the grounds for decertification—to include biased policing and other forms of gross professional misconduct, as well as any misdemeanors committed on duty and certain serious misdemeanors committed off duty—and lays the groundwork for potentially putting officer certification under the purview of the Office of Professional Regulation, just like almost 50 other licensed professions in Vermont. This is a very important and long overdue step toward greater police professionalism and accountability. The bill awaits the governor’s signature.

H. 419 – Requiring and regulating body cameras

H. 419 would ensure that local law enforcement agencies equip their officers with body cameras and that officers turn their cameras on during interactions with someone the officer has reasonable suspicion to believe is committing a crime or civil violation. The legislation also requires officers to inform suspects that they are being recorded and limits the discretion of officers to delete camera footage. The bill currently awaits consideration by the House Judiciary Committee.

S. 80 – Authorizing corrections officers to carry firearms

This bill would authorize all corrections officers who are certified as law enforcement officers to carry firearms. ACLU opposes this bill because it could lead to negative incentives within the correctional system. The bill is currently under consideration by the Senate Institutions Committee.

H. 475 – Certifying parole/probation as law enforcement officers

This bill requires the Commissioner of Corrections to allow a correctional officer assigned to a parole and probation office to be certified as a law enforcement officer. ACLU opposes this bill because it detracts from the main goals of parole and probation, which should be to help formerly incarcerated people reintegrate into society. The bill awaits consideration by the House Corrections and Institutions Committee.

GOVERNMENT ETHICS AND TRANSPARENCY

S.8 – Required disclosures and ethics

Vermont has fallen behind on state ethics: it is one of the few states that does not have an Ethics Commission, and has been named the state most at risk for embezzlement. The Vermont Legislature sought to combat this issue through S.8, which creates a state ethics commission and imposes financial disclosure and conflict of interest rules on lawmakers and state officeholders and candidates. The ethics commission has no investigatory or enforcement power: it will simply receive ethics complaints about lawmakers, state officeholders, and the judiciary, and will forward the complaint to the appropriate investigating authority.

The Commission will be composed of five members: one appointed by the Chief Justice of the Vermont Supreme Court, one member of the League of Women Voters appointed by the League, one member of the Vermont Society of Certified Public Accountants appointed by the Board of Directors of the Society, one member of the Vermont Bar Association appointed by the Board of Managers of the association, and one member of the Vermont Human Resource Association appointed by the association's Board of Directors. The Commission, along with its part-time executive

director, will draft a State Code of Ethics and engage in ethics education and advisory work.

The bill also creates disclosure requirements for candidates for state legislative and executive office and requires candidates for statewide office to release their most recent tax returns. The bill also requires that all municipalities create conflict of interest policies. Although this bill does not address all our concerns about state ethics, the ACLU supported this legislation as a good first step towards better government transparency.

H. 495 – Ensuring public records access

H. 495 enacts changes to various agricultural statutes. Near the end of consideration of the bill, the Senate slipped in an amendment that would have exempted nutrient management plans (which deal with farmer management of natural resources concerns) from the Public Records Act (PRA), meaning the public could not request and receive information about these plans from the Agency of Agriculture. The ACLU, along with our partners, worked to oppose this provision, as we believe that government transparency is essential to a functioning democracy and that exempting this information from the PRA was not in the public interest. The conference committee eventually removed this provision from the final bill, replacing it with a mandate for the Agency of Agriculture to study the issue. H. 495 was approved by the Legislature and now awaits the governor's signature.

S. 4—Open meetings for ACOs

Vermont has decided to allow its health care system in the next few years to be run by “accountable care organizations” (ACOs) in what has been called the “all-payer” model. These are private entities that will indirectly manage the medical care of every Vermonter by using data to determine criteria for medical services. S. 4 ensures that board meetings of ACOs are noticed, produce published minutes or recordings, and are open to the public with an opportunity to comment, except in particular circumstances that require executive session. This is vital to ensure Vermonters have an opportunity to be involved in the state-created health care system of the future. The bill passed both chambers with strong majorities.

FREE SPEECH

S. 18 – Protecting student journalists' free expression

S. 18 codifies protections for student journalists. In 1988, the United States Supreme Court held in *Hazelwood v. Kulmeier* that under the First Amendment of the United States Constitution, school authorities have broad discretion in determining and censoring the content of school newspapers. S. 18 guarantees free

expression and freedom of the press for student journalists under the Vermont Constitution, with exceptions only for libel and slander, invasions of privacy, profanity or threats, harassment, violations of federal or state law, or disruptions of the school's ability to perform its educational mission. S. 18 was passed by the Senate on February 14, 2017. The bill language was then inserted into H. 513, which was passed by both chambers and now awaits the governor's signature.

S. 96 – Media shield law

S. 96 is a 'media shield' bill that protects journalists from compelled disclosure of information from confidential sources by the government. The bill also provides some protection for information from non-confidential sources. The bill was passed by both the House and Senate with overwhelming support and now awaits the governor's signature. The ACLU supported this bill, as ensuring the free flow of information without fear of reprisal or discovery is essential to holding the government and others accountable. The bill was signed into law by the governor on May 17, 2017.

INDIVIDUAL RIGHTS

H. 228 / S. 79 – Preventing Muslim registry and deputizing of local police

The Governor signed this bill which seeks to prevent Vermont's support for a registry of persons based on protected characteristics, including religion. The bill also prevents local police from entering into two types of agreements with federal immigration agencies without the express approval of the Governor. We attempted to expand the bill's protections and scope, but were unsuccessful. While the impact of this bill is largely negligible, it is a positive statement and we certainly support its intentions.

H. 136—Pregnancy accommodations

H. 136 requires employers to provide reasonable accommodations for all workers with pregnancy-related conditions unless the accommodation would impose an undue hardship on the employer. The ACLU supported this bill, which was signed into law by the governor on May 4, 2017.

H. 196 – Paid family leave

H. 196 would establish a paid family leave program in Vermont, creating a 0.141 percent payroll tax to create a six-week paid family leave program administered by the Department of Labor. An employee who had been with a company for at least a year would be able to take up to six weeks off for a new child, for a serious illness, or to care for a close family member who is ill. Workers would be reimbursed for up to

80 percent of their pay. The House passed H. 196 on May 3, 2017, and the bill now awaits consideration by the Senate. Governor Phil Scott has expressed his opposition to the bill because it creates a new tax. The ACLU is a strong supporter of paid leave and will continue to fight for its implementation in Vermont.

H. 230—Mental health treatment of minors without parental or guardian consent

This bill, which originally allowed minors to obtain mental health treatment related to sexual orientation and gender identity without needing parental or guardian consent, now allows minors to obtain mental health treatment on any issue without the need for parental or guardian consent. The bill does not allow minors to receive prescription drugs without parental or guardian consent. H. 230 was signed into law by the governor on May 17, 2017.

H. 333—Gender-neutral bathrooms

This bill ensures that any single-user bathroom in public buildings or in places of public accommodation will be made available for use for people of all genders. The ACLU strongly supports this bill, especially in this time where both the federal government and other state governments are rolling back protections for the transgender community. The bill was passed by the House and awaits consideration by the Senate.

PRIVACY

H. 364 – Resisting the Surveillance State

The surreptitious use of an individual's private electronic data and metadata has become a hot button issue, and the ACLU is committed to ensuring that personal data is protected. H. 364 would forbid the State of Vermont from assisting in the federal government's collection or use of electronic data or metadata without a warrant and would require that products offered for sale in Vermont have a warning label if the product can record personal data. The bill currently awaits consideration by the House Commerce and Economic Development Committee.

H. 462 – Protecting employees' online speech

H. 462 prohibits employers from requiring or asking employees or job applicants to share their personal social media account information. The bill strikes an appropriate balance between protecting employees' reasonable expectations of privacy against unwarranted intrusions and granting employers limited access when necessary to investigate misuse of proprietary information or workplace harassment, threats, or discrimination. The ACLU supports this bill, as demands to

see employees or potential employees' social media accounts constitute a serious invasion of privacy. The bill was signed by the governor on May 17, 2017.

H. 467/S. 72 – Regulating data brokers

H. 467 seeks to regulate data brokers, which collect, maintain, and sell consumer information, often without consumer knowledge or consent. The bill would require data brokers to register with and report to the state as well as create customer identification programs, and also require public agencies to maintain records of the sale of any personal information to a broker. While H. 467 awaits consideration by the House Commerce and Economic Development Committee, the House and Senate included language in S. 72 that requires the Commissioner of Financial Regulation and the Attorney General, in consultation with stakeholders, to submit recommendations to the Legislature on data broker legislation by December 2017. S. 72 awaits the governor's signature.

H. 535/S. 147 – Reinstating FCC rules to protect online privacy

Both these bills would require the Attorney General and the Commissioner of Public Service to adopt privacy and data security rules for Internet service providers modeled after the FCC rules that were eliminated by Congress in early 2017. While these bills await consideration by the House Energy and Technology and Senate Finance Committees, respectively, the House and Senate included language in S. 72 that requires the Attorney General and the Commissioner of Public Service, in consultation with stakeholders, to submit recommendations to the Legislature on Internet service provider regulation legislation by December 2018. S. 72 awaits the governor's signature.