

January 11, 2021

VIA EMAIL

To the Members of the 151st General Assembly,

For over 100 years, the ACLU has defended and expanded the rights and liberties of all Americans to advance justice and equity in our society. We write to you today to urge you to prioritize education, voting, and legal system reforms this session.

Education Equity

After decades of inequitable funding, a lawsuit brought against the state of Delaware by the ACLU of Delaware and our community partners has settled. As part of the agreement, Governor Carney has pledged to guarantee significant funding for low-income, English learner, and special education students that would lay the groundwork for systemic change in our public school system. Additionally, the COVID-19 pandemic has exacerbated long-standing inequities for Black and brown students including a lack of access to essential educational tools and academic supports, leading to increased learning loss compared to white students. According to nationwide data collected by the ACLU in 2018 examining state arrest records of students, Delaware had the fifth highest rate of arrest of students with disabilities. When that data is overlaid with race and gender data, Delaware consistently remains in the top five states for referrals to law enforcement and arrest of disabled Black and Latinx boys and girls. These disparities illustrate the overlap between racial justice and disability rights that desperately needs to be addressed in Delaware schools. Our priorities to address these issues include:

School Funding Reform. Deliver on the baseline promises made by Governor Carney on additional school funding, and engage with the community on how this funding can meet the needs of low-income, English learner, and special education students.

Creation of an Education Ombudsperson Office. Ensure that parents and students are equipped and supported to interact within established school policies in order to have issues properly addressed.

Compliance of 2018 School Discipline Reform Law. Ensure robust implementation of the law, including Delaware Department of Education data release and school level corrective action plans.

Referendum Reform. Update the tax-based process that funds schools at the County level.

Voting Rights

2020 saw unprecedented voter turnout in Delaware due in large part to legislation that expanded access to voting in response to the COVID-19 pandemic. Delaware's General Assembly must act to expand access and make opportunities to vote by mail permanent.

No-Excuse Absentee Voting Constitutional Amendment (HB 15). Delaware's Constitution unnecessarily limits which voters are eligible to vote absentee. The 150th General Assembly passed Constitutional amendment legislation that would permit no-excuse absentee voting, but Constitutional amendments must be passed twice in successive General Assemblies by 2/3rds majorities to become effective. The 151st General Assembly should pass this legislation again to enact this Constitutional amendment.

Same-Day Registration (HB 25). Same-Day Registration eliminates the need for advance registration by permitting an eligible voter to register and cast a ballot at the same time on Election Day or during an early voting period. By combining registration and voting, same-day registration streamlines the voting process, eases the burden on voters, and increases voter participation. Currently, 21 states permit some form of same-day registration. The General Assembly should pass legislation that makes same-day registration available at all polling places, at any time voting happens, and permit same-day registrants access to regular ballots (not provisional ballots) without any proof of residency not otherwise required of voters who register in advance.

Permanent Vote By Mail Legislation. The General Assembly's emergency legislation enabling voters to cast their ballots by mail or drop-box due to the pandemic was a good first step in expanding access to the polls. The General Assembly should pass vote by mail implementing legislation that increases the number of drop boxes available to voters (including permitting voters to deliver completed mail ballots to their polling precinct), notifies voters if for any reason their ballot is rejected (and permits them to correct for any mistakes), and pays for postage to deliver vote by mail applications and ballots to voters and the Department of Elections.

Smart Justice

Delaware incarcerates people at a rate higher than the national average and higher than our neighboring states. Our criminal legal system is full of racial disparities, too. Black people make up just 23% of Delaware's population, but they are 60% of our prison population. Our priorities are to tackle the state's countless systemic policies and practices that disproportionately target and trap people of color through over-policing, charging decisions, the criminalization of poverty, and barriers to reentry.

Fines, Fees, and Drivers' License Suspension. The consequences of being unable to pay fines and fees in Delaware include being subject to search and arrest at any time, drivers' license suspension, and includes more fees to cancel warrants and reinstate the license. This practice reinforces poverty and keeps systemic racism alive. The General Assembly should end the criminalization of poverty that traps people in a punitive cycle by allowing the court to consider a person's ability to pay court fines and fees before they are assessed, and ending the automatic suspension of drivers' licenses where someone is unable to pay.

Sentencing Reform. Too many people are spending unnecessary years in prison, long after they've been rehabilitated and able to safely return to their communities. Moreover, Delaware has designated drug crimes as violent, even if a particular instance of possession or dealing involved no violence. Treating drug crimes in every instance as a violent crime has been a primary driver of the exploding incarcerated population. At the same time, it has had no effect in addressing the public health issue of drug addiction. The General Assembly should expand opportunities for sentencing modification and early release, and remove all drug crimes from the violent felony list.

Probation Reform. The General Assembly should end the revolving door to incarceration by implementing post-release policies that promote success after incarceration, including eliminating probation for minor convictions, customizing probation terms to meet individual needs, ending incarcerations for rule violations, and limiting probation terms to one year.

Police Accountability and Transparency Reform. Delaware has laws that govern how police can be investigated internally for misconduct and keep the records of the investigation private. The General Assembly should make changes to the code to enable processes that increase trust, such as use of force databases, data collection of patterns of misconduct for officers/departments, and citizen review boards.

Clean Slate Act. Delaware passed historic legislation in 2019 that made expungement available to many people with criminal records to repair and restore the rights and status of those with a criminal record. However, the disparate impact of the complex process and financial burdens to get an expungement remain. The General Assembly should pass a true Clean Slate bill that will expand expungement or record sealing by eliminating barriers through an automated process.

Public Health Credit Bill (HB 37). Incarcerated people in Delaware are vulnerable to COVID-19 and have been especially hard hit by the virus. Twelve incarcerated people have died to COVID-19. As of January 6, 2021, 618 correctional staff and 1,779 incarcerated people have tested positive. HB 37 is a public health

response bill, rooted in recommendations from public health officials. The General Assembly must pass the bill without delay to allow for an orderly release of people who can safely return home and stifle the virus's spread within and outside of correctional facilities.

The ACLU of Delaware is committed to collaborating with you and your staff and providing community-based support to achieve these goals. Thank you for your time and consideration of these monumental issues.

Sincerely,

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