

When Does Punishment End?

Collateral Consequences Reform in DE



“The struggles of my past should not determine the outcome of my future.” —Corie Priest

Did you know that, in Delaware, you may not live in public housing if convicted of ticket scalping? That is just one of Delaware’s 792 “collateral consequences” that restrict privileges and opportunities based on criminal convictions. Few of these are imposed by a judge, but act to extend punishment.

Collateral consequences significantly increase the barriers that someone with a criminal conviction must overcome as they try to reintegrate into society. Rather than helping people transition from prison, this web of laws makes it more difficult for thousands of Delawareans to rebuild their lives, support their families, and become productive members of their communities. Below are a few examples.

Employment. From bizarre restrictions on various licensure requirements, to “checking the box” on a job application that indicates an individual has a conviction or an arrest on record, finding employment can be extremely difficult for former prisoners. The ability to support oneself and one’s family is imperative to a one’s successful reintegration.

Housing. Apart from shelter being a basic human need, a physical address is often

required to apply for a job and to re-establish community ties. Delaware restricts public and subsidized housing from convicted individuals in various ways that make it very difficult for them to find acceptable shelter.

Public Assistance. Federal “War on Drugs” laws often prohibit access to public assistance, but states can opt out of these laws. Delaware opted out of restrictions on food aid, but not federal restrictions on TANF – the principal form of aid available to families in poverty. Because drug laws are among the most disproportionately enforced against people of color (despite roughly equal rates of drug use across racial identities), these policies unfairly target communities of color. Such racial and socioeconomic disparities also come into play as a criminal case plays out, and the collateral consequences continue to pile up. *(For more information, see page three.)*

Education. Federal law substantially restricts financial aid to students with a drug conviction. State law also limits financial aid and admissions for individuals convicted of a crime. The best path to secure employment and a productive life is education. It’s counterproductive to make it harder for those coming out of prison to improve themselves by going back to school.

Voting rights. Delaware requires that someone convicted of a felony must pay all financial obligations resulting from the sentence — often in the hundreds or thousands of dollars — before his right to vote is restored. Even then, those convicted of certain crimes, such as murder and sexual assault, are permanently barred from voting.

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The newsletter of the American Civil Liberties Union of Delaware

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Executive Director's Notes

It's Time for an Equal Rights Amendment



Kathleen MacRae
Executive Director

Last September, I was invited to join a group called ERANow. It was organized because there is a renewed push coming out of Washington D.C. to pass federal legislation for an Equal Rights Amendment to protect women. I think it's incredible that in 2016 women are still not expressly protected under the U.S. Constitution. An ERA was first introduced in 1923, shortly after women won the right to vote. In 1972, it finally passed Congress and the state ratification process began. But ultimately that effort fell three states short, with only 35 states, including Delaware, ratifying the amendment.

At one of our meetings, a member suggested that we push for an ERA here in Delaware. But the Delaware Constitution doesn't have an equal rights or equal protection clause at all, so we couldn't add sex to it as a protected class. Instead, after various consultations, we decided to go all in and lawyers from Widener University Delaware Law School worked with me, Rich Morse, and Senator Karen Peterson to write an equal protection clause for the Delaware Constitution. Shortly thereafter, Senator Peterson introduced Senate Bill 190.

Adding an Equal Protection Amendment to our state constitution is a powerful moral and legal commitment to the values of equality and fairness. It affirms our belief that all people are created equal. It enshrines the concept of "equality in law for all" and protects against discrimination based on race, sex, age, disability, religion, sexual orientation, gender identity, familial status and national origin. While it is true that there are many federal and state

statutes that prevent discrimination in many situations, an amendment is needed to strengthen anti-discrimination law. Statutes can be changed.

In 2014, this is what Justice Ruth Bader Ginsberg said about the ERA: "If I could choose an amendment to add to the Constitution, it would be the Equal Rights Amendment...I think we have achieved that [protection against discrimination] through legislation, but legislation can be repealed, it can be altered. So I would like my granddaughters, when they pick up the Constitution, to see that notion — that women and men are persons of equal stature — I'd like them to see that is a basic principle of our society."

Please contact your Senator, Representative and Governor Markell and urge them to support SB 190.

Want to learn about collateral consequences and how they affect thousands of Delawareans?

Go to aclu-de.org to read our recent publication, *Every Sentence Should Not Equal a Life Sentence: Collateral Consequences Reform in Delaware.*



Racial and Socioeconomic Disparities in the Critical Stages of a Criminal Case



Artwork provided by Caspari McCormick

Collateral Consequences, cont'd from page 1

The ACLU of Delaware recently distributed a publication, *Every Sentence Should Not Equal a Life Sentence: Collateral Consequences Reform in Delaware*, which explains the issue in more depth and offers recommendations for modest reforms that can help Delaware become more effective at reintegration. You can find it at www.aclu-de.org. The good news is that some of our recommendations are now bills that have been or will be introduced in the General Assembly. We are making progress; recently the Senate approved a bill that will allow former prisoners to register to vote before their financial obligations are paid in full.

Donor Spotlight: Mark Purpura

Why I Give to the ACLU



“The ACLU of Delaware is the number one organization in Delaware providing expert litigation on behalf of LGBT Delawareans. I’ve seen them in action — you know you are getting quality work — the best representation possible and one where we can see results.” —Mark Purpura

Mark Purpura, a partner at Richards Layton & Finger and an Amicus Society member, is also a cooperating ACLU attorney. He and others at his firm have partnered with ACLU-DE on cases that helped ensure equal treatment for transgender students and for transgender prisoners. In particular, Mark and his associates helped defend the right of a transgender prisoner to a name change that aligned with his gender identity. They

continue to work with that transgender prisoner to ensure proper medical care.

Mark says ACLU’s legal work — impact litigation — helps change systems that infringe upon our constitutional rights, especially on the rights of those who cannot afford private legal representation. The ACLU’s strength as an organization—its strong board of directors and staff leadership — is another reason for his support.

“More and more, impact litigation is becoming an important tool in our efforts to achieve a better and more just society for all people, especially those who are marginalized,” he said. “I feel that one way we have the strongest ability to achieve change is through the type of impact litigation that the ACLU spearheads.”

As an Amicus Society member, Mark supports the ACLU-DE financially as well as professionally. Thank you Mark! You make our work possible in so many ways.

Join Mark and so many others, make a generous contribution today!

The Longwood Freedom & Justice Challenge is On!

Invest in Your Values

Our sincere thanks go out to the Longwood Foundation Board of Trustees for supporting the expansion of the ACLU of Delaware. Because of Longwood’s grant award, we can continue our challenge of solitary confinement policies and our suit against the State Police for using militarized tactics that severely harmed a husband and wife who both had disabilities. We can pursue legislative change with our Collateral Consequences Campaign. And increasing, we can focus on police — community relations, and investigate school funding disparities up and down state.

Now, we ask that you consider investing in the ACLU-DE as well. Invest in your values of freedom and justice and help us sustain and expand the work.

Over the next several months, we plan to raise \$50,000. Once we do, every additional contribution will be matched dollar for dollar by the Longwood Foundation up to \$25,000. That totals a \$100,000 investment in freedom and justice.

Please consider two gifts to the ACLU-DE over the next twelve months. Your first gift will help us reach the \$50,000 goal quickly. Your second gift, once the threshold is reached, will be matched dollar for dollar and have double the impact.

Because of you, school children are staying in school instead of being suspended for minor offenses. Because of you, people coming out of prison will face fewer barriers to reintegration and have a fair shot at putting their life back together. As a generous supporter, you make Delaware more safe and free. We’re in this together.

Thank you!

Engaging Supporters and Expanding our Reach

The month of May was a busy one — some of our outreach events included:

- Our annual membership meeting — We elected new board members and hosted a spirited debate between retired Judge Charles H. Toliver and Dr. Yasser Payne about race and the criminal justice system. Board member Charles Madden moderated. We thank them for participating.
- Our Amicus Society Breakfast with chief of staff of the ACLU Washington D.C. legislative office Wes Macleod-Ball and veteran ACLU lawyer Louise Melling, Deputy Legal Director and Director of the ACLU Center for Liberty. The topic — President Obama’s civil rights legacy.
- Board member George Meldrum’s house party — an event designed to make new friends, discuss the work of the ACLU-DE and raise funds. We will work with any of our supporters to host such an event. Just let us know if you would like to volunteer.

There are many ways to invest in the work of ACLU of Delaware. Become a member of the Amicus Society. Host a house party. Participate in the Longwood Freedom & Justice Challenge. Mail a gift using the enclosed envelope or go to the website www.aclu-de.org at any time to make a secure online donation. Contact Kathleen MacRae at kmacrae@aclu-de.org or 302-654-5326 x102 to learn more.

Thank you to all who generously give time and financial support.

We are all freedom fighters and we’re in this fight together!



Case Docket



Religious Freedom. We intervened with the Department of Correction on behalf of the Catholic inmates at Delaware’s largest prison who were prevented by DOC from being able to attend a religiously appropriate Mass. Although Catholic doctrine requires that the priest celebrating the Mass drink wine during the service, DOC prohibited priests from bringing wine into the prison for that purpose. Wine was prohibited for five months. Four days after receiving a letter from us, the DOC reversed the policy. According to its attorney, it didn’t know of our letter at the time.

Transgender rights. Together with the parents of a transgender eight year old, we were successful in convincing a school district to change its restroom practices, so that the child will no longer be treated differently than every other student in class. We recently sent information on protecting transgender students to a second school district and began encouraging it to act to prevent the bullying of a transgender student.

Solitary Confinement. Federal court rejected the Department of Correction’s effort to delay the trial of our suit challenging Delaware’s use of solitary confinement and the adequacy of mental health care in the prisons. DOC, which has the eighth highest reported rate of confining prisoners in solitary in the nation, has entered into serious settlement negotiations with us, and mediation under the direction of a federal magistrate is ongoing. If the case does not settle, it will go to trial in January, 2017.

Police Militarization. Our ongoing case on behalf of a quadriplegic woman and her husband who were terrorized by a state police assault team executing a search warrant against two alleged

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News from the Floor A First Step in Sentencing Reform

Like many states during the tough-on-crime era, Delaware adopted a “three strikes law” that requires long mandatory sentences for people convicted of multiple felonies in their lifetime. Known as the “habitual offender law,” Delaware’s version results in irrational sentences immune from judicial review, such as Kenneth Smith’s life sentence for his third felony — stealing two winter coats.

Even when the crimes are more serious, the law makes little sense. By its very nature, it requires Delaware to sentence people to terms longer than our judges believe necessary. These required draconian sentences cause Delaware to spend millions of dollars to incarcerate senior citizens who no longer pose a substantial threat to society. There are better ways to spend money to improve public safety — testing all rape kits or all guns collected at crime scenes, improving safety equipment for patrol officers, or expanding the youth summer jobs program.

Fortunately, long overdue reform may finally reach the governor’s desk this session. With bipartisan support, the Senate has already passed SB 163 by a 16-3 vote, and it is awaiting a vote on the House floor. The bill would roll back some of the most severe sentences, including most of the multiple offense mandatory minimums for drug crimes — eliminating all mandatory life sentences under the three strikes law in the process. SB 163 is a compromise bill that does not go far enough. But we recognize it as a first step in what we hope will be a longer road of reform for Delaware’s sentencing law, bringing us into the modern era of evidence-based criminal justice policy.

Bills We Will Support or Oppose This Session:

Here are some additional bills we support or oppose that were not mentioned in our last legislative update:

- **SB 134: We support** providing specific protections for homeless people to prevent discrimination, and empowering the Division of Human Relations to investigate such discrimination.
- **SB 239: We support** restricting the use of out-of-school suspensions for serious offenses and promoting restorative justice practices in schools.
- **SB 242: We support** allowing felons who have completed their prison sentences and terms of probation to vote, regardless of any outstanding debts owed to the state.
- **SB 258: We oppose** this bill unless it is narrowed because it exempts too many IT records from FOIA, closing off public scrutiny of mismanagement and public discovery of vulnerabilities by people seeking to help.
- **HB 287: We support** creating a uniform state rule for sex offender residency restrictions, expressly preempting more harsh restrictions, which increase the number of sex crimes.
- **HB 299: We oppose** requiring the creation of public records containing the identifying information and residence of certain refugees resettled in Delaware.
- **HB 365: We support** ending the lifetime ban on drug felons receiving assistance under Temporary Aid for Needy Families (TANF).
- **HB 386: We oppose** creating a new crime of bullying because the language is so broad that it violates the First Amendment and because it furthers the criminalization of youth.

How May Stingrays Be Used Legally? Nobody Knows, Including the Users State Police Ignoring Freedom of Information Act

Cell site simulators are devices used to gather data from all phones in a given location, or to track and locate particular phones. Colloquially referred to by a well-known brand, “Stingray,” the devices work by mimicking a cell tower and causing nearby phones to connect to it. ACLU believes that police need a warrant before using Stingrays to track people, and several courts and the U.S. Department of Justice have agreed.



Our client, a Delaware small business owner, sought to learn more about how the Delaware State Police were using this technology — in particular, what kind of court authority they were getting. But his Freedom of Information Act (FOIA) request was met with improper denial, over six months of unexplained delay during an administrative appeal, and ultimately near-complete denial on incorrect grounds about which he was given no notice or opportunity to respond. In short, he was stonewalled.

That’s not how FOIA is supposed to work. So we brought suit on his behalf. During the litigation process, we learned that the State Police have no written policies governing the use of Stingrays — such as whether they must apply for a warrant, what kinds of investigations to use them in, or what to do with the data of innocent people gathered by the devices. Moreover, we learned that the State Police did not engage in a written bidding or negotiation process while spending several hundred thousand dollars to obtain the technology.

Before this is over, we hope to learn much more, including the answer to the crucial question of whether and how the courts are overseeing the use of this invasive surveillance technology.

To learn more about Stingrays and our investigative work about them and other surveillance techniques, visit us at aclu-de.org.

“There will come a time when it isn’t
‘They’re spying on me through my phone’
anymore. Eventually, it will be ‘My phone
is spying on me’.”

—Philip K. Dick (1928-1982)
author of *Do Androids Dream of Electric Sheep?*

Case Docket, cont’d from page 6

minor drug criminals, is proceeding through discovery, and the complaint was recently amended to add the names of officials obtained through the discovery. The case challenges the state’s policy of using military-type force and equipment in situations where it is clearly not justified.

GPS monitoring. Our challenge to the Delaware statute requiring all Tier III registered sex offenders on probation or parole to wear GPS transmitters 24/7, without regard to dangerousness, was argued to the Court of Chancery on May 3. The case record shows that the law causes the probation and parole department not to use available scientific evidence to decide who should wear the transmitters if public safety is the issue, but instead attach them to many people who should not be wearing them, while not seeking judicial approval to attach them to people who might reasonably be required to wear them as a condition of probation. We’ve asked the court to rule that the statute violates the Fourth Amendment’s reasonableness requirement, and anticipate a ruling this summer.

Fair elections. Depositions and document production are underway in our case challenging the procedures Red Clay Consolidated School District used in last year’s tax referendum to increase the number of likely favorable voters and decrease the number of likely unfavorable voters. The case seeks to require that Red Clay win a fairly conducted referendum if it wants to keep the increased taxes. The Court of Chancery ruled that we had alleged a claim upon which it could grant relief, and directed that the case go to trial this fall.

Disability Rights. We submitted an *amicus curiae* (friend of the court) brief in support of the appeal of a deaf prisoner, who was found by the Delaware Human Relations Commission to be entitled to relief because he had been discriminated against because of his disability, only to lose his victory when Superior Court reversed the finding on the ground that the anti-discrimination law does not apply to the Department of Correction. We argue that since the law explicitly applies to the government, it is applicable to DOC.



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