



# LEGISLATIVE REPORT

**2019**

The Michigan legislature concluded the first half of its 2019-2020 session. Bipartisan criminal justice reform and attacks on reproductive rights were key focuses.

The ACLU has successfully championed the passage of several criminal legal reform laws, the introduction of progressive immigration and reproductive health legislation, and LGBTQ+ policies.

Still, the fight continues—as we keep pushing to stop ongoing anti-immigrant, anti-abortion, and voter suppression bills.

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# 107

VOTING DAYS  
IN SESSION

# 229

BILLS AND  
RESOLUTIONS  
WE TRACKED

(121 WERE CRIMINAL  
JUSTICE RELATED)

# 18

HEARINGS WE  
TESTIFIED AT

# 141

BILLS WE  
ACTIVELY  
SUPPORTED

WE TESTIFIED  
IN SUPPORT OF

12 BILL  
PACKAGES

62 BILLS  
TOTAL

# 52

BILLS WE  
ACTIVELY  
OPPOSED

WE TESTIFIED  
IN OPPOSITION TO

7 BILL  
PACKAGES

16 BILLS  
TOTAL

(INCLUDING THE METHOD BAN  
AND SANCTUARY CITIES)

BILLS WE'VE CHAMPIONED  
THAT HAVE ADVANCED

6 BILL  
PACKAGES

37 BILLS  
TOTAL

INCLUDING

RAISE THE AGE  
MEDICAL PAROLE  
CIVIL FORFEITURE  
FOIA

EXECUTIVE ACTIONS

ELLIOTT LARSEN  
GENDER MARKERS

# REFORMING GOVERNMENT TRANSPARENCY

## FOIA/LORA

We support HB 4007-4016 which will increase government transparency by expanding the Michigan Freedom of Information Act to apply to the governor, lieutenant governor, and executive office employees. It also creates a new Legislative Open Records Act (“LORA”) to establish transparency laws to the legislature.

It is clear that FOIA was designed to guarantee the public has access to public records of government bodies at all levels in Michigan and serves as a cornerstone of our democracy. Unfortunately, Michigan remains one of only two states where both the legislature and the executive office are exempted from responding to FOIA requests.<sup>1</sup> In fact, most states do not exempt either branch and only a few exempt one or the other.<sup>2</sup> As a result, these protective laws have created a culture in Michigan of a government that operates with little expectation of meaningful public oversight.

In 2015, the Center for Public Integrity and Global Integrity, two nonprofit organizations that promote government transparency and ethics, conducted a national study assessing government transparency and accountability of

each state by analyzing laws designed to prevent and expose corruption and how those laws are implemented. Eleven states received a failing grade of “F”, including Michigan, which ranked dead last. Among those factors contributing to Michigan’s failing grade: lack of executive and legislative accountability and lack of public access to information.<sup>3</sup>

Due to several recent events, such as the Flint water crisis, interest has centered on subjecting the legislative and executive branches to more transparency. As the Flint water crisis unfolded under the bright lights of a national stage, the eventual disclosure of some Flint related emails revealed that government actors often attempted to pre-empt scrutiny through mechanisms such as: including a disclaimer that the correspondence was attorney-client privilege (even when neither party was an attorney) or including a subject heading categorizing the message as “preliminary and deliberative” or “not subject to FOIA”. Flint was an example of what happens when our elected officials can pick and choose when, how, and what information is actually disclosed to the public.

1 In Massachusetts, the Legislature is exempt by statute and the governor’s office is exempt as a result of a court ruling. See *Lambert v. Executive Dir. Of the Judicial Nominating Council*, 425 Mass. 406, 409 (1997).

2 Many states give exemptions to the governor’s office that fall short of a blanket exemption. For example, in Arkansas, “working papers” of the governor are exempt and the exemption has been interpreted narrowly. Ark. Code Ann. § 25-19-105(b)(7). In Tennessee, the governor may protect “papers relating immediately to the executive department, and in the governor’s judgment, requiring secrecy.” T.C.A. §8-3-104(10).

3 The Center for Public Integrity, Michigan gets F grade in 2015 State Integrity Investigation: An honor system with no honor, Nov. 19, 2015, <https://www.publicintegrity.org/2015/11/09/18427/michigan-gets-f-grade-2015-state-integrity-investigation>.

# A YEAR OF PROGRESS IN CRIMINAL JUSTICE

## Sentencing Reform

We are championing comprehensive sentencing reform (SB 697-698). The bills will change sentencing enhancement practices where prosecutors seek to lengthen a person's sentence when they have a prior felony conviction. Habitual sentencing is used to unjustly and excessively punish people for simply coming into contact with the criminal legal system more than once. This legislation has bipartisan support and will significantly reduce racial disparities and how long people spend behind bars.

## Raise the Age

The legislature passed a bill package (HB 4133-4139, 4142, 4443, 4452) to raise the age of juvenile jurisdiction from 17 to 18. In October 2019, Michigan became the 47th state to end the automatic prosecution of 17-year-olds as adults. The new law will allow adjudicated juveniles to be housed at juvenile facilities which are better equipped to provide the educational, emotional and psychological necessities for their development. We testified alongside 46 other individuals and organizations in support of these bill, arguing "children are constitutionally and fundamentally different from adults."

## Medical Parole

On May 23, 2019, Governor Whitmer signed into law HB 4129, 4130, and 4131 – commonly referred to as the "medical parole" bills. The new law establishes procedures for parole of a prisoner who is determined to be medically

frail. The Michigan Department of Corrections reports approximately 800 prisoners have medical conditions that are debilitating but only 200 would meet the definition of medically frail under the bill. MDOC also estimates that of the nearly 800 prisoners with serious medical conditions, only 20-40 would currently be eligible for medical parole because of exclusions and a limited definition. These bills are a step in the right direction but we hope the legislature will expand medical parole to focus on medical conditions and risks without excluding based on a criminal conviction. We support it as a part of our Smart Justice campaign work.

## Civil Asset Forfeiture

We championed the successful passage of civil asset forfeiture reform legislation. On May 17, 2019, Governor Whitmer signed HB 4001 and HB 4002 into law. The bills place significant limitations on when a forfeiture can be effectuated by requiring a criminal conviction (with some exceptions) for property valued at \$50,000 or less, for allegations violations of drug related crimes. Michigan's forfeiture laws have been rated among the worst in the nation. Our office has been working on this for years both through litigation and legislation. The bills had bipartisan support and were backed by the Attorney General.

# DEFENDING ATTACKS ON REPRODUCTIVE FREEDOM

## Method Ban

These bills would criminalize a very safe method of abortion that is the standard of care for people who need an abortion at 15-16 weeks of pregnancy. This procedure is used by many physicians because of its proven record through years of research and medical practice. Under this legislation, doctors would be forced to provide care in a manner dictated by legislators, even if they think it is inappropriate for their patient or risk criminal charges (2-year felony). In no other field of medicine would this be acceptable. It is for these reasons that leading medical groups, like the American College of Obstetricians and Gynecologists oppose it.

## Reproductive Health Act

The Reproductive Health Act (HBs 5179-5185 and SBs 622-628) establishes the fundamental right to reproductive health which includes right to use/refuse contraception (birth control) or sterilization and the right to continue a pregnancy and give birth or have an abortion. It modernizes Michigan's reproductive rights laws by repealing outdated and unconstitutional prohibitions on reproductive healthcare and enacting a new Michigan Reproductive Health Act that regulates abortion like any other form of health care.

The Reproductive Health Act includes the following provisions:

- *Enacts the new Reproductive Health Act.* The RHA provides that every individual possesses fundamental rights with respect to

personal decisions about their reproductive health, with limited governmental interference, including the right to choose or refuse birth control, the right to carry a pregnancy to term and give birth, and the right to choose or refuse abortion.

- *Repeals unconstitutional and outdated laws.* The bill also ensures that abortion is treated like all health care, with regulations that reflect current medical standards by repealing and updating Michigan's outdated and unconstitutional laws restricting access to abortion like inaccurate, biased informed consent laws; state mandated 24 hour waiting periods that delay care; and burdensome, medically inappropriate regulations on clinics. The bill will also repeal Michigan's unconstitutional 1931 law that bans virtually all abortions and lifts the ban on insurance coverage for abortion care.





# FIGHTING FOR THE RIGHTS & DIGNITY OF IMMIGRANTS

## Welcoming Cities Ban

The ACLU of Michigan opposes HB 4083 and 4090 that will prohibit local municipalities from adopting, implementing, or enforcing policies that limit the cooperation or communication with federal immigration enforcement authorities on immigration status. Municipalities that violate this may be sued by *any* resident of their jurisdiction and public officials may be fined thousands of dollars. The bills go beyond the limitations of the current federal law, are discriminatory, and will have a detrimental effect on our communities' relationship with law enforcement. Alongside 97 other individuals and organizations, we testified against this legislation arguing, "These bills will result and invite racial profiling, unconstitutional detention, and intertwining of limited local resources on federal issues."

We also successfully stopped the inclusion of this language in the Department of Corrections budget which would have conditioned county jail reimbursement funding from the state on the elimination of welcoming policies.

## Drivers Licenses For All

The ACLU of Michigan supports Drive SAFE (Safety Access Freedom and the Economy) SB 631-632 and HB 5912-5193 that will expand access to driver's licenses. This legislation will help not only immigrants who are undocumented, but also the thousands of people who may have difficulty accessing necessary documents, such as the elderly, homeless, or those with limited financial resources.

Photo credit: Movimiento Cosecha Kzoo



# STRENGTHENING LGBTQ+ RIGHTS BEYOND MARRIAGE

## Expanding Elliott-Larsen

Currently the Elliott-Larsen Civil Rights Act makes it illegal to discriminate based on religion, race, color, national origin, age, sex, height, weight, familial status or marital status but not sexual orientation and gender identity.

Today in Michigan, individuals who are or are perceived to be gay or transgender lack protections from being fired or refused housing or services. Including both orientation and identity is critical to provide protection for all of the LGBTQ+ community and it is long overdue that the Michigan Legislature pass this critical legislation.

## Adoption Discrimination

SBs 273-274 and HBs 4470 & 4471 undo a current, dangerous law that permits state-contracted child placement agencies to reject qualified same-sex couples based on the agencies' religious beliefs.

The State of Michigan is responsible for approximately 13,000 children who are in the state's foster care system, usually because they were removed from their families due to abuse or neglect. Although the state is responsible for finding appropriate foster and adoptive families to care for these children, it has contracted out public adoption and foster care services to private agencies, which it pays with taxpayer dollars.

Even though adoption and foster care placement is a public function, the state allows these

publicly funded agencies to discriminate against same-sex couples based on the agencies' religious beliefs. This practice is not only unconstitutional, it denies innocent children in need of a home the opportunity to be placed with loving families who want to care for them.

## Conversion Therapy

SB 284 and HB 4515 would prohibit treatment on minors that seeks to force changes to sexual orientation or gender identity, also known as "conversion therapy", by licensed mental health professionals.

These bills would protect LGBTQ+ youth in Michigan from the dangerous, harmful effects of conversion "therapy."

## Trans Drivers Licenses

This year, Michigan Secretary of State announced it is streamlining the process for a person to change their sex designation on their state driver's license or identification card. This is an inclusive move that respects the transgender community, and enables members to match their IDs with how they live their lives.

While sex designation policies have been in Michigan since the 90's, this simplified process requires residents to provide their:

- Driver's license or state ID;
- Completed Secretary of State sex designation form, available at [Michigan.gov/SOS](http://Michigan.gov/SOS) and SOS offices; and a,
- \$9 fee

# PRIVACY RIGHTS

## Facial Recognition

SB 342 will ban the use of real time facial recognition technology by law enforcement. Facial recognition technology worsens existing racial disparities in policing and threatens to create a near constant surveillance state where individuals cannot walk down the street without being identified. Facial recognition is a threat to everyone, but will disproportionately impact communities of color, activists, immigrants, and other groups that are often already unjustly targeted. Facial recognition technology has enormous civil liberties implications and its use must be closely examined and regulated to ensure that it is not violating individual civil rights. We support this legislation.

# RACIAL JUSTICE

## Distracted Driving

A package of distracted driving bills HB 4181, 4198, and 4199. If passed, these bills would allow a law enforcement officer to pull over a vehicle based solely on suspicion that the person is using a phone. This means someone who looks like they are using a mobile device may be stopped and ticketed with a lower burden of proof than is currently required to protect drivers' rights. The fines are increased from \$50 and \$100 for first and second violations to \$100-250 as well as a suspension of license for a third violation in three years. The prospective funds collected from these additional tickets and fines may incentivize over-policing and increase racial profiling as well as overly burden low income individuals. We oppose this legislation because it will lower protections for drivers, increase racial disparities, disproportionately impact low income communities, and may decrease roadway safety.

