

## ACLU TAKES LEGAL ACTION OVER ARREST OF 13-YEAR-OLD HONORS STUDENT

A claim for damages has been formally submitted to Pawtucket over a school resource officer's (SRO) unlawful arrest of a 13-year-old African-American middle school honors student. The claim was submitted by ACLU of RI cooperating attorney Shannah Kurland as a legal prerequisite to the filing of a lawsuit on behalf of the student, Tre'sur Johnson.

Last June, Tre'sur and another student got into a scuffle at Goff Middle School before school started. Although neither student was hurt, the SRO decided to arrest Tre'sur for "disorderly conduct." Tre'sur was handcuffed, taken to the police station, and kept in a cell for close to an hour. The charge was dismissed when Tre'sur appeared before the City's juvenile hearing board.

This is not the first time that attention has focused on Pawtucket SRO misconduct.

A 2015 video showing an SRO's body-slam of a Tolman High School student led to that SRO's removal. At the time, the ACLU of RI raised concerns about SROs escalating minor incidents into criminal matters. Tre'sur's case illustrates that little has changed.

After the mandated 40 days have elapsed from the submission of the damages claim, the ACLU will file a lawsuit on Tre'sur's behalf. The suit will seek both monetary damages and a court order addressing the SRO's unlawful actions.



Tre'sur and her mother, Tiqua Johnson, at our recent press conference.



## WELCOME, BUT OVERDUE: BARRINGTON DROPS LAWSUIT AGAINST STUDENT

The Barrington School District has dropped a lawsuit it filed in October 2019 against a middle school student who had successfully challenged his three-day out-of-school suspension before the Rhode Island Department of Education (RIDE). Barrington's lawsuit sought to overturn RIDE's decision in the student's favor, and demanded a recovery of attorneys' fees from both the student and RIDE.

When ruling on the student's challenge last year, RIDE determined that the school had improperly issued the suspension, which was based on the student's participation in a school lunchroom conversation about the then-recent Parkland, Florida school shooting. Barrington appealed RIDE's decision to the Council on Elementary and Secondary Education (CESE), which affirmed the RIDE decision finding no evidence that the conversation was threatening or disruptive. In so ruling, both decisions enforced a 2016 state law enacted to stem the harm caused by unnecessary out-of-school suspensions. Despite its enactment, high rates of out-of-school suspensions for minor infractions persist.

After CESE upheld RIDE's decision against the district, the school committee filed a lawsuit against both the student and RIDE. ACLU cooperating attorney Aubrey Lombardo represented the student in the case. Chastened by the publicity surrounding its retaliatory action against the student, the school district finally agreed to dismiss the suit.

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## FROM THE DESK OF THE EXECUTIVE DIRECTOR

In addition to marking our 60<sup>th</sup> Anniversary, 2019 was our Affiliate's strongest year ever defending the rights of all in the Ocean State. We were active in more than 50 lawsuits, lobbied on a record number of bills, and our work behind the scenes was more robust than ever.

### **Your support helped make this possible.**

But while we accomplished a lot in the past year, we also encountered an unprecedented number of civil liberties threats, and with this new year now in full swing, that trend shows no signs of abating.

We need your continued support to keep up this fight. Here are just a few ways you can continue to support our critical work:

- Sign up to make a recurring contribution (see the back page for how to donate)
- Tell your friends and family about our work
- Volunteer your time with us
- Start a facebook (@riaclu) fundraiser on our behalf.

I hope we will continue to earn your support as we enter our 61st year fighting for the rights of all in the Ocean State.

As always, thank you.

-- Steven Brown

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## JUDGE ISSUES RESTRAINING ORDER IN FOOD STAMP NOTICE LAWSUIT

Responding to a lawsuit filed by the ACLU of RI, a federal judge has entered a temporary restraining order (TRO) against the Department of Human Services' (DHS) use of notices demanding that SNAP recipients reimburse the state for alleged overpayments received years earlier.

The lawsuit, filed by ACLU cooperating attorney Ellen Saideman, was brought on behalf of Woonsocket resident Carmen Correa, who obtains SNAP benefits for herself and her thirteen-year-old niece. She recently received a notice from DHS demanding that she repay \$1,925 in benefits that the agency claims were overpaid to her more than four years ago. The only



explanation given was that the overpayment was due to "Agency Error." While the notice advised Correa of her right to a hearing to contest DHS's determination, the ACLU lawsuit argues that it "does not contain sufficient information to allow a reader to determine whether the over-issuance is correct or whether Plaintiff has grounds to contest it."

### **This is the third class-action lawsuit in as many years filed by the ACLU to address problems related to the UHIP computer system.**

Correa was given a month to sign an overpayment agreement with the state or else face harmful cuts to her SNAP benefits. If those cuts occur, the lawsuit claims that Correa "will have great difficulty feeding herself and her niece" and, unable to pay her bills, could have her utilities shut off. The suit points out that federal SNAP regulations require overpayment notices to "include the reason for the claim and an explanation of how the [amount] was calculated," information missing from the notice to Correa.

The Department's efforts to recoup alleged overpayments were halted a few years ago – as the result of an earlier ACLU lawsuit – due to enormous problems of inaccuracy and untimeliness with benefits that occurred in 2016 when the state's troubled computer system, known as UHIP, first went online.

In entering the TRO, U.S. District Judge Jack McConnell, Jr. found that the notices being sent recipients likely violated federal SNAP regulations and the due process rights of the recipients. The order temporarily bars the state from issuing any more of the demand letters based on agency or household errors, and further bars DHS from processing any SNAP benefit reductions for individuals who have already received the notices. DHS is also required to notify all households that received the deficient letter of the terms of the restraining order. The TRO was recently extended indefinitely to allow DHS to address the issue as the case proceeds.

## RI DHS ACCUSED OF VIOLATING LAW BANNING USE OF ARREST RECORDS IN EMPLOYMENT DECISIONS

The R.I. Department of Human Services (DHS) illegally used an employee's non-conviction criminal history to terminate her employment, the ACLU has claimed in a discrimination charge it filed with the R.I. Commission for Human Rights on behalf of Coventry resident Cheryl Robbio.



Robbio was initially hired by DHS as an Eligibility Technician. Shortly before she was to start the job, the state terminated her employment, relying on a BCI report which indicated she had an arrest that was not followed by a conviction. In fact, the incident has since been expunged from her record.

Rhode Island's Fair Employment Practices Act bars both public and private employers from inquiring, directly or indirectly, whether an applicant has ever been charged with or arrested for, as opposed to convicted of, a crime. Despite this, DHS ended her planned employment based on her now-expunged arrest record.

The complaint, filed by ACLU of RI cooperating attorney David Cass, notes that "by requiring presentation of Mrs. Robbio's BCI," the state unlawfully "inquire[d] as to Mrs. Robbio's non-conviction criminal history" and illegally relied upon it in terminating her employment. The complaint also cites state personnel rules which authorize only pertinent "convictions" to serve as a basis for making hiring or reclassification decisions.

## FOLLOWING ACLU INTERVENTION, DEPARTMENT OF CORRECTIONS AGREES TO RELEASE INMATE UNLAWFULLY HELD AT ACI



Under a stipulation signed by R.I. Superior Court Judge Robert Krause, the R.I. Department of Corrections (DOC) has agreed to release a man who was unlawfully being held in prison despite a unanimous decision by the R.I. Parole Board to release him on supervised parole. The habeas corpus petition was filed by ACLU of RI cooperating attorneys Lisa Holley and Lynette Labinger on behalf of inmate Robert McKinney.

When McKinney was sentenced in 1997, RIDOC determined his parole eligibility in accordance with an existing parole eligibility calculation process and then informed him that his initial parole eligibility date was April 2019. However, at some point in the recent past, and without notice

to McKinney, the DOC decided to change the way it calculates parole eligibility dates for individuals serving consecutive sentences for their crimes, and then applied the change retroactively.

The petition argued that the DOC's action violated a host of McKinney's constitutional rights and contravened state law, and asked for his immediate release from custody, subject to the Parole Board's supervision.

The court stipulation authorizing McKinney's release does not address the legality of the DOC's policy change, but the DOC acknowledged that he was "eligible for release to the community on the terms set forth by the Parole Board and without the need or requirement to serve additional time in the institution before such release to the community."

**With the resolution of McKinney's case, the ACLU is reviewing a further challenge to the DOC's application of the policy, as it is harming dozens of other inmates who might otherwise be eligible for parole consideration in the near future.**

## 2020 LEGISLATIVE PREVIEW: PROACTIVE CIVIL LIBERTIES LEGISLATION

As this newsletter went to press, there were hundreds of bills still to be introduced, and we'll cover many of them – particularly those that pose a threat to civil liberties – in the next issue. In the meantime, below are a few of the positive civil liberties bills the ACLU is working on. [Note: many bill numbers are not available yet.] For updates on these and other bills, visit our website at [www.riaclu.org/legislation](http://www.riaclu.org/legislation).

### REPRODUCTIVE FREEDOM

#### Medicaid Funding for Abortion (H 7618)

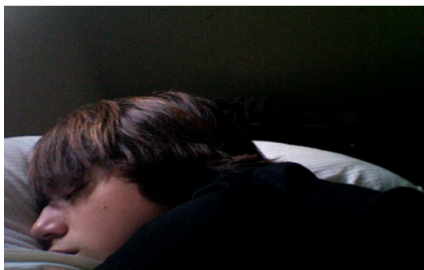
Legislation introduced by Rep. Liana Cassar and Sen. Bridget Valverde will extend Medicaid coverage to abortion and ensure that state employee health care plans also provide coverage for this procedure. Restrictions on abortion coverage disproportionately impact low-income individuals, people of color, and younger people, so expanding Medicaid coverage for abortion will provide necessary funding to support a patient's decision making over their health and well-being.



### WAR ON DRUGS

#### Drug Reclassification (H 7637)

The implications of a felony charge versus a misdemeanor are substantial and impact many aspects of an individual's life, including access to employment, housing, and higher education. This legislation, introduced by Rep. Scott Slater, would reclassify simple drug possession from a felony to a misdemeanor and ensure that people charged with minor drug offenses will not face long-lasting civil punishments that hinder their rehabilitation and reintegration into the community.



This screenshot of a student in his bed captured by school officials from his school-loaned laptop resulted in a major privacy lawsuit in PA.

### STUDENTS' RIGHTS

#### School Computer Privacy (H 7509)

In recent years, distributing computers to students in RI public schools for home use has become commonplace. Unfortunately, as a study conducted two years ago by the ACLU showed, students have virtually no privacy protections on these computers, with some school policies even allowing for remote spying on students. This legislation, introduced by Rep. June Speakman and Sen. Adam Satchell, would allow school officials to search these devices only if they have reasonable suspicion to believe the student has engaged in misconduct on the computer, and would also greatly limit remote access to the computers.

#### School Discipline Reform (H 7439)

Despite the passage of legislation in 2016 designed to reduce the use of out-of-school suspension, rates in the schools have not significantly decreased, nor have the disparities in those rates for students of color and those with disabilities. In fact, an alarming number of K-5 students continue to be removed from the classroom, thrusting them into the school-to-prison pipeline before they even hit middle school. This bill, introduced by Rep. Grace Diaz and Sen. Sandra Cano, would ban out-of-school suspensions for K-5 students except in very limited instances, and would require districts to submit a yearly report documenting their strategies to mitigate disparities on the basis of race or disability in their use of this punishment.

#### Funding for Student Mental Health Services (FY 2021 Budget, H 7171)

Included in the Governor's FY2021 budget is a provision to allow public schools to receive reimbursement for the hiring of more mental health and student support staff, instead of law enforcement officers. For years, the ACLU has called for this approach rather than a focus on police in schools, who often inappropriately redefine normal adolescent behavior as a criminal justice issue. This budget proposal represents a major step forward in the fight to keep police out of schools and to instead provide students with comprehensive social service support.

## CRIMINAL JUSTICE

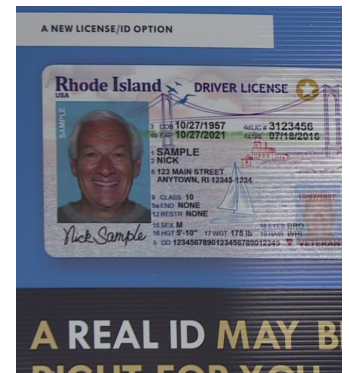
### “Moral Turpitude”

Despite the term’s undeniably vague and highly subjective nature, many occupational licensing statutes prevent individuals who have been convicted of a “crime of moral turpitude” from obtaining a license. Such inappropriately broad language can render individuals with a criminal background, no matter how minor or irrelevant, unable to procure a license. This bill, introduced by Rep. Camille Vella-Wilkinson and Sen. Joshua Miller, would remove that term from all occupational licensing statutes and ensure that applicants are not prevented from entering fields for which they may be eminently qualified based on this vague standard.

## IMMIGRANTS’ RIGHTS

### Immigrant Drivers’ Licenses

As in past years, the ACLU will be supporting legislation permitting the issuance of driver’s licenses to undocumented immigrants. Current law requires a social security number; this legislation would allow for identity verification using a number of other factors. Allowing undocumented immigrants to obtain a license will keep the roads safer by ensuring they have driver’s training and car insurance. The legislation, sponsored by Rep. Anastasia Williams and Sen. Frank Ciccone, is supported by the Attorney General, the State Police and the DMV. It includes protections to ensure that these specially-marked licenses (required because of the federal REAL ID law) cannot be used to discriminate against undocumented immigrants.



### 364 Day Misdemeanors

Under federal immigration law, certain minor offenses carrying a sentence of no more than a year can lead to harsh immigration penalties, including detention and deportation. This legislation, introduced by Rep. Carlos Tobon and Sen. Sandra Cano, would reduce the maximum sentence that an individual can be given for a misdemeanor charge from one year to 364 days, thus helping to ensure that no one will be automatically forced to endure harsh immigration penalties as a result of a minor offense. By reducing the maximum sentence for a misdemeanor by one day, anyone who is convicted of a misdemeanor offense under RI law will not reach the threshold that can trigger severe immigration penalties.



### Private Prison Ban

After the Wyatt Detention Center’s controversial decision to enter into an agreement with Immigration and Customs Enforcement to house ICE detainees, legislation is being introduced to prevent any renewal of the agreement and to further ensure that the quasi-public entity cannot sell the facility to a private prison corporation, an idea they have floated. This bill is critical for both the rights of immigrants and for continuing the work of criminal justice reform.

## ADDITIONAL BILLS SUPPORTED BY THE ACLU

The ACLU is additionally supporting numerous other bills on important civil liberties topics, including:

- Banning discriminatory gender rating practices in health insurance (H 7440, S 2125)
- Repealing the state’s voter ID law (S 2274)
- Ensuring that young offenders are given timely opportunities to apply for parole (H 7592)
- Limiting the circumstances when juveniles can be interrogated alone by police (H 7431)
- Enacting a comprehensive update of the state’s parenting laws to help LGBTQ families (S 2136A)
- Banning the undemocratic practice of prison gerrymandering (H 7140, S 2275)

## NEWS BRIEFS

### K-12 COUNCIL AFFIRMS DISCRIMINATORY RULING AGAINST ENGLISH LANGUAGE LEARNERS; ACLU PLANS FURTHER ACTION

The state Council of Elementary and Secondary Education (CESE) has affirmed a problematic ruling by former RI education commissioner Ken Wagner that risks undermining English Learner (EL) education offered by school districts. In response, the ACLU and R.I. Legal Services (RILS) are taking action in an attempt to negate the ruling's potentially significant adverse effects on multilingual students.

More than three years ago, the ACLU of RI and RILS filed an administrative complaint against the Providence School District (PSD) for violating EL students' rights. Among other things, the complaint targeted the illegality of PSD's "Consultation Model" of teaching EL students, a model that provided virtually no direct services to students by certified teachers. In fact, the US Department of Justice determined that the model was educationally unsound and violated federal law and should not be used. Ignoring those findings, former Commissioner Wagner upheld the use of the model, and inexplicably concluded that it "does not violate the Rhode Island Regulations," a ruling upheld by the CESE. ACLU and RILS plan to appeal the decision and, in the meantime, more than a dozen organizations have joined in petitioning RIDE to revise the EL regulations to explicitly make use of the "Consultation Model" unlawful.



ACLU of RI cooperating attorney Ellen Saideman testifying on EL regulations.

### PROVIDENCE SURVEILLANCE CAMERA PROPOSAL PUT ON HOLD

ACLU of RI Board member Heather Burbach testified in January against a proposed Providence ordinance that would require establishments serving alcohol to install video cameras to monitor every part of the property used by patrons, and also give police unfettered access to the footage. In written testimony, the ACLU argued that "this type of pervasive government surveillance system would threaten the privacy rights of thousands of Rhode Islanders, could stifle perfectly innocent interactions in a variety of public accommodations, and would only further acclimatize residents to a 24/7 surveillance state." After the hearing, Council members agreed to bring the proposal back to the drawing board.

### ACLU TESTIFIES FOR USE OF CAMPAIGN FUNDS FOR CHILDCARE

The ACLU testified before the state Board of Elections in support of a proposed regulation that would allow candidates to use campaign funds for childcare expenses associated with running for office. Currently, candidates for office can use campaign funds to cover such expenses as travel, food and beverages, and even purchases of graduation and marriage gifts. Under the circumstances, the ACLU argued, "it is impossible to make a fair or legitimate argument against including childcare expenses in that list. The balancing of family and politics is always difficult, but it is a particularly significant burden on women candidates." The Board is expected to approve the regulations.



### WOMEN'S RALLY at the RI STATE HOUSE (JANUARY 2020)

Thanks to Amelia, Cherie, and Anne, who made it out to the Women's Wave Rally on a freezing January day – to man (ahem) the ACLU of RI information table. It was a true showing of solidarity with many other organizations, as well as a great presence and resource for the substantial crowd in attendance. Brava!

## UPCOMING EVENTS:

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### LEGISLATIVE ADVOCACY TRAINING

Join the ACLU of Rhode Island for a hands-on workshop to learn how to lobby effectively, contact your legislators, and advocate for the civil liberties issues that you care about. This event is nonpartisan, free, and open to all. Light snacks will be provided.

**WHEN:** Saturday, February 29, 2020  
11am-1pm

**WHERE:** The Rochambeau Library  
708 Hope Street  
Providence, RI 02906

## LEGISLATIVE RESOURCES:

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### CIVIL LIBERTIES ADVOCACY TOOLKIT

Can't attend the training, but want to learn more about advocating for civil liberties? Visit [www.riaclu.org/legislation](http://www.riaclu.org/legislation) and click on ADVOCACY TOOLKIT for more information on legislative advocacy.

### 2019 VOTING RECORD ONLINE

Want to see how your state Representative and Senator voted on key civil liberties bills in 2019? A voting chart is available at [www.riaclu.org/legislation](http://www.riaclu.org/legislation). You are encouraged to contact your legislators if you are concerned about their vote on any particular issue.

### IS OUR INFO FOR YOU CORRECT?

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### TUNE IN TO OUR CABLE SHOW: "RIGHTS OF A FREE PEOPLE"

#### STATEWIDE:

Channel 13 (Ch 32 on Verizon FIOS)  
Tuesdays 10:00pm  
Fridays 3:30pm

#### PROVIDENCE/N. PROVIDENCE:

Channel 18 (Ch 38 on Verizon FIOS)  
Wednesdays 9:00pm

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