

# ADVANCING JUSTICE IN THE LEGISLATURE

## 2021 LEGISLATIVE SESSION REPORT



### From Our Legislative Director

Eric González Alfaro

Since its founding in 1935 by trade unionists, political activists, intellectuals, and a minister, the ACLU of Washington has protected and extended the promises of the Bill of Rights and Washington State Constitution to all people living in and visiting this state. Our work is never done.

The year 2020 brought extraordinary challenges. The pandemic devastated entire communities, disproportionately Black, Indigenous, and people of color. By last December, Latinx people made up 34% of all COVID-19 infections in Washington, yet only represented 13% of the population. Death rates for Latinx and Black patients were also twice as high as the rate for white patients.

The pandemic compounded generational disregard by people in positions of power in government and private institutions who, with a stroke of a pen and political will, could greatly improve the lives of many. COVID-19 exposed the structural injustices that were built by design, or reinforced once discovered, to preserve unfair benefits for some at the expense of others.

In the 2021 legislative session we responded to two critical public health crises that the events of 2020 made more visible and harder for people in power to avoid: the COVID-19 health pandemic and the pandemic of racial injustice.

May 25 marked the one-year anniversary of the murder of George Floyd. While Washington state has made significant progress on police accountability and public safety, we have more to do to fully repair and heal from the injustices of more than four hundred years.

As our state begins to recover from the COVID-19 pandemic, let's remember the lives we lost, and that the pandemic exacerbated and highlighted disparities that have long existed in our state's health infrastructure. This is one of the many reasons we believe it is just to advocate for comprehensive, quality care for all, regardless of immigration status.

The 2021 legislative session delivered historic progress despite the challenges presented by the first ever virtual session. We hope you enjoy the following legislative recap and will help us build on these successes in the 2022 session, as we continue to bend the moral arc of the universe a bit closer to justice.



Rose Davis, Renee Davis' sister, receives the pen Governor Jay Inslee used to sign the Use of Force bill into law, from Rep. My-Linh Thai

# Legislative Impacts

## Debt-Based Driver's License Suspensions

The ACLU-WA worked alongside dozens of community organizations to pass legislation that would stop the suspension of driver's licenses for financial reasons and the accompanying automatic loss of vehicle insurance coverage. Washington state should not suspend driver's licenses for unpaid fines and fees. This puts people at risk of being pulled over and charged with a crime the next time they drive to work, the grocery store, or a medical appointment. There are better ways to hold people accountable for missing payments. Unfortunately, the bill that eventually passed fell short of the meaningful reform necessary to end debt-based license suspensions. The ACLU-WA will keep working in the legislature to make this change happen, and in the meantime, we are advocating in the courts.

## Pathways to Recovery

Due to COVID-19, the Treatment First Washington (TFW) campaign, supported by the ACLU-WA, decided not to gather signatures to place I-1715 on the November 2020 ballot. I-1715 would have decriminalized drug possession and replaced arrest and incarceration with a public health approach to a public health crisis. TFW pivoted to a 2021 legislative strategy and collaborated with the Public Defender Association, King County public health stakeholders, labor organizations, and the Washington Recovery Alliance to create the Pathways to Recovery coalition and support introduction of the Pathways to Recovery Act. This legislation addresses what public health experts have known for decades: Police and jails are the wrong tools to help community members with substance use disorders. It is a crucial step toward reducing the harm inflicted on communities of color by the War on Drugs and mass incarceration. The Act got a hearing and passed out of the House Public Safety Committee, a major milestone for this issue! Elements of the bill were also adopted in another law enacted in response to the Washington Supreme Court's *State v. Blake* decision, which struck down the state's main drug possession crime. Unfortunately, that bill recriminalized drug possession in Washington. The ACLU-WA and community and coalition partners are returning to a ballot initiative strategy for 2022 to end the failed and biased criminalization of people for drug possession and build sustainable pathways to recovery that address the root causes of substance use disorder.

## Voting Rights

Washington became the 21st state to automatically restore the right to vote to all citizens upon release from prison. Starting January 1, 2022, over 26,000 Washingtonians currently on community custody will have their voting rights restored and be able to register to vote and participate in our democracy. This bill is a critical step to remove barriers to voting and to end the racist practice of felony disenfranchisement. Several harmful carve-out amendments were successfully defeated to create a bright-line rule that leaves no one behind.

## Sentencing Reform

The ACLU-WA is working in coalition and partnership with many allies and incarcerated individuals to combat the systemic inequities and institutional racism of the criminal legal system through holistic sentencing reform and decarceration efforts. Several legislative proposals were introduced this session to reduce sentences and provide an avenue for release for those who are serving life and long sentences. The ACLU-WA will continue to advocate for priority bills to increase earned release-time (i.e., "good time") to reduce total time served in prison; provide a system for post-conviction review (similar to "parole") allowing for an independent review board to provide

second chances for those currently serving long and life sentences in prison; provide similar review for "emerging adults" who were convicted before turning 26 years old; and remove consideration of juvenile records when sentencing adults.

## Ending Solitary Confinement

The use of solitary confinement in our state prisons is torture and has devastating impacts on those incarcerated. Building on work in 2020 that helped successfully pass legislation to ban juvenile solitary confinement for disciplinary purposes, this session, the ACLU-WA partnered with Disability Rights Washington to ban the use of adult solitary confinement in prison. Despite a powerful hearing with testimony by many supporters, the bill did not pass. The work remains pressing as the Department of Corrections has increased its use of solitary confinement in response to COVID and as prison conditions continue to worsen.

## Private, For-Profit Immigration Detention

This legislative success bans the use of private detention facilities in Washington and prevents existing contracts from renewing. Private prisons are driven by profit motives that fuel the problem of mass incarceration. In our state the only private detention facility is the Northwest Detention Center in Tacoma that detains noncitizens for ICE. Passed with the help of strong advocacy led by La Resistencia and Columbia Legal Services, this new law requires that the detention center stop detaining people when its contract ends in 2025 - a huge victory for immigrant rights.

## Youth Access to Counsel

Youth often do not understand the consequences of waiving their right to an attorney, and while the right to remain silent is a hallmark constitutional protection, less than 10 percent of youth assert their Miranda rights when stopped by police. The ACLU-WA successfully advocated for a groundbreaking state law that requires police officers to connect youth to an attorney before they conduct a custodial interrogation when they detain a youth based on probable cause of criminal activity or when they request that the youth consent to a search of their person, property, or vehicle. These expanded protections will help reduce false confessions and the disparate number of Black youth who tend to waive their constitutional rights when encountering police.

## Youth Sex Offender Registries

Thousands of Washington youth, many under the age of 16, are forced to register as sex offenders for behaviors that they barely understand or were the result of living in traumatic and abusive homes. These registries are ineffective in providing accountability and community safety, and they do not meet their intended goal of reducing sexual assaults. The ACLU-WA and allies supported a bill that would eliminate the youth sex offender registry for most offenses and create a developmentally appropriate response for youth. The bill never made it to the Senate floor, but we are prepared to resume the fight.

## Protecting Pregnant Patients

Across our state pregnant patients have had their medical care delayed or denied because of institutional policies that are not grounded in science. These policies, which prohibit pregnancy terminations except in very limited circumstances, are discriminatory, serve no medical purpose, and place the health and lives of pregnant patients at risk. The ACLU-WA, working closely with many reproductive health advocates and providers, spent years advocating and mobilizing to pass the

Protecting Pregnant Patients Act. This Act prevents hospitals from interfering with a qualified health care practitioner's ability to provide medically necessary care to a pregnant patient whose health or life is at risk. It is a critical step in addressing discriminatory barriers to reproductive health care. Our success in passing it this year ensures that patients experiencing harmful pregnancy complications will receive the care they need when they need it.

### Health Equity for Immigrants

Many immigrants go without critical health care services because they have no way to obtain quality, affordable health coverage. Immigrants without qualifying immigration status are ineligible for Medicaid and Qualified Health Plans, so around 46 percent of undocumented individuals are uninsured in Washington, compared to just 7 percent of the state's overall uninsured population. Thousands of immigrants go without needed care or delay care until it becomes an emergency. This year the ACLU-WA, with community advocates and providers, worked to ensure undocumented immigrants would have access to state-funded health insurance programs. While the bill did not move forward, we successfully pivoted to a budget strategy and obtained two budget provisos: \$35 million for health care services for uninsured and underinsured individuals, regardless of immigration status, and authorization for government agencies to use funds to explore opportunities to facilitate enrollment of currently excluded populations in a state-funded health coverage program by 2024 – a significant step forward.

### Data Privacy

The ACLU-WA and the Tech Equity Coalition introduced the People's Privacy Act, one of the strongest data privacy proposals in the country. It would prohibit companies from collecting, using, or selling people's information without freely given opt-in consent. The bill's introduction helped stop the passage of the weak, industry-backed Washington Privacy Act for the third year in a row. That bill claimed to protect consumers' personal information, but instead prioritized the ability of corporations to profit from the use and sale of that data. Its defeat sends a strong message: Washington should set the gold standard for protecting the privacy of individuals' personal data against corporate profiteering. The ACLU-WA will work over the interim to push forward strong privacy protections in the next legislative session.

### Automated Decision-Making Systems

Government agencies make some of the biggest decisions in people's lives – from whether they receive healthcare, to whether they can receive housing assistance, to how long they are sentenced to prison. Increasingly, these government decisions are being made by secret algorithms developed by both government agencies and private companies. This lack of transparency and accountability has created due process nightmares. The ACLU-WA introduced a bill that prohibits any agency from developing or using automated decision systems that discriminate and establishes minimum standards of fairness and accountability for any government agency buying or using these systems. The ACLU-WA successfully passed a budget proviso that creates a task force to examine some of the systems in use. We will continue to push for accountability in 2022.

### Face Surveillance

Facial recognition is an unprecedented technology that gives the government massively enhanced powers to identify, locate, and track people. Some companies even use it to assess emotions or one's potential for dangerous behavior. Taking decisions

about who a person is and what they may be feeling out of human hands, for example in policing, can have life-or-death consequences. The ACLU-WA introduced a bill that hits pause on government purchase and use of this technology and creates a task force to begin a necessary and overlooked consultation with the communities most impacted by surveillance. While the bill did not move, we will continue to advocate for a moratorium on government use of this technology.

## REFORMING POLICING: Victories and Continued Advocacy



Use of Force bill signing. L to R: Rep. John Lovick, Rep. Debra Entenman, Rep. David Hackney, Sen. T'wina Nobles, Governor Jay Inslee, Rep. Jamila Taylor, Rep. Kirsten Harris-Tally, Rep. Jesse Johnson

### Deadly Tactics

This legislative victory was a key demand of the Washington Coalition for Police Accountability (WCPA) that centers the voices of family members whose loved ones were killed by police. In the wake of the George Floyd and Breonna Taylor killings, people across Washington and across the country took to the streets to protest police brutality. This bill prohibits certain hyper-aggressive police tactics and equipment such as chokeholds and neck restraints, no-knock warrants, and military equipment, and puts significant restrictions on other dangerous tactics like vehicle pursuits, tear gas, and shooting at moving vehicles.

### Use of Force

This legislative success is a foundational part of reducing police violence across our state. Police officers in Washington kill about 40-50 people each year, and harm many others. This bill restricts when and how officers can use force against members of the public and significantly limits their authority to use deadly force. It emphasizes de-escalation over confrontation so that everyone has a better chance of leaving an encounter with the police unharmed. The ACLU-WA worked closely with WCPA to get this bill passed.

### Felony Bar

Before this bill passed, Washington state law shielded police from civil liability for hurting and killing people by allowing them to claim that the injured or deceased individual was committing a felony at the time. This is called the "felony



bar” rule. Families who have lost loved ones to police violence succeeded in reforming this rule. Under the bill, if police claim the commission of a felony as a defense to a lawsuit, they must prove the defense at trial and satisfy a higher burden of proof. The bill is a significant step forward in holding police accountable for taking the lives of community members.

### Peace Officer Accountability

When a police officer harms someone without facing consequences, there is no justice for the victim, no incentive to change bad behavior, erosion of community trust, and loss of community safety. This bill sought to remove obstacles to holding officers and departments civilly liable for violating peoples’ rights by creating a private right of action, with attorneys’ fees and without qualified immunity. This bill did not pass this year but did get to the House floor.

### Collective Bargaining

The community’s right to police accountability should not be bargained away. Over and over, throughout Washington, community efforts to strengthen police accountability have been stymied by the police union collective bargaining process. ACLU-WA helped draft a bill to make clear that police unions are unique among public employees because police officers have the authority and broad discretion to engage in state-sanctioned use of force, taking of life, and taking of liberty. The bill would have taken specified accountability issues out of the police union collective bargaining process. It would also have ended private arbitration of police discipline appeals which often resulted in reinstatement of officers who committed serious misconduct. Strong testimony supporting the bill was presented at a hearing, but the bill was not voted out of committee. Efforts to pass it will continue in 2022.

### Independent Investigations

A shared priority of WCPA and the ACLU-WA was passage of legislation implementing recommendations of the Governor’s Task Force on Independent Investigations of Police Use of Force. Seven of the twenty-four task force members were also WCPA members. Throughout 2020, the ACLU-WA co-chaired a WCPA working group that helped task force members develop positions and supporting arguments. A newly enacted law delivers on key recommendations of the task force: creation of a statewide entity to conduct criminal investigations of police use of force; transition to non-law enforcement investigators within five years; an advisory board with a strong majority of community members for input on the hiring of the director; and adopting an anti-oppression and racial equity framework to lead the organization’s work.

## ACT NOW

**ADVANCE JUSTICE AND EQUITY**  
[aclu-wa.org/actnow](https://aclu-wa.org/actnow)

**JOIN OR START  
A PEOPLE POWER GROUP**  
[aclu-wa.org/people-power](https://aclu-wa.org/people-power)

## BY THE NUMBERS

### Legislative Advocacy in the 2021-2022 Biennium 2021 Regular Session (January 11 to April 25)

- 602** Bills were introduced in the House
- 506** Bills were introduced in the Senate
- 63** Bills we supported were enacted
- 51** Bills were opposed by us
- 3** Total number of bills we opposed that were enacted
- 25** Number of times ACLU-WA staff testified at hearings
- 39** Number of times we met, called, and wrote legislators
- 23,537** Number of times ACLU-WA supporters met, called, and wrote legislators
- 259** Total days from end of 2021 session to start of 2022 session

## The Power Is with the People

Every year, the ACLU-WA looks forward to gathering activists together in Olympia to learn and to lobby legislators about critical civil liberties bills. This year looked a little different. With a completely remote session, activists from across the state joined the affiliate via Zoom for the first-ever virtual Lobby Week!

From January 25 through January 29, supporters representing 26 legislative districts worked in teams to attend virtual meetings with state representatives and senators to advocate for police reform. Over the course of 58 meetings, activists advocated for passage of a bill related to collective bargaining for police unions, and a bill concerning use of force by police officers. Lobby Week participants also learned how to register their position on a bill for the public record, attended virtual hearings, emailed lawmakers, and completed action alerts to support our full legislative agenda. With the support of amazing advocacy from our lobby week participants, the ACLU-WA successfully advocated for passage of the use of force bill this session and will continue to fight for police union collective bargaining reform in 2022.

Stay tuned for more information about next year’s Lobby Day on January 17, 2022!

**ACLU**  
Washington