

## 2018 Legislative Session Review



On March 8th, the 2018 Utah legislative session concluded after 45 days of fast-paced lawmaking, and the ACLU of Utah was there for it all.

This year the legislature hit a new record in number of bills introduced; accordingly, we also hit a high mark for number of bills tracked: 115! We've highlighted 35 of the most important of those bills in this review that demonstrate some of the highs and lows of the 2018 session, from a civil liberties perspective.

## **ACLU of Utah's Top 10 Legislative Priorities**

1. Abolish the death penalty
2. Expand gender equality in the workplace, and in places open to the public
3. Provide anti-discrimination protection for all workers in Utah
4. Promote reproductive health
5. Improve jail conditions
6. Expand voting rights and accessibility
7. Increase access to criminal defense support for the indigent.
8. Strengthen Fourth Amendment protections for Utahns
9. Provide for meaningful prosecutorial oversight
10. Expand access to end-of-life options

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	Review Bills	Testified/ Amended	Opposed	Supported	Neutral
First Amendment	2	2	0	1	1
Fourth Amendment	6	5	4	1	1
Racial Justice	2	1	0	2	0
Criminal Justice	14	12	5	8	1
Voting Rights	2	1	1	1	0
Equal Rights	5	5	0	4	1
Reproductive Rights	4	3	1	2	1
<b>Total</b>	<b>35</b>	<b>29</b>	<b>11</b>	<b>19</b>	<b>5</b>

# **First Amendment**

HB 36

## **Free Expression Regulation Amendments**

<https://le.utah.gov/~2018/bills/static/HB0036.html>

Sponsor: Rep. Norm Thurston (R-Provo)

Subject: First Amendment

ACLU of Utah Position: Supported

Status: Passed

This bill, which we supported, requires that all political subdivisions, including cities, municipalities, townships, etc., respect the First Amendment when restricting expressive activity, including peaceful assemblies, distributing literature, and gathering signatures. The bill explicitly prevents the prohibition of political activity on public grounds, including the outside of a public building as well as sidewalks, streets, and parks. Sometimes two times is the charm, and that's true with this bill; it was introduced in 2017 ran into some challenges, was amended and successfully passed in 2018.

HB72

## **Communications of Governmental Entity Employees and Officers**

<https://le.utah.gov/~2018/bills/static/HB0072.html>

Sponsor: Rep. Justin Fawson (R-North Ogden)

Subject: First Amendment

ACLU of Utah Position: Neutral as amended

Status: Passed

As originally drafted, this bill posed substantial First Amendment concerns. HB72 would have made public a private email communication sent by a public employee concerning a political matter. The threat of making private communications public would certainly have had a chilling effect on what is otherwise constitutionally-protected speech. Working alongside lobbyists for the media, as well as local government, we were able to convince the sponsor to substantially amend the bill, and as a result, were able to remove our objections to its passage.

## **Fourth Amendment**

HJR 9

### **Proposal to Amend Utah Constitution - Unreasonable Searches and Seizures**

Rep. Craig Hall (R-West Valley City)

<https://le.utah.gov/~2018/bills/static/HJR009.html>

Subject: Fourth Amendment

ACLU of Utah Position: Supported

Status: Held in House Committee

Alongside the libertarian-leaning Libertas Institute and the Utah Association of Criminal Defense Attorneys, the ACLU of Utah worked to introduce this joint resolution, which if passed would have sent to Utah voters the question of whether to modify our state Constitution to make explicit that electronic data and communications are protected by the Fourth Amendment's warrant requirement. This language would have ensured that the private communications and data kept on Utahn's cell phones, tablets, or computers would be safeguarded in the same way that other personal documents and effects are protected. Unfortunately, the bill was held in a House committee after robust debate. Until the Utah legislature picks this issue up again, we will have to wait for federal and state courts to uniformly interpret the Fourth Amendment as applying to this type of data.

HB43

### **Blood Testing Amendments**

Rep. Craig Hall (R-West Valley City)

<https://le.utah.gov/~2018/bills/static/HB0043.html>

Subject: Fourth Amendment

ACLU of Utah Position: Supported

Status: Passed

The genesis for HB43 comes from a high-profile case during the summer of 2017 when a nurse at the University of Utah was arrested for attempting to stop law enforcement from obtaining a blood draw from an unconscious patient. After worldwide media exposure resulted in universal condemnation for law enforcement's action in this regard, Rep. Hall introduced legislation to clarify that in order to withdraw blood from an individual, there must either be consent (unavailable when someone is unconscious) or a warrant. The bill enjoyed widespread support in both bodies of the legislature and was passed without opposition.

HB83

### **Forcible Entry and Warrants Amendments**

Rep. Marc Roberts (R-Santaquin)

<https://le.utah.gov/~2018/bills/static/HB0083.html>

Subject: Fourth Amendment

ACLU of Utah Position: Supported

Status: Failed in Senate; not assigned to committee

After several national incidents of law enforcement using unannounced and forcible entries to private property that resulted in injuries and deaths—including an incident in Georgia where a flash-bang grenade thrown by a police officer landed in a toddler’s crib—the goal of HB83 was to provide additional levels of supervision and risk assessments before these operations could be conducted.

The ACLU of Utah strongly supported this bill, not only working to draft its language with the Libertas Institute, but also testifying in favor of the bill during a House committee hearing. Speaking on why this bill is necessary, the ACLU of Utah’s Marina Lowe told lawmakers, “these are really dangerous situations, not just for the people upon whom the warrant is being served, but also for the officers that are undertaking this dangerous mission, and we want to make sure that we’re getting the right house, the right location, that the proper precautions are being considered.” After passing the House, the bill was never assigned to a Senate committee. The ACLU of Utah is hopeful that similar legislation will be considered in future sessions. For additional information about this bill, see the ACLU on the Hill Episode 2 “Some that We Like” here ([YouTube](#)).



Connor Boyack, president of the Libertas Institute, and the ACLU’s Marina Lowe discuss HB 83, Forcible Entry and Warrants Amendments, on Episode #2 of *ACLU on the Hill*.

HB260

### **Professional Licensing Revisions**

Rep. Ray Ward (R-Bountiful)

<https://le.utah.gov/~2018/bills/static/HB0260.html>

Subject: Fourth Amendment

ACLU of Utah Position: Opposed

Status: Failed in the Senate

HB260 would have rolled back the Fourth Amendment protections the ACLU of Utah and others established for searches of medical records and drug databases during the 2015 legislative session. Claiming that the ongoing opioid epidemic justified serious measures, backers of HB260 would have allowed specific law enforcement officers to forego a warrant requirement and instead simply undergo a training course before being able to request prescription drug data from the state's Division of Professional Licensing. The ACLU of Utah's Marina Lowe testified against the bill, stating, "We continue to believe that the information contained in the database reveals many sensitive details about one's medical conditions, and therefore just like our physical medicine cabinets, should require a warrant before law enforcement is granted access." Also testifying against the bill was Jeremy Robertson, the former president of the Salt Lake County fire-fighters union who represented hundreds of first responders whose records were searched without a warrant in 2013, prompting an ACLU lawsuit and the 2015 revision to the law. After narrowly passing the House (39-32), the bill faced a skeptical Senate committee where Sen. Todd Weiler, the sponsor of 2015's SB119, claimed the bill would once again allow law enforcement to violate the Fourth Amendment protections against unreasonable searches. Although the bill passed the Senate committee on a 4-3 vote, it failed by a 9-18 vote on the floor of the Senate.

HB330

### **Communication Interception Amendments**

Rep. Lowry Snow (R-St. George)

<https://le.utah.gov/~2018/bills/static/HB0330.html>

Subject: Fourth Amendment

ACLU of Utah Position: Neutral

Status: Failed; never considered by committee

HB330 would have made it illegal for one party to record a conversation without the other party's knowledge—a reality in 12 states as diverse as Maryland and Montana. The sponsor eventually pulled the bill from consideration after significant public backlash. The ACLU of Utah was neutral on HB330, which surprised many of our frequent allies. The ACLU of Utah generally supports measures that enhance and protect the right to privacy for individuals. While we were disappointed that HB330 didn't extend two-party consent to situations when the government records a person's conversations without their knowledge (e.g., "under the color of law"), we did appreciate how it extends privacy rights for Utahns in the realm of private communications. HB330 would have enhanced a person's right to privacy by preventing others from recording them without consent.

In addition, HB330 included several important carve-outs to restore "one-party consent" to record government officials and law enforcement officers, even when those conversations are private. HB330 also contained similar protections for whistle-blowers who make private recordings to substantiate wrong-doing, or for people who believe they are being harmed, harassed, or in situations with threats of harm or extortion, an ongoing pattern of harassment, obscene language, evidence of a crime, or abuse. We couldn't support HB330, however, because the bill expanded

criminal penalties to behavior that was not previously a crime in Utah. We do not support legislation that adds new, harsher penalties for actions that were previously legal, and HB330 violates that directive.

HB392

**Search and Seizure Amendments**

Rep. Brian Greene (R-Pleasant Grove)

<https://le.utah.gov/~2018/bills/static/HB0392.html>

Subject: Fourth Amendment

ACLU of Utah Position: Supported

Status: Held in House Committee

In 2016, the U.S. Supreme Court handed down an unfortunate decision in a case originating from Utah: *Utah v. Strieff*. Despite a unanimous Utah Supreme Court ruling to the contrary, the high court announced that evidence was admissible in this case, even though the officers admitted that they had no reasonable suspicion to believe that Mr. Strieff had done anything wrong. According to the case record, officers stopped and searched him and discovered the evidence after the fact. HB 392 would have attempted to address this problematic decision by clarifying that under Utah law, an unlawful stop would make any subsequently discovered evidence inadmissible. Despite strong support from the ACLU of Utah, libertarian groups and criminal defense attorneys alike, the bill was held by the House committee in which it was heard.



ACLU of Utah board members and supporters receive a legislative update from Marina Lowe on February 15, 2018.

## **Racial Justice**

HB189

### **Driver License Exam Revisions**

Rep. Carol Spackman Moss (D-Holladay)

<https://le.utah.gov/~2018/bills/static/HB0189.html>

Subject: Racial Justice

Status: Passed

ACLU of Utah Position: Supported

HB189 allows a refugee or person seeking asylum to take the written exam for a limited-term driver license in their native language if they are renewing it for the first time. Current law already allows refugees and asylees to take the exam in their native language the first time they apply for a limited-time license. The bill also increases the duration of a limited-term license certificate from one year to five years. Rep. Moss emphasized Utah's commitment to welcoming refugees and explained how the current requirement to pass the written test in English prevented refugees from participating fully in the workforce and community.

SB198

### **Public School Disciplinary Action Amendments**

Sponsor: Sen. Jake Anderegg (R-Lehi)

<https://le.utah.gov/~2018/bills/static/SB0198.html>

Subject: Racial Justice

ACLU of Utah Position: Supported

Status: Passed

SB198 requires the State Board of Education and local school districts, charter schools, and law enforcement agencies to compile an annual report on disciplinary incidents involving police or school resource officers (SROs) and students in Utah's public and charter schools. Details to be recorded include the race, gender, age, and disability status of a minor or student involved in each incident. The ACLU of Utah drafted and supported this legislation by testifying in both the House and Senate committee hearings, claiming "This bill would assist schools and law enforcement in reporting contact and discipline, and so be able to see the trends within their school and how they compare across the State." Accurate data about the interactions between SROs and students had been missing from the important conversation about Utah's school-to-prison pipeline and is all the more critical given the passage of HB132 this session (see above), which further defines the role of SROs on school campuses.

## **Criminal Justice**

HB83

### **Felony Fleeing Amendments**

Rep. Paul Ray (R-Clinton)

<https://le.utah.gov/~2018/bills/static/HB0084.html>

Subject: Criminal Justice

ACLU of Utah Position: Opposes

Status: Failed in the Senate

HB83 intended to make fleeing from a law enforcement a predicate offense (i.e. a component of a more serious criminal activity) for murder if another person dies while the suspect is fleeing. The ACLU of Utah opposed this bill because it would have allowed the State to prosecute someone for murder for what is otherwise a misdemeanor offense, which is dramatically different from other predicate offenses that include robbery and rape. At the Senate hearing the ACLU of Utah testified that, "Associating fleeing from law enforcement with crimes of violence is incongruent to the murder statute and defies common sense." HB83 passed the House and Senate committee, but it never received a vote from the full Senate.

HB125

### **Duty to Assist in an Emergency**

Rep. Brian King (D-Salt Lake City)

<https://le.utah.gov/~2018/bills/static/HB0125.html>

Subject: Criminal Justice

ACLU of Utah Position: Opposes

Status: Failed in the House

Although we usually find ourselves aligned with Rep. Brian King on many issues, we opposed HB125 because it could potentially criminalize behavior (e.g. failing to intervene during an emergency situation) that was previously not a crime. In addition, we considered the application of this law at crime scenes to be challenging, as police officers might need to issue the Miranda warning (i.e. "you have the right to remain silent") to any witnesses to a crime or accident because their self-admitted inactivity could make them culpable of a crime. We were also concerned about the implications of this bill on communities of color.

HB129

### **Self Defense Amendments**

Rep. Cory Maloy (R-Lehi)

<https://le.utah.gov/~2018/bills/static/HB0129.html>

Subject: Criminal Justice

ACLU of Utah Position: Opposes

Status: Failed in the Senate

HB129, a so called “Stand Your Ground” bill, would have modified the self-defense statute so that a person claiming self-defense does not have a duty to retreat from an aggressor before using deadly force. If this bill had passed, whether a person could escape to a safe location rather than use deadly force, would not be a factor in determining if a person claiming self-defense acted reasonably. The bill passed the House and the Senate committee, but the Senate never voted on it.

HB132

**Juvenile Justice Modifications**

Rep. Lowry Snow (R-St. George)

<https://le.utah.gov/~2018/bills/static/HB0132.html>

Subject: Criminal Justice

ACLU of Utah Position: Neutral as amended

Status: Passed

HB 132 concerns multiple areas of the juvenile justice system. First, it addresses a school’s role in juvenile justice where it defines the authority of school resource officers (SRO) and it clarifies procedures when responding to a student’s school-based behavior. Second, it outlines when a school may refer a juvenile to law enforcement or court. Other areas the bill modifies include the court’s authority and procedure to impose a suspended custody order, the responsibilities of victims when requesting restitution from juveniles, and the criteria needed for a prosecutor to file charges against a minor. We successfully amended the bill to require that SROs have probable cause before engaging in searches, and therefore were neutral on the bill overall. The bill passed the House and Senate with overwhelming margins.

HB190

**Juvenile Offense and Jurisdiction Amendments**

Rep. Mike Winder (R-West Valley City)

<https://le.utah.gov/~2018/bills/static/HB0190.html>

Subject: Criminal Justice

ACLU of Utah Position: Opposes

Status: Failed in the House

HB190 would have mandated that prosecutors charge 15-year-old children as adults if their actions resulted in the death of a law enforcement officer. The ACLU of Utah testified against this bill by explaining that prosecutors already have leeway to charge minors as adults for serious crimes. The bill disregards current research on juvenile brain development and recent United States Supreme Court case law that discusses the problems with treating juveniles like adults. Testifying before the House Law Enforcement and Criminal Justice Committee, the ACLU explained our position: “We do not support the idea that a 15-year-old accused of murder should be subject to adult criminal proceedings based solely on the victim’s occupation. Rather, we support evidence-based rationale that considers a juvenile’s culpability and the prospects of rehabilitation in a juvenile justice system.”

Although this bill passed a House committee, it failed on the floor of the House. The genesis for this bill was the death of a West Valley City police officer in November 2016 during a high-speed chase involving three teenagers.

HB291

**Sentencing Commission Length of Supervision Guidelines**

Rep. Eric Hutchings (R-Kearns)

<https://le.utah.gov/~2018/bills/static/HB0291.html>

Subject: Criminal Justice

ACLU of Utah Position: Supported

Status: Passed

HB291 requires that the Utah Sentencing Commission provide parole guidelines that, if drafted with parole reform in mind, should emphasize evidence-based decision making and allow the Board of Pardons and Parole more discretion. The bill also removes barriers to rehabilitation by eliminating mandatory supervision provisions and allowing early termination from supervision in some cases. The ACLU of Utah supports HB291 because it is a positive extension of the Justice Reform Initiatives (JRI) passed in a previous session. "Assuming the new guidelines comport with the JRI," the ACLU explained to a committee reviewing the bill, "the modifications will promote fair decision making and just outcomes for both the person under review and the community where that person will re-enter."

HB248

**Compensatory Service in Lieu of Fine Amendments**

Rep. Brian King (D-Salt Lake City)

<https://le.utah.gov/~2018/bills/static/HB0248.html>

Subject: Criminal Justice

ACLU of Utah Position: Supported

Status: Passed

HB 248 allows a defendant to perform community service in lieu of paying a fine after they are convicted of an infraction or a class B or C misdemeanor. Compensatory service could be service or unpaid work for a government agency, a nonprofit organization, or any other entity approved by a court. Service work will be credited at \$10 per hour. The ACLU of Utah supported this bill because it provides an alternative option for low-income people to pay fines while increasing the likelihood they can complete any court-ordered punishment. Many others supported this bill, as it passed the House and Senate by wide majorities.

HB309

**Drug Distribution Induced Homicide**

Rep. Steve Eliason (R-Sandy)

<https://le.utah.gov/~2018/bills/static/HB0309.html>

Subject: Criminal Justice  
ACLU of Utah Position: Opposed  
Status: Failed in the Senate

This bill would have allowed law enforcement to charge individuals with drug-induced homicide—a first-degree felony—if they knowingly provided a controlled substance that caused another individual’s death. The bill included an exception for doctors, and provided that reporting an overdose to authorities would be a mitigating factor in sentencing. After passing the House on a 45-23 vote, the bill failed on a narrow 11-12 vote in the Senate on the second-to-last day of the session. The ACLU raised numerous objections to this bill, including the elevation of a minor crime to a felony homicide charge, and the challenge for investigators to determine which drug provided by which individual at which time contributed to an eventual death.

**HB336**

**Fine Amendments**

Rep. Dan McCay (R-Riverton)

<https://le.utah.gov/~2018/bills/static/HB0336.html>

Subject: Criminal Justice

ACLU of Utah Position: Supported

Status: Passed

Late fees and penalties for non- or late-payment of a parking citation, civil citation, or administrative fine can sometimes exceed the cost of the original fine. Under this system, a \$25 fine can grow to hundreds of dollars, turning a small infraction into a struggle with serious debt.

HB336 caps the late fees on these fines to 25% of the original amount, while also capping the court-sanction interest to 25% of the original amount. This bill did not address the power of a court to jail a person for contempt for non-payment of a fine, a practice that the ACLU of Utah opposes. In the end the ACLU of Utah supported this bill because it increases the likelihood that people will be able to pay their fines and avoid incarceration.

**HB379**

**Death Penalty Amendments**

Rep. Gage Froerer (R-Huntsville)

<https://le.utah.gov/~2018/bills/static/HB0379.html>

Subject: Criminal Justice

ACLU of Utah Position: Supported

Status: Failed in the House; no vote

Introduced on day 22 of the session, this year’s effort to repeal Utah’s death penalty began with great promise but fell short of the necessary votes to pass in the House. At the February 20 press conference announcing the bill, House Speaker Greg Hughes described the death penalty as, “an outdated form of punishment, and I think we as a

society in 2018 are better than that.” He was joined by bill sponsor Rep. Gage Froerer, who admitted he opposed repealing the death penalty the last time the chamber considered it in 2016. This issue has been a key ACLU priority for some time; and we dedicated significant resources and effort to advancing the bill in 2018. This included lobbying not only legislators, but also members of the executive branch, and local government. For the first time, a county level body, Salt Lake County, took a position in support of this bill. Equally significant, the Governor publicly expressed willingness to consider signing the bill should it have reached his desk. Rep. Froerer’s bill passed the House Law Enforcement and Criminal Justice Committee on 7-4 vote after emotional testimony from both sides. While the bill was not ultimately heard on the House floor because we were short a few votes, it is clear that we make steady progress every year.



The House Law Enforcement and Criminal Justice Committee listens to the debate on HB 379 before voting 7-4 to pass the bill and send it to the House Floor on February 21, 2018.

SB154

### **Prohibition of Law Enforcement Quotas**

Sen. Howard Stephenson (R-Draper)

<https://le.utah.gov/~2018/bills/static/SB0154.html>

Subject: Criminal Justice

ACLU of Utah Position: Supported

Status: Passed

SB154 prohibits a law enforcement agency from requiring or directing officers to meet any quotas for arrests or citations. The ACLU of Utah supported this bill, testifying, “Quota policies, whether suggested or mandated, send a message that police enforcement is more about making money than enforcing the law in a fair, equitable and necessary manner.” This bill passed the House and Senate with only a handful of dissenting votes, and Utah will now join 18 other states that have banned quotas on law enforcement officers.

SB186

**Indigent Defense Amendments**

Sen. Todd Weiler (R-Woods Cross)

<https://le.utah.gov/~2018/bills/static/SB0186.html>

Subject: Criminal Justice

ACLU of Utah Position: Supported

Status: Passed

This bill expanded the scope of who could be considered an indigent defendant, adjusted how counties can receive grants from the state fund, and made administrative adjustments to the powers and membership of the state's Indigent Defense Commission. The ACLU supported this bill because it made small but important improvements to the state's indigent defense system—although we believe the system remains significantly unfunded. Although the governor's office asked for \$3 million to fund the state's indigent defense commission for FY2019, the final budget approved only \$1.2 million—a \$500,000 reduction from the prior budget year. Note: The ACLU of Utah is currently pursuing litigation against the state of Utah over inadequate support for indigent defendants.

SB196

**Homeless Identification Documents**

Sen. Allen Christensen (R-Ogden)

<https://le.utah.gov/~2018/bills/static/SB0196.html>

Subject: Criminal Justice

ACLU of Utah Position: Supported

Status: Passed

This bill waived the fee for a state identification document or birth certificate for individuals who are experiencing homelessness. The ACLU of Utah supported this bill because it reduces the barriers for homeless individuals to access social services and rebuild their lives, especially with regard to the access restrictions and checkpoints created by Operation Rio Grande in Salt Lake City.

SB205

**Incarceration Reports**

Sen. Todd Weiler (R-Woods Cross)

<https://le.utah.gov/~2018/bills/static/SB0205.html>

Subject: Criminal Justice

ACLU of Utah Position: Supported

Status: Passed

SB205 requires county jails and the Utah Department of Corrections to compile data on in-custody inmate deaths, treatment policies for inmates with substance or alcohol

addiction, and medications dispensed during incarceration. It also requires additional study of alcohol and substance use withdrawal in county jails.

In 2016 24 inmates died while in Utah jails, giving Utah the highest per-capita jail death average in the nation. But for several investigative reports by Utah journalists, especially at the Ogden Standard Examiner, the scope of this tragedy would not have become known to the public because no statewide system of counting and tracking inmate deaths existed in Utah.

In response, Sen. Weiler authored this bill to require county jails and the Department of Corrections (which manages the state prisons) to track and report inmate deaths. And because several high-profile deaths involved inmates undergoing withdrawal from substance abuse addictions, Sen. Weiler added a section to track in-jail treatment for medical prescriptions and substance abuse histories. Although some lawmakers feared this requirement would expose jails to litigation for not treating inmates, testimony from law enforcement agencies explained that jails already complied this information during the intake procedures.

The ACLU of Utah encouraged Sen. Weiler to run this bill, and then actively supported its passage by testifying in committees and lobbying individual lawmakers. During the House committee hearing we explained how tracking inmate deaths connects to our goal of increasing the transparency for the jail standards that govern the response of corrections officers to medical and safety emergencies. The passage of SB205 means that future inmate deaths in Utah will be recorded and analyzed with the goal of preventing more fatalities from occurring.

## Voting Rights

HB218

### **Modifications to Election Law**

Rep. Chavez-Houck (D-Salt Lake City)

<https://le.utah.gov/~2018/bills/static/HB0218.html>

Subject: Voting Rights

ACLU of Utah Position: Supported  
Status: Passed

HB218 combines several changes to voting and election laws, including: implementing a version of automatic voter registration that requires individuals who apply for or renew their driver's license to choose whether to also be registered to vote; reinstating election day registration as a permanent, state-wide law; and providing voters the option to cast a ballot in person. The ACLU supports efforts to automate voter registration and election day registration as they make the voting process more accessible and more convenient. The bill does allow for voters who fail to return absentee ballots in two general elections to be removed from the absentee voter list; those voters would need to then request an absentee ballot in the future. This legislation on balance is a common sense, nonpartisan way to increase Utah's persistent low voter turnout rate and protect election integrity. Most importantly, after 11 years of advocating for Election Day Registration, the ACLU is glad to see this practice made permanent statewide.



ACLU of Utah's Marina Lowe (left) joins Rep. Rebecca Chavez-Houck, Gov. Gary Herbert, and others at the signing of HB 218 on April 3, 2018.

HB471

### **Initiative Amendments**

Rep. Brad Daw (R-Orem)

<https://le.utah.gov/~2018/bills/static/HB0471.html>

Subject: Voting Rights

ACLU of Utah Position: Opposed  
Status: Failed in the Senate; no vote

Introduced late in the session, this bill would have delayed the implementation of any voter initiative to 60 days after the conclusion of the next legislative session. In 2018 there could be up to four voter initiatives on the general election ballot. The ACLU of Utah tracked this bill based on our concerns about its impact on the separation of powers. After passing the House, the bill failed to receive a committee hearing or vote in the Senate.

# Equal Rights

HB156

## **Family Leave Amendments**

Rep. Elizabeth Weight (R-West Valley City)

<https://le.utah.gov/~2018/bills/static/HB0156.html>

Subject: Equal Rights

ACLU of Utah Position: Supported

Status: Failed, held in House committee

Press: <https://www.deseretnews.com/article/900011073/utah-lawmakers-debate-fail-to-act-on-family-leave-bill.html>

HB156 would have required certain executive branch and higher-education employers to offer and administer limited paid parental leave. The covered new parents could take time off from work during the birth or adoption of a child, providing six weeks—or up to 240 hours—of paid parental leave for certain full and part-time employees of the state. Approximately 56,000 Utahns would have been positively affected by this bill, including 18,000 state employees, 37,862 employees at the eight public colleges and universities, plus University of Utah Hospital staff and the 205 employees of the Utah State Board of Education. Due to the large fiscal note of \$12.6 million to cover the estimated 1,200 employees who might take paid leave each year, the bill was held by the House Business and Labor Committee on a 11-1 vote.

HB196

## **Breastfeeding Protection Act**

Rep. Justin Fawson (R-North Ogden)

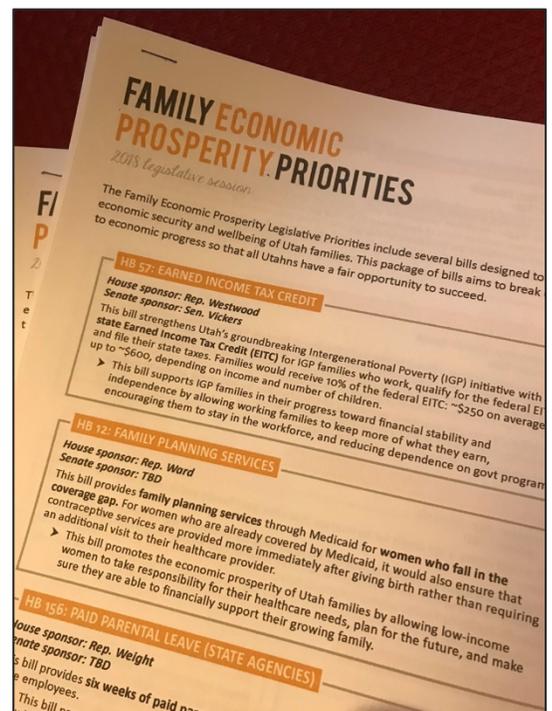
<https://le.utah.gov/~2018/bills/static/HB0196.html>

Subject: Equal Rights

ACLU of Utah Position: Supported

Status: Passed

HB196 adds places of public accommodation such as stores, public businesses, and restaurants, to the list of places that Utah women can breastfeed or nurse in public without fear of being asked to leave or cover up. This bill aligns Utah's breastfeeding protections with 48 other states, and it builds on a 2016 ACLU of Utah victory to extend breastfeeding accommodations in many workplaces. Rep. Fawson decided to run this bill at the urging of his wife, a nurse, and the ACLU of Utah, of course, and



HB 156 "Family Leave Amendments" was among the bills included in the *Family Economic Prosperity Priorities* that lawmakers promoted during a press conference on January 26, 2018.

guided it through sometimes awkward questions and debate in a House committee hearing, before it passed both chambers by wide margins.

HB278

**Paid Family and Medical Leave Tax Credit**

Rep. Becky Edwards (R-North Salt Lake)

<https://le.utah.gov/~2018/bills/static/HB0278.html>

Subject: Equal Rights

ACLU of Utah Position: Supported

Status: Failed

HB 278 would have provided a tax credit to encourage Utah businesses to offer paid family and medical leave to employees. The ACLU of Utah supported this bill because the burden of family or health-related responsibilities disproportionately fall on women, many of whom are also wage-earners for their families. Initially designed as a 25% tax credit, the bill was amended to lower the tax credit to 5%, resulting in a smaller fiscal note but also a less impactful bill. After narrowly passing the House on a 38-28 vote, the bill was not heard in the Senate and failed.

HB283

**Workplace Protection Amendments**

Rep. Becky Edwards (R-North Salt Lake)

<https://le.utah.gov/~2018/bills/static/HB0283.html>

Subject: Equal Rights

ACLU of Utah Position: Supported

Status: Failed in House committee

Did you know that a Utah business with fewer than 15 employees can discriminate against workers based on their sex, pregnancy, gender, race, or any other protected class? That's because state and federal anti-discrimination protections only kick in for employers with more than 15 workers. HB283 would have lowered that threshold to a single employee and established the rule that discrimination in any workplace is unacceptable. This bill faced many hurdles, including an initial fiscal note (the estimate of how much enacting the bill would cost the state) of \$1.9 million—which is 20% more than the entire annual budget of the state agency charged with investigating workplace discrimination. But after intervention from the sponsor, the fiscal analysts lowered the fiscal note to the more realistic total of \$141,000—vastly improving the chances that the bill could pass. But despite strong lobbying by the ACLU of Utah, the Salt Lake Chamber of Commerce, community partners and several small business owners, the bill failed in the House Business and Labor Committee. Learn more about the ACLU's role in supporting HB 283 by watching Episode #3 of ACLU on the Hill, "A Tough Bill to Lift" ([YouTube](#)).

SB138

### Sex Change Amendments

Sen. Todd Weiler (R-Woods Cross)

<https://le.utah.gov/~2018/bills/static/SB0138.html>

Subject: Equal Rights

ACLU of Utah Position: Neutral

Status: Failed in Senate

This bill attempted to standardize the judicial process for a person wanting to change their birth gender. But several compromises added to the bill angered both the transgender community and social conservatives, dooming its chances of passing. Currently a person's request to change their gender on a birth certificate can be granted or refused by a judge based on the judge's interpretation or preference. SB138 would have created guidelines for judges to approve gender changes as long as the petitioners met several basic requirements. While the Utah Eagle Forum opposed the bill for general reasons, transgender supporters opposed it because an amended version of the bill would have excluded people under age 18 and required a note attached to an official document indicating that it had been amended. During the Senate committee hearing, the ACLU's Marina Lowe urged lawmakers to make the bill as clear as possible by retaining the language that judges "shall" grant these gender changes, instead of the more ambiguous term, "may." While Marina's suggestion was sustained, the bill was amended several more times on the Senate floor before it finally failed in a 10-16 vote.



Marina Lowe appears on ABC4's *Inside Utah Politics* on January 28, 2018 to discuss the ACLU's legislative priorities.

# **Reproductive Rights**

HB12

## **Family Planning Services Amendments**

Rep. Ray Ward (R-Bountiful)

<https://le.utah.gov/~2018/bills/static/HB0012.html>

Subject: Reproductive Rights

ACLU of Utah Position: Supported

Status: Passed

In one of this year's biggest legislative victories, HB12 increases access to free contraception for low-income women by providing family planning services and both oral and long-lasting contraception for women in the Medicaid coverage gap. The bill also adjusts a Medicaid billing rule to allow doctors to provide contraception services—such as intrauterine devices (IUDs)—immediately after a birth, rather than requiring a waiting period and additional office visits. The ACLU of Utah worked for several years with partners at the University of Utah and Planned Parenthood to craft this bill. We believe that giving low-income women improved access to contraception increases their control over their reproductive freedom and bodily autonomy, allowing them to better plan their lives, careers, and families. The thoughtful behind-the-scenes lobbying for this bill paid off as it passed the House with a 53-21 vote and the Senate with 24-3 vote.

HB205

## **Down Syndrome Nondiscrimination Abortion Act**

Rep. Karianne Lisonbee (R-Clearfield)

<https://le.utah.gov/~2018/bills/static/HB0205.html>

Subject: Reproductive Rights

ACLU of Utah Position: Opposed

Status: Failed

Introduced on the opening day of the session, HB205 would have made it a crime for doctors in Utah to perform abortions if the provider believed the pregnant woman is seeking the abortion "solely because an unborn child has, or may have, Down syndrome." This bill, which the ACLU believed was blatantly unconstitutional, became one of the most-watched and debated bills during the 2018 session. A contributing factor was the bill's 500-word "legislative review note," an official warning by legislative attorneys that there was a "high probability" the law would be declared unconstitutional by courts. During committee testimony and interviews with the media, the ACLU of Utah explained that these "constitutional notes" are a rare occurrence at the Utah legislature and their implications should not be ignored. We also showed how HB205 resembles similar legislation passed in Indiana and Ohio that is currently being challenged in court. During the House committee hearing Rep. Brian King (D-SLC) warned his colleagues, "If we pass this bill, we are buying ourselves a lawsuit."

After passing the House on a 54-17 vote, HB205 was held in the Senate Rules Committee for two crucial weeks before being assigned to the Senate Judiciary Committee where it passed on a 3-2 vote. But then the bill stalled again, and when it appeared unlikely that the full Senate would consider HB205, supporters proposed an amendment to transform it into a “trigger” bill. Such a bill would only take effect once a federal court with jurisdiction over Utah or the U.S. Supreme Court ruled that abortion bans based on Down Syndrome diagnosis could be legal. But even that compromise measure failed to move the bill forward and it was never heard by the Senate. Defeating HB205 was a primary goal of the ACLU of Utah during the session.

SB118

**Abortion Law Amendments**

Sen. Todd Weiler (R-Woods Cross)s

<https://le.utah.gov/~2018/bills/static/SB0118.html>

Subject: Reproductive Rights

ACLU of Utah Position: Neutral as amended

Status: Passed

SB118 updated the information produced by the state that a woman must view before undergoing an abortion. It would update current abortion educational materials (brochures and video) and require the Department of Health to maintain a website with current abortion-related information. The bill also defines types of clinics or hospitals that can provide abortions in the state of Utah. After confirming that an amendment we sought was included to ensure that the bill did not increase or raise the existing barriers the state requires for women seeking abortions, both the ACLU of Utah and Planned Parenthood took a neutral stance on SB118. The bill passed both chambers by wide margins and was signed into law on March 19, 2018.

SB184

**Pharmacist Dispensing Authority Amendments**

<https://le.utah.gov/~2018/bills/static/SB0184.html>

Sponsor: Sen. Todd Weiler (R-Woods Cross)

Subject: Reproductive Rights

ACLU of Utah Position: Supported

Status: Passed

This bill—which expands the ability of pharmacists to distribute oral hormonal contraception under a doctor’s standing prescription—flew under the radar for the entire session, passing by wide margins in all committees and floor votes. The ACLU of Utah quietly supported this legislation because it would expand reproductive access for Utah women. This bill would allow women age 18 and older to access oral hormonal contraception directly from a pharmacist (with a standing prescription order from a doctor) for up to 24 months between provider visits. Both doctors and pharmacists will have to opt in to this new approach, but SB184 will save some Utah women both time and money as they seek to manage their reproductive rights.

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