

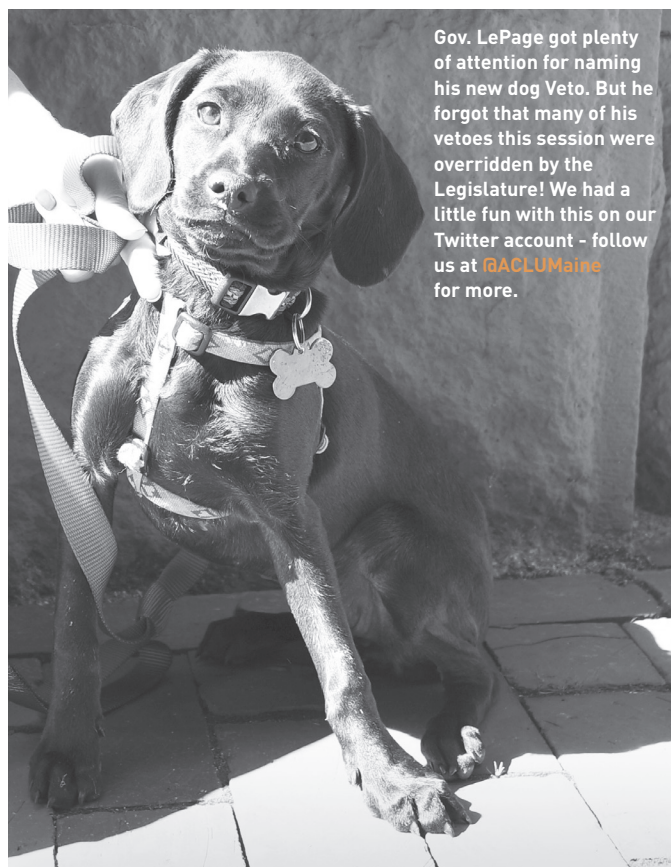


Legislative Review 2016

WE WENT INTO the second regular session of the 127th Legislature looking to build on the successes of last year, when we worked to ban the shackling of pregnant women in correctional custody and to reduce some first-time, low-level drug possession charges. We faced a governor that seems hell-bent on ramping up the failed law enforcement approach, while denying people access to the treatment and recovery services they need.

Today we can say we have made even more progress toward ending Maine's overreliance on punishment and incarceration as a way to fix societal problems.

But our work is not done - earlier this spring we learned that Maine has the highest rate in New England of children with an incarcerated parent. Our punitive system continues to tear families apart, without making us safer. Something has got to give, and we believe our legislative efforts are part of the solution.



Gov. LePage got plenty of attention for naming his new dog Veto. But he forgot that many of his vetoes this session were overridden by the Legislature! We had a little fun with this on our Twitter account - follow us at [@ACLUMaine](#) for more.

IN THE LAST SESSION

100%

of the bills we supported became law.

Here is a round-up of our priority bills.

LD 1554 "An Act To Resolve Inconsistencies in the Drug Laws"

Status: VICTORY! Became law on April 28 without the Governor's signature

In 2015, the legislature passed LD 113 (sponsored by Sen. Roger Katz, R-Augusta), our bill to reduce some low-level, first-time

drug possession offenses from felonies to misdemeanors.

We have always argued that felony convictions actually make it harder for a person suffering from substance use disorder to recover, by putting in place barriers to education,

employment and housing.

This win was a huge success for drug law reform and a step toward ending our reliance on law enforcement to fix the drug problem. However, the legislature also passed LD 1246, which amended the same section of Maine law dealing with drug possession penalties. This created a conflict in the law.

LD 1554 was the Attorney General's proposal to resolve the conflict, by essentially repealing LD 113. We opposed the original version of LD 1554, because it would have re-felonized the charges, rolling back the progress we made last year. The Criminal Justice Committee gave the bill an initial supportive vote of 9-4. The minority report, supported by four members, preserved misdemeanor charges for first-time, low-level possession with

subsequent felony charges.

We lobbied hard to flip the vote on the floor of the Senate and the House, with the AG working hard on the other side. Going into the fight, we expected to lose the Senate but win the House, which would have killed the bill and given us the chance to fight again next session. We did indeed lose the Senate, but by just one vote – a much closer margin than we expected. Moving on to the House, we lobbied nearly every representative individually. Our work paid off – we won the House by a wide margin (83-63). The bill then moved back to the Senate, where we hoped to pick up the votes needed to put the bill on the governor's desk.

Meanwhile, the governor's staff joined the AG in trying to pick off enough votes in the House to get the majority report passed. Fortunately, most House members were locked in, agreeing with us that low-level possession should be treated as a misdemeanor. The AG then proposed a compromise – that low-level (below a certain threshold) possession would always be a misdemeanor offense, not just the first time. The threshold (200mg) was lower than we would have liked –but not an unreasonable level. And a "forever misdemeanor" would mean that many Mainers suffering from substance use disorders would never have to face a felony record, and all the consequences that come with it. We agreed to support the compromise, which then sailed through the Senate with a vote of 35-0 and the House with a vote of 132-17, and with the support of the ACLU, the Attorney General, and bipartisan legislators.

A governor's veto was a distinct possibility, and we were working to secure enough votes to override him. However, the governor let the 10-day window to veto lapse and the bill became law without his signature.



Shammah Gahomera, a rising senior at Westbrook High School, will attend the ACLU Summer Advocacy Institute in Washington, D.C. this month.

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Talley-O Design
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LD 1639 "An Act To Implement the Recommendations of the Intergovernmental Pretrial Justice Reform Task Force"

Status: VICTORY! Signed into law by the Governor on April 7, 2016

In the first session of the 127th Legislature, we proposed three criminal justice reform bills: a drug law reform bill (LD 113 - see above), a bill to ban the shackling of pregnant women (LD 1013, passed into law last year), and a bill to stop the jailing of people for being too poor to pay their fines (LD 951, sponsored by Rep. Mark Dion, D-Portland). We also supported a bail reform bill to overhaul Maine's antiquated bail system.

We put together a comprehensive plan to end the jailing of people for being too poor to pay, which amounts to modern-day debtors' prison. In addition to proposing legislation, we produced a study detailing the number of people in jail for failure to pay that led to a feature story in the *Portland Press Herald* on the issue. The *Press Herald* and the *Bangor Daily News* also wrote editorials decrying the practice.

In the midst of this public attention, Chief Justice Leigh Saufley convened a task force to explore the issue of bail and

fines reform in Maine. Our bill, LD 951, was tabled over the summer in anticipation of the task force recommendations. Alison was appointed to the task force, along with members of the judiciary, the legislature, the AG's office, prosecutors, defense attorneys, victims' advocates, and other stakeholders. E.D. Alison Beyea attended meeting after meeting throughout the summer and fall.

In December, the task force compiled a comprehensive report, complete with recommendations for reforms to ensure that indigent Mainers do not languish in jail under the weight of hefty fines and bail. The task force recommendations included specific language to give judges discretion to waive some mandatory fines when individuals face financial hardship, thus ensuring poor Mainers don't get caught up in the system.

The Judiciary Committee unanimously voted to turn the task force recommendations into a bill, LD 1639 (sponsored by committee chair Sen. David Burns, R-Whiting). In a rare moment, the AG, Governor, and ACLU of Maine all testified in favor of the same bill. The committee voted unanimously to adopt the task force recommendations almost whole-sale (a few provisions that would have generated a fiscal noted were moved into further study and will hopefully pass next session). The bill sailed through the House and Senate and was signed by the governor.

(LEFT) Professor Deirdre M. Smith was the honoree at our annual Justice Louis Scolnik Award Dinner in April. The featured speaker for the evening was Dennis Parker, Director of the national ACLU Racial Justice Program.

LD 1577 "An Act To Increase the Availability of Mental Health Services"

Status: VICTORY! Died on the table

Since problems at Riverview came to light a few years ago, the Department of Health and Human Services has repeatedly demanded that the Legislature grant Commissioner Mayhew the authority to transfer forensic mental health patients to prison and jail units. Each time, the ACLU of Maine has loudly opposed these efforts.

The 2016 session was no different. A Governor's bill, LD 1577 (sponsored by Rep. Deborah Sanderson, R-Chelsea), again proposed to put patients convicted of no crime (individuals deemed not criminally responsible and incompetent to stand trial) in prison. The Health and Human Services Committee vote was down party lines, with six Republican members supporting the Governor's bill and seven Democrats voting for an amended version of the bill to clarify that the Commissioner has no authority to transfer patients to jail settings. The amended version became the majority report, which we supported.

In close votes, the House and the Senate passed the majority report (to keep patients in hospital settings). That bill then went to the Appropriations Committee, where it remained until session adjourned - the bill "died on the table," meaning it will not become law. Because neither the original nor the amended version of the bill became law, the status quo remains the law of the land. DHHS still does not have the authority to transfer people in their custody, who have not been convicted of a crime, to prison.



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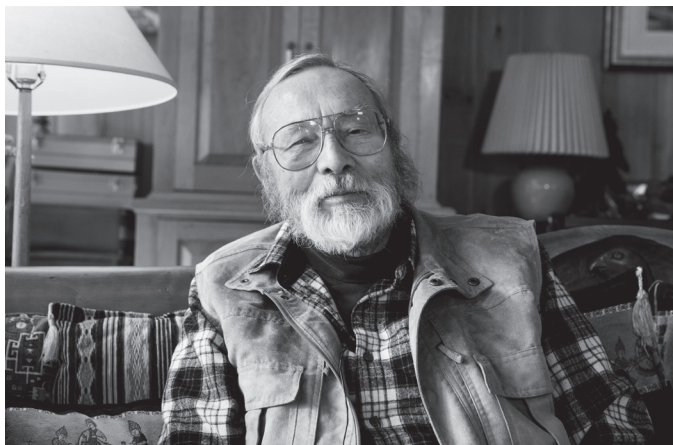
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