

Civil Liberties Review

2003 Session of the Virginia General Assembly



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American Civil Liberties Union of Virginia

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About the Civil Liberties Review

The *Civil Liberties Review* summarizes the legislative actions of the Virginia General Assembly that affect civil rights and civil liberties. More information is available by calling the ACLU office at 804/644-8080.

The ACLU of Virginia encourages all Virginia citizens to become involved in the legislative process by participating in our grassroots lobbying program. If you are interested in up-to-the-minute information on the actions of the General Assembly and are inclined to call, write or e-mail elected officials to express your opinion on pending legislation, please contact the ACLU of Virginia.

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ABOUT THE 2003 SESSION

A tag line to describe this year's legislative session could easily read "The 2003 Virginia General Assembly: Unconstitutional and Uncontested." Many bills had clear constitutional flaws—the bill to end the execution of the mentally retarded, the so-called partial birth infanticide bill, a bill to require parental consent for abortion and the "Choose Life" license plate bill, to name a few—that were consistently dismissed by the legislators.

Anti-terrorist sentiment was still running high this year, but with a noticeable shift away from state security issues and instead toward an anti-immigrant agenda. Lawmakers passed bills to restrict immigrant's access to driver's licenses and higher education. Fortunately, the Governor thought the legislature went too far by denying in-state tuition for illegal immigrants and vetoed that bill.

The desire to protect the privacy of citizens' social security numbers exploded this year. About a dozen bills were introduced to prohibit the display of such numbers on identification cards, driver's licenses, mailed packages and on the Internet.

*The death penalty work this session focused on complying with the recent U.S. Supreme Court ruling in *Atkins v. Virginia*, prohibiting the execution of the mentally retarded. Despite repeated testimony and memos sent to legislators, the constitutional flaws we were most concerned about still exist in the final version of the bill. We expect the issue to be litigated.*

And finally, more legislators than usual introduced more anti-choice legislation than in any previous session. The bills addressed various aspects of the anti-choice agenda, ranging from parental consent for abortion to requiring abortion clinics to be regulated like hospitals.

Fortunately, as in each previous year, after the dust settles and we take stock of our civil liberties in Virginia, it appears that we have fared better than it looked when we were embroiled in the battle.

Aimee Perron

Aimee Perron, Legislative Director

CHURCH AND STATE

Delegate Scott Lingamfelter, a self-proclaimed supporter of 'school choice,' introduced a bill to amend the Constitution of Virginia to authorize the General Assembly to appropriate state funds to private schools, both secular and religious, through vouchers. Despite the recent US Supreme Court decision upholding school vouchers, the bill was defeated in committee.

**'SCHOOL CHOICE'
THREATENS THE
SEPARATION OF
CHURCH & STATE**

Another attempt to use state funds to support religious schools came with Delegate Cox's introduction of a tuition tax credit bill. This bill would give tax credits to corporations who contribute to nonprofit scholarship funding organizations. Fortunately, this bill was defeated as well.

The legislature finally repealed an antiquated law restricting the amount of property that churches may own. Under current law, churches are limited to holding up to 15 acres in a city or town and up to 250 acres in a county.

PASSED

HB 2603 (Bryant) Quantity of real property a church may hold. Repeals the limitation on the amount of real property that a church may hold. Under current law, churches are limited to holding up to 15 acres in a city or town and up to 250 acres in a county, but other non-profits are not. *This bill passed the House, 96-4 and the Senate, 37-0. The ACLU supported this bill.*

HB 1498 (Lingamfelter) Character education; Virginia Statement of Values. Modifies the current character education requirement to include instruction in Virginia's civic values--the principles articulated in Article I of the Virginia Constitution (Bill of Rights) and the ideals reflected in the Seal of the Commonwealth. *The bill passed the House, 94-1 and the Senate, 38-0. The ACLU opposed this bill.*

FAILED

HJ 545 (Lingamfelter) Constitutional Amendment- Use of public funds for school vouchers or tuition tax-credits. Authorizes the General Assembly to appropriate public funds for assistance in the payment of tuition or other costs for private education. The proposed amendment permits the General Assembly to provide vouchers or tax credits to parents and students in private schools, including religious schools. *This bill was passed by indefinitely, 13-7 by the House Privileges & Elections committee. The ACLU opposed this bill.*

HB 2761 (Cox) Children At Risk in Education Tax Credit. The bill gives tax credits to corporations and other entities that contribute to nonprofit scholarship-funding organizations. These organizations then give tuition scholarships of up to \$5000. This is a very narrowly crafted piece of legislation designed to open the door to vouchers and tax credits. *The House Finance committee passed this bill by indefinitely, 13-9. The ACLU opposed this bill.*

HJ 658 (Amundson) Constitutional Amendment- Prohibits appropriation of public funds to private schools. Adds tax credits and voucher-like programs to the restrictions placed on the General Assembly's appropriation authority. *This bill was passed by indefinitely, 16-4, by the House Privileges & Elections committee. The ACLU monitored this bill.*

HJ 572 (R. Marshall) Study; Effects of school vouchers & tuition tax incentives on school enrollment. Establishes a joint subcommittee to study the effects of school vouchers and tuition tax credits and deductions on school enrollment. *Tabled in House Rules committee, 17-0. The ACLU monitored this bill.*

CRIMINAL JUSTICE AND DUE PROCESS

Under current law, individuals convicted of a crime in Virginia have only 21 days after trial to introduce newly discovered evidence of innocence, unless it is DNA evidence, for which there is no time limit. Every year, dedicated lawmakers introduce legislation to correct this flaw in Virginia law, known as the most unyielding in the whole country. This year, bills eliminating the 21-day rule found more support than usual and sparked considerable debate in the House and Senate Courts of Justice committees.

***21-DAY RULE SPARKS
LENGTHY DEBATE AT THE
CAPITOL***

Senator Marsh's bill, which completely eliminated any time limit for introducing new evidence of innocence, passed the Senate but met strong opposition in the House Courts of Justice committee.

The only bill addressing the 21-day rule that survived was Senator Stolle's Crime Commission-sponsored bill that extended the time period to an inadequate 90 days. The bill was later amended by the Governor to delay implementation to 2004. This issue will be studied during the interim session by a special 21-day rule task force of the Crime Commission.

Delegate Griffith's bill allowing the post-incarceration civil commitment of sexually violent predators that passed in a previous session with insufficient funds, was funded this year and made effective from its date of passage.

Contrary to past sessions, legislators appeared a bit more sympathetic to the plight of Virginia's prison population as they attempt to re-enter society. To assist with the transition, the Department of Corrections is now required to provide each newly released inmate with a DMV-approved identification card, a copy of their birth certificate and a social security card. In addition, a bill to allow more non-violent prisoners to participate in residential, community-based programs six months before their release also passed.

PASSED

SB 1143 (Stolle) 21-Day Rule. Under current law, individuals convicted of a crime have 21 days after trial to introduce newly discovered evidence of innocence, unless it is DNA evidence, for which there is no time limit. This bill extends the time limit from 21 days to 90 days. The Governor amended this bill to make its effective date July 1, 2004. *Passed the Senate, 40-0 and the House 72-27. The ACLU opposed this bill because we believe there should be no time limit.*

HB 2445 (Griffith) Sexually violent predators. Allows the state to commit certain sex offenders to indeterminate sentences in special institutions after their release from prison. The original bill passed during the 2002 session. This merely moves the effective date of the sexually violent predator legislation from 2004 to "effective from its passage." *Passed the House, 97-0 and the Senate, 37-0. The ACLU opposed this bill.*

HB 1594 (Byron)/SB 1210 (Newman) Crimes; peeping. Makes it unlawful for a landlord, without just cause, to enter upon property leased or rented to a tenant and secretly or furtively peep, spy or attempt to peep or spy into or through a window, door or other aperture of any building, structure, or other enclosure under circumstances that would violate the occupant's reasonable expectation of privacy. *Passed the House, 99-0 and the Senate 40-0. The ACLU supported these bills.*

HB 2309 (Alexander) State-responsible clients; forms of identification. Requires the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Department of Corrections to provide those in their custody certain pieces of identification- a DMV-approved ID card, a copy of their birth certificate and a social security card. *This bill passed the House, 89-9 and the Senate, 40-0. The ACLU supported this bill.*

HB 2661 (Janis) DNA samples for violent crime arrests. Clarifies that a DNA sample may be taken upon an arrest pursuant to a finding of probable cause by a grand jury as well as a magistrate; clarifies that a DNA sample is not to be destroyed upon an acquittal if there is a pending arrest that requires DNA sample retention. *The bill passed the House, 98-0 and the Senate, 40-0. The ACLU opposed this bill.*

HB 2245 (Watts) Parole; community-based programs. Permits the Department of Corrections to give prisoners who have not been convicted of a violent crime and who have been sentenced to serve a term of imprisonment of at least three years, the opportunity to participate in residential community programs, work release, or community-based programs within six months of such prisoner's projected or mandatory release date. *This bill passed the House, 50-48 and the Senate, 40-0. The ACLU supported this bill.*

SB 1169 (Puckett) Financial responsibility of sheriffs and localities for medical treatment of inmates. Clarifies that a sheriff, jail superintendent or a locality is not required to pay for the medical treatment of an inmate for an injury, illness, or condition that existed prior to the inmate's commitment to a local or regional facility. Amended to require that the state does pay for treatment of communicable, life-threatening diseases or serious medical needs. *Passed the Senate, 39-0 and the House, 100-0. The ACLU opposed this bill.*

FAILED

HB 1912 (Almand)/HB 2787 (Marshall)/SB 705 (Marsh) Writ of actual innocence- Elimination of the 21-Day Rule. Allows a convicted and incarcerated individual to petition the Supreme Court for a writ of actual innocence based upon any new evidence, not just DNA. *All three bills were tabled or killed in House Courts of Justice. However, SB 705 passed the Senate, 20-20 with the Lt. Governor breaking the tie. The ACLU supported these bills.*

HB 2082 (Gear) Chemical castration of sex offenders. Persons convicted of certain sex crimes must submit to chemical castration (hormone chemical treatment with medroxyprogesterone acetate or its equivalent) for the entire term of their sentence including any suspended sentence and post-release supervision. *This bill was killed in Courts of Justice, 21-0. The ACLU opposed this bill.*

HB 2408 (Marrs) Student discipline-Eating utensils. (Anti-zero tolerance) Prohibits disciplinary actions against students for possession of an eating utensil or personal grooming device unless such utensil or device is brandished or employed as a weapon. *The bill was passed by indefinitely in the House Education committee, 20-1. The ACLU supported this bill.*

HB 2409 (Marrs) Student discipline-Possession & use of nonprescription medications. (Anti-zero tolerance) Prohibits disciplinary actions against students for possession or use of nonprescription medications, regardless of whether school personnel have knowledge of such possession or use, if student has parental consent. *The bill was passed by indefinitely in the House Education committee, 21-0. The ACLU supported this bill.*

HB 1740 (Byron) /SB 1011 (Howell) Mandatory Clergy Reporting of child abuse and neglect. Requires any regular minister, priest, rabbi, nun, monk or accredited practitioner, including a duly accredited Christian Science practitioner, to report suspected child abuse or neglect to a local department of social services or the Department of Social Services' toll-free child abuse and neglect hotline. The bill does not require the reporting of privileged communications between such individuals and the persons they counsel or advise. *These bills were both killed in the House Courts of Justice committee-- HB1740 failed to report, 5-16. SB 10-11 passed the Senate, 38-1 and then failed to report in House Courts, 8-12. The ACLU monitored these bills.*

DEATH PENALTY

Convening in the wake of the sniper attacks in Northern Virginia, legislators quickly defeated all the death penalty abolition and moratorium bills. Indeed, rather than rolling back the death penalty, legislators added the killing of a Department of Conservation and Recreation officer to the list of potential capital crimes.

**ENDING THE
EXECUTION OF
THE MENTALLY
RETARDED
BECOMES A
CHALLENGE IN
VIRGINIA**

In response to the U.S. Supreme Court ruling in *Atkins v. Virginia*, the General Assembly has approved a bill intended to prevent the execution of a mentally retarded person. However, parts of this bill present constitutional concerns that are expected to be litigated. In the final version, the determination of mental retardation is made after the conviction, during the sentencing phase. The preferred method is a bifurcated process where the determination of mental retardation is made before a judge in a pretrial proceeding. Another flaw in the law is where the burden of proof lies. In the Virginia version, the burden is on the defense to prove mental retardation by a preponderance of the evidence. Based on court rulings, the burden should be on the prosecution to prove beyond a reasonable doubt that the defendant is *not* mentally retarded.

PASSED

HB 1923 (Almand)/ SB 1239 (Norment) Ending the Execution of Mentally Retarded Persons.

Establishes procedures for determining whether a defendant in a capital case is mentally retarded and may not be sentenced to death. (See above for more detail) *These bills were passed by both Houses and then amended by the Governor during the veto session. However, the ACLU believes this bill presents too many constitutional concerns and opposes it in its final form.*

HB 2612 (Bryant) Killing a conservation officer; penalty. Redefines "law-enforcement officer" to include a conservation officer of the Department of Conservation and Recreation. Defining conservation officers as law-enforcement officers includes them in the capital murder statute and has other consequences throughout the Code of Virginia. *Passed the House, 98-0 and the Senate, 40-0. The ACLU was opposed to this bill.*

SB 863 (Lambert) Claims; Marvin Lamont Anderson. Provides relief for Marvin Lamont Anderson who was incarcerated between 1983 and 1997 for a crime that scientific evidence later revealed he did not commit. Governor Warner granted him a full and absolute pardon on August 22, 2002. Under the bill, the Commonwealth will provide a lump-sum payment to Mr. Anderson of \$200,000 and a \$460,000 annuity providing for equal monthly payments to him for the remainder of his life. *Passed the Senate, 40-0 and the House, 95-0. The ACLU monitored this bill.*

FAILED

HB 1554 (Hargrove) Abolition of the Death Penalty. Abolishes the death penalty for all Class 1 felonies committed on or after July 1, 2003. *This bill was killed in House Courts of Justice. The ACLU supported this bill.*

HB 2657 (Darner)/ SB 709 (Marsh). Moratorium on the Death Penalty. Provides that the Commonwealth shall not conduct any executions of prisoners sentenced to death. *Both bills were killed in the Courts of Justice committees. The ACLU supported these bills.*

HB 2662 (Christian) Claims; Earl Washington, Jr. Provides \$1,000,000 in relief to Earl Washington, Jr. He was incarcerated for more than 16 years for crimes that DNA testing proved he did not commit. *This bill was tabled in House Appropriations, 21-3. The ACLU monitored this bill.*

EQUAL RIGHTS

This session produced numerous anti-immigrant bills, introduced under the guise of being “anti-terrorist” legislation. Nationally, anti-immigrant initiatives targeting refugees, immigrants and visitors have provided few, if any, advantages in the battle against terrorism. We expect the same outcome here in Virginia.

One such bill that has been signed into law prohibits the Department of Motor Vehicles from issuing licenses and special identification cards to most immigrants.

*ANTI-OPPORTUNITY,
ANTI-IMMIGRANT BILLS
ABOUND.*

Legislation denying in-state tuition to illegal immigrants passed both houses, but was vetoed by the Governor at the last possible moment. Had it passed, nearly all those affected by this legislation would have been children who are long-time Virginia residents who have attended elementary, middle, and high school in Virginia and who consider the Commonwealth their only home. They would have been punished because of their parents’ failure to establish legal residency, not because of any action on their part.

Contradictions predictably abound at the General Assembly, typified this year by its ambivalence toward the restoration of voting rights. At the same time that the legislature passed a long-awaited constitutional amendment to make the restoration of voting rights to felons less burdensome, it also passed a contradictory bill that expanded the list of felonies rendering a person ineligible for restoration of the right to vote.

A bill to add sexual orientation as a protected class under the hate crimes statute died, as usual, early in committee. Similarly, a new bill that would have extended health care coverage to gay and lesbian partners under most family health insurance plans was defeated in committee.

PASSED

HB 2339 (Drake) Denying in-state tuition for illegal immigrants. Provides that an illegal immigrant who is not lawfully present in the U.S. shall not be eligible for in-state tuition. *Passed the House, 88-10-1 and passed the Senate, 27-13. The Governor amended the bill during the veto session, the House rejected the amendments and the bill was returned to the Governor in its original form. Because the bill did not pass by a veto proof margin, the Governor had a final chance to veto it before May 2 and did so. The ACLU opposed this bill.*

HJ 635 (Moran)/ SJ 283 (Y.B. Miller) Constitutional Amendment- Restoration of civil rights. Authorizes the General Assembly to provide by general law for the restoration of civil rights for felons. The present Constitution provides for restoration of rights by the Governor only. The amendment retains the right of the Governor to restore civil rights and adds the alternative for restoration of rights pursuant to general law. *HJ 635 passed the House, 75-18 and the Senate, 32-5. SJ 283 passed the Senate, 34-6 and the House, 70-29. The ACLU supported these bills.*

HB 1954 (Albo)/ SB 1058 (O'Brien) Licenses & ID cards- Issuance to Immigrants. Provides that licenses, permits, and ID cards will only be issued to citizens, permanent resident aliens, or those granted non-immigrant status. *HB 1954 passed the House, 80-20 and the Senate, 37-0. SB 1058 went to conference committee and passed the Senate, 35-5 and the House, 82-15. The ACLU opposed these bills.*

HB 2020 (Bell) Restoration of right to vote- Adding felonies to be denied this right. Expands the current list of felony crimes, which if committed, will disqualify an individual from seeking their right to vote. *Passed the House, 70-29 and passed the Senate, 29-10. The ACLU opposed this bill.*

SB 1064 (Maxwell) Department of General Services; Public Procurement Act; preference for businesses that hire ex-felons. Prohibits discrimination by state agencies against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. *Passed the Senate, 38-0 and passed the House, 99-0. The ACLU supported this bill.*

FAILED

HB 2779 (Dillard) Accident and sickness insurance; coverage for household members. Permits an accident and sickness insurance policy to be extended to include coverage for persons who reside in the same household as the insured. Current law only permits coverage to be extended to a spouse or dependent children of the insured. This bill would have allowed gays and lesbians under the umbrella of “household member”. *Failed to report from House Commerce & Labor 13-6. The ACLU supported this bill.*

HB 2530 (Almand)/SB 1155 (Ticer) Hate crimes; penalty. Adds sexual orientation to categories of acts for which a person may seek injunctive relief or file an action for damages and increases the penalty from a Class 1 misdemeanor to a Class 6 felony penalty. *Both bills were killed in their respective Courts of Justice committees- HB 2530 was passed by indefinitely, 17-4 and SB 1155 failed to report, 5-8. The ACLU supported these bills.*

HB 1812 (Welch)/SB 836 (Howell) Prohibiting Genetic Characteristic Discrimination. Declares it to be the policy of the Commonwealth to safeguard individuals from unlawful discrimination based on genetic characteristics. *Tabled in General Laws. The ACLU supported these bills.*

HB 1609 (Darner) Reduced tuition for illegal immigrants. Allows the governing board of the Virginia Community College System (VCCS) to charge reduced tuition to any illegal immigrant not holding an immigration visa or not classified as a political refugee who fulfills criteria enumerated in the bill. These students would also be entitled to the same rights and benefits as other eligible students, including eligibility for state financial aid, scholarships, and grants. *Tabled in Education Committee and recommended to be studied during the interim in the Education Subcommittee on Undocumented Aliens. The ACLU supported this bill.*

HB 1610 (Darner) Eligibility for in-state tuition for illegal immigrants. Provides eligibility for in-state tuition, but not classification as a Virginia resident, to any alien not holding an immigration visa or not classified as a political refugee upon a showing of clear and convincing evidence that is enumerated in the bill. *Tabled in Education Committee and recommended to be studied during the interim in the Education Subcommittee on Undocumented Aliens. The ACLU supported this bill.*

SB 1105 (Whipple) General Assembly; sexual harassment. Establishes a sexual harassment policy. The policy states that the General Assembly is committed to providing a work environment free from intimidation and coercion in any form, and sexual harassment is a form of intimidation and coercion and shall not be tolerated. *Passed the Senate, 40-0 and was killed in the House Rules committee, 14-2. The ACLU supported this bill.*

SB 828 (Marsh) VA. Racial Profiling & Traffic Statistics Reporting. Requires local and state police to collect information pertaining to traffic stops, including: race, ethnicity, color, age and gender of the alleged traffic offender; to record the specific reason for the stop. The bill also requires the development of a statewide database. *Killed in Senate Transportation, 5-8-1. The ACLU supported this bill.*

SJ 328 (Byrne) US Constitution- Equal Rights Amendment. Ratifies the Equal Rights Amendment to the United States Constitution that was proposed by Congress in 1972. *Failed to report out of Senate Privileges and Elections, 6-9. The ACLU supported this bill.*

FREE EXPRESSION

Only a veto by Governor Warner prevented the issuance of a “Choose Life” special license plate by the Department of Motor Vehicles. The bill authorizing the plate passed the House and Senate with ease, despite the threat of a lawsuit by the ACLU of Virginia and a recent federal court ruling striking down an identical license plate in South Carolina.

Lost in the debate over the plate—which focused solely on its anti-choice objective—were the First Amendment implications of the state issuing a license plate supporting only one side of a political debate and denying that same right to the opposing view. Fortunately, the Governor agreed with our analysis.

*A CASE OF MISTAKEN
IDENTITY-
FREE SPEECH ISSUE
CLOUDED BY THE ONGOING
BATTLE OVER REPRODUCTIVE
CHOICE*

The South Carolina court ruling has been appealed to the Fourth Circuit Court of Appeals. The appellate court’s decision in the next six months may determine whether this bill will return next year.

Delegate Black revived legislation from last year that needlessly protects access to school facilities for Boy and Girl Scouts. In 2002, this bill was soundly defeated in the Senate Education and Health committee-- a committee often seen as a bastion of reasonableness in the General Assembly. This session, the legislators allowed the bill to sail out of committee with no opposition there or on the floor.

In response to last year’s bill requiring the posting of ‘In God We Trust’ in all public schools, Delegate Brink counter attacked by introducing a bill requiring the First Amendment be posted in all schools. The bill passed the House and Senate with no opposition.

PASSED

HB 1483 (Byron) Special license plate- National motto. Authorizes the issuance of special license plates bearing the national motto: "IN GOD WE TRUST." *This bill passed both the House and the Senate in an omnibus bill with other special license plates. The ACLU believes that license plates with messages should be issued without regard to content and should not be subject to the vote of the General Assembly. We opposed this bill.*

HB 1518 (Black) School board policies; equal access for the Boy and Girl Scouts. Prohibits local school boards from discriminating against the Boy Scouts of America or the Girl Scouts of the USA. *This passed the House, 95-5 and in the Senate, 40-0. The ACLU opposed this bill. We believe it is unnecessary because schools are already prohibited from discriminating against groups based on their viewpoint under current law.*

HB 1858 (Cox) /SB 954 (Stosch) Solicitation of contributions-Terrorist organizations. Requires that every registration statement used to solicit contributions have a statement saying that none of the funds will be used in any way to aid terrorist organizations. The bill also prohibits the licensing of any organization that has used funds for terrorist purposes. *Both bills passed the House and Senate unanimously. The ACLU opposed these bills.*

HB 2140 (Brink) Posting of the first amendment in public schools. Amends the law requiring "In God We Trust" to be posted in public schools by adding that the First Amendment will also be posted. *The bill passed the House, 97-0 and the Senate, 38-0. The ACLU supported this bill.*

FAILED

HB 1406 (Black) "CHOOSE LIFE" License Plate. Authorizes a license plate bearing the legend "Choose Life" with the funds raised going to non-profit agencies that charge no fees in supporting adoption placements and do not provide any abortion services. *This bill passed the House, 57-37-2 and passed the Senate, 25-14. It was vetoed by the Governor and his veto was upheld during the General Assembly's reconvened session. The ACLU opposed this bill because we believe that license plates with messages should be issued without regard to content and should not be subject to the vote of the General Assembly.*

HJ 515 (Purkey) Constitutional Amendment- Governor's term of office. Permits the Governor to succeed himself in office. The amendment allows two terms (either in succession or not in succession) but prohibits election to a third term. The amendment allows Governors elected in 2005 and thereafter to serve two successive terms. *This bill was very close to passing the House until a maneuver rereferred the bill back to Privileges and Elections committee with a vote of 50-47, where it was left. The ACLU supported this bill.*

HB 2138 (Brink) Acceptable Internet use policies. Requires division superintendents, library boards and governing bodies to include a report detailing all incidents in violation of Internet policies occurring in that biennium. *House Education committee passed it by indefinitely, 19-2. The ACLU supported this bill.*

HB 2141 (Brink) Governor; disposition of official correspondence and other records. Attempts to tighten the provision that requires the Governor to deliver to The Library of Virginia all correspondence and other records of his office during his term. As to correspondence or other records of a strictly personal or private nature, the Governor must consult with the Librarian of Virginia before deciding which records are not required to go to The Library of Virginia. *This bill was tabled in House General Laws committee, 22-0. The ACLU monitored this bill.*

PRIVACY

This year was marked by a torrent of legislation introduced to limit the display of social security numbers on driver's licenses, identification cards, packages and on the Internet.

One potentially groundbreaking internet privacy bill, HB 2426, struck an important balance between open government and individual privacy by promoting online access to public documents, but only after social security numbers and other private information was redacted. Disappointingly, the final version of the bill neither protected individual privacy nor promoted open government.

*STRIKING A BALANCE:
OPEN GOVERNMENT
VS.
INDIVIDUAL PRIVACY*

Ultimately, HB 2426 allows court clerks to post *all* information— with no redaction of social security numbers, dates of birth or signatures— online if their server is a restricted access network, meaning that anyone can sign up by giving their name, business or residence address and citizenship status.

On a more positive note, social security numbers will no longer be used as driver's license numbers at the DMV and complete social security numbers may not be displayed on student or employee identification cards issued by public agencies.

PASSED

HB 2426 (Nixon) Posting Certain Public Information on the Internet. Provides that beginning January 1, 2004, no court clerk shall post on a court-controlled website any document that contains specified private information, including social security numbers and actual signatures. However, there is an exception for court clerks whose remote network or system that is used to provide the access has been certified to be 'restricted' by the Department of Technology Planning. Restricted access standards require users who register in person (or provide a notarized application) and establish the prospective user's identity, business or residence address, and citizenship status, all as a precondition for access. *Passed the House, 68-29-1 and the Senate, 36-3. The Governor amended the bill to remove the 'purpose of access' clause and the House concurred. The ACLU supported the original version of the bill (see above), but we do not support the final version.*

HB 1744 (Byron) Gov't Data Collection & Dissemination Practices Act- Social Security Numbers. Provides that no agency shall display an individual's entire social security number on any agency-issued identification card or license certificate. Agencies can still display a portion of such social security numbers on any agency-issued identification card or license certificate. *Passed the House, 98-0-1 and the Senate, 37-0. The ACLU supported this bill.*

HB 2062 (Dudley) Gov't Data Collection & Dissemination Practices Act-Display of Social Security Numbers. Prevents public agencies from displaying social security number on the outside of envelopes or packages that they mail. *Passed the House, 98-0 and passed the Senate, 37-0. The ACLU supported this bill.*

HB 2063 (Dudley) Gov't Data Collection & Dissemination Practices Act-Social Security Numbers on student ID's. Prohibits the display of a person's entire social security number on any student or employee identification card by public agencies on and after July 1, 2004. *Passed the House, 98-0 and passed the Senate, 37-0. The ACLU supported this bill.*

HB 1593 (Byron) Driver's license numbers. Eliminates optional use of social security numbers as driver's license numbers for licenses issued or renewed on or after July 1, 2003. *Passed the House, 99-0 and the Senate, 40-0. The ACLU supported this bill.*

HJ 631 (Devolites) Court records. Continues the joint subcommittee studying the protection of court records. The joint subcommittee shall review the findings and recommendations of the Executive Secretary of the Supreme Court concerning information in court records and recommend necessary changes in the statutory law. *Passed the House, 97-0 and passed the Senate, 40-0. The ACLU supported continuing this study.*

HB 1716 (Hogan) Student social security numbers. Authorizes the division superintendent or his designee to assign another identifying number to students who are ineligible to obtain a federal social security number or if the student's parent is unwilling to present such number or waive the requirement.

HB 2091 (Joannou) Drug testing in public schools. Requires the Board of Education to include policies addressing voluntary and mandatory drug testing, in accordance with the most recent enunciation of constitutional principles by the Supreme Court of the United States of America, in its guidelines for student conduct policies and student searches.

FAILED

HB 1887 (May)/ SB 1289 (Ticer) Workplace Privacy. Requires employers with 10 or more employees to notify employees prior to engaging in electronic monitoring. *Both bills were left in their respective General Laws committees. The ACLU supported these bills.*

HB 2325 (Bland) Gov't Data Collection & Dissemination Practices Act- Social Security Numbers. Prohibits the posting of the social security number of any data subject on the Internet. *Tabled in General Laws, 22-0. The ACLU monitored this bill.*

HB 2506 (Griffith) Orders for facial recognition technology. Creates a procedure by which a locality or a law-enforcement agency shall apply for an order from a court prior to employing facial recognition technology. *Passed the House, 71-25 and was passed by indefinitely in Senate Courts of Justice, 13-2. While we are opposed to facial recognition technology, the ACLU supported this bill because it created guidelines for using such technology.*

SB 1062 (Maxwell) Criminal history record information- Restrictions on access. Provides that a person's criminal history record information may not be released if he was convicted of a misdemeanor or a nonviolent felony, excluding certain drug offenses, and it has been 3 years since he completed his conviction-related obligations or 5 years if it is a violent felony or a drug-related offense. *Failed to report from Senate Courts of Justice, 7-8. The ACLU monitored this bill.*

HB 2073 (Dudley)/ SB 1016 (Reynolds) Insurance; use of social security number. Prohibits an insurer from using an insured's social security number as the insured's account number and from including the insured's social security number on any written or electronic correspondence, if the consumer has requested in writing that the supplier use a different number. *Both bills were passed by indefinitely in their respective Commerce & Labor committees. The ACLU monitored these bills.*

SB 840 (Quayle) "Photo-red" programs. Allows all localities to use "photo-red" programs to enforce traffic light signals and extends the program's "sunset" to July 1, 2010. *This bill passed the Senate, 39-0 and was then passed by indefinitely in the House Militia, Police and Public Safety committee, 11-7. The ACLU opposed this bill.*

REPRODUCTIVE RIGHTS

This year was a record year for anti-choice legislation. Over two dozen bills were introduced in a fierce attack on a woman's right to choose. Despite the incredible odds, however, only two bills passed this session. The first is a bill requiring a minor to obtain parental consent before she can have an abortion. The second, a thinly veiled attempt to circumvent U.S. Supreme Court precedent, just gives a new name, "infanticide" to the so-called "partial birth abortion" ban. Despite the new name and deceptive reasoning, the bill is still unconstitutional, and we expect it to be challenged in court.

In accordance with the chilling trend at the Capitol to extend the attack on reproductive choice beyond abortion, legislators introduced a bill to require parental notification of health services for minors, including the use of contraception and treatment for sexually transmitted diseases. This bill, introduced by Delegate Lingamfelter, gravely illustrates the steps that the anti-choice movement is willing to take in its effort to shut down reproductive freedom in Virginia. One positive outcome from this bill's introduction was the multidisciplinary opposition it received. Not only were the ACLU and Planned Parenthood involved, but so were pediatricians, social workers, the Virginia Health Department, mental health organizations, Voices for Virginia's Children, Virginians Aligned Against Sexual Assault (VAASA) and AIDS/HIV advocacy agencies—making it clear that this was an issue that touched a wide range of the Commonwealth's citizens. With the help of such a diverse collaboration, the bill was defeated in the Senate Education and Health committee.

*DESPITE
RECORD NUMBER
OF
ATTACKS ON
CHOICE, ONLY TWO
BILLS PASS*

A few other important bills were narrowly defeated in the Senate Education and Health committee. One, a so-called conscience clause bill, would have allowed pharmacists to refuse to dispense any medications they believed caused an abortion. This was a deceptive way to allow pharmacists to stop dispensing emergency contraception and birth control pills. Currently, only doctors are allowed to dispense RU-486, the only drug that medically causes an abortion. Finally, Delegate Marshall alone introduced six bills to make abortion clinics subject to the same regulations that apply to outpatient surgical hospitals. The goal of these bills was to shut down the clinics in Virginia and leave abortion legal, but completely inaccessible.

PASSED

HB 1402 (Black)/SB 112 (Stolle) Parental consent for abortion. Requires a physician to obtain parental consent prior to performing an abortion on an unemancipated minor. Under current law, the parents of the minor must be notified of the abortion, but do not have to give consent. *Both bills passed the House and the Senate by a veto proof margin. The Governor recommended amendments and they were rejected during the veto session. The ACLU opposed these bills.*

HB 1541, HB 1548 (R. Marshall)/ HB 2513 (McDonnell)/ SB 1205 (Newman) Partial Birth Infanticide. All these bills defined "partial birth abortions" or "infanticide" and make the act a class 4 felony by attempting to redefine "live birth". *HB 1541 and SB 1205 are the two bills that passed both the House and the Senate. Neither bill has an exception for the health of the woman, only for her life. The Governor offered a health exception amendment and it was rejected by the General Assembly. The ACLU opposed all these bills and believes they are unconstitutional.*

HB 2287 (Devolites)/SB 1218 (Lambert) Defining child for the purpose of FAMIS. Defined child as "from conception to birth" up until age 19. *Both bills were amended in their respective committees, House Health, Welfare and Institutions (HB 2287) and Senate Education and Health (SB 1218) to strike out the phrase "from conception to birth". The ACLU opposed these bills in their original form.*

HB 1833 (Reese) Information to be provided prior to abortion; adoption. Clarifies that the written materials required by law for informed consent before a woman can have an abortion, must include information on adoption services. Adoption must be characterized as a positive alternative and also include information on counseling services, benefits, financial assistance, medical care and contact persons or groups. *Passed House, 98-0, passed the Senate, 40-0. The ACLU opposed this bill.*

FAILED

HB 1499 (Lingamfelter) Parental notification for health services. Any govt. agency providing health services for a condition posing a serious risk to health to a minor must notify parent(s) within 48 hours of providing such services for sexually transmitted diseases, the provision of emergency contraception, pregnancy, illegal drug use, and the contemplation of suicide. *This bill was first killed in House Health, Welfare and Institutions, resurrected and passed the House floor, 59-39 and was finally defeated in Senate Health and Education, 10-5. The ACLU opposed this bill.*

HB 1547 (R. Marshall) Abortion complications for minors. Creates a class 6 felony for a physician who fails to treat complications from an abortion performed by him/her on a minor for whom no parental consent was given. *Tabled in House Courts of Justice 22-0. The ACLU opposed this bill.*

HB 2371 (R. Marshall) Abortion complications- Reporting. Requires physicians performing abortions or treating complications to report detailed information to the Board of Health. *Tabled in House Health, Welfare and Institutions, 22-0. The ACLU opposed this bill.*

HB 1549 (R. Marshall) Abortions performed only within 15 miles of an emergency room. Requires first trimester abortion to be performed in a facility within 15 miles of a hospital emergency room. *Tabled in House Courts of Justice 22-0. The ACLU opposed this bill.*

HB 1580 (Cole) Abortions performed after the second trimester. Removes the "mental health" of a woman from consideration as one of the conditions that would allow for a third trimester abortion. *Passed the House, 71-28. Defeated in Senate Education and Health, 7-8. The ACLU opposed the bill.*

HB 1741 (Byron) Abortion conscience clause. Any physician, pharmacist, or other medical or health care professional cannot be prohibited from exercising conscientious refusal in dispensing any medication prescribed for the purpose of performing an abortion, provided that they refer the patient in a timely manner for services. *Passed the House, 69-29. Passed by indefinitely in Senate Education and Health, 9-5-1. The ACLU opposed bill.*

HB 2692 (Bell)/ SB 1151 (Stolle) Feticide- Injury to child in utero. Punishes the willful, deliberate and intentional conduct that causes death or injury to a child in utero as a felony. *HB 2692 was tabled in House Courts of Justice 21-0. SB 1151 was amended in committee and the feticide section was deleted. The final version only addressed the issue of abandoned babies. It went to conference committee and passed the House, 98-0 and 39-0 in the Senate. The ACLU opposed these bills in their original form.*

HB 1645, HB 2365, HB 2367, HB 2368, HB 2369, HB 2370 (R.Marshall)/ SB 772 (Cuccinelli) Targeted Regulation of Abortion Providers (TRAP). All these bills make abortion clinics subject to the regulations for an "outpatient surgical hospital", making it more difficult and more expensive to have an abortion. *HB 2367 was reported from House Courts of Justice committee and the rest of the bills were stricken at the request of the patron. It passed the House, 65-31. It was then killed in Senate Education and Health by one vote, 7-8. SB 772 was also killed in Senate Education and Health on a tie vote, 7-7-1. The ACLU opposed all these bills.*

HJ 611 (Baskerville) Emergency Contraception (EC) Right to Know Resolution. Urges health care facilities and providers to give patients and public complete & accurate information birth control, including

EC, to enable women to make informed decisions. *This bill was left in House Health, Welfare and Institutions, 22-0. The ACLU supported this bill.*

SB 1104 (Whipple) Family Planning Protection Act. Provides that contraception doesn't constitute abortion and isn't subject to abortion. It also defines "contraception". *This bill passed the Senate, 22-16-1. It was killed in House Courts of Justice in a tie vote, 9-9, after it was rereferred there by the House Health, Welfare and Institutions committee. The ACLU supported this bill.*

VOTING AND ACCESS TO GOVERNMENT

In a time when modern voting laws have evolved to ease voting requirements, legislators nearly made it far more difficult for college students to register to vote.

HB 1468, which required the addresses on driver's licenses and voter registration cards to be the same, created an unnecessary obstacle to voter registration that was likely to have its greatest impact on college students, who often live at school but register their vehicles in their hometown. By testifying at the Senate Privileges and Elections committee and informing the State Board of Elections of the consequences of such legislation, we were able to defeat the bill.

***A STEP BACKWARDS IN
VOTING RIGHTS LAW IS
SUCCESSFULLY DEFEATED***

Reforming the current redistricting process to make it less political and more bipartisan by developing an independent Redistricting Commission never got off the ground this session.

For the second year in a row, a bill to televise the General Assembly session on local cable was defeated. Similarly, an attempt to restore the right of inmates to utilize the Freedom of Information Act was killed again this year.

PASSED

HB 2198 (S. Jones) Conditional votes; identification requirement. Conditional votes; identification requirement. Provides that a voter who is not listed on the precinct registered voter list and seeks to cast a conditional ballot must provide an approved form of identification. If the voter is unable to present one of these forms of identification, he/she shall sign a statement that he is the named registered voter who he claims to be. *Passed the House, 100-0 and the Senate, 24-12. The ACLU opposed this bill in its original form because it eliminated the option of signing a statement, therefore making it more difficult for people to vote. The Governor's amendments added that section back in and the ACLU supported the final version as amended.*

HB 2086 (Abbitt) Freedom of Information Act; penalties for violation. Increases the civil penalty for willful and knowing violations of the Freedom of Information Act from \$100 to \$250 for the first violation and from \$500 to \$1,000 for any subsequent violation. *The bill passed the House, 96-0 and the Senate, 37-0. The ACLU monitored this bill.*

HB 2211 (C. Jones) Freedom of Information Act (FOIA); critical infrastructure and vulnerability assessments. Expands the current record exemption for engineering and architectural drawings to protect the safety of any public building or its occupants, by clarifying that records relating to various critical infrastructure or structural components are exempt. The bill applies to all buildings, whether public or private. *This bill, clearly a direct result of the September 11th terrorist attacks, passed the House, 100-0 and the Senate, 37-0. The ACLU monitored this bill.*

FAILED

HB 1468 (Purkey) Residence addressees; purposes of voter registration. Requires individuals to provide the same residence address for purposes of voter registration and for obtaining licenses, permits, and identity cards from the Department. *This bill was left in the Senate Privileges and Elections committee. The ACLU opposed this bill because we feared that this bill would have restricted voter registration, especially by college students living away from home.*

HJ 634 (Shuler) Constitutional Amendment- Virginia Redistricting Commission. Establishes an independent Redistricting Commission to redraw Congressional and General Assembly district boundaries after each decennial census. Currently, legislators vote on the redistricting process. *The House Privileges and Elections committee passed the bill by indefinitely, 14-7. The ACLU monitored this bill.*

HB 2382 (Moran)/ SB 872 (Deeds) Redistricting commission and process. Establishes a redistricting commission to prepare state legislative and congressional redistricting plans; sets standards for developing plans; and provides for General Assembly action on plans submitted by the commission. *The House Privileges and Elections committee passed the bill by indefinitely, 14-8. The ACLU monitored this bill.*

HB 2626 (Spruill) Freedom of Information Act (FOIA); requests by inmates. Removes the provision that denies access to records to persons incarcerated in any state, local or federal correctional facility. As a result, inmates would have a right of access to records under FOIA. *This bill was tabled in General Laws, 22-0. The ACLU monitored this bill.*

SB 769 (Cuccinelli)/ HB 1405 (Black) Party designations on the ballot. Extends to local elections, other than school board and soil and water conservation district elections, the identification of candidates by party name on the ballot. Current law provides for party identification of candidates on ballots only for federal, statewide, and General Assembly elections. *Both bills were killed in their respective Privileges and Elections committees. The ACLU monitored this bill.*