

# Civil Liberties Review

*2005 Session of the Virginia General Assembly*

## Contents

Message to Supporters .....	1
Free Expression .....	2
Church and State.....	4
Death Penalty .....	6
Reproductive Rights .....	7
Gay and Lesbian Rights .....	9
Privacy.....	10
Criminal Justice and Due Process .....	11
Equal Rights.....	12
Voting and Access to Government .....	14

*American Civil Liberties Union of Virginia*

*May 2005*

## **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 in the state. More information is available by calling the ACLU office at 804/644-8080 or sending an email to [acluva@acluva.org](mailto:acluva@acluva.org)

The ACLU of Virginia encourages all Virginians 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.

### **ACLU of Virginia**

#### **Board of Directors\***

John Vail, President  
George Smith, Vice-President  
Pat Henkel, Vice-President  
Stew Dunn., Vice-President  
Frank Feibelman, Treasurer  
Ron Hall, Secretary  
John Levy, Chair, Legal Panel  
Liz Gilchrist, National Board Representative  
Charles Tierney, Immediate Past President

Patrick Anderson	Gene Hulbert
Jayne Barnard	Jeff Kerr
Kelley Bartges	Jean McCrosky
David Baugh	Adisa Muse
Gena Chieco	Stephen Nash
Jules Cohen	Jerry Peters
William Coleman	Sarah Richardson
Janet Cook	Preston Royster
Imad Damaj	Freddie Smith
David Drachsler	Jerry Thompson
Paul Fleisher	Nat Wilson
Howard Gholson	Barbara Ziony

\*Effective May 21, 2005

#### **Staff**

Kent Willis, Executive Director  
Rebecca Glenberg, Legal Director  
Aimee Perron Seibert, Legislative Director  
Valerie Jones-Fleming, Office Manager

*American Civil Liberties Union of Virginia*  
6 N. Sixth Street, Suite 400  
Richmond, VA 23219

Phone: (804) 644-8080 Fax: (804) 649-2733 E-mail: [acluva@acluva.org](mailto:acluva@acluva.org)

## *Message to ACLU Supporters*

*I recently read in a Richmond magazine that the ACLU of Virginia has been tilting at windmills for so long it must walk with a permanent slant. The writer of the piece clearly intended to praise us for our perseverance in the General Assembly -- praise for which we deservedly should be proud. I submit, however, that her metaphor is flawed in two ways: It does not appreciate the direct and substantial impact we have on the legislative process, and it impermissibly allows Virginia's elected officials to define the norm.*

*The ACLU does not always take the easy road, and our uncompromising adherence to the constitutional principles first articulated by Thomas Jefferson, James Madison and George Mason -- Virginians all, I might add -- takes us down some unusual paths on occasion. But the steady stream of successes we have garnered over the years serves to validate our role as Virginia's preeminent guardian of free speech, religious freedom, privacy, and the rights of minorities. And the accumulated bulk of our successes hardly qualifies as quixotic.*

*In the Virginia General Assembly, just as in the courts, we are a force to be reckoned with. We may not win all of our legislative battles, but we keep policy makers honest, illuminate the lawmaking process, and carefully articulate positions that change votes -- sometimes in sufficient numbers to make the difference between failure and success. Our Virginia ACLU members, voters like yourself, dramatically expand our influence with phone calls, letters and emails to elected officials.*

*In the 2005 session, like most sessions in recent years, we focused our efforts on blocking bad bills. The results of the session -- in which legislators approved an anti-gay marriage constitutional amendment, reduced benefits for many in our immigrant population, paved the way for sectarian prayers at government meetings, and instituted a moratorium on methadone clinics -- are not encouraging at first glance.*

*But it could have been much worse -- and would have been without the ACLU. When you read this report, please note that legislators did not pass the bill banning gay adoptions, or amend the state constitution to allow official school prayer, or approve even one of more than a dozen bills restricting reproductive rights. These bills, and others like them, were neither figments of our imagination nor harmless windmills appearing on an idyllic legislative horizon. They were, indeed, real and immediate threats to our civil liberties.*

*The ACLU makes a difference. Thanks for being part of it.*

*Sincerely*

*Charles Tierney  
President*

*May 15, 2005*

# Free Expression

---

In blunder of monumental proportions, the House of Delegates easily passed a bill banning the popular fashion of wearing pants so low that the wearer's undergarments are revealed. Part of an anti-teen triplet of bills that also sought to reduce car radio noise and prohibit slumping while driving, the so-called "droopy drawers" bill became fodder for media outlets around the world. With radio and television programs from Toronto to Sydney to Dublin ridiculing Virginia's legislature, the Senate Courts of Justice committee called a special meeting, labeled the bill "nonsense," and quickly killed it.

The House also passed a bill authorizing the DMV to produce a special license plate containing the phrase "Traditional Marriage" and a depiction of interlocking wedding bands. Intended as an anti-gay marriage message, the bill was reminiscent of the anti-reproductive rights "Choose Life" license plate from the 2003 session. In both instances, the ACLU opposed the license plates on free speech grounds, arguing that if the state is allowed to promote one side of a political message on a license plate -- which we and the federal courts view as a public forum -- it must also allow plates promoting the other side of the argument. The bill was pulled by its patron when it became clear that it lacked support in the Senate.

*"Droopy drawers" bill fails, as does attempt to demean gay marriage through special license plates. Mandatory filters on library computers avoided on close vote in the Senate.*

In a pro-free speech gesture, legislators approved changes to the Virginia Personnel Act, affirming the constitutional right of state employees to express their opinions on matters of public concern to elected officials. HB 2872 passed both chambers unanimously.

Support for mandatory filtering software on all Internet-accessible computers in libraries that receive state funding continued to gain favor among legislators. But despite strong support in the House of Delegates, neither the Senate nor House version of the bill survived Senate committee action. The ACLU argues that filtering software is a crude instrument that is as likely to block legitimate educational websites as sexually explicit ones.

Legislators overwhelmingly supported a bill directing the State Board of Education to develop guidelines for prohibiting gang-related attire in public schools. Concerned that the Board of Education will adopt overly broad rules that will unnecessarily infringe on students' expressive rights, the ACLU opposed the bill. The ACLU will monitor and comment on the guidelines as they are developed by the Board of Education.

Reacting to a Spotsylvania County incident in which a student refused to stand for the Pledge of Allegiance, a local lawmaker introduced a bill requiring school officials to inform parents when their children refused to stand or recite the Pledge. The ACLU opposed the measure on grounds that the threat to blow the whistle on protesting students was tantamount to punishing them for exercising rights protected by the First Amendment. Overwhelmingly approved by the House of Delegates, the bill later died in the Senate.

## **PASSED**

---

**HB 1573 (Albo) Student dress code guidelines.** Directs the Board of Education to develop guidelines for school boards in establishing student dress codes designed to prohibit any apparel or style of dress that may promote illegal gang activity. *Passed the House, (94-Y 0-N) and passed the Senate, (40-Y 0-N). The ACLU opposed this bill.*

**HB 2249/ SB 710 (Bell/Devolites-Davis) Prohibits distribution of materials on highways.** Adds four counties to the list of localities currently authorized to prohibit distribution of handbills, solicitation of contributions and similar activities on highways. *Passed the Senate, (40-Y 0-N) and passed the House, (98-Y 0-N). The ACLU opposed these bills.*

**HB 2872 (Saxman) State employees' right to express opinions to elected officials on matters of public concern.** Provides that nothing in the Virginia Personnel Act shall be construed to prohibit or otherwise restrict the right of any state employee to express opinions to state or local elected officials on matters of public concern. *Passed the House, (98-Y 0-N) and passed the Senate, (40-Y 0-N). The ACLU supported this bill.*

## **FAILED**

---

**HB 1660 (Lingamfelter) Traditional marriage license plates.** Authorizes special license plates to supporters of "TRADITIONAL MARRIAGE." Similar to the "Choose Life" license plate, which were ruled unconstitutional because they discriminate on the basis of viewpoint. *Passed the House, (62-Y 35-N), but was stricken from the Senate docket at the request of the patron. The ACLU opposed this bill.*

**HB 1981 (Howell, A.T.) Redefines indecent exposure.** Provides that any person who exposes their below-waist undergarments in an offensive manner shall be fined \$50. *Passed the House, (60-Y 34-N), but was passed by indefinitely in Senate Courts, (14-Y 0-N). The ACLU opposed this bill.*

**HB 1912 (Cole) Pledge of Allegiance Guidelines.** Requires the Board of Education, in its guidelines for the Pledge, to include provisions addressing parental notification for minor students who decline to stand or to recite the Pledge. *Passed the House, (93-Y 4-N), but failed to report from Senate Ed & Health, (7-Y 7-N). The ACLU opposed this bill.*

**HB 2797/SB 882 (Nixon/Obenshain) Internet Filters on Library Computers.** Requires any library receiving state funding to block access to pornography for juveniles and adults. *HB 2797 passed the House, (76-Y 17-N) and Senate General Laws re-referred the bill, (13-Y 2-N) to Senate Finance where it failed to report (4-Y 4-N). SB 882 failed to report in Senate General Laws, (7-Y 7-N 1-A). The ACLU opposed these bills.*

**HB 2806 (Carrico) Prohibiting Nudist Camps for Juveniles.** Broadens the definition of "nudist camp for juveniles" to prohibit all such camps, regardless of whether the juvenile's parent or legal guardian is also registered and present. *Tabled in House General Laws, (22-Y 0-N). The ACLU opposed this bill.*

# Church and State

---

---

HJ 537, an attempt to amend the Virginia Constitution to allow state-sanctioned prayer in public schools, may have been the most controversial bill of the session. Spurred by a legislator's personal experience (as a police officer he was admonished for taking a Bible to a public school and telling an Old Testament story to students) the bill would have altered the section of the state Constitution that incorporates Thomas Jefferson's Statute for Religious Freedom. The bill easily passed the House of Delegates, but failed to be reported from the Senate Courts of Justice Committee.

A second bill seeking to expand government-sanctioned prayer passed both the House and the Senate unanimously, and has been signed by the Governor.

Prompted by a Fourth Circuit Court of Appeals decision banning sectarian prayers at government meetings, HB 2615 deceptively awards full "First Amendment" rights to everyone present prior to the

"actual call to order or convening of business" of a government meeting. At first glance, the bill appears to expand free speech rights, something the ACLU would favor. But its real purpose is to provide legal cover for sectarian prayers at government meetings by merely moving them from immediately after to immediately before the opening of meetings.

*Constitutional amendment on state-sanctioned school prayer fails, but a bill promoting sectarian prayers at government meetings passes. State's old discriminatory day of rest statute is finally repealed.*

Legislators also reacted to efforts by some school boards to eliminate "release time" programs in which schools cease all educational activities while children leave the premises for religious instruction, riding in a so-called "Bible Bus." After the Harrisonburg School Board voted to abolish its release time program in order to give students more opportunities for academic endeavors -- and after Staunton nearly did the same -- legislators promised to take action. SB 1318 sought to protect release time programs by removing from school boards the authority to initiate or eliminate such programs and instead allowing parents to make such decisions. Introduced in the Senate, the bill failed to gain enough support to make it out of committee.

With support from the ACLU, Virginia has finally repealed its day of rest statute. Under the new law, employees for most businesses still have a right to demand a day off each week, but the law no longer discriminates on the basis of religion. Under the old law, persons who wished to take Sunday off were entitled to it, but Saturday could be taken off only if it were the employee's Sabbath. Friday and other days of worship were not available as one's weekly day of rest.

Two bills that would have provided tax incentives for parents sending their children to private (i.e., parochial) schools did not pass. Variations of these bills have been introduced for more than a dozen years without success.

## **PASSED**

---

**HB 2393 (Griffith) Abolishes the Day of Rest.** Repeals the "day of rest" statute that discriminates among different religions by setting up a hierarchy of religious holy days- Sunday was a day off with no questions asked; Saturday you needed a religious reason. No other religions were granted a day off. *Passed the House, (80-Y 15-N) and passed the Senate, (36-Y 4-N). The ACLU supported this bill.*

**HB 2615 (Orrock) Meetings of Governing Bodies.** Purpose of this bill is to counteract recent court decision banning sectarian prayer to open government meetings. The bill states that government officials have free speech rights before the meeting is called to order. *Passed the House, (97-Y, 0-N) and passed the Senate, (38-Y 0-N). The ACLU opposed this bill.*

## **FAILED**

---

**HB 1811 (Marshall, R.G.) Tuition Tax Credits- Prince William County.** Authorizes Prince William County to provide a credit against real estate taxes paid by the owner of a home in the attendance zone of a school that the school board has declared to be overcrowded. Such credits may be used to support private religious schools. *Tabled in House Finance, (20-Y 2-N). The ACLU opposed this bill.*

**HB 1942 (Saxman) Children At Risk in Education Tax Credit.** Creates a tax credit for children who are at risk of educational failure. Tax credits would be awarded to business entities for contributions made to eligible nonprofit organizations. The contributions may be awarded as grants for students' tuition in public and private schools, including religious schools. *Passed the House, (56-Y 41-N) and was left in Senate Finance. The ACLU opposed this bill.*

**HJ 537 (Carrico) Religious 'Freedom' Constitutional Amendment.** Amends the current religious freedom provisions of the Virginia Constitution to permit the exercise of religious expression, including prayer, on public property and public schools. *Passed the House, (69-Y 27-N) and was re-referred from Senate Privileges & Elections to Senate Courts where it failed to report, (5-Y 10-N). The ACLU opposed this bill.*

**SB 1305 (Mims) Determination of property rights upon division of church.** Provides that upon division of a church, the congregation may vote on whether to belong to a different church, diocese, or society, or be independent of any church, diocese, or society. *Reported from Senate General Laws (15-Y 0-N), but was sent back to committee from the Senate floor (killed). The ACLU opposed this bill.*

**SB 1318 (Hanger) Education; religious time release programs.** Transfers the authority to establish or discontinue weekday religious education (WRE) programs from school boards to parents of students. Under this bill, an existing WRE program at a school can only be terminated by a majority vote of the parents whose children attend the school. If there is no WRE program at a school, a two-thirds vote is needed to create one. *Passed by in Senate Education and Health (killed). The ACLU opposed this bill.*

# Death Penalty

---

---

Death penalty reform during the 2005 session came not from Virginia's legislators, but from the U.S. Supreme Court, which banned juvenile executions on March 1.

With the exception of a last minute amendment that allows some crimes associated with street gangs to qualify for capital punishment (see SB 1156) legislators rejected Attorney General Jerry Kilgore's efforts to expand the death penalty. Kilgore's so-called "Death Penalty Enhancement" package included measures that would have allowed death sentences for those who instigate capital crimes as well as those who commit them. It also sought to eliminate the default life sentence when juries deadlock on the death sentence.

## **PASSED**

---

**HB 1812 (Marshall, R.G.) Prohibits the execution of pregnant inmate.** Requires the Dept. of Corrections to adopt regulations assuring that no inmate will be executed while pregnant. *Passed the House, (98-Y 0-N) and Senate, (40-Y 0-N). The ACLU monitored this bill.*

**SB 1156 (Stolle) Penalties for methamphetamine manufacture.** An amendment to this bill expands the death penalty by adding crimes committed by or under the direction of "criminal street gangs" to the definition of "continuing criminal enterprise," which is a factor in determining if an offense qualifies as capital crime. *Passed the Senate, (39-Y 0-N) and passed the House, (93-Y 3-N). The ACLU opposed this bill.*

## **FAILED**

---

**HB 1800 (Albo) Expands capital murder statute to include gang violence.** Provides that the willful, deliberate, and premeditated killing of any person under the direction of a criminal street gang is capital murder. *Passed the House, (91-Y 5-N). Senate Courts referred it to the VA Crime Commission to be studied. The ACLU opposed this bill.*

**HB 1879 (Hargrove) Abolishes death penalty.** Abolishes the death penalty for crimes committed after July 1, 2005. *Tabled in Courts, (22-Y 0-N). The ACLU supported this bill.*

**HB 1975/SB 1078 (Callahan/Ticer) Abolishes the Juvenile Death Penalty.** Prohibits capital punishment for persons under 18, rather than 16. *House and Senate Courts committees referred the bills to the VA Crime Commission to be studied. The ACLU supported these bills.*

**HB 2773 (Bell) Removes 'default' life sentence in capital cases if a jury deadlocks.** Removes the "default" life sentence when a jury cannot agree on the sentence in a capital case; provides for empanelment of a new jury-- or judge when parties agree --to decide punishment. *Failed to report in House Courts, (7-Y 7-N). The ACLU opposed this bill.*

**SB 915 (Marsh) Death Penalty Moratorium.** Prohibits executions while the death penalty is studied pursuant to SJ 318. *Failed in Courts, (3-Y 11-N 1-A). The ACLU supported this bill.*

**SJ 318 (Marsh) Study; moratorium on the death penalty; report.** Creates a joint subcommittee to study the death penalty. *Left in Senate Rules. The ACLU supported this bill.*



# Reproductive Rights

---

---

Despite the usual deluge of anti-choice legislation -- there were more than a dozen in all -- lawmakers did not pass one such bill during the 2005 General Assembly.

Not that reproductive rights opponents lacked creativity. One measure attempted to extend the constitutional right of “enjoyment of life” to begin from the “moment of fertilization.” Another would have amended the Consumer Protection Act to define abortion services as “consumer transactions.” Yet another would have exposed public universities to lawsuits if complications occurred after a student received emergency contraception. Finally, HB 1524 would have required fetal anesthesia during abortions.

*Despite support from the House of Delegates, all anti-reproductive rights bills fail in the 2005 session.*

Delegate Robert Marshall’s perennial TRAP (Targeted Regulations for Abortion Providers) bill, which would impose unnecessary and expensive restrictions on abortion clinics, passed the House but failed in the Senate Education and Health Committee.

## **FAILED**

---

**SB 456/HB 2855 (Whipple/Amundson) Birth Control Protection Act.** Provides that contraception does not constitute abortion and is not subject to or governed by the abortion laws of Virginia. *SB 456 was stricken on the floor of the Senate at the patron's request; floor amendments changed the intent of the bill. HB 2855 was killed when House Courts sent the bill to House Health, Welfare and Institutions. The ACLU supported these bills.*

**HB 1524 (Black) Fetal Anesthesia.** Requires doctors to anesthetize a fetus from 20 weeks on before performing an abortion. Also requires women to be provided 'information' about so-called fetal pain. *Passed the House (72-Y 20-N), but failed to report in Senate Ed & Health, (6-Y 9 N). The ACLU opposed this bill.*

**HB 1629/ SB 860 (Van Yahres/Howell) Contraceptive Equity.** Requires health insurers whose plans include prescription drugs to include coverage for any prescribed drug or device approved by the FDA for use as a contraceptive. *HB 1629 passed by indefinitely in C&L, (14-Y 7-N). SB 860 failed to report in C&L, (5-Y 9-N 1-A). The ACLU supported these bills.*

**HB 1662 (Lingamfelter) Parental notification for minor's health services.** Government agencies providing the STD, pregnancy, drug use, emergency contraception or suicide health services to minors must notify parents within 48 hours of providing such services. *Tabled in House Health, Welfare and Institutions, (14-Y 7-N). The ACLU opposed this bill.*

**HB 1807 (Marshall, R.G.) Criminalizing Providing Birth Control to Minors.** Makes providing a minor with a contraceptive or contraceptive device if the person knows or has reason to believe that the minor is engaging in sexual relations with a person three or more years older than the minor is a Class 6 felony. *Tabled in House Courts, (22-Y 0-N). The ACLU opposed this bill.*

**HB 1809 (Marshall, R.G.) Prohibiting the sale of fetal body parts.** Makes the sale of fetal body parts a prohibited business practice. Violators of the statute may be assessed a \$1,000 civil penalty per fetal body part sold, but are not subject to criminal prosecution. *Stricken from docket at the request of the patron. The ACLU opposed this bill.*

**HB 1810 (Marshall, R.G.) Prohibiting the sale of post-abortion fetal tissue.** Provides that any physician who performs an abortion and sells, or offers for sale, fetal tissue resulting from the abortion is guilty of a Class 1 misdemeanor. *Passed the House, (98-Y 0-N), but failed to report in Senate Ed & Health, (7-Y 8-N). The ACLU opposed this bill.*

**HB 1813 (Marshall, R.G.) University Liability for providing Emergency Contraception.** Provides that public two and four-year institutions of higher education may be held liable for injuries from exposure to emergency contraception. *Tabled in Courts of Justice, (20-Y 0-N). The ACLU opposed this bill.*

**HB 1841 (Marshall, R.G.) Prohibits menstrual extraction without a pregnancy test.** Creates a class 6 felony for any health professional performing a menstrual extraction on any woman without first performing a pregnancy test to determine that she is not pregnant. *Tabled in Courts of Justice, (20-Y 0-N). The ACLU opposed this bill.*

**HB 1918 (Cole) Guarantees "enjoyment of life" to preborn humans.** Extends the Constitutional right to enjoyment of life to the moment of fertilization. *Tabled in House Privileges & Elections (14-Y 3-N). The ACLU opposed this bill.*

**HB 2347 (Marshall, R.G.) Targeted Regulations for Abortion Providers.** Authorizes localities to adopt an ordinance requiring local licensing of abortion clinics. *Passed the House, (60-Y 36-N), but was left in Senate Education & Health. The ACLU opposed this bill.*

**HB 2350/HB 2352 (Marshall, R.G.) Virginia Consumer Protection Act- abortion.** Amends the VA Consumer Protection Act by defining abortion services as consumer transactions. *Both bills were tabled in House Courts, (19-Y 0-N). The ACLU opposed these bills.*

**HB 2784 (Reid) Targeted Regulations for Abortion Providers.** Requires all abortion clinics to be licensed and to comply with the requirements currently in place for ambulatory surgery centers. *Passed the House (59-Y 28-N), but failed to report in Senate Education and Health, (6-Y 9-N). The ACLU opposed this bill.*

**HJ 712 (Byron) Constitutional amendment; parental right is a fundamental right.** Provides that "the God-given right of parents to direct the upbringing and education of their children is a fundamental right, subject only to those same limitations as other fundamental rights." *Stricken from the docket, (17-Y 0-N). The ACLU opposed this bill.*

**SB 839 (Cuccinelli) Targeted Regulations for Abortion Providers.** Requires all abortion clinics to be licensed and to comply with the special requirements. *Passed by indefinitely in Senate Education & Health, (9-Y 6-N). The ACLU opposed this bill.*

# Gay and Lesbian Rights

---

---

Legislators easily approved an amendment to the Virginia Constitution that not only prohibits gay marriage, but also civil unions, partnerships, or any other legal relationship that purports to approximate marriage between unmarried individuals. This measure must now pass the legislature a second time (in the 2006 session) before being submitted to voters for approval or disapproval. It will face stiff opposition, as gay rights activists across the state are mobilizing to oppose its re-passage.

*An anti-gay marriage constitutional amendment passes first legislative test, but bans on adoptions and gay student clubs are voted down.*

Two other anti-gay bills -- one prohibiting adoptions by gays and lesbians, and the other banning Gay-Straight Alliances in public schools -- passed the House but failed in the Senate.

## **PASSED**

---

**HJ 586/ SJ 337 (Cosgrove/Marshall/Byron/Newman) Anti-Gay Marriage Constitutional Amendments.** Prohibits gay marriage, civil unions and many other non-traditional domestic relationships. *HJ 586 passed the House, (78-Y 18-N) and passed the Senate, (27-Y 10-N). SJ 337 passed the Senate, (30-Y 10-N) and the House, (76-Y 21-N). The bills did not need the Governor's signature, but they must be reintroduced in 2006 in the exact same form and pass again before they go on the ballot. The ACLU opposed these bills.*

## **FAILED**

---

**HB 1633 (Van Yahres) Repeals the "Affirmation of Marriage Act" (HB 751).** Repeals last year's "Marriage Discrimination Act"/HB 751 that prohibited civil unions, partnership contracts or other arrangements between persons of the same sex purporting to bestow the privileges or obligations of marriage. *Passed by indefinitely in House Courts, (17-Y 3-N). The ACLU supported this bill.*

**HB 2868 (Weatherholtz) Public schools; Banning Gay-Straight Alliances.** Attempts to prohibit Gay-Straight Alliance clubs in high schools. *Passed the House, (95-Y 0-N), but was passed by indefinitely in Senate Education & Health, (9-Y 6-N). The ACLU opposed this bill.*

**HB 2921 (Black) Adoption; prohibited if homosexual.** Originally, prohibited adoptions by homosexuals, but was amended to make current voluntary homosexual activity or being unmarried and cohabiting with another adult to who were not related by blood or marriage, as factors in the adoption investigation. *Passed the House, (71-Y 24-N), but was killed in Senate Courts on a voice vote. The ACLU opposed this bill.*

**SB 1077 (Ticer) Repeals Virginia's Sodomy Law.** Provides that "human carnal knowledge" is not a crime when all persons are consenting adults. *Failed to report in Senate Courts, (5-Y 7-N). The ACLU supported this bill.*

# Privacy

---

---

Except for extending a law that keeps Social Security Numbers, signatures and other personal identifiers from being posted on court websites containing public records, legislators neither enhanced nor eroded privacy rights this session. The ACLU strongly opposed a bill that would have required a person stopped by the police to identify himself and give a “reasonably credible account of the lawfulness of his conduct and purposes.” Fortunately, members of the House Courts Committee agreed, killing the bill on a 20-0 vote, while the patron pulled the Senate version. A bill to study the placement of biometric identifiers on drivers’ licenses got a similar reception in the House Rules Committee, failing 16-0.

*Legislators extend privacy law to keep key personal identifiers off court-controlled websites.*

## **PASSED**

---

**HB 2052 (Nixon) Prohibits posting personal information on Internet.** Extends the sunset clause prohibiting clerks from posting certain personal information, including social security numbers and signatures, on a court-controlled website from July 1, 2005, to July 1, 2007. *Passed the House, (95-Y 1-N) and the Senate, (40-Y 0-N). The ACLU supported this bill.*

## **FAILED**

---

**HB 2353 (Griffith) Facial recognition technology; definition, regulations of use.** Prohibits a locality or law-enforcement agency from utilizing facial recognition technology absent a court order authorizing use of such technology. *Re-referred from House Courts of Justice to Militia, Police and Public safety where it was left in committee. The ACLU supported this bill, but asked for clarifying amendments.*

**HB 2474 (May) Restricting Use of Social Security Numbers.** Prohibits a supplier from using a consumer's social security number when the consumer requests his driver's license number be used. *Passed the House (96-Y 0-N), but was stricken at the request of the patron. The ACLU supported this bill.*

**HJ 691 (May) Biometric Identifier Study.** Study of the use of biometric identifiers driver's licenses/ID cards. *Passed by indefinitely in Rules, (16-Y 0-N). The ACLU opposed this bill.*

**SB 780/SB 1004/SB 1095 (Mims/Devolites-Davis) Photo-red monitoring systems.** Postpones the July 1, 2005, "sunset" on local "photo-red" programs to July 1, 2007 and expands photo-monitoring systems to all of Virginia instead of specified localities. *All three bills passed the Senate, but were killed in the House Militia, Police and Public Safety committee. The ACLU opposed these bills.*

**HB 1643/SB 1207 (Orrock/Mims) Requiring ID during Terry Stops.** Requires a “Terry stop” detainee to identify himself and “give a reasonably credible account of the lawfulness of his conduct and purposes.” *HB 1643 was tabled in House Courts, (20-Y 0-N). SB 1207 was stricken by the patron. The ACLU opposed these bills.*

# Criminal Justice and Due Process

---

---

Virginia's criminal law remained virtually unchanged during the 2005 session, as both progressive and regressive efforts failed to materialize.

Legislators came close to continuing the reforms of the last several years regarding the rights of convicted persons to petition for new hearings when non-biological evidence of their innocence is discovered. This year's bills would have allowed inmates who pled guilty to use the petition process, would have allowed more than one use of the petition process, and would have eliminated the requirement that the newly discovered evidence be previously unknown or unavailable to the petitioner and his lawyer. Introduced in both the House and Senate, one version passed the Senate, but failed in the House Courts of Justice Committee on a 10-9 vote.

## **PASSED**

---

**HB 2836 (Sherwood) Sex Offender Registry Act.** Adds those who murder a child under 18 and sexually batter a child under six (by a perpetrator 18 or older) to the sex offender registry. *Passed the House, (91-Y 0-N); passed the Senate, (40-Y 0-N). The ACLU monitored this bill.*

**SB 1177 (Obenshain) Speedy trial.** After significant amendments, allows the state to appeal speedy trial violations. *Passed the Senate, (40-Y 0-N) and passed the House, (82-Y 15-N). House and Senate agreed to conference report. The ACLU monitored this bill.*

## **FAILED**

---

**HB 1805/ SB 914 (Marshall, R.G. / Marsh) The Freedom Restoration Act.** Expands access to writ of actual innocence process for non-biological evidence by removing the provision that the petitioner must have pled not guilty, the limit of one writ per conviction and the requirement that the evidence was previously unknown or unavailable at the time the conviction. *HB 1805 killed by House Courts, (13-Y 8-N). SB 914 passed the Senate floor, (37-Y 2-N) and was tabled in House Courts, (10-Y 9-N). The ACLU supported these bills.*

**HB 2129 (Gear) Driving with Special License Plates after DUI Conviction.** Requires persons convicted of drunk driving a second time to use yellow license plates with red letters and numbers. *Tabled in House Courts, (20-Y 0-N). The ACLU opposed this bill.*

**HB 2463 (Nixon) Licensed professionals and sex offender registration.** Requires registered sex offenders and who may encounter persons under the age of 18 during the course of their jobs to inform each customer, client or patient of his offense. *Passed the House, (97-Y 0-N), but was killed in Senate Courts of Justice. The ACLU opposed this bill.*

**SB 808(Marsh) DNA Evidence.** Requires the Division of Forensic Science to store, preserve and retain all biological evidence in its possession. *Re-referred from Senate Courts, (14-Y 4-N) to Senate Finance where it was left in committee (killed). The ACLU supported this bill.*

**HB 1639 (Miles) Expanding DNA Database.** Requires that a person arrested for solicitation of prostitution or a drug offense have his DNA analyzed. *Stricken from docket in House Courts, (20-Y 0-N). The ACLU opposed this bill.*

# Equal Rights

---

---

For the second year in a row, lawmakers imposed onerous restrictions on methadone clinics. Last year's bill prohibited clinics from locating within a half-mile of schools and day care centers, effectively eliminating such services from many urban areas. The 2005 law places a moratorium on the opening of new methadone clinics until more restrictive regulations can be approved. The ACLU unsuccessfully argued against the bill, claiming that persons receiving methadone treatment have a right not to be denied such services under the Americans with Disabilities Act and that methadone clinics serve a beneficial function by lowering the crime rate in communities where they locate.

*Legislators deny state and local benefits to many immigrants and place additional onerous restrictions on methadone clinics.*

This year Virginia became the last state in the nation to allow accident and health insurance companies to extend family-style coverage beyond persons related by blood or marriage. Under the new law, employers may offer insurance plans to any class of persons agreed to by the holder of the policy (typically an employer) and the insurance company. The result is that many individuals in non-traditional relationships, including same-sex partners, may now be covered by group policies.

As they have done for several years, legislators sought to diminish the rights of the state's immigrant population. The ACLU and other immigrants' rights advocates opposed twin House and Senate bills that deny state and local public benefits to undocumented immigrants. The bills passed, but contain enough exceptions that their impact may be minimal.

Anti-immigrant bills that failed to pass included one that prohibited illegal immigrants from attending any of Virginia's public universities and another that expanded the authority of law enforcement officers to detain and arrest illegal immigrants. A third anti-immigrant bill prevented DMV from issuing drivers' permits and licenses to non-English speaking persons. This bill, which evolved at least in part from one legislator's concern that some immigrants may not be able to read traffic signs, included an exemption for illiterate drivers.

A minor but significant proposed change in the state's fair housing law drew considerable attention this year, just as it did last year. Under current law, any advertisement for housing that references race, religion or other protected categories of people is considered prima facie evidence of discrimination. HB 1992 kept the prohibition against racial and religious advertising, but required plaintiffs in lawsuits to prove that such advertising is discriminatory. The ACLU joined other civil rights groups to oppose this weakening of Virginia's fair housing law. The House approved the bill, but it was defeated in the Senate.

## **PASSED**

---

**HB 1778/SB 753 (Kilgore/ Wampler) Methadone Clinics; prohibited in certain counties.** Creates burdensome standards to be set for the issuance of new licenses for methadone clinics. Until such standards are developed, there will be a moratorium on the issuance of

new licenses to such clinics. *Both bills passed the House and Senate unanimously. SB 753 went into effect February 25 when the Governor signed it. The ACLU opposed these bills.*

**HB 1798/SB 1143 (Albo/Hanger) Denies eligibility for state and local public benefits for illegal immigrants.** Provides that no person who is not a U.S. citizen or legally present in the United States are eligible for any state or local public benefits. The bill defines state and local public benefits, and sets forth a series of exceptions to this eligibility rule. The bill also requires applicants for state or local assistance to provide proof of being in the United States legally. *Passed the House, (85-Y 13-N) and passed the Senate, (27-Y 11-N). The ACLU opposed these bills.*

**SB 1338 (Howell) Group accident and sickness insurance coverage.** Allows coverage under an insurance policy to be extended to insure any class of persons as may mutually be agreed upon by the insurer and the group policyholder, including same sex partners. *Passed the Senate, (26-Y 14-N) and passed the House, (49-Y 48-N). The ACLU supported this bill.*

## **FAILED**

---

**HB 1625 (Marshall, D.W.) Driver's licenses; learner's permits.** Prohibits issuance of driver's licenses and learner's permits to non-English speaking persons. *Reported from House Transportation (12-Y 8-N), but was re-referred from the House floor to House Courts where it failed to report (7-Y 10-N). The ACLU opposed this bill.*

**HB 1837 (Parrish) Expands the authority of law-enforcement officers to arrest illegal aliens.** Makes it easier for a law-enforcement officer to arrest an illegal immigrant. *Tabled in House Courts, (19-Y 0-N). The ACLU opposed this bill.*

**HB 1992 (Griffith) Amending the Fair Housing Law.** Weakens Virginia fair housing law by removing presumption that housing advertisements with references to race, religion, sex or national origin are discriminatory. Such ads, rather than being prima facie evidence of discrimination, will only be evidence of possible discrimination. *Passed the House (62-Y 32-N), but was defeated on the Senate floor, (7-Y 31-N). The ACLU opposed this bill.*

**HB 2735 (Ward) Racial Profiling Reporting Act.** Requires the Department of State Police to develop a statewide database for collecting race, ethnicity and gender as a factor in traffic stops. *Tabled in House Militia, Police & Public Safety, and (13-Y 6-N). The ACLU supported this bill.*

**HB 2755 (Bland) Restoration of Rights.** Eliminates the requirement that persons convicted of non-violent felonies must wait 5 years before they can petition for the restoration of their rights. *Stricken at the request of the patron. The ACLU supported this bill.*

**HB 2910 (Gear) Prohibiting admission of illegal aliens to public institutions of higher education.** Provides that persons who are illegal immigrants may not be admitted to any public university in VA. *Passed House (67-Y 28-N), but was passed by indefinitely in Senate Education and Health, (12-Y 3-N). The ACLU opposed this bill.*

# Voting and Access to Government

---

Legislators voted down five bills that would have increased voter participation by making it easier to cast absentee ballots. Four of the bills would have effectively eliminated any qualifying criteria for voting absentee, opening the process to anyone with the forethought and desire to vote in advance of Election Day. The fifth bill would have allowed online applications for absentee ballots. None of the bills survived committee votes.

The General Assembly reacted, as expected, to an ACLU lawsuit claiming that Virginia's Freedom of Information Act (FOIA) requires the Judicial Inquiry and Review Commission to release to the public legal ethical advisory opinions written for judges to the public. The advisories are now explicitly exempted from the FOIA.

*General Assembly rejects bills to ease restrictions on use of absentee ballot and excludes advisories on legal ethics from the public.*

---

## PASSED

**HB 1847 (Brink) Training Electoral boards and registrars.** Requires a member of the electoral board and the registrar to attend annual training programs provided by the state. *Passed House, (91-Y 6-N) and passed the Senate, (38-Y 0-N). The ACLU supported this bill.*

**SB 1157 (Stolle) Judicial Inquiry and Review Commission (JIRC).** Requires that ethical advice given to a judge by the JIRC and any attendant records be kept confidential. *Passed Senate, (39-Y 0-N 1-A) and passed the House, (85-Y 10-N). The ACLU opposed this bill.*

---

## FAILED

**HB 1555 (Purkey) Voter Registration applications and records.** Requires individuals to provide the same residence address for purposes of voter registration as on licenses, permits, and ID cards. *Stricken on the House floor at request of patron. The ACLU opposed this bill.*

**HB 1773 (Dillard) Absentee ballots; applications may be made on line.** Allows absentee ballot application to local registrars through the official website of the State Board of Elections. *Tabled in House Privileges & Elections, (11-Y 4-N). The ACLU supported this bill.*

**HB 1909/HB 2153/HB 2636/SB 1226 (Baskerville/Amundson/Ebbin/Ticer) Absentee ballots; no qualifications.** Allows anyone to vote absentee. *House bills tabled in Privileges & Elections, (16-Y 4-N). SB 1226 killed in Senate P&E (12-3) ACLU supported these bills.*

**HJ 542/HJ 698/SJ 307 (Shuler/Amundson/Deeds) Constitutional amendment to establish a Virginia Redistricting Commission.** Establishes a commission to redraw state and federal political district lines after each census. *HJ 542 & HJ 698 were killed in House Privileges and Elections. SJ 307 failed on a tie vote of (7-Y 7-N) in Senate P&E. ACLU monitored these bills.*