

Civil Liberties Review

Virginia General Assembly 2010

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About the ACLU of Virginia Civil Liberties Review

The *Civil Liberties Review* summarizes the legislative actions of the Virginia General Assembly that affect civil rights and civil liberties. The ACLU of Virginia encourages all Virginia voters 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 taking place during the General Assembly session and are inclined to call, write or e-mail elected officials to express your opinion on pending legislation, please contact the ACLU of Virginia at (804) 644-8080 or lobby@acluva.org, or sign up on our website at www.acluva.org.

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Free Expression

Last year, when then-Governor Tim Kaine signed a bill creating an anti-choice specialty license plate, he warned legislators that the First Amendment required them to pass a pro-choice bill, should one be introduced in the 2010 session. One was (SB 18), and no issue generated more controversy or intrigue. Faced with a bill authorizing a license plate bearing the message “Trust Women, Respect Choice” and directing proceeds from sales of the plate to Planned Parenthood, anti-choice legislators found themselves caught between their ideological views on reproductive rights and their constitutional obligation to recognize all viewpoints in a public forum.

Pro-choice specialty license plate bill becomes law.

Enough legislators ultimately understood they had a legal obligation to vote for the pro-choice plate, but there was still much wrangling over the revenues going to Planned Parenthood. A stalemate developed after the Senate passed the bill as introduced, but the House approved a version that removed Planned Parenthood as the recipient of revenues. After the ACLU warned legislators that failure to approve the bill as introduced would result in a lawsuit, the House agreed with the Senate and the bill passed. A last minute amendment by Governor Robert McDonnell to prohibit Planned Parenthood from using plate-generated revenues for abortions was subsequently approved by legislators (with no objections from Planned Parenthood).

Reacting to a Virginia Supreme Court case -- *Jaynes v. Commonwealth*, in which the ACLU of Virginia filed an amicus brief -- lawmakers revised the state’s anti-spam law to limit its application to commercial emails. Previously, the law banned all anonymous unsolicited bulk emails, including non-commercial emails containing political and religious messages.

Passed

HB 1 (Loupassi) Anti-Spam Law Restricted to Commercial Speech. Narrows the scope of Virginia’s anti-spam statute to cover only anonymous, unsolicited *commercial* email. Previously the law applied to non-commercial email as well. *Passed the House (99-Y, 0-N); passed the Senate (39-Y, 0-N). Signed by the Governor. ACLU supported.*

SB 18; SB 704 (Howell, J.); HB 1108 (Brink) “Trust Women, Respect Choice” Specialty License Plate. Creates pro-choice specialty license plate displaying the phrase, “Trust Women, Respect Choice” with revenues from plate sales supporting Planned Parenthood. *HB 1108 passed House with amendment (77-Y, 22-N); failed in Senate Transportation (6-Y, 7-N). SB 704 incorporated into SB 18. SB 18 passed Senate (26-Y, 8-N); passed House with amendment (81-Y, 15-N); House-amended bill rejected by the Senate (13-Y, 22-N); sent to conference committee. House (64-Y, 30-N) and Senate (22-Y, 15-N) agreed to conference report; Governor amended SB 18; amendment agreed to by Senate (38-Y, 0-N) and the House (78-Y, 7-N). ACLU supported.*

Failed

HB 1296 (Pogge) Censoring Obscenity in Public Colleges and Universities. Requires that no public money be used on public college campuses to support art, literature, theater performance or movies that contain obscenity, unless written permission has been given by the governing body or board of visitors. *Left in House Education Committee. ACLU opposed.*



Religious Liberty

For the second year in a row, Delegate Charles Carrico sponsored a bill to allow state police chaplains to offer sectarian prayers at government-sanctioned events. HB 9 was an attempt to reverse a 2008 police policy requiring such prayers to be *nonsectarian*. That policy had been enacted shortly after the Fourth Circuit Court of Appeals ruled (in an ACLU-supported case) that prayers by government officials at government events must not favor one religion over others. Unlike last year, when the bill easily passed the House, but was killed in the Senate, this year's bill failed to survive initial committee action in the House.

Bill to establish state-sanctioned sectarian prayers fails (but Governor intervenes).

(Note: After the session ended, Governor McDonnell accomplished what the legislature could not by unilaterally reversing the existing policy requiring nonsectarian prayers at government events. The ACLU of Virginia sent notice to the Governor reminding him that sectarian prayers at government events are unconstitutional and, if offered, could be subjected to litigation. We also sent our pamphlet on why government prayers must be nonsectarian to the Superintendent of State Police and asked him to distribute it to all police chaplains.)

Perplexing prayer bills introduced in the House and Senate seemed to both allow and ban sectarian prayers at the same time. HB 1282 and SB 56 would have prohibited government agencies from regulating the content of prayers at government-sanctioned events (thus allowing sectarian prayers), except that such prayers could not favor one religion over others (thus, in effect, prohibiting sectarian prayers). Both bills were killed, perhaps because no one understood them.

Passed

SB 361 (Barker) Excused Absence from School for Religious Holidays. Adds observance of a religious holiday to the list of reasons students can be excused from school. Students who have a written note from a parent will have their absence excused. *Passed the Senate (37-Y, 3-N); passed the House (99-Y, 0-N); signed by the Governor. ACLU supported.*

Failed

HB 9 (Carrico) State Police Volunteer Chaplaincy Program. Allows the Superintendent of State Police to establish a Volunteer Chaplaincy Program and guidelines regarding the selection, conduct, and supervision of volunteers. However, the Superintendent may not regulate the volunteers' expression of religious beliefs. The bill also requires that when a volunteer chaplain provides an invocation at a government-sanctioned event, the printed program include a disclaimer that the beliefs expressed are those of the individual and are not endorsed or approved by the Department of State Police. *Left in House General Laws Committee. ACLU opposed.*

HB 1282 (Bell, Richard P.); SB 56 (Martin) Prayer at Government-Sanctioned Events. Provides that no government agency may regulate the content of prayer at a government-sanctioned event, but prohibits prayers that advance a particular religion or disparage another faith or belief. *HB 1282 left in General Laws Committee. SB 56 was passed by indefinitely in Senate Courts of Justice Committee (9-Y, 6-N). ACLU opposed.*



Privacy Rights

Sweeping reform bills intended to protect the privacy rights of medical patients passed, but legislators watered down HB 1039, HB 525 and SB 224 to the point that they accomplished only a small portion of their original purpose. As introduced, these bills required Virginia residents to be notified by all data-collecting entities, both private and public, of breaches in security involving their medical records or health insurance. As passed, however, the legislation applies only to state and local government agencies that collect such data and leaves the private sector, where most of this kind of data is collected, unaffected.

Government now required to notify citizens of breaches of its medical records.

A bill anticipating the increased use of human tracking implants passed the House but failed in the Senate. The bill, HB 53, would have made it illegal to implant a tracking device on any person without their consent. It also would have prevented employers and insurance companies from requiring such devices for employees or clients.

Lawmakers rejected a bill (SB 256) to require DMV to comply fully with the Federal Real ID Act, a law opposed by the ACLU because it will turn drivers' licenses into a national ID required for entering federal buildings and airplanes. This action comes in the wake of last year's law prohibiting DMV from complying with any aspect of the Real ID Act that requires the collection of biometric data from citizens or involves access to their financial records.

Lawmakers also rejected a bill (HB 189) to allow parents of students in public schools to refuse immunization based on philosophical objections. Under current law, parents may refuse immunization of their children for religious or health reasons.

Passed

HB 1039 (Byron); HB 525 (Nixon); SB 224 (Barker) Notification of Breach of Medical Information. As introduced, required Virginia residents be notified, by all data-collecting entities, of breaches in security in which their medical records or insurance information may have been compromised. As amended and passed, the notification requirement only applies to state and local governmental entities. *HB 525 incorporated into HB 1039. HB 1039 passed the House (97-Y, 0-N) and Senate (40-Y, 0-N); Governor's amendment agreed to by House (94-Y, 0-N) and Senate (39-Y, 0-N). SB 224 passed the Senate (40-Y, 0-N) and House (99-Y, 0-N) with a substitute; Senate rejected substitute (4-Y, 35-N); failed in conference. ACLU supported.*

HB 1292 (Tata); HB 461 (Herring) Photo-Monitoring at Traffic Lights-Information Sharing. Allows private companies that monitor cameras at traffic lights to obtain from DMV registration information on drivers who violate traffic laws. As amended by the Governor, requires that images be stored in a secure database comparable to DMV's system and that any unauthorized disclosure of private information is grounds for termination of the agreement between the private company and DMV. *HB 461 was left in House Transportation Committee. HB 1292 passed the House (55-Y, 42-N) and Senate (29-Y, 10-N); House and Senate concurred on Governor's recommendation (34-Y 6-N); signed by the Governor. ACLU opposed.*

Failed

HB 53 (Cole) Unlawful Use of Human Tracking Devices. As introduced, makes it unlawful for anyone to implant a tracking device on another person without his or her consent, punishable as a Class 1 misdemeanor. As amended and passed by the House, makes it unlawful, punishable by a civil fine, for employers to require a tracking device be implanted in an employee as a condition of employment. The bill also prohibits life insurance companies from requiring an implantation device on an insured person as a condition of obtaining or remaining on a life insurance plan. *Passed by the House (88-Y, 9-N, 1-A). Left in the Senate Commerce and Labor committee. ACLU supported.*

HB 189 (Purkey) Philosophical Exemption for Immunization Requirements. Adds philosophical views to the list of reasons a student can use to be exempt from immunization requirements. *Left in House Health, Welfare & Institutions Committee. ACLU supported.*

HB 226 (Watts) TANF Assistance Eligibility Not Affected by Past Drug Charges. Provides that a person who is otherwise eligible to receive TANF assistance shall not be denied assistance solely because he or she has been convicted of a felony offense of possession of a controlled substance, provided he complies with all obligations imposed by the court, has completed substance abuse treatment, and participates in drug screenings. *Continued to 2011 by the House Health, Welfare and Institutions Committee. ACLU supported.*

HB 679 (May); HB 836 (Carr) Social Security Numbers and Government Entities. HB 679 prohibits the state from collecting Social Security Numbers unless it is imperative to the purpose of the agency or required by federal law. HB 836 prohibits government identification cards from displaying any part of or all of a person's Social Security Number. *HB 679 and HB 836 were tabled in House General Laws Committee. ACLU supported.*

HB 804 (Poindexter) Limits on Use of Personal Information. Prohibits a person from sending solicitations or advertisements by email, letters, or packages that contain the recipient's date of birth, place of birth, parents' names or telephone number. *Tabled in House Commerce and Labor Committee. ACLU supported.*

SB 256 (Miller, Y.B.) REAL ID Compliance. Requires Virginia to comply with the federal law, Real ID, which mandates every state to issue a federally-approved driver's license or similar ID that will become part of a national database. Real IDs will be required to board an airplane and to access many federal facilities. *Continued to 2011 by Senate Transportation Committee. ACLU opposed.*

SB 711 (Edwards) Amending FOIA Exemptions for Records of Criminal Investigations. Requires the disclosure under FOIA of information pertaining to criminal investigations, such as the identity of witnesses and victims, once the investigation is closed, unless it jeopardizes the safety of an individual. Under current law, information related to criminal investigations is exempt from the Freedom of Information Act. *Continued to 2011 by the Senate General Laws and Technology Committee. ACLU supported.*



Equal Rights

Legislation intended to protect gays and lesbians from employment discrimination is introduced in every legislative session, but rarely receives much notice. This year, however, Governor McDonnell brought considerable attention to the issue by deleting from an existing executive order the provisions protecting gays and lesbians from discrimination in state employment. The omission was glaring, but McDonnell survived the criticism until Attorney General Cuccinelli warned Virginia's colleges that their policies prohibiting discrimination based on sexual orientation violated state law. McDonnell's response to Cuccinelli was a symbolically beneficial but unenforceable "executive directive" correctly claiming that the U. S. Constitution prevented the government from discriminating against gays and lesbians.

AG's anti-gay actions spur debate on adding legal protections for gays and lesbians, but bill fails in the House.

It was in this context that the House and Senate addressed bills to prohibit discrimination against gays and lesbians in state employment. With gay rights advocates and state employees packing committee hearings, the Senate bill (SB 66) fared well, passing on a 27-13 vote. But the House refused to address its own bill (HB 1116) and killed SB 66 in subcommittee.

Legislators summarily rejected bills to protect homeless persons and gays and lesbians from hate crimes (HB 844, HB 1142) and to ban employment discrimination based on an employee's genetics (HB 455).

Passed

HB 192 (Cosgrove); HB 405 (Oder); SB 214 & SB 216 (Locke) Fair Housing Board and Certification Program. After various amendments and consolidations of these bills, SB 216 mandates that the Fair Housing Board establish educational materials on the Fair Housing Law for persons who sell or rent housing to sign an affidavit stating that they have read and understand the materials. *HB 405 was incorporated into HB 192. HB 192 passed the House (89-Y, 10-N) and Senate (40-Y, 0-N) with substitutes; Senate substitute rejected by the House (4-Y, 95-N); sent to conference committee; conference committee report passed by House (86-Y, 7-N) and Senate (39-Y, 0-N); signed by the Governor. SB 214 was stricken at the request of the patron in Senate General Laws and Technology Committee. SB 216 passed the Senate (40-Y, 0-N); passed the House with a substitute (92-Y, 8-N); House substitute rejected by the Senate (2-Y, 38-N); sent to conference committee; conference committee report passed by the House (92-Y, 5-N) and the Senate (38-Y, 0-N); signed by the Governor. ACLU supported.*

Failed

HB 103 (Loupassi) Removal of Loophole in Virginia Fair Housing Law. Closes the loophole in Virginia's Fair Housing Law that allows property owners who rent or sell three or fewer units without the use of a real estate agent to discriminate on the basis of race, color, religion, national origin, sex, elderliness, familial status, or disability. This loophole is not in the federal law. *Left in House General Laws Committee. ACLU supported.*

HB 454 (Herring) Anti-Discrimination Protection for Employees of Small Businesses.

Under current law, employees of small businesses who have been discriminated against have a cause of action only if they have been wrongfully discharged. HB 454 expands employees' protections and gives them a cause of action for discrimination in matters related to hiring, compensation, and other privileges of employment. *Left in House General Laws Committee. ACLU supported.*

HB 455 (Herring) Public Employers May Not Discriminate on the Basis of Genetics.

Provides that the state and its agencies may not discriminate on the basis of genetic characteristics or request genetic testing for employment. *Left in House General Laws Committee. ACLU supported.*

HB 844 (Hope) Hate Crimes Based on Homelessness. Under current Virginia law, persons who commit crimes motivated by race, religion or ethnicity are subject to enhanced penalties. HB 844 adds homelessness to the list of protected classes. *Left in House Courts of Justice Committee. ACLU supported.*

HB 1116 (Ebbin); SB 66 (McEachin) Prohibition on Sexual Orientation Discrimination in Public Employment. HB 1116 and SB 66 prohibit in state government employment discrimination on the basis of sexual orientation, which is defined as a person's actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression. *HB 1116 was left in the House General Laws committee. SB 66 passed the Senate (23-Y, 17-N); passed by indefinitely in House General Laws, Professions/Occupations and Administrative Process Subcommittee (5-Y, 3-N). ACLU supported.*

HB 1142 (Scott, J.M.) Hate Crimes Based on Person's Sexual Orientation. Under current Virginia law, persons who commit crimes motivated by race, religion or ethnicity are subject to enhanced penalties. HB 1142 adds sexual orientation to the list of protected classes. *Left in House Courts of Justice Committee. ACLU supported.*

HB 1280 (McClellan) Anti-Discrimination in Land-Use Applications. Prohibits political jurisdictions from discriminating based on race, color, national origin, religion, sex, age, familial status or handicap, in land use ordinances or guidelines. Also, prohibits discriminating against proposed developments because they will contain low-income housing. *Passed by in House General Laws Committee with a letter. ACLU supported.*

HB 1287 (Plum) Sexual Orientation Protected Under Virginia Human Rights Act. Adds sexual orientation to the Virginia Human Rights Act, which protects people from discrimination in places of public accommodation and employment. *Left in House General Laws Committee. ACLU supported.*

HJ 55 (Englin) Repeal of Marriage Amendment to Virginia Constitution. Proposes the repeal of the amendment to the Virginia Constitution, passed in 2006, that defines marriage as a union between one man and one woman, and prohibits the recognition of other unions or legal arrangements between unmarried individuals that approximate marriage. *Left in House Privileges and Elections Committee. ACLU supported.*



Immigrants' Rights

This year's session saw the continuing decline of anti-immigrant legislation, which only two years ago comprised the single largest number of bills in any civil liberties category in the legislature. The drop in numbers, from nearly 150 such bills in 2007 to fewer than a dozen in 2010 is a sign of how unsuccessful anti-immigrant legislators have been in accomplishing their goals in Virginia.

The sole anti-immigrant bill that passed this year was diluted somewhat during the legislative process. HB 737 originally required all government and most private employers to use the federal government's E-Verify database to determine the immigration status of employees. Because E-Verify is riddled with errors that have led to *legal* immigrants losing their jobs, the ACLU has opposed its use as a condition of employment. As amended and passed, HB 737 only requires state agencies to use E-Verify.

Partially diluted version of E-Verify bill passes -- only state agencies required to use it.

A bill intended to encourage immigrants to report crimes failed. SB 462, which would have prevented police from inquiring into the immigration status of witnesses and victims of crimes, passed the Senate without opposition, but failed in a House committee on a 10-10 vote.

Passed

HB 737 (Albo); SB 225 (Barker) Mandated Use of E-Verify. As introduced, HB 737 required state and local agencies and private companies with 15 or more employees to use E-Verify to determine employees' immigration status. SB 225 limited E-Verify to public contractors and subcontractors. As passed, HB 737 requires state agencies, but not local governments or private companies, to use E-Verify by December 2012. *HB 737 passed the House (82-Y, 13-N) and the Senate with amendments (37-Y, 3-N); House agreed to Senate amendments (87-Y, 8-N); signed by the Governor. SB 225 was left in Senate Commerce and Labor Committee. ACLU opposed.*

SB 354 (Obenshain) School Divisions to Decide English Proficiency Assessments. Allows individual school districts to design English proficiency assessments in accordance with the federal law, No Child Left Behind. *Passed the Senate (40-Y, 0-N) and House (96-Y, 0-N); signed by the Governor. ACLU supported.*

Failed

HB 1338 (Janis) Cost of English Interpreters. Requires non-English speaking defendants to pay for interpreters if they are convicted in criminal trials. *Passed the House (65-Y, 34-N); failed in Senate Courts of Justice Committee (11-Y, 3-N). ACLU opposed.*

SB 462 (Howell, J.) Limiting Police Inquires into Immigration Status. Prohibits law-enforcement from inquiring about the immigration status of any victim or witness of a crime-- unless the witness has been arrested or charged with a criminal violation, or when such inquiry is required by federal law or is essential to the investigation or prosecution of the crime. *Passed the Senate (40-Y, 0-N); failed in House Courts of Justice (10-Y, 10-N). ACLU supported.*



Reproductive Rights

Although no anti-choice bills passed in 2010, an amendment to the budget may have a detrimental effect on the reproductive rights of some low-income women. Under federal law, Medicaid funding of abortion is not permitted except in cases of rape, incest, or the risk of death. States, however, are allowed to use their own Medicaid supplemental funds to provide abortions in additional circumstances. Until this budget amendment passed, Virginia allowed Medicaid-supported abortions in situations where there is a severe risk to the health of the woman. (This includes, for example, when cancer is discovered during the pregnancy, or when there are diabetic complications during pregnancy that could lead to blindness or loss of an appendage). As a result of this amendment, some low-income women on Medicaid will be forced either to take substantial risks to their health by carrying an unsafe pregnancy to term or to find other resources to obtain an abortion.

Anti-choice bills fail, but budget amendment may jeopardize health of some low-income women.

Failed

HB 112 (Marshall, R.G.) Definition of Life. Provides that human embryos, at every stage of development, have constitutional rights of life, liberty and due process under the Virginia Constitution. *Left in House Courts of Justice Committee. ACLU opposed.*

HB 334 (Marshall, R.G.) Informed Consent for Abortion Amended. Adds to Virginia's informed consent law that before performing an abortion, a doctor must inform the patient about the effects of the abortion on future pregnancies. *Passed by the House (95-Y, 2-N); passed by indefinitely in Senate Education and Health Committee (11-Y, 4-N). ACLU opposed.*

HB 335 (Marshall, R.G.) License to Practice Medicine for Graduates of Non-Accredited Medical Schools. States that the Board of Medicine may not deny a person a license to practice medicine solely because his or her course of study does not include an accredited course in induced abortions. *Left in House Health, Welfare and Institutions Committee. ACLU opposed.*

HB 393 (Lohr) Targeted Regulations of Abortion Providers. Requires abortion clinics that conduct 25 or more abortions per year to be licensed by the Board of Health and meet the requirements of ambulatory surgery centers. *Passed the House (72-Y, 25-N); failed in Senate Education and Health Committee (4-Y, 11-N). ACLU opposed.*

HB 986 (Jones, C.) Felony for Women to Self-Abort. Prohibits pregnant women from administering any drug or using any other means to produce abortion or miscarriage with the intent to destroy the fetus. HB 986 provides an exception for medically approved contraceptives or legally prescribed medication as a means of producing abortion or miscarriage. *Left in House Courts of Justice Committee. ACLU opposed.*

HB 1042 (Byron) Mandatory Ultrasound. Amends the informed consent law to require that every pregnant woman be given an ultrasound to determine the gestation age of the fetus, and the opportunity to view the ultrasound prior to abortion. *Passed the House (65-Y, 33-N); left in Senate Education and Health committee. ACLU opposed.*



Death Penalty

In one of the few surprises of the 2010 session, lawmakers defeated a bill to eliminate the “triggerman rule,” under which only the actual killer is eligible for capital punishment (except in cases involving murder for hire, terrorism or criminal enterprises). Had HB 502 passed, Virginia, which already ranks second among the states in number of executions since the reinstatement of the death penalty, would have been ripe for dramatic expansion of capital punishment.

Major death penalty expansion bill fails for fourth year, despite support from the Governor.

Technically, the defeated legislation would have permitted principals in the second degree and accessories before the fact to be eligible for the death penalty.

For three successive years, from 2007 through 2009, a bill to eliminate the triggerman rule passed the House of Delegates and Senate by strong majority votes, failing only when the Senate could not muster the two-thirds vote required to override then-Governor Kaine’s veto. (The House easily accomplished the two-thirds majority.) When Governor McDonnell promised to support the bill, its passage into law seemed assured.

The surprise this year was not in the House, which again supported the bill by a veto-proof majority, but in the Senate, where the Courts of Justice Committee, which has approved the bill for the last three years, prevented it from going to a floor vote where it would have surely passed.

Lawmakers did expand the death penalty, but not in ways that will measurably increase capital punishment. Persons who kill auxiliary police officers and deputy sheriffs, or fire marshals and their assistants with police powers will now be eligible for the death penalty (HB 166, HB 934, SB 520).

Passed

HB 166 (Pogge); HB 934 (Bell, R.); SB 520 (Norment) Eligible for Death Penalty for Killing of Auxiliary Law Enforcement and Others. As introduced, HB 166 expands the crimes eligible for capital punishment by allowing death sentences to be imposed for the murder of auxiliary law enforcement officers, fire marshals and assistants with police powers, and EMS personnel. As amended and passed, HB 166 does not include EMS personnel. Similarly, HB 934 and SB 520 expand the death penalty by allowing the death sentence for the murder of auxiliary police officers and deputy sheriffs. *HB 166 passed the House (75-Y, 23-N); passed the Senate with amendments (28-Y, 12-N); Senate amendments approved by the House (75-Y, 21-N). HB 934 passed the House (78-Y, 20-N); passed the Senate (26-Y, 14-N). SB 520 passed the Senate (26-Y, 14-N); passed the House (75-Y, 18-N). These bills were all signed by the Governor. ACLU opposed.*

HB 568 (Iaquinto) Notice of Expert Testimony in Capital Murder Cases. Changes the requirement that a defendant must notify the State that he or she will have an expert testify on his or her behalf from 21 days to 60 days before trial. *Passed the House (97-Y, 0-N); passed the Senate (40-Y, 0-N); signed by the Governor. ACLU opposed.*

SB 248 (Watkins) Indigent Capital Defendant Right to Ex-Parte Hearing for Expert Witness. Permits a lawyer for an indigent capital defendant to seek the appointment of an expert witness without divulging confidential information to the prosecutor. Currently, when a lawyer for an indigent capital defendant requests funds for an expert witness, he must present specific evidence and defense theories to the judge in the presence of the prosecutor. *Passed the Senate (39-Y, 1-N); passed the House (78-Y, 18-N); Governor recommended an amendment; Governor's amendment agreed to by Senate (39-Y, 1-N) and House (74-Y, 17-N). ACLU supported.*

SB 162 (Edwards) Life Sentences in Capital Cases. As introduced, this bill created a new sentencing form for juries to use in capital cases permitting imposition of life imprisonment instead of the death penalty even when there is a determination of future dangerousness. As amended and passed, the bill removes all mandatory sentencing forms used in capital cases from Virginia law and allows judges to notify juries of the proper instructions for a finding of a sentence of death or life imprisonment. Currently, the court must use forms explicitly set out in Virginia law and there is no form that permits a jury to impose a sentence of life imprisonment, instead of death, when a jury makes a determination future dangerousness and vileness. *Passed the Senate (40-Y, 0-N); passed the House (95-Y, 0-N); signed by the Governor. ACLU supported.*

Failed

HB 243 (Janis) Penalty for Accessories in Capital Murder Cases. Makes being an accessory after the fact in cases of capital murder a class 6 felony rather than a class 1 misdemeanor. *Stricken from the docket in House Courts of Justice Committee. ACLU opposed.*

HB 502 (Gilbert); SB 7 (Obenshain) Elimination of the Triggerman Rule. Expands the death penalty by eliminating the 'triggerman rule,' which provides, with few exceptions, that only the actual perpetrator of a capital murder is eligible for the death penalty. This bill would permit accessories before the fact and principals in the second degree to be charged with capital murder and therefore eligible for the death penalty. *HB 502 passed the House (74-Y, 24-N); passed by indefinitely in Senate Courts of Justice (9-Y, 6-N). SB 7 failed to report in Senate Courts of Justice (6-Y, 9-N). ACLU opposed.*

SB 54 (Martin) Death Penalty for Killing of Various Groups of Persons. Adds the following personnel to the capital murder statute so that the death sentence can be imposed for the murder of such a person in the performance of the person's official duties: fire marshals and assistant fire marshals with law enforcement powers, firefighters, special forest wardens, emergency medical technicians, lifesaving and rescue squad members, arson investigators, volunteer firefighters and lifesaving or rescue squad, and persons certified as emergency medical service providers. *SB 54 was passed by indefinitely in Senate Courts of Justice (10-Y, 5-N). (Note: Although this bill did not pass, similar bills did. See above: HB 166 (Pogge); HB 934 (Bell, R.); SB 520 (Norment) Eligible for Death Penalty for Killing of Auxiliary Law Enforcement and Others.) ACLU opposed.*



Open Government

Lawmakers overwhelmingly supported a bill (HB 1028) to make it clear that recording devices are allowed at public meetings and that no public meeting may be held in a place that prohibits such devices. However, an important bill (SB 711) to require police to share information on criminal investigations once cases are closed failed in committee.

Recording devices allowed at public meetings, but lawmakers fail to increase access to police records.

Passed

HB 431 (Griffith) Fees for Expert Witnesses in FOIA Cases. Allows a court to award compensation for expert witnesses in a Freedom of Information Act action. *Passed the House (97-Y, 0-N); passed the Senate (40-Y, 0-N); signed by the Governor. ACLU supported.*

HB 432 (Griffith) GA Clerks Exempted. Adds House and Senate clerks' offices to the list of government bodies whose working papers are excluded from the FOIA. *Passed the House (97-Y, 0-N); passed the Senate (40-Y, 0-N). Signed by the Governor. ACLU opposed.*

HB 434 (Griffith) FOIA Exemption for Financial Data. Requires redaction of account numbers from financial documents distributed through the FOIA. *Passed the House (97-Y, 0-N); passed the Senate (40-Y, 0-N); signed by the Governor. ACLU supported.*

HB 518 (Rust) FOIA Exemptions for Criminal Investigative Files. Defines the existing exemption for criminal investigative files to include complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements and evidence. *Passed the House (96-Y, 0-N); passed the Senate (40-Y, 0-N); signed by the Governor.*

HB 857 (Carrico) Access to Records under Line of Duty Act. Provides that any evidence or documents obtained in the investigation of a death in the line of duty is confidential and exempt from the Freedom of Information Act. *Passed the House (99-Y, 0-N); passed the Senate (40-Y, 0-N); signed by the Governor. ACLU opposed.*

HB 1028 (Pollard) Recording of Meetings. Prohibits public bodies from conducting public meetings in buildings where recording devices are prohibited and clarifies that recording devices are allowed in all public meetings. *Passed the House (97-Y, 0-N); passed the Senate (40-Y, 0-N); signed by the Governor. ACLU supported.*

Failed

HB 449 (Ware, R.L.) Allows Courts to Restrain FOIA Abusers. Permits public bodies to ask a court to prevent harassment from a FOIA requester. *Passed by indefinitely with a letter in House General Laws Committee. ACLU opposed.*

SB 711 (Edwards) Amending FOIA Exemptions for Records of Criminal Investigations. Requires under FOIA the disclosure of information pertaining to criminal investigations, once the investigation is closed, unless it jeopardizes the safety of an individual. *Continued to 2011 by the Senate General Laws and Technology Committee. ACLU supported.*



Voting Rights

Legislators tweaked Virginia's election law in a variety of ways, making slight changes to the absentee voting process and requiring more oversight for the training of poll workers. But all the real reform bills were defeated. A bill (HB 158) to allow early voting failed to garner any support, while a no-excuse absentee voting bill (SB 83) passed the Senate on an impressive 29-10 vote before being rejected by the House.

A bill (HB 498) to require a government photo-ID to vote not only failed in the Senate as usual, but also failed to pass the House. Such bills usually do well in the House, but after a spirited floor debate in which key legislators argued that the photo-ID requirement would burden the elderly, low-income persons, and minorities, the bill was sent back to committee.

No major election reforms. Bill requiring photo ID to vote rejected.

Neither chamber acted on constitutional amendments (HJ 6, HJ 16) to reform Virginia's anachronistic felon disfranchisement law. This was not a surprise, however, as it is rare for resolutions to amend the Virginia Constitution to start in even-numbered years. The next serious effort to change this constitutional provision will take place in the 2011 General Assembly.

Passed

HB 63 (Toscano) Expansion of Eligibility for In-Person Absentee Voting. Under current law, a person is allowed to vote in-person absentee when unable to vote on Election Day due to the hospitalization or death of an immediate family member. As amended, HB 63 expands the definition of immediate family member to include children, including adopted children, legal guardians, and siblings of whole- or half- blood. *Passed the House (89-Y, 9-N); passed the Senate with amendment (39-Y, 0-N); House approved Senate amendment (95-Y, 2-N); signed by the Governor. ACLU supported.*

HB 1235 (Anderson; Martin); SB 55 (Martin); SB 152 (Stuart) Deadline for Making Absentee Ballots Available. Requires that ballots be available for absentee voting not later than 45 days before any election rather than 45 days before the November election and 30 days before other elections. Also requires that the electoral board send military and overseas voters printed absentee ballots within three business days of receiving the requests. *HB 1235 passed the House (99-Y, 0-N); passed the Senate with a substitute (40-Y, 0-N); House approved Senate substitute (99-Y, 0-N). SB 152 was incorporated into SB 55. SB 55 passed the Senate (39-Y, 1-N); passed the House with a substitute (97-Y, 0-N); House substitute agreed to by the Senate (40-Y, 1-N). ACLU supported.*

SB 50 (Martin) Training for Election Workers. Requires the State Board of Elections to mandate certification from the local electoral board each year prior to the November general election that officers of election have been trained consistent with the training standards set by the Board. *Passed the Senate (40-Y, 0-N); passed by the House (99-Y, 0-N); Senate approved Governor's recommendation #1 and #2, (39-Y, 0-N) and rejected #3, (0-Y, 39-N); House concurred with Governor's recommendations #1 and #2, (93-Y, 0-N). Signed by the Governor. ACLU supported.*

SB 51 (Martin) Absentee Voting for Poll Watchers. Allows poll watchers designated by a political party or candidate to vote by absentee ballot. *Passed the Senate (40-Y, 0-N); passed the House (99-Y, 0-N); signed by the Governor. ACLU supported.*

SB 137 (Obenshain) Lists of Registered Voters to Tax Collectors. Allows the State Board of Elections to provide for a fee, lists of registered voters to commissioners of revenue and city/county treasurers for tax assessment, collection and enforcement purposes. *Passed the Senate (35-Y, 5-N); passed the House (81-Y, 15-N); signed by the Governor. ACLU opposed.*

SB 313 (Martin) Absentee Voter Applicants. As amended, SB 313 states that a voter, who has applied for but did not receive or has lost an absentee ballot or who returns an unused or accidentally spoiled absentee ballot, must be allowed to vote on Election Day at his proper polling place or at a central absentee voter precinct for his county or city. *Passed the Senate with significant amendments (40-Y, 0-N); passed the House with a substitute (99-Y, 0-N); House substitute agreed to by the Senate (40-Y, 0-N); signed by the Governor. As introduced, ACLU opposed. After significant amendments, ACLU supported.*

Failed

HJ 6 (Howell, A.T.); SJ 62 (Miller, Y.B.) Restoration of Civil Rights for Non-Violent Felons. Amends the Virginia Constitution to allow the General Assembly to provide for the restoration of civil rights for *non-violent* felons. *HJ 6 was left in House Privileges and Elections Committee. SJ 62 was continued to 2011 by Senate Privileges and Elections Committee. ACLU supported.*

HJ 16 (Dance); HJ 42 (Morrissey); HJ 70 (Ware, O.); HJ 116 (Carr) Restoration of Civil Rights for All Felons. Amends the Virginia Constitution to allow the General Assembly to provide for the restoration of civil rights for *all* felons. *Left in House Privileges and Elections Committee. ACLU supported.*

HB 101 (Loupassi) General Registrar and Voter Registration Qualifications. Permits the general registrar to request any reasonable and nondiscriminatory information from an applicant to determine an applicant's qualification to register to vote. *Left in House Privileges and Elections Committee. ACLU opposed.*

HB 157 (Dance); HB 161 (Dance); SB 83 (Howell, J.D.) Expansion of Absentee Voting. HB 157 allows all voters to vote by absentee, either in-person or by mail-in ballot. HB 161 and SB 83 allow all voters to vote by absentee ballot in-person without providing an excuse or reason for not being able to vote in person on Election Day, but in order to vote absentee by mail-in ballot a person must provide a reason that is included on the current list of excuses a person must offer to be entitled to vote absentee. *HB 157 and HB 161 were left in House Privileges and Elections Committee. SB 83 passed by the Senate (29-Y, 10-N); left in House Privileges and Elections Committee. ACLU supported.*

HB 158 (Dance); HB 185 (Morrissett); HB 362 (Ware, O.) Early Voting. HB 158 and HB 185 allow any qualified voter to vote in-person from 14 to 3 days before the election. HB 362 allows any qualified voter to vote in-person from 19 to 3 days before the election. *HB 158, HB 185, and HB 362 were left in House Privileges and Elections Committee. ACLU supported.*

HB 341 (Marshall, R.); HB 497 (Lingamfelter); SB 302 (Martin) Voter ID; Proof of Citizenship to Register to Vote. HB 341 requires documented proof of citizenship for registration and government photo ID to vote. HB 497 requires proof of citizenship to register to vote. SB 302, as introduced, states that failure to provide proof of citizenship to the registrar constitutes a material omission, and the application to register to vote is to be denied. *HB 341 and HB 497 were left in House Privileges and Elections Committee. SB 302 was significantly amended and passed the Senate (40-Y, 0-N); left in House Privileges and Elections Committee. ACLU opposed.*

HB 498 (Lingamfelter); SB 134 (Obenshain); SB 301 (Martin) ID Required to Vote. Requires all voters to show a valid government-issued photo ID to vote or be required to cast a provisional ballot. *HB 498 passed House Privileges and Elections Committee (12-Y, 8-N); sent to the House floor for debate and sent back to House Privileges and Elections Committee, where it was left for the remainder of the session. SB 134 was passed by indefinitely in Senate Privileges & Elections Committee (6-Y, 5-N). SB 301 failed in Senate Privileges and Elections Committee (6-Y, 7-N). ACLU opposed.*

HB 786 (LeMunyon) Extension of Polling Hours. Extends polling place closing time from 7 p.m. to 8 p.m. *Left in House Privileges and Elections Committee. ACLU supported.*

SB 139 (Miller, J.C.) Absentee Voting for Persons 65 Years and Older. Provides that persons age 65 and older will be entitled to vote absentee. *Left in House Privileges and Elections Committee. ACLU supported.*

SB 226 (Barker) Extension of Polling Hours during an Emergency Situation. Permits for court ordered extension of polling hours in emergency situations and situations that interfere with the ability of voters to travel to the polls. *Passed the Senate (21-Y, 19-N); defeated in House Privileges and Elections Committee. ACLU supported.*

SB 307 (Martin) Photo ID to Vote by Absentee Ballot. Requires absentee voters to submit a copy of a current and valid photo ID or a copy of a current utility bill, bank statement, government check, paycheck, or other document that shows the name and address of the voter with the absentee ballot. If an individual does not submit ID, the individual's signature on the absentee ballot envelope must be compared to the individual's signature on his voter registration. The ballot will not be counted if there appears to exist a material discrepancy between these signatures, however it will be counted as a provisional ballot. *Stricken at the request of the patron in Senate Privileges and Elections Committee (15-Y, 0-N). ACLU opposed.*



Criminal Justice and Due Process

Several progressive bills intended to reform Virginia's criminal justice system were introduced, but each failed in the House of Delegates. Bills to decriminalize simple possession of marijuana (HB 1134) and expand the use of prescription medical marijuana (HB 1136), for example, were seriously debated --a change for lawmakers -- but both failed to survive the House Courts of Justice Committee.

For the fourth straight year, the House passed, but the Senate rejected, a bill (HB 681) to expand the arrest and search powers of law enforcement when charging individuals with Class 1 and 2 misdemeanors. Under current law, law enforcement officers must release an individual who has been stopped for a Class 1 or 2 misdemeanor (unless the person is intoxicated, resistant, or seems unlikely to appear in court) after issuing a summons.

Bill to expand police search and arrest powers fails again.

Although it did not receive much attention outside the Capitol, an important juvenile justice reform bill passed this year. Under the new law (SB 259), juveniles whose criminal cases are transferred to circuit court to be tried as adults will now be detained in juvenile detention centers rather than adult correctional facilities. This limits exposure of juveniles to the dangerous conditions in adult facilities, and gives them access to education and counseling programs only available in juvenile facilities.

Passed

HB 13 (Marshall, R.) Availability of presentence reports to counsel for convicted person.

Provides that counsel representing a person who has been convicted of a crime for which a presentence report was prepared by a probation officer may be provided a copy of the report, without a court order, when the convicted person is pursuing a post-conviction remedy. *Passed the House (98-Y, 0-N); passed the Senate (40-Y, 0-N); signed by the Governor. ACLU supported.*

HB 203 (Alexander) Compensation for Wrongful Incarceration. Permits the General Assembly to compensate persons who have been wrongfully incarcerated as determined by writs of innocence based on non-biological evidence or who have been granted an absolute pardon. Under current law, guidelines for compensation for wrongful incarceration apply only to individuals granted writs of actual innocence based solely on biological evidence. *Passed the House (98-Y, 0-N); passed the Senate (40-Y, 0-N); signed by the Governor. ACLU supported.*

HB 314 (McClellan) DNA Data Bank. As introduced, the bill allows a person to determine if his or her DNA profile is included in the state's data bank and to challenge the legality of inclusion. As amended and passed by the House, the bill permits the defendant or his lawyer to obtain the results of DNA testing upon request made during investigation of a criminal offense. The amended bill also expands the DNA database to include any type of human biological evidence, not just blood, saliva or tissue samples. *Passed the House (99-Y, 0-N); passed Senate with amendments (40-Y, 0-N); Senate amendments agreed to by the House (94-Y, 2-N); signed by the Governor. ACLU supported.*

HB 476 (Carrico) Use of Polygraph and Other Lie Detection Devices. Allows for the use of lie detection tests other than polygraphs, such as voice stress analyzers, so long as they are subject to the same regulations as polygraphs. *Passed the House (97-Y, 0-N); passed the Senate (22-Y, 18-N); signed by the Governor. ACLU opposed.*

HB 500 (Gilbert); HB 456 (Herring) Certificates of Analysis at Preliminary Hearing without Expert Testimony. In preliminary hearings, allows certificates of analysis and reports to be admitted as evidence without the testimony of the lab analyst who produced the reports. *HB 456 was incorporated into HB 500. HB 500 passed the House (99-Y, 0-N); passed the Senate with a substitute (35-Y, 5-N); Senate substitute approved by the House (95-Y, 1-N); signed by the Governor. The ACLU opposed these bills.*

HB 1121 (Gilbert); SB 486 (Hurt); HB 254 & HB 255 (Miller P.) Allows Law Enforcement to Access Juvenile Records. Requires the Department of Juvenile Justice to send otherwise confidential juvenile records to law enforcement whenever there is an indication of gang activity. *HB 254 and HB 255 were incorporated into HB 1121. HB 1121 passed House (96-Y, 0-N); passed Senate with a substitute (40-Y, 0-N); House approves Senate substitute (98-Y, 0-N); signed by the Governor. SB 486 passed Senate (40-Y, 0-N) and House with substitute (95-Y, 0-N); House substitute approved by Senate (40-Y, 0-N); signed by the Governor. ACLU opposed.*

SB 259 (Lucas) Detention of Juveniles Being Tried as Adults. Provides that juveniles whose criminal cases are transferred to circuit court (where they will be tried as adults) be detained in juvenile detention centers rather than adult correctional facilities. Juveniles deemed to be a threat to security or the safety of other juveniles may be moved to an adult facility when authorized by a judge. *Passed the Senate with amendments (40-Y, 0-N); passed the House with a substitute (95-Y, 0-N); signed by the Governor. ACLU supported.*

SB 387 (Obenshain); SB 149 (Stuart) Video-Conferencing to Confront Lab Analysts. Allows the prosecution to use two-way video conferencing to confront lab analyst witnesses unless the defendant specifically objects to the use of the technology. The U.S. Supreme Court in *Melendez-Diaz v. Massachusetts* ruled that a defendant has the constitutional right to confront the lab analysts and breath test operators who perform the tests on evidence used against the defendant at trial. *SB 149 was incorporated into SB 387; passed the Senate (40-Y, 0-N); passed the House with a substitute (95-Y, 0-N); Governor recommended an amendment to SB 387; Governor's amendment agreed to by the Senate (40-Y, 0-N) and the House (94-Y, 0-N). ACLU opposed.*

Failed

HB 14 (Marshall, R.G); HB 67 (Toscano) Self-Incrimination in Questions of Extra-marital Affairs. Allows the court to assume that refusing to answer questions pertaining to adultery, sodomy, buggery outside of marriage, or fornication during divorce, separation or custody/visitation proceedings constitutes an affirmation that those crimes were committed. *HB 67 was incorporated into HB 14. HB 14 passed the House (49-Y, 48-N); passed by indefinitely in Senate Courts of Justice Committee (12-Y, 3-N). ACLU opposed.*

HB 183 (Morrissey); SB 70 (McEachin) Expungement of Criminal Conviction Record.

Allows a person convicted of a misdemeanor to petition to have his conviction expunged after ten years have passed since the conviction and upon showing that opportunities for employment, education or professional licensure have been prejudiced by the existence of the criminal record. SB 70 is similar except it requires only five years to have passed since conviction. *HB 183 left in House Courts of Justice Committee. SB 70 was passed by indefinitely in Senate Courts of Justice Committee. ACLU supported.*

HB 184 (Morrissey) Petition to Vacate Conviction upon Finding of New Evidence and with Support of Commonwealth's Attorney. Allows any person convicted of a crime, who has the support of the Commonwealth's attorney, to petition the court to vacate a guilty judgment upon the discovery of new evidence. *Left in House Courts of Justice. ACLU supported.*

HB 226 (Watts) Eligibility of TANF Assistance. Provides that a person who is otherwise eligible to receive temporary assistance for needy families (TANF) benefits shall not be denied assistance solely because he has been convicted of a felony offense of possession of a controlled substance provided he complies with all obligations imposed by the court, has completed substance abuse treatment, and participates in drug screenings. *Left in House Health, Welfare and Institutions Committee. ACLU supported.*

HB 483 (BaCote) Attorneys for Juveniles in Correctional Centers. Provides for a court-appointed attorney to assist individuals confined in juvenile correctional centers in legal matters related to their incarceration. *Continued to 2011 by House Courts of Justice Committee. ACLU supported.*

HB 528 (Nixon) Notification of Physical Restraint of Student. Requires the school principal to notify parents when their child has been physically restrained at school. *Continued to 2011 by the House Education Committee. ACLU supported.*

HB 681 (Miller, J.H.); SB 643 (Reynolds) Arrest & Search Powers for Class 1 & 2 Misdemeanors. Allows law enforcement officers to arrest and thus search any person for Class 1 or 2 misdemeanors. Under current law, law enforcement officers must release the person on a summons for most Class 1 and 2 misdemeanors. *HB 681 passed the House (68-Y, 28-N); passed by indefinitely in Senate Courts of Justice Committee (9-Y, 5-N). SB 643 was defeated in Senate Courts of Justice Committee (5-Y, 10-N). ACLU opposed.*

HB 685 (Miller, J.H.) Criminalizing "Sexting" by Juveniles. Prohibits the solicitation, possession, production, publication, or creation of child pornography committed by juveniles, punishable as a Class 3 misdemeanor. If the judge determines that the facts warrant a finding of guilt and it is the first time the juvenile is charged with sexting, the judge may defer the charge with the agreement of both the juvenile and Commonwealth's attorney, and dismiss it after successful completion of probation by the juvenile. *Continued to 2011 by House Courts of Justice Committee. ACLU opposed.*

HB 793 (Morrissey) Videotaping Requirements for Certain Confessions. Requires confessions for serious felonies, such as rape and abduction, to be videotaped in order for them to be admissible in court. *Left in House Courts of Justice. ACLU supported.*

HB 911 (Bell, Rob) Charging Juveniles as Adults. Mandates juveniles 14 years of age or older charged with adult felony crimes to have all ancillary charges transferred to circuit court. *Passed the House (73-Y, 25-N); defeated in Senate Courts of Justice (5-Y, 10-N). ACLU opposed.*

HB 925 (Bell, Robert B.); SB 59 (Martin) Public Assistance & Substance Abuse Screenings. Requires local departments of social services to screen all Virginia Initiative for Employment not Welfare Program (VIEW) applicants for drug use and to conduct drug tests on all those who fail to pass the drug screen. Applicants who fail the drug test or who refuse to take the test are ineligible for benefits. *HB 925 was continued to 2011 by Health, Welfare, and Institutions Committee. SB 59 was left in Senate Finance Committee. ACLU opposed.*

HB 1004 (Athey) Expanding Residency Restrictions for Sex Offenders. Expands the residency restrictions for sex offenders to include school bus stops, all community parks or playgrounds, recreation centers, and public pools. Under current law, certain sex offenders are prohibited from living within 500 feet of a child care center, school, or public park that shares a boundary with a school that regularly uses that park for activities. *Left in House Courts of Justice Committee. ACLU opposed.*

HB 1134 (Morgan) Decriminalization of Marijuana. Decriminalizes the possession of marijuana by imposing a civil fine of not more than \$500 rather than a criminal penalty. This bill also lessens the criminal penalty for distribution of small amounts of marijuana by increasing, from one-half to one ounce, the amount that triggers a felony charge. *Left in House Courts of Justice Committee. ACLU supported.*

HB 1136 (Morgan) Expands the Scope of Medical Marijuana. Allows the use of prescribed marijuana for the treatment of any medical condition. Currently, medical marijuana can be prescribed only for treatment of cancer and glaucoma. *Left in House Courts of Justice Committee. ACLU supported.*

HB 1366 (Cline) Sex Offenders Banned from Child Day Care Centers. Prohibits sex offenders from entering the property of child day care centers at all times, not solely times in which the property is used for daycare. Several properties, such as churches, house child day care centers but are also used for other purposes, and therefore sex offenders would be prohibited from entering them. *Left in House Courts of Justice Committee. ACLU opposed.*

SB 260 (Lucas) Background Checks in Hiring of Mental Health and Substance Abuse Providers. Permits licensed mental health and substance abuse providers to hire employees who have been convicted of misdemeanor violations relating to assault and battery so long as the offense was related to substance abuse or mental illness that has since been treated, or the conviction occurred more than ten years previously. *Passed the Senate (40-Y, 0-N); passed the House with a substitute (71-Y, 27-N); House substitute rejected by the Senate (1-Y, 39-N); sent to conference committee; failed to pass. ACLU supported.*