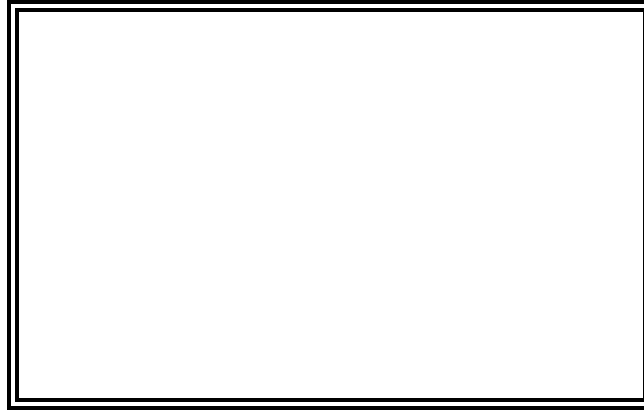


Civil Liberties Review

2004 Session of the Virginia General Assembly



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American Civil Liberties Union of Virginia

May 2004

About the Civil Liberties Review

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

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

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May 2004

Message to Our Supporters

Each year during the Virginia General Assembly, the ACLU of Virginia works tirelessly--supporting initiatives to expand or protect our civil liberties and thwarting legislation that negatively affects our freedoms. As you can imagine, here in the Commonwealth we spend far more time on the latter than the former.

We devote significant resources to our legislative program. When the General Assembly is in session, the staff sifts through nearly 3,000 bills to identify the ones we will oppose or support. Our lone lobbyist, with help from our legal, executive and clerical personnel (that is, everyone else on staff), works far more than fulltime during the session, educating legislators, testifying at committee meetings, and communicating with the ACLU members who serve as grassroots lobbyists.

On issues that draw the attention of other rights groups, we carefully orchestrate our collective efforts to maximize the impact of all the organizations involved. Reproductive freedom and the death penalty come to mind as longstanding issues on which our voice is amplified by coordinating our work with other groups. In addition, we have been able to successfully coordinate our lobbying efforts with other groups on separation of church and state, gay and lesbian rights, and civil rights.

But there are many matters on which we are practically alone. Privacy and due process rights are frequently our exclusive province. And on perhaps the most fundamental and important right of all, free speech, we are often the only organization championing this vital cause. No session of the General Assembly closes without at least a few threats to free speech, and in some sessions, like this one, there may even be a bill or two that expands expressive rights. I am proud to say that our affiliate has a strong record in the General Assembly of successfully promoting the free speech rights of all citizens.

These are critical times for the ACLU's voice to be heard. In the post-9/11 world, lawmakers tend to believe that anything goes, so long as it strengthens government. Liberty can, and does, take a beating under these conditions.

What we do could not be achieved without what you do, which is to support our work. Thank you very, very much.

Sincerely,

*Charles Tierney
President*

Free Expression

Two important bills defining free speech rights passed the General Assembly this year. Both addressed subjects that have been the target of ACLU legal threats. The first, SB 76, prevents local governments from limiting the amount of time political signs can remain on private property. Before this bill was passed, the ACLU had promised lawsuits against several localities that prohibited the posting of campaign signs more than a designated number of days prior to an election. One locality did not permit campaign signs more than 14 days before elections.

The second bill appears to have grown out of an election-day incident last year. The ACLU threatened to file a lawsuit when a campaign worker was forced to leave his spot outside a church that was serving as a polling place. Now, there is a law clarifying the right to distribute campaign literature at all polling places, including those that are on privately owned property.

*Campaign signs
and materials
receive extra
protection.*

PASSED

HB 767 (Hurt) Distribution of Campaign Materials at Polling Places. Makes it clear that it is permissible to distribute campaign materials on election day on the property on which a polling place is located, except as specifically prohibited by law. *The bill passed the House and the Senate unanimously. The ACLU supported this bill.*

SB 76 (Potts) Local Regulations on Campaign Signs. Prohibits local governments from limiting the amount of time that political campaign signs may remain on private property. This does not affect any local ordinances regarding signs on public property. *The bill passed the Senate, 38-2 and the House, 94-5. The ACLU supported this bill.*

SB 336 (Stolle) Judicial Inquiry and Review Commission. Eliminates confidentiality with respect to any evidence of alleged misconduct concerning a judge who is up for election or reelection when such evidence is transmitted to the House and Senate Courts of Justice Committees or to any member of the General Assembly. *The bill passed the Senate, 40-0 and the House, 98-1. The original bill lifted the gag rule on complainants. The ACLU preferred and supported the original version, but sees the final bill as a small step forward to opening the all too secretive process.*

FAILED

HB 189 (Black)/HB 475 (Nixon) Filters on Library Computers. Required libraries to use blocking software on computers to prevent juveniles from accessing sexually explicit materials on the Internet. HB 189 went even further by requiring any library receiving state money to block access to such sites to juveniles and adults. *Both bills were killed in house Science and Technology, 11-7. The ACLU opposed these bills.*

HB 804 (Peterson) Political Billboards. Adds political advertising to the kinds of signs near of public highways that are subject to state regulations. Under current law in Virginia, regulations for billboards and other messages near public highways apply only to commercial advertising. *An amended version of the bill removing political signs from state regulation was killed in House Privileges and Elections. The ACLU opposed the original bill but supported the amended version.*

Church and State

Virginia's old, ignored and largely eroded "blue laws" were finally removed entirely from the Code this year, making it legal now to transact almost any kind of legitimate business on Sunday. The bill passed the Senate unanimously and with only token opposition in the House.

Legislators passed a resolution encouraging the Supreme Court to strike down the California appellate court decision banning "under God" from the Pledge of Allegiance when recited in public schools. Another resolution, asking Congress to give states the right to display the Ten Commandments in public buildings and keep "under God" in the Pledge, passed the House of Delegates but failed in the Senate Rules Committee.

*Virginia blue laws
are finally gone;
voucher bills fail
again.*

Encouragingly, support for a school voucher-like program may be fading. Barred by the Virginia Constitution from providing direct taxpayer support for parochial schools, lawmakers have instead sought to allow tax credits for donations made to non-profit groups that then subsidize religious and other private schools. There was little discussion of the issue this year. The two House bills were summarily carried over to 2005.

PASSED

SJ 89 (Mims) Study; Incorporation of Churches. Establishes a joint subcommittee to study the issues surrounding the incorporation of churches in Virginia. *The bill passed the Senate and the House unanimously. The ACLU supported this bill.*

HR 14 (Cole) Resolution; Pledge of Allegiance. Encourages the United States Supreme Court to uphold in *Elk Grove Unified School District v. Newdow* a public school district policy that keeps the phrase "under God" in the Pledge of Allegiance. *This resolution passed the House, 86-14. It did not have to pass the Senate. The ACLU opposed this resolution.*

SB 659 (Quayle) Abolishes Sunday "Blue laws." Repeals the section of the VA Code that prohibits working or transacting business on Sunday. *The bill passed the Senate, 40-0 and the House, 88-9. The ACLU monitored this bill.*

FAILED

HB 1036 (Saxman)/HB 1280 (R. Marshall) Tax Credits for Education. Awards tax credits to businesses for contributions made to nonprofit organizations that provide tuition grants to private schools. *This bill was continued until 2005 in House Appropriations, 24-1. The ACLU opposed this bill because the bill failed to clarify that tax credits would not be awarded for support of religious institutions.*

HJ 285 (Black) Resolution; Religious faith and State Sovereignty. Asks Congress to pass legislation declaring that the power to display the Ten Commandments, to recite the Pledge of Allegiance and the national motto, be among the powers reserved to the states and be exempt from the jurisdiction of federal courts. *The resolution passed the House, 70-29 and was killed in Senate Rules. The ACLU opposed this resolution.*

Death Penalty

Despite the ACLU of Virginia's timely publication last November of *Broken Justice: The Death Penalty in Virginia*, legislators all but ignored reform of Virginia's capital punishment system. A bill to eliminate the execution of juveniles joined returning moratorium and abolition bills, but none were warmly greeted by the General Assembly. The most positive sign was the fact that 24 legislators co-patroned the juvenile death penalty bill. Even that bill, however, was defeated in committee on a 21-0 vote.

Lawmakers refuse to address Virginia's flawed death penalty system.

PASSED

HB 755 (Hurt) Death penalty sentencing orders. Provides that when a judge sets aside a death sentence and imposes a life sentence, the order shall include an explanation for the sentence reduction. *Passed the House, 97-3 and the Senate, 40-0. The ACLU monitored this bill.*

HB 848 (S.C. Jones)/SB 234 (Lambert) Claims; Julius Earl Ruffin. Provides relief for Julius Earl Ruffin who was incarcerated between 1982 and 2003 for a crime that scientific evidence later revealed he did not commit; he was granted an absolute pardon on March 19, 2003. Under the bill, the Commonwealth will provide a lump-sum payment to Mr. Ruffin of \$325,000 and a \$900,000 annuity paid over 30 years. *Passed the House, 87-13 and the Senate, 40-0. The ACLU monitored this bill.*

SB 177 (Stolle) Appointment of counsel in Capital Cases. Requires that at least two attorneys be appointed in capital cases, including an attorney from Public Defenders Commission. *Passed the Senate, 39-0 and the House, 100-0. The ACLU monitored this bill.*

FAILED

HB 129 (Hargrove) Abolition of the Death Penalty. Abolishes the death penalty for all Class 1 felonies after July 1, 2004. *HB 129 bill was killed in House Courts of Justice, 22-0. The ACLU supported this bill.*

HB 134 (R. Marshall) Prohibiting the Execution of Pregnant Women. Originally prevented the execution of a pregnant woman, but later amended to require that the Department of Corrections develop regulations to assure that no woman sentenced to death shall be put to death while she is pregnant. *Passed the House, 95-2 and was carried over until 2005 in Senate Courts of Justice, 11-4.*

HB 1341 (Eisenberg) Abolition of the Juvenile Death Penalty. Changes the age of eligibility for the death penalty from the current age of 16 to 18 at the time of the offense. *This bill was tabled in House Courts of Justice, 21-0. The ACLU supported this bill.*

SB 47 (Marsh) Moratorium on the Death Penalty. Extends a stay on executions in the Commonwealth for prisoners sentenced to death. *This bill was killed in Senate Courts of Justice, 10-4. The ACLU supported this bill.*

Equal Rights

Despite the threat of a legal challenge from the ACLU, the Governor signed a bill that prohibits methadone clinics from being placed within one-half mile of schools and day care centers. Because there are so many educational and child care facilities in urban areas, the new law is expected to prevent methadone clinics from locating in many Virginia cities. The bill is a capitulation to those who do not want methadone clinics near their neighborhoods, but ignores the fact that methadone clinics tend to reduce crime overall and that individuals receiving methadone treatment are protected under the Americans with Disabilities Act. That protection includes their right to geographically accessible methadone clinics.

A bill that would have weakened Virginia's fair housing law passed the House, but fell in the Senate after a broad coalition of groups joined forces to oppose it. The bill, HB 1245, removed from the law the presumption that housing advertisements referring to religion, race, national origin and gender are discriminatory. Under the pretext of promoting religious freedom, the patron sought to make it easier for landlords and realtors to include preferential language in their housing advertisements.

Fair housing law survives attack, but methadone clinics face new barriers.

Bills requiring the police to keep records on racial profiling and easing the process for restoring voting rights after a felony conviction failed again this year. None received significant support, failing to survive their initial committee votes.

PASSED

HB 745 (O. Ware) /SB 607 (Wampler) Methadone Clinics. Requires that methadone clinics be located one-half mile or more from day care centers and schools. *HB 745 passed the House, 97-3 and the Senate, 39-0. SB 607 passed the Senate, 39-1 and the House, 89-9. The ACLU opposed both bills.*

SB 24 (Marsh) Interpreters at Mental Commitment Proceedings. Requires a judge or magistrate to appoint an interpreter for a non-English-speaking person who is the subject of, or a witness in, a mental commitment proceeding. *The bill passed the Senate, 39-0 and the House, 97-1. The ACLU supported this bill.*

FAILED

HB 156 (Reid) Prohibiting Admission of Illegal Immigrants to Public Universities. Provides that public institutions of higher education may not knowingly accept for enrollment any illegal immigrant, and directs each institution, upon discovering an enrollment of an illegal immigrant, to provide for the prompt dismissal of any such person from the institution. *The bill passed the House, 72-23 and was killed in Senate Education and Health, 12-2-1. The ACLU opposed this bill.*

HB 838 (Ebbin) Eligibility for In-State Tuition for Illegal Immigrants. Provides eligibility for in-state tuition for illegal immigrants if they meet certain criteria set forth by the bill, including living in Virginia for over five years, graduating from a Virginia high school and if they or their

parents pay Virginia taxes. *The bill was tabled in House Education, 22-0. The ACLU supported this bill.*

HB 1014 (Dillard)/SB 479 (Potts) Standards of Quality in Public Schools. Reorganizes the Standards of Quality and makes substantive amendments that are focused on failing schools, often in minority areas of the state. The bill will not take effect unless the state's share of the funding for the provision is appropriated in the 2004 budget. *HB 1014 passed the House, 79-10 and the Senate, 40-0. SB 479 passed the Senate, 40-0 and the House, 86-14. The ACLU monitored this bill.*

HB 1104/HJ 204 (Moran)/SB 172/SJ 4 (Miller) Constitutional Amendment- Restoration of Civil Rights. Authorizes the General Assembly to provide by general law for the restoration of civil rights for non-violent felons. The Constitution currently provides for the restoration of such rights by the Governor only. These bills allow the Governor to retain that right and add the General Assembly alternative. Constitutional amendments have to pass two legislative sessions with an intervening election before they can go on the ballot. *These bills passed last year, but were all killed this year in House Privileges and Election. The ACLU supported these bills.*

HB 1245 (Griffith) Fair Housing Law; Discrimination in Advertising. Weakens Virginia's fair housing law by removing the presumption that housing advertisements with references to race, religion, sex or national origin are discriminatory. HB 1245 struck out the "prima facie" language and replaced it with "may" be discriminatory, when dealing with advertising. *Passed the House, 67-33 and was killed in Senate General Laws on a tie vote, 6-6-2. The ACLU opposed this bill.*

SB 82 (Puller) Restoration of Right to Vote; Marijuana Felonies. Provides that a person convicted of a felony for the distribution of marijuana (five pounds or less) or possession with the intent to distribute the same amount, have completed their sentence at least 10 years previously, and has no other criminal convictions, can petition for restoration of their right to vote. *The bill passed the Senate, 35-5 and was continued until 2005 in House Militia, Police and Public Safety. The ACLU supported this bill.*

SB 225 (Marsh) VA Racial Profiling & Traffic Statistics Reporting Act. Requires that each local and state police officer collect certain information pertaining to traffic stops, including race, ethnicity, color, age and gender of the alleged traffic offender, and to record the specific reason for the stop, whether the person was interrogated, charged, arrested or if a written citation or oral warning was issued. *The bill was continued until 2005 in Senate Transportation, 15-0. The ACLU supported this bill.*

SJ 94 (Ticer) Equal Rights Amendment. Ratifies the Equal Rights Amendment to the U.S. Constitution that was proposed by Congress in 1972. *The bill was killed in Senate Privileges and Elections, 8-7. The ACLU supported this bill.*

Gay and Lesbian Rights

At a time when gay and lesbian rights have taken dramatic, albeit controversial, steps forward in many parts of the nation, Virginia lawmakers either failed to act to protect gays and lesbians or introduced measures to reduce their rights under Virginia law.

HB 751 sadly underscores the status of gay and lesbian rights in the Virginia General Assembly. The bill, which passed easily in the House and Senate, not only bars civil unions but goes far beyond that by also banning partnership contracts or other arrangements between persons of the same sex that attempt “bestow the privileges or obligations of marriage.” The sweeping language may void contracts between same-sex couples that define child custody arrangements, medical decision making, survivor benefits and other important relationships. The ACLU expects to challenge this law in court.

Lawmakers ban civil unions and other contracts between gays and lesbians.

Lawmakers also passed a resolution urging Congress to amend the Constitution to require that marriage only be permitted between a man and a woman. They tried, but failed on a close vote in the House, to pass a law prohibiting the Virginia Housing Development Authority from allowing two or more persons not related by blood or marriage to combine incomes in order to qualify for assistance. The bill would have prevented gay couples from pooling resources to obtain loans.

Legislators could not even fix the Virginia’s clearly unconstitutional sodomy law. Following the U.S. Supreme Court’s decision last year in *Lawrence v. Texas*, all state laws regulating the private intimate acts of consenting adults were rendered unconstitutional. The momentum to repeal the Virginia sodomy law broke down when legislators could not agree on how to punish sodomy in public places. Some wanted the punishment to be the same as for any sex act in public (the ACLU position), while others wished to create harsher punishment for gay public sex than heterosexual public sex.

Given the anti-gay atmosphere, it was surprising that a bill allowing employers to extend insurance policies to domestic partners passed the House for the very first time. Although close--the vote was 50 to 49--and later rejected by the Senate committee, it was a sign of hope.

PASSED

HB 751 (R. Marshall) Affirmation of Marriage Act. States that a civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited and that such an arrangement entered into in another state is void in Virginia and any contractual rights created thereby are void and unenforceable. *Passed the House, 79-18 and the Senate, 27-10. The Governor amended the bill to strike out the “partnership contract and other arrangement” language, but the amendment was rejected and the bill was passed by veto proof margins. The ACLU opposed this bill.*

HJ 187 (McDonnell)/SJ 91(Cuccinelli) Defense of Marriage Resolution. Urges Congress to propose a constitutional amendment to protect the fundamental institution of marriage as a union between a man and woman and to declare that civil unions, domestic partnerships, or other similar relationships as a

substitution for such marriage shall not be valid or recognized in the U.S. *HJ 187 passed the House, 82-12 and the Senate on a voice vote. SJ 91 passed the Senate, 29-11 and the House, 74-23. The ACLU opposed these resolutions.*

FAILED

HB 187 (Black) Virginia Housing Development Authority (VHDA); Re-Implementing the “Family Rule.” Prohibits the VHDA from allowing persons unrelated by blood or marriage—including single mothers, elderly persons, gay and lesbian couples—from pooling resources for VHDA loans. Current VHDA policy allows such loans. *Reported from House General Laws, 12-9 but was killed on the House floor, 54-44. The ACLU opposed this bill.*

HB 727 (R. Marshall) Impeachment of Judges. Provides that any judge who rules Virginia’s prohibition against same sex marriage unconstitutional to have committed malfeasance and be subject to impeachment. *The bill was killed in House Courts, 19-3. The ACLU opposed this bill.*

HB 880 (Plum) Prohibits Discrimination Based on Sexual Orientation. Adds "sexual orientation" as prohibited discrimination and for action against such discrimination by a human rights commission. Applies only to counties with the urban county executive form of government. *The bill was killed in House Counties, Cities and Towns, 19-3. The ACLU supported this bill.*

HB 1016 (Dillard) Health insurance Coverage for Household Members. Permits insurance policies to be extended to include coverage for persons with whom the primary insured has an insurable interest and who reside in the same household as the insured. Current law only permits coverage to be extended to a spouse or dependent children. *The bill passed the House, 50-49 and was continued until 2005 in Senate Commerce and Labor, 9-6. The ACLU supported this bill.*

HB 1054 (Albo) Revises the ‘Crimes Against Nature’ Statute. Adds a new section to the Code, making sodomy in a public place a felony, but does not repeal the existing law that does not differentiate between public or private acts of sodomy. This bill was attempting to bring Virginia law into compliance with the Supreme Court ruling in *Lawrence v. Texas* that struck down laws prohibiting private, consensual sodomy between adults. *The bill passed the House, 97-1 and was continued until 2005 in Senate Courts of Justice. The ACLU opposed this bill.*

SB 473 (Ticer) Hate crimes. Adds sexual orientation to the Virginia hate crimes statute. *The bill was killed in Senate Courts of Justice, 8-7. The ACLU supported this bill.*

SB 475 (Ticer) Prohibits Employment Discrimination Based on Criminal Convictions. Prohibits discrimination in employment because of criminal convictions, unless the criminal conviction relates directly to the occupation or profession for which employment is sought. *The bill was killed in Senate Commerce and Labor, 14-1. The ACLU supported this bill.*

SB 477 (Ticer) Revises the ‘Crimes Against Nature’ Statute. Provides that sodomy is not a crime when all persons are consenting adults who are not in a public place. Charges the act of public sodomy as a misdemeanor, the same as any other type of public sex act. *The bill passed Senate Courts of Justice, 9-6 but was killed when the full Senate sent it back to committee and it was continued until 2005. The ACLU supported this bill.*

Reproductive Rights

Despite a profusion of bills threatening reproductive freedom, by the end of the session only one anti-choice measure had passed. That bill, which makes the killing of a fetus a separate felony, was promoted as a means of protecting pregnant women, but is really an attempt by the anti-choice lobby to award legal rights to fetuses by making them independent victims of crime.

Although all the other anti-choice bills failed, many were close calls. An attempt to ban distribution of emergency contraception on public university campuses passed the House, but was killed in the Senate Education and Health Committee on a 10-4-1 vote. A bill to require notarized parental consent before issuing emergency contraception to a minor also passed the House, but died in the same Senate committee, 9-4-2.

Lawmakers become more creative with anti-choice bills, but only feticide passes.

Similarly, TRAP bills, which require abortion clinics to meet the standards for ambulatory surgery centers, passed the House, but failed to survive in the Senate Education and Health Committee. Another bill forcing all abortions to be performed in a hospital or in a clinic within 15 miles of a hospital died in the House Health, Welfare and Institutions Committee. Both of these bills were attempts to diminish the number of abortions performed by making clinics less accessible and the procedure more expensive. There is no medical reason for creating these onerous requirements.

For the first time here or apparently anywhere else anti-choice legislators introduced a bill requiring anesthesia to be administered to a fetus before a doctor could perform a second or third trimester abortion. The House version of the bill passed, but it and the Senate version were voted down in the Senate Education and Health Committee. Much like the feticide bills, anesthesia legislation is designed to define the fetus apart from the pregnant women, thereby laying the groundwork for giving separate legal rights to fetuses.

One lawmaker even tried to remove the obligation of the state to dispense family planning information with marriage licenses. The bill went through several permutations and ultimately did not survive a vote of the House.

PASSED

HB 1 (Cosgrove)/SB 319 (Stolle) [HB 196 (Black)/HB 230 (Kilgore)/HB 378 (Lingamfelter)/HB 671 (Bell)/HB 772 (McDougle)] Feticide. Provides that a fetus can be a victim of murder. *HB 196, HB 230, HB 671 and HB 772 were all rolled into HB 1. HB 1 passed the House, 77-28 and the Senate, 33-7. SB 319 passed the Senate, 30-8 and the House, 76-23. The ACLU opposed these bills.*

FAILED

HB 114 (R. Marshall) Abortions, 15 Miles within an Emergency Room. Requires that any abortion must be performed in a hospital or in a clinic located within 15 miles from a hospital emergency room. *This bill was passed by indefinitely in House Health, Welfare and Institutions, 14-8. The ACLU opposed this bill.*

HB 116 (R. Marshall)/HB 1290/SB 146 (Cuccinelli) Targeted Regulations of Abortion Providers (TRAP). Requires all abortion clinics to be licensed as ambulatory surgery centers, making it more difficult and more expensive to have an abortion. *HB 116 and HB 1290 both passed the House and with SB 146, were killed in Senate Education and Health, 9-6.*

HB 191 (Black) Domestic relations; applicants for marriage license. Allows marriage licenses to be issued without providing information on birth control, genetic disorders, or the availability of family planning clinics. *The bill was amended in committee, but ultimately failed to on the House floor by a 44-56 vote.*

HB 381 (Lingamfelter) Parental Notification for Health Services. Any government agency providing the following health services to minors- STDs, pregnancy, drug use, promiscuous sexual behavior and contemplation of suicide and emergency contraception- must notify parent(s) within 48 hours of providing such services. *This bill was passed by indefinitely in House Health, Welfare and Institutions, 16-6. The ACLU opposed this bill.*

HB 479 (Black) Reporting Abortion Complications. Requires physicians performing abortions or treating abortion complications to report on forms from the Board of Health. *Passed by indefinitely in House Health, Welfare and Institutions, 12-9. The ACLU opposed this bill.*

HB 1315 (Black)/SB 371 (Cuccinelli) Fetal Anesthesia. Requires fetal anesthesia to be administered during second and third trimester abortions. *HB 1315 passed the House, 68-32 and was killed with SB 371 in Senate Education and Health, 9-6. The ACLU opposed these bills.*

HB 1403 (Byron) Parental Consent for Emergency Contraception. Requires notarized parental consent before a physician can prescribe emergency contraception to a minor. *The bill passed the House, 59-41 and was killed in Senate Education and Health, 9-4-2. The ACLU opposed this bill.*

HB 1414 (R. Marshall) Emergency Contraception on University Campuses. Prohibits public universities from prescribing and dispensing emergency contraception to students. *The bill passed the House, 52-47 and was killed in Senate Education and Health, 10-4-1. The ACLU opposed this bill.*

SB 456 (Whipple) Birth Control Protection Act. Provides that contraception does not constitute abortion and is not subject to or governed by the abortion laws in Virginia. *The bill passed Senate Education and Health, 10-4-1 but was referred back to committee and continued until 2005. The ACLU supported this bill.*

Privacy

Following revelations last summer that data on the movements of Smart Tag and EZ PASS vehicles could be traced by police without a warrant or any other justification, lawmakers overwhelmingly supported a bill requiring a court order or exigent circumstances before such information would be given to police. The ACLU had been highly critical of the unprotected driver records and urged legislators support the bill. The bill passed the House and the Senate unanimously.

Last summer also saw Virginia's first juvenile nudist camp, eliciting a bill banning such camps. The ACLU agreed that juvenile camps could be subjected to strict regulations, but argued against an outright ban as violation of the right to privacy and association. The bill passed easily.

***Police access to driver information is restricted.
Nudist camps for juveniles banned.***

Although it received virtually no support from legislators, a bill requiring government bodies to perform privacy impact studies before using new technologies drew considerable attention. Had it passed, the state and any local governing council that intended to use technology such as facial recognition software, public surveillance cameras, or "photo-red" traffic monitoring systems would first be required to evaluate the impact of those technologies the privacy rights of citizens. The ACLU hopes this bill will return to a more accepting General Assembly next year.

Legislators passed a bill to study the feasibility of storing biometric and other personal data in drivers' licenses. The ACLU is against this proposal and will be present at study meetings to argue against the use of this new technology.

PASSED

HB 118 (Albo) Wiretaps. Expands the list of crimes for which the Attorney General may seek wiretap orders, including gang activity, drug dealing, organized crime, rape and terrorism. *Passed the House, 97-2 and the Senate, 40-0. The ACLU opposed this bill.*

HB 158 (Reid) Prohibiting Nudist Camps for Juveniles. Effectively prohibits nudist camps held solely for juveniles by requiring a parent, grandparent or guardian register for the camp and be present with each child that attends. *The bill passed the House, 98-2 and the Senate, 40-0. The ACLU opposed this bill.*

HB 543 (May) Gov't Data Collection & Dissemination Practices Act-Unique Identifiers. Prohibits filing or creating public records that contain more than the last four digits of any unique identifying number, unless such use is required by law or the record is exempt from disclosure. Unique identifiers include a social security, bank account, credit card, military service and driver's license numbers. *The bill passed the House, 92-8 and the Senate, 40-0. The ACLU monitored this bill.*

HJ 162 (Byron) Study; "Smart" Driver's Licenses and ID Cards. Establishes a joint subcommittee to study the desirability and feasibility of issuing driver's licenses and identification cards containing an embedded computer chip that stores biometric and other personal data. *Passed the House and Senate unanimously. The ACLU opposed this study.*

SB 148 (Cuccinelli) “Smart Tag” Information. Provides that data generated by automated toll collection systems, such as “Smart Tag,” during the use of toll facilities by individually identifiable vehicles can only be disclosed when required to do so by court order, with three reasonable exceptions. *The bill passed the Senate and the House unanimously. The ACLU supported this bill.*

FAILED

HB 19 (McQuigg)/HB 370 (Rust)/SB 92 (Devolites)/ SB 132 (Edwards)/SB 176 (Stolle) “Photo-red” Monitoring. These bills allowed for photo-monitoring systems to enforce traffic light signals all over Virginia and also repealed the July 1, 2005 sunset clause on the law allowing some localities to operate such systems now. *SB 92, SB 132 and SB 176 all passed the Senate unanimously and then died with all the House bills in House Militia, Police and Public Safety. The ACLU opposed these bills.*

HB 308 (R. Marshall) End-of-life Care Decisions. Excludes anyone with a ‘material interest’ in the death of an incapacitated person from being appointed legal guardian. Also requires, without exception, a prior written directive from an incapacitated patient before the removal of artificial hydration or nutrition can occur. *The bill was tabled in House Health, Welfare and Institutions, 21-1. The ACLU opposed this bill.*

HB 753 (May) Personal Information Privacy Act. Adds a section to the Code of Virginia called the “Personal Information Privacy Act”, which lists numerous restrictions on the use of social security numbers. *The bill was carried over until 2005 in House Science and Technology, 16-0. The ACLU monitored this bill.*

HB 948 (A. Howell) Social Security Numbers on Certain Court documents. Provides that only the last four digits of the debtor’s social security number shall appear on a copy of a docketed judgment. *The bill passed the House, 98-1 and was killed in Senate Courts of Justice, 12-3. The ACLU monitored this bill.*

HB 954 (Lingamfelter) Testing Drug offenders for STDs. Requires courts to order testing for sexually transmitted diseases for anyone arrested for any drug offense. Does not require a conviction, only a finding of probable cause. *The bill was tabled in House Courts of Justice, 22-0. The ACLU opposed this bill.*

HB 990 (Hugo)/HB 1259 (Bland) Special License Plates for DUI Offenders. Requires persons convicted of drunk driving who have registered motor vehicles in Virginia to have special red or yellow license plates to identify them as DUI offenders. *The bills were killed in House Courts of Justice, 22-0. The ACLU opposed both bills.*

HB 1304 (Lingamfelter) Invasive Technology Studies. Requires local government and the state to conduct impact studies before authorizing or prohibiting the use of invasive technologies, such as facial recognition software, public surveillance cameras or “photo-red” traffic monitoring systems. *Continued until 2005 in House Science and Technology, 18-0. The ACLU supported this bill.*

HR 15 (Welch) Safe and Free Resolution. A resolution defending the civil liberties and civil rights of all individuals living in the Commonwealth and denouncing provisions of the PATRIOT Act. *This resolution was tabled in House Rules, 15-0. The ACLU supported this bill.*

Criminal Justice and Due Process

It took a dozen years--and the final product is still intolerably flawed--but Virginia's lawmakers have finally eliminated the notorious 21-day rule. Under the old rule, persons convicted of a crime had only three weeks after sentencing to ask a court to review newly discovered evidence of innocence. After that, no new evidence of innocence, no matter how compelling, could be reviewed by any court. Two years ago, the law was changed to allow courts to review new evidence of innocence that emerged from biological samples in which DNA is present. The law passed this year allows convicted persons to seek review of any new evidence of innocence.

Twenty-one day rule is finally eliminated, but final product is flawed.

Unfortunately, under the new law, convicted persons may not avail themselves of this process unless they pled innocent to the crime of which they were accused. In addition, they are allowed to use the process only once, and the standard for deciding relief is unrealistically high. The law is a symbolic victory, certainly, but the real work to make this law usable has only begun.

Another symbolic victory, but one that could prove beneficial, was the formation of an Indigent Defense Commission. For many years, Virginia has failed to provide adequate legal representation for indigent defendants. With a commission overseeing training of attorneys and setting practice standards for court-appointed lawyers and public defenders, Virginia's indigent defense system will surely get more attention. The question that remains is whether or not the system will improve.

PASSED

HB 120 (Albo) Discovery in misdemeanor cases in circuit court. Provides that in any criminal prosecution for a misdemeanor by trial de novo in circuit court, the attorney for the Commonwealth shall have a duty to adequately and fully provide discovery. Currently, no discovery is available on appeal of misdemeanor convictions to circuit court. *The bill passed the House and the Senate unanimously. The ACLU supported this bill.*

HB 638 (Tata)/SB 271 (Quayle) Compensation for Wrongful Incarceration for a Felony Conviction. Provides guidelines for the compensation of persons wrongfully incarcerated. *HB 638 passed the House, 85-15 and the Senate, 38-1. SB 271 passed the Senate, 38-1 and the House, 80-17. The ACLU monitored these bills.*

HB 787 (Hurt) Confidentiality of court records; juveniles. Authorizes Commonwealth Attorney's to obtain the sealed juvenile court records of adults being charged for a violation of §18.2-308.2 (possession or transportation of firearms, stun weapons, tasers or concealed weapons by a convicted felon). The bill also allows a bondsman to know the status of his bond on a juvenile, without access to any other part of the juvenile's record. *Passed the House and Senate unanimously. The ACLU opposed this bill.*

HB 1056 (Moran)/SB 330 (Stolle) Indigent Defense Commission. Changes the name and some of the duties of the Public Defender Commission to the Indigent Defense Commission. The new commission

will establish criteria for court-appointed lawyers and provide training. All of the existing public defender offices are retained and no new ones were added. *HB 1056 passed the House, 92-7 and the Senate 40-0. SB 330 passed the Senate 40-0 and the House, 89-11. The ACLU supported these bills.*

SB 333 (Stolle) Issuance of Writ of Actual Innocence for Nonbiological Evidence. Ends the infamous 21- day rule by removing the time limit for filing a petition and allows any type of non-biological evidence to be used as evidence. However, the standard of proof is beyond a reasonable doubt; a defendant is only eligible if he pled not guilty at trial and there is a one time limit on the number of petitions that can be filed. *This bill passed the Senate, 40-0 and the House, 76-23. The Governor amended the bill to strike out the one petition limit, but the House rejected his amendments. The ACLU supported this bill, but with reservations.*

SB 575 (Obenshain)/HB 759 (Hurt) Sex Offender and Crimes Against Minors Registry Act. Adds to the Sex Offender Registry list any person who has solicited or has attempted to solicit children by use of a communications system. *The bills passed the Senate and the House unanimously. The ACLU opposed the bills.*

HB 871 (Byron) Infected sexual battery; penalty. Provides that any person who, knowing they are infected with HIV, syphilis or hepatitis B and engages in sexual behavior without disclosing the existence of such infection to the other person, is guilty of a Class 1 misdemeanor. *This bill passed the House, 99-0 and the Senate, 39-1. The ACLU monitored/opposed this bill.*

FAILED

HB 296 (R.L. Ware)/SB 49 (Marsh) Prisoner Litigation Reform Act. Changes the provisions regarding civil remedies in the Virginia Prisoner Litigation Reform Act by exempting cases claiming physical or sexual assault, rape, or sexual abuse. *Both bills were killed in Courts of Justice and referred to the Virginia Crime Commission to be studied this summer. The ACLU supported the bills.*

SB 93 (Devolites) Background checks at adult substance abuse treatment facilities. Permits the hiring of any applicant to provide adult substance abuse treatment, regardless of any conviction, if the employer determines that such criminal behavior was substantially related to the applicant's substance abuse and the person has been successfully rehabilitated and is not a risk to the patients. *Passed the Senate, 39-0 and was killed on the House floor, 41-55. The ACLU supported this bill.*

SB 218 (Marsh) Issuance of Writ of Actual Innocence for Nonbiological Evidence. Also ended the 21- day rule by allowing all convicted and incarcerated persons to petition the court for a writ of actual innocence with no time limit, no limit on the type of non-biological evidence and the standard was preponderance of evidence. *This bill was killed in Senate Courts of Justice, 15-0. The ACLU supported this bill*

SB 658 (Quayle/Ticer) Mandatory release on Parole. Provides that a prisoner whose parole is revoked on a technical violation would not be required to serve the minimum six months. A "technical violation" means any failure to adhere to conditions of parole that is not deliberate defiance of those conditions or does not constitute further criminal conduct or both. *The bill passed the Senate, 26-13 and was killed in House Militia, Police and Public Safety, 20-2. The ACLU supported this bill.*

Voting and Access to Government

In one of the scariest displays of legislative hubris in years, lawmakers passed a bill exempting themselves from the open meeting provisions of the Freedom of Information Act. Instead of being governed by the FOIA, all legislative meetings--except for floor sessions and meetings of full committees and subcommittees, which will remain open-- will now be opened or closed by the sole authority of the Joint Rules Committee. Previously, almost any meeting of more than two members of the House or Senate for the purpose of conducting business was open to the public. The ACLU opposed the new FOIA law and will seek to have it repealed when that becomes feasible.

Legislators exempt themselves from many open meetings provisions.

Lawmakers passed a bill to require the state to explore the issues surrounding electronic voting equipment. Like most new technologies, electronic voting was initially viewed as a panacea for the kinds of problems that occurred in Florida during the 2000 presidential election. Several years later, however, after considerable experimentation with electronic voting machines, the only thing that is certain is that electronic voting presents

election officials with a whole new set of problems, including, among others, difficulty of use by voters and vulnerability to tampering.

PASSED

HB 1357 (Griffith) Freedom of Information Act (FOIA); General Assembly Meeting Exemptions.

Exempts the legislature from the provisions of FOIA by giving the Joint Rules Committee (made up solely of legislators) the power to pass rules governing public access to General Assembly meetings. The bill specifically leaves floor sessions, committee and subcommittee meetings open and closes political caucus meetings. Finally, the Joint Rules Committee must hold regional public hearings at least 60 days before the adoption of any rules related to meetings. *The bill passed the House, 63-25 and the Senate, 26-14. The ACLU opposed this bill.*

HB 1396 (Cosgrove) Freedom of Information Act (FOIA); Record and Meeting Exemptions for the Virginia Commission on Military Bases. Exempts the Commission on Military Bases' records that contain information relating to vulnerabilities of military bases in Virginia and also exempts Commission meetings when discussing these records. The bill's provisions will expire on July 1, 2006 and goes into effect immediately. *The bill passed the House and Senate unanimously. The ACLU monitored this bill.*

HJ 174 (Hugo) Study; Voting Equipment. Creates a joint subcommittee to evaluate the Commonwealth's procedures and processes for evaluating, certifying, and handling voting equipment, including electronic voting equipment and verified paper ballots. *The bill passed the House and Senate unanimously. The ACLU monitored this bill.*

SB 457 Electronic Voting Systems; Correction Opportunities. Requires that electronic voting devices be equipped to provide an opportunity for the voter to correct any error in his/her vote

before a permanent record is preserved. *The bill passed the Senate and the House unanimously. The ACLU monitored this bill.*

FAILED

HB 348 (Albo) Identification Requirement for Casting Conditional Ballots. Requires that a person casting a conditional ballot had to provide an approved form of identification for his/her vote to count. The bill also removed the option allowing a person who is unable to provide such identification to sign a statement that the voter is who he/she claims to be. *The bill was continued until 2005, 22-0 in House Privileges and Elections. The ACLU opposed this bill because eliminating the signed statement option makes it more difficult for people to vote.*

HB 389 (Lingamfelter) Freedom of Information Act (FOIA); Elected Officials. Specifies that once a person is elected or reelected, they are subject to the provisions of FOIA upon certification of the election results by the state or local electoral board. *The bill was reported from House General Laws, 21-1 and was then killed on the House floor, 35-60. The ACLU supported this bill.*

HB 987 (Hugo)/HB 1200 (Cline)/SB 137 (Cuccinelli) Equipping Electronic Voting Systems with Voter-verified Paper Ballots. Requires that direct electronic voting devices be equipped to provide voter-verified paper ballots by January 1, 2007. *These bills were both continued until 2005 in the Privileges and Elections committees and the issue has been included in HJ 174, a study of voting equipment. The ACLU monitored these bills.*

HB 1023 (Dillard)/ SB 391 (Norment) Online Applications for Absentee Ballots. Allows a registered voter to request an application for an absentee ballot on the State Board of Election website. The voter would then have to fill out the ballot, sign it and send it in for verification. *SB 391 passed the Senate 40-0 and was killed with HB 1023 in House Privileges and Elections. The ACLU supported these bills.*

HB 1097 (Moran)/HJ 7 (Morgan)/ HJ 173 (Barlow)/SJ 3 (Deeds) Redistricting Commission. Establishes an independent Redistricting Commission to redraw Congressional and General Assembly district boundaries after each decennial census, either by statute or by constitutional amendment. *All the bills were killed in the Privileges and Elections committees. The ACLU monitored the bills.*

HJ 165 (Plum)/SJ 27 (Williams) Study; Redistricting process. Creates a joint subcommittee to evaluate the current Virginia redistricting process, review alternative redistricting processes used in other states, and consider constitutional and statutory changes in the process. *Both bills were killed in Rules committees. The ACLU monitored the bills.*

Legislative Studies & Commissions to Watch

Specially Created Legislative Joint Subcommittees

- **Court Records; Private Information** (Devolites). Continuing study to examine the issues surrounding the protection of information contained in the records, documents and cases filed in the courts of the Commonwealth.
- **Incorporation of Churches** (SJ 89 Mims). Examines the issues surrounding the incorporation of churches in Virginia in response to a recent ruling from the United States District Court for the Western District of Virginia.
- **Smart Driver's Licenses and ID cards** (HJ 162 Byron). Studies the desirability and feasibility of issuing driver's licenses and identification cards containing an embedded computer chip that stores biometric and other personal data.
- **Two-term Governor** (HJ 13 Landes). Examines the balance of power between the legislative and executive branches to support a two-term Governor in the Commonwealth.
- **Voting Equipment** (HJ 174 Hugo). Evaluates the Commonwealth's procedures and processes for evaluating, certifying, and handling voting equipment, including electronic voting devices.

Joint Commission on Health Care (JCHC)

- **Issues Affecting Women's Obstetrical and Gynecological Health** (HJR 144 Marshall). Although the original bill did not pass (HJR 144), JCHC will still be studying this issue. We are monitoring it for any reproductive freedom issues.
- **Mental Health Needs and Treatment for Young Minority Adults** (SJR 25 Marsh/HJR 155 Baskerville). Directs JCHC to study the mental health needs and treatment of young minority adults in the Commonwealth.

Virginia State Crime Commission (VSCC)

- **Capital Murder Statute; Aggravating Factors** (McDonnell). Not a legislative directive, but the VSCC will study whether "lying in wait/ambush" should be added as an aggravating factor to the death penalty statute.
- **Computer Crime Legislation** (Stolle). Not a legislative directive, but the VSCC will examine the statutory basis for computer crimes in the Code of VA, including a determination of the appropriate definitions and elements constituting an offense.
- **Mistaken Identity** (HJR 79 Purkey). Directs the VSCC to study mistaken identification in criminal cases by: (i) reviewing cases in the US where DNA profiling was used to exonerate persons convicted of a crime; and (ii) examining police lineup procedures.
- **Prisoner Litigation Reform Act** (SB 49 Marsh). Studies the issue of prisoner physical assault, sexual assault or rape and if they should or should not be covered under the Prisoner Litigation Reform Act. The Act provides procedures for pro se civil actions brought by prisoners incarcerated in state and local correctional facilities.

Joint Rules Committee

Freedom of Information Act (FOIA); General Assembly Meeting Exemptions. (HB 1357 Griffith)
The Joint Rules Committee will be setting rules governing public access to General Assembly meetings. The Committee must hold regional public hearings at least 60 days before the adoption of any rules.