

# Civil Liberties Review

Virginia General Assembly 2008

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ACLU of Virginia  
Legislative Report  
July 2008

# About the Virginia Civil Liberties Review

The *Civil Liberties Review* summarizes the legislative actions of the Virginia General Assembly that affect civil rights and civil liberties in the state. 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 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 at (804) 644-8080 or [lobby@acluva.org](mailto:lobby@acluva.org), or sign up on our website at [www.acluva.org](http://www.acluva.org).

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*This report is available online at [www.acluva.org](http://www.acluva.org)*

For more details about bills, including legislative history and text, visit the State of Virginia's legislative information website at <http://leg1.state.va.us/lis.htm>.

# Free Expression

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Topping this year's list of legislation that makes no sense is a bill prohibiting the dissemination of another person's Social Security Number, even when the number is obtained from a government website open to the public. The measure, frequently referred to as the "Anti-B.J. Bill," is almost certainly a reaction to privacy advocate B.J. Ostergren, who downloads Social Security Numbers from government websites, then publishes them on her own website to demonstrate how easy it is to steal another person's identity in Virginia.

The ACLU, Ms. Ostergren, and other privacy advocates have long lobbied the General Assembly to require the removal of Social Security Numbers from public records before they are placed on the Internet. Ironically Virginia's lawmakers passed such a law several years ago, but have never provided the funding required for implementation.

*Bizarre bill bans dissemination of information obtained from publicly accessible government websites; prompts ACLU lawsuit.*

Despite objections to the bill and threats to sue from the ACLU of Virginia, both the House and the Senate passed the Social Security Number bill without any dissenting votes, and the Governor signed it into law. In mid-June the ACLU of Virginia filed a federal lawsuit to prevent the new law from being enforced. Our case is based on U.S. Supreme Court precedents holding that free speech protects the right of the individuals to disseminate information made public by the government.

For the second consecutive year, a so-called "academic freedom" bill was introduced, but failed to become law. Sometimes called "intellectual diversity" laws, these measures pressure state universities to give credence to ideas merely because they are different and not because they have been subjected to the kind of rigorous debate that academic freedom and excellence requires. The ACLU believes that forced diversity of ideas undermines freedom of speech just as much as censorship. The bill passed the House of Delegates on a 99-0 vote, but failed to survive the Senate Education and Health Committee.

## *Passed*

**HB 633/SB 133 (May; Houck) Dissemination of Social Security Numbers.** Prohibits the dissemination of another person's Social Security Number, even when obtained from a public record. *HB 633 passed the House (99-Y, 0-N) and Senate (38-Y, 2-N). SB 133 passed the Senate (40-Y, 0-N) and House (99-Y, 0-N). Signed by the Governor. The ACLU opposed these bills.*

**HB 1410 (Ingram) Notification of a Paid Political Advertisement.** Provides that any candidate clearly identified in an advertisement is entitled to the name of the person who submitted the advertisement. *Passed the House (98-Y, 0-N). Passed the Senate with amendments (40-Y, 0-N). Conference report agreed to by the House (100-Y, 0-N) and Senate (38-Y, 2-N). Signed by the Governor. The ACLU opposed this bill because it undermines anonymous political speech.*

*Failed*

**HB 118 (Landes) Academic Freedom on College Campuses.** Requires each public institution of higher education to report to the State Council of Higher Education for Virginia the steps the institution is taking to ensure academic freedom and the free exchange of ideas. *Passed the House (99-Y, 0-N). Stricken from the docket in Senate Education and Health Committee at the request of the patron (15-Y, 0-N). The ACLU opposed this bill.*

**HB 152 (Poisson) Permission to Form Associations.** Current law permits government employees to form associations for the purpose of discussing their interests with their employing agencies. HB 152 added a requirement that such associates first obtain permission to organize from the employing agency. *Left in Rules Committee. The ACLU opposed this bill.*

**HB 852 (Ebbin) Collective Bargaining Power of Government Employees.** Effectively permits state and local government employees to form unions with collective bargaining power. *The House failed to engross the bill (0-Y, 82-N). The ACLU supported this bill.*

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## Religious Liberty

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After much debate and numerous revisions, legislators passed a law permitting students to express their personal religious beliefs in their schoolwork. The ACLU of Virginia and other religious rights organizations felt that the proposed legislation came dangerously close to state-

*Bill passes allowing students to express religious beliefs in schoolwork. ACLU fails to expand bill to include protections for philosophical and political expression.*

promoted religion by giving special status to student religious expression over other kinds of equally valuable expression. We sought to have the law amended to protect the right of students to express not just their religious views, but also their political, philosophical, and social views. Legislators paid no heed, however, and passed a law protecting only religious expression.

*Passed*

**HB 1135 (Fralin) Religious Viewpoints in Public Schools.** Allows students to express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Additionally, the bill states that home and classroom work must be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school. *Passed the House (85-Y, 13-N). Passed the Senate with a substitute (39-Y, 1-N). Senate substitute agreed to by the House (99-Y, 0-N). House (97-Y, 0-N) and Senate (39-Y, 0-N) agreed to the Governor's recommendations. Signed by the Governor. The ACLU opposed this bill.*

# Equal Rights

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With the exception of one bill clarifying that schools are among the public facilities that must accommodate physically disabled persons, lawmakers did not advance equal rights during the 2008 session. They refused to extend fair housing and equal employment rights to gays and lesbians, rejected a bill to protect homeless persons under the Hate Crimes Law, and failed to ban discrimination in housing based on the *source* of one's income. And, for the first time in many years, no legislator bothered to file a bill addressing racial profiling by police.

*Bills expanding gay and lesbian rights to housing and employment fail.*

## *Passed*

**HB 214 (Cole) Rights of Persons with Disabilities in Public Entities, Schools.** Adds schools to the list of public places in which persons with disabilities are entitled to the same full and free rights as other persons. *Passed the House (98-Y, 0-N) and Senate (40-Y, 0-N). Signed by the Governor. The ACLU supported this bill.*

## *Failed*

**HB 36 (Scott, J.M.) Ban on Sexual Orientation Discrimination in Housing.** Amends the Virginia Fair Housing law to ban discrimination in housing on the basis of sexual orientation. *Left in General Laws Committee. The ACLU supported this bill.*

**HB 610 (Eisenberg) Addition of Homeless Persons to the Hate Crimes Act.** Adds homeless persons to Virginia's hate crimes law as a protected class of individuals. *Left in Courts of Justice Committee. The ACLU supported this bill.*

**HB 675 (Plum) Prohibition of Sexual Orientation Discrimination in Fairfax County (urban county executive forms of government).** Allows Fairfax County to prohibit discrimination in housing, employment, public accommodations, credit, and education on the basis of sexual orientation. *Left in Counties, Cities and Towns Committee. The ACLU supported this bill.*

**HB 1085 (Englin) Prohibition of Discrimination on the Basis of Source of Income in Housing.** Adds source of income to the list of unlawful discriminatory housing practices, thus requiring housing providers to allow homeowners or renters to meet their income obligations using federal and state subsidies, proceeds from a bequest, or child or spousal support payments. *Left in General Laws Committee. The ACLU supported this bill.*

**HB 1493 (Ebbin) Prohibition of Discrimination on Basis of Sexual Orientation.** Prohibits discrimination in state government employment based on race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, or status as a special disabled veteran or other veteran covered by the Vietnam Era Veterans Readjustment Act of 1974. Sexual orientation defined as a person's actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression. *Left in Courts of Justice Committee. The ACLU supported this bill.*

# Immigrants' Rights

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Immigration-related legislation dominated the General Assembly in 2008, just as it did in 2007. Well over 100 bills that the ACLU classifies as “anti-immigrant” were introduced this year. Ostensibly aimed at undocumented immigrants, most of these bills would have provided cover for official discrimination against all immigrants in Virginia, but especially Latinos. The anti-immigrant bills ran the legislative gamut, addressing language spoken, housing, employment, and even the right to due process.

*Bills targeting Virginia's immigrant population dominate session. More than 100 filed, although few pass.*

One new law will, for all practical purposes, deny bail to individuals not lawfully present in the United States when they are charged with crimes that do not ordinarily carry a presumption against bail. Attaching bail to resident status, rather than the likelihood of flight based on an assessment of individual circumstances, runs counter to the most rudimentary principles of due process under the law.

Note: The list below is partial. For a separate publication on anti-immigrant bills in the 2008 General Assembly, go to [www.acluva.org](http://www.acluva.org) or contact the ACLU of Virginia office.

## ***Passed***

**HB 440/SB 623 (Rust; Stolle) Presumption against Bail for Illegal Aliens.** Denies bail, subject to rebuttal, if a person is charged with certain offenses and the court determines that the person is illegally present in the United States. *HB 440 passed the House (98-Y, 0-N); passed the Senate with substitute (33-Y, 7-N). SB 623 passed the Senate (34-Y, 6-N); passed the House with amendment (94-Y, 2-N). Signed by the Governor. The ACLU opposed these bills.*

**HB 820/SB 609 (Albo; Stolle) Alien Status Determination in Jail or Correctional Facility.** Jail officials are required to ask all persons taken into custody if they were born in a country other than the U.S. and if they are citizens of another country. Affirmative or insufficient answers to both trigger a federal immigration status inquiry. Results of the inquiry are forwarded to the State Compensation Board, which will, on a monthly basis, forward to the Central Criminal Records Exchange information on anyone found to be illegally present. The information will then be placed in the individual's criminal history record. *HB 820 passed House (98-Y, 0-N); passed Senate with substitute (35-Y, 5-N). Senate substitute adopted by House (96-Y, 0-N). Signed by the Governor. SB 609 passed the Senate (40-Y, 0-); passed the House with substitute (97-Y, 0-N). House substitute adopted by the Senate (40-Y, 0-N). Signed by the Governor. The ACLU opposed these bills.*

**HB 926/SB 782 (Byron; Obenshain) Disciplinary Action against Convicted Employers.** States that the State Corporation Commission may terminate a business when the directors or officers have a pattern of violating federal immigration laws. *HB 926 passed the House (98-Y, 0-N). HB 926 passed the Senate with a substitute (40-Y, 0-N). Senate substitute adopted by the House (98-Y, 0-N); signed by the Governor. SB 782 passed the Senate (34-Y, 6-N); passed the House with a substitute (97-Y, 0-N). House substitute agreed to by the Senate (36-Y, 4-N). SB 782 was signed by the Governor. The ACLU opposed these bills.*

**HB 1298/SB 517 (Frederick; Cuccinelli) Discipline against Employers for Hiring Illegal Aliens.** Requires that all public bodies provide in every written contract that the contractor does not knowingly employ an unauthorized alien. *HB 1298 passed the House (96-Y, 3-N; passed the Senate with an amendment (40-Y, 0-N). Senate amendment adopted by the House (97-Y, 0-N). SB 517 passed Senate (35-Y, 5-N); passed the House with a substitute (97-Y, 0-N). House substitute agreed to by Senate (39-Y, 0-N). Signed by Governor. The ACLU opposed these bills.*

*Failed*

**HB 14/SB 781 (Peace; Vogel) Illegal Aliens Ineligible for Admission to Public Colleges.** Prohibits the admission of any unlawfully present alien in the United States into a public institution of higher education. *HB 14 passed the House (72-Y, 27-N); passed by indefinitely in Senate Education and Health Committee (9-Y, 6-N). SB 781 passed by indefinitely in Senate Education and Health Committee (13-Y, 1-N). The ACLU opposed these bills.*

**HB 45 (Tata) Fraudulent Assistance of Illegal Aliens.** Makes it a crime to knowingly assist an illegal immigrant attempting to acquire a service to which the illegal alien is not entitled. *Left in Rules Committee. The ACLU opposed this bill.*

**HB 51 (Lingamfelter) Immunity for Government Employees for Enforcement of Immigration Laws.** Provides immunity for government employees who enforce immigration laws. *Continued to 2009 by a voice vote. The ACLU opposed this bill.*

**HB 55 (Lingamfelter) English as the Official Language.** Makes English the official language of Virginia and prohibits any state or local agency from publishing any literature in any other language. *Continued to 2009. The ACLU opposed this bill.*

**HB 151 (Lewis) Proof of Citizenship to Change Name.** House version requires applicants for a change of name prove they are U.S. citizens. Amended in the Senate to require place of domicile, but not proof of citizenship. *Passed the House (94-Y, 3-N); passed the Senate with amendments (34-Y, 6-N). Failed in conference committee. The ACLU opposed this bill.*

**HB 156 (Nichols) Evidence of Legal Presence Required for Mortgage Loan.** Makes it unlawful to make a real estate loan unless the individual, prior to settlement, provides evidence of legal presence. *Left in Rules Committee. The ACLU opposed this bill.*

**HB 186 (Marshall, R.G.) Proof of U.S. Citizenship for Driver's License.** Requires a driver to present proof of U.S. citizenship when applying for a driver's license or renewing a driver's license. *Left in Rules Committee. The ACLU opposed this bill.*

**HB 305 (Nichols) Creation of a State Police Department of Legal Presence.** Creates a division of legal presence investigation and immigration enforcement within the Department of State Police. *Left in Rules Committee. The ACLU opposed the bill.*

**HB 376 (Marshall, D.W.) English-Only Driving Test.** Requires that all examinations for drivers' licenses be conducted exclusively in the English language. No interpreters allowed to assist applicant. *Left in Rules Committee. The ACLU opposed this bill.*

**HB 301 (Nichols) Sheriff Required to Enter into Federal Immigration Agreement.** Requires the sheriff of a locality with a population greater than 300,000 to enter into a memorandum of agreement with Immigration and Customs Enforcement (287(g)) that would allow designated local law enforcement officers to perform certain federal immigration law functions in the Commonwealth. *Left in Rules Committee. The ACLU opposed this bill.*

**HB 459 (Albo) Officer on Duty to Enforce Immigration Laws under 287(g) Agreement.** Clarifies the mandate that any person in charge of a correctional facility shall inquire as to the citizenship status of a person in his facility for purposes of reporting alien status to the Central Criminal Records Exchange. *Left in Rules Committee. The ACLU opposed this bill.*

**HB 623/SB 433 (Miller, J.H.; Vogel) Governor to Enter into Immigration Agreement.** Governor required to enter into an agreement with Immigration and Customs Enforcement to allow state and local law enforcement officers to perform federal immigration law functions in Virginia. *HB 623 passed the House (89-Y, 11-N). SB 433 was passed by indefinitely in Senate Courts of Justice Committee (11-Y, 4-N). The ACLU opposed these bills.*

**HB 1034 (Frederick) Proof of Lawful Presence for DMV Registration.** Requires any individual applying for a vehicle registration or certificate of title to prove to DMV that he is a legal permanent resident of the U.S. or a conditional resident alien of the U.S. *Left in Rules Committee. The ACLU opposed this bill.*

**HB 1248 (Hugo) Harboring Illegal Aliens.** Provides that any person who as a part of a commercial enterprise transports an illegal alien into or within the Commonwealth or conceals detection of that alien in any place with the purpose of violating the immigration laws of the United States is guilty of a class 6 felony. *Left in Rules Committee. The ACLU opposed this bill.*

**HB 1472 (Cole) National Origin Discrimination.** Provides that discharging an employee on the basis of the employee's failure to comply with an employer's requirement that English be spoken at work is not discrimination. *Passed House (70-Y, 29-N); failed in Senate General Laws & Technology Committee (7-Y, 7-N, 1-A). The ACLU opposed this bill.*

**HJ 124 (Joannou) English as the Official Language.** Amends Virginia Constitution to make English the official language of the state. *Continued to 2009. The ACLU opposed this resolution.*

**SB 339 (Cuccinelli) English-Only in the Work Place.** Provides that an employee's inability or refusal to speak English in the workplace, in violation of a policy of the employer, constitutes misconduct, and thereby disqualifies the person for unemployment compensation. *Passed by indefinitely in Commerce and Labor Committee (15-Y, 0-N). The ACLU opposed this bill.*

**SB 434 (Vogel) Prohibition of In-State Tuition Eligibility.** Any person who is unlawfully present is not eligible for any post-secondary educational benefit, including in-state tuition. *Failed in Education & Health Committee (9-Y, 6-N). The ACLU opposed this bill.*



# Mental Health Law Reform

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The 2008 session was the first since the tragic shootings on the Virginia Tech campus in the spring of 2007. Spurred on by the event, legislators began a massive overhaul of Virginia's mental health law. From the beginning, the ACLU of Virginia was concerned that mental health law reform in Virginia would lead to the diminishment of due process and privacy rights of persons with mental disabilities. By the end of the session, mental health bills had been passed that lowered the threshold for involuntary commitment of mentally disabled persons and allowed for easier sharing of mental health records among state agencies. How these new laws will affect the rights of mentally disabled persons will depend on how they are enforced. The ACLU and other civil rights and civil liberties organizations will be monitoring the laws as they are implemented.

*Mental health law  
changed to ease path to  
involuntary commitment.*

## ***Passed***

**HB 499/SB 246 (Hamilton; Howell) Involuntary Commitment Standard; Mandatory Outpatient Treatment.** Changes the standard for involuntary commitment from imminent danger to oneself or others to “a substantial likelihood that, as a result of mental illness, the person will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs.” Mandates that health care providers share information with each other and disclose any and all information that is necessary and appropriate when it is requested. The bills expand the list of parties who may request the information. Immunizes any health care provider disclosing records from civil liability, including any liability under the federal Health Insurance Portability and Accountability Act. States how magistrates may determine when probable cause exists to issue emergency custody orders and temporary detention orders. In addition to other categories of information, probable cause determinations may consider any relevant hearsay evidence. Outlines the evaluation, admission, enforcement, and compliance procedures of mandatory outpatient treatment. Provides that an individual's involuntary commitment hearing dispositional order may be disclosed if it is found to be in the best interest of the individual or in the best interest of the public. *HB 499 passed the House (98-Y, 0-N); passed the Senate with a substitute (40-Y, 0-N). Senate substitute adopted by the House (99-Y, 0-N). House (97-Y, 0-N) and Senate (38-Y, 0-N) agreed to Governor's recommendations. HB 499 signed by the Governor. SB 246 passed the Senate (40-Y, 0-N); passed the House with a substitute (99-Y, 0-N). House substitute adopted by the Senate (40-Y, 0-N). Senate (39-Y, 0-N) and House (97-Y, 0-N) agreed to the Governor's recommendations. SB 246 signed by the Governor.*

**HB 559 (Bell) Involuntary Commitment Standard.** Amends many of the same code sections as HB 499/SB 246, however with less detail. Among other provisions, the bill also changes the standard for commitment from “imminent danger” to “a substantial likelihood...” (see above) *Passed the House (98-Y, 0-N). Passed the Senate with a substitute (40-Y, 0-N). Senate substitute adopted by the House (99-Y, 0-N). Signed by the Governor.*

**HB 576 (Watts) Mental Health Records.** Expands the list of individuals and organizations with which mental health records must be shared. Health records disclosed to law enforcement must be limited to information necessary to protect the officer, the individual, or the public from injury. Information disclosed to law enforcement cannot be used for any other purpose, disclosed to others, or retained. Immunizes any health care provider disclosing records from civil liability. *Passed House (98-Y, 0-N); passed Senate with a substitute (38-Y, 0-N). Senate substitute adopted by House (98-Y, 0-N). Signed by the Governor. The ACLU opposed this bill.*

**HB 582/SB 276 (Marsden; Cuccinelli) Involuntary Commitment Petitions and Hearings of Minors.** Increases from 72 hours to 96 hours the length of time allowed to detain a minor before holding a hearing for the involuntary commitment or emergency admission for inpatient treatment. Also a minor may be admitted by his parents to a facility over his objections. *HB 582 passed the House (98-Y, 0-N); passed Senate with a substitute (40-Y, 0-N). Senate substitute adopted by House (99-Y, 0-N). HB 582 signed by Governor. SB 276 passed the Senate (40-Y, 0-N); passed the House with a substitute (97-Y, 0-N). Conference report agreed to by Senate (38-Y, 0-N) and House (97-Y, 0-N). SB 276 was signed by Governor. The ACLU opposed these bills.*

**HB 583 (Marsden) Emergency Custody Order Extension.** Permits a magistrate to extend the time of emergency custody orders for one two-hour period if good cause exists to grant the extension. Good cause for an extension includes the need for additional time to find a suitable facility in which to temporarily detain the person subject to the order, or complete a medical evaluation of the person. *Passed the House (98-Y, 0-N). Passed the Senate with a substitute (40-Y, 0-N). Senate substitute adopted by the House (99-Y, 0-N). Signed by the Governor. The ACLU opposed this bill.*

**HB 707 (Janis) Length of Detainment.** Provides that a person who is subject to a temporary detention order must remain in the custody of a law enforcement officer until the person is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by the facility identified in the temporary detention order. *Passed the House (98-Y, 0-N) and Senate (40-Y, 0-N). Signed by the Governor. The ACLU opposed this bill.*

*Failed*

**HB 267 (Albo) Appointment of Counsel for Indigent Petitioners in Involuntary Commitment Hearings.** Permits the court to appoint an attorney if the petitioner in an involuntary commitment hearing is determined to be indigent. As originally introduced, the bill allowed the judge in a civil commitment hearing to consider testimony from close family members as to an individual's conduct and treatment history. The bill also allowed for civil involuntary outpatient commitment for a person whose past commitment history and psychosis diagnosis indicated that when the individual is not taking their medicine he/she meets the involuntary commitment standard. *Passed the House (98-Y, 0-N). Passed by in Senate Courts of Justice Committee with a letter to the Virginia Supreme Court Commission on Mental Health to study (15-Y, 0-N). Note: As introduced, the ACLU opposed this bill, however it was significantly amended and the ACLU did not take a position on the bill.*

## Privacy Rights

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For the first time, bills opposing the implementation of the federal Real ID Act were introduced in both the House and the Senate in 2008. The Real ID Act, once implemented, will require a uniform government-issued ID, verifiable through a nationally-linked database, for anyone boarding an airplane or entering certain government buildings.

*Bills opposing REAL ID Act fail, but some privacy protections for Social Security Numbers added to law.*

HJ 42 asked Congress to delay implementation of the Real ID Act until the federal government agreed to cover the costs for states to implement it and additional efforts are made to protect privacy rights. SB 492 called for Virginia to ignore the unfunded federal mandates of the Real ID Act, but recommended that Virginia create a parallel state Real ID law. While neither bill survived committee scrutiny, they will almost certainly return next year with more support. Nineteen states have now passed legislation opposing the Real ID Act.

Legislators passed two bills that add some privacy protections in Virginia. HB 634/ SB 132 makes it clear that no state agency can demand a Social Security Number or driver's license number from anyone unless specifically authorized by law. HB 1469/ SB 307 requires that breaches of databases containing personal information be reported to the Attorney General.

### *Passed*

**HB 634/ SB 132 (May; Houck) Government Data Collection and Dissemination Practices Act.** Provides that no agency shall require an individual to furnish or disclose his Social Security Number or driver's license number unless the furnishing or disclosure of such number is expressly authorized by state or federal law and essential for the performance of that agency's duties. The bills also strengthen the remedies provisions of the GDCDPA by adding civil penalties matching those in the Freedom of Information Act, and grants general district courts the authority to hear GDCDPA cases. *HB 634 passed the House (98-Y, 0-N) and Senate (40-Y, 0-N). HB 634 was signed by the Governor. SB 132 passed the Senate (40-Y, 0-N); passed the House with amendments (99-Y, 0-N). House amendments agreed to by the Senate (40-Y, 0-N). SB 134 was signed by the Governor. The ACLU supported these bills.*

**HB 1469/ SB 307 (Byron; Reynolds) Identity Theft Protection.** Requires an individual or entity that owns computerized data that includes personal information to disclose any breach of the security of the system following discovery or notification of the breach to the Attorney General and any affected resident of the Commonwealth whose personal information was, or is reasonably believed to have been accessed and acquired by an unauthorized person. *HB 1469 passed the House (99-Y, 0-N). HB 1469 passed the Senate with a substitute (40-Y, 0-N). Senate substitute adopted by the House (99-Y, 0-N). HB 1469 was signed by the Governor. SB 307 passed the Senate (40-Y, 0-N). SB 307 passed the House with a substitute (98-Y, 0-N). House substitute agreed to by the Senate (40-Y, 0-N). SB 307 was signed by the Governor. The ACLU supported these bills.*

*Failed*

**SB 404 (Puckett) Public Assistance and Substance Abuse Screenings.** Requires departments of social services to conduct a drug screening of all applicants, to test those identified as users for drugs, and if testing is positive, for the person to enter a rehabilitation program. If a person fails to participate in a screening or rehabilitation he or she is ineligible for public assistance for twelve months (with one opportunity to comply and be reinstated). *Passed Senate (40-Y, 0-N); tabled in the House Health, Welfare, and Institutions Committee. The ACLU opposed this bill.*

**HB 365 (Carrico) Public Assistance Ban.** Similar to SB 404, requires drug screening for all clients of departments of social services. When drug test indicates that the applicant or recipient was using illegal drugs, the person would become ineligible for public assistance and could re-apply after twelve months. *Left in Appropriations Committee. The ACLU opposed the bill.*

**HB 28 (Bulova) Titling and use of Driver's License Number.** Permits the use of a driver's license number when titling a vehicle instead of disclosing a Social Security Number. *Left in Rules Committee. The ACLU supported this bill.*

**HB 729 (Scott, E.T.) Social Security Number Required for Marriage License.** Requires that the marriage record prepared by the clerk in issuing a marriage license include the Social Security Number if applicants have them. *Passed the House (86-Y, 13-N). Failed to report from Senate Courts of Justice Committee (7-Y, 8-N). The ACLU opposed this bill.*

**HB 1087 (Sickles) Confidentiality of Social Security Number.** Provides that the Social Security Number of any individual contained in the public records of a local government shall be confidential and exempt from disclosure under the Freedom of Information Act. *Left in General Laws Committee. The ACLU supported this bill.*

**HB 1096 (Sickles) Protection of Social Security Numbers Act.** Creates the Protection of Social Security Numbers Act, which prohibits every agency from releasing those portions of a public record that contain the Social Security Number of any individual. *Left in General Laws Committee. The ACLU supported this bill.*

**HB 1102 (Sickles) FOIA Exemption of Social Security Number.** Exempts from disclosure requirements of the Freedom of Information Act portions of records containing an individual's Social Security Number. *Left in General Laws Committee. The ACLU supported this bill.*

**HJ 42 (Peace) Resolution to Congress to Repeal or Amend Real ID.** Declares the opposition of the General Assembly to the federal Real ID Act unless the federal government provides funds to the states to cover the costs of implementation and unless amendments are made to protect the privacy and preserve the essential civil rights and liberties of the citizens. *Left in General Laws Committee. The ACLU supported this resolution.*

**SB 492 (Hanger) Rejection of Real ID.** Requires appropriate state and local agencies to implement a plan to provide IDs as an alternative to the requirements of the federal Real ID Act of 2005. The measure specified that Virginia shall not comply with the unfunded mandates of the Real ID Act. *Continued to 2009 by a voice vote. The ACLU supported this bill.*

# Reproductive Rights

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For the fourth year in succession, lawmakers failed to pass any anti-choice bills. Three bills passed the House of Delegates but were blocked in a Senate committee. HB 894/ SB 437 would have required most abortion clinics to be licensed as ambulatory surgery centers, an unnecessary and expensive proposal that would put some clinics out of business. HB 1556 would have required doctors to offer to anesthetize a fetus prior to abortion and to include informational materials stating that a fetus at 20 gestational weeks can feel pain. HB 1315 bill would have required every pregnant female to obtain an ultrasound and be given the opportunity to view the image prior to the abortion.

*For fourth year running, no damage is done to reproductive rights.*

Two budget amendments affecting reproductive rights were also defeated. One would have prohibited state Medicaid funds to be used for abortions even when a fetal abnormality is present (thus forcing some low-income women to carry out a potentially dangerous pregnancy). In a highly unusual move, a budget amendment aimed at preventing any state funding for Planned Parenthood, a non-profit organization that provides low-income women with a variety of affordable healthcare services, was introduced.

## ***Failed***

**HB 81 (Marshall, R.G.) Abortion Illegal upon Overturning of *Roe v. Wade*.** Makes abortion illegal in Virginia if *Roe v. Wade* is overturned. The bill criminalizes the encouragement of abortion by publication, lecture, advertisement, or by the sale or circulation of any publication, or in any other manner. *Left in Rules Committee. The ACLU opposed this bill.*

**HB 283 (Toscano) Parents' Right to Know.** Requires schools to distribute to the parents of students in family life education programs a summary of the program. If the curriculum of the program taught in the classroom is comprised solely of abstinence education, the school division shall include in the summary that abstinence-only education does not conform to the state's Family Life Education guidelines. *Left in Education Committee. The ACLU supported this bill.*

**HB 670 (Marshall, R.G.) Abortion Regulations.** Permits abortion providers to operate only in areas zoned for hospitals, and not within 1,500 feet of schools, parks, residential areas, or religious institutions. *Left in Courts of Justice Committee. The ACLU opposed this bill.*

**HB 894/ SB 437 (Lohr; Vogel) Abortion Clinics Regulations.** Requires all abortion clinics, defined as any facility in which 25 or more first trimester abortions are performed in any 12-month period, to comply with the requirements for ambulatory surgery centers. *HB 894 passed House (60-Y, 37-N); failed in Senate Education & Health Committee (10-Y, 5-N). SB 437 passed by indefinitely in Education and Health Committee (10-Y, 5-N). The ACLU opposed these bills.*

**HB 1071 (Amundson) FDA Definition of Birth Control.** Adds a definition of birth control to the Virginia Code. Birth control was defined as contraceptive methods that are approved by the U.S. Food and Drug Administration and shall not be considered abortion. *Left in Courts of Justice Committee. The ACLU supported this bill.*

**HB 1315 (Byron) Informed Consent for Abortion.** Requires that as a component of informed consent to an abortion, every pregnant female is required to obtain an ultrasound and be given the opportunity to view the image prior to the abortion. *Passed the House (62-Y, 37-N); failed in Senate Education and Health Committee (11-Y, 4-N). The ACLU opposed this bill.*

**HB 1538/SB 542 (Pogge; Obenshain) Abortion Services and Education Prohibited in Schools.** Prohibits schools from providing abortion services. The bill also prohibits any abortion provider from disseminating information or course materials related to human sexuality or sexually transmitted diseases. *HB 1538 was continued to 2009. SB 542 was passed by indefinitely in Education and Health Committee (10-Y, 4-N). The ACLU opposed these bills.*

**HB 1556 (Cline) Fetal Anesthesia.** Requires doctors to offer to anesthetize a fetus prior to abortion and to inform pregnant women that a fetus at 20 gestational weeks can feel pain. *Passed the House (68-Y, 31-N). Passed by indefinitely in Senate Education and Health Committee (10-Y, 5-N). The ACLU opposed this bill.*

## Death Penalty

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In a nearly exact repeat of the 2007 session, legislators sent a bill to the Governor eliminating the “triggerman rule,” which limits capital punishment to the actual perpetrator of a murder (with exceptions for murder for hire, or a killing ordered by a person engaged in a criminal enterprise or terrorist act). The Governor again vetoed the bill and, again, the Senate failed to muster the two-thirds majority required to override a veto.

*Death penalty expansion bill vetoed by Governor. Moratorium bill fails.*

As in almost every session in recent memory, bills to abolish or declare a moratorium on the death penalty were introduced and failed any real discussion.

### *Failed*

**HB 296 (Hargrove) Moratorium on Execution.** Bans executions for five years. *Left in Courts of Justice Committee. The ACLU supported this bill.*

**HB 299 (Hargrove) Abolishment of the Death Penalty.** Bans the death penalty for crimes committed on or after July 1, 2008. *Left in Courts of Justice Committee. The ACLU supported this bill.*

**HB 933/SB 560 (Gilbert) Elimination of the Triggerman Rule.** Eliminates the triggerman rule, which provides that only the actual perpetrator of a capital murder is eligible for the death penalty (with some enumerated exceptions). *HB 933 passed House (77-Y, 21-N); passed Senate with substitute (24-Y, 16-N). Senate substitute agreed to by House (80-Y, 16-N). Vetoed by the Governor. Governor's veto overridden by House (77-Y, 23-N), but not Senate (24-Y, 16-N). SB 560 passed Senate (24-Y, 14-N) and House (78-Y, 17-N). Vetoed by the Governor. Senate failed to override Governor's veto (24-Y, 16-N). The ACLU opposed these bills.*

## Criminal Justice and Due Process

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For the second consecutive year, a bill that would have permitted law enforcement officials to arrest individuals for Class 1 and 2 misdemeanors-- and thus be permitted to search those individuals – was blocked in the Senate after receiving overwhelming support in the House of Delegates. Under current law, unless justified by the circumstances, police may only issue summonses for Class 1 and 2 misdemeanors and do not have the authority to arrest. The ACLU opposed the bill, arguing that such a drastic expansion of police power was unwarranted.

*Arrest and search expansion bill fails.*

### *Passed*

**HB 410/SB 553 (Griffith; Hurt) Appointment of Counsel of Indigent Defendants.** Extends the provision that if there is no attorney available on the list maintained by the Indigent Defense Commission, courts may appoint an attorney not on the list, but must inform the Commission. *HB 410 passed the House (98-Y, 0-N) and the Senate (40-Y, 0-N). SB 553 passed the Senate (40-Y, 0-N) and the House (97-Y, 0-N). Signed by the Governor. The ACLU supported these bills.*

**SB 610 (Stolle) Compensation for Court-Appointed Counsel.** Provides that a court-appointed counsel who defends a juvenile for an offense that would be a felony if committed by an adult, may request a waiver on the compensation cap. *Passed Senate (40-Y, 0-N); passed House with amendments (100-Y, 0-N). Signed by the Governor. The ACLU supported this bill.*

### *Failed*

**HB 103 (Albo) Verification of Citizenship of Person Committed to a Correctional Facility.** Requires the officer-in-charge to inquire into the citizenship of anyone confined in a correctional facility and requires the officer to report the suspected alien to the U.S. Bureau of Immigration and Customs Enforcement. *Left in Rules Committee. The ACLU opposed this bill.*

**HB 436 (Miller, J.H.) Authority to Arrest for Class 1 & 2 Misdemeanors.** Permits law enforcement officers the choice of issuing a summons or arresting for class 1 and 2 misdemeanors. *Passed the House (86-Y, 12-N). Left in Senate Courts of Justice Committee (15-Y, 0-N). The ACLU opposed this bill.*

**HB 550 (Griffith) Implied Consent Law Applies Despite Inability to Understand English Language.** Provides that the provisions of the law of implied consent (to the DUI breath or blood test) shall not apply despite the inability of the person so arrested to comprehend, because of his state of inebriation or inability to understand the English language, the advisement of the arresting officer or the person administering the test. *Left in Courts of Justice Committee. The ACLU opposed this bill.*

**HB 591 (Marsden) Advisement of Children and Parents of Rights.** Removes probation officers and other court services staff from the list of persons who are permitted to advise a child of his right to counsel. *Stricken from the docket in Courts of Justice Committee. The ACLU opposed this bill.*

**HB 606 (Eisenberg) Recording of Juvenile Interrogations.** Requires that statements made to police by a juvenile criminal defendant accused of committing a violent juvenile felony are to be electronically recorded. *Left in Courts of Justice Committee. The ACLU supported this bill.*

**HB 1366 (Cline) Waiver of Fourth Amendment Rights.** Allows courts to impose upon a probationer that he shall be subject to search without a warrant during the period of his probation under specified conditions. *Failed to pass the House (49-Y, 50-N). The ACLU opposed this bill.*

**HB 624 (Miller, J.H.) Cost of Interpreter for Non-English Speaking Defendant.** Requires defendant to pay for cost of an interpreter if he is convicted of a criminal offense. *Left in Courts of Justice Committee. The ACLU opposed this bill.*

**SB 369 (McDougle) Right to Expert Witness for Indigent Defendants in Capital Case.** Provides that an indigent defendant who has been charged with a capital offense may move for the appointment of experts to assist in the preparation of his defense. *Passed the Senate (34-Y, 4-N). Continued to 2009 in House Courts of Justice Committee. The ACLU supported this bill.*

## Open Government

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The General Assembly limited public oversight of the Virginia Fusion Intelligence Center, a storehouse of data collected by local, state, and federal agencies for the purpose of fighting terrorism, by exempting it from the Freedom of Information Act. Already operating in near secrecy the FOIA exemption makes it more difficult to determine what kind of data is being collected on Virginia's citizens and how that data is being used.

*Secret Virginia Fusion Intelligence Center is exempted from Freedom of Information Act inquiries.*

### *Passed*

**HB 1007 (Jones, D.C.) Virginia Fusion Intelligence Center.** Provides that information in the possession of the State Police is not subject to the Freedom of Information Act. The bill restricts the release or dissemination of information without prior authorization from the Virginia Fusion Intelligence Center and punishes any person who knowingly disseminates information. Bill does require an annual review to purge data not related to terrorist activities. *Passed the House (98-Y, 1-N). Passed the Senate with a substitute (40-Y, 0-N). Conference report adopted by the House (100-Y, 0-N) and agreed to by the Senate (38-Y, 0-N). Signed by the Governor. The ACLU opposed this bill.*

### *Failed*

**HB 802 (Englin) Board of Elections to Publish List of Candidates on Internet.** Requires the State Board of Elections to publish on the Internet the names of candidates for federal, statewide, or General Assembly office within 24 hours of the time when the candidate is certified as qualified for the ballot. *Continued to 2009. The ACLU supported this bill.*



## Access to the Polls

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Legislators defeated a bill that would require voters to show a government-issued ID at the polls, but the strongest argument against the bill during the session was that the U.S. Supreme Court was about to rule on the constitutionality of a similar law in Indiana. Unfortunately, the high court later allowed the Indiana law to stand, meaning the Virginia bill will likely return in the 2009 session, and with additional support.

Legislators ignored bills in the House and Senate to reform Virginia's antiquated law permanently disfranchising former felons (until the Governor acts to restore voting rights). Virginia and Kentucky are the last two states in the nation to maintain these Jim Crow-era restrictions on voting. (Note: The ACLU of Virginia has launched a major initiative for voter restoration reform, targeting the 2009 session for the initial passage of bills to amend the state Constitution. Visit [www.acluva.org](http://www.acluva.org) to find out more about this program.)

*Absentee voting receives boost and onerous voter ID bill fails. But ACLU-supported bills to restore voting rights to former felons fail to pass.*

Absentee voting was expanded in Virginia, although a bill to allow anyone to vote absentee never got off the ground. Nonetheless, pregnant women and persons with mental disabilities now qualify to vote by absentee ballot.

### *Passed*

**HB 798/ SB 508 (Englin; Northam/Whipple) Absentee Voting Electronic Transmission.** Provides that voters covered by the Uniformed and Overseas Citizens Absentee Voting Act, who reside or are stationed outside the continental borders of the U.S., may receive their blank absentee ballots by electronic transmission. Present law allows these voters to request absentee ballots by electronic transmission. The bill covers the second step of sending the ballot to these overseas voters. The voted ballots will have to be returned by mail. *HB 798 passed the House (97-Y, 0-N) and Senate (40-Y, 0-N). HB 798 was signed by the Governor. SB 508 passed the Senate (40-Y, 0-N) and House (97-Y, 0-N). SB 508 was signed by the Governor. The ACLU supported these bills.*

**HB 1062 (Brink) Absentee Voting for Pregnant Women.** Adds women who are pregnant at the time of applying to vote absentee to the list of persons eligible to vote absentee. *Passed the House (98-Y, 0-N). Passed the Senate (40-Y, 0-N). Signed by the Governor. The ACLU supported this bill.*

**HB 1262 (Hall) Absentee Voting for Persons Confined.** As introduced, the bill provided that any person who is otherwise qualified to vote, but is confined in a state facility or otherwise confined by the state because of a mental illness or disability, shall be allowed to vote absentee. After amendment, the bill does not expand absentee balloting to all persons in state mental health facilities but simply permits an absentee ballot to be sent to the address where a person with physical disabilities is temporarily confined. *Passed the House with a substitute (98-Y, 0-N). Passed the Senate (40-Y, 0-N). Signed by the Governor. The ACLU supported this bill.*

**SB 7 (Deeds) Absentee Voting for Disabled Persons.** Extends to persons with any disability or illness, rather than only a "physical" disability or illness, the ability to obtain an absentee ballot and provides a definition for "person with a disability" in conformance with the Virginians with Disabilities Act. *Passed the Senate (40-Y, 0-N). Passed the House with an amendment (98-Y, 0-N). Conference committee report agreed to by the Senate (40-Y, 0-N) and the House (100-Y, 0-N). Senate agreed to the Governor's recommendations (39-Y, 0-N). House agreed to the Governor's #1 recommendation (97-Y, 0-N). House rejected the Governor's #2 and #3 recommendations (4-Y, 94-N). The bill with the Governor's #1 recommendation was signed by the Governor.*

**SB 62 (Howell) Receipt for Voter Registration.** States that the state voter registration application must contain a receipt that will be given to an in-person applicant. *Passed by the Senate (40-Y, 0-N) and House (88-Y, 9-N). Senate (39-Y, 0-N) and House (98-Y, 0-N) agreed to the Governor's recommendations. Signed by the Governor. The ACLU supported this bill.*

*Failed*

**HB 64 (Marshall, R.G.) Voter Qualifications Posted.** Requires poll officials to post signs titled "ILLEGAL VOTING" in a large type, stating the qualifications to vote and the penalties for voting illegally. *Left in Rules Committee. The ACLU opposed this bill.*

**HB 65 (Marshall, R.G.) Government Photo ID Required to Vote.** Requires a voter to show a government-issued photo ID in order to vote or be required to vote by provisional ballot. *Continued to 2009. The ACLU opposed this bill.*

**HB 68 (Marshall, R.G.) Proof of Citizenship to Vote.** Requires a person registering to vote to provide a legible photocopy of a birth certificate, U.S. passport, U.S. naturalization documents, documents approved under the Immigration Reform and Control Act, or a Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number. *Left in Rules Committee. The ACLU opposed this bill.*

**HB 309 (Eisenberg) Absentee Voting Without Providing a Reason.** Permits any qualified voter to vote by absentee ballot without providing a reason. *Left in Privileges and Elections Committee. The ACLU supported this bill.*

**HB 310 (Eisenberg) Absentee Voting for any Disability or Illness.** Allows a person with a disability or illness to vote absentee. *Continued to 2009. The ACLU supported this bill.*

**HB 313 (Landes) Freedom of Information Act: Access to Public University/College Working Papers and Correspondence.** Removes the exemption in FOIA for working papers and correspondence for the president or other chief executive officer of any public institution of higher education in Virginia. *Left in General Laws Committee. The ACLU supported this bill.*

**HB 619 (Brink) Polling Place Activities and Apparel.** Adds paid campaign advertisements to the list of campaign materials that cannot be exhibited within or around the polling place. Does not prohibit novelty items authorized by a candidate, such as pens, pencils, magnets, and buttons attached to one's clothing. *Continued to 2009. The ACLU supported this bill.*

**HB 621 (Brink) Early Voting.** Provides that any registered voter qualified to vote in the election may vote in person from 17 to 3 days before the election at specified times and at the sites provided in the locality. The provisions for absentee voting remained in effect except that the provisions for in-person absentee voting were superseded by the early voting process during the early voting period. *Continued to 2009. The ACLU supported this bill.*

**HB 640 (May) Expansion of Poll Hours in Northern Virginia.** Permits northern Virginia localities by ordinance to extend the 6:00 a.m. to 7:00 p.m. voting hours for an additional two hours until 9:00 p.m. The extended hours will be applicable to all elections in the locality. *Left in Privileges and Elections Committee. The ACLU supported this bill.*

**HB 799 (Englin) Absentee Voting Electronic Transmission.** Requires the State Board of Elections to mail a voter guide to all registered voters in advance of the November general election with information on pending constitutional amendments, statewide referenda, and candidates for statewide or General Assembly office. The bill also authorized localities to provide voter guides for local elections. *Left in Privileges and Elections Committee. The ACLU supported this bill.*

**HB 907 (Jones, D.C.) Absentee Voting Without Providing a Reason.** Provides that qualified voters may vote absentee for any reason. The bill eliminated the present statutory list of specific reasons entitling a voter to cast an absentee ballot. Several special provisions concerning military and overseas absentee voters and disabled voters were consolidated in one new provision. *Left in Privileges and Elections Committee. The ACLU supported this bill.*

**HB 1276 (Spruill) Absentee Voting for Persons 65 and Older.** Adds persons age 65 and older to the list of persons eligible to vote absentee. *Left in Privileges and Elections Committee. The ACLU supported this bill.*

**HB 1278 (Spruill) Early Voting.** Provides that any registered voter qualified to vote in the election may vote in person from 17 to 3 days before the election at specified times and at the sites provided in the locality. The provisions for absentee voting remained in effect except that the provisions for in-person absentee voting were superseded by the early voting process during the early voting period. *Left in Privileges and Elections Committee. The ACLU supported this bill.*

**HJ 182 (Hall) Restoration of Civil Rights for Felons.** Authorizes the General Assembly to provide by general law for the restoration of civil rights for persons convicted of felonies who have completed service of their sentence including any period or condition of probation, parole, or suspension of sentence. *Continued to 2009. The ACLU supported this resolution.*

**SB 69 (Howell) Absentee Voting Without Providing a Reason.** Provides that qualified voters may vote absentee in person without providing an excuse or reason for not being able to vote in person on Election Day. The bill retained the present statutory list of specific reasons entitling a voter to cast an absentee ballot for those persons who vote absentee by mail. *Passed the Senate (31-Y, 9-N). Left in House Privileges and Elections Committee. The ACLU supported this bill.*

**SB 523 (Wagner) Prohibition of Misspelled Write-In Candidates.** Provides that write-in votes will be counted only if the last name of the write-in candidate is spelled correctly as determined by the chief officer of election at the polling place. *Stricken at the request of the patron (11-Y, 0-N) in Privileges and Elections Committee. The ACLU opposed this bill.*

**SB 554 (Obenshain) Voter Identification and Absentee Voting Requirements.** Revises the list of items that a voter may show to prove identification at the polls. The bill added to the list: a copy of a current utility bill, bank statement, government check, or paycheck that shows the name and address of the voter. However, the bill deleted the provision that allows a voter to sign a sworn statement that he is the named registered voter he claims to be in lieu of showing identification and provides for voting by provisional ballot instead. The bill applied the same measures to applicants for absentee ballots. *Failed to report from Senate Privileges and Elections Committee (6-Y, 9-N). The ACLU opposed this bill.*

**SJ 7 (Miller, Y.B.) Restoration of Civil Rights for Non-Violent Felons.** Authorizes the General Assembly to provide by general law for the restoration of civil rights for persons convicted of non-violent felonies who have completed service of their sentence including any period or condition of probation, parole, or suspension of sentence. *Continued to 2009. The ACLU supported this resolution.*