

Civil Liberties Review

2006 Session of the Virginia General Assembly

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American Civil Liberties Union of Virginia

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About the Civil Liberties Review

The *Civil Liberties Review* summarizes the legislative actions of the Virginia General Assembly that affect civil rights and civil liberties 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) 644-8022 or acluva@acluva.org, or visit our website at www.acluva.org.

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Free Expression

Lawmakers in more than 30 states, including Virginia, introduced bills this year restricting free speech near funeral services. The bills were a reaction to more than 100 protests at military memorial services across the country over the last 12 months, all organized by Rev. Fred Phelps, a Kansas minister who believes that the war in Iraq is God's revenge on our society for being too accepting of gays and lesbians. In its original form, HB 372 would have created a new section of the Virginia Code banning any assembly "intended to disrupt" a funeral. The ACLU opposed the measure as a vague and overbroad restraint of free speech.

By the end of the session, the amended bill that passed the House and Senate merely added funerals to an existing list of gatherings at which "disorderly conduct" is illegal. The change is a subtle one, but leaves Virginia with a far less restrictive anti-Phelps funeral protest law than many states. Whether or not the new law will pass constitutional muster depends on how it is applied.

A bill to restrict protests near funerals passes, but final, amended version does little to change existing law. Virginia bill is far less problematic than similar bills passed in other states this year.

HB 878 and SB 621 were introduced to counteract the growing tendency of homeowners' associations to adopt rules prohibiting homeowners from placing political campaign signs in their front yards. Although the First Amendment prevents the government from banning political signs on private property, nothing in the Constitution or state law stops private groups, such as homeowners' associations, from imposing such restrictions in the areas under their control. As introduced, HB 878 and SB 621 were intended to protect the right of homeowners to place campaign signs on their property even when their associations forbade them. However, ambiguities in the language of the bills undermined their intent, and by the end of the session they had lost what support they had. These bills, hopefully with clearer language, will almost certainly return next year.

A bill (HB 781) guaranteeing the right of local government employees to express their opinions on matters of public concern to elected officials easily passed both chambers. The new law builds on a measure passed last year that provides the same protection for state employees.

PASSED

HB 372 (Carrico) Unlawful assembly at solemn ceremonies. Amends Virginia's disorderly conduct statute by adding funerals to the existing list of gatherings that interlopers cannot willfully disrupt. Under the statute, a person cannot disrupt a funeral, memorial service, or the meeting of government body, school, literary society or place of religious worship if the disruption interferes with the orderly conduct of the gathering or causes acts of violence by the people at whom the disruption is directed. *Passed the House (100-Y, 0-N) and the Senate (40-Y, 0-N). Signed by the Governor. The ACLU opposed the original bill, which created a new section of the code banning any assembly "intended to disrupt" a funeral.*

HB 781 (Albo) Rights of residents and employees to contact elected officials. Provides that every local government employee has the right to express opinions to state or local elected officials on matters of public concern. Retaliation against an employee who speaks out in this manner is unlawful. *Passed the House (99-Y, 1-N) and passed the Senate (40-Y, 0-N). Signed by the Governor. The ACLU supported this bill.*

HB 1242 (Hugo) Administration of surveys and questionnaires to public school students. Requires parental notification of any school survey requesting sexual information from students. Allows parents to review the survey instrument and to exempt their child from participation. No sexual information surveys of children in grades K-6 are allowed unless required by federal or state law. *Passed the House (93-Y, 4-N) and passed the Senate (39-Y, 0-N). Signed by the Governor. The ACLU opposed the original bill which banned all surveys of students regarding sexual matters.*

FAILED

HB 570 (Nixon) Internet filters for public library computers. Requires any library receiving state funding to use filtering software to prevent all patrons from accessing pornography. *Passed the House (92-Y, 8-N). The Senate also passed the bill (39-Y, 0-N), but only after changing it to be identical to SB 176 (see below). The House then rejected the Senate changes and the bill went to conference. No compromise could be worked out, and the bill died when the General Assembly adjourned. The ACLU opposed this bill.*

SB 176 (Wampler) Public Library Internet Protection Fund. Establishes a fund for public libraries to purchase Internet filtering software, but does not require any libraries to install such filters. *Passed the Senate (39-Y, 0-N). The House also passed the bill (89-Y, 5-N), but only after changing it to be identical to HB 570 (see above). The Senate rejected the House changes and the bill went to conference. No compromise could be worked out, and the bill died when the General Assembly adjourned. The ACLU monitored this bill.*

HB 878/SB 621 (Frederick/Puller) Property owners' association; display of political signs. Intended to prevent homeowners' associations from banning political signs on private property, but written in such a way that they did not actually accomplish this objective. *HB 878 was killed in House General Laws Subcommittee; SB 621 passed the Senate (37-Y, 0-N) but was continued until 2007 in House General Laws.*

HB 1344 (Bell) Using abusive language toward a law enforcement officer. Adds police officers, firefighters and EMS personnel to the list of persons protected by Virginia's anti-curse and abuse law. *Tabled in Criminal subcommittee of the House Courts Committee (7-Y, 2-N). The ACLU opposed this bill.*

SB 334 (Obenshain) Public Libraries; technology protection measures. Requires libraries that receive state funding to put filtering software on computers to block child pornography and obscenity. Provides an exception allowing the library to disable the filtering software for a patron conducting bona fide research or for some other lawful purpose. *Reported from General Laws and Technology with substitute (9-Y, 5-N). Left in Senate Finance.*

Religious Liberty

The passage of HJ 159 signals the beginning of the end of a 200-year ban on the right of churches to incorporate in Virginia. Originally intended as a check on the power of religious organizations, this provision is now viewed as preventing churches from operating on equal footing with other non-profit organizations. The ban on church incorporation has already been struck down by a federal court -- in a case brought by the Rev. Jerry Falwell and the ACLU of Virginia -- so the constitutional change, while necessary, is largely symbolic. The final step in the elimination of this provision from the Virginia Constitution will probably take place on November 7, when Virginia voters will vote in a referendum.

The ACLU opposed a bill requiring the State Board of Education to adopt guidelines for the “sanctioning of high school baccalaureate ceremonies...as part of graduation ceremonies.” Our objections diminished, however, when the bill was amended to remove the word “sanctioning” and thus merely directed the Board of Education to address baccalaureate ceremonies in its guidelines. However, since the Board of Education’s existing guidelines address baccalaureate services -- stating, in essence, that schools may *not* sanction them -- the amended version of the bill seemed to serve no function. Nonetheless it passed both chambers before being vetoed by the Governor precisely because it served no function.

Constitutional amendment to allow churches to incorporate passes; will be on the ballot in November.

Food prepared under religious guidelines becomes consumer friendly while avoiding government meddling.

A bill intended to protect consumers from purchasing falsely-labeled halal food ran afoul of the Establishment Clause when it put the government in the position of judging when a food product properly followed Islamic dietary law. The ACLU opposed the bill, but withdrew our opposition when it was amended to require only that the label on food packaged as halal (or kosher) show the name of the person or entity that authorized the preparation, or include a phone number or website where that information can be found. In its final form, this bill gives consumers the ability to know what religious guidelines were used to process their food, while making certain that the government does not influence the religious aspects of the preparation. The new law does not supersede any federal or state law governing the health and safety standards for food preparation and labeling.

PASSED

HJ 159 (McQuigg) Constitutional Amendment; Incorporation of churches. Deletes language in the Virginia Constitution that prohibits the General Assembly from granting charters of incorporation to churches. This prohibition was found unconstitutional in *Falwell v. Miller* (2002), a case in which the ACLU of Virginia filed an amicus brief on behalf of Rev. Jerry Falwell. *Passed the House (96-Y, 0-N) and the Senate (39-Y, 0-N). Signed by the Governor. The amendment will be on the ballot on November 7, 2006. The ACLU supported this bill.*

SB 349/HB 153 (Howell/Alexander) Regulation of the sale of halal food. Makes it unlawful to label any food or food product or display any unwrapped food or food product for sale that represents the food or food product as kosher or halal without indicating the authority for such designation or providing a toll-free number or website so that consumers may obtain such information. *Both bills were amended several times, but in the end, they passed the Senate (40-Y, 0-N) and the House (97-Y, 3-N). Signed by the Governor. The ACLU did not oppose the bill in its final form.*

SJ 44/HJ 64 (Stosch/Griffith) Virginia Statute for Religious Freedom. Commemorates the 220th Anniversary of the passage of the Virginia Statute for Religious Freedom by the General Assembly of Virginia. *Both bills passed the House and the Senate unanimously. Signed by the Governor. The ACLU supported these bills.*

FAILED

HB 493 (Frederick) High school baccalaureate ceremonies; guidelines. As introduced this bill required the State Board of Education to amend its guidelines on religious activities in public schools by adding a section on the “sanctioning of high school baccalaureate ceremonies by school divisions as part of high school graduation.” In its final form, the bill still required the guidelines to address baccalaureate services but the word “sanctioning” had been removed. *Passed the House (87-Y, 11-N) and, after amendments, passed the Senate (32-Y, 7-N). Vetoed by the Governor. The House of Delegates attempted to override the veto, but failed on a 60-Y, 36-N vote that was only a few votes short of the required 2/3 majority. The Governor issued the following veto statement:*

This bill is unnecessary, as the Board’s Guidelines Concerning Religious Activity in the Public Schools already address this issue in a comprehensive manner. Specifically, public schools in the Commonwealth, while prohibited from sponsoring or arranging private baccalaureates, are given the authority to grant after-hour use of school facilities for such a purpose, just as they may for other student or community groups. In addition, schools may permit scheduling notices regarding baccalaureate services to be posted on bulletin boards and announced over public address systems.

The ACLU initially opposed the bill, but our concerns diminished when it was amended.

HJ 123 (Cline) Religious freedom; establishing guidelines for religious activity in higher education. Encourages the Board of Education to review the “Guidelines Concerning Religious Activity in the Public Schools” and the State Council of Higher Education to consider establishing guidelines to ensure religious freedom at institutions of higher education in the Commonwealth. *Passed the House after amendments (100-Y, 0-N), but was passed by indefinitely in Senate Rules. The ACLU supported this bill.*

HB 1294 (Saxman) Public/Private Education Investment Fund. Creates income tax credits for businesses and taxpayers who make contributions to eligible public school and scholarship foundations that award tuition grants for students in public and private schools, including religious schools. *Passed the House (57-Y, 42-N), but was continued until 2007 in Senate Finance (15-Y, 0-N). The ACLU opposed this bill.*

Death Penalty

The death penalty was unaffected by the 2006 legislative session, moving neither forward nor backward. Moratorium and abolition bills were quickly dismissed, while bills to eliminate the triggerman rule and expand the death penalty to apply to those who kill judges and witnesses also failed. Lawmakers did increase the age of eligibility for the death penalty from 16 to 18 years, but this was required by last year's U.S. Supreme Court ruling abolishing the juvenile death penalty and was, in practice, already in effect.

PASSED

HB 45 & SB 362 (Callahan & Ticer) Abolishing the juvenile death penalty. Changes the death penalty eligible age from 16 to 18 to conform with the Supreme Court's ruling in *Roper v. Simmons*. *HB 45 passed the House (63-Y, 34-N) and passed the Senate (36-Y, 4-N); SB 362 Senate (34-Y, 3-N) and the House (63-Y, 34-N). Signed by the Governor. The ACLU supported these bills.*

FAILED

HB 188 (R. Marshall) Jury instructions. Instructs juries in capital cases that two persons sentenced to death in Virginia were pardoned after DNA testing, and that eyewitness identifications are often inaccurate. *Left in House Courts. The ACLU supported this bill.*

HB 782 (Gilbert) Elimination of the triggerman rule. This bill eliminates the triggerman rule, which requires that only the actual perpetrator of a capital murder is eligible for the death penalty. *Passed the House (83-Y, 16-N), but was unanimously carried over until 2007 in Senate Courts and sent to the Crime Commission to be studied. The ACLU opposed this bill.*

HB 859 (Hargrove) Abolition of the death penalty. Abolishes death penalty. *Passed by in the Criminal Subcommittee of the House Courts Committee. The ACLU supported this bill.*

HB 1018 (Hurt) Killing a judge is capital murder. Provides that the killing of a judge to interfere with performance of his duty is capital murder. *Passed the House (90-Y, 10-N). Carried over in Senate Courts. Sent to the Crime Commission. The ACLU opposed this bill.*

HB 1311 (Gilbert) Capital murder of a witness. Provides that the killing of any person because he or she is assisting in a criminal investigation or prosecution is a capital crime. *Passed the House (89-Y, 9-N), but was unanimously carried over until 2007 in Senate Courts of Justice and sent to the Crime Commission to be studied. The ACLU opposed this bill.*

HB 1441 (Landes) Definition of law enforcement officer. Expands the definition of a "law enforcement officer" to be any investigator designated by the Department of Corrections to have police power. This expands the death penalty because killing a law enforcement officer is already a capital crime. *Reported from House Militia, Police and Public Safety (22-Y, 0-N) and was left in House Appropriations (no funds appropriated). The ACLU opposed this bill.*

SB 17 (Marsh) Moratorium on executions. Stops executions, but does not halt capital trials. *Passed by indefinitely in Senate Courts (11-Y, 2-N). The ACLU supported this bill.*

Reproductive Rights

Fifteen bills intended to diminish reproductive rights were introduced this year, but none passed. This is the second year in a row that the General Assembly did not pass any anti-choice legislation.

For the second year in a row, no anti-choice bills made it through the General Assembly.

PASSED

SJ 171 (Whipple) Family Life Education (FLE) Survey. Asks the Board of Education to survey public schools to determine which divisions offer FLE instruction, what curricula are used, the qualifications required of FLE teachers, the number of children who opt out each year, and the degree of parental and community involvement. *Passed the Senate (40-Y, 0-N) and the House (71-Y, 28-N). Signed by the Governor. The ACLU supported this bill.*

HB 1472 (Saxman) Medicaid; family planning services. Provides family planning services, but no abortions or abortion referrals, to families with incomes up to 133% of the federal poverty level. *HB 1472 was stricken from the docket, but budget amendment item 302 #23 (Howell/Saxman/Amundson) accomplishes the same purpose. The budget measure passed the Senate (37-Y, 0-N) and the House (91-Y, 2-N). The ACLU supported the bill and amendment.*

FAILED

HB 164 (Lingamfelter) Abstinence in Family Life Education. Requires FLE courses that include a discussion of sexual intercourse to emphasize that abstinence is the accepted norm and the only guarantee against unwanted pregnancy. *Passed the House (68-Y, 31-N). Carried over to 2007 in Senate Education and Health (8-Y, 4-N, 3-A). The ACLU opposed this bill.*

HB 173 (Lingamfelter) Notification to parents of certain health services to minors. Any government agency providing services to minors for sexually transmitted diseases, pregnancy, drug use, emergency contraception or suicide contemplation must notify parents within 48 hours of providing the service. *Failed to report in House Health, Welfare and Institutions. The ACLU opposed this bill.*

HB 187 (R. Marshall) Prohibition on the provision of certain medical technology to unmarried women. Prohibits unmarried women from using artificial insemination, in vitro fertilization, or other medical technologies to become pregnant. *Passed by indefinitely in House Health, Welfare and Institutions. The ACLU opposed this bill.*

HB 189 (R. Marshall) Targeted Regulations for Abortion Providers (TRAP). Requires any medical facility providing abortions to comply with the licensing requirements for the operation of an ambulatory surgery center. *Passed the House (66-Y, 33-N), but failed to report from Senate Education and Health (6-Y, 9-N). The ACLU opposed this bill.*

HB 237 (R. Marshall) Abortion provider prohibitions. Requires physicians performing abortions in Virginia to reside and practice in the state and have privileges in a Virginia hospital. *Failed in House Health, Welfare and Institutions. The ACLU opposed this bill.*

HB 868 (Byron) Emergency Contraception; requiring parental consent for minors. The bill requires parental consent to be obtained prior to prescribing any form of “the morning after” pill to a minor. *Left in House Courts of Justice. The ACLU opposed this bill.*

HB 1151 (Lingamfelter) Restrictions on funding of family planning services. Prohibits organizations from receiving family planning funds from the state if they perform abortions, refer women for abortions or are associated with abortion providers. *Left in House Health, Welfare and Institutions. The ACLU opposed this bill.*

HB 1191 (R. Marshall) Wrongful death; “pre-born child.” Allows wrongful death law to apply to the death of a “pre-born” child. *Left in House Courts. The ACLU opposed this bill.*

HB 1199 (R. Marshall) Requirements for prescribing oral contraceptives for minors. Makes it a felony to prescribe oral contraceptives to a minor without parental consent if an adverse interaction occurs with another prescription medication. *Continued to 2007 in House Health, Welfare and Institutions. The ACLU opposed this bill.*

HB 1232 (Landes) Unintentional causing death of fetus. Causing injury to a woman during the commission of a crime or during conduct that shows a reckless disregard for human life that results in the death of her fetus is punishable as involuntary manslaughter. *Left in House Courts of Justice. The ACLU opposed this bill.*

HB 1274 (Janis) Abortion complications; reporting. Requires physicians to report to the Department of Health any treatment for complications after an abortion. *Passed the House (64-Y,34-N). Failed in Senate Education and Health (9-Y, 6-N). The ACLU opposed this bill.*

HB 1378 (Cole) Informed consent to an abortion. Provides that informed consent to an abortion shall include a determination by a physician of the viability of the pregnancy as indicated by the presence of a fetal sac within the uterus and of fetal cardiac activity. *Left in House Courts of Justice. The ACLU opposed this bill.*

SB 315 (Cuccinelli) Abortion; preservation of fetal tissue when performed on a child. Requires the preservation and testing of fetal tissue for the purpose of determining whether the pregnancy is the result of criminal behavior. Samples will be sent to the Dept. of Forensic Science. *Failed to report in Senate Court of Justice (4-Y, 11-N). The ACLU opposed this bill.*

SB 580 (Cuccinelli) Abortion; type of licensure required for physicians. Prohibits a physician from performing abortions in Virginia unless the physician is certified by the Board of Medicine to practice surgery or obstetrics/gynecology, or both. *Passed by indefinitely in Senate Education and Health (10-Y, 5-N). The ACLU opposed this bill.*

SB 584 (Cuccinelli) Child abuse or neglect; mandates reporting of teenage pregnancies. Requires an attending physician or other health professional to report any pregnancy of a person under 15 as child abuse or neglect. *Failed to report in Senate Rehabilitation and Social Services (7-Y, 7-N). The ACLU opposed this bill.*

Gay and Lesbian Rights

Legislators passed a constitutional amendment (HJ 41/SJ92) that not only bans gay marriages and civil unions, but also any other legal arrangement between unmarried persons when that arrangement approximates marriage. Virginia joins at least five other states where citizens will vote this fall on amendments banning gay marriage. Twenty states already have constitutional bans on gay marriage.

Seventy-five percent of legislators support constitutional amendment banning gay marriage.

In related legislation, some lawmakers attempted to mislead voters into believing that the amendment banned only gay marriages and civil unions. The original version of the bills to establish what language would be used on the ballot did not mention that the amendment also banned any "legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage language." However, the final version of these bills, after amendments, requires that the proposed amendment be printed on the ballot in its entirety.

Lawmakers voted down a bill that would have, in effect, banned Gay-Straight Alliances in public schools. They also rejected a bill prohibiting the Department of Vital Statistics from placing the names of both adoptive gay parents on birth certificates. The latter was an attempt to reverse a recent Virginia Supreme Court ruling -- in a case brought by the ACLU of Virginia -- interpreting state law to require the names of both gay or lesbian parents birth certificates reissued after adoptions. (Note: This only applies to gay and lesbian parents from out of state who have adopted children born in Virginia. Virginia does not allow gay or lesbian couples to adopt, although no Virginia law prevents single gay or lesbian parents from adopting.)

PASSED

HJ 41/SJ 92 (R. Marshall/Newman) Constitutional amendment against gay marriage/civil unions. Amends the Virginia Constitution by adding:

"That only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions. This Commonwealth and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage. Nor shall this Commonwealth or its political subdivisions create or recognize another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage."

HJ 41 passed the House (73-Y, 22-N) and the Senate (29-Y, 11-N). SJ 92 passed the Senate (28-Y, 11-N) and the House (76-Y, 22-N). Signed by the Governor. The ACLU opposed this amendment (and will continue to work to defeat it in November).

HB 101/SB 526 (Cosgrove & Newman) Ballot language for the constitutional amendment to ban gay marriage/civil unions. Provides for a voter referendum at the November 2006 election and sets the language that will appear on the ballot for the constitutional amendment banning gay marriage, civil unions and other arrangements between

non-married persons that approximate marriage. *The original version of this bill did not include the full language of the constitutional amendment on the ballot. Instead, it used an abridged version that deceptively implied that the amendment banned only gay marriage. That bill, as introduced in the House and Senate, and as passed by the House, placed the following language on the ballot:*

"Question: Shall Article I (the Bill of Rights) of the Constitution of Virginia be amended to state, in part, that 'only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political sub-divisions' and to add provisions relating to the legal status of other relationships?"

However, the Senate Privileges and Elections Committee changed the bill to require that the entire amendment (see HJ 41/SJ 42, above) be printed on the ballot. This version passed the Senate (40-Y, 0-N) and the House (85-Y, 12-N). Signed by the Governor. The ACLU opposed the original version of the bill, but supported the final version requiring that the entire amendment be printed on the ballot.

FAILED

HB 389 (Englin) Repeals the "Affirmation of Marriage Act." Repeals the Virginia law enacted in 2004 that prohibits civil unions, partnership contracts or other arrangements between persons of the same sex purporting to bestow the privileges or obligations of marriage. *Continued until 2007 in House Courts of Justice. The ACLU supported this bill.*

HB 1308 (Lohr) School boards; authority to block use of school facilities by certain groups. Authorizes school boards to prohibit the use of school facilities by any student club or other student group that encourages or promotes sexual activity by unmarried minor students. *Passed House (70-Y, 29-N), but failed to report from Senate Education and Health (6-Y, 9-N). The ACLU opposed this bill.*

HB 1373 (Hull) Sexual orientation added as prohibited discrimination in certain counties. Adds "sexual orientation" as prohibited discrimination in a county with the urban county executive form of government, i.e., Fairfax County. *Laid on the table in House Counties, Cities and Town. The ACLU supported this bill.*

SB 414 (Hanger) Birth certificates; same-sex couples. Prohibits both partners in a same-sex couple from being listed on a Virginia birth certificate following the adoption in another state of a Virginia-born child. *Failed to report in Senate Rehabilitation and Social Services (7-Y, 8-N). The ACLU opposed this bill.*

HB 1552 (J. Scott) Fair Housing Law; prohibiting sexual orientation discrimination. Prohibits discrimination in housing on the basis of sexual orientation. *Laid on the table in House General Laws Subcommittee (4-Y, 3-N). The ACLU supported this bill.*

SB 700 (Lucas) Public employment; discrimination prohibited. Prohibits state agencies, boards, bureaus, and councils from discriminating on the basis of sexual orientation. *Failed to report from Senate General Laws (6-Y, 8-N, 1-A). The ACLU supported this bill.*

Privacy

Legislators passed two bills that will provide greater privacy protection for drivers. The first, HB 816/SB 90, limits access to the data stored in the “black boxes” that are now standard equipment in new cars. These data boxes can record, among other things, a vehicle's speed, direction, location, and seat belt status at any given time. Under the new law, the recorded data can only be accessed with permission of the owner, by licensed dealers using the information for maintenance, in emergencies, or with a warrant. The bill makes it clear that insurance companies do not have a right to the data. Before the passage of this bill, it was unclear who owned this data and who had access to it.

A second driver-related bill protects the privacy of drivers who fail to pay electronic tolls. In addition to numerous other provisions defining the process of collecting fines, HB 1000 creates strict security measures by limiting the information about drivers available to the collecting agency, preventing the agency from disseminating the information, and requiring that the information collected by the agency be destroyed after a specified amount of time.

Legislators protect data stored in “black boxes” that come in new cars, but violate the spirit of federal privacy law by requiring colleges to provide background information on accepted students to state police.

An omnibus sex offender bill (SB 559/HB 984) not only increases penalties for sex offenders and restricts their mobility, employment and volunteer activities, but it also requires all colleges and universities to provide the state police with a list of accepted students to be checked against the sex offender registry. By having the background checks occur after students have been accepted, but before they have enrolled, the new Virginia measure narrowly circumvents federal law that prohibits universities from sharing this kind of information about students once their enrollment is finalized.

PASSED

HB 816/SB 90 (May/Watkins) Recording devices in automobiles; access to data. Limits access to data stored on recording devices in motor vehicles. Recorded data cannot be accessed by persons other than the motor vehicle owner except under designated circumstances. *HB 816 passed the House (67-Y, 33-N) and after amendments passed the Senate (40-Y, 0-N). SB 90 passed the Senate (40-Y, 0-N) and after amendments passed the House (92-Y, 3-N). However, each chamber rejected the other's changes, and the bills went to conference committee. The final report was agreed to by the Senate (39-Y, 0-N) and the House (50-Y, 47-N). Signed by the Governor. The ACLU supported these bills.*

HB 1000 (Rust) Failure to pay electronic tolls. Prevents agencies charged with collecting fines from drivers who fail to pay electronic tolls from disseminating information about drivers, and requires that the driver information be destroyed after a specified amount of time. *Passed the House (99-Y, 0-N) and passed the Senate (40-Y, 0-N). Signed by the Governor. The ACLU supported this bill.*

SJ 51 (O'Brien) Study; Adequacy of security of state government databases. Directs the Auditor of Public Accounts to study the adequacy of the security of state government databases and data communications. *Passed the Senate (38-Y, 0-N) and passed the House (98-Y, 0-N). Signed by the Governor. The ACLU supported this bill.*

SB 559/HB 984 (Stolle/Sherwood) Sex Offender and Crimes against Minors Registry; registration, civil commitment and mandatory minimums; penalties. These omnibus bills expand the sex offender registry to include all sex offenders, non-violent and violent; to require a mandatory minimum of 25 years in prison for certain child-related sex offenses; to increase the penalties for failing to register, including GPS monitoring; to add more crimes to the list of those eligible for civil commitment; to prohibit more offenders from working or volunteering at schools or day care centers; and to prevent some offenders from residing within 500 feet of a school or day care center. In addition, all two and four year higher education institutions will now have to send lists of all their accepted students to the State Police to be checked against the sex offender database. *Both bills passed the House and Senate unanimously. Signed by the Governor. The ACLU opposed these bills.*

FAILED

HB 412 (R. Marshall) Gamete donors; anonymous donations prohibited. Prohibits the use of unrelated anonymous donor oocyte or sperm as a means of conception; requires the identity of any unrelated oocyte or sperm donor to be noted in the health record of any patient who uses them. *Continued to 2007 in House Health, Welfare and Institutions.*

HB 966 (Ebbin) Student records; parental consent to release such information to military recruiters. Requires schools to give notice to parents that, absent their objection, information on their children found in the school directory may be given to military recruiters. School directories may include the student's name, sex, address, telephone number, date and place of birth, major field of study, extracurricular activities, dates of attendance, degrees and awards received, and other information. The notice advises parents of their right to deny consent to release directory information concerning their child or limit the persons to whom such information may be released. *Passed by indefinitely in House Education. The ACLU supported this bill.*

HB 995 (Brink) Identity theft; notification of breach of information system. Requires an individual or a commercial entity that conducts business in Virginia and that owns or licenses computerized data that includes personal information to conduct in good faith a reasonable and prompt investigation when it becomes aware of a security breach. If the investigation determines that misuse of information has or is reasonably likely to occur, the individual or commercial entity shall give notice as soon as possible to the persons who may be affected. *Continued to 2007 in House Science and Technology. The ACLU monitored this bill.*

Criminal Justice and Due Process

A sprawling sex offender law passed the General Assembly this year without a single dissenting vote. SB 559/HB 984 provides for longer sentences for sex-offenders, creates new residency and employment restrictions, and even requires colleges and universities to give to the state police the names of all incoming students once they have been accepted for admittance.

Although court-appointed attorneys in Virginia are among the lowest paid in the nation, and despite overwhelming evidence that indigent criminal defendants here receive inadequate legal representation, legislators failed to make even modest progress in this area. (See HB176 and HB313/SB 573).

Lawmakers again fail to provide adequate legal representation for indigent defendants in criminal cases.

PASSED

SB 552 (Stolle) Destruction of human biological evidence. Makes it a Class 6 felony for a clerk of court or other public officer to intentionally destroy human biological samples collected as evidence in a felony conviction, except as allowed by law. *Passed the Senate (40-Y, 0-N) and passed the House (99-Y, 0-N). Signed by the Governor. The ACLU supported this bill.*

SB 559/HB 984 (Stolle/Sherwood) Sex Offender and Crimes against Minors Registry; registration, civil commitment and mandatory minimums; penalties. These omnibus bills expand the sex offender registry to include all sex offenders, non-violent and violent; to require a mandatory minimum of 25 years in prison for certain child-related sex offenses; to increase the penalties for failing to register, including GPS monitoring; to add more crimes to the list of those eligible for civil commitment; to prohibit more offenders from working or volunteering at schools or day care centers; and to prevent some offenders from residing within 500 feet of a school or day care center. In addition, all two and four year higher education institutions will now have to send lists of all their accepted students to the State Police to be checked against the sex offender database. *Both bills passed the House and Senate unanimously. Signed by the Governor. The ACLU opposed these bills.*

FAILED

HB 176 (Putney) Court-appointed counsel; court may waive limit on compensation. Authorizes the circuit and district courts, when appropriate, to waive the limit on the compensation for court-appointed counsel in cases where counsel represents a defendant on a felony charge that may be punishable for a period of more than 20 years. *Passed the House (98-Y, 0-N, 2-A). Carried over until 2007 in Senate Finance. The ACLU supported this bill.*

HB 313/SB 573 (Albo/Stolle) Compensation for court-appointed counsel. Removes the monetary caps on court-appointed counsel fees and instead allows the court to set an hourly rate based on the type of case. *Left in House Appropriations and Senate Finance (no funds provided). The ACLU supported these bills.*

Equal Rights

The General Assembly continued to show its anti-immigrant bias this year, although all such bills were ultimately rejected. Failed measures included bills to require that all driver's license examinations be conducted solely in English, to deny in-state tuition to all illegal immigrants, and to prevent undocumented immigrants from attending state universities. Legislators also rejected a bill authorizing the Governor to enter into an agreement with U.S. Immigration and Customs Enforcement that would require the Virginia State Police to enforce federal immigration law.

A bill to amend the Virginia Constitution to allow the General Assembly to regulate the process for the restoration of voting rights of felons failed, as it has for many years. The purpose of the bill is to give legislators the authority to create an objective process for the automatic restoration of voting rights rather than

depending entirely on the Governor to make the decision. Governor Warner streamlined the process during his tenure, but the state Constitution still leaves the decision entirely in the hands of the Governor. A bill to collect data on racial profiling by the law enforcement officials also failed again this year.

Legislators' bias against immigrants remains intact, but all such bills fail in the end.

PASSED

HB 691/HB 1093 (Dance/ J. Scott) Certain documents to be provided upon a prisoner's release. Requires the Director of the Department of Corrections to provide each prisoner with the following documents upon discharge: the prisoner's medical records (including copies of current prescriptions and a physician's summary of continuing or pending medical treatment), verification of the prisoner's work history while in custody, and verification of all educational and treatment programs completed by the prisoner while in custody. *Passed the House (97-Y, 0-N) and Senate (40-Y, 0-N). Signed by the Governor.*

HB 1236 (Melvin and Suit) Amending the Fair Housing Law. Removes exemption of single family homes from the Fair Housing Law section relating to restrictive covenants, voiding any contract or agreement that restricts the sale or rental of housing based on race, color, religion, national origin, sex, elderliness, familial status or handicap. *Passed House (100-Y, 0-N) and the Senate (38-Y, 0-N). Signed by the Governor. The ACLU supported this bill.*

FAILED

HB 157 (Ward) Virginia Biased-Based Policing and Traffic Statistics Reporting Act. Requires the Department of State Police to collect data regarding race, ethnicity and gender of drivers stopped by the police. The Department must develop a database for correlating, analyzing, interpreting, and reporting the data to determine if racial bias exists in the policing of Virginia's roadways. *Left in House Militia, Police and Public Safety. The ACLU supported this bill.*

HB 262 (Hargrove) Prohibiting admission of illegal aliens to public institutions of higher education. Prohibits persons who are unlawfully present in the country from enrolling in any public institution of higher education in Virginia. *Passed the House (67-Y, 33-N), but was passed by indefinitely in Senate Education and Health (12-Y, 0-N, 3-A). The ACLU opposed this bill.*

HB 287 (D. Marshall) Examination of applicants for driver's licenses. Requires that all examinations of applicants for driver's licenses be conducted exclusively in the English language. Use of interpreters in connection with driver's license examinations is prohibited. *Tabled in House Transportation. The ACLU opposed this bill.*

HB 487 (Frederick) Governor to enter into agreement with federal immigration. Original version of this bill gives the Virginia State Police the authority to enter into an agreement with U.S. Immigration and Customs Enforcement that would enable state law enforcement officials to enforce federal immigration laws. Amended version on of the bill gives the Governor the authority to enter into such an agreement on behalf of the State Police. *Passed the House (77-Y, 22-N), but passed by indefinitely in Senate Courts of Justice (14-Y, 0-N). The ACLU opposed this bill.*

HB 1050/SB 677 (Reid/Hanger) Tuition rates for undocumented immigrants in higher education in Virginia. HB 1050 denies eligibility for in-state tuition rates to undocumented immigrants who are enrolled in higher education in Virginia. SB 677 is similar to HB 1050, but provides exceptions for those who have resided in Virginia for at least three years prior to high school graduation and meet other criteria established by the law. *HB 1050 passed the House (76-Y, 23-N), but was stricken at the request of the patron. SB 677 passed the Senate (36-Y, 3-N) and was continued until 2007 in House Education. The ACLU opposed both bills.*

HJ 29/SJ 15 (D. Jones/Miller) Constitutional amendment; restoration of civil rights. Authorizes the General Assembly to provide for the restoration of civil rights -- most notably the right to vote -- for persons convicted of felonies who have completed service of their sentence, including any period or condition of probation, parole, or suspension of sentence. These bills would not remove the Governor's authority to restore civil rights, which is currently the only way in which such rights can be restored in Virginia, but would allow the General Assembly to pass laws providing for alternative means for restoration of rights not requiring gubernatorial approval. *Both bills were continued until 2007 in their respective Privileges and Elections Committees. The ACLU supported these bills.*

Voting and Access to Government

For the first time in many years, legislators attempted to clarify Virginia's confusing law on where voters should register to cast their votes. Under existing law, a person must both live in a particular place (that is, have an abode) and intend to remain in that place (that is, be domiciled) in order to register to vote in elections there. HB 1432 and HB 1604 recognize that some voters -- for example, college students -- may live in more than one place, and direct registrars to assist such voters in determining the appropriate place for them to register to vote. In recent years, the ACLU of Virginia has provided legal representation to several students who were denied the right to register to vote where they attended college. Because the law is vague, the results of those cases have been mixed. Although the bill failed, the State Board of Elections has agreed to take up the issue between legislative sessions.

Bills to clarify student voter registration practices fail, as do other measures to make voting easier.

Lawmakers rejected bills to make voting easier in Virginia. Despite evidence that longer hours for polling places will increase voter participation, a bill to keep the polls open until 8:00 p.m. did not receive any support. Likewise, bills allowing absentee voting for everyone failed quickly.

PASSED

HB 564 (Nixon) Freedom of Information Act; Posting of minutes by state boards and commissions. Clarifies that all boards, commissions, councils and other public bodies created in the executive branch will post minutes of their meetings on their websites (if they have them) and on the Commonwealth Calendar. *Passed the House (97-Y, 0-N) and passed the Senate (38-Y, 0-N). Signed by the Governor. The ACLU supported this bill.*

HB 1327 (McClellan) Absentee voting; those who did not receive such ballot may vote by provisional ballot at polling place. Permits voters who applied for, but did not receive, absentee ballots, to vote by provisional ballot at their polling places after signing a statement that they did not receive or vote by absentee ballot. *Passed the House (90-Y, 6-N, 1-A) and passed the Senate (39-Y, 0-N). Signed by the Governor. The ACLU supported this bill.*

FAILED

HB 11/HB 562 (Parrish/Amundson) Absentee voting; no qualifications to use. Allows qualified voters to vote absentee for any reason. Eliminates the requirement that voters who wish to vote absentee cite one of the nine reasons allowed under existing law. *Both bills were tabled in House Privileges and Elections. The ACLU supported these bills.*

HB 1432/HB 1604 (Barlow/Rapp) Definitions of residence; duties of registrars. Provides that an applicant to register to vote may have more than one place of abode but only one domicile, which must be claimed as his or her primary residence. Registrars are directed to make reasonable inquiries to assist applicants to make an accurate determination of their

residence status. *Both bills were continued to 2007 and will be studied by the State Board of Elections this summer. The ACLU supported these bills.*

HB 1243/SB 424/SB 272 (Hugo/ Davis/Whipple) Electronic voting equipment; pilot program. Requires the State Board of Elections to design a pilot program to test electronic voting equipment, including what paper records should be required and how equipment is to be monitored for reliability. *HB 1243 reported from House Privileges and Elections (17-Y, 5-N), but was continued until 2007 in House Appropriations where no funds were approved. SB 424 was continued until 2007 in Senate Privileges and Elections (13-Y, 0-N). SB 272 passed the Senate (40-Y, 0-N), but was continued to 2007 in House Appropriations.*

HB 1598 (Hugo) Hours polls are open. Adds one hour to the time that the polls are open for voting by moving the closing time from 7:00 p.m. to 8:00 p.m. *Passed by indefinitely in House Privileges and Elections. The ACLU supported this bill.*

SJ 84 (Williams) Study; Redistricting process. Creates a joint subcommittee to evaluate the Virginia redistricting process and its impact on competitive elections and the drawing of districts; to review alternative redistricting processes used in other states; examine the impact of federal legislation, such as the Voting Rights Act, on the redistricting process; to consider both constitutional and statutory changes in the process; and to study the criteria that should be followed in developing redistricting plans. *Passed the Senate (40-Y, 0-N), but left in House Rules Committee.*