

Civil Liberties Review



Virginia General Assembly 2007

Contents

Free Expression	1
Religious Liberty	3
Reproductive Rights	4
Equal Rights.....	6
Immigrants' Rights	7
Gay and Lesbian Rights	9
Privacy.....	10
Death Penalty	11
Criminal Justice and Due Process	12
Voting and Access to Government	14

American Civil Liberties Union of Virginia

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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, or sign up on our website at www.acluva.org.

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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

Public libraries in Virginia lost control over their Internet access policies this year. A new law requires public libraries that receive state funds, which nearly all do, to install blocking devices, or filters, on computers with access to the Internet. The filters may be disabled, but only at the request of adults who can demonstrate that they are engaged in bona fide research purposes that require uncensored Internet access. The ACLU has long opposed the use of filters on library computers used by adults because they tend to block access to much legitimate information on health care, literature, art, and science. Libraries in Virginia are already required to have acceptable use policies, which the ACLU does not oppose.

Virginia finally has a law that explicitly protects public speakers against lawsuits filed solely for the purpose of preventing them from voicing their opinions at public meetings. The new law should help protect free speech, but may not serve as much of a deterrent to Strategic Litigation Against Public Participation, commonly called SLAPP suits. SLAPP suits are typically filed by corporations that receive criticism at a public hearing solely for the purpose of intimidating the speaker. The ACLU supported a bill (SB 858) that would have provided a stronger deterrent to such lawsuits, but legislators ultimately favored a more watered down version (SB 1290).

Internet filters now required on computers in public libraries receiving state funds.

Weak law protecting speakers at public meetings passed.

Our efforts to extend First Amendment rights to tenants and individuals living in communities controlled by homeowners' associations failed. One bill would have allowed renters of single-family dwellings to post campaign signs in their yards and the other would have given the same right to homeowners whose associations ban campaign signs.

Passed

HB 2197 (Nixon) Internet filters on library computers. Requires libraries that receive state funding to place anti-pornography filters on computers accessible to the public, although the filters must be disabled for adults with a bona fide research purpose. Note: Libraries are already required to have internet use policies to prevent minors from accessing sexually explicit materials. *Passed the House of Delegates (80-Y, 14-N). Substitute version passed by the Senate (39-Y, 0-N). Substitute version passed by the House and adopted (85-Y, 12-N). The ACLU opposed this bill.*

SB 1250 (Herring) Immunity when speaking at public hearings. As introduced, immunizes people who speak at public hearings of a local body so long as they are speaking on matters properly before the governing body and not committing libel or slander. As amended, the immunity does not apply to any statements made with knowledge that they are false or with reckless disregard for whether they are false. *Passed the Senate (39-Y, 0-N). Substitute version passed by the House (97-Y, 0-N). House substitute version agreed to by the Senate (40-Y, 0-N). The ACLU supported this bill.*

Failed

HB 1643 (Landes) Intellectual diversity on college campuses. Requires public colleges to develop intellectual diversity programs and report annually on their progress to the State Council on Higher Education. (Note: The ACLU of Virginia supports intellectual diversity at public universities, but is concerned that a state law mandating annual reporting on intellectual diversity will result in universities giving undue credibility to some ideas merely for the sake of diversity, rather than accepting or rejecting those ideas based on the kind of rigorous debate expected in the marketplace of ideas.) *Left in Education Committee. The ACLU opposed this bill.*

HB 1733 (Fralin) Tenants' right to display campaign signs. The bill would give tenants in detached single-family units the right to display campaign or election signs on premises. Because tenants do not own the property they rent, landlords may, as a condition of the lease, prohibit political signs. This bill would prevent landlords from imposing such restrictions on tenants. *Left in General Laws Committee. The ACLU supported this bill.*

HB 1769 (Brink) Campaign apparel in polling places. The bill would permit voters to wear stickers, buttons, shirts, hats, or other apparel on which a candidate's name or political slogan appears when approaching or entering a polling place. *Tabled in Privileges and Elections Committee. The ACLU supported this bill.*

HB 2731 (Englin) Rights of public employees to contact public officials. Guarantees state and local employees the right to express their opinions on matters of public concern to state or local public officials or officers. *Reported from General Laws Committee. Failed in the House (45-Y, 48-N, 1-A). The ACLU supported this bill.*

HB 3194 (Ware) Immunity when speaking at public hearings. Immunizes people who speak at public hearings of a governmental entity so long as they are speaking on matters properly before the governing body. *Passed by the House (97-Y, 0-N) on Feb. 6. Referred to Senate Courts of Justice on Feb. 7. Left in committee on Feb. 19. The ACLU did not oppose this bill.*

SB 858 (Reynolds) Strategic lawsuits against public participation. Prohibits malicious, frivolous lawsuits filed solely for the purpose of preventing a person from publicly expressing his or her opinion as protected by the First Amendment. Creates sanctions for entities that bring SLAPP suits (Strategic Lawsuits Against Public Participation) in order to chill those who would speak against them in public. Note: The ACLU is well aware that the right to bring lawsuits is protected by the First Amendment, but is satisfied that this bill is properly written so that it protects the rights of public speakers without unfairly restricting access to the courts. *Incorporated into SB 1250 (Herring) Courts of Justice Committee. The ACLU supported this bill.*

SB 964 (Puller) Display of political signs. Protects the rights of homeowners in subdivisions to display political signs in their yards even when they may be prohibited by the rules and regulations of their local homeowners' associations. Along with the usual panoply of rules designed to protect the aesthetics of their subdivisions, many homeowners' associations ban campaign signs even during the run-up to Election Day. This bill would allow associations to adopt reasonable regulations regarding the size and tenure of campaign signs, but not outright bans. The bill does not interfere with the other restrictions typically imposed by homeowners' associations, nor does it affect such bans if they are incorporated into the subdivision's declaration. *Stricken at the request of the patron (9-Y, 0-N) in Senate General Laws and Technology Committee. The ACLU supported this bill.*

Religious Liberty

Virginia now has a religious freedom “restoration” law, albeit not one that the ACLU entirely endorses. The new law, which the ACLU supports in principle, is intended to restore protections for free exercise of religion that the Supreme Court removed when it ruled in 1990 that it is permissible for laws to infringe on religious practices so long as they apply equally to all persons and practices.

New religious freedom law expands free exercise rights, but fails to protect prisoners and may allow violations of civil rights laws.

The new Virginia law requires the state to show that a compelling governmental interest is at stake and that it is using the least restrictive means at its disposal any time it interferes with a religious practice. The ACLU has supported religious restoration laws since they were first introduced in the Virginia General Assembly in the late 1990s, but the new law does not apply to incarcerated persons, and it lacks a non-discrimination clause that would prevent individuals from using religion as a justification to circumvent federal and state civil rights laws. Our attempts to amend the law in the Senate and through an appeal to the Governor failed.

Passed

HB 3082 (Lingamfelter) Religious freedom defined. Government may not burden a person's free exercise of religion unless it is essential to further a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest. *Reported from Houses Courts of Justice Committee (15Y, 4N). Passed by the House of Delegates (67-Y, 30-N). Reported from Senate Courts of Justice (9Y, 6N). Passed by the Senate with a substitute with amendment (26-Y, 12-N). Substitute version passed by the House (80-Y, 8-N). Passed by the Senate with a substitute and an amendment (28-Y, 11-N). Senate substitute version with an amendment agreed to by the House (80-Y, 8-N). Conveyed to the Governor. House of Delegates adopted the Governor's recommendations (94-Y, 3-N). Senate adopted the Governor's recommendations (39-Y, 0-N). Note: The ACLU supported this bill in general, but sought to have it amended, per the discussion above, to add a non-discrimination clause and to remove from it the exclusion of incarcerated persons.*

Failed

HJ 724 (Carrico) Constitutional amendment-religious freedom. Amends the Virginia Constitution to permit prayer and the recognition of "religious beliefs, heritage, and traditions on public property, including public schools." Note: This bill would amend the portion of the Virginia Constitution into which Thomas Jefferson's Statute for Religious Freedom is incorporated. The intention, based on public statement made by the bill's patron, appears to be to promote government-sanctioned religion in public schools. *Left in House Privileges and Elections Committee. The ACLU opposed this resolution.*

Reproductive Rights

For the third year in row, lawmakers failed to pass any anti-choice bills, but the future of reproductive rights is uncertain. As usual, several of the bills were voted down by narrow one or two vote margins in Senate committees after being approved by the full House of Delegates. One of those Senate committees, Education and Health, will lose its chair and consistent pro-choice advocate, Russell Potts, before the 2008 session. In addition, when the U.S. Supreme Court upheld the federal ban on so-called partial birth abortions this spring, it opened the door for Virginia to pass its own version of the law in 2008. (A partial birth ban was passed in Virginia in 2000 but was struck down under an earlier U.S. Supreme Court ruling.)

Legislators go three years without passing any anti-choice bills— but a key retirement in the Senate and a new Supreme Court ruling have set the stage for a contentious 2008 session.

Failed

HB 1631 (Jones) Feticide. Would make the killing of a fetus by any person, including a pregnant woman who kills her own fetus, a felony punishable by a maximum of forty years. Feticide is already illegal in Virginia, but it only applies when the act is committed by a person other than the pregnant woman. *Left in House Courts Committee. ACLU opposed.*

HB 1665 (Marshall, R.G.) Forced or coerced abortion. Prohibits any person from forcing or coercing a pregnant female to have an abortion. “Forces or coerces” is defined as any act or attempted act including a threat of physical, emotional, financial, or psychological harm. Abortions should never be coerced, but this bill could infringe on the free speech right to express an opinion on a woman's decision to have an abortion. *Reported from House Courts of Justice with amendments (5-Y, 3-N). Reported from the House of Delegates (71-Y, 27-N). Passed by in Senate Education and Health Committee (9-Y, 6-N). ACLU opposed.*

HB 1883 (Marshall, R.G.) Licensure of clinics. Requires abortion clinics performing more than 25 procedures per year to have the same equipment and facilities as ambulatory surgery centers. *Reported from Health, Welfare & Institutions (14Y, 8N). Passed by House (60-Y, 35-N). Passed by indefinitely in Senate Education and Health (8-Y, 7-N). ACLU opposed.*

HB 2123 (Marshall, R.G.) Fertility treatments; disclosure required of egg donors. Requires physicians to disclose to any woman donating ova for another person all known risks of such donation and prohibits the anonymous donation of gametes for use in infertility treatments. *Passed by indefinitely in House Health, Welfare & Institutions. ACLU opposed.*

HB 2124 (Marshall, R.G.) Abortion illegal if *Roe v. Wade* overturned. Bill states that if the United States Supreme Court overturns *Roe v. Wade*, Virginia law would revert to pre-*Roe* status in which abortions were illegal. *Left in Courts of Justice Committee. ACLU opposed.*

HB 2125 (Marshall, R.G.) Procedures for abortion provider to ensure non-coercion. Requires abortion providers to go through a long list of procedures to ensure that the patient's request for an abortion is not the result of intimidation or coercion by others. *Left in Courts of Justice Committee. ACLU opposed.*

HB 2221 (Amundson) Birth control defined as not an abortion. States that birth control methods approved by the U.S. Food and Drug Administration are not considered abortion under Virginia law. *Failed to report from House Health, Welfare and Institutions Committee. ACLU supported.*

HB 2301 (Cole) Informed consent amended. Adds a requirement that a physician who is not the person performing the abortion determine the viability of the pregnancy as indicated by the presence of a fetal sac within the uterus and of fetal cardiac activity. This bill dramatically changes the informed consent law from one in which a pregnant woman is provided with certain information in advance of an abortion to one in which a second physician must be consulted. *Left in House Courts of Justice Committee. ACLU opposed.*

HB 2337 (Gilbert) Ingestion of drugs by a pregnant woman. Makes a pregnant female who ingests controlled substances guilty of child abuse and neglect. *Left in House Courts of Justice. ACLU opposed.*

HB 2456 (Cline) Requirement to inform about anesthesia for fetuses. Requires doctors to offer to anesthetize a fetus prior to abortion and to include in the informational materials a statement that a fetus at twenty weeks feels pain. *Reported from House Courts of Justice (13-Y, 6-N). Passed by the House of Delegates (69-Y, 29-N). Failed to report from Senate Education and Health Committee (5-Y, 10-N). ACLU opposed.*

HB 2532 (Landes) Unintentional death of a fetus. Makes it a felony to recklessly and willfully cause injury to a pregnant woman that results in a miscarriage or stillbirth. As originally introduced, this bill created a presumption that life begins at conception by providing that perpetrators would be guilty of manslaughter. The bill was later amended to make the act a class 5 felony. *Reported out of House Courts of Justice (16-Y, 2-N). Assigned to House Appropriations Committee. Passed House of Delegates (90-Y, 7-N). Referred to Senate Education and Health Committee. Re-referred to Courts of Justice (7-Y, 8-N). Passed by indefinitely in Senate Courts (8-Y, 7-N). ACLU opposed.*

HB 2648 (Jones) Producing abortion or miscarriage. Provides that any person, including the pregnant female, who uses drugs (or anything else) to produce an abortion or miscarriage is guilty of a Class 4 felony. Current law does not include the pregnant female as a possible perpetrator. *Reported from House Courts (19-Y, 0-N). Passed by the House of Delegates (72-Y, 25-N). Failed to report from Senate Education and Health (7-Y, 8-N). ACLU opposed.*

HB 2797 (Marshall, R.G.) Life begins at conception. Declares that life begins at the moment of fertilization and the right to enjoyment of life guaranteed by the Constitution of Virginia is vested in each born and pre-born human being from the moment of fertilization. *Reported from House Privileges & Elections (12-Y, 7-N). Defeated by the House of Delegates (43-Y, 53-N). The ACLU opposed this bill.*

HB 2808 (Byron) Requirement of ultrasound testing as part of informed consent. Requires that, as a component of informed consent to an abortion, every pregnant female must sign a form affirming that she was given the opportunity to view an ultrasound image of her unborn child prior to the abortion. *Reported from House Courts Committee (13-Y, 8-N). Passed House of Delegates (60-Y, 38-N). Failed to report from Senate Education and Health (6-Y, 9-N). The ACLU opposed this bill.*

Equal Rights

On the 400th anniversary of the founding of Jamestown, the General Assembly passed a resolution expressing profound regret and seeking reconciliation for the slavery of Africans. After amendments, the bill also expresses regret for the exploitation of Native Americans. The ACLU joined a broad coalition of organizations to support the resolution.

At the same time, legislators failed – yet again – to address the restoration of voting rights of formerly incarcerated persons. Virginia is one of only three states left that still permanently disenfranchises persons convicted of a felony. Of the two other states, one, Florida, has recently instituted dramatic reforms, while the other, Kentucky, is poised to follow suit.

Apology for slavery and exploitation of Native Americans passes, but lawmakers again refuse to reform Virginia's Jim Crow-era felon disenfranchisement law.

Passed

HJ 728 (McEachin) and SJ 332 (Marsh) Profound regret and reconciliation for involuntary servitude. In their final form, these resolutions express profound regret for the involuntary servitude of Africans and the exploitation of Native Americans. *After much back and forth and amending, both resolutions passed the House (96-Y, 0-N) and the Senate (30-Y, 0-N). ACLU supported.*

Failed

HB 2744 (Englin) Fair housing law; source of income discrimination. Prohibits discrimination in housing because the source of income of the tenant or buyer is a federal subsidy or proceeds from a bequest, life insurance policy, annuity, or other like source. *Stricken from the docket on Feb. 1. The ACLU supported this bill.*

SJ 307 (Miller) Restoration of voting rights for felons. As introduced, amends the state Constitution to permit the General Assembly to enact a law for the restoration of civil rights for convicted violent felons who have completed their sentences. Amended to apply only to non-violent felons. *Reported from Senate Privileges & Elections (10-Y, 4-N). Amended version passed by the Senate (29-Y, 10-N). Referred to House Privileges and Elections Committee. Failed to report from subcommittee (2-Y, 3-N). The ACLU supported this resolution.*

HJ 680 (Jones, D.C.) Restoration of civil rights. Permits the General Assembly to provide for the restoration of civil rights for persons convicted of felonies who have completed their sentence including any period or condition of probation, parole, or suspension of sentence. *Left in House Privileges and Elections Committee. The ACLU supported this resolution.*

HB 2252 (Waddell) Prohibiting sexual orientation discrimination in Richmond. Allows the City of Richmond to enact an ordinance prohibiting discrimination on the basis of sexual orientation in housing, employment, and public accommodations. *Tabled in House Committee on Counties, Cities and Town. The ACLU supported this bill.*

Immigrants' Rights

No subject (other than transportation) occupied more of the legislature's time this year than immigration. The thirteen bills listed in this report are less than half of those that addressed, in some form or another, the issue of immigration. Although generally presented as anti-illegal immigration measures, the ACLU of Virginia is concerned that most of the bills targeted Virginia's Latino community as a whole, the vast majority of whom are legal residents of the U.S., and that many of the bills would have resulted in increased profiling of Latinos. The bills ran the gamut, from empowering local and state police to enforce federal immigration laws to refusing to provide court interpreters for non-English speaking persons.

Large spate of anti-immigrant bills fails, but anti-immigrant attitude of legislators made abundantly clear.

In the end, only a study of immigrant issues passed, but the number and nature of the bills introduced shows this is a political issue that is likely to remain on the front burner as long as the national debate on immigration remains unresolved, and Virginia's cultural landscape continues to change to include more Spanish-speaking persons.

Passed

HB 1643 (Marshall, R.G.) Immigration Commission. Creates the Virginia Commission on Immigration to study and make recommendations to address the costs and benefits of immigration on the Commonwealth, including the impact on education, health care, law enforcement, local demands for services and the economy, and the effect on the Commonwealth of federal immigration and funding policies. *Reported from General Laws (21-Y, 0-N). Passed the House (98-Y, 0-N). Reported from Senate Rules (16-Y, 0-N). Passed Senate with substitute (40-Y, 0-N). Senate substitute agreed to by House (85-Y, 3-N).*

Failed

HB 1618 (Frederick) State enforcement of federal immigration laws. Authorizes the Governor and other eligible persons to enter into agreement with the U.S. Department of Homeland Security, Immigration and Customs Enforcement to permit the state police to enforce federal immigration laws. *Reported from committee (16-Y, 6-N). Passed the House (69-Y, 31-N). Passed by indefinitely in Senate Courts of Justice (11-Y, 3-N). ACLU opposed.*

HB 1656 (Lohr) Cost of court interpreters for guilty parties. Requires the fee for an interpreter for a non-English-speaking defendant to be assessed against the defendant if he or she is found guilty. *Left in Criminal Law Subcommittee of House Courts of Justice Committee. The ACLU opposed this bill.*

HB 1918 (Cole) Local law enforcement of federal immigration laws. Allows state and local law enforcement officials to enforce federal immigration laws. Includes everyone from the state police to local sheriffs and conservation officers. *Incorporated into HB 1970. The ACLU opposed this bill.*

HB 1961 (Hargrove) Prohibition on in-state tuition for undocumented students. Prohibits undocumented persons from enrollment in any public institution of higher education in the Commonwealth. *Incorporated into HB 2623. The ACLU opposed this bill.*

HB 1970 (Albo) Authority to arrest illegal immigrants. Makes it illegal to be an illegal immigrant in Virginia and gives Virginia law enforcement officers, including sheriffs and conservation officers, the authority to enforce federal immigration laws. *Reported from House Courts of Justice Committee (15-Y, 5-N). Passed by the House of Delegates (70-Y, 28-N). Killed in Senate Courts of Justice. The ACLU opposed this bill.*

HB 2111 (Carrico) Defendants to bear cost of court interpreters. Requires non-English speaking defendants to pay for court interpreters. *Incorporated into HB 3096. ACLU opposed.*

HB 2169 (Carrico) Prohibition on in-state tuition for undocumented students. Prevents illegal immigrants from receiving state financial aid or in-state tuition rates when attending public colleges in Virginia. *Incorporated by HB 2623. The ACLU opposed this bill.*

HB 2435 (Albo) Prohibition on domicile. Prohibits undocumented persons from obtaining a legal domicile in Virginia. *Left in House Courts Committee. The ACLU opposed this bill.*

HB 2605 (Watts) Employment verification. Prohibits falsely representing that an alien worker has documentation indicating that he is eligible for employment. *Reported from House Commerce & Labor Committee (20-Y, 0-N). Passed by the House (98-Y, 0-N). Failed to report (6-Y, 8-N) from Senate Courts of Justice Committee. The ACLU opposed this bill.*

HB 2622 (Reid) Harboring of illegal aliens. Makes it a felony to conceal, harbor, or shield from detection any alien or to conspire to do so. *Passed by the House of Delegates (89-Y, 9-N). Passed by indefinitely in Senate Courts of Justice (8-Y, 7-N). The ACLU opposed this bill.*

HB 2623 (Reid) Prohibits in-state tuition for undocumented students. Prohibits undocumented persons without legal domicile in Virginia from receiving in-state tuition eligibility. *Reported from House Education Committee (15-Y, 6-N). Passed by the House (74-Y, 23-N). Passed by indefinitely in Senate Education and Health Committee (8-Y, 7-N). ACLU opposed this bill.*

HB 2926 (Rust) Powers of law enforcement officers. Expands the powers of state and local law enforcement officials to include immigration powers conferred upon the law enforcement agency by agreement with the U.S. Department of Homeland Security. The bill also allows the Department of Corrections to receive any person into a state or local facility committed under the authority of the United States. *Reported from Militia, Police & Public Safety (21-Y, 0-N). Reported from Appropriations (23-Y, 0-N). Passed the House (92-Y, 6-N). Passed by indefinitely in Senate Courts of Justice (11-Y, 4-N). The ACLU opposed this bill.*

HB 2933 (Miller, J.H.) Agreement with federal government to enforce immigration. Requires that Virginia enter into an agreement with the federal government to authorize the State Police and the Department of Corrections to enforce federal immigration laws. *Incorporated by HB 2926 (Rust). HB 2926 was passed by indefinitely in Senate Courts of Justice (11-Y, 4-N). The ACLU opposed this bill.*

SB 1204 (Hanger) Prohibits in-state tuition for illegal immigrants. As passed by the Senate, prohibits in-state tuition for illegal immigrants but provides an exception for some students. The version passed by the House had no exceptions. *Reported from Senate Education & Health Committee (13-Y, 2-N). Passed by the Senate (32-Y, 8-N). Reported from House Education with substitute (19-Y, 2-N). Passed the House (81-Y, 16-N). House substitute rejected by the Senate (5-Y, 35-N). The ACLU opposed this bill.*

Gay and Lesbian Rights

Despite the prevailing anti-gay rights sentiment in the legislature that led to last year's constitutional ban on same-sex marriages, legislators overwhelmingly passed a bill requiring hospitals to allow patients to choose their visitors. The result of this bill is that hospitals cannot deny visits between gay and lesbian partners. In addition, anti-gay lawmakers failed to push through a bill aimed at suppressing gay student clubs. In its original form, HB 1727 would have required students to obtain parental permission before joining non-curriculum student clubs.

Hospital visitation law protects all patient-visitor rights, including those of gays and lesbians.

Passed

HB 2730 (Englin) Hospital visitation. Requires hospitals to allow adult patients to receive visits from any individual from whom the patient desires. *Reported from House Health, Welfare & Institutions (22-Y, 0-N). Passed House (97-Y, 0-N, 1-A). Reported from Senate Health & Education (15-Y, 0-N). Passed the Senate (40-Y, 0-N). ACLU supported this bill.*

Failed

HB 1727 (Lohr) Parental permission for school club participation. Original bill required prior written permission from a parent before any student could join or attend a meeting of a non-curriculum-related school-sponsored student organization. Amended version that passed the House requires schools to describe such clubs for parents and choose whether to require parental permission for student attendance or to allow students to attend unless parents objected. *Defeated in House Education Committee (10-Y, 10-N). Reconsidered and amended. Reported out of the House of Delegates (82-Y, 15-N). Failed in Senate Education and Health Committee (6-Y, 9-N). The ACLU opposed this bill.*

HJ 678 (Ebbin) Amendment to anti-gay marriage amendment. Amends Virginia's anti-gay marriage amendment by adding a savings clause stating: *Any right, benefit, obligation or status pertaining to persons not married is otherwise not altered or abridged by this section.* *Passed by indefinitely in Privileges and Elections committee. The ACLU supported this resolution.*

HJ 721 (Englin) Repeals the anti-gay marriage amendment. Repeals the anti-gay marriage constitutional amendment defining marriage. *Passed by indefinitely in Privileges and Elections Committee. The ACLU supported this resolution.*

SB 820 (Devolites Davis) Employment discrimination. Bans employment discrimination on the basis of sexual orientation in state agencies. *Failed to report out of General Laws and Technology (7-Y, 8-N). The ACLU supported this bill.*

HB 2252 (Waddell) Prohibiting sexual orientation discrimination in Richmond. Allows Richmond to prohibit discrimination on the basis of sexual orientation in housing, employment, and public accommodations. *Tabled in House Counties, Cities and Town Committee. ACLU supported this bill.*

Privacy

Despite growing evidence of identify theft, legislators failed to take simple measures to further protect Social Security Numbers from public dissemination. None of the four bills designed to fight identity theft by restricting access to Social Security Numbers and other personal information (see HB 2060, HB 2821, SB 819 and SB 823) survived committee action.

Lawmakers neglect to take steps to protect Social Security Numbers.

Failed

HB 1773 (Cosgrove) Prior approval for certain search warrants. Requires prior approval by the local Commonwealth's attorney before a warrant for arrest is issued against an accused law enforcement officer or public school employee when the alleged offense is to have occurred while the accused was in performance of official duties. *Left in Courts of Justice Committee. The ACLU opposed this bill.*

HB 2060 (McQuigg) Protecting social security numbers from public distribution. Prohibits anyone from disseminating to the public another person's social security number. *Tabled in House General Laws Committee. The ACLU supported this bill.*

HB 2821 (Sickles) Exemption of social security records from public records. Exempts from the mandatory disclosure requirements of the Freedom of Information Act those portions of records containing an individual's social security number; however, access is not denied to the person who is subject of the records. *Passed by in General Laws Committee. The ACLU supported this bill.*

HB 2943 (Miller, J.H.) Right of police to arrest and search. Expands the right of police to arrest -- and, therefore, search -- individuals who have been arrested for Class 1 and 2 misdemeanors. Under current law, police are required to issue summonses for Class 1 and 2 violations and may only make arrests for these violations under limited circumstances. *Reported from House Courts of Justice (17-Y, 3-N). Passed the House (74-Y, 23-N). Failed in Senate Courts of Justice Committee (5-Y, 10-N). The ACLU opposed this bill.*

SB 819 (Cuccinelli) Excluding private information from FOIA requests. Requires removal of dates of birth, social security numbers, bank account numbers, and other personal information from public records before they are distributed under Freedom of Information Act requests. *Left in General Laws and Technology Committee. The ACLU supported this bill.*

SB 823 (Devolites Davis) Prohibiting public dissemination of social security numbers. Prohibits the intentional communication to the general public of another person's social security number, regardless of whether the social security number was obtained from a public record or from a private source. *Left in General Laws and Technology. ACLU supported.*

SB 1178 (Stolle) Access to confidential juvenile records. Permits a law enforcement agent, attorney for the Commonwealth, school administrator, or probation officer to access juvenile records without having to obtain a court order. *Left in Courts of Justice committee. The ACLU opposed this bill.*

Death Penalty

Prior to the opening of the session, many activists were optimistic that the momentum building against the death penalty in Virginia in recent years would finally culminate with a moratorium on executions. Instead, no moratorium bill was introduced, and by the end of the session, legislators had expanded the state death penalty law for the first time in several years. It is now a capital crime in Virginia to kill a witness or a judge when the purpose is to interfere with their official duties.

The session was not entirely void of success, however. After passing the House and Senate relatively easily, the two bills mentioned above and a third bill to eliminate the “triggerman rule” were all vetoed by Governor Tim Kaine. Kaine’s vetoes of the witness and judge bills were overridden, but the veto of the triggerman bill was sustained when two Senators changed their position on the bill between the regular legislative session and the veto session. The 14 votes to uphold the veto in the Senate were the minimum number required.

Death penalty expanded to include the killing of judges and witnesses, but attempt to eliminate the “triggerman rule” successfully vetoed by the Governor.

The proposed changes to the triggerman rule could have dramatically increased the number of executions in Virginia by allowing capital charges to be brought against accomplices and others only indirectly involved in first degree murders. Under current law, only the person who actually commits a murder qualifies for a capital crime, except in cases of murder for hire or murder ordered by a drug dealer or terrorist.

Passed

HB 2347 (Gilbert) Killing of a witness as a capital crime. Makes it a capital crime to kill any witness in a criminal case when the killing is for the purpose of interfering with the person's duties. *Reported from House Courts of Justice (18-Y, 0-N). Passed House (83-Y, 13-N). Reported from Senate Courts of Justice (12-Y, 2-N). Passed Senate (39-Y, 0-N). Senate amendments agreed to by the House (87-Y, 7-N). Vetoed by the Governor. Veto overridden by House (83-Y, 16-N) and Senate (29-Y, 10-N). The ACLU opposed this bill.*

HB 2750 (Hurt) Killing of a judge or justice as a capital crime. Makes it a capital crime to kill a judge for the purpose of interfering with his official duties. *Reported from House Courts of Justice (18-Y, 0-N). Passed House of Delegates (81-Y, 14-N). Reported from Senate Courts (12-Y, 2-N). Passed Senate (30-Y, 9-N). Vetoed by the Governor. Veto overridden by House (82-Y, 18-N) and Senate (28-Y, 10-N). The ACLU opposed this bill.*

SB 1116 (Rerras) Capital murder; premeditated killing of a judge or witness. Same as HB 2750, except that, as introduced, the bill also redefined triggerman rule. The triggerman redefinition was not part of the substitute bill. *Passed Senate (30-Y, 10-N). Reported from House Courts of Justice Committee with a substitute (20-Y, 1-N). Passed House (82-Y, 12-N). House substitute version agreed to by the Senate (31-Y, 9-N). Vetoed by the Governor. Senate overrode the veto (30-Y, 10-N). House of Delegates overrode (81-Y, 18-N). The ACLU opposed this bill.*

Failed

HB 2348 (Gilbert) Redefinition of the triggerman rule. Eliminates the "triggerman rule," which provides that only the actual perpetrator of a capital murder, with few exceptions, is eligible for the death penalty. *Reported from House Courts of Justice (18-Y, 1-N). Passed House of Delegates (83-Y, 14-N). Reported from Senate Courts of Justice (10-Y, 4-N). Passed by the Senate (27-Y, 13-N). Vetoed by the Governor. House of Delegates overrode veto (79-Y, 21-N). Governor's veto sustained when Senate failed to override (24-Y, 14-N). The ACLU opposed this bill.*

SB 1288 (Obenshain) Redefinition of the triggerman rule. Same as HB 2348. *Reported from Senate Courts of Justice (10-Y, 5-N). Reported from the Senate (28-Y, 11-N). Reported from House Courts of Justice (20-Y, 1-N). Passed by the House (83-Y, 13-N). Vetoed by the Governor. Governor's veto sustained when Senate failed to override (24-Y, 14-N). The ACLU opposed this bill.*

HB 1960 (Hargrove) Abolishment of the death penalty. Abolishes the death penalty for all Class 1 felonies committed on or after July 1, 2007. *Referred to Committee for Courts of Justice. Left in Courts of Justice. The ACLU supported this bill.*

Criminal Justice and Due Process

The 2007 General Assembly took a small yet significant step towards improving legal representation for indigent criminal defendants by removing the cap on fees for court-appointed attorneys, which now can be waived when justified. The hard cap on fees in Virginia was the lowest in the nation, often resulting in inadequate representation.

Indigent defense gets a boost with removal of hard cap on fees for court-appointed attorneys

Legislators attempted to pass a bill that would have excluded the identities of persons who carry out executions from any legal proceeding, including lawsuits challenging the procedures used during executions. After being amended, the bill that passed excludes such identities from legal proceedings, but creates an exception when good cause can be shown that the person's identity is necessary for a full and fair review of the facts in the case.

Passed

HB 2361 (Putney)/ SB 1116 (Rerras) Removing fee cap for court-appointed attorneys. Provides that court-appointed counsel may request a waiver of the limitations on compensation by submitting the request to the appropriate court. *HB 2361 reported from House Courts of Justice (17-Y, 2-N). Passed the House (96-Y, 1-N). Reported from Senate Courts (15-Y, 0-N). Passed by the Senate with a substitute (40-Y, 0-N). Passed the House (92-Y, 0-N). SB 1168 reported from Senate Courts of Justice (15-Y, 0-N). Passed the Senate (40-Y, 0-N). Reported from House Appropriations (24-Y, 0-N). Passed by the House (97-Y, 0-N). House substitute version agreed to by the Senate (40-Y, 0-N). House and Senate rejected the Governor's amendments to expand coverage to include juvenile courts. ACLU supported.*

HB 2418 (Kilgore) Exclusion of executioners' identities. As introduced, excluded from legal proceedings the identities of persons who carry out executions. Later amended to include an exception, allowing for identities to be made available "for good cause shown." *Passed by the House (95-Y, 4-N). Reported from Senate Rehab & Social Services Committee with amendments (15-Y, 0-N). Passed the Senate (40-Y, 0-N). Senate amendments agreed to by the House (97-Y, 0-N). The ACLU vigorously opposed this bill in its original form, but dropped our opposition after it was amended (although we did not support it).*

HB 2855 (Moran) Permission of the federal government to execute search warrants in Virginia. Allows an agent of the U.S. Dept. of Homeland Security or police personnel of the U.S. Postal Inspection Service to execute a search warrant in Virginia. *Reported from Courts of Justice Committee (17-Y, 3-N). Passed House (94-Y, 4-N). Reported from Senate Courts of Justice (14-Y, 0-N). Passed by the Senate (40-Y, 0-N). The ACLU opposed this bill.*

HB 3034 (Bell) DNA Databank. Among other provisions, this bill creates an exception for the use of erroneously taken DNA samples in the databank if taken in good faith. That the DNA sample was taken mistakenly and in violation of the law does not invalidate the sample's use in the databank. *Reported from Courts of Justice Committee (20-Y, 0-N). Passed the House (99-Y, 0-N). Reported from Senate Courts of Justice (15-Y, 0-N). Passed by the Senate (40-Y, 0-N). Passed by the House (97-Y, 0-N). Senate substitute version agreed to by the House and adopted (97-Y, 0-N). The ACLU opposed this bill.*

Failed

HB 1656 (Lohr) Cost of court interpreters for guilty parties. Requires the fee for an interpreter for a non-English-speaking defendant to be assessed against the defendant if he or she is found guilty. *Left in House Courts of Justice Committee. The ACLU opposed this bill.*

HB 2907 (Spruill) DUI license plates. Requires persons convicted of drunk driving a third or subsequent time to use yellow license plates with red letters and numbers for a five-year period. *Left in Courts of Justice Committee. The ACLU opposed this bill.*

HB 2943 (Miller, J.H.) Right of police to arrest and search. Expands the right of police to arrest -- and, therefore, search -- individuals who have been arrested for Class 1 and 2 misdemeanors. Under current law, police are required to issue summonses for Class 1 and 2 violations and may only make arrests for these violations under limited circumstances. *Reported from House Courts of Justice (17-Y, 3-N). Passed the House (74-Y, 23-N). Failed to report from Senate Courts Committee (5-Y, 10-N). The ACLU opposed this bill.*

HB 3096 (Lohr) Local fee for interpreters for non-English speaking persons. Allows any locality to provide by ordinance for the imposition of a fee on any person convicted under any criminal statute or ordinance if such person was provided an interpreter paid for by the locality. *Left in Courts of Justice Committee. The ACLU opposed this bill.*

SB 1049 (Lucas) Certification of laboratories that perform DNA analysis. Provides that all DNA analyses offered as criminal evidence shall have been performed by laboratories accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB). This bill helps ensure the accuracy of DNA analyses in criminal cases. *Left in Courts of Justice Committee. The ACLU supported this bill.*

Voting and Access to Government

Lawmakers brought moderate reforms to the Freedom of Information Act by requiring state bodies to post notice of their meetings on their websites and by requiring state employees not holding requested documents, but knowing where they are, to tell requesters how to find it. Unfortunately, they also excluded individuals civilly committed under the Sexually Violent Predators Act from using FOIA to obtain public records.

Bills to clarify student voter registration rights fail, as do measures to make absentee voting easier.

Student voting rights went unaddressed again this year, despite promises for reform from the State Board of Elections. A bill that would have allowed college students to decide whether to vote in the jurisdiction where they attend school or where their parents live was killed in committee. Other voting reforms, including those to make absentee voting easier, failed as well. (For information on the voting right of felons, see “Equal Rights” section.)

Passed

HB 2758 (Hurt) Posting of meeting notices and minutes of public bodies. All state public bodies are required to post notice of their meetings on their websites and on the electronic calendar maintained by the Virginia Information Technologies Agency. *Reported from General Laws with amendment (22-Y, 0-N). Passed by the House (100-Y, 0-N). Referred to Senate General Laws and Technology. Reported from committee (14-Y, 0-N). Passed by the Senate (40-Y, 0-N). The ACLU supported this bill.*

HB 1790 (Griffith) Denial of access to records of certain sexual predators. Prevents persons civilly committed under the Sexually Violent Predators Act from using the Freedom of Information Act to obtain public records. *Reported from General Laws committee (22-Y, 0-N). Passed the House (99-Y, 0-N). Reported from General Laws and Technology committee (14-Y, 0-N). Passed the Senate (40-Y, 0-N). The ACLU opposed this bill.*

HB 1791 (Griffith) Right to know location of public records. Requires a public body that does not possess records requested under the Freedom of Information Act, but knows their location, to refer the requester to the appropriate place. *Reported from General Laws committee (22-Y, 0-N). Passed the House (99-Y, 0-N). Passed the Senate with amendments (40-Y, 0-N). Senate amendments rejected by the House (0-Y, 96-N). Conference report agreed to by the Senate (38-Y, 0-N) and House (98-Y, 0-N). The ACLU supported this bill.*

HB 3168 (Dance) Rights of voters who register at the DMV. Original bill required the DMV to forward voter registration applications to elections officials within three days and allowed transmission by fax or email. Also allowed voters whose names are not on the poll book to vote by regular ballot if they presented proof of timely registration at a DMV office. As amended, however, the bill would permit such voters to vote only by provisional ballot. *Reported from Privileges & Elections (22-Y, 0-N). Passed the House of Delegates (96-Y, 1-N). Reported from Senate Privileges & Elections (15-Y, 0-N). Passed the Senate (39-Y, 0-N). The ACLU supported the original bill, but did not take a stand on amended version, which appears to do almost nothing.*

Failed

HB 1769 (Brink) Campaign apparel in polling places. Permits voters to wear stickers, buttons, shirts, hats, or other apparel on which a candidate's name or political slogan appears when entering a polling place. *Reported from House Privileges & Elections Committee (22-Y, 0-N). Rereferred by House of Delegates to Privileges and Elections Committee where it was tabled. The ACLU supported this bill.*

HB 2069 (Brink) Absentee voting allowed for Election Day volunteers. Provides that any person who will be commuting to perform volunteer service on Election Day may vote absentee if his commute and service time equals 11 or more hours of the 13 hours the polls are open. *Passed by indefinitely in House Privileges & Elections. ACLU supported.*

HB 2574 (Shannon) Absentee voting rights expanded. Allows anyone to vote by absentee ballot. *Incorporated into HB 3001(see below). Passed by indefinitely by the House Privileges & Elections Committee. The ACLU supported this bill.*

HB 2891 (Phillips) Absentee voting rights expanded. Allows anyone to vote by absentee ballot in person from thirty to three days before the election at various sites owned by the Commonwealth. *Tabled in Privileges & Elections Committee. The ACLU supported this bill.*

HB 2911 (Spruill) Absentee voting expanded. Allows any registered voter to vote by absentee ballot in person from seventeen to three days before the election at specified times and at various sites owned by the Commonwealth such as the DMV. *Tabled in Privileges and Elections Committee. The ACLU supported this bill.*

HB 3001 (Scott) Absentee voting rights expanded. Allows anyone to vote by absentee ballot. *Incorporated into HB 2574 by House Privileges & Elections Committee, which then passed it by indefinitely. The ACLU supported this bill.*

HB 3200 (Rapp) Rights of students to register for local elections. Creates a presumption that the address given by a full-time student at a Virginia college is the proper address for registering to vote whether it is the address where the student lives while attending school or the address in Virginia where the student lives when not attending school. *Tabled in House Privileges and Elections Committee. The ACLU supported this bill.*

SB 916 (Howell) Receipts for voter registration. Provides that the state form for an application to register to vote must contain a receipt that will be given to the applicant. *Reported from Senate Privileges and Elections (15-Y, 0-N). Passed by from Senate (38-Y, 0-N). Left in House Privileges and Elections Committee. The ACLU supported this bill.*

SB 920 (Howell) Absentee in-person voting. Permits qualified voters to vote absentee in person without providing an excuse or reason, but retains the current list of criteria entitling a voter to cast an absentee ballot by mail. *Reported from Privileges and Elections (11-Y, 4-N). Passed by the Senate (25-Y, 15-N). Left in House Privileges and Elections Committee. The ACLU supported this bill.*

SB 986 (Deeds) Absentee voting and disability. Defines disability for voting purposes to be the same as in the Virginians with Disabilities Act and the Americans with Disabilities Act. Would allow voters with all kinds of disabilities, not just physical ones, to vote absentee. *Reported from Senate Privileges & Elections Committee with substitute (15-Y, 0-N). Passed Senate (40-Y, 0-N). Tabled in House Privileges & Elections Committee. ACLU supported.*