

2011 Legislative Session Recap

SB 407/408 - Creating the West Virginia Insurance Exchange. As mandated by federal health care reform, each state has the opportunity to create a state - run insurance plan by 2014. In the event a state does not develop its own plan, the federal government will operate the plan. West Virginia joins Utah and Massachusetts as one of the first states to create a state plan. As expected a significant effort to derail the plan was mounted, including a concerted effort to include in the insurance exchange draconian anti-choice language. Thanks to efforts by West Virginia Free, Planned Parenthood, and the ACLU of WV, no anti-choice amendments were added to this bill.

SB 193 - Creating a registry for police officers who have been removed from office for misconduct and creating a mechanism for revoking the certification of law enforcement officers in certain circumstances. Thanks in part to the Gary Harki series in The Charleston Gazette calling attention to this issue, the ACLU earned a major victory in the passage of this important legislation.

The ACLU-WV was able to defeat HB 3044 permitting local law enforcement to seize property if it is suspected to be the instrument of a crime of fraud. The bill would have placed the burden of proof upon innocent defendants to obtain possession of their seized property and would have permitted local law enforcement officers to keep a portion of the proceeds of the liquidated property.

The ACLU-WV also defeated SB 67 requiring a DNA sample from persons arrested – not convicted – of certain felony offenses.

HB 3144 - Creating a misdemeanor offense for protesting at a funeral or memorial service. The House version that ultimately passed requires protests be conducted at least 500 feet away from the funeral. Senate amendments to the bill designed to comply with time, place, manner restrictions outlined in *Snyder v. Phelps*, which held that such protests are protected by the First Amendment to the United States Constitution, were rejected by the House. Ironically, the House of Delegates passed their version of the bill – the version that ultimately became law -- on the same day the U.S. Supreme Court released its opinion in *Snyder*. The ACLU has contacted the Governor's counsel to urge a veto of this bill.

SB 186 - Permitting the State Police to obtain internet records as well as bank and credit card information for someone who is suspected – not charged – of committing certain sexual offenses against minors using an "administrative subpoena." Upon request by the State Police and as authorized by a magistrate, family court judge, or circuit court judge under a "reasonable suspicion" standard of review, an internet service provider must release certain records to the State Police. Furthermore, the internet service provider is prohibited from informing its suspected customer about the release of this information to the State Police. While the ACLU fought unsuccessfully to defeat the bill, it was able to modify the introduced legislation authorizing a prosecuting attorney to issue a subpoena to require authorization from a judicial officer to issue a subpoena. ACLU-WV has contacted the Governor's counsel to urge a veto of this bill.

SB 338 - Opting out of the federal prohibition from providing SNAP (food stamp) and TANF benefits to former drug felons. The bill passed the Senate quickly with strong floor speeches on behalf of the bill, but failed to advance in the House despite numerous conferences with the Chairman of the House Judiciary Committee, where the bill was referenced. Subsequent conversations with members of the House leadership and Committee staff revealed the Speaker of the House believed the bill was too controversial and was unwilling to move the bill. The Senate has passed this bill two consecutive sessions.

SB 522 – A bill permitting an exemption to mandated vaccines for children as a condition of school enrollment was introduced in the Senate, but failed to advance.

HB 2161 - Creating the Herbert Henderson Office of Minority Affairs. The bill passed quickly through the House, but languished in the Senate until the final few days of the session when the Senate Finance Committee stripped the bill of any funding necessary to create and sustain the office. The bill failed on the final day of the session when the House refused to accept the Senate's version, and also refused to appoint a conference committee to discuss a solution.