

## FELON ENFRANCHISEMENT (HB 17)

The ACLU's felon enfranchisement campaign is finally making headway in Delaware, with the introduction of House Bill 17. The bill, sponsored by Representatives Hazel Plant (D) and Helene Keeley (D), would amend the Delaware Constitution to allow people with felony convictions to vote once their sentence is completed. According to a state report, there are over 5600 people currently incarcerated in Delaware. Under Delaware law, those serving time for felonies are denied the right to vote. But the denial of this basic right and civic duty does not end with the completion of their sentences. Under the current state law, all persons convicted of felonies must wait five years after completion of their sentence to participate in state or federal elections. In addition to the five-year waiting period, they must pay all court costs and victim restitution. The result of this waiting period is large-scale disfranchisement and disempowerment among ex-felons. Although they may hold jobs, pay taxes, and otherwise contribute to society, they are deprived of any political voice. Thanks to HB 17, Delaware's ex-felons may be getting their voices back. If the bill is signed into law, Delaware will join the twenty other states, including New Jersey and Maryland, which allow felons to vote immediately after finishing their sentences. Some studies have suggested a strong correlation between increased political participation and reduced recidivism among felons. For example, an independent study conducted in 2004 found that only 12% of ex-felons who voted were arrested again, compared to 27% of ex-felons who did not vote. In a study conducted in 2004, many felons reported that the ability to vote was one of the most important factors determining their re-assimilation into society. HB 17 passed the House on March 31<sup>st</sup> and was assigned to the Senate's Executive Committee, where it awaits action when the General Assembly resumes in January.

"Prisoner Disenfranchisement Policy: A Threat to Democracy?"  
Dhami, Mandeep K. *Analyses of Social Issues & Public Policy*; Dec 2005, Vol. 5 Issue 1,  
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## SCHOOL DISCIPLINE

House Resolution 22, sponsored by Rep. Mike Barbieri seeks to address the larger problem of the criminalization of school discipline by convening a task force to study the effect of Delaware law and policy on school discipline. In addition to the zero tolerance policies addressed elsewhere in this report's discussion of HB120, other school discipline policies turn disciplinary infractions into crimes, leaving children with criminal records that may follow them for the rest of their lives. The universal practice of placing police in Delaware schools has led to an increasing reliance on law enforcement to administer school discipline. The ACLU of Delaware will be working closely with the task force to create new policies, and will host a one-day symposium in March 2010 that will bring in experts to discuss how to end policies that push students from the classroom to the courtroom. Look for more information on the symposium in future issues of the newsletter.

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## VICTORY!

**Some of our readers may be wondering why we didn't discuss the passage of Senate Bill 121 in this Legislative Roundup. We felt that this bill, which prohibits sexual orientation-based discrimination in public venues, was such a huge civil-liberties victory that it deserved its own section in our quarterly newsletter. See the front page story on SB 121 in the enclosed newsletter.**

## PRIVACY VS FREE SPEECH (SB 169)

The murder of physician George Tiller has created a ripple effect throughout the country, and raised many important issues. One of these is how to resolve the conflict between one person's right to privacy and another's right to protest. In an attempt to answer this question, Delaware legislators have written a bill that attempts to safeguard the rights of patients and protesters alike. Senate Bill 169, written by Sen. Bruce Ennis (D) and cosponsored by Rep. Helene Keeley (D), would make it a class B misdemeanor to "obstruct ingress to or egress from a health care facility." The bill also creates an eight-foot protected zone around anyone entering or exiting a health care facility within 100 feet of the building. While abortion clinics are not specifically mentioned in the text of the bill, those wishing to picket outside clinics will be the most affected by the legislation. While these guidelines may seem to infringe on free speech, the Supreme Court has upheld similar limitations. The legal precedent for SB 169 was set in 2000 in *Hill v. Colorado* 530 U.S. 703 (2000). In the Court's opinion, Justice Stevens wrote that legislation similar to SB169 is constitutional because it does not unduly restrict free speech, but places a reasonable limitation on the place in which speech or protest may take place. SB169 is intended to walk the fine line between people's right to privacy and their right to protest; and it gives police a roadmap to follow when dealing with confrontations at medical facilities. The law would also protect protesters from counter-protesters. SB 169 passed the Senate, and is now in the House Judiciary Committee until the legislative session resumes in the fall.

# Legislative Roundup

## 145th Session of the Delaware General Assembly



## American Civil Liberties Union of Delaware 2009

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## ZERO TOLERANCE (HB 120)

For over a decade, Delaware public schools have implemented policies that criminalize student misbehavior and impose inappropriately harsh punishments for minor or accidental offenses. One of the most counter-productive of these policies ended this session when the General Assembly amended Delaware's requirement that schools enforce a zero tolerance policy. Such policies require a pre-determined punishment for an infraction; for example, bringing a weapon to school requires automatic expulsion or suspension. In most cases, the "weapon" is not intended for assault; in some cases the student may not even be aware that he or she has a weapon. Nevertheless, if the weapon is discovered the student can expect to be suspended or even expelled. In Delaware, the ACLU has counseled students in several cases in which the zero tolerance policy was unfairly applied, including a case in which an honors student was expelled for bringing a small knife to trim the edges of a complex architectural model; and another case in which a student was expelled after he turned in a table knife his father had left in his lunch bag.

The American Bar Association calls zero tolerance policies a "one-size-fits-all solution" to disciplinary infractions. Some of the zero-tolerance cases listed on their website include that of a 14-year-old girl who was suspended for giving her classmate a tablet of Midol and a boy who was suspended for violating school alcohol policy after using Listerine. The effect of these overly harsh punishments creates a "school-to-prison pipeline." Students who are suspended or expelled can become disenfranchised if not quickly re-introduced to the school system. Their isolation from the school community all too often leads to criminal activity. Zero tolerance policies have been implemented in public schools nationwide since the early 1990s, when incidents such as the Columbine High School shootings created widespread concern for students' safety. However, the implementation of such policies has caused no significant decrease in school violence nationwide.

Recently, a backlash against zero tolerance has started in schools across the country. Mississippi was the first state to tone down its disciplinary policy, beginning in the late 1990s. Now Delaware has amended its own zero tolerance policy with the passage of House Bill 120. The bill tacks on a provision to the Delaware Code which allows school administrators to consider expulsion on a case-by-case basis. The bill was sponsored by Rep. Terry Schooley (D), and passed both the House and Senate unanimously. Governor Markell signed HB120 into law on June 26<sup>th</sup>.

## FOIA (HB 1)

Thanks to a new law extending the reach of the Freedom of Information Act (FOIA) in Delaware, the public now has access to most meetings and communications of the Delaware General Assembly. House Bill 1, sponsored by Rep. Robert Gilligan and Sen. Karen Peterson, broadens the definition of "public records" in Delaware. E-mails, library records, and criminal records (unless someone wishes to view their own criminal record) are among the exemptions to the public records definition, and cannot be obtained under FOIA. Delawareans now have access to meetings of the General Assembly, with the exception of the House and Senate party caucuses, which meet to discuss party legislative strategy. The records of the General Assembly, with some exceptions, have also been opened to the public. As a result of HB 1, which was signed into law on June 24<sup>th</sup>, Delaware citizens can expect greater transparency in the way their state is run. Other reforms are needed, however, as Delaware's FOIA remains one of the most restrictive in the country. Several states, including neighboring Pennsylvania, have significantly reformed their freedom of information laws to recognize the impact of new technology and to enhance transparency in government.

## SEXUAL ASSAULT IN PRISON (HB 284)

For many years, Delaware law has taken an outdated stance towards sexual assault in prison. Rape and other forms of assault happen too frequently inside correctional facilities around the country, yet often they go unreported. In response to a request from the ACLU of Delaware and with the support of the Delaware Department of Correction, Senator Bruce Ennis and Representative James Johnson have sponsored House Bill 284. As stated in the synopsis to the bill: In the spirit of the federal Prison Rape Elimination Act, this bill addresses and eliminates an unintended chilling effect on the reporting of sexual assaults and other sexual offenses which may occur at the State's detention facilities. The current statute criminalizes conduct for both the victim and perpetrator, likely causing such crimes to be underreported out of fear of criminal prosecution. This Act changes the statute to impose criminal liability solely on employees, visitors, contractors and volunteers at detention facilities. Prisoner-on-prisoner sexual assaults remain prosecutable pursuant to already existing criminal statutes.

HB284 was introduced in the last days of the session and will not be acted on until the General Assembly reconvenes in January.

## DE FACTO PARENTING (SB 84)

Senate Bill 84, sponsored by Sen. Patricia Blevins (D) and co-sponsored by Rep. Melanie George Marshall (D), codifies de facto parent status in Delaware. A petitioner may be declared the legal parent of a child, provided that the child's original legal parent consented to the formation of the parent-child relationship. In other words, children in non-traditional families, including same-sex couples, can now establish legal parental relationships between parent and child. SB 84 was passed 34-2 in the House on June 24<sup>th</sup>, having passed the Senate unanimously in mid-May.

The legal test for de facto parenthood holds petitioners to a very high standard. First, the legal parent of the child must have consented to the formation of a parent-child relationship. Under this standard, before the petitioner can proceed, he or she must prove two facts to the court: the consent of the legal parent and the creation of a very particular kind of relationship. In other words, a close relationship to the legal parent or to the child won't rise to the level of de facto parenthood. For example, a babysitter, teacher, or coach would not be a de facto parent. Neither would a person who merely had a romantic relationship with the legal parent. Once those facts are established, the petitioner must prove to the court that he or she has previously acted in a parental manner towards the child and has consistently acted in the child's best interest. Finally, a third-party expert must determine if the petitioner has acted as a parent for a long enough time to truly have a parental bond with the child.

The de facto parent bill gained the support of the Ex-

ecutive Committee of the Delaware State Bar Association, the Family Law section of the Bar Association, Adoptive Families with Information and Support, the Delaware Division of Services for Children Youth and Families, and a large number of individual psychologists, educators, adoption advocates, and mental health professionals. De facto parent laws are being enacted nationwide, with Delaware joining 13 other states that have embraced the policy.

Delaware's de facto parent policy has been in place since 2001, when the Delaware family court established de facto parent status in *In Re Hart*, using the same standards that are now implemented under the new statute. However, in February 2009 the Delaware Supreme Court overruled *Hart*, holding that, because the General Assembly had passed the Delaware Uniform Parentage Act without including de facto parents in the act's language, the court would not recognize de facto parent status unless the General Assembly made its intention clear by including de facto parent status in the Delaware Uniform Parentage Act. The passage of SB 84 ensures that all children can have their parents recognized legally. Legal parents provide a host of benefits to their children such as health insurance coverage, life insurance benefits, Social Security benefits, child support, pension coverage, and the responsibility to make important decisions on the child's behalf. In addition, legal recognition of the parent-child relationship confers important psychological benefits to the child.

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## REAL ID (SB 74)

One of the biggest civil liberties fights of the decade arrived in Delaware this past spring. The Real ID program was introduced by federal lawmakers in 2005, as part of a tsunami relief bill, and was signed into law shortly thereafter. The program aims to create a standardized identification card for all United States citizens. Names, addresses, and other personal information would be entered into an electronic database; a move that the act's opponents, including the ACLU, view as incredibly risky. Storing this information electronically makes it easy for hackers to access anyone's personal information at will. Furthermore, the Real ID plan allows ID holders' personal data to be accessed by private third parties. The current form of the Real ID Act gives individual states until 2011 to begin issuing the cards. Technically, the Real ID cards are not mandatory; however, it's probable that they will become the standard identification form used by federal agencies. The Real ID plan has faced widespread opposition, with several states passing legislation condemning the act. However, this past April Senator Brian Bushweller (D) created Senate Bill 74, which would ensure Delaware's cooperation with the Real ID Act. The bill was voted out of committee, but neither legislative branch has voted on it yet. The ACLU will be watching this bill very closely in the coming months, and we encourage our members to do the same.