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TO: ACLU of PA Board of Directors
ACLU of PA Staff

FROM: Andy Hoover, Legislative Director

DATE: May 20, 2009

RE: LEGISLATIVE UPDATE

There has been a flurry of legislative activity since the board of directors' last meeting in March. We have a lot to be proud of in our legislative advocacy. There are currently ten bills on which we have a position that are out of their initial committees, and we support seven of those bills.

HOUSE BILL 300 (Lesbian, Gay, Bisexual, Transgender Discrimination)

Current status: Rereferred to House Appropriations Committee

ACLU-PA Position: *Support*

House Bill 300 would amend the Pennsylvania Human Relations Act to include "sexual orientation" and "gender identity or expression" as protected classes. Twenty states have this protection on the basis of sexual orientation, and 13 of those states also have protection for gender identity or expression. In addition, 14 Pennsylvania municipalities have some form of this protection.

HOUSE BILL 306 (Searches without cause of certain parolees)

Current status: Rereferred to House Appropriations Committee

ACLU-PA Position: *Oppose*

House Bill 306 requires persons on parole for particular crimes to sign a waiver allowing the police to conduct stops and searches of the person without cause. Currently, only probation and parole officers have that power. This bill will expose the parolees' spouses, partners, children, and friends to searches at anytime by police. In addition, this excessive government power will create another barrier for the person on parole to successfully reintegrate into the community. Finally, it is inevitable that this power will be abused. If HB 306 becomes law, it will certainly be challenged, so the commonwealth should be prepared to pay the cost of litigation. ACLU-PA's memo to the House Judiciary Committee on HB 306 is available at <http://www.aclupa.org/downloads/memoHJudHB306.pdf>.

HOUSE BILL 181 (Search-and-seizure powers of Game Commission officials)

Current status: Second consideration on the House floor

ACLU-PA Position: *Support*

House Bill 181 increases search-and-seizure standards that Pennsylvania Game Commission officers must follow. Currently, commission officers can conduct stops and searches almost at will. HB 181 would require a finding of reasonable suspicion to stop a vehicle and a finding of probable cause to conduct a search. The ACLU of PA has received many complaints about this issue over the years, and we believe that current law fails to pass federal and state constitutional muster. We are grateful that this issue could be resolved through legislation and not litigation.

HOUSE BILL 108 (Criminalizing the use of burning crosses and swastikas)

Current status: Rereferred to House Appropriations Committee

ACLU-PA Position: *Oppose*

House Bill 108 creates a felony of burning a cross or placing a swastika on another person's property or somewhere in public with the intent to intimidate. The kind of offensive action that HB 108 addresses already falls under numerous statutes, including vandalism, arson, terroristic threats, harassment, criminal mischief, and ethnic intimidation. Criminalizing specific forms of speech is always problematic under the First Amendment, and the commonwealth will likely face litigation if HB 108 becomes law.

HOUSE BILL 333 (No-excuse absentee balloting)

Current status: Rereferred to House Appropriations Committee

ACLU-PA Position: *Support*

House Bill 333 would amend the state constitution to allow the legislature to enact legislation expanding the use of absentee ballots. According to the National Conference of State Legislatures, 28 states currently allow no-excuse absentee balloting. It is a diverse group of states that includes California, Utah, Oklahoma, and Vermont. Statistics show that states that have this form of voting available have greater voter turnout than states that do not.

HOUSE BILL 1211 (The right to counsel for juveniles)

Current status: Rereferred to House Appropriations Committee

ACLU-PA Position: *Support*

House Bill 1211 eliminates the ability of a parent or guardian to waive counsel for a juvenile in a judicial proceeding. This bill stems from the recent juvenile court scandal in Luzerne County in which two judges received \$2.6 million in kickbacks from a private detention company. Juveniles waived their right to counsel in Luzerne County at a rate well above the rest of the state. While it is true that an overwhelming majority of juveniles in Pennsylvania do not waive counsel, this bill will put a check into place to ensure that corruption like that which occurred in Luzerne County does not happen again.

HOUSE BILL 1072 (Voting rights of persons formerly incarcerated)

Current status: Rereferred to House Appropriations Committee

ACLU-PA Position: *Support*

House Bill 1072 requires the Department of Corrections to have voter registration applications available to persons who are released from prisons. The only citizens over 18 who cannot vote in Pennsylvania are those who are currently incarcerated for a felony (including in a halfway house) or those who have violated the election code in the last four years. Through our legal, legislative, and community organizing work, ACLU-PA has recognized that many people who were formerly incarcerated and even government officials are confused about the voting rights of former offenders. HB 1072 addresses that problem.

HOUSE BILL 264 (Criminal records expungement)

Current status: Rereferred to House Appropriations Committee

ACLU-PA Position: *Support*

House Bill 264 would allow persons convicted of 2nd- and 3rd-degree misdemeanors to have their records expunged after a period of years without another conviction. Last session a bill that included expungement for M2s and M3s passed the House with just one vote in opposition, but it was amended in the Senate to remove those offenses and to allow only the expungement of summary offenses. This bill potentially opens doors of employment for people who were formerly incarcerated and who have demonstrated a commitment to leading a law-abiding life.

SENATE BILL 56 (Mandated reporting by school administrators to the police)

Current status: Rereferred to Senate Appropriations Committee

ACLU-PA Position: *Oppose*

Senate Bill 56 requires school administrators to call the local police for certain incidents in schools. While we recognize that there are times when schools must call the police, the bill is too broad. Typical playground fights would need to be reported, and there is no distinction for the age of the child. A first grade student is held to the same level of accountability as a 12th grade student. We are joined in our opposition by the Juvenile Law Center, Education Law Center, Disability Rights Network of PA, and the Arc of PA, among others.

SENATE BILL 628 (Death penalty-mental retardation)

Current status: Rereferred to Senate Appropriations Committee

ACLU-PA Position: *Support*

Senate Bill 628 implements a pre-trial procedure for a judge to determine if a defendant is mentally retarded and should not face the death penalty. This is the same legislation we've supported since the *Atkins v. Virginia* decision in 2002.