



# End of Session Report

## for the 2009 Legislative Session

The 2009 Montana State Legislature adjourned its regular session on April 28, bringing to an end a very busy four months for the ACLU of Montana. Of the more than 300 bill requests that we tracked this session, we testified on 52 bills and resolutions before various committees of both chambers. The following is a brief summary and final disposition of each of the bills on which the ACLU of Montana testified during this session.

## **Reproductive Choice:**

- Total number of bills we monitored: 22
- Total number of bills introduced: 16
- Bills we testified on: **HB 257, HB 281, HB 284, HB 307, HB 372, HB 661, SB 46, SB 142, SB 327, SB 374, SB 406, SB 497, SJ 27**

**HB 257 • Robyn Driscoll • Revise pharmacy laws.** This bill would allow adult employees of a pharmacy to become a licensed pharmacy auxiliary, who could then dispense pre-packaged contraceptives. It would also allow certain medical practitioners to dispense prescription drugs that are not available through a local pharmacy. We **supported** this bill. **Tabled in committee and failed to meet the transmittal deadline.**

**HB 281 • Chuck Hunter • Remove contraceptive prohibition under CHIP.** We **supported** this bill to remove the prohibition against covering the costs of contraceptives under the CHIP program. **Failed in committee and failed to meet the transmittal deadline.**

**HB 284 • Sue Dickenson • Montana Pharmacy Patient Protection Act.** This bill would require pharmacists to follow certain minimum guidelines when refusing to dispense a drug based upon pharmacists' personal beliefs. It would also require pharmacies to make alternate means available to fill prescriptions for any drug the pharmacy carries in stock. We **supported** this bill. **Tabled in committee and failed to meet the transmittal deadline.**

**HB 307 • Don Roberts • Prescription exception when drug not available locally.** This bill would allow medical practitioners to dispense a prescription drug if there is no pharmacy within 10 miles that stocks the particular drug. We supported this bill. **This bill was approved by both chambers and was signed into law by the Governor.**

**HB 372 • Franke Wilmer • Revise exemptions for jury duty.** We **supported** this bill to create an exemption from jury duty for breast feeding mothers and primary caregivers whose absence would cause hardship for their dependents. **This bill was approved by both chambers and was signed into law by the Governor.**

**HB 661 • Joel Boniek • Revise abortion laws.** This bill was a TRAP law ("targeted restriction of abortion practices") that created a new licensing process and imposed additional requirements that only facilities that perform abortions would have been required to follow. We **opposed** this bill. **This bill failed in committee and a blast motion on the bill also failed.**

**SB 46 • Dan McGee • Unborn life as a compelling state interest.** This proposed constitutional amendment would add a sentence to our privacy clause, stating that the government has a "compelling interest" in protecting unborn life. In short, this would allow the state to infringe

upon a woman's right to privacy by prohibiting many forms of contraception and regulating every aspect of a pregnancy. We **strongly opposed** this bill. After being **approved by the Senate, this bill failed in the House Judiciary Committee, and a blast motion to send the bill to the floor also failed.**

**SB 142 • Gary L. Perry • Revise unisex insurance law provisions.** This bill would repeal Montana's gender neutral insurance laws and would allow insurance companies to factor in gender when writing policies and assessing rates. We **opposed** this bill. After being **approved by the Senate, this bill failed in the House Business and Labor Committee, and a blast motion to send the bill to the floor also failed.**

**SB 327 • Aubyn Curtiss • Fetal Homicide Act.** This bill would define "unborn child" as any human from the moment of conception and incorporate this change into our existing homicide statutes. This bill would also create enhanced penalties for assault of a pregnant woman. While the bill contains an exemption for medical procedures and the pregnant mother's own actions, this exemption is vaguely worded, leaving open the door for the prosecution of health care providers. We **opposed** this bill. After being **approved by the Senate, this bill failed in the House Judiciary Committee, and a blast motion to send the bill to the floor also failed.**

**SB 374 • Gary Perry • Revise parental notification law.** This bill revises the current judicial bypass section of the parental notification law for minors seeking abortion care, which has been declared unconstitutional. This bill does nothing to rectify concerns that the act endangers minors. We **opposed** this bill. After being **approved by the Senate, this bill failed in the House Judiciary Committee, and a blast motion to send the bill to the floor also failed.**

**SB 406 • Dan McGee • Constitutionally define person.** This proposed constitutional amendment would define a person as beginning at fertilization or conception, thereby granting to fertilized eggs all of the inalienable rights contained in our state constitution. We **opposed** this bill. After being **approved by the Senate, this bill failed in the House Judiciary Committee, and a blast motion to send the bill to the floor also failed.**

**SB 497 • Jim Shockley • Creating a crime of obstructing a demonstration at a health care facility.** As originally drafted, this bill would have prohibited any person from coming within eight feet of a person protesting outside of a health care facility. We **supported amendments** to the bill that clarified that the demonstrator must be acting lawfully and that a person may come within the eight-foot buffer zone while entering or exiting the facility. After being **approved by the Senate, this bill failed in the House Judiciary Committee.**

**SJ 27 • Joe Balyeat • Oppose Federal Freedom of Choice Act.** We **opposed** this resolution against the federal Freedom of Choice Act. While no such legislation has been introduced before this session of Congress, prior versions have sought to prohibit states from unduly

infringing upon a woman's right to access abortion care. **Failed in committee and failed to meet the transmittal deadline.**

**Criminal Justice/Other Detention or Civil Commitment Proceedings:**

- Total number of bills we monitored: 47
- Total number of bills introduced: 34
- Bills we testified on: **HB 2, HB 55, HB 60, HB 149, HB 200, HB 295, HB 528, HB 552, HR 39, SB 87, SB 91, SB 157, SB 171, SB 341**

**HB 2 · Jon Sesso · General appropriations act.** We supported increased funding for the state's public defender program as part of the state budget. The final bill approved by the legislature reduced the allocations originally proposed for the office of public defender by more than \$700,000 over the biennium.

**HB 55 · Ray Hawk · Geographic restrictions on juvenile sex offenders.** This bill would require that when a youth is convicted of a level 3 sexual offense, the superintendent of the school district where the student is enrolled be notified of the charges and restrictions. The youth would come under all the same restrictions as an adult charged with the same crime. We **opposed** this bill. **This bill passed the House, was transmitted to the Senate, and then to the Governor who returned the bill with minor amendments. The amendments were approved by both chambers and the bill was signed into law by the Governor.**

**HB 60 · Bob Ebinger · Jail mental health crisis network standards pilot program.** We **supported** this bill to create a suicide risk screening and prevention pilot program in select detention centers, while arguing for the creation of comprehensive statewide mental health services standards in all facilities. **This bill was tabled in committee and failed to meet the transmittal deadline for revenue bills.**

**HB 149 · Mike Menahan · Restitution and probationary supervision fees.** We **opposed** this bill as originally drafted, which would have required all persons ordered to pay restitution as part of a criminal sentence also to pay for costs of processing the restitution payments. The bill was **amended to clarify that its provisions would not apply to indigent offenders. Approved by both chambers and signed into law by the Governor.**

**HB 200 · Janna Taylor · Revise Criminal Accountability.** We **opposed** this bill, which would have allowed a passenger in a vehicle involved in a hit and run accident to be charged with the same crime as the driver of the vehicle if the passenger failed to report the accident. **Tabled in committee and failed to meet the transmittal deadline.**

**HB 295 · Mike Menahan · Allow admissibility of other crimes in child sex crimes.** We **opposed** this bill to lower the standards and remove safeguards for admitting into evidence the prior acts of a person charged with a sex crime. After being **approved by the House, this bill was tabled in the Senate Judiciary Committee.**

**HB 528 · Dee Brown · Enhanced penalties for teachers convicted of sex offenses with minors.** This bill would double the penalties for a person convicted of a sexual offense if that person was a teacher and the victim was a minor. We **opposed** this bill. This bill was **tabled in committee and failed to meet the deadline for revenue bill transmittal.**

**HB 552 · Robert Mehlhoff · Regulate location of sexual offenders at prerelease centers.** This bill would allow any county commission that has a prerelease center in their territory to vote against allowing the placement of sex offenders at that prerelease center. We **opposed** this bill. **Tabled in committee and failed to meet the transmittal deadline.**

**HR 39 · Pat Noonan · Study development of additional community services for developmentally disabled.** This resolution calls for an interim committee of the legislature to study and monitor the development of community services for developmentally disabled children and adults with mental illness. We **supported** this resolution as a step toward increasing available services and decreasing more restrictive placements of individuals with developmental disabilities and mental illness. **Approved by both chambers.**

**SB 87 · Jeff Essman · Geographic restrictions on sex offenders.** This bill would make it a crime for a person convicted of sexual abuse to live, work, or loiter within 500 feet of a daycare, school, athletic field or any other place designed for children. We **opposed** this bill. **Tabled in committee and failed to meet the transmittal deadline.**

**SB 91 · Carol Juneau · Revise waiver of attorney by youth.** This bill would require that a youth must consult with an attorney before he or she can waive the right to an attorney in a probable cause hearing. We **supported** this bill. This bill was **approved by both chambers and signed by the Governor.**

**SB 157 · Jim Shockley · Audio-video hearings for certain mental health proceedings.** We **opposed** this bill as originally drafted, as it would have allowed judges to compel video conferencing with people subject to certain mental health detentions, thereby denying people the opportunity to appear in person and have face-to-face interactions with the judge. The bill was **amended to apply only to the initial informational hearing, thereby removing our opposition.** This bill was **approved by both chambers and signed by the Governor.**

**SB 171 · Gregory Barkus · Criminal Damage to rental property.** This bill would create a criminal offense for damaging a rental property. We **opposed** this bill. This bill was **approved**

by both chambers and was transmitted to the Governor who returned it with amendments. The legislature approved some, but not all, of the Governor's proposed amendments.

**SB 341 · Jesse Laslovich · Revise cost of criminal proceedings.** This bill would require people convicted in the state of Montana to pay for the costs of prosecuting them including prosecution costs, pretrial supervision, and any other costs the state incurs in the process. We **opposed** this bill. **This bill was approved by both chambers and the Governor signed it into law.**

#### **Drug Policy Reform:**

- Total number of bills we monitored: 8
- Total number of bills introduced: 7
- Bills we testified on: **HB 541, SB 212, SB 326**

**HB 541 · Brady Wiseman · Revise marijuana related crime laws.** This bill would make the possession of less than 30 grams of marijuana or drug-related paraphernalia a civil infraction punishable by a fine, instead of a criminal offense that would result in incarceration. We **supported** this bill. **This bill failed in committee and failed to meet the transmittal deadline for revenue bills.**

**SB 212 · Verdell Jackson · Revise laws for revocation of medical marijuana registration.** This bill allowed police officers to administer blood tests to medical marijuana patients and allowed the seizure and permanent revocation of registration cards if the patient operated a motor vehicle with even a modest blood THC level. We **opposed** this bill. **Tabled in committee and failed to meet the transmittal deadline.**

**SB 326 · Ron Erickson · Revise medical marijuana laws.** We **supported** this bill to increase the number of conditions that qualify for the use of medical marijuana, as well as the amount of marijuana that can be possessed. After being **approved by the Senate, this bill failed in committee and a blast motion to send it to the House floor also failed.**

#### **Privacy:**

- Total number of bills we monitored: 18
- Total number of bills introduced: 13
- Bills we testified on: **HB 155, HB 267, SB 154, SB 350, SB 431**

**HB 155 · JP Pomnichowski · Require state agencies to develop procedures to protect personal information.** We **supported** this bill which requires state agencies and state contractors to notify individuals if any of their personal information stored by the agency or a third party is believed to have been acquired by an unauthorized party. This bill was **approved by both chambers and signed into law by the Governor.**

**HB 267 · Teresa K. Henry · Prescription drug database and monitoring program.** This bill would create a prescription drug database to monitor all prescription drug orders for possible abuse. We provided **informational testimony** on this bill. **Tabled in committee and failed to meet the transmittal deadline.**

**SB 154 · Kim Gillan · Issuance of enhanced driver's licenses.** We provided **informational testimony** on this bill, which would have allowed the state to issue enhanced driver's licenses or identification cards. These cards can be read by radio frequency by agents at border crossings. While expediting crossings, these cards raise privacy concerns regarding the ease with which the information contained on the cards may be obtained by unauthorized parties. **Tabled in committee and missed the transmittal deadline.**

**SB 350 · Kim Gillan · Revise HIV testing laws.** This bill seeks to make HIV testing a routine part of medical care by revising the procedures for informing patients of the test and receiving their consent. While we **supported the bill's attempts to provide more access to testing, we opposed this bill's deletion of current requirements regarding specific information that must be provided to patients before the test is conducted and after the results are shared.** This bill passed both the House and the Senate and was signed into law by the Governor.

**SB 431- Roy Brown- Revise laws on employer drug testing.** This bill would increase the types of employees who may be subjected to drug testing in the work place. We **opposed** this bill. This bill **failed in the House Business and Labor Committee.**

### **Immigration:**

- Total number of bills we monitored: 28
- Total number of bills introduced: 14
- Bills we testified on: **HB 554, SB 379, SB 380, SB 381, SB 382, SB 413**

**HB 554 · David Howard · Verify alien status of prisoners.** This bill would require detention facilities to verify the immigration status of all inmates, including minors, who are detained for various reasons, and to report that information to federal authorities. We **opposed** this bill. **Tabled in committee and failed to meet the transmittal deadline.**

**SB 379 • Gary Perry • Create offenses concerning illegal aliens.** This bill would make it a crime to harbor, transport or encourage the residency of undocumented persons within the state. In addition to criminal penalties, the bill would allow the forfeiture of almost any property used in the commission of these new crimes. We **opposed** this bill. After being **approved in the Senate, this bill failed in the House Judiciary Committee.**

**SB 380 • Jim Shockley • Prohibit vehicle registration for unauthorized aliens.** This bill would prohibit the state from issuing a vehicle registration permit to someone who cannot prove, to the “satisfaction of the department,” that they are a legal resident of the United States. We **opposed** this bill. **Failed in committee and failed to meet the transmittal deadline.**

**SB 381 • Jim Shockley • Direct Department of Justice to enter MOU.** This bill would require the state Attorney General’s office to negotiate with the federal Department of Homeland Security to provide for training of peace officers and then to allow peace officers to enforce federal immigration laws. We **opposed** this bill. After being **approved in the Senate, this bill failed in the House Judiciary Committee.**

**SB 382 • Jim Shockley • Prohibit noncooperation practices concerning illegal aliens.** This bill would make it illegal for any local government to adopt a policy of noncooperation with any federal immigration inquiry over a person’s legal status in the United States. We **opposed** this bill. After being **approved in the Senate, this bill failed in the House Judiciary Committee.**

**SB 413 • Christine Kaufmann • Government not to racial profile immigrants.** This bill, after being heavily amended, requires the state and local governments to protect the human rights of immigrants and to prevent racial profiling. We **supported** this bill. After being **approved in the Senate, this bill failed in the House State Administration Committee.**

#### **Voting Rights and Election Reform:**

- Total number of bills we monitored: 39
- Total number of bills introduced: 23
- Bills we testified on: **HB 88, SB 187, SB 394**

**HB 88 • Ted Washburn • Revise close of late voter registration.** We **opposed** this bill, which repealed Montana’s same-day voter registration laws and moved the deadline to register back to the Friday before an election. **Failed to meet the transmittal deadline.**

**SB 187 • Joe Balyeat • Limit redistricting to 1 percent standard deviation.** This bill is a constitutional amendment that would allow a 1 percent deviation from ideal population when deciding on districting. We **opposed** this bill. **This bill failed in committee.**



**SB 394 • Keith Bales • Expand types of elections that may be conducted by mail ballot elections.** This bill would allow any election to be conducted by mail at the request of a political subdivision. The bill did not establish any minimum standards or requirements for Election Day voting locations that would be staffed, stocked with ballots, and fully accessible to voters with disabilities. Given the possibility that some voters may be denied the ability to vote, or severely restricted in their ability to vote a secret ballot, we **opposed** this bill. After being **approved by the Senate, this bill failed in the House State Administration Committee. A blast motion to move the bill to the House floor also failed.**

### **Free Speech:**

- Bills we testified on: **HB 546**

**HB 546 • JP Pomnichowski • Prohibit covenants restricting political speech.** This bill would prohibit landlords, property owners associations and homeowners associations from banning the display of political speech. We testified in **support** of this bill. This bill was **approved by both chambers and signed into law by the Governor.**

### **Religious Freedom/Separation of Church and State:**

- Bills we testified on: **SB 342**

**SB 342 • Jeff Essman • Tax credits for scholarships to private schools.** We **opposed** this bill to provide a tax credit for scholarships to private schools. This bill **failed on the Senate floor.**

### **LGBT Equality:**

- Bills we testified on: **HB 252, HB 590**

**HB 252 • Margaret Campbell • Sexual orientation and gender identity anti-discrimination.** We **supported** this bill to include sexual orientation and gender identity in the state's anti-discrimination statutes. **Failed in committee.**

**HB 590 • Franke Wilmer • Define domestic partnership and establish benefits.** We **supported** this bill to define domestic partnerships and to grant certain rights to partners, such as hospital visitation, inheritance and insurance benefits. **Failed in committee and a blast motion to bring the bill to the House floor also failed.**

### **Racial Justice:**

- Bills we testified on: **HB 340, HB 591, SJ 26**

**HB 340 · Margaret MacDonald · Establish the third Saturday in June as Juneteenth National Freedom Day.** We **supported** this bill to recognize the third Saturday in June as a day to commemorate the emancipation of African-American slaves and as a celebration of freedom for all oppressed people. This bill **failed on the House floor**.

**HB 591 · Carolyn Pease-Lopez · Require an American Indian member of the Board of Parole and Pardons.** This bill simply requires that one of the members of the Board of Parole and Pardons be of American Indian descent. We **supported** this bill. This bill was **approved by both chambers and signed into law by the Governor**.

**SJ 26 · Carol Juneau · Protect Native American Women from violence.** This resolution calls upon the state and federal governments to address violence perpetrated against Native American and Alaska Native women. We **supported** this bill. This resolution was **approved by both chambers and, though his signature was not required, it was signed by the Governor**.

### **Death with Dignity:**

- Total number of bills we monitored: 5
- Total number of bills introduced: 0

Perhaps the biggest non-event this session was the decision to not introduce any bills addressing physician-assisted end of life care. After Judge McCarter's December ruling in the *Baxter* case, many expected one or more bills to be introduced this session to clarify or restrict the newly-recognized right to receive a physician's assistance in ending one's life. Both sides of the issue eventually agreed, however, that it would be premature to pursue any legislation this session and declined to address the issue before the state Supreme Court delivers its ruling in the *Baxter* appeal.