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## **Statehouse Update Vol 6 No 4 - 3/8/2003**

by Marty Ryan, Legislative Director

Earlier in the week, a bill that would allow peace officers to withdraw blood without a warrant from persons believed to have been involved in a crash in which a fatality occurred, or which could result in a fatality, passed the House of Representatives. House File 265 passed by a vote of 88-8. It had passed previously out of the House Public Safety Committee with 7 "no" votes. The content of the bill is questionable in itself, but the real significance is the vote count. The American Civil Liberties Union of Iowa opposed the measure, and we had expected up to 15 "no" votes after debate on the House floor. Of course, that's not enough votes to defeat the bill, but a significant number of votes against a bill in one chamber can result in the other chamber pausing to reflect on whether it will be debated when it arrives there. We lost votes because people on the other side of the issue had waged a campaign to get legislators to support the bill. Very few people wrote, called, or e-mailed legislators urging a "no" vote on the floor.

To emphasize the point that contact with legislators can make a difference, a few weeks ago the ACLU-IA had asked certain members within the Iowa City area to contact Rep. Vicki Lensing (D-Iowa City), a subcommittee member on HF 116, and urge her to oppose HF 116 as a subcommittee member. HF 116, as originally written, would have required emergency room personnel to report burn injuries (most of them minor and included most sunburns) to the state fire marshal's office. The bill suspended the doctor/patient confidentiality provision and would make criminals of doctors who failed to report.

ACLU-IA members contacted Rep. Lensing and she did her best to prevent the bill from moving forward. When the bill was brought before the House Judiciary Committee, Rep. Pam Jochum made a motion to send the bill back to subcommittee. The motion prevailed and representatives of the Iowa Medical Society and the Iowa Hospital Association immediately drafted an amendment to present to the subcommittee. The amendment eliminated the criminal provisions and contained language similar to current law that requires medical personnel to report certain gunshot wounds and knife wounds. ACLU-IA signed off on the amendment and another subcommittee meeting was held in which the amendment was approved. The bill has since moved forward and has become HF 455. ACLU-IA does not support the bill, but we no longer oppose it.

ACLU-IA is grateful to the citizen lobbyists in the Iowa City area who contacted Rep. Lensing, and we are thankful to Reps. Lensing and Jochum for their persistent work in making this bill palatable. Please take a moment to send a thank you note to these two hard-working legislators, and to any other lawmaker who has followed through with a request of yours.

Other bills in the hopper:

House File 400 is a bill that will allow any peace officer to conduct a search of any person on parole or probation, their vehicle, place of residence, or personal effects, at any time without probable cause. The Parole Board already makes this a mandatory requirement of parole. Adding people on probation will have an adverse impact on the correctional system. Most people offered probation would agree to the terms. Most peace officers will enforce the issue and search as often as they are able, seeking whatever they may find, whether it belongs to the person on probation or someone else. The final conclusion will be violations of probation. The state cannot afford this at this time. A fiscal note prepared by the nonpartisan Fiscal Bureau estimates that this bill will cost the state an additional quarter of a million dollars in 2004. Contact your representative and ask him/her to oppose this bill.

House Study Bill 81, which permits peace officers to require minors to "blow on demand," has had no fewer than 3 subcommittee meetings. None of the subcommittee members are enthusiastic about moving the bill forward (Chambers, Freeman & Osterhaus). Rep. Chambers, the floor manager of the bill, has stated in a Des Moines newspaper that the bill is about 90% dead. The bill has terrible flaws and should not become law. Law enforcement groups are actively pushing for this measure. Please let Reps. Chambers (R-Sheldon), Freeman (R-Alta) & Osterhaus (D-Maquoketa) know that this bill should not advance.

HSB 81 has no threshold for tolerance. A positive test means .000001 or infinity. A minor "driving a vehicle" with a positive reading of .02 or above is considered to have passed the no-tolerance threshold. A positive reading of .02 or below is acceptable to be behind the wheel, but not standing on a public street. Does that make sense?

"Taking or refusing the test" will make no difference as to whether the person (minor) is in violation of possession. Why take the test? Why refuse it? It makes no difference. This is implied consent! Implied consent needs to be kept to the interior of the car, behind the steering wheel. The entire meaning behind implied consent is that a person applying for a motor vehicle license is agreeing to relinquish Fourth Amendment rights for the privilege to drive a motor vehicle. Driving is NOT a right; it's a privilege! Okay, we can accept that, but being a minor citizen of the United States is a right! Minors do not relinquish their rights to unreasonable searches by statute under the Fourth Amendment. Furthermore, the burden of proof is on the government, not the minor. "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Coffin v. United States*, 156 U.S. 432, 453, 15 S.Ct. 394, 403, 39 L.Ed. 481 (1895). What has happened to our society when "anyone,"

minor or not, has to prove to the government, on the spot, that he or she is not guilty of a crime committed?

The Attorney General proposes HSB 76 and Senate Study Bill 1029, an issue that allows previous charges of sex-related crimes, whether they resulted in a conviction or not, into evidence in a trial pertaining to another alleged sex crime. Judges, law professors, and private attorneys do not like this propensity evidence rule. The AG's office is pushing hard for this change. The issue is very, very controversial and does not need to move from subcommittee status. Subcommittee members on HSB 76 include: Reps. George Eichhorn (R-Stratford), Clel Baudler (R- Greenfield), and Mike Reasoner (D-Creston). Subcommittee members on SSB 1029 include: Sens. Larry McKibben (R-Marshalltown), David Miller (R-Fairfield), and Herman Quirmbach (D-Ames). Please contact these subcommittee members and urge them to oppose these bills.

Now the dumbest bill to ever face the Iowa Legislature may come out of the House Public Safety Committee during this upcoming week. HSB 218, a bill prohibiting "false" compartments in vehicles (as opposed to what?.REAL compartments?), has tons of flaws. A similar bill failed in the Senate Judiciary Committee last year after passing the House. The bill didn't just fail, it was practically laughed out of committee. It is the only time we have ever seen a unanimous vote "against" a bill. Please contact members of the House Public Safety Committee and urge them to oppose this legislation.

<http://www.legis.state.ia.us/GA/80GA/House/Comm/PublicSafety.html>

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