



505 Fifth Avenue, Ste. 901
Des Moines, IA 50309
(515) 243-3576

Statehouse Update - 4/9/2005

by Marty Ryan, Legislative Director

Immortality

A bill may die, but the issue struggles for reincarnation. It's an ongoing struggle, this year and every year at the Capitol.

Thanks to all the ACLU-IA Statehouse Update readers who contacted their legislators and made a difference. Because of it, many bills are dead for the session. For example, the following bills will not be seen anymore this year. But beware! The issue may arise in an appropriations bill or other funnel-proof pieces of legislation.

Constructive possession? Gone. DNA profiling? Dead. False compartments? Bye-bye. An additional five year sentence for growing a marijuana plant within 1,000 feet of a swimming pool on a minus 20 degree night in January? Poof. Hair drug testing? Vanished. It does pay to contact legislators. Thanks!

But you know, there are still some . . .

Big issues remaining

[House File 440](#) is mentioned often in the Statehouse Update.^[1] This is a bill that the governor [vetoed](#) last session, and it pertains to driving away from the gas pumps without paying. Under this proposed law you MAY lose your driver's license upon a second or subsequent conviction if you defraud the retailer.

Some solutions have been offered, such as requiring consumers to pay before pumping, debit and credit only, etc., but many legitimate excuses are provided for these solutions. For instance, those debit and credit card pumps are expensive and not feasible for local entrepreneurs, no one wants to pay before pumping because it can be embarrassing and inconvenient, etc. But Senator [Herman Quirmbach](#) (D-Ames) has a better solution.

Senator Quirnbach is concerned that many people driving off without paying may not have a driver's license to lose. Currently, if caught, the person may be charged with theft in the fifth degree, a simple misdemeanor.^[2] Three types of people may fall into this category (no driver's license): Minors under the age of 16 who are out joyriding, those who have lost a license because of previous convictions for driving-related matters, and as we discovered earlier this year – undocumented residents.

Senator Quirnbach offered an amendment in the Senate Judiciary Committee that makes a lot of sense. Perhaps that is why it was rejected. Anyway, the amendment has resurfaced on the floor of the Senate. The amendment provides for a minimum fine of \$200 for a first offense and a minimum \$300 fine with a mandatory 2 days in jail for a second or subsequent offense.

ACLU-IA OPPOSES HF 440 (without the Quirnbach amendment S-3083) because the punishment does not fit the crime. HF 440 passed the House 83-15 and is on the Senate Debate Calendar. Contact your state senator and urge him/her to support amendment S-3083 to HF 440, or OPPOSE HF 440 as it stands.

[House File 275](#) is bill aimed at underage drinkers. It looks innocuous at first, changing the criminal violation for possessing, purchasing, or consuming alcohol by a minor from a simple misdemeanor to a simple misdemeanor to be punishable as a scheduled violation. However, because a person charged with the scheduled violation will most likely not see a judge; there is no mechanism to give notice to the minor that a suspension of driving privileges may be revoked. Because of the lack of due process, the ACLU-IA OPPOSES this bill. HF 275 passed the House 99-0 is on the Senate Debate Calendar. Contact your state senator.

[House File 619](#) is a bill that began establishing a sex offender registry database task force and has grown into a political monster as the result of a brutal rape/murder in Eastern Iowa. HF 619 has turned into a proposal changing numerous areas of Iowa's sex offender statutes. There is even talk of attaching a death penalty amendment to it. Maybe that's the only way to kill this bill that is nothing more than a vehicle for posturing and grandstanding by most legislators. HF 619 has been thrown together quickly, without much common sense consideration. Who could oppose such a bill? It's a bill to protect our children! Or, is it?

HF 619, in its present form, requires all persons required to register as a sex offender to: submit to DNA testing; register beyond the original 10 year requirement in certain circumstances; reside beyond a 1,000 foot radius of a childcare facility or school (paying very little attention to the points of law addressed in the ACLU-IA case of [John Does I-XI v. Miller](#), in which an Eighth Circuit Court of Appeals ruling could be forthcoming in the next few months; at a minimum, annually submit to being photographed; and be supervised by electronic tracking and monitoring devices. Also, the bill gives the general public the right to freely distribute information about the offender in public places, a right that may lead to potential vigilante retaliation. The bill requires either an additional indeterminate sentence or treatment.

A considerable amount of testimony was presented to a Senate subcommittee. More than a couple presenters told the subcommittee to refrain from making treatment mandatory. "Placing a person into sex offender treatment who does not wish to be there will be the bad apple that spoils the entire barrel," was how one expert explained it. Offering the choice between treatment and possible early release, or staying in prison for the entire sentence without completing treatment will entice offenders to opt for the former and create the situation of spoiling the barrel.

Watch for many other counter-productive and questionably constitutional initiatives to arise during the course of this legislation moving through the process. ACLU-IA strongly OPPOSES HF 619. It passed the House 100-0 and on the Senate Debate Calendar.

[House File 682](#) is another one of those bills that appears to be non-threatening on the surface. HF 682 is a bill that provides for the assessment of a civil penalty upon the entry of a deferred judgment. However, the Senate Judiciary Committee amended this bill by adding the provisions of [House File 123](#) to it. HF 123 creates a criminal penalty surcharge that is used to pay for equipment at the state criminalistics laboratory in Ankeny. The ACLU-IA has beaten back this issue for 3 continuous years. [3] We OPPOSE this legislation for many reasons, not to mention the fact that a percentage of fund that once went to victim compensation will be reduced. HF 682 passed the House on March 16 by a vote of 79-19. It awaits debate in the Senate. Contact your state senator.

Hey, a bill we support? Yep. [House File 685](#) establishes the Child Identification and Protection Act. The bill prohibits the fingerprinting of children unless the parent or guardian gives written permission. The print cards stay with the parent or guardian and MAY be used by investigators if the child runs away or is missing. The Act prohibits the fingerprints, authorization, and notice of their existence from being recorded. "When a child is located or the case is otherwise disposed of, the fingerprint cards shall be returned to the parents or guardian." There are exceptions in which the government may keep fingerprints, such as requirements by court order, delinquency cases, etc. The ACLU-IA SUPPORTS the passage of HF 685. It passed the House on March 15 by a vote of 95-3. It is currently on the Senate Debate Calendar. Contact your state senator.

A couple of open records/open meetings bills are also on the Senate Calendar. The ACLU-IA SUPPORTS the passage of [House File 772](#) and [Senate File 403](#). HF 772 requires the removal of a member of a government body upon a second violation of the open meetings law or open records law. SF 403 provides that a request for an open record does not have to be made in person, and that a fee for the actual costs associated with copying costs may only be charged, not expenses such as electricity, depreciation, employment benefits, etc.

HF 772 passed the House on April 5 by a vote of 77-23. It awaits action by the Senate. SF 403, a Government Oversight Committee bill which is funnel-proof, awaits action in the Senate also. Contact your state senator.

Trouble with AOL

If you have an e-mail address that ends in “aol.com” or “mcleodusa.net” and have subscribed to the ACLU-IA Statehouse Update in the past and are not receiving it now, or if you subscribed but have never received it, it could be because we have difficulty getting through to many subscribers with those addresses. If that’s the case, and you’re reading this online or through the generosity of a friend, let us know. We’ll see what we can work out with you.

As usual

There are numerous issues affecting civil liberties at the State Capitol. Unfortunately, we cannot list all of them in this newsletter. If you have a question about a particular bill, issue, or concern, contact ACLU-IA Legislative Director Marty Ryan to obtain a bill’s status, information, or talking points. [Contact the ACLU-IA Legislative Director](#).

We appreciate the feedback to these Updates. Please keep us informed by forwarding copies of e-mails received from legislators after you have written them about a bill or subject included in this newsletter.

How to contact your legislators:
[Find my legislators](#).

How to contact Governor Tom Vilsack:
http://www.governor.state.ia.us/comments/capitol_correspond/index.html

By mail:
The Honorable Tom Vilsack
Governor of Iowa
State Capitol
Des Moines, IA 50319

Phone: (515) 281-5211
Fax: (515) 281-6611

[1] See ACLU-IA [Statehouse Update](#) of 2/27/2005. Also, ACLU-IA [Statehouse Update](#) of 3/14/2005.

[2] 903.1 Maximum sentence for misdemeanants.

1. . . .

a. For a simple misdemeanor, there shall be a fine of at least fifty dollars but not to exceed five hundred dollars. The court may order imprisonment not to exceed thirty days in lieu of a fine or in addition to a fine.

[3] See ACLU-IA [Statehouse Update](#) 2/8/2004 from last year on this same issue.