

ACLU OF UTAH LEGISLATIVE WRAP-UP 2020

-  BIG WIN
-  DEFENSE
-  OFFENSE
-  FIRST STEP
-  NEXT STEPS
-  TEAM EFFORT
-  TESTIFIED
-  FAILED

ACLU Utah

INTRODUCTION

The 2020 Legislative was unusual by all accounts, with a slow roll out of bills at the beginning, and the threat of Covid-19 changing lobbying practices at the end. Nevertheless, the ACLU was on Capitol Hill every day for 45 days, and covered a lot of ground! In 2020, we tracked 155 bills that impacted Utah's civil liberties, addressing topics from criminal justice to free speech to reproductive rights. We worked behind the scenes, in coalition with partners and in the public eye to pass legislation that promotes civil liberties, and to stop or amend harmful bills. The following is but a snapshot of some of our more high profile efforts.

ABORTION BILLS ROUND-UP

- S.B. 67 - DISPOSITION OF FETAL REMAINS
- S.B. 174 - ABORTION PROHIBITION
- H.B. 364 - ABORTION REVISIONS (ULTRASOUND)



Abortion faced a triple threat during the 2020 session, with each of these three bills targeting reproductive rights from a new and pernicious angle. But thanks to a strong strategy, persistent lobbying, and most importantly--the courage of six women state senators who walked out of the Senate chamber just before a majority of their male colleagues voted for medically- unnecessary ultrasounds for every woman seeking an abortion, we helped defeat that bill (H.B. 364) and revealed fatigue for anti-abortion legislation, even in the Republican-dominated Utah legislature. While the Senate walkout became the most powerful moment of the 2020 session, it also illustrates a key finding of our statewide

survey of abortion rights--released at the beginning of the session--that showed 80 percent of Utahns informed about the state's current abortion restrictions oppose lawmakers passing additional limits.

While we couldn't defeat the other two abortion bills, we have requested their veto by the Governor. The most headline-grabbing bill was Sen. Dan McCay's (R-Riverton) full ban on elective abortions (S.B. 174), which, as a "trigger bill," will only take effect if a higher court like the U.S. Supreme Court allowed it by overturning the four decades of abortion rights established by Roe v. Wade. McCay's bill is similar to the Down Syndrome abortion ban that passed during the 2019 session and is likewise in limbo until a higher court decides it is legal. Taking a more indirect approach was Sen. Curt Bramble's (R-Provo) fetal remains bill (S.B. 67), which requires medical providers to inform women about how they can dispose of the fetal remains after an abortion or miscarriage while also limiting their eventual options. Even though our lobbying team pushed several amendments to make this legislation more workable, the inclusion of miscarriages in this bill demonstrated the legislature's willingness to limit all women's healthcare choices just to strike a glancing blow against abortion rights.



Marina Lowe and Jason Stevenson discuss legislation at the Utah Capitol during a broadcast of "ACLU on the Hill" during the 2020 Session

PRIVACY/TECHNOLOGY BILLS ROUND-UP

S.B. 218 - FACIAL RECOGNITION PROVISIONS

H.B. 231 - GENETIC INFORMATION AMENDMENTS

H.B. 466 - LAW ENFORCEMENT USE OF BIOMETRIC INFORMATION



After last year's success at approving the nation's first protections for cloud-based data storage (H.B. 57 Electronic Information or Data Privacy), we expected to pass more bills this session limiting law enforcement use of facial recognition (S.B. 218) and personal DNA database at consumer genetic testing companies like Ancestry.com (H.B. 231). But neither of those bills advanced. Why? Because these types of thorny and complex issues often require several years of study and work before they become law. Plus, recent state and national surveys indicate that the public is willing to give law enforcement significant leeway in using crime-fighting technology even if it erodes their personal privacy. Much work remains, but look for these two issues, plus restrictions on law enforcement's ability to force you to use your face to open your smartphone (H.B. 466), to return in future sessions. One privacy bill we actively supported and passed this year provides much-needed regulation for when law enforcement officers deactivate a body camera (S.B. 210). Not only does the bill require police officers to document the reason why they failed to activate a bodycam, but it also allows a judge in a trial to instruct the jury to view missing body camera footage negatively against the officer.

H.B. 146 - DRIVERS LICENSE SUSPENSION



Most people believe that your driver's license can be suspended only due to a driving-related offense like a DUI or serious accident where you were at

fault. But every year, 30,000 Utahns are losing their licenses and their ability to drive merely due to non-payment of legal fines or failing to appear for a court hearing. This didn't make sense to the ACLU of Utah, nor to Rep. Cory Maloy (R-Lehi), who sponsored this legislation to remove license suspensions as a consequence of non-payment of fines or missing court dates. After all, losing your ability to drive will make it harder to earn wages to pay fines and show up at court. Plus, we learned that the fees collected by the state to re-instate these suspended licenses were projected at about \$1 million a year. Despite widespread support in both chambers for this commonsense legislation, Sen. Curt Bramble (R-Provo) held this bill in the final hour of the session and prevented it from passing.

JAIL BILLS ROUND-UP

S.B. 185 - GOVERNMENT RECORDS AMENDMENTS

S.B. 193 - STATEWIDE JAIL DATA AMENDMENTS



What happens inside Utah's county jails has long remained hidden behind locked doors and secret records. This deliberate policy of concealment masked problems like the state's dubious distinction of having the nation's highest per-capita rate of jail deaths in 2016, and institutionalized prisoner abuse in Daggett County. While the ACLU of Utah has pursued difficult but ultimately successful public records requests and lawsuits to shed daylight on jail practices, we recognize that better legislation can create new methods to reform jail conditions. Hence, our strong support and testimony in favor of these two Senate bills, by our Legislative Counsel and Equal Justice Works Fellow Sara Wolovick, which helped secure their successful passage. Both bills passed in the final hours of the 2020 session. S.B. 185 will increase the transparency and

accessibility of public documents related to jail operations by making jail standards and audits public, while S.B. 193 will create a statewide demographic census of people incarcerated in jails as well as an account of how many people county jails are incarcerating on behalf of ICE or the state Department of Corrections. Together, both bills will provide the necessary data to guide future criminal justice reform efforts.

H.B. 288 - PROSECUTOR DATA COLLECTION AMENDMENTS



We know that bias exists in the criminal justice system. But where does it start, and where is it concentrated? This bill will attempt to answer those questions by collecting previously unavailable data from all prosecutory offices in Utah--from city prosecutors to the Attorney General--on how they do their jobs. This information, which includes jail data on age, race, and ethnicity of the defendants, as well as what charges the prosecutor filed or whether a plea deal was offered, will be sent every six months to the state's Commission on Criminal and Juvenile Justice. This information will be made available to researchers and the public. Given that this new law will create mountains of new and useful data to illuminate the "black box" of Utah's prosecutorial system, it's no surprise that the bill's sponsor, Rep. Marsha Judkins (R-Provo), has a day job as a math professor at Utah Valley University. ACLU of Utah Smart Justice Coordinator Jason Groth not only shaped the content of this bill, but he also spent hours at the Utah Capitol lobbying lawmakers and testifying in front of committees to build the bipartisan support that enabled its passage.

S.B. 200 - REDISTRICTING AMENDMENTS



Of the three ballot initiatives passed by Utah voters in 2018, only Proposition 4, the anti-gerrymandering initiative, remained unaltered by legislative meddling at the beginning of the 2020 legislative session. As a result, everyone, including the ACLU of Utah (which actively campaigned for Prop 4 to promote fair elections) waited for the ax to fall on it and stood ready in defense. But instead of a complete repeal, negotiations between Better Boundaries (the main backers of Prop 4) and lawmakers resulted in a compromise bill that kept the independent redistricting commission intact and funded it with \$1 million. However, the bill also removes the commission's leverage over the legislature's review of redistricting maps and restricted public lawsuits against lawmaker-drawn maps. With Better Boundaries claiming the commission will retain significant power and urging passage of the compromise agreement, the Legislature voted for the bill nearly unanimously to set the redistricting process in motion.

H.B. 206 - BAIL AND PRETRIAL RELEASE AMENDMENTS



Did you know that over 50 percent of the people incarcerated in Utah jails and prisons haven't been convicted of a crime? They are held in pre-trial detention, with many of them unable to pay bail to get out. This bill, which passed in the final hours of the 2020 session, brings important reforms to Utah's bail system with the goal of reducing pre-trial detention. Not only does the bill create a new rule that defendants eligible for release "shall be released under the least restrictive reasonably

available conditions," but it also allows judges to consider a person's ability to pay when setting bail amounts. Opposition to the bill by the bail bond industry was overcome by strong lobbying and testimony from a powerful combination of advocates, public defenders, and prosecutors whose testimony propelled Rep. Stephanie Pitcher's (D-Salt Lake City) bill across the finish line to begin the process of reforming bail in Utah.

H.B. 298 - VICTIM GUIDELINES FOR PROSECUTORS (U VISAS)



A "U Visa" is a form of immigration status the federal government grants to victims of violent crimes who report the crime and cooperate with criminal investigations. First created in 2000, U Visas provide protection that allows recipients to legally live and work in the U.S. As a first step, victims must obtain a certification by a law enforcement agency that they have been helpful to the investigation of the crime they reported. For years, immigrant communities and service providers have reported inconsistencies in the way Utah law enforcement agencies handle requests for U Visa certifications. Fortunately, Rep. Andrew Stoddard (R-Midvale) agreed to our request, working in coordination with the Refugee Justice League, that he champion this bill to promote and standardize the use of this important tool to protect vulnerable victims of crime. Legislators agreed with his approach, passing the final version of H.B. 298 unanimously in both chambers to secure this session's major win for immigrants' rights.

H.B. 243 - WARNING LABELS AMENDMENTS



Originally designed to protect children from the dangers of pornography by slapping a 57-word warning label on any potentially obscene material,

this bill was revised during the session to reduce the warning label and more clearly focus on obscenity, which receives less First Amendment protection. One troubling aspect of this bill that didn't change was the provision that allows individuals, with support from the Utah Attorney General, to bring civil suits against any person who distributes obscene material without a visible warning. Successful lawsuits would result in a \$2,500 fine per violation and \$500 "bounty" paid to the person who initiated the suit--a practice that could promote self-censorship and a chilling of free expression, not to mention the creation of a cottage legal industry to file frivolous civil actions against book stores and other businesses. For these reasons, the ACLU of Utah opposed this bill, although it ultimately passed both chambers of the legislature.

H.B. 449 - STUDY OF THE DIAGNOSIS, TREATMENT, AND CARE OF TRANSGENDER MINORS



As lawmakers in South Dakota and Idaho debated bills this winter that would have criminalized hormone therapy and other medications for transgender youth, a similar bill drafted by Rep. Brad Daw (R-Pleasant Grove) sat waiting at the Utah Legislature. When national attention, public outcry, and boycott threats derailed the bills in neighboring states, and local pressure and lobbying ramped up in Utah, Rep. Daw knew his bill was in trouble. So, when Daw released his bill with a week left in the session, he had re-written it to require the Utah Department of Health to establish a \$26,000 grant to study the "benefits and side effects" of hormone therapy by transgender youth. But even that attempt to deflect opposition failed when a bipartisan coalition of House members voted 55-17 to stop the bill from advancing and secure a major win for LGTBQ rights in Utah.