



## STATE REPORT CARD

Name: Pennsylvania

Date: September 17, 2009

Subject	Grade
<i>LGBT Rights</i>	<i>D+</i>
<i>Reproductive Rights</i>	<i>C</i>
<i>Death Penalty</i>	<i>D+</i>
<i>Immigrants' Rights</i>	<i>D+</i>
<i>Access to Public Records</i>	<i>B</i>
<i>Voting Rights</i>	<i>B-</i>

OVERALL GRADE: C-

September 17, 2009

## Civil Liberties in the Keystone State

In honor of Constitution Day, September 17, the ACLU of Pennsylvania has taken a moment to assess the state of civil liberties and civil rights in Pennsylvania.

SUBJECT: LGBT Rights

GRADE: D+

### ***Discrimination***

Pennsylvania does not protect its LGBT citizens from discrimination in employment, housing, or public accommodations. Twenty-one states prohibit discrimination based on sexual orientation – including neighboring states Maryland, Delaware, New York, and New Jersey – and 13 states provide transgender individuals with this protection. Although a bill to amend the PA Human Relations Act to include sexual orientation and gender identity or expression has been introduced in the state House of Representatives and was passed by the House State Government Committee, it has met with stiff resistance. LGBT employees of the state are protected from discrimination by Executive Order 2003-10, and 15 municipalities have local ordinances prohibiting employment discrimination within their jurisdictions. Nonetheless, approximately 73% of the state’s population remains without any protection.

### ***Relationship Recognition***

In 1996 the state passed the Defense of Marriage Act, which expressly prohibits the issuing of marriage licenses to same-sex couples or the recognition of same-sex marriages performed in other jurisdictions. The Pennsylvania Constitution, however, remains discrimination-free, with attempts to pass an anti-gay marriage amendment failing in two previous legislative sessions. Senator John Eichelberger has announced his intention to introduce a bill to amend the state’s constitution in the current session while Senator Daylin Leach has introduced a competing bill to allow marriage between two partners of the same sex. Most political insiders do not believe that either bill will be passed before the end of the session.

### ***Parenting***

LGBT parents are better situated than LGBT couples when it comes to their rights. Pennsylvania allows qualified same-sex couples, as well as single homosexual and bisexual adults, to adopt children. It also allows second-parent adoption, in which the same-sex partner of a child’s legal parent adopts the child as the child’s second parent. In 2002, the Pennsylvania Superior Court ruled that if a same-sex couple that has children splits up, the custodial parent of the child is entitled to child support from the co-parent. In addition, in 2005 the Superior Court upheld a custody decision in which the ex-partner of the children’s biological mother was found to have parental rights to the children and granted primary physical custody on the basis that she would provide a better home.<sup>1</sup>

### ***Transgender Rights***

Pennsylvania allows both pre- and post-operative transgender individuals to change their names on

legal documents. Post-operative transsexuals may also obtain a revised birth certificate that reflects the change in gender. No standard policies are in place for public bathroom usage, hormone therapy and placement in prison, or other issues.<sup>2</sup>

<sup>1</sup> 23 Pa. C.S.A. 2312; *In re Adoption of R.B.F.*, 803 A.2d 1195 (Pa. 2002); *L.S.K. v. H.A.N.*, 813 A.2d 872 (Pa. Super. Ct. 2002); *Jones v. Boring*, 884 A.2d 915 (Pa. Super. Ct. 2005)

<sup>2</sup> *In re Brian Harris*, PICS Case No. 97-2655 (Pa. Super. Dec. 11, 1997); 35 Penn. Stat. § 450.603 (2005)

**SUBJECT:** Reproductive Rights

**GRADE:** C

### **Family Planning Services**

Funding for pregnancy prevention comes from a combination of state and federal funds, with the bulk coming from the federal government through the Title X program. For every dollar the state spends on family planning, however, an equal amount is given to so-called “crisis pregnancy centers.” These centers discourage women from having abortions, often giving biased or outright false information, such as “abortion causes breast cancer and infertility.” Among the 50 states and the District of Columbia, Pennsylvania ranked 26th in service availability. Family planning clinics serve only 41% of all women in need of publicly supported contraceptive services and only 39% of teenagers in need, and 94% of counties have at least one family planning clinic.

### **Abortion**

Pennsylvania has among the most restrictive abortion laws in the nation with a mandatory delay (the 24-hour waiting period) and counseling rule, required parental consent for minors (or judicial bypass), and no public funding for abortion except in the case of threat to the woman’s life or a reported case of rape or incest. Nonetheless, provision of services is much better than one would assume based on these laws. Several of the clinics in Pennsylvania were founded just after the *Roe v Wade* decision and have been providing services to women through all the ups and downs of the 36 years since abortion became legal. Unfortunately, travel can be long and burdensome for some women, with most clinics in the state centered in metropolitan areas. Women with later-term pregnancies have few options.

As noted above, neither the Commonwealth of Pennsylvania nor the federal government provide state funds to poor women seeking routine abortion services. A tiny number of women receive state funds: those who have been victims of rape or incest and women whose lives are threatened by continuing a pregnancy. In response to the lack of funding, five nonprofit loan funds have been established that serve women across the state. However, the funds estimate they are meeting less than 20% of the need.

Since the 2008 election, clinic violence has been escalating around the country, and Pennsylvania is one of the hot spots. Clinics in the state deal with protestors on a regular basis. Even with protective ordinances and other precautions, protestors still manage to harass, threaten, and even blockade clinics on top of disturbing doctors and clinic staff in their own homes and neighborhoods. Federal authorities are working with local law enforcement, but the situation at some clinics is truly volatile.

One factor that improves the state of reproductive health in Pennsylvania is the commitment of some academic medical centers in training the next generation of doctors. Several hospitals have high level training programs for residents in both family medicine and obstetrics and gynecology. These centers

also have active research programs and are recognized leaders at the national level. In addition, the Medical Students for Choice organization is extremely vibrant in Pennsylvania with chapters at all of Pennsylvania's medical schools.

### ***Sex Education and Abstinence-Only-Until-Marriage Programs***

Strong advocacy and program efforts resulted in victories in promoting responsible sex education. The Pennsylvania Coalition to Prevent Teen Pregnancy recently obtained funding to implement science-based sex ed curricula in four urban school districts. Meanwhile, a coalition of organizations in Pittsburgh (including the ACLU) organized against the district's abstinence-only policy. In the spring of 2009, the school voted to switch the entire district's curriculum to a comprehensive approach—the largest district in the nation to do so under community pressure.

**SUBJECT:** Death Penalty

**GRADE:** D+

### ***Country's Fourth-Largest Death Row***

Pennsylvania has the fourth-largest death row in the country with 223 inmates awaiting execution as of July 1, 2009. Six people were sentenced to death in Pennsylvania in 2007, the most recent year for which data is available. That was an increase from 2006, when four people were sentenced to death, but still down significantly from the 1990s when between a dozen and 21 people per year were given death sentences. The commonwealth has not executed anyone since 1999.

### ***Disproportionate Rate of Minorities on Death Row***

The commonwealth currently has the second-highest percentage of minorities on its death row among states with at least 10 people on death row. Sixty-nine percent of persons awaiting execution in Pennsylvania are racial or ethnic minorities. Only Texas has a higher percentage of minority death row inmates.

### ***Mental Retardation***

Seven years after the United States Supreme Court outlawed the execution of persons with mental retardation, the state legislature still has not figured out how courts are to determine if a defendant is mentally retarded. A majority of states have implemented procedures for courts to rule before trial on a person's mental retardation, a position supported by advocates for persons with mental retardation, faith groups, and the ACLU. In July, the Pennsylvania Senate passed Senate Bill 628, legislation that would implement the pre-trial determination, by a vote of 45-2.

### ***ABA Recommendations***

In October, 2007, the American Bar Association released a report decrying the state of capital punishment in Pennsylvania. Specifically, the ABA indicated that the commonwealth is at serious risk of executing an innocent person and that poor defendants in capital cases do not receive adequate representation. The ABA report was issued by a team of prosecutors, defense attorneys, and a judge, all from Pennsylvania. The General Assembly and Governor Rendell have done nothing in response to this report.

**Indefinite Detention**

As of January 25, 2009, 1,135 people were being detained by U.S. Immigration and Customs Enforcement (ICE) in Pennsylvania facilities—mostly in our county prisons, which hold contracts with ICE.<sup>1</sup> Pennsylvania detains people far longer than the 47 days the U.S. Supreme Court has determined to be average and reasonable.<sup>2</sup> Of the people jailed by ICE in Pennsylvania, 551 of them had been held longer than 47 days—one as long as five years. Some of these detainees have never been given the opportunity to challenge their detention before a judge.

**Children in Detention**

This summer, ICE announced that it would discontinue use of the T. Don Hutto facility in Houston, TX, to jail immigrant families after an ACLU lawsuit over its inhumane conditions. Instead, ICE plans to “house” families exclusively at the Berks Family Residential Center in Leesport, Pennsylvania – the only remaining family detention center in the country, which Berks County runs under contract with ICE. In spite of its name, the Berks facility is a jail. It sits on a remote hillside 10 miles outside Reading in a row of government detention facilities, including a juvenile detention center and the Berks County Prison. Though they aren’t forced to wear prison clothes or remain in barred cells as at Hutto, the children at Berks are not free to leave the fenced, locked and guarded facility. They don’t attend school with local youth. Their parents don’t decide when they go to bed or what they’ll eat. Though the facility includes a small basketball court encircled by a towering fence, they don’t play on the local sports teams or socialize with other children outside the facility. Instead, they wait – for months or even years – as their cases plod through the immigration court system.

**287(g) Agreements**

On July 10, 2009, the Department of Homeland Security (DHS) announced plans to expand the number of state and local law enforcement agencies that it empowers to make immigration arrests under Section 287(g) of the Immigration and Nationality Act. These agreements reduce public safety by distracting state and local police officers from their number one priority—protecting us from crime. They also discourage immigrants from reporting crime to state and local police out of fear that they could be questioned about their immigration status. To our knowledge, no Pennsylvania state or local law enforcement agencies has signed a 287(g) agreement. In spite of this, reports of ethnic profiling and immigration arrests following traffic stops are on the rise.<sup>3</sup>

**Driver’s Licenses**

On May 29, 2009, the Pennsylvania Department of Transportation (PennDOT) mailed notices to thousands of Pennsylvania residents, informing them that their drivers’ licenses would be cancelled on June 19 because PennDOT could not verify their social security numbers. However, in Pennsylvania, non-citizens do not need social security numbers to hold drivers’ licenses, and many immigrants who are ineligible for social security cards *are eligible* for drivers’ licenses. The cancellation notices, which were written in legalistic English, caused confusion and panic among non-citizen residents of Pennsylvania. Fortunately, after receiving a detailed letter from the ACLU-PA and the American Immigration Lawyers Association, PennDOT agreed to temporarily suspend the cancellations and revise its documentation requirements.

### **E-verify**

In June, members of the Pennsylvania General Assembly introduced House Bills 1502 and 1503. If passed, HB 1502 would require that state contractors verify the work-eligibility status of all employees, using the Department of Homeland Security's E-verify program,. HB 1503 would require that all construction companies operating in the commonwealth, regardless of whether they hold government contracts, use E-verify to investigate the work-eligibility status of employees. By producing false rejections in about 3% of verification requests, E-verify results in discrimination against legally present foreign-born workers and U.S. citizens who are authorized for employment.<sup>4</sup> Both HB 1502 and 1503 are now pending in the House Labor Relations Committee.

1 "Immigrants Face Long Detention, Few Rights." Associated Press (March 15, 2009) [available at <http://www.msnbc.msn.com/id/29706177/>.]

2 *Demore v. Kim*, 538 U.S. 510, 529 (2003).

3 See, e.g., "Putting Brakes on Crime," Centre Daily Times (June 22, 2008) [available at <http://www.centredaily.com/>].

4 "Use of Federal Database for ID Checks Hits Some Bumps," USA Today (Feb. 6, 2009) [available at [http://www.usatoday.com/news/nation/2009-02-05-immigration\\_N.htm](http://www.usatoday.com/news/nation/2009-02-05-immigration_N.htm)].

**SUBJECT:** *Access to Public Records*

**GRADE:** *B*

Pennsylvania has shown admirable progress in the area of Open Government and Access to Public Records. The commonwealth started the year strong with a newly revised Right to Know Law and the new Pennsylvania Office of Open Records. The new law is a huge improvement over Pennsylvania's former law governing access to public records, which primarily served to shield government records from disclosure. Under the new law, most government records are assumed to be public, with exceptions that are clearly defined. The brand new Office of Open Records has truly changed the way Pennsylvanians relate to their government, offering clear and easily followed instructions for requesting records from any government agency in the state and an easy way to appeal the denial of a records request. In many cases, the Office of Open Records has worked with government agencies to push them toward a better understanding of their obligations under the new law and has provided many Pennsylvanians with excellent service and support in their efforts to learn how their government operates and how their tax money is being spent.

Pennsylvania's work is not finished, however. There are still a number of Pennsylvania government agencies, both state and local, that haven't quite caught up with the new law and still think they can operate in secret. Unfortunately, many government agencies also have been less than welcoming to the guidance of the commonwealth's Office of Open Records. Indeed, earlier in the year, Terry Mutchler, the executive director of the office, wrote to Governor Rendell to complain about lack of cooperation from executive branch agencies. Ms. Mutchler has also warned that her office is getting squeezed by the budget crunch, which means that it soon may not have the resources it needs to really enforce the new law.

In addition, the new law still has some rough spots, particularly with respect to the conduct of appeals. The appeal process is not currently set up to guarantee that the average person can effectively pursue an appeal. The law does not fully protect the right to challenge factual assertions by government agencies or the ability of a requester without legal training to demand that a full record be made. The

Office of Open Records approaches appeals with the goal of facilitating resolution, which is a terrific service in most cases, but doesn't always help to set the stage for a further appeal to the court when that is necessary. The courts are currently addressing the first judicial appeals under the Right to Know Law, which should help to clarify these outstanding problem areas. We hope for even better performance in this area in the future.

**SUBJECT:**     *Voting Rights*    

**GRADE:**     *B-*    

***Voter Fraud***

On Election Day 2008, some 6 million Pennsylvanians voted in 9,300 polling places staffed by 50,000 poll workers. This represents the highest voter turnout since 1968. There was no credible evidence of voting fraud. (While the Association of Community Organizations for Reform Now [ACORN] was accused of plotting a campaign of voter fraud in its campaign to register low income voters, no evidence has been produced that ineligible persons voted in the election as a result of ACORN's voter registration drives.) The Pennsylvania Department of State took several positive steps to ensure a smooth voting process by providing accurate information on its web site and by issuing guidance to county officials.

***Obstacles to Voting***

At the same time, not all eligible voters found it easy or possible to exercise their right to vote. Potential voters faced significant obstacles in some areas of Pennsylvania. Counties were uneven in their preparedness for the election. Nowhere was this more evident than with the handling of absentee ballots. Philadelphia and Allegheny counties were the locus of the most severe problems. In Philadelphia, many voters who had registered and applied for absentee ballots simply never received them. Also, the exercise of this basic democratic right was impaired by continued physical accessibility problems of polling places and machines, especially in Philadelphia. Eligible voters in nursing homes, hospitals and prisons faced significant obstacles. In some areas, voters were discouraged by false information contained in fliers circulated in Philadelphia's African-American communities and by robo calls in Latino precincts in the Lehigh Valley.

Overall efforts to protect the right to vote are hampered by Pennsylvania's system of elections. In the commonwealth, 67 county boards of election have authority to determine critical election rules, including dress codes for voters, the locations of polling places, the type of voting system or machine that is used, and practices for registering and voting for eligible prisoners and people in other facilities and institutions.

There are concerns that the location of polling places is determined more by political considerations than by convenience to voters or by population concentration. In Bucks County, a complaint was filed alleging that the relocation of a polling place was conducted in an attempt to disenfranchise voters of color, especially immigrants and the elderly. In Chester County, many voters, most of them students at a historically black college, were made to wait in excess of six hours in pouring rain until a judge issued an order to bring additional machines to the area.

One key positive development was an October 29, 2008 ruling (*NAACP v. Cortes*) in which an injunction was issued requiring Pennsylvania to use emergency paper ballots in polling places in which at least half the electronic vote-counting machines had broken down.



Positive post Election Day reform efforts have centered on attempts to make it easier to use the system of absentee voting by permitting no excuse absentee balloting, a system now being used in 28 states. On the negative side, there are currently legislative proposals that would tighten voter identification requirements, thereby making it harder for many eligible voters to exercise this cherished democratic right. This proposal purports to solve a problem that simply does not exist.

### **Voter Dress Codes**

Also on a positive note, the Secretary of State's office issued an advisory opinion to county election boards that voters who wear partisan political buttons, stickers, and t-shirts to their polling places should be allowed to vote as long as those voters took no additional action to attempt to influence other voters. This advisory opinion was challenged in court (*Kraft v. Harhut, et al*) by two Allegheny County election officials. Although the challenge was rejected by the court, counties were uneven in their compliance with recommended policy. On Election Day, dress codes varied widely from county to county.

**OVERALL GRADE:** C-

The birthplace of the Constitution, Pennsylvania now lags behind many of its neighbors in advancing civil liberties and civil rights, particularly in the area of protecting its LGBT residents from discrimination. Although Pennsylvania is not the worst state in the nation on most of the issues cited above, it has a long way to go to live up to its legacy of leading the way for freedom and justice for all.



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