

LEGISLATIVE LETTER®

LEAGUE OF WOMEN VOTERS OF COLORADO

1410 Grant St., B-204, Denver, CO, 80203 303.863.0437

e-mail: info@lwvcolorado.org

www.lwvcolorado.org



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LL #2:7

COLORADO'S ELECTION WOES

The process to be used in the 2008 elections in Colorado is of concern to everyone. The clerks are watching time pass when they should be finalizing plans for this important election cycle but are instead on hold awaiting decisions from the Secretary of State and statute changes from the legislature. The Secretary of State is trying to balance between the needs of the clerks and the importance of assuring the security and accuracy of the machines – all with the concern that whatever actions are taken might lead to further lawsuits. And the voters are completely confused, as they are hearing about a new scenario almost daily.

All the electronic machines in Colorado were subject to new rules and standards and then recertification because of a lawsuit just prior to the November 2006 election. The process dragged on far longer than anticipated because the vendors were slow in providing the information requested for the tests. On December 17, 2007, the Secretary of State announced that most of the machines in the state did not meet the standards and were therefore decertified. It would appear that some of the conditions that caused decertification might be easily corrected, but even if they are met, the time-frame for recertification is lengthy. Should the legislature agree to change the existing law in order to shorten the process, measures must be taken to ensure that the rules/standards not be compromised.

We are sympathetic to the problems that the clerks are facing. Most counties have invested a great deal of money in the new electronic equipment in order to meet the HAVA requirements, and are alarmed at the prospect of having to purchase yet more equipment. A few counties that have equipment that is certified do not want to make a change. Many counties believe the best solution is to go to all mail-in balloting for this election; others strongly believe that method would disenfranchise many voters. The law requires that in a general election the state must have a unified method of carrying out elections, but clearly there is not one solution that will work well for everyone.

LWVCO supports only voting systems that are designed so that they employ a voter-verifiable paper ballot or other paper record, that paper being the official record of the voter's intent. Further, the

voter must be able to verify that the paper record accurately reflects intent and that such verification can take place while the voter is still in the process of voting. The paper ballot/record can then be used for recounts and audits.

The League has no position as to the technical aspect of the recertification. However, we support the most efficient process that would boost the confidence of the voters that their votes will be secure and that the count will be accurate. The bipartisan recommendation that this year's elections be conducted with paper ballots at polling places offers the most options and would hopefully restore the confidence of the voters. The plan would allow voters to choose how they want to cast their ballots – by mail, at early voting locations, or at polling places on Election Day.

Carol Tone
303.377.3746

GOVERNMENT

CAMPAIGN FINANCE

ENFORCING CAMPAIGN FINANCE

HB 1041 Campaign Finance Enforcement (Rep. M. Carroll; Sen. Gordon) (support) seeks to address an omission in the enforcement provisions of the statutes implementing Amendment 27 on campaign finance. Reports of campaign finance violations **made by citizens** and enforcement of any relevant sanctions are brought under the implementing statutes. League supports this measure, consistent with principles that laws should have effective enforcement. The measure was heard in House State Affairs Committee on January 24. Discussion between committee members and the sponsor covered some other instances where enforcement may need to be addressed, and there will likely be second reading amendments. We will need to watch those carefully, as substantial changes or additions of other subjects could cause our position to change. The bill was approved on a vote of 10-1, with Rep. Bruce opposed.

Christine Watson, 303.250.1796

GUN CONTROL

LIMITING MINORS' ACCESS TO FIREARMS

SB 49 Access to Firearms by Minors (Sen. Windels) (support) is another in a long line of bills (supported by the League) to make it difficult for minors to access firearms. The bill holds an adult accountable by making it an unclassified misdemeanor if he or she leaves a firearm easily accessible to a minor, and the minor im-

properly gains access to the firearm and injures or kills himself, herself or others. Exceptions to the crime are outlined.

The bill also requires gun dealers and gun show promoters to provide information regarding storage requirements for firearms to buyers. The director of the Office of Suicide Prevention in the Dept. of Public Health and Environment is directed to convene a workgroup to make recommendations to the General Assembly regarding the language of the warning. The bill awaits hearing in Senate State Affairs Committee.

Marilyn Shuey, 303.863.0437

JUSTICE SYSTEM

MAKING A GREAT SYSTEM BETTER

SB 54 Judicial Performance Evaluations (Sen. Shaffer; Rep. T. Carroll) (support). Colorado's merit system for appointing and retaining judges is a model for other states; the system emphasizes the individual's qualifications for being a judge, rather than political connections or ability to raise money to run an election. In these days of skepticism about all things government, there is room for improvement to make a great system even better. Over the last few months, interested parties including the bar associations, Judicial Performance Commissioners, and various citizens and interest groups (including League) have provided input on ways to make the performance evaluation and retention system more systematic, consistent, and transparent.

SB 54 is the result of that work. Key provisions:

- The State Commission on Judicial Performance will develop uniform procedures and techniques for evaluating judges and justices.
- The criteria on which they are evaluated are set forth, and are relevant to the job, including integrity, legal knowledge, communication skills, judicial temperament, administration and service to the legal profession and the public.
- A wide variety of parties will have input, and the system and measurements will be statistically rigorous.
- Reports of the evaluation will be available to the public.
- The Commission will report to the General Assembly data on how many judges/justices receive recommendations of “retain” or “do not retain”; how many of each stood for retention; and of those, how many were retained.
- There will be interim evaluations as well as retention year evaluations.
- The entity responsible for doing the work under the direction of the Commission will be the newly established Office of Judicial Performance within the Judicial Department.

This measure comes at a particularly critical time. Ballot initiatives to elect judges and justices and to subject them to term limits are returning. League believes these attempts represent a giant step backward in a system that has for more than 40 years provided Colorado with a non-partisan judicial system in which judges and justices are nominated for the bench based on their knowledge, skills and training, not on the political acceptability of their rulings.

Christine Watson, 303.250.1796

JUVENILE JUSTICE

MENTAL HEALTH SERVICES FOR JUVENILE OFFENDERS

HB 1016 Juvenile Justice Mental Health Process (Rep. Solano; Sen. Boyd) (support) requires all parties (except defense attorneys) to a delinquency proceeding to advise the court if they have reason to believe the juvenile could benefit from mental health services. The bill then requires the court to order a mental health screening; and if that indicates a need for mental health services, the court may order a mental health assessment. The bill also permits the court to order mental health services as part of the disposition of the delinquency proceeding.

The bill defines the minimum definition of a “mental health assessment” and excludes evidence obtained from the assessment in determining a juvenile’s guilt. The bill also defines the criteria for a juvenile who could benefit from mental health services.

HB 1016 passed the House Judiciary Committee unanimously on Jan. 16, and passed 3rd reading in the House on Jan. 24 by a vote of 61-2-2. Voting No: Bruce, Vaad; excused: Lundberg, Rice.

Frank Bennett 303.757.2930

BILL ADDS RESTORATIVE JUSTICE TO CHILDREN’S CODE

HB 1117 Juvenile Restorative Justice Program (Rep. Merrifield) (support) adds a definition of restorative justice to the juvenile justice section of the Children’s Code. In addition, the bill:

- Makes restorative justice a sentencing option.
- Requires the court to advise the juvenile that it is an option at the advisement hearing and when the juvenile enters a plea.
- Allows the court to include a restorative justice intake conference when sentencing the juvenile to probation.

Restorative justice is defined as “those practices that emphasize repairing the harm to the victim and the community caused by criminal acts.” It provides an “opportunity for the offender to take responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm.” Restorative justice results in win-win-win situations. The offender is less likely to offend again, the victim(s) receive some restoration, and the taxpayers are saved the money spent on incarceration, which frequently results in young people learning to be better criminals. The bill is scheduled for hearing in House Judiciary on Jan. 30.

Carla Bennett, 303.757.2930

FELONY MURDER REFORM BILL MOVES TO SENATE JUDICIARY

SB 66 Felony Murder Penalty for Juveniles (Sen. Williams; Rep. Marshall) (support) is scheduled to be heard in Senate Judiciary on Jan. 30. The bill revises the felony murder statute regarding juveniles who have been charged as adults. It reduces first degree murder to a Class 2 felony if the juvenile was under 18 at the

time the crime was committed, was convicted as an adult, did not commit the murder, and did not aid, abet, advise, or encourage the murderer in the planning or commission of the murder. It also makes a juvenile convicted of a Class 2 felony murder in the first degree eligible to be sentenced to the youthful offender system.

League has always supported the juvenile court system, believing that while children should be held accountable for the often heinous crimes committed, they should be afforded more protection than adult court systems offer and more opportunity to redeem themselves. Research has shown that juvenile brains are not fully developed. Immature reasoning is partially responsible for decisions that led to being involved in crimes. The developing brain also makes them capable of redeeming themselves. Sentencing in the youthful offender system puts them in a situation more conducive to that positive development.

SB 66 is another attempt to reform our sentencing laws regarding juveniles who have been convicted as adults. In 2006, Colorado law was changed so that juveniles convicted as adults for a class 1 felony can no longer be sentenced to life in prison without parole. The maximum sentence is now life in prison with the possibility of parole after 40 years. (Unfortunately, that change was not retroactive for those juveniles who had already been sentenced to life without parole.)

SB 66 addresses the issue of juveniles who are convicted as adults under the felony murder statute that holds any participant in a felony responsible for any death that occurs during the commission of a crime, even if the participant didn't cause the death. That participant receives the same sentence as the juvenile who actually committed the murder. According to Jessica Corry of the Independence Institute, 60% of the juveniles currently sentenced to life without parole in Colorado are in prison because of a felony murder conviction. This bill would not apply to those juveniles because it is not retroactive, but it would prevent future juveniles from being sentenced in that way.

This bill is scheduled to be heard in Senate Judiciary on Jan. 30.

Carla Bennett 303.757.2930

OOPS!

In LL #1, we inadvertently left **Rep. Mitchell's** name off of the **House Business Affairs and Labor Committee**. Please add his name to your list.

REPRODUCTIVE RIGHTS

MORE HELP FOR POOR WOMEN

SB 3 Medicaid Family Planning Pilot Program (Sen. Boyd; Rep. Riesberg) (support) raises the income level of people who are eligible for family planning services under the Medicaid pilot program from 150% to 200% of the federal poverty level. More women and men receiving Medicaid would receive help with birth control medications and other health measures related to reproductive choice, including voluntary sterilization over age 21. No abortion services are covered in this program. The costs would be budget neutral.

This bill passed the Senate Health and Human Services Committee on Jan. 16, after favorable testimony from workers in women's health and public health fields, on a 4-3 vote. Voting in favor of the bill were Sens. Boyd, Sandoval, Hagedorn and Trochtop; those opposed were Sens. Cadman, Mitchell and Schultheis. SB 3 went on to pass 2nd reading on a voice vote.

Carolyn Engelken, 303.750.0949

DELAYING THE RIGHT TO AN ABORTION

SB 95 Informed Consent Bill (Sen. Schultheis; Rep. Lundberg) (oppose) provides a requirement that a woman seeking an abortion receive information about what an ultrasound would tell her about her fetus. Then she must sign a consent form and wait 24 hours before having an abortion (unless an emergency condition exists). Noncompliance by the participating physician could result in Class 1 misdemeanor charges and a charge of unprofessional conduct. This bill was assigned to Senate State, Veterans and Military Affairs Committee and is scheduled for hearing on Feb. 11.

Carolyn Engelken, 303.750.0949

VOTING RIGHTS

MORE REQUIREMENTS FOR VOTERS

HB 1039 Voter Photo ID in Elections (Rep. Summers; Sen. Renfroe) (oppose) requires that a photo identification be used for election-related purposes. Accepted identification would include a valid Colorado driver's license, Dept. of Revenue ID card, U.S. passport, government employee identification card, U.S. military ID card, and student ID card issued by an institution of higher education in Colorado.

HB 1177 Citizenship Documents for Voting (Rep. McNulty; Sen. McElhany) (oppose) requires that a person registering to vote must provide proof of citizenship, which can be established by a valid U.S. passport or photocopy, a birth certificate or copy, U.S. naturalization documentation, the verified number of the applicant's certification of naturalization, or any document of citizenship proof established by federal immigration law. This bill would also direct clerks and recorders not to allow a person to vote by provisional ballot without this proof. Under this provision, a person who may have been legally registered and whose name appears in the poll book would not be allowed to vote, even if they provide the identification that is already required at the polling place or with the mail ballot.

The matter of identification nationally is a difficult one. The means to acquire "official" identification documents can be "catch-22" for many people, especially elderly and poor, and the costs involved can become, in essence, a poll tax. League acknowledges that some consistent form of identification will eventually be needed for all manner of private and citizen transactions, but the system is not in place yet, and in the meantime, many can be disenfranchised by requirements of either of these bills.

Carol Tone, 303.377.3746

FIXES FOR THE 2008 ELECTION

HB 1155 Certification of Voting Systems for 2008 Election (Reps. Balmer & Marshall; Sens. Gordon & Johnson) (support) sped through the House in record time and is now being heard in the Senate State Affairs Committee. This bill would allow the secretary of state to amend or rescind orders regarding machines that were decertified on December 17, 2007, as long as the standards for the voting machines are not relaxed. This bill would also allow additional testing of a voting system and allow clerks and recorders to use designated personnel to operate the voting system during the additional testing. Regardless of what voting system(s) is/are adopted for the 2008 election, this change in statute is necessary for the secretary of state's office to certify the voting machines that might be used to accommodate the disabled, as well as to scan the ballots received by mail or voted on paper.

Carol Tone, 303.377.3746

REGISTERING TO VOTE ONLINE?

SB 40 Online Voter Registration (Sen. Gordon) (watch) proposes to make online registration possible at the secretary of state's website, so long as the potential voter has a signature already on file in the electronic data base of the Department of Revenue. These electronic signatures are now collected when driver's licenses are renewed, motor vehicles titled, and the like. The voter would allow permission for that electronic signature to be applied to the registration document, affirming his/her eligibility and obligations.

"Traditionalists" may wonder why this is necessary or even desirable. After all, voter registration is already possible when getting or renewing (in person) a driver's license, and citizen groups regularly conduct voter registration drives. Colorado's state government does not have a good record of implementing technology, and the integrity of this process rests, in part, on the technology working. For a generation accustomed to using online services, however, not being able to register online could mean not getting registered at all. Accordingly, the proposal fits under the umbrella of encouraging all citizens to vote.

League does have some concerns with the proposal, and they are mostly centered on the technology and the timing. Sharing of the Dept. of Revenue's signature data base could be problematic (and we, who are not technology experts, don't know what problems might arise regarding logistics and privacy). Furthermore, the bill calls for the system to be in place by January 1, 2009. We think the secretary of state's office has more urgent technology issues to address in the coming months.

This may be a proposal whose time has not yet come. But League will follow it with interest as we are increasingly brought into the wired age.

Christine Watson, 303.250.1796

NATURAL RESOURCES

ENERGY

GOVERNOR'S ENERGY OFFICE

HB 1025 Concerning the Governor's Energy Office (Rep. Weissmann) (support) statutorily creates the Governor's Energy Office (GEO) within the Governor's Office. The bill sets in statute the name change

authorized by Executive Order in 2007. The bill further delineates the mission of the GEO by expanding its duties and powers, establishes a director position and regional representative positions, and expands the authorized uses for monies in the Clean Energy Fund passed in 2007.

In prior years the primary funding for the office came from federal grants and petroleum violation escrow funds. Starting in FY 2005-06 state funding was appropriated, and then in FY 2006-07 legislation significantly increased state funding so that in FY 2007-08 the state will provide about 86% of the funding for the GEO. There was deemed to be no fiscal impact since the primary funding for the office is within the Clean Energy Fund, which is continuously appropriated from the Limited Gaming Fund.

The bill passed the Transportation and Energy Committee Jan. 22 with 11 yeas, Rep. Rice excused and Rep. Sonnenbug voting No.

Sigrid Higdon, 303.233.8111

SOCIAL POLICY

CHILDREN & FAMILIES

CORE SERVICES BILL SAILS ALONG

HB 1051 Core Services For Families (Rep. Marshall; Sen. Spence) (support) implements some of the recommendations in the May 2007 state audit of foster care services. It clarifies statutory language regarding core services for families, and it removes the statutory time limit on intensive family services. Under current law, those services are limited to 6 weeks. The results of this bill are that children in vulnerable family situations are more likely to remain in their homes successfully, with intensive services, rather than be placed in, or remain in, out-of-home placement.

The bill passed 3rd reading in the House on Jan. 16 on a vote of 62-1 with Rep. Bruce voting No. On Jan. 24 it passed Senate Health and Human Services on a vote of 5-1-1 with Sen. Tochtrop excused and Sen. Schultheis voting No.

Carla Bennett 303.757.2930

EDUCATIONAL SERVICES FOR FOSTER CHILDREN

House Bill 1019 Transfer Education Records for Foster Children (Rep. Casso; Sen. Sandoval) (support) is designed to smooth the transition from one educational system to the next for foster children who are moved from one placement to another. Implementation of the provisions of this legislation could reduce the high school drop-out rate among foster children. To accomplish that, school districts will have a human services liaison, the requirement to transfer records within a specified amount of time, and recognition of credits earned by the student at the previous school. The speedy transfer of records would especially benefit elementary children in any of the special education programs. The recognition of credits would benefit high school students moving from one school to the next. Streamlining the transfer procedure for foster children might help them feel more secure and supported in the educational setting. The bill will be heard in House Education Committee on Jan. 31.

Roberta Long-Twyman

EDUCATION/HIGHER EDUCATION

BILL CLARIFIES CHARTER SCHOOL INSTITUTE PROCEDURES

HB 1159 Concerning Institute Charter Schools (Rep. Fischer; Sen. Bacon) (support) clarifies procedures to be followed in a variety of situations involving the granting of charter schools; for example, local school boards seeking exclusive authority, a charter school's request for revocation of a local board's exclusive authority, and an institute charter school's application to convert to a district charter school and vice-versa. The bill specifies that the mission of the institute board is to foster high-quality public school choices, particularly those directed at closing the achievement gap for at-risk students with options that differ substantially from the opportunities provided by existing schools. It directs the institute and the institute board to maintain open records and follow open meetings laws, to ensure that all information about the board and its meetings are posted and updated on its web site, and to collect and update specific data from institute charter schools.

This bill is essentially a revision of last year's SB 61. The League supported that bill based on our advocacy

of local control; equal educational opportunity; and equity for students, taxpayers and school districts. HB 1159 awaits hearing in House Education Committee.

Sally Augden, 303.455.5800

LONGITUDINAL ANALYSIS OF STUDENT GROWTH ON CSAP

HB 1024 CSAP Longitudinal Analysis Models (Rep. Merrifield; Sen. Windels) (support). This bill modifies prior legislation related to longitudinal analysis of student performance on the CSAP that had specified the type of statistical models to be used in the data analysis. By deleting terms such as “mixed-effects” model and “hierarchical linear” model from existing statutes, the Technical Advisory Panel (established in prior legislation) and the State Board of Education are able to select and implement a statistical model that will more effectively describe and communicate information about student growth on the CSAP.

On Jan. 14, the Education Committee voted 12-0 to send the bill unamended to the House floor, where it passed 2nd reading on Jan. 16. Third reading occurred Jan. 17 with a vote of 60 Yes, 2 No, and 3 Excused. Voting No: Bruce, Lambert. Excused: Primavera, Rice, Swalm. HB 1024 now awaits hearing in Senate Education Committee.

Catherine Felknor, 303.494.7199

BILL STREAMLINES HIGHER ED LAWS

SB 18 Higher Education Clean-Up (Sen. Windels; Rep. Massey) (support) clarifies the statutory responsibilities of the Colorado Commission of Higher Education and the Department of Higher Education. A Higher Education Advisory Committee to CCHE is established that would propose solutions to the needs of higher education and would provide a liaison between the General Assembly and governing boards for state-supported institutions of higher education. Composition of the advisory committee would consist of 13 members and would include two legislative members, one from the majority party and one from the minority party from each house of the General Assembly. Additionally, the bill will consolidate statutes related to the Private Occupational School and repeal some obsolete provisions. The proposed revisions would maximize opportunities for postsecondary education in Colorado, avoid duplication of facilities and programs in state-supported institutions, simplify state administrative procedures and better utilize resources. There is no fiscal impact as this bill effectively “cleans-up” current statutes related to higher education. The measure passed both Senate Education Committee and the full Senate unanimously.

Barbara Whinery, 970.353.6731

STATUS SHEET

The Status Sheet is a constantly updated list of bills being followed by Legislative Action Committee members.

Policy Area	S/H	Bill #	Bill Title	S/O	Page(s)	Status
Campaign Finance	HB	1041	Campaign Finance Enforcement	S	8	H-2nd rdg
Children and Families	HB	1019	Transfer Education Records for Foster Children	S	12	H-ED
Children and Families	HB	1051	Core Services for Families	S	12	S-2nd rdg
Education	SB	18	Higher Education Clean-up	S	13	To House
Education	HB	1024	CSAP Longitudinal Analysis Models	S	13	S-2nd rdg
Education	HB	1159	Institute Charter Schools	S	12	H-ED
Energy	HB	1025	Governor's Energy Office	S	11	H -2nd rdg
Gun Control	SB	49	Access to Firearms by Minors	S	8	S-SA
Justice System	SB	54	Judicial Performance Evaluation	S	8	S-JUD
Juvenile Justice	SB	66	Felony Murder Penalty for Juveniles	S	9	S-JUD
Juvenile Justice	HB	1016	Juvenile Justice Mental Health Procedures	S	9	To Senate
Juvenile Justice	HB	1117	Juvenile Restorative Justice Program	S	9	H-JUD
Reproductive Rights	SB	3	Medicaid Support for Family Planning	S	10	S-3rd rdg
Reproductive Rights	SB	95	Informed Consent for Abortion	O	10	S-SA
Voting Rights	SB	40	Online Voter Registration	W	11	S-SA
Voting Rights	HB	1039	Voter Photo ID in Elections	O	10	H-SA
Voting Rights	HB	1155	Cert. of Voting Systems for 2008 Election	S	11	S-SA
Voting Rights	HB	1177	Citizenship Documents for Voting	O	11	H-SA