

ACLU of Virginia

2011 General Assembly Preview

January 12, 2011

Note: *Listed below are some of the bills we expect to see in the 2011 General Assembly. A few have already been filed. Others we know about through our legislative grapevine. They may or may not be filed before the bill-filing deadline on January 21. As bills are introduced, they will be described and placed on the ACLU of Virginia website, www.acluva.org.*

I. Religious Liberty

Prayer at Government-Sanctioned Events (HB 1409, Bell, Richard, prefiled). Provides that no government agency may regulate the content of prayer at a government-sanctioned event, but prohibits prayers that advance a particular religion or disparage another faith or belief. The purpose of this bill is to circumvent a recent court decision prohibiting public officials from offering sectarian prayers at government events. For the past two years, nearly identical bills have been introduced and failed. *ACLU opposes.*

Amending the Virginia Constitution Concerning Freedom of Religion (HJ 593, Carrico, prefiled). Amends the Virginia Constitution to explicitly state that the government cannot establish an official religion and that the people have the right to pray and recognize their religious beliefs on public property, including in public schools. However, schools may not compose school prayers or require any person to join in prayer or religious activity. *This ambiguous resolution either unnecessarily amends the Virginia Constitution to repeat existing law on religious rights, or is it intended to permit government-sponsored religious expression—such as teacher-led prayers in public schools—that have been prohibited by the U.S. Supreme Court. ACLU opposes.*

II. Free Expression

Censorship in Public Colleges and Universities (anticipated). Prohibits public funds, including activities fees, from being used in the display of any art, literature, theater performance or movie on a public college campus that contains obscenity unless written permission has been given by the governing body or board of visitors. This bill would give college governing boards the authority to censor artistic expression protected by the First Amendment. *This bill failed in the Education Committee last year, but we expect it to be redrafted and introduced again. ACLU opposes.*

III. Women's Rights

Prohibition of Shackling Pregnant Prisoners (HB 1488, Hope, prefiled). Prohibits a state, regional, local, or juvenile correctional facility from using restraints on any pregnant prisoner during labor, transport to a medical facility, delivery, or postpartum recovery unless the warden finds a compelling reason to believe that the prisoner poses serious harm to herself or others, is a flight risk, or cannot be reasonably restrained by other means. The facility must use the least restrictive restraints necessary on any inmate in the second or third trimester of pregnancy.

ACLU supports.

State Funds for Abstinence-Only Until Marriage Sex Education (HB 1500, Item 286). This section of the budget bill designates \$455,000 the first year and \$455,000 the second year from the general fund for the operation of the teenage pregnancy prevention programs in the health districts of Richmond, Norfolk, Alexandria, Roanoke City, Crater, Portsmouth, and Eastern Shore as the state match for the federal abstinence only until marriage Title V grant. *The ACLU opposes abstinence only until marriage programs because they are ineffective, censor vital health care information, and often rely on harmful stereotypes and messages of shame and fear. ACLU opposes.*

Medically Accurate Sex Education Required (anticipated). Amends the current law to require that any curricula or materials used to implement the family life education guidelines must be medically accurate, and provides a definition of "medically accurate." *ACLU supports.*

Expand Access to Protective Orders for Victims of Dating Violence, Stalking, and Sexual Assault (anticipated). This bill will have three main parts. First, it expands eligibility for petitioning the courts for a civil order of protection to any individual experiencing or being threatened with physical harm, rape, sexual assault, stalking, false imprisonment, or damage to property so as to intimidate or attempt to control them. Second, it makes "Domestic Violence Protective Orders" available to individuals experiencing acts of violence when the alleged perpetrator is a family or household member or is in a dating relationship with the petitioner. Third, it makes "Stalking, Sexual Assault and Acts of Violence Restraining Orders" available to any individual experiencing acts of violence regardless of relationship. *ACLU supports.*

IV. Reproductive Freedom

Targeted Regulations of Abortion Providers (HB 1428, Bell, Richard, prefiled). Requires all abortion clinics, defined as any facility other than a hospital or an ambulatory surgery center in which 25 or more first-trimester abortions are performed in any 12-month period, to be licensed and regulated by the Board of Health. *ACLU opposes.*

Personhood Amendment (HB 1440, Marshall, R. prefiled). This bill construes the word "person" under Virginia law to include unborn children, including how and when actions for death by wrongful act can be brought. *ACLU opposes.*

Requirement to Inform about Anesthesia for Fetuses (anticipated). Requires doctors to offer to anesthetize a fetus prior to the abortion and to include in the informational materials for patients a statement that a fetus feels pain at twenty weeks. *ACLU opposes.*

Restricting Medicaid’s Coverage of Abortion Services (HB 1500, Item 297). This section of the budget bill prohibits the use of state Medicare and Medicaid funding for family planning services dealing with abortion, including performing, assisting, encouraging or making direct referrals for abortions. *ACLU opposes.*

V. Privacy

Prohibited Electronic Tracking Devices on Vehicles (anticipated). Prohibits the placement of an electronic tracking device on a vehicle without the permission of the vehicle’s owner. The bill does not apply to the original manufacturer of the vehicle or law enforcement officers, judicial officers, and probation/parole officers acting in the lawful performance of their duties, or a parent or legal guardian of a minor. *The ACLU supports prohibiting unauthorized electronic tracking, but strongly opposes the provisions of this bill that allow the police to place tracking devices on vehicles without a warrant.*

VI. Death Penalty

Elimination of the Triggerman Rule (anticipated). Expands the death penalty by eliminating the “triggerman rule,” which provides, with few exceptions, that only the actual perpetrator of a capital murder is eligible for the death penalty. This bill would permit accessories before the fact and principals in the second degree to be charged with capital murder. *ACLU opposes.*

VII. Voting Rights

Early Voting (HB 1400, Dance, prefiled). Permits any qualified voter to vote in-person from 14 to 3 days before the election. *ACLU Supports.*

No Excuse Absentee Voting (HB 1401, Dance, prefiled). Permits any qualified voter to vote by absentee ballot for any reason. *ACLU supports.*

No Excuse Absentee Voting In-Person (HB 1402, Dance, prefiled). Permits any qualified voter to vote by absentee ballot in-person without providing an excuse for not being able to vote in-person on Election Day. The bill retains the present statutory list of specific reasons entitling a voter to cast an absentee ballot for those persons who vote absentee by mail. *ACLU supports.*

Availability of Voter Registration Application Forms (HB 1501, Putney, prefiled). Provides that the State Board of Elections, in cooperation with the Department of Game and Inland Fisheries, will make mail voter registration application forms available where hunting and fishing licenses are sold. *ACLU supports.*

Mandatory Voter ID Required (HB 1560, Cole, prefiled; SB 808, Obenshain, prefiled; SB 864, Martin, prefiled). Mandates that voters show photo identification in order to vote. Voters without an ID may still vote, but only by provisional ballot, which will not be counted until proper ID is produced. Under existing Virginia law, voters without IDs may vote by regular ballot after signing an Affirmation of Identity form. *ACLU opposes.*

VIII. Restoration of Voting Rights

Under the Virginia Constitution, the power to restore civil rights after a felony conviction rests solely with the governor. The Virginia Constitution must be amended in order to reform Virginia's felon disenfranchisement law, which is acknowledged as being the harshest in the nation. Only Virginia and Kentucky permanently disenfranchise all felons for life, requiring an act of the governor to have them restored.

Automatic Restoration of Rights for All Non-Violent Felons (SJ 306, McEachin, prefiled). Amends the Virginia Constitution to automatically restore the civil rights, including voting rights, for persons who have been convicted of non-violent felonies (excluding drug offenses or election fraud) upon completion of their sentence, including probation and parole. Allows the Governor or General Assembly to restore the civil rights of persons convicted of violent felonies, felony drug offenses or election fraud. *ACLU supports.*

Restoration of Rights for All Felons (HJ 497, Dance, prefiled; HJ 524, Ware, prefiled; HJ 610, Carr, prefiled). Amends the Virginia Constitution to allow the General Assembly to provide for the restoration of civil rights, including voting rights, for all persons who have been convicted of felonies who have completed all the requirements of their sentences. *ACLU supports.*

Restoration of Rights for Non-Violent Felons (HJ 543, Herring; SJ 284, Miller Y., prefiled). Permits the General Assembly to pass laws for the restoration of civil rights for persons convicted of nonviolent felonies who have completed service of their sentences subject to the conditions, requirements, and definitions set forth in that law. *ACLU supports.*

IX. Criminal Justice & Due Process

Uniform Police Line-Up Procedure Training (anticipated). Mandates law enforcement departments to provide line-up education and training to officers. *Recent studies show that police line-ups are often purposely or inadvertently manipulated to influence the identification of suspects by witnesses. ACLU supports.*

Criminalizing "Sexting" by Juveniles (anticipated). Prohibits the solicitation, possession, production, publication, or creation of child pornography committed by juveniles punishable as a Class 3 misdemeanor. *Sexting between minors, while inadvisable and subject to punishment by parents or schools, should not be criminalized. Child pornography laws are intended to protect minors from adults, not from each other's imprudence. ACLU opposes.*

Charging Juveniles as Adults (anticipated). Expands the authority of Commonwealth's Attorneys to charge juveniles as adults for additional crimes such as gang offenses and second or subsequent drug violations. Mandates juveniles charged with a second act of violence be tried as adults. *ACLU opposes.*

Arrest for Class 1 & 2 Misdemeanors (anticipated). This bill allows law enforcement officers to arrest, and therefore search, any person detained for committing a Class 1 or 2 misdemeanor. *Under current law, a law enforcement officer is limited to issuing a summons to an individual charged with a Class 1 or 2 misdemeanor, unless the person is intoxicated, unlikely to appear in court, refuses to stop the unlawful act, or poses a danger to himself or others. The ACLU believes that this law not only expands exponentially the arrest powers of police in Virginia, but is also likely to lead to racial profiling by giving police extraordinary discretionary powers to arrest. ACLU opposes.*

X. Immigrants' Rights

Denial of Citizenship to American-born Children of Undocumented Immigrants (anticipated). A constitutional amendment to require states to deny birth certificates to babies born in the U.S. to undocumented immigrant parents. The amendment would repeal the portion of the Fourteenth Amendment that bestows automatic citizenship to any person born in the United States. *ACLU opposes.*

Limiting Police Inquires into Immigration Status (anticipated). Prohibits law enforcement from inquiring about the immigration status of any victim or witness of a crime--unless the witness has been arrested or charged with a criminal violation, or when such inquiry is required by federal law or is essential to the investigation or prosecution of the crime. *ACLU supports.*

Cost of English Interpreted (anticipated). Requires that the cost for an English interpreter be paid for by a non-English speaking defendant if the defendant is convicted at trial of a criminal offense. *ACLU opposes.*

Arresting officer to ascertain citizenship of arrestee (HB 1430, Albo, prefiled). This bill expands the power of law enforcement by requiring an arresting officer to ask every individual arrested whether he was born in another country and is a citizen of a country. If the individual was born in another country and is not a citizen of the U.S., the officer must make an immigration alien query to the Law Enforcement Support Center of the United States Immigration and Customs Enforcement and must communicate the results to the Central Criminal Records Exchange. The current law only mandates that sheriffs make a query into legal presence when a person is taken into custody at a jail. *ACLU opposes.*

Prohibited Admission of Undocumented Students to Public Colleges (HB 1465, Peace, prefiled). Prohibits undocumented individuals from applying for admission to Virginia public colleges and universities. *ACLU opposes.*

Public Services Prohibited to Undocumented Individuals (HB 1468, Albo, prefiled). Mandates that social services departments verify citizenship or legal presence of applicants for public assistance prior to initiating benefits, and that the Governor may withhold state funds under his control to any agency or locality in violation of the proposed law. *ACLU opposes.*

XI. Equal Rights

Prohibition of Openly Gay Individuals in Virginia National Guard (anticipated). Prohibits openly gay individuals from serving in the Virginia National Guard. *ACLU opposes.*

Virginia National Guard Subject to Same Eligibility Requirements as U.S. Military (anticipated). Requires the Virginia National Guard to follow the same eligibility requirements for personnel that the U.S. Military dictates. *This proposal would be introduced to respond to proposed legislation prohibiting openly gay individuals from serving in the Virginia National Guard. ACLU supports.*

Prohibition on Sexual Orientation Discrimination in Public Employment, (SB 747, McEachin, prefiled). Prohibits sexual orientation discrimination in state employment, which is defined as a person's actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression. *ACLU supports.*

Prohibition on Sexual Orientation and Gender Identity Discrimination in Virginia (HB 1755, Plum, prefiled; SB 797, Locke, prefiled). Amends the Virginia Human Rights Act to prohibit discrimination anywhere in Virginia on the basis of sexual orientation and gender identity. Sexual orientation is defined as a person's actual or perceived heterosexuality, bisexuality, or homosexuality.

XII. Open Government

Legislators' Voting Histories Available Online (HB 1566, LeMunyon). Beginning in 2012, requires the Legislative Support Commission to post on the legislative electronic information website the recorded committee, subcommittee, and floor votes of each member of the General Assembly on legislation. The information pertaining to the voting records of legislative members must be electronically accessible to state agencies, political subdivisions, and the public. *ACLU supports.*