

Civil Liberties Review

Virginia General Assembly 2011

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ACLU of Virginia
Legislative Report

July 2011

About the ACLU of Virginia Civil Liberties Review

The *Civil Liberties Review* summarizes the legislative actions of the Virginia General Assembly that affect civil rights and civil liberties. The ACLU of Virginia encourages all Virginia voters to become involved in the legislative process by participating in our grassroots lobbying program. If you are interested in up-to-the-minute information on the actions taking place during the General Assembly session and are inclined to call, write or e-mail elected officials to express your opinion on pending legislation, please contact the ACLU of Virginia at (804) 644-8022 or lobby@acluva.org, or sign up on our website at www.acluva.org.

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For more details about bills, including complete legislative history and full text, visit the State of Virginia's legislative information website at <http://lis.virginia.gov>

Welcome to the Twentieth Civil Liberties Review ...and Thank You Grassroots Lobbyists!

The 2011 edition of the Civil Liberties Review is our twentieth. Not that we weren't lobbying and reporting on the sad state of Virginia's legislative affairs long before 1992, but since that time the Review has become the annual cap on a continuously expanding and influential ACLU of Virginia lobbying project that puts staff and other experts on the ground at the Capitol and energizes grassroots lobbyists from around the state to voice their opinions to elected representatives.

Back in 1992, before email or the internet, the most difficult and least effective legislative activity in which we engaged was grassroots lobbying. Communications with grassroots lobbyists during the legislative session, which moved just as fast then as it does today, was by regular postal service, and the number of participants seldom exceeded 100. Today, our grassroots lobbying list is closer to 2,000, and many more use our web-based lobbying updates to assist with their lobbying efforts.

The ACLU has been the premier defender of civil liberties in the state legislature for the last 20 years. Our reputation, our expertise, and the voices of our grassroots lobbyists have time and again thwarted legislation that jeopardized free speech, religious liberty, due process, privacy, and equal rights.

Typically the ACLU is way ahead of the curve in straight-line Virginia. We lobbied for years against Virginia's discriminatory sodomy law, until the U.S. Supreme Court declared all such laws unconstitutional. In our work to curtail the death penalty, we lobbied against laws allowing the execution of mentally disabled persons and minors, and eventually the Supreme Court nixed those laws as well.

Today we lobby for equal treatment for gay men and lesbians, for abolition of the death penalty and for the elimination of felon disenfranchisement, the one official stain of Jim Crow that still haunts our slow-moving state. That we will win these battles is inevitable. It is mostly a matter of perseverance. The victories may come in Virginia, in Congress, or in the Supreme Court. But they will come, and every grassroots lobbyist who made a call or sent an email will know he or she played a part.

Thank you ACLU of Virginia grassroots lobbyists. You make a difference...and you are appreciated.

*Kent Willis
Executive Director*



First Amendment

In what has become an annual exercise, the House of Delegates easily approved legislation intended to turn back the clock on separation of church and state. Delegate Carricio's HJ 593 would have amended the Virginia Constitution to establish an individual right to pray in public schools. While ambiguous as written, the amendment is probably best understood as explained by Delegate Carrico, who said he introduced it to protect the right to pray over public address systems at high school football games. Delegate Greason's HJ 614 would have circumvented Virginia's constitutional ban on state-sponsored financial assistance for religious training by allowing such assistance when the objective of the recipient is to be a military chaplain. Both HJ 593 and HJ 614 passed the House with a two-thirds majority vote, but failed in the Senate Privileges and Elections Committee.

Constitutional amendment to permit prayers over public address systems at high school football games passes House, but fails in the Senate.

Delegate Bell's HB 1409, an incomprehensible bill that seems to both permit and prohibit sectarian prayers at government events, has been around for several years. This year it received the attention it deserved, dying without a vote in the House Courts of Justice Committee.

Failed

HB 1409 (Bell, Richard) Prayer at Government-Sanctioned Events. Prevents government agencies from regulating the content of prayer at government-sanctioned events, but bans prayers that advance a particular religion or disparage another faith or belief. This confusing and self-contradicting bill seems to allow sectarian prayers at government events by preventing government agencies from censoring the content of such prayers, but then requires that such prayers be nonsectarian. This is the third year in a row that this bill, or something very similar to it, has been introduced. ACLU opposed. *Killed in House Courts of Justice Committee.*

HJ 593 (Carrico) Amending the Virginia Constitution Concerning Freedom of Religion. Amends the Virginia Constitution by adding the following language to Article I, Section 16: "To secure further the people's right to acknowledge God according to the dictates of conscience, neither the Commonwealth nor its political subdivisions shall establish any official religion, but the people's right to pray and to recognize their religious beliefs, heritage, and traditions on public property, including public schools, shall not be infringed; however, the Commonwealth and its political subdivisions, including public school divisions, shall not compose school prayers, nor require any person to join in prayer or other religious activity." According to testimony from its patron, this amendment is intended to allow prayers over public address systems at high school football games. ACLU opposed. *Passed the House (61-Y, 33-N, 1-A); killed in a Senate Privileges and Elections Subcommittee.*

HJ 614 (Greason) Financial Aid for Chaplains. Amends the Virginia Constitution to allow state-sponsored financial assistance for college students whose primary goal is religious or theological education and who are approved candidates for military chaplaincy. ACLU opposed. *Passed the House (62-Y, 32-N, 1-A); killed in a Senate Privileges and Elections Subcommittee.*



Privacy Rights

Lawmakers rejected identical House and Senate bills to expand the scope of the Virginia Fusion Center, which was created in 2005 to collect data on suspected terrorist activity in the state. HB 1953/SB 918 would have allowed the Center also to collect data on ordinary criminal activity. The ACLU has been critical of the Fusion Center's secretive operations and exaggerated reports about terrorist activities in Virginia, and has asked legislators and other government officials not to expand its functions.

Unfortunately, the General Assembly approved HB 1948/SB 1259, authorizing less frequent review of the Fusion Center's operations. Under the new law, the Center must be reviewed every three years rather than annually. Not only will reviews be less frequent, but the validity of the reviews will remain suspect, since they are conducted in virtual secrecy by the state police, one of several agencies that collect information for the Center.

Effort to expand Fusion Center's function fails to gain traction, but oversight of the Center's operations is diminished.

The ACLU would have supported HB 2032, which banned the placement of GPS tracking devices on automobiles without owners' permission, except that law enforcement personnel were exempted from the law's provisions. Fortunately, the bill failed in the Senate after passing the House unanimously.

Passed

HB 1948 (Villanueva), SB 1259 (Vogel) Less Frequent Review of Virginia Fusion Center. These bills require that the data in the Virginia Fusion Center database be reviewed every three years instead of every year. The Virginia Fusion Center was created in 2005 to provide a mechanism for the sharing of anti-terrorism intelligence among different local, state and federal law enforcement agencies. The ACLU has been concerned that a lack of oversight and clear rules for collecting and storing data would make fusion centers into secret stockpiles of information on innocent citizens. ACLU opposed. *HB 1948 passed the House (97-Y, 1-N) and the Senate (40-Y, 0-N). SB 1259 passed the Senate (40-Y, 0-N) and the House (97-Y, 0-N).*

SB 945 (Howell) SSN Requirement Eliminated for Voter Erroneously Omitted from Poll Book. Eliminates the requirement that voters provide their Social Security Numbers when their names are erroneously omitted from the poll book but the registrar confirms that they are registered to vote. ACLU supported. *Passed the Senate (38-Y, 0-N) and the House (97-Y, 0-N).*

Failed

HB 1953 (Villanueva), SB 918 (McDougle) Expansion of Virginia Fusion Center's Function. Currently, the Virginia Fusion Center collects intelligence information related to terrorism. These bills expand the Center's scope so that it will also collect criminal-related intelligence information. *HB 1953 was killed in House Militia, Police & Public Safety Committee. SB 918 was killed in Senate Courts of Justice Criminal Subcommittee.*

HB 2032 (May) Prohibits Electronic Tracking Devices on Motor Vehicles. Prohibits the placement of electronic tracking devices on motor vehicles without the permission of the vehicle's owner, unless placed by the vehicle manufacturer, a law enforcement officer, or a parent of a minor. The ACLU supports prohibiting unauthorized electronic tracking, but opposed the provisions of this bill that allow the police to place tracking devices on vehicles without a warrant. *Passed the House (98-Y, 0-N); killed in Senate Courts of Justice Committee.*

HB 2315 (Byron) Notification of Breach of Medical Information. Requires private companies to notify Virginia residents of breaches in security that may have compromised their medical records. Under a law passed last year, local and state governmental entities are already required to report such breaches. ACLU supported. *Passed the House (94-Y, 4-N); killed in Senate Education and Health Committee.*

HB 2327 (Lingamfelter) Limiting New Photo Monitoring Programs by Localities. Localities that want to install red light cameras must establish their programs through an ordinance adopted before July 1, 2011. ACLU supported. *Killed in Militia, Police and Public Safety (9-Y, 12-N).*



Death Penalty

For the first time in six years, no bill was introduced to eliminate the “triggerman rule,” which generally holds that only the actual killer is eligible for the death penalty (although there are particular exceptions, such as murder for hire). For three years running, from 2007-2009, the House and Senate passed a triggerman rule elimination bill, but it was vetoed by Governor Kaine. Last year, despite support from Governor McDonnell, the bill was killed in the Senate Courts of Justice Committee after passing the House.

While no triggerman rule elimination bill was introduced this year, SB 1200 sought to restrict the application of the triggerman rule by allowing the death penalty for individuals who had the same intent as the killer in a rape or other sex crime, but did not participate in the killing. SB 1200 received considerable attention and support, but failed in the Senate Courts of Justice Committee.

Session differs from recent past in that legislators introduce only one death penalty expansion bill -- and it fails.

Failed

SB 1200 (Obenshain) Redefinition of the Triggerman Rule. Redefines the triggerman rule by expanding the death penalty to apply to the principals in the second degree and accessories before the fact who had the same intent to kill as the actual killer in cases of willful, deliberate, and premeditated killing while in the commission of rape or other sexual criminal acts. ACLU opposed. *Killed in Senate Courts of Justice (8-Y, 6-N).*



Equal Rights

In response to Congress's repeal of "Don't Ask, Don't Tell," Delegate Bob Marshall introduced HB 2474 to prohibit gay men and lesbians from serving openly in Virginia's National Guard. To counter HB 2474, another bill, HB 2345 was introduced mandating that Virginia's National Guard comply with all federal guidelines, including the right of LGBT persons to serve openly in the military. Both bills were killed in committee.

The Senate passed SB 747, which would have prohibited sexual orientation discrimination in state employment, but it died in the same House General Laws Committee that rejected the House's version of the bill. Several other bills to protect against discrimination on the basis of sexual orientation, including an anti-bullying measure for students, were introduced in the House. All failed.

Standoff for LGBT rights, as both pro- and anti-gay rights bills fail in 2011 session.

Failed

HB 1509 (Scott, J.M.), HB 1964 (Rust), HB 2046 (Ebbin), SB747 (McEachin) Prohibition on Sexual Orientation Discrimination in Public Employment. These bills prohibit employment discrimination on the basis of sexual orientation in state government. ACLU supported. *HB 1509 and HB 1964 were incorporated into HB 2046, which was killed in House General Laws Subcommittee. SB 747 passed the Senate (22-Y, 18-N), but was killed in House General Laws Committee.*

HB 1575 (Englin), HB 1576 (Ebbin), HB 1748 (Plum) Anti-bullying in Public Schools. HB 1575 clarifies the definition of bullying in public schools to include those actions motivated by actual or perceived personal characteristics, including race, national origin, sex, sexual orientation, gender identity, religion, ancestry, physical attributes, socioeconomic status, familial status, physical or mental ability, or disability. HB 1576 makes bullying a Class 1 Misdemeanor and defines bullying as "recklessly or intentionally endangering the health or safety of a student by exposing that student repeatedly, and over time, to physical aggression or intimidation...resulting in bodily injury or other harm to person or property." HB 1748 redefines bullying to include cyber bullying, which is bullying through the use of technology or electronic communications. ACLU supported. *HB 1575 killed in House Education Committee. HB 1576 killed and then referred to Crime Commission for study. HB 1748 killed in House Courts of Justice Committee.*

HB 1755 (Plum), SB 797 (Locke) Prohibition on Sexual Orientation and Gender Identity Discrimination in Virginia. These bills amend the Virginia Human Rights Act to prohibit discrimination anywhere in Virginia on the basis of sexual orientation. ACLU supported. *HB 1755 was incorporated into HB 2046, which was killed House General Laws Subcommittee. SB 797 killed in Senate General Laws & Technology Committee.*

HB 2345 (Morrissey) Prohibits Sexual Orientation Discrimination in Virginia National Guard. States that eligibility for service in the Virginia National Guard must follow rules adopted by the U.S. Department of Defense. This bill was meant to counter Del. Marshall's bill

(HB 2474, see immediately below) that prohibits gay men and lesbians from serving in the Virginia National Guard. ACLU supported. *Killed in House Rules Committee.*

HB 2474 (Marshall, R.G.) Sexual Orientation Discrimination in Virginia National Guard. Prohibits gay men and lesbians from serving openly in the Virginia National Guard. ACLU opposed. *Killed in House Rules Committee.*

HJ 637 (Englin) Marriage Amendment. Proposes the repeal of the constitutional amendment defining marriage as only a union between one man and one woman. ACLU supported. *Killed in House Privileges and Elections Constitutional Subcommittee.*



Reproductive Rights

In an unexpected development near the session's end, legislators passed the equivalent of a TRAP (Targeted Regulation of Abortion Providers) bill when they amended an unrelated bill -- SB 924 -- to require the State Board of Health to regulate facilities in which five or more first-trimester abortions per month are performed as if they were a category of hospital.

TRAP bills are not new in the General Assembly, where they typically pass the House of Delegates, but fail in the Senate Education and Health Committee. But SB 924 was amended on the House floor and went directly to the Senate floor, where it passed when the Lt. Governor broke a 20-20 tie. The ultimate effect of SB 924 will depend on the regulations produced by the Board of Health, but clinics in the state that now provide legal abortions could be subjected to costly new regulations that have nothing to do with the safe delivery of services.

*Last minute maneuver
in the House of
Delegates brings
TRAP law to Virginia.*

Legislators failed to pass SB 967, a comprehensive sex education bill that would have required each school division to implement the Board of Education's family life education program, which is aimed at reducing the incidence of pregnancies (as well as sexually transmitted diseases and substance abuse) among teenagers. SB 967 also required all family life curricula to be based on legitimate medical research. Currently, many of the family life education programs contain factual errors and have an anti-reproductive rights bias.

Passed

SB 924 (McDougle) Targeted Regulation of Abortion Providers (TRAP) Amendment. As introduced, SB 924 required the Board of Health to issue regulations on disaster preparedness, infection prevention, and security of hospitals and nursing facilities, but it was amended in the House to require facilities that perform five or more first trimester abortions per month to meet the same physical and staffing requirements as a category of hospitals. ACLU opposed SB 924 as amended. *The House passed the amended version (67-Y, 32-N). Senate approved the House amendment (20-Y, 20-N), with the Lieutenant Governor casting the tie-breaking vote in favor.*

HB 2434 (Kilgore) Health Benefit Exchange, Amended to Restrict Abortions. As introduced, HB 2434 lays the groundwork for a state health care exchange under the Affordable Care Act. As amended, it prevents insurance under the exchange from covering abortions except when the pregnancy endangers the mother's life or is the result of rape or incest. ACLU opposed HB 2434 as amended. *The House passed the amended version (59-Y, 36-N, 3-A). The Senate approved the House amendment (20-Y, 20-N), when the Lt. Governor cast the tie-breaking vote.*

Failed

HB 1428 (Bell, Richard P.) TRAP. Requires abortion clinics that conduct 25 or more abortions per year to meet the emergency equipment requirements of ambulatory surgery centers. ACLU opposed. *Passed the House (66-Y, 33-N); killed in Senate Education and Health Committee.*

HB 1440 (Marshall, R.G.) Definition of Life. Provides that “*unborn children... from the moment of conception until birth at every stage of biological development*” enjoy the right to life and liberty under the state constitution include. The ACLU believes that this law could be used in the future to advance the argument that abortions are crimes in Virginia. ACLU opposed. *Passed the House (62-Y 36-N 1-A); killed in Senate Education and Health Committee.*

HB 2147 (Cline), SB 1202 (Obenshain) Prohibits Abortion Coverage under Health Care Exchange. These bills prohibit abortion coverage by health insurance plans sold in Virginia through health benefits exchanges. ACLU opposed. *HB 2147 passed the House (60-Y 36-N 2-A); killed in Senate Education and Health. SB 1202 killed in Senate Education and Health.*

HB 2192 (Ebbin) Medicaid Coverage for Certain Pregnant Immigrants. Provides Medicaid coverage for pregnant women who are lawfully residing in the U.S. who are not admitted for permanent residence but are otherwise eligible for medical assistance. ACLU supported. *Killed in House Appropriations Committee.*

HB 2436 (Herring) Optional Abortion Coverage under Health Benefits Exchange. Allows insurance companies under the health benefits exchanges to decide whether or not they will provide abortions. *Killed in House Health, Welfare and Insitutions Committee.*

SB 967 (Northam) Family Life Education. Requires schools to implement the standards of learning for the family life education program, and states that any materials used must be evidence-based and supported by peer reviewed medical research. ACLU supported. *Passed the Senate (24-Y, 16-N); killed in House Education Committee.*

SB 1217 (Smith) Forced or Coerced Abortion. Prohibits any person from forcing or coercing a pregnant female to have an abortion. The ACLU believes this bill could infringe on the free speech right to express an opinion on a woman's decision to have an abortion. ACLU opposed. *Killed in Senate Education and Health.*

SB 1435 (Smith) Mandatory Ultrasound. Amends the informed consent law to require that every pregnant woman be given an ultrasound prior to an abortion. ACLU opposed. *Killed in Senate Education and Health Committee.*



Immigrants' Rights

Anti-immigrant bills remained below the record high levels of several years ago, when as many as 150 such bills dominated the legislature. Still, the House of Delegates passed bills that would have required proof of legal presence in order to use social services, prohibited higher education for the children of undocumented immigrants, and mandated the collection of information on legal presence from every parent registering their children in public schools. All of these bills were turned back by the Senate.

Unfortunately, the House and Senate passed HB 1859/SB1049, which will require state agencies to include in every contract over \$50,000 a provision requiring the contractor to use the E-Verify program to determine if its employees are legally present. The ACLU has opposed the use of E-Verify because it has been riddled with errors that have resulted in the loss of jobs for many legally present immigrants.

Most anti-immigrant bills fail, but private contractors with state will be required to use error-filled E-Verify program.

Passed

HB 1651 (Cosgrove) DMV Cancel Driver's License upon Notification by Federal Agency. Requires the Department of Motor Vehicles to cancel the driver's license of any individual when it is notified by a federal agency that the individual is neither a U.S. citizen nor legally in the country. Because individuals in Virginia must prove their legal presence in order to obtain a license, the ACLU is concerned that notoriously inaccurate reporting by federal agencies will result in the loss of licenses by persons who are legally present. ACLU opposed. *Passed the House (99-Y, 0-N) and the Senate (40-Y, 0-N).*

HB 1859 (Anderson), SB 1049 (Barker) Mandated Use of E-Verify for Contractors. HB 1859 requires state agencies to include in their contracts of more than \$50,000 provisions requiring the contractor to use the E-Verify program. SB 1049 requires any government contractor or subcontractor that enters into a contract with a public entity in Virginia to use the E-verify program. The ACLU opposes mandatory use of the E-Verify program due to well-documented inaccuracies. *HB 1859 passed the House (81-Y, 18-N) and Senate (40-Y, 0-N) with substitute. SB 1049 passed the Senate (40-Y, 0-N) and the House (79-Y, 20-N) with amendments. Conference report for SB 1049 passed the Senate (40-Y, 0-N) and the House (86-Y, 6-N).*

Failed

HB 1421 (Albo) State and Local Enforcement of Federal Immigration Laws. Requires state agencies and localities to enforce federal immigration laws to the extent permitted by federal law. The ACLU argues that only trained federal immigration officers should be enforcing federal immigration law. Prospects for due process abuses and racial profiling increase when poorly trained local law enforcement attempt to implement complex federal immigration laws. ACLU opposed. *Passed the House (73-Y, 26-N); killed in Senate Courts of Justice Committee.*

HB 1430 (Albo), HB 2332 (Lingamfelter) Arresting Officer to Determine Citizenship Status of All Arrestees. In 2008, legislation was passed requiring jail officials to ascertain the

citizenship status of all persons taken into custody at the jail. HB 1430 requires that a computerized immigration check take place only if an individual was arrested on a warrant for which probable cause exists or only after a judicial officer determines probable cause for the arrest and issued a warrant or summons. HB 2332 requires every state and local officer to make a subjective immigration determination even before a judicial officer determines probable cause exists to arrest the person. The officer then conveys his evaluation of the individual to the magistrate, who decides, without being required to make an official immigration check, whether the individual should be released. ACLU opposed. *HB 1430 passed the House (72-Y, 27-N); killed in Senate Courts of Justice Committee. HB 2332 passed the House (68-Y, 31-N); killed in Senate Courts of Justice Committee.*

HB 1465 (Peace) Undocumented Immigrants Ineligible for Admission to Public Colleges. Prohibits the admission of any undocumented immigrant into a public college. ACLU opposed. *HB 1465 passed the House (72-Y, 24-N); killed in Senate Courts of Justice Committee.*

HB 1468 (Albo) Proof of Legal Presence Required for Public Assistance. Requires local departments of social services to verify an applicant's citizenship or legal presence in the United States before providing any public assistance benefits. ACLU opposed. *Passed the House (83-Y, 16-N); killed in Senate Courts of Justice Committee.*

HB 1727 (Carrico) Mandated Use of E-Verify. Requires state agencies, localities, and companies with 15 or more employees to use the E-Verify program to verify employees' work status. Companies that do not use E-Verify will have licenses revoked. (Note: There are many documented cases of E-Verify incorrectly identifying as undocumented individuals who are legally present, resulting in detention and even deportation hearings.) The ACLU opposes mandatory use of E-Verify until the system has been proven to be accurate. *Passed the House (76-Y, 23-N); killed in Senate Courts of Justice Committee.*

HB 1775 (Gilbert) Citizenship Status Indicated for Public School Enrollment. As introduced, requires that persons enrolling students in public schools indicate the citizenship or immigration status of the students' parents. As amended, requires schools to report to the State Board of Education the number of students enrolled in ESL classes and the number of students whose parents could not present a birth certificate when enrolling the students. ACLU opposed. *Passed the House (73-Y, 25-N); killed in Senate Courts of Justice Committee.*

HB 1934 (Miller, J.H.) State Police to Enter into Immigration Agreement. Directs the State Police to enter into a Memorandum of Agreement with Immigration and Customs Enforcement to allow the State Police to perform certain federal immigration law functions in Virginia. ACLU opposed. *HB 1934 passed the House; killed in Senate Courts of Justice Committee.*

HB 2466 (Englin) Virginia Biased-Based Profiling & Traffic Statistics Reporting Act. Requires state and local police to record demographic data at traffic stops to determine the prevalence of racial profiling in Virginia. ACLU supported. *Killed in House Courts of Justice Committee.*



Women's Rights

Women's Rights took a step forward in Virginia this year with the passage of SB 1222, a bill expanding eligibility for protective orders. With the passage of this legislation, persons in dating relationships, as well as extended family members and other individuals can acquire a protective order when the threat of violence places them in fear of death, sexual assault, or bodily injury. Previously, protective orders were only available for spouses, those in live-in relationships, and couples who share a child.

Some progress may occur as the result of HB 1488, a bill restricting the use of restraints on pregnant inmates during labor, transport and delivery. Although HB 1488 died in the House Militia, Police and Public Safety Committee, it became the starting point for discussions with the Department of Corrections when the committee's chair announced that a letter would be sent to DOC conveying the committee's interest in having DOC adopt regulations to prevent unwarranted shackling.

Protective orders expanded in Virginia to include more non-traditional relationships.

Passed

HB 1757 (Wilt), SB 1199 (Obenshain) Expansion of Address Confidentiality Program for Victims of Domestic Violence. These bills provide for statewide implementation of the Address Confidentiality Program, which allows victims of domestic violence to request that the Office of the Attorney General be used as their designated mailing address rather than their actual address. ACLU supported. *HB 1757 and SB 1199 passed the House and Senate unanimously.*

HB 2063 (Bell, Robert B.), SB 1222 (Barker) Expanding Access to Protective Orders and Penalties for Domestic Violence. These bills expand the class of persons who are eligible to obtain a protective order to include anyone who has been subjected to assault or any conduct that creates a reasonable fear of death, sexual assault, or bodily injury. Under existing law only spouses, live-in domestic relationships, and couples who share a child qualify for protective orders. ACLU supported. *HB 2063 passed the House (99-Y, 0-N) and Senate with substitute (40-Y, 0-N). SB 1222 passed the Senate (37-Y, 0-N) and House with substitute (97-Y, 0-N). Conference reports agreed to by House (92-Y, 0-N) and Senate (40-Y, 0-N).*

HB 2190 (Ebbin) Assistance for Victims of Human Trafficking. Requires the Department of Social Services to develop a plan to provide services to victims of human trafficking. ACLU supported. *Passed the House (98-Y, 0-N) and Senate (40-Y, 0-N). Governor's amendments agreed to by the House (95-Y, 0-N) and Senate (40-Y, 0-N).*

Failed

HB 1488 (Hope) Prohibition on Shackling of Pregnant Prisoners. With a few exceptions, prohibits the use of restraints on pregnant prisoners during labor, transport to a medical facility, delivery, or postpartum recovery. ACLU supported. *Killed in House Militia, Police and Public Safety Committee, but Committee chair agreed to write the Department of Corrections to adopt policies to prevent shackling of pregnant women.*



Voting and Elections

A House Privileges and Elections Subcommittee rejected all meaningful measures to advance voting rights in the state. Bills permitting early voting and no-excuse absentee voting passed the Senate, but failed in the same House subcommittee.

The House easily passed HB 1560, which would have required voters to show an official ID or be required to vote by provisional ballot. Under current Virginia law, voters without IDs may sign a form affirming their identity and cast a regular ballot. Fortunately, the bill was killed in the Senate Privileges and Elections Committee.

No major election reforms pass. Bill requiring photo ID to vote passes House, but is voted down in the Senate.

Passed

HB 1501 (Putney), SB 1213 (Smith) Expansion of Voter Registration Application Form Availability. These bills expand the places where voter registration application forms are available to include any facility where hunting and fishing licenses are sold. ACLU supported. *HB 1501 passed the House (98-Y, 0-N) and Senate (40-Y, 0-N). SB 1213 passed the Senate (40-Y, 0-N) and House (98-Y, 0-N).*

HB 1568 (Cleaveland) Counting Absentee Ballots of Deceased Voters. Requires the counting of absentee ballots cast by qualified voters who die between the time they cast the ballots and when the absentee ballots are counted. ACLU supported. *Passed the House (92-Y, 6-N) and Senate (40-Y, 0-N).*

Failed

HB 158 (Dance), HB 185 (Morrissey), HB 362 (Ware, O.) Early Voting. HB 158 and HB 185 allow any qualified voter to vote in-person from 14 to 3 days before the election. HB 362 allows any qualified voter to vote in-person from 19 to 3 days before the election. ACLU supported. *HB 158, HB 185, and HB 362 were killed in House Privileges and Elections Committee.*

HB 341 (Marshall, R.), HB 497 (Lingamfelter), SB 302 (Martin) Voter ID; Proof of Citizenship to Register to Vote. HB 341 requires documented proof of citizenship for registration and government photo ID to vote. HB 497 requires proof of citizenship to register to vote. SB 302, as introduced, states that failure to provide proof of citizenship to the registrar constitutes a material omission, and the application to register to vote is to be denied. ACLU opposed. *HB 341 and HB 497 were killed in House Privileges and Elections Committee. SB 302 was significantly amended and passed the Senate (40-Y, 0-N); killed in House Privileges and Elections Committee.*

HB 498 (Lingamfelter), SB 134 (Obenshain), SB 301 (Martin) ID Required to Vote. These bills require all voters to show a valid government-issued photo ID to vote or be required to cast a provisional ballot. ACLU opposed. *HB 498 passed House Privileges and Elections Committee (12-Y, 8-N); sent to the House floor for debate and sent back to House Privileges and Elections Committee, where it was killed. SB 134 killed in Senate Privileges & Elections. SB 301 killed in Senate Privileges and Elections Committee.*

HB 786 (LeMunyon) Extension of Polling Hours. Extends polling place closing time from 7 p.m. to 8 p.m. ACLU supported. *Killed in House Privileges and Elections Committee.*

HB 1400 (Dance) Early Voting. Allows any qualified voter to cast a ballot in-person at the office of the registrar from 14 to 3 days before Election Day. ACLU supported. *Killed in House Privileges & Elections Subcommittee #2.*

HB 1560 (Cole) ID Required to Vote. Requires all voters to show an ID to vote or be required to cast a provisional ballot. ACLU opposed. *Passed the House (68-Y, 31-N); killed in Senate Privileges and Elections Committee.*

HB 2088 (Herring) Expansion of Absentee Voting for Business and Medical Emergencies. Under existing Virginia law, any voter who learns that he or she will become unavailable to vote on Election Day because of a business engagement or medical emergency that they became aware of after noon on the Saturday before an election may apply for an absentee ballot on the Monday preceding the election. HB 2088 allows voters to cast an absentee ballot if they learn of such conflicts after 6:00 p.m. on the Thursday before Election Day. ACLU supported. *Killed by House Privileges & Elections Subcommittee on Elections.*

HB 2459 (Surovell), SB 937 (Miller, J.C.) Absentee Voting for Individuals 65 or Older. These bills allow all individuals 65 or older to vote absentee. ACLU supported. *HB 2459 killed in House Privileges and Elections Committee. SB 937 passed the Senate (32-Y, 6-N); killed in House Privileges and Elections Committee.*

SB 226 (Barker) Extension of Polling Hours during an Emergency Situation. Permits for court ordered extension of polling hours in emergency situations and situations that interfere with the ability of voters to travel to the polls. ACLU supported. *Passed the Senate (21-Y, 19-N); killed in House Privileges and Elections Committee.*

SB 307 (Martin) Photo ID to Vote by Absentee Ballot. Requires absentee voters to submit a copy of a current and valid photo ID or a copy of a current utility bill, bank statement, government check, paycheck, or other document that shows the name and address of the voter with the absentee ballot. If an individual does not submit ID, the individual's signature on the absentee ballot envelope must be compared to the individual's signature on his voter registration. The ballot will not be counted if there appears to exist a material discrepancy between these signatures, however it will be counted as a provisional ballot. ACLU opposed. *Stricken at the request of the patron in Senate Privileges and Elections Committee.*

SB 949 (Howell) Expansion of Absentee Voting. Allows all voters to vote by absentee ballot in-person, but in order to vote absentee by mail-in ballot a person must provide one of the acceptable excuses under state law. ACLU supported. *Passed the Senate (24-Y, 14-N); killed in House Privileges and Elections Committee.*



Criminal Justice

Taking a cue from recent research concluding that police line-ups are often manipulated or inadvertently arranged to unfairly aid in the identification of police suspects, both the House and the Senate unanimously passed SB 944 to require the Department of Criminal Justice Services to produce training standards and model policies for conducting proper line-ups. SB 944 also directs the DCJS to produce model policies on police pursuits.

An important reform bill that would have decriminalized first-time possession of marijuana and saved taxpayers millions of dollars was rejected by the House Courts of Justice Committee and was never heard on the House floor or in the Senate.

Marijuana reform bill fails, but new training on police line-ups and high speed pursuits approved.

Passed

HB 1650 (Cosgrove), SB 782 (Reynolds) Magistrates' Power to Issue Felony Arrest Warrants. These bills require a commonwealth's attorney or law enforcement to authorize an arrest warrant for a felony issued by a magistrate when it is based on a citizen complaint. The purpose of these bills is to reduce the number of false charges and arrests made against citizens because of private disputes. ACLU monitored. *HB 1650 passed the House (98-Y, 0-N) and Senate (40-Y, 0-N). SB 782 passed the Senate (39-Y, 0-N) and House (99-Y, 0-N).*

SB 944 (Howell) Training Standards for Police Pursuits and Line-ups. Requires the Department of Criminal Justice Services to establish training standards for law enforcement regarding pursuits, response to emergency calls, and procedures for line-ups. *Passed the Senate (39-Y, 0-N) and the House (99-Y, 0-N).*

Failed

HB 1443 (Morgan) Decriminalization of Marijuana. Decriminalizes the simple possession of marijuana by imposing a civil fine of not more than \$500 rather than a criminal penalty. ACLU supported. *Killed in House Courts of Justice Criminal Subcommittee.*

HB 1448 (Greason) No Expungement for Juvenile Court Deferral and Dismissal. Under current law, any person who is the subject of a juvenile delinquency proceeding and is found innocent or had the proceeding dismissed may petition to have his or her record expunged. HB 1448 prohibits the expungement of such records. ACLU opposed. *Killed in House Courts of Justice Criminal Subcommittee.*

HB 1463 (Ware, O.) Expungement of Records for Drug Charges. Allows any person charged or convicted of possession of marijuana to petition for expungement of related police and court records after five years. ACLU supported. *Killed in House Courts of Justice Criminal Subcommittee.*

HB 1533 (Howell, A.T.) Expansion of Parole Eligibility. Under current law, any inmate convicted of three separate felony offenses of murder, rape, or robbery with a firearm or deadly weapon is ineligible for parole. HB 1533 makes eligible for parole a person (1) convicted only

of robbery, (2) who did not injure or attempt to injure any person, (3) who did not have an attorney assist him or her in a previous petition for review of parole ineligibility, (4) who has been continuously confined for 15 years, and (5) has a record of good conduct during confinement. ACLU supported. *Killed in House Committee on Militia, Police and Public Safety Subcommittee #2.*

HB 1574 (Garrett) Mandatory Self-Identification to Law Enforcement. Requires individuals detained and questioned by law enforcement to identify themselves. (Note: The Supreme Court recently ruled that states may have such a law, but that identification is not required absent the law. Some Virginia localities do require that individuals identify themselves to police officers.) ACLU opposed. *Killed in House Courts of Justice Criminal Subcommittee.*

HB 2351 (Morrisey) Testing of Biological Evidence in a Case. Under current law, any person convicted of a felony may apply for a new testing of the biological evidence that was used to convict them, but the test must be one employed by the Department of Forensics. HB 2351 allows testing of biological evidence, whether or not the procedure is one employed by the Department, provided the Department regards the test as reliable. ACLU supported. *Killed in House Courts of Justice Committee.*

HB 2440 (Comstock) Expungement of Record for Forced Prostitution. Allows individuals charged with or convicted of prostitution to expunge their record if they were forced, intimidated or deceived by another into engaging in prostitution. ACLU supported. *Killed in House Courts of Justice Criminal Subcommittee.*

SB 767 (Marsden) Expungement of Records Related to Protective Orders. Allows a person against whom a protective order was issued to petition for expungement of police and court records related to that protective order if the order is dissolved. ACLU supported. *Killed in Senate Courts of Justice.*

SB 781 (Reynolds) Mandatory Substance Abuse Screenings for Recipients of Public Assistance. Requires local departments of social services to screen all Virginia Initiative for Employment not Welfare Program (VIEW) applicants for drug use and to conduct drug tests on all those who fail to pass the drug screen. Failure of drug test or refusal to take the drug test makes applicants ineligible for Temporary Assistance for Needy Families (TANF) benefits. ACLU opposed. *Passed the Senate (32-Y, 7-N); killed in House Appropriations Committee.*

SB 822 (Edwards) Juvenile's Right to Appeal Being Tried as an Adult for Certain Crimes. Under current law, if a juvenile commits a crime that would be considered a felony if committed by an adult, he or she may be tried as an adult if ordered by the court. SB 822 would allow the juvenile to appeal the decision to be tried as an adult, when charged with certain crimes. ACLU supported. *Passed the Senate (29-Y, 9-N); killed in House Courts of Justice Committee.*

SB 914 (McDougle) Expansion of Juvenile Transfers to Adult Court. Currently, juveniles may be tried as adults for certain crimes at the discretion of the commonwealth's attorney or after a hearing before a juvenile court judge. SB 914 expands the list of those crimes left to the discretion of the commonwealth attorney. ACLU opposed. *Killed in Senate Courts of Justice.*

SB 948 (Howell) Expanded Juvenile Sentencing Opportunities. Allows circuit court judges to give juveniles tried as adults the opportunity to earn a juvenile delinquency conviction instead of an adult conviction upon successful completion of terms and conditions set by the judge. ACLU supported. *Passed the Senate (39-Y, 0-N); killed in House Courts of Justice Committee.*

SB 1467 (Edwards) Disclosure of Inactive Criminal Investigative Records under FOIA. Requires police departments to disclose records of inactive criminal investigations or prosecutions when requested under the Virginia Freedom of Information Act. ACLU supported. *Killed in Senate General Laws & Technology FOIA subcommittee and referred to FOIA Council.*



Felon Disenfranchisement

Despite the efforts of a broad-based coalition of local and statewide organizations, Virginia legislators again rejected a constitutional amendment to rid Virginia of its worst-in-the-nation felon disenfranchisement law. Virginia and Kentucky remain the only two states that permanently disenfranchise all felons, requiring an act of the governor for voting rights to be restored. The constitutional provision is a holdover from Jim Crow that still disproportionately affects African-Americans. *(For more information, go to www.restoreourvote.org.)*

*All felon
disenfranchisement
reform bills fail
again, as House
refuses to act.*

Failed

HJ 497 (Dance), HJ 524 (Ware, O.), HJ 610 (Carr), HJ 634 (Morrissey) Restoration of Civil Rights for All Felons. These bills amend 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 supported. *HJ 524, HJ 610 and HJ 634 were incorporated into HJ 497, which was killed in the House Privileges and Elections Constitutional Subcommittee.*

HJ 543 (Herring) Restoration of Civil Rights for Non-Violent Felons. Amends the Virginia Constitution to allow the General Assembly to provide for the restoration of civil rights for persons who have been convicted of non-violent felonies who have completed all the requirements of their sentences. ACLU supported. *Incorporated into HJ 497 (see above).*

SJ 284 (Miller, Y.B.), SJ 306 (McEachin) Restoration of Civil Rights for Non-Violent Felons. These bills amend the Virginia Constitution to allow the General Assembly to provide for the restoration of civil rights, including voting rights, for persons who have been convicted of non-violent felonies who have completed all the requirements of their sentences. ACLU supported. *SJ 306 was incorporated into SJ 284, which passed the Senate (27-Y, 13-N) and was then killed in House Privileges and Elections Constitutional Subcommittee without a vote.*



Open Government

Virginia's government became neither less nor more transparent as a result of the 2011 legislative session. Senator Martin created some controversy with SB 812, which sought to prevent the public from accessing the names of state employees, including high level state officials, whose salary information was requested under the Freedom of Information Act. Open government groups quickly convinced legislators that taxpayers had a right to know how their dollars were being spent and on whom, and the bill did not survive committee action.

Legislators turn back attempt to exclude names of public employees from FOIA salary requests.

Failed

HB 1566 (LeMunyon) Publication of all House and Senate Voting Records on the Internet. Requires the publication on the internet of all recorded committee, subcommittee, and floor votes of all members of the House of Delegates and Senate on all legislation. ACLU supported. *Killed in House Rules Committee.*

HB 1935 (Ware, O.), HB 2079 (Landes) Change to Public Notice Requirements. HB 1935 allows localities to advertise legal notices on the Internet, radio or television instead of in local newspapers. HB 2079 makes advertising legal notices for charter changes, referenda, and public hearings in local newspapers optional instead of required, and allows ads to be placed in other media. ACLU opposed. *HB 1935 killed in House Counties, Cities and Towns Committee. HB 2079 killed in House Counties, Cities and Towns Subcommittee #2.*

SB 812 (Martin) FOIA Exemption for Names when Obtaining Salary Information. Requires that the names of public employees be withheld when their salary information is provided through the Freedom of Information Act. ACLU opposed. *Killed in Senate General Laws & Technology Committee.*