

# Civil Liberties Review

## *Virginia General Assembly 2012*

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ACLU of Virginia  
Legislative Report

July 2012

## 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 [acluva@acluva.org](mailto:acluva@acluva.org), or sign up on our website at [www.acluva.org](http://www.acluva.org).

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## *Forward to Supporters*

*The 2012 General Assembly Session was one in which legislative hostility to civil rights and civil liberties continued to grow. The ultra-partisan redistricting process in which incumbent legislators chose their voters (in what is an increasingly technology-driven and undemocratic process) resulted in fall legislative elections that exaggerated the influence of the polar ends of the electorate and continued to minimize the voting power of blacks and other people of color.*

*In this environment, civil liberties victories this session were small and few. The bill requiring warrants for GPS tracking, the largely symbolic but important bill opposing indefinite detention of American citizens under the National Defense Authorization Act come to mind as positive developments.*

*Reproductive freedom and voting rights were sure to take a hit, however —and they did.*

*Virginia's mandatory ultrasound bill, as originally introduced, was so bad it made national news, became the butt of jokes on late night television, and motivated demonstrations at the state Capitol unlike any seen in decades.*

*The voter ID bill continued the long and dismal history of Virginia efforts to suppress voter participation. With no history of voter impersonation fraud whatsoever in Virginia, the bill lawmakers approved is likely to disenfranchise many older people, people without cars, working people with inflexible schedules and others who forget to bring their ID's to the polls. Under the new law, anyone who forgets their ID will have to make a special effort to get their ID to the office of their voter registrar to ensure that their vote will be counted. In a state that continues to be one of the few without early or no-excuse absentee voting and with the most restrictive voting rights restoration law in the country, this latest change underscores the apparent desire of a majority of Virginia's lawmakers to further shrink the rolls of voters and undercut the most fundamental and important right in a democracy – the right to vote.*

*Our work to promote civil liberties and civil rights in Virginia has always been hard, but one late-night incident this past session illustrates most clearly what we're really up against. In the wee hours of the morning on the last day they were in session, the Virginia House of Delegates, which has consistently rejected proposals to bar workplace discrimination based on sexual orientation, refused to elect a well-qualified candidate as a general district court judge simply because he is an openly gay man living in a committed relationship and raising a family. Although efforts were made to justify the decision on other grounds, it was clear then and now that the proffered reasons were simply a pretext for discrimination.*

*The ACLU must continue to fight back and be a catalyst for change, in the legislature and in the courts. We can only do this with your continued support! Thanks for being one of us, for supporting us, and for helping in any way you can.*

*Claire Guthrie Gastañaga, Executive Director*



# First Amendment

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Legislators took aim at a Virginia’s unconstitutional requirement placing residency restrictions on individuals who circulate ballot petitions for political candidates, but ultimately missed the target. Bills that would have eliminated all residency requirements were later amended to eliminate only the requirement that petition circulators live in the district where the candidate is running for office. The ACLU followed the passage of the bill by filing a lawsuit on behalf of the Virginia Libertarian Party challenging the constitutionality of the state residency restrictions which recently resulted in a trial court decision declaring the law unconstitutional.

*Legislators miss target with bill to expand right to circulate ballot access petitions.*

Over ACLU objections, legislators finally passed a bill to allow tax credits to be issued to businesses that provide scholarships to students who attend private schools, including religious schools. This legislation funnels state tax dollars (in the form of tax breaks) to private, religious education, violating at least the spirit of the state constitutional ban on providing direct state funding for such schools.

## ***Passed***

**HB 321 (Massie); SB 131 (Stanley); SB 241 (Obenshain) Tax Credits for Businesses Providing Private School Scholarships.** Establishes a tax credit for corporations that make donations to non-profit organizations that provide scholarships to students to attend private elementary or secondary schools, including religious schools. ACLU opposed. *HB 321 passed the House (64-Y, 35-N); passed the Senate with a substitute with the Lt. Governor casting the tie-breaking vote (21-Y, 20-N); House concurred in Governor's recommendation #'s 1, 2, 3 and 5 (58-Y 37-N) and rejected recommendation # 4 (1-Y 93-N); Senate concurred in the Governor's recommendation with the Lt. Governor casting the tie-breaking vote (20-Y, 19-N; Governor's recommendation adopted in-part; signed by the Governor.*

*SB 241 incorporated into SB 131, and passed the Senate with the Lt. Governor casting the tie-breaking vote (21-Y, 20-N); passed the House (57-Y, 40-N); signed by the Governor.*

**SB 613 (Edwards); HB 1133 (Cole) Eliminating Residency Requirement for Petition Circulators.** As introduced, this bill would have allowed non-residents to circulate petitions to get candidates on all state and local ballots. As amended, the bill requires a person circulating such petitions to be a resident of the state. Currently, the petition circulator must be eligible to vote for the office for which the petition is being circulated. ACLU supported in part and opposed in part. (See note below.) *Passed the Senate (35-Y, 5-N); passed the House (95-Y, 4-N); signed by the Governor.*

*Note: Although SB 613/HB 1133 eliminated the unconstitutional requirement that petition circulators be residents of the district in which they are circulating petitions, in its final form the bill still requires petition circulators to be state residents –a clear constitutional violation. On July 30, a federal district court struck down the state residency restrictions on petition circulators for third-party presidential candidates in an ACLU of Virginia lawsuit, Libertarian Party of Virginia v. Judd.*

## *Failed*

### **HB 61 (Cole); SB 63 (Stanley) Prohibits Solicitation of Absentee Ballot Applications.**

Prohibits in-person solicitations of absentee voting applications or ballots from individuals in any hospital, nursing home or assisted living facility (unless the solicitations are by a registrar, electoral board member or family member). ACLU opposed. *HB 61 killed in House Privileges and Elections Subcommittee on Elections. SB 63 killed in Senate Privileges and Elections Committee.*

**HB 631 (Morris); HB 825 (Marshall, R.G.) Anti-Sharia Law.** Voids court decisions and other contracts or agreements based on foreign laws that do not have jurisdiction in the United States. ACLU opposed. *Continued to 2013 in House Courts of Justice Committee.*

*Note: These bills are part of a national wave of proposed anti-Sharia legislation. Protections already exist in our legal system to ensure that courts do not improperly consider religious law where it would violate basic principles of U.S. federal or state policy. Prohibiting courts from considering Islamic law in their decisions serves only one purpose: to bar Muslims from having the same rights and access to the courts as other individuals.*

**HB 707 (Filler-Corn); SB 434 (Puller) Prohibiting Protests at Funerals.** Prohibits intentionally disruptive protests sixty minutes before, during, and immediately after funerals and memorial services. ACLU opposed. *HB 707 continued until 2013 in House Courts of Justice Committee. SB 434 continued until 2013 in House Courts of Justice Committee.*

### **HB 1115 (Englin); Eliminating Government Oversight of Religious Rite of Marriage.**

Virginia's current law governing the solemnization of marriage confuses the "rites" of marriage with recognition of civil marriage, and makes it criminal for a minister to use the word marriage in conducting a "rite" of marriage if the parties before him or her do not have a license from the state. In addition, the law allows judges and ministers to qualify to perform marriages without paying a fee but requires non-ministers and members of Quaker congregations to post a bond before they can be authorized to solemnize a civil marriage on behalf of the state. HB 1115 would have eliminated the criminal penalty for the use of the word marriage in a solely religious ceremony and allowed judges and any other person posting bond to preside over civil marriage ceremonies. ACLU supported. *Killed in House Courts of Justice Committee.*

### **HB 1207 (Pogge) Use of Religion to Refuse Academic Coursework in Higher Education.**

Requires colleges and universities to allow students to refuse coursework that is contrary to their religious beliefs. ACLU opposed. *Continued to 2013 in House Education Committee.*

**HJ 9 (Greason) State Scholarships for Religious Training.** Amends the Virginia Constitution to allow state-sponsored financial assistance for chaplaincy students for the United States Armed Forces attending Virginia universities whose primary purpose is to provide religious or theological education. Virginia has a long history of not providing state money for religious education and the Virginia Constitution explicitly prohibits it. ACLU opposed. *Left in House Privileges and Elections.*

**HJ 94 (Marshall, D.W.) Amends U.S. Constitution to Allow for Prayer in School and at Government Events.** Proposes to Congress an amendment to the U.S. Constitution allowing for prayer in public schools and at public meetings. ACLU opposed. *Adopted by the House (72-Y, 23-N); continued to 2013 in Senate Rules Committee.*



# Privacy Rights

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The General Assembly approved legislation requiring law enforcement officials to obtain warrants before installing a location tracking device on an individual's vehicle, thus bringing Virginia law in line with a recent decision of the U.S. Supreme Court. The legislation clearly outlines the procedures to be followed by law enforcement when obtaining the warrant, installing the device, and when notification to the tracked individual is to be provided.

*New GPS tracking law complies with Supreme Court, offers clear rules for police to obtain and continue warrants*

Like many states, Virginia saw the introduction of legislation mandating nearly suspicion-less drug testing for recipients of public benefits. The Senate bill passed narrowly, but both the Senate and House versions were halted by the House Appropriations Committee, which expressed concerns about the cost and carried the legislation over to 2013. The ACLU opposes this legislation as an unreasonable search under the Fourth Amendment, and is challenging these laws in states that have passed them.

## *Passed*

**HB 500 (Dance) Protecting Personal Information of Children in Foster Care.** Requires the Department of Social Services to reduce the likelihood of disclosure of Social Security Numbers and other personal identifying information of children in foster care. ACLU supported. *Passed the House (100-Y, 0-N); passed the Senate (40-Y, 0-N); signed by the Governor.*

**HB 852 (Yost); SB 375 (Barker) Student Mental Health Records.** Under current law, private and public universities may require entering students to provide their mental health records from their secondary school. This bill would also require those students to provide mental health records from any other college attended by the student. ACLU opposed. *Passed the House (98-Y, 0-N); passed the Senate (40-Y, 0-N); signed by the Governor. SB 375 passed the Senate (40-Y, 0-N); passed the House (98-Y, 0-N); signed by the Governor.*

**HB 900 (Brink); SB 374 (Barker) Parental Notification of College Student's Mental Health.** Under current law, a doctor or clinical psychologist treating a college student may choose to withhold parental notification of a dependent student's mental health treatment if that notification is reasonably likely to cause substantial harm to the student or another person. These bills expand that choice to any licensed health professional treating a student. ACLU supported. *HB 900 passed the House (97-Y, 0-N); passed Senate with an amendment (40-Y, 0-N); amendment agreed to by the House (94-Y, 2-N); signed by the Governor. SB 374 passed the Senate (40-Y, 0-N); passed House with an amendment (98-Y, 0-N); amendment agreed to by Senate (39-Y, 0-N); signed by Governor.*

**HB 1298 (Albo); SB 685 (Reeves) Protocol for Warrants Related to Use of GPS.** Codifies the U.S. Supreme Court Decision, *U.S. v. Jones*, by establishing protocol for law enforcement's use of location-tracking devices. Among other provisions, this bill limits monitoring to 30 days at a time before seeking further court approval, requires the removal of the GPS device within 10 days after tracking has ended, and requires law enforcement to notify the person who was tracked within ten days after removal of the device. ACLU supported. *HB 1298 passed the*

*House (98-Y, 0-N); passed Senate with substitute (40-Y, 0-N); House adopted Senate substitute (95-Y, 0-N); signed by the Governor. SB 685 passed the Senate (39-Y, 0-N); passed the House with substitute (97-Y, 0-N); Senate agrees to House substitute (33-Y, 0-N); signed by the Governor.*

***Failed***

**HB 73 (Bell, Richard P.); HB 221 (Head); HB 249 (Cline); HB 598 (Crockett-Stark); HB 955 (Bell, Robert B.); SB 6 (Martin); SB 83 (McWaters); SB 318 (Carrico) Mandatory Drug Testing for Recipients of Public Assistance.** Requires local departments of social services to screen all Virginia Initiative for Employment Not Welfare (VIEW) applicants for drug use and to conduct drug tests on all those who fail to pass the drug screen. Failure of the drug test or refusal to take the drug test makes applicants ineligible for Temporary Assistance for Needy Families (TANF) benefits. ACLU opposed. *HB 221, HB 249, HB 598 and HB 955 incorporated into HB 73, which was continued to 2013 in House Appropriations Committee. SB 83 and SB 318 incorporated into SB 6, which passed the Senate (21-Y, 20-N) with Lt. Gov. Bolling casting the tie-breaking vote; continued to 2013 in House Appropriations Committee.*

**HB 148 (Ransone); HB 562 (Marshall, D.); SB 319 (Carrico) Mandatory Drug Testing for Recipients of Unemployment Benefits.** Requires unemployed individuals to pass a drug screening and/or drug test in order to be eligible for unemployment benefits. ACLU opposed. *HB 148 and HB 562 killed in House Commerce and Labor subcommittee. SB 319 killed in Senate Commerce and Labor Committee (9-Y, 6-N).*

**HB 413 (Watts) Employers Excluded from Sex Offender Registry Information on Website.** Prohibits registrants' employer information from being listed on the Sex Offender Registry website. ACLU supported. *Killed in House Courts of Justice Criminal Subcommittee.*

**HB 679 (Surovell) Prohibits Sale of Person's Criminal History Information.** Prohibits the sale of criminal history information related to a person's charge or criminal offense conviction that has been expunged. ACLU supported. *Continued to 2013 in House Commerce and Labor.*

**HB 807 (May) Prohibits Electronic Tracking Devices on 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. As amended, the bill also provides an exception for the owner of a fleet of vehicles, or the guardian of an incapacitated adult. ACLU supported. *Passed the House (88-Y, 10-N); continued to 2013 in Senate Courts of Justice Committee.*

**SB 168 (Petersen) Prohibitions on Closed-Circuit Cameras in Schools.** Prohibits schools from using closed-circuit cameras to monitor students, unless it is necessary to protect the physical safety and security of students. ACLU supported. *Continued to 2013 in Senate Education and Health Committee.*

**SB 214 (Barker) Notification of Breach of Medical Information.** Under current law, Virginia residents must be notified of breaches in government security that may have compromised their medical records. SB 214 extends the law to require that private entities also report breaches in medical records to any affected Virginia resident. ACLU supported. *Continued to 2013 in Senate Education and Health.*



## Death Penalty

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The fourth attempt by legislators in as many years to pass a law that would have enabled commonwealth's attorneys to expand the number of persons prosecuted for capital crimes failed again in 2012. Despite changes in the Senate's makeup that many predicted would lead to the passage of the so-called "triggerman bill," the Senate Courts of Justice Committee killed the bill, preventing it from reaching the Senate floor. An identical bill had already passed the House of Delegates by an overwhelming margin when the Senate committee acted.

*One death penalty expansion bill introduced then fails in the Senate.*

**HB 389 (Gilbert); HB 954 (Bell, Robert B.); SB 58 (Obenshain) Elimination of Triggerman Rule.** 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 and therefore be eligible for the death penalty. ACLU opposed. *HB 954 incorporated into HB 389, which passed the House (72-Y, 22-N); killed in Senate Courts of Justice Committee. SB 58 killed in Senate Courts of Justice Committee.*



## Felon Disenfranchisement

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An unusual attempt to pass a law giving the General Assembly the power to restore voting rights for non-violent felons failed in the House. The ACLU agreed with the purpose of the bill, but then conceded that the Virginia Constitution would need to be amended for the General Assembly to have such powers. A constitutional amendment supported by the ACLU was carried over to 2013.

*Reform of felon disenfranchisement law fails yet again.*

**HB 16 (Habeeb); HB 1098 (Herring) Automatic Restoration of Civil Rights for Certain Felons.** Automatically grants restoration of civil rights to individuals convicted of most non-violent felonies upon completion of their sentence, including probation or parole, and payment of restitution, fines, costs, and fees. ACLU monitored. *HB 16 and HB 1098 failed in House Militia, Police and Public Safety Committee.*

**HJ 17 (Morrissey); HJ 125 (Carr); SJ 35 (Miller, Y.B.) Automatic Restoration of Civil Rights.** Amends the Virginia Constitution to authorize the General Assembly to provide by general law for the restoration of civil rights for persons convicted of felonies who have completed service of their sentence, including any period or condition of probation, parole or suspension of sentence. Currently, only the Governor has the authority to restore voting rights. ACLU supported. *HJ 17 and HJ 125 were left in House Privileges and Elections Committee. SJ 35 was continued to 2013 in Senate Privileges and Elections Committee.*





# Equal Rights

As in previous sessions, the General Assembly once again failed to treat seriously any of the many bills to prohibit employment discrimination based on sexual orientation or gender identity.

*Passage of anti-LGBT adoption and foster bill shows legislators' bias. Bills to prohibit LGBT employment discrimination fail as usual.*

Virginia also passed so-called “conscience clause” legislation that permits discrimination by any private foster care or adoption agency, including those receiving millions in tax-payer funds. Under the new law, such agencies have the right to refuse services to otherwise qualified parents and adoptive or foster care children based on individual characteristics such as age, religion, disability, marital status or sexual orientation if they say that their decision to do so is based on “religious” or “moral” beliefs. No licensing action may be taken against them for such discriminatory policies, no state or local agency may refuse to contract with them because of their discriminatory policies, and no lawsuit may be brought against them even if a child is harmed by the discriminatory policies.

## ***Passed***

### **HB 189 (Gilbert); SB 349 (McWaters) Discrimination by Private Adoption Agencies.**

Allows a private foster care and adoption agency to discriminate against potential parents and adoptive and foster care children on any basis said to be in line with the adoption agency’s religious or moral beliefs. ACLU opposed. *HB 189 passed the House (71-Y, 28-N); passed the Senate (22-Y, 18-N); signed by the Governor. SB 349 passed the Senate (22-Y, 18-N); passed by the House (71-Y, 28-N); signed by the Governor.*

*Note: The ACLU is sensitive to the important constitutional right of religious liberty and strongly advocates for the right of each religious institution to practice its own faith. However, when a private organization contracts with the state to perform an important governmental function — such as certifying adoptive parents or placing children in foster care — it should do so in a non-discriminatory fashion.*

**HJ 64 (McClellan); HJ 65 (McClellan); SJ 89 (Marsh); SJ 13 (Marsh). Recognizing African-American Legislators during Reconstruction and Representatives to the Virginia Constitutional Convention.** Resolutions to recognize and celebrate the service of African-American men elected to the Virginia General Assembly during Reconstruction and the Virginia Constitutional Convention of 1867-1868 on the 150th anniversary of the Emancipation Proclamation on January 1, 2013. ACLU supported. *HJ 64 incorporated into HJ 65, and passed the House (98-Y, 0-N); substitute version passed by the Senate; substitute rejected by the House (1-Y, 94-N); conference committee version approved by House and Senate. SJ 89 incorporated into SJ 13 and passed the Senate by voice vote; substitute version passed by the House (98-Y, 0-N); substitute rejected by the Senate by voice vote; conference committee version adopted by House (92-Y, 0-N) and Senate by voice vote.*

## ***Failed***

**HB 218 (Bell, Richard P.); SB 399 (Hanger). Special Education for Deaf and Hard-of-Hearing Children.** Requires schools to ensure that Individualized Education Program (IEP)

teams consider and address the specific communication needs of deaf and hard-of-hearing children in their individual IEPs. ACLU supported. *HB 218 passed House (98-Y, 1-N); continued to 2013 in Senate Education and Health. SB 399 carried over to 2013 in Senate Education and Health.*

**HB 420 (Watts); SB 552 (Favola) Eligibility for Public Assistance.** Provides that a person who are otherwise eligible to receive Temporary Assistance for Needy Families (TANF) benefits shall not be denied assistance solely because they have been convicted of a felony drug offense provided they comply with all obligations imposed by the court, have completed substance abuse treatment, and participate in drug screenings. ACLU supported. *HB 420 killed in House Appropriations. SB 552 passed the Senate with substitute (31-Y, 9-N); killed in House Appropriations.*

**HB 527 (McQuinn) Establishing Virginia Slave Commission.** Establishes the Virginia Slave Commission for the purpose of addressing contemporary political, economic, educational, and societal issues and public policies whose roots lie in the transatlantic slave trade. ACLU supported. *Killed in House Rules Committee.*

**HB 613 (LeMunyon); HB 692 (Plum); HB 694 (Plum); HB 977 (Scott); HB 1099 (Herring); HB 1175 (Englin); SB 263 (Ebbin) Prohibiting Sexual Orientation Discrimination in Employment.** HB 613 prohibits discrimination on any grounds in public employment, except for reasons related to job qualifications, ability or performance. HB 692, HB 977, HB 1099, HB 1175 and SB 263 amend Virginia law to codify prohibitions against discrimination in public employment based on race, national origin, age, sex, disability, marital status, religion and sexual orientation and gender identity. HB 694 and HB 977 also amend the policy statement of the Virginia Human Rights Act to include sexual orientation nondiscrimination. ACLU supported. *HB 692, HB 694, HB 977 and HB 1175 incorporated into HB 613, which was killed in House General Laws Subcommittee. HB 1099 incorporated into HB 1003, which was killed in House General Laws Committee. SB 263 killed in Senate General Laws and Technology Committee.*

**HB 1048 (Keam) Miranda Rights in Arrestee's Native Language.** Requires arresting officers to advise arrestees of their Miranda rights in their native language, in either written or verbal form, to ensure arrestees comprehend their rights. ACLU supported. *Killed in House Courts of Justice Criminal Subcommittee.*

**SB 569 (Ebbin); SB 647 (McEachin) Prohibiting Discrimination by Private Adoption Agencies.** Prohibits the Department of Social Services from contracting with private foster care and adoption agencies – including many that are run by religious institutions – that discriminate against potential parents on the basis of race, religion, national origin, sex, age, family status, disability, sexual orientation, or gender identity. ACLU supported. *SB 647 incorporated into SB 569, which was killed in Senate Rehabilitation and Social Services Committee.*

**SB 651 (McEachin); Women- and Minority-Owned Businesses.** Amends the Virginia Procurement Act to require state agencies to take corrective measures when analysis shows a statistically significant disparity between the availability and utilization of women-owned and minority-owned businesses. The current law allows, but does not require the Governor to do so. ACLU supported. *Passed the Senate (23-Y, 17-N); continued to 2013 in House General Laws Committee.*



## Reproductive Rights

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The 2012 session witnessed an increase in the number of bills restricting reproductive rights – from 9 bills introduced last year to 13 bills this year. All but one – a controversial mandatory ultrasound bill that brought protestors to the Capitol in record numbers and garnered national media attention – failed.

*Mandatory ultrasound prior to abortion becomes law in Virginia.*

The ultrasound bill, as passed, mandates that every woman undergoing an abortion must first have a trans-abdominal ultrasound and be given the option to view the ultrasound image and hear the heartbeat. The ultrasound is optional only if the woman is the victim of rape or incest and the incident was reported to law enforcement.

### *Passed*

**HB 261 (Cole); HB 462 (Byron); SB 279 (Smith); SB 484 (Vogel) Mandatory Ultrasound Prior to Abortion.** These bills require a woman to have an ultrasound prior to obtaining an abortion. HB 261 extends the waiting period before obtaining an abortion from 24 hours to 48 hours. HB 462 and SB 484 require that a woman be offered an opportunity to view an image of the fetus and hear the fetal heartbeat. SB 279 requires that a woman be offered the option to view an image of the fetus. *HB 261 was incorporated into HB 462, which passed the House (63-Y, 36-N); passed Senate with amendment (21-Y 19-N); House approved amendment (61-Y 35-N); signed by the Governor. SB 279 was incorporated into SB 484, passed the Senate (21-Y, 18-N); passed House with substitute (65-Y 32-N 1-A); failed in the Senate. Note: The final bill requires that every woman undergoing an abortion must first have a transabdominal ultrasound to determine the gestational age of the fetus and she must be given the option to view the ultrasound image and hear the heartbeat. The bill also requires the image to be kept in the woman's medical records for seven years. The ultrasound is not required if the woman is the victim of rape or incest and the incident was reported to law enforcement.*

### *Failed*

**HB 1 (Marshall, R.) Defining Personhood.** Grants fertilized eggs the status of persons under Virginia law, subject only to the U.S. Constitution and U.S. Supreme Court precedents. *This bill could outlaw all abortions and contraception in Virginia if current U.S. Supreme Court precedent is overturned. ACLU opposed. HB 1 passed the House (66-Y, 32-N); continued to 2013 in Senate Education and Health Committee.*

**HB 62 (Cole) Abortion Funding Ban for Low-Income Women with Incapacitated Fetuses.** Repeals current Virginia law providing state funding for an abortion to low-income women when a doctor believes and certifies that the fetus would be born with a gross and totally incapacitating physical deformity or mental deficiency. ACLU opposed. *Passed the House (65-Y, 35-N); killed in Senate Finance Committee.*

**HB 464 (Byron); SB 496 (Watkins) Prohibiting Abortion Coverage in the Virginia Health Care Exchange.** Creates the state's health care exchange under the federal Affordable Care Act but prohibits the sale of insurance coverage for abortions, except when the pregnancy endangers

the mother's life or is the result of rape or incest. ACLU opposed. *HB 464 killed in House Commerce and Labor subcommittee. SB 496 continued to 2013 in Senate Commerce and Labor.*

**HB 1174 (Marshall, R.G.) Insurance Coverage for Abortion.** Requires all insurance companies that provide plans with abortion coverage in Virginia to also provide plans that do not include abortion coverage. *Abortion is part of comprehensive reproductive medical care and should not be singled out for separate coverage.* ACLU opposed. *Left in House Commerce and Labor Committee.*

**HB 1285 (Anderson); SB 637 (Obenshain) Abortion Prohibited after 20 Weeks Gestation.** Prohibits abortion after 20 weeks gestation unless, in reasonable medical judgment, the mother is at risk of substantial and irreversible physical impairment of a major bodily function or death. *The ACLU believes these bills are unconstitutional because they prohibit abortions the U.S. Supreme Court has ruled are constitutionally protected. Moreover, the exceptions provided in these bills are very narrow. The Supreme Court has rejected the notion that a health exception can be limited to only those affecting a major physical function.* ACLU opposed. *HB 1285 continued to 2013 in House Courts of Justice Committee. SB 637 killed in Senate Education and Health Committee.*

**SB 277 (Smith) Prohibiting Forced or Coerced Abortion.** Prohibits any person from forcing or coercing a pregnant female to have an abortion. *Regardless of medical procedure, no woman should be forced or coerced into a decision that is not in her best interest. This bill purports to help women who are in abusive relationships. However, domestic violence and child abuse are already illegal, and it has always been illegal to threaten or force someone to undergo a medical procedure against his or her will. By singling out abortion, proponents of the bill are really taking away women's decision-making abilities.* ACLU opposed. *Passed the Senate (22-Y, 18-N); continued to 2013 in House Courts of Justice Committee.*

**SB 380 (McEachin) Defining Birth Control.** Defines birth control as contraceptive methods approved by the U.S. Food and Drug Administration and states that birth control does not constitute abortion. ACLU supported. *Killed in Senate Education and Health Committee.*

**Budget Amendment to Restore Funding for the Teen Pregnancy Prevention Initiative,** Budget Amendment Item 297#14h (Englin). This budget amendment restores funding for the Teen Pregnancy Prevention Initiative, which was cut by the Governor in his proposed 2012-2014 budget. TPPI provides sex education and pregnancy prevention services to at-risk teens. ACLU supported. *Failed to be included in the final approved budget.*



The ACLU continues to work with a broad coalition of organizations to modernize policies allowing the use of restraints on incarcerated pregnant women. Unfortunately, a subcommittee of the House Militia, Police, and Public Safety Committee blocked a bill that would have created uniform standards for all state prisons, local and regional jails, and juvenile correctional facilities. The bill allowed for the use of wrist restraints only on pregnant inmates

during transportation and included a broad exception to give prison or jail officials the discretion to use restraints where a “reasonably necessary circumstance” arose during any stage of pregnancy, childbirth, or post-partum recovery.

Women’s rights advanced in Virginia with the passage of bills related to the prevention of human trafficking. Delegate Watt’s HB 1188 and Senator Ebbin’s SB 259 require the Board of Education to provide awareness and training materials for public schools on human trafficking, including the prevention of trafficking of children.

*Legislators address human trafficking through educational programs.*

Delegate Bulova’s HB 1200 also passed, providing crucial education and awareness in the form of a requirement that exotic dancing businesses post the telephone number of the National Human Trafficking Resource Center hotline.

### ***Passed***

#### **HB 1188 (Watts); SB 259 (Ebbin) Resources on Human Trafficking in Public Schools.**

Requires the Board of Education to provide awareness and training materials for public schools on human trafficking, including the prevention of trafficking of children. ACLU supported. *HB 1188 passed the House (98-Y, 0-N); passed the Senate with amendment (40-Y, 0-N); amendment agreed to by the House (96-Y, 0-N); signed by the Governor. SB 259 passed the Senate (40-Y, 0-N); passed by the House with amendment (96-Y, 0-N); amendment agreed to by the Senate (38-Y, 0-N); signed by the Governor.*

**HB 1200 (Bulova) Human trafficking hotline; posted notices.** Provides that any striptease or topless place of business must post the telephone number of the National Human Trafficking Resource Center hotline. ACLU supported. *Passed the House with a substitute (100-Y, 0-N); passed the Senate (39-Y, 0-N); signed by the Governor.*

### ***Failed***

**HB 836 (Hope) Prohibits Shackling of Pregnant Prisoners.** Prohibits, with few exceptions, state, regional, local, and juvenile correctional facilities from using restraints on any pregnant prisoner during labor, transport, delivery or post-partum recovery. ACLU supported. *Killed in House Militia, Police and Public Safety Subcommittee.*

**HJ 106 (Filler-Corn) National Women’s History Museum.** A resolution supporting the creation of a National Women’s History Museum on the National Mall in D.C. to recognize and honor the contributions of women in the U.S. ACLU supported. *Killed in House Rules Committee.*

**HJ 115 (Surovell); SJ 130 (Barker) Equal Rights Amendment.** Ratifies the Equal Rights Amendment to the U.S. Constitution, which affirms that women and men have equal rights under the law. ACLU supported. *HJ 115 was left in House Privileges and Elections Committee. SJ 130 was passed by the Senate (24-Y, 15-N); left in House Privileges and Elections Committee.*



## Voting and Elections

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After several years of unsuccessful attempts, Virginia legislators approved legislation requiring qualified voters to present ID to vote or be required to cast a provisional ballot. The new law eliminates the current affirmation of identity affidavit, which allows voters without ID to swear to their identity and cast a regular ballot.

*Virginia passes onerous and unnecessary voter ID law.*

The bill passed despite no indication of in-person voter impersonation in Virginia and overwhelming evidence the new law will disproportionately impact low-income, elderly, and minority individuals. The General Assembly rejected proposed amendments from the governor that would make the law less onerous, but the governor signed the bill despite being urged to veto the bill by the ACLU and others. Instead, the governor issued an executive directive requiring the State Board of Elections to, among other provisions, send new voter registration cards to all registered voters at an estimated cost to taxpayers of over \$1 million.

### *Passed*

**HB 9 (Cole); HB 1084 (Hugo); SB 1 (Martin); SB 55 (Obenshain) Voter ID Required to Vote.** HB 1084, SB 1 and SB 55 eliminate the “Affirmation of Identity” option and require voters without ID to cast provisional ballots. SB 55 also expands the list of acceptable forms of ID. ACLU opposed and urged the governor to veto the bills after his amendments were rejected. *HB 9 passed the House (69-Y, 30-N); passed the Senate with Lt. Governor Bolling casting the tie-breaking vote (21-Y, 20-N); Governor’s amendments rejected by the General Assembly; signed by the Governor. HB 1084 killed in House Privileges and Elections Subcommittee on Elections. SB 55 incorporated into SB 1, which passed the Senate (21-Y, 20-N) with Lt. Gov. Bolling casting the tie-breaking vote; passed the House with a substitute (66-Y, 31-N); Governor’s amendments adopted in-part; signed by Governor.*

### *Failed*

**HB 64 (Cole) Voting Assistance Prohibited.** Prohibits anyone from assisting more than two persons in the casting of in-person or absentee ballots. Does not apply to election registrars, electoral board members, or election officials. ACLU opposed. *HB 64 killed in House Privileges and Elections Subcommittee on Elections.*

**HB 569 (Marshall, D.W.) HB 828 (Marshall, R.G.); HB 895 (Albo) Proof of Citizenship to Register to Vote and Photo ID to Vote.** HB 569 and HB 828 require proof of citizenship to register to vote and a government-issued photo ID to vote. HB 895 requires proof of citizenship, proof of residency, and a government-issued photo ID to register to vote. ACLU opposed. *HB 569 was left in House Appropriations Committee. HB 828 was killed in House Privileges and Elections Subcommittee on Elections. HB 895 was left in House Privileges and Elections Committee.*

**HB 1227 (Marshall, R.G.) Prohibiting Loyalty Oaths in Primary Elections.** Prohibits a political party from requiring a loyalty oath or pledge to support the party’s candidate as a condition to participate in the party’s presidential primary. ACLU supported. *Killed in House Privileges and Elections Subcommittee.*



## Immigrants' Rights

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For the past few years as the anti-immigrant sentiment in Virginia seemed to subside from its peak in the 2008 General Assembly Session, legislators introduced fewer targeting Virginia's foreign born population. Following the adoption of tough new laws in Alabama and Georgia, Virginia's legislators showed a renewed interest in this subject despite the fact that Virginia already has statewide legislation mandating immigration checks at the time of any custodial arrest, requiring legal presence to obtain a driver's license and barring access to Medicaid and other benefit programs.

*Number of anti-immigrant bills increases, but none of consequence passes.*

Legislators introduced bills to require convicted persons to pay the cost of court interpreters, to require public schools to take a census of students based on place of birth, and to require police to conduct background checks during routine traffic stops, however, no bill with a direct negative effect on immigrants' rights passed the General Assembly in 2012 and one positive bill to expand access to health care for legal immigrant mothers and children passed.

### *Passed*

**HR 10 (Miller, J.H.). Immigration Enforcement Agreement Resolution.** HR 10 urges the President of the United States and Secretary of Homeland Security to honor Virginia's request to enter into a 287(g) memorandum of agreement allowing the Virginia State Police to enforce federal immigration laws. ACLU opposed. *HR 10 was approved by the House (73-Y, 23-N). Note: While this bill was pending, the Secretary notified the Governor that she had rejected his request for a 287(g) agreement.*

**HB 183 (O'Bannon); SB 568 (Ebbin) Medicaid Coverage for Certain Immigrants.** Provides Medicaid coverage for pregnant immigrant women and immigrant children lawfully residing in the U.S. who are not admitted for permanent residence, but who are otherwise eligible for medical assistance. ACLU supported. *HB 183 passed the House (99-Y, 1-N); passed Senate with an amendment (40-Y, 0-N); Senate amendment rejected by the House; conference committee version adopted by House and Senate; signed by the Governor. SB 568 passed with an amendment (36-Y, 4-N); passed House with amendment (99-Y, 0-N); House amendment rejected by the Senate; conference committee version adopted by House and Senate; signed by the Governor.*

### *Failed*

**HB 89 (Albo); HB 320 (Ingram); HB 958 (Bell, Robert B.); HB 1060 (Anderson) Arresting Officer to Ascertain Citizenship.** In 2008, legislation was passed requiring jail officials to ascertain the citizenship status of all persons taken into custody at the jail. HB 958 clarifies existing law to ensure officials check the citizenship status of all individuals who are arrested and taken into custody including those released on bail. HB 1060 requires arresting officers to question the citizenship status of all arrestees, whether or not they are taken into custody. ACLU opposed. *HB 89 and HB 320 incorporated into HB 958, which passed the House (81-Y, 19-N); passed Senate with substitute (26-Y 14-N); failed to pass with substitute in the House. HB 1060 passed the House (75-Y, 25 -N); failed in Senate Courts of Justice Committee.*

**HB 108 (Albo) “Anti-Sanctuary Law”** Prohibits adoption of any policy restricting the right of state and local employees to cooperate with federal immigration officials. Duplicates an existing federal law. ACLU opposed. *Left in House Courts of Justice Committee.*

**HB 138 (Cole) Reporting Citizenship Status of Public School Students.** Requires public schools to determine which students were born outside the U.S. or who are the children of parents not lawfully present in the U.S. The information will be compiled and reported to the State Department of Education and ultimately the General Assembly. ACLU opposed. *HB 138 was withdrawn by the patron in House Education Subcommittee.*

**HB 173 (Loupassi); SB 184 (Stuart) Cost of English Interpreters.** Requires non-English speaking defendants to pay for interpreters if they are convicted in criminal trials. ACLU opposed. *HB 173 passed the House (73-Y, 26-N); continued to 2013 in Senate Finance Committee. SB 184 continued to 2013 in Senate Finance Committee.*

**HB 472 (Albo); SB 460 (Black) Ascertaining Immigration Status at Traffic Stop.** Requires law enforcement officers to detain and question the immigration status of any person during a traffic stop or when the officer suspects criminal activity is taking place. When an officer has “reasonable suspicion” that a person is unlawfully present, the officer must detain the individual and make an immigration inquiry to Immigration and Customs Enforcement (ICE). Following the results of the ICE inquiry, an individual may be arrested for a criminal violation or detained, without a criminal charge, until ICE takes custody of the person. ACLU opposed. *HB 472 was left in House Courts of Justice Committee. SB 460 was killed in Senate Courts of Justice.*

**HB 779 (Lopez) In-State Tuition for Undocumented Immigrants.** Allows undocumented immigrants to apply for in-state tuition if (1) they have resided with parent or guardian while attending high school in Virginia, (2) graduated from high school in Virginia or received GED in the state, (3) resided in Virginia for at least three years since high school graduation, (4) are applying to become permanent residents, and (5) the parent or guardian has filed Virginia income taxes for the last three years. ACLU supported. *Left in House Courts of Justice.*

**HB 1001 (Ramadan) State Police to Perform Federal Immigration Law Enforcement.** HB 1001 directs the State Police to enter into agreement with federal government to allow State Police to perform federal immigration law enforcement functions in Virginia. *The ACLU does not oppose appropriate enforcement of federal immigration laws by federal agencies, but objects to enforcement by local and state personnel because immigration is a federal, not a state, function.* ACLU opposed. *HB 1001 passed the House (77-Y, 23-N); continued to 2013 in Senate Courts of Justice Committee.*

**HB 1077 (Hugo) Expanded Use of E-Verify.** Targeted at the Centerville Day Labor Center, this bill requires any agency referring employees for work to enroll in and use the E-Verify program to verify laborers’ work status. *The ACLU opposed the mandatory use of the E-Verify program because there are many documented cases of E-verify incorrectly identifying as undocumented individuals those who are legally present, resulting in detention and even deportation hearings. Continued to 2013 in House Commerce and Labor Committee.*

**HB 1282 (Cline) Prohibition on In-State Tuition for Undocumented Immigrants.** Any person who is not lawfully present is not eligible for any post-secondary educational benefit, including in-state tuition. ACLU opposed. *Left in House Courts of Justice Committee.*



Several bills removing the mandate that localities print public notices in newspaper resulted in considerable debate in the legislature. After taking a careful look at what should constitute public notice and considering all segments of the community, some of which are less likely to have internet access than others, lawmakers decided that it was too soon to eliminate print versions of public notices.

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

### ***Failed***

**HB 222 (Head); HB 773 (Landes); HB 1193 (Villanueva); SB 664 (Smith) Change to Public Notice Requirements.** Under current law local governments are required to publish certain legal notices as well as provide notice of all public hearings and meetings in newspapers. HB 222, HB 773, and SB 664 allow localities to place such notices on the internet, radio or television in lieu of local newspapers. HB 1193 makes newspaper publication of procurement notices optional and requires notice be provided on the Department of General Services' electronic procurement website. ACLU opposed. *HB 222 killed in House Courts of Justice Civil Subcommittee. HB 773 killed in House Counties, Cities and Towns Committee. HB 1193 passed the House (78-Y, 21-N); killed in Senate General Laws and Technology Committee. SB 664 left in Senate Local Government Committee.*

**HB 397 (Hope) Expansion of Freedom of Information Act.** Expands the Freedom of Information Act by requiring the Virginia Parole Board's guidance documents to be available as public records. ACLU supported. *Killed in House General Laws Committee.*

**HB 1105 (Greason); HB 1149 (Dudenhefer) Public Meetings via Electronic Communications.** These bills allow state public bodies to conduct meetings open to the public by audio or video conference instead of solely in-person so long as it meets certain communications requirements. HB 1105 also requires members of the public to incur the cost of participating electronically, but limits the number of electronic meetings to no more than 50% of the body's meetings per year. HB 1149 expands the ability to conduct meetings electronically to local public bodies. *The ACLU supports laws that use technology to make meetings easier and more open to the public, but we are not certain this bill accomplishes those goals. ACLU monitored. HB 1105 was killed in House General Laws Subcommittee on FOIA/Procurement. HB 1149 failed in House General Laws Subcommittee on FOIA/Procurement.*

**HR 4 (Surovell) Recording of House of Delegates Committees and Subcommittees Meetings.** A resolution to digitally record meetings of the House of Delegates standing committees and subcommittees, and to have those recordings available for download. ACLU supported. *Killed in House Rules Committee.*

**SB 107 (Edwards) Disclosure of Inactive Criminal Investigative Records under FOIA.** Requires the disclosure of records of inactive criminal investigations or prosecutions when requested under the state Freedom of Information Act. ACLU supported. *Killed in Senate General Laws and Technology Committee.*



## Criminal Justice

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With support from the ACLU and sponsor Del. Bob Marshall, legislators approved a bill that prohibits the state from assisting the federal government or military in enforcing the provisions of the National Defense Authorization Act that allow for indefinite detention of American citizens suspected of terrorism.

*Legislators pass anti-NDAA bill opposing indefinite detentions.*

Unfortunately, similar to years past, good legislation that would have provided additional due process protections for criminal defendants or opportunities for rehabilitation failed.

Lawmakers proposed a study to investigate solitary confinement after news reports shed light on its pervasiveness in Virginia prisons. Despite overwhelming evidence of its negative consequences, problematic constitutional concerns, and its overuse being contrary to national standards of treatment of prisoners, the House Rules Committee refused to approve the study.

### *Passed*

**HB 718 (Kilgore); SB 419 (Stanley) Expansion of Juvenile Transfers to Adult Court.** As introduced, the bills dramatically expanded the list of those crimes in which a juvenile may be tried as an adult at the discretion of the commonwealth attorney. HB 718 was significantly amended after the defeat of SB 419 to narrow that expansion. ACLU opposed. *SB 419 was killed in Senate Courts of Justice Committee. HB 718 passed the House (79-Y, 21-N); passed Senate with a substitute (26-Y, 14-N); House agreed to substitute (82-Y, 14-N); Governor's amendments agreed to; signed by Governor.*

**HB 753 (Cline) Juvenile Offenses Requiring Sex Offender Registration.** Current law does not specifically address any time frame during which a prosecutor must file a motion to require a juvenile sex offender to register. HB 753 allows a prosecutor to file that motion at any time. Amended on January 23 to state that the Commonwealth's Attorney may only file the motion as long as the court has jurisdiction (i.e., within 21 days of the judgment or during probation under the court). ACLU opposed. *Passed the House (98-Y, 0-N); passed Senate with a substitute (36-Y, 4-N); substitute agreed to by the House (100-Y, 0-N); signed by the Governor.*

**HB 1160 (Marshall, R.G.) Opposing Indefinite Detention of U.S. Citizens.** Prohibits Virginia from assisting the federal government or U.S. military in the investigation, prosecution or indefinite detainment of U.S. citizens under the National Defense Authorization Act when it violates the Virginia Constitution. ACLU supported. *Passed the House (96-Y, 4-N); passed Senate (39-Y, 1-N); Governor's amendment agreed to; signed by the Governor.*

**HB 1271 (Jones); SB 91 (Howell); SB 314 (Blevins) New Assessment Tool for Civil Commitment of Sexually Violent Predators.** Eliminates the current assessment instrument (i.e., Static-99) for evaluating whether a prisoner convicted of a sexually violent offense should be civilly committed, and requires the development of a new protocol to assess such prisoners. *Static-99 is outdated, allowing for the civil commitment of individuals who should not continue to be incarcerated. The ACLU hopes that a new look at assessment tools will result in the use of more accurate models for civil commitment. HB 1271 passed the House (100-Y, 0-N); passed Senate with a substitute (36-Y, 4-N); signed by governor after amendments. SB 91 incorporated*

*into SB 314, and passed the Senate (40-Y, 0-N); passed the House with a substitute (98-Y, 0-N); House substitute adopted by the Senate; signed by the Governor.*

***Failed***

**HB 51 (Albo); HB 750 (Cline) Elimination of Deferred Judgment.** Eliminates the ability of judges to offer deferred judgment in which, for example, criminal charges are dropped after a finding of guilt if the defendant commits no additional crimes during a certain period of time. ACLU opposed. *HB 51 incorporated into HB 750, which passed the House (72-Y, 26-N); killed in Senate Courts of Justice Committee.*

**HB 165 (Hope) Conditional Release of Older Prisoners.** Under current law older prisoners other than class one felons who meet certain age and time-served criteria may petition the Parole Board for conditional release. HB 165 allows all prisoners over 60 to submit such petitions. ACLU supported. *Killed in House Militia, Police and Public Safety Subcommittee.*

**HB 223 (Habeeb) Writ of Actual Innocence for Certain Juveniles.** Extends the ability to petition for a writ to juveniles found guilty of an offense that would be a felony if committed by an adult. ACLU supported. *Killed in House Courts of Justice Criminal Subcommittee.*

**HB 227 (Habeeb) Expungement of Police and Court Records When Prosecutors Drop Charges.** Automatically expunges the police and court records of the person charged in cases in which the prosecution voluntarily dropped the charges (i.e., nolle prosequi). ACLU supported. *Failed in House Courts of Justice Criminal Subcommittee.*

**HB 1278 (Morrissey) Reform of Writs of Actual Innocence.** Under current law, a petition for a writ of actual innocence based on biological evidence may only be filed by a person who pled not guilty and was sentenced to death or convicted of a Class 1 or Class 2 felony or a felony in which the maximum penalty is life imprisonment. Petitioners for a writ based on non-biological evidence must have pled not guilty and are limited to just one petition. This bill would allow petitions, based on either biological or non-biological evidence, for any felony regardless of plea. ACLU supported. *Killed in House Courts of Justice Criminal Subcommittee.*

**HJ 66 (McClellan); HJ 89 (Robinson) Study on Expulsion and Suspension Practices in Schools.** Directs the Joint Legislative Audit and Review Commission to review and consider school discipline practices and effective alternatives to suspension and expulsion. ACLU supported. *Killed in House Rules Committee.*

**HJ 122 (Sickles) Study on Reinstating Parole.** Establishes a joint subcommittee to study reinstating parole in Virginia. ACLU supported. *Killed in House Courts of Justice Committee.*

**HJ 126 (Hope); SJ 93 (Ebbin) Study on Solitary Confinement.** Directs the Joint Legislative Audit and Review Commission to study the use of solitary confinement by the Department of Corrections. ACLU supported. *HJ 126 killed in House Rules Subcommittee on Studies. SJ 93 passed the Senate by voice vote; killed in House Rules Committee.*

**HJ 140 (Englin) Study on Legalization of Marijuana.** Establishes a joint subcommittee to study the potential revenue impact of legalizing the sale and use of marijuana with certain restrictions, and selling it through state ABC stores. ACLU supported. *Killed in House Rules.*