

# ACLU of Virginia

## 2012 General Assembly Preview

January 9, 2012

**Note:** Listed below are some of the bills we expect to see in the 2012 General Assembly. A few have already been pre-filed and we also describe bills we expect to see in the session. As bills are introduced, they will be listed on the ACLU of Virginia website, [www.acluva.org](http://www.acluva.org).

### I. Religious Liberty

#### *Pre-filed*

**State Scholarships for Religious Training (HJ 9, Greason).** Amends the Virginia Constitution to allow the General Assembly to provide loans or grants to chaplaincy students for the United States Armed Forces attending Virginia universities whose primary purpose is to provide religious training or theological education. *ACLU opposes.*

#### *Anticipated*

**Prayer at Government-Sanctioned Events.** Allows sectarian prayers at government events by preventing government agencies from regulating the content of prayer at such events. *ACLU opposes.*

**Tax Credits for Businesses Providing Private School Scholarships.** Establishes a tax credit for corporations that make donations to non-profit organizations which provide scholarships to low-income students to attend private elementary or secondary schools, including religious schools. *ACLU opposes.*

### II. Reproductive Freedom

#### *Pre-filed*

**Personhood Amendment (HB 1, Marshall, R.)** Grants fertilized eggs the status of a person under Virginia law. The bill automatically outlaws all abortions in Virginia if the U.S. Supreme Court precedent establishing the right to an abortion is overturned. Finally, the bill anticipates a legal scenario that would ban some of the most commonly used methods of birth control. *ACLU opposes.*

**Abortion Funding Ban for Low-Income Women with Incapacitated Fetuses (HB 62, Cole).** Repeals current Virginia law permitting the Board of Health to provide low-income women with funding for abortions when a doctor believes and certifies that the fetus would be born with a gross and totally incapacitating physical deformity or mental deficiency. *ACLU opposes.*

### *Anticipated*

**Mandatory Ultrasound Prior to Abortion.** Requires a woman to undergo a medically unnecessary ultrasound prior to obtaining an abortion and be offered an opportunity to view an image of the fetus. *ACLU opposes.*

**Requirement to Anesthetize Fetus prior to Abortion.** Requires doctors to anesthetize a fetus prior to the abortion and to include informational materials for patients a statement that a fetus feels pain at twenty weeks. *ACLU opposes.*

## **III. Privacy**

### *Pre-filed*

**Mandatory Drug Testing for Public Benefits (HB 73, Bell, Richard; SB 6, Martin).** Requires 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 opposes.*

**Mandatory Drug Testing for Unemployment Benefits (HB 148, Ransone).** Requires unemployed individuals to provide the Virginia Employment Commission with the results of a negative drug test in order to be eligible for unemployment benefits. *ACLU opposes.*

### *Anticipated*

**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. *The ACLU supports prohibiting unauthorized electronic tracking, but strongly opposes a law that would allow electronic tracking by law enforcement officers without a court approved warrant.*

## **IV. Death Penalty**

### *Pre-filed*

**Elimination of the Triggerman Rule (SB 58, Obenshain).** 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 eligible for the death penalty. *ACLU opposes.*

## V. Voting Rights

### *Pre-filed*

**Mandatory ID or Provisional Ballot (HB 9, Cole).** Requires voters who are unable to present ID at the polls to sign an affirmation of identity affidavit and vote by provisional ballot. Currently, a voter without ID may sign an affidavit and cast a regular ballot. *ACLU opposes.*

**Mandatory Voter ID (SB 55, Obenshain).** Requires voters to show ID in order to vote. Voters without ID may only cast a provisional ballot. This bill eliminates the affirmation of identity affidavit option, but expands the list of acceptable IDs to include a current utility bill, bank statement, government check, or paycheck that shows the name and address of the voter. *ACLU opposes.*

**Unlawful Solicitation of Absentee Ballot Applications (HB 61, Cole; SB 63, Stanley).** Prohibits individuals from 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 a family member). *ACLU opposes.*

**Closed Electoral Board Meetings (HB 63, Cole).** Requires that meetings of the electoral board that are conducted to determine the validity of provisional ballots following an election be open only to authorized party and candidate representatives and the persons who cast the provisional ballots. *ACLU opposes.*

**Voting Assistance Prohibited (HB 64, Cole).** Prohibits anyone from assisting more than two persons in the casting of in-person or absentee ballots in one election. The prohibition does not apply to election registrars, electoral boards, or election officers. *ACLU opposes.*

**Mandatory Voter ID; Elimination of Affidavit Option. (SB 1, Martin).** Requires voters to show a valid government-issued ID or valid employer-issued photo ID in order to vote. Voters without ID must vote by provisional ballot and subsequently provide ID to election officials. The bill eliminates the current affirmation of identity affidavit option, which allows qualified voters without ID to sign the affidavit and then cast an official ballot. Additionally, the bill eliminates the voter registration card as an acceptable form of ID. *ACLU opposes.*

**No Excuse Absentee Voting (SB 12 Howell).** Allows any voter to vote by absentee ballot for any reason. *ACLU supports.*

### *Anticipated*

**Early Voting.** Allows any voter to vote in-person a certain number of days before an election. *ACLU Supports.*

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

## VI. Restoration of Voting Rights

### *Pre-filed*

**Automatic Restoration of Civil Rights for Certain Felons (HB 16, Habeeb).** 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. *The ACLU is monitoring this bill. While the bill has good intentions, the ACLU does not believe the General Assembly has the authority, without a constitutional amendment, to usurp the Governor’s authority to restore voting rights. (See HJ 17, below.)*

**Automatic Restoration of Civil Rights (HJ 17, Morrissey).** 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 rights. The proposed amendment retains the right of the Governor to restore rights. *ACLU supports.*

## VII. Criminal Justice & Due Process

### *Pre-filed*

**Elimination of Deferred Judgment (HB 51, Albo).** 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 opposes.*

### *Anticipated*

**Criminalizing “Sexting” by Juveniles.** Makes it a crime for a juvenile to send sexually explicit images to another juvenile. *The ACLU does not condone “sexting” and does not oppose appropriate parental or school-imposed punishment, but does not believe minors should face criminal charges for such behavior. ACLU opposes.*

**Expansion of Charging Juveniles as Adults.** Expands the authority of Commonwealth’s Attorneys to charge juveniles as adults for additional crimes, such as gang offenses and second or subsequent drug violations. *ACLU opposes.*

**Arrest for Class 1 & 2 Misdemeanors.** Allows law enforcement officers to arrest, and therefore search, any person detained for committing Class 1 or 2 misdemeanors. Under current law, a law enforcement officer is limited to issuing a summons to an individual charged with Class 1 or 2 misdemeanors, unless the person is intoxicated, unlikely to appear in court, refuses to stop the unlawful act, or poses a danger to himself or others. *ACLU opposes.*

## VIII. Immigrants' Rights

### *Pre-filed*

**Arresting Officer to Ascertain Citizenship (HB 89, Albo).** Expands current law by requiring the arresting law enforcement officer to ask every arrestee whether he was born in a country other than the United States and is a citizen of a country other than the United States. Current law only requires sheriffs to make a query into legal presence when a person is taken into custody at a jail. *ACLU opposes.*

**Mandatory Enforcement of Immigration Law by State and Localities (HB 108, Albo).** Requires state and local agencies to enforce federal immigration laws. *ACLU opposes.*

**Mandatory Reporting of Suspected Undocumented Students (HB 138, Cole).** Requires public schools to determine which students were born outside the United States or are the child of an individual not lawfully present. *ACLU opposes.*

### *Anticipated*

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

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

**Prohibited Admission of Undocumented Students to Public Colleges.** Prohibits undocumented individuals from applying for admission to Virginia public colleges and universities. *ACLU opposes.*

**Public Services Prohibited for Undocumented Individuals.** Requires social services departments to verify citizenship or legal presence of applicants for public assistance prior to initiating benefits. *ACLU opposes.*

## IX. Equal Rights

### *Anticipated*

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