

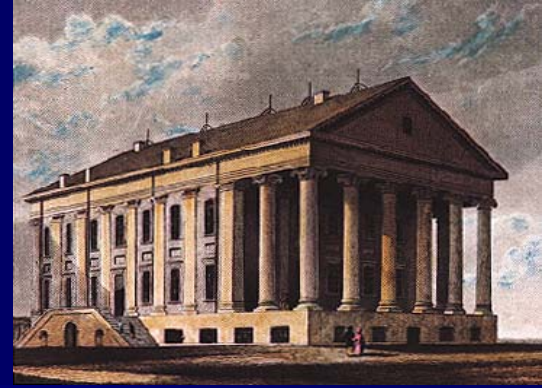
# Virginia State Crime Commission



Virginia Statutes & Legislation  
Pertaining to Illegal Immigration

May 15, 2007

# Agenda



- Current Virginia Code pertaining to illegal immigration.
- Legislation aimed at illegal immigration during 2003 - 2007 Sessions of General Assembly.
- Legal issues requiring review.



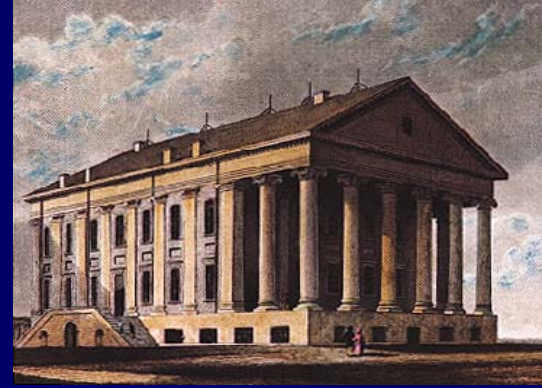
# Current Virginia Law

# Current VA Law



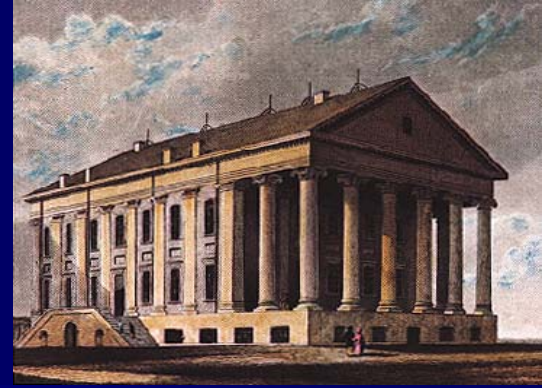
- 22 Virginia Code sections address illegal immigration:
  - 15 - public safety;
  - 3 - public benefits/assistance;
  - 2 - identification requirements for DMV regarding drivers licenses;
  - 2 - regarding reporting requirements for colleges / universities and state mental health facilities; and,
  - Additionally, there is a second enactment clause that forbids the Virginia State Bar and Legal Services Corporation from filing suits on behalf of illegal aliens.

# Current VA Law (cont.)



- 13 provisions relate to public safety/crime:
  - § 16.1-309.1 – intake officers, in juvenile proceedings, are required to report suspected illegal alien to INS;
  - § 18.2-59 – Class 5 felony to use a person’s illegal status in the U.S. to extort money or another form of consideration;
  - § 18.2-308 – an illegal alien is disqualified from obtaining a concealed weapon permit;
  - § 18.2-308.2:01 – class 6 felony for an illegal alien to possess or transport an assault firearm;
  - § 18.2-308.2:2 – class 6 felony for dealer to transfer a firearm to an illegal alien;

# Current VA Law (cont.)



- § 19.2-81.6 – provides the authority for all law enforcement to arrest illegal aliens under limited circumstances;
- § 19.2-294.2 – post-conviction inquiry into immigration status for persons on probation or parole;
- § 40.1-11.1 – class 1 misdemeanor to knowingly employ, or refer for employment, an illegal alien;
- § 53.1-218 – officers at correctional facilities are responsible for inquiring about the citizenship of new inmates;
- § 53.1-219 – if requested by a federal immigration officer, a clerk has the duty to provide conviction information concerning an alien;

# Current VA Law (cont.)

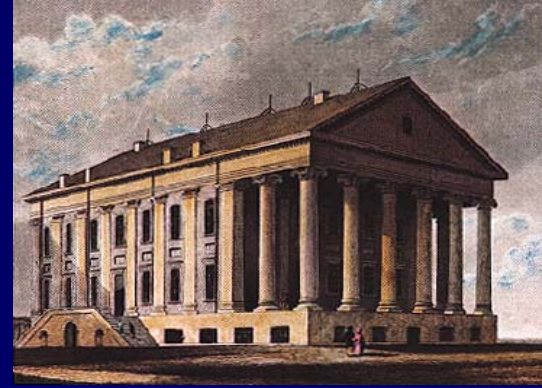


- § 53.1-220 – permits the transfer of alien prisoners, under treaty;
- § 53.1-220.1 – allows INS to take custody of certain convicted alien felons, with agreement from the state or local officials;
- § 66-3.2 – The director of DJJ shall coordinate submissions to the U.S. Department of Justice for the SCAAP; and
- Also in the 1<sup>st</sup> enactment clause from Acts of Assembly 2004, for sections § 19.2-310.2 and § 19.2-310.3:1 , the Compensation Board must maintain citizenship of inmates in LIDS and encourage local jails to participate in the USDOJ State Criminal Alien Assistance Program (SCAAP).



# Virginia Illegal Immigration Bills: 2003 - 2007

# Illegal Immigration Bills



- While illegal immigration has been a hotly debated issue in the U.S. Congress, there has been an equal amount of attention by state legislatures.
- Immigration bills have been introduced into every state legislature in 2007\*;
  - In 2007, at least 1,169 bills and resolutions were introduced to legislatures across the country, a dramatic increase from the 570 introduced in 2006.

\*April 2007 survey of the National Conference on State Legislatures.

# Illegal Immigration Bills (cont.)

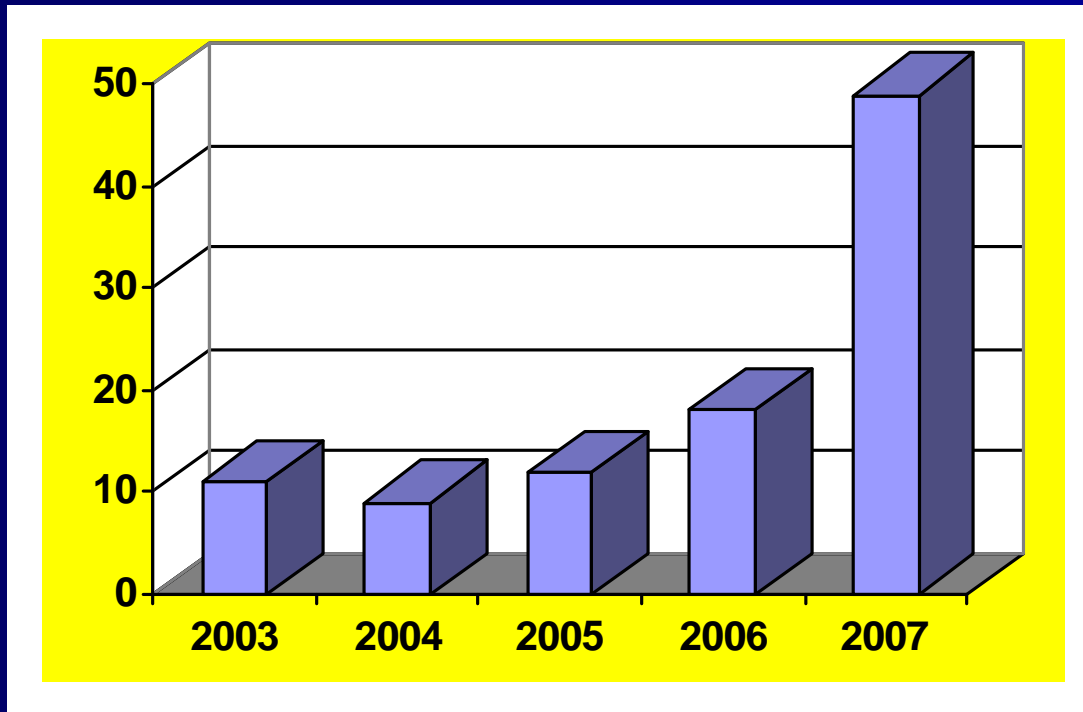


- In the 2007 Session of the Virginia General Assembly, 49 bills and resolutions were introduced regarding illegal immigration, compared to 18 introduced during the 2006 legislative session.
- Only 3 illegal immigration bills were signed into law;
  - HB1921 and SB815 (based on Crime Commission recommendations), both strengthen the extortion statute.
  - HB 1673, created a “Commission on Immigration” to report to the Governor.

# Illegal Immigration

## Bills (cont.)

Illegal Immigration Bills introduced in Virginia:  
2003-2007



# Illegal Immigration Bills (cont.)

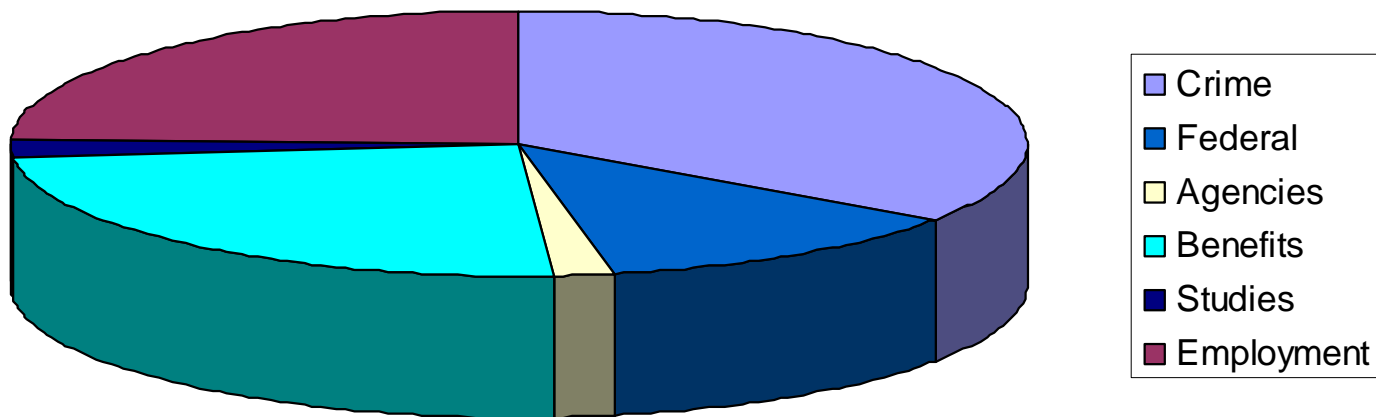


- The bills submitted in the last five years can be categorized into 6 basic groups:
  - Study Resolutions;
  - Employment,
  - Criminal;
  - Enforcement of Federal laws;
  - New Agencies; and,
  - Benefits/Legal Status.
- Most legislative efforts from 2003 to 2006 focused on benefits and legal status issues.
- In 2007, the majority of illegal immigration bills introduced contained criminal penalties.

# Illegal Immigration

## Bills (cont.)

2007 Illegal Immigration Bills by Category

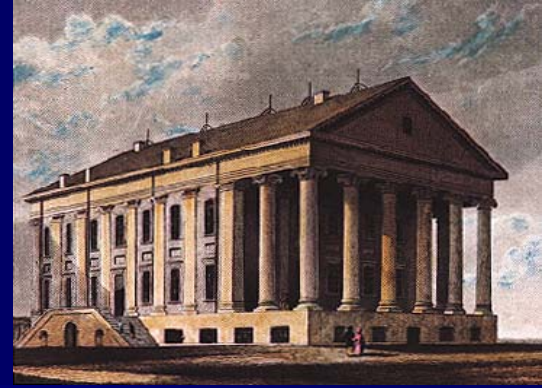


# Illegal Immigration Bills (cont.)



- Overall, 31 bills were introduced in the 2007 session that involved criminal justice or public safety.
- While there were 17 bills regarding criminal actions, 8 of the 12 employment bills also carried criminal penalties.
- Additionally, all of the bills (6) in the federal category dealt with law enforcement or criminal justice system initiatives.

# Illegal Immigration Bills (cont.)

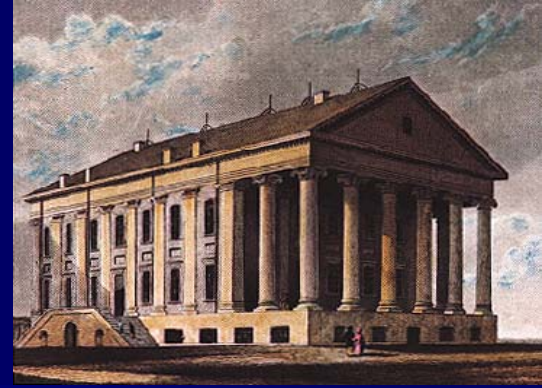


## ■ 2007 Bills:

- HB 1048 – Legal presence verification for employers, Class 1 misdemeanor;
- HB 1051 – Prohibits funding of employment centers unless workers are legal, Class 2 misdemeanor;
- HB 1067 – Class 1 misdemeanor to falsely represent that an alien is eligible to work;
- HB 1460 – Investigation of immigration status after conviction of criminal street gang activity;
- HB 1569 – Class 1 misdemeanor for companies to use employment services that do not properly document workers;

# Illegal Immigration

## Bills (cont.)



- HB 1570 – Failure to adequately document an employees' immigration to the SCC is a Class 1 misdemeanor;
- HB 1618 - Require Governor to enter into a MOU with ICE for the State Police to enforce federal immigration laws;
- HB 1827 –Human trafficking act;
- HB 1918 – Class 1 misdemeanor for an illegal immigrant to be present in Virginia;
- HB 1921 - Adds the withholding of immigration papers as extortion;
- HB 2328 – Class 1 misdemeanor for an employer to fail to verify the employment eligibility status of a job applicant;
- HB 1970 - Class 1 misdemeanor for an illegal immigrant to be present in Virginia;
- HB 2264 - Adds the withholding of immigration papers as extortion;

# Illegal Immigration

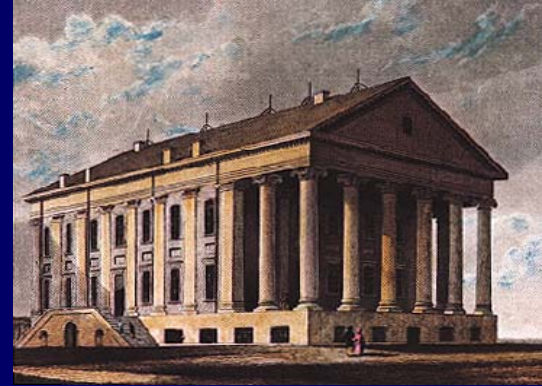
## Bills (cont.)



- HB 2322 -Presumption against bail for illegal immigrants;
- HB 2551 - Human Trafficking Act;
- HB 2605 - Class 1 misdemeanor to falsely represent that an alien is eligible to work;
- HB 2622 – If part of a commercial enterprise, a Class 6 Felony to conceal illegal immigrants;
- HB 2688 - Class 2 misdemeanor for failure to comply with workers' compensation with illegal immigrants;
- HB 2751 - Evidence permissible in the prosecution of illegal immigrants for possession of firearms;
- HB 2924 - Adds the withholding of immigration papers as extortion;
- HB 2926 - Expands the powers of local law-enforcement with regard to immigration laws;

# Illegal Immigration

## Bills (cont.)



- HB 2931 - Encourages local cooperation with federal immigration officials;
- HB 2933 - MOU to enforce immigration laws, for State Police and Department of Corrections;
- HB 2936 - Expands the arrest powers for law enforcement to include federal immigration law;
- HB 3006 - Investigation of immigration status after conviction of criminal street gang activity;
- HB 3206 - Presumption against bail for illegal immigrants;
- SB 815, SB 1027 and SB 1227 - Adds the withholding of immigration papers as extortion;
- SB 1045 - Expands the powers of local law- enforcement with regard to immigration laws; and,
- SB 1421 - Presumption against bail for illegal immigrants.

# Legal Issues Affecting State Action



- Federal preemption significantly restricts the ability of states to take action with immigration matters.
- 3 types of federal preemption:
  - Express preemption state law;
  - Implicit field preemption (“occupying the field”); and,
  - Implicit conflict preemption.
- Other legal issues include:
  - Practicality; and,
  - Effectiveness.

# Legal Issues Affecting State Action



- Overall, the goal is to determine:
  - What measures can be legally implemented at the state and local levels of government, and
  - Of those legally permissible measures, which ones will be constructive and effective?



# Questions