

VIRGINIA STATE CRIME COMMISSION

ILLEGAL IMMIGRATION TASK FORCE

DISCUSSION TOPICS

OCTOBER 16, 2007

(All Task Force Members were invited to make recommendations to be discussed and voted on at today's meeting. The thirty-two recommendations received are listed below.)

- I. ROLE OF THE FEDERAL GOVERNMENT
- II. DATA COLLECTION
- III. EDUCATION
- IV. LAW ENFORCEMENT & PUBLIC SAFETY
- V. AGREEMENTS WITH I.C.E. PURSUANT TO 8 U.S.C. 1357(g) - 287(g)
- VI. THE ROLE OF JAILS & PRISONS
- VII. IDENTIFICATION DOCUMENTS
- VIII. EMPLOYMENT OF ILLEGAL IMMIGRANTS
- IX. DOCUMENTATION FOR CERTAIN BENEFITS

I. ROLE OF THE FEDERAL GOVERNMENT

Recommendation # 1 - Task Force Resolution:

The Task Force recommends a resolution, addressed to Virginia's representatives serving in the U.S. Senate and House of Representatives, reflecting that 1) the regulation and enforcement of immigration law is the responsibility of the federal government, 2) federal law preempts most state and local measures aimed at addressing the effects of illegal immigration, 3) despite the federal government's preemption over the field of illegal immigration, it has failed to properly address the issue, thereby forcing the state and local governments to attempt to address an issue which is largely preempted, and 4) the limited state and local measures that can be implemented will be of limited effect unless and until the federal government provides the dedicated members of the U.S. Immigration & Customs Enforcement with the resources needed to do its job.

Action: Passed.

- **Proposed Amendment to Recommendation # 1:** Amend the resolution to encourage Congress to withhold "most favored nation" trade status and foreign aid from nations that will not accept return of criminal aliens who are illegally present in the United States.

Action: Failed.

- **Proposed Amendment to Recommendation # 1:** Amend the resolution to ask that Congress clarify federal law to remove the prohibition for state and local authorities to act in certain situations.

Action: Failed.

II. DATA COLLECTION

Recommendation # 2 - Local Inmate Data System: (Related to Recommendation # 6 and # 25)

The Local Inmate Data System should include a field requiring the input of confirmation, upon consultation with the U.S. Immigration and Customs Enforcement, of the immigration status of any inmate who 1) was born in another country, and 2) is a citizen of another country, or for whom this information is unknown.

Action: Passed.

Recommendation # 3 - Department of Corrections Data:

The data system used by the Virginia Department of Corrections should include a field requiring the input of confirmation, upon consultation with the U.S. Immigration and Customs Enforcement, of the immigration status of any inmate who 1) was born in another country, and 2) is a citizen of another country, or for whom this information is unknown.

Action: Passed.

Recommendation # 4 - Department of Corrections; Social Security Number Verification:

The Virginia Department of Corrections should be required to verify the validity of inmates' social security numbers in its records and to omit from its records those that are discovered to be false.

Action: Passed.

Recommendation # 5 - Data of the U.S. Immigration & Customs Enforcement:

It is recommended that the U.S. Immigration & Customs Enforcement maintain data on 1) the number of inquiries made by state and local law enforcement agencies to its Law Enforcement Support Center, 2) the number of these inquiries that are found to be illegal immigrants, legal nonimmigrants, legal permanent residents, and U.S. citizens, 3) the number of detainers issued for those found to be illegal immigrants, nonimmigrants, and legal permanent residents, and 4) the number of deportations that result from the detainers issued.

Action: Passed.

- **Proposed Amendment to Recommendation # 5:** Amend the recommendation to include that the U.S. Immigration & Customs Enforcement provide the data to the Commonwealth upon request.

Action: Passed.

Recommendation # 6 – Cross Check LIDS Against NCIC/LESC: (Related to Recommendation # 2 and # 25)

It is recommended that the information within the Local Inmate Data System (LIDS) for all inmates currently in jails be cross checked against the illegal alien databases of the National Crime Information Center (NCIC) and the Law Enforcement Support Center (LESC) illegal immigrant databases.

Action: Passed.

Recommendation # 7 – Creation of a Virginia Criminal Illegal Alien Database:

Create a Virginia criminal illegal immigrant database, for law enforcement purposes only, within the Virginia Criminal Information Network, to contain information obtained by State Police pursuant to Va. Code § 19.2-294.2 and § 53.1-218 and reported on Suspected Alien Reporting Forms.

Action: Failed.

Recommendation # 8 - Data Collection; Crimes by Illegal Immigrants to be Categorized by Offense:

In order to better assess the number of crimes for which illegal immigrants are arrested that are merely “incidental” to their illegal status (such as crimes involving fake documents), illegal immigrants should be grouped according to the crime for which they have been charged or convicted.

Action: Failed.

Recommendation # 9 - Data Collection; Racial Profiling:

Law enforcement agencies should be required to collect and report the racial and ethnic data of all persons stopped, detained, arrested and/or convicted so that law enforcement actions can be monitored and an informed assessment made regarding any possible racial or ethnic bias.

Action: Failed.

III. EDUCATION

Recommendation # 10 - Bridging the Language Barrier between Law Enforcement and Immigrant Communities:

Law Enforcement agencies should enhance their ability to overcome language barriers with Spanish speaking communities by arranging for law enforcement officers to be trained in the Spanish language and culture and by hiring more multi-lingual personnel. The Department of

Criminal Justice Services should partner with community organizations, such as the Hispanic Chamber of Commerce, to provide language training at no cost to the officer and to explore the possibility of tuition assistance or grant opportunities for officers who seek to earn language degrees at community colleges.

Action: Passed as amended. The amendment provides that the recommendation is not limited to Spanish speaking communities and the Spanish language.

Recommendation # 11 - Greater Education for Immigrant Communities on Laws, Regulations, and Safety:

Law enforcement agencies, state and local governmental agencies, and community organizations should work together to educate immigrant communities on laws, regulations and safety issues relevant to immigrant communities.

Action: Passed.

IV. LAW ENFORCEMENT & PUBLIC SAFETY

Recommendation # 12 - Immigration Training for Criminal Justice Agencies: (Related to Recommendation # 16)

Amend Virginia Code § 9.1-102 to provide that the Department of Criminal Justice Services shall have the power and duty to establish, in consultation with the U.S. Immigration and Customs Enforcement, the Virginia State Crime Commission, the Virginia Sheriff's Association and the Virginia Association of Chiefs of Police, educational programs for criminal justice agencies with respect to federal immigration law and enforcement and applicable state laws.

Action: Failed.

Recommendation # 13 - Building Relationships between Law Enforcement and Immigrant Communities:

Law enforcement agencies should continue to build stronger working relationships and tighter bonds with immigrant communities by working to establish trust through crime prevention programs, neighborhood watch programs, citizen police academies, community outreach events, and community information meetings.

Action: Passed.

Recommendation # 14 - Reinforcing Existing Federal Law:

It is the sense of the Crime Commission that, as stated in Section 642(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, no State or local government entity or official shall intentionally prohibit, or in any way restrict, any government entity or official from sending to or receiving from the Department of Homeland Security information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

Action: Failed.

Recommendation # 15 - Reinforcing Existing State Law:

It is the sense of the Crime Commission that, as stated in Virginia Code Section 19.2-81.6, law enforcement officers in Virginia have the authority to arrest illegal aliens they encounter in the normal course of their duty when: (1) the officer confirms the alien is illegally present in the United States, (2) the alien has previously been convicted of a felony in the United States, and (3) the alien was deported after such conviction.

Action: Failed.

Recommendation # 16 - Mandatory Immigration Training / Policies: (Recommendation # 12)

Require the Department of Criminal Justice Services to implement mandatory immigration training for all local and state law enforcement. Additionally, Va. Code § 19.2-81.4 should be amended to require that all law enforcement agencies develop a policy for the handling of illegal aliens encountered in the course of their normal duties in the Commonwealth.

Action: Failed.

Recommendation # 17 - Regional Anti-Gang Task Forces:

It is recommended that 1) all regions of the Commonwealth that have not already done so form an anti-gang task force, and 2) all anti-gang task forces include, as a member, a representative from the U.S. Immigration & Customs Enforcement.

Action: Passed.

Recommendation # 18 - Immigration Assistance in Crime Fighting Act:

To promote the safety and health of all residents by making it more likely that immigrants will report violations of law, the Virginia Code should be amended to provide that:

- No law enforcement officer or other agent of state and local government shall inquire into the immigration status of any person who complains of, or is a witness to, a violation of state or local law;
- No law enforcement officer or other agent of state and local government shall ask a complainant or witness for their social security number or other information that might disclose an individual's immigration status;
- During the course of any court proceeding, the state or local government shall oppose efforts of any party to discover a complainant's or witness' immigration status and shall seek a protective order or other similar relief;
- In the occasion that an agent of state or local government must know the complainant's immigration status, the agent shall keep that status confidential and not disclose that information to third parties, including to other government agents, unless required by federal law;

- Law enforcement officers may inquire into the immigration status of a person when an officer has reasonable grounds to believe that the person:
 - Has been convicted of a felony criminal law violation;
 - Was deported or left the United States after the conviction; and
 - Is again present in the United States.
- The state and local government shall train its law enforcement and other government agents to understand and comply with these requirements, shall work closely with organizations that serve the immigrant community in the design of this training, and shall make efforts to work with community-based organizations to educate the immigrant community about this policy.

Action: Failed.

V. AGREEMENTS WITH I.C.E. PURSUANT TO 8 U.S.C. 1357(g) - 287(g)

Recommendation # 19 - Authorization for the Departments of State Police, Corrections, and Motor Vehicles:

Request that the Governor execute 287(g) agreements with the U.S. Immigration and Customs Enforcement to authorize the Virginia State Police, the Virginia Department of Corrections (DOC) and the Virginia Department of Motor Vehicles (DMV) to assist federal authorities in the detection, apprehension, detention and removal of illegal aliens confronted in their normal criminal justice functions.

- The proposal for the State Police is limited to investigations involving serious or violent offenses under Virginia law.
- The proposal for DMV is limited to crimes involving document fraud which enables illegal aliens to establish new identities and avoid detection by law enforcement.
- The proposal for DOC will better enable it to assist state and local police in their efforts to detain and deport criminal illegal aliens in the community, as well as those currently in our criminal justice system.
- These agreements have been prepared by the Office of the Attorney General and are tailored to be consistent with the current obligations of those agencies under state law within the scope and allocation of existing resources.

Action: Passed.

Recommendation # 20 - Law Enforcement to Consider Possible Benefits of 287(g) in Identifying Illegal Immigrants Apprehended and Detained for Criminal Activity:

It is recommended that each jurisdiction in the Commonwealth, the Virginia State Police, and the Department of Corrections assess whether the legal authority provided to state and local law enforcement in Section 287(g) of the Immigration and Nationality Act would be beneficial in identifying illegal aliens who have been apprehended and detained for criminal activity.

Action: Failed.

Recommendation # 21 - Limited Statutory Authority for 287(g) Agreements:

Amend the Virginia Code to limit agreements with the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, to 1) correctional facilities, and 2) post-conviction.

Action: Failed.

Recommendation # 22 - Statewide Statutory Standards for 287(g) Agreements: *(Submitted as an alternative to Recommendation # 21)*

Amend the Virginia Code to set uniform statewide standards relating to agreements between state and local law enforcement agencies and the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, to:

- Strictly limit such agreements to correctional facilities and post-conviction inquiries or enforcement of immigration laws only in the context of an ongoing criminal investigation involving a specified list of crimes;
- Prohibit 287(g) agreements that permit any state or local law enforcement officer to be engaged in unlimited enforcement of civil immigration laws against persons who have not committed a criminal act under state or local law; and
- Require all 287(g) agreements to include the following elements: 1) specific requirements for complaint procedures and monitoring; 2) a finite duration with a sunset date; 3) a required process of review before renewal that affords an opportunity for community input regarding the implementation and effectiveness of the agreement; 4) limited applicability to specifically designated officers who are well trained and clearly differentiated from officers who engage in community policing activities; 5) carefully defined authority for the designated officers; and 6) clear guidelines defining circumstances in which those designated officers can detain someone on an immigration violation.

Action: Failed.

VI. THE ROLE OF JAILS & PRISONS

Recommendation # 23 - Offenses Triggering Response by I.C.E.:

The Crime Commission should work with the U.S. Immigration & Customs Enforcement to develop a list of felonies and misdemeanors which, if committed by a person illegally present in the country, will guarantee that I.C.E. will detain and take custody of the suspect at the time of their trial, or at the conclusion of their sentence, whichever is longer.

Action: Passed as amended. Amendment inserts, “not already covered by ICE,” after the word “misdemeanors.”

- **Proposed Amendment to Recommendation # 23:** Amend the recommendation to request that if the U.S. Immigration & Customs Enforcement cannot guarantee detention and deportation of criminal illegal aliens for all offenses that qualify under federal law, then it

must advise the Commonwealth of the reason(s) for that decision so that the Commonwealth may evaluate any options at its disposal to facilitate deportation.

Action: Passed.

Recommendation # 24 - Presumption Against Bail:

Virginia Code § 19.2-120 should be amended to include illegal immigrants charged with a state crime, or for whom a federal warrant is outstanding, among those for whom there exists a presumption against bail unless and until notification is received from the U.S. Immigration & Customs that it does not plan to detain the individual. Upon such notification being received, the presumption shall no longer exist.

Action: Passed.

Recommendation # 25 - Inquiry into Immigration Status and Reports to I.C.E.: (Related to Recommendation # 2 and # 6)

Virginia Code § 53.1-218 should be amended to require direct reporting to the Law Enforcement Support Center of the U.S. Immigration & Customs Enforcement, of any inmate who 1) was born in another country, and 2) is a citizen of another country, or for whom this information is unknown and, further, to require that confirmation of such an inmate's immigration status be requested.

Action: Passed as amended. The amendment provides that the jailer inquire as to every person.

Recommendation # 26 - Training for Certain Jail and Prison Officers:

Clarify the requirements of Va. Code § 53.1-218 to ensure that officers responsible for intake and detention of inmates at local and regional jails and state prisons obtain training on the detection of illegal aliens coming into our criminal justice system. They should assist federal authorities with the placement of federal immigration detainees for those subject to deportation.

Action: Passed as amended. The amendment strikes the last sentence.

Recommendation # 27 - Facility for the Detention of Criminal Illegal Immigrants:

The Commonwealth of Virginia should negotiate with the U.S. Immigration & Customs Enforcement with regard to the government or private construction of a facility, containing up to 1,000 beds, at a location to be determined. The construction should be contingent upon I.C.E.'s commitment to make use of, and pay per diems for, the agreed upon bed space in order to fund debt service and the operational costs of the facility.

Action: Passed As Amended. The amendment strikes the language, as proposed, and, instead, proposes 1) to give jailers a higher rate (100%) of the reimbursement received from ICE for use of bed space, rather than it going to the General Fund, and 2) that the state fund new construction of extra bed space at a rate of 50%, rather than the current 25%.

Recommendation # 28 - Reimbursement Rate for Per Diems Collected from I.C.E.:

Any sheriff or regional jail administrator who holds an illegal immigrant, nonimmigrant, or legal permanent resident on behalf of the federal government and, in so doing, is entitled to per diem reimbursement, shall be entitled to 100% of the reimbursement received from the federal government.

Action: Passed (Incorporated into # 27).

VII. IDENTIFICATION DOCUMENTS

Recommendation # 29 - Identity Theft Prevention:

It is recommended that the Virginia Department of Motor Vehicles work with the U.S. Immigration & Customs Enforcement to assess if there are any vulnerabilities in the production of identity documents that results in the manufacturing, counterfeiting, alteration, sale and/or use of identity documents and other fraudulent documents in an effort to circumvent immigration law or for other criminal activity.

Action: Failed.

Recommendation # 30 - Verification Cards for Purpose of Showing Identity:

A “verification card” should be accepted/created and issued to those who are in the United States without legal presence to help state and local authorities properly identify such persons in the Commonwealth. Such a document shall not provide legal status or rights but, rather, will merely serve as verification that the individual is who they say they are.

Action: Referred to Commission on Immigration

VIII. EMPLOYMENT OF ILLEGAL IMMIGRANTS

Recommendation # 31 - Verification of New Employees Through “Basic Pilot Program”; Loss/Suspension of License for Knowing Employment of Illegal Immigrants:

Provides the loss of licenses for a business that knowingly employs illegal immigrants after investigation by the Attorney General or local commonwealth’s attorney. The determination of employee’s immigration status can only be made by the federal government. A first time violation will result in the minimum suspension of license, not to exceed 10 business day and a 3 year probationary period. It permits the business to avoid the loss of licenses if it discharges the illegal immigrants. Any loss of license requires a hearing and court order. All employers are also required to verify the immigration status of all new employees through the federal government’s “E-Verify” program.

Action: Referred to Commission on Immigration

IX. DOCUMENTATION FOR CERTAIN BENEFITS

Recommendation # 32 - Documentation Required for Certain Benefits:

Any person who applies for a state administered public benefit program that requires participants to be U.S. citizens, must provide documentation that they are legally present in the U.S. Self-declarations of U.S. citizenship, even under the penalty of perjury, are not sufficient to document citizenship.

Action: Referred to Commission on Immigration