

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 19-1124

BY REPRESENTATIVE(S) Benavidez and Lontine, Buckner, Caraveo, Coleman, Duran, Galindo, Gonzales-Gutierrez, Hooton, Melton, Arndt, Esgar, Herod, Jackson, Jaquez Lewis, Mullica, Singer, Sirota, Tipper, Valdez A., Weissman, Becker;
also SENATOR(S) Foote and Gonzales, Fenberg, Lee.

CONCERNING CLARIFICATION OF THE AUTHORITY OF CRIMINAL JUSTICE OFFICIALS WITH RESPECT TO THE ENFORCEMENT OF CERTAIN FEDERAL CIVIL LAWS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The federal government does not have the authority to command state or local officials to enforce or administer a federal regulatory program, as doing so would violate the tenth amendment of the United States constitution; and

(b) Colorado has the right to be free from mandates or financial obligations to perform the duties of the federal government, or to be

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

threatened or coerced to do so by withholding federal funding; and

(c) Any requirement that public safety agencies play a role in enforcing federal civil immigration laws can undermine public trust; and

(d) Coloradans have constitutional rights to due process and protection against unlawful detainment and seizures; and

(e) The Colorado judicial system serves as a vital forum for ensuring access to justice that is secured by section 6 of article II of the state constitution; and

(f) In times of crisis, Colorado courts are the main points of contact for the most vulnerable, including crime victims, victims of sexual abuse and domestic violence, witnesses to crimes who are aiding law enforcement, limited English speakers, unrepresented litigants, and children and families, who seek justice and due process of law.

(2) Therefore, it is necessary to adopt this act to promote public safety, the protection of civil liberties, and to further the preservation of the peace, health, and safety of Colorado.

SECTION 2. In Colorado Revised Statutes, **add** article 76.6 to title 24 as follows:

ARTICLE 76.6
Prioritizing State Enforcement of
Civil Immigration Law

24-76.6-101. Definitions. AS USED IN THIS ARTICLE 76.6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CIVIL IMMIGRATION DETAINER" MEANS A WRITTEN REQUEST ISSUED BY FEDERAL IMMIGRATION ENFORCEMENT AUTHORITIES PURSUANT TO 8 CFR 287.7 TO LAW ENFORCEMENT OFFICERS TO MAINTAIN CUSTODY OF AN INDIVIDUAL BEYOND THE TIME WHEN THE INDIVIDUAL IS ELIGIBLE FOR RELEASE FROM CUSTODY, INCLUDING ANY REQUEST FOR LAW ENFORCEMENT AGENCY ACTION, WARRANT FOR ARREST OF ALIEN, ORDER TO DETAIN OR RELEASE ALIEN, OR WARRANT OF REMOVAL/DEPORTATION ON ANY FORM PROMULGATED BY FEDERAL IMMIGRATION ENFORCEMENT AUTHORITIES.

(2) "ELIGIBLE FOR RELEASE FROM CUSTODY" MEANS THAT AN INDIVIDUAL MAY BE RELEASED FROM CUSTODY BECAUSE ONE OF THE FOLLOWING CONDITIONS HAS OCCURRED:

(a) ALL CRIMINAL CHARGES AGAINST THE INDIVIDUAL HAVE BEEN DROPPED OR DISMISSED;

(b) THE INDIVIDUAL HAS BEEN ACQUITTED OF ALL CRIMINAL CHARGES FILED AGAINST HIM OR HER;

(c) THE INDIVIDUAL HAS SERVED ALL THE TIME REQUIRED FOR HIS OR HER SENTENCE;

(d) THE INDIVIDUAL HAS POSTED A BOND OR HAS BEEN RELEASED ON HIS OR HER OWN RECOGNIZANCE;

(e) THE INDIVIDUAL HAS BEEN REFERRED TO PRETRIAL DIVERSION SERVICES; OR

(f) THE INDIVIDUAL IS OTHERWISE ELIGIBLE FOR RELEASE UNDER STATE OR MUNICIPAL LAW.

(3) "LAW ENFORCEMENT OFFICER" MEANS A PEACE OFFICER EMPLOYED BY THE COLORADO STATE PATROL, A MUNICIPAL POLICE DEPARTMENT, A TOWN MARSHAL'S OFFICE, OR A COUNTY SHERIFF'S OFFICE.

(4) "PERSONAL INFORMATION" MEANS ANY CONFIDENTIAL IDENTIFYING INFORMATION ABOUT AN INDIVIDUAL, INCLUDING BUT NOT LIMITED TO HOME OR WORK CONTACT INFORMATION; FAMILY OR EMERGENCY CONTACT INFORMATION; PROBATION MEETING DATE AND TIME; COMMUNITY CORRECTIONS LOCATIONS; COMMUNITY CORRECTIONS MEETING DATE AND TIME; OR THE MEETING DATE AND TIME FOR CRIMINAL COURT-ORDERED CLASSES, TREATMENT, AND APPOINTMENTS.

24-76.6-102. Civil immigration detainees - legislative declaration. (1) **Legislative declaration.** THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) FEDERAL IMMIGRATION AUTHORITIES AT TIMES SUBMIT REQUESTS TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES TO DETAIN AN INMATE

AFTER THE INMATE IS ELIGIBLE FOR RELEASE FROM CUSTODY. CONTINUED DETENTION OF AN INMATE UNDER A FEDERAL CIVIL IMMIGRATION DETAINER CONSTITUTES A NEW ARREST UNDER STATE LAW AND A SEIZURE UNDER THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

(b) REQUESTS FOR CIVIL IMMIGRATION DETAINERS ARE NOT WARRANTS UNDER COLORADO LAW. A WARRANT IS A WRITTEN ORDER BY A JUDGE DIRECTED TO A LAW ENFORCEMENT OFFICER COMMANDING THE ARREST OF THE PERSON NAMED, AS DEFINED IN SECTION 16-1-104 (18). NONE OF THE CIVIL IMMIGRATION DETAINER REQUESTS RECEIVED FROM THE FEDERAL IMMIGRATION AUTHORITIES ARE REVIEWED, APPROVED, OR SIGNED BY A JUDGE AS REQUIRED BY COLORADO LAW. THE CONTINUED DETENTION OF AN INMATE AT THE REQUEST OF FEDERAL IMMIGRATION AUTHORITIES BEYOND WHEN HE OR SHE WOULD OTHERWISE BE RELEASED CONSTITUTES A WARRANTLESS ARREST, WHICH IS UNCONSTITUTIONAL, *PEOPLE V. BURNS*, 615 P.2d 686, 688 (COLO. 1980).

(2) A LAW ENFORCEMENT OFFICER SHALL NOT ARREST OR DETAIN AN INDIVIDUAL ON THE BASIS OF A CIVIL IMMIGRATION DETAINER REQUEST.

(3) THE AUTHORITY OF LAW ENFORCEMENT IS LIMITED TO THE EXPRESS AUTHORITY GRANTED IN STATE LAW.

(4) NOTHING IN THIS SECTION PRECLUDES ANY LAW ENFORCEMENT OFFICER OR EMPLOYEE FROM COOPERATING OR ASSISTING FEDERAL IMMIGRATION ENFORCEMENT AUTHORITIES IN THE EXECUTION OF A WARRANT ISSUED BY A FEDERAL JUDGE OR MAGISTRATE OR HONORING ANY WRIT ISSUED BY ANY STATE OR FEDERAL JUDGE CONCERNING THE TRANSFER OF A PRISONER TO OR FROM FEDERAL CUSTODY.

(5) NOTHING IN THIS SECTION PRECLUDES ANY LAW ENFORCEMENT OFFICER FROM INVESTIGATING OR ENFORCING ANY CRIMINAL LAW OR FROM PARTICIPATING IN COORDINATED LAW ENFORCEMENT ACTIONS WITH FEDERAL LAW ENFORCEMENT AGENCIES IN THE ENFORCEMENT OF LOCAL, STATE, OR FEDERAL CRIMINAL LAWS.

24-76.6-103. Limitations on providing personal information by probation offices. (1) A PROBATION OFFICER OR PROBATION DEPARTMENT EMPLOYEE SHALL NOT PROVIDE PERSONAL INFORMATION ABOUT AN INDIVIDUAL TO FEDERAL IMMIGRATION AUTHORITIES.

(2) NOTHING IN SECTION 24-76.6-102 PREVENTS LAW ENFORCEMENT OFFICERS FROM COORDINATING TELEPHONE OR VIDEO INTERVIEWS BETWEEN FEDERAL IMMIGRATION AUTHORITIES AND INDIVIDUALS INCARCERATED IN ANY COUNTY OR LOCAL JAIL OR OTHER CUSTODIAL FACILITY, TO THE SAME EXTENT AS TELEPHONE OR VIDEO CONTACT WITH SUCH INDIVIDUALS IS ALLOWED BY THE GENERAL PUBLIC, IF THE INDIVIDUAL HAS BEEN ADVISED, IN THE INDIVIDUAL'S LANGUAGE OF CHOICE, OF CERTAIN INFORMATION IN WRITING, INCLUDING BUT NOT LIMITED TO:

(a) THE INTERVIEW IS BEING SOUGHT BY FEDERAL IMMIGRATION AUTHORITIES;

(b) THE INDIVIDUAL HAS THE RIGHT TO DECLINE THE INTERVIEW AND REMAIN SILENT;

(c) THE INDIVIDUAL HAS THE RIGHT TO SPEAK TO AN ATTORNEY BEFORE SUBMITTING TO THE INTERVIEW; AND

(d) ANYTHING THE INDIVIDUAL SAYS MAY BE USED AGAINST HIM OR HER IN SUBSEQUENT PROCEEDINGS, INCLUDING IN A FEDERAL IMMIGRATION COURT.

(3) THE WRITTEN ADVISEMENT DESCRIBED IN SUBSECTION (2) OF THIS SECTION MUST BE PROVIDED TO THE INMATE AGAIN WHEN THE INMATE IS RELEASED.

SECTION 3. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO