

HOUSE COMMITTEE OF REFERENCE REPORT

March 28, 2019

Chair of Committee

Date

Committee on State, Veterans, & Military Affairs.

After consideration on the merits, the Committee recommends the following:

HB19-1124 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

- 1 Amend printed bill, strike everything below the enacting clause and
2 substitute:
- 3 **"SECTION 1. Legislative declaration.** (1) The general
4 assembly hereby finds and declares that:
- 5 (a) The federal government does not have the authority to
6 command state or local officials to enforce or administer a federal
7 regulatory program, as doing so would violate the tenth amendment of the
8 United States constitution; and
- 9 (b) Colorado has the right to be free from mandates or financial
10 obligations to perform the duties of the federal government, or to be
11 threatened or coerced to do so by withholding federal funding; and
- 12 (c) Any requirement that public safety agencies play a role in
13 enforcing federal civil immigration laws can undermine public trust; and
- 14 (d) Coloradans have constitutional rights to due process and
15 protection against unlawful detainment and seizures; and
- 16 (e) The Colorado judicial system serves as a vital forum for
17 ensuring access to justice that is secured by section 6 of article II of the
18 state constitution; and
- 19 (f) In times of crisis, Colorado courts are the main points of
20 contact for the most vulnerable, including crime victims, victims of
21 sexual abuse and domestic violence, witnesses to crimes who are aiding
22 law enforcement, limited English speakers, unrepresented litigants, and
23 children and families, who seek justice and due process of law.
- 24 (2) Therefore, it is necessary to adopt this act to promote public

1 safety, the protection of civil liberties, and to further the preservation of
2 the peace, health, and safety of Colorado.

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

5 **ARTICLE 76.6**
6 **Prioritizing State Enforcement of**
7 **Civil Immigration Law**

8 **24-76.6-101. Definitions.** AS USED IN THIS ARTICLE 76.6, UNLESS
9 THE CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

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

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

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

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

38 (4) "NONPUBLIC AREA" MEANS ANY AREA OF THE FACILITY THAT
39 IS NOT GENERALLY OPEN AND ACCESSIBLE TO THE GENERAL PUBLIC BUT
40 INSTEAD REQUIRES SPECIAL PERMISSION FOR ADMITTANCE BY A LAW
41 ENFORCEMENT OFFICER OR FACILITY EMPLOYEE ON AN INDIVIDUAL BASIS.

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

8 **24-76.6-102. Civil immigration detainees - legislative**
9 **declaration. (1) Legislative declaration.** THE GENERAL ASSEMBLY FINDS
10 AND DECLARES THAT:

11 (a) FEDERAL IMMIGRATION AUTHORITIES AT TIMES SUBMIT
12 REQUESTS TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES TO DETAIN
13 AN INMATE AFTER THE INMATE IS ELIGIBLE FOR RELEASE FROM CUSTODY.
14 CONTINUED DETENTION OF AN INMATE UNDER A FEDERAL CIVIL
15 IMMIGRATION DETAINER CONSTITUTES A NEW ARREST UNDER STATE LAW
16 AND A SEIZURE UNDER THE FOURTH AMENDMENT OF THE UNITED STATES
17 CONSTITUTION.

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

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

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

38 (4) NOTHING IN THIS SECTION PRECLUDES ANY LAW ENFORCEMENT
39 OFFICER FROM INVESTIGATING OR ENFORCING ANY CRIMINAL LAW OR
40 FROM PARTICIPATING IN COORDINATED LAW ENFORCEMENT ACTIONS WITH
41 FEDERAL LAW ENFORCEMENT AGENCIES IN THE ENFORCEMENT OF LOCAL,

1 STATE, OR FEDERAL CRIMINAL LAWS.

2 **24-76.6-103. Limitations on access to nonpublic areas of jails**
3 **and related facilities.** (1) (a) A LAW ENFORCEMENT OFFICER, OR OTHER
4 STATE, COUNTY, OR LOCAL EMPLOYEE, SHALL NOT GRANT FEDERAL
5 IMMIGRATION AUTHORITIES ACCESS TO OR USE OF THE NONPUBLIC AREAS
6 OF ANY COUNTY OR LOCAL JAIL, CUSTODIAL FACILITY, OR OTHER LAW
7 ENFORCEMENT FACILITY FOR THE PURPOSE OF CONDUCTING
8 INVESTIGATIVE INTERVIEWS OR FOR ANY OTHER PURPOSE RELATED TO THE
9 ENFORCEMENT OF CIVIL IMMIGRATION LAWS UNLESS FEDERAL
10 IMMIGRATION AUTHORITIES PRESENT A WARRANT, WRIT, OR OTHER COURT
11 ORDER ISSUED BY A FEDERAL JUDGE OR MAGISTRATE.

12 (b) A PROBATION OFFICER OR PROBATION DEPARTMENT EMPLOYEE
13 SHALL NOT PROVIDE PERSONAL INFORMATION ABOUT AN INDIVIDUAL TO
14 FEDERAL IMMIGRATION AUTHORITIES OR GRANT ACCESS TO OR THE USE OF
15 THE NONPUBLIC AREAS OF A PROBATION OFFICE FOR THE PURPOSE OF
16 CONDUCTING INVESTIGATIVE INTERVIEWS OR FOR ANY OTHER PURPOSE
17 RELATED TO THE ENFORCEMENT OF CIVIL IMMIGRATION LAWS UNLESS
18 FEDERAL IMMIGRATION AUTHORITIES PRESENT A WARRANT, WRIT, OR
19 OTHER COURT ORDER ISSUED BY A FEDERAL JUDGE OR MAGISTRATE.

20 (2) NOTHING IN SUBSECTION (1) OF THIS SECTION OR IN SECTION
21 24-76.6-102 PREVENTS LAW ENFORCEMENT OFFICERS FROM
22 COORDINATING TELEPHONE OR VIDEO INTERVIEWS BETWEEN FEDERAL
23 IMMIGRATION AUTHORITIES AND INDIVIDUALS INCARCERATED IN ANY
24 COUNTY OR LOCAL JAIL OR OTHER CUSTODIAL FACILITY, TO THE SAME
25 EXTENT AS TELEPHONE OR VIDEO CONTACT WITH SUCH INDIVIDUALS IS
26 ALLOWED BY THE GENERAL PUBLIC, IF THE INDIVIDUAL HAS BEEN ADVISED,
27 IN THE INDIVIDUAL'S LANGUAGE OF CHOICE, OF CERTAIN INFORMATION IN
28 WRITING, INCLUDING BUT NOT LIMITED TO:

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

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

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

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

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

41 **24-76.6-104. Contracts related to enforcement of federal civil**

1 **immigration laws prohibited.** THE STATE OR A POLITICAL SUBDIVISION
2 OF THE STATE SHALL NOT ENTER INTO A CONTRACTUAL AGREEMENT,
3 INCLUDING ANY SUBCONTRACTS, THAT WOULD REQUIRE AN EMPLOYEE TO
4 DIRECTLY OR INDIRECTLY ASSIST IN THE ENFORCEMENT OF CIVIL
5 IMMIGRATION LAWS, SPECIFICALLY ANY AGREEMENT AUTHORIZED BY 8
6 U.S.C. SEC. 1357 (g), REFERRED TO AS A "287g AGREEMENT". THE
7 GENERAL ASSEMBLY FINDS THIS PROHIBITION IS NECESSARY BECAUSE
8 SUCH AGREEMENTS DEPUTIZE LAW ENFORCEMENT OFFICERS TO ENFORCE
9 FEDERAL IMMIGRATION LAW TO THE EXTENT CONSISTENT WITH STATE AND
10 LOCAL LAW. COLORADO LAW EXPRESSLY LIMITS THE POWER OF SHERIFFS
11 TO ENFORCING CRIMINAL LAW, MAKING ARRESTS FOR VIOLATIONS OF
12 CRIMINAL LAW, AND HOUSING PRISONERS FOR VIOLATIONS OF CRIMINAL
13 LAW. THE AUTHORITY OF SHERIFFS IS LIMITED TO THE EXPRESS AUTHORITY
14 GRANTED THEM BY THE GENERAL ASSEMBLY, CONSISTENT WITH THE
15 COLORADO SUPREME COURT OPINIONS IN *PEOPLE V. BUCKALLEW*, 848 P.2d
16 904 (COLO. 1993) AND *DOUGLASS V. KELTON*, 610 P.2d 1067 (COLO.
17 1980). THEREFORE, 287g AGREEMENTS ARE NOT CONSISTENT WITH STATE
18 AND LOCAL LAW.

19 **SECTION 3. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety."

22 Page 1, strike lines 101 and 102 and substitute "**CONCERNING**
23 **CLARIFICATION OF THE AUTHORITY OF CRIMINAL JUSTICE OFFICIALS**
24 **WITH RESPECT TO THE ENFORCEMENT OF CERTAIN FEDERAL CIVIL**
25 **LAWS.**".

** ** ** ** **