A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill prohibits a department, agency, board, commission, or officer or employee of the state or a political subdivision of the state from using public funds or resources to assist in the enforcement of federal civil immigration laws. The bill allows a state employee or employee of a political subdivision of the state to cooperate or assist 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.

The bill prohibits the state or a political subdivision of the state from entering into any contractual agreement that would require an employee to directly or indirectly assist in the enforcement of federal civil immigration laws.

The bill prohibits federal immigration authorities access to the secure areas of any city or county jail or other law enforcement facility for the purpose of conducting investigative interviews or for any other purpose related to the enforcement of federal civil immigration laws unless federal immigration authorities present a warrant issued by a federal judge or magistrate.

The bill prohibits a law enforcement officer from arresting or detaining an individual solely on the basis of a civil immigration detainer.

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 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 detainers - 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.