

**Implementation of Senate Bill 06-090
Department of Public Safety
Department of Local Affairs**

**Performance Audit
May 2009**



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Members of the Legislative Audit Committee:

This report contains the results of a performance audit of state and local agencies' implementation of Senate Bill 06-090. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Departments of Public Safety and Local Affairs.

Glossary

Colorado Crime Information Center or CCIC – a restricted, criminal justice information system administered by the Colorado Bureau of Investigation. Local, state, and federal law enforcement agencies in Colorado rely on CCIC to identify individuals and property, search for outstanding warrants, interact with federal databases, and check information contained in individuals' criminal history records, including previously reported place(s) of birth.

Detainer – a written order requesting a jail or peace officer to hold a foreign national for ICE for up to 48 hours, excluding holidays and weekends. A detainer serves to notify a law enforcement agency that ICE seeks custody of an alien presently in the custody of that agency.

United States Immigration and Customs Enforcement Agency or ICE – the largest investigative branch of the U.S. Department of Homeland Security. ICE has primary responsibility for enforcing the nation's immigration laws in the interior of the United States.

Illegal Alien – anyone who has entered the United States illegally and is deportable, or anyone who has “overstayed a visa” or otherwise violated the terms of his or her legal admission into the United States. Sometimes known as an “illegal immigrant.”

Immigrant Alien Query or IAQ – an electronic query made by local law enforcement to ICE to determine the immigration status of a suspected foreign national. An IAQ is sent via CCIC to ICE's Law Enforcement Support Center in Vermont.

Peace Officer – a person who is included within the provisions of Title 16, Article 2.5, C.R.S., and who meets all standards imposed by law on a peace officer. Sheriffs, deputy sheriffs, police officers, and Colorado State Patrol officers are all peace officers according to statute.

Probable Cause – a standard of evidence needed to charge for a criminal offense. Probable cause exists when a peace officer has a reasonable belief that a person has committed a crime. The officer must be able to articulate facts that would lead a neutral, independent magistrate to conclude that under the totality of circumstances, there is a “fair probability” that the person committed a crime. Probable cause is a stronger standard of evidence than reasonable suspicion.

Reasonable Suspicion – a standard of evidence needed for a stop or investigatory detention. It is defined as a particularized and objective basis of specific and identified facts and inferences that a person has been, is, or is about to be involved in criminal activity. Reasonable suspicion is a lesser standard of evidence than probable cause.

Senate Bill 06-090 Implementation

Purpose, Authority, and Scope

On September 4, 2008, a vehicle allegedly driven by a suspected illegal immigrant broadsided another vehicle in the City of Aurora, killing three people, including a three-year-old child in a nearby food establishment. The suspected illegal immigrant had an extensive criminal history, no Colorado driver's license, and multiple traffic citations. According to a report subsequently issued by the Governor's Working Group on Law Enforcement and Illegal Immigration, the suspected illegal immigrant had never been referred to the U.S. Immigration and Customs Enforcement agency (ICE) by local law enforcement for detention and deportation. The accident prompted widespread outcry by state legislators for a review of existing immigration and law enforcement policies, procedures, and practices.

Following the accident, the Office of the State Auditor received two audit requests from state legislators. One request called for an audit of interagency reporting and enforcement of traffic law violations and an examination of the nexus between local and federal officials on immigration enforcement. The second request asked for an audit of state and local agencies' compliance with Senate Bill 06-090. Senate Bill 06-090, codified as Section 29-29-101 et seq., C.R.S., requires peace officers and county sheriffs in Colorado, under specific circumstances, to report suspected illegal immigrants to ICE (see Appendix A for Article 29 of Title 29 of the Colorado Revised Statutes). Senate Bill 06-090 establishes the minimum requirements that Colorado peace officers and county sheriffs must follow when coming into contact with suspected illegal immigrants. Senate Bill 06-090 also prohibits local governments in Colorado from establishing immigration "sanctuary" policies. Specifically, the bill states that:

No local government, whether acting through its governing body or by an initiative, referendum, or any other process, shall enact any ordinance or policy that limits or prohibits a peace officer, local official, or local government employee from communicating or cooperating with federal officials with regard to the immigration status of any person within this state.
[Section 29-29-103(1), C.R.S.]

These legislative requests are being addressed through two separate audits. This audit focused on state and local agencies' implementation of Senate Bill 06-090.

The second audit will focus on the enforcement of state traffic laws and will be completed later in 2009.

This audit evaluated the impact Senate Bill 06-090 has had on local communities and assessed whether the law, as currently implemented, would prevent incidents similar to the one in the City of Aurora from occurring in the future. As part of the audit we sent a survey to all 239 local law enforcement agencies in Colorado to obtain information on their implementation of the law and the law's impact on local communities (see Appendix B). We selected 15 local law enforcement agencies representing a cross-section of the State, including eight police departments and seven sheriff's departments for further testing (see Appendix C for the list of local law enforcement agencies visited during the audit). For these 15 local law enforcement agencies, we interviewed staff; reviewed agency policies, procedures, and arrest files; and observed agency activities related to the identification of suspected illegal immigrants and reporting of those individuals to ICE. Additionally, we interviewed staff at the Colorado State Patrol and observed troopers during their traffic enforcement activities.

We also evaluated the Department of Local Affairs' implementation of Senate Bill 06-090. Senate Bill 06-090 requires the Department of Local Affairs to withhold grant funds from any local government violating portions of the law's requirements. Additionally, we met with staff from the Department of Public Safety, the Office of the Attorney General, and ICE. We acknowledge the assistance of the management and staff at the local, state, and federal agencies we visited during our audit.

The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of state government. The Office of the State Auditor does not have the authority to audit the federal government and, except as set forth in the Local Government Audit Law [Section 29-1-601 et seq., C.R.S.], cannot compel local governments to participate in an audit or require them to comply with information or data requests. Nevertheless, all 15 local governments contacted by our office agreed to cooperate with the audit and were forthcoming with information. Due to pending litigation, the local governments were unable to discuss the specific details of the September 2008 accident in the City of Aurora or provide information on the suspect's prior arrests. Additionally, ICE did not respond to requests from our office for critical data needed to assess the overall effectiveness of Senate Bill 06-090. Lack of complete federal data prevented our office from answering some of the specific questions raised in the two legislative audit requests.

The audit work was performed from December 2008 through May 2009 and was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and

conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Summary of Findings

Our audit concluded that local law enforcement agencies, the Colorado State Patrol, and the Department of Local Affairs have substantially implemented and are generally in compliance with the requirements of Senate Bill 06-090. However, due to limited local resources and other issues identified in our audit, we concluded that implementation of Senate Bill 06-090 alone is unlikely to prevent similar incidents such as happened in the City of Aurora in September 2008 from occurring in the future. We did identify areas where improvements could be made to increase the overall effectiveness and enforcement of Senate Bill 06-090 throughout Colorado.

The remainder of the report is divided into four sections. The first two sections provide descriptive information about Senate Bill 06-090's requirements and the processes used by local law enforcement to report suspected illegal immigrants to ICE. The final two sections discuss the steps taken by local law enforcement agencies and the Departments of Public Safety and Local Affairs to implement the law, and the effect of the implementation of Senate Bill 06-090 on preventing fatal traffic accidents allegedly caused by illegal immigrants and increasing the number of detainees and removals of illegal aliens in Colorado.

Background

The federal government has primary responsibility and jurisdiction for the administration and enforcement of our nation's immigration laws. Federal government responsibilities include the identification, apprehension, and removal of illegal aliens from the United States; investigation of federal immigration crimes; dissemination of immigration data to local law enforcement agencies; and adjudication of criminal and civil immigration cases. State and local law enforcement agencies have a limited role in the enforcement of federal immigration laws. Typically, the role and legal authority of state and local law enforcement officers is limited to the identification and reporting of suspected illegal aliens to ICE. State and local law enforcement officers generally do not have the authority to enforce federal immigration laws and cannot, in most circumstances, detain suspected illegal aliens or remove illegal aliens from Colorado or the United States.

During the 2006 Session the General Assembly passed a number of laws intended to address concerns about the impact of illegal immigration on the State and local

communities. One of these laws, Senate Bill 06-090, was intended to provide specific direction, within the limits of federal law, to peace officers and local governments in the enforcement of immigration laws. Senate Bill 06-090 outlines specific requirements for: (1) Colorado peace officers, including county sheriffs and state troopers, and (2) local governments as described below.

Colorado Peace Officer Requirements

Senate Bill 06-090 requires Colorado peace officers (who include state troopers) and county sheriffs to report suspected illegal aliens to ICE under certain circumstances. The bill establishes two reporting standards based on whether or not the suspected illegal alien is held at a detention facility. Specifically, the law [Section 29-29-103(2)(a)(I), C.R.S.] requires that:

- A peace officer who has probable cause that an arrestee for a criminal offense is not legally present in the United States shall report such arrestee to the United States Immigration and Customs Enforcement office if the arrestee is not held at a detention facility.
- If the arrestee is held at a detention facility and the county sheriff reasonably believes that the arrestee is not legally present in the United States, the sheriff shall report such arrestee to the federal Immigration and Customs Enforcement office.

At a minimum, for Senate Bill 06-090 to apply the following must occur:

- A person must be arrested for a criminal offense; **and**
- The officer or county sheriff must establish probable cause or reasonable belief that the arrestee is not legally present in the United States.

Based on Colorado law, there are generally two categories of arrests in which the Senate Bill 06-090 reporting requirements would apply. First are custodial arrests. A custodial arrest occurs when an officer takes a person into custody and transports the arrestee to a booking or detention facility, such as a county jail. Second are non-custodial arrests. Under Colorado law, “arrest” includes non-custodial arrests, which involve only temporary detention for the purpose of issuing a summons. Non-custodial arrests occur when a peace officer issues a person a summons and complaint or penalty on the street. During non-custodial arrests, the arrestee is never taken to a booking or detention facility. For example, a peace officer may elect to issue a summons and complaint to a shoplifter who was observed stealing less than \$500 in merchandise. Although technically a criminal arrest, the shoplifter would be cited at the store and immediately

released. The suspect would be expected to appear in court at a later date to address the shoplifting charges.

Additionally, Senate Bill 06-090 reporting requirements only apply when the peace officer arrests a person for committing a criminal offense. According to Section 18-1-104, C.R.S., a crime is defined as “a violation of, or conduct defined by, any statute for which a fine or imprisonment may be imposed.” Felonies, misdemeanors, and petty offenses are all classified as “crimes.” In addition, state statutes classify some minor traffic offenses, such as speeding or failing to signal, as “infractions” and not criminal offenses. As such, under Senate Bill 06-090 peace officers are not required to report individuals charged with minor driving infractions to ICE.

Since specific conditions must exist for the requirements of Senate Bill 06-090 to be triggered, there are many situations in which a peace officer may have contact with an illegal immigrant but the Senate Bill 06-090 reporting requirements would not apply. Specifically, Senate Bill 06-090 would not require that a person be reported to ICE if:

- A peace officer cannot establish probable cause that a criminal arrestee is illegally present in the United States.
- A county sheriff does not reasonably believe the arrestee is illegally present in the United States.
- The peace officer or county sheriff knows the person is in the country illegally, but the person has not been arrested for a criminal offense.
- The person is cited for a minor traffic infraction.
- The person is a witness reporting a crime or the victim of a crime.

Additionally, Section 29-29-103(2)(a)(II), C.R.S., stipulates that illegal immigrants arrested for a suspected act of domestic violence are **not** to be reported to ICE until conviction.

When applying Senate Bill 06-090, Colorado peace officers must also adhere to Section 24-31-309(3), C.R.S., which prohibits profiling. Profiling, also known as bias-based policing, is the “practice of detaining a suspect based on race, ethnicity, age, or gender without the existence of any individualized suspicion of the particular person being stopped.” In this law, the General Assembly declared that “motorists who are stopped by peace officers for no reason other than the color of their skin or their apparent race, ethnicity, age, or gender are the victims of discriminatory practices” and these practices “present a great danger to the

fundamental principles of our constitutional republic and are abhorrent and cannot be tolerated.”

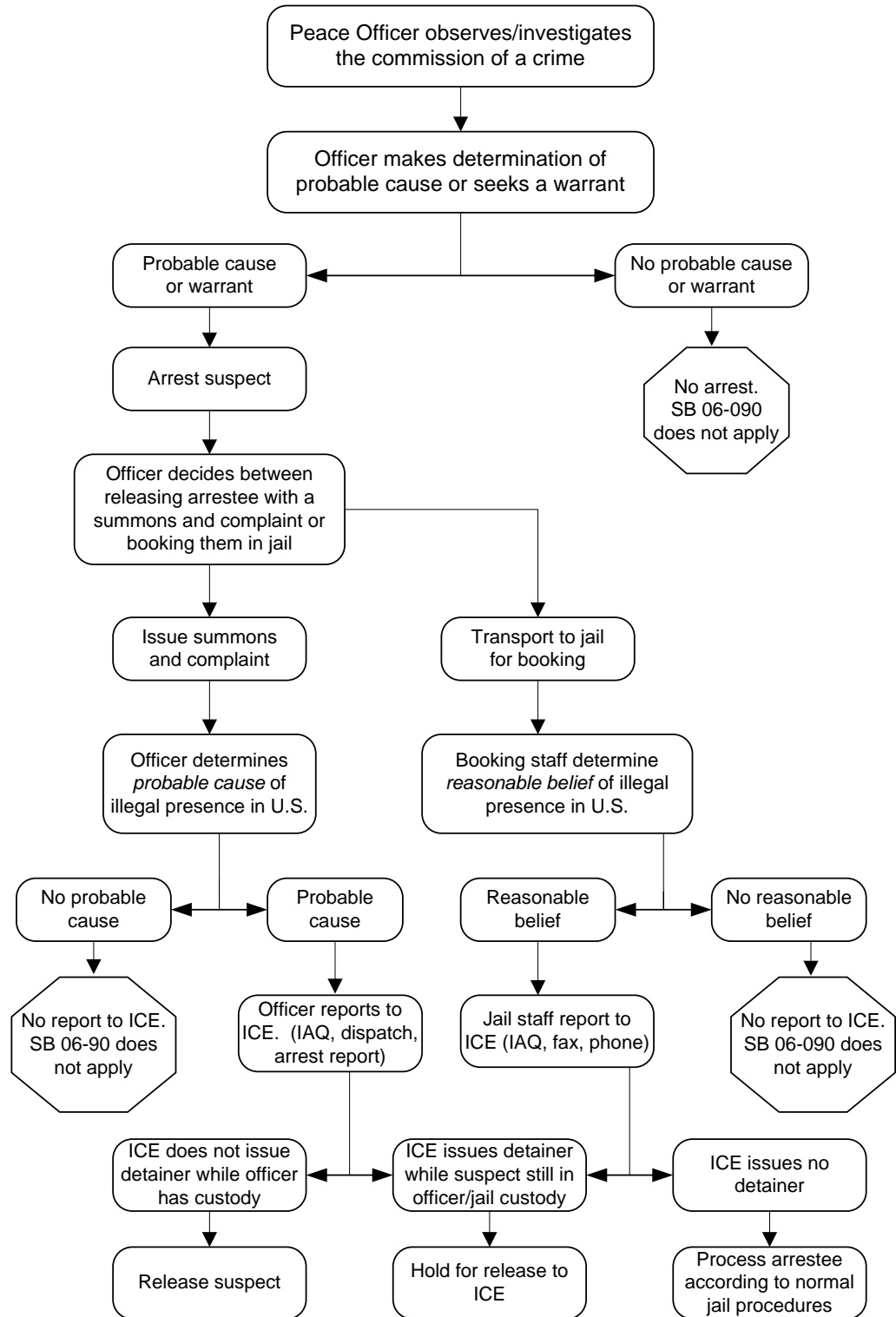
Local Government Requirements

In addition to the requirements placed on Colorado peace officers, Senate Bill 06-090 places mandates on local governments. The law defines a local government as a town, city, city and county, or county. As previously mentioned, local governments are prohibited from instituting immigration sanctuary policies. That is, local governments cannot limit or prohibit their officials or employees from communicating or cooperating with federal authorities regarding a person’s immigration status. Additionally, Senate Bill 06-090 requires the governing body of each local government to provide written notice to peace officers of their duty to cooperate with state and federal officials with regard to immigration enforcement and to comply with the peace officer reporting provisions contained in the law. Finally, on or before March 1 of each year, local governments are required to report to the Legislative Council of the General Assembly the number of arrestees reported to ICE.

Senate Bill 06-090 Law Enforcement Reporting Process

To fully grasp the requirements and limitations of Senate Bill 06-090, it is important to understand how law enforcement officers in Colorado identify and report suspected illegal immigrants to ICE. Although law enforcement practices for identifying and reporting illegal immigrants to ICE varied at the agencies we visited, the flow chart on the following page outlines the most common approaches. In the sections following the flow chart, we describe the specific steps taken by Colorado law enforcement officers to identify suspected illegal aliens who are arrested and report them to ICE.

Local Law Enforcement Senate Bill 06-090 Reporting Process



Source: Colorado Office of the State Auditor.

The application of Senate Bill 06-090 by local law enforcement begins when a patrol officer makes an arrest for a crime. According to statute, to make a lawful arrest, an officer must obtain a warrant or establish probable cause that an individual has committed a crime. If an officer does not have a warrant or is unable to establish probable cause that the suspect has committed a crime, the officer cannot lawfully arrest the person. Until an officer makes a criminal arrest, the officer has no duties related to Senate Bill 06-090.

Once an officer makes a criminal arrest, the officer must decide between releasing the arrestee with a summons and complaint or booking the arrestee in the county jail. Statute allows officers to issue a summons and complaint if the arrestee has not committed a felony and the officer believes the individual is likely to appear in court. In addition, most law enforcement agencies have additional requirements regarding summons and complaints, including that the officer must be able to positively identify the individual arrested. As part of this process, peace officers will also assess whether probable cause exists that the arrestee is illegally present in the United States. Officers reported that they usually make a determination of immigration status based on several factors, including the arrestee's ability to speak English, the arrestee's statements regarding his or her immigration status, and whether the arrestee's identification card is foreign or appears forged or invalid. Peace officers reported that they will, on infrequent occasions, release a suspected illegal alien who has been arrested for a criminal offense with a summons and complaint. As discussed in the background, the issuance of a summons and complaint is considered a non-custodial arrest. Even when a suspect is released after arrest, Senate Bill 06-090 requires that the peace officer report the arrestee to ICE, if the officer has probable cause to believe the suspect is in the country illegally.

For non-custodial arrests, at the agencies we visited, some patrol officers reported individuals to ICE immediately while the suspect was still under arrest, while others put a note in the arrest report indicating that the arrestee should be reported to ICE by police staff. Even when a suspected illegal immigrant is under arrest at the time he or she is reported to ICE, after reporting, most patrol officers will not hold the individual for any more time than it takes to write the summons and complaint, which is about 20 minutes. According to the law enforcement agencies we visited, ICE rarely responds to a report in this amount of time, and typically the suspect is released. Further, some agencies compile the names of suspected illegal aliens arrested and periodically send a report to ICE well after the arrestees have been released from custody. In the rare cases where ICE does issue a detainer while the arrestee is still in the patrol officer's custody, the officer will usually transport the individual to jail for holding.

Although officers reported that they occasionally release suspected illegal aliens following a non-custodial arrest, in most cases officers reported that they take these individuals to jail for booking. For this reason, we found jail staff have

taken on the bulk of the reporting duties created by Senate Bill 06-090. Senate Bill 06-090 requires county sheriffs to report individuals held at their jails to ICE whenever the sheriffs reasonably believe the individuals are not in the country legally. When an arrestee is booked into the jail, staff fingerprint the individual and collect biographical information to identify and classify the person. At this time, booking staff will attempt to determine whether there is a reasonable belief that the person is in the country illegally. The primary factor jail staff use to determine immigration status is the arrestee's place of birth, although some agencies will review immigration documents or consider other factors, such as whether the arrestee can speak English. Most of the jails we contacted notify ICE whenever they book individuals with a foreign place of birth. If booking staff can identify the individual, they can review the person's arrest record to check for places of birth reported during previous arrests; however, in some cases booking staff reported that they do not check the arrest record and simply use the place of birth the arrestee reports at the time of the current booking.

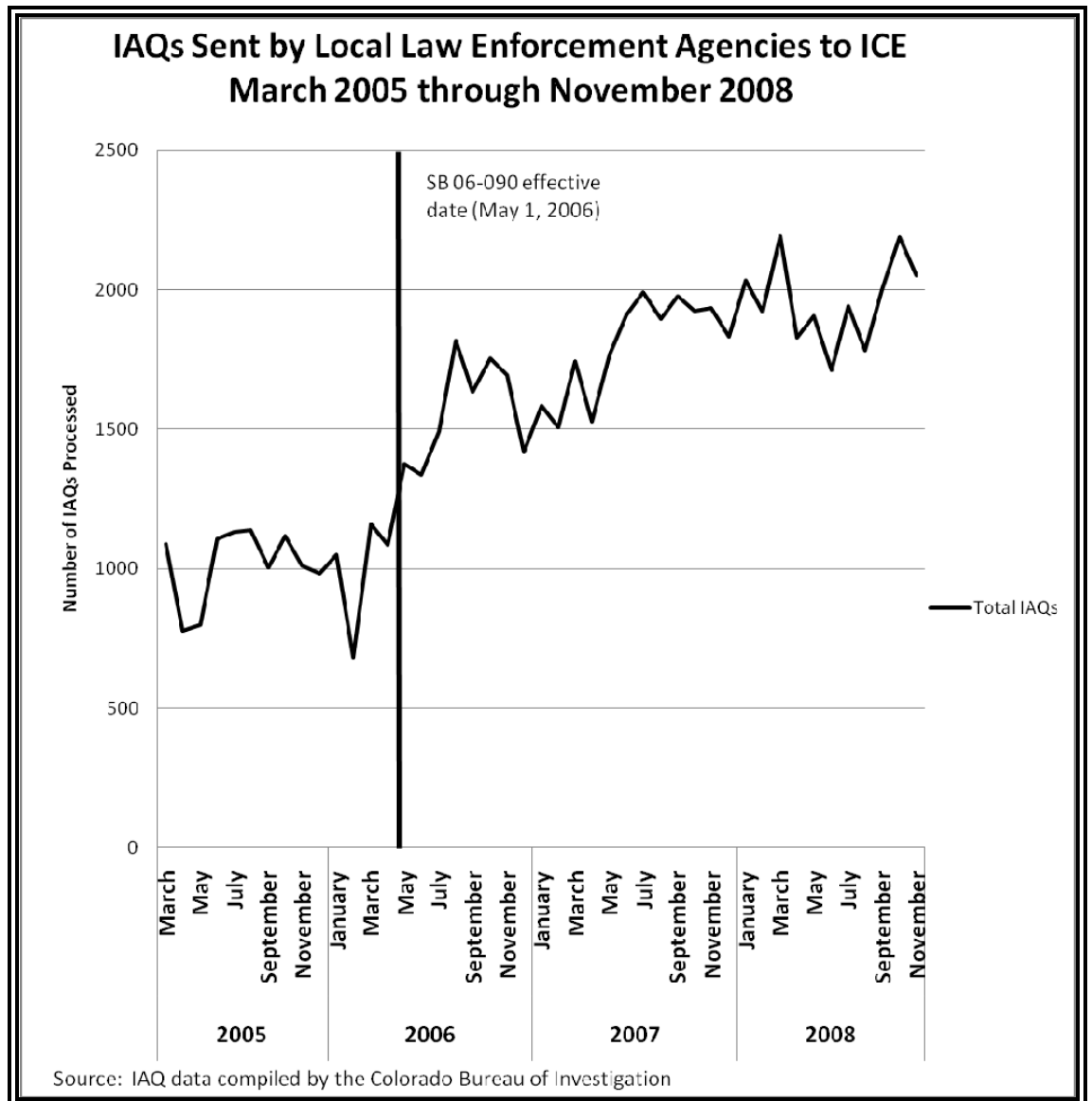
Once the jail reports an arrestee to ICE, if the individual reported is of interest to ICE, ICE will send a detainer requesting that the jail hold the person for up to 48 additional hours so that an ICE agent can pick the arrestee up when released. The 48-hour hold begins as soon as the individual posts bail or completes his or her jail sentence. When a suspected illegal alien is due to be released, but ICE has not yet responded to the jail's report, some agencies in our sample indicated they will hold the person for a few extra hours while a detainer is pending. However, other agencies release the arrestee immediately unless ICE has issued a detainer prior to the time of release.

Once ICE has issued a detainer and takes custody of a suspected illegal alien, its agents generally transport the illegal alien to an ICE holding facility to await immigration proceedings conducted by the Executive Office of Immigration Review within the U.S. Department of Justice. In some cases suspected illegal aliens will agree to voluntary deportation. However, if a suspected illegal alien elects to contest immigration action, he or she is entitled to full administrative due process, which can take several years to complete and may or may not result in deportation. Further, because ICE holding capacity is limited, individuals awaiting an administrative hearing may be allowed to bond out of ICE custody. Thus, it is important to note that detainers do not always result in ICE's maintaining custody of suspected illegal aliens or ultimately deporting them.

Implementation of Senate Bill 06-090

The primary purpose of our audit was to ascertain the extent to which local and state law enforcement agencies in Colorado have implemented Senate Bill 06-090. As previously noted, we found that local law enforcement agencies, the Colorado State Patrol, and the Department of Local Affairs have substantially implemented and are generally in compliance with the requirements of Senate Bill 06-090. To evaluate implementation we reviewed available data on Immigrant Alien Queries (IAQs) sent via the Colorado Crime Information Center (CCIC) to ICE. IAQs are electronic queries made to ICE to determine the immigration status of a suspect. We also reviewed policies and procedures for reporting illegal immigrants under Senate Bill 06-090 developed by the Colorado State Patrol and local law enforcement agencies, conducted a survey of local law enforcement practices, and reviewed records maintained by the Department of Local Affairs. We found the following:

- **IAQs Submitted to ICE.** We found that since the passage of Senate Bill 06-090 the number of arrestees identified as illegal immigrants by local law enforcement and reported to ICE has increased significantly. We reviewed the total number of IAQs submitted by all local law enforcement agencies to ICE per month between March 2005 and November 2008. As shown in the chart on the following page, the number of IAQs sent by local law enforcement agencies to ICE increased by about 69 percent in the two years following the bill's effective date (May 1, 2006) and has remained relatively stable. This is a strong indication that law enforcement agencies in Colorado have implemented and are complying with the reporting requirements contained in Senate Bill 06-090. Data on the number of IAQs submitted by individual law enforcement agencies were not available during the period of our review. Consequently, we were unable to determine the extent to which individual law enforcement agencies were contributing to the increased IAQ reporting following the bill's effective date.



- Policies and Procedures.** We found that the Colorado State Patrol and each of the 15 law enforcement agencies we visited have practices or procedures in place that comply with Senate Bill 06-090. For example, the Colorado State Patrol has developed written procedures that troopers are required to follow when coming in contact with suspected illegal aliens. State troopers use three different mechanisms for reporting suspected illegal aliens to ICE. First, state troopers rely on the county sheriff to report suspected illegal aliens to ICE if the suspected alien is physically arrested and booked into the county jail. In these situations, troopers will notify jail staff that the arrestee is a suspected illegal alien and should be reported to ICE. Second, troopers who are performing a non-custodial arrest (summons and release) are required to notify the

Colorado State Patrol Communications Center if the arrestee is a suspected illegal immigrant. The patrol dispatcher will then send an IAQ to ICE. Finally, troopers are required to notify the State Patrol's Immigration Enforcement Unit for cases involving human smuggling or trafficking or serious/multiple traffic offenses. The Immigration Enforcement Unit is a specialized unit of the Colorado State Patrol, established by Senate Bill 06-225, to address human smuggling and trafficking on state highways. Troopers in the Immigration Enforcement Unit have specialized training to identify illegal aliens and are authorized by a Memorandum of Understanding with ICE to detain illegal aliens and begin federal immigration proceedings.

- **Affirmation from Local Law Enforcement Agencies.** As part of our audit, we sent a survey to all 239 local law enforcement agencies in Colorado and asked agency administrators if their agency was complying with Senate Bill 06-090 (see Appendix B – Question 9). Of the 97 agencies that responded to this question, 94 confirmed that they were complying with the law. We followed up with the three respondents that did not report compliance with the law. On the basis of additional information provided by these agencies and the information maintained by the Department of Local Affairs and Legislative Council of the General Assembly, these agencies appear to be complying with Senate Bill 06-090.
- **Records Maintained by the Department of Local Affairs.** Finally, we found that as of January 2009, the Department of Local Affairs had determined that all local governments in Colorado but one had certified compliance with Senate Bill 06-090. This municipality stated in its response to our survey that it was complying with the law. According to Legislative Council, this municipality also provided the statutorily required reports on the number of arrestees reported to ICE in 2008 and 2009. This municipality has neither applied for nor received funding from the Department of Local Affairs.

Although evidence indicates that Colorado law enforcement agencies are generally complying with Senate Bill 06-090 reporting requirements, we determined that the information provided to law enforcement agencies could be improved to further assist agencies in identifying arrestees who may be illegal immigrants. Specifically, the Department of Public Safety could make improvements to its automated Colorado Crime Information Center (CCIC) database to provide information disclosing previously reported foreign places of birth when law enforcement officers make standard inquiries during the arrest and booking process. We describe CCIC and these enhancements in the next section.

Role of the Department of Public Safety in Implementation of Senate Bill 06-090

The Department of Public Safety's mission is to provide a safe environment in Colorado by maintaining, promoting, and enhancing public safety through law enforcement, criminal investigations, fire and crime prevention, recidivism reduction, and victim advocacy. The Department of Public Safety (Department) encompasses the Colorado State Patrol, Colorado Bureau of Investigation (CBI), Division of Criminal Justice, Division of Fire Safety, and Office of Preparedness and Security. The Department works cooperatively with local law enforcement to achieve its mission of enhancing public safety in Colorado.

CCIC is a restricted, criminal justice information system administered by CBI. Local, state, and federal law enforcement agencies in Colorado rely on CCIC to identify individuals and property, search for outstanding warrants, interact with federal databases, and check information contained in individuals' criminal history records, including their place of birth. Because law enforcement agencies use an arrestee's place of birth as a key factor in determining whether to report the individual to ICE, CCIC is critical to the effective identification and reporting of suspected illegal aliens if they have been previously arrested. Although CCIC provides most law enforcement agencies with easily accessible information on a person's place of birth, we found that some agencies we visited overlook this information and, as a result, may not identify some arrestees as illegal aliens or report them to ICE, as required by Senate Bill 06-090.

When an arrestee reports either a foreign place or different places of birth in different arrests, most law enforcement agencies we visited report the arrestee to ICE. Law enforcement officers generally determine an arrestee's place of birth by asking the arrestee directly or by checking identification or immigration documents on the arrestee's person. However, not all law enforcement officers consistently check CCIC records to determine if the arrestee has reported a foreign place of birth during a previous arrest.

Although law enforcement officers do not always check CCIC records for an arrestee's place of birth, checking CCIC for current arrest warrants is a standard part of the booking process. However, information on the arrestee's reported place(s) of birth is not automatically provided by CCIC as part of the warrant check. Therefore, to identify whether the arrestee has previously disclosed a foreign place or multiple places of birth, the officer must open a separate screen in CCIC that provides information from an arrestee's criminal history. If the officer only checks CCIC for prior arrest warrants, no information on previously disclosed birth-place(s) will be returned by the system.

Since CCIC does not automatically alert peace officers and booking staff of an arrestee's disclosed place(s) of birth during a warrant check, law enforcement officers may fail to identify the arrestee as a suspected illegal alien and report to ICE as required. According to the Governor's Working Group on Law Enforcement and Illegal Immigration, the suspected illegal alien involved in the City of Aurora accident had numerous prior arrests and traffic citations and was booked into jail six times. Many of these arrests and jail sentences occurred after Senate Bill 06-090's effective date and would have triggered a report to ICE if local law enforcement officers suspected he was an illegal alien. However, the Governor's Working Group report indicated that the suspected illegal alien was never reported to ICE by local law enforcement agencies because the suspect had command of the English language and reported that he was born in California. We reviewed the suspected illegal alien's publically available CCIC record and found that he had previously disclosed foreign places of birth, including Mexico and Guatemala, and that this information was available to law enforcement officers through CCIC during several of his previous arrests. In this situation, an automatically generated flag would have alerted local law enforcement officers of the foreign and conflicting places of birth.

Prior to the start of the Governor's Working Group on Law Enforcement and Illegal Immigration, we discussed the development and implementation of auto-generated flags in CCIC records listing a foreign place of birth with Department of Public Safety management staff. The Governor's Working Group considered the idea and made a recommendation to the Colorado Bureau of Investigation “. . . to continue to explore and, when feasible, implement auto-generated flags to reflect the non-U.S. birthplace or country of origin of individuals within its database.” (See Appendix D for all recommendations made by the Governor's Working Group.) By providing auto-generated system flags to help law enforcement agencies identify foreign-born arrestees, CBI can improve state and local efforts to identify illegal aliens and assist ICE in the enforcement of federal immigration laws. Therefore, we recommend that the Department of Public Safety develop and implement auto-generated flags in CCIC that will automatically alert the arresting and/or booking agency that an arrestee has previously disclosed a foreign place of birth. Additionally, the Department should update its CCIC training manual to include a section on the use and interpretation of the auto-generated flags and notify local law enforcement once the flags are implemented in CCIC.

Recommendation No. 1:

The Department of Public Safety should assist local governments with the identification and reporting of suspected illegal aliens by:

- a. Implementing auto-generated flags in CCIC that automatically alert the law enforcement agencies responsible for arresting and booking an arrestee if the arrestee has a foreign place of birth listed in the CCIC database.
- b. Updating the CCIC training manual and notifying local law enforcement of the auto-generated flags once implemented in CCIC.

Department of Public Safety Response:

Agree. Implementation Date: June 2009.

- a. The Colorado Bureau of Investigation (CBI) has implemented this recommendation. When local law enforcement arrests an individual and submits the arrestee's fingerprints to CBI, the following message will automatically be forwarded to the arresting agency if the arrestee's record contains a previously self-disclosed place of birth outside of the United States: ". . . a fingerprint search of the CCIC-CCH and AFIS files has determined that the above subject has self-reported his/her place of birth outside the United States. Please utilize this information to consider notification of United States Immigration and Customs (ICE) of a possible foreign born detainee. The CBI has provided this information to your agency as an investigative tool. This information is not a definitive confirmation on the legality of the subject's immigration status." The local law enforcement agency will then be responsible for performing additional investigation concerning the arrestee's immigration status and making the determination of whether sufficient evidence exists to report the arrestee to ICE as required by Senate Bill 06-090.
 - b. The CBI Program Support Unit will modify the basic CCIC training curriculum and program manual. This information will be available to law enforcement on the Colorado Criminal Justice Information System (CJIS) portal and presented during scheduled training classes. Once the CCIC training manual modifications have been completed, CBI will notify local law enforcement through the CCIC newsletter and Chiefs of Police and Sheriffs email list.
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Implementation of Senate Bill 06-090 by the Department of Local Affairs

The Department of Local Affairs (Department) is responsible for enforcing certain components of Senate Bill 06-090. According to Section 29-29-103(3), C.R.S., the Department is required to withhold grant funding from any local government that has:

- Enacted an immigration sanctuary policy;
- Failed to provide written notice to peace officers of their duty to cooperate with state and federal officials regarding the enforcement of immigration laws; or
- Failed to submit an annual report to Legislative Council by March 1 on the number of arrestees reported to ICE during the previous calendar year.

In Fiscal Year 2008, the Department distributed approximately \$136 million in state and federal grants to almost 210 Colorado local governments. We reviewed the Department's practices and procedures for identifying local governments that are in violation of Senate Bill 06-090 and for ensuring that those local governments are not provided grant funds. We found that the Department has taken steps to ensure that the local governments it funds are in compliance with Senate Bill 06-090; however, we believe improvements are necessary.

In July 2006 the Department required all local governments in Colorado as defined in Senate Bill 06-090 to submit documentation certifying compliance with Senate Bill 06-090. Department management assigned administrative staff to track local governments' submission of the completed and signed certification forms and to work with Legislative Council to ensure that local governments had submitted their annual arrest reports by March 1 of each year. Administrative staff created a spreadsheet identifying all Colorado local governments and their level of compliance with Senate Bill 06-090. The Department made the spreadsheet available to all Department grant administration and accounting staff.

In addition to the procedures mentioned above, the Department instituted additional controls over its grant administration and disbursement processes. Specifically, the Department updated its standard grant payment voucher form by adding a checkbox that, if checked, indicates compliance with Senate Bill 06-090. The Department's policy is that the accounting office will not authorize or process a payment voucher unless the checkbox has been checked and initialed by the grant administrator. Prior to awarding a grant, the Department requires the grant administrator and the accounting staff to review the tracking spreadsheet to ensure the local government is in compliance with Senate Bill 06-090. This review is

documented on a grant routing form. The Department will not officially award a grant to a local government unless the routing form is completed, which includes verification of compliance with Senate Bill 06-090.

We reviewed and tested the Department's procedures related to Senate Bill 06-090 and identified several areas for improvement. First, the Department has only required local governments to certify compliance with Senate Bill 06-090 one time, in Calendar Year 2006. If a local government instituted an immigration sanctuary policy after 2006, the Department would have no mechanism for identifying the noncompliance and could potentially provide grant funds to ineligible local governments. Second, we reviewed a sample of certification forms for 19 local governments that received funding from the Department since Senate Bill 06-090's effective date and found that the Department was unable to produce the supporting documentation for one of these local governments. Prior to completion of the audit, Department staff contacted this local government and obtained the required certification. In the future, the Department should perform a supervisory review to confirm that the spreadsheet accurately reflects the supporting documentation.

Recommendation No. 2:

The Department of Local Affairs should improve its procedures for enforcing provisions of Senate Bill 06-090 by:

- a. Requiring each local government receiving grant funds to annually certify compliance with Senate Bill 06-090.
- b. Maintaining copies of all local government certification response forms.
- c. In the future, conducting a supervisory review of the internal spreadsheet and the supporting documentation to ensure the spreadsheet accurately reflects each local government's level of compliance with Senate Bill 06-090.

Department of Local Affairs Response:

Agree. Implementation Date: March 2010.

- a. The Department will continue its proactive practices to ensure local government compliance with Senate Bill 06-090. We will require local governments to submit documentation certifying full compliance on an annual basis, by March 31 of each year. Such documentation will include:

- Certification that no immigration sanctuary policy has been implemented.
 - Certification that peace officers have been provided written notification of their duty to cooperate with state and federal officials regarding the enforcement of immigration laws.
 - Certification of submission of an annual report to Legislative Council on the number of arrestees reported to ICE during the previous calendar year.
- b. The Department will maintain copies of all local government certification response forms for three years, per the Division of Local Government’s records retention policy.
- c. The Department has implemented a supervisory review to confirm the spreadsheet tracking such certification has thorough supporting documentation.

Effects of Senate Bill 06-090

Finally, our audit considered the effect of the implementation of Senate Bill 06-090 on preventing traffic accidents similar to the one that occurred in the City of Aurora in September 2008 and increasing the number of detainers and removals of illegal aliens in Colorado. We concluded that the implementation of Senate Bill 06-090 alone is unlikely to either prevent fatal traffic accidents allegedly caused by illegal immigrants or increase the number of detained or removed illegal immigrants.

First, it is important to note that issues unrelated to an individual’s immigration status, such as state and local traffic enforcement practices and policies, contribute to traffic accidents and traffic fatalities. One study conducted by the California Department of Motor Vehicles indicated that drivers with suspended or revoked driver’s licenses and drivers who have never had licenses are 3.7 and 4.9 times more likely, respectively, to be involved in fatal crashes than licensed drivers. Further, from 2001 to 2005, over one-quarter of the fatal car accidents in Colorado involved an unlicensed driver. An “unlicensed driver” includes both drivers who were never licensed and drivers who had revoked or suspended licenses. The Office of the State Auditor is currently conducting a performance audit of state traffic enforcement practices that will focus on efforts to combat the problems posed by unlicensed drivers and habitual traffic offenders, regardless of

whether those drivers are Colorado residents or illegal aliens. The audit will be released later this year.

Second, implementation of Senate Bill 06-090 is one component in a complex array of immigration laws and policies that are primarily the purview of the federal government. The State's role in this area is limited. Although the overall purpose of Senate Bill 06-090 is to improve the State's identification and reporting of illegal aliens to ICE by local law enforcement, increased reporting may not necessarily result in increased detentions and removals by the federal government. Our audit attempted to determine whether the substantial increase in suspected illegal aliens reported to ICE since the enactment of Senate Bill 06-090 resulted in increased detentions or removals by ICE. Because our Office does not have access to federal records, we were unable to obtain data to answer this question. However, based on our review of the report prepared by the Governor's Working Group on Law Enforcement and Illegal Immigration, interviews conducted with law enforcement, and responses to our survey, resource constraints at the federal and local levels appear to be a primary factor affecting the identification, detention, and removal of illegal aliens from Colorado. We briefly discuss these issues below.

The Governor's Working Group on Law Enforcement and Illegal Immigration, formed in the fall of 2008, identified government resource constraints as a significant issue affecting immigration enforcement in Colorado. The Governor's Working Group concluded that "state and local resources are stretched beyond capacity and cannot absorb additional unfunded mandates to deal with the federal immigration problem" and that "increasing the number of law enforcement officials with immigration enforcement authority will not result in a meaningful strategy to ameliorate the problem" without the addition of further resources. Based on these conclusions, the Governor's Working Group recommended, among other things, that:

- The federal government significantly expand the detention capacity and all necessary support services and staff available for Colorado detainees.
- Congress appropriate significant additional resources to ICE to implement effective detention, removal, and training functions in support of local law enforcement.

Our interviews of local, state, and federal law enforcement officers and responses to our survey confirm the Governor's Working Group's findings. For example, the police officers we interviewed generally agreed that it is difficult, if not impossible, to both adequately respond to their local communities' public safety needs and take proactive steps to enforce federal immigration law. One officer stated, "You have to ask yourself if you are going to be a city police officer today

or an ICE agent. You can't do both, at least not well." Local police officers and jail staff also confirmed that ICE rarely takes action on suspected illegal immigrants arrested for minor crimes and indicated that they believe this is because of the lack of available ICE officers and detention beds. The federal Government Accountability Office substantiated these officers' views in a recently released report, which stated that ICE, due to resource constraints, is generally focused on apprehending and deporting serious felons, not those who have committed minor crimes.

A copy of the executive summary and recommendations from the Governor's Working Group is included in Appendix D of this report.

Appendices

Appendix A
Senate Bill 06-090

Article 29, Colorado Revised Statutes
Immigration Status - Cooperation with Federal Officials

Section 29-29-101. Legislative Declaration.

(1) The general assembly hereby finds, determines, and declares that:

(a) Sanctuary policies are local government ordinances or policies that prohibit local officials, including peace officers, from communicating or cooperating with federal officials with regard to the immigration status of any person within the state;

(b) The matters contained in this article have important statewide ramifications for compliance with and enforcement of federal immigration laws;

(c) Sanctuary policies allow illegal immigrants to reside within Colorado and to undermine federal immigration law.

(2) The general assembly therefore declares that the matters addressed in this article are matters of statewide concern.

Section 29-29-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) “Local government” means a town, city, city and county, or county.

Section 29-29-103. Cooperation with federal officials regarding immigration status.

(1) No local government, whether acting through its governing body or by an initiative, referendum, or any other process, shall enact any ordinance or policy that limits or prohibits a peace officer, local official, or local government employee from communicating or cooperating with federal officials with regard to the immigration status of any person within this state.

(2) (a) (I) A peace officer who has probable cause that an arrestee for a criminal offense is not legally present in the United States shall report such arrestee to the United States immigration and customs enforcement office if the arrestee is not held at a detention facility. If the arrestee is held at a detention facility and the county sheriff reasonably believes that the arrestee is not legally present in the United States, the sheriff shall report such arrestee to the federal immigration and customs enforcement office.

(II) This subsection (2) shall not apply to arrestees who are arrested for a suspected act of domestic violence as defined by Section 18-6-800.3, C.R.S., until such time as the arrestee is convicted of a domestic violence offense.

(b) The governing body of each local government shall provide notice in writing to peace officers of the duty to cooperate with state and federal officials with regards to enforcement of state and federal laws regarding immigration and comply with paragraph (a) of this subsection (2). Each governing body shall provide written confirmation to the general assembly that it has provided such notice and shall annually, on or before March 1 of each year, report to the legislative council of the general assembly the number of reports made to the United States immigration and customs enforcement office pursuant to this article.

(c) The general assembly finds and declares that the state attorney general and all appropriate state and local law enforcement agencies should vigorously pursue all federal moneys to which the state may be entitled for the reimbursement of moneys spent to enforce federal immigration laws.

(3) A local government that violates subsection (1) of this section or paragraph (b) of subsection (2) of this section shall not be eligible to receive local government financial assistance through grants administered by the department of local affairs until such time as the ordinance or policy is no longer in effect.

Appendix B
Colorado Office of the State Auditor
Summarized Local Government Survey Results
Senate Bill 06-090 Performance Audit

As part of the audit, we sent a survey to all 239 local law enforcement agencies (police departments, town marshals, county sheriffs) in Colorado. We received 98 completed surveys for a 41 percent survey response rate. Of the 98 respondents, some failed to answer all questions. As such, the summarized results do not always total 98. The summarized results are provided under the corresponding question. For open ended questions, we provided a representative sample of comments made by the responding agencies.

General Information

1) Type of Law Enforcement Agency

Type of Law Enforcement Agency	Number	Percentage
County Sheriff	24	25%
Police Department	61	64
Town Marshall	10	10
Other (Court Marshall)	1	1
Total	96	100%

2) What is the size of your law enforcement agency?

Number of Officers

Size of Law Enforcement Agency – Number of Officers	Number	Percentage
< 5	20	21%
5-15	29	30
16-50	27	28
51-100	6	6
101-200	4	4
>200	10	11
Total	96	100%

2008 Budget

Size of Law Enforcement Agency – Budget	Number	Percentage
< \$500,000	27	30%
\$500,000 - \$999,999	16	17
\$1-\$9.9 million	34	37
\$10-\$49.9 million	10	11
\$50-\$100 million	4	4
>\$100 million	1	1
Total	92	100%

3) Considering the place of residence of the population served, is your jurisdiction primarily urban, rural, or suburban?

Population Served by Agency	Number	Percentage
Urban	27	28%
Rural	47	50
Suburban	21	22
Total	95	100%

4) In which region of the State is your agency located?

Geographical Region of Respondent	Number	Percentage
Front Range (Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, Pueblo)	25	26%
Northeast (Elbert, Kit Carson, Lincoln, Logan, Morgan, Phillips, Sedgwick, Washington, Weld, Yuma)	19	20
Southeast (Baca, Bent, Cheyenne, Crowley, Kiowa, Las Animas, Otero, Prowers)	6	6
Mountain/Central (Alamosa, Chaffee, Clear Creek, Conejos, Costilla, Custer, Eagle, Fremont, Gilpin, Grand, Gunnison, Huerfano, Jackson, Lake, Mineral, Park, Pitkin, Routt, Rio Grande, Saguache, Summit, Teller)	24	25
Northwest (Garfield, Mesa, Moffat, Rio Blanco)	9	9
Southwest (Archuleta, Dolores, Delta, Hinsdale, Montezuma, Montrose, La Plata, Ouray, San Juan, San Miguel)	13	14
Total	96	100%

5) Please provide the total number of arrests your agency made in calendar years 2003 through 2008.

Calendar Year	Average Number of Arrests of those that reported	Number of Law Enforcement Agencies Reporting Arrests
2003	3688	64
2004	3487	66
2005	3465	70
2006	3564	73
2007	3529	74
2008	3187	77

Note: The responses to this question varied greatly, from 1 to 70,000 arrests per year.

6) If your agency operates a detention facility, how many days was the facility at or exceeding capacity in calendar years 2007 and 2008?

Calendar Year	Average Days Detention Facilities Over Capacity	Number of Respondents
2007	121	13
2008	128	14

Note: 76 respondents said they have no detention facility.

If the facility was over capacity, on average, by what percentage was capacity exceeded in calendar years 2007 and 2008?

Percentage Detention Center Capacity Exceeded in CY 2007	Number	Percentage
< 10%	7	54%
10%-19%	3	23
20%-29%	0	0
30%-39%	0	0
40%-50%	1	8
>50%	2	15
Total	13	100%

Percentage Detention Center Capacity Exceeded in CY 2008	Number	Percentage
< 10%	6	43%
10%-19%	5	36
20%-29%	2	14
30%-39%	0	0
40%-50%	0	0
>50%	1	7
Total	14	100%

SB 06-090 Implementation

7) How often has your agency come into contact with suspected illegal aliens during the past year?

Frequency of Agency Contact with Suspected Illegal Aliens	Number	Percentage
Never	5	5%
Rarely (Less than once per month)	22	23
Occasionally (About once per month)	27	29
Often (Several times each month)	24	26
Very Often (Several times weekly or more)	16	17
Total	94	100%

8) Has your agency made specific policy changes or created new procedures to comply with SB 06-090?

SB 06-090 Procedures Created	Number	Percentage
Yes	61	63%
No	36	37
Total	97	100%

If yes, please explain how the policies were changed and the scope of the changes. If no, please explain why there was no change in policy.

Sample “Yes” Responses:

- The policy was changed to reflect the requirements of SB 06-090.
- No change was made in the policy except to include the need to compile existing data for reporting required under SB 06-090.
- (Agency) passed a resolution directing officers to cooperate with state and federal officials with regard to enforcement of immigration laws and added new policy to comply with SB 06-090.

Sample “No” Responses

- The policy to notify ICE existed prior to passage of SB 06-090.
- The unwritten policy is: if contact with suspected illegal aliens is made, a good tool is to contact ICE agents; typically they will respond and take custody of suspect.

9) Do you believe your agency is in compliance with SB 06-090?

Agency Complying with SB 06-090	Number	Percentage
Yes	94	97%
No	3	3
Total	97	100%

Based on interviews and information maintained by the Department of Local Affairs and Legislative Council of the General Assembly, the three agencies that answered “no” to this question appear to be complying with Senate Bill 06-090.

10) Has your agency provided notice to peace officers of their duties under SB 06-090?

Notice Provided to Peace Officers	Number	Percentage
Yes	91	93%
No	7	7
Total	98	100%

Based on information maintained by the Department of Local Affairs and the Legislative Council of the General Assembly, the seven agencies that answered “no” to this question appear to be complying with Senate Bill 06-090.

If yes, is this notice provided at the time each peace officer is hired?

Notice Provided to Peace Officers Upon Hire	Number	Percentage
Yes	79	86%
No	13	14
Total	92	100%

Please explain how the notification is provided.

Sample Responses:

- In-service training and providing the officers with copies of SB 06-090.
- During field training program.
- As part of our policy manual.
- In a notice that is provided as part of the new hire training for officers.

Does your agency periodically repeat the notification?

Periodically Repeats Notification to Peace Officers	Number	Percentage
Yes	38	51%
No	37	49
Total	75	100%

11) SB 06-090 requires peace officers to report criminal arrestees to ICE when they have *probable cause* to believe that the person is in the country illegally and that person is *not* held at a detention facility. If a criminal arrestee is held at a detention facility, then the Sheriff must report the individual to ICE when there is a *reasonable belief* that the person is in the country illegally. Does your agency have specific policies or procedures for determining whether there is probable cause or a reasonable belief that a person is in the country illegally?

Procedures for Determining Probable Cause/Reasonable Belief	Number	Percentage
Yes	34	35%
No	63	65
Total	97	100%

If yes, please summarize the procedures used to determine probable cause or reasonable belief. If no, explain how your officers would make this determination.

Sample Responses:

- Procedures include the weighing of facts and information including but not limited to the defendant’s ability to produce one of the identifying documents listed on the illegal presence check list, information received from arresting officer or ICE, and prior arrest information or information from offender.
- Determination of probable cause should include at a minimum the following elements: information pertaining to the person's country of origin, presence of forged or false citizenship documents, absence of citizenship documents, and information from a constitutionally valid interview.
- The officer shall contact ICE and the officer is responsible to run the individual thru CCIC/NCIC.

12) Do your agency’s personnel receive specific training on determining probable cause or a reasonable belief that an individual is in the country illegally? If yes, please explain the training provided.

Training on Probable Cause/ Reasonable Belief	Number	Percentage
Yes	26	27%
No	71	73
Total	97	100%

Sample Responses:

- An ICE officer from Highway Patrol comes here and briefs the deputies of new operations.
- Training is provided through a training bulletin and discussion in roll call.
- A brief procedural explanation is given during the Field Training Officer program.

13) Has compliance with SB 06-090 required a significant time investment?

Has SB 06-090 Required Significant Time Investment	Number	Percentage
Yes	9	10%
No	85	90
Total	94	100%

If yes, please describe how the time is spent and provide an estimate of the amount of time.

Sample Responses:

- The time spent doing initial set up of internal procedures in records as well as interpreting the law and designing the training to ensure compliance was somewhat time consuming; maintaining our records and monitoring compliance is not time consuming.
- Between training new personnel, tracking, compiling statistics, and notifying ICE, probably 100-200 hours are spent annually.
- Time spent for records and officers to log enter the subject; estimate 15-20 man hours a year.

Cooperation with Federal Authorities - U.S. Immigration and Customs Enforcement (ICE)

14) How frequently did your agency work with ICE during the past year?

Frequency Working With ICE	Number	Percentage
Never	19	20%
Rarely (Less than once per month)	37	38
Occasionally (About once per month)	20	21
Often (Several times each month)	14	14
Very Often (Several times each week or more)	7	7
Total	97	100%

Which ICE offices do you primarily work with?

Results: Respondents listed several local ICE offices located throughout the State.

15) Overall does your agency have timely access to information regarding a person’s immigration status in order to establish probable cause/reasonable belief that the individual is in the country illegally?

Timely Access to Immigration Information	Number	Percentage
Yes	46	50%
No	46	50
Total	92	100%

If yes, please indicate the information and databases used by your agency. If no, please explain any constraints on access to information and how the information available to your agency could be improved.

Sample “Yes” Responses:

- The ICE authorities respond very quickly for verification of immigration status. They give us an immediate call back and then either come to our facility on the same day, or call us in a short period.
- We check CCIC and NCIC for wants and use booking interviews to help determine the person’s status.
- Information used includes NCIC, CCIC, IAQ, and telephone contact with ICE.

Sample “No” Responses:

- We have limited access and ICE agents are not allowed to come out on overtime to help.
- The response time to an IAQ is very slow during the week days.
- We don’t have access to ICE databases except through direct contact with ICE agents.
- The time involved to receive information through CCIC is usually hours and officers will not detain suspected illegal aliens for long periods to wait for information.

16) Do your agency’s personnel have adequate training on sending Immigrant Alien Queries (IAQs) to ICE? If yes, please describe the training provided and explain which personnel receive the training. If no, please explain the ways in which the training is not adequate.

Adequate Training on IAQs	Number	Percentage
Yes	47	52%
No	44	48
Total	91	100%

Sample “Yes” Responses:

- All dispatchers are informed and trained on NCIC, including IAQs.
- All detention officers and dispatchers are trained via CBI training manuals.

Sample “No” Responses:

- The queries are generally handled by dispatch personnel or by sergeants on duty so line officers are usually unaware of a specific process.
- We seldom have occasion to use IAQs, and when the occasion does occur we have to update officers on procedures.
- No, training is not adequate because training has not been made available.

17) As you may be aware, the federal government has developed a program that provides training to state and local law enforcement and grants each with greater authority to enforce federal immigration laws. This program is authorized under Section 287(g) of the Immigration and Nationality Act. Has your agency considered seeking 287(g) authority? Please explain.

Considered 287(g) Authority	Number	Percentage
Yes	11	12%
No	84	88
Total	95	100%

Sample Response:

- We decided not to proceed when ICE expressed lukewarm interest in cooperating.
- Our agency has minimal contact with suspected illegal aliens.
- We have a very good ICE unit and they take care of our needs in a very timely manner.
- We did not know anything about it. Any information you have on this would be appreciated.
- Aware of program but City Council is not inclined to take on this responsibility.
- The training lasts 4 weeks and we would have to send 2-4 deputies away to cover the work load and pay someone overtime to cover their shifts. This would cost tens of thousands when you add in a T-1 line for computer connectivity, and take the deputy away from their routine duties.

18) Would having more authority to enforce federal immigration law through 287(g) be helpful?

Would 287(g) authority be helpful?	Number	Percentage
It would primarily provide potential benefits to my jurisdiction.	12	15%
It would primarily present potential problems for my jurisdiction.	33	42
It would provide both potential benefits and present potential problems for my jurisdiction.	34	43
Total	79	100%

19) Please explain the potential benefits and problems that having greater authority to enforce immigration laws under 287(g) would present for your jurisdiction.

Sample “Potential Benefits” Responses:

- We would not have to rely on ICE to dispatch agents.
- It would save time, easier flow of process.

- With the 287(g) there would be a great potential for training for smaller agencies. It would be a benefit for officers, communication, and our community.
- Benefits would be to hold illegal aliens until ICE can take them.

Sample “Potential Problems” Responses:

- Potential problems are community reaction when illegal immigrants have been established within the community and employers who rely on immigration labor.
- We are a very small agency with limited staff.
- With turn-over of personnel, the burden of training and maintaining would be overwhelming.
- There is no place to put additional arrestees.
- There is potential for loss of trust in local law enforcement by immigrant community. They may not report violent crimes for fear of ICE notification.

20) In what time frame does your agency report arrestees identified as possible illegal immigrants to ICE?

When Does Your Agency Report Arrestees to ICE?	Number
Immediately Upon Arrest	32
When Arrestee is Booked at a Detention Facility	33
We rely on the county sheriff to process all reports to ICE	28
Total	93

Note: The numbers are a duplicate count; some agencies reported multiple methods of reporting arrestees to ICE

Sample “Other” Responses:

- We report on following business day.
- Jail reports and we notify ICE and send reports.
- We report on the first of the following month.

21) How often did ICE issue a detainer for criminal arrestees reported to ICE by your agency in CY 2006, CY 2007, and CY 2008? (Please indicate the percentage. If exact figures are unknown please indicate and provide estimated figures.)

Results: Data for this question could not be aggregated due to variation in response types. In addition, many respondents noted that they do not have access to this information and therefore could not respond.

22) On average, how much time must your agency expend in order to process a single IAQ report to ICE?

Results: Several respondents noted that they did not know how long it took them to process an IAQ. Most respondents that did answer said it took between 5 and 30 minutes to process an IAQ, with an average of about 10-15 minutes.

23) On average, how long does it take to receive a response to an IAQ from ICE?

Average Response Time from ICE to IAQs	Number	Percentage
< 4 hours	36	64%
4-7 hours	14	24
8-23 hours	2	4
24-47 hours	2	4
48-72 hours	0	0
>72 hours	2	4
Total	56	100%

24) How frequently (e.g., what percentage of the time) does ICE provide a response to IAQs before your agency must release the individual in question from arrest?

ICE Response Received Prior to Releasing Arrestee	Number	Percentage
<5%	21	45%
5%-25%	9	19
26%-50%	3	6
51%-75%	4	9
>75%	10	21
Total	47	100%

From a detention facility?

ICE Response Received Prior to Releasing Arrestee from Detention Center	Number	Percentage
<5%	10	38%
5%-25%	4	16
26%-50%	1	4
51%-75%	1	4
>75%	10	38
Total	26	100%

25) Please rate your agency’s experience in working with both the local and national ICE authorities. If your agency has had minimal interaction with ICE, please indicate.

Experience Working with the Local ICE Office	Number	Percentage
Minimal Interaction	43	47%
Very Negative	1	1
Negative	2	2
Neutral	9	10
Positive	19	20
Very Positive	19	20
Total	93	100%

Experience Working with the National ICE Authorities	Number	Percentage
Minimal Interaction	66	72%
Very Negative	3	3
Negative	5	5
Neutral	10	11
Positive	7	8
Very Positive	1	1
Total	92	100%

26) Please provide any suggestions you have on how interaction between ICE and local law enforcement agencies could be improved.

Sample Responses:

- None. We believe communication and cooperation with ICE are positive.
- It would be helpful to better understand the decision making process in issuing a hold or when a subject is deported.
- Interaction can be improved through training and meetings with local ICE agents and law enforcement.
- We just have not had the need to interact with ICE.
- Improve by providing hands-on training to local municipalities to assist with processing an IAQ report.
- Have ICE funded appropriately and get ICE holds out of local jails.

27) Do you believe that SB 06-090 is effective at fostering greater cooperation between ICE and local law enforcement and curtailing the number of illegal immigrants in the State? Please explain.

Sample Responses:

- I believe it has helped; our biggest problem is ICE won't come out here and pick illegal immigrants up.

- Yes, it requires law enforcement to assist federal enforcement on this issue, without SB 06-90 some law enforcement may turn their head on this issue.
- I believe SB 06-090 has finally put a face on ICE in our jurisdiction and it has been positive. I don't believe SB 06-090 has had any effect on the number of suspected illegal immigrants in our jurisdiction. I can't speak for the State.
- The answer to this question is unknown - lack of incidents and experience.
- The reporting procedures with ICE are clearer since SB 06-090; I don't know if I would say cooperation is better between ICE and local agencies.
- SB 06-090 did not foster it; we had this good relationship (with ICE) before SB 06-090.
- No, SB 06-090 has not led to a curtailment of illegal immigrants.
- No, this is a revolving door and until there is truly an enforcement effort on the national level it will not be resolved. Training needs to be provided for alien documentation so locals can effectively enforce these issues
- No. The number of detainees has stressed the local jails. ICE does not have sufficient agents or detention beds to handle the increase. Responses from ICE have slowed because they are overwhelmed and after all the money is spent on housing, ultimately deported people return to our community within weeks. ICE is frustrated and so are we.

28) Do you believe that SB 06-090 has had a positive effect on public safety in your jurisdiction? Please explain.

Has SB 06-090 Had A Positive Effect on Public Safety?	Number	Percentage
Yes	27	34%
No	53	66
Total	80	100%

Sample Responses:

- Illegal aliens who commit crimes are deported, and if they return face greater penalties.
- It has added a level of accountability that was otherwise not present.
- I haven't seen where it has made any difference in the way the officers handle calls or do their jobs.
- Nothing has really changed.
- SB 06-090 is an unnecessary and unfunded mandate.
- Unknown - Those inmates taken by ICE for further holds/disposition cannot be tracked.
- It hasn't changed anything. We reported to ICE before the law was enacted and the end results remain the same. Just more paperwork.
- We contact so few illegal persons SB 06-090 makes little to no difference.

State Assistance

28b) What could the State do to assist local law enforcement in the implementation of SB 06-090 and the enforcement of immigration laws?

Sample Responses:

- The State could make available grant funding for smaller agencies (to allow training time and enforcement manpower).
- Nothing, unless you are willing to assist with the detention and housing of all illegal aliens.

- Match resources necessary with mandates, many law enforcement agencies, such as ours, are struggling to meet basic responsibilities of public safety.
- I don't believe local or state efforts can have much impact until there is a change in federal laws, policies, and resources.
- Repeal SB 06-090 reporting requirements to the Legislature. And work with ICE to increase the size of staffing of the local office.
- Issue model policy and/or guidance on how to establish probable cause that a subject is in the country illegally. Any mandates should be accompanied by funding.
- Training on documentation and ID from countries.
- Pressure federal government to develop practical and enforceable immigration policy and regulations.

29) Please provide any other comments below. Thank you for your participation.

Sample Responses:

- SB 90 requires peace officers to cooperate with state and federal officials with regard to the enforcement of laws concerning illegal immigration and peace officers, under certain circumstances, make reports to ICE. The impact of this legislation has had a minimal impact on my department and even less impact on the flow of illegal immigrants into Colorado.
- Until such time that there is clear federal agreement and understanding we will not be effective in this endeavor.
- The Legislature should understand that local law enforcement cannot develop probable cause when we do not have access to information that is essential to make the determination. They should also understand that local law enforcement does not have jurisdiction to enforce federal laws. The federal government's inaction causes the citizens of this jurisdiction to suffer hundreds of crimes committed by persons who are in this country illegally.
- I think all or most police agencies would appreciate training and/or information that would allow them to take illegal aliens off the streets.

Appendix C
Colorado Office of the State Auditor
Law Enforcement Agencies Included in Site Visits
for Senate Bill 06-090 Performance Audit

Agency	CY 2007 Officers ¹	Percentage of Statewide Total	2007 Reports to ICE ²	Percentage of Statewide Total
Arapahoe County Sheriff's Office	300	2.63%	779	3.50%
Aurora Police Department	610	5.36	2,532	11.38
Avon Police Department	17	0.15	56	0.25
Commerce City Police Department	83	0.73	69	0.31
Denver Police Department	1,561	13.71	109	0.49
Denver Sheriff's Office ³	784	6.89	1,979	8.90
Durango Police Department	53	0.47	43	0.19
Glenwood Springs Police Department	23	0.20	29	0.13
Grand Junction Police Department ⁴	107	0.94	0	0.00
La Plata County Sheriff's Office	86	0.76	78	0.35
Limon Police Department	5	0.04	3	0.01
Lincoln County Sheriff's Office ⁵	5	0.04	12	0.05
Mesa County Sheriff's Office	168	1.48	278	1.25
Summit County Sheriff's Office	56	0.49	71	0.32
Weld County Sheriff's Office ⁶	102	0.90	2,741	12.32
Total for Audit Site Visits	3,960	34.78%	8,779	39.46%
Statewide Total	11,387	100%	22,247	100%

¹Officer information from Colorado Bureau of Investigation "Crime in Colorado" Reports. Civilian employees are not included.

²Figures on ICE reporting provided by Legislative Council.

³Officer information provided by Denver County Sheriff's Office.

⁴Grand Junction Police Department reported no arrestees to ICE in 2007. Department policy requires arrestees suspected of being illegal aliens to be booked into Mesa County Jail. Mesa County Jail is then responsible for reporting these individuals to ICE.

⁵Officer Information for the Lincoln County Sheriff's Office is from 2006. Information for 2007 was not available in the Colorado Bureau of Investigation report.

⁶Officer information provided by Weld County Sheriff's Office.

Appendix D
Report of the Governor's Working Group on Law Enforcement and Illegal Immigration
December 2008
Executive Summary and Recommendations

Source: Prepared by the Department of Public Safety on behalf of the Working Group. The entire report is located on the Department of Public Safety's website at: <http://cdpsweb.state.co.us/immigration/documents/FINAL%20Report%202%20for%20Eservice.pdf>.

Executive Summary

A panel of 31 specially recruited leaders from law enforcement, legal aid, human services, prosecution, criminal justice, and government agencies throughout Colorado met in six four-hour long sessions to examine current conditions in immigration and traffic law enforcement at the request of Governor Bill Ritter, Jr., following two tragic traffic crashes this year involving drivers who were living in the United States in violation of federal immigration laws. In the most recent incident the driver in a crash that resulted in the deaths of three people had been living in the country since childhood, providing a number of different aliases and residency claims to local law enforcement officers in a number of jurisdictions during his numerous contacts with law enforcement. In the course of the resulting investigation, officials learned he never had been licensed to drive. By all accounts, his true immigration status remained undiscovered until the fatal crash, due to his misrepresentations, to his ability to cast himself as a U.S. citizen and to federal immigration data systems that are not linked to criminal histories maintained by states and the FBI.

At present, it is impossible for local police officers, sheriffs' deputies and most State Patrol troopers to be able to verify immigration status of persons they normally encounter. Such a verification presently requires a separate request for a manual search of a federal database. In two states, a pilot project of the U.S. Immigration and Customs Enforcement agency called Secure Communities may help local law enforcement agencies overcome the existing limitations of data systems. Members of the panel want Colorado to explore the possibility of becoming a Secure Communities participating test site.

The only other option available to local law enforcement agencies to obtain federal immigration status information is their participation in a program known as 287(g) authority. Participating in the 287(g) program, however, costs local agencies significant resources to train officers. It also severely reduces the ability of local police officers to work effectively in communities to solve crime and serve victims. When 287(g) authority is applied to county jail operations, some savings can be realized to counties, even though there are other resource issues associated with limited 287(g) authority. The decision whether to participate in the 287(g) program must remain with individual law enforcement agencies in Colorado.

Immigration enforcement remains within the realm of federal law enforcement agencies. Local law enforcement agencies do not have the authority and cannot be expected to develop the complex technical expertise needed to enforce federal immigration law.

Peace officers need better ways of verifying the identity of persons they encounter who do not have identification or who criminally misrepresent their identities.

This report presents a number of recommendations and potential improvements that might help avoid the ability of a driver to take advantage of data system limitations. Some of these recommendations will require state and federal legislative changes, and others can be enacted administratively. Most of the legislative changes suggested by the panel involve improving definitions and refining existing statutes rather than creating new sections of state law.

LAW ENFORCEMENT ISSUES

Law Enforcement Recommendation 1

For those local and state law enforcement agencies that have determined that they want to pursue 287(g) powers, the state requests that ICE make the training available to those agencies within a reasonable time to accommodate the needs and interests of Colorado law enforcement.

- A. The federal government should provide supplemental funding for local authorities to assist with the cost of the training, including overtime to backfill the positions of those officers that are away taking the training.
- B. ICE should expand its ability to conduct 287(g) training in Colorado, rather than requiring Colorado agencies to send officers out of state.
- C. 287(g) training should be expanded for detentions and enforcement, depending on the request of the Colorado law enforcement agency.

Law Enforcement Recommendation 2

The federal government should significantly expand the detention capacity and all necessary support services and staff available for Colorado detainees.

Law Enforcement Recommendation 3

ICE should revisit its policies regarding appropriate standards for local jails to qualify as an ICE detention facility.

- A. ICE should not impose any more stringent requirements for the housing of illegal aliens than are mandated for the constitutional detention of United States citizens (statement applies to criminal and civil detainees).

Law Enforcement Recommendation 4

The federal government should fully compensate local authorities after all local charges have been resolved for any costs associated with arrestees being detained for ICE at all stages of a proceeding including medical, food and housing expenses.

Law Enforcement Statement and Issue 5

Simply increasing the number of law enforcement officials with enforcement authority under section 287(g) without a significant increase in detentions capacity will **not** result in a meaningful strategy to ameliorate the problem. The impact on the entire infrastructure, including detention facilities, attorneys, courts and staff must be considered, in a totality approach to solving the issues.

Law Enforcement Statement and Issue 6

Law enforcement authorities have a duty to support and defend the constitutional rights of **all** persons.

- A. Officers must build trust with all elements of the community, including immigrants. This engenders respect for the law and promotes the cooperation of victims and witnesses at every stage of an investigation and prosecution.
- B. Bias based policing and racial profiling can never be tolerated within the law enforcement community.

Law Enforcement Recommendation 7

The development of a national identification card based on biometric technology such as fingerprints or DNA would be helpful to law enforcement.

Law Enforcement Recommendation 8

The Peace Officers' Standards and Training (P.O.S.T.) Board should develop a curriculum and training to assist local police and sheriff's deputies in determining probable cause regarding a person's place or country of origin and immigration status (as contemplated by SB 06-090, Section 29-29-101 et seq., C.R.S.).

Law Enforcement Statement and Issue 9

State and local law enforcement resources are stretched beyond capacity and cannot absorb additional unfunded mandates to deal with the federal immigration problem.

- A. Public funding policies should prioritize public safety needs.

Law Enforcement Statement and Issue 10

Because illegal immigrants are as likely as any other group to commit crimes, tragic and egregious activity by a small segment of the illegal immigrant community will continue to occur in Colorado. The problem of illegal immigrants causing such tragedies will not be fully addressed until such time as the national problems of illegal immigration are resolved by the federal government.

Law Enforcement Recommendation 11

ICE has a national policy of prohibiting its local officials in any jurisdiction, including Colorado, from engaging directly and openly with the local community and local media about its many challenges in enforcing federal immigration law. This policy should be ended immediately. Public discourse directly with ICE about its capacities and limitations is crucial for Colorado to fully partner with the federal government to solve our immigration problems.

COMMUNICATIONS ISSUES

Communications Recommendation 1

Communication between ICE and local law enforcement, prosecutors and the court is inconsistent regarding detention and deportation (voluntary or otherwise). ICE should not deport any individual pending state felony, misdemeanor or traffic charges without notifying both the arresting agency and the prosecuting attorney.

- A. If necessary, federal law should be revised to prohibit deportation while state charges are pending.

Communications Recommendation 2

ICE should report to local law enforcement, prosecutors and the court on the ultimate disposition of any individual against whom ICE has lodged a detainer during a state criminal prosecution or detention. Currently ICE's victim notification system is only available for victims of felony crimes to learn the status of an immigration case involving the perpetrator.

Communications Recommendation 3

ICE should provide training for state and municipal prosecutors, judges, law enforcement and the defense bar that would contribute significantly to a more complete understanding of ICE's policies and procedures.

Communications Recommendation 4

CBI should continue to explore and, when feasible, implement auto-generated flags to reflect the non-U.S. birthplace or country of origin of individuals within its database.

Communications Statement and Issue 5

This working group supports ICE’s efforts to dedicate additional resources to the IAQ system to expedite inquiries from local law enforcement.

Communications Recommendation 6

When submitting an inquiry to the IAQ system, local law enforcement should use the “narrative” field to distinguish case priorities.

Communications Recommendation 7

Colorado should vigorously advocate to be designated as a new site for the Immigration and Customs enforcement’s (ICE) “Secure Communities” program, which allows state and local law enforcement authorities to automatically check fingerprints of arrestees against national fingerprint databases. Our congressional delegation should urge the Department of Homeland Security to make implementing this program in Colorado a top priority.

LEGISLATIVE ISSUES

Legislative Recommendation 1

Additional state legislative guidance is needed in determining appropriate sentences and the extent of the court’s authority when dealing with illegal immigrants accused or convicted of state crimes.

- A. What are appropriate factors to consider when setting a bond?
- B. Is someone who is in the country illegally and is convicted of a crime eligible for probation?
- C. What is an appropriate sentence for both misdemeanants and felons who are in the country illegally and are convicted of a crime?

Legislative Recommendation 2

Colorado should enact a “material witness” statute, similar to the federal statute and must address the following issues:

- A. How long may an individual be detained?
- B. Where would the individual be detained?
- C. Who pays the cost of detention?
- D. What due process rights inure to the detainee?
- E. Is there a right to counsel and, if so, at whose expense?

Legislative Recommendation 3

Colorado should revise its “human smuggling” law to mirror federal statutes by deleting the requirement of proving a “thing of value” for payment.

Legislative Recommendation 4

Colorado should revise its “human trafficking” statute to mirror federal statutes by:

- A. Amending the state statute to align subsections of trafficking minors and trafficking aliens to be the same class of crime.
- B. Addressing the definition of the age of a minor. Currently there is disparity between the state and federal statutes.
- C. Compare state statutory language of Coercion of Involuntary Servitude to trafficking statutory language. Align federal and state language.

Legislative Recommendation 5

The Immigration Working Group recommends a comprehensive revision of asset forfeiture laws in Colorado to deter criminal activity, including those committed by illegal aliens. Forfeiture proceeds disbursement should be prioritized to include investigation, apprehension, detention, and deterrence of criminal activities, including those committed by illegal aliens, as well as cost recoveries for bringing these civil actions.

FEDERAL RECOMMENDATIONS

Federal Recommendation 1

The U.S. Congress needs to examine the complexities of current immigration laws and the impact of these laws on policies and procedures.

Federal Recommendation 2

The U.S. Congress needs to set policy for the nation regarding the commission of crimes by illegal aliens.

Federal Recommendation 3

Congress should adopt the recommendations contained in the Western States Governors’ Association 2006 “Policy Resolution on United States-Mexico Border Security and Illegal Immigration” and Colorado House Joint Resolution 06-1023.

Federal Recommendation 4

Congress should appropriate significant additional resources to ICE to implement effective detention, removal and training functions in support of local law enforcement.

Federal Recommendation 5

The federal government should provide supplemental funding to Colorado to provide for a useful state “material witness” statute (applicable to human smuggling and human trafficking prosecutions) for sheltering, housing or detention of victims and witnesses so that admissible depositions may be conducted.

Federal Recommendation 6

The federal government should provide supplemental funding to Colorado to offset the costs of 287(g) training for local law enforcement as well as for overtime and compensation time associated with the training.

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