

HB1124_L.004

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on State, Veterans, & Military Affairs.

HB19-1124 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

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

9 (b) Colorado has the right to be free from mandates or financial
10 obligations to perform the duties of the federal government, or to be
11 threatened or coerced to do so by withholding federal funding; and

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

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

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

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

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

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

29 **ARTICLE 76.6**

30 **Prioritizing State Enforcement of**
31 **Civil Immigration Law**

32 **24-76.6-101. Definitions.** AS USED IN THIS ARTICLE 76.6, UNLESS
33 THE CONTEXT OTHERWISE REQUIRES:

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

1 ON ANY FORM PROMULGATED BY FEDERAL IMMIGRATION ENFORCEMENT
2 AUTHORITIES.

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

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

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

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

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

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

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

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

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

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

33 **24-76.6-102. Civil immigration detainees - legislative**
34 **declaration. (1) Legislative declaration.** THE GENERAL ASSEMBLY FINDS
35 AND DECLARES THAT:

36 (a) FEDERAL IMMIGRATION AUTHORITIES AT TIMES SUBMIT
37 REQUESTS TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES TO DETAIN
38 AN INMATE AFTER THE INMATE IS ELIGIBLE FOR RELEASE FROM CUSTODY.
39 CONTINUED DETENTION OF AN INMATE UNDER A FEDERAL CIVIL
40 IMMIGRATION DETAINER CONSTITUTES A NEW ARREST UNDER STATE LAW
41 AND A SEIZURE UNDER THE FOURTH AMENDMENT OF THE UNITED STATES
42 CONSTITUTION.

43 (b) REQUESTS FOR CIVIL IMMIGRATION DETAINERS ARE NOT

1 WARRANTS UNDER COLORADO LAW. A WARRANT IS A WRITTEN ORDER BY
2 A JUDGE DIRECTED TO A LAW ENFORCEMENT OFFICER COMMANDING THE
3 ARREST OF THE PERSON NAMED, AS DEFINED IN SECTION 16-1-104 (18).
4 NONE OF THE CIVIL IMMIGRATION DETAINER REQUESTS RECEIVED FROM
5 THE FEDERAL IMMIGRATION AUTHORITIES ARE REVIEWED, APPROVED, OR
6 SIGNED BY A JUDGE AS REQUIRED BY COLORADO LAW. THE CONTINUED
7 DETENTION OF AN INMATE AT THE REQUEST OF FEDERAL IMMIGRATION
8 AUTHORITIES BEYOND WHEN HE OR SHE WOULD OTHERWISE BE RELEASED
9 CONSTITUTES A WARRANTLESS ARREST, WHICH IS UNCONSTITUTIONAL,
10 *PEOPLE V. BURNS*, 615 P.2d 686, 688 (COLO. 1980).

11 (2) A LAW ENFORCEMENT OFFICER SHALL NOT ARREST OR DETAIN
12 AN INDIVIDUAL, OR PROVIDE ANY INDIVIDUAL'S PERSONAL INFORMATION
13 TO FEDERAL IMMIGRATION ENFORCEMENT AUTHORITIES, ON THE BASIS OF
14 A CIVIL IMMIGRATION DETAINER REQUEST.

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

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

26 **24-76.6-103. Limitations on access to nonpublic areas of jails**
27 **and related facilities.** (1) (a) A LAW ENFORCEMENT OFFICER, OR OTHER
28 STATE, COUNTY, OR LOCAL EMPLOYEE, SHALL NOT GRANT FEDERAL
29 IMMIGRATION AUTHORITIES ACCESS TO OR USE OF THE NONPUBLIC AREAS
30 OF ANY COUNTY OR LOCAL JAIL, CUSTODIAL FACILITY, OR OTHER LAW
31 ENFORCEMENT FACILITY FOR THE PURPOSE OF CONDUCTING
32 INVESTIGATIVE INTERVIEWS OR FOR ANY OTHER PURPOSE RELATED TO THE
33 ENFORCEMENT OF CIVIL IMMIGRATION LAWS UNLESS FEDERAL
34 IMMIGRATION AUTHORITIES PRESENT A WARRANT, WRIT, OR OTHER COURT
35 ORDER ISSUED BY A FEDERAL JUDGE OR MAGISTRATE.

36 (b) THE GENERAL ASSEMBLY FINDS THE FOLLOWING PROHIBITION
37 IS NECESSARY, SINCE IMMIGRATION STATUS IS NOT A CONSIDERATION FOR
38 SENTENCING. A PROBATION OFFICER OR PROBATION DEPARTMENT
39 EMPLOYEE SHALL NOT PROVIDE PERSONAL INFORMATION ABOUT AN
40 INDIVIDUAL TO FEDERAL IMMIGRATION AUTHORITIES OR GRANT ACCESS TO
41 OR THE USE OF THE NONPUBLIC AREAS OF A PROBATION OFFICE FOR THE
42 PURPOSE OF CONDUCTING INVESTIGATIVE INTERVIEWS OR FOR ANY OTHER
43 PURPOSE RELATED TO THE ENFORCEMENT OF CIVIL IMMIGRATION LAWS

1 UNLESS FEDERAL IMMIGRATION AUTHORITIES PRESENT A WARRANT, WRIT,
2 OR OTHER COURT ORDER ISSUED BY A FEDERAL JUDGE OR MAGISTRATE.

3 (2) NOTHING IN SUBSECTION (1) OF THIS SECTION OR IN SECTION
4 24-76.6-102 PREVENTS LAW ENFORCEMENT OFFICERS FROM
5 COORDINATING TELEPHONE OR VIDEO INTERVIEWS BETWEEN FEDERAL
6 IMMIGRATION AUTHORITIES AND INDIVIDUALS INCARCERATED IN ANY
7 COUNTY OR LOCAL JAIL OR OTHER CUSTODIAL FACILITY, TO THE SAME
8 EXTENT AS TELEPHONE OR VIDEO CONTACT WITH SUCH INDIVIDUALS IS
9 ALLOWED BY THE GENERAL PUBLIC, IF THE INDIVIDUAL HAS BEEN ADVISED,
10 IN THE INDIVIDUAL'S LANGUAGE OF CHOICE, OF CERTAIN INFORMATION IN
11 WRITING, INCLUDING BUT NOT LIMITED TO:

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

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

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

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

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

24 **24-76.6-104. Contracts related to enforcement of federal civil**
25 **immigration laws prohibited.** THE STATE OR A POLITICAL SUBDIVISION
26 OF THE STATE SHALL NOT ENTER INTO A CONTRACTUAL AGREEMENT,
27 INCLUDING ANY SUBCONTRACTS, THAT WOULD REQUIRE AN EMPLOYEE TO
28 DIRECTLY OR INDIRECTLY ASSIST IN THE ENFORCEMENT OF CIVIL
29 IMMIGRATION LAWS, SPECIFICALLY ANY AGREEMENT AUTHORIZED BY 8
30 U.S.C. SEC. 287 (g), REFERRED TO AS A "287g AGREEMENT". THE
31 GENERAL ASSEMBLY FINDS THIS PROHIBITION IS NECESSARY BECAUSE
32 SUCH AGREEMENTS DEPUTIZE LAW ENFORCEMENT OFFICERS TO ENFORCE
33 FEDERAL IMMIGRATION LAW TO THE EXTENT CONSISTENT WITH STATE AND
34 LOCAL LAW. COLORADO LAW EXPRESSLY LIMITS THE POWER OF SHERIFFS
35 TO ENFORCING CRIMINAL LAW, MAKING ARRESTS FOR VIOLATIONS OF
36 CRIMINAL LAW, AND HOUSING PRISONERS FOR VIOLATIONS OF CRIMINAL
37 LAW. THE AUTHORITY OF SHERIFFS IS LIMITED TO THE EXPRESS AUTHORITY
38 GRANTED THEM BY THE GENERAL ASSEMBLY, CONSISTENT WITH THE
39 COLORADO SUPREME COURT OPINIONS IN *PEOPLE V. BUCKALLEW*, 848 P.2d
40 904 (COLO. 1993) AND *DOUGLASS V. KELTON*, 610 P.2d 1067 (COLO.
41 1980). THEREFORE, 287g AGREEMENTS ARE NOT CONSISTENT WITH STATE
42 AND LOCAL LAW.

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

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

3 Page 1, strike lines 101 and 102 and substitute "CONCERNING
4 CLARIFICATION OF THE AUTHORITY OF CRIMINAL JUSTICE OFFICIALS
5 WITH RESPECT TO THE ENFORCEMENT OF CERTAIN FEDERAL CIVIL
6 LAWS."

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