First Regular Session
Seventieth General Assembly
STATE OF COLORADO

ENGROSSED

This Version Includes All Amendments Adopted on Second Reading in the House of Introduction

LLS NO. 15-0947.01 Michael Dohr x4347

HOUSE BILL 15-1356

HOUSE SPONSORSHIP

Salazar, Buckner, Duran, Esgar, Fields, Melton, Moreno, Pabon, Vigil, Williams

SENATE SPONSORSHIP

Guzman,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES RELATED TO ENFORCING FEDERAL**
102 **IMMIGRATION LAW.**

Bill Summary

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

The bill prohibits a public safety agency from holding or detaining a person beyond the point that he or she is eligible for release based solely on an immigration detainer request or administrative warrant.

The bill prohibits a court from using the existence of an immigration detainer request or administrative warrant as the deciding factor in setting bond in criminal cases. The bill prohibits discouraging an

HOUSE
Amended 2nd Reading
April 23, 2015

individual who is the subject of an immigration detainer request or administrative warrant from payment of bond or bail on the basis of that detainer request or administrative warrant.

The bill repeals the statute regarding bonds recovered for persons without documentation.

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

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

(a) It is important to enhance public safety by building trust between immigrant communities and public safety agencies and to ensure equal protection and safety for all members of Colorado communities, including witnesses and victims of crime;

(b) Entangling public safety agencies in enforcing federal immigration laws can undermine community trust;

(c) A federal immigration detainer request or administrative warrant that is used to detain an individual does not contain or require statements of probable cause or a judicial finding of probable cause as is required in Colorado criminal procedure;

(d) Those documents can create liability for Colorado's public safety agencies while harming community trust;

(e) Recent federal court rulings have indicated that an immigration detainer request or administrative warrant not issued by a court are "requests" and therefore are not considered "arrest warrants";

(f) There is no state authority for arresting or prolonging the detention of a person based on an alleged civil immigration violation, and an immigration detainer request or administrative warrant does not confer any authority on Colorado law enforcement agencies. An immigration detainer request or administrative warrant does not create an obligation

or legal authority to maintain custody of a prisoner who is otherwise eligible for immediate release from custody.

(g) By clarifying and delineating the responsibilities of Colorado public safety agencies and those of federal immigration agencies, the general assembly can ensure that local resources are focused on public safety issues instead of immigration issues that are the federal government's responsibility. This will save local governments a significant amount of time, energy, and resources.

(h) Preventing civil liability for Colorado communities and public safety agencies, along with ensuring the equal provision of constitutional protections, are a primary concern for Colorado and public safety agencies.

(2) The general assembly further finds that enacting this act will promote public safety, community policing, and civil liberties and does not limit state or local government responsibilities pursuant to federal law.

SECTION 2. In Colorado Revised Statutes, **add** article 6.5 to title 16 as follows:

ARTICLE 6.5

Immigration Detainer Limits

16-6.5-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "IMPROVING AND MAINTAINING PROTECTIONS, ACCOUNTABILITY, AND COMMUNITY TRUST ACT".

16-6.5-102. Definitions. AS USED IN THIS ARTICLE UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADMINISTRATIVE WARRANT" MEANS A DOCUMENT ISSUED BY AN IMMIGRATION OFFICIAL THAT CAN FORM THE BASIS FOR AN

INDIVIDUAL'S ARREST OR DETENTION FOR A CIVIL IMMIGRATION PURPOSE, INCLUDING BUT NOT LIMITED TO AN IMMIGRATION WARRANT OF ARREST, AN ORDER TO DETAIN OR RELEASE ALIENS, A NOTICE OF CUSTODY DETERMINATION, A NOTICE TO APPEAR, A REMOVAL ORDER, OR A WARRANT OF REMOVAL.

(2) "IMMIGRATION DETAINER REQUEST" MEANS A DOCUMENT ISSUED BY AN IMMIGRATION OFFICIAL TO A FEDERAL, STATE, OR LOCAL PUBLIC SAFETY AGENCY THAT REQUESTS THAT THE PUBLIC SAFETY AGENCY PROVIDE NOTICE OF RELEASE OR MAINTAIN CUSTODY OF THE INDIVIDUAL BASED ON AN ALLEGED VIOLATION OF A CIVIL IMMIGRATION LAW, INCLUDING BUT NOT LIMITED TO A REQUEST FOR NOTIFICATION AND DETAINER ISSUED UNDER SECTION 236.1 OR SECTION 287.7 OF TITLE 8 OF THE CODE OF FEDERAL REGULATIONS, AND BASED ON DEPARTMENT OF HOMELAND SECURITY FORM I-247 "IMMIGRATION DETAINER - NOTICE OF ACTION".

(3) "NCIC" REFERS TO A FEDERALLY MAINTAINED DATABASE KNOWN AS THE NATIONAL CRIME INFORMATION CENTER, WHICH IS USED TO HOUSE WARRANTS ACCESSIBLE BY LAW ENFORCEMENT AGENCIES AROUND THE UNITED STATES.

(4) "PEACE OFFICER" MEANS A PEACE OFFICER DESCRIBED IN ARTICLE 2.5 OF THIS TITLE.

16-6.5-103. Immigration-related detention. (1) A PUBLIC SAFETY AGENCY SHALL NOT HOLD OR DETAIN A PERSON BEYOND THE POINT THAT HE OR SHE IS ELIGIBLE FOR RELEASE BASED SOLELY ON AN IMMIGRATION DETAINER REQUEST OR ADMINISTRATIVE WARRANT. A PUBLIC SAFETY AGENCY MAY EXECUTE OR COMPLY WITH A VALID AND PROPERLY ISSUED FEDERAL WARRANT THAT MEETS THE LEGAL STANDARD

OF JUDICIAL REVIEW AND IS SIGNED BY A FEDERAL MAGISTRATE OR JUDGE.

(2) IF A PUBLIC SAFETY AGENCY RECEIVES AN IMMIGRATION-RELATED WARRANT FROM NCIC, OR ANY SUCCESSOR OR SIMILAR DATABASE, THE PUBLIC SAFETY AGENCY SHALL LOCATE THE WARRANT AND CONFIRM THAT IT MEETS THE LEGAL STANDARD OF JUDICIAL REVIEW AND IS SIGNED BY A FEDERAL MAGISTRATE OR JUDGE BEFORE EXECUTING THE WARRANT.

(3) THIS SECTION DOES NOT RESTRICT ANY EXPENDITURE OR ACTION BY THE STATE, A LOCAL UNIT OF GOVERNMENT, OR A PUBLIC SAFETY OR OTHER AGENCY, OR BY AN EMPLOYEE OR AGENT OF THE STATE, LOCAL UNIT OF GOVERNMENT, OR AGENCY, THAT IS NECESSARY TO PERFORM THE OBLIGATIONS OF A CONTRACT BETWEEN THE STATE, LOCAL UNIT OF GOVERNMENT, OR AGENCY AND FEDERAL OFFICIALS REGARDING THE USE OF A FACILITY TO DETAIN INDIVIDUALS ALREADY IN FEDERAL IMMIGRATION CUSTODY AND IN FEDERAL IMMIGRATION REMOVAL PROCEEDINGS.

16-6.5-104. Bond issues for individuals with immigration-related issues. (1) A COURT SHALL NOT USE THE EXISTENCE OF AN IMMIGRATION DETAINER REQUEST OR ADMINISTRATIVE WARRANT AS THE DECIDING FACTOR IN SETTING BOND IN CRIMINAL CASES. THIS SECTION DOES NOT AFFECT THE AUTHORITY OF A COURT TO MAKE BAIL OR BOND DETERMINATIONS ACCORDING TO ITS USUAL PROCEDURES.

(2) A PERSON WHO MAKES BAIL OR BOND SHALL NOT BE PREVENTED FROM RELEASE UPON REVIEW OF ACCURACY AS TO THE BOND OR BAIL. AN IMMIGRATION DETAINER REQUEST OR ADMINISTRATIVE WARRANT MUST NOT INTERFERE WITH OR DELAY AN INDIVIDUAL'S BONDING PROCESS. ONLY JUDICIALLY APPROVED WARRANTS MAY

PREVENT THE RELEASE OF AN INDIVIDUAL.

(3) AN INDIVIDUAL WHO IS THE SUBJECT OF AN IMMIGRATION DETAINER REQUEST OR ADMINISTRATIVE WARRANT SHALL NOT BE DISCOURAGED FROM PAYING BOND OR BAIL ON THE BASIS OF THAT DETAINER REQUEST OR ADMINISTRATIVE WARRANT.

SECTION 3. In Colorado Revised Statutes, 16-4-110, **add** (1) (f) as follows:

16-4-110. Exoneration from bond liability. (1) Any person executing a bail bond as principal or as surety shall be exonerated as follows:

(f) WHEN THE SURETY APPEARS AND PROVIDES SATISFACTORY EVIDENCE TO THE COURT THAT THE DEFENDANT HAS BEEN REMOVED PURSUANT TO ACTION BY A FEDERAL IMMIGRATION AGENCY WHILE ON BOND OR THAT THE DEFENDANT HAS FAILED TO APPEAR DUE TO BEING IN THE CUSTODY OF THE UNITED STATES RELATED TO THEIR IMMIGRATION STATUS.

SECTION 4. In Colorado Revised Statutes, 16-4-114, **add** (5) (b) (V) (D) as follows:

16-4-114. Enforcement procedures for compensated sureties - definitions. (5) Liability of bond obligors on bonds issued by compensated sureties may be enforced, without the necessity of an independent action, as follows:

(b) (V) (D) A COMPENSATED SURETY SHALL BE EXONERATED FROM LIABILITY UPON THE BOND WHEN THE SURETY PROVIDES SATISFACTORY EVIDENCE TO THE COURT THAT THE DEFENDANT HAS BEEN REMOVED PURSUANT TO ACTION BY A FEDERAL IMMIGRATION AGENCY WHILE ON BOND OR THAT THE DEFENDANT HAS FAILED TO APPEAR DUE TO

BEING IN THE CUSTODY OF THE UNITED STATES RELATED TO THEIR IMMIGRATION STATUS.

SECTION 5. In Colorado Revised Statutes, **repeal** 16-3-503.

SECTION 6. In Colorado Revised Statutes, **repeal** 17-26-137.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.