

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0024.01 Michael Dohr

HOUSE BILL 10-1294

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A BILL FOR AN ACT

101 **CONCERNING A PROHIBITION ON THE TRANSFER OF DETAINEES FROM**
102 **THE GUANTANAMO BAY DETENTION FACILITY TO A**
103 **CORRECTIONAL FACILITY IN THE STATE OF COLORADO.**

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 directs the attorney general to oppose any attempt by the federal government to transfer Guantanamo bay detainees to a federal correctional facility in Colorado or to try any detainee in Colorado.

The bill prohibits the state or any political subdivision of the state

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

from providing resources to the federal bureau of prisons if a federal correctional facility in Colorado houses a detainee who was originally detained at Guantanamo bay. The bill prohibits the state from selling any property to the federal government for the purpose of housing Guantanamo bay detainees.

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

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

4 (a) On January 22, 2009, President Barack Obama, in an executive
5 order, instructed the Department of Defense to close the detention
6 facilities at Guantanamo Bay as soon as possible, no later than one year
7 from the date of the order. The order states, "If any individuals covered
8 by this order remain in detention at Guantanamo at the time of closure of
9 those detention facilities, they shall be returned to their home, released,
10 transferred to a third country, or transferred to another United States
11 detention facility in a manner consistent with law and the national
12 security and foreign policy interest of the United States".

13 (b) While the current headcount of persons who will be treated
14 indefinitely as detainees subject to the federal "Military Commissions Act
15 of 2006" is not public information, a press account published in the *New*
16 *York Times* on May 21, 2009, indicates that more than one hundred
17 Guantanamo Bay detainees are scheduled, under the current policy of the
18 administration of President Barack Obama, to be moved to the United
19 States, and, of that number, between fifty and one hundred of the
20 detainees are likely to be classified as being too dangerous to ever release;

21 (c) The placement of this group of Guantanamo Bay detainees,
22 classified as "unlawful enemy combatants" subject to the federal "Military
23 Commissions Act of 2006", should be of great concern to the people of

1 the United States;

2 (d) There is ongoing concern that the persons detained at
3 Guantanamo Bay still have terrorist allies around the world who may
4 respond to these detentions with the ongoing threat of homicidal violence
5 that may stretch indefinitely into the future;

6 (e) The decision to close the current detention facility at
7 Guantanamo Bay and transfer the detainees to the populated territory of
8 the United States, and the potential that these individuals may be detained
9 in Colorado, demonstrates no regard for the ongoing and indefinite threat
10 to the people of Colorado and the United States;

11 (f) It is of statewide concern that detainees currently located at
12 Guantanamo Bay, if moved to or tried in a facility in Colorado, would
13 introduce serious and catastrophic risks to many communities in the state,
14 including the cities of Aurora, Colorado Springs, Denver, Florence,
15 Fountain, and Pueblo;

16 (g) The possibility of Guantanamo Bay detainees being tried in the
17 Denver federal court for their terrorist acts poses potentially
18 insurmountable risks to the citizens of Denver and the surrounding area,
19 and such a possibility shall be opposed by the Colorado attorney general;

20 (h) If Guantanamo Bay detainees are allowed to be transferred to
21 any of the federal or state prisons in the state of Colorado, or tried in the
22 Denver federal court, Colorado's five million citizens will be subject to
23 the unwanted scrutiny of other countries and terrorist organizations
24 throughout the world;

25 (i) Colorado's five million citizens are relying on the members of
26 the general assembly to consider the following:

27 (I) That Arapahoe county is home to more than 554,000 citizens

1 and Buckley Air Force Base;

2 (II) That the city and county of Denver is home to nearly 600,000
3 citizens and the Rocky Mountain Arsenal;

4 (III) That El Paso county is home to more than 596,000 citizens,
5 the Fort Carson Army Post, Peterson Air Force Base, Schriever Air Force
6 Base, North American Radar Defense, and the United States Air Force
7 Academy;

8 (IV) That Fremont county is home to more than 47,000 citizens;
9 and

10 (V) That Pueblo county is home to nearly 157,000 citizens, the
11 Pueblo Army Depot, the United States Air Force Initial Flight Screening
12 program and Air Education and Training Command, and the Pueblo
13 Reservoir;

14 (j) The military installations in Pueblo and El Paso counties are
15 within an hour's drive of the United States Penitentiary Administrative
16 Maximum Facility, or Supermax-ADX, and the Fremont Correctional
17 Facility, and a Guantanamo Bay detainee transferred to either of those
18 facilities would pose a danger to the area's military installations and their
19 surrounding communities; and

20 (k) The tenth amendment of the United States constitution
21 reserves for the states any powers not expressly granted to the federal
22 government by the constitution and prohibits the federal government from
23 compelling the states to enforce federal regulations.

24 (2) Therefore, the general assembly finds and declares that it is
25 necessary for the safety of the citizens of Colorado to prevent the transfer
26 of a Guantanamo Bay detainee to a federal or state correctional facility in
27 Colorado and to prevent a Guantanamo Bay detainee from being tried in

1 the federal court in Denver.

2 **SECTION 2.** Article 2 of title 3, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW SECTION to read:

4 **3-2-102. State jurisdiction over correctional facilities housing**
5 **international terrorists - attorney general - prohibit state resources.**

6 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
7 REQUIRES, "GUANTANAMO BAY DETAINEES" MEANS PERSONS WHO WERE
8 ORIGINALLY DETAINED AT THE GUANTANAMO BAY DETENTION FACILITY
9 AND WHO ARE BEING TRANSFERRED TO ANOTHER FEDERAL DETENTION OR
10 CORRECTIONAL FACILITY.

11 (2) (a) THE ATTORNEY GENERAL OF THE STATE OF COLORADO
12 SHALL OPPOSE ANY ATTEMPT BY THE FEDERAL BUREAU OF PRISONS OR
13 ANY OTHER UNIT OF THE FEDERAL GOVERNMENT TO RELOCATE ANY
14 GUANTANAMO BAY DETAINEES TO ANY FEDERAL OR STATE CORRECTIONAL
15 FACILITY LOCATED IN COLORADO. THE OPPOSITION SHALL BE MADE A
16 PRIORITY BY THE ATTORNEY GENERAL AND, WHENEVER FEASIBLE, TAKE
17 PRECEDENCE OVER ANY OTHER MATTERS.

18 (b) THE ATTORNEY GENERAL OF THE STATE OF COLORADO SHALL
19 OPPOSE ANY ATTEMPT BY THE PRESIDENT OF THE UNITED STATES, THE
20 UNITED STATES CONGRESS, THE FEDERAL BUREAU OF PRISONS, OR ANY
21 OTHER UNIT OF GOVERNMENT TO RELOCATE A GUANTANAMO BAY
22 DETAINEE TO COLORADO FOR THE PURPOSE OF TRYING A DETAINEE IN THE
23 FEDERAL COURT LOCATED IN DENVER, COLORADO. THE OPPOSITION
24 SHALL BE MADE A PRIORITY BY THE ATTORNEY GENERAL AND, WHENEVER
25 FEASIBLE, TAKE PRECEDENCE OVER ANY OTHER MATTERS.

26 (3) (a) A STATE GOVERNMENTAL ENTITY OR A POLITICAL
27 SUBDIVISION OF THE STATE SHALL NOT PROVIDE RESOURCES OF ANY

1 NATURE TO THE FEDERAL BUREAU OF PRISONS IF A FEDERAL
2 CORRECTIONAL FACILITY IN THE STATE OF COLORADO HOUSES ANY
3 GUANTANAMO BAY DETAINEES.

4 (b) A STATE GOVERNMENTAL ENTITY OR A POLITICAL SUBDIVISION
5 OF THE STATE SHALL NOT SELL, LEASE, OR TRANSFER ANY REAL PROPERTY
6 TO THE FEDERAL BUREAU OF PRISONS IF THE FEDERAL BUREAU OF PRISONS
7 PLANS TO USE THE PROPERTY TO HOUSE A GUANTANAMO BAY DETAINEE.

8 (c) A STATE GOVERNMENTAL ENTITY OR A POLITICAL SUBDIVISION
9 OF THE STATE SHALL NOT PROVIDE RESOURCES OF ANY NATURE TO THE
10 FEDERAL BUREAU OF PRISONS OR A UNIT OF THE FEDERAL GOVERNMENT
11 TO HOUSE, TRANSFER, OR DETAIN IN A FEDERAL CORRECTIONAL FACILITY
12 IN THE STATE OF COLORADO A GUANTANAMO BAY DETAINEE FOR
13 PURPOSES OF TRYING THE DETAINEE IN THE FEDERAL COURT IN DENVER,
14 COLORADO.

15 (4) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION
16 THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, SUCH
17 INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
18 THIS SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID
19 PROVISION OR APPLICATION, AND, TO THIS END, THE PROVISIONS OF THIS
20 SECTION ARE DECLARED TO BE SEVERABLE.

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