

STATE OF COLORADO

Colorado General Assembly

Natalie Castle, Director
Legislative Council Staff

Colorado Legislative Council
200 E. Colfax Ave., Room 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email lcs.ga@coleg.gov



Ed DeCecco, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 E. Colfax Ave., Room 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Email olls.ga@coleg.gov

MEMORANDUM

To: Suzanne Taheri and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: May 9, 2025

Subject: Proposed initiative measures 2025-2026 #86 and #87, concerning law enforcement reporting requirements to federal authorities

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution. We hereby submit our comments and questions to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Colorado Legislative Council and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

Proposed initiatives 2025-2026 #86 and #87 were submitted by the same designated representatives as a series of proposed initiatives. The comments and questions raised in this memorandum address proposed initiatives 2025-2026 #86 and #87.

Earlier versions of these proposed initiatives, proposed initiative 2025-2026 #32 and proposed initiatives 2025-2026 #74 and #75, were submitted by the same designated

representatives, were the subject of memoranda dated February 25, 2025, and April 23, 2025, and were discussed at public meetings on February 28, 2025, and April 25, 2025. The comments and questions raised in this memorandum do not include comments and questions that were addressed in earlier memoranda or at earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiatives. Prior comments and questions that are not restated in this memorandum continue to be relevant and are considered part of this memorandum.

Purposes

Purposes for Proposed Initiative 2025-2026 #86

The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be to:

1. Require law enforcement to notify the federal Department of Homeland Security (DHS) in certain circumstances that a person is not lawfully present in the United States or that the status of the person's lawful presence is unknown;
2. Repeal the prohibition on a law enforcement officer arresting or detaining an individual on the basis of a civil immigration detainer request; and
3. Repeal the prohibition on probation department employees providing personal information about an individual to federal immigration authorities.

Purposes for Proposed Initiative 2025-2026 #87

The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be to:

1. Require law enforcement to notify DHS in certain circumstances that a person is not lawfully present in the United States or that the status of the person's lawful presence is unknown;
2. Require law enforcement to make a reasonable effort to determine whether certain persons are lawfully present in the United States;
3. Repeal the prohibition on a law enforcement officer arresting or detaining an individual on the basis of a civil immigration detainer request; and

4. Repeal the prohibition on probation department employees providing personal information about an individual to federal immigration authorities.

Substantive Comments and Questions

The substance of the proposed initiatives raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado Constitution requires all proposed initiatives to have a single subject.
 - a. What is the single subject of proposed initiative 2025-2026 #86?
 - b. What is the single subject of proposed initiative 2025-2026 #87?
2. Article V, section 1 (4)(a) of the Colorado Constitution requires that when the majority of voters approve an initiative, the initiative is effective on and after the date of the official declaration of the vote and proclamation of the governor. Because the proposed initiatives do not contain an effective date, this would be the default effective date. Does this default effective date satisfy your intent? If not, the designated representatives should include the desired effective date that is not earlier than the default effective date to comply with this constitutional requirement.
3. The proposed initiatives change all of the substantive provisions of article 76.6 of title 24, C.R.S. (article 76.6), but maintain the definitions of “civil immigration detainer,” “eligible for release from custody,” and “personal information” in section 24-76.6-101, C.R.S., which are not used in the proposed initiatives.
 - a. Would the proponents consider repealing those definitions, since they are not used in article 76.6, as amended by the proposed initiatives?
 - b. If so, would the proponents consider repealing and reenacting the entire article 76.6 instead of making amendments to, or repealing, each section in the article?
4. The proposed initiatives amend the defined term “law enforcement officer.” That term is not used in article 76.6, as amended by the proposed initiatives, but section 24-76.6-102, C.R.S., refers to “law enforcement.” Do you intend that “law enforcement” refers to law enforcement officers? If so, please either amend the defined term to be “law enforcement” or use “law enforcement officer” in section

24-76.6-102, C.R.S. If not, who constitutes “law enforcement” as used in section 24-76.6-102, C.R.S.?

5. Concerning the definition of “law enforcement officer” in the proposed initiatives:
 - a. What does it mean for a certified peace officer to be “actively employed” by a law enforcement agency? Is that different from an attorney’s or investigator’s employment by the district attorney, which is not described as “active”?
 - b. Which specific district attorney does “the district attorney” refer to in section 24-76.6-101 (3)(c), C.R.S., in the proposed initiatives? Should this instead be “a” district attorney, so that attorneys and investigators employed by any district attorney are included in the definition?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public hearing only if the designated representatives so request. You will have the opportunity to ask questions about these comments at the review and comment hearing. Please consider revising the proposed initiative as follows:

1. There is no need to strike and reintroduce “A” in proposed section 24-76.6-101 (3)(a), C.R.S., of both proposed initiatives; standard drafting practice allows simply capitalizing the word.