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MEMORANDUM

To: Suzanne Taheri and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: June 4, 2025

Subject: Proposed initiative measures 2025-2026 #94 and #95, 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 #94 and #95 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 #94 and #95.

Earlier versions of these proposed initiatives, proposed initiative 2025-2026 #32, proposed initiatives 2025-2026 #74 and #75, and proposed initiatives 2025-2026 #86 and #87, were submitted by the same designated representatives; were the subject of memoranda dated February 25, 2025, April 23, 2025, and May 9, 2025; and were discussed at public meetings on February 28, 2025, April 25, 2025, and May 9, 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 #94

The major purpose of the proposed amendment to the Colorado Constitution appears to be to require law enforcement to notify the federal Department of Homeland Security (DHS) within 72 hours of charging a person in certain circumstances that the person is not lawfully present in the United States or that the status of the person's lawful presence is unknown.

Purposes for Proposed Initiative 2025-2026 #95

The major purposes of the proposed amendment to the Colorado Constitution appear to be to:

1. Require law enforcement to notify DHS within 72 hours of charging a person in certain circumstances that the person is not lawfully present in the United States or that the status of the person's lawful presence is unknown; and
2. Require law enforcement to make reasonable efforts to determine whether certain persons are lawfully present in the United States.

Substantive Comments and Questions

The substance of the proposed initiative 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 #94?
 - b. What is the single subject of proposed initiative 2025-2026 #95?
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 add section 18 to article XVIII of the Colorado Constitution. Under current law, the last section of article XVIII is section 16. In order to use consecutive section numbers, please renumber the section added in each proposed initiative to be section 17.
4. The Colorado Constitution vests “legislative power” in the Colorado General Assembly. The Colorado Supreme Court has explained that the General Assembly's power is plenary and is limited only by the federal and state constitutions. The proposed initiatives amend the Colorado Constitution.
 - a. Is your intent to limit the General Assembly's authority to enact legislation related to law enforcement notifying DHS about a charged person’s lawful presence in the United States?
 - b. Under current law, section 24-76.6-103, C.R.S., a probation officer, who is a peace officer under sections 16-2.5-137 and 16-2.5-138, C.R.S., is prohibited from providing personal information about an individual to federal immigration authorities. Do you intend that the proposed constitutional amendments affect this prohibition?
5. The description of certified peace officers in the definition of “law enforcement” added in the proposed initiatives refers to a specific statutory section number, section 16-2.5-101, C.R.S. Because the General Assembly may repeal or amend that section, or may relocate the provisions of that section, would the proponents consider removing the specific statutory citation and instead generally refer to the “law”? For example, in existing law, other sections in the constitution use the phrases “as provided by law,” “prescribed by law,” and “established by law.”

Similarly, subsection (2) of each proposed initiative refers to “Colorado law” and “Colorado statute.”

6. The proposed initiatives require law enforcement to notify DHS. Because the federal government may change the name of DHS or reassign its responsibilities related to persons’ lawful presence in the United States to a different agency, would the proponents consider referring to the federal department with certain duties related to persons’ lawful presence instead of naming DHS? Alternatively, would the proponents indicate that it may be appropriate to notify a different agency and allow the General Assembly to designate that agency in law, for example requiring that law enforcement report to DHS “or any appropriate successor agency, as prescribed by law”?

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. Please add “- **definitions.**” at the end of the section headnote after “**United States.**”
2. The subsection numbers should be in regular type and should not be bolded.
3. If the designated representatives do not remove the reference to section 16-5-101, C.R.S., as suggested in comment 5 of the substantive comments and questions above, in subsection (1)(a) of both proposed initiatives, the statutory reference should appear in this format: “section 16-5-101, Colorado Revised Statutes,”.
4. In subsection (2) of both proposed initiatives, “seventy-two hours of charging the person” should be expressed as “seventy-two hours after charging the person” to conform to standard drafting language.