

# 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  
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  
Email olls.ga@coleg.gov

## MEMORANDUM

**To:** Suzanne Taheri and Michael Fields

**From:** Legislative Council Staff and Office of Legislative Legal Services

**Date:** February 25, 2025

**Subject:** Proposed initiative measure 2025-26 #32, concerning law enforcement determination of legal presence

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 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 intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

### Purposes

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

1. Require law enforcement to make a reasonable effort in specified circumstances to determine whether a person is lawfully present in the United States; and
2. Require that the federal Department of Homeland Security be notified if no determination is made that the person is legally 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. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. What constitutes making a "reasonable effort" to determine whether a person is lawfully in the United States? Would the proponents consider defining the term?
4. Who constitutes "law enforcement"? Would the proponents consider defining the term?
5. The proposed initiative does not clearly indicate which law enforcement agency or officer shall make the reasonable effort upon the person being charged with a crime. If the prosecutor who charges a person is a peace officer under Colorado law, is the prosecutor the law enforcement who shall make the effort? If so, who makes the effort if the prosecutor is not a peace officer? Or is the law enforcement agency that has custody of the person when charges are filed required to make the effort?
6. Concerning the requirement for law enforcement to make a reasonable effort to determine whether a person is lawfully in the United States at least 72 hours prior to the person's release after conviction of a crime:
  - a. Which law enforcement agency or officer is required to make the effort to determine whether a person is lawfully present in the United States prior to release after a conviction? If the person is in the custody of the Department of Corrections, do you intend that the Department of Corrections makes the effort prior to releasing the person from the department? The executive director of the Department of Corrections and many employees of the department are peace officers under Colorado law, but the Department of Corrections itself is generally not considered a law enforcement agency, so if you intend the Department of Corrections to make the effort, please indicate that in the proposed initiative. Who makes the effort if the person is released after conviction but prior to sentencing?

- b. Does the criterion in proposed section 24-76.6-102 (6)(a), that the person is charged with a crime of violence, mean that the person is being released following a conviction for the charged crime of violence or does it refer to a separate charge for which the person has not been convicted?
  - c. Does the crime for which the convicted person is being released qualify as a "prior felony," as described in proposed section 24-76.6-102 (6)(b), or must the person have been convicted of a felony before the conviction for which the person was detained and is being released?
  - d. How does law enforcement comply with the requirement to make a reasonable effort "at least 72 hours" before release if a court orders a person released from custody within 72 hours and law enforcement has not yet made the required effort?
7. The proposed initiative refers to crimes of violence "as defined by Colorado statute." "Crime of violence" is defined in sections 16-1-104 (8.5)(a), 18-1.3-406 (2), and 24-10-106.3 (2)(b), C.R.S. Which of these definitions do you intend to refer to?
8. Who is required to notify the federal Department of Homeland Security under proposed section 24-76.6-102 (7)? Would the proponents clarify who has that responsibility?
9. Proposed section 24-76.6-102 (7) appears to say that if law enforcement does not make a determination that the person is lawfully present in the United States, regardless of whether the law enforcement makes a determination at all, the federal Department of Homeland Security must be notified. Is that your intent? Or do you intend that if law enforcement actually determines that a person is not lawfully present in the United States that the law enforcement notify the federal department? If the latter, would the proponents consider rewriting proposed section 24-76.6-102 (7) to make that clear?
10. What is the deadline for law enforcement to notify the federal Department of Homeland Security pursuant to proposed section 24-76.6-102 (7)?
11. Does each law enforcement agency or officer required to notify the federal Department of Homeland Security have the access or ability to do so in a manner that complies with the requirements in the proposed initiative?

## Technical Comments

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

1. The amending clause indicates that the proposed initiative adds subsections (6) and (7) to section 24-76-101.2, C.R.S., but the text of the law in the initiative adds those subsections to section 24-76.6-102, C.R.S. Please update the amending clause to reflect the additions to section 24-76.6-102, C.R.S.
2. The proposed initiative uses numerals to describe a number of hours, but per standard drafting practice, the proposed initiative should use words rather than numerals.