

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 5, 2025

Subject: Proposed initiative measure 2025-2026 #23, concerning cooperation with federal immigration requests

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 amendments to the Colorado Revised Statutes appear to be:

1. Repealing the prohibition on a law enforcement officer arresting or detaining an individual on the basis of a civil immigration detainer request; and
2. Requiring state and local law enforcement to cooperate with federal requests to:

- a. Notify the federal Department of Homeland Security prior to releasing certain inmates; and
- b. Detain certain inmates.

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. The "headnote" after each section number should briefly describe the content of the section. The headnote for section 24-76.6-102, C.R.S., in the proposed initiative is "legislative declaration." The section does not include a legislative declaration but does include a substantive duty for law enforcement to cooperate with federal requests related to notification and detention. Please rewrite the headnote to reflect the content of the section.
4. Who constitutes "state and local law enforcement"? The definition of "law enforcement officer" in section 24-76.6-101, C.R.S., applies to the section you are adding. Please consider either using that term or defining "state and local law enforcement."
5. What is a "federal request"? Can it be made by any federal department, agency, office, court, officer, agent, or employee?
6. What do you intend by the term "inmate"? Do you intend that it includes any person detained by state or local law enforcement?
7. The proposed initiative refers to crimes of violence "as defined by C.R.S."
 - a. "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?
 - b. The abbreviation "C.R.S." is used in an outdated citation format for state law and includes an unnecessary comma. If you do not refer to a specific definition, please write out "Colorado Revised Statutes" instead of using the abbreviation.

8. What do you intend by the term "prior felony"?
9. Section 24-76.6-103, C.R.S., refers to section 24-76.6-102, C.R.S., which is repealed and reenacted in the proposed initiative. Do you want to maintain that reference in section 24-76.6-103, C.R.S.?

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. Paragraph letters should not be shown in small capitals, but instead should be shown in lowercase lettering. For example, (A) and (B) should be (a) and (b).
2. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), C.R.S., and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), C.R.S., "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty." The proposed initiative appears to impose a duty on state and local law enforcement to cooperate with federal requests, so "shall" should be used instead of "must."
3. Standard drafting practice when referring to a federal department is to include the word "federal" before the department name to be clear that it refers to the federal agency. Also, titles of governmental departments are not capitalized in the Colorado Revised Statutes. So, the reference to the Department of Homeland Security should be to the "FEDERAL DEPARTMENT OF HOMELAND SECURITY."