

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: Joshua Rodriguez and Amy Rodriguez

From: Legislative Council Staff and Office of Legislative Legal Services

Date: August 18, 2025

Subject: Proposed initiative measure 2025-2026 #133, concerning child digital safety

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.

Purposes

Purposes for Proposed Initiative 2025-2026 #133

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

1. Creating new criminal offenses related to the creation, possession, or distribution of child sexual abuse material generated by artificial intelligence; the creation or distribution of nonconsensual sexual deepfake imagery involving a minor; online grooming; and sextortion;
2. Imposing various requirements on digital platforms operating in the state, including mandating age verification and parental consent for minor user accounts; requiring certain transparency measures, limits concerning user accounts on devices, and privacy controls; and compelling the removal of reported exploitative content within a certain timeframe;
3. Authorizing victims of enumerated digital violations to pursue civil remedies including damages, attorney fees, and ill-gotten profits; and
4. Establishing an enforcement framework that empowers the attorney general and district attorneys to seek civil and criminal penalties; includes civil liability for platforms that fail to comply with child safety obligations; and deposits civil and criminal penalty revenue into a digital child safety fund to facilitate education, awareness, and abuse prevention efforts related to child digital safety.

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. Article V, section 1 (8) of the Colorado Constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado." To comply with this constitutional requirement, this phrase must be added to the beginning of the proposed initiative.
3. 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 initiative does 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.

4. With respect to the title of the proposed initiative, once the designated representatives have submitted final language to the secretary of state's office, the measure will be scheduled for a hearing with the title board to fix the title and the ballot title and submission clause for the ballot. The staff member from the Office of Legislative Legal Services who is assigned to the initiative is responsible for preparing a staff draft title for the measure and a staff draft ballot question that mirrors the title. Consequently, the designated representatives may omit the title from the initiative at this stage in the process.
5. Article V, section 1 (5) of the Colorado Constitution and section 1-40-102 (4), C.R.S., require designated representatives to submit for review and comment the full text of the measure being proposed, which, if passed, becomes the actual language of the constitution or statute. In several sections of the proposed initiative you have submitted a detailed outline of policy ideas, rather than the actual language that would be added to the Colorado Revised Statutes. Please amend your proposal to include the actual text of your proposed statutory change, including the use of complete sentences.
6. Where will the proposed initiative be placed? In accordance with section 1-40-102 (4), C.R.S., and for publication purposes, an amending clause should be used to show where in the Colorado Revised Statutes a proposed initiative's provisions should be inserted. Please indicate through an amending clause where the proposed initiative will be placed. An example amending clause is included in the Technical Comments section of this memo.
7. The following comments and questions relate to section 1 of the proposed initiative:
 - a. The definition of "AI-CSAM" involves the depiction of "a minor in sexual conduct." Is there a verb form missing between the words "minor" and "in"? For example, the proposed initiative's definition of "deepfake" involves "a minor engaged in sexual conduct."

- b. The definitions of “AI-CSAM” and “deepfake” both refer to “sexual conduct.” What do the designated representatives mean by this term? Would the designated representatives consider defining the term or elaborating to promote clarity? “Sexual conduct” is defined in sections 18-7-501 and 18-7-701, C.R.S., and “explicit sexual conduct” is defined in section 18-6-403, C.R.S. As an alternative to defining the term in this initiative, the proponents could incorporate one of the existing definitions.
 - c. The definition of “AI-CSAM” extends to “a depiction of a minor ... whether or not an actual minor was involved.” Involved in what?
 - d. Is there a difference between the types of media included in “audio, visual, or multimedia” referenced in the definition of “AI-CSAM” and the “synthetic or altered media” in the definition of “deepfake”?
 - e. What is the difference between AI-CSAM and a deepfake that is created by artificial intelligence?
 - f. The definition of “deepfake” includes a requirement that the media “realistically” depict a minor engaged in sexual conduct.
 - i. What does the term “realistically” mean in this context?
 - ii. The definition of “AI-CSAM” does not contain a similar realism requirement. Is the discrepancy intentional?
8. The following comments and questions relate to section 2 of the proposed initiative:
- a. Section 18-6-403, C.R.S., creates the crime of sexual exploitation of a child, which can include various forms of creation, possession, or distribution of sexually exploitative material. S.B. 25-288 was enacted earlier this year and added certain realistic, computer-generated digital depictions to the definition of sexually exploitative material.
 - i. How do the proposed initiative’s AI-CSAM and deepfake exploitation offenses relate to section 18-6-403, C.R.S., in general and its new provisions on sexually exploitative material in particular?

- ii. Are you creating new offenses? Or are you attempting to change the elements, definitions, and sentencing schemes for existing ones?
- iii. Is your intent to repeal or replace any part of current statute? If so, would the designated representatives consider adding provisions to the proposed initiative showing the language to be deleted from or amended in, for example, section 18-6-403, C.R.S.?
- iv. The Colorado Supreme Court has held that Colorado's guarantee of equal protection is violated when two criminal statutes proscribe identical conduct, yet one punishes that conduct more harshly.¹
 - 1. Sexual exploitation of a child pursuant to section 18-6-403, C.R.S., is a class 3, 4, or 5 felony, depending on the actor's conduct. The offenses created in the initiative are each a class 2, 3, or 4 felony, depending on the actor's conduct. Does the initiative proscribe identical conduct as the crime of sexual exploitation of a child in section 18-6-403, C.R.S., but punish that conduct more harshly?
 - 2. Does the offense of creation, possession, or distribution of AI-CSAM created in the proposed initiative as a class 2 or 3 felony proscribe identical conduct as the offense of creation or distribution of nonconsensual sexual deepfake imagery involving a minor created in the proposed initiative as a class 3 or 4 felony but punish that conduct more harshly?
- b. Crimes generally require a mental state. Even if a mental state is not identified in the offense, a certain mental state may still be required to commit the offense. If a mental state is not identified in the offense, a court may imply a mental state. The mental states defined in section 18-1-501, C.R.S., are intentionally, knowingly or willfully, recklessly, and negligently.
 - i. If the designated representatives intend to create new crimes, would they consider adding a required mental state?
 - ii. The one exception to using a mental state is when the offense is a strict liability offense, for which a mental state is not necessary to

¹ *People v. Lee*, 2020 CO 81, ¶ 14.

commit the offense. To ensure that the intent to create a strict liability offense is respected and a mental state is not implied, the offense needs to specifically state that it is a strict liability offense.

- c. With respect to AI-CSAM, what do the designated representatives mean by the term “large-scale offenses”?
- d. With respect to deepfake exploitation, what does the word “nonconsensual” signify? Is the idea that a particular minor did not consent to sexual activity? Or is the idea that a particular minor did not consent to the creation of an image that depicts the minor engaged in sexual activity? Or is the idea that a particular minor did not consent to the distribution of an image that depicts the minor engaged in sexual activity?
- e. What is deepfake imagery “involving” a minor?
- f. Can the designated representatives identify “aggravated uses” with more specificity? What conduct besides blackmail constitutes an aggravated use?
- g. What do the designated representatives mean by the terms “online grooming” and “sextortion”? What are the elements of these offenses?
- h. Concerning the “sextortion” offense:
 - i. How does the prohibited conduct in the “sextortion” offense relate to existing sections 18-7-107 and 18-7-108, C.R.S., which address criminal penalties for disclosures of intimate images and digital depictions for harassment and pecuniary gain?
 - ii. The offenses in sections 18-7-107 and 18-7-108, C.R.S., are class 1 misdemeanors. The “sextortion” offense in the initiative is a class 4 felony. Does the initiative proscribe identical conduct as in sections 18-7-107 and 18-7-108, C.R.S., but punish that conduct more harshly?
- i. Are there any exceptions or limitations to criminal liability for the offenses described in section 2 of the proposed initiative? For example, are there any exemptions for information sharing activity by law enforcement personnel or any limitations for conduct by juveniles?

9. The following comments and questions relate to section 3 of the proposed initiative:
- a. What does it mean for a platform to “operate” in Colorado?
 - b. Are the “platforms” in section 3 the same as “digital platforms” in section 1? If not, what are platforms?
 - c. What is an “account”? Would the designated representatives consider defining the term or elaborating to promote clarity?
 - d. How do platforms verify the ages of users? How do they verify parental consent? Is there any liability for erroneous determinations of age or parental consent?
 - e. To what must a parent consent? Is it account creation?
 - f. Are parents the only people authorized to give consent? Could a minor’s guardian give consent?
 - g. Are the age verification and parental consent requirements subject to any limitations? Does it matter what type of content is created, shared, or transmitted via the platform?
 - h. With respect to account transparency, what entity is responsible for collecting, verifying, and displaying the information and what is the goal of the display? Who is being contacted in the “initial contacts”?
 - i. With respect to device account limits and bans:
 - i. What is the goal of this requirement? Is the idea to restrict the number of accounts that can be created or accessed on a single device?
 - ii. What is a “device” in this context?
 - iii. What is “prohibited conduct” in this context? How is a use for prohibited conduct determined? Is there any recourse if an account holder or other person disputes that certain conduct is prohibited?
 - j. With respect to privacy controls:

- i. What do the designated representatives mean by the term “end-to-end encryption”?
 - ii. What does a “screenshot alert” indicate?
 - iii. What does the term “geo-masking” mean in this context? Is the goal of the geomasking requirement to protect an accountholder’s privacy so that the accountholder’s location is obscured? Or is the goal to permit an accountholder to block contacts by users from particular regions or countries?
 - k. With respect to the takedown requirement, what is “exploitative content”?
 - l. If the proposed initiative is approved, how would the requirements in section 3 be administered and enforced?
10. The following comments and questions relate to section 4 of the proposed initiative:
- a. Who are “victims” of AI-CSAM, deepfake exploitation, or sextortion who have a private right of action pursuant to section 4? Must a victim be a minor? Must a victim be a depicted party, or could a victim be on the receiving end of a communication containing the content in question?
 - b. Online grooming is not listed among the activities for which a victim has a private right of action. Is that omission intentional?
 - c. What constitutes a “violation” entitling a victim to relief?
 - d. What constitutes a single “violation” of a platform’s “child safety obligations”? Are the child safety obligations in section 4 the same as the platform safety requirements in section 3?
 - e. To whom is a platform liable for its failure to comply with child safety obligations? Is a platform liable to the state pursuant to an enforcement action that the attorney general or a district attorney brings under section 5 of the proposed initiative?
 - f. S.B. 25-288 was enacted earlier this year and created a civil cause of action against a person who discloses or threatens to disclose a realistic but false intimate depiction of another that was created, altered, or produced by generative AI, image editing software, or computer-generated means. How

do the proposed initiative's civil remedy provisions relate to the new provisions on intimate digital depictions in part 15 of article 21 of title 13, Colorado Revised Statutes?

11. The following comments and questions relate to section 5 of the proposed initiative:
 - a. What types of enforcement activities may the attorney general or a district attorney undertake?
 - i. For example, are the attorney general and district attorneys being jointly authorized to bring civil actions on behalf of the state to seek court-imposed civil remedies?
 - ii. Is the attorney general charged with registering complaints regarding violations and conducting related investigations or examinations?
 - iii. What does criminal enforcement look like in this context?
 - b. Under what circumstances would the attorney general or a district attorney seek a civil or criminal penalty pursuant to section 5 of the proposed initiative?
 - i. What parties are subject to these penalties? Platforms that fail to comply with child safety obligations are subject to civil penalties pursuant to section 4 of the proposed initiative. Are platforms also subject to criminal liability for these failures? If so, the designated representatives may want to include language to that effect in a separate criminal offense.
 - ii. Does an enforcement action brought pursuant to this section 5 of the proposed initiative require a showing of some widespread or significant public harm?
 - c. Concerning the Digital Child Safety Fund (fund):
 - i. The fund does not currently exist. Would the proponents please formally create the fund in the state treasury? Standard drafting practice is to say: "The [fund name] is created in the state treasury."
 - ii. Which state departments can spend money from the fund?

- iii. Authority to spend money from a fund is called an appropriation. Appropriations can be either annual, where the General Assembly determines the amount appropriated each year, or continuous, which means that a state department that has the authority to spend from the fund can spend any money in the fund at any time. Would the proponents clarify that either (1) the money in the fund is subject to annual appropriation by the General Assembly; or that (2) the money in the fund is continuously appropriated to the [state department] for the specified purposes?

12. The designated representatives may wish to use the following standard drafting language to express the severability concept in section 6 of the proposed initiative:

If any provision of [this initiative] or the application of [this initiative] to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of [the initiative] that can be given effect without the invalid provision or application, and to this end the provisions of [this initiative] are declared to be severable.

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 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. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

SECTION 1. In Colorado Revised Statutes, **add** part 16 to article 21 of title 13 as follows:

2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, if you intend to add a new section to title 18 of the

Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** 18-6-403.5 as follows:".

3. Each section in the Colorado Revised Statutes and the Colorado Constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to each section of the proposed initiative and be in bold-face type.
4. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

5. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado Constitution or the Colorado Revised Statutes.
6. Do the proponents intend for the proposed initiative's legislative declaration language to be a statutory or nonstatutory legislative declaration?
 - a. If the proponents intend to add a statutory legislative declaration, please consider relocating and reformatting so that the legislative declaration language immediately follows the amending clause, appears in SMALL

CAPITAL LETTERS, and is otherwise formatted to be consistent with these technical comments, as shown in part below:

X-X-XXXX. Legislative declaration. (1) THE PEOPLE OF COLORADO
FIND AND DECLARE THAT:

- b. If the proponents intend to add a nonstatutory legislative declaration, please relocate the text so that it immediately follows a section number and headnote. The nonstatutory legislative declaration does not need to be in small capital letters. Please consider organizing the declaration, if it is a nonstatutory declaration, as shown in part below:

SECTION 1. Legislative declaration. (1) The people of Colorado
find and declare that:

- 7. A severability clause may be statutory or nonstatutory. If the proponents intend for the proposed initiative's severability clause to be in the statute, please include that language in SMALL CAPITAL LETTERS.
- 8. Concerning the definitions:
 - a. The following is the standard drafting language used for creating a definition:
 - (1) As used in this [article][section][subsection], unless the context otherwise requires:
 - (a) “[term]” means (the definition for the term)...
 - b. For example:
 - (1) As used in this [article][section][part], unless the context otherwise requires:
 - (a) “Minor” means a person under eighteen years of age.
 - c. The definitions should be in alphabetical order.
- 9. 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."