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Colorado General Assembly

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MEMORANDUM

To: Suzanne Taheri and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: April 1, 2025

Subject: Proposed initiative measure 2025-2026 #58, concerning personal recognizance bonds for certain crimes

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

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

1. To prohibit a court, without the consent of the district attorney, from releasing a person on an unsecured personal recognizance bond if the person is accused of committing a crime of violence and the court finds probable cause to believe that the person committed the offense;
2. To prohibit a court, without the consent of the district attorney, from releasing a person on an unsecured personal recognizance bond if the person is accused of committing motor vehicle theft, the court finds probable cause to believe the person has committed the offense, and either the person has a record of conviction for a crime of violence within the prior two years or there are at least two pending criminal charges against the person that allege that the person committed a crime of violence or motor vehicle theft and the court finds probable cause to believe that the person committed the prior alleged offenses;
3. To prohibit a court, without the consent of the district attorney, from releasing a person on an unsecured personal recognizance bond if the person is accused of committing an assault, the alleged victim was a peace officer and the assault occurred during the course of the officer's duties, and the court finds probable cause to believe that the person committed the offense; and
4. For bond set for a defendant described in number 1, 2, or 3 of this section, that bond be posted in an amount of at least \$10,000 prior to release.

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. The following questions relate to subsection (2.6) in section 1 of the proposed initiative. It prohibits a court, without the consent of the district attorney, from releasing a person on an unsecured personal recognizance bond if the person is accused of committing motor vehicle theft, the court finds probable cause to believe the person has committed the offense, and there are at least two pending criminal charges against the person that allege that the person committed a crime of violence or motor vehicle theft and the court finds probable cause to believe that the person has committed the prior alleged offenses.
 - a. Under this provision, does it need to be either two crimes of violence or two incidents of motor vehicle theft or can it be one crime of violence and one incident of motor vehicle theft?
 - b. Is it the proponents' intent that "conviction" means only a verdict of guilty by a judge or a jury? Or, do the proponents intend other dispositions, such as a plea of guilt or nolo contendere, or a deferred judgment, to apply as well? The proponents should clarify their intent.
3. The following question relates to subsection (2.7) in section 1 of the proposed initiative. It states, in part, "The court finds that the affidavit for arrest establishes probable cause to believe that the person has committed the offense; and the court finds that the affidavit for arrest for the alleged assault establishes probable cause to believe that the person has committed the offense." The two clauses are nearly identical. Would proponents remove one of the clauses?
4. The following question relates to section 2 of the proposed initiative. It states, in part, "for bond set under section 16-4-104 (2.5), 16-4-104 (2.6), or 16-4-104 (2.7), a minimum bond of ten thousand dollars cash or surety must be posted prior to release." Based on this language, the court could impose a bond of \$25,000, but the defendant would only need to post a bond of \$10,000 to be released.
 - a. Is that the proponents' intent?

- b. If not, the language should be revised to require the court to set a bond amount of at least \$10,000.

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. Subsection 2.5 in section 1 of the proposed initiative is missing a comma after “as defined in section 18-1.3-406.”
2. Subsections (2.5) and (2.6) in section 1 of the proposed initiative reference “motor vehicle theft, as defined in section 18-4-409.” Section 18-4-409, C.R.S., does not have a formal definition of “motor vehicle theft” but instead describes varying degrees of the crime in section 18-4-409 (2), (3), and (4), C.R.S. Consider changing “defines” to “describes.”
3. Subsections (2.5), (2.6), and (2.7) in section 1 of the proposed initiative all use the past perfect verb tense in the verb phrase “has committed” when the simple past tense “committed” is the preferred form. Consider changing the verb tense in these subsections.
4. In subsection (2.7) in section 1 of the proposed initiative, the comma after “18-3-204” should be replaced with a semicolon.
5. Section 2 of the proposed initiative references “section 16-4-104 (2.5), 16-4-104 (2.6), or 16-4-104 (2.7).” Because all three subsections referenced are found in the same section, they should instead be expressed as “section 16-4-104 (2.5), (2.6), or (2.7).”