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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: February 24, 2025

Subject: Proposed initiative measure 2025-2026 #33, concerning penalties for theft and motor vehicle theft

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:

1. Increase the criminal penalties for certain levels of theft and in cases when the person has committed theft previously;
2. Impose mandatory minimum periods of imprisonment for certain theft convictions;
3. Eliminate the one-thousand-dollar property damage threshold in the element of causing property damage to the vehicle for purposes of motor vehicle theft in the second degree; and

4. Impose mandatory minimum periods of imprisonment for motor vehicle theft convictions and unauthorized use of a motor vehicle convictions.

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.
 - a. Section 18-4-401 (2)(k) of the proposed initiative creates a class 6 felony for violations of subsection (2)(b), (2)(b.6), or (2)(c) when the person has two previous theft convictions. Would the proponents consider adding an exception to subsections (2)(b), (2)(b.6), and (2)(c), explaining that the penalty may be different pursuant to subsection (2)(k)?
 - b. Section 18-4-401 (2)(k) of the proposed initiative creates a class 6 felony when the person has two previous convictions. However, the related section 18-4-401 (2)(b.6) of the proposed initiative applies when the person has been "convicted and sentenced." By using conviction in one instance, but conviction and sentencing in another, is it the proponents' intent that these related provisions have distinct conditions? If not, would the proponents consider revising for uniformity?
4. Section 18-4-401 (2.6) of the proposed initiative states that when a person acts in concert with two or more persons to take, attempt to take, damage, or destroy any property in the commission of a felony, the person shall be punished by an additional and consecutive term of imprisonment of one, two, or three years.
 - a. What does "acts in concert" mean? Would the proponents consider defining the phrase?
 - b. Is the additional term of imprisonment intended to be a separate sentence or is the additional amount added to the sentence for the underlying felony? If it is a separate sentence, is subsection (2.6) intended to be a separate criminal charge? If the amount is intended to be added to the sentence for the felony, what happens if the sentence for the felony does not include a sentence of imprisonment?

- c. If the additional term of imprisonment is from a separate criminal charge, what is the charge? For example, if a defendant damages property in the commission of a felony, that is not an offense against property. Does the damage of property constitute theft under the proposed initiative? If so, is it the proponents' intent that the value of the thing that is damaged dictates the class of misdemeanor or felony with which the person is charged?
 - d. Is the intent that the additional amount be exactly either one, two, or three years, meaning the additional amount could not be, for example, 27 months? If the intent is that it be any additional amount between one and three years, please rephrase.
- 5. Section 18-4-409 (8)(b) of the proposed initiative states, "[t]he court shall not set aside or suspend this minimum sentence." Is the intent that the statement only apply to subsection (8)(b) or does it also apply to subsection (8)(a)?
 - 6. Section 18-4-409 (8) of the proposed initiative requires that a person convicted of motor vehicle theft be sentenced to either a minimum of 60 days' or a minimum of 120 days' imprisonment depending on the circumstances. Motor vehicle theft is currently a class 3 felony, class 4 felony, or class 5 felony. The minimum period of incarceration authorized for a class 3, 4, or 5 felony exceeds 60 and 120 days. How do the proponents intend for a court to reconcile section 18-4-409 with the sentencing provisions currently required for a class 3, 4, or 5 felony?
 - 7. Section 18-4-409.5 (4) of the proposed initiative states, "any person convicted of a violation of this section 409.5 where the vehicle was recovered by law enforcement shall be sentenced to:". The use of "where" is confusing since it seems to indicate that it is important where law enforcement recovered the vehicle. Please rephrase.
 - 8. Section 18-4-409.5 (4)(b) of the proposed initiative states, "[t]he court shall not set aside or suspend this minimum sentence." Is the intent that the statement only apply to subsection (4)(b) or does it also apply to subsection (4)(a)?
 - 9. Section 18-4-409.5 (4) of the proposed initiative requires that a person convicted of unauthorized use of a motor vehicle be sentenced to either a minimum of 60 days' or a minimum of 120 days' imprisonment depending on the circumstances. Unauthorized use of a motor vehicle is either a class 5

felony or class 1 misdemeanor. The minimum period of incarceration authorized for a class 5 felony exceeds 60 and 120 days. How do the proponents intend for a court to comply with this provision and the sentencing provisions required for a class 5 felony?

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. In the amending clause for section 1 of the proposed initiative, it states that it is adding a new subsection (3.5); however, there is no new subsection (3.5) in section 1 of the proposed initiative.
2. Section 18-4-401 (2)(k) of the proposed initiative ends, "subsection (2); and"; however, since it is the last paragraph in subsection (2), it should end "subsection (2)."
3. The proposed initiative capitalizes references to "Title 18"; however, "title" should not be capitalized.
4. The proposed initiative uses numerals in reference to a number of days. Per our standard drafting practice, the proposed initiative should use words to express the number of days.
5. The proposed initiative states, "this section 409" and "this section 409.5." The correct references are "this section."