

# STATE OF COLORADO

## 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:** May 6, 2025

**Subject:** Proposed initiative measure #85, concerning penalties for fentanyl 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.

Earlier versions of these proposed initiatives, proposed initiatives **2025-2026 #30** and **#31**, were submitted by the same designated representatives, and were the subject of memoranda dated February 24, 2025, and were discussed at a public meeting on February 28, 2025. Additionally, earlier versions **2025-2026 #62** and **#63** were submitted by the same designated representatives, and were the subject of memoranda dated April 1, 2025, and were discussed at a public meeting on April 4, 2025. The comments and questions raised in this memorandum do not include comments and

questions that were addressed in the earlier memoranda, or at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiatives. Prior comments and questions that are not restated in this memorandum continue to be relevant and are considered part of this memorandum.

## **Purposes**

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

1. Make it a level 1 drug felony if a person knowingly manufactures, dispenses, sells, or distributes; possesses with intent to manufacture, dispense, sell, or distribute; or induces, attempts to induce, or conspires with one or more persons to manufacture, dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute any material, compound, mixture, or preparation that weighs any amount and that contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof;
2. Repeal an exemption from a mandatory sentencing requirement for a person who knowingly manufactures, dispenses, sells, or distributes; possesses with intent to manufacture, dispense, sell, or distribute; or induces, attempts to induce, or conspires with one or more persons to manufacture, dispense, sell, distribute, or possess with intent to manufacture, dispense, sell, or distribute any material, compound, mixture, or preparation that weighs an amount that is no more than four grams and that contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof, and such action is the proximate cause of the death of another person who consumed the material, compound, mixture, or preparation that contained fentanyl, carfentanil, benzimidazole opiate, or an analog thereof;
3. Revise the criminal penalties for knowing possession of any material, compound, mixture, or preparation that contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof; and
4. Narrow a provision that requires a court to vacate a drug felony conviction for knowing possession of any material, compound, mixture, or preparation that contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof and enter a conviction for a level 1 drug misdemeanor upon the defendant's successful completion of a community-based sentence to probation or to a community

corrections program from all convictions for knowing possession of any material, compound, mixture, or preparation that contains fentanyl, carfentanil, benzimidazole opiate, or an analog thereof to only such convictions when the material, compound, mixture, or preparation weighs more than six milligrams but no more than 100 milligrams.

## **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. Sections 2 and 3 of the proposed initiative repeal and reenact sections 18-18-405 and 18-18-403.5, C.R.S. What is the intent in repealing and reenacting the sections rather than amending the specific provisions that are being changed in the sections?
3. Sections 2 and 3 of the proposed initiative repeal and reenact sections 18-18-405 and 18-18-403.5, C.R.S. In doing so, the proposed initiative renumbers certain subsections, but the proposed initiative fails to make conforming amendments to reflect the subsection renumbering. Consequently, the proposed initiative contains citations to provisions that would no longer exist under this proposed initiative. The proponents must make conforming amendments, as appropriate.
  - a. Section 18-18-405 (2)(c) and (2)(d) of the proposed initiative refer to section 18-18-405 (8) of the proposed initiative. However, there is no section 18-18-405 (8) under the proposed initiative.
  - b. Section 18-18-403.5 (2)(b) of the proposed initiative refers to section 18-18-403.5 (2)(c) of the proposed initiative. However, there is no section 18-18-403.5 (2)(c) under the proposed initiative.
  - c. Section 18-18-403.5 (4) of the proposed initiative refers to section 18-18-403.5 (2.7) of the proposed initiative. However, there is no section 18-18-403.5 (2.7) under the proposed initiative.

## 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. Section 18-18-405 (2)(d)(II) of the proposed initiative uses an out-of-date internal reference to a C.R.S. section. Instead of “Notwithstanding the provisions of paragraph (c) of this subsection (2),...”, the text should be rewritten to match the contemporary Colorado Revised Statutes style as follows: “Notwithstanding subsection (2)(c) of this section...”. The other internal references in the proposed initiative are drafted correctly.