

# 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:** April 23, 2025

**Subject:** Proposed initiative measure 2025-2026 #74, concerning law enforcement reporting requirements to federal authorities

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.

An earlier version of this proposed initiative, proposed initiative 2025-2026 #32, was submitted by the same designated representatives, was the subject of a memorandum dated February 25, 2025, and was discussed at a public meeting on February 28, 2025. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the earlier memorandum or at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed

initiative. 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 purpose of the proposed amendments to the Colorado Revised Statutes appears to be to require law enforcement to notify the federal Department of Homeland Security (DHS) in certain circumstances that a person is not lawfully present in the United States or if the status of the person's lawful presence is unknown.

## **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 proposed initiative adds section 24-76.6-103 to the Colorado Revised Statutes. Section 24-76.6-103, C.R.S., already exists. Do you intend to repeal the existing section from law and replace it with this new language?
  - a. If not, please renumber the added section in the proposed initiative to be section 24-76.6-104.
  - b. If so, please repeal section 24-76.6-103, C.R.S., and renumber the added section in the proposed initiative to be section 24-76.6-104. Repealing section 24-76.6-103, C.R.S., would be done in its own section of the initiative, using a similar amending clause:

**SECTION 1.** In Colorado Revised Statutes, **repeal** 24-76.6-103.

3. The proposed initiative requires law enforcement to notify DHS in certain circumstances upon charging a person with a crime and at least 72 hours prior to release after a conviction, and the proposed initiative states that law enforcement includes an employed certified peace officer, correctional officers, and attorneys and investigators employed by the district attorney. Is each type of law enforcement required to notify DHS at both times, upon charging and 72 hours before release?

4. What does law enforcement notify DHS about? Can the initiative expressly state the subject of the notification?
5. In section 24-76.6-103 (1) of the proposed initiative, the use of “or” and “and” in the list of circumstances that trigger the requirement to notify DHS makes it unclear what triggers the requirement. Which of the following reflects your intent?
  - a. Notification is required when (1) the person is charged with a crime of violence **or** (2) when **both** the person has been convicted of a prior felony and the person is not lawfully present in the United States or the person’s status is unknown.
  - b. Notification is required when (1) the person is not lawfully present in the United States or the person’s status is unknown **and** (2) when **either** the person is charged with a crime of violence or the person has been convicted of a prior felony.

Would you please clarify the language to reflect your intent? You can use subparagraphs to clarify which criteria are grouped together. For example:

- (a) The person is not lawfully present in the United States or the status of the person’s lawful presence is unknown; and
  - (b) Either:
    - (I) The person is charged with a crime of violence as defined by Colorado statute; or
    - (II) The person has been convicted of a prior felony.
6. Section 24-76.6-103 (2), as added in the proposed initiative, states that law enforcement includes an employed certified peace officer, correctional officers, and attorneys and investigators employed by the district attorney. “Includes” is a nonlimiting term. In addition to the three categories listed, who else is law enforcement subject to the requirement to notify DHS? If you do not intend that anyone else is law enforcement, please rephrase subsection (2) to clarify that.
7. Who are “corrections officers”? Does the term only include officers in the Colorado Department of Corrections who work in state-run correctional facilities? Does it include employees at private correctional facilities? Do you intend to include jail employees who are not otherwise certified peace officers?

## 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. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] 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. This includes language added as an entirely new section.
2. In section 24-76.6-103 (1) introductory portion of the proposed initiative, “Department of Homeland Security” should not be initial capitalized to conform to standard drafting practice.
3. In section 24-76.6-103 (2)(a) of the proposed initiative, “Section” should not be initial capitalized to conform to standard drafting practice.
4. Use the singular form of a noun whenever possible. For example, in section 24-76.6-103 (2)(a) and (2)(b) of the proposed initiative, “correctional officers,” “attorneys,” and “investigators” should all be expressed in their singular form.