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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 measures 2025-2026 #62 and #63, 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.

Proposed initiatives **2025-2026 #62** and **#63** were submitted by the same designated representatives as a series of proposed initiatives. The comments and questions raised in this memorandum address proposed initiatives **2025-2026 #62** and **#63**.

Earlier versions of these proposed initiatives, proposed initiatives **2025-2026 #30** and **#31**, submitted by the same designated representatives, were the subject of memoranda dated February 24, 2025, and were 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 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

Purposes for Proposed Initiative 2025-2026 #62

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.

Purposes for Proposed Initiative 2025-2026 #63

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 to be four tiers where the severity of the penalty correlates to the weight of the 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 each of the proposed initiatives?
2. Section 8 in each of the proposed initiatives states that the effective date is January 1, 2027. However, Section 8 does not clarify to what actions the proposed initiative applies. The proponents should include an applicability clause that clarifies that the act applies to offenses committed on or after an intended date.

Technical Comments

There are no technical comments.