

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: February 24, 2025

Subject: Proposed initiative measure 2025-2026 #31, 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 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.

This initiative was submitted with a series of initiatives including proposed initiative 2025-2026 #30. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiative 2025-2026 #30, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in that other memorandum may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum. Technical comments 1 and 3 in the memorandum for proposed initiative 2025-2026 #30 are incorporated by reference. The technical comment in this memorandum is new.

Purposes

The major purposes of the proposed amendment 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. What will be the effective date of the proposed initiative?
3. Under Section 5 of the proposed initiative, section 18-18-403.5 (2.5)(a)(II) states "commits a level 4 treatment mandated drug felony and such defendant is eligible for court-ordered treatment for drug rehabilitation." Is it the proponents' intent to create a new drug felony level named "level 4 treatment mandated drug felony" that is distinct from a level 4 drug felony? If so, what are the penalties and penalty ranges associated with this new drug felony level? Or, is it the proponents' intent to state that such action is a level 4 drug felony, and that it is eligible to be vacated pursuant to section 18-1.3-103.5, C.R.S.? The proponents should revise to clarify their intent.

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. Under Section 6 of the proposed initiative, the proponents' citation to "18-18-403.5(a)(II)" is missing a subsection. The proponents must insert a proper subsection.