

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Edgar Antillon and Isaac Chase
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: December 15, 2023
SUBJECT: Proposed Initiative Measure 2023-24 #106, Criteria for Obtaining Concealed Handgun Permit

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. To limit the criteria related to handgun possession for issuance of a permit to carry a concealed handgun (concealed carry permit) to requiring the person to be eligible to possess a firearm pursuant to state law and not requiring the person to be eligible to possess a firearm pursuant to federal law; and

2. To make persons who are lawful users of marijuana pursuant to the Colorado Constitution eligible for a concealed carry permit.

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 effective date in the proposed initiative is December 1, 2024. The governor might not certify the 2024 general election results before that date. Would the proponents consider a later effective date or making the initiative effective upon proclamation of the governor?
3. Under existing law, a person who is ineligible to possess a firearm pursuant to federal law is not eligible to be issued a concealed carry permit. The proposed initiative repeals this provision. Federal law prohibits certain persons from possessing a firearm who are not prohibited from possessing a firearm pursuant to state law, including a person who has been adjudicated as a mental defective or who has been committed to a mental institution; been admitted to the United States pursuant to a nonimmigrant visa or is an unlawfully present alien; been dishonorably discharged from the Armed Forces; renounced the person's United States citizenship; or been convicted of a misdemeanor crime of domestic violence. Do you intend to make those persons who are ineligible to possess a firearm under federal law but not state law eligible for a concealed carry permit if the applicant satisfies the other criteria for a permit?
4. Concerning the new language added to subsection (1)(f) that prohibits a sheriff from using an applicant's lawful use of marijuana pursuant to the Colorado Constitution as a basis for denying a permit (provision prohibiting marijuana use denials):
 - a. The proposed initiative amends the Colorado Revised Statutes to state that whether a person is an unlawful user of a controlled substance is determined by state law instead of by federal law. This change means that a person who lawfully uses marijuana pursuant to state law is not disqualified from being issued a concealed carry permit. Because a lawful marijuana user is not disqualified, a sheriff has a duty, pursuant to section 18-12-203 (1), C.R.S., to issue a concealed carry permit to the

person if the person satisfies the other criteria for a concealed carry permit. Because the sheriff has a duty to issue the permit to the lawful user of marijuana, the provision prohibiting marijuana use denials appears duplicative. What is the intent in also including the provision prohibiting marijuana use denials?

- b. In addition to the criteria for being issued a permit in section 18-12-203 (1), C.R.S., section 18-12-203 (2), C.R.S. allows a sheriff to deny a concealed carry permit application if the sheriff has a reasonable belief that documented previous behavior by the applicant makes it likely the applicant will present a danger to the applicant's self or others if the applicant receives a permit. Does the provision prohibiting marijuana use denials apply to the sheriff's discretion in subsection (2)? If so, would the proponents consider adding the provision prohibiting marijuana use denials as a new subsection in section 18-12-203, C.R.S., so it applies to the whole section instead of adding it to section 18-12-203 (1)(f), C.R.S.?

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. 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. A roman numeral in new language, such as an article number of the Colorado Constitution, is capitalized.
2. On the final line of section 18-12-203 (1)(f), it appears that the intent is to strike the word "federal" but the strike does not go through the word "federal."
3. The stricken text referring to section 18-12-203 (1)(c) should include the semicolon after "federal law."