

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Angela Eicher and Rebecca Greenwood
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: January 24, 2022
SUBJECT: Proposed initiative measure 2021-2022 #56, concerning the equal protection of every living child in Colorado

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 create a crime that makes it unlawful to cause the death of a child before, during, and after the child's birth until adulthood; and
2. To treat as invalid any law that conflicts with the created criminal offense.

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 clause states "[t]his statute shall be self-executing, severable, effective at once, and repeal all conflicting statutes, regulations, or court rulings, and applies to offenses committed on or after said date."
 - a. This clause specifies neither that approval by the people as the result of a vote is necessary for the initiative to be effective, nor who would declare the result of an approval vote, for there to be a clear effective date for the provisions of this initiative. Would the proponents consider clarifying this clause?
 - b. What is the intent of "[t]his statute"? Would the proponents consider clarifying this in the proposed initiative?
 - c. This clause states that all conflicting court rulings are ineffective. What is the legal effect if a court finds that this proposed initiative is unconstitutional?
 - d. The effective date clause cannot repeal conflicting statutes. If the proponents want specific conflicting statutes to be repealed, the proposed initiative needs to specifically repeal those provisions.
3. The United States Supreme Court has recognized a woman's right to an abortion. Do you anticipate that the proposed initiative would conflict with legal precedent?
4. Section 18-6-901 (1) of the proposed initiative states in part "... according to Paragraph 1 of the United States Constitution referring to rights extended to our Posterity." "Posterity" is referenced in the preamble of the United States Constitution. Would the proponents consider changing this citation?
5. Section 18-6-902 of the proposed initiative states in part "... of a living human being at any time prior to, during, or after birth until reaching 18 ..." When does one become a living human being prior to birth? Would the proponents consider clarifying this in the proposed initiative?

6. Section 18-6-902 of the proposed initiative states in part "... causing immediate or lingering death." What is "lingering death"? Would the proponents consider clarifying this in the proposed initiative?
7. Section 18-6-903 (2) of the proposed initiative states "[a]ny person who murders a child will be held to equal penalties to homicide of an at-risk adult." Under title 18, there are different types of homicide, each with different elements that are required to constitute the crime itself, and different applicable sentencing provisions. There is overlap between the existing homicide offenses and the new offense. How do these different provisions work together? Would the proponents consider clarifying this in the proposed initiative?

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. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:
 - X-X-XXXX. Headnote.** (1) Subsection
 - (a) Paragraph
 - (I) Subparagraph
 - (A) Sub-subparagraph
 - (B) Sub-subparagraph
 - (II) Subparagraph
 - (b) Paragraph
 - (2) Subsection
 - (3) Subsection
2. It is common drafting practice to use "United States constitution" and "state constitution."

3. In the introductory portion to a definitions section, it is common drafting practice to write "[a]s used in this _____, unless the context otherwise requires:".
4. In a definitions section, it is standard drafting practice to place quotation marks around the defined term.
5. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and to use stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.
6. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;
 - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.
7. When expressing an upper age limit but no lower age limit, it is common drafting practice to write, for example, "a person who is under eighteen years of age" to clearly state that people who are eighteen years of age are not included.