

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Erin Behrens and Giuliana Day

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**DATE:** July 15, 2019

**SUBJECT:** Proposed initiative measure 2019-2020 #116, concerning prohibition on late-term abortions

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.

An earlier version of this proposed initiative, proposed initiative 2019-2020 #108, was the subject of a memorandum dated May 31, 2019. Proposed initiative 2019-2020 #108 was discussed at a public meeting on June 4, 2019. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

## Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To make it unlawful for a person to perform or attempt to perform an abortion if the gestational age of the fetus is at least twenty-two weeks; and
2. To define unprofessional conduct by a physician to include performing or attempting to perform an abortion when the probable gestational age of the fetus is at least twenty-two weeks.

## 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. Proposed section 18-6-903 (6) references "C.R.S 12-36-117(1)(NN), and C.R.S. 12-36-118(9.5)". Although the proponents updated these references in sections 2 and 3 of the proposed initiative, they are not updated in proposed section 18-6-903 (6). If left unchanged, the initiative will reference nonexistent statute. Please update those references so that they reference the correct provisions and are in the correct format. For further information on the proposed paragraph and subsection designations and format, please see comment #5 on page 3 of the memorandum and comment #6 on page 4 of the memorandum.
3. Because the effective date described in proposed section 18-6-903 (6) applies to the entire measure, including new provisions in sections 2 and 3 of the initiative that are not part of part 9 of article 6 of title 18, C.R.S., would you consider including it as a separate section of the initiative, not added to the Colorado Revised Statutes? For example:

**SECTION 4. Effective date – applicability – self-executing.** (1) This act takes effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, and applies to offenses committed on or after said date.

(2) The provisions of this initiative are self-executing.

4. What does it mean that the statutory provisions are "self-executing"? Is this a statement that the provisions in the initiative do not require additional

- legislation to implement? As a statutory change, the proposed initiative may be amended by subsequent legislation enacted by the Colorado General Assembly. Is this your intention? Does the "self-executing" language in the proposed initiative limit the power of the Colorado General Assembly to add or amend the proposed new provisions?
5. Section 2 and 3 of the proposed initiative amend provisions in title 12, Colorado Revised Statutes, that are relocated by House Bill 19-1172, which was passed by the Colorado General Assembly, signed into law by the governor, and is effective October 1, 2019. House Bill 19-1172, which shows the new text of title 12, Colorado Revised Statutes, and a comparative table showing where title 12's provisions are being relocated are available on the Office of Legislative Legal Services' Title 12 Recodification Project webpage:  
<http://leg.colorado.gov/agencies/office-legislative-legal-services/title-12-recodification-project>.
    - a. According to the text of the final act, the last paragraph in section 12-240-121 (1), Colorado Revised Statutes, is section 12-240-121 (1)(dd). If section 2 of the proposed initiative intends to add an additional paragraph, it should be numbered 12-240-121 (1)(ee), not "(NN)".
    - b. According to the comparative table, former section 12-36-118 (9), Colorado Revised Statutes, is relocated to section 12-240-125 (8), Colorado Revised Statutes. If section 3 of the proposed initiative intends to add a new subsection immediately following the same relocated language, it should be numbered accordingly, for example, "(8.5)".
  6. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
    - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
    - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
    - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be

submitted to the legislative council staff at  
[BallotImpactEstimates.ga@state.co.us](mailto:BallotImpactEstimates.ga@state.co.us).

## 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 not necessary for an amending clause to be in small capital letters, as reflected at the beginning of sections 1, 2, and 3 of the proposed initiative, because the amending clause is not being added to the Colorado Revised Statutes. In addition, the words "add" or "amend" should appear in bold-face type.
2. In substantive law, express numbers in words. For example: "(4) "TWENTY-TWO WEEKS" MEANS TWENTY-TWO WEEKS, ZERO DAYS GESTATIONAL AGE."
3. Section 18-6-901 (1)(a) includes a typo. "Perfromed" should be "performed".
4. Headnotes, defined terms, and part, article, and section references should be in all small caps (not with the first letter large capitalized unless the word is the first word in a sentence).
5. In section 18-6-903 (3) and (4), "woman that" and "mother that" should be "woman who" and "mother who".
6. There are different drafting standards for referencing statutes within the same C.R.S. section and referencing a different C.R.S. section.
  - a. When referencing a subsection within the same C.R.S. section, references are made to subsections "of this section." For example: "EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, IT IS [ . . . ]".
  - b. When referencing a different C.R.S. section, include the word "section" before the section number. For example "[ . . . ] WITH SECTION 12-240-117 (1)(ee) AND SECTION 12-240-125 (8.5), SHALL [ . . . ]".
7. The headnote for section 22-240-121 is missing "**- definitions.**" at the end of the headnote.