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Colorado General Assembly

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MEMORANDUM

TO: Faye Barnhart and Angela Eicher
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: March 24, 2023
SUBJECT: Proposed initiative measure 2023-2024 #26, Concerning 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 to:

1. Protect every living child from abuse, harm, and intentional death and refer mothers, parents, and caregivers to nonviolent resources; and

2. Define a living child as any living human being during a developmental stage at any time prior to, during, or after birth from the moment the human life biologically begins when unique human DNA is weaved together into a new living and growing human being until the child reaches the minimum age of adulthood.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Subsection (2) of section 18-6-903 of the proposed initiative states "[a]ny person who intentionally abuses, harms, or causes the death of a living child will be held to *equal penalties* and due process..." [*emphasis added*]. What equal penalties are you referring to?
2. Subsection (3) of section 18-6-903 refers to "unlawful conduct" and "illegal activity." What unlawful conduct and illegal activity are you referring to?

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. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to section 18-6-902 of the proposed initiative and be in **bold-face type**.
2. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to the Colorado Revised Statutes.
3. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means that "a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
4. It is standard drafting practice to only capitalize proper nouns, such as "Colorado," "South Platte river," or "Pike's Peak community college." It is not

necessary to capitalize "Attorney General" in subsection (3) of section 18-6-903.

5. The proposed initiative uses a slash (/) to indicate different possible words or word tense. Standard drafting practices do not use slashes and instead use "and" or "or."
6. Section 18-6-904 seems to combine two legislative operations: (a) An applicability clause, which is non-statutory and establishes the effective date of a bill; and (b) A statutory provision establishing the self-executing nature of a certain set of statute. Please consider separating the two. An applicability clause has the following standard language:

SECTION 2. Applicability. This act applies to offenses committed on or after January 1, 2025.