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MEMORANDUM

TO: Suzanne Taheri and Michael Fields

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 22, 2022

SUBJECT: Proposed initiative measure 2021-2022 #90, concerning eligibility for parole

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 require a person sentenced for second degree murder; first degree assault; first degree kidnapping, unless the first degree kidnapping is a class 1 felony; sexual assault under section 18-3-402, Colorado Revised Statutes; sex assault on a child; sex assault on a child by one in a position of trust; first degree arson; first degree burglary; or aggravated robbery, committed on or after

January 1, 2023, to serve eighty-five percent of the person's sentence before the person is eligible for parole.

2. To require a person sentenced for second degree murder; first degree assault; first degree kidnapping, unless the first degree kidnapping is a class 1 felony; sexual assault under section 18-3-402, Colorado Revised Statutes; sex assault on a child; sex assault on a child by one in a position of trust; first degree arson; first degree burglary; or aggravated robbery, committed on or after January 1, 2023, who has twice previously been convicted of a crime of violence, to serve the full sentence imposed.

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. Section 17-22.5-403 (2.5), Colorado Revised Statutes, contains parole eligibility provisions that cover the offenses in section 17-22.5-303.3 (1.5) of the proposed initiative and grants parole eligibility at seventy-five percent of the sentence served. There appears to be a conflict between these provisions and section 17-22.5-303.3 (1.5) of the proposed initiative, which sets parole eligibility at eighty-five percent. Which provisions are intended to apply? Would the proponents consider clarifying the intent?
3. Section 17-22.5-303.3 (2.5) of the proposed initiative states, "[A]ny person sentenced on or after January 1, 2023, for any crime enumerated in subsection (1.5) of this section, who has twice previously been convicted for a crime of violence, shall be eligible for parole after he has served the full sentence imposed. Thereafter, the provisions of section 17-22.5-303 (6) and (7) shall apply." A person sentenced for any of the enumerated crimes in the proposed initiative is subject to a mandatory period of parole pursuant to section 18-1.3-401 (1)(a)(V.5), Colorado Revised Statutes, and the mandatory period of parole starts immediately after the offender's discharge from imprisonment.
 - a. What does "shall be eligible for parole after he has served the full sentence imposed" mean in the proposed initiative in light of section 18-1.3-401 (1)(a)(V.5), Colorado Revised Statutes?

- b. What does "full sentence" mean? Would the proponents clarify the intent?
4. Section 17-22.5-303 (6), Colorado Revised Statutes, states that certain offenders are eligible for parole after the offender serves the sentence imposed less any good time earned. How does that provision work with section 18-1.3-401 (1)(a)(V.5), Colorado Revised Statutes?

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. For purposes of this 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."
2. Standard drafting practice is to use gender-neutral terms instead of gender-specific pronouns, but not the singular "they."