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Colorado General Assembly

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MEMORANDUM

TO: Suzanne Taheri and Michael Fields

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: July 5, 2023

SUBJECT: Proposed initiative measure 2023-2024 #71, 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; class 2 felony kidnapping; sexual assault under part 4 of article 3 of title 18, Colorado Revised Statutes; first degree arson; first degree burglary; or aggravated robbery, committed on or after January 1, 2025, to serve eighty-five percent of the person's sentence before the person is eligible for parole; and

2. To require a person sentenced for second degree murder; first degree assault; class 2 felony kidnapping; sexual assault under part 4 of article 3 of title 18, Colorado Revised Statutes; first degree arson; first degree burglary; or aggravated robbery, committed on or after January 1, 2025, 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. The proposed initiative repeals and reenacts, with amendments, section 17-22.5-303.3 (1) and (2), Colorado Revised Statutes. Repealing and reenacting is a disfavored practice but is allowed when the interests of better understanding the bill are served by its use. What is the purpose of repealing and reenacting rather than amending these provisions?
3. In section 17-22.5-303.3 (1) of the proposed initiative, one of the crimes subject to parole eligibility after a person serves seventy-five percent of the person's sentence is first degree kidnapping, unless the first degree kidnapping is a class 1 felony. In section 17-22.5-303.3 (1.5) of the proposed initiative, class 2 felony kidnapping is subject to parole eligibility after serving eighty-five percent of the person's sentence. Under current law, a class 2 felony kidnapping charge applies to first degree kidnapping pursuant to section 18-3-301 (3), Colorado Revised Statutes, and second degree kidnapping pursuant to the circumstances in section 18-3-302 (3), Colorado Revised Statutes. Is it the proponents' intent to subject second degree kidnapping pursuant to section 18-3-302 (3), Colorado Revised Statutes, committed on or after January 1, 2025, to parole eligibility after serving eighty-five percent of the person's sentence even though those crimes were not subject to the parole eligibility after serving seventy-five percent of the person's sentence for crimes committed after July 1, 1987, but before January 1, 2025?
4. In section 17-22.5-303.3 (1) of the proposed initiative, the list of crimes subject to parole eligibility after serving seventy-five percent of a sentence is triggered when the offense is committed on or after July 1, 1987, but before January 1, 2025. In section 17-22.5-303.3 (2) of the proposed initiative, the same list of

- crimes as in section 17-22.5-303.3 (1) of the proposed initiative requires a person convicted of one of those crimes who has twice been previously convicted for a crime of violence to serve the sentence imposed less any earned time awarded. The triggering event for this provision is a conviction and sentencing before January 1, 2025. What is the proponents' intent in having the two provisions have different triggering events?
5. Section 17-22.5-303.3 (2.5) of the proposed initiative states, "Any person convicted and sentenced for a crime committed on or after January 1, 2025, for any crime enumerated in subsection (2) of this section, who has twice previously been convicted for a crime of violence, shall begin 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. Section 17-22.5-303.3 (1.5) of the proposed initiative expands the amount of time a person must serve to eighty-five percent of the sentence imposed; section 17-22.5-303.3 (2) states that a person convicted twice previously for a crime of violence must serve the full sentence imposed. Is it the proponents' intent to reference section 17-22.5-303.3 (2) instead of section 17-22.5-303.3 (1.5) in section 17-22.5-303.3 (2.5) of the proposed initiative?
 - b. What does "shall begin 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?
 - c. What does "full sentence" mean? Would the proponents clarify the intent?
 - d. 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 nouns instead of gender-specific pronouns, but not the singular "they."
3. 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.