

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

June 13, 2003

TO: Charmaine Look & Fernando Rugus

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed Initiative Measure 2003-2004 #56, Concerning Child Protection Services

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 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 initiative appear to be:

1. To require child protective service workers to report all suspected child abuse allegations to state and local law enforcement;
2. To require a person who reports suspected child abuse to child protective services to identify himself or herself and to require that the identifying information be shared for the purpose of allowing law enforcement to validate the allegation of child abuse;

3. To require law enforcement to perform a welfare check on a child who is the subject of a report of suspected child abuse;
4. To authorize a child to be taken into protective custody by child protective service workers only when law enforcement has determined the child is the victim of a crime;
5. To require law enforcement to charge a parent with the crime or crimes committed that prompted the removal of the parent's child, unless the parent cannot be found or has otherwise abandoned the child;
6. To require the state department of human services to immediately return the child to his or her parent if the parent cannot be charged with, or if the parent is found not guilty of, the crime that prompted removal of the child.

### **Comments and Questions**

The form and substance of the proposed initiative raise the following comments and questions:

#### **Technical questions:**

1. The first sentence of the proposed measure states "We, the people, bieng Americans, as well as residents, as well as register voters in the state of Colorado, in the United States of America, petition the State of Colorado to bring into state law, this petition:". Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by initiative:

"Be it Enacted by the People of the State of Colorado:"

- a. Do the proponents intend for the first sentence of the proposed measure to have a substantive intent other than serving as an enacting clause? If not, to comply with Colorado's constitutional requirement, the proponents should strike the first sentence of the proposed measure and substitute the enacting clause above at the beginning of the proposed measure.
- b. If the proponents intend for the first sentence of the proposed measure to serve a purpose other than as an enacting clause, would the proponents consider adding the enacting clause stated above to comply with Colorado's constitutional requirement? Would the proponents also consider substituting a lower-case "state" for "State" to comply with standard drafting practices? In addition, it appears there are a couple of typographical errors that should be corrected: "Bieng" should be spelled "being", and "register" should read "registered".

2. To provide notice to the public of the proposed changes to the law and to identify whether the proponents intend to add to, amend, or repeal a provision of the state constitution or the Colorado Revised Statutes, an initiative, similar to a bill or referendum, generally refers to the specific statutory or constitutional section that is to be added, amended, or repealed. An initiative usually goes further to provide the specific language within the statutory section that will be added, amended, or repealed. Arguably, the language in the proposed measure does not provide adequate notice to the public of the changes to the law proposed by the initiative. Would the proponents consider specifying the statutory or constitutional sections that are to be added, amended, or repealed in the proposed measure?
  
  3. The Colorado Revised Statutes are divided into sections and each section may be divided as follows:  
**39-28.6-101. Section.** (1) Subsection
    - (a) Paragraph
      - (I) Subparagraph
        - (A) Sub-subparagraph
          - a. If the proponents intend to create new statutory language in the proposed measure, would the proponents be willing to conform the proposed measure to this organizational format?
          - b. If the proponents conform the proposed measure to this format, would the proponents consider modifying the sentences in paragraphs 1, 2, 3, and 4 of the proposed measure to form complete sentences that command an action? [For example, "That child protective service workers must report all suspected child abuse allegations to state and local law enforcement" would become "Child protective service workers must report all suspected child abuse allegations to state and local law enforcement."]
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4. In Colorado, when a proposed measure adds new language or repeals existing language in the state constitution or in the Colorado Revised Statutes, the proposed measure uses an amending clause indicating the specific section of the constitution or the statutes where new language will be added, or existing language will be amended, or where existing language will be deleted. [For example, "**SECTION 1.** 19-3-102, Colorado Revised Statutes, is amended to read:".] The new language itself generally is shown in capital (CAPITAL) letters. If existing language in the constitution or the statutes is to be repealed, the convention is to show the language with dashes (~~dashes~~) through it to indicate it is repealed or to state in the amending clause that the entire provision or provisions are repealed. Each section of the constitution and of the statutes begins with a section heading that includes the section number and a short description of the section contents. [For example, the heading to section 19-3-102, C.R.S., reads as follows: **19-3-102. Neglected or dependent child.**]

Would the proponents consider adding appropriate amending clauses to the proposed measure to indicate whether the measure will add new language or amend or repeal existing language of the

Colorado Revised Statutes? Would the proponents consider showing existing statutory language with dashes through it, if you intend to repeal existing language, or indicating new language with capital letters? In copying existing statutes into the measure, the proponents should include the section heading.

5. Is it the proponents' intent to amend title 19, C.R.S., the Colorado Children's Code, which contains the statutes governing Colorado's child dependency and neglect process? If so, would the proponents consider placing the proposed measure within the relevant provisions of articles 1 or 3 of title 19 of the Colorado Revised Statutes?
6. Throughout the proposed measure, would the proponents consider striking the word "must" and substituting the word "shall" to conform to standard drafting practices? In addition, would the proponents consider striking the word "can" and substituting the word "may" to conform to standard drafting practices?
7. Throughout the proposed measure, would the proponents consider using the singular instead of the plural to conform to standard drafting practices? [For example, substituting "himself or herself" for "themselves", and substituting "each suspected child abuse allegation" for "all suspected child abuse allegations".]
8. Throughout the proposed measure, would the proponents consider referencing either "state and local law enforcement" or "state law enforcement" or "local law enforcement" rather than simply "law enforcement", for consistency and avoidance of confusion?
9. The language in paragraph 2 of the proposed measure appears to be intended to require a person who reports known or suspected child abuse to identify himself or herself to the county department of social services and to require the county department to forward this identifying information to law enforcement for the purpose of authorizing or requiring law enforcement to validate the information. Would the proponents consider rewording these sentences to form complete sentences that clearly state the proponents' intent?
10. In the language of paragraph 3 of the proposed measure, for proper grammar usage, would the proponents consider modifying "law enforcements" to "law enforcement's"? In addition, would the proponents consider striking the reference to "said" and specifying which child or children, to conform to standard drafting practices?
11. In the language of paragraph 4 of the proposed measure, for proper grammar usage, would the proponents consider modifying the word "than" to "then"? In addition, would the proponents consider omitting the underlining in this sentence to conform to standard drafting practices? In addition, would the proponents consider modifying the word "aloud" to "allowed" or "authorized" for proper grammar usage? In addition, would the proponents consider modifying the word "implemented" to more clearly express the intent of this sentence?

12. In the language of paragraph 5 of the proposed measure, would the proponents consider modifying the phrase "is at hand" to clarify the meaning of the sentence?
13. In the language of paragraph 6 of the proposed measure, it is unclear whether the reference to "crime" is "the crime" or "a crime". Would the proponents consider more clearly specifying the article? In addition, would the proponents consider rewording the sentence so that the plural term "they" is not used? Finally, would the proponents consider eliminating the comma after "state," as it appears to be unnecessary?

Substantive questions:

1. Title 19, C.R.S., the Colorado Children's Code, does not define "child protective service workers" but does define "county department" as the county or district department of social services, and uses the term "county department" throughout the statutory sections that relate to reports of known or suspected child abuse or neglect and the statutory sections that relate to action taken upon a report of abuse or neglect. In addition, certain county departments have created "child protection teams". When the proponents refer to "child protective service workers" do the proponents mean "a worker in a county department", which would include a worker on a child protection team? If so, would the proponents consider substituting this term for "child protective service workers"?
2. With respect to the language in paragraph 1 of the proposed measure, current law requires reports of known or suspected child abuse or neglect to be made to a county department of social services or a local law enforcement agency. "Child abuse or neglect" is defined in section 19-1-103 (1), C.R.S., and is not the same as the crime of "child abuse", as specified in section 18-6-401, C.R.S. Which "child abuse" reference, if either, does the term "child abuse" refer to in the proposed measure?
3. "Local law enforcement agency" is defined in section 19-1-103 (74), C.R.S., to mean a police department in incorporated municipalities or the office of county sheriff. Do the proponents intend for "local law enforcement" as used in the proposed measure to have this same meaning? If so, would the proponents consider using the full defined term, "local law enforcement agency"? State law enforcement agencies are not currently referenced in article 3 of title 19, C.R.S. Do the proponents intend to add state law enforcement agencies to the dependency and neglect process? What is the definition of "state law enforcement"?
4. Current state law authorizes or requires reports of known or suspected child abuse or neglect to be made to a county department of social services or a local law enforcement agency. [See section 19-3-307, C.R.S.] In addition, with a few exceptions, county departments of social services are the agencies responsible for the coordination of all investigations of all reports of known or suspected incidents of intrafamilial abuse or neglect, while local law enforcement agencies have the responsibility for the coordination and investigation of all reports of third-party abuse or neglect by persons ten years of age or older. [See section 19-3-308, C.R.S.] Current law also requires a

county department, when it reasonably believes that an incident of abuse or neglect has occurred, to notify the local law enforcement agency responsible for investigation of violations of criminal child abuse laws. [See section 19-3-308 (5.5), C.R.S.] Do the proponents intend to modify these provisions so that local, and perhaps state, law enforcement agencies perform all investigations? Do the proponents intend to modify these provisions so that the only reports that are investigated are reports of known or suspected criminal child abuse? What is the proponents' intent regarding these provisions of state law?

5. Pursuant to the recently enacted House Bill 03-1037, current state law in section 19-3-304, C.R.S., requires social workers and workers in a facility or agency that is licensed or certified pursuant to part 1 of article 6 of title 26, C.R.S., (child care licensing), as well as workers in the state department of human services to report known or suspected child abuse or neglect to a county department **or** a local law enforcement agency. Does this recently enacted legislation meet with your intent? With respect to the language in paragraph 1 of the proposed measure, do the proponents intend for social service workers to report only to state and local law enforcement agencies, rather than reporting to either the county department of social services or a local law enforcement agency? If so, again, what is the definition of "state law enforcement"?
6. Currently, state law requires reports of known or suspected child abuse or neglect to include, *when possible*, the reporter's name, address, and occupation and a description of any action taken by the reporter. [See section 19-3-307 (1) (f), C.R.S.] In addition, state law makes it a class 3 misdemeanor to knowingly make a false report of abuse or neglect to a county department of social services or a local law enforcement agency. [See section 19-3-304 (3.5), C.R.S.] Do the proponents intend, through the language of paragraph 2 of the proposed measure, to make disclosure of the name of the reporter a requirement for the making of a report? What will be the procedure if the reporter refuses to disclose his or her name?
7. As previously stated, state law, with a few exceptions, requires county departments of social services to coordinate all investigations of all reports of known or suspected incidents of intrafamilial abuse or neglect, while local law enforcement agencies have the responsibility for the coordination and investigation of all reports of third-party abuse or neglect by persons ten years of age or older. [See section 19-3-308, C.R.S.] State law also requires a county department, when it reasonably believes that an incident of abuse or neglect has occurred, to notify the local law enforcement agency responsible for investigation of violations of criminal child abuse laws. [See section 19-3-308 (5.5), C.R.S.] Further, a copy of all reports of known or suspected abuse or neglect reported to a county department is required to be forwarded to the local law enforcement agency.
  - a. Do the proponents intend to modify these provisions so that local, and perhaps state, law enforcement agencies perform all investigations? In other words, what do the proponents mean by "only to validate the allegation" as stated in paragraph 2 of the proposed measure?
  - b. Is the word "allegation" synonymous with "report of known or suspected child abuse"? If

so, how do the proponents define "child abuse"? Do the proponents intend to modify these provisions so that the only reports investigated are reports of known or suspected criminal child abuse?

8. With respect to the language in paragraph 3 of the proposed measure, there is no definition of "welfare check" in state statute. What do the proponents mean by "welfare check"? Is a welfare check different than "the investigation and assessment process" that county departments of social services follow upon receipt of a report of abuse or neglect, or different than the "investigation" currently required of local law enforcement agencies in section 19-3-308, C.R.S? Do the proponents intend to change the current process of investigation? If so, how?
9. With respect to the language in paragraph 4 of the proposed measure:
  - a. "Abuse or child abuse or neglect" is defined in section 19-1-103 (1), C.R.S., and includes behavior that is not criminal conduct under Colorado law. Do the proponents intend for the "welfare check" to be used only to determine whether a crime has been committed under Colorado law? If so, what type of crime? Any crime? Only a crime against a child? Only "child abuse" as specified in Colorado criminal law in section 18-6-401, C.R.S.?
  - b. Does the belief of law enforcement that a crime has been committed need to be reasonable? To arrest a person, a law enforcement officer needs to find probable cause to believe the person committed an offense. Is this the standard the proponents intend in this circumstance?
  - c. State law currently authorizes a law enforcement officer to take a child into temporary custody when the child is seriously endangered in the child's surroundings or when the child seriously endangers others and immediate removal appears to be necessary for the child's protection or the protection of others or when there is an emergency and the child is seriously endangered and there is no other reasonable way to protect the child without removing the child from the child's home. [See section 19-3-401, C.R.S.] In addition, state law currently authorizes a court to enter temporary protective custody orders, which may include restraining a parent from having contact with a child, when a county department of social services, a law enforcement officer, or an administrator of a hospital, reasonably believes that a child has been neglected or abused and that the child is unable to remain safely in the child's place of residence or in the care and custody of the person responsible for the child's care and custody, regardless of whether the parent has committed a crime. [See section 19-3-405, C.R.S.]
    - i. How do the proponents intend the language of the proposed measure to modify current law?
    - ii. How will law enforcement determine "the child or children implemented" as phrased in paragraph 4 of the proposed measure? If a parent commits criminal child abuse, as defined in section 18-6-401, C.R.S., against one child, would that

be grounds for a law enforcement official to take all of the children in the home into protective custody?

10. State law currently requires a county department of social services to immediately forward a copy of a report of known or suspected child abuse or neglect to the district attorney's office and to the local law enforcement agency [*See* section 19-3-307, C.R.S.] The district attorney then reviews the investigation to determine whether criminal charges may be filed. Do the proponents intend to modify this process through the language in paragraph 5 of the proposed measure? Do the proponents intend to require criminal charges to be filed against a parent before a child may be removed from the home of the parent? What type of criminal charges? Only criminal child abuse? Only a crime against the child? Do the proponents intend for there to be an exception to a new requirement that a parent must be charged with a criminal offense before a child can be removed from the parent's home if the parent is unable to be found or if the parent has abandoned the child? What does "abandonment is at hand" mean?
11. After a law enforcement agent arrests a person, the person may be held for 48 hours or longer prior to being charged, depending on the jurisdiction. Paragraph 5 suggests the parent must be charged at the time the child is removed from the home. Do the proponents intend the parent be charged or arrested when the child is removed? Is it the proponents' intent to affect the timelines and procedures for charging with the language in paragraph 5?
12. What are the "due process of law procedures" referred to in the language of paragraph 6 of the proposed measure? Does the language refer to the due process rights and procedures applicable to a person who is arrested for, charged with, and tried for a crime? Are these the same as the existing "reasonable efforts" requirements to reunite the child and the family? [*See* section 19-1-115, C.R.S.] State and federal laws specify that reasonable efforts are not required in certain circumstances, including when the court finds that the parent has been convicted of certain crimes. Not all of these crimes are required to be committed against the child who is removed from the home. [*See* section 19-1-115 (7), C.R.S.] How do the proponents intend for the language in paragraph 6 of the proposed measure to affect current law? What is "the crime" referred to in paragraph 6 of the proposed measure? Is "the state" the same as the district attorney's office?