

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

July 3, 2003

TO: Charmaine Look & Shane Forte

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed Initiative Measure 2003-2004 #58, 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 purpose of the proposed initiative appears to be:

1. To repeal Title 19 of the Colorado Revised Statutes, known as the "Colorado Children's Code", and not replace it with any new laws related to the issues currently covered by the "Colorado Children's Code".

Comments and Questions

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

Technical questions:

1. The proposed measure states "Be it enacted, Title 19, be Repealed by the people of the State of Colorado." 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:"

To comply with Colorado's constitutional requirement, the proponents should include the enacting clause above in its entirety at the beginning of the proposed measure. Would the proponents consider including the phrase above at the beginning of the proposed measure?

2. In Colorado, when a proposed measure adds new language or repeals existing language in the state constitution or the Colorado Revised Statutes, the proposed measure includes an amending clause indicating the specific section of the state constitution or the statutes where new language will be added, where existing language will be amended, or where existing language will be deleted. [For example, "**SECTION 1. Repeal.** 19-3-102, Colorado Revised Statutes, is repealed."]
 - a. Would the proponents consider adding an appropriate amending clause to the proposed measure to indicate a section number and to conform the language of the repeal of title 19 to standard drafting practices?
 - b. In addition, would the proponents consider clarifying whether this proposed measure is intended to be a statutory repeal, capable of being modified through a bill enacted by the General Assembly, or a constitutional amendment, which would be capable of modification through a concurrent resolution passed by the General Assembly and submitted to and approved by the people?
 - c. Note that another way to repeal existing statutory language is through a "future repeal". This type of repeal is different than the repeal section referenced above and discussed in paragraph a. If a provision of law is to be repealed at a time in the future, new statutory language may be added to statute to repeal the provision at the designated time. A future repeal would require an amending clause related to the new statutory language. For example:

"SECTION 1. Part 3 of article 5 of title 18 , Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

18-5-308. Repeal of part. THIS PART 3 IS REPEALED, EFFECTIVE JULY 1, 2006."

If the proponents intend to add an effective date that occurs in the future to the proposed measure, would the proponents consider using the amending clause applicable to a future repeal?

3. A general repealing clause, such as "All acts or parts of acts in conflict with this section are hereby repealed", is not used in standard drafting practice. However, in repealing existing law, it is necessary to repeal all the existing law on the subject and to eliminate from the law all references to the subject repealed and to all statutory provisions being repealed. There may be references to sections, parts, or articles of title 19, or the entirety of title 19, in portions of the Colorado Revised Statutes other than title 19. Standard drafting practice requires a search of all the statutes to locate all other statutes that refer to the repealed material so that appropriate conforming amendments can be made to those statutes. There are occasions, however, when conforming amendments would be so numerous as to unduly burden or disrupt the process, and on those occasions, a section that allows the Revisor of Statutes to prepare conforming amendments may be added to a measure. Another option would be to authorize the General Assembly to make all necessary conforming amendments to implement the measure.

Would the proponents consider performing a search of all of the statutes to locate all other statutes that refer to the repealed material and all statutory provisions being repealed to make appropriate conforming amendments, or in the alternative, would the proponents consider a new section granting to the Revisor of Statutes or the General Assembly the authority to prepare such conforming amendments?

Substantive questions:

1. Title 19, C.R.S., the "Colorado Children's Code", includes six articles, which are, in turn, subdivided into parts, and sections. The articles and parts of the "Colorado Children's Code" are as follows:

Article 1, General Provisions, Part 1, General Provisions

Article 1, General Provisions, Part 2, Court-Appointed Special Advocate Program

Article 1, General Provisions, Part 3, Records and Information

Article 2, The Colorado Juvenile Justice System, Part 1, General Provisions

Article 2, The Colorado Juvenile Justice System, Part 2, Administrative Entities - Agents

Article 2, The Colorado Juvenile Justice System, Part 3, Juvenile Administrative Programs - Services

Article 2, The Colorado Juvenile Justice System, Part 4, Juvenile Facilities

Article 2, The Colorado Juvenile Justice System, Part 5, Entry Into the System

Article 2, The Colorado Juvenile Justice System, Part 6, Special Proceedings

Article 2, The Colorado Juvenile Justice System, Part 7, Preadjudication

Article 2, The Colorado Juvenile Justice System, Part 8, Adjudicatory Procedures

Article 2, The Colorado Juvenile Justice System, Part 9, Postadjudicatory Process

Article 2, The Colorado Juvenile Justice System, Part 10, Postsentence
Article 2, The Colorado Juvenile Justice System, Part 11, Teen Courts
Article 3, Dependency and Neglect, Part 1, Definitions
Article 3, Dependency and Neglect, Part 2, General Provisions
Article 3, Dependency and Neglect, Part 3, Child Abuse or Neglect
Article 3, Dependency and Neglect, Part 4, Temporary Custody and Shelter
Article 3, Dependency and Neglect, Part 5, Petition, Adjudication, Disposition
Article 3, Dependency and Neglect, Part 6, Termination of the Parent-Child Legal Relationship
Article 3, Dependency and Neglect, Part 7, Review of Placement
Article 3.5, Colorado Children's Trust Fund
Article 4, Uniform Parentage Act
Article 5, Relinquishment and Adoption, Part 1, Relinquishment
Article 5, Relinquishment and Adoption, Part 2, Adoption
Article 5, Relinquishment and Adoption, Part 3, Access to Adoption Information
Article 5, Relinquishment and Adoption, Part 4, Access to Nonidentifying Adoption Information
Article 6, Support Proceedings

- a. Is it the proponents' intent to repeal the entirety of title 19, Colorado Revised Statutes, including the articles and parts referenced above related to the juvenile justice system, the dependency and neglect process, the establishment of paternity, the relinquishment of children, the adoption of children, and child support proceedings, as well as the sections of law contained therein?
- b. Is it the proponents' intent, by repealing part 1 of article 1 of title 19, to remove from statute the right of a grandparent to seek visitation with his or her grandchildren?
- c. Is it the proponents' intent, by repealing part 3 of article 1 of title 19, to eliminate the provisions of law related to the confidentiality of court and other records related to juvenile delinquency or dependency and neglect cases?
- d. Do the proponents intend, by repealing the Colorado Juvenile Justice System, to eliminate provisions from the law related to holding a child under eighteen years of age criminally responsible for actions which, if committed by an adult, would have constituted a crime or is it the proponents' intent that a child, regardless of age, be subject to the criminal laws and penalties set forth in title 18, Colorado Revised Statutes?
- e. Is it the proponents' intent, by repealing article 3 of title 19, to eliminate Colorado's current responsibility to protect children from unsafe environments?
- f. Do the proponents intend, by repealing the "Uniform Parentage Act", article 4 of title 19, to eliminate a parent's ability to establish, for legal purposes, that he or she and another person is the mother or father of a child?
- g. Is it the intent of the proponents, by repealing article 5 of title 19, to eliminate the ability of

a citizen in Colorado to relinquish his or her child or to adopt a child?

- h. Do the proponents intend, by repealing part 4 of article 5 of title 19, to eliminate the law concerning access to adoption records?
 - i. Are the proponents aware that Colorado receives substantial federal funding for participation in federal programs related to the subjects mentioned above, and that by virtue of repealing title 19, the state of Colorado could risk losing some or all of this federal funding?
2. What is the intended effective date of the measure? An effective date is the time that the proposed measure would go into effect. An example of an effective date clause is as follows: "**SECTION 2. Effective date.** This act shall take effect _____ (*insert a fixed date - e.g. July 1, 2005*)." Some measures can go into effect immediately without undue inconvenience to anyone, but measures affecting state government and involving the appropriation or expenditure of state moneys should generally have an effective date of July 1, which marks the beginning of the state's fiscal year. In addition, certain measures affect a wide variety of processes and would be inconvenient or nearly impossible to make effective immediately. For example, if the proposed measure were to go in effect immediately, what would be the intent of the proponents with respect to juveniles adjudicated as a delinquent, but not yet sentenced? With respect to a child who has been removed from an unsafe home, but not yet permanently placed? With respect to a parent who has filed for relinquishment of his or her child, but whose case has not yet been heard before the judge? With respect to an adoption currently in progress, but not yet final? A future effective date would allow for a winding down period or a phase-out process to allow time to address these types of issues. Furthermore, placement of an effective date in the permanent text of the measure arguably provides public notice in addition to placement of an effective date in a separate effective date section.
- a. If the proponents intend to repeal the "Colorado Children's Code" in its entirety on a date certain, would the proponents consider adding an effective date clause?
 - b. In addition, would the proponents consider placing that date in the text of the proposed measure?
 - c. Further, would the proponents consider an effective date in the future to allow for a winding down period or a phase-out process?
3. What is the applicability of the proposed measure? In other words, how might the applicability of the repeal of title 19 be limited? When a new act or the repeal of an old act would affect existing rights, obligations, and procedures, a savings clause may be included to limit the application of the proposed measure when enacted into law. A savings clause "saves" existing law for purposes of applying to existing rights, obligations, and procedures. For example, a specific savings clause combined with an effective date and related to a new title might read as follows:

4-10-101. Effective date. (1) This title shall take effect at 12:01 a.m. on July 1, 2006.

(2) Transactions validly entered into prior to the effective date of this title and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by the enactment of this title as though such repeal or amendment had not occurred.

- a. What do the proponents intend to happen to the open juvenile delinquency, dependency and neglect, paternity, relinquishment, adoption, and child support court cases? Would it be the intent of the proponents that ongoing cases continue to exist and that the law of title 19 as it exists immediately preceding the passage of this measure be applied to such cases, but no new cases be filed after the effective date of the measure? Or would it be the proponents' intent that ongoing cases be dismissed? If so, what will be the result of dismissing the current proceedings in juvenile delinquency, dependency and neglect, paternity, relinquishment, adoption and child support?
 - b. What will happen to funds created in title 19, containing moneys appropriated by the state and moneys received pursuant to federal law?
- 4.
- a. If the proponents add a future effective date, would the proponents authorize the General Assembly or the Department of Human Services the authority to implement a plan for the phase-out process?
 - b. Do the proponents anticipate that the General Assembly will need to enact implementing legislation pertaining to juvenile delinquency, dependency and neglect, paternity, relinquishment, adoption, and child support court cases, funds and other issues raised by this repeal? If so, would the proponents consider authorizing the General Assembly to enact implementing legislation for the proposed measure?