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MEMORANDUM

March 2, 2012

TO: Samuel Babcock and Elise Van Grinsven

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2011-2012 #60 concerning the right to bear arms

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. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purpose

The major purpose of the proposed initiative appears to be:

To amend section 13 of article II of the Colorado constitution to permit a United States citizen who is at least twenty-one years of age and able to legally own a firearm in Colorado to carry a handgun, whether concealed or open, without a permit in Colorado.

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.

Organization and Punctuation of Provisions

1. In Colorado, constitutional and statutory provisions are organized and punctuated using the following structure:

- a. Subsection, for example, "(1)";
- b. followed by paragraphs, for example, "(a)";
- c. followed by subparagraphs, for example, "(I)";
- d. ending with sub-subparagraphs, for example, "(A)".

The proposed initiative amends and reorganizes the existing language of section 13 of article II of the Colorado constitution to create a subsection "(1)"; however, there is no subsection "(2)" created. Similarly, the proposed initiative creates within this subsection (1) a paragraph "(A)" [sic]; however, there is no paragraph "(b)" created.

Please consider reorganizing the language of the proposed initiative to eliminate the creation of the subsection (1) and paragraph (a). Alternatively, please reorganize the language to include the amended language within multiple subsections.

2. In the language that appears in the proposed initiative under paragraph "(A)" [sic], for the sake of clarity, please consider breaking out the language that follows "prohibit:" into a list of sub-provisions. For example:

"(2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT:

(a) THE ISSUANCE OF PERMITS TO CARRY CONCEALED HANDGUNS FOR THE PURPOSE OF RECIPROCITY WITH OTHER STATES;

(b) THE AUTHORITY OF THE STATE GOVERNMENT OR ANY LOCAL GOVERNMENT TO LIMIT THE CARRYING OF FIREARMS:

(I) ON THE REAL PROPERTY OF ANY PUBLIC ELEMENTARY, MIDDLE, JUNIOR HIGH, OR HIGH SCHOOL, OR ON OR WITHIN ANY IMPROVEMENTS ERRECTED THEREON;

(II) WITHIN ANY BUILDING OF A COURT OF LAW, LAW ENFORCEMENT AGENCY, CORRECTIONAL FACILITY, OR MENTAL HEALTH FACILITY; OR

(III) WITHIN THE STATE CAPITOL BUILDING OR ANY BUILDING IN WHICH A STATE OR LOCAL DEPARTMENT OR AGENCY IS LOCATED."

Capitalization

1. To reflect standard drafting practice, please do not capitalize any word other than the first word in the headnote of the proposed new section. I.e., the headnote should read "**Section 13. Right to bear arms.**".

Substantive Comments and Questions

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

1. Subsection (5.5) of section 1 of article V of the state constitution requires each proposed initiative to have a single subject. What is the single subject of the proponents' initiative proposal?

2. What exactly do the proponents mean by the term "mental health facilities"? For example, is this term intended to include hospitals? Please consider including language to clarify the meaning of this term.

3. Do the proponents anticipate a potential conflict between the proposed initiative and the provisions of the federal "Gun-Free School Zones Act of 1990", 18 U.S.C. 922(q), which prohibits possession of a firearm within a distance of one thousand feet from the grounds of a public, parochial, or private school?

4. Do the proponents intend that passage of the proposed initiative will require the General Assembly to modify or repeal any provision of:

- Part 2 of article 12 of title 18, Colorado Revised Statutes, concerning permits to carry concealed handguns;
- Section 18-12-105, Colorado Revised Statutes, concerning the unlawful carrying of concealed weapons and unlawful possession of weapons; or
- Section 18-12-105.5, Colorado Revised Statutes, concerning the unlawful carrying of concealed weapons and unlawful possession of weapons on school, college, or university grounds?