

STATE OF COLORADO

Colorado General Assembly

Mike Mauer, Director
Legislative Council Staff

Colorado Legislative Council
029 State Capitol Building
Denver, Colorado 80203-1784
Telephone (303) 866-3521
Facsimile (303) 866-3855
TDD (303) 866-3472
E-Mail: lcs.ga@state.co.us



Dan L. Cartin, Director
Office of Legislative Legal Services

Office Of Legislative Legal Services
091 State Capitol Building
Denver, Colorado 80203-1782
Telephone (303) 866-2045
Facsimile (303) 866-4157
E-Mail: olls.ga@state.co.us

MEMORANDUM

February 8, 2013

TO: Heather Surovik and Gualberto Garcia Jones

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2013-2014 #2 concerning the definition of person and child

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 amendment to the Colorado constitution appears to be:

1. Define the terms "person" and "child" for the Colorado criminal code and the Colorado wrongful death act to include unborn human beings.

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. The office has developed a new amending clause format. Here is an example of the new format: In the constitution of the state of Colorado, Article XVIII, **add** (17) as follows:
2. The proposed initiative cites to *People v. Lage*, but the citation is incomplete. The correct full citation is *People v. Lage* 232 P.3d 138 (Colo. App. 2009).
3. The proposed initiative capitalizes "Colorado Criminal Code" and "Colorado Wrongful Death Act". It is standard drafting practice to only capitalize Colorado.

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. The proposed initiative intends to define person and child for both the criminal statutes and the Colorado wrongful death act. What is the single subject of the proposed initiative?
2. As a change to the Colorado constitution, the proposed initiative may only be amended by a subsequent amendment to the constitution. Is this your intention?
3. The intent of the measure is to define person and child in the Colorado Revised Statutes, but the measure amends the Colorado Constitution. Why not propose the measure as a change to the Colorado Revised Statutes?
4. In the purpose and findings provision, the language cites language from an opinion of a panel of the Colorado Court of Appeals. The first phrase comes from the majority opinion, but the second and third phrases come from a concurring in part, dissenting in part opinion. The provision could be interpreted as misleading since it appears that the Colorado Court of Appeals as a whole endorsed those phrases when only one member of the court endorsed the second and third phrases.
5. The proposed initiative states "the words 'person' and 'child' in the Colorado criminal code and the Colorado wrongful death act must include unborn human beings". Do the proponents intend for the General Assembly to enact a bill to achieve that result or do they intend for the constitutional provision to stand on its own?
6. The proposed initiative does not define "unborn human beings". What is the definition of unborn human beings and would the proponents consider including it in the proposed initiative?

7. The proposed initiative does not define "criminal injury". What is the definition of criminal injury, and would the proponents consider including it in the proposed initiative?
8. Is it the intent of the measure to grant legal status to a fetus distinct from the pregnant woman?