

STATE OF COLORADO

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MEMORANDUM

January 5, 2006

TO: Mason Tvert and Evan Ackerfeld

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2005-2006 #72, concerning marijuana possession.

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 amendment to the Colorado Revised Statutes appear to be:

1. To limit the prohibition against possession of one ounce or less of marijuana to individuals under twenty-one years of age; and
2. Legalize the possession of one ounce or less of marijuana by individuals twenty-one years of age or older.

Comments and Questions

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

questions:

Technical questions:

1. 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 initiative. Would the proponents consider including the phrase above at the beginning of the proposed initiative?

2. The proposed initiative states that "The statutory change" is to the "Current version of CRS 18-18-406". The proposed initiative includes the current version of section 18-18-406 (1), C.R.S., followed by a version of how the statute would appear after adding new language "under the age of 21" to the statute. To conform to the style in which existing law and amendments to existing law are written, would the proponents consider:
 - a. After the enacting clause, replacing the heading "The statutory change" and the text within that heading with an amending clause that states "Section 18-18-406 (1), Colorado Revised Statutes, is amended to read:"?
 - b. Inserting below the amending clause the section number and head note of section 18-18-406, C.R.S., followed by the text of subsection (1) with the addition of the new language in small capital letters?
 - c. The format generally followed in the statutes for stating an age is to write out the numeral, followed by the phrase "years of age". Would the proponents consider following the standard statutory format for stating an age?
3. Under section 1 (4) of article V of the state constitution, a measure approved by the voters does not become law until it is officially proclaimed by the governor. Is it the intent of the proponents that the measure become law upon proclamation of the governor?
4. The ballot title board will set the title of the measure, as provided in section 1-40-106, C.R.S. Pursuant to section (1) (7.5) (a) (II) of article V of the Colorado constitution, the nonpartisan research staff of the general assembly shall provide a summary of the measure. Would the proponents consider removing the paragraph that summarizes the measure and the paragraph that contains the "envisioned ballot title" and submitting only the enacting clause, amending clause, and text of the measure?
5. The proposed initiative concerns "marijuana". The statute that the proposed initiative seeks

to amend, section 18-18-406, C.R.S., concerns "marihuana". Would the proponents consider changing the word "marijuana" to "marihuana" in order to conform with the wording of the current statute?

Substantive questions:

1. In order to avoid confusion as to the application of this law, would the proponents consider adding a provision to specify a date after which the measure will apply?
2. If the proposed initiative is enacted, persons twenty-one years of age and older will not be subject to state prosecution for possession of one ounce or less of marijuana because it will no longer be an offense. Under current law in section 18-18-406 (5), C.R.S., the transferring or dispensing of not more than one ounce of marijuana from one person to another for no consideration is deemed to be possession and not dispensing or selling. It follows, therefore, that persons twenty-one years of age or older who transfer or dispense one ounce or less of marijuana without consideration will be deemed to possess the marijuana and no longer be subject to state prosecution for dispensing or selling. Is this the proponents' intent?
3. The federal Controlled Substances Act ("federal CSA") in 21 U.S.C. sec. 812 (c) (10) classifies marijuana as a "Schedule I" controlled substance, the most restrictive category under federal law. The federal CSA in 21 U.S.C. sec. 841 prohibits the distribution or dispensing of any schedule I drug, including marijuana. As discussed in paragraph 2 above, however, the enactment of the proposed initiative would result in legalizing the transfer or dispensing of one ounce or less of marijuana by persons twenty-one years of age or older, thus creating a potential conflict with federal law. Is this the proponents' intent?