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MEMORANDUM

To: Suzanne Taheri and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: January 19, 2026

Subject: Proposed Initiative measure 2025-2026 #216, concerning child sexual assault sentencing

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 and questions to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council Staff and the Office of Legislative Legal Services is to provide comments and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

An earlier version of this proposed initiative, proposed initiative **2025-2026 #59**, was submitted by the same designated representatives, was the subject of a memorandum dated April 1, 2025, and was discussed at a public meeting on April 4, 2025. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the earlier memorandum or at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed

initiative. Prior comments and questions that are not restated in this memorandum continue to be relevant and are considered part of this memorandum.

Purposes

The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be to:

1. Require a court to sentence a sex offender convicted of enumerated sex offenses against children to an indeterminate prison sentence and prohibit a court from sentencing the sex offender to probation;
2. Require a court to sentence a person convicted of the following offenses to a prison sentence of at least the minimum of the applicable presumptive range:
 - a. Class 3 felony enticement of a child, class 3 felony internet luring of a child, pandering of a child, pimping of a child; and
 - b. As renamed in the proposed initiative, soliciting a child for commercial sexual activity, keeping a place for commercial sexual activity with a child, inducement of commercial sexual activity with a child, and engaging in commercial sexual activity with a child;
3. Require a court to sentence a person convicted of class 4 felony sexual assault on a child, class 4 felony sexual assault on a child by one in a position of trust, class 3 felony sexual assault on a child by one in a position of trust because the victim is less than 15 years old, human trafficking of a minor for involuntary servitude, and class 3 felony sexual exploitation of a child, to a prison sentence of at least the minimum of the applicable presumptive range and up to the maximum of the person's natural life;
4. Define "commercial sexual activity with a child" and change references to child prostitution to instead refer to commercial sexual activity with a child; and
5. Make the following offenses crimes of violence: Sexual assault on a child, sexual assault on a child by one in a position of trust, keeping a place for commercial sexual activity with a child, engaging in commercial sexual activity with a child, and pimping of a child.

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. What is the single subject of the proposed initiative?
2. The initiative renames various offenses related to child prostitution. Those offenses are referenced by name elsewhere in the Colorado Revised Statutes. Please include in the initiative amendments to the references to reflect the changed name, and the applicability of the change, where necessary.
3. Section 3 of the initiative makes internet luring with the intent to meet for the purpose of engaging in commercial sexual activity a class 3 felony. Internet luring for the purpose of engaging in sexual exploitation is currently a class 4 felony and addresses similar conduct, namely, “publishes, produces, promotes, makes, sells finances, offers, exhibits, advertises, deals, distributes, transports or transfers...” sexually exploitative material pursuant to section 18-6-403 (3)(b), C.R.S. The definition of “commercial sexual activity” likely overlaps or includes prohibited conduct of internet luring for the purpose of engaging in sexual exploitation. If a person is charged with a crime and there is another crime that contains the same elements and carries a lower penalty, the court will impose the lower penalty. Is that your intent?
4. Section 5 of the initiative makes sentencing of an offender convicted of sexual assault of a child by one in a position of trust pursuant to section 18-3-405.3, C.R.S., start at the minimum sentencing range for both a class 4 and class 3 felony. Sexual assault of a child by one in a position of trust is a crime of violence, subject to mandatory sentencing of at least twice the midpoint, but no more than twice the maximum sentence in the sentencing range pursuant to section 18-1.3-406 (1)(d), C.R.S., when the offender used, or possessed and threatened the use of, a deadly weapon, or caused serious bodily injury or death to any other person during the commission of the crime. Is it your intent to remove the crime of violence enhancer from the offense of sexual assault of a child by one in a position of trust?
5. Section 6 of the initiative makes sentencing for a class 2 felony of an offender convicted of human trafficking for involuntary servitude pursuant to section

18-3-503, C.R.S., start at the minimum sentencing range for a class 2 felony. Human trafficking for involuntary servitude is a crime of violence, subject to mandatory sentencing of at least twice the midpoint, but no more than twice the maximum sentence in the sentencing range pursuant to section 18-1.3-406 (2)(a)(II)(L), C.R.S., when the offender used, or possessed and threatened the use of, a deadly weapon, or caused serious bodily injury or death to any other person during the commission of the crime. Is it your intent to remove the crime of violence enhancer from the offense of human trafficking for involuntary servitude in all instances?

6. Section 8 of the initiative defines “commercial sexual activity” as “sexual activity for which anything of value is given to, promised to, or received by a person.”
 - a. Would the proponents consider defining “sexual activity”?
 - b. The definition of “commercial sexual activity” appears to encompass activity defined in “prostitution by a child” and “prostitution of a child” but does not repeal the definition of either. Failure to repeal these definitions may create an equal protection issue for the same or similar conduct in different criminal statutes requiring the court to sentence to the lower penalty. Is that your intent?
 - c. Likewise, while it appears the initiative attempts to fully replace “prostitution by a child” and “prostitution of a child” with “commercial sexual activity,” “prostitution of a child” is not repealed in section 18-7-403.5, C.R.S., procurement of a child. Is it your intent to leave section 18-7-403.5, C.R.S., unamended?
7. In section 9 of the initiative, section 18-7-402 (1)(b), C.R.S., please add “person” after “another” so it is clear you are talking about soliciting another person for commercial sexual activity with a child.
8. Section 15 of the initiative adds sexual assault on a child and sexual assault on a child by one in a position of trust as crimes of violence in section 18-1.3-406, C.R.S. As felony unlawful sexual offenses, these offenses are included as crimes of violence when, in the commission of the offense, the defendant used, or possessed and threatened the use of, a deadly weapon or caused serious bodily injury or death to any other person, pursuant to section 18-1.3-406 (2)(a), C.R.S., and when the defendant caused bodily injury to the victim or used threat,

intimidation, or force against the victim, pursuant to section 18-1.3-406 (2)(b), C.R.S.

- a. What is your intended effect of adding sexual assault on a child and sexual assault on a child by one in a position of trust as crimes of violence in the proposed initiative that is not covered by existing law?
 - b. The name of the offense in section 18-3-405.3, C.R.S., is “sexual assault on a child by one in a position of trust.” Please update the language in section 15 of the initiative to use “one” instead of “someone” in the name of that offense. Similarly, the word “of” is omitted from the reference to the offense of pimping of a child.
9. In section 15 of the initiative, you add sexual assault on a child pursuant to section 18-3-405, C.R.S.; sexual assault on a child by someone in a position of trust pursuant to section 18-3-405.3, C.R.S.; keeping a place for commercial sexual activity with a child pursuant to section 18-7-404, C.R.S.; engaging in commercial sexual activity with a child pursuant to section 18-7-406, C.R.S.; and pimping a child pursuant to section 18-7-405, C.R.S., as statutory crimes of violence.
- a. Sexual assault on a child pursuant to section 18-3-405, C.R.S., is already a crime of violence if the person used, or possessed and threatened the use of, a deadly weapon, or caused serious bodily injury or death to any other person except another participant pursuant to section 18-1.3-406 (2)(a)(I)(E), C.R.S. What is your intended effect in the initiative that is not covered by existing law?
 - b. Sexual assault on a child by someone in a position of trust pursuant to section 18-3-405.3, C.R.S., is already a crime of violence if the person used, or possessed and threatened the use of, a deadly weapon, or caused serious bodily injury or death to any other person except another participant pursuant to section 18-1.3-406 (2)(a)(I)(E), C.R.S. What is your intended effect in the initiative that is not covered by existing law?
 - c. Keeping a place for commercial sexual activity with a child, as newly named but previously located in section 18-7-404, C.R.S., is already a crime of violence if the defendant caused bodily injury to the victim or if the defendant used threat, intimidation, or force against the victim pursuant to

section 18-1.3-406 (2)(b)(I), C.R.S. What is your intended effect in the initiative that is not covered by existing law?

- d. Engaging in commercial sexual activity with a child, as newly named but previously located in section 18-7-406, C.R.S., is already a crime of violence if the defendant caused bodily injury to the victim or if the defendant used threat, intimidation, or force against the victim pursuant to section 18-1.3-406 (2)(b)(I), C.R.S. What is your intended effect in the initiative that is not covered by existing law?
 - e. Pimping of a child pursuant to section 18-7-405, C.R.S., is already a crime of violence if the defendant caused bodily injury to the victim or if the defendant used threat, intimidation, or force against the victim pursuant to section 18-1.3-406 (2)(b)(I), C.R.S. What is your intended effect in the initiative that is not covered by existing law?
 - f. If your intent in each of the above situations is to make every instance of the crime a crime of violence, would the proponents amend current law to remove the qualified instances of a crime of violence?
10. In section 16 of the initiative, you have the effective date as the “date it is declared by proclamation of the governor to have been adopted by the voters,” with the same date for the applicability clause. Legislation affecting criminal statutes typically has an effective date in the future so people have adequate notice to conform their conduct to the legal standard. Please consider adding an applicability clause date that is after the effective date.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public meeting only if the designated representatives 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 follows:

1. Section 3 of the initiative includes internal underlining of section numbers. Standard drafting practice does not include the use of underlining within the Colorado Revised Statutes.

2. Changes to section headnotes are nonstatutory and do not require showing changes in strike type and small caps. Additionally, all headnotes should remain in lowercase letters.
3. When striking existing law in strike type and replacing it with new law shown in small capital letters, the stricken type should always appear before the new small capital letters. An amended section of the Colorado Revised Statutes should never have stricken type interrupted by new small caps type that is then followed by more stricken type.
4. In an amending clause, it is necessary to write out the entire subsection you are amending, for example, “In Colorado Revised Statutes, xx-x-xxx, **amend** (5)(a) as follows:” instead of “In Colorado Revised Statutes, xx-x-xxx (5), **amend** (a) as follows:”.
5. Standard drafting practice is to add a new subsection instead of renumbering within a list, when possible, to avoid any potential missed conforming amendments.
6. Do not use striketype to strike out spaces between words when you are not striking two consecutive words. Additionally, when you are striking through existing language, standard drafting practice is to strike the entire word or number, including any relevant parentheses, and then introducing the replacement word or number.
7. It is standard drafting practice to not show standalone changes to punctuation in strike type when amending existing law. When you are changing existing punctuation, such as a comma to a semicolon, within the Colorado Revised Statutes, make the change without striking through the old punctuation.
8. Standard drafting practice no longer uses “as set forth” to reference another section of statute and now uses “set forth.”