

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

**TO:** Stephen Ball and Paul Ball

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**DATE:** December 17, 2019

**SUBJECT:** Proposed initiative measure 2019-2020 #131, concerning expungement of eligible criminal records

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 directors of 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.

Two earlier versions of this proposed initiative, proposed initiative 2019-2020 #123 and proposed initiative 2019-2020 #130, were the subject of memoranda dated August 12, 2019, and December 2, 2019, respectively. Proposed initiative 2019-2020 #123 was discussed at a public meeting on August 15, 2019, and proposed initiative 2019-2020 #131 was a discussed at a public meeting on December 4, 2019. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative.

However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

## **Purposes**

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

1. To provide a process for criminal record expungement based on the eligibility criteria in the proposed initiative; and
2. To distribute the revenue raised by the expungement fee to various organizations or individuals and to use the revenue to cover administrative expenses.

## **Substantive Comments and Questions**

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

1. Proposed section 24-72-804 addresses the operation of the expungement period:
  - a. Subsections (2)(b) and (2)(c) and subsections (2)(d) and (2)(e) appear to be duplicative. Would the proponents consider combining subsections (2)(b) and (2)(c) and subsections (2)(d) and (2)(e)?
  - b. The use of the term "current day" is vague. Would the proponents consider adding language to qualify what the "current day" applies to?
  - c. In subsection (6), what does the phrase "would interfere" mean and how does it apply?
2. Proposed section 24-72-828 relates to the duty of official custodians to expunge records:
  - a. Subsection (1)(a) gives official custodians 360 days beginning January 1, 2021, to expunge the records that are eligible for immediate expungement for convictions before December 31, 2020. But the courts will not enter the expungement order for those cases until July of 2021. What are the official custodians supposed to do between January 1, 2021, and July 2021?
  - b. Subsection (1)(a) gives official custodians 360 days beginning January 1, 2021, to expunge the records that are eligible for immediate expungement for convictions before December 31, 2020. But subsection (1)(d) says that upon the issuance of the expungement order, the official

custodian shall immediately expunge the records. That appears to be a conflict. Do the custodians still have until December 26, 2021, to expunge the records? What would qualify as "immediately"?

- c. Is there a penalty for not complying with the expungement provisions for convictions before December 31, 2020?

## **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. Throughout the proposed initiative, when referencing a part, article, or subsection, the number should be included ("this part 8," "this article 72," etc.). The only case when you do not need to include a number is when referencing the section you are in, in which case you would simply say "this section."
2. Throughout the proposed initiative, dates expressing the first nine days of the month should not include a zero (use "January 1" rather than "January 01").
3. Throughout the proposed initiative, "money" should be used in place of "moneys."
4. Throughout the proposed initiative, there should never be a subsection (1) without a subsection (2), a paragraph (a) without a paragraph (b), a subparagraph (I) without a subparagraph (II), and so on. Standard drafting practice does not include numbers or letters that stand alone. Such information should be combined into a single provision.
5. Throughout the proposed initiative, references to statutory citations are missing the word "section" before the section number. Please add it.
6. In proposed section 24-72-801, "an individual" is discussed and then is referred to as "one," "their," and "they." Standard drafting practice is to use the singular gender-neutral noun (repeat "an individual") or to use the singular pronouns for each gender ("his or her") after the first mention. This format should be reflected throughout the initiative.

7. In proposed section 24-72-802 (15), "aimed to enhance" should be "aimed at enhancing," and "activities" should be set in small caps.
8. In proposed section 24-72-802 (19), "and" is missing before "plating."
9. In proposed section 24-72-803, the first semicolon should be replaced with a comma, the second semicolon should be deleted, and "or" should be added after "acquittal." I believe a new sentence should start with "The district court in the judicial district..."
10. In proposed section 24-72-804 (2)(b), the "(b)" is in small caps and should be in regular type.
11. In proposed section 24-72-804 (5)(a), no comma is needed between "clemency" and "shall."
12. In proposed sections 24-72-811 to 24-72-824, you should not use quotation marks around the names of the offenses.
13. In proposed section 24-72-812 (4)(c), the word "describe" should be "described."
14. In proposed section 24-72-820, paragraph (g) is missing, so the paragraphs need to be relettered.
15. In proposed section 24-72-828 (1)(a), the word "where" should be "when."
16. In proposed section 24-72-830, subsection (3)(v) either needs to be a (3)(v)(I) and the subsequent (3)(v)(I) and (3)(v)(II) need to be renumbered accordingly or (3)(v) needs to end in a colon.
17. The text in proposed section 24-72-841 (3)(a)(IV) should be set in small caps.
18. In proposed section 24-72-847 (4), "(3)(e)(V)" should not be in small caps.
19. Sections 3 and 4 of the proposed amendment can be combined into a single section because they both amend section 18-1.3-701. The amending clause would then read: "In Colorado Revised Statutes, 18-1.3-701, **amend** (1)(b); and **add** (1)(d) as follows:" The headnote to section 18-1.3-701 needs to be shown after the amending clause and before (1)(b). In subsection (1)(d), "Expungement Fee Cash Fund" should not be capitalized. Section 5 should then be renumbered as section 4.