

STATE OF COLORADO

Colorado General Assembly

Natalie Castle, Director
Legislative Council Staff

Colorado Legislative Council
200 E. Colfax Ave., Room 029
Denver, Colorado 80203-1716
Telephone 303-866-3521
Facsimile 303-866-3855
Email: lcs.ga@coleg.gov



Sharon L. Eubanks, Director
Office of Legislative Legal Services

Office of Legislative Legal Services
200 E. Colfax Ave., Room 091
Denver, Colorado 80203-1716
Telephone 303-866-2045
Email: olls.ga@coleg.gov

MEMORANDUM

TO: Marla Fernandez-Benavides and Debra Carroll
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: May 25, 2023
SUBJECT: Proposed initiative measure 2023-2024 #65, concerning parental rights

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.

Purposes

The major purpose of the proposed amendment to the Colorado constitution appears to be to add the right of parental involvement in a minor child's public school education and health-care decision making in article IX, section 16 of the Colorado constitution.

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. What is the meaning of the term "custody of the school district" in the first paragraph of the proposed initiative?
3. Article IX, section 16, subsections (3)(j) and (3)(k) of the proposed initiative refer to the "Department of Human Services: Children and Families." Do you mean to refer to the Office of Children, Youth, and Families within the Department of Human Services or the Division of Child Welfare within the Office of Children, Youth, and Families? If so, please rephrase to accurately identify the correct entity. If not, does this proposed initiative intend to create a new division within the Department of Human Services?
4. Subsection 2 of the proposed initiative lists acceptable uses of biometric scanning records. However, subsections (2)(e) and (2)(f) do not refer to a use of biometric scanning records. Would the proponents consider making this a new section?
5. Subsection (2)(e) of the proposed initiative requires notification. Who is required to be notified?
6. Subsection (2)(f) of the proposed initiative states, "This subsection does not create a new obligation for a school to report misconduct between students at school to report misconduct between students . . . ". What is meant by "misconduct between students at school to report misconduct between students"?
7. Subsection (3) of the proposed initiative begins with the headnote, "Request for information," but the provisions of subsection (3) relate to parental rights. Would the proponents consider changing the headnote to reflect the provisions in subsection (3)?
8. Subsection (3)(d) of the proposed initiative provides the right to enroll the parent's minor child in public school or private school. Does that mean that a public school or private school has to enroll a student regardless of whether there is space available, or in the case of a private school, regardless of whether the parents can pay the tuition?

9. Subsection (3)(j) of the proposed initiative cites "a legitimate academic or extracurricular activity." What is a "legitimate academic or extracurricular activity"?
10. Subsection (3)(n) of the proposed initiative states, "This ensures the termination process fairer." What is "termination process fairer"? Should it instead say "fairness of the termination process" or "This ensures the termination process is fairer" or something else?
11. Subsection (3)(o) of the proposed initiative states, "A biological parent's right to his or her child may not be terminated unless found guilty of a crime and beyond a reasonable doubt of abuse and neglect" The phrase should state "unless *the parent is* found." Does the crime have to relate to abuse and neglect or is a finding beyond a reasonable doubt of abuse and neglect a separate means for parental rights to be terminated?
12. Subsection (3)(q) of the proposed initiative references a "refund." What does "refund" refer to?
13. Subsection (3)(r) of the proposed initiative requires the Colorado Department of the Treasury to appropriate funds to parents who opt out of public education.
 - a. Is the intent to issue tax refunds to parents who decide not to enroll their child into the public education system? If so, should this refund be issued by the Colorado Department of Revenue?
 - b. How will this refund be determined and verified?
14. Subsection (3)(s) of the proposed initiative references "funding raised by the government for schools." What does "funding raised by the government for schools" refer to?
15. Subsection (5)(4) of the proposed initiative states that section (5), relating to parental consent to medical treatment, applies to abortion procedures. How does this provision affect the "Colorado Parental Notification Act," part 7 of article 22 of title 13, Colorado Revised Statutes?
16. Subsection (5)(5) of the proposed initiative exempts services provided to a minor in a clinical laboratory from the parental written consent requirement stated section (5). Is that your intent?

17. Subsection (5)(7) of the proposed initiative states a violation is a misdemeanor in the first degree. Colorado does not have a first degree misdemeanor; in Colorado the terminology is class 1 misdemeanor.

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 phrase "Be it Enacted by the People of the State of Colorado" should appear at the beginning of the proposed initiative before any other language, including the amending clause and section number.
2. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., SECTION 1., SECTION 2.). For example:

SECTION 1. In the constitution of the state of Colorado, **amend** section 16 of article IX as follows:

3. Each constitutional section being amended, repealed, or added is preceded by an amending clause explaining how the law is being changed. For example, the amending clause in the proposed initiative should be changed from:

"[A]MENDS THE COLO. CONST. ART. IX, SECTION 16." to "In the constitution of the state of Colorado, **amend** section 16 of article IX as follows:

4. Each section of the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. Changes to the headnote should be made without striking through language you intend to delete and putting language you intend to add in small caps. For example, the headnote in the proposed initiative should be changed from:

"Article IX. Education. Section 16. ~~Textbooks in public schools~~ Textbooks and technology, BIOMETRIC SCANNING, and parental involvement – request for information or healthcare of a minor child in public schools."

to

"Article IX. Section 16. Textbooks and technology, biometric scanning, and parental involvement – requests for information or health care of a minor child in public schools."

5. The Colorado constitution is divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs.

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

6. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution.
7. Per our standard drafting practice, it is unnecessary to capitalize "general assembly" in the proposed initiative.
8. Per our standard drafting practice, the following uppercase words in the proposed initiative should be lowercased: "State" and "Department of Human Services: Children and Families."
9. "Public-school" should be spelled "public school."
10. Per our standard drafting practice, the phrase "his or her minor child" should be changed to "the parent's minor child."