

# STATE OF COLORADO

## Colorado General Assembly

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### MEMORANDUM

**TO:** Faye Barnhart and Angela Eicher  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** August 31, 2023  
**SUBJECT:** Proposed initiative measure 2023-2024 #82, concerning equal protection of every living child in Colorado

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.

This initiative was submitted with a series of initiatives including proposed initiatives 2023-2024 #81, #83, and #84. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2023-2024 #81, #83, and #84, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Earlier versions of this proposed initiative, proposed initiatives 2023-2024 #26 and 2023-2024 #74, were the subject of memoranda dated March 24, 2023, and July 21, 2023, respectively, which were discussed at public meetings on March 28, 2023, and July 25, 2023, respectively. 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 purpose of the proposed amendment to the Colorado Revised Statutes appears to be to prohibit the intentional harm of any living human child that leads to disability or death.

## **Substantive Comments and Questions**

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

1. What is the single subject of the proposed initiative?
2. In the legislative declaration, the proposed initiative states that "medical personnel shall make every attempt to save all lives." Does the proposed initiative create a legal duty for all medical personnel to make every attempt to save all lives? If so what are the sanctions if medical personnel fail to make every attempt to a save a life? Is there an exception for medical personnel who abide by a "do not resuscitate" order?
3. Subsection (1) of section 18-6-901 of the proposed initiative states "[t]he homicide of a human child at any time prior to, during, or following birth shall be treated in accordance with Colorado Revised Statutes §§ 18-3-101 to 107 ... ." Sections 18-3-101 to 18-3-107 apply to a "person" which is defined in section 18-3-101 as "... a human being who had been born and was alive at the time of the homicidal act." Do the proponents intend to expand the definition of "person" in section 18-3-101 to include a human child at any time prior to or during birth? If so, would the proponents clarify how the definition of "person" in section 18-3-101 is expanded in the proposed initiative?

## 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. Subsection (1) of section 18-6-901 refers to "Colorado Revised Statutes §§ 18-3-101 to 107... ." When referring to sections in the Colorado Revised Statutes, it is standard drafting practice to type out the section number rather than use symbols. Additionally, it is standard drafting practice to cite the entire section number rather than only the last portion of the section. For example, "section 18-3-101 to 18-3-107."
2. Subsection (2) of section 18-6-901 states that the attorney general has concurrent jurisdiction "to enforce 18-6-901 (1)." When referencing a subsection within the same section, it is standard drafting practice to use the language "subsection (1) of this section" rather than restate the section number.