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MEMORANDUM

TO: Erin Behrens and Giuliana Day

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: July 31, 2019

SUBJECT: Proposed initiative measure 2019-2020 #117, concerning prohibition on late-term abortions

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 2019-2020 #117 to #121. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2019-2020 #118 to #121, 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. Only new comments and questions are included in this memorandum.

Earlier versions of this proposed initiative, proposed initiatives 2019-2020 #108 and #116, were the subject of memoranda dated May 31, 2019, and July 15, 2019, which were discussed at public meetings on June 4, 2019, and July 17, 2019, 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 may 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 make it unlawful for a person to injure a pregnant woman while intentionally or recklessly performing or attempting to perform an abortion if the gestational age of the fetus is at least twenty-two weeks, except under certain circumstances set forth in the proposed initiative; and
2. To define unprofessional conduct by a physician to include performing or attempting to perform an abortion that violates the provisions relating to abortion when the probable gestational age of the fetus is at least twenty-two weeks.

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. In proposed section 18-6-901, the declaration of the people in subsection (1)(b) states that the initiative would "prohibit an abortion after 22 weeks gestational age of the fetus." However, in proposed section 18-6-903 (3), there is an exception to the prohibition. By failing to reference an exception, the legislative declaration may inaccurately convey the intent of the initiative.
3. How is the term "physician" defined for purposes of the proposed initiative?
4. Proposed section 18-6-903 (1) makes it unlawful for "any person" to perform or attempt to perform an abortion, but the provisions relating to determination of

gestational age of the fetus in subsection (2) and the exception in subsection (3) apply only to a "physician," which is a subset of all persons.

- a. Is this your intent?
 - b. If someone other than a physician performs an abortion, are they required to assess gestational age? Is a person who is not a physician protected by the exception in subsection (3) if it is done to save the life of the pregnant woman?
5. Section 2 of the proposed initiative states that a person commits the crime of assault in the third degree if the person "injures a pregnant woman by violating 18-6-903."
 - a. What does it mean to "injure" a pregnant woman for purposes of this crime?
 - b. If a person fails to comply with the provisions of proposed section 18-6-903 but the pregnant woman is not "injured," is it still unlawful?
6. Because the level of crime and penalty provision appears in a different article in title 18, Colorado Revised Statutes, you might want to consider adding a cross reference to section 18-3-204 (1)(c), Colorado Revised Statutes, in proposed section 18-6-903.
7. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the Legislative Council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least twelve days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the Legislative Council staff at BallotImpactEstimates.ga@state.co.us.

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. In proposed section 18-6-903 (3), "judgment" is misspelled as "judgement."
2. In the introductory portion of section 18-3-204 (1), Colorado Revised Statutes, "third-degree" should not include a hyphen.
3. The word "section" is missing from proposed section 18-3-204 (1)(c) before the citation to 18-6-903.
4. In section 4 of the proposed initiative, the new subsection is "(8.5)" but the amending clause above it adds "(9.5) as follows:". They should both read "(8.5)" for consistency.