

# 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 26, 2023  
**SUBJECT:** Proposed initiative measure 2023-2024 #68, concerning the fundamental rights of parents to direct the upbringing, education, and care of their minor children

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 purposes of the proposed initiated measure appear to be to prohibit the state from infringing on the fundamental rights of a parent to direct the upbringing, education, health care, and mental health care of the parent's minor child without demonstrating beyond a reasonable doubt that such rights should be infringed on and to require proof that there is no doubt a parent is unfit to terminate parental rights.

## Substantive Comments and Questions

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

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
2. 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?
3. The proposed initiative appears to add section 43 of article II to the Colorado constitution. The next section to be added to article II is section 32.
4. The title of the proposed initiative says "Concerning parental rights in education" but the text of the proposed measure seems to concern the termination of parental rights.
5. The summary states the proposed initiative takes effect January 1, 2024. Since it is not a TABOR ballot question, the proposed initiative must be for the 2024 general election, which will be held on November 5, 2024, so the effective date cannot be before that date.
6. Subsection 2 of the proposed initiative states that parental rights terminate either upon the death of the parent or child or through a court-ordered termination of parental rights. Is the proponents' intent that the rights of the parent continue even when the child reaches adulthood?
7. Subsection (2)(a)(i) states that the Natural Parent Presumption applies but it is not clear what it applies to? Does it apply in an action to terminate parental rights? Would the proponents consider defining Natural Parent Presumption?
8. Subsection (2)(a)(i) states to rebut the Natural Parent Presumption the prosecutor must prove there is no doubt that parent is unfit. In this situation what entity is prosecuting the action? Is the "no doubt" standard the same as the beyond a reasonable doubt standard? If so would the proponents, consider using the beyond a reasonable doubt language?

## 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. 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, **add** article XXX as follows:

2. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "In the constitution of the state of Colorado, article \_\_, **add** section \_\_ as follows:".
3. Each section in the Colorado constitution has a headnote. Headnotes briefly describe the content of the section.
4. It is standard drafting practice to set off nonessential phrases (i.e. prepositional phrases like "in short") with commas.
5. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

**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. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. Only the following should be large-capitalized:
  - a. The first letter of the first word of each sentence;
  - b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
  - c. The first letter of proper names.
8. All nouns should be in the singular whenever possible. For example, in the summary, instances of "children" or "child(ren)" should be "child".
9. The title of the proposed initiative should end in a period.
10. In subsection (2), it states "The people of Colorado amend Article II of the Colorado constitution setting force parental rights is a god-given right . . . ." Should the proposed initiative say "setting forth parental rights as a god-given right"?
11. In subsection (2)(a)(i), there should be an "and" between "*child*" and "that".