

# 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 2, 2019

**SUBJECT:** Proposed initiative measure 2019-2020 #130, 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.

An earlier version of this proposed initiative, proposed initiative 2019-2020 #123, was the subject of a memorandum dated August 12, 2019. Proposed initiative 2019-2020 #123 was discussed at a public meeting on August 15, 2019. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, 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.

## **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. 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 12 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](mailto:BallotImpactEstimates.ga@state.co.us).
3. The intent and effect of proposed section 24-72-804 (1), (2), and (3) of the proposed initiative are unclear. Would the proponents explain the intent and effect and consider revising the language?

4. Proposed section 24-72-807 of the proposed initiative creates the life skills development program. Would the proponents describe the program?
5. Proposed section 24-72-807 of the proposed initiative creates the life skills development advisory board. What are the duties of the board?
6. For persons sentenced to participate in the life skills development program, who supervises or monitors their progress? Do they have a certain amount of time to complete their sentenced hours? What happens if they do not complete their hours?
7. Proposed section 24-72-828 (1)(c) of the proposed initiative requires the attorney general to confirm the records of expungement. What does this duty entail?
8. Proposed section 24-72-828 (1)(f) of the proposed initiative creates a penalty for failing to expunge records that are eligible for immediate expungement, and proposed section 24-72-828 (2) of the proposed initiative creates a penalty for failing to comply with proposed section 24-72-828, which also deals with records eligible for immediate expungement. Which penalty applies in the case of records eligible for immediate expungement?
9. In proposed section 24-72-828 (5) of the proposed initiative, any record that is expunged is not available to the judge or probation department in a future proceeding in which the person is charged with a crime. If the record is not available to a judge, how would the court know when a person is subject to a higher penalty or larger expungement fee when the person is convicted of a subsequent offense?
10. In the proposed statutory sections of the proposed initiative that create scholarship and grant programs, the proposed initiative says the board shall award the scholarships or grants, but it also states the specified executive director has the sole discretion in making the awards. This seems to be a conflict. Who has the authority?
11. Proposed section 24-72-844 of the proposed initiative creates the veteran peer support grant program to provide grants for "peer support programs or activities." What are peer support programs or activities? Would the proponents consider defining the phrase?
12. Proposed section 24-72-846 of the proposed initiative creates the fallen first responder grant program to award grants to family members of first responders

who have fallen in the line of duty. What are the grants compensating the families for?

13. Proposed section 24-72-848 of the proposed initiative creates the Colorado state school supply fund grant program to provide grants to teachers and Title I schools to provide school supplies. Is the grant program limited to giving grants to teachers at Title I schools, or are all teachers eligible?

## **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, the phrase "as defined in this part 8 of article 72 of title 24" is included after a term that is defined by the proposed initiative. That phrase is unnecessary since the proposed initiative provides a definitions section that applies to the entire added part.
2. Expungement is misspelled in the headnote for proposed section 24-72-828.
3. In proposed section 24-72-830 (3) of the proposed initiative, instead of "this subsection (3)(a)," it should state "subsection (2)(a) of this section."
4. In proposed section 24-72-837 (2) of the proposed initiative, please delete "first responder safety equipment fu."
5. Throughout the proposed initiative, the phrase "their designee" is used, but it does not refer to more than one person, so it should be "his or her designee" or "[designator name]'s designee." For example, you could write "executive director of the department of corrections, or the executive director's designee."
6. The first responder safety equipment cash fund defines the term "safety equipment" but does not use the term. The definition should be moved to proposed section 24-72-845, which does use the term, or to the proposed definitions section, section 24-72-802.
7. Proposed section 24-72-848 of the proposed initiative refers to "institutions in the state of Colorado which carry a current title one status of "schoolwide". The reference should state "institutions in the state of Colorado that operate a schoolwide Title I program."