

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**To:** Amy Hedges and Kathy Teschendorf

**From:** Legislative Council Staff and Office of Legislative Legal Services

**Date:** June 6, 2025

**Subject:** Proposed initiative measure 2025-2026 #97, concerning family court reforms

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 and questions 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 and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Colorado Legislative Council and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

## Purposes

The major purposes of the proposed amendments to the Colorado Revised Statutes appear to be:

1. Promoting coordination between criminal courts and courts hearing family law matters when domestic violence is involved;

2. Changing various procedures in family law proceedings that involve domestic violence to enhance protections for survivors;
3. Prohibiting family-court-sanctioned mediation or joint services that violate mandatory protection orders and prohibiting waivers of mandatory protection orders under certain circumstances; and
4. Adding enforcement requirements for family courts and training requirements for judicial officers related to the rights of children and people with disabilities.

## **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. Article V, section 1 (4)(a) of the Colorado Constitution requires that when the majority of voters approve an initiative, the initiative is effective on and after the date of the official declaration of the vote and proclamation of the governor.

Because the proposed initiative does not contain an effective date, this would be the default effective date. Does this default effective date satisfy your intent? If not, the designated representatives should include the desired effective date that is not earlier than the default effective date to comply with this constitutional requirement.

3. The proposed initiative adds section 14-10-129.5 to the Colorado Revised Statutes. However, section 14-10-129.5, C.R.S., already exists. Please renumber the new section added by the proposed initiative. Designated representatives may wish to consider adding the text of the proposed initiative as a new section 14-10-127.7 so that it is located near statutory provisions governing domestic violence training for court personnel in section 14-10-127.5, C.R.S.
4. Standard drafting practice discourages, but does not prohibit, using acronyms in place of terms. However, parentheticals are not used to indicate the meaning of an acronym. Would the designated representatives add a definitions subsection that defines each acronym used in the section? The

definitions subsection should either appear after the legislative declaration (see technical question #3, below) or, if there is no legislative declaration, it should appear as the first subsection.

5. The following comments and questions relate to section 14-10-129.5 (2) of the proposed initiative:
  - a. In the introductory portion, what do the designated representatives mean by "family law cases"? Are there certain types of actions brought pursuant to article 10 of title 14 that fall outside the scope of the term? Or is the designated representatives' intent to include all proceedings initiated pursuant to article 10?
  - b. In subsection (2)(a), the term "is present" is ambiguous. Do the designated representatives mean cases in which a party is the subject of a protection order, conviction, or charge?
  - c. In subsection (2)(b), what do the designated representatives mean by "involved in"? For example, a party could be actively involved in an unrelated domestic violence case as a witness. Does a party to the family law case need to be involved as a party in the criminal domestic violence case too? Do both parties to the family law case need to be involved as parties in the criminal domestic violence case?
  - d. In subsection (2)(c), does the affidavit or documentation need to allege or show that a party to the family law case has suffered or perpetrated the domestic violence?
6. The following comments and questions relate to section 14-10-129.5 (3) of the proposed initiative:
  - a. In the introductory portion, the phrase "[w]hen domestic violence is present" is ambiguous. Does the phrase refer to a claim of domestic violence? A court finding? If the term refers to a claim, does it matter who is making the claim and in what context? Does it matter who suffered or who perpetrated the domestic violence? Would the designated representatives consider revising for clarity?
  - b. In subsection (3)(a), what do the designated representatives mean when directing family courts to "[c]oordinate proceedings" when "parallel" cases exist? What does coordination look like? Would the designated representatives consider elaborating?

- c. Pursuant to section 14-10-103, C.R.S., the term "custody" and related terms such as "custodial" and "custodian" were changed in 1999 to "parental responsibilities" throughout article 10 of title 14. Would the designated representatives consider changing the term "custody evaluations" in subsection (3)(b) to "parental responsibility evaluations"? Also, how does the proposed initiative's requirement in subsection (3)(b) relate to the existing training requirements for parental responsibilities evaluators described in section 14-10-127.5, C.R.S.? Is the training requirement in subsection (3)(b) of the initiative intended to override or alter the training requirements in current statute?
  - d. In subsection (3)(c), who are "trained professionals"?
  - e. How should family courts "incorporate findings from criminal proceedings into family law rulings" as described in subsection (3)(c)?
7. The following comments and questions relate to section 14-10-129.5 (4) of the proposed initiative:
- a. In subsection (4)(a), what do the designated representatives mean by the phrase "family law matter with an active or adjudicated domestic violence case"? Is the "case" a civil action to recover damages caused by an act of domestic violence or a criminal case in which a party to the family law matter is charged with a crime the underlying factual basis of which has been found by the court to involve domestic violence? A civil protection order issued pursuant to part 1 of article 14 of title 13? A claim that a party committed domestic violence?
  - b. Who needs to provide a district attorney with notice and what information should that notice contain?
  - c. Are there any procedural requirements or limitations on the purposes for which a district attorney may appear or intervene?
  - d. With whom does the district attorney file recommendations?
  - e. Do you intend that the district attorney coordinate communication between the judges?
  - f. Are there any ethical considerations that prohibit the district attorney from facilitating communication involving the judge in a pending criminal case that the district attorney is prosecuting?

- g. Current Colorado law authorizes a district attorney to appear on behalf of the people of the state in child support enforcement proceedings pursuant to section 20-1-102 (3), C.R.S. The designated representatives may wish to review the language in this provision in connection with any revisions to the language in the proposed initiative's subsection (4)(b) that outlines the scope of district attorney authority.
8. The following comments and questions relate to section 14-10-129.5 (5) of the proposed initiative:
- a. In subsection (5)(a), do the proponents intend to refer to protection orders issued under section 18-1-1001, C.R.S.? If so, please add the word "issued".
  - b. Does "mandatory protection order" or "MPO", as used in subsection (5), always refer to a mandatory protection order issued pursuant to section 18-1-1001, C.R.S.? If so, would the designated representatives consider defining "mandatory protection order" as an order issued pursuant to section 18-1-1001?
  - c. In subsection (5)(b), what do the designated representatives mean by "compromise probable cause"?
  - d. Pursuant to section 18-12-1001, C.R.S., a mandatory protection order remains in effect until final disposition of the criminal action in which it was issued. What is the legal basis for a person to waive a mandatory protection order, as described in subsection (5)(b)? Who is permitted to waive a mandatory protection order in this subsection (5)(b)?
  - e. In subsection (5)(c), does "this process" refer to the written request and hearing process outlined in subsection (5)(b), the disallowance of mediation or joint services pursuant to subsection (5)(a), or both? Would the designated representatives consider amending section 24-4.1-302.5, C.R.S., to identify the process violation in the appropriate Victim Rights Act statutory section as well?
9. As used in section 14-10-129.5 (6) of the proposed initiative, what does it mean for a case to "involve" domestic violence?
10. The following comments and questions relate to section 14-10-129.5 (7) of the proposed initiative:
- a. In subsection (7)(a), what does the term "care plans" mean? Are they plans pursuant to section 504 of the federal "Rehabilitation Act of

1973," 29 U.S.C. sec. 701 et seq., that provide educational guidance and support for a child with disabilities? What does the term mean with respect to the federal "Americans with Disabilities Act"?

- b. What does court enforcement of care plans in subsection (7)(a) and the various services in subsection (7)(b) look like? Would the designated representatives consider clarifying their intent with respect to the enforcement responsibilities of courts?
  - c. What types of services are intended by the term "Speech", as used in subsection (5)(b)?
  - d. What does "obstruction" mean, as used in subsection (5)(b)? Does it refer to a parent's obstruction of implementation of a child's care plan, or interference with a child's access to the enumerated services, or both?
  - e. What does it mean if care is "disputed", as used in subsection (5)(b)? Does it mean that the requirements of the care plan or service obligations are in dispute? Or that the allocation of responsibility for executing the plan or facilitating access to services is in dispute?
  - f. In subsection (7)(c), who do the designated representatives intend to provide ADA training for judicial officers? What does the training address? Is the focus to ensure access to services, supports, accommodations, etc. for children in various proceedings? Or does the content of the training extend to the rights of parents, witnesses, attorneys, or other persons involved family court proceedings?
  - g. Who are the "judicial officers" described in subsection (7)(c)?
11. With respect to the submission clause and title of the proposed initiative, once the designated representatives have submitted final language to the secretary of state's office, the measure will be scheduled for a hearing with the title board to fix the title and the ballot title and submission clause for the ballot. The staff member from the Office of Legislative Legal Services who is assigned to the initiative is responsible for preparing a staff draft title for the measure and a staff draft ballot question that mirrors the title. Consequently, the designated representatives may omit the title and submission clause language from the initiative at this stage in the process.

## Technical Comments

The following comments address technical issues raised by the form of the proposed initiatives. These comments will be read aloud at the public hearing only if the designated representatives so request. You will have the opportunity to ask questions about these comments at the review and comment hearing. Please consider revising the proposed initiative as follows:

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 Colorado Revised Statutes, **add** 14-10-127.7 as follows:

2. Each section in the Colorado Revised Statutes and the Colorado Constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added after the introduction of section 14-10-129.5 of the proposed initiative and be in bold-face type, similar to what you have done after the numbered sections 1-7.
3. Do you intend for the proposed initiative's legislative declaration language to be a statutory or nonstatutory legislative declaration?
  - a. If you intend to add a statutory legislative declaration, please consider relocating and reformatting so that the legislative declaration language immediately follows the amending clause, appears in SMALL CAPITAL LETTERS, and is otherwise formatted to be consistent with these technical comments, as shown in part below:

**14-10-127.7. [Headnote.]** (1) THE PEOPLE OF COLORADO FIND AND DECLARE THAT CURRENT...

- b. If you intend to add a nonstatutory legislative declaration, please relocate the text so that it immediately follows a section number and headnote. It does not need to be in small capital letters. Please consider organizing the declaration, if it is a nonstatutory declaration, as shown in part below:

**SECTION 1. Legislative declaration.** (1) The people of Colorado find and declare that current...

(2) This measure ensures that...

4. 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

Would the designated representatives please revise the numbering and lettering of the proposed initiative's provisions to conform?

5. If the text includes an introductory portion, it is typically numbered, and the subsections that follow should end with semi-colons, with the second to last subsection ending in "and" or "or" as appropriate. Bolded headings describing the subsection's content are rarely necessary. For example, subsection (3) of the proposed initiative could begin as follows:

(3) When domestic violence is present, the family court shall:

6. It is standard drafting practice when referencing statutory sections to include the word "section" before the number and use the term "pursuant to" rather than "under." For example, subsection (5)(c) of the proposed initiative could be revised to read "...is a violation pursuant to section 24-4.1-302.5."
7. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado Constitution or the Colorado Revised Statutes.
8. For purposes of this statutory initiative, the word "shall" is defined in section 2-4-401 (13.7), C.R.S., and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), C.R.S., "means that a person or thing is required to meet a condition for a consequence to apply."



Furthermore, "'must' does not mean that a person has a duty." Would the designated representatives consider changing the "shall" in section 14-10-129.5 (6)(b) to "must"?

9. In subsection (7)(b) of the proposed initiative, does the acronym "ABA" refer to applied behavioral analysis? Is "OT" occupational therapy? It is standard drafting practice to spell out acronyms.