

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: April 16, 2019
SUBJECT: Proposed initiative measure 2019-2020 #78, 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.

Purposes

The major purpose of the proposed amendment appears to be to provide a process for criminal records expungement based on the eligibility criteria in the proposed initiative.

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. An initiative proposal must indicate where the text of the proposed measure will be located in the Colorado constitution or the Colorado Revised Statutes. Where will the language in the proposed initiative be located in the Colorado constitution or Colorado Revised Statutes?
4. What will be the effective date of the proposed initiative?
5. Which state agency or agencies are responsible for expunging the records? What types of records can be expunged? What happens if the records are not expunged within the specified time period? What constitutes expungement by the responsible agency?
6. Does a private custodian of records that has records that are eligible for expungement under the proposed initiative have a duty to expunge those records? If so, how is the private custodian informed about that duty?
7. Does a defendant have to do anything other than pay the expungement fee to have his or her records expunged? Does this apply to adult records and juvenile records?
8. For those records that are eligible for expungement for convictions that occurred before January 1, 2021, how does a defendant get his or her records expunged? Does the defendant have to pay for an expungement? If yes, whom do they pay?
9. What is the effect of expungement?
10. Who collects the expungement fee and where is it deposited? What can the expungement fee revenue be used for?

11. How do the total expungement period and consecutive expungement period work and interact with each other?
12. 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.

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 in the Colorado constitution or Colorado Revised Statutes 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, **add** section __ to article X as follows:", or, if you intend to add a new article to title 39 of the Colorado Revised Statutes, you would include the following

amending clause: "In Colorado Revised Statutes, **add** article __ to title 39 as follows:".

3. 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 to each section of the proposed initiative that modifies the Colorado Revised Statutes or Colorado constitution and be in bold-face type.
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

5. It is standard drafting practice to use SMALL CAPITAL LETTERS to show new language being added to the Colorado Revised Statutes or Colorado constitution and stricken type, which appears as stricken type, to show language being removed from the Colorado constitution or the Colorado Revised Statutes.