

# Forensic/Civil Commitment Statutory Review

## Study ideas

\*This list was compiled based on staff review of [materials](#) submitted by members of the HB 872 Commission at the Sept. 11 LJIC meeting and the [county attorney panel](#) conducted by the HB 872 Commission on Sept. 8, 2023. It reflects preliminary study options from staff based on the time allotted. This list is not exhaustive, and alternative suggestions may be made at the discretion of the committee.



**Discharge planning** | Panelists cited a statutory “gap” that exists because individuals who cannot have their fitness restored within statutory timelines are required to be civilly committed.<sup>i</sup> However, they often do not meet criteria for civil commitment<sup>ii</sup> and are released. Panelists suggested effective discharge planning could impact reentry of these individuals into the criminal justice system. Discharge plans are required in the civil commitment process<sup>iii</sup> but not in the forensic process.

**Questions for study** | Are discharge plans being done when required? If not, what barriers exist? What does a good discharge plan look like? Can/should discharge plans engage community resources and establish clear action items? Could effective discharge planning impact recidivism? Can/should discharge plans be required in both the forensic and civil commitment spheres? What solutions do stakeholders suggest?

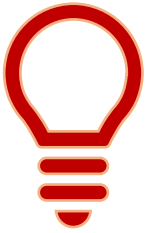
**Potential stakeholders:** DPHHS, staff from the State hospital, county attorneys, public defenders, community mental health providers, HB 29 Transition Review Committee.



**Fitness evaluations** | When a defendant’s fitness to proceed<sup>iv</sup> to trial is called into question, various parties can request an evaluation. Panelists and DPHHS cited a backlog of individuals awaiting fitness evaluations at FMHF (Galen). DPHHS suggests that the pay structure in statute disincentivizes these evaluations being conducted in the community. Panelists also cited a lack of qualified community evaluators as a significant barrier.

**Questions for study** | How often are fitness evaluations completed in the community vs. the state hospital? Does the current statute discourage evaluations by community providers? Do qualified community providers exist throughout the state that are not being utilized? Are they known to the state and courts? What barriers exist to utilizing them? What solutions do stakeholders suggest?

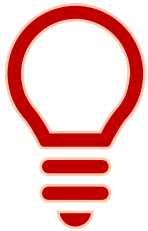
**Potential stakeholders:** DPHHS, staff from the State hospital, Office of the Court Administrator, public defenders, judges, county attorneys, community mental health service providers.



**Stabilization in jail settings** | According to DPHHS, a significant cause for delay in the forensic commitment process is the stabilization needs of individuals requiring psychotropic medication or chemical dependency treatment.

**Questions for study:** Would allowing law enforcement and jail commanders to administer certain medications help individuals who require stabilization? Are there other methods of providing medication in a jail setting? What statutes or processes need to change to allow this? Does this pose due process issues? What solutions do stakeholders suggest?

**Potential stakeholders:** DPHHS, public defenders, county attorneys, sheriffs, jail commanders



**Restoration timeline** | DPHHS cited concerns with current statutory timelines being insufficient, particularly those required for initial fitness evaluations and restoration.<sup>v</sup> Statute requires the proceedings against a defendant to be dismissed if fitness cannot be restored in 90 days.

**Questions for study:** What statutory timelines are utilized in other states for restoring a defendant to fitness? Would changing Montana's existing timelines pose due process issues? Is there Montana case law preventing existing timelines from being changed? What solutions do stakeholders suggest?

**Potential stakeholders:** DPHHS, staff from state hospital, OPD, mental health service providers



**Other committee suggestions?**

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<sup>i</sup> [46-14-221\(3\)\(b\), MCA](#)

<sup>ii</sup> [53-21-126, MCA.](#)

<sup>iii</sup> [53-21-180, MCA.](#)

<sup>iv</sup> [46-14-103, MCA.](#)

<sup>v</sup> [46-14-221, MCA.](#)