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Colorado General Assembly

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MEMORANDUM

To: Suzanne Taheri and Michael Fields

From: Legislative Council Staff and Office of Legislative Legal Services

Date: November 12, 2025

Subject: Proposed initiative measure 2025-2026 #180, concerning mental competency and civil commitment

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff 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 Staff 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 Legislative Council Staff 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. To require the Behavioral Health Administration (BHA) to evaluate and establish criteria for competency evaluators and make a list of the criteria publicly available;
2. Prior to the court dismissing certain low-level charges against a defendant who is found incompetent to proceed, requiring the defendant to be confined for no more than six months;
3. To require the court to dismiss a class 4 drug felony charge against a defendant who is found incompetent to proceed after the defendant has been confined for no more than one year, unless certain circumstances apply;
4. Rather than dismissing the criminal proceedings against a defendant who is found incompetent to proceed and is not likely to be restored to competency, requiring the court to hold a hearing to determine whether the defendant is a continuing danger to the public, and if so, authorizing the court to certify the defendant for civil commitment;
5. To require the state to prioritize civil commitment beds for defendants whose civil commitment was certified by a judge;
6. To revise the definition of “gravely disabled” to include a person who is found incompetent to proceed and is charged with an offense involving death, great bodily harm, or a serious threat to the well-being of another person; and
7. To authorize a district attorney to invoke an emergency mental health hold against an adult who, because of a mental disease or permanent mental incompetence, presents a serious danger to the safety of other persons.

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, you should include the desired effective date that is not earlier than the default effective date to comply with this constitutional requirement.

3. In section 16-8.5-103 (10) of the proposed initiative, the BHA is required to evaluate and establish valid criteria for competency evaluators.
 - a. The Colorado Department of Human Services (CDHS) currently conducts competency evaluations, and defendants are in the custody of CDHS while a defendant is incompetent to proceed. What is your intention for requiring the BHA to establish criteria for competency evaluators rather than CDHS?
 - b. The term “competency evaluator” is defined in section 16-8.5-102 (3), C.R.S, and means a licensed psychiatrist or psychologist who is trained in forensic competency assessments. Is it your intention to require the BHA to establish additional criteria beyond the current licensing requirements for psychiatrists and psychologists?
 - c. What is meant by “credibility for evaluators”?
4. In section 16-8.5-111 of the proposed initiative:
 - a. Throughout subsection (1.6), the court is required to dismiss the charges against the defendant after the defendant has been confined for no more than a certain period of time (i.e., no more than six months / one year).
 - i. What is the intent of the maximum length of confinement language? Is it to make sure the person is confined for at least one year, exactly one year, or no more than one year (i.e., less than a year)? For example, in subsection (1.6)(d), a court is required to dismiss charges “after the defendant has been confined for no more

than one year.” At what point will a defendant have been confined for “no more than one year” so that a court can act “after” that time? Does this mean that a court can dismiss charges at any point until the defendant has been confined for one year?

- ii. Does the period of confinement begin to run after the final determination of incompetency is made?
- iii. What if a defendant has already been confined for more than the required time while the defendant’s case was pending?

- b. Subsection (1.6)(b) applies if the defendant's highest charge is a class 4 drug felony. How does the severity of a drug felony compare with a non-drug felony? Is a class 4 felony a higher or lower charge than a class 4 drug felony?
- c. Instead of relettering current subsections 16-8.5-111 (1.6)(b) and (1.6)(c) to accommodate the changes to subsection (1.6), you should add the new language as subsections (1.6)(a.5) and (1.6)(b.5) and update the amending clause to reflect this change.

5. In section 16-8.5-111 (5) of the proposed initiative:

- a. What is meant by “victims of the defendant”?
- b. What does it mean to be “a continuing danger to the public”?
- c. The judge is authorized to “certify the defendant for **civil commitment.**” **(Emphasis added)** When referring to “civil commitment,” the appropriate phrase is “certification for short-term treatment.” For clarity, you should consider citing to the court-ordered certification for short-term treatment process in section 27-65-108.5, C.R.S.

6. In the proposed initiative, a new section related to prioritization of civil confinement beds is being added to article 91 of title 27; however, article 91 concerns general administrative provisions related to state institutions. If the intention is to prioritize beds at state institutions, you may want to consider adding a new subsection (2) to section 27-93-106, C.R.S., which concerns access to inpatient civil beds at the Colorado Mental Health Institute at Pueblo and a new subsection (3) in section 24-94-107, C.R.S., which concerns renovation for additional beds at the Colorado Mental Health Institute at Fort Logan.

- a. Is it your intent that **all** beds are prioritized for individuals who have been certified by a court for short-term treatment or only a certain number of beds?
 - b. The phrase “under this statute” isn’t clear as to what statute the designated representatives are referring to. For clarity, you should cite to section 16-8.5-111 (5), C.R.S., or section 27-65-108.5, C.R.S., whichever is applicable.
 - c. The phrase “permanently incompetent” is not defined and it is not used elsewhere in article 8.5 of title 16 or article 65 of title 27. You may consider using the more commonly understood phrase “...to be incompetent to proceed and there is not a substantial probability that the defendant will be restored to competency within the reasonably foreseeable future... .”
7. In section 27-65-102 (17) of the proposed initiative:
- a. What is intended by adding the specified persons to the definition of “gravely disabled”?
 - b. The designated representatives should use the phrase “incompetent to proceed” rather than “incompetent to stand trial.”
 - c. What is considered “great bodily harm” or “serious threat to the well-being of another person”? Is “great bodily harm” different from “serious bodily injury,” as used in the Criminal Code, title 18 of the Colorado Revised Statutes?
8. In section 27-65-106 (1) of the proposed initiative:
- a. The defined term in section 27-65-102 (22), C.R.S., is “mental health disorder” rather than “mental disorder.”
 - b. What is “permanent mental incompetence”?
 - c. What is meant by “serious danger to the safety of other persons”? You may consider using the defined term “danger to the person’s self or others” located in section 27-65-106 (10), C.R.S.
 - d. What is meant by “unless committed”? Do the designated representatives mean “unless the person is placed on an emergency mental health hold”?

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 meeting only if the designated representatives 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 follows:

1. When adding a new section to the Colorado Revised Statutes, the amending clause should read “In Colorado Revised Statutes, **add** 27-91-110 as follows:”
2. In section 27-91-110 of the proposed initiative, it is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to the Colorado Revised Statutes.
3. In the amending clause of section 27-65-106 of the proposed initiative, the second “6” is missing from “27-65-10**6**”.