



TEXAS  
Health and Human  
Services

# Court-Ordered Psychoactive Medications and Credible Evidence of Immediate Restoration

for Persons Determined Incompetent to Stand Trial under the Texas Code of Criminal Procedure, Chapter 46B, and Awaiting Admission to a State Hospital

## FACT



The wait time for most forensic state hospital admissions is several months in length.

## FACT



The provision of adequate health care, including mental health care, is a detainee's constitutional right.

## FACT



Obtaining a court order for psychoactive medications for an individual determined Incompetent to Stand Trial may not only reduce the person's psychiatric symptomatology, but often results in the defendant being restored to competency without the significant wait for a state hospital bed.

## Statutory Authority to Court Order Psychoactive Medications<sup>1</sup>

### Probate Court

HSC, [Chapter 574, Subchapter G](#), and [Chapter 592, Subchapter F](#), delineate the provisions for the application and the order for the administration of psychoactive medications when the defendant presents a danger to self or others in the correctional facility as a result of a mental disorder or mental defect OR lacks capacity to make a decision regarding the administration of the proposed medication, and treatment with the proposed medication is in their best interest.

### Criminal Court

CCP, [Art. 46B.086](#), delineates the provisions for a secondary process, after a probate court's denial, of seeking an order for the administration of psychoactive medications to defendants who do not meet the lack of capacity or dangerousness criteria under [HSC Chapter 574, Subchapter G](#), or [Chapter 592, Subchapter F](#); yet when the state still has a clear and compelling interest in the defendant obtaining and maintaining competency to stand trial.

## Evidence of Restoration to Competency before State Hospital Admission

If the court receives credible evidence that the defendant has been restored to competency at any time after the court's determination of incompetency but before state hospital admission, CCP, [Art. 46B.0755](#), sets forth the process by which the court determines if the defendant has been restored to competency.

<sup>1</sup> The Texas Judicial Commission on Mental Health (JCMH) has sample applications and orders available for this purpose on their website at <http://www.texasjcmh.gov/technical-assistance/resources/forms-bank/>