

Flow Charts Provided by Chris Lopez, HHSC

Mental Health

**Chapter 46B
Incompetency to Stand Trial**

**Chapter 46C
NGRI/Insanity Defense**

Texas Criminal Defense Lawyers Association

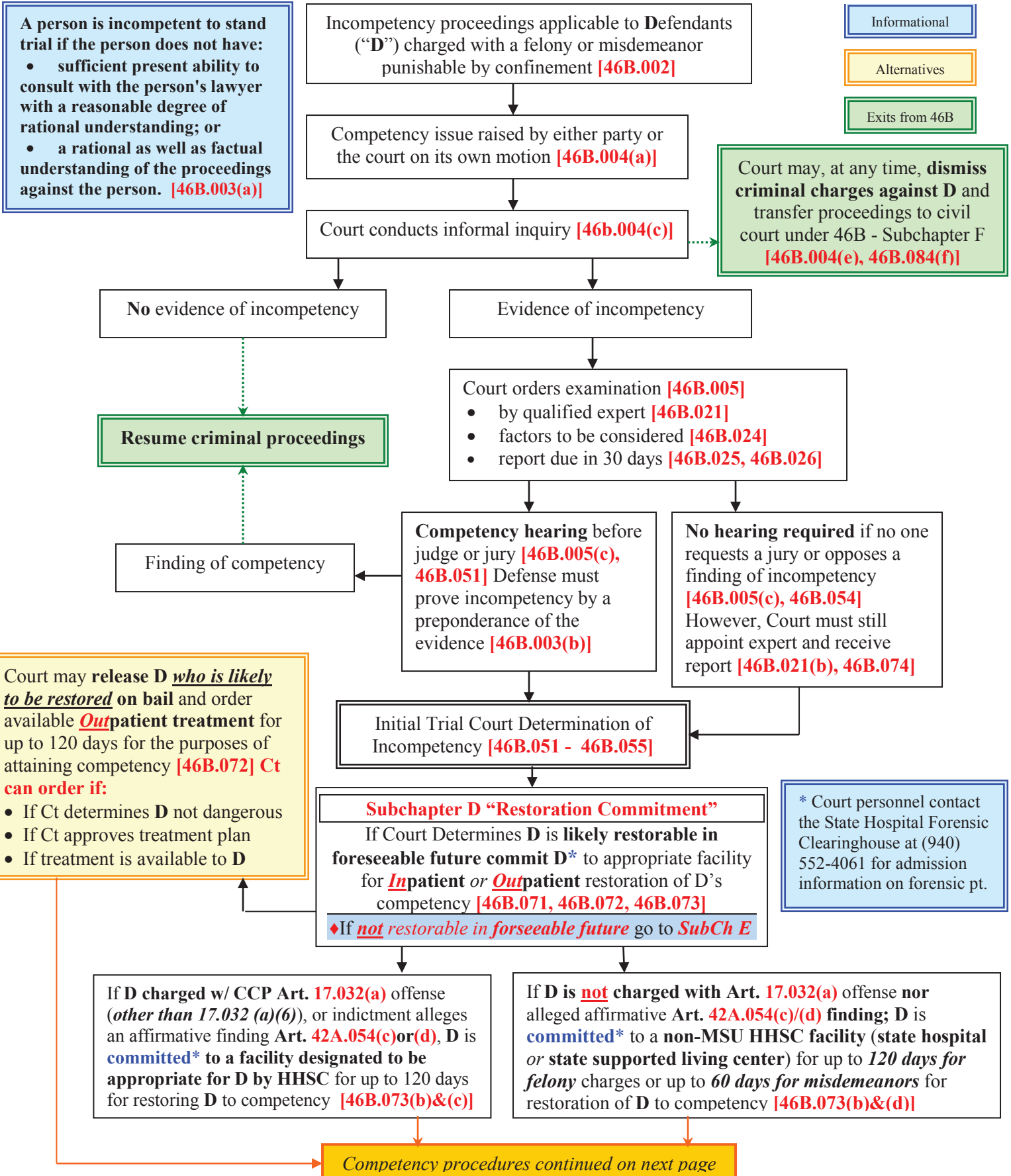
Code of Criminal Procedure – Chapter 46B Incompetency to Stand Trial

Flow Chart Key

Informational

Alternatives

Exits from 46B



Treatment Facility Responsibilities during Subchapter D “Restoration Commitment” apply to **Inpatient** and **Outpatient** MH treatment facilities and ID-State Supported Living Centers [46B.077(a)]

- Develop individual treatment program for **D**
- Assess whether **D** will attain competency in the foreseeable future
- Report to the court and local MH/ID Authority on **D**’s progress toward competency

Head of Inpatient or Jail-Based Competency Restoration (JBCR) programs sends **Notice to Court** when:

- **D** has attained competency [46B.079(b)(2)]
- **D**, while not competent, is **clinically ready for OCR program** [46B.079(b)(1)]
- **D** won’t attain competency in foreseeable future [46B.079(b)(3)]
- Term of commitment is set to expire (≥ 15 days)* [46B.079(a)]

Head of Outpatient program sends **Notice to Court** when:

- **D** has attained competency [46B.079(b-1)(1)]
- **D** won’t attain competency in foreseeable future [46B.079(b-1)(2)]

When giving **Notice to Court** the facility supplies the committing court a **Final Report** stating reasons for **D**’s discharge/transfer and a list of types and dosages of medications **D** was on during treatment [46B.079(c)]

If the facility believes that **D** meets **civil commitment criteria** the facility supplies court with either two Certificate of Medical Examination (“CME”) for mental illness *or* affidavit supporting **D**’s intellectual disability (should also include IDT recommendation on least restrictive appropriate setting) [46B.083(a)/(b)]

***Head of facility** may request one **60-day extension** of restoration order [46B.079(d); and 46B.080]

Even if a party **objects** to the findings of the **Final Report**, the issue of **D**’s current competency **must still be heard within 20 days of receiving report** [46B.084(a-1)]

If the hearing is before the court, the hearing may be by electronic broadcast system [46B.084(b-1); 46B.013]

D is to be **returned to court** within **15 days*** of Notice under 46B.079 and court must make determination on **D**’s current competency within **20 days** of receiving Final Report [46B.084(a-1)]

* If **D** not returned to ct. w/in 15 days, facility shall return **D** and charge the county for costs [46B.082(b)]

If **no objection** to the **Final Report** the court can determine competency based solely on the report **without a hearing** [46B.084(a)]

D found competent

D found *in*competent

D found competent

Resume criminal proceedings

Resume criminal proceedings

Charges not dismissed [46B.084(e)] after Subchapter D commitment or if **D not likely to be restored in foreseeable future** [46B.071(b)]

Are **criminal charges** against **D** dismissed?

Charges dismissed [46B.084(f)]

Court determines if there is evidence of mental illness or intellectual disability [46B.102(a); 46B.103(a)]

Court determines if there is evidence of mental illness or intellectual disability [46B.084(f); 46B.151]

46B - Subchapter E “Civil Commitment; Charges Pending”

- **Criminal court** conducts commitment hearing (*inpatient* or *outpatient*) for **D** with **mental illness** pursuant to Subtitle C, Title 7, Health and Safety Code (**Mental Health Code**) [46B.102(b)]
- Commitment proceedings for **D** with **intellectual disability** are conducted pursuant to Subtitle D, Title 7, Health and Safety Code (**Persons with Intellectual Disability Act**) [46B.103(b)]

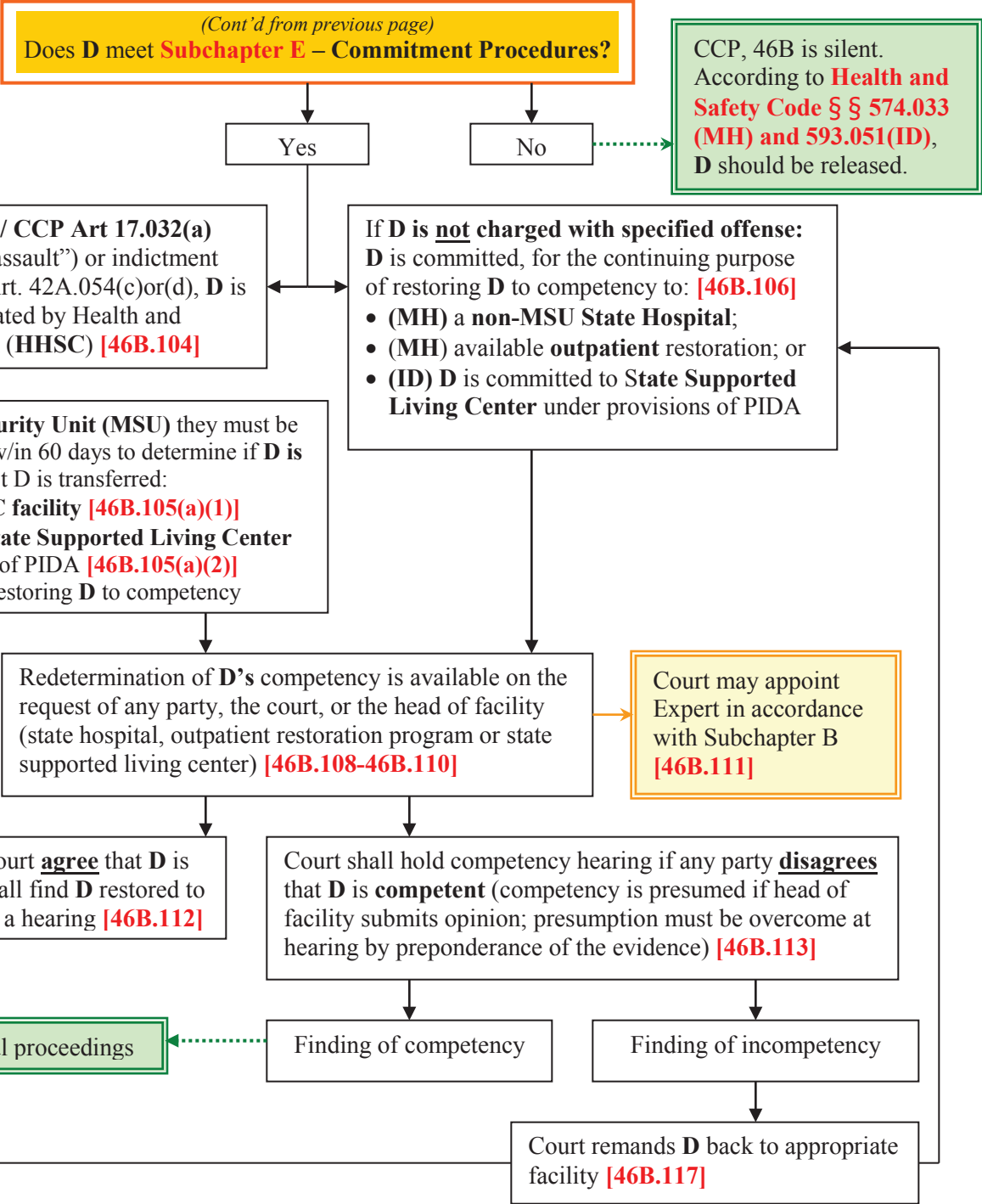
Evidence of mental illness or intellectual disability

No evidence

Pursuant to **Subchapter F**, court **transfers D**’s case to **civil court** for commitment proceedings [46B.151(b)]

D released [46B.151(d)]

Subchapter E commitment procedures continued on next page



The head of facility must notify the committing court if they determine that D on **Subchapter E commitment** should be **released**. This would include a release due to:

- **expiration of D’s commitment** under the Mental Health Code;
- facility determination that D **no longer meets commitment criteria** under Subtitle C or D, Title 7, Health and Safety Code (Mental Health Code/ Persons with Intellectual Disability Act) [46B.107(a)-(c)]; or
- D has “Timed Out” via Maximum Term of Commitment [46B.0095]

The court may hold a hearing on these matters by means of an **electronic broadcast system** [46B.107(d)(2), 46B.013]

If the court determines **release is not appropriate**, the court shall enter an **order directing D not be released** [46B.107(e)]

Code of Criminal Procedure – Chapter 46C

NGRI / Insanity Defense*

Flow Chart Key

Informational

Exits from 46C

Commitment Types

A Defendant (“D”) is **Not Guilty by Reason of Insanity (NGRI)** if:

- The prosecution has established, beyond a reasonable doubt, that D committed the offense; and
- The defense establishes, by a preponderance of the evidence, that D was **insane** at the time of the offense. [46B.153(a)]

*** Penal Code, Sec. 8.01. Insanity**
It is an affirmative defense to prosecution that, **at the time of the conduct charged**, the actor, as a result of severe mental disease or defect, **did not know that his conduct was wrong.**

A Defendant (“D”) must give **notice of intent to raise insanity defense** at least **20 days** before trial, or at the pretrial hearing if more than 20 days from trial [46C.051]

Once the intent to raise the insanity defense has been raised, the court may **appoint disinterested experts** to:

- examine D with regard to the defense; and
- testify at trial regarding that issue [46C.101]

Expert on insanity may be same person who opined on D’s competency under Art. 46B. The **report is due** to court in **30 days** from date of appointment and must address:

- **observations and findings** pertaining to **insanity**;
- whether D currently meets **MH Code** for **commitment**; or
- whether D has **Intellectual/Developmental Disabilities (“IDD”)** [46C.105]

Determination of sanity may be made by judge or jury, however, **jury may not be informed of the consequences of an acquittal by reason of insanity.** [46C.151-156]

If there is evidence of continued **MH** or **IDD** issues the criminal court shall **transfer** the matter to court with probate jurisdiction

If found **Not Guilty by Reason of Insanity (“NGRI”)** the court must determine if the offense for which D was acquitted involved conduct that:

- caused **serious bodily injury (“SBI”)** to another;
- placed another in **imminent danger of SBI**; or
- consisted of a threat of SBI through use of a **deadly weapon** [46C.157]

Conduct did **NOT** involve **SBI** or use of **deadly weapon** [46C.159]

Conduct **involving SBI** or **deadly weapon** [46C.158]

* Court personnel contact **North Texas State Hospital - Vernon Campus** at (940) 552-4061 for information about admission of **AP** to an HHSC designated facility

The court shall order **Acquitted Person (“AP”)** to a facility designated by Health and Human Services Commission (HHSC) for an initial **30 Day Commitment*** for **Evaluation/Treatment** of AP’s present mental condition and **Report** [46C.251]

The **Report** describes procedure, techniques and test used to evaluate acquittee including:

- whether **AP** has mental illness or intellectual/developmental disabilities and if so whether it is **severe**;
- whether, as a result of severe MH/IDD, **AP is likely to cause serious harm to others**;
- whether **AP meets commitment criteria** under Mental Health (“MH”) Code or Person with Intellectual Disabilities Act (“PIDA”); and
- whether **treatment** can be safely/effectively provided on **outpatient basis** [46C.252]

NGRI procedures continued on next page

Court **hearing on disposition** of NGRI **acquitted person (“AP”)** following Report after Evaluation is conducted in the same manner as a hearing for involuntary commitment under MH Code or PIDA and addresses:

- whether **AP** has **severe mental illness** or **IDD**;
- whether, as a result of mental illness or IDD, **AP** is **likely to cause serious harm to another**; and
- whether appropriate treatment and supervision can be provided **AP** as **outpatient/community-based treatment** [46C.253(a)/(b)]

The court shall order **AP** to **HHSC designated facility** for **inpatient / residential treatment** for an initial **180-day commitment** if, by clear and convincing evidence, the state proves that **AP**:

- has **severe mental illness** or **IDD**;
- as a result of mental illness or IDD **AP** is **likely to cause serious harm to others**; and
- inpatient/residential treatment is necessary to protect the safety of others [46C.256]

The court shall order **outpatient/community-based treatment*** for a period of **12 months** if, by clear and convincing evidence, the state proves **AP**:

- has **severe mental illness** or **IDD**;
- as a result of mental illness or IDD **AP** is **likely to cause serious harm to others**; **however**
- the state fails to prove that inpatient/ residential treatment is necessary to protect the safety of others [46C.257]

If **AP** is designated by HHSC to a **Maximum Security Unit (MSU)** they must be presented to Review Board, w/in 60 days to determine if **AP** is **Manifestly Dangerous (MD)**. If **AP** is not **MD** they must be transferred to **non-MSU state hospital** or **state supported living center** [46C.260(c)]

The court shall order **AP** transferred to **court with probate jurisdiction** if state fails to establish standards for inpatient 46C.256 or outpatient 46C.257 commitment **but evidence provides reasonable basis for commitment** under MH Code or PIDA [46C.253(c)]

*Court may only order **AP** into outpatient/community-based if:

- court **approves** comprehensive treatment/supervision **plan**; and
- plan will be **available** and **provided to AP** [46C.263(b)]

The treating **facility** or **outpatient program** has a **continuing responsibility** to determine if **AP**:

- continues to have a severe mental illness or IDD and is **likely to cause serious harm to others**; and
- if so, whether treatment and supervision **cannot** be safely and effectively provided as an **outpatient** [46C.258(a)]

The **head of an inpatient/residential treatment facility** must notify the committing court:

- at least **60 days** before **commitment expires** and provide report on **AP**'s psychological evaluation, certificate of medical examination (if required) and a recommendation for further treatment; [46C.258(c)] or
- seek commitment **modification**♦ if **AP** no longer:
 - has severe MH/IDD;
 - likely to cause serious harm to others; or
 - supervision and treatment can be safely provided on outpatient basis [46C.258(b)]

The **head of an outpatient/community-based treatment facility** must notify the committing court:

- at least **30 days** before **commitment expires** and request that the order be renewed, provide in detail the reason for the renewal and certificate of medical examination (if required); [46C.261(b)]

The court may renew commitment♦ for **12 months** for **inpatient/ residential treatment** or **outpatient/community-based treatment** if it is shown, by clear and convincing evidence, that continued mandatory supervision and treatment is appropriate [46C.261(h)]

♦ Courts have the ability to modify commitment from inpatient to outpatient and vice versa when deemed appropriate [46C.262 and 46C.266]

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