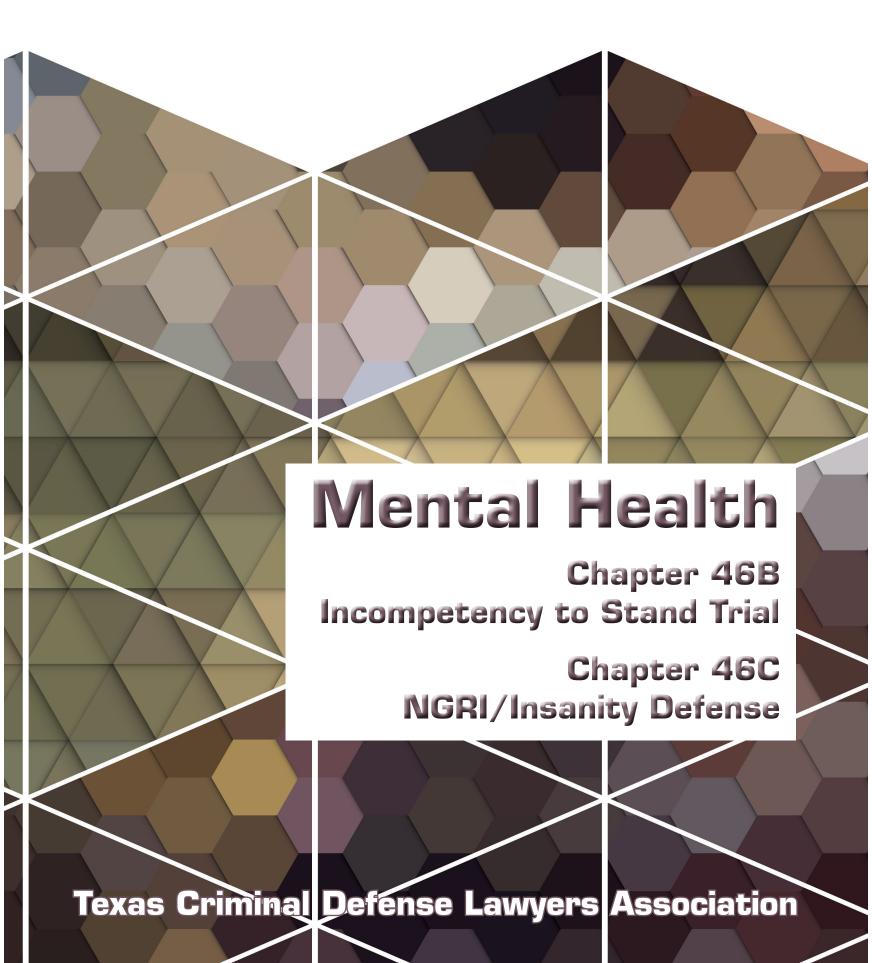
Flow Charts Provided by Chris Lopez, HHSC





Incompetency to Stand Trial Flow Chart Kev Incompetency proceedings applicable to **D**efendants Informational A person is incompetent to stand trial if the person does not have: ("D") charged with a felony or misdemeanor sufficient present ability to punishable by confinement [46B.002] Alternatives consult with the person's lawyer with a reasonable degree of Exits from 46B rational understanding; or Competency issue raised by either party or a rational as well as factual the court on its own motion [46B.004(a)] understanding of the proceedings Court may, at any time, dismiss criminal charges against D and against the person. [46B.003(a)] transfer proceedings to civil Court conducts informal inquiry [46b.004(c)] court under 46B - Subchapter F [46B.004(e), 46B.084(f)] No evidence of incompetency Evidence of incompetency Court orders examination [46B.005] by qualified expert [46B.021] factors to be considered [46B.024] Resume criminal proceedings report due in 30 days [46B.025, 46B.026] Competency hearing before No hearing required if no one judge or jury [46B.005(c), requests a jury or opposes a Finding of competency 46B.051] Defense must finding of incompetency prove incompetency by a [46B.005(c), 46B.054] preponderance of the However, Court must still appoint expert and receive evidence [46B.003(b)] report [46B.021(b), 46B.074] Court may release D who is likely to be restored on bail and order available **Out**patient treatment for Initial Trial Court Determination of up to 120 days for the purposes of Incompetency [46B.051 - 46B.055] attaining competency [46B.072] Ct can order if: * Court personnel contact **Subchapter D "Restoration Commitment"** • If Ct determines **D** not dangerous the State Hospital Forensic If Court Determines **D** is **likely restorable in** • If Ct approves treatment plan Clearinghouse at (940) • If treatment is available to **D** foreseeable future commit D* to appropriate facility 552-4061 for admission for *In*patient or *Out*patient restoration of D's information on forensic pt. competency [46B.071, 46B.072, 46B.073] ♦If not restorable in forseeable future go to SubCh E If **D** is not charged with Art. 17.032(a) offense nor If D charged w/ CCP Art. 17.032(a) offense (other than 17.032 (a)(6)), or indictment alleges alleged affirmative Art. 42A.054(c)/(d) finding; D is an affirmative finding Art. 42A.054(c)or(d), D is committed* to a non-MSU HHSC facility (state hospital committed* to a facility designated to be or state supported living center) for up to 120 days for appropriate for **D** by HHSC for up to 120 days felony charges or up to 60 days for misdemeanors for for restoring **D** to competency [46B.073(b)&(c)] restoration of **D** to competency [46B.073(b)&(d)] Competency procedures continued on next page

Code of Criminal Procedure – Chapter 46B

Treatment Facility Responsibilities during Subchapter D "Restoration Commitment" apply to *Inpatient and Out*patient 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: *Head of D has attained competency [46B.079(b)(2)] D, while not competent, is clinically ready for OCR program [46B.079(b)(1)] facility may **D** won't attain competency in foreseeable future [46B.079(b)(3)] request one Term of commitment is set to expire $(\geq 15 \text{ days})^*$ [46B.079(a)] 60-day Head of *Outpatient* program sends Notice to Court when: extension of D has attained competency [46B.079(b-1)(1)] restoration D won't attain competency in foreseeable future [46B.079(b-1)(2)] order When giving Notice to Court the facility supplies the committing court a Final Report stating reasons for D's [46B.079(d); 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 46B.0801 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)] Even if a party **objects** to the findings of * If **D** not returned to ct. w/in 15 days, **D** is to be returned to court the **Final Report**, the issue of **D's** current facility shall return **D** and charge the within 15 days* of Notice competency must still be heard within 20 county for costs [46B.082(b)] under 46B.079 and court days of receiving report [46B.084(a-1)] must make determination on If the hearing is before the court, the If no objection to the Final Report D's current competency hearing may be by electronic broadcast the court can determine competency within 20 days of receiving system [46B.084(b-1); 46B.013] based solely on the report without a Final Report [46B.084(a-1)] hearing [46B.084(a)] **D** found competent **D** found *in*competent **D** found competent Resume criminal proceedings Are criminal Resume criminal proceedings charges against D dismissed? Charges not dismissed [46B.084(e)] after Subchapter D commitment or if **D** not likely to Charges dismissed [46B.084(f)] be restored in foreseeable future [46B.071(b)] Court determines if there is evidence of mental Court determines if there is evidence of mental illness or intellectual disability [46B.084(f); illness or intellectual disability [46B.102(a); 46B.151] 46B.103(a)]

46B - Subchapter E "Civil Commitment; Charges Pending"

- Criminal court conducts commitment hearing (*inp*atient or *out*patient) 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)]

Subchapter E commitment procedures continued on next page

Charges dismissed [46B.084(f)]

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

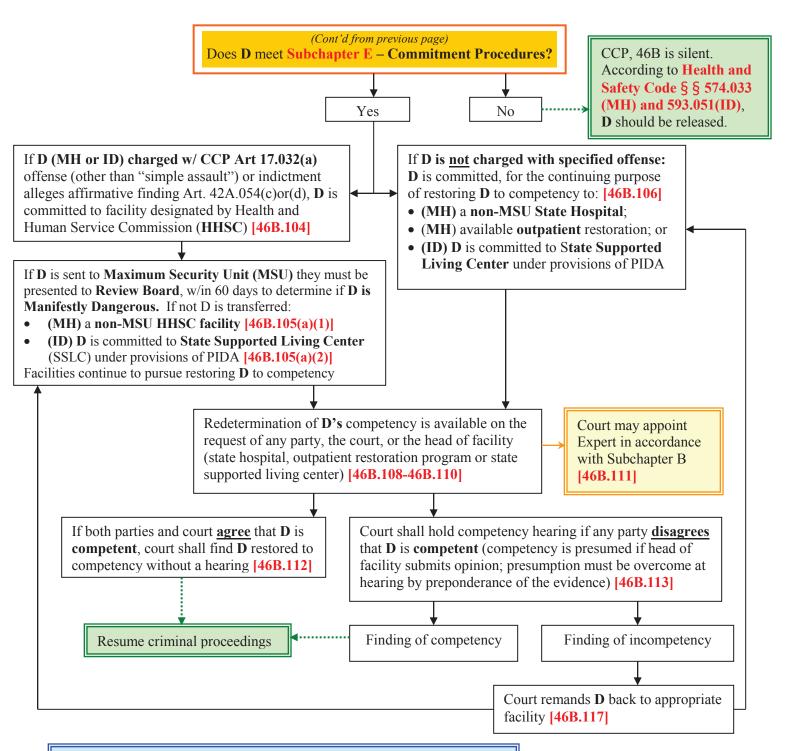
46B.151|

Evidence of mental illness or intellectual disability

D released [46B.151(d)]

Pursuant to Subchapter F, court transfers D's case to civil court for commitment

proceedings [46B.151(b)]



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*

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.

If there is evidence of continued **MH** or **IDD** issues the criminal

court shall **transfer** the matter to

court with probate jurisdiction

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]

Flow Chart Key

Informational

Exits from 46C

Commitment Types

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]

by reason of insanity. [46C.151-156]

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 <u>NOT</u> involve **SBI** or use of **deadly weapon** [46C.159]

Conduct <u>involving</u> 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 <u>outpatient/community-based</u> 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 <u>inpatient/residential</u> 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 <u>outpatient/community-based treatment</u> **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]

