



Trial Competency & Forensic Commitments 101

The purpose of this packet is to provide basic information on the forensic commitment and competency restoration process. It is meant to be brief and does not contain all aspects of said process. HHSC's Texas State Hospital Chief of Forensic Medicine team, in collaboration with the Office of Forensic Coordination, offers support to county forensic teams through the Jail In-Reach Learning Collaborative (JIRLC). This packet may assist counties who are not yet ready to join the collaborative in understanding the basics of the forensic commitment and competency restoration processes and to prepare for participation in future cohorts of the JIRLC.

1. Incompetency: What makes someone incompetent to stand trial?

Incompetency to stand trial is defined in the Code of Criminal Procedure (CCP) [Article 46B.003](#) as follows:

(a) A person is incompetent to stand trial if the person does not have:

- (1) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; or
- (2) a rational as well as factual understanding of the proceedings against the person.

(b) A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence.

Factors Considered in the Trial Competency Evaluation (TCE) as defined by CCP [Art. 46B.024](#):

The capacity of the defendant during the criminal proceedings to:

- a. rationally understand the charges against the defendant and the potential consequences of the pending criminal proceedings;
- b. disclose to counsel pertinent facts, events, and states of mind;
- c. engage in a reasoned choice of legal strategies and options;
- d. understand the adversarial nature of criminal proceedings;
- e. exhibit appropriate courtroom behavior; and testify.

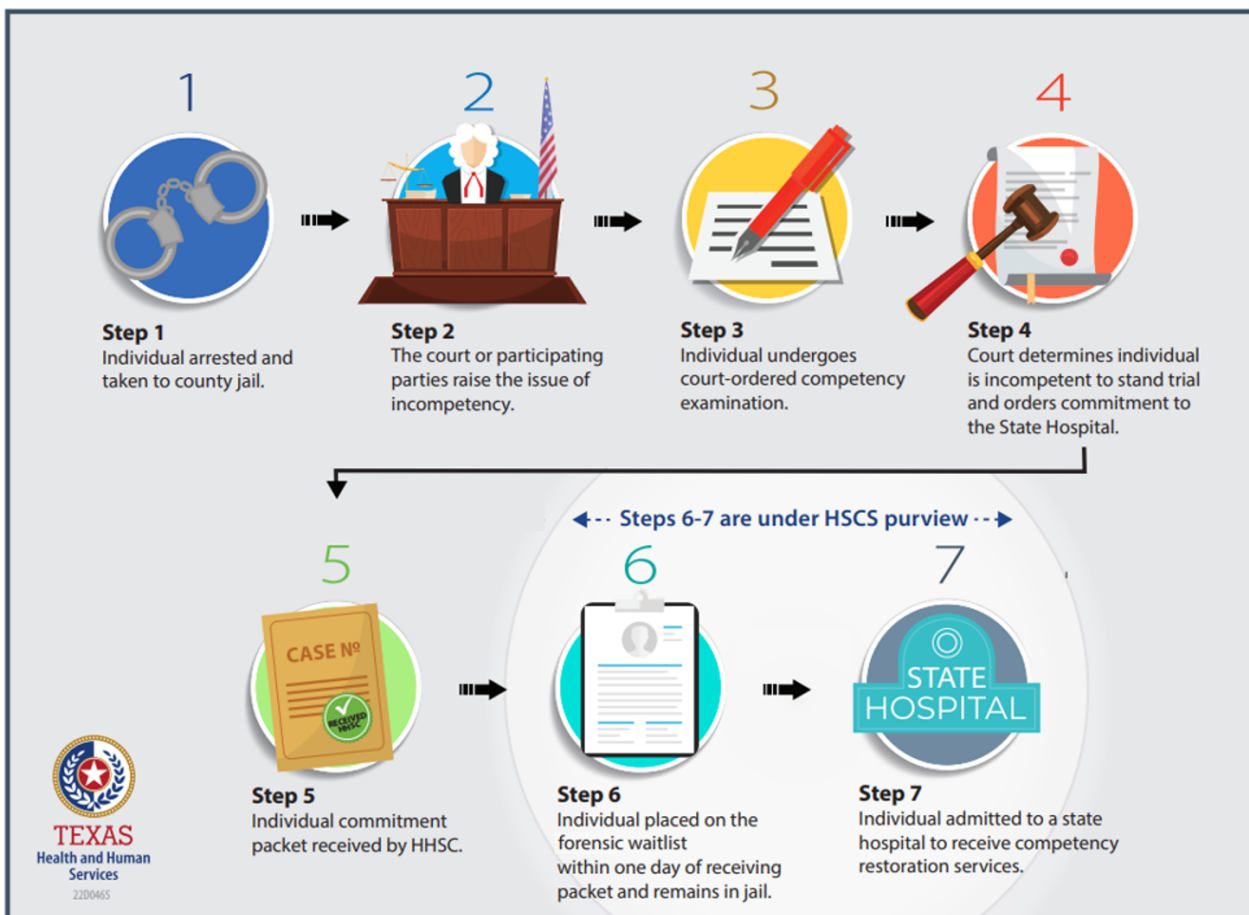
The TCE must also discuss:

- a. whether the defendant is a person with mental illness or intellectual or developmental disability (IDD);
- b. whether the identified condition has lasted or is expected to last continuously for at least 1 year;
- c. the degree of impairment and impact on the defendant's ability to engage with counsel in a reasonable and rational manner; and
- d. if defendant is taking psychoactive or other medication,
 - i. whether the medication is necessary to maintain competency, and
 - ii. the effect, if any, of medication on the defendant's appearance, demeanor, or ability to participate in the proceedings.



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2. General Process



- When a commitment order is signed, it must be sent to HHSC via email at ForensicAdmissions@hhsc.state.tx.us along with the TCE, offense report, indictment, and any other clinically relevant information (e.g., current medical records, behavior reports, and/or jail records). The individual is then added to the appropriate waitlist based on their charges [maximum security unit (MSU) or non-MSU].

- If placed on the MSU waitlist, there will be a clinical security review (CSR) conducted to determine if that individual can be safely treated in a non-MSU setting. For more information on the CSR process, please refer to the MSU Waiver Process (see *Appendix 1*).

- If the person is placed on the non-MSU list, they are assigned to a hospital based on geographical location of committing county, any other clinical information, or programming needs.



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3. Most Common Forensic Commitments (CCP Chapters 46B and 46C)

- CCP [Art. 46B.073](#) – Initial Commitment for Restoration to Competency
 - o 60 days (misdemeanor) or 120 days (felony)
 - o +60-day extension for Class A/B misdemeanors and felonies
- CCP [Art. 46B.102](#) – Civil Commitment: Charges Pending (Mental Health) to a state hospital
- CCP [Art. 46B.103](#) – Civil Commitment: Charges Pending (Intellectual Disability) to a state supported living center
- CCP [Art. 46C.251](#) – Initial Not Guilty by Reason of Insanity (NGRI) commitment
 - o 30 days; court hearing by 30th day after acquittal
 - o Admissions are expedited

4. Three Types of Competency Restoration

	Inpatient Competency Restoration	Outpatient Competency Restoration (OCR)	Jail-Based Competency Restoration (JBCR)
Physical Location	State hospital or contracted facility	Community or residential	In jail within a designated space separate from general population
Bond Status	Bond NOT required	Bond required	Bond NOT required
Eligibility	No eligibility criteria	Specific eligibility criteria set by OCR provider	Specific eligibility criteria set by JBCR provider
Treatment Length (for initial commitments)	Misdemeanor up to 60 days Felony up to 120 days	Class B Misdemeanor up to 60 days Class A Misdemeanor or Felony up to 120 days	Misdemeanor up to 60 days Felony 60 days + may continue to provide services for authorized period unless inpatient or OCR slot available
Wait Time for Admission (as of close of FY22)	MSU approximately 20 months Non-MSU approximately 8 months	2-3 months	2-3 months

Jail Based Competency Restoration (JBCR) and Outpatient Competency Restoration (OCR) are not currently available in all counties. Please check with your local mental health/behavioral health authority (LMHA/LBHA) for JBCR/OCR availability.



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5. Special Considerations

There are several special considerations when monitoring your county's waitlist, some of which are highlighted below:

a. Misdemeanor cases that will likely "time-out" before the individual is admitted to the state hospital:

Many individuals who are waiting on misdemeanor charges end up "timing out," or spending the allowable maximum time detained prior to ever admitting for inpatient competency restoration services. Therefore, if there is someone on your county's forensic waitlist in this situation and your county does not have JBCR or OCR as an option, please consider having conversations with the court personnel to determine if there is an alternate disposition available for this individual. If this individual meets civil commitment criteria (as per Health and Safety Code [Chapter 574](#) or [Chapter 592](#)), an application can be completed and submitted to the courts.

b. Intellectual or Developmental Disability (IDD) / Neurocognitive Disorder (NCD) and not likely to regain (NLTR) trial competency:

There are some individuals who have a diagnosis of IDD or NCD and have been opined NLTR. If there is someone on your forensic waitlist in this situation, please contact HHSC_SHS_Forensic_Team@hhs.texas.gov to determine if an alternate disposition may be appropriate.

c. Immediate restoration of trial competency:

There are times when individuals may restore to trial competency while awaiting state hospital admission. Typically, this is after an individual begins taking medication in jail and demonstrates improvement in their psychiatric symptoms. These individuals may be appropriate for a screening of their trial competency. The Texas State Hospitals (SH) have a standardized screening tool, the Standardized Clinically Based Competency Screening (SCCS), that can assist in determining whether an individual may be appropriate for a re-evaluation of their trial competency (see *Appendix 2*). The SCCS may be used as credible evidence of immediate restoration in a motion to re-evaluate trial competency. If there is someone on your county's forensic waitlist that may be appropriate for a screening, please contact HHSC_SHS_Forensic_Team@hhs.texas.gov and we can share the tool and/or assist with the screening process.

d. Expedited admission requests due to clinical need:

Expedited admissions may be requested when an individual on the forensic waitlist has significantly decompensated and there are concerns for the individual's health and safety due to such deterioration. If you are concerned about an individual on your waitlist that may meet these criteria, please reach out to your LMHA/LBHA and request a crisis assessment. Once obtained, please reach out to us. HHSC will follow the internal expedited admission review process to evaluate your request.

If you would like additional information on these or other subjects (such as court-ordered medication process, JBCR/OCR programs, pre-trial diversion agreements, or the JIRLC), please contact HHSC_SHS_Forensic_Team@hhs.texas.gov or assistance or to be connected with an HHSC subject matter expert.



MSU WAIVER PROCESS

The Maximum-Security Unit (MSU) waiver process is utilized for individuals awaiting admission to a state hospital after having been found incompetent to stand trial (under the Texas Code of Criminal Procedure [Chapter 46B](#)) or who were acquitted as Not Guilty by Reason of Insanity (under the Texas Code of Criminal Procedure [Chapter 46C](#)).



What is a Maximum-Security Unit waiver?

An MSU waiver allows an individual to be admitted to a non-maximum security state hospital unit, even if the alleged offense would typically require admission to an MSU. The waiver is granted through a Clinical Security Review (CSR).

What does a Clinical Security Review entail?



The CSR is a clinically-informed screening process to assist in determining the least restrictive, yet clinically appropriate setting, for MSU-bound individuals. Many factors are considered in the review, including:

- The details of the offense
- The individual’s current clinical presentation
- Medical complexities
- Intellectual or developmental disabilities
- Prior treatment history
- Risk of elopement or violence
- Community safety
- Bond status and compliance with conditions of bond

How does an MSU waiver get approved?



A CSR is initiated automatically once HHSC receives the entire commitment packet from the court. An MSU waiver needs to be approved at three levels within HHSC:

- 1st level: Conducted by masters’ level clinicians
- 2nd level: Recommended by the Chief of Forensic Medicine or designee
- 3rd level: Approved by the Associate Commissioner of State Hospitals or designee

Once approved, HHSC notifies the court, and the individual is moved to the appropriate non-maximum-security waitlist.

Statutory Authority

Legislation granting HHSC authority to designate the admitting facility for competency restoration services:

- **SB562/HB601:** This law passed during the 86th Regular Session of the Texas Legislature, which went into effect September 1, 2019.
- **Statutory Change to CCP Art. 46B.073(c):** If the defendant is charged with an offense listed in Art. 17.032(a) or if the indictment alleges an affirmative finding under Art. 42A.054(c) or (d), the court shall enter an order committing the defendant for competency restoration services to a facility designated by the commission.

Standardized Clinically Based Competency Screening



What is the Standardized Clinically Based Competency Screening?

The Standardized Clinically Based Competency Screening (SCCS) is a screening tool that was developed for use by the Texas State Hospitals to clinically ascertain individuals' progress towards trial competency restoration. The SCCS is not a competency examination under Code of Criminal Procedure Articles 46B.024 and 46B.025.

What does an SCCS entail?

The SCCS (sometimes referred to as a "competency quick screen") contains brief questions that align with CCP [Art. 46B.024](#), regarding areas of competency to stand trial. For example, the SCCS reviews the individual's basic understanding of potential consequences of their alleged charges, the four plea options, a plea bargain, and their ability to work with their attorney. The SCCS also considers any current evidence of psychiatric symptoms that may impact the individual's rational competency.

How can the SCCS be helpful?

- May offer a snapshot of an individual's progress toward trial competency restoration.
- May identify specific barriers to trial competency.
- May provide a pathway to most appropriate level of competency restoration services.
- May help determine whether there is evidence of immediate restoration.

How is an SCCS conducted?

When information provided to the Chief of Forensic Medicine team suggests that an individual on the wait list may have restored to trial competency, the following steps occur*:



- Obtain agreement from the defense attorney for the SCCS to be conducted.
- If the defense is agreeable, arrange a virtual meeting between the individual and the screener for SCCS completion.
- Summarize SCCS results and provide to the defense counsel.

*Depending on the county of commitment, there may be a slight variation in the above steps. However, the defense attorney's approval will always be obtained.

Statutory Authority

CCP Article 46B.0755, Procedures on Credible Evidence of Immediate Restoration

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.