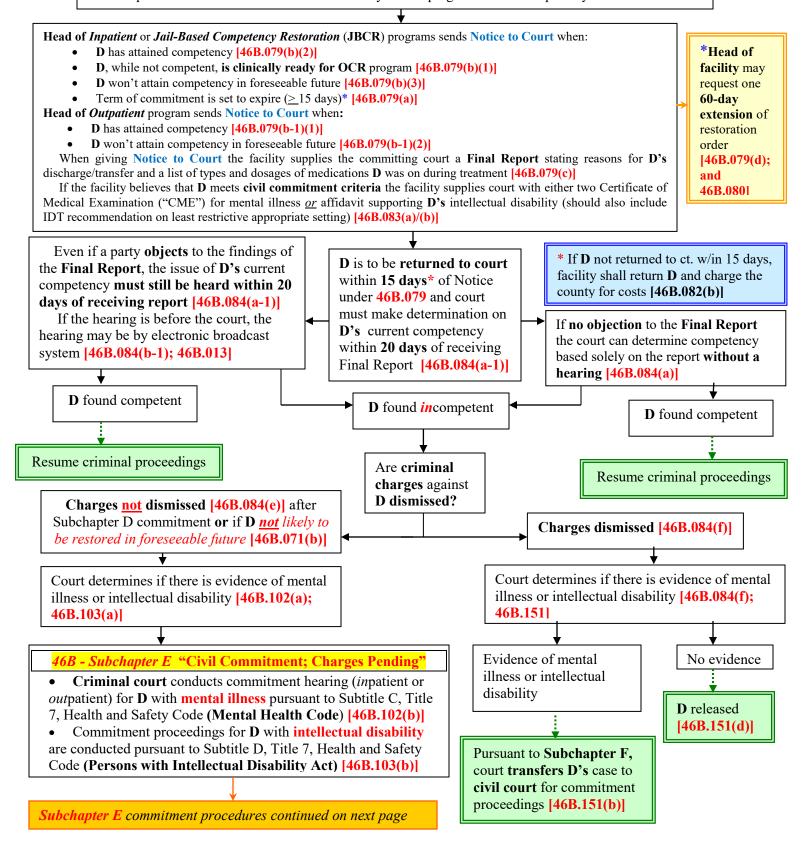
Incompetency to Stand Trial Flow Chart Kev Incompetency proceedings applicable to **D**efendants Informational A person is incompetent to stand ("D") charged with a felony or misdemeanor trial if the person does not have: sufficient present ability to punishable by confinement [46B.002] Alternatives 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)] Court may, at any time, dismiss understanding of the proceedings against the person. [46B.003(a)] criminal charges against D and transfer proceedings to civil Court conducts informal inquiry [46b.004(c)] court under 46B - Subchapter F [46B.004(e), 46B.084(f)] Evidence of incompetency **No** 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 evidence [46B.003(b)] appoint expert and receive 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: **Subchapter D "Restoration Commitment"** • If Ct determines **D** not dangerous If Court Determines D is likely restorable in • If Ct approves treatment plan Court personnel please contact the foreseeable future commit D* to appropriate facility • If treatment is available to **D** Forensic Admissions Team's email at for **Inpatient** or **Outpatient** restoration of D's Forensicadmissions@hhsc.state.tx.us for more information about admission competency [46B.071, 46B.072, 46B.073] ♦If not restorable in forseeable future go to SubCh E If D charged w/ CCP Art. 17.032(a) offense If D is not charged with Art. 17.032(a) offense nor alleged affirmative Art. 42A.054(c)/(d) finding; D is (other than 17.032 (a)(6)), or indictment alleges 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)]

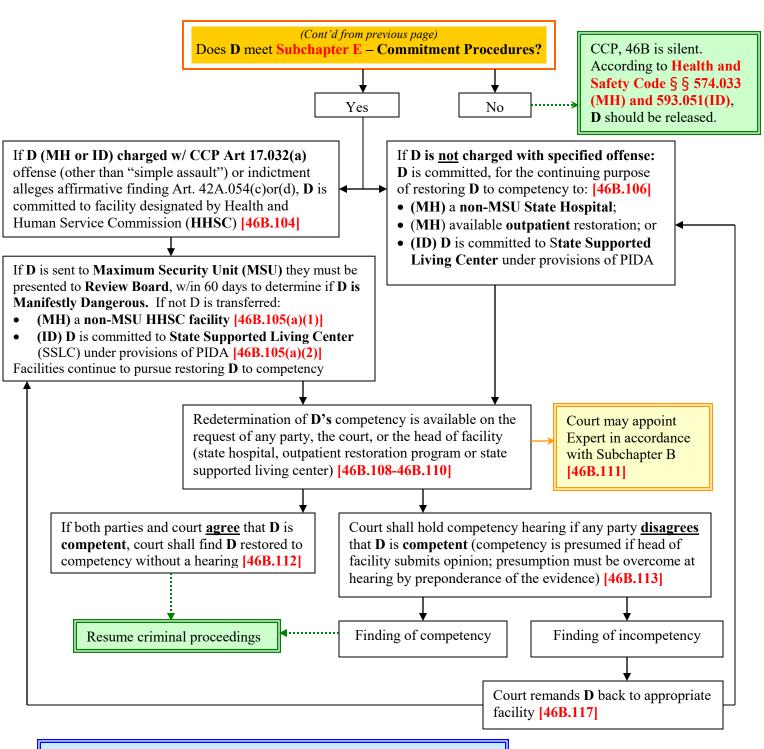
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Competency procedures continued on next page

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





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)]