

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

Flow Chart Key

Informational

Alternatives

Exits from 46B

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

- sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; or
- a rational as well as factual understanding of the proceedings against the person. [46B.003(a)]

Incompetency proceedings applicable to Defendants ("D") charged with a felony or misdemeanor punishable by confinement [46B.002]

Competency issue raised by either party or the court on its own motion [46B.004(a)]

Court conducts informal inquiry [46b.004(c)]

Court may, at any time, **dismiss criminal charges against D** and transfer proceedings to civil court under 46B - Subchapter F [46B.004(e), 46B.084(f)]

No evidence of incompetency

Evidence of incompetency

Resume criminal proceedings

Court orders examination [46B.005]

- by qualified expert [46B.021]
- factors to be considered [46B.024]
- report due in 30 days [46B.025, 46B.026]

Finding of competency

Competency hearing before judge or jury [46B.005(c), 46B.051] Defense must prove incompetency by a preponderance of the evidence [46B.003(b)]

No hearing required if no one requests a jury or opposes a finding of incompetency [46B.005(c), 46B.054] However, Court must still appoint expert and receive report [46B.021(b), 46B.074]

Initial Trial Court Determination of Incompetency [46B.051 - 46B.055]

Court may **release D who is likely to be restored on bail** and order available **Outpatient treatment** for up to 120 days for the purposes of attaining competency [46B.072] Ct can order if:

- If Ct determines D not dangerous
- If Ct approves treatment plan
- If treatment is available to D

Subchapter D "Restoration Commitment"

If Court Determines D is likely restorable in foreseeable future commit D* to appropriate facility for **Inpatient** or **Outpatient** restoration of D's competency [46B.071, 46B.072, 46B.073]

♦If **not restorable in foreseeable future** go to **SubCh E**

* Court personnel please contact the Forensic Admissions Team's email at Forensicadmissions@hhsc.state.tx.us for more information about admission

If D charged w/ CCP Art. 17.032(a) offense (other than 17.032 (a)(6)), or indictment alleges an affirmative finding Art. 42A.054(c) or (d), D is **committed*** to a facility designated to be appropriate for D by HHSC for up to 120 days for restoring D to competency [46B.073(b)&(c)]

If D is **not** charged with Art. 17.032(a) offense nor alleged affirmative Art. 42A.054(c)/(d) finding; D is **committed*** to a non-MSU HHSC facility (state hospital or state supported living center) for up to 120 days for felony charges or up to 60 days for misdemeanors for restoration of D to competency [46B.073(b)&(d)]

Competency procedures continued on next page

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)]

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

D released [46B.151(d)]

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

Subchapter E commitment procedures continued on next page

(Cont'd from previous page)
Does D meet Subchapter E – Commitment Procedures?

CCP, 46B is silent.
 According to **Health and Safety Code § § 574.033 (MH) and 593.051(ID)**, **D should be released.**

Yes

No

If **D (MH or ID) charged w/ CCP Art 17.032(a)** offense (other than “simple assault”) or indictment alleges affirmative finding Art. 42A.054(c) or (d), **D is committed to facility designated by Health and Human Service Commission (HHSC) [46B.104]**

If **D is not charged with specified offense:** **D is committed, for the continuing purpose of restoring D to competency to:** **[46B.106]**

- **(MH) a non-MSU State Hospital;**
- **(MH) available outpatient restoration; or**
- **(ID) D is committed to State Supported Living Center under provisions of PIDA**

If **D is sent to Maximum Security Unit (MSU)** they must be presented to **Review Board**, w/in 60 days to determine if **D is Manifestly Dangerous**. If not D is transferred:

- **(MH) a non-MSU HHSC facility [46B.105(a)(1)]**
- **(ID) D is committed to State Supported Living Center (SSLC) under provisions of PIDA [46B.105(a)(2)]**

Facilities continue to pursue restoring **D** to competency

Redetermination of **D’s** competency is available on the request of any party, the court, or the head of facility (state hospital, outpatient restoration program or state supported living center) **[46B.108-46B.110]**

Court may appoint Expert in accordance with Subchapter B **[46B.111]**

If both parties and court **agree** that **D is competent**, court shall find **D** restored to competency without a hearing **[46B.112]**

Court shall hold competency hearing if any party **disagrees** that **D is competent** (competency is presumed if head of facility submits opinion; presumption must be overcome at hearing by preponderance of the evidence) **[46B.113]**

Resume criminal proceedings

Finding of competency

Finding of incompetency

Court remands **D** back to appropriate facility **[46B.117]**

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)]**