



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 the process.

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Incompetency: What makes someone incompetent to stand trial?

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

- A person is incompetent to stand trial if they do not have:
 - Sufficient present ability to consult with their lawyer with a reasonable degree of rational understanding.
 - A rational and factual understanding of the pending criminal proceedings and charges against them.
- A defendant is presumed competent to stand trial and shall be found competent unless proven incompetent by a preponderance of the evidence.

Factors considered in the Trial Competency Evaluation as defined by Code of Criminal Procedure [Article 46B.024](#):

The capacity of the defendant during the criminal proceedings to:

- Rationally understand the charges against them and the potential consequences of the proceedings.
- Disclose to counsel pertinent facts, events and states of mind.

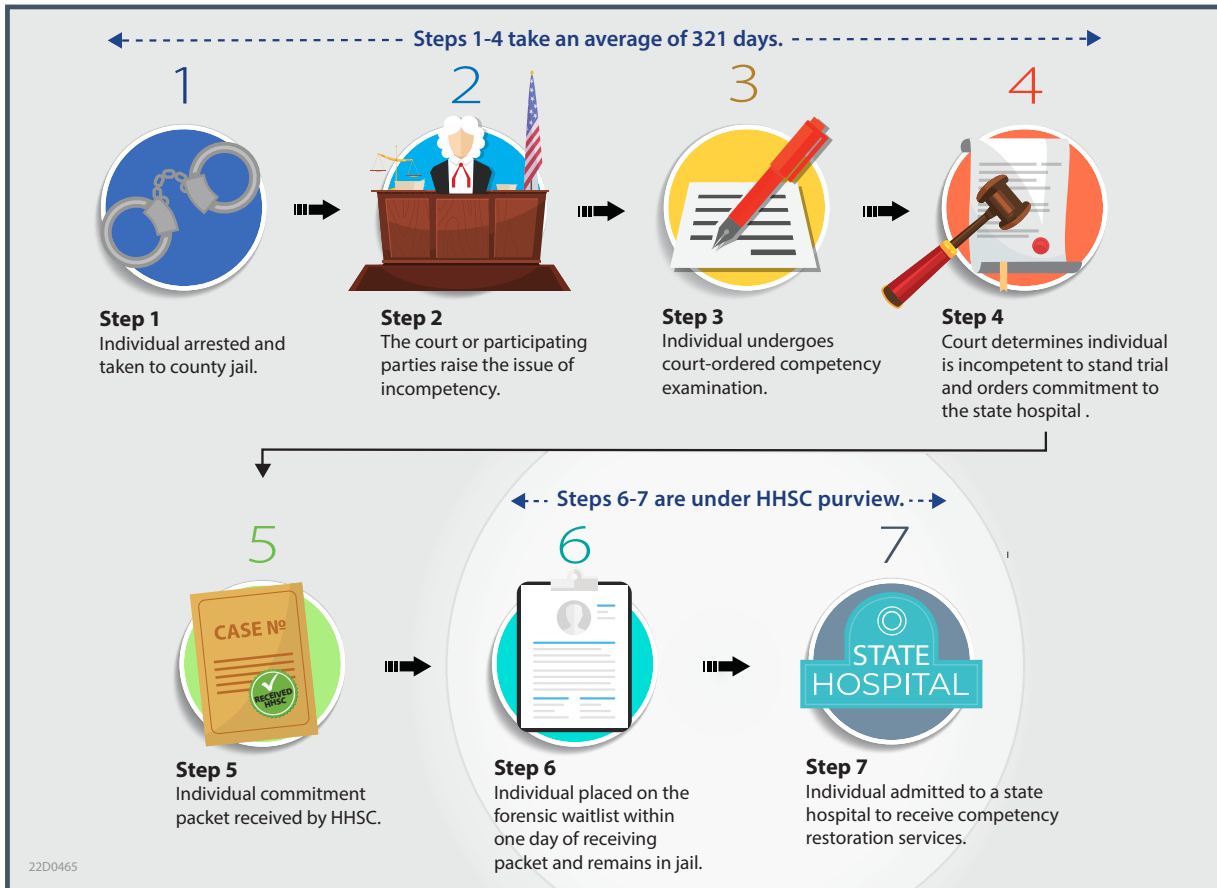
- Engage in a reasoned choice of legal strategies and options.
- Understand the adversarial nature of criminal proceedings.
- Exhibit appropriate courtroom behavior.
- Testify.

The Trial Competency Evaluation must also discuss:

- Whether the defendant is a person with mental illness or an intellectual or developmental disability.
- Whether the identified condition has lasted or is expected to last continuously for at least one year.
- The degree of impairment and impact on the defendant's ability to engage with counsel in a reasonable and rational manner.
- If the defendant is taking psychoactive or other medication(s):
 - Whether the medication is necessary to maintain competency.
 - The effect, if any, of medication(s) on the defendant's appearance, demeanor or ability to participate in the proceedings.

2

General Process



- When a commitment order is signed, it must be emailed to HHSC at ForensicAdmissions@hhsc.state.tx.us along with the TCE, offense report, indictment, and any other clinically relevant information (current medical records, behavior reports, jail records, etc.). The person is then added to the appropriate waitlist for a maximum-security unit (MSU) or non-maximum-security unit based on their charges.
- If placed on the MSU waitlist, a clinical security review (CSR) will be conducted to determine if that person can be safely treated in a non-MSU setting. For more information on the CSR process, refer to the MSU Waiver Process one-pager (*see Appendix 1*).
- If the person is placed on the non-MSU list, they are assigned to a hospital based on geographical location of the committing county, other clinical information or programming needs.

3

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

- CCP [Article 46B.073](#) – Initial Commitment for Restoration to Competency :
 - 60 days (misdemeanor) or 120 days (felony).
 - Plus possible 60-day extension.
- CCP [Article 46B.102](#) – Civil Commitment: Charges Pending (Mental Health) to a state hospital.
- CCP [Article 46B.103](#) – Civil Commitment: Charges Pending (Intellectual Disability) to a state supported living center.
- CCP [Article 46C.251](#) – Initial Not Guilty by Reason of Insanity (NGRI) Commitment:
 - 30 days, with court hearing by 30th day after acquittal.
 - Admissions are expedited.

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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 <i>(for initial commitments)</i>	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 and may continue to provide services for authorized period unless inpatient or OCR slot is available

Jail-Based Competency Restoration and Outpatient Competency Restoration are not currently available in all Texas counties. Check with your local mental health or behavioral health authority for availability.

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Special considerations when monitoring your county's waitlist:

Some of the special considerations to be aware of when monitoring your county's waitlist:

- **Misdemeanor cases that will likely “time out” before the person is admitted to the state hospital:**
 - People waiting on misdemeanor charges may end up “timing out,” or spending the allowable maximum time detained prior to admitting for inpatient competency restoration services. If someone on your county's forensic waitlist is in this situation, and your county does not have jail-based competency restoration or outpatient competency restoration as an option, consider speaking to court personnel to determine if there is an alternate disposition available for them. If the individual meets civil commitment criteria (per Health and Safety Code [Chapter 574](#) or [Chapter 592](#)), an application can be submitted to the courts.
- **An intellectual or developmental disability or neurocognitive disorder, and not likely to restore to trial competency:**
 - If someone on your forensic waitlist has a diagnosis of an intellectual or developmental disability or neurocognitive disorder, and has been determined not likely to restore, email SHForensicTeam@hhs.texas.gov to determine if an alternate disposition may be appropriate.
- **Immediate restoration of trial competency:**
 - There are times when someone may restore to trial competency while awaiting state hospital admission. This is usually after they begin taking medication(s) in jail and demonstrate improvement in psychiatric symptoms. At that point, they may be appropriate for a screening of their trial competency. Texas State Hospitals have developed the Standardized Clinically Based Competency Screening tool to assist in determining whether someone may be appropriate for a reevaluation of their trial competency (*see Appendix 2*). The screening tool may be used as credible evidence of immediate restoration in a motion to reevaluate trial competency. If someone on your county's forensic waitlist may be appropriate for the screening, email SHForensicTeam@hhs.texas.gov. HHSC can share the tool and assist with the screening process.
- **Expedited admission requests due to clinical need:**
 - An expedited admission may be requested when someone on the forensic waitlist has significantly decompensated and there are concerns for their health and safety. If you are concerned about someone on your waitlist who may meet criteria outlined in Appendix 3, reach out to your local mental health or behavioral health authority to request a crisis assessment. Once obtained, email SHForensicTeam@hhs.texas.gov. We will follow the internal expedited admission review process to evaluate your request.

For more information on these or other subjects (such as court-ordered medication process, JBCR/OCR programs, pre-trial diversion agreements or the Jail In-Reach Learning Collaborative), email SHForensicTeam@hhs.texas.gov for assistance or to be connected with an HHSC subject matter expert.

APPENDIX 1

Maximum-Security Unit Waiver Process



What is an MSU waiver?

The maximum-security unit (MSU) waiver process is used for people awaiting admission to a state hospital after being 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](#). An MSU waiver allows someone 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 CSR entail?

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

- The details of the offense.
- The person'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 must be reviewed at three levels within HHSC:
 - **Level 1:** Conducted by masters level clinicians.
 - **Level 2:** Recommended by the Chief of Forensic Medicine or designee.
 - **Level 3:** Approved by the Associate Commissioner of State Hospitals or designee.

Once approved, HHSC notifies the court, and the person is moved to the non-MSU waitlist.

Statutory Authority

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

- **SB562/HB601:** This law was passed during the 86th Regular Session of the Texas Legislature and went into effect Sept. 1, 2019.
- **Statutory Change to CCP [Article 46B.073\(c\)](#):** If the defendant is charged with an offense listed in Article 17.032(a) or if the indictment alleges an affirmative finding under Article 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 toward 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 [Article 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 (CFM) team suggests that an individual on the wait list may have clinically improved since the original Trial Competency Exam and may have restored to trial competency, the CFM team will engage in the following steps:

- Request approval from committing court via court coordinator for the SCCS to be conducted.
- If approval is obtained from the court, arrange a virtual meeting between the individual and the screener for SCCS completion.
- Summarize SCCS results and provide to the committing court via court coordinator.

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 [Article 46B.0755](#), sets forth the process by which the court determines if the defendant has been restored to competency.

APPENDIX 3

Texas State Hospitals Forensic Expedited Admission Process



What is a forensic expedited admission?

An expedited admission (EA) occurs when a person on the forensic state hospital waitlist is moved for clinical reasons to the next available and appropriate bed ahead of others waiting to be admitted for competency restoration services under a Code of Criminal Procedure Chapter 46B commitment. The Health and Human Services Commission Chief of Forensic Medicine team judiciously reviews all EA requests based on several factors.

What is the review and determination process for an EA request?

A master's level clinician will accept an EA request from any source, such as court parties, legislative inquiries, local mental health authorities (LMHAs), family or jail staff. When the request is received:

- The clinician obtains a clinical update from the jail and a crisis assessment from the LMHA.
- The clinician reviews and summarizes the information gathered in a formal write-up and submits it along with supporting documentation to the Chief of Forensic Medicine (CFM).
 - If the CFM deems there is insufficient clinical information to support an EA, the request will be declined, and a detailed rationale will be provided.
 - If the CFM deems there is sufficient clinical information to support an EA, the recommendation to expedite will be sent to the State Hospital Associate Commissioner.
 - The State Hospital Associate Commissioner has final authority to approve or deny EA requests.

When an EA request may be appropriate:

- Persistent clinical deterioration despite adequate psychiatric interventions.
- The person's needs are beyond what the jail can safely provide.

Clinical considerations*:

- Severity of current psychiatric symptoms.
- Severity of suicidal or homicidal ideation.
- Self-injurious behaviors.
- Level of aggression.
- Inattention to activities of daily living.
- Medical concerns exacerbated due to unstable psychiatric symptoms.

Additional considerations*:

- Previous attempted interventions.
- A county jail's access to resources.

**These lists include the main areas of focus and are not exhaustive.*

Interventions to consider prior to requesting an EA:

- Adjustment to medications.
- Court-ordered medications.**
- Clinical consultation request.**
- Consulting with an LMHA on behavioral or therapeutic interventions.

***Email the HHSC Forensic Team at SHForensicTeam@hhs.texas.gov to request more information.*