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Behind the Curtain: Competency Restoration at Texas State Hospitals

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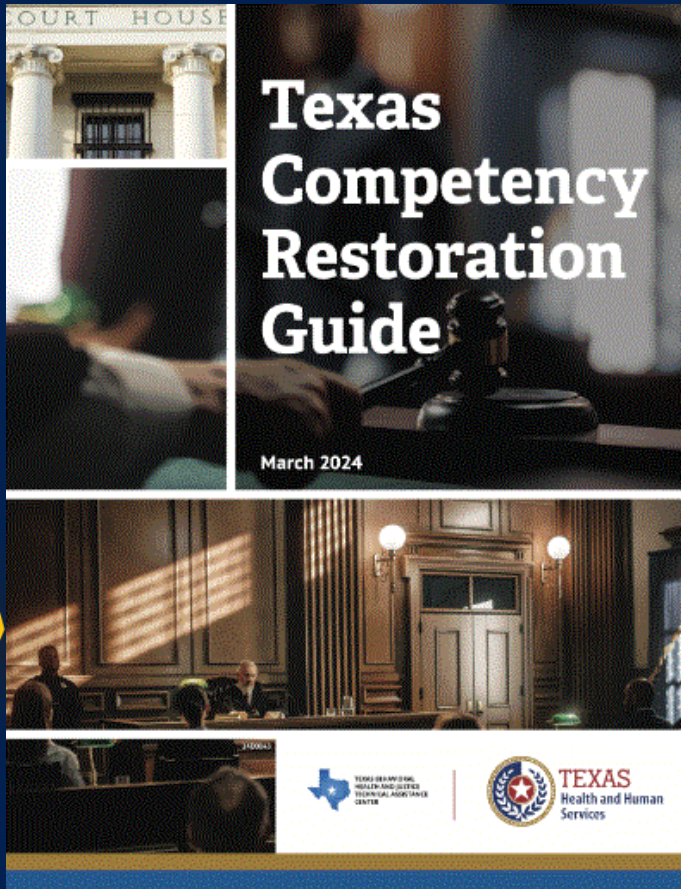
Presentation Goals

- Enhance awareness of least restrictive competency restoration settings
- Enhance awareness of alternative pathways to treatment and case resolutions
- Provide considerations for when inpatient competency restoration is likely most appropriate
- Explain implications of an inpatient competency restoration commitment
- Provide an overview of Texas state hospitals' programming
- Review treatment goals within a state hospital setting related to individuals committed under CCP Chapter 46B
- Review outcomes post Texas state hospitalization



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Texas Competency Restoration Guide



Developed through a peer review and consensus process:

- ▶ Expert panel convened by the Substance Abuse and Mental Health Services Administration
- ▶ Guide drafted and reviewed by Steering Committee
- ▶ Tested in two focus groups with subject matter experts
- ▶ Reviewed by national experts

Includes overview of legal processes, CR treatment, and different placement options



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Ten Guiding Principles

1. Access to robust, appropriate, and timely community-based services and support is essential to divert people with mental illness from the criminal justice system and to promote reentry after a period of incarceration. This is the foundation for reducing the number of people determined incompetent to stand trial (IST) who need CR.
2. People for whom the compelling interest to prosecute is low are not considered for CR. People for whom the compelling interest to prosecute is high receive CR services in the least restrictive setting as appropriate.
3. CR is used only to stabilize symptoms of mental illness and provide legal education to allow for the resumption of the adjudicative process.
4. The CR system provides clear accountability for systematic efficiency, equity, quality evaluators and evaluations, and is committed to confidentiality.
5. The CR system emphasizes early identification and intervention, matching the services provided to the person's needs, and ensures continuity of services and support for people moving between treatment settings.



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Ten Guiding Principles

6. The CR system is defined by strong collaboration among mental health providers, law enforcement, jail administration, prosecutors, defense attorneys, the judiciary, and all three branches of state and local government.

7. Partners involved in the CR process observe and promote appropriate and statutorily required timelines for tasks that fall within their respective domains.

8. Partners implement data-driven decision-making processes, to include a data collection, analysis, and dissemination strategy.

9. Partners are knowledgeable about the CR process, including the sequence of events, terminology, and processes.

10. CR placement decisions are guided by research, data, statute, administrative rule, and the best available tools to support decision-making that consider legal severity, clinical acuity, and risk of recidivism.

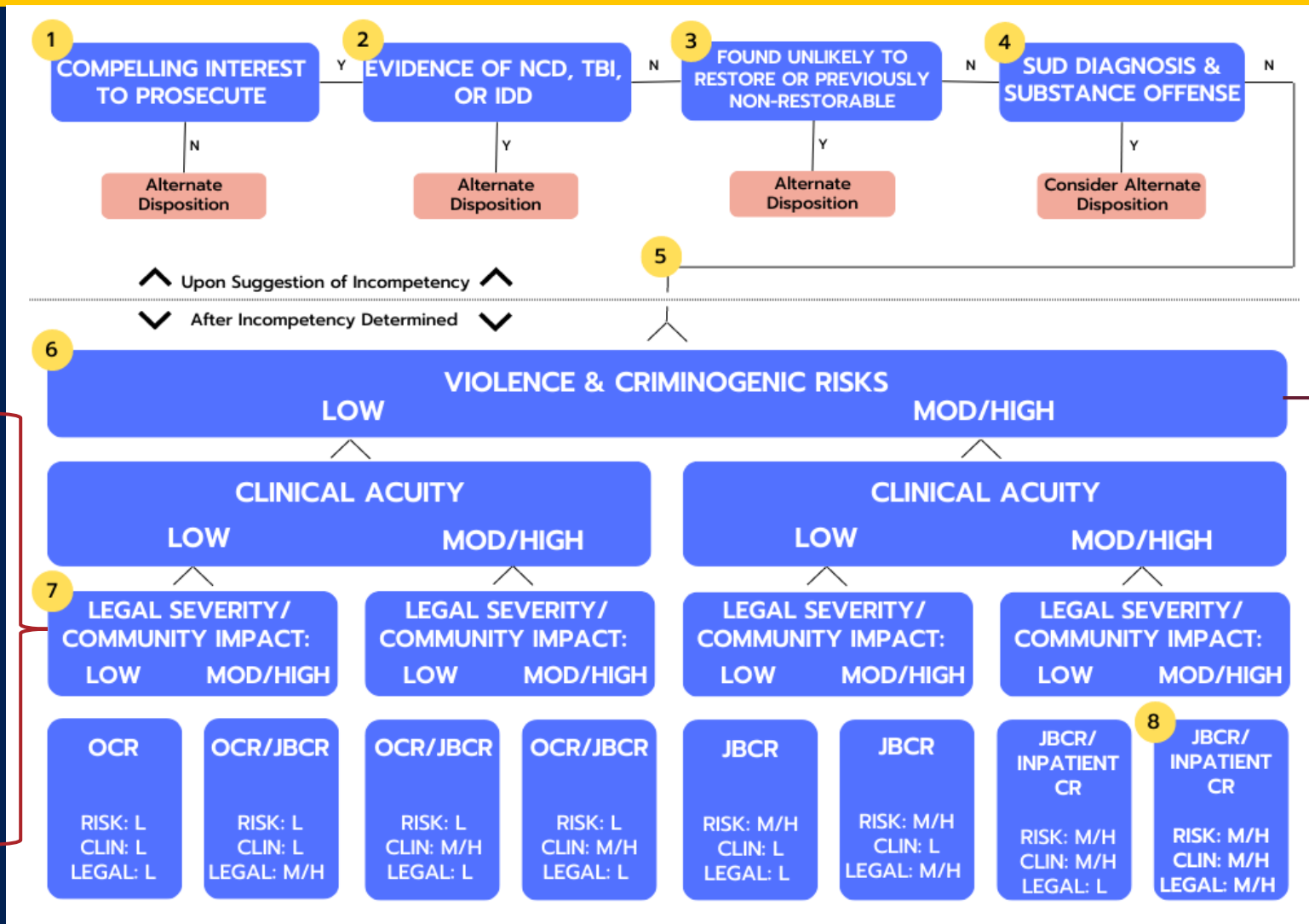


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Competency Restoration Decision-Tree

Consider:

- Violence risk and risk of recidivism
- Nature and severity of offense
- Potential impact to public safety if person returns to community



Use validated violence and criminogenic risk assessment instruments



Outpatient Competency Restoration

In accordance with the Texas CCP Chapter 46B, a person:

- ▶ Must be deemed incompetent to stand trial;
- ▶ Not be a danger to others;
- ▶ Can safely be treated on an outpatient basis with the specific objective of attaining competency; and
- ▶ Be eligible for bond.

An appropriate OCR program must be available.



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More cost-effective than traditional inpatient competency restoration

Promotes recovery and community stability and tenure

Reduces the time spent in custody

Reduces the impact to state hospital and forensic waitlists



Jail-Based Competency Restoration

In accordance with the Texas CCP Chapter 46B, a person:

- ▶ Must be deemed incompetent to stand trial; and
- ▶ Not be eligible for release on bail.



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A court must issue an order for the person to participate in JBCR.

Supports timely access to competency restoration services
May increase access to community-based services through LMHA connection

Minimizes the cost associated with forensic inpatient treatment in state hospitals

Reduces the impact to state hospital and forensic waitlists

Dismiss and Transfer

CCP 46B.004(e)

- At any time after the issue of incompetency is first raised, the court may dismiss all charges pending against the defendant.
- If there is evidence to support a finding of IST, the court may transfer to probate court for civil commitment under Chapter 46B, Subchapter F (Civil Commitment: Charges Dismissed)
- If the court does not elect to proceed under Subchapter F, the court shall discharge the defendant

Art. 46B.151

- (a) the court shall determine whether there is evidence that a person has a mental illness or is a person with an intellectual disability
- (b) If [there is such evidence], the court shall enter an order transferring the defendant to the appropriate court for civil commitment proceedings and stating that all charges pending against the defendant in that court have been dismissed



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Dismiss and Transfer

Art. 46B.151, continued

- (b) The court may order the defendant:
 - (1) detained in jail or any other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant will be committed to a mental health facility or residential care facility; or
 - (2) placed in the care of a responsible person on satisfactory security being given for the defendant's proper care and protection.
- (c) Notwithstanding Subsection (b), a defendant placed in a facility of the commission pending civil hearing under this article may be detained in that facility only with the consent of the head of the facility and pursuant to an order of protective custody issued under Subtitle C, Title 7, Health and Safety Code.
- (d) If the court does not detain or place the defendant under Subsection (b), the court shall release the defendant.



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When is Inpatient CR likely indicated

- Compelling interest to prosecute
 - Nature of the charged offense and aggravating factors
 - Concerns and safety of the alleged victims and community
- High risk of violence/criminogenic risk
- Moderate to high clinical acuity
 - Severe psychiatric symptomatology
 - Danger to self or others
 - Refractory symptomatology



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Case Example to Consider – Ms. Laura



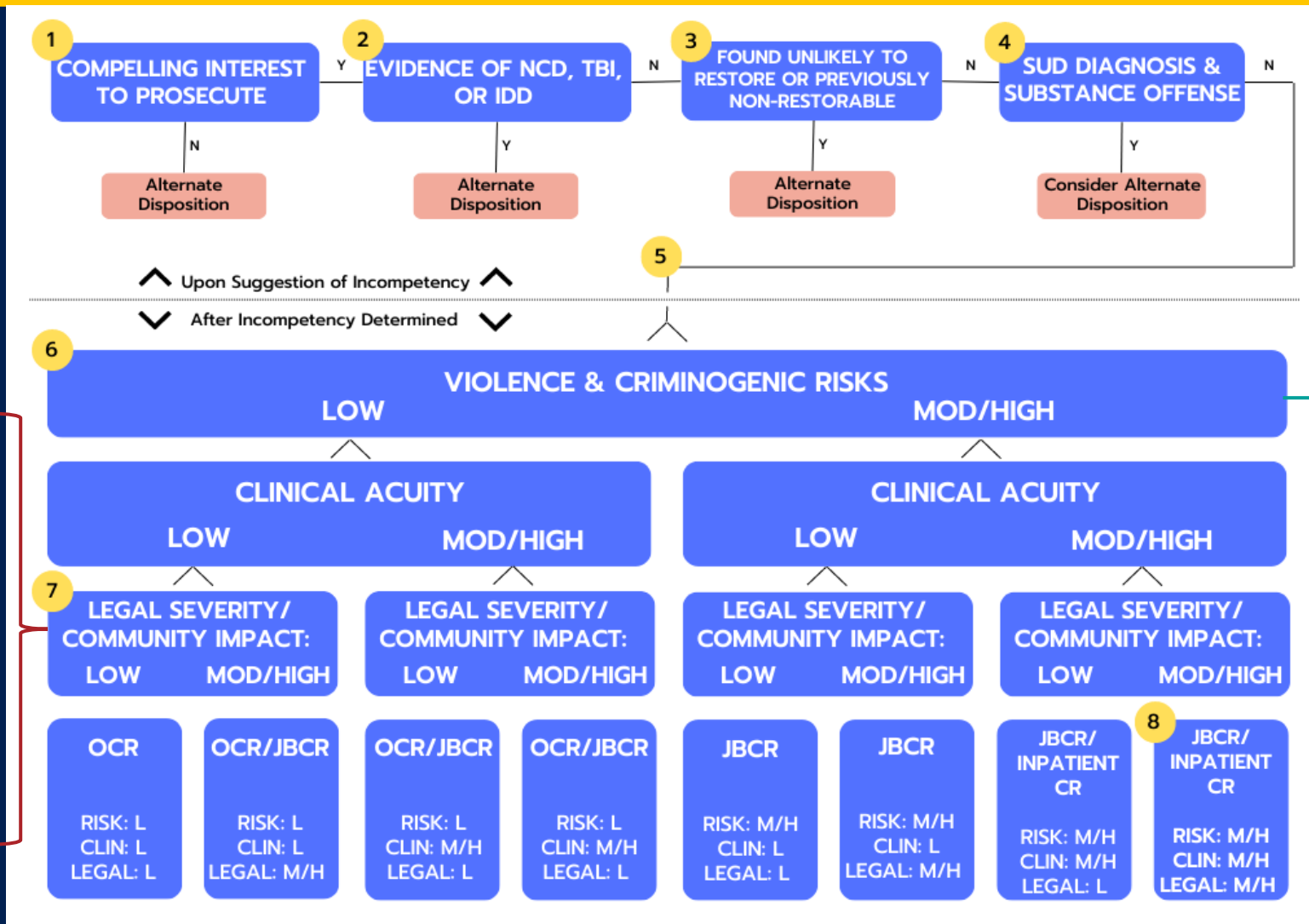
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Ms. Laura has pending charges of **Assault, Criminal Trespass, Criminal Mischief, and Resisting Arrest**. She typically lives with her daughter who is very supportive. She has several criminal trespass charges in her history. She also has a history of one psychiatric hospitalization as well as residential substance abuse treatment. She typically responds well to treatment. Ms. Laura is currently experiencing auditory hallucinations, disorganized thought process, and manic mood. She is eating regularly and is reporting getting about 3 hours of sleep per night. She is agreeable to take psychiatric medications. Regarding her pending charge, Ms. Laura is unable to stay on topic to rationally or logically discuss events leading to her arrest. She can be verbally aggressive if provoked but has not been physically aggressive for the last 3 months in jail. She reports she does not have legal counsel despite her attorney attempting to meet with her multiple times. She was recently opined incompetent to stand trial with the likelihood to regain trial competency in the foreseeable future.

Competency Restoration Decision-Tree

Consider:

- Violence risk and risk of recidivism
- Nature and severity of offense
- Potential impact to public safety if person returns to community



Use validated violence and criminogenic risk assessment instruments



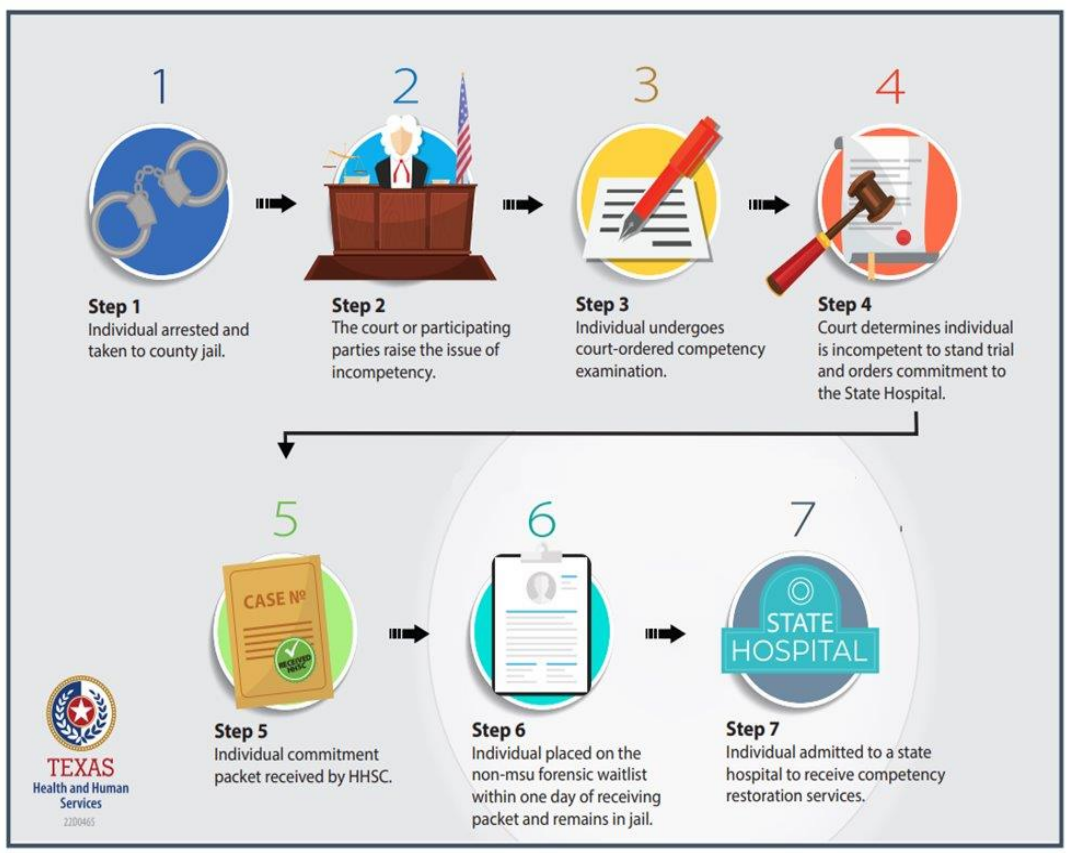
Case Example to Consider – Mr. Greg

Mr. Greg is charged with **Aggravated Assault with a Deadly Weapon (AADW)**. He has a prior criminal history including conviction of a different AADW and Aggravated Assault – Family Violence. He is currently homeless. He has a history of multiple inpatient psychiatric hospitalizations including for competency restoration. He is currently experiencing auditory and visual hallucinations as well as persistent delusions that he owns several properties across the U.S. He is only intermittently compliant with his prescribed medications and his symptoms are interfering with his ability to care for his own hygiene. He has reportedly not showered in weeks and has been observed multiple times drinking his urine. He is eating about half of the meals offered to him and has lost 15 lbs. in 2 months. He is sleeping 4 hours per night. Regarding his pending charge, he is unable to rationally or logically discuss the events leading to his arrest and does not interact with his defense attorney, stating he has “representation in London,” and that he suspects his attorney is against him. He does not want to discuss plea options in Texas as he claims he is “a citizen of London.” He was recently evaluated for trial competency and was opined incompetent with the likelihood to regain trial competency in the foreseeable future.



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Implications for 46B Commitment



Average Time Between Arrest to Notification of Commitment (46B.073 cases only)	
Non-MSU	MSU
286.32 days	342.28 days



Person is likely continuing to decompensate

- Access to medication
- Access to onsite mental health professionals

Locations

State Hospitals & Inpatient Mental Health Construction Projects

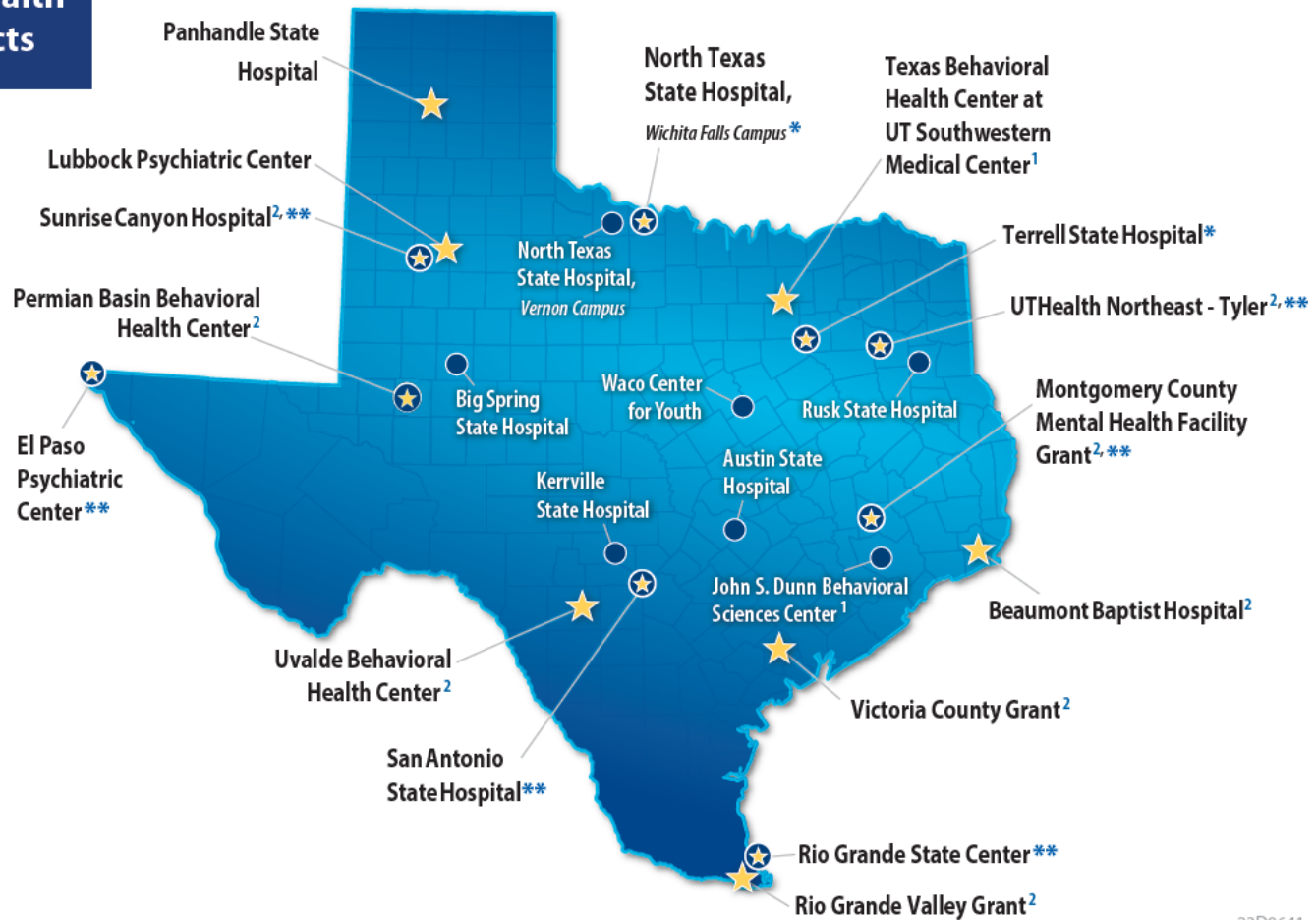
- Current state hospitals
- ★ New facility projects
- ★ Expansion and renovation projects

** Rebuilding existing hospital*

*** Expanding capacity*

¹ Owned by HHSC and operated by an academic partner

² Community mental health hospital





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Services	Facilities
Adult Civil	ASH, BSSH, EPPC, NTSH-WF, RGSC, RSH, SASH, TSH
Child and Adolescent	ASH, NTSH-WF, TSH
Adult Forensic	ASH, BSSH, EPPC, KSH, NTSH-V, NTSH-WF, RGSC, RSH, SASH, TSH
Adult Maximum Security	KSH, NTSH-V, NTSH-WF, RSH
Adolescent Forensic	NTSH-V
Transitional Adult Forensic (NGRIs)	KSH (primarily)
Veterans' Unit	TSH
Residential Adult	RSH, SASH
Residential IDD	RGSC
Adolescent Residential	WCY
Outpatient Public Health Clinic	RGSC

Inpatient Competency Restoration



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- The goal of any competency restoration program is to treat and stabilize the psychiatric symptoms that interfere with the individual's trial competency



- Inpatient competency restoration is designed to treat individuals with severe psychiatric symptoms whose needs may be better served in an inpatient state hospital setting versus an outpatient or jail-based setting

Inpatient Competency Restoration



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Inpatient Competency Restoration *Admission to Discharge*

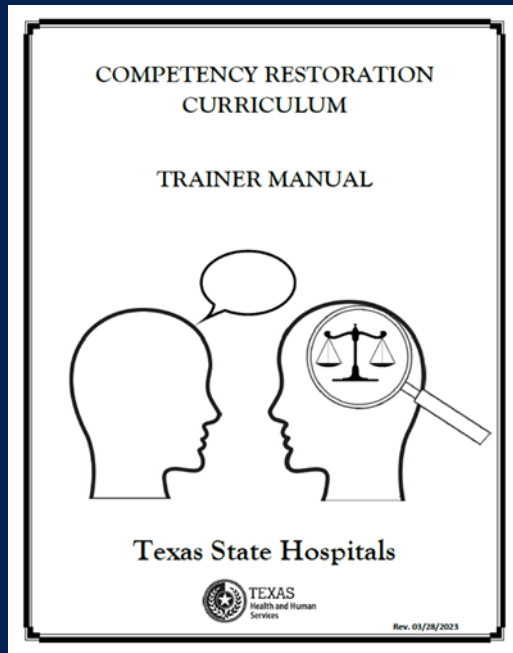
The goal of inpatient competency restoration is to treat and stabilize the psychiatric symptoms that interfere with a person's trial competency.



Competency Restoration Curriculum



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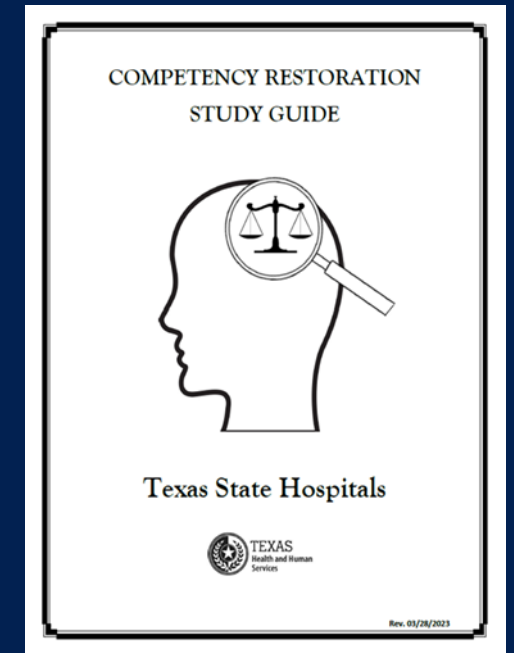


8-Module
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Manual

Patient
Study
Guide

Living
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Educational
Materials

Train-the-
Trainer
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Standardized Clinically Based Competency Screen (SCCS)



- SCCS is not a competency examination under Code of Criminal Procedure Articles 46B.024 and 46B.025
- SCCS is utilized in the hospitals and for those on the forensic waitlist

1. Are the patient's psychiatric symptoms sufficiently stable to:
 - a. discuss the case? Yes/No
 - b. engage in competency class? Yes/No
2. Does the patient know the charges? Yes/No
3. Does the patient know the potential consequences of the charges? Yes/No
4. Does the patient have a basic understanding of
 - a. the four plea options? Yes/No
 - b. a plea bargain? Yes/No
5. Does the patient have the ability to work with their attorney?
 - a. Does the patient think the attorney is on their side? Yes/No
 - b. Is the patient willing to share the details of their case? Yes/No
6. Do you observe any evidence of psychiatric symptoms (e.g. delusional belief, hallucinations, mania) that may interfere with the defendant's ability to assist their attorney or understand the court process? Yes/No

NOTE: If yes then the "Please Explain/Other Comments" box becomes mandatory.

Please Explain/Other Comments

Referral Recommendation

- Request consideration from Treatment Team for a formal competency evaluation
- Patient does not appear to be ready for a formal competency evaluation

46B: SH Commitment Outcomes



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- Trial Competency Evaluation Outcomes:
 - CST → Report to Court → Recommend Discharge
 - IST, likely to restore in the foreseeable future → Continue with CRS and treatment; request for extension as statutorily appropriate
 - IST, unlikely to restore in the foreseeable future → Report to Court
 - CCP, Art. 46B.102 civil commitment (charges pending)
- vs.
- CCP, Art. 46B.151 civil commitment (charges dismissed)
- BOTH following HSC, Title 7, Subtitle C, Chapter 574, commitment criteria
- Discharge if does not meet civil commitment criteria

Case Example – Mr. Greg

Mr. Greg has been at the state hospital for 100 days. He is currently compliant with his prescribed medication. His thought content is observed to be linear and logical, and his speech is still a bit rapid but of normal volume. He is no longer observed responding to internal stimuli but does report that he hears voices telling him “positive affirmations.” He reports his mood to be “good,” and his affect is congruent. He attends classes regularly and follows unit rules. He continues to have delusional thought content that he owns multiple properties and that he has a lawyer in London. However, he accepts that he also has representation in Texas for his pending legal case and must abide by Texas rules and statute. He is now able to discuss his legal case and understands potential consequences. He states he has spoken with his attorney and understands they are working with him for the best possible outcome. He has been opined competent.

Trial Competency is determined by the capacity of the defendant during 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
- (F) testify;



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Post State Hospitalization: Continuity of Care

Continuity of Care Standards

SH OP states the following shall be included in a discharge packet:

- Client Face Sheet;
- Physician Discharge Order Note;
- Discharge/Furlough Referral Form;
- Psychiatric Evaluation;
- Social Assessment;
- Physical Exam;
- Medical History Review of Systems Report;
- Diagnosis Input Report;
- Transition Record;
- Safety Plan;
- Lab Reports;
- Copy of Guardianship Papers, as applicable;
- Trial Competency Exam Report, as applicable; and
- Copy of Letter to the Court, as applicable.



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Return to Court

CCP Art. 46B.079

CCP Art. 46B.081

CCP Art. 46B.084

15 days before expiration of restoration period

As soon as practicable and no later than expiration of restoration period

1 business day after return
<1.2M or >4M: as soon as practicable

3 business days after court notice or later date as determined by court if good cause

<1.2M or >4M: as soon as practicable

Earlier of the 20th day after provider notice OR the 5th day after return to court

<1.2M or >4M: by the 20th day of provider notice

If found competent, no later than 14th day after court determination

<1.2M or >4M: as soon as practicable

Provider gives notice and report to court

Individual returned to court

Court notifies attorneys

Defense counsel evaluates competency

Court makes determination on competency

Criminal case resumes



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CCP Art. 32A.01(c) requires the criminal trial of a defendant who has been restored to competency under 46B.084 "shall be given preference over other matters before the court, whether civil or criminal."

Access to Medication

CCP Art. 46B.0825

Administration of Medication while in Custody of Sheriff

- (a) A sheriff or sheriff's deputy having custody of a defendant for transportation [...] shall, according to information available at the time and unless directed otherwise by a physician treating the defendant, ensure that the defendant is provided with the types and dosages of medication prescribed for the defendant.
- (b) To the extent funds are appropriated for that purpose, a sheriff is entitled to reimbursement from the state for providing the medication required by Subsection (a).
- (c) If the sheriff determines that funds are not available from the state to reimburse the sheriff as provided by Subsection (b), the sheriff is not required to comply with Subsection (a).



Rider 35 Program

- Continuity of Care for Individuals Returning to the Committing Court for Trial and Continuation of Medications
- As part of the Continuity of Care Plan, TCOOMMI shall provide up to a **90-day post-release supply of medication, related lab cost and prescriber cost** to defendants who, **after having been committed to a state mental health facility for restoration of competency under Chapter 46B, Code of Criminal Procedure, are being returned to the committing court for trial.**
- The up to 90-day supply of medication **shall be the same as prescribed in the Continuity of Care Plan prepared by the state mental health facility.**



[TCOOMMI PGP 0119 COC 46B Defendants Pre-Authorization Request Form Att A.xlsx](#)

Court-Ordered Medications after Jail Return

HSC Art. 574.110

If discharged with COMs (issued by Probate Court under HSC Art. 574.106) to await trial in a criminal proceeding, the order remains active

- **for 180 days after return to jail from State Hospital;**
- until the defendant is acquitted, is convicted, or enters a plea of guilty;
- or
- when the charges are dismissed

CCP Art. 46B.086

There is no expiration provision in CCP if the COM was issued by the criminal court under this section.



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Resources

Find these and more at <https://txbhjustice.org/>

- Texas Competency Restoration Guide
- Eliminate the Wait Toolkit
- SCCS One-Pager
- Court-Ordered Medications One-Pager
- Competency Restoration Process Flowchart for Courts



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Texas Competency Restoration Guide
March 2024

TEXAS Health and Human Services

ELIMINATE the WAIT

The Texas Toolkit
for Rightsizing
Competency Restoration Services

October 2021



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 (CFM) team suggests that an individual on the wait list may have clinically improved since the original Trial Competency Examination 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 Art. 46B.0755, sets forth the process by which the court determines if the defendant has been restored to competency.



Court-Ordered Psychoactive Medications and Credible Evidence of Immediate Restoration

for Persons Determined Incompetent to Stand Trial under the Texas Code of Criminal Procedure, Chapter 46B, and Awaiting Admission to a State Hospital

FACT



The wait time for most forensic state hospital admissions is several months in length.

FACT



The provision of adequate health care, including mental health care, is a detainee's constitutional right.

FACT



Obtaining a court order for psychoactive medications for an individual determined Incompetent to Stand Trial may not only reduce the person's psychiatric symptomatology, but often results in the defendant being restored to competency without the significant wait for a state hospital bed.

Statutory Authority to Court Order Psychoactive Medications¹

Probate Court

HSC, Chapter 574, Subchapter G, and Chapter 592, Subchapter E, delineate the provisions for the application and the order for the administration of psychoactive medications when the defendant presents a danger to self or others in the correctional facility as a result of a mental disorder or mental defect OR lacks capacity to make a decision regarding the administration of the proposed medication, and treatment with the proposed medication is in their best interest.

Criminal Court

CCP Art. 46B.086, delineates the provisions for a secondary process, after a probate court's denial, of seeking an order for the administration of psychoactive medications to defendants who do not meet the lack of capacity or dangerousness criteria under HSC Chapter 574, Subchapter G, or Chapter 592, Subchapter E; yet when the state still has a clear and compelling interest in the defendant obtaining and maintaining competency to stand trial.

Evidence of Restoration to Competency before State Hospital Admission

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.

¹ The Texas Judicial Commission on Mental Health (JCMH) has sample applications and orders available for this purpose on their website at <https://www.txbhjustice.org/technical-assistance/resources/forms.html>.



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Thank you!

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