Six Steps to Establishing a Jail In-Reach Program

TEXAS
Health and Human Services

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Acronym List

Acronym	Full Name
CCP	Texas Code of Criminal Procedure
CR	competency restoration
CFTs	county forensic teams
COMs	court-ordered medications
HSC	Texas Health and Safety Code
IST	incompetent to stand trial
IDD	intellectual or developmental disability
JBCR	jail-based competency restoration
JIRLC	Jail In-Reach Learning Collaborative
LMHA/LBHA	local mental health authority or local behavioral health authority
MI	mental illness
MOU	memorandum of understanding
MSU	maximum security unit
OCR	outpatient competency restoration

Acronym	Full Name
POC	point of contact
TLETS CCQ	Texas Law Enforcement Telecommunication Systems Continuity of Care Query

Establishing a Jail In-Reach Program

In September 2021, Texas Health and Human Services Commission (HHSC) launched the Jail In-Reach Learning Collaborative (JIRLC) to support county forensic teams (CFTs) in identifying strategies to actively monitor people in county jails who have been found incompetent to stand trial (IST) (known in statute as "46B" commitments) and are awaiting admission into a state hospital. Working with more than 30 counties across Texas, HHSC has identified six steps to launch a jail in-reach program:

1. Establish a County Forensic Team;
2. Review Local Waitlist Data;
3. Document Diversion and Competency Workflows and Processes;
4. Coordinate Regular Waitlist Monitoring Meetings;
5. Ensure Access to Medication; and,
6. Explore Competency Restoration Options.

The purpose of this brief is to summarize those steps and provide implementation examples from a range of counties across Texas.

Step One: Establish a County Forensic Team

The first step to developing a jail in-reach program is establishing a local CFT. It is important that the team includes key behavioral health and justice system stakeholders who have a role in the local competency restoration process. Typically, this will include judges, prosecutors, defense attorneys, the local mental health or behavioral health authority (LMHA or LBHA), jail administration, and jail medical providers. **Appendix A** includes helpful templates for thinking about team member roles and responsibilities. Another resource is the Eliminate the Wait Toolkit, which details key stakeholders and strategies they might pursue to help reduce the wait for inpatient competency restoration services.

County Spotlight: Bell County, TX

Bell County (Population 379,617)

The Bell County Forensic Team includes key stakeholders representing the LMHA, Central Counties Services, Bell County Jail, Bell County District Attorney's Office, Bell County Pretrial Services, Bell County Courts, and other key staff as needed.

Step Two: Review Local Waitlist Data

Once a CFT has been established, the team should look at county-specific waitlist trends, both over time and for persons currently on the waitlist for inpatient services. Throughout the JIRLC, HHSC works with CFTs to review and discuss waitlist data. **Appendix B** includes tables containing data elements for county teams to collect and analyze. Below is a list of questions that can be helpful in guiding these conversations.

1. What percentage of people on your waitlist have misdemeanor charges?
2. What are the average and median number of days someone is involved with the criminal justice system (incarcerated or on bond) from the time they are arrested to the first time HHSC is notified by the court that they are being ordered for inpatient competency restoration?
3. What are the most common charges for people on the non-maximum-security unit (non-MSU) waitlist?
4. What demographic trends do you see in forensic commitments over the past five years in your county?
5. What larger trends do you observe in the data?
6. Which partners' decisions influence this data? Be sure to think about the role of each partner.
7. Are there strategies that could be implemented to reduce the wait for inpatient competency restoration?

JIRLC counties utilize the Texas Health and Safety Code Section 614.017 to facilitate information sharing across county stakeholders. Some have also established Memorandums of Understanding (MOU) and Interlocal Agreements (IA) to support information sharing. Appendix C includes a list of Texas and federal privacy and information sharing provisions.

County Spotlight: Collin and Orange Counties

Collin County (Population 1.109 million)

While Collin County has an MOU with LifePath Systems LMHA, they primarily use the Health and Safety Code Section 614.017 to support information sharing. County stakeholders generally note minimal challenges with information sharing issues as all local stakeholders see the power in data and are dedicated to figuring out how to make it work to better serve people who have been found IST.

Orange County (Population 84,742)

Spindletop Center has IAs and MOUs in place with Orange County. These agreements include Spindletop Center, the Orange County Jail, and Orange County courts. These agreements originated when Spindletop began providing the Mental Health Deputy Program and through acquisition of the jail contracts. These agreements are long standing, renewed annually, and used to monitor the forensic waitlist in Orange County. The ongoing collaboration between these entities resulted in the development of a jail-based competency restoration program (JBCR) in January 2022.

Step Three: Document Diversion and Competency Workflows and Processes

In addition to reviewing data, CFTs should review and document diversion and competency workflows and processes. The workflow on the following page is helpful in guiding this conversation and prompting discussions on strategies implemented at each point in the competency restoration process. This may not reflect each county's exact process but can be used as a model for mapping. Additionally, Appendix D shows a Code of Criminal (CCP) Procedure IST flowchart.

County Spotlights: Galveston County, TX

Galveston County (Population 355,062)

The Galveston County Forensic Team, including the Galveston County Mental Health Docket and Court, the Galveston County District Attorney's Office, the Galveston County Sheriff's Office, the Galveston County Jail, Gulf Coast Center LMHA, the Galveston County Misdemeanor Mental Health Public Defender's Office, and the Galveston County Probate Court, worked to develop process maps for all competency matters, including:

- From point of a defendant's competency being called into question, through final disposition of their case
- Competency Exam tracking
- Incompetent to Stand Trial Waitlist
- Court-Ordered Medications
- Incompetent to Stand Trial – Not Likely to Restore
- Civil Commitment
- Jail-Based Competency Restoration

See **Appendix E** for copies of the Galveston County processes.

Diversion & Competency Workflow

Law Enforcement Role | **Court Role** | **Jail Role** | **LMHA/LBHA Role** | **State Hospital Role**

Law Enforcement (LE) interaction with a person who may have mental illness (MI), substance use disorder (SUD) or intellectual and developmental disability (IDD)

What programs exist to support crisis response and/or diversion in your community (e.g., Mobile Crisis Outreach Team, Mental Health (MH) Deputies, Co-Responder Team, CIT Training for LE, etc.)?

LE determine whether an individual is eligible for diversion under CCP 16.23

YES

Individual is diverted to treatment or issue is resolved on scene

What are the existing diversion options in your community (e.g., transport to a walk-in clinic, drop-off center, emergency department, etc.)? How are LE educated on diversion and service options? Are there regular meetings between LE, the Local Mental Health Authority (LMHA) or Local Behavioral Health Authority (LBHA) and other stakeholders?

NO

Individual is booked into jail and Texas Law Enforcement Telecommunication System Continuity of Care Query (TLETS CCQ) is run, per 37 Tex. Admin. Code (TAC) § 273.5

Is the TLETS CCQ run at every booking to determine MH history or IDD? Who runs the query?

MATCH FOUND

Jail medical or MH provider connects with the LMHA, LBHA, LIDDA, or State Hospital (SH) to determine past MI and IDD history, medication, treatment plan, etc.

Who does the jail contact when there is a CCQ match? What information is collected?

NO MATCH

Jail assesses MI and IDD needs, per 37 TAC § 273.5

Who conducts the initial screenings? Does the jail screen for MI, SUD, and IDD? What screening tools are used? If an individual screened positive, are additional assessments conducted? If yes, by whom and what tools?

POSITIVE SCREEN

If MI or IDD identified, jail informs Magistrate per CCP 16.22 of MI or IDD

Who sends the 16.22 reports for the jail? Who is on the receiving list? How does this report inform post-booking diversion and other legal options in your county? Is the 16.22 process used for both individuals with MI and IDD? Does your county consider opportunities to connect with defense counsel both prior to and after a 16.22 report is completed?

NEGATIVE SCREEN

No further action needed at this time.

Outpatient Civil Commitment (OCC) option with ability to dismiss upon completion per CCP 16.22(c)(5)

Which court handles OCCs? Is Assisted Outpatient Treatment (AOT) utilized? What are the eligibility criteria? Are risk assessments used to determine eligibility? Who are the treatment and service providers?

Mental Health Court Docket

Who is the presiding judge? What are the eligibility criteria? Are risk assessments used to determine eligibility? Who are the treatment and service providers? What is the program's capacity? What outcomes are you measuring to determine program success?

Bond determination, per CCP 17.032

Does your county utilize MH PR bonds? What types of bond conditions are imposed? Who performs the examination required under CCP 17.032(b)(2)?

Other diversion options

What are the other post-booking diversion and treatment options available in your county?

Interested in learning more?

HHSC has a free technical assistance center for resources to help communities reduce justice involvement for people with MI, SUD, and IDD.

txbhjustice.org

Bond determination, continued

ELIGIBLE FOR BOND

Released on MH PR bond with possible bond conditions

Is dismissal of charges considered if defendant is complying with bond conditions?

NOT ELIGIBLE FOR BOND

Staying in jail

What are the behavioral health services and supports available to the person inside the jail?

COMPETENCY RESTORATION SERVICES

Issue of competency can be raised at any point after charges have been filed. Steps below may apply to individuals who the court has determined are incompetent and likely to restore to competency in the foreseeable future (within timeframe allowed by Subchapter D).

Defendant is committed to appropriate facility for Inpatient, Jail-Based, or Outpatient Competency Restoration per CCP 46B.0711, 46B.072, 46B.073, 46B.091

Issue of competency can be raised at any point after charges have been filed. Steps below may apply to individuals who the court has determined are incompetent and likely to restore to competency in the foreseeable future (within timeframe allowed by CCP Chapter 46B, Subchapter D).

Outpatient Competency Restoration (OCR)

If your county has OCR, who are the key partners? What are the eligibility criteria? What services are provided? What opportunities exist to increase utilization of the program if underutilized or increase restoration rates? If your county does not have OCR, what would you need to make a case for piloting a program for your community?

Jail-Based Competency Restoration (JBCR)

If your county has JBCR, who are the key partners? What are the eligibility criteria? What services are provided? What opportunities exist to increase utilization of the program if underutilized or increase restoration rates? If your county does not have JBCR, what would you need to make a case for piloting a program for your community?

Inpatient Competency Restoration

Are you closely monitoring people waiting in jail for inpatient admission? Are they taking medication? If not, have you considered court-ordered medications (COMs)? Upon admission, are you communicating with the state hospital to receive updates on the patient? Do the prosecutor and defense counsel work on the case while waiting for a patient to restore to competency?

RESTORED

Court proceeds with criminal case

Does the court set cases preferentially when an individual has been restored per CCP. Art. 32A.01? If the individual is returned to the jail, does the jail work with the SH to determine treatment and medications necessary to maintain competency until court hearing?

NOT RESTORED

Court discharges defendant and charges dismissed

Is this option utilized for individuals who may not be likely to restore or have a traumatic brain injury or neurocognitive disorder with no co-occurring MI? Does the court/jail coordinate with the LMHA or LBHA for reentry services? Is there any in-reach by the LMHA or LBHA before the individual is released? What reentry services are available?

Proceed under CCP Ch. 46B, Subchapter E: criminal court conducts commitment hearing and charges remain pending

Does the court consider whether outpatient mental health services may be appropriate? Does the county utilize CCP Art. 46B.1055 to modify the inpatient order to an outpatient treatment program? Does the LMHA or LBHA collaborate with the SH on 46B.1055 modifications? Does the court collaborate with the LMHA or LBHA and SH to determine what services and supports are needed to release the individual back to the community? If the individual no longer meets civil commitment criteria, does the court release the individual to the community?

Proceed under CCP Ch. 46B, Subchapter F: criminal court dismisses charges and, if evidence of MI or IDD, transfers case to the appropriate court for civil commitment

Is this option utilized in your county? Does the criminal court coordinate transfer with the probate court? If the individual is being released back to the community, does the court/jail coordinate with the LMHA or LBHA for reentry services? Is there any in-reach by the LMHA or LBHA before release? What reentry services are available prior to commitment and admission to outpatient or inpatient mental health services?

DATA & INFORMATION SHARING

Does your county utilize Health and Safety Code section 614.017 to facilitate information sharing across stakeholders? Do you utilize MOUs to share data? Have you contemplated aggregate information sharing to track county trends as well as individual level data to support continuity of care?

WAITLIST MONITORING MEETINGS

Do you have a system to regularly monitor the status of all individuals who have been found IST, in jail, out on bond, or receiving restoration services through OCR, JBCR, or inpatient. Many counties facilitate weekly meetings with jail medical, jail admin, the LMHA or LBHA, courts, and others to discuss cases. Topics include health and case updates, potential evidence of restoration, medication compliance and OCR or JBCR eligibility.

ACRONYM GUIDE

AOT: Assisted Outpatient Treatment
CCP: Code of Criminal Procedure
CCQ: Continuity of Care Query
CIT: Crisis Intervention Team
COMs: court-ordered medications
IDD: Intellectual and Developmental Disabilities
IST: Incompetent to Stand Trial
JBCR: Jail-Based Competency Restoration
LE: Law Enforcement
LIDDA: Local Intellectual & Developmental Disability Authority
LBHA: Local Behavioral Health Authority
LMHA: Local Mental Health Authority
MI: Mental Illness
MH: Mental Health
OCC: Outpatient Civil Commitment
OCR: Outpatient Competency Restoration
PR: Personal Recognizance
SH: State Hospital
SUD: Substance Use Disorder
TAC: Texas Administrative Code
TLETS: Texas Law Enforcement Telecommunications System

Step Four: Establish Regular Waitlist Monitoring Meetings

Another critical element to any Jail In-Reach program is the establishment of regular CFT meetings to actively monitor persons found IST in jail and regularly review county data and processes. While these meetings look different in every county based on stakeholders, available resources, primary coordinator (*e.g.,* the courts, LMHA or LBHA, or jail) and target population [only people found IST or all persons who screen positive for Mental Illness (MI) or Intellectual or Developmental Disability (IDD)], it is important that people are meeting regularly, reviewing policies, processes, and individual cases to continuously identify opportunities to better serve people in their care.

County Spotlights: Lubbock County, TX

Lubbock County (Population 314,451)

The Lubbock County Care Team at the Lubbock County Detention Center is an interdisciplinary team consisting of security staff, reentry staff, rehabilitation staff, medical staff, and mental health staff contracted through StarCare, the LMHA. They meet weekly to discuss the most acute cases in the facility including judicial status updates, medication compliance, competency restoration enrollment and waitlist positions, behavioral treatment plans, peer support needs, and reentry plans. The Care Team is also committed to collecting data and measuring success of current efforts, focusing on length of stay, time between arrests, and recidivism.

County Spotlights: Collin County, TX

Collin County (Population 1.109 Million)

Collin County hosts weekly medical meetings to problem solve, manage their waitlist, and support discharge planning. Medical meeting stakeholders include the Collin County District Attorney's Office, Collin County Jail Medical and Correctional Staff, defense attorneys, the Jail In-Reach point of contact (POC) and LifePath Systems, the LMHA. Collin County also has a designated single POC to support communication and accountability across their local forensic team. The primary responsibility of the POC is to manage competency cases and keep them moving. The POC does this by maintaining a list of competency cases and the status of each case and serving as a resource to all forensic team members.

Step Five: Ensure Access to Medication

The provision of behavioral health services and medications while a person is incarcerated may increase the likelihood that a person's symptoms improve and reduce the potential for mental health deterioration. Per Health & Safety Code (HSC) section 574.106(a-1)(2)(B) and CCP Art. 46B.086(a)(2)(A), court-ordered medications (COMs) can be considered for a defendant who has remained in jail for more than 72 hours following a finding of IST, but before a transfer to a facility or program for competency restoration services. COMs can also be considered for defendants after being restored to competency at a facility while they await further criminal proceedings per CCP Art. 46B.086(a)(2)(C).

Obtaining a court order for psychoactive medications for a person determined IST may not only reduce the person's psychiatric symptomatology but can result in the defendant being restored to competency without the need for a state hospital bed.

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 can order an examination of the defendant and determine if the defendant has been restored to competency.

When an inpatient hospital stay is necessary, communication between the state hospital, jails, and LMHAs or LBHAs is key to reducing risk of relapse after hospital discharge. Some best practices for LMHAs or LBHAs include:

- Having LMHA or LBHA staff meet with the person prior to discharge;
- Conducting intake assessments prior to discharge;
- Attending and engaging in a person's treatment team meetings throughout the admission, particularly as discharge approaches;
- Ensuring information about ongoing needs and interventions are shared; and
- Sharing information and collaborating with state hospitals regarding medication availability and access as soon as possible to decrease possible disruption to a person's treatment upon discharging from state hospital.

Probate Court
HSC, Chapter 574, Subchapter G, and Chapter 592, Subchapter F, 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 MI or IDD 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 an application for court-ordered medication, 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 F.

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 that the court can order an examination of the defendant and determine if the defendant has been restored to competency.

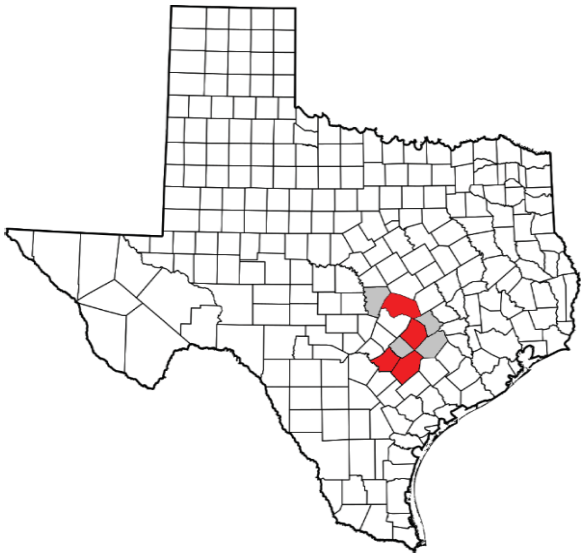
Appendix G includes helpful resources for establishing court-ordered medications in your county.

What is Rider 35?

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.

Court-Ordered Medications Spotlight: Bastrop, Gonzalez, Guadalupe, and Williamson Counties



Bluebonnet Trails, Catchment Area 5

Bluebonnet Trails leverages the power of relationship building and education to utilize the COMs process for four counties in its catchment area. Bluebonnet's Director of Forensic Services provides education and outreach to jails about the process and grows relationships within the courts and jails to make sure the process is efficient. As a result of this ongoing work, several people have been removed from the forensic inpatient waitlist for restoration and jail administrators have observed less resistance from inmates.

Step Six: Explore Competency Restoration Options

Upon reviewing local processes, the jail in-reach program implementation often facilitates more in-depth conversations around the county's utilization of competency restoration services. People determined IST may receive competency restoration (CR) services in a state hospital or contracted facility, State Supported Living Center, or if available, in an Outpatient Competency Restoration (OCR)[1] or Jail Based Competency Restoration (JBCR)[2] program. Providing alternatives to inpatient competency restoration can prevent a person from waiting in jail for an available inpatient bed. **Table 1** outlines the different types of CR programs in Texas.[3] **Appendix F** provides questions for CFTs to think through regarding these different types of CR programs.

Table 1. Texas Competency Restoration Programs

Type of Competency Restoration	Inpatient Competency Restoration	Outpatient Competency Restoration	Jail-Based Competency Restoration
Physical Location	State hospital or contracted facility	Community or residential	In jail in 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 • Possibility to request a 60-day extension.	• Class B Misdemeanor – up to 60 days • Class A Misdemeanor or Felony – up to 120 days • Possibility to request a 60-day extension.	• Misdemeanor – up to 60 days • Felony – 60 days + may continue to provide services for authorized period unless inpatient or OCR slot available. • Possibility to request a 60-day extension.

[1] Per CCP Art. 46B.0711(d)(1) and 46B.072(d)(1), OCR programs can be administered by a community center or any other entity that provides competency restoration services.
[2] Per CCP Art. 46B.091 and 26 TAC §307.103 a county or counties jointly may develop and implement a JBCR program by contracting with the Local Mental Health Authority and Local Behavioral Health Authority.
[3] HHSC's base performance contract does not include funding for OCR or JBCR. Some LMHAs and LBHAs have additional state and or local funding for these services.

Inpatient Competency Restoration
Texas Health and Human Services Commission operates 10 state hospitals, as well as John S. Dunn Behavioral Sciences Center, and contracts with three additional facilities to provide inpatient competency restoration (CR) services.

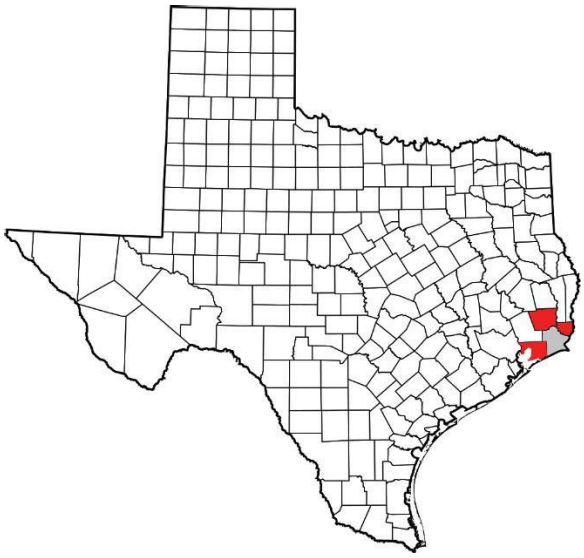
Outpatient Competency Restoration
OCR programs provide community-based CR services, which include mental health and substance use treatment services, as well as competency restoration education for persons found IST. As of November 2023, HHSC provides funding to 15 of the 39 LMHAs and LBHAs for OCR programs.

Jail-Based Competency Restoration
JBCR are services provided to persons in jail with mental health or co-occurring psychiatric and substance use disorders. Services include behavioral health treatment services and competency education for people found IST. As of November 2023, HHSC provides funding to 14 local mental health authorities (LMHA) and local behavioral health authorities (LBHA) for JBCR programs. Four LMHAs have JBCR programs that are not funded by HHSC: Center for Health Care Services, Gulf Coast Center, Nueces Center, and Spindletop Center (featured below).

JBCR Spotlight: Chambers, Hardin, and Orange Counties

Spindletop Centers, Catchment Area 31

Spindletop Centers created their first JBCR in January 2022, partnering with sheriffs and the judiciary to achieve the shared goals of treating vulnerable inmates while reducing wait times and costs. Their model adapts what larger counties are doing into a sustainable and affordable solution for much smaller jails through a fee-for-service approach.



Appendices

Appendix A: Identifying Key Roles and Responsibilities Across County Forensic Teams

Points of Contact

Provide the names, responsible agencies, titles, and contact information of the staff who serve as points of contact for the County Forensic Team.

Contact	Agency	Email	Telephone	Role

Responsibilities

Clearly identify the responsibilities of each contact for the County Forensic Team. Responsibilities could include activities such as convening monthly meetings; identifying needed processes and communication channels; gathering data and completing monthly data worksheets; and developing a communications plan.

Contact	Jail In-Reach Responsibilities

Appendix B: Data Review

Building a data-collection plan and measuring program performance is needed to help make data informed decisions. County Forensic Teams should work togetherto develop a plan to assess trends related to the maximum and non-maximum-security waitlists and incorporate ongoing data collection and information sharing into local in-reach practices.

Historic Data Review	Non-MSU	MSU
Jail population		
• 2018		
• 2019		
• 2020		
• 2021		
• 2022		
• 2023		
Number of people on the waitlist		
• 2018		
• 2019		
• 2020		
• 2021		
• 2022		
• 2023		
For people admitted in the designated year, average # of days from arrest to state hospital notification		
• 2018		
• 2019		
• 2020		
• 2021		
• 2022		
• 2023		
For people admitted in the designated year, average # of days from placement on the waitlist (state hospital notification) to admission to state hospital		
• 2018		
• 2019		
• 2020		
• 2021		
• 2022		
• 2023		

Monthly Data Review	#
Total people on the Non-MSU waitlist:	
• Average, median, and max wait: arrest to clearinghouse notification of order	
• Average, median, and max wait: placement on the waitlist to current date	
Total people on the MSU waitlist:	
• Average, median, and max wait: arrest to clearinghouse notification of order	
• Average, median, and max wait: placement on the waitlist to current date	
Number of felony cases where the court ordered an initial competency evaluation during the previous month	
Number of misdemeanor cases where the court ordered an initial competency evaluation during the previous month	
Number of people added to the waitlist during the previous month	
Number of people removed from the waitlist during previous month:	
• Competency restored in jail	
• Charges dismissed	
• Medical issues	
• Alternate dispositions	
• Admitted to state hospital for inpatient competency restoration services	
Number of people admitted to JBCR (if applicable) during the previous month.	
Number of people found CST in JBCR (if applicable) during the previous month.	
Number of people admitted to OCR (if applicable) during the previous month.	
Number of people found CST in JBCR (if applicable) during the previous month.	
Non-MSU waitlist by offense type:	
• Misdemeanor A	
• Misdemeanor B	
• State Jail Felony	
• Felony 1	
• Felony 2	
• Felony 3	
Top three charges on the Non-MSU waitlist	
MSU waitlist by offense type:	
• State Jail Felony	
• Felony 1	
• Felony 2	
• Felony 3	
Top three charges on the MSU waitlist	
Number of people who are authorized to receive any level of care following release over the last month	
• For those authorized to receive follow-up care from the LMHA, what is the amount of time between release and first appointment?	

Additional Data to Consider for Regular In-Reach Meetings	#
Number of people currently hospitalized on 46B.073 commitments (and the commitment timeframes)	
Number of people currently hospitalized on 46B.102 commitments (and the commitment timeframes)	
Number of people in jail awaiting inpatient competency restoration services on the last day of the month	
• By person, number of days from arrest to order for competency evaluation	
• Number of people started on court-ordered medication for the month	
• By person, number of days spent in jail (cumulative to present) for current charges/cause number	
• By person, number of days between state hospital notification to committing court and discharge from state hospital	
• By person, number of days between state hospital return and next court date	
By person, number of days between court date upon return from state hospital and case disposition	
Number of people found CST at the state hospital who were again found IST on the same charge/case prior to court disposition	
Number of people removed from the waitlist due to a finding of competency based on evidence of immediate restoration while in jail	
Number of competency re-evaluations completed by state hospital Waitlist In-Reach Team	
Waitlist broken down by race, age, and gender	
Number of people authorized for LMHA services upon release from state hospital or jail after being found CST	
• Average amount of time between release and first follow-up psychiatric appointment	

Other data that could be helpful to collect that could be useful in understanding the prevalence of people with mental illness in jails:

- Number of TLETS CCQ probable and exact matches
- Number of positive mental health screenings at jail booking
- Number of mental health assessments completed for people who screen positive
- Number of 16.22 reports submitted
- Number of people with MI who receive reentry planning prior to release
- Number of people referred to LMHA after release
- Average time between release and first appointment for people referred
- Number of people who were homeless at the time of offense

Appendix C: Texas and Federal Privacy and Information Sharing Provisions

Mental Health Record Protections

Health and Safety Code Chapter 533:
Section 533.009. EXCHANGE OF PATIENT RECORDS.
(a) HHSC facilities, local mental health authorities, community centers, other designated providers, and subcontractors of mental health services are component parts of one service delivery system within which patient records may be exchanged without the patient's consent.

Health and Safety Code Chapter 611:
Section 611.004 AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION OTHER THAN IN JUDICIAL OR ADMINISTRATIVE PROCEEDING.
(a) A professional may disclose confidential information only:
(1) to a governmental agency if the disclosure is required or authorized by law;
(2) to medical, mental health, or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient;
(3) to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);
(4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;
(5) to the patient's personal representative if the patient is deceased;
(6) to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;
(7) to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;
(8) in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c);
(9) to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody;
(10) to an employee or agent of the professional who requires mental health care information to provide mental health care services or in complying with statutory, licensing, or accreditation requirements, if the professional has taken appropriate action to ensure that the employee or agent:
(A) will not use or disclose the information for any other purposes; and

(B) will take appropriate steps to protect the information; or

(11) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code.

(a-1) No civil, criminal, or administrative cause of action exists against a person described by Section 611.001(2)(A) or (B) for the disclosure of confidential information in accordance with Subsection (a)(2). A cause of action brought against the person for the disclosure of the confidential information must be dismissed with prejudice.

(b) Personnel who receive confidential information under Subsection (a)(3) may not directly or indirectly identify or otherwise disclose the identity of a patient in a report or in any other manner.

(c) The exception in Subsection (a)(8) applies only to records created by the state hospital or state school or by the employees of the hospital or school. Information or records that identify a patient may be released only with the patient's proper consent.

(d) A person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information. This subsection does not apply to a person listed in Subsection (a)(4) or (a)(5) who is acting on the patient's behalf.

Health and Safety Code Chapter 614

Section 614.017 EXCHANGE OF INFORMATION.

(a) An agency shall:

(1) accept information relating to a special needs offender or a juvenile with a mental impairment that is sent to the agency to serve the purposes of continuity of care and services regardless of whether other state law makes that information confidential; and

(2) disclose information relating to a special needs offender or a juvenile with a mental impairment, including information about the offender's or juvenile's identity, needs, treatment, social, criminal, and vocational history, supervision status and compliance with conditions of supervision, and medical and mental health history, if the disclosure serves the purposes of continuity of care and services.

(b) Information obtained under this section may not be used as evidence in any juvenile or criminal proceeding, unless obtained and introduced by other lawful evidentiary means.

(c) In this section:

(1) "Agency" includes any of the following entities and individuals, a person with an agency relationship with one of the following entities or individuals, and a person who contracts with one or more of the following entities or individuals:

(A) the Texas Department of Criminal Justice and the Correctional Managed Health Care Committee;

(B) the Board of Pardons and Paroles;

(C) the Department of State Health Services;

(D) the Texas Juvenile Justice Department;

(E) the Department of Assistive and Rehabilitative Services;
(F) the Texas Education Agency;
(G) the Commission on Jail Standards;
(H) the Department of Aging and Disability Services;
(I) the Texas School for the Blind and Visually Impaired;
(J) community supervision and corrections departments and local juvenile probation departments;
(K) personal bond pretrial release offices established under Article 17.42, Code of Criminal Procedure;
(L) local jails regulated by the Commission on Jail Standards;
(M) a municipal or county health department;
(N) a hospital district;
(O) a judge of this state with jurisdiction over juvenile or criminal cases;
(P) an attorney who is appointed or retained to represent a special needs offender or a juvenile with a mental impairment;
(Q) the Health and Human Services Commission;
(R) the Department of Information Resources;
(S) the bureau of identification and records of the Department of Public Safety, for the sole purpose of providing real-time, contemporaneous identification of individuals in the Department of State Health Services client data base; and
(T) the Department of Family and Protective Services.

Substance Use Disorder (SUD) Records Protections:

42 CFR Part 2. CONFIDENTIALITY OF SUBSTANCE USE DISORDER PATIENT RECORDS

42 CFR Part 2 Subpart C. DISCLOSURES WITH PATIENT CONSENT

42 CFR Part 2 Subpart D. DISCLOSURES WITHOUT PATIENT CONSENT

42 CFR Part 2 Subpart E. COURT ORDERS AUTHORIZING DISCLOSURE AND USE

Appendix D: Code of Criminal Procedure – 46B Flowchart

Code of Criminal Procedure – Chapter 46B
Incompetency to Stand Trial (IST) – "Simplified Version"

46B Subchapters

Exits from 46B

Once a Defendant is determined **IST** there should also be a finding by the court whether the person is ***likely restorable to competency in the foreseeable future*** (within the timeframe allowed by Subchapter D) **[46B.025(b)(2), 46B.071(b)]**

Restoration Likely

Subchapter D "Restoration Commitment"

If Court Determines **Defendant (D)** is ***likely restorable in foreseeable future*** **(within timeframe allowed by Subchapter D)** then **D** is **committed** to appropriate facility for ***In*patient, *Jail*-Based** *or* ***Out*patient** restoration of D's competency **[46B.071, 46B.072, 46B.073, 46B.091]**

D is restored to competency within the period allowed in Subchapter D

Resume criminal proceedings

D not restored

Charges **dismissed**

Charges **not dismissed**

Subchapter E "Civil Commitment; Charges Pending"

Criminal court conducts **civil commitment** hearing (*in*patient or *out*patient) 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 (ID)** are conducted pursuant to **Subtitle D**, Title 7, Health and Safety Code **(Persons with Intellectual Disability Act "PIDA")** **[46B.103(b)]**

Does **D** meet **MH** or **PIDA** commitment criteria?

No

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

Yes

D is (re)committed for the **period authorized** under **MH Code** (IDD/**PIDA** commitments do not have an annual expiration) up to maximum allowed under **[46B.0095]** [see **NOTE**]

Redetermination of **D's** competency on the request of any party, the court, or the head of facility **[46B.108-46B.110]**

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

Court shall holds hearing if a party **disagrees** that **D** is **competent** (competency is presumed if facility submits opinion of D restored; must be overcome at hearing by prep. of the evidence) **[46B.113]**

Restored

Not Restored

Resume criminal proceedings

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

Subchapter F "Civil Commitment; Charges Dismissed"

Criminal court determines if there is evidence of mental illness or intellectual disability **[46B.084(f), 46B.071(b)(1), 46B.004(e), 46B.151(a)]**

Evidence of mental illness or intellectual disability

Pursuant to **Subchapter F,** criminal court **transfers D's** case to **civil court** with probate jurisdiction for civil commitment under the **MH Code** or **PIDA** **[46B.151(b)]**

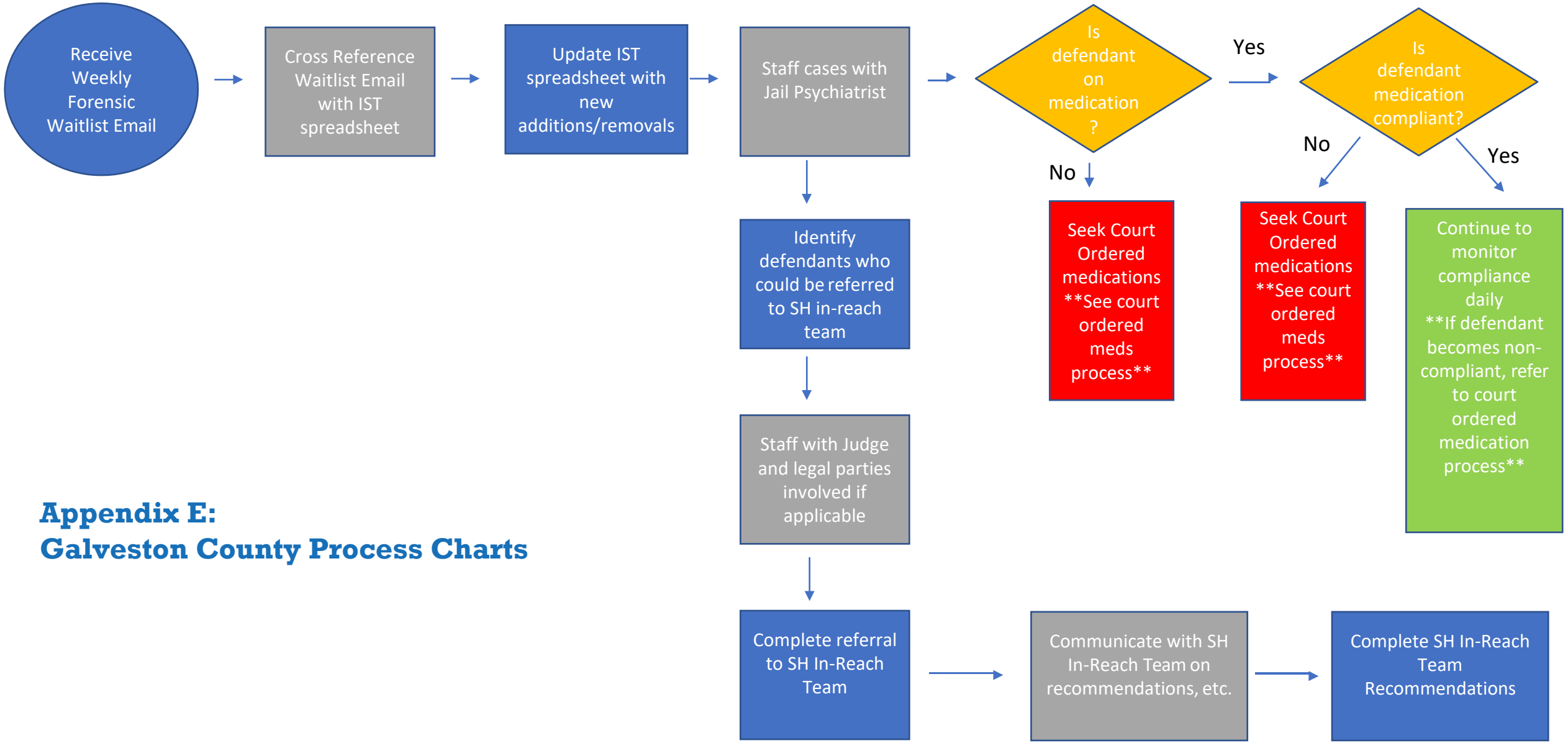
No evidence

D released **[46B.151(d)]**

NOTE-The facility must notify the committing court if they determine that **D** on **Subchapter E commitment** should be **released** due to **[46B.107(a-c)]**:

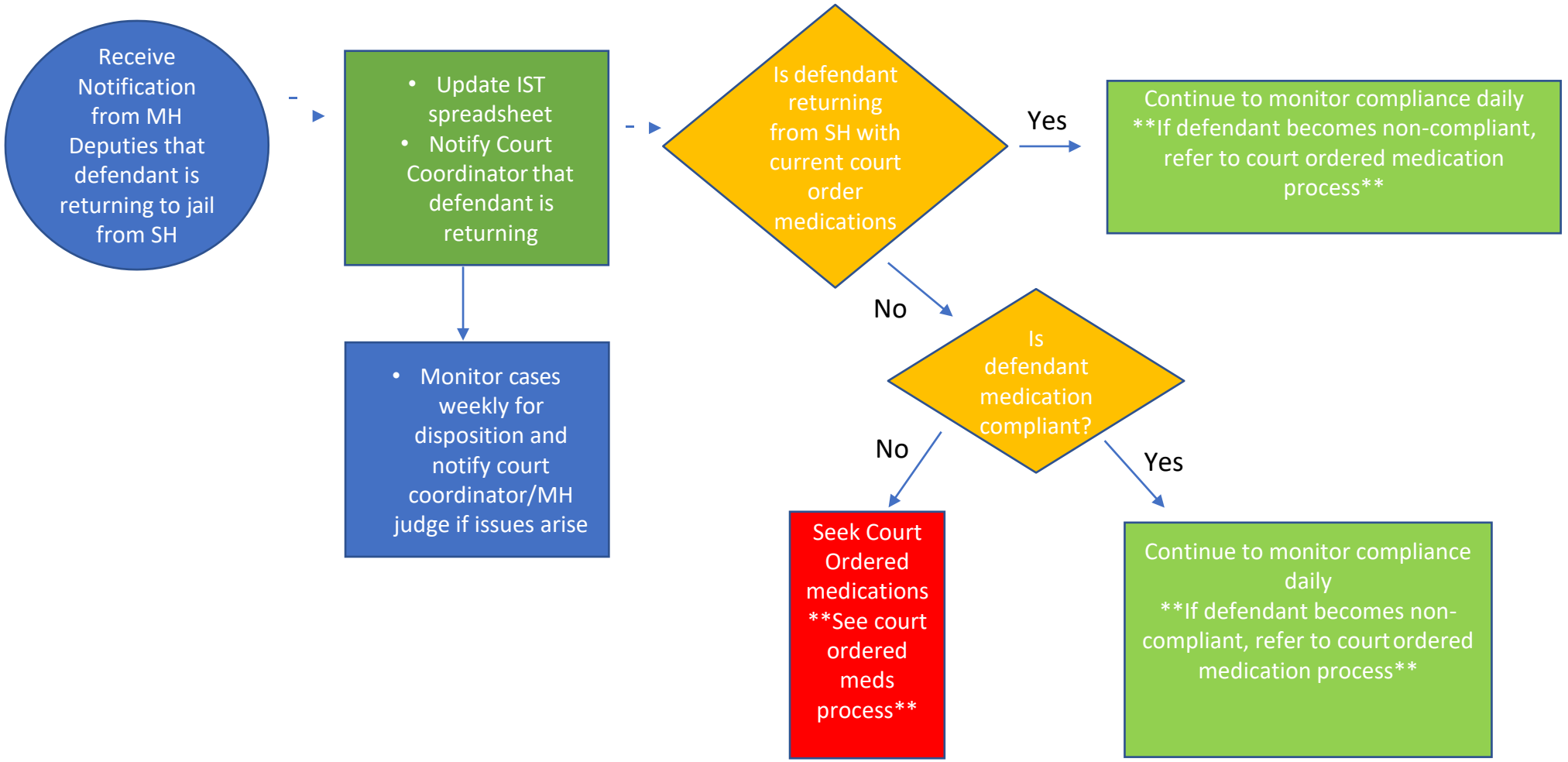
- **expiration of D's commitment** under the Mental Health Code;
- determination **D** doesn't meet criteria under **MH Code/PIDA;**
- **D** has "Timed Out" via Maximum Term of Commitment **[46B.0095]**

Incompetent to Stand Trail (IST) Monitoring (Before SH Admission)

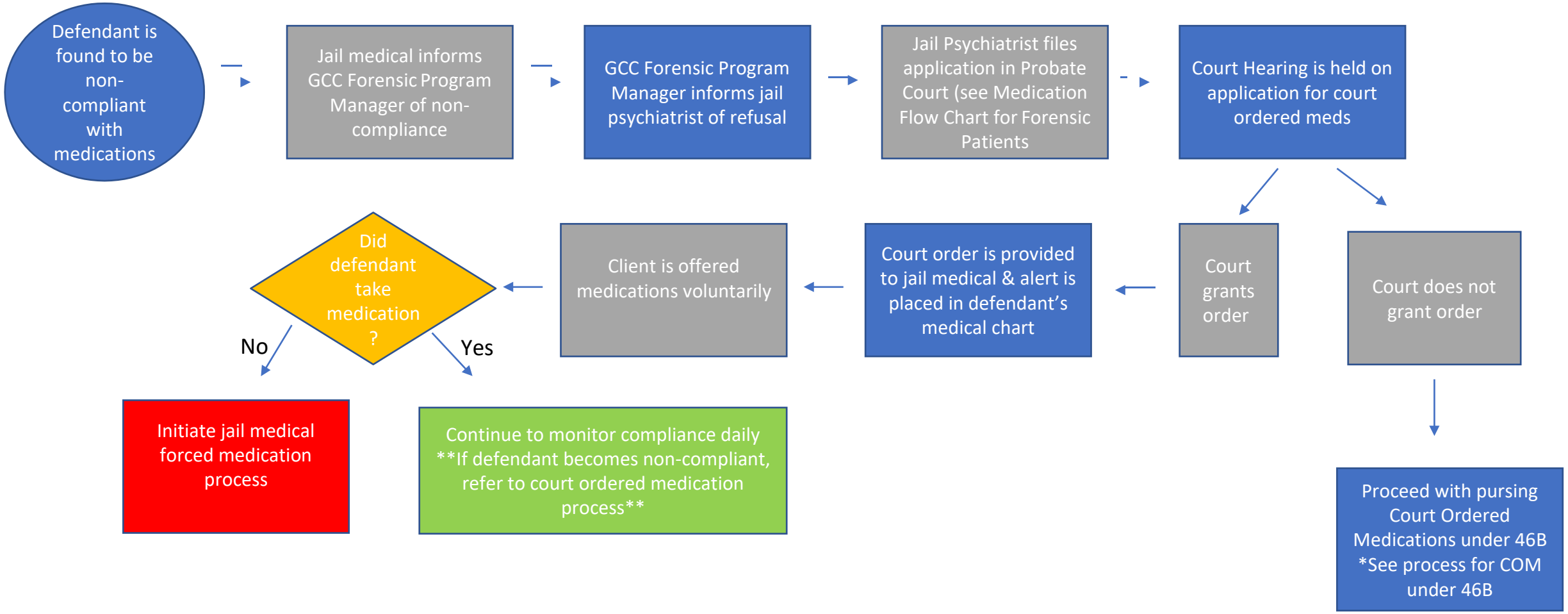


Appendix E:
Galveston County Process Charts

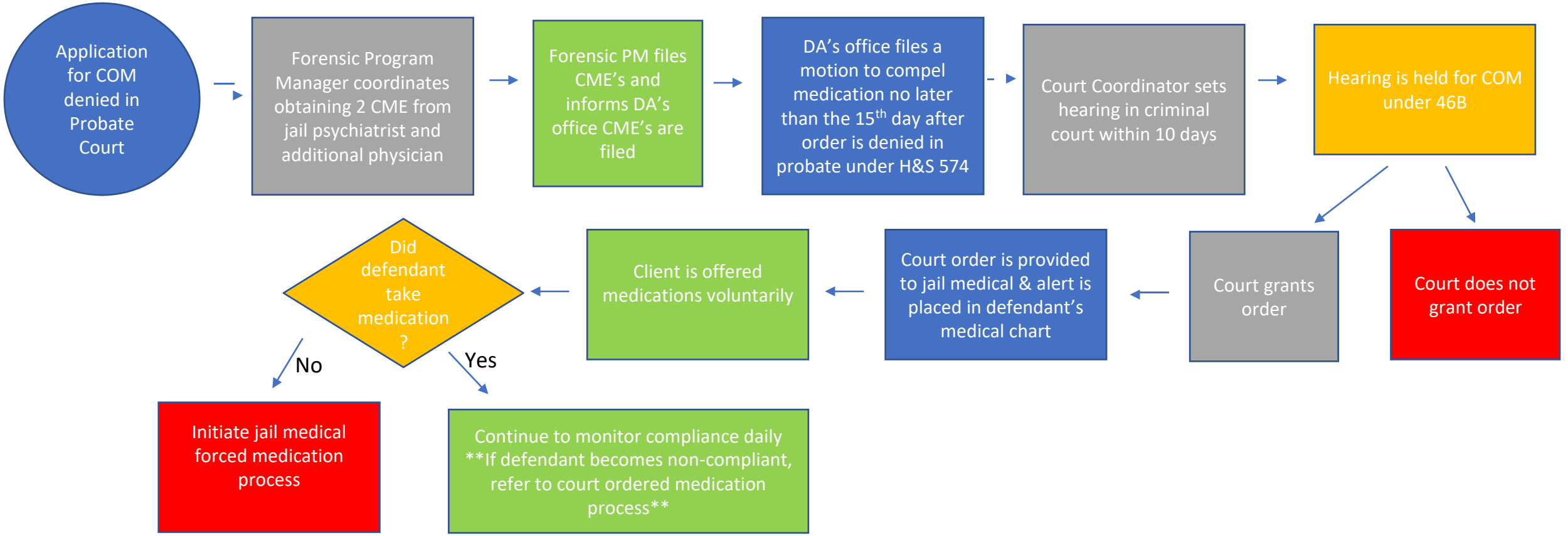
Incompetent to Stand Trail (IST) Monitoring (Return from SH Admission)



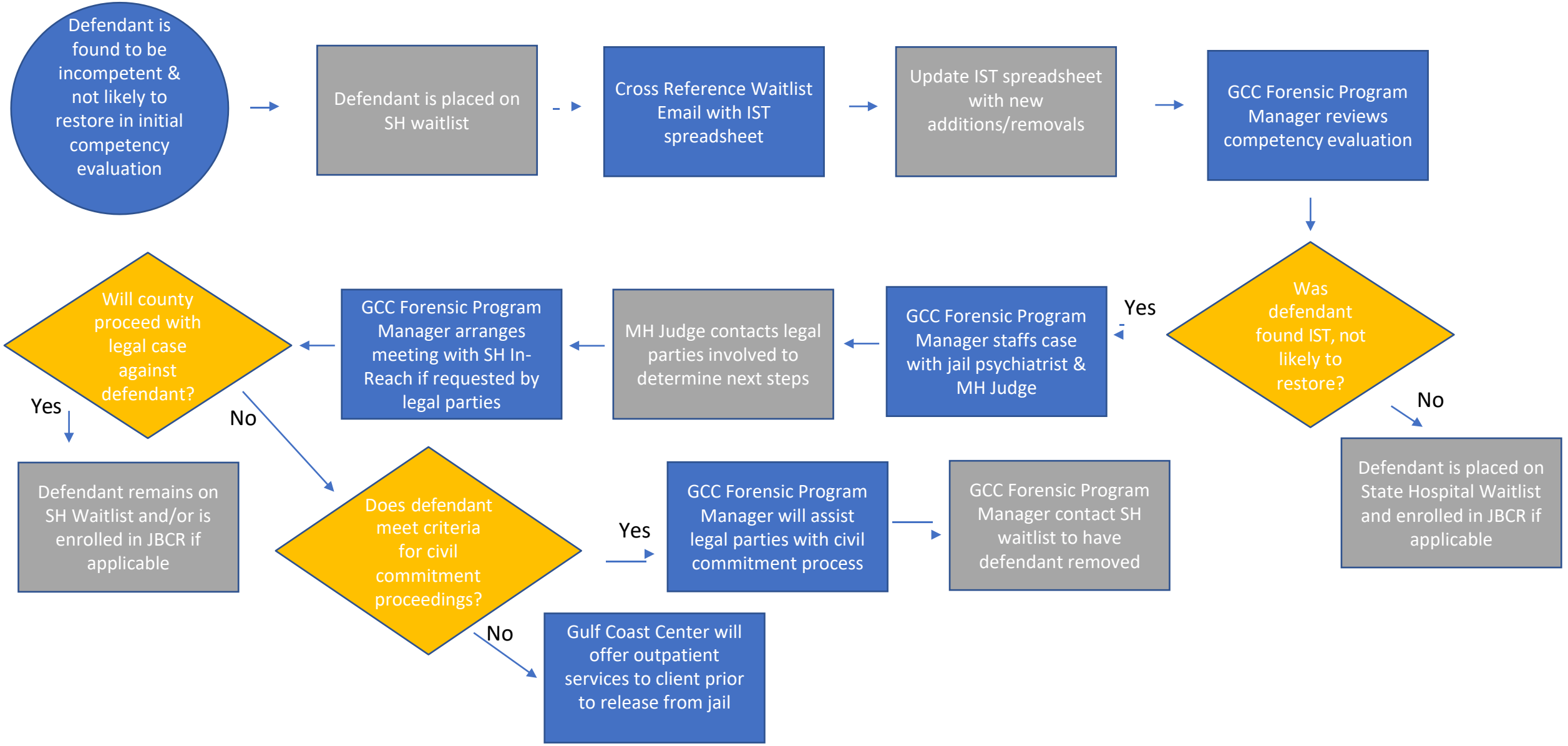
Court Ordered Medications Process
Chapter 574 Health & Safety Code



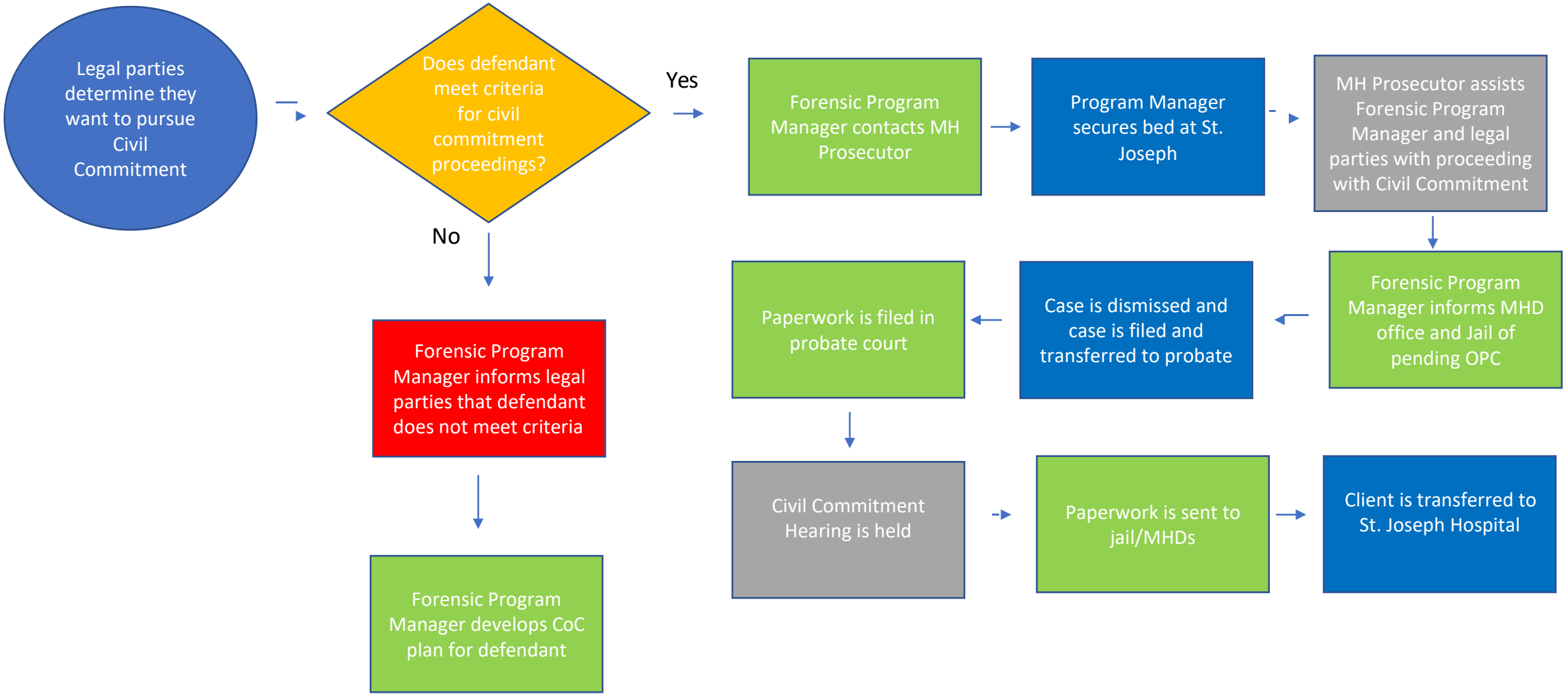
Court Ordered Medications Process
Criminal Code of Procedure 46B



Incompetent & Not Likely to be Restored

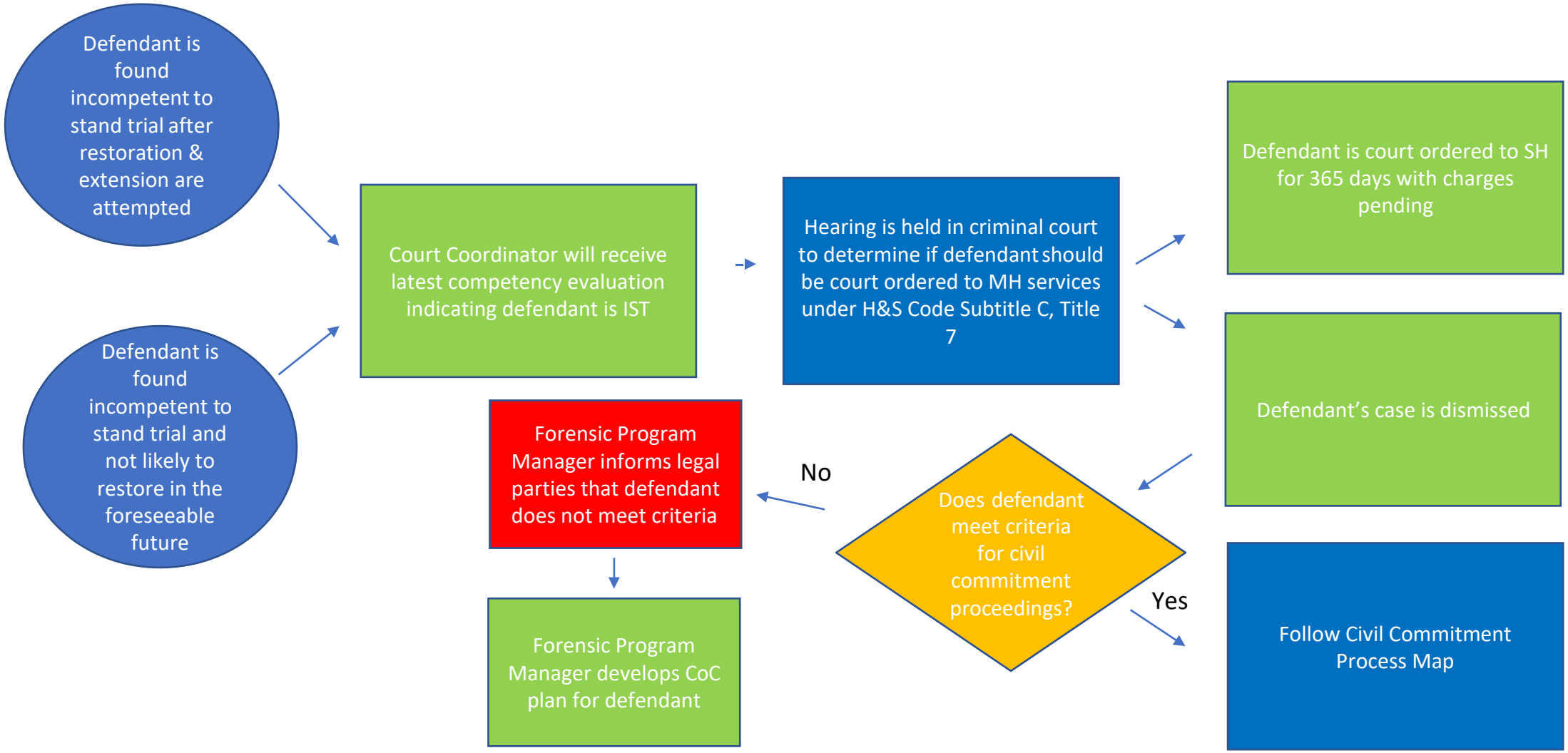


Civil Commitment Process
Charges Dismissed



Civil Commitment Process
Charges Pending (46B Subchapter E)

Defendant has completed competency restoration period plus extension or is found incompetent not likely to restore in the foreseeable future



Appendix F: Outpatient and Jail-Based Competency Restoration

Jail-Based Competency Restoration Services

For County Forensic Teams **with existing JBCR programs**, please complete the following worksheet.

	Jail-Based Competency Restoration	
Program Goal		
Partners		
Eligibility Criteria		
Services Offered through JBCR		
Gaps		
Opportunities		
Data	People served FY XX	
	Average length of stay FY XX	
	Percent of people restored	

For County Forensic Teams **interested in JBCR programs**, please complete the following worksheet.

	Jail-Based Competency Restoration	
Prospective Goals		
Potential Partners		
Proposed Eligibility Criteria		
Potential Funding Sources		
Other Considerations or Barriers to Implementation		
Making the Case	How many people are waiting inside of your county jail for inpatient competency restoration services?	
	How long have they been waiting?	
	What is the cost per bed per day for people inside the jail?	
	How many people in FY XX could have potentially been eligible for JBCR had it been available in your county jail?	
	What additional costs might be associated with adding a JBCR program to your county jail?	
	What other data might be helpful to local stakeholders considering JBCR as an option for your county?	

*It may be helpful to reference CCP Art. 46B and 26 TAC §307 Subchapter C for programming requirements while completing worksheet.

Outpatient Competency Restoration Services

For County Forensic Teams with **existing OCR programs**, please complete the following worksheet.

	Outpatient Competency Restoration	
Program Goal		
Partners		
Eligibility Criteria		
Services Offered through OCR		
Gaps		
Opportunities		
Data	People served FY XX	
	Average length of stay FY XX	
	Percent of people restored	

For County Forensic Teams **interested in OCR Programs**, please complete the following worksheet.

	Outpatient Competency Restoration	
Prospective Goals		
Potential Partners		
Proposed Eligibility Criteria		
Potential Funding Sources		
Other Considerations or Barriers to Implementation		
Making the Case	How many people are waiting inside of your county jail for inpatient competency restoration services?	
	How long have they been waiting?	
	What is the cost per bed per day for people inside the jail?	
	How many people in FY XX could have potentially been eligible based on your proposed eligibility criteria for OCR had it been available?	
	What additional costs might be associated with adding an OCR program to your county jail?	
	What other data might be helpful to local stakeholders considering OCR as an option for your county?	

*It may be helpful to reference CCP Art. 46B and 26 TAC §307 Subchapter D for programming requirements while completing worksheet.

Appendix G: Court-Ordered Medications

Goals, Barriers, Solutions

For County Forensic Teams **interested in utilizing COMs,** please complete the following worksheet for implementing COMs in your county jail.

	Court Ordered Medications
Goals for Utilizing COMs	
Key Partners	
Existing Barriers	
Strategies to Address Barriers	

Identify Key Roles and Responsibilities for Implementing COMs

County Forensic Teams interested in utilizing COMs should provide the names, titles, and contact information of the staff who will serve as points of contact for implementing a COM process for people determined IST in county jails.

Role	Name	Title	Org.	Email	Phone
LMHA or LBHA Liaison					
Jail Admin.					
Jail Mental Health Provider					
Asst. County Attorney					
Asst. District Attorney					
Probate Court Judge					
District Court Judge					

Responsibilities

County Forensic Teams who are interested in utilizing COMs should clearly identify the responsibilities of each contact for implementing COMs. The pre-populated responsibilities are only suggestions and can be customized based on your county's specific approach.

Contact(s)	Court-Ordered Medication Responsibilities
	Coordinate and schedule recurring meetings to determine who may be appropriate for COM
	Complete application for COM (physician must sign as applicant)
	File application with probate court or court with probate jurisdiction
	Prepare for hearing on COM and coordinate with any witnesses (e.g., physician who completed the application)
	Attend hearing on application for COM (within 30 days after filing)
	Transmit court order to appropriate parties (e.g., jail medical provider and LMHA)
	Determine whether to forcibly administer medication if COM application is granted
If COM application is denied by the probate court, the following steps can be considered:	
	Notify Criminal Court of medication refusal
	Complete Motion to Compel Medication (no later than 15 days after probate court denial of order) (e.g., assistant district attorney)
	File Motion to Compel Medication in the Criminal Court
	Prepare for Criminal Court hearing on COM (requires testimony by two physicians, one of whom must be the prescribing physician)
	Attend Criminal Court hearing on COM
	Determine whether to forcibly administer medication if COM application is granted

Create an Implementation Checklist

County Forensic Teams who are interested in utilizing COMs should provide a brief description of each major task required to ***formalize and sustain*** a process for COMs. Create action steps for achieving that task. Assign ownership of the task.

Task	Owner	Action Steps
Coordinate regular meetings to discuss COMs process and applicable cases. Ensure proper information sharing agreements are in place.		
Clarify COM roles and responsibilities		
If applicable, secure COM provider inside the jail		
Tailor COM applications and templates for responsible parties (e.g., see HHSC resources and JCMH Forms bank for examples)		
Document COM workflow (e.g., see Galveston County Process Chart, Appendix E and Bench Book for examples)		
If necessary, identify funding to cover additional costs that might be associated with COMs (e.g., securing a new provider if one is not available)		

TEXAS Health and Human Services

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 admission 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 Medications[1]

Probate Court

HSC, Chapter 574, Subchapter G, and Chapter 592, Subchapter F, 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 F; 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 http://www.texasjcmh.gov/technical-assistance/resources/forms-bank/**

Medication Flow Chart for Forensic Patients: Chapter 46B (Incompetent to Stand Trial)

CAPACITY STANDARD and DANGEROUS STANDARD

DOES PATIENT REFUSE PSYCHOACTIVE MEDICATIONS?

NO → **Medications Administered**

YES

***Is Patient*:** H&S § 574.103
- Having a medication-related Emergency (as defined);
- Over 18 and a guardian has consented to the medication

→ **YES** → **Medications Administered**

→ **NO**

Physician files Application in Probate Court that states:
- Patient is on a forensic commitment (or in jail waiting);
- Patient lacks capacity and reasons for that belief;
- Each medication the physician wants court to compel;
- Physician's diagnosis of Patient; and
- Proposed method of administration (If not customary/ provides justification for departure)

H&S § 574.104(b)

↔

If Application is filed patient gets:
- representation by a court-appointed attorney;
- to meet with that attorney;
- notice of the time, place, and date of the hearing;
- to be present at the hearing;
- to request from the court an independent expert; and
- notification of the court's determination

H&S § 574.105

↓

Court Hearing on Physician's Application
- Court finds, by clear and convincing evidence, that ***PATIENT LACKS CAPACITY*** to make decision regarding medication; **and**
- Treatment with medication is in patient's ***Best Interest***

H&S § 574.106(a-1)(1)

↔

Best Interest

Court must consider patient's:
- expressed preferences regarding treatment with medications;
- religious beliefs;
- the risks and benefits of meds;
- consequences if the meds not administered;
- prognosis if treated with meds;
- alternative, less intrusive treatments that are likely to produce the same results as treatment with meds; and
- less intrusive treatments to

H&S § 574.106(b)

↓ **Yes** → **Court Grants Order**

- OR - If Patient has Capacity ↓ ***Is Patient Dangerous?***

Court may still issue order if patient is ***DANGEROUS*** **to self or others** in the facility considering:
- Assessment of patient's condition;
- Whether the patient has inflicted, attempted or made a serious threat of inflicting substantial physical harm while in the facility;
- Whether the patient, in the six months prior to being placed in the facility, has inflicted, attempted or made a serious threat of inflicting substantial physical harm; **and**
- Treatment is in ***Best Interest***

H&S § 574.106(a-1)(2)(A)or(B) and § 574.1065

← **Yes**

Probate Court May ***Not*** Grant Order if patient, **with capacity**, is ***not Dangerous*** or **medications are *not* in patient's *Best Interest* -**
If denied may seek order from ***Crim. Court*** via Art 46B.086

Appendix H: Resources

Data Resources:

- Data Collection Across the Sequential Intercept Model: Essential Measures, Substance Abuse, and Mental Health Services Administration (SAMHSA)
- Stepping Up Initiative: Four Key Measures Case Studies, National Association of Counties (NACo)
- Just and Well: Rethinking How States Approach Competency to Stand Trial, Council of State Governments (CSJ) Justice Center
- Community Toolbox, Toolkit 16: Sustaining the Work or Initiative, University of Kansas

COMs Resources:

- Eliminate the Wait the Texas Toolkit for Rightsizing Competency Restoration Services, Texas Health and Human Services Commission and the Judicial Commission on Mental Health
- JCMH Bench Book, Judicial Commission on Mental Health
- JCMH Forms bank – template, Judicial Commission on Mental Health
- Prescribing a Balance: The Texas Legislature Responses to Sell v. United States, Texas Tech University School of Law

Competency Restoration Resources:

- Eliminate the Wait the Texas Toolkit for Rightsizing Competency Restoration Services, Texas Health and Human Services Commission and the Judicial Commission on Mental Health
- Competency Restoration, OCR and JBCR, Texas Health and Human Services Commission
- State Hospitals, Texas Health and Human Services Commission

Mental Health in Jails Resources:

- Eliminate the Wait the Texas Toolkit for Rightsizing Competency Restoration Services, Texas Health and Human Services Commission and the Judicial Commission on Mental Health
- Current Minimum Standards, Texas Commission on Jail Standards
- Mental Health Resources, Texas Commission on Jail Standards
- Flow Chart Describing the Article 16.22 Process, Texas Commission on Jail Standards
- TA Memo: Revised Intake Screening Form, Texas Commission on Jail Standards
- Instructions for Suicide and Medical/Mental/Developmental Impairments Form, Texas Commission on Jail Standards
- Mental Health Texas, Statewide Behavioral Health Coordinating Council
- Screening and Assessment of Co-Occurring Disorders in the Justice System, SAMHSA

- Substance Use Disorders and Treatment Among Jail Populations, Bureau of Justice Assistance (BJA) Comprehensive Opioid, Stimulant, and Substance Abuse Program (COSSAP)
- Jail-Based Medication-Assisted Treatment: Promising Practices, Guidelines, and Resources for the Field, National Commission on Correctional Health Care & National Sheriffs' Association