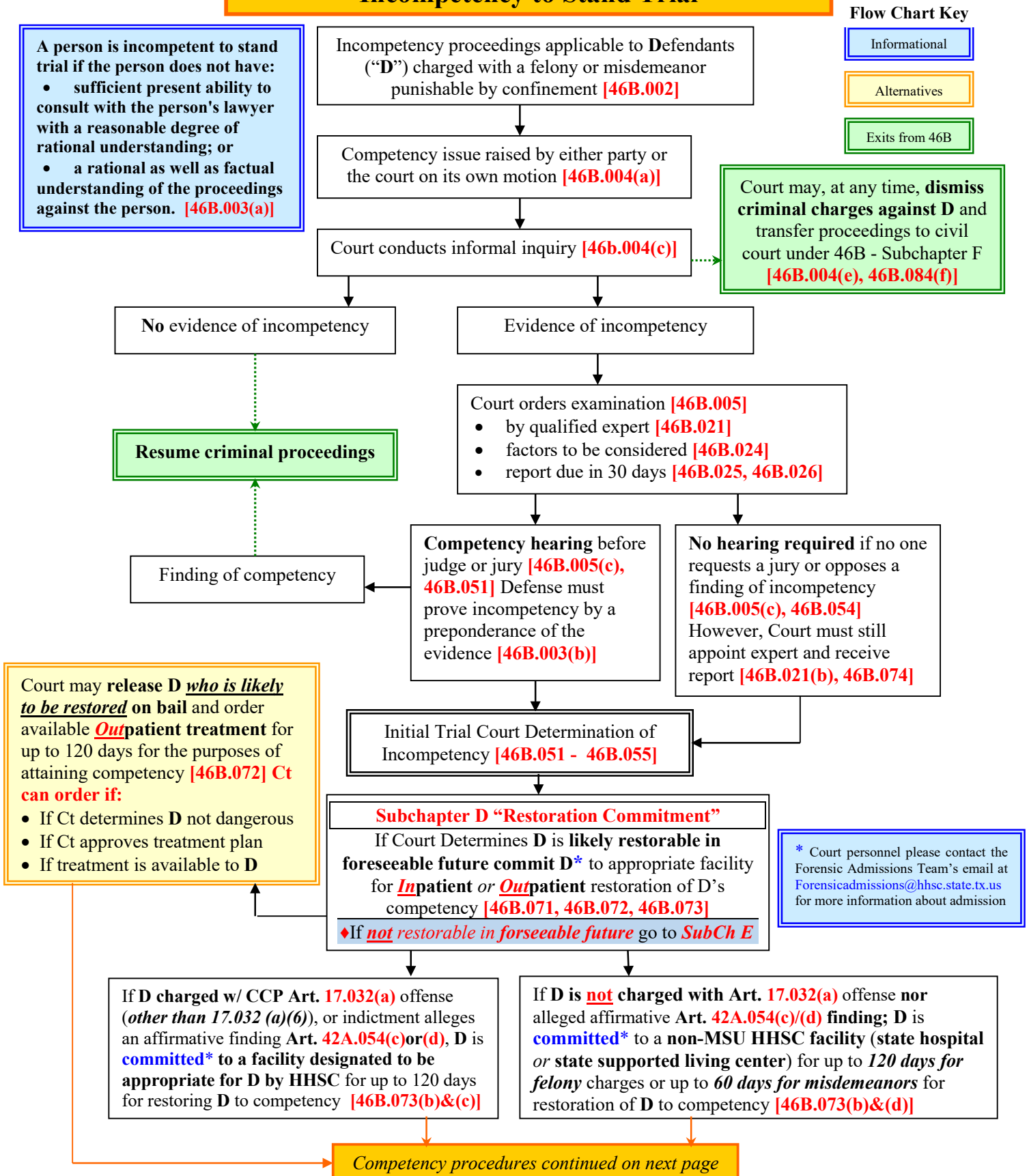


K. CCP 46B Competency Flow Chart (HHSC)

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



Treatment Facility Responsibilities during Subchapter D “Restoration Commitment” apply to **Inpatient** and **Outpatient** MH treatment facilities and ID-State Supported Living Centers [46B.077(a)]

- Develop individual treatment program for **D**
- Assess whether **D** will attain competency in the foreseeable future
- Report to the court and local MH/ID Authority on **D**’s progress toward competency

Head of Inpatient or Jail-Based Competency Restoration (JBCR) programs sends **Notice to Court** when:

- **D** has attained competency [46B.079(b)(2)]
- **D**, while not competent, is **clinically ready for OCR** program [46B.079(b)(1)]
- **D** won’t attain competency in foreseeable future [46B.079(b)(3)]
- Term of commitment is set to expire (≥ 15 days)* [46B.079(a)]

Head of Outpatient program sends **Notice to Court** when:

- **D** has attained competency [46B.079(b-1)(1)]
- **D** won’t attain competency in foreseeable future [46B.079(b-1)(2)]

When giving **Notice to Court** the facility supplies the committing court a **Final Report** stating reasons for **D**’s discharge/transfer and a list of types and dosages of medications **D** was on during treatment [46B.079(c)]

If the facility believes that **D** meets **civil commitment criteria** the facility supplies court with either two Certificate of Medical Examination (“CME”) for mental illness *or* affidavit supporting **D**’s intellectual disability (should also include IDT recommendation on least restrictive appropriate setting) [46B.083(a)/(b)]

***Head of facility** may request one **60-day extension** of restoration order [46B.079(d); and 46B.080]

Even if a party **objects** to the findings of the **Final Report**, the issue of **D**’s current competency **must still be heard within 20 days of receiving report** [46B.084(a-1)]

If the hearing is before the court, the hearing may be by electronic broadcast system [46B.084(b-1); 46B.013]

D is to be **returned to court** within **15 days*** of Notice under 46B.079 and court must make determination on **D**’s current competency within **20 days** of receiving Final Report [46B.084(a-1)]

* If **D** not returned to ct. w/in 15 days, facility shall return **D** and charge the county for costs [46B.082(b)]

If **no objection** to the **Final Report** the court can determine competency based solely on the report **without a hearing** [46B.084(a)]

D found competent

Resume criminal proceedings

D found **in**competent

Are criminal charges against **D** dismissed?

D found competent

Resume criminal proceedings

Charges **not** dismissed [46B.084(e)] after Subchapter D commitment **or** if **D** **not likely to be restored in foreseeable future** [46B.071(b)]

Charges dismissed [46B.084(f)]

Court determines if there is evidence of mental illness or intellectual disability [46B.102(a); 46B.103(a)]

Court determines if there is evidence of mental illness or intellectual disability [46B.084(f); 46B.151]

46B - Subchapter E “Civil Commitment; Charges Pending”

- **Criminal court** conducts commitment hearing (*inpatient or outpatient*) for **D** with **mental illness** pursuant to Subtitle C, Title 7, Health and Safety Code (**Mental Health Code**) [46B.102(b)]
- Commitment proceedings for **D** with **intellectual disability** are conducted pursuant to Subtitle D, Title 7, Health and Safety Code (**Persons with Intellectual Disability Act**) [46B.103(b)]

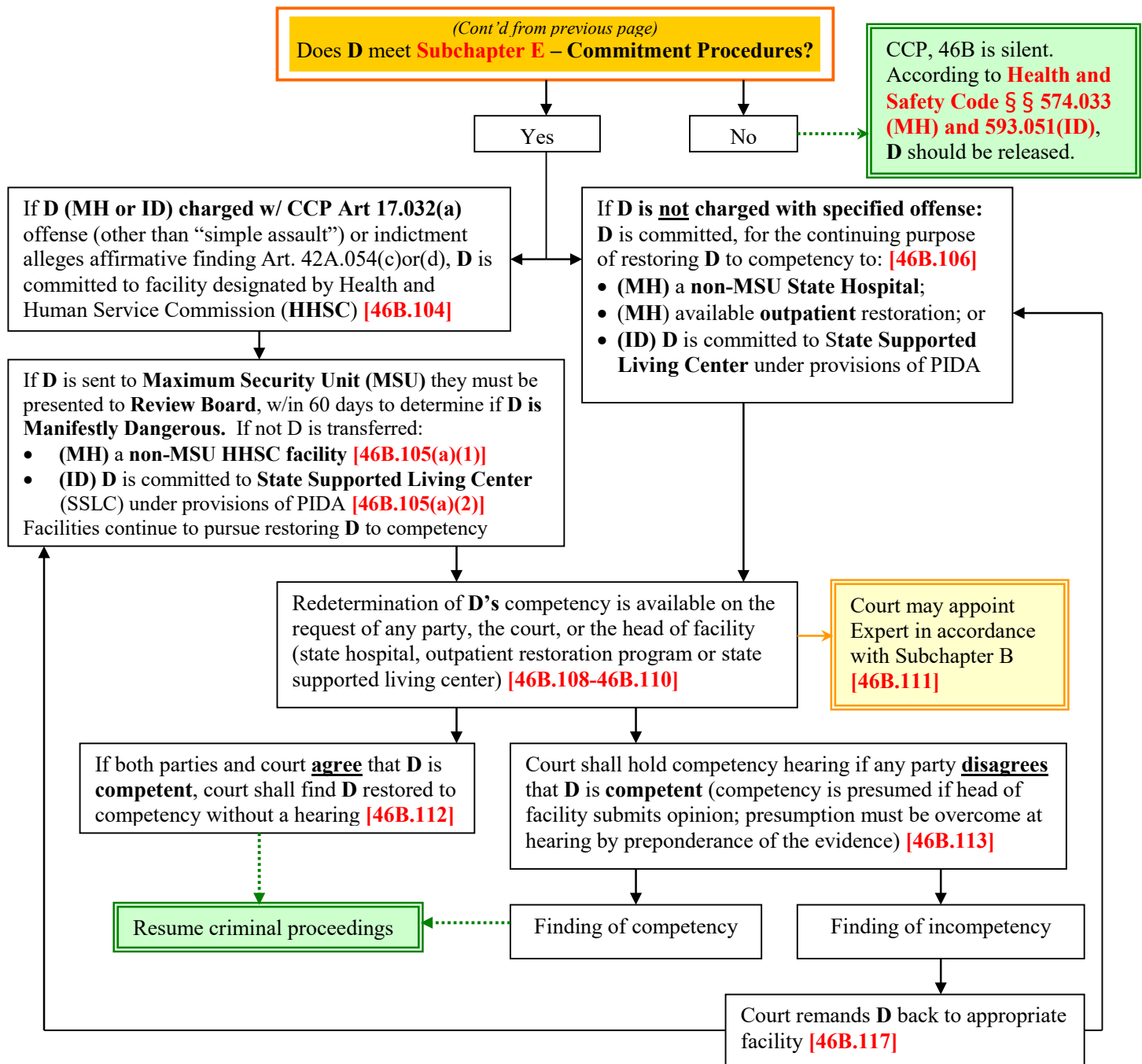
Evidence of mental illness or intellectual disability

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

No evidence

D released [46B.151(d)]

Subchapter E commitment procedures continued on next page



The head of facility must notify the committing court if they determine that D on **Subchapter E commitment** should be **released**. This would include a release due to:

- **expiration of D’s commitment** under the Mental Health Code;
- facility determination that **D no longer meets commitment criteria** under Subtitle C or D, Title 7, Health and Safety Code (Mental Health Code/ Persons with Intellectual Disability Act) [46B.107(a)-(c)]; or
- D has “Timed Out” via Maximum Term of Commitment [46B.0095]

The court may hold a hearing on these matters by means of an **electronic broadcast system** [46B.107(d)(2), 46B.013]

If the court determines **release is not appropriate**, the court shall enter an **order directing D not be released** [46B.107(e)]