

Successfully Working With Physicians for Your CCP 46B and 46C Clients

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Agenda

01	Case Discussion
02	46B
03	Best Practices
04	46C
05	Best Practices

DIAGNOSTIC AND STATISTICAL
MANUAL OF
MENTAL DISORDERS

FIFTH EDITION
TEXT REVISION

DSM-5-TR™

AMERICAN PSYCHIATRIC ASSOCIATION

Texas Code of Criminal Procedure

(2025 Edition)



TEXAS HEALTH AND SAFETY CODE

WHAT TEXANS MUST KNOW IN 2025





JUST IN

**ACCUSED IMMIGRANT SMUGGLER
PLEADS NOT GUILTY**

#KSATnews



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OVERVIEW OF THE COMPETENCY PROCESS

Preponderance of the Evidence Defense Burden

CRIMINAL CHARGE	COMPETENCY ISSUE RAISED BY	FINDINGS	DISPOSITION
• FELONY • MISDEMEANOR PUNISHABLE BY CONFINEMENT	• ANY PARTY • THE COURT	• COMPETENT • INCOMPETENT LIKELY RESTORABLE IN THE FORESEEABLE FUTURE • INCOMPETENT UNLIKELY RESTORABLE IN THE FORESEEABLE FUTURE	• ORDER FOR TREATMENT (OUTPATIENT, JAIL-BASED, INPATIENT) • CIVIL COMMITMENT

Appointment of Experts

CCP 46B.021

- Must be a [disinterested party](#) and not the treating provider
- Provide copies of the [indictment](#) and any supporting documents used to establish probable cause in the case
- Provide [previous competency evaluations](#)
- Provide [mental health records](#)

Making the Distinction:

8.7.1.1 Bench Book

Competency to Stand Trial:

Present Mental State and **Present** Capacity to Stand Trial

Insanity:

Mental State **at the Time of the Alleged Crime**

Mental Illness:

Impairment of Thought, Perception of Reality, Emotional Process, Judgment, or behavior

Intellectual Disability:

Subaverage Intellectual Functioning

A person may have a mental illness/intellectual disability but **still be competent to stand trial and not meet the legal standard for the insanity defense**

FACTORS CONSIDERED IN EXAMINATION

CCP 46B.024

- rationally **understand the charges** and the potential consequences
- disclose to counsel pertinent facts, events, and states of mind
- **strategies and options**
- engage in a reasoned choice of legal strategy
- understand the **adversarial nature** of criminal proceedings
- exhibit appropriate courtroom behavior
- Testify

“Verbatim Responses In the Report”

Expert's Report

CCP 46B.025

(a-1) Opinion may not be based solely on defendant's refusal to communicate during the examination

(b) symptoms, severity, likely restorable in the foreseeable future, treatment options, community based, jail-based, or inpatient

(c) Report may not state opinion on sanity if expert opinion is incompetent to stand trial

Commitment for Restoration to Competency

CCP46B.073

(a) Applies only to a defendant not released on bail



(b) Commit to a mental health facility, residential care facility, or jail-based



(c) If charged with an offense listed in Article 17.032(a)

Murder

Capital
Murder

Kidnapping

Child, Elderly,
Disabled

Assault and
Sexual Assault

Commitment Periods: Maximum Initial Restoration Periods

CCP 46B.073 (b)
(1) (2)

120 Days

Class A misdemeanor Outpatient

Felony

60 Days

Class B misdemeanor

Class A misdemeanor Jail-Based or Inpatient

One 60-day extension may be granted

46B.079 and 46B.080



LIVE
DENVER DRIVING STORY
MEGHAN MCROBERTS
KPTV NEWSCHANNEL 5



SEVERE WEATHER FROM  [UPLOAD YOUR STORM PICTURES AND VIDEOS TO YOUREPORT](#)

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Civil Commitment

CCP 46B Subchapter E or F

Subchapter E: Charges Pending

- Article 46B.102 Mental Illness
- Article 46B.103 Intellectual Disability
- Subtitle C, Title 7, Health and Safety Code

Subchapter F: Charges Dismissed

- Article 46B.151 Mental Illness or Intellectual Disability
- Subtitle C, Title 7, Health and Safety Code

Subtitle C, Title 7, Health and Safety Code

Sec. 574.035

EXTENDED INPATIENT

Mental illness expected to continue for more than 90 days

Harm to Self or Others

Deterioration of ability to function independently, and provide for basic needs, including Food, Clothing, Health, or Safety

Unable to make a rational and informed decision about submitting to treatment

Clear and convincing: recent overt act or a continuing pattern of behavior: Harm to Self or Others, Distress, and Deterioration

Sec. 574.0355

EXTENDED OUTPATIENT

Mental illness expected to continue for more than 90 days

Inability to live safely in the community

Prevent a relapse resulting in serious harm to self others

Inability to make a rational and informed decision, and to participate effectively and voluntarily

Actions occurring within the two-year period that immediately precedes the hearing

Clear and convincing: recent overt act or continuing pattern of behavior to the extent of inability to live safely in the community

Inpatient Competency Restoration Program Patient Quote

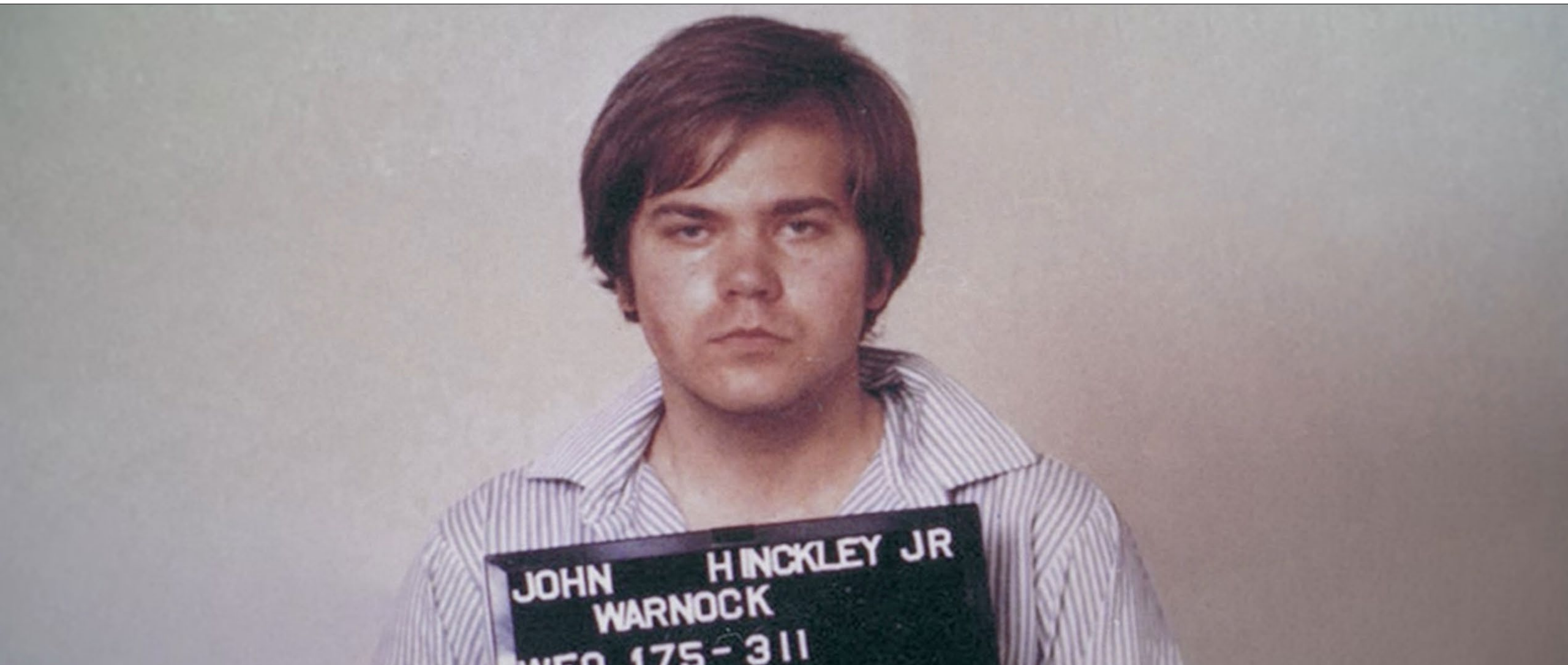
“I’m charged with murder and was in jail before coming to this nice hospital. If I learn this material and get found competent, I go back to jail, face my charges, and go to prison? Oh, ok I see.”



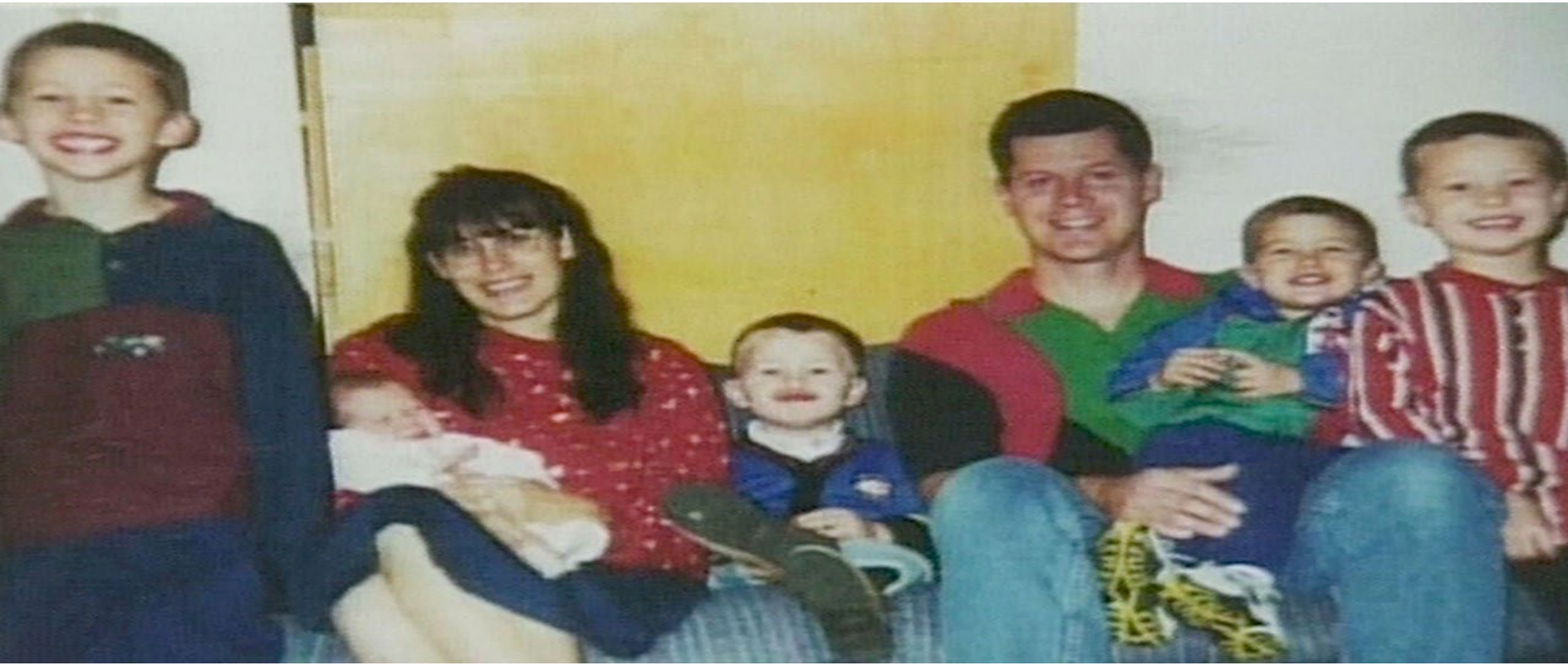
M'Naghten, 1843, "Right-Wrong" Test



American Law Institute, 1973, "Volitional" Prong



Section 8.01, Texas Penal Code, "Right-Wrong"



Severe/Serious Mental Illness

8.8.1.2 Bench Book

Bipolar disorder

Major depressive disorder

Obsessive-compulsive disorder

Paranoid and other psychotic disorder

Schizo-affective disorder

Schizophrenia

Differential Diagnosis of Psychosis

DSM-5-TR

Psychiatric

- Schizophrenia
- Bipolar Disorder, Mania
- Major Depressive Disorder, Severe, with Psychotic Features

Medical Conditions

- Brain Tumor
- Infection
- Autoimmune Disorders

Substance Induced

- Methamphetamine (ICE, Crank, Speed)
- Synthetic Marijuana (Spice, K2, Climax)
- Psychedelics/Hallucinogens (LSD, Mushrooms, MDMA)

Information Provided to Experts

8.8.3.4 Bench Book

Police Reports

Police Videos

Incident Video

Defendant
Statements

Witness
Statements

Psych History

Situational
History

Other Defendant
Videos before
and After
Incident

Family and
Friends

Defendant
Interview

3 Basic Questions During Insanity Evaluation

Did the defendant suffer from a mental disorder at the time of the alleged crime?

Was there a relationship between the mental disorder and the criminal behavior?

If so, were the criteria met for the jurisdiction's legal test for being found not criminally responsible?

Cognition of the Legal Wrong

8.8.1.3.e
Bench Book

DID NOT KNOW THAT THEIR CONDUCT WAS LEGALLY WRONG

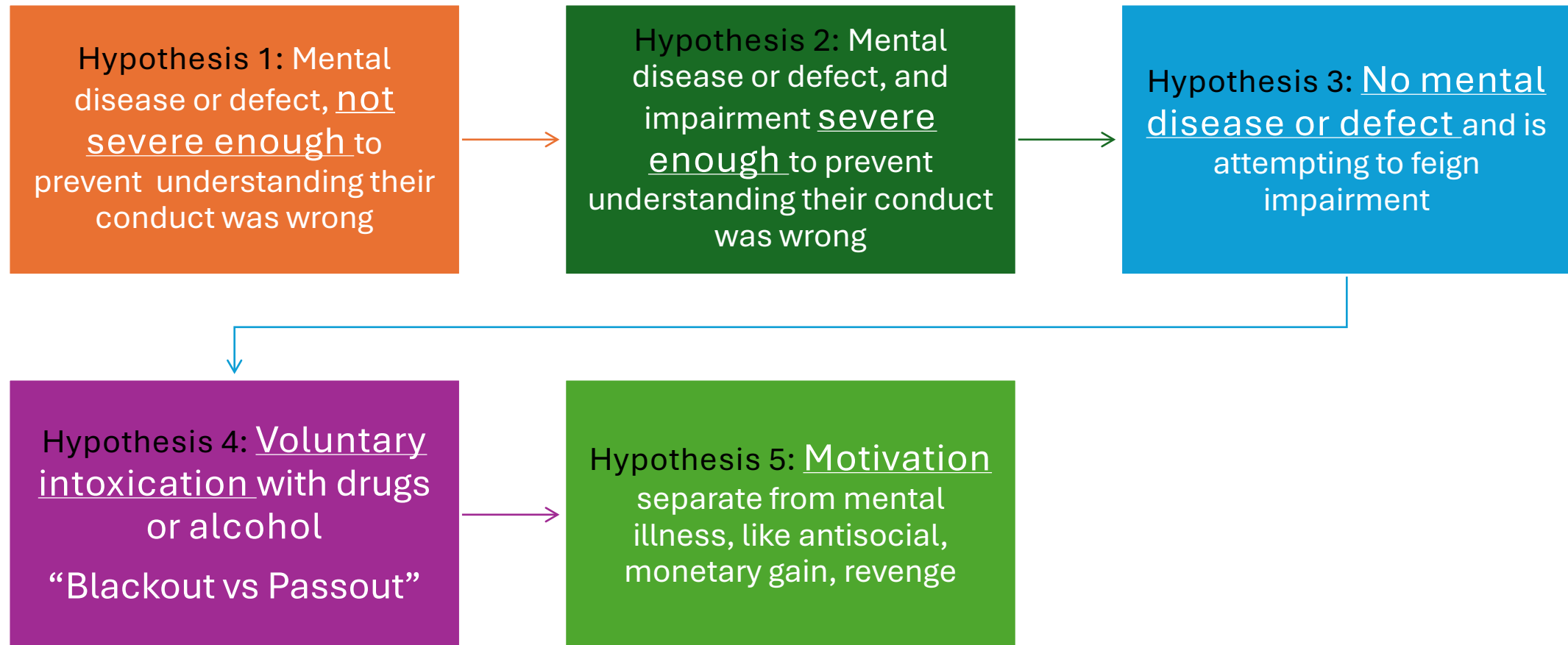
FACTUALLY KNOWS THAT SOCIETY CONSIDERS THIS CONDUCT AGAINST THE LAW, EVEN THOUGH DUE TO MENTAL DISEASE OR DEFECT, MAY THINK THE CONDUCT IS MORALLY JUSTIFIED= SANE BY TEXAS LAW

AS A RESULT OF THE MENTAL DISEASE OR DEFECT 8.8.1.3.F

OPINION NOT BASED SOLELY ON REFUSAL TO COMMUNICATE DURING THE EXAMINATION. CCP 46B.025(A-1).

Hypothesis In A Valid Insanity Evaluation

8.8.3.8.c Bench Book



Malingering

8.8.3.8.a
Bench Book
and DSM-5-TR

Essential feature is the intentional production of false or grossly exaggerated physical or psychological symptoms

motivated by external incentives like evading criminal prosecution, financial incentives, avoiding work, avoiding military duty

Report on Insanity

8.8.3.11 Bench Book

Includes facts and reasoning

Reproduces data needed to support the opinion

Contains clinical data justifying the “analysis”

Addresses inconsistencies

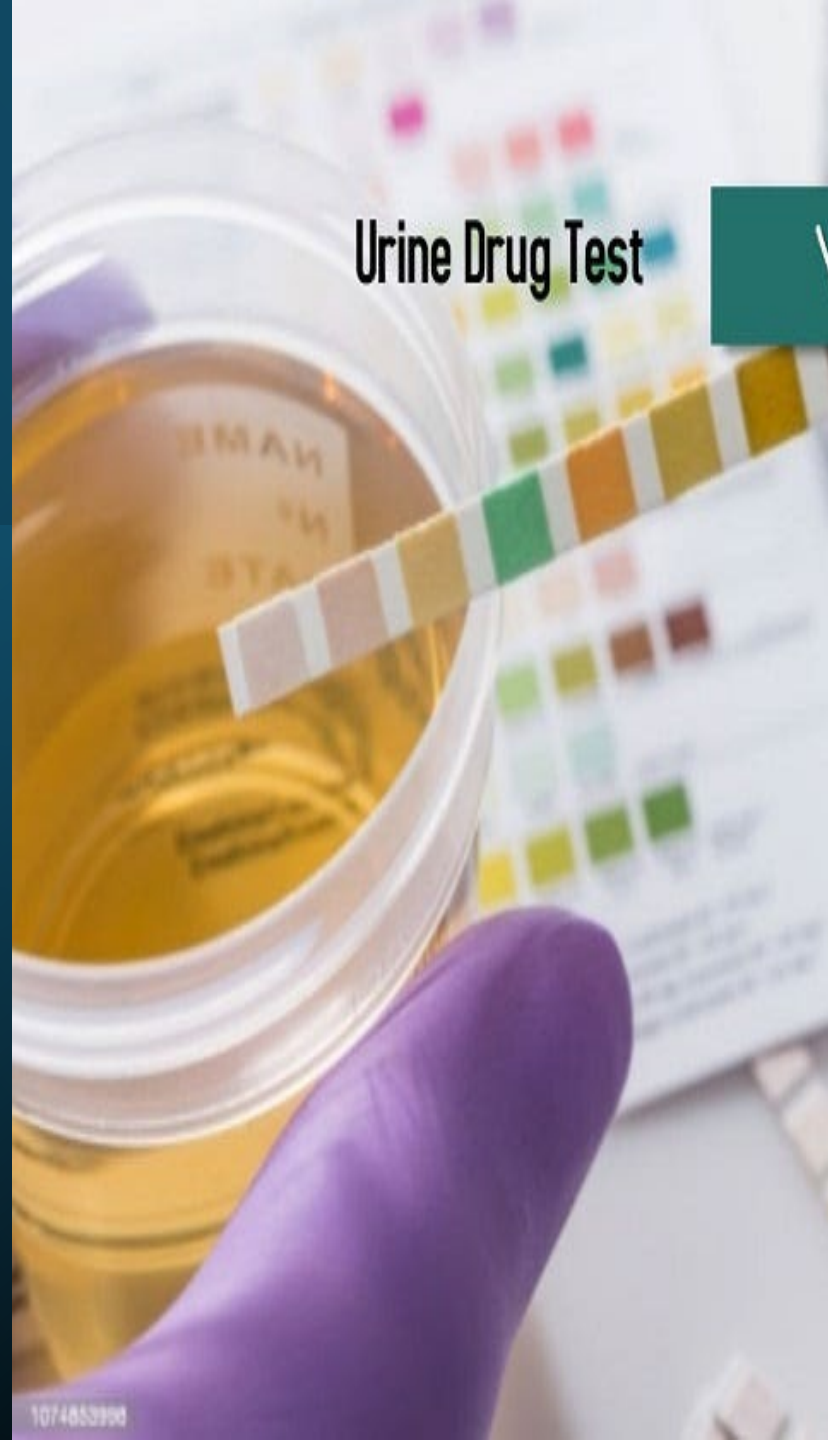
Complexity of case determines length

Less complex case may require 7-8 Pages

More complex cases may require up to 40 Pages

Writing the report can take 4 to 20 Hours

Pros and Cons of Standard Urine Drug Testing Versus Hair Follicle Drug Testing



VS



NGRI Hearing Disposition Options

8.8.8.2.f

Bench Book

Inpatient or
Residential
CCP46C.256

- Necessary to Protect the Safety of Others

Outpatient or
Community-Based
CCP46C.257

- Inpatient or Residential not Necessary to Protect the Safety of Others

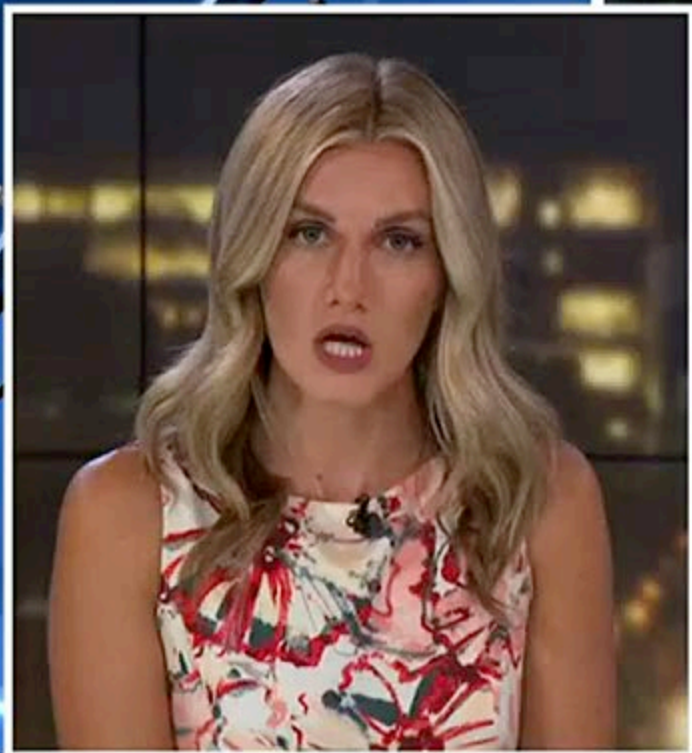
Subtitle C or D, Title
7, Health and Safety
Code

- Not Likely to Cause Serious Harm to Another but Meets Civil Commitment Criteria

Discharged and
Immediately
Released
CCP46C.253

- No Severe Mental Illness or ID
- Not Likely to Cause Serious Harm to Another

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Advance Discharge of Acquitted Person

CCP 46C.268

No Severe Mental
Illness or Mental
Retardation

Not likely to Cause
Serious Harm to
Another

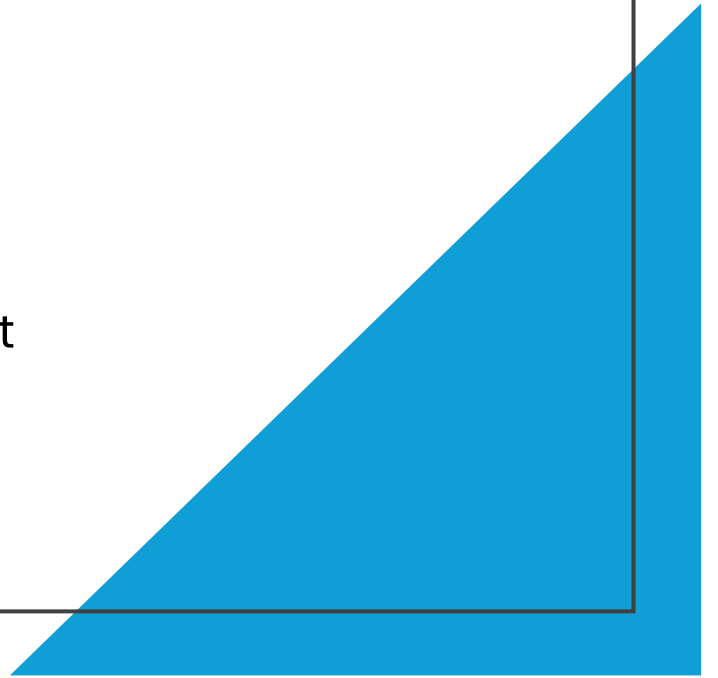
Man with schizophrenia killed his mother

Dating a prostitute and called her his girlfriend

Upset with mom and beat her to death with a hammer

Called 911

Hid the hammer in the closet



Man with Major Depressive Disorder killed his boys

Severe with psychotic features

Psychotic behavior a week before the murders

Did not care about the NGRI defense

Wanted to die after psychosis cleared

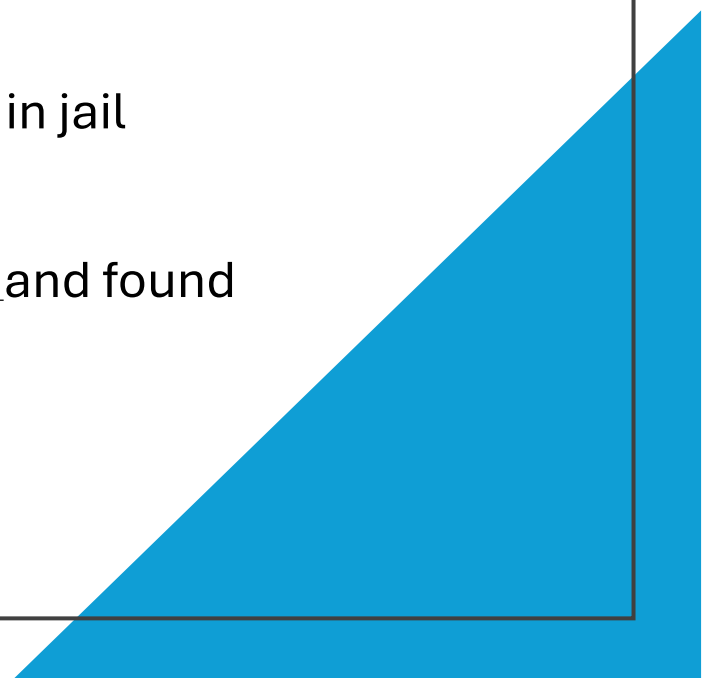
Man with no mental illness found NGRI

No history of mental illness prior to offense

Facing 6 years in prison if convicted

Learned about NGRI defense in jail

Faked psychotic symptoms and found NGRI



Man with Spice induced psychosis found NGRI

No history of mental illness prior to offense

Long history of Spice use

Urine drug screen negative

Psychotic two months after arrest



Voluntary intoxication with alcohol and no memory of offense

Question of competency to stand trial

Cannot provide details of incident to attorney

Cannot testify about what he does not remember

Friends made him drink

imho]

Successful Advance Discharge





Questions
