

Civil Court-ordered Medication (COM) Process

Respondent | State | Probate Court

Patient is refusing psychoactive medications.

Yes

1. Respondent is under court order for inpatient MH services.
- OR**
2. Respondent is in custody awaiting trial in criminal proceeding and was ordered to receive inpatient MH services in the last 6 months.

Yes

- State seeks med order in the Probate Court. Physician completes Appl. to Administer Meds. [H&S 574.104](#).
- Physician **MUST** sign with statements from [H&S 574.104 \(b\)](#).
- State, or treating physician on behalf of the state, may file Application for Court-Ordered Meds with Court with Probate Jurisdiction ([574.105](#))

State Coordinates Witnesses for Hearing

Court must find by Clear & Convincing Evidence that:

- 1) Treatment with proposed medication is the best interest of the patient
 - 2) The patient lacks the **capacity** to make a decision regarding the administration of the proposed medication
- or**
- 2) if the patient was ordered to receive inpatient mental health services by a criminal court with jurisdiction over the patient, and either:
 - A. the patient **presents a danger** ([see H&S Code 574.1065](#)) **or**
 - B. the patient:
 - i. **Presents a danger**
 - AND**
 - ii. has **remained confined in a correctional facility for a period exceeding 72 hours** while awaiting transfer for competency restoration treatment

Court shall consider factors in [574.106\(b\)](#).

Yes

COMs Granted under H&S Code [§ 574.106](#)

No

COMs Denied

CAPACITY STANDARD

OR

DANGEROUSNESS STANDARD

Probate Court holds Hearing [574.106](#)

Within 30 days of application

State | Probate Court | Criminal Court | Jail

- State must first seek med order in the Probate Court (even in criminal/competency cases).
- Jailer, LMHA, or Physician completes Appl. to Administer Meds.
- Physician **MUST** sign with statements from H&S 574.104 (b).

State
Coordinates
Witnesses
for Hearing

[illegible]

COMs Granted
under H&S Code
§ 574.106

Within 30 days of application

- Jail Med. Provider
- LMHA, &
- Defendant

COMs Denied

Director of Facility or Program Provider shall notify the Criminal Court of Defendant's Continued refusal to take medications

By end of next business day following D's refusal

[illegible]

Jail Medical determines whether to forcibly administer medication

The State may now file Motion in Criminal Court to Compel Meds under CCP 46B.086

Not later than the 15th day after the Order Denying COMs from Probate Court (unless D in OCR)

[illegible]

Criminal Court notifies the State and Defense Attorney of the D's refusal to take meds.

COMs Granted
under 46B

COMs
Denied

No Court
Ordered
Meds
Allowed

Criminal Court holds Hearing

Requires testimony of 2 physicians:

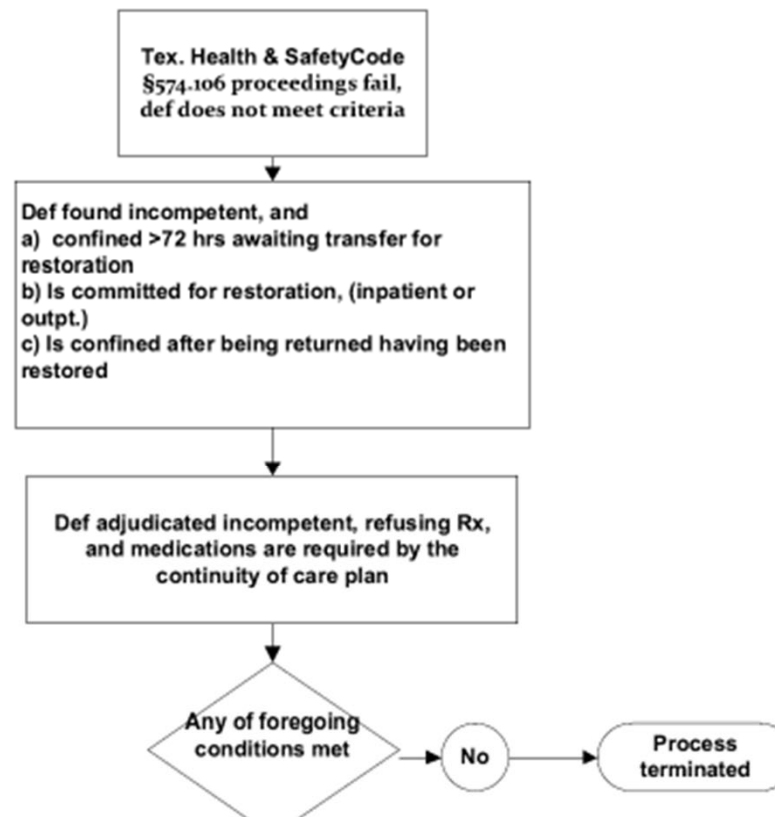
- i. treating Dr. &
- ii. uninvolved Dr.

- Jail Med. Provider
- LMHA, &
- Defendant

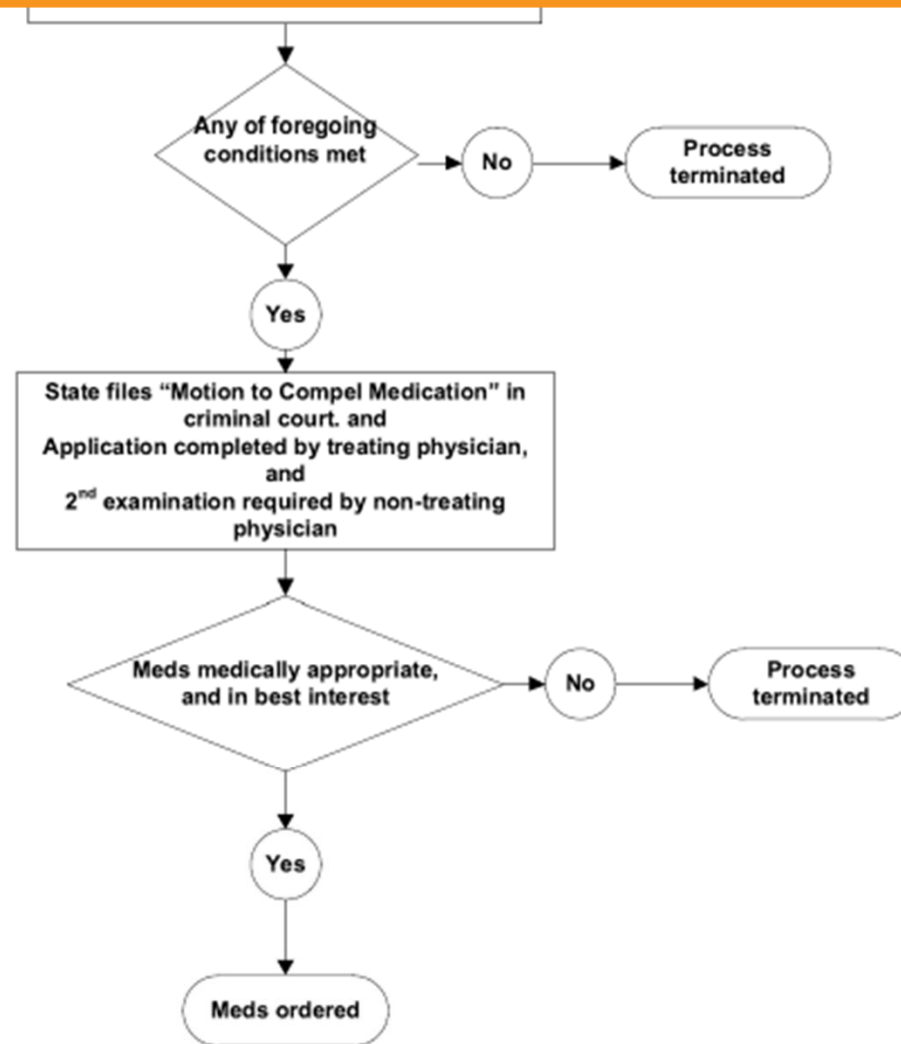
[illegible]

Jail Medical determines whether to forcibly administer medication

**Tex. Code Crim. Proc.
art.46B.086
Proceedings**



State has clear & compelling interest in maintaining competency, and No other, less invasive, means is available



Flowchart developed by Dr. Floyd Jennings, Harris County Public Defender's Office

Court-ordered Medication (COM) Process Flowchart for a 46B Defendant

1. D found incompetent; and
2. D is either:
 - In jail waiting to go to Competency Restoration Services (CRS) (inpatient, residential, or outpatient);
 - Committed to inpatient, residential, or JBCR for CRS;
 - Out on bond for OCR; or
 - In jail after returning from CRS.
3. Psychoactive meds required by Dr. or D's continuity of care plan.
4. D refusing to take meds.

- State must first seek med order in the Probate Court (even in criminal/competency cases).
- Jailer, LMHA, or Physician completes Appl. to Administer Meds.
- Physician **MUST** sign with statements from H&S 574.104 (b).

Transmit the Order to:

- Jail Med. Provider
- LMHA, &
- Defendant

Criminal Court holds Hearing 46B.086

COMs Granted under 46B

COMs Denied

*Requires testimony of 2 physicians:
i. treating Dr. &
ii. uninvolved Dr.*

Jail Medical determines whether to forcibly administer medication

No Court Ordered Meds Allowed

CAUSE NO. _____

THE STATE OF TEXAS § IN THE _____ COURT OF

V. §

§

§ COUNTY, TEXAS

ORDER ON STATE'S MOTION TO COMPEL INVOLUNTARY ADMINISTRATION OF COURT-ORDERED MEDICATION PURSUANT TO 46B.086

On this the _____ day of _____, 202____, came on to be considered the State's Motion to Compel Involuntary Administration of Court-Ordered Medication in the above-referenced cause pursuant to Article 46B.086 of the Texas Code of Criminal Procedure, after Defendant _____ having been previously found incompetent.

I.

In accordance with the Texas Code of Criminal Procedure Article 46B.086, upon the submission and consideration of the requisite physicians' testimony, the Court finds the following by clear and convincing evidence that:

(1) the prescribed medication is medically appropriate, is in the best medical interest of the defendant, and does not present side effects that cause harm to the defendant that is greater than the medical benefit to the defendant;

(2) the state has a clear and compelling interest in the defendant obtaining and maintaining competency to stand trial;

(3) no other less invasive means of obtaining and maintaining the defendant's competency exists; and

(4) the prescribed medication will not unduly prejudice the defendant's rights or use of defensive theories at trial.

II.

Pursuant to these findings shown by clear and convincing evidence, it is hereby ORDERED, ADJUDGED, AND DECREED that the program and/or treatment provider or his designee at _____ or whichever appropriate facility of the State Hospital Section that the Defendant/patient may be transferred, is authorized to administer the following classes of court-ordered medication, by reasonable force if necessary, as provided by Article 46B.086 of the Texas Code of Criminal Procedure:

- Antidepressants;
- Antipsychotics;
- Anxiolytics/sedatives/hypnotics;
- Mood stabilizers;
- Mono-amine oxidase inhibitors;

