

Effectively Utilizing Civil Law in Mental Health and IDD Cases

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Scarcity of Resources

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What legal options are available when...

someone is in the community and threatening suicide or harm?

someone is arrested, charged, and found to be incompetent?

someone is found to be incompetent and unrestorable?

What legal options are available when...

someone is in the community and threatening suicide or harm?

- Emergency Detention
- Order of Protective Custody
- Court Ordered Mental Health Services
 - Inpatient/Outpatient
 - Temporary/Extended

someone is arrested, charged, and found to be incompetent?

- Restoration
 - Inpatient
 - Outpatient
 - Jail Based
- Diversion Options
- Court Ordered Medication
- Spontaneous Restoration

someone is found incompetent but unrestorable?

- Civil Commitment
 - Forensic (Charges Pending)
 - Non-forensic (Charges Dismissed)

What legal options are available when someone is in the community and threatening suicide or harm?

What is Emergency Detention?

Emergency Detention is the legal procedure by which a person experiencing a severe mental health crisis may be detained for a preliminary examination and crisis stabilization, if appropriate.

Emergency Detention Options

	Warrantless Apprehension by Peace Officer	Application for ED filed by any adult	Guardian's Application for ED
Health & Safety Code	§ 573.001	§ 573.011 § 573.012	§ 573.004
Warrant needed?	No	Yes	No
The application for ED must be presented to magistrate <i>in person</i>?	N/A	Physician = no, electronic is ok; Other Adults = Yes § 573.012(a)	N/A <i>Must notify the court that ordered the guardianship.</i>
Is application for Detention needed at the hospital?	Yes § 573.002	No, the warrant serves that purpose § 573.012(f)	Yes § 573.004

Standard for a Mental Health Warrant

- ▶ In order to issue a warrant for immediate apprehension of an individual, the magistrate must conclude that there is reasonable cause to believe that the individual
 1. is mentally ill, and
 2. shows a substantial risk of serious harm to self or others,
 3. that the harm is imminent unless the individual is immediately restrained, and
 4. that the restraint could not be accomplished without emergency detention.

Order of Protective Custody

- ▶ While the commitment hearing is pending, a judge or magistrate may order the proposed patient be immediately taken into protective custody for up to 72 hours if the court determines that:
 - (1) that a physician has stated the physician's opinion and the detailed reasons for the physician's opinion that the proposed patient is a person with mental illness; and
 - (2) the proposed patient presents a substantial risk of serious harm to the proposed patient or others if not immediately restrained pending the hearing.

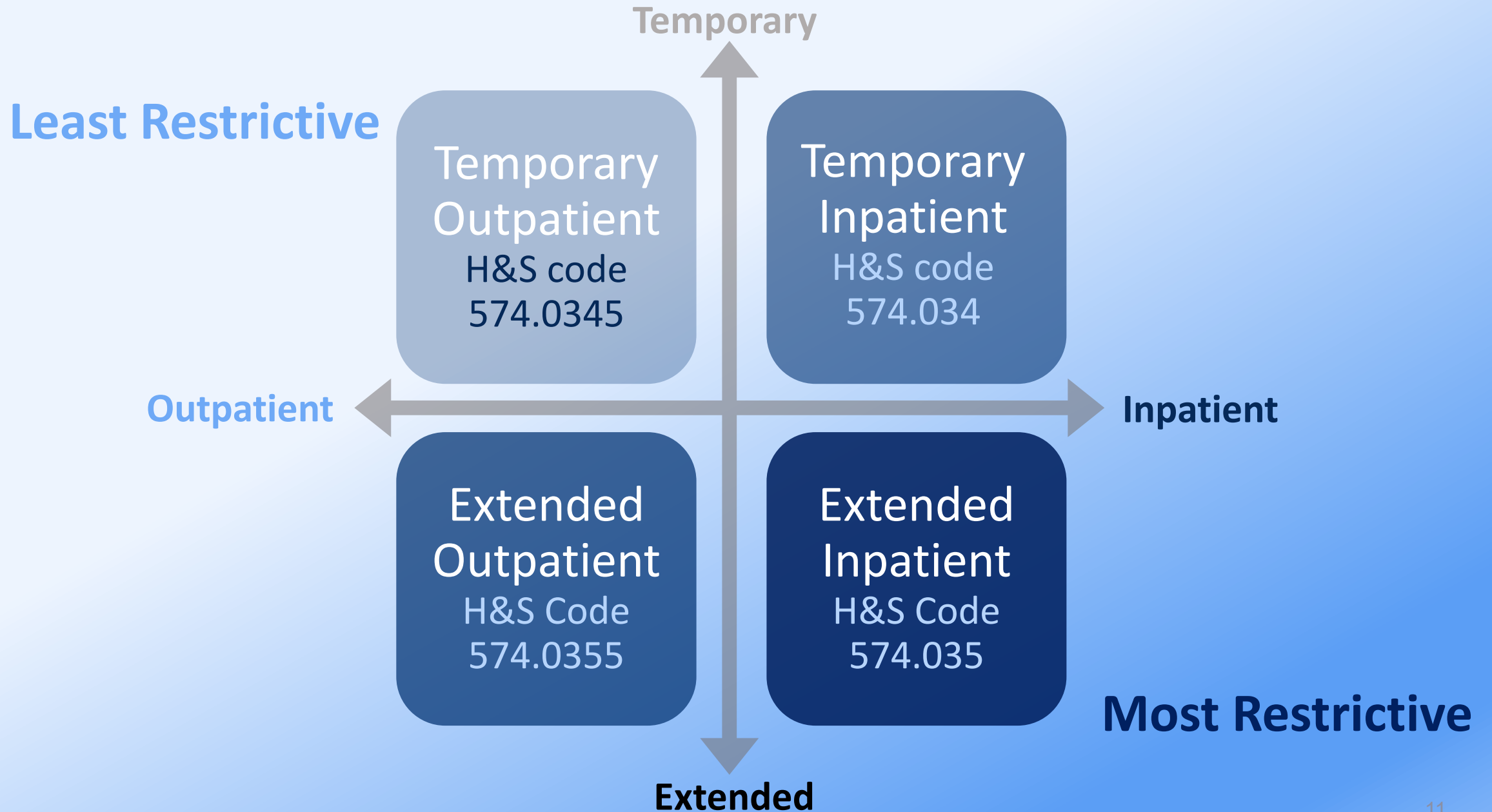
Tex. Health & Safety Code § 574.022(a)
- ▶ Before the expiration of 72 hours (extra time allowed if the period ends on weekend or holiday) there must be a hearing to determine:
 - (1) there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to the proposed patient or others to the extent that the proposed patient cannot be at liberty pending the hearing on court-ordered mental health services; and
 - (2) a physician has stated the physician's opinion and the detailed reasons for the physician's opinion that the proposed patient is a person with mental illness.
- ▶ The state may meet its burden based upon the CME submitted in support of the OPC application
Tex. Health & Safety Code § 574.025(a),(f)

Court Ordered Mental Health Services

Proceedings for Court-Ordered Mental Health Services are divided into four parts, one for each procedure:

- Order for *Temporary* Inpatient Mental Health Services. [Tex. Health & Safety Code § 574.034.](#)
- Order for *Temporary* **Outpatient** Mental Health Services. [Tex. Health & Safety Code § 574.0345.](#)
- Order for Extended Inpatient Mental Health Services. [Tex. Health & Safety Code § 574.035.](#)
- Order for Extended **Outpatient** Mental Health Services. [Tex. Health & Safety Code § 574.0355.](#)

Court Ordered Mental Health Services from Least to Most Restrictive



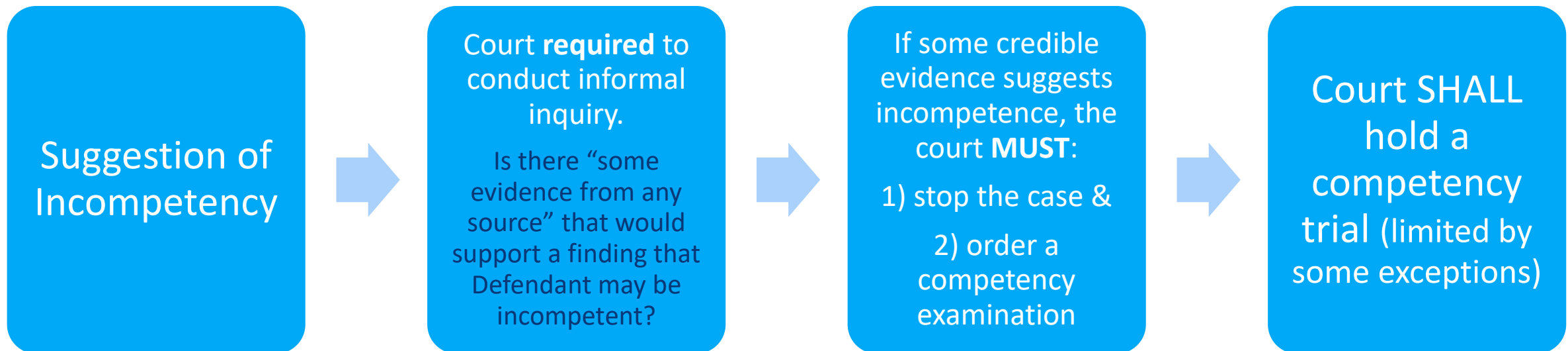
What legal options are available when someone is arrested, charged, and found to be incompetent?

Overview of the Competency Process

- Criminal Charge (Felony or Misdemeanor Punishable by Confinement)
- Competency Issue Raised by Any Party or the Court (Suggestion)
- Informal Inquiry by the Court
- Examination of Defendant
- Findings
 - Competent to Stand Trial
 - Incompetent to Stand Trial, but Restorable in the Foreseeable Future
 - Incompetent to Stand Trial, but Not Restorable in the Foreseeable Future
- Disposition
 - Order for Treatment
 - Civil Commitment

Once the issue of competency is raised...

High level overview of Tex. Code Crim. Pro. art. 46B.004 & 46B.005



Once there is a mere suggestion of incompetency, the court is legally bound to move forward with the competency route.

The Defendant is Found to be Incompetent

Now what?

- ▶ Do we send them to restoration services?
- ▶ Is it too late for other diversions?
- ▶ When do Court Ordered Medications become an option?
- ▶ What if the evaluation says they are unlikely to restore?

Restoration Options

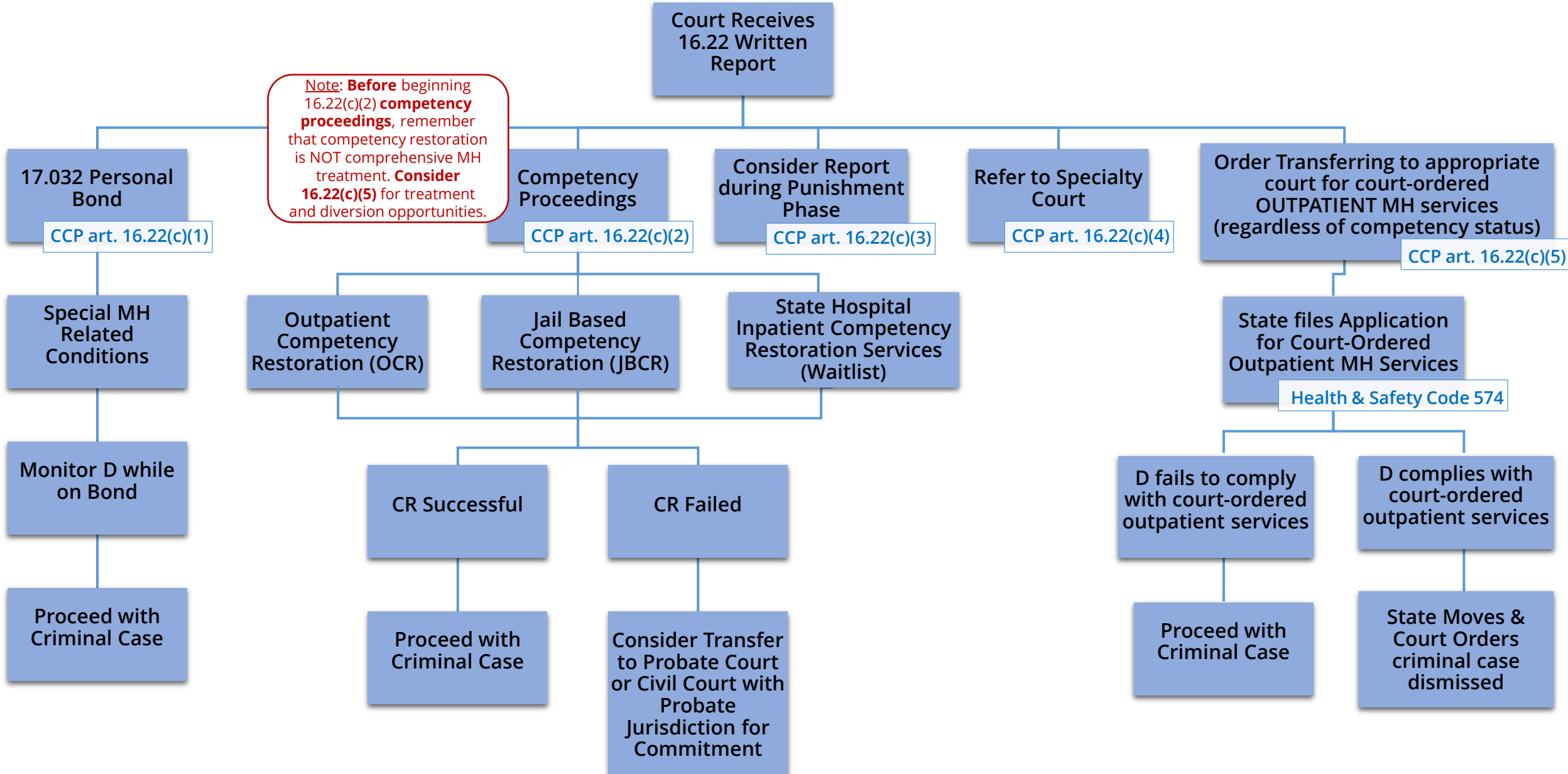
Summary of Different Competency Restoration Options



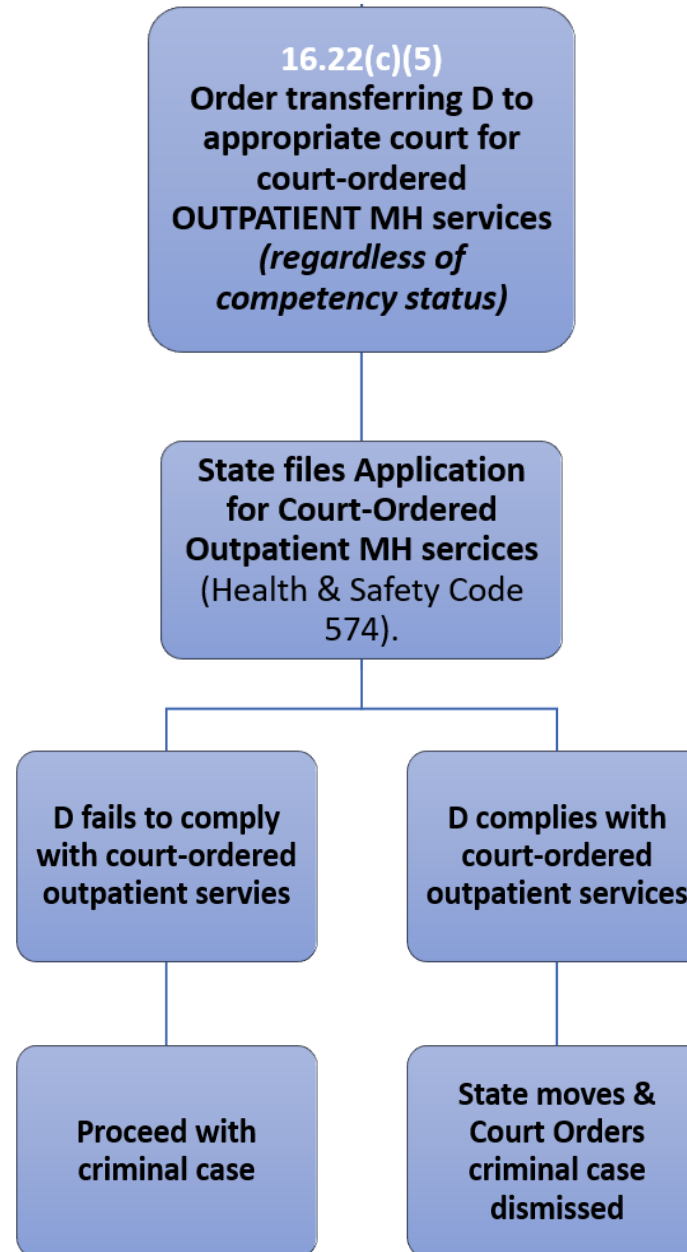
Type of Competency Restoration	Inpatient Competency Restoration	Outpatient Competency Restoration	Jail-Based Competency Restoration
Physical Location	State Hospital or Contracted Facility (e.g. Dunn)	Community or residential	In jail in designated space separate from general population
Bond Status	Bond 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	Class B Misdemeanor – up to 60 days Class A Misdemeanor or Felony – up to 120 days	Misdemeanor – up to 60 days Felony – 60 days + may continue to provide services for authorized period unless inpatient or OCR slot available.*
Wait Time for Admission	MSU 567.5 days Non-MSU 236.7 days	2-3 months	2-3 months

Diversion Options

Ways to Utilize a 16.22 Report



A Focus on CCP 16.22(c)(5)



Diversion Ideas & Opportunities by Profession



Trial Court:

- Diversion Options:
- Specialty Courts
- Specialty Dockets
- Starfish meetings or Staffings
- Medication orders
- Inclusion of Peers in the Courtroom or Specialty Courts

Defense Attorney:

- Working with LMHA/LIDDA:
 - Treatment plans
 - Outpatient treatment
 - AOT programs
 - 16.22(c)(5) transfer
 - Civil commitment proceedings
 - Discharge plans post-dismissal
- Medication/treatment in custody
- Local resources that are available
 - How to connect client?
 - Do they do warm handoffs?
 - Any Peers Available?

Prosecutor:

- Intake review for MH / IDD issues
- Official Pre-Trial Intervention Programs
- Pre-adjudication agreements with defendant, possibly include:
 - Dismissal with treatment plan
 - Dismissal or No Dismissal with AOT, civil/probate court supervision, civil commitment
 - Inpatient/outpatient Mental Health Treatment

Diversion Ideas & Opportunities by Profession, cont.



Personal Bond or Pretrial Services:

- Treatment as part of bond conditions
- Making an appointment with the LMHA as a bond condition
- Treatment as a suggestion from pretrial officer
- Warm handoffs to LMHA

Jail:

- In custody MH treatment options
- LMHA Jail Liaison
- Access to 24/7 telemental health
Tex. Gov't Code § 511.009(a)(19)
- Provide inmates prescription MH medications
Tex. Gov't Code § 511.009(d)
- Mandatory Prescription Review by Qualified Medical Professional ASAP
Tex. Gov't Code § 511.009(d); 37 Tex. Admin. Code Ch. 273.2(12)

Court Ordered Medication

Two-Step Process

1. Probate Court: Health & Safety Code, Ch. 574, Subchapter G

2. Criminal Court: Code of Criminal Procedure, Art. 46B.086



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Probate Court – Court findings



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Capacity Standard -

Lacks capacity to make a decision regarding the administration of proposed medication; AND treatment with the proposed medication is in the best interest of the patient. (Civil or Forensic inpatient)

Health & Safety Code §574.106(a-1)(1)

Dangerousness Standard -

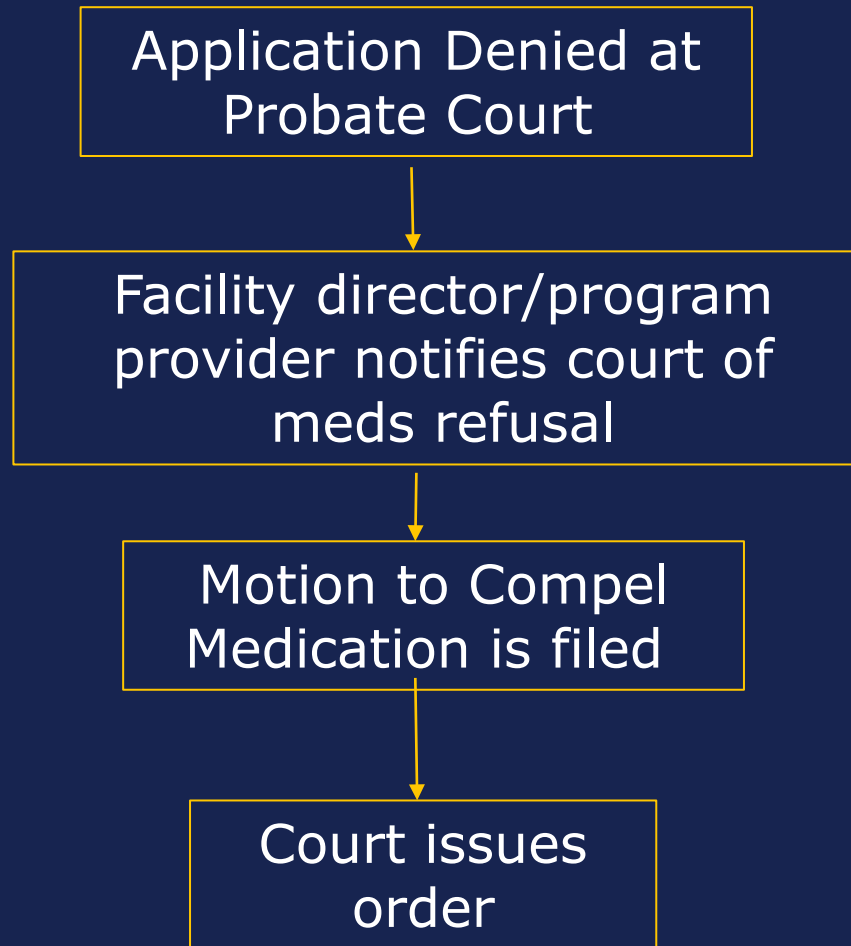
- If the patient was ordered to receive inpatient mental health services by a criminal court with jurisdiction over the patient, that treatment with the proposed medication is in the best interest of the patient; AND the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated. (Inpatient)

Health & Safety Code §574.106(a-1)(2)(A)

- If waiting in jail for at least 72 hours for transfer to inpatient competency restoration services (ordered in preceding six months) and presents a danger to self or others as a result of the mental illness; AND treatment with proposed medication is in the best interest of the patient. (IST Jail Detainee)

Health & Safety Code §574.106(a-1)(2)(B)

Criminal Court - Overview



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Criminal Court - Who is Eligible?

- Had a hearing under Health & Safety Code §§574.106 or 592.156 and was found to NOT meet criteria
- Determined IST; AND
- In jail more than 72 hours and waiting for inpatient or outpatient competency restoration services; OR
- in jail and waiting for criminal proceedings to commence following competency restoration; OR
- In OCR (Felony/Class A misdemeanor); AND
- Continuity of care plan that requires psychoactive medications

Code of Criminal Procedure Art. 46B.086(a)



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Spontaneous Restoration

Evidence of Immediate or Spontaneous Restoration?

If credible evidence (from any source) of stabilization occurs before transfer to the restoration services, the court may order another competency evaluation (a re-evaluation) and, if supported by the evidence, find immediate restoration of the defendant under CCP art. 46B.0755

What legal options are available when someone is found to be incompetent and unrestorable?

Unlikely to Restore

If unlikely to restore in foreseeable future → CCP 46B
Subchapter E or F or release on bail.

CCP 46B.071(b)

- Subchapter E: Charges Pending
 - ▶ Must meet civil commitment criteria in Health & Safety Code Chapter 574 (mental health code) or Chapter 593 (Persons with an Intellectual Disability Act)
 - ▶ Criminal court maintains jurisdiction
- Subchapter F: Charges Dismissed
 - ▶ Transfer to probate court for civil commitment



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What legal options are available when someone is not restorable but also not civilly committable?