Legislative Requirement: A Review of

Competency Restoration Services for Inmates in County Jails

- The increased number of individuals on the waitlist for competency restoration was due to the limited availability of beds in the state hospital system.
- Auditors' analysis of the Health and Human Services Commission's waitlist data determined that the time individuals spent on the waitlist was not affected by their race, gender, ethnicity, or age.

Lisa R. Collier, CPA, CFE, CIDA
State Auditor

The most significant reason for the increased number of individuals on the Health and Human Services Commission's (Commission) waitlist for competency restoration from September 2018 through December 2023 was the limited availability of beds, which was made worse by the COVID-19 pandemic and ongoing challenges with staffing key medical positions. (See Background Information for more details about competency restoration.)

A total of 15,652 individuals were added to the Commission's waitlist for competency restoration from September 2018 through December 2023. As of December 31, 2023, 2,254 individuals were on the waitlist, a 247 percent increase from September 1, 2018, when 650 individuals were on the waitlist. Based on the data available, auditors identified no significant disparities in the time individuals spent on the waitlist based on their race, gender, ethnicity, or age.

- *Background* | p. 3
- *Project Objectives* | p. 44

This project was conducted in accordance with Senate Bill 1677 (88th Legislature, Regular Session).

STATE HOSPITAL CAPACITY

The number of beds available for competency restoration was limited, and staffing shortages further reduced the number of beds available. In addition, state hospital beds were used by individuals who could have been treated in alternative settings and individuals whose competency had been deemed unlikely to be restored.

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THE COMMISSION'S WAITLIST FOR COMPETENCY RESTORATION

The number of individuals on the Commission's waitlist for competency restoration increased by 247 percent from September 1, 2018, to December 31, 2023.

Chapter 2 | p. 18

ALTERNATIVE PROGRAMS AND RESOURCES

Alternative competency restoration programs help individuals receive competency restoration while on the waitlist, but most counties do not offer them.

Chapter 3 | p. 29

DATA COLLECTION

Concerns were identified with the timeliness, accuracy, and completeness of certain data collected and reported on competency restoration.

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For more information about this project, contact Audit Manager Willie Hicks or State Auditor Lisa Collier at 512-936-9500.

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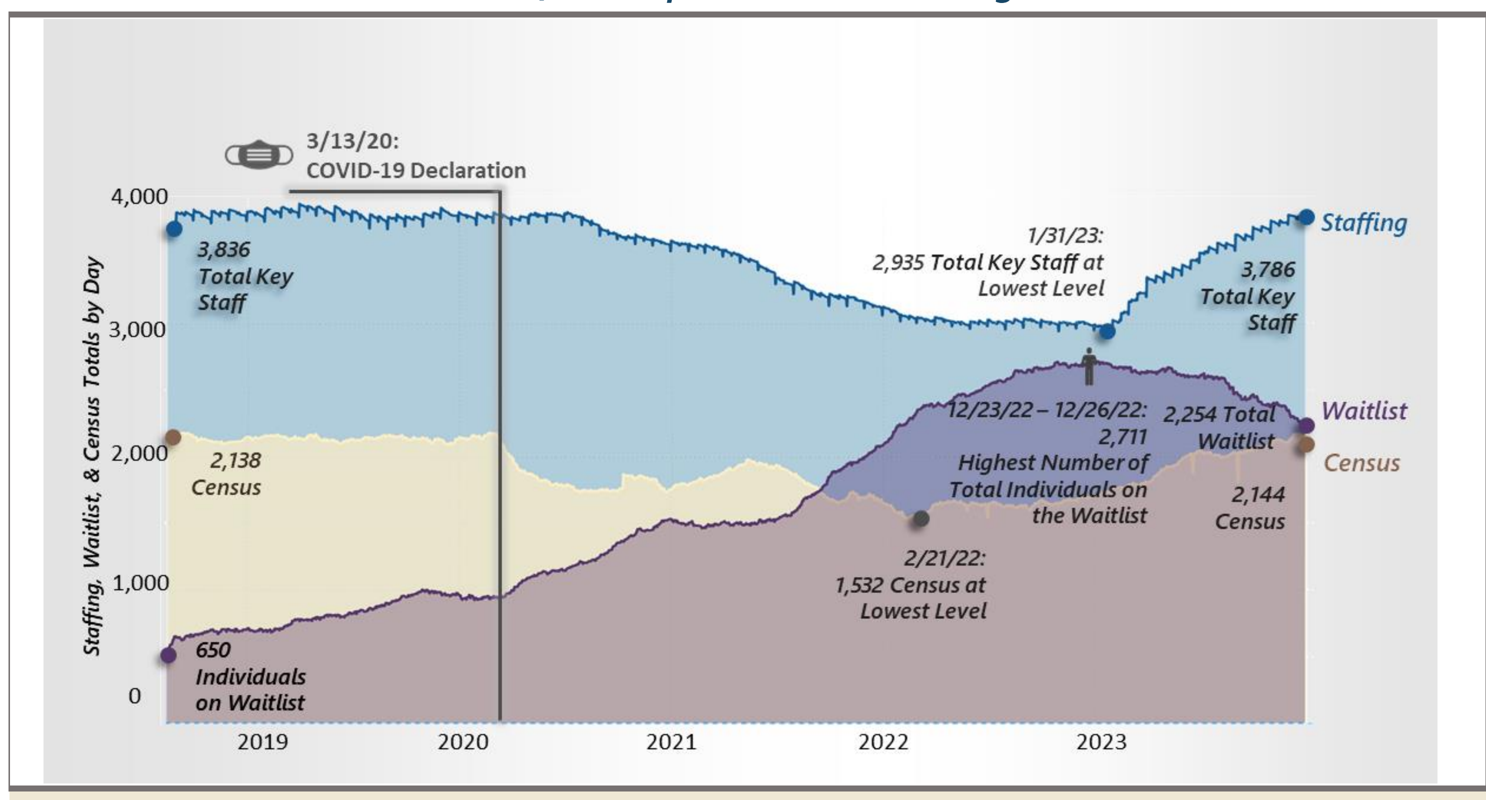
Figure 1 shows the changes in key medical staffing levels, census (the number of occupied state hospital beds), and waitlist totals for the state hospital system from September 1, 2018, through December 31, 2023.

Figure 1

Comparison of the State Hospital System's Key Medical Staffing Levels,[a] Census, and Waitlist Totals[b] from September 2018 through December 2023



[a] Key medical staff include psychiatrists, nurses, and nursing assistants.

[b] The waitlist totals include individuals placed on hold, which includes individuals who are out on bond or receiving outpatient or jail-based competency restoration.

Source: The Commission.

Additional supplemental interactive elements related to capacity, staffing, the waitlist, alternative competency restoration programs, and reoffenders are available at **Data Supplement: Competency Restoration Services for Inmates in County Jails**.

Background Information

Legislative Requirement

Senate Bill 1677 (88th Legislature, Regular Session) required the State Auditor's Office to (1) conduct an audit of inmates in county jails who are waiting for a forensic hospital bed for the provision of competency restoration services and identify issues and inefficiencies in the commitment process; (2) review the history and status of the waitlist for competency restoration services beginning September 2018, including any disparities in treatment in the forensic commitment process based on race, gender, ethnicity, or age; and (3) complete an audit report by December 1, 2024. We prepared this report, including an analysis of the individuals on the waitlist, to comply with that requirement.

Competency Restoration

Texas Code of Criminal Procedure, Article 46B.001, defines competency restoration as the treatment or education process for restoring a person 's ability to consult with the person's attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the person.

If an individual is found incompetent to stand trial,[1] a court can order the individual to receive competency restoration services in an inpatient facility, outpatient or community-based program, or jail-based program. Because of the limited availability of outpatient and jail-based programs, inpatient treatment in a state hospital is usually the most common option available. Figure 2 on the next page describes those types of competency restoration programs.

[1] Texas Code of Criminal Procedure, Article 46B.003, specifies that a person is deemed incompetent to stand trial if they do not have (1) sufficient present ability to consult with their lawyer with a reasonable degree of rational understanding or (2) a rational, as well as factual, understanding of the proceeding against them.

Figure 2

Competency Restoration Programs

	Inpatient Facility	Outpatient/Community-based Facility	Jail-based Program
Physical Location	State Hospital State hospital or contracted facility.	Community Community or residential facility.	Jail In a designated space separate from the general jail population.
Eligibility	No eligibility criteria.	Must be eligible for community release and meet the eligibility criteria set by the service provider.	Must meet eligibility criteria set by the service provider.
Treatment Length (for initial commitments)	• Misdemeanor – up to 60 days. • Felony – up to 120 days. • Possibility of requesting a 60-day extension.	• Class B Misdemeanor [a] – up to 60 days. • Class A Misdemeanor [b] or Felony – up to 120 days. • Possibility of requesting a 60-day extension.	• Misdemeanor – up to 60 days. • Felony – 60 days and may continue to provide services for an authorized period unless inpatient or outpatient placement is available. • Possibility of requesting a 60-day extension.

[a] In Texas, a Class B misdemeanor is punishable by up to 180 days in jail, a fine of up to $2,000, or both jail time and a fine. Theft of property valued between $100 and $750 is an example of a Class B misdemeanor.

[b] In Texas, a Class A misdemeanor is punishable by up to one year in jail, a fine of up to $4,000, or both jail time and a fine. Burglary of a vehicle and resisting arrest are examples of Class A misdemeanors.

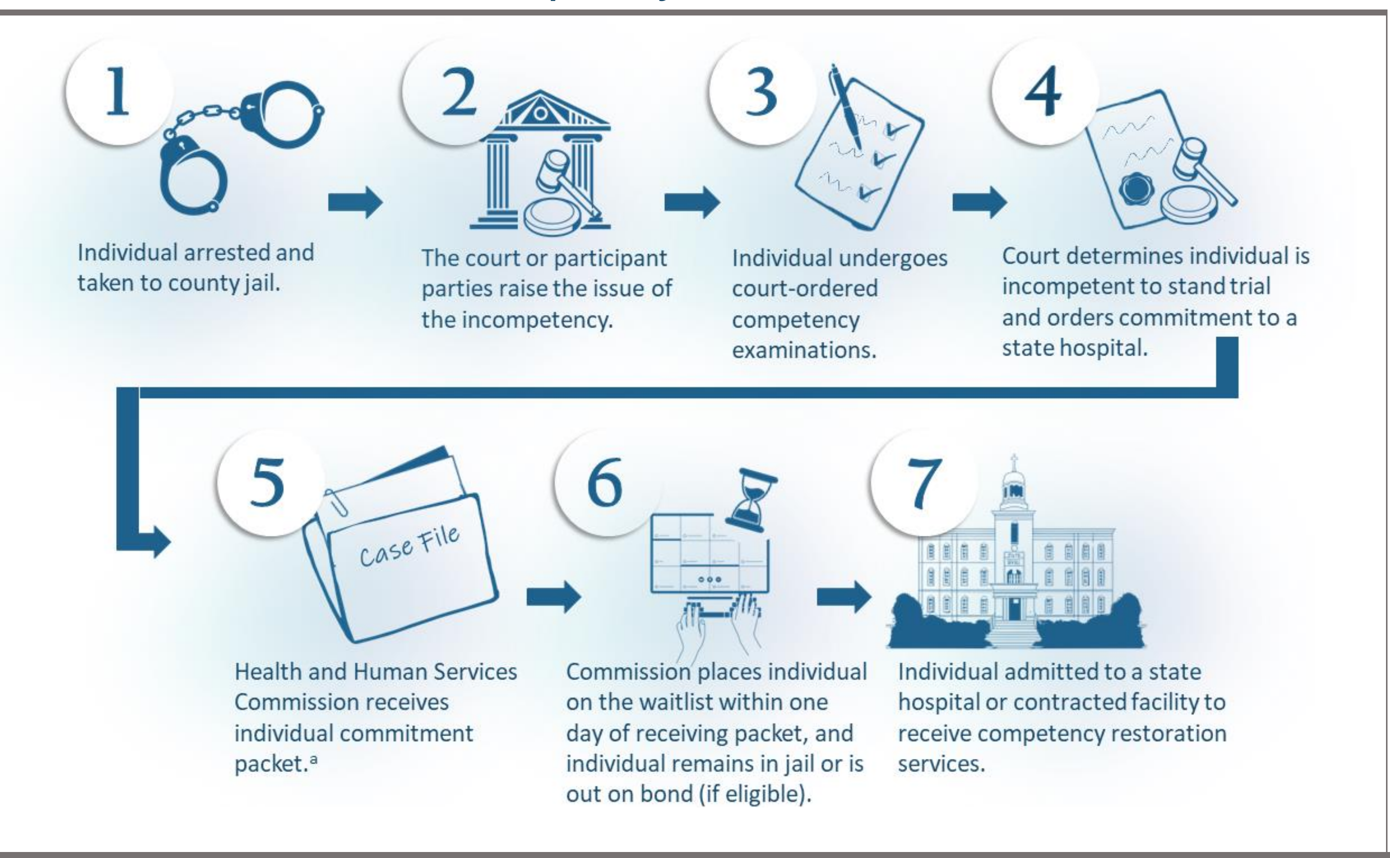
Sources: Texas Penal Code, Sections 12.21 and 12.22, and Texas Behavioral Health and Justice Technical Assistance Center, *Texas Competency Restoration Guide*, March 2024.

Individuals Committed to Inpatient Facilities

The Health and Human Services Commission (Commission) is responsible for admitting to an inpatient facility those individuals ordered to receive competency restoration. The Commission maintains a waitlist to help manage when an individual can be admitted to an inpatient facility. Figure 3 shows the process for an individual to be committed to receive competency restoration at an inpatient facility.

Figure 3

Overview of the Inpatient Facility Commitment Process for Competency Restoration



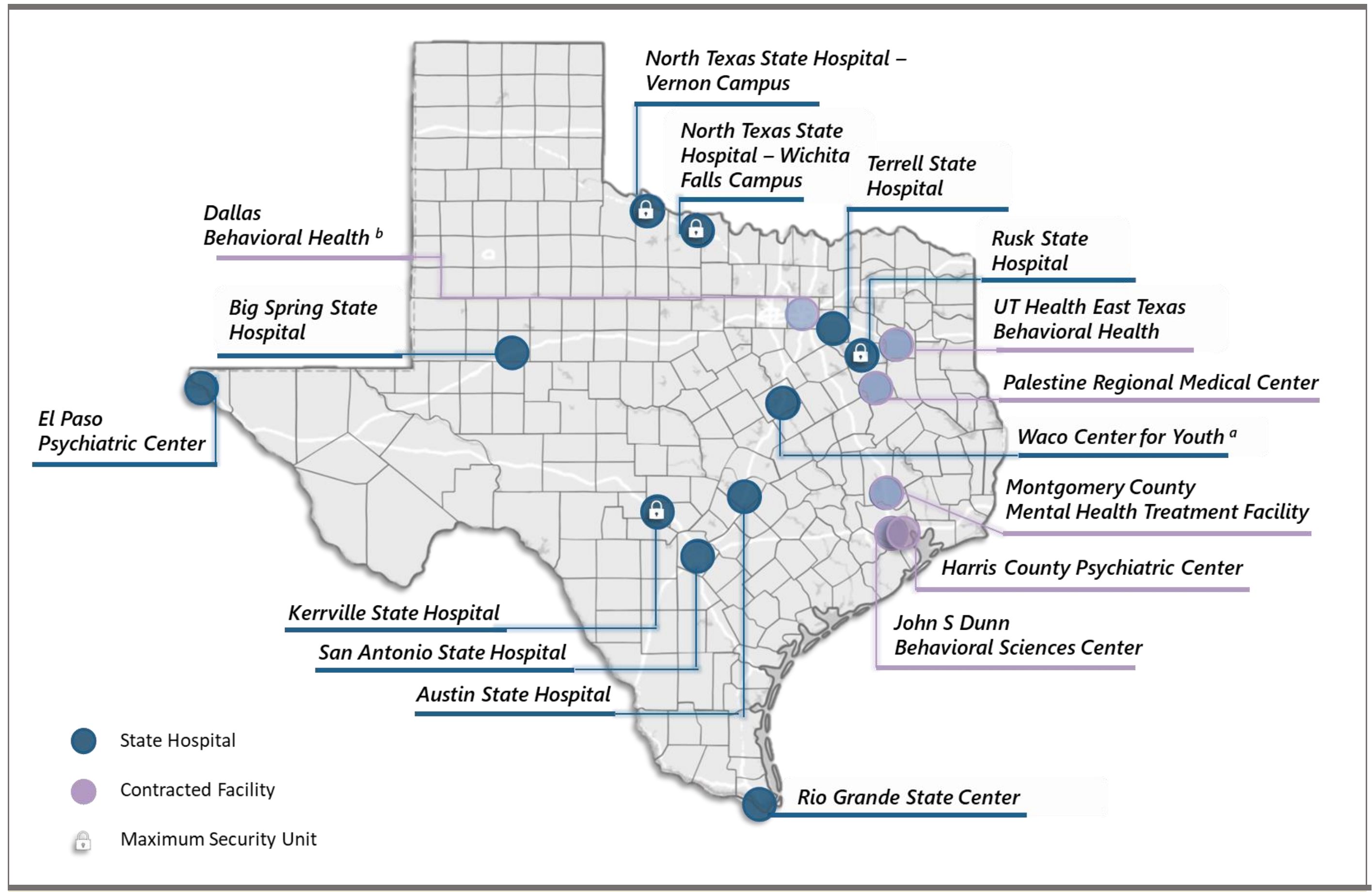
[a] The commitment packet includes the commitment order and other documentation required by Texas Code of Criminal Procedure, Article 46B.076, including various reports from doctors, medical professionals, social workers, documents provided by the prosecutor and defendant's attorney, copies of the indictment or information used to establish probable cause in the case, the defendant's criminal history record, and contact information for the attorneys representing the State and the defendant.

Sources: Texas Code of Criminal Procedure, Chapter 46B, and information provided by the Commission.

As of December 31, 2023, inpatient facilities provided competency restoration at 9 state hospitals, as well as through contracted services between the Commission and 5 contracted facilities. Figure 4 shows the locations of those inpatient facilities.

Figure 4

Locations of State Hospitals and Contracted Facilities for Competency Restoration



[a] The Waco Center for Youth serves only juveniles aged 13 through 17 and does not provide competency restoration.

[b] Some local mental health authorities and/or behavioral health authorities independently manage contracts with local community hospitals for inpatient treatment for which the Commission does not manage, such as the North Texas Behavioral Health Authority's contract with Dallas Behavioral Health.

Source: Based on information provided by the Commission.

Individuals admitted to an inpatient facility for competency restoration are placed by the Commission in either a maximum-security unit or non-maximum-security unit. From September 2018 through December 2023, there were three state hospitals with maximum-security units that provided competency restoration: Kerrville State Hospital (beginning in 2023), North Texas State

Hospital (Vernon and Wichita Falls campuses), and Rusk State Hospital. (See Chapter 2 for more information on state hospitals with maximum-security units.)

The Commission determines the placement of an individual in a maximum-security or non-maximum-security unit when the individual is added to the waitlist. Individuals are placed in maximum-security units if they have been charged with certain offenses listed under Texas Code of Criminal Procedure, Article 17.032(a), or if their indictment alleges an affirmative finding under Texas Code of Criminal Procedure, Article 42A.054(c) or (d). The Commission may redirect individuals placed in maximum-security units to non-maximum security units, if clinically acceptable, through a maximum-security unit waiver process.

Other Competency Restoration Programs

When a court orders an individual to receive competency restoration, it is sometimes a dual order, which allows treatment to be provided by either an inpatient facility or one of the following alternative competency restoration programs:

- **Jail-based competency restoration.** This type of program provides competency restoration to individuals who are in the custody of a county jail. As of June 2024, 21 local mental health and behavioral health authorities were providing jail-based competency restoration in 34 counties. (See Chapter 3 for more information on community-based and jail-based competency restoration programs.)
- **Outpatient competency restoration.** This type of program is delivered through contracts between the Commission and local mental health and behavioral health authorities. As of June 2024, 16 local mental health and behavioral health authorities were providing outpatient competency restoration in 57 counties. Those 16 local mental health and behavioral health authorities provide community-based competency restoration—which includes mental health and substance-use treatment, as well as competency education—for individuals found incompetent to stand trial.

An individual remains on the waitlist for an inpatient facility while participating in one of the alternative programs and will be removed from the waitlist only if

competency is restored by the alternative program (if that individual received a dual order as described above).

Recent Legislative Actions

Senate Bill 500 (86th Legislature, Regular Session). Senate Bill 500 appropriated $445 million during fiscal years 2018 and 2019 to continue improvements to facilities at Austin State Hospital, Rusk State Hospital, and San Antonio State Hospital.

House Bill 2 (87th Legislature, Regular Session). House Bill 2 appropriated over $321 million to finish construction of the Austin and San Antonio replacement state hospitals and begin pre-planning and planning efforts for the new state hospital in Dallas.

Senate Bill 8 (87th Legislature, 3rd Called Special Session). Senate Bill 8 appropriated over $237 million for the initial construction of the new state hospital in Dallas, subsequently named the Texas Behavioral Health Center at The University of Texas Southwestern Medical Center.

Senate Bill 30 (88th Legislature, Regular Session). Senate Bill 30 appropriated $1.4 billion to increase the bed capacity in the state hospital system by replacing existing beds and adding new beds at Panhandle State Hospital,[2] El Paso Psychiatric Center, North Texas State Hospital – Wichita Falls, Rio Grande State Center, San Antonio State Hospital, and Terrell State Hospital. Figure 5 shows the planned bed replacements and additions.

Figure 5

Additional Bed Capacity for State Hospitals

Replacement Beds			New and Expanded State Hospitals		
Facility	Number of Beds	Estimated Year Available	Facility	Number of Beds	Estimated Year Available
Austin State Hospital	240	2024	Rio Grande State Center	50[a]	2027
North Texas State Hospital - Wichita Falls Campus	200[a]	2027	Texas Behavioral Health Center (UT Southwestern Medical Center)	292	2026

[2] The Commission renamed the Amarillo State Hospital to the Panhandle State Hospital.

Replacement Beds			New and Expanded State Hospitals		
Facility	Number of Beds	Estimated Year Available	Facility	Number of Beds	Estimated Year Available
San Antonio State Hospital	300 [a]	2024	El Paso Psychiatric Center	50	Pending
Terrell State Hospital	250 [a]	2027	Lubbock Psychiatric Center	50[a]	2027
			Panhandle State Hospital	75	2027

[a] Some of these beds will be designated for maximum-security.

Sources: Senate Bill 500 (86th Legislature, Regular Session), House Bill 2 (87th Legislature, Regular Session), Senate Bill 8 (87th Legislature, 3rd Called Special Session), Senate Bill 30 (88th Legislature, Regular Session), and the Commission.

Senate Bill 30 also provided $39 million to the Commission to upgrade the electronic health record system that is used to manage the waitlist and admissions into state hospitals.

Additionally, Senate Bill 30 authorized a salary increase for most state employees. The salary increase allowed the Commission to raise the salaries for key medical and nursing positions necessary to manage beds assigned to individuals receiving competency restoration.

Rider 35, page V-14, the General Appropriations Act (87th Legislature). The 87th Legislature authorized an amount not to exceed $500,000 each fiscal year (2022 and 2023) to the Commission for providing a 90-day post release supply of medication to individuals who, after having been committed to an inpatient facility, are being returned to the court for trial. Additionally, the Texas Correctional Office on Offenders with Medical or Mental Impairments is required to reimburse the Commission, in an amount not to exceed $500,000, for providing medication to individuals. The purpose of this legislation was to provide an individual whose competency has been restored with a post release supply of medication to reduce the risk that the individual will lose competency (decompensate) while awaiting trial. These responsibilities were later transferred to the Texas Correctional Office on Offenders with Medical or Mental Impairments.

Chapter 1

State Hospital Capacity

The most significant reason for the increased number of individuals on the waitlist for competency restoration was the limited availability of beds, which was made worse by the COVID-19 pandemic and ongoing challenges with staffing key medical positions.

In addition, state hospital beds were used by individuals who could have been treated in alternative settings and individuals whose competency had been deemed unlikely to be restored.

Interactive supplemental data visualizations for this chapter are available in the **Data Supplement: Competency Restoration Services for Inmates in County Jails**.

The number of beds available for competency restoration was limited.

The available beds in the state hospital system for new admissions for competency restoration depended on the number of beds being used for other types of admissions, which included civil commitments[3] and emergency detentions[4]. The Commission asserted that over time, the proportion of individuals in state hospitals has shifted from being a majority civil commitments to now being approximately two-thirds forensic commitments, which are primarily made up of competency restorations. The number of beds needed for other types of admissions varies daily.

The Commission averaged 1,943 available state hospital beds from April 2020 through December 2023, which was affected by the COVID-19 pandemic that

[3] Texas Health and Safety Code, Chapter 574 outlines the legal procedures to involuntarily commit individuals with serious mental illness that are likely to cause serious harm to themselves or others.
[4] Texas Health and Safety Code, Chapter 573, authorizes peace officers to detain and transport individuals with mental illness that are a serious threat to themselves or others to the nearest inpatient treatment facility or mental health facility for generally no longer than 48 hours.

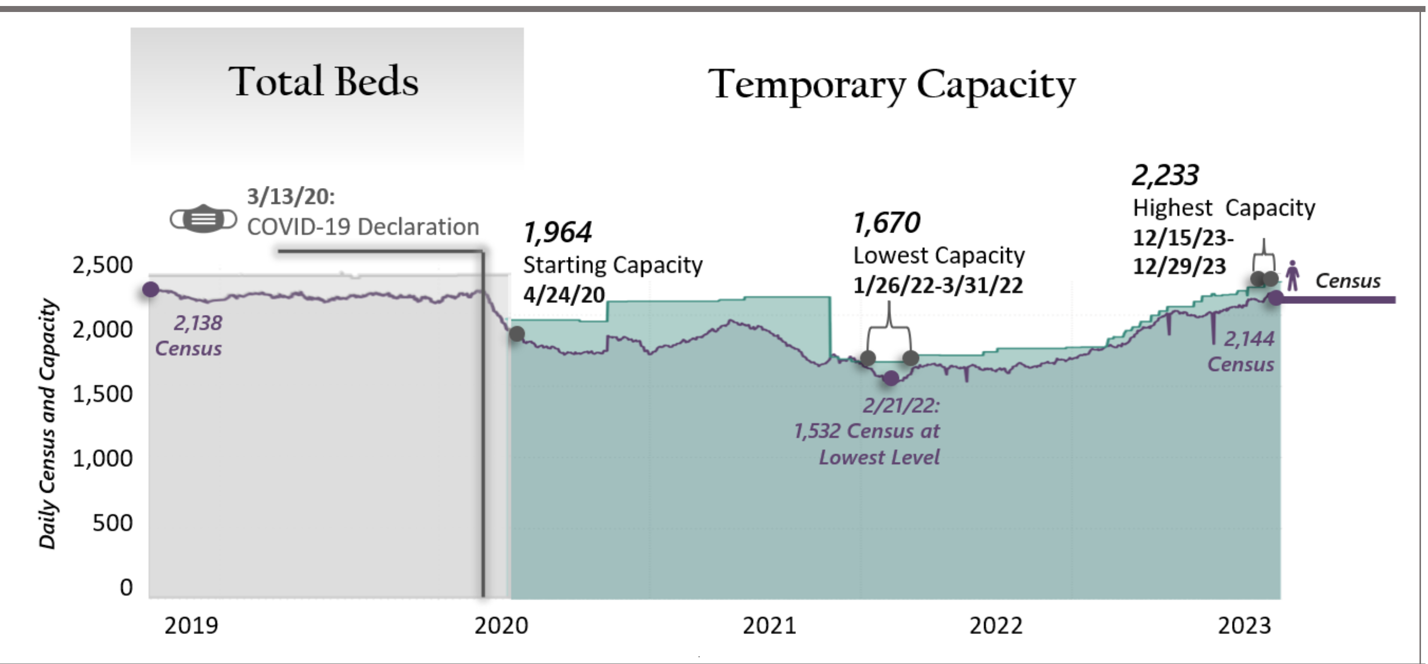
reduced the number of state hospital beds available to provide competency restoration.[5] The Commission indicated that the availability of beds during that time was affected by staffing challenges, social distancing, and the need for isolation units for patients that tested positive for COVID-19. From September 2018 through March 2020 (prior to the pandemic), the average daily census of occupied beds was 2,120. In the first year of the COVID-19 pandemic, from April 2020 through March 2021, the average daily census of occupied beds decreased 15 percent to 1,810.

15%
Reduction in Beds
Reduction in available beds for the first year of the COVID-19 pandemic.

Figure 6 shows the state hospital system's bed capacity and the daily census of occupied beds from September 2018 through December 2023.

Figure 6

State Hospital Bed Capacity from September 2018 through December 2023 [a]



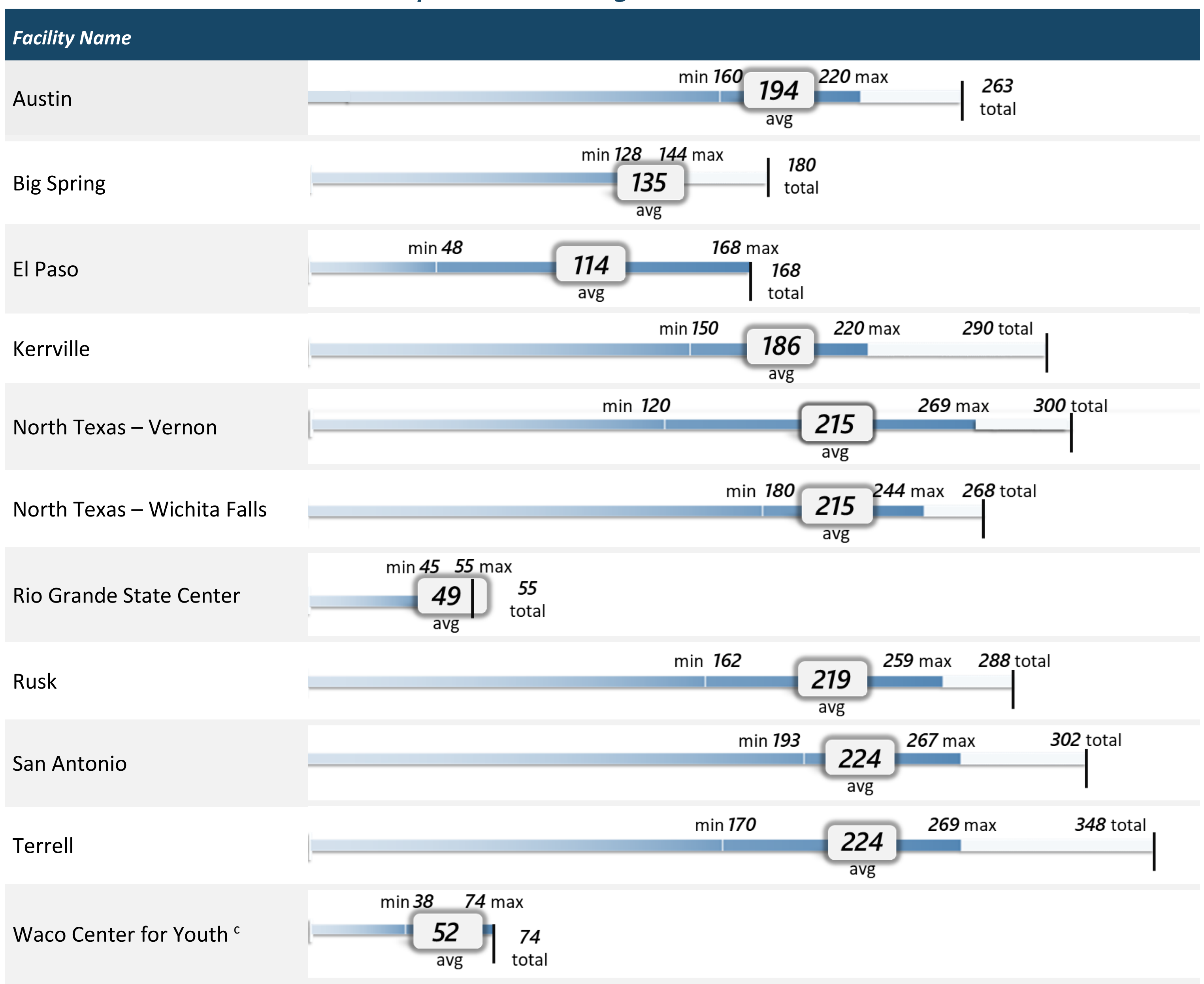
[a] The estimate that the Commission used to determine the number of available beds in the state hospital system, called "total beds," was not set up to consider the conditions caused by the COVID-19 pandemic. This estimate was based on available state funds and the cost to fully staff and operate all beds at a state hospital. In April 2020, the Commission established a new estimate to account for factors such as limited staffing, the COVID-19 pandemic, and building construction. This estimate, called temporary capacity, provides a more accurate measure of the number of beds available.

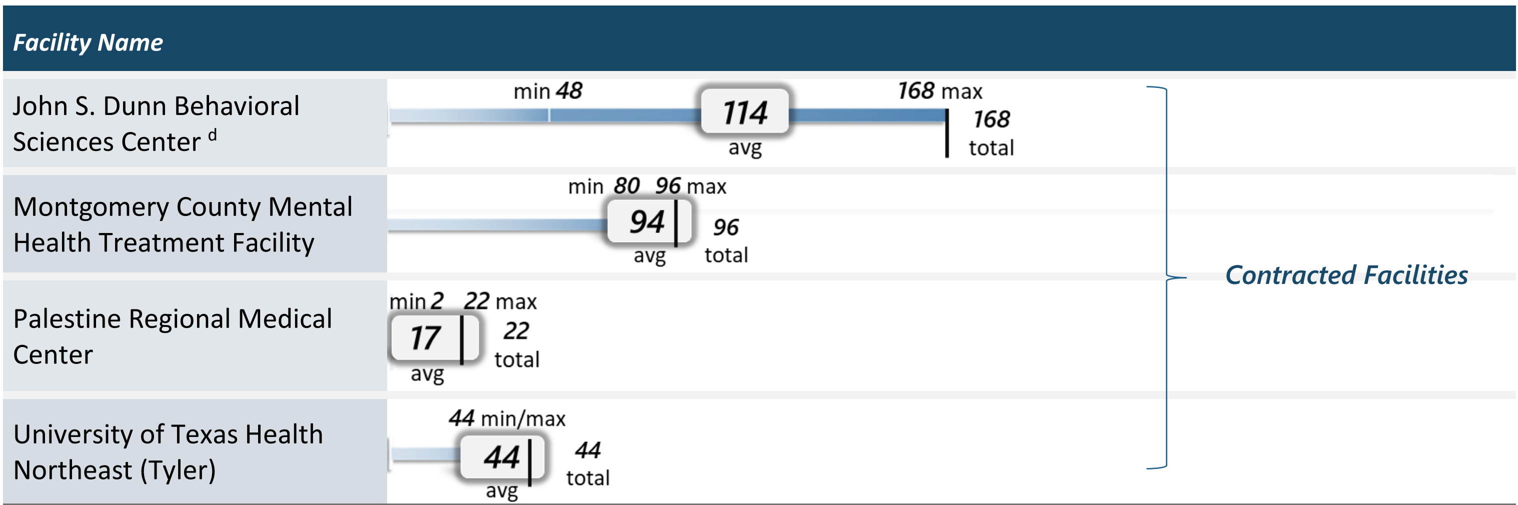
Source: The Commission.

[5] This average includes partner-operate and contracted bed capacity.

Figure 7 shows the average, minimum, and maximum temporary capacity estimate at each state hospital, including contracted facilities, compared to the highest reported total beds estimate from April 2020 through December 2023. The total beds estimate represents the best-case scenario for a state hospital; however, it is not a good indicator of a state hospital's actual capacity.

Figure 7





[a] The temporary capacity totals shown for min, max, and avg are calculated based on the daily, temporary capacity estimate of the number of beds available at a state hospital during the time period.

[b] Harris County Psychiatric Center did not report bed capacity for this time period.

[c] Waco Center for Youth serves only juveniles aged 13 through 17 and does not provide competency restoration.

[d] The John S. Dunn Behavioral Sciences Center is owned by the Commission and operated by UT Health Houston.

Source: The Commission.

The Commission has contracted with local psychiatric hospitals since 2011 to help increase the number of beds available for competency restorations. The Commission asserted that it was on track to have 386 competency restoration beds to add to those that are available in the state hospital system by the end of fiscal year 2025. The Commission has worked to add more beds by amending existing agreements and procuring additional agreements with contracted facilities. The Commission expects to add up to a total of 536 contracted beds for competency restoration by the end of fiscal year 2027.

The Legislature has taken other actions to increase the number of beds available in state hospitals. See Background Information for more details.

Staffing shortages further reduced the number of beds available.

The Commission experienced additional challenges related to hiring and retaining medical staff necessary for providing competency restoration in state hospitals. The availability of a bed for competency restoration depends on having the medical staff necessary to manage an individual's treatment. During the COVID-19 pandemic, the state hospital system experienced a significant decrease in the number of key medical

staff (psychiastrists, nurses, and nursing assistants) important to competency restoration, which corresponded to the growth of the waitlist over that same period.

Figure 8 shows changes in the number of total key medical staff and the number of individuals on the waitlist from September 2018 through December 2023.

Figure 8

Comparison of the Number of Key Medical Staff and the Waitlist from September 2018 through December 2023

[a] The March 2022 and February-March 2023 pay increases were management actions taken by the Commission.
[b] The July 2023 pay action was legislatively funded by Senate Bill 30 (88th Legislature, Regular Session).
[c] The highest number of individuals on the waitlist, 2,711, was recorded between December 23, 2022, and December 26, 2022.
[d] On January 31, 2023, the state hospital system had 2,935 employees in key medical staff positions.

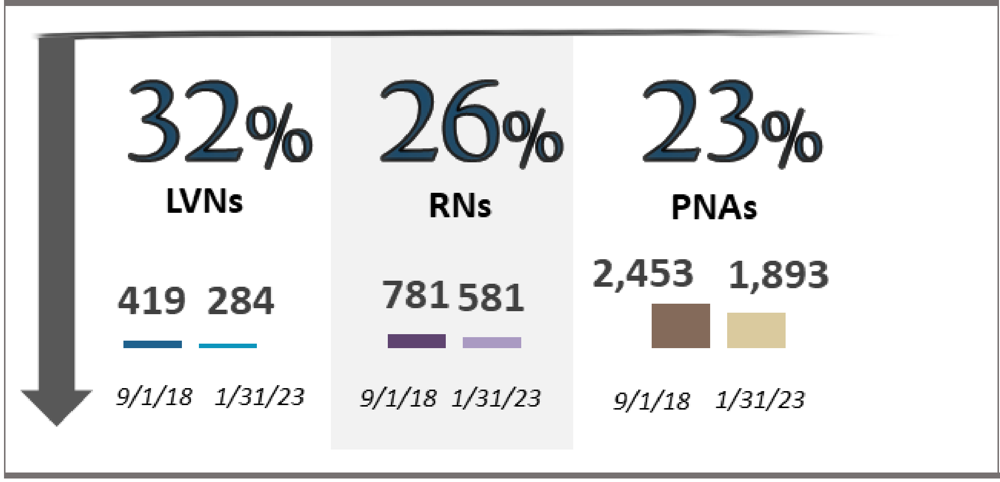
Source: The Commission.

Psychiatrists. The Commission stated that it struggled to retain psychiatrists, who are essential for competency restoration, and cited opportunities for telework and higher pay in the private sector in some locations as reasons. From September 2018 through December 2023, the Commission started with 103 psychiatrists and ended with 85, a 17 percent decrease in the number of staff over that time period.

Nursing Staff. The Commission also described challenges to compete with the private sector for nursing staff. Declines in staffing of licensed vocational nurses (LVNs), registered nurses (RNs), and psychiatric nursing assistants (PNAs) are shown in Figure 9.

Figure 9

Staffing Decreases September 2018 to January 2023

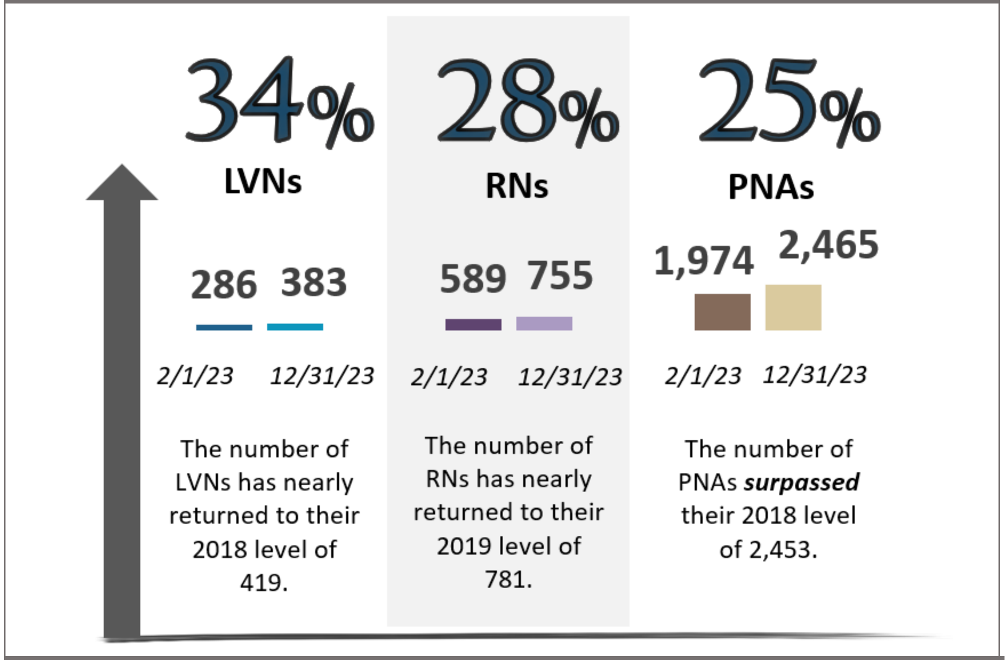


Source: The Commission.

The Commission stated that it initiated actions to help address the shortage of nursing staff. These actions included paying bonuses in March 2022 and salary increases in February/March 2023. Additionally, Senate Bill 30 (88th Legislature, Regular Session) provided a salary increase to most state employees effective July 2023 (see Background Information for more details on Senate Bill 30). As a result of those actions, the Commission's key nursing staff increased, as shown in Figure 10 on the next page.

Figure 10

Staffing Increases February 2023 to December 2023



Source: The Commission.

As the Commission continues to increase the number of state hospital beds, it will need to attract and retain the additional nursing staff required to make those beds available for competency restoration.

Some beds are used for individuals who could be treated elsewhere.

The Commission stated that some state hospital beds were used by individuals who could have been treated in alternative settings and individuals whose competency had been deemed unlikely to be restored.

Alternative placements. Since September 2022, the Commission has evaluated state hospital admissions (including admissions for competency restoration) lasting longer than one year to determine if those individuals could be effectively treated in a less-intensive environment when appropriate monitoring and supervision were available. The types of settings considered included independent living, group homes, assisted living facilities, and nursing homes.

As of January 2024, the Commission's evaluation identified 142 individuals, representing 7 percent of the average bed capacity of 1,943, who could have been treated effectively elsewhere. Finding alternative placements for these individuals would allow the Commission to serve more people currently on the waitlist.

142
Individuals who could be treated effectively elsewhere
or
7%
State Hospital Beds
in use by individuals who have been evaluated appropriate for less restrictive settings.

However, the Commission noted several challenges that would prevent some of these 142 individuals from being treated outside state hospitals:

- Charges against the individuals would have to be dismissed for the individuals to be released to some types of less-intensive settings.
- Limitations in the availability of many of these settings would make placement difficult.
- Lack of guardians could be a barrier to placement.

In addition to these 142 individuals, the Commission identified another 18 individuals who could be effectively treated in settings that would address the need for secure settings and long-term clinical care but that do not currently exist.

Individuals whose competency is unlikely to be restored. The Commission also identified individuals whose competency has been deemed unlikely to be restored. When these individuals are accused of lesser or non-violent crimes, a dismissal or other court disposition is frequently sought so that they can be treated elsewhere in the community or be released to a stable living situation. However, if no appropriate community placement is available, then those individuals might have to stay in state hospitals until an appropriate placement can be found.

In cases in which the individuals might be a danger to themselves or their communities, converting commitments for competency restoration into civil commitments may be necessary. Subchapters E and F of Texas Code of Criminal Procedure, Chapter 46B, outline the processes under which a competency restoration commitment can be converted to a civil commitment. However, individuals under civil commitments often must stay at state hospitals, which prevents those beds from being used for individuals whose competency is more likely to be restored.

Chapter 2
The Commission's Waitlist for Competency Restoration

The number of individuals on the Commission's waitlist for competency restoration grew from 650 individuals to 2,254 individuals (an increase of 247 percent) from September 1, 2018, to December 31, 2023. As a result, the average wait time also increased, especially for those assigned to maximum-security units.

Interactive supplemental data visualizations for this chapter are available in the **Data Supplement: Competency Restoration Services for Inmates in County Jails**.

The length of the waitlist was caused in part by limited capacity in the state hospital system, as discussed in Chapter 1. Also contributing to the length of the waitlist were reappearances of individuals whose competency had been restored but were (1) recommitted because they decompensated[6] while waiting for trial or (2) charged with new offenses and again found incompetent to stand trial.

Auditors analyzed data from the Commission's waitlist and did not identify any significant disparities in the wait time for individuals by race, gender, ethnicity, or age. While auditors identified inaccurate and incomplete records within the Commission's data (see Chapter 4), the data was the best available source of information about the individuals on the waitlist.

The number of individuals on the Commission's waitlist for competency restoration increased significantly.

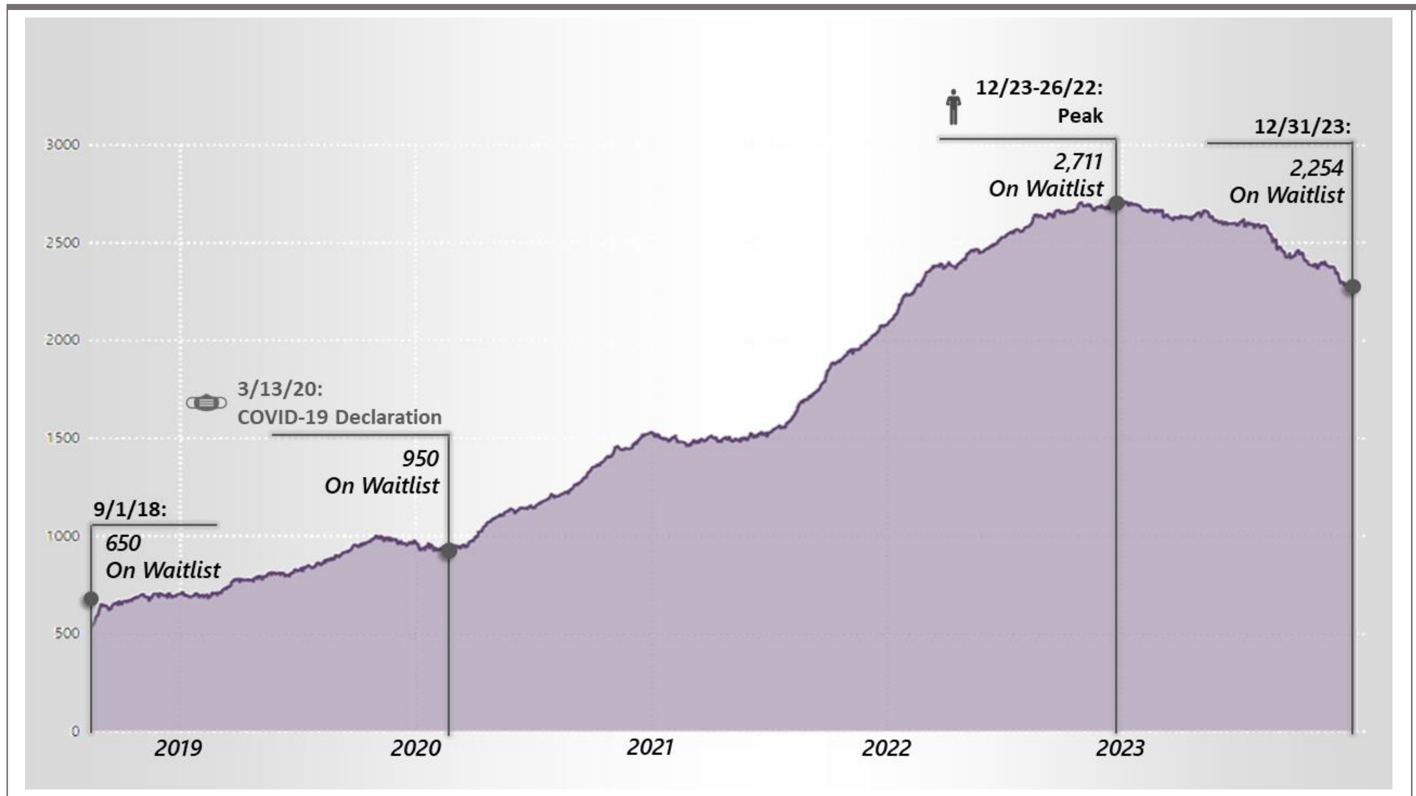
Auditors examined the Commission's waitlist data from September 2018 through December 2023. As discussed above, the number of individuals on the waitlist increased by nearly 250 percent during that time period. The peak number of individuals on the waitlist was 2,711 in December 2022.

[6] Decompensation is the breakdown in an individual's defense mechanisms resulting in progressive loss of functioning or worsening of psychiatric symptoms. The symptoms are unique to each person and the diagnosis, but may include sensory, perceptual, emotional, or cognitive changes.

Figure 11 shows the change in the number of individuals on the waitlist from September 1, 2018, through December 31, 2023.

Figure 11

Number of Individuals on the Waitlist from September 1, 2018, through December 31, 2023



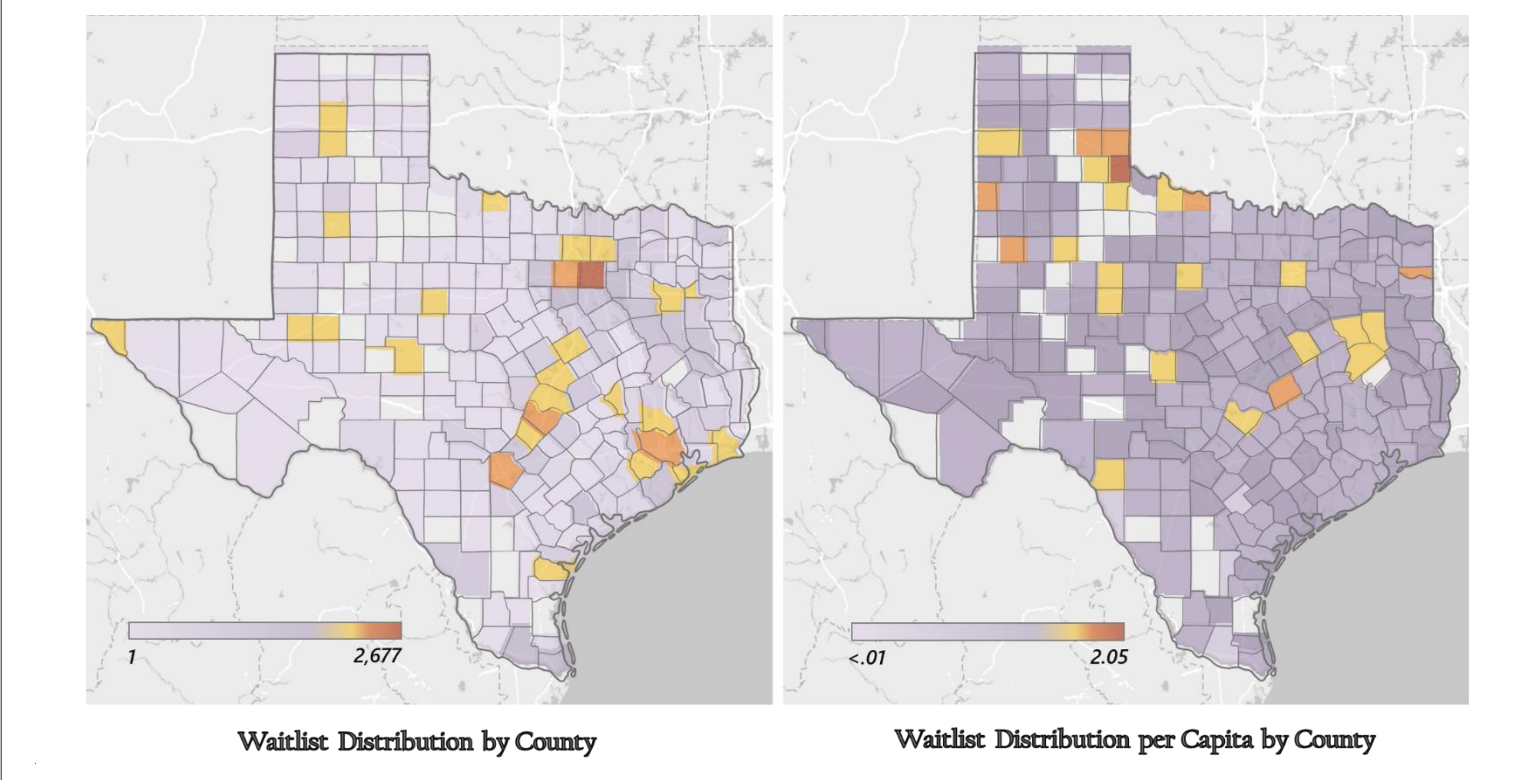
Source: The Commission.

The Commission stated that the state hospital system's limited bed capacity contributed to the increase in the number of individuals on the waitlist. (See Chapter 1 for more information.)

Figure 12 shows the counties that committed (1) the most individuals and (2) the most individuals per capita to state hospitals for competency restoration.

Figure 12

Number of Individuals Assigned to the Waitlist by County from September 1, 2018, through December 31, 2023



Top 5 Counties by Number:

- Dallas County – 2,677
- Harris County – 1,795
- Travis County – 1,728
- Tarrant County – 1,228
- Bexar County – 1,138

Top 5 Counties per 1,000 (and total added):

- Childress County – 2.05 (14 total)
- Terry County – 1.76 (20)
- Bailey County – 1.64 (11)
- Milam County – 1.57 (41)
- Wichita County – 1.56 (203)

Source: The Commission.

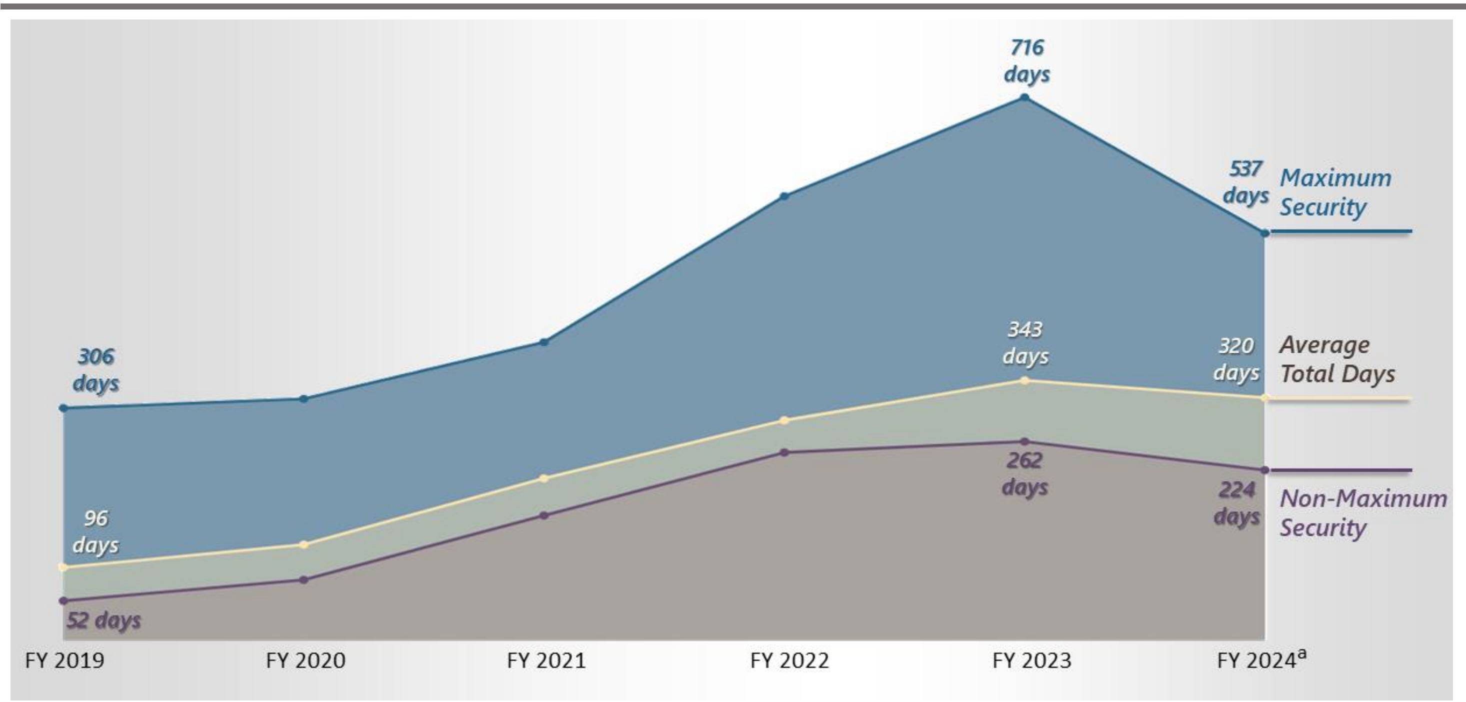
The average wait time for admission increased significantly.

As the number of individuals on the Commission's waitlist increased, so did the time it took for an individual to be admitted to a state hospital for competency restoration. The average wait time for all individuals who were admitted for competency restoration rose from 96 days in fiscal year 2019 to 343 days in fiscal year 2023, an increase of 257 percent.

Figure 13 shows the average wait time for admission to receive competency restoration from September 2018 to December 2023.

Figure 13

Average Wait Time for Competency Restoration Admission from September 2018 to December 2023 [a]



[a] Fiscal year 2024 data is from September 1, 2023, to December 31, 2023.

Source: The Commission.

The average wait time for the first four months of fiscal year 2024 was 320 days, which was a 7 percent reduction from fiscal year 2023 but still significantly higher than the average wait time in fiscal year 2019. The Commission's efforts to increase bed capacity can be expected to reduce the average wait times.

Wait times varied by state hospital and by assignment to a maximum-security unit.

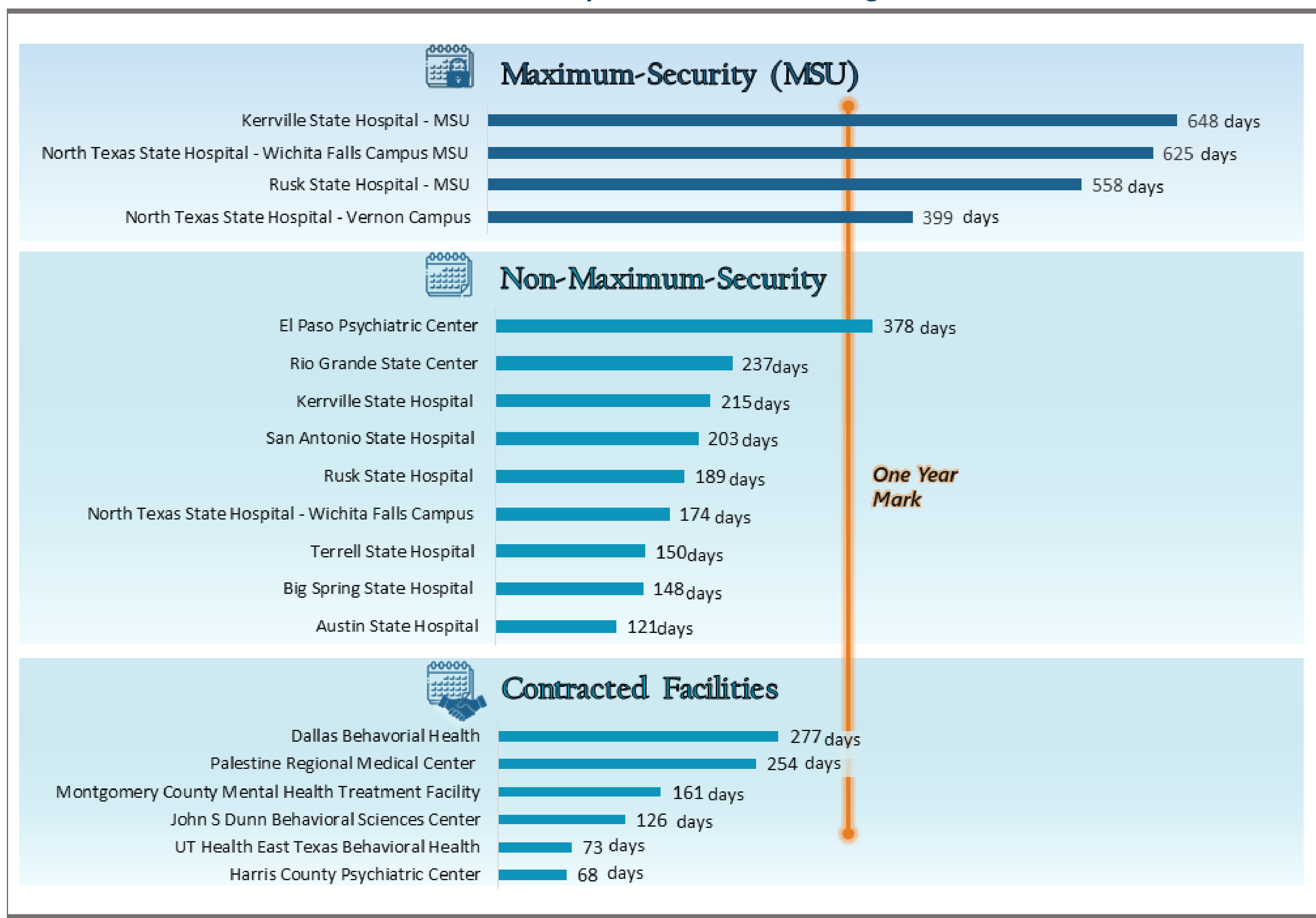
Individuals on the Commission's waitlist for competency restoration are assigned to state hospitals based on either (1) the location of the county that issued the commitment order or (2) whether the individual requires admission to a maximum-security unit (MSU). Local sheriffs or their deputies are responsible for transporting individuals committed for competency restoration to and from state hospitals. If the closest state hospital does not have capacity for an individual assigned to a non-MSU bed, that individual will remain on the waiting list for that state hospital instead of being assigned to another state hospital. Meanwhile, an individual assigned to an MSU bed will remain on the waiting list until the next MSU bed at any facility is available.

The state hospital system has fewer MSU beds than non-MSU beds, which can lead to longer wait times for MSU beds. Only three state hospitals have MSU beds: Kerrville State Hospital, North Texas State Hospital – Vernon and Wichita Falls Campuses, and Rusk State Hospital.

Figure 14 on the next page shows the average wait time for admission into state hospitals and contracted facilities from September 2018 through December 2023.

Figure 14

Average Wait Time by State Hospital and Community Hospitals Providing Competency Restoration Services from September 2018 through December 2023 [a]



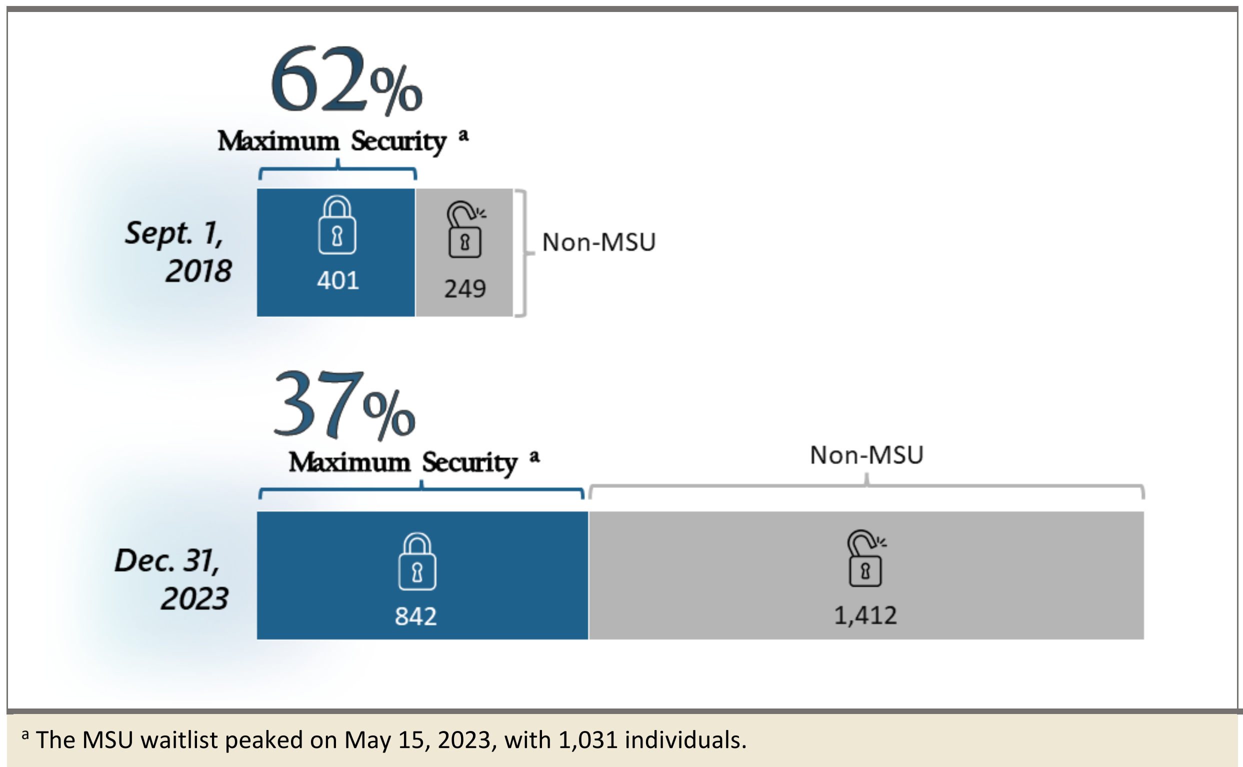
[a] The Kerrville State Hospital added MSU capacity in April 2023. The average wait time shown for Kerrville State Hospital-MSU is for the time period from April 2023 to December 2023.

Source: The Commission.

In addition, the percentage of individuals on the waitlist requiring MSUs substantially changed between September 2018 and December 2023. Figure 15 on the next page shows the difference.

Figure 15

Percentage of Individuals on the Waitlist for MSU beds and Non-MSU beds on September 1, 2018, and December 31, 2023



[a] The MSU waitlist peaked on May 15, 2023, with 1,031 individuals.

Source: The Commission.

The increase in the demand for competency restoration for individuals who **did not** require MSUs was responsible for this change in the composition of the waitlist. From September 1, 2018, to December 31, 2023, the number of individuals waiting for non-MSU beds increased four times more than the increase of the number of individuals waiting for MSU beds. The Commission reported that the number of MSU beds rose by 31 percent during that period, while the number of non-MSU beds decreased by 0.4 percent.[7]

[7] According to the Commission's count of total beds, which is the only metric available for the entire scope of the project.

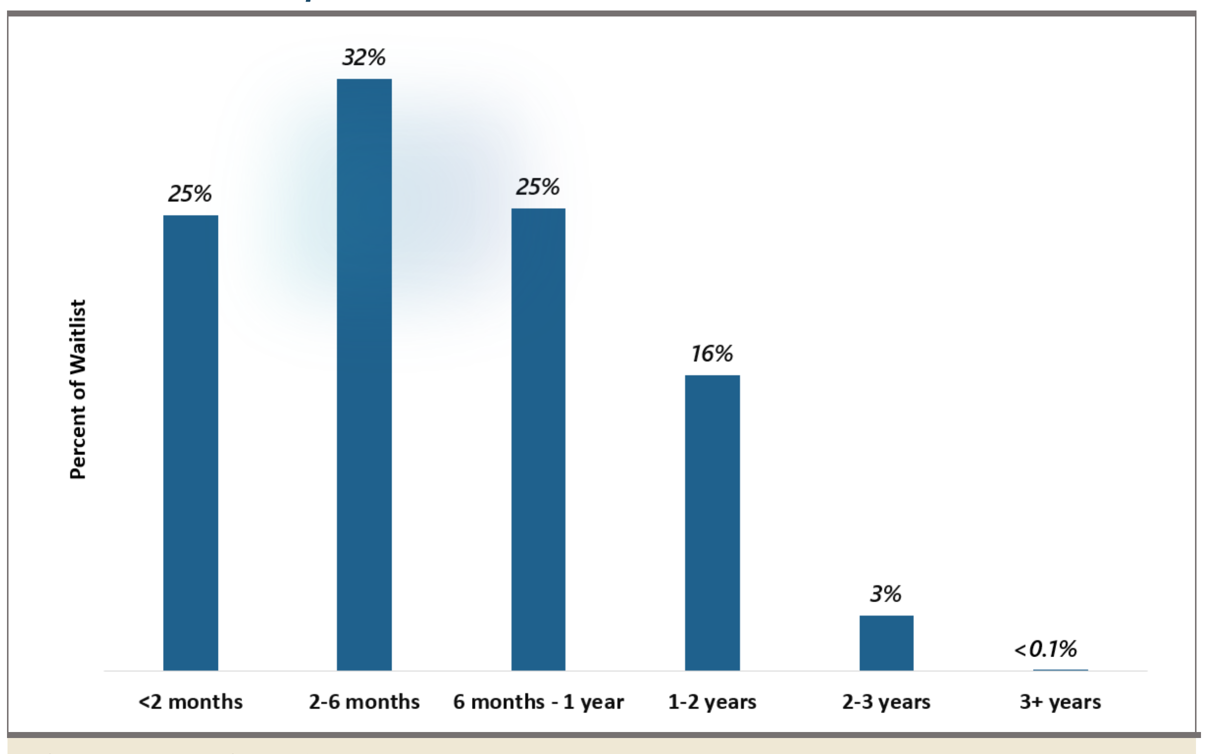
Several additional factors affected the composition of the waitlist.

From September 2018 to December 2023, the Commission's waitlist for competency restoration included a total of 15,652 individuals. Auditors reviewed the waitlist data and determined the following:

No demographic disparities. Auditors' analysis of the Commission's waitlist data determined that the time individuals spent on the waitlist was not significantly affected by their race, gender, ethnicity, or age. Figure 16 shows the average wait time by percentage for all individuals added to the waitlist from September 1, 2018, to December 31, 2023.

Figure 16

Percent of Individuals by Wait Time from September 1, 2018, to December 31, 2023 [a]



[a] The percentages shown do not sum to 100 percent due to rounding.

Source: The Commission.

Overall, the variations in wait time that were seen among various subgroups were minor except for instances of small populations or a lack of data.

Removals from the waitlist. While admission to a state hospital for competency restoration was the most common reason individuals are removed from the waitlist, individuals can be removed for other reasons. Specifically:

- 1,807 (12 percent) of the individuals were removed because their competency was restored while they were in jail. County judges and sheriffs' offices explained that, in some cases, individuals who are committed while under the influence of illegal drugs may regain their competency in jail.
- 1,602 (10 percent) individuals were removed because the cases against them were dismissed. These dismissals can be related to diversion efforts such as pre-trial intervention agreements (see Chapter 3 for more information).

Deaths. A total of 30 individuals who were on the waitlist for competency restoration were reported to the Texas Commission on Jail Standards (TCJS)[8] as dying from natural causes (20), unknown or undetermined causes (8), an accident (1), and homicide (1). This included individuals whose deaths occurred in county jails, as well as medical settings such as a hospital or hospice.

An additional 24 deaths were identified by auditors from the waitlist data. These individuals were not necessarily in custody at the time of death, as some were eligible for bond and could have been back in the community.

"Timed out." There were 168 individuals identified as removed from the waitlist after serving the maximum period of commitment (see text box for more information about the maximum period).

Individuals who "timed out," including those who are indigent, are required to be released even if their competency has not been restored.

Maximum Period of Commitment

The time that someone can be held for an alleged crime when incompetent to stand trial is the maximum term provided by law for the offense for which the defendant was to be tried, unless the individual is charged with a misdemeanor and has been ordered only to participate in an outpatient competency restoration or treatment program under Subchapter D or E, the maximum period of restoration is two years. The time starts accruing at the time of the individual's arrest.

Source: Texas Code of Criminal Procedure, Chapter 46B.

[8] Texas Government Code, Section 511.020, requires sheriffs to report serious incidents to TCJS monthly. Those incidents include suicide, attempted suicide, death, serious bodily injury, assault, escape, sexual assault, and any use of force resulting in bodily injury.

A significant number of individuals were placed on the waitlist more than once.

Auditors identified a significant number of individuals who appear on the waitlist multiple times between September 2018 and December 2023. The individuals who reappeared were (1) recommitted because they decompensated while waiting for trial or (2) charged with new offenses and again found incompetent to stand trial.

Decompensation. When an individual's competency has been restored, the criminal cases against them can usually proceed. However, while awaiting trial, individuals may lose their competency if it cannot be completed timely. Before a trial can proceed, a court must redetermine whether the individual is competent to stand trial. If the redetermination finds that the individual is not competent to stand trial, the individual may be recommitted for competency restoration and placed back on the Commission's waitlist.

341

Decompensation

Number of instances that individuals appear to have decompensated and were added back to the waitlist.

Auditors identified 341 individuals who were on the waitlist **2 to 6 different times** for the **same charges**. The Commission explained that this was likely because the individuals decompensated after they initially had their competency restored. Six individuals had at least six different entries on the waitlist for the same charges.

Decompensation is a concern acknowledged by the various stakeholders involved in competency restoration, including law enforcement agencies, judges, and attorneys.

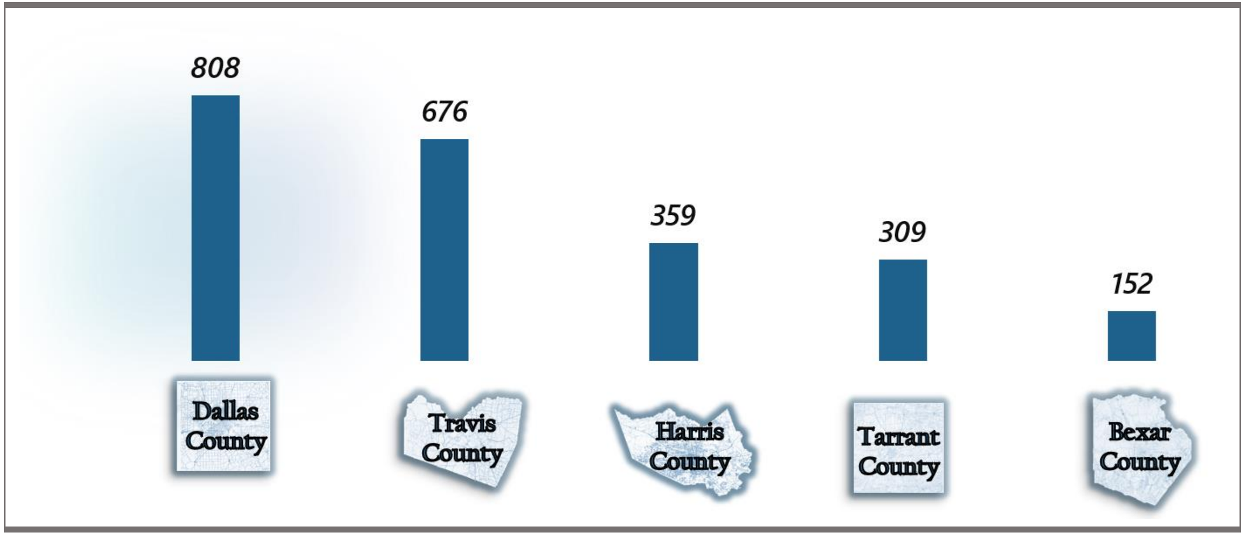
Reoffenders. From September 1, 2018, to June 30, 2024, 1,528 (10 percent) of the 15,652 individuals on the waitlist appeared multiple times for new charges. One individual appeared on the waitlist for eight different arrests (including five instances of criminal trespass – a Class B misdemeanor) for which he was admitted to a state hospital three times and had five other dispositions off the waitlist.[9]

Figure 17 on the next page shows the top 5 counties with individuals reappearing on the waitlist for new offenses from September 2018 to June 2024. These same counties are the top 5 in number of individuals who were on the waitlist overall.

[9] These five dispositions consisted of three dismissals of the case against the individual, one referral to outpatient competency restoration, and one instance of competency being restored while the individual was in jail.

Figure 17

Top 5 Counties by Number of Entries on the Waitlist for Individuals with New Charges from September 2018 to June 2024

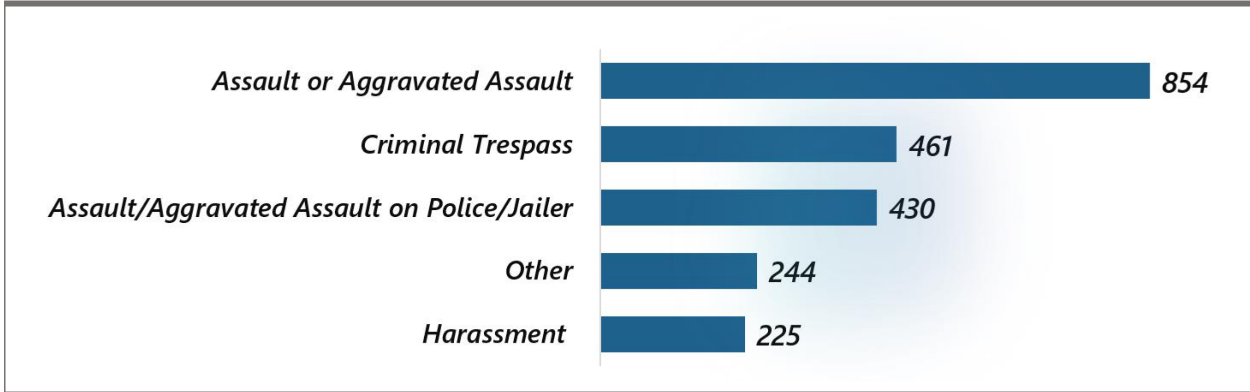


Source: The Commission.

Figure 18 shows the most common types of new charges for the individuals who reappeared on the waitlist from September 2018 to June 2024.

Figure 18

Most Common Types of New Charges for Individuals Appearing on the Waitlist More than Once from September 2018 to June 2024



Source: The Commission.

Chapter 3
Alternative Programs and Resources

Interactive supplemental data visualizations for this chapter are available in the **Data Supplement: Competency Restoration Services for Inmates in County Jails**.

Alternative programs such as jail-based and outpatient competency restoration have helped to reduce the number of individuals on the Commission's waitlist. Additionally, courts, district attorneys, and law enforcement agencies in some counties have established specialized processes and practices to deflect or divert individuals with mental health issues from the court system to community-based, mental health programs, which helps to reduce the number of individuals who would likely be committed for competency restoration. However, those programs and resources are not available in all counties.

To gather information about the alternative programs, training, and best practices used to manage competency-related cases, auditors interviewed key stakeholders in the commitment process, including judges, district attorneys, law enforcement agencies, local mental and behavioral health authorities, and public defender's offices in 10 selected counties: Cherokee, Dallas, El Paso, Harris, Kendall, Lubbock, Milam, Tarrant, Taylor, and Travis. Auditors also conducted a statewide survey of key stakeholders.

Most counties do not have alternative programs for competency restoration.

A limited number of counties use outpatient competency restoration (outpatient) programs or jail-based competency restoration (jail-based) programs as alternatives for treatment of individuals waiting for admission to a state hospital. See the Background Information section for more details about those programs. Figure 19 on the next page shows the 20 counties with jail-based programs, the 43 counties with outpatient programs, and the 14 counties with both as of June 2024.

Figure 19

Counties with Jail-based Programs and Outpatient Programs as of June 2024

Jail-based Competency Restoration[a]

Outpatient Competency Restoration[b]

Both Jail-based and Outpatient Competency Restoration[c]

[a] The counties with only a jail-based program are: Anderson, Chambers, Cherokee, Comal, Ector, Erath, Galveston, Grayson, Hardin, Hood, Jasper, Johnson, Midland, Orange, Palo Pinto, Parker, Potter, Somervell, Tom Green, and Wichita.

[b] The counties with only an outpatient program are: Bastrop, Bell, Bosque, Bowie, Burnet, Caldwell, Cass, Cochran, Coleman, Colin, Crosby, Ellis, Falls, Fayette, Freestone, Gonzales, Gregg, Guadalupe, Harrison, Henderson, Hill, Hockley, Hunt, Kaufman, Lee, Liberty, Limestone, Lynn, Marion, McCulloch, Montgomery, Navarro, Panola, Rains, Red River, Rockwall, Rusk, San Saba, Travis, Upshur, Van Zandt, Walker, and Wood.

[c] The counties with jail-based and outpatient programs are: Bexar, Brown, Comanche, Dallas, Eastland, El Paso, Harris, Lubbock, McClennan, Mills, Nueces, Smith, Tarrant, and Williamson.

Source: The Commission.

From September 2018 through December 2023, 948 (6 percent) of the 15,652 individuals on the Commission’s waitlist for competency restoration were removed after their competency was restored through either an outpatient program or a jail-

based program. Of those 948 individuals, 499 were treated through jail-based programs and 449 were treated through outpatient programs.

While jail-based programs can help individuals on the waitlist receive competency restoration sooner, individuals in a jail that does not have a jail-based program usually have no options for competency restoration other than a state hospital.

The Commission established a Jail In-Reach Learning Collaborative beginning in 2021 through which it supports counties' efforts to monitor individuals found to be incompetent to stand trial and reduce the wait for competency restoration cases in county jails. County forensic teams are made up of representatives from local mental and behavioral health authorities, sheriffs' offices, jail personnel, jail psychiatric providers, prosecutors, defense counsel, and judges. Participating teams receive free technical assistance, legal education, and other consultation services.

Community-based mental health deflection programs may reduce the need for competency restoration.

Community-based programs designed to help individuals experiencing a mental health crisis avoid involvement with the criminal justice system by directing them to treatment were available in several counties. The most common programs identified by law enforcement agencies and local mental health authorities in survey responses include 24-hour crisis lines, mobile crisis outreach teams (MCOT), inpatient and outpatient mental health programs, and law enforcement training on mental health.

Those programs provide opportunities for mental health professionals to assist law enforcement agencies responding to calls involving an individual with a mental health condition. The earlier the interventions occur, the less likely those cases will end up in the criminal justice system and create the need for an individual's competency to be restored. However, the impact and effectiveness of those types of programs vary significantly. For example, some law enforcement agencies have used tablet computers with varying success to connect with mental health professionals to help assess an individual's mental state when responding to a call. Three of the counties that auditors contacted discussed using this type of program:

- **Harris County.** The Clinician and Officer Remote Evaluation (CORE) involves the collaboration of various law enforcement agencies with the Harris Center.[10] One of the law enforcement agencies that participates in the CORE program,

[10] The Harris Center is a local mental health authority that serves Harris County.

the Harris County Sheriff's Office, estimated that the program has led to $40 million in cost avoidance due to directing individuals with mental health issues to appropriate treatment and away from jail.

- **El Paso County.** The El Paso Police Department piloted tablet computers to help its officers connect with mental health professionals; however, officers struggled with connectivity issues. This led to frustrations for officers and individuals, and the pilot was discontinued.
- **Travis County.** The sheriff's office piloted tablet computers with their MCOT and Emergency MCOT teams with mixed results. The tablet computers were helpful in identifying individuals who had previous contacts with mental health resources; but overall, in-person connections were determined to be more beneficial, in part because they did not involve issues with technology or connectivity issues.

Counties have developed diversion programs that can help individuals with mental health issues avoid competency restoration.

Some counties have developed other types of programs and practices to divert individuals to mental health treatment programs to help reduce the need for competency restoration in a state hospital:

- **Harris County**. The district attorney's office has attorneys on call 24/7 who must accept charges before an individual is processed into jail. Individuals who display signs of mental health issues and are being processed for low-level, non-violent misdemeanors are sent to the county's mental health diversion center. In addition, the district attorney's office, the sheriff's office, and the local mental health authority jointly operate a diversion desk where all individuals arrested in the county are initially taken during processing for a mental health screening. Centralizing the diversion process and involving the district attorney's office early can increase the likelihood that an individual suffering a mental health crisis will be connected with services for treatment instead of going to jail.
- **Taylor County.** The sheriff's office works with the local mental health authority to connect arrested individuals who suffer from mental illness with appropriate mental health care resources to divert them from competency restoration unless it is necessary.

- **Dallas County.** The district attorney's office has developed pre-trial intervention (PTI) agreements to address arrested individuals with mental health needs. The PTI agreement process has guidelines and checkpoints to ensure that individuals stay connected to mental health services. Under a PTI agreement, an individual will be placed on a status similar to probation, typically for one to two years but for no more than 60 months. If the individual completes all treatment requirements, the case will be dismissed. Because individuals subject to PTI agreements are not considered incompetent to stand trial, these agreements have the effect of reducing the number of individuals on the waitlist.

Survey responses indicated that 49 (57 percent) of 86 district attorney's offices use PTI agreements for mental health-related cases.

Some counties have courts, prosecutors, and defense attorneys that specialize in cases involving mental illness, but others do not.

Competency cases can be complicated for prosecutors, defense attorneys, and courts that may have varying levels of experience with these types of cases, which can influence outcomes for individuals declared incompetent to stand trial. As a result, some counties have specialized practices to effectively manage competency cases that could result in individuals receiving treatment instead of being on the waitlist for competency restoration. Specifically:

Courts and Judges. The ways that jurisdictions handle competency cases vary significantly from county to county, which can affect how long it takes to resolve the cases, including the length of time that individuals spend on the waitlist. However, some counties have taken approaches to hear competency cases faster:

- Harris, Tarrant, and Travis counties each have a dedicated docket for all competency-related cases.
  - Harris County uses three rotating judges to manage the county's large volume of competency cases.
  - Tarrant County has 1 judge who sees all competency matters from all 21 criminal courts in the jurisdiction.
  - Travis County has all its felony-related competency cases sent to a mental health specialty docket overseen by one judge.

- El Paso County sends most competency cases to the 384th District Court. If competency is restored for an individual, that case is sent back to the original jurisdiction for trial.

Prosecutors. Survey responses indicated that 12 (14 percent) of 88 district attorney's offices that responded have dedicated staff such as case managers, social workers, and attorneys to work on cases involving defendants with mental illnesses, intellectual/development disabilities, and/or competency issues. Examples include the Mental Health Division at the Dallas County District Attorney's Office and the Special Victim and Mental Health Bureau, as well as the Mental Health and Child Fatality Division at the Harris County District Attorney's Office.

Defense Attorneys. Survey responses indicated that 24 (69 percent) of 35 attorneys assigned by public defender's offices that responded had received specialized training in managing mental health and competency cases. Defense attorneys familiar with the competency process can impact the outcome of an individual's case.

Some prosecutors, defense attorneys, and judges have not received specialized training related to mental health or competency restoration issues.

For counties that do not dedicate resources to cases involving competency, some law enforcement agencies, prosecutors, defense attorneys, public defenders[11], and judges take specialized training on mental illness, intellectual/developmental disability, and competency restoration, or use known best practices to manage competency cases. However, survey responses from those key stakeholders indicate that most do not receive specialized training related to mental health or competency restoration. Figure 20 on the next page shows the reported participation in specialized training and use of known best practices.

[11] Public defenders also included Managed Assigned Counsel offices that assign defense attorneys to indigent defendants independently from judges.

Figure 20

Reported Participation in Specialized Training and Use of Known Best Practices

Law Enforcement Agencies

66%

Training Participation

179 of 273 law enforcement agencies surveyed indicated they had some type of appropriate training. Training was most frequently provided by the Texas Commission on Law Enforcement.

33%

Use of Known Best Practices

86 of 261 law enforcement agencies surveyed indicated they used a known best practice. The most common best practices identified were crisis intervention teams, co-responder models, and jail screening processes.

Prosecutors

32%

Training Participation

28 of 88 prosecutors surveyed indicated they had some type of appropriate training. Training was most frequently provided by the Texas District and County Attorneys Association.

45%

Use of Known Best Practices

40 of 88 prosecutors surveyed indicated they used a known best practice. The most commonly used best practice was the Texas District and County Attorneys Association's *Mental Health Law for Prosecutors* (2020).

Defense Attorneys

69%

Training Participation

24 of 35 public defender's offices and managed assigned counsels surveyed indicated they had some type of appropriate training. Training was most frequently provided by the Texas Criminal Defense Lawyers Association.

66%

Use of Known Best Practices

23 of 35 of public defender's offices and managed assigned counsels surveyed indicated they used a known best practice. Various resources were mentioned, including resources from the Texas Criminal Defense Lawyers Association, the Texas District and County Attorneys Association, and the Judicial Commission on Mental Health.

Judges

45%

Training Participation

83 of 185 judges surveyed indicated they had some type of appropriate training. The most common training taken was provided by the Texas Center for the Judiciary.

30%

Use of Known Best Practices

56 of 184 prosecutors surveyed indicated they used a known best practice. The most commonly used best practice was the Judicial Commission on Mental Health's *Texas Mental Health and Intellectual and Developmental Disabilities Law Bench Book.*

Chapter 4
Data Collection

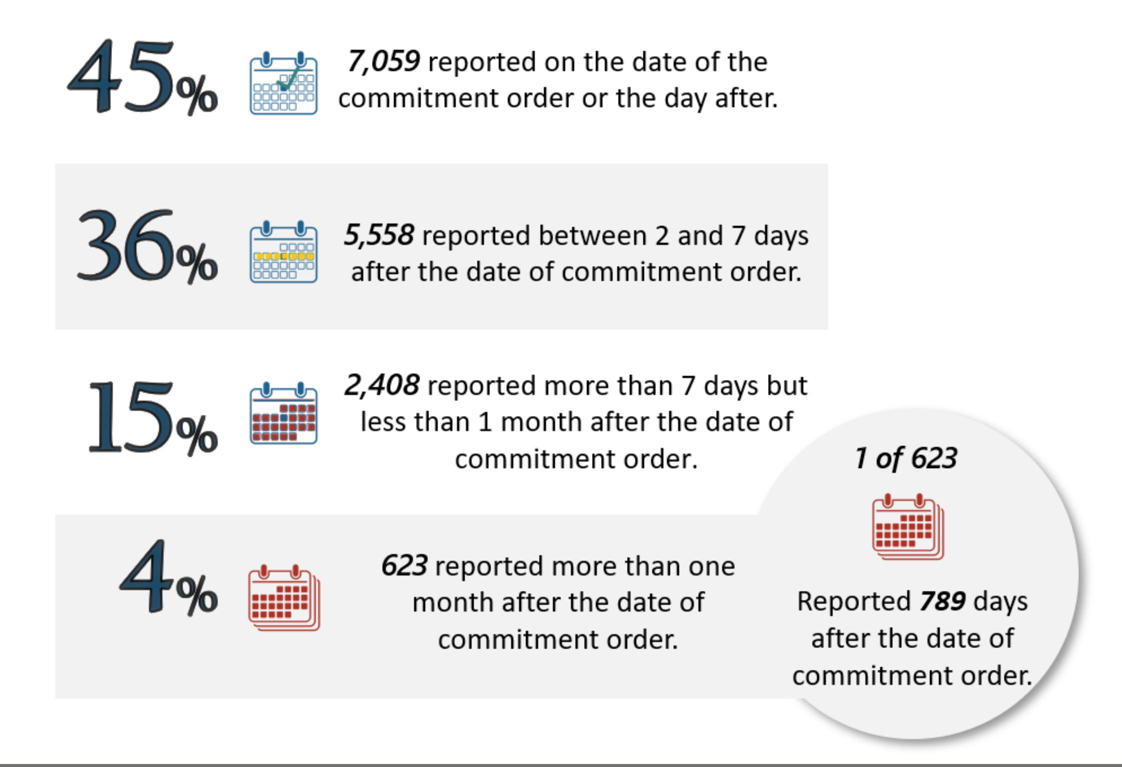
State, county, and community-based entities report program and performance data on various aspects of the competency restoration services they may provide, including information such as demographics on the individuals placed on the Commission's waitlist and on the types of community-based services local mental health and behavioral health authorities provide. However, concerns were identified by auditors with the timeliness, accuracy, and completeness of certain data collected and reported related to competency restoration.

Commitment orders are not submitted to the Commission in a timely manner.

Texas Code of Criminal Procedure, Article 46B.076, requires courts to send a copy of a commitment order to the applicable facility or program no later than the date of the order of the commitment for individuals deemed to be incompetent to stand trial. However, courts are not consistently submitting commitment orders to the Commission within the required timeframe. The delayed submission of a commitment order may affect an individual's placement on the waitlist because the Commission puts individuals on the waitlist in the order in which their commitment orders are received. Figure 21 on the next page shows the timeliness of the submission for the 15,652 commitment orders that courts submitted to the Commission between September 1, 2018, and December 31, 2023.

Figure 21

Timeliness of Commitment Orders Received by the Commission from September 1, 2018, through December 31, 2023 [a]



[a] The summary shown does not include 4 of the 15,652 commitment orders because a commitment date was not recorded nor could be supported by the Commission.

Source: The Commission.

The Commission indicated that courts in rural counties, which may not be familiar with the competency restoration process, sometimes do not report commitment orders in a timely manner. However, instances in which a commitment order is submitted more than three months after the order date, the Commission will place that individual on the waitlist with other individuals with similar commitment order dates to reduce their wait time for admission.

Additionally, courts are statutorily required to provide the Commission with other legal and medical documentation[12] when submitting commitment orders. Auditors tested records for 60 individuals on the waitlist for compliance with those

[12] Texas Code of Criminal Procedure, Article 46B.076, requires documentation—including various reports from doctors, medical professionals, and social workers; documents provided by the prosecutor and defendant's attorney; copies of the indictment or information used to establish probable cause in the case; the defendant's criminal history record; and contact information for the attorneys representing the State and the defendant—to be included in the submission of a commitment order to the Commission.

requirements, and none of the commitment orders tested included all required documentation. The Commission asserted that the additional documentation, while statutorily required, is not needed to place an individual on the waitlist but is necessary, and received, before an individual can be admitted into a state hospital.

The waitlist contains inaccurate information on individuals.

Individuals' Personal Information

The electronic health records system that the Commission used to manage information about the individuals placed on the waitlist contained errors related to the name, race, and ethnicity for some individuals. Auditors tested a sample of records for 60 individuals on the waitlist from September 1, 2018, through December 31, 2023, to compare their personal information in the Commission's electronic health records system to the commitment orders and other documentation provided by courts. Figure 22 shows a summary of the inaccuracies identified.

Figure 22

Inaccuracies with the Waitlist Information from September 1, 2018, through December 31, 2023

32%	17%	37%
Inaccurate Name	**Inaccurate Race**	**Inaccurate Ethnicity**
For 19 of 60 records tested, the names did not match supporting documentation.	For 7 of 41 records tested, the race did not match supporting documentation.[a]	For 15 of 41 records tested, the ethnicity did not match supporting documentation.[a]

[a] Only 41 (68 percent) of the 60 records tested reported information on an individual's race and ethnicity. The remaining 19 records (32 percent) did not include that information. Prior to 2021, race and ethnicity information was not collected for all individuals added to the waitlist.

Source: The Commission.

- **Inaccurate names.** The inaccuracies identified included misspellings, omitted middle names, or transposed first and last names. The Commission indicated that inaccuracies may have been caused by data entry errors.
- **Inaccurate races and ethnicities.** The Commission stated that inaccuracies identified may have been caused by either data entry errors or limitations with

the electronic health records system. The system provides only two options for ethnicity: “Hispanic or Latin Origin” or “Non-Hispanic or Latin Origin.” If the information submitted does not specify ethnicity, “Non-Hispanic or Latin Origin” is used.

Criminal Offenses

Alleged criminal offenses committed by an individual are categorized in the electronic health records system by the level of offense (such as misdemeanor or felony) and type of offense (such as assault or robbery). However, those categories were not always accurately recorded. Specifically:

- **Level of Offense.** Ten (17 percent) of the 60 records tested did not support the level of offense. Of those 10 records, 7 did not include information on the offense, as the courts did not provide that information, and 3 offenses were not correctly recorded.[13]
- **Type of Offense.** The type of offense recorded for 17 (28 percent) of the 60 records tested did not match documentation, and there was no documentation to support the type of offense for 2 (3 percent) of the records tested. The Commission indicated that its electronic health records system does not list all the types of offenses that an individual may be charged with, which limits the types of offenses that can be recorded.

The Commission stated that Senate Bill 30 (88th Legislature, Regular Session) provided additional funding to replace its electronic health records system; it anticipates that a new system will be implemented by May 2025. See the Background Information section for more information on Senate Bill 30.

[13] One offense was recorded as a felony but was actually a misdemeanor. The other two offenses, a felony and a misdemeanor, were not recorded.

Some information the Commission collects may be unreliable on competency restoration services provided by community-based programs.

The Commission contracts with local mental health and behavioral health authorities to provide mental health services including competency restoration services through outpatient and jail-based programs (see the Background Information section for more details on those programs). As described in Chapter 3, these services are not available in all counties. The Commission requires local mental health and behavioral health authorities to periodically report on certain performance and financial information for their competency restoration programs. (See text box for examples of the information collected).

The Commission explained that local mental health and behavioral health authorities do not all have the same community relationships with county courts and jails, potentially limiting their access to some information needed to accurately report. Therefore, the information was of limited reliability.

Reporting Requirements

The Commission collects the following information on outpatient and jail-based competency restoration:

- Monthly data related to individuals on the waitlist such as the number of individuals refusing psychotropic medication, receiving court ordered medication, considered for Outpatient Competency Restoration (OCR) services, or were awaiting a new competency evaluation.
- Quarterly expenditures for OCR programs such as the amounts spent on medication, substance abuse, and forensic evaluations.
- Biannual information on jail-based competency restoration outcomes such as the number of felony/misdemeanor charges, number of individuals restored, and associated costs.

Source: The Commission.

Courts are not always reporting individuals found to be incompetent to the Department of Public Safety as required.

According to Texas Government Code, Sections 411.052 and 411.0521, district and county clerk offices are statutorily required to report information on certain individuals who are prohibited under federal law from purchasing firearms, which includes individuals determined to be incompetent to stand trial, to the Department of Public Safety (Department) within 30 days of certain court actions. (See text box for more details.) The Department reports that information to the Federal Bureau of Investigation (FBI) for use in the federal background check system for firearm purchases.

Auditors compared the names of individuals on the Commission's waitlist from September 1, 2018, through December 31, 2023, to the names of individuals reported to the Department under this statutory requirement. Figure 23 on the next page shows the results of that comparison.

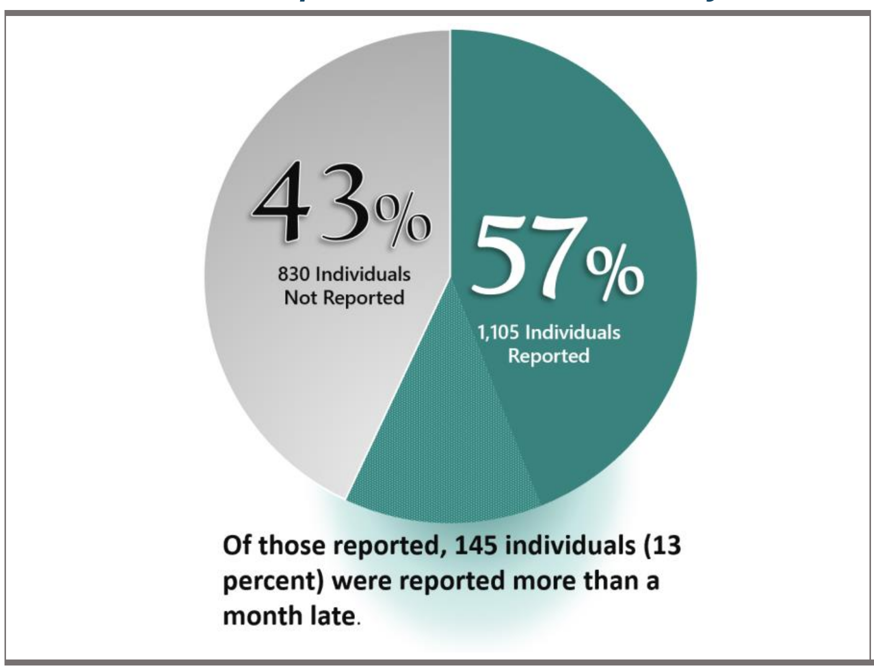
Court Actions That Must Be Reported to the Department

District and county clerks must report to the Department information on an individual who is at least 16 years of age in which the court has taken the following actions on: (1) ordered to receive inpatient mental health services, (2) acquitted in a criminal case by reason of insanity or lack of mental responsibility, (3) committed to long-term placement in a residential care facility due to intellectual disabilities, and (4) determined to be incompetent to stand trial.

Source: Texas Government Code, Section 411.0521(a)(1).

Figure 23

Individuals on the Waitlist Required to Be Reported to the Department of Public Safety



Sources: The Commission and the Department.

Additionally, auditors reviewed the records of the individuals who were not reported to the Department to identify the counties responsible for misreporting. Figure 24 lists the 103 counties that did not report the individuals identified.

Figure 24

Number of Individuals Not Reported to the Department of Public Safety from September 1, 2018, through December 31, 2023, by County

County	Individuals per County
Dallas	269 [a]
Bexar	125 [b]
Smith	44
El Paso	37
Tarrant	33
Travis	29
Harris	20
Nueces	15
Lubbock	12

County	Individuals per County
Cherokee, McLennan	11
Hays	10
Jefferson	9
Brazos	8
Bell, Milam	7
Coryell, Harrison, Hidalgo, Limestone	6
Gregg, Guadalupe, Kaufman, Wichita, Willacy	5
Anderson, Aransas, Henderson, Navarro, Starr, Wood	4
Bastrop, Bee, Cameron, Freestone, Kleberg, Maverick	3
Blanco, Brazoria, Calhoun, Cass, Collin, Deaf Smith, Ellis, Erath, Galveston, Gray, Hill, Howard, La Vaca, Liberty, Llano, Marion, Newton, Nolan, Palo Pinto, Potter, Randall, Reeves, Tom Green, Walker, Ward, Wise	2
Bailey, Bandera, Bowie, Chambers, Childress, Collingsworth, Comal, Dallam, Falls, Fayette, Fisher, Garza, Goliad, Hardin, Haskell, Hockley, Hood, Hopkins, Hunt, Hutchinson, Jackson, Kendall, Kinney, Lamb, Lampasas, Leon, Matagorda, Mills, Nacogdoches, Panola, Polk, Robertson, Runnels, San Saba, Scurry, Shelby, Sterling, Valverde, Van Zandt, Wharton	1
Total	**830**

[a] The Dallas County District Clerk's office indicated that the individuals not reported resulted from its implementation of a new case management system during fiscal year 2023. The Dallas County District Clerk's Office suspended reporting to the Department in May 2023 and resumed after the implementation of the new system in February 2024. Commitment orders for 182 (68 percent) of the 269 individuals identified were issued after the new case management system was implemented.

[b] The Bexar County District Clerk's Office indicated that the individuals not reported resulted from understanding that it was responsible for reporting individuals only to the Commission. The 125 individuals identified all had commitment orders that were issued on and after November 2021.

Sources: Dallas County District Clerk's Office, Bexar County District Clerk's Office, the Department, and the Commission.

Additionally, the Department stated that it has no processes to verify that the list of individuals reported by a county is complete and accurate. The Department explained that it has only two staff dedicated to managing the reporting process to the FBI, and it does not have access to the Commission's waitlist to help validate whether all individuals have been reported.

Appendix 1

Objectives, Scope, and Methodology

The following members of the State Auditor's staff worked on this project:

- Thomas Andrew Mahoney, CFE, CGAP (Project Manager)
- Amadou Ngaide, CIDA, CFE, MBA, CICA (Assistant Project Manager)
- Charlotte Carr, M. Ed.
- Rebecca Franklin, CFE, CISA, CGAP, CICA
- Benjamin Hikida, Macy, CFE
- Sam Minty
- Armando S. Sanchez, CFE
- Venus Santos, CISA, CFE
- Heather Stearns
- Alex Sumners, CFE
- Michele Yonkeu
- Sarah Puerto, CIA, CISA, CFE (Quality Control Reviewer)
- Willie Hicks, CIA, MBA, CGAP (Audit Manager)

Objectives

The objectives of this project were to:

- Evaluate the process for competency restoration for inmates in county jails and identify related inefficiencies in the commitment process.
- Review the waitlist for forensic beds as required by Senate Bill 1677 (88th Legislature, Regular Session).

Scope

The scope of this project included gaining an understanding of the Health and Human Services Commission's (Commission) processes for managing the waitlist for adults that were court-ordered to receive competency restoration at a state hospital from September 2018 to December 2023. Additionally, the scope included a review of data about the individuals on the Commission's waitlist from January 2024 through June 2024.

Methodology

For this project, we performed the following:

- Interviewed management and staff of the Commission, state hospitals,[14] the Department of Public Safety, the Texas Commission on Jail Standards, the Texas Correctional Office on Offenders with Medical or Mental Impairments, the Texas Indigent Defense Commission, the Office of Court Administration, and selected law enforcement agencies, district attorney's offices, public defenders' offices, criminal defense attorneys, judges, local mental health authorities, and community-based advocacy organizations that assist individuals with mental health or intellectual and developmental disabilities for the following 10 counties: Cherokee, Dallas, El Paso, Harris, Kendall, Lubbock, Milam, Tarrant, Taylor, and Travis, to gain an understanding of the competency restoration process in Texas. The 10 counties selected represented 55 percent of the individuals on the waitlist from September 2018 to December 2023.
- Identified and reviewed relevant criteria:
  - Texas Code of Criminal Procedure, Chapter 46B.
  - Texas Health and Safety Code, Chapter 573.
  - Texas Government Code, Chapters 411 and 511.
  - Texas Penal Code, Chapter 12.
  - Texas Administrative Code, Title 25, Chapter 415, and Commission policies and procedures.
- Conducted a statewide survey of the law enforcement agencies, district attorney's offices, judges, public defenders and criminal defense attorneys, and local mental health authorities to identify and understand challenges with the competency restoration process, including the availability and use of alternative programs, training, and best practices.

[14] Auditors did not interview staff at the Waco Center for Youth because the facility does not provide competency restoration to adults.

- Tested a random sample[15] of 60 records from the population of 15,747 records in the Commission's electronic health records system to determine if selected data fields related to individuals' demographics, related offense charges, and court notification dates were accurately recorded and whether the Commission received all required information from counties in a timely manner.
- Analyzed data on the Commission's waitlist for competency restoration to determine if any disparities exist in the wait time for individuals by race, gender, ethnicity, or age from September 2019 through December 2023. Auditors compiled and summarized the results of the analysis. See **Data Supplement: Competency Restoration Services for Inmates in County Jails**.
- Collected and reviewed Commission data on the number of state hospital beds available from September 1, 2018, to December 31, 2023, to determine the number of beds being used by individuals who had been cleared to be discharged but had not been released and the number of beds that could have been available for individuals needing competency restoration.
- Reviewed the Commission's workforce data on psychiatrist and nursing positions to understand staffing levels, including the effect of pay actions that increased staff compensation.

Data Reliability and Completeness

To determine the reliability and completeness of the Commission's waitlist data collected, auditors (1) verified that selected data fields were populated and correctly formatted and (2) compared records to other data sources as appropriate. As discussed in Chapter 2, auditors identified inaccurate and incomplete records within the Commission's data. However, that data was used for the purposes of this project as it was the best available source of information about the individuals on the waitlist.

We conducted the work for this project from September 2023 through November 2024. The project was subjected to certain quality control procedures to ensure accuracy but was not subjected to all the tests and confirmations that would be performed to comply with audit standards.

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[15] The sample was a nonstatistical sample designed to obtain a cross section of the population to test and was not representative of the population; therefore, it would not be appropriate to project the test results to the population.

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The Honorable Dan Patrick, Lieutenant Governor, Joint Chair

The Honorable Dade Phelan, Speaker of the House, Joint Chair

The Honorable Joan Huffman, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable Greg Bonnen, House Appropriations Committee

The Honorable Morgan Meyer, House Ways and Means Committee

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The Honorable Greg Abbott, Governor

Health and Human Services Commission

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