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Central Texas Regional Forum

December 1, 2022

AT&T Conference Center



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Central Texas Regional Forum

**Judge Steve Leifman, Eleventh
Judicial Circuit Court of Florida**

Research & Best Practices on Competence to Stand Trial & Competence Restoration

Lisa Callahan, PhD

SAMHSA's GAINS Center for
Behavioral Health and Justice Transformation

December 1, 2022



Overview of Presentation

- Introduction: What is the Competence Process and Why is it on Overload?
- What is competence restoration (CR)?
- Where does the competence process fall in the SIM?
- Why is the competence system on overload?
- Where does CR happen? What does research show? What are best practices?
- What are some quick fixes & longer-term strategies by step in process/intercept?
- Considerations in improving the competence process

Disclaimer

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Constitutional & Case Law Foundation

- *Dusky v. U.S.* (1960) - A defendant is, by law, required to be able to understand charges against him/her/them & the criminal process
 - Historically rooted in law, but first U.S. Supreme Court case
- *Jackson v. Indiana* (1972) – sets limits on length of time a defendant can be held for CR & requires that defendant be “restorable”
- *Sell v U.S.* (2002) – sets conditions for forced medications to restore competency

Terminology & Legal Constructs

- ***Competence to Stand Trial (CST)*** – refers to a legal question raised by a party (e.g. judge, defender, prosecutor) of a defendant’s capacity to understand the legal proceedings against him/her/them
 - AKA: Adjudicative Competency , Fitness to Proceed
- ***Incompetent to Stand Trial (IST)*** – is the legal determination by a judge that a defendant lacks the capacity to proceed with trial or disposition based on a clinical evaluation.
- ***Competence Restoration (CR)*** – the process or program for an IST defendant to become CST that involves both treatment of underlying mental illness & education about legal concepts/ procedures (2018 AAPL Guidelines)
- ***Attainment or Remediation*** – for defendants with underlying IDD without prior competence
- Part of the CRIMINAL procedures in your state established by state statute & state/federal case law.

ABA Recommendations

- Revision in Standards related to Criminal Justice and Mental Health
- Incompetent defendants charged with minor crimes should be released or civilly committed; changes even for other defendants
- 7-4.8(e): Alternative to hospitalization (i.e. diversion opportunities) should be offered for some incompetent defendants

American Bar Association: *ABA Criminal Justice Mental Health Standards*, Standard 7-4.

Available at: http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/mental_health_standards_2016.authcheckdam.pdf

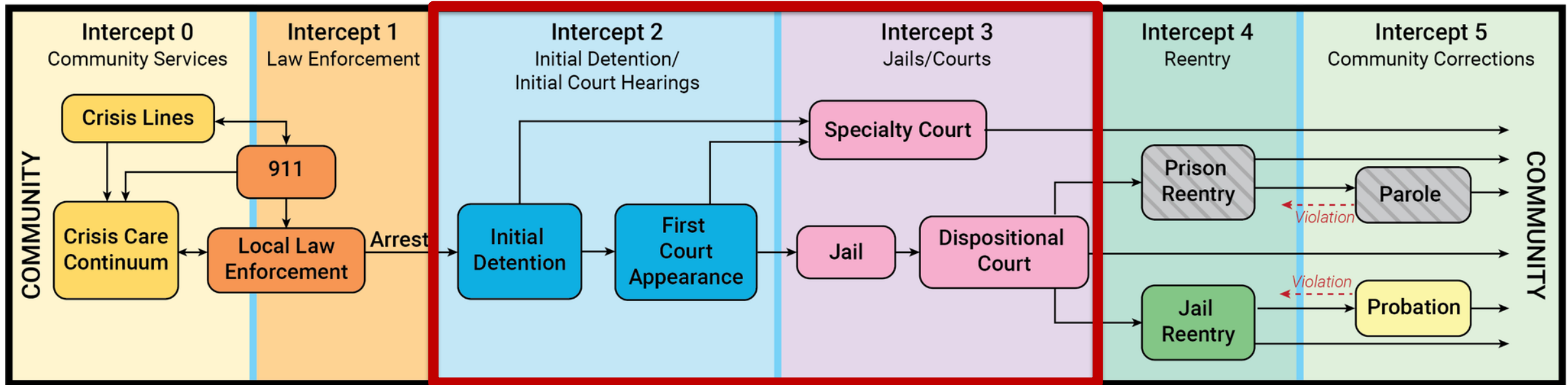
2016 Update

AAPL Recommendations – 2018 Revisions

- Developed by forensic psychiatrists and other qualified forensic evaluators
- Resource to guide forensic evaluations of competence to stand trial:
 - Interview
 - Collateral data
 - Assessment instruments
 - Formulating the opinion
 - Preparing the report
 - Restoration

Source: [AAPL Practice Resource for the Forensic Psychiatric Evaluation of Competence to Stand Trial | Journal of the American Academy of Psychiatry and the Law \(jaapl.org\)](https://www.jaapl.org/)

Sequential Intercept Model (SIM)



Abreu, D., Parker, T. W., Noether, C. D., Steadman, H. J., & Case, B. (2017). Revising the paradigm for jail diversion for people with mental and substance use disorders: Intercept 0. *Behavioral Sciences & the Law*, 35(5-6), 380-395. <https://doi.org/10.1002/bsl.2300>
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← INTERCEPT 2 → INTERCEPT 3 →

COMPETENCE TO STAND TRIAL (CST)

HOSPITAL JAIL COMMUNITY SUPPORT COURT

© 2019 POLICY RESEARCH ASSOCIATES, INC., DEBRA A. PINALS, M.D., AND LISA CALLAHAN, PH.D.

DIVERSION

CST Raised

CST Evaluation

Competent?

Restoration

Criminal Process Resumes

Restored?

Further Restoration

Restored to CST

Not Restorable

Disposition



Why is the competence “system” on overload?

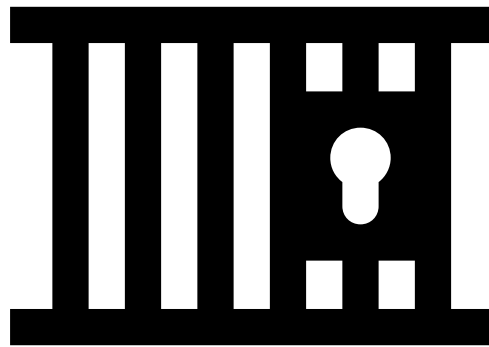
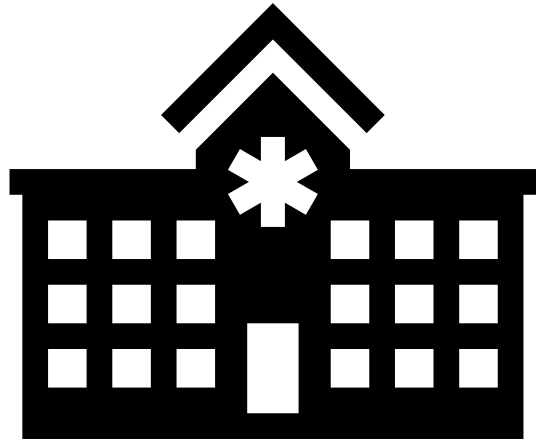
- CST can be raised at any time by many parties
- Low threshold for asking for CST evaluation
- Attorneys may confuse CST with insanity
- CST is a trial strategy , case management tactic
- Diffusion of responsibility – local v. state
- Judges rarely refuse a request for CST evaluation
- Misuse of legal system to pressure BH system
- “Out of sight, out of mind....”

Before initiating the competence process, there are questions to consider:

Should this case be prosecuted?

Are there community-based alternatives if the case is not prosecuted?

Pros & Cons of Restoration Sites



Inpatient Restoration – Most Common

Pros of Inpatient Restoration

- Level of clinical services
 - Range of therapeutic interventions
 - Intensity of treatment
 - Multiple professional disciplines
 - Attention to medical care
 - Adherence to treatment
- Level of security

Cons of Inpatient Restoration

- Lack of bed capacity
- Cost
- Geographic isolation

Jail-based Restoration (JBCR)

Pros of JBCR

- Quicker access to treatment
- Location/community
- Cost
- Most people pass through jail

Cons of JBCR

- Non-therapeutic setting
- Lack of treatment/providers
- Overcrowding

Jail-based Restoration Programs

- First JBCR Unit in Virginia in 1997; now in at least 19 states
- Proper candidates – similar to inpatient CR population
- Technology challenges, responding to COVID
- Treatment in a punitive setting
- Separation of roles between treaters and forensic evaluators
- Procedures for involuntary medication – jurisdiction specific
- Consolidation of jail-based restoration services
- Malingering assessments
- Costs

Source: Danzer et al., 2019; Kapoor, 2011

Fulton County GA's JBCR Program

- Interdisciplinary treatment team in special unit in the jail
- Engagement in programming within 48 hours
- Initial intake interview by forensic psychiatrist; assigned case manager; postdoctoral residents performed psychological testing
- Schedule adapted from inpatient CR program – group & individual
- Evaluators and treatment providers different professionals
- Shifted to telehealth due to pandemic
 - More sessions and longer sessions
 - Restoration rate higher during pandemic with telehealth – smaller groups, longer individual sessions, fewer distractions, increased focus on Zoom
 - Longer time to restoration
 - Privacy concerns

Source: Lewis et al. , 2022

Outpatient Restoration (OPCR)

Pros of OPCR

- Quick access to treatment
- Least restrictive environment
- Location/community
- Continuity of care/treatment
- Recovery focused
- Lower cost

Cons of OPCR

- Underutilization -> few data
- Accountability
- Longer time to restoration

Examples: mental health centers, day hospital, group homes, co-located/supported housing

Outpatient CR takes longer than Inpatient CR

- 62-94% longer in Texas (Graziani et al., 2015)
- 45% longer in NOLA (Mikolajewski et al., 2017)
- 20% longer in Denver (Fahlbusch et al., 2019)

- Outpatient CR is also less likely to restore individuals: why?
 - More cognitively impaired individuals (e.g. TBI, dementia, IDD)
 - Fewer environmental controls that affect restoration
 - Other?

Washington DC's Outpatient Restoration Program (OCRCP)

- Any person found IST can be referred to OCRCP or inpatient
- Charges include minor and serious offenses, international defendants
- Does not have mandated medication compliance
- Standardized curriculum, required training; evaluators are either forensic psychiatrist or forensic psychologist w/ additional training
- Individual and group sessions, modified FSH CompKit
- Largest number of people restored w/in 45 days; program enhancements led to restoration in 6th round of CR (over 166 days)
 - Increased resources and staff are necessary for longer term restoration periods of time
 - Know who is being restored and if it varies by diagnosis, clinical history, etc.
 - Need to weigh LOS with fairness

Source: Bell, Candilis, & Johnson, 2021

Outcomes of CR Services by Location

- Inpatient Competence Restoration: \$300-\$1000/day
 - 80-90% restoration rate
 - Average LOS -> restoration = ~73 days
 - High clinical need
 - Moderate to high level of dangerousness/risk
- Jail-based Competence Restoration: \$42-\$222/day
 - 55-86% restoration rate
 - Average LOS -> restoration = 57 days (followed by transfer to SH)
 - Moderate clinical need
 - Moderate to high level of dangerousness/risk
- Outpatient Competence Restoration: \$100-\$500/day
 - 54-70% restoration rate
 - Average LOS -> restoration = 149-207 days
 - Low to moderate clinical need
 - Low to moderate level of dangerousness/risk

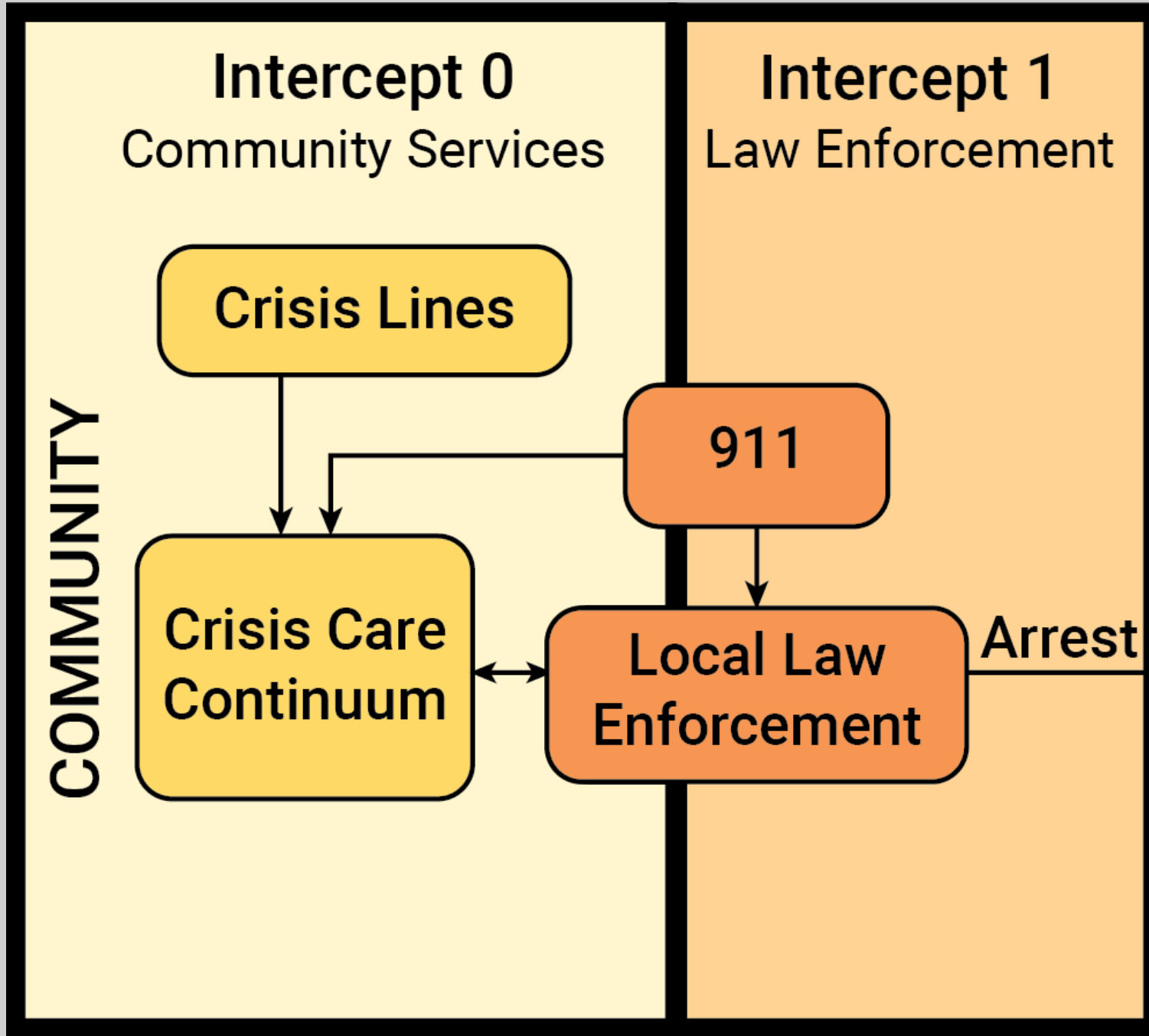
Issues to Consider with CR Location

- What restoration programs are available?
- What impact does the environment have on restoration?
On stabilization?
- What medication/treatment options are available?
- How will restoration be maintained?
- What impact will location have on monitoring of medications?
 - Do locations have different formularies?
 - Utilization management
- How will different evaluators affect outcomes/recommendations?
- How frequently will an individual be re-evaluated?



Quick Fixes & Longer-Term Changes to the Competence Process

Intercept 0
Community Services

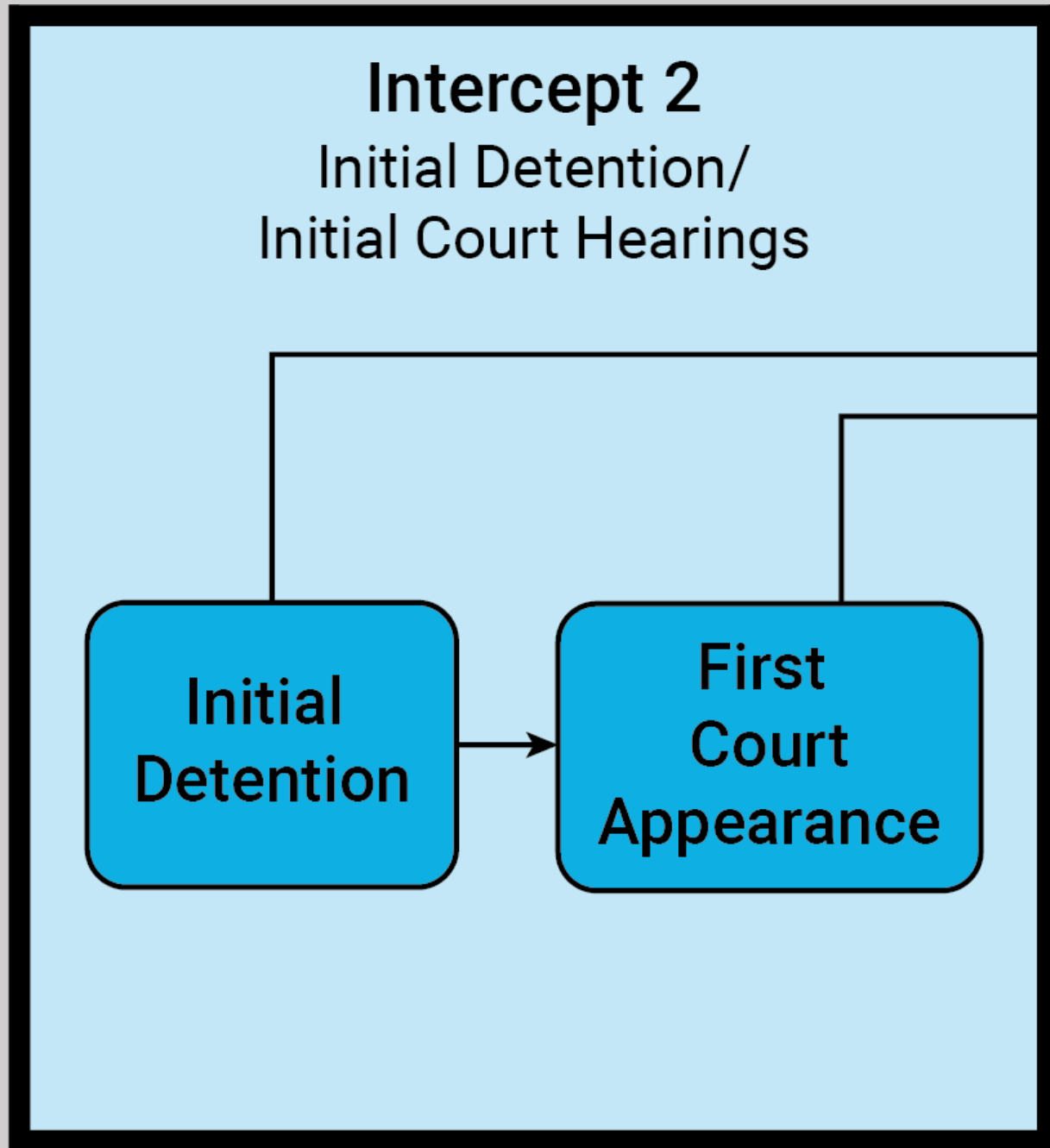


Intercept 1
Law Enforcement

Potential Solutions at Intercepts 0/1

- Crisis Intervention Team (CIT) policing and Mental Health First Aid training
- Law enforcement and behavioral health co-responder teams
- De-escalation training for law enforcement and community providers
- Mobile Crisis Teams (MCT)
- Community-based crisis centers, 24/7 drop-off
- Trauma-informed training
- Communication between crisis teams & law enforcement

Intercept 2
Initial Detention/
Initial Court Hearings/
Pre-trial



Quick Fixes at Examination Stage

- Rapid access to evaluators through appropriate fees or court-based evaluation structure (e.g., MA, IL)
- Transfer to inpatient setting prior to competence proceedings when needed (e.g., MD, VA)
- “Competence Courts” or dockets (e.g., NV, TX, Seattle, TN)
 - Coordination between transport, hospitals, courts
- Time-sensitive case processing – *Jackson* timeline

Intercept 2: Initial Detention/Court Hearings

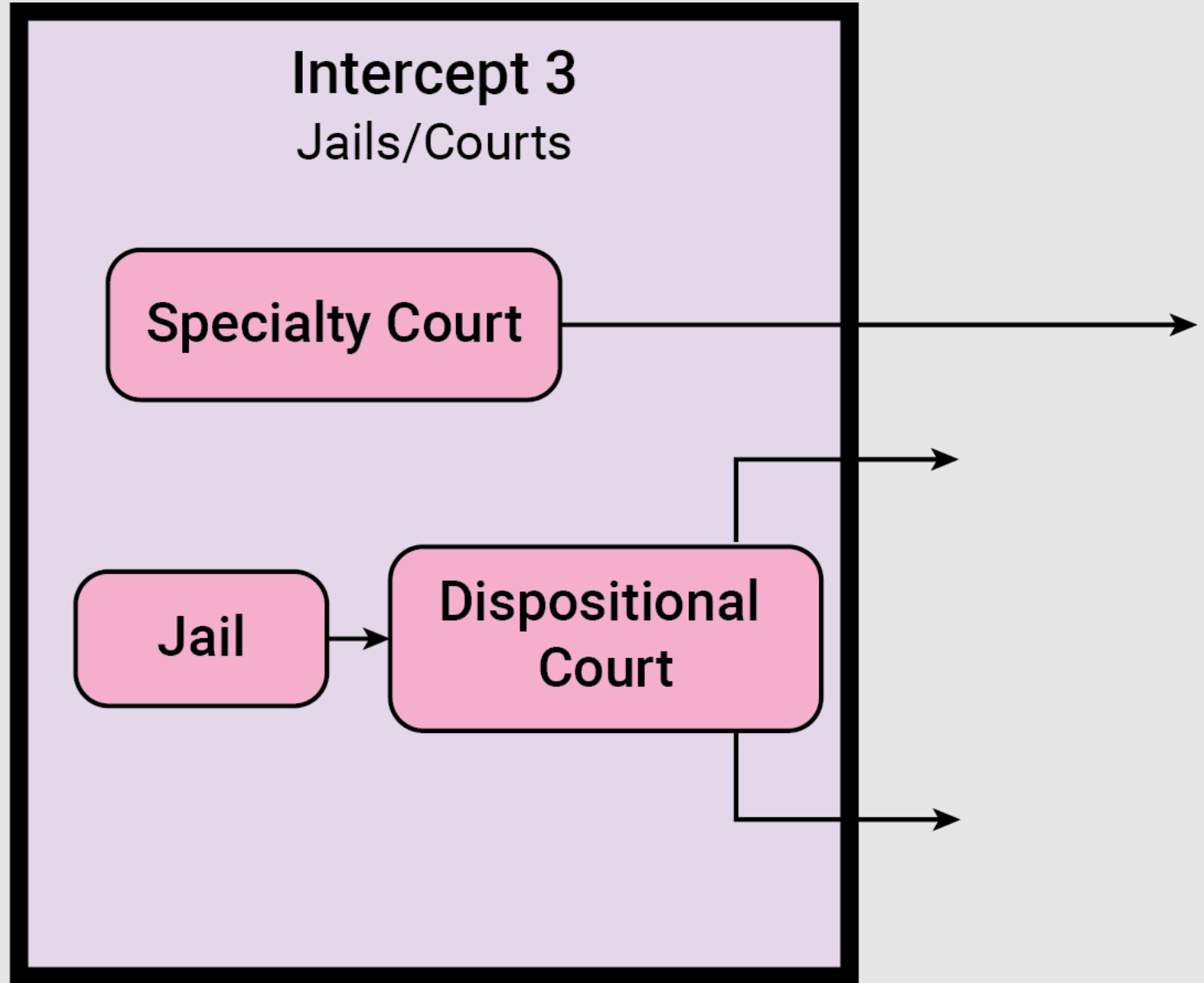
Quick Fixes

- Limit CST to felonies
- Training on alternatives to inpatient eval/restoration
- Linkage to specialized pretrial services
- Linkage to services for unique populations (IDD, TBI, neuro-atypical)

Longer Term Solutions

- Competence dockets
- Rapid access to evaluators
- Time-sensitive case processing
- Development of alternative programs/supports/services
- Expedited Diversion to Court-Ordered Treatment (EDCOT)

Intercept 3 Jails/Courts



Intercept 3: Jails & Courts

Quick Fixes

- Standardized restoration approaches
- Statutory time frame for CR
- Utilization management of CR “beds”
- Utilization of existing community-based CR
- Information sharing
- Telehealth at all stages

Longer Term Solutions

- Competence dockets/courts
- Guidance for CR location suitability
- Coordination & training across system
- Jail-based CR
- Expansion of community-based options
- Expedited Diversion to Court-Ordered Treatment (EDCOT)

Policy/Legal Questions to Consider:

1. Are there charges/offenses that you would consider to be ineligible for referral to the competence process?
2. How many CST evaluations are required? How frequently?
3. What are the required timelines (see Intercept 2/3 diagram)?
4. What happens if someone is found to be unrestorable?
5. What are the legal considerations for evaluation & restoration?

Source: NCSC, "Leading Reform," May 2022

Procedural Questions to Consider:

1. What diversion options exist? What should exist?
 - How is someone diverted? Who decides?
2. How are evaluators qualified/chosen/evaluated?
 - Where are evaluations done?
3. Are competence cases handled by a team?
 - Is anyone assigned to manage the competence cases?
4. Are peers included in the competence process?
5. Do you collect any data on this population/process?
6. What are your CR options? What's included?
7. How is CR progress/updates conveyed to court?
8. Is there a transition plan for individuals in the competence process?
 - Are there resources for this population?

A photograph of a wooden desk with a laptop, a white coffee mug, a notebook with a pen, and a smartphone. The scene is lit with natural light from a window in the background.

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<http://bit.do/GAINSenews>
(Link is case sensitive)

Thank You

Substance Abuse and Mental Health Services Administration

SAMHSA's mission is to reduce the impact of substance abuse and mental illness on America's communities.

www.samhsa.gov

1-877-SAMHSA-7 (1-877-726-4727) • 1-800-487-4889 (TDD)

GAINS Center for Behavioral Health and Justice Transformation

The GAINS Center focuses on expanding access to services for people with mental and/or substance use disorders who come into contact with the justice system.

<https://www.samhsa.gov/gains-center>

1-800-311-4246



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Competency Restoration Process in Texas and the State Hospital System

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Policy Department
Office of Chief Counsel

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Chief of Forensic Medicine
Health and Specialty Care System
State Hospitals

Incompetency (CCP, Art. 46B.003)



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- (a) A person is incompetent to stand trial if the person does not have:
 - (1) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; or
 - (2) a rational as well as factual understanding of the proceedings against the person.
- (b) A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a **preponderance of the evidence**.

Mental Illness (CCP, Art. 46B.001)



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- "Mental illness" means an illness, disease, or condition, **other than epilepsy, dementia, substance abuse, or intellectual disability**, that grossly impairs:
 - (A) a person's thought, perception of reality, emotional process, or judgment; or
 - (B) behavior as demonstrated by recent disturbed behavior.



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Who Does Chapter 46B Apply To?

Persons charged with a felony or misdemeanor punishable by confinement

Applies to:

- Trial on the Merits of Index Offense
- Motions to Revoke (probation/parole)
- Motion to Adjudicate (deferred or pre-trial adjudication)

Competency Restoration Process



Step 1
Individual arrested and taken to county jail.



Step 2
The court or participating parties raise the issue of incompetency.



Step 3
Individual undergoes court-ordered competency examination.



Step 4
Court determines individual is incompetent to stand trial and orders commitment to the State Hospital.



Step 5
Individual commitment packet received by HHSC.



Step 6
Individual placed on the non-msu forensic waitlist within one day of receiving packet and remains in jail.



Step 7
Individual admitted to a state hospital to receive competency restoration services.**



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** Individuals can also be admitted to a contracted private bed.

Summary of Different Competency Restoration Options



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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 JBKR 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

Credible Evidence of Immediate Restoration



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If the court receives credible evidence that an individual has been restored to competency prior to admission for inpatient competency restoration, the court may appoint disinterested experts to reexamine the defendant.

If the expert opines the individual competent, the court shall find the individual competent if all parties and court agree or shall hold a hearing on competency.

CCP, Art. 46B.0755



Charges Dismissed

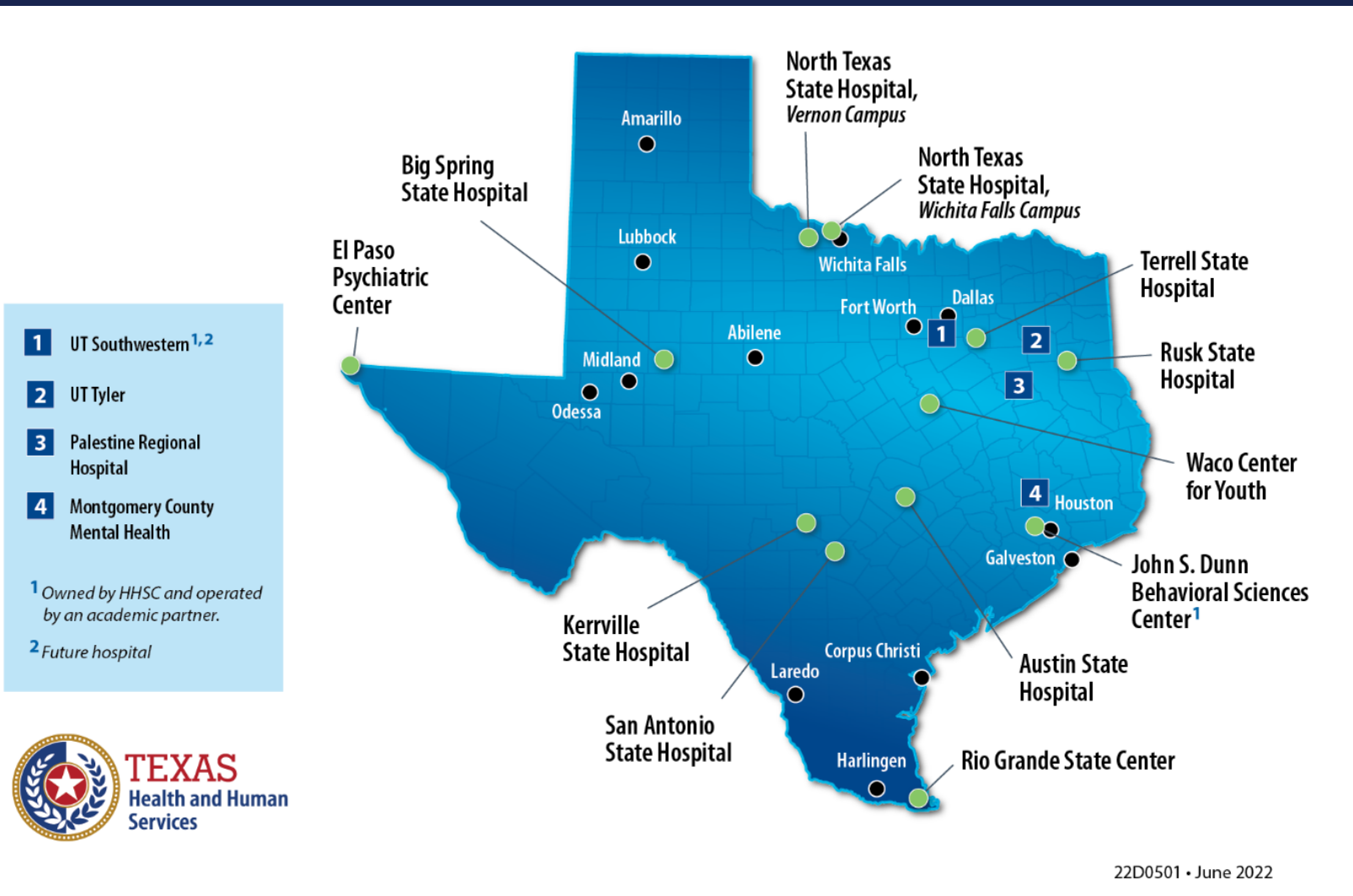
- At any time after the issue of IST is first raised, the court on the motion of the attorney representing the state may dismiss all charges pending.
- If there is evidence to support a finding of IST, the court may transfer to probate court for civil commitment.
- If not, the court shall discharge the person.

CCP, Art. 46B.004(e)

State Hospitals & Contracted Beds



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State Hospital Demographics

- Predominantly male
- 80 percent with a primary psychotic disorder
- 75 percent with comorbid substance use disorder
- 66 percent Forensic / 34 percent Civil
- Forensic Admissions:
 - ▶ ~80 percent on competency restoration commitments
 - ▶ ~20 percent on NGRI commitments
- Bed Turnover: 7 civil admissions per 1 forensic admission

Most Common Forensic Commitments



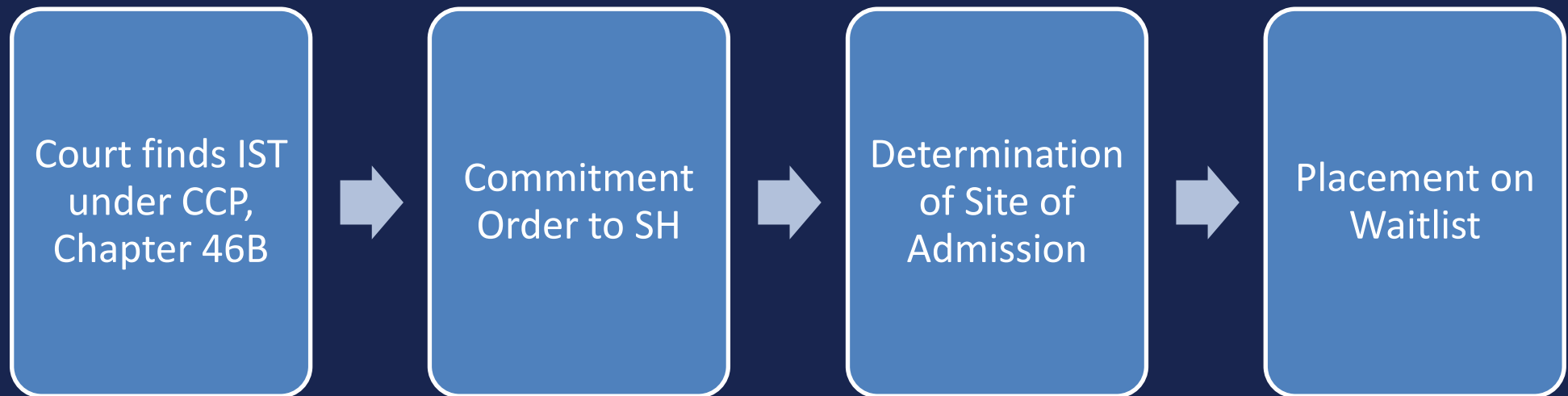
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- CCP, Art. 46B.073 – Initial Commitment for Restoration to Competency
 - ▶ 60 days (misdemeanor), 120 days (felony); +60-day extension for Class A/B misdemeanors and felonies
- CCP, Art. 46B.102 – Civil Commitment: Charges Pending (Mental Health) to State Hospital
- CCP, Art. 46B.103 – Civil Commitment: Charges Pending (Intellectual Disability) to SSLC
- CCP, Art. 46C.251 – Initial not guilty by reason of insanity commitment
 - ▶ 30 days; court hearing by 30th day after acquittal; admissions are expedited

IST (46B) Commitment Process



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MSU Clinical Security Review

- SB562/HB601 passed and became law during the 86th Legislative Session (2019)
- Change to 46B.073(c):
 - (c) If the defendant is charged with an offense listed in Article 17.032(a) or if the indictment alleges an affirmative finding under Article 42A.054(c) or (d), the court shall enter an order committing the defendant for competency restoration services **to a facility designated by the commission.**
- Reviews went into effect on September 1, 2019



IST (46B) Admission

- Admission for Mental Health Treatment/Competency Restoration Services (CRS)
- Medical, psychological and psychiatric treatment for the patient's diagnoses begin immediately after admission, as for any other patient, with the addition of CRS
- Types of Competency Restoration Curricula (CRC):
 - A standard CRC for the majority of patients presenting for the first time
 - A modified curriculum for patients with intellectual or developmental disabilities (IDD) or with cognitive impairments
 - A modified curriculum for the refractory patient who has not succeeded with other curricula
- Patients receive concurrent psychosocial rehabilitation necessary to recover from their psychiatric illness(es), support their competency restoration, and minimize their deterioration upon return to jail.⁴⁹



IST (46B) Discharge Process

- Standardized Clinically-Based Competency Screening (SCCS) completed within 60 hours of admission and at additional pre-determined times (or as deemed appropriate by the treatment team)
 - SCCS will assist treatment team, along with additional clinical information, on whether a referral for a formal Trial Competency Evaluation (TCE) should be made
- Order for a TCE to be completed by a statutorily-qualified forensic examiner
- TCE completed



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IST (46B) Discharge Process

- Several Potential Trial Competency Evaluation Outcomes:
 - CST → Report to Court → Recommend Discharge
 - IST, likely to restore in the foreseeable future → Continue with CRS and treatment; request for extension as statutorily appropriate
 - IST, unlikely to restore in the foreseeable future → Report to Court



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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

Return to Court under 46B, Subchapter D



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CCP Art. 32A.01(c) requires that preference be given to criminal trial of defendant who has been restored to competency.

HHSC One-Pagers



MSU WAIVER PROCESS

The Maximum-Security Unit (MSU) waiver process is utilized for individuals awaiting admission to a State Hospital after having been found incompetent to stand trial (under the Texas Code of Criminal Procedure, Chapter 46B) or who were acquitted as Not Guilty by Reason of Insanity (under the Texas Code of Criminal Procedure, Chapter 46C).



What is a Maximum-Security Unit waiver?

An MSU waiver allows an individual to be admitted to a non-maximum security state hospital bed, even if the alleged offense would typically require admission to an MSU. The waiver is granted through a Clinical Security Review (CSR).

What does a Clinical Security Review entail?



The CSR is a clinically-informed screening process to assist in determining the least restrictive, yet clinically appropriate setting, for MSU-bound individuals. Many factors are considered in the review, including:

- The details of the offense
- The individual's current clinical presentation
- Medical complexities
- Intellectual or developmental disabilities
- Prior treatment history
- Risk of elopement or violence
- Community safety
- Bond status and compliance with conditions of bond

How does an MSU waiver get approved?



A CSR is initiated automatically once HHSC receives the entire commitment packet from the court. An MSU waiver needs to be approved at three levels within HHSC:

- 1st level: Conducted by masters' level clinicians
- 2nd level: Recommended by the Chief of Forensic Medicine or designee
- 3rd level: Approved by the Associate Commissioner of State Hospitals or designee

Once approved, HHSC notifies the court, and the individual is moved to the appropriate non-maximum security waitlist.

Statutory Authority

Legislation granting HHSC authority to designate the admitting facility for competency restoration services:

- **SB562/HB601:** This law passed during the 86th Regular Session of the Texas Legislature, which went into effect Sept. 1, 2019.
- **Statutory Change to 46B.073(c):** If the defendant is charged with an offense listed in Article 17.032(a) or if the indictment alleges an affirmative finding under Article 42A.054(c) or (d), the court shall enter an order committing the defendant for competency restoration services to a facility designated by the commission.



Standardized Clinically Based Competency Screening



What is the Standardized Clinically Based Competency Screening?

The Standardized Clinically Based Competency Screening (SCCS) is a screening tool that was developed for use by the State Hospital System to clinically ascertain individuals' progress towards trial competency restoration. The SCCS is not a competency examination under Code of Criminal Procedure, Articles 46B.024 and 46B.025.

What does an SCCS entail?

The SCCS (sometimes referred to as a "competency quick screen") contains brief questions that align with CCP, Art. 46B.024, regarding areas of competency to stand trial. For example, the SCCS reviews the individual's basic understanding of potential consequences of their alleged charges, the four plea options, a plea bargain, and their ability to work with their attorney. The SCCS also considers any current evidence of psychiatric symptoms that may impact the individual's rational competency.

How can the SCCS be helpful?

- May offer a snapshot of an individual's progress toward trial competency restoration.
- May identify specific barriers to trial competency.
- May provide a pathway to most appropriate level of competency restoration services.
- May help determine whether there is evidence of immediate restoration.

Statutory Authority

CCP, Article 46B.0755, Procedures on Credible Evidence of Immediate Restoration

If the court receives credible evidence that the defendant has been restored to competency at any time after the court's determination of incompetency but before state hospital admission, CCP, **Art. 46B.0755**, sets forth the process by which the court determines if the defendant has been restored to competency.



Court-Ordered Psychoactive Medications and Credible Evidence of Immediate Restoration for Persons Determined Incompetent to Stand Trial under the Texas Code of Criminal Procedure, Chapter 46B, and Awaiting Admission to a State Hospital



FACT:

The wait time for most forensic state hospital admission is several months in length.



FACT:

The provision of adequate health care, including mental health care, is a detainee's constitutional right.



FACT:

Obtaining a court order for psychoactive medications for an individual determined Incompetent to Stand Trial may not only reduce the person's psychiatric symptomatology, but often results in the defendant being restored to competency without the significant wait for a state hospital bed.

Statutory Authority to Court Order Psychoactive Medications¹

Probate Court

HSC, [Chapter 574, Subchapter G](#), and [Chapter 592, Subchapter F](#), delineate the provisions for the application and the order for the administration of psychoactive medications when the defendant presents a danger to self or others in the correctional facility as a result of a mental disorder or mental defect OR lacks capacity to make a decision regarding the administration of the proposed medication, and treatment with the proposed medication is in their best interest.

Criminal Court

CCP, [Art. 46B.086](#), delineates the provisions for a secondary process, after a probate court's denial, of seeking an order for the administration of psychoactive medications to defendants who do not meet the lack of capacity or dangerousness criteria under HSC [Chapter 574, Subchapter G](#), or [Chapter 592, Subchapter F](#); yet when the state still has a clear and compelling interest in the defendant obtaining and maintaining competency to stand trial.

Evidence of Restoration to Competency before State Hospital Admission
If the court receives credible evidence that the defendant has been restored to competency at any time after the court's determination of incompetency but before state hospital admission, CCP, [Art. 46B.0755](#), sets forth the process by which the court determines if the defendant has been restored to competency.



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Thank You!

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Eliminate the Wait

**Jennie M. Simpson, PhD, Associate
Commissioner and State Forensic Director, Texas
Health and Human Services**



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Eliminate the Wait

A statewide campaign to *Eliminate the Wait (ETW)* for Inpatient Competency Restoration Services.

Partners:



Texas Council
of Community Centers



KION INVESTIGATES WATCH LIVE NEWS COVID-19 WEATHER & TRAFFIC INVESTIGATIONS SPORTS STUDIO 51

INVESTIGATIONS

Jail waitlist for mental health help hits new record. This plan proposes a statewide fix.



THEIR "ELIMINATE THE WAIT" INITIATIVE FOCUSES ON TREATMENT DIVERSION TRAINING TO RELIEVE A BACKLOGGED STATE HOSPITAL SYSTEM.



ETW Addresses Common Waitlist Drivers

People with mental illness are arrested when diversion is appropriate and possible.

Belief that competency restoration is comprehensive treatment.

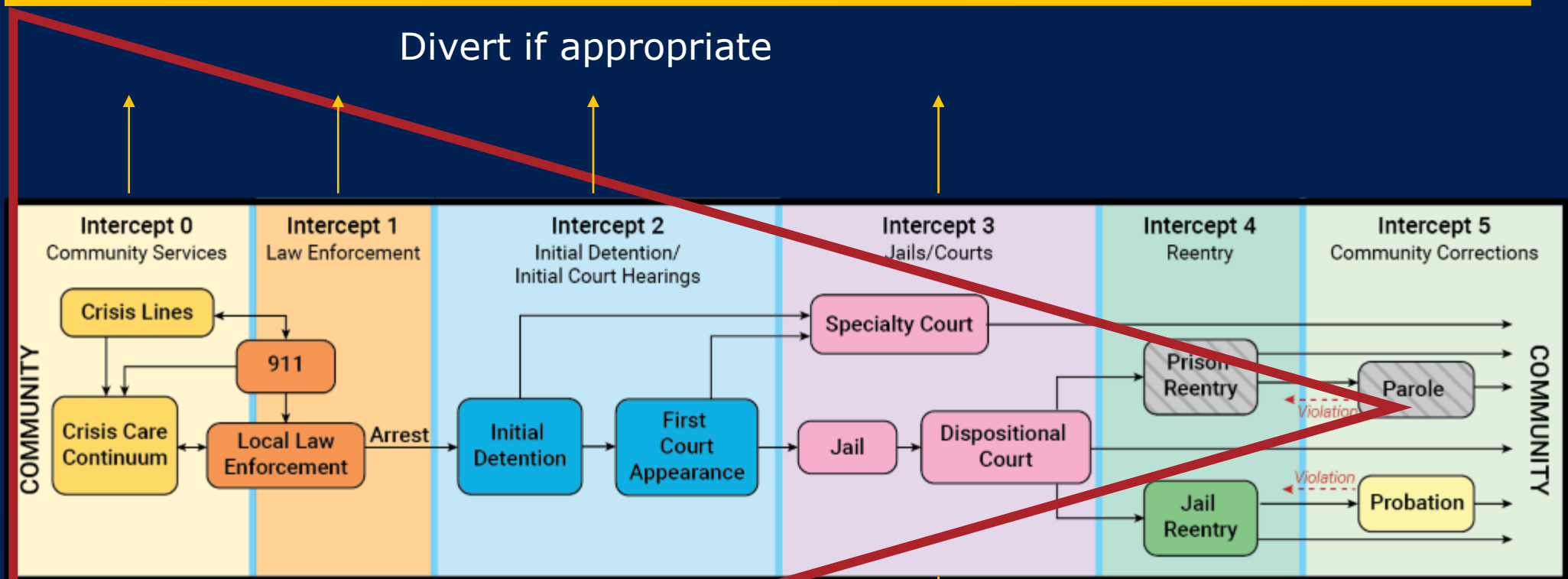
Lack of streamlined local processes and collaboration among stakeholders



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Increase Appropriate Diversion = Reduce the Forensic Waitlist

Divert if appropriate



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Forensic Evaluation and Forensic Hospitalization



Strategies to Eliminate the Wait: Looking Across the Entire System

Eliminate the Wait takes a collaborative approach to “right-sizing” the waiting lists in jails.
Stakeholder roles in the process span the SIM intercepts 0, 1, 2, and 3:

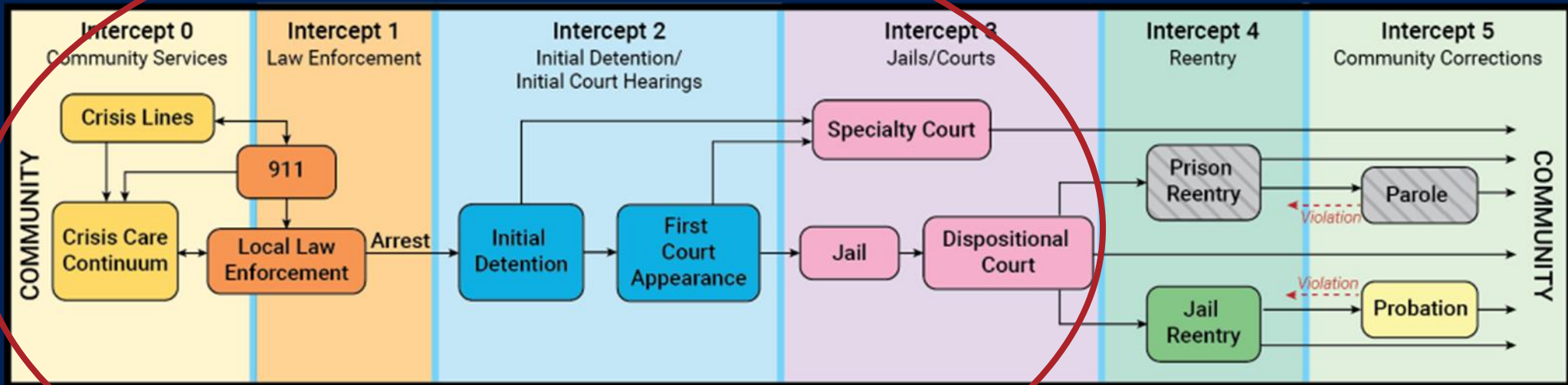
Intercept 0 Crisis/Community Services	Intercept 1 Law Enforcement/ Emergency Services	Intercept 2 Initial Detention/ Initial Court Hearings	Intercept 3 Jails/Courts
<p>Providers and communities should ensure adequate and accessible crisis mental services are available to residents and consider offering alternatives to inpatient competence restoration.</p>	<p>Local police are advised to use diversion strategies when encountering people in mental health crises to reduce justice involvement.</p>	<p>Sheriffs and jail administrators can screen and treat mental illness in jail settings and work closely with courts and hospitals on competence restoration.</p>	<p>Judges, prosecutors, and defense attorneys can identify and meet mental health needs as soon as possible and focus on diversion and alternatives to inpatient hospitalization for competence restoration.</p>

Adapted from the Sequential Intercept Model © 2022 Policy Research Associates, Inc.



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What Do the Data Tell Us?



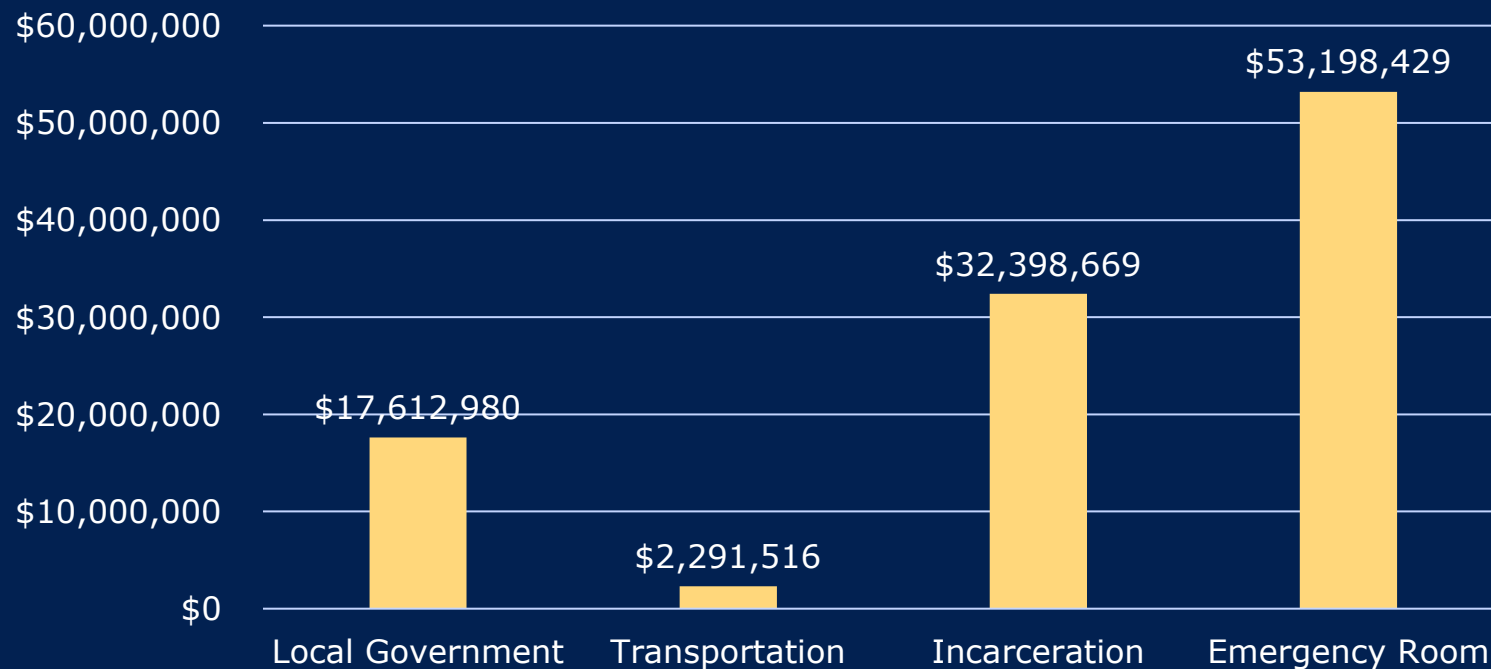
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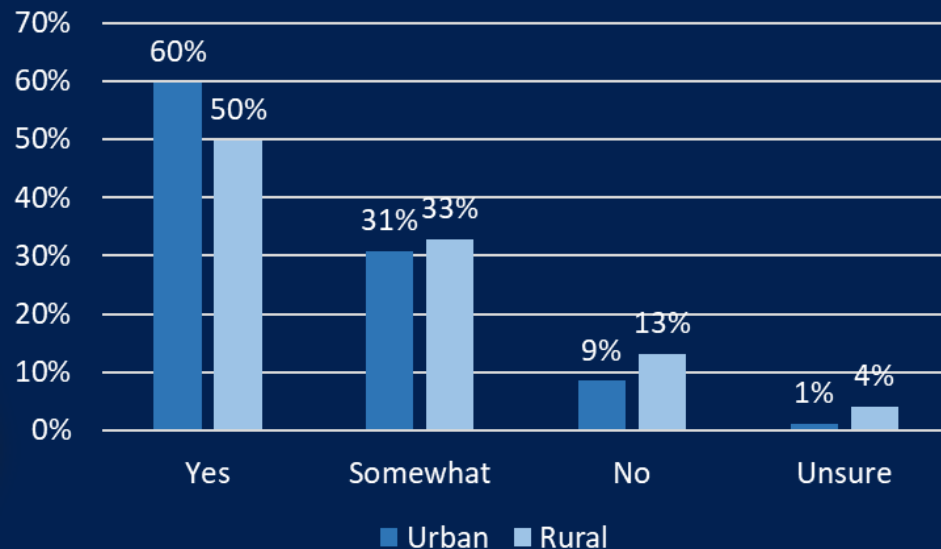
The Cost of Crisis Care

The cost of providing services to people experiencing a mental health crisis in All Texas Access ASH Region (2019)

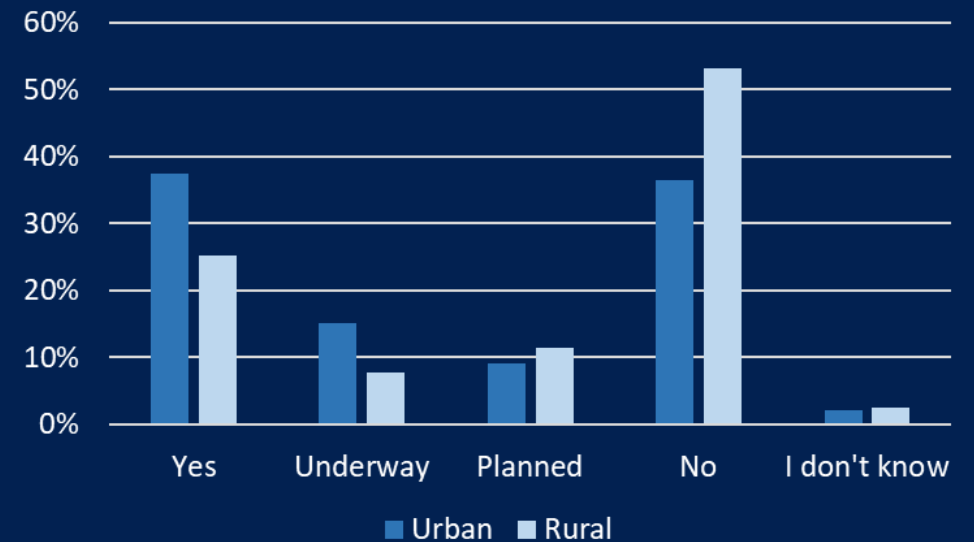


Law Enforcement Diversion

Priority of pre-arrest diversion



A diversion program has been identified by community



Survey Partners: Texas Police Chiefs Association (TPCA), Law Enforcement Management Institute (LEMIT) and Texas Institute for Excellence in Mental Health (TIEMH)

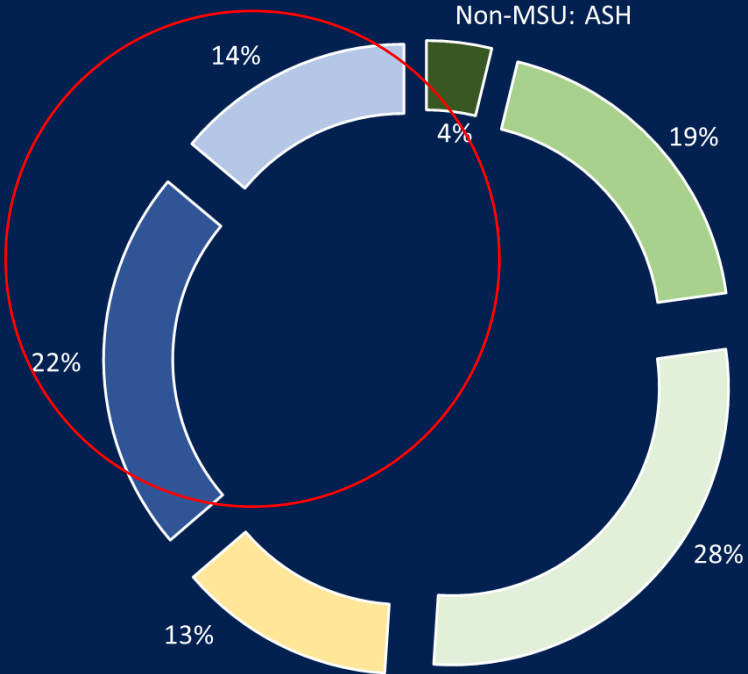
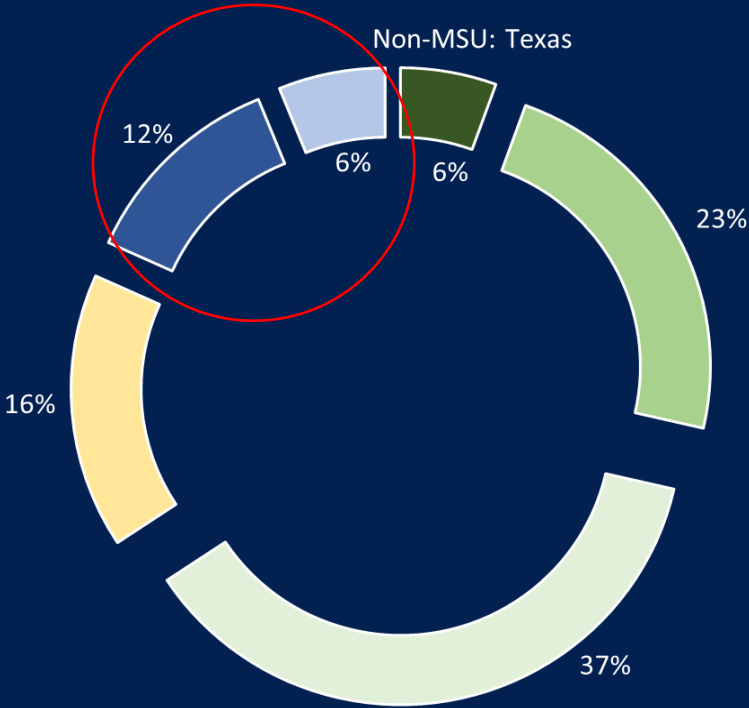


Waitlist by Offense Type

Non-Maximum Security (Non-MSU)

- Texas

- ASH Region

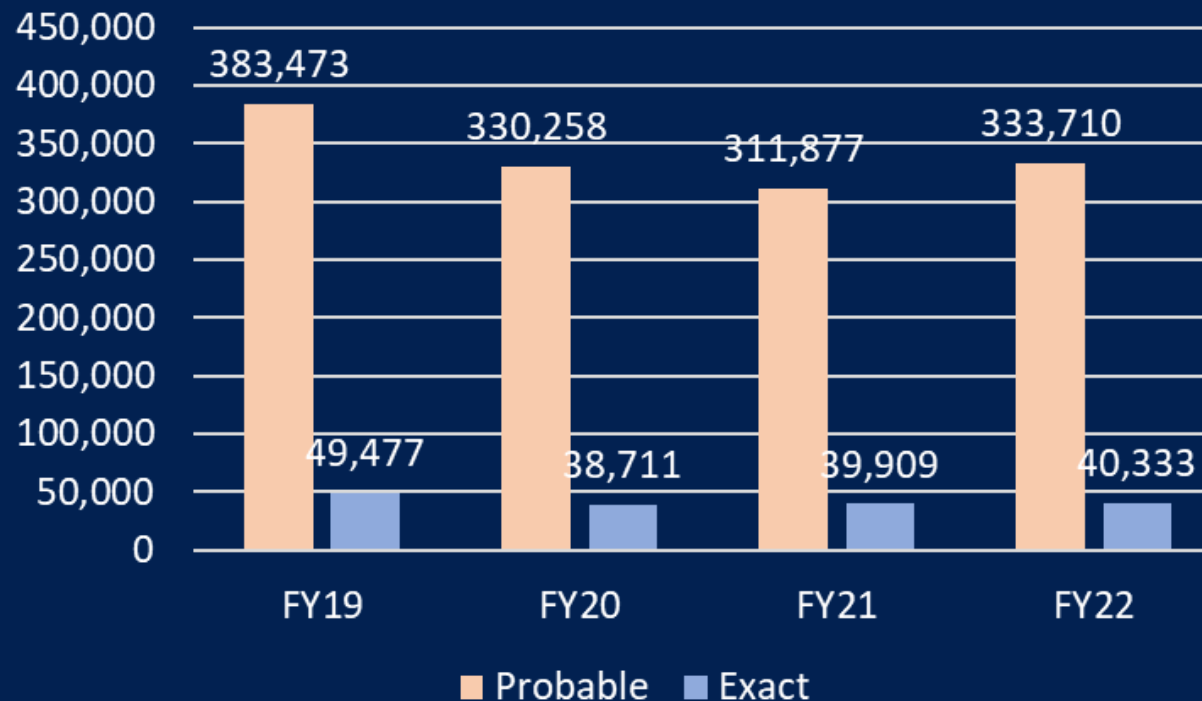


- Felony 1
- Felony 2
- Felony 3
- State Jail Felony
- Misdemeanor A
- Misdemeanor B



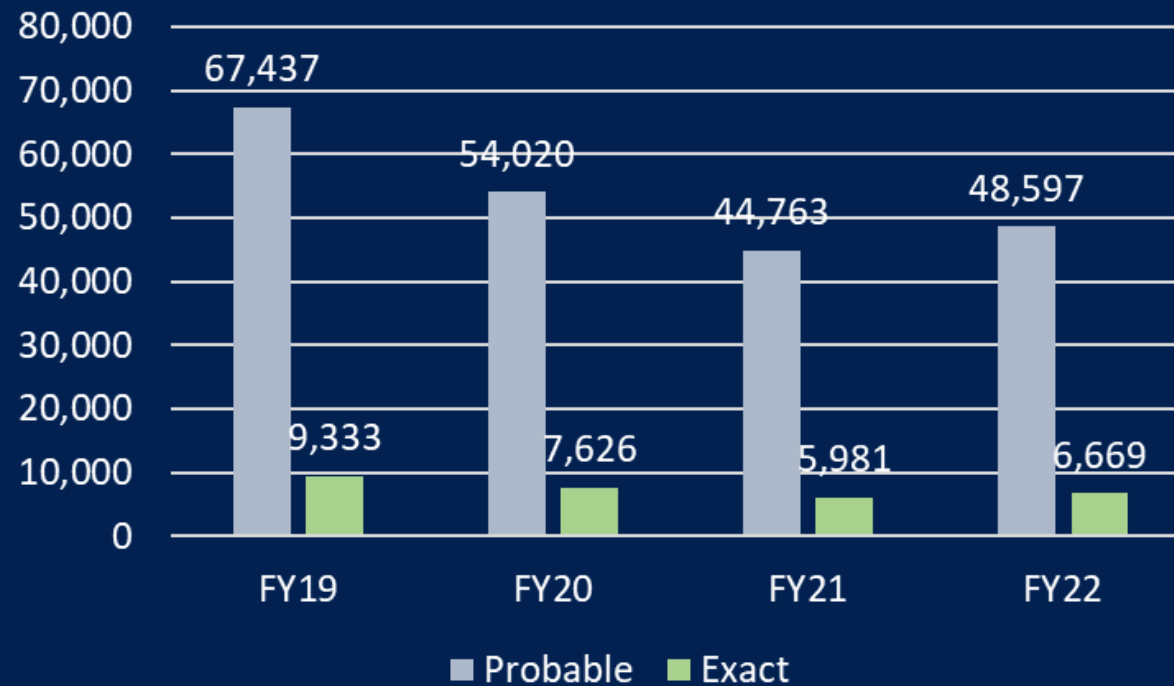
Texas Law Enforcement Telecomm System Continuity of Care Query (1 of 2)

Number of probable and exact Texas Law Enforcement Telecomm System (TLETS) Continuity of Care Query (CCQ) matches in Texas



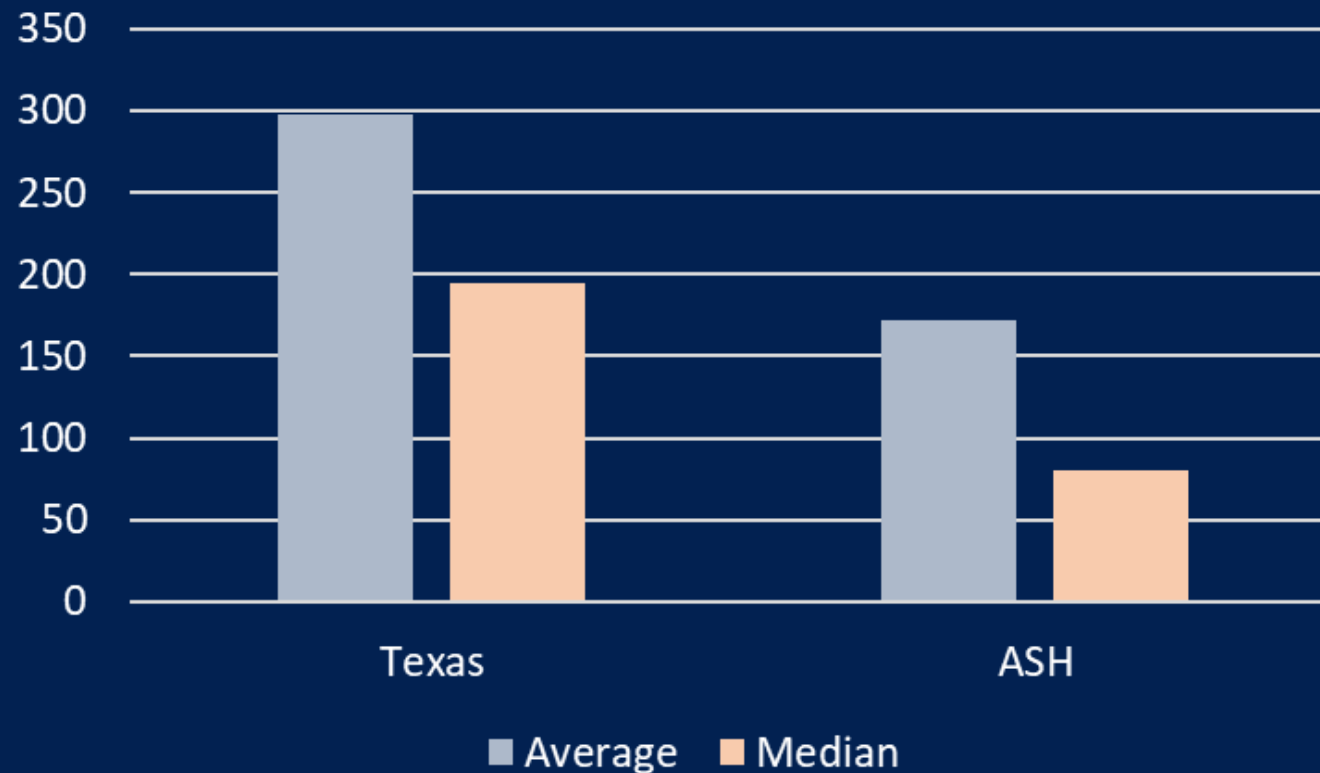
TLETS CCQ (2 of 2)

Number of probable and exact TLETS CCQ matches in ETW Regional Forum Counties



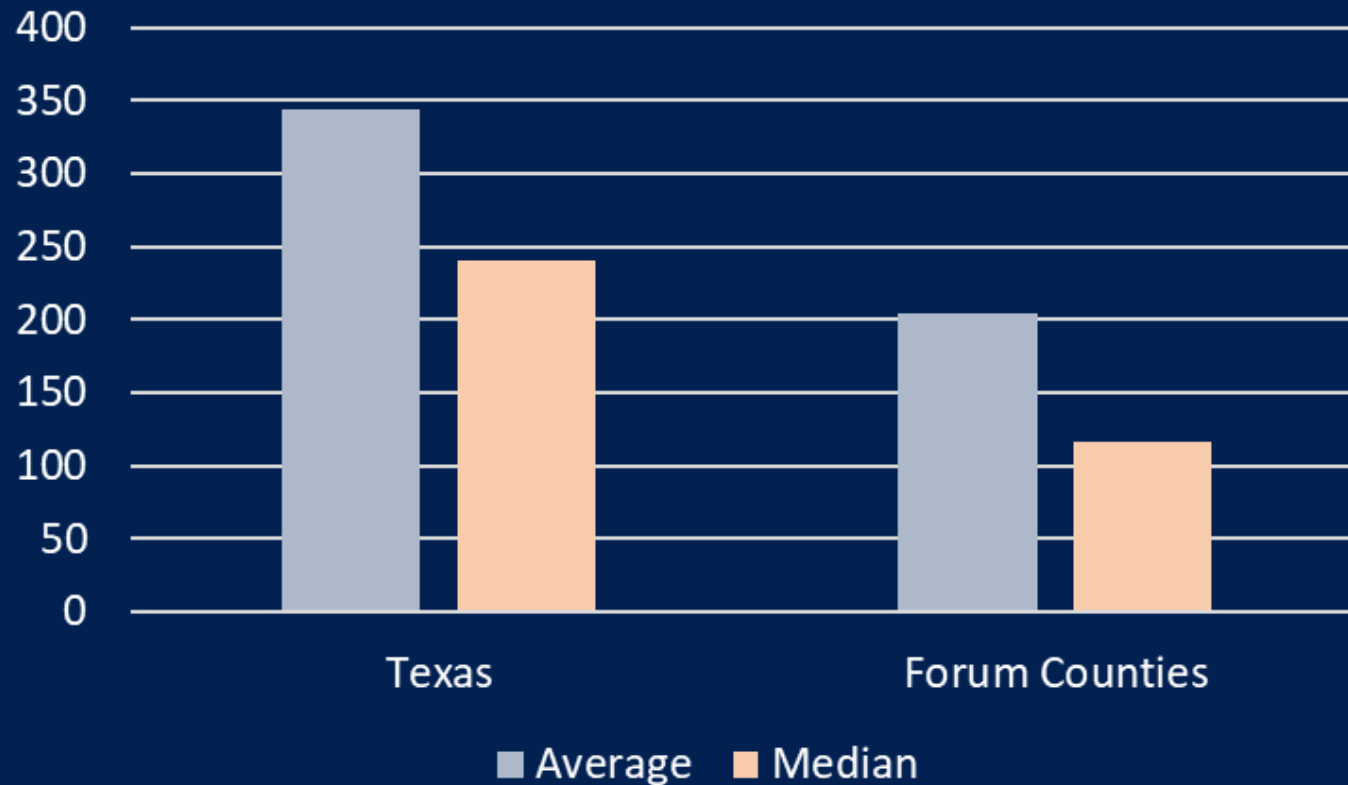
Arrest to State Hospital Notice (1 of 2)

Non-MSU



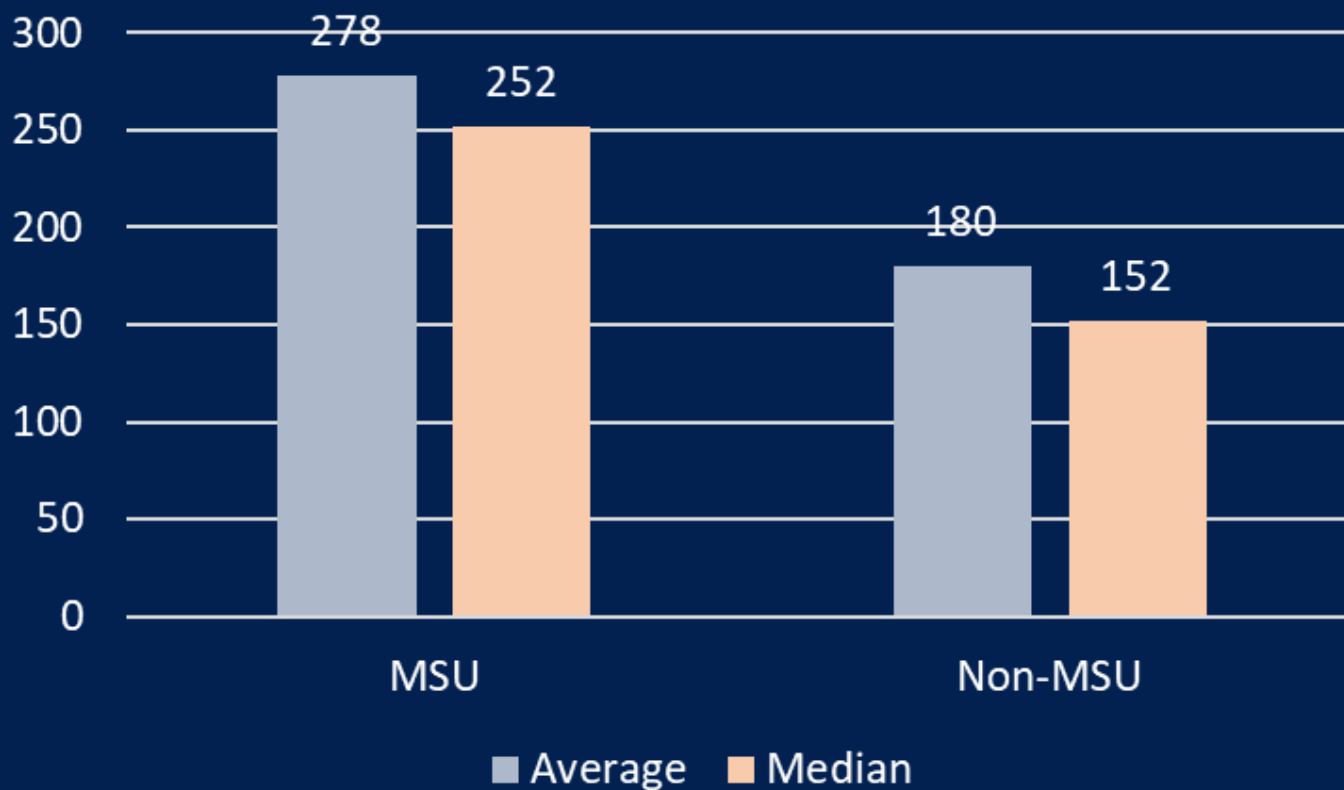
Arrest to State Hospital Notice (2 of 2)

MSU



State Hospital Notice to Admission

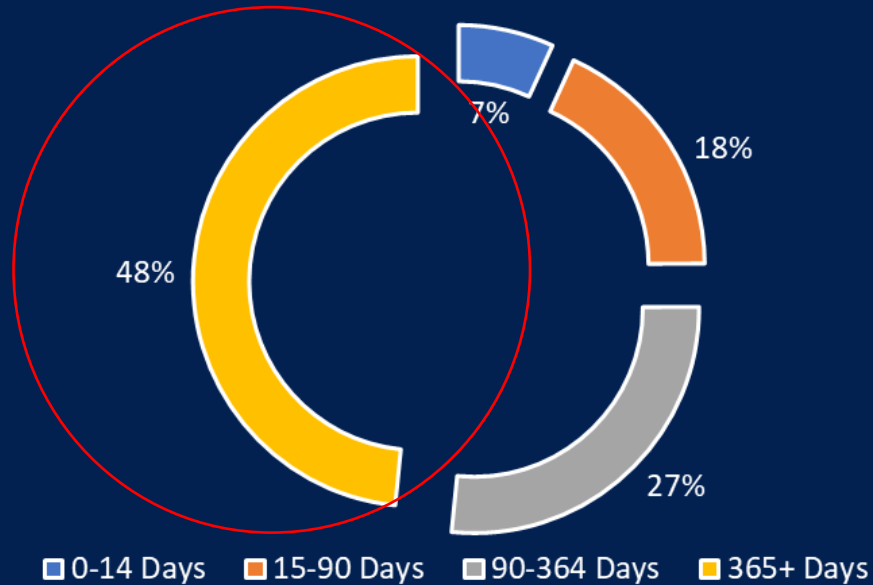
Texas



State Hospital Length of Stay and 365+ Commitment Type

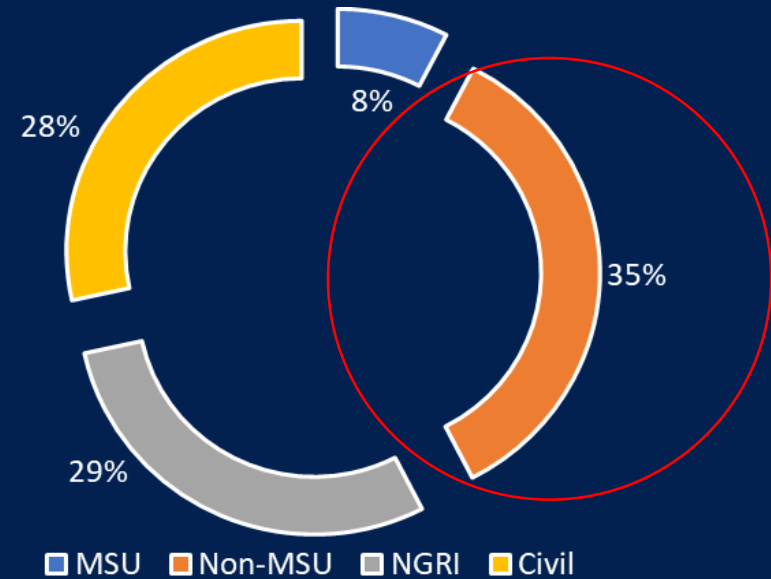
Length of Stay (LOS)

- All commitment types



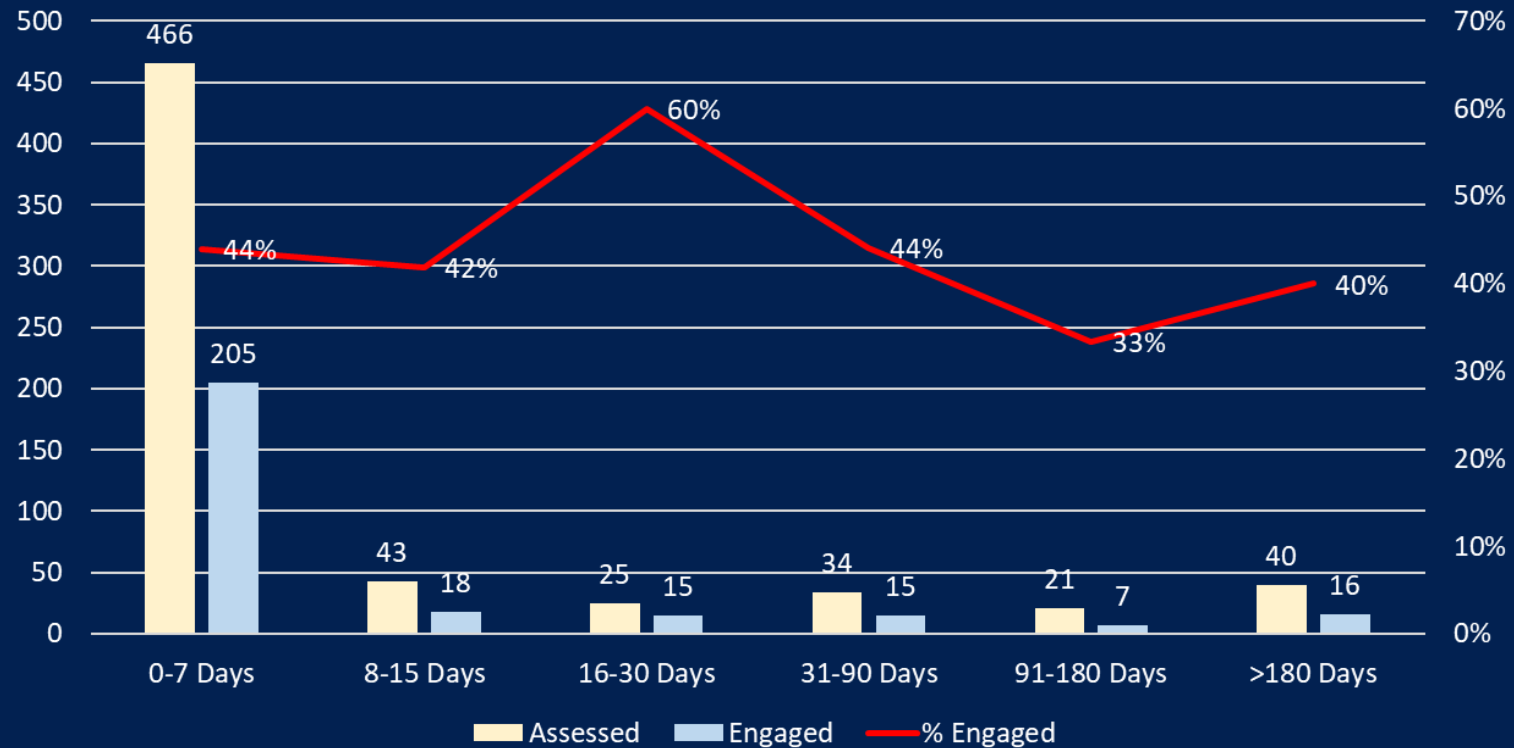
Commitment Type:

- LOS of 365+ Days



Release and Connection to Care

Assessed versus engaged after first forensic commitment



Eliminate the Wait Toolkit



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“What’s My Role” Checklists for:

- Local Mental Health Authorities (LMHA), Local Behavioral Health Authorities (LBHA), and treatment providers
- Police
- Sheriffs and Jail Administrators
- Courts
- Prosecutors
- Defense Attorneys

Toolkit available at:

<http://texasjcmh.gov/media/2103/eliminate-the-wait-toolkit-11921-final.pdf>

ELIMINATE the WAIT

The Texas Toolkit
for Rightsizing
Competency Restoration Services

October 2021






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Thank you!

forensicedirector@hhs.Texas.gov



Eliminate the Wait Central Texas Regional Forum
*Diversity, Equity, and Inclusion in
Behavioral Health and Justice*
December 1, 2022



Hogg Foundation
for Mental Health



Hogg Foundation
for Mental Health

Dr. Octavio N. Martinez, Jr., MD, MPH, MBA, FAPA

Executive Director

Hogg Foundation for Mental Health

Octavio.Martinez@austin.utexas.edu



Hogg Foundation *for* Mental Health

Mission

The people of Texas thrive in communities that support mental health and well-being.

Vision

Transform how communities promote mental health in everyday life.

Behavioral Health Disparities

- Behavioral health disparities refer to **differences in outcomes and access to services** related to mental health and substance use which are experienced by groups based on their **social, ethnic, and economic status**.
- Behavioral health disparities may exist for individuals based on their **age, sex, income, disability status, sexual orientation, language, or geographic location**, and often their intersectionality.

COVID and Focus on Racial Disparities

- These disparities have long existed prior to the pandemic, however COVID-19 propelled conversations, and acknowledgement of the need for **longstanding inequities** to be addressed.
- In June 2020, elevated levels of adverse mental health conditions, substance use, and suicidal ideation were reported by adults in the United States, but more so for specific populations, including **Latinx populations, Black persons, and essential workers.**

Uninsured Rates & Access

- In 2021, the uninsured rate in Texas was **more than 20 percent**, double the national average of 10 percent.
- In Texas, over 30 percent of Hispanic Texans, 17.5 percent of Black Texans, 21 percent of Native American Texans, and 12.5 percent of White Texans were uninsured in 2021.
- Because people of color have less access to insurance coverage, their access to treatments and services for mental health care and substance use conditions is **negatively impacted**.

Social Determinants of Mental Health

- Factors like transportation, poverty, housing, and food insecurity exacerbate mental health and wellbeing.
- Lack of access to timely and effective mental health and substance use treatment often leads to someone entering crisis.

Stigma and Social Sensitivity

- People of color not only are disproportionately uninsured, but often are **less likely to seek out treatment and more likely to end it prematurely** due to a number of systemic issues including:
 - Community stigma, poorer quality of care and lack of culturally competent care.
- ***Mental health care for people of color is often lower quality and less likely to be culturally sensitive.***
- In 2020, Black or Hispanic physicians in Texas were glaringly underrepresented compared to the population.
 - Black Texans made up 12 percent of the population, but 8 percent of primary care providers (PCPs).
 - Latinx Texans made up almost 40 percent of the population, and slightly less than 10 percent of PCPs.

Criminal Justice Involvement

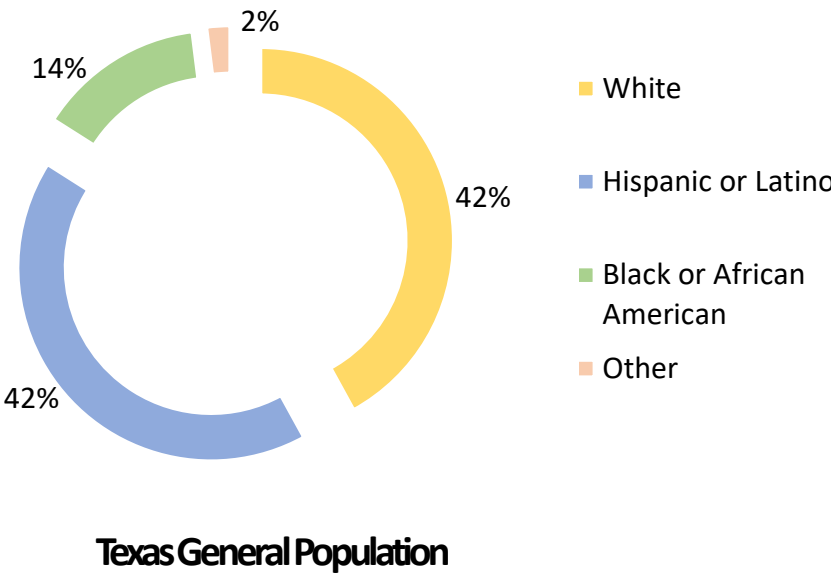
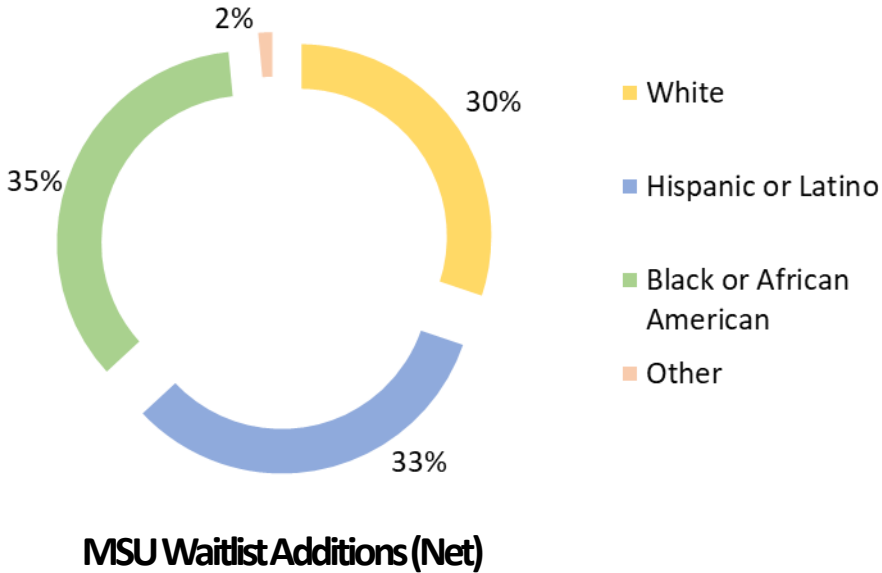
- There are a **disproportionate number of Black people and Native Americans** in the Texas Juvenile Justice and Criminal Justice systems in Texas.
- While Black Texans made up **13.2 percent** of the state's population in 2021, they represented **32.7 percent** of Texas Department of Criminal Justice's population.
- *Justice-involved youth have higher rates of mental and behavioral health problems than their peers, including the onset of severe mental illness.*

Forensic Waitlists

- As of June 2022, more than 2,400 individuals were on the forensic waitlist for a state hospital bed and **70 percent** of state hospital beds were utilized for forensic commitments.
- *Over the last 20 years, Texas has seen a 38 percent increase in rates of individuals who were incompetent to stand trial.*

JCAFS Dashboard Data: 9/1/21 - 6/30/22

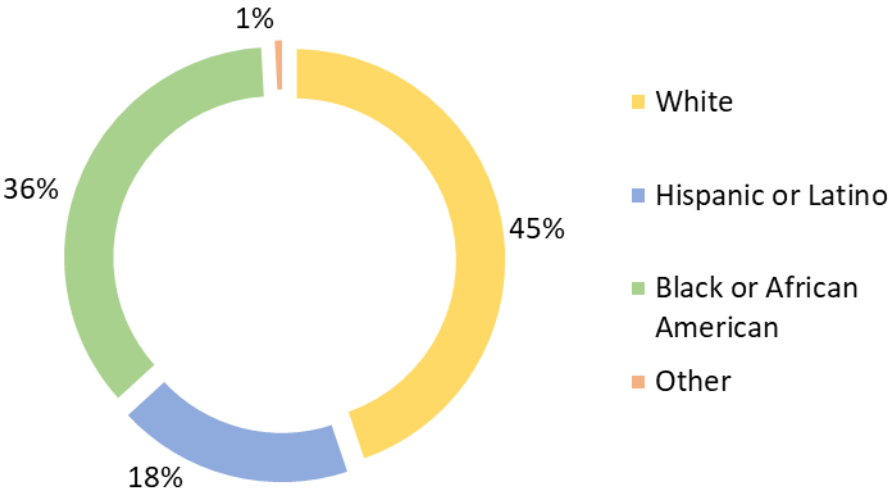
Racial Disparities of Maximum-Security Unit (MSU) Waitlist



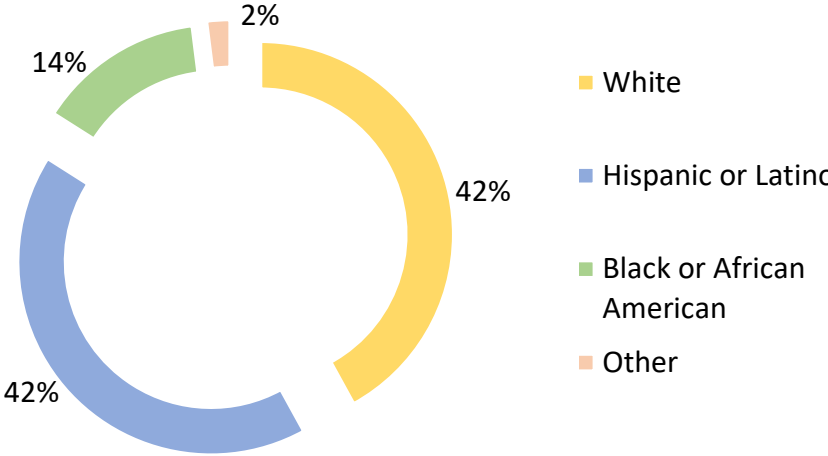
Black or African Americans make up 35% of people added to the MSU waitlist compared to 14% of the Texas population.

JCAFS Dashboard Data: 9/1/21 - 6/30/22

Racial Disparities of Non-Maximum-Security Unit (Non-MSU) Waitlist



Non-MSU Waitlist Additions (Net)

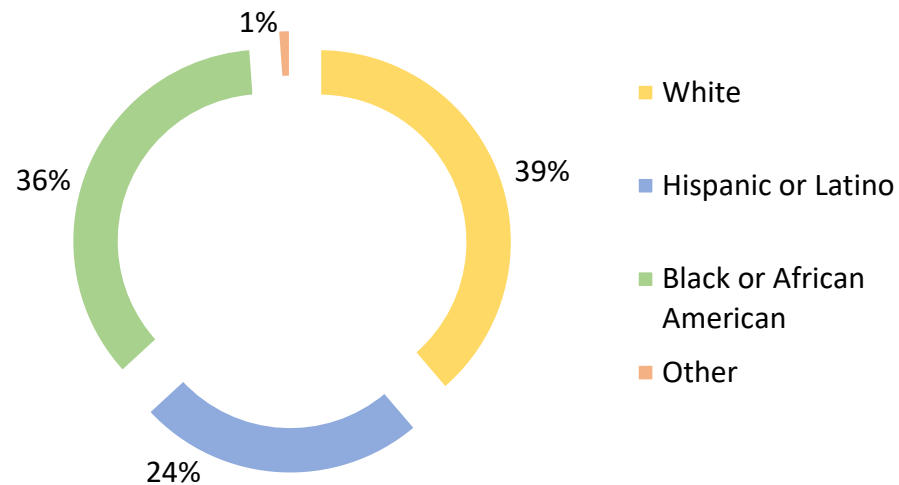


Texas General Population

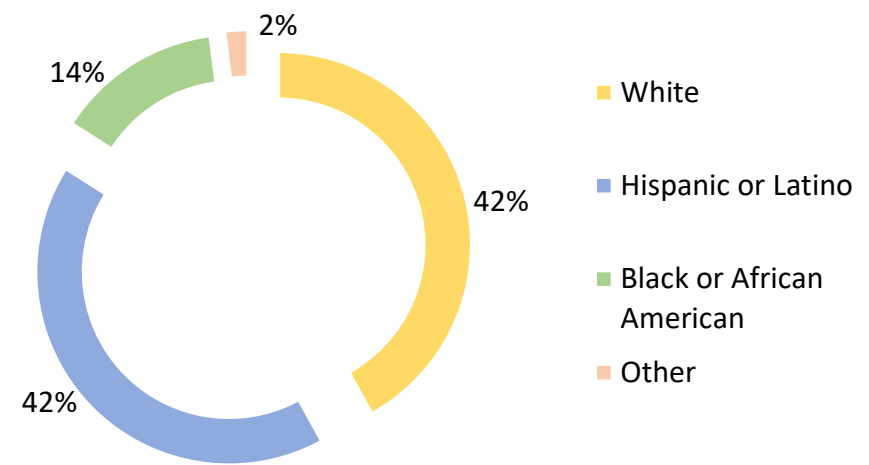
Black or African Americans make up 36% of people added from the Non-MSU waitlist compared to 14% of the Texas population.

JCAFS Dashboard Data: 9/1/21 - 6/30/22

Racial Disparities of MSU and Non-MSU Waitlist



MSU & Non-MSU Waitlist Additions (Net)

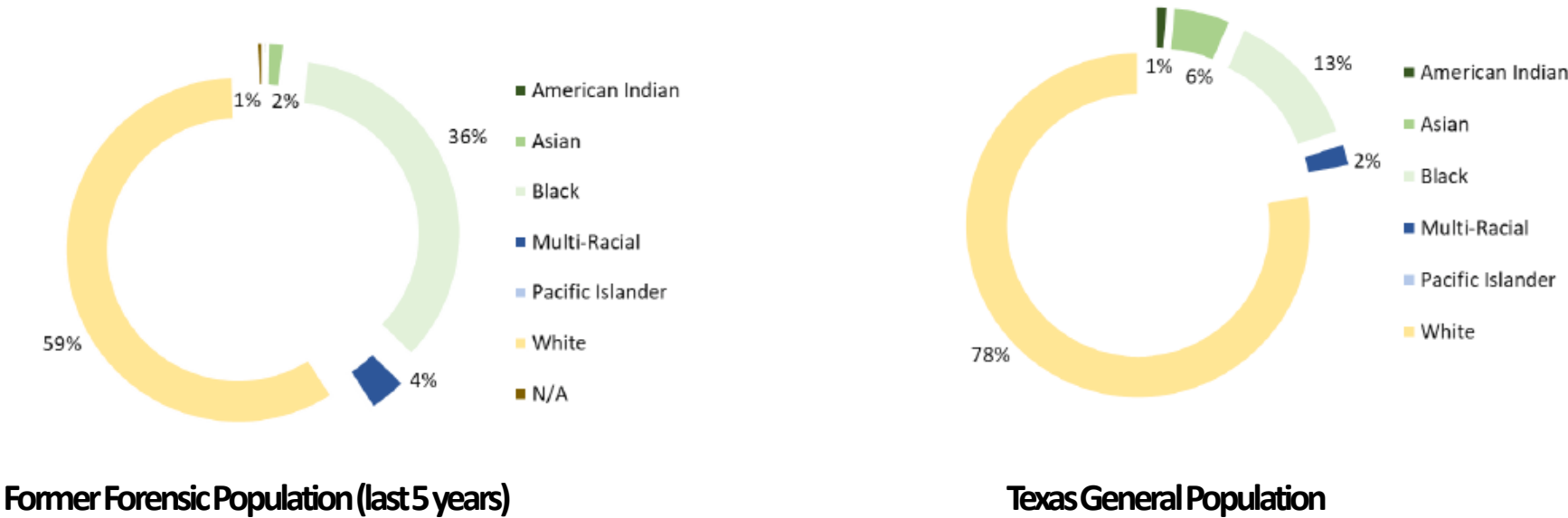


Texas General Population

Black or African Americans make up 36% of people added to the MSU and Non-MSU waitlist compared to 14% of the Texas population.

Former Forensic Population

- Over the last five years, when compared to the total percentage of Texas's general population, ***people of color are disproportionately represented in the former forensic population.***



**Thank you to HHSC for the data and visual representation seen here.*

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Eliminate the Wait: Innovator Panel

**Catherine Bialick, MPAff, Senior Advisor, Office of Forensic
Coordination, Behavioral Health Services, HHSC**

Innovation Panel



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Facilitator:

- Catherine Bialick, MPAff, Senior Advisor, Office of Forensic Coordination, HHSC

Panelists:

- Chief Ryan Braus, Assistant Chief Deputy, Detention, Lubbock County Sheriff's Office
- Cristyn Cordova, LCSW-S, Director of Social Work, Austin State Hospital
- B.J. Wagner, MS, Senior Vice Present of Health and Public Safety, Meadows Mental Health Policy Institute



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Thank you!

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Stakeholder Training Sessions



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Stakeholder Training Session	Room
Behavioral Health	Salon 1
Law Enforcement	Salon 2
Jails	Salon 5
Courts	Salon 6

County Leadership Action Planning (Invite Only)



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County	Room
Travis	Zlotnik Ballroom
Bell and Milam	Salon 1
Hays and Comal	Salon 2
McLennan and Limestone	Salon 5
Burnet, Guadalupe, Williamson	Salon 6

Eliminate the Wait Central Texas Regional Forum

Final Evaluation



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Eliminate the Wait

Central Texas Regional Forum

**Judge Nancy Hohengarten, Travis
County, County Court at Law #5**



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