



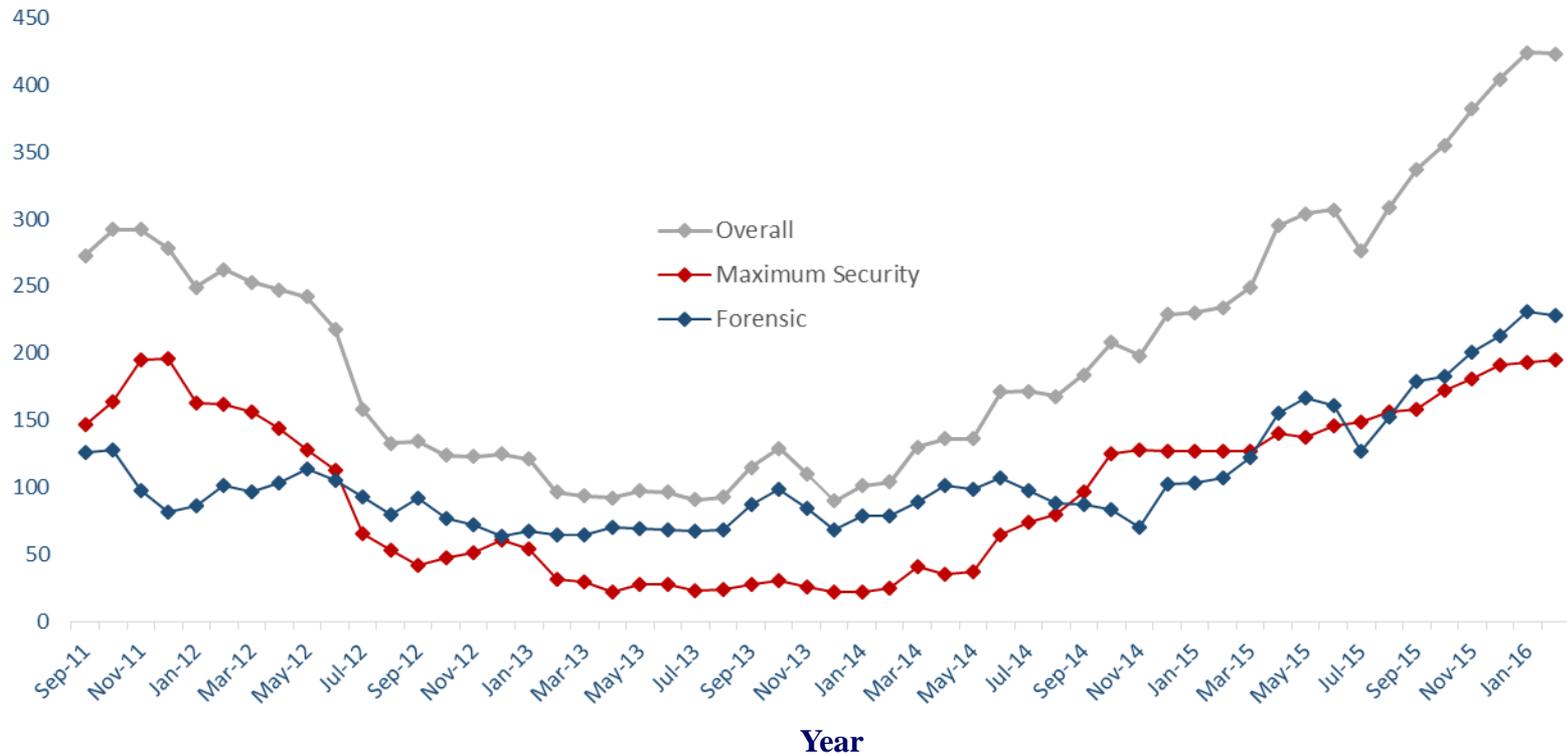
Presentation to the Senate Committee on Criminal Justice

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Division

March 30, 2016

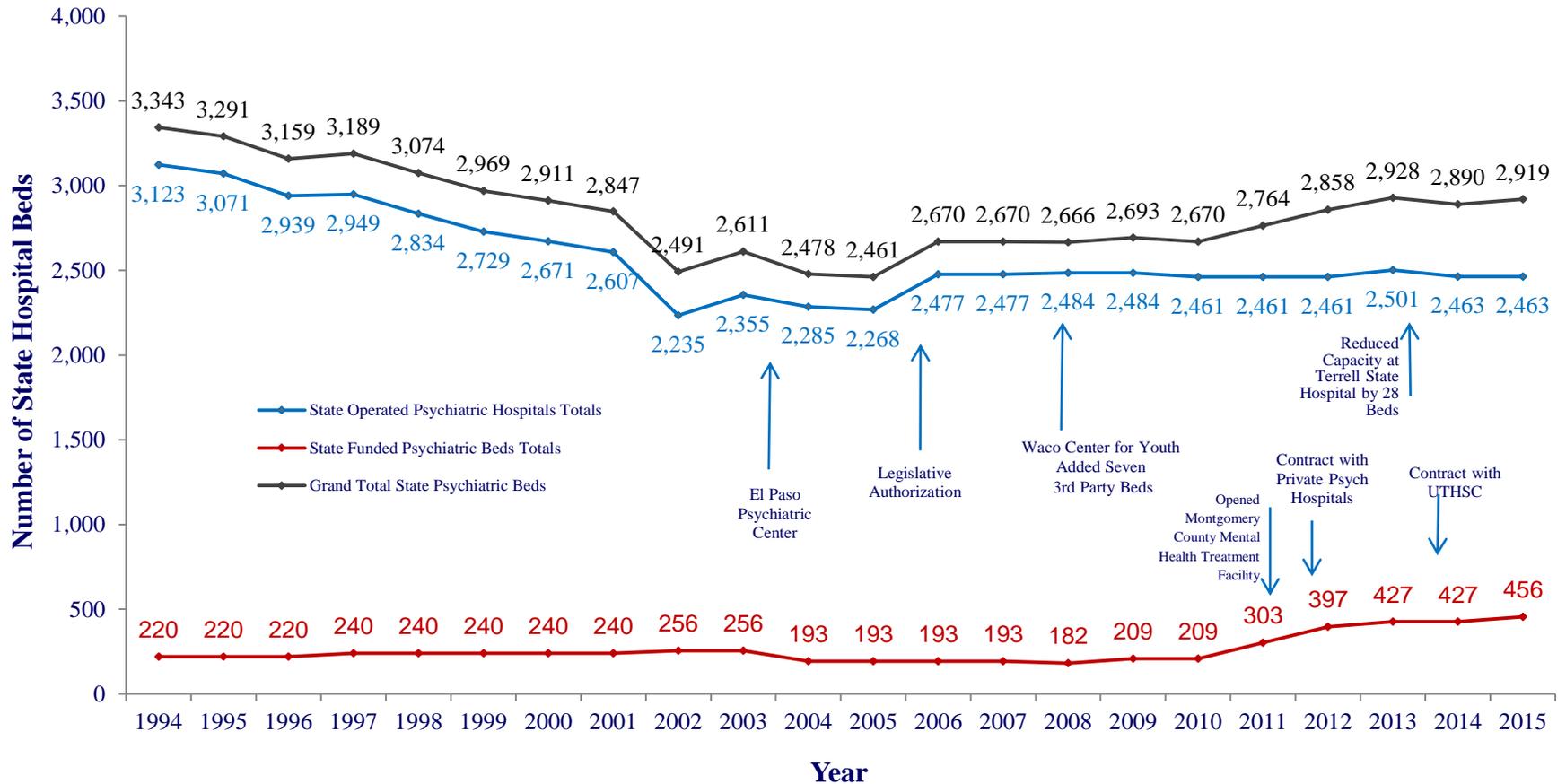
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- Demand: Forensic and Maximum Security Waitlist
 - Inpatient Hospital Capacity
 - Key Trends
 - DSHS Efforts to Address Demand:
 - Outpatient Competency Restoration
 - Jail-based Competency Restoration
 - Access to services
 - Supported housing
 - Crisis alternatives
 - The Forensic Commitment Process

Forensic and Maximum Security Wait List: September 2011 - February 2016



Inpatient Hospital Capacity

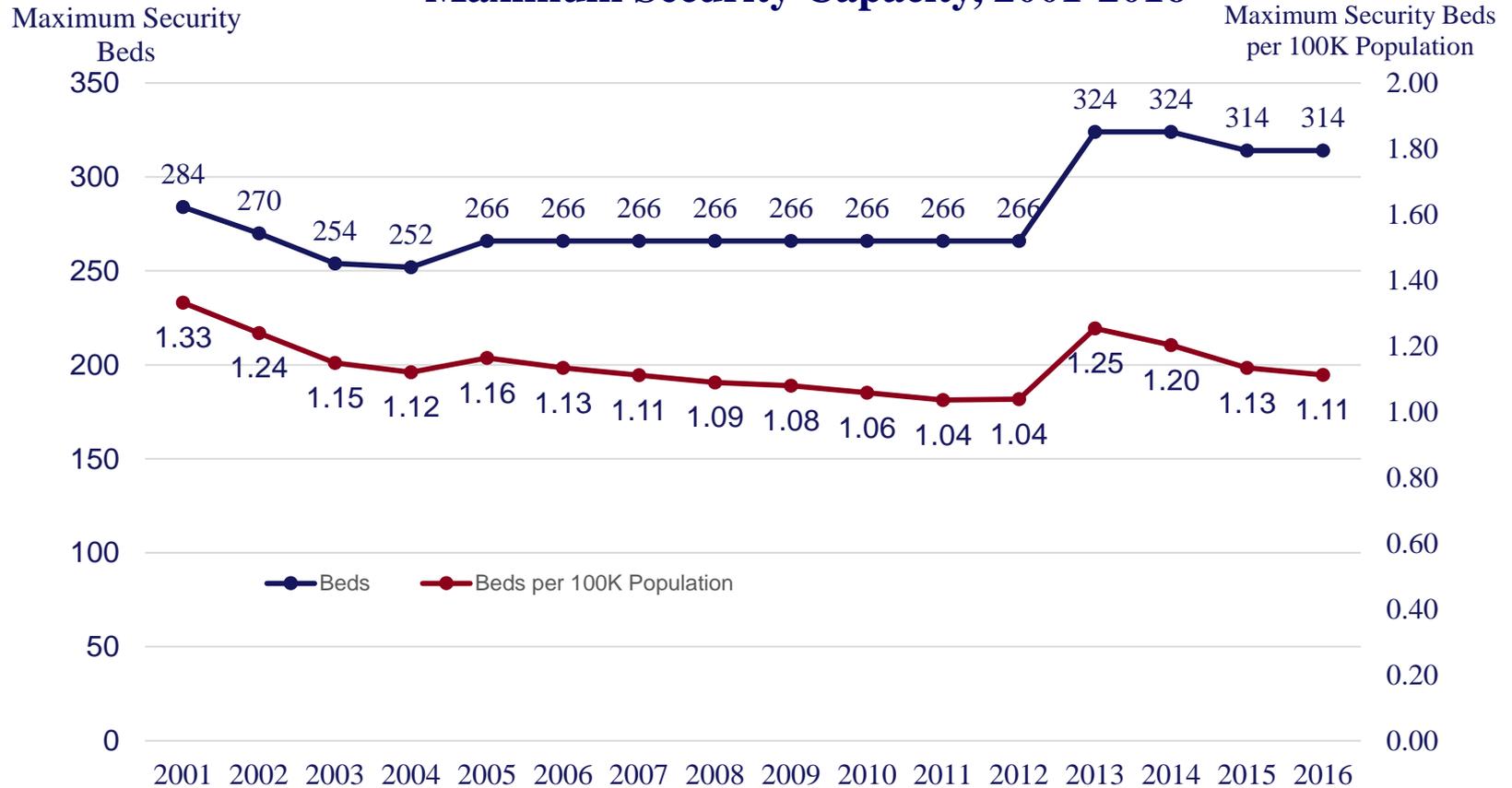
State Psychiatric Hospital Bed Capacity: FY 1994 - 2015



Note: In fiscal year 2015, \$20 million in additional funds will add approximately 94 additional contracted beds

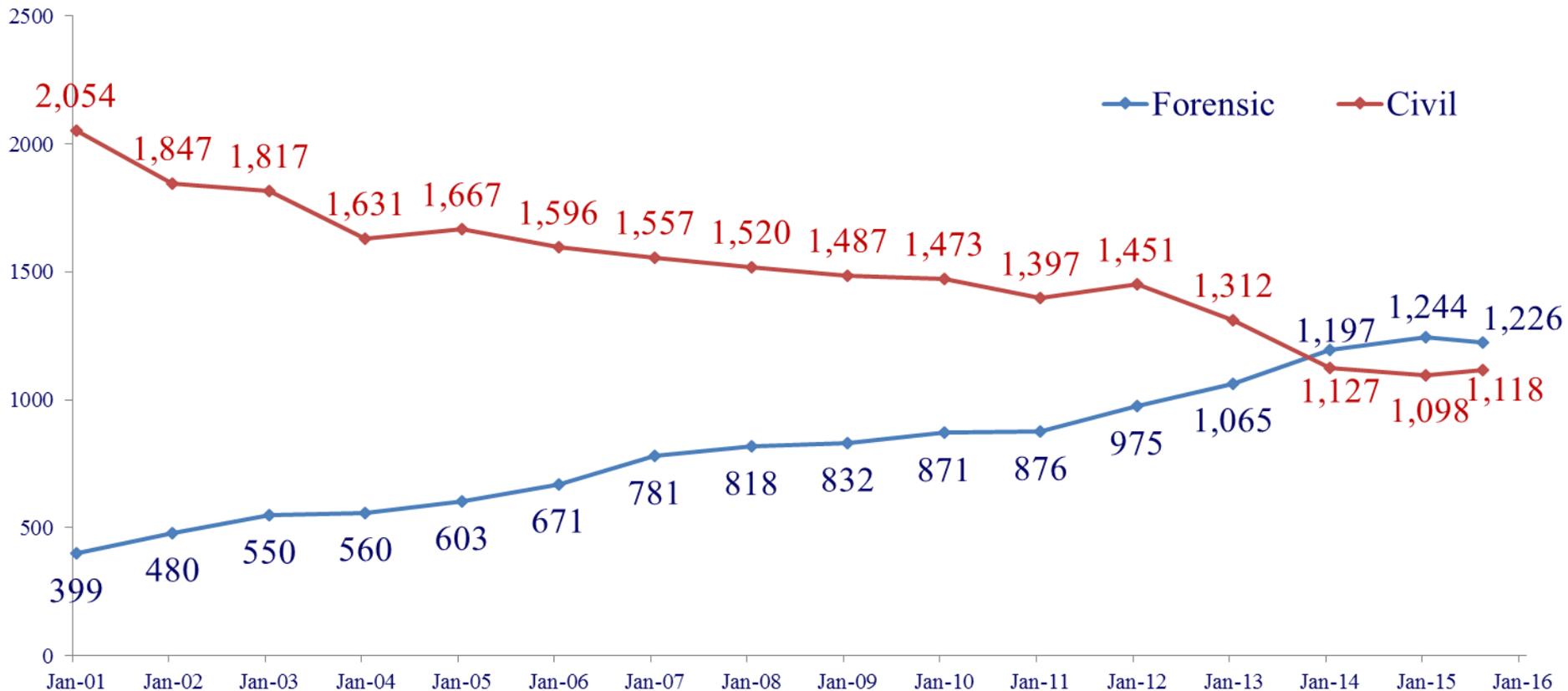
Inpatient Hospital Capacity: Maximum Security

Maximum Security Capacity, 2001-2016



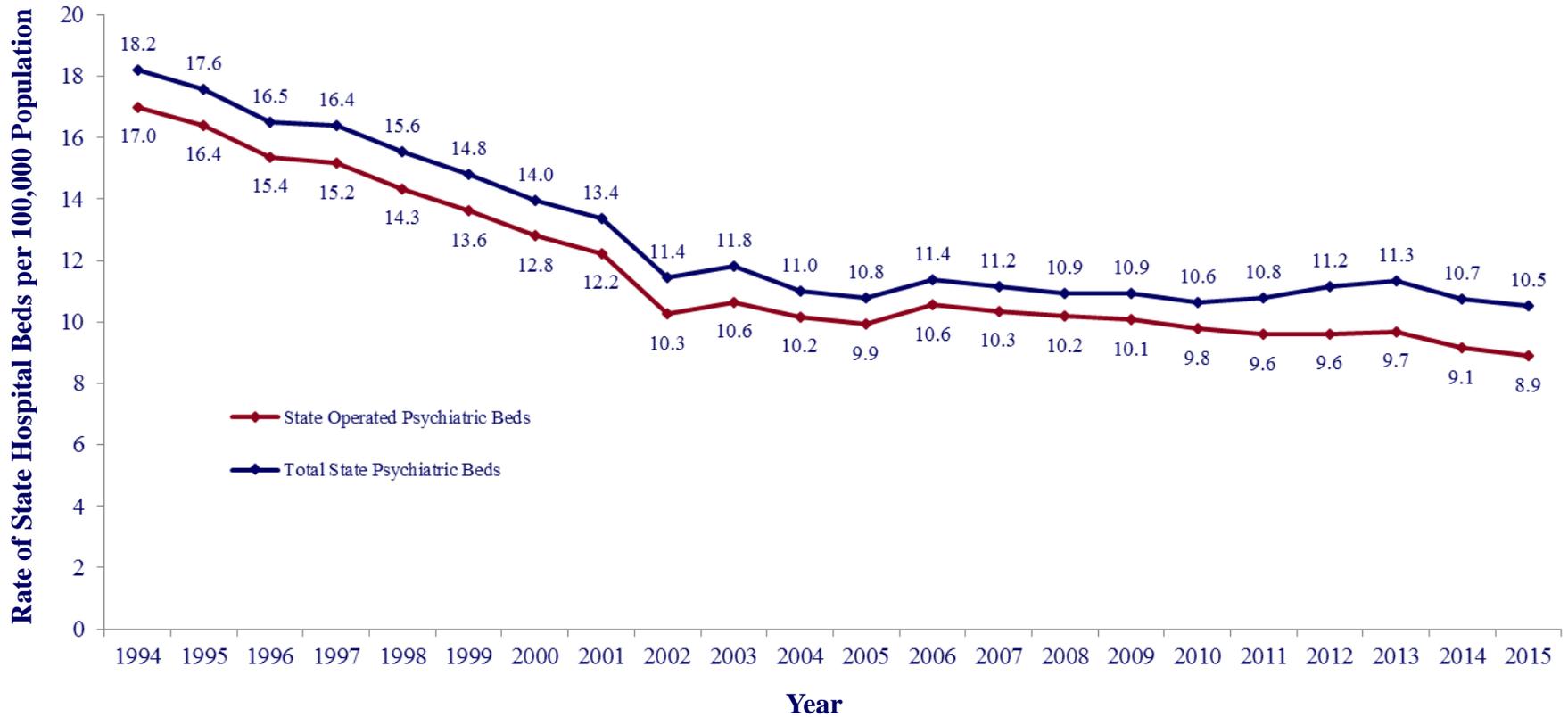
Key Trends: Civil vs. Forensic Populations

Civil vs. Forensic Patient Population of State Hospitals



Key Trends: Inpatient Capacity

State Psychiatric Hospital Bed Capacity: FY 1994 - 2015

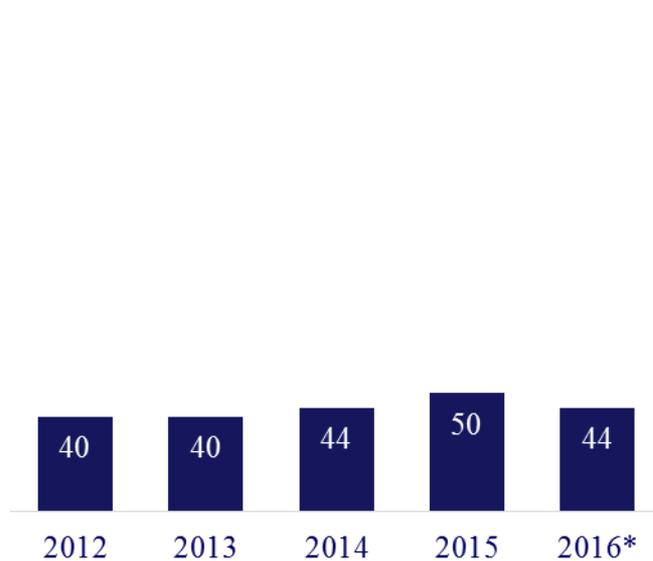


Source: DSHS Mental Health and Substance Abuse Division

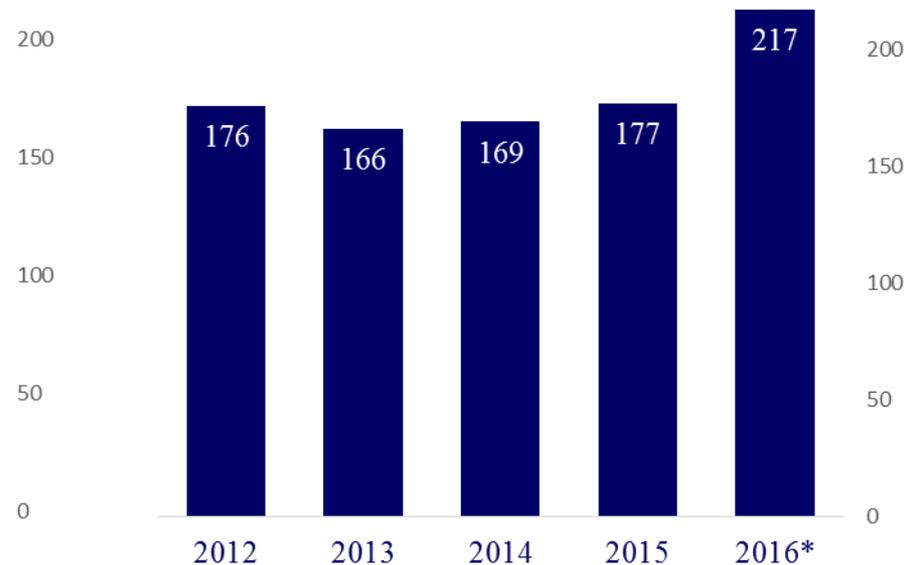
Key Trends

Impact of Different Commitment Types

Average Length of Stay for Civil and Voluntary Discharges from State Operated Psychiatric Hospitals



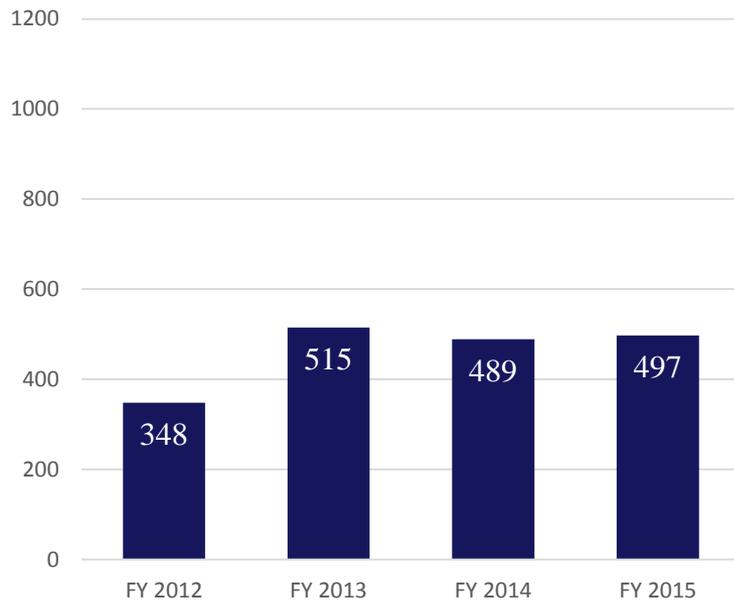
Average Length of Stay for Incompetent to Stand Trial Discharges from State Operated Psychiatric Hospitals



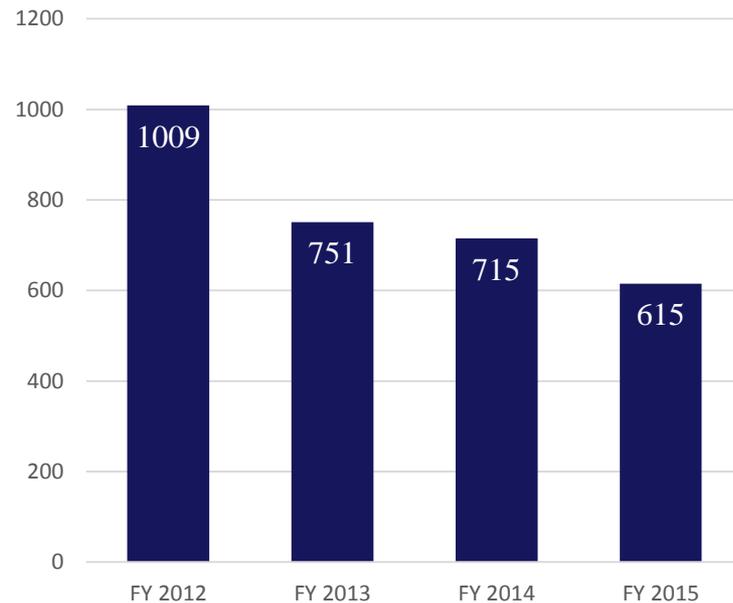
*fiscal year 2016 data is through February 2016

Key Trends: Impact of Different Commitment Types

Average Length of Stay for Individuals with Multiple Disabilities Including Intellectual Developmental Disorders



Average Length of Stay for Individuals Found Not Guilty by Reason of Insanity

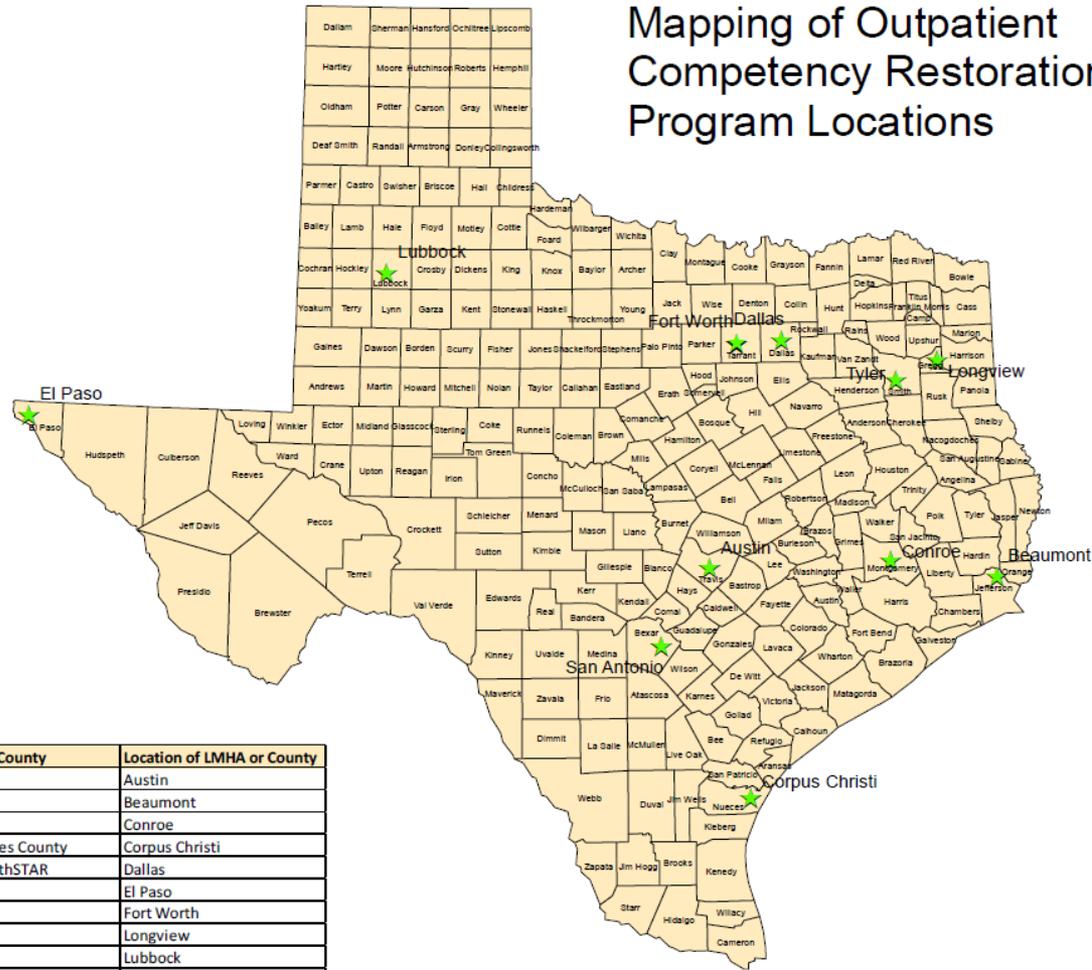


Efforts to Address Demand: Outpatient Competency Restoration

- Twelve sites across Texas
- DSHS contracts with Local Mental Health Authorities and ValueOptions-NorthSTAR for services that include:
 - Access to intensive mental health services;
 - Substance abuse treatment, if needed; and
 - Judicial system education
- Key barriers:
 - Medication compliance
 - Level of offenses not currently eligible for outpatient competency restoration

Efforts to Address Demand Outpatient Competency Restoration

Mapping of Outpatient
Competency Restoration
Program Locations



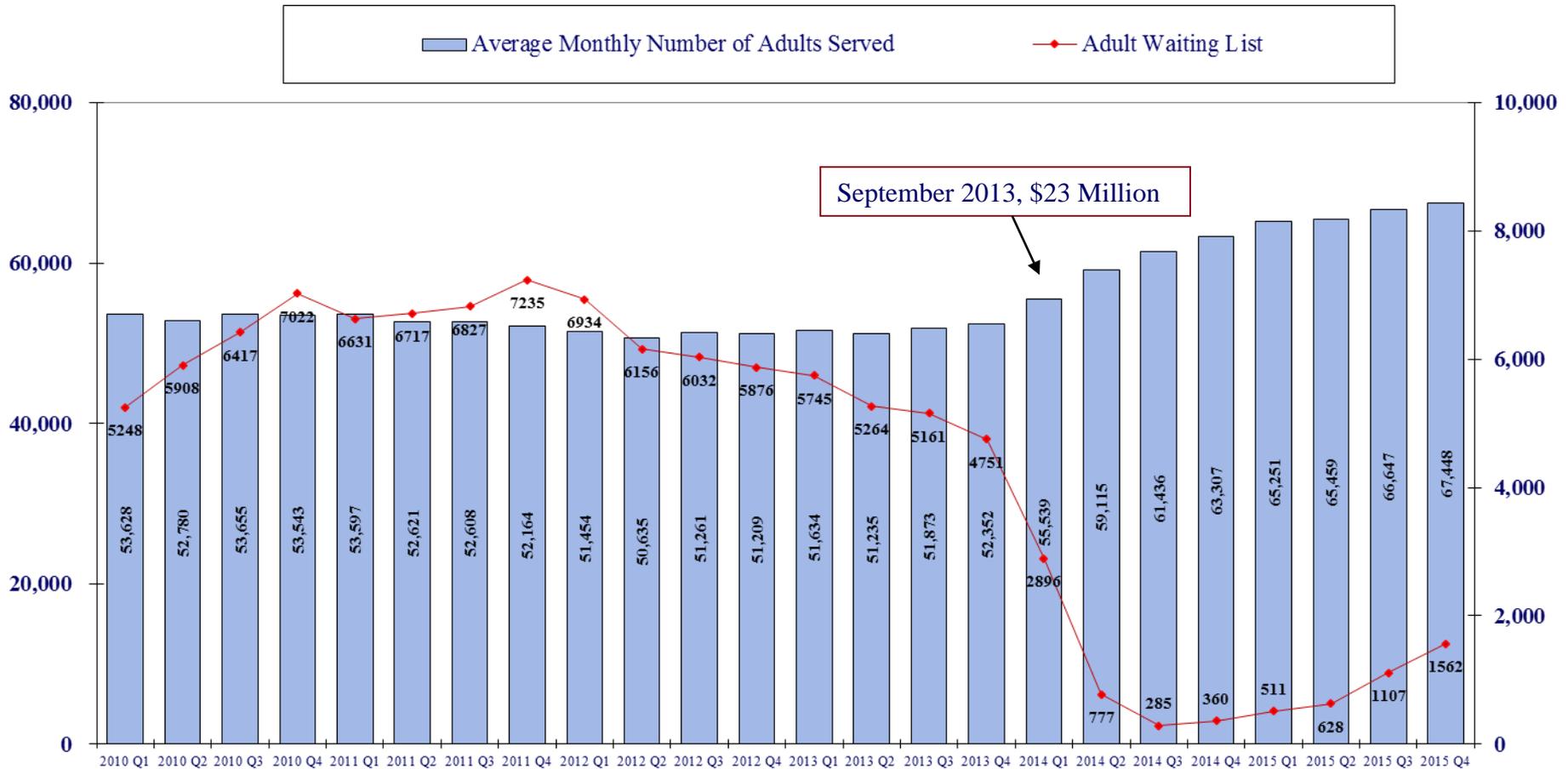
★ OCR Facilities

Local Mental Health Authority or County	Location of LMHA or County
Austin Travis County Integral Care	Austin
Spindletop Center	Beaumont
Tri County Services	Conroe
Behavioral Health Center of Nueces County	Corpus Christi
Dallas County - ValueOptions NorthSTAR	Dallas
Emergence Health Network	El Paso
MHMR of Tarrant County	Fort Worth
Community Healthcare	Longview
StarCare Specialty Health System	Lubbock
The Center for Health Care Services	San Antonio
Andrews Center Behavioral Healthcare System	Tyler

Efforts to Address Demand: Jail-Based Competency Restoration

- The 83rd Legislature (H.B. 1, Rider 74) appropriated \$3.05 million for DSHS to develop and implement a jail-based competency restoration pilot program
- The 84th Legislature (H.B. 1, Rider 70) extended the pilot period
- DSHS released a request for proposals for providers of this pilot in December 2015
- DSHS anticipates a contract to be finalized in Spring 2016

Efforts to Address Demand: Access to Services



Efforts to Address Demand: Supported Housing

- DSHS housing programs include:
 - Supported Housing Program
 - Healthy Community Collaboratives
 - U.S. Department of Housing and Urban Development Section 811
 - Home and Community-Based Services
 - Money Follows the Person Behavioral Health Pilot
 - Project Access Pilot Program

Efforts to Address Demand: Crisis Facilities

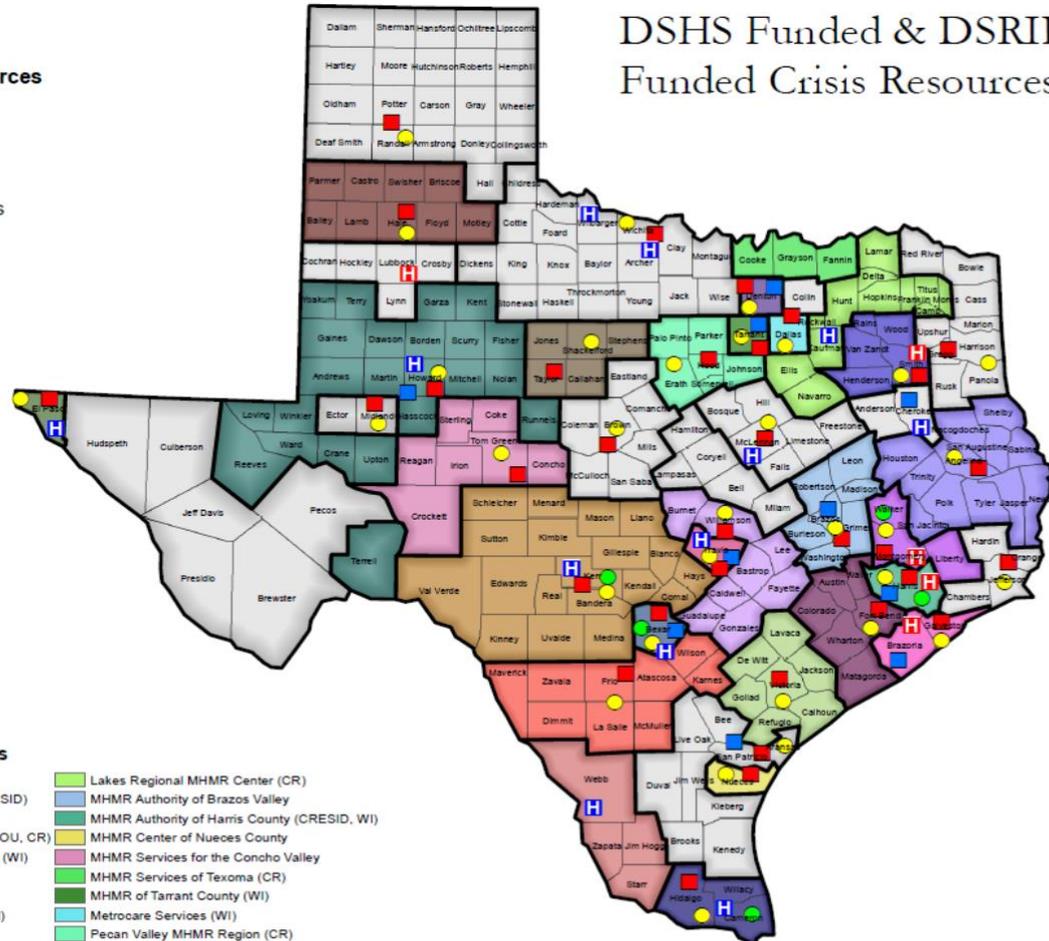
- Crisis Facilities:
 - Extended Observation Units
 - Crisis Respite
 - Crisis Residential
 - Crisis Stabilization Unit
 - Crisis Stabilization Beds
 - Outpatient Crisis Response

Efforts to Address Demand: Crisis Alternatives

DSHS Funded Crisis Resources

-  State Hospitals
-  Community Hospitals
-  Existing Crisis Projects
-  New Crisis Projects
-  Existing Local Inpatient Beds
-  New Local Inpatient Beds

DSHS Funded & DSRIP Funded Crisis Resources

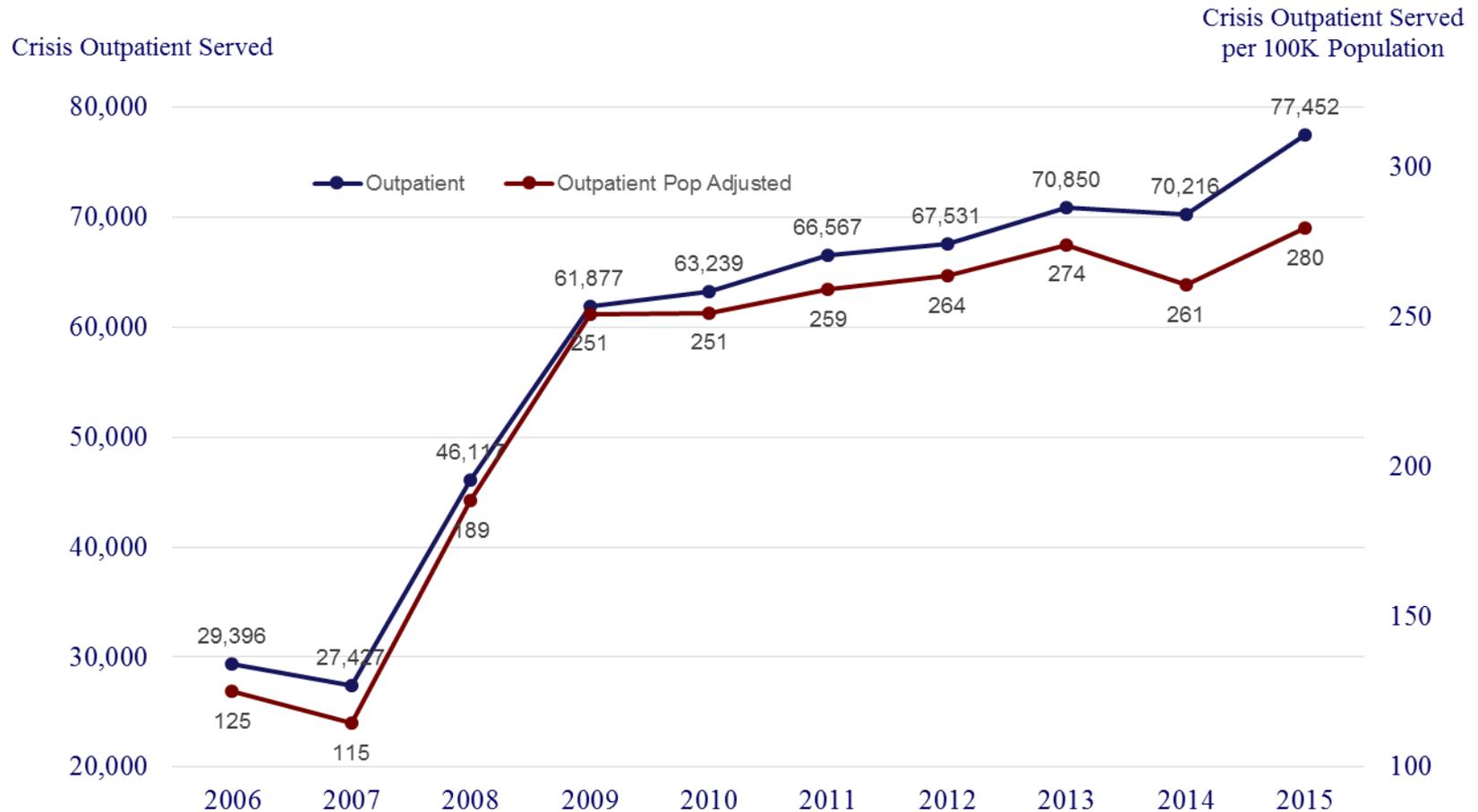


DSRIP Funded Crisis Resources

- | | |
|--|--|
|  Andrews Center (CR) |  Lakes Regional MHMR Center (CR) |
|  Austin Travis County MHMR Center (CRESID) |  MHMR Authority of Brazos Valley |
|  Betty Hardwick Center |  MHMR Authority of Harris County (CRESID, WI) |
|  Bluebonnet Trails Community Services (EOU, CR) |  MHMR Center of Nueces County |
|  Border Region MHMR Community Center (WI) |  MHMR Services for the Concho Valley |
|  Burke Center (EOU, CRESID) |  MHMR Services of Texoma (CR) |
|  Camino Real Community MHMR Center |  MHMR of Tarrant County (WI) |
|  Center for Health Care Services (HOT, WI) |  Metrocare Services (WI) |
|  Central Plains Center (EOU) |  Pecan Valley MHMR Region (CR) |
|  Denton County MHMR Center (CRESID, WI) |  Texana MHMR Center (EOU, CRESID) |
|  El Paso MHMR (EOU, HOT) |  Tri-County MHMR Services (EOU) |
|  Gulf Bend MHMR Center (WI) |  Tropical Texas Center for MHMR |
|  Gulf Coast Center (CR) |  West Texas Centers for MHMR |
|  Hill Country Community MHMR Center (CR) |  No Crisis Related 1115 Project(s) |

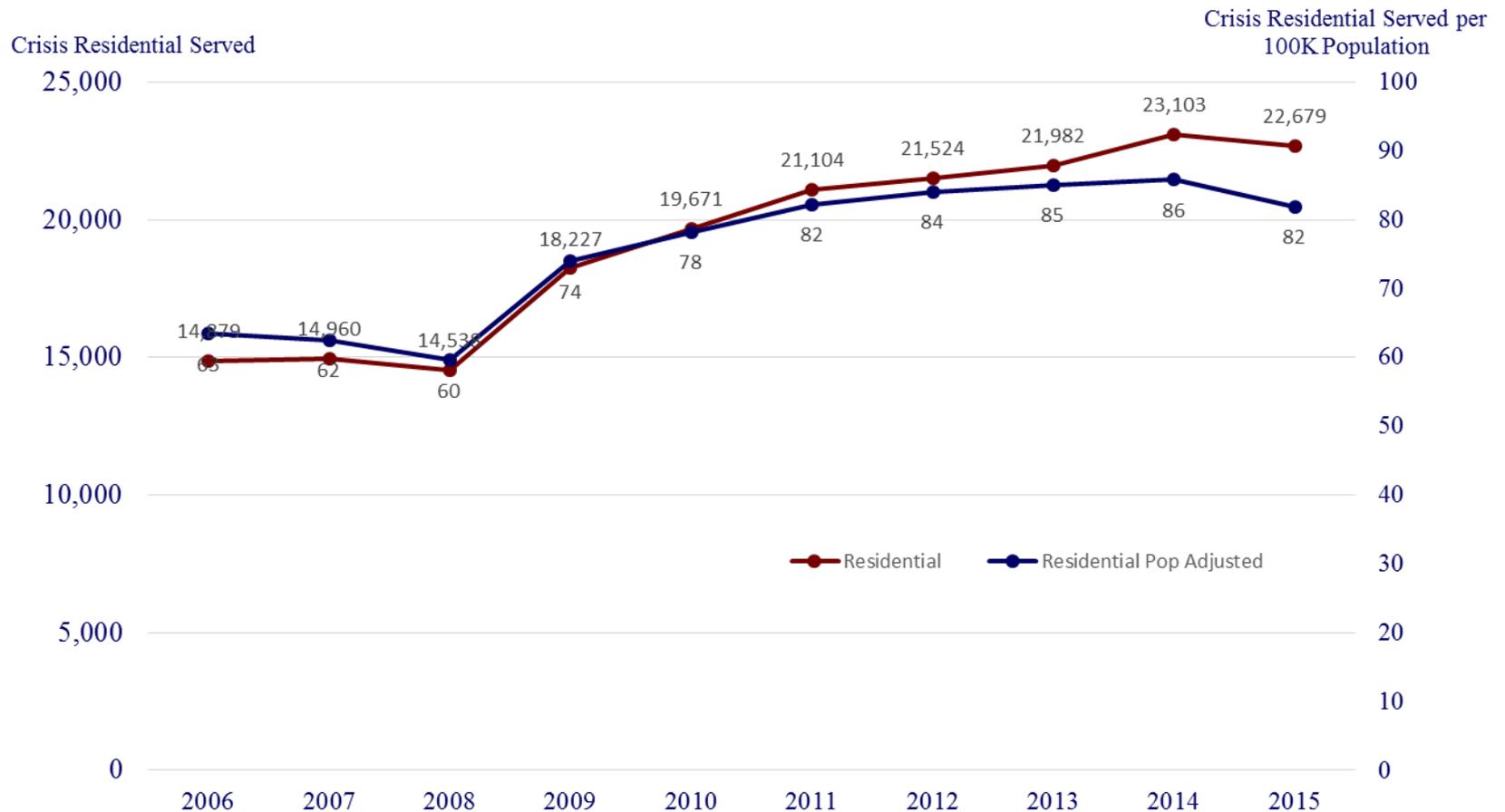
Demand for Outpatient Crisis Response

Crisis Outpatient Consumers Served, 2006-2015



Demand for Crisis Facilities

Crisis Residential Consumers Served, 2006-2015



Forensic Commitment Process: Incompetent to Stand Trial (IST)

- Procedures for determining incompetency to stand trial are outlined in the Code of Criminal Procedure, Chapter 46B
- A person is incompetent to stand trial if he / she does not have:
 - Sufficient present ability to consult with his / her lawyer with a reasonable degree of rational understanding; *or*
 - Does not have a rational as well as factual understanding of the proceedings against him / her [46B.003(a)]
- Incompetency proceedings apply to defendants charged with a felony or misdemeanor punishable by confinement [46B.002]

Forensic Commitment Process: Determination of Incompetency

- Issues of competency may be raised by either party or the court on its own motion [46B.004(a)]
- The court conducts an informal inquiry [46.B.004(c)]
 - If evidence of incompetency is not found, criminal proceedings resume
 - If evidence of incompetency is found, the court will order an examination [46B.005] by a qualified expert [46B.021]
- Given an initial trial court determination of incompetency [46B.051 – 46B.055], a defendant will be committed to the appropriate facility or program for *inpatient* or *outpatient* restoration of competency [46B.071, 46B.072, 46B.073]

Forensic Commitment Process: Inpatient Commitment for IST

- If charged with a specified violent offense (e.g., capital murder, aggravated robbery, and others):
 - The defendant will be committed to a facility designated by Department of State Health Services (DSHS) as a Maximum Security Unit (MSU) [46.B073(b) & (c)]
- Defendant not charged with a specified violent offense requiring MSU admission:
 - Will be committed to a non-maximum security facility (i.e., state hospital, contracted facility *or* state supported living center)
- Length of stay for initial restoration commitment is [46B.073(b) & (d)]:
 - Up to 120 days for felony charges
 - Up to 60 days for misdemeanors
 - One 60 day extension allowed* [46B.079(d) and 46B.080]

One 60 day extension allowed **IF defendant has not achieved competency by the expiration of commitment but the treatment team believes competency is achievable within another 60 days.*

Forensic Commitment Process: Civil Commitment: Charges Pending

- After initial commitment, the Code of Criminal Procedure incorporates civil commitment standards set forth in the Health & Safety Code when addressing the issue of extended commitments
- Defendants who meet criteria for 46B Subchapter E – *Civil Commitment: Charges Pending* and who are charged with a specified violent offense:
 - Are initially committed to a Maximum Security Unit [46B.104], *unless*
 - Determined to be manifestly dangerous by a review board, defendants are transferred, within 60 days, to a non-maximum security DSHS or contracted facility [46B.105(a)(1)] or State Supported Living Center (SSLC) [46B.105(a)(2)]
- In cases where a defendant is not charged with a MSU-specific offense, he / she is committed to a non-maximum security DSHS facility, contracted facility, SSLC, or outpatient restoration program

Forensic Commitment Process: Release of a Defendant

- The head of a facility must notify the committing court if they determine that a defendant on a Incompetent to Stand Trial commitment should be released
- This includes release due to either:
 - Expiration of the defendant's commitment under the Mental Health Code; or
 - Facility determination that the defendant no longer meets commitment criteria under Subtitle C or D, Title 7, Health and Safety Code (Mental Health Code / Persons with Intellectual Disability Act) [46B.107(a)-(c)]
- If the court determines release is not appropriate, the court shall enter an order directing the defendant not be released [46B.107(e)].

Forensic Commitment Process: Not Guilty by Reason of Insanity (NGRI)

- The procedures associated with findings of not guilty by reason of insanity are outlined in the Code of Criminal Procedure, Chapter 46C
- Insanity [Texas Penal Code, Sec. 8.01]
 - An *affirmative* defense to prosecution that, at the time of the conduct charged, the defendant, as a result of severe mental disease or defect, did *not* know that his/her conduct was legally or morally wrong
 - The term “mental disease or defect” does *not* include an abnormality manifested *only* by repeated criminal or otherwise antisocial conduct
 - Burden of proof = *preponderance of evidence*

Forensic Commitment Process: Dangerous/Non-Dangerous Conduct

- Immediately following a not guilty by reason of insanity acquittal, the court must determine whether the offense of which the person was acquitted involved conduct that:
 - Caused serious bodily injury to another person;
 - Placed another person in imminent danger of severe bodily injury; or
 - Consisted of a threat of severe bodily injury through the use of a deadly weapon [46C.157].
- Court retains jurisdiction if there is a finding of dangerous conduct until either:
 - The court discharges the person and terminates jurisdiction; or
 - The cumulative total period of institutionalization and outpatient treatment equals the maximum term for the offense of which the person was acquitted [46C.269].

Forensic Commitment Process: Dangerous/Non-Dangerous Conduct

Dangerous

[46C.251]



Person is committed for evaluation of present mental condition and treatment to maximum security unit (MSU) for a period not to exceed **30** days.



The court must hold a hearing on disposition no later than the **30th** day after the date of acquittal.

Non-Dangerous

[46C.159/201]



The court determines if there is evidence of mental illness or intellectual or developmental disability.



Evidence of mental illness or intellectual developmental disorder



The case is transferred to civil court for civil commitment proceedings.*

**Court may also order detention in jail or any other suitable place pending prompt initiation and prosecution of appropriate civil proceedings by the state attorney, or placement in the care of a responsible person on satisfactory security being given for the acquitted person's proper care and protection [46C.201].*

Forensic Commitment Process: Commitment to Inpatient or Residential Care

- The court shall commit a person to inpatient or residential care if [46C.256]:
 - He / she has severe mental illness or intellectual developmental disorder;
 - As a result, he / she is likely to cause severe bodily injury to another if not treated and supervised; *and*
 - Inpatient treatment or residential care is needed to protect the public.
- Order of commitment expires on the **181st** day following date the order is issued.
- The court shall determine *annually* whether to renew the order [46C.261].
 - This requires evidence that continued mandatory supervision and treatment are appropriate.
- Renewed orders are for no more than **one** year and may be modified to an outpatient setting.

Forensic Commitment Process: Maximum Period of Confinement

- Persons acquitted not guilty by reason of insanity *cannot* be committed to a mental health or residential care facility, or to outpatient programming for a cumulative period that exceeds the maximum term for the offense for which the person was tried and acquitted [46C.002]

Court-ordered Forced Medication

- A court-order may be obtained for forced medications for defendants who have been determined incompetent to stand trial yet are awaiting placement in a state hospital [Health and Safety Code, Section 574.106(a-1)(2)(B)(i)]
- Beginning a medication regimen in the time between the court-order and state hospital admission could help individuals with mental illness stabilize prior to state hospital admission, reducing length of stay
- Few prosecutors have availed themselves of the provisions to obtain these orders under Health and Safety Code, Sections 574.101 - 574.110, because the orders must be obtained via courts with Probate jurisdiction