January 25, 2023

The Honorable Peter Sakai  
Bexar County Judge  
101 W. Nueva, 10th Floor  
San Antonio, Texas 78205

The Honorable Rebeca Clay-Flores  
Bexar County Commissioner, Precinct 1  
101 W. Nueva  
Suite 1009  
San Antonio, Texas 78205

The Honorable Justin Rodriguez  
Bexar County Commissioner, Precinct 2  
101 W. Nueva  
Suite 1032  
San Antonio, Texas 78205

The Honorable Grant Moody  
Bexar County Commissioner, Precinct 3  
101 W. Nueva  
Suite 1007  
San Antonio, Texas 78205

The Honorable Tommy Calvert  
Bexar County Commissioner, Precinct 4  
101 W. Nueva  
Suite 1029  
San Antonio, Texas 78205

Dear Judge Sakai and Commissioners,

As you are aware, overtime expenditures for the Bexar County Sheriff’s Office have consistently been an issue for well over a decade now. Although overtime expenditures are necessary to ensure compliance is maintained with the Texas Commission on Jail Standards, there is no end in sight for our growing jail population which is a major contributor to our overtime expense. At present, well over 700 inmates are languishing in the Bexar County Jail due to either having been convicted of a felony charge and sentenced to serve in a state prison or having been diagnosed with a mental health condition and awaiting treatment and care in a mental health facility designated by the State of Texas.

Due to the fact that there are not enough adequate facilities to house this special population, they are remanded into our custody. This is not fair to the inmates, to the Bexar County taxpayers who shoulder the burden, or to the deputies who work overtime to watch these inmates. Of these 700-plus inmates, 288 have been found incompetent to stand trial and remain in our custody. Deputies are also forced into an untenable situation of continuing to be mental health care providers.

While I am proud to say our deputies are trained above and beyond the minimum requirements, this is not a role that is sustainable for them or for the consumer we are having to deal with. It is a huge stressor on the workforce and leads to a higher attrition rate than normal. In fact, this population is more manpower intensive as they need to be separated to a larger extent than regular inmates, which is a major driving factor in our overtime payments.
In regular meetings with the Urban County Sheriff's Committee, which is comprised of large sheriff's offices and jails and of which I'm a member, it is evident that all major jails are plagued by the same issue. Dallas County is taking steps to hold the State of Texas accountable for its shortcomings and for the problems it is causing to the Dallas County Jail.

I am including the correspondence sent by the Dallas County District Attorney to Attorney General Ken Paxton. Respectfully, my advice is that we strongly consider a similar course of action to recoup the Bexar County taxpayer dollars expended as a result of the State's shortcomings. Please let me know how I may help in this effort.

Sincerely,

Javier Salazar
Sheriff
Bexar County, Texas
January 24, 2023

VIA CERTIFIED MAIL RR 7020 1290 0001 6311 8391
Ken Paxton
Office of the Attorney General
300 W. 15th Street
Austin, Texas 78701

VIA CERTIFIED MAIL RR 7020 1290 0001 6311 9169
AND FACSIMILE @ 512-438-4249
Cecile Erwin Young, Executive Commissioner
Texas Health and Human Services Commission
701 W. 51st St.
Austin, Texas 78751

VIA CERTIFIED MAIL RR 7020 1290 0001 6311 9176
AND EMAIL @ HHSCForensicsAndJailDiversionServices@hhs.texas.gov
Karen Ray, Chief Counsel
Texas Health and Human Services Commission
701 W. 51st St.
Austin, Texas 78751

Re: HHSC designation of State beds pursuant to Texas Code of Criminal Procedure Article 46B.

This correspondence is for the purpose of putting the State and the Texas Health and Human Services Commission ("HHSC"), and its Executive Commissioner, on notice of possible claims that Dallas County, Texas may have against the Executive Commissioner. Specifically, the Texas Code of Criminal Procedure Article 46B sets forth the legal standards and processes for a court's finding an individual incompetent to stand trial. It further sets forth which individuals must be sent to a HHSC designated State facility for evaluation, treatment, and/or restoration of competency.

First, when a defendant is found incompetent to stand trial, the criminal proceeding against the individual is stayed and the court either commits the defendant to a mental health facility designated by HHSC under the Texas Code of Criminal Procedure ("TCCP") 46B.073 or release the defendant on bail subject to conditions under 46B.072. Tex. Code Crim. Proc. Art. 46B.004(d), 46B.071. Under the TCCP, article 46B.073, a defendant found incompetent to stand trial and not released on bail shall be committed to a mental health facility “[f]or purposes of further examination and competency restoration services with the specific objective of the defendant attaining competency to stand trial....” Id. at Art. 46B.073(b). An individual charged with an offense listed under TCCP 17.032(a) or an indictment that makes an affirmative finding under TCCP, Arts 42A.054(c) & (d), concerning use of a firearm, shall be “commit[ed]...for competency
restoration services to a facility designated by the commission." *Id.* (emphasis added). 

"Commissioner" means the commissioner of state health services. *Id.* at § 532.001.

Second, under the TCCP, Arts 46B.102 (mental illness hearing) and 46B.103 (intellectual disability hearing), a mentally ill or intellectually disabled defendant that meets the criteria for civil commitment, who is charged with an offense listed under TCCP 17.032(a) or whose indictment makes an affirmative finding under TCCP 42A.054(c) & (d), "...shall be committed to the facility designated by the commission...."  *Id.* (emphasis added).

Third, if a defendant is acquitted as not guilty by reason of insanity of a crime involving dangerous conduct the court "shall order the acquitted person to be committed for evaluation of the person's present mental condition and for treatment to the facility designated by the commission," for a period not to exceed 30 days. *Id.* at Art. 46C.251(a) (emphasis added).

An order committing the defendant for restoration of competency "must place the defendant in the custody of the sheriff for transportation to the facility in which the defendant is to receive treatment for purposes of competency restoration." *Id.* at Art. 46B.075. The TCCP further provides:

> The transportation of a patient from a jail or detention facility to a mental health facility or residential care facility must meet the following requirements: (1) the patient must be transported directly to the facility within a reasonable amount of time and without undue delay;

*Id.* at Art. 46.04, Sec. 2(1) (emphasis added). The TCCP is devoid of any provisions that provide for the wait listing of defendants who are to be transferred to facilities designated by HHSC under Art. 46B.

As of December 31, 2022, there were 382 individuals awaiting transfer to State facilities for competency restoration in the Dallas County Jail, which accounts for six (6%) of the Dallas County jail population. In December 2022, Dallas County took care of and provided medication for the 382 inmates waiting for the state hospital at a cost of $66.17 per inmate per day for housing. This came at a cost of $783,585.14 for the month, to the taxpayer. Additionally, given the special needs of this population, treatment and supervision costs are an added cost of the care, which could be up to $469.17 per inmate, per day. Based on this estimate in the month of December 2022, it costs Dallas County taxpayers up to $5,555,911.14 to maintain care for individuals the State was required to designate an available facility, but has failed to do so. The wait time for a bed from HHSC can be over 300 days. For example, as of December 2022, the average wait time for a male defendant for a maximum-security state hospital bed from HHSC was 831 days. Per a September 2022 published study, there are approximately 2,540 individuals across the State of Texas languishing in county jails awaiting competency restoration at state facilities, with an average wait time of 699 days for an individual in a maximum-secure bed facility and 241 days for a non-maximum secure bed.

This correspondence is to notify the Texas Attorney General, HHSC, and the Executive Commissioner, that the Executive Commissioner is in violation of the TCCP, including by failing
to perform ministerial duties, and/or non-discretionary acts, subjecting them to declaratory, mandamus, and/or injunctive relief. The Executive Commissioner’s abdication of responsibility is not only costing Dallas County millions, but it has the potential to give rise to a violation of the Texas Commission on Jail Standards rules. Dallas County, therefore, demands that within 30 days of this correspondence that HHSC designate State facilities with available beds to take the over 300 defendants in the Dallas County Jail awaiting the designation of available beds by HHSC. In the event HHSC or the Executive fail to do so, Dallas County will have no choice but to bring suit under the Declaratory Judgment Act, among other authority, to compel compliance.

This is an attempt to resolve this matter without litigation and provide notice, including pursuant to the Tex. Civ. Prac. & Rem. Code § 37.006. Should you have any questions or wish to discuss, I can be reached at (214) 653-6149.

Sincerely,

Barbara S. Nicholas
Chief, Civil Division
Dallas County District Attorney’s Office

cc:

Jennifer A. Shuford
Commissioner of the Texas Department of State Health Services
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756-3199

Darryl Martin
Dallas County Administrator
Records Building
500 Elm Street, Suite 7600
Dallas, Texas 75202