

SUNSET ADVISORY COMMISSION

STAFF REPORT



Texas Commission on Jail Standards

2020–2021

87TH LEGISLATURE

SUNSET ADVISORY COMMISSION



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Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. Elaborate, custom-designed hardware accentuates the beautifully carved wooden doors. The Sargent and Co. of New Haven, Connecticut created the glass molds especially for the building in the 1880s. The Capitol hardware features incised designs of geometric and stylized floral motifs. This reflects the shift from the Renaissance Revival style of the building's interior architecture to the simpler Aesthetic Movement for its decorative details. Photo credit: Janet Wood

TEXAS COMMISSION ON JAIL STANDARDS

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HOW TO READ SUNSET REPORTS

For each agency that undergoes a Sunset review, the Sunset Advisory Commission publishes three versions of its staff report on the agency. These three versions of the staff report result from the three stages of the Sunset process, explained in more detail at sunset.texas.gov/how-sunset-works. The current version of the Sunset staff report on this agency is noted below and can be found on the Sunset website at sunset.texas.gov.

CURRENT VERSION: Sunset Staff Report

The first version of the report, the Sunset Staff Report, contains Sunset staff's recommendations to the Sunset Commission on the need for, performance of, and improvements to the agency under review.

Sunset Staff Report with Commission Decisions

The second version of the report, the Sunset Staff Report with Commission Decisions, contains the original staff report as well as the commission's decisions on which statutory recommendations to propose to the Legislature and which management recommendations the agency should implement.

Sunset Staff Report with Final Results

The third and final version of the report, the Sunset Staff Report with Final Results, contains the original staff report, the Sunset Commission's decisions, and the Legislature's final actions on the proposed statutory recommendations.

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SUMMARY OF SUNSET STAFF REPORT

Since 1975, the Legislature has entrusted the Texas Commission on Jail Standards with one of the state's most challenging, high-stakes jobs — decreasing safety risks for jail staff and inmates, including those involving injury and death. While state law charges local elected officials with funding and operating jails, the agency sets and enforces minimum standards to help ensure these facilities are safe and secure, regardless of their varying sizes, operations, and available resources. Jails are often the greatest potential liability for local governments, and the agency helps minimize this liability, for which taxpayers would otherwise foot the bill, by setting standards, performing routine inspections, and providing technical assistance.

Until recently, the agency largely stayed out of the spotlight, as criminal justice reforms tended to focus on topics like bail, sentencing, and decarceration more than jail conditions. However, in 2015, the agency generated considerable attention when Sandra Bland died by apparent suicide inside a county jail. Her death sparked a national conversation about transparency and accountability in the criminal justice system, resulting in significant new requirements for the agency and the jails it oversees.

Texas relies on this agency to act as the public's eyes and ears inside jails.

While jails operate behind closed, secured doors, Texas relies on this agency to act as the public's eyes and ears inside these facilities. With this role in mind, Sunset staff determined the agency's functions and independent structure are critical to the state and should be continued for 12 years. However, some of the agency's most pressing problems lie beyond its authority to fix. For example, the influx of people with mental health issues and disabilities into local jails has been a concern for decades. While agency staff can help jailers manage the impacts of this issue, they cannot tackle its root causes, which fall outside of the agency's control and beyond Sunset's scope. Therefore, Sunset staff identified other areas in which the agency has sufficient authority to address problems, but has not used it adequately.

Despite a broad mandate to adopt needed safety and security standards, the agency has not proactively updated standards to keep pace with dynamic jail environments. Also, many of its key standards are overly vague, tending to take a one-size-fits-all approach that does not account for variations in risk among jails of different types and sizes. Further, underdeveloped processes for conducting inspections, investigating complaints, and taking enforcement action perpetuate inconsistencies across jails and do not incentivize prompt, sustained compliance with state standards. Requiring the agency to update procedures for its major duties, including standards development, inspections, and data collection, would ensure the agency improves safety, minimizes liability, and allocates resources more efficiently.

The following material highlights Sunset staff's key recommendations for the Texas Commission on Jail Standards.

Sunset Staff Issues and Recommendations

ISSUE 1

The Agency's Minimum Jail Standards are Overly Vague, Broad, and Stagnant, Creating Risks for Jails and Inefficiencies for the Agency.

The agency writes, proposes, and promulgates minimum jail standards in the form of its rules. However, many of these standards are unnecessarily vague, which hinders their ability to decrease potential liabilities in jails. The agency's overly broad standards also take a one-size-fits-all approach that does not adequately address variations in risk among jails of different types and sizes. Finally, the agency does not regularly review and update its rules to ensure standards are up-to-date and responsive to trends occurring across the state.

Key Recommendations

- Require the commission to ensure minimum standards account for varying needs and levels of risk among different jails.
- Clarify the commission has authority to revise, amend, and change rules as needed without specific legislative action or approval.
- Direct the commission to review its rules for vague and ineffective standards, and improve their specificity and usefulness.

ISSUE 2

The Agency's Inspection and Enforcement Processes Do Not Adequately and Efficiently Mitigate Risk in Jails.

Routine inspections allow the agency to help jails correct noncompliance with minimum standards. However, overly rigid inspection schedules and inconsistent procedures in the field prevent staff from identifying problems as efficiently as possible. Further, when the agency does find violations, its limited enforcement process does not deter prolonged or repeat noncompliance. Developing a more standardized, risk-based approach to inspections and adopting a system of graduated actions against noncompliant jails would help the agency target its resources toward high-risk jails and address violations more predictably and comprehensively.

Key Recommendations

- Require the commission to establish a risk-based approach to inspections.
- Require the commission to adopt rules and policies for taking escalating actions against jails that remain out of compliance for extended or recurring periods of time.
- Direct the agency to create a procedures manual detailing its inspection process.

ISSUE 3

The Agency Lacks Key Complaints Data and Investigation Processes to Best Ensure Jails Meet Minimum Standards.

The agency receives more than 2,000 complaints each year but lacks clear, documented, and comprehensive procedures to guide thorough investigations, prioritize the high volume of complaints, and consistently refer out non-jurisdictional complaints. Additionally, the agency does not provide adequate information about the complaints process, which leads to inefficiency and unfairness. Finally, the agency lacks consistent, reliable complaints data, without which it cannot conduct the analysis needed to improve its own operations or effectively address jail noncompliance.

Key Recommendations

- Require the commission to adopt rules directing jails to post information on the commission's complaints process.
- Update statute to enhance existing requirements for tracking, analyzing, and reporting on complaints.
- Direct the agency to develop clear, detailed procedures for investigating complaints.

ISSUE 4

The Agency's Poor Data Practices and Weak Communications Limit Its Transparency and Ability to Improve Jail Operations.

The agency collects and maintains a significant amount of data about jails' inmate populations; compliance histories; and serious incidents, such as deaths, escapes, and assaults. However, the agency's insufficient data storage and lack of trend analysis prevent staff from using that data to identify common problems in jails statewide. The agency's website also includes incomplete and unnecessarily restricted information, which reduces efficiency for staff and transparency for the public. Further, staff's procedures for collecting input and sharing information do not include broad stakeholder groups that could help the agency better achieve its mission.

Key Recommendations

- Require the agency to conduct trend analysis with the data it collects.
- Direct the agency to publish certain information on its website for a specified amount of time.
- Direct the agency to expand certain procedures for information gathering and sharing to include more diverse groups of stakeholders.

ISSUE 5

The State Has a Continuing Need for the Texas Commission on Jail Standards.

The agency serves a vital role monitoring compliance with minimum standards in diverse jails across the state. While the commission should continue, its staffing allocation does not align with the agency's most critical function — inspections. Assessing opportunities for redistributing certain staff toward inspection work would ease burdens on current field inspectors and increase time spent with struggling jails, all within existing resources. Additionally, authorizing the commission to establish advisory committees would increase stakeholder engagement on complex problems, and strengthen the commission's ability to balance pressing current issues with long-term strategic planning.

Key Recommendations

- Continue the agency for 12 years, until 2033.
- Authorize the commission to establish advisory committees by rule.
- Direct the agency to conduct a staffing analysis to better align resource allocation with its core inspection function.

Fiscal Implication Summary

Overall, some recommendations in this report would have upfront costs in staff time but should also result in efficiencies for the agency. Most of the recommendations are intended to ensure the agency most efficiently uses its limited resources, including by targeting inspections toward high-risk jails and improving the clarity of minimum standards. However, the exact fiscal impact of these changes cannot be estimated without knowing how the agency would implement them.

AGENCY AT A GLANCE

In 1975, the Legislature created the Texas Commission on Jail Standards after a series of lawsuits identified overcrowding, poor sanitation, and other substandard conditions in county jails across the state. The agency's mission is to empower local governments to provide safe, secure, and suitable jail facilities through proper rules and procedures, while promoting innovative programs and ideas.¹ To carry out this mission, the agency performs the following key duties:

- Develops mandatory minimum standards for jails on health services, inmate supervision, emergency preparedness, and other relevant topics.
- Monitors compliance with minimum standards by inspecting jail facilities, investigating complaints, reviewing jail deaths and escapes, and taking enforcement action when necessary.
- Provides technical assistance and training to stakeholders, including licensed jailers, jail administrators, and county sheriffs.
- Approves jail construction, renovation, and operational plans.
- Compiles and reports monthly data on inmate populations, incarceration rates, and jailer turnover.

Statute limits the agency's authority to jail systems operated by county governments or contracted private vendors for county and municipal governments.² The agency currently oversees 239 of these jail systems, each of which may contain multiple facilities. Federally operated prisons and immigrant detention centers fall outside of the agency's authority, as do several types of local and state correctional facilities, as shown in the accompanying textbox. Inmates housed in jails under the agency's jurisdiction largely include people who are awaiting trial; have been convicted of low-level crimes and are serving a short sentence; or have been convicted of more serious crimes and are awaiting transfer to a state jail or prison. On September 1, 2020, these jails had a collective capacity of about 95,000 beds, 70 percent of which were filled — a breakdown that has remained relatively consistent since fiscal year 2015. About 60 percent of inmates were awaiting trial, while 10 percent were ready for transfer to a state jail or prison.

Local and State Facilities Outside of the Agency's Jurisdiction

- **Municipal jails and lockups** are usually locally run, short-term facilities where a police department or other local entity may hold people for processing before transporting them to a county jail.
- **State jails** are state-run facilities where people convicted of low-level felonies and some Class A misdemeanors for mostly drug and property crimes are incarcerated for sentences between 180 days and two years.
- **State prisons** are state-run facilities where people convicted of higher-level felonies are incarcerated for sentences up to life.
- **Juvenile detention facilities** are county- or state-run facilities where youth who commit offenses between their 10th and 17th birthdays are detained.

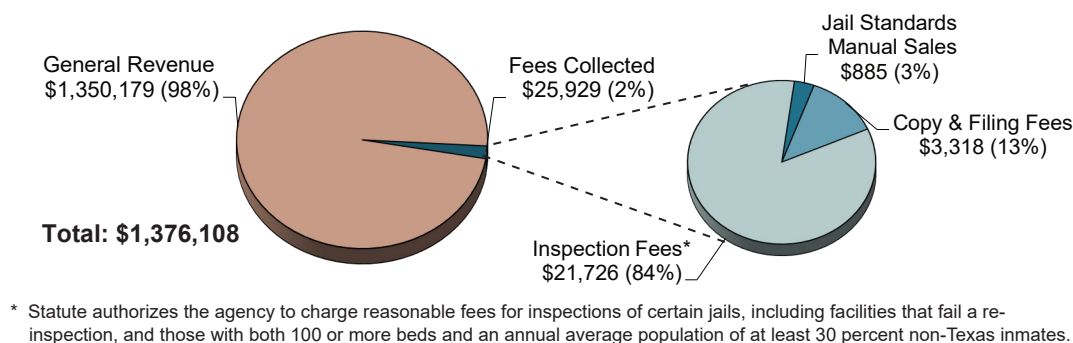
Key Facts

- **Governance.** The governor appoints the agency's nine-member commission with the advice and consent of the Senate to serve staggered six-year terms. Statute requires commission membership to include two county sheriffs, a county judge, a county commissioner, a licensed medical practitioner,

and four public members.³ One sheriff and one public member must come from counties with populations of 35,000 or less, a threshold set in statute since 1991.⁴ The governor designates the commission chair, and commission members elect the vice chair.⁵

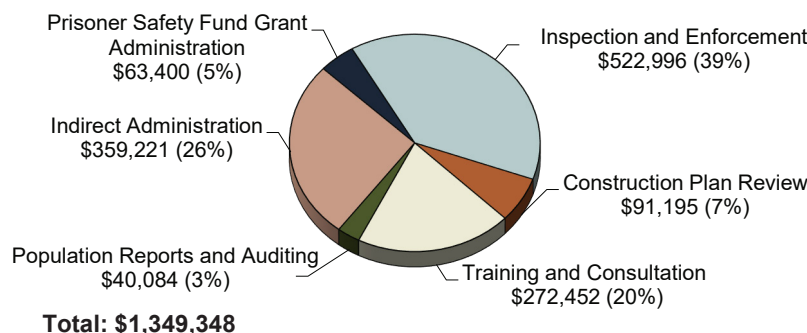
- **Funding.** As shown in the *Commission on Jail Standards Sources of Revenue* chart, the agency received about \$1.4 million in revenue in fiscal year 2019. The Legislature appropriated nearly all of the agency's budget from the General Revenue Fund, while the agency's remaining funds came from fee collections, mostly to recover certain inspection costs.⁶

Commission on Jail Standards Sources of Revenue – FY 2019



As shown in the *Commission on Jail Standards Expenditures* chart, the agency spent about \$1.3 million in fiscal year 2019, with about 40 percent going toward jail inspections and enforcement. The remaining \$27,000 lapsed back to the General Revenue Fund. Appendix A includes a description of the agency's use of historically underutilized businesses in purchasing goods and services for fiscal years 2017–19.

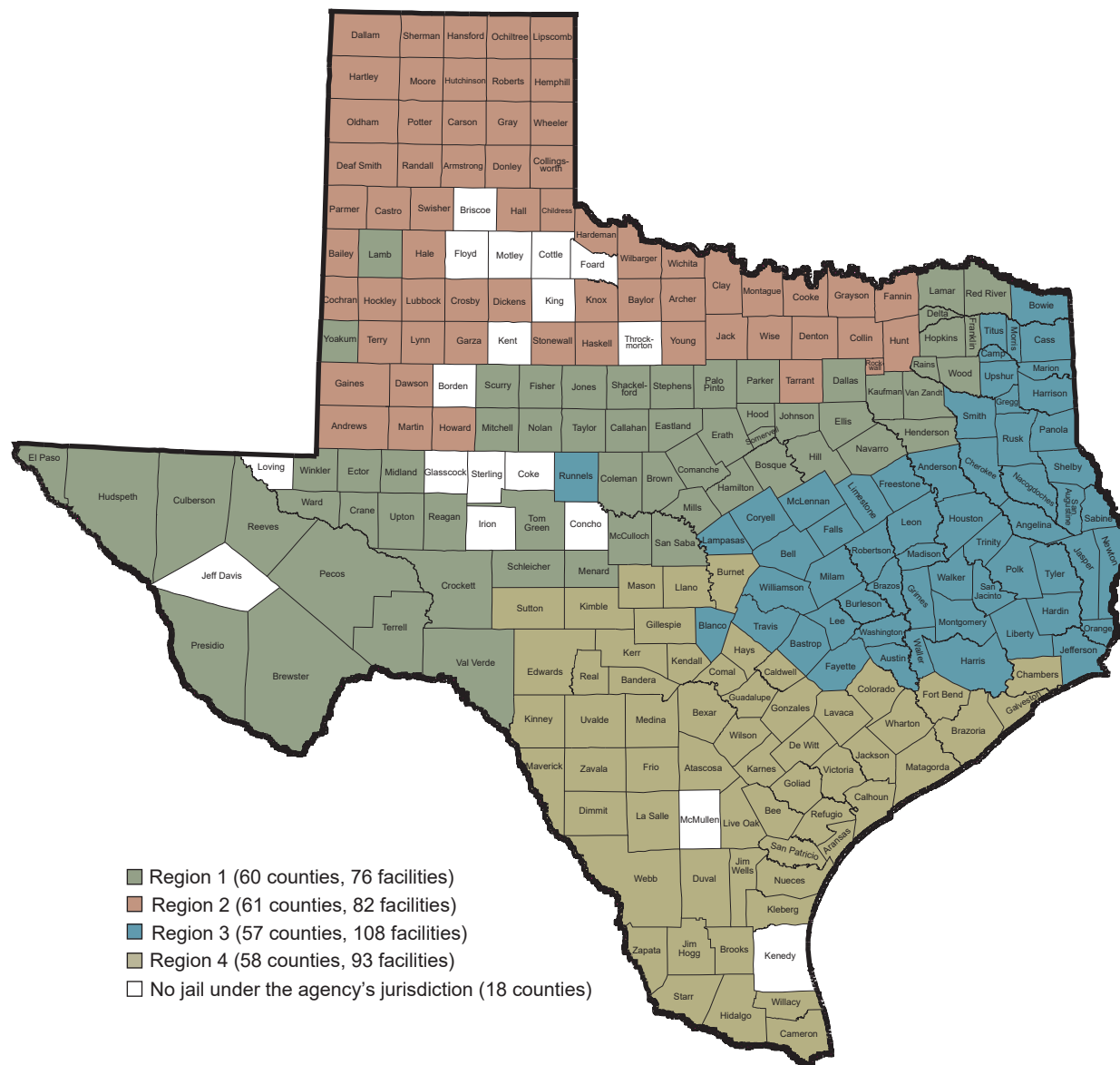
Commission on Jail Standards Expenditures – FY 2019



In fiscal year 2018, the Legislature also appropriated \$1 million to the Prisoner Safety Fund, a general revenue-dedicated account through which the agency distributed grants to help small counties comply with mental health standards passed under the Sandra Bland Act of 2017.⁷ The agency distributed about \$375,000 to 73 county governments for the purchase of certain telemental health and surveillance equipment before the program ended on September 1, 2020. Appendix B provides more information about the fund's history and requirements, as well as general information about the Sandra Bland Act's impact on the agency.

- Staffing.** The agency employed 22 full-time staff in fiscal year 2019. Most employees work at the agency's Austin headquarters, while seven employees mainly travel across the state performing inspections and training. Generally, four employees conduct routine jail inspections within their designated regions, as shown in the map, *Commission on Jail Standards Field Inspector Regions*. However, throughout much of the COVID-19 pandemic and nearly all of the Sunset review, the agency only employed three field inspectors to cover the entire state. Appendix C compares the agency's workforce to the percentage of minorities in the statewide civilian labor force for fiscal years 2017–19.

Commission on Jail Standards Field Inspector Regions



* To minimize potential conflicts of interest, field inspectors cover each jail within their region except those located in a field inspector's home county or facilities where they previously worked.

- **Jail standards.** The agency's primary responsibility is to develop minimum standards that address jail facility construction, maintenance, and operations, as well as the custody, care, and treatment of inmates.⁸ Hundreds of standards exist across wide-ranging topics, such as inmate classification, fire prevention, and sanitation. Counties may apply for variances, or waivers, from a specific standard, but statute prohibits variances from permitting unhealthy, unsanitary, or unsafe conditions.⁹ Between fiscal years 2017–19, the commission reviewed 19 variance requests and granted all but one.

To assist counties in interpreting and complying with minimum standards, the agency provides routine training and consultation, including the following activities:

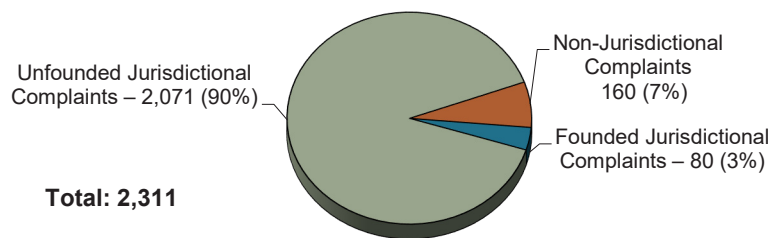
- Approves each jail's operational plans describing how staff will implement standards.
 - Conducts various trainings for jail and county officials, including workshops on basic jail operations, inmate classification, and inmate mental health.
 - Issues technical assistance memos outlining guidance relevant to jails statewide, such as updates on COVID-19.
- **Inspections.** The agency conducts four main types of unannounced jail inspections, during which field inspectors have unfettered access to each facility, jail staff, inmates, and documentation.¹⁰ First, annual inspections are statutorily required compliance reviews of each jail system.¹¹ Second, if a jail fails its annual inspection, the agency schedules a re-inspection to ensure jail staff adequately addressed each area of noncompliance. Third, staff performs special inspections, typically after a critical incident, such as an inmate death or escape. Finally, field inspectors conduct informal drop-by visits to provide increased monitoring for jails struggling with noncompliance, high complaint volume, or other areas of concern. The table, *Inspections by Category*, shows the agency's inspection activity in fiscal year 2019.

Inspections by Category – FY 2019

Annual Inspections	241
Re-Inspections	55
Special Inspections	22
Drop-By Visits	59
Total	377

- **Enforcement following inspections and complaints.** When field inspectors identify standards violations, they provide on-site technical assistance to help jails fix their problems immediately. However, if problems are egregious or not easily addressed, the agency issues and posts online a notice of noncompliance outlining the jail's violations. Jail and county officials have up to one year to regain compliance before the commission issues a remedial order, which could fully or partially vacate a facility until improvements occur.¹² In fiscal year 2019, agency staff issued 74 notices of noncompliance, and commission members either issued or authorized the executive director to issue four new remedial orders.¹³

The agency also identifies noncompliance through complaints from inmates, their families, jail staff, and the public. For jurisdictional complaints, staff conducts an investigation, offers technical assistance, and may issue a notice of noncompliance. However, as the *Commission Complaints* chart on the following page shows, staff closes most jurisdictional complaints as unfounded allegations. In fiscal year 2019, the top complaint categories requiring investigation involved medical and dental services, inmate services, and food service.¹⁴

Commission Complaints – FY 2019

- **Critical incident investigations.** Within 24 hours of a death in or escape from custody, jail officials must notify the agency, which launches a documentation review and an on-site inspection, if necessary, to evaluate compliance with minimum standards.¹⁵ For example, after jail deaths, the agency typically examines whether jailers conducted adequate mental health screenings and followed medical providers' orders. In fiscal year 2019, counties reported 105 inmate deaths — including 20 suicides — and 26 escapes to the agency, leading to 18 new notices of noncompliance.
- **Construction and staffing reviews.** The agency reviews construction plans for new jails and large renovation projects for existing jails to ensure counties build efficient, economical facilities that comply with minimum standards.¹⁶ Upon request, the agency also conducts facility needs analyses to help counties identify jail space needs and determine whether future construction is appropriate. In fiscal year 2019, the agency completed 54 planning and construction consultations, 15 finished construction project reviews, and seven facility needs analyses.
- **Population reports and auditing.** At the beginning of each month, the agency is statutorily required to collect certain data from each county, including totals for special inmate populations like pregnant inmates, which the agency publishes on its website.¹⁷ Statute also directs the agency to gather data on serious incidents, such as jail deaths and assaults, though the agency does not publish this information monthly.¹⁸ Each year, staff compiles and reviews audits of jails' commissary operations and general finances.¹⁹ Together, these audits and data allow the agency to develop average daily cost estimates that counties, other state agencies, and policymakers may use to inform their decision making.

¹ Texas Commission on Jail Standards, *2019 Annual Report*, accessed September 1, 2020, <https://www.tcjs.state.tx.us/wp-content/uploads/2020/07/2019-TCJS-Annual-Jail-Report.pdf>, 5.

² The agency also has authority to inspect jails housing non-Texas inmates. While rare, this may include oversight of local facilities operated directly by municipal governments, not private vendors. All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 351.002 and 361.062(1), Texas Local Government Code; 37 T.A.C. Section 251.1.

³ Section 511.004(a), Texas Government Code.

⁴ Ibid.

⁵ Section 511.005, Texas Government Code.

⁶ Section 511.0091, Texas Government Code.

⁷ GR Dedicated – Prisoner Safety Account No. 5172, page V–24, Article V (S.B. 1), Acts of the 85th Legislature, Regular Session, 2017 (the General Appropriations Act).

⁸ Section 511.009(a)(1)–(2), Texas Government Code.

⁹ Section 511.009(c), Texas Government Code.

¹⁰ Section 511.010, Texas Government Code; 37 T.A.C. Section 297.2.

¹¹ Section 511.009(a)(13), Texas Government Code.

¹² Section 511.012, Texas Government Code.

¹³ The commission issued or authorized the executive director to issue new remedial orders to the following counties in fiscal year 2019: Falls, Frio, Liberty (private facility), and McLennan (private facility). The commission also took follow-up action to amend remedial orders for Kinney and San Saba counties, but Sunset staff did not count the amendments as new orders.

¹⁴ Texas Commission on Jail Standards, *2019 Annual Report*, 20.

¹⁵ 37 T.A.C. Section 269.1(4)–(5).

¹⁶ Section 511.009(a)(7), Texas Government Code.

¹⁷ Sections 511.0101 and 511.0102, Texas Government Code.

¹⁸ Section 511.020, Texas Government Code.

¹⁹ Section 511.016, Texas Government Code.

ISSUE 1

The Agency's Minimum Jail Standards are Overly Vague, Broad, and Stagnant, Creating Risks for Jails and Inefficiencies for the Agency.

Background

The Texas Commission on Jail Standards writes, proposes, and promulgates minimum jail standards in the form of its agency rules.¹ These rules cover many aspects of jail development and operations, such as facility construction, emergency preparedness, administrative operations, recordkeeping, and inmate services. Examples of the topics covered in minimum jail standards include:

- The number of square feet per inmate required for different types of dormitories and day rooms in newly constructed jails
- The maximum number of hours per week inmates may be required to work
- The kinds of records jails must keep on each inmate, including documentation on medical care and discipline
- Procedures for returning property upon an inmate's release
- Requirements for the type, location, and features of fire suppression equipment

While some rules contain extensive detail on what constitutes acceptable compliance, others are brief or vague to allow jails flexibility. The commission adopts these rules with input and advice from varied stakeholder groups, including county sheriffs, jailers, and advocacy groups. These stakeholders' interests are often in direct conflict or at least vary widely, complicating the agency's job passing rules that accomplish its mission, promote inmate safety, reduce jail risk, and ensure practicability for jails to implement.

Agency rules also require jails to develop and implement 17 different operational plans describing how the jail will meet state minimum standards. Most jails, excluding the state's smallest facilities, must submit all plans listed in the *Required Operational Plans* textbox to the agency, and work with agency staff to ensure each submission meets all relevant standards. Jails may not operate under any specific plan until agency staff informs the jail of the plan's approval. In fiscal year 2019, the agency's one employee who reviews operational plans approved about 1,500 plans for 120 counties.

Required Operational Plans

- Classification
- Commissary
- Correspondence
- Discipline
- Education and rehabilitation
- Emergencies
- Fire prevention
- Grievances
- Health services
- Inmate rules or handbook
- Library
- Mental disabilities/suicide prevention
- Recreation and exercise
- Religious practices
- Sanitation
- Telephone
- Visitation

Findings

Minimum jail standards are unnecessarily vague, decreasing their effectiveness in mitigating risk for counties and ensuring safety for inmates and jail staff.

Many of the agency's minimum jail standards are broadly worded and contain insufficient information to ensure jails fully promote safety and mitigate their risk of liability. While broad standards provide flexibility for jails, they also fail to clearly and meaningfully communicate minimum standards that prevent negative outcomes like inmate deaths, and protect jails from making expensive or dangerous mistakes. The textbox, *Examples of Vague Jail Standards*, describes some of these standards.

Examples of Vague Jail Standards

- Standards require jails to conduct fire drills every quarter, but they do not specify how quickly jail staff must complete each drill to be considered sufficient, which complicates field inspectors' ability to take action against slow drills during on-site visits.²
- Standards broadly direct jails to develop procedures for long-term, convalescent care necessary for inmates with disabilities, but they do not provide further guidance on managing health care for this higher-risk population.³
- Standards require jails to develop procedures for communicating information about inmates who are potentially suicidal, but they do not include any details about what information jailers should communicate.⁴

The vagueness of these standards can manifest within jails' operational plans. First, jails have enough leeway to create plans that do not meet the intended purpose of the minimum standard. Second, jails submit undetailed plans that merely mimic the vagueness of the standard. Finally, staff tasked with approving operational plans creates informal, internal guidelines to more clearly define some of the broad standards without the commission's consideration.

Jails have latitude to create operational plans that conflict with the intended purpose of jail standards.

- **Excessive permissiveness.** Because the agency's rules often do not provide specific guidance on how jails should interpret and implement standards, jails have significant latitude to create hollow operational plans that may, in practice, conflict with the standards' intent. For example, jails have wide discretion to determine what constitutes reasonable criteria for inmates to qualify for education and rehabilitation programs.⁵ One approved education and rehabilitation plan Sunset staff reviewed requires inmates to "have a need for the classes." Though agency staff authorized the jail to use this broad guideline, the plan does not provide any further specifics about how to determine a "need" or who makes this determination. This functionally provides jailers with the ability to unilaterally prohibit an inmate from participating in any educational program if they subjectively determine the program is not a necessity.
- **Discourages quality plans.** Agency staff also actively discourages jails from submitting plans with more specific information, which leads to plans that are just as vague as the standards they are supposed to operationalize.

For example, staff deters jails from outlining the timing and scheduling of recreation access in their plans. This results in plan submissions that merely parrot the language in the standard — inmates will receive one hour three days a week — without explaining how the jail plans to implement the timing and distribution of recreational opportunities.⁶ Under this process, jails have complete discretion to schedule recreation at any time, including in the middle of the night. Sunset staff learned one jail scheduled a two-hour block of recreation from 11 p.m. to 1 a.m., reasoning this one block could satisfy two of the three days required by the standard. The jail's operational plan did not contain any details about its intended schedule, and the plan was approved. The agency only discovered and corrected this problem during an on-site inspection.

The agency discourages jails from adopting operational plans that go beyond minimum standards.

In addition to rejecting plans with specificity, the agency at times discourages jail administrators from adopting plans that hold their jails to a higher standard than the required minimums, which does not mitigate risk as proactively as possible. For example, minimum standards require jailers to conduct face-to-face observation at least once every 30 minutes for inmates who are “known to be assaultive, potentially suicidal, mentally ill, or who have demonstrated bizarre behavior.”⁷ Agency employees indicated if they receive plans implementing 15-minute checks on suicidal inmates, they may encourage the jail to resubmit an operational plan that mirrors the minimum standards set in rule, and implement more stringent requirements in its internal jail procedures that do not require the agency's approval.

- **Informal staff guidelines.** In some cases, agency employees have created informal, internal guidelines to compensate for vague standards. While well-intentioned, these informal benchmarks can put staff in a difficult position. For instance, the benchmarks circumvent the commission's input and the public rulemaking process. They also require staff to make individual judgment calls about whether each jail's operational plan submissions are sufficiently close to the agency's internal guidelines, which invites inconsistency into risk reduction efforts.

For example, the agency's rules on suicide prevention plans require jails to set their own parameters for the frequency and duration of training jailers must receive regarding potentially suicidal inmates.⁸ In fiscal year 2019, nearly one-fifth of deaths in Texas jails were suicides. When deciding whether to approve or deny a jail's suicide prevention plan, agency staff must determine whether the frequency and duration of the training seem reasonable. Recognizing the importance of this training, agency employees have internally agreed on an aspirational benchmark of four training hours every year, but they do not proactively communicate this to jails or require them to meet it. Additionally, in the absence of more specific requirements in rule, jails submit drafts of their plans for agency approval with extremely minimal training schedules, such as one hour of training every three or four years. Underdeveloped plans require agency staff to engage in back-and-forth communication with the jails until they accept edits that are either close or equal to the agency's informal benchmark. Formally proposing

In fiscal year 2019, nearly one-fifth of deaths in Texas jails were suicides.

The agency's
vague standards
and insufficient
plan approval
process burden
field inspectors.

and adopting these internal guidelines in rule would make better use of jail and agency time, while also improving the transparency and applicability of jail standards.

The agency's vague standards ultimately impede the original purpose of the operational plan approval process — identifying and eliminating problems before jails put their plans into effect. This places greater burdens on the agency's four field inspectors who must spend additional time uncovering the missing details omitted from each plan while they are on-site, rather than gathering those details and correcting as many issues as possible through the plan approval process before inspections occur. As discussed in Issues 2 and 5, field inspectors are already overburdened, which has led to inspection inconsistencies across the state.

The commission's uniform, one-size-fits-all standards do not account for significant variations in risk different types of jails pose.

The agency
oversees jails
ranging from
three-bed
lockups to
10,500-bed,
multi-facility
systems.

Jails of varying sizes and resource availability inherently have disparate risks and must operate differently, but the agency's one-size-fits-all approach to standards does not account for these differences. Although the existing jail standards are true minimums, regardless of a jail's size, operations, or resources, they may not be stringent enough for jails with different risk profiles. The agency oversees jails ranging from small lockups with three beds to the multi-facility Harris County jail system with capacity for more than 10,500 inmates. Larger jail systems are generally better resourced, but their operations are more complex, creating more opportunities for noncompliance and errors to occur among their multiple facilities, numerous staff, and complex logistics. Meanwhile, smaller jails and their simpler processes operate on smaller budgets, creating situations in which resource constraints and high staff turnover are often major drivers of noncompliance. Essentially, a single set of minimum standards must try to ensure safe and suitable operations within both of these systems without accounting for any of the nuances agency staff, commission members, and jailers know impact jail operations on a daily basis.

While all jails must comply with the current minimum standards to ensure safety across the state, jails can only meaningfully mitigate risk if the agency holds them to requirements commensurate with their risks and resources. For example, minimum standards governing prescription medications state an "appropriate person" — an undefined term — should pass out medications to inmates.⁹ This rule does not specify or require this person to have any kind of training or healthcare experience. However, passing out medication creates very different demands for the diverse types of jails the agency oversees. Tracking and distributing medications for fewer than 10 people may be an appropriate and reasonable duty for a generalist jailer in a small jail. However, the same task becomes much riskier and more complicated when it involves larger quantities of drugs, hundreds of inmates who may have the same or similar names and medications, and differing medication schedules. To account for

and adequately minimize risk, the agency's standards could specify inmate population thresholds for which a jail may use a generalist jailer to distribute medications and when jails must use a medical professional or a jailer with appropriate training.

Similarly, the agency sometimes requires jails to approve and implement new rules and plans as soon as possible. This may be more difficult for larger jails, which require more extensive planning, complicated procedures, and multiple layers of vetting and approval. In contrast, smaller jails could likely implement changes more quickly and simply. The agency's rules could specify more stringent timelines for small jails when appropriate as compared to larger jails to ensure they mitigate risks without unnecessary delays. Relying solely on jails to make judgment calls like this when interpreting vague standards perpetuates inconsistency and limits the agency's ability to take action if jails prioritize cutting costs over promoting safety.

The commission does not proactively update its standards, leaving problems and vulnerabilities in place that jeopardize safety and prolong risk.

Despite its broad statutory mandate to update standards as necessary, the commission's typical practice is to update minimum standards only when the Legislature requires a change, limiting the agency's effectiveness in addressing issues as they arise.¹⁰ The commission's approach means needed changes can only occur biennially and only with the full Legislature's authorization. This approach hinders the commission's ability to react quickly to unexpected problems within dynamic jail environments, such as the need for new standards on quarantining, testing, and infection reporting during the COVID-19 pandemic.

Even when agency staff or stakeholders identify needed or desirable changes, the commission does not initiate and execute changes in standards through the rulemaking process. For example, the agency has identified issues connecting veterans with available services, such as compensation under federal benefits programs, upon entry into a jail but has not taken steps to address this through rulemaking. Statute and rule require jails to check incoming inmates for veteran status to help coordinate with other state and federal agencies, and ensure veteran services are available for eligible inmates.¹¹ However, the agency's existing rules fail to specify any time periods or other parameters for when and how frequently jails must fulfill this requirement, despite known inconsistencies occurring across jails.¹² Some jails only run this check once a quarter, during which time a veteran may have entered and left the jail without being identified and offered access to services. Other jails run their entire inmate population through the check every day, leading to constant duplicative hits. While the commission has authority to propose and consider new rules clarifying when jails must run this check, it has not done so without a specific legislative directive. This creates unnecessary challenges for staff as they attempt to ensure veterans are properly identified and jails are complying with existing standards.

The commission's approach to updating standards hinders its ability to address unexpected problems, like COVID-19.

Jails reported
over 1,600
injuries resulting
from use of
force between
2018–19.

Agency rules also do not address critical topics, despite data and practical experience demonstrating the need for additional guidance to minimize safety and security risks. For example, beginning in 2018, the Legislature required the agency to collect data on serious incidents occurring in county jails, such as deaths and assaults.¹³ Since then, jails have consistently reported bodily injuries resulting from use of force as one of the most common types of serious incidents, with over 1,600 of these injuries reported between calendar years 2018–19. Recognizing the liability use of force can pose to correctional staff, the American Bar Association adopted standards describing when use of force is permissible, as well as recommendations for correctional staff to develop procedures governing use of force practices.¹⁴ However, the commission has not adopted rules to ensure jails decrease risks associated with underdeveloped or nonexistent use of force procedures, and instead refers any concerns or complaints related to use of force to law enforcement.

The commission does not meaningfully comply with the statutory requirement to review its administrative rules every four years.

The commission
has not
amended or
readopted most
of its rules since
the 1990s.

The Sunset Act directs the Sunset Commission to assess each agency’s rulemaking process, including the extent to which agencies encourage public participation in rulemaking.¹⁵ As part of this assessment, Sunset considers an agency’s compliance with statutory requirements in the Administrative Procedure Act, including an agency’s review and consideration of the continuing need for each of its rules every four years from the date each rule took effect.¹⁶ The commission has not complied with this requirement, as the commission’s regular rule review does not address most jail standards. For example, the commission has not amended or readopted most of its rules — including minimum standards covering emergency preparedness, jail construction, and rehabilitation programs — since the 1990s. The commission’s failure to review most of its rules allows for the continuation of regulation that may not be meaningful or needed. In addition, neglecting to post rules for re adoption denies stakeholders and members of the public the opportunity to participate in the standards development process through formal consideration of the rules and public comment.

Even for rules the commission has readopted, its four-year rule review process does not amount to more than simply posting rules in the *Texas Register* for public comment before re adoption. A meaningful rule review should consider whether the initial factual, legal, and policy reasons for adopting each rule are still relevant.¹⁷ As part of its analysis, an agency should consider the practical experience the agency, stakeholders, and the public have had with each rule over the past four years.¹⁸ In contrast, most of the few changes made during the recent rule review processes were technical or semantic changes, such as repeatedly amending the term “corrections officer” to “jailer.” Without a more in-depth analysis of all rules, the commission misses an opportunity to clarify commonly violated standards or remove rules that no longer reflect current practices.

Sunset Staff Recommendations

Change in Statute

1.1 Require the commission to ensure minimum standards account for varying needs and levels of risk among different jails.

Under this recommendation, the commission would be required to ensure jails across the state can apply minimum standards appropriately without lowering any existing standards. The agency should gather feedback from a diverse collection of jails, including those of different types and sizes, to identify specific standards that do not currently account for their varying needs and risk levels. The agency would have discretion in determining the best way to adjust standards, which could be through measures like establishing tiered or separate standards depending on a facility's size, resources, or type; clarifying or amending existing standards; or publishing guidance on rule interpretations. For example, the agency could describe what constitutes compliance with the prescription drug distribution rule for jails with and without full-time medical staff. By adjusting standards both for facilities' different risk levels and for vagueness, the commission would provide clearer direction to jails and improve the effectiveness and usefulness of minimum standards. This recommendation would ensure minimum standards are reasonable for all jails, while protecting counties from known risks of liability.

1.2 Clarify the commission has authority to revise, amend, and change rules as needed without specific legislative action or approval.

While statute currently requires the commission to revise, amend, and change its minimum standards as needed, more explicit statutory authority could better ensure commission members regularly consider rule updates.¹⁹ Under this recommendation, statute would clarify the commission's requirement to revise its rules is not contingent upon a specific legislative directive to do so. This would allow commission members and agency staff to proactively address issues currently within their authority, such as COVID-19 directives, veteran identification issues, and use of force guidelines based on nationally recognized best practices, without infringing on the Legislature's role to establish state policy. This recommendation would work in conjunction with Recommendation 5.4, under which commission members would receive training on the scope of and limitations on the commission's rulemaking authority.

Management Action

1.3 Direct the commission to review its rules for vague and ineffective standards, and improve their specificity and usefulness.

This recommendation would direct the commission to conduct a thorough review of all its rules to identify and improve standards where vagueness impedes jails' ability to understand requirements and ensure compliance. As part of this one-time review, the commission, with assistance from diverse stakeholders, should identify and update standards with nonspecific guidance, including those requiring ambiguous time intervals or frequencies such as directives to perform functions "promptly," "regularly," or "as soon as possible." The commission should also address rules for which staff has created internal, informal guidance and provide more explicit, publicly accessible requirements for compliance in rule. Going forward, when adopting new and amending existing rules, the commission should aim to ensure specificity and minimize the need for inconsistent rule interpretations. The agency should provide the Sunset Commission with an update on its implementation of this recommendation by March 1, 2022.

1.4 Direct the agency to adopt a policy to ensure each rule undergoes meaningful review pursuant to state law.

This recommendation would direct the agency to adopt a policy requiring the four-year review of its rules. The policy should require the review to include the consideration of current factual, legal, and policy reasons for readopting each rule, as well as practical experience the agency, regulated community, and public have had with each rule over the past four years. This policy would also direct the commission to readopt rules even when no changes are recommended. Undergoing a more substantive analysis, as well as going through the public posting and readoption process, would allow the agency to better engage the public and maintain its rules based on current circumstances and factors. The agency should provide the Sunset Commission with an update on its implementation of this recommendation by December 1, 2021.

1.5 Direct the agency to adjust its operational plan approval process so jails may have plans that implement higher-than-minimum standards.

This recommendation would direct the agency to revise the process for approving jail operational plans to ensure plans with additional specificity and higher-than-minimum standards are eligible for approval. Through this recommendation, jails would be allowed and not discouraged to strive for more than the bare minimum, providing more opportunities for enhanced jail operations, improved inmate safety, and reduced risk across the state. The agency would be required to update its staff training and operational plan approval process by December 1, 2021.

Fiscal Implication

Overall, these recommendations are designed to provide jails with more clarity on the rules and procedures with which they must comply to improve jail operations and decrease risk. However, the exact fiscal impact of these recommendations cannot be estimated because it would depend on the procedures the agency deems most efficient and appropriate for reviewing existing standards, differentiating jails' risk levels, and assessing operational plans. Additionally, while revising standards and related agency processes would require staff time upfront, these changes could reduce burdens in the long run by decreasing the need for staff to continually interpret, inspect, and provide guidance on vague standards. Further, recommendations elsewhere in this report streamline various agency processes to improve efficiency and effectiveness, potentially offsetting the impact of these recommendations.

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- 1 37 T.A.C. Part 9.
- 2 37 T.A.C. Section 263.41.
- 3 37 T.A.C. Section 273.2(4).
- 4 37 T.A.C. Section 273.5(a)(3).
- 5 37 T.A.C. Section 287.2.
- 6 37 T.A.C. Section 285.1.
- 7 37 T.A.C. Section 275.1.
- 8 37 T.A.C. Section 273.5(a)(1).
- 9 37 T.A.C. Section 273.2(7).
- 10 All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 511.009(a)(5), Texas Government Code.
- 11 Section 511.009(a)(21), Texas Government Code; 37 T.A.C. Section 265.13.
- 12 37 T.A.C. Section 265.13.
- 13 Section 511.020, Texas Government Code.
- 14 American Bar Association, Criminal Justice Standards Committee, *ABA Standards For Criminal Justice: Treatment of Prisoners*, accessed September 1, 2020, https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/treatment_of_prisoners.pdf, 132–137.
- 15 Section 325.011(8), Texas Government Code.
- 16 Section 2001.039, Texas Government Code.
- 17 Ronald L. Beal, *Texas Administrative Practice and Procedure* (New York: Matthew Bender & Company, 2018), Section 3.8, 36–37.
- 18 Ibid.
- 19 Section 511.009(a)(5), Texas Government Code.

ISSUE 2

The Agency's Inspection and Enforcement Processes Do Not Adequately and Efficiently Mitigate Risk in Jails.

Background

The Texas Commission on Jail Standards ensures the effective implementation of its minimum standards by periodically inspecting jails and taking enforcement action when necessary. Together, these activities are the agency's top cost drivers, consuming about 40 percent of the agency's expenditures in fiscal year 2019.

Statute requires the commission to assess each jail's compliance with minimum standards at least annually, and internal policies direct the agency's four field inspectors to complete this work within a 14-month cycle.¹ During these annual visits, field inspectors conduct an unannounced walk-through of each jail, review internal files, and interview inmates and jail staff. The textbox, *Example Inspection Components*, describes several key compliance checks the agency completes. Field inspectors also provide technical assistance to help jailers correct problems immediately if possible.

Field inspectors discuss their findings with jail and county officials, and send them an inspection report that describes violations requiring documented technical assistance, as well as any necessary follow-up actions. The agency issues a certificate of compliance to jails that pass their annual inspections. Typically, the annual inspection process takes between one and five days, depending on the size of the county's jail system, which can include more than one facility.

In addition to annual inspections, the agency conducts re-inspections when jails fail their annual compliance check, and special inspections after critical incidents like inmate deaths. The agency also uses a statutorily required risk assessment to identify high-risk jails that may benefit from an informal drop-by visit.² In fiscal year 2019, the agency conducted 241 annual inspections, 55 re-inspections, 22 special inspections, and 59 drop-by visits.

If a field inspector identifies a violation that jailers cannot address immediately or that is particularly egregious, the agency initiates its enforcement process by issuing a notice of noncompliance. Jails that receive a notice of noncompliance have 30 days to develop a corrective action plan detailing how jail staff will address violations, and they have up to one year to fix each problem.³ If, after a year, the jail fails to make progress on correcting its areas of noncompliance, the commission may issue a remedial

Example Inspection Components

During facility walk-throughs, field inspectors have unfettered access to all parts of a jail, and they evaluate various physical and structural components of each facility, such as:

- General sanitation and cleanliness
- Power, plumbing, and communication systems
- Emergency preparedness, including staff responses to fire drills

Field inspectors may also review any internal documentation demonstrating compliance with minimum standards, including:

- Inmate medical records
- Mental health screening forms
- Grievance submissions and disciplinary forms
- Logs showing recreation opportunities, use of restraint chairs, and jailer licenses

order against the county, which can vacate all or part of the jail and require the transfer of inmates to another county until improvements occur.⁴ Between fiscal years 2017–19, agency staff issued 191 notices of noncompliance, and commission members issued or authorized the executive director to issue seven new remedial orders.⁵

Findings

The agency does not adequately use its risk assessment to drive decision making and allocate resources most efficiently.

Since the agency's last Sunset review in 2009, statute has required the commission to establish a risk assessment plan to guide its inspections, using the factors listed in the accompanying textbox.⁶ In practice, however, the assessment is a perfunctory task, rather than a robust tool. While staff conducts the assessment

each month, the agency does not use the information in a formal, consistent way to ensure findings direct resources toward the highest-risk jails within the inspection and enforcement processes.

Required Risk Assessment Factors

Statute requires the commission to use the following risk factors, at a minimum, in its routine assessment of each jail:

- The jail's compliance history
- Inmate population data
- Recent inmate deaths and escapes
- Mental and medical health reports
- Compliance issues related to mental health and disability screening requirements
- Sheriff and jail staff turnover
- The number and nature of complaints against the jail, particularly those involving understaffing
- Problems with a jail's grievance process

Several issues prevent the agency from maximizing the risk assessment's potential. First, while the agency has policies for how to compile data on required risk factors, its process for analyzing that data across jails is not documented, objective, or clear, which limits the assessment's reliability. Second, the assessment excludes key variables that may indicate increased risk. For example, the assessment does not consider turnover of a county's sheriff, as required by statute, or its jail administrator, though agency staff and stakeholders agree leadership changes

are a crucial red flag for predicting changes in compliance status.⁷ Further, the assessment largely focuses on a county's compliance history during annual inspections, not performance during special and re-inspections over time. In the agency's final risk assessment for fiscal year 2020, Sunset staff identified about 25 jail systems showing perfect annual compliance histories between fiscal years 2017–19, even though each one received at least one notice of noncompliance during this time frame. Finally, the agency does not train its field inspectors on how to use the assessment and has not established procedures for updating it based on inspectors' feedback. Instead, staff applies risk information inconsistently, without any opportunities for improving the tool's accuracy or usefulness.

Inflexible statutory requirements prevent the agency from scheduling inspections based on risks posed to jail staff, inmates, and county governments.

Oversight agencies should have statutory authority and procedures to evaluate the risk level posed by the entities they oversee, and allocate staff resources to the highest-risk areas. Complex, 24-hour supervision of inmates, as well as potential dangers to inmates and jail staff, often make jails the most expensive county function and biggest liability risk for local governments. While the commission's statute requires a risk assessment, it also requires an annual determination of whether each jail is in compliance with minimum standards.⁸ In fiscal year 2019, about two-thirds of the agency's inspections were annual visits based on a rigid 14-month schedule, not risk factors like ongoing or repeat findings of noncompliance. The agency considers risk when scheduling informal drop-by visits to jails, but staff can only conduct these visits when they do not interfere with the annual inspection schedule.

Statutory inspection time frames monopolize staff time and decrease efficiency.

Statutory inspection time frames create two problems for the agency. First, mandatory annual inspections monopolize field inspectors' time, rather than allowing for the most efficient allocation of limited resources. Cost-effective activities are essential for all state agencies, particularly in the wake of financial shortfalls brought on by the COVID-19 pandemic. However, as discussed in Issue 5, the agency's minimal staffing resources make it even more critical to ensure field inspectors' time is dedicated to jails needing the most attention. With greater scheduling flexibility, staff could lengthen the amount of time spent with struggling jails and increase drop-by visits or special inspections to evaluate known risks, such as recent deaths, assaults, or complaints. For example, staff could reallocate some days typically spent in Brazos County, which passed all annual inspections over the last decade, to nearby jails with recent compliance issues, such as Falls, Robertson, and Waller counties — each of which failed at least two annual inspections since fiscal year 2016.

Additionally, current scheduling procedures make the dates of unannounced inspections predictable, which hinders the agency's ability to minimize risk year-round. Sunset staff's review of agency calendars between fiscal years 2017–20 found inspections typically occur around the same time period each year, which can potentially incentivize jails to comply with standards temporarily when jailers know they are most likely to be inspected. In fact, Sunset staff received comments from jailers stating they generally know when to expect and start preparing for inspections. Allowing the agency to schedule all inspections based on risk would remove predictability and encourage jailers to prioritize compliance constantly rather than cyclically.

Risk-based inspections would encourage jailers to prioritize compliance constantly, not cyclically.

The agency's inspection process lacks comprehensive policies and procedures to ensure staff mitigates risks consistently across jails.

Inspections drive the agency's compliance process, but field inspectors lack thorough procedures for how they must conduct and document their work,

Field inspectors use a subjective, “gut check” method when responding to standards violations.

leading to inconsistency in how the agency evaluates standards, addresses problems, and follows up on noncompliance. Instead of a comprehensive manual guiding inspection procedures, staff relies on a brief policy statement and checklist, which lack detail on how to handle various types of noncompliance. For example, while both of these documents include information on which inmate files field inspectors should review, neither provides direction on the error rates they should use to determine whether anomalies, such as undocumented mental health screenings, are systemic problems or isolated mistakes. Beyond the agency’s general and vague written guidance, field inspectors have depended on institutional knowledge from both their supervisor and each other. However, these options are not adequate replacements for clearly documented procedures. The long-serving supervisor retired in September 2020, and field inspectors have a high turnover rate, with two out of four leaving the agency in just the past 12 months.

Absent comprehensive procedures, field inspectors use a subjective, “gut check” method, through which they have wide discretion to determine whether violations seem serious enough to require formal technical assistance and documentation. For example, during a recent annual inspection, Sunset staff viewed documentation showing jailers did not consistently comply with standards related to monitoring inmates confined in restraint chairs — a device the American Bar Association recommends jails avoid using when possible to minimize increased risks of death and health problems.⁹ Rather than recording the problem in the jail’s inspection report, the field inspector discussed the issue with jailers informally. Field inspectors may keep personal notes on undocumented areas of concern like this for the jail’s next inspection, but future field inspectors do not always have access to these materials. As a result, field inspectors will not know to check for repeat noncompliance during upcoming inspections or drop-by visits, so the agency may not take more stringent action moving forward.

Field inspectors use different inspection processes, creating confusion and perceptions of unfairness.

Further, the agency’s lack of formal protocols creates uneven outcomes. During the review, several jail administrators and jailers complained to Sunset staff that the inspection process differs from one field inspector to the next, which causes confusion and a perception of unfairness. Additionally, inconsistent consequences for standards violations fail to discourage jailers from committing them in the first place and hinder the agency’s ability to decrease liabilities for county governments. The textbox on the following page, *Examples of Inspection Inconsistencies*, describes some of the variability the agency could largely eliminate by adopting a comprehensive procedures manual for inspectors to follow.

The agency’s enforcement process does not encourage prompt and sustained compliance among jails to minimize risk as quickly as possible.

To better preempt violations before field inspectors uncover them, the agency shifted its approach in 2010 from taking enforcement action to providing technical assistance. This approach allows staff to focus their expertise on helping jails through training and relationship building. As a result, violations

found during inspections must be particularly egregious to require enforcement action. However, helping jails obtain compliance over being punitive has created a slow and incomplete process for holding jails accountable, resulting in numerous jails being noncompliant repeatedly and for extensive periods of time — two conditions that usually warrant action.

Examples of Inspection Inconsistencies

- Some field inspectors review a jail's grievance process in detail, checking jailers' responses to inmate grievances from submission through the appeals process and interviewing inmates about their experiences. Others focus on how timely jailers respond to an initial grievance submission.
 - Some field inspectors review operational plans in depth before and during inspections to compare a jail's written procedures with its actual practices. Others focus on whether jails' operational plans are five or more years old.
 - Some field inspectors require noncompliant jails to proactively provide updates on their corrective actions at least weekly. Others seek out compliance updates from jails monthly.
 - Some field inspectors refer unlicensed jailers to the Texas Commission on Law Enforcement (TCOLE), the state agency charged with licensing jailers and fining their employer when they work without a current license.¹⁰ Others informally advise jail administrators to ensure their jailers are licensed.
- **Limited strategies for encouraging compliance.** Typically, the commission only uses two extreme, and at times ineffective, options when addressing noncompliance in jails: providing technical assistance to slowly guide jails back into compliance over the course of a year, and issuing a remedial order to close a jail or limit its population. Some causes for a jail's prolonged noncompliance lie beyond the agency's control, such as when a county commissioners court cannot or will not provide the funding necessary for jail staff to align their practices with minimum standards. However, the agency's enforcement process is also responsible.

After discovering noncompliance, field inspectors first focus on regularly communicating with noncompliant jails to check on progress and provide guidance. However, this process drains field inspectors' already limited time, which they must distribute among roughly 60 counties each. Further, this approach often does not provide sufficient incentives for swift corrective action, allowing known risks to linger. Between fiscal years 2017–19, around 20 percent of the agency's notices of noncompliance involved jails that remained noncompliant for about six months or longer, a few of which are described in the *Lengthy Noncompliance Examples* textbox on the following page. Meanwhile, inmates and jailers continued to live and work in these facilities that did not meet minimum standards, increasing the risk to county governments for escalating problems and possible lawsuits. If jail officials do not regain compliance within a year, statute authorizes the commission to issue a remedial order to vacate a facility.¹¹ Issuing an order to vacate involves significant costs and complicated logistics for counties, so commission members use this tool only as a last resort. Between fiscal years 2017–19, the commission issued only one new remedial order for every 27 notices of noncompliance.

Insufficient incentives for jails to take corrective action allow risks to linger.

Lengthy Noncompliance Examples

- **Robertson County:** Between fiscal years 2018–19, Robertson County remained out of compliance for about 11 months due to management problems, not violations requiring drawn out maintenance timelines. During three back-to-back inspections, the agency determined jail staff repeatedly failed to observe inmates, particularly those in holding or detoxification cells, according to time frames prescribed by rule.
- **Bosque County:** Between fiscal years 2018–19, Bosque County remained out of compliance for about 10 months due to various issues, including problems with maintenance, emergency preparedness, jailer training, and inmate screening. In January 2020, the county failed another compliance check for violations related to jailer training and emergency preparedness. As of October 2020, the county is still out of compliance.
- **Victoria County:** In March 2018, the agency identified sanitation issues, including the presence of mold, in Victoria County’s jail and informed local officials of the need for immediate action. However, when the agency inspected the jail again nine months later, mold was still present, and the county remained out of compliance for about 10 additional months. Within three months of passing its re-inspection, the county failed another compliance check for new violations related to inmate health and mental health.

A system of graduated, escalating actions would help the agency incentivize faster compliance and provide jails with predictable consequences for prolonged noncompliance, particularly when communication is ineffective but remedial orders are not yet appropriate. This change would also align with recent legislative directives. Since 2019, statute has required noncompliant private jails to report on their progress at the commission’s next scheduled meeting.¹² Agency staff and stakeholders reported this change applied public pressure on private jails to take action more quickly without adding substantial duties to the agency’s workload. Appendix D describes other intermediate, cost-effective strategies the agency could use to prompt jails to come into compliance.

Jails with repeat inspection failures are not held fully accountable.

- **Few deterrents for repeat noncompliance.** The commission’s enforcement process not only allows jails to resolve findings of noncompliance slowly; it also fails to hold repeat violators accountable. For two-thirds of noncompliance notices issued between fiscal years 2017–19, jails came back into compliance within about four months by passing a re-inspection, in which the agency focused solely on the previously violated standards. However, only months later, the agency often uncovered noncompliance again — either with the same standards or new ones — during a drop-by, special, or annual inspection. About 100 counties received at least one notice of noncompliance between fiscal years 2017–19, and of those, over 40 percent received two or more. The agency does not have procedures to ensure jails with repeat inspection failures face escalating consequences, such as requirements to answer for their violations publicly at one of the commission’s open meetings. Each new compliance certification resets the agency’s enforcement clock, so as long as jails regain compliance within one year, their repeat problems likely will not lead to more agency attention or action. As a result, jails lack incentives to address problems holistically and sustainably, perpetuating a cycle of noncompliance.

For example, since 2015, about 10 percent of jail systems failed three or more annual inspections, some consecutively, but only half of these repeat violators were placed on the commission's agenda to discuss their noncompliance during a public meeting. Other jails passed annual inspections, but the agency continued to find problems during intermittent special inspections. For instance, in Harris County, jail officials received six notices of noncompliance between fiscal years 2017–19, four of which mentioned jail staff's failure to conduct adequate visual checks on high-risk inmates. Though failed checks have contributed to inmate deaths in Harris County, the commission has not placed the county on its agenda to discuss the issue.

Sunset Staff Recommendations

Change in Statute

2.1 Require the commission to establish a risk-based approach to inspections.

This recommendation would remove the statutory requirement for the commission to assess each jail's compliance with minimum standards at least annually, and instead require the agency to adopt policies and procedures formally guiding the prioritization of inspections based on each jail's relative risk level. In establishing these policies, the agency would use an updated assessment tool, as discussed in Recommendation 2.4, to determine how frequently and intensively staff must conduct various inspections based on known risk factors, such as repeat noncompliance, recent inmate deaths, or high jailer turnover. The assessment could also include the number of months since each jail's last inspection to ensure facilities do not go unchecked for extended periods of time, as determined by agency staff. For inspections deemed low risk, the recommendation would clearly authorize staff to use alternative inspection methods, such as desk audits of a jail's key documentation or abbreviated inspection procedures, when necessary. Establishing a risk-based approach to all inspections would ensure a more efficient allocation of resources to the facilities presenting the most potential harm to jail staff, inmates, and county governments.

2.2 Require the commission to adopt rules and policies for taking escalating actions against jails that remain out of compliance for extended or recurring periods of time.

This recommendation would require the commission to develop and adopt rules clearly outlining a system of graduated, escalating actions staff and commission members could take against jails that either do not make timely progress on correcting noncompliance or fail multiple inspections within a certain number of years. The commission would develop these rules, including clear time frames for escalating its response to noncompliance, using historical data and practical experience. Appendix D provides examples of escalating actions the agency could take to prompt change in jails.

This recommendation would also require the agency to update its internal policies and procedures by developing and publishing a penalty matrix online, which is a guideline designed to inform but not dictate an agency's escalating actions. The matrix would base suggested actions on the severity of a violation, and outline how aggravating and mitigating factors should be applied in making these decisions. Aggravating factors would include, but not be limited to, repeat violations across inspections and consecutive inspection failures. A penalty matrix would ensure the agency more consistently and fairly applies graduated actions to all jails.

2.3 Require the commission to adopt rules and procedures to assess compliance with all standards during a certain percentage of jail re-inspections.

Under this recommendation, the commission would adopt rules and procedures for conducting full compliance checks during a certain percentage of its re-inspections, rather than only evaluating previously violated standards. As the state agency entrusted with inspecting jails, the agency is best positioned to determine what percentage of comprehensive re-inspections would appropriately balance field inspectors' existing workloads with the need to discourage jails from prioritizing only a subset of standards at any given time. The procedures should also ensure staff randomly chooses which jails will receive a comprehensive re-inspection to assure fairness. Increasing the rigor of some, but not all, re-inspections would help compel jails to monitor all standards at all times, rather than focusing narrowly on certain problem areas and ignoring others.

Management Action

2.4 Direct the agency to develop clear, consistent procedures for conducting its monthly risk assessment.

This recommendation would direct the agency to establish documented procedures for how staff conducts the monthly risk assessment, which would allow the agency to evaluate jails more consistently despite staff turnover. The protocols should include clear, objective thresholds for what constitutes high-, medium- and low-risk jails. Using historical data, staff expertise, and stakeholder input as necessary, the agency should also analyze the assessment's existing risk factors and add variables where appropriate. For example, the agency should include statutorily required information about sheriff turnover, and could add other information it already collects, such as performance during special and re-inspections over time or the relative number of recent inmate assaults. After finalizing its updated risk assessment procedures, the agency should provide training to relevant employees on how to apply the assessment to their workload and develop routine opportunities for updating the assessment based on user feedback. The agency should provide the Sunset Commission with an update on its implementation of this recommendation by December 1, 2021.

2.5 Direct the agency to create a procedures manual detailing its inspection process.

Under this recommendation, the agency should formally document inspection procedures, including those for informal drop-by visits, to improve consistency in inspections across staff and over time. This would allow the agency to compile and record valuable knowledge from tenured staff, develop an in-depth training resource for new field inspectors, and prevent regulatory gaps and inconsistencies moving forward. The manual should include procedures on how field inspectors should document and communicate all identified risks to other agency staff and jail administrators so they do not unknowingly overlook any standards violations. This would enable future inspectors and jail staff to track noncompliance accurately over time. Procedures should also include direction on how to address current inconsistencies, such as differences in how field inspectors refer unlicensed jailers to TCOLE and standard error rates to use during file reviews. The agency should make the inspection manual available to all staff electronically, which would give inspectors easy access to the resource during their fieldwork and allow the agency to update the tool as cost effectively as possible.

While the inspection process will inevitably include some degree of subjectivity, an inspection manual would help eliminate inconsistencies that perpetuate risk, confusion, and unfairness. The agency should provide the Sunset Commission with an update on its implementation of this recommendation by December 1, 2021.

Fiscal Implication

Together, these recommendations are designed to reduce the agency's workload by targeting resources toward the highest-risk jails, incentivizing timely and sustained compliance, and improving internal consistency and efficiency. However, the exact fiscal impact would depend on the results of the agency's updated risk assessment and cannot be estimated. For example, while conducting more comprehensive re-inspections and increasing visits to struggling jails would require more staff time, the agency could use the results of its risk assessment to offset these changes by decreasing intensive, on-site visits to lower-risk jails.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 511.009(a)(13), Texas Government Code.

² Section 511.0085, Texas Government Code.

³ Section 511.012(a), Texas Government Code.

⁴ Section 511.012(b), Texas Government Code.

⁵ The commission issued or authorized the executive director to issue new remedial orders to the following counties between fiscal years 2017-19: Falls, Frio, Kinney, Liberty (private facility), McLennan (private facility), San Patricio, and San Saba. The commission also took follow-up action to amend remedial orders for Kinney and San Saba counties, but Sunset staff did not count the amendments as new orders.

⁶ Section 511.0085, Texas Government Code.

⁷ Section 511.0085(a)(6), Texas Government Code.

⁸ Sections 511.0085 and 511.009(a)(13), Texas Government Code.

⁹ American Bar Association, Criminal Justice Standards Committee, *ABA Standards For Criminal Justice: Treatment of Prisoners*, accessed September 1, 2020, https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/treatment_of_prisoners.pdf, 143-148.

¹⁰ Section 1701.507, Texas Occupations Code; 37 T.A.C. Section 223.2(c)(1).

¹¹ Section 511.012, Texas Government Code.

¹² Section 511.011(b), Texas Government Code.

ISSUE 3

The Agency Lacks Key Complaints Data and Investigation Processes to Best Ensure Jails Meet Minimum Standards.

Background

Statute requires the Texas Commission on Jail Standards to publicly provide information on its complaints process and to receive, track, and report to commission members on complaints received from inmates, their families, jail staff, and members of the public.¹

The agency employs one complaint inspector, who reviews all complaints and determines whether they are within the agency's jurisdiction, as discussed in the *Complaint Types* textbox. The inspector then prioritizes complaints based on severity and subject matter, and investigates complaints by communicating with sheriffs and jail administrators and reviewing records to determine whether the complaint is founded. If necessary, the agency's four field inspectors may also investigate complaints on-site during a jail inspection. Following each investigation, the complaint inspector notifies the complainant, sheriff, and jail administrator of the final determination.

Complaint Types

- **Jurisdictional.** Complaints against facilities the agency regulates that pertain to jail standards, such as those involving jail staff's noncompliance with a physician's orders. The agency investigates these complaints to determine whether they are founded and require enforcement action. Usually, inmates submitting complaints must first exhaust their jail's local grievance process before submitting a complaint to the agency.
- **Non-jurisdictional.** Complaints against facilities the agency does not regulate, such as prisons; alleged criminal violations, such as use of force complaints; and complaints not related to jail standards, such as those against a physician for providing inadequate care.

In fiscal year 2019, the agency resolved 2,311 complaints, 160 of which were non-jurisdictional. Of the jurisdictional complaints, the agency determined 80 were founded and 2,071 were unfounded. Jail inmates submit the majority of complaints, and the most common complaint allegations involve medical and dental services, inmate services, and food service.

The agency's previous Sunset review in 2009 identified issues with the agency's complaints processes. In response, the Legislature adopted statutory changes to improve the agency's handling of complaints.² The current Sunset review found the agency has not fully implemented some of these important changes. While the agency collects most of the complaints data required by state law, it does not properly enter, analyze, and report on the data and therefore cannot use it effectively to identify and address issues of noncompliance in jails.

Findings

The agency lacks clear, documented, and comprehensive complaints procedures.

The agency does not have clear procedures for tracking, prioritizing, and investigating complaints; collecting and analyzing complaints data; and making information about complaints available to the public.

Poor complaints procedures undermine efforts to identify violations and require corrective action.

- **Overly broad complaints procedures.** The agency has a broad policy for its complaints process, but not more detailed procedures to ensure staff investigates complaints effectively and consistently. Without clear, standard guidelines for the complaints investigation process, the agency cannot ensure inspectors properly and consistently determine whether complaints are founded, or if corrective actions are needed. This risk is particularly salient given high turnover in the complaint and field inspector positions, as well as the agency's overreliance on a former tenured supervisor to ensure accuracy and consistency of investigations.

The agency's lack of detailed procedures also contributes to complaint inspectors documenting their work inconsistently and incompletely, undermining the agency's ability to collect quality complaints data and quickly provide important information about complaints it has received and investigated. Instead of documenting all allegations included in a complaint in the agency's database, complaint inspectors determine and code only the three highest-priority allegations. Determining which allegations to document is a subjective decision that differs depending on the complaint inspector and allows staff to overlook key problems happening in jails. Sunset staff reviewed the agency's complaints database and found other inconsistencies in the coding and analysis of complaints. For example, for dozens of recent complaints, staff did not track disposition or allegation information. Inconsistencies in documenting and handling complaints result in an incomplete picture of all the potential issues occurring in jails.

Not tracking all information about non-jurisdictional complaints obscures a full regulatory picture.

- **Inconsistent referrals for and tracking of non-jurisdictional complaints.** An agency should have a process to refer and track all complaints not within its jurisdiction to the appropriate organization. However, the commission does not consistently adhere to this best practice. For example, while agency employees refer complaints related to prisons to the Texas Department of Criminal Justice and criminal complaints to law enforcement, they do not refer complaints alleging standard of care violations by physicians or nurses to the Texas Medical Board or Texas Board of Nursing respectively. The agency maintains some information about non-jurisdictional complaints, but does not track the subject matter or appropriate entity to which the complaint should be sent, obscuring a full regulatory picture. Directing complainants to the entity with authority to address their allegations would provide recourse to such individuals and ensure serious allegations are properly investigated. Tracking such referrals would also allow for a more complete reflection of potential problems and concerns in this general area of regulation.
- **Undefined prioritization of complaints.** Agencies should have a structured and clear process to prioritize complaints to ensure limited resources are allocated in order of importance. Statute requires the agency to establish priorities for complaints.³ The agency's internal policy states complaints should be prioritized by severity, with complaints related to emergency preparedness, overcrowding, or supervision handled immediately, but this policy is overly broad and does not reflect the most common and high-risk

types of complaints received. Consequently, agency staff reports prioritizing medical complaints and other complaints that seem high priority based on individual judgment rather than clearly defined priority levels. In fiscal year 2019, about 75 percent of the complaints requiring agency investigation and possible action related to medical concerns. While these may be important and worthy of prioritization, the policy should reflect this goal, and the agency should have detailed procedures on how to prioritize the large volume of medical complaints. In addition to establishing clear, actionable priorities to rank complaints for investigation, training complaint inspectors on prioritization would better position the agency to manage its high volume of complaints, particularly given the agency's small size.

- **Weak investigation process.** The agency's role is to serve as an independent, objective investigator to ensure complaints are properly and fairly investigated. However, the agency is overly reliant on jail staff to investigate complaints and does not always make independent and objective determinations on whether an allegation is founded. Generally, the agency delegates much of the complaint investigation process to sheriffs and jail administrators by forwarding complaints to them, and using just their response to conduct a desk investigation and make a determination. In some cases, the agency forgoes the complaint investigation altogether by turning over a complaint to the jail to address, including informing the complainant of the resolution. In both situations, the agency primarily relies on the jail's response to determine whether a complaint is founded, and in some instances, the commission's response to a complainant is a direct copy of the jail's response to the agency. Agency employees report they must often accept the jails' explanations for the allegations included in a complaint due to time and resource constraints, but they will eventually find bad actors through multiple complaints or annual inspections, which is an inefficient use of resources. This approach to investigations allows jail staff to disproportionately influence the agency's final determination on allegations, and potentially lets jails remain noncompliant until their next inspection, which may leave jailers and inmates at risk.

While a lack of resources precludes conducting an in-person inspection for every complaint, the agency should have a fair and consistent process to review documentation and escalate complaints when needed. The agency should not substitute jail officials' judgment for its own independent assessment of whether a complaint is founded. For example, if the agency receives multiple complaints about sanitation issues at a particular jail, the agency could request additional supporting documentation on sanitation procedures and take an independent look at sanitation during the jail's next annual inspection.

The agency prioritizes complaints based on individual judgment, not clearly defined priority levels.

Jail staff can disproportionately influence final complaint determinations.

The agency does not provide adequate information about its complaints procedures, creating an inefficient and unfair process.

The agency's rules about complaints provide only a broad outline of the complaints process, and do not include any details about the receipt, investigation, and disposition of complaints, as required by statute.⁴

More detailed complaints procedures could reduce complaints and save agency resources.

- **Types of complaints.** The agency does not provide information in rule or policy about the types of complaints over which the commission has jurisdiction, though doing so could reduce the number of non-jurisdictional complaints the agency receives, saving resources and decreasing complainant frustration. For example, complaints about criminal issues, such as use of force, are always non-jurisdictional, and the agency simply refers these complaints to law enforcement. The agency also does not provide information to the general public or inmates about submitting complaints anonymously.
- **Unclear and largely unknown prerequisite for filing a complaint.** Except for the most serious allegations, the agency requires inmates wishing to file a complaint first exhaust their jail's grievance process through final appeal and provide supporting documentation of this as proof before agency staff may investigate the complaint. However, the agency does not ensure inmates receive this information, and this requirement is not in the agency's statute, rules, or a published complaints policy. Sunset staff reviewed a random sample of 50 complaints and found nearly 30 percent were rejected because the inmate complainant had not first exhausted the grievance process. While some jails choose to make information available about the commission and its complaints process, neither state law nor agency policy requires such notification, and agency staff reports inmates typically receive this information by word of mouth from other inmates rather than through the jails' inmate rules or handbooks. Without making the grievance requirement clear, both agency staff and inmates will continue to waste time on these complaints.
- **Unpublicized appeals process.** The commission has an appeals process for complainants who are dissatisfied with the agency's determination on their complaints, but does not make information available about submitting an appeal, so few complainants are aware of this option. In fact, some stakeholders reported they did not know the agency accepted appeals until Sunset staff asked them about it. The appeals process is included in the agency's internal policies, but this information is not available online or included in determination letters sent to complainants to close out complaints. In the last five fiscal years, the agency has only received about 90 official appeals and could not provide an accurate count of the number of appeals investigated. Complainants who are uninformed about the appeals process have no recourse if they are dissatisfied with the agency's complaint determination, particularly for the 96 percent of jurisdictional complaints deemed unfounded. Other state agencies, including the Texas

Few complainants know they can appeal the agency's determination.

Department of Criminal Justice, provide information on their websites about both filing a complaint and appealing a complaint determination.⁵

The agency lacks consistent, reliable complaints data, without which it cannot conduct the analysis needed to improve its own operations or effectively address jail noncompliance.

- **Insufficient complaints data and trend analysis.** The agency does not capture all of the data needed to use complaints to improve conditions in jails. As shown in the accompanying textbox, the agency's existing complaint allegation categories are too broad to facilitate meaningful analysis. Complaint inspectors only track specific information about these allegations in their notes, so staff cannot efficiently pull data from the tens of thousands of complaints included in the database to determine and act upon recurring complaint allegations. For example, the agency cannot easily provide statistics showing the number of complaints specifically involving mental health or COVID-19, since both of these topics fall under the overarching "medical/dental" allegation category. More specific complaint coding would allow for detailed trend analysis and could be used to inform the inspection process, better targeting the agency's limited resources on identifying violations of standards that put inmates and jail staff at risk. More detailed complaints data could also help identify issues needing additional training, statewide technical assistance memos, or clarifications through the rulemaking process. The agency does not conduct this analysis, although it is possible even with the agency's outdated database. The agency is in the process of upgrading to a new database, which creates opportunities to improve data collection, analysis, and reporting.

Complaint Allegation Examples

- Medical/dental complaints may include:
 - No medical treatment for injury or illness
 - Mental health concerns
 - Prescription issues
- Sanitation complaints may include:
 - Mold
 - Rodent and pest issues
 - Cleanliness and lack of cleaning supplies
- Food service complaints may include:
 - Amount of food
 - Temperature and quality of food
 - Accommodation for religious diets

The agency does not take advantage of its complaints data to track noncompliance trends and improve inspection, training, and rulemaking efforts. Each quarter, the agency provides commission members with some complaint information, including the number of complaints by county and non-aggregated data on the types of allegations received, but staff does not include sufficient detail to help members identify recurring problems and better inform the commission's decision making. For example, the agency could use its available data to provide information on counties with a high incidence of founded complaints over time or particular problem areas for certain counties, regions, or the state at large.

- **Limited publicly available complaints data.** The agency does not publish sufficient data about complaints, which hinders the public's ability to

Published
complaints
data lacks
detail needed
to identify
noncompliant
jails.

understand recurring complaint trends and identify jails with high numbers of complaints. The agency's annual report includes only basic information about complaints, such as the number of complaints, number of complaints by broad allegation category, and the manner of disposition.⁶ As described above, the agency provides slightly more detail to commission members in advance of commission meetings, but this information is not available to the public and lacks the level of detail needed to understand alleged noncompliance in Texas jails. Other agencies publish more detailed statistical complaints data. For example, the Texas Department of Criminal Justice publishes a report that categorizes complaints, with detailed subcategories providing useful information on the types of complaints within each group, and provides the manner of disposition for these complaints.⁷ The Texas Juvenile Justice Department's independent ombudsman publishes a quarterly report with information on complaints by facility, allegation, and type of complainant, and also includes trend information on complaints and incidents, as directed by statute.⁸

- **Complaints data not integrated with inspection and enforcement processes.** Complaints data should help inform and improve an agency's oversight and enforcement functions, and ensure staff handles noncompliance consistently and thoroughly. Currently, the agency lacks a clear link between these functions, missing opportunities to identify and address areas of noncompliance. Prior to an inspection of a jail, the agency does not consistently provide complaints data from that jail to field inspectors, nor does the agency train field inspectors to use complaints data as part of the inspection process. Some field inspectors report reviewing a sample of complaints against a particular jail to prepare for an inspection, but this is not a required, agencywide approach. Field inspectors generally do not further investigate complaints deemed unfounded, though a more detailed, in-person look at these allegations, particularly if they are recurring, could help identify systemic problems within a county's jail system. In limited cases, the agency's deputy director may ask a field inspector to investigate a complaint during a routine inspection, but the agency does not have a consistent process for when staff should elevate complaint investigations in this manner.

Field inspectors
do not receive
consistent
access to or
training on
complaints data.

Without a defined connection between the agency's complaint, inspection, and enforcement processes, the agency cannot deter repeat noncompliance most effectively. For example, if a field inspector is unaware of a specific recurring problem alleged through a complaint at a facility but identifies this problem during the facility's annual inspection, the field inspector may not properly address the problem by issuing a formal notice of noncompliance for the repeat violation. The commission also lacks information about the rare circumstance when complaints culminate in an enforcement action because staff does not update the complaints database to reflect the allegation's ultimate outcome. The agency reported three complaints led to formal notices of noncompliance in fiscal years 2017–20, but did not consistently track the ultimate disposition of these complaints in the

database. Using complaints to help drive the inspection and enforcement processes would be a more efficient use of the agency's resources, and would result in more effective processes and better outcomes.

Sunset Staff Recommendations

Change in Statute

3.1 Require the commission to adopt rules directing jails to post information on the commission's complaints process.

Under this recommendation, the commission would adopt rules requiring jail administrators to post information about the complaints process throughout their facilities and in their inmate rules or handbooks, including information on jurisdictional complaints, appeals, and the requirement that inmates exhaust the local jail grievance process before agency staff may investigate most complaint categories. The commission's rules would also ensure jails appropriately display this signage and incorporate information into their inmate rules or handbooks as part of the inspection process. The commission should establish a timeline for appeals and require jails to provide inmates this information. This recommendation would help inmates understand the complaints process and would be more efficient for both inmates and the agency. The commission should develop this signage by March 1, 2022, and require jails to post the signs and update their inmate rules or handbooks by April 1, 2022.

3.2 Update statute to enhance existing requirements for tracking, analyzing, and reporting on complaints.

This recommendation would update the existing statutory requirements for the agency to track and analyze complaints by requiring the commission to better capture and evaluate trends in complaints data through the following actions:

- Establishing detailed categories of alleged violations, such as breaking out types of medical complaints to reflect more specific issues like COVID-19 or mental health.
- Requiring complaint inspectors to document all allegations, not just a subjectively selected sample of problems alleged.
- Regularly evaluating trends in allegations and facilities with high numbers of complaints to identify potentially problematic jails requiring additional inspections.
- Including enhanced trend analysis in staff's periodic reports to the commission on complaint information to help guide decision making.
- Making the same information provided to commission members on complaints, types of allegations, trends, and complaint disposition available to the public.

As part of this recommendation, the commission should consider ways to use the new database currently in development to better capture and analyze complaints data. This recommendation would allow the agency to make better use of its limited resources to ensure proper conditions in the jails it regulates.

Management Action

3.3 Direct the agency to develop clear, detailed procedures for investigating complaints.

This recommendation would provide additional direction to ensure the agency fully implements its existing statutory requirement to develop procedures for its entire complaints process from receipt through resolution. The agency should expand its written procedures to include:

- The manner for prioritizing complaints to ensure the most severe complaints are investigated quickly, with more detail than the agency's current broad policy.
- Guidelines for when complaints should be referred to a field inspector to help guide a jail's next inspection.
- Instructions on when and how field inspectors must review complaints to inform the inspection process, as well as guidelines for what investigatory information they should report back to the complaint inspector for inclusion in the agency's database.
- Robust investigation procedures — including required documentation a jail would need to provide the agency depending on the type of allegation — that ensure the agency does not merely rely upon the sheriff's or jail administrator's response to make a determination.
- Improved documentation of the agency's complaint investigations to capture detailed allegations and other data needed to better understand trends in jails.

This recommendation would ensure the agency investigates complaints thoroughly and consistently, particularly given its limited resources and high turnover among its inspectors. The agency should adopt these procedures by December 1, 2021.

3.4 Direct the agency to develop a formal process to refer non-jurisdictional complaints to the appropriate agency.

This recommendation would direct agency staff to refer all non-jurisdictional complaints received to the appropriate agency or entity, while tracking the subject matter or type of such complaints. Formal referral and tracking of all non-jurisdictional complaints would ensure all complaints arrive at the proper authority and receive a proper evaluation, while providing a more complete picture of potential concerns within the criminal justice or regulatory environment. The agency should develop this referral process by December 1, 2021.

3.5 Direct the commission to prioritize complaint investigations by risk level.

This recommendation would direct the commission to use its existing statutory authority to develop rules and more detailed procedures to formally guide prioritization of complaint investigations based on the risk the complaint poses to jailers' and inmates' safety, such as severity of the allegation and repeat allegations in a single jail. The commission should develop complaint investigation priorities with stakeholder input as necessary. The commission should use these rules and procedures to train complaint inspectors on how to prioritize their caseloads, especially considering the agency's available resources and high volume of complaints. Prioritizing complaints would ensure the most efficient allocation of resources toward the highest-risk complaints. The commission should adopt rules by December 1, 2021.

3.6 Direct the agency to publicize additional information about its complaints process.

Under this recommendation, the agency would publish information on its website about the complaints process, including the types of complaints that are outside of the agency's jurisdiction and how the appeals process works. The commission should also include information about how to appeal the agency's complaint decision in the notification letter sent to complainants to close out each complaint. This recommendation would make the complaints process more transparent, fair, and efficient. The agency should make this information available by December 1, 2021, and update the information as needed to reflect any changes to the complaints process.

Fiscal Implication

These recommendations would not have a fiscal impact to the state because the agency could implement them with existing resources. Many of these recommendations are already required by statute but have not been fully implemented. All of the recommendations would increase the efficiency of the complaints process and allow the agency to better use its limited resources to investigate complaints.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 511.0071, Texas Government Code.

² Texas Sunset Advisory Commission, *Sunset Advisory Commission Final Report, Texas Commission on Jail Standards*, July 2009, accessed August 26, 2020, <https://www.sunset.texas.gov/public/uploads/files/reports/Commission%20on%20Jail%20Standards%20Final%20Report%202009%2081st%20Leg.pdf>, 25–30; Chapter 1215 (S.B. 1009), Acts of the 81st Texas Legislature, Regular Session, 2009.

³ Section 511.0071(a-1)(3), Texas Government Code.

⁴ Section 511.0071(a-1), Texas Government Code.

⁵ “TDCJ Ombudsman Program,” Texas Department of Criminal Justice, accessed October 13, 2020, https://www.tdcj.texas.gov/divisions/arm/res_ombudsman.html.

⁶ Texas Commission on Jail Standards, *2019 Annual Report*, accessed August 24, 2020, <https://www.tjcs.state.tx.us/wp-content/uploads/2020/07/2019-TCJS-Annual-Jail-Report.pdf>, 19–21.

⁷ Texas Department of Criminal Justice, *Ombudsman Resolution Report, Fiscal Year 2019*, accessed August 24, 2020, https://www.tdcj.texas.gov/documents/Ombudsman_Report_FY2019.pdf.

⁸ Independent Ombudsman for the Texas Juvenile Justice Department, *Third Quarter Report FY 19*, accessed August 31, 2020, https://www2.tjjd.texas.gov/ombudsman/reports/IO_3Q_19.pdf, 4–7; Section 261.101(a)(10), Texas Human Resources Code.

ISSUE 4

The Agency's Poor Data Practices and Weak Communications Limit Its Transparency and Ability to Improve Jail Operations.

Background

Responsible for overseeing compliance with minimum standards in 239 jail systems across the state, the Texas Commission on Jail Standards first seeks to help jails improve their operations by providing advice and assistance. These activities help the agency ensure safe facilities and promote innovative programs and ideas, tasks established in its mission statement.¹

As required by statute, the agency collects a significant amount of data from jails and publishes some of it in daily and monthly reports, as listed in the *Agency Reports* textbox.² These reports contain information about jails under the agency's jurisdiction, their inmate populations, and their operations. In addition, the agency receives other data about serious incidents in jails, such as suicides, other deaths, escapes, and assaults, as required by statute.³

Agency Reports

- Counties housing local inmates elsewhere
- County jail incarceration rates
- COVID-19 information (published daily)
- Immigration detainer information
- Inmate populations
- Inmates awaiting transfer to state jails and prisons
- Licensed jailer turnover
- Number of pregnant inmates

The agency largely maintains communication with its primary stakeholder groups — county officials and jail staff — through field inspectors' conversations with the jails in their regions. More formal, widespread communication is less frequent, and typically involves alerting jails about statewide technical assistance memos published on the agency's website to update jails on new standards and guidelines, such as memos related to the COVID-19 pandemic. The agency also solicits feedback from county officials and jailers through an annual customer service survey through which the agency gathers information about how it could improve. Communication with other stakeholders, such as advocacy groups, healthcare providers and other vendors operating in jails, and inmates and their families, is largely limited to the commission's public meetings and website.

Findings

The agency's poor data practices hinder its ability to identify and address problems.

- **Insufficient data collection and storage.** Generally, to understand the effect of laws the Legislature enacts and guide future policymaking, state agencies are required to collect a substantial amount of data and information. The data should be collected and maintained in a way that lends itself to analysis. Given the high-risk nature of jails, which are taxpayer-funded facilities, this analysis is particularly important for the Texas Commission on Jail Standards. However, the agency's approach to collecting and maintaining data undermines its ability to use the data effectively. The agency currently

The agency maintains key information in scattered and difficult-to-analyze formats.

maintains most information on inspections, common violations, and enforcement actions in scattered and difficult-to-analyze formats, but it is in the process of moving to a new database that will reorganize its information storage. Still, the new database will not make the data more usable or accessible if the agency continues to leave out or inadequately catalog key information. For example, inspectors do not input the types of violations for which they provide technical assistance into a database or other searchable format. Consequently, to determine which standards jails most commonly violate over time, agency staff would have to manually look through each inspection report.

Even for information the agency does store in a searchable format, staff captures some data inconsistently or incompletely. To comprehensively analyze the agency's data, Sunset staff worked closely with analysts at the Texas Legislative Council. Council staff found the agency has enough data to provide valuable insight into issues affecting jails, but the agency does not clearly define its data to ensure both employees and members of the public can understand and make use of the information. For example, the agency has not clarified whether the pregnant inmate data the agency collects and reports includes the total population of pregnant inmates in jails or simply the number of pregnant inmates booked into jails within a given month, which excludes those who have been incarcerated for longer periods of time. Council staff also identified gaps in the agency's data and analysis, such as incomplete tracking of complaint categories within its monthly assessment to flag high-risk jails and discrepancies in jails' overall noncompliance rates due to agency staff miscalculating these percentages.

Agency practices allow anecdotes, not data, to drive strategic conversations.

- **Lack of comprehensive trend analysis.** Despite collecting significant data and being the primary repository for most of the county jail data in the state, the agency does not conduct trend analysis to help improve both its own and jails' operations. Instead, the agency relies on institutional knowledge and personal observations to identify potential problems. For example, while the agency collects data on jail inmate deaths and assaults across the state, it has not used this data to identify how or if risk factors, such as a jail's compliance history or jailer turnover, correlate to these events. Further, the agency has not used existing tools available in its current database to perform a basic analysis of how violations differ across jails of varying types and sizes. Instead, the agency relies on staff to uncover trends based on their experiences, which allows anecdotes, not data, to drive the agency's strategic conversations. By contrast, if the agency were to regularly analyze its data to identify trends, like sudden spikes or decreases in jail deaths, it could further investigate to determine possible causes for these trends; identify effective solutions; and update its standards, training, and inspection practices accordingly. Without a regular process for reviewing and analyzing its data, however, the agency misses significant opportunities for improving its own operations, as well as jail compliance and operations across the state.

Inconsistent and needlessly restricted information on the agency's website limits transparency, efficiency, and the usefulness of the agency's data.

- **Incomplete and inconsistent information.** The primary place the public goes to learn about the agency and its operations — its website — does not consistently provide important information. For example, since the beginning of the COVID-19 pandemic, the commission has held two meetings virtually. While the agency's website provided information about how to attend and provide public comment at the June 2020 meeting, it never did so for the August 2020 meeting. The website's information about past commission meetings is also limited, providing only the minutes from the most recent meeting, not additional historical information on other past minutes, agendas, or instructions on how to view video footage. Further, the website contains confusing and misleading directions on critical information stakeholders need to interact with the agency. For example, the page with information about submitting complaints states that complaints may be submitted "on the form below," but the form is on a separate page that is not clearly linked or explained to visitors.

The website contains misleading directions on how to submit complaints.

Similarly, the agency generally fails to provide clear explanations and context for the reports and data it publishes. Instead of describing reports, their purpose, and the differences between them, website pages merely contain lists of report titles linking straight to documents with data but no introductory or explanatory text. For example, the agency provides both a population report and, separately, a population summary report, but does not explain the relationship between them, leaving readers to guess whether the numbers in the latter reflect the same data as the numbers in the former. This lack of complete information drives people to reach out to agency staff with common or simple questions, taking up staff's limited time.

The agency does not consistently and proactively provide information that would ensure transparency to the public. For example, the agency does not publish aggregated information about serious incidents in jails, such as assaults, escapes, and deaths in custody, even though statute requires jails to submit this information to the agency monthly.⁴ In contrast, when the Office of the Attorney General receives notice from local and state entities, including county jails, about certain deaths in custody, it publishes detailed information on its website about each incident, such as the cause, location, and time of death.⁵ While some of the death-related data each agency collects is similar, it is not identical. Proactively publishing the agency's more expansive and aggregated information regarding all serious incident types, including deaths, suicide attempts, and assaults, on its website would allow for a more complete picture of what occurs inside Texas jails. Although jails self-report this information and agency staff lacks resources to verify its accuracy, the self-reported numbers still provide meaningful information and context to the public.

Publishing serious incident data would better inform the public about what occurs in jails.

Removing noncompliance notices from the website incentives jails to correct problems but limits public information.

- **Unnecessarily restricted information.** The agency also restricts some of the information it does provide on its website. The agency replaces some documents every time it updates them without consistently storing historical information online so anyone outside the agency can analyze trends over time. For example, for some types of reports, the agency removes the previous document every time it uploads a new version, leaving only the current report easily accessible to the public. Although the agency started uploading historical documents for some of its reports in August 2020, it still replaces others, such as jailer turnover and population summary reports, each month and replaces COVID-19 reports daily. Removing old reports obscures and limits access to longitudinal data, which is particularly important for stakeholders during the pandemic. A member of the public wishing to view changes in COVID-19 cases in county jails throughout the state must either remember to download the new COVID-19 report each day or file a Public Information Act request for months of documents that were previously published, wasting the requester's and staff's time.

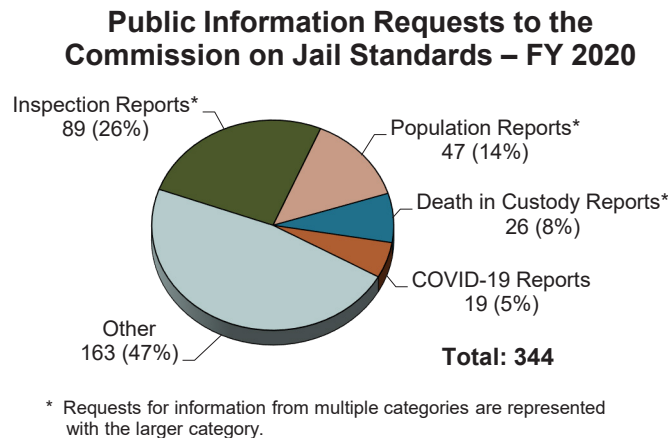
The agency also removes notices of noncompliance from the site as soon as a jail achieves compliance again. While the agency uses this practice as an incentive for sheriffs and jail administrators to make corrections more quickly, this also hinders the public's ability to determine which jails recently or consistently have struggled with noncompliance. For the purposes of transparency and public interest, many state regulatory agencies, like the Texas Board of Nursing, leave relevant disciplinary histories on their websites for a certain period of time.

Publishing complete jail data on the website would reduce information requests and save resources.

- **Missed opportunities to improve efficiency.** The agency has devoted staff time to developing resources that could be provided on the website but are instead only used internally, if at all. An agency employee who handles questions and correspondence from the public has written a frequently asked questions document intended to help the agency address some of the public's most common queries and requests. However, the agency has not published this document online, failing to make use of a significant resource that could provide valuable information to the public and reduce the need for individuals to contact the agency with questions.

Even the agency's own limited data on information requests shows how its reluctance to provide complete information proactively to the public directly affects the workload of an already under-resourced staff. In fiscal year 2020, the agency received 344 Public Information Act requests. The agency's incomplete recordkeeping does not provide meaningful information on the amount of staff time dedicated to public information requests. However, Sunset staff found the agency could have avoided at least half of these requests if it had proactively published and kept online all population, inspection, and COVID-19 reports. The chart on the following page, *Public Information Requests to the Commission on Jail Standards*, shows the types of reports generally requested. Notably, the figures provided in this pie chart reflect minimums because they are rough estimates based on Sunset

staff's analysis of the agency's insufficient data. For example, the number of requests for inspection reports is likely a much higher proportion than what the chart depicts.



The agency's lack of engagement of all interested parties limits input and information sharing.

The agency's minimal engagement of stakeholders, aside from county officials and jailers, diminishes its ability to disseminate information, share the extensive data it already collects, and meet its mission to promote innovative programs and ideas. The last Sunset review of the agency in 2009 found the agency did not take full advantage of improving jail operations through information sharing, resulting in management directives and statutory requirements for the agency to better collect and disseminate best practices and share information with stakeholders.⁶ While the agency has shown some improvement in this area in the intervening 11 years, its progress has been inconsistent.

For example, the agency only includes county officials and jailers in its annual customer service surveys. While jail administrators and county officials can provide input on inmate complaint investigations, a more balanced understanding of whether the agency resolves inmate complaints in a fair and timely manner requires more comprehensive data collection by soliciting input from a broader group of people, including those who file and receive responses to inmate complaints. Further, the listserv the agency created after its last review only included jail administrators and county officials instead of more diverse stakeholders, such as advocacy groups or vendors. The agency distributes information largely through proxies by asking professional associations, like the Texas Jail Association and the Sheriffs' Association of Texas, to send it to their mailing lists. While using other groups' mailing lists is an effective way to reach those specific populations, it leaves other interested parties without direct communication and access to key information.

The agency excludes key stakeholders from customer service surveys.

Sunset Staff Recommendations

Change in Statute

4.1 Require the agency to conduct trend analysis with the data it collects.

The recommendation would require the agency to establish formal trend analysis practices and use them to identify consistent problems in jails. The agency should quantitatively evaluate data it collects on a routine basis to identify trends in noncompliance, inspection outcomes, serious incidents, and other areas of jail operations. Conducting trend analysis would help the agency identify specific issues facing all jails, as well as those impacting jails with certain characteristics, such as facilities of different sizes or in different regions. The agency could then develop data-driven solutions; update its rules, training, and technical assistance accordingly; and publish or disseminate relevant findings to better fulfill its mission of promoting innovative programs and ideas to jails.

Management Action

4.2 Direct the agency to publish certain information on its website for a specified amount of time.

This recommendation would direct the agency to publish the following information, reports, and data on its website:

- Information about past and future commission meetings, including agendas, clear information about how to attend or participate, and past meeting minutes
- Individual inspection reports
- Notices of noncompliance
- Aggregated reports on serious incidents, inmate populations, population summaries, pregnant inmates, immigration detainees, inmates awaiting transfer to state jails and prisons, incarceration rates, counties housing local inmates elsewhere, and any other reports it regularly publishes, such as the current COVID-19 reports

Under this recommendation, the agency would continue to redact or withhold any information required by the Public Information Act. The agency should consider publicly posting data in a user-friendly format that allows for quantitative analysis, such as an Excel spreadsheet rather than a PDF file, if staff already maintains the information this way internally. The agency would be required to keep these documents and data online for at least five fiscal years but would have discretion in determining where and how to provide this information on its website. For example, while the agency keeps current notices of noncompliance clearly linked from its website's homepage, staff could provide historical notices on a different page to ensure they can still use the website as a tool for incentivizing prompt corrective actions. The agency would not be obligated to verify or perform additional quality checks on self-reported data from jails related to serious incidents. The agency could, at its discretion, include a notation in these reports that serious incident data is self-reported by jails and not verified by the agency.

As part of this recommendation, the agency should use public input and existing internal documentation to develop a data dictionary and list of frequently asked questions and answers for the website. The frequently asked questions should address common inquiries the agency receives about its general operations, commission meetings, opportunities for public participation, data and reports, and public information

requests. The agency should provide the Sunset Commission with an update on its implementation of this recommendation by December 1, 2021.

4.3 Direct the agency to regularly review its Public Information Act requests and determine what information could be proactively published to optimize staff resources.

Under this recommendation, the agency should periodically review the Public Information Act requests it receives, and determine which common requests it could proactively publish on the agency's website to reduce the number of requests and increase efficiency. The agency should provide the Sunset Commission with an update on its implementation of this recommendation by December 1, 2021.

4.4 Direct the agency to ensure consistent, cohesive data tracking.

Under this recommendation, the agency should review its use of databases and data to develop procedures for consistently defining and inputting data, as well as performing quality control. As part of this recommendation, the agency should ensure employees are instructed on how to consistently and completely capture needed information. More complete and consistent data collection would ensure the agency provides accurate information to the public and draws reliable conclusions from its internal risk assessment process. The agency should provide the Sunset Commission with an update on its implementation of this recommendation by December 1, 2021.

4.5 Direct the agency to expand certain procedures for information gathering and sharing to include more diverse groups of stakeholders.

This recommendation would direct the agency to update its procedures for conducting customer service surveys by including additional categories of respondents who are directly impacted by the agency's operations, including individuals who file complaints. The agency should also expand its email list to include a broader group of stakeholders instead of only county officials and jail staff. The agency should provide the Sunset Commission with an update on its implementation of this recommendation by December 1, 2021.

Fiscal Implication

The recommendations in this issue would not have a significant fiscal impact to the state. While some recommendations, such as improving the agency's data tracking procedures, may require additional work, they could be offset by the efficiencies realized through other recommendations. The recommendations to proactively publish certain reports and analyze Public Information Act requests would likely reduce the amount of staff time spent responding to common requests, time which could be spent on comprehensive trend analysis and enhanced stakeholder communication.

¹ Texas Commission on Jail Standards, *2019 Annual Report*, accessed September 1, 2020, <https://www.tcjs.state.tx.us/wp-content/uploads/2020/07/2019-TCJS-Annual-Jail-Report.pdf>, 5.

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 511.0101 and 511.0102, Texas Government Code.

³ Section 511.020, Texas Government Code.

⁴ Ibid.

⁵ “Custodial Death Report,” Office of the Attorney General, accessed October 6, 2020, <https://oagtx.force.com/cdr/cdrreportdeaths>.

⁶ Texas Sunset Advisory Commission, *Sunset Advisory Commission Final Report, Texas Commission on Jail Standards*, July 2009, accessed October 13, 2020, <https://www.sunset.texas.gov/public/uploads/files/reports/Commission%20on%20Jail%20Standards%20Final%20Report%202009%2081st%20Leg.pdf>, 17–23.

ISSUE 5

The State Has a Continuing Need for the Texas Commission on Jail Standards.

Background

The Legislature created the Texas Commission on Jail Standards in 1975 to prevent federal court intervention in jail operations by establishing and overseeing minimum standards for safe, secure, and suitable jails across the state.¹ The agency helps counties implement and maintain these standards by conducting periodic inspections; providing ongoing technical assistance and training; investigating complaints; reviewing inmate deaths and escapes; and taking enforcement action when necessary. The agency accomplishes its independent oversight function with about \$1.4 million in revenue and 22 employees, four of whom conduct routine inspections of 239 jail systems throughout Texas. Beyond its staff, the agency also relies on informal working groups made up of various stakeholders, such as sheriffs, jailers, and advocacy groups, to assist with its operations, primarily through rulemaking.

Findings

Texas has a continuing need to establish and oversee minimum standards for jails.

Since the agency's creation, capacity in county jails has increased by five times, from less than 20,000 beds to 95,000, highlighting jails' growing role in the state's criminal justice system. As jails expand, counties struggle to balance diverse community needs with ensuring safety for the state's 26,000 licensed and appointed jailers and over 60,000 daily inmates, most of whom are awaiting trial. The agency provides an independent mechanism through which the state can assist counties in mitigating risks and avoiding expensive mistakes, while also increasing transparency and accountability for local taxpayers. Statewide standards promote safety for those living and working in jails, from initial construction through daily operations. Further, routine monitoring offers opportunities to identify and address problems proactively before they worsen.

The number of noncompliant jails has decreased significantly over time — from nearly all 265 facilities in 1977 to only 10 at the beginning of October 2020. However, the state's previous experience with federal lawsuits before the agency's creation, as well as periodic litigation when jails violate minimum standards, suggest jails continue to pose significant risks to county governments and require the state's continued oversight. As the *Serious Incidents Reported in Jails* table shows, the agency collects critical data revealing the dangerous realities occurring inside local jails. Agency staff and stakeholders agree these incidents are often linked to limited resources and high jailer turnover, but external oversight through inspections provides an

**Serious Incidents Reported
in Jails – FY 2019²**

Assaults	10,409
Attempted suicides	1,058
Use of force resulting in bodily injuries	753
Serious bodily injuries	172
Deaths in custody	105
Escapes	26
Suicides	20
Sexual assaults	10

The agency
helps ensure
jails are more
safe and secure.

element of consistency and predictability in the face of budgetary and staffing changes. The agency's inspection findings can sometimes bolster a sheriff's request for additional funds needed to bring a jail back into compliance with minimum standards. Further, the agency creates an avenue for the state not only to take action against poorly performing jails, but also to identify trends, share best practices, and improve overall jail operations. Without the agency's oversight, responsibility for ensuring safe and secure jails would fall exclusively on counties, many of which lack the expertise or incentive to do so effectively, which could increase the number of serious incidents and lead to federal intervention the agency was designed to prevent.

The agency's staffing allocation does not align with its most critical functions.

The agency's inspections drive its goal to decrease risks in jails, including those involving injuries and deaths, but compared to other inspection-centered state oversight functions, the number of employees allocated to this activity does not reflect its importance. In fiscal year 2019, the agency performed 241 annual inspections with only four — and at times, three — full-time field inspectors. Throughout Sunset staff's survey of and interviews with stakeholders, jail staff lauded the agency's field inspectors as invaluable assets to counties but indicated they are overstretched. Field inspectors must cover roughly 60 counties each, across which they conduct on-site compliance checks for every jail and provide technical assistance by phone and email to sheriffs, jail administrators, and jailers.

Other agencies
can allocate
more staff and
resources to
fewer or lower-
risk inspections.

By contrast, other state agencies responsible for performing comparable in-depth inspections are able to allocate more staffing resources to complete smaller workloads. For example, the Texas Juvenile Justice Department (TJJD) performs annual inspections of certain facilities detaining youth. In fiscal year 2019, TJJD employed 12 staff to conduct 92 comprehensive inspections — less than half the Texas Commission on Jail Standards' annual inspection workload. Other agencies can allocate more resources toward inspections even when those efforts do not involve the same health and safety risks present in jails. For instance, the Credit Union Department conducts multi-day inspections, called exams, of regulated entities to determine compliance with relevant statutes and rules. In fiscal year 2019, the department employed 19 examiners to conduct 151 full exams across the state. Though resource availability and inspection types differ across state government, opportunities exist to ensure the agency's staffing decisions align more closely with the primary means by which the agency achieves its mission.

The agency could benefit from assessing the feasibility of reallocating newly available staff to its core inspection function. In particular, the Legislature appropriated four permanent positions to the agency in fiscal year 2018 to assist with implementing the Sandra Bland Act, each of which presents an opportunity for reallocation, since the functions attached to these positions are set to expire soon.³ For example, to implement the act's grant program, which helps counties improve services for and monitoring of high-risk inmates, the

Legislature appropriated a full-time grant administrator position. However, the program ended on September 1, 2020, and few tasks remain to close it out, which should allow the agency to redistribute staff time to other functions in the upcoming biennium. Additionally, the Legislature appropriated the agency three full-time trainer positions to help jailers fulfill the act's mental health education requirements. This program concludes on August 31, 2021, the date by which jailers must obtain the training, providing another opportunity to redistribute staffing resources.⁴

No substantial benefits would result from transferring the commission's functions to a different state agency.

Sunset staff considered organizational alternatives for administering the agency's functions, particularly given its limited staffing resources, but concluded no substantial benefit would result from transferring or merging functions with another state agency. As described below, due to jails' high-risk nature and the agency's reliance on specific expertise and institutional knowledge, no other agency presents a viable option for consolidation.

- **Office of the Attorney General (OAG).** The Legislature has previously considered proposals to transfer jail oversight to OAG.⁵ However, while OAG staff provides legal assistance to the agency, OAG's core mission is not focused on proactive monitoring of and assistance for county governments. Because the agency's budget allocates little to administrative overhead, transferring its functions to OAG would require almost a direct transfer of resources, yielding limited savings while providing no significant benefits to justify the change.
- **Texas Department of Criminal Justice (TDCJ).** Similarly, the Legislature has considered transferring the agency's functions to TDCJ.⁶ However, such a change could jeopardize objectivity and independence because TDCJ's policies — especially those involving inmates awaiting transfer to a state jail or prison — significantly affect county jail populations and could present conflicts of interest.
- **Texas Commission on Law Enforcement (TCOLE).** TCOLE licenses and sets education requirements for various law enforcement personnel, including county jailers. Though jail officials interact with both TCOLE and the Texas Commission on Jail Standards, the two agencies have different priorities and expertise. While TCOLE focuses on licensing and regulating individuals, the commission focuses on minimum standards for jail facilities and processes.

Further, as discussed in the November 2020 Sunset Staff Report on TCOLE, there are significant concerns about the agency's regulatory structure.⁷ Consolidation or increased collaboration between the two agencies may be appropriate in the future, but Sunset staff determined TCOLE's current challenges prevent such changes from happening immediately.

Changes to the agency's structure may jeopardize its independence without significantly increasing efficiency.

- **Office of the Independent Ombudsman (IO) for the Texas Juvenile Justice Department.** Like county jails, Texas' juvenile justice system also benefits from an independent oversight body to ensure people living and working in correctional settings are safe, but IO's expertise lies in youth-oriented detention centers operating under different statutes and rules. Merging the agencies could result in some administrative efficiencies, but because the agencies focus on different populations with different rights, needs, and risks, consolidation would not yield significant efficiencies.
- **Texas Department of Licensing and Regulation (TDLR).** As the state's umbrella licensing agency, TDLR oversees about 40 different programs across diverse industries, but staff lacks expertise in jail standards and operations. Transferring the agency to TDLR would require a direct transfer of resources to ensure jail staff, inmates, and county governments are not put at risk. This move would also increase burdens on an agency already overloaded with responsibility, as discussed in the June 2020 Sunset Staff Report on TDLR.⁸

While organizational structures vary, most states have an entity performing statewide jail oversight.

The agency provides more independent oversight of jails than similar entities in other states.

About 30 states have agencies that conduct statewide jail oversight, most of which establish mandatory minimum standards for jails to follow. States use a variety of organizational structures to regulate local jails. For example, Sunset staff identified at least eight states, including Texas, Tennessee, and New York, that rely on an independent agency for jail oversight, while others incorporate this function into their corrections departments, health departments, or sheriffs' associations. Although Texas' structure is not the most common, it offers greater independence than models involving correctional staff and sheriffs' associations, and ensures employees have more jail-specific expertise than states relying on health department staff.

The agency would benefit from using standing advisory committees to assist with developing rules, identifying best practices, and addressing long-standing trends.

The commission lacks authority to appoint advisory committees and instead uses informal working groups to help with standards development, which reduces the agency's transparency, inclusivity, and effectiveness.

- **Lack of transparency and inclusivity.** Unlike advisory committees, working group meetings are not open to the public. State agencies do not have to post meeting notices, agendas, or minutes, and working group discussions and actions are not public record. The commission's working groups typically meet irregularly and away from the public's eye, and staff does not publish their work products or other relevant documentation demonstrating their contribution to the commission's decision-making process.

Further, working group participation is not representative of all those affected by the agency's minimum standards. Typically, agencies can appoint whomever they want to working groups with no requirements for balanced or diverse representation. While commission members may announce a working group opportunity during quarterly meetings, the agency does not post these opportunities on its website or seek applications from stakeholders at large. Instead, staff usually selects members from counties or interest groups that already have close ties to the agency. As a result, working group rosters since fiscal year 2017 show certain counties and interest groups have had multiple chances to participate in these influential groups, while others — particularly those directly representing inmates and their families — have not. Commission members and staff have also served as members of working groups. While they may coordinate and facilitate meetings, commission members and agency staff should not directly participate in the process or unduly influence recommendations.

- **Unaddressed long-standing issues.** In recent years, the commission has briefly convened working groups after legislative sessions to discuss rule updates required by statutory changes. These time-limited groups do not help the agency address long-standing problems or plan strategically for the future. For example, though mental health identification and services in jails have been major issues for decades, the agency's working group on telemental health and high-risk inmates met for only two months in 2018 to discuss specific legislative changes. Since mental health issues are long recurring problems for jails, they have a high probability of affecting new legislation, rulemaking, and strategic initiatives moving forward. Using advisory committees for issues like this would allow the agency to engage stakeholders in ongoing, in-depth conversations about complex problems and innovative solutions. This approach would also strengthen the commission's ability to balance pressing current issues with long-term strategic planning by ensuring invested stakeholders are readily available to analyze agency data and offer guidance that could ultimately ease burdens on commission members' time.

Advisory committees would help the commission balance current issues with long-term strategic planning.

The agency's outdated statute does not reflect current practices or updated requirements for commission member training.

- **Unnecessary data collection requirements.** While statute requires jails to submit certain juvenile justice data to the agency, this data is no longer required at the state level, and the agency has not collected it in over a decade.⁹ Previously, the agency gathered this data, and the state submitted it to the federal government to certify compliance with and receive funding under the Juvenile Justice and Delinquency Prevention Act. The Office of the Governor took over this function from 2008 until 2016, when the state no longer needed to collect the data centrally for communities to receive funding. Removing this data submission requirement would align statute with current practice.

Statute does not contain new training requirements on the commission's rulemaking authority.

- **Outdated commission member training.** The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These across-the-board recommendations (ATBs) reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain “good government” standards for state agencies. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

The agency's statute contains standard language requiring commission members to receive training and information necessary for them to properly discharge their duties.¹⁰ However, statute does not contain newer requirements for all topics the training must cover, such as a discussion of the scope of, and limitations on, the commission's rulemaking authority. Statute also does not require that the agency create a training manual for all commission members or specify that commission members must attest to receiving and reviewing the training manual annually.

The agency's statutory reporting requirements continue to be needed.

The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished.¹¹ The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, or posting requirements.

Annual reports should identify changes necessary to improve the agency's oversight function.

State law requires the agency to annually report to the governor, lieutenant governor, and speaker about the agency's operations, findings from its activities over the preceding year, and any recommendations it considers appropriate.¹² Sunset staff recommends continuing this report to ensure the agency retains a formal vehicle to convey needed changes in jail oversight to the governor and lawmakers. However, in recent years, the agency has not used this opportunity to identify potential statutory changes that could improve operations, such as those mentioned in the agency's self-evaluation report submitted to Sunset in August 2019.¹³ The agency should use its annual report to proactively discuss statutory changes needed to better conduct its oversight function and keep pace with evolving jail environments.

Sunset Staff Recommendations

Change in Statute

5.1 Continue the Texas Commission on Jail Standards for 12 years.

This recommendation would continue the Texas Commission on Jail Standards until September 1, 2033.

5.2 Authorize the commission to establish advisory committees by rule.

This recommendation would authorize the commission to establish advisory committees subject to the requirements of Chapter 2110 of the Texas Government Code to provide expertise during the rulemaking process, identify best practices, help the agency address trends, and assist with other purposes as needed. The commission should adopt rules regarding each advisory committee, including:

- Purpose, role, and goals
- Appointment procedures, composition, terms, and quorum requirements
- Membership qualifications, such as experience, representation of diverse stakeholders, or geographic location
- Conflict-of-interest provisions
- Compliance with the requirements of the Open Meetings Act

5.3 Remove statutory requirements for jail officials to report certain juvenile justice information to the agency each year.

This recommendation would remove outdated statutory requirements that municipal and county jail officials submit annual information to the agency regarding detained youth. This recommendation would ensure the agency's statute reflects current practice.

5.4 Update the standard across-the-board requirement related to commission member training.

This recommendation would require the agency to develop a training manual that each commission member attests to receiving annually, and require existing commission member training to include information about the scope of and limitations on the commission's rulemaking authority. As discussed in Issue 1, the training should provide clarity that the Legislature sets policy, and agency boards and commissions have rulemaking authority necessary to implement legislative policy.

Management Action

5.5 Direct the agency to conduct a staffing analysis to better align resource allocation with its core inspection function.

This recommendation would direct the agency to conduct an analysis of its available staffing to determine what, if any, changes could be made to focus more resources on its critical inspection duties. Under this recommendation, the agency would use historical data to assess past trends in staff workloads, as well as its strategic planning process to consider goals and priorities for the future. The agency should involve commission members, agency leadership, and staff in the analysis to help determine where current staffing limitations hinder the agency's ability to achieve its mission. The agency should complete its staffing analysis by December 1, 2021.

5.6 The agency should use its annual reporting requirement to proactively identify statutory changes needed to conduct its work more efficiently and effectively.

This recommendation would direct the agency to capitalize on its annual report as an opportunity to identify and recommend statutory changes necessary to improve its operations. For example, the agency could include recommendations on statutory updates that could enhance safety in jails. The agency should implement this recommendation beginning with its fiscal year 2021 annual report.

Fiscal Implication

These recommendations would not result in a fiscal impact to the state. Based on fiscal year 2019 appropriations, continuing the Texas Commission on Jail Standards as an independent agency would require \$1.4 million annually.

¹ Chapter 480 (H.B. 272), Acts of the 64th Texas Legislature, Regular Session, 1975.

² The table does not provide a total number of serious incidents because some incident categories overlap, allowing a single event to be counted across multiple categories. For example, a suicide in custody is also counted as a death in custody, and an assault may also result in a serious bodily injury.

³ Commission on Jail Standards, page V–24, Article V (S.B. 1), Acts of the 85th Legislature, Regular Session, 2017 (the General Appropriations Act).

⁴ Chapter 950 (S.B. 1849), Acts of the 85th Texas Legislature, Regular Session, 2017.

⁵ H.B. 1724, 78th Texas Legislature, Regular Session, 2003.

⁶ H.B. 3001, 78th Texas Legislature, Regular Session, 2003.

⁷ Sunset Advisory Commission, *Texas Commission on Law Enforcement Sunset Staff Report* (Austin: Texas Sunset Advisory Commission, November 2020).

⁸ Sunset Advisory Commission, *Texas Department of Licensing and Regulation Sunset Staff Report*, accessed September 1, 2020, https://www.sunset.texas.gov/public/uploads/files/reports/Texas%20Department%20of%20Licensing%20and%20Regulation%20Staff%20Report_6-4-20.pdf.

⁹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 511.009(a)(12) and 511.009(a)(14), Texas Government Code.

¹⁰ Section 511.004(h)–(i), Texas Government Code.

¹¹ Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

¹² Section 511.015, Texas Government Code.

¹³ Texas Commission on Jail Standards, *2019 Self-Evaluation Report*, accessed September 1, 2020, <https://www.sunset.texas.gov/public/uploads/files/reports/Texas%20Commission%20on%20Jail%20Standards%20SER.pdf>, 83–87.

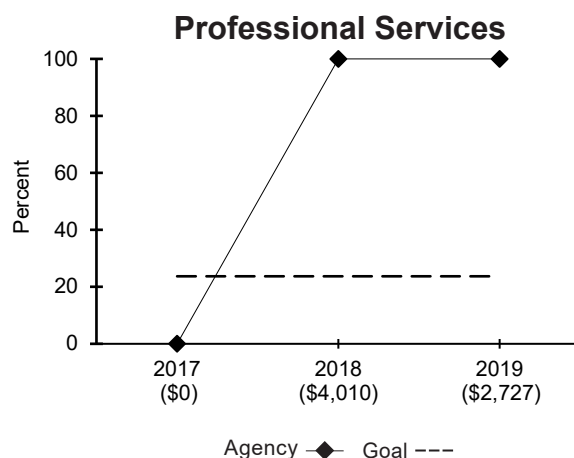
APPENDIX A

Historically Underutilized Businesses Statistics, FYs 2017–2019

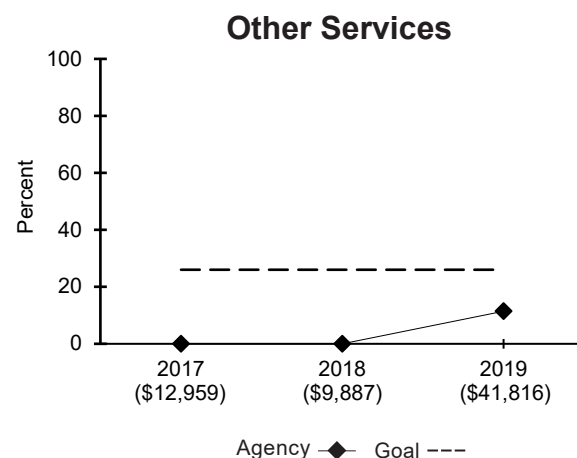
The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.¹

The following material shows trend information for the Texas Commission on Jail Standards' use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.² In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from fiscal years 2017–19. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

The agency exceeded statewide goals for HUB purchasing in the professional services and commodities categories in fiscal years 2018 and 2019. However, the agency fell below the state's goal in the other services category over the last three fiscal years. The agency has limited contract spending overall and has no spending in heavy construction, building construction, or special trade categories.

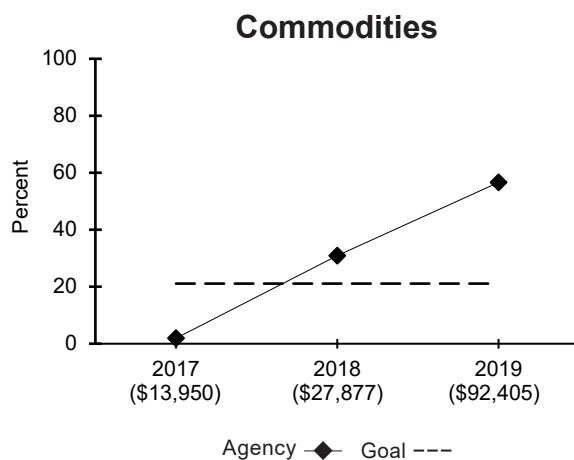


The agency had no spending in the professional services category in fiscal year 2017, but exceeded the statewide goal for HUB purchases over the next two years.



The agency did not meet the statewide purchasing goal for other services in each of the last three fiscal years. However, the spending in this category is for communications services not available through a HUB vendor.

Appendix A



The agency did not meet the statewide purchasing goal for commodities in fiscal year 2017, but exceeded this goal in fiscal years 2018 and 2019.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

² Chapter 2161, Texas Government Code.

APPENDIX B

Sandra Bland Act

In 2017, the Legislature passed Senate Bill 1849, the Sandra Bland Act, to address deficiencies that contributed to Sandra Bland's death by apparent suicide in 2015 in the Waller County Jail.¹ In 2019, the Legislature passed House Bill 4468, which made additional changes to the act.² The information below summarizes the legislative changes in these bills that relate to the Texas Commission on Jail Standards.³

- Updated jail standards by requiring the commission to adopt rules to:
 - Require jails to provide 24/7 access to telemental health services.

In 2019, H.B. 4468 modified this provision to require jails to provide access to care through either telemental health services or in-person visits. If neither is available in the county, a jail must make “reasonable efforts” to arrange for mental healthcare access “within a reasonable time.” Neither statute nor rule defines “reasonable efforts” or “within a reasonable time.”
 - Require jails to provide 24/7 access to a healthcare professional or telehealth services.
 - Require jails to have surveillance equipment monitoring jail staff as they conduct face-to-face checks on high-risk inmates.
 - Ensure continuity of prescription medication for inmates, including requirements for a qualified medical professional to review any inmate prescription “as soon as possible.” Neither statute nor rule defines “as soon as possible.”
- Established a grant program to help small county jails with 96 beds or fewer purchase telemental health and surveillance equipment. The agency received funding for one full-time equivalent (FTE) employee to administer the program.
 - In 2019, H.B. 4468 expanded grant eligibility to include jails with 288 beds or fewer due to the high amount of funds remaining one year after the agency began distributing awards.
- Required jails to report the number of serious incidents, such as deaths, assaults, and escapes, to the agency monthly, and specified the reports are considered public information.
- Required the agency to appoint a state or local law enforcement agency to investigate jail deaths as soon as possible. Neither statute nor rule defines “as soon as possible.” The agency also received funding for one FTE to review all jail deaths and escapes, and assess each reporting jail's compliance with minimum standards.
- Updated training requirements for all licensed jailers to include eight hours of mental health education coordinated and approved by the commission and Texas Commission on Law Enforcement (TCOLE) to be completed by August 31, 2021. The agency received funding for three FTEs to provide mental health training statewide.
- Formally created the jail administrator position in statute, requiring the agency and TCOLE to coordinate on developing and approving an exam for employees assigned to the position. Unless jail administrators are also sheriffs, they must pass the exam within 180 days of starting the position.

Appendix B

Statute also directed the commission to adopt rules requiring counties to remove jail administrators who fail the exam until they pass. An individual may take the exam an unlimited number of times.

- H.B. 4468 added a requirement for any privately operated jail that receives a notice of noncompliance from the agency to appear before the commission for review at its next scheduled meeting, regardless of whether the jail achieves compliance in the meantime, to incentivize compliance and ensure adequate oversight. Agency data shows, on average, private jails pass fewer annual inspections over time than other jails under the agency's jurisdiction.
- H.B. 4468 prohibited jailers appointed on a temporary basis from serving in supervisory roles, and specified temporary licenses cannot be renewed.

¹ Chapter 950 (S.B. 1849), Acts of the 85th Texas Legislature, Regular Session, 2017.

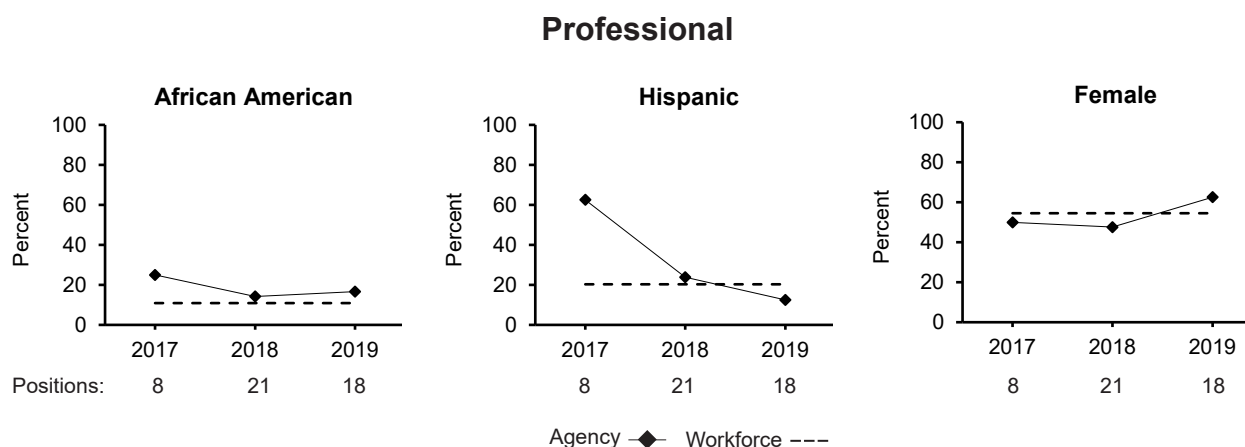
² Chapter 1252 (H.B. 4468), Acts of the 86th Texas Legislature, Regular Session, 2019.

³ All references are to S.B. 1849 unless otherwise specified.

APPENDIX C

Equal Employment Opportunity Statistics, FYs 2017–2019

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Commission on Jail Standards.¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and females in each job category.³ These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from fiscal years 2017–19. The agency exceeded civilian workforce percentages in the professional category with the exception of Hispanics in 2019 and females in 2017 and 2018. The administration and administrative support categories had too few employees to conduct a meaningful comparison to the overall civilian workforce, and the agency had no employees in the technical, service/maintenance, or skilled craft categories.



The agency exceeded the statewide civilian workforce percentage for African Americans in each of the last three fiscal years. The agency exceeded the statewide percentage for Hispanics in fiscal years 2017 and 2018, but fell below the percentage in fiscal year 2019. The agency fell below the statewide percentage for females in fiscal years 2017 and 2018, but exceeded the percentage in fiscal year 2019.

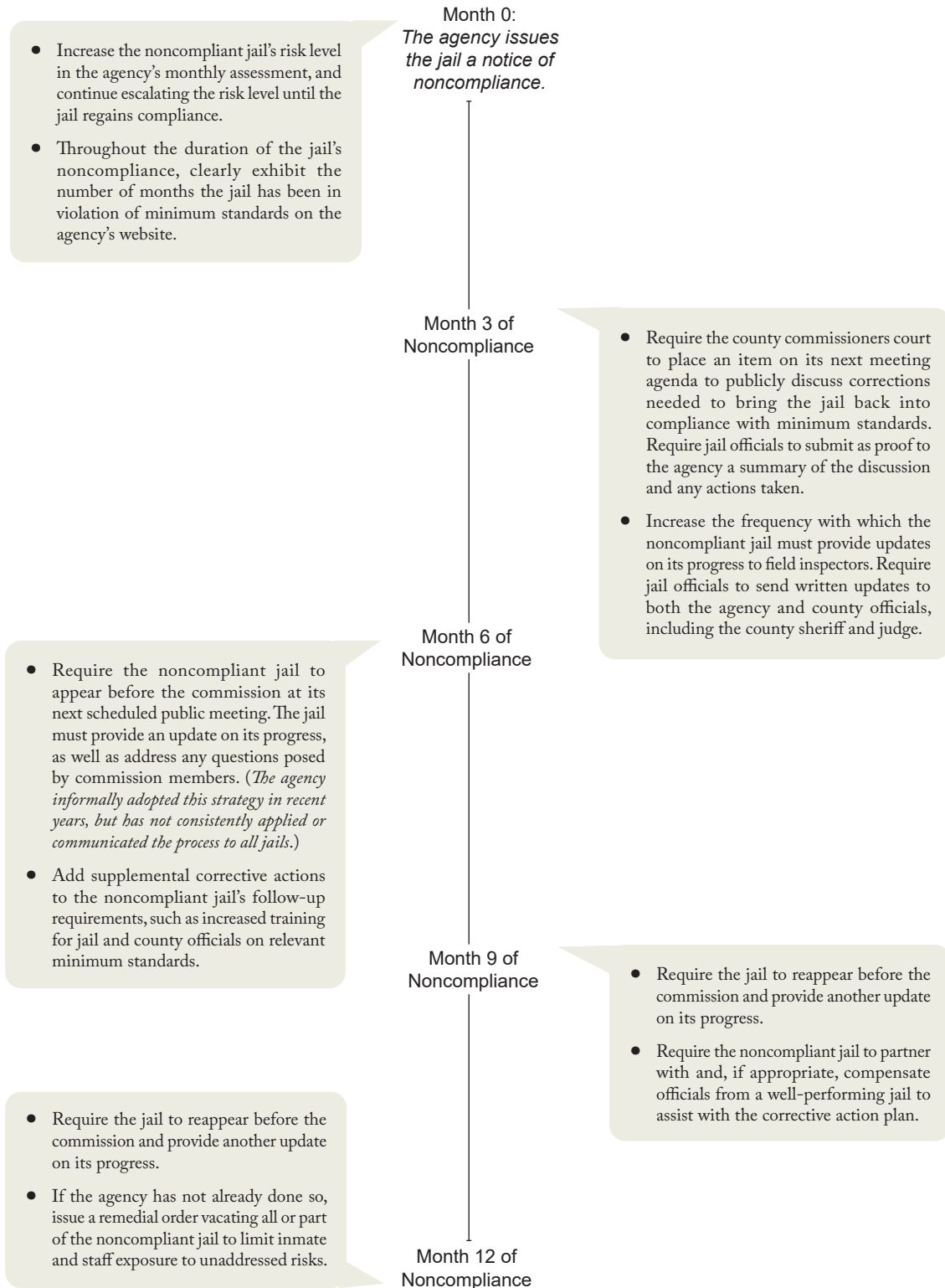
¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

² Section 21.501, Texas Labor Code.

³ Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

APPENDIX D

Timeline of Potential Escalating Actions Against Noncompliant Jails



APPENDIX E

Staff Review Activities

During the review of the Texas Commission on Jail Standards, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended commission meetings; conducted interviews and solicited written comments from interest groups and the public; spoke with staff from key legislative offices; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this agency:

- Accompanied agency staff on an inspection of a county jail.
- Attended meetings of the agency's statutorily required task force on individuals with intellectual and developmental disabilities.
- Conducted a survey of stakeholders, including sheriffs, jail administrators, county judges, and interest groups.
- Attended a conference on correctional oversight bodies within and outside the United States.
- Interviewed staff from the Texas Department of Criminal Justice, Department of Information Resources, and the Office of the Governor's Criminal Justice Division.

Sunset Staff Review of the *Texas Commission on Jail Standards*

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