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**HOUSE BILL NO. 147**

Offered January 12, 2022

Prefiled January 7, 2022

*A BILL to amend and reenact §§ 53.1-68 and 53.1-133.03 of the Code of Virginia, relating to minimum standards for local correctional facilities and lock-ups; individuals in need of behavioral health or developmental services.*

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 Patron—Wiley
 

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Committee Referral Pending

**Be it enacted by the General Assembly of Virginia:****1. That §§ 53.1-68 and 53.1-133.03 of the Code of Virginia are amended and reenacted as follows:****§ 53.1-68. Minimum standards for local correctional facilities and lock-ups; health inspections, behavioral health services inspections, and personnel.**

A. The Board shall establish minimum standards for the construction, equipment, administration, and operation of local correctional facilities, whether heretofore or hereafter established. However, no minimum standard shall be established that includes square footage requirements in excess of accepted national standards. The Board or its agents shall conduct at least one unannounced inspection of each local facility annually. However, in those years in which a certification audit of a facility is performed and the facility is in compliance with all the standards, the Board may elect to suspend the unannounced inspection based upon that certification audit and the history of compliance of the facility with the standards promulgated in accordance with this section, except in any year in which there is a change in the administration of a local or regional jail. The Board shall also establish minimum standards for the construction, equipment, and operation of lock-ups, whether heretofore or hereafter established. However, no minimum standard shall be established that includes square footage requirements in excess of accepted national standards.

B. Standards concerning sanitation in local correctional facilities and procedures for enforcing these standards shall be promulgated by the Board with the advice and guidance of the State Health Commissioner. The Board, in conjunction with the Board of Health, shall establish a procedure for the conduct of at least one unannounced annual health inspection by the State Health Commissioner or his agents of each local correctional facility. The Board and the State Health Commissioner may authorize such other announced or unannounced inspections as they consider appropriate.

C. The Board shall establish minimum standards for behavioral health services in local correctional facilities and procedures for enforcing such minimum standards, with the advice of and guidance from the Commissioner of Behavioral Health and Developmental Services and the State Inspector General.

Such standards shall include:

1. Requirements for behavioral health services provided in jails, including requirements for (i) behavioral health screening of individuals committed to local correctional facilities; (ii) referral of individuals committed to local correctional facilities for whom a behavioral health screening indicates reason to believe the person may have mental illness to a behavioral health service provider for a behavioral health assessment; ~~and (iii) the provision transfer of an individual determined to be in need of behavioral health services in from a local correctional facilities, as well as regulations directing facility to a behavioral health facility within 72 hours of completion of the behavioral health assessment; and (iv) the sharing of medical and mental health information and records in accordance with § 53.1-133.03.~~ Requirements related to behavioral health screenings and assessments shall include a requirement that in cases in which there is reason to believe an individual is experiencing acute mental health distress or is at risk for suicide, ~~(a) staff of the local correctional facility shall consult with the behavioral health service provider to implement immediate interventions and shall provide ongoing monitoring to ensure the safety of the individual and (b) the behavioral health assessment shall be completed within 72 hours of completion of the behavioral health screening, except that if the 72-hour period ends on a day that is a Saturday, Sunday, or legal holiday, the assessment shall be completed by the close of business on the next day that is not a Saturday, Sunday, or legal holiday;~~

2. Requirements for discharge planning for individuals with serious mental illness assessed as requiring behavioral health services upon release from the local correctional facility, which shall include (i) creation of a discharge plan, as soon as practicable after completion of the assessment required pursuant to subdivision 1, and (ii) coordination of services and care with community providers, community supervision agencies, and, as appropriate, the individual's family in accordance with the discharge plan until such time as the individual has begun to receive services in accordance with the

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59 discharge plan or for a period of 30 days following release from the local correctional facility,  
60 whichever occurs sooner. Discharge plans shall ensure access to the full continuum of care for the  
61 individual upon release from the local correctional facility and shall include provisions for (a) linking  
62 the individual for whom the discharge plan has been prepared to the community services board in the  
63 jurisdiction in which he will reside following release and to other supports and services necessary to  
64 meet his service needs and (b) communication of information regarding the individual's treatment needs  
65 and exchange of treatment records among service providers;

66 3. A requirement for at least one unannounced annual inspection of each local correctional facility by  
67 the Board or its agents to determine compliance with the standards for behavioral health services  
68 established pursuant to this subsection and such other announced or unannounced inspections as the  
69 Board may deem necessary to ensure compliance with the standards for behavioral health services  
70 established pursuant to this subsection; and

71 4. Provisions for the billing of the sheriff in charge of a local correctional facility or superintendent  
72 of a regional correctional facility by and payment by such sheriff or superintendent to a community  
73 services board that provides behavioral health services in the local correctional facility, in accordance  
74 with § 53.1-126.

75 *D. The Board shall establish minimum standards for identification and care of individuals with*  
76 *developmental disabilities in local correctional facilities and procedures for enforcing such minimum*  
77 *standards, with the advice of and guidance from the Commissioner of Behavioral Health and*  
78 *Developmental Services and the State Inspector General. Such standards shall include requirements for*  
79 *(i) screening of individuals committed to local correctional facilities for developmental disabilities; (ii)*  
80 *referral of individuals committed to local correctional facilities for whom a screening indicates reason*  
81 *to believe the person may have a developmental disability to an appropriate provider for an assessment*  
82 *to determine whether the individual has a developmental disability and is in need of developmental*  
83 *services; (iii) transfer of an individual determined to have a developmental disability and to be in need*  
84 *of developmental services from a local correctional facility to a facility at which appropriate*  
85 *developmental services are provided within 72 hours of completion of the assessment described in clause*  
86 *(ii); and (iv) the sharing of medical information and records, including information and records*  
87 *regarding the individual's developmental disability, in accordance with § 53.1-133.03. For the purposes*  
88 *of this subsection, "developmental disability" and "developmental services" shall have the same meaning*  
89 *as set forth in § 37.2-100.*

90 The Department of Criminal Justice Services, in accordance with § 9.1-102, shall establish minimum  
91 training standards for persons designated to provide courthouse and courtroom security pursuant to the  
92 provisions of § 53.1-120 and for persons employed as jail officers or custodial officers under the  
93 provisions of this title. The sheriff shall establish minimum performance standards and management  
94 practices to govern the employees for whom the sheriff is responsible.

95 E. The superintendent of a regional jail or jail farm shall establish minimum performance standards  
96 and management practices to govern the employees for whom the superintendent is responsible.

97 **§ 53.1-133.03. Exchange of medical and mental health information and records.**

98 A. Whenever a person is committed to a local or regional correctional facility, the following shall be  
99 entitled to obtain medical and mental health information and records concerning such person, *including*  
100 *information and records related to such person's developmental disability*, from a health care provider,  
101 even when such person does not provide consent or consent is not readily obtainable:

102 1. The person in charge of the facility, or his designee, when such information and records are  
103 necessary (i) for the provision of health care *or developmental services* to the person committed, (ii) to  
104 protect the health and safety of the person committed or other residents or staff of the facility, or (iii) to  
105 maintain the security and safety of the facility. Such information and records of any person committed  
106 to jail and transferred to another correctional facility may be exchanged among administrative personnel  
107 of the correctional facilities involved and of the administrative personnel within the holding facility  
108 when there is reasonable cause to believe that such information is necessary to maintain the security and  
109 safety of the holding facility, its employees, or prisoners. The information exchanged shall continue to  
110 be confidential and disclosure shall be limited to that necessary to ensure the security and safety of the  
111 facility.

112 2. Members of the Parole Board or its designees, as specified in § 53.1-138, in order to conduct the  
113 investigation required under § 53.1-155.

114 3. Probation and parole officers and local probation officers for use in parole and probation planning,  
115 release, and supervision.

116 4. Officials of the facilities involved and officials within the holding facility for the purpose of  
117 formulating recommendations for treatment and rehabilitative programs; classification, security and work  
118 assignments; and determining the necessity for medical, dental and mental health care, treatment and  
119 other such programs.

120 5. Medical and mental health hospitals and facilities *and developmental services providers*, both

public and private, including community services boards and health departments, for use in treatment while committed to jail or a correctional facility while under supervision of a probation or parole officer.

B. Substance abuse records subject to federal regulations, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. § 2.11 et seq., shall not be subject to the provisions of this section. The disclosure of results of a test for human immunodeficiency virus shall not be permitted except as provided in §§ 32.1-36.1 and 32.1-116.3.

C. The release of medical and mental health information and records, *including information and records related to a person's developmental disability*, to any other agency or individual shall be subject to all regulations promulgated by the ~~State Board of Local and Regional Jails~~ that govern confidentiality of such records. Medical and mental health information, *including information about a person's developmental disability*, concerning a prisoner that has been exchanged pursuant to this section may be used only as provided herein and shall otherwise remain confidential and protected from disclosure.

D. Nothing contained in this section shall prohibit the release of records to the Department of Health Professions or health regulatory boards consistent with Subtitle III (§ 54.1-2400 et seq.) of Title 54.1.

E. Except for any information and records not subject to this section or not permitted to be disclosed pursuant to subsection B, any health care provider as defined in § 32.1-127.1:03 who has provided services within the last two years to a person committed to a local or regional correctional facility shall, upon request by the local or regional correctional facility, disclose to the local or regional correctional facility where the person is committed any information necessary to ensure the continuity of care of the person committed. Any health care provider who discloses medical and mental health information and records, *including information and records related to a person's developmental disability*, pursuant to this section shall be immune from civil liability resulting from such disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), absent bad faith or malicious intent.