

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: HB1341

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Brewer

3. Committee: Courts of Justice

4. Title: Local correctional facilities and lock-ups; minimum standards.

5. Summary: Requires the State Board of Local and Regional Jails (the Board) to establish minimum standards for identification and care of individuals with developmental disabilities in local correctional facilities and procedures for enforcing such minimum standards, including requirements for (i) developmental disabilities screening of individuals committed to local correctional facilities, (ii) referral of individuals committed to local correctional facilities for whom a screening indicates reason to believe the individual may have a developmental disability to an appropriate provider for an assessment to determine whether the individual has a developmental disability and is in need of developmental services, and (iii) transfer of an individual determined to have a developmental disability and to be in need of developmental services from a local correctional facility to a facility at which appropriate developmental services are provided within 72 hours of completion of the assessment. The bill also requires the Board to amend standards governing the delivery of behavioral health services in local correctional facilities and lock-ups to provide that if an individual is assessed as being in need of behavioral health services for severe mental illness, such individual shall be transferred from the local correctional facility or lock-up to a behavioral health facility within 72 hours of the assessment. Currently, standards governing behavioral health services in local correctional facilities and lock-ups require that if a person is assessed as being in need of behavioral health services, the local correctional facility or lock-up shall provide such services.

The bill also provides that the local community services board or behavioral health authority shall arrange for the admission of a person determined to be in need of behavioral health services for severe mental illness or severe developmental disability within 72 hours of receipt of notification by the local correctional facility of the need for such admission.

6. Budget Amendment Necessary: Indeterminate

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: This legislation is likely to have a fiscal impact on numerous state and local entities.

Impact on Department of Behavioral Health and Developmental Services:

The Department of Behavioral Health and Developmental Services anticipates that this bill will have a significant impact on the number of individuals ordered to be transferred to a DBHDS facility. Using current existing information from the State Compensation Board regarding the number of mentally ill in jails, there are **6,554** inmates with mental illness, of which **3,277** have Serious Mental Illness (SMI). The legislation specifies “severe mental illness”, thus if the bill is interpreted to only require the transfer of those with SMI, admissions could be at least **3,277** inmates. The state currently operates 1,120 staffed adult mental health beds at a cost of **\$908.77** per day, with approximately 6500 admissions in FY 2021. With the additional admissions to facilities as a result of this legislation, additional security staff and security measures would be required, resulting in a rising average cost per bed. Utilizing the current price and various lengths of stay, the estimated fiscal impact is demonstrated below for the bill as is and if it were to be amended. It is important to note that length of stay can vary from one day to weeks, to a year, or even more. Based on current average lengths of stay, it likely that transfers would stay anywhere from several months to a year. This fiscal impact assumes that the language is interpreted to mean “serious mental illness”.

Length of Stay	3,277 Inmates
1 Day	\$2,978,039
1 Week	\$20,846,275
1 Month	\$83,385,100
1/2 Year	\$542,003,151
1 Year	\$1,084,006,302

This impact assumes that the state is able to build capacity solely through increasing staffing in existing facilities to cover additional demand for beds. If able to find sufficient additional staff, DBHDS could operate approximately 1,500 adult beds within their current operational bed capacity (not all beds are currently able to be staffed), which is not sufficient to accommodate a large influx in admissions. In order to accommodate capacity beyond 1,500 beds, the expansion of facilities or new facilities would be required and would take time and resources to build. For the purposes of this fiscal impact statement, the cost of a one-month stay, assuming all 3,277 inmates are transferred to a DBHDS facility for one stay, is presented below. This cost does not account for the indeterminate cost of expansion of facilities. The cost of this legislation also does not account for individuals who would return to jail and then possibly require an additional stay(s) in a DBHDS facility.

Costs to DBHDS Facilities	GF Annual Cost
3,277 Admissions, 1 month of stay	\$83,385,100
Total	\$83,385,100

Impact on Law Enforcement Agencies:

The bill requires screening of individuals committed to local correctional facilities for developmental disabilities. At this time, based on information received from the Compensation Board, it is not clear if any local correctional facility has a screening tool or instrument to conduct such screenings for referral purposes. The Virginia Association of Regional Jails has reported that current screening and assessment instruments do not address developmental disabilities, and therefore a screening instrument would need to be identified or developed for use. The estimated cost of developing a screening instrument is not known at this time.

The bill further requires referral of individuals committed to local correctional facilities for whom a screening indicates reason to believe the person may have a developmental disability to an appropriate provider for an assessment to determine whether the individual has a developmental disability and is in need of developmental services. Based on information from the Compensation Board, it is not known if any local correctional facility has an appropriate provider for assessment purposes or if offenders would need to be transported outside the facility. The fiscal impact on local correctional facilities related to this provision is not available at this time.

Additionally, the legislation requires transfer of an individual determined to have a severe developmental disability and to be in need of developmental services from a local correctional facility to a facility at which appropriate developmental services are provided within 72 hours of completion of the assessment. Further, the legislation requires transfer of an individual determined to be in need of behavioral health services for severe mental illness from a local correctional facility to a behavioral health facility within 72 hours of completion of the behavioral health assessment. Based on information received from the Compensation Board, sheriffs with jails have reported that transferring an individual within 72 hours of completion of a mental health assessment or an assessment of developmental disability is not feasible due to manpower issues and the potential of limited bed capacity at the state facilities.

To the extent, offenders are transferred to a DBHDS facility for treatment, there is potential savings. Any local-responsible inmate who is transferred out of a jail would result in a cost avoidance of \$4 per day (\$12 per day for any state-responsible inmate who is held in a jail). However, at this time, it is not known how long the individual would be housed at the state facility if transferred. Making the same assumptions and notations for the number of patients and bed days as were made at DBHDS in the example above, (3,277 patients and 30 bed days of jail avoided for each) the cost avoidance would be \$393,240 assuming all transferred patients are local-responsible.

According to the Department of Corrections, which provides administrative and other support functions for the Board, this bill is not expected to have a material impact on agency operations. The State Inspector General also reports that this bill is not expected to impact agency operations.

Additional possible costs:

- In addition to the costs of this legislation to treat individuals in state facilities, will likely be a need for Community Services Boards to provide additional evaluation and coordination services, and participate in court proceedings. The legislation requires Community Services Boards and Behavioral Health Authorities to coordinate the transfer of individuals from jails to facilities. The cost to CSBs at this time is indeterminate, but could be considerable if they need to provide evaluation services to every individual and coordinate the large number of transfers that would result from this legislation.
- It is anticipated that one area of concern will be the costs of transporting individuals to and from DBHDS facilities in such large numbers. Currently, a jail transfer is kept in law enforcement custody until they have been admitted to the facility. This could place an increased staffing and cost burden on local law enforcement.
- The cost of developing a screening tool is indeterminate at this time. The Department of Behavioral Health and Developmental Services was unable to locate a similar tool being used elsewhere, and would need additional time to research and determine what type of tool could be used and the possible costs of implementing it.
- Costs to the courts related to the increased number of jail transfer orders is indeterminate.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, local and regional jails, State Inspector General, Department of Behavioral Health and Developmental Services

10. Technical Amendment Necessary: No

11. Other Comments: None.