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HOUSE BILL NO. 1341

Offered January 21, 2022

A *BILL to amend and reenact §§ 53.1-68 and 53.1-133.03 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 5 of Title 37.2 a section numbered 37.2-513 and by adding in Chapter 6 of Title 37.2 a section numbered 37.2-616, relating to local correctional facilities and lock-ups; transfer of individuals in need of behavioral health or developmental services.*

Patron—Brewer

Referred to Committee for Courts of Justice

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 and that the Code of Virginia is amended by adding in Chapter 5 of Title 37.2 a section numbered 37.2-513 and by adding in Chapter 6 of Title 37.2 a section numbered 37.2-616 as follows:

§ 37.2-513. Coordination of services for certain individuals in local correctional facilities.

Every community services board shall, upon notification by a local correctional facility that an individual committed to the local correctional facility has been determined to have (i) severe mental illness, arrange for the admission of such individual to a mental health facility for treatment or (ii) severe developmental disability, arrange for the admission of such individual to a facility at which developmental services are provided. Admission of an individual pursuant to this section shall occur within 72 hours of receipt of notification of the need for admission.

§ 37.2-616. Coordination of services for certain individuals in local correctional facilities.

Every behavioral health authority shall, upon notification by a local correctional facility that an individual committed to the local correctional facility has been determined to have (i) severe mental illness, arrange for the admission of such individual to a mental health facility for treatment or (ii) severe developmental disability, arrange for the admission of such individual to a facility at which developmental services are provided. Admission of an individual pursuant to this section shall occur within 72 hours of receipt of notification of the need for admission.

§ 53.1-68. Minimum standards for local correctional facilities and lock-ups; health inspections, behavioral health services and developmental 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~~ individual may have mental illness to a behavioral health service provider for a behavioral health assessment; ~~and~~ (iii) in cases in which an individual is determined to have severe mental illness, prompt notification of the local community services board or behavioral health authority

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59 regarding the need to arrange for admission of the individual to a mental health facility for mental
60 health treatment and the transfer of such individual to the mental health facility designated by the
61 community services board within 72 hours of such notification in accordance with § 37.2-513 and, in
62 all other cases, the provision of behavioral health services in local correctional facilities; as well as
63 regulations directing; and (iv) the sharing of medical and mental health information and records in
64 accordance with § 53.1-133.03. Requirements related to behavioral health screenings and assessments
65 shall include a requirement that in cases in which there is reason to believe an individual is experiencing
66 acute mental health distress or is at risk for suicide, (a) staff of the local correctional facility shall
67 consult with the behavioral health service provider to implement immediate interventions and shall
68 provide ongoing monitoring to ensure the safety of the individual and (b) the behavioral health
69 assessment shall be completed within 72 hours of completion of the behavioral health screening, except
70 that if the 72-hour period ends on a day that is a Saturday, Sunday, or legal holiday, the assessment
71 shall be completed by the close of business on the next day that is not a Saturday, Sunday, or legal
72 holiday;

73 2. Requirements for discharge planning for individuals with serious mental illness assessed as
74 requiring behavioral health services upon release from the local correctional facility, which shall include
75 (i) creation of a discharge plan, as soon as practicable after completion of the assessment required
76 pursuant to subdivision 1, and (ii) coordination of services and care with community providers,
77 community supervision agencies, and, as appropriate, the individual's family in accordance with the
78 discharge plan until such time as the individual has begun to receive services in accordance with the
79 discharge plan or for a period of 30 days following release from the local correctional facility,
80 whichever occurs sooner. Discharge plans shall ensure access to the full continuum of care for the
81 individual upon release from the local correctional facility and shall include provisions for (a) linking
82 the individual for whom the discharge plan has been prepared to the community services board in the
83 jurisdiction in which he will reside following release and to other supports and services necessary to
84 meet his service needs and (b) communication of information regarding the individual's treatment needs
85 and exchange of treatment records among service providers;

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

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

95 D. The Board shall establish minimum standards for identification and care of individuals with
96 developmental disabilities in local correctional facilities and procedures for enforcing such minimum
97 standards, with the advice of and guidance from the Commissioner of Behavioral Health and
98 Developmental Services and the State Inspector General. Such standards shall include requirements for
99 (i) developmental disabilities screening of individuals committed to local correctional facilities; (ii)
100 referral of individuals committed to local correctional facilities for whom a screening indicates reason
101 to believe the individual may have a developmental disability to an appropriate provider for an
102 assessment to determine whether the individual has a developmental disability and is in need of
103 developmental services; (iii) in cases in which an individual is determined to have a severe
104 developmental disability, prompt notification of the local community services board or behavioral health
105 authority regarding the need to arrange for admission of the individual to a facility in which
106 developmental services are provided and the transfer of such individual to such facility within 72 hours
107 of such notification in accordance with § 37.2-513 and, in all other cases, the provision of
108 developmental services in local correctional facilities; and (iv) the sharing of medical and mental health
109 information and records in accordance with § 53.1-133.03. For the purposes of this subsection,
110 "developmental disability" and "developmental services" shall have the same meaning as set forth in
111 § 37.2-100.

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

117 F. The superintendent of a regional jail or jail farm shall establish minimum performance
118 standards and management practices to govern the employees for whom the superintendent is
119 responsible.

120 **§ 53.1-133.03. Exchange of medical and mental health information and records.**

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

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

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

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

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

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.