

In the past, the State has offered settlement negotiations to counties that did not pay their full Safekeeper bills within 120 days, and these agreements sometimes resulted in the State being reimbursed for an amount less than its total charges. Some agreements allow county governments to remit payment to the State at a rate of \$100 per month for up to 200 years and do not assess interest fees or prevent these counties from continuing to send Safekeepers to prisons while in arrears. Thus, the State is not recouping the total cost of Safekeepers sent by these counties, and as a result, less funds are available for the inmate population serving sentences in prisons.

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## Recommendations

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### **Recommendation 1. The General Assembly should direct DPS Health Services to expand the data elements it collects on the Safekeeper population.**

As described in Finding 1, counties may send a county inmate to a state prison facility under a Safekeeping order. However, limited data collection by the Department of Public Safety's division of Health Services (DPS Health Services) prevents the State from conducting analysis of the relative number of Safekeepers who are admitted for medical and mental health reasons and assessing adequate charges to counties for the services DPS provides to Safekeepers.

The General Assembly should direct DPS and DPS Health Services to create and maintain an electronic inventory of the following

- date a Safekeeping order is received;
- reason an order was granted as outlined in law;
- date a county transfers a Safekeeper to state custody;
- prison location of Safekeeper transfer;
- name of the referring county transferring a Safekeeper to state custody;
- date a Safekeeper receives DPS health services (e.g., intake screening and sick calls);
- health services provided with corresponding charges billed;
- date DPS Health Services staff determines a Safekeeper no longer needs high-level healthcare services from a state prison;
- date DPS staff notifies the county it should reassume custody, as well as respective method of notification (i.e., phone, mail, electronic mail); and
- date that a county reassumes custody of a Safekeeper.

### **Recommendation 2. The General Assembly should direct DPS Health Services to revise its rates and ensure consistent billing practices for Safekeeper health services, seek reimbursement for additional health-related Safekeeper costs, and complete Medicaid applications for Safekeepers.**

As discussed in Finding 2, DPS does not assess consistent or up-to-date charges to counties for health services it provides to Safekeepers. DPS

also does not assess charges for custody staff time or transportation costs related to Safekeepers receiving outside health services and does not assess charges to counties for Safekeeper sick call visits. Further, DPS does not complete Medicaid applications for Safekeepers receiving qualifying services while in state custody but instead pays bills from outside providers at statutory or contractual rates and in turn seeks reimbursement from counties.

The General Assembly should modify state law to require DPS to collect data on and seek reimbursement from counties for custody staff time and transportation costs associated with Safekeepers receiving outside health services. The rates for reimbursement should mirror those for which the State reimburses counties for the same services through the State Misdemeanor Confinement Program (SMCP). Further, the General Assembly should direct DPS Health Services to submit Medicaid applications on behalf of Safekeepers admitted for qualifying services and thought to be Medicaid-eligible.

The General Assembly also should direct DPS Health Services to update the medical services schedule of charges assessed to counties for Safekeepers, adopt these rates in policy, and ensure that counties are assessed these charges for Safekeepers at all prison facilities.<sup>18</sup> In determining rates, DPS should consider, at a minimum, the actual rate for services provided and current established Medicaid rates for respective services. DPS Health Services should be directed to report to the Joint Legislative Oversight Committee on Justice and Public Safety on its modified schedule of charges by December 1, 2019.

Further, DPS Health Services should be directed to ensure that the medical services Safekeepers receive are documented and that this information is reported to the DPS Controller's Office so that county governments are properly billed. In addition, the General Assembly should modify state law to require counties to reimburse DPS for all Safekeeper sick call encounters at the rate established for other inmates.

**Recommendation 3. The General Assembly should modify state law to change the per diem rate for counties that do not reassume custody of their Safekeepers in a timely manner.**

As discussed in Finding 1, DPS does not have a mechanism in place to ensure counties reassume custody of Safekeepers in a timely manner, potentially limiting internal health services resources available to the general prison population.

The General Assembly should modify state law to impose an additional daily per diem charge, inclusive of weekends, for counties that do not reassume custody of their Safekeepers upon notification by DPS Health Services staff that the Safekeeper may be returned safely to county custody.<sup>19</sup> If a notified county fails to reassume custody of a Safekeeper after three days, statute should require DPS to charge the county an

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<sup>18</sup> Rates should be in compliance with N.C. Gen Stat. § 162-39(c).

<sup>19</sup> N.C. Gen Stat. § 162-39.

additional \$20 per day per Safekeeper (in addition to the \$40 per diem and other charges allowable under current state law) until the county reassumes custody, unless there are documented extenuating circumstances approved by the Director of DPS Health Services. Regardless of the circumstances, if a notified county fails to reassume custody of a Safekeeper after five days, statute should require DPS to charge the county the additional per diem charge. Further, the General Assembly should direct DPS Health Services to call the Safekeeper's sending county jail to notify that facility that a Safekeeper admitted for medical purposes is ready for pickup and also email the county sheriff or the sheriff's designee with such notification.

**Recommendation 4. The General Assembly should modify state law to prohibit counties that do not reimburse the State in a timely manner for Safekeeper charges from transferring Safekeepers to prisons for medical or mental health purposes.**

As described in Finding 2, the State cannot fully ensure reimbursement for Safekeepers from counties that do not participate in the Statewide Misdemeanant Confinement Program (SMCP). Under state law, the North Carolina Sheriff's Association (NCSA) withholds SMCP payments from counties with accrued and unpaid balances of 120 days or more for their Safekeeper populations and directs these payments to the Controller's Office within the Department of Public Safety (DPS), which then applies the amount towards a county's respective past due balance. This arrangement is designed to recover costs associated with Safekeepers being temporarily housed in state facilities. However, the effectiveness of this recovery mechanism is limited because counties are not required to participate in SMCP as receiving counties in order to send their Safekeepers to state prisons.

The General Assembly should modify state law to prohibit counties meeting either of the following two conditions from sending Safekeepers to state prison facilities for medical or mental health purposes:

- counties that have incurred Safekeeper balances of 120 days as of January 1, 2020, unless a formal dispute over the balance has been initiated by the county, or
- counties that are not a SMCP-receiving county for reasons other than documented jail capacity.

**Recommendation 5. The General Assembly should modify state law related to the processes by which Safekeepers are admitted to prisons for medical or mental health purposes.**

State law stipulates that the decision by a county to send an inmate to a prison as a Safekeeper for medical or mental health purposes should be made when a prisoner held in a county jail requires medical or mental health treatment that the county decides can best be provided by DPS's

Division of Adult Correction.<sup>20</sup> The decision to request an order is made by county sheriff staff, at which point the order is sent to a judge for a decision. DPS staff stated that Safekeeper orders for medical or mental health purposes do not consistently contain an expiration date or a date by which the county must reassume custody of the inmate.

As discussed in Finding 1, there is no mechanism in place to ensure only those county jail inmates who have medical or mental health treatment needs exceeding their jails' capabilities receive such services as Safekeepers in state prison facilities. Neither DPS nor the North Carolina Sheriff's Association (NCSA) maintain systematic records of the healthcare-related capabilities of county jails.

As shown in Exhibit 4, the General Assembly should modify state law to allow initial Safekeeper orders for medical or mental health purposes to be granted for a maximum of 10 days. Within 10 days of entry into a prison as a Safekeeper, the following two steps should occur.

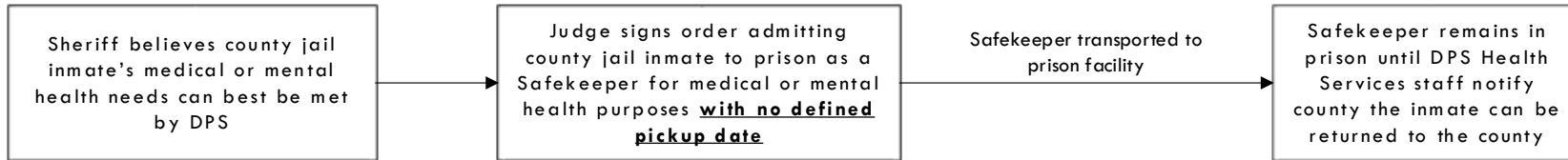
- **Step 1.** DPS Health Services should evaluate the Safekeeper's medical or mental health needs and recommend whether it would be more appropriate to return the inmate to county jail or allow the inmate to remain in prison to receive services. The setting recommendation should include an estimated date by which the inmate should no longer need DPS's services.
- **Step 2.** Sheriffs should obtain a second judicial order for any Safekeeper staying beyond the initial 10-day period. Any request to a judge for a medical or mental health admission beyond the initial 10 days should include DPS Health Services's setting recommendation.

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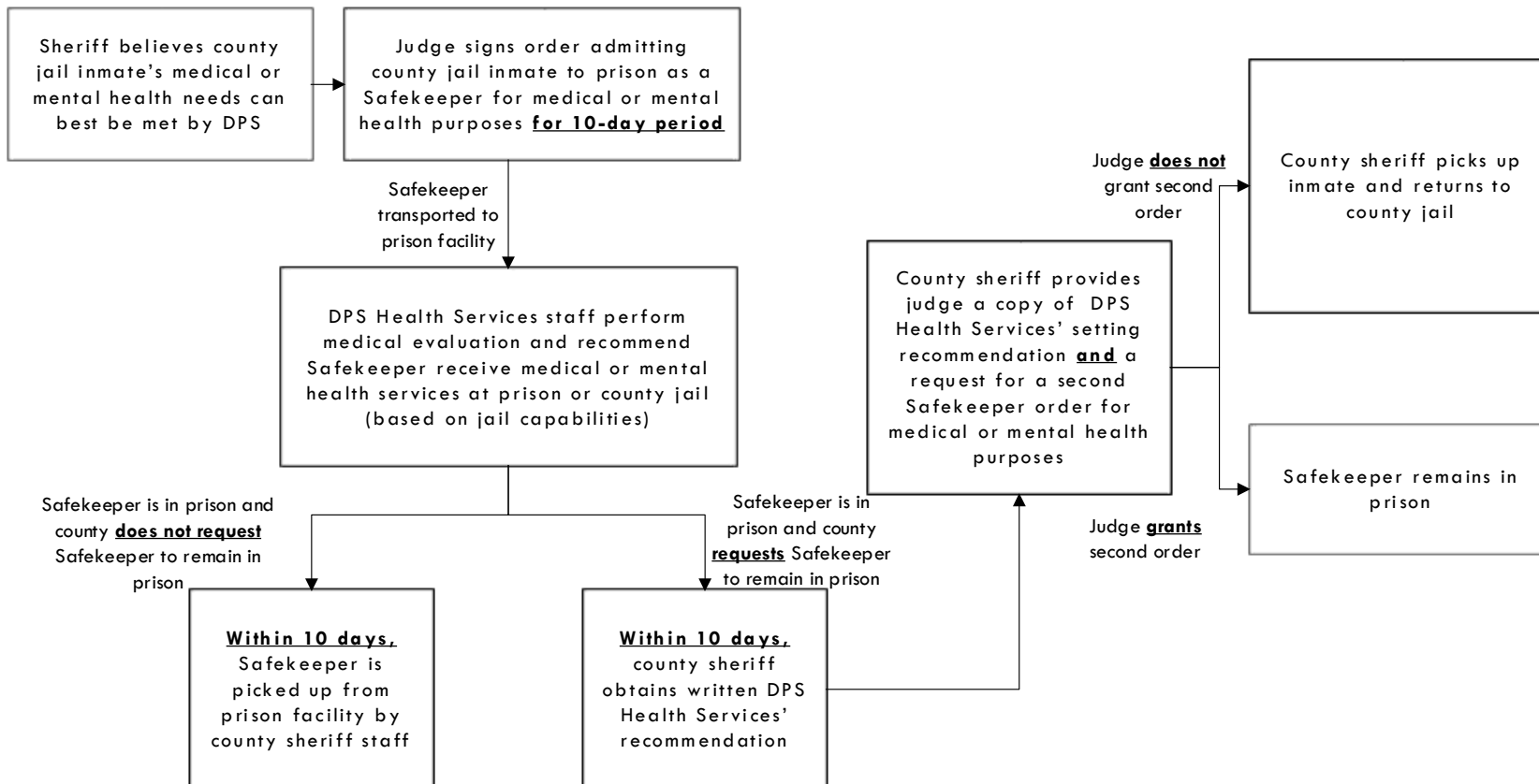
<sup>20</sup> N.C. Gen. Stat. § 162-39(d).

### Exhibit 4: Recommended Process for Admitting and Extending Services to Safekeepers for Medical or Mental Health Purposes in State Prison Facilities

#### Current Process



#### Recommended Process



Source: Program Evaluation Division based on review of state law and information from the Department of Public Safety.

In addition, the General Assembly should direct the NCSA to compile an inventory, to be updated annually, of each county jail's medical and mental health capabilities within the facility itself or through extension or partnership with other county departments (i.e., county health departments) or private vendors. This inventory will provide DPS Health Services staff with valuable information when making decisions on the necessity of an inmate remaining in a prison facility as a Safekeeper and will help ensure county inmates are not staying in prisons when their needs could be met within county jails. NCSA should provide this inventory to DPS Health Services and the Joint Legislative Oversight Committee on Justice and Public Safety beginning December 1, 2019, and annually thereafter.

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## Agency Response

A draft of this report was submitted to the Department of Public Safety for review. Its response is provided following the report.

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## Program Evaluation Division Contact and Acknowledgments

For more information on this report, please contact the lead evaluator, Brent Lucas, at [brent.lucas@ncleg.net](mailto:brent.lucas@ncleg.net).

Staff members who made key contributions to this report include Sara Nienow and Adora Thayer. John W. Turcotte is the director of the Program Evaluation Division.