

§ 162-39. Transfer of prisoners when necessary for safety and security; application of section to municipalities.

(a) Whenever necessary for the safety of a prisoner held in any county jail or to avoid a breach of the peace in any county or whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the housing of such prisoners, the resident judge of the superior court or any judge holding superior court in the district or any district court judge may order the prisoner transferred to a fit and secure jail in some other county where the prisoner shall be held for such length of time as the judge may direct.

(b) Whenever necessary to avoid a security risk in any county jail, or whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the housing of such prisoners, the resident judge of the superior court or any judge holding superior court in the district or any district court judge may order the prisoner transferred to a unit of the State prison system designated by the Secretary of the Department of Adult Correction or the Secretary's authorized representative. For purposes of this subsection, a prisoner poses a security risk if the prisoner:

- (1) Poses a serious escape risk;
- (2) Exhibits violently aggressive behavior that cannot be contained and warrants a higher level of supervision;
- (3) Needs to be protected from other inmates, and the county jail facility cannot provide such protection;
- (4) Is a female or a person 18 years of age or younger, and the county jail facility does not have adequate housing for such prisoners;
- (5) Is in custody at a time when a fire or other catastrophic event has caused the county jail facility to cease or curtail operations; or
- (6) Otherwise poses an imminent danger to the staff of the county jail facility or to other prisoners in the facility.

(b1) The Health Services Division of the Department of Adult Correction shall maintain records of prisoners transferred to a unit of the State prison system pursuant to subsection (b) of this section. The records shall utilize unique identifiers for each transferred prisoner and shall include all of the following information:

- (1) The date the transfer order was received.
- (2) The statutory basis upon which the order was granted.
- (3) The date the prisoner was transferred to State custody.
- (4) The State prison facility where the prisoner was transferred.
- (5) The county where the prisoner was removed.
- (6) The dates the prisoner received health services from the Department.
- (7) A list of health services provided to the prisoner and the corresponding charges.
- (8) The date the Department determined that the prisoner no longer needs health services to be provided by the State prison system.
- (9) The date and method used by the Department to notify the county that the prisoner should be transferred back to the custody of the county.
- (10) The date that the prisoner is returned to the custody of the county.

(c) The sheriff of the county from which the prisoner is removed shall be responsible for conveying the prisoner to the jail or prison unit where the prisoner is to be held, and for returning the prisoner to the common jail of the county from which the prisoner was transferred. The return shall be made at the expiration of the time designated in the court order directing the transfer unless the judge, by appropriate order, directs otherwise. The sheriff or keeper of the jail of the county designated in the court order, or the officer in charge of the prison unit designated by the Secretary of the Department of Adult Correction shall receive and release custody of the prisoner

in accordance with the terms of the court order. If a prisoner is transferred to a unit of the State prison system, the county from which the prisoner is transferred shall pay the Division of Prisons of the Department of Adult Correction for maintaining the prisoner for the time designated by the court at the per day, per inmate rate at which the Division of Prisons of the Department of Adult Correction pays a local jail for maintaining a prisoner. The county shall also pay the Division of Prisons of the Department of Adult Correction for the costs of medical care incurred while the prisoner was in the custody of the Division, defined as follows:

- (1) Medical expenses incurred as a result of providing health care to a prisoner as an inpatient (hospitalized).
- (2) Other medical expenses when the total cost exceeds thirty-five dollars (\$35.00) per occurrence or illness as a result of providing health care to a prisoner as an outpatient (nonhospitalized).
- (3) Cost of replacement of eyeglasses and dental prosthetic devices if those eyeglasses or devices are broken while the prisoner is incarcerated, provided the prisoner was using the eyeglasses or devices at the time of his commitment and then only if prior written consent of the county is obtained by the Division.
- (4) Transportation and custody costs associated with the transfer of prisoners receiving health care outside of the prison facility. The county shall reimburse the State for services provided to the prisoner at the same mileage reimbursement rate and hourly custody rate that are reimbursed pursuant to the Statewide Misdemeanant Confinement Program.
- (5) Cost of sick call encounters at the rate charged to State prison inmates.

(c1) If the prisoner is transferred to a jail in some other county, the county from which the prisoner is transferred shall pay to the county receiving the prisoner in its jail the actual cost of maintaining the prisoner for the time designated by the court. Counties are authorized to enter into contractual agreements with other counties to provide jail facilities to which prisoners may be transferred as deemed necessary under this section.

(c2) Whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the safekeeping of such prisoners, the resident judge of the superior court or any superior or district court judge holding court in the district may order the prisoners transferred to a unit of the Division of Prisons of the Department of Adult Correction designated by the Secretary of the Department of Adult Correction or the Secretary's authorized representative, where the prisoners may be held for such length of time as the judge may direct, such detention to be in cells separate from those used for imprisonment of persons already convicted of crimes, except when admission to an inpatient prison medical or mental health unit is required to provide services deemed necessary by a prison health care clinician. The sheriff of the county from which the prisoners are removed shall be responsible for conveying the prisoners to the prison unit or units where they are to be held, and for returning them to the common jail of the county from which they were transferred. However, if due to the number of prisoners to be conveyed the sheriff is unable to provide adequate transportation, the sheriff may request the assistance of the Division and the Division is hereby authorized and directed to cooperate with the sheriff and provide whatever assistance is available, both in vehicles and manpower, to accomplish the conveying of the prisoners to and from the county to the designated prison unit or units. The officer in charge of the prison unit designated by the Secretary of the Department of Adult Correction or the Secretary's authorized representative shall receive and release the custody of the prisoners in accordance with the terms of the court order. The county from which the prisoners are transferred shall pay to the Division the actual cost of transporting the prisoners and the cost of maintaining the prisoners at the per day, per inmate rate at which the Division pays a local jail for maintaining a prisoner, provided, however, that a county is not required to reimburse the State for transporting or maintaining a prisoner who was a resident of another state

or county at the time the prisoner was arrested. However, if the county commissioners shall certify to the Governor that the county is unable to pay the bill submitted by the Division to the county for the services rendered, either in whole or in part, the Governor may recommend to the Council of State that the State of North Carolina assume and pay, in whole or in part, the obligation of the county to the Division, and upon approval of the Council of State the amount so approved shall be paid from the Contingency and Emergency Fund to the Division of Prisons of the Department of Adult Correction.

(c3) When, due to an emergency, it is not feasible to obtain from a judge of the superior or district court a prior order of transfer, the sheriff of the county and the Division of Prisons of the Department of Adult Correction may exercise the authority hereinafter conferred; provided, however, that the sheriff shall, as soon as possible after the emergency, obtain an order from the judge authorizing the prisoners to be held in the designated place of confinement for such period as the judge may direct. All provisions of this section shall be applicable to municipalities whenever prisoners are arrested in such numbers that the municipal jail facilities and the county jail facilities are insufficient and inadequate for the safekeeping of the prisoners. The chief of police is hereby authorized to exercise the authority herein conferred upon the sheriff, and the municipality shall be liable for the cost of transporting and maintaining the prisoners to the same extent as a county would be unless action is taken by the Governor and Council of State as herein provided for counties which are unable to pay such costs.

(d) Whenever a prisoner held in a county jail requires medical or mental health treatment that the county decides can best be provided by the Department of Adult Correction, the resident judge of the superior court or any judge holding superior court in the district or any district court judge may order the prisoner transferred to a unit of the State prison system designated by the Secretary of the Department of Adult Correction or the Secretary's authorized representative for an initial period not to exceed 30 days. The sheriff of the county from which the prisoner is removed shall be responsible for conveying the prisoner to the prison unit where the prisoner is to be held, and for returning the prisoner to the jail of the county from which the prisoner was transferred. The officer in charge of the prison unit designated by the Secretary shall receive custody of the prisoner in accordance with the terms of the order. Prior to the conclusion of the 30-day period, the Division of Prisons of the Department of Adult Correction shall conduct an assessment of treatment and venue needs. The assessment shall be conducted by the attending medical or mental health professional and shall assess the medical and mental health needs of the prisoner and make a recommendation on whether the prisoner should remain in the custody of the Division or if the prisoner should be returned to the custody of the county. To extend the order beyond the initial 30-day period, the sheriff shall provide the Division of Prisons of the Department of Adult Correction assessment and any other relevant information to the resident judge of the superior court or any judge holding superior court in the district or any district court judge who shall determine whether to extend the transfer of the prisoner to a unit of the State prison system beyond the initial 30-day period. If the judge determines that the prisoner should remain in the custody of the Division, the judge shall renew the order and include a date certain for review by the court. Prior to the date of review, the Division shall conduct a reassessment of treatment and venue needs and the sheriff shall provide the reassessment and any other relevant information to the court, as described in this subsection. If the judge determines that the prisoner should not remain in the custody of the Division, the officer in charge of the prison unit designated by the Secretary shall release custody of the prisoner in accordance with the court order and the instructions of the attending medical or mental health professional. The county from which the prisoner is transferred shall pay the Division for maintaining the prisoner for the period of treatment at the per day, per inmate rate at which the Division pays a local jail for maintaining a prisoner, and for extraordinary medical expenses as set forth in subsection (c) of this section.

(e) The number of county prisoners incarcerated in the State prison system pursuant to safekeeping orders from the various counties pursuant to subsection (b) of this section or for medical or mental health treatment pursuant to subsection (d) of this section may not exceed 200 at any given time unless authorized by the Secretary of Adult Correction. The Secretary may refuse to accept any safekeeper and may return any safekeeper transferred under a safekeeping order when this capacity limit is reached. The Secretary shall not refuse to accept a safekeeper because a county has failed to pay the Department of Adult Correction for services rendered pursuant to this section.

(f) If, after 10 days of receiving notification and request for transfer from the Department of Adult Correction pursuant to G.S. 148-19.3(a), the sheriff fails to assume custody of the county prisoner from the State prison facility to which the prisoner was assigned, then, in addition to the actual cost of transporting the prisoner and the cost of maintaining the prisoner at the per day, per inmate rate at which the Division of Prisons of the Department of Adult Correction pays a local jail for maintaining a prisoner, the county shall be liable to the State for an additional per day, per inmate rate not to exceed twenty dollars (\$20.00) for each day the sheriff fails to assume custody of the prisoner, unless the sheriff has obtained an extension of the order because the inmate cannot be safely housed in the local jail. The section chief of the Health Services Section may waive up to 10 days of the additional per day rate if the sheriff provides documentation of extenuating circumstances. (1957, c. 1265; 1967, c. 996, ss. 13, 15; 1969, cc. 462, 1130; 1973, c. 822, s. 3; c. 1262, s. 10; 1983, c. 165, ss. 1-4; 1985 (Reg. Sess., 1986), c. 1014, s. 198(a)-(c); 1989, c. 1, s. 7; 1991, c. 535, s. 1; 1991 (Reg. Sess., 1992), c. 983, s. 1; 2002-126, s. 17.1; 2011-145, s. 19.1(h), (i); 2012-83, s. 60; 2017-186, s. 2(kkkkkkkkkk); 2019-171, s. 1; 2021-180, s. 19C.9(rrrr); 2022-74, s. 19A.1(i).)