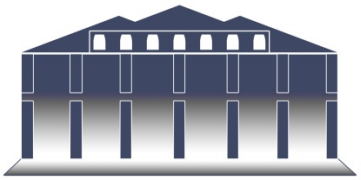
Inadequate Data Collection and Cost Recovery Practices Limit Economy of Healthcare for Safekeepers

Final Report to the Joint Legislative Program Evaluation Oversight Committee

Report Number 2018-10

September 17, 2018



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September 17, 2018

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Honorable Co-Chairs:

The 2015–17 Work Plan of the Joint Legislative Program Evaluation Oversight Committee directed the Program Evaluation Division to examine the efficiency and economy of medical and dental services provided for North Carolina state prison inmates. This report is the third in a four-part series and focuses on the use of health services by Safekeepers, who are county jail inmates being temporarily housed in a state prison.

I am pleased to report that the Department of Public Safety cooperated with us fully and was at all times courteous to our evaluators during the evaluation.

Sincerely,

John W. Turcotte
Director

PROGRAM EVALUATION DIVISION
NORTH CAROLINA GENERAL ASSEMBLY

September 2018 Report No. 2018-10

Inadequate Data Collection and Cost Recovery Practices Limit Economy of Healthcare for Safekeepers

Summary

The Joint Legislative Program Evaluation Oversight Committee directed the Program Evaluation Division to examine the efficiency and economy of inmate healthcare. This report is the third in a four-part series and focuses on the provision of healthcare services to Safekeepers, who are county inmates temporarily housed at state prisons.

The Department of Public Safety (DPS) does not systematically collect, analyze, or report data on usage of healthcare services by Safekeepers. Limited data collection prevents DPS Health Services from determining if Safekeepers' medical needs exceed the capabilities of county jail facilities, conducting analysis of the rationales for admissions, and calculating Safekeepers' healthcare costs.

DPS's method of seeking reimbursement from counties for internal medical costs incurred by Safekeepers limits the State's ability to recoup total expenditures for these inmates. In Fiscal Year 2016–17, Safekeepers were housed at five prison facilities, but only two sought reimbursement from county governments for certain internal medical costs as allowed by state law. Further, these two facilities billed counties for services inconsistently. The current rates charged for prison medical services are not sanctioned by administrative rule or departmental policy and have not been updated since 2009. In Fiscal Year 2016–17, DPS invoiced counties $3.3 million, or $35 per Safekeeper per day, for Safekeeper health-related expenditures. However, these billing issues limit the State's ability to fully recoup its total expenditures.

State law provides a mechanism to recoup state Safekeeper costs by withholding Statewide Misdemeanant Confinement Program (SMCP) payments for services provided by counties for state inmates; however, the effectiveness of this mechanism is limited because counties are not required to participate in SMCP. In Fiscal Year 2016–17, two counties avoided reimbursing the State more than $500,000 in Safekeeper charges; further, the State has offered generous settlements to counties that have not reimbursed the State in a timely manner.

Based on these findings, the General Assembly should (1) modify state law to change the per diem rate for counties that fail to reassume custody of their Safekeepers in a timely manner and direct DPS Health Services to collect additional data, update the rates charged for medical services, and require that all facilities bill counties for services for Safekeepers and (2) modify state law to prohibit non-SMCP-participating counties with past-due balances from transferring Safekeepers to prisons for medical purposes and modify the process by which Safekeepers are admitted to prisons for medical purposes.

Purpose and Scope

The 2015–17 Work Plan of the Joint Legislative Program Evaluation Oversight Committee directed the Program Evaluation Division to examine the efficiency and economy of medical and dental services provided for North Carolina state prison inmates. This evaluation only includes healthcare services provided in adult prison facilities and does not include services provided to youth offenders residing in youth detention centers or adults serving temporary sentences in county jails through the State's Misdemeanant Confinement Program.

This report is the third in a four-part series on the efficiency and economy of inmate healthcare. As discussed in the first report, the Department of Public Safety's Health Services division (DPS Health Services) is responsible for the provision of healthcare to the State's inmates. Administratively, DPS consists of seven units: Medical, Mental Health, Behavioral Health, Dental, Operations, Risk Management, and Clinical Informatics. This report focuses on the use of health services by county jail inmates who are being temporarily housed in a state prison.

This evaluation addressed four research questions:

1. What is the process for determining when county jail inmates require health services within prisons?
2. What health services does the State deliver to county jail inmates in prisons?
3. How efficient is the provision of healthcare services to county jail inmates?
4. How could the provision of healthcare services to county jail inmates be made more efficient?

The Program Evaluation Division collected and analyzed data from several sources, including

- queries and interviews of DPS staff;
- data on prison population demographics, expenditures and revenues for DPS and DPS Health Services between Fiscal Years 2006–07 and 2016–17, and on purchasing and usage of healthcare supplies and outside services,
- site inspections of state prison healthcare facilities and interviews with healthcare staff;
- interviews and queries of stakeholders and staff from other states' corrections departments; and
- a review of data and reports from other states and national organizations on efforts to contain costs for inmate healthcare.

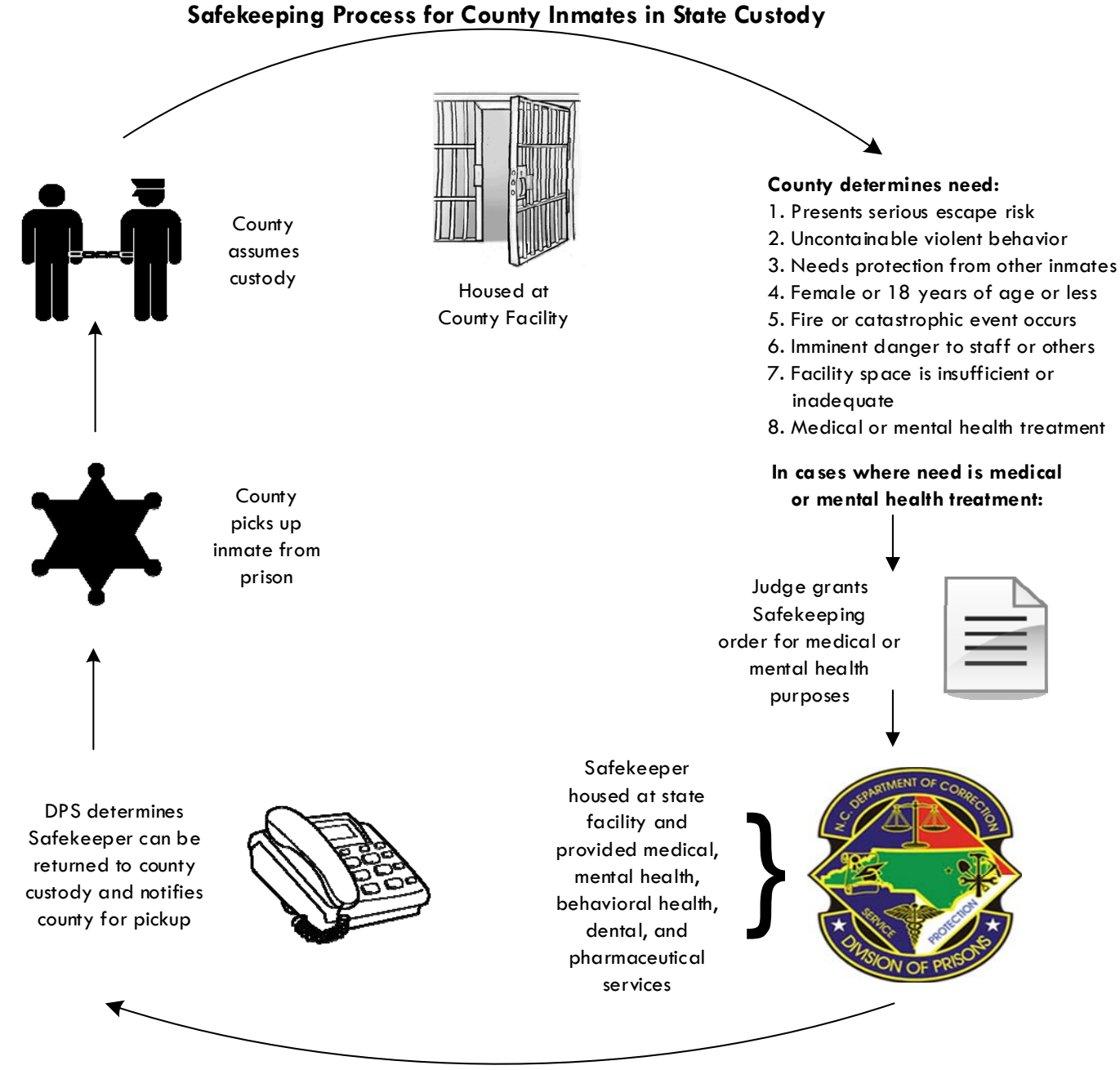
Background

North Carolina's adult corrections system is responsible for the safety and health of inmates in the State's 57 prisons and extends these services to some county inmates awaiting trial within a state prison.

In addition to providing healthcare services to inmates serving sentences in the State's 57 prisons, the Department of Public Safety (DPS) is also responsible for providing services to certain county jail inmates who have been directed to a prison for a particular purpose.[1] County inmates who are referred by county sheriffs to a state prison are known as Safekeepers. State law limits the total statewide number of Safekeepers at any given time to 200 unless additional requests have been approved by the Secretary of DPS.[2] Exhibit 1 shows the general process by which the State assumes temporary custody of inmates in county jails, the eight accepted reasons for a Safekeeper referral, and the specific processes for inmates admitted for medical or mental health purposes. Only those Safekeepers admitted for a health-related reason can be returned upon a determination of appropriateness by DPS. In comparison, the Safekeeping order signed by a judge for inmates admitted for any of the other seven reasons includes the specific date on which a county must reassume custody of the Safekeeper.

[1] Two of these prison facilities are specialized units referred to as Confinement in Response to Violation units.
[2] N.C. Gen. Stat. § 162-39(e).

Exhibit 1: DPS Assumes Safekeeping Responsibility for County Jail Inmates for a Variety of Reasons Including for Medical and Mental Health Treatment



Note: Only one of the eight criteria is necessary to be met for a Safekeeper to be admitted.

Source: Program Evaluation Division based on a review of state law and data from DPS.

The State temporarily assumes responsibility for Safekeepers only after a sheriff obtains a court order citing which admission criterion has been met, unless the sheriff believes the county inmate needs an emergency transfer.[3] Regardless of which one of the eight admission criteria a Safekeeper has met, the county jail inmate is entitled to receive the same healthcare services as a state inmate serving a sentence in a prison.

State law requires county governments to reimburse the State $40 per day for Safekeeper services. County governments also are required to reimburse the State for three additional types of health services provided to Safekeepers while in the State's care: internal health services with value greater than $35, any pharmaceutical costs, and any outside health services costs.[4]

The General Assembly has expressed interest in ensuring that counties reimburse the costs incurred to the State for services provided to Safekeepers and that inmate healthcare costs in general are contained. Taking those concerns into consideration, this report focuses on the provision of health services to Safekeepers in state prison facilities and the State's ability to recover its associated expenditures.

Findings

Finding 1. The Department of Public Safety does not systematically collect, analyze, or report data on usage of healthcare services by Safekeepers.

To summarize the finding below, Department of Public Safety (DPS) staff contend that Safekeepers spend unnecessarily lengthy stints in state prison facilities and consequently receive significant amounts of health services while held in state custody. However, limited data collection by DPS and the North Carolina's Sheriff's Association prevents analysis that could determine if county jail inmates sent to state prison facilities as Safekeepers for healthcare purposes could have received adequate health services at a county jail facility. In addition, North Carolina lacks measures such as those used by neighboring states to prevent unnecessary Safekeeping orders or lengthy stays.

As discussed in the Background, county jail inmates can be admitted to a state prison for any one of eight reasons, at which point they are referred to as Safekeepers. One of these criteria—admission for medical or mental health purposes—is applied when a county decides a county jail inmate's medical or mental health needs exceed the capabilities of the county facility and require treatment by DPS.

DPS Health Services staff contend counties sometimes send inmates to state prisons even when the inmates' medical needs do not exceed the

[3] During site inspections, DPS Health Services staff stated that sometimes county jails send inmates to a state prison because the county jail has limited financial resources to maintain custody for an extended period of time. State law allows for county jail inmates to be transferred to state custody under a Safekeeping order in the event that prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the housing of such prisoners. In addition, DPS staff report instances of the State assuming custody of a Safekeeper upon a county sending the inmate to a hospital facility.

[4] N.C. Gen. Stat. § 162-39(c) further requires counties to reimburse DPS for the replacement of eyeglasses or dentures if the county grants prior consent for such replacements.

capabilities of local jails. One often-cited reason for counties sending their inmates to state prisons for medical purposes is that certain health services, such as 24-hour nurse coverage, are not available at many county jails.

During site inspections and interviews, several DPS Health Services staff stated that county jail inmates sent to state prisons under Safekeeper orders for medical purposes often could receive adequate health services in county jails. For instance, all pregnant women in county jails are sent to state prisons as Safekeepers. In response, a DPS Health Services provider stated,

> "I think the jail should be able to take care of them. Some do not need to come here that do, but we don't have a choice. A third of them [that] are here for medical purposes are not needed to be here for medical purposes."

Because DPS does not compile data on the rationale for Safekeeper orders, the Program Evaluation Division could not determine the number of county inmates transferred for medical or mental health purposes. Each Safekeeper order includes the statutory criterion the judge used to qualify a county jail inmate for admission to a state prison as a Safekeeper. The court orders are sent directly to prison facility staff; thus, individual prisons are maintaining these records instead of the central DPS Health Services office. Given these data collection limitations, the Program Evaluation Division could not determine the number of Safekeepers that counties refer to state prisons for medical or mental health purposes.

In addition, the North Carolina Sheriff's Association does not maintain data on the health services capabilities of county jails. The lack of information on the available health services within each county jail—which could range from having no services, to an arrangement for services provided by the county health department, to a contractual relationship with an outside provider—further inhibits analysis of the appropriateness of county jail inmates being sent to prisons for health services.

According to DPS Health Services staff, North Carolina's criteria for admitting Safekeepers to state prisons results in county jail inmates consuming significant health services resources. Analysis of Safekeeper data shows that although the total number of Safekeepers often does not exceed the statutory limit of 200, Safekeepers tend to disproportionately arrive during the winter months and can stay for long periods of time, consuming significant health services resources in the process. While in state custody, Safekeepers receive the same health services that are provided to the general prison population, including intake processing, sick calls and internal medical services, necessary external medical services, and pharmaceuticals. DPS Health Services staff stated that Safekeepers also consume significant staff time.

In comparison, South Carolina's criteria and processes for receiving county inmates is more rigorous, thereby ensuring limited use of state resources and shorter lengths of stay. South Carolina allows the transfer of county jail inmates as Safekeepers if they pose a high escape risk, are

extremely violent, or need to be protected from themselves or others. South Carolina also requires that information in addition to a court order be provided before a county jail inmate can be designated as a Safekeeper.[5]

Any South Carolina county requesting a Safekeeping order must provide documentation to both the South Carolina Department of Corrections and the Office of the Governor. After the documentation is submitted and reviewed, the department provides a recommendation of action to the Governor's office.[6] South Carolina law prohibits the use of a Safekeeping order to acquire or provide medical services, medical attention, or to hospitalize a pretrial detainee at the Department of Corrections.[7] Additionally, Safekeepers are only housed in two state prison facilities and total statewide capacity cannot exceed 10 individuals. South Carolina has also taken measures to prevent extended lengths of stay such as limiting the number of days a Safekeeper may be housed at a state prison facility.[8]

In North Carolina, DPS staff stated that counties frequently forced state prison facilities to wait extended periods of time before reassuming custody of Safekeepers, resulting in extended lengths of stay. As discussed in the Background, Safekeepers admitted for non-health-oriented reasons must remain in state prisons until their Safekeeping order expires. For inmates admitted as Safekeepers for medical or mental health purposes, however, state law requires that the county jail shall reassume custody when the attending medical or mental health professional determines that the prisoner may be returned safely.[9] DPS Health Services staff contend Safekeepers admitted for health-related reasons remain in state facilities for excessive periods of time and that there is no mechanism to ensure county jails reassume custody in a timely manner upon being notified that inmates are ready to be returned.

Limited collection of logistically-oriented data elements, such as when DPS Health Services staff inform a county that their Safekeeper can be returned, limits analysis of the appropriateness of extended stays. Upon entry of a county inmate into a state prison facility, DPS collects and maintains little data on their Safekeeping status. Safekeepers are provided with a unique activity assignment to indicate their status within DPS's offender database.[10] Additionally, the entry date and exit date for each Safekeeper is recorded to the associated unique identifier. Safekeepers spent an average of 86 days in a state prison in Fiscal Year 2016–17, though this average is independent of any assessment of how

[5] Additional documents include a copy of the arrest warrant for the county inmate, an affidavit declaring why Safekeeping status should be granted, proposed certificate by the circuit solicitor indicating that the transfer is necessary, and proof that an application for Safekeeping has been submitted.
[6] In South Carolina, the Governor is the designated authority to grant Safekeeping status.
[7] South Carolina Executive Order 2000-11(7).
[8] South Carolina Safekeepers can be housed in a state prison facility for up to 120 days with an optional 90 day renewal.
[9] N.C. Gen. Stat. 162-39(d).
[10] North Carolina's offender database is the Offender Population Unified System.

long the average Safekeeper actually needed to be in state custody.[11] Gaps in data collection prevent a determination of whether counties delay reassuming custody of Safekeepers, as DPS Health Services staff suspect. Exhibit 2 shows the limited data elements collected for Safekeepers admitted for medical purposes.

Exhibit 2

DPS Health Services Does Not Systematically Collect Logistical Data on Safekeepers Admitted for Medical Purposes

Logistical Data Element for Safekeepers Admitted for Medical Purposes	Systematically Collected by DPS Health Services
Date on which county drops off Safekeeper	✓
Statutorily-met criterion for Safekeeper admission	✗
Name of referring county	✗
Date by which DPS Health Services staff believe a Safekeeper no longer needs higher-level health services from a prison and the county can reassume custody	✗
Date on which DPS Health Services staff inform a county it believes a Safekeeper no longer needs higher-level health services from a prison and the county can reassume custody	✗
Date on which county picks up Safekeeper	✓

Source: Program Evaluation Division based on interviews with DPS Health Services staff.

Finding 2. Inconsistent billing practices, gaps in policy, and other issues limit the State's ability to receive full reimbursement from counties for internal medical costs incurred by Safekeepers.

To summarize the finding below, several issues inhibit the Department of Public Safety's (DPS) ability to achieve full reimbursement from counties for Safekeepers' internal medical costs as allowed by law. Billing practices are inconsistent and the cost recovery mechanism offered by the State Misdemeanant Confinement Program is limited; as a result, DPS sometimes resorts to reaching settlements with counties that are less than favorable to the State. Although the State invoiced counties for $3.3 million in Safekeeper health-related costs in Fiscal Year 2016–17, these billing practices limit the State's ability to recoup its total Safekeeper healthcare expenditures.

As explained in the Background, state law requires county governments to reimburse the State $40 per day for Safekeeper services. County governments are also required to reimburse the State for three additional types of health services: internal health services provided with value

[11] As discussed earlier, because DPS does not systematically collect information on Safekeeper admission criteria, the average number of days that Safekeepers are in prisons is based on all Safekeepers, not only those admitted for medical or mental health purposes; thus, it is possible that those admitted for medical or mental health purposes have longer or shorter lengths of stay relative to all Safekeepers. In Fiscal Year 2016–17, the maximum number of days of a Safekeeper stay in a prison was 365 days.

greater than $35, pharmaceutical costs, and outside health services costs.[12]

As the first report in this series discusses, DPS Health Services social workers complete Medicaid applications for certain inmates receiving qualifying services at an outside facility; however, these state social workers do not complete such applications for Safekeepers. Counties must reimburse the State at the statutory or other contracted rates for services that outside facilities provide for Safekeepers, and thus it is the county's responsibility to complete these applications upon receiving a bill for outside services that have been paid by DPS.

DPS reported invoicing counties $6.3 million in Fiscal Year 2016–17 for all Safekeeper charges. Of this total, $3.3 million (53%) was for external medical services, certain internal medical services, and pharmaceutical supplies attributable to Safekeepers. Daily costs for these healthcare services were $35 per Safekeeper, which is $11 more per day than healthcare costs for the average general population inmate.

As Exhibit 3 shows, county governments are systematically billed for three of these four service areas but are not systematically billed for internal medical costs.[13]

Exhibit 3

DPS Does Not Systematically Bill County Governments for All Four Areas of Safekeeper Health Services Costs

Safekeeper Location	Area of Service for Which DPS Bills County Governments			
	Per Diem	External Medical	Internal Medical	Pharmaceutical
Central Prison or NC Correctional Institution for Women	●	●	◖	●
Any other state prison housing Safekeepers	●	●	○	●
● = Fully bills	◖ = Partially bills		○ = Does not bill	

Source: Program Evaluation Division based on data provided by DPS, interviews with DPS staff, and a review of state law.

For example, counties are not billed for Safekeeper sick call visits for in-prison services or for state prison custody staff time and transportation expenses incurred when accompanying a Safekeeper for a medical encounter at an outside facility. In comparison, counties housing state inmates through the State Misdemeanor Confinement Program receive reimbursement from the State for custody staff time and transportation costs for outside encounters.

[12] N.C. Gen. Stat. § 162-39(c) further requires counties to reimburse DPS for the replacement of eyeglasses or dentures if the county grants prior consent for such replacements.

[13] DPS staff have stated that Safekeepers in their care for medical purposes are generally in worse health than the general prison population and require more attention, thereby giving them a higher priority than a typical state inmate.

The Program Evaluation Division identified five issues that hinder the State's current process of recovering expenditures for Safekeepers from county governments:

1. **Only two prison facilities charge counties for internal medical costs.** Only two of the five prison facilities that housed and provided services to Safekeepers in Fiscal Year 2016–17 (Central Prison and the North Carolina Correctional Institution for Women [NCCIW]) maintained records of Safekeepers' internal medical costs and submitted paperwork to the DPS Controller's Office to bill county governments. DPS did not seek any reimbursement for internal health services provided to Safekeepers at the other three prisons during the last fiscal year. The Program Evaluation Division was unable to determine total internal costs for Safekeepers that could be chargeable to counties for reimbursement due to a lack of clarity about the true cost of these services and a lack of data.
2. **The two facilities that do bill counties for internal medical costs do not bill them consistently.** During interviews, DPS staff stated that NCCIW does not always provide full information on the cost of certain services, thereby preventing DPS accounts receivable staff from seeking full reimbursement from county governments. For example, the State receives reimbursement for lab services performed for Safekeepers at Central Prison because this information is sent to DPS accounts receivable staff, but staff stated they do not receive this same billing information from NCCIW. Thus, the State is being reimbursed for lab services at one facility and not another; it is unclear how many other services provided for Safekeepers are inconsistently reported and thereby remain unbilled to county governments.
3. **DPS bills county governments for internal health services at rates that are not officially sanctioned in rule or policy.** Although state law grants DPS the authority to bill county governments, DPS policy and rules do not officially sanction the rates of reimbursement. The absence of these charges in official policy could present challenges in ensuring counties sufficiently reimburse the State for internal services.
4. **The rates for the two prisons that charge for internal health services have not been updated since 2009.** DPS staff seeking reimbursement from county governments for Safekeeper internal health services rely on a schedule of charges last revised in 2009. This schedule does not reflect the general rise in healthcare costs, and as a result the State may not be recovering the full cost of internal services even at the two prisons where these charges are being assessed.
5. **Safekeepers are not assessed copayments for health services encounters.** Inmates within the State's prison system are assessed copayments of $5 for a sick call or $7 for an emergency

encounter.[14] In comparison, counties do not reimburse the State for Safekeeper sick call encounters with health services staff.

These issues present challenges to the State in recouping its total health services expenditures on Safekeepers.

State law provides a mechanism that attempts to ensure county governments reimburse DPS for Safekeeper expenditures. County jails provide services to State Misdemeanant Confinement Program (SMCP) participants, who are individuals convicted of misdemeanor offenses who serve sentences for periods of up to 180 days in local jail facilities rather than in a state prison. Statute mandates that all misdemeanants with an imposed sentence of more than 90 days shall be housed in a local jail facility.[15] State law further requires that counties be reimbursed by the State for SMCP inmate expenses incurred.

In 2015, the General Assembly directed the North Carolina Sheriff's Association (NCSA) to withhold SMCP payments for counties with accrued and unpaid Safekeeper charges of 120 days or more.[16,17] In Fiscal Year 2016–17, NCSA withheld $92,919 in SMCP payments for overdue Safekeeper charges from counties and redirected that amount to DPS. NCSA withholds all SMCP funds owed to both Safekeeper-sending and SMCP-receiving counties; however, the amounts owed to, and therefore withheld from, sending-only counties are minimal.

The effectiveness of the statutory Safekeeper cost recovery mechanism is limited because not all counties participate in SMCP. Any of the State's 100 sheriffs can send a county jail inmate to a state prison as a Safekeeper provided they obtain the proper judicial order. In comparison, DPS can only send SMCP participants to those county jails that choose to participate in the program. Thus, withholding and redirecting SMCP payments is an effective Safekeeper cost recovery mechanism only when county sheriffs are participating in both programs.

Because DPS lacks the authority to force counties to provide reimbursement for Safekeepers, the State has at times resorted to offering settlements that do not fully recoup Safekeeper costs. The Program Evaluation Division identified two recent instances in which non-SMCP-participating counties sent Safekeepers to state prisons and failed to reimburse the State in a timely manner for billed Safekeeper charges. As of July 2017, both of these counties had accumulated Safekeeper balances of more than 150 days in arrears. Together, they owe the State more than $500,000, and since they choose not to receive SMCP participants, the State must resort to judicial action or an outside monetary settlement to recoup its Safekeeper costs.

[14] State law provides for the waiver of these copayments for indigent inmates and for waiving copayments for emergency sick call requests when they are deemed to be a medical emergency by DPS Health Services staff.

[15] N.C. Gen Stat. § 148-32.1(b2). In addition, all sentences imposed for impaired driving under N.C. Gen. Stat. § 20-138.1 must be served through the SMCP.

[16] SMCP was established per N.C. Gen Stat. § 148-32.1 and amended by Sess. Law 2011-192, also known as The Justice Reinvestment Act of 2011.

[17] N.C. Gen Stat. § 148-10.4 and Sess. Law 2015-41.

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.

Recommendations

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.[18] 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.[19] If a notified county fails to reassume custody of a Safekeeper after three days, statute should require DPS to charge the county an

[18] Rates should be in compliance with N.C. Gen Stat. § 162-39(c).
[19] 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.[20] 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.

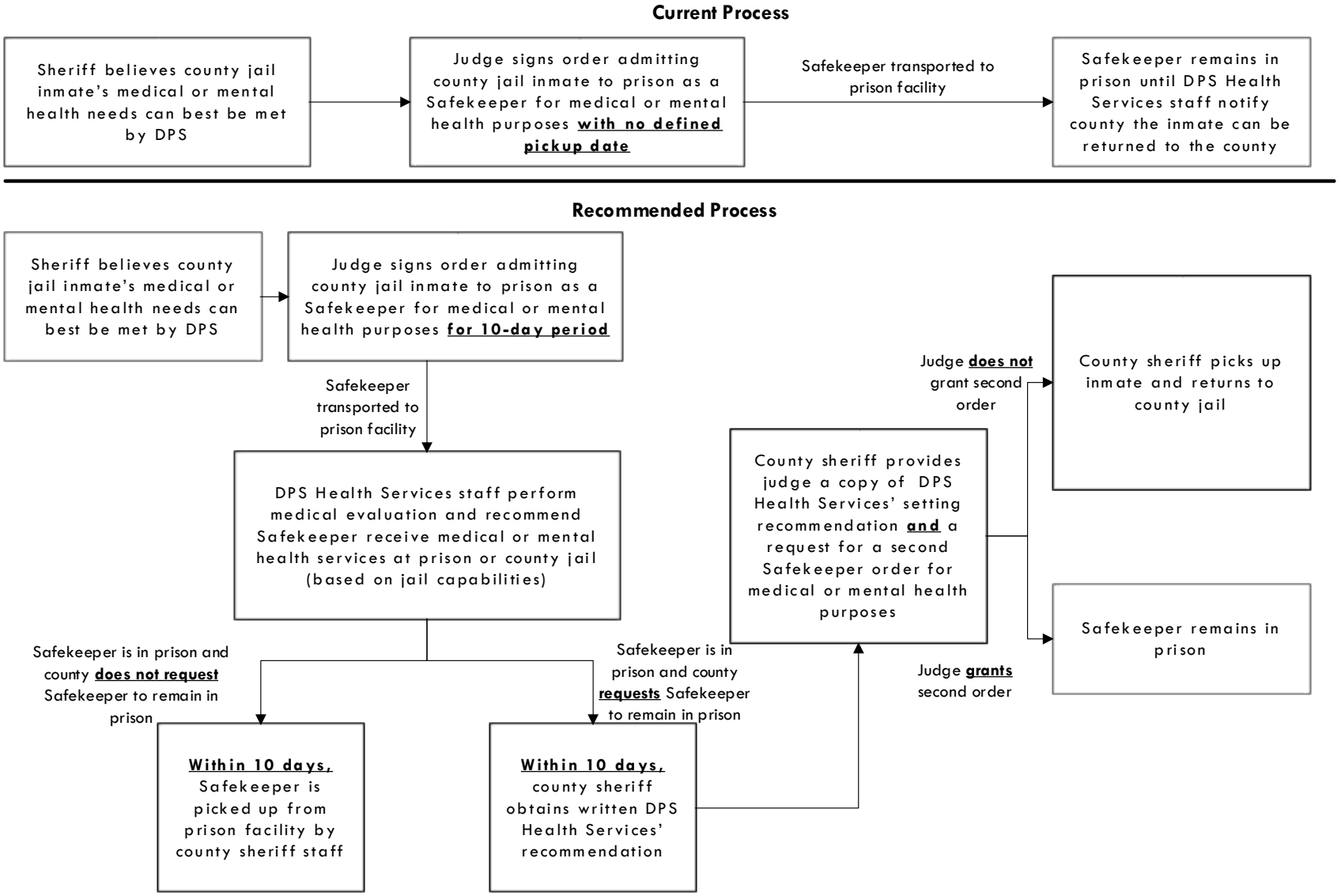
As discussed in Finding 1, there is no mechanism in place to ensure only those county jail inmates who have medical or mental health treatment needs exceeding their jails' capabilities receive such services as Safekeepers in state prison facilities. Neither DPS nor the North Carolina Sheriff's Association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

[20] 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



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.

Agency Response

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

Program Evaluation Division Contact and Acknowledgments

For more information on this report, please contact the lead evaluator, Brent Lucas, at 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.

North Carolina Department of Public Safety
Prevent. Protect. Prepare.

Roy Cooper, Governor

Erik A. Hooks, Secretary

August 3, 2018

Mr. John W. Turcotte
Director, Program Evaluation Division
300 North Salisbury Street, Suite 100 LOB
Raleigh, NC 27603-5925

Re: ***Inadequate Data Collection and Cost Recovery Practices Limit Economy of Healthcare for Safekeepers*** **(PED Report 2018-10)**

Dear Mr. Turcotte:

Thank you for providing the Department of Public Safety (DPS) with the opportunity to review and respond to the Program Evaluation Division's Report 2018-10: *Inadequate Data Collection and Cost Recovery Practices Limit Economy of Healthcare for Safekeepers*.

North Carolina General Statutes §162-39 authorizes a process by which pretrial detainees, known as "Safekeepers," may be transferred from the custody of county jails to the custody of DPS.[1] This statutory process requires the involvement of the judiciary (a district court or superior court judge), the sheriff, and the Department. The PED Report focuses on DPS's role, which is reasonable given PED's legislative directive to "examine the efficiency and economy of inmate healthcare." However, in the matter of Safekeepers, it is worth pointing out that the Department's role is largely prescribed and constrained by statute, and that other stakeholders (namely, the district and superior court judges and the sheriffs) may also have information and feedback regarding how the process of safekeeping should be administered under the law.

This report makes five recommendations for action by the Department or the General Assembly regarding healthcare cost containment for Safekeepers in the Department's custody. These five recommendations are as follows:

- The General Assembly should direct DPS Health Services to expand the data elements it collects on the Safekeeper population;
- 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;
- 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;

[1] Section 148-32.1 similarly provides for the transfer of Safekeepers to DPS from a municipality's local confinement center.

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

Because several of the recommendations are highly interrelated, this response will address general themes rather than taking the recommendations one by one.

Two recommendations suggest that the General Assembly address issues with the per diem rate paid by counties to DPS for housing Safekeepers. The current per diem housing rate of $40 was initially established in 1992 and has not been revised subsequently. The PED report suggests establishing variable rates for Safekeepers based on the county's ability to reassume custody in a timely manner following treatment.

The Department contends the first step in addressing these issues is to address the per diem rate itself. At $40 per day, it is a rational business decision for a county to send a jail inmate to DPS because the daily cost is lower. The current average cost per day to house an inmate in prison is $96.58. Moreover, most Safekeepers are housed at Central Prison and the average daily cost for such close custody facilities is higher at $114.26. If the Department could set the rate based on up-to-date daily costs, rather than a fixed rate in statute, several consequences would occur, most notably that a county would have a different set of factors to consider when deciding whether to request a Safekeeper order for an inmate.

In addition to establishing a more reasonable daily rate for housing Safekeepers, the Department should be allowed to establish a separate, additional daily rate for Safekeepers sent for medical or mental health reasons. Since these Safekeepers are housed at either Central Prison Healthcare Complex or N.C. Correctional Institution for Women, costs can be computed and applied. Again, utilizing realistic rates for housing Safekeepers should have the effect of limiting entries and encouraging counties to shorten the length of stay for offenders they send for medical care and mental health treatment.

The Department concurs that a more consistent effort needs to occur to invoice and collect balances for housing and care of Safekeepers, and will explore all options presented in the PED report. The Department does not agree that participation in the Safekeeper program should be tied in any way to participation in the Statewide Misdemeanor Confinement Program. Counties choose to participate in this program as receiving counties based on a variety of factors, including available bed capacity. Counties with already limited space would need to make greater use of the Safekeeper program if more of their beds were utilized for SMCP inmates.

The Department does not contest that more data collection on Safekeepers would be useful for resource management. This solution would require some combination of additional functionality in both the Department's electronic offender record system (OPUS) and the electronic health record application (HERO). Any changes to these databases would require funding.

In summary, the Department contends that tying per diem charges to counties for Safekeepers to a realistic cost figure is the most straightforward solution to the problem of expanding costs for medical care and mental health treatment for Safekeepers in the state prison system.

Again, thank you for the opportunity to review and address the recommendations in the report. The Department looks forward to working with the General Assembly on ways to enhance delivery of inmate healthcare services.

Sincerely,

Erik A. Hooks

Erik A. Hooks
Secretary
North Carolina Department of Public Safety