

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 20, 2023

TO: Honorable Abel Herrero, Chair, House Committee on Corrections

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3363 by Frank (Relating to the confinement or detention of certain individuals in a county jail or other facility operated by or for the county and to the compensation to the county for the costs of that confinement or detention.), **Committee Report 1st House, Substituted**

The fiscal implications of the bill cannot be determined due to the unknown number of additional individuals who would be committed to the Health and Human Services Commission and the Texas Juvenile Justice Department and the related costs to compensate counties, however the bill could have a significant negative fiscal impact to the state.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would require the Health and Human Services Commission (HHSC) to take custody of a defendant awaiting transfer to a mental health facility operated by or under contract with HHSC within 45 days after the order is issued. If HHSC does not take custody of such a defendant, the bill would require HHSC to compensate the county for each day the defendant remains confined in the county jail in an amount equal to the amount HHSC would have incurred to confine the defendant. The bill would require compensation to counties for costs of confinement on or after January 1, 2024.

According to HHSC, the agency cannot determine how many individuals will be on the waitlist for 45 days as of January 1, 2024, and unless a standard rate is set, there is no way to calculate the cost per day per person as costs vary for each individual depending on services provided.

Based on information provided by HHSC, the analysis assumes there could be an average of 2,400 defendants awaiting transfer to a mental health facility operated by or under contract with HHSC each day. This amount is based on a slightly reduced count of the current state hospital waitlist. The analysis assumes the cost to compensate counties for each day the defendant remains confined in a county jail would be \$544.1 million in fiscal year 2024 for costs starting January 1, 2024, and going through the end of the fiscal year. Costs for subsequent fiscal years would be approximately \$817.3 million. HHSC estimates the bed day rate for the state hospital system to be \$933. The analysis assumes counties would be compensated at that rate for all 2,400 estimated defendants each day. The bill's costs would vary depending on HHSC's actual bed day rate and the number of defendants remaining in county jail.

The bill would require the Texas Department of Juvenile Justice (TJJD) to take custody of a child within 45 days of a judge signing a disposition order committing the child to TJJD. If TJJD does not take custody of such a child, the bill would require TJJD to compensate the county for each day the child remains confined in the county jail in an amount equal to the amount TJJD would have incurred to confine the child. The bill would require compensation to counties for costs of confinement on or after January 1, 2024.

The analysis assumes there would be a significant cost to TJJD to admit youth or provide compensation to counties, but the cost cannot be determined. The ability to admit these youth would be dependent on the number of youth committed to TJJD and state secure facility capacity and staffing levels. Based on data reported by TJJD, a daily average of approximately 123 youth were pending admission to TJJD between September 2022

and February 2023. During that period, 233 youth were committed to TJJD and placed in a local facility pending admission, and 247 youth were admitted to TJJD custody after being placed in a local facility pending admission. The average wait time for youth admitted during this period was 94 days.

The fiscal impact would be dependent on TJJD's capacity to take custody of youth pending admission to TJJD and the number of committed youth not taken into custody within 30 days of commitment. Based on the February 2023 Criminal and Juvenile Justice Uniform Cost Report, the state uniform costs per day for a youth in TJJD's custody were \$709.66 for a state residential facility, \$296.54 for contract residential placements, and \$594.04 for halfway houses.

The bill would require the Texas Department of Criminal Justice (TDCJ) to take custody of a person awaiting transfer to TDCJ following a conviction of a felony or an administrative violation of release within 45 days of the completion of processing of the transfer. If TDCJ does not take custody of such a person, the bill would require TDCJ to compensate the county for each day the child remains confined in the county jail in an amount equal to the amount TDCJ would have incurred to confine the person. The bill would require compensation to counties for costs of confinement on or after January 1, 2024.

It is assumed that TDCJ could absorb the costs related to implementing the bill within current resources.

Local Government Impact

The fiscal impact to local governments cannot be determined as the amount of compensation received by counties cannot be estimated. The analysis assumes counties would potentially receive a total positive fiscal impact of \$544.1 million in fiscal year 2024 and \$817.3 million in each subsequent fiscal year based on the compensation HHSC would be required to provide to counties for defendants remaining confined in a county jail.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 529 Health and Human Services Commission, 696 Department of Criminal Justice

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