



Sub. H.B. 162

126th General Assembly
(As Reported by H. Criminal Justice)

Reps. Peterson, Latta, D. Evans, Hughes, Seitz, Yuko

BILL SUMMARY

- Makes a county or counties eligible to establish a community-based correctional facility ("CBCF") or district community-based correctional facility ("DCBCF") instead of a court or courts of common pleas.
- Eliminates judicial corrections boards and gives the functions previously held by them to facility governing boards, advised by judicial advisory boards.
- Abolishes citizens advisory boards.
- Modifies the requirements that must be included in a proposal for the creation of a CBCF or DCBCF.
- In addition to the powers given to a judicial corrections board under current law, gives the successor facility governing board the power to contract for legal and fiscal services and to purchase liability insurance for members of the facility governing board, judicial advisory board, and employees of a CBCF or DCBCF when engaged in official duties.
- Replaces a CBCFs or DCBCFs commissary fund with a resident program fund that may be used for expanded purposes.
- Specifies that it is the intent of the General Assembly in enacting the bill to ensure membership in PERS for officers and employees of publicly operated CBCFs and DCBCFs and not to add to the category of employees eligible for membership in PERS.
- Makes other revisions to the law governing CBCFs and DCBCFs.

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CONTENT AND OPERATION

Community-based correctional facilities

Under current law, unchanged by the bill, a court may sentence an offender to up to six months at a community-based correctional facility ("CBCF") or district community-based correctional facility ("DCBCF") that serves the county, in addition to other available sanctions. Additionally, the parole board as a condition of release from imprisonment and as a post-release control sanction may require an offender to be confined in a CBCF or DCBCF. (R.C. 2929.16 and 2929.28, *not in the bill*.)

Establishment of a community-based correctional facility

Current law

Under current law, the court of common pleas of any county that has a population of at least 200,000 may formulate a community-based correctional proposal, that upon implementation, would provide a CBCF for the use of that court in accordance with law. For counties that have fewer than 200,000 residents, the courts of common pleas of two or more adjoining or neighboring counties that have an aggregate population of at least 200,000 may form a judicial corrections board (see "**Judicial corrections board**," below), proceed to organize a district, and formulate a district community-based correctional facility proposal that upon implementation would provide a DCBCF for the use of the member courts in accordance with law. The Department of Rehabilitation and Correction ("DRC"), has the authority to approve the formulation of more than one CBCF or DCBCF proposal. In determining whether to grant approval for more than one CBCF or DCBCF proposal, DRC must consider the extent to which the county or counties served by the court or courts commits felony offenders to the state correctional system. The fact of any proposal formulation and the fact of any subsequent establishment of a CBCF or DCBCF must be entered upon the journal of the court. (R.C. 2301.51(A)(1) and (2).)

Operation of the bill

Under the bill, any *county* (instead of a court of common pleas as under current law) that has a population of at least 200,000 is eligible to formulate a community-based correctional proposal. For counties that have fewer than 200,000 residents, two or more adjoining or neighboring counties that have an aggregate population of at least 200,000 are eligible to formulate a district community-based correctional facility proposal. As under current law, DRC has the authority to approve the formulation of more than one CBCF or DCBCF proposal. The bill removes the requirement that the fact of any proposal formulation and the fact of any subsequent establishment of a CBCF or DCBCF be entered upon the journal of the court or each member court. (R.C. 2301.51(A)(1) and (2).)

Submitting a CBCF or DCBCF proposal

Current law

Under current law, a judicial corrections board is responsible for submitting a proposal for the formation of a CBCF or DCBCF to the Division of Parole and Community Services, within DRC. A judicial corrections board is comprised of

judges, not to exceed 11 judges, who are members of the courts served by the CBCF or DCBCF. (R.C. 2301.51(A)(1) and (B)(1) and 5120.10).

Each proposal for a CBCF or DCBCF must provide for or contain at least all of the following provisions (R.C. 2301.52):

(1) The designation of a physical facility to be used for the confinement of persons sentenced to the CBCF or DCBCF that (a) is a secure facility that contains lockups and other measures sufficient to ensure the safety of the surrounding community, (b) provides living space and accommodations that are suitable and adequate for the housing of offenders,¹ and (c) is constructed or modified, and maintained and operated, so that it complies with applicable rules.

(2) The designation of a general treatment program that will be applied individually to each person sentenced to a CBCF or DCBCF that at a minimum includes provisions to ensure that (a) each person confined in a CBCF or DCBCF is provided an orientation period of at least 30 days, during which period the person is not permitted to leave the facility and is evaluated in relation to the person's placement in rehabilitative programs, (b) each person confined in a CBCF or DCBCF is placed in a release program whereby the person will be released temporarily for the purpose of employment in a manner consistent with the applicable work-release program established under R.C. 5147.28, for vocational training, or for other educational or rehabilitative programs, and (c) all available and suitable community resources are utilized in the treatment of each person confined in a CBCF or DCBCF.

(3) Provisions to ensure that the CBCF or DCBCF will be staffed and operated by persons who satisfy the minimum educational and experience requirements that are prescribed by DRC rule;

(4) Provisions for an intake officer to screen each felony offender who is sentenced by the court or courts that the CBCF or DCBCF serves and to make recommendations to the sentencing court concerning the admission or referral of each felony offender to the facility and program within 14 days after notification of sentencing;

(5) Written screening standards that are to be used by an intake officer in screening an offender under the provisions described in (4), above, and that at a minimum include provisions to ensure that the intake officer will not make a

¹ For a facility that became operational prior to July 1, 1993, the facility must have adequate living space for between 20 and 200 persons. For a facility that became operational on or after July 1, 1993, the facility must have adequate living space for between 50 and 200 persons. (R.C. 2301.52(A)(2)(a) and (b).)

recommendation to a sentencing court in support of the sentencing of a person to a CBCF or DCBCF if the person is ineligible for placement in the CBCF or DCBCF under rules adopted by the CBCF's or DCBCF's judicial corrections board;

(6) A statement that a good faith effort will be made to ensure that the persons who staff and operate the CBCF or DCBCF proportionately represent the racial, ethnic, and cultural diversity of the persons released, sentenced, or otherwise committed or admitted to the CBCF or DCBCF.

Operation of the bill

Judicial corrections board. The bill eliminates judicial corrections boards (R.C. 2301.51(A)(1) and (2)).

Judicial advisory board. Instead of judicial corrections boards, the bill creates both judicial advisory boards and facility governing boards. Under the bill, the formulation of a proposal for a CBCF or DCBCF begins by the establishment of a judicial advisory board by judgment entry. The judicial advisory board consists of not less than three judges. Each general division judge of the court of common pleas in the county or counties wishing to formulate a proposal or to continue operation of an existing facility is eligible to become a member of the judicial advisory board but is not required to be a member. A judicial advisory board may also invite a non-general division judge from the county or counties proposing the creation of a CBCF or DCBCF or a general division judge from a court of common pleas outside the county or counties proposing the creation of a CBCF or DCBCF who regularly sends offenders to its facility to be a member of the judicial advisory board.

A judge who serves on a judicial advisory board receives no additional compensation but may be reimbursed for reasonable and necessary expenses incurred during service on the board. The bill also specifies that service on the board is a judicial function.

The judicial advisory board is required by the bill to meet at least once a year, but may meet as often as the members consider necessary, to make necessary appointments to the facility governing board, discussed below in "**Facility governing board**," and to provide advice to the facility governing board regarding the public safety needs of the community, admission criteria for any CBCF or DCBCF, and the general requirements of the CBCF or DCBCF. The judicial advisory board may also communicate directly with the Division of Parole and Community Services and may provide advice to the facility governing board regarding the state financial assistance agreement, discussed below in "**Funding a CBCF or DCBCF**." (R.C. 2301.51(A)(3).)

Facility governing board. The bill provides that a facility governing board, instead of a judicial corrections board, formulates the proposal for a CBCF or DCBCF and submits the proposal to the Division of Parole and Community Services. The facility governing board consists of at least six members, with each member serving a three-year term. The judicial advisory board is responsible for appointing two-thirds of the members, and the board or boards of county commissioners of the member counties appoint the remaining one-third of the members. In the case of a DCBCF, no more than one-half of the members may be from the same county. Members receive no compensation but may be reimbursed reasonable and necessary expenses for service. A facility governing board member is not liable in damages in a civil action for injury, death, or loss to person or property that arises from the member's service on the facility governing board, unless the action or omission of the member constitutes willful or wanton misconduct or intentionally tortious conduct. (R.C. 2301.51(A)(4)(a) and (b).)

Requirements for a CBCF proposal. The bill modifies the components that must be included in a CBCF proposal discussed above in the "**Current law**" provision of "**Submitting a CBCF or DCBCF proposal**" regarding the requirements for a CBCF proposal as follows (R.C. 2301.52):

(1) The designation of a physical facility to be used for the confinement of persons sentenced to the CBCF or DCBCF that (a) is a secure facility that contains lockups and other measures sufficient to ensure the safety of the surrounding community, (b) provides living space and accommodations that are suitable and adequate for the housing of offenders, and (c) is constructed or modified, and maintained and operated, so that it complies with applicable rules (*the bill removes the requirement that the CBCF or DCBCF house specified numbers of persons*);

(2) The designation of a program that will be applied individually to each person sentenced to a CBCF or DCBCF that includes, but is not limited to, education, treatment, or work release (*the bill removes current law's reference to a general treatment program and instead specifies education, treatment, or work release*);

(3) A provision that each person confined in a CBCF or DCBCF with the consent of the facility governing board is provided an orientation period of at least 30 days, during which period the person is not permitted to leave the facility and is evaluated in relation to the person's placement in rehabilitative programs (*removes current law's requirements regarding release programs and use of community resources*);

(4) Provisions to ensure that the CBCF or DCBCF will be staffed to ensure security and the effective delivery of services (*removes the mention of certain educational and experience requirements for CBCF or DCBCF employees*);

(5) Provisions for the facility governing board, upon the advice of the judicial advisory board, to set standards for the screening and admission of each felony offender who is referred by a court or the parole board (*new provision*);

(6) A statement that a good faith effort will be made to ensure that the persons who staff and operate the CBCF or DCBCF proportionately represent the racial, ethnic, and cultural diversity of the persons released, sentenced, or otherwise committed or admitted to the CBCF or DCBCF (*no change from current law*).

The bill also removes current law's requirements regarding intake officers and screening standards.

Operation of a CBCF or DCBCF

Current law

Duties of the judicial corrections board. Under current law, once the Division of Parole and Community Services approves the formation of a CBCF or DCBCF, the judicial corrections board that submitted the proposal may establish and operate the approved CBCF or DCBCF, and persons may be placed in the CBCF or DCBCF. Generally, CBCFs and DCBCFs must operate in conformance with DRC rules (see "**Required DRC rules**," below). Also, the judicial corrections board must adopt rules for the sentencing or other commitment or admission pursuant to law of persons to, and the operation of, the CBCF or DCBCF. These rules must be entered upon the journal of the court of each member court of a district.

A judicial corrections board that administers a CBCF or DCBCF is responsible for appointing and fixing the compensation of the director of the CBCF or DCBCF and other professional, technical, and clerical employees who are necessary to properly maintain and operate the CBCF or DCBCF. The director, under the supervision of the judicial corrections board and subject to the rules of the judicial corrections board, has the responsibility to control, manage, operate, and have general charge of the CBCF or DCBCF, including custody of its property, files, and records.

Additional authority given to the judicial corrections board includes the ability to enter into contracts with the board of county commissioners of the county in which the CBCF is located or, in the case of a DCBCF, with the county commissioners of any county included in the district, whereby the county is to provide buildings, goods, and services to the CBCF or DCBCF. A judicial corrections board may also accept any gift, donation, devise, or bequest of real or personal property made to it by any person, or any grant or appropriation made to

it by any federal, state, or local governmental unit or agency. The board may then use the gift, donation, devise, bequest, grant, or appropriation in any manner that is consistent with any conditions of the gift, donation, devise, bequest, grant, or appropriation and that it considers to be in the interests of the CBCF or DCBCF, including transferring any real or personal property in a manner consistent with Ohio law. (R.C. 2301.55(A), (B), and (C) and R.C. 5120.111.)

Citizens advisory boards. Once the Division of Parole and Community Services approves a proposal for the establishment of a CBCF or DCBCF, current law requires the judicial corrections board that submitted the proposal, in conjunction with the county or counties served by the CBCF or DCBCF, to appoint a citizens advisory board comprised of an uneven number of at least five but not more than 15 members. If a judicial corrections board submits more than one proposal for the establishment of a CBCF or DCBCF, and if more than one of the proposals are approved by the Division of Parole and Community Services, the judicial corrections board is only required to appoint one citizens advisory board. (R.C. 2301.53.)

A citizens advisory board must do all of the following (R.C. 2301.54):

- (1) Recommend physical facilities for the use and operation of the CBCF or DCBCF;
- (2) Provide community relations services for the CBCF or DCBCF;
- (3) Regularly conduct public meetings in the communities that are served by the CBCF or DCBCF, accept recommendations from the public that are offered at the meetings and that relate to the operation of the CBCF or DCBCF, and refer the recommendations to the judicial corrections board;
- (4) Encourage the provision of community services by persons, agencies, organizations, or groups in the area served by the CBCF or DCBCF, and seek out persons, agencies, organizations, or groups to provide community services, to the CBCF or DCBCF;
- (5) Perform other duties relating to the operation of the CBCF or DCBCF that are prescribed by the judicial corrections board.

The applicable judicial corrections board is responsible for providing the citizens advisory board with necessary staff assistance (R.C. 2301.55(C)).

Operation of the bill

Duties of the facility governing board. The bill eliminates judicial corrections boards and gives the responsibility for operating and administering

CBCFs and DCBCFs to facility governing boards. Under the bill, the facility governing board may either appoint a director who will control, manage, operate, and have general charge of the facility or program or enter into a contract with a nonprofit or private entity that will control, manage, operate, and have general charge of the facility or program. The director or entity with whom the facility board contracts has custody of the facility's property, files, and records. If the facility governing board chooses to contract the operation of a facility or program, an agreement that includes, at a minimum, terms and conditions established by DRC, must be in effect with the chosen contractor. (R.C. 2301.55(A).)

As is permitted for judicial corrections boards under current law, the bill allows a facility governing board to contract with the applicable board or boards of county commissioners for the provision of buildings, goods, and services to the CBCF or DCBCF. Also, similar to current law, the facility governing board, upon the advice of the judicial advisory board, must adopt rules for the commitment or admission of persons to, and the operation of, the CBCF or DCBCF that conform with Ohio law. (R.C. 2301.55(B) and (C).)

New powers given to the facility governing board by the bill include all of the following (R.C. 2301.55(E), (F), and (G)):

(1) The ability to purchase liability insurance to cover members of the facility governing board, the judicial advisory board, and the CBCF or DCBCF employees when engaged in official duties;

(2) The ability to contract for legal services for the facility governing board, judicial advisory board, and CBCF or DCBCF employees when engaged in the performance of their official duties. The bill specifies that in the absence of a contract for legal services, the prosecuting attorney of the county in which a CBCF or DCBCF is located must provide legal services to the facility governing board, judicial advisory board, and CBCF or DCBCF employees. The prosecuting attorney is to be reasonably reimbursed for these legal services.

(3) The ability to contract with a fiscal agent who is responsible for the deposit of funds and compliance with the funding requirements, discussed below in "**Funding a CBCF or DCBCF**." In the absence of a contract for a fiscal agent, the county auditor of the county in which a CBCF or DCBCF is located is responsible for providing fiscal services to the facility governing board. The county auditor is to be reasonably reimbursed for these fiscal services.

Citizens advisory boards. The bill eliminates citizens advisory boards (repealed R.C. 2301.53 and 2301.54 and R.C. 2301.55(C)).

Funding a CBCF or DCBCF

Current law

Funding from the board of county commissioners. To finance the CBCF or DCBCF, the judicial corrections board may submit a request for funding all or part of the CBCF or DCBCF operation to the board or boards of county commissioners served by the CBCF or DCBCF. The board or boards have the authority to appropriate funding for the CBCF or DCBCF. If the board or boards decide against funding the facility or if the board or boards provide insufficient funding to operate the facility, the judicial corrections board has no recourse against the board or boards. (R.C. 2301.51(C) and 2301.56(B).)

State financial assistance. The judicial corrections board may also apply to the Division of Parole and Community Services for state financial assistance for the cost of renovation, maintenance, and operation of a CBCF or DCBCF. Once the Division receives an application for financial assistance, the Division must determine whether the application is in proper form, whether the applicant satisfies the standards of operation and training and qualifications of personnel prescribed by DRC rules, and whether the CBCF or DCBCF is already established or that once established it appears that the standards will be satisfied. If the Division determines that the application is in proper order and that the applicant will meet applicable standards, the Division must notify the applicant that it has qualified for state financial assistance.

To determine how much assistance to grant to a particular CBCF or DCBCF, the Division uses a formula that allocates state financial assistance. The formula provides for funding that is based upon a set fee to be paid to an applicant per person committed or referred in the year of application. In no case may the set fee be greater than the average yearly cost of incarceration per inmate in all state correctional institutions, as determined by DRC.

It is within the discretion of the Division to determine the times and manner of distribution of state financial assistance. However, before state financial assistance is distributed, the Director of DRC, the Deputy Director of the Division and the chairperson of the judicial corrections board must enter into an agreement that is valid for one year from the date of agreement and that specifies all terms and conditions applicable to the granting of assistance, including all of the following (R.C. 5120.112(C)):

(1) The total amount of assistance to be granted for each CBCF or DCBCF and the times and manner of the payment of the assistance;

(2) How persons who will staff and operate the CBCF or DCBCF are to be utilized during the period for which the assistance is to be granted, including descriptions of their positions and duties, their salaries and fringe benefits, and their job qualifications and classifications;

(3) A statement that none of the persons who will staff and operate the CBCF or DCBCF, including those who are receiving some or all of their salaries out of funds received by the CBCF or DCBCF as state financial assistance, are employees or are to be considered as being employees of DRC, and a statement that the employees who will staff and operate that CBCF or DCBCF are employees of the CBCF or DCBCF;

(4) A list of the type of expenses, other than salaries of persons who will staff and operate the CBCF or DCBCF, for which the state financial assistance can be used, and a requirement that purchases made with funds received as state financial assistance be made through the use of competitive bidding;

(5) The accounting procedures that are to be used by the CBCF or DCBCF in relation to the state financial assistance;

(6) A requirement that the CBCF or DCBCF file quarterly reports, during the period that it receives state financial assistance, with the Division of Parole and Community Services, which reports shall be statistical in nature and shall contain that information required under a research design agreed upon by all parties to the agreement, for purposes of evaluating the CBCF or DCBCF;

(7) A requirement that the CBCF or DCBCF comply with all of the DRC standards of operation and training and qualifications of personnel and with all information submitted on its application;

(8) A statement that the CBCF or DCBCF will attempt to accept and treat at least 15 percent of the eligible adult felony offenders sentenced in the county or counties it serves during the period that it receives state financial assistance;

(9) A statement that the CBCF or DCBCF will make a reasonable effort to augment the funding received from the state.

If a CBCF or DCBCF fails to comply with the terms of the agreement, the Division may deny state financial assistance. CBCFs and DCBCFs are also subject to audits by the Auditor of State. (R.C. 2301.56(A) and (E) and 5120.112.)

Other fees. A board of county commissioners may require a person who was convicted of an offense and who is confined in a CBCF or DCBCF to reimburse the county for its expenses incurred by reason of the person's confinement. Costs that may be reimbursed include the costs of repairing property

damage, a per diem fee for room and board, medical and dental costs, and a one time reception fee. Prisoners receive an itemized bill, have the ability to make periodic payments, and may contest portions of the bill. Reimbursed funds are credited to the general fund of the treasury of the political subdivision that incurred the expense, to be used for general fund purposes. (R.C. 2301.56(B) and 2929.37.)

Also, the judicial corrections board may establish a policy that requires any person who is not indigent and who is confined in a CBCF or DCBCF to pay a reception fee or a fee for any medical treatment or service requested by and provided to that person. (R.C. 2301.56(C) and 2929.38.)

Operation of the bill

Generally, the provisions regarding the funding of a CBCF or DCBCF under the bill are similar to current law's provisions, discussed above. However, the bill does make several changes with respect to funding a CBCF or DCBCF. First, instead of the judicial corrections board applying for funding from either the boards of county commissioners or the Division of Parole and Community Services, the bill gives this authority to the facility governing board. It is also the facility governing board, instead of the judicial corrections board, that enters into an award agreement with DRC and the Division of Parole and Community Services. (R.C. 5120.112(C) requires the facility governing board, upon the advice of the judicial advisory board to enter into an award agreement with DRC, and R.C. 5120.112(D) requires the chairperson of the facility governing board to enter into an agreement concerning the assistance with the Director of DRC and the deputy director of the Division of Parole and Community Services.) (R.C. 2301.51(C), 2301.56 (A) and (B), and 5120.112(D).)

Second, the bill modifies how the Division is to allocate state financial assistance. Under the bill, when the Division determines the amount of state financial assistance to award to a qualified applicant, the Division is prohibited from calculating the cost of an offender incarcerated in a CBCF or DCBCF as being greater than the average yearly cost of incarceration per inmate in all state correctional institutions, as determined by DRC. (R.C. 5120.112(B).)

With respect to the terms of an award agreement, the bill requires the following agreement inclusions (R.C. 5120.112(D)):

(1) The total amount of assistance to be granted for each CBCF or DCBCF and the times and manner of the payment of the assistance (*no substantive change from current law*);

(2) How persons who will staff and operate the facility and program are to be utilized during the period for which the assistance is to be granted, including descriptions of their positions and duties, their salaries and fringe benefits (*removes current law's inclusion of job qualifications and classifications*);

(3) A statement that none of the persons who will staff and operate the facility and program, including those who are receiving some or all of their salaries out of funds received by the facility and program as state financial assistance, are employees or are to be considered as being employees of DRC, and a statement that the employees who will staff and operate that facility and program are employees of the facility and program (*no change from current law*);

(4) A list of the type of expenses, other than salaries of persons who will staff and operate the facility and program, for which the state financial assistance can be used, and a requirement that purchases made with funds received as state financial assistance *follow established fiscal guidelines as determined by the Division of Parole and Community Services and any applicable provisions of Ohio Law* (*added by the bill in place of a competitive bidding requirement*);

(5) The accounting procedures that are to be used by the facility and program in relation to the state financial assistance (*no change*);

(6) A requirement that the facility and program file reports, during the period that it receives state financial assistance, with the Division of Parole and Community Services, which reports shall be statistical in nature and shall contain that information required under a research design agreed upon by all parties to the agreement, for purposes of evaluating the facility and program (*removes current law's quarterly report requirement*);

(7) A requirement that the facility and program comply with the standards of operation prescribed by DRC and with all information submitted on its application (*removes current law's inclusion of job qualifications and classifications*);

(8) A statement that the facility and program will make a reasonable effort to augment the funding received from the state (*no change from current law*).

The bill removes current law's requirement that an agreement contain a statement that the facility and program will attempt to accept and treat at least 15 percent of the eligible adult felony offenders sentenced in the county or counties it serves during the period that it receives state financial assistance. The bill also requires that the facility governing board identify in the award agreement a fiscal agent responsible for the deposit of funds and compliance with the CBCF laws. (R.C. 5120.112(C) and (D).)

As under current law, if a CBCF or DCBCF fails to comply with the terms of the agreement, the Division may deny state financial assistance. (R.C. 5120.112(E)(2).)

Other fees. The bill makes no change to the ability of a board of county commissioners to require a person confined in a CBCF or DCBCF to reimburse the county for incurred expenses. Also, the bill makes no substantive changes to the provisions of current law regarding the imposition of a reception fee or a fee for any medical treatment or service except to allow the facility governing board, instead of the judicial corrections board, to develop such a policy. Also, the bill moves these provisions currently contained in R.C. 2301.56(C) to R.C. 2301.57(D). (R.C. 2301.56(C) and 2301.57(D).)

Medical issues involving a person confined in a CBCF or DCBCF

Current law

Health insurance claims of a confined person. For each person confined in a CBCF or DCBCF, the county may determine if that person is covered by a health insurance policy and the terms of that policy. If a person is covered by a health insurance policy and the CBCF or DCBCF provides health care to the person, the person, county, or health care provider must promptly submit a claim for payment for the health care services to the appropriate third-party payer and must ensure that payment of any amount due on the claim is made to the county or provider. Any health care payment received by a county is paid into the county treasury of the county that incurred the expense. (R.C. 2301.57.)

Authority to test for certain diseases. The person in charge of the operation of a CBCF or DCBCF has the authority to cause a person confined in a CBCF or DCBCF to be examined and tested for tuberculosis, HIV infection, hepatitis, and other contagious diseases. If the person refuses to be tested, the person in charge of the facility may cause the person to be tested and treated involuntarily. (R.C. 2301.56(D).)

Operation of the bill

Health insurance claims of a confined person. The bill gives the authority to determine a person's health insurance coverage to the CBCF or DCBCF, instead of the county, as under current law. Payment for health care provided to the person by a CBCF or DCBCF is to be made to the CBCF, DCBCF, or provider. The bill removes the provision that states that any health care payment received by a county must be paid into the county treasury of the county that incurred the expense. (R.C. 2301.57(A), (B), and (C).)

Authority to test for certain diseases. The bill makes no substantive changes to a CBCF's or DCBCF's authority to test for certain diseases but does move the provision from R.C. 2301.56(D) to R.C. 2301.57(E).

Commissary Fund

Current law

Under current law, the director of a CBCF or DCBCF is authorized to establish a commissary for the facility. If a commissary is established, all persons in the facility must receive commissary privileges. Purchases from the commissary are to be deducted from the person's facility account. If a person is indigent, the commissary must provide necessary hygiene articles and writing materials to the person. If a commissary is established, the director of the CBCF or DCBCF must create a commissary fund. Commissary fund revenue over and above operating costs and reserve is considered profit and must be expended for the purchase of supplies and equipment for the benefit of persons incarcerated in the facility. (R.C. 2301.58.)

Operation of the bill: resident program fund

The bill repeals existing R.C. 2301.58 regarding the establishment of a commissary and enacts a new R.C. 2301.58 that permits the establishment of a resident program fund. Under the bill, if the facility governing board approves, the director of the CBCF or DCBCF may establish a resident program fund. The director must establish rules, to be approved by the facility governing board, for the operation of the resident program fund that follow guidelines established by the Auditor of State (R.C. 2301.58(C)). Also, the director is required to deposit in the fund all revenues received by the facility from commissions on telephone systems, commissary operations, reimbursable costs such as per diem and medical services, and similar services. The money in the fund can only be used to pay for the costs of the following expenses (R.C. 2301.58(A)):

(1) The purchase of materials, supplies, and equipment used in any library program, educational program, vocational program, rehabilitative program, religious program, medical services program, or recreational program operated by the facility for the benefit of the residents;

(2) The construction, alteration, repair, or reconstruction of a facility under the control of the facility governing board for use in any library program, educational program, vocational program, rehabilitative program, religious program, medical services program, or recreational program operated by the facility for the benefit of the residents;

(3) The payment of salaries, wages, and other compensation to employees of the facility who are employed in any library program, educational program, vocational program, rehabilitative program, religious program, medical services program, or recreational program operated by the facility for the benefit of the residents;

(4) The compensation of vendors that contract with the facility for the provision of services for any library program, educational program, vocational program, rehabilitative program, religious program, medical services program, or recreational program for the benefit of the residents;

(5) The purchase of other goods and the payment of other services that are determined, at the discretion of the director, to be goods and services that may provide additional benefit to the residents;

(6) The costs for the auditing of the resident program funds.

The bill does maintain current law's provision that if a commissary is established by a CBCF or DCBCF all persons in the facility must receive commissary privileges, and if a person is indigent, the commissary must provide necessary hygiene articles and writing materials to the person (R.C. 2301.58(B)).

Withdrawal by a court from a CBCF or DCBCF

Current law

If a court of common pleas that is being served by any CBCF determines that it no longer wants to be served by the CBCF, the court may dissolve the CBCF by entering upon the journal of the court the fact of the determination to dissolve the CBCF and by notifying, in writing, the Division of Parole and Community Services of the determination to dissolve the CBCF. If the court is served by more than one CBCF, it may dissolve some or all of the CBCFs and, if it does not dissolve all of the CBCFs, it shall continue the operation of the remaining CBCFs.

If all of the courts of common pleas being served by any DCBCF determine that they no longer want to be served by the DCBCF, the courts may dissolve the DCBCF by entering upon the journal of each court the fact of the determination to dissolve the DCBCF and by the judge who serves as chairperson of the judicial corrections board notifying, in writing, the Division of Parole and Community Services of the determination to dissolve the DCBCF. If the courts are served by more than one DCBCF, they may dissolve some or all of the DCBCFs and, if they do not dissolve all of the DCBCFs, they shall continue the operation of the remaining DCBCFs.

If at least one, but not all, of the courts of common pleas being served by one or more DCBCFs determines that it no longer wants to be served by the DCBCF, the court may terminate its involvement with each of the DCBCFs by entering upon the journal of the court the fact of the determination to terminate its involvement with the DCBCFs and by the court notifying, in writing, the Division of Parole and Community Services of the determination. If at least one, but not all, of the courts of common pleas being served by one or more DCBCFs terminates its involvement with each of the DCBCFs, the other courts of common pleas being served by the DCBCFs may continue to be served by each of the DCBCFs if the other counties are adjoining or neighboring counties and have an aggregate population of two hundred thousand or more. (R.C. 2301.51(D).)

Operation of the bill

The bill largely retains current law's provisions regarding a court's withdrawal from a CBCF or DCBCF. Under the bill, if a court of common pleas that is being served by a CBCF determines that it no longer wants to be served by the CBCF, the *facility governing board, upon the advice of the judicial advisory board* (instead of the court as under current law) may dissolve the CBCF by notifying, in writing, the Division of Parole and Community Services of the determination to dissolve the CBCF. If the court is served by more than one CBCF, the facility governing board, upon the advice of the judicial advisory board, may dissolve some or all of the CBCFs, and, if it does not dissolve all of the CBCFs, the facility governing board shall continue the operation of the remaining CBCFs.

If all of the courts of common pleas being served by any DCBCF determine that they no longer want to be served by the DCBCF, the facility governing board, upon the advice of the judicial advisory board, may dissolve the DCBCF by notifying, in writing, the Division of Parole and Community Services of the determination to dissolve the DCBCF. If the courts are served by more than one DCBCF, the facility governing board, upon the advice of the judicial advisory board, may dissolve some or all of the DCBCFs, and, if they do not dissolve all of the DCBCFs, they shall continue the operation of the remaining DCBCFs.

If at least one, but not all, of the courts of common pleas being served by one or more DCBCFs determines that it no longer wants to be served by the DCBCF, the court may terminate its involvement with each of the DCBCFs by entering upon the journal of the court the fact of the determination to terminate its involvement with the DCBCFs and by the court notifying, in writing, the Division of Parole and Community Services of the determination. If at least one, but not all, of the courts of common pleas being served by one or more DCBCFs terminates its involvement with each of the DCBCFs, the other courts of common pleas being served by the DCBCFs may continue to be served by each of the

DCBCFs. Under the bill, a court may use a DCBCF by remaining as a member county of the DCBCF or by making a written service agreement with the facility governing board without remaining a member county. (R.C. 2301.51(D).)

Required DRC rules

Current law

Current law requires DRC to perform the following functions with respect to CBCFs and DCBCFs (R.C. 5120.111):

(1) Adopt rules that serve as criteria for the operation of approved CBCFs and DCBCFs;

(2) *Adopt rules that prescribe minimum educational and experience requirements that must be satisfied by persons who staff and operate a CBCF or DCBCF* (italicized portions of this section indicate changes made by the bill that are discussed below in "**Operation of the bill**");

(3) Adopt rules governing the procedures for the submission of proposals for the establishment of CBCFs and DCBCFs to the Division of Parole and Community Services;

(4) Prescribe forms that a *judicial corrections board* must use to apply for state financial assistance *and that include a requirement that the applicant estimate the number of offenders that will be committed or referred to a CBCF or DCBCF and that the CBCF or DCBCF will serve in the year of application*;

(5) Adopt rules that prescribe the standards of operation *and the training and qualifications of persons who staff and operate* the CBCFs and DCBCFs and that must be satisfied for the CBCFs and DCBCFs to be eligible for state financial assistance. *These standards must at least include the minimum requirements that each proposal must include, as explained above in "Submitting a CBCF proposal."*

(6) Through the Division of Parole and Community Services, accept and review proposals for the establishment of a CBCF or DCBCF, approve the proposals that satisfy the requirements described above in "**Submitting for a CBCF proposal**," and administer the program for state financial assistance.

Operation of the bill

The bill makes several changes to the obligations of DRC with respect to CBCFs and DCBCFs. First, the bill removes DRC rule making authority regarding the educational and experience requirements that must be met by a

CBCF or DCBCF employee by eliminating the second DRC obligation discussed above in "Current law" and by removing the italicized portions of the fifth DRC obligation discussed above in "Current law." Second, the bill changes the reference in paragraph (4), above, from the judicial corrections board to the facility governing board. Third, the bill removes the requirement in paragraph (4), above, that an applicant for approval of a CBCF or DCBCF estimate the number of offenders that will be committed or referred to a CBCF or DCBCF and that the CBCF or DCBCF will serve in the year of application. Fourth, the bill removes the requirement in paragraph (5), above, that the prescribed standards must include the minimum requirements that each proposal must include, as explained above in "Submitting a CBCF or DCBCF proposal."

Provisions affecting CBCFs and DCBCFs that existed prior to the effective date of the bill

The bill provides that if a CBCF or DCBCF was established by a judicial corrections board under a prior version of R.C. 2301.51, the CBCF or DCBCF will continue to exist under its existing contractual agreements but, on and after the effective date of the bill, the facility will be governed by a facility governing board and advised by a judicial advisory board (R.C. 2301.51(A)(5)).

The bill also states that the changes made by the bill do not change the status of any CBCF or DCBCF officer or employee in the Public Employees Retirement System ("PERS"). The bill specifies that it is the intent of the General Assembly in enacting the bill to ensure membership in PERS for officers and employees of publicly operated CBCFs and DCBCFs and not to add to the category of employees eligible for membership in PERS. (Section 3.)

Technical changes

R.C. 2152.20 contains a reference to the provision regarding reimbursement of confinement costs in R.C. 2301.56. The bill changes this reference to R.C. 2301.56(C) to reflect the reorganization of R.C. 2301.56.

R.C. 2929.01, which defines a community-based correctional facility for purposes of R.C. Chapter 2929., R.C. 5120.031, which is concerned with shock incarceration, and R.C. 5149.34, which is concerned with local corrections planning boards, contain references to R.C. 2301.51 to 2301.56. The bill amends these cross-references to read R.C. 2301.51 to 2301.58 (R.C. 2929.01(E), 5120.031, and 5149.34(B).)

R.C. 2929.37 contains references to a "judicial corrections board." The bill replaces the references to "judicial corrections board" with references to "facility governing board." (R.C. 2929.37(A).)

R.C. 2929.38 contains references to both a "judicial corrections board" and a "commissary fund." The bill replaces the references to "judicial corrections board" with references to "facility governing board" and for a CBCF replaces the references to "commissary fund" with references to "resident program fund." (R.C. 2929.38(A) and (B).)

HISTORY

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