

1 **JAIL CONTRACTING - JAIL**
2 **COMPENSATION AMENDMENTS**

3 2007 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Michael E. Noel**

6 Senate Sponsor: Dennis E. Stowell

8 **LONG TITLE**

9 **General Description:**

10 This bill repeals the Jail Reimbursement chapter of Title 64, State Institutions, and
11 enacts a new chapter entitled, State Payment and Reimbursement to County
12 Correctional Facilities.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ permits the Department of Corrections to contract with a county to house state
17 inmates, subject to legislative approval in most cases;
- 18 ▶ establishes requirements and procedures for setting the rate for payment by the
19 Department of Corrections to a county for a contract described in the preceding
20 paragraph;
- 21 ▶ requires a contracting county to provide an annual report to the Department of
22 Corrections;
- 23 ▶ requires a county to accept, or contract with another county to accept, state
24 probationary inmates and state parole inmates into a county correctional facility;
- 25 ▶ establishes requirements and procedures for setting the rate for reimbursement by
26 the Department of Corrections to a county for housing the inmates described in the
27 preceding paragraph;
- 28 ▶ grants rulemaking authority to the Department of Corrections;
- 29 ▶ requires a county that is reimbursed for housing state probationary or state parole

30 inmates to provide an annual report to the Department of Corrections;
31 ▶ establishes requirements and procedures for setting the state daily incarceration rate;
32 ▶ requires the Department of Corrections to submit an annual report to the Law
33 Enforcement and Criminal Justice Interim Committee of the Legislature relating to
34 state inmates, state probationary inmates, and state parole inmates housed in county
35 facilities, and the rates for payment or reimbursement to the counties for housing
36 these inmates; and
37 ▶ makes technical changes.

38 **Monies Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 This bill coordinates with H.B. 263 by providing substantive and technical
42 amendments.

43 **Utah Code Sections Affected:**

44 AMENDS:

- 45 **10-8-58**, as last amended by Chapter 301, Laws of Utah 2004
- 46 **63-55b-164**, as last amended by Chapter 86, Laws of Utah 2005
- 47 **76-3-201**, as last amended by Chapter 208, Laws of Utah 2006

48 ENACTS:

- 49 **64-13e-101**, Utah Code Annotated 1953
- 50 **64-13e-102**, Utah Code Annotated 1953
- 51 **64-13e-103**, Utah Code Annotated 1953
- 52 **64-13e-104**, Utah Code Annotated 1953
- 53 **64-13e-105**, Utah Code Annotated 1953
- 54 **64-13e-106**, Utah Code Annotated 1953

55 REPEALS:

- 56 **64-13c-101**, as last amended by Chapter 29, Laws of Utah 2006
- 57 **64-13c-201**, as last amended by Chapter 270, Laws of Utah 2002

- 58 **64-13c-301**, as last amended by Chapter 270, Laws of Utah 2002
- 59 **64-13c-302**, as last amended by Chapter 270, Laws of Utah 2002
- 60 **64-13c-303**, as last amended by Chapter 270, Laws of Utah 2002
- 61 **64-13c-304**, as enacted by Chapter 287, Laws of Utah 1999
- 62 **64-13c-401**, as enacted by Chapter 230, Laws of Utah 2001

63

64 *Be it enacted by the Legislature of the state of Utah:*

65 Section 1. Section **10-8-58** is amended to read:

66 **10-8-58. Jails and workhouses -- Establishment and maintenance.**

67 The governing body of a city or town may:

68 (1) establish, erect, and maintain city jails, houses of correction, and workhouses for
69 the temporary confinement, not to exceed 72 hours, of persons convicted of violating any city
70 ordinances;

71 (2) make rules for the government of them;

72 (3) appoint necessary jailers and keepers; and

73 (4) use the county correctional facilities, including the county jail, for the confinement
74 or punishment of offenders on the following conditions:

75 (a) a city or town may use the county correctional facilities without payment of ~~[core]~~
76 compensation or reimbursement for incarceration costs ~~[as defined in Subsection~~
77 ~~64-13c-101(1)]~~ or costs associated with booking of offenders in county correctional facilities;

78 (b) subject to any conditions that are imposed by law; and

79 (c) with the consent of the county legislative body which may include, without
80 limitation, the allocation or rationing of correctional facility capacity and prohibition of
81 booking for classes of offenses or offenders. These limitations shall be applied equally to all
82 entities using the county correctional facilities.

83 (5) If consent is given for the use of the county correctional facilities, the sheriff, at the
84 sheriff's discretion, may assign offenders to county correctional facilities or programs or
85 transfer offenders between facilities or programs.

86 (6) Nothing contained in this section shall:

87 (a) preclude cities, towns, and counties from executing written agreements containing
88 terms or conditions for the use of the county jail; or

89 (b) invalidate any agreements entered into prior to July 1, 2004.

90 Section 2. Section **63-55b-164** is amended to read:

91 **63-55b-164. Repeal dates -- Title 64.**

92 [~~Subsection 64-13c-303(1) is repealed July 1, 2010.~~]

93 Section 3. Section **64-13e-101** is enacted to read:

94 **CHAPTER 13e. STATE PAYMENT AND REIMBURSEMENT**
95 **TO COUNTY CORRECTIONAL FACILITIES**

96 **64-13e-101. Title.**

97 This chapter is known as "State Payment and Reimbursement to County Correctional
98 Facilities."

99 Section 4. Section **64-13e-102** is enacted to read:

100 **64-13e-102. Definitions.**

101 As used in this chapter:

102 (1) "Department" means the Department of Corrections.

103 (2) "State daily incarceration rate" means the final state daily incarceration rate,

104 rounded down to the nearest half-dollar, reviewed and discussed under Subsection

105 64-13e-105(2), and approved by the Legislature under Subsection 64-13e-105(3), that reflects

106 the expenses of the department, including:

107 (a) executive overhead;

108 (b) administrative overhead;

109 (c) transportation overhead;

110 (d) division overhead;

111 (e) motor pool expenses;

112 (f) medical expenses;

113 (g) mental health expenses;

114 (h) dental expenses; and
115 (i) straight line capital depreciation, over a 40-year period, for prison facilities of the
116 department.

117 (3) "State inmate" means a person, other than a probationary inmate or state parole
118 inmate, who is committed to the custody of the department.

119 (4) "State parole inmate" means a person who is:

120 (a) on parole, as defined in Section 77-27-1; and

121 (b) housed in a county jail for a reason related to the person's parole.

122 (5) "State probationary inmate" means felony probationers sentenced to time in a
123 county jail under Subsection 77-18-1(8).

124 Section 5. Section **64-13e-103** is enacted to read:

125 **64-13e-103. Contracts for housing state inmates.**

126 (1) Subject to Subsection (6), the department may contract with a county to house state
127 inmates in a county or other correctional facility.

128 (2) The department shall give preference for placement of state inmates, over private
129 entities, to county correctional facility bed spaces for which the department has contracted
130 under Subsection (1).

131 (3) The compensation rate for housing state inmates pursuant to a contract described in
132 Subsection (1) shall be 70% of the state daily incarceration rate.

133 (4) Compensation to a county for state inmates incarcerated under this section shall be
134 made by the department.

135 (5) Counties that contract with the department under Subsection (1) shall, on or before
136 June 30 of each year, submit a report to the department that includes:

137 (a) the number of state inmates the county housed under this section; and

138 (b) the total number of state inmate days of incarceration that were provided by the
139 county.

140 (6) Except as provided under Subsection (7), the department may not enter into a
141 contract described under Subsection (1), unless the Legislature has previously passed a joint

142 resolution that includes the following information regarding the proposed contract:

143 (a) the approximate number of beds to be contracted;

144 (b) the state daily incarceration rate;

145 (c) the approximate amount of the county's long-term debt; and

146 (d) the repayment time of the debt for the facility where the inmates are to be housed.

147 (7) The department may enter into a contract with a county government to house
148 inmates without complying with the approval process described in Subsection (6) only if the
149 county facility was under construction, or already in existence, on March 16, 2001.

150 (8) Any resolution passed by the Legislature under Subsection (6) does not bind or
151 obligate the Legislature or the department regarding the proposed contract.

152 Section 6. Section **64-13e-104** is enacted to read:

153 **64-13e-104. Housing of state probationary inmates or state parole inmates --**
154 **Reimbursement.**

155 (1) (a) A county shall accept and house a state probationary inmate or a state parole
156 inmate in a county correctional facility, subject to available resources.

157 (b) If a county is unable to accept a person due to lack of resources, the county shall
158 negotiate with another county to accept and house the person.

159 (2) Within funds appropriated by the Legislature for this purpose, the department shall
160 reimburse a county that houses a state probationary inmate or a state parole inmate at a rate of
161 50% of the state daily incarceration rate.

162 (3) Funds appropriated by the Legislature under Subsection (2):

163 (a) are nonlapsing;

164 (b) may only be used for the purposes described in Subsection (2); and

165 (c) may not be used for:

166 (i) the costs of administering the reimbursement described in this section; or

167 (ii) payment of contract costs under Section 64-13e-103.

168 (4) The costs described in Subsection (3)(c)(i) shall be covered by legislative
169 appropriation.

170 (5) (a) The director of the department shall administer the reimbursement described in
171 this section.

172 (b) The department shall by rule establish procedures for the distribution of
173 reimbursement described in this section.

174 (6) Counties that receive the reimbursement described in this section shall, on or before
175 July 31 of each year, submit a report to the department, for the preceding fiscal year, that
176 includes:

177 (a) the number of state probationary inmates and state parole inmates the county
178 housed under this section; and

179 (b) the total number of state probationary inmate days of incarceration and state parole
180 inmate days of incarceration that were provided by the county.

181 Section 7. Section **64-13e-105** is enacted to read:

182 **64-13e-105. Procedures for setting the state daily incarceration rate.**

183 (1) (a) Before September 1 of each year, the department shall inform the counties of
184 the department's proposed state daily incarceration rate for the fiscal year beginning on July 1
185 of the following year.

186 (b) The state daily incarceration rate described in Subsection (1)(a) may not be less
187 than the state daily incarceration rate presented to the Executive Appropriations Committee of
188 the Legislature for purposes of setting the appropriation for the department's budget.

189 (2) Before October 1 of each year, the following parties shall meet to review and
190 discuss the proposed state daily incarceration rate, described in Subsection (1):

191 (a) as designated by the Utah Sheriffs Association:

192 (i) one sheriff of a county that is currently under contract with the department to house
193 state inmates; and

194 (ii) one sheriff of a county that is currently receiving reimbursement from the
195 department for housing state probationary inmates or state parole inmates;

196 (b) the executive director of the department or the executive director's designee;

197 (c) as designated by the Utah Association of Counties;

198 (i) one member of the legislative body of one county that is currently under contract
199 with the department to house state inmates; and

200 (ii) one member of the legislative body of one county that is currently receiving
201 reimbursement from the department for housing state probationary inmates or state parole
202 inmates;

203 (d) the executive director of the Commission on Criminal and Juvenile Justice or the
204 executive director's designee; and

205 (e) the director of the Governor's Office of Planning and Budget or the director's
206 designee.

207 (3) (a) The state daily incarceration rate, reviewed and discussed under Subsection (2),
208 may not be implemented until approved by the Legislature in the annual appropriations act.

209 (b) Nothing in this chapter prohibits the Legislature from setting the final state daily
210 incarceration rate at an amount higher or lower than:

211 (i) the rate that is review and discussed under Subsection (2); or

212 (ii) the rate that was used during the preceding fiscal year.

213 Section 8. Section **64-13e-106** is enacted to read:

214 **64-13e-106. Report to Legislature.**

215 On or before September 1 of each year, the department shall provide to the Law
216 Enforcement and Criminal Justice Interim Committee of the Legislature a report regarding
217 housing of state inmates, state parole inmates, and state probationary inmates under this
218 chapter, including:

219 (1) the state daily incarceration rate established under this chapter;

220 (2) the rates described in Subsections 64-13e-103(3) and 64-13e-104(2);

221 (3) participating counties;

222 (4) the number of state inmates housed by each county;

223 (5) the number of state parole inmates housed by each county; and

224 (6) the number of state probationary inmates housed by each county.

225 Section 9. Section **76-3-201** is amended to read:

226 **76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil**
227 **penalties -- Hearing.**

228 (1) As used in this section:

229 (a) "Conviction" includes a:

230 (i) judgment of guilt; and

231 (ii) plea of guilty.

232 (b) "Criminal activities" means any offense of which the defendant is convicted or any
233 other criminal conduct for which the defendant admits responsibility to the sentencing court
234 with or without an admission of committing the criminal conduct.

235 (c) "Pecuniary damages" means all special damages, but not general damages, which a
236 person could recover against the defendant in a civil action arising out of the facts or events
237 constituting the defendant's criminal activities and includes the money equivalent of property
238 taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical
239 expenses.

240 (d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a
241 victim, and payment for expenses to a governmental entity for extradition or transportation and
242 as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

243 (e) (i) "Victim" means any person who the court determines has suffered pecuniary
244 damages as a result of the defendant's criminal activities.

245 (ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

246 (2) Within the limits prescribed by this chapter, a court may sentence a person
247 convicted of an offense to any one of the following sentences or combination of them:

248 (a) to pay a fine;

249 (b) to removal or disqualification from public or private office;

250 (c) to probation unless otherwise specifically provided by law;

251 (d) to imprisonment;

252 (e) on or after April 27, 1992, to life in prison without parole; or

253 (f) to death.

254 (3) (a) This chapter does not deprive a court of authority conferred by law to:
255 (i) forfeit property;
256 (ii) dissolve a corporation;
257 (iii) suspend or cancel a license;
258 (iv) permit removal of a person from office;
259 (v) cite for contempt; or
260 (vi) impose any other civil penalty.
261 (b) A civil penalty may be included in a sentence.

262 (4) (a) When a person is convicted of criminal activity that has resulted in pecuniary
263 damages, in addition to any other sentence it may impose, the court shall order that the
264 defendant make restitution to the victims, or for conduct for which the defendant has agreed to
265 make restitution as part of a plea agreement.

266 (b) In determining whether restitution is appropriate, the court shall follow the criteria
267 and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

268 (5) (a) In addition to any other sentence the court may impose, the court shall order the
269 defendant to pay restitution of governmental transportation expenses if the defendant was:

270 (i) transported pursuant to court order from one county to another within the state at
271 governmental expense to resolve pending criminal charges;
272 (ii) charged with a felony or a class A, B, or C misdemeanor; and
273 (iii) convicted of a crime.

274 (b) The court may not order the defendant to pay restitution of governmental
275 transportation expenses if any of the following apply:

276 (i) the defendant is charged with an infraction or on a subsequent failure to appear a
277 warrant is issued for an infraction; or
278 (ii) the defendant was not transported pursuant to a court order.

279 (c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i)
280 shall be calculated according to the following schedule:
281 (A) \$75 for up to 100 miles a defendant is transported;

282 (B) \$125 for 100 up to 200 miles a defendant is transported; and

283 (C) \$250 for 200 miles or more a defendant is transported.

284 (ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant
285 transported regardless of the number of defendants actually transported in a single trip.

286 (d) If a defendant has been extradited to this state under Title 77, Chapter 30,
287 Extradition, to resolve pending criminal charges and is convicted of criminal activity in the
288 county to which he has been returned, the court may, in addition to any other sentence it may
289 impose, order that the defendant make restitution for costs expended by any governmental
290 entity for the extradition.

291 (6) (a) In addition to any other sentence the court may impose, the court shall order the
292 defendant to pay court-ordered restitution to the county for the cost of incarceration in the
293 county correctional facility before and after sentencing if:

294 (i) the defendant is convicted of criminal activity that results in incarceration in the
295 county correctional facility; and

296 (ii) (A) the defendant is not a state prisoner housed in a county correctional facility
297 through a contract with the Department of Corrections; or

298 (B) the reimbursement does not duplicate the reimbursement provided under Section
299 ~~[64-13c-301]~~ 64-13e-104 if the defendant is a state ~~[prisoner housed in a county correctional~~
300 ~~facility as a condition of probation under Subsection 77-18-1(8)]~~ probationary inmate, as
301 defined in Section 64-13e-102, or a state parole inmate, as defined in Section 64-13e-102.

302 (b) (i) The costs of incarceration under Subsection (6)(a) are ~~[-(A)]~~ the daily ~~[core]~~
303 inmate incarceration costs and medical and transportation costs ~~[established under Section~~
304 ~~64-13c-302; and]~~ for the county correctional facility.

305 ~~[(B) the costs of transportation services and medical care that exceed the negotiated~~
306 ~~reimbursement rate established under Subsection 64-13c-302(2).]~~

307 (ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred
308 by the county correctional facility in providing reasonable accommodation for an inmate
309 qualifying as an individual with a disability as defined and covered by the federal Americans

310 with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental
311 health treatment for the inmate's disability.

312 (c) In determining the monetary sum and other conditions for the court-ordered
313 restitution under this Subsection (6), the court shall consider the criteria provided under
314 Subsections 77-38a-302(5)(c)(i) through (iv).

315 (d) If on appeal the defendant is found not guilty of the criminal activity under
316 Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall
317 reimburse the defendant for restitution the defendant paid for costs of incarceration under
318 Subsection (6)(a).

319 (7) (a) If a statute under which the defendant was convicted mandates that one of three
320 stated minimum terms shall be imposed, the court shall order imposition of the term of middle
321 severity unless there are circumstances in aggravation or mitigation of the crime, except as
322 provided in Subsection (8).

323 (b) Prior to or at the time of sentencing, either party may submit a statement identifying
324 circumstances in aggravation or mitigation or presenting additional facts. If the statement is in
325 writing, it shall be filed with the court and served on the opposing party at least four days prior
326 to the time set for sentencing.

327 (c) In determining whether there are circumstances that justify imposition of the
328 highest or lowest term, the court may consider the record in the case, the probation officer's
329 report, other reports, including reports received under Section 76-3-404, statements in
330 aggravation or mitigation submitted by the prosecution or the defendant, and any further
331 evidence introduced at the sentencing hearing.

332 (d) The court shall set forth on the record the facts supporting and reasons for imposing
333 the upper or lower term.

334 (e) In determining a just sentence, the court shall consider sentencing guidelines
335 regarding aggravating and mitigating circumstances promulgated by the Sentencing
336 Commission.

337 (8) (a) The defendant shall be sentenced to the highest minimum term in prison if the

338 trier of fact finds that:

339 (i) during the commission of any of the following offenses the defendant causes
340 substantial bodily injury to the child:

341 (A) Section 76-5-301.1, child kidnapping;

342 (B) Section 76-5-402.1, rape of a child;

343 (C) Section 76-5-402.3, object rape of a child; or

344 (D) Section 76-5-403.1, sodomy on a child; or

345 (ii) at the time of the commission of any of the offenses in Subsections (8)(a)(i)(A)

346 through (D), the defendant had been previously convicted of:

347 (A) Section 76-5-402, rape;

348 (B) Section 76-5-402.1, rape of a child;

349 (C) Section 76-5-402.2, object rape;

350 (D) Section 76-5-402.3, object rape of a child;

351 (E) Subsection 76-5-403(2), forcible sodomy;

352 (F) Section 76-5-403.1, sodomy on a child;

353 (G) Section 76-5-404, forcible sexual abuse;

354 (H) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;

355 (I) Section 76-5-405, aggravated sexual assault;

356 (J) any offense in any other state or federal jurisdiction which constitutes or would

357 constitute a crime in Subsections (8)(a)(ii)(A) through (I); or

358 (K) the attempt to commit any of the offenses in Subsections (8)(a)(ii)(A) through (J).

359 (b) This Subsection (8) takes precedence over any conflicting provision of law.

360 **Section 10. Repealer.**

361 This bill repeals:

362 **Section 64-13c-101, Definitions.**

363 **Section 64-13c-201, County housing of state prisoners.**

364 **Section 64-13c-301, Reimbursement program created -- Funding -- Purposes.**

365 **Section 64-13c-302, Procedures for setting county reimbursement for core inmate**

366 **incarceration costs, and medical and transportation costs.**

367 Section **64-13c-303, Payment of reimbursement.**

368 Section **64-13c-304, Report to Legislature.**

369 Section **64-13c-401, Legislative approval of contracting.**

370 Section 11. **H.B. 438 with H.B. 263 -- Substantive and technical amendments.**

371 If this H.B. 438 and H.B. 263, Jail Expenses Amendments, both pass, it is the intent of
372 the Legislature that the Office of Legislative Research and General Counsel shall prepare the
373 Utah Code database for publication by amending Subsection 76-3-201(6)(b)(i) to read as
374 follows:

375 "(b)(i) The costs of incarceration under Subsection (6)(a) are~~[-(A)]~~ the daily [core]
376 inmate incarceration costs and medical and transportation costs [established under Section
377 ~~64-13c-302; and]~~ for the county correctional facility.

378 ~~[(B) the costs of transportation services and medical care that exceed the negotiated~~
379 ~~reimbursement rate established under Subsection 64-13c-302(2).]~~"