

**JAIL CONTRACTING AND REIMBURSEMENT AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jacob L. Anderegg**

House Sponsor: Eric K. Hutchings

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to jail contract and reimbursement rates.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ modifies the formula used to calculate the rate at which the state pays a correctional facility for housing state inmates under various circumstances; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**64-13e-102**, as last amended by Laws of Utah 2018, Chapter 374

**64-13e-103**, as last amended by Laws of Utah 2018, Chapters 250 and 374

**64-13e-104**, as last amended by Laws of Utah 2015, Chapters 412 and 425

**64-13e-105**, as last amended by Laws of Utah 2014, Chapter 436

ENACTS:

**64-13e-103.1**, Utah Code Annotated 1953

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

30 Section 1. Section **64-13e-102** is amended to read:

31 **64-13e-102. Definitions.**

32 As used in this chapter:

33 (1) "Actual county daily incarceration rate" means the median amount of jail daily  
34 incarceration costs based on the data submitted by counties in accordance with Section  
35 64-13e-104(6)(b).

36 ~~[(+)]~~ (2) "Actual state daily incarceration rate" means the average daily incarceration  
37 rate, calculated by the department based on the previous three fiscal years, that reflects the  
38 ~~[actual expenses of]~~ following expenses incurred by the department~~[, including]~~ for housing an  
39 inmate:

40 (a) executive overhead;

41 (b) administrative overhead;

42 (c) transportation overhead;

43 (d) division overhead; and

44 (e) motor pool expenses~~;~~];

45 ~~[(f) medical expenses;]~~

46 ~~[(g) mental health expenses;]~~

47 ~~[(h) dental expenses;]~~

48 ~~[(i) straight line capital depreciation, over a 40-year period, for prison facilities of the~~  
49 ~~department; and]~~

50 ~~[(j) expenses for treatment, including substance abuse treatment, alcohol abuse~~  
51 ~~treatment, sex offender treatment, and alternative treatment.]~~

52 ~~[(2)]~~ (3) "Alternative treatment" means:

53 (a) evidence-based cognitive behavioral therapy; or

54 (b) a certificate-based program provided by a Utah technical college, as defined in

55 Subsection 53B-26-102(8).

56 (4) "Annual inmate jail days" means the total number of state probationary inmates  
57 housed in a county jail each day for the preceding fiscal year.

58           ~~[(3)]~~ (5) "CCJJ" means the Utah Commission on Criminal and Juvenile Justice, created  
59 in Section [63M-7-201](#).

60           ~~[(4)]~~ (6) "Department" means the Department of Corrections.

61           ~~[(5)]~~ (7) "Division of Finance" means the Division of Finance, created in Section  
62 [63A-3-101](#).

63           ~~[(6)] "Final state daily incarceration rate" means the average actual state daily~~  
64 ~~incarceration rate, calculated, reviewed, and discussed under Section [64-13e-105](#), and approved~~  
65 ~~by the Legislature under Subsection [64-13e-105\(3\)](#).]~~

66           (8) "Final county daily incarceration rate" means the amount equal to:

67           (a) the amount appropriated by the Legislature for the purpose of making payments to  
68 counties under Section [64-13e-104](#); divided by

69           (b) the average annual inmate jail days for the preceding five fiscal years.

70           (9) "Jail daily incarceration costs" means the following daily costs incurred by a county  
71 jail for housing a state probationary inmate on behalf of the department:

72           (a) executive overhead;

73           (b) administrative overhead;

74           (c) transportation overhead;

75           (d) division overhead; and

76           (e) motor pool expenses.

77           ~~[(7)]~~ (10) "State inmate" means an individual, other than a state probationary inmate or  
78 state parole inmate, who is committed to the custody of the department.

79           ~~[(8)]~~ (11) "State parole inmate" means an individual who is:

80           (a) on parole, as defined in Section [77-27-1](#); and

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

82           ~~[(9)]~~ (12) "State probationary inmate" means a felony probationer sentenced to time in  
83 a county jail under Subsection [77-18-1\(8\)](#).

84           ~~[(10)]~~ (13) "Treatment program" means:

85           (a) an alcohol treatment program;

- 86 (b) a substance abuse treatment program;
- 87 (c) a sex offender treatment program; or
- 88 (d) an alternative treatment program.

89 Section 2. Section **64-13e-103** is amended to read:

90 **64-13e-103. Contracts for housing state inmates.**

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

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

96 (3) (a) The compensation rate for housing state inmates pursuant to a contract  
97 described in Subsection (1) shall be:

98 (i) except as provided in Subsection (3)(a)(ii), ~~[91.75%]~~ 83.19% of the ~~[final]~~ actual  
99 state daily incarceration rate for beds in a county that, pursuant to the contract, are dedicated to  
100 a treatment program for state inmates, if the treatment program is approved by the department  
101 under Subsection (3)(c);

102 (ii) ~~[81% of the final]~~ 74.18% of the actual state daily incarceration rate for beds in a  
103 county that, pursuant to the contract, are dedicated to an alternative treatment program for state  
104 inmates, if the alternative treatment program is approved by the department under Subsection  
105 (3)(c); and

106 (iii) ~~[73% of the final]~~ 66.23% of the actual state daily incarceration rate for beds in a  
107 county other than the beds described in Subsections (3)(a)(i) and (ii).

108 (b) The department shall:

109 (i) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
110 Rulemaking Act, that establish standards that a treatment program is required to meet before  
111 the treatment program is considered for approval for the purpose of a county receiving payment  
112 based on the rate described in Subsection (3)(a)(i) or (ii); and

113 (ii) determine on an annual basis, based on appropriations made by the Legislature for

114 the contracts described in this section, whether to approve a treatment program that meets the  
115 standards established under Subsection (3)(b)(i), for the purpose of a county receiving payment  
116 based on the rate described in Subsection (3)(a)(i) or (ii).

117 (c) The department may not approve a treatment program for the purpose of a county  
118 receiving payment based on the rate described in Subsection (3)(a)(i) or (ii), unless:

119 (i) the program meets the standards established under Subsection (3)(b)(i);

120 (ii) the department determines that the Legislature has appropriated sufficient funds to:

121 (A) pay the county that provides the treatment program at the rate described in

122 Subsection (3)(a)(i) or (ii); and

123 (B) pay each county that does not provide a treatment program an amount per state  
124 inmate that is not less than the amount per state inmate received for the preceding fiscal year by  
125 a county that did not provide a treatment program; and

126 (iii) the department determines that the treatment program is needed by the department  
127 at the location where the treatment program will be provided.

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

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

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

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

135 (6) Except as provided under Subsection (7), the department may not enter into a  
136 contract described under Subsection (1), unless the Legislature has previously passed a joint  
137 resolution that includes the following information regarding the proposed contract:

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

139 [~~(b) the final state daily incarceration rate;~~]

140 (b) the daily rate at which the county is paid to house a state inmate;

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

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

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

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

148 Section 3. Section **64-13e-103.1** is enacted to read:

149 **64-13e-103.1. Calculating the actual state incarceration rate.**

150 (1) Before September 15 of each year, the department shall calculate, and inform each  
151 county and CCJJ of the actual state daily incarceration rate.

152 (2) The actual state daily incarceration rate may not be less than the rate presented to  
153 the Executive Appropriations Committee of the Legislature for purposes of setting the  
154 appropriation for the department's budget.

155 Section 4. Section **64-13e-104** is amended to read:

156 **64-13e-104. Housing of state probationary inmates or state parole inmates --**  
157 **Payments.**

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

160 (b) A county may release a number of inmates from a county correctional facility, but  
161 not to exceed the number of state probationary inmates in excess of the number of inmates  
162 funded by the appropriation authorized in Subsection (2) if:

163 (i) the state does not fully comply with the provisions of Subsection (9) for the most  
164 current fiscal year; or

165 (ii) funds appropriated by the Legislature for this purpose are less than 50% of the  
166 [~~average actual state~~] actual county daily incarceration rate.

167 (2) Within funds appropriated by the Legislature for this purpose, the Division of  
168 Finance shall pay a county that houses a state probationary inmate or a state parole inmate at a  
169 rate of [~~50% of the final state~~] 56.88% of the actual county daily incarceration rate.

170 (3) Funds appropriated by the Legislature under Subsection (2):  
171 (a) are nonlapsing;  
172 (b) may only be used for the purposes described in Subsection (2) and Subsection (10);  
173 and  
174 (c) may not be used for:  
175 (i) the costs of administering the payment described in this section; or  
176 (ii) payment of contract costs under Section 64-13e-103.  
177 (4) The costs described in Subsection (3)(c)(i) shall be covered by legislative  
178 appropriation.  
179 (5) (a) The Division of Finance shall administer the payment described in Subsection  
180 (2) and Subsection (10).  
181 (b) In accordance with Subsection (9), CCJJ shall, by rule made pursuant to Title 63G,  
182 Chapter 3, Utah Administrative Rulemaking Act, establish procedures for ~~[the calculation of~~  
183 ~~the payment described in Subsection (2) and Subsection (10)]~~ collecting data from counties for  
184 the purpose of completing the calculations described in this section.  
185 (c) Notwithstanding any other provision of this section, CCJJ shall adjust the amount  
186 of the payments described in Subsection (7)(b), on a pro rata basis, to ensure that the total  
187 amount of the payments made does not exceed the amount appropriated by the Legislature for  
188 the payments.  
189 (6) ~~[Counties that receive]~~ Each county that receives the payment described in  
190 Subsection (2) and Subsection (10) shall~~;~~:  
191 (a) on at least a monthly basis, submit a report to CCJJ that includes:  
192 ~~[(a)]~~ (i) the number of state probationary inmates and state parole inmates the county  
193 housed under this section;  
194 ~~[(b)]~~ (ii) the total number of state probationary inmate days of incarceration and state  
195 parole inmate days of incarceration that were provided by the county;  
196 ~~[(c)]~~ (iii) the total number of offenders housed pursuant to Subsection 64-13-21(2)(b);  
197 and

198           ~~(iv)~~ (iv) the total number of days of incarceration of offenders housed pursuant to  
199 Subsection [64-13-21\(2\)\(b\)](#)~~[-]; and~~

200           (b) before September 15 of every third year beginning in 2022, calculate and inform  
201 CCJJ of the county's jail daily incarceration costs for the preceding fiscal year.

202           (7) (a) On or before September 30 of each year, CCJJ shall:

203           (i) compile the information from the reports described in Subsection (6)(a) that relate  
204 to the preceding state fiscal year and provide a copy of the compilation to each county that  
205 submitted a report[-]; and

206           (ii) calculate:

207           (A) the actual county incarceration rate, based on the most recent year that data was  
208 reported in accordance with Subsection (6)(b); and

209           (B) the final county incarceration rate.

210           (b) On or before October 15 of each year, CCJJ shall inform the Division of Finance  
211 and each county of:

212           (i) the actual county incarceration rate;

213           (ii) the final county incarceration rate; and

214           (iii) the exact amount of the payment described in this section that shall be made to  
215 each county.

216           (8) On or before December 15 of each year, the Division of Finance shall distribute the  
217 payment described in Subsection (7)(b) in a single payment to each county.

218           (9) (a) The amount paid to each county under Subsection (8) shall be calculated on a  
219 pro rata basis, based on the average number of state probationary inmate days of incarceration  
220 and the average state parole inmate days of incarceration that were provided by each county for  
221 the preceding five state fiscal years; and

222           (b) if funds are available, the total number of days of incarceration of offenders housed  
223 pursuant to Subsection [64-13-21\(2\)\(b\)](#).

224           (10) If funds appropriated under Subsection (2) remain after payments are made  
225 pursuant to Subsection (8), the Division of Finance shall pay a county that houses in its jail a



226 person convicted of a felony who is on probation or parole and who is incarcerated pursuant to  
227 Subsection 64-13-21(2)(b) on a pro rata basis not to exceed 50% of the ~~[final state]~~ actual  
228 county daily incarceration rate.

229 Section 5. Section 64-13e-105 is amended to read:

230 **64-13e-105. Meeting to discuss daily incarceration rates.**

231 ~~[(1) (a) Before September 15 of each year, the department shall calculate, and inform~~  
232 ~~the counties and CCJJ of the average actual state daily incarceration rate for the most recent~~  
233 ~~three years for which the data is available.]~~

234 ~~[(b) The actual state daily incarceration rates used to calculate the average rate~~  
235 ~~described in Subsection (1)(a) may not be less than the rates presented to the Executive~~  
236 ~~Appropriations Committee of the Legislature for purposes of setting the appropriation for the~~  
237 ~~department's budget.]~~

238 ~~[(2)]~~ (1) Before September 30 of each year, ~~[the following parties]~~ the individuals  
239 described in Subsection (2) shall meet to review and discuss:

240 (a) the ~~[average]~~ actual state daily incarceration rate, described in ~~[Subsection (1) and]~~  
241 Section 64-13e-103.5;

242 (b) the actual county daily incarceration rate; and

243 (c) the compilation described in Subsection 64-13e-104(7)[:].

244 (2) The following individuals shall meet in accordance with Subsection (1):

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

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

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

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

251 (c) as designated by the Utah Association of Counties:

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

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

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

259 (e) the executive director of the Governor's Office of Management and Budget or the  
260 executive director's designee.

261 ~~[(3) (a) The average actual state daily incarceration rate, reviewed and discussed under  
262 Subsection (2), may not be used for purposes of calculating payment or reimbursement under  
263 this chapter, unless approved by the Legislature in the annual appropriations act.]~~

264 ~~[(b) Nothing in this chapter prohibits the Legislature from setting the final state daily  
265 incarceration rate at an amount higher or lower than:]~~

266 ~~[(i) the average actual state incarceration rate; or]~~

267 ~~[(ii) the final state daily incarceration rate that was used during the preceding fiscal  
268 year.]~~