

JAIL CONTRACTING AND REIMBURSEMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: _____

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

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



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

29 **64-13e-102. Definitions.**

30 As used in this chapter:

31 [~~(1) "Actual state daily incarceration rate" means the daily incarceration rate that~~
32 ~~reflects the actual expenses of the department, including:]~~

33 [~~(a) executive overhead;~~]

34 [~~(b) administrative overhead;~~]

35 [~~(c) transportation overhead;~~]

36 [~~(d) division overhead;~~]

37 [~~(e) motor pool expenses;~~]

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

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

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

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

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

45 [~~(2)] (1) "Alternative treatment" means:~~

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

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

48 Subsection [53B-26-102\(8\)](#).

49 [~~(3)] (2) "CCJJ" means the Utah Commission on Criminal and Juvenile Justice, created~~

50 in Section [63M-7-201](#).
51 (3) (a) "Comparable department expense" means an expense incurred by the
52 department for housing a state inmate that a jail or other correctional facility would also incur
53 when housing a state inmate on behalf of the department.

54 (b) "Comparable department expense" includes:

55 (i) executive overhead;

56 (ii) administrative overhead;

57 (iii) transportation overhead;

58 (iv) division overhead; and

59 (v) motor pool expenses.

60 (4) "Department" means the Department of Corrections.

61 (5) "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 (6) "Jail comparison incarceration rate" means the daily cost incurred by the
67 department for housing a state inmate:

68 (a) calculated based on the preceding fiscal year; and

69 (b) including only comparable department expenses.

70 (7) "State inmate" means an individual, other than a state probationary inmate or state
71 parole inmate, who is committed to the custody of the department.

72 (8) "State parole inmate" means an individual who is:

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

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

75 (9) "State probationary inmate" means a felony probationer sentenced to time in a
76 county jail under Subsection 77-18-1(8).

77 (10) "Treatment program" means:

78 (a) an alcohol treatment program;

79 (b) a substance abuse treatment program;

80 (c) a sex offender treatment program; or

81 (d) an alternative treatment program.

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

83 **64-13e-103. Contracts for housing state inmates.**

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

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

89 (3) (a) The compensation rate for housing state inmates pursuant to a contract

90 described in Subsection (1) shall be:

91 (i) except as provided in Subsection (3)(a)(ii), ~~[91.75%]~~ 82.4% of the ~~[final state daily]~~
92 jail comparison incarceration rate for beds in a county that, pursuant to the contract, are
93 dedicated to a treatment program for state inmates, if the treatment program is approved by the
94 department under Subsection (3)(c);

95 (ii) ~~[81%]~~ 72.8% of the ~~[final state daily]~~ jail comparison incarceration rate for beds in
96 a county that, pursuant to the contract, are dedicated to an alternative treatment program for
97 state inmates, if the alternative treatment program is approved by the department under
98 Subsection (3)(c); and

99 (iii) ~~[73%]~~ 65.6% of the ~~[final state daily]~~ jail comparison incarceration rate for beds in
100 a county other than the beds described in Subsections (3)(a)(i) and (ii).

101 (b) The department shall:

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

106 (ii) determine on an annual basis, based on appropriations made by the Legislature for
107 the contracts described in this section, whether to approve a treatment program that meets the
108 standards established under Subsection (3)(b)(i), for the purpose of a county receiving payment
109 based on the rate described in Subsection (3)(a)(i) or (ii).

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

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

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

114 (A) pay the county that provides the treatment program at the rate described in
115 Subsection (3)(a)(i) or (ii); and

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

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

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

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

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

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

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

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

132 (b) the [~~final state daily~~] jail comparison incarceration rate;

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

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

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

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

140 Section 3. Section **64-13e-104** is amended to read:

141 **64-13e-104. Housing of state probationary inmates or state parole inmates --**
142 **Payments.**

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

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

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

150 (ii) funds appropriated by the Legislature for this purpose are less than [~~50%~~] 44% of
151 the [~~average actual state daily~~] jail comparison incarceration rate.

152 (2) Within funds appropriated by the Legislature for this purpose, the Division of
153 Finance shall pay a county that houses a state probationary inmate or a state parole inmate at a
154 rate of [~~50%~~ 44% of the [~~final state daily~~] jail comparison incarceration rate.

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

156 (a) are nonlapsing;

157 (b) may only be used for the purposes described in Subsection (2) and Subsection (10);

158 and

159 (c) may not be used for:

160 (i) the costs of administering the payment described in this section; or

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

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

164 (5) (a) The Division of Finance shall administer the payment described in Subsection
165 (2) and Subsection (10).

166 (b) In accordance with Subsection (9), CCJJ shall, by rule made pursuant to Title 63G,
167 Chapter 3, Utah Administrative Rulemaking Act, establish procedures for the calculation of the
168 payment described in Subsection (2) and Subsection (10).

169 (c) Notwithstanding any other provision of this section, CCJJ shall adjust the amount
170 of the payments described in Subsection (7)(b), on a pro rata basis, to ensure that the total
171 amount of the payments made does not exceed the amount appropriated by the Legislature for
172 the payments.

173 (6) Counties that receive the payment described in Subsection (2) and Subsection (10)
174 shall, on at least a monthly basis, submit a report to CCJJ that includes:

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

177 (b) the total number of state probationary inmate days of incarceration and state parole
178 inmate days of incarceration that were provided by the county;

179 (c) the total number of offenders housed pursuant to Subsection 64-13-21(2)(b); and

180 (d) the total number of days of incarceration of offenders housed pursuant to
181 Subsection 64-13-21(2)(b).

182 (7) (a) On or before September 30 of each year, CCJJ shall compile the information

183 from the reports described in Subsection (6) that relate to the preceding state fiscal year and
 184 provide a copy of the compilation to each county that submitted a report.

185 (b) On or before October 15 of each year, CCJJ shall inform the Division of Finance
 186 and each county of the exact amount of the payment described in this section that shall be made
 187 to each county.

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

190 (9) ~~(a)~~ The amount paid to each county under Subsection (8) shall be calculated on:

191 (a) a pro rata basis~~[-based on the average number of state probationary inmate days of~~
 192 ~~incarceration and the average state parole inmate days of incarceration that were provided by~~
 193 ~~each county for the preceding five state fiscal years]; and~~

194 (b) if funds are available, the total number of days of incarceration of offenders housed
 195 pursuant to Subsection 64-13-21(2)(b).

196 (10) If funds appropriated under Subsection (2) remain after payments are made
 197 pursuant to Subsection (8), the Division of Finance shall pay a county that houses in its jail a
 198 person convicted of a felony who is on probation or parole and who is incarcerated pursuant to
 199 Subsection 64-13-21(2)(b) on a pro rata basis not to exceed ~~[50%]~~ 44% of the ~~[final state daily]~~
 200 jail comparison incarceration rate.

201 Section 4. Section **64-13e-105** is amended to read:

202 **64-13e-105. Procedures for setting the jail comparison incarceration rate.**

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

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

210 (2) Before September 30 of each year, the following parties shall meet to review ~~[and~~
 211 ~~discuss the average actual state daily]~~ and approve the jail comparison incarceration rate~~;~~
 212 ~~described in Subsection (1)]~~ and the compilation described in Subsection 64-13e-104(7):

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

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

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

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

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

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

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

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

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

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

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

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

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