

Representative Eric K. Hutchings proposes the following substitute bill:

JAIL CONTRACTING AND REIMBURSEMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: Eric K. Hutchings

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



26 ENACTS:

27 **64-13e-103.1**, Utah Code Annotated 1953



29 *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 ~~[(d)]~~ (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.]~~