

## SB0236S02 compared with SB0236S01

~~text~~ shows text that was in SB0236S01 but was deleted in SB0236S02.

text shows text that was not in SB0236S01 but was inserted into SB0236S02.

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~~Senator Jacob L.~~Representative Eric K.~~Anderegg~~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

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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:

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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:*

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

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

As used in this chapter:

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

~~[(1)]~~ (2) "Actual state daily incarceration rate" means the average daily incarceration rate, calculated by ~~the~~ department based on the previous three fiscal years, that reflects the ~~actual~~ ~~expenses of~~ following expenses incurred by ~~the~~ the department ~~including~~ for housing an inmate:

(a) executive overhead;

(b) administrative overhead;

(c) transportation overhead;

(d) division overhead; and

(e) motor pool expenses~~;~~.

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

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

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

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

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

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

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

~~(b) a certificate-based program provided by a Utah technical college, as defined in Subsection 53B-26-102(8).~~

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

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

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

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

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

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

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

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

~~(9) "Jail daily incarceration costs" means the following daily costs incurred by a county jail for housing ~~{an}~~ a state probationary inmate on behalf of the department ~~{, including the costs associated with}~~:~~

~~(a) executive overhead;~~

~~(b) administrative overhead;~~

~~(c) transportation overhead;~~

~~(d) division overhead; and~~

~~(e) motor pool expenses.~~

~~{ ——— [(1)] (2) "Actual state daily incarceration rate" means the daily incarceration rate calculated by the department that reflects the actual expenses [of] incurred by the the department for housing an inmate, including the costs associated with:~~

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- ~~—— (a) executive overhead;~~
- ~~—— (b) administrative overhead;~~
- ~~—— (c) transportation overhead;~~
- ~~—— (d) division overhead; and~~
- ~~—— (e) motor pool expenses[;];~~
- ~~—— [(f) medical expenses;]~~
- ~~—— [(g) mental health expenses;]~~
- ~~—— [(h) dental expenses;]~~
- ~~—— [(i) straight line capital depreciation, over a 40-year period, for prison facilities of the department; and]~~
- ~~—— [(j) expenses for treatment, including substance abuse treatment, alcohol abuse treatment, sex offender treatment, and alternative treatment.]~~
- ~~—— [(2)] (3) "Alternative treatment" means:~~
  - ~~—— (a) evidence-based cognitive behavioral therapy; or~~
  - ~~—— (b) a certificate-based program provided by a Utah technical college, as defined in Subsection 53B-26-102(8).~~
- ~~—— [(3)] (4) "CCJJ" means the Utah Commission on Criminal and Juvenile Justice, created in Section 63M-7-201.~~
- ~~—— [(4)] (5) "Department" means the Department of Corrections.~~
- ~~—— [(5)] (6) "Division of Finance" means the Division of Finance, created in Section 63A-3-101.~~
- ~~—— (7) "Final county daily incarceration rate" means the rate calculated by:~~
  - ~~—— (a) totaling the number of state probationary inmates housed in a county jail facility under Section 64-13c-104 for each day of the preceding fiscal year, and~~
  - ~~—— (b) dividing the number described in Subsection (7)(a) by the amount appropriated by the Legislature for the purpose of making payments to counties under Section 64-13c-104.~~
- ~~—— [(6)] (8) "Final state daily incarceration rate" means the average actual state daily incarceration rate, calculated, reviewed, and discussed under Section 64-13c-105, and approved by the Legislature[ under Subsection 64-13c-105(3)].~~
- ~~—— (9) "Median county daily incarceration rate" means the median rate of the actual jail incarceration rates submitted by each county jail under Subsection 64-13c-104.~~

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

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

- (a) on parole, as defined in Section 77-27-1; and
- (b) housed in a county jail for a reason related to the individual's parole.

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

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

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

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

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

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

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

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

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

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

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

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(b) The department shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~{2}~~3. Section **64-13e-103.1** is enacted to read:

**64-13e-103.1. Calculating the ~~{average}~~ actual state incarceration rate.**

(1) ~~{(a)}~~ Before September 15 of each year, the department shall calculate, and inform each county and CCJJ of the ~~{average}~~ actual state daily incarceration rate ~~{ for the most recent three years for which the data is available}~~.

~~{(b)}~~2 The actual state daily incarceration ~~{rates used to calculate the average rate described in Subsection (1)(a)}~~ rate may not be less than the ~~{rates}~~ rate presented to the Executive Appropriations Committee of the Legislature for purposes of setting the appropriation for the department's budget.~~{~~

~~—— (2) (a) The average actual state daily incarceration rate may not be used for purposes of calculating payment or reimbursement under this chapter, unless approved by the Legislature in the annual appropriations act.~~

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

~~—— (i) the average actual state incarceration rate; or~~

~~—— (ii) the final state daily incarceration rate that was used during the preceding fiscal year.~~

Section ~~{3}~~4. Section **64-13e-104** is amended to read:

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

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

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

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

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

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

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

(a) are nonlapsing;

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

and

(c) may not be used for:

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

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

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

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

(b) In accordance with Subsection (9), CCJJ shall, by rule made pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish procedures for ~~{collecting the data from county jails for purposes of completing }~~ collecting data from counties for the purpose of completing the calculations described in this section. [~~the calculation of the payment described in Subsection (2) and Subsection (10)~~]

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

(6) [~~Counties that receive~~] Each county that receives the payment described in

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Subsection (2) and Subsection (10) shall~~[-];~~:

(a) on at least a monthly basis, submit a report to CCJJ that includes:

~~[(a)]~~ (i) the number of state probationary inmates and state parole inmates the county housed under this section;

~~[(b)]~~ (ii) the total number of state probationary inmate days of incarceration and state parole inmate days of incarceration that were provided by the county;

~~[(c)]~~ (iii) the total number of offenders housed pursuant to Subsection 64-13-21(2)(b);  
~~{}~~and~~{}~~

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

~~[(e) the actual jail incarceration rate as calculated by the jail]~~ b) before September 15 of every third year beginning in 2022, calculate and inform CCJJ of the county's jail daily incarceration costs for the preceding fiscal year.

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

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

(ii) calculate:

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

~~{A}~~ B) the final ~~{jail}~~county incarceration rate~~{, and}~~;

~~{~~ (B) the median jail incarceration rate.

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

(i) the actual county incarceration rate;

(ii) the final county incarceration rate; and

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

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

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

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pro rata basis, based on the average number of state probationary inmate days of incarceration and the average state parole inmate days of incarceration that were provided by each county for the preceding five state fiscal years; and

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

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

Section ~~{4}~~5. Section **64-13e-105** is amended to read:

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

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

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

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

(a) the [average] actual state daily incarceration rate, described in ~~[Subsection (1) and]~~ Section 64-13e-103.~~{1}~~5;

(b) the ~~{median}~~ actual ~~{jail}~~ county daily incarceration rate; and

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

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

(a) as designated by the Utah Sheriffs Association:

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

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

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

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

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

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

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

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

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

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

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

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