

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 596

By Senators Barrett and Tarr

[Introduced February 09, 2023; referred
to the Committee on Finance]

1 A BILL to amend and reenact §15A-3-16 of the Code of West Virginia, 1931, as amended; relating
 2 to the payment of payment for housing and maintenance of inmates; establishing a means
 3 of calculating fees; providing for a reduced rate in certain circumstances; providing for an
 4 enhanced rate in certain circumstances; providing for recalculation every decennial;
 5 requiring publication on the agency webpage; establishing an effective date; and providing
 6 for official and personal liability for payment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-16. Funds for operations of jails under the jurisdiction of the commissioner.

1 (a) Any special revenue funds previously administered by the Regional Jail and
 2 Correctional Facility Authority or its executive director are continued, and shall be administered by
 3 the commissioner.

4 (b) Funds that have been transferred by §15A-3-16(a) of this code shall be limited in use to
 5 operations of jail functions, and for payment to the Regional Jail and Correctional Facility Authority
 6 Board, for payment of indebtedness. In no case shall a fund be utilized to offset or pay operations
 7 of nonjail parts of the facility: *Provided*, That funds may be utilized on a pro rata basis for shared
 8 staff and for operational expenses of facilities being used as both prisons and jails.

9 (c) Whenever the commissioner determines that the balance in these funds is more than
 10 the immediate requirements of this article, he or she may request that the excess be invested until
 11 needed. Any excess funds so requested shall be invested in a manner consistent with the
 12 investment of temporary state funds. Interest earned on any moneys invested pursuant to this
 13 section shall be credited to these funds.

14 (d) These funds consist of the following:

15 (1) Moneys collected and deposited in the State Treasury which are specifically designated
 16 by Acts of the Legislature for inclusion in these funds;

17 (2) Contributions, grants, and gifts from any source, both public and private, specifically

18 directed to the operations of jails under the control of the commissioner;

19 (3) All sums paid pursuant to §15A-3-16(g) of this code; and

20 (4) All interest earned on investments made by the state from moneys deposited in these
21 funds.

22 (e) The amounts deposited in these funds shall be accounted for and expended in the
23 following manner:

24 (1) Amounts deposited shall be pledged first to the debt service on any bonded
25 indebtedness;

26 (2) After any requirements of debt service have been satisfied, the commissioner shall
27 requisition from these funds the amounts that are necessary to provide for payment of the
28 administrative expenses of this article, as limited by this section;

29 (3) The commissioner shall requisition from these funds, after any requirements of debt
30 service have been satisfied, the amounts that are necessary for the maintenance and operation of
31 jails under his or her control. These funds shall make an accounting of all amounts received from
32 each county by virtue of any filing fees, court costs, or fines required by law to be deposited in
33 these funds and amounts from the jail improvement funds of the various counties;

34 (4) Notwithstanding any other provisions of this article, sums paid into these funds by each
35 county pursuant to §15A-3-16(g) of this code for each inmate shall be placed in a separate
36 account and shall be requisitioned from these funds to pay for costs incurred; and

37 (5) Any amounts deposited in these funds from other sources permitted by this article shall
38 be expended based on particular needs to be determined by the commissioner.

39 (f)(1) After a jail facility becomes available pursuant to this article for the incarceration of
40 inmates, each county within the region shall incarcerate all persons whom the county would have
41 incarcerated in any jail prior to the availability of the jail facility in the jail facility, except those whose
42 incarceration in a local jail facility used as a local holding facility is specified as appropriate under
43 the previously promulgated, and hereby transferred standards and procedures developed by the

44 Jail Facilities Standards Commission, and whom the sheriff or the circuit court elects to incarcerate
45 therein.

46 (2) Notwithstanding the provisions of §15A-3-16(f)(1) of this code, circuit and magistrate
47 courts are authorized to:

48 (A) Detain persons who have been arrested or charged with a crime in a county or
49 municipal jail specified as appropriate under the standards and procedures referenced in §15A-3-
50 16(f)(1) of this code, for a period not to exceed 96 hours; or

51 (B) Commit persons convicted of a crime in a county or municipal jail, specified as
52 appropriate under the standards and procedures referenced in §15A-3-16(f)(1) of this code, for a
53 period not to exceed 14 days.

54 (g) When inmates are placed in a jail facility under the jurisdiction of the commissioner
55 pursuant to §15A-3-16(f) of this code, the county, and municipality if the incarceration is a
56 municipal violation, shall pay into this fund a cost per day for each incarcerated inmate, to be
57 determined by the state Budget Office annually by examining the most recent three fiscal years of
58 costs submitted by the commissioner for the cost of operating the jail facilities and units under his
59 or her jurisdiction, and taking an average per day, per inmate cost of maintaining the operations of
60 the jail facilities or units: *Provided*, That beginning July 1, 2018, and continuing through July 1,
61 2023, in no case shall any county or municipality be required to pay a rate that exceeds \$48.25 per
62 day, per inmate. Nothing in this section shall be construed to mean that the per diem cannot be
63 decreased or be less than \$48.25 per day per inmate as set forth in subsection (k) of this section.

64 (h) The per diem costs for incarcerating inmates may not include the cost of construction,
65 acquisition, or renovation of the regional jail facilities: *Provided*, That each jail facility or unit
66 operating in this state shall keep a record of the date and time that an inmate is incarcerated, and a
67 county may not be charged for a second day of incarceration for an individual inmate until that
68 inmate has remained incarcerated for more than 24 hours. After that, in cases of continuous
69 incarceration, subsequent per diem charges shall be made upon a county only as subsequent

70 intervals of 24 hours pass from the original time of incarceration.

71 (i) The county is responsible for costs incurred by the division for housing and maintaining
72 inmates in its facilities who are pretrial inmates and convicted misdemeanants. The costs of
73 housing shall be borne by the division on a felony conviction on which an inmate is incarcerated
74 beginning the calendar day following the day of sentencing: *Provided*, That beginning July 1, 2019,
75 the costs of housing shall be borne by the division on a felony conviction when an inmate is
76 incarcerated beginning the calendar day following the day of conviction. In no case shall the
77 county be responsible for any costs of housing and maintaining felony convicted inmate
78 populations.

79 (j) The county is responsible for the costs incurred by the authority for housing and
80 maintaining an inmate who, prior to a felony conviction on which the inmate is incarcerated and is
81 awaiting transportation to a state correctional facility for a 60-day evaluation period as provided in
82 §62-12-7a of this code.

83 ~~(k) On or before July 1, 2020, the commissioner shall prepare a report on the feasibility of~~
84 ~~phasing out the county and municipal per diem charges required by §15A-3-16(g) of this code.~~
85 ~~This report shall include information regarding savings realized because of the consolidation of the~~
86 ~~former Division of Corrections, Division of Juvenile Services, and the operations of the Regional~~
87 ~~Jail and Correctional Facility Authority, as well as any other recommendations that might ease the~~
88 ~~burden of paying the per diem inmate costs by the counties or municipalities. On or before January~~
89 ~~1, 2019, January 1, 2020, January 1, 2021, and January 1, 2023 the commissioner shall report to~~
90 ~~the Joint Committee on Government and Finance and the co-chairmen of the Joint Standing~~
91 ~~Committee on Finance the actual per diem rate as calculated pursuant to §15A-3-16(g) of this~~
92 ~~code and any amount not assessed to counties if the actual per diem cost is larger than the~~
93 ~~amount charged to the counties or municipalities pursuant to §15A-3-16(g) between July 1, 2018,~~
94 ~~and _____ July _____ 1, _____ 2023~~

1 (k) (1) Effective July 1, 2023, the cost per day per inmate for an incarcerated inmate shall

2 be determined as set forth in this subsection. The base rate per day per inmate rate shall be set at
3 \$48.25. Modifications to this base rate per day per inmate shall occur as set forth in this section.

4 (2) On July 1, 2023, the commissioner shall determine the pro rata share of inmate days
5 per county. This figure shall be determined by the county's population as contained in the 2020
6 United States Census multiplied by .52. A county's pro rata share of inmate days shall then be
7 divided by the population of the State of West Virginia as determined by the 2020 United States
8 Census. The result of that calculation shall then be multiplied by the population of each county.
9 This will set the base number of pro rata days for that county.

10 (3) A county or municipality, if the incarceration is a municipal violation, shall pay eighty
11 percent of the base rate per day per inmate cost as set forth in this subsection (k)(1) of this section
12 for any inmate whose period of incarceration is eighty percent less than the base number of pro
13 rata days resulting from the calculation as set forth in subsection (k)(2) of this section. The rate
14 shall be determined by multiplying the pro rata night figure by eighty percent. This will set the
15 number of days which the county or municipality shall pay at the reduced rate of eighty percent of
16 the per day per inmate cost as set forth in subsection (k)(1) of this section.

17 (4) The per day per inmate cost between the reduced rate as determined by subsection
18 (k)(3) of this section up to and including the base number of pro rata days as set determined by
19 subsection (k)(2) of this section shall be one hundred percent of the base rate per day per inmate
20 costs as set forth in subsection (k)(1) of this section.

21 (5) A county or municipality shall pay an increased per day per inmate cost for any inmate
22 whose incarceration exceeds the base number of pro rata days for that county as set forth in
23 subsection (l)(1) of this section. That cost will be determined by adding an additional twenty
24 percent over and above the base rate per day per inmate cost as set forth in subsection (k)(1) of
25 this section.

26 (6) Upon receipt of 2030 United States Census data, the commissioner shall recalculate
27 the base number of pro rata days for all counties using that data. This recalculation shall occur

28 each decennial upon the publication of the United States Census.

29 (7) The commissioner shall post on the Division of Corrections and Rehabilitations
30 webpage by county:

31 (i) The pro rata share of inmate days,

32 (ii) The base number of pro rata days,

33 (iii) The reduced rate of the per day per inmate costs,

34 (iv) The increased per day per inmate, and

35 (v) Any other information deemed necessary by the commissioner.

36 (l) County commissioners may be liable in both their official and individual capacity for the
37 payment of the fees established in this section. County commissioners pursuant to the
38 jurisdiction, powers, and duties placed upon them pursuant to §7-1-1 et seq. of this code and
39 Section 11, Article 9 of the West Virginia Constitution are responsible for the fiscal affairs of their
40 county. This includes oversight of all financial transaction including compliance with legal
41 requirements for the operation of a county government. The non-payment of the expenses
42 associated with providing housing and maintaining inmates as required by this section is in direct
43 contradiction of their established statutory and constitutional duties as the fiscal officers of a
44 county. This violation of the clearly established statutory and constitutional duty to manage all
45 fiscal matters of a county abrogates any qualified immunity county commissioners may have as a
46 government official.

NOTE: The purpose of this bill is to modify payment for housing and maintenance of inmates. The bill establishes a means of calculating fees. The bill provides for a reduced rate in certain circumstances. The bill provides for an enhanced rate in certain circumstances. The bill provides for recalculation every decennial. The bill requires publication on the agency webpage. The bill establishes an effective date. Finally, the bill provides for official and personal liability for payment.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.