

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 596

BY SENATORS BARRETT AND TARR

[Originating in the Committee on Finance; reported on

February 16, 2023]

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; setting a per day per
3 inmate base rate; establishing a means of calculating fees; providing for a reduced rate in
4 certain circumstances; providing for an enhanced rate in certain circumstances; providing
5 for recalculation every decennial; requiring publication on the agency webpage;
6 establishing an effective date; providing for official and personal liability for payment; and
7 providing for an exception to personal liability.

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
3 by the commissioner.

4 (b) Funds that have been transferred by §15A-3-16(a) of this code shall be limited in use
5 to operations of jail functions, and for payment to the Regional Jail and Correctional Facility
6 Authority Board, for payment of indebtedness. In no case shall a fund be utilized to offset or pay
7 operations of nonjail parts of the facility: *Provided*, That funds may be utilized on a pro rata basis
8 for shared 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
11 until 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
16 designated 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
31 of jails under his or her control. These funds shall make an accounting of all amounts received
32 from each county by virtue of any filing fees, court costs, or fines required by law to be deposited
33 in 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
42 whose incarceration in a local jail facility used as a local holding facility is specified as appropriate

43 under the previously promulgated, and hereby transferred standards and procedures developed
44 by the Jail Facilities Standards Commission, and whom the sheriff or the circuit court elects to
45 incarcerate 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-
50 3-16(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 as set forth in subsection (k) of this section. ~~by the state Budget Office annually by~~
58 ~~examining the most recent three fiscal years of costs submitted by the commissioner for the cost~~
59 ~~of operating the jail facilities and units under his or her jurisdiction, and taking an average per day,~~
60 ~~per inmate cost of maintaining the operations of the jail facilities or units: *Provided*, That beginning~~
61 Beginning July 1, 2018, and continuing through July 1, 2023 June 30, 2023, in no case shall any
62 county or municipality be required to pay a rate that exceeds \$48.25 per day, per inmate. ~~Nothing~~
63 ~~in this section shall be construed to mean that the per diem cannot be decreased or be less than~~
64 ~~\$48.25 per day per inmate.~~

65 (h) The per diem costs for incarcerating inmates may not include the cost of construction,
66 acquisition, or renovation of the regional jail facilities: *Provided*, That each jail facility or unit
67 operating in this state shall keep a record of the date and time that an inmate is incarcerated, and
68 a county may not be charged for a second day of incarceration for an individual inmate until that

69 inmate has remained incarcerated for more than 24 hours. After that, in cases of continuous
70 incarceration, subsequent per diem charges shall be made upon a county only as subsequent
71 intervals of 24 hours pass from the original time of incarceration.

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

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

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

94 ~~the amount charged to the counties or municipalities pursuant to §15A-3-16(g) between July 1,~~
95 ~~2018, and July 1, 2023~~

96 (k) (1) Effective July 1, 2023, the cost per day per inmate for an incarcerated inmate shall
97 be determined as set forth in this subsection. The base rate per day per inmate rate shall be set
98 at \$58.44. The State Budget Office shall annually examine the most recent three fiscal years of
99 costs submitted by the commissioner for the cost of operating the jail facilities and units under his
100 or her jurisdiction, and taking an average per day, per inmate cost of maintaining the operations
101 of the jail facilities or units shall adjust the per day per inmate rate annually. Notice of the adjusted
102 per day per inmate rate shall be provided to each county commission.

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

109 (3) A county or municipality, if the incarceration is a municipal violation, shall pay 80
110 percent of the base rate per day per inmate cost as set forth in this subsection (k)(1) of this section
111 for any inmate whose period of incarceration is 80 percent less than the base number of pro rata
112 days resulting from the calculation as set forth in subsection (k)(2) of this section. The rate shall
113 be determined by multiplying the pro rata night figure by 80 percent. This will set the number of
114 days which the county or municipality shall pay at the reduced rate of 80 percent of the per day
115 per inmate cost as set forth in subsection (k)(1) of this section.

116 (4) The per day per inmate cost between the reduced rate as determined by subsection
117 (k)(3) of this section up to and including the base number of pro rata days as set determined by
118 subsection (k)(2) of this section shall be 100 percent of the base rate per day per inmate costs as
119 set forth in subsection (k)(1) of this section.

120 (5) A county or municipality shall pay an increased per day per inmate cost for any inmate
121 whose incarceration exceeds the base number of pro rata days for that county as set forth in
122 subsection (l)(1) of this section. That cost will be determined by adding an additional 20 percent
123 over and above the base rate per day per inmate cost as set forth in subsection (k)(1) of this
124 section.

125 (6) Upon receipt of 2030 United States Census data, the commissioner shall recalculate
126 the base number of pro rata days for all counties using that data. This recalculation shall occur
127 each decennial upon the publication of the United States Census.

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

- 130 (i) The pro rata share of inmate days;
- 131 (ii) The base number of pro rata days;
- 132 (iii) The reduced rate of the per day per inmate costs;
- 133 (iv) The increased per day per inmate; and
- 134 (v) Any other information deemed necessary by the commissioner.

135 (l) County commissioners may be liable in both their official and individual capacity for the
136 payment of the fees established in this section. County commissioners pursuant to the jurisdiction,
137 powers, and duties placed upon them pursuant to §7-1-1 et seq. of this code and Section 11,
138 Article 9 of the West Virginia Constitution are responsible for the fiscal affairs of their county. This
139 includes oversight of all financial transaction including compliance with legal requirements for the
140 operation of a county government. The non-payment of the expenses associated with providing
141 housing and maintaining inmates as required by this section is in direct contradiction of their
142 established statutory and constitutional duties as the fiscal officers of a county. This violation of
143 the clearly established statutory and constitutional duty to manage all fiscal matters of a county
144 abrogates any qualified immunity county commissioners may have as a government official:
145 Provided, That if a county commission has entered into a payment agreement to pay the amount

146 of arrears for the housing and maintenance of inmates and continues to remain current in the
147 payment of the arrears as set forth in the agreement, that shall stay any personal liability of a
148 county commissioner as set forth in this subsection.