

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 202**

By Senator Hamilton

[Introduced January 11, 2024; referred to the  
Committee on Government; and then 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 requiring certain municipalities to pay for the incarceration of inmates arrested by the  
3 municipality's police.

*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 non-jail 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  
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 for a period not to exceed 96 hours; or

50 (B) Commit persons convicted of a crime in a county or municipal jail for a period not to  
51 exceed 14 days.

52 (g) When inmates are placed in a jail facility under the jurisdiction of the commissioner  
53 pursuant to §15A-3-16(f) of this code, the county, and municipality if the incarceration is a  
54 municipal violation, shall pay into this fund a cost per day for each incarcerated inmate, to be  
55 determined as set forth in subsection (k) of this section. In cases in which the inmate was arrested  
56 by the municipal police of a municipality which participates in municipal home rule and which  
57 levies a local sales tax, the municipality shall pay the first seven days of the jail bill.

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

65 (i) The county is responsible for costs incurred by the division for housing and maintaining  
66 inmates in its facilities who are pretrial inmates and convicted misdemeanants. The costs of  
67 housing shall be borne by the division on a felony conviction when an inmate is incarcerated  
68 beginning the calendar day following the day of conviction. In no case shall the county be  
69 responsible for any costs of housing and maintaining felony convicted inmate populations.

70 (j) The county is responsible for the costs incurred by the authority for housing and  
71 maintaining an inmate who, prior to a felony conviction on which the inmate is incarcerated and is  
72 awaiting transportation to a state correctional facility for a 60-day evaluation period as provided in

73 §62-12-7a of this code.

74 (k) (1) Effective July 1, 2023, the cost per day, per inmate for an incarcerated inmate shall  
75 be determined as set forth in this subsection. The base per day, per inmate rate shall be set at  
76 \$54.48. The State Budget Office shall annually examine the most recent three fiscal years of costs  
77 submitted by the commissioner for the cost of operating the jail facilities and units under his or her  
78 jurisdiction, and taking an average per day, per inmate cost of maintaining the operations of the jail  
79 facilities or units shall adjust the per day, per inmate rate annually. Notice of the adjusted per day,  
80 per inmate rate shall be provided to each county commission.

81 (2) Beginning July 1, 2023, the commissioner shall determine the pro rata share of inmate  
82 days per county. This figure shall be calculated by multiplying each county's population as  
83 contained in the 2020 United States Census by .52.

84 (3) Each county shall pay as its annual per diem jail cost:

85 (A) Eighty percent of the current per diem rate for the first 80 percent of its pro rata share of  
86 total billed inmate days;

87 (B) One hundred percent of the current per diem rate for its inmate days that are greater  
88 than 80 percent and up to 100 percent of its pro rata share of total billed inmate days; and

89 (C) One hundred twenty percent of the current per diem rate for its inmate days that  
90 exceed 100 percent of its pro rata share of total billed inmate days.

91 (4) Beginning July 1, 2031, and every 10 years thereafter the pro rata share of inmate days  
92 per county shall be calculated by dividing the number of inmate days from the previous calendar  
93 year by the state's population according to the most recent United States Census data and then  
94 multiplying that number by each county's population.

95 (5) The commissioner shall post on the Division of Corrections and Rehabilitations  
96 webpage by county:

97 (i) The pro rata share of inmate days;

98 (ii) The base number of pro rata days;

- 99 (iii) The reduced rate of the per day, per inmate costs;
- 100 (iv) The increased per day, per inmate; and
- 101 (v) Any other information deemed necessary by the commissioner.
- 102 (l) In cases in which the incarcerated inmate was placed in a jail facility by the municipal
- 103 police of a Class I or Class II municipal corporation as defined in §8-1-3 of this code, or of a Class
- 104 III municipal corporation as defined in §8-1-3 of this code but with a population in excess of 4,000
- 105 according to the most recent census taken under the authority of the United States, and the
- 106 incarceration resulted from a charge that could have been brought in municipal court but was
- 107 brought in a magistrate court of this state, the county commission responsible for paying the cost
- 108 per day pursuant to this subsection shall be entitled to reimbursement from the municipal
- 109 corporation of actual expenditures for up to five days of per diem costs borne by the county
- 110 commission.

NOTE: The purpose of this bill is to require certain municipalities to pay certain costs for the jailing of an inmate arrested by their police.

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