

WEST VIRGINIA LEGISLATURE
2023 FIRST EXTRAORDINARY SESSION

Introduced

House Bill 107

By Delegates Kelly and Skaff

(By Request of the Executive)

[Introduced August 6, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §15A-3-16 of the Code of West Virginia, 1931, as amended, relating
2 to regional jail per diem fees; requiring certain municipalities to reimburse responsible
3 county for up to five days of regional jail per diem fees when municipality incarcerates
4 individuals for offenses that could have been prosecuted in municipal court but were
5 prosecuted in magistrate court; and making technical corrections.

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
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-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 as set forth in subsection (k) of this section. ~~Beginning July 1, 2018, and continuing~~
58 ~~through June 30, 2023, in no case shall any county or municipality be required to pay a rate that~~
59 ~~exceeds \$48.25 per day, per inmate~~

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

67 (i) The county is responsible for costs incurred by the division for housing and maintaining
68 inmates in its facilities who are pretrial inmates and convicted misdemeanants. The costs of
69 housing ~~shall be borne by the division on a felony conviction on which an inmate is incarcerated~~

70 ~~beginning the calendar day following the day of sentencing: *Provided*, That beginning July 1, 2019,~~
71 ~~the costs of~~ housing shall be borne by the division on a felony conviction when an inmate is
72 incarcerated beginning the calendar day following the day of conviction. In no case shall the
73 county be responsible for any costs of housing and maintaining felony convicted inmate
74 populations.

75 (j) The county is responsible for the costs incurred by the authority for housing and
76 maintaining an inmate who, prior to a felony conviction on which the inmate is incarcerated and is
77 awaiting transportation to a state correctional facility for a 60-day evaluation period as provided in
78 §62-12-7a of this code.

79 (k) (1) Effective July 1, 2023, the cost per day, per inmate for an incarcerated inmate shall
80 be determined as set forth in this subsection. The base rate per day, per inmate rate shall be set at
81 \$54.48. The State Budget Office shall annually examine the most recent three fiscal years of costs
82 submitted by the commissioner for the cost of operating the jail facilities and units under his or her
83 jurisdiction, and taking an average per day, per inmate cost of maintaining the operations of the jail
84 facilities or units shall adjust the per day, per inmate rate annually. Notice of the adjusted per day,
85 per inmate rate shall be provided to each county commission.

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

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

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

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

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

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

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

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

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

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

105 (iv) The increased per day, per inmate; and

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

107 (l) In cases in which the incarcerated inmate was placed in a jail facility by the municipal
108 police of a Class I or Class II municipal corporation as defined in §8-1-3 of this code, or of a Class
109 III municipal corporation as defined in §8-1-3 of this code but with a population in excess of 4,000
110 according to the most recent census taken under the authority of the United States, and the
111 incarceration ~~is not a municipal violation~~ resulted from a charge that could have been brought in
112 municipal court but was brought in a magistrate court of this state, the county commission
113 responsible for paying the cost per day pursuant to this subsection ~~may~~ shall be entitled to seek
114 reimbursement from the municipal corporation of actual expenditures for ~~one day~~ five days of per
115 diem costs borne by the county commission. ~~by memorandum of understanding~~

NOTE: The purpose of this bill is to require certain municipalities to reimburse the counties responsible for payment for up to five days of regional jail per diem fees when a municipality incarcerates an individual in regional jail and prosecutes an offense in magistrate court that could have been prosecuted in municipal court.

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