

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 4790**

By Delegate Adkins

[Introduced January 16, 2024; Referred  
to the Committee on Jails and Prisons then Finance]

1 A BILL to amend and reenact §15A-3-16 of the Code of West Virginia, 1931, as amended, relating  
 2 to funds for operations of jails under the jurisdiction of the Commissioner of Division of  
 3 Corrections; requiring the commissioner to prepare a report on the feasibility of splitting the  
 4 per diem costs for incarcerating inmates among the municipalities, counties, and the state;  
 5 and determining when certain of these costs are paid by the state, including that the state  
 6 pay the per diem costs for incarcerating inmates for counties with outstanding balances.

*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.

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

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

68 (j) The county is responsible for the costs incurred by the authority for housing and  
69 maintaining an inmate who, prior to a felony conviction on which the inmate is incarcerated and is

70 awaiting transportation to a state correctional facility for a 60-day evaluation period as provided in  
71 §62-12-7a of this code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

109 (m) Notwithstanding any other provisions of this article, on or before July 1, 2025, the  
110 commissioner shall prepare a report on the feasibility of splitting the per diem costs for  
111 incarcerating inmates among the municipalities, counties, and the state so that:

112 (1) Class I, II and III municipalities shall pay their per diem costs. The county shall pay the  
113 Class IV municipalities;

114 (2) Counties shall pay their per diem costs;

115 (3) The state shall pay the state police jail bills for incarcerating inmates; and

116 (4) The state shall forgive outstanding jail bills one time for counties with outstanding  
117 balances if they do not have the disposable funds to pay for incarcerating inmates.

118 (n) The provisions of subsection (m) shall become effective on January 1, 2025.

NOTE: The purpose of this bill is to require the Commissioner of Division of Corrections to prepare a report on the feasibility of splitting the per diem costs for incarcerating inmates among the municipalities, counties, and the state.

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