

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2164**

BY DELEGATES PACK AND HOWELL

[Introduced February 10, 2021; Referred to the  
Committee on Political Subdivisions then 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  
 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), 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, by examining the most recent three years of costs  
58 submitted by the commissioner for the cost of operating the jail facilities and units under his or  
59 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 2021, in no case shall any county or municipality be required to pay a rate that exceeds \$48.25  
62 per day, per inmate. Nothing in this section shall be construed to mean that the per diem cannot  
63 be decreased or be less than \$48.25 per day per inmate. In cases in which the inmate was  
64 arrested by the municipal police of a municipality which participates in municipal home rule and  
65 which levies a local sales tax, the municipality shall pay the first seven days of the jail bill.

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

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

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

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

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.