

1 **COUNTY CORRECTIONAL FACILITY CONTRACTING**

2 **AMENDMENTS**

3 2023 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Derrin R. Owens**

6 House Sponsor: Jefferson S. Burton

8 **LONG TITLE**

9 **General Description:**

10 This bill concerns county correctional facility contracting.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies definitions;
- 14 ▶ amends provisions concerning county correctional facility contracting for state
- 15 inmates;
- 16 ▶ mandates certain data collection and reporting regarding county correctional facility
- 17 treatment programs for state inmates;
- 18 ▶ removes existing state daily incarceration rate as applied to county correctional
- 19 facility contracting for state inmates;
- 20 ▶ removes existing annual expenditure for county correctional facility contracting for
- 21 state inmates;
- 22 ▶ requires the Department of Corrections to annually estimate the number of county
- 23 correctional facility bed spaces required for state inmates and removes specific
- 24 numbers of bed spaces;
- 25 ▶ amends provisions concerning the Subcommittee on County Correctional Facility
- 26 Contracting and Reimbursement; and
- 27 ▶ makes technical and conforming changes.

28 **Money Appropriated in this Bill:**

29 This bill appropriates in fiscal year 2024:

- 30 ▶ to the Department of Corrections - County Correctional Facility Contracting:
- 31 • from the General Fund, \$5,410,400.
- 32 • from the General Fund, One-time, \$1,436,200.
- 33 ▶ to the Department of Corrections - County Correctional Facility Contracting
- 34 Reserve, as a one-time appropriation:
- 35 • from the General Fund, One-time, \$2,000,000.

36 **Other Special Clauses:**

37 This bill provides a special effective date.

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **63J-1-602.2**, as last amended by Laws of Utah 2022, Chapters 59, 68, 154, 224, 236,
41 242, and 447 and last amended by Coordination Clause, Laws of Utah 2022,
42 Chapter 154

43 **64-13e-102**, as last amended by Laws of Utah 2022, Chapter 370

44 **64-13e-103**, as last amended by Laws of Utah 2022, Chapter 187

45 **64-13e-103.1**, as enacted by Laws of Utah 2020, Chapter 410

46 **64-13e-103.2**, as enacted by Laws of Utah 2021, Chapter 366

47 **64-13e-105**, as last amended by Laws of Utah 2021, Chapters 366, 382

48 ENACTS:

49 **64-13e-103.3**, Utah Code Annotated 1953

50 REPEALS:

51 **64-13e-101**, as enacted by Laws of Utah 2007, Chapter 353



53 *Be it enacted by the Legislature of the state of Utah:*

54 Section 1. Section **63J-1-602.2** is amended to read:

55 **63J-1-602.2. List of nonlapsing appropriations to programs.**

56 Appropriations made to the following programs are nonlapsing:

- 57 (1) The Legislature and the Legislature's committees.

58 (2) The State Board of Education, including all appropriations to agencies, line items,
59 and programs under the jurisdiction of the State Board of Education, in accordance with
60 Section 53F-9-103.

61 (3) The Percent-for-Art Program created in Section 9-6-404.

62 (4) The LeRay McAllister Critical Land Conservation Program created in Section
63 4-46- 301.

64 (5) The Utah Lake Authority created in Section 11-65-201.

65 (6) Dedicated credits accrued to the Utah Marriage Commission as provided under
66 Subsection 17-16-21(2)(d)(ii).

67 (7) The Division of Wildlife Resources for the appraisal and purchase of lands under
68 the Pelican Management Act, as provided in Section 23-21a-6.

69 (8) The Emergency Medical Services Grant Program in Section 26-8a-207.

70 (9) The primary care grant program created in Section 26-10b-102.

71 (10) Sanctions collected as dedicated credits from Medicaid providers under
72 Subsection 26-18-3(7).

73 (11) The Utah Health Care Workforce Financial Assistance Program created in Section
74 26-46-102.

75 (12) The Rural Physician Loan Repayment Program created in Section 26-46a-103.

76 (13) The Opiate Overdose Outreach Pilot Program created in Section 26-55-107.

77 (14) The Utah Medical Education Council for the:

78 (a) administration of the Utah Medical Education Program created in Section
79 26-69-403;

80 (b) provision of medical residency grants described in Section 26-69-407; and

81 (c) provision of the forensic psychiatric fellowship grant described in Section
82 26-69-408.

83 (15) Funds that the Department of Alcoholic Beverage Services retains in accordance
84 with Subsection 32B-2-301(8)(a) or (b).

85 (16) The General Assistance program administered by the Department of Workforce

86 Services, as provided in Section [35A-3-401](#).

87 (17) The Utah National Guard, created in Title 39, Militia and Armories.

88 (18) The State Tax Commission under Section [41-1a-1201](#) for the:

89 (a) purchase and distribution of license plates and decals; and

90 (b) administration and enforcement of motor vehicle registration requirements.

91 (19) The Search and Rescue Financial Assistance Program, as provided in Section

92 [53-2a-1102](#).

93 (20) The Motorcycle Rider Education Program, as provided in Section [53-3-905](#).

94 (21) The Utah Board of Higher Education for teacher preparation programs, as

95 provided in Section [53B-6-104](#).

96 (22) Innovation grants under Section [53G-10-608](#), except as provided in Subsection

97 [53G-10-608](#)(6).

98 (23) The Division of Services for People with Disabilities, as provided in Section

99 [62A-5-102](#).

100 (24) The Division of Fleet Operations for the purpose of upgrading underground

101 storage tanks under Section [63A-9-401](#).

102 (25) The Utah Seismic Safety Commission, as provided in Section [63C-6-104](#).

103 (26) The Division of Technology Services for technology innovation as provided under

104 Section [63A-16-903](#).

105 (27) The Office of Administrative Rules for publishing, as provided in Section

106 [63G-3-402](#).

107 (28) The Colorado River Authority of Utah, created in Title 63M, Chapter 14,

108 Colorado River Authority of Utah Act.

109 (29) The Governor's Office of Economic Opportunity to fund the Enterprise Zone Act,

110 as provided in Title 63N, Chapter 2, Part 2, Enterprise Zone Act.

111 (30) The Governor's Office of Economic Opportunity's Rural Employment Expansion

112 Program, as described in Title 63N, Chapter 4, Part 4, Rural Employment Expansion Program.

113 (31) County correctional facility contracting program for state inmates as described in

114 Section 64-13e-103.

115 ~~[(31)]~~ (32) Programs for the Jordan River Recreation Area as described in Section
116 65A-2-8.

117 ~~[(32)]~~ (33) The Division of Human Resource Management user training program, as
118 provided in Section 63A-17-106.

119 ~~[(33)]~~ (34) A public safety answering point's emergency telecommunications service
120 fund, as provided in Section 69-2-301.

121 ~~[(34)]~~ (35) The Traffic Noise Abatement Program created in Section 72-6-112.

122 ~~[(35)]~~ (36) The money appropriated from the Navajo Water Rights Negotiation
123 Account to the Division of Water Rights, created in Section 73-2-1.1, for purposes of
124 participating in a settlement of federal reserved water right claims.

125 ~~[(36)]~~ (37) The Judicial Council for compensation for special prosecutors, as provided
126 in Section 77-10a-19.

127 ~~[(37)]~~ (38) A state rehabilitative employment program, as provided in Section
128 78A-6-210.

129 ~~[(38)]~~ (39) The Utah Geological Survey, as provided in Section 79-3-401.

130 ~~[(39)]~~ (40) The Bonneville Shoreline Trail Program created under Section 79-5-503.

131 ~~[(40)]~~ (41) Adoption document access as provided in Sections 78B-6-141, 78B-6-144,
132 and 78B-6-144.5.

133 ~~[(41)]~~ (42) Indigent defense as provided in Title 78B, Chapter 22, Part 4, Utah Indigent
134 Defense Commission.

135 ~~[(42)]~~ (43) The program established by the Division of Facilities Construction and
136 Management under Section 63A-5b-703 under which state agencies receive an appropriation
137 and pay lease payments for the use and occupancy of buildings owned by the Division of
138 Facilities Construction and Management.

139 ~~[(43)]~~ (44) The State Tax Commission for reimbursing counties for deferred property
140 taxes in accordance with Section 59-2-1802.

141 Section 2. Section **64-13e-102** is amended to read:

170 63A-3-101.

171 [~~(8)~~] (7) "Final county daily incarceration rate" means the amount equal to:

172 (a) the amount appropriated by the Legislature for the purpose of making payments to
173 counties under Section 64-13e-104; divided by

174 (b) the average annual inmate jail days for the preceding five fiscal years.

175 [~~(9)~~] (8) "Jail daily incarceration costs" means the following daily costs incurred by a
176 county jail for housing a state probationary inmate on behalf of the department:

177 (a) executive overhead;

178 (b) administrative overhead;

179 (c) transportation overhead;

180 (d) division overhead; and

181 (e) motor pool expenses.

182 (9) "State daily incarceration rate" means the average daily incarceration rate,
183 calculated by the department based on the previous three fiscal years, that reflects the following
184 expenses incurred by the department for housing an inmate:

185 (a) executive overhead;

186 (b) administrative overhead;

187 (c) transportation overhead;

188 (d) division overhead; and

189 (e) motor pool expenses.

190 (10) "State inmate" means an individual, other than a state probationary inmate or state
191 parole inmate, who is committed to the custody of the department.

192 (11) "State parole inmate" means an individual who is:

193 (a) on parole, as defined in Section 77-27-1; and

194 (b) housed in a county [~~jail~~] correctional facility for a reason related to the individual's
195 parole.

196 (12) "State probationary inmate" means a felony probationer sentenced to time in a
197 county [~~jail~~] correctional facility under Subsection 77-18-105(6).

198 (13) "Treatment program" means:

199 (a) an alcohol treatment program;

200 (b) a substance abuse treatment program;

201 (c) a sex offender treatment program; or

202 (d) an alternative treatment program.

203 Section 3. Section **64-13e-103** is amended to read:

204 **64-13e-103. County correctional facility contracting program for state inmates --**

205 **Payments -- Reporting -- Contracts.**

206 (1) Subject to Subsection (6), the department may contract with a county to house state
207 inmates in a county [~~or other~~] correctional facility.

208 (2) The department shall give preference for placement of state inmates, over private
209 entities, to county correctional facility bed spaces for which the department has contracted
210 under Subsection (1).

211 (3) (a) The compensation rate for housing state inmates pursuant to a contract
212 described in Subsection (1) shall be:

213 (i) except as provided in Subsection (3)(a)(ii), [~~83.19%~~] 84% of the [~~actual~~] state daily
214 incarceration rate for [~~beds~~] a county correctional facility bed space in a county that, pursuant
215 to the contract, [~~are~~] is dedicated to a treatment program for state inmates, if the treatment
216 program is approved by the department under Subsection (3)(c);

217 (ii) [~~74.18%~~] 75% of the [~~actual~~] state daily incarceration rate for [~~beds~~] a county
218 correctional facility bed space in a county that, pursuant to the contract, [~~are~~] is dedicated to an
219 alternative treatment program for state inmates, if the alternative treatment program is
220 approved by the department under Subsection (3)(c); and

221 (iii) [~~66.23%~~] 70% of the [~~actual~~] state daily incarceration rate for [~~beds~~] a county
222 correctional facility bed space in a county other than the [~~beds~~] bed spaces described in
223 Subsections (3)(a)(i) and (ii).

224 (b) The department shall:

225 (i) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative

226 Rulemaking Act, that establish standards that a treatment program is required to meet before
227 the treatment program is considered for approval for the purpose of a county receiving payment
228 based on the rate described in Subsection (3)(a)(i) or (ii); and

229 (ii) determine on an annual basis, based on appropriations made by the Legislature for
230 the contracts described in this section, whether to approve a treatment program that meets the
231 standards established under Subsection (3)(b)(i), for the purpose of a county receiving payment
232 based on the rate described in Subsection (3)(a)(i) or (ii).

233 (c) The department may not approve a treatment program for the purpose of a county
234 receiving payment based on the rate described in Subsection (3)(a)(i) or (ii), unless:

235 (i) the program meets the standards established under Subsection (3)(b)(i); and

236 ~~[(ii) the department determines that the Legislature has appropriated sufficient funds~~
237 ~~to:]~~

238 ~~[(A) pay the county that provides the treatment program at the rate described in~~
239 ~~Subsection (3)(a)(i) or (ii); and]~~

240 ~~[(B) pay each county that does not provide a treatment program an amount per state~~
241 ~~inmate that is not less than the amount per state inmate received for the preceding fiscal year by~~
242 ~~a county that did not provide a treatment program; and]~~

243 ~~[(iii)]~~ (ii) the department determines that the treatment program is needed by the
244 department at the location where the treatment program will be provided.

245 (d) (i) The department shall annually:

246 (A) collect information from each county described in Subsection (1) regarding the
247 treatment programs for state inmates offered by the county;

248 (B) evaluate, review, and audit the results of each treatment program on state inmate
249 recidivism and other relevant metrics; and

250 (C) on or before November 30, report the results of the information described in
251 Subsection (3)(d)(i)(B) to the Executive Offices and Criminal Justice Appropriations
252 Subcommittee.

253 (ii) The department may make rules, in accordance with Title 63G, Chapter 3, Utah

254 Administrative Rulemaking Act, to implement the provisions of Subsection (3)(d)(i).

255 (4) (a) Compensation to a county for state inmates incarcerated under this section shall
256 be made by the department.

257 (b) Funds from the County Correctional Facility Contracting Reserve Program may be
258 used only once existing annual appropriated funds for the fiscal year have been exhausted.

259 (5) Counties that contract with the department under Subsection (1) shall, on or before
260 June 30 of each year, submit a report to the department that includes:

261 (a) the number of state inmates the county housed under this section; ~~and~~

262 (b) the total number of state inmate days of incarceration that were provided by the
263 county~~[-]; and~~

264 (c) the information required under Subsection (3)(d)(i)(A).

265 (6) Except as provided under Subsection (7), the department may not enter into a
266 contract with a county as described under Subsection (1), unless:

267 (a) beginning July 1, 2023, the county ~~[a]n~~ correctional facility within the county is in
268 compliance with the reporting requirements described in Subsection 17-22-32(2); and

269 (b) the Legislature has previously passed a joint resolution that includes the following
270 information regarding the proposed contract:

271 (i) the approximate number of beds to be contracted;

272 ~~[(ii) the daily rate at which the county is paid to house a state inmate;]~~

273 ~~[(iii)]~~ (ii) the approximate amount of the county's long-term debt; and

274 ~~[(iv)]~~ (iii) the repayment time of the debt for the facility where the inmates are to be
275 housed.

276 (7) The department may enter into a contract with a county government to house
277 inmates without complying with the approval process described in Subsection (6) only if the
278 county facility was under construction, or already in existence, on March 16, 2001.

279 (8) Any resolution passed by the Legislature under Subsection (6) does not bind or
280 obligate the Legislature or the department regarding the proposed contract.

281 Section 4. Section ~~64-13e-103.1~~ is amended to read:

282 **64-13e-103.1. Calculating the state incarceration rate.**

283 (1) Before September 15 of each year, the department shall:

284 (a) calculate~~[;]~~ the state daily incarceration rate; and

285 (b) inform each county and CCJJ of the ~~[actual]~~ state daily incarceration rate.

286 (2) The ~~[actual]~~ state daily incarceration rate may not be less than the rate presented to
 287 the Executive Appropriations Committee of the Legislature for purposes of setting the
 288 appropriation for the department's budget.

289 Section 5. Section **64-13e-103.2** is amended to read:

290 **64-13e-103.2. State daily incarceration rate -- Limits -- Payments to county**
 291 **correctional facilities for state probationary and state parole inmates.**

292 (1) Notwithstanding ~~[Sections 64-13e-103 and]~~ Section 64-13e-103.1, the ~~[actual]~~ state
 293 daily incarceration rate shall be \$85.27~~[-This rate shall apply to inmates under Section~~
 294 ~~64-13e-103 and]~~ for probationary and parole inmates under Section 64-13e-104.

295 ~~[(2) Notwithstanding Subsection 64-13e-103(3)(a), the number of jail beds contracted~~
 296 ~~for shall be 1450 at the base rate of 71.57%, with the exception of:]~~

297 ~~[(a) the beds set aside for Subsection 64-13e-103(3)(a)(i) which shall be 434 beds and~~
 298 ~~shall be reimbursed at 88.53% of the actual state daily incarceration rate; and]~~

299 ~~[(b) the beds set aside for Subsection 64-13e-103(3)(a)(ii) which shall be 235 beds and~~
 300 ~~shall be reimbursed at 79.52% of the actual state daily incarceration rate:]~~

301 ~~[(3)]~~ (2) Notwithstanding Subsection 64-13e-104(9), the five year average state
 302 probationary or parole inmate days is set at 300,000 days.

303 ~~[(4)]~~ (3) Notwithstanding Subsection 64-13e-104(2), within funds appropriated by the
 304 Legislature for this purpose, the Division of Finance shall pay a county that houses a state
 305 probationary inmate or a state parole inmate at a rate of 50% of the ~~[actual]~~ state daily
 306 incarceration rate.

307 ~~[(5) Expenditures for Section 64-13e-103 shall be \$35,173,900 annually.]~~

308 ~~[(6)]~~ (4) Expenditures for Section 64-13e-104 shall be \$12,790,700 annually.

309 Section 6. Section **64-13e-103.3** is enacted to read:

310 **64-13e-103.3. Estimating the annual number of county correctional facility bed**
 311 **spaces required for state inmates.**

312 (1) (a) Before September 15 of each year, the department shall estimate the total
 313 number of annual county correctional facility bed spaces that are required for state inmates in
 314 the upcoming fiscal year, including the annual number of bed spaces that shall be dedicated to:

315 (i) a treatment program for state inmates under Subsection [64-13e-103\(3\)\(a\)\(i\)](#); and

316 (ii) an alternative treatment program for state inmates under Subsection

317 [64-13e-103\(3\)\(a\)\(ii\)](#).

318 (b) The department's estimates described in Subsection (1)(a) shall be based upon:

319 (i) a review of the annual numbers of county correctional facility bed spaces used for
 320 state inmates during the preceding years; and

321 (ii) any other information relevant to the department.

322 (2) The department shall inform each county of the estimates described in Subsection

323 (1)(a).

324 Section 7. Section **64-13e-105** is amended to read:

325 **64-13e-105. Subcommittee on County Correctional Facility Contracting and**
 326 **Reimbursement -- Purpose -- Responsibilities -- Membership.**

327 (1) There is created within [~~the Commission on Criminal and Juvenile Justice~~] CCJJ,
 328 the Subcommittee on [~~Jail~~] County Correctional Facility Contracting and Reimbursement
 329 consisting of the individuals listed in Subsection (3).

330 (2) The subcommittee shall meet at least quarterly to review, discuss, and make
 331 recommendations for:

332 (a) the state daily incarceration rate, described in Section [64-13e-103.1](#);

333 (b) the county daily incarceration rate;

334 (c) [~~jail~~] county correctional facility contracting and [~~jail~~] reimbursement processes and
 335 goals, including the creation of a comprehensive statewide system of [~~jail~~] county correctional
 336 facility contracting and reimbursement;

337 (d) developing a partnership between the state and counties to create common goals for

- 338 housing state inmates;
- 339 (e) calculations for the projected number of [~~beds~~] bed spaces needed;
- 340 (f) programming for inmates while incarcerated;
- 341 (g) proposals to reduce recidivism;
- 342 (h) enhancing partnerships to improve law enforcement and incarceration programs;
- 343 (i) inmate transportation costs; and
- 344 (j) the compilation described in Subsection [64-13e-104\(7\)](#).
- 345 (3) The membership of the subcommittee shall consist of the following nine members:
- 346 (a) as designated by the Utah [~~Sheriffs~~] Sheriffs' Association:
- 347 (i) one sheriff of a county that is currently under contract with the department to house
- 348 state inmates; and
- 349 (ii) one sheriff of a county that is currently receiving reimbursement from the
- 350 department for housing state probationary inmates or state parole inmates;
- 351 (b) the executive director of the department or the executive director's designee;
- 352 (c) as designated by the Utah Association of Counties:
- 353 (i) one member of the legislative body of one county that is currently under contract
- 354 with the department to house state inmates; and
- 355 (ii) one member of the legislative body of one county that is currently receiving
- 356 reimbursement [~~from the department~~] for housing state probationary inmates or state parole
- 357 inmates;
- 358 (d) the executive director of [~~the Commission on Criminal and Juvenile Justice~~] CCJJ
- 359 or the executive director's designee;
- 360 (e) one member of the House of Representatives, appointed by the speaker of the
- 361 House of Representatives;
- 362 (f) one member of the Senate, appointed by the president of the Senate; and
- 363 (g) the executive director of the Governor's Office of Planning and Budget or the
- 364 executive director's designee.
- 365 (4) The subcommittee shall report to the Law Enforcement and Criminal Justice

366 Interim Committee in November [~~2022~~] 2023 and 2024 on progress and efforts to create and
367 implement a comprehensive statewide [~~joint~~] county correctional facility reimbursement and
368 contracting system.

369 (5) The subcommittee shall report to the Executive Offices and Criminal Justice
370 Appropriations Subcommittee not later than October 31 in 2022, 2023, and 2024 on costs
371 associated with creating and implementing a comprehensive statewide [~~joint~~] county
372 correctional facility reimbursement and contracting system.

373 (6) (a) A member who is not a legislator may not receive compensation or benefits for
374 the member's service, but may receive per diem and travel expenses as allowed in:

375 (i) Section 63A-3-106;

376 (ii) Section 63A-3-107; and

377 (iii) rules made by the Division of Finance according to Sections 63A-3-106 and
378 63A-3-107.

379 (b) Compensation and expenses of a member who is a legislator are governed by
380 Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

381 Section 8. **Repealer.**

382 This bill repeals:

383 Section 64-13e-101, Title.

384 Section 9. **Appropriation.**

385 The following sums of money are appropriated for the fiscal year beginning July 1,
386 2023, and ending June 30, 2024. These are additions to amounts previously appropriated for
387 fiscal year 2024. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
388 Act, the Legislature appropriates the following sums of money from the funds or accounts
389 indicated for the use and support of the government of the state of Utah.

390 ITEM 1

391 To Department of Corrections - County Correctional Facility Contracting

392	<u>From General Fund</u>	<u>\$5,410,400</u>
393	<u>From General Fund, One-time</u>	<u>\$1,436,200</u>

394	<u>Schedule of Programs:</u>	
395	<u>County Correctional Facility Contracting</u>	<u>\$6,846,600</u>
396	<u>ITEM 2</u>	
397	<u>To Department of Corrections - County Correctional Facility Contracting Reserve</u>	
398	<u>From General Fund, One-time</u>	<u>\$2,000,000</u>
399	<u>Schedule of Programs:</u>	
400	<u>County Correctional Facility Contracting Reserve</u>	<u>\$2,000,000</u>
401	Section 10. Effective date.	
402	<u>This bill takes effect on July 1, 2023.</u>	