

Department of Planning and Budget 2019 Fiscal Impact Statement

1. Bill Number: SB1040

House of Origin ☐ Introduced ☐ Substitute ☒ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Peake

3. Committee: Finance

4. Title: Jails, local; compensation for cost of incarceration of convicted felons.

5. Summary: Current law directs that offenders convicted of a felony and given a sentence of one year or more be committed to the Department of Corrections (DOC), which shall receive these offenders within 60 days after receiving the final sentencing order. These offenders are commonly referred to as “state-responsible offenders.” If DOC is unable to receive state responsible offenders from a jail, the law directs the agency to compensate the jail for the cost of incarceration as provided in the Appropriation Act, beginning on the sixty-first day following the date of receipt of the final sentencing order. This group of offenders, for whom compensation is paid, is usually referred to as “out of compliance” inmates.

The proposed legislation requires DOC to reimburse the jail for “the actual cost” of incarceration as calculated by the Compensation Board’s annual jail cost report, rather than at the rate set out in the Appropriation Act.

6. Budget Amendment Necessary: Yes. Item 67.

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: As set out in the Appropriation Act, the Compensation Board reimburses local and regional jails \$12 per day for each state-responsible inmate housed in the jails. The reimbursement rate is the same for all groups of inmates: out-of-compliance inmates, those for whom DOC has not received a final sentencing order, and those for whom sixty days has not elapsed since DOC received the final order.

According to DOC, in 2018, there was an average of 3,379 out-of-compliance inmates held each day in local and regional jails. At a rate of \$12 per day, the state reimbursed jails an estimated \$14,800,020 for housing these inmates. The legislation states that compensation is to be based on “*actual cost as calculated in the jail report prepared annually by the Compensation Board,*” but is not specific as to where in the report this cost is set out. There are several definitions that could be used to project the potential cost of the bill.

Depending on which definition is used, the annual fiscal impact of the legislation could range from \$2.3 million to \$90.3 million. Those various definitions are discussed below. The data regarding the costs of housing inmates in local and regional jails are from the latest Jail Cost

Report, released in November 2018, by the Compensation Board. The data in this report are for FY 2017. Using this data, “actual cost” could be defined and calculated in one of the following ways:

- **Total cost** --The total average daily cost of operating local and regional jails was \$85.83 per inmate. Because the Commonwealth already pays a per diem for the out-of-compliance inmates, that amount is subtracted from the calculation of the amount needed for “actual cost.”
- **Local cost** --Localities and regional jail authorities receive revenue from several sources, including the Commonwealth and, in some cases, the federal government, to help offset the costs of operating jails. Therefore, “actual cost” could be interpreted to mean the cost that localities or regional jails incurred themselves in housing out-of-compliance inmates. That average daily cost per inmate was \$46.30.
- **Direct inmate cost**--Because the overhead costs of jail administration and security personnel are minimally affected, if at all, by the addition or removal of individual inmates, the “actual costs” of incarcerating out-of-compliance inmates could be viewed as being only the marginal costs, commonly referred to as “direct inmate costs,” incurred by those inmates individually. The largest components of direct inmate costs are food and medical services. The average daily cost of food and medical services per inmate was \$13.85.

The following table shows the estimated fiscal impact of each different method of measuring actual cost:

	Total Cost	Local Cost	Direct Inmate Cost
Number of out of compliance inmates daily (2018 average)	3,351	3,351	3,351
Daily reimbursement rate	\$85.83	\$46.30	\$13.85
Number of days per year	365	365	365
Total	\$104,979,960	\$56,630,225	\$16,940,143
Current state expenditure	\$14,677,380	\$0	\$14,677,380
Net fiscal impact	\$90,302,580	\$56,630,225	\$2,262,763

In addition to increased per diem costs, the Compensation Board estimates that it would cost at least \$50,000 to update its computerized systems to comply with the proposed legislation.

Finally, a language amendment to the budget would be needed to allow the purpose of this bill to be realized. Since the appropriation act supersedes statutory law, the existing language in the appropriation act that establishes these payments would need to be modified to match this legislation. Otherwise, this legislation may have no effect.

9. Specific Agency or Political Subdivisions Affected: Compensation Board, Department of Corrections, local and regional jails

10. Technical Amendment Necessary: None

11. Other Comments: Senate amendment made on January 16, 2019, provides that this act shall not become effective unless an appropriation effectuating the purposes of this act is included in a general appropriation act passed in 2019 by the General Assembly that becomes law.