

## **Department of Planning and Budget 2022 Fiscal Impact Statement**

**1. Bill Number:** HB989

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

**2. Patron:** Runion

**3. Committee:** Public Safety

**4. Title:** Compensation of local jails for cost of incarceration.

**5. Summary:** This bill requires that local jails be compensated for the cost of incarcerating of convicted felons at the rate of \$12 per inmate per day for the first 60 days, \$40 per inmate per day during the period of more than 60 but not more than 90 days, and for the actual cost of incarceration as calculated in the jail report prepared annually by the Compensation Board for more than 90 days. Current law provides for jails to be compensated for the cost of incarceration of convicted felons as provided for in the general appropriation act.

**6. Budget Amendment Necessary:** Yes, Item 73.

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

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

This bill establishes a tiered system of payment depending on the length of time a state-responsible offender has been housed in a jail, starting after the date a court mailed or transmitted a final order to the Department of Corrections. According to an analysis provided by the Compensation Board, data for July through December of calendar year (CY) 2019 (the last period prior to the pandemic) is comparable to current data and provides sufficient detail to categorize inmates' length of stay based on the time periods set in the bill. It should be noted, however, that the Compensation Board's data measures the length of stay from the date of sentencing because information on the date the court mailed an order is not readily available. The CY 2019 data is used to illustrate the potential impact of this bill.

Under the provisions of the bill, payment for state-responsible inmates who have been in a jail post-sentencing for 60 days or less would not change from current payment practice (\$12 per day). For those who have been in jail for more than 60 but fewer than 90 days post-sentencing, the payment would be \$40 per day, which is \$28 per day higher than current practice. Compensation Board data shows that the average number of state-responsible

inmates who had been housed in jails between 61 and 90 days was 568. Therefore, under the provisions of this bill, raising the per diem from \$12 to \$40 for these inmates would have increased annual costs to the state by approximately \$5.8 million.

For those who have been housed in a jail post-sentencing for more than 90 days (91+ days), generally referred to as “out-of-compliance”, the bill requires compensation at the “actual cost of incarceration as calculated in the jail report prepared annually by the Compensation Board” but is not specific as to where in the report this is set out. Based on data in the Compensation Board’s annual report, 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 for this group of inmates ranges from \$7.4 million to \$154.8 million. The 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, (the Report) released in November 2021, by the Compensation Board. The data contained in the Report is based on FY 2020 expenditure data. Using data from the Report, “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 \$100.32 per inmate. Because the Commonwealth already pays a per diem for the out of compliance inmates, the amount currently expended by the state is subtracted from the calculation of the amount needed for “actual cost” in the table below.
- 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 \$55.30.
- 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 \$16.21. Considering other provisions of this bill, this option would result in a payment for the 91+ days post-sentencing group that is less than the amount the bill proposes paying for the 61 - 90 days group.

The following table shows the estimated fiscal impact of each different method of measuring the actual cost for state-responsible inmates that are 91+ days post-sentencing:

	<b>Total Cost</b>	<b>Local Cost</b>	<b>Direct Inmate Cost</b>
Number of state-responsible inmates incarcerated 91+ days post-sentencing daily (July - Dec 2019 average)	4,802	4,802	4,802
Daily reimbursement rate	\$100.32	\$55.30	\$16.21
Number of Days	365	365	365
Total	\$175,833,874	\$96,925,969	\$28,411,753
Less: Current state expenditure	\$(21,032,760)		\$(21,032,760)
Net Fiscal Impact	\$154,801,114	\$96,925,969	\$7,378,993

The statute currently provides that compensation for state-responsible prisoners held in local jails is provided for in the general appropriation act beginning on the sixty-first day following the date of mailing by certified letter or electronic transmittal by the clerk of the committing court to the Director of DOC of the final order. This bill amends this provision to require compensation directly after the court order is sent to DOC. However, the provisions of the Appropriation Act direct the Compensation Board to make these payments (instead of DOC), and direct those payments to be made at a fixed rate beginning with the date of final sentencing as a state-responsible inmate.

The Compensation Board reports that the variation between when the inmate is sentenced and becomes a state-responsible inmate vs. the date the court order is mailed poses timing issues that would require significant changes to the electronic offender management systems used by the Compensation Board. The Compensation Board estimates that it would cost approximately \$120,000 to update its systems to comply with a tiered payment system as proposed in the bill, if such tiers are based upon the date of sentencing and not the date of mailing of the final sentencing order. The Compensation Board estimates that due to vendor programmatic changes, the necessary system modifications could not be implemented until July 2023, at the earliest, and potentially as late as January 2024. It is not known at this time if additional funding would be needed to make corresponding changes to CORIS, which is the offender management system used by DOC.

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:** No

**11. Other Comments:** None