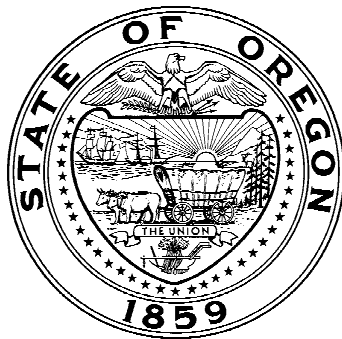


# **Cost Avoidance Report** *Per House Bill 3194 (2013)*

January 1, 2021

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## **Oregon Criminal Justice Commission**

Ken Sanchagrin  
Executive Director

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The mission of the Oregon Criminal Justice Commission is to improve the legitimacy, efficiency, and effectiveness of state and local criminal justice systems.

## 1. Background

House Bill 3194 (2013) requires the Oregon Criminal Justice Commission (CJC), in conjunction with the Oregon Department of Corrections (DOC), to deliver a report no later than January 1, 2021 to the Justice Reinvestment Grant Review Committee that effectively identifies the avoided costs to state government resulting from the passage of the bill, as well as any increased costs to local government resulting from its passage. In addition to this report, the CJC, in accordance with ORS 192.245 (as outlined in the bill), must provide an Executive Summary of the report to the Legislative Assembly by electronic mail.

A 2011 report from the Oregon Commission on Public Safety found that Oregon would need an additional 2,300 prison beds by 2021. It also estimated that the state would need to invest an additional \$571 million to accommodate the growing population. As prisons consume a growing share of Oregon's public safety budget, many local public safety programs have received inadequate resources.

In 2012, Governor John Kitzhaber charged the commission with recommending structural and funding changes to control the growth of the prison population, to hold offenders accountable, and to protect the public.

Those recommendations formed the basis for 2013 House Bill 3194 – landmark legislation that was designed to reduce prison population growth to just 500 inmates over the next 10 years resulting in a state cost avoidance of an estimated \$326 million. The reduction in prison population growth was driven by changes made to sentencing laws for individuals sentenced on or after August 1, 2013. It did not change the law for anyone sentenced prior to this date.

In addition to sentencing law changes, HB 3194 also reduced projected prison cost by increasing the transitional leave period for eligible inmates. Historically, certain DOC inmates have been eligible for a 30-day Short-Term Transitional Leave (STTL) period. The bill expanded the amount of STTL eligible inmates can receive from 30 days to up to 90 days. This allows offenders to participate in re-entry supervision programs, which are far cheaper than the cost of remaining in prison.

In the 2017 legislative session, the legislature passed and the Governor signed House Bill 3078. HB 3078 included several components such as the expansion of the STTL program to 120 days as well as removing the crimes of Theft in the 1<sup>st</sup> Degree (ORS 164.055) and Identity Theft (ORS 165.800) from the sentencing structure created by Measure 57 (ORS 137.717). These changes were effective for sentences on or after January 1, 2018. Due to the COVID-19 pandemic, beginning in March 2020 both prison intakes and the overall population have decreased, and this is estimated to continue until early 2021.

Originally, HB 3194 did not include any avoided construction costs for a new Junction City facility in cost savings estimates. However, in more recent versions of cost savings estimates, as it has become clear that the prison population does not warrant the construction of that facility, it has been forecasted as a savings (specifically in the 2017-19 biennium).

HB 3194 provided additional funding to counties in the form of Justice Reinvestment Grants administered through the CJC. In the 2013-15 biennium the Justice Reinvestment Grants provided \$15 million in funding for community based programs, sanctions, and services. In the 2015-17 biennium the Justice Reinvestment Grants provided \$38.7 million in funding. In the 2017-19 biennium the Justice Reinvestment Grants provided \$40.1 million in funding, with an additional \$7 million for a supplemental Justice Reinvestment program to fund downward departure prison diversion programs which was included in HB 3078. In the 2019-21 biennium the Justice Reinvestment Grants provided \$48.9 million total in funding with \$7.26 million of it being supplemental Justice Reinvestment funding.

## 2. Methodology

### 2.1. Estimated State Cost Avoidance

The \$326 million state cost avoidance was the accumulation of five separate biennial cost avoidance calculations beginning with the 2013-15 biennium. The estimated state cost avoidance was \$19.7 million in 2013-15, \$70.3 million in 2015-17, and \$80.7 million in 2017-19. The methodology used to calculate the state cost avoidance for each biennium was to compare the estimated cost increase of serving the forecasted inmate population prior to the passage of HB 3194 (Variable A) with the estimated cost increase to serve the forecasted inmate population after the passage of the bill (Variable B).

The estimated cost associated with both Variable A and B was driven by a housing plan completed by the Department of Corrections that specifically identified the activation and deactivation of emergency and/or permanent beds that were necessary to effectively serve the forecasted population (as of April 2013) based on each variable. These activations and/or deactivations were priced on the timing (month) in which either the emergency and/or permanent bed would be brought online. The balance of all actions was then fully priced to determine the biennial cost increase to serve the forecasted population. This calculation was first performed for both Variable A and B for the 2013-15 biennium.

The 2015-17 estimated cost avoidance was then calculated by taking all of the 2013-15 activations and/or deactivations and pricing them for a full biennium for each variable. These amounts were then added to a calculation of Variable A and B for just the 2015-17 plan of activations and deactivations. This created Variable A and B for the 2015-17 biennium, which reflected all actions taken since the passage of HB 3194. The same methodology was used to estimate the 2017-19, 2019-21, and 2021-23 cost avoidance.

To arrive at the estimated cost avoidance for each biennium, Variable B was then simply subtracted from Variable A. The results of these actions are depicted in Table 1. Note that the DOC cost increase in the 2017-19 biennium includes construction costs for the Junction City facility.

**Table 1. Estimated State Cost Avoidance**

<b>Biennium</b>	<b>Variable A (From April 2013 Corrections Population Forecast)</b>	<b>Variable B (From HB 3194 Funded Forecast July 2013)</b>	<b>Cost Avoidance Estimate (From HB 3194 Funded Forecast July 2013)</b>
2013-15 DOC Cost Increase	\$22,646,065	\$2,918,816	\$19,727,249
2015-17 DOC Cost Increase	\$72,207,449	\$1,950,595	\$70,256,854
2017-19 DOC Cost Increase	\$230,962,717	\$150,262,487	\$80,700,230
2019-21 DOC Cost Increase	\$116,763,866	\$47,912,906	\$68,850,960
2021-23 DOC Cost Increase	\$141,149,766	\$58,136,103	\$83,013,663
<b>Total</b>	<b>\$583,729,863</b>	<b>\$261,180,907</b>	<b>\$322,548,956</b>

### 2.2. Local Government Cost Methodology

In addition to the state avoided cost created through the passage of HB 3194, it was possible that local governments could incur additional costs due to an increase in number of days required to supervise inmates on Short-Term Transitional Leave. To estimate the possible local government cost, the chosen methodology was to rely upon any increase cost derived from forecasted community correction caseloads. Caseload costs are represented in the Department of Correction Budget as Grants-In-Aid, which also include, per ORS 144.103, allocations for sexually violent dangerous offenders.

The methodology used to calculate the increase in community corrections was to use the forecasted caseloads for both 2013-15 and 2015-17 and establish a base cost prior to the passage of HB 3194. This

calculation was completed for the first two biennia, but was not done for the later years. The forecasted caseloads were separated by offenders under supervision and local control, as well as Interstate Compact for Adult Offender Supervision (CMPO). Costs were calculated by using an average cost per day of \$8.64 (Approved Capitated Rate for 2013-15) for supervision and local control, and \$0.58 for CMPO. Each of these rates were multiplied by the number of days in each month of the biennium. This established the monthly cost which was then multiplied by the average forecasted caseload for each month for each category. The results for all months within the appropriate biennium were added together to create the total estimated biennial cost for both supervision and local control, as well as CMPO. The addition of the biennial cost for supervision and local control to the biennial cost for CMPO represents the total community correction cost prior to the passage of HB 3194.

The same methodology was then applied to establish the community correction cost after the passage of HB 3194 by simply using the new forecasted caseload for 2013-15 and 2015-17. The result of this calculation represented the new estimated community correction caseload cost, which when compared to the base calculation as described above, rendered either a cost increase or savings. In the 2013-15 biennium, this resulted in an estimated local government cost of \$1,318,711. In the 2015-17 biennium, this resulted in an estimated local government cost of \$3,587,164.

### 2.3. Net Avoided Cost Methodology

Appropriately estimating the net avoided cost of HB 3194 during its implementation required subtracting the estimated local government cost from the estimated state cost avoidance. As shown in Table 2, the estimated net cost avoidance was \$18,408,538 for 2013-15 and \$66,669,690 for 2015-17. Each of these estimates was represented in the DOC fiscal impact statement for HB 3194 during the 2013 Legislative Session. The estimated net cost avoidance for the 2017-19 biennium is \$80,700,230, and for the 2019-21 biennium it is \$68,850,960.

**Table 2. Estimated Net Cost Avoidance**

<b>Biennium</b>	<b>Cost Avoidance Estimate (From HB 3194 Funded Forecast July 2013)</b>	<b>Estimated Local Government Cost</b>	<b>Net Avoided Cost (From HB 3194 Funded Forecast July 2013)</b>
2013-15	\$19,727,249	(\$1,318,711)	\$18,408,538
2015-17	\$70,256,854	(\$3,587,164)	\$66,669,690
2017-19	\$80,700,230		\$80,700,230
2019-21	\$68,850,960		\$68,850,960
2021-23	\$83,013,663		\$83,013,663
<b>Total</b>	<b>\$322,548,956</b>	<b>(\$4,905,874)</b>	<b>\$317,643,081</b>

### 3. Updated Net Avoided Cost Based on October 2020 Corrections Population Forecast

To obtain an updated net avoided cost calculation, the values for both Variable A (Pre-HB 3194 Cost Increase) for the State Cost Avoidance and the Base Cost Calculation for the amount for the Local Government Cost will remain the same. These amounts establish the baseline cost prior to the passage of HB 3194.

Using the October 2020 corrections population forecast, a revised housing plan for activations and/or deactivations for emergency and/or permanent was created and priced out for the 2019-21 biennium. These revised amounts were then added to the biennialized cost for all actual and estimated activations and deactivations for the 2017-19 biennium to generate a revised State Cost Avoidance for Variable B. The updated figures are displayed in Table 3.

The October 2020 population forecast included the sentencing change impacts from HB 3194 (2013) and HB 3078 (2017), as well as any trend changes to the forecast input variables. The COVID-19 pandemic has resulted in a drop in intakes and the overall population starting in April 2020, and is expected to continue until early 2021<sup>1</sup>.

The 2013-15, 2015-17, and 2017-19 DOC cost increases were based on the actual prison population in those biennia. The 2019-2021 cost increase was based on the actual prison population up to October 2020, and then the October 2020 Corrections Population Forecast from October 2020 to June 2021. The October 2020 corrections population forecast estimates the Junction City facility will not be needed within the 10 year forecast window, and the avoided construction costs have been included in the estimated cost avoidance for the 2017-19 biennium.

**Table 3. Revised Estimated State Cost Avoidance**

<b>Biennium</b>	<b>Variable A (From April 2013 Corrections Population Forecast)</b>	<b>Variable B (From October 2020 Corrections Population Forecast)</b>	<b>Cost Avoidance Estimate (From October 2020 Corrections Population Forecast)</b>
2013-15 DOC Cost Increase	\$22,646,065	\$8,487,698 <sup>2</sup>	\$14,158,367
2015-17 DOC Cost Increase	\$72,207,449	\$15,708,003 <sup>3</sup>	\$56,499,446
2017-19 DOC Cost Increase	\$230,962,717	\$15,287,414 <sup>4</sup>	\$215,675,303
2019-21 DOC Cost Increase	\$116,763,866	\$13,498,949	\$103,264,917
2021-23 DOC Cost Increase	\$141,149,766	\$7,178,064	\$133,971,702
<b>Total</b>	<b>\$583,729,863</b>	<b>\$60,160,128</b>	<b>\$523,569,735</b>

In terms of the Local Government Cost, the October 2018 population forecast provided new caseload impacts for the 2015-17 biennium. In addition, because of the \$15.8 million investment of funds for 2013-15, a new average cost per day of \$9.32 (Based on 2013-15 Legislatively Approved Budget) was calculated for supervision and local control, as well as \$0.64 for CMPO. With the updated caseload impact multiplied by the new rates, the Revised Calculation was updated for Local Government Cost, which is displayed in Table 4.

**Table 4. Revised Estimated Local Government Cost**

<b>Biennium</b>	<b>Base Calculation</b>	<b>Revised Calculation</b>	<b>Cost Increase</b>
2013-15 DOC Comm Corr Caseloads	\$198,035,545	\$199,354,256	(\$1,318,711)
2015-17 DOC Comm Corr Caseloads	\$205,767,311	\$208,832,271	(\$3,064,960)
2017-19 DOC Comm Corr Caseloads	\$207,933,272	\$194,822,295	\$13,110,977
2019-21 DOC Comm Corr Caseloads	\$209,346,012	\$188,584,139	\$20,761,873
2021-23 DOC Comm Corr Caseloads	\$210,701,064	\$201,456,011	\$9,245,053
<b>Total</b>	<b>\$1,031,783,204</b>	<b>\$993,048,971</b>	<b>\$38,734,233</b>

As shown in Table 5 below, based on the revisions, the estimated net cost avoidance for HB 3194 was \$12,839,656 for 2013-15, \$53,434,486 for 2015-17, \$228,786,280 for 2017-19, and \$124,026,790 for 2019-21. The estimated net cost avoidance for HB 3194 for the 2021-23 biennium is \$143,216,755.

<sup>1</sup> <https://www.oregon.gov/das/OEA/Documents/DOCForecast202010.pdf>

<sup>2</sup> Based on actual prison population in 2013-15 biennium

<sup>3</sup> Based on actual prison population in 2015-17 biennium

<sup>4</sup> Based on actual prison population in 2017-19 biennium

**Table 5. Revised Estimated Net Cost Avoidance**

<b>Biennium</b>	<b>Cost Avoidance Estimate (From October 2020 Corrections Population Forecast)</b>	<b>Estimated Local Government Cost</b>	<b>Net Avoided Cost (From October 2020 Corrections Population Forecast)</b>
2013-15	\$14,158,367	(\$1,318,711)	\$12,839,656
2015-17	\$56,499,446	(\$3,064,960)	\$53,434,486
2017-19	\$215,675,303	\$13,110,977	\$228,786,280
2019-21	\$103,264,917	\$20,761,873	\$124,026,790
2021-23	\$133,971,702	\$9,245,053	\$143,216,755
<b>Total</b>	<b>\$523,569,735</b>	<b>\$38,734,233</b>	<b>\$562,303,968</b>

Table 6 displays a summary of the updated Justice Reinvestment net cost avoidance analysis. For the 2013-15 biennium, the net avoided cost estimate from July 2013 was \$18.4 million. The updated net avoided cost, based on the actual prison population in the 2103-15 biennium, is \$12.8 million. Justice Reinvestment programs were funded at \$15 million in the 2013-15 biennium.

For the 2015-17 biennium, the net avoided cost estimate from July 2013 was \$66.7 million. The updated net avoided cost, based on the actual prison population in the 2015-17 biennium, is \$53.4 million. Justice Reinvestment programs were funded at \$38.7 million in the 2015-17 biennium.

For the 2017-19 biennium, the net avoided cost estimate from July 2013 was \$80.7 million. This figure assumes construction costs for Junction City would be incurred in the 2017-19 biennium. The updated net avoided cost, based on the October 2020 corrections population forecast, is \$228.8 million. The October 2020 corrections population forecast estimates the Junction City facility will not be needed within the 10 year forecast window, and the avoided construction costs have been included in the net avoided cost. Justice Reinvestment programs, including the Supplemental Program, were funded at \$47.1 million in the 2017-19 biennium.

For the 2019-21 biennium, the net avoided cost estimate from July 2013 was \$68.9 million. The updated net avoided cost, based on the October 2020 corrections population forecast, is \$124.0 million. Justice Reinvestment programs were funded at \$48.9 million in the 2019-21 biennium.

For the 2021-23 biennium, the net avoided cost estimate from July 2013 was \$83.0 million. The updated net avoided cost, based on the October 2020 corrections population forecast, is \$143.2 million. For the 2021-23 biennium, the level of funding for Justice Reinvestment Grant programs has yet to be determined.

**Table 6. Justice Reinvestment Net Cost Avoidance Summary**

<b>Biennium</b>	<b>Net Avoided Cost (From HB 3194 Funded Forecast July 2013)</b>	<b>Net Avoided Cost (From October 2020 Corrections Population Forecast)</b>	<b>Justice Reinvestment Program Funding</b>
2013-15	\$18,408,538	\$12,839,656	\$15,000,000
2015-17	\$66,669,690	\$53,434,486	\$38,700,000
2017-19	\$80,700,230	\$228,786,280	\$47,131,000
2019-21	\$68,850,960	\$124,026,790	\$48,907,851
2021-23	\$83,013,663	\$143,216,755	To Be Determined
<b>Total</b>	<b>\$317,643,081</b>	<b>\$562,303,968</b>	<b>\$149,738,851</b>