

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO JBC Members  
FROM JBC Staff  
DATE January 30, 2024  
SUBJECT Supplemental Comeback Packet 3

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Included in this packet are staff comeback memos for the following items:

**Department of Public Health and Environment, page 2** (Abby Magnus): S9 Vital Records ARPA Return

**Department of Corrections, page 3** (Justin Brakke): S1/BA1 Prison Caseload

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee  
FROM Abby Magnus, JBC Staff (303-866-2149)  
DATE January 30, 2024  
SUBJECT S9 Vital Records ARPA Return Correction

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On January 18, 2024, the Committee approved staff's recommendation to approve S9 Vital Records ARPA Return for the Department of Public Health and Environment. That recommendation was to reduce appropriations to the Department from the Revenue Loss Restoration Cash Fund from \$1.2 million to \$0 in FY 2023-24 to account for higher than expected debt collection efforts, receiving federal grant funding, and increased service volumes.

An oversight in the Schedule 13 submission as well as in staff's presentation failed to account for one portion of the request. That piece included a net-zero adjustment to:

- Reduce the Personal Services cash fund appropriation by \$122,500 for a new balance of \$1,897,238; and
- Increase the Operating Expenses cash fund appropriation by \$122,500 for a new balance of \$350,365.

This adjustment was initially approved by the Committee in 2023 when the Committee was setting the Department's FY 2023-24 budget, and was accounted for in the appropriation from the Revenue Loss Restoration Cash Fund. Because this appropriation is being reduced to \$0, the Division needs to account for this adjustment via the Vital Records Cash Fund.

**Staff recommends approval of the request for the net-zero reallocation of cash funds between the Personal Services and Operative Expenses line items.**

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee  
FROM Justin Brakke, JBC Staff (303-866-4958)  
DATE January 30, 2024  
SUBJECT JBC staff comeback for DOC S1/BA1 Prison Caseload

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This memo includes updated information about the Department's request (S1/BA1 Prison Caseload) and a revised JBC staff recommendation that consists of four options that the Committee may choose from. It also includes additional information for the JBC and General Assembly's consideration. Readers who are short on time should focus on Section 2, which discusses the proposal to temporarily close the Skyline Correctional Facility and the Executive Branch's erratic approach to private prison utilization over the past four years. The first two pages provide the key takeaways for this document.

### KEY TAKEAWAYS: JBC STAFF ANALYSIS FOR S1/BA1 MALE PRISON CASELOAD

- **Department request for FY 2023-24 supplemental prison caseload adjustment:** Per the Department, "Temporarily closing Skyline Facility and moving the Beacon program continues to be the Department's recommendation and the most cost-effective way to implement the bed reduction with the least impact on staff and private prison partners."
- **JBC staff revised recommendations for FY 2023-24 supplemental prison caseload adjustment:** The recommendation offers four options for the Committee's consideration, depending on the Committee's goals for the supplemental: (1) A budget reduction equivalent to 491 male prison beds, (2) A budget reduction equivalent to 391 male prison beds, (3) A budget reduction equivalent to 286 male prison beds, or (4) No budget reductions. All options include funding for FTE for those beds that are assumed to remain online for the rest of the fiscal year. **Staff notes that largest assumed funding reduction for actual prison beds would be 286 under the largest reduction. And Buena Vista would be the only facility assumed to experience an actual physical capacity reduction.** The reasons are explained on page 30.
- **Section 1A (pg. 5) Current funded capacity vs. prison population (recent actual and projected):** A Long Bill footnote already provides the Department with a 168-bed "cushion" or "buffer" in the private prisons line item. This "buffer" exists if the Department underutilizes its appropriation for reimbursements to county jails by at least \$4.0 million. JBC staff estimates that, based on year-to-date data, the Department will underutilize the county jails appropriation by about \$5.6 million General Fund, if not more. This means the DOC may over-utilize the appropriation for private prisons by 168 beds if the JBC approves the DOC's request.
- **Section 1B (pg. 8) The meaning and history of the bed vacancy rate:** For at least the past decade, the State has appropriated money to hold a certain percentage of prison beds vacant. These beds are funded but not expected to be occupied based on prison population forecasts. The practice of budgeting with a vacancy rate is not a statutory requirement. The Department may propose any vacancy rate it wants. The JBC and General Assembly may accept that proposal or budget to their preferred vacancy rate.

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- **Section 1C (pg. 10) Current supplemental request = 3.8 percent de facto vacancy rate:** There is no real distinction between a bed held vacant through a 2.5 percent vacancy rate and a bed held vacant through a “surplus” or “buffer” or “cushion.” A 317-bed, 2.5 percent vacancy rate and a 165-bed surplus are both system-wide figures and are not attached to a particular bed type or facility. The Department and OSPB have given them different names but they have the same effect: If the Committee approves the Department’s request, the DOC will have a total of 482 vacant beds to work with for the remainder of FY 2023-24. This represents a 3.8 percent *de facto* vacancy rate, exclusive of the flexibility provided by the Long Bill to transfer appropriations between the line items for private prisons and county jails.
- **Section 1D (pg. 11) Additional points to consider when considering how many vacant beds to pay for:** Bed vacancy rates have policy implications. Extra money in the budget for extra prison space may allow the Executive Branch to pursue policies that may or may not be consistent with the General Assembly’s policy values and preferences. This subsection discusses technical parole returns and prison population management measures prescribed by statute.
- **Section 2A (pg. 15) A brief overview of custody classifications:** The DOC’s most recent custody classification policy (effective July 2023) shows changes relative to both the October 2022 policy and the July 2019 policy. These changes probably make prison population management more difficult, but JBC staff cannot draw strong conclusions at this time.
- **Section 2C (pg. 17) The Executive Branch’s explanation for requested reductions and alternatives:** The OSPB comeback states three reasons for temporarily closing the Level I minimum security Skyline facility: (1) It is difficult to find qualified inmates for both minimum security Level I facilities and the Beacon Program, (2) They want to use the 38.0 FTE at Skyline to fill vacancies elsewhere in the Canon City complex, thereby reducing overtime, and (3) Skyline is/will be expensive to maintain.

The Department is proposing to relocate the Beacon Program from Skyline to the Level V high security Centennial-North Facility. Beacon Program participants would be housed in single cells that were previously utilized to house the medium custody Sex Offender Treatment Management Program. The facility would work to provide a positive setting within their pods that would contain gaming systems, softer furniture, larger TVs, and other such accommodations. As an alternative to the Department’s preferred 126-bed reduction at Skyline, the Executive Branch has proposed a reduction of 96 beds at Delta and a reduction of 30 private prison beds.

- **Section 2D (pg. 20) The Executive Branch’s erratic approach to private prison utilization since FY 2020-21:** The Executive Branch’s erratic approach to private prison utilization over the past four years has made budgeting for prison caseload changes more challenging (in addition to changes in the methodology used to calculate caseload).
- **Section 3B (pg. 31) JBC staff recommendation for FTE funding related to prison caseload:** JBC staff recommends adjusting appropriations for currently unfunded FTE in a manner that is consistent with the state-operated prison beds that the Committee chooses to retain or exclude from the budget.

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## → JBC STAFF COMEBACK-S1/BA1 PRISON CASELOAD

**DEPARTMENT REQUEST:** After the OSPB comeback, the Department is still requesting a reduction of \$177,007 total funds, including \$172,144 General Fund, in FY 2023-24 for a reduction of 326 male prison beds: 200 at Buena Vista and 126 at Skyline (effectively a temporary closure of Skyline). The requested reductions in funding are limited to certain operating expenses. The Buena Vista closure would save \$108,597 and the Skyline closure would save \$68,410.

There is not a corresponding reduction of FTE and related personal services funding. The Department would use funded positions at the affected facilities to “fund positions that are currently unfunded.” The Office of State Planning and Budgeting comeback on January 25, 2024, shows that the Department is proposing to retain \$3.4 million General Fund for the 43.1 FTE affected by the 326 bed reduction. The prorated cost for the final three months of the fiscal year is therefore \$852,585 and 10.8 FTE.

TABLE 1~DOC REQUEST: NUMBER OF FUNDED POSITIONS IN LIVING UNITS BEING UNPOPULATED

	FACILITY	FTE	EXPENSE
Full-year cost	Skyline Correctional Center	38.0	\$3,031,675
	Buena Vista Correctional Complex	5.1	\$378,665
	<b>Total</b>	<b>43.1</b>	<b>\$3,410,340</b>
	FACILITY	FTE	EXPENSE
Pro-rated cost (Apr.-Jun. 2024)	Skyline Correctional Center	9.5	\$757,919
	Buena Vista Correctional Complex	1.3	\$94,666
	<b>Total</b>	<b>10.8</b>	<b>\$852,585</b>

Source: OSPB Comeback, January 25, 2024

In response to the Committee’s concerns, OSPB and the Department have proposed an alternative to closing Skyline: a reduction of 96 beds at Delta and a reduction of 30 private prison beds. The reduction of 96 beds at Delta equals a reduction of \$49,450 General Fund in the current fiscal year (pro-rated for April through June 2024). This reduction is limited to certain operating expenses. The Department calculates that a 30-bed reduction in private prisons would save \$178,540 General Fund in the current fiscal year. This was also pro-rated for three months.

**STAFF RECOMMENDATION:** Staff offers four options for the Committee’s consideration, depending on the Committee’s goals for the supplemental: (1) A budget reduction equivalent to 491 male prison beds, (2) A budget reduction equivalent to 391 male prison beds, (3) A budget reduction equivalent to 286 male prison beds, or (4) No bed reductions. All options include funding for FTE for those beds that are assumed to remain online for the rest of the fiscal year.

The phrase “budget reduction equivalent to” is deliberate. That is because staff recommends applying the budget reductions for private prison beds to the *Payments to Local Jails* line item. The *Payments to in-state Private Prisons* line item has been over-utilized by about 69 beds thus far in the fiscal year, but the *Payments to Local Jails* line item has been underutilized by about 203 beds. JBC staff estimates that the *Payments to Local Jails* line item will be underutilized by a least \$5.7 million General Fund. In other words, the caseload math suggests a 205-bed reduction in private prisons should be possible, but JBC staff is recommending that the JBC substitute the private prison reduction for a reduction in the local jails line item. **This recommendation effectively retains 205 private beds in the DOC’s overall**

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**male prison capacity, but reduces the budget by the same amount.** The table on the next page summarizes the total cost of each option by facility and funding category.

TABLE 2~SUMMARY OF JBC STAFF RECOMMENDATIONS FOR FY 2023-24 S1 PRISON CASELOAD							
Facility	Total <i>after</i> private prison/ local jail swap	Total <i>before</i> private prison/ local jail swap	Limon	Trinidad	Buena Vista	Delta	Private Prisons
Custody/Security Level			Close (Level IV)	Minimum- restricted (Level II)	Minimum- restricted (Level II)	Minimum (Level I)	Medium (Level III)
JBC Staff revised rec. #1 (assumed bed change)	(286)	(491)	0	0	(200)	(86)	(205)
Personal Services		\$2,496,437	\$1,442,267	\$1,492,690	(\$378,665)	(\$59,855)	n/a
Operating Expenses		(541,649)	0	0	(302,219)	(239,430)	n/a
FTE start-up		103,078	45,054	67,574	0	(9,550)	n/a
Facility Start-up		(59,774)	0	0	(32,137)	(27,637)	n/a
# of FTE		28.8	16.5	18.2	(5.1)	(0.8)	n/a
<b>Supplemental change (\$)</b>	<b>(\$2,895,365)</b>	<b>(\$2,895,365)</b>	<b>\$1,487,321</b>	<b>\$1,560,264</b>	<b>(\$713,021)</b>	<b>(\$336,472)</b>	<b>(\$4,893,457)</b>
JBC Staff revised rec. #2 (assumed bed change)	(186)	(391)	0	0	(200)	(86)	(105)
Personal Services		\$2,496,437	\$1,442,267	\$1,492,690	(\$378,665)	(\$59,855)	n/a
Operating Expenses		(541,649)	0	0	(302,219)	(239,430)	n/a
FTE start-up		103,078	45,054	67,574	0	(9,550)	n/a
Facility Start-up		(59,774)	0	0	(32,137)	(27,637)	n/a
# of FTE		28.8	16.5	18.2	(5.1)	(0.8)	n/a
<b>Supplemental change (\$)</b>	<b>(\$508,313)</b>	<b>(\$508,313)</b>	<b>\$1,487,321</b>	<b>\$1,560,264</b>	<b>(\$713,021)</b>	<b>(\$336,472)</b>	<b>(\$2,506,405)</b>
JBC Staff revised rec. #3 (assumed bed change)	(286)	(286)	0	0	(200)	(86)	0
Personal Services		\$2,496,437	\$1,442,267	\$1,492,690	(\$378,665)	(\$59,855)	n/a
Operating Expenses		(541,649)	0	0	(302,219)	(239,430)	n/a
FTE start-up		103,078	45,054	67,574	0	(9,550)	n/a
Facility Start-up		(59,774)	0	0	(32,137)	(27,637)	n/a
# of FTE		28.8	16.5	18.2	(5.1)	(0.8)	n/a
<b>Supplemental change (\$)</b>	<b>\$1,998,092</b>	<b>\$1,998,092</b>	<b>\$1,487,321</b>	<b>\$1,560,264</b>	<b>(\$713,021)</b>	<b>(\$336,472)</b>	<b>\$0</b>
JBC Staff revised rec. #4 (assumed bed change)	0	0	0	0	0	0	0
Personal Services		\$4,066,266	\$1,442,267	\$1,492,690	\$378,665	\$752,644	n/a
Operating Expenses		0	0	0	0	0	n/a
FTE start-up		156,618	45,054	67,574	19,469	24,521	n/a
Facility Start-up		0	0	0	0	0	n/a
# of FTE		48.6	16.5	18.2	5.1	8.8	n/a
<b>Supplemental change (\$)</b>	<b>\$4,222,884</b>	<b>\$4,222,884</b>	<b>\$1,487,321</b>	<b>\$1,560,264</b>	<b>\$398,134</b>	<b>\$777,165</b>	<b>0</b>
If the JBC approves JBC staff recommendation #1, the <i>Local Jails</i> line item would support an average daily population of 319. The <i>Payments to Local Jails</i> appropriation currently supports an average daily population of 496 DOC inmates at a per-diem rate of \$75.65.							
If the JBC approves JBC staff recommendation #2, the <i>Local Jails</i> line item would support an average daily population of 405. The <i>Payments to Local Jails</i> appropriation currently supports an average daily population of 496 DOC inmates at a per-diem rate of \$75.65.							

STAFF ANALYSIS: This analysis is structured as follows:

- 1 How many male prison beds should the General Assembly pay for in FY 2023-24?
  - a. Current funded capacity vs. prison population year-to-date and projected

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- b. The meaning and history of the “bed vacancy rate”
  - c. Current supplemental request = 3.8 percent *de facto* vacancy rate for male prison beds
  - d. Additional points to consider when considering how many vacant beds to pay for
  - e. JBC staff recommendation options for “how many” male prison beds the State should pay for in FY 2023-24
- 2 Which male prison beds should the General Assembly pay for in FY 2023-24?
  - a. A brief overview of custody classifications
  - b. Assumed bed increases for FY 2023-24 vs. actual bed increases in FY 2023-24
  - c. The Executive Branch’s explanation for requested reductions and alternatives
    - i. Moving the Beacon program from Skyline to Centennial
  - d. The Executive Branch’s erratic approach to private prison utilization since FY 2020-21
  - e. JBC staff recommendations for “which” prison beds the State should pay for in FY 2023-24
- 3 How much funding should the General Assembly provide for full-time equivalent (FTE) staff?
  - a. Review of current budget and the DOC’s current supplemental budget request
  - b. JBC staff recommendation for FTE funding related to prison caseload
- 4 Summary of JBC staff recommendations and conclusion

## **SECTION 1: HOW MANY MALE PRISON BEDS SHOULD THE GENERAL ASSEMBLY PAY FOR IN FY 2023-24?**

### **1A. Current funded capacity vs. prison population (recent actual and projected)**

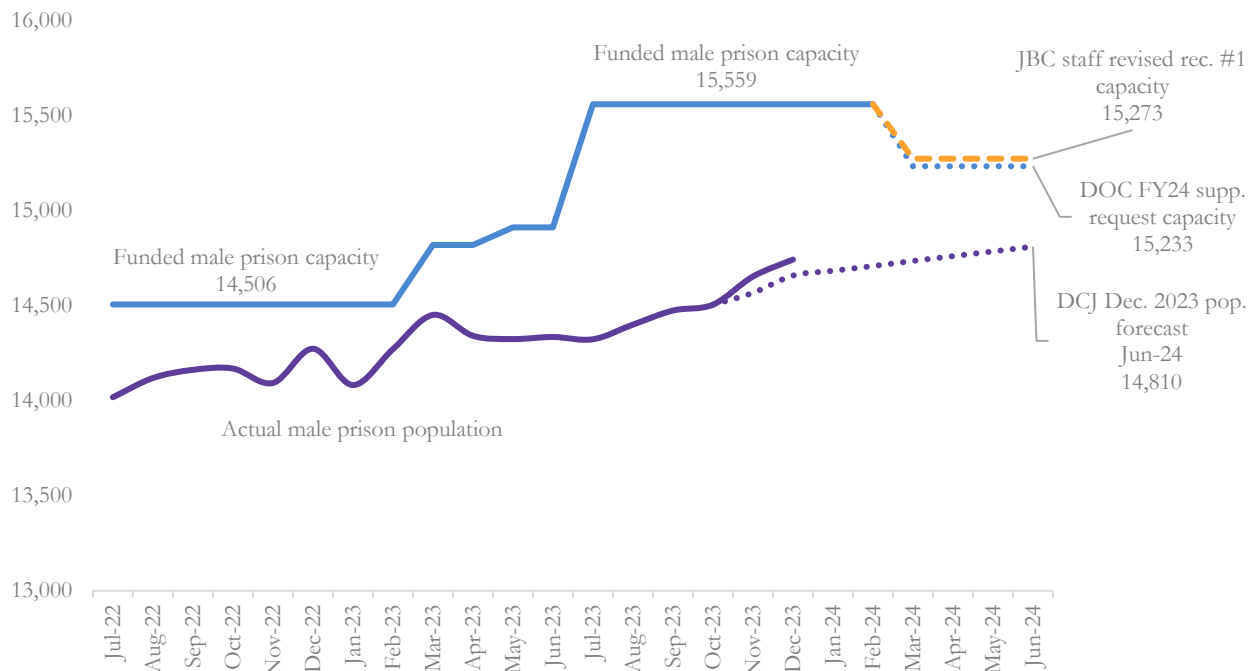
The DOC’s FY 2023-24 budget (“current budget”) includes funding for 15,559 male prison beds (“funded male prison capacity”). This includes 12,794 state-operated prison beds and 2,765 privately-operated prison beds. The budget also includes funding for an average daily population of 496 DOC inmates in county jails.

The following three charts show: (1) total male prison population vs. total funded male prison capacity, (2) private prison population vs. funded private prison capacity, and (3) DOC inmate population in county jails vs. funded county jail capacity.

Based the DCJ prison population forecast, 2.8 percent of all funded male prison beds would be vacant at the end of the current fiscal year (June 2024) if the Committee approves the DOC’s request. Based on JBC staff revised recommendation #1, 3.0 percent of all funded male prison beds would be vacant at the end of the current fiscal year.

As explained later in this section, the DOC may utilize additional private prison beds via Long Bill footnote authority to transfer money from the line item that supports county jail reimbursements. The capacity figure in JBC staff’s recommendation reflects the recommendation to apply the 205-bed reduction for private prisons in the county jails line item, rather than in the private prisons line item. Consequently, chart reflects a recommended funding reduction equivalent to 286 beds, not 491.

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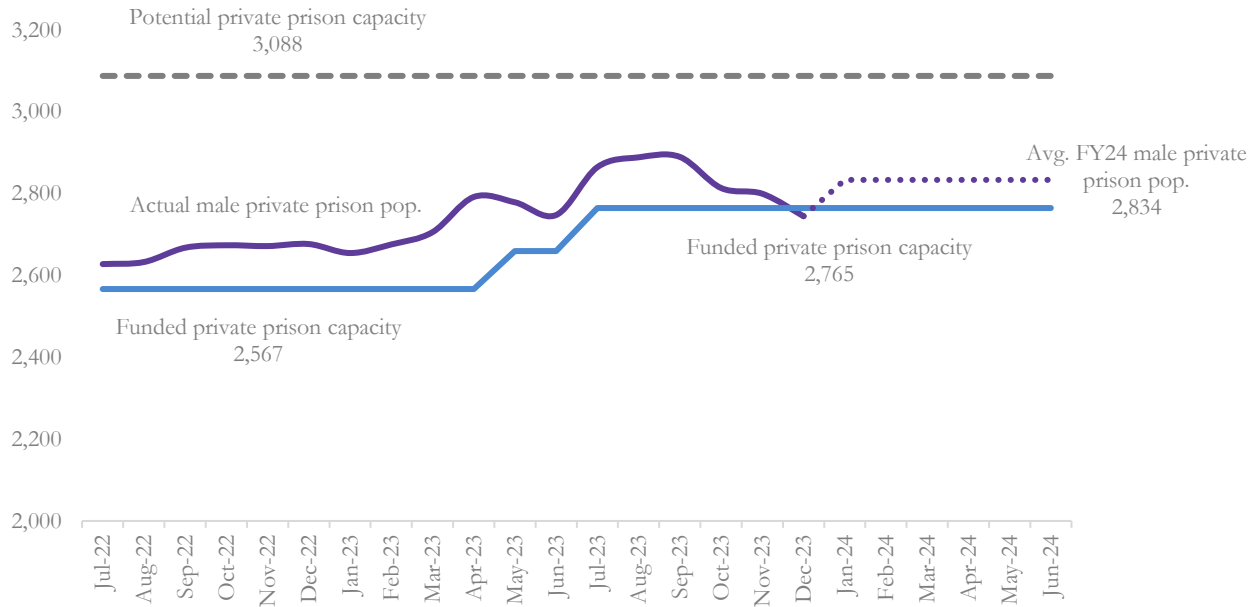
**Chart 1~Total funded prison capacity and total male prison inmate population FY22-23 & FY23-24**

The chart on the next page shows that the private prison population has exceeded funded capacity since at least the beginning of FY 2022-23. The DOC is able to do this because a Long Bill footnote provides them with the authority to transfer appropriations from the *Payments to Local Jails* line item to the *Payments to In-state Private Prisons* line item.

Footnote #6 in S.B. 23-214 (FY 2023-24 Long Bill) provides the Department with the ability to transfer up to 5.0 percent of the total appropriation for external capacity subprogram between line items in the external capacity subprogram. The current appropriation of \$80.3 million General Fund allows for a \$4.0 million transfer between those line items.



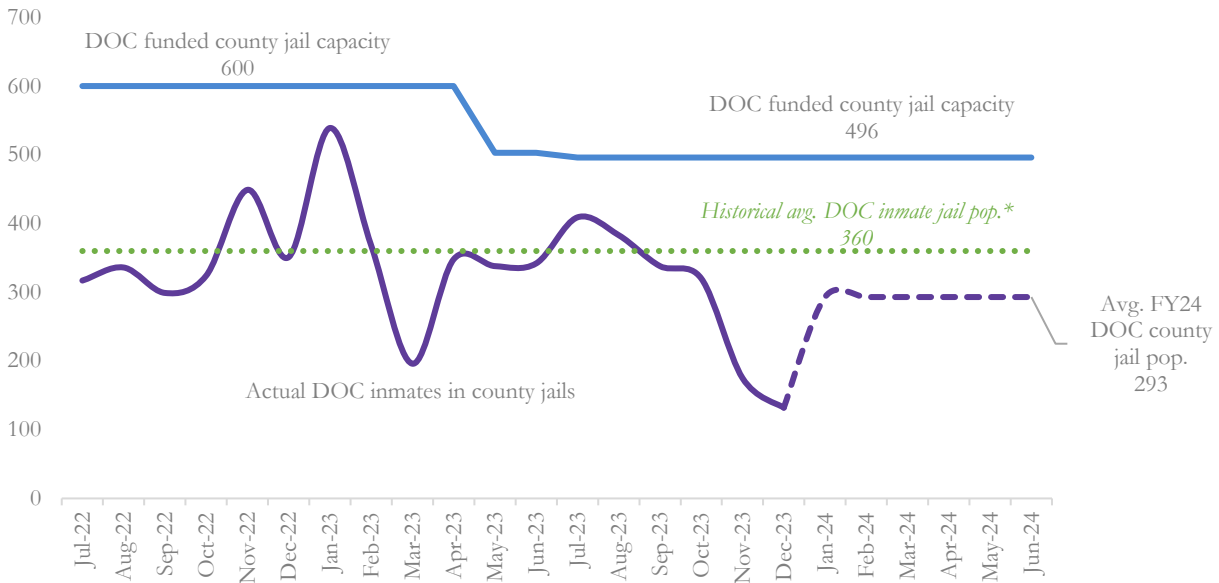
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**Chart 2~Private prison utilization vs. funded private prison capacity vs. potential private prison capacity**

*Funded capacity is based on an assumed average daily population and the established per-diem rate. Actual utilization is based on end-of-month reporting by the DOC.*

As the chart below shows, the DOC will likely underutilize its appropriation for county jail reimbursements despite a \$15.04 (or 24.8 percent) increase in the per-diem reimbursement rate included in the current budget. The current appropriation of \$13.7 million General Fund can support an average daily population of 496 DOC inmates in county jails. JBC staff estimates that the Department will only spend about \$8.0 million of that \$13.7 million appropriation if the second half of the current fiscal year resembles the first half.

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**Chart 3~DOC county jail utilization vs. DOC county jail funded capacity vs. Historical average of DOC inmates in county jails**

\*The historical average of 360 represents the pre-COVID monthly average (FY 15-16 to March 2020) and July 2022 to January 2023.

Funded capacity is based on an assumed average daily population and the established per-diem rate. Actual utilization is based on end-of-month reporting.

This suggests that about \$5.7 million General Fund would be reverted at the end of the fiscal year. The Long Bill footnote allows the DOC to transfer about \$4.0 million of that reversion to the private prisons line item. Utilization of the entire \$4.0 million transfer authority can support an additional 168 private prison beds for a full-year.

In other words, the current budget supports an average daily private prison population of 2,765. Full utilization of the transfer authority, if funds are available, supports a *de facto* average daily population of 2,932. This 168 bed “buffer” offered by the Long Bill footnote suggests that 5.1 percent of possible male prison beds (funded state beds + funded private beds + transfer authority private beds) could be vacant at the end of the current fiscal year if the Committee approves the DOC’s request.

### **1B. The meaning and history of the “bed vacancy rate”**

For at least the past decade, the State has appropriated money to hold a certain percentage of prison beds vacant. These beds are funded but not expected to be occupied. This percentage is applied to the total number of funded beds across the entire prison system; it does not concern itself with the individual qualities of a particular prison bed or facility.

This is done in recognition of the fact that it is very difficult—if not impossible—to run a prison system “...if plans call for all beds to be continually occupied.”<sup>1</sup> According to the 2021 Prison Utilization Study by CGL Companies,

<sup>1</sup> CNA Analysis & Solutions, “2013 Colorado Prison Utilization Study,” June 2013. Page 62.

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“Operational issues such as physical plant maintenance and the need for available cells to accommodate fluctuations in the prison population as well as the continual movement of inmates within and between facilities dictates that systems need to maintain a minimum number of vacant beds for management purposes. To this end, most correctional systems set a goal of keeping a minimum of 2 percent of operational capacity vacant as a recognized best practice.”<sup>2</sup>

The 2021 study also says, “Ideally, state correctional systems want to maintain a margin of readily available vacant beds in the range of 2 - 5 percent of system wide general population capacity.”<sup>3</sup> In one of its responses to a JBC request for information this past November, the DOC described CGL Companies as “...a leading consultant in corrections management...” implying that the Department sees CGL companies as a trusted source of information.

The practice of applying a fixed vacancy rate percentage to prison caseload adjustments goes back to at least the FY 2014-15 budget cycle. The DOC’s R1 Offender Population Caseload from that budget cycle says,

“The [2013] Prison Utilization Study assumed a 2 percent bed vacancy rate for both state and private facilities. The Department believes the vacancy rate established for state beds will be sufficient for managing moderate population fluctuations and recommends not increasing the private facility bed requirement for this purpose.”<sup>4</sup>

The Department applied a 2.0 percent vacancy rate to its prison caseload calculations from FY 2014-15 through the FY 2020-21 budget cycle. During the FY 2021-22 budget cycle, the Department applied a 10.0 percent vacancy rate for male prison caseload and a 13.2 percent vacancy rate for female prison caseload. This was done to mitigate the impacts of the coronavirus pandemic.

During the FY 2022-23 budget cycle (2022 legislative session), the Department stepped down to a 2.5 percent vacancy rate for male prison caseload and a 5.8 percent vacancy rate for female prison caseload. However, during the supplemental request for FY 2022-23 (2023 legislative session), the Department applied a *de facto* 6.5 percent vacancy rate for male prison caseload and a 6.6 percent vacancy rate for female prison caseload. This was done by holding 495 male Residential Treatment Program beds vacant in addition to the 2.5 percent vacancy rate. For females, the request held 48 Residential Treatment Program beds vacant in addition to the 2.5 percent vacancy rate.

**The practice of budgeting with a vacancy rate is not a statutory requirement. The Department may propose any vacancy rate it wants. The JBC and General Assembly may accept that proposal or budget to their preferred vacancy rate.**

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<sup>2</sup> CGL Companies, LLC, “Colorado State Prison Utilization Study,” January 15, 2021. Pages 79-80. This study was funded through H.B. 20-1019 (Prison Population Reduction and Management). The 2013 study, cited above, says, “The vacancy rate typically is under 5 percent [for most corrections systems]. For the purposes of this study, we have assumed a 2 percent vacancy rate [for the Colorado Department of Corrections].”

<sup>3</sup> Ibid, pages 19-20.

<sup>4</sup> FY 2014-15 Department of Corrections R1 Offender Population Caseload, page 4.

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**1C. Current supplemental request = 3.8 percent *de facto* vacancy rate for male prison beds**

Per the OSPB comeback, the Department is proposing to hold 165 beds vacant *in addition to* the 317 beds held vacant through the 2.5 percent vacancy rate. There is no real distinction between a bed held vacant through the 2.5 percent vacancy rate and a bed held vacant through a “surplus” or “buffer” or “cushion.” A 317-bed vacancy rate and a 165-bed surplus are both system-wide figures and are not attached to a particular bed type or facility. The Department and OSPB have given them different names but they have the same effect: **If the Committee approves the Department’s request, the DOC will have a total of 482 vacant beds to work with for the remainder of FY 2023-24.** This represents a 3.8 percent *de facto* vacancy rate, exclusive of the flexibility provided by the Long Bill to transfer appropriations between the line items for private prisons and county jails.

TABLE 3~DOC MALE PRISON POPULATION FORECAST VS. CAPACITY 3.8 PERCENT <i>DE FACTO</i> VACANCY RATE			
LINE		FY24	FY25
A	Current funded state bed capacity	12,794	12,794
B	Beds offline due to maintenance projects	(115)	(115)
C	Available state beds online [A + B]	12,679	12,679
D	Less: 3.8% vacancy rate [C * 0.038]	(482)	(482)
E	<b>Subtotal available state male beds [C + D]</b>	<b>12,197</b>	<b>12,197</b>
F	Projected average male prison population	14,636	15,062
G	<b>Male bed need [F - E]</b>	<b>2,439</b>	<b>2,865</b>
H	Funded private prison beds	2,765	2,765
I	Male bed surplus/(shortfall) [H - G]	326	(100)

JBC staff disagrees with OPSB’s assertion that the Department used “the same caseload calculation methodology as the November request.”<sup>5</sup> The November 1, 2023 prison caseload request methodology and the January 16, 2024 prison caseload request look different and produce different outcomes. JBC staff thus concludes that the methodologies are different, not the same.

Furthermore, the comeback claims that approaching a 2.5 percent vacancy rate in FY 2023-24 would “risk unsafe cross-category bed allocation.”<sup>6</sup> If true, the same principle would apply in FY 2024-25. The November 1, 2024 request for FY 2024-25 does not propose a “surplus” or “buffer” in addition to the 2.5 percent vacancy rate. Yet the January 16, 2024 budget amendment for FY 2024-25 does propose a “buffer.” Consequently, JBC staff concludes that the November 1 request and the January 16 request do not use the same methodologies.

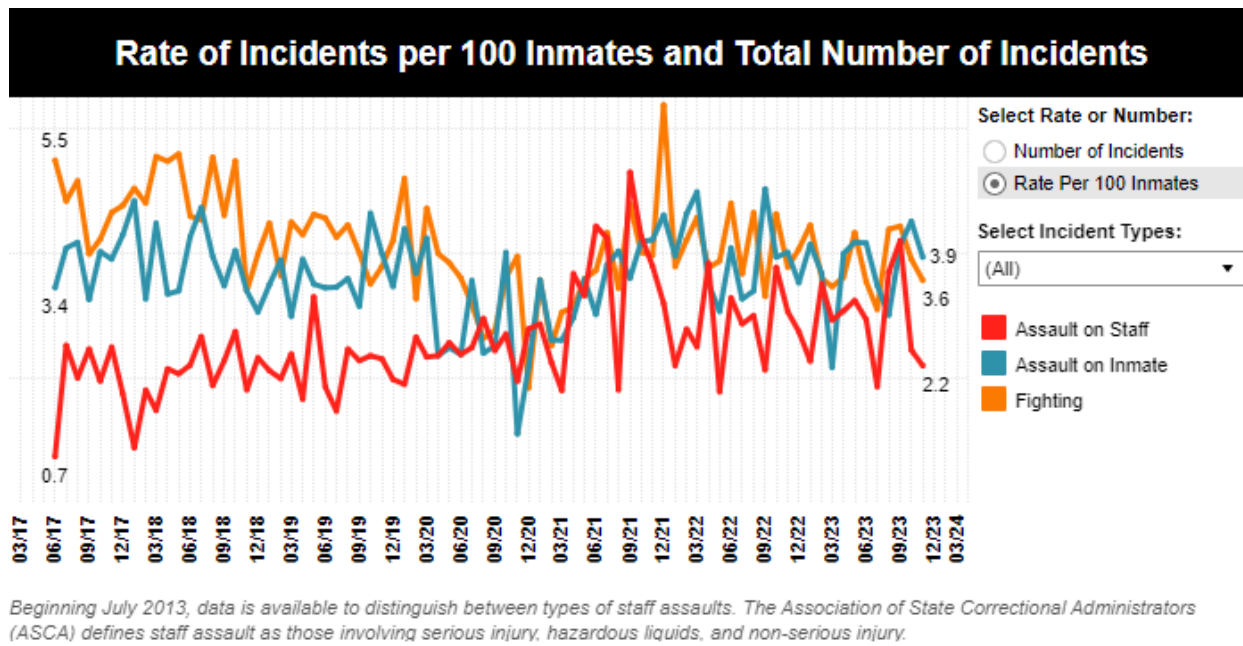
JBC staff notes that the average end-of-month vacancy rate for male prison beds was 1.7 percent in the two years from June 30, 2017 to June 30, 2019. When excluding Residential Treatment Program beds, the average rate was 1.0 percent. Staff cannot explain why the Department now sees 2.5 percent as insufficient, but operated with much leaner bed vacancy margins prior to the coronavirus pandemic. It is possible that prior practice was unsafe and that current practice is also unsafe. However, data on

<sup>5</sup> OSPB Comebacks, January 25, 2024, page 2: [Link](#) to document.

<sup>6</sup> Ibid, page 3.

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the Department's website shows that current inmate-on-inmate assault rates are broadly in line with the years preceding the pandemic, while inmate-on-staff assault rates appear to have increased.<sup>7</sup>



Differences between current and past practice are explained further in the section on custody classifications.

#### **1D. Additional points to consider when considering how many vacant beds to pay for**

The number of funded-but-vacant prison beds constrains the Department's ability to manage the prison population if that number is too low. If the number is higher, management becomes easier (though not easy). Staff does not dispute this basic principle. There may be other benefits to a larger vacancy rate that have not been explained by the Department thus far.

However, the 3.8 percent bed vacancy rate implicitly requested by the Department has policy implications. For example, extra money in the budget for extra prison space may allow the Executive Branch to pursue policies that may or may not be consistent with the General Assembly's policy values and preferences.

These policy implications require value judgements about what is or is not morally right, what is or is not preferable from a policy perspective, etc. JBC staff cannot make recommendations based on value judgements. However, staff offers the following points to consider so the JBC and General Assembly can make policy decisions that are consistent with their preferences.

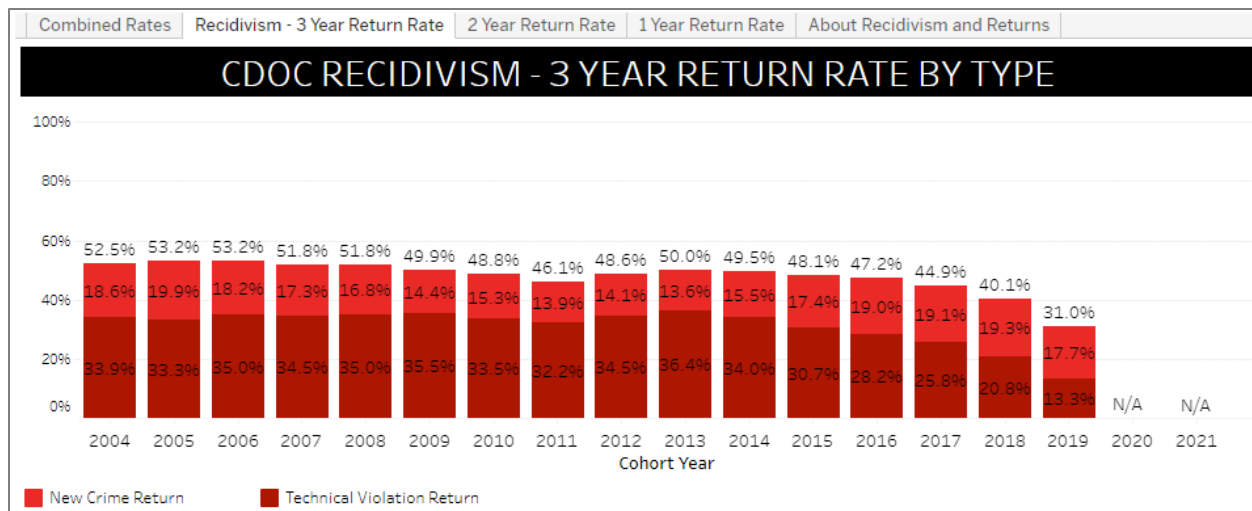
<sup>7</sup> <https://cdoc.colorado.gov/about/data-and-reports/statistics>, see Dashboard Measures—Prison Behavior—Rate of Incidents per 100 Inmates.

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*The Role of Parole: Technical Parole Violations and the Prison Population Forecast*

From FY 2020-21 and FY 2022-23, the DOC aimed to reduce technical parole violations (TPVs) as a way to reduce the recidivism rate (defined by the DOC as a return to prison or offender status in Colorado within three years of release). These were part of the DOC's "wildly important goals," or WIGs<sup>8</sup> Per the DOC's WIGs on the Governor's Dashboard, "Reducing technical parole violations will ensure that prison is only utilized for high-risk persons."

Per the DOC's statistical dashboard, TPVs were the primary contributor to the recidivism rate in the years preceding the coronavirus pandemic.<sup>9</sup> The data show that TPVs accounted for well over half of the pre-pandemic recidivism rate.



<sup>8</sup> <https://dashboard.colorado.gov/governors-dashboard/corrections>

<sup>9</sup> <https://cdoc.colorado.gov/about/data-and-reports/statistics>

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In FY 2020-21, the DOC aimed to reduce the TPV rate from 24.5 percent to 22.5 percent. The DOC exceed this goal by a considerable margin; the actual TPV rate ended up being around 9.0-10.0 percent.

In FY 2021-22, the DOC aimed to reduce the TPV rate from 18.43 percent to 14.2 percent. The DOC exceeded this goal; the actual TPV rate ended up ranging from 8.0-11.0 percent.

In FY 2022-23, the DOC aimed to reduce the TPV rate from 13.0 percent to 11.0 percent. However, the TPV rate jumped up to 16.0 percent by the end of FY 2022-23. Per a draft copy of the December 2023 DCJ prison population forecast, the increase in returns to prison for TPVs contributed to a 4.0 percent increase in the total inmate population.<sup>10</sup>

In the current fiscal year, it appears that TPV goals are no longer included in the DOC's WIGs. Instead, the DOC is aiming to hold the one-year return to prison rate steady at 17.0 percent. An indicator for this goal is, "Increase the percent of people successfully completing parole from 66.1% to 70% by June 30, 2024." However, as of November 2023, this percentage is 64.0 percent. The DOC is also attempting to increase the number of people meeting the criteria for early discharge from parole from 1,012 to 1,200 by June 30, 2024. As of November 2023, this number was at 613.

JBC staff thought this issue was worth highlighting for the JBC because the prison population forecasts use historical data to estimate the future prison population. They also make certain assumptions in their datasets. For example, the DCJ forecast assumes:

- Decision makers in the justice system will not change the way they use their discretion, except in explicitly stated ways that are accounted for in the models.
- Admission, release and sentencing patterns will not change dramatically from the prior year through the upcoming seven years, except in ways that are accounted for in the current year's projection models.

The upshot is that if the Executive Branch is no longer aiming to reduce the TPV rate, and if the prison population forecasts are assuming a lower TPV rate that is consistent with the past few years, it is possible that a "buffer" or "cushion" in addition to the 2.5 percent bed vacancy rate would make it easier to for the DOC to accommodate an increase in the number of people returned to prison for a TPV. At the very least, the data suggest that a change in TPV rates led to an increase in the prison population in FY 2022-23. JBC staff would have to do additional research to draw a firm conclusion about what is happening in this area, but wanted to flag the possibility for the JBC's consideration.

#### Statutory Prison Population Management Measures

Section 17-1-119.7, C.R.S., (Prison population management measures) provides a statutory relief valve for the prison population. This statute says,

"The department [of corrections] shall track the prison bed vacancy rate in both correctional facilities and state-funded private contract prison beds on a monthly basis. If the vacancy rate falls below three percent for thirty consecutive days, the department shall notify the governor, the joint budget committee, the parole board, each elected district attorney, the chief judge of

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<sup>10</sup> The total inmate jurisdictional population includes inmates who are in prison and inmates who are in the community but not yet on parole. About 92.6 percent of the male total inmate jurisdictional population are housed in prisons.

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each judicial district, the state public defender, and the office of community corrections in the department of public safety. The department shall notify the governor, the joint budget committee, the parole board, each elected district attorney, the chief judge of each judicial district, the state public defender, and the office of community corrections once the vacancy rate exceeds four percent for thirty consecutive days.”

It provides specific requirements for some of the actors listed above. For example, it requires that the DOC ask the Department of Public Safety’s Office of Community Corrections (OCC) to provide the DOC with information regarding the location and nature of any unutilized community corrections beds. The OCC shall provide the information within seventy-two hours of the request and on a weekly basis until the office of community corrections receives notification that the vacancy rate exceeds 3.0 percent

Statute also requires the DOC ask the Parole Board review a list of inmates who are within ninety days of their mandatory release date, have an approved parole plan, and do not require full board review or victim notification pursuant to section 24-4.1-302.5, C.R.S. (Rights afforded to victims).

During last year’s supplemental process, the DOC told JBC staff that the Department had opened additional beds to stay over the 3.0 percent vacancy rate threshold. The DOC also told JBC staff that they slowed intake from county jails to stay above the 3.0 percent threshold. When questioned about this, the DOC indicated that the 3.0 percent vacancy rate was also helpful for their operations.

JBC staff cannot say whether it is right or wrong for the Executive Branch to act within its statutory authority to avoid triggering statutory prison population management measures. If the Executive Branch’s policy preference is to stay above a 3.0 percent bed vacancy rate, one can see why the Executive would view budgeting to a 2.5 percent bed vacancy rate as problematic. However, mixing these kinds of subjective policy preferences with more objective operational needs makes it difficult to take claims about operational needs at face value. Consequently, JBC staff is reluctant to recommend that the JBC adopt budgeting practices that may conform more to the Executive Branch’s policy preferences than the General Assembly’s.

#### **1E. JBC staff recommendations for “how many” male prison beds the State should pay for in FY 2023-24**

**JBC staff recommendation #1 is that the JBC reduce the DOC’s budget by an amount equal to 491 prison beds.** This consists of 200 minimum-restricted beds at Buena Vista (as requested by the Department), 86 minimum beds at Delta, and 205 private prison beds. As mentioned previously, the 205-bed reduction for private prisons would not actually occur because staff is recommending that the JBC apply the reduction in the *Payments to Local Jails* line item due to underutilization of that appropriation.

The following table shows how JBC staff arrived at the 491 bed figure. Staff used the standard 2.5 percent vacancy rate methodology described in the Department’s November 1, 2023 prison caseload request, which did not include a “buffer.” The section following the table explains how staff arrived at the specific number of beds for each facility.



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**TABLE 4~REVISED JBC STAFF RECOMMENDATION #1: SURPLUS MALE PRISON BEDS IN FY 2023-24**

Line		FY24	FY25
A	Current funded state bed capacity	12,794	12,794
B	Beds offline due to maintenance projects	(115)	(115)
C	Available state beds online [A + B]	12,679	12,679
D	Less: 2.5% vacancy rate [C * 0.025]	(317)	(317)
E	<b>Subtotal available state male beds [C + D]</b>	<b>12,362</b>	<b>12,362</b>
F	Projected average male prison population	14,636	15,062
G	<b>Male bed need [F - E]</b>	<b>2,274</b>	<b>2,700</b>
H	Funded private prison beds	2,765	2,765
I	<b>Male bed surplus/(shortfall) [H - G]</b>	<b>491</b>	<b>65</b>
K	Male bed surplus/(shortfall) based on LCS forecast	512	254

**JBC staff is offering three additional options for the JBC's consideration: (1) A lesser reduction equivalent to 391 beds in FY 2023-24, (2) a lesser reduction equivalent to 286 beds in FY 2023-24, and (3) no bed reductions in FY 2023-24.** All options will impact the FY 2024-25 figure setting process. For example, if the Committee makes no prison caseload-related changes to the DOC's budget in the current fiscal year, JBC staff would recommend a 65-bed reduction in FY 2024-25 based on the DCJ forecast or a 254-bed reduction based on the LCS forecast.

## **SECTION 2: WHICH MALE PRISON BEDS SHOULD THE GENERAL ASSEMBLY PAY FOR IN FY 2023-24?**

### **2A. A brief overview of custody classifications**

The DOC classifies every inmate according to the level of security required to safely supervise that inmate.<sup>11</sup> This custody classification rating is described by the Department as an objective rating process aimed at balancing the lowest possible custody level with objective assessments of public, staff, and inmate safety.

Similarly, DOC prison facilities offer varying levels of security, which guides where the Department can place an inmate. For example, inmates needing high levels of security cannot be placed in low-security facilities. The following table demonstrates the relationship between inmate and facility security levels. A "Yes" means that an inmate with that classification can be placed in a facility with the corresponding security level.

Security/Custody Levels	(Most secure) Level V	Level IV	Level III	Level II	Level I
Close (Most secure)	Yes			No	
Medium	Yes			No	
Minimum-restricted	Yes				No
Minimum	Yes				

DOC policies include various exceptions and caveats to the general principles outline in the table. For example, a minimum custody inmate (Level I) may be considered for placement in a Level IV facility, "but only for specific program or work assignments as dictated by the needs of the facility and/or offender." A lower custody inmate may be assigned to a Level V facility if they are "assigned to a specialized program, status, and/or facility..."

<sup>11</sup> [Link](#) to DOC Administrative Regulation 600-01 regarding inmate classification (effective July 1, 2023).

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Additionally, DOC policies allow for custody classification overrides. There are two types of overrides: (1) mandatory overrides and (2) discretionary overrides. A mandatory override is required under policy to restrict offenders from progressing below a level III facility or a level II facility. A discretionary override is used to assign a higher or lower custody rating contrary to the scored custody.

Recent Changes to Custody Classification Policies

The most recent classification policy (July 2023) shows changes relative to both the October 2022 policy and the July 2019 policy:

- Mandatory override: Sex offender restriction removed
- Discretionary override (higher custody): A higher custody override is now allowed for placement in the Centennial Correctional Facility Residential Treatment Program
- Discretionary override (lower custody): A lower custody override is no longer allowed for the Sex Offender Treatment and Monitoring Program and the Therapeutic Community drug and alcohol treatment program.

The most recent policy also includes a new section on “Considerations for Internal Classification and Cell Assignment,” which was not in the October 2022 policy. That new section reads:

- 1 Factors which have been identified when making Unit/ Pod / Cell determinations are:
  - a. A review of pod/unit racial and [Security Threat Group] balance.
  - b. AR 100-40, Prison Rape Elimination Procedure states "DOC employees will use information from the [Sexually Aggressive Behavior/Sexual Vulnerability Risk] assessments to determine housing, bed, work, education, and program assignments with the goal of keeping separate those offenders at high risk of being sexually victimized from those at high risk of being sexually aggressive (115.42(a), 115.242(a))."
  - c. Verified and validated custody issues.
  - d. [American Disabilities Act] and/or clearly defined medical accommodations.
  - e. Program / work assignments as designated by facility.
  - f. Classification or status as designated by facility
- 2 Additional considerations for bed assignments related to assigning more than one offender to a cell or room:
  - a. [Sexually Aggressive Behavior/Sexual Vulnerability Risk] scores
  - b. Age disparity of more than 10 years, unless age 50 or older
  - c. Great disparity in length of sentence between cellmates, (for example, someone with a life sentence housed with an offender releasing in 2 months)
  - d. Other correctional considerations - for example staff assessment of the likelihood of being victim prone or observed behaviors such as intimidating other offenders could also be considerations
  - e. In the event of emergency situations that require temporary placement of offenders in other locations, the above factors will be considered at the earliest feasible opportunity.

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The upshot is that some of these internal policy changes may be driving the Department's prison management challenges relative to pre-COVID practice. JBC staff does not know whether these changes help or hinder the Department's case to fund more vacant beds, as the information provided by the Department has not specifically addressed the factors that would drive a higher vacancy rate.

## **2B. Assumed bed increases for FY 2023-24 vs. actual bed increases in FY 2023-24**

The FY 2023-24 currently-funded male prison capacity is 740 beds higher than it was in FY 2022-23. This increase consisted of 542 state prison beds and 198 private prison beds. The following table shows the changes the current budget assumed would happen and the actual changes in prison beds that have happened in the current fiscal year.

TABLE 5~MALE PRISON BED CHANGES IN FY 2023-24 (ASSUMED VS. ACTUAL)				
FACILITY	CUSTODY/SECURITY LEVEL	ASSUMED BED INCREASES FY 2023-24 COMPARED TO FY 2022-23	ACTUAL BED CHANGES FY 2023-24 COMPARED TO FY 2022-23*	DOC REQUEST FY 2023-24 SUPPLEMENTAL
Limon	Close/Level V	156	156	0
Trinidad	Minimum-restricted (Level II)	200	100	0
Buena Vista	Minimum-restricted (Level II)	100	110	(200)
Delta	Minimum (Level I)	86	0	0
Skyline	Minimum (Level I)	0	0	(126)
Private	Medium (Level III)	198	267	0
<b>Total</b>		<b>740</b>	<b>633</b>	<b>(326)</b>
<i>*Year-to-date changes based on the DOC's monthly prison population reports.</i>				

## **2C. The Executive Branch's explanation for requested reductions and alternatives**

This subsection focuses on the reasons behind the requested "temporary closure" of Skyline, the relocation of 96 of the inmates from Skyline to Centennial-North, and the desire to retain funding for beds at Delta.

### *Temporary closure of Skyline Correctional Facility*

The original request to close Skyline is connected to unfunded FTE positions. Per the request, "Staff assigned to SCC will be relocated within the Canon Complex to fill vacant positions, and funding will be utilized to fund positions that are currently unfunded." Per the OSPB comeback, the Department's request aims to backfill is \$3,410,340 General Fund and 43.1 FTE. This includes \$3.0 million and 38.0 FTE repurposed from Skyline and \$378,665 and 5.1 FTE repurposed from Buena Vista. Section 3 (pg. 26) details this issue.

After the OSPB comeback, where the JBC expressed their concerns about the proposed Skyline closure, the Executive Branch informed JBC staff, "Temporarily closing Skyline Facility and moving the Beacon program continues to be the Department's recommendation and the most cost-effective way to implement the bed reduction with the least impact on staff and private prison partners."

The OSPB comeback explains further (portions italicized by JBC staff for emphasis):

"Skyline Correctional Facility is a minimum custody correctional facility. *These beds are some of the hardest beds to keep occupied due to the classification criteria required to qualify for this level.* Incarcerated individuals who meet these criteria are highly sought after for community progressions and parole, thereby creating a high rate of turnover in these beds. Criteria to be selected to

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participate at Skyline exceed that of the current general population minimum beds, which adds to the difficulty of filling these beds...

... Closing Skyline facility, in contrast, minimizes negative effects on staff, as there are vacant and open positions on the East Canon complex. Furthermore, relocation of the Beacon program to Centennial allows staff to follow the program if they choose. *Finally, Skyline facility has ongoing large physical maintenance issues that will cost the Department funds if kept in ongoing use.... By redeploying staff from Skyline, we can minimize overtime needs at other East Canon facilities."*

**In short, the comeback states three additional reasons for temporarily closing Skyline:** (1) It is difficult to find qualified inmates for both minimum security Level I facilities *and* the Beacon Program, (2) They want to use the 38.0 FTE at Skyline to fill vacancies elsewhere in the Canon City complex, thereby reducing overtime, and (3) Skyline is/will be expensive to maintain. The Department said this about maintenance:

"Maintenance of Skyline continues to be an ongoing issue. Because of the age of the building, it has a high maintenance cost resulting from pipe issues, HVAC, generators, bathrooms, and many others. Short-term, the existing laundry system that cleans the clothes and bedding of inmates at Skyline does not function properly. Renovation costs are anticipated to be approximately \$650,000. This will be handled through a CDC-controlled maintenance project.

In the meantime, the Department must send the materials to Fremont Correctional Facility for cleaning, which creates costs in terms of staffing and transportation. In addition, this creates extra administrative work in order to schedule pick-up, processing, and delivery, both for staff at Skyline and Fremont.

Long-term, Skyline Correctional Center (SCC) has an evaporative system, which needs to be replaced as our facilities face the impacts of climate change. Currently, SCC is grandfathered in by CDPHE; however, with any renovations, code requirements must be met and material abated. SCC also needs a full replacement of the mechanical system, and an elevator added that is augmented by the removal of encapsulated hazardous materials. To meet ADA requirements in the long-term, the facility requires a renovation of cells, toilet and shower rooms. The anticipated cost of these upgrades at Skyline Correctional Facility is \$25.208M."

Relocation of inmates and the Beacon Program from Skyline (Level I) to Centennial (Level V)

The original request states the following: "With the depopulation of SCC, 96 of the inmates housed there will be transferred to Centennial Correctional Facility (CCF), and the remaining 30 will be relocated to other mentor positions in Level I and Level II facilities." The request does not provide additional details and the Beacon is never mentioned.

The OSPB comeback indicates that the DOC will continue to operate the Beacon Program within the Centennial Correctional Facility:

"...the Beacon program is an innovative and impactful piece of the DOC system, and it will be retained regardless of the outcome of caseload funding. While Skyline Correctional Facility currently hosts the Beacon program, the two are not inseparable. There are no plans to end or

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interrupt the Beacon program, and participants would remain in the program even as Skyline goes offline and they are relocated to [the Centennial Correctional Facility].

...Staff in Canon City will have the option to either follow the Beacon program to the Centennial Correctional Facility or seek another position at the six other facilities in Canon City or another state facility.”

JBC staff asked additional questions. First, staff asked, “Where would Beacon inmates be housed if they are moved to Centennial? Would it be Centennial North or South?” The Department indicated that they would be moved to Centennial North, a 336-bed Level V facility with 240 Residential Treatment Program beds and (formerly) 96 Intensive Treatment Community beds.<sup>12</sup> Specifically, they Department said that Beacon program inmates would be housed in two units consisting of 6 pods with 16 single cells per pod for a total of 96 beds.

JBC staff also asked, “If Centennial North, would they be housed in what are/were formerly [Residential Treatment Program] units or Intensive Treatment Community Units? And have those units been converted to minimum security Level I cells, or would they still be Level IV cells?” The Department provided the following response:

“[These units] were previously utilized to house our Medium Custody SOTMP (Sex Offender Treatment Management Program) program. There are no capital modifications that would need to be made to make these cells lower custody. CDOC would work to provide a positive setting within their pods that would contain gaming systems, softer furniture, larger TVs, and other such accommodations. The units that the Beacon inmates would be housed in would be single cells.”

*Desire to keep funding for 86 beds at Delta that have not been brought online yet this year*

The Delta Correctional Facility is a Level I minimum security facility. In May 2022, the Department increased Delta’s capacity by 106 beds, from 285 to 391. The DOC requested funding for these 106 beds through the FY 2022-23 supplemental process, which was approved and included in the FY 2022-23 DOC supplemental bill (S.B. 23-113).

The DOC’s FY 2022-23 supplemental budget package also included a budget amendment for FY 2023-24, which asked for funding to support 86 additional beds at Delta. The JBC approved funding for these 86 beds in FY 2023-24, with the exception of certain job classifications (discussed in detail in Section 3 of this document).

The DOC’s monthly prison capacity reports show that these 86 funded beds have not been brought online yet. Delta’s capacity has actually declined by 10 beds—to a total capacity of 381—to accommodate an honor unit in which cells are being utilized for washers and dryers in the area.<sup>13</sup>

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<sup>12</sup> The OSPB comeback appears to indicate that the Intensive Treatment Community/Sex Offender Treatment beds have been moved to the Level III Fremont Correctional Facility.

<sup>13</sup> In its December 14, 2023 hearing with the JBC, the Department described honor units: “Honor Units represent a shift toward normalizing the culture within the correctional environment. This cultural shift allows us to create a more compassionate atmosphere, enabling the implementation of tangible items, supportive processes, programs, and events.”

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Further research shows that Delta's average bed vacancy rate in FY 2023-24 (August through December) is 14.4 percent, or about 55 beds.

The OSPB comeback states, "The closure of beds at Delta...would result in the relocation of staff to another facility, increasing commute time and straining our staff." It also states, "Delta has seen gains in staffing, and is currently on an upward trajectory. The Department does not want to lose this momentum. Furthermore, if the Department closes beds at Delta, it cannot redeploy staff to other facilities with high vacancies."

JBC staff is a bit confused by the use of the word "closure" in the OSPB comeback. If the 86 funded beds at Delta are not currently open and occupied, they cannot be "closed" via a budget reduction. Given the beds' status, the JBC staff recommendation would eliminate the funding for the still-closed beds at Delta.

#### *Proposed Alternatives to Skyline Closure*

In response to the Committee's concerns, OSPB and the Department have proposed an alternative to closing Skyline: a reduction of 96 beds at Delta and a reduction of 30 private prison beds. The reduction of 96 beds at Delta equals a reduction of \$49,450 General Fund in the current fiscal year (pro-rated for April through June 2024). This would annualize to a reduction of \$197,800 General Fund in FY 2024-25. The reduction in funding is small because the proposal would not decrease any FTE associated with the bed reduction.

The Department calculates that a 30-bed reduction in private prisons would save \$178,540 General Fund in the current fiscal year. This was also pro-rated for three months. Both the OSPB comeback and the alternative proposal show concern about how JBC staff calculated their original private prison reduction for a full-year, rather than pro-rated for the remainder of the year. The alternative proposal also states, "...the Department remains concerned about private facilities' ability to absorb additional reductions, hence the Department's preference to close Skyline for maximum savings without reducing support for private prisons." The private prison issue is discussed in the next section.

#### **2D. The Executive Branch's erratic approach to private prison utilization since FY 2020-21<sup>14</sup>**

The DOC's FY 2023-24 budget included funding for an increase of 198 private prison beds relative to FY 2022-23. The DOC did not ask for this increase; it was recommended by JBC staff and approved by the JBC. Given that history, it is noteworthy that the DOC's current utilization of private prisons would not be possible if the JBC had approved the Department's prison caseload request during the last legislative session.

In fact, the Executive Branch went to great lengths during the last budget cycle to avoid asking for private prison beds. The prison caseload request submitted by the DOC on January 17, 2023 aimed to "minimize the needed private beds" by bringing all available state prison beds online in FY 2023-24. That request sought 613 male prison beds as an FY 2022-23 supplemental adjustment and an additional 840 male prison beds in FY 2023-24. The total request was \$15.6 million General Fund and

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<sup>14</sup> Merriam Webster defines erratic as "having no fixed course" or "characterized by lack of consistency, regularity, or uniformity."

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7.0 FTE in FY 2022-23 and \$27.0 million General Fund and 200.7 FTE in FY 2023-24.<sup>15</sup> The total requested increase of 1,453 male prison beds included 300 high-security beds at the Level V Centennial South facility at a cost of about \$14.2 million General Fund and 98.3 FTE. It also included 300 minimum security beds at Sterling.

The request for 300 beds at Sterling and zero private prison beds is worth highlighting in detail. The day before submitting the January 17, 2023 budget request, the Department wrote to JBC staff that staffing shortages were preventing the Department from operating those beds at Sterling. The Department said that they “...must improve staffing to ensure the safety and security of staff and offenders at [Sterling Correctional Facility] before opening these beds.”

In other words, the Executive Branch so strongly wanted to avoid increasing funding for private prison beds in the FY 2022-23 supplemental request that they opted to request funding for beds at Sterling despite a terrible and potentially unsafe staffing shortage. The request tacked on an additional \$11.8 million General Fund for DOC staff housing to address that issue.

At that time, JBC staff asked the DOC to explain the logic behind “minimizing the needed private beds.” They responded with, “The department greatly values our relationship with CoreCivic, and relies on their partnership to protect public safety. The department has focused these requests on maximizing state beds that provide robust programming, services, and care. The state is also able to provide more specialized care, which is designed to support public safety when inmates are released from the department's custody.”

The importance of the Level III medium security beds in the DOC's prison system makes last year's budget request even more perplexing. The Department and OSPB emphasized this fact in the January 25, 2024 OSPB comeback, saying,

“...Level III beds are the most widely used beds within the department. As of December 2023, Level III Medium Custody male beds constitute the largest percentage of any bed type at 60.3% of all available beds. This represents our greatest bed space need by inmate classification. Level III beds are our system's most versatile and widely used programmatic and security placement options for general population inmates. The Department cannot accommodate large cut to Level III beds because of the large population of Level III inmates. Private prisons house Level III beds. Therefore, the Department looked at closing Level I and II beds.”

Yet the supplemental budget request from last year sought 613 additional Level I and II male prison beds and zero Level III private prison beds. The proportion of Level III medium security male inmates in the DOC prison system is roughly the same now as it was a year ago. In December 2022, it was 8,299 inmates representing 58.1 percent of the male prison population. In December 2023, it was 8,892 inmates representing 60.3 percent of the male prison population.

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<sup>15</sup> Notably, the request did not show how the Department arrived at the requested number of beds. Subsequent information provided to JBC staff on January 20, 2023, three days after submitting the request, shows that the Department had changed its caseload methodology to exclude 495 Residential Treatment Program beds.

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The Executive Branch is now expressing substantial concern for a 232 bed reduction in funding for their private prison partners. Per the OSPB comeback on January 25, 2024, “The Department values our private partners and works to ensure their financial stability in continuing to help with the Department’s caseload.” The Executive Branch’s inconsistency in this area over the past year continues a trend that has been ongoing for the past four years, as discussed below.

*FY 2020-21 Budget Cycle (FY 2019-20 Supplemental and FY 2020-21 Budget)*

On November 1, 2019, the Executive Branch submitted the DOC’s FY 2020-21 R3 Reducing Private Prison Use budget request. This request sought an increase of \$7.0 million General Fund and 210.4 FTE in FY 2020-21. It aimed to close about 700 male prison beds at the privately-operated Cheyenne Mountain Reentry Center (CMRC) by August 31, 2020. To compensate for the closure, the request proposed opening 617 close custody beds at the then-closed Centennial South (CCF-S) facility. The Department said it would move close custody inmates from Buena Vista, Sterling, and Limon to the newly-opened beds at Centennial South and then backfill those vacated beds with medium custody inmates from CMRC.<sup>16</sup>

The request claimed, “Closing the Cheyenne Mountain Re-entry Center by opening two towers in CCF-S will reduce the State’s reliance on private prisons and enable improved re-entry programming for offenders who are at a higher risk of returning to prison.” The JBC staffer at that time recommended in their December 2019 briefing that the JBC deny this request. JBC staff wrote,

“It was known prior to the submission of this request that no data exists that shows a difference between the results in private prison versus public prison. This has been a subject over many years and the question about data on this area has been asked many times. The response has been the same each time; no data exists that shows a difference in the recidivism rates or program outcomes between public prisons and private prisons. The executive even went as far as to have the Department of Corrections conduct a study on this topic in 2014, which showed no statistical difference between the outcomes of public prisons versus private prisons.”<sup>17</sup>

The DOC’s request assumed that CMRC would be phased out by August 2020, but CMRC notified the DOC on January 7, 2020 that it would close its doors within 60 days. To deal with an expected capacity crisis, the General Assembly appropriated about \$20.6 million General Fund through three bills to open the Centennial Correctional Facility-South campus.<sup>18</sup> This impending crisis was averted when a significant number of inmates were released a few months later when the coronavirus pandemic struck.

*FY 2021-22 Budget Cycle (FY 2020-21 Supplemental and FY 2021-22 Budget)*

On November 2, 2020, the Executive Branch submitted the DOC’s FY 2021-22 R1 Align Prison Caseload budget request. This request sought a reduction of \$22.0 million General Fund and 1,044 private prison beds. The result would have been 2,000 funded private prison beds, down from 3,044.

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<sup>16</sup> Link to FY 2020-21 R3 Reducing Private Prison Use: [https://drive.google.com/drive/folders/1K1-Yzqr\\_tN9Bk3N3-pEax-KrD1ZgsatE](https://drive.google.com/drive/folders/1K1-Yzqr_tN9Bk3N3-pEax-KrD1ZgsatE). Copy and paste link into browser for better results.

<sup>17</sup> JBC Staff Budget Briefing, Department of Corrections, December 2, 2019: [https://leg.colorado.gov/sites/default/files/fy2020-21\\_corbrf\\_0.pdf](https://leg.colorado.gov/sites/default/files/fy2020-21_corbrf_0.pdf), pg. 11.

<sup>18</sup> \$5.4 million through H.B. 20-1019, \$3.1 million through H.B. 20-1243, and \$12.1 million through H.B. 20-1360.



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The request claimed, “The utilization of 2,000 private prison beds also makes the two private prisons viable as history shows that when a private prison is operating fewer than 1,000 beds, it struggles to meet contractual obligations.”<sup>19</sup> The table below (screenshot from the request) shows how the Department calculated this reduction. It appears that somebody backed into the vacancy rate by first deciding how many private prison beds to take offline. The FY 2021-22 budget amendment submitted later shows a 10.0 percent vacancy rate in their calculations.

<b>Table 5: Male Bed Calculations</b>	
Current Capacity	13,384
Less Facility Closures:	
Skyline (closes January 2021)	(252)
Revised Capacity	13,132
Less: 7.775% vacancy rate	(1,021)
State Male Beds/(a)	12,111
FY 22 ADP Projection, based on DCJ Forecast (Table 3)	13,493
Plus:	
Lost Diversion Beds	341
Lost Transition Beds	277
Revised FY 22 ADP Projection/(b)	14,111
Private Prison Bed Need/(b) - (a)	2,000
Current Private Prison Bed Funded Level	3,044
Proposed Private Prison Bed Reduction	1,044

OSPB withdrew this request on November 2, 2020, the day it was submitted to the JBC. The OSPB letter to the JBC that accompanied the request said, “It has come to our attention that these technical changes could create unintended operational impacts not supported by the Governor.”

*FY 2022-23 Budget Cycle (FY 2021-22 Supplemental and FY 2022-23 Budget)*

On November 1, 2021, the Executive Branch submitted the DOC’s FY 2022-23 R1 Prison Caseload budget request. This request was dramatically different than the previous two years and represented what one may describe as a “return to normalcy.” It sought a reduction of just three private prison beds and used the more traditional methodology. The 37 bed reduction shown below (a screenshot from the request) was offset by an increase of 34 beds to compensate for beds in state prison facilities that had to be taken offline for planned maintenance projects.<sup>20</sup>

<sup>19</sup> Link to FY 2021-22 R1 Align Prison Caseload. Copy and paste link into browser for better results.

<https://drive.google.com/drive/folders/1tJt7fazz3Bp8bI5VO4xcGR5llqXRdhMf>

<sup>20</sup> Link to FY 2022-23 R1 Prison Caseload. Copy and paste link into browser for better results.

<https://drive.google.com/drive/folders/17uVm5bJ6IqzHwFTC3U1gDOBw2kjU-oTg>

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<b>Table 3: Male Bed Calculations</b>	
	<b>Male Beds</b>
<b>Current capacity</b>	<b>11,976</b>
<b>Less: 2.5% vacancy</b>	<b>(299)</b>
<b>State Male Beds</b>	<b>11,677</b>
<b>DCJ - FY 23 Projection</b>	<b>14,257</b>
<b>Private bed need</b>	<b>2,580</b>
<b>Currently funded</b>	<b>2,617</b>
<b>Private bed reduction</b>	<b>37</b>

The DOC's supplemental request during that budget cycle was similarly devoid of complications with respect to the way that male prison caseload was calculated, as shown in the table below (a screenshot from the request).<sup>21</sup> The DOC's supplemental/budget amendment request package during this budget cycle also included a request to increase the per-diem rate for private prisons by 7.7 percent.<sup>22</sup>

<b>Table 4: FY 2021-22 Male Bed Calculations</b>	
	<b>Male Beds</b>
<b>Current capacity</b>	<b>11,965</b>
<b>Less: 10.0% vacancy</b>	<b>(1,197)</b>
<b>State Male Beds</b>	<b>10,768</b>
<b>DCJ - FY 22 Projection</b>	<b>13,336</b>
<b>Private bed need</b>	<b>2,568</b>
<b>Currently funded</b>	<b>2,617</b>
<b>Private bed reduction</b>	<b>49</b>

*FY 2023-24 Budget Cycle (FY 2022-23 Supplemental and FY 2023-24 Budget)*

The Executive Branch did not submit a prison caseload-related budget request on November 1, 2022. Three independent sources later informed JBC staff that the Department had indeed submitted a

<sup>21</sup> Link to FY 2021-22 S2 Prison Caseload. Copy and paste link into browser for better results.

<https://drive.google.com/drive/folders/1iReT4tYWrlYcJ6Bg1Xbl9lEVMQhVpuIq>

<sup>22</sup> Link to FY 2021-22 S1/BA1 Private Prison Per-diem. Copy and paste link into browser for better results.

<https://drive.google.com/drive/folders/1mhM6HUwTxOsWaY4HeNyO3OdipQCOWSbL>

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prison caseload request to OSPB for inclusion in the November budget package. That request did not make it into the November 1 budget package.

As previously mentioned, on January 17<sup>th</sup> 2023, the Executive Branch submitted the DOC's S1 FY 2022-23/BA1 FY 2023-24 budget request. This request omitted all caseload calculations and sought to open all state prison beds for males while excluding changes to private prisons. Private prisons are mentioned twice in the request in this passage:

“Unlike in traditional years, the Department is facing a staffing crisis, which hinders its ability to open the required number of state beds. If this staffing crisis is not overcome, the Department will have to increase the amount of private beds utilized. In order to try to minimize the needed private beds, the Department is requesting an additional \$11,800,000 GF for staff housing, in the form of employee stipends and acquisition of long term housing solutions to help staff in locations that have faced extreme staffing shortages.”<sup>23</sup>

FY 2024-25 Budget Cycle (FY 2023-24 Supplemental and FY 2024-25 Budget)

On November 1, 2023, the Executive Branch submitted the DOC's FY 2023-24 R1 Prison Caseload budget request. This request appeared to represent a “return to normalcy.” It requested 253 additional private prison beds using the more traditional caseload methodology shown on the following page (a screenshot from the request).<sup>24</sup>

	Male Beds
Current State Operational Capacity	12,694
Add'l Beds Offline Due to FMS Projects	115
State Beds Online	12,579
Less: 2.5% Vacancy	314
State Male Beds	12,265
DCJ - FY 25 Projection	15,383

	Male Beds
Male Bed Need	3,118
Currently Funded Private Beds	2,765
Male Bed Shortfall	353

*The request seeks funding for 253 private prison beds. The 353 bed figure shown in the "Male Bed Shortfall" column was too high by 100 beds because the "Current State Operational Capacity" row was too low by 100 beds.*

The DOC's FY 2023-24 supplemental request seeks a reduction 326 male prison beds, with no reductions to private prison funding. The Department's reasoning is provided on pages 16 and 17 of this document.

<sup>23</sup> S1 FY 2022-23/BA1 FY 2023-24 Prison Caseload. Copy and paste link into browser for better results.

[https://drive.google.com/drive/folders/1W5X1bti139SMBQwVBO5Bmle\\_QWYY2fBg](https://drive.google.com/drive/folders/1W5X1bti139SMBQwVBO5Bmle_QWYY2fBg)

<sup>24</sup> FY 2024-25 R1 Prison Caseload. Copy and paste link into browser for better results.

<https://drive.google.com/drive/folders/1t92ycxjSBzcHTxTEEnY0Zex7InD92s3Ny>

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Summary of erratic approach to private prison utilization

The Executive Branch's erratic approach to private prison utilization over the past four years has made budgeting for prison caseload changes extremely challenging (in addition to changes in the methodology used to calculate caseload).

Traditionally, changes in male prison caseload were mainly accounted for in the private prisons line item. Per the Department's FY 2021-22 prison caseload budget request, "The Department utilizes private prison beds when the need to house male inmates exceeds the state facility prison capacity."

The other reason is that private prisons provide a significant number of Level III medium custody beds. Because the majority of inmates are medium custody, adjusting the appropriation for private prisons is the easiest way to account for projected changes in the prison population.

Lastly, the State does not have any closed medium custody male prison beds in state-operated facilities that it can bring online in lieu of medium custody beds at private prisons. To JBC staff's knowledge, this has been the case since before the coronavirus pandemic.

In JBC staff's view, the lack of additional medium custody beds in state facilities makes the erraticism of the past four years all the more problematic. This is because it forces the General Assembly, the JBC, and JBC staff (and possibly DOC and OSPB staff) to improvise when prison caseload requests do not add up, do not make sense, and/or are inconsistent with information previously provided by the Executive Branch. The Executive Branch's caseload adjustments over the past four years have suggested that private prison beds are both: (1) an essential part of the Colorado state prison system because they provide the most common and therefore needed type of prison capacity (as suggested by the January 25, 2024 OSPB comeback), or (2) they are unnecessary or undesirable because state facilities are allegedly better at providing services and reducing recidivism.

JBC staff's calculations for supplemental private prison adjustments are consistent with the DOC's past practice

JBC staff's original recommendation for this supplemental request included a reduction of 232 private prison beds and \$5,537,961 General Fund. Staff's calculations removed funding for those beds for a full-year: 232 beds \* 366 days (leap year) \* daily per inmate rate of \$65.22.

The OSPB comeback states, "The Department is also concerned that the recommendation approved by JBC removes funding for beds for the full year, rather than the remaining months in the year. For private beds in particular, the Department has already paid for an existing level of beds, and would have to dramatically reduce private beds to reach this level of funding reduction. The Department will work with JBC Staff to reach a consensus on this concern." The "existing level of beds" exceeds what the current appropriation could support over a full-year. The current FY 2023-24 budget can support 2,765 private prison beds (not including Long Bill transfer authority from the county jails line item). The average monthly utilization is 2,834 through the end of December 2023.

JBC staff calculated their recommended reduction the same way the Department did during the FY 2021-22 supplemental process, the FY 2018-19 supplemental process, the FY 2017-18 supplemental process, the FY 2016-17 supplemental process, and the FY 2015-16 supplemental process. The following tables show that the Department calculated their requested supplemental changes as a full-

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year of reduced funding for private prisons. The amounts are consistent with other budget documents submitted with these requests.

*FY 2021-22 Supplemental Prison Caseload Adjustment*

Table 5: FY 2021-22 Male Bed Needs					
	# Days	Per Diem	Bed Reduction	GF \$ Change	CF \$ Change
Payments to Private Prisons	365	\$58.79	49	(\$1,051,459)	\$0
Adjustment for Non-Receipt of SCAAP				\$2,400,000	(\$2,400,000)
Total FY 2021-22 Fund Changes				\$1,348,541	(\$2,400,000)

*FY 2018-19 Supplemental Prison Caseload Adjustment*

Table 7: FY 2018-19 External Capacity Bed Adjustments and Supplemental Funding Need				
Facility	# Days	Daily Per Diem	# Beds	Total Change
Local Jails	365	\$54.93	0	\$0
Private Prisons	365	\$57.37	311	\$6,512,356
Cheyenne Mountain Re-entry Center (CMRC)	365	\$57.37	90	\$1,884,605
<b>Total Need</b>				<b>\$8,396,961</b>
Less Requested Cash Funds Spending Authority				(\$2,200,000)
<b>Total General Fund Request</b>				<b>\$6,196,961</b>

*FY 2017-18 Supplemental Prison Caseload Adjustment*

Table 14: FY 2017-18 External Capacity Bed Adjustments for DCJ Forecast				
Facility	# Days	Daily Per Diem	# Beds	Total Change
Local Jails	365	\$54.39	(121)	(\$2,402,134)
Private Prisons	365	\$56.80	250	\$5,183,000
GF Increase to Offset CF Reduction				\$577,720
Cheyenne Mountain Re-entry Center (CMRC)	365	\$56.80	142	\$2,943,944
Community Return to Custody Facilities				(\$259,474)
<b>Total GF</b>				<b>\$6,043,056</b>

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*FY 2016-17 Supplemental Prison Caseload Adjustment*

<b>Table 18: FY 2016-17 External Capacity Bed Adjustments for DCJ Forecast</b>				
<b>Facility</b>	<b># Days</b>	<b>Daily Per Diem</b>	<b># Beds</b>	<b>Total Change</b>
Local Jails	365	\$53.64	55	\$1,076,823
Private Prisons	365	\$56.02	34	\$695,208
Cheyenne Mountain Re-entry Center (CMRC)	365	\$56.02	14	\$286,262
<b>Total</b>				<b>\$2,058,293</b>

<b>Table 19: Additional Bed Needs for FY 2016-17</b>				
<b>Facility</b>	<b># Days</b>	<b>Daily Per Diem</b>	<b># Beds</b>	<b>Additional Funding Needed</b>
Private Prisons	365	\$56.02	72	\$1,472,206

*FY 2015-16 Supplemental Prison Caseload Adjustment*

<b>Table 11: FY 2015-16 External Capacity Bed Adjustments</b>				
<b>Facility</b>	<b># Days</b>	<b>Daily Per Diem</b>	<b># Beds</b>	<b>Total Change</b>
Local Jails	366	\$53.64	(150)	(\$2,944,836)
Private Prisons	366	\$56.02	(377)	(\$7,729,752)
Cheyenne Mountain Re-entry Center (CMRC)	366	\$56.02	(94)	(\$1,927,312)
Community Return to Custody Facilities	366	\$50.04	(14)	(\$256,405)
<b>Total</b>				<b>(\$12,858,305)</b>

*Managing the Appropriation for Private Prisons*

Theoretically, the Department should utilize private prison beds in a manner that is consistent with the average daily population that the appropriation can support. This average daily population is based on prison population forecasts produced every June and December. The initial appropriation is set in February or March for the fiscal year starting in July. This initial appropriation is based on the prison population forecast from the preceding December.

In June, the DCJ produces an interim prison population forecast. The DOC can use that interim June forecast to utilize prison capacity accordingly. For example, if the June forecast projects a smaller prison population than the preceding December forecast, the DOC should, theoretically, manage its population to underutilize the appropriation for private prisons in anticipation of a supplemental reduction. This would, theoretically, work in reverse if the June population forecast projects a larger prison population than the preceding December forecast.

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DCJ's June 2023 interim prison population forecast expected about 300 fewer males in prison than the preceding December 2022 forecast. Yet the DOC appears to be using more private prison beds than the appropriation can support. JBC staff does not know why.

*Applying the recommended private prison reduction in the local jails line item*

Two of JBC staff's revised recommendation options include a reduction of funding equivalent to: (A) 205 private prison beds totaling \$4,893,457 General Fund, or (B) 105 private prison beds totaling \$2,506,405. The original recommendation was for a reduction of 232 private prison beds and \$5,537,961 General Fund.

Consistent with the Department's calculations in previous years (as recently as two years ago), the staff recommendations calculate the private prison reduction as a full-year of funding. However, in recognition of the fact that the Department has over-utilized its appropriation for private prisons, JBC staff recommends applying the recommended reduction in the *Payments to Local Jails* line item. This recommendation recognizes the fact that the Department will likely underutilize the local jails appropriation by a significant margin.

**2E. JBC staff recommendations for "which" prison beds the State should pay for in FY 2023-24**

The following table shows JBC staff's four recommended options as compared to: (1) the beds that the current budget expected, (2) what has actually happened through the end of December 2023, and (3) the DOC's current supplemental request. All of JBC staff's recommendations exclude reductions related to Skyline.

TABLE 6~JBC STAFF RECOMMENDATIONS: MALE PRISON BED CHANGES IN FY 2023-24								
Facility	Total <i>after</i> private prison/ local jail swap	Total <i>before</i> private prison/ local jail swap	Limon	Trinidad	Buena Vista	Delta	Skyline	Private
Custody/Security Level			Close (Level IV)	Minimum-restricted (Level II)	Minimum-restricted (Level II)	Minimum (Level I)	Minimum (Level I)	Medium (Level III)
Assumed bed increases FY24 compared to FY23	n/a	740	156	200	100	86	0	198
Actual bed increases FY24 compared to FY23*	n/a	633	156	100	110	0	0	267
<b>DOC supp. request</b>	(326)	(326)	0	0	(200)	0	(126)	0
Year-over-year change after supplemental	414	414	156	200	(100)	86	(126)	198
<b>JBC staff rec. #1</b>	(286)	(491)	0	0	(200)	(86)	0	(205)
Year-over-year change after supplemental	454	249	156	200	(100)	0	0	(7)
<b>JBC staff rec. #2</b>	(186)	(391)	0	0	(200)	(86)	0	(105)
Year-over-year change after supplemental	554	349	156	200	(100)	0	0	93
<b>JBC staff rec. #3</b>	(286)	(286)	0	0	(200)	(86)	0	0
Year-over-year change after supplemental	454	454	156	200	(100)	0	0	198



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TABLE 6~JBC STAFF RECOMMENDATIONS: MALE PRISON BED CHANGES IN FY 2023-24								
Facility	Total <i>after</i> private prison/ local jail swap	Total <i>before</i> private prison/ local jail swap	Limon	Trinidad	Buena Vista	Delta	Skyline	Private
Custody/Security Level			Close (Level IV)	Minimum-restricted (Level II)	Minimum-restricted (Level II)	Minimum (Level I)	Minimum (Level I)	Medium (Level III)
JBC staff rec. #4	0	0	0	0	0	0	0	0
Year-over-year change after supplemental	740	740	156	200	100	86	0	198
*Fiscal year-to-date bed changes based on the DOC's monthly prison population reports.								

**Recommendation #1** is based on the traditional prison caseload methodology, which applies a 2.5 percent vacancy rate (see page 10). It assumes a budget reduction equivalent to 491 beds for the following reasons, with the actual bed reduction assumed to be 286 beds:

- 200 beds at Buena Vista to be consistent with the Department's request;
- 86 beds at Delta to reflect the fact that, as of December 2023, those funded beds have not been brought online; and
- 205 private prison beds, with the reduction applied to the *Payments to Local Jails* line item so that private prison beds are retained as a part of the DOC's prison capacity.
- If the JBC adopts this recommendation, the recommended increase for the next fiscal year (FY 2024-25) would be 221 beds under the DCJ forecast and 32 beds under the LCS forecast.

**Recommendation #2** provides the JBC with the option to make a lesser reduction. It assumes a budget reduction equivalent to 391 beds, with the actual bed reduction assumed to be 186 beds. This recommendation assumes a budget reduction equivalent to 105 private prison beds instead of 205, with the reduction applied to the *Payments to Local Jails* line item so that these 105 beds are retained as a part of the DOC's prison capacity. If the JBC adopts this recommendation, the recommended change for the next fiscal year (FY 2024-25) would be an increase of 121 beds under the DCJ forecast and a decrease of 68 beds under the LCS forecast.

**Recommendation #3** provides the JBC with the option to make a lesser reduction. It assumes a budget reduction equivalent to 286 beds: 200 at Buena Vista and 86 at Delta. If the JBC adopts this recommendation, the recommended increase for the next fiscal year (FY 2024-25) would be equivalent to 221 beds under the DCJ forecast and 32 beds under the LCS forecast.

**Recommendation #4** makes no changes to current funding levels for male prison beds. If the JBC adopts this recommendation, the recommended decrease for the next fiscal year (FY 2024-25) would be 65 beds under the DCJ forecast and 254 beds under the LCS forecast.

### SECTION 3: HOW MUCH FUNDING SHOULD THE GENERAL ASSEMBLY PROVIDE FOR FULL-TIME EQUIVALENT (FTE) STAFF?

#### **3A. Review of current budget and the DOC's current supplemental budget request**

The following table was included in the original JBC staff figure setting document for FY 2023-24, dated February 21, 2023.<sup>25</sup> It shows the job classifications and related funding requested by the

<sup>25</sup> [https://leg.colorado.gov/sites/default/files/fy2023-24\\_config.pdf](https://leg.colorado.gov/sites/default/files/fy2023-24_config.pdf), page 20 of the PDF, page 17 of the document.



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Department of Corrections for FY 2023-24 in its January 17, 2023 prison caseload budget request. It also shows the job classifications and related funding recommended by JBC staff and approved by the JBC. Both the request and the recommendation reflect an assumed increase of 740 male prison beds.

**In short, it shows that JBC staff's recommendation excluded funding for Correctional Officer and Correctional Trades Support Supervisor positions, but included funding for Case Managers and Teachers.** This is because the Department was experiencing a severe staff shortage among all job classifications, but especially among correctional officers. Staff thus concluded that that “an appropriation for additional correctional officers would more likely be used for overtime, bonuses, or contracted personal services.” The requested funding for Correctional Officers and Correctional Trades Support Supervisor’s was repurposed to provided \$1,000 housing stipends for DOC staff at Limon, Buena Vista, and Sterling from July 2023 to February 2024. These stipends were aimed at improving staffing levels at those facilities, where staffing shortages were the most severe.

TABLE 5~DOC FTE REQUEST VS. JBC STAFF RECOMMENDATION FOR BA1 PRISON CASELOAD +740 MALE					
PRISON BEDS					
FACILITY	POSITION	REQUESTED FY24 FTE	REQUESTED FY24 FTE COST	RECOMMENDED FY24 FTE	RECOMMENDED FY24 COST
Limon	Correctional Officer I	10.1	\$856,629	0	0
	Correctional Officer II	4.6	410,386	0	0
	Correctional Officer III	1.8	175,252	0	0
	Case Manager I	1.8	161,859	1.8	128,255
	State Teacher I	0.9	76,009	0.9	59,615
	<b>Subtotal - Limon</b>	<b>19.2</b>	<b>1,680,135</b>	<b>2.7</b>	<b>\$187,870</b>
FACILITY	POSITION	REQUESTED FY24 FTE	REQUESTED FY24 COST	RECOMMENDED FTE	RECOMMENDED COST
Trinidad	Correctional Officer I	11.9	\$951,630	\$0	\$0
	Correctional Officer II	1.8	152,180	0	0
	Correctional Officer III	0.8	73,299	0	0
	Correctional Trades Support Supervisor I	2.8	231,155	0	0
	Correctional Trades Support Supervisor II	0.9	84,426	0	0
	Case Manager I	1.8	168,102	1.8	134,672
	State Teacher I	2.8	267,845	2.8	215,373
	Administrative Assistant III	0.9	64,656	0.9	49,197
	<b>Subtotal - Trinidad</b>	<b>23.7</b>	<b>\$1,993,293</b>	<b>5.5</b>	<b>\$399,242</b>
FACILITY	POSITION	REQUESTED FY24 FTE	REQUESTED FY24 COST	RECOMMENDED FTE	RECOMMENDED COST
Buena Vista	Correctional Officer I	5.1	\$378,665	\$0	\$0
FACILITY	POSITION	REQUESTED FY24 FTE	REQUESTED FY24 COST	RECOMMENDED FTE	RECOMMENDED COST
Delta	Correctional Officer I	1.7	\$137,472	\$0	\$0
	Correctional Officer II	0.8	67,635	0	0
	Correctional Trades Support Supervisor I	4.6	380,542	0	0
	Correctional Trades Support Supervisor II	0.9	84,426	0	0
	Case Manager I	0.8	75,046	0.8	59,855
	<b>Subtotal</b>	<b>8.8</b>	<b>\$745,121</b>	<b>0.8</b>	<b>\$59,855</b>
<b>Total</b>		<b>56.8</b>	<b>4,797,214</b>	<b>9.0</b>	<b>646,967</b>

The Department’s request aims to backfill these “unfunded positions” by reducing beds at Buena Vista and Skyline and reallocating staff accordingly. The total amount of FTE funding not provided in the current budget for Limon, Trinidad, and Delta was \$3,605,032 General Fund and 47.8 FTE.

The total amount of funding that the Department’s request aims to backfill is \$3,410,340 General Fund and 43.1 FTE. This includes \$3.0 million and 38.0 FTE repurposed from Skyline and \$378,665 and 5.1 FTE repurposed from Buena Vista.

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**3B. JBC staff recommendation for FTE funding related to prison caseload**

JBC staff recommends adjusting appropriations for currently unfunded FTE in a manner that is consistent with the state-operated prison beds that the Committee chooses to retain or exclude from the budget. Staff recommends increasing appropriations to make the Department whole at the facilities where beds are retained and reducing appropriations where beds are excluded.

TABLE 7~JBC STAFF RECOMMENDATIONS: SUPPLEMENTAL CHANGES IN FUNDING FOR FTE					
Facility	Total	Limon	Trinidad	Buena Vista	Delta
Custody/Security Level		Close (Level IV)	Minimum-restricted (Level II)	Minimum-restricted (Level II)	Minimum (Level I)
Assumed bed increases FY24 compared to FY23	542	156	200	100	86
FTE funding excluded from current budget	\$3,983,697	\$1,442,267	\$1,492,690	\$378,665	\$670,075
# of FTE excluded from current budget	47.8	16.5	18.2	5.1	8.0
JBC Staff revised rec. #1 Beds retained/(excluded)	70	156	200	(200)	(86)
Recommended supplemental change	\$2,496,437	\$1,442,267	\$1,492,690	(\$378,665)	(\$59,855)
# of FTE	28.8	16.5	18.2	(5.1)	(0.8)
JBC Staff revised rec. #2 Beds retained/(excluded)	70	156	200	(200)	(86)
Recommended supplemental change	\$2,496,437	\$1,442,267	\$1,492,690	(\$378,665)	(\$59,855)
# of FTE	28.8	16.5	18.2	(5.1)	(0.8)
JBC Staff revised rec. #3 Beds retained/(excluded)	70	156	200	(200)	(86)
Recommended supplemental change	\$2,496,437	\$1,442,267	\$1,492,690	(\$378,665)	(\$59,855)
# of FTE	28.8	16.5	18.2	(5.1)	(0.8)
JBC Staff revised rec. #4 Beds retained/(excluded)	0	0	0	0	0
Recommended supplemental change	\$3,983,697	\$1,442,267	\$1,492,690	\$378,665	\$670,075
# of FTE	47.8	16.5	18.2	5.1	8.0

The Department's request to close Skyline is connected to unfunded FTE positions. In JBC staff's view, by increasing appropriations for FTE where beds are open and operating, the Department cannot claim that it needs to shutdown Skyline "to fund positions that are currently unfunded."

To the extent that overtime costs are motivating the Department to reallocate the Skyline staff to fill staff vacancies elsewhere in the Canon City area, the JBC could approve the Department's overtime request (S4 Overtime) in full and alleviate that concern for the time being.

The JBC cannot do anything about the alleged difficulty of placing inmates in the Beacon program or Level I facilities more generally. With respect to maintenance, it is not clear that the Skyline facility's needs require its closure. The Department was comfortable bringing the facility online in early 2023 using existing appropriations.

JBC notes that if the Executive Branch's primary (but unstated) concern with Skyline is security-related (e.g. potential ease of escape), budget decisions aimed at saving Skyline will not matter. For example, the Department used to operate the celebrated transitional work program, known as "Take TWO."

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That program was shut down shortly after an inmate escaped in July 2022.<sup>26</sup> That program, like the Beacon, also had fairly high standards for inmates to participate.<sup>27</sup>

#### SECTION 4: SUMMARY OF JBC STAFF RECOMMENDATIONS AND CONCLUSION

The following table shows JBC staff's four recommended funding changes. None of these recommendations affect funding levels for the Skyline Correctional Facility.

TABLE 8~SUMMARY OF JBC STAFF RECOMMENDATIONS FOR FY 2023-24 S1 PRISON CASELOAD							
Facility	Total <i>after</i> private prison/ local jail swap	Total <i>before</i> private prison/ local jail swap	Limon	Trinidad	Buena Vista	Delta	Private Prisons
Custody/Security Level			Close (Level IV)	Minimum- restricted (Level II)	Minimum- restricted (Level II)	Minimum (Level I)	Medium (Level III)
JBC Staff revised rec. #1 (assumed bed change)	(286)	(491)	0	0	(200)	(86)	(205)
Personal Services		\$2,496,437	\$1,442,267	\$1,492,690	(\$378,665)	(\$59,855)	n/a
Operating Expenses		(541,649)	0	0	(302,219)	(239,430)	n/a
FTE start-up		103,078	45,054	67,574	0	(9,550)	n/a
Facility Start-up		(59,774)	0	0	(32,137)	(27,637)	n/a
# of FTE		28.8	16.5	18.2	(5.1)	(0.8)	n/a
<b>Supplemental change (\$)</b>	<b>(\$2,895,365)</b>	<b>(\$2,895,365)</b>	<b>\$1,487,321</b>	<b>\$1,560,264</b>	<b>(\$713,021)</b>	<b>(\$336,472)</b>	<b>(\$4,893,457)</b>
JBC Staff revised rec. #2 (assumed bed change)	(186)	(391)	0	0	(200)	(86)	(105)
Personal Services		\$2,496,437	\$1,442,267	\$1,492,690	(\$378,665)	(\$59,855)	n/a
Operating Expenses		(541,649)	0	0	(302,219)	(239,430)	n/a
FTE start-up		103,078	45,054	67,574	0	(9,550)	n/a
Facility Start-up		(59,774)	0	0	(32,137)	(27,637)	n/a
# of FTE		28.8	16.5	18.2	(5.1)	(0.8)	n/a
<b>Supplemental change (\$)</b>	<b>(\$508,313)</b>	<b>(\$508,313)</b>	<b>\$1,487,321</b>	<b>\$1,560,264</b>	<b>(\$713,021)</b>	<b>(\$336,472)</b>	<b>(\$2,506,405)</b>
JBC Staff revised rec. #3 (assumed bed change)	(286)	(286)	0	0	(200)	(86)	0
Personal Services		\$2,496,437	\$1,442,267	\$1,492,690	(\$378,665)	(\$59,855)	n/a
Operating Expenses		(541,649)	0	0	(302,219)	(239,430)	n/a
FTE start-up		103,078	45,054	67,574	0	(9,550)	n/a
Facility Start-up		(59,774)	0	0	(32,137)	(27,637)	n/a
# of FTE		28.8	16.5	18.2	(5.1)	(0.8)	n/a
<b>Supplemental change (\$)</b>	<b>\$1,998,092</b>	<b>\$1,998,092</b>	<b>\$1,487,321</b>	<b>\$1,560,264</b>	<b>(\$713,021)</b>	<b>(\$336,472)</b>	<b>\$0</b>
JBC Staff revised rec. #4 (assumed bed change)	0	0	0	0	0	0	0
Personal Services		\$4,066,266	\$1,442,267	\$1,492,690	\$378,665	\$752,644	n/a
Operating Expenses		0	0	0	0	0	n/a
FTE start-up		156,618	45,054	67,574	19,469	24,521	n/a
Facility Start-up		0	0	0	0	0	n/a
# of FTE		48.6	16.5	18.2	5.1	8.8	n/a
<b>Supplemental change (\$)</b>	<b>\$4,222,884</b>	<b>\$4,222,884</b>	<b>\$1,487,321</b>	<b>\$1,560,264</b>	<b>\$398,134</b>	<b>\$777,165</b>	<b>0</b>

<sup>26</sup> Walker, Chris. "Escaped Prisoner Causes State to Pause Take TWO Program." 5280. August 23, 2022. <https://www.5280.com/escaped-prisoner-causes-state-to-pause-take-two-program/>

<sup>27</sup> FY 2021-22 JBC Staff Figure Setting, Department of Corrections, February 18, 2021: [https://leg.colorado.gov/sites/default/files/fy2021-22\\_config.pdf](https://leg.colorado.gov/sites/default/files/fy2021-22_config.pdf) (pgs. 88-89).

JANUARY 30, 2024

TABLE 8~SUMMARY OF JBC STAFF RECOMMENDATIONS FOR FY 2023-24 S1 PRISON CASELOAD							
Facility	Total <i>after</i> private prison/ local jail swap	Total <i>before</i> private prison/ local jail swap	Limon	Trinidad	Buena Vista	Delta	Private Prisons
Custody/Security Level			Close (Level IV)	Minimum- restricted (Level II)	Minimum- restricted (Level II)	Minimum (Level I)	Medium (Level III)
<b>If the JBC approves JBC staff recommendation #1, the <i>Local Jails</i> line item would support an average daily population of 319.</b> The <i>Payments to Local Jails</i> appropriation currently supports an average daily population of 496 DOC inmates at a per-diem rate of \$75.65.							
<b>If the JBC approves JBC staff recommendation #2, the <i>Local Jails</i> line item would support an average daily population of 405.</b> The <i>Payments to Local Jails</i> appropriation currently supports an average daily population of 496 DOC inmates at a per-diem rate of \$75.65.							

JBC staff's calculations fully remove funding for the 86 beds at Delta because, as of December 2023, those funded beds have not been brought online.

JBC staff's calculated reduction for Buena Vista exceeds the Department's calculated reduction of \$108,597. JBC staff's recommended reduction of \$713,021 for 200 beds is similar to the increase of \$732,490 requested by the Department last year to bring 100 beds online at that facility.

JBC staff's recommendations for Trinidad and Limon represent funding for FTE that is commensurate with what the Department had asked for last year and the number of beds assumed to be online per the recommendation.

JBC staff emphasizes that the only facility that would experience a physical capacity reduction would be Buena Vista, which is what the DOC asked for, citing staffing issues and maintenance projects.

If the JBC approves options 1 or 2, the changes would occur in the *Payments to Local Jails* line item and the centrally-appropriated prison caseload line items newly-added to the budget in FY 2023-24. These line items are:

- *Additional Prison Capacity-Personal Services*
- *Additional Prison Capacity-Operating Expenses*
- *Additional Prison Capacity-Facility Start-up*
- *Additional Prison Capacity-Personnel Start-up*

If the JBC approves option 3, the changes would occur in the centrally-appropriated prison caseload line items newly-added to the budget in FY 2023-24.