

MEMORANDUM



JOINT BUDGET COMMITTEE

TO JBC Members
FROM JBC Staff
DATE March 24, 2021
SUBJECT Comeback Packet 6

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

Higher Education, page 1 (Amanda Bickel): Colorado Mesa University Fees (*Technical Correction*)

HCPF, page 2 (Eric Kurtz): FY 2021-22 Intergovernmental transfer for University of Colorado School of Medicine (*Additional Information*)

Judicial, page 10 (Christina Beisel): Follow-up on polygraph footnote (*Additional Information*)

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee
FROM Amanda Bickel, JBC Staff (303-866-4960)
DATE March 23, 2021
SUBJECT Higher Education Comeback - Colorado Mesa University Fees

→ COLORADO MESA UNIVERSITY FEES - TECHNICAL CORRECTION

JBC ACTION TO-DATE: Action by the JBC includes amending the FY 2020-21 appropriations for Colorado Mesa University (CMU) to eliminate \$5,823,992 in fees (leaving \$0 estimated fee revenue) and also including no amount for fee revenue for Colorado Mesa University for FY 2021-22. Mandatory fees are shown for informational purposes.

REVISED STAFF RECOMMENDATION: Staff recommends that FY 2020-21 fee revenue for CMU be amended to reflect:

For FY 2020-21: \$4,693,441

For FY 2021-22: \$5,435,390

ANALYSIS: Through communication on March 22, 2021, staff learned that Colorado Mesa University fees had been misstated in documents previously provided by the Department of Higher Education. Staff relies on estimates received from the Department in February of each year to identify state institutions' mandatory fee revenue estimates for the current and next fiscal year. These amounts are then included in the Long Bill for informational purposes. Colorado Mesa University submitted its data somewhat late, and, as a result, the Department's submission to Legislative Council Staff and JBC Staff on February 16 showed CMU with \$0 estimated fees in FY 2020-21 and FY 2021-22. In response to a recent staff question to CMU about what had happened to their fees, the error became clear.

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee
FROM Eric Kurtz, JBC Staff (303-866-4952)
DATE March 24, 2021
SUBJECT Health Care Policy and Financing Comebacks

- FY 21-22 INTERGOVERNMENTAL TRANSFER FOR UNIVERSITY OF COLORADO SCHOOL OF MEDICINE** – During figure setting for the Department of Health Care Policy and Financing the JBC approved "the request from the University of Colorado School of Medicine" with direction that staff work out the details to effectuate the request. The text below explains how the JBC staff plans to implement the JBC's decision. No further action is necessary from the JBC, unless any portion of this plan differs from the JBC's intent.

To implement the JBC's decision, the JBC staff plans to add \$36,529,680 total funds, including \$16,000,000 cash funds and \$20,529,680 federal funds, to the Medical Services Premiums line item. The source of cash funds is an intergovernmental transfer of clinical revenues from the University of Colorado School of Medicine (CUSOM) to the Department of Health Care Policy and Financing. The federal match is 56.2 percent, because the payments in FY 21-22 will be for services rendered in FY 20-21 when the enhanced federal match is available for the entire fiscal year.

In addition, the JBC staff plans to add \$152,333 total funds, including \$76,467 cash funds and \$76,466 federal funds, and 1.8 FTE for the Executive Director's Office for administration. It was ambiguous whether the JBC's motion included funding for FTE for administration, but both the University of Colorado and the Department agree that additional FTE are needed. Still, the JBC may want to consider whether the FTE are necessary and what they will be doing. The proposed function of the FTE appears disconnected from how CUSOM proposes spending the additional revenue. Here is the Department of Health Care Policy and Financing's description of the FTE:

Statistical Analyst

The position will calculate performance metrics to hold CU Medicine accountable to HCPF goals. The calculation includes validating CU Medicine data. The position will be responsible for measuring provider enrollment, especially specialist enrollment, and will monitor visits with different types of specialists and mode of visit (In person vs. telemedicine). The position will also track access by race/ethnicity, urban/rural/frontier and Regional Accountable Entity (RAE) region. The position's work enables the performance of vital business functions by analyzing trends in Medicaid utilization and expenditures for the CU School of Medicine program including comparing the population served by CU Medicine to the overall Medicaid population. The position will create a dashboard for this program that demonstrates the value of the program to executive leadership and other HCPF staff.

Lead Clinical Outcomes Officer

This position will collaborate with the statistical analyst to begin pulling in Prometheus and other quality metrics to tie to future CUSOM payments. The position will provide project and program level support, such as meeting reporting, deliverable tracking, and coordinating site visits. The position will research and track support for future collaboration projects; for example, leading community collaboration efforts in an upcoming project around the justice involved and homeless populations. This position will also provide support around access to care work. The Department has a comprehensive Action Plan for three specialty care areas with the potential of a fourth in FY 2021-22. This position will provide assistance with implementation, community engagement, and statewide application for the different specialty care areas.

The table below summarizes the impact by line item.

Financing for University of Colorado School of Medicine				
	TOTAL FUNDS	CASH FUNDS	FEDERAL FUNDS	FTE
Personal Services	\$137,833	\$68,917	\$68,916	1.8
Operating Expenses	15,100	7,550	7,550	0.0
Medical Services Premiums	36,529,680	16,000,000	20,529,680	0.0
Total	\$36,682,613	\$16,076,467	\$20,606,146	1.8

To reflect the new intergovernmental transfer of CUSOM clinical revenues, the JBC staff will make modifications to the existing footnote 26. Based on the JBC's actions to date, the revised footnote will read:

N Department of Health Care Policy and Financing, Grand Totals; Department of Higher Education, College Opportunity Fund Program, Fee-for-service Contracts with State Institutions, Fee-for-service Contracts with State Institutions for Specialty Education Programs; and Governing Boards, Regents of the University of Colorado -- The Department of Higher Education shall transfer up to \$800,000 to the Department of Health Care Policy and Financing for actual administrative costs and family medicine placements associated with care provided by the faculty of the health sciences center campus at the University of Colorado that are eligible for payment pursuant to Section 25.5-4-401, C.R.S. If the federal Centers for Medicare and Medicaid services continues to allow the Department of Health Care Policy and Financing to make supplemental payments to the University of Colorado School of Medicine, it is assumed that the University of Colorado School of Medicine will use clinical revenues to make intergovernmental transfers in the amount approved, up to \$16,180,000 to the Department of Health Care Policy and Financing, including up to \$180,000 for actual administrative costs. The Department of Higher Education shall transfer the remaining amount approved, up to \$77,818,160, to the Department of Health Care Policy and Financing pursuant to Section 23-18-304(1)(c), C.R.S. If permission is discontinued, or is granted for a lesser amount, the Department of Higher Education shall transfer any portion of the \$77,818,160 that is not transferred to the Department of Health Care Policy and Financing to the Regents of the University of Colorado.

However, the JBC staff requests permission to update these figures if the JBC changes the appropriations for higher education.

The University of Colorado proposes that if the JBC increases or decreases the General Fund appropriations for the CUSOM, then the amount of the intergovernmental transfer from CUSOM clinical revenues would change in the opposite direction to keep the total from state funds (General Fund + the intergovernmental transfer) constant.

The Joint Budget Committee already approved a Request for Information on the public benefits from special financing for the University of Colorado. Both the University of Colorado and the Department interpret the existing Request for Information as applying to this new intergovernmental transfer and so they would just expand the scope of the report to include it. The approved wording of the existing Request for Information is as follows:

N Department of Health Care Policy and Financing, Executive Director's Office and Department of Higher Education, Governing Boards, Regents of the University of Colorado -- Based on agreements between the University of Colorado and the Department of Health Care Policy and Financing regarding the use of Anschutz Medical Campus Funds as the State contribution to the Upper Payment Limit, the General Assembly anticipates various public benefits. The General Assembly further anticipates that any increases to funding available for this program will lead to commensurate increases in public benefits. The University of Colorado and the Department of Health Care Policy and Financing are requested to submit a report to the Joint Budget Committee about the program and these benefits by October 1 each fiscal year.

The table below summarizes how the CUSOM says they would spend the money. The payments would be for services to Medicaid clients, but with the additional revenue CUSOM would pay for several initiatives that are not typically financed with Medicaid. These initiatives are designed to improve care for indigent clients.

Financing for University of Colorado School of Medicine					
	Year 1	Year 2	Year 3	Year 4	Pays for:
Aurora Community Health Commons	\$12,500,000	\$0	\$0	\$0	One-time investment to facilitate development
Medical student diversity scholarships	3,500,000	3,500,000	3,500,000	3,500,000	~35 scholarships/year based on financial need
Undergraduate health sciences curriculum	0	1,000,000	2,000,000	750,000	Staff to train community members to become medical assistants, technicians, health systems managers, nurses, and other health professionals
Health equity longitudinally integrated clerkship	0	250,000	250,000	250,000	Clerkship at Salud for 10 equity-focused students to learn care for underserved patients
Medical assistant scholarship	0	135,700	135,700	135,700	Scholarships for 20 students/year for training through the National Institute for Medical Assistant Advancement to become medical assistants
Dental assistant training	0	45,000	45,000	45,000	Train 45 dental assistants/year through CU School of Dental Medicine
Expanded duties dental assistants	0	60,000	30,000	30,000	Train 10-20 dental assistants/year for expanded duties
Doulas	0	250,000	250,000	250,000	Pilot to train and offer doula services for 70 births/year (partnership with Salud and Colorado Community Doulas)
Pharmacy technicians	0	206,800	206,800	206,800	Train 5 pharmacy technicians/year who provide support to pharmacists, including communicating with patients and filling prescriptions
Community health workers apprenticeship	0	424,600	424,600	424,600	10 community health worker apprenticeships/year, including admin support for the program
Determinants of health/community engagement	0	300,000	300,000	300,000	Design, assessment, and evaluation of updated curriculum
Family medicine and multispecialty practice	0	8,400,000	0	0	Set up for new family medicine practice w/ rotating specialties, employing 4 family medicine practitioners and 6 specialists
Medical-legal partnership	0	0	3,000,000	0	Set up for partnership with clinic to provide legal assistance re: income and benefits, housing, education, legal status, and personal stability
Medical pain management	0	0	7,000,000	0	Set up for new practice providing multidisciplinary care
Telehealth training	0	100,000	100,000	100,000	Development and implementation of telehealth curriculum providing simulated patient modules with feedback on student performance
eConsults	0	2,500,000	0	0	Expand existing eConsult program that provides specialist support to primary care to two additional locations
HCPF Administration	180,000	180,000	180,000	180,000	Up to \$180,000/year for 2 administrative positions at HCPF for program support and quality monitoring
TOTAL	\$16,180,000	\$17,352,100	\$17,422,100	\$6,172,100	

The University of Colorado proposed this financing as time-limited because the intergovernmental transfer of CUSOM clinical revenue could potentially increase General Fund obligations for TABOR refunds. This intergovernmental transfer counts against the state's TABOR limit. If state revenue is at or above the Referendum C TABOR limit, then any increase in cash fund revenue from the intergovernmental transfer will increase the General Fund obligation for a TABOR refund. Both the Legislative Council Staff (LCS) and Office of State

Planning and Budgeting (OSPB) March revenue forecasts project state revenues will be sufficiently below the Referendum C TABOR limit in FY 21-22 to accommodate the proposed intergovernmental transfer without increasing General Fund obligations, but the margins are relatively small (below the limit by \$328.7 million in the LCS forecast and \$82.6 million in the OSPB forecast). Given that the University of Colorado has presented a 4-year plan, it might be worth noting that the General Assembly budgets annually and frequently revisits the budget mid-year. If the revenue forecast changes it might cause the General Assembly to look at the proposed financing differently. If the state is at the Referendum C TABOR limit, accepting the intergovernmental transfer would increase General Fund obligations for a TABOR refund, making the budget impact the same as a General Fund appropriation to the University of Colorado.

- 2 **UNIVERSITY OF COLORADO SCHOOL OF MEDICINE FY 20-21 FOOTNOTE 26** – Staff recommends a supplemental modification, detailed below, to the wording of footnote 26 that appeared in the FY 20-21 Long Bill.

There is a technical inconsistency between the FY 20-21 appropriations and footnote 26 explaining those appropriations. The footnote indicates that the money for administrative costs and family medicine placements associated with care provided by the faculty of the health sciences center will come from the CUSOM's clinical revenues, but the appropriations continue the practice from prior years of paying for the administrative costs out of a transfer from the Department of Higher Education. As long as the totals from clinical revenues versus the transfer from the Department of Higher Education remain the same, the JBC staff does not see any policy reason to change how the administrative costs are financed. Therefore, the JBC staff recommends technical modifications to the wording of footnote 26 to align with the way the money was appropriated:

- 26 **Department of Health Care Policy and Financing, Grand Totals; Department of Higher Education, College Opportunity Fund Program, Fee-for-service Contracts with State Institutions, Fee-for-service Contracts with State Institutions for Specialty Education Programs; and Governing Boards, Regents of the University of Colorado**
~~-- Due to the operating budget reduction for public institutions of higher education, for FY 2020-21 only, it is assumed that the University of Colorado School of Medicine will use clinical revenues to make an intergovernmental transfer of~~ THE DEPARTMENT OF HIGHER EDUCATION SHALL TRANSFER up to \$800,000 to the Department of Health Care Policy and Financing for ACTUAL administrative costs and family medicine placements associated with care provided by the faculty of the health sciences center campus at the University of Colorado that are eligible for payment pursuant to Section 25.5-4-401, C.R.S. If the federal Centers for Medicare and Medicaid services continues to allow the Department of Health Care Policy and Financing to make supplemental payments to the University of Colorado

School of Medicine, it is assumed that the University of Colorado School of Medicine will use clinical revenues to make an intergovernmental transfer in the amount approved, up to ~~\$45,389,025~~ \$46,189,025 to the Department of Health Care Policy and Financing. The Department of Higher Education shall transfer the remaining amount approved, up to ~~\$32,609,135~~ \$31,809,135, to the Department of Health Care Policy and Financing pursuant to Section 23-18-304(1)(c), C.R.S. If permission is discontinued, or is granted for a lesser amount, the Department of Higher Education shall transfer any portion of the ~~\$32,609,135~~ \$31,809,135 that is not transferred to the Department of Health Care Policy and Financing to the Regents of the University of Colorado.

- 3 **ENHANCED FEDERAL MATCH AND H.B. 20-1385** – Staff recommends technical adjustments to the FY 20-21 appropriations for both the Department of Health Care Policy and Financing and the Department of Higher Education to comply with H.B. 20-1385. The extension of the federal public health emergency increased the time an enhanced federal match is available for Medicaid services, thereby changing the fiscal impact of H.B. 20-1385. The JBC's actions to date have captured most of the impacts on H.B. 20-1385, but the JBC has not yet accounted for the impact on higher education funding. Among other provisions, H.B. 20-1385 requires that the fee-for-service appropriations to the Department of Higher Education for specialty education services provided by the health sciences center campus at the University of Colorado be reduced by the amount of federal participation received in excess of 50 percent. To comply with H.B. 20-1385 the FY 20-21 appropriations need to be adjusted as follows:

Enhanced Federal Match and H.B. 20-1385				
	TOTAL FUNDS	GENERAL FUND	REAPPROPRIATED FUNDS	FEDERAL FUNDS
Higher Education				
Fee-for-service Contracts with State Institutions for Specialty Education Programs	(\$133,635)	(\$133,635)	\$0	\$0
Regents of the University of Colorado	(\$133,635)	\$0	(\$133,635)	\$0
Subtotal - Higher Education	(\$267,270)	(\$133,635)	(\$133,635)	\$0
Health Care Policy and Financing				
Medical Services Premiums	(\$286,187)	\$0	(\$133,635)	(\$152,552)
Grand Total	(\$553,457)	(\$133,635)	(\$267,270)	(\$152,552)

- 4 **COLORADO BENEFITS MANAGEMENT SYSTEM FOOTNOTE** – The JBC staff recommends the JBC continue a footnote allowing the Department to rollforward up to \$2.5 million of the appropriation for the Colorado Benefits Management System. The JBC previously approved a staff recommendation to discontinue the footnote. On further review, variability in the timing of bills sometimes causes a portion of the expenditures for this information technology project to move between fiscal years. Also, there is variability in the allocation of costs between the Department of Human Services and the Department of Health Care Policy and Financing that sometimes needs to be trued up in the next fiscal year. For these reasons, the JBC staff is

convinced providing limited rollforward authority is appropriate. The footnote has been in place since FY 2018-19.

- 5 **S.B. 19-195 WRAPAROUND SERVICES FOR YOUTH** – The JBC approved continuation of the FY 20-21 decision to halt funding for the implementation of S.B. 19-195. However, Sen. Moreno requested additional information on options for phasing or scaling the funding to reduce General Fund costs in future years.

Wraparound services would provide intensive care coordination for children with behavioral health needs. A specialist would frequently check in on the youth and family's progress toward treatment goals, assessing children for their needs, and coordinating system partners and services based on those needs. Services would include engaging children and their families, developing a plan for treatment, identifying and engaging system partners in treatment plans, treating children and their families, and preparing them for a transition that includes more reliance on community supports.

If the JBC wants to restart the implementation of S.B. 19-195 it would need to restart at the beginning. There were appropriations in FY 19-20, but according to the Department most of what was actually spent was for hiring and training staff and the department stopped expenditures before there was much work that would be useable, timely, and transferable to a restart of the program. Therefore, the cost to restart the program would be very similar to the original fiscal note for S.B. 19-195, with slight updates for current common policy assumptions. The table below summarizes the projected expenditures by fiscal year.

Cost to Restart S.B. 19-195				
	TOTAL FUNDS	GENERAL FUND	FEDERAL FUNDS	FTE
FY 21-22				
Health Care Policy and Financing	\$1,407,606	\$586,514	\$821,092	4.0
Human Services	442,449	142,449	300,000	1.5
Public Health and Environment	0	0	0	0.2
Total	\$1,850,055	\$728,963	\$1,121,092	5.7
FY 22-23				
Health Care Policy and Financing	1,501,700	633,562	868,138	5.0
Human Services	477,138	177,138	300,000	2.0
Public Health and Environment	108,840	108,840	0	0.2
Total	\$2,087,678	\$919,540	\$1,168,138	7.2
FY 23-24				
Health Care Policy and Financing	10,495,391	5,247,696	5,247,695	4.0
Human Services	477,138	177,138	300,000	2.0
Public Health and Environment	39,779	39,779	0	0.3
Total	\$11,012,308	\$5,464,613	\$5,547,695	6.3

There are options to reduce costs in FY 23-24, but with tradeoffs. One option is a phased implementation that would ultimately reach the same funding level, but would delay some of the costs to FY 24-25. Another option would be to limit eligibility to the highest risk children. Rather than serving approximately 800 children, advocates suggested the program eligibility could be limited to target serving as few as 70 children. The Department agreed the eligibility could be limited, but was reluctant to provide specific scenarios before further analysis and consultation with the providers and Regional Accountability Entities about what is feasible. Another option would be to limit the program to specific regions. This option would reduce costs, but presents challenges when clients move from one region to another. None of these options would change the upfront administrative costs.

While it is theoretically possible to reduce costs in FY 23-24 without eliminating the program, the JBC staff does not recommend assuming a reduced cost. The options to reduce costs would narrow the scope of a program that already is designed to serve a relatively small number of people. As the program is reduced the feasibility and interest of providers in offering the services may diminish. Also, the ratio of administrative costs to total program costs increases. Staff recommends deciding whether to restart S.B. 19-195 assuming full implementation.

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee
FROM Christina Beisel, JBC Staff (303-866-2149)
DATE March 24, 2021
SUBJECT Offender Services and Polygraph Follow-up

On March 18, the JBC approved a staff comeback related to the Offender Treatment and Services line item which was tabled during figure setting pending additional information on the use of polygraphs for sex offender assessment and treatment. In addition to approving funding for the line item, the Committee approved the addition of a footnote that would state the General Assembly's intent that funding in the line item not be used for polygraphs and allow for a wind-down of existing contracts for polygraph providers. The Committee also requested additional information.

This memorandum includes follow-up responses provided by the Department, as well as additional information about the potential impact of the proposed footnote.

NEW FOOTNOTE

The Committee approved the addition of a footnote that would state the General Assembly's intent that funding in the line item not be used for polygraphs and allow for a wind-down of existing contracts for polygraph providers.

Staff has drafted the following footnote for the Committee's consideration and approval:

Judicial Department, Probation and Related Services, Offender Treatment and Services -- It is the General Assembly's intent that no portion of this appropriation be used to fund polygraphs, with the exception of the wind-down of existing contracts.

Staff asked the Department to describe the potential impact of the footnote on the Department and on offenders. As noted during the comeback discussion, the addition of this footnote would not prohibit the use of polygraphs, which is based on Sex Offender Management Board (SOMB) Standards. Instead, **the footnote would likely mean that the cost of the test is shifted to offenders themselves.** Unless SOMB guidance and requirements are changed, treatment providers will still be required to use polygraphs, and Probation will continue to refer probationers for these tests. This could particularly impact individuals on probation who are economically disadvantaged.

Funding in the Offender Treatment and Services line item totals \$19,276,236, including \$269,464 General Fund, \$14,961,290 cash funds, and \$4,045,482 reappropriated funds. These cash funds come from the Offender Services Fund, which is made up of cost of care payments or probation supervision fees¹. The portion of funding that is spent by the Judicial Department for offenders on probation is generally allocated among judicial districts based on each district's relative share of FTE and probationers under supervision. Each probation department then develops a local budget to provide treatment and services, including polygraphs.

¹ Section 18-1.3-204 (2)(a)(V), C.R.S. allows the Court, as a condition of probation, to require the defendant to pay reasonable costs of supervision of probation. This fee is \$50 per month for the length of ordered probation. The amount may be lowered by the Court if the defendant is unable to pay. Section 19-2-114 (1), C.R.S. allows the Court to order a juvenile or parent of a juvenile to make payments towards the cost of care, as deemed appropriate under the circumstances.

MOST RECENT EXPENDITURES

The staff comeback included the most recent, full year of data (FY 2019-20). At the Committee’s request, the Department has provided the most recent, year-to-date expenditures for FY 2020-21, as well as projected costs for the fully fiscal year. These are included in the table below.

FY21 YTD Offender Treatment and Services Expenditure Summary through March 17, 2021

Service Type	YTD Expenditures	End of Year Projected Expenditures
Adult Sex Offender Assessment	497,499	746,248
Adult Sex Offender Polygraph	278,895	418,343
Adult Sex Offender Treatment	712,370	1,068,555
Domestic Violence Treatment	981,479	1,472,218
Drug Testing Services & Supplies	2,073,807	3,110,710
DUI Level II 4+ Treatment	71,568	107,352
Education & Vocation Assistance	45,700	68,551
Emergency Food, Housing, & Utilities	617,360	926,039
Evidence-Based Practices Implementation Support / Research	120	
General Medical & Dental Assistance	2,160	3,239
Incentives / Reinforcements for Offenders	58,698	88,048
Juvenile Sex Offender Assessment	28,155	42,233
Juvenile Sex Offender Polygraph	28,890	43,335
Juvenile Sex Offender Treatment	241,854	362,780
Mental Health Services-Outpatient	358,404	537,607
Monitoring Services	280,374	420,560
Restorative Justice	75,830	113,744
Rural / Specialized Treatment Initiatives	46,673	70,010
Special Needs Services	554,187	831,281
Substance Abuse Treatment-Outpatient	1,449,885	2,174,828
Transportation Assistance	133,068	199,602
Grand Total	8,536,974	12,805,281

**year end projected expenditures based on 8 month of actuals*

RURAL/SPECIALIZED TREATMENT INITIATIVES

During the discussion of the items above, there was a question regarding the used of "Rural/Specialized Treatment Initiatives" funds and how they are used. The Department provided the response below.

Response: Treatment allocations are based on active offender caseload; in some cases, a district may need additional funding to address a specific need in their district that cannot be absorbed within their general allocation. In FY19-20, several districts contracted with approved provider agencies for Navigators or Field Specialists. These folks work with offenders to address various barriers to access treatment and navigate the treatment system, primarily in rural areas.

BENEFITS OF POLYGRAPH USE IN TREATMENT

The Committee also asked the Department to describe how polygraphs lead to better outcomes in treatment. The Department provided the following documents to address this question, and provide additional context about the overall use of polygraphs for treatment services.

Colorado Probation Polygraphs and Treatment

In 1992, the Colorado General Assembly passed legislation that created a Sex Offender Treatment Board to develop standards and guidelines for the assessment, evaluation, treatment and behavioral monitoring of sex offenders. The General Assembly changed the name to the Sex Offender Management Board (SOMB) in 1998 to more accurately reflect the duties assigned to the SOMB. In 2011 the legislature declared that, “to protect the public and to work toward the elimination of sexual offenses, it is necessary to comprehensively evaluate, identify, treat, manage, and monitor adult sex offenders who are subject to the supervision of the criminal justice system and juveniles who have committed sexual offenses who are subject to the supervision of the juvenile justice system.”

The use of the polygraph with individuals on probation is governed by the SOMB Standards. According to SOMB Standard 5.065, “The polygraph shall be used...to gather information to assist the CST in individualizing their approach to the offender’s risk and need...The polygraph shall be used in conjunction with other information to inform adjustments to supervision and treatment.”

The frequency and duration of polygraph testing are driven by the SOMB Standards. The Adult Standards require testing two times per year, if the person is passing, and every 90 days, if the person is showing deception. After successful completion of treatment, polygraph testing is discretionary, and the requirement may be removed completely. The Juvenile SOMB Standards differ greatly from the Adult Standards. The frequency for juveniles is based on suitability and appropriateness criteria, and the team must identify what information they want to learn prior to making the referral for testing.

In the Standards for Probation in Colorado, which govern the actions of probation officers, it states, “The probation officer cannot use the machine generated results obtained from polygraph examinations as the sole factor in supervision decisions, nor can the officer use the results of the examinations as a basis to revoke a probationer’s probation.”

Probation officers and therapists are trained to identify disclosures and use the results to assess risk, inform case plans, and respond to behaviors. Disclosures from polygraph testing reveal information about behaviors not otherwise known and are used by the team of professionals to successfully treat the individual.

Polygraph examinations cost \$250.00 per test. The Offender Treatment and Service fund is used to assist probationers, who are indigent, unemployed, or are otherwise experiencing financial distress. Funds are also used to off-set treatment and other expenses, when an individual is using their own money to focus on restitution payments to the victim(s). It should be noted that individuals on probation, who are economically disadvantaged, will be disproportionately affected if Probation can no longer pay for the polygraph examinations mandated by the SOMB Standards.

Summary of Contemporary Research on Use of the Polygraph in Treatment

The polygraph improves assessment accuracy, which has implications for both supervision and treatment.¹

- There are several well-researched risk factors addressed in sex offender risk/need assessments. Polygraph results can corroborate these assessments and improve the accuracy of sexual recidivism risk estimation.
- Without the polygraph tool, there are risk factors that would remain unknown and go untreated. Without identifying and addressing these risk areas, the potential for future re-offense is increased.

¹ Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2004; Hindman and Peters, 2000

The polygraph contributes to more *disclosures*, in general, throughout the course of supervision and treatment which are central to behavioral change and accountability.² Disclosures refer to unlawful or deviant sexual behaviors, which typically occur in isolated or secretive settings. Secrecy is the leading behavior that connects with risk and a lack of sexual risk management, which is different than individuals who commit other offense types, and can hamper treatment and supervision efforts.

- There is an established body of evidence that suggests polygraph examination elicits increased numbers of disclosures from offenders. This was confirmed as recently as June 2018 in a systematic review of peer reviewed studies of the polygraph in community sex offender populations.³
- Studies have reported that the odds of offenders, who are subject to a polygraph, making at least one disclosure relevant to their subsequent treatment, supervision, or risk assessment was 14 times greater than for comparison offenders.⁴
- Some studies have linked full disclosures in treatment to positive recidivism outcomes.⁵ In other words, the use of polygraphs was subsequently associated with the occurrence of fewer new crimes.

The polygraph can assist with detecting actual *hands-on* offending behavior among individuals convicted of *hands-off* internet crimes. By identifying and addressing the breadth of the individual's risk, treatment can reduce the likelihood of the individual re-offending.

- A study of 127 subjects convicted of internet crimes found that 4.7% self-disclosed hands-on behavior prior to the polygraph, while 52.8% disclosed actual hands-on offending behavior during the polygraph examination process.⁶

Crossover behavior is a well-established and well-researched phenomenon; individuals convicted of sex offenses have complex and multi-faceted, victim types, paraphilias and offense histories. It is well established that the crime of conviction does not represent offending or victimization behavior patterns. The polygraph increases the probability that supervision and treatment personnel become aware of existing and past crossover behavior of the individual. This information is critical to developing an effective treatment plan to address and reduce harmful behavior and the potential for sexual recidivism.

- Crossover studies often use polygraph outcomes to examine actual crossover behavioral patterns of individuals convicted of sex offenses.⁷ These studies have found that the individual has been involved in other sexually inappropriate or illegal behavior beyond the crime for which they have been charged.

2 Ahlmeyer et al., 2000; Emerick & Dutton, 2000b; Heil et al., 2003; Hindman, 1988a; Hindman & Peters, 2001; Humbert, 1990; O'Connell, 1998. Gannon et al., 2014; Bourke et al., 2014; Grubin, 2010; McGrath et al., 2007; Wilcox & Sosnowski, 2005

3 Elliott & Volmm (2018). The Utility of Post-Conviction Polygraph Testing Among Sexual Offenders. *Sexual Abuse*. Vol 30(4).

4 Grubin (2006, 2010)

5 Konopasek (2015)

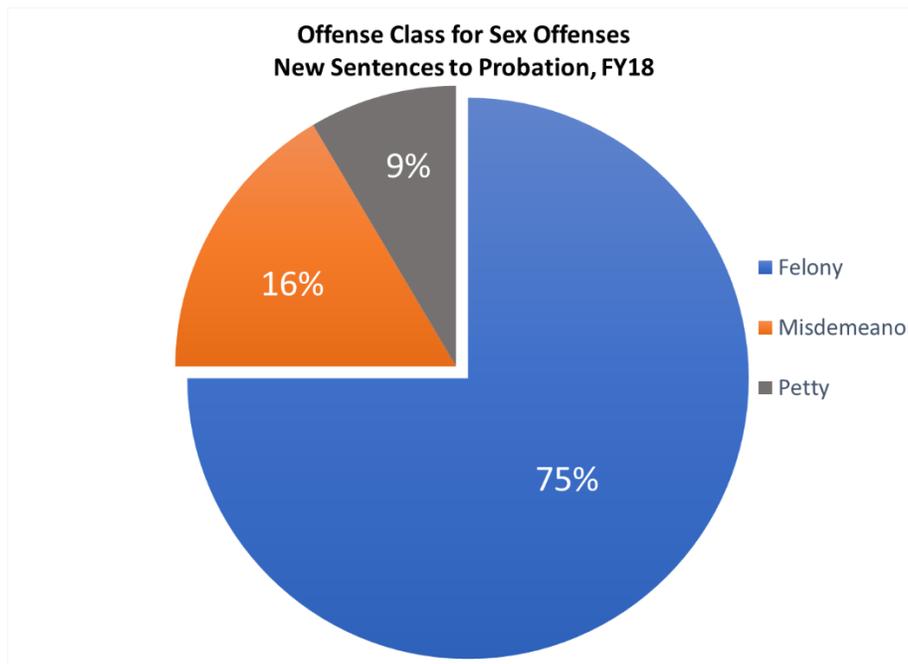
6 Bourke et al. (2014)

7 Sim & Proeve (2010); Levenson et al. (2008); Kleban et al. (2013); Sim & Proeve, 2010; Levenson et al., 2008; Cann et al., 2007; Marshall, 2007; Wilcox & Sosnowski, 2005; Heil et al., 2003.

Colorado Probation Population Sex Offender Fact Points

- There were 2,808 active adult sex offenders on probation, approximately 50% were (1,412) sentenced to Sex Offender Intensive Supervision (SOISP), while the remainder were on regular supervision (as of June 30, 2018).
- In FY18, there were 576 new sentences to probation for sex offenses. Of these new sentences for sex offenses, **75% were for felony offenses** and the remainder for misdemeanor (16%) or petty offenses (9%). This a large contrast from the rest of the regular adult population which is two-thirds (66%) misdemeanor and one-third (32%) felony. See Figure 1 below.
- Of the 576 new sentences to probation for sex offenses, two-thirds (**66%**) were convictions for **actual or attempted sex offenses against children** and the remainder for indecency (20%), sex assault (11%) and invasion of privacy (2%). See Figure 2 below.

**Figure 1 – Offense Class for Sex Offenses
[New Sentences to Probation in FY2018]**



**Figure 2 – Sexual Offense Conviction Categories
[New Sentences to Probation in FY2018]**

Sexual Offense Conviction Categories		
	#	%
Child	210	36%
Attempted Child	173	30%
Indecency	113	20%
Attempted Indecency	4	1%
Invasion of Privacy	12	2%
Attempted Invasion	2	0%
Sex Assault	23	4%
Attempted Sex Assault	39	7%
Total	576	100%

Summary of Contemporary Research on Use of the Polygraph

The polygraph improves assessment accuracy, which has implications for both supervision and treatment.¹

- There are several well-researched risk factors addressed in sex offender risk and need assessments. Polygraph results can corroborate these assessments and improve the accuracy of sexual recidivism risk estimation.
- Without the polygraph tool, there are risk factors that would remain unknown and go untreated. Without identifying and addressing these risk areas, the potential for future re-offense is increased.

The polygraph contributes to more *disclosures*, in general, throughout the course of supervision and treatment which are central to behavioral change and accountability.² Disclosures refer to unlawful or deviant sexual behaviors which typically occur in isolated or secretive settings.

- There is an established body of evidence that suggests polygraph examination elicits increased numbers of disclosures from offenders. This was confirmed as recently as June 2018 in a systematic review of peer reviewed studies of the polygraph in community sex offender populations.³
- Studies have reported that the odds of offenders, who are subject to a polygraph, making at least one disclosure relevant to their subsequent treatment, supervision, or risk assessment was 14 times greater than for comparison offenders.⁴
- Some studies have linked full disclosures in treatment to positive recidivism outcomes.⁵ In other words, the use of polygraphs was subsequently associated with the occurrence of fewer new crimes.

The polygraph can assist with detecting actual *hands-on* offending behavior among offenders convicted of *hands-off* internet crimes.

- A study of 127 subjects convicted of internet crimes found that 4.7% self-disclosed hands-on offender behavior prior to the polygraph, while 52.8% disclosed actual hands-on offending behavior during the polygraph examination process.⁶

***Crossover behavior* is a well-established and well-researched phenomenon; sex offenders have complex and multi-faceted, victim types, paraphilias and offense histories. It is well established that the crime of conviction does not represent offending or victimization behavior patterns of sex offenders. The polygraph increases the probability that supervision and treatment personnel become aware of existing and past crossover behavior among the offender population. This information is critical to developing an effective treatment plan to address and reduce harmful behavior and the potential for sexual recidivism.**

- Crossover studies often use polygraph outcomes to examine actual crossover behavioral patterns of sex offenders.⁷ These studies have found that the offender has been involved in other sexually inappropriate or illegal behavior beyond the crime for which they have been charged.

1 Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2004; Hindman and Peters, 2000

2 Ahlmeyer et al., 2000; Emerick & Dutton, 2000b; Heil et al., 2003; Hindman, 1988a; Hindman & Peters, 2001; Humbert, 1990; O'Connell, 1998. Gannon et al., 2014; Bourke et al., 2014; Grubin, 2010; McGrath et al., 2007; Wilcox & Sosnowski, 2005

3 Elliott & Volmm (2018). The Utility of Post-Conviction Polygraph Testing Among Sexual Offenders. *Sexual Abuse*. Vol 30(4).

4 Grubin (2006, 2010)

5 Konopasek (2015)

6 Bourke et al. (2014)

7 Sim & Proeve (2010); Levenson et al. (2008); Kleban et al. (2013); Sim & Proeve, 2010; Levenson et al., 2008; Cann et al., 2007; Marshall, 2007; Wilcox & Sosnowski, 2005; Heil et al., 2003.

Other Research Considerations

Risk assessment, management, and reduction is central to probation supervision, especially with sex offender populations. Without objective tools, human beings do not fairly, reliably, or accurately predict risk.

- The past 50 years of empirical research on human decision making has led us to understand that human beings rarely make consistently rational decisions, especially when weighing several competing and complex factors⁸
- This same research base has illuminated the basic finding that people are subject to strong, systemic and often implicit bias when making decisions.⁹ These shortcuts, often called ‘heuristics’ come in the form of subconscious, and therefore invisible cognitive biases based on emotional impacts to information that challenges existing belief systems, values, and general life experiences.
- When attempting to predict complex human behavior, especially when estimating risk without an objective risk assessment tool, people tend to make inconsistent predictions. Two (2) out of three (3) clinical predictions of violence, for example, are incorrect.¹⁰ Without structured, objective, actuarial, and validated tools, people must infer risk and must informally try and forecast future behavior in community supervision settings.

Other Facts and Points about Probation and Sex Offender Supervision

In FY2018, Probation invested nearly \$2.4 million in supporting the costs of supervision and treatment costs for sex offenders to include the costs of polygraph examinations (16% of \$2.4 million).

Sex Offender Assessment	\$1,045,998
Sex Offender Polygraph	\$379,055
Sex Offender Treatment	\$944,130
TOTAL	\$2,369,183

⁸ Nagy, Geraldine. (2013). Moving implementation of evidence-based practice forward: A practitioner’s view. Justice Research and Policy. Vol 15., No 1.

⁹ Kahneman, D., Slovic, P., & Tversky, A. (Eds.). (1982). *Judgment under uncertainty: Heuristics and biases*. New York: Cambridge University Press.

¹⁰ Monohan, J. (1984). The prediction of violent behaviour: Toward a second generation of theory and policy. American Journal of Psychiatry, 141, 458-471.

Consequences of Eliminating the Polygraph Tool from Community Supervision

There will be a loss of access to additional and critical information used for supervision and treatment purposes

- Sex offenders typically commit their offenses in secret and are motivated to stay undetected through manipulative behavioral and cognitive habits that have been embedded and reinforced over time.
- Polygraphs erode the probationer's ability to maintain a secretive lifestyle and promote discussion with the probation officer and treatment provider about problematic thoughts, feelings and behaviors.
- Polygraphs assist in decreasing cognitive distortions that lend to secrecy, manipulation and grooming behaviors.

There will be a loss of corroborating information for risk and needs assessment

- Due to the combination of 1) self-reported aspects of risk assessment instruments, 2) secrecy and stigma of sexual deviance, and 3) high degree of deception among sexually deviant population, the polygraph is currently used to corroborate the assessments conducted by probation and treatment providers. Without the polygraph results, there will be critical information that will go undetected and other information that will take an extended period of time to gather.

There will be less effective treatment planning and measurement of treatment progress

- In two separate research studies, sex offenders corroborated polygraph results as 84-90% accurate, and the vast majority reported the polygraph as helpful in treatment and in avoiding reoffending.
- Offenders are not terminated from treatment if they refuse to answer sex offense history questions.
- The use of the polygraph allows treatment providers and supervision officers to modify the treatment and supervision plans based on important information gained from the polygraph process.
- Without the polygraph, progress on treatment will be very difficult to measure and offenders may progress slower in treatment due to risk-averse approaches to supervision and containment.

There will be a shift in sentencing to incarceration rather than community supervision

- Without the polygraph, prosecutors and judges may be less likely to sentence to probation and rely more on institutional settings to safely manage the sex offender population.
- Release authorities such as the Parole Board and Community Corrections Boards may have diminished willingness to place sex offenders in the community, due to the diminished information available to monitor sex offenders.

There will be higher costs for community supervision with higher recidivism and victimization rates

- Limiting or eliminating the use of the polygraph would lead to the need for more resources to adequately monitor sex offenders in the community (e.g. probation officers, community managers, parole officers).
- Additional resources may also include GPS tracking and computer and/or cell phone monitoring. For example, a polygraph can lead to an offender disclosing his presence at a park, school or carnival. Without this tool, officers would be inclined to use the more costly and burdensome GPS monitor to track the offender's movement.

There will be over-supervision of sex offenders and minimal focus on needs rather than risks

- Multiple focus groups were conducted with probation officers in all 22 judicial districts in Colorado in 2017. Participating officers indicated that they would rely on increased monitoring and other risk-averse approaches to sex offender supervision, if the polygraph was not available. The focus would shift away from treatment needs and toward risk management and containment, with a more “law enforcement” orientation.
- Without the polygraph as a tool, the aforementioned focus group participants also indicated that they would be far less likely to grant certain privileges and more likely to increase restrictions, due to the risks associated with the sex offender population. For example, based on polygraph results, an officer may grant limited contact with certain children; however, with no polygraph, the officer may hesitate to allow said contact in an effort to be abundantly cautious.
- Without the corroborating and additional information gained from the polygraph, sex offenders who may be at lower risk of reoffending will most likely be treated as higher risk offenders, with substantial supervision and heavy monitoring. This over-supervision is an unnecessary expense for the taxpayer and a burden to the offender. In addition, research indicates that over-supervision also leads to the increase of recidivism.

The prevention of larger-scale victimization greatly outweighs the burdens and limitations placed on convicted sex offenders because of the polygraph tool.

- While the polygraph tool is not without its imperfections and limitations (as is any other criminal justice tool), the long-term consequences to ongoing victimization of sex crimes has more far reaching consequences than the short-term burdens that are placed on legally convicted sex offenders in the community.