

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee  
FROM Christina Beisel, JBC Staff  
DATE July 26, 2019  
SUBJECT Colorado Bureau of Investigation Toxicology Testing

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The Colorado Bureau of Investigation (CBI) provides toxicology services to local law enforcement agencies and coroners/medical examiners. Toxicology testing includes an analysis of blood samples to detect alcohol and/or drugs for driving under the influence of alcohol (DUI) or drugs (DUID) investigations.

### BACKGROUND

Prior to 2013, the Colorado Department of Public Health and Environment (CDPHE) operated the State's toxicology laboratory. In July 2013, CDPHE suspended, and ultimately shut-down, toxicology services due to a variety of issues, including personnel and performance concerns. Following the closure of the CDPHE unit, the General Assembly passed H.B. 14-1340 (State Toxicology Laboratory), which requires the CBI to operate a state toxicology laboratory on or before July 1, 2015 to assist local law enforcement agencies in the enforcement of DUI laws.

Between July 2013 and July 2015, the State of Colorado did not have an operating toxicology laboratory. During this time, local law enforcement agencies were advised to work with private laboratories for testing needs. The CBI began receiving toxicology samples at the Grand Junction facility on July 1, 2015. Toxicology services began at the Pueblo and Arvada facilities on May 1, 2016, upon completion of construction at the new locations.

### CERTIFIED TOXICOLOGY LABORATORIES

As required by statute, CDPHE annually certifies laboratories to perform toxicological analysis. For FY 2019-20, there are nine participating laboratories (see Appendix A). The same laboratories were certified in FY 2018-19.

The table below provides the number of toxicology cases processed by each laboratory in FY 2018-19, as reported to CDPHE. Please note: staff received data from both CDPHE and CBI, including some estimates. Due to the quick turnaround in preparation of this memorandum, staff was not able to fully reconcile all of the numbers. Therefore, there may be some discrepancies in the caseload numbers provided throughout this memo. However, staff has included them in order to provide as much context to the Committee as possible.

TOTAL NUMBER OF TOXICOLOGY CASES PROCESSED (PROVIDED BY CDPHE)	
LABORATORY	NUMBER OF CASES
CBI Denver	1,952
CBI Grand Junction	1,143
CBI Pueblo	856
<b>CBI Total</b>	<b>3,951</b>
Colorado State University	137
Denver Police (alcohol only)	570

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TOTAL NUMBER OF TOXICOLOGY CASES PROCESSED (PROVIDED BY CDPHE)	
LABORATORY	NUMBER OF CASES
El Paso County Coroner (postmortem only)	140
National Medical Services, Inc. (postmortem only, not all were motor vehicle related)	3,242
Rocky Mountain Instrumental Labs (secondary defense testing only)	1,185
ChemaTox*	8,000+
<b>Total</b>	<b>17,225</b>

\*ChemaTox number are an approximation. CBI reports the number of cases, while ChemaTox reports on the number tests. One case can include multiple samples.

### **FY 2019-20 DEPARTMENT REQUEST**

The Department of Public Safety submitted a budget request in FY 2019-20 to eliminate all toxicology testing fees paid by coroners, counties, and local law enforcement agencies. The intent of the request was to both reduce the burden of the cost of testing to local agencies, as well as to increase data collection on the impacts of marijuana legalization. Prior to July 1, 2019, the CBI toxicology program was funded entirely based on a fee-for-service model, with local agencies paying \$30 for blood alcohol testing and \$300 for blood drug testing, credited to the Toxicology Cash Fund to cover the direct and indirect costs of operating the toxicology lab.

Due to the cost of the drug testing, the CBI reported that many agencies only request alcohol analysis rather than the more comprehensive drug and alcohol analysis. This limits the information available not only to the prosecution in DUI/DUID cases, but also to the state in evaluating the impacts of legalization of marijuana.

The Department's FY 2019-20 request and final appropriation included a \$1,696,626 increase in cash funds from the Marijuana Tax Cash Fund and a \$1,176,626 decrease in cash funds from the Toxicology Cash Fund, resulting in a \$520,000 net increase for one-time capital equipment expenditures. There were no increases in the number of FTE.

Included in the staff briefing issue presented to the Joint Budget Committee (JBC) on November 29, 2018 by Mr. Mike Mann was the following analysis related to workload.

If the Department's FY 2019-20 budget request is approved, the Department anticipates that the elimination of the testing fees for toxicology testing services will result in a 75 percent increase in workload, or an additional 2,700 cases a year. This is based on a survey of 280 law enforcement agencies and coroners who indicated that if the fee were to decrease, the agencies would consider submitting samples for alcohol and drug screening. The Department's strategic performance objective regard toxicology testing is to return the results of all analyses to the requesting agency in less than 30 calendar days. The increase in workload could impact the Department's ability to meet this objective, however the benefits to law enforcement agencies and lawmakers would be significant.

### **ISSUES**

In June 2019, the CBI announced that toxicology testing would be offered to all law enforcement agencies and coroners/medical examiners at no cost for offenses dated July 1, 2019 and later.

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A CBS4 news story released on July 24, 2019 (<https://denver.cbslocal.com/2019/07/24/taxpayers-cover-millions-dui-tests/>) reports that ChemaTox, a private laboratory providing toxicology testing, has lost 75 percent of its business due to the elimination of CBI's testing fees. According to the ChemaTox website, the laboratory will be closing down and will stop accepting samples on July 31, 2019. In describing the reason for the closure, the website states the following:

“On June 6, 2019, CBI announced that they would no longer be charging for toxicology testing effective July 1, 2019. This change came about after Colorado legislators chose to fund the cost of CBI's toxicology testing with Colorado tax dollars. ChemaTox was not notified about the intended changes by anyone in state government, nor were we consulted in any capacity prior to the change. As the primary provider of the law enforcement toxicology testing services in the state of Colorado, this rapid change has had a swift and profound effect on our ability to operate. We explored many options attempting to save the company and it's 25 full time employees from this sudden closure. However, with the loss of all but a few of our clients in the first two weeks of July and the continued drop off as the month goes on, little could be done in the short time we had leaving us with no other option but to close our laboratory.” (<https://www.chematox.com/shutdown/>)

The CBI has stated that it was not the intent of the request to damage ChemaTox, nor did they believe that the request would have a severe impact on their business. However, the CBI admits that they did not proactively engage with ChemaTox ahead of submittal of the request. The impact to ChemaTox was not discussed during the briefing or figure setting for this decision item, and staff does not believe that the JBC or JBC staff were aware of this potential impact.

Since the elimination of the fees on July 1, the number of samples received by the CBI have increased.

SAMPLES RECEIVED BY CBI		
MONTH	2018	2019
June	316	344
July 25	308	472
July Total	415	Not available

COMPARISON OF TOXICOLOGY SAMPLES RECEIVED BY THE CBI		
	INCREASED SAMPLES	PERCENTAGE INCREASE
July 2018 (total) compared to July 25, 2019 (month to date)	57	13.7%
July 25, 2018 (month to date) compared to July 25, 2019 (month to date)	164	53.2%
June 2019 (total) compared to July 25, 2019 (month to date)	128	37.2%

The CBI estimates that it could see an increase of 5,914 cases annually, due to the increase in requested testing and the closure of ChemaTox. Additionally, there could be an associated increase in turnaround time, which is currently an average of 25 days. The Department indicates that that an estimation is difficult to make based on economies of scale, efficiencies in batching, and the overall unknowns in volume and testing required for each sample. However, estimates that turnaround time could climb to 45-60 days.

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**POTENTIAL IMPACTS TO THE STATE BUDGET**

At this time, the CBI is still assessing the impact and determining a strategy to address the issues outlined above. Continued increases to caseload and/or turnaround time could lead to requests for increased funding in the future. While the CBI has indicated a desire to avoid a supplemental request for increased funding, given the anticipated increases in caseload, staff would expect that additional funding may be needed at some point in the future.

**OPTIONS FOR THE JOINT BUDGET COMMITTEE**

At this point in time, prior to the beginning of session on January 8, 2019, there are no actions the Joint Budget Committee (JBC) or the General Assembly can take to address the issues outlined above.

1331 supplemental requests can only be made by the Executive Branch; the JBC cannot initiate them. Therefore, the JBC cannot restrict the Department's spending from the Marijuana Tax Cash Fund (which would presumably lead the Department to re-examine the fee-for-service model used prior to the July 1 changes) prior to the session. Moreover, the 1331 process addresses overexpenditures, not underexpenditures. Additionally, the General Assembly cannot enact legislation directing or requiring the Department to take specific actions until the session begins. Outside of these processes, the JBC and General Assembly do not have the authority to compel the CBI or Department of Public Safety to take any specific actions.

**Issue Date: July 1, 2019**

**Expires: June 30, 2020**



**COLORADO**  
Department of Public  
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

**LABORATORIES CERTIFIED TO TEST BLOOD AND URINE FOR COLORADO DUI AND DUID ENFORCEMENT**

**CERTIFICATION EFFECTIVE UNTIL JUNE 30, 2020.**

Laboratories are certified annually by the Colorado Department of Public Health and Environment as authorized by C.R.S. 42-4-1301/1304 and the Colorado Board of Health Rules and Regulations 5 CCR 1005-2.

List revised 2/1/2019.



Issue Date: July 1, 2019

Expires: June 30, 2020

<u>Laboratory Name:</u>	<u>Approved Test</u>	
Colorado Bureau of Investigation Attn: Mr. Dan Anderson Forensic Services - Toxicology Section <b>6000 W 54<sup>th</sup> Avenue</b> Arvada, CO 80002 303-463-7000 / 303-463-7001 <a href="mailto:Daniel.anderson@state.co.us">Daniel.anderson@state.co.us</a>	Blood Alcohol Blood Drug Urine Drug Post Mortem	CERTIFIED CERTIFIED CERTIFIED CERTIFIED
Colorado Bureau of Investigation Attn: Mr. Lance Allen Forensic Services - Toxicology Section 2797 Justice Drive Grand Junction, CO 81506 970-248-7500 / 970-248-7464 <a href="mailto:Lance.allen@state.co.us">Lance.allen@state.co.us</a>	Blood Alcohol Blood Drug Urine Drug Post Mortem	CERTIFIED CERTIFIED CERTIFIED CERTIFIED
Colorado Bureau of Investigation Attn: Shawn West Forensic Services - Toxicology Section 79 North Silicon Drive Pueblo West, CO 81007 719-647-5960/ 719-547-9200 <a href="mailto:Shawn.west@state.co.us">Shawn.west@state.co.us</a>	Blood Alcohol Blood Drug Urine Drug Post Mortem	CERTIFIED CERTIFIED CERTIFIED CERTIFIED
Colorado State University Attn: Dr. Greg Dooley Analytical Toxicology Laboratory 1680 Campus Delivery 970-491-5128 <a href="mailto:gregory.dooley@colostate.edu">gregory.dooley@colostate.edu</a>	Blood Alcohol Blood Drug Urine Drug Post Mortem	CERTIFIED CERTIFIED Not Certified Not Certified
ChemaTox Laboratory, Inc Attn: Ms. Sarah Urfer 5375 Western Ave Ste C, Boulder, CO 80308(physical) PO Box 20590, Boulder, CO 80308 (mailing) 303-440-4500 / 303-440-0668 (fax) <a href="mailto:sarah@chematox.com">sarah@chematox.com</a>	Blood Alcohol Blood Drug Urine Drug Post Mortem	CERTIFIED CERTIFIED CERTIFIED CERTIFIED



Colorado Dept. of Public Health & Environment  
Laboratory Certification Program  
9 Participating Laboratories

# APPENDIX A

**Issue Date: July 1, 2019**

**Expires: June 30, 2020**

**Laboratory Name:**

**Approved Test**

**Denver Police Department - Crime Laboratory**  
Attn: Dr. Gregory LaBerge / Mr. Jason Lehn  
1371 Cherokee St, Rm 305, Denver, CO 80204  
303-337-2010 / 720-337-2012 (fax)  
[jason.lehn@denvergov.org](mailto:jason.lehn@denvergov.org)

Blood Alcohol	CERTIFIED
Blood Drug	Not Certified
Urine Drug	Not Certified
Post Mortem	Not Certified

**El Paso County - Office of the Coroner**  
Attn: Dr. Leon Kelly / Mr. Werner Jenkins  
2743 E. Las Vegas St, Colorado Springs, CO 80906  
719-390-2450 / 719-390-2462 (fax)  
[wernerjenkins@elpasoco.com](mailto:wernerjenkins@elpasoco.com)

Blood Alcohol	CERTIFIED
Blood Drug	CERTIFIED
Urine Drug	CERTIFIED
Post Mortem	CERTIFIED

**National Medical Services, Inc.**  
Attn: Dr. Robert Middleberg / Ms. Margaret R. Beamer, MS  
200 Welsh Road  
Horsham, PA 19044  
215 657-4900 / 215 657-2972 (fax)  
[margaret.beamer@nms.com](mailto:margaret.beamer@nms.com)

Blood Alcohol	CERTIFIED
Blood Drug	CERTIFIED
Urine Drug	CERTIFIED
Post Mortem	CERTIFIED

**Rocky Mountain Instrumental Laboratories, Inc**  
Attn: Dr. Robert Lantz  
108 Coronado Ct, Fort Collins, CO 80525  
970-266-8108 / 303-530-1169 (fax)  
[rklantz@rockylab.com](mailto:rklantz@rockylab.com)

Blood Alcohol	CERTIFIED
Blood Drug	CERTIFIED
Urine Drug	CERTIFIED
Post Mortem	CERTIFIED

