

DEPARTMENT OF CORRECTIONS  
FY 2017-18 JOINT BUDGET COMMITTEE HEARING AGENDA

**Monday, January 9, 2017**

**1:30 pm – 4:30 pm**

**1:30-1:50      INTRODUCTIONS AND OPENING COMMENTS**

**1:50-3:00      FACTORS DRIVING THE BUDGET**

Factors Driving the Budget

1. Can offenders in the Division of Youth Corrections be somehow moved to YOS? Is there a process (or should there be a process) that allows this to be done? Can an offender in DYC who commits a new serious crime be charged as an adult for the new crime and sentenced to YOS?
2. How many offenders are now in DOC due to H.B. 15-1043 (Felony Offense for Repeat DUI)? How is DOC dealing with them? Are they being treated for their substance abuse problems? Where is DOC placing these offenders? Private prisons? Do the DUI offenders mix with a general prison population that is more violent and crime prone? Do they learn to be criminals by mixing with the general population?
3. Why are YOS costs so high? Who pays for education in DYC and in DOC?

Department Requests

4. In requests R1 to R5, why didn't the divisions that are giving up personal services appropriations utilize the appropriations as intended? Why are the programs unable to fill or maintain the positions? Why should the new items that will be funded by these requests be a priority over the items the money was originally appropriated for?
5. Why is DOC under-spending its mental health appropriations?
6. Could the personal-services funding that DOC is asking to use for other projects within the DOC be instead used by another agency?

R1 Mother Baby Unit:

7. Is a mother-baby unit evidence based? What evidence is there to support it?

R2 Sterling Correctional Facility Restrictive Housing Staffing:

8. How do extra teachers at Sterling Correctional Facility fit into the plan to eliminate RH Max (Restrictive housing, Maximum security, which is similar to Administrative Segregation)? Are they critical to elimination of RH Max?

R3 Hepatitis C Treatment:

9. Why is Hepatitis C prioritized over other diseases? How will you select the additional inmates to be added to the list of those to treat for Hepatitis C?
10. Does the DOC adhere to the community standard of care for Hepatitis C? What standard does it use?

R4 Maintenance Operating:

11. Why did the department's estimate of deferred maintenance needs grow by \$100 million over last year? What process does the Department use to measure the amount of deferred maintenance that it has?
12. How do the Department's deferred maintenance needs relate to its controlled maintenance needs? Do these requests need to go through the CDC? Is there a priority ranking system as with controlled maintenance? Are deferred maintenance needs rated by the state architect?
13. If DOC is reducing Personal Services for sex offenders, how can this be reconciled with the department's response to the audit of the sex offender program? Is it consistent? What is DOC doing to address the deficiencies found in the audit?

R5 Food Service Equipment:

14. This request redirects food-service personal services to food-service equipment. What personal services won't be provided? Where did that money go before?

R? Parole Caseload Adjustment:

15. If the department did ask for a parole caseload adjustment, what adjustment would it ask for?

**3:00-3:15      BREAK**

**3:15-4:30      ISSUES**

Turnover and Vacancy Surplus in the DOC:

16. What does the department think of the theory presented in this issue? Is this how it works?
17. How does the Department plan to use its SERF account?
18. Does the Department plan on turnover and turnover savings? Does the fact that the Department is not using these appropriations for mental health, etc, impact the quality of the programs? If the turnover savings was directed back into the programs it comes from, would the programs be improved?

Sex Offender Treatment:

19. Could the sex offender treatment program be moved to a high population area so DOC can hire more therapists? Where?
20. Why is it difficult to hire and keep employees for this program? Did the department change job expectations when the program changed? Did responsibilities increase? Salary?
21. Please comment on the treatment wait list. How much could be saved could from bringing treatment to Denver?
22. Has the department implemented individualized sex offender treatment as recommended by the 2012 outside reviewers? For example, are there customized Phase I programs for sex offenders with differing needs? Based on the results for those who have completed treatment, is the revised sex offender program effective?

Private Prison Effectiveness:

23. Can we use the federal study of federal private prisons as a guide to gather and analyze information about the effectiveness of Colorado's private prisons? On this basis, how do Colorado's public and private prisons compare?
24. Should we close Colorado's private prisons as the feds plan to do based on an analysis similar to the federal study?
25. Some offenders cannot be placed in private prisons because it would violate statute and DOC rules. The Department's 2013 private prison report excluded these offenders when making comparisons of private and public prisons. Did that adjustment lead to fair comparisons?

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

- 1 Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.
- 2 If the Department receives federal funds of any type, please respond to the following:
  - a. Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2016-17.
  - b. Are expecting any changes in federal funding with the passage of the FFY 2016-17 federal budget? If yes, in which programs, and what is the match requirement for each of the programs?
- 3 Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report of Audit Recommendations Not Fully Implemented" that was published by the State Auditor's Office and dated June 30, 2016 (link below)? What is the department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations?

[http://leg.colorado.gov/sites/default/files/documents/audits/1667s\\_annual\\_report\\_-\\_status\\_of\\_outstanding\\_recommendations\\_1.pdf](http://leg.colorado.gov/sites/default/files/documents/audits/1667s_annual_report_-_status_of_outstanding_recommendations_1.pdf)

- 4 Is the department spending money on public awareness campaigns? What are these campaigns, what is the goal of the messaging, what is the cost of the campaign? Please distinguish between paid media and earned media. Do you have any indications or metrics regarding effectiveness? How is the department working with other state or federal departments to coordinate the campaigns?
- 5 Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy?
- 6 For FY 2015-16, do any line items in your Department have reversions? If so, which line items, which programs within each line item, and for what amounts (by fund source)? What are the reasons for each reversion? Do you anticipate any reversions in FY 2016-17? If yes, in which programs and line items do you anticipate these reversions occurring? How much and in which fund sources do you anticipate the reversion being?
- 7 [Background Information: For FY 2017-18, the Department of Law has submitted a request to change the calculation of legal services appropriations as well as the monthly billing system for legal services provided to state agencies. Specifically, the proposal would: 1) calculate the number of budgeted legal services hours for each agency as the average of actual usage in the prior three years; 2) include a two-year average of "additional litigation costs" such as court reporting, travel for depositions, expert witness costs, etc., in the appropriation for legal services (these costs are not currently included in the appropriation and are often absorbed from other personal services and operating expenses line items); and 3) convert from monthly billing based on the actual hours of service provided to monthly billing based on twelve equal installments to fully spend each client agency's appropriation.]

Please discuss your agency's position on the Department of Law's proposed changes to the legal services system, including the potential impacts of the changes on your agency budget. That is, does your department support the proposed changes? How would you expect the changes to positively or negatively impact your department? Please explain.

- 8 What is the expected impact of Amendment 70 (minimum wage increase) on Department programs? Please address impacts related to state personnel, contracts, and providers of services.
- 9 Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Cybersecurity Center in the Office of Information Technology?
- 10 Is the SMART Act an effective performance management and improvement tool for your Department? What other tools are you using? Do your performance tools inform your budget requests? If so, in what way?
- 11 Please identify how many rules you have promulgated in the past two years. With respect to these rules, have you done any cost-benefit analysis pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analysis pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.
- 12 What has the department done to decrease red tape and make the department more navigable/easy to access?

What is the number one customer service complaint the department receives? What is the department doing to address it?

# **COLORADO DEPARTMENT OF CORRECTIONS**



**Budget Hearing**

**January 9, 2017**

**RICK RAEMISCH**

**EXECUTIVE DIRECTOR**

DEPARTMENT OF CORRECTIONS

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Factors Driving the Budget

1. Can offenders in the Division of Youth Corrections be somehow moved to YOS? Is there a process (or should there be a process) that allows this to be done? Can an offender in DYC who commits a new serious crime be charged as an adult for the new crime and sentenced to YOS?

*Answer: The Division of Youth Corrections (DYC) offenders may not be moved into DOC's Youthful Offender System (YOS) as YOS offenders are adjudicated and sentenced as adults. Sentencing to YOS is at the request of the District Attorney and/or the Public Defender as a sentencing option; however, it is solely at the discretion of the judge to grant the request as a sentencing option.*

*Pursuant to C.R.S. 19-2-601 (5)(b)(1), upon court order, the Department of Human Services (DHS) may transfer an aggravated juvenile offender committed to its custody to DOC if the juvenile has reached 18 years of age and DHS has certified that the juvenile is no longer benefiting from its programs. However, the judicial branch must be part of this process, as the executive branch does not have the authority to transfer such offenders between systems. DYC is a juvenile system (juvenile youth corrections involves incarceration, diversion opportunities, and probation) while YOS juveniles and/or young adults are sentenced as adults to the DOC and their sentence is suspended conditioned on completion of a sentence to the YOS, including a period of community supervision. Based on failure to complete the program, the YOS sentence may be revoked and the original suspended sentence restored to be completed in an adult prison within the DOC. Therefore, the two populations cannot be mixed as DYC offenders are juveniles sentenced as juveniles versus YOS offenders are sentenced as adults.*

*If a DYC offender commits a new felony and is sentenced as an adult, they may be sentenced to YOS if the judge determines that to be an appropriate course of action. This assumes the Public Defender and District Attorney pursue such sentencing option through the judicial system.*

2. How many offenders are now in DOC due to H.B. 15-1043 (Felony Offense for Repeat DUI)? How is DOC dealing with them? Are they being treated for their substance abuse problems? Where is DOC placing these offenders? Private prisons? Do the DUI offenders mix with a general prison population that is more violent and crime prone? Do they learn to be criminals by mixing with the general population?

*Answer: As of December 22, 2016, 100 offenders are in DOC from a conviction for repeated DUI's. Of the 100 offenders, 84 (79 males and 5 females) have a governing sentence for repeat DUI's.*

*The Department has seen a steady increase for offenders sentenced under the provisions of H.B. 15-1043 as the governing sentence. The current number of offenders warrants implementation of specialized programming/treatment to address the specific needs of these offenders. A majority of these offenders have had Levels I and II DUI treatment due to previous convictions. In Colorado, DUI treatment services are licensed by the Office of Behavioral Health (OBH) within the Department of Human Services. OBH has designated the needs for felony DUI sentences as DUI Level II Therapy Four Plus (4+).*

*The majority of the male offenders (59) are being housed at the Cheyenne Mountain Re-entry Center (CMRC). OBH approved the renewal of the CMRC Substance Use Disorder (SUD) License and granted DUI Level II Education (Therapy Four Plus) as a new service to be provided. Program delivery at CMRC is anticipated to begin in March 2017. Some offenders may not be eligible for placement at CMRC based on medical or mental health needs or other placement criteria. At this time, 8 of the 79 male offenders are new arrivals and are being processed through the Denver Reception and Diagnostic Center. The DUI offenders not housed at CMRC are provided existing substance abuse programs based on the needs of the offenders. The female offenders are housed at La Vista Correctional Facility and, like their male counterparts, are provided existing substance abuse treatment programs based on the individual needs of the offenders.*

*The DUI offenders will interact with the general prison population, but not necessarily a more violent and crime prone population. The DUI offenders housed together at CMRC will interact with other offenders of the same classification at the facility. The DUI offenders not housed at CMRC are housed in general population settings consistent with their classification and risk needs. The Department utilizes a valid objective classification rating process to assign offenders to the lowest custody level consistent with an objective assessment of public risk, the safety of staff and other offenders, the security needs of the offender, and the programmatic needs of the offender. Based on the classification rating, DUI offenders would not generally be housed in a population that is more violent and crime prone. Since DUI offenders are being housed according to the classification rating,*



*with a majority housed together at CMRC, these offenders are not expected to learn to be criminals by mixing with other general population offenders.*

3. Why are YOS costs so high? Who pays for education in DYC and in DOC?

*Answer: The Youthful Offender System (YOS) is a “middle tier” sentencing option, whereby eligible youthful offenders and/or young adults can be sentenced as adults directly to YOS. The age of the youthful offenders combined with the fact that most are violent offenders drives programming needs that include a low staff-to-offender ratio and, in turn, higher total costs. YOS blends security, treatment, case management, education, and re-entry, which provides a comprehensive “middle-tier” correctional sentencing option. Since staff is a key component in delivering programs, the staffing ratio to offenders is approximately one-to-one and is the primary expense for the program. In FY 2015-16, \$12.7 million of the \$14 million direct expenses for the program were personal services. Staff working with YOS offenders must be able to perform multiple functions. YOS staff members are selected for their professionalism, attitude, and experience working with adjudicated adolescent populations; and for their potential to mentor, coach, and provide training to offenders and facilitate counseling sessions and programmatic activities.*

*The cost per day (CPD) for the YOS program, \$231.00 in FY 2015-16, is consistently higher when compared to other state facilities. The cost differential is attributed to the population (typically younger, violent offenders) and the strong emphasis on providing an environment that includes intensive programming for modifying behavior and assisting in acquiring skills to enable the assigned offenders to grow and develop into successful, productive citizens. The YOS program has a history of proven results with 78 percent of all participants from FY 1995-2015 achieving successful completion of the program, while the post-release recidivism rates are significantly lower than the adult system. The most recent recidivism rates are: 6 percent returned within one year, 19 percent within three years, and 29 percent within five years. Additionally, the historical FY 1995-2015 YOS sentence served compared to their adult sentence was 7.7 years less which reduced overall expenses for each youthful offender.<sup>1</sup> It should be noted there is no parole monitoring period for YOS offenders, which is a difference from the adult system. Instead, YOS offenders attend Phase III in the community.*

*The education program expenses for the YOS program are part of the YOS CPD and represent a comprehensive educational program of academic, career, and technical*

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<sup>1</sup> Colorado Department of Corrections, Youthful Offender System Fiscal Year 2015 (pages 49 and 51).

*classes, along with cognitive behavior classes. The personal services and operating program expenses associated with the education program were calculated at \$25.32 per offender per day for FY 2015-16. Per the Department of Human Services, the DYC commitment education is funded by the General Fund and provided by DYC, whereas detention education is provided and funded by the local school district by statute.*

#### Department Requests

4. In requests R1 to R5, why didn't the divisions that are giving up personal services appropriations utilize the appropriations as intended? Why are the programs unable to fill or maintain the positions? Why should the new items that will be funded by these requests be a priority over the items the money was originally appropriated for?

***Answer:** The divisions that are giving up personal services appropriations did utilize the appropriations as intended. There are several factors behind the proposed redirection of personal services. The Department has recently experienced turnover savings where actual average salaries have increased at a slower pace than the appropriated average salary (this is the primary driver for the proposed redirects from the food service and medical programs). The other programs (mental health, sex offender treatment, and parole) represent a combination of vacancy savings as well as turnover savings.*

#### Clinical position challenges

*There is a national shortage of behavioral healthcare professionals. The Department faces the same recruiting challenges in behavioral healthcare classes that other health care entities experience; all health care sectors are competing for the same candidate. The ability to recruit qualified candidates for open positions at the Department is a constant and critical challenge.*

*Colorado's stated minimum requirements for professional behavioral health staff include experience and licensure. In addition, Sex Offender Counselors are required to comply with the Colorado Sex Offender Management Board (SOMB) provider requirements within 30 days of employment and are required to follow the treatment provider guidelines. The sex offender treatment counselor applicant pool is extremely limited for a number of reasons. Of those candidates interested in professional counseling, sex offender treatment is not sought after. There has also been a significant drop in SOMB applicants through Department of Regulatory Agencies (DORA). In FY 2015-16, there were 23 new adult treatment provider applications processed compared to 40 applications in FY 2014-15. The number of renewals also dropped from 77 to 59 in those two fiscal years.*

*The Department has difficulty in filling professional positions throughout the state; rural and metropolitan areas have their own set of challenges. Many professionals who are*

willing to work in rural areas are not interested in working with an offender population. For metropolitan areas, the Department is faced with a competitive job market in which candidates have employment opportunities that may provide a more appealing compensation package.

On a continual basis, the Department posts these positions as open continuous/competitive on the State's job website as well as a number of social media platforms. The recruitment efforts also include the purchase of advertising through social platforms, large newspapers, smaller publications, professional journals, and newsletters such as the National Association of Social Workers and the Association for the Treatment of Sexual Abusers. Many of these advertisement sites populate DOC's information into various web-based locations such as Monster.com. Platform sites currently being utilized to advertise/market positions are Facebook, Twitter, and LinkedIn. In addition, the Department participates in job fairs, recruiting events, job boards, military panels, and functions. The Department has also been approved for a residency waiver, a necessary tool for DOC to compete in an already competitive job market.

To further recruitment efforts, the Department fulfills loan repayment, tuition reimbursement, and internships with the intent to retain developed staff. DOC also participates in the federal loan repayment program that allows the Department to provide benefits to those that accept employment in critical need locations. DOC already hires above the minimum pay range for these professional positions. In January 2014, the Department initiated an in-range salary movement increase for behavioral health positions. DOC has also implemented a referral bonus award for staff referring top talent to the agency.

#### Parole position challenges

Parole positions are very difficult to recruit for due to salary and/or location. Per the State of Colorado, Annual Compensation Report FY 2017-18, "The Department's findings suggest that as a result of the State's pay practices, base salaries of state employees are, on average, 5.75% below the market". Specific occupational groups are showing that "Enforcement and Protective Services are 9% below market median" (CPO's fall under this occupational group).

In addition to salary, some CPO positions are hard to fill due to their geographic location, to include outlying areas such as: La Junta, Bent County, Montrose, Sterling, Craig, and Trinidad. The Bent County CPO position underscores this challenge as the position was vacant for almost a year.

CPO retention is also an issue with salary cited as the main reason for departures. CPO's are able to find law enforcement positions that pay more, especially in the Denver area. The most common reason for separation is "accepted new job outside of system".

Rationale for funding new items

R-1. *The Mother-Baby Unit provides an opportunity for the Department to join the 10 states that already recognize the importance of promoting secure attachment between a mother and her baby. Research suggests that providing an opportunity for the mother and baby to satisfy the biological need to stay in contact with each other can prevent long term consequences of maternal deprivation for the child such as depression, increased aggression, and delinquency.*

R-2. *The additional staff requested for the extended restrictive housing unit at the Sterling Correctional Facility supports the Department's commitment to lead the nation with on-going segregation reforms. Extended restrictive housing is defined as being confined to a cell for at least 22 hours/day. The increased out-of-cell time that will result from the increased staff, a minimum of four hours daily, would allow the Department to be the first state in the nation to end extended restrictive housing. Without this funding, Colorado will not be able to abolish extended restrictive housing.*

R-3. *A large portion of the DOC offender population (18 percent) has the Hepatitis C infection. Current resources only allow the treatment of 30 to 35 offenders annually. The treatment protocol has seen great success with 40 of 40 offenders that have completed treatment now eradicated of the virus. Additional resources will allow the Department to provide a highly successful treatment to more offenders.*

R-4 and R-5. *The Department has limited resources to address the many infrastructure issues that come from operating 20 prison facilities, including 471 state-owned buildings, and accompanying equipment, components, and systems that keep the buildings and daily prison operations going. The requests for additional maintenance operating (\$1.5 million) and food service equipment (\$600,000) will help slow the exponential growth of deferred maintenance projects as well as implement an industry standard replacement plan for food service equipment.*

*The five requests are a priority over the original personal services appropriations in light of the recent reversions due to turnover and vacancy savings. It should be noted that the Department is not proposing to redirect the funds in an effort to cut key programs or abandon services that are critical to the offender and parolee populations. The Department views this as an opportunity to keep Colorado at the forefront of innovation in the corrections environment, particularly with the first two requests. The third request allows the Department to address a critical healthcare need for a large portion of the offender population while the final two requests address the fact-of-life infrastructure issues that are present in facilities that range from 15-plus to over 100 years old.*

5. Why is DOC under-spending its mental health appropriations?

**Answer:** *Although the Department is underspending its mental health personal services appropriation, it is spending the mental health medical contract services appropriation,*

using over 99 percent of available funds in FY 2015-16. This budget line is used to contract and hire outside mental health staff to fill the gap of fewer state FTE, and ensure critical services are provided to the offenders. As discussed in Question 4, underspending in the clinical personal services appropriations is due to a national shortage of behavioral healthcare professionals. This is especially true of sex offender counselors where the interest in providing counseling services for this particular type of client is declining. The Department is also having to compete in an aggressive job market where candidates have employment opportunities that may provide a more appealing compensation package.

6. Could the personal-services funding that DOC is asking to use for other projects within the DOC be instead used by another agency?

*Answer:* Yes, the personal services funding identified by the Department could be redirected from the DOC and used by another agency. However, the Department believes the five projects provide critical support to the Performance Plan and funding them internally, from redirected personal services, is preferable to seeking additional General Fund.

#### R1 Mother Baby Unit:

7. Is a mother-baby unit evidence based? What evidence is there to support it?

*Answer:* No, the Mother-Baby Unit is not considered evidence based by research clearinghouses; however, there is research suggesting they are effective. There are currently 10 states that have prison nurseries in response to the increasing incarceration of women and the research that indicates the majority of children of incarcerated mothers have “enduring trauma”. This is a clinical name that is applied to children who have never achieved basic safety and trust through attachment, resulting in compulsive behaviors, aggression, substance dependency, theft, and sexual misconduct. This mother-baby unit addresses the criminogenic needs of family, promotes the bond between mother and child, motivates a healthy relationship and allows the mother to make better decisions.

Studies also indicate that common outcomes, due to lack of early attachment among children of women offenders are: delays in social and emotional development; early emotional and relationship problems; and academic difficulties. Having a mother incarcerated and being separated from her child perpetuates a multitude of societal problems, including increased mental disorder and continuing the familial cycle of criminal justice involvement.

In order to fully understand the impact that the Mother-Baby Unit has on recidivism in Colorado, baseline measurements need to be established and cohorts of individuals tracked over time. The Department’s request includes funding for contract research staff to establish the tracking framework and the initial capture of data on the residents of this unit.

R2 Sterling Correctional Facility Restrictive Housing Staffing:

8. How do extra teachers at Sterling Correctional Facility fit into the plan to eliminate RH Max (Restrictive housing, Maximum security, which is similar to Administrative Segregation)? Are they critical to elimination of RH Max?

*Answer: The extra teachers (3.0 FTE) at Sterling Correctional Facility (SCF) are an essential component in the ability to provide a minimum four hours of daily out-of-cell activity. SCF currently has one teacher assigned to RHMAX conducting cell-side General Educational Development (GED) and Adult Basic Education (ABE) programming. With the addition of three teachers, SCF will be able to provide twelve 90-minute out-of-cell sessions daily (three sessions daily per teacher). Along with traditional GED and ABE curriculums, the following cognitive-based programs are examples of what could be taught in a pro-social group setting by the additional staff: Thinking for a Change, Moral Reconciliation Therapy, and Phoenix New Freedom Gang Intervention Programs.*

*The 90 minute educational periods will be incorporated into an overall daily activity schedule with additional out-of-cell opportunities that allow for a cumulative total of four hours of out-of-cell time, seven days per week. The increased out-of-cell time made available to all offenders will promote pro-social behavior in a controlled environment.*

*Offenders offered four hours of out of cell time per day would no longer meet the definition of RHMAX or Extended Restrictive Housing (confined to a cell for at least 22 hours per day). The request for extra teachers represents the next phase of reforms to end extended restrictive housing.*

R3 Hepatitis C Treatment:

9. Why is Hepatitis C prioritized over other diseases? How will you select the additional inmates to be added to the list of those to treat for Hepatitis C?

*Answer: Hepatitis C is not prioritized over other diseases. The DOC appropriately and effectively treats all medically significant conditions. The distinctive issue with Hepatitis C is that this treatment provides a cure to the disease.*

*The Department will select additional offenders for Hepatitis C treatment utilizing current standards which indicate that treatment be directed first to those who would derive the greatest and most immediate benefit from therapy. DOC will continue to use current guidelines and criteria for treatment prioritization.*

10. Does the DOC adhere to the community standard of care for Hepatitis C? What standard does it use?

*Answer: Yes, DOC provides a standard of Hepatitis C care and treatment that is consistent with currently published guidelines; specifically, the Hepatitis C Virus Guidelines published by the American Association for the Study of Liver Disease. This is the medical standard that is practiced in the community as a whole, and is also upheld by the Federal Bureau of Prisons in their most recently published Hepatitis C treatment guidelines.*

#### R4 Maintenance Operating:

11. Why did the department's estimate of deferred maintenance needs grow by \$100 million over last year? What process does the Department use to measure the amount of deferred maintenance that it has?

*Answer: Last year, the Department provided a report to the Office of the State Architect to update the facility condition index for all buildings 50 years and older. These older buildings comprise 27% of the Department's building inventory (125 of 471) and almost 2 million square feet of utilized facility space (31% of 6.4 million square feet in state facilities). Also facility condition indexes were completed on vacant buildings not previously on the list. This brought many additional maintenance needs to the forefront that were not on the previous year's list. For example, a renovation project at Arkansas Valley Correctional Facility was added, which has an extensive list of repairs for approximately \$600,000. Other examples of individual projects added to the list include a building's mechanical and electrical improvements of \$1.3 million, parking lot maintenance of almost \$1.0 million, window replacements for \$3.9 million, chiller failure for \$1.5 million, generator replacement for \$1.0 million, boiler replacement of \$767 thousand, and pond liners for a wastewater system for \$3.2 million.*

*The Department has many aging facilities; all are over 15 years old, 6 are over 50 years old and 2 over 100 years old. The Department opened seven new prisons between 1993 and 2001 to provide housing for the increasing number of offenders in Colorado. Even these newer facilities are now having component and system failures. System failures impact facility operations, such as the Limon hot water loop leak in December 2013, which resulted in bringing electrical generators and heaters from out of state to ensure minimal heat in the facility while repairs were made to the system.*

*The Department submitted 10 controlled maintenance projects in FY 2016-17 (\$9.0 million), from a total of 209 projects on the deferred maintenance list. Three of those projects were approved in FY 2016-17 for a total of \$3.45 million. The deferred maintenance list has now grown to more than 600 projects.*

*The Department compiles a comprehensive list of projects/costs that are prioritized by facility, and are identified as capital construction, capital renewal, controlled maintenance, or deferred routine maintenance. The list changes weekly as system deficiencies are identified. DOC prioritizes and uses financial resources for preventive maintenance on major equipment to extend the maximum useful life on these expensive*

*components. However, due to age and use, more of the significant system components continue to fail before a complete Controlled Maintenance or Capital Renewal system replacement project can be funded.*

12. How do the Department's deferred maintenance needs relate to its controlled maintenance needs? Do these requests need to go through the CDC? Is there a priority ranking system as with controlled maintenance? Are deferred maintenance needs rated by the state architect?

***Answer:** The Department's deferred maintenance and controlled maintenance needs are directly related. Deferred maintenance includes both controlled maintenance projects, and smaller repair and replacement of components, funded with operating funds. The Department prefers to identify deferred maintenance items at an early stage, via routine maintenance, and if funding allows, make the required repairs at a component level. If left unrepaired, the maintenance components become too great to fix with operating funds as the issue now requires entire system replacement and becomes a controlled maintenance project.*

*Smaller system component repairs do not need to go through the Capital Development Committee (CDC). These items are funded through maintenance operating funds and are handled within the Department. All controlled maintenance requests are submitted to the Office of the State Architect (OSA) each July, reviewed and ranked by OSA, and then submitted to the CDC.*

*There is a priority ranking system for deferred maintenance as with controlled maintenance. With limited funding, operating repairs tend to be addressed on an as-needed emergency basis.*

*Deferred maintenance needs are not rated by OSA. These needs are ranked internally by the Department's FMS staff, through discussions with facility physical plant managers.*

13. If DOC is reducing Personal Services for sex offenders, how can this be reconciled with the department's response to the audit of the sex offender program? Is it consistent? What is DOC doing to address the deficiencies found in the audit?

***Answer:** It is expected that a reduction in Personal Services in the area of sex offender treatment will have a limited impact due to the relatively consistent number of Sex Offender Treatment and Monitoring Program (SOTMP) employees over the last several years. The Department will continue to evaluate and promote staff retention for the SOTMP.*

*The Department has embraced the Behavioral Health audit results, creating an implementation plan that specifically addresses the 11 recommended areas of improvement and includes clearly defined processes to ensure: the improvement of controls for policy/procedure compliance, the modification of applicable policies and*



*clinical standards, and the implementation of consistent monitoring practices in the form of quality audits. In an effort to ensure consistent implementation statewide, the audit results and the implementation plan were communicated to all facility health services administrators and behavioral health supervisors, with the expectation that this information be communicated to line staff. Implementation progress will be provided to the Assistant Director of Clinical Services and the Director of Clinical and Correctional Services monthly.*

R5 Food Service Equipment:

14. This request redirects food-service personal services to food-service equipment. What personal services won't be provided? Where did that money go before?

***Answer:** The proposed redirection of food service personal services funding will not result in a reduction of service. The proposed reduction is reflective of turnover savings that have occurred in the program. In this case, the FY 2015-16 personal services appropriation exceeded the expenditures not covered by benefits by approximately \$400,000. Although expenditures were below the funds appropriated, the Department utilized 99.2 percent of the appropriated full-time equivalents (FTE) in the food service program in FY 2015-16. This program also experienced turnover savings in FY 2014-15 but prior to that, the salary, PERA, and Medicare expenditures were much closer to the appropriated funds.*

R? Parole Caseload Adjustment:

15. If the department did ask for a parole caseload adjustment, what adjustment would it ask for?

***Answer:** The Department would not ask for a parole caseload adjustment given the disparity between the parole population forecasts provided by the Division of Criminal Justice (DCJ) and Legislative Council Staff (LCS) in December 2016. From an ending population of 8,402 in FY 2015-16, DCJ is projecting a gradual decrease in the current year with more significant decreases in FY 2017-18 and FY 2018-19. On the other hand, LCS is projecting gradual increases in the parole population through FY 2018-19. There is a difference of 177 parolees between the two forecasts at the end of FY 2016-17, and it grows to a difference of 870 in FY 2018-19 and 1,449 by the end of FY 2018-19.*

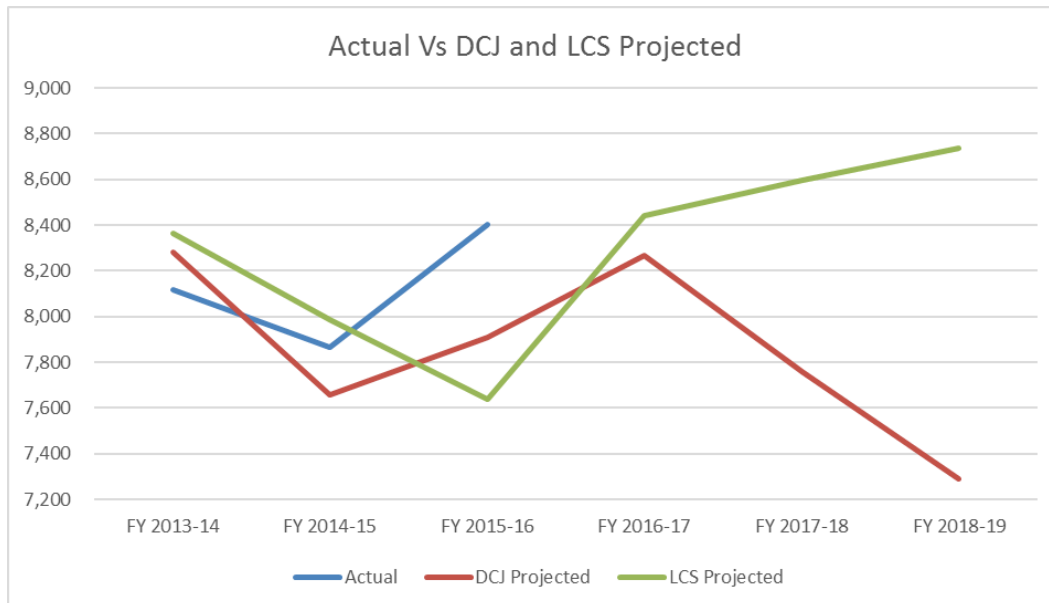
*The Department is currently funded for a parole caseload of 8,280. This funding includes both FTE and a variety of contract services. The current caseload funding level falls between the FY 2017-18 average daily population (ADP) projections for DCJ and LCS. The ADP is calculated as the average of the FY 2016-17 and FY 2017-18 ending population projections. This equates to 7,996 for DCJ  $((8,266 + 7,725)/2)$ . The ADP using the LCS forecast is 8,519  $((8,443 + 8,595)/2)$ .*

The table and chart below illustrate the volatility of actual populations from June 30, 2014 to June 30, 2016, along with the DCJ and LCS projected population through FY 2018-19. As of June 30, 2016, there was an actual population swing of 492 parolees with the DCJ projected population and an even more dramatic increase of 764 from the LCS forecast. If a caseload adjustment is made for FY 2017-18 based on the DCJ December 2016 forecast, the Department will most likely be underfunded but could be overfunded if using the LCS projected population.

Maintaining the current staffing levels will provide continued stability in the Division of Adult Parole and allow staff to focus on the successful re-entry of offenders as they return to their communities and become pro-social, productive taxpaying members of society.

Actual vs. DCJ and LCS Projected Parole Population			
End of Fiscal Year	Actual	DCJ Projected	LCS Projected
FY 2013-14	8,116	8,280	8,365
FY 2014-15	7,865	7,659	7,985
FY 2015-16	8,402	7,910	7,638
FY 2016-17		8,266	8,443
FY 2017-18		7,725	8,595
FY 2018-19		7,290	8,739

Note: DCJ and LCS projected populations came from the December 2013 (FY 2013-14), December 2014 (FY 2014-15), December 2015 (FY 2015-16), and December 2016 (FY 2016-17 and beyond) forecasts.



**3:00-3:15**     **BREAK**

**3:15-4:30**     **ISSUES**

Turnover and Vacancy Surplus in the DOC:

16. What does the department think of the theory presented in this issue? Is this how it works?

*Answer: The Department is in general agreement with the theory. However, there are several factors that contributed to the Department's personal services reversion in FY 2015-16 (\$13.8 million General Fund or approximately 3 percent of personal services appropriations).*

*The Department opened seven new prisons between 1993 and 2001 to provide housing for the increasing number of offenders in Colorado. Staff members hired when these facilities became operational are now, almost simultaneously, reaching retirement age; those hired before July 2001 also experienced annual anniversary and step increases which moved them upward through the salary ranges. As the Department loses more of the staff that received anniversary and step increases, it expects to experience a reduced savings effect from position turnover.*

*For non-entry level positions, it can be assumed the staff selected to fill the position will not, in most cases, be paid at the same rate of the more experienced staff that have departed. However, it is also likely that the replacement will not be paid the starting salary rate, particularly when the position is filled through an internal promotion. In this regard, the Department differs with the theory presented as it cannot be assumed that "...turnover surplus is the difference between the salary of a departing worker and the starting salary". The Department also experiences a high level of turnover in entry level positions, such as the Correctional Officer I class. In this case, there would likely be little to no turnover savings as the new staff would be hired at or near the same salary of the staff that departed.*

*The Department is in agreement with the point made regarding pay raises (p. 48 of briefing document): "raises are needed to produce turnover surplus, but the surplus might not appear for years". The realization of turnover savings is a recent phenomenon for DOC, beginning in FY 2014-15. This coincided with the receipt of salary survey/merit pay increases after several years of no pay increases, as well as the full funding of shift differential. Prior to these changes, turnover savings were suppressed due to the need to use the funds to close the gap when shift differential was funded at 80 percent as well as cover unfunded costs such as overtime or shortfalls in other employee benefits appropriations.*

17. How does the Department plan to use its SERF account?

*Answer: The Department does not have plans for the State Employees Reserve Fund (SERF) account for FY 2017-18. The Governor's FY 2017-18 budget request includes a transfer of the anticipated \$46.9 million balance in the SERF fund (from all agencies) into the General Fund to balance the budget, which will allow a possible across-the-board salary survey increase for all state employees. The Department supports this effort.*

18. Does the Department plan on turnover and turnover savings? Does the fact that the Department is not using these appropriations for mental health, etc, impact the quality of the programs? If the turnover savings was directed back into the programs it comes from, would the programs be improved?

*Answer: Yes, the Department does plan on turnover and turnover savings. Staff turnover is a constant in any large organization and DOC is no exception. Prior to FY 2014-15, savings generated from turnover was applied to unfunded costs such as overtime and shift differential and did not materialize as an end-of-year reversion from the personal services appropriations.*

*The fact that the Department is not using all of the personal services appropriations does not impact the quality of the programs in those areas. In three programs, mental health, sex offender treatment, and parole, there are vacancy savings due to the challenges discussed in the response to Question 4. The reductions in these areas will not impact the quality of the programs as the staffing levels have been relatively consistent in recent years. The Department believes using the personal services funds as outlined in Requests 1 through 5 is the best use of these funds.*

#### Sex Offender Treatment:

19. Could the sex offender treatment program be moved to a high population area so DOC can hire more therapists? Where?

*Answer: Yes, sex offender treatment program services could be moved to a high population area, such as Denver, where a greater applicant pool of sex offender treatment therapists exists; however, this applicant pool is extremely limited, even in higher population areas, for a number of reasons. As described in the response to Questions 4 and 5, Colorado's stated minimum requirements for professional behavioral health staff include experience and licensure. Of those candidates interested in professional counseling, sex offender treatment is not sought after. In addition, Sex Offender Counselors are required to comply with the Colorado Sex Offender Management Board (SOMB) provider requirements within 30 days of employment and are required to follow the treatment provider guidelines. There has also been a significant drop in SOMB applicants through the Department of Regulatory Agencies in FY 2015-16. For the most recent fiscal year, 23 new adult treatment provider applications were processed compared*

to 40 applications in FY 2014-15. The number of renewals also dropped from 77 to 59 in those two years. With that said, recruitment of a finite number of sex offender therapists from the community would ultimately result in a deficit (vacancy) in community providers, including those that provide treatment to releasing offenders.

20. Why is it difficult to hire and keep employees for this program? Did the department change job expectations when the program changed? Did responsibilities increase? Salary?

**Answer:** *It is difficult to hire employees for the Sex Offender Treatment and Monitoring Program (SOTMP) due to the reasons cited in Question 19. It is difficult to retain employees for this program due to dissatisfaction with working in a prison environment and salary.*

*No, the Department did not change job expectations or increase job responsibilities when the program changed; however, there was a strong shift in the culture of the treatment program. The therapeutic model changed to the Risk, Needs and Responsivity (RNR) Model, among other changes recommended from the 2012 program evaluation, which required many therapists to implement a different approach to treatment. Some of the therapists that left the Department's SOTMP have cited an unwillingness to use the RNR model as their reason for resigning. As stated in the response to Question 4, an in-range salary movement increase was implemented in January 2014.*

21. Please comment on the treatment wait list. How much could be saved could from bringing treatment to Denver?

**Answer:** *The Department does not have a treatment wait list. A global referral list is utilized to prioritize sex offense specific treatment based upon parole eligibility date, ongoing comprehensive risk assessment, and willingness to participate in treatment. To be placed on the referral list, offenders must have four years or less to parole eligibility date. There are 386 lifetime supervision sentenced offenders on the global referral list. 161 of them are past their eligibility date. 94 of the 161 were not always compliant to treatment. 67 of the 161 have met participation requirements, are considered ready for treatment, and are prioritized.*

*A cost savings would not be anticipated due to a shift in location.*

22. Has the department implemented individualized sex offender treatment as recommended by the 2012 outside reviewers? For example, are there customized Phase I programs for sex offenders with differing needs? Based on the results for those who have completed treatment, is the revised sex offender program effective?

**Answer:** *Yes, the Department has implemented individualized sex offender treatment as recommended in the 2012 program evaluation. The treatment program is now separated*

into specific risk tracks, one for high risk and one for low risk. Offenders participate in on-going assessments to determine the appropriate risk track. In addition to treatment groups based on individual offender risk, the SOTMP has specialized groups to address specific treatment needs. The SOTMP has developed specialized services to provide treatment for females, youth, Spanish speaking, offenders with persistent mental illness, medical restrictions, hearing impairments, and intellectual and developmental needs.

According to the 2016 Annual Lifetime Supervision Report, in FY 2015-16, 89 lifetime supervision and 67 determinant sentenced sex offenders met criteria for successful progress in prison treatment for a total of 156, exceeding the goal of 150 program completions.

Recidivism is defined by return to prison within 3 years of release. Since implementation of the evaluation recommendations in 2013, recidivism rates for this cohort are not yet available.

Private Prison Effectiveness:

23. Can we use the federal study of federal private prisons as a guide to gather and analyze information about the effectiveness of Colorado’s private prisons? On this basis, how do Colorado’s public and private prisons compare?

**Answer:** *There are aspects of the federal study that can be used as a guide; however, there are differences that need to be considered. The below table compares the findings from the federal study to Colorado’s experiences with private prisons:*

<i>Federal BOP / Findings</i>	<i>DOC Contracted Facilities</i>
<i>Low Security offenders 90 months or less time remaining to serve.</i>	<i>Medium, Minimum Restrictive, Minimum offenders. Various sentence lengths – some of which are longer term.</i>
<i>Identified “more safety and security incidents per capita than comparable BOP institutions...”.</i>	<i>Safety and security incidents per capita are not determined to be significantly higher in the private prisons.</i>
<i>Lack of detailed monitoring tools – insufficient checklist for onsite monitors</i>	<i>DOC has a designated monitoring unit that does onsite monitoring. DOC utilizes Weekly, Monthly, Quarterly and Annual monitoring tools that addresses DOC policy and contractual requirements.</i>

<i>A result was determined that the BOP cannot “...effectively ensure that the contract prisons comply with the contract requirements and BOP policies...”</i>	<i>With the monitoring tools that DOC utilizes, along with various audits conducted, such as Security Audits and Program Audits, and the assessment of liquidated damages for contract violations, the Department enforces compliance.</i>
<i>In recent years, disturbances in several federal contract prisons resulted in extensive property damage, bodily injury, and the death of a Correctional Officer. Private facilities had higher rates of incidents of contraband and assaults.</i>	<i>According to the 2013 private prison study, the Department has not seen significant disturbances or incidents in Colorado private prisons.</i>
<i>Determination that the facilities had significant issues meeting minimum staffing requirements.</i>	<i>Contractually, DOC has held the private facilities to a minimum staffing level and have assessed liquidated damages for contract violations since 2005.</i>
<i>Reported that they were unable to accurately determine offender cost per day. CCA in their 2015 annual report states that their revenue per compensated man-day is \$72.76 but fixed expenses and variable expenses total \$52.49</i>	<i>The Colorado private prison daily bed cost is \$56.02.</i>

*It is not possible to compare Colorado public prisons to Federal or Colorado private prisons due to differences in classification, medical needs, mental health needs, treatment needs, and programming needs.*

24. Should we close Colorado’s private prisons as the feds plan to do based on an analysis similar to the federal study?

*Answer: The offender population in state and private prisons was 17,509 on November 30, 2016. The current capacity of state prisons is 14,349. The Department’s partnership with the private prison providers helps to accommodate the total prison population.*

25. Some offenders cannot be placed in private prisons because it would violate statute and DOC rules. The Department’s 2013 private prison report excluded these offenders when making comparisons of private and public prisons. Did that adjustment lead to fair comparisons?

*Answer: A first step when comparing groups is to mitigate as much difference between the groups as possible so that any effect observed can be more confidently attributed to the independent variable, in this case the percent of time spent incarcerated in a private prison. In addition to excluding offenders ineligible for private prisons based on the*

*criteria established by statute, the study's authors used propensity score matching to ensure that the groups were highly similar on other variables including; offense degree, release type, violations of the code of penal discipline, gang status, age, ethnicity, and needs levels.*

*The Department's 2013 private prison report (page 10) states "The ideal research study would compare a sample of offenders who spent their entire incarceration in private prisons with a sample of offenders who spent their entire incarceration in state prisons, and the two samples would be highly similar in every respect except for the type of prison where they were incarcerated. This was not possible because no offenders spent their entire incarceration in private prisons." After discussion with outside consultants, the study's authors agreed to proceed with analyzing the data in multiple ways, with multiple fiscal years of offender releases, to determine consistency in the results.*

#### **ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

- 1 Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

##### **(a) Legislation not implemented**

*Answer: The Department is in the process of implementing SB 16-180, concerning creating a specialized program for offenders who were sentenced as an adult for an offense they committed as a juvenile. The CDOC has until August 2017 to complete the design for the program and until November 2017 to place eligible offenders in the program. Several focus groups are currently working on curriculum for the educational, vocational, life skills, cognitive thinking, mental health, and pre-release/re-entry aspects of the program for this specialized population.*

##### **(b) Legislation partially implemented**

*Answer: SB 13-210, Concerning Employment Conditions for Correctional Officers, was signed into law by Governor Hickenlooper on May 24, 2013. In summary, the legislation requires the Department to establish staffing levels at each correctional facility and private prison by security level; develop a criteria when a correctional officer works two consecutive shifts and to pay overtime; and establish a new work period for staff subject to provisions of the Fair Labor Standards Act. The DOC is in compliance with these provisions of the Act.*

*Additionally, the Department is required to provide all DOC employees with a pay stub that clearly and accurately reflects all hours worked, among other requirements. The Department*



*of Personnel and Administration (DPA) is currently researching vendors to implement a Human Resources Information System that will include payroll systems that will accurately reflect all hours worked, standard rate of pay, overtime worked, leave accruals, and leave and compensatory time balances.*

*Finally, the Department is currently collaborating with DPA and the governor's Office of Information Technology to modernize the Department's personnel timekeeping system. To that end, the state has entered into an agreement with a vendor for the implementation of an electronic timekeeping system. The timekeeping project has progressed from the requirements design phase and the proof of concept, to the start of the system testing phase. The timekeeping module is scheduled to "roll out" to the Department in November 2017. The fielding of the new timekeeping system will produce a system that is transparent, accountable, and easily employed by department personnel, as required by SB 13-210.*

- 2 If the Department receives federal funds of any type, please respond to the following:
  - a. Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2016-17.

*Answer: The Department is not aware of any actual or potential federal sanctions of state activities related to federal funding.*

- b. Are expecting any changes in federal funding with the passage of the FFY 2016-17 federal budget? If yes, in which programs, and what is the match requirement for each of the programs?

*Answer: The annual State Criminal Alien Assistance Program award from the Federal Bureau of Justice Assistance increased approximately \$900,000 from the award received in FY 2015-16; there is no match requirement for this program. The Department is not aware of any other funding impacts related to federal grants.*

- 3 Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report of Audit Recommendations Not Fully Implemented" that was published by the State Auditor's Office and dated June 30, 2016 (link below)? What is the department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations?

*Answer: In accordance with the State Auditor's Office report dated June 30, 2016, the Department does not have any recommendations classified as High Priority Outstanding.*

- 4 Is the department spending money on public awareness campaigns? What are these campaigns, what is the goal of the messaging, what is the cost of the campaign? Please distinguish between paid media and earned media. Do you have any indications or metrics

regarding effectiveness? How is the department working with other state or federal departments to coordinate the campaigns?

*Answer: The Department does not spend any money on public awareness campaigns.*

- 5 Based on the Department’s most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy?

*Answer: The Department had 6,189 active employees and 925 separations for a total 15 percent turnover rate in FY 2015-16. Although division level data is not available at this time, the following turnover data is provided for five key classes:*

FY 2015-16 Turnover by Class

Class Title	Total Active Employees	Separations	Turnover Rate
Corr/Yth/Clin Sec Off I	2,296	427	19%
Corr/Yth/Clin Sec Off II	720	64	9%
Corr/Yth/Clin Sec Off III (supv & spec)	307	25	8%
Corr Supp Trades Supv I	507	57	11%
Comm Parole Officer	207	30	14%
Agency Total	6,189	925	15%

*The Department attributes the turnover rate to salary concerns. The current workforce falls well below range midpoints with 66 percent of staff falling in quartile 1, 13 percent in quartile 2, 11 percent in quartile 3, and 10 percent in quartile 4. Per the FY 2017-18 Compensation Report, base salaries for state employees are 5.7 percent below market median. In addition, 75 percent of the workforce is in the Enforcement and Protective*

*Services occupational group, which is 9 percent below market median. The following were the top reasons for separation:*

- *Accepted new job outside of system:* 221
- *Full service retirement:* 159
- *Personal reasons:* 158

*The Department's vacancy challenges have been in the behavioral healthcare professions as well as with Community Parole Officers. A detailed discussion of these vacancy challenges is provided in the Department's response to Question 4 of the department-specific questions received from the Committee.*

- 6 For FY 2015-16, do any line items in your Department have reversions? If so, which line items, which programs within each line item, and for what amounts (by fund source)? What are the reasons for each reversion? Do you anticipate any reversions in FY 2016-17? If yes, in which programs and line items do you anticipate these reversions occurring? How much and in which fund sources do you anticipate the reversion being?

*Answer: The Office of State Planning and Budgeting submitted a report to the Joint Budget Committee on November 2 that shows the transfers by agency into the State Employee Reserve Fund (SERF) for FY 2015-16. In addition, the Department submitted a Schedule 3 with its FY 2017-18 budget request that details the reversions that were not part of the transfer to the SERF. The Schedule 3 details include line item and fund source information.*

*The Department is requesting a \$5,000,000 reduction in General Fund personal services appropriations in a FY 2016-17 supplemental request. The proposed reduction of funding would be in lieu of reverting those funds.*

- 7 [Background Information: For FY 2017-18, the Department of Law has submitted a request to change the calculation of legal services appropriations as well as the monthly billing system for legal services provided to state agencies. Specifically, the proposal would: 1) calculate the number of budgeted legal services hours for each agency as the average of actual usage in the prior three years; 2) include a two-year average of "additional litigation costs" such as court reporting, travel for depositions, expert witness costs, etc., in the appropriation for legal services (these costs are not currently included in the appropriation and are often absorbed from other personal services and operating expenses line items); and 3) convert from monthly billing based on the actual hours of service provided to monthly billing based on twelve equal installments to fully spend each client agency's appropriation.]

Please discuss your agency's position on the Department of Law's proposed changes to the legal services system, including the potential impacts of the changes on your agency budget. That is, does your department support the proposed changes? How would you expect the changes to positively or negatively impact your department? Please explain.

*Answer: The Department of Corrections is supportive of the proposed changes to the legal services appropriation in FY 2017-18. The new methodology will provide predictability for legal services expenditures and eliminate the need to find other funding sources when the appropriation is insufficient. These changes are expected to positively impact the DOC, as a reduced DOC appropriation is projected under this request.*

- 8 What is the expected impact of Amendment 70 (minimum wage increase) on Department programs? Please address impacts related to state personnel, contracts, and providers of services.

*Answer: Amendment 70 will have minimal impact to the Department's General Fund programs, as the minimum wage increase will affect a small number of positions, namely temporary staff and a few trainee positions in the Department. The largest impact will be with the Correctional Industries cash funded operations with Prison Industry Enhancement (PIE) Certification Programs, which requires offenders to be paid minimum wage for products produced in Colorado and shipped out of state to private customers and non-state entities. While the impact is only now in discussion stages with venture partners, the wage increase may affect business revenue if these partners make a business decision to reduce their use of CI for production of their products. Currently, the Department's PIE programs include the saddle shop in Buena Vista Correctional Facility, portions of the garment factory at Limon Correctional Facility, license plate plant at Colorado Territorial Correctional Facility, furniture shop at Fremont Correctional Facility (FCF), metal shop at FCF, the fiberglass shop at FCF; and the seating factory at Sterling Correctional Facility.*

- 9 Please provide an update on the Department's status, concerns, and plans of action for increasing levels of cybersecurity, including existing programs and resources. How does the Department work with the Cybersecurity Center in the Office of Information Technology?

*Answer: The Office of Information Security, within OIT, provides security governance, security architecture, risk management, compliance assessment support, and security operations functions for the Department of Corrections.*

*The Office of Information Security has input into the 5-year plans for the Department and has worked to prioritize projects benefiting the Department such as: the Enterprise Firewall Refresh project, new quarterly security awareness trainings, and an enterprise security log collection and correlation engine. Additionally, OIT implemented a mandatory two-factor authentication for Google email users across the executive branch agencies, which is expected to reduce phishing attempts by 90 percent.*

*Also, the Office of Information Security produces a quarterly risk report card in which they measure risk for the Department and have specific goals set for reducing risk.*

- 10 Is the SMART Act an effective performance management and improvement tool for your Department? What other tools are you using? Do your performance tools inform your budget requests? If so, in what way?

*Answer: The Department's performance plan, required by the SMART Act, is a valuable tool. Each year the Department analyzes its operations and selects strategic policy initiatives that will best assist offenders to successfully reintegrate into society. By having a written plan with defined strategies and operations, along with metrics and goals to track progress, the Department can gauge the effectiveness of the chosen initiatives. It can also identify shortcomings in current operations allowing the Department to correct those insufficiencies. A performance plan is also beneficial because it not only advises staff of the priorities of the Department, it also illustrates to the public how the Department is carrying out its mission.*

*The Department's FY 2017-18 decision item for the Mother/Baby Unit ties to the Department's Performance Plan by promoting behavioral health for female offenders in allowing them to learn and grow as individuals and parents, and establishing a bond between the mother and child. This experience will encourage responsible and productive behavior while reinforcing good decision making patterns and rewarding program compliance.*

*The FY 2017-18 SCF Restrictive Housing Staffing decision item builds on the Performance Plan value statement that "we are dedicated to providing opportunities for offender success." The Restrictive Housing – Maximum Security (RH-MAX) offenders would have opportunities to participate in a minimum four hours of daily out-of-cell individual, small group pro-social, educational, and cognitive intervention activities. The additional out-of-cell time offered to these high risk offenders will serve to promote pro-social interaction and better prepare them for successful reintegration into less restrictive general population facilities and eventually back into the community. Also, by providing additional out-of-cell opportunities Colorado will eliminate the use of extended restrictive housing (long term segregation of 30-plus days), being the first state in the nation to do so. Allowing offenders housed within extended restrictive housing to participate in a minimum four hours of daily out-of-cell activities removes them from the restrictive housing umbrellas, thus allowing the Department to classify them appropriately.*

- 11 Please identify how many rules you have promulgated in the past two years. With respect to these rules, have you done any cost-benefit analysis pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analysis pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.

*Answer: Per Section 17-1-111 C.R.S., the Department is not subject to the requirements of Section 24-4-103 C.R.S. Rule-Making, and thus does not promulgate rules.*

- 12 What has the department done to decrease red tape and make the department more navigable/easy to access?

*Answer: The Department has revamped its website for easier navigation. Included on the DOC website are links to reports and statistics, legislative reports, policies, dashboard measures, performance plans and regulatory agendas, as well as information on visiting, how to contact an offender, or how to send an offender money, among other informational documents. In addition, the Department regularly holds stakeholder meetings with citizen advocates, offender advocates, and victims. These meetings are open to the public and provide opportunities for justice involved and/or interested individuals to have their voices heard and for the Department to interact with constituencies. The Department prides itself on being transparent and accessible.*

- 13 What is the number one customer service complaint the department receives? What is the department doing to address it?

*Answer: The number one customer service complaint the department receives in terms of inquiry category is related to offender visitation. This category includes general questions regarding the visitation application process, inquiries/complaints regarding processing time, and inquiries/complaints due to lack of notification when visitation is cancelled. In order to address these customer service needs, the Department has revamped its website and provides detailed information on the parameters of visitation including general information, the approval process, rules and guidelines, and links to visiting forms. In addition, the Department posts on the main page of the website any time that visitation is cancelled due to a facility lock down or other unforeseen circumstance. Furthermore, the Department regularly conducts Citizens' Advocate Meetings with offender families to share information and to learn how the Department can better address their needs.*

# Colorado State Board of Parole Annual Report: FY 2016

**A REPORT SUBMITTED TO THE MEMBERS OF THE JOINT BUDGET COMMITTEE**



**January 2017**

**Colorado State Board of Parole**

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## Colorado State Board of Parole Annual Report | 2016

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This report is intended to provide the members of the Joint Budget Committee of the Colorado General Assembly with information on a review of the Parole Board's Fiscal Year 2016 operations, projects/activities, and performance measures. Additionally, appended to this report as **Exhibit A** is a separate analysis of presumptive parole procedures related to C.R.S. 17-22.5-404.5 (2016).



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## **Parole Board Operations:**

The Colorado Board of Parole (“Parole Board” or “Board”) consists of seven members who are appointed by the Governor and confirmed by the Senate. Board members serve three-year terms at the will of the Governor. Board members may be re-appointed for more than one term.

### ***Current Parole Board Members***

**Joe Morales, Chairperson of the Board**, serves as a former law enforcement officer on the Board and holds over 30 years of law enforcement service. Mr. Morales was originally appointed to the Board in 2013 to a three-year term as a Board member. In September 2015, Mr. Morales was appointed to serve as Chairperson for the Board and then reappointed for a 3-year term in July 2016. The Chairperson is the administrative head of the Parole Board. It is Mr. Morales’ responsibility to enforce the rules and regulations of the Board and to assure that parole hearings are scheduled and conducted properly.

**Rebecca Oakes, Vice-Chairperson of the Board**, was originally appointed to the Board in 2007 as a citizen member on the Board. She was appointed Vice-chairperson of the Board in July 2013. Ms. Oakes has extensive experience working in the field of victim services. Ms. Oakes was most recently reappointed for a three-year term in July 2016. The Vice-Chairperson assumes the responsibilities of the Chairperson in his or her absence.

**Denise Balazic** was originally appointed in 2011 to serve as a former parole officer on the Board. Ms. Balazic has extensive experience as a Probation and Parole officer, Addiction Counselor and leadership and management trainer. Ms. Balazic was reappointed for a 3-year term July 2014.

**Dr. Brandon Mathews** was appointed as a citizen member of the Board in September 2016 through 2017 to replace a resignation of a previous Board member. Dr. Mathews has a decade of experience in various criminal justice roles, including institutional and community corrections, the judicial system, and correctional investigations. Most recently he held positions as the Director of a community correctional facility in Southern Colorado and the State Director of five residential community correctional facilities across the state, where he spearheaded efforts to change culture and implement innovative treatment programs and evidence-based practices.

**John O’Dell** was originally appointed to the Board as a former law enforcement officer in 2011. His most recent reappointment for a 3-year term was in July 2015. Mr. O’Dell retired as a command officer for the Denver Police Department after 30 years of service.

**Alfredo Peña** serves as a citizen member of the Board, originally appointed in 2012. Mr. Pena has extensive experience as an attorney, emphasizing civil, criminal, and administrative trial representation before Federal and State courts. He was reappointed for a 3-year term July 2014.

**Alexandra Walker** was appointed in 2015 as a citizen member of the Board and reappointed for a 3-year term July 2016. She has an extensive background in corrections, training/education, implementation science, and substance use and mental health treatment.

## ***Mission***

The mission of the Parole Board is to increase public safety by critical evaluation, through the utilization of evidence-based practices of inmate potential for successful reintegration to society. The Board determines parole suitability through the process of setting conditions of parole and assists the parolee by helping to create an atmosphere for a successful reintegration and return to the community (Colorado Board of Parole Strategic Plan; created in accordance with the SMART Government Act, section 2-7-201, C.R.S. (2016)).

## ***Staffing***

The Parole Board is supported by eleven (11) full-time employees (FTE). The Board support staff is structured as follows:

- Parole Board Administrator (1 FTE)
- Office Manager, Pueblo (1 FTE)
- Revocation Unit, Pueblo (4 FTE)
- Application Unit, Pueblo (2 FTE)
- Administrative Support Staff, Pueblo (1 FTE)
- Administrative Support Staff, Denver (1 FTE)
- Statistical Analyst, CO Springs (1 FTE)

During FY 2016, the Board also utilized several contract employees, including: (a) two (2) Administrative Hearing Officers to conduct revocation hearings pursuant to 17-2-202.5, C.R.S. (2016); (b) a defense attorney to represent parolees who are not competent to represent themselves during revocation hearings; (c) a Release Hearing Officer to conduct application interviews pursuant to section 17-2-202.5, C.R.S. (2016); and (d) one temp-worker in Pueblo to help scan files for the Board's automation project.

## ***Budget***

The following illustrates appropriations made to the Board of Parole from FY2011-12 through FY 2016-17:

	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
<b>Personal Services</b>	\$1,348,408 <b>(17.5 FTE)</b>	\$1,197,526 <b>(12.5 FTE)</b>	\$1,197,526 <b>(13.5 FTE)</b>	\$1,197,526 <b>(13.5 FTE)</b>	\$1,376,891 <b>(16.2 FTE)</b>	\$1,389,395 <b>(16.2 FTE)</b>
<b>Operating Expenses</b>	\$101,545	\$99,545	\$104,890	\$104,890	\$106,390	\$106,390
<b>Contract Services</b>	\$152,000	\$228,637	\$288,437	\$272,437	\$272,437	\$272,437
<b>Start-Up Costs</b>	0	0	0	0	\$14,109	0
<b>Total</b>	\$1,601,953	\$1,525,708	\$1,590,853	\$1,574,853	\$1,769,827	\$1,768,222

## ***Training***

Pursuant to section 17-2-201 (1) (e), C.R.S. (2016), each member of the Parole Board is required to undergo at least 20 hours of professional development training each year. This is an obligation the Board takes very seriously and the Board has logged well over the statutorily required limit in the past year.

FY 2016 training activities and topics have included:

- Victim Advocates
- CARAS
- Victim-offender Dialogue
- Time & Release Rescission Process
- Cyber Security Awareness
- Community and CRCF Placement Training
- Revocation Appeals
- C-TAP
- Re-Entry
- Active Shooter
- Victim Right's Act
- Association of Parole Authorities International Convention (Available Trainings):
  - Biological and Psychological Effects of Trauma
  - The Science of Decision Fatigue

- Brain Development- Birth Through Adolescence: Why Does It Matter, What Can We Do About It?
- The Effectiveness of GPS Monitoring on the Outcomes of Florida Offenders Placed on Post-Prison Conditional Release Supervision
- Implicit Bias in Parole Decision-Making
- Offender Re-entry: The Value of Victim Involvement
- Understanding the Deportation Life Cycle & How ICE Can Work For You
- Inside the Mind of a Psychopath: A Primer for Paroling Authorities
- Paroling Authorities as We Find Them Today
- A Proactive Response to Domestic Violence: Identification, Management, & Programming for Offenders who Use Violence in Relationships
- Canada's New Victims' Bill of Rights
- Security Threat Group Identification
- Security of Decision Makers- Active Shooter Training
- Stress in Law Enforcement & Corrections
- International Innovative Practices
- Enhancing Parole: The Importance of Fidelity
- The Keys to a Fair & Legally Sound Administrative Hearing
- Justice Reinvestment, Crime Victims and Paroling Authorities

## ***Collaborations***

In addition to the training listed above, the Parole Board made a concerted effort to improve communications between Department of Corrections (DOC) Case Managers, Community Parole Officers, and Board members and staff. It also participated in a variety of initiatives, work groups, and study committees.

The following is a list of site visits the Board made to various facilities and programs during FY 2016:

- Fremont County Parole Division
- Pueblo County Parole Division
- Camp George West
- Cheyenne Mountain Re-Entry Center
- San Carlos Correctional Facility
- Harvest Farms
- Second Chance Center Tour

In addition to site visits, the Board also participates in a number of initiatives with other stakeholders. The following is a list of initiatives and collaborations that Board members participated in during FY 2016:

- Commission on Criminal and Juvenile Justice ("CCJJ")
- CCJJ Re-Entry Task Force Subcommittee
- CCJJ Mandatory Parole Subcommittee
- CCJJ Community Corrections Task Force Subcommittee

- CCJJ Mental Health/Jails Task Force
- CCJJ Condition's Working Group
- CCJJ-Standards Subcommittee
- CCJJ-ISP-I Working Group
- Discovery Channel Documentary
- SOTMP Programming
- Robina Institute of Criminal Justice
- CDOC OIT Revocation Automation
- Restorative Justice Council

OTHER STAKE HOLDER MEETINGS DURING FY 2016:

- Voices for Victims
- Denver Community Corrections Board
- Citizen's Advocate Meeting
- Community Correction's Association Annual Meeting
- Community Corrections Advisory Board
- Advocates for Change
- Colorado Cure
- Colorado Immigration and Customs Enforcement
- Criminal Justice/Parole Board Presentation

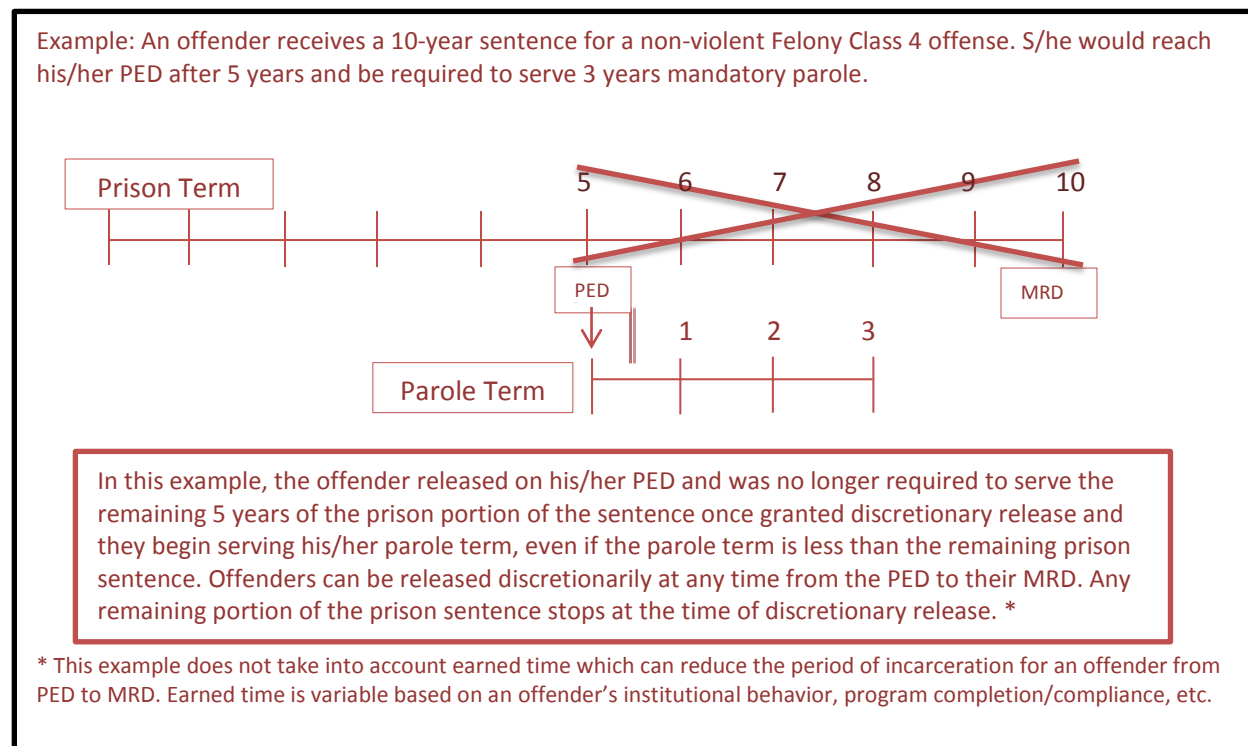
***New Board Member Training***

In 2014, the Board implemented an enhanced, formalized training program for new Parole Board Members and has continued to develop this structured training guide during FY 2016 with newly appointed Board members. A comprehensive training and reference manual has been created to accompany the newly developed training program. As members serve three (3)-year terms and the terms of different members are staggered, the Board experiences a relatively high rate of turnover. Historically, training of Board members has been an "on-the-job-training" process. However, the laws, rules, and regulations governing our process are very complex. And, the magnitude of the decisions we make is very great. Therefore, by utilizing both the structured training program and the reference manual, the new Board member will be brought up to speed more quickly.

# Colorado Parole Process

Colorado has primarily a determinate sentence structure, with exceptions for certain offenses, such as certain sexual offenses, that can carry indeterminate sentences. The Colorado State Board of Parole holds the statutory authority to grant a discretionary release to an offender once s/he reaches his/her Parole Eligibility Date (PED). If an offender is granted discretionary release by the Parole Board, s/he stops serving his/her prison sentence and start serving his/her parole sentence. Figure 1 below illustrates the process of discretionary parole release in Colorado. Once an offender reaches his/her Mandatory Release Date (MRD), the Department of Corrections is mandated to release that individual to serve his/her statutory period of parole.

Figure 1:





## Types of Parole Board Hearings

The Parole Board conducts a wide variety of hearings and reviews: (1) parole application interviews, (2) Full Board reviews, (3) parole rescission hearings, (4) parole revocation hearings, (5) early release reviews, (6) special needs parole hearings, (7) interstate parole probable cause hearings, (8) sexually violent predator designation reviews, and (9) reduction of sex offender supervision level requests reviews.

During FY 2016, the Parole Board conducted:

- 16,188 Application Hearings
- 2,205 Full Board Reviews
- 673 Rescission Hearings
- 7,055 Revocation Hearings
- 692 Parole Early Release Reviews
- 42 Special Needs Parole Hearings
- 48 Interstate Probably Cause Hearings
- 62 Sex Offender Supervision Level Reduction Request

**Total: 26,965 hearings**

The Parole Board also completed the following during FY 2016:

- Issued 2,222 arrest warrants
- Granted 603 waivers
- Conducted 1,617 File Reviews in lieu of hearings

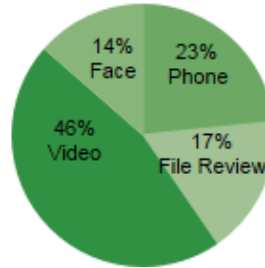
### ***Parole Board Application Hearings***

The Parole Board generally conducts initial Parole Application Hearings approximately three months prior to an offender's PED. If an offender is deferred at the time of the application hearing (i.e. not given a discretionary release), they are typically seen by the Board again one year from the time of the deferral action. There are certain crime types that can be deferred for a greater time period than one year. Also, there are certain instances in which a Board member may feel the offender needs to be seen before a year passes (i.e., the offender will have completed a program/class/treatment/etc. integral to his/her current criminogenic needs before the year time frame, and the Board member feels that his/her case should be reviewed once it's completed to determine when the offender should be released).

The application hearing can take place in person, via video conference, via phone, or by process of a file review depending on the circumstance and situation of each offender. In FY 2016, the majority (46%) of application hearings were conducted via video conference, phone conferences made up 23% of the application hearings, file reviews made up 17%, and 14% of application hearings were conducted in person or face-to-face (Figure 2).

Figure 2:

### FY 2016 Hearing Method



In addition to the statutorily defined criteria the Board must consider when conducting Parole Application Hearings, information that the Parole Board receives before, and at the time of, an offender’s application hearing is also utilized to determine the most evidence-informed release or deferral decision. The Colorado Department of Corrections’ staff provides information in the Application Hearing portal, an electronic portal that allows for Case Managers, Facility Community Parole Officers, Treatment Providers and other applicable staff to upload information for use during the hearing. The portal also contains the offender’s “Parole Plan.” The parole plan typically contains a brief synopsis of the offender’s criminal history, institutional conduct, program, treatment and class participation and completion information, as well as the offender’s self-determined residential and employment plan should s/he be granted release. The residential and employment plan information is rarely vetted prior to the Parole Board member making a release decision. The policy of the CDOC and the Division of Adult Parole is to investigate the parole plan information after an offender is granted release, rather than prior to the application hearing. This process is in place in order to alleviate the unnecessary investigation for those offenders who aren’t granted a release at the time of the application hearing. Therefore, the information provided to the Board member at the time of the application hearing could differ, and often does, from that obtained by the person investigating the parole plan. Unfortunately, this may lead to offender’s paroling homeless, if their original home plan is not deemed viable and the Board is not notified of this change in circumstance in order to rescind his/her original decision for release in order to find a more suitable housing plan.

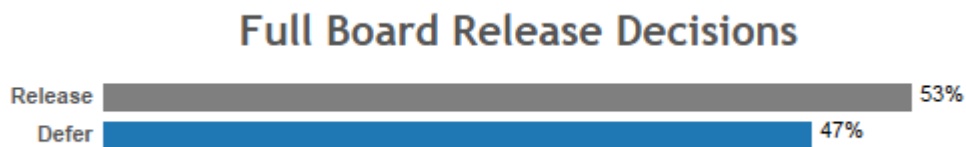
The portal and other electronic systems from the CDOC contain the offender’s most recent assessment(s) that are available and pertinent, which may include the CARAS (Colorado Actuarial Risk Assessment Scale), LSI (Level of Service Instrument), the Prisoner Intake Tools (PIT), Re-entry Tool (RT), and Supplemental Re-entry Tool (SRT). If an offender is a part of a needs-specific program or treatment program within the CDOC (i.e., sexual offense specific treatment), the treatment provider is also able to provide information directly to the Board member(s) at the time of hearing.

The quality of information provided to the Board can vary, and often correlates with the accuracy and detail of the information provided by the CDOC staff and information systems. The Board relies on valid and up-to-date information in rendering a release decision that ensures both the success of the offenders and their commitment to uphold public safety.

## ***Full Board Reviews***

Any discretionary release of an inmate that has been convicted of a violent or sexual crime as described by Colorado statute or by the policy and procedures of the Colorado Board of Parole is required to be reviewed by the Full Board. An offender eligible to be seen by the Full Board requires at least 4 affirmative votes to be released discretionarily. The Board sits as a Full Board at least once a week. In FY 2016, the Board conducted 2,205 Full Board hearings. Fifty-three percent (53%) of those seen by the Full Board were granted a discretionary release, while 47% were deferred either to the next eligible parole hearing or to his/her mandatory release date (Figure 3). Based on the 2014 release cohort, the recidivism rate after the first year on parole for offenders considered and released by the Full Board is 17.7%.

**Figure 3:**



## ***Rescission Hearings***

Rescission hearings are held to determine whether a previous decision for discretionary release should be rescinded for cause. The Board may suspend a grant of release pending a finalized rescission hearing based on receipt of information not previously considered by the Board, or upon receipt of information reflecting improper conduct by the offender including, but not limited to, acts that constitute a criminal offense or a serious CDOC disciplinary violation. During FY 2016, the Board conducted 673 rescission hearings.

## ***Parole Board Release Guideline Instrument***

As per 17-22.5-404(6)(a) and 17-22.5-107(1) C.R.S. (2016), the Parole Board Release Guideline Instrument (PBRGI) was developed by the Division of Criminal Justice and offers an advisory release decision recommendation for parole applicants who are not sex offenders. “The goal of the parole release guideline is to provide a consistent framework for the Board to evaluate and weigh specific release decision factors and, based on a structured decision matrix, to offer an advisory release decision recommendation for parole applicants” (*Analysis of Colorado State Board of Parole Decisions: FY 2015 Report* published by DCJ, September 2016). The Board considers all the factors specified in section 17-22.5-404, C.R.S. (2016) in making parole decisions, including the PBRGI, which incorporates the CARAS.

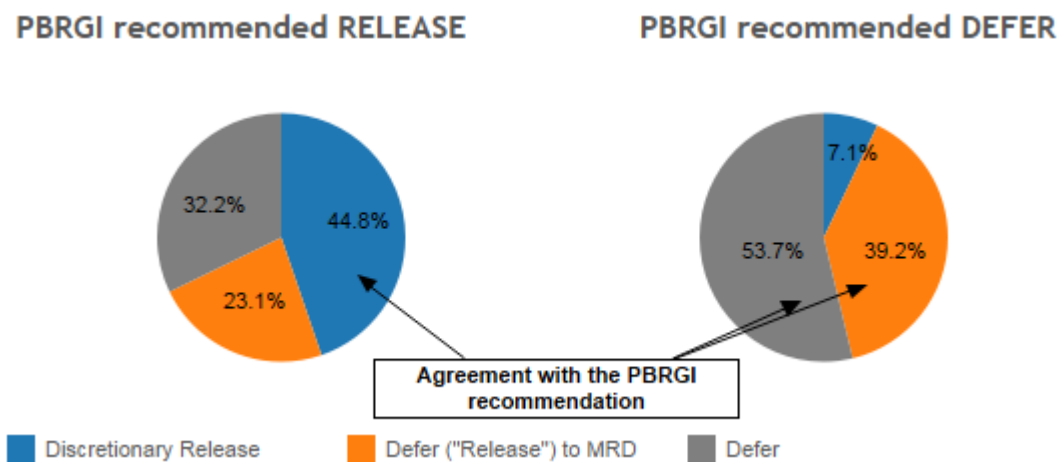
Currently, no evidence-based standard percentage exists for the number of discretionary releases that a releasing authority should provide. Experts caution that even the most reliable

risk assessment tools will result in some false positives and/or false negatives (Austin, 2004). Therefore, it is advised that properly executed professional judgment (“evidence informed discretion”) that addresses both the individual offender’s risk and needs assessments be utilized while addressing one’s risk of future criminal risk (Andrews & Bonta 2010; Austin, 2004; Bonta & Wormith, 2013; Wolff, 2008). The National Parole Resource Center (2016) advises that it’s critical to consider both the objective risk assessment information and the offender-specific information available in formulating an appropriate decision. At each hearing, the Board attempts to determine, based on both the available risk and needs assessments, what the appropriate outcome for release would be to maximize the success of each individual offender.

Currently, the Board has initiated discussions with DCJ of considerations regarding making future changes to the tool, to include additional information included in the PBRGI’s recommendation, such as misdemeanor convictions, recent failures in community corrections, and/or probation, etc. It is the intention of the Board to collaborate with DCJ on enhancing the tool and continuing to work toward a reliability agreement level that is in line with existing standards of decision making tools. Any assumption that the PBRGI is a sole predictor of parole success is distorted given that the tool is still in its infancy. Since its inception in 2012, further validation and enhancements of the tool have not yet been completed and are still necessary; however, it is the intention of the Board to study the outcomes from the last 4 years to ensure that the tool is providing the most effective and informative advisory recommendations. The Board is looking forward to future evaluation and collaboration with DCJ to further enhance the predictive capabilities of the PBRGI.

During FY16, the Board concurred with the PBRGI recommendation 66% of the time. When the PBRGI recommended release, the Board agreed 45% of the time; when the PBRGI recommended defer, the Board agreed 93% of the time. Figure 4 displays the outcomes of defer/release decisions for the defer/release recommendation provided by the PBRGI for hearings conducted during FY16 included in the sample.

**Figure 4:**



\*Sample from FY 16 hearing data with non-sex-offenders whose hearing was finalized, and includes overall counts and percentages of Parole Board release and defer decisions by PBRGI release and defer recommendations. Deferrals due to non-appearance/absence and MRPs are excluded.

Parole Board members can defer an offender’s discretionary release for a variety of reasons. Some reasons for disagreement with the PBRGI recommendation for release given during FY 2016 included the following: offender(s) continued to pose a Public Safety risk based on his/her lack of adjustment during the current or past period(s) of supervision, offender(s) lack of participation in, or successful completion of, needed treatment and/or programming to address his/her identified criminogenic needs, and offender(s) inappropriate parole plan, such as a homeless parole plan.

### ***Early Parole Discharge Hearings***

Parolees who have shown compliance over an extended period of time may be considered for by the Board for early discharge consideration from his/her parole period. The offender’s Community Parole Officer (CPO) submits an early discharge recommendation to the Board, and the Board members meet as a Full Board to consider the early discharge for each individual application. To be considered eligible for submission by his/her CPO for review, the parolee shall:

- (1) have been under supervision for a period not less than six months and have completed not less than 50 percent of his/her current parole term (absconders, offenders pending a revocation hearing, and offenders in custody paroled to a detainer or to charges, are not eligible for early discharge),
- (2) be in substantial compliance with all standard and/or stipulated parole conditions to include, but not limited to, treatment requirements, ensuring restitution payments are current, and exhibit evidence of being substance abuse free, through drug testing, and
- (3) have not had a level III or higher CVDMP violation for the previous six months of parole supervision.

The overwhelming majority of early parole discharges submitted to the Board are approved by the Full Board. Figure 5 below exhibits the total number and percentage of applications that were approved for early discharged during Fiscal Years 2013-2016.

**Figure 5:**

<b>Early Parole Discharges</b>								
	<b>FY 2013</b>		<b>FY 2014</b>		<b>FY 2015</b>		<b>FY 2016</b>	
<b>APPROVED</b>	87%	142	80%	156	75%	417	80%	552
<b>DENIED</b>	13%	21	20%	38	25%	139	20%	134

## Parole Board Releases

Discretionary and Mandatory release rates have remained relatively stable over the last five fiscal years, fluctuating approximately 9%. There are many factors that can contribute to fluctuation of the discretionary release rates of offenders. Figure 6 displays the number of discretionary and mandatory parole releases from FY 2012-FY 2016. These numbers do not include those released on mandatory re-parole release types after a revocation or other release types, such as sentence discharges, etc. Parole releases from FY 2017 to date (includes July 1, 2016-October 31, 2016 release numbers) include 40% releases from a discretionary decision and 60% from a mandatory release decision.

**Figure 6:**

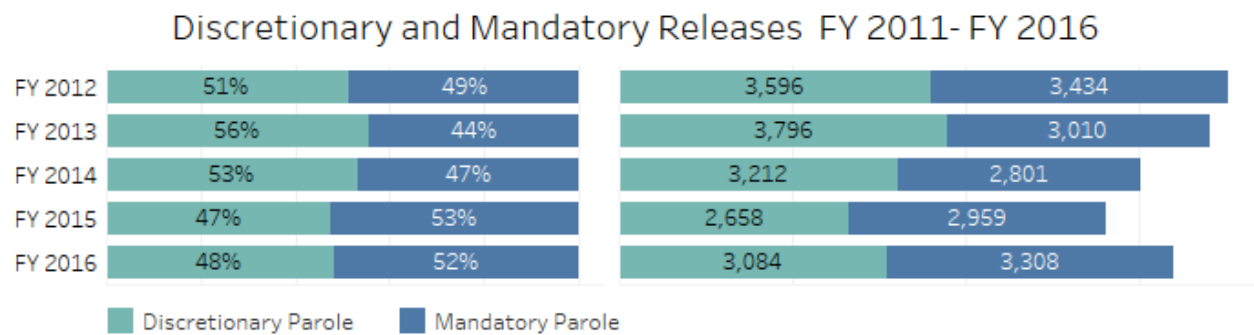
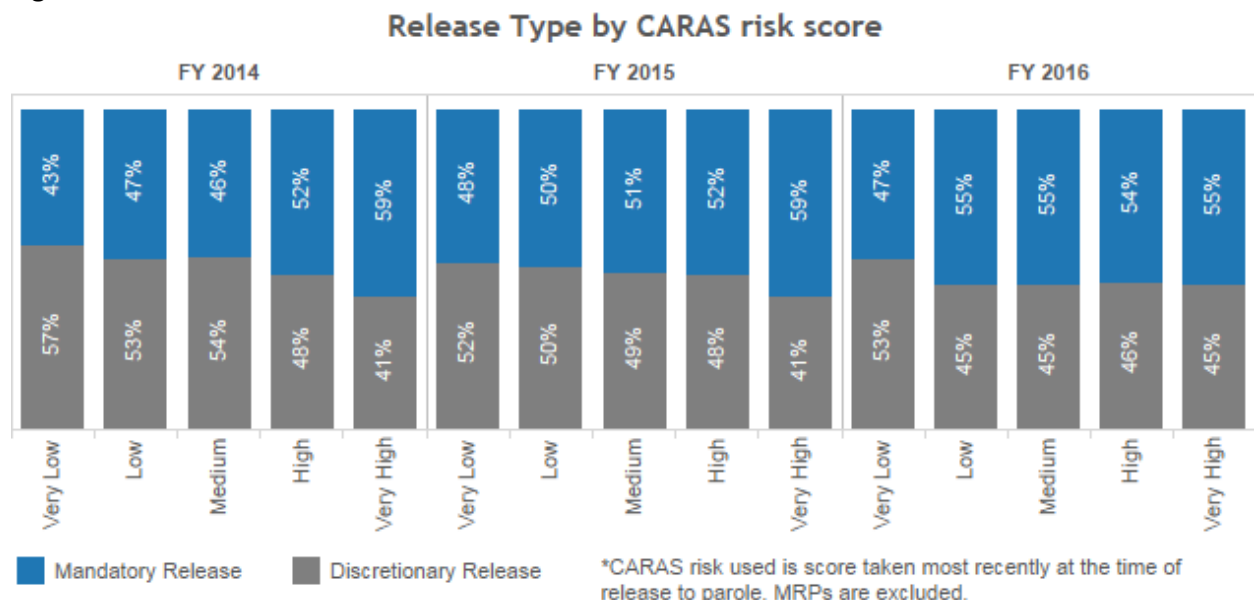


Figure 6 displays actual release totals by release type from DOC custody, not Parole Board hearing outcomes.

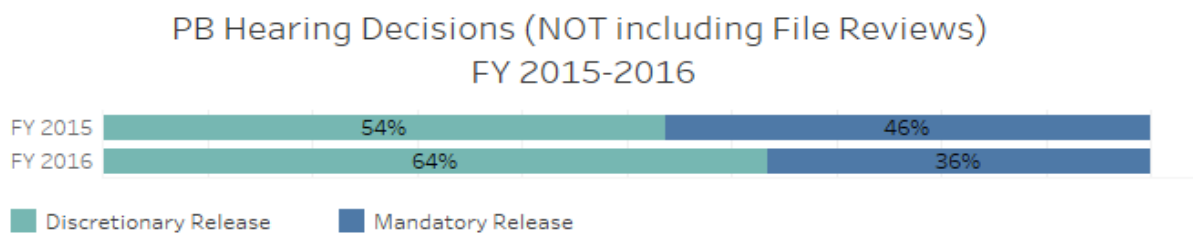
In FY 2016, the Board voted to release 3,084 (48%) of offenders on discretionary parole and 3,308 (52%) on mandatory parole. The average risk assessment for offenders who were granted discretionary parole in FY 2016 was 120 (Medium Risk). The following graph (Figure 7) breaks down mandatory/discretionary release percentages by risk assessment scores:

**Figure 7:**



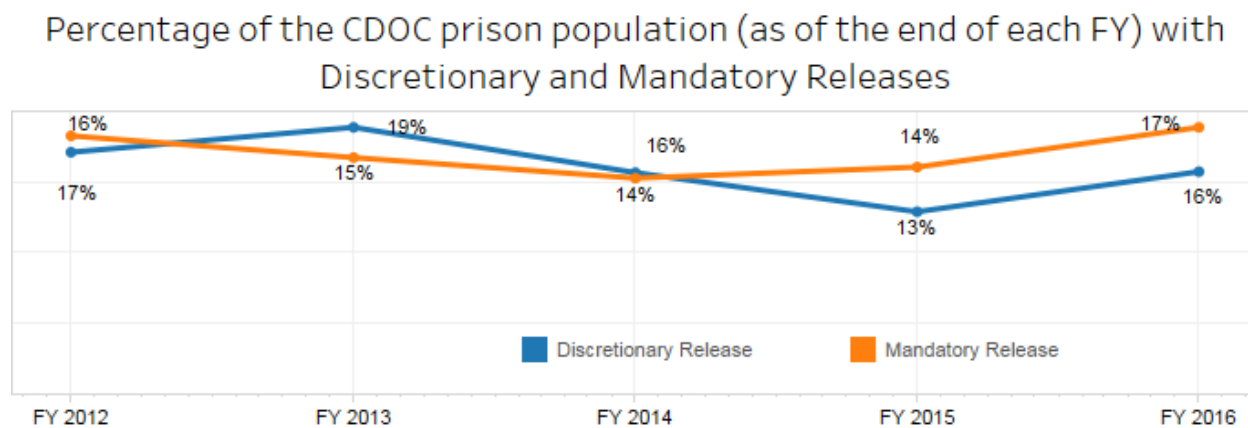
The releases shown in Figures 5 and 6 are the result of all types of release hearings, including File Reviews. House Bill 15-1122 was signed into law in March 2015. The bill allows the Parole Board to conduct an administrative review (i.e., “file review”) in lieu of a parole application hearing for an offender who has a Mandatory Release Date (MRD) or Sentence Discharge Date (SDD) within six (6)-months of his or her next regularly scheduled parole hearing. The Parole Board retains the discretion to conduct regular parole hearings for offenders eligible for file reviews on a case-by-case basis. Since HB 15-1122 was enacted, a larger portion of hearings were conducted via file review. During FY 2016, the overwhelming majority (over 90%) of file reviews resulted in a decision to release to Mandatory parole. Figure 8 displays the decisions (i.e. Discretionary vs. Mandatory release decisions) of the Board in FY 2016 that do not include those file review hearings.

**Figure 8:**



The population of the Colorado Department of Corrections has fluctuated over the same time period of releases reported above. Figure 9 displays the percentage of the prison population (as of June 30 of each corresponding fiscal year) that was released on either discretionary or mandatory parole.

**Figure 9:**



**Prison Population by Fiscal Year (population as of June 30 of each  
corresponding year)**

FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
21,037	20,134	20,522	20,623	19,619

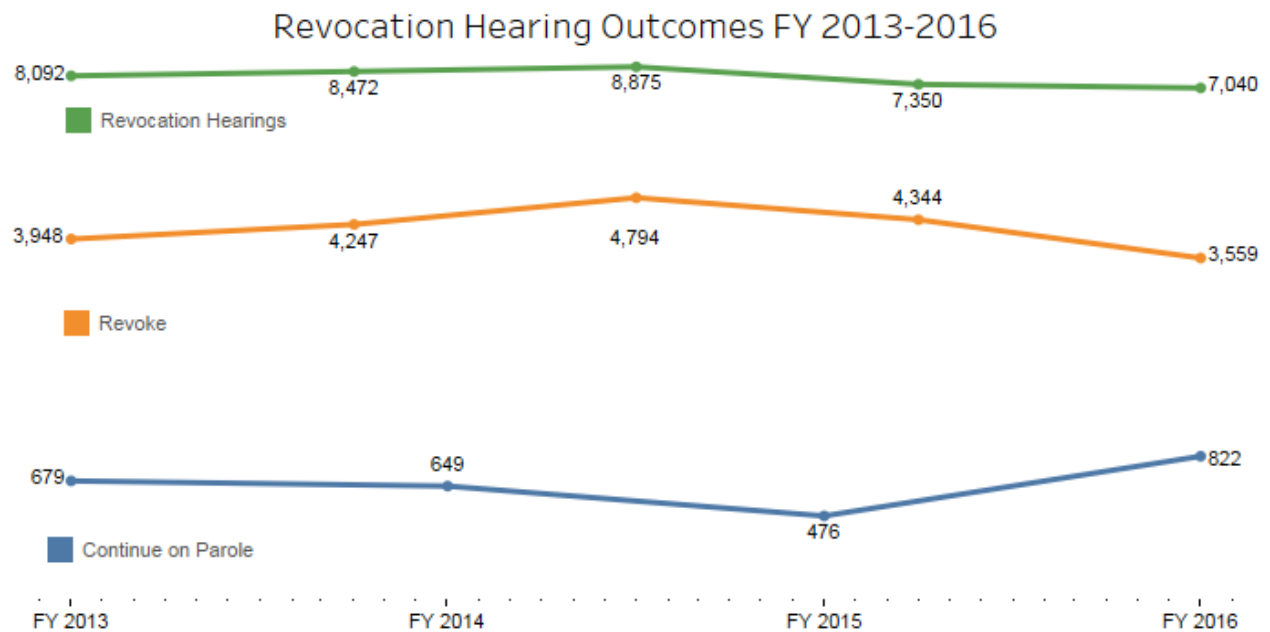
## Parole Board Revocation Hearings

Once an offender has been released to parole, s/he must abide by the conditions of parole, as designated by the Parole Board. If the parolee violates his/her conditions of parole, s/he may be brought before the Parole Board by the Division of Adult Parole for possible revocation of parole.

The revocation process is governed by C.R.S. 17-2-103 (2016). Each hearing is an independent event. The Parole Board member conducting the hearing is an objective hearing officer and accepts testimony and evidence from the Division of Adult Parole and the parolee. After reviewing all pertinent information, the Board member uses statutory guidelines and the evidence presented to render a decision.

Figure 10 displays the revocation hearing totals from FY 2013-2016 and the decisions to revoke and continue parole in those cases. Offenders can have more than once revocation hearing per instance of revocation that can be continued for various reasons (i.e., pending criminal charges, appointment of attorney, etc.).

Figure 10:

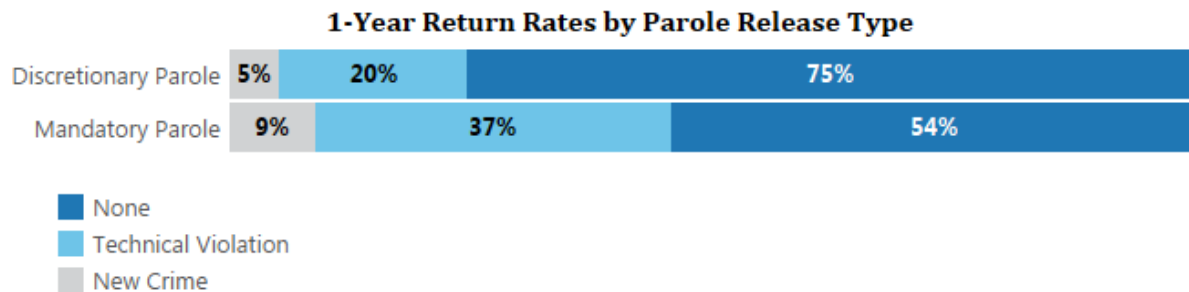




## Return to Prison

Return rates differ depending on an offender's type of release. Those released discretionarily historically have lower return to prison rates than those who release on mandatory parole release types. For those released in calendar year 2014, the 1-year return rate is nearly 20% lower for discretionary releases than mandatory releases (Figure 11). The 3- year return rate in 2014 for discretionary parole was 36% and 54% for mandatory parole releases.

Figure 11:



## Conclusion

The Colorado Parole Board strives to increase public safety by critical evaluation and evidence-based practices to maximize the potential for each offender's successful reentry into society. Colorado's Board of Parole, similar to most other states, has a unique process for reviewing and releasing offenders. There is no current evidence-based standard by which release rates can, or should, be measured. Each release hearing should be viewed as an individual event for each individual offender, by which the releasing authority uses evidence-informed decision making to determine the most appropriate method of release to maximize the successful re-entry for each offender. Therefore, the Colorado's Board of Parole attempts to ensure that each release decision is embedded in evidence-informed, up to date, and validated information to maximum the opportunity for an offender's success, while maintaining the Board's commitment to public safety.

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## Appendix A: Presumptive Parole

Although C.R.S. 17-22.4-404.5(4), that previously required the Chairperson of the Parole Board to submit an annual report regarding C.R.S 17-22.4-404.5, was repealed effective February 1, 2016, the Colorado State Board of Parole presents the impact from this statutory section to the Colorado Department of Corrections population and public safety.

### *Drug Offenders*

House Bill 10-1352, effective beginning May 2011, lowered penalties for unlawful possession and use of controlled substances, making it very unlikely those offenders would serve a prison term for unlawful use or low-quantity possession. However, it was soon realized that offenders with the same crimes, already incarcerated at the time that the law changed, would likely serve longer sentences than those sentenced after them. House Bill 11-1064 created a presumption of parole for those offenders incarcerated for unlawful use or possession offenses committed prior to August 11, 2010, when HB 10-1352 was enacted. To be eligible for presumption, offenders must not have incurred a class I Code of Penal Discipline (COPD) violation within the 12 months prior to review or a class II COPD within the 3 months prior to review, must be program compliant, and must not have an active felony or immigration detainer.

### Parole Hearings and Releases

Since the time that this Bill was enacted through the end of fiscal year (FY) 2016, approximately 20,000 application reviews have been conducted by the Parole Board with eligible drug offenders. Offenders can have multiple hearings within a span of weeks or months; Figure A shows all unique hearings (not releases of offenders).

Figure A:

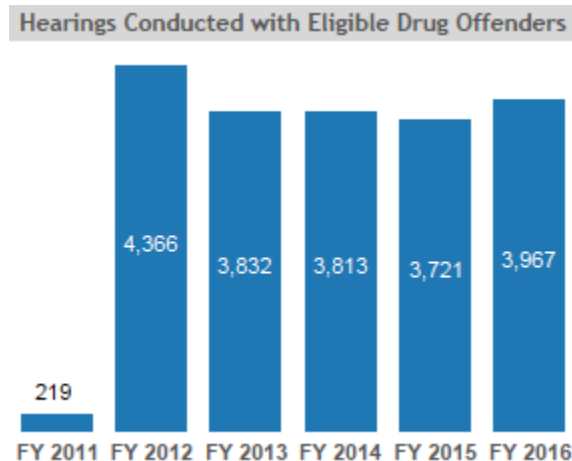
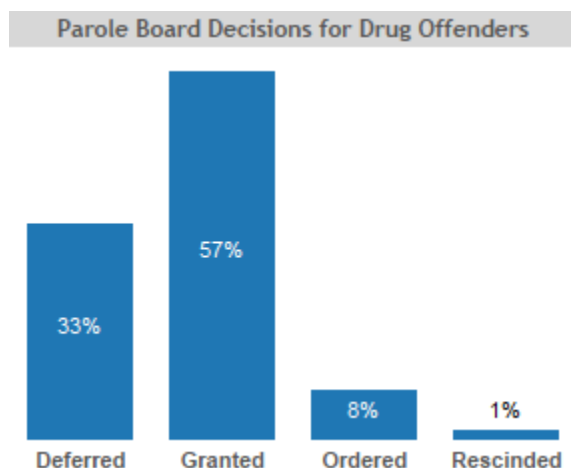


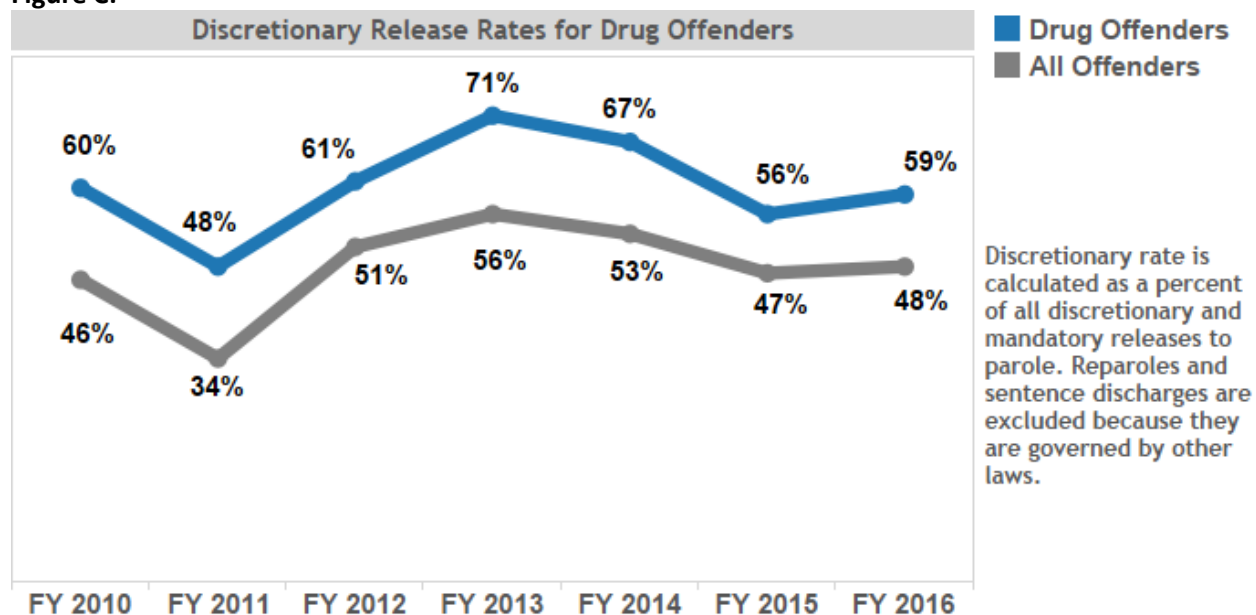
Figure B shows the grant rate at 57% for eligible drug offenders, based on Parole Board decisions for FY 2011-2016. The hearings data clearly shows that the Parole Board is giving presumptive favor to eligible drug offenders.

**Figure B:**



Examination of actual releases to parole provides further evidence that the Parole Board favors eligible offenders for release. Although related, release data differs from Board decisions because an offender might receive multiple hearings prior to a single release. Figure C displays the percent of parole releases that were discretionary. Across time, both before and after the law was passed, drug offenders with unlawful use or possession were more likely to be granted parole.

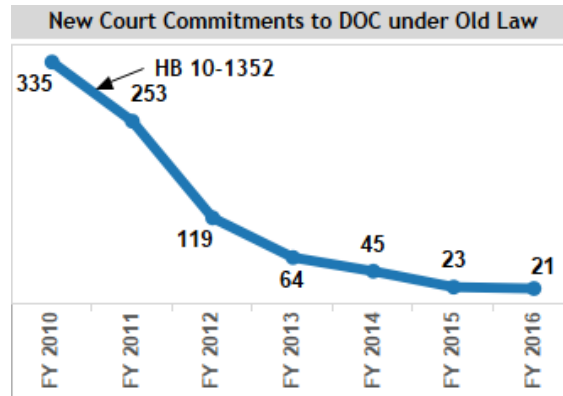
**Figure C:**



## Impact on Prison Population and Public Safety

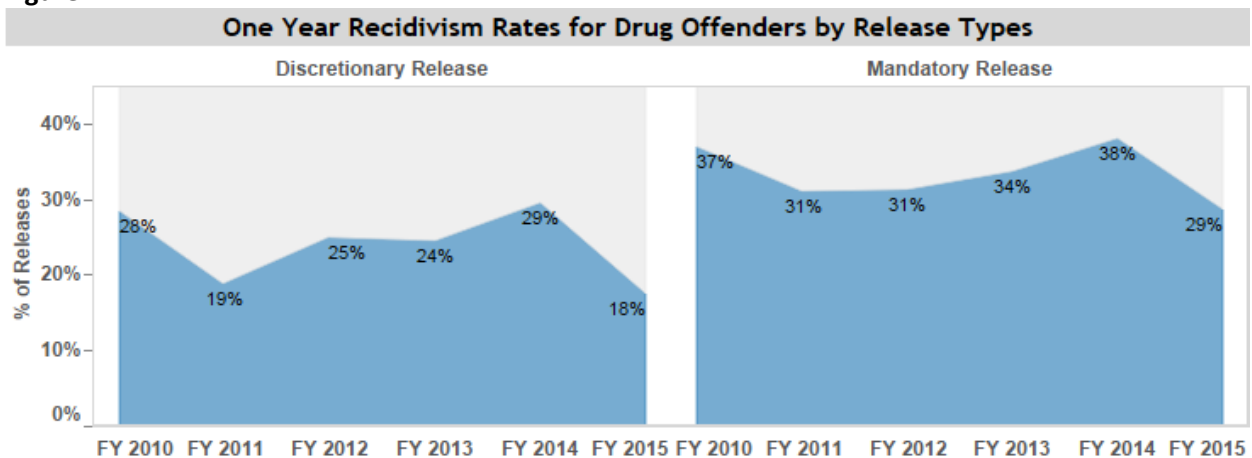
Since HB 11-1064 was enacted, the population of eligible drug offenders declined from 1,051 (4.6% of adult inmate population) on June 30, 2011, to 85 (0.4% of adult inmate population) on June 30, 2016. Of the 85 remaining in the inmate population, 58% have released to parole and been revoked due to either a technical violation or a new crime. This is in part due to the granting of discretionary parole, but also due to the diminishing number of offenders sentenced under statutes in effect prior to HB 10-1352. Figure D displays new court admissions to the Department of Corrections (DOC) for unlawful use or possession under the old law.

Figure D:



Recidivism rates were explored for eligible drug offenders for one year following their release to parole. Figure E below shows releases both before and after HB 11-1064 went into effect by type of parole release. In general, releases in FYs 2010 and 2011 were prior to the Bill's effective date (a small number in 2011 were after). The results indicate that there was not a meaningful increase in recidivism rates for offenders receiving presumption of parole and that the recidivism rates of discretionary releases continue to be much lower than similar drug offenders who released on their mandatory parole date. Because the overall rate of discretionary parole releases also increased after FY 2011, it is not possible to attribute the increased release to the passage of HB 11-1064.

Figure E:



## ICE Detainees

Presumption of parole for a nonviolent inmate with an ICE detainer is based upon an inmate having reached his/her parole eligibility date and having received a score of medium or below for risk to re-offend per the Colorado Actuarial Risk Assessment Scale (CARAS). Senate Bill 11-241 added a new section, C.R.S. 17-22.5-404.7, creating this presumption of parole release.

## Parole Hearings and Releases

During FYs 2011 through 2016, a total of 1,784 hearings were held with ICE detainees who met the eligibility requirements of this statute (Figure F). These figures represent the number of hearings held, not the number of offenders or releases, as an offender may have multiple hearings across or within years. However, it should be noted that ICE detainees were much less likely to have multiple hearings than the drug offenders.

Figure F:

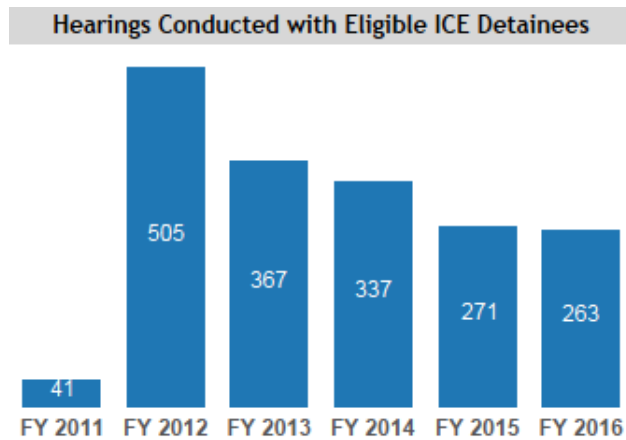


Figure G shows the grant rates by the Parole Board. From FY 2011-2016 parole was granted for 66% of hearings.

Figure G:

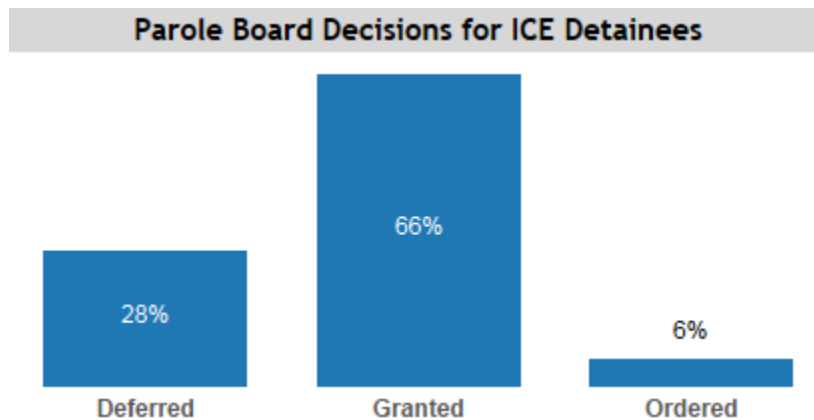
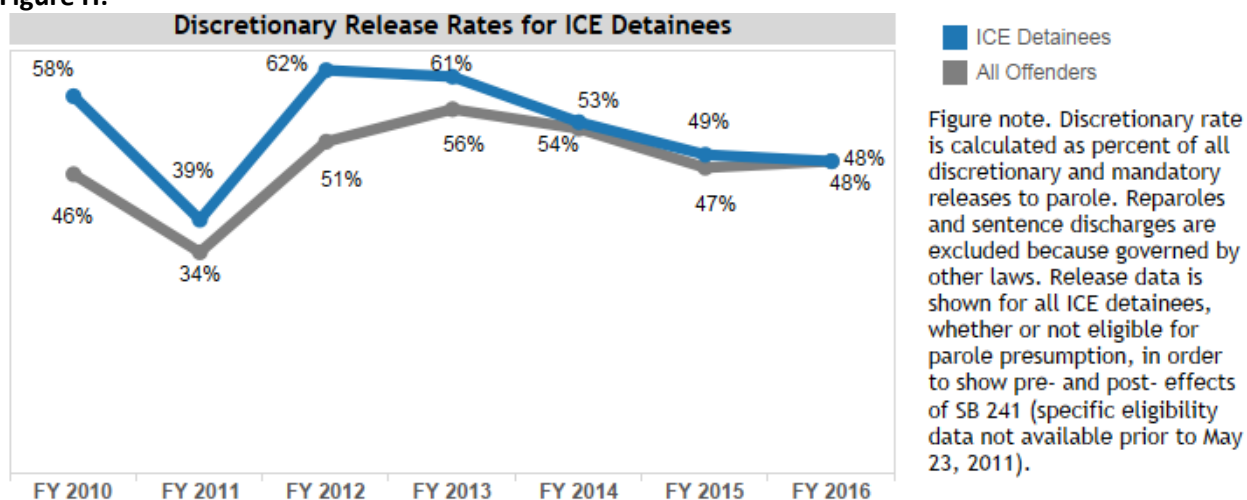


Figure H below examines actual parole releases of ICE detainees in comparison to all inmate releases to parole. Again, actual releases differ from Parole Board hearing decisions because offenders can have one or more hearings prior to a single release. The data indicates that ICE detainees release through discretionary parole at a slightly greater frequency than most offenders, both before and after SB 11-241 took effect. Because the overall rate of discretionary parole releases also increased after FY 2011, it is not possible to attribute the increased release of ICE detainees to the passage of SB 11-241.

Figure H:



### Impact on Prison Population and Public Safety

There was an increase in the number of ICE detainees among the inmate population leading up to this legislation. Since SB 11-241 was enacted, the ICE population has decreased by 417 inmates. However, because the overall inmate population has also decreased, the decline is only slightly greater than for all of the inmate population (Figure I).

Figure I:

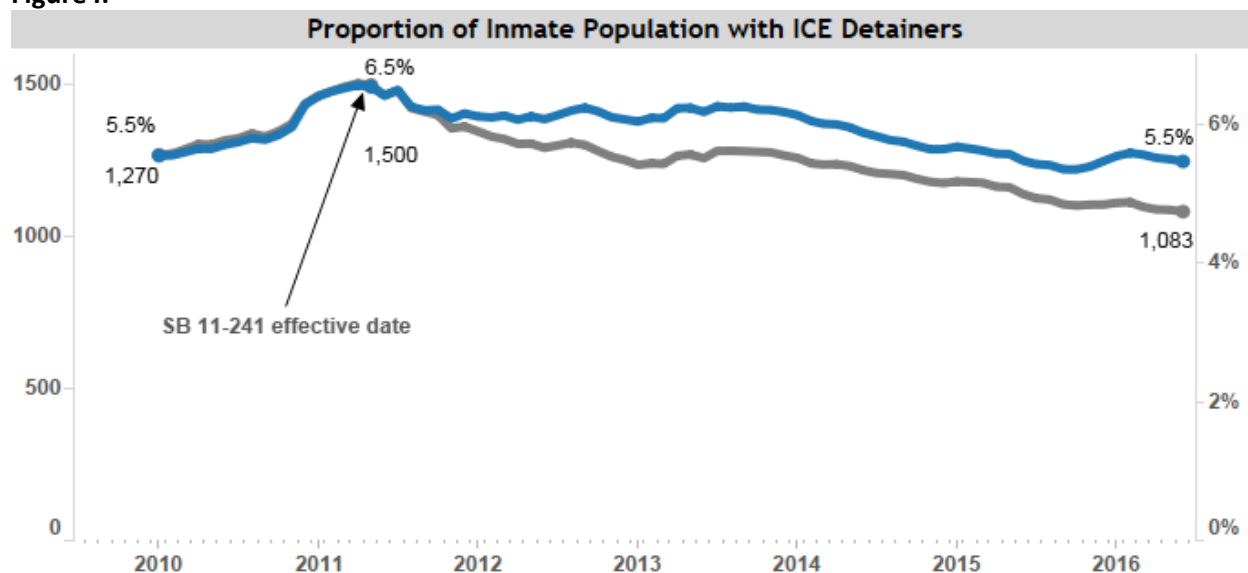
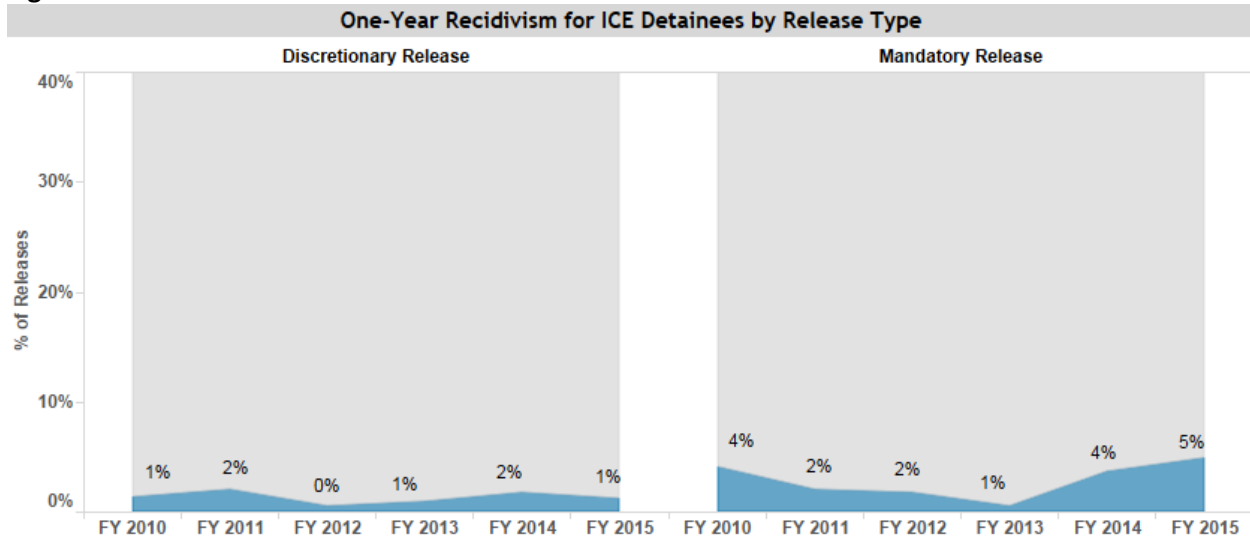




Figure J:



Recidivism rates, as shown in Figure J, are near zero for all ICE detainees, regardless of whether they received parole presumption or whether they released under discretionary or mandatory parole.

### ***Special Needs Parole***

Special needs parole refers to the release of a special needs inmate from prison to parole. A special needs offender means an inmate who:

- is 60 years of age or older; is diagnosed to have a chronic infirmity, illness, condition, disease or mental illness; AND is determined by the Parole Board to be incapacitated to the extent that he or she is not likely to pose a risk to public safety; OR
- suffers from a chronic, permanent, terminal, or irreversible physical or mental illness, condition, disease or mental illness that requires costly care or treatment AND is determined by the Parole Board to be incapacitated to the extent that he or she is not likely to pose a risk to public safety.

Releases are based on a special needs inmate's conditions and medical evaluations. Senate Bill 11-241 was effective beginning May 23, 2011 and modified C.R.S. 17-22.5-403.5 to expand the eligibility requirements and assign DOC the responsibility of identifying inmates who meet the eligibility criteria. DOC clinical staff, case managers, and/or the inmate may initiate the referral process. This process requires a clinical assessment, case management prerelease plan, and notification to victims and the district attorney. All documentation is forwarded to a committee delegated by the Director of Prisons. The CDOC committee determines who meets the eligibility requirements and then makes a referral to the Parole Board. The Parole Board then has the task to determine, based on the special needs of the offender's condition and a medical evaluation, whether he or she constitutes a threat to public safety and is not likely to commit an offense.

## **Release Hearings**

Since the enactment of SB 11-241 through the end of FY 2016, 169 inmates have applied for Special Needs Parole (some offenders have submitted multiple applications during this time frame). The Parole Board reviews the applicant's information, including the DOC committee's referral recommendation, as a Full Board, in order to determine the inmate's risk to public safety.

In FY 2016, 42 applications for special needs parole were received by the Board, of which only two (5%) were given a recommendation decision to the Parole Board by the DOC committee. Three applicants died before a decision could be reached. The majority of applicants were deferred to when eligible (35), 2 offenders were granted parole, and 2 offenders are tabled for acceptance into a suitable nursing/care facility. It should be noted that finding suitable care facilities for convicted felons under active supervision is quite difficult and a large contributor to the high deferral rate.

## **Impact on Prison Population and Public Safety**

Twenty-five special needs offenders have been granted parole since the time SB 11-241 went into effect through FY 2016<sup>1</sup>. Of those 25 offenders, 23 have actually released to parole and 2 have been tabled for acceptance into a suitable care facility. Due to the small number of offenders released and the short time period at risk post-release, it is difficult to quantify the effect on public safety or the prison population. However, only 6 of the 23 offenders who released had their parole revoked for violations of the conditions of their parole. None were returned to prison for new crimes. As of the end of FY 2016 from the offenders released on parole since the enactment of SB11-241, 10 are still under parole supervision, 2 were revoked to CDOC for technical violations, 4 died while on parole, 3 received early discharges from parole supervision, and 4 successfully completed their parole sentence.

## **Conclusions**

Two legislative bills, HB 11-1064 and SB 11-241, were passed during the 2011 legislative session to mandate that the Parole Board show presumptive favor in granting parole to particular offenders, including certain drug offenders, nonviolent Immigration and Customs Enforcement (ICE) detainees, and special needs inmates. Although the bills added or changed offender eligibility criteria, no changes were made with regard to the release criteria. Therefore, the same release guidelines applied to these offenders as were used by the Board of Parole in granting parole to any offender.

The data indicates the Parole Board is strongly granting presumptive favor to both drug offenders and ICE detainees. However, because the legislation targets offenders who are lower risk, these offenders were already favored for early release (i.e., discretionary parole) before the legislation was created. The conclusions to be drawn are that the Parole Board is complying with the spirit and the intent of the legislation, but there is no compelling evidence that these specific legislative mandates were the cause of a change in practices.

<sup>1</sup> Previous reports included releases from applications received prior to the enactment of SB11-241 (prior to May 23, 2011).

The central purpose of HB 11-1064 was to provide advantages to offenders convicted of unlawful use or possession who were sentenced to longer prison terms under the old law than those sentenced pursuant to HB 10-1352. The data presented herein shows the number of offenders admitted under the old law is declining, and they are receiving presumptive favor of parole. As of June 30, 2016, the population of targeted drug inmates ( $n = 85$ ) was 8.1% of its size on June 30, 2011. Additionally, 49 of the 85 drug offenders had already paroled at some point during their incarceration and were reincarcerated due to a parole revocation.

The Parole Board must achieve an adequate balance between release rates and public safety. That is to say that, optimally, the Board would release the maximum number of offenders without increasing the public safety risk. The recidivism data shows that drug offenders released discretionarily were likely to fail at approximately the same rate before and after parole presumption was in effect, which was at a substantially lower rate than similar offenders who released on their mandatory parole date. For ICE detainees, recidivism rates approach zero, which is very minimal public safety risk at most. Thus, it can be concluded that the increased rate of releases has not so far shown an increased threat to public safety.

The effects of Special Needs Parole are harder to assess because of the smaller number of offenders. Reliable data regarding special needs offenders does not exist prior to the effective date of SB 11-241, so it is difficult to gauge whether the statute changes increased the number of special needs parolees. As well, it is difficult to know the extent to which special needs parole may be needed but impractical due to the challenges of finding appropriate end-of-life care for felons. The small number who have released makes it difficult to adequately quantify recidivism rates, but none released have committed new crimes.



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