

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
FY 2017-18 JOINT BUDGET COMMITTEE HEARING AGENDA

Monday, January 9, 2017

10:30 am – 12:00 pm

10:30-10:45 INTRODUCTION AND OPENING COMMENTS

10:45-12:00 FACTORS DRIVING THE BUDGET

1. Why has the use of specialized beds declined? Are we optimally using this community corrections tool? Is it still effective? Why are there reversions in specialized and standard bed appropriations? Why can't the DCJ use the full community corrections appropriation?
2. Can the Department submit community corrections budget requests that are more accurate? Submit supplementals?
3. What information does DCJ have on best practices for sex offender management?
4. How do people obtain a placement in a community corrections program (specialized or not)?
5. How do those involved in sentencing decisions (Judges, District Attorneys, probation officers, etc.) learn about community corrections options? Is there a lack of knowledge? What can the DCJ do?
6. Can anything be done about the low enrollment in the JERP program in Jefferson County? Can offenders come there from other judicial districts?
7. Do clients in community corrections facilities have difficulty getting to substance abuse screening facilities? How hard is it to access these facilities? How big a problem is this? What can be done about it?
8. Have there been any studies concerning advances in technology (DNA, surveillance cameras, body cameras, etc.) and the prosecution of crime? Has this led to more charges against people suspected of crime, particularly more charges for violent crimes? Has it led to longer sentences? Has it affected plea agreements?

9. The DOC has changed the way it deals with technical violations by parolees. As a result, far fewer parolees are being revoked back to DOC. Is there any evidence on how this is affecting public safety? For example, are more parolees being arrested for new crimes?
10. What drove up Colorado's prison population before it peaked in 2009?

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED

These questions were addressed during the previous hearing for the other divisions of the Department of Public Safety.

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1. Why has the use of specialized beds declined? Are we optimally using this community corrections tool? Is it still effective? Why are there reversions in specialized and standard bed appropriations? Why can't the DCJ use the full community corrections appropriation?

Response: *The Colorado community corrections population has gradually declined over the last several years. Specialized populations grew quickly from 2008 to 2013, with a decline in the last 3 years. Trends in community corrections placements are a function of a myriad of complex factors to include:*

1. *General crime trends in Colorado*
2. *Prosecution trends in each of the 22 judicial districts*
3. *Sentencing practices in each of the 22 judicial districts*
4. *Probation practices in each of the 22 judicial districts to include pre-sentence investigations, probation revocations, and violation practices in each judicial district*
5. *Defense practices to include initiating referrals as sentencing options for community corrections placement rather than prison placement*
6. *Case management and referral practices of each of the 13 Department of Corrections Institutions*
7. *Referral practices of each of the 18 DOC Parole Offices in Colorado*
8. *Approval and referral practices of the Colorado Board of Parole*
9. *Screening and acceptance practices of 22 community corrections boards in Colorado*
10. *Screening and acceptance practices of 33 residential community corrections facilities*
11. *Victim input to community corrections placement and parole decisions*
12. *Budgetary capacity by the General Assembly*
13. *DCJ allocation practices via its contracts with boards and providers*

14. Success/failure rates in community corrections programs and general offender movement within and among facilities

Placements in specialized beds are a function of each of the 14 factors as well as the assessed risks and needs of the offenders that are processed through the above aspects of the criminal justice system. General crime, trends in substance abuse, mental illness, and sexual deviance, vary within and among local communities and the state as a whole. Accordingly, it is very difficult to both monitor and predict the criminal justice system behavior that leads to the numbers of offenders that are ultimately placed in community corrections.

The 2015 Results First Initiative reported a return of \$8.40 for every \$1 spent on regular (non-specialized) community corrections programs. However, the community corrections system and State of Colorado would also benefit from improvements in the short-term and long-term outcome trends among community corrections providers.

The Division of Criminal Justice (DCJ) believes that the efficacy of the community corrections should be viewed from a robust constellation of process measures (e.g. adherence to evidence based principles/practices and compliance with basic public safety measures), short term outcome measures (e.g. success rates, failure rates, risk reduction rates), and long-term outcome measures such as post-release recidivism rates. This full constellation of multiple performance measures forms the basic premise of the model for Performance Based Contracting that has been developed by the Governor's Community Corrections Advisory Council. DCJ also believes that it is more important to place the right offenders in community corrections, from a risk/need/responsivity perspective, than it is to simply place more or less offenders in community corrections. Working towards a more research-informed target population for Colorado community corrections is a long-term effort that DCJ continues to work on with local providers and boards.

One of the reasons for the reversions in the community corrections line items is the simple fact that while DCJ can control the supply of funding for community corrections. DCJ has very little direct influence over the demand of the larger system for community corrections. That larger system is described in the 14 points outlined above. The Community Corrections appropriations only provides funding for the services that the larger system of 22 judicial districts as well as the Colorado prison facilities and parole offices demand on a year-to-year basis. While DCJ can indirectly influence some judicial districts and the Department of Corrections through education and training (see response to Question #5 below), this would have only a marginal effect on the statewide utilization of community corrections appropriations on a year-to-year basis. Moreover, the flow of offenders into and out of community corrections beds means that some beds are unfilled at points in time. For instance, sentencing hearings get continued in courts and offender behaviors may necessitate alternative placements or change the timing of intended actions. Budgets set a cap on spending, but most government-funded entities operate just below that cap because overspending is not allowed. With all those factors in mind, the chart below (see page 5)

shows that the allocations and spend patterns for community corrections have over the past 9 years averaged 95 percent to 98.9 percent. This is extraordinarily efficient spending for a capped budget that can only pay for client services.

The Division reviews assessments conducted by providers during audits to evaluate the appropriate use of specialized treatment services and whether the services are being optimally used. The assessments are used by providers to determine which clients are best served in the beds and DCJ provides quality control through the audit reviews. If the audit team discovers an assessment is not scored properly and an eligible offender is not referred to specialized services (or a non-eligible client is referred to specialized services) DCJ requires an action plan response from the provider to remediate the errors. Such plans include enhanced training for staff by the Division or other subject matter experts, internal file reviews, enhanced supervision of assessment processes by program management, and other quality control measures. These processes ensure that community corrections clients are being matched to the appropriate beds.

2. Can the department submit community corrections budget requests that are more accurate? Submit supplementals?

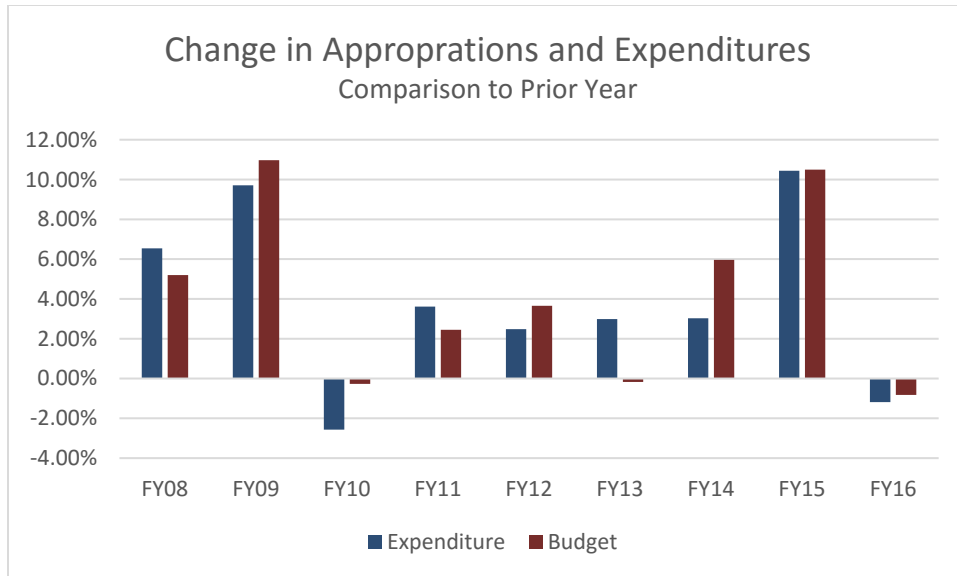
Response: *Submitting an accurate budget request for Colorado community corrections is a difficult and complex undertaking. Simply put, in order to do so, the Division must be able to more accurately predict the behavior of the larger criminal justice system described in the 14 points addressed in the response to Question #1 above. It would require either human or statistical predictions of trends in general felony crime incidence, prosecution, defense, referrals from probation, sentencing decisions, incarceration, institutional referrals, parole release, and parole referrals, community corrections board decision making, provider decision making, and offender behavior. Any one of these aspects is hard to predict – whether it be statistically or judgmentally. The prison population projections are an example of how limited advanced statistics are in predicting future criminal justice system behavior. Because the community corrections placements are a function of a complex myriad of many dynamic factors, more accurate projections would be difficult to accomplish with existing resources.*

Mid-year supplementals are also challenging for many of the reasons enumerated above as it is difficult to predict what placements will look like in future months. Additionally, the use of first quarter expenditures as a predictor of third and fourth quarter placements has significant limitations. Community Corrections placements fluctuate throughout the year. For example, placements early in the fiscal year may be artificially low as programs work to build capacity or expand due to new allocations. Also, placements may slow at the end of the year as programs prepare for potential lowered allocations in the coming year, which would then require that they begin to build placements back up throughout the first part of the year should allocations be higher than anticipated. In order for the Department to submit supplemental requests to the General Assembly within the proper timeframes, only

first quarter expenditure information would be available and therefore would not be highly predictive of potential placements throughout the remainder of the year. Additionally, negative supplementals can have the unintended consequence of driving placements down. When provider allocations are reduced unexpectedly mid-year, providers often respond by lowering placements through the remainder of the year out of fear that costs will not ultimately be covered at the end of the fiscal year. This is known locally as the “ratcheting down effect” of negative supplemental. In the simplest terms, it means that local governments spend slightly less than their annual budget, similar to most public entities who receive funds from an outside government entity. It is counter-intuitive for a local government to spend more than its annual budget that comes from the State of Colorado. As the budget ceiling goes down (via negative supplemental) then the corresponding maximum spending goes down with it - resulting in the ratcheting down of spending due to decreased spending ceilings or contract maximums.

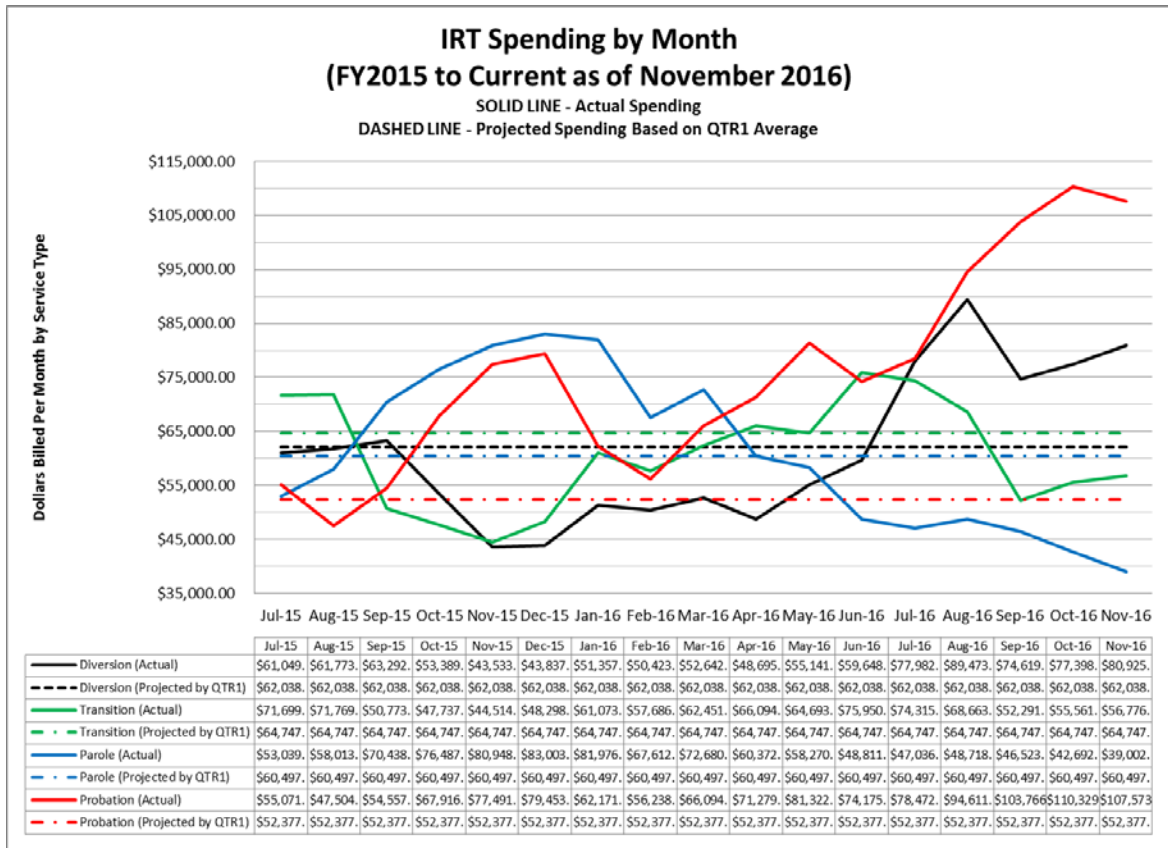
This phenomenon is demonstrated when examining changes in appropriations and expenditures on a year-to-year basis. The chart that follows clearly shows that, with limited exceptions, changes in appropriations are closely equal to changes in expenditures, and as such, placements or ADP. For example, in FY08, there was an increase of 5.2 percent in the budget compared to the prior fiscal year. That change yielded a corresponding increase in expenditures of 6.5 percent. In FY10 there was a decrease in the appropriation which is also seen in the year-end expenditures. Changes for FY15 compared to FY14 were nearly identical for both appropriations and budgets. The sole exception is FY13 for which a small decrease in appropriations still yielded an increase in expenditures. This is an example of a situation in which placements and expenditures work to “catch up” with changes in the appropriations.

Overall, this demonstrates that communities do take advantage of increased budgets and show restraint in placements when appropriations are lowered. In other words, the best predictor of placements is probably not crime rates or types of crimes, it is the budget. That also is a demonstration of why mid-year corrections (supplementals) and projections are of little value for this correctional program. Overall, communities manage the community corrections program to the available budget. Interestingly, the correlation coefficient (r-squared on this) between these two ranges of data is an incredibly high +0.91.



Finally, small changes in placement strategies by judicial districts can have a significant impact in reverted dollars because of the scale of the overall budget. Between FY 2012-13 and FY 2015-16, there was an 8.2 percent decrease in the use of specialized residential beds (i.e., 593.4 ADP to 544.4 ADP). This decrease represents 49 beds across the state. However, each judicial district makes decisions about community corrections (and other sentencing options) independent of each other. That means the average decrease per district over the four years represented here is 2.2 beds per judicial district, or just over one-half a bed each year. Between FY 2008-09 and FY 2015-16, the average expenditure against the appropriation statewide was 97 percent. Districts are managing to the cap imposed by the budget and making placements with the budget constraints in mind.

The chart below tracks one year of Intensive Residential Treatment bed expenditures by month and shows the variations that occur through the year, making predictions extremely difficult.



3. What information does DCJ have on best practices for sex offender management?

Response: Pursuant to Section 16-11.7-109(2), C.R.S., the Colorado Sex Offender Management Board (SOMB) is mandated to complete an Annual Legislative Report identifying best practices for the treatment and management of adult sex offenders and juveniles who have committed sexual offenses. The most recent report was completed in January 2016 and is available at:

<http://cdpsdocs.state.co.us/somb/resources/SOMB2016AnnualLegislativeReport.pdf>.

Best practices identified in this report include the Risk, Need, Responsivity (RNR) Principles; the importance of the therapeutic alliance; Circles of Support and Accountability (COSA); and the benefits of a holistic approach to treatment for juveniles, among others. The SOMB will publish the 2017 Annual Legislative Report in January 2017 on best practice research identified over the past year. In addition, the 2017 report will also include an update on work to incorporate RNR into the SOMB Standards, and a proposed data collection plan for treatment providers, evaluators, and polygraph examiners to learn more about how the Standards are being utilized.

4. How do people obtain a placement in a community corrections program (specialized or not)?

Response: *There are multiple ways in which offenders may be referred and placed in residential community corrections facilities and programs. Cases are referred for community corrections placement either by the State District Courts, or by the Colorado Department of Corrections (DOC). Court placements are known as Diversion cases, whereas DOC placements are known as transition cases. Placements may also be referred to community corrections as a condition of Parole or as a condition of Probation.*

Diversion placements are those who have been convicted of an eligible felony offense pursuant to statute. Generally, a pre-sentence investigation is conducted and a sentence to community corrections may be recommended to the courts. The court then imposes a sentence of community corrections which includes terms and length. If an offender is subsequently rejected by the community corrections board or program, they are referred to the Court for resentencing. If accepted, they are scheduled for intake and placement.

Transition placements result from referrals from DOC institutions. Statute requires that offenders housed within the DOC be referred for community corrections screening and placement. Generally referrals occur no more than 19 months prior to the offender's Parole Eligibility Date (PED). If accepted, offenders are scheduled for intake and placement. If an offender is subsequently rejected by the community corrections board or program after the first referral, re-referrals may be made at the discretion of the institutional case manager and the offender.

Condition of Probation offenders may be referred to a community corrections program as a condition of their probation sentence. This can be done by the Courts or the local probation office in each of the 22 Judicial Districts throughout Colorado.

Condition of Parole offenders may be referred to a community corrections program as a condition of their parole. This can be done by the Parole Board or by each of the 18 local Parole offices throughout Colorado.

Regardless of the legal status of the offender (i.e. Diversion, Transition, Condition of Probation or Condition of Parole), once a referral is made, cases are screened by a local community corrections board and the intended community corrections program. Community corrections boards are extensions of local (county) governments in most cases and consist of several members of the local government and community. Board members have varying professional backgrounds including law enforcement officers, probation officers, parole officers, judges, attorneys, treatment providers, elected officials, or even non-criminal justice professions such as teachers and business owners. If the community corrections board accepts an offender for placement, the case is referred to a specific facility which also then screens the case for acceptance. If both the board and the program accept the referral, the offender is eventually placed in community corrections.

In addition to the standard eligibility requirements for placement in community corrections, each of the specialized community correction programs has a unique clinically or crime driven criteria. Intensive Residential Treatment (IRT) is for high risk and high needs individuals with significant substance abuse-related impairment requiring that level of treatment. Placement in an IRT program is assessment driven and requires a specific set of clinical indicators. Similarly, Residential Dual Diagnosis Treatment (RDDT) programs are intended for individuals presenting with serious substance abuse problems, chronic mental illness, and a history of felony criminal conduct. Placement in a RDDT program is driven by both substance abuse assessment and mental health screening. Therapeutic Communities (TC) serve the most chronically addicted population and are targeted at those offenders for whom IRT is insufficient to treat substance abuse problems. Again, placement in TCs is assessment driven. Finally, sex offender specific programs serve those offenders currently under specialized supervision for a sex offense and who are required to attend sex offense specific treatment.

Placements in specialized programs go through all of the same referral and screening processes as described above for all offenders. However, these populations may also be referred by other community corrections programs which do not provide that specialized service but have offenders with that identified need. Under this process, if after the acceptance of an offender a program identifies a specific assessed need that the provider cannot meet, the provider can refer that offender to any other community corrections program across the state that provides the specialized services necessary to meet that offender's needs.

5. How do those involved in sentencing decisions (Judges, District Attorneys, probation officers, etc.) learn about community corrections options? Is there a lack of knowledge? What can the DCJ do?

Response: *Recommendations for sentences to community corrections are made by State Probation during the Pre-Sentence Investigation (PSI) process. Following a finding of guilt for misdemeanors and any felonies other than a class 1, the local probation department provides a written report to the court to assist in the sentencing decision. Among other details, the report is to include, “an evaluation of the alternative dispositions available to the defendant¹.”*

State probation requires officers to obtain training specific to the purpose and content of the reports before they are approved to prepare a PSI. Included in the training is an overview of the sentencing options available to the court, including community corrections. Probation offers that training to every judicial district on a routine basis.

¹ Colorado Rule of Criminal Procedure, VII. Judgment, Rule 32. Sentence and Judgment (a) (2) Report.

It should be noted that training is not the primary manner in which local agencies familiarize themselves with community corrections. Representatives from district attorney offices, probation offices, county jails and the sheriff's office, and other local system partners are represented on the local community corrections boards. They also participate in the local process to draft and post requests for proposals soliciting community corrections providers, help score and select those providers, and provide oversight of the quality of the programming delivered. As such, community corrections is a multi-agency collaborative program at the county and judicial district levels with partners that are well immersed in the design and use of community corrections.

The Office of Community Corrections is aggressively working to implement new major initiatives from the FY 2015-16 budget process along with existing statutory duties of funding, performance audits, and technical assistance to providers and boards. To the extent possible, the Division also seeks opportunities to explain options available for offender treatment and management in community corrections to audiences that include criminal justice professionals in all sectors of the system.

6. Can anything be done about the low enrollment in the JERP program in Jefferson County? Can offenders come there from other judicial districts?

Response: *The John Eachon Reentry Program (JERP) originated in the early 2000s, in two non-profit organizations in Jefferson County; specifically, Jefferson Center for Mental Health and Intervention Community Corrections Services Inc. The program began as a federally funded grant project to provide dual diagnosis treatment for high risk and severely mentally ill offenders who would otherwise not have been accepted into community corrections due to having severe mental illness and inability to gain employment. This grant-funded initiative was the first of its kind in community corrections and was developed before Residential Dual Diagnosis Treatment (RDDT) beds were funded in the state budget for community corrections in the mid-2000's.*

Because the grant originated as a local-level initiative, the program and community corrections board prioritized placements for clients who had specific community ties in Jefferson County through a formal parole destination. The logic behind this local focus was to prioritize clients who would eventually be taken in by the Jefferson Center for Mental Health for long-term treatment due to severe mental illness. It was important that the clients in the JERP program had continuous and consistent treatment over a long-term basis which warranted a single mental health center to provide the long-term care. This was preferred over taking clients from other jurisdictions who would eventually have to seek treatment at other mental health centers throughout the State of Colorado due to their residence in other judicial districts.

The JERP program was eventually funded by the General Assembly. As it stands now there is no state policy that prohibits placement of clients in the JERP program who originate

from or reside in other jurisdictions. The local level entities in Jefferson County still give preference to local clients for the reasons cited above related to long-term continuity of care in the mental health center.

In 2016, DCJ was notified by Intervention Community Corrections Services, that they and the Jefferson Center for Mental Health will be closing the JERP program and, instead, placing clients in the less costly Residential Dual Diagnosis Treatment (RDDT) beds in Jefferson County. This was for a myriad of reasons.

7. Do clients in community corrections facilities have difficulty getting to substance abuse screening facilities? How hard is it to access these facilities? How big a problem is this? What can be done about it?

Response: *The Colorado Community Corrections Standards set forth the requirements for providers regarding the frequency and parameters for substance use screening. Thus, clients placed into residential community corrections programs are randomly screened for use of substances and programs are audited for compliance with these Standards. The costs of substance use screening are covered by the base per diem and clients are not charged. Clients are screened upon intake to a residential community corrections facility; twice per month at random intervals, and then at the point of successful discharge from a facility. Therefore, DCJ knows of no problems or issues with clients in community corrections facilities having access to substance use screening.*

It is possible that offenders placed in other forms of community-based supervision (e.g. probation, parole, diversion, pre-trial supervision) may have challenges paying for or accessing substance use screening as part of their supervision or court orders. However, those individuals and entities are not under the purview of the DCJ and therefore unable to provide a reliable answer to the question.

8. Have there been any studies concerning advances in technology (DNA, surveillance cameras, body cameras, etc.) and the prosecution of crime? Has this led to more charges against people suspected of crime, particularly more charges for violent crimes? Has it led to longer sentences? Has it affected plea agreements?

Response: *DCJ is not aware of any studies that focus on charging and prosecution results before and after technological advances. There are many reasons why such studies may not be feasible. One of the likely reasons is that there is not an easily accessible data base that would show whether any type of technology was used in an individual charge or prosecution. Another is that there are multiple changes occurring in the criminal justice system at any given point in time that influence outcomes. For instance, sentencing laws change, crime rates change, and law enforcement responses change. Pinpointing a case outcome to a particular piece of evidence is not reasonable. Also, while technological*

advances have been significant, the reality is that most crime is still not solved through the use of technology. The best indicator of the influence of technology is the use of DNA databases in investigations. Data released by the FBI relating to the use of CODIS indicates that 7,443 investigations in Colorado have been aided by DNA information from CODIS. That system began as a pilot project in 1990 and is now nationwide.

9. The DOC has changed the way it deals with technical violations by parolees. As a result, far fewer parolees are being revoked back to DOC. Is there any evidence on how this is affecting public safety? For example, are more parolees being arrested for new crimes?

Response: *DCJ undertakes studies that are funded by the legislature or through outside grants. DCJ has not studied whether recidivism rates for parolees have changed due to a reduction in revocations.*

10. What drove up Colorado's prison population before it peaked in 2009?

Response: *On the most basic level, the number of inmates in prison is determined by the flow of admissions and releases. Prior to FY 2008, admissions to prison consistently exceeded releases. This discrepancy equalized beginning in FY 2009, followed by a decline in the inmate population. These numbers were significantly impacted by legislation as well as the exercise of discretion at various points in the system. Some of the legislative changes prior to 2009 included:*

- ❑ *H.B.93-1302 created split sentences with mandatory periods of parole of 1 to 5 years depending on felony class. The effect was to increase length of stay since it reduced the Parole Board's incentive to parole inmates before their mandatory release date since those sentenced under the new law's provisions would experience a period of parole supervision anyway. The bill also greatly increased the parole population and consequently the number of inmates re-incarcerated for technical parole violations.*
- ❑ *S.B. 94-196 created another provision for habitual offenders with a current conviction of any class one or two felony, or any class three felony that is defined as a crime of violence, and who have been previously convicted of these same offenses twice. This "three strikes" legislation requires that these offenders be sentenced to a term of life imprisonment with parole eligibility in forty calendar years.*
- ❑ *H.B. 98-1156 created indeterminate sentences for many sex offenders with increased minimums and a maximum of life in prison.*
- ❑ *H.B. 04-1189 increased the proportion of sentence that must be served by violent offenders before they become eligible for parole.*

Subsequently, a shift in legislative actions and policies at various levels of criminal justice decision-making has influenced the prison population. These changes included:

- ❑ *H.B. 10-1338 expanded probation eligibility for persons with 2 prior felony convictions at the recommendation of the district attorney.*
- ❑ *S.B. 11-096 removed Felony-6 possession of a controlled substance as a predicate felony for purposes of habitual criminal charges.*
- ❑ *H.B. 12-1213 removed escape from confinement in a correctional facility as a predicate felony for purposes of habitual criminal charges.*
- ❑ *S.B. 13-229 reduced the charge for an escape from a juvenile correctional setting from a felony to a Misdemeanor-3 for those over age 18 at the time of the escape.*
- ❑ *S.B. 13-250 adjusted the drug sentencing scheme in Colorado resulting in reductions in both crime classifications and sentence lengths.*

Discretionary decisions in probation prior to 2008 led to approximately 8.5 percent of probationers being revoked, compared to less than 3 percent in the past five years. Of these revocations, approximately a third were sent to prison between FY 2000 and FY 2006. In more recent years, the proportion revoked to prison has remained under 15 percent. Additionally, from 2003 to 2008, the number of prison admissions with a new sentence for escape increased from 348 to 765, a 120 percent increase. These figures represent growth from 5.8 percent to 10.1 percent of all new sentences to prison. In contrast, this proportion fell over the following five years to 4.9 percent.

Many other points of judicial discretion likely contributed to the rise in the prison population over many years prior to FY 2009. However, data is currently unavailable to identify all of these as well as determine the impact.

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