

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee
 FROM Justin Brakke, JBC Staff (303-866-4958)
 DATE March 18, 2022
 SUBJECT Additional information on subsistence payments in community corrections

This memo provides additional information for the JBC-Initiated FY 2021-22 Community Corrections Savings Options decision item on pages 38-40 of Comeback Packet #8 dated March 18, 2022. Specifically, it provides additional information regarding Option #4 on page 40 of that packet.

The main funding line item for community corrections is *Community Corrections Placements*. The appropriation is tied to a Long Bill footnote that assumes certain per-diem reimbursement rates. The footnote also assumes that most community corrections providers will collect \$17.00 per day from offenders in residential facilities and \$3.00 per day from nonresidential offenders. This daily offender fee is called a “subsistence payment.” The fee is not statutory; it is a Long Bill footnote assumption.

FY 2021-22 appropriation: \$66,063,793 General Fund

The following table is a modified version of the current footnote. The table shows the current FY 2021-22 appropriation and the current per-diem rates.

FY 2021-22 COMMUNITY CORRECTIONS PLACEMENTS		
Placement Type	Rates	Appropriation
Standard residential	\$49.16	\$45,897,331
Specialized residential services	Differential	Appropriation
Cognitive behavioral treatment pilot program	\$44.91	\$1,648,106
Intensive Residential Treatment	45.69	5,608,687
Inpatient Therapeutic Community	32.98	3,238,097
Residential Dual Diagnosis Treatment	34.70	3,672,860
Sex Offender	34.70	3,550,431
Non-residential	Rates	Appropriation
Standard Non-residential	\$6.65	\$1,908,464
Outpatient Therapeutic Community	23.86	539,997
Total		\$66,063,973

FY 2022-23 JBC Actions To-date

The FY 2022-23 appropriation currently sits at \$58,483,555 General Fund; the table below shows the incremental changes so far to arrive at that figure.

DIVISION OF CRIMINAL JUSTICE, COMMUNITY CORRECTIONS, COMMUNITY CORRECTIONS PLACEMENTS						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2022-23 RECOMMENDED APPROPRIATION						
FY 2021-22 Appropriation	\$66,063,973	\$66,063,973	\$0	\$0	\$0	0.0
Provider rate common policy	1,133,692	1,133,692	0	0	0	0.0
Staff-initiated performance-based incentive payments	631,513	631,513	0	0	0	0.0
Staff-initiated community corrections caseload adjustment	(7,697,517)	(7,697,517)	0	0	0	0.0
Annualize prior year budget actions	(1,648,106)	(1,648,106)	0	0	0	0.0
TOTAL	\$58,483,555	\$58,483,555	\$0	\$0	\$0	0.0

Based on the Committee’s actions to-date, the Long Bill footnote currently reads as follows, with the language about subsistence highlighted and bolded:

N Department of Public Safety, Division of Criminal Justice, Community Corrections, Community Corrections Placements -- This appropriation assumes the daily rates and average daily caseloads listed in the following table and is based on the following assumptions: the base rate for standard nonresidential services is a weighted average of the rates for four different levels of service; **community corrections providers will collect client fees of up to \$17 per day for residential placements and up to \$3 per day for nonresidential placements; fees may be partially or fully waived in specialized residential and non-residential programs with the approval of the Division of Criminal Justice; pursuant to its authority to administer and execute contracts under Section 17-27-108, C.R.S., the Division of Criminal Justice will ensure that every reasonable effort is made to achieve such collections.** This appropriation also assumes that the residential base per-diem rate in the table included in this footnote will be increased by 1.0 percent for programs meeting recidivism performance targets and 1.0 percent for programs meeting program completion performance targets.

Rate type	Rates	Average Daily Placements	Estimated Allocation
Residential base rate	\$50.14	526	\$9,626,379
Base rate plus 1.0% incentive	\$50.64	786	\$14,528,109
Base rate plus 2.0% incentive	\$51.14	1,337	\$24,956,575
Specialized differentials			
Intensive residential treatment	\$46.61	146	\$2,483,847
Inpatient therapeutic communities	\$33.65	108	\$1,326,483
Residential dual diagnosis treatment	\$35.39	120	\$1,550,082
Sex offender treatment	\$35.39	116	\$1,498,413
Standard non-residential	\$6.79	792	\$1,962,853
Outpatient therapeutic community	\$24.34	62	\$550,814
Total		3,503	\$58,483,555

Impacts of Option #4: Let FY 2021-22 savings revert and eliminate subsistence assumption for FY 2022-23

If the Committee were to eliminate subsistence payments for FY 2022-23 (Option #4 in the staff comeback document) and increase the standard residential per-diem rate to \$67.00, all residential specialized rates to \$100.00 (an across-the-board differential of \$33.00), and a \$3.00 increase for non-residential rates, the appropriation would increase to \$74,926,952. **This is an increase of \$16,443,396 General Fund from currently approved FY 2022-23 levels; it is \$8,862,978 General Fund higher than FY 2021-22 levels.**

Staff notes that if the community corrections population increases to pre-pandemic levels sometime in the future (whether FY 2022-23 or a future year), appropriations would increase by \$30,378,370 General Fund relative the currently approved FY 2022-23 appropriation, or \$22,797,953 higher than FY 2021-22 levels.

The footnote would be amended as follows:

N Department of Public Safety, Division of Criminal Justice, Community Corrections, Community Corrections Placements -- This appropriation assumes the daily rates and average daily caseloads listed in the following table and is based on the following assumptions: The base rate for standard nonresidential services is ASSUMES a weighted average of the rates for four different levels of service. ~~community corrections providers will collect client fees of up to \$17 per day for residential placements and up to \$3 per day for nonresidential placements; fees may be partially or fully waived in specialized residential and non-residential programs with the approval of the Division of Criminal Justice; pursuant to its authority to administer and execute contracts under Section 17-27-108, C.R.S., the Division of Criminal Justice will ensure that every reasonable effort is made to achieve such collections.~~ This appropriation also assumes that the residential base per-diem rate in the table included in this footnote will be increased by 1.0 percent for programs meeting recidivism performance targets and 1.0 percent for programs meeting program completion performance targets.

Rate type	Rates	Average Daily Placements	Estimated Allocation
Residential base rate	\$67.00	526	\$12,863,330
Base rate plus 1.0% incentive	\$67.67	786	\$19,413,846
Base rate plus 2.0% incentive	\$68.34	1,337	\$33,350,262
Specialized differentials			
Intensive residential treatment	\$33.00	146	\$1,758,570
Inpatient therapeutic communities	\$33.00	108	\$1,300,860
Residential dual diagnosis treatment	\$33.00	120	\$1,445,400
Sex offender treatment	\$33.00	116	\$1,397,220
Standard non-residential	\$9.65	792	\$2,789,622
Outpatient therapeutic community	\$26.86	62	\$607,842
Total		3,503	\$74,926,952

If the Committee wanted to add legislative intent language that subsistence not be collected, staff recommends the following addition to the footnote: “THE APPROPRIATION ASSUMES THAT OFFENDERS WILL NOT BE CHARGED A DAILY SUBSISTENCE FEE.” Staff also recommends adding a sentence to a related Request for Information (RFI) directing the Division of Criminal Justice to ask providers if they are still charging subsistence and to identify these providers (if applicable) in the RFI.

Recommended companion actions

If the Committee chooses Option #4, staff recommends pairing it with a two subsequent motions to:

- Deny staff’s recommendation for the *Staff-initiated Double Facility Payments decision item* and eliminate the *Community Corrections Facility Payments* line item, which would save \$8,406,859 General Fund that is currently factored into budget balancing documents.
- Exempt the community corrections placements line item from further provider rate common policy changes for FY 2022-23 and remove community corrections line items from the provider

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rate common policy in future years. Future rate increases would be tied to performance measures that can be adjusted by the JBC during the annual budget cycle.

Summary

Staff is neutral on the elimination of the subsistence fee assumption. However, if the Committee makes a budget and policy decision to eliminate the subsistence fee and increase per-diem rates, staff has recommended eliminating the *Community Corrections Facility Payments* item and denying the staff-initiated decision item to double those payments in FY 2022-23. This companion recommendation partially offsets the General Fund impact of eliminating the subsistence fee.

When accounting for all JBC actions to-date for community corrections placements *and* the recommended elimination of the facility payment, the *net General Fund impact of all actions* for FY 2022-23 is a more modest \$456,120 General Fund.

The *net General Fund incremental change FY 2021-22 to FY 2022-23* would be \$4,652,044

SUMMARY FOR OPTION #4		
	ACTION	GENERAL FUND
FY 2022-23 actions to-date for <i>Community Corrections Placements</i> line item	Provider rate common policy	\$1,133,692
	Performance-based incentive payments	631,513
	Caseload adjustment	(7,697,517)
	Prior year budget actions	(1,648,106)
Subtotal		(\$7,580,418)
Possible FY 2022-23 Actions	Eliminate subsistence assumption and increase per-diem rates	\$16,443,397
	Eliminate facility payments and reject staff-initiated double facility payments	(8,406,859)
Subtotal new actions		\$8,036,538
Net General Fund impact all actions		\$456,120
Line Item Changes		
Community Corrections Placements		
	FY 2021-22 appropriation	\$66,063,973
	FY 2022-23 appropriation (JBC actions to-date)	58,483,555
	FY 2022-23 revised appropriation	\$74,926,952
	<i>Incremental change FY 2021-22 to FY 2022-23</i>	<i>\$8,862,979</i>
Community Corrections Facility Payments		
	FY 2021-22 Facility Payments appropriation	\$4,299,753
	FY 2022-23 Recommended Facility Payments appropriation if subsistence eliminated	0
	<i>Incremental change FY 2021-22 to FY 2022-23</i>	<i>(\$4,299,753)</i>
	<i>Net Incremental Change FY 2021-22 to FY 2022-23</i>	<i>\$4,563,044</i>