

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



**FY 2016-17 STAFF BUDGET BRIEFING
DEPARTMENT OF PUBLIC SAFETY**

(Division of Criminal Justice)

**JBC Working Document - Subject to Change
Staff Recommendation Does Not Represent Committee Decision**

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DEPARTMENT OF PUBLIC SAFETY

(Division of Criminal Justice *only*)

Department Overview

The Division of Criminal Justice has the following responsibilities:

- Oversee Colorado's community corrections system by:
 - Providing funding to local community corrections boards. The boards use this money to fund their operations and to contract with the community corrections programs in their judicial districts.
 - Establishing standards for community corrections programs and providing training for those who work for these programs.
 - Auditing community corrections programs to evaluate compliance with standards.
- Collect, analyze, and disseminate statewide criminal-justice statistics and other criminal-justice information.
- Provide recommendations and develop plans of action for the General Assembly, state agencies, and local governments detailing measures to improve the criminal justice system and reduce crime and juvenile delinquency.
- Promote evidence-based criminal justice practices that have been shown by research to be effective.
- Help law enforcement agencies improve their law enforcement systems and their relationships with other agencies and the statewide system.
- Administer federal and state criminal and juvenile justice grant programs.
- Administer victim assistance programs, including the State VALE program (Victims Assistance and Law Enforcement), the federal VOCA program (1984 Victims of Crime Act) and the federal VAWA program (1994 Violence against Women Act).
- Provide support to the Domestic Violence Offender Management Board (DVOMB) and the Sex Offender Management Board (SOMB) and administer related programs.

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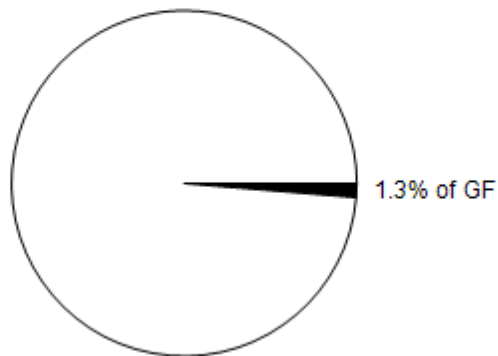
Department Budget: Recent Appropriations

Funding Source	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17 *
General Fund	\$168,464,555	\$134,566,411	\$125,170,650	\$125,439,904
Cash Funds	166,495,597	175,622,518	184,486,485	190,655,664
Reappropriated Funds	26,975,529	33,311,956	34,175,433	38,245,604
Federal Funds	<u>55,237,146</u>	<u>58,435,885</u>	<u>59,499,919</u>	<u>59,659,984</u>
Total Funds	\$417,172,827	\$401,936,770	\$403,332,487	\$414,001,156
Full Time Equiv. Staff	1,618.2	1,688.6	1,727.1	1,738.5

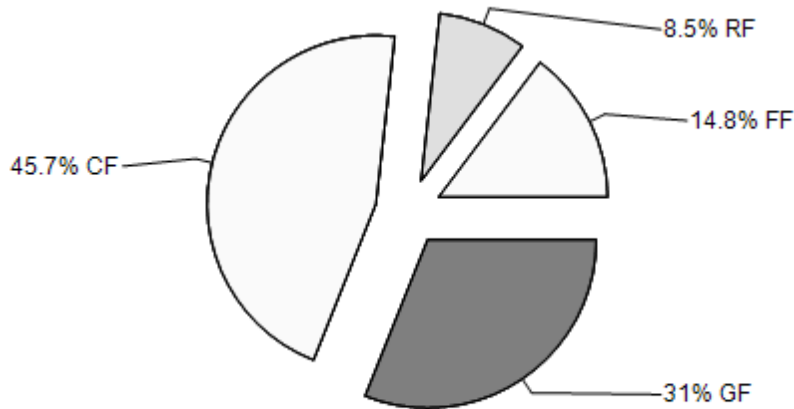
*Requested appropriation.

Department Budget: Graphic Overview

**Department's Share of Statewide
General Fund**

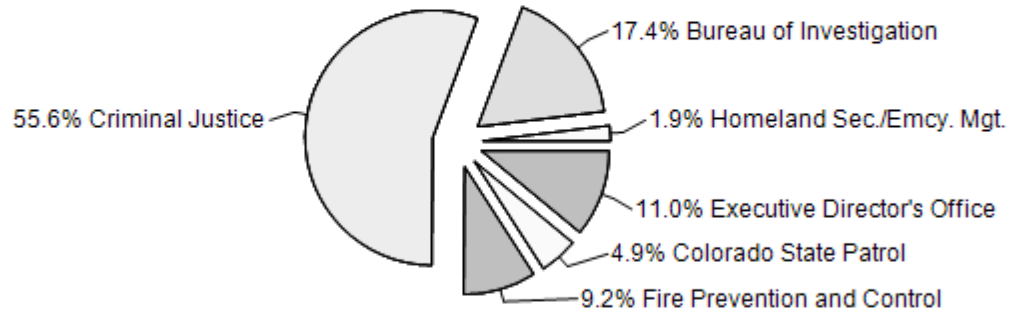


Department Funding Sources

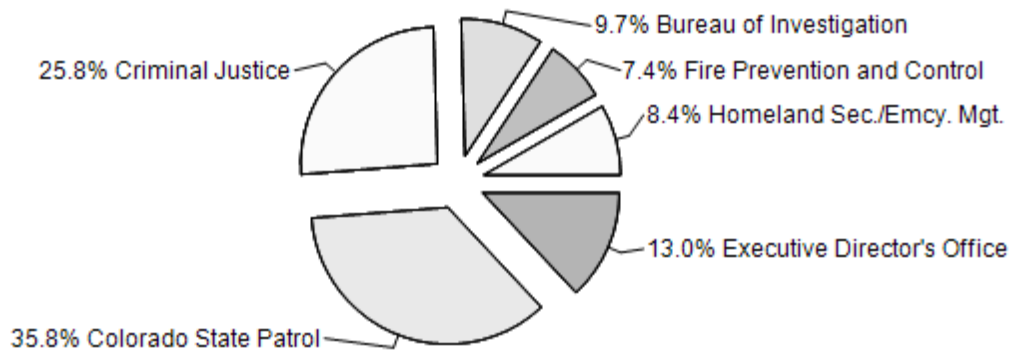


All charts are based on the FY 2015-16 appropriation.

Distribution of General Fund by Division



Distribution of Total Funds by Division



All charts are based on the FY 2014-15 appropriation.

General Factors Driving the Budget

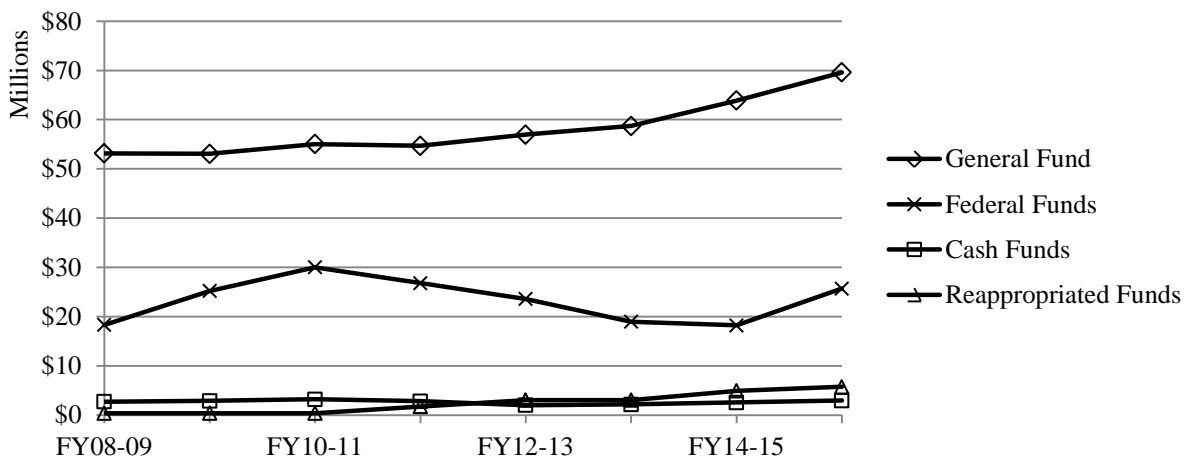
Funding for the Department of Public Safety in FY 2015-16 consists of 31.0 percent General Fund, 45.7 percent Cash Funds, 8.5 percent Reappropriated Funds, and 14.8 percent Federal Funds

Funding for the Division of Criminal Justice in FY 2015-16 consists of 66.9 percent General Fund, 2.8 percent cash fund, 5.5 percent reappropriated funds, and 24.7 percent federal funds.

Division of Criminal Justice

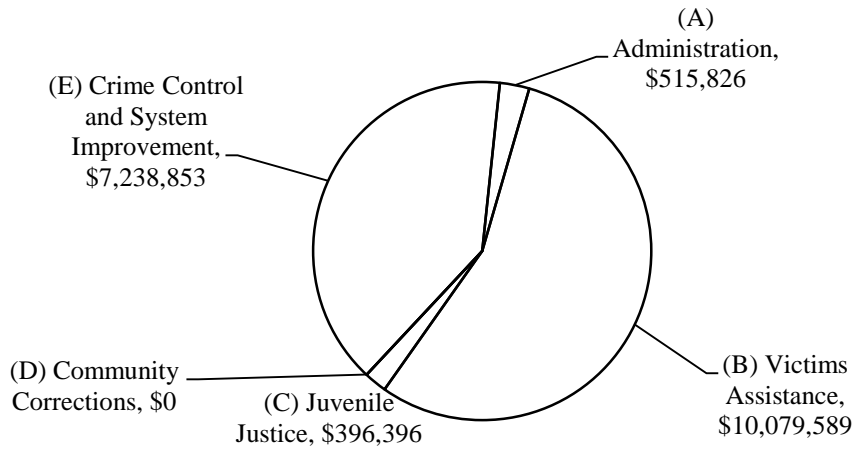
The two largest sources of funding for the Division of Criminal Justice (DCJ) are the General Fund and federal funds. The following chart shows actual spending by the Division since FY 2008-09 along with the appropriation for FY 2015-16. As the chart indicates, there was a marked bump in federal funding around FY 2010-11 during the recent recession. Federal funding subsequently declined but has recently recovered. General Fund appropriations increased markedly in FY 2014-15 when the General Assembly approved higher rates for Community Corrections providers. The increase would have been greater except that several community corrections programs closed down during FY 2014-15, which led to negative supplementals during that year. Restoration of funding in FY 2015-16 boosted the General Fund growth in that year.

Division of Criminal Justice Recent Actual Expenditures and Appropriations



Federal Funds. As the next chart shows, Federal Funds are concentrated in two divisions, the Victim's Assistance subdivision and the Crime Control and System Improvement subdivision.

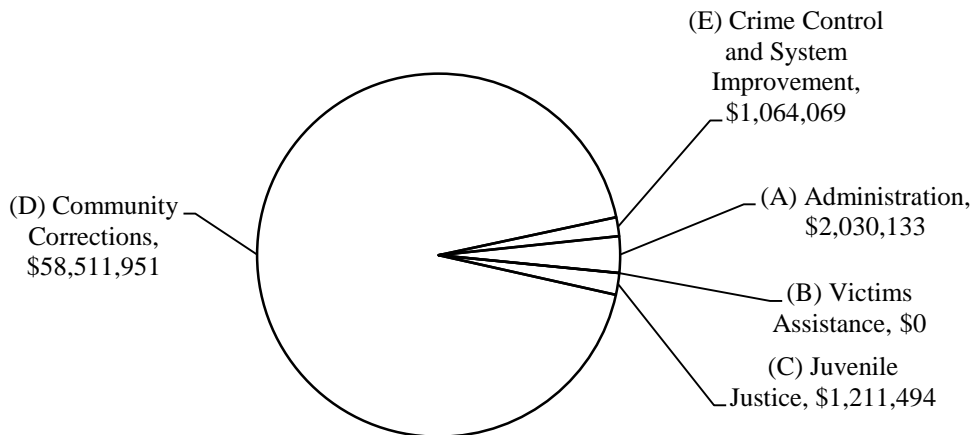
**Distribution of FY 2014-15 Federal Funds
Expenditures Among Subdivisions**



Most of the Federal Funds are pass-through grants. They include the Victims of Crime Act (VOCA), the S.T.O.P. Violence against Women Act (VAWA), the Sexual Assault Service Program (SASP), Justice Assistance Grants (JAG), Juvenile Accountability Block Grants (JABG), Project Safe Neighborhood, Title V, Residential Substance Abuse Treatment for State Prisoners, Coverdell, John R Justice, and the National Criminal History Improvement Program.

General Fund. The following pie chart shows the distribution of General Fund expenditures among the DCJ subdivisions.

**Distribution of FY 2014-15 General Fund
Expenditures Among Subdivisions**



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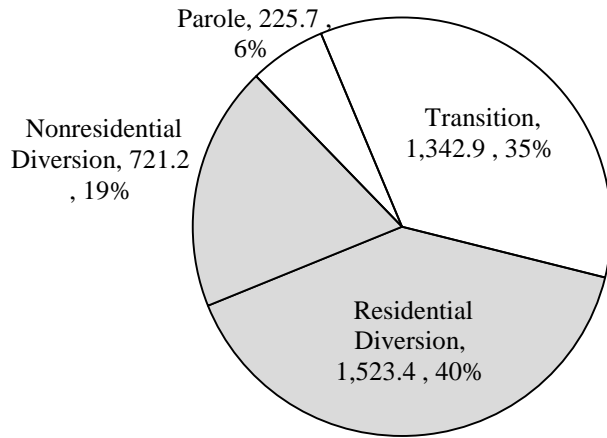
As this diagram indicates, most of the Division's General Fund expenditures are concentrated in the Community Corrections subdivision where they fund the state's approximately three dozen community corrections programs or halfway houses. These programs are based in local communities and are operated by private providers, non-profits, and local governments. The programs provide the courts with an intermediate sanction between probation and prison (“diversion”) and provide reintegration services between prison and parole (“transition”).

Community Corrections: Colorado's two dozen halfway houses provide offenders with supervision and structure in both residential and nonresidential settings. *Diversion* clients are directly sentenced to community corrections by a judge as the result of a felony conviction while *Transition* clients are in prison and are placed in a halfway house prior to parole, following a stay in the Department of Corrections. *Parolees*, former prison inmates who have been paroled by the parole board, are also placed in community corrections facilities, though in smaller numbers. The parolees would be required by the parole board to live in a community corrections facility as a condition of parole.¹

The following pie chart shows the relative number of transition, diversion, and parole offenders in community corrections, not counting revoked parolees in "community return to custody facilities". The two shaded slices divide diversion offenders into residential and non-residential categories to help show that total diversion offenders exceed total transition offenders, but residential transition offenders exceed residential diversion offenders. The pie chart also shows that there are about 4 residential beds for each nonresidential slot and that residential diversion offenders outnumber transition diversion offenders 53 percent to 47 percent.

¹ Another group of parolees also resides in community-corrections-like facilities, but are included in the Department of Corrections population counts, rather than the DCJ Community Corrections population count. These parolees have committed class 4, 5 or 6 felonies (some class 4 to 6 felons are ineligible) and have been sentenced to up to 180 days in residence at a "Community Return to Custody facility" due to a technical parole violation. These Community Return to Custody facilities are operated by some of Colorado's halfway houses and are located in the same facilities that house regular community corrections offenders. As this suggests, Community Return to Custody programs are similar to residential community corrections programs. Funding for these parole-revocation programs is included in the Department of Corrections budget, rather than the Division of Criminal Justice budget.

Distribution of Community Corrections Offenders FY 2014-15



Residential community corrections offenders live in community corrections facilities, going out to work or to seek work and returning when work ends. Transition offenders always begin in residential programs; diversion offenders almost always begin in residence but commonly progress to nonresidential status; they then live outside the facility but check in regularly and are monitored to make sure they are at jobs and other approved locations.

Specialized Treatment. All residential community corrections facilities provide programs for their offenders, covering such things as drug and alcohol education, anger management classes, parenting, and money management. Some residential programs provide much more extensive, specialized therapy:

- *Intensive Residential Treatment (IRT)* is a 90-day residential substance-abuse program.
- *Therapeutic Communities* focus on substance abuse, sometimes in combination with mental illness. They have inpatient and outpatient phases.
- *Residential Dual Diagnosis Treatment (RDDT)* programs address co-occurring mental health and substance abuse problems. They have inpatient and outpatient phases.
- The *John Eachon Re-Entry Program (JERP)* offers intensive residential and non-residential treatment for offenders with serious mental illnesses and substance abuse disorders.

Community Corrections Rates

Standard residential community corrections programs receive a per diem payment from the Division of Criminal Justice of \$42.09 per day for each offender they house. Specialized programs receive the same base payment plus a differential that covers the cost of the specialized treatment. These per-offender-per-day differentials range from \$27.73 for Inpatient Therapeutic Communities to \$55.04 for the John Eachon Re-entry Program.

Residential Community Correction programs also receive a \$95,064 per year facility fee that is paid to all community corrections facilities regardless of their size. By design, the fee is worth

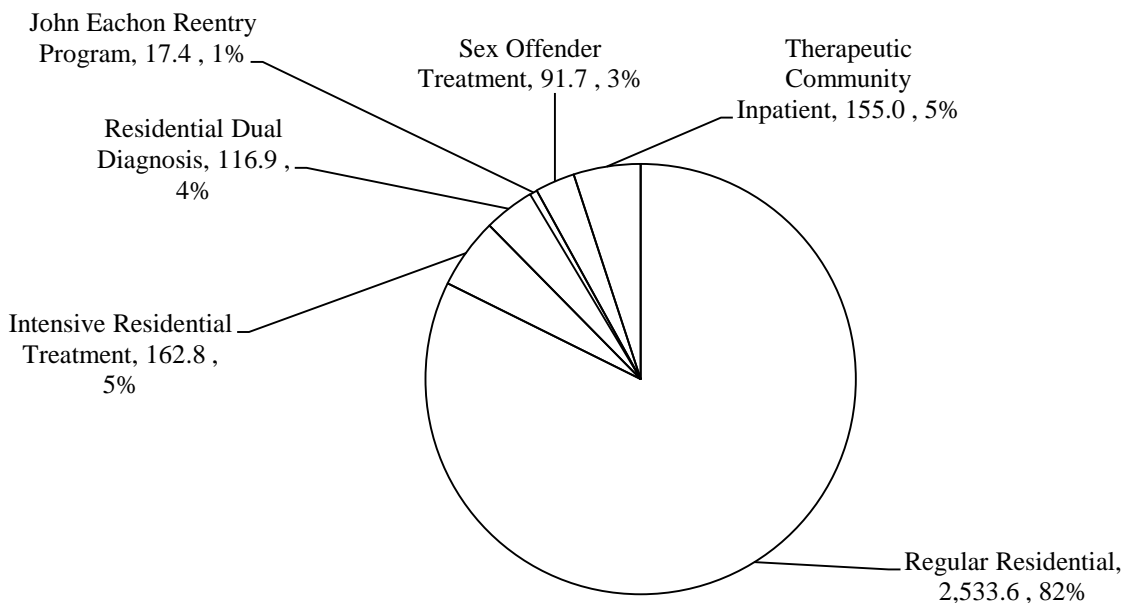
proportionately more for a small facility than for a large facility. For a 50 bed facility, this fee is equivalent to $\$95,064/50/365 = \5.21 of additional payments per offender per day while for a 200-bed facility it is worth $\$95,064/200/365 = \1.30 per offender per day.

Community corrections programs also receive per diem payments for offenders who are in the non-residential phase of treatment. Standard nonresidential community corrections programs receive an average state payment of \$6.13 per day, while payments for specialized non-residential programs range up to \$34.68 per day.

A table in Appendix C ("Update on Long Bill Footnotes & Requests for Information") lists FY 2015-16 community corrections per diem rates and community corrections populations.

The following pie chart shows the distribution of offenders among residential programs.

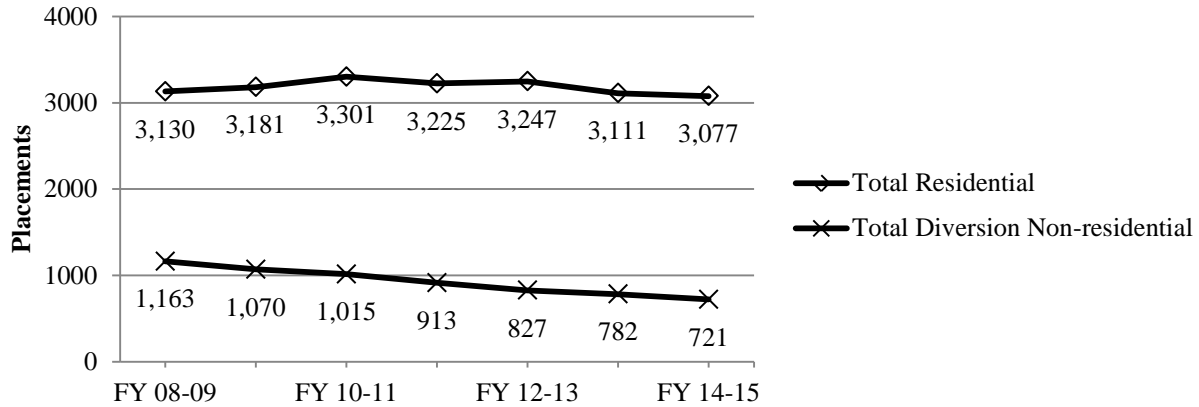
The Number of Residential Community Corrections Regular and Specialized Beds, FY 2015-16



Trends:

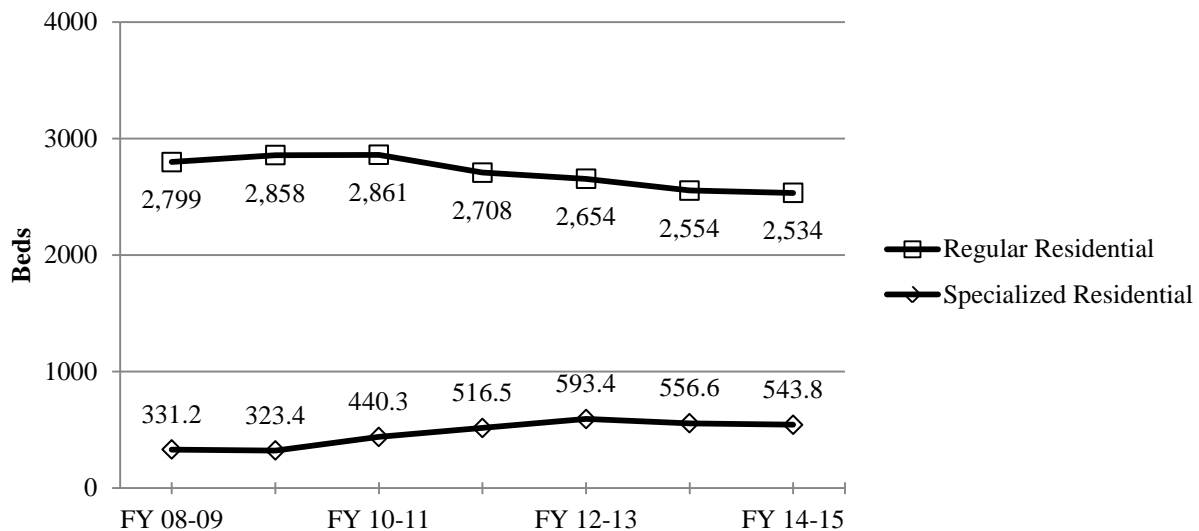
1. The number of residential and non-residential placements has declined since FY 2010-11, with non-residential placements declining more sharply .

Residential vs Nonresidential Placements



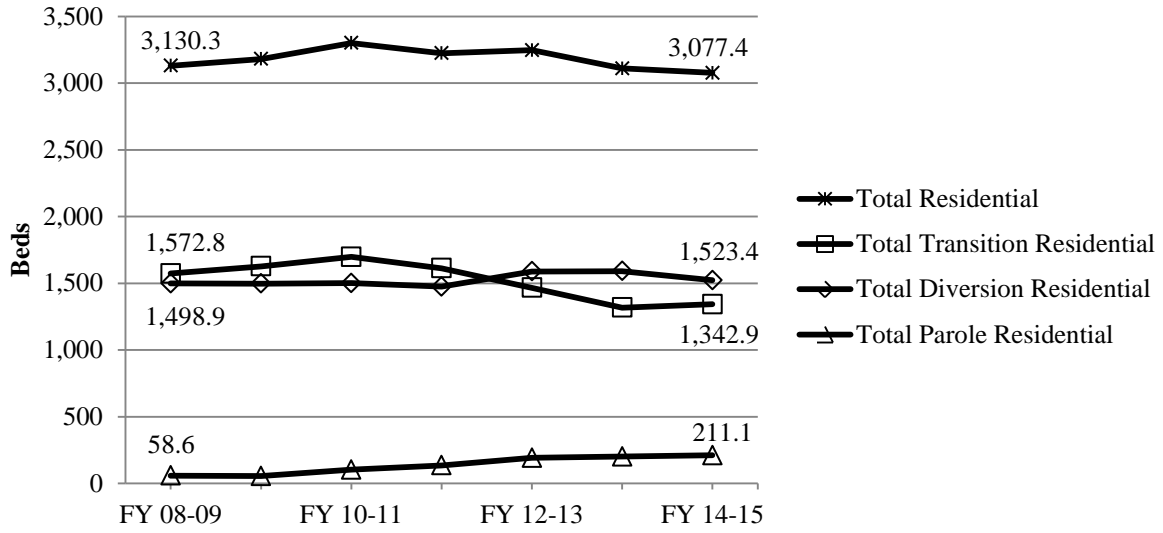
2. The number of specialized beds has been increasing relative to the number of regular beds.

Regular vs Specialized Residential



3. The number of residential diversion offenders has moved ahead of the number of transition offenders. The parole board is placing more offenders in community corrections as a condition of parole.

Changing composition of residential beds



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Summary: FY 2015-16 Appropriation & FY 2016-17 Request

Department of Public Safety						
	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FTE
FY 2015-16 Appropriation						
S.B. 15-234 (Long Bill)	\$401,570,957	\$123,485,119	\$184,426,485	\$34,159,434	\$59,499,919	1,722.8
Other legislation	<u>1,761,530</u>	<u>1,685,531</u>	<u>60,000</u>	<u>15,999</u>	<u>0</u>	<u>4.3</u>
TOTAL	\$403,332,487	\$125,170,650	\$184,486,485	\$34,175,433	\$59,499,919	1,727.1
FY 2016-17 Requested Appropriation						
FY 2015-16 Appropriation	\$403,332,487	125,170,650	\$184,486,485	\$34,175,433	\$59,499,919	1,727.1
R1 Realignment of EDO	4,438,154	0	0	4,438,154	0	5.0
R2 Additional E-470 troopers	261,040	0	261,040	0	0	2.0
R3 Jail survey impacts	75,000	0	75,000	0	0	0.0
R4 Leased space true-up	(55,145)	0	(55,145)	0	0	0.0
R5 Eliminate Policing Institute line item	(100,000)	0	0	(50,000)	(50,000)	(2.5)
R6 Community Corrections provider rate decrease	(658,873)	(658,873)	0	0	0	0.0
NP1 Annual fleet vehicle request	(1,072,223)	(259,045)	(615,517)	(98,832)	(98,829)	0.0
NP2 Secure Colorado	56,799	56,799	0	0	0	0.0
NP3 Niche records management system	158,873	0	158,873	0	0	0.0
Centrally appropriated line items	7,836,819	2,780,076	6,637,424	(1,769,073)	188,392	0.0
Technical adjustments	1	0	3,003	(1,428)	(1,574)	0.0
Annualize prior year budget actions	(120,019)	(68,634)	(41,264)	(1,436)	(8,685)	0.0
Indirect cost assessment adjustment	(111,673)	(1,523,062)	(256,175)	1,536,803	130,761	0.0
Annualize prior legislation	<u>(40,084)</u>	<u>(58,007)</u>	<u>1,940</u>	<u>15,983</u>	<u>0</u>	<u>6.9</u>
TOTAL	\$414,001,156	\$125,439,904	\$190,655,664	\$38,245,604	\$59,659,984	1,738.5
Increase/(Decrease)	\$10,668,669	\$269,254	\$6,169,179	\$4,070,171	\$160,065	11.4
Percentage Change	2.6%	0.2%	3.3%	11.9%	0.3%	0.7%

Shaded change requests are covered by this briefing. Items that are not shaded were covered during the briefing for other divisions of the Department of Public Safety.

Description of Requested Changes

R1 Realignment of EDO: The Department requests \$4,438,154 reappropriated funds and 5.0 FTE in FY 2016-17 in order to consolidate within the Executive Director's Office (EDO) administrative resources currently operating at the division level.

R2 Additional E-470 troopers: The Department is requesting an increase of \$261,040 cash funds spending authority and 2.0 FTE for FY 2016-17 to increase patrolling hours in the E-470 corridor. The Department has a contract with the E-470 Public Highway Authority under which these FTE would operate.

R3 Jail survey impacts: The Department requests a one-time increase of \$75,000 Cash Funds from the Marijuana Tax Cash Fund in FY 2016-17 to conduct a survey of jail inmates to determine whether legal marijuana use is linked to incarceration, homelessness, and criminal behavior. Data collected from this survey will allow DCJ to deliver a more complete picture of the impacts of marijuana legalization to the General Assembly, the Governor's Office, and the public. Section 24-33.5-516 (1), C.R.S., directs the Division of Criminal Justice (DCJ) to study the public safety impact of retail marijuana. \$70,000 of the requested \$75,000 would be to hire a contractor who would conduct a survey of incoming jail inmates.

R4 Leased space true-up: The Department requests a transfer of spending authority from the Division of Fire Prevention and Control (DFPC) operating appropriations to the EDO Leased Space line for FY 2016-17 and beyond, with a net reduction of \$55,145 cash funds.

R5 Eliminate Policing Institute line item: The Department requests elimination of the Colorado Regional and Community Policing Institute line item in the Division of Criminal Justice, which, will remove a \$50,000 appropriation of reappropriated Funds from the P.O.S.T. Board in the Department of Law and a \$50,000 appropriation of federal funds. Actual expenditure from this line item was about \$12,000 of federal funds in FY 2012-13 and FY 2013-14 and \$0 in FY 2014-15. Nothing was received from the P.O.S.T. Board in any of these years. The Department does not expect to receive future federal funding for the program.

R6 Community Corrections provider rate decrease: The Department requests a decrease of \$658,873 General Fund for FY 2016-17 to reduce the community corrections per diem, differentials, and facilities payments by 1.0 percent. Payments to Community Corrections boards would also fall by 1.0 percent. This reduction is part of the 1.0 percent community provider rate decrease proposed by the Governor.

NP1 Annual fleet vehicle request: The request includes a reduction of \$1,072,223 total funds in annual payments to the Department of Personnel for fleet vehicles.

NP2 Secure Colorado: The request seeks an increase of \$56,799 General Fund for FY 2016-17 to cover the Department's share of the Office of Information Technology's implementation of advanced information security event analytics capabilities.

NP3 Niche records management system: The request includes an increase of \$158,873 cash funds for FY 2016-17 to support and maintain the Niche Records Management System. The System is used by the Colorado State Patrol for records management of data associated with core policing activities.

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Centrally appropriated line items: The request includes adjustments to centrally appropriated line items for the following: state contributions for health, life, and dental benefits; merit pay; salary survey; short-term disability; supplemental state contributions to the Public Employees' Retirement Association (PERA) pension fund; shift differential; workers' compensation; payment to risk management and property funds; and Capitol complex leased space.

Technical adjustments: The request includes a technical adjustment of \$1 total funds to align dispatch billing within the Colorado State Patrol.

Annualize prior year budget actions: The request includes adjustments related to prior year budget actions, including merit pay and salary survey adjustments.

Indirect cost assessment: The request includes a reduction of \$111,673 for the Department's indirect cost assessment, including a reduction of \$1,523,062 General Fund.

Annualize prior year legislation: The request includes adjustments that are a consequence of the following prior year legislation: S.B. 15-014 (Medical Marijuana), S.B. 15-020 (Education to Prevent Child Sexual Abuse and Assault), S.B. 15-124 (Reduce Parole Revocations for Technical Violations), S.B. 15-185 (Police Data Collection and Community Policing), S.B. 15-217 (Police Shooting Data Collection), H.B. 15-1129 (Disaster Prediction and Decision Support Systems), H.B. 15-1285 (Law Enforcement Use of Body-worn Cameras), H.B. 15-1379 (Marijuana Permitted Economic Interest), and H.B. 15-205 (Veterans Fire Corps).

Issue: Results of the Subsistence Forgiveness Pilot Project

For FY 2013-14, the General Assembly appropriated \$591,200 General Fund for a seven month experiment under which offenders newly arrived in community corrections facilities were given a four week “grace period” during which they were not charged the standard \$17 per day for subsistence. Based on suggestive but not conclusive evidence from other sources, the experiment was expected to produce better offender outcomes, i.e. more successful completions, fewer escapes, and fewer technical revocations. The evidence from the experiment has now been analyzed and results show that outcomes were statistically worse for diversion clients and statistically unchanged for transition clients. In summary, the experiment was not successful.

SUMMARY:

- A seven month community corrections subsistence-forgiveness project failed to produce better outcomes for transition offenders and produced worse outcomes for diversion offenders.

DISCUSSION:

Background: Offenders in standard community corrections programs are expected to pay \$17 daily to their community corrections program to offset part of the cost of keeping them at the facility. This payment, often referred to as "subsistence", amounts to \$476 (= 28 * \$17) every 4 weeks. Offenders usually have other expenses, such as paying for required counseling, restitution, and child support, as well as medical expenses.

Offenders in standard residential programs who have difficulty finding a job after they arrive find that their debts to the community corrections program mount rapidly. There is some evidence suggesting that offender indebtedness contributes to escapes and to technical violations. In FY 2000-01, the Division of Criminal Justice collaborated with Peer I and The Haven, two community corrections programs that operate therapeutic communities. This initiative allowed the programs to use Drug Offender Surcharge Funds to offset offender subsistence fees during the first six months of residential placement, which, in turn, allowed offenders to delay seeking employment and focus on adjustment and treatment. Escape rates declined from 25.4 percent in FY 2000 to 15.28 percent in FY 2001.

Beginning in 2008, the Colorado Commission on Criminal and Juvenile Justice recommended that offenders newly arrived in a community corrections center be given a two to four week “grace period” during which fees and subsistence payments were delayed until the offender stabilized in the community.

For FY 2013-14, the General Assembly decided to fund a \$591,200 six month experiment under which subsistence payments were waived for four weeks for newly arrived community corrections clients. The committee was advised by the Division of Criminal Justice that this would provide an adequate sample to evaluate the results.

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The experiment began in December 2013 and ended on June 30, 2014. Because participants needed to be followed for at least a year, results were not available until late August 2015. This group was then compared with a group of offenders who were in community corrections programs one year earlier.

The Subsistence Grace Period Pilot Project was expected to improve outcomes for clients serving community corrections sentences. However, Pilot Project participants were not more successful than the comparison group. Diversion clients were significantly more likely to escape and significantly less likely to successfully complete their programs. Differences for transition clients were not statistically significant. In summary, a subsistence grace period was expected to improve outcomes, but this did not occur

		Diversion			
Termination Reason:		Pilot Program	Comparison	N	Statistical Significance
	Successful Completion	42.0%	49.5%	862	.007*
	Escape	23.1%	17.0%	335	.003
	New Crime	2.5%	2.2%	41	n.s.
	Technical Violation	32.4%	31.4%	572	n.s.
	N	445	1365	1810	
		Transition			
Termination Reason:		Pilot Program	Comparison	N	Statistical Significance
	Successful Completion	57.8%	59.9%	1251	n.s.
	Escape	13.5%	13.7%	288	n.s.
	New Crime	1.5%	1.5%	32	n.s.
	Technical Violation	27.2%	24.9%	539	n.s.
	N	599	1511	2110	

Lessons from the pilot project.

- There are many ideas in criminal justice that sound good. No matter how good they sound, however, and no matter how convincing the anecdotal evidence, until tested one cannot assume that they will improve outcomes.
- Had this experiment not been conducted, subsistence grace periods might have been permanently funded at a cost of approximately \$1 million per year. The state would have been spending \$1 million annually for a program that did not make a difference. Whenever possible, fund a temporary experiment before adding a program permanently to statute.
- This experiment provides no support for subsistence grace periods, but it is not a perfect study. Whenever a study is done, one must be mindful of the possibility that some unmeasured factor or factors will influence the outcomes for individual participants. This study compared participants who entered community corrections between December 2013 and June 2014 with a group of offenders who were in community corrections a year earlier. A potentially very significant event occurred during this interval: the murder of Department of Corrections Director Clements in March 2013. Director Clements' death, and subsequent investigations in the press, had a deep impact on many criminal justice professionals. To mention only two affected groups, it may have influenced parole officers, who make revocation decisions for transition offenders, or it may have influenced Community Corrections boards, which decide who to accept and who to reject. As a result of Director Clements' death, the community corrections environment in the spring of 2014 may have been very different from the environment in the spring of 2013.

Director Clements' murder is an obvious unmeasured factor that may have had differing effects over time, but there may have been others, such as the economy.

A study that randomly assigned new community corrections offenders to receive or not receive subsistence forgiveness might have avoided the Director-Clements problem. Everyone in the study would have started participating 9 to 16 months after Director Clements' death and would probably have been similarly influenced by it. Such a study may not have been feasible, however, because it would have resulted in offenders living side by side who received very different treatment simply because one was lucky and the other was not.

Issue: Crime and Punishment Trends

There has been a broad and continuing decline in crime rates in the U.S. and Colorado since the early 1990's. The decline appears to have gone unnoticed by a substantial part of the U.S. public. The issue examines some of the theories that have been advanced to explain decline in crime rates.

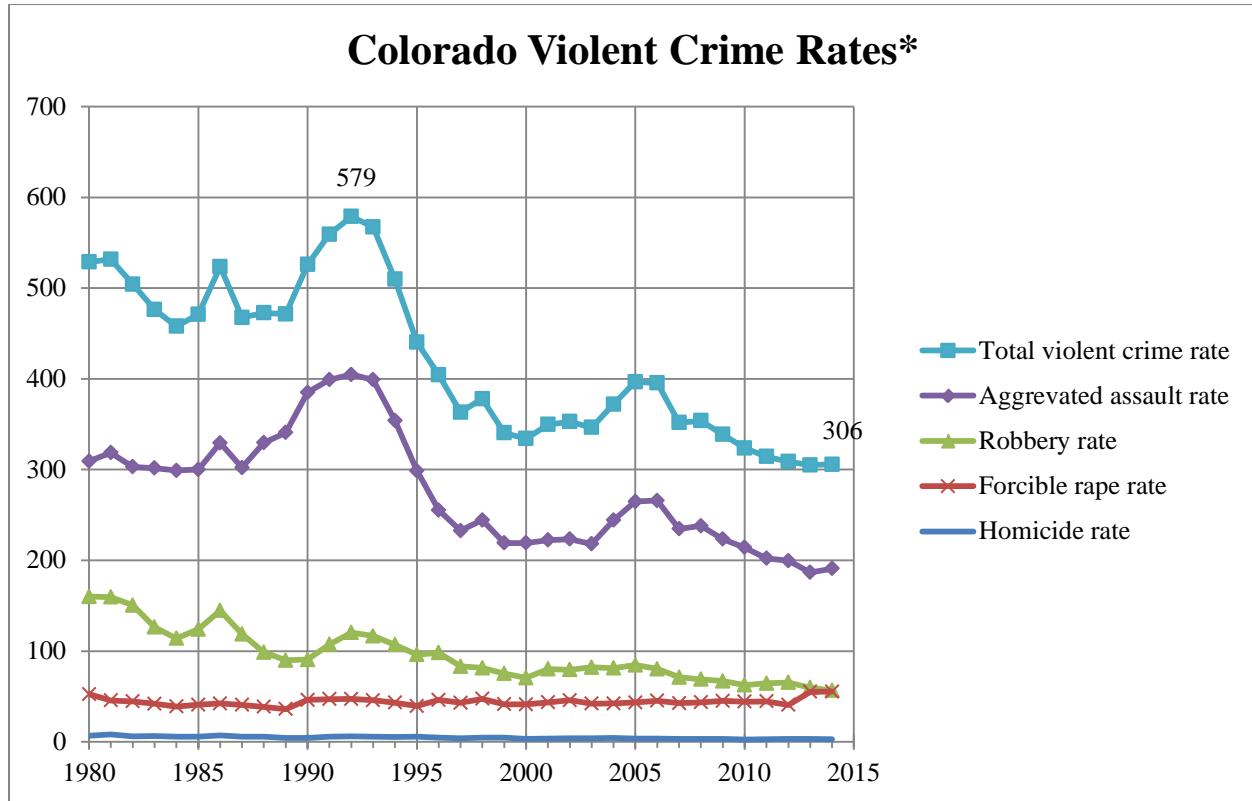
SUMMARY:

- U.S. and Colorado crime rates have fallen substantially since the early 1990's .
- Polls indicate that substantial parts of the U.S. public are unaware of declining crime trends.
- A number of theories have been advanced to explain the decline.

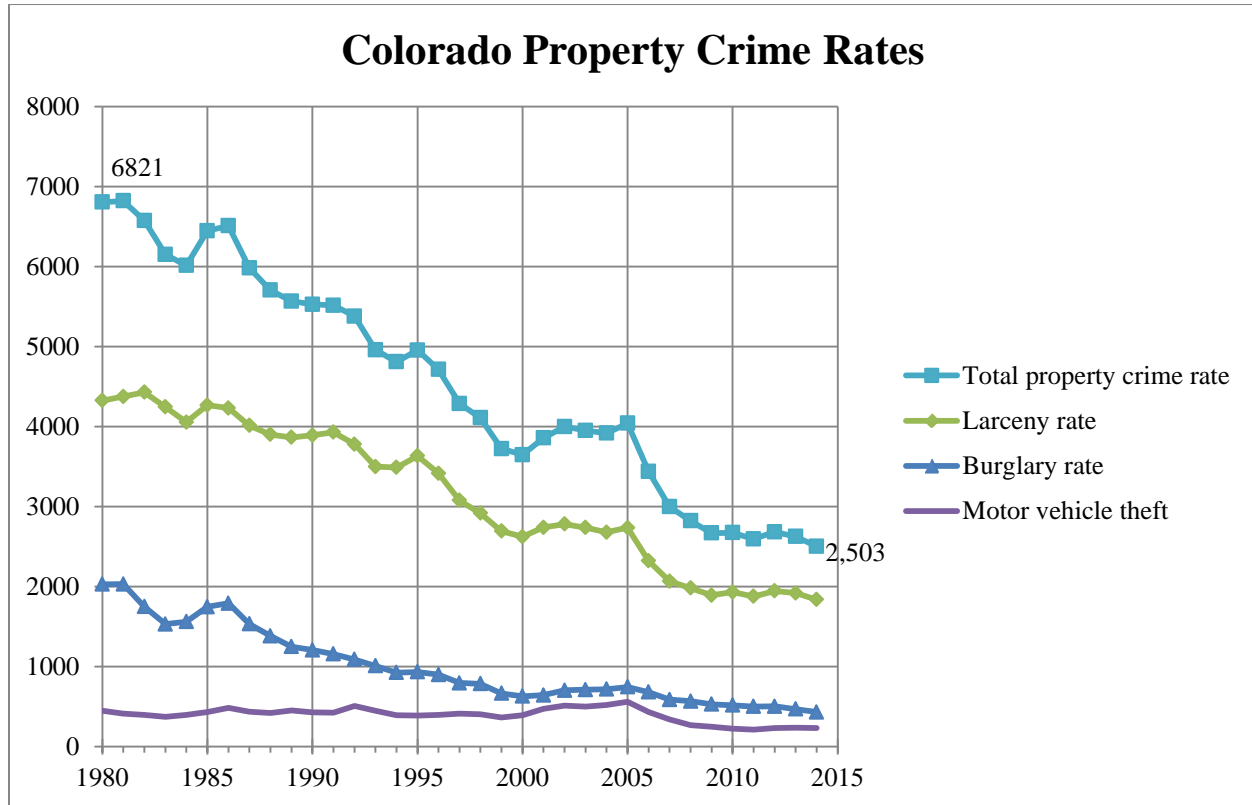
DISCUSSION:

Data background: U.S. crime rates are usually measured using Uniform Crime Reports (<https://www.fbi.gov/about-us/cjis/ucr/ucr>), which are issued by the FBI based upon data provided by local law enforcement agencies. Part I of the Uniform Crime Reports divide reported crimes into two categories: violent and property crimes. The four "index" crimes in the violent category are aggravated assault, forcible rape, murder, and robbery while burglary, larceny-theft, and motor vehicle theft are the three index crimes in the property category. The FBI imposes uniform definitions for these index crimes, which allows rates to be compared across states. (The Colorado statutory definition of burglary, for example, differs substantially from the Uniform Crime Reports definition.) The violent crime rate is the number of violent index crimes per 100,000 Colorado residents. The property crime rate is the number of property index crimes per 100,000 Coloradans. Sometimes the entire Colorado population is used as the denominator and other times the Colorado adult population is used.

The Division of Criminal Justice publishes Uniform Crime Reports data for Colorado on its web site (<https://www.colorado.gov/pacific/dcj-ors/ors-crimestats>). The DCJ data ends in 2014. The following chart, drawn from the DCJ data, shows that Colorado violent crime rates peaked in the early 1990's and the property crimes rates peaked in the early 1980's. Since those peaks, the violent crime rate has declined 47 percent while the property crime rate has declined 63 percent



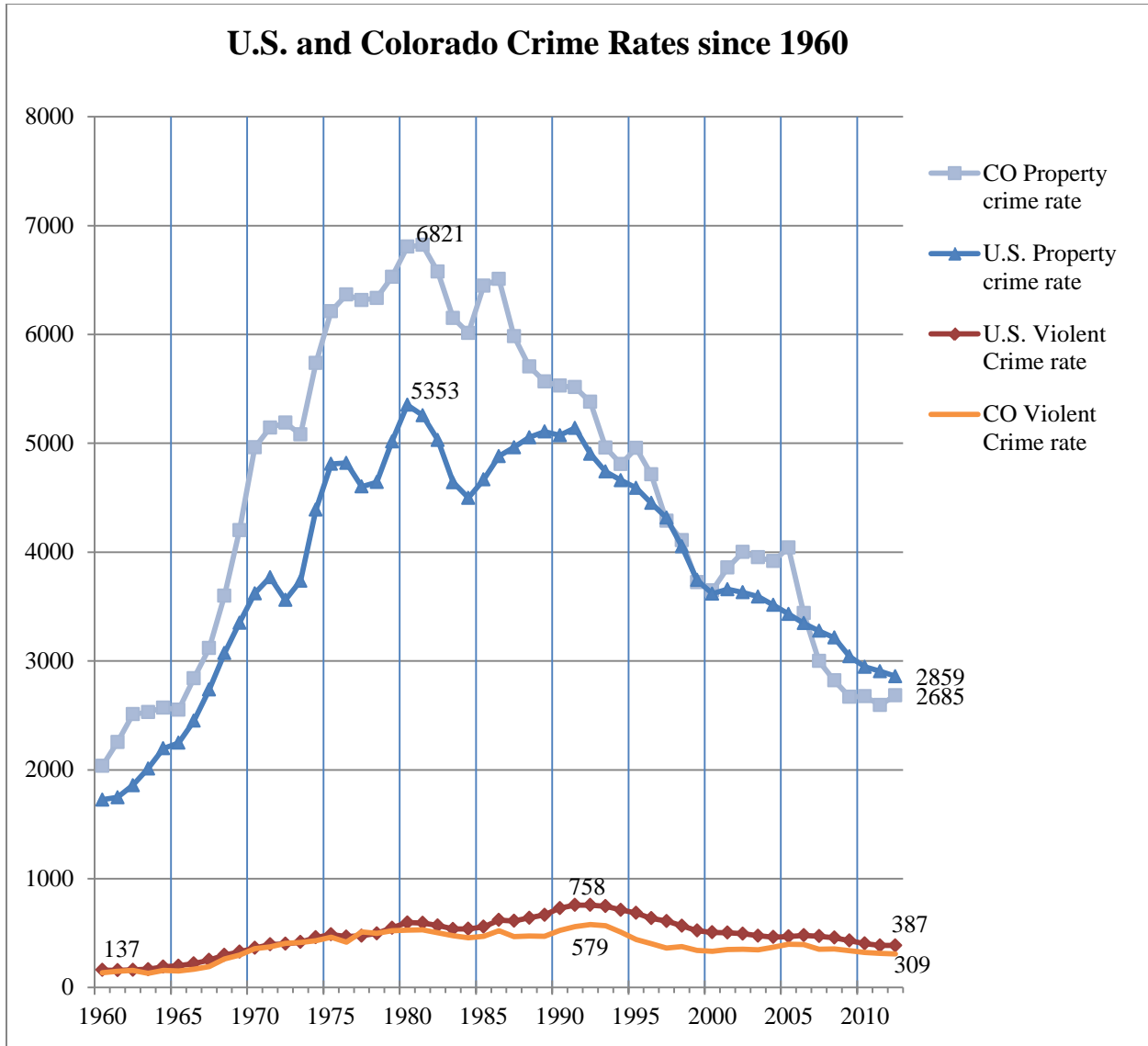
* This and the other Colorado crime rate charts show the number of crimes per 100,000 Colorado adults. The FBI broadened the definition of rape in 2013, which contributed to the recent uptick in the rate for that crime.



The charts above focus on Colorado index crime rates since 1980. The next chart, drawn directly from [FBI data](#), focuses on the total property crime rate and total violent crime rate since 1960 and compares Colorado with the entire U.S. This chart ends in 2012 and uses a different population denominator than the earlier charts. (Pre 1960 index crime data is not available in an easily usable form.)

As the chart shows, the Colorado property crime rates rose during the 1960's and peaked in the early 1980's at a level 235 percent higher than 1960. The U.S. property rate also grew, but more slowly. In the mid 1980's, both rates began to decline with the Colorado rate falling more rapidly and the U.S. property crime rate resuming growth in the latter 1980's. By 2012, Colorado's property crime rate was 32 percent higher than its 1960 level and slightly below the U.S. rate.

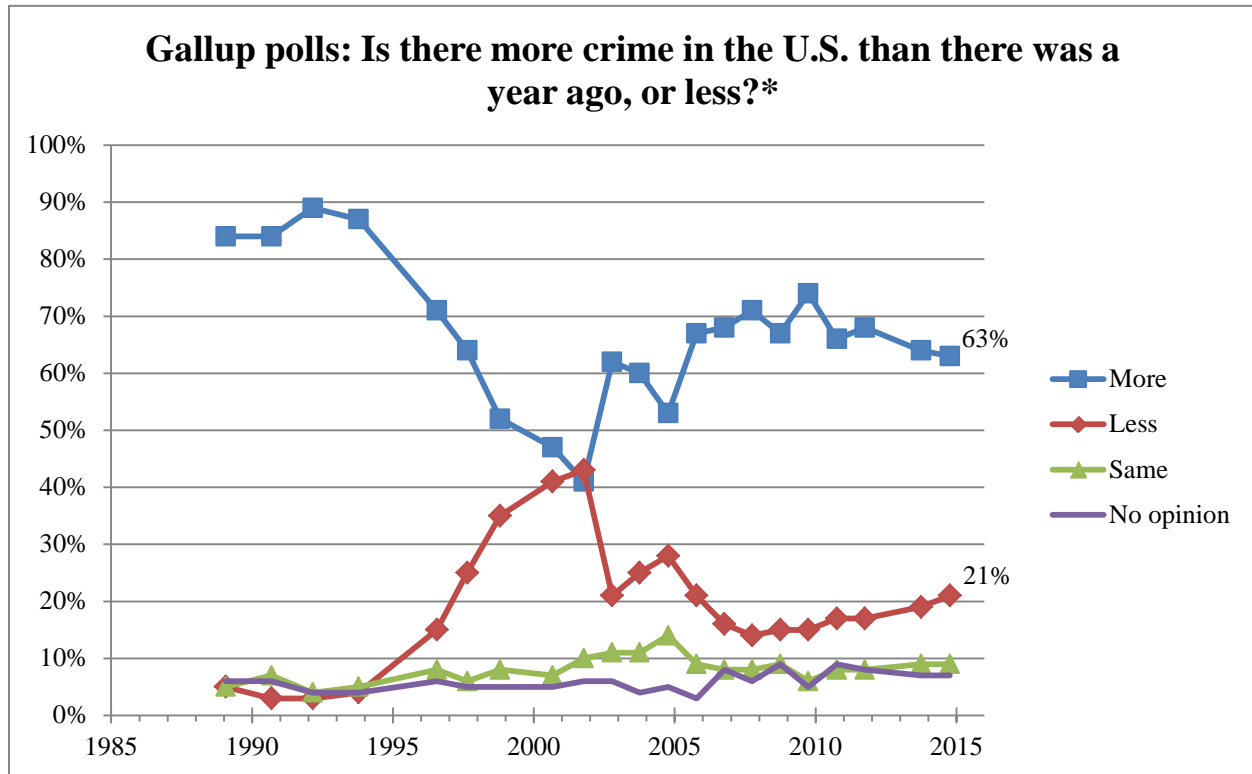
In 1960, the U.S. violent crime rate was 17 percent higher than the Colorado rate. Both rates more than tripled by the early 1990's, with the U.S. rate rising more rapidly. By the mid 1990's, both rates were declining and by 2012 had fallen to levels that are a little more than twice the 1960 level.



The disconnect between public perceptions of crime and reality

Gallup, Inc., has been gathering nationwide polling data on perceptions of crime in the U.S. since the 1980's. These results, which are summarized in the following table, reveal that in every year except 2000 and 2001, a majority of respondents believed that crime was rising.

This perception of increasing crime was basically correct through the early 1990's, since violent crime increased in the U.S. until 1992. However, by the mid 1990's, there was an increasing disconnect between public perceptions and reality. After 1993, U.S. property and U.S. violent crime rates declined almost every year, but a majority of respondents continued to report that U.S. crime was increasing. Thus it appears that most Americans ignore available crime statistics when forming their crime perceptions.



*For 2014 the Gallup survey, sample size was 1,017 and sampling error was ± 4 percentage points. Staff is not aware of polling data that focuses exclusively on Colorado.

Why did U.S. crime rate decline?

There has been a substantial amount of speculation and research on why U.S. crime rates fell beginning in the early 1990's and continue to fall. A number of theories have been advanced, but consensus has been elusive.

Before looking at various theories, however, it's reasonable to ask whether we should expect to even find factors that drive all crimes. Do the same factors that affect homicide affect theft? Some have argued that one should look at specific factors for specific crimes, rather than look for factors that drive a wide range of crimes. JBC staff will set this concern aside and focus on factors that are said to affect all crime. The result is a list that is not meant to be complete. It also makes no attempt to rank them.

Policing. One of the most commonly cited factors is the increase in the number of police on the street during the 1990's. There is substantial evidence that more police lead to lower crime.

Policing strategy. Improved policing strategies have also been cited, though these claims are more controversial and may have a down side. One of New York City's strategies serves as an

example, "Starting in 1994, [New York] adopted a management and data-mapping system called CompStat. At a central office in downtown Manhattan, analysts compile data on serious crimes, including their exact locations, and map them to identify significant concentrations of crime. Patrols then deploy in full force on-site — whether it is a sidewalk, a bar or any other public place — sometimes for weeks at a time, systematically stopping and frisking anyone who looks suspicious and staring down everyone else."² Recent events suggest that aggressive police tactics of this sort have a serious downside.

The effectiveness of policing is supported by research showing that the certainty of being caught is a much more powerful deterrent than the punishment. "Police deter crime when they do things that strengthen a criminal's perception of the certainty of being caught. Strategies that use the police as "sentinels," such as hot spots policing, are particularly effective. Seeing a police officer with handcuffs and a radio is more likely to influence a criminal's behavior than passing a new law increasing penalties."³

Deterrence through length of punishment. Though the certainty of punishment is often said to be a more important deterrent than length, the length of punishment also has a deterrence effect — those who respond to the threat of more punishment are deterred from committing crimes.

Incapacitation. The number of people incarcerated in the U.S. rose until three years ago. A locked up offender cannot commit a crime in the community, a reduction that is known as the incapacitation effect. If the criminal justice system succeeds in putting offenders in prison who are at high risk of repeated crime, the incapacitation effect works. If the criminal justice system places large numbers of low risk offenders in prison, incapacitation will be much less effective and may have the opposite effect of training low risk offenders to be better criminals when they emerge from prison.

Changing Demographics. The likelihood of committing a crime declines as one ages. Thus an increase or decrease in the relative number of youth could alter crime rates. This well-known factor does alter rates, but it is easily overstated since the relative size of age cohorts rise and fall much more slowly than crime rates.

The Waning of the Crack Epidemic of the 1980's and 1990's. The crack cocaine trade proved highly lucrative for gangs, leading to violence as rival gangs competed to sell the drug. This drug epidemic drove violence to an extent other epidemics have not.

Improvements in forensic and other crime scene investigation techniques such as DNA testing, coupled with the ability of computers to search large databases may have contributed to the fall in crime. This would presumably have an incapacitation and a deterrence effect.

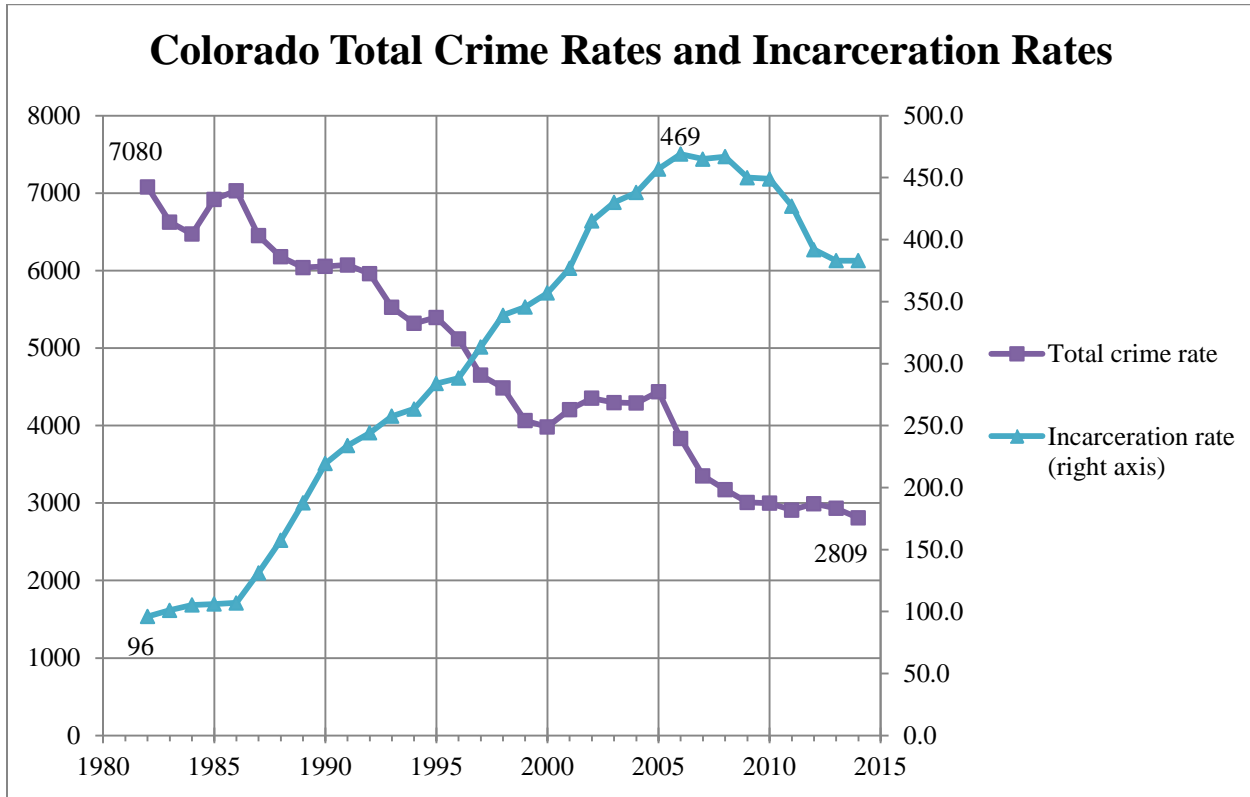
Improved pharmaceutical therapies for the treatment of mental illness. Research by Marcotte and Markowitz suggests that increases in prescriptions for psychiatric drugs are

² "How New York Beat Crime" by Franklin E. Zimring, <http://blog.oup.com/2012/06/zimring-scientific-american-nyc-beat-crime/>. This blog post is based on Zimring's book, "The City that Became Safe New York's Lessons for Urban Crime"

³ "Five Things About Deterrence," National Institute of Justice.

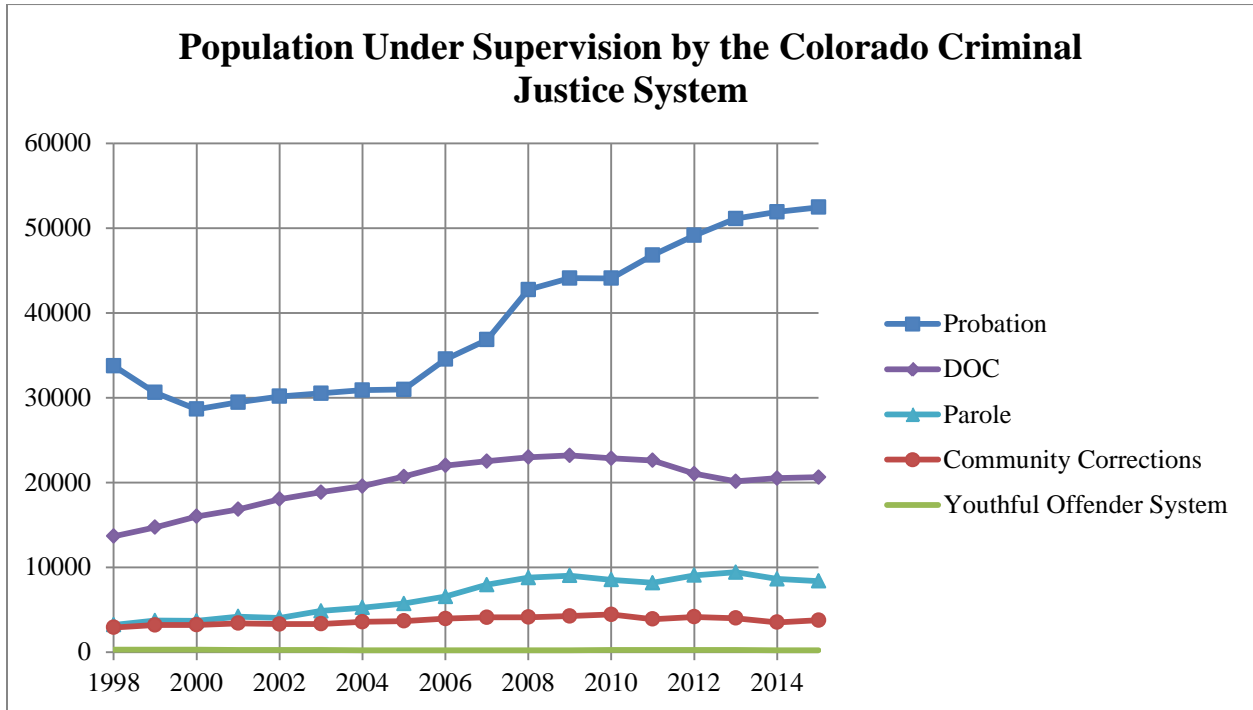
associated with decreases in violent crime, with the largest impacts associated with new generation antidepressants and stimulants used to treat ADHD. However, the measured effects are small.⁴

Crime is not all that matters for prison populations. As the following chart shows, it is challenging to relate Colorado crime rates to incarceration rates. In fact the linkage is so weak that crime rates are not even an input in the DCJ prison population forecasting model. Instead DCJ uses new court filings.



Crime rates are not the only driver of populations under criminal justice supervision. It is also difficult to relate the amount of criminal justice supervision in Colorado to declining Colorado crime rates.

⁴ "A Cure for Crime? Psycho-Pharmaceuticals and Crime Trends", Dave E. Marcotte and Sara Markowitz NBER Working Paper No. 15354, Revised January 2010



Issue: Results First Preliminary Findings with an Emphasis on Intensive Residential Treatment

The Results First model is, without question, an important step forward. It provides a systematic framework for identifying state programs that are likely to produce benefits in excess of costs. However, the model may have a few shortcomings when applied to community corrections programs. It would be unwise to adjusting community corrections spending before examining Results First findings in detail.

SUMMARY:

- Preliminary Results First findings are now available. Most Department of Corrections programs show benefits in excess of costs. However, a large portion of community corrections programs do not.
- Some of the Results First community corrections findings may be misleading. Before adjusting community corrections spending in response to Results First, it is important to examine those findings carefully.

DISCUSSION:

The preliminary Results First findings are now available. They include cost-benefit analyses of six community corrections programs, seven programs delivered in Department of Corrections facilities, and five parole programs. Most of the Department of Corrections programs show benefits that exceed costs (the exception being in-prison sex offender treatment, in-prison therapeutic communities for substance abuse, and in-prison vocational education). However, all but one of the community corrections programs evaluated by Colorado's Results First team, failed to produce benefits in excess of costs.

Rather than review the findings for each of the community corrections program, staff will focus on the findings for Intensive Residential Treatment (IRT) programs, which account for more beds than any other specialized community corrections program in the state. This program has the lowest benefit-cost ratio of any program reviewed, but staff will argue that the ratio is misleading. Staff suspects that cost-benefit adjustments also need to be made for several other community corrections programs.

The following table summarizes the results first findings for Colorado IRT programs. The Results First model places IRT in a category called "Inpatient/intensive outpatient drug treatment (community)". The numbers in the following table are a combination of numbers provided by the Results First model and numbers provided by Colorado's Results First team.

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Cost Benefits Analysis of Intensive Residential Treatment Beds [Inpatient/intensive outpatient drug treatment (community)]	
a. Benefits to Taxpayers	\$224
b. + <u>Non-taxpayer benefits</u>	\$228
c. = Total Benefits	\$452
d. Cost	\$4,134
e. Benefits - Costs	(\$3,682)
f. Taxpayer Benefits to Cost Ratio (a/d)	\$0.05
g. Total Benefits to Cost Ratio (c/d)	\$0.11

The findings in this table do not look promising. Benefits (which total \$452) are \$3,682 less than costs. For every \$1 spent by taxpayers, the return is 5¢.

The underlying meta-analysis. The Washington State Institute for Public Policy (WSIPP) conducted most of the research that underpins the PEW Results First model. At the WSIPP web site one can view a summary of the [WSIPP findings regarding the effectiveness of programs similar to IRT](#).

WSIPP's program-effectiveness finding are based on meta-analysis of multiple studies of similar programs. Meta-analysis is a statistical technique for combining the findings from independent studies. If done correctly, the result is more robust than any of the studies in isolation. WSIPP's meta-analysis for "Inpatient/intensive outpatient drug treatment (community)" is based on five studies.

1. California Department of Corrections. (1997). Los Angeles Prison Parole Network: An evaluation report. CA: Author.
2. Drake, E.K. (2006). Washington's drug offender sentencing alternative: An update on recidivism findings (Document No. 06-12- 1901). Olympia: Washington State Institute for Public Policy.
3. Eisenberg, M., Riechers, L., & Arrigona, N. 2001. Evaluation of the performance of the Texas Department of Criminal Justice Rehabilitation Tier Programs. Austin, TX: Criminal Justice Policy Council.
4. Fabelo, T. (1999). Three year recidivism tracking of offenders participating in substance abuse treatment programs. Texas Criminal Justice Policy Council.
5. Grommon, E., Davidson, I.I. W.S., & Bynum, T.S. (2013). A randomized trial of a multimodal community-based prisoner reentry program emphasizing substance abuse treatment. *Journal of Offender Rehabilitation*, 52(4), 287-309.

JBC staff was able to review studies 2-4 on this list. Items 1 and 5 were not available. Staff's review of these papers was not entirely reassuring. Papers 3 and 4 draw on the State of Texas' *Substance Abuse Felony Punishment (SAFP)* program. The SAFP program is a 9 to 12 month intensive treatment program focused on substance abuse in a secure facility followed by 3 months in a residential treatment facility and 3 to 9 months of outpatient counseling. Participation in the SAFP program is a condition of probation. By contrast, Colorado's IRT

program is a 90 day residential program, which is much shorter than SAFP. Results from a program that takes more than a year to complete may not predict the effectiveness of a 90 day substance abuse program.

Paper 3 on the above list is a WSIPP study of the effectiveness of Washington State's Drug Offender Sentencing Alternative (DOSA) program. Drug offenders who possess small amounts of drugs can be sentenced to DOSA as can drug-involved property offenders. Under DOSA, the standard sentence length is split between a term in prison and a term of community custody. There are several different treatment modes, none of which align closely with Colorado IRT programs.

Papers 2, 3 or paper 4 provide no information about program content. What sort of therapy was provided? What were the credentials of the therapists who delivered the therapy? Without this information, it's difficult to determine how well Colorado's IRT programs align with the papers used in the meta-analysis.

What is the cost of an IRT bed for Cost-Benefit analysis purposes? An IRT bed is a specialized community corrections bed with a daily cost that equals the sum of the base rate for community corrections beds and a differential. Colorado's Results First team, which began its work in the summer and fall of 2014, used 2014 costs as the basis for its analysis. In 2014 the base rate equaled \$38.68 and the differential equaled \$45.93 for a total cost of \$84.61. Which, if any, of these numbers is the correct cost to use in a cost benefit analysis?

Cost benefit analysis examines the costs and benefits associated with a given action. In order to measure the costs and benefits of the action, one must first know the baseline costs and benefits that will be incurred if the action is not taken. To determine the baseline for IRT programs, consider a few of the ways that you, an offender, might make it into an IRT program.

- A judge directly sentences you to community corrections but specifies that you must first attend an IRT program because of your substance abuse problems.
- While resident in a standard community corrections program as a diversion or transition client, you begin having drug problems and are set to IRT to stop using. After you complete the IRT program you return to your standard community corrections program and pick up where you left off.
- You are on probation, you begin having substance abuse problems and are sentence to IRT as a condition of probation. After the IRT program is complete you will return to regular probation.
- You are on parole, you begin having substance abuse problems and are sent to IRT.

Staff would argue that in several of these cases, the baseline for judging the cost of an IRT program is the cost of a trip to the Department of Corrections, possibly for a period longer than 90 days.

Consider the parolee in bullet 4. Non-IRT forms of substance abuse treatment aren't working. If IRT isn't available, it's very likely that your parole will be revoked and you will be returned to DOC. A typical return period would be 90 days. If this is the case, then the cost of the base line

is 90 days in DOC, which in 2014 would have cost \$56.02 per day or \$5,041 for 90 days. If sent to IRT, the cost would be \$7,614 for 90 days. Thus the incremental cost of 90 days in an IRT program would be $\$7,614 - \$5,041 = \$2,573$.

Consider the probationer in bullet 3. If you are failing probation due to substance abuse, your judge is likely to conclude that the only alternative to IRT is revocation of probation and a sentence to DOC. If the sentence is a year, the cost of the baseline is 365 days in DOC, which in 2014 would have cost \$56.02 per day or \$20,447 for the year. If IRT is successful and you return to probation, the cost would be \$7,614 for 90 days in an IRT bed plus the cost of nine months of probation (\$618) for a total of \$8,232, which is less than half the cost of a year in DOC. This makes it look like a no-brainer to send you to IRT, but a more sophisticated analysis would consider the possibility that you may again fail on probation after IRT.

In summary, the Colorado criminal justice system uses IRT beds in several different ways that make it difficult to assign a single cost.

What are the benefits for cost-benefit analysis purposes? The IRT Cost-benefit table above reports two measures of benefit. The first measure is Benefits to Taxpayers, which reflects the state and local costs avoided as a result of programs that reduce future crime and thus cut future jail and prison costs, court and prosecution costs, and arrest and supervision costs. The second measure is Non-taxpayer Benefits, which measure benefits other than reduced costs to state and local governments. For adult criminal justice programs, non-taxpayer benefits are calculated using costs associated with avoided victimization, including tangible (e.g. medical expenses, cash or property theft, or lost earnings due to injury) and intangible costs (e.g. pain and suffering resulting from being a crime victim.)

It is interesting to note that the avoided future crime costs are only \$452. Substance abusers who find their way into IRT programs are not particularly crime prone. The crimes they commit generally don't cost state and local governments very much and don't impose large costs on victims.

However, that there are probably large but difficult-to-quantify benefits that are not being measured in the non-taxpayer benefits row. First are the potential benefits to the addicted individual, who may be able to live a more drug- or alcohol-free life as the result of an IRT program. There are also benefits to the family of the addicted individual, who may stress over the individual's condition and spend substantial sums of money to help him. The family may also be victims of never-reported theft committed by the individual that will continue in the future.

Summary. Staff considers the Results First model to be an important step forward and does not doubt that it will inform policy and budget decisions in the future. However, there is reason to believe that some of the community corrections findings are misleading. Before adjusting community corrections spending in response to Results First findings, it is important to examine those findings carefully.

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Appendix A: Number Pages

	FY 2013-14 Actual	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2016-17 Request	Request vs. Appropriation
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DEPARTMENT OF PUBLIC SAFETY
James Davis, Executive Director

(4) DIVISION OF CRIMINAL JUSTICE

ice policies, problems, and programs and make related recommendations. Forecast offender populations. Encourage the use of evidence-based criminal justice practices.

(A) Administration

DCJ Administrative Services	<u>2,490,935</u>	<u>3,029,318</u>	<u>4,073,556</u>	<u>3,784,945</u> *
FTE	28.1	28.1	41.0	36.2
General Fund	1,718,610	2,030,133	2,774,365	2,452,338
Cash Funds	380,508	609,986	671,251	753,084
Reappropriated Funds	346,731	330,936	509,482	451,892
Federal Funds	45,086	58,263	118,458	127,631
Indirect Cost Assessment	<u>529,050</u>	<u>511,154</u>	<u>536,617</u>	<u>731,325</u> *
Cash Funds	35,777	53,591	58,879	110,279
Reappropriated Funds	5,556	0	0	0
Federal Funds	487,717	457,563	477,738	621,046

SUBTOTAL - (A) Administration	3,019,985	3,540,472	4,610,173	4,516,270	(2.0%)
FTE	<u>28.1</u>	<u>28.1</u>	<u>41.0</u>	<u>36.2</u>	(11.7%)
General Fund	1,718,610	2,030,133	2,774,365	2,452,338	(11.6%)
Cash Funds	416,285	663,577	730,130	863,363	18.2%
Reappropriated Funds	352,287	330,936	509,482	451,892	(11.3%)
Federal Funds	532,803	515,826	596,196	748,677	25.6%

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	FY 2013-14 Actual	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2016-17 Request	Request vs. Appropriation
(B) Victims Assistance					
Federal Victims Assistance and Compensation Grants	<u>10,156,492</u>	<u>10,079,589</u>	<u>10,400,000</u>	<u>10,400,000</u>	
Federal Funds	10,156,492	10,079,589	10,400,000	10,400,000	
State Victims Assistance and Law Enforcement Program	<u>1,449,421</u>	<u>1,394,955</u>	<u>1,500,000</u>	<u>1,500,000</u>	
Cash Funds	1,449,421	1,394,955	1,500,000	1,500,000	
Child Abuse Investigation	<u>171,663</u>	<u>698,267</u>	<u>800,000</u>	<u>797,693</u>	*
FTE	0.1	0.0	0.4	0.3	
General Fund	0	500,000	500,000	500,000	
Cash Funds	171,663	198,267	300,000	297,693	
Sexual Assault Victim Emergency Payment Program	<u>114,000</u>	<u>142,911</u>	<u>167,933</u>	<u>167,933</u>	
FTE	0.1	0.1	0.2	0.2	
General Fund	114,000	142,911	167,933	167,933	
Statewide Victim Information and Notification System (VINE)	<u>424,720</u>	<u>424,720</u>	<u>434,720</u>	<u>434,720</u>	
General Fund	424,720	424,720	434,720	434,720	
SUBTOTAL - (B) Victims Assistance	12,316,296	12,740,442	13,302,653	13,300,346	(0.0%)
FTE	<u>0.2</u>	<u>0.1</u>	<u>0.6</u>	<u>0.5</u>	(16.7%)
General Fund	538,720	1,067,631	1,102,653	1,102,653	0.0%
Cash Funds	1,621,084	1,593,222	1,800,000	1,797,693	(0.1%)
Federal Funds	10,156,492	10,079,589	10,400,000	10,400,000	0.0%

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	FY 2013-14 Actual	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2016-17 Request	Request vs. Appropriation
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(C) Juvenile Justice and Delinquency Prevention

Juvenile Justice Disbursements	<u>358,373</u>	<u>396,396</u>	<u>750,000</u>	<u>750,000</u>	
Federal Funds	358,373	396,396	750,000	750,000	
Juvenile Diversion Programs	<u>1,241,081</u>	<u>1,211,494</u>	<u>1,241,139</u>	<u>1,241,139</u>	
FTE	0.7	0.7	0.9	0.9	
General Fund	1,241,081	1,211,494	1,241,139	1,241,139	

SUBTOTAL - (C) Juvenile Justice and Delinquency Prevention	1,599,454	1,607,890	1,991,139	1,991,139	0.0%
<i>FTE</i>	<u>0.7</u>	<u>0.7</u>	<u>0.9</u>	<u>0.9</u>	<u>0.0%</u>
General Fund	1,241,081	1,211,494	1,241,139	1,241,139	0.0%
Federal Funds	358,373	396,396	750,000	750,000	0.0%

(D) Community Corrections

Community Corrections Placements	<u>52,607,485</u>	<u>55,483,640</u>	<u>60,153,878</u>	<u>59,552,339</u>	*
General Fund	51,588,617	53,173,366	57,510,009	56,908,470	
Reappropriated Funds	1,018,868	2,310,274	2,643,869	2,643,869	
Community Corrections Facility Payments	<u>0</u>	<u>2,994,323</u>	<u>3,422,313</u>	<u>3,388,090</u>	*
General Fund	0	2,994,323	3,422,313	3,388,090	
Community Corrections Boards Administration	<u>2,110,912</u>	<u>2,288,343</u>	<u>2,253,818</u>	<u>2,231,280</u>	*
General Fund	2,110,912	2,288,343	2,253,818	2,231,280	
Services for Substance Abuse and Co-occurring Disorders	<u>1,693,722</u>	<u>2,313,132</u>	<u>2,553,900</u>	<u>2,553,900</u>	
Reappropriated Funds	1,693,722	2,313,132	2,553,900	2,553,900	

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	FY 2013-14 Actual	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2016-17 Request	Request vs. Appropriation
Specialized Offender Services	<u>68,528</u>	<u>51,977</u>	<u>57,333</u>	<u>56,760</u>	*
General Fund	68,528	51,977	57,333	56,760	
Offender Assessment Training	<u>9,514</u>	<u>3,942</u>	<u>10,507</u>	<u>10,507</u>	
General Fund	9,514	3,942	10,507	10,507	
Subsistence Grace Period Pilot Project	<u>581,998</u>	<u>0</u>	<u>0</u>	<u>0</u>	
General Fund	581,998	0	0	0	
SUBTOTAL - (D) Community Corrections	57,072,159	63,135,357	68,451,749	67,792,876	(1.0%)
FTE	0.0	0.0	0.0	0.0	0.0%
General Fund	54,359,569	58,511,951	63,253,980	62,595,107	(1.0%)
Reappropriated Funds	2,712,590	4,623,406	5,197,769	5,197,769	0.0%

(E) Crime Control and System Improvement

State and Local Crime Control and System Improvement

Grants	<u>2,693,589</u>	<u>2,669,648</u>	<u>4,900,000</u>	<u>4,900,000</u>	
Federal Funds	2,693,589	2,669,648	4,900,000	4,900,000	
Sex Offender Surcharge Fund Program	<u>68,308</u>	<u>154,823</u>	<u>160,918</u>	<u>162,269</u>	
FTE	1.3	1.2	1.5	1.5	
Cash Funds	68,308	154,823	160,918	162,269	
Sex Offender Supervision	<u>323,555</u>	<u>339,386</u>	<u>347,580</u>	<u>352,765</u>	
FTE	3.4	3.4	3.2	3.2	
General Fund	323,555	339,386	347,580	352,765	

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Treatment Provider Criminal Background Checks	<u>12,587</u>	<u>25,989</u>	<u>49,606</u>	<u>49,606</u>	
FTE	0.0	0.1	0.6	0.6	
Cash Funds	12,587	25,989	49,606	49,606	
Colorado Regional and Community Policing Institute	<u>12,328</u>	<u>0</u>	<u>100,000</u>	<u>0</u>	*
FTE	0.0	0.0	2.5	0.0	
Reappropriated Funds	0	0	50,000	0	
Federal Funds	12,328	0	50,000	0	
Federal Grants	<u>5,046,069</u>	<u>4,569,205</u>	<u>9,000,000</u>	<u>9,018,990</u>	
FTE	13.9	14.3	17.5	17.5	
Federal Funds	5,046,069	4,569,205	9,000,000	9,018,990	
EPIC Resource Center	<u>708,850</u>	<u>724,683</u>	<u>860,931</u>	<u>872,317</u>	
FTE	5.8	7.3	9.0	9.0	
General Fund	527,134	724,683	860,931	872,317	
Federal Funds	181,716	0	0	0	
Criminal Justice Training Fund	<u>55,002</u>	<u>80,389</u>	<u>120,000</u>	<u>120,000</u>	
FTE	0.0	0.0	0.5	0.5	
Cash Funds	55,002	80,389	120,000	120,000	
MacArthur Foundation Grant	<u>7,970</u>	<u>51,228</u>	<u>75,000</u>	<u>75,000</u>	
Cash Funds	7,970	51,228	75,000	75,000	
Methamphetamine Abuse Task Force Fund	<u>1,954</u>	<u>2,040</u>	<u>20,000</u>	<u>20,000</u>	
Cash Funds	1,954	2,040	20,000	20,000	

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SUBTOTAL - (E) Crime Control and System					
Improvement	8,930,212	8,617,391	15,634,035	15,570,947	(0.4%)
<i>FTE</i>	<u>24.4</u>	<u>26.3</u>	<u>34.8</u>	<u>32.3</u>	<u>(7.2%)</u>
General Fund	850,689	1,064,069	1,208,511	1,225,082	1.4%
Cash Funds	145,821	314,469	425,524	426,875	0.3%
Reappropriated Funds	0	0	50,000	0	(100.0%)
Federal Funds	7,933,702	7,238,853	13,950,000	13,918,990	(0.2%)
TOTAL - (4) Division of Criminal Justice	82,938,106	89,641,552	103,989,749	103,171,578	(0.8%)
<i>FTE</i>	<u>53.4</u>	<u>55.2</u>	<u>77.3</u>	<u>69.9</u>	<u>(9.6%)</u>
General Fund	58,708,669	63,885,278	69,580,648	68,616,319	(1.4%)
Cash Funds	2,183,190	2,571,268	2,955,654	3,087,931	4.5%
Reappropriated Funds	3,064,877	4,954,342	5,757,251	5,649,661	(1.9%)
Federal Funds	18,981,370	18,230,664	25,696,196	25,817,667	0.5%
TOTAL - Department of Public Safety	82,938,106	89,641,552	103,989,749	103,171,578	(0.8%)
<i>FTE</i>	<u>53.4</u>	<u>55.2</u>	<u>77.3</u>	<u>69.9</u>	<u>(9.6%)</u>
General Fund	58,708,669	63,885,278	69,580,648	68,616,319	(1.4%)
Cash Funds	2,183,190	2,571,268	2,955,654	3,087,931	4.5%
Reappropriated Funds	3,064,877	4,954,342	5,757,251	5,649,661	(1.9%)
Federal Funds	18,981,370	18,230,664	25,696,196	25,817,667	0.5%

Appendix B: Recent Legislation Affecting the Division of Criminal Justice Budget

This section summarizes bills pertaining to the Division of Criminal Justice. Bills exclusively affecting other divisions of the Department of Public Safety are excluded.

2014 Session Bills

S.B. 14-153 (Legislative Member Compensation for Boards and Commissions): Establishes uniform payments of per diem and travel expenses for members of the General Assembly who are statutorily appointed to serve on state entities. Reduces appropriations to the Department by \$1,408 General Fund for FY 2014-15.

S.B. 14-215 (Disposition of Legal Marijuana Related Revenue): Creates the Marijuana Tax Cash Fund (MTCF) and directs that all sales tax moneys collected by the state starting in FY 2014-15 from retail and medical marijuana be deposited in the MTCF instead of the Marijuana Cash Fund. Specifies permissible uses of moneys in the MTCF, including for the study of law enforcement's activity and costs related to the implementation of the laws legalizing retail marijuana in the Department of Public Safety. Reduces the Long Bill (H.B. 14-1336) appropriation to the Division of Criminal Justice by \$159,983 cash funds from the Marijuana Cash Fund and appropriates that amount from the MTCF.

H.B. 14-1273 (Human Trafficking): Repeals, reenacts, and makes changes to existing laws concerning human trafficking. Creates the Colorado Human Trafficking Council within the Division of Criminal Justice and specifies a number of duties for the Council. Appropriates \$263,796 General Fund and 1.8 FTE to the Department FY 2014-15.

H.B. 14-1336 (Long Bill): General appropriations act for FY 2014-15. Corrects a technical error in prior appropriations by reducing the FY 2013-14 appropriation for community corrections placements by \$223,170 General Fund and appropriates \$1,000,000 reappropriated funds for traffic control services provided by the Colorado State Patrol to the Department of Transportation.

2015 Session Bills

S.B. 15-124 (Reduce Parole Revocations for Technical Violations): Narrows the scope of behavior that warrants arresting a parolee for a technical violation and requires the use of intermediate sanctions short of parole revocation to address noncompliance. Increases General Fund appropriations to the Department by \$780,019 for the provision of intensive residential treatment beds in community corrections facilities for parolees. For more information, see the corresponding bill description in the "Recent Legislation" section of the Department of Corrections.

S.B. 15-185 (Police Data Collection and Community Policing): Requires the Department of Public Safety to compile and report parole hearing data, arrest data, and other related information to the General Assembly and the Colorado Commission on Criminal and Juvenile Justice. Includes a FY 2015-16 General Fund appropriation of \$38,799 to the Department, which is based on the assumption that the Department will require an added 0.4 FTE. For more information, see the corresponding bill description in the "Recent Legislation" section of the Department of Corrections.

H.B. 15-159 (Supplemental Bill): Supplemental appropriation for FY 2014-15 for the Department of Public Safety.

S.B. 15-217 (Police Shooting Data Collection): Creates a process for public reporting of specified data concerning officer-involved shootings involving certain law enforcement agencies, including the Colorado Bureau of Investigation, Colorado State Patrol, county sheriff's offices, municipal police departments, the Division of Parks and Wildlife within the Department of Natural Resources, and town marshal's offices. Includes a FY 2015-16 General Fund appropriation of \$30,851 to the Department, which is based on the assumption that the Department will require an added 0.5 FTE.

S.B. 15-234 (Long Bill): General appropriations act for FY 2015-16. Includes a \$1.5 million General Fund supplemental reduction to the FY 2014-15 Community Corrections Placements appropriation

H.B. 15-1273 (Comprehensive School Discipline Reporting): Adds to the list of items that must be included in the existing safe school report. Requires law enforcement agencies to report to the Division of Criminal Justice (DCJ) within the Department of Public Safety about student tickets, summons, and arrests on school property. Requires district attorneys to report to the DCJ information about students who are granted pre-file juvenile or adult diversion for arrests that occurred on school property. Requires the DCJ to compile, analyze, and report on the received data. Appropriates \$73,457 General Fund to the Department for FY 2015-16, which is based on the assumption that the Department will require an added 1.0 FTE.

H.B. 15-1285 (Law Enforcement Use of Body-worn Cameras): Creates a grant program within the Department's Division of Criminal Justice for the purchase of body-worn cameras as well as related data retention, management, and training costs. Establishes a body-worn camera study group that will report to the General Assembly. Appropriates \$89,893 General Fund to the Department for FY 2015-16, which is based on the assumption that the Department will require an added 1.0 FTE.

Appendix C: Update on Long Bill Footnotes & Requests for Information

Long Bill Footnotes

- 71 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 caseload for Diversion Intensive Residential Treatment includes at least 48 condition-of-probation placements; 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; client 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; and outpatient therapeutic community programs: (1) will receive the standard non-residential base rate for all offenders in their programs, including Department of Corrections clients; (2) will receive the outpatient therapeutic community base rate for all clients in program phases other than the post graduate phase, including Department of Corrections clients; (3) will not receive the outpatient therapeutic community base rate or the non-residential base rate for probation clients; (4) will collect client fees of up to \$3 per day; and (5) will not receive payment from the Department of Corrections for services covered by the standard non-residential base rate or the outpatient therapeutic community base rate. Of this appropriation, \$1,545,409 is from the savings produced by H.B. 10-1360 pursuant to Section 17-2-103 (11.5), C.R.S., for parolee Intensive Residential Treatment beds and for parolee sex offender beds.

Placement Type	Rates			Caseload			Appropriation
	Base	Differential	Total	Diversion	Transition	Parole	
Standard Residential	42.09	0.00	42.09	1,240.0	1,187.0	120.4	\$39,135,017
Intensive Residential Treatment	42.09	46.71	88.80	89.0	54.0	49.0	6,223,104
Inpatient Therapeutic Community	42.09	27.73	69.82	95.0	59.0	10.0	4,179,170
Residential Dual Diagnosis Treatment	42.09	35.29	77.38	73.0	52.0	19.1	4,067,093
John Eachon Re-entry Program	42.09	55.04	97.13	8.0	12.0	0.0	708,694
Sex Offender Residential	42.09	35.29	77.38	53.0	23.0	21.0	2,740,769
Standard Non-residential	6.13	0.00	6.13	670.0	5.0	5.0	1,521,511
Outpatient Day Treatment	34.68	0.00	34.68	4.0	0.0	0.0	50,506
Outpatient Therapeutic Community	22.00	0.00	22.00	<u>67.9</u>	<u>19.3</u>	<u>6.0</u>	<u>747,995</u>
Total				2,299.9	1,411.3	230.5	\$59,373,859

Comment: This footnote is attached to the *Community Corrections Placements* appropriation, which provides General Fund and a smaller amount of cash funds to the Department. The Department uses this appropriation to contract with the local

community corrections boards that oversee and fund local community corrections providers. The Department is complying with the intent of this appropriation.

- 72 Department of Public Safety, Division of Criminal Justice, Community Corrections, Community Corrections Placements** -- It is the intent of the General Assembly that the Intensive Residential Treatment (IRT) bed allocation in the San Luis Valley should not be reduced below 36 beds for the Southern Central Colorado Region to ensure bed capacity for this part of the state.

Comment: The Division of Criminal Justice has complied with this footnote.

- 73 Department of Public Safety, Division of Criminal Justice, Community Corrections, Community Corrections Facility Payments** -- These payments may be withheld in whole or in part from facilities that: (1) fail to maintain an average ratio of at least one case manager for every 20 residents; (2) fail to raise average pay and benefits of security staff members by at least 1 percent; or (3) fail to raise the average pay and benefits of case managers by 1 percent. A facility is exempt from requirement (2) if the sum of average pay and benefits for security staff members exceeds \$33,000 annually. A facility is exempt from requirement (3) if the sum of average salary and benefits for case managers exceeds \$38,500 annually. For purposes of this footnote, payroll taxes are not benefits. Community corrections programs are encouraged to exceed these goals. It is the intent of the General Assembly that community corrections facilities with an average of 32 or more security FTE receive a second facility payment.

Comment: The Division of Criminal Justice has collected and reported this data.

Requests for Information

Requests Affecting Multiple Departments

- 1. Department of Corrections; Department of Human Services; Judicial Department; Department of Public Safety; and Department of Transportation** -- State agencies involved in multi-agency programs requiring separate appropriations to each agency are requested to designate one lead agency to be responsible for submitting a comprehensive annual budget request for such programs to the Joint Budget Committee, including prior year, request year, and three year forecasts for revenues into the fund and expenditures from the fund by agency. The requests should be sustainable for the length of the forecast based on anticipated revenues. Each agency is still requested to submit its portion of such request with its own budget document. This applies to requests for appropriation from: the Alcohol and Drug Driving Safety Program Fund, the Law Enforcement Assistance Fund, the Offender Identification Fund, the Persistent Drunk Driver Cash Fund, and the Sex Offender Surcharge Fund, among other programs.

Comment: This footnote is designed to ensure that Departments coordinate requests that draw on the same cash fund. Of the funds listed, the Division of Criminal Justice shares two with other state agencies: the Sex Offender Surcharge Fund, and the Correctional Treatment Cash Fund.

The Sex Offender Surcharge Fund. This fund, which is created in Section 18-21-103 (3), C.R.S., consists of 95 percent of sex offender surcharge revenues. These surcharges range from \$150 to \$3,000 for adult conviction. Surcharges for youth adjudications are half as large. Revenues of the fund in recent years have averaged about \$495,000. The fund is managed by the Judicial Department, which retains 5 percent of revenues for its management duties and reports on the fund in its annual budget submission. Moneys in the fund are appropriated to the Judicial Department's Probation Services, the Department of Corrections' Sex Offender Treatment Subprogram, the Department of Public Safety's Division of Criminal Justice, and the Department of Human Services' Division of Youth Corrections. The Fund can be used to pay for the direct and indirect costs associated with the evaluation, identification, treatment, and continued monitoring of sex offenders. Pursuant to Section 16-11.7-103 (4) (c), C.R.S., the Sex Offender Management Board (SOMB) is required to develop a plan for the allocation of moneys deposited in the Fund, and to submit the plan annually to the General Assembly.

The Sex Offender Management Board has proposed the following allocation for state agencies in FY 2016-17:

- \$302,029 (56.6 percent) to the Judicial Department for direct services, beginning with the funding of sex offender evaluations, assessments and polygraphs required by statute during the pre-sentence investigation;
- \$163,591 (30.6 percent) to the Division of Criminal Justice in the Department of Public Safety for administration and implementation of the Sex Offender Treatment and Management Standards. \$3,500 of these funds will be used to provide cross-system training. These dollars may be matched by grants as available.
- \$38,250 (7.2 percent) to the Department of Human Services to be used for training and technical assistance to county departments, the Division of Youth Corrections, and the Division of Child Welfare.
- \$30,041 (up from \$29,311 last year) (5.6 percent) to the Department of Corrections to be used to manage sex offender data collection, including entry of psychological and risk assessment test results and demographics for use in treatment planning and research;

These allocations total \$533,911 and, with the exception of a \$730 increase for the Department of Corrections, are identical to the allocations proposed by the Sex Offender Management Board since FY 2009-10.

The fund manager (the Judicial Branch) restricts distributions when revenues do not support appropriations. When a shortfall looks likely, the amount received by each department is proportionately reduced.

Fund revenue is reported in the Judicial Branch budget request. With the exception of FY 2008-09, each year since FY 2006-07 the ending balance in the fund has grown, relative to the prior year. In many years, this growth has been the result of the Judicial Branch's distribution restriction practices. Thus, even though the proposed allocations from the fund by the Sex Offender Management Board total \$533,911 and exceed the likely revenue of the Fund, the restriction practices of the Judicial Branch make it very unlikely that the fund will overspend in FY 2016-17 if the Sex Offender Management Board's proposed allocation is approved and placed in the Long Bill.

The General Assembly is not required to accept the plan proposed by the Sex Offender Management Board, but has always done so.

The Correctional Treatment Cash Fund. The Judicial Branch reports on the Correctional Treatment Cash Fund in its budget request to the JBC. The Correctional Treatment Board, which is created in Section 18-19-1035, C.R.S., has proposed the following allocation for the Correctional Treatment Cash Fund for FY 2016-17:

- \$3,457,227 to the Department of Corrections;
- \$6,621,156 to the Department of Human Services;
- \$6,359,335 to the Judicial Department; and
- \$5,299,574 to the Department of Public Safety, Division of Criminal Justice.

The proposed allocation to the Department of Public Safety, Division of Criminal Justice is \$2,192 greater than in FY 2015-16.

Requests Affecting the Department of Public Safety

Requests for Information 1, 4, and 6 will be addressed in the briefing document for the Department's other divisions.

2. Department of Public Safety, Division of Criminal Justice, Community Corrections –

The Department is requested to submit the evaluation report for the Subsistence Grace Period Pilot Project to the Joint Budget Committee as soon as feasible after the project is completed but no later than November 1, 2015. The Department is requested to examine whether a subsistence grace period alters length of stay; rates of successful completion, technical violation, or escape; the amount owed to programs at termination; and the amount of savings at termination. The Department is requested to examine whether the effects depend upon the risk level of the offender. The Department is requested to estimate the magnitude of the effects and the precision of the estimates. The Department is also requested to conduct a cost-benefit analysis to determine whether the benefits, if any, observed during the period covered by this study, exceed the cost. The report need not be limited to these questions.

Comment: The Department has submitted the requested report, which is examined in detail in the issue titled "Results of the Subsistence Forgiveness Pilot Project."

3. **Department of Public Safety, Division of Criminal Justice, Community Corrections, Community Corrections Placements** – It is requested that the Division of Criminal Justice work with Denver Community Corrections, the Department of Health Care Policy and Financing, ARTS (Addiction Research and Treatment Services), and other relevant parties to determine whether outpatient therapeutic community clients can qualify for Medicaid reimbursement and determine whether Medicaid reimbursement would reduce state costs. The Division is requested to report the findings by January 1, 2016.

Comment: The Department has submitted a response, which is reproduced in Appendix E.

5. **Department of Public Safety, Division of Criminal Justice, Community Corrections, Community Corrections Placements** – As part of its FY 2016-17 budget request, the Department is requested to provide a report showing actual average daily community corrections placements for recently completed fiscal years at a level of detail that is compatible with the table in Long Bill footnote 71. This report should also show condition of probation placements.

Comment: The Department has submitted the required information.

7. **Department of Public Safety, Division of Criminal Justice, Community Corrections, Community Corrections Placements** – The Department is requested to report the following information for FY 2014-15 for community corrections facilities of different sizes: (1) the average number of total staff, security staff, and case managers, (2) the average wage and salary of security staff and case managers, (3) the average cost of benefits, excluding payroll taxes, for security staff and for case managers, (4) the average length of employment for security staff and for case managers, and (5) average case manager caseloads for resident and non-resident offenders. The Department is requested to continue collecting periodic financial statements and starting salary information from community corrections programs. The Department is requested to retain the data received from each facility. To reduce data collection costs, the Department may ask programs to provide aggregate data. The Department does not need to sample all providers every year. The Department is requested to submit the report by January 1, 2016.

Comment: The Department expects to submit required information in January.

8. **Department of Public Safety, Division of Criminal Justice, Community Corrections, Community Corrections Placements** – As part of its FY 2016-17 budget request, the Department is requested to report the estimated impact on community corrections facilities and community corrections boards of any standards or rules that the Department has issued or revised during FY 2014-15. This report should include a summary of the new standards or rules, an estimate of the amount of time it will take facilities or boards to comply, an estimate of the number of additional FTE that will be required for compliance, and an estimate of

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additional financial costs that facilities or boards may incur. The Department is also requested to report any new or revised standards, rules, or laws from the federal government, the state government, local governments, or other parties that are likely to have a similar impact on community corrections facilities or on community corrections boards. The Department does not need to estimate the costs of standards, rules, and laws issued by other governments or other parties.

Comment: The Division has submitted the required report, which states that it neither issued nor revised any of the Colorado Community Corrections Standards or rules that took effect during fiscal year 2014-15. The report notes that the Division is currently collaborating with boards and providers in a major revision of its Standards. This project will continue throughout FY 2015-16. Once completed, the Division states that it will make all reasonable attempts to report any potential cost impact, however comparison with the prior standards will be difficult and the cost estimates will have substantial limitations because of the large changes that are anticipated.

Appendix D: SMART Act Annual Performance Report

Pursuant to Section 2-7-205 (1) (b), C.R.S., the Department of Public Safety is required to publish an Annual Performance Report by November 1 of each year. This report is to include a summary of the Department's performance plan and most recent performance evaluation. For consideration by the Joint Budget Committee in prioritizing the Department's budget request, the FY 2014-15 report dated October 2015 can be found at

https://drive.google.com/file/d/0B_om-XLNWzsXajhrZ3RqYTB2SkU/view

Pursuant to Section 2-7-204 (3) (a) (I), C.R.S., the Department of Public Safety is required to develop a performance plan and submit that plan to the Joint Budget Committee and the appropriate Joint Committee of Reference by July 1 of each year. For consideration by the Joint Budget Committee in prioritizing the Department's budget request, the FY 2015-16 plan can be found at

<https://drive.google.com/file/d/0BzIopKKDzSSTaG9sdWZJmIZmclNSNIRLeGlaRE5OOWZ6SG40/view>

Appendix E: RFI #3, Medicaid Funding for ARTS Therapeutic Community

This appendix contains the complete text of the DCJ response to RFI #3 "Medicaid Funding Opportunities for Clients in the ARTS Outpatient Therapeutic Community."



COLORADO

Division of Criminal Justice

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Department of Public Safety FY 2015-16 RFI #3

Medicaid Funding Opportunities for Clients in the ARTS Outpatient Therapeutic Community

Background: The following is a response to the Legislative Request for Information (RFI). The RFI is stated as follows:

Department of Public Safety, Division of Criminal Justice, Community Corrections, Community Corrections Placements – It is requested that the Division of Criminal Justice work with Denver Community Corrections, the Department of Health Care Policy and Financing, ARTS (Addiction Research and Treatment Services), and other relevant parties to determine whether outpatient therapeutic community clients can qualify for Medicaid reimbursement and determine whether Medicaid reimbursement would reduce state costs. The Division is requested to report the findings by January 1, 2016.

As directed, the Division of Criminal Justice worked with Health Care Policy & Financing (HCPF), the Office of Behavioral Health (OBH) in the Department of Human Services, Denver's Division of Community Corrections, ARTS (Addiction Research Treatment Services) and the CCJRC (Colorado Criminal Justice Reform Coalition), during the months of August and September 2015 to examine opportunities and barriers to Medicaid funding for ARTS Outpatient Therapeutic Community participants. This report is prepared by the Division of Criminal Justice with collaboration and input of the following parties:

- Glenn Tapia, DCJ
- Susan Turowski-Reher, ARTS
- Kristen Dixon, ARTS
- Herb Brown, ARTS
- Angi Wold, ARTS
- Herb Brown, ARTS
- Karen Mooney, OBH
- Rebecca Lembke, OBH
- Greg Mauro, DCC
- Terri Hurst, CCJRC
- Zach Lynkiewicz, HCPF
- Lenya Robinson, HCPF
- Laurel Karabatsos, HCPF
- Amy Barton, University of Colorado College of Nursing
- Amie Walton, DCJ

This examination produced information that illuminated several complex challenges to Medicaid funding for this population. It is the collective belief of this group that Medicaid funding is possible for this population at some point in the future. Accessing federally supported behavioral health services would; however, require negotiating several complex challenges and changes to existing policy or practice. These changes would include procuring

additional staff with expertise in Medicaid billing procedures; and negotiating medical necessity with existing Behavioral Health Organizations (BHO). The challenges to this issue are highly complex and the outcome uncertain at the current time. The information that follows provides a summary of factors that, when combined, lead to the conclusion that while Medicaid funding is possible for the future, it is not an immediate resource for the ARTS Outpatient Therapeutic Community program.

Issue 1 (Partially Resolved): The federal government prohibits Medicaid funding for persons associated with Institutes of Mental Disease (IMD).

In 1988, P.L. 100-360¹ defined an institution for mental diseases as a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services². This definition is in §1905(i) of the Act and in 42 CFR 435.10093. These regulations also indicate that an institution is an IMD if its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases.

Facilities with fewer than 17 beds that specialize in treating persons with mental disorders can provide the types of services covered under Medicaid if they meet the regulatory requirements to provide these institutional benefits, but these facilities are not technically IMDs. While the ARTS outpatient program exceeds the 17 bed exclusionary criteria, whether it is considered an IMD is complicated by the following factors

- ARTS is situated on the Ft. Logan Campus, which is currently designated an IMD site. The Outpatient Program, because it is connected to ARTS, might be subject to IMD designation by virtue of their physical location.
- It is possible that because of this situation, ARTS might be designated IMD, but the ultimate decision stands with the federal agency, the Center for Medicaid Services (CMS).
- HCPF believes it might be advantageous to seek a formal written federal opinion on this, which could take months or even years to obtain.
- ARTS expresses concern with obtaining such an opinion, as it could unintentionally compromise their funding for several other programs in the university, including their sister agency, Sheridan Health Services.

This issue had originally been determined by the group as a significant barrier for ARTS to access Medicaid behavioral health services. The working group identified this problem early in the study period and believed this to be a significant barrier until the final drafting of this report. In late October 2015, the Division of Criminal Justice received an email communication from HCPF conveying verbal advice from the CMS on this issue. According to the email sent by HCPF on October 27, 2015, the CMS verbally acknowledged that ARTS OTC clients

¹ Section 1905(i) of the Social Security Act provides the definition of IMD :

http://www.ssa.gov/OP_Home/ssact/title19/1905.htm

² State Medicaid Manual Section 4290 provides the detailed guidance on how IMDs are defined

³ 42 CFR Section 435.1009 (attached) offers definitions related to institutional status

42 CFR Section 441.310 (attached) describes limits on federal funding

42 CFR Sections 435.1008 and 441.13 (http://www.ecfr.gov/cgi-bin/text-idx?SID=037cfd7252536daa8971762f936b8d92&mc=true&node=se42.4.441_113&rgn=div8) further describes limits on federal funding

may access Medicaid behavioral health services as long as the following factors exist:

- 1) the clients live off the Fort Logan campus in independent housing;
- 2) the clients are Medicaid eligible and not legally on *Inmate* status with the Department of Corrections; and
- 3) the services are determined to be medically necessary.

There are some ARTS OTC clients who currently reside in the Fort Logan boarding house. The CMS will need to further investigate Medicaid eligibility for these clients. At the time of this writing, the CMS is planning to access information at their central office in Baltimore, MD to get clarification on this issue. Thus, the issue of IMD designation for the ARTS Outpatient program is no longer universally prohibitive for accessing federally supported behavioral health care services. However, the CMS has issued no such position in writing and is currently conducting further investigation of the issue. This issue is partially resolved.

ISSUE 2 (Outstanding): Medicaid only provides support for behavioral health services that are deemed medically necessary.

The second challenge with Medicaid funding is the requirement that all behavioral health services be medically necessary. Medical necessity is determined on a case-by-case basis and is based on traditional definitions of medical necessity. Each Behavioral Health Organization (BHO) has specific definitions and governance over decisions regarding medical necessity. The above referenced agencies have, in collaboration, identified several situations that are unique to community-based offenders that can result in services being deemed medically unnecessary under Medicaid.

The first of these issues is the high percentage of offenders that screen negative for illicit drug use or licit drug abuse. In any given community corrections program, over 90% of the urinalysis tests administered each month show negative results⁴. Negative urinalysis testing can often be a criterion used among Medicaid providers to determine that federally funded treatment services are no longer necessary – as evidenced by recent drug abstinence. Since offenders are required as part of correctional supervision to maintain negative tests for drug use, this is likely a commonplace occurrence. However, although a negative drug test may suffice as a criterion for discontinuation of federal funding, it in no way indicates that an offender no longer needs continued treatment or recovery support services.

Another barrier in this category is the fact that the Colorado criminal justice system uses a standardized assessment and treatment system for offenders which prescribes minimum levels of intensity for various levels of substance use disorder services⁵. Offenders are assessed with standardized and validated screening and assessment tools and are required to participate in treatment that appropriately matches their assessed risks and needs related to substance use. There have been recent examples in the field of community corrections where an offender is assessed as needing a level of substance use disorder treatment that far exceeds that which is determined medically necessary under Medicaid standards. In other words, Medicaid will cover only a basic amount of treatment, which could be substantially less than that identified by the assessed risks and needs of

⁴ These data are reported anecdotally from community corrections providers who track the information internally. Neither the Division of Criminal Justice nor any other state agency collects these data.

⁵ C.R.S. 18-1.3-211 (2015)

community-based offenders. Clients in the ARTS Outpatient Therapeutic Community program are placed there due to substantially longer histories of substance use disorders, more chronic treatment failures in their histories, and longer-term or life course criminal justice involvement. It would be more the rule than the exception that these offenders will require levels of care well beyond that which is deemed medically necessary under current Medicaid practices.

These two situations are among others that will vary by individual offender, individual clinician, medical director and individual levels of clinical judgment. Therefore, it is impossible for this working group to provide reliable projections regarding the prevalence with which ARTS Outpatient Therapeutic Community clients could access Medicaid services that are both medically necessary and matched to their assessed risks and needs.

ISSUE 3 (Outstanding): There is a myriad of practical issues with Medicaid billing that could be cost-prohibitive in the immediate future.

While the working group discussed several practical issues with ARTS billing for Medicaid services, the primary issues mentioned above are most pressing and could be more universally problematic with respect to Medicaid reimbursement. As a result, the group did not deeply explore the degree to which the following items warranted reduced funding for the ARTS Outpatient Therapeutic Community program:

1. Are Medicaid rates competitive with current state-funded rates of treatment?

If Medicaid rates are substantially lower than state-funded rates, it may serve as a disincentive for the provider to take on the additional work of billing for Medicaid services.

2. Does Medicaid cover the same range of services that ARTS provides in the Outpatient Therapeutic Community program?

ARTS offers many services at the Outpatient Therapeutic Community program that are not reimbursable by Medicaid (e.g. behavioral monitoring). The group discussed this issue but abandoned a closer comparison in light of Issue 1 and Issue 2, which more globally aggravate the ability of ARTS to seek Medicaid reimbursement.

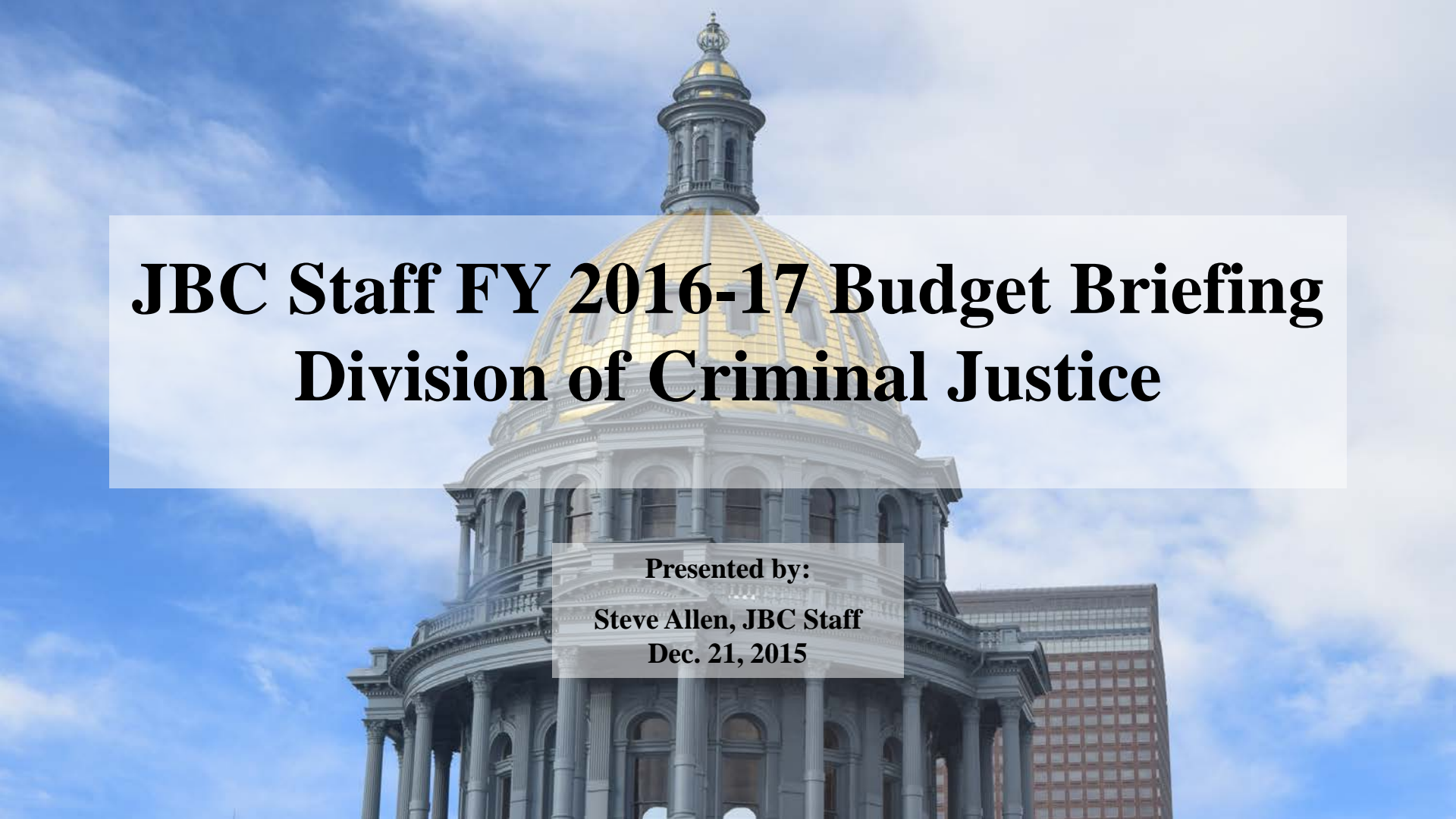
3. Is the administrative burden of Medicaid billing worth the benefits to the provider and to the client?

ARTS representatives report substantial administrative burdens with staff billing Medicaid services. ARTS would need to hire additional staff/medical coders in order to bill for services. This cost of hiring the additional staff along with the potentially lower reimbursement rate could make it financially unviable to begin to bill for services. This cost alone could outweigh the benefits of seeking Medicaid funding.

Given the considerations of the IMD Designation Issue, the medical necessity issue, and the time allotted to investigate this highly complex matter overall, the group did not give additional attention to these practical issues that could significantly challenge or prohibit Medicaid reimbursement. If the issues of medical necessity and IMD designation could ever be addressed affirmatively, it would be prudent to examine Issue 3 with individuals who specialize in these practical areas.

Conclusion

Medicaid funded behavioral health services for the ARTS Outpatient Therapeutic Community program are not out of the question for the future. However, it is the collective understanding of this working group that Medicaid funding opportunities are unlikely in the immediate future given the constellation of the above factors. Many of these factors require further investigation, and in some cases, federal involvement. It is the collective belief that, at the current time, there must be substantial and continued work to address the myriad of challenges identified herein in order to answer the RFI question conclusively.



JBC Staff FY 2016-17 Budget Briefing

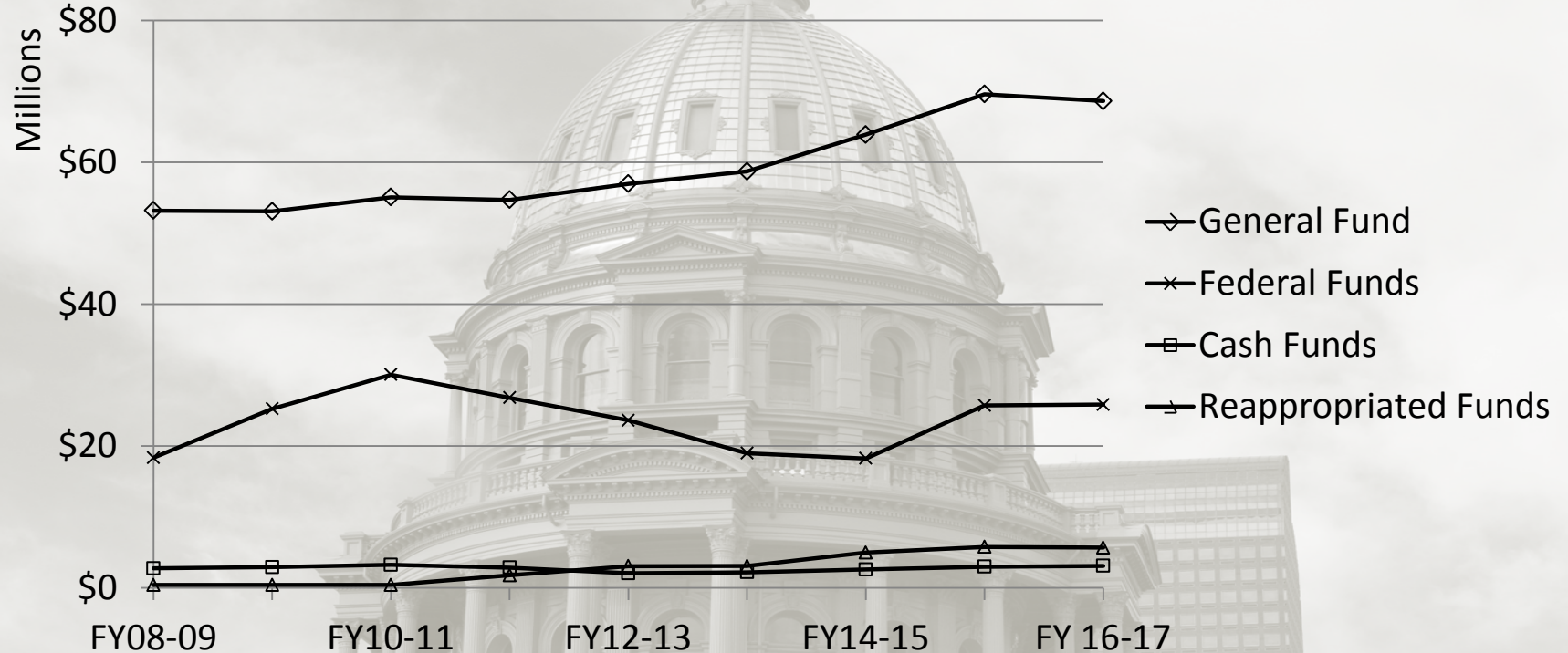
Division of Criminal Justice

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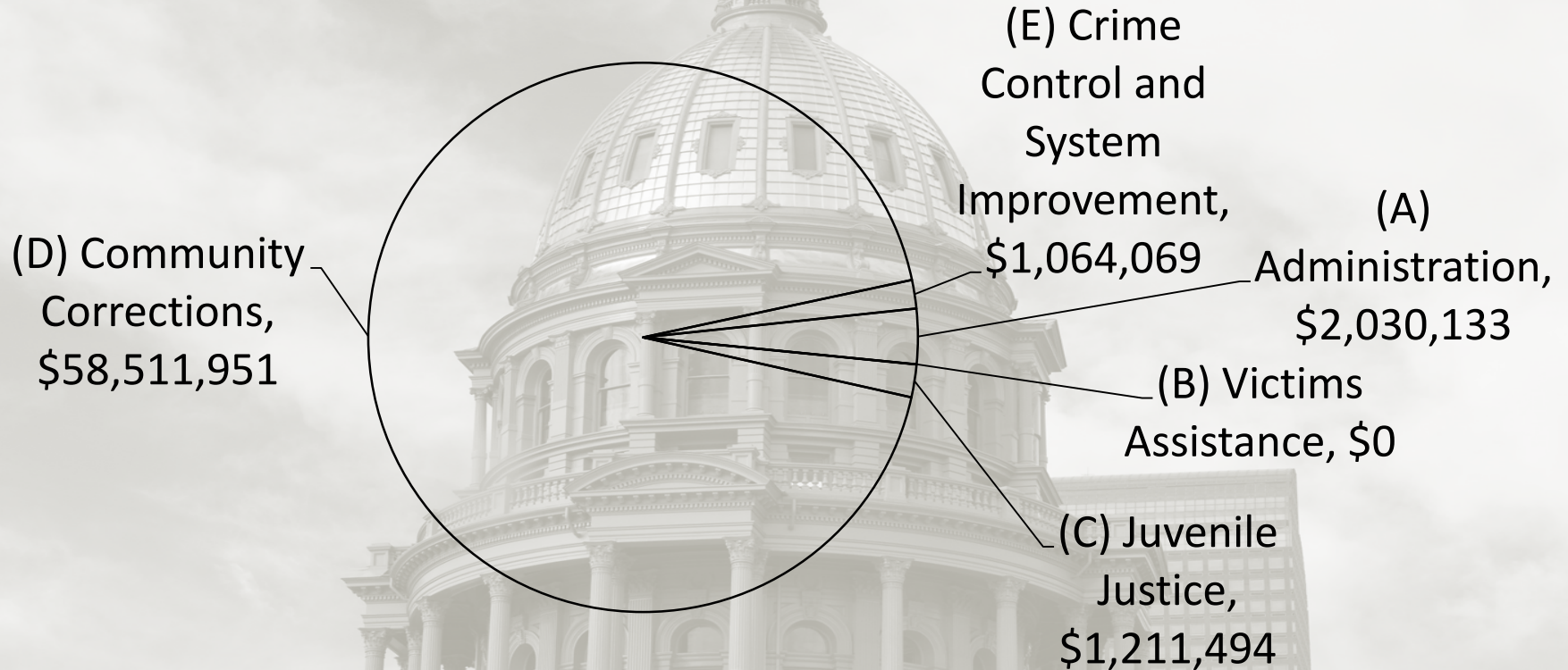
Steve Allen, JBC Staff

Dec. 21, 2015

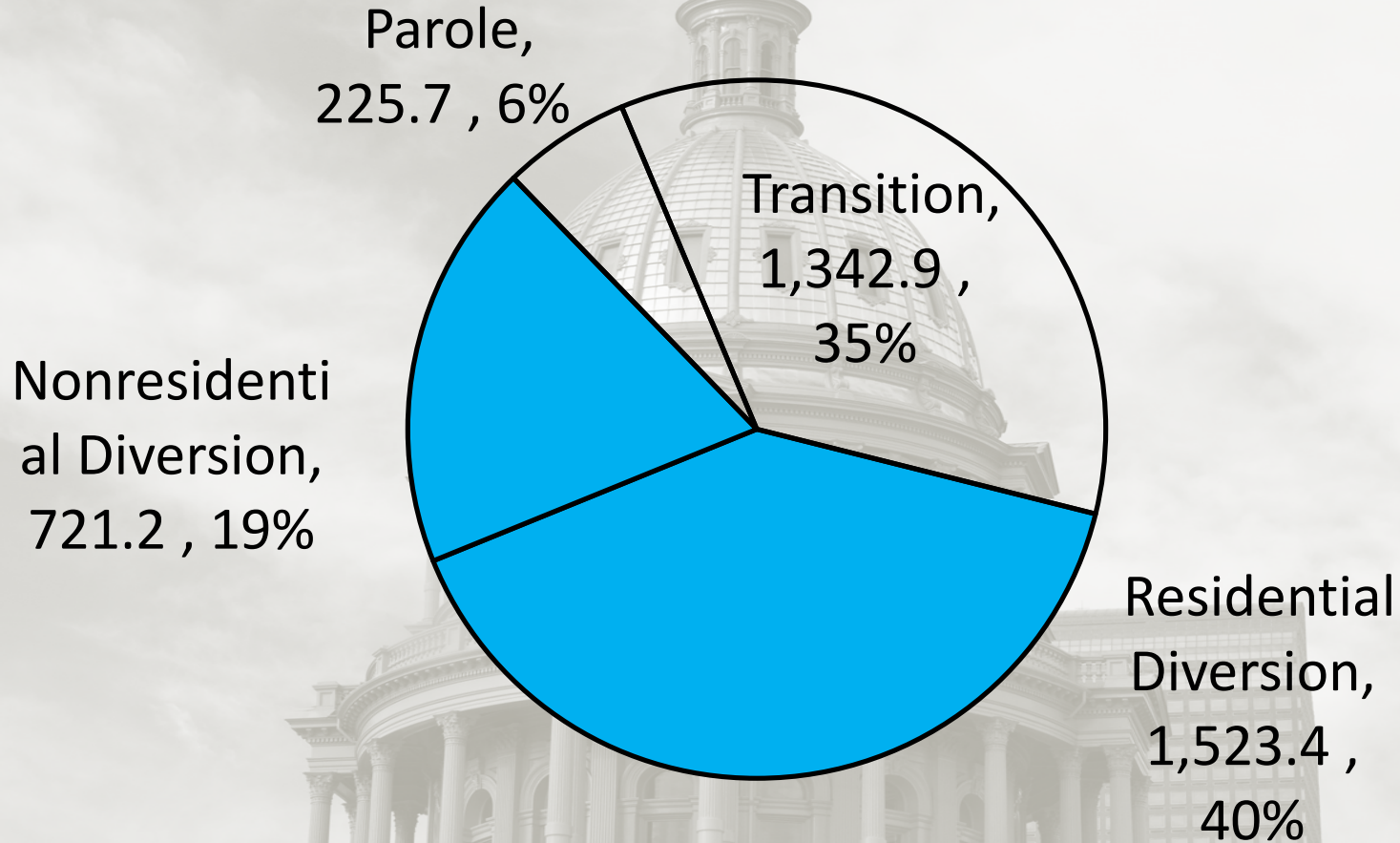
Division of Criminal Justice Recent Actual Expenditures, Appropriations, and Request



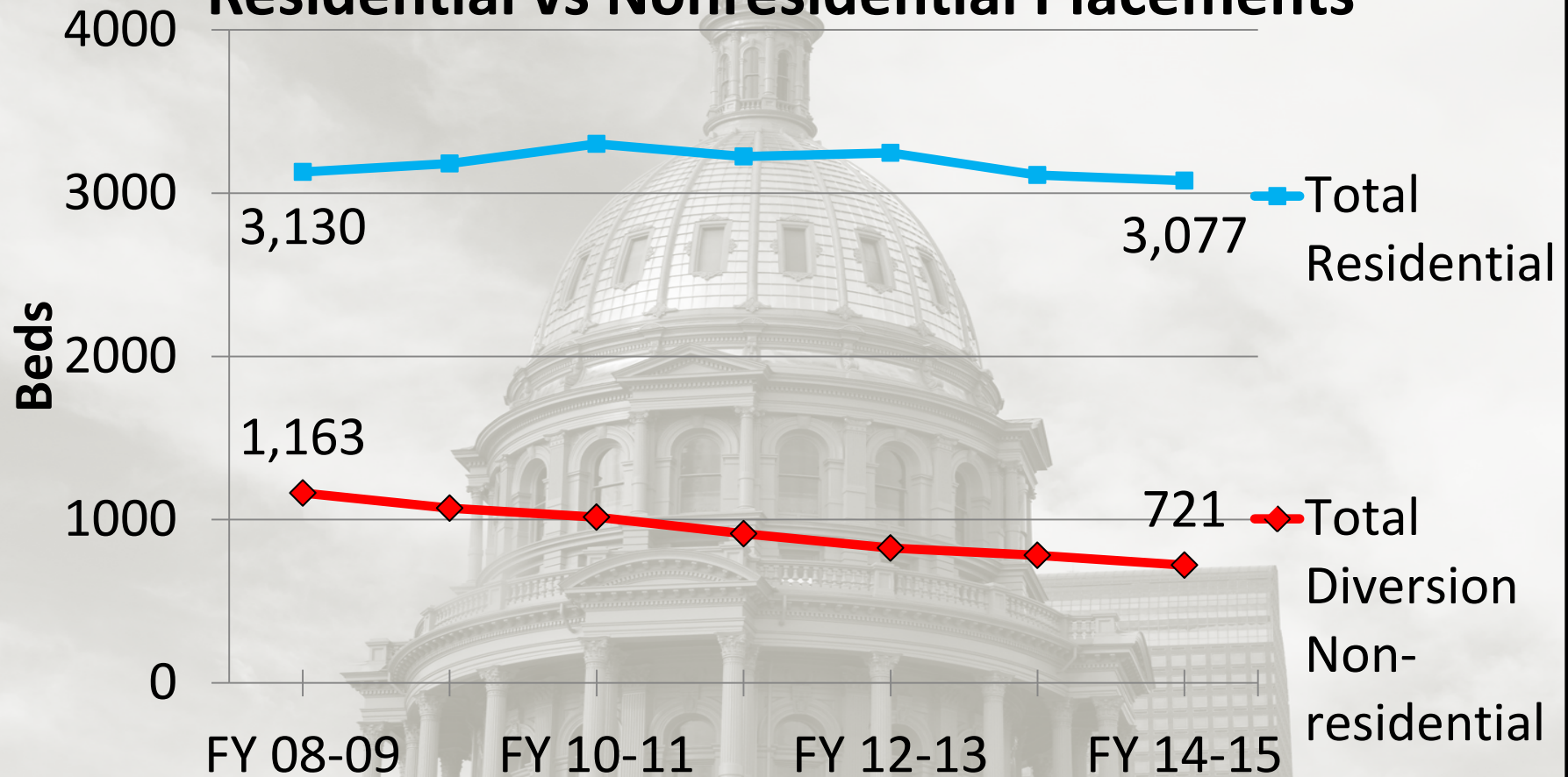
Distribution of FY 2014-15 GF Expenditures Among Subdivisions



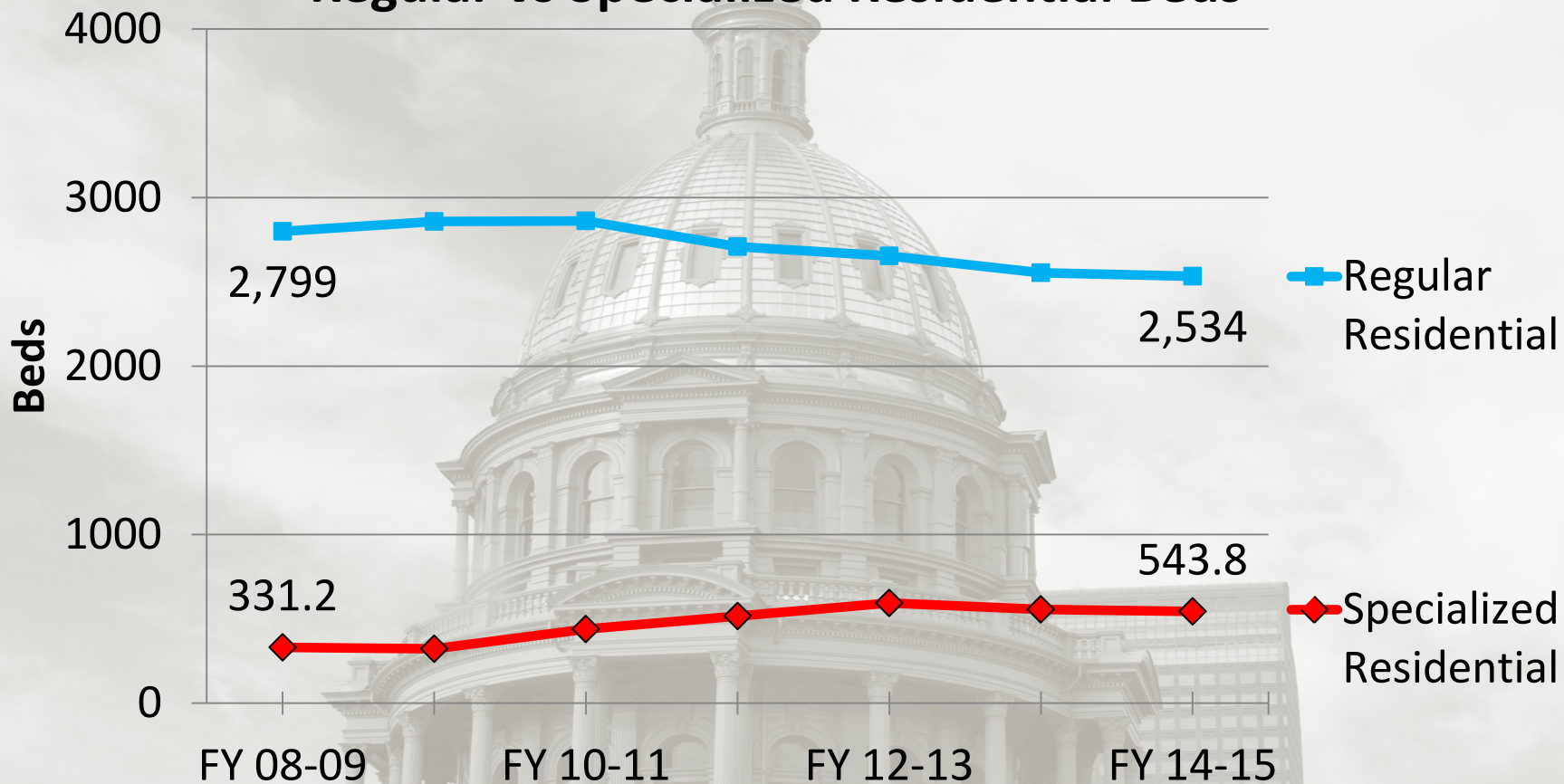
Distribution of Community Corrections Offenders FY 2014-15



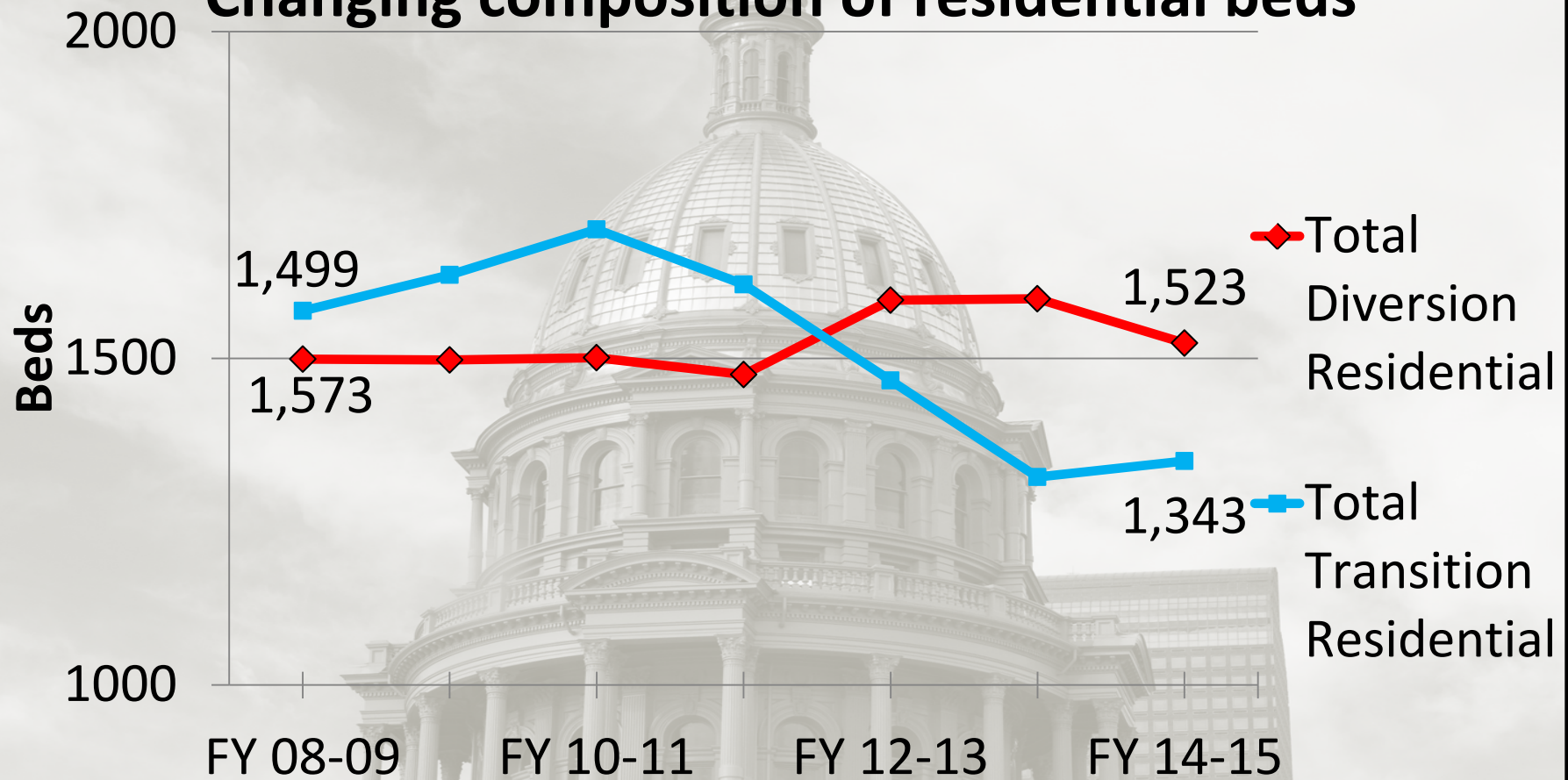
Residential vs Nonresidential Placements



Regular vs Specialized Residential Beds



Changing composition of residential beds



FY 2016-17 DCJ Requested Decision Items

R3 Jail Survey Impacts

**R5 Eliminate Policing Institute
Line Item**

**R6 1% Community Corrections
Provider rate decrease**



FY 2016-17 Briefing Issue

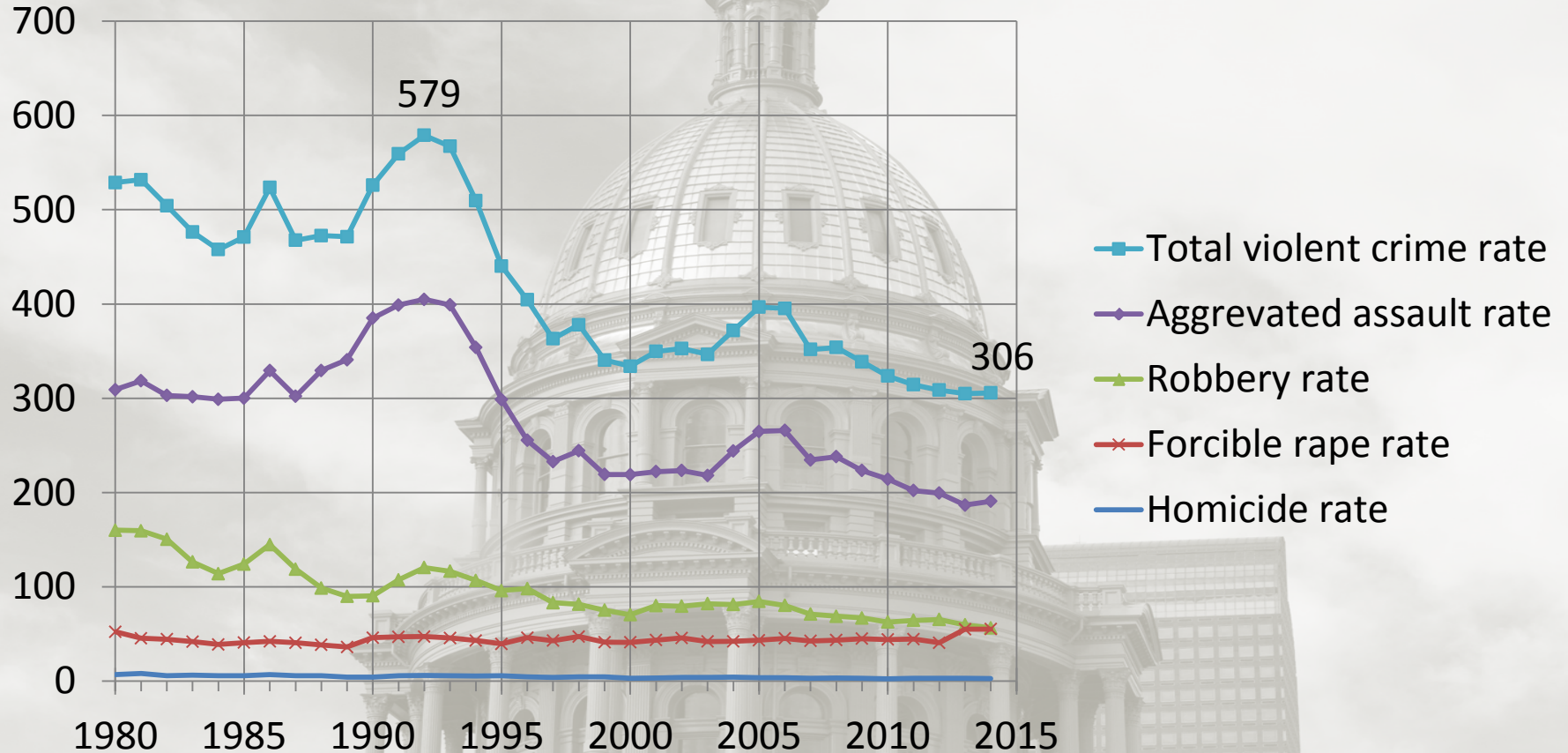
**Results of Subsistence Forgiveness
Pilot Project**



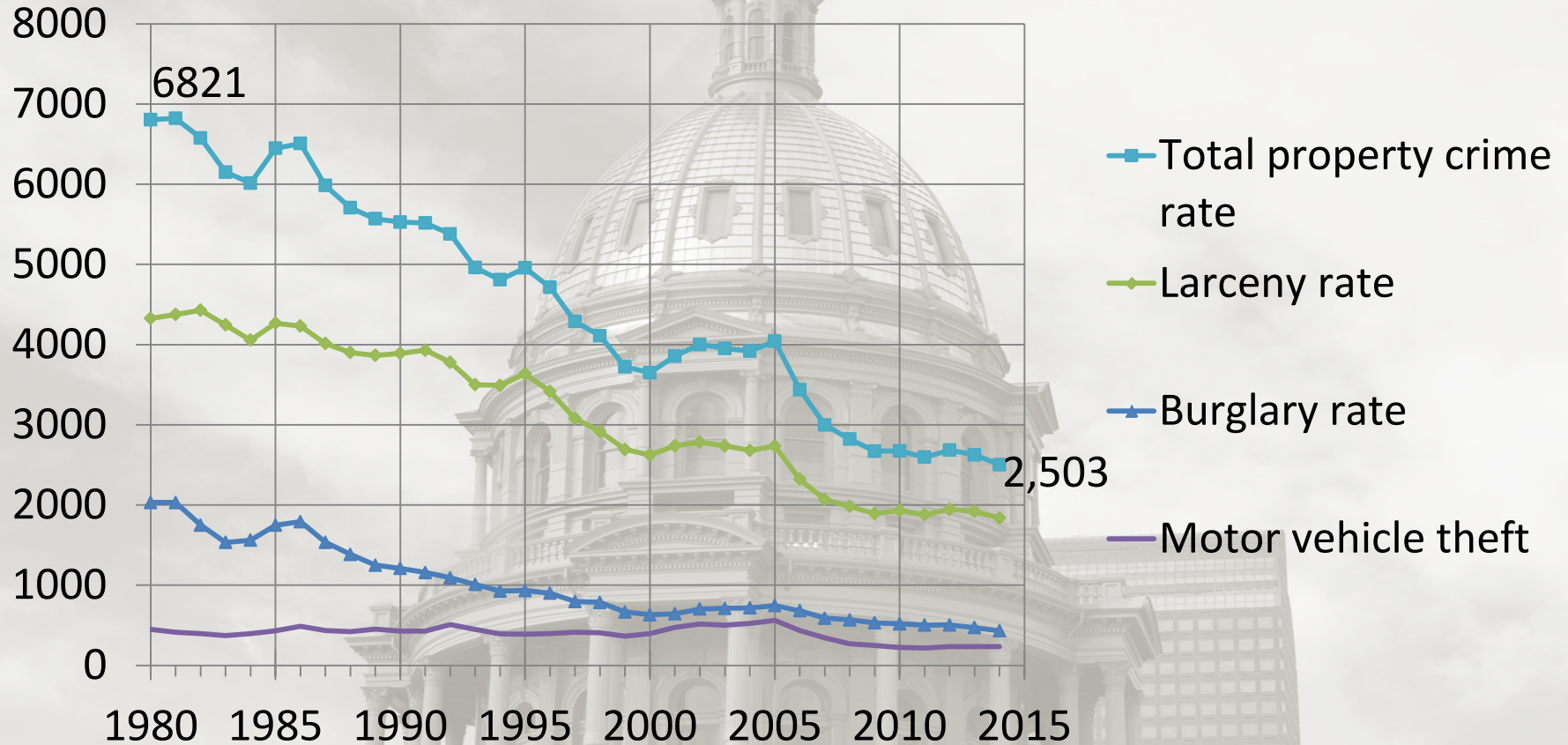
FY 2016-17 Briefing Issue

Crime and Punishment Trends

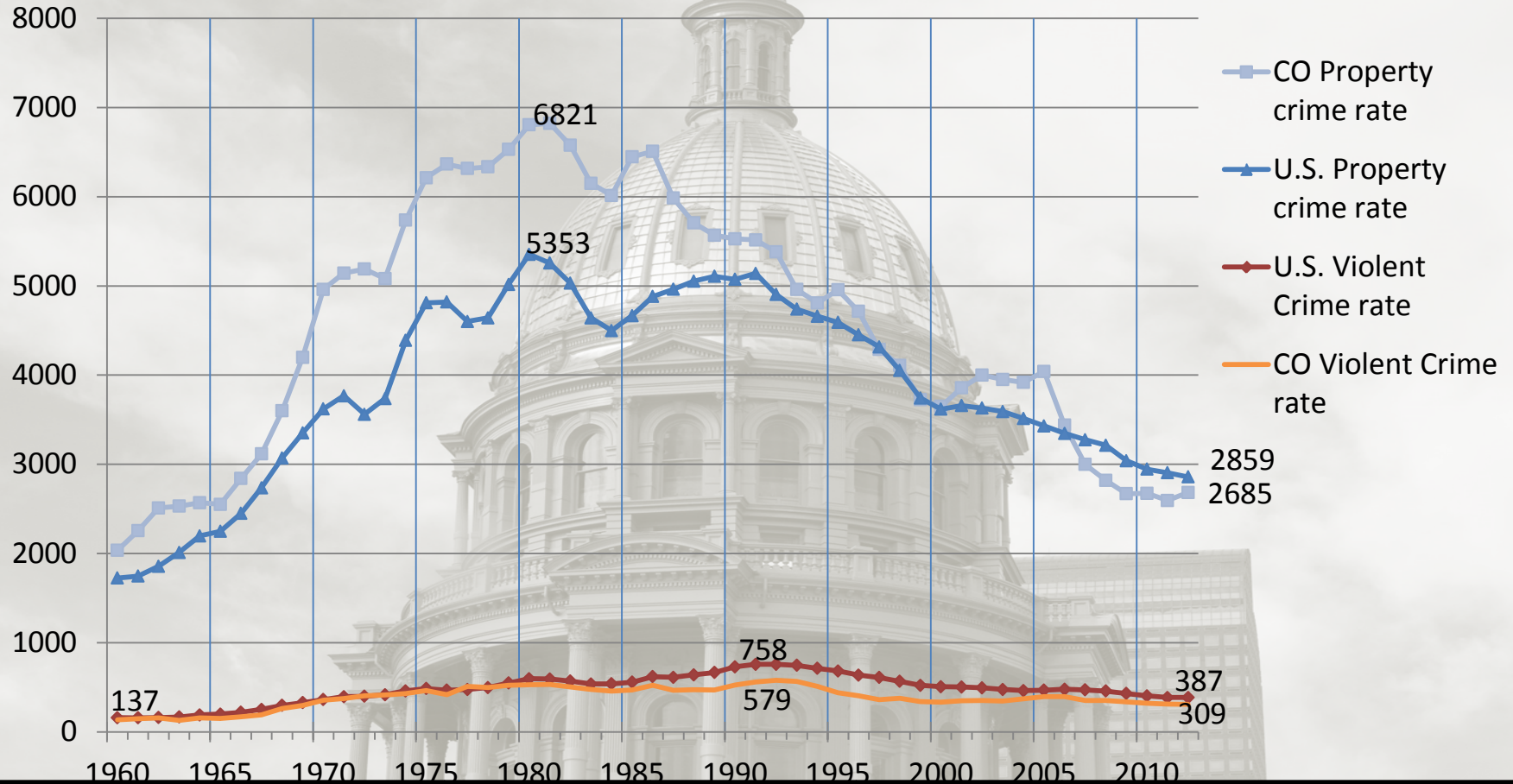
Colorado Violent Crime Rates



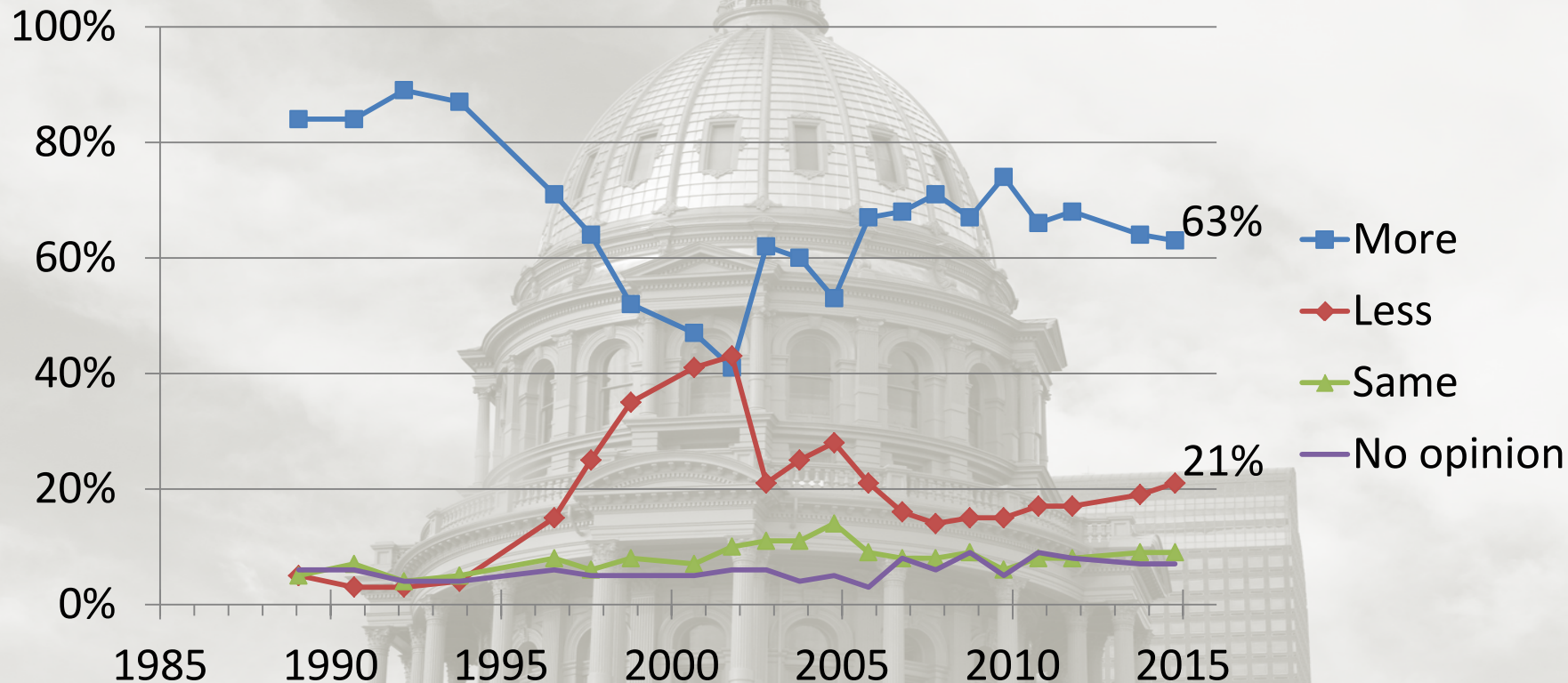
Colorado Property Crime Rates



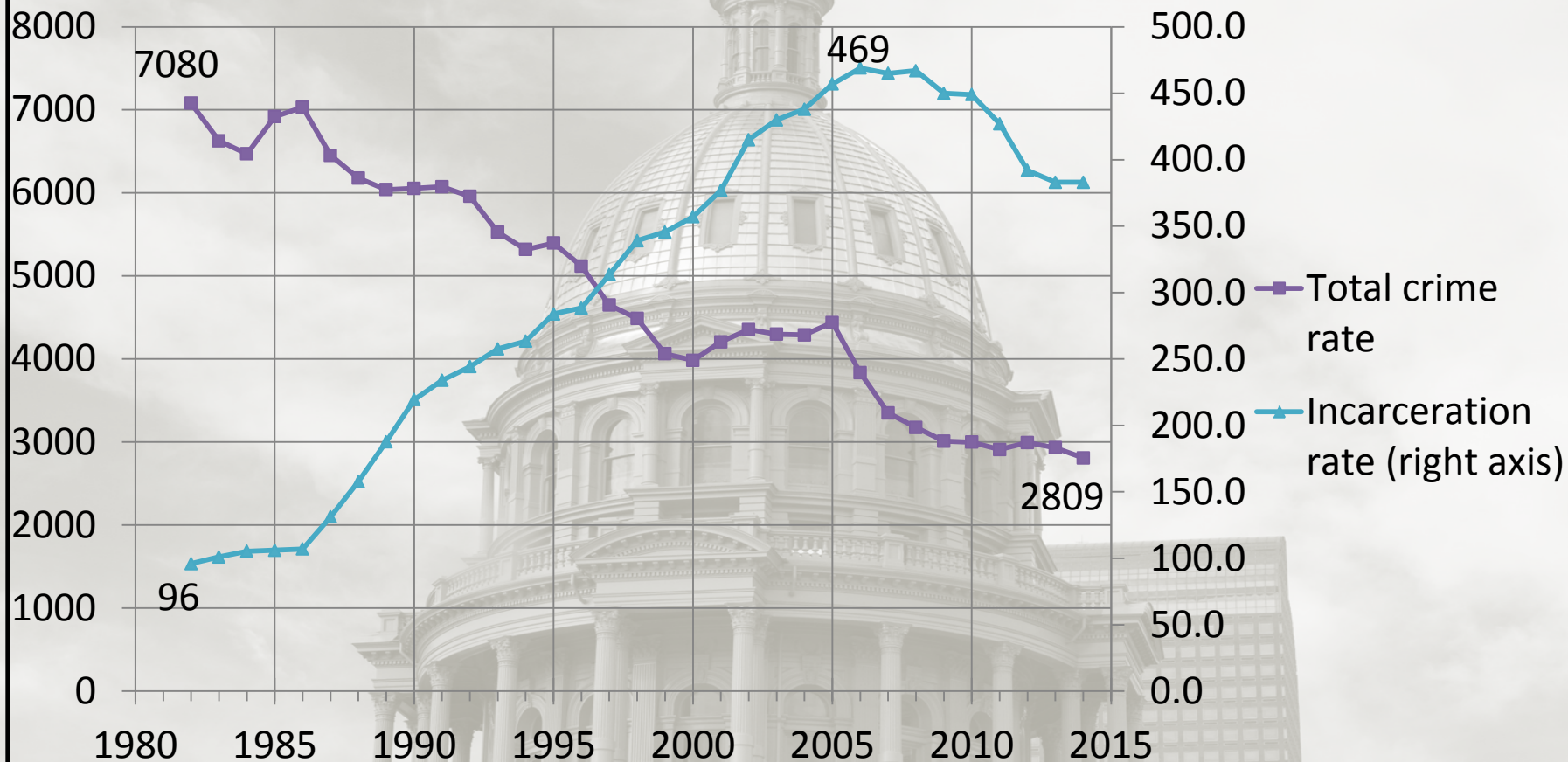
U.S. and Colorado Crime Rates since 1960



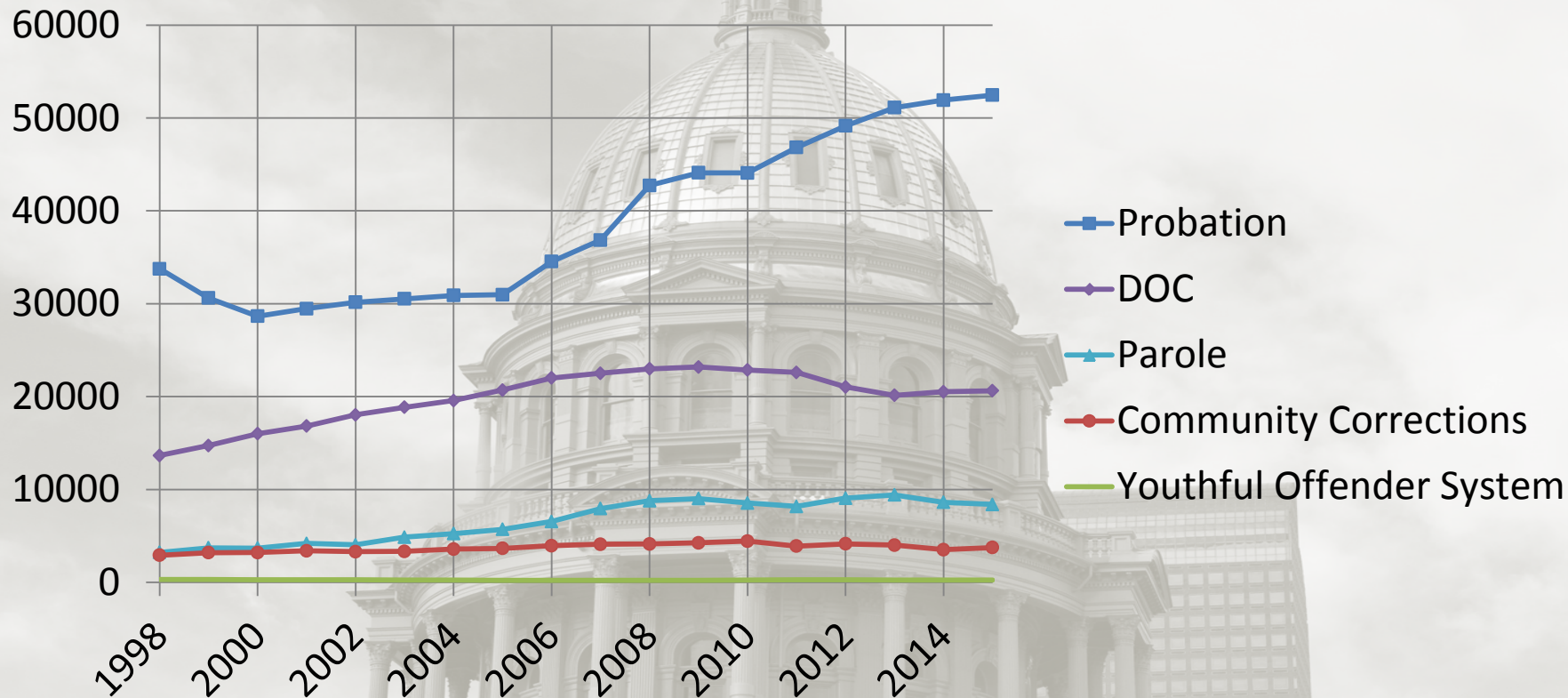
Gallup polls: Is there more crime in the U.S. than there was a year ago, or less?*



Colorado Total Crime Rates and Incarceration Rates



Population Under Supervision by the Colorado Criminal Justice System





FY 2016-17 Briefing Issue

**Results First and Intensive
Residential Treatment (IRT)**



FY 2016-17 Briefing Issue

Appendix E: Medicaid Funding for ARTS Therapeutic Community



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Division of Criminal Justice