

**DEPARTMENT OF PUBLIC SAFETY
(Except Division of Criminal Justice)
FY 2010-11 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Monday, November 30, 2009
9:00 am – 12:00 pm**

9:00-9:15 **INTRODUCTIONS AND OPENING COMMENTS**

9:15-9:30 **GENERAL QUESTIONS FOR THE DEPARTMENT OF PUBLIC SAFETY**

Department Fleet Vehicle Policies

1. *What is the Department policy on state employees using state vehicles to commute to and from work? Provide a list of Department employees by division and program that use their state vehicles to commute to and from work. Does the department reimburse employees for mileage expenses for using personal vehicles to simply commute to and from work?*

RESPONSE: The Department of Public Safety (CDPS) both supports and adheres to the Department of Personnel and Administration's (DPA) current policy on the use of State vehicles for commuter purposes. The three hallmarks of this policy are as follows:

- CDPS employees may commute in State-owned vehicles only if that employee is directed by the Department to travel between home and work in a State-owned vehicle;
- Employees who commute in State-owned vehicles may not employ those vehicles in any personal use; and
- Pursuant to IRS guidelines, employees who commute in State-owned vehicles receive imputed taxable income of \$60 per month as "compensation" for the benefits of commuting.

It is important to note that IRS regulations *exempt* any employee commuting in a marked or unmarked law enforcement vehicle from required imputation of income. For this reason, the Department *does not* impute income for any law enforcement officer employed by CDPS who commutes in a State-owned vehicle. These individuals, however, are still prohibited from using the State-owned vehicle for personal purposes, and may not commute unless specifically required by Department management.

Attachment A contains a list of all CDPS employees who are required to commute in a State-owned vehicle. For the purposes of convenience, this list *excludes* all uniformed members of the Colorado State Patrol, who are exempted from the policy of imputed income. However, all uniformed CSP members are authorized, when directed by management, to commute in a State-owned law enforcement vehicle. This list also excludes the names of employees, but does include job titles.

Finally, in accordance with DPA policy and IRS guidelines, the Department *does not* authorize or pay reimbursement of any commuting expenses incurred by employees in employee-owned vehicles.

9:30-10:30 QUESTIONS FOR THE COLORADO BUREAU OF INVESTIGATION

General Overview Questions

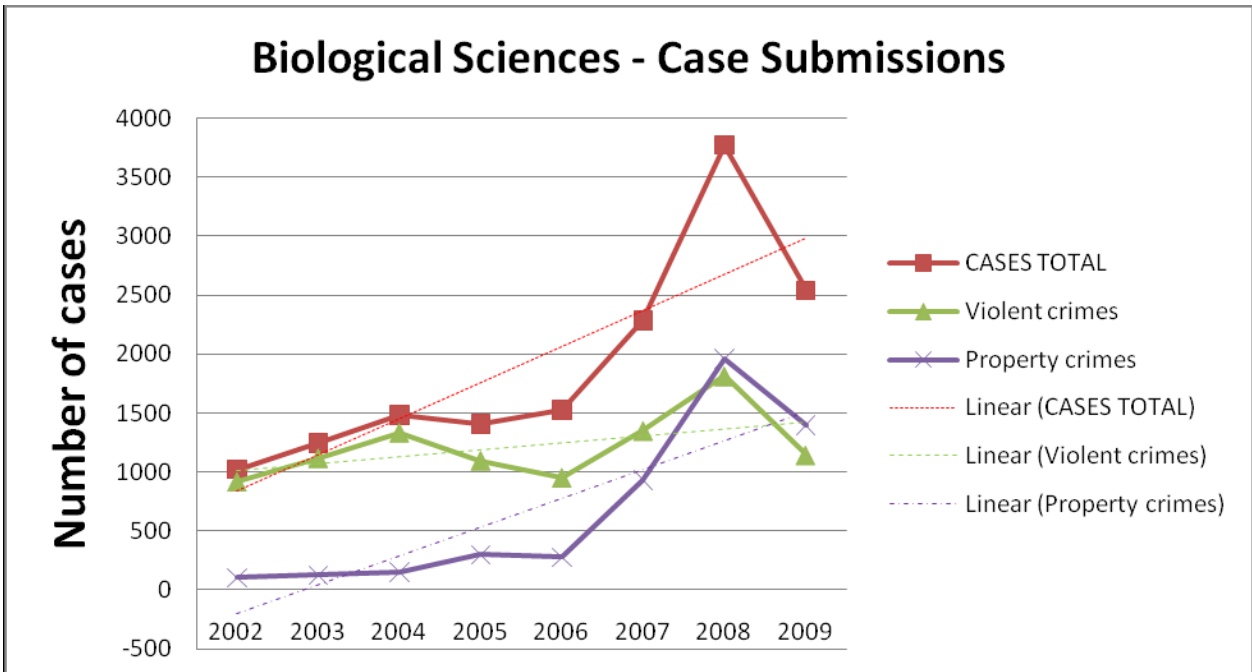
2. *On page 6 of JBC staff briefing document there is a graph titled “Colorado Violent vs. Property Crime Rates”, are these statistics based on arrests or convictions?*

RESPONSE: The tables on page 6 of the JBC document are based neither on arrests nor convictions. Rather, crime rate statistics are based upon crimes *reported* to police.

Laboratory

3. *On page 6 of JBC staff briefing document, there is a graph titled “Colorado Violent vs. Property Crime Rates”, this graph shows violent and property crime rates going down. On page 7 of JBC staff briefing document, staff narrative states that the CBI Laboratory processed 7,779 forensic DNA specimens (Denver, Western Slope, and Pueblo labs), which was more than 89 percent higher than the number of specimens processed in FY 2006-07. Why is the number of cases in lab increasing if the crime rate is going down?*

RESPONSE: The CBI does not control the number of submissions to its laboratories by any local law enforcement agency. Local Law Enforcement agencies submit cases to CBI as their investigations and filing of charges demand. Although the graph referenced below shows a decrease in both violent and property crime rates, the trend in **the number of cases submitted annually has been increasing**. This is directly correlated to an increasing demand for the application of forensic DNA analysis. The chart below depicts this increase for case submissions from both violent and property crimes.



Prior to the advent of DNA technology at the CBI in 1994, and even during the following ten years, the mindset of DNA forensic labs across the country was to perform DNA testing on samples previously identified to a bodily fluid. However, within the last five years, a change in the application of DNA technology has occurred. At first, the testing of trace DNA (very few cells) was linked to homicides, sexual assaults, and other violent crimes. The successes of locating and developing DNA profiles with minimal quantities of DNA, along with studies on the use of DNA in property crimes, has increased the number of requests for DNA testing. This increase can be seen in the above chart.

Local law enforcement agencies are aware of the results of the number of Combined DNA Index System (CODIS) database hits tied to evidence collected at property crimes. This knowledge has resulted in an increase in the number of felony property crime submissions to the CBI. Over the past three years, the ratio of violent crimes to property crimes has changed. Prior to 2007, there were more violent crime submissions compared to property crime submissions. Since then, the volume of violent crime submissions has remained relatively constant, while the number of property crime submissions has increased. Agencies are now realizing the success in submitting these cases for DNA analysis.

4. *How much funding does the crime lab spend on each judicial district, provide breakdown by volume of work per district as well as cost per district?*

RESPONSE: This information is not available. The CBI does not routinely track the

number of items submitted by either agency or judicial district. There is only a direct correlation between the item tested and the cost.

5. *Do cities have to pay for laboratory work done on their behalf?*

RESPONSE: No. The CBI is statutorily required to provide forensic science services to the people of the State of Colorado. The local law enforcement agencies and the people of the state have an expectation that the CBI will perform this testing on cases submitted to the Bureau.

The act of assessing a fee to local jurisdictions for the CBI's laboratory activities would carry significantly negative consequences. Most importantly, it is likely that a fee assessment would force some local jurisdictions to choose whether or not to investigate certain major crimes based on budgetary limitations. The Department and the CBI believe strongly that Colorado citizens' best interests are served by ensuring that local agencies are never forced to choose between the often-competing interests of budget and the investigation of serious crimes.

6. *Are cities hiring more DNA technicians because the CBI cannot reduce backlog fast enough? How does this whole system work? How does the Laboratory set priorities on what work gets done in what order? Is there some standard in the court system that requires the lab work to be done through CBI?*

RESPONSE: While several police departments and Sheriffs' offices in Colorado operate crime laboratories for some disciplines, only two local agencies operate DNA laboratories: the Denver and Colorado Springs police departments. All other local agencies within Colorado depend upon the CBI laboratory for analysis of DNA evidence.

Some local Sheriffs' Offices provide personnel that work out of the CBI laboratories located throughout the state. These "contributed" analysts perform DNA testing of their own cases, and also provide assistance in the testing of cases submitted to the CBI from city labs within their respective counties. These local law enforcement agencies hired the analysts due to the growing case submission backlog, hoping to ameliorate the shortfall of CBI DNA personnel employed to perform analysis of bodily fluid and DNA evidence. Both bodily fluids and DNA analysis are critical functions within the biological science section. They help in providing investigative information, identifying the perpetrator(s), and assisting the prosecutor in bringing charges and the case to trial. The impact extends not only to the completion of the local agencies' cases, but these contributions of staff also allow CBI agents to focus on cases from other law enforcement agencies within the state. This arrangement allows the local agencies' personnel to work hand-in-hand with CBI agents on the mission to provide forensic biological science services (serology and DNA) to the state of Colorado.

To answer the second part of this question, CBI will assume that the “whole system” involves the processing of forensic biological science evidence. A law enforcement agency (LEA) submits evidence collected from a crime scene to the CBI lab for testing. The number of items submitted depends upon the type of crime, the nature of the scene(s), the number of victims and suspects, and the jurisdiction. In cases of violent crimes (such as a homicide or violent sexual assault), where there are a large number of items of evidence, the CBI requests that the LEA contact the CBI to set up a meeting to discuss the case and items for submission. In this meeting, the number of items to be submitted is discussed and jointly agreed upon. The CBI has found that these meetings are very useful for both the LEA and the CBI. The meetings generally result in a reduced number of items submitted to the CBI, which decreases the time spent analyzing evidence. These meetings also provide the CBI lab agent with additional information to help him or her focus on specific items and areas on a given item. In several instances, these meetings have guided the LEA in submitting different items than originally intended.

Once the evidence is brought to the CBI, it is delivered to the CBI Laboratory Information Management System (LIMS) so that a secure chain of custody can be established. Notes, photos, instrument results, and all other documents related to the examination and analysis of evidence are retained in the CBI LIMS system. The lab agent then takes the evidence to the forensic serology section where each item is carefully handled and examined, looking for the specific information (bodily fluid stains or DNA, for instance) that will assist in solving the elements of the cases. Any cuttings or swabbings collected for DNA are placed into a DNA packet. The evidence is returned to the evidence vault for storage until the agency picks it up for long-term storage at its own facility. This process continues until a batch containing about 40 to 50 items is obtained. At this point, approximately 10 - 12 cases have been examined, depending upon the number of items submitted and number of samples collected for DNA testing.

The next step in the process is the testing of the samples for DNA. This involves cutting a portion of the sample in order to extract the DNA from the solid surface it resides on, into a liquid medium. Case law suggests that only the amount needed for testing should be taken, allowing for re-testing if requested. The extraction of DNA also removes potential chemicals and debris that could inhibit the downstream DNA processes. Once the DNA has been extracted, the concentration of DNA is determined. In order to obtain a DNA profile of interpretive value, an optimal amount of DNA must be added to a set of reagents designed to amplify or make copies of specific regions of DNA. This also may provide a stopping-off point if no DNA is detected during this quantification step. Each sample is then diluted to a specified concentration, and a portion of the sample added to a specific amount of amplification reagents. These samples are then placed in a DNA amplification instrument where millions of copies of specific regions of DNA are generated. Following this step, a portion of each sample is placed into a specific spot in an analysis tray, one sample per well, and this tray is then placed into a DNA analysis instrument. Once the instrument has completed its analysis, the CBI DNA analyst reviews the results for each sample. The CBI DNA analyst combines all of the information related to each case, prepares a report, and then provides the results to another CBI DNA analyst to perform a

technical review. Once that is done, the report is administratively reviewed and released to the LEA.

The CBI Laboratories prioritize their work in such a manner as to optimize the examination and analytical processes. This is done to maximize case throughput, and to keep analytical costs to a minimum. The priority of cases is determined by risk to the general public safety, court deadlines, the type of crime (Type I versus Type II as defined by the FBI), and case duration in the queue. Violent crimes take precedence over property crimes. Older cases are generally done before new cases. Cases that have to be completed to meet a court deadline or risk being dismissed are set at the front of the queue. At the same time, if there is a case in which there is a threat to the community, e.g. a serial rapist or violent random homicide in which the suspect has not been apprehended, an agency will often request a rush on that particular case.

The CBI is statutorily required to provide forensic science services to the people of the State of Colorado. The local law enforcement agencies and the people of the state have an expectation that the CBI will perform this testing as well.

7. *How often is a sample requested from CBI but never used in the court because the case has been plead or resolved in some other way before the sample is completed? How long does it take to get a sample tested from the time it is submitted? Is there a way to improve this system to speed up the time it takes to get the results on a sample?*

RESPONSE: This situation occurs infrequently. The CBI currently has no way of tracking this information. The CBI follows a procedure which limits the amount of unnecessary samples from being tested, however.

The turnaround for DNA cases submitted to the CBI in Calendar Year 2008 was 160 days. Detailed information has been provided above on the DNA analysis process. Following that process, without interruptions (rush cases, demands from the courts and others), an average of approximately 12 to 15 cases can be examined during a 2-week period. Homicide cases with more evidence take longer and demand more time than a property crime case in which a swab is submitted for DNA testing. At the end of the serology testing, the DNA analysis begins, and it generally takes 2 weeks to complete all of the steps in that process. If cases are batched and analyzed in the manner described above, an average of thirty minutes is required to perform the serology testing and two hours to perform the DNA testing. The costs and time to process cases almost doubles when cases are performed one-at-a-time.

The CBI works to improve efficiencies without increasing costs and reducing quality. The use of robots provides assistance in the DNA casework section. It is important to note, when comparing the CBI DNA casework units to other states' DNA laboratories, the CBI is rated very high in case and sample output. The CBI has hired a very dedicated staff to

perform DNA testing, and their commitment to the public is shown in the quality of the work that is done.

There is more to the analysis of DNA than just running a set of samples on an instrument. Every step performed in the process has the potential of being scrutinized by the law enforcement agency submitting evidence; the prosecutors as they prepare the case; and the defense community as they review the case to be certain that their client has not been wrongfully included due to mistakes made in the examination and analytical process. High-profile cases are also scrutinized in the local and national media. The demands are high for quality work to be performed in a timely and cost effective manner.

The CBI will continue to pursue means to optimize the workflow process, while maintaining the quality at a level expected by everyone in the state. Quality takes time, and the CBI has a responsibility to the victim and the accused to spend adequate time and resources to be certain justice is done for all in the state.

The following six charts represent case and item productivity for both forensic serology and DNA. It is important to note that while the number of serology cases (chart 1) and the number of items completed (chart 2) are increasing, the number of analysts has gradually increased over time as reflected in the third chart. Serology Items completed per FTE (chart 3) reflects the fact that the CBI analysts have been working to reduce the number of serology items tested. Once the critical questions for investigation and court have been answered, analysts move on to the next case.

Chart 1

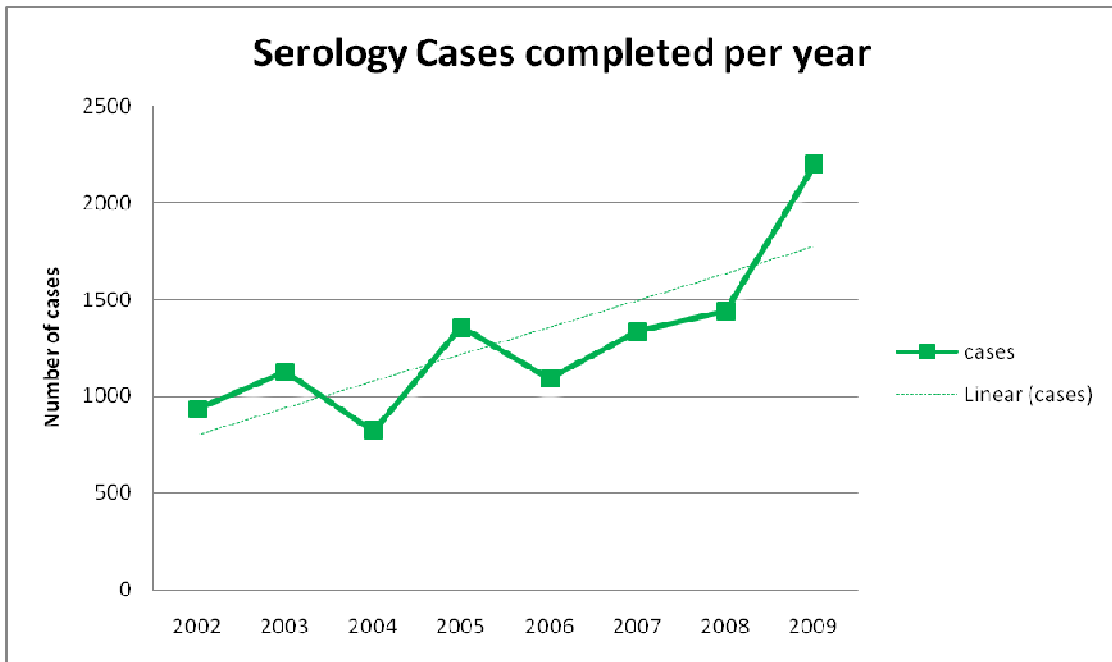


Chart 2

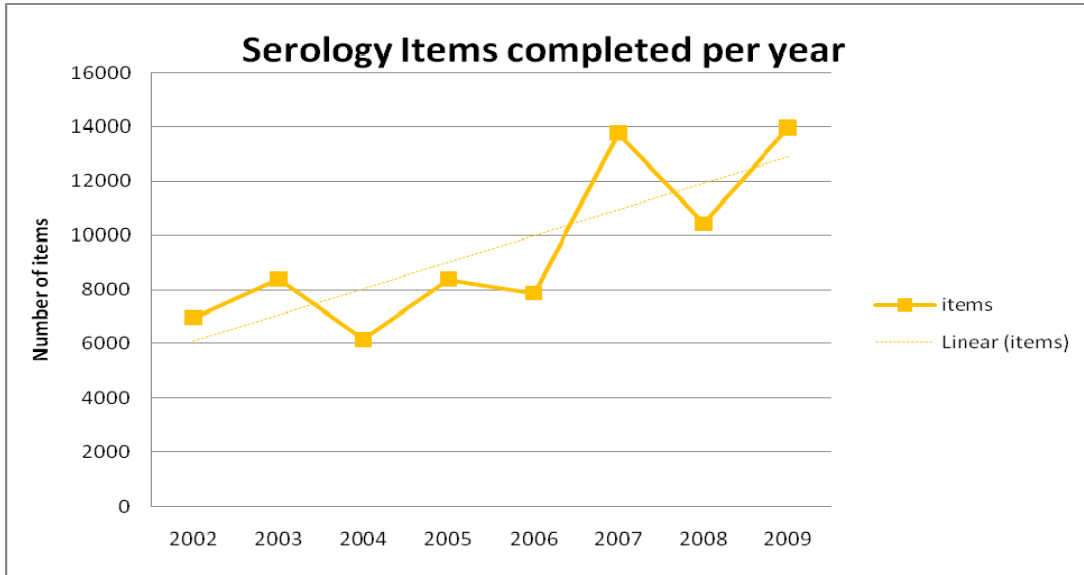
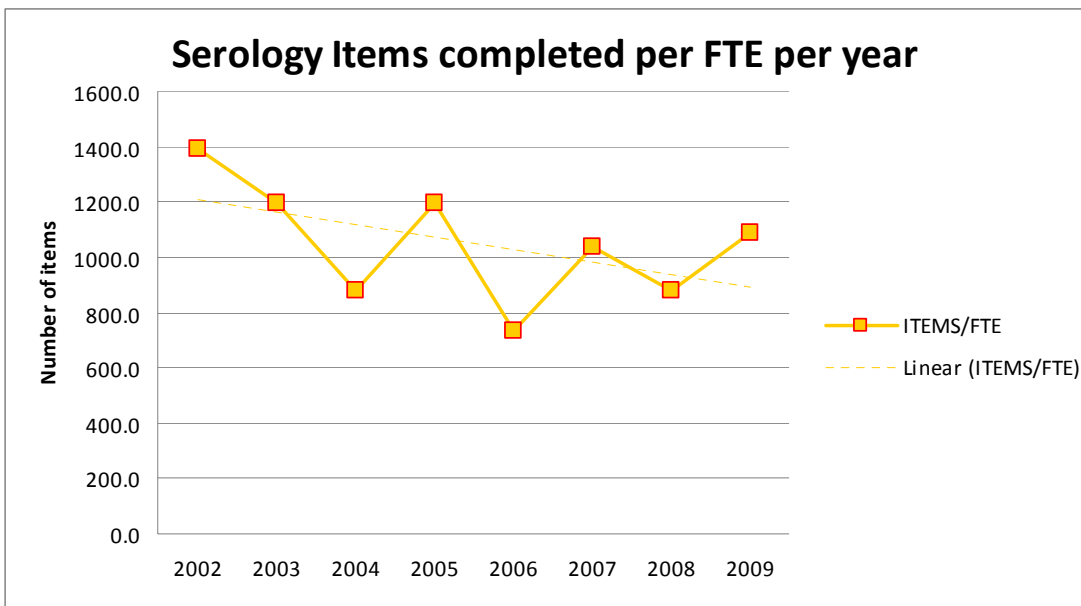


Chart 3



At the same time, the number of DNA cases (chart 4) and items (chart 5) analyzed has also increased. In the case of DNA, CBI analysts currently analyze more items per FTE as shown in chart 6. This is in part due to a demand for DNA testing, and also as a result of recent court decisions, e.g. People v Masters, in which trace DNA was presented. In this

specific instance, trace DNA provided exculpatory information, that assisted the judge in his decision to release Timothy Masters. As a result, homicides, other violent crimes, and cold cases will increase the demand for the testing of more items for DNA.

Chart 4

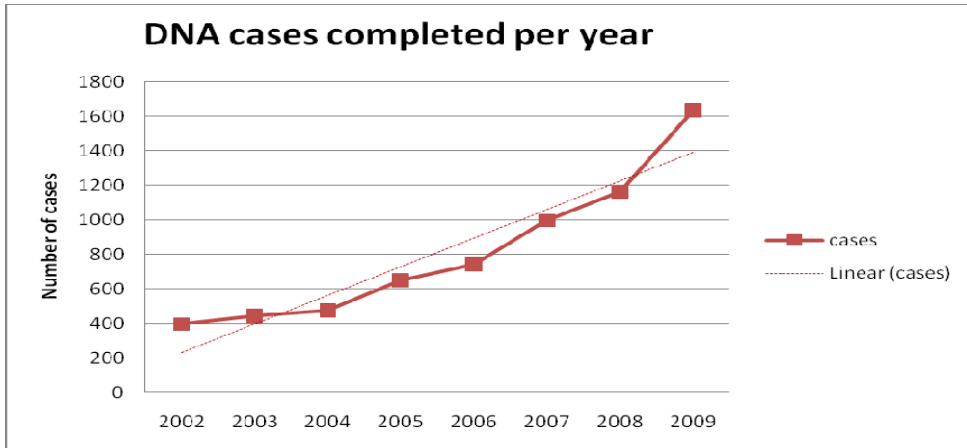


Chart 5

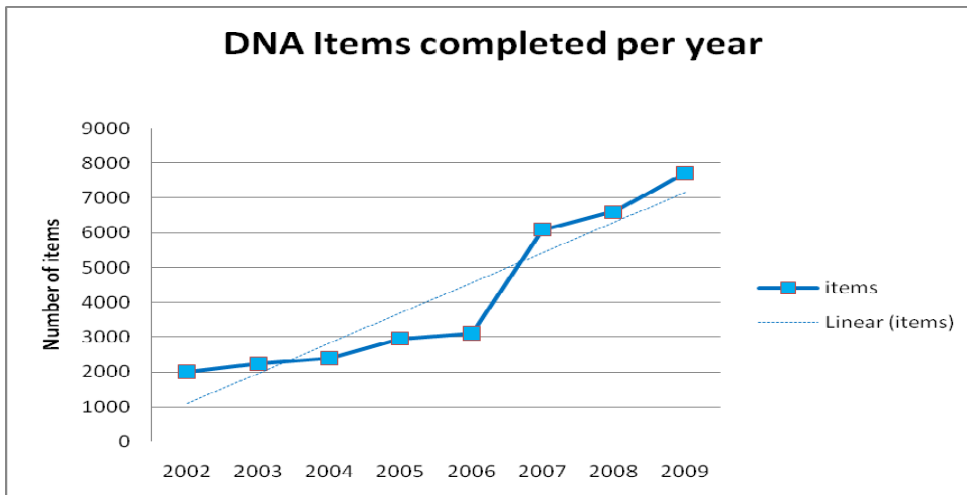
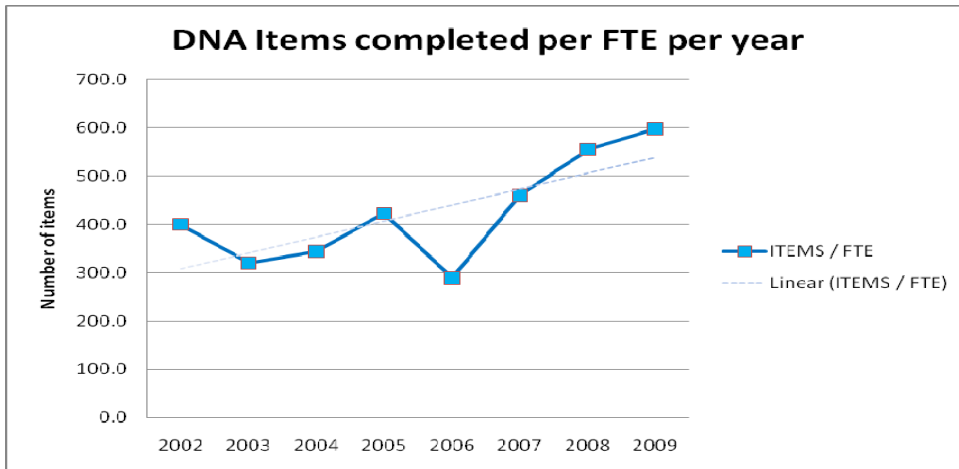


Chart 6



8. *What is the average time it takes to complete the actual analysis on a sample? What is the average time that a sample sits in backlog?*

RESPONSE: The processing of evidence begins with the examination of the initial item. This can take from 5 minutes to an entire day, depending upon the item and the examination necessary. On average, one item takes thirty minutes to examine. Once examined, cuttings or swabbings are taken from the item and placed into a DNA packet. The items from the DNA packet are processed for DNA. This takes, on average, two hours.

Each item is not processed one at a time all the way through before the next item is processed. Cases and items are batched to improve efficiencies so that on average 10 to 12 cases consisting of 40 to 50 items are analyzed for DNA. This process takes approximately two weeks to complete from extraction of the sample to a final report being transmitted.

The bench time consists of DNA extraction, quantification, Polymerase chain reaction (PCR) set-up, DNA amplification, DNA analysis set-up and analysis. Once the analysis is completed, the analyst reviews the results of the analysis, sets up for any re-analysis that needs to be completed, prepares the documentation, and writes the reports. Once reports are completed they must be technically and administratively reviewed. After all of the quality checks have been completed the reports are released to the LEA.

It is essential to note that an analyst's time at the bench may consume only 50 percent of their time at work. The rest of an analyst's time is consumed by other essential duties such as courtroom appearances; meetings with law enforcement agencies, prosecutors and defense counsel; staff meetings; training other analysts; training to local law enforcement agencies; instrument and method evaluations; reagent preparation; and instrument

validation and maintenance.

Currently, the average time that a sample sits in backlog is 160 days.

Eliminate General Fund Support for CBI InstaCheck and Criminal Identification

[See Briefing Document (Safety except Division of Criminal Justice) pg 26]

9. *Provide draft legislation showing the specific changes to statute proposed with this request.*

RESPONSE: Legislative Legal Services is in the process of drafting legislation that would allow CBI to assess a surcharge on fees paid by individuals submitting fingerprints for civil employment. This surcharge would subsequently be used to fund the Criminal Identification operations presently performed by CBI, and presently funded with General Fund. The Department has not been authorized by LLS to share this draft in a public forum. However, CDPS would suggest that the Committee's staff contact LLS directly to obtain a confidential copy of the draft legislation.

10. *Why is the Department proposing to refinance criminal identification operations with an increased fee to individuals seeking employment? Why is the Department not proposing to assess a fee to arrested individuals and those serving a sentence for the log and processing costs of their criminal history information?*

RESPONSE: The Department has proposed this shift in financing only in response to the Statewide General Fund revenue shortfall. This proposal represents a means of significantly reducing the General Fund appropriation to the CBI without compromising critical public safety functions.

In contemplating this proposal, the Department did consider the possibility of recommending the imposition of another fee, fine, or surcharge to be assessed against convicted offenders in Colorado. It was determined that such a surcharge may prove difficult to collect from convicted offenders, given their propensity toward indigence and the myriad other fines and surcharges that already exist for convicted offenders.

An additional surcharge on civil fee-payers will likely guarantee a more stable, predictable source of funding for this critical service.

11. Provide detailed analysis of the methodology used to come up with the increase to fingerprint background checks for individuals who are required by statute to undergo criminal history background checks for employment or licensing purposes. In particular, the Department stated that it needs to refinance \$1.6 million General Fund in FY 2010-11, however, two of the proposed fee increases will generate approximately \$2.4 million in FY 2010-11. Are the fees set in the proposal too high?

RESPONSE: In its August 2009 budget reduction proposal, the Department included the following narrative and table:

In order to generate this revenue, it is expected that the assessment for the CBI's share of each fingerprint-based background check would increase as estimated in the following table:

	Current Fee	Estimated New Fee
Name Search - Internet (Colorado Only)	\$ 6.85	\$ 10.30
Name Search - Manual (Colorado Only)	\$ 13.00	\$ 19.50
Fingerprint Search (Colorado Only, Non-Flagged)	\$ 16.50	\$ 24.75
Fingerprint Search (Colorado Only, Flagged)	\$ 17.50	\$ 26.25
Fingerprint Search (Colo. and National, Non-Flagged)	\$ 38.50	\$ 49.75
Fingerprint Search (Colo. and National, Flagged)	\$ 39.50	\$ 50.75

To provide this estimate for the fee increases necessary to generate sufficient revenue for the Criminal Identification operation, the Department determined the total amount of revenue collected in FY 2008-09 for the CBI Civil Identification operations – approximately \$3,546,000. Then, the Department estimated the amount of additional revenue that would be required for the Criminal Identification operations – approximately \$1.6 million. Taken together, for FY 2008-09, the Department would have required approximately \$5.2 million in revenue to fully cash-fund its Identification section. The required \$5.2 million is just under 50% more than the \$3.5 million collected in FY 2008-09. Based on this, the Department calculated the effects of a 50% increase in its fee structure.

This methodology should produce a relatively close approximation of the fees that would be assessed should the proposed legislation pass. However, if the legislation does pass, the Department will undertake a more rigorous analysis of its fee-setting process to ensure that fee-payers are not over-charged for support of the CBI's Criminal Identification operations. This analysis will include the total resource costs associated with the services to provide criminal history record information to law enforcement agencies, covering personnel (salary and benefits), non-labor (material, equipment, and facility), overhead, (management and administration), and transaction volume and trends.

12. *What is the history of InstaCheck (when was it initiated)? Has InstaCheck had any improvements to its system or query process since its inception?*

RESPONSE: The United States Congress passed the “Brady Law” in 1992, and the law went into effect with interim and permanent provisions in 1993. The interim law applied only to handguns and required the Chief Law Enforcement Officer (CLEO) in the local jurisdiction in which the gun purchase applicant resided to make a “reasonable effort” to determine whether a transaction would violate local, state, or federal laws. The CLEO had 5 days in which to conduct this query.

On November 30, 1998, the permanent provisions of the law took effect. At that time, the FBI’s national system became operational and local law enforcement was no longer responsible to conduct queries regarding the legality of firearms sales. Long guns also came under the background check requirement.

Mirroring the Brady Law, the Colorado General Assembly enacted the “Instant Criminal Background Check System Act” in 1994, charging the Colorado Bureau of Investigation with the responsibility to conduct criminal background checks on handgun purchasers in Colorado.

From 1994 through April 1999, the CBI conducted background checks on firearms transfers, using a rather strict standard. Under these standards, an individual could be denied a firearm purchase if they were convicted or arrested for a crime that, if convicted, would cause them to be prohibited from possessing a firearm. CBI charged a fee of \$10-\$12 for background checks during this time.

During the 1999 Session, S.B. 99-058 was introduced, which would have made CBI the Point of Contact for firearm purchases in the state, continuing the responsibility it had since the General Assembly’s action in 1994. The bill failed to pass in February 1999, and the process for the approval of firearm’s purchases in Colorado became the sole responsibility of the federal government via the FBI National Instant Criminal Background Check System (NICS).

In June of 1999, Simon Gonzalez was approved by the FBI for the purchase of a handgun, which he subsequently used to kill his three daughters. That same day, he attempted an armed assault on a police station, and died in the ensuing shootout. His background check was approved because the National Instant Criminal Background Check System was unable to check Colorado Crime Information Center (CCIC) or Colorado State Court records. It was determined that, if CBI had run his background check, he would not have been able to purchase the handgun he used.

In July 1999, an Executive Order by Governor Bill Owens re-established the CBI as the point-of-contact for all Colorado gun purchases. At this point, the legislature began crafting a new InstaCheck law, which was signed on March 17, 2000 as S.B. 00-125.

Roughly a year after this law was passed, Colorado Revised Statute §12-26.1-101 was amended mandating that every purchase made at a gun show had to undergo a criminal background check. Private individuals selling firearms at a gun show now must have a federally-licensed firearms dealer (FFL) run a check on a purchaser of one of their guns as well. The law limited the fee FFL holders could charge for running a check for a private seller to \$10.

The CBI InstaCheck Unit has not upgraded its physical systems, but continually strives to improve procedures as they pertain to conducting queries, handling denial appeals, and improving customer service. The CBI has made internet transactions available to FFLs to improve transaction approval time, along with modifying the Soundex system. The unit is dedicated to operating at a level that best insures the public safety of Colorado's citizens, while respecting the right of its citizens to acquire firearms and attempting to minimize any inconvenience caused them by the process.

Today, the CBI InstaCheck Unit is also responsible for running background checks for Colorado's Sheriffs on behalf of individuals seeking to obtain permits to carry concealed handguns. This cash-funded subsection of the InstaCheck Unit receives a fee of \$13.00 per name check query for this purpose.

13. Was InstaCheck Ever suspended? Describe the CBI InstaCheck process. How many databases does the InstaCheck process query?

RESPONSE: As noted in response to question #17, the InstaCheck Unit's responsibility to run instant background checks in Colorado ended briefly in February 1999. In June 1999, Simon Gonzales, an individual who had a protection order restraining him from contact with his estranged wife and children, killed his three young daughters before firing shots at the Castle Rock Police Department and its personnel, causing him to be fatally shot by the police.

Gonzales had been approved to purchase the firearm used in the murders by the FBI NICS system. It was determined that had the CBI InstaCheck Unit handled the background check, Gonzales would have been denied based on information available to the CBI – an issue which is still an area of concern as it pertains to the FBI NICS system.

Following this tragic event, then-Governor Bill Owens signed an Executive Order on July 1, 1999, reinstating CBI's responsibility as the point of contact for firearms purchase background checks in Colorado. The CBI reestablished the unit on August 1, 1999, and it has been in operation from that time until the present.

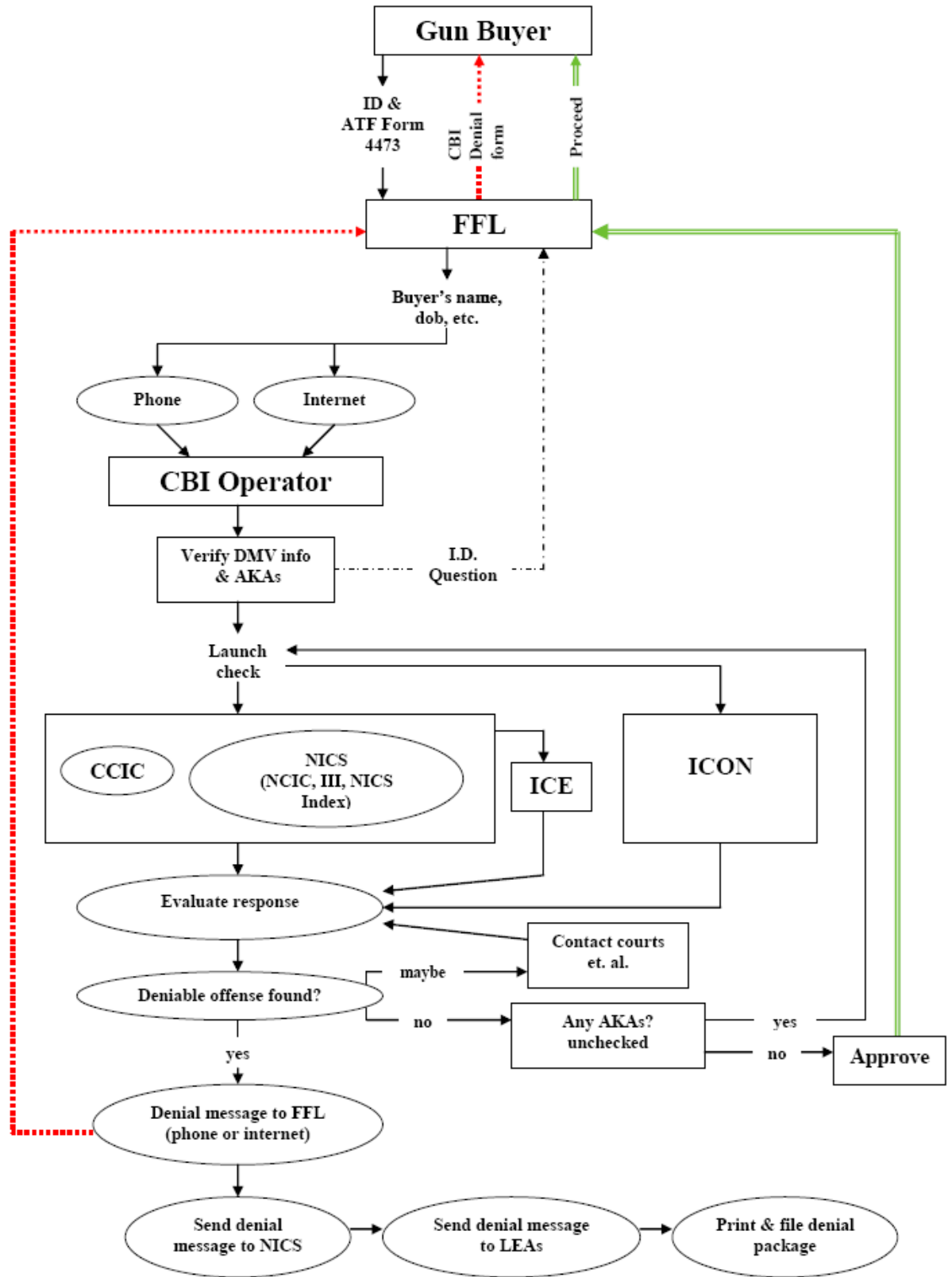
The CBI InstaCheck process actually consists of a number of queries, analyses, and criteria-driven additional checks, and the process varies based upon whether certain criteria are present in each particular background check. Additionally, background checks of individuals with common names will result in a significantly larger amount of both

additional database queries and analytical time.

The CBI InstaCheck Process

The process is initiated when a gun buyer completes a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Form 4473 at the time of the purchase. The form is transmitted to CBI electronically, or the information is provided by the CBI Crime Data Specialist (CDS) by telephone call from the federally-licensed firearms dealer (FFL).

The CDS will then attempt to verify the subject's identity with Department of Motor Vehicle files, and locate any possible aliases used by the subject (this is an identity verification procedure which the FBI does not utilize). The CDS then queries the Colorado Crime Information Center records maintained by the CBI as-well-as the FBI NICS system. At that point the CDS evaluates the information received for any indication of a potentially deniable offense, active protections orders, etc. In most cases, no such information exists in these indices, within the Colorado Court records or the Immigration and Customs Enforcement (DHS/ICE) database, and the FFL is provided with an approval number, and the sale is allowed to proceed. All records of the transaction are destroyed by CBI as required by statute. See the InstaCheck Flow Chart below.



Denials

If a deniable offense is confirmed, (the record indicates an arrest for a deniable offense as well as a conviction) the CDS informs the FFL that the subject attempting to make the purchase is denied, but may file for an appeal.

On many occasions, a criminal history report may show an arrest for a deniable offense, but not a conviction. In this case, the CDS will attempt to determine the disposition of the arrest through the Colorado courts' ICON database (Integrated Colorado Online Network), or through calls to the courts themselves. If the CDS cannot confirm a disposition, the purchase request will be denied, the FFL will be notified, and the purchaser will be given information on how to initiate the appeal process and obtain information about the reason for the denial. This represents another difference between the FBI NICS system and Colorado's InstaCheck program. In Colorado, denials are based on an arrest for prohibiting conduct; the FBI denials are based only on a conviction. The FBI does have the option to put a request on delay for three days. If the purchase is not approved at the end of the three day period, the query goes into "indefinite delay" so that it can conduct additional research. The FFL is advised of the indefinite delay status, and that it may legally transfer the firearm to the applicant at that point. The FBI itself acknowledges this to be a "huge problem" with their system, wherein individuals who should be denied are allowed to purchase a firearm. (This will be discussed in more detail in response to question #19.)

This is a simplification of the query process, and there is a substantial amount of additional work after the query, especially in the case of a denial. In those cases, not only must the FFL be notified, but CBI also needs to send a denial message to the FBI NICS, and Colorado law enforcement. A denial package is also prepared to facilitate response to the applicant upon appeal. CBI has an Appeals section within the InstaCheck Unit that explains the reason for the denial to the Appellant, and in many cases works with the Appellant to correct or update the official record where errors, omissions, or incomplete information might have occurred. This would include correcting the omission of disposition information on an individual's permanent criminal history record – such as noting that a charge was dismissed, where the record only showed the arrest.

Though the process might be somewhat inconvenient to the applicant, correction of the records such as this can have very profound impact not only on their ability to purchase a firearm, but even in some far-reaching areas such as employment, housing, and professional licensing.

Databases Queried by the CBI InstaCheck Process

There are six primary databases queried by the CBI InstaCheck process. These include the FBI NICS system, the National Crime Information Center (NCIC), the Interstate Identification Index (III), the Colorado courts' Integrated Colorado Online Network (ICON), the Colorado Crime Information Center (CCIC), and the Department of Homeland Security DHS/ICE Database. Each of these has a number of component databases that are accessed as well.

14. *Would it be more effective to eliminate InstaCheck and rely on federal criminal background check databases?*

RESPONSE: CBI believes the InstaCheck enhances the safety of Coloradans. The CBI InstaCheck process is a significantly better system when it comes to public safety and welfare based on reasons the FBI acknowledges. It also provides for a procedure to assist in remedying of incorrect criminal history records and the serious negative impacts those have on our citizens. Eliminating the CBI InstaCheck Unit would remove the capital costs associated with the program; however this would come at the expense of public safety to Colorado's citizens. The FBI NICS program agrees with this as noted on its website.

As discussed in response to the previous questions, the CBI InstaCheck process is significantly more effective in accurately making a determination as to whether an individual has factors that should prohibit their ability to purchase a firearm. The statistical data discussed previously indicates that *30 percent of the total denial determinations that CBI has made would have been missed by the FBI.* As the statistics demonstrate, from June 2004 to October 2009, there were 9,292 denials issued by CBI that were not detected by the FBI NICS system. CBI denies based on arrest information, whereas the FBI's system only denies based on documented convictions.

Under the FBI NICS system, firearms purchase transactions are only denied if an applicant's criminal history shows that they were arrested and convicted of a prohibiting offense. Therefore, if an applicant's criminal history shows that they were arrested for murder but no disposition is listed, the FBI cannot deny the sale. They can put the matter on delay for a period of three days. If they cannot resolve the matter in three days (which, due to the tremendous volume of requests and compartmented nature of their system, is not likely), they can put the query into an "indefinite delay" status. Upon doing so, they notify the FFL that the check is going into indefinite delay, and that the FFL can legally make the sale to the applicant.

On page 12 of the FBI's National Instant Criminal Background System (NICS) Operations 2007 publication, the FBI acknowledges this issue as follows:

"In 2007, over 134,000 transactions processed by the NICS Section did not reach a final status before the lapse of three business days because of incomplete or unavailable record information. As such, the potential that prohibited persons may be in possession of firearms becomes more of a reality. . ."

In the next paragraph, the document goes on to say:

"When the NICS Section receives prohibiting disposition information after the three-business-day time frame and renders a deny decision to the FFL, it is possible that the firearm has already been transferred. These scenarios pose serious public safety risks, as a firearm, in the control of a prohibited person, must be retrieved. Such instances are referred to the ATF. In 2007, the NICS Section staff referred 3,055 such firearm retrieval cases to the ATF."

There is an unintended but significant benefit to applicants who have been denied. In some cases, the applicant may have been arrested for a felony, but that charge may have been reduced or dismissed entirely, and this disposition was never noted on their criminal history record. In such cases, the applicant has been victimized by poor record-keeping and lack of follow-through by various components of the criminal justice system. In many cases, the CBI InstaCheck Appeals Section has been able to assist the appellant in taking the steps needed to remedy the situation; in others, the CBI's own appeals research develops the evidence which leads to the remedy. The Appeals Section is able to "cure" the applicant's criminal history record in many instances to reflect the correct information. The result of this is a reversed denial, but such correction of the record can have far greater relevance than simply the ability to purchase a firearm. Incorrect criminal history data can unfairly affect an individual's access to employment, housing and professional and occupational licensing.

15. *What information does the CBI database query? What information does the FBI national database query?*

RESPONSE: The FBI NICS checks query three primary databases and a fourth in the event an applicant is a non-U.S. citizen. These databases are managed by the FBI's Criminal Justice Information Services (CJIS) Division:

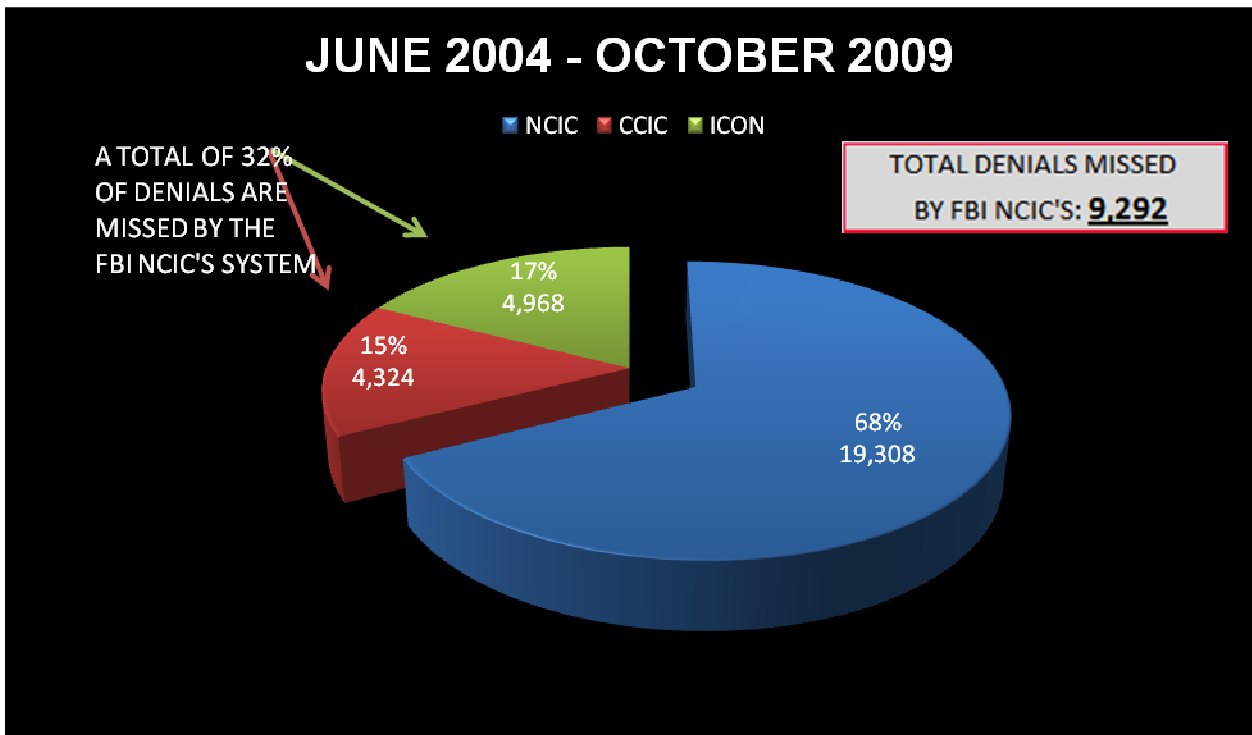
- Interstate Identification Index (III)- The III maintains subject criminal history records. As of December 31, 2007, the III records accessed by the NICS during a background check numbered 51,153,117.
- National Crime Information Center (NCIC)- The NCIC contains data on persons who are the subject of protection orders, or active criminal warrants, among others. As of December 31, 2007, the NCIC records searched by the NICS during a background check numbered 3,812,723.
- NICS Index- The NICS Index, a database created specifically for the NICS, collects and maintains information contributed by tribal, local, state and federal agencies pertaining to persons who are federally prohibited from the transfer of a firearm. Typically, the records maintained in the NICS Index are not available via the III or the NCIC. As of December 31, 2007, the NICS Index records searched by the NICS during a background check numbered 5,108,039.
- DHS/ICE databases- the Department of Homeland Security/Immigration and Custom Enforcement databases are queried when an applicant indicates that they are a non-U.S. citizen.

CBI Queries

The CBI InstaCheck process queries all of the systems listed above. Additionally, the CBI InstaCheck Unit queries the Colorado Crime Information Center (CCIC) and the Integrated Colorado Online Network (ICON) which contains information submitted by the Colorado Courts.

Although it might appear by description that the federal databases are comprehensive and capture information from state, local and tribal jurisdictions, CBI's statistics show that there are significant lapses and absence of such information. CBI has tracked this information, capturing data about denials based on deniable factors discovered via CCIC and ICON queries that are missed by the FBI NICS databases.

From June 2004 to October of 2009, statistics reveal that a total of 9,282 denials based on prohibiting factors were missed by the FBI NICS databases but were captured by either CCIC or ICON and resulted in denials. The following graphics demonstrate this information:

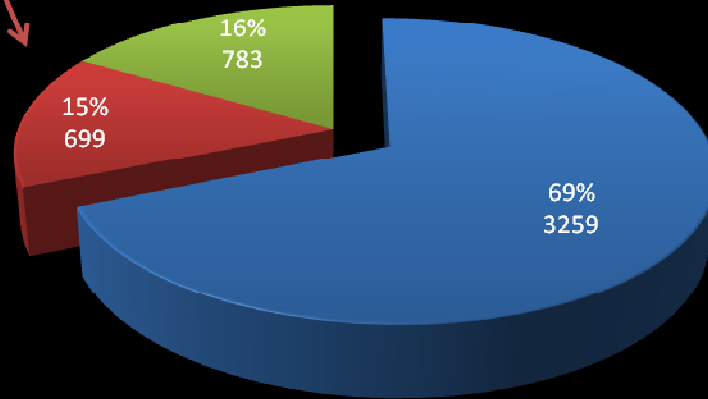


The next three graphics show that this missed denial percentage rate has been fairly constant even after the enactment of the NICS Improvement Act in 2008.

2007 DENIALS BY SYSTEM

A TOTAL OF 31%
OF DENIALS ARE
MISSED BY THE
FBI NCIC'S SYSTEM

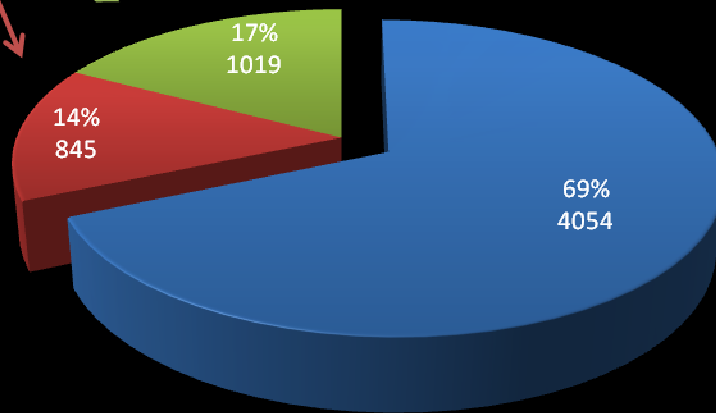
■ NCIC ■ CCIC ■ ICON

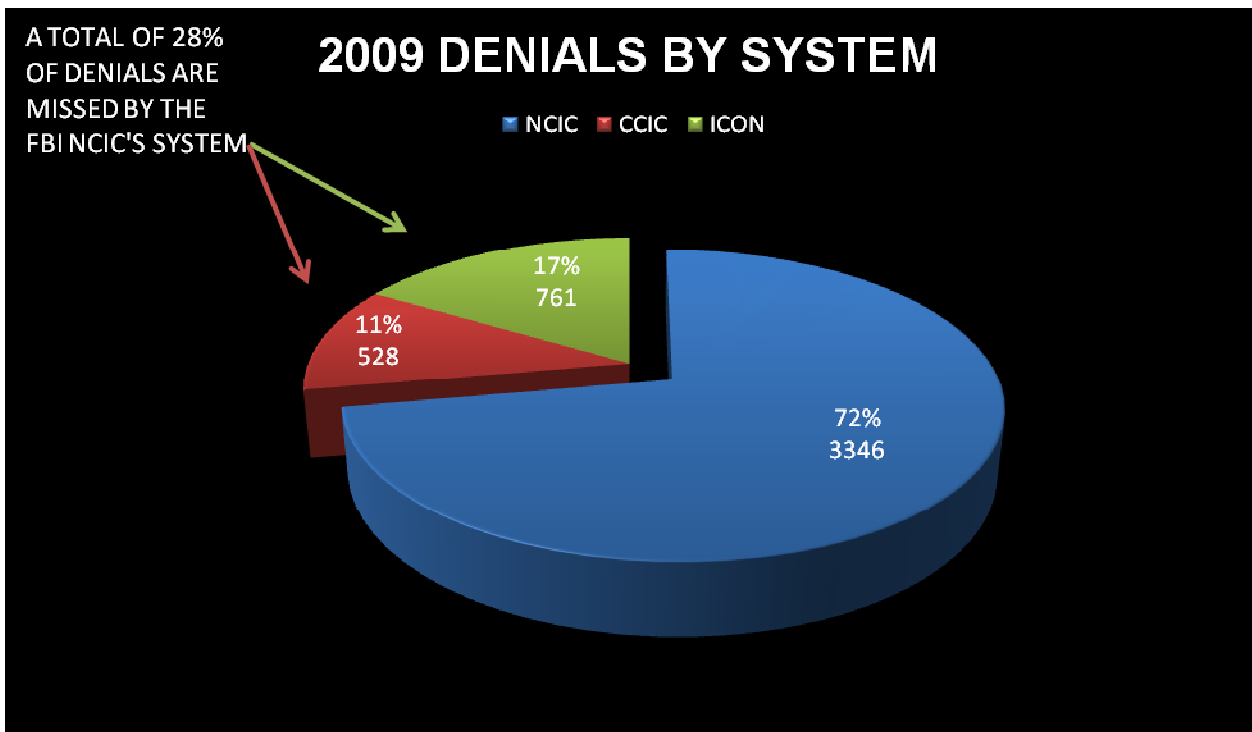


2008 DENIALS BY SYSTEM

A TOTAL OF 31%
OF DENIALS ARE
MISSED BY THE
FBI NCIC'S SYSTEM

■ NCIC ■ CCIC ■ ICON





15a. *Since the FBI National Instant Criminal Background Check System (NICS) now includes disqualifications under both federal and state law, the Interstate Identification Index, domestic violence holds, and other databases, are there any other checks conducted by CBI that significantly and measurably increase public safety? Are there cases of background checks in which disqualifying data is found in the CBI database but not found in the FBI National Instant Criminal Background Check System (NICS)? If so, please list the number of cases.*

RESPONSE: In addition to the FBI checks captioned in question 15a, the CBI checks include the Colorado Crime Information Center (CCIC), the Integrated Colorado Online Network (ICON) that contains information submitted by the Colorado Courts, and an analysis contained in the Colorado Department of Motor Vehicle database. This additional information is not available to the FBI. As noted above, from June 2004 to October of 2009, statistics reveal that a total of 9,282 denials based on prohibiting factors were missed by the FBI NICS databases.

After the tragic Virginia Tech shootings in April 2007, Congress recognized some of the large information gaps in the FBI NICS process, and passed legislation to correct this problem. The approved version of the NICS Improvement Act made a number of findings including: SEC.2.FINDINGS. Congress finds the following:

- (4) Nearly 21,000,000 criminal records are not accessible by NICS and millions

of criminal records are missing critical data, such as arrest dispositions, due to data backlogs.

As noted above, CBI statistics show little if any change in missed denials when comparing the data before and after the enactment of the law.

15b. *What is the most cost-effective fastest system for running background checks?*

RESPONSE: The CBI currently assesses no fee for a firearm background check. As currently funded, if the CBI eliminates the InstaCheck program, General Fund dollar savings would be realized. The FBI approval process is generally faster; however, the FBI does not have access to the various databases used by the CBI in firearm background checks. (These databases were discussed in the previous question.) In terms of cost-effectiveness to Colorado taxpayers, any calculation must consider the difficult task of placing a value on human life. For example, on June 22, 1999, Simon Gonzales killed his three daughters, Leslie, Kathryn and Rebecca, who were 7, 8 and 10 years old at the time, before engaging in a shootout with Castle Rock Police. “Cost-effectiveness” is a relative term, but for grieving mothers like Jessica Gonzales, no cost would have been too high to spare her daughters this fate. This case demonstrates the shortcomings of the FBI NICS system. The CBI InstaCheck system would have caught the fact that there was a protection order against Gonzales based on acts of violence he was accused of carrying out against his family. This case led to the reinstatement of the CBI InstaCheck program in August 1999. Additionally, there are significant dollars spent by Colorado taxpayers for public safety officials to respond, investigate, and prosecute crimes by individuals possessing illegal firearms. These incidents usually result in economic loss to the community.

The FBI NICS process may be considered quicker because the FBI does not take measures to verify the identity of the purchaser beyond the information provided by the FFL, and approves sales unless there is an exact match with the identifiers provided.

CBI’s diligence in background checks is significant. During the first ten months of 2009, InstaCheck participated in the arrests of 89 individuals after determining that these individuals had outstanding arrest warrants at the time they attempted to purchase a firearm. As an example, on November 7 and November 9, 2009, two individuals were arrested after CBI InstaCheck staff determined that these individuals were wanted for committing serious crimes. InstaCheck initiated and coordinated the response of local law enforcement agencies. One individual was arrested for Distribution of Cocaine from New Mexico; the other individual was arrested for multiple counts of Sexual Assault on a Child.

15c. *Have there been cases when the CBI InstaCheck system has caused significant delays in the processing of gun sales? What was the average processing time for running an InstaCheck for FY 2008-09? What would be the equivalent processing time for running an InstaCheck only through the FBI NICS? How much overtime funds were spent in FY 2008-09 on the CBI InstaCheck system?*

RESPONSE: There have been times when the CBI InstaCheck system has caused delays in the processing of gun sales. In the case of prohibited persons, or persons reasonably suspected of being so, that is a part of the mission. With any technology-based system, outages to component systems and databases (to include the FBI databases accessed) do occur, and FFLs and legitimate customers are occasionally inconvenienced by a delay in the approval of their purchase. Staffing issues factor into this process as well, especially during periods of unprecedented increases in volume being handled by the same total number of staff.

CBI has data regarding “queue times” and processing times for FY 2008-09 which clearly reflect the impact of increased volume and current staffing levels during the last several years. It is believed based on anecdotal information that FBI NICS also experienced this sort of demand increase, however the FBI has not published data for that time period at the time of this writing, and has not responded to requests for this information.

At the 2009 NICS conference, the FBI provided a report about the unprecedented increase in firearms sales in the latter part of 2008 and early 2009. The report indicated that FBI NICS realized a 26 percent increase in background checks from the time period of October 1, 2008 through February 28, 2009. They report that during that same time period, Colorado had a 49 percent increase.

CBI strives to provide good customer service and response times, but feels strongly about the importance of the public safety responsibility of the mission. The unit does not neglect critical processes in order to reduce queue times. The InstaCheck Unit seeks to be consistently thorough – a balance of customer service and public safety. The consequences of a delayed response to a customer is a degree of dissatisfaction, the consequences of a bad decision or decisions based on insufficient information have been far more significant, and at times tragic.

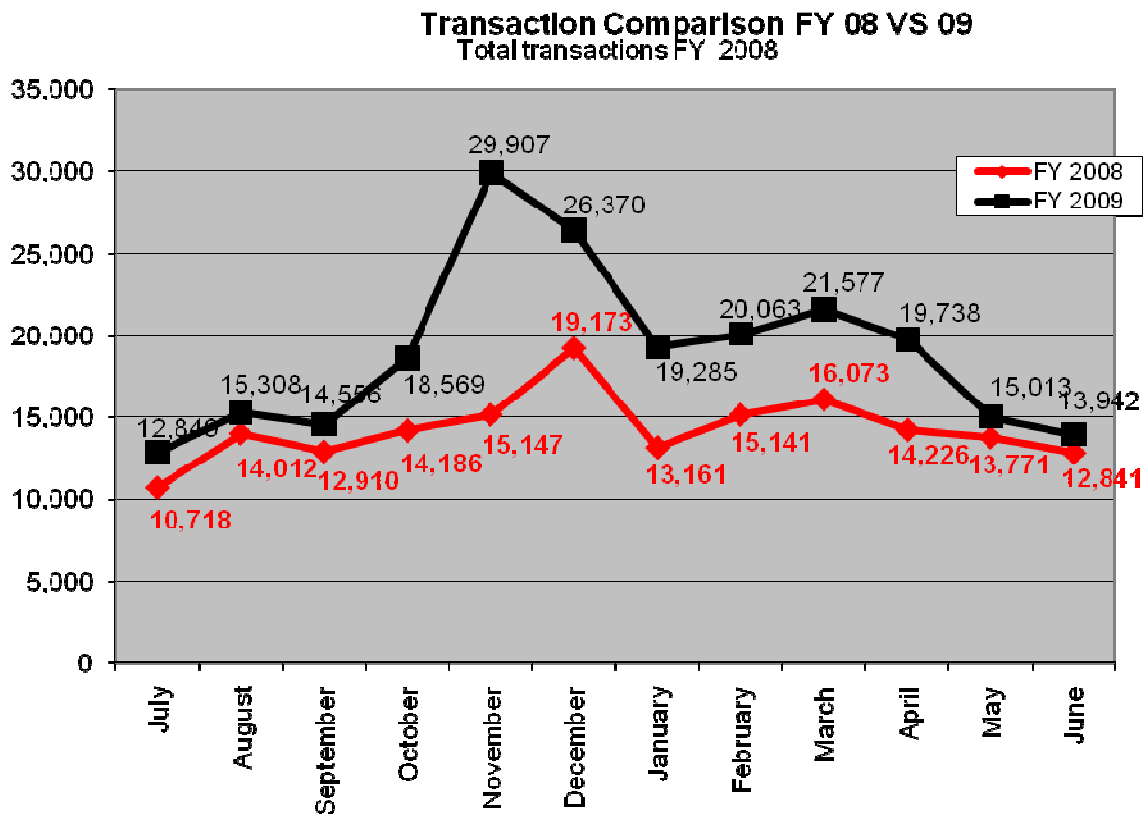
Activity patterns are regularly analyzed, major events such as gun shows are racked, and staffing adjustments are made accordingly. Recognizing the seasonal spikes in activity, CBI hires temporary staff to assist with conducting background checks during those high peak periods. That being said, there were times when there were simply not enough personnel, available workstations or allocated funds to maintain the level of speed and efficiency of the previous fiscal year given the 25-30 percent increase in volume.

Average Processing Time for FY 2008-2009

The InstaCheck Unit defines “processing time” as the actual amount of time it takes to complete a transaction. These times can vary significantly based on a number of factors. These include things like applicants with common names, for which a large amount of data has to be reviewed to make an accurate determination. Telephonic background check requests typically take longer than internet-based checks because the CDS has to ask for the information and wait for the FFL’s reply as opposed to receiving the information electronically. System and IT issues also impact processing and queue times. CBI uses the indefinite delay status discussed earlier very infrequently, and seeks to make a quick but accurate decision at the time of the call/query where possible. For FY 2008-09, the average processing time for a query was 5:49 (5 minutes and 49 seconds).

Average Delay Times, CBI InstaCheck

Average delay times, corresponding with the incredible increase in guns sales volume, went from 14.67 minutes in FY 2007-08 to 26.08 minutes in FY 2008-09. Although there are likely other factors, the 49 percent increase in volume without an increase in staffing are the primary reason for this increased delay. The graph below depicts this increase.



Equivalent Processing Time Using Only FBI NICS

The CBI does not track processing time by component part and has no data on how long it would take to process only using FBI NICS. NICS may be quicker but produces less information to analyze and review.

The CBI overtime expenditures for FY 2008-09 were \$55,548.73. Many of these expenditures were the result of the unprecedented volume.

16. *Has the Department consulted with the Attorney General on whether requiring a citizen to pay for their own background check when purchasing a firearm constitutes a violation of their 2nd Amendment right if that person is economically burdened by the fee?*

RESPONSE: The CBI has been designated the point of contact to the National Instant Criminal Background Check System (NICS). Colorado Revised Statutes 24-33.5-424 sets forth the requirements that the CBI InstaCheck provides background checks pursuant to Colorado law and provisions of the federal “Brady Act” on persons wishing to purchase firearms from federally licensed firearms dealers. There is no fee assessed to any individual for this background check. The CBI has not requested an official opinion of the Colorado Attorney General pertaining to the above captioned question.

The question of whether citizens paying for their own background check when purchasing a firearm constitutes a violation of their Second Amendment right if that person is economically burdened by the fee is ultimately a policy issue for the legislature and courts to decide. However, it should be noted in 2008, the U.S. Supreme Court in *District of Columbia v. Heller* listed many types of laws that would not be barred by the Second Amendment which support the laws imposing conditions and qualifications on gun sales. This would include background checks that were not a violation of the Second Amendment.

10:15-11:40 QUESTIONS FOR THE COLORADO STATE PATROL

Decision Item #1 – Computer Aided Dispatch, Records Management System, and Mobile Data Computer Asset Maintenance

17. *Explain why the Department is requesting \$2.0 million per year in perpetuity for this decision item.*

RESPONSE: The ongoing \$2.0 million per year will sustain the Colorado State Patrol’s Computer Aided Dispatch (CAD), Records Management System (RMS), and Mobile Data Computer (MDC) programs as Colorado’s public safety demands increase, and as technological advances for these information technology systems continue at such a rapid pace. Please see **Attachment B** for additional detail.

The Department anticipates that this ongoing appropriation will prove equivalent to the costs of procuring the necessary maintenance and upgrades of these critical systems through large, one-time capital construction appropriations. More likely, however, the Department anticipates that the inclusion of an ongoing appropriation for maintenance of the IT assets will result in lower overall costs when considered over the course of several years.

18. *Was any of the existing equipment purchased with Homeland Security money or any other type of federal dollars? If so, what year were those purchases made?*

RESPONSE: No. The Development of the CAD, RMS, and MDC architectures occurred through State capital construction appropriations, and the systems have been supported through some ongoing operating expenses appropriations.

19. *If there were no Homeland Security or other federal funds used for the purchase of the existing CAD, RMS, or MDC system software or hardware, what funding mechanism was used for the purchase of the systems? What is the current funding mechanism for supporting ongoing system support and maintenance for CAD, RMS, and MDC? How much does the Department spend currently for the maintenance and support of the CAD, RMS, and MDC system software and hardware (provide 5-year historical funding)?*

RESPONSE: The Department received a capital construction appropriation to begin development of the CAD and RMS systems in FY 1997-98. The CAD system itself became fully operational in Calendar Year 2001.

In FY 2002-03, the General Assembly approved an annual CAD maintenance and support budget is \$431,666.

Currently, a maintenance and support budget for RMS does not exist.

The annual MDC maintenance and support budget has been \$839,168 for the last three years. Of this amount, the General Assembly approved an ongoing appropriation of \$414,168 in FY 2002-03 for maintenance of the MDC software systems. The remaining \$425,000 was appropriated on an ongoing basis in FY 2006-07, and provides for regular replacement of MDC computers, docking stations, and printer equipment.

Currently, replacement funds for the voice recorders, radio consoles, and CAD workstation furniture does not exist.

The current CAD and MDC funding only allows the Colorado State Patrol to "maintain" these software architectures, and does not allow for future planning and development of modern CAD, RMS, and MDC hardware and software architectures.

It is important to note that the funding needed to maintain the current CAD architecture will grow substantially over the next year as the system will not be supported by the development vendor. Please see **Attachment C** for additional detail.

20. *How much will be saved in maintenance by purchasing the new systems? Why could the Department not use savings from current system maintenance and support for the CAD, RMS, and MDC, for the funding of the purchase of the new system architectures?*

RESPONSE: As noted above, the existing appropriations for the CAD, RMS, and MDC systems allow only for maintenance of the software architecture, and for the replacement of MDC consoles. Current appropriations *do not* allow for any replacement of back-end hardware, or development of up-to-date software systems.

It is somewhat likely, however, that the development of new hardware and software architectures will allow for a marginal reduction in the ongoing maintenance costs for the software architecture. Until such time as a new software architecture is developed, those marginal savings cannot be calculated.

Moreover, the department cannot use savings from the current system maintenance and support budgets to fund the purchase of the new systems. Until a new set of systems is designed and implemented, it is absolutely critical to the Patrol's public safety mission that the current systems be maintained appropriately. The safety of the public, and of officers supported by the Patrol's CAD, RMS, and MDC systems, would be compromised in the occurrence of a system failure with no vendor support to bring the failed system back to a functioning status.

21. *How does this replacement fit into the OIT consolidation process? Is the long term plan to shift purchase of this type of equipment to OIT or is the consolidation strictly related to FTE? Will OIT have a central acquisition function that takes purchasing out of the hands of individual departments? If so, when will that occur? If not, how will purchasing in similar sized projects fit into the IT consolidation?*

RESPONSE: Importantly, this request was developed directly by members of the Governor's Office of Information Technology (OIT), in conjunction with the Patrol. Although the Patrol plans to manage and direct the use of the requested funds as part of its annual appropriation, it will work in close conjunction with OIT staff in the development and deployment stages of new hardware and software architectures.

This request presents a new opportunity to develop a model partnership with the newly-formed and developing OIT. Both departments have had extensive communications about these system architectures, and, more importantly, about the management and vision of these architectures. Specifically, this decision item allows the CSP and OIT to have an

established funding mechanism for the future success of the CAD, RMS, and MDC programs.

This request also offers an opportunity for the CSP and OIT to cooperatively produce cost-effective and reliable technological solutions, not only for the CSP, but for over sixty user agencies.

At the present time, the OIT consolidation is strictly related to FTE. While it is possible that OIT will pursue a strategy to consolidate operating expenses appropriations, as well, any such action is not expected in FY 2010-11. As noted above, however, OIT personnel will play a central role in the development of strategies, budget requests, and implementation processes for all IT projects in the future, regardless of size. Furthermore, OIT personnel will continue to coordinate all large-scale purchases with the State to ensure that opportunities for economies of scale are met. Although OIT personnel will not receive direct appropriations for operating expenses budgets, they will continue to manage those budgets within departments.

22. *Will the Department be using in-state or out-of-state vendors for the CAD, RMS, and MDC infrastructure replacement proposal? In relation to the process for choosing a vendor, does the State weigh the benefit of payroll, income taxes and corporate taxes that an in-state company would generate against a possible lower bid from an out-of-state company?*

RESPONSE: Because the Patrol cannot begin the procurement process until after it receives an appropriation, it is not yet possible to know which vendors will be selected for projects related to the replacement of the CAD, RMS, and MDC architectures.

If the Patrol is able to move forward and solicit proposals from vendors, it will evaluate those proposals based on several, yet to be determined, criteria. Among these criteria will be responsiveness to the specific request for proposal, capacity of the vendor to complete the project efficiently and effectively, and price, among many others. In the end, the Patrol will select the vendor that submits a proposal most advantageous to the State based on a combination of these various criteria, and not solely on price.

In the past, the Department's scoring criteria for large IT contracts have not typically included any assessment of the impact of payroll, income, and corporate taxes of an in-state versus out-of-state vendor.

23. *Is the State OIT working toward web-based systems so that in the future we will not have to keep buying hardware every 3-5 years?*

RESPONSE: OIT has placed a high priority on positioning the State with the agility to take full advantages of changes in the technological environment. While it is clear that the capabilities of Web-based "cloud" computing are not yet sufficient to support the Patrol's

operational needs for its CAD, RMS, and MDC systems, that capacity may very well exist in the not-too-distant future.

As a primary benefit, approval of this request for ongoing “asset maintenance” funding will allow the Patrol greater flexibility to make use of advances in technology. A capital construction appropriation would compel the Patrol to spend a large, one-time sum of money on building and deploying a full CAD/RMS/MDC system, and operating that system for close to a decade. This request, by contrast, would allow the Patrol to spend a lesser sum in the short-term, and maintain the dexterity to more quickly adopt increasingly robust technologies.

It is also noteworthy that a large part of the cost-efficiency of service-based “cloud” computing revolves around an ongoing, smaller expenditure for the provision of IT “capacity,” rather than on periodic large expenditures on the acquisition of IT hardware. This type of IT strategy differs dramatically from the State’s traditional means of funding IT projects. As State agencies begin to pursue this method of expanding capacity, it is likely that the JBC will begin to see requests – much like this CAD/RMS/MDC item – to increase ongoing appropriations to pay for IT services, and fewer “big-ticket” requests for capital purchases.

Decision Item #2 – Officer Safety Equipment Package

24. Why is Decision Item #2 – Officer Safety Equipment Package a lower priority on the decision item list than the Department’s Decision Item #1 – Computer Aided Dispatch, Records Management System, and Mobile Data Computer Asset Maintenance?

RESPONSE: The CAD, MDC and RMS systems are a key factor in the safety of Colorado State Troopers. These systems, when active and operational, allow Troopers to have knowledge of a suspect before leaving the patrol car or making a contact. This information can include stolen vehicles; wanted parties; suspended or revoked drivers; gang related activity; probation and parole clients; and concealed weapons permit holders, among many others. This information is vital knowledge to a Trooper before making contact, and can dramatically reduce incidents that may cause harm to the trooper or public.

While it is of tremendous importance for the Patrol to establish an ongoing appropriation for ballistic vests and mobile data “air time,” these concerns are dwarfed by the catastrophic consequences to officer safety that would result if the CAD system became disabled for any period of time.

Decision Item #3 – Additional Gaming Trooper FTE

25. *If this decision item is not approved, where would the money from the funds go? Do the funds flow into the General Fund if not spent on this decision item?*

RESPONSE: The 2008 Gaming in Colorado Fact Book states in pertinent part:

The Division of Gaming is a cash-funded organization, meaning no general tax dollars are used for its operation or expenses. The Division operates on the revenues generated from the gaming tax, application and license fees, any fines levied by the Division and other miscellaneous revenues.

Before any monies are distributed via the Limited Gaming Fund, the expenses of running the Commission and the Division of Gaming must be paid and two months of operating expenses for the Division must be placed in escrow. After these obligations are met, the remaining money is distributed according to the following formula:

- **28%** to the State Historical Society
 - **20%** (of the 28%) distributed by the State Historical Society to the governing bodies of Cripple Creek, Central City and Black Hawk (in proportion to the revenues generated in the respective cities)
 - **80%** (of the 28%) used for historic preservation and restoration throughout the state
- **12%** to Gilpin and Teller counties (in proportion to the gaming revenues generated in the respective counties)
- **10%** to the towns of Cripple Creek, Central City and Black Hawk (in proportion to the respective gaming revenues)
- **50%** to the General Fund, from which the following amounts are designated:
 - **13%** to the Local Government Limited Gaming Impact Fund, an annually determined amount to the Colorado Department of Transportation
 - **\$19 million** to the Colorado Travel & Tourism Promotion Fund (adjusted annually by rate of inflation),
 - **\$3 million** to the New Jobs Incentives Cash Fund (adjusted annually by rate of inflation),
 - **\$1.5 million** to the State Council on the Arts Cash Fund (adjusted annually by rate of inflation),
 - **\$600,000** to the Film Incentives Cash Fund (adjusted annually by rate of inflation), and
 - The remaining portion to the Clean Energy Fund.

While approval of this request may have a marginal impact to revenue in the Clean Energy Fund, the Department firmly believes that the benefits of ensuring the safety of travelers on Gaming highways far outweigh the consequences of reducing Clean Energy Fund revenue.

Decision Item #5 – E-470 Spending Authority Increase

26. *How does the E-470 billing system work now that there are no toll collectors? How do people get charged for the use of this road? Does the use of Legislative plates impact this billing system? If a citizen uses these roads and is never billed, will they later be subject to some type of traffic summons for no-payment of the bill?*

RESPONSE: The E-470 toll-way now makes use of an automatic tracking and billing system. The system still reads the license plates of vehicles entering and exiting the highway, keeps track of the use of the vehicle, and sends a monthly billing statement to the registered owner of the vehicle. In the case where the license plate comes back to no record on file, the tolling authority makes no further billing attempts, unless such a vehicle repeatedly fails to pay for use of the toll-way.

HUTF “OFF-THE-TOP” GROWTH

[See Briefing Document (Public Safety except Division of Criminal Justice) pg 21]

27. *How would abolishing the six percent "off-the-top" limit affect the responsibilities of the State Patrol?*

RESPONSE: The Patrol has been successful as an agency in reducing the number of fatal and injury crashes, increasing criminal interdiction contacts on Colorado’s highways, and presenting for prosecution felony case files. While abolishing the six-percent limit would not affect the responsibilities assigned to the Patrol, it may cause a significant increase in the ability of the Patrol to secure the appropriations necessary to effectively fulfill its mission. Any failure to properly fund the Patrol will, at best, limit the Patrol’s ability to maintain gains in highway safety, or to further enhance the safety of Colorado’s motoring public. At worst, budgetary failures will begin to erode safety on Colorado’s roadways, contributing to an increase in fatal and injury crashes on Patrol-covered highways.

Eliminating the six-percent limit may limit the Patrol’s ability to plan and project budgetary levels, causing planning to occur only on a short-term basis, instead of long-term in nature. Many future enforcement and public safety programs are based off of advanced planning, with an idea of the funding that will be available in the following years to accomplish the Patrol’s mission-critical goals and objectives.

28. *Because of budget constraints most state agencies have had their requested increases limited due to a smaller pool of State funding available. Does the Department believe there are reasons that the Patrol should not be required to do the same for requests involving HUTF “Off-the-Top” funding?*

RESPONSE: The Colorado State Patrol was created through the Patrol Act in 1935, with the emphasis of public safety as it pertains to Colorado’s highways. The HUTF was created to ensure a consistent flow of revenue for the development, maintenance, and safety of Colorado’s highway infrastructure. The “Off the Top” mechanism, codified in the 1995 and 1996 legislative sessions, has guaranteed a stable funding mechanism to continually provide effective law enforcement for Colorado’s roadways. Without the protection of this funding mechanism, it is quite possible that the Patrol would have absorbed significant budget reductions in 2002 and 2003, and many of the dramatic highway safety gains realized over the past five years may not have occurred. It is highly likely that the lives of thousands of Colorado’s citizens, residents, and visitors have been saved in the past five years, simply because the Patrol has been somewhat insulated from fluctuations in the State’s General Fund revenue.

Colorado’s average economic growth remains at an estimated 1.6%, and continues even through the drop in the national economy. Many see Colorado as a stable place to live and raise their families, and this increases the demands on public safety resources, including the Colorado State Patrol. The CSP is tasked with providing services to the citizens of Colorado and to those that visit our state, and progressive services can only be accomplished through continued and heightened resource funding through the HUTF.

It is noteworthy that, although the HUTF “Off the Top” growth is capped at 6.0%, the average growth for the State Patrol has been only 5.1% since FY 1998-99. In several instances over the past decade, the General Assembly has diverted “Off the Top” funding away from the State Patrol and Ports of Entry, largely to address Statewide General Fund shortfalls. Specifically, the General Assembly has taken the following actions that have limited the HUTF funding available to the Patrol:

- In FY 2004-05 and FY 2005-06, the General Assembly appropriated \$8,441,863 and \$8,948,375, respectively, to the Division of Motor Vehicles, as an offset to General Fund appropriations to address General Fund shortfalls. After FY06, this \$8.9M was dropped out of the HUTF “Off-the-Top” base, removing the ability of the Patrol and Ports of Entry to make use of this funding in future years.
- In FY 2009-10, the Legislature appropriated \$4,064,839 to the Division of Motor Vehicles, as an offset to General Fund appropriations to address General Fund shortfalls.

In FY 2010-11, the Governor’s budget request includes \$1,082,980 to be appropriated to the Patrol, but that will be directed to the Colorado Department of Transportation for the

“Heat Is On” campaign. This transaction is related to the Law Enforcement Assistance Fund (LEAF) refinance.

In short, large sums of HUTF “Off the Top” have been diverted from their stated purposes in support of the State Patrol and Ports of Entry in the past five years. While it is true that the Patrol has benefited through its relative insulation from General Fund revenue fluctuations, it cannot be said that the Patrol has remained entirely unaffected by the State’s overall budgetary challenges.

29. *When will the Alamosa Troop Office capital construction project be completed? When the office opens, will the Department request more FTE to staff the office?*

RESPONSE: The Certificate of Occupancy for the new Alamosa facility is estimated to be completed by April 1, 2009. The Patrol has no plans or intentions to seek additional personnel resources as a result of the completion of this office.

30. *Has the department received all the funding it requires for the Alamosa troop office?*

RESPONSE: Yes, the Department has received all funding requested, and the Alamosa troop office will be completed on time. However, due to greater-than-expected OIT requirements for the new Alamosa communications center, completion of a garage for the Alamosa Troop Office may require a new funding request at some point in the future.

Sherman Anti-Trust Act and State Troopers Salary Survey Process

[See Briefing Document (Safety except Division of Criminal Justice) pg 29]

31. *Does the Department of Public Safety agree that Section 24-50-104 (1) (a) (III) (A), C.R.S., and its requirements are in violation with the Sherman Anti-Trust Act?*

RESPONSE: No. The Department, along with the Department of Personnel and Administration (DPA), has concluded that this section does not violate the provisions of the Sherman Anti-Trust Act. The U.S. Supreme Court, in *Parker v. Brown*, established a precedent in 1943, which dismissed a claim on the anti-competitive effect of a California state statute. The Court held that the Sherman Act was designed to combat only anticompetitive business combinations and monopolies perpetrated by private individuals or corporations. This does not apply to a state government’s administration of a duly passed state statute.

In the *Parker* case, the Supreme Court handed down the "State Action Antitrust Immunity Doctrine," colloquially referred to as the "*Parker* Immunity Doctrine." The Supreme Court formulated a two-pronged test in *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980), to determine if *Parker* immunity extends to a given

state agency. First, the challenged restraint must be one clearly articulated and affirmatively expressed as state policy. Second, the policy must also be "actively supervised" by the State itself.

The Colorado State Trooper compensation process clearly meets both of these required steps. First, the purpose of the process is clearly articulated under Section 24-50-104 (1)(a)(III)(A) and second, the Department is required to actively supervise and execute the salary survey. There is no doubt that the State of Colorado is immune from Sherman Act liability for administering a statutory requirement to set salary levels for state troopers.

32. Has the Department of Public Safety had discussions with the Department of Personnel and any other association or labor group about this issue?

RESPONSE: Yes. DPA published a memorandum, dated September 14, 2009, which addresses this issue. (This memorandum is included in this document as **Attachment D**.) The Department of Public Safety, along with the DPA, Colorado WINS, and the Association of Colorado State Patrol Professionals, continues to meet regarding compensation issues, and is reviewing all information related to this issue.

33. Is there a current proposal that the Department of Public Safety is willing to support?

RESPONSE: No. The Department, as well as the DPA, has concluded that a statutory revision to the state trooper salary survey process (C.R.S 24-50-104(1)(a)(III)(A)) is both unwarranted and unnecessary.

34. Would the Department of Public Safety support the Joint Budget Committee if the Committee decided to sponsor legislation to remedy Section 24-50-104 (1) (a) (III) (A), C.R.S.?

RESPONSE: The Department does not believe that any statutory remedy is necessary.

35. What would be the impact on the state budget if State Troopers salary survey statute was amended to be in compliance with the Sherman Anti-Trust Act?

RESPONSE: The Department does not feel that a conflict exists.

36. Has the State Auditor consulted with the Attorney General on the probability that the State could potentially be exposed to litigation as a result of this issue?

RESPONSE: The federal guidelines promulgated by the Department of Justice (DOJ)

and the Federal Trade Commission (FTC) to help prevent potential violations of the Sherman Act are not applicable to Colorado's statutory process for setting State Trooper compensation. The DOJ and FTC rules apply only to salary surveys involving the exchange of wage information *among competitors* (see *United States v. Utah Society for Healthcare Human Resources Admin.*, 1994 -2 Trade Cas. (CCH) ~ 60, 795 (D. Utah 1994)). It is not the goal of the Trooper salary survey to allow the state to lower the cost of producing or providing goods or services to improve its competitive position in the market place. Considering that the purpose of the Sherman Act is to rein in anti-competitive or collusive practices among private entities engaged in a similar trade or commerce, it would be inconsistent with the purpose of the Act and guidelines to expect them to apply in this case. There is no evidence that the federal government intends to act inconsistently with the *Parker* immunity doctrine.

11:40-11:50 QUESTIONS FOR THE DIVISION OF FIRE SAFETY

Decision Item #7 – Vehicles for Fire Inspectors

37. *Why is it more efficient for the state to do these fire inspections? Are there delays in the state performing this function? Would it be more efficient for local entities to do their own inspections?*

RESPONSE: A review of the legislative history of this program shows the education community's desire for state oversight. Some argued that public schools should be subject to local jurisdictions' codes, plan reviews, and inspections; however, schools expressed many concerns with this approach. First, the schools need to be able to locate schools in areas that best suit their business needs and not worry about idiosyncratic local planning and zoning requirements. Second, many school districts span multiple jurisdictions: e.g., Jefferson County School District has more than twenty local jurisdictions within the school district. Schools are concerned about having multiple codes, with multiple interpretations, that will increase the cost of construction. For example, a school district can design a model elementary school under a statewide code and be certain that one design will be suitable for many locations, which saves both design costs and project development time. In addition, because Colorado has many communities without any fire or building codes, the stakeholders all agreed that state oversight was necessary. Finally, many of Colorado's local jurisdictions do not have the expertise to adequately perform plan review and inspections.

Under the current regulatory framework, the Division of Fire Safety's Public School Construction and Inspection Program relies on a partnership among schools and state and local jurisdictions. Under the existing system, school districts may choose to have all of their part of their construction plan review and inspection activities performed by qualified local jurisdictions. Currently there are 23 local jurisdictions that have entered into agreements to provide construction plan review, inspections, and issue certificates of occupancy for their schools. These jurisdictions include some of Colorado's larger

communities such as Denver, Aurora, Colorado Springs, Westminster, and Pueblo. In addition, 80 fire departments are qualified to conduct annual inspections in public schools and junior colleges. Without the participation of these local jurisdictions, the Division would need a substantially larger workforce.

Schools are given the ability to determine what works best for their individual circumstances when they have prequalified local jurisdictions. Some jurisdictions charge fees that are higher than the state's fees; some jurisdictions charge no fees. Some jurisdictions are faster than the state; some are slower. Efficiency is maximized by the schools' ability to select which agency will provide them with the most cost effective service.

As for delays, the Division is able to provide timely service to its customers. The Division's times for plan reviews and inspections are similar to most large local jurisdictions' delivery times.

11:50-12:00 QUESTIONS FOR THE COLORADO INTEGRATED CRIMINAL JUSTICE INFORMATION SYSTEM (CICJIS)

38. Does the City of Denver participate in CICJIS?

RESPONSE: On December 31, 2007, the Denver DA made the decision to secede from the Colorado Districts Attorney's Council (CDAC). As CICJIS received Denver DA case data via an interface with CDAC, the removal of the Denver DA from CDAC effectively stopped the flow of case data from the Denver DA to CICJIS.

In January 2008, the CICJIS Executive Board (the Board) met with members from the Denver DA's office to determine if a course of action could be pursued to restore the interface between either the Denver DA and CDAC or between the Denver DA and one other member agency in the CICJIS program. By statute, the Board has a responsibility to ensure that public safety is not compromised and that no impact on any agency involved in the CICJIS program occurs due to the introduction of a new data source.

Toward this end, the Board recommended to the Denver DA the completion of a feasibility study that would have allowed the Board to make an informed decision on both a technical and fiscal level. State agencies under the Executive Branch are required to follow guidelines set by the Governor's Office of Information Technology (OIT), the first of which is a study or business case that must be presented to OIT before that office will approve a new State IT project.

Since January 2008, there has been no contact with the Denver DA's office on this matter. It is the Board's opinion that the Denver DA's office did not agree with the recommendation presented by the Board; however no alternative from the Denver DA was offered during, nor has any alternative been provided since, the January 2008 meeting.

The CICJIS Executive Board has been, and continues to be, willing to work with the Denver DA's office to research the possibility of any solution that would restore the flow of case data from the Denver DA to CICJIS.

ADDENDUM: QUESTIONS REQUIRING ONLY A WRITTEN RESPONSE

Please provide:

39. *Organizational charts for your department, showing divisions and subdivisions (with geographic locations).*

RESPONSE: This information is included on page 1-3 of the Department's November 2009 budget request.

40. *Definitions of the roles and missions of your department, its divisions and subdivisions.*

RESPONSE: This information is included in the "Department Description" section of the Department's November 2009 budget request, comprising pages 1-9 through 1-32.

41. *The number of current personnel and the number of assigned FTE by division and subdivision (with geographic locations), including all government employees and on-site contractors.*

RESPONSE: Position-by-position FTE detail, along with detail of expenditures by object code, are included as part of the November 2009 budget request. At this time, this is the most complete information available concerning FTE.

42. *A specific list of names, salaries, and positions by division and subdivision of any salaried officer or employee making over \$95,000 per year in FY 2009-10.*

RESPONSE: This information is included in this document as **Attachment E**. In this attachment, the Department has included position numbers, but has *excluded* employees' names.

43. *A specific list of names, bonuses, and positions by division and subdivision of any salaried officer or employee making over \$95,000 per year who received any bonuses in FY 2008-09.*

RESPONSE: The only "bonuses" paid in FY 2008-09 were one-time Performance-Based Pay awards for peak performers. These payments were awarded in accordance with the

statewide and Departmental performance management plans. Information on these non-base-building awards is included in this document as **Attachment F**. In this attachment, the Department has included position numbers, but has *excluded* employees' names.

44. *Numbers and locations of any buildings owned or rented by any division or subdivision (by location) and the annual energy costs of all buildings.*

RESPONSE: This information is included in this document as **Attachment G**.

45. *Any real property or land owned, managed, or rented by any division or subdivision (by geographic location).*

RESPONSE: This information is included in this document as **Attachment G**.

46. *List essential computer systems and databases used by the department, its divisions and subdivisions, with their actual FY 2008-09 expenditures.*

RESPONSE: Please see the Governor's Office of Information Technology for this information.

47. *Any actual FY 2008-09 expenditures over \$100,000 total from the department or from its divisions and subdivisions to any private contractor, identifying the contract, the project, and whether the contracts were sole-source or competitive bid.*

RESPONSE: The Governor has determined that this request is administratively burdensome, and is best accessed through the State Controller's Office. Please contact the State Controller for a report containing this information.

48. *The amount of actual FY 2008-09 expenditures for any lobbying, public relations, gifts, public advertising, or publications including:*

- a. expenditures for lobbying by public employees, contract lobbyists, or "think tanks;"*
- b. expenditures for lobbying purposes at other levels of government;*
- c. expenditures for lobbying purposes from grants, gifts, scholarships, or tuition;*
- d. expenditures for publications or media used for lobbying purposes;*
- e. expenditures for gratuities, tickets, entertainment, receptions or travel for purposes of lobbying elected officials; or*
- f. expenditures for any public advertising. Include all advertising campaigns, including those that are not for public relations.*

RESPONSE: The Governor's Office collected the information outlined in this question and provided it to Legislative Council in September 2009. Information on a department-by-department level can be obtained through LCS.

49. *List of all boards, commissions, and study groups, including actual FY 2008-09 expenditures, travel, per diem budgets and assigned FTEs.*

RESPONSE: The Governor's Office collected this information and provided it to the JBC in August 2009. Please contact OSPB to request a copy of what was sent. The Governor has determined that compiling any information in addition to that provided in August 2009 would be administratively burdensome, as the operating budget is not appropriated or expended according to specific FTE.

50. *Suggest budget and staff reductions, including reductions in FTE and hours, by division and subdivision, that will reduce your department's total FY 2010-11 General Fund expenditures by 12.5% relative to FY 2009-10 appropriations before any adjustments that have been announced since the end of the 2009 session.*

51. *Suggest budget and staff reductions, including reductions in FTE and hours, by division and subdivision, that will reduce your department's total FY 2010-11 General Fund expenditures by 25.0% relative to FY 2009-10 appropriations before any adjustments that have been announced since the end of the 2009 session.*

RESPONSE: The Governor's November 2009 budget submission contains the entirety of the Department's recommended budget-balancing proposals for FY 2010-11. Similarly, the Governor's December 1, 2009 Budget Balancing package will contain the entirety of the Department's recommended budget-balancing proposals for FY 2009-10.

CSP TROOP 11-C	Victim Advocate
CSP TROOP 11-C	Victim Advocate
CSP TROOP 11-C	Victim Advocate
CSP TROOP 11-C	Victim Advocate
CSP TROOP 11-C	Victim Advocate
CSP TROOP 11-C	Victim Advocate
CSP TROOP 11-C	Victim Advocate
CSP TROOP 7-A	Communications Manager
CSP TROOP 7-B	Communications Manager
CSP TROOP 7-B	Communications Manager
CSP TROOP 7-Z	Communications Manager
CSP TROOP 7-Z	Communications Manager

ATTACHMENT B
SUMMARY OF PROPOSED CAD, RMS, AND MDC EXPENDITURES

Decision Item Funds Expenditure Summary	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
	Budget = 2,000,000.00	Budget = 2,000,000.00	Budget = 2,000,000.00	Budget = 2,000,000.00	Budget = 2,000,000.00
CAD Architectures	\$1,950,000	\$1,500,000	\$1,925,000	\$1,625,000	\$1,350,000
RMS Architectures	\$50,000	\$250,000	\$50,000	\$275,000	\$375,000
MDC Architectures	\$0	\$250,000	\$25,000	\$100,000	\$275,000
TOTALS	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000

Comptuer Aided Dispatch	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Backup Communications Center	\$0	\$500,000	\$0	\$0	\$200,000
Backup Hardware and Software	\$60,000	\$100,000	\$100,000	\$0	\$200,000
Dispatch Workstation Furniture	\$0	\$200,000	\$400,000	\$0	\$200,000
Emergency Medical Dispatch Hardware and Software	\$0	\$0	\$300,000	\$0	\$50,000
Network Infrastructure Equipment	\$15,000	\$50,000	\$135,000	\$25,000	\$50,000
Personal Services	\$150,000	\$75,000	\$25,000	\$0	\$0
Radio Consoles	\$0	\$0	\$612,000	\$0	\$100,000
Servers and Racks	\$400,000	\$0	\$0	\$400,000	\$200,000
Software	\$1,100,000	\$0	\$0	\$1,000,000	\$100,000
Training	\$25,000	\$75,000	\$75,000	\$0	\$0
Uniterrupted Power Supply	\$0	\$100,000	\$100,000	\$50,000	\$50,000
Voice Recorders	\$200,000	\$400,000	\$0	\$150,000	\$200,000
Workstation Computers, Monitors, Printers	\$0	\$0	\$178,000	\$0	\$0
TOTALS	\$1,950,000	\$1,500,000	\$1,925,000	\$1,625,000	\$1,350,000

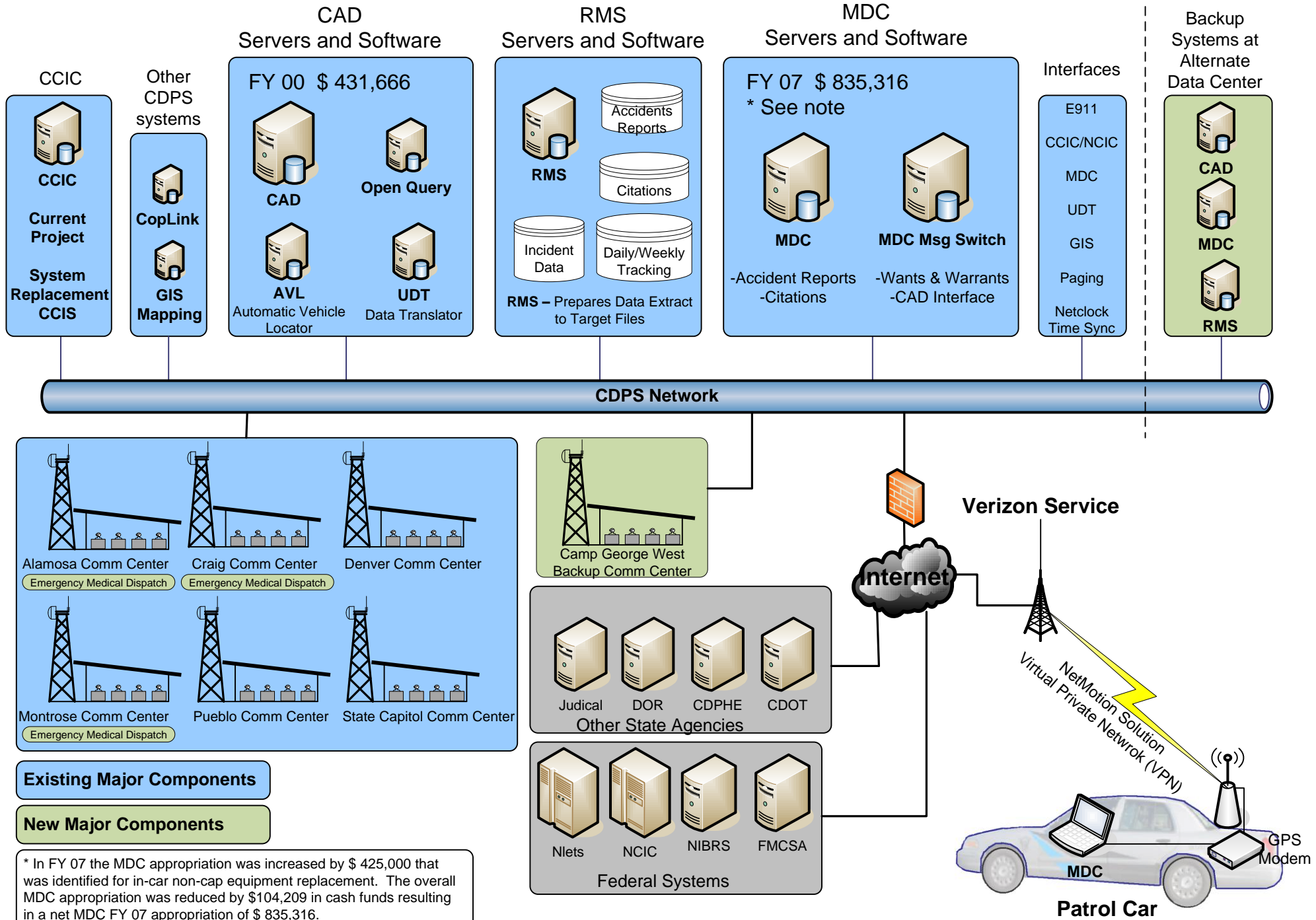
Records Management System	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Backup Hardware and Software	\$0	\$0	\$0	\$75,000	\$175,000
Network Infrastructure Equipment	\$0	\$0	\$0	\$0	\$25,000
Servers and Racks	\$0	\$0	\$0	\$100,000	\$0
Software	\$ 50,000.00	\$225,000	\$0	\$100,000	\$150,000
Training	\$0	\$0	\$0	\$0	\$0
Workstation Computers, Monitors, Printers	\$0	\$25,000	\$50,000	\$0	\$25,000
TOTALS	\$50,000	\$250,000	\$50,000	\$275,000	\$375,000

Records Management System	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Backup Hardware and Software	\$0	\$0	\$0	\$25,000	\$0
Network Infrastructure Equipment	\$0	\$0	\$0	\$0	\$25,000
Servers and Racks	\$0	\$0	\$0	\$75,000	\$0
Software	\$0	\$250,000	\$25,000	\$0	\$250,000
TOTALS	\$0	\$250,000	\$25,000	\$100,000	\$275,000

Attachment C

Colorado State Patrol CAD, MDC, and RMS Overview

Colorado State Patrol CAD, MDC, and RMS Components Overview



* In FY 07 the MDC appropriation was increased by \$ 425,000 that was identified for in-car non-cap equipment replacement. The overall MDC appropriation was reduced by \$104,209 in cash funds resulting in a net MDC FY 07 appropriation of \$ 835,316.

- FY07 MDC Appropriation of \$ 425,000 supports in-car hardware only.
- MDC (Ruggedized Laptops)
 - Docking Stations
 - In-Car Printers

Attachment D

Department of Personnel and Administration

Letter to the State Auditor Concerning
Salary Survey for Colorado State Troopers

State of Colorado



Bill Ritter, Jr.
Governor

Rich Gonzales
Executive Director

Jennifer Okes
Deputy Executive Director

DPA

**Department of Personnel
& Administration**

Executive Office
633 17th Street, Suite 1600
Denver, Colorado 80202
(303) 866-3000
Fax (303) 866-2102
www.colorado.gov/dpa

September 14, 2009

Sally Symanski
Colorado State Auditor
200 E. 14th Avenue
Denver, CO 80203-2211

Dear Ms. Symanski,

In response to the recommendations contained in the 2009 Annual Compensation Survey Performance Evaluation, the Department of Personnel and Administration has further reviewed the audit's conclusion that the State's statutory process for setting state trooper compensation is inconsistent with the Sherman Anti-Trust Act or federal anticompetitive guidelines promulgated by the Department of Justice and the Federal Trade Commission.

The original recommendation contained in the audit suggested that the Department evaluate "statutory requirements related to the survey process for state troopers to determine if changes are needed to ensure the State's compliance with federal guidelines and the [Sherman] Act, pursuing statutory changes as necessary." Office of the Colorado State Auditor, *Annual Compensation Survey Performance Evaluation*, May 2009, pg. 22.

Pursuant to our pledge to evaluate the necessity of legislation to address this concern, and after conducting an in-depth analysis of the pertinent federal antitrust guidelines and case law, we have concluded that a statutory revision to the state trooper salary survey process under Colo. Rev. Stat. § 24-50-104 (1)(a)(III)(A) is both unwarranted and unnecessary.

This conclusion is based on several factors, but the most compelling is the long heeded precedent established by the U.S. Supreme Court in *Parker v. Brown*, 317 U.S. 341 (1943). In this case, the Supreme Court dismissed a claim challenging the anti-competitive effect of a California state statute on grounds that it violated the Sherman Act. The Court stated that there was nothing in "the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature." *See id* at 350. Additionally, the Court ruled that the Sherman Act was designed to combat only anticompetitive "business combinations" or monopolistic actions perpetrated by individuals and corporations, not a state government's administration of a duly passed state statute. *See id* at 351 (citing 21 Cong. Rec. 2562, 2457).

"Good Government Starts Here"

Accordingly, in *Parker* the Supreme Court handed down the “State Action Antitrust Immunity Doctrine,” colloquially referred to as the “*Parker* Immunity Doctrine,” which stood for the notion that principles of “federalism and state sovereignty” precluded the Sherman Act from applying to anticompetitive restraints imposed by the States “as an act of government.” See *City of Columbia v. Omni Outdoor Advertising*, 499 U.S. 365, 370 (1991).

To further brighten the line for States attempting to understand which actions qualify for *Parker* immunity, the Supreme Court formulated a two-pronged test in *California Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980), to determine if *Parker* immunity extends to a given state action: (1) the challenged restraint must be one clearly articulated and affirmatively expressed as state policy, (2) and the policy must be “actively supervised” by the State itself. See *id* at 105.

Clearly, the state trooper compensation process meets both of these required steps. That is, the purpose of the process is clearly articulated under Section 24-50-104 (1)(a)(III)(A) and the Department is required to actively supervise and execute the salary survey. Hence, there is no doubt that the State of Colorado is immune from Sherman Act liability for administering a statutory requirement to set salary levels for state troopers.

Next, the audit asserts that the process required under Section 24-50-104 (1)(a)(III)(A), which mandates the Department to review salary data from the top three law enforcement agencies in Colorado and then set the state trooper salary at a level equaling the average of the three jurisdictions, does not comply with federal guidelines and standards promulgated by the Department of Justice and the Federal Trade Commission to help prevent potential violations of the Sherman Act. Specifically, the audit concludes that the statute violates the guidelines because it mandates surveying only three organizations, instead of the five required by the guidelines.

For two primary reasons, these federal guidelines are not applicable to Colorado’s statutory process for setting state trooper compensation.

First, the audit does not reconcile the fact that the DOJ and FTC rules apply only to salary surveys involving the exchange of wage information among competitors. See *United States v. Utah Society for Healthcare Human Resources Admin.*, 1994 – 2 Trade Cas. (CCH) ¶ 60, 795 (D. Utah 1994). It is not the goal of the trooper salary survey to allow the state to lower the cost of producing or providing a good or service to improve its competitive position in the market place vis-à-vis other competing entities. Considering the underlying purpose of the Sherman Act is to rein in anti-competitive or collusive practices among private entities engaged in a similar trade or commerce, it is inconsistent with the purpose of the Act and guidelines to apply them here. This is not to suggest that a state agency engaged in commerce or trade with a private entity is always automatically immune from Sherman Act liability. Instead, however, because the backbone of the Sherman Act’s anticompetitive features were designed to combat private entities inhibiting free market forces, it is doubtful that the inherently public component of the salary survey process laid out in Section 24-50-104 (1)(a)(III)(A) could result in federal claim under the Sherman Act.

Letter to Sally Symanski
Re: State Trooper Survey – Sherman Act Letter
September 14, 2009
Page 3

Second, all of the FTC and DOJ rules cited in the audit were expressly designed to prevent officials working in the health care industry from violating the Sherman Act. *See id.* The assertion made in the audit that the State of Colorado may be forced to defend against litigation is based on the assumption that the FTC and DOJ view their guidelines as applicable into other sectors of the economy. There is no evidence that the federal government intends to act inconsistently with the *Parker* immunity doctrine, or in light of inapplicability of the Sherman Act to the state trooper salary survey, that it could.

For these reasons, the Department will not pursue a legislative fix to the statute in question. Section 24-50-104 (1)(a)(III)(A) is not inconsistent with the Sherman Act or the federal guidelines.

Please contact our office if you have any additional questions or concerns.

Sincerely,



Rich Gonzales
Executive Director

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cc: Craig Welling, Governor's Office – Legal Counsel
Jennifer Okes, Deputy Executive Director, DPA

Attachment E

Officers with FY 2009-10 Salaries Projected to Exceed \$95,000

POSITION NUMBER	PROJECTED SALARY (BEFORE FURLOUGH)
01013	146,040
10858	139,560
40454	139,560
10113	135,000
08800	135,000
10296	114,948
08803	114,948
10315	114,948
02001	114,948
08802	114,948
11171	114,948
10148	111,600
11075	110,508
10301	109,764
10790	109,404
11151	109,284
10275	109,200
11152	107,316
07500	106,656
06500	106,656
07000	106,656
10312	106,656
08000	106,656
08300	106,656
06000	106,656
08886	106,656
08801	106,656
01557	105,516
10672	104,844
06200	104,844
08859	103,992
08500	103,200
10732	101,292
06523	101,004
40953	100,980
10688	100,848
10661	100,560
09047	100,200
08902	99,828
10722	99,828
10338	99,732
10824	96,636

POSITION NUMBER	PROJECTED SALARY (BEFORE FURLOUGH)
10165	96,072
00120	96,000
10305	95,700
10303	95,700
10116	95,472
06123	95,244
07700	95,244
06100	95,244
06600	95,244
07501	95,244
06800	95,244
06099	95,244
07800	95,244
08301	95,244
08840	95,244
10806	95,244
06700	95,244
07300	95,244
08843	95,244
07001	95,244
08100	95,244
08400	95,244
08988	95,244
08855	95,244
08863	95,244
06200	95,244
08978	95,244
08887	95,244

Please note that this table includes CDPS employees with *base salaries* that are projected to exceed \$95,000 in FY 2009-10. Employees whose overtime payments caused total compensation to exceed \$95,000 are excluded from this list.

Attachment F
Officers with FY 2008-09 Salaries Exceeding \$95,000
Who Received Non-Base-Building Performance Awards

POSITION NUMBER	FY 2008-09 Salary	Non-Base Award
11151	121,715.55	2,299.00
06123	114,948.00	2,299.00
07700	114,948.00	2,299.00
06100	114,481.00	2,299.00
07500	109,764.00	2,881.00
06500	109,404.00	2,188.00
06600	109,065.00	2,029.00
07000	108,960.00	2,186.00
06800	108,847.20	2,017.00
10722	108,680.40	6,552.00
10790	107,435.40	6,552.00
07800	107,348.80	4,585.00
08803	106,998.00	2,146.00
08840	106,656.00	6,552.00
40953	106,656.00	6,552.00
10806	106,656.00	6,552.00
10672	106,656.00	4,585.00
10312	106,416.00	4,585.00
10688	104,844.00	2,097.00
10630	103,992.00	2,080.00
08843	100,980.00	2,020.00
08300	100,306.16	2,004.00
10301	99,828.00	1,997.00
08802	96,861.99	5,846.00
08100	96,499.70	5,846.00
06000	96,347.30	5,846.00
08859	96,256.20	5,846.00
08988	95,936.80	5,846.00
08855	95,893.50	3,005.00
08863	95,882.67	5,846.00
06200	95,795.04	5,846.00
11152	95,417.20	3,005.00
08886	95,244.79	5,846.00
08887	95,244.00	5,550.00
09047	95,244.00	5,846.00
10148	95,244.00	5,846.00
08800	95,244.00	5,846.00
11151	95,244.00	3,005.00

Please note that this table includes CDPS employees with *base salaries* that exceeded \$95,000 in FY 2008-09. Employees whose overtime payments caused total compensation to exceed \$95,000 are excluded from this list.

ATTACHMENT G						
Colorado Dept. of Public Safety						
JBC Hearing Agenda						
Response to Questions 42 and 43						
Location Name	Street No.	Street Name	City	CDPS Owned/ Leased	Land Owned/ Leased	Energy Cost FY 09
CDPS Headquarters (EDO, CSP, DCJ, SSRC)	700	Kipling St. #1000, 2000, 3000	Lakewood	L (DPA)		N/A
Dale Tooley St. Off.	690	Kipling St. #2000, 3000, 4000	Lakewood	L (DPA)		N/A
CBI Program Support Unit	710	Kipling Street, Suite 303	Lakewood	L		N/A
CBI Durango Office	160	Rockpoint Dr. Unit B	Durango	L		N/A
CBI Investigations/Gaming Office	710	Kipling Street #200	Lakewood	L		N/A
CBI Investigations (Bank Fraud)	710	Kipling Street, 2nd floor	Lakewood	L		N/A
CSP Public Affairs (Storage)	15000	S. Golden Rd.	Golden	O	L	Land owned by DPA and utilities paid by DPA (common policy)
CSP Public Affairs (Storage)	15000	S. Golden Rd	Golden	O	L	
CSP Golden Office/CGW	1096	McIntyre	Golden	O	L	
CSP Golden Garage	15550	S. Golden Rd., Bldg 106	Golden	O	L	
OPSFS (Fire Safety) Storage	15570	S. Golden Rd. #59	Golden	O	L	
CSP Storage/CGW	15590	S. Golden Rd. #58	Golden	O	L	
CSP Storage/CGW	15570	S. Golden Rd. #59	Golden	O	L	
CSU FS Office (Leased to CSU Forest Svc)	15280	S. Golden Rd. #67	Golden	O	L	
CSU FS Office /CGW - (Leased to CSU Forest Svc)	15260	S. Golden Rd. #68	Golden	O	L	
CSU FS Office /CGW (Leased to CSU Forest Svc)	15240	S. Golden Rd. #69	Golden	O	L	
CSP Office CGW - Leased to DOLA	15220	S. Golden Rd. #70	Golden	O	L	
CSP Office CGW - Leased to CDOT	15200	S. Golden Rd. #71	Golden	O	L	
CSU FS Storage Garage/CGW	15260	S. Golden Rd. #73	Golden	O	L	
CSU FS Storage Garage/CGW	15280	S. Golden Rd. #74	Golden	O	L	
CSU FS Storage Garage/CGW	15240	S. Golden Rd. #76	Golden	O	L	
CSP/MCSAP Storage Gar/CGW	15220	S. Golden Rd. #77	Golden	O	L	
CSP/MCSAP Storage Gar/CGW	15200	S. Golden Rd. #81	Golden	O	L	
CSP/Maint Shop/Stor.CGW	15400	S. Golden Rd. #82	Golden	O	L	
CSP/Academy Conf/CGW	15165	S. Golden Rd. #100	Golden	O	L	
CSP/Vehicle/Supply/CGW	15203	W. 12th Avenue #105	Golden	O	L	
CSP Acad., OPSFS, OEM offices/CGW	15055	S. Golden Rd. #120	Golden	O	L	
DCJ Storage (CGW)	15000	Golden Road, Bldg #82	Golden	O	L	
Range #126 CGW	15055	S Golden Rd.	Golden	O	L	
CSP Training Bldg. 120 / OEM	15000	Golden Rd.	Golden	O	L	

Location Name	Street No.	Street Name	City	CDPS Owned/Leased	Land Owned/Leased	Energy Cost FY 09
CSP Limon Office	131	C Avenue	Limon	O		8,601
CSP Limon #2 Garage	131	C Avenue	Limon	O		
CSP Boulder Co Office	7701	W. 120th	Broomfield	O		4,705
CSP Castle Rock Office	4600	Castleton Court	Castle Rock	O		16,814
CSP Castle Rock Garage	4600	Castleton Court	Castle Rock	O		
CSP Canon City Office	615	Macon Avenue Suite LL-1	Canon City	L		429
CSP Salida	7405	Highway 50 West	Salida	L		N/A
CSP Pueblo Office/CDOT	902	Erie	Pueblo	L		N/A
CSP Colo Spgs Office/CDOT	1480	Quail Lake Loop #B	Colorado Springs	L		N/A
CSP Lamar Office / Leased	111	W Parmenter	Lamar	L		4,229
CSP Lamar Storage Shrd	2402	So. Main St.	Lamar	O		N/A
CSP LaJunta Office	617	Raton Ave.	La Junta	L		N/A
CSP Trinidad Office/CDOT	10201	C.R. 69.3	Trinidad	L (CDOT)		559
CSP Trinidad Garage	10201	C.R. 69.3	Trinidad	L (CDOT)		
CSP Greeley (Evans) Office	3939	Riverside Pkwy #8	Evans	L (CDOT)		2,778
CSP Ft. Lupton Office	12700	WCR 14 1/2	Ft. Lupton	O		N/A
CSP Sterling Office / CDOT	12850	CR 370	Sterling	L (CDOT)		831
CSP Sterling Garage	12850	CR 370	Sterling	O		
CSP Ft.Morgan Office	13360	W I-76 Frontage Rd	Ft. Morgan	O		7,263
CSP Ft.Morgan Garage	13360	W I-76 Frontage Rd	Ft. Morgan	O		
CSP Yuma Office	5053	Cnty Rd 37 Mod Unit	Yuma	O		42
CSP Grd Jct (Fruita) Office	554	Jurassic Ct.	Fruita	O		11,828
CSP Grd Jct (Fruita) Garage	554	Jurassic Ct.	Fruita	O		
CSP Comm. Base		Grand Mesa @ Palisade Pt.	Grand Junction	Radio Tower	L	OIT - N/A
Div. Telecom. Base		10 Mi. W Whitewater Co 141	Grand Junction	Radio Tower	L	OIT - N/A
CSP Craig Office	666	West 1st Ave	Craig	O		1,619
CSP Craig Garage	280	Ranney	Craig	O		N/A
CSP Steamboat Office/Garage	30200	Highway 40	Steamboat Springs	O		956
CSP Glenwood SpgsOffice/CDOT	202	Centennial	Glenwood Springs	L (CDOT)		1,160
CSP Glenwood Spgs Garage/CDOT	202	Centennial	Glenwood Springs	L (CDOT)		
CSP Eagle Office/CDOT	714	Castle Dr.	Eagle	L		824
CSP Dowd Office (Post)	41413	Hwy 6 & 24	Avon	O		N/A
CSP Pagosa Sprgs. Office	191	N. Pagosa Blvd	Pagosa Springs	L		N/A
CSP Cortez (Mancos) Office	33009	Hwy 160	Mancos	L (CDOT)		1,670
CSP Alamosa Office/CDOT	1205	West Ave	Alamosa	L		N/A
CSP Del Norte Office	925	6th Street	Del Norte	L		N/A
CSP Montrose Dispatch/Office	2420	N. Townsend	Montrose	O	L (CDOT)	N/A
CSP Montrose Storage Shed	2420	N. Townsend	Montrose	O	L (CDOT)	N/A
CSP Montrose Parking Garage	2420	N. Townsend	Montrose	O	L (CDOT)	N/A
CSP Delta Office	550	Palmer	Delta	L		N/A

Location Name	Street No.	Street Name	City	CDPS Owned/Leased	Land Owned/Leased	Energy Cost FY 09
CSP Gunnison Office	200	E. Virginia	Gunnison	L		N/A
CSP Frisco Office	021	Peak One Blvd.	Frisco	O	L (Summit Cty)	11,908
CSP Idaho Springs Office	3000	Colorado Blvd.	Idaho Springs	L (CDOT)		2,681
CSP Meeker Office (Post)	345	Market Street	Meeker	L		1,102
CSP Aircraft/Denver/Centennial Airport	13352	E. Control Tower Rd. #63-4	Englewood	L (Land Board)		908
CSP Alamosa Storage	1205	West Ave.	Alamosa	L (CDOT)		N/A
CSP Rangely Office (Post)	209	E.Main Street	Rangely	L		N/A
CSP Executive Security	400	E 8th Ave	Denver	L (DPA)		N/A
Executive Security (Rm 100 & Troopers' Room/Basement)	200	E. Colfax - State Capitol Bldg.	Denver	L (DPA)		N/A
CSP Adams Co Office/Garage	8200	N. Highway 85	Commerce City	O		17,775
CSP Exec. Security	1341	Sherman St.	Denver	L		N/A
CSP Ft. Collins Office	3991	SE Frontage Road	Ft. Collins	O		14,743
CSP Watkins Office	5200	Front Range Parkway	Watkins	L (CDOT)		N/A
CSP Walsenburg Post (in Lathrop State Park)	70	Co. Road 502	Walsenburg	L (DNR Parks)		N/A
CSP Pueblo Dispatch/District Office	1019	Erie	Pueblo	L (CDOT)	L (CDOT)	N/A
Preparedness, Security & Fire Safety (OPSFS)	9195	East Mineral Avenue	Centennial	L (DOLA)		N/A
CBI Investigations/Gaming Office	710	Kipling Street #309	Lakewood	L		N/A
CSP Aircraft/Grand Junction	796	Heritage Way	Grand Junction	L		N/A
CSP Invest. Svcs. Storage	7405	W Hwy 50	Salida	L		N/A
CSP Kremmling Office	403	N. 9th Street	Kremmling	L		1,372
CSP Durango Dist & Trp Office	20591	Highway 160	Durango	L (CDOT)		1,960
CSP Gilpin Co. Office	142	Lawrence St.	Central City	L (DOR)		N/A
CSP Burlington Office	478	15th Street	Burlington	L		N/A
CSP Burlington Garage/CDOT	179	Webster	Burlington	O	L (CDOT)	2,402
CSP Yuma Office		P.O. Box 211	Yuma	L (CDOT)	L	N/A
CBI Pueblo Office	3416	No. Elizabeth	Pueblo	L		N/A
CBI Grand Junction Office (See note)	2797	Justice Drive	Grand Junction	L (GJC State Leasing Auth.)		155,108
Vail Radio Tower		Vail Mountain			L	N/A
NOTE: CBI Grand Junction Office - this figure includes 15 months of energy charges (April 2007 - June 2009) due to a billing and metering issue. The office opened in April 2008.						
Information for energy costs paid as part of a fixed lease payment are not available.						
Some leased locations have separate electric/gas meters, and those costs are provided.						