

DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF CRIMINAL JUSTICE

JBC Budget Hearing

Tuesday, January 8, 2008

10:30am - 12:00pm

10:30 – 10:40 Introductions and General Overview

Common Hearing Questions for All Departments

*The Department addressed the bulk of these common questions during the hearing for its other agencies. The responses below are specifically for questions relating to the Division of Criminal Justice.*

- i. *What are your department's principal goals and objectives? What are the metrics by which you measure success or failure?*
- ii. *Given the change in the Administration, have there been any changes to your department's principal goals and objectives since last year?*
- iii. *What progress did you make during the last year in achieving your goals?*

As part of the November 1 budget request for FY 2008-09, each Executive Branch department submitted a strategic plan that highlighted a small number of “core” department-wide objectives and performance measures. At the direction of the Ritter Administration, the format for this Strategic Plan changed dramatically from documents submitted in prior fiscal years. This change in Executive leadership has brought a renewed statewide focus on improving the operational outcomes of government-operated programs. Within the Department of Public Safety, this new focus led to significant reworking of the Strategic Plan document, and has caused each division to concentrate efforts on improving the outcomes for its largest, most substantial programs.

The Department of Public Safety’s Strategic Plan highlights five “core” Department objectives, along with 16 division-level objectives. It is important to note, however, that these measures do not reflect the entirety of the Department’s statutorily-required operations. Rather, they provide a year-to-year snapshot of the Department’s accomplishments in its largest, and most substantial programs.

Below is a brief summary of the Department’s Strategic Plan objectives as they related to the Division of Criminal Justice.

**Division of Criminal Justice**

*Recidivism Reduction Objective: Reduce the likelihood of criminal recidivism through an increase in Community Corrections program compliance and accountability. Improve overall Community Corrections program compliance*

through an annual decrease in the average Risk Factor Analysis score. (The average risk factor analysis score *increased* to 24.3 percent in FY 2006-07, up from 23.6 percent in FY 2005-06.)

*Domestic Violence and Sex Offender Management Objective: Increase provider compliance with Sex Offender Management Board (SOMB) and Domestic Violence Offender Management Board (DVOMB) Standards statewide. Increase the overall percentage of DVOMB and SOMB providers who demonstrate Standards compliance in the quality assurance review. (The percentage of providers meeting standards reached 82 percent in FY 2006-07, up from 72 percent in FY 2005-06.)*

*Community Policing Training Objective: Strengthen the performance and professionalism of Colorado law enforcement agencies through training, education, and technical assistance. Increase the number of Colorado Law Enforcement personnel completing CRCPI professional skills training. (This number dropped to 1,618 in FY 2006-07, down from 2,761 in FY 2005-06.)*

*Division Administrative Support Objective: Maximize funding available for the effective management of federal grants by decreasing the Administration Unit's reliance on federal indirect cost recoveries. Decrease the overall percentage of federal indirect cost recoveries used for DCJ's central administrative purposes. (The percentage of federal indirect recoveries used for DCJ's administrative purposes increased to 1.7 percent in FY 2006-07, up from 1.4 percent in FY 2005-06.)*

**iv. *How is the additional money provided to your department in FY 2007-08 being used to achieve your goals? What improvements is your department making in its outputs?***

For the FY 2007-08 budget year, the General Assembly approved several substantive changes in the General Fund appropriations to the Division of Criminal Justice, relating primarily to the Governor's Recidivism Reduction package. A summary of each of these items follows:

- Specialized Mental Health Services for Transition Offenders – \$571,046
  - Funds 60 additional Mental Health beds for offenders transitioning out of DOC facilities. This includes 45 specialized mental health beds, along with 15 beds for the John Eachon Re-Entry Program (JERP).
- Specialized Services for Diversion Offenders – \$220,540
  - Funds 20 additional Mental Health beds for offenders sentenced directly to community corrections.
  - Funds 20 additional Therapeutic Community beds for offenders with severe substance addiction.
- Additional Community Corrections Diversion Beds – \$938,290
  - Adds approximately 66 additional diversion beds to the overall community corrections system.

- Community Corrections Sanctions and Incentives Model – \$82,240 and 1.5 FTE
  - Allows the Division of Criminal Justice to implement a *sanctions and incentives* model for community corrections providers.

In addition, the General Assembly approved a new appropriation in order for the Division of Criminal Justice to evaluate the effectiveness of those new appropriations in reducing criminal recidivism. The Division is actively engaged in the evaluation and analysis of the various components of the FY 2007-08 Recidivism Reduction package, and expects to provide a preliminary report to the General Assembly during the 2008 session.

#### 10:40 – 11:00 Overview and General Questions

##### 1. *How large was the reduction in federal funds from FY 2005-06 to FY 2006-07?*

The Division of Criminal Justice (DCJ)'s federal funds fluctuate from year to year, and it can be difficult to project future grant funding. The annual state budget documents are submitted prior to receiving information on federal funding levels. Therefore, actual expenses may differ significantly from what was anticipated.

Following is a summary of federal fund actual and anticipated expenditures for DCJ for the Fiscal Years 2003-04 through 2008-09:

| <u>Actual</u><br><u>2003-04</u> | <u>Actual</u><br><u>2004-05</u> | <u>Actual</u><br><u>2005-06</u> | <u>Actual</u><br><u>2006-07</u> | <u>Anticipated</u><br><u>2007-08</u> | <u>Anticipated</u><br><u>2008-09</u> |
|---------------------------------|---------------------------------|---------------------------------|---------------------------------|--------------------------------------|--------------------------------------|
| \$27,863,636                    | \$24,815,801                    | \$25,544,202                    | \$20,910,085                    | \$17,471,504                         | \$20,202,026                         |

The reduction in federal funds from FY 2005-06 to FY 2006-07 was \$4,634,117, and was attributed primarily to a reduction in expenses for the Violent Offender/Truth in Sentencing (VOI/TIS) Grant of \$3,688,136, the Juvenile Accountability Grant of \$600,950, and the Project Safe Neighborhood Grant \$446,518. There were many other grants with minimal variances.

The increase in expenditures between FY 2004-05 and FY 2005-06 was due to the last full fiscal year of expenses for the VOI/TIS Grant, resulting in higher than average expenses.

In its November 2007 submission, the Division projected an increase of \$2,730,522 in federal expenditures from FY 2007-08 to 2008-09. At the time, it was anticipated that the federal Victims Assistance and Victim Compensation grants would increase approximately \$600,000 each, and the Justice Assistance Grant would increase by approximately \$1,800,000. These 3 grants account for a projected increase of \$3,000,000 in federal funds for FY 2008-09.

However, as mentioned earlier, DCJ has not yet received notification of final federal funding levels, and the actual awards could be significantly different than these projections. For example, current information on JAG funding indicates a potential

decrease in funding of up to 68% for FY 2008-09, rather than a \$1,800,000 increase. In light of this new information, DCJ considers the \$3,000,000 anticipated increase in federal fund expenditures in FY 2008-09 to be high, and an overall decrease is now likely.

**2. The Department of Public Safety currently contracts with the University of Colorado Addiction Research and Treatment Services for Therapeutic Community (TC) treatment community corrections beds. Please explain this program, its efficacy, and potential for expansion.**

The therapeutic community (TC) programs at Peer I and The Haven are highly specialized, long-term, inpatient treatment/correctional programs for high risk, substance-abusing offenders. Characteristics of offenders admitted to the TC programs include:

- extensive criminal backgrounds
- a chronic history of failure to deal with addiction
- social deficits that lead to continued criminal conduct

TC programs differ from traditional community corrections programming in their length of stay, program intensity, program design and methods of therapeutic intervention.

**2a. How many TC community corrections beds are there in the State?**

The Division of Criminal Justice (DCJ) funds a total of 117.05 TC Community Corrections Beds through a combination of General Fund, Cash Funds, and Cash Funds Exempt monies. (Note that the Cash Funds and Cash Funds Exempt amounts are entirely from monies in the Drug Offender Surcharge Fund.)

| <b>No. Beds</b> | <b>Program(s)</b>   | <b>Differential Funding Source</b> | <b>Differential Funding Amount (at \$14.13 per day)</b> | <b>Base Bed Funding Source</b> | <b>Base Bed Funding (at \$37.18 per day)</b> |
|-----------------|---------------------|------------------------------------|---|--------------------------------|--|
| 40              | Peer I<br>The Haven | State General Funds                | \$206,863   | State General Funds            | \$544,315                                    |
| 20              | Peer I              | Cash Fund Exempt                   | \$103,432   | State General Funds            | \$272,158                                    |
| 57.05           | Peer I              | Cash Fund                          | \$295,079   | State General Funds            | \$776,330                                    |
| <b>117.05</b>   |                     |                                    | <b>\$605,374</b>  |                                | <b>\$1,592,803<sup>1</sup></b>               |

<sup>1</sup> Funding is based upon a 366 day year for 2008

**2b. How expensive is the TC Program?**

Each therapeutic community bed costs an additional differential per diem amount of \$14.13 over the base residential Community Corrections rate of \$37.18 per day.

**2c. Does the TC program work?**

Recent data strongly supports the efficacy of the TC model. A 2004 study by the Colorado Department of Corrections<sup>2</sup> reported the following outcomes:

- Offenders who participated in both the Arrowhead and Peer I TC programs had a 78% reduction in one-year recidivism rates and a 42% reduction in recidivism when compared with an untreated control group.
- Offenders who completed the Arrowhead TC, but who had no Peer I TC involvement, showed reductions of 12% and 14% for the one-year and two-year outcomes, respectively.

In 2006, the Division of Criminal Justice published a study of recidivism following treatment in Colorado's community corrections programs.<sup>3</sup> The following outcomes were reported:

- Peer I had a one-year recidivism rate of 8.8%, compared to the statewide average of 14.6% for all Community Corrections TC programs.
- The lower recidivism rate was observed despite the fact that Peer I accepts higher-risk offenders than traditional community corrections programs. This recidivism rate was the third lowest in the state among community corrections programs.
- The Haven had the state's lowest one-year recidivism rate at 4.8%, also with a higher-risk population than most traditional programs.

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<sup>2</sup> *Effectiveness of Arrowhead and Peer I Therapeutic Communities*, Maureen O'Keefe, K. Klebe, K. Roebken and E. Fisher, Colorado Department of Corrections, 2004)

<sup>3</sup> *Community Corrections in Colorado: A Study of Program Outcomes and Recidivism, FY00-FY04*, Nicole Hetz-Burrell, K. English, Colorado Division of Criminal Justice, 2006

**2d. How much money does a TC bed save versus a prison bed?**

The current daily rate for a community corrections TC bed is \$51.31<sup>4</sup>. The cost for a publicly operated prison bed is \$75.58 per day, and the cost for a private prison bed is \$52.69 per day. Based on the current number of TC community corrections beds funded, the immediate correctional cost savings are:

| <b>Beds</b> | <b>TC Cost<br/>(at \$51.31<br/>per day)</b> | <b>DOC-Operated<br/>Prison Cost<br/>(at \$75.58 per day)</b> | <b>Difference<br/>(Cost Savings,<br/>DOC-Operated)</b> | <b>Private Prison<br/>Cost (at \$52.69<br/>per day)</b> | <b>Difference<br/>(Cost Savings,<br/>Private Prison)</b> |
|-------------|---|--|--|---|--|
| 117.05      | \$2,198,136                                 | \$3,237,870  | (\$1,039,734) <sup>5</sup>                             | \$2,257,255 <sup>5</sup>                                | (\$59,119) <sup>5</sup>                                  |

Per bed, the state realizes immediate savings of about \$8,883 annually. Longer-term savings from TC beds in community corrections result from a reduction in recidivism.

**2e. What level of offender (risk) does the TC program accept?**

Offender risk in Colorado is measured by a standardized assessment instrument called the LSI, a 54-item scale that measures an offender's probability of committing another crime. Higher scores predict a higher statistical likelihood of recidivism.

Between Fiscal Years 2000 through 2004, the average LSI score for Peer I and The Haven clients was 30.8. This compared to a statewide average of 27.6. TC clients often begin the Department of Corrections' (DOC's) Arrowhead TC program with LSI scores of about 33 points.<sup>6</sup>

**3. Could the Department expand this TC program to other parts of the State, similar to the success of STIRRT?**

The decision to expand the TC program would ultimately be at the discretion of the General Assembly, in consultation with the local community correction boards and providers, and with the consent of the community itself. However, if funding was available to support additional beds, the Division of Criminal Justice believes the TC program could be expanded with some caveats.

As with all types of community corrections programs, there are barriers to both expansion and to the creation new programs:

- Many jurisdictions are unwilling to authorize the new construction or expansion of community corrections facilities; their objections are not likely to be lessened by the high LSI scores common among TC offenders.

<sup>4</sup> \$37.18 standard community corrections bed reimbursement, plus a differential of \$14.13 per day

<sup>5</sup> Calculations are based upon a 366 day year for 2008

<sup>6</sup> O'Keefe, et al, *supra*

- Even successful TC programs may experience high walk-away escape rates, perhaps in response to the therapeutically confrontational nature of these programs.
- Recent research documents that shorter-term programs for the treatment of chronic substance abuse tend to be less successful. If therapeutic communities are to be expanded, the commitment must be made to adequately fund long-term treatment.

In 2001, the Interagency Advisory Committee on Adult and Juvenile Correctional Treatment (IACAJCT) published a report that estimated an annual need for 674 community-based TC beds. At that time, only 142 state-funded TC beds were available. Funding levels that fiscal year met only 21% of the demand for TC beds.

In FY 2006, there were 336 offenders assessed as appropriate for TC treatment in community corrections. This number does not include parolees or probationers. The problem is compounded by the fact that one TC bed generally serves no more than one offender annually, since the length of stay in TC programs is typically at least one year.

#### 11:00 – 11:15 **Decision Items and Footnotes**

##### *Decision Item #1 – Diversion Community Corrections Bed Increase*

#### **4. Why is the Department requesting 161.7 diversion community corrections beds? Specifically, why is a percentage of a bed included?**

For convenience, the Division refers to community corrections appropriations in terms of total "beds" for each fiscal year. During figure setting for FY 2007-08, the Joint Budget Committee took several actions that resulted in the appropriation of funding for a total of 1,297.3 Diversion "beds." The Division submitted the FY 2008-09 request for 161.7 "beds" in order to return the figure setting calculations for Community Corrections beds to an amount based on whole integers.

It should be noted that, because different offenders come and go from the same "bed" throughout the year, community corrections funding is, in practice, a matter of authorized offender days, as computed using the approved per diem rate. The request for 161.7 beds actually represents 59,020.5 offender days, a figure that was derived after the deduction of money requested for other purposes in the same budget.

*Footnote #6 – Shared Cash Funds*

- 5. Please provide a detailed analysis of the Drug Offender Surcharge Fund and the Sex Offender Surcharge Fund, including historic and projected revenues and expenditures. What are the surcharges that are directed into these funds? Have the surcharges recently been changed? Why are there such large fund balances in these funds? Is there a reason large balances are being retained in these funds? Should these funds be subject to the 16.5 percent fund balance restriction? Are there additional ways these funds can be used?**

DCJ's response to these questions can be found on Attachment 1. The questions will be addressed individually to the Drug Offender Surcharge Fund (DOSF), and the Sex Offender Surcharge Fund (SOSF).

**11:15 – 12:00 Issues**

*Community Corrections Funding Level*

- 6. Please discuss the opportunity to increase the funding percentage for community corrections programs, and whether the Department feels there is the capacity and ability to increase community corrections utilization.**

An increase in the funding percentage for community corrections programs should be viewed in light of both capacity and the ability to efficiently place offenders in community corrections beds.

DCJ agrees that an increase in the total bed capacity of community corrections programs is both desirable and achievable. Colorado presently funds about 3,000 residential community corrections beds. Some providers report that they have unfunded bed capacity; others are actively working to expand.

Anecdotal reports conflict, but, by some estimates, 250 presently-unfunded beds will be available in FY 2008-09. A well-regarded community corrections program in the Eighth Judicial District reports that it alone could fill an additional 80 beds if the allocations became available.

While DCJ strongly supports an increase in community corrections capacity, there are several limiting factors:

- Many providers have encountered opposition from local communities in their efforts to expand bed capacity.
- Existing unfunded bed capacity could decrease as the federal government expands its community corrections programs; some providers would prefer federal referrals because the federal government pays a substantially higher per diem for its offenders.



- Although expansion may benefit providers in terms of economies of scale, any increase in capacity must be accompanied by measures to assure that quality in offender supervision and rehabilitation is not compromised.

The more efficient use of community corrections bed capacity has been more difficult to achieve, though improvements are underway. Data entry into DCJ's new Community Corrections database will begin this spring, and will permit a more efficient initial allocation and subsequent reallocation of beds. DCJ will also ask the recently reconstituted Governor's Community Corrections Advisory Council to consider specific refinements to the bed allocation process so that ongoing reallocations of underused bed capacity can be accomplished more easily.

There remain several challenges, particularly relating to the usage of Transition beds. For the past several years, the Joint Budget Committee has aggressively attempted to expand the population of offenders in Community Corrections Transition beds. In FY 2003-04, the Transition appropriation to DCJ was based on an assumption that 6.0 percent of the total DOC prison population would be placed in a Community Corrections setting. That percentage grew to 6.75 percent of DOC population for FY 2006-07 and FY 2007-08. In spite of growing appropriations, the Community Corrections system has consistently under-utilized the Transition appropriation each year since FY 2004-05, typically by over \$1.0 million per year.

The historical under-utilization of Transition appropriations suggests that the system still encounters some barriers to increasing the percentage of DOC offenders in Transition placements. For instance, some local community corrections boards are reluctant to accept some transition offenders from the Department of Corrections. Additionally, it is likely that a geographical disconnect exists where the demand for additional Transition beds is not in alignment with jurisdictions that have excess bed capacity. Furthermore, anecdotal reports suggest that some transition referrals from DOC case managers are delayed because the necessary criminal history information and offender assessments are not immediately forthcoming. While the Division does believe that the Transition population can grow above the current allocation of 6.75 percent of the DOC population, it is unlikely to occur until the factors described above, along with several others, are better understood and addressed.

By contrast, recent experience indicates that demand for Community Corrections Diversion beds has far exceeded funded capacity. As Transition appropriations have been under-utilized, Diversion appropriations have been substantially insufficient. It is for this reason that the Division requested such a large Diversion increase for FY 2008-09, and did not request an increase in the percentage of DOC offenders placed in Transition beds.

**7. Are providers asked to place more offenders in their facilities than they are paid for? Why? How long could this situation exist? What can be done rectify the situation?**

The Division of Criminal Justice – and to our knowledge the Executive Branch as a whole – *never* asks a community corrections provider to accept an offender without a pre-existing allocation from the General Assembly to pay that provider. A synopsis of how facilities accept offenders and how they are paid may explain why some programs voluntarily choose to supervise offenders for whom they may or may not be paid.

Each year, DCJ allocates community corrections beds to the local community corrections board in each judicial district. The bed allocation process takes into account census information, DOC prisoner data, probationer information, parolee data, past utilization, and requests from the local boards. The process has been approved by the Governor’s Community Corrections Advisory Council, and the Department of Corrections and the Judicial Department annually sign off on the final allocation package.

Following the initial allocation process, the following factors determine the subsequent commitment of dollars to private providers:

- The local board has the exclusive authority to determine which community corrections providers will receive an allocation of beds. The local board contracts with those providers to fund a specific number of beds, consistent with the allocation the board has received from DCJ.
- Potential community corrections clients are then referred to the local board for screening. The local board has the exclusive authority to refer offenders to the providers with which it contracts. The providers have the authority to accept or reject each offender referred for placement.

This process allows for individual providers, at their own financial risk, to accept more offenders than they have received allocations for into their programs. To the extent that funding is available, the Division *always* reimburses providers who exceed their initial bed allocations. In recent years, FY 2005-06 represented the only year in which the Division’s Community Corrections appropriations were insufficient to reimburse providers who exceeded their bed allocations.

*Community Corrections Reversion Flexibility*

**8. Please discuss the opportunity to roll forward appropriations for community corrections programs, and whether the Department feels that such an approach would increase the local utilization of community corrections beds and allow better utilization of the community corrections appropriations.**

The Division concurs that the existing appropriation and allocation process may cause a “chilling” effect that discourages Community Corrections boards and providers from accepting greater numbers of offenders as fiscal years draw to a close. Providers, in particular, become increasingly wary of exceeding their bed allocations in the final quarter of a fiscal year because it is less clear that appropriations may exist to ensure full compensation. DCJ also agrees with the concept that it should make use of the entire

appropriation for the beneficial purpose of filling as many community corrections beds as possible.

DCJ agrees with the presumption that a "roll forward" fund could allow programs to more easily accept a total number of offenders that may exceed the original allocation provided to some local community corrections boards. Acceptance of those additional offenders likely would result in an increased use of beds, especially near the end of the fiscal year.

The unintended consequence of a "roll forward" fund, however, could be that some programs will view the process as carte blanche to accept numbers of offenders far in excess of their allocations. The Division of Criminal Justice believes that, while increased utilization of allocated beds is a desirable and appropriate goal, it may be unwise to routinely encourage programs to spend beyond their allocations. By so doing, the State could place itself at great risk by fostering an environment in which private providers aggressively expand their populations, while the State's fiscal limitations may not allow for a guarantee of payment.

Moreover, it is possible that the "chilling" effect that this "roll forward" fund would correct is not a particularly substantial problem. DCJ strongly disagrees with the notion that the reversion following the last fiscal year is an indication of why "roll forward" flexibility should be sought.

Late in the last legislative session, the General Assembly authorized a supplemental appropriation of about \$1.2 million for community corrections beds because some providers were concerned that they would not be paid for spending beyond their allocations. Most of that supplemental appropriation was reverted after sufficient funds were found in the original budget to pay for all of the diversion and transition bed expenditures of all of the programs during the entire fiscal year. The only money spent from the supplemental appropriation was to support a limited community corrections monitoring program known as Day-Reporting.

If one removes the FY 2006-07 reversion from consideration, the reversions of the previous four fiscal years averaged only 0.875% of the total community corrections appropriation. Indeed, in FY 2005-06, only \$26 was reverted from a budget of about \$37.7 million.

It should also be noted that the Division believes it has largely addressed the accounting technicalities that has affected the utilization rate of Community Corrections beds in previous fiscal years. In recent years, revisions to the Division's Community Corrections contracts have increased the efficiency with which the Division can reallocate beds between boards, allowing for movement of dollars right up until the last day of each fiscal year. (Until this contract change occurred, reallocations of dollars between boards were significantly more difficult to achieve in the last month of a fiscal year.) Additionally, the Division expects that an updated Community Corrections IT system,

scheduled for rollout in the second half of FY 2007-08, will serve to make the bed reallocation process even more efficient.

In the end, a “roll forward” fund could serve two considerably positive purposes. First, as noted above, it could marginally increase the utilization rates of the Division’s annual Community Corrections appropriations. Second, the existence of a balance in the fund could serve as an indication to private providers that the State has the fiscal capacity and committed interest to expand the number of offenders it places in Community Corrections settings. (Private providers have indicated that longer-term expansion of Community Corrections capacity within Colorado may be hampered by the inability of the State to guarantee compensation for the additional beds.)

Should the JBC consider a bill to create a “roll forward” fund, though, the Division would strongly caution that the Committee consider means of ensuring that providers would not use the existence of the fund as a green light to accept offenders into their programs without regard to fiscal limitations. The Committee should also recognize that the fund itself should not be used as an offset to providing appropriate General Fund dollars for Community Corrections programs, and that any expansion of Community Corrections populations enabled by the fund *must* be backed-up by an increase in associated General Fund appropriations.

**9. *Are community corrections providers getting paid for all the beds in which they have offenders?***

Over the past several years, except in FY 2005-06, community corrections providers have been paid for every offender they have accepted, even when they have filled more beds than they were allocated.

In FY 2005-06, providers were paid for every bed assigned to them by their local community corrections boards. Put another way, they were paid for all the beds the state contracted to support.

Each year, beds are allocated to the local community corrections boards in the judicial districts. The local boards determine how many beds their providers will receive, and then execute subcontracts with those providers to fund that particular number of beds for the fiscal year. DCJ does not participate in that process.

As noted in the response to Question 7 above, some providers have voluntarily chosen to fill beds for which they have no allocation. DCJ has been told that providers accept these additional offenders in the hope that a redistribution of unexpended allocations will compensate them for these added clients.

In general, that expectation has been met. Except in FY 2005-06, a combination of the bed reallocation process, coupled with DCJ’s statutory authority to transfer up to 10 percent of its Community Corrections appropriations between line items, has served to

pay the programs for all of their Diversion and Transition clients, whether or not these beds were previously allocated. Some local boards report that they have used administrative monies to pay providers for clients who were accepted above and beyond allocation levels, but DCJ believes this practice is not widespread.

***10. Is there a chronic problem with non-payment of community corrections providers? If so, what is the problem and why does it exist?***

At the beginning of each quarter of the fiscal year, each community corrections board is sent *payment in advance* for that board's Diversion and Transition bed allocation during that quarter.<sup>7</sup> This money is then redistributed by the local boards to the community corrections programs with which they contract.

These advance disbursements have been made in a timely manner throughout the fiscal year. Payment has been withheld in the case of only one judicial district, which chronically failed to submit required data back to DCJ for later audits by the State Auditor.<sup>8</sup>

Therefore, with the previously noted exceptions, the local community corrections boards are provided the financial resources the state has promised, in accordance with the diversion and transition beds authorized by the General Assembly for each fiscal year.

As noted above, FY 2005-06 represented the *only* fiscal year in which DCJ's Community Corrections appropriations were not sufficient to compensate *every* provider for *every* bed filled. In all other fiscal years, including FY 2006-07, providers have been appropriately compensated for services provided to the State.

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<sup>7</sup>There are two exceptions. The Third Judicial District's local board has asked that the programs with which it contracts be paid directly by the Division of Criminal Justice after the submission of bills. The Second Judicial District has asked DCJ not to send the fourth quarter allocation in advance due to accounting procedures unique to the City and County of Denver; the local board in Denver is paid upon the submission of bills after the fourth quarter.

<sup>8</sup>The local board in the Tenth Judicial District has recently been working diligently with the Division of Criminal Justice to correct this problem.

# Attachment 1

## Division of Criminal Justice

### JBC Hearing Agenda

*Footnote #6 – Shared Cash Funds*

*Please provide a detailed analysis of the Drug Offender Surcharge Fund and the Sex Offender Surcharge Fund, including historic and projected revenues and expenditures. What are the surcharges that are directed into these funds? Have the surcharges recently been changed? Why are there such large fund balances in these funds? Is there a reason large balances are being retained in these funds? Should these funds be subject to the 16.5 percent fund balance restriction? Are there additional ways these funds can be used?*

#### Drug Offender Surcharge Fund

**Table 1** lists the surcharges that are directed into the Drug Offender Surcharge Fund (DOSF). These surcharges have remained unchanged since 1996:

**Table 1: Drug Offender Surcharge Fund Assessments**

| <b>Drug Offender Surcharges: C.R.S. 18-19-103</b> |                  |
|---|------------------|
| <b>Offense Class</b>                              | <b>Surcharge</b> |
| Felony 2  | \$ 4,500.00      |
| Felony 3  | \$ 300.00        |
| Felony 4  | \$ 1,500.00      |
| Felony 5  | \$ 1,125.00      |
| Felony 6  | \$ 750.00        |
| Misdemeanor 1                                     | \$ 600.00        |
| Misdemeanor 2                                     | \$ 450.00        |
| Misdemeanor 3                                     | \$ 225.00        |
| Deferred Judgment- Marii. Poss.                   | \$ 100.00        |

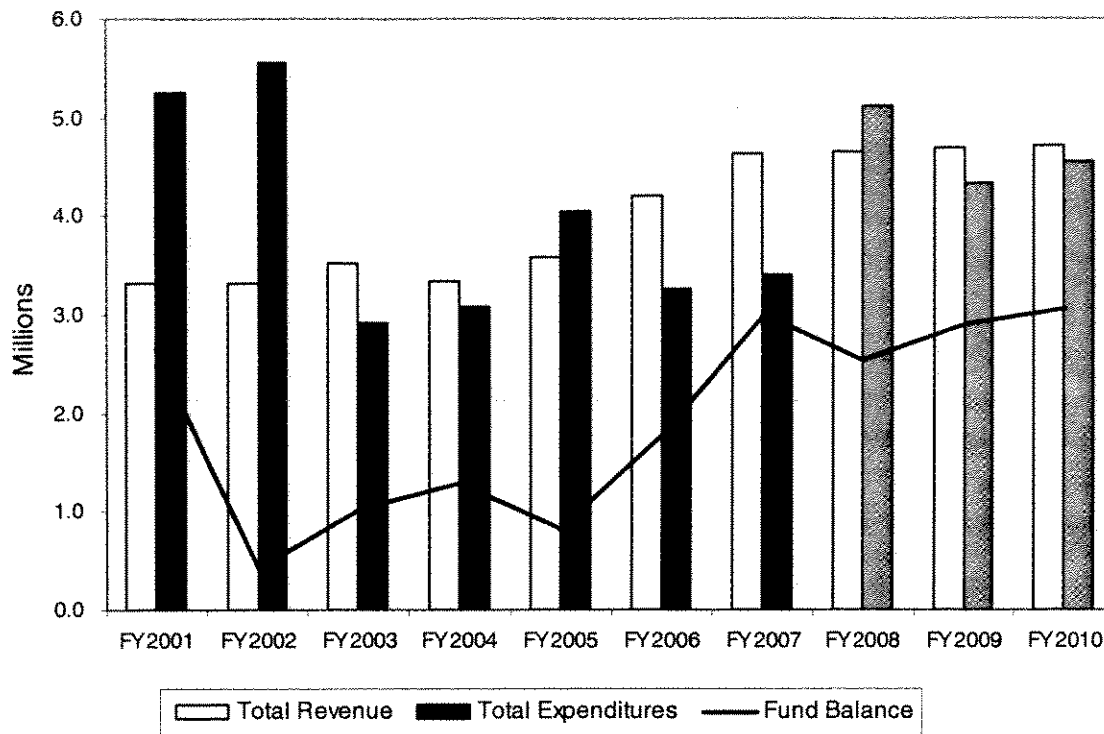
**Table 2** identifies the historic and projected revenues and expenditures for the Drug Offender Surcharge Fund:

**Table 2: DOSF Revenue and Expenditure Trends**

|                               | Actual<br>FY2001 | Actual<br>FY2002 | Actual<br>FY2003 | Actual<br>FY2004 | Actual<br>FY2005 | Actual<br>FY2006 | Actual<br>FY2007 | Projected<br>FY2008 | Projected<br>FY2009 | Projected<br>FY2010 |
|-------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|---------------------|---------------------|---------------------|
| <i>Beginning Fund Balance</i> | 4,589,570        | 2,661,702        | 429,458          | 1,033,356        | 1,295,310        | 826,122          | 1,768,861        | 3,005,884           | 2,546,628           | 2,890,966           |
| Revenue                       | 3,322,758        | 3,330,799        | 3,522,996        | 3,342,553        | 3,580,777        | 4,151,907        | 4,515,517        | 4,538,094           | 4,580,785           | 4,583,589           |
| Interest                      |                  |                  |                  |                  |                  | 53,910           | 120,044          | 120,713             | 121,317             | 121,923             |
| <b>Total Revenue</b>          | <b>3,322,758</b> | <b>3,330,799</b> | <b>3,522,996</b> | <b>3,342,553</b> | <b>3,580,777</b> | <b>4,205,817</b> | <b>4,635,561</b> | <b>4,658,806</b>    | <b>4,682,102</b>    | <b>4,705,512</b>    |
| Expenditures:                 |                  |                  |                  |                  |                  |                  |                  |                     |                     |                     |
| Program Costs*                | 1,659,057        | 1,981,045        | 977,146          | 1,063,425        | 1,331,224        | 1,065,732        | 1,127,750        | 1,465,836           | 1,499,542           | 1,499,542           |
| Indirect Costs                |                  |                  |                  | 3,817            | 51,623           | 70,538           | 117,310          | 119,322             | 51,475              | 51,475              |
| Central Pots                  |                  |                  |                  |                  |                  |                  |                  | 101,254             | 99,415              | 99,415              |
| IAC Spending Restrictions     |                  |                  |                  |                  |                  |                  |                  | (97,886)            | (204,953)           |                     |
| Transfers:                    |                  |                  |                  |                  |                  |                  |                  |                     |                     |                     |
| Dept. of Corrections*         | 1,171,827        | 1,136,810        | 588,403          | 651,766          | 770,401          | 651,766          | 636,867          | 995,127             | 995,127             | 995,127             |
| Public Safety*                | 1,072,771        | 1,064,100        | 600,933          | 608,975          | 1,002,616        | 722,426          | 783,995          | 913,994             | 894,542             | 894,542             |
| Human Services*               | 1,346,971        | 1,381,098        | 752,616          | 752,616          | 894,102          | 752,616          | 752,616          | 1,620,616           | 1,620,616           | 1,620,616           |
| <b>Total Expenditures</b>     | <b>5,250,626</b> | <b>5,563,043</b> | <b>2,919,098</b> | <b>3,080,599</b> | <b>4,048,966</b> | <b>3,263,078</b> | <b>3,398,538</b> | <b>5,119,763</b>    | <b>4,070,764</b>    | <b>4,042,715</b>    |
| <b>Fund Balance</b>           | <b>2,661,702</b> | <b>429,458</b>   | <b>1,033,356</b> | <b>1,295,310</b> | <b>826,121</b>   | <b>1,768,861</b> | <b>3,005,884</b> | <b>2,546,628</b>    | <b>2,890,966</b>    | <b>3,053,761</b>    |
| Reserve inc/(dec)             | (1,927,868)      | (2,232,244)      | 603,898          | 261,954          | (469,189)        | 942,739          | 1,237,023        | (459,255)           | 344,338             | 162,795             |

Chart A describes the historic and projected revenue, expenditures, and balance of the Fund:

**Chart A:  
Drug Offender Surcharge Fund Revenues, Expenditures and Fund Balance**



At the beginning of FY 01, the Fund had over \$4.5 million in reserve. Two years later, (FY 02 at year-end), the Fund had less than \$500,000 in reserves due to a purposeful increase in FY 01 and FY 02 expenditures.

Expenditures were significantly reduced in FY 03 as a result of the diminished Fund balance. As the Fund's balance began to grow again, a one-time expenditure increase was implemented in FY 05 in an effort to use the additional revenue for the benefit of offenders. All of this activity demonstrates a keen and continuing awareness of the Fund's financial status by the four involved state agencies.

The Fund's current high balance is largely due to a programming change in mid-FY 06 that affected the way in which probation fees are allocated to each cash fund. IAC members thought that it would be prudent to assess the actual revenue impact of this programming change before expanding any program services; as a result, no expenditure increase was requested in FY 07.

As part of the FY 08 budget request, each agency submitted a successful decision item that increased ongoing expenditures in an effort to expand treatment services using the increased revenue. The Governor's Office is using \$600,000 from the Fund for the STIRRT, an intensive residential and non-residential drug offender treatment program.

Consequently, the fund balance is projected to decrease by almost \$500,000 in FY 08. Projections show that, at the current rate of expenditure, most of the revenue coming into the Fund will be used in any given year, but the Fund balance will remain stable. The IAC is aware of the situation and continually monitors revenue, spending and programmatic treatment options.

The budget cycle does not always allow for immediate responses to revenue fluctuations. Rather than limit the Fund to the 16.5% fund balance limit, a preferred approach would be to support future program initiatives put forth by the IAC during the budget cycle, which will allow for more targeted treatment options for the probation population.

**Table 3** provides an example of Drug Offender Surcharge fee distribution under the old and new systems.

**Table 3:  
Drug Offender Surcharge Fee Distribution<sup>1</sup>**

| <b>Payment</b> | <b>Old Distribution</b>                                  | <b>New Distribution</b>                                   |
|----------------|--|---|
| Month 1: \$500 | Supervision fee = \$500<br>Drug Offender Surcharge = \$0 | Supervision fee = \$50<br>Drug Offender Surcharge = \$450 |
| Month 1: \$200 | Supervision fee = \$200<br>Drug Offender Surcharge = \$0 | Supervision fee = \$50<br>Drug Offender Surcharge = \$150 |

**Sex Offender Surcharge Fund**

**Table 4** identifies the surcharges that are directed into this Fund:

**Table 4: Sex Offender Surcharges**

| <b>Sex Offender Surcharge:<br/>C.R.S. 18-21-103 (1) (a)</b> |                  |
|---|------------------|
| <b>Offense Class</b>  | <b>Surcharge</b> |
| Felony 2  | \$ 3,000.00      |
| Felony 3  | \$ 2,000.00      |
| Felony 4  | \$ 1,000.00      |
| Felony 5  | \$ 750.00        |
| Felony 6  | \$ 500.00        |
| Misdemeanor 1   | \$ 400.00        |
| Misdemeanor 2   | \$ 300.00        |
| Misdemeanor 3   | \$ 150.00        |
| Adjudicated Juvenile  | 1/2 adult amount |
| <b>No change since 1996</b>                                 |                  |

**Table 5** identifies the historic and projected revenues and expenditures for the Fund:

**Table 5:**

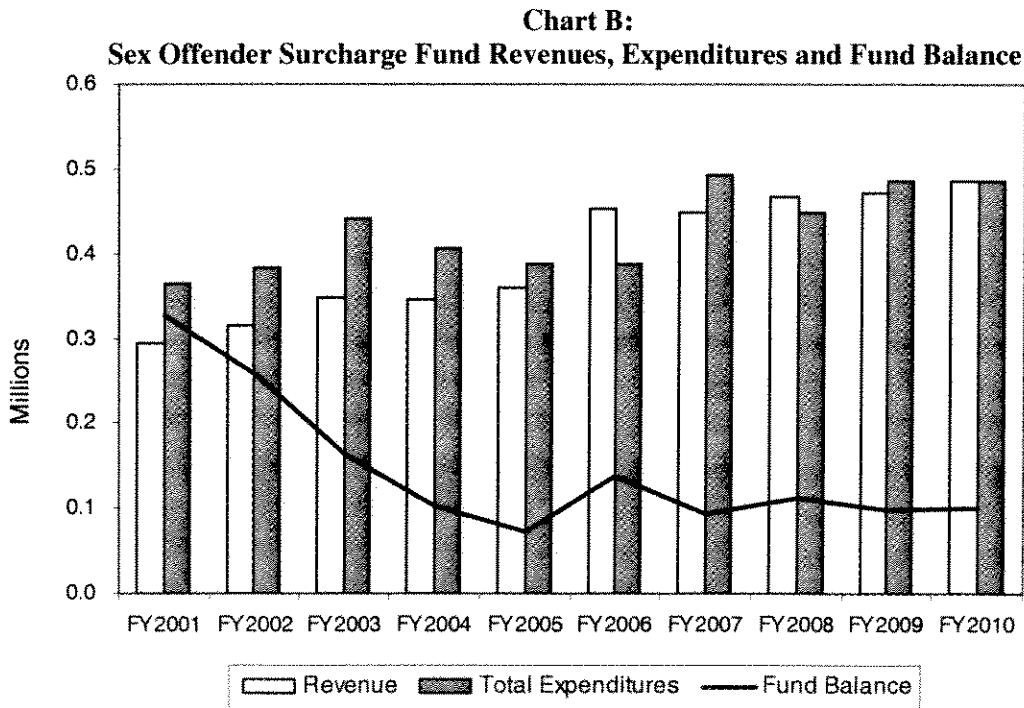
<sup>1</sup> Excludes distributions to VALE, Victim Compensation and restitution



## Historic and Projected Sex Offender Surcharge Fund Revenues and Expenditures

|                               | Actual<br>FY2001 | Actual<br>FY2002 | Actual<br>FY2003 | Actual<br>FY2004 | Actual<br>FY2005 | Actual<br>FY2006 | Actual<br>FY2007 | Appropriation<br>FY2008 | Projected<br>FY2009 | Projected<br>FY2010 |
|-------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-------------------------|---------------------|---------------------|
| <b>Beginning Fund Balance</b> | <b>396,296</b>   | <b>327,281</b>   | <b>257,962</b>   | <b>183,131</b>   | <b>101,992</b>   | <b>73,079</b>    | <b>138,334</b>   | <b>94,146</b>           | <b>112,783</b>      | <b>99,100</b>       |
| Revenue                       | 294,754          | 314,270          | 346,770          | 344,926          | 358,720          | 452,065          | 448,218          | 486,508                 | 471,173             | 485,308             |
| Expenditures:                 |                  |                  |                  |                  |                  |                  |                  |                         |                     |                     |
| Program Costs                 | 209,000          | 203,930          | 196,311          | 202,934          | 200,400          | 172,245          | 256,411          | 283,034                 | 291,422             | 302,029             |
| Indirect Costs                |                  |                  |                  | 1,556            | 10,936           | 21,831           | 18,618           | 18,995                  | 10,607              | 0                   |
| SOMB Spending Restrictions    |                  |                  |                  |                  |                  |                  |                  | (48,325)                | (48,325)            | (48,325)            |
| Transfers:                    |                  |                  |                  |                  |                  |                  |                  |                         |                     |                     |
| Dept. of Corrections          | 3,809            | 31,518           | 46,046           | 27,454           | 500              | 26,445           | 29,311           | 24,621                  | 29,311              | 29,311              |
| Public Safety                 | 150,960          | 148,141          | 155,928          | 136,000          | 137,600          | 133,054          | 153,244          | 137,416                 | 163,591             | 163,591             |
| Human Services                | 0                | 0                | 43,316           | 38,121           | 38,197           | 33,235           | 34,822           | 32,130                  | 38,250              | 38,250              |
| <b>Total Expenditures</b>     | <b>363,769</b>   | <b>383,589</b>   | <b>441,601</b>   | <b>406,065</b>   | <b>387,633</b>   | <b>386,810</b>   | <b>492,406</b>   | <b>447,871</b>          | <b>484,856</b>      | <b>484,856</b>      |
| <b>Fund Balance</b>           | <b>327,281</b>   | <b>257,962</b>   | <b>163,131</b>   | <b>101,992</b>   | <b>73,079</b>    | <b>138,334</b>   | <b>94,146</b>    | <b>112,783</b>          | <b>99,100</b>       | <b>99,552</b>       |
| Reserve increase/(decrease)   | (69,015)         | (69,319)         | (94,831)         | (61,139)         | (28,913)         | 65,255           | (44,188)         | 18,637                  | (13,683)            | 452                 |

Chart B highlights the historic and projected revenue, expenditures, and balance of the Fund:



Since FY 01, the Sex Offender Surcharge Fund balance has steadily dropped. Expenditures for each agency have fluctuated annually, in accordance with the revenue projections and treatment decisions of the Sex Offender Management Board (SOMB).

The SOMB places spending restrictions on each affected agency each year and, depending on revenue streams, alters those restrictions as needed. In FY 05, there was concern over the long-term viability of this fund and discussions focused on how to restrict expenditures with minimal harm to treatment services.

The same FY 06 programming change that benefitted the Drug Offender Surcharge Fund boosted the long term revenue projections of Sex Offender Surcharge Fund. Its balance grew in FY 06 as a result of both expenditure restrictions and increased revenue related to the programming change.

The SOMB is acutely aware of the financial status of the Fund and is working toward a balance at which the Fund can sustain the level of necessary services in future years. As with the Drug Offender Surcharge Fund, the historical data for the Sex Offender Surcharge Fund demonstrates that the SOMB has made the required programmatic changes in response to revenue fluctuations. The fund is now relatively stable.

Unfortunately, the budget cycle does not always permit an immediate response to revenue fluctuations. Rather than limit the Fund to the 16.5% fund balance limit, the preferred approach would be to allow the SOMB to continue to monitor the evolving Fund balance with the assistance of State Judicial, and then respond with plans to address the balance through prudent future spending allocations.