

JOINT BUDGET COMMITTEE



STAFF BUDGET BALANCING FY 2020-21

DEPARTMENT OF CORRECTIONS

JBC WORKING DOCUMENT - SUBJECT TO CHANGE
STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

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HOW TO USE THIS DOCUMENT

The **first section** of this document includes a summary table showing:

- Committee action on Long Bill appropriations for the Department of Corrections (DOC) through March 16, 2020;
- Staff comebacks from figure setting that the Committee has not yet considered; and
- Staff recommended changes to Long Bill appropriations, assuming that General Fund appropriations in FY 2020-21 must be kept at approximately the same level as FY 2019-20 to bring the budget into balance. This recommendation is based on the Legislative Council Staff March 16, 2020, revenue forecast, assumes that the statutory General Fund reserve will be increased in FY 2020-21 as proposed by the Governor, and assumes that only the federal increase in the Medicaid matching funds rate will be available to help cover shortfalls.

The table is followed by descriptions of each change recommended by staff.

A **second section** of the document (not applicable for DOC) summarizes staff recommendations that require statutory changes.

A **third section** of the document includes additional staff recommendations and options for the Committee to consider if deeper cuts are required.

SUMMARY OF STAFF BUDGET BALANCING RECOMMENDATIONS FOR LONG BILL

DEPARTMENT OF CORRECTIONS						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2019-20 APPROPRIATION						
FY 2019-20 Appropriation	\$998,134,380	\$894,899,801	\$47,901,602	\$51,757,665	\$3,575,312	6,316.3
TOTAL	\$998,134,380	\$894,899,801	\$47,901,602	\$51,757,665	\$3,575,312	6,316.3
FY 2020-21 RECOMMENDED APPROPRIATION						
FY 2019-20 Appropriation	\$998,134,380	\$894,899,801	\$47,901,602	\$51,757,665	\$3,575,312	6,316.3
COMEBACKS						
Paid family leave (mistakenly recommended and approved during figure setting)	3,671,815	3,568,417	103,398	0	0	0.0
Withdraw approval of Paid family leave	(3,671,815)	(3,568,417)	(103,398)	0	0	0.0
Additional private prison 2% rate increase (Recommended by staff, cost \$1.33 million GF; no decision by JBC during figure setting; recommendation now withdrawn by staff)	0	0	0	0	0	0.0
OTHER CHANGES APPROVED DURING FIGURE SETTING						
BA2A House inmates at Centennial South	12,162,509	12,080,349	82,160	0	0	173.4
R12 Common policy provider rate increase	2,236,832	2,194,230	0	42,602	0	0.0
JBC initiated catch-up jail per diem increase	628,056	628,056	0	0	0	0.0
Staff initiated deferred maintenance increase	500,000	500,000	0	0	0	0.0
R1-BA1 Medical caseload	292,998	292,998	0	0	0	0.0
R2 Nurse staffing pilot program	181,613	181,613	0	0	0	1.9
Non-prioritized request items	35,304	37,000	(1,696)	0	0	0.0
R9 Line item funding adjustments	0	0	0	0	0	1.0
R11 Radio replacement cancellation	0	0	0	0	0	0.0
R3-BA3A External Capacity Reductions	(11,058,319)	(11,058,319)	0	0	0	0.0
R4 Hepatitis C treatment cost reduction	(10,145,760)	(10,145,760)	0	0	0	0.0
R6 Realign funding for offender services	(3,781,144)	(3,781,144)	0	0	0	0.0
R5 Jail Caseload Reduction	0	0	0	0	0	0.0
R7 Correctional Industries raw materials adjustment	(1,000,000)	0	(700,000)	(300,000)	0	0.0
R10 Eliminate unused cash-fund appropriations	(12,947)	0	(12,947)	0	0	0.0
R8 Reduce reversions in multiple programs	(295,000)	(295,000)	0	0	0	0.0
FY 20-21 Funding already in statute from 5-year sentencing bills	(380,688)	(380,688)	0	0	0	0.0
Centrally appropriated line items	12,741,575	12,392,170	346,937	2,468	0	0.0

DEPARTMENT OF CORRECTIONS						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
Annualize 2019 R1 Salary increases for staff retention	10,972,429	10,701,094	27,600	243,735	0	0.0
Annualize other prior year budget actions	(227,077)	(227,076)	(1)	0	0	0.9
Annualize S.B. 15-211 depreciation-lease equivalent payments	(89,413)	(89,413)	0	0	0	0.0
Annualize other prior year legislation	2,726,234	2,665,861	60,373	0	0	1.5
Contract mental health staff rate increase	370,738	370,738	0	0	0	0.0
Cost increases from other state agencies	106,036	106,036	0	0	0	0.0
Indirect cost adjustment	(75,839)	75,837	9,228	(73,054)	(87,850)	0.0
SUBTOTAL - JBC ACTION TO DATE IF COMEBACKS ARE APPROVED	1,014,022,517	911,148,383	47,713,256	51,673,416	3,487,462	6,495.0
RECOMMENDED JBC REDUCTIONS CONSIDERED IN THIS DOCUMENT:						
Approve R05 (Jail bed caseload reduction)	(1,004,497)	(1,004,497)	0	0	0	0.0
Approve full reduction requested for R6 (Realign funding for offender services)	(800,000)	(800,000)	0	0	0	0.0
Withdraw approval of rate increase for jails in excess of provider rate increase	(628,056)	(628,056)	0	0	0	0.0
Withdraw approval of staff-initiate increase for deferred maintenance	(500,000)	(500,000)	0	0	0	0.0
Withdraw approval of rate increase for contract mental health staff	(370,738)	(370,738)	0	0	0	0.0
Withdraw approval of R2 (Nurse staffing pilot program)	(181,613)	(181,613)	0	0	0	(1.9)
REVISED TOTAL	1,010,537,613	907,663,479	47,713,256	51,673,416	3,487,462	6,493.1
INCREASE/(DECREASE)	12,403,233	12,763,678	(188,346)	(84,249)	(87,850)	176.8
Percentage Change	1.2%	1.4%	-0.4%	-0.2%	-2.5%	2.8%

Changes to staff recommendations for common policy items, including salary survey and provider rates, will be addressed in statewide policy packets. While the exact reductions will depend upon the decisions that the Committee makes, elimination of the two largest items, salary survey and the common policy provider rate increase, would decrease the Department’s General Fund appropriation by approximately \$12.3 million and return the appropriation to its FY 2019-20 level.

→ COMEBACK ON PAID FAMILY LEAVE

JBC ACTION AS OF 3/16/20: The Staff figure setting document for the Department of Corrections mistakenly included an appropriation of \$3,671,815 General Fund for Paid family leave. This increase was grouped with other Centrally Appropriated line items and was not discussed in the document. The recommendation was a mistake; the JBC did not approve a common-policy appropriation for paid family leave when it considered the matter in January.

RECOMMENDATION: Staff recommends that the Committee withdraw approval of this appropriation.

→ COMEBACK ON ADDITIONAL PRIVATE PRISON RATE INCREASE

JBC ACTION AS OF 3/16/20: The Staff figure setting document for the Department of Corrections recommended that the per diem paid to private prisons for housing state inmates be increased by an additional 2.0 percent in addition to the 1.9 percent common policy provider rate increase for a total increase of 3.9 percent, which would raise the current per diem of \$57.94 to \$60.20 and cost \$1,288,830 General Fund. In support of this recommendation, staff showed that the purchasing power of the current per diem has declined 27.5 percent since FY 2001-02 and that the per diem would now equal \$84.61 if it had kept pace with the cost of operating DOC facilities. The Committee deferred a decision on this matter, asking for more information.

RECOMMENDATION: In view of the current budget situation, Staff no longer recommends this increase. However, since the recommendation was included in the figure setting document but no decision was made, staff recommends that the Committee formally reject the original recommendation.

→ APPROVE REQUEST R05 (JAIL BED CASELOAD REDUCTION)

JBC ACTION AS OF 3/16/20: The Department requested that its external capacity appropriation for jail beds be reduced by \$1,004,497, a 7.0 percent reduction. The Committee did not approve the request.

RECOMMENDATION: Staff recommends that the Committee reduce the appropriation for jail beds by \$1,004,497 as requested by the Department. The Department intends to place fewer offenders, both parolees and inmates, in county jail in FY 2020-21.

ANALYSIS:

Key Considerations: The Department based this request on an analysis of its recent use of jail bed space to house state inmates. The March 2020 DOC population report shows a reduction in the use of jail beds for both inmates and parolees. The parolee reduction is particularly notable and reflects the Department's current policy of minimizing parolee revocations. Staff believes that a \$1,004,497 General Fund reduction of the appropriation for jail beds is realistic.

→ APPROVE FULL REDUCTION REQUESTED FOR R6 (REALIGN FUNDING FOR OFFENDER SERVICES)

JBC ACTION AS OF 3/16/20: The Department requested an ongoing reduction of \$4,581,144 to the appropriation for *Parolee Supervision and Support Services*, but JBC staff recommended and the JBC approved a reduction of \$3,781,144 General Fund, which is \$800,000 less than the requested reduction. The Department's request is based on ending its \$3,700,000 contract with Rocky Mountain Offender Management System (RMOMS), which currently provides assessment and case management services. The Department also plans to find additional unspecified additional savings elsewhere in the *Parolee Supervision and Support Services* appropriation. Since this line item pays for drug screening, mental health treatment, in-home electronic monitoring, and fugitive returns, the additional savings would come in these areas.

RECOMMENDATION: Staff recommends that the Committee approve an additional reduction of \$800,000 as requested by the Department.

ANALYSIS:

Though staff is uncomfortable about these reductions, the Department has indicated that it can manage them and staff makes the recommendation on that basis.

→ WITHDRAW APPROVAL OF RATE INCREASE FOR JAILS IN EXCESS OF PROVIDER RATE INCREASE

JBC ACTION AS OF 3/16/20: JBC staff recommended and the JBC approved a 4.71 percent increase of the per diem that DOC pays to jails that hold offenders who have been sentenced to the DOC. This increase is in addition to the 1.9 percent common policy provider rate increase; it continues a jail rate-setting policy that the JBC approved last year that is designed to close the gap between the current jail per diem and the actual cost of holding DOC offenders in local jails over a period of 10 years. In combination with the 1.9 percent provider rate increase, this increase raises the per diem paid to jails by 6.61 percent from \$58.56 to \$62.43 per day. The cost of the additional 4.71 percent increase is \$628,056 General Fund.

RECOMMENDATION: Staff recommends that the Committee withdraw approval of this 4.71 percent increase for FY 2020-21.

ANALYSIS: House Bill 18-1132 requires jails to annually report to the General Assembly the costs of housing Department of Corrections (DOC) inmates in their facilities. The General Assembly must *consider* this information when it establishes the DOC reimbursement rate for jails in the Long Bill, but it is not required to *act* on it. Based on a report that JBC staff presented to the Committee in 2019, the Committee decided to increase the per diem paid to jails by 6.61 percent annually in order to close the gap between the current jail per diem and the actual cost of holding DOC offenders over a period of 10 years. The recommendation continues the policy approved for the FY 2019-20 Long Bill. Staff recommends that the “catch-up” policy be suspended for FY 2020-21.

→ WITHDRAW APPROVAL OF STAFF-INITIATED INCREASE FOR DEFERRED MAINTENANCE

JBC ACTION AS OF 3/16/20: Based on a list showing that the Department needs \$47.9 million for capital construction, \$135.4 million for capital renewal, \$156.8 million for controlled maintenance, and \$33.0 million for deferred maintenance, Staff recommended that the Maintenance Subprogram’s appropriation for Operating Expenses be increased by \$500,000 General Fund annually in order to reduce the backlog of deferred maintenance projects and prevent some of these projects from becoming more expensive controlled maintenance and capital renewal projects.

RECOMMENDATION: Staff recommends that the Committee withdraw approval of this increase.

ANALYSIS: While the most pressing of these deficits must be addressed in the next few years, staff believes that deferral is reasonable given the current budget situation.

→ WITHDRAW APPROVAL OF REQUEST R2 (NURSE STAFFING PILOT PROGRAM)

JBC ACTION AS OF 3/16/20: JBC staff recommended and the JBC approved an appropriation of \$181,613 General Fund and 1.9 nurse FTE to create a pilot program at Sterling Correctional Facility that is designed to reduce inmate health care costs by offering nurse-patient education on conditions that are leading contributors to unscheduled, emergency medical transports outside of prison facilities for external medical services. The prevention-oriented program will promote inmate behaviors that can improve health and reduce medical costs.

RECOMMENDATION: Staff recommends that the Committee withdraw approval of this request for FY 2020-21.

ANALYSIS: The Department has experienced significant growth in the utilization of external medical services in recent years. The primary driver has been the increasing percentage of the prison population with moderate to severe medical needs. While it is possible that this health-education initiative will slow the growth of these costs, the Department presents no evidence that inmates will respond to a health education program. Under normal circumstances, staff would recommend approval of the initiative, coupled with the gathering of evidence on its effectiveness. However, given the unproven nature of such education in a prison setting and the difficulty of assessing program effectiveness in an environment colored by Covid19, staff recommends withdrawal of the Committee's prior approval.

Note that staff is very much in favor of educating inmates on the transmission and dangers of Coronavirus. However, staff believes that funding for Coronavirus education should come from the state's share of CARES Act revenue, which is not under the control of the General Assembly. Staff believes that funding for such endeavors should be left to the discretion of the Governor's Office.

→ REDUCING THE NUMBER OF INMATES IN DOC

The [Governor's Executive order D 2020 016 *Suspending Certain Regulatory Statutes Concerning Criminal Justice*](#) enables the DOC and the Parole Board to release additional inmates. The DOC issues [this memorandum](#) on April 9, 2020, providing additional detail on how it plans to implement the Order. Staff has requested that the Department estimate the number of inmates who may be released pursuant to this memorandum, but has not yet received an estimate. Staff will update the Committee when this estimate is received. Based on preliminary conversations with the Department, staff does not expect a substantial population reduction.

SUMMARY OF RECOMMENDATIONS REQUIRING STATUTORY CHANGE

Staff does not recommend any changes requiring statutory change. The Department has no cash funds with substantial balances that the General Assembly could draw upon during this economic contraction.

SUMMARY OF OTHER RECOMMENDATIONS AND OPTIONS IF DEEPER CUTS ARE REQUIRED

10.0-20.0 PERCENT REDUCTION SCENARIOS

Staff recommends that the Committee consider the following options based on a scenario in which General Fund appropriations and transfers must be reduced by 10.0-20.0 percent in FY 2020-21.

The Department’s base General Fund appropriation in FY 2019-20 was \$894,899,801.

- A 10.0 percent reduction would be (\$89.5 million).
- A 20.0 percent reduction would be (\$179.0 million).

With approximately 6,000 FTE, 97 percent of whom are paid from the General Fund, salaries totaling \$357 million, and other compensation-related costs of \$109 million (comprised of PERA, Medicare, AED, SAED, HLD, and Shift Differential), it difficult to envision cutting the DOC General Fund budget by \$89.5 million or \$179.0 million without substantially reducing compensation and/or compensation-related costs. The following table (for the most part based on numbers from March Figure Setting for DOC) shows some other expenditures that might be reduced.

LARGE DOC LINE ITEMS	
EXPENDITURE	GENERAL FUND
External capacity	\$76,617,948
External medical care	41,711,091
Pharmaceuticals, including Hepatitis C	27,282,772
Utilities	21,574,639
Food operating	19,023,858
Medical Services Contracts	2,624,673
Mental Health Contract Services	5,008,625
Drug and Alcohol treatment contract services	2,188,003
Inmate pay	2,518,186
Non-comp transportation	3,824,628
Payments to OIT	27,996,243
Grants to Community-based Organizations for Parolee Support	6,697,140
Community Supervision Support Services	4,218,089
Total	\$241,285,895

The possibilities presented in this section fall far short of a 10 percent reduction.

BUDGET BALANCING OPTIONS FOR DEEPER CUT					
FY 2020-21 EXPENSE	BILL? Y/N	NET GF IMPACT	OTHER FUNDS	TOTAL FUNDS	FTE
Withdraw approval of annualization of salary increase for corrections officers	N	(\$10,701,094)	(\$271,335)	(\$10,972,429)	0.0
Withdraw approval of annualization of rate increase for contract mental health psychiatrists	N	(370,738)	0	0	0.0
Temporarily suspend volunteers program	N	(465,439)	0	(465,439)	(8.0)
Temporarily suspend Restorative Justice program	N	(75,000)	0	(75,000)	(1.2)

→ WITHDRAW APPROVAL OF ANNUALIZATION OF SALARY INCREASE FOR CORRECTIONS OFFICERS

JBC ACTION AS OF 3/16/20: In 2019, the JBC approved increases spread over two years to raise the pay of corrections officers. The increases were designed to reduce staff turnover. The FY 2019-20 General Fund cost was \$26,584,206 (\$27,304,122 total funds) with \$10.0 million of the General Fund appropriation provided by a transfer from the State Employees Reserve Fund (SERF). The second year increase was an additional \$10,701,094 General Fund (\$10,972,429 Total Funds).

RECOMMENDATION: Staff recommends that the Committee withdraw approval of the FY 2020-21 portion of this increase, thus reducing General Fund appropriations for FY 2020-21 by \$10,701,094.

ANALYSIS: Staff is uncomfortable withdrawing an already approved pay increase, particularly since Corrections Officers may be working in prisons in which there are Coronavirus outbreaks during FY 2020-21. However, staff believes that this reduction is preferable to reductions that reduce other salaries below FY 2019-20 levels and preferable to furloughs of Department employees.

→ WITHDRAW APPROVAL OF ANNUALIZATION OF RATE INCREASE FOR CONTRACT MENTAL HEALTH PSYCHIATRISTS

JBC ACTION AS OF 3/16/20: DOC's Mental Health Subprogram utilizes psychiatrists from the University of Colorado School of Medicine. During [FY 2019-20 figure setting for the Department of Human Services' Office of Behavioral Health \(p. 14\)](#) the Committee approved increased compensation for contract psychiatrists who work at the Mental Health Institutes at Pueblo and Fort Logan. The increase was designed to improve recruitment and retention. At that time, JBC staff recommended that the Committee also consider additional funding for the DOC so it can also pay the higher rates. During figure setting, staff presented this as an annualization of a prior budget action that resulted in an increase of \$370,738 General Fund for FY 2020-21 for the Department's Mental Health Subprogram.

RECOMMENDATION: Staff recommends that the Committee withdraw approval of this \$370,738 General Fund increase for FY 2020-21.

ANALYSIS: Given the current budget situation, believes that deferral of this increase is warranted.

→ TEMPORARILY SUSPEND VOLUNTEERS PROGRAM

JBC ACTION AS OF 3/16/20: The Committee approved continuation of this \$465,439 General Fund program for FY 2020-21.

RECOMMENDATION/OPTION: Staff recommends that this program be temporarily suspended for FY 2020-21.

ANALYSIS:

The Department uses volunteers to assist in the development and participate in the implementation of programs for the rehabilitation of offenders. An office of volunteer services was created by the Department effective July 1, 1995, in order to provide religious and non-religious volunteer programs to offenders.

In view of the fact that DOC is currently closing its facilities to outside visitors and is likely to continue such closure as long as there is the threat of an outbreak of Covid 19 in DOC facilities, staff recommends the temporary suspension of this program

→ TEMPORARILY SUSPEND RESTORATIVE JUSTICE PROGRAM

JBC ACTION AS OF 3/16/20: The Committee approved continuation of this \$75,000 General Fund program for FY 2020-21.

RECOMMENDATION/OPTION: Staff recommends that this program be temporarily suspended for FY 2020-21.

ANALYSIS:

The \$75,000 appropriation titled *Restorative Justice Program with Victim-Offender Dialogues in Department Facilities* funds a Restorative Justice Program to facilitate victim-offender dialogues that take place within the Department's facilities. The Department will arrange the dialogues if requested by the victim and agreed to by the offender. The dialog program conducts victim-initiated conferences in which a victim of violent crime meets face-to-face in a secure environment with the offender who committed the crime. All parties must agree to the meeting and the offender must be in the custody of the DOC. The objective is to (1) provide victims with a safe opportunity to be heard and to experience a sense of justice and healing and (2) provide the offender who committed the crime with an opportunity to express remorse and regret and to experience a sense of accountability. The meetings are carefully controlled and are overseen by DOC employees or volunteer facilitators approved by the DOC.

In view of the fact that DOC is currently closing its facilities to outside visitors and is likely to continue such closure as long as there is the threat of an outbreak of Covid 19 in DOC facilities, staff recommends the temporary suspension of this program