JOINT
BUDGET
COMMITTEE

STATE · OF · COLORADO
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1876

SUPPLEMENTAL BUDGET REQUESTS
FY 2021-22

DEPARTMENT OF CORRECTIONS

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

PREPARED BY:
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JANUARY 21, 2022

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DEPARTMENT OF CORRECTIONS

DEPARTMENT OVERVIEW

The Department of Corrections (DOC) is responsible for:

- Managing, supervising, and controlling the correctional facilities that are owned and operated by the State.
- Paying for privately operated prison facilities that house state prisoners and monitoring contract compliance.
- Operating programs for offenders that provide treatment and services that improve the likelihood of successfully reintegrating into society following release.
- Supervising and counseling inmates in community corrections programs and offenders who have been placed on parole.
- Operating correctional industries within the institutions that have a rehabilitative or therapeutic value for inmates and which also supply products for state institutions and the private sector.
- Operating the Youthful Offender System (YOS), which serves as a middle tier sentencing option (between the juvenile system and the adult system) for violent youthful offenders who would otherwise be sentenced to the adult prison system.

SUMMARY: FY 2021-22 APPROPRIATION AND RECOMMENDATION

Department Of Corrections: Recommended Changes for FY 2021-22	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FTE
FY 2021-22 Appropriation						
SB 21-205 (Long Bill)	$959,986,433	$866,975,862	$46,289,623	$43,788,523	$2,932,425	6,306.6
Other legislation	1,322,919	671,796	0	651,123	0	7.3
Current FY 2021-22 Appropriation:	**$961,309,352**	**$867,647,658**	**$46,289,623**	**$44,439,646**	**$2,932,425**	**6,313.9**
Recommended Changes						
Current FY 2021-22 Appropriation	$961,309,352	$867,647,658	$46,289,623	$44,439,646	$2,932,425	6,313.9
S1/BA1 Increase private prison per-diem	1,446,311	1,446,311	0	0	0	0.0
S2/BA2 Prison caseload	(1,051,459)	1,348,541	(2,400,000)	0	0	0.0
S3/BA3 Medical caseload	4,866,749	4,866,749	0	0	0	0.0
S4 Increase for food service	700,701	700,701	0	0	0	0.0
NPS1 Annual fleet true-up	0	0	0	0	0	0.0
Recommended FY 2021-22 Appropriation:	**$967,271,654**	**$876,009,960**	**$43,889,623**	**$44,439,646**	**$2,932,425**	**6,313.9**
Recommended Increase/(Decrease)	**$5,962,302**	**$8,362,302**	**($2,400,000)**	**$0**	**$0**	**0.0**
Percentage Change	0.6%	1.0%	(5.2%)	0.0%	0.0%	0.0%
FY 2021-22 Executive Request	**$966,727,120**	**$875,492,476**	**$43,862,573**	**$44,439,646**	**$2,932,425**	**6,313.9**
Request Above/(Below) Recommendation	($544,534)	($517,484)	($27,050)	$0	$0	0.0

Request/Recommendation Descriptions

S1/BA1 Increase private prison per-diem: The Department requests an increase of $1,085,532 General Fund in FY 2021-22 to pay for a $3.40 increase in the per-diem rate for private prisons housing state inmates. This would bring the per-diem rate from $58.79 to $62.19 (5.8 percent) effective March 1, 2021. Staff recommends an increase of $1,446,311 General Fund in FY 2021-22

S2/BA3 prison caseload: The Department requests a reduction of $1,051,459 total funds in FY 2021-22, including an increase of $1,348,541 General Fund and a decrease of $2,400,000 cash funds. Staff recommends approval of the request.

S3/BA3 medical caseload: The Department requests an increase of $4,866,749 General Fund in FY 2021-22 and a Long Bill footnote to provide 5.0 percent transfer authority between three medical line items. Staff recommends approval of the request.

S4 Increase for food service: The Department requests an increase of $700,701 General Fund in FY 2021-22 to pay for an increase in milk costs stemming from the closure of the Correctional Industries dairy operation. Staff recommends approval of the request.

PRIORITIZED SUPPLEMENTAL REQUESTS

S1/BA1 INCREASE PRIVATE PRISON PER-DIEM

	REQUEST	RECOMMENDATION
TOTAL	**$1,085,532**	**$1,446,311**
FTE	0.0	0.0
General Fund	1,085,532	1,446,311
Cash Funds	0	0
Reappropriated Funds	0	0
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? **YES**

[An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]

Explanation: JBC staff and the Department agree that this request is the result of data that was not available when the original appropriation was made.

DEPARTMENT REQUEST: The Department requests an increase of $1,085,532 General Fund in FY 2021-22 to pay for a $3.40 increase (5.8 percent) in the per-diem rate for private prisons starting March 1, 2021.

The Department also requests an additional rate increase of $1.13 in FY 2022-23, bringing the per-diem rate to $63.32 at a total cost of $4,322,118 General Fund. The incremental change between FY 2021-22 and FY 2022-23 would be $3,326,587 General Fund. If the Committee approves the Department's FY 2021-22 supplemental request, it will still have to make a decision on the FY 2022-23 request (BA1) during figure setting.

S1/BA1 REQUEST YEAR-OVER-YEAR CHANGE			
	FY 2021-22	FY 2022-23	CHANGE
Beds	2,617	2,614	(3)
Days	122	365	243
Per-diem (change from current rate)	$3.40	$4.53	1.13
Total	**$1,085,532**	**$4,322,118**	**3,236,587**

STAFF RECOMMENDATION: Staff recommends an increase of $1,446,311 General Fund in FY 2021-22 to increase the per-diem rate by $4.53, bringing the rate to $63.32. Rather than split the increase over two years, staff recommends doing it all in FY 2021-22. Staff further recommends that the private prison per-diem rate be exempt from any adjustments related to the FY 2022-23 provider rate common policy. If the Committee approves staff's recommendation, no action will be necessary for the FY 2022-23 decision item (BA1).

JBC STAFF CALCULATIONS			
	FY 2021-22	FY 2022-23	CHANGE
Beds	2,617	2,614	(3)
Days	122	365	243
Per-diem (change from current rate)	$4.53	$4.53	$0.00
Total	**$1,446,311**	**$4,322,118**	**$2,875,807**

Staff Analysis:

The request aims to reduce high staff turnover and vacancy rates at two private prisons operated by CoreCivic in Bent County and Crowley County. The larger objective is to ensure that the State has the capacity to house inmates classified as "medium custody" (MC). Staff focused on the answer to three questions to arrive at the recommendation:

1. Is an increase in the per-diem rate justified?
2. If it is justified, is the requested rate appropriate?
3. When should the increase happened?

Staff concludes that an increase in the per-diem rate is justified for two reasons: (1) the operational demand for MC beds, and (2) the fact that the per-diem rate has declined over time when accounting for inflation. The State currently needs the MC capacity offered by private prisons and an increase in the per-diem rate could help CoreCivic hire and retain enough employees to continue providing that capacity to the standards required in its contracts with the DOC. Each subsequent section discusses how staff arrived at these conclusions.

Medium custody capacity

The DOC classifies every inmate according to the level of security required to safely supervise that inmate.[1] Similarly, DOC prison facilities offer varying levels of security, which guides where the Department can place an inmate. For example, inmates needing high levels of security cannot be placed in low-security facilities. The following table demonstrates the relationship between inmate and facility security levels. A "Yes" means that an inmate with that classification can be placed in a facility with the corresponding security level.

<table>
<tr><th>Security/Custody Levels</th><th>(Most secure)
Level V</th><th>Level IV</th><th>Level III</th><th>Level II</th><th>Level I</th></tr>
<tr><td>Close (Most secure)</td><td colspan="3">Yes</td><td colspan="2">No</td></tr>
<tr><td>Medium</td><td colspan="3">Yes</td><td colspan="2">No</td></tr>
<tr><td>Minimum-restricted</td><td colspan="4">Yes</td><td>No</td></tr>
<tr><td>Minimum</td><td colspan="5">Yes</td></tr>
</table>

The most common inmate classification is "medium," making up 59.3 percent of the male inmate prison population in December 2021. Most prisons are Level III or higher facilities, making up 12 of the State's 18 prisons, including the two private facilities. However, some Level III or higher facilities also have units classified as minimum-restricted or lower. For example, the Sterling Correctional Facility (Level V) has a total operational capacity of 2,188, but 800 of those beds are for minimum-restricted or lower inmates.

As of December 31, 2021, the DOC prison system's medium custody operational capacity is 8,561 with an MC population of 8,208 (a vacancy rate of 4.1%). The capacity figure includes 2,617 funded beds in private facilities operated by CoreCivic in Bent County and Crowley County housing an MC population of 2,220.

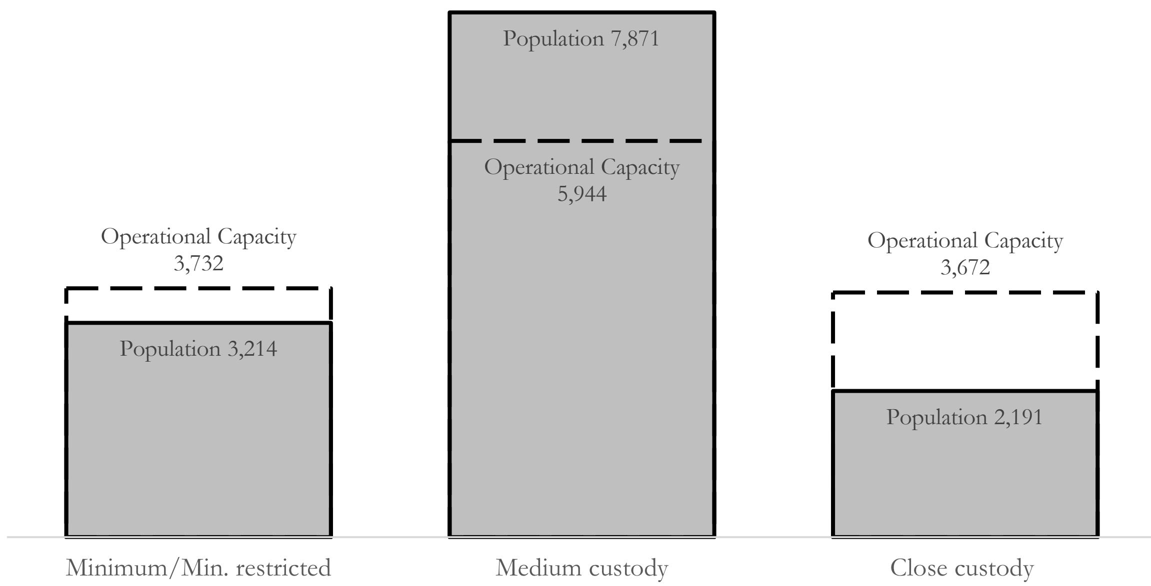
If the State lost the MC capacity offered by private prisons, the State would not have enough MC beds for MC inmates. This holds true even if the state reopened all of the minimum and minimum-restricted security beds that it closed last year (≈1,000), reopened 154 close custody beds at Limon, and opened

[1] Link to DOC policy regarding inmate classification.

300 close custody beds in the third tower at Centennial South II. Based on the DOC's December 2021 prison population report, the State would be short 1,927 MC beds. The graph below shows these figures in a visual format.

Without the medium custody capacity offered by the two private prisons, the State's medium custody population would exceed available medium custody beds.

- - - *Dashed lines represent capacity*
— *Solid lines show population as of December 31, 2021*



If confronted with a scenario where MC inmates outnumbered MC beds, the Department would have to place inmates in beds not aligned with their custody level. To allow for more inmates to be housed in available minimum/minimum-restricted beds, the Department would have to override placement criteria for inmates with sex offender/medical/psychological coding, as well as time to parole eligibility and mandatory release dates. The Department would also need to place medium custody inmates in more restrictive close custody cells.

Even if the Department took those steps and filled every available bed, the vacancy rate would be 0.5 percent, well below the 2.0 percent historical standard. If prison population forecasts are correct and the prison population continues to grow, the population would exceed the State's total capacity, not just MC beds.

Furthermore, there are not any previously-closed state facilities that the Department could furnish and staff for MC inmates without either: (1) Displacing an existing program, or (2) Retrofitting the facility to provide the needed level of security.

Closed Prisons in Colorado			
Fiscal Year	**Closure**	**Facility**	**# Beds**
2008-09	April 1, 2009	Huerfano County Correctional Facility (private)	774
2008-09	May 31, 2009	Colorado Women's Correctional Facility (state)	224
2009-10	July 1, 2010	High Plains Correctional Facility (private)	272

Closed Prisons in Colorado			
Fiscal Year	**Closure**	**Facility**	**# Beds**
2010-11	July 1, 2010	Boot Camp (state)	100
2011-12	November 1, 2011	Fort Lyon Correctional Facility (state)	500
2016-17	July 31, 2016	Kit Carson Correctional Center (private)*	1,562
2019-20	March 1, 2020	Cheyenne Mountain Re-entry Center (private)	710
2020-21	January 15, 2021	Skyline Correctional Center (State Level I)	252
		Total Bed Reductions	**4,394**

Does not include Hudson Correctional Facility 1,200 beds, which did not house Colorado offenders.

*Kit Carson beds reflect 720 funded/used by DOC and 842 unfunded beds on closure date.

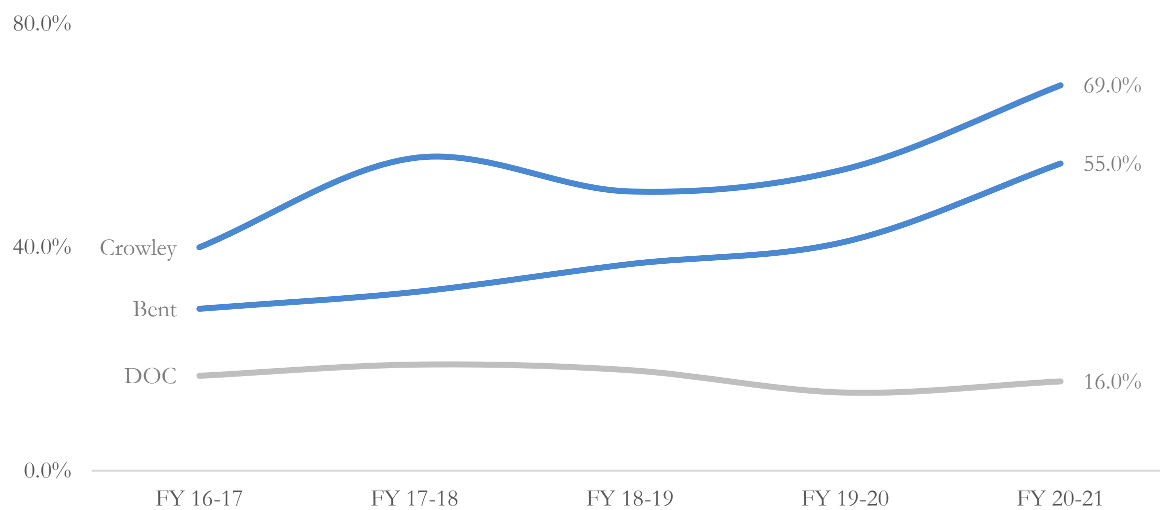
Notes on State Facilities:
1. The Colorado Women's Correctional Facility is the site for the International Corrections Management Training Center.
2. The Boot Camp facility at Buena Vista is currently being used for the Transitional Work Center (Take TWO program).
3. The Fort Lyon facility was transferred to DOLA in 2013 and is now used as a supportive residential community.
4. Two towers of the Centennial Correctional Facility-South were reopened in FY 2019-20; the unopened third tower has a total of 316 beds.

A few policy options exist outside of the Department's control. For example, the General Assembly could pursue reductions in the prison population through legislation aimed primarily at the medium custody population. Alternatively, the General Assembly could work with the Department to expand capacity by providing funding to purchase, lease, or build a new medium custody-capable facility.

STAFF TURNOVER AND VACANCIES

The following chart shows total staff turnover rates at the two private facilities as compared to the Department-wide turnover rate for the DOC over the last five years. Turnover rates are typically calculated as the number of separations divided by the average number of employees.

Turnover at private prisons typically exceeds turnover at the **DOC**, with the gap increasing in recent years



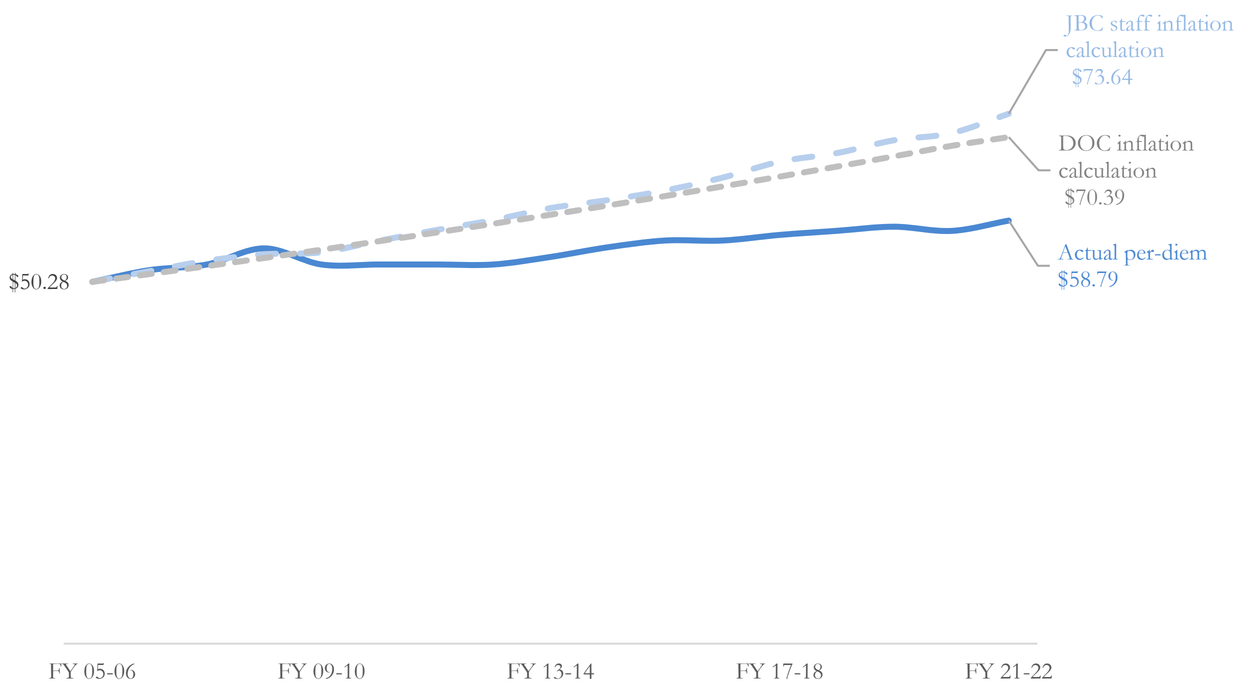
Data for DOC aligns with state fiscal year, data for private prisons aligns with calendar year. Per the Department's December 2021 hearing with the JBC, the Department saw an uptick in turnover at state facilities starting in August 2021.

Data provided by the Department and CoreCivic suggests the situation is worse for correctional officer positions, with Crowley County Correctional Facility showing a turnover rate of 126.0 percent in 2021 and Bent County Correctional Facility showing a rate of 107.0 percent. This means that the number of separated correctional officers exceeds the average number of officers at those facilities; more people are starting and quitting than are employed there.

The request attributes high turnover to low wages. An entry-level Correctional Officer at private facilities makes $18.00 per hour and the same position at DOC facilities makes $24.47 per hour.[2] The difference, at least in part, stems from an insufficient per-diem rate. Per the Department, CoreCivic "has made annual investments in correctional officer pay," but is constrained by "the per diem that the department is allowed to pay as legislated in the Long Bill."

As supporting evidence, the request shows that the per-diem rate has not kept pace with inflation. When comparing the FY 2005-06 per-diem rate of $50.28 to the Consumer Price Index (CPI) U.S. city average series for all items, the Department calculated that the private prison per-diem rate would be $70.39 if the rate had kept pace with inflation. JBC staff arrived at a similar but slightly higher number when using the Denver-Aurora-Lakewood CPI for all items. However, as shown in the graph below, the rate currently sits at $58.79.

Inflation has outpaced growth in the private prison per-diem rate since FY 2005-06



[2] A job announcement on the CoreCivic website shows $18.50 per hour, suggesting that CoreCivic increased the wage in the weeks following the writing and submittal of the Department's request (link to job announcement). This is $2.00 higher than reported in May 2021 (link to news report).

The current request would boost the per-diem rate to 90.0 percent of the $70.39 inflation-adjusted rate calculated by the Department. Staff asked why the Department chose 90.0 percent as the benchmark and the Department provided this response:

> "The department targeted a per diem increase that would allow CoreCivic correctional officers to start at $22.00 per hour, which is $2.00 per hour less than state employees. Although DOC is seeking a total $4.53 increase in the daily per diem rate, the increase is within reason given the history of private prison per diem increases over the years and the rate of inflation during the same period of time. The department believes the salary increases that will be enabled by the higher per diem rate will help CoreCivic's recruiting and retention efforts while also allowing state funds to be available for other budget priorities."

It is possible that the requested increase will improve recruitment and retention, but it is not guaranteed. Other factors might be influencing the turnover rate, such as working conditions or housing availability. To the latter point, the Department acknowledged that housing could be an issue for CoreCivic staff, but noted that "CoreCivic is actively engaging with local authorities to create more opportunities for affordable housing for the staff that work in the Bent and Crowley County facilities."[3] This includes the purchase of modular housing to temporarily lodge employees while they look for more permanent quarters.

OPTIONS FOR ACCOUNTABILITY

The Department says that funding for this request will be used solely to increase employee wages and salaries. In addition to raising entry-level pay, CoreCivic says it will also address pay compression issues among existing staff.

JBC staff asked the Department about technical or legal obstacles to collecting information from CoreCivic to verify the intended use of these funds. The Department provided this response:

> "There are no technical or legal reasons DOC cannot collect salary information from CoreCivic. CoreCivic is providing proof of payment information for the retention bonuses currently being paid from ARPA Public Health funds.[4] CoreCivic will be able to show that the per diem increase goes directly to security staff pay increases if this request is approved. DOC can also include language in the contract amendment that the per diem increase is intended to be used exclusively for security staff salary increases."

STAFF RECOMMENDATION

Staff concludes that an increase in the per-diem rate is justified for two reasons: (1) the operational demand for MC beds, and (2) the fact that the per-diem rate has declined over time when accounting for inflation. The State currently needs the MC capacity offered by private prisons and an increase in the per-diem rate could help CoreCivic hire and retain enough employees to continue providing that capacity to the standards required in its contracts with the DOC.

Although staff's calculations resulted in a slightly higher inflation-adjusted rate than the one calculated by the Department, staff does not have an objective reason to deviate from the rates identified in the

[3] DOC response to JBC staff question

[4] To date, the Department has spent $728,000 ARPA funds for this purpose.

request. The decision to increase the rate to 90.0 percent of the inflation-adjusted benchmark appears to be a policy judgement.

The Department's decision to split the rate increase across two fiscal years also has subjective components. When asked about that decision, the Department provided this response:

> "The two-step approach allows multiple budget priorities to be addressed in FY 2021-22. Private prison staff recruitment/retention is a key concern for DOC but the department also has funding needs for prison and medical caseload as well as in the food service program. In addition to the requested per diem increase, the department is also using ARPA Public Health funds to pay CoreCivic staff retention bonuses as a short-term measure to alleviate staff turnover until salary increases via the higher per diem rate are effective."

If it is true that increasing the per-diem rate will improve hiring and retention, staff sees no reason to split the rate increase over two years. The difference between the Department's request and staff's recommendation for FY 2021-22 is $360,779 for FY 2021-22. If the Committee approves staff's recommendation, it will not have to act on the budget amendment component of the request during the FY 2022-23 figure setting process.

S2/BA2 ADJUST PRISON CASELOAD

	REQUEST	RECOMMENDATION
TOTAL	**($1,051,459)**	**($1,051,459)**
FTE	0.0	0.0
General Fund	1,348,541	1,348,541
Cash Funds	(2,400,000)	(2,400,000)
Reappropriated Funds	0	0
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?	**YES**
[An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	

Explanation: JBC staff and the Department agree that this request is the result of data that was not available when the original appropriation was made.

DEPARTMENT REQUEST: The Department requests a reduction of $1,051,459 total funds in FY 2021-22, including an increase of $1,348,541 General Fund and a decrease of $2,400,000 cash funds. The request assumes a 10.0 percent vacancy rate for male beds and a 13.2 percent vacancy rate for female beds, leading to a decrease of 49 male private prison beds leading to a decrease of $1,051,459 General Fund and no change for the female population.

The request also includes an increase of $2,400,000 General Fund to offset non-receipt of federal funds through the Federal Bureau of Justice Assistance (BJA) for the State Criminal Alien Assistance Program (SCAAP). The decrease in beds and the increase to offset lost cash fund revenue produces a total requested General Fund increase of $1,348,541.

For FY 2022-23 the Department requests a total increase of $3,798,896 from current levels, including $3,791,986 General Fund and 6.4 FTE. This assumes a 2.5 percent vacancy rate for male beds and a 5.8 percent vacancy rate for female beds, leading to an increase of 146 private prison beds and no change in female bed capacity. Staff will address the FY 2022-23 portion of the request during figure setting.

STAFF RECOMMENDATION: Staff recommends approval of the request. Reductions in excess of the Department's request are possible if the Committee assumed a lower vacancy rate. However, these reductions would likely be temporary given forecasted growth in the prison population. Staff therefore concludes that a modest reduction of 49 male prison beds in FY 2021-22 is more practical, even though a larger reduction is possible. The table below shows the calculations used for the Department's request and staff's recommendation.

S2/BA2 PRISON CASELOAD CALCULATIONS		
	FY 21-22	FY 22-23
Current capacity	11,965	11,965
Vacancy rate	10.0%	2.5%
Vacant beds	1,197	299
State male bed capacity	10,768	11,666
DCJ November 2021 Forecast	13,336	14,395
Private bed need	2,569	2,729
Currently funded	2,617	2,617
Private bed change	(49)	112
Private per-diem rate	58.79	58.79
Days	365	365
General Fund impact bed changes	(1,051,459)	2,403,335
General Fund offset cash funds reduction	2,400,000	n/a
Cost for additional private beds to offset state beds taken offline for controlled maintenance projects	n/a	721,119
Total General Fund Impact	**$1,348,541**	**$3,124,454**

STAFF ANALYSIS:

The DOC arrives at its caseload adjustments as follows:

1. Select prison population forecast
2. Calculate percent of males and females in prison based on forecast
3. Identify current capacity
4. Choose desired vacancy rate
5. Calculate needed number of beds

MALE CASELOAD

For the **prison population forecast**, the Department selected the Division of Criminal Justice (DCJ) November 2021 forecast because it expects a larger caseload than the Legislative Council Staff (LCS) forecast. The Department typically selects, and JBC staff typically recommends, the forecast with larger caseload estimates to avoid the need for large supplemental increases in funding.

Forecasts estimate caseload for the total inmate population, which includes inmates in county jails, community corrections, or intensive supervision. To **calculate the prison population projection**, the Department identifies the percent of inmates actually residing in prisons in the three months prior to the writing of the request.

Next the Department identifies **capacity in state-operated facilities** and chooses a **desired vacancy percentage.** The Department then applies that percentage to *actual* state capacity to get an *adjusted* state capacity (words in italics are JBC staff's terms, not the Department's). Then they subtract the adjusted state capacity from the projected prison population to arrive at the number of needed beds in private facilities.

Caseload adjustments historically assume a vacancy rate of 2.0 percent, but during figure setting for FY 2021-22 the Department requested and the Committee approved a vacancy rate assumption of 10.0 percent. This higher vacancy rate had two purposes: (1) allow the Department to manage COVID-19 in the prison system, and (2) accommodate potential growth in the prison population amid large felony case backlogs in the judicial system.

The current request assumes a vacancy rate of 10.0 percent through the rest of FY 2021-22 before jumping down to 2.5 percent in FY 2022-23. Per the Department, the purpose of a higher vacancy rate for the next five months is to "have additional beds available for pandemic isolation." This comes amid other policies aimed at mitigating COVID-19 health risks in DOC prisons. All DOC facilities are currently in Phase II operations. This means reduced staffing patterns, 100.0 percent staff health screenings prior to entering any facility, and suspension of group programming for inmates.[5] The Department also suspended in-person visitation at all facilities from January 3 to February 1, 2022.[6]

Staff is neutral on the suitability of a 10.0 percent vacancy rate. It is largely a subjective policy decision where values and risks in one domain are weighed against values and risks in other domains. Day-to-day operational decisions are beyond the scope of this decision item, but there is an opportunity cost tied to the requested vacancy rate; a lower vacancy rate would allow the Committee and the General Assembly to put $1.0-3.0 million General Fund to other uses.

Risk levels are not the same as they were during February and March 2021 when the current appropriation was set with an assumed 10.0 percent vacancy rate. Statewide data show significantly reduced risk of hospitalization and death in vaccinated populations and 75.0 percent of the prison population is fully vaccinated, with 37.0 percent receiving a booster shot.[7] However, staff lacks the data necessary to compare health outcomes in DOC facilities with health outcomes among the general public. What staff does know is that the Department's medical caseload request (S3/BA3) says, "COVID-19 is having [a] minimal effect…" on a trend of increasing medical claims, which appears to suggest that risks are indeed lower. Whether they are low enough is a policy question.

The Committee could assume a lower vacancy rate if it wanted to make caseload-related reductions in funding. The following table shows what these reductions would look like at different vacancy rate assumptions. Each 1.0 percent reduction in the vacancy rate means about $850,000 in reduced appropriations, assuming a per-diem rate of $58.79 for 122 days (March 1-June 30).

[5] https://cdoc.colorado.gov/resources/covid-19-faq-and-updates
[6] https://cdoc.colorado.gov/news-article/all-in-person-visitation-cancelled-for-cdoc-facilities-until-2/1/2022
[7] https://covid19.colorado.gov/vaccine-breakthrough

FY 2021-22 Male Prison Bed Vacancy Rate Scenarios							
Vacancy Rate	Actual state capacity	State beds held vacant	Adjusted state capacity	Projected population	Private bed need	Currently funded	**Private bed change**
10.0%	11,965	(1,197)	10,769	13,336	2,568	2,617	**(50)**
9.0%	11,965	(1,077)	10,888	13,336	2,448	2,617	**(169)**
8.0%	11,965	(957)	11,008	13,336	2,328	2,617	**(289)**
7.0%	11,965	(838)	11,127	13,336	2,209	2,617	**(408)**
6.0%	11,965	(718)	11,247	13,336	2,089	2,617	**(528)**
5.0%	11,965	(598)	11,367	13,336	1,969	2,617	**(648)**
2.5%	11,965	(299)	11,666	13,336	1,670	2,617	**(947)**

However, custody classifications and current funding levels complicate matters. As shown in the following table, the vacancy rate for medium custody units is actually about 4.1 percent (4.9% in state facilities, 2.3% in private facilities).

Male Custody Capacity, Population, and Vacancy Rates on December 31, 2021				
Custody level	Population	Operational Capacity	Vacancies	Vacancy rate
State minimum/min. restricted	2,879	2,733	(146)	-5.3%
State medium custody	5,651	5,944	293	4.9%
Private medium custody*	2,557	2,617	60	2.3%
Close custody	2,189	3,218	1,029	32.0%
Total	**13,276**	**14,512**	**1,236**	**8.5%**

**2,220 of the population indicated are medium custody. Capacity indicates funded capacity, whereas total physical capacity is 3,188.*

Staff does not advise assuming a vacancy rate lower than 8.0 percent. Any large decreases in current year appropriations would likely be offset during figure setting for FY 2022-23 to account for projected population growth. It is also possible that reducing private prison beds by 600 or more from current funded levels of 2,617 will jeopardize the private prisons' ability to meet their contractual obligations.[8] Staff concludes that a modest reduction of 49 male private prison beds in FY 2021-22 is the most practical option even though it is possible to make larger reductions.

Female caseload

The request does not adjust appropriations for female caseload. The budget for the female prison population assumed a vacancy rate of 13.2 percent in FY 2021-22. Based on the DCJ November 2021 forecast, growth in the female prison population would bring the vacancy rate down to about 5.1 percent. The following table shows these calculations.

FY 2021-22 Female Caseload Calculations	
Capacity	1,168
Population as of Dec. 31, 2021	1,046
Vacant beds	122
Dec. 31 vacancy rate	10.4%
Projected caseload by June 30, 2022	1,108
End of fiscal year vacancies	60
End of fiscal year vacancy rate	5.1%

The DCJ forecast expects the average daily caseload to rise to 1,175 in FY 2022-23. This would exceed current capacity. Staff will address this issue during figure setting.

[8] Link R1 Align Prison Caseload FY 2021-22

STATE CRIMINAL ALIEN ASSISTANCE PROGRAM FUNDING

The federal State Criminal Alien Assistance Program (SCAAP) reimburses state and local governments for correctional officer salary costs related to "managing incarcerated undocumented criminal aliens."[9] The Bureau of Justice Assistance (BJA) manages the SCAAP in conjunction with the U.S. Department of Homeland Security.

The State Criminal Alien Assistance Program Cash Fund was established through in 2005 for the purpose of receiving federal funds provided via the federal Immigration and Nationality Act. Pursuant to statute, "the governor shall… submit to the United States attorney general the average per-inmate cost and the total cost of incarcerating such undocumented criminal aliens for the state fiscal year for which the request is made."[10]

In practice, the DOC submits an application for reimbursement to the BJA. Data available on the DOC website shows that the DOC typically receives between $2-2.4 million per year (see link in Footnote 9). The Long Bill provides the Department with authority to spend up to $2,400,000 annually from the SCAAP cash fund.

However, the Department received $4.8 million in FY 2019-20 and received nothing in FY 2020-21; funds remaining from FY 2019-20 were able to cover the FY 2020-21 appropriation. The Department applied for funding to be available in the current fiscal year, but has not received an award from BJA. Per the Department, "BJA has not offered any details on the lag in awarding SCAAP grants although this happened previously following a presidential administration change." The DOC has made similar requests in the past to cover non-receipt of federal funds, which last occurred in FY 2017-18.

Given the absence of federal revenue to support the SCAAP cash funds appropriation, staff recommends approval of the Department's request to refinance the current cash funds appropriation with a General Fund appropriation.

[9] State Criminal Alien Assistance Program (SCAAP), Federal Assistance for Incarcerated Aliens, CDOC, January 2020 (Link to document)

[10] Section 17-1-107.5 (2), C.R.S.

S3/BA3 ADJUST MEDICAL CASELOAD

	REQUEST	RECOMMENDATION
TOTAL	**$4,866,749**	**$4,866,749**
FTE	0.0	0.0
General Fund	4,866,749	4,866,749
Cash Funds	0	0
Reappropriated Funds	0	0
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? **YES**

[An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]

Explanation: JBC staff and the Department agree that this request is the result of data that was not available when the original appropriation was made.

DEPARTMENT REQUEST S3A: The Department requests an increase of $4,866,749 General Fund in FY 2021-22. There are three components to the request: (1) updated inmate population projections; (2) an $11.89 increase in the pharmaceutical per offender per month (POPM) rate and a $33.89 increase in the external medical services POPM rate; and (3) reduced need for Hepatitis C treatment.

For FY 2022-23, the Department requests an increase of $11,069,819 General Fund. If the Committee approves this supplemental request and the budget amendment, the year-over-year increase would be $6,203,070 General Fund. Staff will address the budget amendment during figure setting for FY 2022-23.

DEPARTMENT REQUEST S3B: The Department requests the addition of a Long Bill footnote to allow 5.0 percent transfer authority between three medical-related line items: (1) Purchase of Pharmaceuticals, (2) Hepatitis C Treatment, and (3) External Medical Services. Based on current appropriations, this would allow the Department to transfer about $3.0 million General Fund between these line items. The purpose of this request is to mitigate volatility in medical caseload expenses and avoid 1331 supplemental requests to address shortfalls in funding.

STAFF RECOMMENDATION: Staff recommends approval of both S3A and S3B. The requested medical caseload adjustment falls with normal historical ranges. As for the 5.0 percent transfer authority, staff believes this is a reasonable way to provide flexibility without reducing transparency. It keeps the line items separate to track appropriations for each purpose and any transfers between lines will be clearly reported.

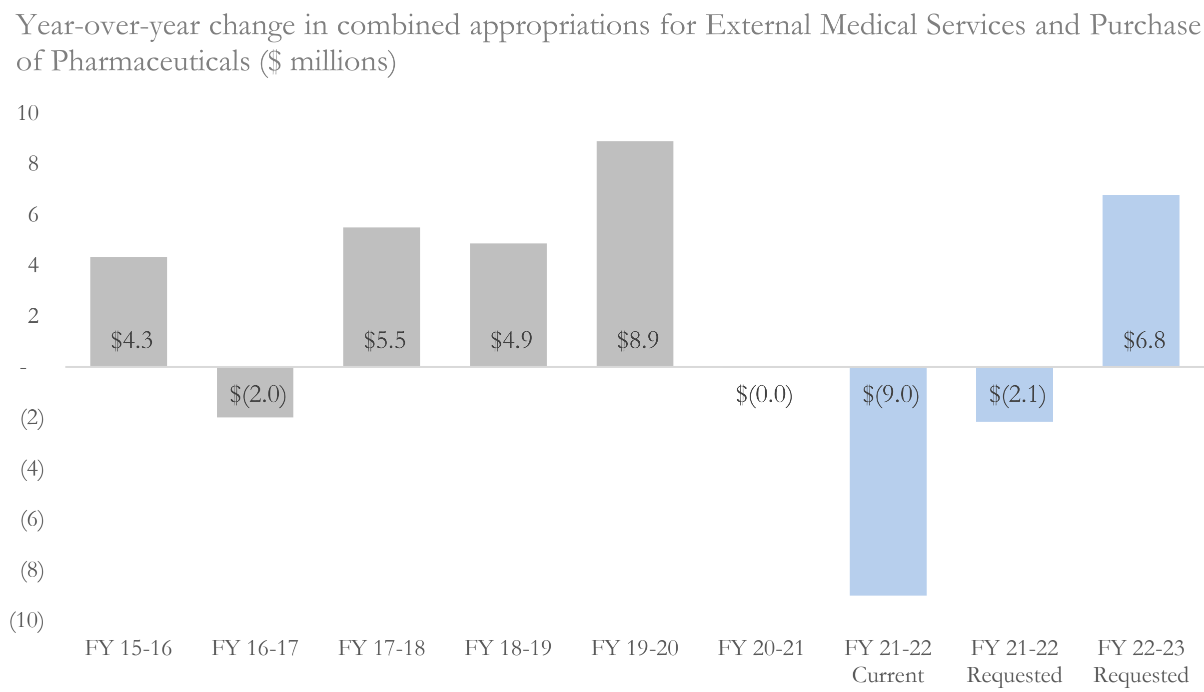
STAFF ANALYSIS:

This medical caseload adjustment affects three line items: (1) External medical services, (2) Purchase of pharmaceuticals, and (3) Hepatitis C treatments. The following table summarizes the populations that qualify for care under each appropriation. Staff will address Hepatitis C later on in this analysis.

Population	Used to compute appropriation for	Offenders in DOC facilities (including YOS*)	Offenders in private prisons	Offenders in community corrections, jails, on parole, ISP-I*
Pharmaceutical population	*Purchase of Pharmaceuticals*	Yes	No	No
External medical services population	*External medical services*	Yes	Yes	No

*YOS is the Youthful Offender System. ISP-I is Intensive Supervision-Inmate status under which inmates are placed in the community and intensively supervised.

These lines are adjusted annually to account for changes in the prison population and changes in the costs for medical drugs and services. If the Committee approves the FY 2021-22 request, combined appropriations for the pharmaceutical and external services lines will be $2.1 million General Fund less than the FY 2020-21 appropriation. The following table shows the net year-over-year change in these lines going back to FY 2015-16.



Line by Line Impact of Request and Cost Drivers

External Medical Services

Medical care to inmates can be divided into two categories: internal care provided within DOC facilities, and external care provided outside of DOC facilities by contracted health care providers that offer specialty services, outpatient tests and procedures, more extensive emergency services, and inpatient hospital care. Inmates who receive external services must be accompanied by corrections officers, or by contractors who provide security.

The Department contracts with Correctional Health Partners (CHP) to manage external health care services for inmates. CHP reviews requests for external services, making sure that all suitable internal care options have been utilized before an inmate is sent out for external care. CHP also establishes a network of external specialty and institutional providers who treat DOC inmates. CHP verifies the resulting bills but the DOC makes the payments.

To determine its caseload adjustments for external medical services, the DOC and CHP extrapolate trends in monthly per offender costs (POPM). The Department then multiplies projected per offender costs by the projected population.

Using the DCJ November 2021 forecast, the Department assumed a prison population of 14,523. This is 122 inmates *lower* than what is currently funded for FY 2021-22. However, the newly-projected POPM rate for external medical services increased to $217.63 from the $183.74 used to set appropriations for FY 2021-22, an increase of $33.89 (18.4 percent).[11]

CHP also charges an administrative POPM rate. This rate is $11.75 up to 14,000 inmates and falls to $6.50 for every inmate over 14,000. Assuming a population of 14,523 results in an administrative fee of $2,014,794.

Lastly, there is a flat $385,000 fee for contracted security services. The Department estimates this fee based on prior actual expenses. The table below summarizes these changes, which result in an increase of $5,151,345 from current levels.

Requested Changes to External Medical Services	
FY 21-22 External medical services appropriation	$35,176,135
Base services	
FY 21-22 Projected population	14,523
FY 21-22 Projected POPM	$217.63
Subtotal projected base funding	**$37,927,686**
Administrative charges	
$11.75 per inmate up to 14,000 inmates	$1,974,000
$6.50 per inmate above 14,000 (523)	$40,794
Subtotal administrative charges	**$2,014,794**
Contracted security services	$385,000
Total projected need	**$40,327,480**
Change from current levels	$5,151,345

Factors driving change in the External Medical Services POPM rate

Per the request, the number of appointments are back up to pre-pandemic levels despite a lower prison population. This is driving an increase in the number of medical claims. JBC staff asked what is driving the increased number of claims and the Department provided this response:

> "The biggest single factor for the increased number of claims is the high number of appointments now occurring to make up for the deferral of non-emergency appointments during the height of the pandemic. This is underscored by the fact that the number of appointments currently is on a par with the number of external appointments prior to March

[11] One-time costs related to COVID-19 were excluded from the $183.74 external care POPM used to set FY 2021-22 appropriations.

2020. For comparison, the end of December 2021 incarcerated population was 14,322; this population stood at 17,600 on February 29, 2020."

PURCHASE OF PHARMACEUTICALS

The Purchase of Pharmaceuticals line item includes all pharmaceutical expenses for inmates in DOC facilities, including the Youthful Offender System. Inmates that are housed in private prisons, jails, and other non-DOC facilities are not included in the pharmaceutical population. The POPM is derived from actual incurred expenses and projected expenses based on the cost of the Department's pharmaceutical formulary and pharmaceuticals prescribed by providers for inmates.

These pharmaceutical expenses have also increased. Using the DCJ November 2021 forecast, the Department assumed a pharmaceutical population of 11,955, eight inmates higher than the population currently assumed for FY 2021-22. This means that the requested increase in funding for pharmaceuticals stems from a higher POPM rate. The newly-projected POPM rate for pharmaceuticals increased to $112.57 from the $100.68 used to set appropriations for FY 2021-22, an increase of $11.89 (11.8 percent).[12] The table below shows the calculations for the requested increase.

REQUESTED CHANGES TO PURCHASE OF PHARMACEUTICALS	
FY 21-22 Purchase of Pharmaceuticals appropriation	$14,433,888
FY 21-22 Projected population	11,955
FY 21-22 Projected POPM	112.57
Total projected need	**16,149,292**
Change from current levels	1,715,404

FACTORS DRIVING CHANGE IN THE PHARMACEUTICAL POPM RATE

The Department says there are several factors driving increased use of pharmaceuticals. First, there has been an increase in diagnoses, including multiple diagnoses for individuals. This stems from the increase in outpatient appointments and "the discovery of previously unknown health conditions while undergoing treatment for COVID."

There has also been an increase in certain medications for a variety of medical conditions. For example, Humira treats Chron's disease and rheumatoid arthritis and Biktarvy treats Human Immunodeficiency Virus (HIV-1). These two drugs accounted for 31.8 percent of all drug spending in the first quarters of FY 2021-22, as compared to 25.7 percent in FY 2020-21. Other specialty medications can cost anywhere from thousands to tens of thousands of dollars per month. The Department noted Remicade (Chron's disease, ulcerative colitis), Revlimid (multiple myloma), and Axitnib (renal cell carcinoma).[13]

Lastly, the Department noted that some increased costs stem from S.B. 19-008 (Substance Use Disorder Treatment in the Criminal Justice System). The bill initially appropriated $492,750 General Fund to the DOC with $111,142 going to the Purchase of Pharmaceuticals line item. The Department's responses to JBC staff's questions suggests that this population is increasing along with costs for treatment drugs. Specifically, patients are typically offered Suboxone at a cost between $240 per month to "the more likely figure of $474-$948 per month."

[12] One-time costs related to COVID-19 were excluded from the $183.74 external care POPM used to set FY 2021-22 appropriations.

[13] Main uses indicated, but these medications may also be used for other ailments as well.

HEPATITIS C TREATMENT

This line item was added to the Long Bill in FY 2018-19 with an appropriation of $20.5 million General Fund. The current appropriation is $10,368,384 General Fund.

The Departments requests a decrease of $2,000,000 General Fund in FY 2021-22 to match appropriations with expected treatment needs. This stems from a primarily from a reduced prison population, which is influenced the number of admissions from other parts of the criminal justice system. These factors contributed to a reversion of $5,237,216 General Fund in FY 2020-21, slightly more than half of the total appropriation. To date, the Department has spent about $2.8 million of the $10.4 million FY 2021-22 appropriation. This suggests that there should be sufficient funds to cover modest growth in needed Hepatitis C treatments after a $2.0 million reduction.

LONG BILL FOOTNOTE FOR TRANSFER AUTHORITY

The Department requests 5.0 percent transfer authority between the three line items affected by this request. The purpose of this request is to mitigate volatility in medical caseload appropriations and avoid June 1331 supplemental requests to address shortfalls in funding. The last such example occurred in June 2018.[14]

Per the Department, there is a lag between the provision of external medical services and related billings. In May, the Department uses April data to determine whether it will have sufficient funding for the remainder of the fiscal year. At this point the Department has typically spent 70.0 percent of the appropriation and it is not unusual for the lag in billing to add another 10-15.0 percent before the end of the fiscal year. If there is an unusually high need for services in May and June, the Department could bump up against the limits of the appropriation. The pharmaceutical and Hepatitis C lines are affected by different dynamics related to accounting practices, but the end result is uncertainty at the end of the fiscal year that can—and has—prompted a June 1331 supplemental request.

Staff notes that the Department has 5.0 percent transfer authority in the External Capacity Subprogram for payments to jails and private prisons. This authority allowed the Department to transfer $3,848,888 General Fund from the private prisons line item to the jail line item to address unusually high jail caseload in FY 2020-2021, which avoided the need to submit a June 1331 supplemental request.

Staff concludes that this is a reasonable way to provide some budget flexibility among related line items while retaining the transparency that comes with keeping the lines separate. This arrangement makes actual expenditures much easier to track than roll-forward spending authority or combining the lines into a larger programmatic line item.

The footnote would read as follows. Staff requests permission to make technical language adjustments as needed.

> 3A Department of Corrections, Institutions, Medical Services Subprogram - - The Department of Corrections is authorized to transfer up to 5.0 percent of the total appropriation for external medical services, the purchase of pharmaceuticals, and Hepatitis C treatments between those lines for the purposes of providing medical services, pharmaceuticals, Hepatitis C treatments for inmates.

[14] https://leg.colorado.gov/sites/default/files/cor_1331-06-20-18.pdf

S4 INCREASE FOR FOOD SERVICES

	REQUEST	RECOMMENDATION
TOTAL	**$700,701**	**$700,701**
FTE	0.0	0.0
General Fund	700,701	700,701
Cash Funds	0	0
Reappropriated Funds	0	0
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? **YES**

[An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]

Explanation: JBC staff and the Department agree that this request is the result of information that was not available when the original appropriation was made. Specifically, the decision to close the Correctional Industries dairy operation occurred after FY 2021-22 appropriations were finalized.

DEPARTMENT REQUEST: The Department requests an increase of $700,701 General Fund in FY 2021-22 to pay for an increase in milk costs stemming from the closure of the Correctional Industries dairy operation.

STAFF RECOMMENDATION: Staff recommends approval of the request.

STAFF ANALYSIS:
In 1977, the General Assembly formally created the Division of Correctional Industries (CCI) to provide able-bodied offenders with full-time (40 hours/week) employment opportunities. In 1994 the General Assembly designated CCI as a state enterprise. The legislature intended for CCI to:

1. Be profited-oriented and closely resemble the operations of a private corporate entity;
2. Develop, to the extent possible, industries that provide full-time work opportunities; and
3. Train offenders in general work habits and skills to increase their employment prospects when released.[15]

For many years CCI operated a dairy farm that provided low cost milk to the DOC's prison facilities. That operation closed toward the end of FY 2020-21 because it was not profitable or sustainable in future years. This decision followed the denial of an FY 2020-21 supplemental request for $4.0 million General Fund to offset lost revenue.[16]

The Department provides milk to inmates 12 times per week in accordance with various national dietary guidelines. To continue providing milk after the closure of the CCI dairy operation, the Department had to contract with an outside vendor. Per the Department, this vendor charges about $1.07 more per gallon and $0.13 more per pint than CCI did. The following table shows how the

[15] Section 17-24-102, C.R.S.
[16] Link to JBC Staff FY 2020-21 Supplemental analysis

Department estimated the requested amount of funding. Multiplying the increase per unit by the number of units does **not** result in the $700,701 figure identified in the request, but it is close.

DOC Calculations Increased Milk Costs					
	CCI cost	Vendor cost	Increase per unit	# of units	Total cost increase
Gallons	$2.44	$3.51	$1.07	321,019	$343,490
Pints	$0.20	$0.33	$0.13	2,835,002	357,211
Total					**$700,701**

CONSEQUENCES IF NOT APPROVED

If the request is not approved the Department says it will have cut costs by purchasing less healthy protein sources like hot dogs and mechanically-separated meat. The Department also says that it may have to scale back its equipment replacement program in facility kitchens. Lastly, the Department suggests reducing the quality of meals provided to inmates could cause security issues because "food is very important to the inmate population."

STAFF RECOMMENDATION

The request is not on the evidence-based continuum, so it is difficult to prove that cutting back on milk availability will have the effects claimed by the Department. Milk appears to be a dietary staple in DOC facilities, so if one accepts the premise that it milk should keep being a staple, the DOC has to get milk from somewhere after the closure of CCI's dairy operation. The cost per gallon with the new vendor is not much different from what any Colorado resident would pay at a grocery store. With all of that considered, staff believes the request is reasonable and recommends its approval.

STATEWIDE COMMON POLICY SUPPLEMENTAL REQUESTS

These requests are not prioritized and are not analyzed in this packet. The JBC acted on these items on January 19th when it made decisions regarding common policies.

Department's Portion of Statewide Supplemental Request	Total	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	FTE
NPS01 Annual fleet supplemental	$0	$0	$0	$0	$0	0.0
DEPARTMENT'S TOTAL STATEWIDE SUPPLEMENTAL REQUESTS	**$0**	**$0**	**$0**	**$0**	**$0**	**0.0**

STAFF RECOMMENDATION: This request was addressed during the JBC staff supplemental presentation for the Department of Personnel on January 19, 2022. Staff requests permission to incorporate the Committee's action into the supplemental bill. The dollar amounts in the table above represent the recent Committee action.

Appendix A: Numbers Pages

DEPARTMENT OF CORRECTIONS
Dean Williams, Executive Director

S1/BA1 Increase private prison per-diem rate

(1) MANAGEMENT
(B) External Capacity Subprogram
(2) Payments to House State Prisoners

	FY 2020-21 Actual	FY 2021-22 Appropriation	FY 2021-22 Requested Change	FY 2021-22 Rec'd Change	FY 2021-22 Total w/Rec'd Change
Payments to in-state private prisons	57,077,081	56,152,550	1,446,311	57,598,861	
General Fund	54,677,081	53,752,550	1,446,311	55,198,861	
Cash Funds	2,400,000	2,400,000	0	2,400,000	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Total for S1/BA1 Increase private prison per-diem rate	57,077,081	56,152,550	1,446,311	57,598,861	
FTE	0 .0	0 .0	0 .0	0 .0	
General Fund	54,677,081	53,752,550	1,446,311	55,198,861	
Cash Funds	2,400,000	2,400,000	0	2,400,000	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	

	FY 2020-21 Actual	FY 2021-22 Appropriation	FY 2021-22 Requested Change	FY 2021-22 Rec'd Change	FY 2021-22 Total w/Rec'd Change
S2/BA2 Prison caseload					
(1) MANAGEMENT					
(B) External Capacity Subprogram					
(2) Payments to House State Prisoners					
Payments to in-state private prisons	57,077,081	56,152,550	(1,051,459)	55,101,091	
General Fund	54,677,081	53,752,550	1,348,541	55,101,091	
Cash Funds	2,400,000	2,400,000	(2,400,000)	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Total for S2/BA2 Prison caseload	57,077,081	56,152,550	(1,051,459)	55,101,091	
FTE	0 .0	0 .0	0 .0	0 .0	
General Fund	54,677,081	53,752,550	1,348,541	55,101,091	
Cash Funds	2,400,000	2,400,000	(2,400,000)	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	

	FY 2020-21 Actual	FY 2021-22 Appropriation	FY 2021-22 Requested Change	FY 2021-22 Rec'd Change	FY 2021-22 Total w/Rec'd Change
S3/BA3 Medical caseload					
(2) INSTITUTIONS					
(E) Medical Services Subprogram					
Purchase of Pharmaceuticals	14,039,609	14,433,888	1,715,404	16,149,292	
General Fund	14,039,609	14,433,888	1,715,404	16,149,292	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Hepatitis C Treatment Costs	5,237,216	10,368,384	(2,000,000)	8,368,384	
General Fund	5,237,216	10,368,384	(2,000,000)	8,368,384	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Purchase of Medical Services from Other Medical Facilities	41,711,091	35,176,135	5,151,345	40,327,480	
General Fund	41,711,091	35,176,135	5,151,345	40,327,480	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Total for S3/BA3 Medical caseload	60,987,916	59,978,407	4,866,749	64,845,156	
FTE	0 .0	0 .0	0 .0	0 .0	
General Fund	60,987,916	59,978,407	4,866,749	64,845,156	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	

	FY 2020-21 Actual	FY 2021-22 Appropriation	FY 2021-22 Requested Change	FY 2021-22 Rec'd Change	FY 2021-22 Total w/Rec'd Change
S4 Increase for food service					
(2) INSTITUTIONS					
(D) Food Service Subprogram					
Operating Expenses	18,862,949	17,271,775	700,701	17,972,476	
General Fund	18,862,949	17,271,775	700,701	17,972,476	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Total for S4 Increase for food service	18,862,949	17,271,775	700,701	17,972,476	
FTE	0 .0	0 .0	0 .0	0 .0	
General Fund	18,862,949	17,271,775	700,701	17,972,476	
Cash Funds	0	0	0	0	
Reappropriated Funds	0	0	0	0	
Federal Funds	0	0	0	0	
Totals Excluding Pending Items					
CORRECTIONS					
TOTALS for ALL Departmental line items	960,525,566	961,309,352	4,866,749	5,962,302	967,271,654
FTE	6,103.6	6,313.9	0 .0	0 .0	6,313.9
General Fund	827,806,268	867,647,658	4,866,749	8,362,302	876,009,960
Cash Funds	37,833,350	46,289,623	0	(2,400,000)	43,889,623
Reappropriated Funds	27,857,916	44,439,646	0	0	44,439,646
Federal Funds	67,028,032	2,932,425	0	0	2,932,425