REPORT OF

THE

STATE AUDITOR

Inmate Restitution and Child Support

PERFORMANCE AUDIT
March 2003

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March 7, 2003

Members of the Legislative Audit Committee:

This report contains the results of the performance audit of Inmate Restitution and Child Support. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Department of Corrections, the Department of Human Services, and the Division of Child Support Enforcement.

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JOANNE HILL, CPA
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Authority, Purpose, and Scope

This performance audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the Office of the State Auditor to conduct performance audits of all departments, institutions, and agencies of state government. The audit focused on the methods used by the Department of Corrections and the Department of Human Services to ensure that inmates pay their court-ordered restitution and child support. As part of our audit work, we interviewed representatives from the Department of Corrections, the Division of Child Support Enforcement, the State's four privately operated prisons, counties, judicial districts, and selected other states. We also compared restitution balances maintained in the Department of Corrections database system with the information in the Judicial Department database to check for accuracy. In addition, we visited a sample of counties to determine their procedures for implementing administrative liens to collect court-ordered child support. We also contacted several other states to determine their policies regarding mandatory deductions from inmate accounts for the payment of restitution and child support as well as policies regarding mandatory savings accounts for inmates. The audit work, performed from June 2002 through December 2002, was conducted in accordance with generally accepted governmental auditing standards.

We gratefully acknowledge the assistance and cooperation extended by management and staff at the Department of Corrections and the Department of Human Services as well as representatives from county social service departments.

Overview

According to the Department of Corrections (Corrections) staff, approximately 90 percent of all inmates owe court-ordered restitution and about 15 percent owe child support. Colorado law provides Corrections with the authority to use no less than 20 percent of all deposits into an inmate's bank account to pay outstanding orders from a criminal case or for child support. If an inmate owes both restitution and child support, Corrections splits the amount deducted and applies 10 percent to restitution and 10 percent to child support. Corrections' Administrative Regulations exempt indigent inmates from the mandatory 20 percent deduction.

Findings and Recommendations

Our audit identified the following areas for improvement:

- **Accuracy of Restitution Information.** Corrections maintains an internal computer system known as DCIS to track inmate restitution debt and balances. Corrections can also access restitution debts and balances in the Judicial Department's Integrated Colorado On-Line Network (ICON) through the Colorado Integrated Criminal Justice Information System (CICJIS). We reviewed a sample of 239 restitution cases involving 120 inmates and found that the restitution ordered in DCIS did not match that ordered in ICON in 80 (33 percent) of the cases. This resulted in a potential net undercollection of $128,000 for the sample alone, which is more than 5 percent of Corrections' total average annual restitution collection of $2 million. We found similar issues regarding the amount of restitution owed by parolees.

- **Issuance of Administrative Liens.** State law requires that Corrections receive an administrative lien prior to deducting child support payments from deposits to an inmate's bank account. The Division of Child Support Enforcement in the Department of Human Services has delegated the actual issuance of the liens to the individual counties. The counties determine whether or not to issue liens on a case-by-case basis. In our sample of 10 counties, we found that some counties were inconsistently issuing liens, while others were taking several months to issue the liens. In July 2002, there were 1,500 inmates who had failed to pay child support for more than 45 days. Assuming an average period of incarceration of 24 months, we estimate that between $302,000 and $605,000 could have been collected for child support. Counties and the Division expressed legitimate concerns about the cost of administering collections for small dollar amounts on many inmate child support payments. However, automatic issuance of administrative liens at the state level could be a cost-effective solution for increasing the timely collection of child support from inmates.

- **Effective Implementation of Administrative Liens.** We found that Corrections does not consistently implement administrative liens for those inmates who participate in the Prison Industry Enhancement (PIE) Certification Program. Inmates in this program are paid the local prevailing wage and therefore have the ability to pay significantly more child support than other inmates. Similar concerns were raised about the timely transfer of liens when an inmate moves to a privately operated facility. Failure to properly implement the liens for inmates in the PIE program or those transferred to a private prison means that consistent child support payments are not being made. Central processing of all liens or improved controls over the transfer of liens should ensure the consistent payment of child support.

- **Mandatory Deductions.** Currently, Corrections only deducts the minimum required by statute from inmate accounts, even though the statute allows Corrections to deduct more than 20 percent. We found that inmates are often spending three times more on personal items from the prison

Canteen each month than they pay toward their court-ordered restitution or child support. For example, we examined the expenditures of a sample of 43 inmates who owed restitution or child support. For a four-month period, we found these inmates paid a total of $1,000 for child support and $900 for restitution while spending $6,400 on items from the Canteen. We spoke with representatives from 12 other states that have mandatory deductions for restitution and child support. None expressed concerns with maintaining a mandatory deduction amount that exceeded Colorado's 20 percent requirement. Raising the mandatory deduction could increase restitution and child support payments while also leaving inmates with a reasonable amount for personal expenditures.

- **Inactive Accounts.** Corrections annually consolidates the money in inactive accounts and transfers these funds to its Canteen and Library Fund. In Fiscal Year 2002, Corrections transferred $23,000 from inactive accounts to the Canteen and Library Fund. Inactive accounts can result from the death of an inmate with no known heir or when a former inmate fails to claim funds deposited after his or her release from custody. Transferring the money in inactive accounts to the Canteen and Library Fund results from a March 1982 Federal Court Agreement related to a class action lawsuit filed by inmates that required Corrections to transfer the money in an inmate's account to the Canteen and Library Fund if unable to locate a former inmate or his estate within one year. This Court Agreement may conflict with Colorado's unclaimed property and probate statutes. Corrections should seek an Attorney General's opinion to determine which takes precedence. Once this determination has been made, we believe that Corrections should seek judicial or statutory authority to use the money in inactive accounts to pay court-ordered restitution or child support, or to otherwise benefit victims of crime, rather than placing the funds in the Canteen and Library Fund, for the benefit of inmates.

- **Mandatory Savings Accounts.** Corrections believes that inmates should have about $1,500 upon release from prison. In June 2002, the 368 inmates released from Colorado prisons left with approximately $145 each including $100 given to all inmates upon their release by Corrections. Creation of mandatory savings accounts for inmates could result in inmates' having the money needed for a successful reentry into their community. Also it could reduce the need to use general funds to pay the $100 given to all inmates upon their release. Based on the average monthly deposit of $84 into an inmate's account and the average length of stay of 24 months, a 10 percent deduction of all deposits would result in a balance of $200 in an inmate's mandatory savings account while reducing general fund expenditures. We spoke with representatives from six other states that have implemented mandatory savings accounts. None of these states reported problems related to the implementation of mandatory savings accounts.

Our recommendations and the responses from the Department of Corrections, the Department of Human Services, and the Division of Child Support Enforcement can be found in the Recommendation Locator on pages 5 and 6 of this report.

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	15	Ensure the accuracy of restitution information by accessing more detailed financial information from the Judicial Department's database.	Department of Corrections	Agree	08/31/03
2	17	Develop a process to create a quarterly datamatch of inmates who owe child support and distribute it to the counties.	Division of Child Support Enforcement	Agree	Implemented
			Department of Corrections	Agree	5/01/03
3	17	Work with counties to consistently use the datamatch to maximize child support collections and to achieve all performance goals.	Division of Child Support Enforcement	Agree	Ongoing
4	20	Automatically issue administrative liens for all incarcerated noncustodial parents with a valid child support order.	Division of Child Support Enforcement	Agree	12/31/03
5	21	Establish effective controls for the timely transfer and/or implementation of administrative liens for inmates in private facilities and the Prison Industry Enhancement (PIE) Certification Program.	Department of Corrections	Agree	11/30/02
6	22	Develop procedures to prevent premature closure of child support cases involving inmates, reopen any improperly closed cases, and provide training to all county personnel regarding case closure requirements.	Division of Child Support Enforcement	Agree	12/31/03

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
7	25	Require the Private Prison Monitoring Unit to verify the accuracy of deductions for restitution and child support and ensure that such payments are submitted properly.	Department of Corrections	Agree	09/23/02
8	27	Ensure that all deposits for inmates participating in the Prison Industry Enhancement (PIE) Certification Program are subject to the statutory 20 percent deduction.	Department of Corrections	Agree	04/01/03
9	30	Consider increasing the 20 percent mandatory deduction for restitution and child support.	Department of Corrections	Partially Agree	Fiscal Year 2004
10	31	Seek statutory changes to allow Corrections to send a portion of any inmate's TABOR refund to the Family Support Registry to pay child support obligations.	Department of Human Services	Agree	10/01/03
			Department of Corrections	Agree	10/01/03
11	35	Seek clarification regarding, a) the law governing monies in inactive accounts and, as appropriate, b) seek court or legislative approval to use the money in inactive accounts to pay restitution or child support or for other programs benefitting victims of crime.	Department of Corrections	a. Agree b. Partially Agree	a. 06/30/03 b. 06/30/03
12	37	Implement a mandatory savings account for all inmates.	Department of Corrections	Partially Agree	Fiscal Year 2004

Inmate Restitution and Child Support

Background

The Colorado Department of Corrections (Corrections) currently has legal custody of more than 18,400 inmates, approximately 16,400 of whom are incarcerated in prison facilities. Approximately 2,000 inmates are in local community corrections programs or county jails. Corrections houses approximately 14,000 inmates in State-owned facilities and uses contracts to place about 2,400 in county prisons operated by private vendors.

Corrections establishes and maintains an account for all funds belonging to each inmate in a prison facility. Deposits into inmate accounts come from a variety of sources, including pay earned for attending educational classes or working for either the correctional facility or Correctional Industries, proceeds from the sale of hobby items, receipt of tax refunds, and money sent from family and friends. The Executive Director of the Department of Corrections has the statutory authority to assess an inmate's ability to pay court-ordered restitution or child support. Corrections may deduct a portion of deposits into an inmate's account for purposes of paying such obligations. According to Section 16-18.5-106(2), C.R.S., no less than "twenty percent of all deposits into an inmate's bank account, including deposits for inmate pay, shall be deducted and paid toward any outstanding order from a criminal case or for child support." Corrections' Administrative Regulations exempt indigent inmates from the mandatory 20 percent deduction. Indigent inmates are those who are medically incapable of working or those who have insufficient funds (e.g., deposits of less than $7.60 per month and account balances of less than $10 for the previous 30 days).

According to Corrections staff, approximately 90 percent of all incarcerated inmates currently owe court-ordered restitution, and approximately 15 percent owe child support. As described below in greater detail, enforcement of restitution and child support orders is an important public policy of the State as expressed in statutes.

Restitution Orders

By statute, every order of conviction shall include consideration of restitution. Restitution is defined as losses suffered by a victim because of an offender's conduct, the amount of

which can be reasonably calculated and repaid in money. Losses qualifying for restitution may include out-of-pocket expenses, interest, loss of use of money, and anticipated future expenses. Restitution is assessed by the judge in criminal cases and is considered part of an inmate's sentence. In addition to restitution, the judge typically orders the defendant to pay standard costs including court-ordered fines, fees, late payments, and penalties and assessments, such as the drug offender surcharge. After sentencing, district court personnel enter restitution and other information into the Judicial Department's Integrated Colorado On-Line Network (ICON). Corrections can access some of the restitution information in ICON through the Colorado Integrated Criminal Justice Information System (CICJIS).

The General Assembly has declared in Section 18-1.3-601, C.R.S., of the Colorado Criminal Code that payment of restitution, in addition to compensating victims of crime, serves the following public policies:

- Is a "mechanism for the rehabilitation of offenders."
- Is "recognized as a deterrent to future criminality."
- "Will aid the offender in reintegration as a productive member of society."

Corrections statutes declare a similar legislative intent with respect to restitution owed by current inmates and parolees. In addition, Section 17-28-102, C.R.S., states that:

> The department shall, as a means of assisting in the rehabilitation of persons committed to its care, including persons placed in community correctional facilities or programs, establish programs and procedures whereby such persons may contribute toward restitution of those persons injured as a consequence of their criminal acts.

Together, these statutes establish a strong public policy in favor of restitution payments by inmates and parolees.

When an inmate is sentenced to prison, Corrections receives a mittimus, which is the court document that allows Corrections to hold the inmate. The mittimus contains both sentencing and restitution information. After the restitution order amounts are entered into Corrections' inmate accounts system, Corrections can begin deducting the mandatory amount from each deposit made into an inmate's account. According to Corrections' records, since inception of this requirement in Fiscal Year 2001, mandatory deductions have generated an annual average of about $2 million toward restitution payments. At the

end of each month, Corrections sends a check to each of the 22 judicial districts accompanied by a list of each inmate's payment amount. The judicial districts then distribute the money to the proper recipient based on the restitution order for each inmate. When inmates have multiple restitution orders, Section 16-18.5-106, C.R.S., provides that Corrections "may equitably apportion payments among outstanding obligations." Pursuant to this authority, Corrections has a policy of crediting payments to the oldest restitution order first.

Child Support Orders

According to July 2002 figures from the Division of Child Support Enforcement within the Department of Human Services, there are approximately 2,400 inmates who are required to pay child support. Of this number, approximately 1,500 were more than 45 days delinquent at that time. Their cases required enforcement action by the State. The Division is responsible for ensuring that all noncustodial parents meet their child support obligations, including inmates. The Division has authorized the individual counties to administer the child support enforcement program.

It is the State's policy to instill personal responsibility in parents owing child support. The legislative declaration in the Colorado Child Support Enforcement Act, at Section 26-13-102, C.R.S., provides as follows:

> The purposes of this article are to provide for enforcing the support obligations owed by absent parents, to locate absent parents, to establish parentage, to establish and modify child support obligations, and to obtain support in cooperation with the federal government pursuant to Title IV-D of the federal "Social Security Act," as amended, and other applicable federal regulations.

Pursuant to this legislative declaration, Child Support Enforcement has a policy of enforcing regular child support payments even at very low dollar levels in order to promote personal responsibility among noncustodial parents.

In order for counties to collect child support from an inmate incarcerated in a correctional facility, the county must send an Administrative Lien and Attachment (lien) to the Department of Corrections. The lien authorizes Corrections to subtract the mandatory deduction from every deposit into an inmate's account to pay child support obligations. Once a month, Corrections sends the child support payments directly to the Family Support Registry. The Family Support Registry processes the payments, which are then sent either to the individual counties to cover previous public assistance payments or

directly to the custodial parent or legal guardian. If an inmate owes money on more than one child support order, the money withheld by Corrections for child support is split between the different orders. Therefore, if an inmate owes both restitution and child support, only 10 percent of the mandatory 20 percent deduction will be split between the multiple child support orders.

Audit Scope

Our audit work focused on mandatory deductions from inmate accounts for the payment of restitution and child support. We examined the methods used by Corrections to deduct and submit court-ordered restitution and child support payments. We also reviewed Corrections' procedures for ensuring private facilities and the Prison Industry Enhancement (PIE) Certification Program comply with the mandatory deduction requirements. Our review included an analysis of the computer systems used by Corrections and judicial districts to maintain restitution information. In addition, we examined the Division of Child Support Enforcement's and the individual counties' policies and practices for collecting child support from incarcerated noncustodial parents. Finally, we evaluated Corrections' policy of deducting only the minimum amount allowed by statute, and examined whether an increase in deductions is reasonable.

Administration of Inmate Restitution and Child Support Deductions

Chapter 1

Introduction

We examined how state programs ensure that inmates pay their required restitution and child support obligations. We found that the Department of Corrections (Corrections) is relying on its own records for restitution balances and that these records do not always agree with information available from Judicial Department records. The analysis also revealed weaknesses in the policies and procedures for collection of child support at Corrections, the Division of Child Support Enforcement and the individual counties that administer the child support enforcement program. As described in greater detail in the following pages, we found that the State and the counties are falling short of potential collections for child support for a variety of reasons. These reasons include problems with:

- Underutilization of data matching capabilities.
- Untimely issuance of administrative liens.
- Inadequate implementation and monitoring of liens and inmate obligations at the PIE program and private prisons.
- Premature case closure.

Accuracy of Restitution Information

Criminal justice records concerning inmates are found in at least three state databases. The Colorado Integrated Criminal Justice Information System (CICJIS) is an integrated computer information system that links information from five state-level criminal justice agencies including the Department of Corrections, the Colorado Bureau of Investigations, the Division of Youth Corrections, the District Attorneys Council, and the Judicial

Department. This system is intended to allow all criminal justice agencies to track offenders through the criminal justice system from arrest and prosecution to adjudication and incarceration. Depending on their security clearance, agencies can access various information regarding inmates by requesting information from, or querying, the CICJIS system. CICJIS then pulls the requested information from the various agencies' databases. The database used most often by Corrections through CICJIS is the Integrated Colorado On-Line Network (ICON), which is the Colorado Judicial Department's case management information system. ICON contains information on restitution debts and balances. Corrections, however, also maintains its own internal computer system to track restitution debt and balances called the Department of Corrections Information System (DCIS). DCIS is used by Corrections to track inmate activity, sentencing, financial obligations, and details related to incarceration.

We found that restitution orders and balances in DCIS and ICON often do not match and that the Judicial Department's electronic database, ICON, contains more up-to-date information. To test the accuracy of the information in both DCIS and ICON, we first sampled 30 inmates with restitution cases from various counties and compared the information in ICON, with the hard copy file kept at the judicial district. We found that the information in ICON did, for the most part, agree with what was in the district court file. Our audit work showed that Corrections does not always cross-check DCIS restitution information against the information maintained in ICON. We calculated the difference between the restitution amounts listed in ICON and DCIS for a second sample of cases. We reviewed a sample of 239 restitution cases covering 120 inmates and found that the amount of the restitution ordered as detailed by DCIS and ICON did not match in 80 (33 percent) of the cases. For the cases in our sample where ICON listed a higher restitution amount than DCIS, Corrections could be undercollecting restitution by almost $160,000. For those cases where DCIS listed a higher restitution amount, if Corrections had collected the entire amount it would have overcollected by approximately $32,000.

This comparison of records at a single point in time reveals that Corrections may be undercollecting significant amounts of restitution over time. First, an error rate of 33 percent in a small sample of 239 cases affecting only 120 inmates suggests that the discrepancy could be much larger across the entire inmate population owing restitution. Corrections staff estimate that about 14,800 of the State's 16,400 incarcerated inmates (90 percent) owe restitution. Second, the one-time net discrepancy of $128,000 in potential undercollection is more than 5 percent of Corrections' total average annual restitution collection of $2 million. While we cannot quantify the restitution dollars actually lost over a given period of time, it could be significant based on the error rate that we found.

Similar problems exist in the parole area. In our 1998 *Division of Adult Parole Supervision Performance Audit*, we found that the parole orders which detail the amount of restitution owed by the parolee often listed an incorrect amount of restitution. For the vast majority of parolees, paying off any court-ordered restitution is a condition of parole. Therefore, the parole order should accurately reflect the amount of restitution owed. The incorrect amounts occurred because Corrections provided the Parole Board with restitution information from DCIS based on the original court documents (mittimus). This information did not reflect any payments made while the individual was incarcerated.

To obtain updated information, we reviewed a sample of 52 parole orders for 49 individuals currently on parole in the Denver area to determine if Corrections had made changes to ensure that parole orders correctly reflect the amount of restitution owed at the time of parole. We found that Corrections continues to provide the Parole Board with restitution information from DCIS based on the original court documents (mittimus).

This sample of 52 parole orders also showed the same inconsistency between Corrections' records and court records noted earlier in this chapter with respect to deductions from inmate accounts. We found that the restitution amounts on 44 (85 percent) of these 52 parole orders listed a higher amount of restitution than ICON showed the parolee owing at the time he or she began parole. These parole orders required $20,000 in restitution above the amount actually owed according to court records.

In addition, for these same 49 parolees, Corrections' database showed original restitution amounts and current amounts above or below the amounts shown in the Judicial Department's database. For 16 cases (31 percent) from our sample, the amount of the original restitution owed differed between DCIS and ICON. In 27 cases (52 percent), the current amount owed by the parolee differed between the two systems.

Corrections could eliminate the risk of undercollection and the need to further audit the potential dollars lost by updating its computer query to capture more specific data from the Judicial Department's database. Corrections staff need to have access to more detailed information such as the Financial Summary and the Register of Action screens in ICON. These screens provide specific financial information regarding the amount of restitution owed and all payments received from any source to pay off the restitution orders. Updating Corrections' current query to capture these screens would make reconciling information discrepancies less labor-intensive. Currently when discrepancies are identified, Corrections staff have to contact individual judicial districts directly to request paper restitution documentation to verify both debt and balance information.

By modifying its CICJIS query to access more detailed information from ICON, Corrections could accomplish the following improvements related to potential errors in restitution collections:

- **Monitor outside restitution payments**. Active restitution cases are maintained by the judicial districts. Often judicial districts receive payments on restitution orders from outside sources, such as the inmate's family or friends. When these payments are posted to the ICON system at the judicial district, the restitution balance is updated. However, judicial districts do not notify Corrections regarding any restitution payments received from outside sources. In addition, Corrections' current CICJIS query is unable to access any details about outside payments. In such cases, Corrections staff see a difference between the DCIS balance and the balance in ICON, but cannot always identify the reason for the discrepancy. A more detailed query of ICON data would quickly resolve any discrepancies.

- **Identify restitution cases with multiple defendants**. Some restitution cases have multiple defendants who are assessed a lump sum restitution order. In such cases, the payment of restitution is a joint and several responsibility, pursuant to which each inmate is obligated to pay the entire amount if the others do not pay. According to Corrections staff, each inmate's mittimus would indicate that he or she owes the entire restitution amount. Payments made by one inmate on behalf of the restitution order should be credited to all of the inmates' accounts. However, Corrections staff indicated that when joint and several restitution payments are made the judicial districts do not always properly credit the payment to all of the inmates. This results in discrepancies between the financial information in ICON and DCIS. Access to the financial information in ICON would eliminate the need for Corrections staff to obtain documentation from the judicial districts.

- **Prevent termination of deductions before restitution orders are paid in full**. If DCIS shows a lower restitution balance than ICON, Corrections could prematurely end automatic deductions for an inmate before a restitution order is paid in full. An improved query allowing greater access to ICON information would minimize such occurrences.

- **Provide documentation for inmate inquiries/grievances.** Corrections is required to answer all inmate inquiries and grievances concerning their accounts and to provide account documentation when necessary. Having access to detailed ICON information would allow Corrections staff to print documentation immediately, without relying on judicial districts to provide the documentation each time there is an inquiry.

Using an updated CICJIS query to reconcile the restitution information in the Corrections database with the information in the Judicial Department's ICON database would ensure that Corrections deducts the proper amount of restitution from inmate funds. It would also ensure that Corrections knows the true amount of restitution owed by a parolee at the time he or she begins parole. Accurate restitution information on the parole order would give both the Parole Board and the parole officer a clear picture of how much the parolee needs to pay during the parole period. Corrections concurs that the DCIS system can be programmed at minimal expense to flag an inmate's record when the system indicates that a restitution order is paid in full. Once an inmate's record is flagged, Corrections can verify restitution orders and balances through Judicial's ICON system. Corrections should also be able to flag those inmates scheduled for parole and perform a similar reconciliation for their restitution balances to ensure that the parole order accurately reflects the amount of restitution still owed.

Recommendation No. 1:

In order to ensure it has accurate restitution information, the Department of Corrections should:

a. Modify its use of the Colorado Integrated Criminal Justice Information System to access detailed information from the Judicial Department's ICON system, including the Financial Summary and Register Of Action screens.

b. Program the Department of Corrections Information System (DCIS) to require verification of all restitution cases classified as paid in full and for those inmates scheduled for parole against ICON to ensure that the restitution information in DCIS is correct.

Department of Corrections Response:

a. Agree. The Department implemented this change in August 2002.

b. Agree. The Department implemented verification of all restitution cases paid in full in October 2002. The Department will implement an automated program to use restitution balances from ICON for inmates that are going to parole beginning in August 2003.

Implementation Date: August 31, 2003.

Frequency of Child Support Data Matching

The Division of Child Support Enforcement (Division) periodically provides each county with a list of all noncustodial parents sentenced to Corrections. The Division compiles this list by matching its data on open child support cases with a list of all incarcerated inmates and parolees provided by Corrections. The main purpose of this "datamatch" is to aid counties in locating individuals who are sentenced to Corrections and who have an open child support case pending in their county. The datamatch provides valuable additional information to county child support technicians working to provide child support services on their cases, such as the location of an inmate for purposes of commencing an action to establish paternity.

The datamatch is not issued regularly by the Division of Child Support Enforcement. We believe the counties could better use the datamatch if it were produced and distributed regularly. Corrections has agreed to begin sending the necessary inmate information automatically to the Division on a quarterly basis. The Division , in turn, needs to automatically issue the datamatch to the counties on a quarterly basis so they can locate individuals who already owe child support or those for whom paternity needs to be determined.

We also found that counties are not fully utilizing the datamatch to maximize collection of child support. We reviewed the files of 89 noncustodial parents listed on the February 2002 datamatch. The county technicians were provided the location of these incarcerated individuals in February 2002. As of July 2002, however, it appeared that the technicians did not realize 34 of the individuals were incarcerated, because they were still using the Division's computer system to try to locate the noncustodial parent.

Using the datamatch to maximize collections is important to the State, the counties, and the custodial parents who lose potential child support payments. It also impacts the counties' ability to meet established performance goals. Achievement of these performance goals impacts the amount of federal incentive funds Colorado is eligible to receive. These goals include:

- Collecting a percentage of monthly child support obligations.
- Collecting from a percentage of cases with arrears.
- Establishing paternity in open cases without a paternity determination.
- Establishing child support orders for as many cases as possible.
- Collecting as much as possible of the total child support due.

Effective use of the datamatch by the counties will enhance collections. The counties will know sooner the whereabouts of incarcerated inmates who have been ordered to pay child support. This will, in turn, lead to earlier issuance of administrative liens and increased collections from inmates. The datamatch also provides information on the location of potential noncustodial parents for the purposes of establishing paternity and a child support obligation. In addition, the datamatch allows counties to continuously track the whereabouts of incarcerated noncustodial parents. Since the datamatch also contains the names of parolees, it lets counties know when inmates are released so they can take steps to issue an income assignment and continue to collect child support payments.

Recommendation No. 2:

The Division of Child Support Enforcement should work with the Department of Corrections to develop a process for creating the datamatch of inmates to child support cases and distributing it to the counties on at least a quarterly basis.

Division of Child Support Enforcement Response:

Agree. The Division of Child Support Enforcement will work with the Department of Corrections to develop an automated quarterly datamatch. The Division of Child Support Enforcement currently has requested and is receiving quarterly data matches from the Department of Corrections.

Implementation Date: Implemented.

Department of Corrections Response:

Agree. The Department of Corrections believes it has been cooperative in providing information for the datamatch in the past. The DOC will implement a system to automatically submit this data on a quarterly basis to the Division of Child Support Enforcement effective in May 2003.

Implementation Date: May 1, 2003.

Recommendation No. 3:

The Division of Child Support Enforcement should work with the counties to ensure consistent use of the information in the datamatch to maximize both child support collections and achievement of all performance goals.

Division of Child Support Enforcement Response:

Agree. The Division of Child Support Enforcement will work with counties to ensure that paternity is established and child support orders are enforced appropriately.

Implementation Date: Ongoing.

Automatic Issuance of Administrative Liens for Child Support

The Colorado General Assembly passed legislation in 2000 allowing the collection of child support from inmates using an administrative lien. Pursuant to its statutory authority, the Division of Child Support Enforcement delegated the issuance of liens to the county child support enforcement offices. We found that the centralized issuance of administrative liens by the Division may be a more effective method of enforcement.

In the Fall of 2001, the Division implemented a statewide process that encourages the counties to issue administrative liens for all incarcerated noncustodial parents. Legally, the Department of Corrections must receive a lien before it can deduct child support payments from deposits to an inmate's bank account. While counties have made some progress in increasing collections since the introduction of this new enforcement method, we found that counties do not always issue liens in a timely manner.

As part of our audit work, we obtained information from 10 counties to determine their use of the administrative lien process. We found that some counties were inconsistently issuing liens, while others were taking several months to issue the liens. From these counties, we selected a sample of 82 inmates on the February 2002 datamatch who had been ordered to pay child support but were listed as not currently paying. We found that counties had not issued liens on 71 of the inmates in our sample, or close to 87 percent. The reason for the low rate of issuing administrative liens appears to be the counties' concern that the costs of recovery exceed the benefits. According to Corrections staff, on average, inmates receive $84 per month in deposits and are incarcerated for approximately 24 months. Based on this information, the mandatory 20 percent deduction from all deposits would generate approximately $400 per inmate over the two-year period. If the inmate owed only child support, this entire amount would go to child support. If the inmate owed both child support and restitution, just over $200 would go to child support.

The Division of Child Support Enforcement and the counties also informed us that a core part of their mission is to teach noncustodial parents to provide financial support to their children regardless of the actual amount paid. Even if an administrative lien generates a small amount of money, it reenforces personal responsibility. All of the agencies involved in the child support collections process recognize the importance of reinforcing accountability among noncustodial parents through regular payments. According to the Division, regular payments, however small, can build a sense of long-term commitment, which may lead to increased dollar collections in the future when inmates are out of prison and employed.

In addition, while the amounts in individual cases may be small, in the aggregate the dollars involved are significant. For the almost 1,500 inmates categorized as not paying on the July 2002 datamatch, the counties have the potential to collect a total of between $302,000 if the inmates owe both restitution and child support and $605,000 if the inmates owe only child support (24 months average incarceration).

Even when counties choose to issue liens, there is sometimes a delay of several months between the time the county is notified that the noncustodial parent is incarcerated and the issuance of the lien. This reduces the amount of child support that can be collected from the inmate. A routine delay of four months in issuing liens on delinquent inmates potentially costs needy families and the State an average of between $50,400 and $100,800 in lost child support payments from the 1,500 inmates categorized as nonpaying.

The counties and the Division expressed legitimate concerns about the cost of administering collections for small dollar amounts on many inmate child support payments. Centralizing the issuance of the administrative liens at the state level could be a cost-effective solution that will increase timely collection of child support payments from incarcerated noncustodial parents. The Division already uses a centralized process to issue administrative liens within 10 days against workers' compensation benefits claimed by noncustodial parents owing child support. Centralized issuance of liens against workers' compensation benefits results in early collection of child support payments. Having the Division of Child Support Enforcement automatically issue the liens for inmates based on quarterly data matching from Corrections will ensure that inmate deposits are subject to the mandatory child support deductions earlier. The Division supports the implementation of automatic issuance of administrative liens against incarcerated noncustodial parents and reports that it has placed the necessary system reprogramming on its "should do" list at a cost of $51,000.

During our review of administrative liens, we noted unusual fluctuations in the inmate child support delinquency classifications on the February 2002 and July 2002 datamatches. For example on the February 2002 datamatch, we found a total of 1,800 inmates who owed child support. Approximately 1,000 of these inmates had not made a payment in 45 days

and were therefore delinquent. The July 2002 datamatch listed a total of 2,400 inmates who owed child support with 1,500 categorized as not paying for at least 45 days. We brought this to the attention of Division staff who informed us that they would review the data and reporting procedures to determine if there are any data or classification problems.

Recommendation No. 4:

The Division of Child Support Enforcement should develop policies and procedures regarding the automatic issuance of administrative liens for all incarcerated noncustodial parents with a child support order.

Division of Child Support Enforcement Response:

Agree. The Division of Child Support Enforcement has scheduled the development and implementation of an automated administrative lien to the Department of Corrections effective December 31, 2003.

Effective Implementation of Administrative Liens for Child Support

The counties send all administrative liens for child support to the Department of Corrections' central inmate accounting office for processing. We found that Corrections does not ensure the timely implementation of those liens for inmates participating in the Prison Industry Enhancement (PIE) Certification Program. In addition, we discovered that liens for inmates in private facilities are not consistently transferred or implemented in a timely manner. As a result, continuous payments on child support orders were not made for these inmates.

Inmates in the PIE program are paid the local prevailing wage and therefore are able to pay significantly more child support than other inmates. While Corrections staff stated that there is a process for identifying an inmate in the PIE program and implementing the lien in a timely manner, we found this process is not followed. At the time of our audit, there were roughly 45 inmates involved in the PIE program. Of these 45 inmates, three had an administrative lien filed against them. None of these liens had been implemented in the same month that the inmate started working at the PIE program. Thus, deductions were not taken out and continuous child support payments were not being made to the Family Support Registry. The amount of lost child support collections from the failure to timely

implement the three liens was about $2,200 for the period from September 2001 to August 2002.

Our finding that Corrections does not timely implement liens within its own facilities raised questions regarding proper transfer of liens to private prison facilities. We inquired about the lien transfer process. We were informed by a representative of one private prison that the facility does not always receive liens in a timely manner when an inmate is transferred to the facility.

As our findings demonstrate, transferring liens increases the risk of errors and irregularities. Corrections should ensure that administrative liens are implemented in a timely manner so that child support payments are made without interruption. Corrections should centrally process the liens or improve its controls over transfer and implementation of liens.

Recommendation No. 5:

The Department of Corrections should centrally process all administrative liens for child support and establish effective controls for the timely implementation of liens for inmates in the Prison Industry Enhancement (PIE) Certification Program as well as both the timely transfer and implementation of liens for inmates at private prisons.

Department of Corrections Response:

Agree. The DOC inmate bank has implemented a centralized processing of all child support liens that has been in effect since November 2002.

Premature Closure of Child Support Cases

State and federal rules allow counties to close child support cases under certain circumstances. Allowable reasons for closing a case are when the noncustodial parent is institutionalized in a psychiatric facility, is incarcerated with no chance of parole, or has a medically verified permanent disability. However, prior to closing a case for any of these reasons, the county must also determine that the noncustodial parent has no income or assets that can be used to pay child support. We examined a sample of closed cases involving incarcerated noncustodial parents to determine if the counties are complying with state and federal rules for case closure. We found that counties are closing cases simply because the noncustodial parent is an inmate. Seven of the ten counties we visited close

child support cases solely on the basis of inmate status. This violates both state and federal rules and results in lost child support collections.

The Division of Child Support Enforcement has been aware of problems with case closure for some time. In April 2002 the Division conducted a federally required self-evaluation of child support operations during the period October 2000 through October 2001. The evaluation found unacceptable rates of case closure, in part caused by inmate cases. In addition, Division staff reported that counties were informed in November 2001 that cases involving incarcerated noncustodial parents could not be closed unless Corrections certifies that the inmate has no income or assets. The counties were provided this information orally in meetings with county staff and in writing through the issuance of a formal lien-implementation tool kit sent to all counties. Corrections representatives indicated that few county representatives have requested such certification. Corrections staff noted that an inmate's indigent status can change on a monthly basis and that they have few inmates who are permanently indigent. In addition, our review of inmate account records for a sample of 155 inmates who owed child support revealed that only one of these inmates was indigent, or without any income or assets, for the entire four-month period.

In order to ensure that counties comply with state and federal rules for case closure, the Division of Child Support Enforcement should develop a system to actively monitor case closures. Since counties were notified to stop closing cases involving incarcerated noncustodial parents in November 2001, the Division needs to have its Monitoring Unit review all cases of currently incarcerated noncustodial parents including those closed since December 2001. All child support cases that were closed inappropriately need to be reopened and, if appropriate, an administrative lien issued. Finally, the Division of Child Support Enforcement needs to take steps to ensure that, in the future, counties do not inappropriately close cases involving inmates.

Recommendation No. 6:

The Division of Child Support Enforcement should:

a. Develop a method to review closed cases involving incarcerated noncustodial parents on a continual basis.

b. Require its Monitoring Unit to review closed child support cases involving an incarcerated noncustodial parent.

c. Reopen any improperly closed cases immediately and ensure an administrative lien is issued, if appropriate.

d. Provide additional training to ensure that all counties are aware of the case closure requirements for cases with incarcerated noncustodial parents.

e. Take steps to ensure counties comply with state and federal rules regarding case closures for incarcerated noncustodial parents.

Division of Child Support Enforcement Response:

a. and b. Agree. By June, 2003 the Division will develop a report that identifies currently incarcerated obligors with a IV-D case that has been closed since December, 2001. These cases will be reviewed by the Division to determine if the case was closed inappropriately. If the case was closed inappropriately, the county child support unit will be notified to reopen the case and take the appropriate action. This procedure will be completed quarterly.

c. Agree. As described above, the county child support office will be notified to open a child support case if closed inappropriately.

Implementation Date: June 2003.

d. Agree. The Division will provide training by December 31, 2003 to county child support enforcement staff on case closure with special emphasis on criteria that must be met in order to close cases when the obligor is currently incarcerated.

e. Agree. The Division will continue to review closed cases to ensure compliance with federal and state rules regarding case closure.

Implementation Date: June 2003.

Improvement of Private Prison Monitoring

Corrections contracts with local governments for placement of inmates at four privately operated prisons. Approximately 2,400 inmates are housed in such facilities. As part of our audit work, we reviewed the processes used by private prisons to deduct and transmit both restitution and child support payments to the appropriate destination. We identified problems with timeliness and lack of oversight regarding restitution and child support payments deducted from inmate accounts.

The contracts between Corrections and the local governments for housing state inmates require the private operators to adopt and comply with both Colorado statutes and Corrections' Administrative Regulations, including those related to the payment of restitution and child support. When an inmate in Corrections' custody is transferred to a private facility, Corrections transfers the inmate's records and funds to the private facility where a new account is established. The private facilities are responsible for deducting restitution and child support if owed, applying the payments to the appropriate cases, and splitting the deduction if the inmate owes both child support and restitution. For restitution, the Administrative Regulations require that each private facility submit a check to Corrections once a month with the total inmate restitution withholdings and a list showing which inmates paid restitution and the amounts paid. Corrections forwards the restitution payments to the appropriate judicial districts. The private facilities are required by statute to send child support payments directly to the Family Support Registry (FSR).

In our review of a random sample of inmate accounts, we found that one particular private prison facility had not submitted restitution or child support payments for several months. Once inmate banking staff became aware of this situation, they worked with the facility to obtain the payments. However, no formal investigation was undertaken to determine why this facility had ongoing problems regarding the proper and timely deduction and submittal of restitution and child support payments. Further, staff at the same facility reported that for several months, some child support payments were sent directly to Corrections with the assumption that Corrections would forward the correct amount to the FSR. Corrections staff reported they were not aware of this practice until July 2002 and therefore had not been forwarding the child support payments. After it was notified of the correct procedure, the private facility still did not make all payments to the FSR but continued to send some child support payments to Corrections.

In addition, we found that another private prison did not forward child support payments to the FSR within 10 days after the end of the month, as required by both statutes and Corrections' Administrative Regulations. We looked at child support payments submitted

by the other three private prisons for February and June 2002 and found that the FSR did not receive child support payments from one of the private facilities in a timely manner. For example, the FSR received the February payment on April 4, which was 25 days late. The FSR got the June payment on July 26, 16 days late. These late payments were beyond the 10 days already allowed for calculating and transmitting the previous month's deductions.

The timeliness issue is caused in part by lack of adequate oversight. Corrections has not developed any method for ensuring that restitution and child support payments are transmitted in a timely manner to the appropriate destination. Nor does Corrections staff monitor the deposit amounts into inmate accounts at private facilities to ensure that the amounts deducted for restitution and child support are accurate.

Corrections maintains a Private Prison Monitoring Unit that already monitors compliance with other performance aspects of the contracts. The Unit could perform compliance sampling for restitution and child support along with its other contract administration activities. We believe it would require minimal additional effort to periodically run a test sample to identify any restitution or child support compliance problems. Corrections should also establish a policy for follow-up when problems are identified. These are cost-effective steps that Corrections can take to better enforce its contracts with respect to restitution and child support payments.

Recommendation No. 7:

The Department of Corrections should require its Private Prison Monitoring Unit to periodically verify that private prisons are accurately deducting and submitting all required child support and restitution payments.

Department of Corrections Response:

Agree. Effective September 23, 2002, the DOC Private Prison Monitoring Unit implemented a review process to ensure proper withholding of restitution and child support is being done at private prisons. Monthly audits are being performed and documented on visit reports.

Consistent Application of Mandatory Deductions

As noted earlier, statutes require a minimum deduction of 20 percent of all inmate deposits for payment of restitution and child support. We reviewed Corrections' practices and found that Corrections is not deducting mandatory amounts for inmates in the Prison Industry Enhancement (PIE) Certification Program, even though the statutes do not provide for any exceptions.

The PIE program was created by the federal government in 1979 to provide inmates with marketable job skills and work experience. Federal law prohibits unfair competition in interstate commerce from goods produced with low-wage inmate labor. By federal rule these inmates must be paid the local prevailing wage. Inmates in the PIE program earn considerably more than inmates working in non-PIE programs. At the same time, the federal rules also allow deductions from the inmate's gross earnings for the payment of federal, state, and local taxes; for reasonable room and board charges; for family support pursuant to state statute, court order, or agreement by the inmate; and for contributions to funds established by law to compensate victims of crime. Under federal law, deductions cannot exceed 80 percent of gross earnings. Federal rules allow the individual state corrections agencies to implement the actual deductions as long as they comply with federal requirements.

According to Corrections' Administrative Regulations, up to 40 percent of a PIE inmate's earnings can be deducted for the payment of restitution and child support. Corrections also takes deductions for required taxes and to partially cover room and board costs. Inmates voluntarily agree to participate in the PIE program and also voluntarily agree, in advance, to these deductions from their gross earnings.

Corrections allows inmates in its PIE program to keep 100 percent of deposits from outside sources, such as family and friends, based on its interpretation that inmates involved in the PIE program are exempt from the mandatory 20 percent deduction. This is contrary to state statutes requiring that no less than 20 percent of all deposits be deducted for payment of restitution and child support. Relevant federal rules only apply to the wages earned by inmates from participation in the PIE program and do not supercede state law on the mandatory deduction from other deposits received by inmates.

According to Corrections, 18 of the 43 inmates who participated in the PIE program during the months of June and July 2002 received nonwage deposits into their inmate bank accounts. These deposits totaled approximately $2,600 for the two-month period. All 18

inmates were allowed to keep the entire amount of these nonwage deposits. Corrections staff reported that out of the 18 inmates, 2 owed child support and 8 owed restitution.

In order to comply with Section 16-18.5-106 C.R.S., Corrections must deduct at least 20 percent from *all* deposits into an inmate's account if an order for restitution or child support exists.

Recommendation No. 8:

The Department of Corrections should ensure that all deposits for inmates participating in the Prison Industry Enhancement (PIE) Certification Program are subject to the mandatory 20 percent minimum deduction to pay court-ordered restitution and child support.

Department of Corrections Response:

Agree. The DOC will implement additional withholding of all deposits effective April 1, 2003.

Policy Issues Regarding Inmate Accounts

Chapter 2

Mandatory Deduction Percentage

The Department of Corrections currently deducts only the minimum required by statute from inmate accounts, even though the statute allows Corrections to deduct more than 20 percent. Every deposit into an inmate's account, such as wages or family deposits, is subject to the mandatory 20 percent deduction. If an inmate owes both restitution and child support, Corrections' policy is to apply 10 percent of the offender deposits toward restitution and 10 percent toward child support. The inmates then have access to all remaining funds in their accounts after these deductions.

According to information provided by Corrections, we found that inmates are often spending three times more on personal items from the prison Canteen each month than they pay toward their court-ordered debts. The Canteen Program is designed for purchases of approved food, religious items, clothing, and personal care products that are not furnished by the facility. Canteen items range from basic sanitary items and beauty products to televisions and radios.

We reviewed account statements from March through June 2002 for a sample of 43 inmates who owed restitution or child support. For this four-month period, we found that these 43 inmates had paid approximately $1,000 for child support and another $900 for restitution while spending $6,400 on items from the Canteen. We identified another inmate who paid a total of less than $300 for restitution from March to June 2002 but spent approximately $1,100 on items from the Canteen.

We conducted a survey of correctional departments in other states to determine the feasibility of raising the mandatory deduction percentage. We surveyed 14 other states with regard to restitution and child support deductions. We found that 12 of the 14 states require deductions for court-ordered restitution and 11 of the 14 states require deductions for child support orders. Four of the states surveyed deduct 100 percent of an inmate's deposits until the ordered amount is paid for both restitution and child support, and they

have reported no problems. The remaining eight states, having mandatory deductions for restitution or child support, reported monthly deductions ranging from 5 percent to 50 percent. None of the states we spoke with reported having concerns about requiring a mandatory deduction greater than 20 percent. This is consistent with Colorado's original experience. Colorado had no significant problems associated with the implementation of the 20 percent deduction, which was an increase from zero percent prior to Fiscal Year 2001.

Corrections reports that it has collected an annual average of $2 million in restitution alone since the inception of the 20 percent minimum deduction. Doubling this percentage to 40 percent could raise collections to $4 million annually and still provide inmates with money for reasonable personal expenditures.

Recommendation No. 9:

The Department of Corrections should consider increasing the mandatory deduction for restitution and/or child support.

Department of Corrections Response:

Partially agree. The DOC supports the mandatory withholding of restitution and child support and potential benefit of increasing the withholding amount. However, due to budget constraints and funding needs the DOC does not anticipate implementing an increase in the near future. The DOC is exploring the possibility of mandatory withholdings for inmate cost of care. The DOC is also looking at a 40% decrease to general fund inmate pay as part of a cost savings measure in Fiscal Year 2004, which will reduce inmate pay by approximately $1 million. In Fiscal Year 2003, $1.9 million of Canteen profits have been appropriated for inmate benefits to fund education, recreation and volunteer programs. Any increase in mandatory inmate withholdings will adversely affect Canteen purchases by inmates and reduce funds available for inmate programs. During Fiscal Year 2004, the DOC will consider the feasibility of additional withholding for restitution and child support based on the impact of inmate pay decreases, other mandatory withholding programs, and funding requirements for inmate programs by the Canteen.

Implementation Date: Fiscal Year 2004.

Use of Inmate Tax Refunds

One of the mechanisms for refunding excess state revenue under the Taxpayer's Bill of Rights (TABOR) is a sales tax refund. State statutes allow inmates to receive this TABOR refund in certain cases, such as incarceration for less than 180 days during the previous fiscal year and the filing of a Colorado income tax return. These same statutes allow the entire refund to be intercepted by the Department of Corrections and applied to inmate restitution but do not authorize the same result for inmate child support obligations.

In Fiscal Year 2002, 653 inmates received a total of approximately $99,500 in TABOR sales tax refunds. Section 39-22-2003(9), C.R.S., states that Corrections must apply the State refund entirely to an inmate's restitution order if such order exists. If no restitution is owed, the inmate retains the full refund. Currently these refunds are not subject to attachment to pay child support obligations.

In Fiscal Year 2002, per statute, Corrections applied the entire refund for 585 (90 percent) of the inmates who received it toward their restitution orders. The remaining 10 percent did not have restitution orders and were allowed to retain the entire refund. The number of inmates who received the refund and had an administrative lien for child support is unknown.

The statutes allow the sales tax refund to be applied to restitution because Section 39-22-2003(9) was instituted prior to the creation of the administrative lien process. While it is not likely that the State will be in a position to make TABOR refunds in the near future, in the long term the General Assembly should consider revising the statute to ensure any future sales tax refunds to inmates are used to pay child support as well as restitution. Corrections could forward half the refund to district courts for restitution and the other half to the Family Support Registry for child support. Alternatively, the current statutory priority for restitution could be retained and any remaining balance of a tax refund could be applied to child support.

Recommendation No. 10:

The Department of Human Services and the Department of Corrections should seek statutory changes to allow Corrections to send a portion of any TABOR refund due an inmate to the Family Support Registry to pay child support obligations.

Department of Human Services Response:

Agree. The Department of Human Services, Division of Child Support Enforcement will review statutory language to request authority to intercept TABOR refunds of incarcerated persons who have child support obligations.

Implementation Date: October 1, 2003.

Department of Corrections Response:

Agree. The DOC would support a statutory change to include child support orders for TABOR refunds.

Implementation Date: October 1, 2003.

Use of Inactive Accounts

Clarification of Legal Authority

The Department of Corrections annually consolidates all inactive inmate accounts. Inactive accounts are those that have had no activity for over one year. An inactive account can occur after an inmate with no known heir dies or when a former inmate fails to claim funds deposited after his or her release from custody. While the majority of these accounts contain positive balances, there are a significant number with negative balances because the offender was released while still owing Corrections money. Negative balances, for the most part, arise from damage done to Corrections property, such as inmate cells.

In Fiscal Year 2002, Corrections consolidated the funds from 3,500 inactive inmate accounts. The positive balances totaled approximately $43,000 and the negative balances totaled about $20,000. Corrections used the positive balances to negate the debts, including repaying the State for any damages caused by the inmate. Corrections retained the remaining approximately $23,000 and deposited all of these funds into Corrections' Canteen and Library Fund. This fund is used to benefit inmates and often goes to purchase such items as educational materials, games, and supplies, such as weight lifting equipment and computers. Transferring the monies to the Canteen and Library Fund takes place pursuant to a March 1982 Stipulation and Agreement (Stipulation) entered in the United States District Court in response to a class action lawsuit filed by inmates against Corrections.

We believe that Corrections needs to seek legal clarification to determine if the federal court Stipulation signed in March 1982 supercedes Colorado's unclaimed property and probate laws. The Stipulation states that if Corrections is unable to locate a discharged inmate or a deceased inmate's heirs within one year, any funds in the inmate's bank account are to be deposited in the Canteen and Library Fund. At the same time, the Colorado Unclaimed Property Act created in 1987 provides that intangible property, such as money in bank accounts, is subject to state custody as unclaimed property if it is presumed abandoned. Money held by a state agency is presumed abandoned under state law if it remains unclaimed by the owner for more than one year after becoming payable. Under the Stipulation, Corrections declares an inmate account abandoned if there is no activity within one year. A representative of the Division of Unclaimed Property in the Department of the Treasury stated that Corrections should turn over the monies in abandoned inmate accounts to the State Treasury.

The Stipulation also raises potential conflicts with Colorado's Probate Code for those inactive accounts that result from the death of an inmate. State probate law details how a deceased individual's estate should be handled. A deceased inmate's estate would include any funds remaining in his or her inmate account. If an inmate dies intestate with known heirs or has a legal will, Corrections should provide the account monies only to a legal heir or the individual listed as the personal representative in the will. The Probate Code also requires that Corrections notify the appropriate judicial district's public administrator regarding the death of any inmate who does not have a known heir or will. The public administrator is then responsible for disposing of any personal property including funds in the inmate's account. If the public administrator is unable to locate anyone legally entitled to the money, statutes require that it be paid into the State Treasury.

According to Corrections' Administrative Regulations, if the inmate has designated his or her next of kin, Corrections sends them the balance of money in the account minus any applicable burial expenses. For cases where the balance in the inmate's account exceeds $500 and the next of kin is not clearly established, Corrections contacts the Office of the Attorney General to petition the court for the disposition of the funds. If Corrections is unable to locate the deceased inmate's heirs and the balance in the account is less than $500, Corrections considers the account to be inactive and transfers the money to the Canteen and Library Fund as required by the federal court Stipulation.

We believe that certain portions of Corrections' procedures may not be consistent with Colorado's Unclaimed Property Act and Probate Code. Corrections should seek legal advice regarding the relationship of the 1982 Stipulation to these Colorado statutes to ensure that the Department is in compliance with state law.

Alternative Uses for Inactive Account Dollars

In Fiscal Year 2002, Corrections transferred $23,000 from inactive inmate accounts to its Canteen and Library Fund. However, since the majority of the inmates owe some sort of court-ordered debt, either restitution or child support, these accounts also offer the State an opportunity to benefit the victims of crime or custodial parents.

As we previously discussed, Corrections needs to determine whether money in inactive and deceased inmates' accounts is subject to the 1982 federal court Stipulation calling for transfer of inactive accounts to the Canteen and Library Fund or subject to Colorado's Unclaimed Property Act or Probate Code. Once the legal determination has been made, Corrections should seek either judicial approval or statutory changes to use these funds to make a restitution or child support payment on behalf of the inmate or use the funds to otherwise benefit victims of crime.

In the case of accounts tied to a deceased inmate, the funds offer an opportunity to make one final restitution or child support payment. Between July 2000 and June 2002, 76 inmates died. We found that there was just under $4,100 in the bank accounts of 37 inmates who died owing restitution or child support. Corrections sent this money to either the next of kin or transferred it to the Canteen and Library Fund if no next of kin could be identified. Amounts returned to the inmate's identified next of kin or deposited in the Canteen and Library Fund for these 37 inmates ranged from $0.15 to almost $540. The money remaining in the account upon the inmate's death represents a last opportunity for a crime victim or a custodial parent to obtain financial support from the inmate. Since Corrections already has procedures in place to make restitution and child support payments, and a relatively small number of inmates die each year, this option should not be cost-prohibitive. It may also be more cost-effective than sending small amounts of money to Unclaimed Property or a public administrator if it is determined that Colorado statutes supercede the federal court Stipulation. Monies in the inactive accounts of paroled inmates could also be used to pay any remaining restitution or child support obligations. However, Corrections staff expressed concerns regarding this option because of the large number of inactive accounts and the small dollar amounts involved.

Another option is to use these funds to assist Corrections in providing aid to victims of crime through its Victim Notification Program. This Program provides information to registered victims of violent crime and its staff attends parole hearings and community corrections board meeting with victims. The Program currently relies on grant funding to cover its costs, and this funding has recently been reduced. Monies from the inactive accounts could help ensure that the Program continues to operate and serve victims of crime.

To ensure that remaining monies from inactive accounts are disposed of properly, Corrections needs to determine whether the 1982 federal court Stipulation or Colorado statutes relating to unclaimed property and estate probate take precedence when an inmate's account becomes inactive. Once the legal determination is made, Corrections should take appropriate action to permit the use of inactive account balances to pay restitution and child support, or to fund Corrections programs that aid victims of crime. Such action should include seeking appropriate relief from the federal courts or modifying state statutes as necessary.

Recommendation No. 11:

The Department of Corrections should take appropriate action to enable it to use the proceeds of inactive accounts for restitution, child support, or other programs that benefit crime victims. Appropriate action should include:

a. Seeking legal clarification to determine if monies in inactive accounts are subject to the provisions of the 1982 federal court Stipulation and Agreement or to Colorado's Unclaimed Property Act. For those inactive accounts resulting from the death of an inmate, Corrections also needs to determine the applicability of Colorado's Probate Code.

b. Pursuing federal court approval or changes to statutes authorizing the use of money in inactive and deceased inmates accounts to make a payment toward any court-ordered restitution or child support or for other programs benefitting victims of crime.

Department of Corrections Response:

a. Agree. The DOC will ask the Colorado Attorney General's Office for an opinion on how to handle inactive accounts. The DOC will also ask for clarification if they come under the Federal Decree, unclaimed property, and probate. Implementation of this action should be done by June 2003.

b. Partially agree. Based on the opinion of the Attorney General's Office the Department will determine whether it is beneficial to pursue authorized changes to the Federal Decree with the federal courts and seek statute changes.

Implementation Date: June 30, 2003.

Mandatory Savings Accounts

Corrections believes that inmates should ideally have approximately $1,500 upon release from prison to help them reintegrate successfully into society. The average inmate currently leaves prison with significantly less money than this ideal amount. In June 2002 the 368 inmates that were released from Colorado prisons left with approximately $145 each, which included the $100 that Corrections provides all inmates upon their release. We believe mandatory savings accounts would help increase the amount of money available to inmates when they are released back into society.

In order to determine the feasibility of implementing a mandatory savings account program, we surveyed 14 states to determine if they have mandatory savings accounts for inmates. Six of the fourteen states we surveyed have mandatory savings accounts for all inmates, with mandatory deduction amounts ranging from 5 percent to 50 percent. The other eight states surveyed provide inmates with release money of between $25 and $500, which is funded through either the state's general fund or monies collected from inmates such as fines, fees, telephone charges, and Canteen profits. Additionally, none of the states we contacted reported having problems related to the implementation of mandatory savings accounts.

Corrections considered deducting 10 percent from deposits into each inmate's account and placing these funds into a mandatory savings account until the inmate is released, but never implemented such a program. Based on the average monthly deposits into inmates' accounts, after 24 months the average inmate would have approximately $200 in the mandatory savings account. A mandatory savings rate of 30 percent of all deposits would generate more than $600 for the average inmate incarcerated for 24 months and receiving the average $84 per month in deposits.

Currently when an inmate is released or paroled, Corrections provides the individual with a check in the amount of the balance in his or her account plus $100 "dress-out" funds. Dress-out funds are a monetary allowance given to all eligible inmates upon release to parole. If inmates had savings at the time of their release, Corrections would potentially no longer need to give each inmate $100. This would represent general fund savings because Corrections uses general fund dollars to pay the dress-out funds. As mentioned previously, in June 2002, 368 inmates were released from prisons in Colorado. At $100 per inmate, this represents $36,800 in general funds that could have been saved. If an inmate with an account balance of less than $100 is released, Corrections could consider providing the inmate with only the balance needed for the inmate to leave with $100. Corrections could also consider a sliding scale based on financial resources. Inmates able

to afford substantial non-essential items from the prison Canteen, such as televisions and radios, should be contributing a greater share of their own dress-out needs upon release from prison. For example, one state we contacted operates a program that requires inmates to periodically contribute small amounts of money toward their dress-out funds throughout their incarceration or until the minimum amount is met.

We believe Corrections could increase the amount of funds each inmate has at the time of release by implementing mandatory savings accounts. Mandatory savings accounts would provide inmates with additional funds upon their release as well as save general fund dollars. The rate of the mandatory savings deduction must take into consideration the level of other deductions for restitution and child support, as well as the ability of inmates to obtain essential items from the Canteen.

Recommendation No. 12:

The Department of Corrections should implement a mandatory savings account program for all inmates.

Department of Corrections Response:

Partially agree. The DOC believes that it would be beneficial to the inmates to have a mandatory savings program. As discussed in recommendation number nine, during Fiscal Year 2004, the DOC will consider the feasibility of additional mandatory withholdings based on the impact of inmate pay decreases, other mandatory withholding programs, and funding requirements for inmate benefits by the Canteen.

Implementation Date: Fiscal Year 2004.

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