Schedule 13
Change Request for FY 08-09 Budget Request Cycle

Decision Item FY 08-09 ☐ Base Reduction Item FY 08-09 ☐ *Supplemental FY 07-08 ☑ Budget Request Amendment FY 08-09 ☑

Request Title: Payments to District Attorneys
Department: Department of Corrections
Priority Number: S-4, BA-4

Dept. Approval by: Aristedes W. Zavaras **Date:** 01/11/08
OSPB Approval: **Date:** 01/11/08

	Fund	1 Prior-Year Actual FY 06-07	2 Appropriation FY 07-08	3 Supplemental Request FY 07-08	4 Total Revised Request FY 07-08	5 Base Request FY 08-09	6 Decision/ Base Reduction FY 08-09	7 November 1 Request FY 08-09	8 Budget Amendment FY 08-09	9 Total Revised Request FY 08-09	10 Change from Base (Column 5) FY 09-10
Total of All Line Items	Total	1,464,953	1,389,582	189,122	1,578,704	1,484,409	0	1,484,409	0	1,484,409	0
	FTE	16.20	22.30	0.00	22.30	22.30	0.00	22.30	0.00	22.30	0.00
	GF	1,362,812	1,282,315	189,122	1,471,437	1,377,142	0	1,377,142	0	1,377,142	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	0	0	0	0	0	0	0	0	0	0
	CFE	102,141	107,267	0	107,267	107,267	0	107,267	0	107,267	0
	FF	0	0	0	0	0	0	0	0	0	0
(1) Management (A) Executive Director Personal Services	Total	1,464,953	1,389,582	(101,697)	1,287,885	1,484,409	0	1,484,409	(150,000)	1,334,409	(150,000)
	FTE	16.20	22.30	0.00	22.30	22.30	0.00	22.30	0.00	22.30	0.00
	GF	1,362,812	1,282,315	(101,697)	1,180,618	1,377,142	0	1,377,142	(150,000)	1,227,142	(150,000)
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	0	0	0	0	0	0	0	0	0	0
	CFE	102,141	107,267	0	107,267	107,267	0	107,267	0	107,267	0
	FF	0	0	0	0	0	0	0	0	0	0
(1) Management (A) Executive Director Payments to District Attorneys (New Line)	Total	0	0	290,819	290,819	0	0	0	150,000	150,000	150,000
	FTE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	GF	0	0	290,819	290,819	0	0	0	150,000	150,000	150,000
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	0	0	0	0	0	0	0	0	0	0
	CFE	0	0	0	0	0	0	0	0	0	0
	FF	0	0	0	0	0	0	0	0	0	0

Letternote revised text:
Cash Fund name/number, Federal Fund Grant name:
IT Request: ☐ Yes ☑ No
Request Affects Other Departments: ☐ Yes ☑ No If Yes, List Other Departments Here:

CHANGE REQUEST for FY 08-09 BUDGET REQUEST CYCLE

Department:	Corrections
Priority Number:	S-4, BA-4
Change Request Title:	Payments to District Attorneys

SELECT ONE (click on box):

☐ Decision Item FY 08-09
☐ Base Reduction Item FY 08-09
☒ Supplemental Request FY 07-08
☒ Budget Request Amendment FY 08-09

SELECT ONE (click on box):

Supplemental or Budget Request Amendment Criterion:

☐ Not a Supplemental or Budget Request Amendment
☐ An emergency
☐ A technical error which has a substantial effect on the operation of the program
☒ New data resulting in substantial changes in funding needs
☐ Unforeseen contingency such as a significant workload change

Short Summary of Request:

The Department requests the establishment of a new General Fund appropriation for "Payments to District Attorneys" in the (1)(A) Executor Director's Office Subprogram to pay District Attorney expenses for criminal prosecution of offender's felony cases and pending death penalty cases.

The FY 07-08 supplemental request is for $290,819 in the new Payments to District Attorneys line. This amount consists of $189,122 in new General Fund and $101,697 of General Fund transfer from (1)(A) Executor Director's Office Subprogram - Personal Services line to the Payments to District Attorneys line, within the (1)(A) Executor Director's Office Subprogram.

This request also contains a Budget Amendment for FY 08-09 to continue the General Fund transfer from the (1)(A) Executor Director's Office Subprogram - Personal Services line to the new Payments to District Attorneys line in the amount of $150,000 per year as a permanent base budget change, resulting in $0 need of additional funding.

Background and Appropriation History:

Colorado Revised Statutes 16-18-101 (3) provides the mechanism for the Department to reimburse counties for costs of prosecuting crimes alleged to have been committed in the custody of the Department of Corrections. Historically these expenses have been paid primarily from the Executive Director's Subprogram's Personal Services appropriation and average approximately $150,000 per year.

Expenses charged to the Department include: professional services, witness fees, supplies, lodging, and per diem. Rates charged include: Attorney $50 to $60 per hour; Legal Assistants/Paralegals $15 to $25 per hour and Investigator $35 per hour. Current rates have not been adjusted for several years and will need to be examined in the future.

The Department's Inspector General's Subprogram and Legal Service Subprogram work to maintain constitutionally defensible programs to deter frivolous/recreational litigation which lessens the courts' workload and creates the opportunity for finite resources to be expended on litigating meritorious claims. The County District Attorneys prosecute all classes of misdemeanor and felony cases for the Department. Costs for prosecution are charged by the hour and may be minimal in some cases and in others consist of hundreds of man-hours of work. Cases include, but are not limited to, investigations of serious assaults, homicides, and possession and introduction of drugs and dangerous contraband.

The most costly cases to prosecute are homicide cases in which District Attorneys seek the death penalty. These cases are costly as a result of the labor intensive process to prepare the case for trial. Death Penalty cases may have as many as 1,000 pre-trial motions to be addressed before the court. Four of these cases are expected to be heard in FY 07-08 and in FY 08-09.

General Description of Request:

The Department requests a $101,697 transfer of GF (1A) Executive Director – Personal Services funds to Payments to District Attorneys (New Line) and a supplemental increase of $189,122 GF to Payments to District Attorneys for FY 07-08. The $290,819 total of the new line would supply the needed funds to reimburse the counties prosecuting offenders for crimes committed while in the custody of the Department. The Department

also requests a budget amendment for FY 08-09 to transfer $150,000 GF from (1)(A) Executive Director - Personal Services to the Payments to District Attorneys (New Line).

Consequences if Not Funded: Department would not the appropriated funds to pay the District Attorneys for the costs incurred.

Calculations for Request:

Summary of Request FY 07-08	Total Funds	General Fund	Cash Funds	Cash Funds Exempt	Federal Funds	FTE
Total Request	**$189,122**	**$189,122**	**$0**	**$0**	**$0**	**0.0**
(1)(A) Executive Director's Office – Personal Services	**($101,697)**	($101,697)	$0	$0	$0	0.0
(1)(D) Executive Director's Office – Payments to District Attorneys (New Line)	**$290,819**	$290,819	$0	$0	$0	**0.0**

Summary of Request FY 08-09	Total Funds	General Fund	Cash Funds	Cash Funds Exempt	Federal Funds	FTE
Total Request	**$0**	**$0**	**$0**	**$0**	**$0**	**0.0**
(1)(A) Executive Director's Office – Personal Services	**($150,000)**	($150,000)	$0	$0	$0	0.0
(1)(D) Executive Director's Office – Payments to District Attorneys (New Line)	**$150,000**	$150,000	$0	$0	$0	0.0

Summary of Request FY 09-10	Total Funds	General Fund	Cash Funds	Cash Funds Exempt	Federal Funds	FTE
Total Request	**$0**	**$0**	**$0**	**$0**	**$0**	**0.0**

Summary of Request FY 09-10	Total Funds	General Fund	Cash Funds	Cash Funds Exempt	Federal Funds	FTE
(1)(A) Executive Director's Office – Personal Services	**($150,000)**	($150,000)	$0	$0	$0	0.0
(1)(D) Executive Director's Office – Payments to District Attorneys (New Line)	**$150,000**	$150,000	$0	$0	$0	0.0

Assumptions for Calculations:

Payments made to County District Attorney Offices are made generally for two purposes. The first purpose is of routine nature; to file charges and prosecute cases for crimes committed in the State's prison system. The annual expenditures made by the Department to County District Attorney Offices average approximately $150,000. Therefore, this request seeks approval for the permanent transfer of $150,000 GF from the (1)(A) Executor Director's Office Subprogram - Personal Services line to the new Payments to District Attorneys line, also within the (1)(A) Executor Director's Office Subprogram. The new long bill line item appropriation will provide an easily identifiable customary expenditure by the Department.

The $101,697 General Fund supplemental request in FY 07-08 is to transfer the difference of the $150,000 permanent new line transfer amount, less the $48,303 expenditures for routine legal services year to date (See Table 1 below). The FY 08-09 budget amendment request is a permanent base transfer request for $150.000 of General Fund to be moved from the (1)(A) Executor Director's Office Subprogram - Personal Services line to the new Payments to District Attorneys line.

The more extraordinary and second purpose for expenditures to County District Attorney Offices is for prosecution of death penalty cases. The Department presently has four active death penalty cases that are lengthy and time consuming. Furthermore, funding needs are difficult to forecast since these types of cases are subject to endless legal motions, continuances and court appearances.

Therefore, the Department seeks Supplemental funding in FY 07-08 in the amount of $189,122. This represents actual billings from District Attorneys for services rendered thus far in FY 07-08 for two death penalty cases. Specifically, the Bueno/Perez case has billed $173,863 and the Montour case has billed $15,260 year to date in FY 07-08. The Department has no schedule of legal proceedings to use as a forecasting tool during the supplemental or budget amendment process to request additional funding for anticipated legal expenses.

Historical expenditures for litigation services are depicted in **Table 1** below:

Table 1: Expenditures-Object Code 1930-Litigation				
FY 07-08 (YTD)	**FY 06-07**	**FY 05-06**	**FY 04-05**	**FY 03-04**
$48,303	$155,617	$241,477	$205,334	$93,766

Impact on Other Government Agencies: Counties and District Attorneys

Cost Benefit Analysis:

Cost	**Benefit**
General Fund Impact: Increase of $189,122 in FY 07-08. $0 in FY 08-09 and thereafter.	The Department would be able to fulfill the financial obligations to County District Attorneys.

Implementation Schedule:

Task	**Month/Year**
Issue Purchase Orders and Payment Vouchers for approved charges	July 2007 – June 2008
Issue Purchase Orders and Payment Vouchers for approved charges	July 2008 – June 2009

Statutory and Federal Authority: CRS 16-18-101 (2007) Costs in criminal cases.

(1) The costs in criminal cases shall be paid by the state pursuant to section 13-3-104, C.R.S., when the defendant is acquitted or when the defendant is convicted and the court determines he is unable to pay them.

(2) The costs of preliminary hearings, including any reporters' transcripts thereof ordered by a defendant, shall be paid pursuant to subsection (1) of this section. Reporters' transcripts of preliminary hearings which are ordered by the prosecution shall be paid for by the prosecution, unless otherwise ordered by the court.

(3) The department of corrections, from annual appropriations made by the general assembly, shall reimburse the county or counties in a judicial district for the costs of prosecuting any crime alleged to have been committed by a person in the custody of the department. The county or counties shall certify these costs to the department, and upon approval of the executive director of the department, the costs shall be paid. The provisions of this subsection (3) shall apply to costs that are not otherwise paid by the state.

Source: L. 1876: p. 53, § 1. **G.L.** § 349. **G.S.** § 422. **L. 1889:** p. 99, § 1. **R.S. 08:** § 1077. **C.L.** § 6593. **CSA:** C. 43, § 23. **CRS 53:** § 33-2-1. **L. 59:** p. 342, § 1. **C.R.S. 1963:** § 33-2-1. **L. 71:** p. 319, § 1. **L. 77:** (3) amended, p. 903, § 9, effective August 1. **L. 79:** (2) amended, p. 601, § 28, effective July 1.

ANNOTATION

Am. Jur.2d. See 20 Am. Jur.2d, Costs, §§ 102, 105.

C.J.S. See 24 C.J.S., Criminal Law, §§ 1738, 1740, 1742, 1743.

Constitutionality. Statutes imposing liability for costs on a convicted defendant have been uniformly held to be constitutional. People v. Fisher, 189 Colo. 297, 539 P.2d 1258 (1975).

Costs are a creature of statute unknown to the common law. At common law there were no costs. Bd. of County Comm'rs v. Wilson, 3 Colo. App. 492, 34 P. 265 (1893); Saunders v. People, 63 Colo. 241, 165 P. 781 (1917).

Section protects defendant. The provisions of this section are wise and beneficent. They extend ample protection to an indigent defendant. They afford him every facility for making a legitimate defense. Bd. of County Comm'rs v. Wilson, 3 Colo. App. 492, 34 P. 265 (1893).

It refers to costs incurred by the prosecution and not those of the defendant. It is only in case of the conviction of the defendant and his inability to pay the costs, or of his acquittal, that costs are made a charge against the state; so that there is no difficulty in supposing that the costs referred to are the costs incurred by the prosecution, and not those incurred by the defendant. Bd. of County Comm'rs v. Wilson, 3 Colo. App. 492, 34 P. 265 (1893); Saunders v. People, 63 Colo. 241, 165 P. 781 (1917).

Costs in criminal cases must be taxed according to law and not as per agreement between court and convict, or between the prosecuting officer and the convict. Murphy v. People, 3 Colo. 147 (1876).

The costs in a criminal case must be taxed according to statutes and not according to any plea agreement. People v. Fisher, 189 Colo. 297, 539 P.2d 1258 (1975).

There is no limit to the amount of costs which may be incurred by the prosecution in a criminal case. This is left to the discretion of the prosecutor and the court. Parker v. People, 7 Colo. App. 56, 42 P. 172 (1895).

The general rule as to payment of costs may be avoided if the trial judge, in his discretion, determines that the defendant is unable to pay the costs. People v. Fisher, 189 Colo. 297, 539 P.2d 1258 (1975).

Differs from determination of indigency. Whether a presumably innocent defendant is declared indigent for the purposes of appointing counsel before he is brought to trial involves different considerations than the question of whether a convicted defendant may be charged with the costs expended by the state to secure his conviction. People v. Fisher, 189 Colo. 297, 539 P.2d 1258 (1975).

The sixth amendment of the constitution compels appointing counsel for indigent defendants but does not speak to whether convicted defendants of limited resources may be charged with the costs of their trial. People v. Fisher, 189 Colo. 297, 539 P.2d 1258 (1975).

The expenses of obtaining the testimony of witnesses for an indigent defendant must be paid by the state. People v. McCabe, 37 Colo. App. 181, 546 P.2d 1289 (1975).

Arrest part of preliminary hearing. The arrest of one charged with crime under a capias issued by a justice, is part of the preliminary hearing before the magistrate. Bd. of County Comm'rs v. Camp, 48 Colo. 61, 108 P. 972 (1910).

Applied in People v. Lowe, 60 P.3d 753 (Colo. App. 2002).

Performance Measures:

Improve the safety and security of staff, offenders, and other stakeholders by holding offenders criminally accountable for illegal acts committed within correctional facilities.
Percent of inmates criminally charged based on total OIG (Office of Inspector General) investigations for illegal acts committed within a public or private correctional facility.