

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

Request Title: Decision Item FY 08-09 Base Reduction Item FY 08-09 Supplemental FY 07-08 Budget Request Amendment FY 08-09
 Department: Payments to District Attorneys 1331 Supplemental
 Dept. Approval by: *Aristotle W. Zavaras*
 Priority Number: N/A OSPB Approval: *John M. Z...* Date: 05/27/2008
 Date: *6/6/08*

	Fund	1	2	3	4	5	6	7	8	9	10
		Prior-Year Actual FY 06-07	Appropriation FY 07-08	1331 Supplemental Request FY 07-08	Total Revised Request FY 07-08	Base Request FY 08-09	Decision/ Base Reduction FY 08-09	November 1 Request FY 08-09	Budget Amendment FY 08-09	Total Revised Request FY 08-09	Change from Base (Column 5) FY 09-10
Total of All Line Items	Total	156,996,448	145,939,598	0	145,939,598	152,148,914	0	152,148,914	0	152,148,914	0
	FTE	2,793.9	2,980.3	0.0	2,980.3	2,995.7	0.0	2,995.7	0.0	2,995.7	0.0
	GF	156,996,448	145,939,598	0	145,939,598	152,143,914	0	152,143,914	0	152,143,914	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	0	0	0	0	5,000	0	5,000	0	5,000	0
	CFE	0	0	0	0	0	0	0	0	0	0
	FF	0	0	0	0	0	0	0	0	0	0
(1) Management	Total	0	290,819	183,714	474,533	150,000	0	150,000	0	150,000	0
(D) Executive Director	FTE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Payments to District Attorneys	GF	0	290,819	183,714	474,533	150,000	0	150,000	0	150,000	0
	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
(2) Housing	Total	156,996,448	145,648,779	(183,714)	145,465,065	151,993,914	0	151,993,914	0	151,993,914	0
(C) Housing & Security	FTE	2,793.9	2,980.3	0.0	2,980.3	2,995.7	0.0	2,995.7	0.0	2,995.7	0.0
Personal Services	GF	156,996,448	145,648,779	(183,714)	145,465,065	151,993,914	0	151,993,914	0	151,993,914	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	0	0	0	0	5,000	0	5,000	0	5,000	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---Emergency Supplemental

Department:	Corrections
Priority Number:	N/A
Change Request Title:	Payments to District Attorneys 1331 Supplemental

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 a 1331 Emergency Supplemental in the amount of \$183,714 General Funds in order to pay District Attorney expenses for criminal prosecution of death penalty cases from January to April, 2008. The request would be funded by anticipated Personal Services reversions from the (2)(C) Institutions Housing and Security line for a net \$0 General Fund impact.

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 2007-08 and in FY 2008-09.

The Department requested and received \$290,819 as a FY 2007-08 supplemental for reimbursement for District Attorney cases, as well as billing from July through December 2007 for death penalty cases in a new Long Bill line titled "Payments to District Attorneys." At the supplemental figure setting, JBC staff indicated the understanding that there would be additional charges in 2008 related to death penalty cases.

General Description of Request:

The Department requests \$183,714 in General Fund dollars to supply the needed funds to reimburse the counties prosecuting offenders for crimes committed while in the custody of the Department. The request would be funded from anticipated reversions within the (2)(C)Institutions Housing & Security Personal Services line which will provide a net \$0 General Fund impact. This amount represents the District Attorney charges through April, 2008 for the Bueno death penalty case. The chart on Page 3 detailing the Payments to District Attorneys will show a remaining balance of \$16,002 as of May 29, 2008. Due to the fact that large sum invoices are received after May 30, the Department believes that the remaining balance of \$16,002 will be fully expended by June 30, 2008.

STATE OF COLORADO FY 08-09 BUDGET REQUEST CYCLE: Department of Corrections

Invoices Received after May 30	2005	2006	2007
Payments to District Attorneys	\$19,802	\$23,208	\$9,150

Payments to District Attorneys July 2007- May 2008				
		Appropriation	Expense	Balance
	Date	290,819.00		
City & County of Denver: 211 Gang	5/6/2008		19,253.30	271,565.70
DA Accrual: Bueno/Perez	4/30/2008		183,714.00	87,851.70
DA Accrual: Death Penalty Billing (July-Dec 07)	12/31/2007		189,122.39	(101,270.69)
DA Office: 11th	1/1/2008		3,734.10	(105,004.79)
DA Office: 11th	11/30/2007		1,601.10	(106,605.89)
DA Office: 11th	3/1/2008		1,032.75	(107,638.64)
DA Office: 11th	12/1/2007		3,948.75	(111,587.39)
DA Office: 11th	12/10/2007		2,655.45	(114,242.84)
DA Office: 11th	2/11/2008		930.34	(115,173.18)
DA Office: 11th	12/2/2007		4,631.85	(119,805.03)
DA Office: 11th	3/1/2008		8,394.30	(128,199.33)
DA Office: 13th	1/31/2008		858.51	(129,057.84)
DA Office: 13th	3/31/2008		1,606.71	(130,664.55)
DA Office: 13th	4/30/2008		321.62	(130,986.17)
DA Office: 13th	4/30/2008		382.15	(131,368.32)
DA Office: 13th	4/30/2008		2,793.55	(134,161.87)
DA Office: 13th	10/31/2007		282.57	(134,444.44)
DA Office: 13th	11/30/2007		102.27	(134,546.71)
DA Office: 13th	11/30/2007		528.82	(135,075.53)
DA Office: 13th	2/29/2008		1,591.50	(136,667.03)
DA Office: 13th	1/31/2008		808.51	(137,475.54)
DA Office: 13th	12/31/2007		192.41	(137,667.95)
DA Office: 13th	12/31/2007		401.01	(138,068.96)

STATE OF COLORADO FY 08-09 BUDGET REQUEST CYCLE: Department of Corrections

DA Office: 13th	2/29/2008		470.95	(138,539.91)
DA Office: 16th	3/7/2008		1,130.33	(139,670.24)
DA Office: 16th	4/29/2008		2,772.00	(142,442.24)
DA Office: 16th	4/7/2008		699.73	(143,141.97)
DA Office: 16th	4/7/2008		2,179.91	(145,321.88)
1331 Emergency Supplemental: 05/27/08		183,714.00		38,392.12
Payments to District Attorneys: Pending as of 5/29/08				
DA Office: 10th			3,031.25	35,360.87
DA Office :11th			13,630.95	21,729.92
DA Office: 11th			2,511.00	19,218.92
DA Office: Denver			3,217.00	16,001.92

Consequences if Not Funded:

Department would not have the appropriated funds to pay the District Attorneys for the costs incurred.

Calculations for Request:

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
(1D) Executive Director's Office – Payments to District Attorneys	\$183,714	\$183,714	\$0	\$0	\$0	0.0
(2C) Housing – Housing & Security Personal Services	(\$183,714)	(\$183,714)	\$0	\$0	\$0	0.0

Assumptions for Calculations: Actual bills from County District Attorneys handling pending litigation for the Department.

Impact on Other Government Agencies: Counties and District Attorneys

Cost Benefit Analysis:

Cost	Benefit
General Fund Impact: \$183,714	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	June 2008

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:

The Emergency Request is due to this unforeseen, emergency situation involving an expensive death penalty case and is therefore not directly related to a core departmental performance measure.