Schedule 13
Change Request for FY 2009-10 Budget Request Cycle - 1331 Emergency Supplemental

Decision Item FY 2009-10 ☐	Base Reduction Item FY 2009-10 ☐	Supplemental FY 2008-09 ☑	Budget Amendment FY 2009-10 ☐

Request Title: Payments to District Attorneys 1331 Emergency Supplemental
Department: Corrections
Priority Number: N/A
Dept. Approval by: Aristedes W. Zavaras **Date:** 11/20/08
OSPB Approval: **Date:** 12-3-08

	Fund	1 Prior-Year Actual FY 2007-08	2 Appropriation FY 2008-09	3 1331 Emergency Supplemental Request FY 2008-09	4 Total Revised Request FY 2008-09	5 Base Request FY 2009-10	6 Decision/ Base Reduction FY 2009-10	7 November 1 Request FY 2009-10	8 Budget Amendment FY 2009-10	9 Total Revised Request FY 2009-10	10 Change from Base (Column 5) FY 2010-11
Total of All Line Items	Total	468,551	100,708	49,292	150,000	144,108	0	144,108	0	144,108	0
	FTE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	GF	468,551	100,708	49,292	150,000	144,108	0	144,108	0	144,108	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	0	0	0	0	0	0	0	0	0	0
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	0	0	0	0	0	0	0	0	0	0
(1) Management, (A) Executive Director's Office, Payments to District Attorneys	Total	468,551	100,708	49,292	150,000	144,108	0	144,108	0	144,108	0
	FTE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	GF	468,551	100,708	49,292	150,000	144,108	0	144,108	0	144,108	0
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	0	0	0	0	0	0	0	0	0	0
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	0	0	0	0	0	0	0	0	0	0

Non-Line Item Request: Requesting to lift restriction on spending authority in amount of $100,708 in Payments to District Attorneys.
Letternote Revised Text: None
Cash or Federal Fund Name and COFRS Fund Number: None
Reappropriated Funds Source, by Department and Line Item Name: None
Approval by OIT? **Yes:** ☐ **No:** ☐ **N/A:** ☑
Schedule 13s from Affected Departments: None

CHANGE REQUEST for FY 2009-10 BUDGET REQUEST CYCLE – 1331 Emergency Supplemental

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

SELECT ONE (click on box):

☐ Decision Item FY 2009-10
☐ Base Reduction Item FY 2009-10
☒ Supplemental Request FY 2008-09
☐ Budget Request Amendment FY 2009-10

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 of Corrections is requesting a FY 2008-09 1331 Emergency Supplemental General Fund increase of $49,292 in the Executive Director's Office Payments to District Attorneys budget line, as well as lifting the spending restrictions of $100,708 in the Payments to District Attorneys budget line. No additional funding is requested for FY 2009-10.

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.

The Payments to District Attorneys budget line was created in HB 08-1282 (Supplemental Bill) under the Executive Director's Office Subprogram. Historically these expenses have been paid primarily from the Executive Director's Subprogram's Personal Services appropriation and averaged approximately $150,000 per year. This line was established to provide a designated appropriation for these specific payments to district attorneys.

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 Access 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 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.

An additional 1331 Emergency Supplemental for $183,714 was submitted in June, 2008 for the remainder of the death penalty invoices from December through June, 2008. The supplemental was approved for $38,860.

It was and is the Department's position that the invoices were valid and obligated the Department to reimburse the counties for these death penalty cases. As result of the underfunding and the costs of the death penalty cases, the Department overspent this appropriation by $138,872 at the end of FY 2008-09. An overexpenditure restriction of $100,708 was placed on the entire FY 2008-09 Payments to District Attorneys appropriation (as well as $38,165 in Legal Services in the Executive Director's Office Subprogram) by the State Controller. The remaining $49,292 of the Payments to District

Attorneys original $150,000 appropriation was directed to a one-year funding of HB 08-1382 Criminal Procedural Matters. (Of this $49,292 reduction in FY 2008-09, $43,400 will be reinstated through annualization in the FY 2009-10 Budget Request.) As a result of the restriction, there is no appropriation available for payments to district attorneys in FY 2008-09.

General Description of Request: The Department requests $49,292 in the Executive Director's Office Payments to District Attorneys budget line, as well as lifting the spending restrictions of $100,708 in the Payments to District Attorneys budget line to pay county District Attorneys for costs incurred. The over-expenditure restriction will not extend into FY 2009-10, so a budget amendment is not being requested.

The 1331 emergency supplemental justification for new data exists due to the 1331 Supplemental funding reduction approved by JBC at the June 23, 2008 hearing (after budget submissions), and the State Controller's overexpenditure restriction in July, 2008.

Consequences if Not Funded: The Department would not have any appropriated funds to reimburse county District Attorneys for the costs incurred.

Calculations for Request:

Summary of Request FY 2008-09	**Total Funds**	**General Fund**	**Cash Funds**	**Reappropriated Funds**	**Federal Funds**	**FTE**
Total Request	$150,000	$150,000	$0	$0	$0	0.0
(1) Management (A) Executive Director's Office – Payments to District Attorneys	$49,292	$49,292	$0	$0	$0	0.0
(1) Management (A) Executive Director's Office – Payments to District Attorneys – lift restriction	$100,708	$100,708	$0	$0	$0	0.0

Summary of Request FY 2009-10	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FTE
Total Request	$0	$0	$0	$0	$0	0.0
(1) Management (A) Executive Director's Office – Payments to District Attorneys	$0	$0	$0	$0	$0	0.0

Cash Funds Projections: Not applicable.

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 to restore the Payments to District Attorneys line within the (1)(A) Executor Director's Office Subprogram to $150,000 GF.

The more extraordinary and second purpose for expenditures to County District Attorney Offices is for prosecution of death penalty cases. The Department presently has three 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. At this time, the Department does not have any death penalty cases in court and are not requesting death penalty funding at this time.

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

Table 1: Expenditures-Object Code 1930-Litigation				
FY 2007-08	**FY 2006-07**	**FY 2005-06**	**FY 2004-05**	**FY 2003-04**
$468,551	$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 $49,292 in FY 2008-09.	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	December 2008 – June 2009

Statutory and Federal Authority: The statutes for the duties and powers of the Executive Director confer the authority to the Executive Director to manage, supervise, and control the correctional facilities within the State of Colorado and bestows authority to enter into agreements, contracts, and issue administrative warrants.

Article 1 Department of Corrections

Part 1 Corrections Administration

17-1-103, C.R.S. (2008) Duties of the executive director.

1) The duties of the executive director shall be:

(a) To manage, supervise, and control the correctional institutions operated and supported by the state; to monitor and supervise the activities of private contract prisons; to manage and supervise the divisions, agencies, boards, and commissions that are or may be transferred to or established within the department by law or by the executive director pursuant to section 17-1-101 (2); to provide work and self-improvement opportunities;

and to establish an environment that promotes habilitation for successful reentry into society;

(a.5) to develop policies and procedures governing the operation of the department;

(b) To supervise the business, fiscal, budget, personnel, and financial operations of the department and the institutions and activities under his or her control;

(c) In consultation with the division directors and the wardens, to develop a systematic building program providing for the projected, long-range needs of the institutions under his or her control.

16-18-101, C.R.S. (2008) 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.

Performance Measures: Not applicable.