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MEMORANDUM

January 12, 2012

TO: Interested Persons
FROM: Hillary Smith, Senior Researcher, 303-866-3277
SUBJECT: Services Provided by the Department of Corrections to Inmates

This memorandum provides an overview of federal law concerning inmates' rights and corresponding DOC administrative regulations pertaining to those rights. The memorandum summarizes the basic services provided to inmates by the DOC, the cost of providing those services, and whether offenders are charged for access to such services. An explanation of the privileges available to offenders who meet specific requirements intended to promote good behavior is included. Certain services, such as health care and basic hygiene kits, are provided to inmates regardless of their ability to pay. The memorandum also discusses the wages paid to inmates for their participation in labor programs and explains how wages or other assets of inmates are withheld to pay for the cost of their care. It should be noted that this memorandum is not a legal opinion.

Inmates' Rights Under the U.S. Constitution and Federal Statutes

Although there are some federal statutes that specifically mandate services or rights for inmates, such as the Prison Rape Elimination Act¹ and the Civil Rights of Institutionalized Persons Act,² most federal law concerning inmates' rights is based on case law. In its 2011 edition of *A Jailhouse Lawyer's Manual*, the Columbia Human Rights Law Review summarized inmates' rights under the U.S. Constitution.³ This summary reflects the general consensus of case law, although every case is decided based on its own specific facts.

The Columbia Human Rights Law Review notes that an inmate's constitutional rights are balanced against the state or federal government's interests, such as the interest in maintaining a secure prison environment. In particular, the *Jailhouse Lawyer's Manual* discusses the 1987 Supreme Court decision in *Turner v. Safley*, in which the court held that when a prison regulation has an impact on an inmate's constitutional rights, the regulation is still valid if it is

¹42 U.S.C. § 15601

²42 U.S.C. § 1997, *et seq.*

³"Chapter 16: Using 42 U.S.C. § 1983 and 28 U.S.C. § 1331 to Obtain Relief from Violations of Federal Law," *A Jailhouse Lawyer's Manual (Ninth Edition)*. Columbia Human Rights Law Review, 2011 (366 - 438)

"reasonably related to legitimate penological interests."⁴ The findings of *Turner v. Safley* do not apply to claims of racial discrimination, Eighth Amendment violations, restrictions on private religious exercise, or to some procedural due process claims.

Table 1 replicates the Columbia Human Rights Law Review's summary of inmates' rights under the U.S. Constitution and also provides citations to relevant sections of Colorado law and DOC administrative regulations.⁵ According to the Columbia Human Rights Law Review, most inmates' rights have been found by the courts to be based on the Eighth and Fourteenth Amendments of the U.S. Constitution. Other rights have been found to be based on the First, Fourth, Fifth, and Sixth Amendments.

Table 1
Inmates' Rights According to the U.S. Constitution, Colorado Law, and DOC Administrative Regulations

Type of Inmate Right	Source of Right in the U.S. Constitution	Relevant Colorado Law	Relevant DOC Administrative Regulations
Mail, visitation, telephone use, and other communications	First Amendment	Art. II, Section 10, Colo. Constitution § 16-3-401, C.R.S. § 16-3-402, C.R.S.	AR 300-38 AR 850-12 AR 850-14
Religious practices	First Amendment	Art. II, Section 4, Colo. Constitution § 17-42-101, C.R.S.	AR 800-01 AR 1550-06
Freedom from unreasonable searches and seizures of pretrial detainees or body searches	Fourth Amendment	Art. II, Section 7, Colo. Constitution § 16-3-405, C.R.S.	AR 300-06
Prison conditions (overcrowding, cleanliness, etc.)	Eighth Amendment		AR 850-11
Medical care	Eighth Amendment	§ 16-3-401, C.R.S. § 17-1-101, C.R.S.	AR 700-01, <i>et seq.</i> AR 850-14
Freedom from assault or from failure to protect	Eighth Amendment	§ 17-1-115.5, C.R.S.	AR100-40 AR 850-15
Informational privacy	Fourteenth Amendment	§ 24-90-119, C.R.S. § 18-4-412, C.R.S.	AR 500-02 AR 950-02
Due process in disciplinary hearings	Due Process Clause of the Fifth and Fourteenth Amendments	Art. II, Section 25, Colo. Constitution	AR 150-01
Freedom from discrimination on the bases of race, ethnicity, etc.	Equal Protection Clause of the Fourteenth Amendment		AR 850-03 AR 850-15

⁴482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987)

⁵Staff reviewed all nonrestricted administrative regulations; some administrative regulations are not available to the public.

Table 1
Inmates' Rights According to the U.S. Constitution, Colorado Law, and DOC
Administrative Regulations (Cont.)

Type of Inmate Right	Source of Right in the U.S. Constitution	Relevant Colorado Law	Relevant DOC Administrative Regulations
Freedom from discrimination on the basis of gender	Equal Protection Clause of the Fourteenth Amendment	Art. II, Section 29, Colo. Constitution	AR 850-03 AR 850-15
Rights of prisoners with mental illnesses	Eighth and Fourteenth Amendments	§ 18-1.9-101, <i>et seq.</i> , C.R.S.	
Freedom from discrimination on the basis of disability	Equal Protection Clause of the Fourteenth Amendment		AR 750-04 AR 850-03 AR 850-15
Freedom from discrimination on the basis of sexual orientation or gender identity	Equal Protection Clause of the Fourteenth Amendment		
Access to courts, including law libraries and legal assistance	Fifth, Sixth, and Fourteenth Amendments	§ 16-3-402, C.R.S. § 16-3-403, C.R.S.	AR 300-38 AR 750-01 AR 750-03

Source: "Chapter 16: Using 42 U.S.C. § 1983 and 28 U.S.C. § 1331 to Obtain Relief from Violations of Federal Law," *A Jailhouse Lawyer's Manual (Ninth Edition)*. Columbia Human Rights Law Review, 2011 (366 - 438); Colorado Department of Corrections

Services Provided to Inmates by the Colorado Department of Corrections

The Colorado Constitution requires the state to establish and support reformatory and penal institutions.⁶ In determining the type and manner of services provided to inmates, the DOC relies on the provisions of federal and state law, case law, and standards developed by the American Correctional Association (ACA).⁷ In addition, the DOC adheres to the quality of life and physical plant standards promulgated by the Colorado Department of Public Health and Environment. According to state law, persons arrested or in custody must be treated humanely and provided with adequate food, shelter, and, if required, medical treatment.⁸ Colorado law prescribes several specific duties for the executive director of the DOC, including requirements to:

- provide work and self-improvement opportunities;
- establish an environment that promotes habilitation for successful reentry into society;

⁶Article VIII, Section 1, Colorado Constitution

⁷Pursuant to DOC AR 100-33, it is the policy of the DOC to voluntarily participate, within budgetary constraints in the standards and accreditation program of the American Correctional Association. The department says that it has used the ACA accreditation process to document compliance during federal court proceedings, and that its compliance has been a valuable tool in the department's defense against legal action.

⁸Section 16-3-401 (2), C.R.S.

- to the extent practical, develop within the correctional institutions industries that develop work skills for inmates and that will also serve the purpose of supplying necessary products for state institutions and other public purposes;
- carry out duties concerning substance abuse assessment and treatment; and
- carry out duties concerning sex offender assessment and treatment.⁹

Other sections of state law, particularly those in Titles 16 and 17, C.R.S., also contain information concerning services provided to inmates. Administrative regulations promulgated by the DOC provide further detail on such services. This section of the memorandum briefly outlines the types of services provided by the DOC and explains, when information is available, the state costs related to the provision of such services and whether inmates are required to contribute to these costs. The memorandum primarily concentrates on services provided to inmates who are incarcerated within the DOC; the department may have other obligations to inmates who are released to parole or to community corrections.

Table 2 lists the service the DOC provides, the citation to state statutes or administrative regulations concerning the service, the page number on which it is described, and the total state appropriations for FY 2011-12 for this service.

⁹Section 17-1-103, C.R.S.

Table 2
FY 2011-12 Appropriations for Services Provided to Inmates by the DOC

Service	Citation	Pages of Memorandum	General Fund Appropriation	Other Appropriations	Notes
Health Care	§ 16-3-401 (2), C.R.S. § 16-11.9-102, C.R.S. § 17-1-113, C.R.S.	Page 9	<ul style="list-style-type: none"> • <i>Medical Services</i>: \$28.0 million for personal services and \$43.2 million for operating expenses; and • <i>Mental Health</i>: \$9.1 million for personal services and \$0.9 million for operating expenses 	<ul style="list-style-type: none"> • \$274,485 from inmate copayments; and • \$200,100 from reappropriated grants through the Department of Public Safety 	
Sexual Assault Prevention	§ 17-1-115.5, C.R.S.	Pages 9-10	None	<ul style="list-style-type: none"> • \$265,750 from federal grant funds 	
Genetic Testing	§ 16-11-102.4, C.R.S.	Page 10			DNA is normally collected at the county jail. Until the end of FY 2009-10, incoming offenders paid a fee for their own DNA testing when they entered the DOC through the Denver Diagnostic and Reception Center. As of FY 2010-11, new offenders coming into the DOC are assessed restitution fees by the courts to pay for their DNA tests.
Substance Abuse Testing and Treatment	§ 16-11.5-101, <i>et seq.</i> , C.R.S.	Pages 10-11	<ul style="list-style-type: none"> • \$3.9 million for personal services; and • \$2.2 million for operating expenses 	<ul style="list-style-type: none"> • \$1.2 million from the Drug Offender Surcharge Fund; and • \$125,000 from reappropriated grant funds through the Department of Public Safety 	
Sex Offender Treatment	§ 16-11.7-101, <i>et seq.</i> , C.R.S.	Page 11	<ul style="list-style-type: none"> • \$2.7 million in personal services; and • \$0.2 million in operating expenses 	<ul style="list-style-type: none"> • \$29,000 from the Sex Offender Surcharge Fund; and • \$250,000 from federally funded grants 	

**Table 2 (Cont.)
FY 2011-12 Appropriations for Services Provided to Inmates by the DOC**

Service	Citation	Pages of Memorandum	General Fund Appropriation	Other Appropriations	Notes
Case Management	DOC AR 550-01	Pages 11-12	<ul style="list-style-type: none"> \$15.5 million in personal services; and \$0.2 million in operating expenses 		
Community Reintegration	§ 17-33-101, C.R.S.	Page 12	<ul style="list-style-type: none"> \$1.9 million in personal services; \$0.1 million in operating expenses; \$96,768 in offender emergency assistance; \$0.4 million for the Offender Re-employment Center; and \$0.2 million for contract services 	<ul style="list-style-type: none"> \$10,000 from gifts, grants, and donations; \$85,000 from the Division of Housing in the Department of Local Affairs; and \$40,000 from federal funds 	
Food	§ 16-3-401 (2), C.R.S.	Pages 12-13	<ul style="list-style-type: none"> \$15.2 million in personal services; and \$16.8 million in operating expenses 	<ul style="list-style-type: none"> \$80,000 from the U.S. Department of Agriculture 	
Clothing, Bedding, and Laundry Services	DOC AR 850-05	Page 13	<ul style="list-style-type: none"> \$2.2 million in personal services; and \$2.2 million in operating expenses <p>In FY 2010-11, bedding and linen expenses totaled \$186,047, and offender clothing expenses totaled \$1.4 million.</p>		Appropriations for clothing, bedding, and laundry services are not separate line items.
Hygiene Services	DOC AR 850-11	Pages 13-14	None	Offenders purchase hygiene items through the canteen.	
Freedom of Worship	§ 17-42-101, C.R.S.	Page 14		Worship services are provided by volunteer chaplains and other volunteers through canteen cash funds.	

**Table 2 (Cont.)
FY 2011-12 Appropriations for Services Provided to Inmates by the DOC**

Service	Citation	Pages of Memorandum	General Fund Appropriation	Other Appropriations	Notes
Educational Programs	§ 17-32-101, <i>et seq.</i> , C.R.S.	Pages 15-16	<ul style="list-style-type: none"> • \$11.1 million in personal services; and • \$73,276 in contract services 	<ul style="list-style-type: none"> • \$2.0 million in operating expenses from sales revenues from vocational programs; • \$1.3 million from sales revenues from the canteen; • \$10,000 from gifts, grants, and donations; and • \$500,000 from federal funds 	
Legal Access	DOC AR 750-01	Pages 16-17	<ul style="list-style-type: none"> • \$1.2 million in personal services; and • \$0.4 million in operating expenses 		
Library Services	§ 24-90-105 (1)(d), C.R.S.	Pages 17-18		Provided through canteen funds	
Work Programs	§ 17-29-101, C.R.S.	Pages 18-19	<ul style="list-style-type: none"> • \$5.4 million in personal services; and • \$90,297 in operating expenses 		
Correctional Industries	§ 17-24-101, <i>et seq.</i> , C.R.S.	Pages 19-20		<ul style="list-style-type: none"> • \$55.3 million in cash and reappropriated funds 	
Canteen	§ 17-24-106 (1)(t), C.R.S.	Page 20		<ul style="list-style-type: none"> • \$14.7 million in cash funds <p>Of the \$14.7 million, approximately \$12.0 million is committed for the operation of the canteen; \$1.9 million is committed to fund education, volunteer, and recreation subprograms; and \$972,000 is committed to fund libraries, cable service, offender e-messaging supplies, and other offender benefits.</p>	

**Table 2 (Cont.)
FY 2011-12 Appropriations for Services Provided to Inmates by the DOC**

Service	Citation	Pages of Memorandum	General Fund Appropriation	Other Appropriations	Notes
Victim-Offender Conferences	§ 17-28-103, C.R.S.	Pages 20-21			No funding is available.
Recreation and Hobby Work	DOC AR 1000-01, <i>et seq.</i>	Page 21	<ul style="list-style-type: none"> \$6.3 million in personal services 	<ul style="list-style-type: none"> \$74,000 in operating expenses from sales revenues from the canteen 	
Mail Service	DOC AR 300-38	Pages 21-22			Outgoing postage is paid by offenders.
Telephone Service	DOC AR 850-12	Page 22		Provided through canteen cash funds	
Discharge Funds	§ 17-22.5-202, C.R.S.	Page 23	<ul style="list-style-type: none"> \$675,000 		
Services for Indigent Inmates	AR 850-14	Pages 23-24			The department must ensure that indigent inmates have access to courts, medical treatment, correspondence with family, and basic hygiene items. Hygiene items are generally purchased by inmates through the canteen. Inmate pay is designed to provide unassigned offenders enough to buy basic hygiene supplies.
Incentive Programs	DOC AR 650-01	Pages 24-25		Provided through canteen cash funds	
Inmate Wages	§ 17-24-110, C.R.S. § 17-29-103, C.R.S.	Pages 26-28	<ul style="list-style-type: none"> \$1.5 million 		

Source: Colorado Department of Corrections, Senate Bill 11-209

Health care. The DOC provides medical, nursing, psychiatric, optometric, pharmacy, dental, mental health, sex offender, and drug and alcohol diagnostic and treatment services to all offenders incarcerated in the DOC. The DOC is also required to develop a standardized screening procedure to assess offenders for mental illnesses.¹⁰ Upon admission, all new inmates undergo a medical, dental, and mental health screening.¹¹

Colorado law requires the DOC to assess copayments for every inmate-initiated request for medical or mental health services.¹² The copayment is statutorily capped at \$5 per visit, although a DOC Administrative Regulation 700-30 sets the copayment at \$3 for medical, dental, and optometric services and \$1 for mental health services. The administrative regulation includes a list of 16 general exclusions to the medical copayment fee. The DOC may not deny access to health care because of an inmate's inability to pay copayments.¹³ Further detail on the scope of the DOC's health care services is available in DOC Administrative Regulations 700-01 through 700-34.

State law also requires correctional facility personnel to assist inmates in applying for medical assistance such as Medicaid at least 90 days prior to release.¹⁴ DOC Administrative Regulation 550-07 summarizes the procedures the DOC follows to fulfill this requirement.

For FY 2011-12, the total appropriation to the DOC medical services subprogram was \$71.4 million, with \$274,485 from revenue generated by inmate copayments, and the remainder from the General Fund.¹⁵ The General Assembly appropriated an additional \$10.2 million for the mental health subprogram, of which \$200,100 is from federal funds appropriated to the Division of Criminal Justice within the Department of Public Safety.¹⁶

Sexual assault prevention. Pursuant to the federal Prison Rape Elimination Act, the DOC is required to develop policies and procedures concerning sexual assaults that occur in correctional facilities.¹⁷ In conjunction with this requirement, the DOC must provide:

- acute trauma care for sexual assault victims, including but not limited to, treatment of injuries, HIV/AIDS prophylactic measures, and testing for sexually transmitted diseases; and

¹⁰Section 16-11.9-102, C.R.S.

¹¹DOC AR 850-01 (IV) (A) (7)

¹²Section 17-1-113, C.R.S. In *Negron v. Gillespie*, 111 P.3d 556 (Colo. App. 2005), the court held that a state may establish reasonable inmate copayments for the provision of medical care as long as the state meets an inmate's serious medical needs and may determine whether a governmental entity or the inmate must pay the cost of any medical services provided.

¹³In *Poudre Valley Health Care, Inc., v. City of Loveland*, 85 P.3d 558 (Colo. App. 2003), the court held that the duty imposed by Section 16-3-401 (2), C.R.S. on a detaining governmental entity to provide medical treatment implies an inherent obligation on the part of the entity to pay the costs of such treatment.

¹⁴Section 17-1-113.5 (1), C.R.S.

¹⁵Senate Bill 11-209

¹⁶Senate Bill 11-209

¹⁷Section 17-1-115.5, C.R.S.

- confidential mental health counseling for victims of sexual assault.

DOC Administrative Regulation 100-40 provides further detail on the department's prison rape elimination procedures. The department refers inmates identified as a victim of sexual assault or sexual misconduct to mental health services. DOC Administrative Regulation 700-30 excludes sexual assault treatment and related mental health services from services for which a medical copayment is required.

For FY 2011-12, the DOC received \$265,750 in federal grant funds to be used to satisfy the requirements of the Prison Rape Elimination Act.

Genetic testing. State law requires certain convicted offenders to submit to and pay for the collection and chemical testing of the offender's biological substance sample in order to determine the genetic markets of the sample.¹⁸ Pursuant to DOC Administrative Regulation 300-24, any inmate who has not previously provided a biological substance sample must pay \$5.00 for the collection of a buccal (oral swab) or blood sample for DNA testing. Money paid by offenders for the purposes of genetic testing is deposited in the Offender Identification Fund.¹⁹

According to the department, DNA is normally collected at the county jail. Until the end of FY 2009-10, incoming offenders paid a fee for their own DNA testing when they entered the DOC through the Denver Diagnostic and Reception Center. As of FY 2010-11, new offenders coming into the DOC are assessed restitution fees by the courts to pay for their DNA tests.²⁰

Substance abuse testing and treatment. State law requires the Judicial Department, the DOC, the State Board of Parole, the Division of Criminal Justice in the Department of Public Safety, and the Department of Public Health and Environment to develop and implement a standardized procedure for assessing the use of controlled substances by offenders.²¹ The departments are also required to develop and implement a system of education and treatment programs concerning substance abuse for the use of offenders who are placed on probation, parole, or in community corrections, or who are incarcerated in the DOC. Such programs must include a system of periodic or random chemical testing and a system of punitive sanctions for offenders who test positive for controlled substances after being placed in an educational or treatment program. DOC Administrative Regulation 300-20 states that inmates who test positive or who are found to have tampered, adulterated, or diluted a test will be assessed the current cost of the testing method and any confirmation tests needed. If an offender requests to have a sample re-tested, he or she must pay for this procedure.

¹⁸Section 16-11-102.4 (1), C.R.S.

¹⁹Section 16-11-102.4 (4), C.R.S.

²⁰House Bill 07-1343, concerning DNA testing for felony offenders, awarded \$4,950 per year for three fiscal years (FY 2007-08 through FY 2009-10) to fund testing for individuals who were already incarcerated within the DOC.

²¹Section 16-11.5-101, *et seq.*, C.R.S.

The procedures for the drug and alcohol assessment, treatment, and sanction programs are implemented only if funds are available in the Drug Offender Surcharge Fund.²² For FY 2011-12, the General Assembly appropriated \$7.5 million for substance abuse testing and treatment. Of this amount, \$6.1 million is from the General Fund, \$1.2 million is from the Drug Offender Surcharge Fund, and \$125,000 is from grant funds appropriated to the Division of Criminal Justice in the Department of Public Safety.²³

Sex offender treatment. Colorado law requires the DOC to evaluate, identify, treat, manage, and monitor adult sex offenders.²⁴ Every sex offender who is sentenced to the DOC is required to undergo treatment. Once the offender is released on parole, he or she is required to pay for the treatment to the extent that her or she is financially able to do so.²⁵ Programs for sex offenders must be as flexible as possible in order to be available to each offender. Treatment options may include group counseling, individual counseling, family counseling, shared living arrangements, or treatment in a therapeutic community.

Funding for sex offender treatment is allocated to the Judicial Department, the DOC, the Division of Criminal Justice within the Department of Public Safety, and the Department of Human Services from the Sex Offender Surcharge Fund. For FY 2011-12, the General Assembly appropriated \$3.2 million for sex offender services. Of this amount, \$2.9 million is from the General Fund, \$29,000 is from the Sex Offender Surcharge Fund, and \$250,000 is from federally funded grants.²⁶

Case management. DOC Administrative Regulation 550-01 describes the policy of the DOC to maintain and support a standardized case management system that:

- enables case managers to communicate directly with inmates;
- identifies any progress or regress directly related to the diagnostic package or subsequent evaluations by program providers;
- classifies inmates in accordance with policy; and
- refers inmates to appropriate programs and transitional placements.

The administrative regulation briefly summarizes case management procedures, including intake, admissions, orientation, records management, and progress reviews.

²²Section 16-11.5-102 (2), C.R.S.

²³Senate Bill 11-209

²⁴Section 16-11.7-101, *et seq.*, C.R.S.

²⁵Section 16-11.7-105, C.R.S.

²⁶Senate Bill 11-209

Other administrative regulations address a case manager's role in assisting inmates to apply for disability benefits and replacement Social Security cards and birth certificates.²⁷ Inmates must be eligible for such benefits or replacement documents and are responsible for any necessary application fees.

For FY 2011-12, the General Assembly appropriated \$15.7 million from the General Fund for the case management subprogram.²⁸

Community reintegration. State law requires the DOC to administer reentry programs for inmates prior to and after their release.²⁹ The programs are intended to assist inmates with their reentry into society by reducing the possibility of the inmates returning to prison, assisting them in rehabilitation, and providing them with life-management skills. DOC Administrative Regulation 550-11 provides additional detail on the release programs administered by the department.

DOC Administrative Regulation 250-04 also provides for indigent parolee emergency assistance. The assistance generally consists of community partnerships that provide transitional assistance to parolees, although funding may be provided directly to a parolee if he or she does not qualify for assistance from community resources or if community resources are otherwise unavailable.

For FY 2011-12, the General Assembly appropriated \$2.9 million for the community reentry subprogram. Of this amount, \$2.8 million is from the General Fund, \$10,000 is from gifts, grants and donations, \$85,000 is from funds appropriated to the Division of Housing in the Department of Local Affairs, and about \$40,000 is from federal funds.³⁰

Food. Pursuant to DOC Administrative Regulation 1550-02, the DOC provides meals that are nutritionally adequate and prepared and served in a manner that meets established governmental health and safety codes. Inmates and DOC employees are periodically surveyed on their menu preferences, and alternative and religious diets are available.

The DOC employs a registered dietician who is responsible for developing and approving all menus for DOC facilities. The dietician estimates that, in general, an adult requires 20 to 35 calories per kilogram of body weight each day. When determining an optimal daily caloric level for inmates, the following factors are taken into account:

- age;
- gender;
- activity level;
- cycle of life (e.g., adolescent, adult, or senior citizen);
- body mass index; and

²⁷DOC AR 550-07; DOC AR 550-10

²⁸Senate Bill 11-209

²⁹Section 17-33-101, C.R.S.

³⁰Senate Bill 11-209

- weight.

The regular diet for men in the DOC provides approximately 2,800 to 2,900 calories each day. The diet for the female population provides approximately 2,200 calories each day. Youthful offenders in the DOC are given approximately 4,000 calories per day. The actual number of calories provided to each population is based on the factors listed above.

For the FY 2011-12, the total appropriation to the DOC's food service subprogram was \$32.1 million, with \$80,000 expected to be received from the U.S. Department of Agriculture, and the remainder from the General Fund.³¹

Clothing, bedding, and laundry services. DOC Administrative Regulation 850-05 describes the department's policy of providing properly fitted, climactically suitable, durable, and presentable clothing to all offenders. Special protective clothing may be available depending on an inmate's work assignment. Inmates are responsible for the basic care and maintenance of their clothing, and will be charged if it is damaged or lost. Used state-issued clothing is cleaned, repaired, resized, and redistributed, except for used boxers or underpants. The department is also responsible for providing suitable and clean bedding and linens, including two sheets, a pillow and a pillowcase, one mattress, and sufficient blankets.

The DOC also provides laundry and clothing repair services. Inmates are provided with the opportunity to have three complete sets of clothing per week. Inmates must have access to laundry services for clothes at least two times per week, for linens and towels at least once a week, and for blankets at least once a month. DOC Administrative Regulation 850-11 stipulates that clothing and linens must be laundered and exchanged no less than once a week.

For FY 2011-12, the General Assembly appropriated \$4.4 million from the General Fund to the laundry services subprogram.³² According to the department, in FY 2010-11, bedding and linens expenses totaled \$186,047, and offender clothing expenses totaled \$1.4 million.

Hygiene services. Pursuant to DOC Administrative Regulation 850-11, inmates may purchase basic hygiene kits from the canteen, consisting of the following items:

- comb;
- soap;
- toothbrush;
- toothpaste;
- toilet paper;
- feminine hygiene supplies;
- if needed, denture cleaner and adhesives; and
- upon request, shaving equipment.

³¹Senate Bill 11-209

³²Senate Bill 11-209

A maximum of one kit per month may be purchased. All facilities must provide an adequate issuance of toilet paper and feminine hygiene supplies, and the DOC may provide other hygiene supplies to indigent offenders at no cost.

The department must provide inmates with sufficient shower facilities and the opportunity to shower with both hot and cold water at least three times per week. The department is also required to ensure that hair care services are available to inmates and that such services comply with applicable health requirements. In addition, inmates must have access to cleaning supplies and are required to keep their living areas in a neat and sanitary condition.

Freedom of worship. The U.S. Constitution, state law, and state administrative regulations address an inmate's freedom of worship. State law requires the DOC to afford each inmate with a reasonable opportunity to freely exercise his or her religious beliefs without fear of retaliation or discrimination.³³ The practice of a religion by any particular sect may not be curtailed or prohibited unless the religious practices threaten the reasonable security interests of the correctional facility.

Upon the request of any inmate, and to the extent practicable and consistent with reasonable security considerations, religious facilities must be made available in a nondiscriminatory manner. In addition, the DOC must permit access to objects of a religious nature provided that the possession of such objects would not unduly burden the reasonable security interests of the correctional facility. Finally, the DOC must permit inmates to consult with and receive spiritual advice and ministration from a spiritual leader. The DOC is not required to construct additional facilities, remodel or reconfigure existing structures, or hire additional employees in order to ensure an inmate's freedom of worship.³⁴

DOC Administrative Regulation 800-01 summarizes the department's policy to allow religious programs for inmates. According to the regulation, such programs entail supervision and coordination, an opportunity to practice one's faith, and the use of community resources. Each DOC facility is required to:

- provide adequate space for the administration of faith-based programs;
- allow an inmate the opportunity to declare a faith group affiliation;
- permit inmates to change their faith group affiliation once per year;
- provide appropriate religious diets;
- ensure that inmates have the opportunity to participate in practices deemed essential by the governing body of their faith group, provided that such participation does not threaten the security of the facility;
- permit holy days and work proscriptio days;
- show professional respect for faith group program areas and property; and
- permit inmates to select a faith medallion or medicine bag.

³³Section 17-42-101, C.R.S.

³⁴Section 17-42-101 (5), C.R.S.

Educational programs. State law directs the DOC to develop and implement a comprehensive competency-based educational and vocational program to combat illiteracy and develop marketable employment skills among inmates.³⁵ The correctional educational program must encompass the following goals and objectives:

- ensure that every inmate receives appropriate academic services mandated by federal or state statutes, regulations, or orders;
- ensure that every inmate who has an expectation of release from custody within five years and who lacks basic and functional literary skills receives adult basic instruction;
- provide every inmate who has an expectation of release from custody within five years with the opportunity to achieve functional literacy (the ability to read and write in English and to perform routine mathematical functions);
- provide every inmate who has an expectation of release from custody within five years and who has demonstrated the intellectual capacity with the opportunity to obtain the equivalent of a high school education;
- ensure that every inmate who has an expectation of release from custody within five years has an opportunity to acquire at least entry-level marketable vocational skills in one or more occupational fields for which there is a demonstrable demand in Colorado's economy;
- ensure that every inmate is released possessing life-management skills;
- provide every inmate who demonstrates college-level aptitudes with the opportunity to participate in college-level academic programs offered through the correctional facility; and
- ensure that training in the fundamentals of personal health are an integral part of all instructional services. Such training must include instruction in personal hygiene, general health, and substance abuse education.³⁶

Unless financial assistance for the cost of college-level programs is available through private or federally funded grants or scholarships, or through other programs, costs associated with college-level academic programs must be borne entirely by the inmate participating in the program.³⁷

The legislative declaration concerning correctional educational programs expresses the General Assembly's intent to ensure that state funding is provided to educational and vocational programs that meet performance objectives, provide market-relevant training, and are proven to increase the likelihood that persons who are released from a correctional facility will successfully reintegrate into society.

Pursuant to state law, any inmate who lacks basic and functional literacy skills, as determined by a literacy test approved by the State Board of Education, is required to complete sequential course work sufficient to allow the inmate to pass a competency test or the General

³⁵Section 17-32-101, *et seq.*, C.R.S.

³⁶Section 17-32-105 (1) and (2), C.R.S.

³⁷Section 17-32-105 (1)(g), C.R.S.

Educational Development (GED) test, or both.³⁸ If the inmate does not pass such a test, the DOC may require him or her to continue to receive adult basic education instruction. The only inmates who are exempt from this course work requirement are those who:

- are serving a life sentence or are under sentence of death;
- are specifically exempted from participation for security or health reasons;
- are housed in community corrections;
- are determined, through testing, to have attained a functional literacy level;
- are, because of a disability, at a maximum level of proficiency;
- refuse, in writing, to participate in adult basic education instruction; or
- fail to make positive progress after a minimum of 20 hours.³⁹

Pursuant to DOC Administrative Regulation 500-01, the department provides inmates with disabilities access to its educational programs and makes provisions to meet the educational needs of inmates who require special placements. However, the DOC is not required to take an action to provide accessibility to an educational service if it can prove that the action would impose an undue financial or administrative burden on the agency, or would fundamentally alter the nature of the service, program, or activity.

Funding for the Correctional Education Program comes from the General Fund and from the Correctional Education Program Fund, which consists of all money received by the Correctional Education Program from the federal government and from contributions, grants, gifts, bequests, and donations.⁴⁰ The DOC is required to submit its budget request for the Correctional Education Program as a separate line item.⁴¹ This line item must be the department's total budget request for correctional education funding from the General Fund, and must itemize the amount of its request that will be funded by the Correctional Education Program Fund. No other funds from the General Assembly will be allocated to the department for any educational program.

For FY 2011-12, the General Assembly appropriated \$15.1 million for the educational subprogram. \$11.2 million of this amount is from the General Fund; the remainder consists of \$2.0 million from sales revenues earned by vocational programs, \$1.3 million from sales revenues earned by the operation of the canteen, \$10,000 from gifts, grants, and donations, and about \$500,000 from federal funds.⁴²

Legal access. In 1977, the Supreme Court found that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing inmates with adequate law libraries or adequate assistance

³⁸Section 17-32-105 (3)(a), C.R.S.

³⁹Section 17-32-105 (3)(b), C.R.S.

⁴⁰Section 17-32-107, C.R.S.

⁴¹Section 17-32-106 (1)(c), C.R.S.

⁴²Senate Bill 11-209

from persons trained in the law.⁴³ Adequate law libraries in prisons are one constitutionally acceptable method to assure meaningful access to the courts. DOC Administrative Regulation 750-01 provides for the right of offenders to access an appropriate law library and paper, typewriters, or typing services, and other supplies and services related to legal matters. The law library must contain, at a minimum:

- relevant and up-to-date constitutional, statutory, and case law materials;
- applicable court rules; and
- practice treatises.

When an inmate is unable to make meaningful use of the law library on his or her own, the administrative regulation indicates that the DOC should provide additional assistance. The administrative regulation also ensures the rights of inmates to have access to the courts and provides that offenders in segregation have access to legal materials. Pursuant to the administrative regulation, prison libraries may employ offender clerks and legal assistants.

The DOC provides inmates with legal photocopies for filing habeas corpus, conditions of confinement, or post-conviction actions with the court regardless of an inmate's ability to pay, although the inmate will be charged for the provision of such copies even if his or her account is empty. Any other legal photocopies will not be provided to an inmate unless he or she has the funds necessary to pay for such copies.

Pursuant to DOC Administrative Regulation 300-38, the department is required to ensure and facilitate inmates' access to counsel and assist inmates in making confidential contact with attorneys. Such contact includes, but is not limited to, uncensored correspondence. DOC Administrative Regulation 750-03 provides further detail on the DOC's procedures regarding access to courts and counsel.

For FY 2011-12, the General Assembly appropriated \$1.6 million from the General Fund for the legal access subprogram.⁴⁴

Library services. Pursuant to Colorado law, the State Librarian must furnish non-legal library services to prisons and to make reasonable rules for the establishment, maintenance, and operation of such libraries.⁴⁵ DOC Administrative Regulation 500-02 states that library services include a reference collection containing general and specialized materials, and the planned and continuous acquisition of materials to meet the needs of DOC employees, contract workers, and inmates. The regulation indicates that correctional libraries should operate on hours that allow users greatest access during peak use periods, and that it is preferable for the library to be open seven days a week. DOC employees, contract workers, and volunteers who work at the library are prohibited

⁴³*Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491, U.S.N.C., 1977; Please note that DOC Administrative Regulation 750-01, concerning legal access, cites several other court cases in addition to *Bounds v. Smith*.

⁴⁴Senate Bill 11-209

⁴⁵Section 24-90-105 (1) (d), C.R.S.

from breaching the privacy of a library user's records, unless required to do so by law.⁴⁶ Inmates are not charged for using the library, but will be charged for the loss or destruction of library items.

According to DOC Administrative Regulation 300-26, the department's policy is to respect and respond to the reading needs and preferences of inmates in a manner that is consistent with the rehabilitative goals set for the inmate, public safety concerns, and security needs of DOC facilities. The administrative regulation provides further detail on the review process for inmate reading material. The responsibility for funding correctional library services is shared by the DOC and the State Librarian.

According to the DOC, in FY 2011-12, funding for library services is provided through canteen cash funds. The department indicates that \$970,000 in canteen cash funds is committed to the library subprogram, cable service, offender e-messaging supplies, and other offender benefits.

Work programs. Pursuant to state law, all inmates supervised by the DOC must perform labor.⁴⁷ The DOC is required to assign every able-bodied inmate to work that is most suitable to his or her capacity and that is most advantageous to the citizens of Colorado.⁴⁸ The DOC administers the Division of Correctional Industries (discussed below), along with several other work programs to fulfill this mandate.

The DOC administers physical labor work programs to reclaim and maintain land and resources within Colorado.⁴⁹ Any inmate may be assigned to an intensive labor work program, including repeat offenders, parole violators, and inmates who demonstrate behavior inconsistent with the rules of the department. The intensive labor work program is operated on an incentive basis; an inmate who demonstrates that he or she is willing to modify his or her behavior, to cooperate in his or her rehabilitation, and to learn a work ethic and a job skill becomes eligible for reassignment from the intensive labor work program.⁵⁰ Inmates who are assigned to the intensive labor work program are paid for their work.

The executive director of the DOC is authorized to establish an off-grounds work program for any appropriate minimum and minimum-restrictive inmates.⁵¹ Under the program, inmates may be assigned to work on assignments requested by any federal, state, or local government agency or nonprofit agency. Inmates who are assigned to an off-grounds work program are compensated for their work. DOC Administrative Regulation 300-23 provides further detail on the procedures of the department's work program.

⁴⁶Section 24-90-119, C.R.S.

⁴⁷Section 17-20-115, C.R.S.

⁴⁸Section 17-20-117, C.R.S.

⁴⁹Section 17-29-101, C.R.S.

⁵⁰Section 17-29-103 (1), C.R.S.

⁵¹Section 17-29-105, C.R.S.

For FY 2011-12, the General Assembly appropriated \$5.5 million from the General Fund for the labor subprogram.⁵²

Correctional Industries. The department's Division of Correctional Industries trains and employs inmates to manufacture goods that are sold to various entities in Colorado, including state and local governments and individuals. State law directs Correctional Industries to provide programs that are profit-oriented and that provide 40 hours of work activity each week for inmate participants.⁵³ The programs are intended to train inmates in general work habits and skills in order to increase the inmates' employment prospects upon release.

State law directs the Division of Correctional Industries to establish a system of financial payments to serve as an incentive for more effective and efficient performance.⁵⁴ Inmate pay is based on the number of hours worked, the type of work assignment, and the quality of the work performed. Payment rates are established on an annual basis after review by the Joint Budget Committee and the General Assembly.⁵⁵ A separate section in this memorandum summarizes the current inmate pay rate. Wages earned by an inmate who works in Correctional Industries are deposited in an account and distributed periodically for:

- compensation to the victim of the crime (not to exceed 40 percent of the wages);
- payments for the support of the inmate's dependents;
- establishment of funds in trust for the inmate upon his or her release;
- the inmate's personal expenses while serving his or her sentence;
- voluntary payments to the Victims Assistance and Law Enforcement Fund; and
- defraying the costs incident to the inmate's confinement (not to exceed 20 percent of the wages).⁵⁶

A portion of inmate compensation is also paid to the Division of Adult Parole to defray the costs of parole.⁵⁷

⁵²Senate Bill 11-209

⁵³Section 17-24-101, *et seq.*, C.R.S.

⁵⁴Section 17-24-110, C.R.S.

⁵⁵Section 17-24-114, C.R.S.

⁵⁶Section 17-24-119, C.R.S.

⁵⁷Section 17-24-114 (2), C.R.S.

In the event that an inmate is employed by a private entity, he or she must be paid at least the federal minimum wage.⁵⁸ Such wages are held in trust for the inmate for use upon his or her discharge or parole, except that the DOC may deduct up to 50 percent of the wages to defray the costs of the inmate's confinement.⁵⁹ In addition, the DOC may deduct additional wages for the same reasons listed above.⁶⁰

Correctional Industries receives no General Fund moneys. For FY 2011-12, the General Assembly appropriated \$55.3 million in cash and reappropriated funds.⁶¹ Of this amount, \$35.4 million is from sales to state entities, \$14.0 million is from sales to nonstate entities, \$5.8 million is from the Department of Revenue's purchase of license plates, and \$150,000 is from the Land Improvement Fund.

Canteen. The Division of Correctional Industries is also responsible for the operation of a canteen for inmate use and vending machines for visitors' use.⁶² Pursuant to DOC Administrative Regulation 200-11, all offenders incarcerated within the DOC and private prison facilities, excluding community corrections, must be afforded reasonable access to canteen services.

Items in the canteen and vending machines must be sold for prices that generate sufficient revenue to fund all expenses of the canteen and vending machines, including the costs of employee services, and to produce a reasonable profit. All revenue generated by the canteen and vending machines is deposited in the Canteen, Vending Machine, and Library Account. State law specifies that any profits arising from the operation of the canteen and vending machines must be expended for the educational, recreational, and social benefit of the inmates and to supplement direct inmate needs.⁶³

The canteen receives no General Fund moneys. For FY 2011-12, the General Assembly appropriated \$14.7 million in cash funds. This amount was derived from sales revenues earned by the canteen operation.⁶⁴

Victim-offender conferences. The DOC is authorized to establish a pilot program to facilitate victim-initiated victim-offender conferences.⁶⁵ Under the pilot program, a victim would request a facilitated conference with the offender who committed the crime against the victim. Volunteers would be used to facilitate the conferences, and state law stipulates that the pilot program

⁵⁸Section 17-24-122 (3), C.R.S.

⁵⁹Section 17-24-122 (4), C.R.S.

⁶⁰Section 17-24-122 (5), CR.S.

⁶¹Senate Bill 11-209

⁶²Section 17-24-106 (1)(t), C.R.S.

⁶³Section 17-24-126 (3), C.R.S.

⁶⁴Senate Bill 11-209

⁶⁵Section 17-28-103, C.R.S.

is only to be established when funds become available. House Bill 11-1032, which was enacted during the 2011 legislative session, granted the DOC authority to establish such a program.

According to the department, prior to the passage of House Bill 11-1032, the department had explored options to fund a victim-offender conference program, but no funding was available. Since the passage of the bill, the department renewed its efforts to secure funding for such a program, but has found none so far. The department has a draft policy prepared to serve as a guideline for the pilot program, and a volunteer victim-offender dialogue facilitator has been working with a victim interested in beginning a victim-offender dialogue. However, additional candidates and members of the volunteer facilitator team are not yet confirmed.

The department noted that the DOC's Victim Services Unit is a small office consisting of two victim advocates and two support staff who provide services to 6,000 registered victims. The department expressed concerns over the Victim Services Unit's ability to support and sustain a viable victim-offender conference program over the long term.

Recreation and hobby work. According to DOC Administrative Regulation 1000-01, the DOC ensures that all facilities provide a comprehensive recreational program that includes leisure-time activities, outdoor exercise, and recreation activities for all inmates. Space and equipment suitable for recreational activities are made available in proportion to the inmate population and are maintained in good condition. To ensure that all inmates have equal access to recreational opportunities, the DOC provides loaner athletic footwear. Facilities have the option of providing recognition to inmates for participating in certain activities. Such recognition includes certificates, ribbons, or canteen items, and may not exceed more than \$5.00 per individual per event.

For FY 2011-12, the General Assembly appropriated \$6.4 million for the recreation subprogram, of which about \$74,000 is from sales revenue earned by the canteen operation, with the remainder from the General Fund.⁶⁶

DOC Administrative Regulation 1000-02 summarize's the DOC's policy of providing inmates with opportunities for artistic expression and encouraging the development of constructive leisure-time skills, such as metalwork, woodwork, artwork, glass, ceramics, mirror etching, bead work, leather work, needle work, and paper craft projects. Participation in such hobby work is a privilege; criteria for such participation may include behavior, the completion of program plans, work ratings, housing assignments, custody status, and classification. Any materials and tools necessary for hobby work must be paid for by the inmate.

Mail service. Pursuant to DOC Administrative Regulation 300-38, it is the policy of the DOC to allow inmates to correspond with family, friends, courts, legal counsel, and other public and private entities, as appropriate. Inmates in segregation are permitted to write and receive letters on the same basis as inmates in the general population.

When the inmate bears the mailing cost, there is no limit on the volume of letters than an inmate may send or receive, or on the length, language, content, or source of mail or publications, except when there is a reasonable belief that limitation is necessary in order to protect public safety or institutional order and security. However, the DOC may restrict postage privileges for an inmate

⁶⁶Senate Bill 11-209

whose account has an overage, for postage charges only, of \$300 or greater. DOC regulations specify that indigent offenders must receive a postage allowance to allow such inmates to maintain community ties. In addition, legal mail must be sent at the DOC's expense to avoid delay.

Telephone service. DOC Administrative Regulation 850-12 states the department's policy to permit inmates reasonable access to telephones to maintain essential community, family, and legal contact. The administrative regulation refers to telephone use as a privilege afforded to those inmates who demonstrate a willingness to conduct themselves in a responsible and mature manner.

The Colorado Inmate Phone System serves all inmates and imposes the same rate system regardless of the caller's location in the state. Rates vary based on the payment method used and on the location of the receiving party. Almost all telephone calls made by offenders are monitored, recorded, and managed for security purposes. Offender call lists are also reviewed for security purposes. Phone calls are limited to a maximum of 20 minutes.

Inmates may pay for phone calls using the Department of Corrections' (DOC) debit system, by prepaying for collect calls, or by having the receiving party pay for a collect call. The most cost-effective payment method is the DOC debit system, which requires no set-up fee and permits an offender to add more money to his or her account through a weekly canteen order. Prepaid collect calls, which have a \$7.95 set-up fee, have a higher cost-per-minute than debit calls but a lower cost-per-minute than collect calls paid for by the receiving party. All inmates who choose to participate in the Colorado Inmate Phone System program may place collect calls. In accordance with DOC Administrative Regulation 850-14, the state will bear the expense of an indigent inmate's telephone use only under compelling circumstances.

Table 3 summarizes the in-state and out-of-state rates charged under each type of payment plan.

**Table 3
DOC Telephone Rates for Each Payment Option**

	Charges	Debit	Prepaid Collect	Collect
In-State Calls	Connect Fee	\$1.25	\$2.75	\$2.75
	Cost per Minute	\$0.13	\$0.18	\$0.23
	Total Cost for a 20-minute Call	\$3.85	\$6.35	\$7.35
Out-of-State Calls	Connect Fee	\$2.00	\$3.95	\$3.95
	Cost per Minute	\$0.13	\$0.59	\$0.89
	Total Cost for a 20-minute Call	\$4.60	\$15.75	\$21.75

Source: Colorado Department of Corrections.

Discharge funds. Ten days prior to the date on which any inmate is entitled to be discharged or paroled, the executive director of the DOC or his or her designee must give the inmate suitable clothing and may furnish transportation to the inmate's residence or to any other place in Colorado.⁶⁷

The executive director or his or her designee must also give any inmate being discharged \$100. A parolee may be given less than \$100 if the difference between the amount given to the parolee and \$100 is deposited in an account for the parolee. According to DOC Administrative Regulation 200-01, the following inmates are not eligible to receive the \$100 allowance:

- any paroled offender who has been returned to the custody of a correctional facility before the completion of his or her parole period and has previously received the \$100 allowance;
- any offender released by a court order that vacates the sentence;
- any offender released upon the posting of a bond;
- any offender released by the court on a suspended sentence;
- any offender paroled from a community corrections center or the Intensive Supervision Program;
- any offender paroled or discharged to another felony charge;
- any offender released to Immigration and Customs Enforcement; and
- any offender who, at the time of release or parole, has a mandatory savings account balance exceeding \$100 due to participation in a Correctional Industries Prison Industry Enhancement program.

According to the department, in FY 2011-12, \$675,000 from the General Fund was appropriated to pay for discharge funds, clothing, and transportation.

Services provided to indigent inmates. Pursuant to DOC Administrative Regulation 850-14, the department must ensure that indigent inmates have access to courts, medical treatment, correspondence with family, and basic hygiene items. In order to be considered indigent, an inmate must meet all of the following criteria:

- the inmate has not received inmate pay or any other type of deposit to his or her account for the preceding 30 days;
- the inmate's available account balance has not reached \$4.60 at any time during the preceding 30 days;
- the inmate is not in community corrections or on parole.

If an inmate qualifies as indigent, he or she is entitled to the following assistance:

- a basic hygiene kit and advice on how to obtain replacement items;
- the right to mail one personal letter per week, with postage paid by the state, contingent upon funding and the stipulation that postage must not exceed \$2.00 per month;
- health care services; and

⁶⁷Section 17-22.5-202, C.R.S.

- if an indigent inmate's account balance has not exceeded \$9.10 at any time during the past 30 days, he or she is entitled to legal photocopies for filing habeas corpus, conditions of confinement, or post-conviction actions.

Privileges available to inmates or provided through incentive programs. State law stipulates that the DOC is not required to provide inmates with any privileges. According to the department, items such as televisions, radios, and other entertainment devices are available for all offenders in general population to purchase from the canteen. No General Fund dollars are expended for such media and entertainment systems. In response to staff inquiries, the department explained that entertainment and recreational equipment occupies inmates' time, thereby assisting the department in its supervisory duties. Access to such privileges provides one method of motivating the inmate population.

DOC Administrative Regulation 650-01 explains the department's incentive living program, which rewards positive participation and behavior through quality of life privileges and responsibilities. According to the regulation, by offering an incentive living program, the DOC aims to instill self-discipline that will help offenders when they are released to society, which in turn could reduce the rate of recidivism. Participation in incentive programs is voluntary and driven by a classification process. In order to be eligible for an incentive living program, an inmate must:

be active in a labor, educational, or work program resulting in satisfactory or higher progress reviews;

- be in compliance with any recommended treatment programs;
- possess a GED or high school diploma or be enrolled in related courses;
- have not had any Class I Code of Penal Discipline convictions for two years;
- have not had any Class II Code of Penal Discipline convictions for one year;
- have not had involvement in a disruptive security threat group for two years;
- be currently employed and have been continuously employed three months prior to placement; and
- have not been placed in administrative segregation for two years.

The privileges offered through an incentive living program are based on physical plant limitations and program occupancy and vary based on the security level of the facility. Privileges may include:

- extended purchase capabilities for canteen and gift packs;
- additional "pod time," or time in a common area;
- additional recreation time;
- additional pod equipment, such as a microwave, cushioned furniture, or exercise equipment;
- additional library services; and
- additional media or electronic devices.

Inmates in an incentive living pod may donate funds to be used for the purchase of DVD or VHS players and movies. Players and movies are owned by the pod and not by the individuals who made contributions to their purchase. Players and movies may be checked out by any individual within the pod for use in his or her cell.

According to the DOC, in FY 2011-12, \$972,000 in canteen cash funds was committed to

pay for libraries, cable service, offender e-messaging supplies, and other offender benefits.

In response to staff inquiries, the DOC provided information about its incentive program at the Limon Correctional Facility. The program, which was implemented in August 2009, currently has 308 inmates assigned to it. The department indicated that the program cost about \$11,065 to set up, including \$1,950 for microwaves, \$2,230 for steel to build exercise equipment and microwave tables, and \$6,000 for six televisions and brackets. The department also explained that disciplinary violations result in longer prison stays for inmates. The DOC estimates that a reduction of one Code of Penal Discipline conviction may save the state \$1,492. Further information regarding this calculation is available upon request. Over the course of the Limon Correctional Facility's incentive program, there have been 68 Code of Penal Discipline convictions, none of which were for violent acts. During the same time period, there were 2,839 Code of Penal Discipline convictions in the general population.

Inmates who participate in an incentive living pod are required to perform essential facility tasks during a lock down. Such tasks may include food service detail, laundry, and custodial services. According to the department, prior to the implementation of the incentive living program, major facility emergencies required all Correctional Industries operations to be closed, resulting in decreased production revenue. Now, inmates who are assigned to the incentive living program can continue to work with Correctional Industries.

Additionally, the Limon Correctional Facility has implemented the Security Threat Administrative Review (STAR) program, pursuant to DOC Administrative Regulation 600-07. The STAR program is an incentive-based program established to identify, designate, assign, monitor, transition, and reintegrate inmates who demonstrate dangerous, disruptive, or defiant behavior. Additional information regarding this program is available upon request.

State law also provides for the restriction of inmate privileges. If an inmate refuses to perform labor, participate in educational or work programs, or undergo counseling when he or she is required to do so, the DOC must deny privileges such as television, radio, entertainment systems, and access to snacks.⁶⁸ Furthermore, if an inmate files a lawsuit against the state of Colorado or against any government official, and the court finds that the action lacked substantial justification, was baseless, was malicious, or was interposed for harassment, the department must deny privileges to the inmate who filed the motion.⁶⁹ DOC Administrative Regulation 600-05 provides further detail on the procedures that the department follows when restricting inmate privileges.

⁶⁸Section 17-20-114.5 (1), C.R.S.

⁶⁹Section 17-20-114.5 (2), C.R.S.

Inmate Wages

Colorado law requires inmates to be paid for their labor.⁷⁰ DOC Administrative Regulation 850-03 summarizes the DOC's policies concerning inmate wages. Offenders are paid monthly at a designated daily rate for the actual number of days worked, not to exceed 23 days per month. Inmates assigned to mental health, sex offender, drug and alcohol, or other mandated treatment programs are paid at their normal assigned rate for the time they spend attending such programs and are not be docked for hours spent in such approved programs.

Table 4 summarizes inmate pay grades, which range from \$0.23 per day for "unassigned" inmates to \$2.00 per day for inmates who are assigned to assist inmates with disabilities. The DOC notes that these pay grades have been in effect since FY 2003-04. Prior to that time, inmates assigned to full-day programs could earn up to \$2.10 per day.

Inmates who work for Correctional Industries are paid from cash funds generated by the work of Correctional Industries, and may be eligible for minimum wage or prevailing wages, as well as production incentive bonuses. All inmates may be eligible for other incentives such as additional monetary compensation, special housing, extra privileges, and good time credits. According to the department, additional monetary compensation is rarely provided to inmates who are not assigned to Correctional Industries. In the event that additional pay is authorized, it is usually based on unusual circumstances, such as when inmates are needed to shovel snow for a long period. Inmate pay rates may be frozen or changed in accordance with budgetary constraints. The General Assembly appropriated \$1.5 million for inmate pay during FY 2011-12.⁷¹ The department says that none of these funds are used to provide special housing or entertainment equipment. Such privileges are paid for with funds generated by Correctional Industries.

⁷⁰Section 17-24-110, C.R.S.; 17-29-103, C.R.S.

⁷¹Senate Bill 11-209

**Table 4
DOC Inmate Pay Grades**

Grade	Wage Rate	Notes
1 (Unassigned)	\$0.23 per full day	Includes: <ul style="list-style-type: none"> • inmates assigned to the Intensive Labor Work Program; • inmates who are unable to participate in their assignment due to supervisor absence, segregation status, facility appointments (e.g, medical or dental), facility lockdown/shakedown, or lay-ins; • inmates coded as "ADA Unassigned;*" • inmates who are temporarily assigned to another facility, including an infirmary; and • inmates who refuse to participate in work or training programs.
2 (Assigned)	\$0.30 per half day	<ul style="list-style-type: none"> • includes inmates assigned to mandatory half-time programs
3 (Assigned)	\$0.60 per full day	<ul style="list-style-type: none"> • includes inmates assigned to mandatory full-time programs
4 (Offender Care Aide I)	\$0.80 per full day	<ul style="list-style-type: none"> • includes inmates assigned to assist inmates with disabilities
5 (Offender Care Aide II)	\$1.20 per full day	<ul style="list-style-type: none"> • includes inmates assigned to assist inmates with disabilities
6 (Offender Care Aide III)	\$2.00 per full day	<ul style="list-style-type: none"> • includes inmates assigned to assist inmates with disabilities
Correctional Industries	Pay plans may include minimum wages or prevailing wages and production incentive bonuses.	<ul style="list-style-type: none"> • all inmate assignments are cash-funded; • inmates who are noncompliant with mandatory programs will not receive production incentive bonus pay
Incentive Pay	Incentive pay may not exceed an additional \$0.10 per day for no more than 15 days over a six-month period.	<ul style="list-style-type: none"> • pay provided for work an inmate complete above his assignment; • requires written approval
Unpaid	\$0.00 per full day	<ul style="list-style-type: none"> • includes inmates who are unable to participate in their assignments due to their presence in court, the hospital, a medical day trip, or off-grounds status

Source: Colorado Department of Corrections AR 850-03

* "ADA Unassigned" status is granted to inmates who cannot be reasonably accommodated in any assignment, as determined by the Americans with Disabilities Act coordinator. ADA Unassigned inmates are eligible for earned time and other benefits available to assigned inmates.

Unassigned status. In response to staff inquiries, the DOC provided additional information concerning inmates on unassigned status. As Table 4 indicates, a variety of inmates may be placed on unassigned status, including new arrivals who have not yet been placed on an assignment, inmates who are waiting to secure a facility job after the completion of academic or vocational training, and inmates who refuse to participate in work or training programs.

The department suggested several benefits to paying all inmates, even those without a work assignment. The department says that when inmates are paid, they are responsible for purchasing supplies such as basic hygiene items. If some inmates were not paid, the department would be required to provide these supplies to the inmates for free, just as it does for indigent offenders. The department indicates that obligating inmates to pay for such items prompts them to exercise greater care and accountability for their property. The department argues that the cost to supply inmates with basic hygiene items would likely exceed current expenditures for inmate pay.

The department also explains that paying inmates even a small amount allows the department to withhold money to apply toward restitution. In some cases, the department indicates that such withholdings are the only restitution that the department is able to collect. Finally, the department says that all levels of inmate pay provide a system of incentives and constraints that can be used to help manage inmates effectively.

Offender Contributions to Costs of Care

In addition to the charges for services discussed in the previous section, Colorado law and DOC administrative regulations stipulate several methods in which offenders are required to contribute to the cost of their care. However, other offender obligations, such as restitution and child support, may take precedence over contributions to the cost of care.

Restitution. Whenever a person is sentenced to the DOC, the department conducts an investigation into the financial circumstances of the offender in order to determine his or her ability to pay court-ordered costs, surcharges, restitution, time payment fees, late fees, and other fines, fees, or surcharges.⁷² The DOC may use funds deposited in an inmate's bank account to pay such fees. At a minimum, state law requires the DOC to deduct 20 percent of all deposits into an inmate's bank account, including deposits for inmate pay, and to pay this sum toward any outstanding order from a criminal case or for child support.⁷³ Certain types of deposits, such as veterans' benefits, Social Security survivor benefits, and U.S. Treasury Indian tribal distribution checks are not permitted to be withheld for court-ordered restitution, but may be withheld to pay court-ordered child support and alimony obligations.⁷⁴

In addition, whenever an inmate is released from a correctional facility on parole, the continued payment of restitution is one of the conditions of parole.⁷⁵ Colorado law also permits the state to use lottery winnings, unclaimed property claims, and state income tax refunds to offset the amount of restitution a defendant owes.⁷⁶ Restitution payments are credited in the following order:

- contributions to the Crime Victim Compensation Fund;

⁷²Section 16-18.5-106 (1), C.R.S.

⁷³Section 16-18.5-106 (2), C.R.S.

⁷⁴DOC AR 200-15 (IV) (O)

⁷⁵Section 16-18.5-106 (3), C.R.S.

⁷⁶Sections 16-18.5-106.5, 16-18.5-106.7, and 16-18.5-106.8, C.R.S.

- surcharges for the Victims and Witnesses Assistance and Law Enforcement Fund;
- restitution to victims in the following order:
 - ▶ a victim against whom any felony, misdemeanor, petty, or traffic misdemeanor offense has been perpetrated or attempted;
 - ▶ a victim harmed by an offender's criminal conduct in the course of a scheme, conspiracy, or pattern of criminal activity; and
 - ▶ a victim who has suffered losses because of a contractual relationship or because of joint liability for family expenses related to a victim who fits one of the two categories described above.
 - ▶ surcharges related to the Address Confidentiality Program;
 - ▶ time payment fee;
 - ▶ late fees; and
 - ▶ any other fines, fees, or surcharges.⁷⁷

Contributions to the cost of care. Pursuant to Colorado law, in any circumstance where a person is sentenced to a term of imprisonment, the court is required to order that person to make payments toward the cost of care, as appropriate.⁷⁸ *Cost of care* is defined as the cost to the DOC for providing room and board, clothing, medical care, and other normal living expenses for an offender confined to prison. It also includes costs, as determined by the court, associated with community corrections programs, probation supervision, or parole supervision.

In setting the amount of such payments, the court is required to take into consideration and make allowances for any restitution ordered to the victim or victims of a crime. Restitution payments always take priority over any other payments ordered by the court. The court is also required to consider the maintenance and support of the inmate's spouse, children, and any other individual entitled to support by the inmate. Finally, the court is required to consider the needs of the offender for the six-month period immediately following the offender's release, for the purpose of allowing the offender to seek employment.

If the court determines that the offender has sufficient resources to pay some or all of the cost of care, the court is required to determine an amount of money to be paid by the offender. Such amount may not exceed the per capita cost of maintaining prisoners in the pre-sentence and post-sentence facilities in which the offender resided.

If the court does not order an offender to pay the full cost of his or her care, the state, the prosecuting attorney, the DOC, the Judicial Department, or any other government agency may file an action for reimbursement for the cost of care.⁷⁹ When filing such an action, the plaintiff must demonstrate that the offender substantially misrepresented his or her financial status to the sentencing court or that his or her financial circumstances have changed substantially after sentencing. The plaintiff may file an action for reimbursement of costs of care at any time during an offender's imprisonment or probation service and within two years of the offender's release from

⁷⁷Section 16-18.5-110, C.R.S.

⁷⁸Section 18-1.3-701 (4), C.R.S.

⁷⁹Section 17-10-103, C.R.S.

imprisonment or probation.⁸⁰ If the court rules in favor of such an action, it is required to consider the same facts outlined above concerning restitution, child support, and the needs of the offender following his or her release. If the court determines that the offender has sufficient assets to pay the cost of his or her care, the court may also order the offender to pay the costs of any action filed for reimbursement.⁸¹

Other forfeitures of assets. According to DOC Administrative Regulation 200-15, if an offender owes little or no restitution or child support and receives a large deposit from an outside source such as an inheritance or an insurance settlement, the deposit may be collected by the department for the cost of care.

Offender surcharges. Upon conviction, offenders may be assessed with a variety of fees and surcharges. In some instances, a portion of the money generated by such fees and surcharges may be allocated to the DOC. For example, a portion of the funds generated by the Drug Offender Surcharge is allocated to the DOC to cover the costs associated with substance abuse assessment, testing, education, and treatment.⁸² Similarly, a portion of the funds generated by the Sex Offender Surcharge is allocated to the DOC to cover the direct and indirect costs associated with the evaluation, identification, and treatment of sex offenders.⁸³ If the court finds that an offender is unable to pay a surcharge, the court may waive the requirement. Further information on offender surcharges is available upon request.

⁸⁰Section 17-10-104, C.R.S.

⁸¹Section 17-10-106, C.R.S.

⁸²Section 18-19-103 (4)(a), C.R.S.

⁸³Section 18-21-103 (3), C.R.S.