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MEMORANDUM

November 24, 2012

TO: Members of the Colorado General Assembly
FROM: Mike Mauer, Director of Research
SUBJECT: Fiscal Notes for Bills Affecting the State's Prison Population

The Colorado Revised Statutes impose specific requirements related to the General Assembly's consideration of bills that affect the state's prison population. This memorandum summarizes the baseline assumptions included in fiscal notes for such bills.

Summary

Current law prohibits the passing of any bill to increase periods of imprisonment in state correctional facilities without an appropriation sufficient to cover the first five years of increased capital construction and operating costs. But, it also allows certain offenders to be housed in private contract prisons, for which no state capital construction costs are incurred. As state-run facilities are currently at or near capacity, any new offenders that *must* be housed in a state-run prison because of their custody level will require a shift of other inmates in that facility to private contract prisons. Therefore, beginning in 2012, fiscal notes will assume that the impact of most bills affecting criminal sentencing will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary. Each bill will be analyzed separately, but this policy will remain in effect, for both increases and decreases in sentencing, until the need for additional state-run prison space arises.

Section 2-2-703, C.R.S., prohibits the legislature from passing bills that increase periods of imprisonment in state correctional facilities without a sufficient appropriation of moneys to cover costs in the first five years in which there is a fiscal impact. Under Section 2-2-703, C.R.S., the appropriations committee is responsible for estimating the

amount of moneys sufficient to cover such costs. After consideration of this estimate, the General Assembly determines the sufficient amount and appropriates that amount in the bill. Exceptions to the appropriation requirement are allowed, as long as they are expressly stated in the bill.

Section 2-2-701, C.R.S., requires the Director of Research of the Legislative Council to review any bill that affects criminal sentencing for the purpose of providing information to the legislature on the long-term fiscal impact, both on capital and operating expenditures. This requirement was enacted in 1991 at a time when the prison population was growing beyond the capacity of state-run facilities, recently-enacted laws had tended to further increase the inmate population, and the state had not yet begun to house offenders in private prisons. As these conditions changed over time, fiscal note cost estimates of bills affecting the state prison population have changed too, although at a somewhat slower pace.

Between 1992 and 2009, fiscal notes identified a need for appropriations to cover both capital and operating costs based on the average costs of *state-run* prisons at the time. In 2009, fiscal notes began incorporating costs associated with *private prisons*, reflecting the fact that the Department of Corrections (DOC) may place inmates classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred. This new methodology used a prorated formula based on actual historical placement of prisoners between state-run facilities and private facilities. Thus, if a bill was expected to lead to three new people sentenced to the DOC, and two-thirds of offenders in that felony class had historically been housed in private prisons, the fiscal note would have shown costs to reflect the same placement (i.e., two offenders in private prison and one in a state facility, with capital and operating costs to match these placements.)

Beginning in 2012, fiscal notes identify operating costs based on the private prison rate plus an amount that covers DOC costs for medical care; they do not include capital construction costs except for bills affecting a very large number of inmates that drive a need for new prison space. This methodology more accurately takes into account the fact that minor fluctuations in the prison population are accommodated through the use of private prisons. It also matches current budgeting and other policies of the General Assembly and the Department of Corrections. Each bill will continue to be assessed independently, regardless of whether it increases or decreases the state's overall prison population, but this basic methodology will apply unless or until one of the following factors arises:

- the inmate population declines to a level that can be accommodated wholly in state-run facilities;
- the state's policy toward using private prisons changes; or
- the need for additional state-run prison facilities arises.

Inmates placed in a private prison cost the state about \$56.73 per inmate per day, including the current daily rate of \$52.69 and an estimated \$4.04 per inmate per day for medical care provided by the DOC.