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0263 Committees on: The Highway Users Tax Fund, Institutions and Medically Indigent, The New State Prison

Report to the Colorado General Assembly:

**RECOMMENDATIONS FOR 1982
COMITTEES ON:**

**The Highway Users Tax Fund
Institutions and
Medically Indigent
The New State Prison**



COLORADO LEGISLATIVE COUNCIL

**RESEARCH PUBLICATION NO. 263
December, 1981**

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The Legislative Council, which is composed of six Senators, six Representatives, plus the Speaker of the House and the Majority Leader of the Senate, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on staffing standing committees, and, upon individual request, supplying legislators with personal memoranda which provides them with information needed to handle their individual legislative needs. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

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Colorado Legislative Council Committee on the
" Highway Users Tax Fund "
COLORADO LEGISLATIVE COUNCIL
"

RECOMMENDATIONS FOR 1982

COMMITTEES ON:

The Highway Users Tax Fund

Institutions and
Medically Indigent

The New State Prison

Legislative Council
Report to the
Colorado General Assembly

Research Publication No. 263
December, 1981

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To Members of the Fifty-second Colorado General Assembly:

Submitted herewith are the final reports of the Legislative Council interim committees for 1981. This year's report consolidates the individual reports of ten committees into four volumes of research publications: No. 262, No. 263, No. 264, and No. 265.

Respectfully submitted,

/s/ Representative John Hamlin
Chairman
Colorado Legislative Council

JH/pn

FOREWORD

The recommendations of the Colorado Legislative Council for 1981 appear in four separate volumes (Research Publication Nos. 262 through 265). The Legislative Council reviewed the reports contained in this volume (Research Publication No. 263) at its meeting on November 23, 1981. The Legislative Council voted to transmit the bills included herein to the 1982 Session of the General Assembly.

The committee and staff of the Legislative Council were assisted by the staff of the Legislative Drafting Office in the preparation of bills and resolutions contained in this volume. Matthew Flora assisted the Committee on the Highway Users Tax Fund; Marcia Baird assisted the Committee on Institutions and Medically Indigent; and Bill Hobbs assisted the Committee on the New State Prison.

December, 1981

Lyle C. Kyle
Director

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LEGISLATIVE COUNCIL
COMMITTEE ON HIGHWAY USERS TAX FUND

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SUMMARY OF COMMITTEE ACTIVITIES,
RECOMMENDATIONS, AND FINDINGS

Introduction

The Committee on the Highway Users Tax Fund (HUTF) was established by House Joint Resolution No. 1034 to conduct "a comprehensive study of the Highway Users Tax Fund, the uses thereof, the future needs of the highway system, and the necessary funding requirements." The committee determined that certain statutory and non-statutory disbursements, mechanisms currently used to collect fees, and the function of the HUTF should be reviewed. Specifically, the committee reviewed the disbursements to state executive departments (known as "off-the-top appropriations), statutory appropriations to the Public Utilities Commission Transportation Section, and the funding, organization and responsibilities for the State Patrol. With respect to the collection of funds for the HUTF, the committee examined the gross ton-mile tax and various alternatives thereto and the highway user taxes paid by trucks and automobiles to determine if said vehicles are equitably taxed. Taxes paid by railroads were also reviewed to determine if they should assume a larger responsibility for grade separation construction. Fugitive dust standards related to road maintenance programs for counties were brought to the attention of the committee.

Committee Findings on the Highway Users Tax Fund

I. Disbursements

The enactment in 1979 of House Bill 1445 resulted in strict limitations on "off-the-top" appropriations from the HUTF. An "off-the-top" appropriation is a distribution of HUTF monies before the remaining funds are allocated to the state, the counties and the cities. Specifically, House Bill 1445 required that the General Assembly not make any statutory distribution from the HUTF which is more than twenty-three percent of the "net revenue" of the fund for the prior year or which is more than a seven percent increase over such appropriation for the prior fiscal year. It should be noted that there were several committee interpretations of how the twenty-three percent and seven percent limitations are applied to HUTF distributions. A brief history of Highway User Tax Fund disbursements and sources of revenue is provided in Appendix A, pages 45 to 47 of this report.

In testimony before the committee, it was pointed out that there are increasing requests for funding of highway related programs administered by the various executive departments. Since it will be difficult for those needs to be met within the current statutory limitations on HUTF appropriations, the committee concluded that a review should be conducted of the functions of all agencies receiving HUTF monies. The review was to determine if agency activities are highway related and if the HUTF is being used for its intended purposes. The Office of State Auditor has also been requested to determine whether the present level of HUTF funding for several executive departments is appropriate. A review of the "off-the-top" appropriations to the various highway related programs is provided in Appendix B, page 49 of this report.

In 1976, the state auditor's report on the HUTF noted that three programs are currently being funded from the HUTF without specific statutory authorization therefor.

Non-Statutory Disbursements

Oil Inspection Section -- Division of Labor. The State Inspector of Oils, under the Division of Labor, Department of Labor and Employment receives annual funding from the HUTF. Activities of the Inspector of Oils are directed toward consumer and industry protection. This agency is responsible for conducting annual quality and quantity assurance inspections at service stations, petroleum marketing locations, pipeline terminals, bulk storage plants and transportation facilities throughout the state. Inspectors are required to investigate causes of accidents involving liquid fuels and other fuel products in order to establish possible violations of Colorado statutes and regulations. Examinations are also made of anti-freeze products, brake fluids, lubricants and additives or improvers of products. The Oil Inspection Section charges no fees for any of the services which it provides.

Division of Communications. The Division of Communications, Department of Administration, is charged with responsibility for administering the state communications plan and exercising general supervision over all communications systems and facilities except those communications facilities provided specifically for use by the State Patrol and the Division of Highways. The Division of Communications is also charged with the operation and maintenance of all public safety systems throughout the state.

Although no specific statutory guidance is given for its source of appropriations, the division receives eighty percent of its appropriations from the HUTF and twenty percent from the General Fund. Based on information used at the time of the first allocation in 1967, eighty percent of the mobile units were highway-related, while only twenty percent were non-highway related. The allocation percentage has remained unchanged since 1967.

Colorado Crime Information Center. The State Patrol is provided with access to the Colorado Crime Information Center (CCIC) computer located in the Colorado Bureau of Investigation. Testimony received by the committee indicated that the CCIC has increased the speed in gathering information for the State Patrol. The computer has improved the patrol's identification of stolen property, fugitives and missing persons. Local government law enforcement agencies also use the computer for administering highway laws which are subject to their jurisdiction.

Annual appropriations are made out of the HUTF for reimbursement to the Colorado Bureau of Investigation for the State Patrol's use of the CCIC. The amount of funding from the HUTF is developed by establishing the State Patrol's usage of the CCIC as a factor of total usage. Again, no statutory authorization exists for HUTF or any other funding sources for the use of the CCIC computer.

Statutory Disbursements

Public Utilities Commission Transportation Section. The Transportation Section of the Public Utilities Commission (PUC) is responsible for the regulations and supervision of the following carriers: common carriers (those companies whose service is available to all); contract carriers (companies offering services to the public, but the services are negotiated individually); towing carriers; and carriers of hazardous materials.

The Transportation Section consists of two major units, the rate unit and the enforcement unit. The rate unit deals primarily with the review and analysis of tariff requests and the financial statements of PUC regulated industries. The enforcement unit is responsible for the safety and economic inspections of licenses within the transportation industry.

The Transportation Section of the PUC is currently funded by annual appropriation from the HUTF. For fiscal year 1980-1981, that agency received an appropriation of \$1,345,723. Section 40-2-110 (2), C.R.S. 1973, states that the amount to be appropriated is to provide the net amount required to fund supervision and regulation of motor carriers. Early in its discussion of the activities of the Transportation Section of the PUC, the committee requested that the Legislative Audit Committee direct the Office of State Auditor to analyze the highway and non-highway related activities of that agency to determine if the present level of HUTF funding is appropriate. Subsequently, the committee elected to recommend Bill 4, concerning funding for the Transportation Section of the PUC, for consideration by the 1982 General Assembly.

Colorado State Patrol. The State Patrol receives the largest annual "off-the-top" appropriation from the HUTF. For fiscal year 1980-1981, the State Patrol received an appropriation of \$21,071,470, approximately 50 percent of the total of HUTF disbursements for that fiscal year.

Section 43-5-103 (2), C.R.S. 1973, as amended, assigns the following duties to the State Patrol:

"enforce or aid in enforcing all state laws pertaining to motor and all other vehicles ... upon the highways of Colorado and for the use thereof. The patrol shall also aid in the enforcement of the collection of all motor and other vehicle taxes ... and shall otherwise promote safety, protect human life, and preserve the highways of this state by the intelligent, courteous, and strict enforcement of laws ...".

Representatives of the State Patrol reported to the committee that the budget for the patrol for fiscal year 1981-1982 effectively provides an amount equivalent to approximately a ten percent across the board reduction in field resources. This reduction will mean the loss of fifty and one-half uniformed positions and thirteen civilian positions, and has resulted in a reevaluation of the patrol's goals and objectives.

There are four State Patrol operational goals and objectives where cutbacks will occur:

1. Resources previously committed to enforcement of the 55 miles per hour speed limit;
2. The recovery of stolen vehicles;
3. Truck safety inspection; and,
4. On-the-road inspections of trucks for size and weight violations.

II. Collections

A substantial amount of testimony was given to the committee by representatives of the Department of Highways on the status of HUTF collections. Revenues from the motor fuel tax have declined in the last two fiscal years. Motor fuel tax collections for fiscal year 1978-1979 were approximately \$114,782,000 while the revenues for fiscal year 1980-1981 were around \$108,331,000. The enactment of House Bill 1090 (1981 Session), which provides a two cent per gallon increase in motor fuel taxes, is intended to reverse the downward trend in motor fuel revenues. It is estimated that for fiscal year 1982-1983 the motor fuel tax receipts will be \$133,380,000. Sales and use tax revenues allocated to the HUTF, pursuant to the so-called "Noble Bill" (see explanation in Appendix A) also are helpful in reversing the downward trend in HUTF revenues. The sales and use tax apportionment to the HUTF for fiscal year 1980-1981 was \$33 million.

The committee determined that two other major sources of revenue for the HUTF, the gross ton-mile tax, and motor vehicle related fees, should be reviewed to determine if fee increases or tax structure revisions are appropriate. For fiscal year 1980-1981, gross ton-mile tax collections totalled \$24,869,813 while motor vehicle user fee receipts were \$33,171,000.

Ton-mile Tax Collections

Testimony to the committee by the Ports of Entry Chief indicated that gross ton-mile (GTM) collections for the first-quarter of fiscal year 1981-1982 were down by 4.4 percent (\$285,497) compared to a similar period in fiscal year 1980-1981. If the downward trend in GTM collections continues through the end of 1982, a total estimated revenue shortfall of \$2,707,000 could be expected. Department of Revenue testimony indicated that closure of twelve permanent ports of entry may be one factor causing the decline in GTM revenues. The General Assembly may, in the 1982 session, be reconsidering its decision to close a number of the ports of entry. Representatives of the trucking industry, stated that a decline in the number of trucks operating in Colorado and reductions in their gross operating revenues are primary factors behind the decline in gross ton-mile tax collections.

The committee has requested that the Legislative Audit Committee direct the Office of State Auditor to review gross ton-mile tax accounts to determine ton-mile taxpayer compliance with state statutes. The committee urges the State Auditor to also review "negotiated factor agreements" to determine if there is a need for updating or revising these statutes. Under current law, each carrier can negotiate an agreement ("negotiated factor agreement") with the Department of Revenue establishing procedures for payment of ton-mile taxes directly to the department. The negotiated rate remains constant and the liability of each owner or operator is determined based on the weight of the motor vehicle combined with a determination of the vehicle's average cargo carried during a tax period.

Alternatives to Gross Ton-Mile Tax

Representatives of the Department of Revenue testified on the theory behind and operations of the gross ton-mile tax. The department suggested replacing the ton-mile tax with a declared gross vehicle weight tax. Representatives of a number of intrastate and interstate trucking concerns commented on the gross ton-mile tax and alternatives to said tax. The general consensus in the testimony was that the gross ton-mile tax imposes burdens on truckers because of the excessive amount of time required for reporting and filing and the tax is inefficient in terms of dollars collected versus dollars spent for administration. Among the organizations addressing the committee were the following: Adolph Coors Company, Colorado Farm Bureau, Colorado Motor Carriers Association, Mountain Empire Dairyman's Association and the Colorado Sand and Gravel Producers Association.

The proposed declared gross vehicle weight tax is a weight-distance tax similar to the gross ton-mile tax. The proposed tax provides a system of bracketed weights in which a truck operator declares each year his maximum weight level for each vehicle in his fleet. A rate per mile (no specific rate per mile was noted in the proposal) is then applied to determine the amount of tax due. The owner or operator of any vehicle which is empty must report total mileage in the state and pay two-thirds of the declared gross vehicle weight tax that would be normally due on the empty miles only. The declared gross vehicle weight tax would not apply to farm vehicles.

Also discussed as an alternative to the gross ton-mile tax was a proposal by Senator Dan Noble to increase the fuel tax on trucks at an unspecified amount and to supplement the revenues generated from that tax with an increase in registration fees for all vehicles currently subject to the ton-mile tax. The Department of Revenue estimates that for every one cent increase in the fuel tax, the state would realize an additional \$2 million in revenue. Arguments cited in favor of an increase in registration fees and fuel taxes are that such taxes are easy to administer and collection costs are low.

Committee conclusions. The committee makes no recommendation regarding the proposed declared gross vehicle weight tax. Testimony from the trucking industry to the committee indicated that the declared gross vehicle weight tax has disadvantages similar to those attributed to the gross ton-mile tax, namely high costs of collection and excessive reporting requirements. Members of the committee generally favor further examination of the proposal to increase registration fees and fuel taxes on trucks. Specific dollar figures for that proposal are now being calculated by trucking industry representatives. The fiscal analysis is expected to be available to members of the General Assembly early in the 1982 session. The committee strongly urges the General Assembly to give careful consideration to the possibility of replacing the gross ton-mile tax with a system of increased registration fees and fuel taxes.

Motor Vehicle User Fees

Department of Revenue officials reported to the committee on the revenue generated by motor vehicle user fees and the income potential of fee increases. Major sources of revenue from the user fees are motor vehicle registrations which provided approximately \$24,075,000 and driver licenses which generated about \$4,905,000 for the HUTF in fiscal year 1980-1981. The table below indicates the total revenues from all motor vehicle related fees and two estimates of increased revenue examined but not adopted by the committee:

MOTOR VEHICLE RELATED FEE REVENUES

| | <u>Actual 1980-81 Revenues</u> | <u>Projected 1982-83 Revenues from a \$1 Fee Increase</u> | <u>Projected 1982-83 Revenues from a 10% Fee Increase</u> | <u>Year of Last Major Fee Revision</u> |
|--|--|---|---|---|
| Registrations | | | | |
| Total Collections | \$34,227,000 | | | |
| To HUTF | 24,075,000 | \$2,916,000 | \$2,566,000 | 1955 |
| City and County Share | 10,152,000 | | | |
| Temporary Permits | 119,000 | 111,000 | 14,000 | 1973 (county share) 1953 (state share) |
| Personalized Applications | 236,000 | 14,000 | 32,000 | 1975 |
| Receipt Fee (Inter- state Commercial Carriers) | 863,000 | 475,000 | 95,000 | 1978 |
| Miscellaneous | | | | |
| Registrations | 46,000 | 13,000 | 5,000 | -- |
| Driver Licenses | 4,905,000 | 527,000 | 356,000 | 1979 |
| Identification | | | | |
| Cards | 130,000 | 51,000 | 18,000 | 1977 |
| Reinstatements | 514,000 | 28,000 | 52,000 | 1977 |
| Titles | 514,000 | 1,139,000 | 57,000 | 1949 |
| File Search | 1,390,000 | 1,180,000 | 177,000 | 1971 |
| Other Miscellaneous Fees | <u>379,000</u> | <u>--</u> | <u>42,000</u> | -- |
| Total to HUTF | \$33,171,000 | \$6,898,000 | \$3,381,000 | |

Committee conclusions. The committee has requested that the Audit Committee direct the Office of State Auditor to analyze the motor vehicle related fees collected by the Department of Revenue to determine if the income derived from fees is adequate to cover the department's administrative costs. The analysis is expected to be completed and be provided to the members of the General Assembly by about March, 1982.

III. Function -- Highway Maintenance

Representatives of the Department of Highways and Colorado Counties Inc., presented to the committee a considerable amount of information regarding the condition of Colorado's highways. The Road Information Program (TRIP) of Washington, D.C. has noted that 30 percent of all paved main roads in Colorado are deficient by national engineering standards. The condition of Colorado's highways causes drivers statewide to spend \$150.5 million yearly or about \$75 per driver in increased vehicle operating costs. It was estimated in 1980 that wasted fuel caused by deteriorating highways amounted to approximately 94 million gallons of gasoline. 1/

According to federal standards, 190 bridges on the state highway system are inadequate and an additional 281 will fall into this category during the next ten years. For example, in Prowers County an oil exploration vehicle broke through the bridge deck of a structure on a county road. County expenditures of \$24,000 were required to reconstruct the bridge. Over the last twenty years, Colorado's population has increased 58 percent, the number of vehicle miles traveled has increased 135 percent, and truck traffic has gone up 207 percent. 2/

Substantial maintenance efforts are also required on county roads. Testimony to the committee by a representative of Colorado Counties Inc. indicated a number of highway maintenance problems as a result of energy development and exploration. Roads in Mesa County that formerly experienced traffic counts of 20 to 24 vehicles per day are now subjected to usage by 300 or more vehicles per day. In Delta County, a nine mile stretch of road is used by trucks carrying upwards of 25 to 30 tons of coal waste. The road is not considered adequate to handle these usage and load factors and is in constant need of maintenance. The estimated cost to upgrade this road has been projected to be in excess of \$1.5 million. Rio Blanco County Road No. 5 in the Piceance Creek area has had an increase in maintenance costs from \$22,857 in 1976 to \$233,645 in 1980. The increase in costs is mainly due to oil shale and gas and oil exploration activities.

1/ The Road Information Program, Waste Due to Bad Roads Put at \$150 Million, 1980.

2/ Colorado Highway Users Conference, Colorado's Highway Needs and Financing Options, 1980.

Highway Cost Allocation Study

The HUTF has been severely impacted in recent years by increased costs for highway maintenance. As a result of inflation, the buying power of highway dollars has been reduced by more than half since 1967. The highway users tax structure has also been affected by the reduction in gasoline consumption due to more fuel efficient vehicles and the implementation of energy conservation measures. Concerned that these events may have created a shift in the relative allocation of costs for highway maintenance, construction and repair caused by the various classes of highway users, the State Highway Commission, on June 18, 1981, authorized a Highway Cost Allocation Study to be conducted.

The Highway Cost Allocation study had the following objectives:

1. To determine the relative cost responsibility between the two highway user vehicle types, basic vehicles and heavy trucks. Basic vehicles are those vehicles weighing 10,000 pounds or less, consisting of automobiles and small load carrying vehicles. Heavy vehicles are those trucks and buses weighing over 10,000 pounds.
2. To compare the current user tax contributions for the two vehicle categories with their relative cost responsibilities.

The methodology of the study was based on the assumption that heavy vehicles require additional construction features and maintenance activities beyond those necessary to accommodate basic vehicles. 3/

Highway Cost Allocation Study Findings. The study concluded that heavy vehicles are not paying their proportionate share to the HUTF and that the contributions by heavy vehicles should be adjusted to an equitable level based on cost responsibility. The table below indicates that trucks over 10,000 pounds gross vehicle weight are responsible for thirty-seven percent of the costs incurred by the HUTF but only contribute twenty-three percent.

3/ Colorado Department of Highways, Highway Cost Allocation Study, 1981.

COST RESPONSIBILITY BY VEHICLE TYPE AND WEIGHT

| | <u>Cost Responsibility Percent</u> | <u>Contribution Percent</u> | <u>Overpayment or (Deficiency) Percent</u> |
|---|--|---------------------------------|--|
| Basic Vehicles -- (cars, pickups, light trucks) | <u>63.0</u> | <u>77.0</u> | <u>14.0</u> |
| Trucks | | | |
| 10,000 - 20,000 | 2.4 | 2.4 | 0.0 |
| 20,000 - 30,000 | 5.4 | 4.5 | (0.9) |
| 30,000 - 40,000 | 1.7 | 2.1 | 0.4 |
| 40,000 - 50,000 | 1.6 | 0.8 | (0.8) |
| 50,000 - 60,000 | 2.3 | 0.8 | (1.5) |
| 60,000 - 70,000 | 0.9 | 0.5 | (0.4) |
| 70,000 - 80,000 | 20.9 | 11.6 | (9.3) |
| 80,000 + | 1.8 | 0.3 | (1.5) |
| Total Trucks | <u>37.0</u> | <u>23.0</u> | <u>(14.0)</u> |

It should be noted that the draft of the final report of the Highway Cost Allocation Study was not available until mid-October. Consequently, representatives of the trucking industry did not have sufficient time to prepare a detailed analysis of the study or to provide testimony for the committee regarding their opinions of its findings.

Committee Findings on the Train-Mile Tax

A portion of one committee meeting was devoted to a review of legislation enacted in Nebraska in 1981 to tax railroad carriers and to determine the feasibility of Colorado implementing a new program for the funding of grade separations.

The Nebraska law, Legislative Bill 190, provides an excise tax on each railroad transporting freight in Nebraska at a rate of 6.7 cents for each train mile operated by a railroad in the state and \$100 for each public grade crossing on the line of such railroad in the state. "Train-mile" means each mile traveled by a train in the state regardless of the number of cars in such train.

A ton-mile tax on freight transported by railroads in Nebraska, which had been approved during the 1979 legislative session, was repealed by the passage of Legislative Bill 190. The 1979 statute had imposed a tax of three thousandths of one cent for each mile each ton of freight is transported within Nebraska. The ton-mile tax was found unconstitutional in an opinion issued by the Nebraska Attorney General since said tax was found to be discriminatory between rates imposed

for interstate and intrastate commerce. An opinion by the Colorado Office of Attorney General indicated that a ton-mile tax on freight transported by rail could be constitutional if the tax meets the following four point test:

1. There is a sufficient means between the subject of taxation and the taxing state;
2. There is no discrimination between interstate and intrastate commerce;
3. The tax is fairly apportioned to the taxpayer's activities in the taxing state; and
4. There is a reasonable relation between the services provided by the state and the tax.

A spokesman for the Colorado Department of Highways estimated that Nebraska's train-mile tax produces \$1.5 million per year. The act specifies that the revenues from the railroad tax be placed in the State Grade Crossing Protection Fund for the purpose of constructing, rehabilitating, relocating, or modifying grade separation facilities.

The following table, which was prepared by the Department of Highways, estimates the revenue that would be generated if the Nebraska bill were implemented in Colorado:

| | <u>\$100 Per Public At-grade crossing</u> | <u>6.7 cents per Train mile</u> | <u>Total</u> |
|---|---|-------------------------------------|---------------|
| Denver & Rio Grande Western Railroad | \$ 56,100 | \$323,996 | \$380,096 |
| Colorado & Southern Railway | 39,000 | 99,913 | 138,913 |
| Burlington Northern | 31,900 | 86,849 | 118,749 |
| Union Pacific | 50,400 | 67,549 | 117,949 |
| Atchison, Topeka & Santa Fe | 34,600 | 65,921 | 100,521 |
| Missouri Pacific | 7,700 | 26,959 | 34,659 |
| All other freight railroads | <u>22,100</u> | <u>1,331</u> | <u>23,431</u> |
| | \$241,800 <u>4/</u> | \$672,518 <u>5/</u> | \$914,318 |

4/ Public at-grade crossing data was taken from national grade crossing inventory files as of October 16, 1981.

5/ Train movements taken from the 1980 Colorado State Rail Plan Update -- Volume I; and mileages taken from appropriate carrier time-tables.

After a review of testimony on the Nebraska train-mile tax, the committee decided not to recommend any proposals for additional railroad taxation for purposes of grade separation construction. The committee does recognize the importance of generating additional funding for grade separation construction and urges the General Assembly to consider who should be responsible for such funding -- the railroads, the state via HUTF appropriations, or local governments.

Committee Findings on Fugitive Dust Emissions

Testimony by a representative of Colorado Counties Inc., indicated that the Air Quality Control Commission is considering amending Regulation No. 1 -- Emission Control Regulations for Particulates, Smokes, and Sulfur Oxides for the State of Colorado. Included in Regulation No. 1 are requirements for abatement of fugitive dust emissions from unpaved roads. Committee members expressed concern that amendments to Regulation No. 1 may in effect mandate road maintenance programs for counties such as frequent watering, chemical stabilization, and paving. There is also a possibility that the regulation could be revised to transfer the authority to select the method to be utilized in the abatement of fugitive dust from local jurisdictions to the Air Quality Control Commission.

Committee Recommendations

After review of extensive testimony on the functions of the Oil Inspection Section, the Division of Communications and the Colorado Crime Information Center, the committee questions which method, cash funding, the HUTF, or the General Fund is the most appropriate for funding those agencies.

Committee proposals -- Bills 1 to 3. The committee is concerned about the amount of HUTF money annually appropriated to the Oil Inspection Section, the Division of Communications, and the Colorado Crime Information Center. The committee recommends Bills 1 through 3 for consideration by the 1982 General Assembly. These bills would provide statutory authorization for annual appropriations for the Oil Inspection Section, the Division of Communications, and the Colorado Crime Information Center. The committee believes that statutory authorization for annual appropriations, as suggested in the state auditor's report, to these agencies is needed. There is a constitutional question whether there can be annual funding for agencies which do not have statutory authorization for annual appropriations.

No consensus existed among committee members concerning the appropriate source of funding for those agencies. The relative merits of using the Highway Users Tax Fund, the General Fund, and cash

funding for these programs were discussed. As a means of assisting the General Assembly in making the appropriate determination the committee has requested that the Audit Committee direct the Office of State Auditor to analyze the highway and non-highway related activities of the Division of Communications to determine what percentage of the activities of the division are actually highway related and if the present level of HUTF funding is appropriate. Findings by the Office of State Auditor are expected to be available to members of the General Assembly during the 1982 session.

Concerning funding of transportation utilities -- Bill 4. Fixed utilities are currently required to pay annual fees to the PUC to defray the administrative costs incurred by the PUC; the committee concluded that transportation utilities should be similarly assessed and HUTF appropriations to the PUC should be eliminated.

Bill 4 proposes to amend Section 40-2-112, C.R.S. 1973, by requiring the executive director of the Department of Revenue to compute what the percentage of administrative expenses of the PUC for the supervision and regulation of transportation utilities is of the aggregate amount of gross operating revenues of all regulated transportation utilities which is derived from intrastate business transacted during the preceding calendar year. The percentage so computed will be the basis for establishing fees for the ensuing year. The bill would further require the Department of Revenue to notify, no later than June 15 of each year, each transportation utility of the amount of its fee for the next fiscal year beginning July 1. The fee for a transportation utility will be computed by multiplying its gross intrastate utility operating revenues for the preceding calendar year by the percentage determined in accordance with revised Section 40-2-112. However, no transportation or fixed utility will be required to pay a fee in excess of one-fifth of one percent of its gross intrastate utility operating revenues for the preceding calendar year.

Consistent with statutory provisions for allocation of fixed utility revenues, all fees collected by the Department of Revenue from the transportation utilities will be remitted to the State Treasurer and be credited as follows: three percent to the General Fund and ninety-seven percent to the Public Utilities Commission Transportation Utility Fund. That fund shall be expended only to defray the full amount determined by the General Assembly for the administrative expenses of the PUC for the supervision and regulation of transportation utilities paying such fees.

Concerning funding of the State Patrol -- Bill 5. To enable the State Patrol to meet all of its operational objectives for the 1981-1982 fiscal year and succeeding fiscal years, Bill 5, concerning an additional source of funding for the State Patrol, is recommended.

Bill 5 would provide additional annual appropriations for the State Patrol through the imposition of a \$3.00 surcharge on the registration fees of select categories of motor vehicles. The

selected vehicles include all passenger cars, most trucks which are required to pay registration fees, motorcycles, and special mobile equipment, which is defined in Section 42-1-102 (43), C.R.S. 1973. Based on motor vehicle registrations for 1980, the surcharge would have generated approximately \$7 million.

The committee intends for this new source of revenue to be used specifically for the State Patrol and to relieve financial pressure on the HUTF which has resulted from the statutory limitations on annual "off-the-top" appropriations. The committee expressed concern that continued cutbacks in State Patrol funding could occur if the patrol had to rely solely on HUTF appropriations.

Committee Recommendations -- Bills 6 to 8

In view of testimony given to the committee on the condition of Colorado's highways and the findings of the Highway Cost Allocation Study, the committee recommends Bills 6 through 8.

Concerning fines for overweight vehicles -- Bill 6. Testimony to the committee by representatives of the Department of Revenue indicated that since the number of Ports of Entry have been reduced, there has been an increased incidence of overweight vehicles on Colorado highways. Current statutes provide that persons violating provisions of Section 42-4-406 (wheel and axle loads) and 42-4-407 (gross weight of vehicles and loads) shall be punished by a fine of \$15 plus \$5 per 1,000 pounds in excess of the limits imposed by Sections 42-4-406 and 407. Thus, the operator of a vehicle which is 10,000 pounds in excess of the legal limit, would be required to pay a fine of \$55. It was the consensus of the committee that the existing schedule of fines does not provide a sufficient penalty to ensure compliance with statutorily imposed weight limits.

Bill 6 would provide for an escalating schedule of fines for overweight trucks ranging from \$10 for an excess weight of 1,000 to 1,500 pounds up to a \$1,000 fine for excess weight exceeding 12,500 pounds. The fines at the lower end of the weight scale are small since the committee believes that unintentional overloads can and will take place. Deliberate overloading of an axle or vehicle should be the focus of the penalties. It is the committee's opinion that the progressive schedule of fines provided in Bill 6 will help to alleviate the destructive effect and cost of excessive weight on Colorado highways.

The committee notes that the General Assembly may wish to insert additional tolerance levels in the lower end of the schedule of fines for overweight violations to address the problem of accidental truck overloads. It is also recommended that the General Assembly consider who should be responsible for paying fines for overweight violations -- the truck owner, operator, or shipper.

Appropriations for mobile unit ports of entry -- Bill 7. Bill 7 will authorize the purchase of one mobile weigh station unit at an approximate cost of \$22,000 and provide funding for an additional eight F.T.E. to allow for the full-time operation of two mobile unit crews whose responsibility will be to check for trucking violations. The cost for funding the mobile unit crews will be approximately \$140,000 in fiscal year 1982-1983.

The committee believes that with the reduction in permanent ports of entry from twenty-one to nine, it is necessary to increase mobile unit activity in areas not served by permanent ports. Mobile unit crews are expected to aid in removing overweight and oversize trucks from Colorado highways and to reduce the damage to highways caused by overweight trucks.

Bill 7 also authorizes funding for eight additional F.T.E. for staffing the nine permanent ports of entry.

Concerning the tax on cargo weight of vehicles -- Bill 8. The gross ton-mile tax provides a tax levy of 0.8 of a mill on the empty weight of the vehicle and an assessment of two mills on the cargo. The gross ton-mile tax produced \$25.6 million in fiscal year 1980-1981. The Highway Cost Allocation Study showed a substantial differential between cost responsibility and HUTF contribution for trucks in excess of 40,000 pounds gross vehicle weight.

In view of the findings of the Highway Cost Allocation Study, the committee recommends Bill 8 which would increase from two to four mills the assessment upon each gross ton-mile of cargo weight of vehicles having a gross vehicle weight over 40,000 pounds. The estimated revenue effect of Bill 8 would be an increase of \$14 million to the HUTF.

Joint Resolution 1. In view of the testimony given to the committee on Air Quality Control Commission Regulation No. 1, the committee recommends Joint Resolution 1. The resolution urges the Air Quality Control Commission to carefully examine all proposed amendments to Regulation No. 1. The committee is specifically concerned about the feasibility of transferring from the counties to the Air Quality Control Commission the discretion in determining methods of abating fugitive dust emissions.

BILL 1

A BILL FOR AN ACT

1 CONCERNING THE ADMINISTRATION OF THE OIL INSPECTION SECTION OF
2 THE DIVISION OF LABOR, AND MAKING AN APPROPRIATION
3 THEREFOR.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides that the general assembly shall appropriate moneys for the expenses of the administration of the oil inspection section in the division of labor and of the state inspector of oils.

4 Be it enacted by the General Assembly of the State of Colorado:

5 SECTION 1. Part 1 of article 20 of title 8, Colorado
6 Revised Statutes 1973, is amended BY THE ADDITION OF A NEW
7 SECTION, to read:

8 8-20-105. Expenses of administration. For the purpose
9 of administering this article, there shall be appropriated for
10 each fiscal year such moneys as the general assembly may
11 determine, upon presentation of a budget for that purpose in
12 form and content in accordance with the provisions for

1 submission of budget requests by state agencies.

2 SECTION 2. Appropriation. There is hereby appropriated,
3 out of _____, to the department of labor and employment,
4 for allocation to the oil inspection section of the division
5 of labor, for the fiscal year beginning July 1, 1982, the sum
6 of _____ dollars (\$ _____), or so much thereof as may be
7 necessary, for the implementation of this act.

8 SECTION 3. Safety clause. The general assembly hereby
9 finds, determines, and declares that this act is necessary
10 for the immediate preservation of the public peace, health,
11 and safety.

BILL 2

A BILL FOR AN ACT

1 CONCERNING THE ADMINISTRATION OF THE DIVISION OF
2 COMMUNICATIONS WITHIN THE DEPARTMENT OF ADMINISTRATION,
3 AND MAKING AN APPROPRIATION THEREFOR.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides that moneys shall be appropriated by the general assembly for purposes of administering the division of communications within the department of administration.

4 Be it enacted by the General Assembly of the State of Colorado:
5 SECTION 1. Part 9 of article 30 of title 24, Colorado
6 Revised Statutes 1973, as amended, is amended BY THE ADDITION
7 OF A NEW SECTION, to read:

8 24-30-907. Expenses of administration. For the purpose
9 of administering this part 9, there shall be appropriated for
10 each fiscal year such moneys as the general assembly may
11 determine, upon presentation of a budget for that purpose in
12 form and content in accordance with the provisions for

1 submission of budget requests by state agencies.

2 SECTION 2. Appropriation. There is hereby appropriated,
3 out of _____, to the department of administration, for
4 allocation to the division of communications, for the fiscal
5 year beginning July 1, 1982, the sum of _____ dollars
6 (\$), or so much thereof as may be necessary, for the
7 implementation of this act.

8 SECTION 3. Safety clause. The general assembly hereby
9 finds, determines, and declares that this act is necessary
10 for the immediate preservation of the public peace, health,
11 and safety.

BILL 3

A BILL FOR AN ACT

1 CONCERNING THE ADMINISTRATION OF THE COLORADO CRIME
2 INFORMATION CENTER, AND MAKING AN APPROPRIATION THEREFOR.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides that moneys shall be appropriated by the general assembly for the purposes of administering the Colorado crime information center.

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. 24-32-412 (5), Colorado Revised Statutes
5 1973, as amended, is amended to read:

6 24-32-412. Functions of bureau - legislative review.

7 (5) (a) To assist the bureau in its operation of the uniform
8 crime reporting program, every law enforcement agency in this
9 state shall furnish such information to the bureau concerning
10 crimes, arrests, and stolen and recovered property as is
11 necessary for uniform compilation of statewide reported crime,
12 arrest, and recovered property statistics. The cost to the law

1 enforcement agency of furnishing such information shall be
2 reimbursed out of appropriations made therefor by the general
3 assembly; except that the general assembly shall make no such
4 reimbursement if said cost was incurred in a fiscal year
5 during which the Colorado crime information center was funded
6 exclusively by state or federal funds.

7 (b) FOR THE PURPOSE OF ADMINISTERING THE COLORADO CRIME
8 INFORMATION CENTER, THERE SHALL BE APPROPRIATED SUCH MONEYS AS
9 THE GENERAL ASSEMBLY MAY DETERMINE, UPON PRESENTATION OF A
10 BUDGET FOR THAT PURPOSE IN FORM AND CONTENT IN ACCORDANCE WITH
11 THE PROVISIONS FOR SUBMISSION OF BUDGET REQUESTS BY STATE
12 AGENCIES.

13 SECTION 2. Appropriation. There is hereby appropriated,
14 out of _____, to the Colorado bureau of investigation, for
15 the purpose of administering the Colorado crime information
16 center, for the fiscal year beginning July 1, 1982, the sum of
17 _____ dollars (\$), or so much thereof as may be
18 necessary, for the implementation of this act.

19 SECTION 3. Safety clause. The general assembly hereby
20 finds, determines, and declares that this act is necessary
21 for the immediate preservation of the public peace, health,
22 and safety.

BILL 4

A BILL FOR AN ACT

1 CONCERNING THE FUNDING OF ADMINISTRATIVE EXPENSES OF THE
2 PUBLIC UTILITIES COMMISSION IN REGULATING FIXED UTILITIES
3 AND TRANSPORTATION UTILITIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides that the general assembly shall determine the amount to be expended by the public utilities commission for administrative expenses in regulating fixed utilities and transportation utilities and that such moneys shall be appropriated from funds created for that purpose. Creates such funds and provides that the regulated utilities shall pay fees to defray the costs of such administration. Repeals the provision providing that administrative expenses for regulating motor carriers shall be appropriated from the highway users tax fund.

4 Be it enacted by the General Assembly of the State of Colorado:

5 SECTION 1. Article 2 of title 40, Colorado Revised
6 Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW
7 SECTION to read:

8 40-2-108.5. Definitions. As used in sections 40-2-109
9 to 40-2-114, unless the context otherwise requires:

1 (1) "Fixed utility" means every pipeline corporation,
2 gas corporation, electrical corporation, telephone
3 corporation, telegraph corporation, water corporation, person,
4 or municipality operating for the purpose of supplying the
5 public for domestic, mechanical, or public uses and every
6 corporation or person declared by law to be affected with a
7 public interest.

8 (2) "Transportation utility" means every common carrier,
9 contract carrier by motor vehicle, towing carrier, or air
10 carrier.

11 SECTION 2. 40-2-109, Colorado Revised Statutes 1973, is
12 amended to read:

13 40-2-109. Report to executive director of the department
14 of revenue. On March 1 of each year, the public--utilities
15 commission shall furnish the executive director of the
16 department of revenue with a list of those public FIXED
17 UTILITIES AND TRANSPORTATION utilities subject to its
18 jurisdiction, supervision, and regulation on January 1 of each
19 year. ~~excepting-those-motor-vehicle-carriers--subject--to--the~~
20 ~~ton-mile--or--passenger-mile--tax-imposed-by-the-provisions-of~~
21 ~~section--42-3-123,-6-R-5--1973,-(but-only-so-long-as-the--cost~~
22 ~~of-regulation-of-such-motor-vehicle-carriers-shall-be-defrayed~~
23 ~~from--the--proceeds-of-such-ton-mile-or-passenger-mile-taxes)-~~

24 SECTION 3. 40-2-110 (1), Colorado Revised Statutes 1973,
25 is amended to read:

26 40-2-110. Appropriation and fees. (1) At each regular

1 session, the general assembly shall determine the amounts to
2 be expended by the public--utilities commission for its
3 administrative expenses in supervising and regulating the
4 public FIXED UTILITIES AND TRANSPORTATION utilities which are
5 under its jurisdiction, a list of which the commission is
6 required by section 40-2-109 to furnish to the department of
7 revenue, and shall appropriate to the public---utilities
8 commission from the public utilities commission fixed utility
9 fund AND FROM THE TRANSPORTATION UTILITY FUND, established in
10 section 40-2-114, the full amount so determined, and such
11 amount shall be defrayed out of the fees to be paid by such
12 public utilities, as provided in section 40-2-112.

13 SECTION 4. 40-2-111, Colorado Revised Statutes 1973, is
14 amended to read:

15 40-2-111. Report of utilities to department of revenue.
16 Each public utility required to pay such fees shall, on or
17 before May 15 of each year, file a return with the department
18 of revenue on such forms as shall be prescribed by the
19 executive director of the department of revenue and the public
20 utilities commission setting forth the gross operating
21 revenues of such public utility from intrastate FIXED UTILITY
22 OR TRANSPORTATION utility business only transacted in the
23 state of Colorado during the preceding calendar year. Such
24 return shall be executed and verified by two of the executive
25 officers of the utility making the return and shall contain or
26 be verified by a written declaration that it is made under the

1 penalties of perjury in the second degree, and any officer who
2 knowingly and willfully makes and signs a false return is
3 guilty of perjury in the second degree.

4 SECTION 5. 40-2-112, Colorado Revised Statutes 1973, is
5 amended to read:

6 40-2-112. Computation of fees. On or before June 1 of
7 each year, the executive director of the department of revenue
8 shall ascertain the aggregate amount of gross operating
9 revenues of all public FIXED UTILITIES AND TRANSPORTATION
10 utilities filing returns as provided in section 40-2-111. He
11 shall then compute the percentage which the full amount
12 determined by the general assembly for administrative expenses
13 of the public-utilities commission for the supervision and
14 regulation of such public utilities is of the aggregate amount
15 of gross operating revenues of such public utilities derived
16 from intrastate utility business transacted during the
17 preceding calendar year, and the percentage so computed shall
18 be the basis upon which fees FOR SUCH UTILITIES for the
19 ensuing year shall be fixed.

20 SECTION 6. 40-2-113, Colorado Revised Statutes 1973, is
21 amended to read:

22 40-2-113. Collection of fees, limitation. On or before
23 June 15 of each year, the department of revenue shall notify
24 each public FIXED UTILITY AND EACH TRANSPORTATION utility
25 subject to the provisions of this article of the amount of its
26 fee for the ensuing fiscal year beginning July 1, computed by

1 multiplying its gross intrastate utility operating revenues
2 for the preceding calendar year, as set forth in its return
3 filed for such purpose, by the percentage determined in
4 accordance with section 40-2-112; but no public SUCH utility
5 shall be required to pay a fee in excess of one-fifth of one
6 percent of its gross intrastate utility operating revenues for
7 the preceding calendar year. Such fee shall be paid to the
8 department of revenue in equal quarterly installments on or
9 before July 15, October 15, January 15, and April 15 in each
10 fiscal year. If payment is not made on or before said dates,
11 there shall be added as a penalty ten percent of the
12 installment due, together with interest at the rate of one
13 percent per month on the amount of the unpaid installment
14 until such time as the full amount of the installment,
15 penalty, and interest has been paid. Upon failure, refusal,
16 or neglect of any public SUCH utility to pay such fee or any
17 penalty or interest, the attorney general shall bring suit in
18 the name of the state to collect the same.

19 SECTION 7. 40-2-114, Colorado Revised Statutes 1973, is
20 amended to read:

21 40-2-114. Disposition of fees collected. (1) All fees
22 collected under section 40-2-113 by the department of revenue
23 shall be remitted to the state treasurer and credited by him
24 as follows:

25 (a) OF THOSE MONEYS REMITTED BY FIXED UTILITIES, three
26 percent to the general fund, and ninety-seven percent to the

1 public utilities commission fixed utility fund, which fund is
2 hereby created and shall be expended only to defray the full
3 amount determined by the general assembly for the
4 administrative expenses of the ~~public-utilities~~ commission for
5 the supervision and regulation of the ~~public~~ FIXED utilities
6 paying such fees.

7 (b) OF THOSE MONEYS REMITTED BY TRANSPORTATION
8 UTILITIES, THREE PERCENT TO THE GENERAL FUND, AND NINETY-SEVEN
9 PERCENT TO THE PUBLIC UTILITIES COMMISSION TRANSPORTATION
10 UTILITY FUND, WHICH FUND IS HEREBY CREATED AND SHALL BE
11 EXPENDED ONLY TO DEFRAY THE FULL AMOUNT DETERMINED BY THE
12 GENERAL ASSEMBLY FOR THE ADMINISTRATIVE EXPENSES OF THE
13 COMMISSION FOR THE SUPERVISION AND REGULATION OF THE
14 TRANSPORTATION UTILITIES PAYING SUCH FEES.

15 (2) Any unexpended balance remaining in EITHER OF said
16 fund FUNDS at the end of any fiscal year shall be retained by
17 the state treasurer to defray such administrative expenses of
18 the ~~public--utilities~~ commission during subsequent fiscal
19 years, and the executive director of the department of revenue
20 shall take any such unexpended balance BALANCES into account
21 when computing the percentage upon which fees for the ensuing
22 fiscal year shall be based.

23 SECTION 8. Repeal. 40-2-110 (2), Colorado Revised
24 Statutes 1973, is repealed.

25 SECTION 9. Effective date. This act shall take effect
26 _____.

1 SECTION 10. Safety clause. The general assembly hereby
2 finds, determines, and declares that this act is necessary
3 for the immediate preservation of the public peace, health,
4 and safety.

BILL 5

A BILL FOR AN ACT

1 CONCERNING COSTS OF ADMINISTERING THE COLORADO STATE PATROL.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides that an additional registration fee shall be assessed against certain classes of motor vehicles and that moneys generated from such fees shall be credited to the state patrol fund created within the highway users tax fund. Further provides that those moneys shall be appropriated for the costs of administering the Colorado state patrol.

2 Be it enacted by the General Assembly of the State of Colorado:

3 SECTION 1. Article 3 of title 42, Colorado Revised
4 Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW
5 SECTION to read:

6 42-3-135. Additional registration fees - apportionment
7 of fees. (1) Every owner or operator of the following
8 designated vehicles shall, within the registration period
9 prescribed by law or within ten days after the date of
10 purchase of any such vehicle, pay to the authorized agent in

1 the county wherein such vehicle is to be registered or to the
2 department, as the case may be, an additional registration fee
3 of three dollars, which annual fee shall be in addition to the
4 annual registration fee set forth in the following sections:

5 (a) 42-3-123 (4) (a) - Motorcycles, motorscooters, and
6 motorbicycles;

7 (b) 42-3-123 (4) (b) - Passenger cars, station wagons,
8 taxicabs, ambulances, and hearses;

9 (c) 42-3-123 (9) (a) - Vehicles for delivery without
10 further registration;

11 (d) 42-3-123 (11) (a) - Trucks and truck tractors owned
12 by a farmer or rancher;

13 (e) 42-3-123 (13) - Trucks and truck tractors operated
14 over the public highways;

15 (f) 42-3-123 (14) (a) - Trucks and truck tractors
16 subject to the gross ton-mile tax;

17 (g) 42-3-123 (19) (a) - Mobile machinery and
18 self-propelled construction equipment;

19 (h) 42-3-123 (22) - Noncommercial or recreational
20 vehicles.

21 (2) The additional registration fee provided for in this
22 section shall be transmitted to the state treasurer and
23 credited to a special account within the highway users tax
24 fund, to be known as the "state patrol fund", which account is
25 hereby created for the purposes set forth in subsection (3) of
26 this section.

1 (3) All moneys in the state patrol fund are hereby
2 appropriated to be expended for the costs of administering
3 part 1 of article 5 of title 43 and shall be in addition to
4 and not in lieu of moneys expended for such purpose pursuant
5 to section 43-5-121, C.R.S. 1973.

6 SECTION 2. 43-5-121, Colorado Revised Statutes 1973, as
7 amended, is amended to read:

8 43-5-121. Costs of administration. The cost of
9 administration of this part 1 and of all payrolls and salaries
10 of the chief, commissioned and noncommissioned officers,
11 patrolmen, and office personnel and the cost of clerical work,
12 stationery, postage, uniforms, badges, all supplies and
13 equipment, and necessary travel and subsistence allowances
14 shall be appropriated by the general assembly out of the
15 moneys in the highway users tax fund AND OUT OF THE MONEYS
16 TRANSMITTED TO THE STATE PATROL FUND CREATED PURSUANT TO
17 SECTION 42-3-135, C.R.S. 1973. The expenses and salaries
18 provided for in this section are declared to be for the
19 administration and enforcement of the several statutes
20 referred to in this part 1 and for the construction,
21 maintenance, and supervision of the public highways. Expenses
22 and salaries shall be paid by the state treasurer upon
23 warrants of the controller issued upon vouchers provided by
24 the chief and shall be charged against net collection of
25 highway users taxes as an expense of construction,
26 maintenance, and supervision of public highways and the

1 administration of the laws of the state governing the public
2 highways and the use of same. The expenditures of the
3 Colorado state patrol shall be audited and approved from time
4 to time by the commission and the state auditor.

5 SECTION 3. Effective date. This act shall take effect
6 _____.

7 SECTION 4. Safety clause. The general assembly hereby
8 finds, determines, and declares that this act is necessary
9 for the immediate preservation of the public peace, health,
10 and safety.

BILL 6

A BILL FOR AN ACT

1 CONCERNING THE PENALTY FOR OVERWEIGHT VEHICLES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Establishes a table of penalties to be assessed upon conviction for violating the sections establishing weight limitations for motor vehicles.

2 Be it enacted by the General Assembly of the State of Colorado:

3 SECTION 1. 42-4-1501 (3) (a) (II), Colorado Revised
4 Statutes 1973, as amended, is amended to read:

5 42-4-1501. Misdemeanor traffic offenses classified -
6 penalties. (3) (a) (II) Any person convicted of violating
7 section 42-4-406 or 42-4-407 shall be fined pursuant to this
8 subparagraph (II), whether the violator acknowledges his guilt
9 pursuant to the procedure set forth in subsection (4) (a) of
10 this section or is found guilty by a court of competent
11 jurisdiction. Any violation of section 42-4-406 or 42-4-407
12 shall be punished by a fine of-fifteen-dollars-plus-five

1 dollars-per-one--thousand--pounds--in--excess--of--the--limits
2 imposed--by--section--42-4-466--or-42-4-467:--Any-violation-of
3 section-42-4-469-(2)(b)(vi)-shall-be-punished-as--provided--in
4 that-section, AS FOLLOWS:

| 5 | <u>EXCESS WEIGHT - POUNDS</u> | <u>PENALTY</u> |
|----|-------------------------------|----------------|
| 6 | 1,000 - 1,500 | \$ 10.00 |
| 7 | 1,501 - 2,000 | 15.00 |
| 8 | 2,001 - 2,500 | 20.00 |
| 9 | 2,501 - 3,000 | 25.00 |
| 10 | 3,001 - 3,500 | 30.00 |
| 11 | 3,501 - 4,000 | 35.00 |
| 12 | 4,001 - 4,250 | 40.00 |
| 13 | 4,251 - 4,500 | 50.00 |
| 14 | 4,501 - 4,750 | 70.00 |
| 15 | 4,751 - 5,000 | 85.00 |
| 16 | 5,001 - 5,250 | 100.00 |
| 17 | 5,251 - 5,500 | 120.00 |
| 18 | 5,501 - 5,750 | 140.00 |
| 19 | 5,751 - 6,000 | 160.00 |
| 20 | 6,001 - 6,250 | 180.00 |
| 21 | 6,251 - 6,500 | 205.00 |
| 22 | 6,501 - 6,750 | 230.00 |
| 23 | 6,751 - 7,000 | 255.00 |
| 24 | 7,001 - 7,250 | 280.00 |
| 25 | 7,251 - 7,500 | 310.00 |

| | | |
|----|-----------------|----------|
| 1 | 7,501 - 7,750 | 340.00 |
| 2 | 7,751 - 8,000 | 370.00 |
| 3 | 8,001 - 8,250 | 400.00 |
| 4 | 8,251 - 8,500 | 435.00 |
| 5 | 8,501 - 8,750 | 470.00 |
| 6 | 8,751 - 9,000 | 505.00 |
| 7 | 9,001 - 9,250 | 540.00 |
| 8 | 9,251 - 9,500 | 580.00 |
| 9 | 9,501 - 9,750 | 620.00 |
| 10 | 9,751 - 10,000 | 660.00 |
| 11 | 10,001 - 10,250 | 700.00 |
| 12 | 10,251 - 10,500 | 730.00 |
| 13 | 10,501 - 10,750 | 760.00 |
| 14 | 10,751 - 11,000 | 790.00 |
| 15 | 11,001 - 11,250 | 820.00 |
| 16 | 11,251 - 11,500 | 850.00 |
| 17 | 11,501 - 11,750 | 880.00 |
| 18 | 11,751 - 12,000 | 910.00 |
| 19 | 12,001 - 12,250 | 940.00 |
| 20 | 12,251 - 12,500 | 970.00 |
| 21 | Over 12,500 | 1,000.00 |

22 SECTION 2. Safety clause. The general assembly hereby
23 finds, determines, and declares that this act is necessary
24 for the immediate preservation of the public peace, health,
25 and safety.

BILL 7

A BILL FOR AN ACT

1 CONCERNING PORT OF ENTRY WEIGH STATIONS, AND MAKING
2 APPROPRIATIONS THEREFOR.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides that moneys shall be appropriated to the ports of entry division of the department of revenue to provide for hiring extra personnel to augment existing personnel operating permanent port of entry weigh stations. Further appropriates moneys to be used to purchase a mobile weigh station unit and for funding personnel operating mobile port of entry weigh station operations.

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. Appropriation. There is hereby appropriated,
5 out of the highway users tax fund, to the department of
6 revenue for allocation to the ports of entry division, for the
7 fiscal year beginning July 1, 1982, the sum of _____
8 dollars (\$), or so much thereof as may be necessary,
9 to provide for the funding of eight additional full-time
10 equivalent employees for allocation to permanent port of entry

1 weigh stations by the director of the ports of entry division
2 as he deems necessary.

3 SECTION 2. Appropriation. There is hereby appropriated,
4 out of the highway users tax fund, to the department of
5 revenue for allocation to the ports of entry division, for the
6 fiscal year beginning July 1, 1982, the sum of one hundred
7 fifty-nine thousand seven hundred forty-eight dollars,
8 (\$159,748), or so much thereof as may be necessary, for mobile
9 port of entry weigh station operations. The moneys
10 appropriated by this section shall be used for the purchase of
11 one mobile weigh station unit and for the funding of eight
12 full-time equivalent employees necessary for the operation of
13 existing and new mobile port of entry weigh stations. Such
14 moneys shall not be utilized for funding additional
15 supervisory personnel in the operations of mobile port of
16 entry weigh stations.

17 SECTION 3. Safety clause. The general assembly hereby
18 finds, determines, and declares that this act is necessary
19 for the immediate preservation of the public peace, health,
20 and safety.

BILL 8

A BILL FOR AN ACT

1 CONCERNING THE GROSS TON-MILE TAX ASSESSED ON THE CARGO WEIGHT
2 OF VEHICLES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides for an increase in the gross ton-mile tax assessed on the cargo weight of vehicles having a gross vehicle weight of over a specified number of pounds.

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. 42-3-123 (14) (a) (II), Colorado Revised
5 Statutes 1973, is amended, and the said 42-3-123 (14) (a), as
6 amended, is further amended BY THE ADDITION OF A NEW
7 SUBPARAGRAPH, to read:

8 42-3-123. Registration fees - passenger-mile and
9 ton-mile taxes. (14) (a) (II) Two mills upon each gross
10 ton-mile of cargo weight FOR VEHICLES HAVING A GROSS VEHICLE
11 WEIGHT NOT EXCEEDING FORTY THOUSAND POUNDS;
12 (III) Four mills upon each gross ton-mile of cargo

1 weight for vehicles having a gross vehicle weight exceeding
2 forty thousand pounds.

3 SECTION 2. Effective date. This act shall take effect
4 _____.

5 SECTION 3. Safety clause. The general assembly hereby
6 finds, determines, and declares that this act is necessary
7 for the immediate preservation of the public peace, health,
8 and safety.

RESOLUTION 1

JOINT RESOLUTION NO.

1 WHEREAS, Regulation No. 1 of the Air Quality Control
2 Commission regulates, among other aspects of air pollution,
3 the emission of fugitive dust into the atmosphere; and

4 WHEREAS, The Air Quality Control Commission is currently
5 analyzing Regulation No. 1 and conducting hearings in
6 anticipation of changing a number of requirements of and areas
7 of authority regarding implementation of the regulation; and

8 WHEREAS, Various methods may be utilized in the abatement
9 of fugitive dust emissions from unpaved roads, including
10 frequent watering, chemical stabilization, and paving, all of
11 which are prohibitively expensive when applied on a haphazard
12 basis to such roads; and

13 WHEREAS, Certain proposed changes in Regulation No. 1
14 include transferring the authority to select the method to be
15 utilized in the abatement of fugitive dust from local
16 jurisdictions to the Air Quality Control Commission; and

17 WHEREAS, Local jurisdictions are in a better position
18 than the Air Quality Control Commission to determine whether
19 or not significant health hazards are evident if abatement
20 measures are not taken to minimize fugitive dust emissions;
21 and

22 WHEREAS, The proposed amendments to Regulation No. 1
23 would, in effect, mandate a road maintenance program upon
24 counties without any provision for state funding and would
25 result in a potentially injudicious use of county moneys from
26 the highway users tax fund to the detriment of necessary
27 county road programs; now, therefore,

28 Be It Resolved by the of the Fifty-third General
29 Assembly of the State of Colorado, the
30 concurring herein:

31 (1) That we, the members of this General Assembly, do

1 hereby admonish the Air Quality Control Commission to make a
2 careful examination of Regulation No. 1 prior to promulgating
3 amendments to such regulation, particularly with regard to the
4 respective authority vested in the Air Quality Control
5 Commission versus the authority granted to local jurisdictions
6 concerning the method to be utilized in and the necessity of
7 abatement of fugitive dust emissions.

8 (2) That, in proposing any amendments to Regulation No.
9 1, special regard be given to the possible impact on the
10 highway users tax fund in implementing proposed amendments.

11 Be It Further Resolved, That a copy of this Resolution be
12 transmitted to the Air Quality Control Commission, in care of
13 Joseph Palomba, Jr., Technical Secretary.

COMMITTEE ON THE
HIGHWAY USERS TAX FUND

APPENDIX

A

A Brief History of the Highway Users Tax Fund

The Highway Users Tax Fund was created in 1953 by the General Assembly and became effective January 1, 1954. The sources of revenue for the fund are set forth in section 43-4-203, C.R.S. 1973, as amended. The fund consists of all net revenue (net revenue meaning gross revenue after paying refunds, costs of collection, and expenses of administration):

- (a) from the imposition of any excise tax on motor fuel;
- (b) from the imposition of annual registration fees on motor vehicles, trailers, and semitrailers;
- (c) from the imposition of ton-mile and passenger-mile taxes on vehicles, or any fee or payment substituted therefor; and
- (d) from the imposition of fees for tax payment receipts on Class A personal property (vehicles used to transport persons or property over public highways in this state or compensation as a carrier).

Article X, Section 18 of the Colorado Constitution provides that the proceeds from motor vehicle-related fees, charges, and taxes shall, except for the costs of administration, "be used exclusively for the construction, maintenance, and supervision of the public highways of this state".

Highway Users Tax Fund Distribution Formula

The original distribution formula (1953) provided that appropriations be made from net revenues after transfers were made from the fund to the State Patrol for its operation as appropriated by the General Assembly; to the Department of Revenue for administration of the fund; to the Public Utilities Commission (PUC) for administering the collection of motor carrier taxes; and, to the state penitentiary for the manufacture of license plates.

In 1965, the General Assembly authorized additional "off-the-top" appropriations of \$10,000 per month to the Highway Crossing Protection Fund, to pay for the installation and maintenance of automatic signals at railroad grade crossings. The \$10,000 monthly appropriation was increased during the 1975 session to \$20,000.

The original formula apportioned the HUTF proceeds on the basis of sixty-five percent to the State Highway Fund, thirty percent to the counties, and five percent to the counties and incorporated towns. A method of allocating funds to the individual counties and the individual cities and towns based on motor vehicle registrations and

mileage of roads and streets was established, and it is used today. In the 1959 session, the General Assembly increased the apportionment of the HUTF to cities and incorporated towns from five percent to nine percent and reduced the county share from thirty percent to twenty-six percent.

Limitations on Highway Users Tax Fund Appropriations

In 1979, House Bill 1445 was enacted to require that the Colorado General Assembly not make any statutory distribution or appropriation from the HUTF which is more than 23 percent of the "net revenue" of the fund for the prior year or which is more than a seven percent increase over such appropriation for the prior fiscal year, with the balance of "net revenues" allocated to the state highway fund, counties, and municipalities as provided by current statutes. The bill defines "net revenue" to exclude costs of collection, expenses of administration, and revenue available from sales tax on auto accessories and parts.

Sales and Use Tax Revenues Credited to Highway Users Tax Fund

Also in 1979, the General Assembly enacted Senate Bill 536, the so-called "Noble Bill", to provide a new source of revenue for the HUTF. That is, sales and use taxes attributable to the sales of motor vehicles, batteries, tires, parts, and accessories were previously credited eighty-five percent to the Old Age Pension Fund and fifteen percent to the General Fund. Senate Bill 536 provided that in the 1979-1980 fiscal year the HUTF would be credited with six percent of net revenues from sales and use taxes and the General Fund would be credited with nine percent. The amount credited to the HUTF for that fiscal year was not allowed to exceed \$30 million and any excess would be credited to the General Fund. The "Noble Bill" further provided that for the 1981-1982 fiscal year, eight percent of sales and use tax revenues would be credited to the HUTF up to a maximum of \$36 million.

In 1981, the General Assembly extended the "Noble Bill" in Senate Bill 182 and provided that for the fiscal year beginning July 1, 1981 through the fiscal year beginning July 1, 1985, seven percent of the net revenue from sales and use taxes will be transferred to the HUTF.

The apportionments of sales and use tax revenues from the HUTF are apportioned differently from other HUTF revenues. That is, they are allocated on the basis of sixty percent to the State Highway Fund, twenty-two percent to counties, and eighteen percent to the cities and incorporated towns.

Special Appropriation to Highway Users Tax Fund

In the 1980 session, Senate Bill 148 was enacted as a part of a "tax reduction" program. Senate Bill 148 appropriated \$57.5 million from the General Fund for 1980-1981 only to the HUTF for use on the state highway system. The money is to be allocated to the state, the counties, and the cities in the following manner:

- (a) to the state highway fund \$34 million to be used in addition to money already budgeted for repair, resurfacing, and maintenance of existing highways and bridges within the state;
- (b) to counties -- \$12,650,000; and
- (c) to cities -- \$10,350,000.

The bill used existing statutory formulas to allocate such moneys between the state, counties, and municipalities and between counties and municipalities.

B
DEPARTMENT OF THE TREASURY
HIGHWAY USERS TAX

JULY 1,1980 TO JUNE 30,1981

COLLECTIONS

| | | |
|---|----------------|-----------------------|
| Total Motor Fuel Tax Collections | 111,290,116.25 | |
| Less Motor Fuel Refunds | 2,590,575.79 | |
| Less Motor Fuel Refunds Dealers | 368,811.06 | |
| Net Motor Fuel Tax Collections | | 108,330,729.40 |
| Total Gross Ton Mile Tax Collections | 25,239,953.43 | |
| Less Refunds | 371,140.78 | |
| Net Gross Ton Mile Tax Collections | | 24,868,812.65 |
| Total Motor Vehicle Lic. & Reg. Collections | 25,582,587.07 | |
| Less Refunds | 63,196.05 | |
| Net Motor Vehicle Lic. & Reg. Collections | | 25,519,391.02 |
| Total Motor Vehicle Penalty Assessment Collections | 3,697,304.90 | |
| Less Refunds | 30,851.00 | |
| Net Motor Vehicle Penalty Assessment Collections | | 3,666,453.90 |
| Misc. Receipts--Highway Users Tax Fund--Operators and Chauffeurs Lic., Dealers Lic., Etc. | 12,302,676.11 | |
| Less Refunds | 10,642.55 | |
| Net Miscellaneous Receipts | | 12,292,033.56 |
| Interest Earned | | 679,139.22 |
| TOTAL HIGHWAY USERS TAX NET COLLECTIONS | | <u>175,356,559.75</u> |

DISBURSEMENTS

| | |
|---|---------------|
| HIGHWAY SAFETY COORDINATOR | 174,588.34 |
| COLORADO STATE PATROL | 21,071,470.00 |
| HIGHWAY TRANSPORTATION FOR HANDICAPPED | 20,288.00 |
| PUBLIC UTILITIES COMMISSION | 1,345,723.00 |
| HIGHWAY CROSSING PROTECTION | 240,000.00 |
| DEPARTMENT OF LOCAL AFFAIRS--CCIC | 343,384.84 |
| PENITENTIARY -- LICENSE PLATES | 1,162,409.32 |
| REVENUE DEPARTMENT | 14,539,182.00 |
| COMMUNICATIONS DIVISION (DEPT. OF ADMINISTRATION) | 2,139,875.00 |
| LABOR DIVISION | 373,089.60 |
| CAPITAL CONSTRUCTION | 580,100.00 |

| | |
|---------------------------------|---------------|
| Total Disbursements by Transfer | 41,990,110.10 |
|---------------------------------|---------------|

Funds Available for Apportionment

| | |
|--|----------------|
| 65% of Highway Users Tax to State Highways | 86,688,192.28 |
| 26% of Highway Users Tax to Counties | 34,675,276.91 |
| 9% of Highway Users Tax to Cities & Towns | 12,002,980.46 |
| Highway Users Tax Apportioned | 133,366,449.65 |

| | |
|-------------------------------------|-----------------------|
| TOTAL HIGHWAY USERS TAX DISTRIBUTED | <u>175,356,559.75</u> |
|-------------------------------------|-----------------------|

| | |
|--------------------------------|----------------------|
| 7% Sales and Use Tax Collected | <u>33,000,000.00</u> |
|--------------------------------|----------------------|

| | |
|---|----------------------|
| Sales and Use Tax for Apportionment | |
| 60% Sales and Use Tax to State Highways | 19,800,000.00 |
| 22% Sales and Use Tax to Counties | 7,260,000.00 |
| 18% Sales and Use Tax to Cities and Towns | 5,940,000.00 |
| Total Sales and Use Tax Distributed | <u>33,000,000.00</u> |

TOTAL DISTRIBUTION TO HIGHWAY USERS

| | |
|--|----------------------|
| SPECIAL G.F. APPROPRIATION SENATE BILL 148 | <u>57,500,000.00</u> |
|--|----------------------|

| | |
|-----------------------|---------------|
| 60% TO STATE HIGHWAYS | 34,500,000.00 |
| 22% TO COUNTIES | 12,650,000.00 |
| 18% TO CITIES & TOWNS | 10,350,000.00 |

| | |
|-----------------------------|----------------------|
| TOTAL SPECIAL APPROPRIATION | <u>57,500,000.00</u> |
|-----------------------------|----------------------|

| | |
|-------------------------------------|-----------------------|
| TOTAL DISTRIBUTION TO HIGHWAY USERS | <u>265,856,559.75</u> |
|-------------------------------------|-----------------------|

LEGISLATIVE COUNCIL
COMMITTEE ON INSTITUTIONS AND MEDICALLY INDIGENT

Members of the Committee

Rep. Tom Tancredo,
Chairman*
Sen. William Hughes,
Chairman**
Rep. Jim Lee,
Vice Chairman***
Sen. Dennis Gallagher
Sen. Harvey Phelps
Sen. Peter Susemihl
Sen. Sam Zakhem

Rep. Laura DeHerrera
Rep. Eunice Fine
Rep. Judy Ford****
Rep. Ruth Prendergast
Rep. Arie Taylor

Council Staff

Stanley Elofson
Principal Analyst

Dave Ferrill
Research Associate

- * Resigned as Chairman September, 1981; Resigned from committee November, 1981.
- ** Appointed Chairman, September, 1981.
- *** Appointed to replace Senator Hughes as Vice Chairman, November, 1981.
- **** Appointed to replace Rep. Tancredo, September, 1981.

SUMMARY OF COMMITTEE ACTIVITIES,
RECOMMENDATIONS, AND FINDINGS

Charge

The Interim Committee on Institutions and Medically Indigent was directed by the Legislative Council to conduct a study of two issues pursuant to House Joint Resolution 1034:

A review of the powers, duties, and functions of the Department of Institutions including the review of the performance audit conducted by the Legislative Audit Committee.

A study of the problems of the medically indigent in Colorado including the programs and services available therefor and the funding thereof.

Performance Audit Review:
Department of Institutions

Introduction

In the 1979 session of the General Assembly, House Bill 1555 was enacted to provide for the regular analytical review of the powers, duties, and functions of all of the twenty principal departments in the executive branch of state government. Under the provisions of that bill, each General Assembly is authorized to designate, during its second regular session, three principal departments for review. The Legislative Audit Committee will then conduct a performance audit on each of those three departments to be completed on or before the adjournment of the first regular session of the next General Assembly. During the subsequent interim period, a joint legislative oversight committee will review the results and recommendations presented in the performance audit report. Each of the twenty principal departments shall be studied in this manner at least once before January 1, 1994.

In the 1980 session, the General Assembly initiated the audit process set forth in House Bill 1555 by designating the Departments of Agriculture, Natural Resources, and Institutions as the first three principal departments to be thus reviewed. In House Joint Resolution 1034 of the 1981 session, the interim Committee on Institutions and Medically Indigent was assigned the responsibility of studying the findings of the performance audit of the Department of Institutions.

Background

Subsequent to the release of the performance audit report in August by the Legislative Audit Committee, the interim committee met with staff from the Office of the State Auditor and the Department of Institutions to review the contents of the performance audit of the department.

The audit report presents its findings in four sections: one for each of the department's three divisions (Mental Health, Youth Services, and Developmental Disabilities) and the Executive Director's Office. In each of these four sections, the auditors noted significant functional deficiencies in departmental operations. For the most part, these cited deficiencies concerned poor administrative practices rather than statutory directives. Therefore, it was the opinion of the committee that such issues would not lend themselves to remedial action by the legislature. Instead, the committee focused its attention on those issues specifically identified in the report as requiring action by the General Assembly.

Audit Recommendations Requiring Legislative Action

The committee discussed with representatives of the department, the auditor's staff, and others two specific issues concerning problems that could be rectified by statutory amendment.

Seventy-Two Hour Emergency Psychiatric Evaluation. Statutes currently provide that persons suspected of being mentally ill and who appear to present an imminent danger to themselves or others may be taken into custody and placed in emergency psychiatric evaluation for a period of seventy-two hours. As provided in section 27-10-105 (3), C.R.S. 1973, this seventy-two hour period does not include Saturdays, Sundays, and holidays "... if evaluation and treatment services are not available on those days".

It is noted in the report that departmental rules and regulations provide that services are "available" if a professional person qualified to provide such services is "on call" during that weekend or holiday period. The auditor's conclusion, though, was that staff resources and other support services could rarely be available during these period to accomplish a sufficiently thorough evaluation.

As stated in the audit report, this situation creates a possible conflict between the patients' right to a prompt release from evaluation and treatment, versus their right to thorough evaluation and treatment.

An apparent solution to this problem would be to merely change the department's rule to exclude weekends and holidays from the seventy-two hour evaluation period. This specific rule, though, came about as a result of a 1978 district court decision wherein the rule was included in the court's stipulated judgement. The department has

been advised by the Attorney General that any change in the rule may result in a contempt of court proceeding against the department. The appropriate action to correct this problem then appears to be a change in the statute itself.

Psychiatric Treatment of Defendants on Deferred Prosecution, Deferred Sentencing, or Probation. In any criminal proceeding against a defendant, the court may order the prosecution or sentencing of an offense to be deferred, pending the defendant's satisfactory completion of the terms of his deferred prosecution, deferred sentencing, or probation. Included among the optional dispositions a court may exercise is placement of a defendant in mental health treatment as a condition of his supervision. The court may then issue an order requiring the defendant to obtain mental health treatment from a psychiatrist or any public or private facility of his choosing for a period of up to one year. At the defendant's request, he may be placed by the court at one of the two state mental health facilities. If the facility later determines that further treatment is no longer needed, it must petition the court to change its order, and the order must subsequently be acted upon by the court before any change can be made in the defendant's status at the facility. The process of obtaining that court order is described as being excessively time consuming.

The State Auditor concluded that these defendants on "deferred judgement status" were significantly less mentally ill than other patients in the facilities, that their average lengths of stay were far in excess of the rest of the adult population, and that a number of these persons were inappropriately placed in mental health facilities.

It was pointed out during a 1980 interim study on mental health that bed space in the state's two mental health institutions is already severely limited, and the use of beds by these "deferred judgement" clients creates a further, and often inappropriate, constraint on institutional bed space.

It has been suggested that institutional beds could be more appropriately used for court-ordered clients if two proposals were implemented: a requirement that a defendant be evaluated to determine if mental health services are appropriate prior to their placement; and to create the opportunity for a professional person at the state institution to release the defendant back to the court when mental health services are no longer required. The effect of these changes would be a substantial benefit to the Division of Mental Health by providing increased bed space for the inpatient treatment of other clients.

A proposed change in the statutory provision concerning the placement of defendants in state institutions was considered in the 1981 session (House Bill 1254). The bill was postponed indefinitely by the House Appropriations Committee. It was the opinion of the Division of Mental Health that the provisions of House Bill 1254 would

not have provided them with an effective solution to this problem. Under House Bill 1254, a petition to the court would have still been required, which is the requirement the division would like to avoid because of the lengthy process it entails before the release of the defendant.

Committee Recommendations

The committee is presenting to the Legislative Council two recommendations: a bill concerning the seventy-two hour psychiatric evaluation issue, and a proposal that is currently being drafted to effect certain changes in the procedures by which courts place deferred judgement clients in state institutional facilities.

Bill 9 -- Seventy-Two Hour Emergency Psychiatric Evaluations. The committee recommends a proposal presented by the Office of the Attorney General to clarify the circumstances under which weekends and holidays can be excluded from the seventy-two hour time period for emergency psychiatric evaluations. Currently, this seventy-two hour period does not include Saturdays, Sundays, and holidays "... if evaluation and treatment services are not available on those days". As explained above, the Division of Mental Health is bound by a district court mandate to adhere to a Department of Institutions regulation that such services are "available" if a professional person is "on call" during these periods, even though the necessary complement of staff resources may not be available at those times.

The proposed change would add a provision to this statute that merely having a professional person "on call" does not constitute "available services". The intent of this amendment is to prevent emergency psychiatric evaluations from being performed when sufficient staff resources are unavailable, and to ensure the appropriate and necessary services to which clients are entitled.

Further, it was explained that the adoption of this amendment would provide the Attorney General with grounds to request the district court to change its stipulated judgement, as it would then be in direct conflict with the new statutory provision.

Proposal Concerning "Deferred Judgement" Clients. A second proposal being recommended concerns a change in the procedures by which defendants are released from court-ordered psychiatric treatment in state mental health institutions. Current procedures require that representatives of the state facility undertake the time-consuming process of petitioning the court to change its order before the defendant can be released.

The committee concurred in the need to effect a change that would expedite the release of these clients from institutional treatment, and furthermore, to provide for an evaluation process prior to the defendant's placement in a facility to ensure that the client is, in fact, in need of institutional psychiatric services.

Although the specific intent of this proposal was adopted by the committee, the means by which it could best be incorporated into statute was unresolved. The committee directed representatives of the Division of Mental Health, the Attorney General, and other concerned organizations to assist in the preparation of a draft bill to be presented at a future time.

The committee requests that this issue be placed on the 1982 Governor's call.

Committee Findings on the Medically Indigent

Introduction

In its study of the medically indigent, the committee reviewed current state-funded programs serving this population, explored the problems experienced by both clients and service providers with the current methods by which medical services to the indigent are provided, and heard testimony concerning proposals for recommended changes in the methods for providing medical services to this population.

At the outset of the study, it was noted that one of the recurring issues before the General Assembly is the lack of statutory authorization for the state's medically indigent program. From its origination, this program has been funded by footnote in the long appropriations bill. The result of the program's destablishment by footnote is that a considerable amount of time is devoted to this problem annually, without much opportunity to effect any fundamental changes in the service delivery system itself.

Background

For fiscal year 1981-82, the General Assembly appropriated \$40,813,326 in general funds to provide medical services to indigent persons in the following four programs:

| | |
|---|--------------|
| Medically Indigent Program | \$15,731,885 |
| University of Colorado Health Sciences Center | 20,800,023 |
| Community Maternity Program | 1,600,000 |
| Handicapped Children's Program | 2,681,418 |

(Appendix A further details the appropriations made to these programs.)

Medically indigent program. Colorado's medically indigent program began in 1974 as a line item footnote in the Department of Social Services budget in the long appropriations bill. Since its inception, the program has reimbursed participating hospitals for part

of the cost of providing care to indigent clients. Originally, only hospitals owned by municipalities, counties, and hospital districts were eligible for participation, but in 1978 eligibility was broadened to include private, non-profit hospitals. Additionally, in 1978 hospital-based physician services were made reimbursable.

(Further information concerning the medically indigent program is attached in Appendix B.)

University Hospital. The funding to University Hospital for medically indigent services is provided to them as part of their statutory mission, which includes "... the clinical care and treatment of those residents of Colorado, including minors, who are financially unable to secure such care or have such care secured for them" (23-21-103, C.R.S. 1973).

Community maternity program. Beginning in fiscal year 1978-79, the General Assembly began funding community hospitals around the state to provide delivery services to maternity patients who otherwise would most likely deliver their babies at Denver General or University Hospitals.

The rationale for instituting this program was twofold: maternity-related services have tended to be the most frequently needed services for out-state indigent patients at both Denver General Hospital and University Hospital; and the costs of providing maternity services at either of these two facilities typically exceeds the cost for providing routine, low-risk maternity services in non-urban hospitals.

It was noted that, except for some outpatient services provided by the hospitals, these appropriations are for hospital-oriented services only, and do not include services which may be provided to medically indigent persons in other state-funded programs. It was also noted that substantial amounts of funding for such care is provided by federal and county governments, as well as charitable care provided by private hospitals and physicians.

As evidence of the amount of uncompensated and charitable care being provided by hospitals in Colorado to medically indigent persons, a representative of the Colorado Hospital Association told the committee that an estimated \$60 million of such care was being provided annually, according to a survey conducted by the association.

Problems associated with current service delivery. Under the current methods used to provide care to the medically indigent, the following were cited as examples of deficiencies which pose serious obstacles to care for the medically indigent, or that hinder the more effective provision of that care:

1. The lack of statewide access to medical services for indigent persons.

It was reported to the committee by the Department of Social Services that for the past two program years only three facilities in the state actually received reimbursements under the medically indigent program, two of which are in Denver -- Denver General Hospital and Children's Hospital. The other major provider of medically indigent services in the state, University Hospital, is also in Denver.

In order for many indigent persons from out-state areas to avail themselves of services under the medically indigent program, they frequently must travel great distances to reach a participating hospital, or totally forego program services. In testimony received by the committee relative to problems of the medically indigent in rural areas, it was noted that the lack of transportation is a significant problem for most low-income persons in rural areas, notwithstanding the critical need for transportation when a medical crisis arises.

It has been pointed out that continuity of care for indigent patients is jeopardized when they are placed in the situation of receiving inpatient care in a facility away from their home community.

In a survey conducted relative to a 1978 interim study of the medically indigent, this lack of statewide accessibility to participating facilities was the most frequently cited shortcoming of the current program.

2. The declining number of providers who choose to participate in the medically indigent program.

The reimbursement mechanism under the medically indigent program has historically paid for only a part of the cost incurred by participating facilities. Claims for reimbursement have always exceeded the amount of program funds available, and in the recent past the claims for reimbursement have increased at a much higher rate than the increase in program funding. The result is that, as the percentage rate of reimbursement declines, the incentive for hospitals to participate in the program has also declined. Only three hospitals now are actively participating in the medically indigent program, as compared to the original number of thirteen in fiscal year 1974-1975. The low reimbursement rate has been the primary reason given for the discontinuation of participation.

3. The emphasis of the program on relatively expensive inpatient care.

State-supported medically indigent care places a heavy emphasis on inpatient care by virtue of the fact that only hospital facilities are eligible to participate in the medically indigent program. Although some outpatient services are provided to indigent patients by participating hospitals, many are of the opinion that the program places an overemphasis on inpatient care.

It has been recognized that part of the reason for the emphasis on inpatient care is in response to the very nature of the medical needs of the indigent population, which is the treatment of acute medical conditions which often require hospitalization. It has been suggested that the availability of a greater range of primary and intermediate level services in a more decentralized manner may have the effect of decreasing the incidence of acute inpatient needs by providing the opportunity for earlier medical intervention.

4. The lack of cost-containment incentives to providers being reimbursed for services rendered.

It was noted in testimony before the committee that the current structure of the medically indigent program resembles any other fee-for-service system in that it lacks sufficient incentives for providers to employ the most cost-effective techniques available to them. A noteworthy example of this lack of costconsciousness is that eligible medically indigent persons are often encouraged to use hospitals as a primary source for medical care. This type of care can be provided in alternative, lower cost settings.

Summary of Testimony Presented to the Committee

The following presents a brief synopsis of the numerous proposals presented by various entities during the interim.

University of Colorado Health Sciences Center 1/

1. A definition of medically indigent should be based on the inability to pay and not on the unwillingness to pay. Accountability of the serving institution would be paramount in this area. There needs to be consistent guidelines in both the public and private sector.
2. This is a social welfare problem and the funding should be identified as such. Whether the system changes or not, reimbursement needs to include both the hospital and physician.
3. Parameters of reimbursement need to be consistent for all health care delivery facilities, whether in metro Denver or rural Colorado or state or privately operated.
4. There needs to be a system developed for consistent accountability of the state funds used. Standardized accounting and auditing systems need to be identified and uniformly applied.

1/ Testimony presented on behalf of the Health Sciences Center by Mr. Eric Schmidt, Vice Chancellor, on July 20, 1981.

5. The state should determine their liability sequence e.g. co-insurance, primary, secondary coverage, etc.
6. A system to determine eligibility should be established. Should one agency do it or should each health care delivery institution have that responsibility?

Clear Creek Valley Medical Society 2/

1. Insurance coverage for catastrophic medical needs should be made available to persons whose present health insurance is inadequate to cover those costs. The General Assembly can mandate that all private health insurance sold in Colorado include major medical coverage. If this additional coverage included a high deductible, its cost to the individual would be low.
2. The creation of a state catastrophic health insurance program to provide for the medical expenses of uninsured persons who incur such expenses. Similar programs have been established in the states of Rhode Island and Minnesota.
3. The creation of an "assigned risk pool" to provide subsidized private health insurance to low income persons, who by virtue of significant health problems are otherwise uninsurable.

Colorado Hospital Association 3/

1. A single piece of comprehensive legislation that would identify and provide funding to all medically indigent programs.
2. Key issues to be addressed through any medically indigent legislation would be:
 - a. A statutory definition of "medically indigent", providing eligibility based on income.
 - b. Statutory authorization of state programs for the medically indigent.
 - c. The provision of sufficient funding to fully reimburse all providers of medically indigent care.

2/ Testimony presented by Dr. Joel Karlin, immediate past president of the Clear Creek Valley Medical Society, on October 5, 1981.

3/ Testimony presented by Mr. Al Farr, chairman of the Council on Legislation of the Colorado Hospital Association, on October 5, 1981.

Colorado Medical Society 4/

1. Is there a significant problem regarding the medically indigent in this state? We would submit that there is a major problem and further stress that all of us are potentially medically indigent. We feel that there should be a definition of what constitutes medically indigent.
2. Should there be a public sector program dealing with the problem of medical indigency? We, as a society, feel that there should be such a program. It is our feeling that this program should be structured on the basis of House Bill 1301 introduced in the last session of the legislature. This bill provided for a pilot program on catastrophic health insurance which would help eliminate the potential for medical indigency and a pilot co-insurance program providing health care insurance to those who are now unable to provide insurance for themselves.

In addition to considering the proposals presented in testimony, the committee pursued a discussion of various concepts whereby medically indigent services could be provided in a more cost-effective manner. One of the criticisms raised concerning the current program is the practice of reimbursing hospital facilities for medical services already rendered, which provides no constraints to the spiraling costs of health care, nor discourages the program's emphasis on high-cost inpatient care.

One of the reasons that inpatient care has been relied on in the current program is that medically indigent persons have not had sufficient access to primary health care services in outpatient settings close to their own homes. As a result, medically indigent persons have tended to seek out services only when medical conditions reach an acute stage, and hospitalization is required. The opinion was expressed by several participants in the study that the availability of more primary and preventative health care services for this population would prevent a significant amount of the need for acute care.

Health Insurance. One concept that would ensure the availability of primary health care services to the indigent is the proposal for a subsidized health insurance program for the medically indigent. Under this plan, any provider of medical services to the insured indigent person would be reimbursed, rather than only the few

4/ Testimony presented by Dr. Ben Galloway, vice-chairman of the Legislative Council of the Colorado Medical Society, on October 5, 1981.

specific hospital facilities that currently are reimbursed. Therefore, primary health care services are more likely to be acquired by the indigent person. This concept was embodied in the provisions of House Bill 1301 of the past session and House Bill 1226 of the 1980 session. Despite the defeat of these bills, members of the committee and a number of other participants were of the opinion that certain of its provisions merit further consideration by the General Assembly.

Pre-paid health care. Another concept concerning primary health care discussed by the committee is that of pre-paid services in the manner provided by health maintenance organizations (HMOs). In this regard, the committee sought testimony from the representatives of several HMOs to discuss the techniques and benefits of pre-paid medical care. An HMO can be characterized as a direct service health plan whereby the organization assumes responsibility for comprehensive services to its member patients in a defined geographic area, at a fixed monthly payment.

One of the features of the HMO model that was of particular interest to the committee is its emphasis on cost-containment incentives. In order for the HMO to provide comprehensive medical services within the revenue available from patients' payments, strict controls are placed on manner in which services are provided, especially inpatient hospital care. Quality-of-care is also monitored to ensure that cost controls do not jeopardize the adequate provision of medical services.

The committee expressed its interest in pursuing further the opportunity to employ some of the techniques of pre-paid health care in a program for the medically indigent.

Committee Recommendations

Of the proposals considered by the committee during its study, no consensus was reached as to draft legislation it would recommend concerning its study of the medically indigent. Late in the interim, though, the committee was presented with a proposal concerning the medically needy option under Medicaid that was developed jointly by the departments of Health and Social Services, and the Office of State Planning and Budgeting. The committee is recommending that this issue be placed on the Governor's 1982 legislative agenda.

It was explained to the committee that despite the fact that this proposal emanated from the executive branch, there is some question as to whether it will be placed on the Governor's call. The committee, therefore, desired to make this request to help ensure that the proposal, as described below, can be considered by the General Assembly in the 1982 session.

Medically needy option under Medicaid. The federal Medicaid program (Title XIX) authorizes the provision of medical assistance to:

1. "Categorically needy" welfare recipients who are financially eligible to receive cash payments under the aid to families with dependent children (AFDC) program and the Supplemental Security Income (SSI) program for the aged, blind, and disabled; and
2. "Medically needy" persons who fit the AFDC and SSI categories but are not welfare recipients because their income is higher than that of welfare recipients, although their income is insufficient to pay for their medical care.

Under the Colorado Medical Assistance Act, for the most part, only "categorically needy" welfare recipients are eligible for medical assistance under Medicaid. Some of the persons who now receive assistance under the medically indigent program would qualify for Medicaid assistance if the "medically needy" option were authorized, and would therefore be supported in part by federal funding rather than totally state funding.

From the inception of the Medicaid program in Colorado, the General Assembly has rejected the idea of authorizing the voluntary medically needy option. This was largely because the minimum medical services the state would be required to provide to the "medically needy" would be quite costly to the state, while not serving the entirety of the population identified as medically indigent.

Under the new federal administration, changes in the Medicaid program have been instituted which increase states' flexibility in administering the Medicaid program, as well as the medically needy option. It was in response to these changes that a renewed interest in the medically needy option arose.

The most significant impact of federal legislation relative to the medically needy program is that all high cost program options that were formerly mandated are no longer required for implementation of the program (i.e., institutional care, nursing home care, etc.). Mandatory services now include: ambulatory services for children; ambulatory prenatal services; and delivery services for pregnant women. These programs and inpatient hospital care have proven to be much more controllable for the Medicaid program than state institutional or nursing home care.

States have also been given increased flexibility to develop, implement, and control the type of program they need, and can afford. Criteria for eligibility and for the scope of benefits can be redetermined annually by the state if cost containment is necessary.

The program, as it was proposed to the committee would target mothers, infants and the elderly, with services for mothers and infants to include inpatient hospital, outpatient hospital, home health, lab and X-ray, drugs and physician services. Services for the elderly would only include coverage for prescription drugs with a small copayment required.

The users of the medically needy program will, in part, come from the population currently being served under the state's medically indigent program, who are being served totally with general fund dollars.

According to the projections in the proposal's current form, the total cost of the medically needy option would be \$14.5 million, of which \$6.8 million would be general fund dollars from the medically indigent appropriation. If at least 14.5 percent of the medically indigent population receiving service are eligible for medically needy services, no additional general fund dollars would be required. Current data on the medically indigent being served at Denver General Hospital indicate about 25 percent would be eligible. The \$6.8 million provides at least an additional \$7.7 million in federal funds for Colorado for health services for low income persons.

The program would also provide funding to areas outside the Denver metro area, while at least maintaining current support (and probably increasing it) to Denver area service providers.

An amendment to the "Colorado Medical Assistance Act" would be required to authorize the medically needy option. Although the proposal to the committee was not accompanied by a draft bill for its consideration, the committee was of the opinion that the issues merit further consideration in the 1982 session of the General Assembly.

BILL 9

A BILL FOR AN ACT

1 CONCERNING EMERGENCY PROCEDURES FOR THE CARE AND TREATMENT OF
2 THE MENTALLY ILL.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Addresses the provision of available evaluation and treatment services under emergency admission procedures.

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. 27-10-105 (3), Colorado Revised Statutes
5 1973, is amended to read:

6 27-10-105. Emergency procedure. (3) If the
7 seventy-two-hour treatment and evaluation facility admits the
8 person, it may detain him for evaluation and treatment for a
9 period not to exceed seventy-two hours, excluding Saturdays,
10 Sundays, and holidays if evaluation and treatment services are
11 not available on those days. FOR THE PURPOSES OF THIS
12 SUBSECTION (3), EVALUATION AND TREATMENT SERVICES ARE NOT
13 DEEMED TO BE AVAILABLE MERELY BECAUSE A PROFESSIONAL PERSON IS

1 ON CALL DURING WEEKENDS OR HOLIDAYS. If, in the opinion of
2 the professional person in charge of the evaluation, the
3 person can be properly cared for without being detained, he
4 shall be provided services on a voluntary basis.

5 SECTION 2. Safety clause. The general assembly hereby
6 finds, determines, and declares that this act is necessary
7 for the immediate preservation of the public peace, health,
8 and safety.

**COMMITTEE ON INSTITUTIONS
AND MEDICALLY INDIGENT**

APPENDICES

COMMITTEE ON INSTITUTIONS AND MEDICALLY INDIGENT

Appropriation for Medically Indigent Services
FY 1977-78 to FY 1981-82

The following information presents the appropriations made over the past five fiscal years to four state programs providing services for the medically indigent -- the Medically Indigent Program in the Department of Social Services; the University Hospital medically indigent appropriation; the Community Low-Risk Maternity Program; and the Handicapped Children's Program appropriation. These four programs constitute the major state expenditures for medical services to "indigent" persons (those persons who lack sufficient personal resources to pay for their own services, who do not qualify for public programs such as Medicare and Medicaid, and who do not have third-party insurance coverage for these expenses).

The information presented on two of these programs -- the Medically Indigent Program and the University Hospital appropriation -- will serve as an update on information contained in the 1978 Interim Health, Environment, Welfare, and Institutions Committee report on the medically indigent.

I. Medically Indigent Program

The initial authorization for the program, as contained in the 1974 long bill, provided for an appropriation to "Hospitals and Health Centers Owned and Operated by Municipalities, Counties, and Hospital Districts -- care of indigent patients". This authorization has continued in each successive fiscal year, with some additional requirements, as noted below under "comments".

Further information concerning this program can be found in the 1978 Interim HEWI Committee report, which accompanies this memorandum.

Administered by: Division of Medical Assistance, Department
of Social Services
Authorized by: Long Bill Footnote
Originated: 1974
General Fund Appropriations:

| <u>Fiscal Year</u> | <u>Amount</u> | <u>Footnote Number</u> | <u>Comments</u> |
|--------------------|---------------|------------------------|---|
| 1977-78 | \$ 9,069,453 | 87 | |
| 1978-79 | 10,000,000 | 105 | Included new provisions: (a) for participation of private and non-profit hospitals (b) required use of Colorado General Hospital's ability-to-pay schedule; and (c) statement of counties of residence of clients. |
| | | 105a | \$100,000 of 1978-79 appropriation to be used for reimbursement of physician services. |
| 1979-80 | 10,369,000 | 173 | \$200,000 for physician reimbursement. |
| 1980-81 | 12,967,386 | 141 | \$215,000 for physician reimbursement. |
| 1981-82 | 15,731,885 | 99a | Includes new provisions that terms of reimbursements be defined by contract. |
| | | 99b | Designates University Hospital the first priority facility for services to indigent patients in Denver metro area. |

Distribution of Medically Indigent Funds:

| <u>Fiscal Year</u> | <u>Program Appropriation</u> | <u>Reimbursement to Participating Hospitals</u> |
|--------------------|------------------------------|--|
| 1974-75 | \$ 11,950,000 | Denver General Hospital.....\$7,204,000 Colorado Springs Memorial..... 168,000 Prowers Medical Center..... 30,000 La Plata Community..... 26,000 Huerfano Memorial..... 16,000 Aspen Valley..... 14,000 Walsh District..... 14,000 Clagett Memorial..... 7,000 Salida City..... 6,000 Memorial, Craig..... 1,000 McNamara Memorial..... 1,000 Conejos County..... 500 |

| | | |
|---------|---------------|--|
| 1975-76 | \$ 10,000,000 | Denver General Hospital.....\$8,509,000 |
| | | Colorado Springs Memorial..... 348,000 |
| | | Montrose Memorial..... 31,000 |
| | | Walsh District Hospital..... 30,000 |
| | | Delta Memorial Hospital..... 23,000 |
| | | Huerfano Memorial..... 23,000 |
| | | Aspen Valley Hospital..... 17,000 |
| | | Prowers Medical Center..... 2,000 |
| 1976-77 | \$ 9,576,000 | Denver General Hospital.....\$9,063,000 |
| | | Colorado Springs Memorial..... 602,000 |
| | | Walsh District Hospital..... 36,000 |
| | | Montrose Memorial Hospital.... 25,000 |
| | | Gunnison Public Hospital..... 5,000 |
| 1977-78 | \$ 9,069,453 | Denver General Hospital.....\$8,559,000 |
| | | Colorado Springs Memorial..... 443,000 |
| | | Walsh District Hospital..... 2,000 |
| | | Montrose Memorial..... 16,000 |
| 1978-79 | \$ 10,000,000 | Denver General Hospital.....\$8,845,056 |
| | | Children's Hospital..... 362,538 |
| | | Colorado Springs Memorial..... 666,963 |
| | | Walsh District Hospital..... 25,443 |
| | | (Physician Reimbursement)..... 100,000 |
| 1979-80 | \$ 10,369,000 | Denver General Hospital.....\$9,650,483 |
| | | Children's Hospital..... 510,280 |
| | | Walsh District Hospital..... 8,237 |
| | | (Physician Reimbursement)..... 200,000 |
| 1980-81 | estimates | Denver General Hospital.....\$12,154,695 |
| | | Children's Hospital..... 184,241 |
| | | Walsh District Hospital..... 3,178 |
| | | American Medical Center signed contract |
| | | Clagett Memorial signed contract |
| | | National Jewish Hospital signed contract |
| | | St. Marys of Grand Junction |
| | | signed contract |
| | | (Physician Reimbursement).... 215,000 |

II. University Hospital - Medically Indigent Services

As contained in section 23-21-103, C.R.S. 1973, one of the primary purposes of University Hospital is "the clinical care and treatment of those residents of Colorado, including minors, who are financially unable to secure such care or have such care secured for them".

The long bill footnotes authorizing the following appropriations specifically cite this statutory provision as a basis for these expenditures.

Authorized by: 23-21-103, C.R.S. 1973; Long Bill footnote
General Fund appropriations:

| <u>Fiscal Year</u> | <u>Amount</u> | <u>Footnote Number</u> | <u>Comments</u> |
|------------------------|---------------|----------------------------|--|
| 1977-78 | \$11,542,800 | 43 | |
| 1978-79 | 14,060,494 | 40 | Required report to JBC by October 1, 1978, examining possibility of serving some portion of these patients in community hospitals close to patients' residence. |
| 1979-80 | 18,322,893 | 58 | Required implementation of new policy on verification of indigency, as well as a report to JBC by November 1, 1979, on progress of this implementation and resulting additional revenue generated. |
| | | 59 | Required report to JBC by January 1, 1980, on educational impact of limited indigent deliveries at CGH. |
| 1980-81 | 18,917,499 | 62 | |
| 1981-82 | 20,800,023 | 33 | |

III. Community Low-Risk Maternity Program

The initial appropriation to this program, in 1978, was made on a pilot basis to determine whether indigent maternity patients could deliver their babies in rural hospitals at a lower cost than urban hospitals. The program has been continued in each successive fiscal year since its 1978 initiation.

Most inpatient medical services to indigent patients in Colorado are provided at University Hospital and Denver General Hospital, and maternity-oriented care is the most frequently needed medical care for indigent patients (see patient origin data in 1978 HEWI report). Additionally, a number of the indigent patients served at these two hospitals reside outside the Denver area.

The costs associated with the provision of care at these two facilities exceeds the typical costs of smaller, non-urban hospitals.

The program's intent, therefore, has been to provide routine maternity care in rural hospitals, which are adequately prepared to

provide such service, to indigent patients closer to their own community at a lower cost than the Denver-based hospitals.

Administered by: Family Health Services Division, Department of Health

Authorized by: Long Bill appropriation, and footnote

General Fund appropriations:

Originated: 1978

| <u>Fiscal Year</u> | <u>Long Bill Line Item</u> | <u>Amount</u> | <u>Comments</u> |
|--------------------|--|---------------|--|
| 1978-79 | "Rural Delivery Program" | \$ 75,000 | 1979 Supplemental appropriation increased amount to \$230,910 |
| 1979-80 | "Delivery Program -- Colorado General Diversion" | \$237,776 | Footnote 35 -- 303 low-risk obstetric patients to be served in community hospitals in lieu of CGH. |
| | "Delivery Program -- Denver General Diversion" | 378,860 | Footnote 36 -- low-risk obstetric patients to be served in community hospitals in lieu of DGH. |
| | "Delivery Program -- Special programs" | 339,480 | 1979 Long Bill Narrative -- 464 patients to be served in community hospitals. |
| | TOTAL 1979-80 | \$956,116 | |
| 1980-81 | "Delivery Program -- Colorado General Diversion" | \$470,836 | Footnote 27 -- 410 low-risk obstetric patients to be served in community hospitals in lieu of CGH. |
| | "Delivery Program -- Denver General Diversion" | 748,947 | Footnote 28 -- 580 low-risk obstetric patients to be served in community hospitals in lieu of DGH. |
| | "Delivery Program -- Special Programs" | 380,217 | Footnote 29 -- 464 medically indigent obstetric patients to be served in community hospitals. |
| | TOTAL 1980-81 | \$1,600,000 | |

1981-82 "Community \$1,600,000
 Low-Risk
 Maternity
 Program"

Footnote 20 -- 1,445 low-risk
obstetric patients to be served
in community hospitals at lowest
rate obtainable. Clients
required to pay minimum of \$100.
Contracts to be established with
participating hospitals.

IV. Handicapped Children's Program

The program was instituted by the Department of Health under the provisions of Title V of the Social Security Act of 1936 to provide services to children with physically handicapping conditions, for whom a rehabilitation potential exists.

An ability-to-pay schedule is used to determine the family's cost for program services, taking into account the family's size and its income. The services available under the program include physician services, hospital care, therapy, prosthetic devices, nursing services, and social services.

The types of handicapping conditions eligible for treatment are established by current policy under the program.

Administered by: Maternal and Child Health Services Division,
Department of Health

Authorized by: Long Bill Appropriation

*Appropriations:

| <u>Fiscal Year</u> | <u>Amount</u> |
|------------------------|---------------|
| 1977-78 | \$ 1,648,503 |
| 1978-79 | 1,849,000 |
| 1979-80 | 2,440,139 |
| 1980-81 | 2,806,989 |
| 1981-82 | 2,681,418 |

* Appropriations as amended by supplementals.

B

The Colorado Medically Indigent Program

A Report to the Legislature

July 20, 1981

The Medically Indigent Program as administered by the CDSS has operated in Colorado since FY 1975, following an appropriation for this purpose by the legislature. From the inception of this program all facilities owned by municipalities, counties and hospital districts have been eligible to participate. Beginning with FY 1979 facility eligibility was broadened to also include private, nonprofit hospitals. And finally, services provided by hospital based physicians were also made reimburseable in FY 1979 when it was realized that physicians at certain participating hospitals were unable to be reimbursed for their services under earlier program definitions.

Under this Program eligible recipients receive the following services:

- Inpatient hospital services
- Outpatient hospital services
- Hospital based physician services (M.D. or D.O. licensed in Colorado)
- Licensed physicians' services provided in participating facilities on an inpatient or outpatient basis
- Other lab and x-ray services provided by participating hospitals or health centers
- Prescribed drugs, provided by participating hospitals or health centers.

Since the inception of the Program, requirements for hospital eligibility have remained the same. Thus, for a facility to be eligible for reimbursement under the MI Program it must provide 3% of its operating expenditures as charity care. The determination of this figure is made by the State using operating expense information supplied by each participating facility.

Patient eligibility requirements have also remained constant. In order for an individual or family to be eligible to receive services under the Program he (they) must meet the financial criteria as contained in each year's current University Hospital Ability to Pay Scale. This scale considers the number of dependents and family income into account. A determination of client eligibility has always been tied to the then current Scale, and has always been determined by each participating facility using the Ability to Pay Scale and Patient Application Forms provided by this Department.

There has, however, been a change in the mechanism by which a facility is reimbursed. Until FY 1977 reimbursement for the MI Program was made under a separate contract with the State by the State's Medicaid fiscal agent--Blue Cross and Blue Shield of Colorado--on a patient bill by bill basis. For this task, the fiscal agent was paid approximately \$.5 million per year. Aside from the considerable administrative expense both to the State and to the participating facilities, this methodology also ran the risk of making health services unavailable to the medically indigent population during the later months of the fiscal year when funding ran out, since reimbursement was made on a first come first served basis.

For all of these reasons the methodology was changed beginning with FY 1977. As a result of this change participating facilities were no longer required to submit individual patient bills. Instead, the participating facility maintains the individual charges as part of the facilities' records and submits aggregate patient billing figures to the State. Following the submission of these aggregate figures the State determines what portion of the available

funds each facility is entitled to by calculating the percentage of MI billings of each facility as compared to the total MI billings of all facilities. This percentage is then multiplied by the available appropriation to obtain each facilities' reimbursement for the time period for which reimbursement is being calculated. This methodology ensures that services will be provided throughout the entire fiscal year by spreading reimbursement out over this time period. This system has remained in effect from the time it was first instituted to the present.

The use of this particular reimbursement methodology greatly reduces the amount of time each facility must spend in processing charges of medically indigent patients, thus reducing its overhead. At the same time, this methodology saves the State approximately \$.5 million dollars per year in direct expenditures, thus making these funds available for the provision of services.

For the protection of the public interest it was necessary to institute a verification process. This has been accomplished by requiring each participating facility receiving reimbursement to have a program audit conducted--at the expense of the facility--which verifies that the amount of reimbursement received was correct and that the Ability to Pay Scale was correctly applied.

To present you with an idea of participation by facilities over the years a chart follows which shows the reimbursement each participating facility has received over the course of the MI Program.

MEDICALLY INDIGENT PROGRAM - PARTICIPANTS

1980-81 estimates

| | |
|-----------------------------|-----------------------|
| Denver General Hospital | \$12,154,695 |
| Children's Hospital | 184,241 |
| Walsh District Hospital | 3,178 |
| American Medical Center | has signed a contract |
| Clagett Memorial | has signed a contract |
| National Jewish Hospital | has signed a contract |
| St. Marys of Grand Junction | has signed a contract |

1979- 80

| | |
|-------------------------|-------------|
| Denver General Hospital | \$9,650,483 |
| Children's Hospital | 510,280 |
| Walsh District Hospital | 8,237 |

1978-79

| | |
|------------------------------------|-------------|
| Denver General Hospital | \$8,845,056 |
| Children's Hospital | 362,538 |
| Colorado Springs Memorial Hospital | 666,963 |
| Walsh District Hospital | 25,443 |

1977-78

| | |
|------------------------------------|-------------|
| Denver General Hospital | \$8,558,843 |
| Colorado Springs Memorial Hospital | 442,589 |
| Walsh District Hospital | 16,325 |
| Montrose Memorial Hospital | 51,696 |

1976-77

| | |
|------------------------------------|-------------|
| Denver General Hospital | \$9,063,000 |
| Colorado Springs Memorial Hospital | 602,000 |
| Walsh District Hospital | 36,000 |
| Montrose Memorial Hospital | 25,000 |
| Gunnison Public Hospital | 5,000 |

*1975-76

Denver General Hospital
Colorado Springs Memorial Hospital
Prowers Medical Center
Aspen Valley Hospital
Walsh District Hospital
Delta Memorial Hospital
Montrose Memorial Hospital
Huerfano Memorial

*1974-75

Aspen Valley
Clagett Memorial
Conejos County
Delta Memorial
Denver General
Huerfano Memorial
LaPlata Community
McNamara Memorial
Colorado Springs Memorial
Memorial, Craig
Prowers Medical Center
Salida City
Walsh District Hospital

*Reimbursement during these two fiscal years was made by the fiscal agent.

As the above chart shows, the number of participating facilities has been declining. This is due to the decreasing percentage of total MI costs being recovered by the participating hospitals and to the 3% requirement, which the smaller hospitals in particular have difficulty in meeting.

In conclusion, with this presentation the Department has provided an overview of the Medically Indigent Program by indicating provider and recipient eligibility requirements, how participating facilities are reimbursed and how this has changed over the years, how the State verifies services provided, what the increase in appropriations has been.

LEGISLATIVE COUNCIL
COMMITTEE ON NEW STATE PRISON

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SUMMARY OF COMMITTEE ACTIVITIES, RECOMMENDATIONS, AND FINDINGS

Introduction

During the 1981 legislative session, House Bill 1339 was introduced which would have appropriated \$250,000 to the Department of Corrections for the initial planning of a new medium security facility in the Denver metropolitan area. The purpose of this legislation was to relieve projected prison overcrowding caused by the state's increasing population, increasing crime rate, and new criminal sentencing legislation. Although House Bill 1339 was postponed indefinitely, the General Assembly, in House Joint Resolution No. 1034 of the 1981 session, directed an interim study to be conducted of the necessity for constructing a new state prison.

Background

Historical Analysis of Colorado's Prison Population

Appendix A depicts the size of Colorado's prison population over the last twenty years and compares the Department of Corrections' inmate projections with their actual experience since 1976.

As the graph shows, the state's inmate population has fluctuated radically during this twenty-year time span. In 1960, the prison population was 2,050. During the next five years the population steadily increased to 2,750 in 1965. In 1965 a steady downward trend developed which lasted until 1973 when the system reached a twenty-year low of 1926 inmates. After the inmate population had reached a low point in 1973, an upward trend developed which is still continuing. During 1980, the Department of Corrections reached a twenty-year high of 2,751 inmates; an even greater number of commitments is expected in the years ahead.

Appendix A also shows that the actual prison population has closely followed the estimates of the department until the last few years. Legislative changes have accounted for much of the recent difference between the department's projections and the actual experience.

Facility Capacities

The housing capabilities of the Department of Corrections is set forth in Appendix B. The total, absolute bed space available is 2,711. Although recent completion of the new maximum and new close security facilities along with the expansion of the honor camps and community corrections has resulted in an additional 929 beds, the closure of the old maximum security unit resulted in a loss of 816 beds (144 beds are still in use in Cellhouse 3). Combining these

figures, the net gain in bedspace for the department is slightly over 100 beds, which is not expected to be enough to offset the increasing number of commitments.

Another important factor in calculating possible bed shortages is the difference between the functional capacity of the correctional system compared to the absolute capacity. Absolute capacity includes every bed regularly used for inmate housing. Functional capacity is that portion of the absolute capacity which can be used on a day-to-day basis for the on-grounds inmate population. Functional capacity is based on the premise that a certain number of beds need to be free because of inmate absences due to administrative and punitive segregation, court appearances, medical treatment, and building and cell renovations. Space must also be available to handle the influx of prisoners from local jails. Filling ninety percent of the beds in the major facilities at Canon City is considered the functional capacity of the system. Filling ninety-five percent of the beds in the honor camps is functional capacity.

In utilizing the concept of functional capacity and factoring in the off-grounds inmates, the following calculations reflect the functional capacity of the Department of Corrections as of July 20, 1981:

| | |
|-----------------------------|---------------------------|
| Maximum Functional Capacity | 2,631 |
| Less Off-Grounds Count | - 144 (excludes escapees) |
| Bedspace Available = | <u>2,487</u> |
| Less On-Grounds Count | <u>-2,520</u> |
| Over/Under Capacity = | <u>(33)</u> |

According to the Department of Corrections' calculations, the system is thirty-three inmates over functional capacity as of July 20, 1981.

Inmate Population Projections

Department of Corrections' Projections. The following table is a synopsis of Appendix C, which contains the Department of Corrections' inmate population projections through the year 1986. These projections include the potential impact of House Bill 1156 of the 1981 legislative session, which will be covered in greater detail later on in this section.

Population Projections

| <u>Year</u> | <u>Low Projection</u> | <u>Likely Projection</u> | <u>High Projection</u> |
|-------------|---------------------------|------------------------------|----------------------------|
| 1982 | 2,514 | 2,859 | 3,198 |
| 1984 | 2,594 | 3,263 | 3,702 |
| 1986 | 2,656 | 3,395 | 4,100 |

The central variables used in calculating these projections are the state's unemployment rate, the state's increasing population, and changes in legislation. Although the state's unemployment rate is low compared with many other states, a downward or upward shift can significantly impact the prison population. One of the major causes of the increasing number of commitments to the Department of Corrections is the population growth rate of the state, especially in the "at risk" category (males between the ages of eighteen and thirty-four). The state's population is increasing at a rate of three percent while the "at risk" group is growing at a rate of five and one-half percent.

Changes in a state's sentencing laws will usually have a significant impact on the number of prisoners within the correctional system. During the 1981 legislative session, House Bill 1156 was signed into law. House Bill 1156 mandates that the judge sentence a defendant who has been convicted of a crime of violence or a crime with certain aggravating circumstances to at least the maximum term authorized in the crime's presumptive range, but no more than twice the maximum term. This piece of legislation is expected to have a major impact on the prison population. By examining the records of persons currently being sentenced, the department estimates that thirty-five percent of these inmates would be within the scope of House Bill 1156. Using this figure in their projections, the figures in Appendix C show that the most likely impact of House Bill 1156 is an increase of 622 inmates by the year 1986.

Another bill which was adopted during the 1981 session is Senate Bill 194 which permits the state board of parole to revoke the parole of an offender who fails to pay restitution. This may have a significant impact on the correctional system population, although no estimates have been done on the potential impact.

The table in Appendix D is the Department of Corrections' estimate of the combined effects of their inmate projections and the impact of House Bill 1156. Comparing the most likely prison population projections with the current functional capacity of the correctional system, the Department of Corrections estimates that a shortage of 594 beds will occur by the year 1986:

| | |
|--------------------------------|---------------|
| Projected inmate total | 3,395 |
| Less escapees | <u>- 170</u> |
| Net Active Inmate Population = | 3,225 |
| Functional Capacity | <u>-2,631</u> |
| BEDSPACE SHORTFALL = | 594 |

Division of Criminal Justice's Projections. Appendix E contains the prison bed shortage as estimated by the Division of Criminal Justice. The following assumptions were used by the division in making these projections:

1. Thirty-five percent of commitments of the Department of Corrections will receive longer sentences as a result of House Bill 1156.

Sentences under House Bill 1156 will be at the low end of the presumptive range. The low projection assumes average sentence lengths of ten percent above the maximum in the presumptive range, fifteen percent above the maximum for the medium projection, and twenty percent above the maximum range for the high projection.

2. The legislature has increased the appropriation for community corrections programs by an average daily population of approximately 100 beds. Calculations on the projected use of these beds is based on past experience with community corrections diversion programs.

3. The functional capacity of the prison system is 2,483 based on ninety percent of absolute capacity of the major institutions, ninety-five percent of other institutions, and one hundred percent for contract community programs. The use of Cellhouse 3 was not included in the capacity figures.

The Division of Criminal Justice's statistics in Appendix E indicate that the most likely bedspace shortage will be fifty-eight beds in 1982, 149 beds in 1984, 258 beds in 1986, and 337 beds by the year 1996. Comparing these figures with those prepared by the Department of Corrections, we find that the division predicts a less severe shortage of beds than does the Department of Corrections.

State Auditor's Inmate Population Projections. In their performance audit of the Colorado Department of Corrections issued on June 30, 1980, the auditor's office concluded that:

Assuming the current commitment laws and procedures, and a 96% utilization rate, system-wide there is no apparent need for more beds through 1990. 1/

1/ State Auditor's Office, Report of the State Auditor: Colorado Department of Corrections Performance Audit and Division of Correctional Industries Financial Audit, June 30, 1980, p. 24.

Appendix F contains updated statistics from the auditor's office on the projected amount of available inmate bedspace. In the year 1985 the auditor's office estimates a net surplus of fifty-seven beds and a shortage of forty-one beds in the year 1990. Although these statistics indicate a shortage of beds in the minimum security classification, this is offset by a surplus of beds at both the maximum and medium classifications. The calculations involved with these projections take into account the impact of House Bill 1156, which is also set forth in Appendix F.

The report recommends that the Department of Corrections should pursue other alternatives, such as modification of its inmate security classifications and recommending reconsideration of sentences by the courts, before seeking funding for a new prison.

Prototype of a New Prison Facility

The Department of Corrections has prepared a program plan for a prototype correctional facility. This prototype correctional facility is designed to house 400 inmates at classification levels up to and including close security. In terms of space requirements, the facility contains assignable square feet of 140,977 and gross square footage of 216,888, or 542 square feet per inmate. There is space assigned for food, health, and laundry services as well as space for recreation, a library, correctional industries, and vocational training. The plan recommends this facility be located in a major metropolitan area. In terms of today's costs, the estimated cost is \$24,663,283. This would include site development costs, fees, and a ten percent contingency fund. The plan projects that if a site can be located, architects selected, and the project bid by March 1, 1982, the facilities can be ready for occupancy by May 1, 1984, at a cost of \$28,609,408 (this figure assumes an escalation rate of one percent per month due to inflation). If the bid date is delayed until 1984, the total cost would be approximately \$35,000,000 with the cost rising to \$44,000,000 in the year 1986.

Alternatives to Building a New Prison

Testimony was given by various groups and individuals that a new prison should not be built, but rather emphasis should be placed on programs which provide training and counseling for inmates such as community corrections. The following paragraphs summarize the statements of those who opposed building another prison.

1. Punishment must be turned into positive remedies.

Imprisonment cannot solve our economic and social problems and is ineffectual in terms of rehabilitation and deterrence. Incarceration should only be used as a last resort and only for those persons for whom no other alternatives exist.

2. Safety and prevention.

Safety and prevention should be the center of public policy and should be the responsibility of families, churches, schools, media, social services, the legal system, and the government. Everyone should share in this responsibility.

3. Costs of prisons in terms of human lives and money.

The economic and social costs of confining persons are staggering and the returns are pitiful. Hidden factors such as family welfare, foster care, and loss of income tax revenue of potential wage earners are usually overlooked. 2/

Those persons speaking against building a new prison outlined a number of specific proposals which they believed would be much more effective in handling any overcrowding which may occur in the state's correctional institutions.

a) Establish a statewide sentencing commission to review each sentence in relation to the available prison bed space.

b) Adopt legislation to give the governor emergency release powers. (Legislation such as this was recently passed in Michigan.)

c) Repeal House Bill 1156 of the 1981 session.

d) Establish special programs to help sex offenders, drug and alcohol abusers, and inmates with family problems.

e) Allocate more money to community corrections programs. Residential community alternatives for nonviolent offenders have been in operation for a number of years and have been proven to be successful. These programs alleviate the overcrowding pressures in the major prison institutions and provide help in finding jobs, training in living skills, and other rehabilitative training.

f) Educate the public about alternatives to prison. 3/

2/ Items 1 through 3: testimony Lila Gracey; representing the National Center on Law and Pacifism,

3/ Recommendations a) through e) are taken from testimony presented on September 8, 1981, by Lila Gracey representing the National Center on Law and Pacifism and Roger Lauen, Coordinator of Community Corrections Programs for the State Judicial Department.

Community corrections programs. The committee received testimony from representatives of some of the state's community corrections programs on the operation, cost, and success of these programs.

Most of the community corrections programs in Colorado involve residential facilities run by private contractors. The state has two such facilities, Bails Hall Work Release Center and Fort Logan community corrections. The community corrections programs are mainly for nonviolent offenders and offer job placement, drug and alcohol counseling, assistance with family problems, and instruction in living skills. Comments received from representatives of two community corrections centers, Our House and Williams Street Center, are outlined below:

OUR HOUSE: This program is a residential center in Pueblo which has been in existence since 1975. The program averages 14.6 clients daily, although there was an indication that more clients were needed. Offenders at Our House are nonviolent offenders who especially need counseling in alcohol or drug abuse. Twenty-five dollars per person per day covers the cost of the program. The funding comes from the city, the county, and the Department of Corrections.

WILLIAMS STREET CENTER: This program, located in Denver, attempts to find jobs for offenders and helps them with reentry services into the community. The program is geared for the nonviolent, low risk offender and the average length of stay is three to four months. Approximately seventy percent of all persons who are placed in the program complete it successfully. Although there is verification of employment when an offender is placed in a job, once an offender finishes the program no follow-up studies are done. The program has a ten percent vacancy rate.

The central question that the committee addressed was whether more offenders could be placed in community corrections programs. Although the testimony given by the representatives of the community corrections centers indicated that these programs can serve a number of different types of offenders, are economically feasible for the state, and that additional beds are currently available, there was uncertainty as to whether particular types of inmates who are currently incarcerated could be transferred to community corrections programs.

The Department of Corrections portrayed the type of offender that is being currently committed as more violent and tough than in the past. The department advised that their criteria for releasing inmates into community corrections programs is currently stretched to the limit. An inmate must meet not only the criteria for community placement established by the Department of Corrections, but the requirements adopted by local community boards. In addition to the safety of the community, the Department of Corrections expressed concern that one negative incident in community involving a marginal

type inmate could destroy that particular program and threaten the entire system of community oriented programs.

In addition to examining the state's community corrections system, the committee considered a number of other alternatives to building a new correctional facility.

Renovation of the old maximum security facility. Although the possibility of remodeling parts of the old maximum security unit was discussed, no action was recommended in this area because of two major problems, the cost of remodeling and potential federal court intervention.

In 1977 the engineering and architectural firm of Stearns-Roger prepared a report on renovation costs of the state's old maximum security prison in order to bring the facility up to acceptable state and national prison standards. This 1977 report was updated by the Department of Corrections and the Division of State Buildings in order to ascertain whether renovating "Old Max" was a cost effective and viable alternative to building a new facility. In their updated report, the Department of Corrections and the Division of State Buildings found that the original cost estimate for remodeling given by Stearns-Roger was significantly underestimated. The 1977 projected cost for renovation was set at \$3,430,300 by Stearns-Roger. The Department of Corrections and the Division of State Buildings report pointed out that a number of items were omitted from the Stearns-Roger estimate (such as building rewiring, plumbing replacement, and new solid side panels and cell doors with controls), and that a more accurate cost figure would have been \$11,876,300. Projecting this cost forward, updated remodeling costs for the old maximum security unit are estimated to be \$21,711,600 by the year 1982 and \$29,141,800 in 1985.

The state is currently attempting to correct some of the final deficiencies in the state's correctional system as ordered by the federal court pursuant to Ramos v. Lamm 4/. Mr. Tarquin Bromley from the state Attorney General's Office indicated that Colorado has now fulfilled most, if not all of these requirements and that there will probably be no federal judicial interference in Colorado's correctional system in the future, provided the state follows the guidelines established by the court. One of these requirements is that the old maximum security unit should not be used to house inmates, unless extensive renovation is undertaken. If the state decided to again use "Old Max" to meet projected bed shortages without any type of remodeling, Mr. Bromley stated that the state would again face federal intervention.

4/ In Ramos v. Lamm, 639 F. 2d 559 (CA10 1980), cert. denied, U.S. ____ (1981), the United States district court ruled that conditions present at Colorado's old maximum security prison violated constitutional standards.

Double celling of inmates. In a recent Ohio case, Chapman v. Rhodes, ^{5/} the United States Supreme Court held that double celling of inmates is not, per se, unconstitutional. Based on the Chapman ruling, the committee discussed this option for increasing the bedspace. Tarquin Bromley from the state Attorney General's Office advised the committee that the court's holding was very specific and limited in nature and applied only to the particular Ohio prison in question, which was deemed by the court to meet constitutional standards. Mr. Bromley's interpretation of the Chapman case was that if states meet certain minimum criteria, double celling is not by itself unconstitutional. However, if states do not meet constitutional minima, double celling will not be tolerated and federal courts will intervene in the state's correctional system to enforce constitutional standards. Mr. Bromley noted in his comments that the Colorado prison system was cited by the supreme court as an example of a prison which does not meet constitutional requirements, and which would certainly be subject to federal scrutiny if double celling of inmates were to take place.

Shared prisons. The possibility of the Department of Corrections sharing facilities with other states and with local governmental units was an item of discussion. Officials from the Department of Corrections noted that although consideration had been given to this idea, nothing had been accomplished because of the problems associated with different states and different entities of government trying to agree on items such as management, costs, and day-to-day operations. Another factor is that many state facilities and many local government facilities are also the subject of a lawsuit challenging the constitutionality of their conditions.

Federal assistance for state corrections. A recent federal task force, the Attorney General's Task Force on Violent Crime, has recommended that the federal government assist state governments in handling their growing prison populations.

Recommendation 3

The Attorney General should work with the appropriate governmental authorities to make available, as needed and where feasible, abandoned military bases for use by states and localities as correctional facilities on an interim and emergency basis only. Further, the Attorney General should work with the appropriate governmental authorities to make available, as needed and where feasible, federal property for use by states and localities as sites for correctional facilities.

^{5/} 434 F. Supp. 1007 (1977), cert. granted, U.S. No. 80-332 decided June 15, 1981.

Recommendation 54

The Attorney General should seek legislation calling for \$2 billion over four years to be made available to the states for construction of correctional facilities. Criteria for a state's obtaining federal assistance under this program include (1) demonstration of need for the construction; (2) contribution of 25 percent of the overall cost of the construction; and (3) assurance of the availability of operational funds upon completion of construction. Funds should be allocated by a formula which measures a state's need for prison construction relative to all states.

Recommendation 56

The Attorney General should support or propose legislation to amend the Federal Property and Administrative Services Act of 1949 to (1) permit the conveyance or lease at no cost of appropriate surplus federal property to state and local governments for correctional purposes and (2) ensure such conveyances or leases be given priority over requests for the same property for other purposes. 6/

The committee made inquiries of the federal government and was informed that there are currently no federal lands or facilities available for correctional use by the state. The state Department of Corrections is currently examining the possibility of obtaining federal assistance for the state's potential planning and construction of a new correctional facility.

6/ U.S. Department of Justice, Attorney General's Task Force on Violent Crime Final Report, August 17, 1981.

Committee Recommendations

Concerning the Construction of a New State Prison

Although the committee received conflicting testimony on the present inmate housing situation, the projected shortfall of prison beds, and the necessity for constructing a new correctional facility, a majority of the committee members believed that the evidence presented necessitated the planning of an additional correctional facility. The committee chose to recommend two alternative bills in this area.

BILL 10. MAKING AN APPROPRIATION TO THE DEPARTMENT OF CORRECTIONS.

This bill would allocate \$500,000 to the Department of Corrections for the initial planning of a new close or medium security facility. The plan involves either new construction or remodeling of existing buildings, or a combination of both. The facility is to house 300 persons with the potential to expand to 400. If a new facility is constructed, the bill mandates that it be located in the Denver metropolitan area. In order to provide legislative oversight, a legislative review committee is established.

BILL 11. MAKING AN APPROPRIATION TO THE DEPARTMENT OF CORRECTIONS.

This is an alternative to Bill 10. This piece of legislation would make an appropriation to the Department of Corrections of \$500,000 for the planning of an additional correctional facility. This bill, however, specifically requires the conversion of the present women's correctional institution and the diagnostic unit, both located in Canon City, into medium security facilities for men, and the construction of a new 300-person facility or the renovation of an existing facility in the Denver metropolitan area to house the women's correctional institution, persons in the diagnostic unit, persons in prerelease programs, and young offenders. The legislative oversight committee established in Bill 10 is also embodied in this bill.

Legislative intent of Bill 10. Bill 10 makes an appropriation to the Department of Corrections for the initial planning of a new close or medium security facility.

Although officials from the Department of Corrections estimated the planning cost of a new facility at \$800,000, a majority of the committee members believed that this figure was excessive and instead recommended \$500,000. This money is expected to cover the costs of planning, site selection, and schematic and program designs, but not architectural fees.

In the background section of this report, statistics are cited which contain the projected shortage of beds the state's correctional system will experience in the future. As the background section

notes, estimates on the magnitude of the bed shortage vary greatly. Because of this uncertainty surrounding the bed shortage, the committee recommends constructing a 300-bed facility with the capability to expand to 400 beds.

Based on recommendations from the Department of Corrections, the committee decided that a close or medium security facility would be the best type of facility to construct. The building of a close or a medium security facility rather than a new maximum unit or a minimum unit was considered the appropriate choice in terms of the types of inmates being received by the Department of Corrections. This also provides a degree of flexibility in handling a variety of different inmate classifications.

If the decision is made to build a new close or medium unit, the bill mandates that it be located within the Denver metropolitan area. Urbanized areas have greater potential to provide community programs, correctional personnel, educational facilities, work release programs, a market for correctional industries' products, potential expansion of the correctional industries' program, and a closeness to family and friends.

The legislative review committee established in the bill is modeled after the one established under Senate Bill 587 of the 1977 legislative session. The purpose of this review committee is to monitor the initial planning process.

Legislative intent of Bill 11. Bill 11 also contemplates the addition of a facility to the correctional system, but is different from Bill 10 in its overall plan. Under this bill, the women's facility and the diagnostic unit, both of which are currently located in Canon City, would be moved to the Denver metropolitan area. As previously outlined in the discussion of Bill 10, the metropolitan area provides greater access to services and programs for inmates. In addition to the women's facility and the diagnostic unit, the facility envisioned in this bill would also house young offenders and persons about to be released. Again, because the exact number of beds which are needed is unknown, the committee decided that a facility which could house 300 persons would be adequate. The other aspect of this plan is the remodeling of the present women's facility and diagnostic unit to provide medium security housing for males.

As in Bill 10, a \$500,000 initial appropriation was considered sufficient to develop this plan.

The legislative oversight committee established in Bill 10 was also included in this bill, again for the purpose of monitoring the initial planning stages.

BILL 10

A BILL FOR AN ACT

1 MAKING AN APPROPRIATION TO THE DEPARTMENT OF CORRECTIONS, AND
2 PROVIDING FOR LEGISLATIVE OVERSIGHT IN CONNECTION
3 THEREWITH.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Makes an appropriation to the department of corrections for the initial planning of a new close or medium security facility, consisting of new construction or renovation of existing facilities. Establishes a legislative review committee to work with the department of corrections in the planning process.

4 Be it enacted by the General Assembly of the State of Colorado:

5 SECTION 1. Appropriation. (1) In addition to any other
6 appropriation, there is hereby appropriated, out of any moneys
7 in the state treasury not otherwise appropriated, to the
8 department of corrections, for the fiscal year commencing July
9 1, 1982, the sum of five hundred thousand dollars (\$500,000),
10 or so much thereof as may be necessary, for planning, site

1 selection, schematic design, and program design for a new
2 close or medium security facility.

3 (2) The planning for such facility shall take into
4 consideration:

5 (a) New construction or renovation of existing
6 facilities, or a combination of new construction and
7 renovation. If established by new construction, such facility
8 shall be located in the Denver metropolitan area.

9 (b) Housing for three hundred persons immediately upon
10 opening, with design and service capacity for expansion to
11 house four hundred persons.

12 SECTION 2. Legislative review committee - appropriation.

13 (1) In order to give guidance and direction to the department
14 of corrections in carrying out the purposes and intent of this
15 act, and to provide legislative overview of and input into the
16 corrections plan, the legislative council is directed to
17 appoint a committee of not more than six members of the
18 general assembly. The committee appointed by the legislative
19 council shall meet when necessary with officials of the
20 department of corrections to review progress in the planning
21 process. The committee may consult with such experts in the
22 field of corrections as may be necessary. The staff of the
23 legislative council and the joint budget committee shall
24 assist the committee in reviewing the corrections plan. The
25 committee shall report its findings and recommendations to the
26 joint budget committee when the committee deems such report to

1 be appropriate.

2 (2) All expenditures incurred by the committee in
3 carrying out its responsibility shall be paid by vouchers and
4 warrants drawn as provided by law from funds allocated for
5 legislative studies from appropriations made by the general
6 assembly.

7 (3) There is hereby appropriated, out of any moneys in
8 the state treasury not otherwise appropriated, to the
9 legislative council, for the fiscal year commencing July 1,
10 1982, the sum of twenty thousand dollars (\$20,000), or so much
11 thereof as may be necessary, so that the committee appointed
12 pursuant to subsection (1) of this section may hire a
13 consultant to assist it in the performance of its duties. The
14 consultant shall be paid on a per diem basis, and the total
15 fees for his services shall not exceed twenty thousand
16 dollars.

17 SECTION 3. Safety clause. The general assembly hereby
18 finds, determines, and declares that this act is necessary
19 for the immediate preservation of the public peace, health,
20 and safety.

BILL 11

A BILL FOR AN ACT

1 MAKING AN APPROPRIATION TO THE DEPARTMENT OF CORRECTIONS, AND
2 PROVIDING FOR LEGISLATIVE OVERSIGHT IN CONNECTION
3 THEREWITH.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Makes an appropriation to the department of corrections to develop a plan for converting the present women's correctional institution in Fremont county and the present diagnostic unit in Canon City into medium security facilities for men and for constructing a new facility, or renovating an existing facility, in the Denver metropolitan area to house the women's correctional institution, the diagnostic unit, persons in prerelease programs, and young offenders. Establishes a legislative review committee to work with the department of corrections in the planning process.

4 Be it enacted by the General Assembly of the State of Colorado:

5 SECTION 1. Appropriation. (1) In addition to any other
6 appropriation, there is hereby appropriated, out of any moneys
7 in the state treasury not otherwise appropriated, to the
8 department of corrections, for the fiscal year commencing July
9 1, 1982, the sum of five hundred thousand dollars (\$500,000),

1 or so much thereof as may be necessary, for the development of
2 a plan which provides for the following:

3 (a) Remodeling the present facility for the women's
4 correctional institution in Fremont county and the present
5 diagnostic unit at Canon City into medium security facilities
6 for men;

7 (b) Moving the women's correctional institution in
8 Fremont county and the diagnostic unit at Canon City to a new
9 facility to be located in the Denver metropolitan area, which
10 facility may be established by new construction or by
11 renovation of an existing facility. The new facility shall
12 include housing for three hundred persons, including housing
13 for one hundred women and the remaining housing for the
14 diagnostic unit, young offenders in the custody of the
15 department of corrections, and persons in prerelease programs.

16 SECTION 2. Legislative review committee - appropriation.

17 (1) In order to give guidance and direction to the department
18 of corrections in carrying out the purposes and intent of this
19 act, and to provide legislative overview of and input into the
20 corrections plan, the legislative council is directed to
21 appoint a committee of not more than six members of the
22 general assembly. The committee appointed by the legislative
23 council shall meet when necessary with officials of the
24 department of corrections to review progress in the planning
25 process. The committee may consult with such experts in the
26 field of corrections as may be necessary. The staff of the

1 legislative council and the joint budget committee shall
2 assist the committee in reviewing the corrections plan. The
3 committee shall report its findings and recommendations to the
4 joint budget committee when the committee deems such report to
5 be appropriate.

6 (2) All expenditures incurred by the committee in
7 carrying out its responsibility shall be paid by vouchers and
8 warrants drawn as provided by law from funds allocated for
9 legislative studies from appropriations made by the general
10 assembly.

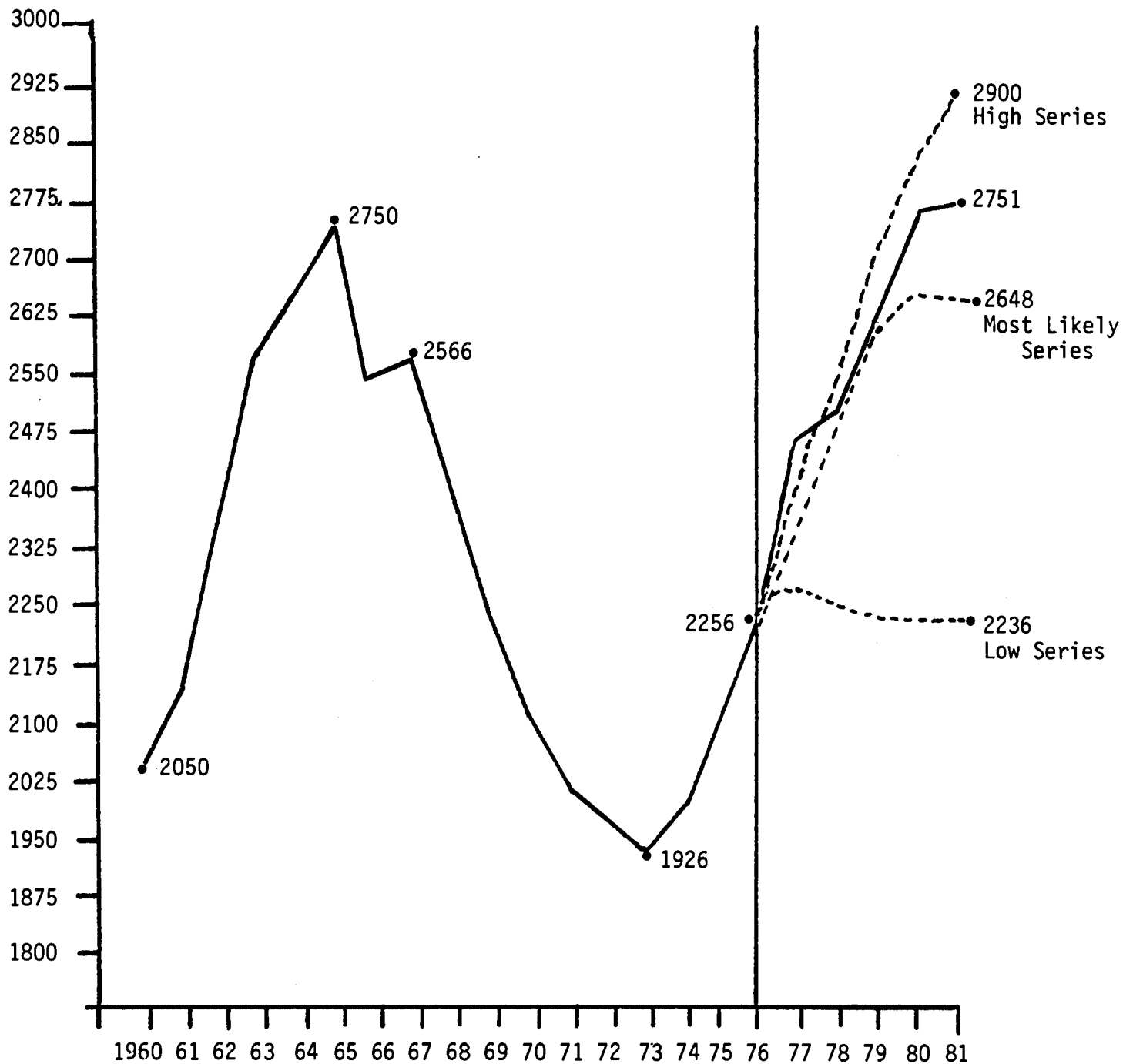
11 (3) There is hereby appropriated, out of any moneys in
12 the state treasury not otherwise appropriated, to the
13 legislative council, for the fiscal year commencing July 1,
14 1982, the sum of twenty thousand dollars (\$200,000), or so
15 much thereof as may be necessary, so that the committee
16 appointed pursuant to subsection (1) of this section may hire
17 a consultant to assist it in the performance of its duties.
18 The consultant shall be paid on a per diem basis, and the
19 total fees for his services shall not exceed twenty thousand
20 dollars.

21 SECTION 3. Safety clause. The general assembly hereby
22 finds, determines, and declares that this act is necessary
23 for the immediate preservation of the public peace, health,
24 and safety.

**COMMITTEE ON THE
NEW STATE PRISON**

APPENDICES

DEPARTMENT OF CORRECTIONS
INMATE PROJECTIONS vs. EXPERIENCE
PROJECTIONS MADE LATE 1976



COLORADO DEPARTMENT OF CORRECTIONS

FACILITY CAPACITIES

July 21, 1981

| | <u>ABSOLUTE</u> | <u>FUNCTIONAL*</u> |
|--|-----------------|------------------------|
| Diagnostic Unit | 118 | 106 - 113 |
| Territorial Correctional Facility | 144 | 130 - 138 |
| Centennial Correctional Facility | 336 | 302 - 323 |
| Fremont Correctional Facility | 440 | 396 - 422 |
| Shadow Mountain Correctional Facility | 384 | 346 - 369 |
| Buena Vista Correctional Facility | 573 | 516 - 550 |
| Colorado Women's Correctional Facility | 96 | 91 - 96 |
| Skyline Correctional Facility | 132 | 125 - 132 |
| Delta Correctional Facility | 99 | 95 - 99 |
| Rifle Correctional Facility | 100 | 95 - 100 |
| Colorado Correctional Facility | 71 | 67 - 71 |
| Bails Hall Work Release Center | 39 | 37 - 39 |
| Ft. Logan Community Corrections | 28 | 27 - 28 |
| Contract Agencies | <u>151</u> | <u>151 - 151</u> |
| T O T A L | <u>2711</u> | <u>2484 - 2631</u> |

* Functional Use is dependent upon off-grounds count.

Tom G. Crago, Ph.D.

INMATE POPULATION PROJECTIONS

1981 - 1986

FEBRUARY 1981

| <u>YEAR</u> | <u>LOW PROJECTION</u> | <u>LIKELY PROJECTION</u> | <u>HIGH PROJECTION</u> |
|-------------|-----------------------|--------------------------|------------------------|
| 1981 | 2,660 | 2,819 | 2,953 |
| 1982 | 2,448 | 2,786 | 3,125 |
| 1983 | 2,347 | 2,754 | 3,194 |
| 1984 | 2,354 | 2,761 | 3,201 |
| 1985 | 2,360 | 2,768 | 3,208 |
| 1986 | 2,365 | 2,773 | 3,214 |

N.B. 1156 INMATE POPULATION IMPACT

1981 - 1986

July 1981

| <u>YEAR</u> | <u>LOW PROJECTION</u> | <u>LIKELY PROJECTION</u> | <u>HIGH PROJECTION</u> |
|-------------|-----------------------|--------------------------|------------------------|
| 1981 | 0 | 0 | 0 |
| 1982 | 66 | 73 | 73 |
| 1983 | 226 | 323 | 403 |
| 1984 | 240 | 502 | 652 |
| 1985 | 291 | 562 | 826 |
| 1986 | 291 | 622 | 886 |

COLORADO DEPARTMENT OF CORRECTIONS

COMBINED PROJECTIONS

July 21, 1981

| | <u>Low Projection</u> | <u>Low HB 1156</u> | <u>TOTAL</u> | | <u>Likely Projection</u> | <u>Low HB 1156</u> | <u>TOTAL</u> | | <u>High Projection</u> | <u>Low HB 1156</u> | <u>TOTAL</u> |
|------|-----------------------|---------------------------|--------------|------|--------------------------|---------------------------|--------------|------|------------------------|---------------------------|--------------|
| 1981 | 2660 | 0 | 2660 | 1981 | 2819 | 0 | 2819 | 1981 | 2953 | 0 | 2953 |
| 1982 | 2448 | 66 | 2514 | 1982 | 2786 | 66 | 2852 | 1982 | 3125 | 66 | 3191 |
| 1983 | 2347 | 226 | 2573 | 1983 | 2754 | 226 | 2980 | 1983 | 3194 | 226 | 3420 |
| 1984 | 2354 | 240 | 2594 | 1984 | 2761 | 240 | 3001 | 1984 | 3201 | 240 | 3441 |
| 1985 | 2360 | 291 | 2651 | 1985 | 2768 | 291 | 3059 | 1985 | 3208 | 291 | 3499 |
| 1986 | 2365 | 291 | 2656 | 1986 | 2773 | 291 | 3064 | 1986 | 3214 | 291 | 3505 |
| | | | | | | | | | | | |
| | <u>Low Projection</u> | <u>Likely HB 1156</u> | <u>TOTAL</u> | | <u>Likely Projection</u> | <u>Likely HB 1156</u> | <u>TOTAL</u> | | <u>High Projection</u> | <u>Likely HB 1156</u> | <u>TOTAL</u> |
| 1981 | 2660 | 0 | 2660 | 1981 | 2819 | 0 | 2819 | 1981 | 2953 | 0 | 2953 |
| 1982 | 2448 | 73 | 2521 | 1982 | 2786 | 73 | 2859 | 1982 | 3125 | 73 | 3198 |
| 1983 | 2347 | 323 | 2670 | 1983 | 2754 | 323 | 3077 | 1983 | 3194 | 323 | 3517 |
| 1984 | 2354 | 502 | 2856 | 1984 | 2761 | 502 | 3263 | 1984 | 3201 | 502 | 3703 |
| 1985 | 2360 | 562 | 2922 | 1985 | 2768 | 562 | 3330 | 1985 | 3208 | 562 | 3770 |
| 1986 | 2365 | 622 | 2987 | 1986 | 2773 | 622 | 3395 | 1986 | 3214 | 622 | 3836 |
| | | | | | | | | | | | |
| | <u>Low Projection</u> | <u>High HB 1156</u> | <u>TOTAL</u> | | <u>Likely Projection</u> | <u>High HB 1156</u> | <u>TOTAL</u> | | <u>High Projection</u> | <u>High HB 1156</u> | <u>TOTAL</u> |
| 1981 | 2660 | 0 | 2660 | 1981 | 2819 | 0 | 2819 | 1981 | 2953 | 0 | 2953 |
| 1982 | 2448 | 73 | 2521 | 1982 | 2786 | 73 | 2859 | 1982 | 3125 | 73 | 3198 |
| 1983 | 2347 | 403 | 2750 | 1983 | 2754 | 403 | 3157 | 1983 | 3194 | 403 | 3597 |
| 1984 | 2354 | 652 | 3006 | 1984 | 2761 | 652 | 3413 | 1984 | 3201 | 652 | 3853 |
| 1985 | 2360 | 826 | 3186 | 1985 | 2768 | 826 | 3594 | 1985 | 3208 | 826 | 4034 |
| 1986 | 2365 | 886 | 3251 | 1986 | 2773 | 886 | 3659 | 1986 | 2773 | 886 | 4100 |

Tom G. Crago, Ph.D.

E

PROJECTED PRISON BEDSHORTAGE

July 22, 1981

| | <u>Low</u> | <u>Medium</u> | <u>High</u> |
|------|------------|---------------|-------------|
| 1981 | -59 | -67 | -52 |
| 1982 | -2 | -58 | -43 |
| 1983 | 74 | -34 | -40 |
| 1984 | -139 | -149 | -171 |
| 1985 | -144 | -227 | -309 |
| 1986 | -163 | -258 | -348 |
| 1987 | -181 | -274 | -365 |
| 1988 | -201 | -295 | -386 |
| 1989 | -225 | -318 | -409 |
| 1990 | -245 | -337 | -428 |

Capacity = 2483 - assumes functional capacity of 90% at major institutions, 95% at other institutions, and 100% at contract community programs.

Impact of actions taken during last legislative session which affect prison population:

- New legislation (primarily HB 1156)
- Additional beds for community corrections
- Additional capacity of institutions

DIVISION OF CRIMINAL JUSTICE

F
PRISON AVERAGE DAILY POPULATION ESTIMATES
PER DIVISION OF CRIMINAL JUSTICE
MEDIUM RANGE SERIES

| <u>YEAR</u> | <u>Dec. 1980 Estimate</u> | <u>Actual To Date</u> | <u>July 1981 Estimate ²⁾</u> |
|-------------|-------------------------------|---------------------------|---|
| 1980 | 2763 | 2751 | ---- |
| 1981 | 2906 | 2766 ¹⁾ | 2768 |
| 1982 | 2816 | | 2777 |
| 1983 | 2714 | | 2762 |
| 1984 | 2739 | | 2860 |
| 1985 | 2764 | | 2945 |
| 1986 | 2786 | | 2979 |
| 1987 | 2801 | | 2996 |
| 1988 | 2818 | | 3019 |
| 1989 | 2840 | | 3044 |
| 1990 | 2858 | | 3065 |

1) Includes only two quarters of 1981 and does not yet reflect impact of HB 1156.

2) Assumes HB 1156 will affect 35% of commitments and the sentences under HB 1156 will be 15% above the current maximum. All other sentencing bills passed in 1981 are estimated to add 75 commitments a year phased in through mid 1983. No actual data under HB 1156 will be available till next year.

FACILITY CAPACITIES

| <u>Facility</u> | <u>"Absolute Capacity" As Reported by Dept. 7-21-81</u> | <u>Aug. 1981 Average Population</u> | <u>Functional Capacity Range Per. Dept.</u> |
|---|---|---|---|
| Maximum | | | |
| Diagnostic | 118 | 113 | 106-113 |
| Centennial | 336 | 289 | 302-323 |
| Sub Total | 454 | 402 | 408-436 |
| Medium | | | |
| Territorial 1) | 144 | 157 | 130-138 |
| Fremont | 440 | 424 | 396-422 |
| Shadow Mountain | 384 | 358 | 346-369 |
| Buena Vista | 573 | 526 | 516-550 |
| Womens | 96 | 77 | 91- 96 |
| Sub Total | 1637 | 1542 | 1479-1575 |
| Minimum | | | |
| Skyline | 132 | 131 | 125-132 |
| Delta | 99 | 93 | 95- 99 |
| Rifle | 100 | 96 | 95-100 |
| Golden 2) | 71 | 68 | 67- 71 |
| Sub Total | 402 | 388 | 382-402 |
| (When beds at Golden finished will be 29 higher) | | | |
| Community | | | |
| Bails Hall | 39 | 34 | 37- 39 |
| Ft. Logan 3) | 28 | 24 | 27- 28 |
| Contract | 151 | 110 | 151-151 |
| Sub Total | 218 | 168 | 215-218 |
| TOTAL on Grounds | 2711 | 2500 | 2484-2631 |
| OFF Grounds | | 310 | |
| TOTAL POPULATION | | <u>2810</u> | |

- 1) Includes only those cells the Department intends to use.
Total is 961.
- 2) Funding has been provided to the Department to increase
the size to 100.
- 3) Contract capacity varies with demand.

The Division of Criminal Justice in their December, 1980 report "Correctional Options for the 80th" estimated the following mix of prisoners by security level:

| | |
|-------------|-----|
| Maximum | 14% |
| Medium | 47% |
| Minimum | 20% |
| Community | 11% |
| Off Grounds | 8% |

100%

Assuming this mix of security classifications, the Division of Criminal Justice's medium range series projection for 1985 (2945) and 1990 (3065), the Department's high "functional capacity" range adjusted for 29 beds at Golden and variable community contract funds we find:

| <u>1985</u> | <u>Inmates</u> | <u>High "Functional Capacity" 1)</u> | <u>"Functional Capacity" Diff.</u> |
|-----------------|----------------|--|------------------------------------|
| Maximum | 412 | 436 | +24 |
| Medium | 1384 | 1575 | +191 |
| Minimum | 589 | 431 | -158 |
| Community | 324 | 324 | --- |
| Off Grounds | <u>236</u> | <u>236</u> | <u>---</u> |
| TOTAL | 2945 | 3002 | +57 |
| <u>1990</u> | | | |
| Maximum | 429 | 436 | +7 |
| Medium | 1441 | 1575 | +134 |
| Minimum | 613 | 431 | -182 |
| Community | 337 | 337 | --- |
| Off Grounds | <u>245</u> | <u>245</u> | <u>---</u> |
| TOTAL | 3,065 | 3,024 | -41 |

- 1) An additional 817 cells exist at Territorial not included in these "functional capacities" reported by the Department.