

JOINT BUDGET COMMITTEE



INTERIM SUPPLEMENTAL BUDGET REQUESTS FY 2020-21

DEPARTMENT OF PUBLIC SAFETY (Colorado Bureau of Investigation)

JBC WORKING DOCUMENT - SUBJECT TO CHANGE
STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

PREPARED BY:
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INTERIM SUPPLEMENTAL REQUESTS

INCREASE FUNDING FOR PROCESSING FIREARMS TRANSFERS

	REQUEST	RECOMMENDATION
TOTAL	\$1,261,266	\$1,035,509
FTE	15.0	15.0
General Fund	\$0	\$0
Cash Funds	\$1,261,266	\$1,035,509
Federal Funds	\$0	\$0

Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.? **YES**
 [The Controller may authorize an overexpenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the overexpenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the overexpenditure is to be made.]

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? **YES**
 [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]

Explanation: JBC staff and the Department agree that this request stems from unforeseen contingencies and data that was not available when the appropriation was made.

DEPARTMENT REQUEST: The Department requests an increase of \$1,261,266 cash funds from the Instant Criminal Background Check Cash Fund for 15.0 term-limited FTE for FY 2020-21.¹ These FTE would assist the Colorado Bureau of Investigation’s (CBI) Instacheck Unit, which performs criminal background checks for firearms transfers.

STAFF RECOMMENDATION: Staff recommends an increase of \$1,035,509 cash funds for 15.0 term-limited FTE in FY 2020-21 (actually representing 20 positions in place for nine months of the fiscal year). Per JBC policy, the recommendation excludes centrally-appropriated funds for the first year of new FTE requests. The line item breakdown is shown in the table below.

JBC STAFF RECOMMENDATION			
CBI STATE POINT OF CONTACT NATIONAL CRIMINAL BACKGROUND CHECK PROGRAM			
LINE ITEM	ORIGINAL APPROPRIATION (H.B. 20-1360 LONG BILL)	RECOMMENDED APPROPRIATION	CHANGE
Personal Services	\$2,814,846	\$3,644,797	\$829,951
Operating Expenses	373,109	578,667	205,558

STAFF ANALYSIS

SUMMARY

The request aims to reduce the amount of time it takes the CBI to process firearms transfer applications, which is called “turnaround time.” A significant increase in the volume of firearms transfers since March 2020 has increased the turnaround time from five minutes in July 2019 to 41

¹Fund created in Section 24-33.5-424 (3.5)(b), C.R.S.

hours in July 2020, peaking at 56 hours in April 2020. Staff recommends approval of the request (with modifications based on the Committee’s common policies) for three reasons:

- 1 **There is sufficient cash fund revenue to support additional term-limited FTE without raising fees.** Funding for this request is supported by fees (currently \$10.50) paid by the purchaser. Given the volume of transactions, the CBI believes it can support additional FTE without raising fees. The table below shows the expected fund balance for FY 2020-21 with and without the recommended increase in appropriations. The box on the far right indicates an FY 2020-21 estimated ending fund balance of \$1.6 million if staff’s recommendation is approved.

INSTANT CRIMINAL BACKGROUND CHECK CASH FUND					
FY 19-20 ENDING BALANCE	FY 20-21 ESTIMATED EXPENDITURES	FY 20-21 ESTIMATED REVENUE	FY 20-21 ENDING BALANCE	JBC STAFF RECOMMENDATION	FY 20-21 ENDING BALANCE (WITH APPROVAL)
\$1,432,919	(\$4,518,156)	\$5,729,141	\$2,643,904	(\$1,035,509)	\$1,608,395

- 2 **It is reasonable to expect high transaction volumes through much of FY 2020-21.** The CBI and JBC staff conducted independent estimates for FY 2020-21 and found that transaction volumes could be 44.0-46.0 percent higher than the average of the previous three fiscal years (FY 2017-18 through FY 2019-20).

The October to March period coincides with the holidays and Colorado’s hunting seasons, so it traditionally sees more transactions than the period from April to September. It is also a presidential election year. Historical data from the past 20 years shows higher transaction volumes in presidential election years, relative to the years preceding and following the election. In short, transactions have reached near record levels in 2020 in traditionally slower months and the busy months could be busier than usual. Without additional FTE support, long turnaround times will likely continue if the recent trend in volume persists through the rest of the fiscal year.

- 3 **State law requires the CBI to adopt rules that are necessary to “employ and train personnel at levels that ensure prompt processing of the reasonably anticipated volume of inquires...”**² If turnaround time is normally 5-10 minutes, one may reasonably conclude that 41 to 56 hours is not prompt. Adding 15.0 term-limited, full-time staff to reduce turnaround time provides both the Department and the JBC with flexibility. If transaction volumes do not subside, the Department will have fully-trained staff on-hand and has indicated it may submit a separate budget request to retain them. If transaction volumes do subside, no further JBC action is necessary because the funding for this request will expire at the end of the current fiscal year. If the Department submits a budget request to keep some or all of these FTE, the JBC will have an opportunity to judge whether the FTE are needed on an ongoing basis.

A short turnaround time benefits purchasers, dealers, and the general public. For purchasers and dealers, it means transactions can be completed in a matter of minutes, not hours or days. For the

² Section 24-33.5-424 (7)(b)(IV)(C), C.R.S.

general public, it reduces the chance that a firearm is transferred to somebody who is legally prohibited from possessing one. Federal law allows dealers to transfer a firearm to a purchaser if the dealer does not receive a response to a background check inquiry within three business days.³ Dealers can withhold the firearm until they receive confirmation from the CBI, but it is not a legal requirement. Since March 2020, the CBI has confirmed two instances where prohibited transfers occurred because of extended wait times. In both cases, the CBI was able to recover the firearms without incident.

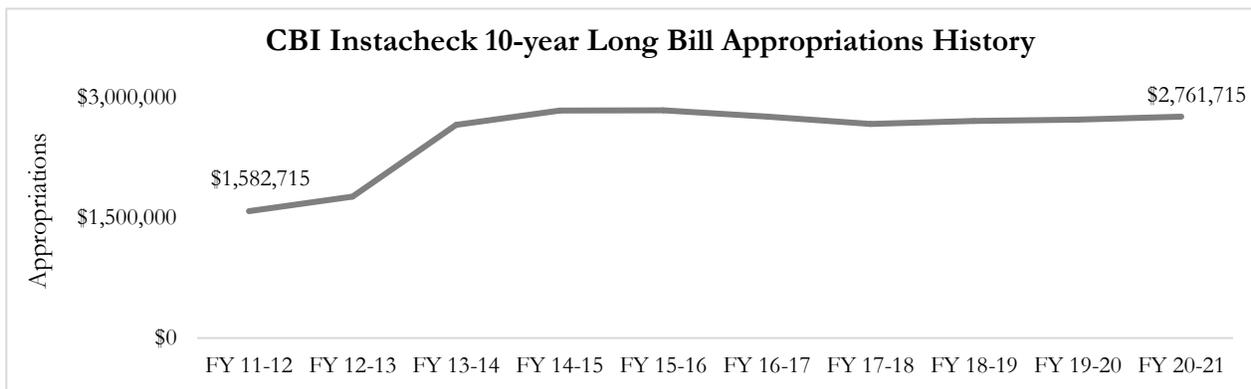
BACKGROUND

Colorado is one of 13 “full point-of-contact” states in the U.S., which means background checks for all firearms transfers in the state are processed through a state entity, rather than the Federal Bureau of Investigation (FBI).⁴ The CBI has been that entity since 2000, and the Instacheck Unit is the group within the CBI that performs the checks. The Instacheck Unit also processes applications for concealed handgun permits and reviews appeals by individuals who are denied the ability to purchase a firearm.

According to the CBI, a full point-of-contact system is more comprehensive and rigorous than reliance on the FBI alone. CBI background checks access the same four national databases used by the FBI, and three state-level databases that are not available to the FBI (see Appendix A). Additionally, Colorado statutes require the CBI to deny a transfer to any prospective transferee that has been arrested or charged with a crime that would result in denial under federal or state law.⁵ Per the CBI, a full point-of-contact system leads to a denial rate that is about 20.0 percent higher than if the State relied on the FBI alone. From 2010 through July 2020, the average CBI denial rate is 2.2 percent.

INSTACHECK FUNDING AND STAFFING

From 2000 to 2014, Instacheck was primarily supported by the General Fund. Beginning in FY 2014-15, Instacheck has been supported almost exclusively by cash funds from the Instant Criminal Background Check Cash Fund. As the following graph shows, inflation-adjusted appropriations (in FY 2019-20 dollars) have been relatively flat in recent years.



³ 18 U.S.C. sec. 922 (t): <https://www.law.cornell.edu/uscode/text/18/922>

⁴ The other full point-of-contact states are California, Connecticut, Florida, Hawaii, Illinois, Nevada, New Jersey, Oregon, Pennsylvania, Tennessee, Utah, and Virginia.

⁵ Section 24-33.5-424 (3)(b)(I)(A), C.R.S.

Revenue for this fund comes from fees paid by gun purchasers. The fee is currently \$10.50, but has fluctuated between \$6.00 and \$15.00. As discussed above, the Department’s estimates indicate that the Fund can support the requested FTE without increasing fees.

The CBI currently employs 23.0 FTE (Technician III) whose primary responsibility is processing background checks. Adding 15.0 FTE is a 65.2 percent increase in that job class for the Unit, but increases of any magnitude are relatively rare. The last increase in FTE occurred in FY 2013-14, when 24.7 FTE were added pursuant to H.B. 13-1229 (Criminal Background Checks Firearms Transfers).⁶ Since that time, the number of appropriated FTE has been flat.

The FY 2020-21 Long Bill shows appropriations for 51.7 FTE, but the actual number of FTE employed by the Instacheck Unit is closer to 40. This number includes supervisory and administrative personnel. In FY 2017-18 and FY 2018-19, the unit reverted 11.3 and 13.4 FTE, respectively. The Department attributes reversions to the disparity between budgeting, which appropriates funding based on minimum salaries, and prevailing labor market rates. For example, H.B. 13-1229 appropriated FTE at the minimum salary. According to the Department, a tight Denver metro area labor market required the CBI to increase pay to attract and retain personnel.⁷ The following table shows the distribution of expenditures for personnel within the Instacheck Unit, including reversions.

ACTUAL EXPENDITURES FOR CBI INSTACHECK PERSONAL SERVICES FTE				
Job Classification	FY 17-18		FY 18-19	
	Amount	FTE	Amount	FTE
Technician III	\$1,097,311	21.7	\$1,163,957	23.8
Technician II	162,643	8.1	108,639	3.5
Technician IV	152,529	2.6	171,492	3.0
Technician V	191,700	3.0	197,460	3.0
Other (admin, assistants, etc.)	393,320	5.0	360,980	5.0
Subtotal	\$1,997,503	40.4	\$2,002,528	38.3
Total spending authority (includes centrally appropriated line items, Medicare, overtime, etc.)				
	\$3,120,261	51.7	\$3,077,685	51.7
Reversions	233,196	11.3	74,867	13.4
Total expenditures	\$2,887,065	40.4	\$3,002,818	38.3

REQUEST AND RECOMMENDATION

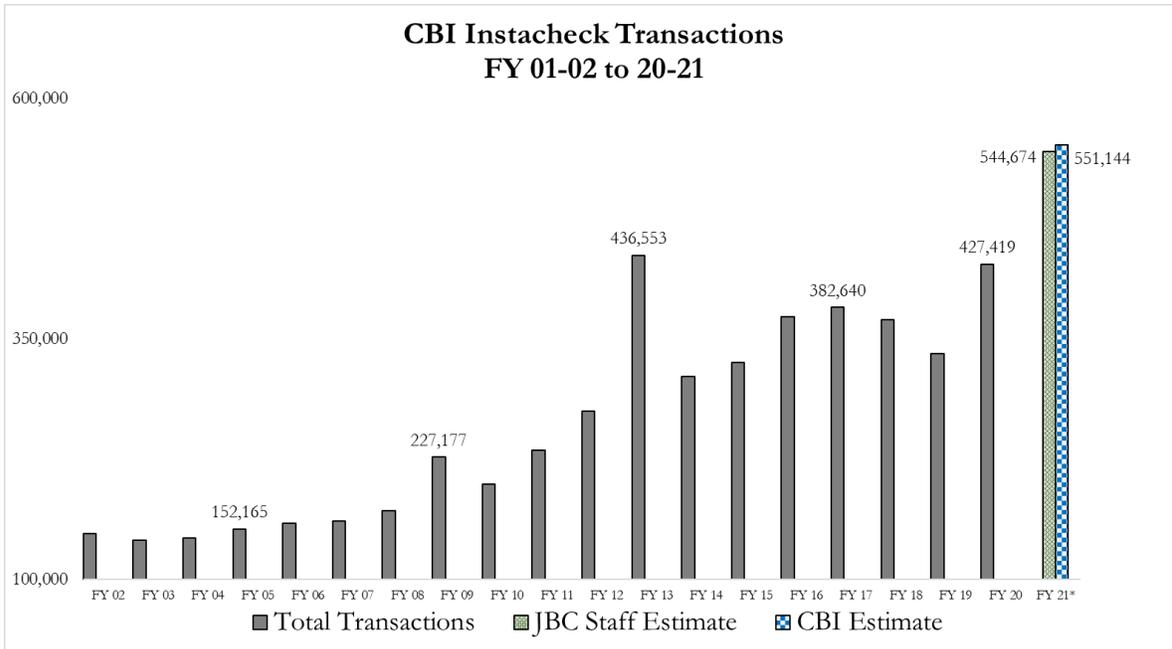
HIGH VOLUMES EXPECTED THROUGH MUCH OF FY 2020-21

The CBI and JBC staff independently projected transaction volumes for FY 2020-21 and found they could be 44.0-46.0 percent higher than the average of the previous three fiscal years. The Department performed a statistical analysis to project the number of background checks received and processed

⁶ [Link to fiscal note](#) for H.B. 13-1229.

⁷ The Department’s reasoning is consistent with its reasoning for a similar request for FY 2017-18. The Department requested \$532,398 cash funds to fully fund Instacheck’s 51.7 appropriated FTE and increase base salaries within the Unit. JBC staff recommended against the request and the Committee accepted staff’s recommendation. The JBC staff figure setting document can be found here: https://leg.colorado.gov/sites/default/files/fy2017-18_pubsaffig1.pdf

for FY 2020-21.⁸ Staff’s projection is based on historical trends. Staff found the average month-over-month change over the past twenty years, removed figures that were more than two standard deviations from the average for that month, and applied those averages to the remainder of FY 2020-21. For example, from 2001 to 2019, December saw 24.7 percent more transactions than November.⁹ Staff took the estimate for November 2020 and increased it by 24.7 percent. The following graph shows transaction volumes since FY 2001-02, including projections for FY 2020-21 by the CBI and JBC staff. Note that projected volumes for FY 2020-21 are significantly higher than the record high in FY 2012-13.



*FY 21 is a projection

Why are volumes so high?

The Department says the unusually high volume of transactions is likely a response to the coronavirus pandemic and civil unrest. Staff agrees these are plausible reasons, but is unable to verify the role of each factor.

Will high volumes persist?

In staff’s view, it is reasonable to expect high volumes to continue through most of FY 2020-21. The October to March period is historically busier than other months because it coincides with the holidays and Colorado’s hunting seasons. Historical data since FY 2001-2002 show that the October to March period accounts for an average of 55.6 percent of all transactions for the year. November, December, and March are consistently the busiest months.

AVERAGE SHARE OF ANNUAL TRANSACTION TOTALS FY 01-02 TO FY 18-19											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
8.1%	8.6%	9.5%	8.1%	7.3%	7.1%	6.5%	7.7%	7.7%	8.6%	9.3%	11.5%

⁸ The Department used a Holt-Winters statistical model with exponential smoothing. The Department’s response to staff questions included 41,095 transactions for July 2021, which staff removed from the dataset.

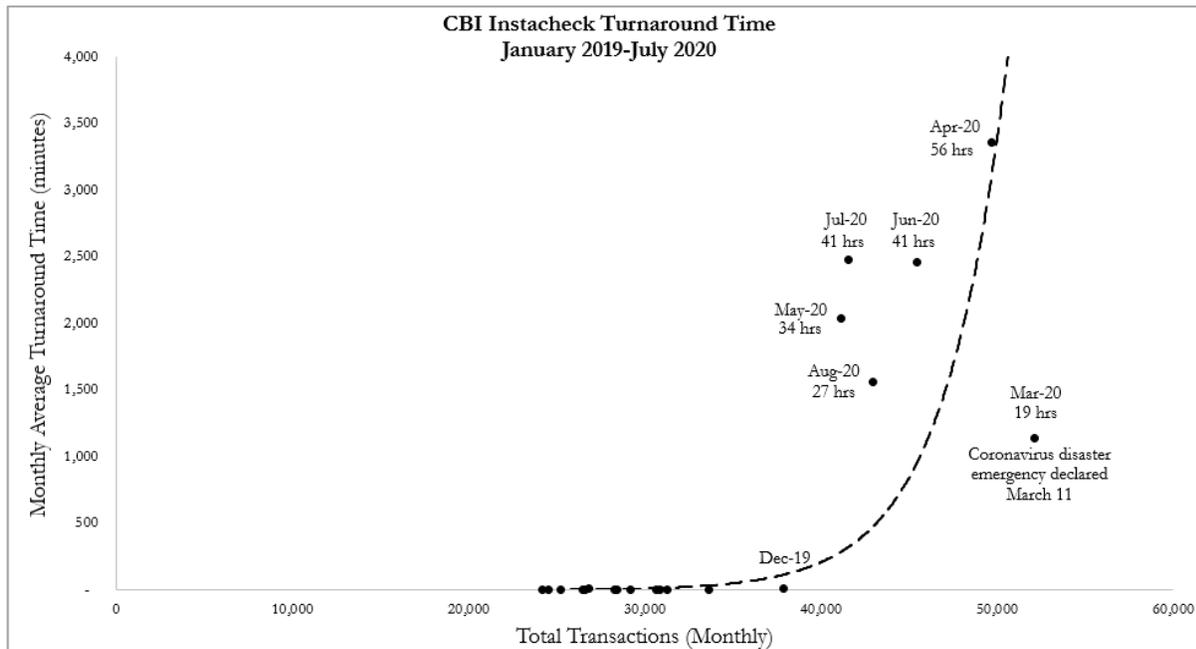
⁹ Staff removed December 2008 and 2015 from the dataset.

It is also a presidential election year. Staff compared the number of transactions in the last four presidential election years (2004-2016) to the three years before and after the election. On average, transactions from the September preceding the election to the following June were 21.3 percent higher than the average of prior and later years. At this time, staff cannot provide a causal explanation for this trend in the data, and consequently did not feel comfortable applying it to projections for FY 2020-21. However, it would be reasonable to expect a higher number of transactions in FY 2020-21 relative to previous years, regardless of the coronavirus and civil unrest.

REDUCING TURNAROUND TIME

State law requires the CBI to adopt rules to “employ and train personnel at levels that ensure prompt processing of the reasonably anticipated volume of inquires...”¹⁰ The term “prompt” is undefined, so the CBI is not required to maintain a specific turnaround time. However, the CBI aims for a target turnaround time of seven minutes. According to the Department, this target has historically been the balance between: (A) the time needed to conduct a thorough and accurate background check, and (B) the retail business needs of the firearm licensed dealers.

There is no question that turnaround times have grown significantly since March 2020. The following graph shows turnaround times relative to transaction volumes. High transactions volumes show a relationship to longer turnaround times.



In December 2019, the CBI received a high number of inquiries (37,891) and kept turnaround times relatively short (11 minutes). That is likely because the CBI typically hires seasonal employees through private temporary placement agencies to supplement staffing during the busy season (October through March). However, in CY 2020, volume has remained high beyond the end of that standard

¹⁰ Section 24-33.5-424 (7)(b)(IV)(C), C.R.S.

busy season, with the number of transactions in each month since March 2020 exceeding the busiest month of CY 2019. However, without seasonal staff to ensure prompt processing, average turnaround times increased from five minutes in July 2019 to 41 hours in July 2020.

Long turnaround times not unprecedented: FY 2012-13

From December 2012 to February 2013, turnaround times peaked at 7-10 days because of a large increase in firearms transactions. The Department submitted a supplemental budget request in January 2013 for \$455,784 General Fund and 24.0 FTE to help reduce the backlog. In this case, the Department was looking to hire temporary employees from January through May. The benchmark for turnaround time in the request was 15 minutes.

The request was rejected by the JBC by a vote of 4-2 and turnaround times reached 18 minutes by May 2013. It is possible that H.B. 13-1229 played some role in this. That bill was signed in late March 2013 and appropriated funding for 4.0 additional FTE for the Instacheck Unit.

The reasoning behind the number of FTE in the current request

The Department used statistical modeling to determine the number of staff needed to bring turnaround times down to seven minutes. Using data from every Friday and Saturday (usually the busiest days of the week) in May, June, and July 2020, the Department concluded it needed about 20.0 additional FTE to process 2,000 background checks per day. Twenty FTE prorated for nine months is 15.0 FTE. For a detailed explanation of the model, staff recommends consulting the Department's request.

Staff has no qualms with the Department's model. It errs on the side of caution by using the busiest days of the week as its foundation. This is appropriate given the likelihood that high volumes will continue for the remainder of the fiscal year. Furthermore, the cash fund can support this request without increasing fees. If 15.0 FTE turns out to be the wrong number, funding will either expire or be amended through a budget request. If there is a budget request, the JBC can adjust the number of FTE at that time.

Why not use part-time or seasonal temporary employees again?

The Department's solution offers the possibility of better performance and flexibility, though staff would emphasize flexibility over performance. It takes time to train technicians. According to the Department, new hires can begin processing background checks with a high level of supervisory oversight after two to three weeks of intensive training. Some new hires can become fully independent in four to six months, but others may require up to nine months and additional training. This level of training and supervision is necessary to prevent "critical errors that result in improper approvals or denials of firearms transfers."¹¹ By the time seasonal technicians become proficient, the busy season is complete. The Department has also tried using part-time personnel. Both seasonal and part-time personnel help manage turnaround times, but commit a "higher than acceptable number of critical

¹¹ OSPB request, pg. 6

errors” and are generally less productive. However, the Department was unable to provide error rate statistics.

The requested FTE are basically seasonal because they are term-limited. However, this arrangement provides flexibility for both the CBI and the JBC. The requested FTE will be full-time and fully-trained by the time their term-limit comes up. If transaction volumes do not subside, the Department has indicated that it may submit a budget request to retain some or all these staff for FY 2021-22. The Department estimates that doing so would save close to \$325,000 in hiring and training costs, relative to an alternative of using temporary staff for FY 2020-21 and then hiring permanent staff for FY 2021-22.

If transaction volumes subside, no further JBC action is necessary because the funding for this request will expire at the end of the current fiscal year. If the Department submits a budget request to keep some or all of these FTE, the JBC will have an opportunity to reassess whether the FTE are necessary on an ongoing basis.

Looking ahead to FY 2021-22

As explained above, there is good reason to assume that the October 2020-March 2021 period will be busier than most busy seasons. If the Department submits a request to retain these FTE in November 2020, or in January 2021 as a budget amendment, the data will likely show that transaction volumes are still high. The spring and summer months are traditionally slower, so they will be a better indicator that high volumes may be sustained through FY 2021-22. If these FTE are retained for FY 2021-22 and transaction volumes drop to normal levels, the CBI may have to increase the fee to maintain support that level of staffing.

The following table shows JBC staff estimates in a scenario where 20.0 FTE (15.0 FTE for a full year) are requested and approved for FY 2021-22, but revenue for the Fund returns to normal levels. If that were to happen, the Fund could be about \$400,000 short. To break even, the fee would have to be increased to \$11.54.

INSTANT CRIMINAL BACKGROUND CHECK FUND FY 2021-22 SCENARIO	
CASH FLOW	AMOUNT
FY 19-20 Ending Balance	\$1,432,919
FY 20-21 Estimated Expenditures	(4,518,156)
FY 20-21 Estimated Revenue	5,729,141
FY 20-21 Ending Balance	\$2,643,904
JBC Staff Recommendation	(1,035,509)
FY 20-21 Ending Balance (with approval)	\$1,608,395
FY 21-22 Estimated Expenditures (FY 20-21 expenditures + full cost of 20.0 FTE) ¹²	(5,925,687)
FY 21-22 Revenue (based on normal transaction volume) ¹³	3,926,722
FY 21-22 JBC Staff Estimated Ending Balance	(\$390,570)

¹² Expenditures calculated by assuming the same level of expenditures as FY 20-21 plus the full cost of the requested 15.0 FTE for a full year (20.0 FTE). The full cost of FTE includes centrally appropriated costs, Medicare, and PERA. These figures are found in OSPB’s request and calculated for 20.0 FTE.

¹³ Normal transaction volume is the average number of transactions for FY 2017-18 through FY 2019-20: 377,751. If anything, this estimate is high because it includes March through June 2020, which saw unusually high transaction volumes.

APPENDIX A: BACKGROUND CHECK DATABASES

FBI	CBI Instacheck
The standard FBI NICS firearm background check accesses four criminal justice databases.	The Instacheck Unit accesses the four databases that serve as the standard NICS background check, as well as three state databases not available to the FBI.
<p>Interstate Identification Index (III)</p> <ul style="list-style-type: none"> Fingerprint based state criminal history records <p>National Crime Information Center</p> <ul style="list-style-type: none"> Name based records, warrants, protection orders, etc. <p>National Instant Criminal Background Check System (NICS)</p> <ul style="list-style-type: none"> Federally prohibited persons generally not discoverable in III or NCIC <p>Immigration and Customs Enforcement (ICE) Database</p> <ul style="list-style-type: none"> Verify immigration status 	<p>Interstate Identification Index (III)</p> <ul style="list-style-type: none"> Fingerprint based state criminal history records <p>National Crime Information Center</p> <ul style="list-style-type: none"> Name based records, warrants, protection orders, etc. <p>National Instant Criminal Background Check System (NICS)</p> <ul style="list-style-type: none"> Federally prohibited persons generally not discoverable in III or NCIC <p>Immigration and Customs Enforcement (ICE) Database</p> <ul style="list-style-type: none"> Verify immigration status <p>Colorado Judicial Database</p> <ul style="list-style-type: none"> Domestic protection orders, felony convictions, juvenile felony adjudications, domestic violence convictions, warrants. <p>Colorado Crime Information Center (CCIC)</p> <ul style="list-style-type: none"> Domestic protection orders, warrants, Colorado criminal histories not shown in NCIC or Interstate Identification Index due to no fingerprints on record. <p>Division of Motor Vehicles</p> <ul style="list-style-type: none"> Verification of purchaser identity

Source: CBI