

# PERFORMANCE BASED CONTRACTING (PBC) FOR COLORADO COMMUNITY CORRECTIONS

## GENERAL ATTRIBUTES OF A PBC PLAN

GOVERNOR'S COMMUNITY CORRECTIONS ADVISORY COUNCIL



COLORADO DIVISION OF CRIMINAL JUSTICE  
OFFICE OF COMMUNITY CORRECTIONS

AUGUST 2015

## Background of Performance Based Contracting

In 2013, the staff of the Joint Budget Committee (JBC) of the Colorado General Assembly introduced the general concept of Performance Based Contracting (PBC). At the December 2013 staff briefing of the JBC, the Committee was briefed on the concept of PBC in Colorado Community Corrections as a potential issue for the upcoming budget hearings with the Colorado Department of Public Safety (CDPS) and its Division of Criminal Justice (DCJ). The staff presentation to the JBC offered the following general rationale for a PBC hearing agenda.

*Performance-based contracts reward contractors for producing better results but are seldom used because it is hard to measure performance. Current law and current contracting practice give community corrections boards little ability to enter into performance-based contracts with their community corrections programs. Legislative change, backed by a moderate appropriation, would enable such contracting. This legislation may prove to be a beneficial long term addition to statute or it may produce example contracts and data that serve as valuable input for a future performance-based budgeting initiative that centralizes contracting at the DCJ.*

### **SUMMARY:**

*Current law and current contracting practice give community corrections boards little ability to enter into performance-based contracts with their community corrections programs.*

- *Legislation to enable performance contracting between local community corrections boards and community corrections providers may prove to be a useful long term addition to statute or it may produce contracts and data that serve as valuable input for a future performance-based budgeting initiative that centralizes contracting at the DCJ.*

### **RECOMMENDATION:**

*Staff recommends that the Committee introduce a bill that enables performance contracting between local community corrections boards and community corrections providers.*

### **DISCUSSION:**

*Performance-based contracts reward contractors for producing better results. These contracts are widely acknowledged to be good idea, but they are often not used because of the difficulty encountered in measuring performance. Current Colorado community corrections contracts are seriously lacking when viewed from a performance contracting perspective.*

**In January 2014, the JBC requested that the CDPS respond to their inquiry about Performance Based Contracting. The JBC presented the following question for the CDPS Budget Hearing:**

*What does the department think of the JBC Staff performance-contracting suggestion? Are the local boards the correct people to administer this program if it is established? How do we ensure that the local boards' goals align with the General Assembly's goals?*

The CDPS provided a written response and oral testimony at the budget hearing and asserted:

*The Department believes that Performance Based Contracting (PBC) is an idea worth pursuing from several perspectives in community corrections:*

1. *It may acknowledge or reward superior performance*
2. *It may incentivize performance improvements*
3. *It may prevent sub-standard performance*
4. *It could provide a formal response to sustained sub-standard performance*

*The Department believes that such a structural and systemic change to community corrections contracting should be contemplated and planned carefully and methodically in order to avoid any unanticipated consequences or adverse collateral impacts. Due to the complex issues of PBC implementation, we believe it could take a year to sort out the practical issues. However, the Department agrees that the idea is worth pursuing.*

The CDPS presented several basic issues that should be explored in order to further consider a PBC model in Colorado Community Corrections. The primary issues, as presented by the CDPS were as follows:

1. Placing **emphasis on rewards** for desired performance over penalties for sub-standard performance
2. The use of **multiple metrics** to glean a comprehensive construct of *performance*
3. The use of **empirically meaningful metrics**
4. The use of **objective metrics**
5. The use of **appropriate benchmarking** between periods of measurement
6. The use of **research-based instrumentation**, where possible
7. The use of an **effective magnitude of incentives** for providers
8. Acquiring the necessary **contractual and/or statutory infrastructure**
9. Acquiring the necessary **technical infrastructure**
10. Acquiring the necessary **administrative infrastructure**

In March 2014, a bill was drafted to introduce PBC into Colorado Community Corrections. At initial presentation of the bill draft, the JBC acknowledged the PBC concept as a meritorious issue, yet one that needs careful consideration and planning before formal introduction of a bill. Legislators suggested that the CDPS assemble a business plan for PBC implementation for future consideration by the General Assembly.

In September 2012, the Executive Director of the Colorado Department of Corrections (CDOC) submitted a letter to the Governor's Community Corrections Advisory Council. The letter asserted his request for the Council as follows (emphasis added):

*During the June 7-8, 2013 Cross Governmental Sentencing and Corrections Policy Forum, the Colorado team identified a community corrections issue that we believe warrants in-depth examination.*

*Community Corrections Issue: **Conduct a broadly focused cost/benefit analysis of community corrections services to ensure that programs are aligned with evidence-based practices, service delivery is based on risk/need principles and sound design/operation is in place.***

*The objective of this issue is to seek opportunities to improve community corrections outcomes and reduce offender recidivism, both short-term and long-term.*

In January and April 2014, the concept of PBC implementation in community corrections was addressed with the Governor's Community Corrections Advisory Council. In both meetings, *Council* members asserted their general support of PBC in community corrections. A subcommittee of the *Council* was formed in June 2014 to assemble the main or critical elements of a PBC implementation. The subcommittee is formed of the following individuals:

#### Appointed Council Members

- **Shannon Carst** (President, CMI) – Council Vice Chair
- **Marc Condojani** (Office of Behavioral Health)
- **Greg Mauro** (Denver Community Corrections Board)
- **Doug Erler** (Weld County Community Corrections Board)
- **Tom Giacinti** (Jefferson County Community Corrections Board)

#### Ancillary members

- **Linda Angell** (Adams County Community Corrections)
- **Michelle Monzingo** (COMCOR, Inc)
- **Brad Kamby** (Arapahoe County Justice Services)
- **Kevin Duckworth** (Community Education Centers)
- **Glenn Tapia** (Colorado Division of Criminal Justice)

The information that follows summarizes the work of the Council regarding Performance Based Contracting. The Council reviewed and approved this document, as edited, on August 7, 2015 with a unanimous vote. The Council acknowledges that, if implemented, this document will reflect the intent of the Council but changes may be necessary as formal implementation commences depending on the will of the Governor and the General Assembly.

The *Council* subcommittee met over several meetings to discuss the desired state of PBC in community corrections. From these discussions, several general principles were gleaned. These principles should generally guide the overall PBC model for Colorado Community Corrections.

### Core Principles of Performance Based Contracting

**PRINCIPLE 1:** The Performance Based Contracting (PBC) model should have primary basis in the desired future state of Colorado Community Corrections rather than its current state.

*(The group has been thinking futuristically and with a 10-15 year scope of overall system advancement)*

**PRINCIPLE 2:** The current structure of Colorado community corrections and its historical roots have value. However, current practices and traditions should not be a barrier to achieving the future desired state of the system.

**PRINCIPLE 3:** The PBC model should be used primarily as a *tool* for system advancement and recognition of superior performance. While the PBC model should contain provisions for addressing low performing providers, and contractual sanctions, its primary function is not punitive.

**PRINCIPLE 4:** Public Safety is comprised of three interdependent domains: 1) Compliance with core security functions, 2) Adherence to the Principles of Effective Intervention (program quality), and 3) Program efficacy using risk-informed outcomes. All measures used in the PBC model should center on compliance with core security *Standards*, risk-informed outcome measures, and adherence to the *Principles of Effective Intervention* (National Institute of Corrections). Together these three (3) areas comprise the general definition of *Public Safety* for the purposes of PBC design and implementation.

**PRINCIPLE 5:** The PBC process and its measures should be fair, objective, and transparent to all boards, providers, and general stakeholders of Colorado Community Corrections.

**PRINCIPLE 6:** The PBC model should emphasize a state and local partnership.

**PRINCIPLE 7:** Overall system advancement and performance improvement is a long-term endeavor. The baseline results should be viewed as a starting point from which the Colorado community corrections system can grow over a period of time. Stakeholders should interpret the baseline results accordingly.

## Performance Measurement Areas (Use of Objective, Multiple, and Meaningful Metrics)

In the January 2014 budget hearing, the CDPS provided the following response to the JBC inquiry about Performance Based Contracting related to the use of objective, multiple and meaningful performance metrics.

*Adequate time and thought should be invested to determine the specific metrics and measurement process. Having well-defined and meaningful performance metrics is a critical element to success in a PBC model for community corrections. The Department believes it is best to use a robust constellation of several metrics to indicate overall program performance. As pointed out in the JBC staff analysis, using only a single performance indicator such as recidivism reduction or success rates can be misleading. It is also important to have some metrics that are in the direct control of the provider and empirically meaningful. For example, a provider only has so much control over the escape/walkaway rate or the recidivism rate. But they do have direct control over the implementation of specific practices (Evidence Based Practices) that are designed to increase success rates and reduce recidivism. It is also very important to add in objective metrics that cannot easily be distorted by a provider, staff, or the measurement process itself. For example, if the State wants to incentivize programs to take higher risk offenders, it is possible to distort offender risk/need assessment scores in order to earn the incentive.*

The PBC model will use three (3) general performance measurement areas that, when combined, comprise the overall construct of *provider performance*. Together these 3 areas comprise the general definition of *Public Safety* for the purposes of PBC design and implementation.

### **AREA 1: Adherence to Principles of Effective Intervention and Other Research-Driven Principles**

This area should be given the highest weight in the overall PBC model and should comprise approximately 50% of the providers overall performance rating. The Principles of Effective Intervention are those that are most likely to impact community corrections outcomes including risk reduction, program success, and post-release recidivism. These practices are in direct control of the provider which means they directly improve performance over time through advancement of their practices. This area also captures the efforts currently underway with implementation of programs that are informed by research and the Principles of Effective Intervention.

The DCJ should develop an evaluation tool that is an evolution of the current Risk Factor Analysis. This tool should assess a program's adherence to evidence-based principles and practices and should adequately assess program quality and strengths to accept special client populations particularly for very high risk offenders. The *Program Assessment for Correctional Excellence* (PACE) tool should be rooted in best practice principles. The individual metrics themselves would not be scientific; but rather would be developed as a baseline for future study.

The DCJ should be funded to procure professional consultation and temporary staff to review the PACE tool; to test the measurement process; and to ultimately complete a statewide baseline measurement of program adherence to the Principles of Effective Intervention. The consultant should be a reputable firm that is established in modern criminology and experienced with formal measurement of evidence-based practices and programs in correctional settings. The consultant will also determine the appropriateness of the individual metrics for future measurement and study.

Exhibit A is a working draft of the Program Assessment for Correctional Excellence (PACE). The PACE tool, as currently envisioned measures program practices along the following general categories:

- **Category 1: Scientific and Strategic Implementation** *(from the National Implementation Research Network)*
- **Category 2: Assess Actuarial Risk and Need** *(from the Principles of Effective Intervention)*
- **Category 3: Enhance Intrinsic Motivation** *(from the Principles of Effective Intervention)*
- **Category 4: Target Intervention/Responsivity** *(from the Principles of Effective Intervention)*
- **Category 5: Skill Train with Directed Practice** *(from the Principles of Effective Intervention)*
- **Category 6: Increase Positive Reinforcement** *(from the Principles of Effective Intervention)*
- **Category 7: Respond to Violation Behavior with Effective Practices** *(from the Center for Effective Public Policy)*
- **Category 8: Engage Ongoing Support in Natural Communities** *(from the Principles of Effective Intervention)*
- **Category 9: Measurement Feedback/Measure Relevant Factors** *(from the Principles of Effective Intervention)*

## **AREA 2: Core Security Measures**

This area will be given the second highest weight in the overall PBC model and should comprise approximately 25% to 40% of the providers overall performance rating. The Core Security Measures are those Standards that are most likely to result in base practices that indicate safe and secure supervision and control of community corrections offenders. These measures do not necessarily directly impact offender outcomes; but rather, are core necessities of supervising higher risk and higher need felony offenders in a community-based setting. Similar to Area 1, these practices are in direct control of the provider which means they directly improve performance over time through improvement of their core security practices. This area captures those *Standards* that are currently prioritized in the existing DCJ audit process.

These measures will be evaluated by local community corrections board staff and the DCJ audit team in periodic performance audits of community corrections programs. This is one area that emphasizes the state and local partnership that is a core principle of the PBC model. Boards shall use state-approved audit processes with training and support from the Division of Criminal Justice. Judicial districts with multiple providers shall use internally consistent audit processes to assure equity and fairness among all providers.

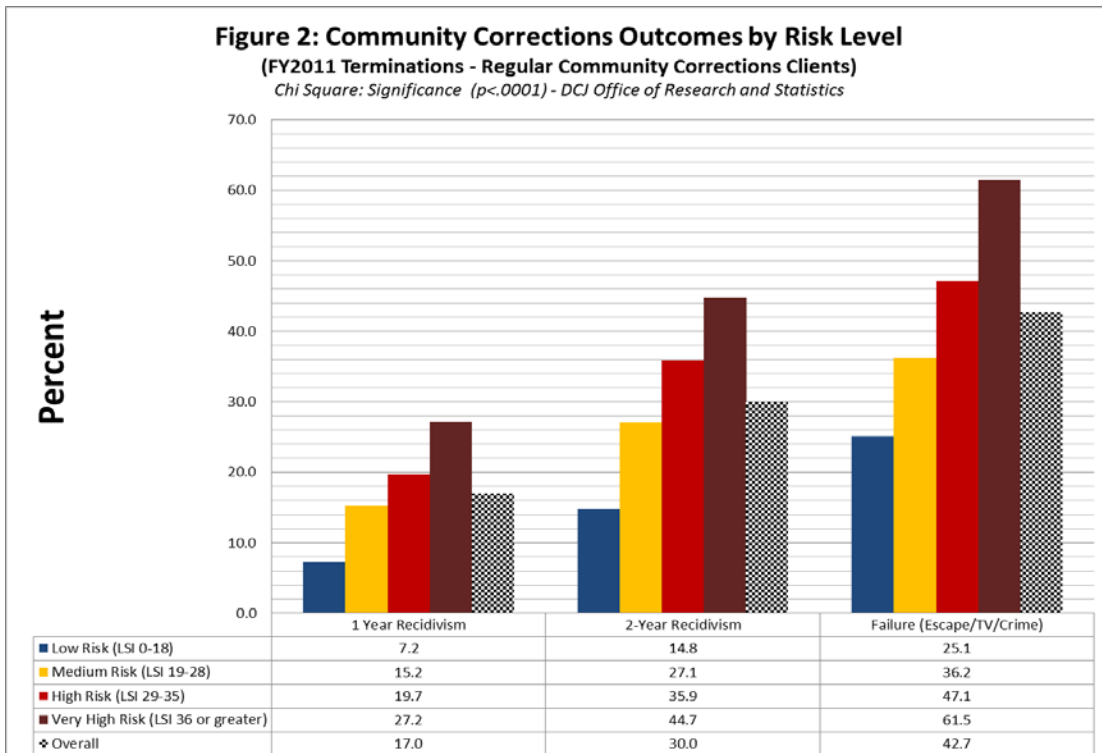
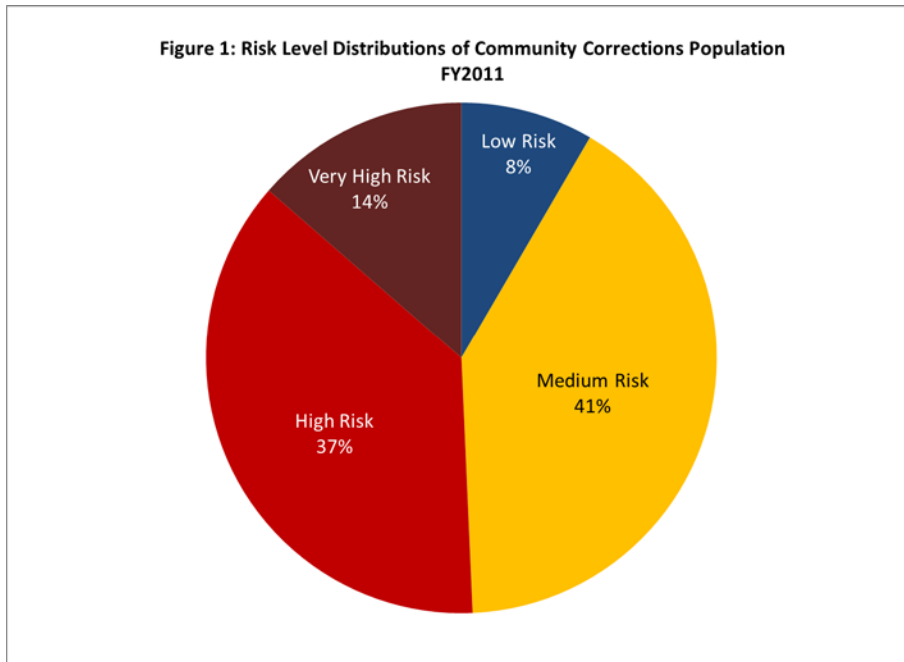
The core security measures, as currently envisioned, includes measurement of the following areas of the Colorado Community Corrections Standards:

1. Random Off Site Monitoring (4-160)
2. Contraband (4-220)
3. Passes (4-170)
4. UA Compliance (Avg of 4-100, 110, 120, 130)
5. Medications (4-040)
6. Ethical Relationships (2-070)
7. Job Search Accountability (4-161)
8. Self-Audits of Program Operations (3-190)
9. Furloughs (4-171)
10. On Ground Surveillance (4-181)
11. Random Headcounts (4-200)
12. Disciplinary Hearings (3-120)
13. Security Staffing Pattern (4-240)
14. Escape (4-260)

### AREA 3: Risk-Informed Outcomes

This area should be given the lowest weight in the overall PBC model and should comprise less than 25% of the providers overall performance rating. Risk-Informed Outcome Measures are those that consider offender outcomes such as success rates, program failure rates, and recidivism rates; yet those that also take into consideration the risk level of the offenders being supervised in a community corrections facility. The design of these measures is driven by recent statistical analysis and general national research on the relationship between the scores on the Level of Supervision Inventory (LSI) and various outcome measures that currently used for Colorado Community Corrections.

Figures 1 & 2 provide the general statistical rationale for the *risk-informed outcome measures* proposed in the PBC model:



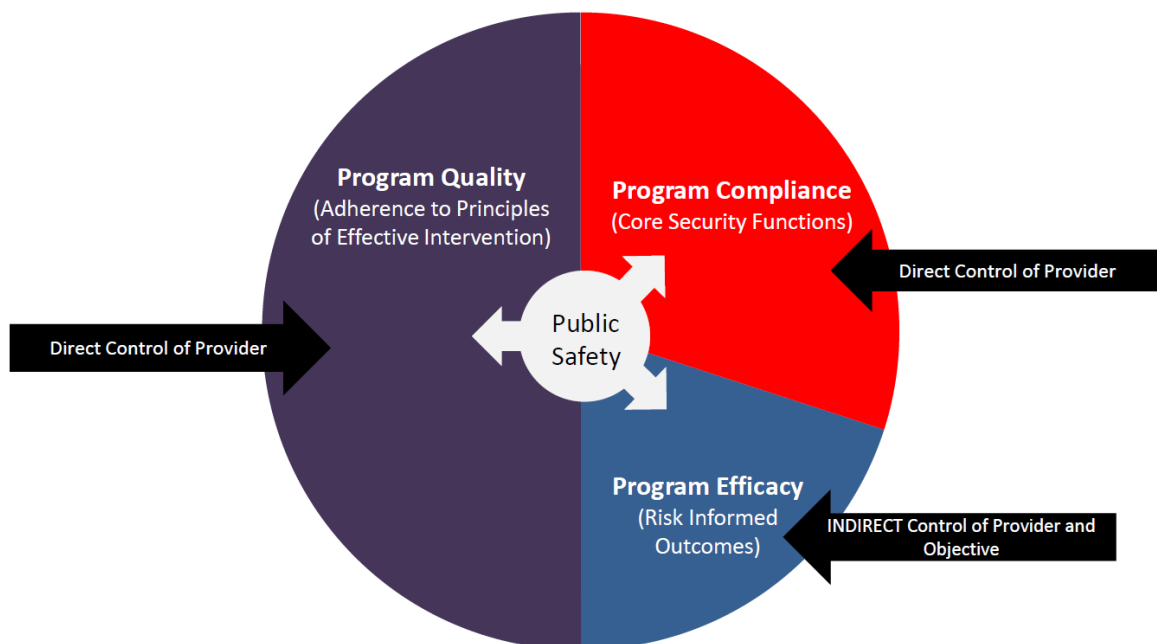
In contrast to other measures in the proposed PBC system, these measures are fully objective and are not in the direct control of the provider. Providers cannot directly impact these measures without first addressing the other two areas of the PBC model. This element is important to have a distal or more long-term outcome measure in the overall PBC model. The use of objective and long-term outcome measures such as these provide a careful balance to the performance measures that are in direct control of the provider. Generally speaking, the PBC model should have an appropriate balance of metrics that are in direct control of the provider and those that are more eventually impacted by provider practices on a long-term basis.

This area also attends to the general Vision Statement of the Council which emphasizes that *community corrections will stop the cycle of recidivism by providing evidence based treatment and education to offenders according to their individual needs; by measuring success through lower recidivism and more effective integration into an informed and supportive community; encouraging success via effective assessment, supervision, and rehabilitation; and being continually focused on overall public safety and individual accountability.*

The risk-informed outcome measures, as currently envisioned includes measurement of the following statistics:

1. **Risk-Informed Recidivism**
  - Formula: Facility Recidivism Rate / Average LSI Score of Offenders in Facility
2. **Risk-Informed Success Rate**
  - Formula: Facility Successful Completion Rate x Average LSI Score of Offenders in Facility
3. **Risk-Informed New Crime Rate**
  - Formula: Facility New Crime Rate / Average LSI Score of Offenders in Facility
4. **Risk-Informed Escape Rate**
  - Formula: Facility Escape Rate / Average LSI Score of Offenders in Facility

## General Definition of Overall Performance





## Use of Research Based Instrumentation Where Possible

In the January 2014 budget hearing, the CDPS provided the following response to the JBC inquiry about Performance Based Contracting related to the use of research-based instrumentation where possible.

*Considering the importance of the metrics to be used in a PBC system, it may be prudent to develop a research-based instrument that uses metrics that are specific, measurable, realistic, time-bound, and empirically meaningful to risk reduction, public safety, and recidivism reduction. It may also be prudent to enlist professional consultation to develop a well-designed and research-based instrument to measure program performance for a PBC system.*

**Exhibit A** is a working draft of the Program Assessment for Correctional Excellence (PACE). The PACE tool, as currently envisioned will form the basis for the future DCJ audit process and will be used to develop evidence-based professional standards for Colorado Community Corrections. The PACE tool and its scoring guidelines are being drafted collaboratively between staff in the Office of Community Corrections and representatives of boards and providers in Colorado through the Evidence-Based Practice Steering Committee.

## Use of Multiple Performance Categories

The Council subcommittee discussed the need to have several categories of performance. Currently the Risk Factor Analysis uses four performance (4) categories. The subcommittee and the DCJ believe this model is inadequate to distinguish differences among programs in terms of overall performance. The proposed PBC model should use six (6) types of programs as indications of different performance categories. The use of “levels” rather than “types” is discouraged. As currently envisioned, programs should be placed into one of 6 types based on the general outline below. The labels herein are only conceptual and would need further development upon formal implementation of a PBC initiative.

Type	General Category
Type 1	<b>1 Year Probationary Status</b> AND/OR Imminent Risk of Contract Termination
Type 2	<b>2 Year Probationary Status</b> Possibility of Contract Termination and Frequent Monitoring
Type 3	<b>Minimally Acceptable Program</b> Targeted for Immediate Improvement and Frequent Monitoring
Type 4	<b>Generally Acceptable Program</b> Opportunity for Long Term Advancement
Type 5	<b>Strong Program</b> Preferred for High Risk/High Need or Specialized Offenders
Type 6	<b>Superior Program</b> Priority for High Risk/High Need or Specialized Offenders

Rather than incentivizing performance on specific individual measures, the PBC model should incentivize overall performance improvement along the performance categories. A Type 3 program, for example, would be incentivized to achieve Type 4 status. A Type 5 program would be incentivized to achieve Type 6 status. Generally speaking, Type 1 and 2 programs would be funded at the lowest levels and would be at risk of contract termination. Overall funding for programs would be progressively higher for achieving Type 4, 5, and 6 status. Type 3 status should be viewed as a minimally acceptable performance category and would be funded at a basic level.

Funding for reaching Type 4, 5, and 6 status would be on an ongoing basis, unless and until a program is re-evaluated and is placed into a different performance category. Incentive funds would be increased if a program is re-evaluated into a more advanced performance category such as Type 5 or 6. However, as an incentive to maintain strong performance, incentive funding would be decreased if a program is re-evaluated into a lower performance category.

## Review and Appeal of Performance Ratings

The existing DCJ audit process contains provisions for providers to review draft audit results prior to final publication. Prior to that stage, providers are given multiple opportunities to provide documentation of compliance during the field-level data collection work with DCJ staff auditors. While the PBC process is driven only partially by audit methods, it should contain similar provisions for the following:

1. Providers should be afforded opportunities to produce documentation or direct observation of processes related to the PBC performance metrics during field-level evaluation.
2. Providers should be afforded the opportunity to review draft results before they are published
3. The PBC process should contain a provision for appeals of performance ratings

NOTE: The subcommittee considered the issues related to rural areas having less access to treatment and training opportunities. After much deliberation, it was ultimately decided that rural areas should have the same measures as urban areas – despite local issues that may impede access to treatment or EBP resources.

## Use of Penalties but Emphasis on Rewards

In the January 2014 budget hearing, the CDPS provided the following response to the JBC inquiry about Performance Based Contracting related to the use of penalties but an emphasis on rewards for the PBC model.

*Theoretically speaking, a PBC system that only penalizes sub-standard performance (or a system without incentives for superior performance) would yield only minimum rather than superior performance among providers. In general (with individuals), punishments and penalties do not yield sustained desired performance. Rather, punishments and penalties only minimally control undesired performance, and only for those that have a system of effective controls in place. With this in mind, it would seem best to have a system that emphasizes rewards or incentives over penalties. A comprehensive system should reward programs that meet specific and desired performance metrics and should respond effectively to programs that do not at least meet minimum standards.*

### PENALTIES: Contract Sanctions

The PBC model, as currently envisioned would allow the DCJ to place contractual sanctions on programs that do not meet basic public safety minimums or that have demonstrated inability to improve sub-standard performance over time. The current community corrections contain the following language to contractual responses to sub-standard performance:

*Non-compliance with Standards may result in:*

- 1) *Reduction of compensation as specified in the Allocation Letter, sample form attached, marked as Exhibit "B" and incorporated herein by reference;*
- 2) *Implementation of a corrective action plan developed in conjunction with a professional consultant with subject matter expertise in Colorado community corrections. The consultant must be approved by the Contractor and the State. The consultant services shall be at the expense of the program or provider.*
- 3) *Implementation of an increased staffing pattern that ensures adequate offender supervision and provision of services.*
- 4) *Cessation of offender placements in the program;*
- 5) *Execution of a competitive bid process, coordinated with the local community corrections board, to consider alternate program providers;*
- 6) *Cancellation of the contract;*
- 7) *Cancellation of the subcontract.*

The current contract also contains provisions for designating a provider ineligible to receive state funds for community corrections services. The current contract language reads as follows:

*Notwithstanding any other provision of this contract, the State may on an emergent basis and after appropriate inquiry designate any program or provider receiving funds pursuant to this contract as ineligible to continue to receive such funds when it is demonstrated either:*

- *that the current operation of the program or provider constitutes an imminent and significant threat to public safety;*  
*OR*
- *that the program or provider has demonstrated neglect, disregard, or inability to sustain compliance with the Colorado Community Corrections Standards.*

Generally speaking, the PBC model should be constructed to align with these contractual provisions.

#### REWARDS: Financial Performance Incentives

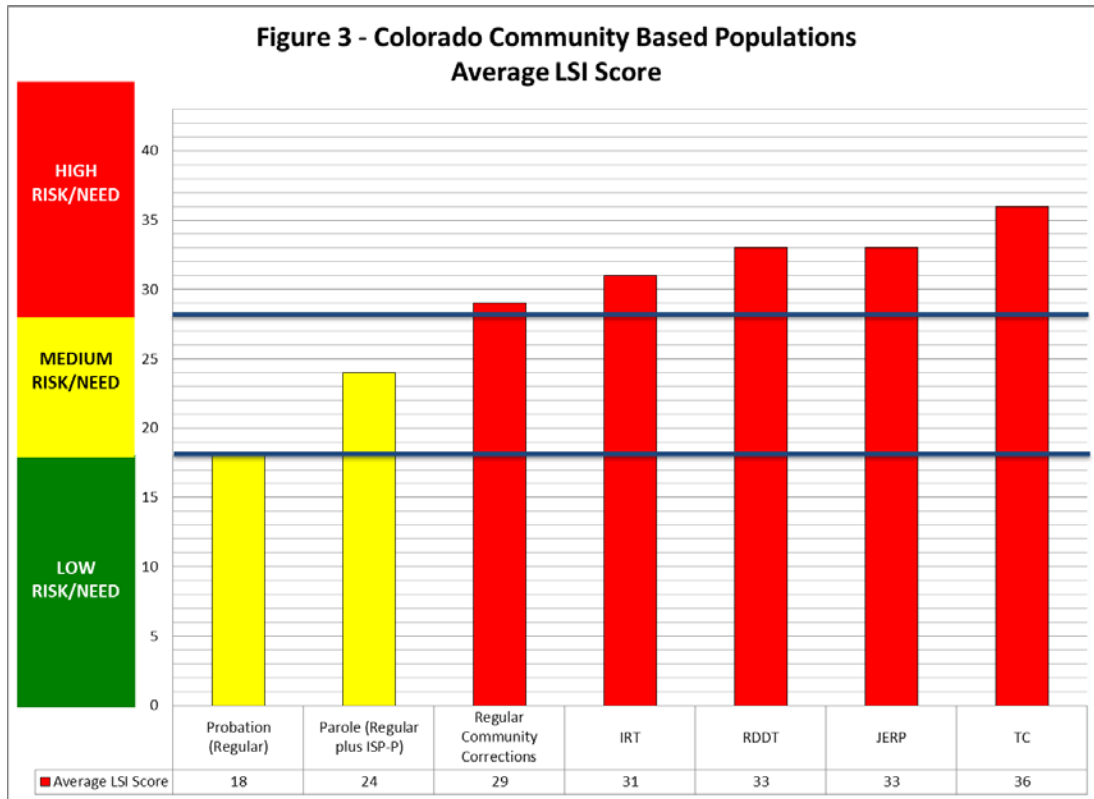
Given the generally rare need to enforce contract sanctions on low performing programs, the rewards structure mentioned previously under *Use of Multiple Performance Categories* should be the primary emphasis for the PBC model. The financial incentives to providers should be one of multiple incentives. As currently conceptualized, the highest performing providers would be funded at the base per diem rate, as with all other providers; but would also receive an additional sum of funds for reaching advanced levels of overall performance. This sum would be *base building*, or annually allocated for as long as the provider stays in their respective level of performance.

#### REWARDS: Explicit Preference for Specialized Contracts

In addition to the direct financial incentives to providers, Type 5 and Type 6 programs would be given explicit preference for specialized contracts in the state procurement process. The performance measures, as currently conceived, are based on overall public safety measures as defined by core security practices, adherence to research-based principles for effective interventions, and risk-informed outcome measures. These measures, as a whole, are very appropriate for awarding contracts that offer higher funding for serving higher risk and higher need offenders than regular community corrections offenders. Theoretically speaking, specialized contracts for high risk/high need offenders should be offered to providers that have the core infrastructure for serving that type of programming. This could have other indirect impacts on the outcomes for specialized offender populations such as Intensive Residential Treatment (IRT), Residential Dual Diagnosis Treatment (RDDT), Therapeutic Communities (TC), and Sex Offender Supervision and Treatment (SOST) Programs which occupy approximately 20% of the overall community corrections population and is a growing population in the field.

Conversely, in the event a provider with a specialized contract is evaluated as a Type 1, 2, or 3 program, the PBC process would allow the DCJ to reallocate those beds and the contract overall to higher performing programs. The PBC model also serves as an incentive to maintain high performance for providers that are also awarded specialized contracts with enhanced funding for high risk and high need offenders.

Figure 3 demonstrates that specialized populations in Colorado community corrections are assessed as higher risk and higher need when compared to the regular community corrections population, probation, and parole.



**REWARDS: Preference for Bed Allocations at the Local Level**

The PBC model, as currently envisioned, would allow community corrections boards to have an objective structure to allocate beds to providers based on performance. In jurisdictions with multiple providers, boards can assign bed allocations in their subcontracts to higher performing programs that serve regular community corrections populations. While this is not a primary objective of the PBC model, it a tertiary benefit of employing a PBC model in community corrections. Of course, considerations other than performance must be taken into consideration at the local level when making bed allocation decisions. Issues such as gender specific programming, physical capacity of programs, and local zoning restrictions must balance performance-based allocation decisions.

**Overall Rewards Structure**

In general, and overall, the PBC model as proposed would have clear emphasis on rewards over penalties by having multiple levels of incentives providers that are both direct and indirect benefits of achieving higher levels of performance by:

1. Reserving penalties only rare situations where providers demonstrate public safety risk or inability to reach or sustain basic compliance with the *Colorado Community Corrections Standards*.
2. Offering base-building and direct financial incentives for achieving higher levels of performance
3. Intentionally and directly prioritizing high performing providers for specialized contracts that offer enhanced funding for higher risk and higher need offenders.
4. Offering local community corrections boards the opportunity to allocate local level bed distributions to higher performing programs

## Magnitude of Incentives for Providers

In the January 2014 budget hearing, the CDPS provided the following response to the JBC inquiry about Performance Based Contracting related to the magnitude of incentives for providers:

*If a system of incentives is created, some careful thought has to be put into the gravity or weight of the incentive. If the incentive to get an "A+" score is too small, it could actually be more an incentive to score a "B" or a "C." For example, Pennsylvania has established a 0.5% rate increase for "A+" performance. Suppose that .5% results in a \$5,000 increase to a provider's revenue in a given year. If being an "A+" costs that provider \$9,500, it actually costs them (\$4,500) to be an A+ level. So the gravity or weight of the incentive should be enough to at least cover the costs of the targeted level of performance. Having too small of an incentive can unintentionally incentivize mediocre or standard performance.*

The Council subcommittee discussed this issue over the course of its work. The subcommittee believes this issue to be important enough to consider carefully after the baseline performance measurement is complete. In order to determine the desired magnitude of the incentives, providers and the DCJ must first know the following:

- The actual and final performance metrics to be utilized over the long term
- Based on the solidified performance metrics, an approximated cost of achieving Type 4, 5, and 6 categories
- The frequency of evaluations that may occur based on the staff intensity of the measurement process and the staffing resources of the Office of Community Corrections and local community corrections boards.

Therefore, the subcommittee is proposing a phased approach to PBC design and implementation. Phase I will be to develop a baseline measurement of overall system performance. Phase II will be to design and implement performance incentives for providers. This approach will be explained in further detail below.

Only for the purposes of illustration, the current PBC incentive funding model might look as follows. **The amounts herein were made with no formal cost analysis and without formal consideration of efficacy. The amounts used herein are for basic demonstration only and should not be understood or interpreted as actual incentive amounts.** The Council believes that payments to facilities for performance improvements should be transparent. The providers should share information that documents how they invested the performance funds.

Type	General Category	Incentive Funding (Demonstration Only – Not Actual Amounts)
Type 1	1 Year Probationary Status	None
Type 2	2 Year Probationary Status	None
Type 3	Minimally Acceptable Program	Base Funding Only – No Additional Incentive Funding
Type 4	Generally Acceptable Program	\$50,000 Payment Per Facility
Type 5	Strong Program	\$100,000 Payment Per Facility
Type 6	Superior Program	\$200,000 Payment Per Facility

## Appropriate Benchmarking

In the January 2014 budget hearing, the CDPS provided the following response to the JBC inquiry about Performance Based Contracting related to appropriate benchmarking of performance results:

*It is also important to establish metrics that have appropriate benchmarks between evaluation periods. Appropriate and reasonable benchmarking will need to be worked out very thoughtfully and carefully.*

The Council subcommittee believes this to be an important part of Phase II of PBC implementation. In Phase I, the DCJ should set a baseline level of performance and work to improve over time. Performance benchmarks cannot reasonably set until a baseline analysis is completed, published, and analyzed. The group has concerns that setting the initial baseline may be time consuming and will require expertise and staff assistance outside the current level of OCC resources. The subcommittee strongly believes that the DCJ should publish statewide performance results once the baseline measurements for all programs is complete and that the baseline results are viewed as a starting point for long-term system advancement. **(See Core Principle 7)**

## Local Level Flexibility (State/Local Partnership)

In the January 2014 budget hearing, the CDPS provided the following response to the JBC inquiry about Performance Based Contracting related to the state and local partnership aspect of PBC implementation:

*Section 17-27-103, C.R.S includes the following provision for community corrections boards:*

*A community corrections board may establish and enforce standards for the operation of any community corrections program located within the physical boundaries of the jurisdiction of the governing body or bodies which created such board. The standards established by a community corrections board may exceed, but shall not conflict with, standards established for community corrections programs by the division of criminal justice of the department of public safety pursuant to section 17-27-108. The community corrections board shall, in coordination with state and local agencies, monitor community corrections programs within the jurisdiction of such board and oversee compliance with state and local standards.*

*The Division of Criminal Justice works in partnership with local community corrections boards to fund, regulate, and provide technical assistance to community corrections providers. The Department believes that most community corrections boards – especially those with dedicated staffing, would align themselves with a PBC system. In fact, several community corrections boards have already initiated local policy to require providers to adhere to evidence based principles and practices. Specifically, the boards in Denver, Arapahoe, Adams, and Pueblo counties have recently placed language into their subcontracts with providers that require that providers take assertive steps to utilize and implement evidence based programs and practices. They are limited, however, in their ability to offer formal incentives or rewards for programs who are working towards evidence-based recidivism reduction.*

*Community corrections boards are extensions of local government. With that in mind, the Department believes that the Division of Criminal Justice and local community corrections boards share common goals. Both the state and local governments desire effective and high performing programs that reduce risk and recidivism while protecting public safety. The Department believes it can work collaboratively with local community corrections boards to develop, implement, and sustain a PBC system for community corrections.*

The Council subcommittee discussed the desire to capitalize on the current state/local partnership model in Colorado community corrections that emphasizes the concept of *Local Support/Local Control*. The PBC model should contain flexibility at the local level to include measures that are of local interest, yet aligned with the three (3) core aspects of the PBC model (core security, adherence to effective interventions, and risk-informed outcome measures). The committee recommends the following aspects to be included in the PBC model for community corrections:

- Local boards can apply to the DCJ or the Governors Community Corrections Advisory Council to substitute a percentage of incentive funding (up to 33%) with locally-based performance measures.
- Local board performance measures shall be aligned with the general categories of the state performance measures but need not be identical. Local level performance measures and the measurement process will be designed by board staff with assistance or consultation of the State, if necessary.
- The first baseline measurement of performance should be exclusively on state performance measures. The first model will focus on the core state measures in order to get the PBC process in place before localizing a portion of the performance incentive process. Therefore, local level performance measures will be added in Phase II of the overall PBC implementation
- Similar to the core community corrections funds, state incentive funds for performance will be locally administered to encourage local-level support of the PBC model.

As stated in the core principles ***the PBC model should emphasize a state and local partnership.***

## Contractual and/or Statutory Infrastructure:

In the January 2014 budget hearing, the CDPS provided the following response to the JBC inquiry about Performance Based Contracting related to the contractual and statutory infrastructure:

*There has to be some architectural arrangements for boards to award incentive payments to providers. At the most basic level, the master state contract will have to be aligned with individual board contracts to establish the authority to award the incentives and to enforce penalties. This will likely require some work with the Office of the State Controller and the CDPS controller as well. Statutory changes may be necessary to CRS 17-27-103 or related sections.*

### Use of Facility Payments Structure in Long Bill

The Council subcommittee agrees that the *Facility Payments* structure in the current (FY15) Long Bill is the most logical and effective method to award performance incentives to providers. The current per diem structure is inappropriate for this purpose due to many complex factors that inhibit successful implementation of performance incentives through daily per-diem payments. The *Facility Payments* structure allows for a flexible yet directed funding mechanism to incentivize performance that doesn't require extensive re-design of the Community Corrections Information and Billing (CCIB) System, local level billing practices, and the current structure of the Long Bill and overall community corrections appropriations.

### Statutory Revisions

The current statutes govern the frequency of DCJ audits, the requirements for the current Risk Factor Analysis, and the general content of the state and local audits. It is plausible that PBC implementation will require amendments to these statutes to provide explicit intention and authority to implement PBC as currently envisioned. In general, the DCJ and Council subcommittee believes that the PBC language should supplant rather than supplement the current requires for the Risk Factor Analysis.

### Permissive Statutory Language

The Council subcommittee agrees that PBC implementation requires explicit statutory authority for the State and local boards to enter into performance based contracts with providers. The statutory language should be permissive rather than compulsory; however, in order to attend to situations where PBC may not be plausible at the local level, or in times of economic recession.

### Contract Amendments in Phase II

The state contracts for community corrections as well as local contracts will need to be amended in order to facilitate effective delivery of incentive funding. The current master contract with local boards for community corrections is in place for FY15 through FY19; yet may be amended within that period. Most local board subcontracts are renewed annual with providers. The task of executing formal contract amendments is most appropriate for Phase II of the overall PBC implementation once the baseline analysis is complete and published.

## Technical and Administrative Needs to Implement and Sustain PBC

In the January 2014 budget hearing, the CDPS provided the following response to the JBC inquiry about Performance Based Contracting related to the technical and administrative needs for implementation:

*Depending on the specific methods for PBC contracting and resultant payment processing, the policy may require changes to the Community Corrections Information and Billing (CCIB) system which is an electronic billing and information system used throughout the state community corrections system. Currently the CCIB system is structured to pay regular residential providers the same per diem rate regardless of their performance level. PBC implementation might require structural changes to this critical system. A PBC system may also require FTE (or partial FTE) at the state or local level in order to collect data on the performance metrics, execute any procedural duties related to contracting, and otherwise administer the PBC program.*

Implementation of PBC may, or may not, require additional resources at the state and local level. At the current stage of design, the committee cannot reliably estimate this aspect without first having experienced baseline performance measurement. Thus, this aspect is better and more reliably determined in Phase II of PBC implementation.

### Solicitation of Professional Consultation and Staff Assistance

Given current staff resources and statutory requirements for audits, it is estimated that it would take several years for the DCJ to administer the PACE instrument and the remainder of the overall PBC model to all providers in Colorado. This creates a long delay for the baseline measurement and provides unfair advantages to some providers who are measured in the later years of implementation and disadvantages for providers that are measured at initial onset of the PBC model.

The Council subcommittee universally agrees that professional consultation and temporary staff assistance is a value-added resource to the DCJ to develop and test the performance measures and to get a first baseline measurement. The costs of professional consultation is a worthwhile investment in order to start the PBC baseline with credentialed and experienced professionals. The benefits of professional consultation are as follows:

1. It can provide credible advice on the performance measures
2. It can provide credible advice on the performance measurement process
3. It allows for careful design of specific methods to capture data on the individual performance measures (e.g. file reviews, staff interviews, staff observation, client interviews, surveys, review of other materials such as video tape)
4. It is a temporary rather than permanent investment to get through Phase I of PBC design and implementation.
5. It allows for the DCJ and local boards to experience performance measurement, as currently envisioned, and to estimate any technical or administrative needs including staffing or shifting of staff resources
6. It allows for a more reliable estimate of the magnitude of incentives for providers that would be necessary to effect performance improvement
7. It allows for a completely objective and external baseline measurement while also training current DCJ staff to assess the performance measures consistently across all programs and with reliable methods
8. It also allows for a national rather than state level or local level perspective on PBC and its methods in general
9. It allows for the baseline measurement to be completed in 1 to 2 years rather than several years.



The Council subcommittee discussed several strategies to fund the PBC initiative. The general strategies recommended by the subcommittee are as follows:

1. **Use community corrections reversion funds** from one year to fund performance incentives for the following year. There is some concern that this could have the perception or actual result of discouraging spending on offender placements in order to leave room for incentive funding. This could be accomplished with a Long Bill footnote or other legal means that would allow for funds to be carried over from one fiscal year to the next and to be used for the purpose of incentive funding.
2. **Restore the board administrative funding** to a level of no less than 5% rather than the current level of 3.6% of community corrections placement appropriations. This would come with explicit expectation that a portion of funds would be used for incentive payment to providers. This would encourage local support of the PBC model and would align with the general statutory intent in C.R.S. 17-27-108 (2)(B)(III)(4) which reads (emphasis added):

*Prior to April 1, 2003, and on and after July 1, 2006, the division of criminal justice may authorize up to five percent of community corrections appropriations to be spent by units of local government and community corrections boards in support of administrative costs incurred pursuant to this article. On and after April 1, 2003, through June 30, 2006, the division of criminal justice may authorize up to four percent of community corrections appropriations to be spent by units of local government and community corrections boards in support of administrative costs incurred pursuant to this article. Such moneys for administrative costs may be applied to support functions authorized in section 17-27-103, to supplement administrative expenses of community corrections programs which have contracted with or are under the jurisdiction of a unit of local government, or to support other direct or indirect costs of involvement in community corrections.*

LIMITATION: This method may be a sustainable structure for Phase II implementation; however, it does not provide immediate resources to complete Phase I of the PBC model as proposed herein.

3. **Write a Justice Assistance Grant (JAG)** for Phase I of PBC design and implementation or at least to secure professional consultation, temporary staff assistance, and completion of a baseline performance measurement analysis.

LIMITATION: This method may be prudent for Phase I implementation; however, it does not provide a sustainable resource to implement Phase II of the PBC model as proposed herein.

The Council subcommittee suggests that the DCJ discuss the initial baseline measurement goal with some potential professional consultants to get a general, yet non-binding, estimate of the cost of Phase I implementation. Potential consultants in this regard are as follows:

- Faye Taxman (George Mason University)
- Ed Latessa (University of Cincinnati)
- Council of State Governments Justice Center (Washington D.C)

The Council subcommittee also agrees that both security and case management staff within a community corrections program should have adequate training and understanding of scientific and effective practices for managing offenders. There is value in assuring that both security and case management positions have effective working knowledge and skills of working with evidence-based interventions.

## Phased Approach to Design and Implementation

In the January 2014 budget hearing, the CDPS provided the following response to the JBC inquiry about Performance Based Contracting related to careful implementation:

*The Department believes that such a structural and systemic change to community corrections contracting should be contemplated and planned carefully and methodically in order to avoid any unanticipated consequences or adverse collateral impacts*

The work of the Council subcommittee and the Division of Criminal Justice result in the following general phased approach to PBC design and implementation.

### Pre-Phase I

**GOAL: Obtain explicit Executive Legislative Branch authority to initiate Phase I of Performance Based Contracting**

**TIMEFRAME:** End of FY15

1. **OBJECTIVE:** Complete PBC Business Plan with Governor's Community Corrections Advisory Council
2. **OBJECTIVE:** Acquire CDPS Executive intent to initiate PBC Phase I AND/OR
3. **OBJECTIVE:** Respond to PBC Inquiry by the Joint Budget Committee or the General Assembly
4. **OBJECTIVE:** Determine formal method of initiation (e.g. Decision Item, Bill, etc)
5. **OBJECTIVE:** Obtain formal resources to complete Phase I

### Phase I

**GOAL: Develop a baseline measurement of overall system performance**

**TIMEFRAME:** Within 2 Years (upon acquisition of authority and initial resources)

1. **OBJECTIVE:** Acquire professional consultation to review the PACE instrument, scoring guidelines, and general content of performance measurement process
2. **OBJECTIVE:** Acquire staff assistance to the DCJ in order to evaluate all regular (non-specialized) programs with the PACE to complete a formal baseline analysis within 3-4 years.
3. **OBJECTIVE:** Complete and publish a statewide baseline report of overall system performance as defined herein
4. **OBJECTIVE:** Determine cut off points for the six (6) levels of performance and assign permanent labels for performance categories
5. **OBJECTIVE:** Determine the expected frequency of evaluations and re-evaluations for long-term performance measurement
6. **OBJECTIVE:** Determine process for review and appeal of performance ratings
7. **OBJECTIVE:** Begin process to estimate costs of performance improvements to boards, providers, and the state.
8. **OBJECTIVE:** Initiate strategic work to collaborate with DOC Community Parole Officers and Probation Liaisons to support the implementation of evidence based initiatives. Acquire upper level, mid-level, and line-level support for performance improvements.
9. **OBJECTIVE:** Complete necessary statutory revisions for Phase II implementation

## Phase II

### **GOAL: Design and implement performance incentives for providers**

**TIMEFRAME:** 1 to 2 Years (upon successful completion of Phase I)

1. **OBJECTIVE:** Estimate cost of performance improvements to providers and determine the magnitude of performance incentives to be used
2. **OBJECTIVE:** Estimate costs of ongoing training requirements for providers and develop a long term plan for sustainable staff development and training.
3. **OBJECTIVE:** Assess the degree to which a single payment method (e.g. Facility Payments appropriations) is the most effective means to award performance improvement funds. Stakeholders should determine the most judicious method to respond to variations in facility sizes and populations.
4. **OBJECTIVE:** Develop appropriate benchmarking based on the initial baseline results
5. **OBJECTIVE:** Develop local-level performance measures and process to apply for local level flexibility of performance incentive funding
6. **OBJECTIVE:** Execute formal contract amendments in the State master community corrections contract and local level subcontracts with providers for incentive funding and PBC measurement
7. **OBJECTIVE:** Determine technical and administrative needs for PBC implementation at the state and local levels
8. **OBJECTIVE:** Educate local governments and local-level criminal justice stakeholders on performance based contracting model to include: local board members, local appointing authorities, city and county attorneys, county commissioners, judges, local criminal justice advisory groups and boards, local referring agencies, prosecutors, defense attorneys, and non-profits. Obtain a formal review of PBC methods by county attorneys.

# EXHIBIT A

## Performance Assessment for Correctional Excellence (PACE)

[DRAFT DOCUMENT]