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mike krause

Throwing away money Colo. faces prison spending crisis

By Mike Krause

After several decades of an ambitious incarceration campaign, Colorado's booming prison population has run headlong into the fact that the state can spend only so much on corrections.

Simply put, Colorado faces a prison spending meltdown. This leaves taxpayers with the option of either paying for a hugely expensive long-term prison expansion project, or demanding that lawmakers make sentencing changes to slow the growth of the prison population a main public policy goal.

Colorado's current prison population is more than 21,000 inmates, and, according to the Colorado Department of Corrections, all currently available prison capacity will be full by the end of 2006.

This is a bit of a problem, as the Legislative Council staff is projecting more than 29,000 inmates by 2011, and the department says it needs an additional half-billion dollars to meet these projections.

So, Colorado needs to build, lease or otherwise pay for more than 1,000 new prison beds every year for the next five years. But even if we started building today, by 2011 Colorado would be in the same position - prisons full and more needed - because expansion plans are only pacing, and not exceeding, population projections.

In the long term, the picture is even grimmer. According to department, "With current sentencing structures, the inmate populations are projected to continue to rise."

It now costs roughly \$83,000 to build one new prison bed and another \$28,000 in annual operations costs. So, the state is looking at a \$100 million per year commitment.

Corrections spending is already more than 8.5 percent of state expenditures. Despite the breathing room provided by the passage of Referendum C, the state isn't exactly awash in money.

Christie Donner at the Colorado Criminal



(Post special / Eric Martines)

Justice Reform Coalition, who has been studying this issue for 13 years, notes that while large sentencing changes may yield minor results, smaller changes to the existing system can actually yield significant results.

A look at the main policies driving prison population growth shows there is room for adjustment.

In 1985, the legislature passed the "Meilke-Arnold" bill, which doubled the maximum penalties in Colorado's presumptive felony sentencing range. The average sentence length quickly increased by two-thirds, and Colorado's inmate population more than doubled in the following five years. It has more than doubled again since.

Of the more than 5,500 court commitments to Colorado prisons in 2004, more than 72 percent were classified as non-violent crimes, and two of the largest categories of these crimes show there is

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room to rethink length of sentences.

About 480, or more than 8 percent of commitments, were the ambiguous "escape/contraband" offenses, more than for either theft (including auto theft) or burglary.

It is well within the legislature's authority to more narrowly define a prosecutable escape/contraband offense and allow more judicial discretion for lower sentences. For instance, fleeing the state to avoid serving a sentence is clearly an escape, but should returning late to a community corrections program be a prosecutable offense with a consecutive mandatory minimum sentence?

A bigger segment - more than 680, or greater than 11 percent - were for inchoate offenses (a legal term meaning a crime was intended but not carried out) such as attempt or conspiracy to commit a non-violent crime.

In Colorado law, an attempt is sentenced in the felony class below the intended crime. But the federal sentencing guidelines, which also include very harsh mandatory minimum sentences, also allow for significant downward departures in sentencing for "minor" and "minimal" participation in inchoate offenses, Colorado lawmakers could take a cue from Washington and allow more judicial discretion for low-level participants in the inchoate category.

These are just a few, narrow examples, but given that almost three-quarters of commitments to Colorado prisons are non-violent offenders, it is hard to believe there is not some room to rethink sentences in an effort to offset some of the massive prison growth, and corresponding spending, generated by Meilke-Arnold.

You simply cannot have a prison population crisis without the war on drugs.

Drug incarceration has quadrupled over 20 years to more than 20 percent of the prison population, at an annual cost of \$100 million (or one new prison per year). In 2004, more than 1,300, or greater than 22 percent, of commitments were for drug offenses. For women it is worse: female drug offenders were a full 30 percent of female commitments.

The mass incarceration of drug offenders has never affected the availability of illegal drugs in Colorado, and like it or not, most drug deals are consensual, albeit criminal, transactions between adults.

Lawmakers could create a sentencing scheme for controlled substance offenses, separate from violent and property crimes, with significantly lower maximum penalties.

Moreover, it is actually time to rethink the concept of a drug felony. In 2003, the legislature lowered the penalty for simple use and possession (1 gram or less) of most illegal drugs to the Class 6 felony sentencing range.

In the following 18 months, Class 6 felony drug convictions increased 30 percent, while the more serious Class 4 and Class 5 felony drug convictions

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dropped a combined 29 percent. In other words, these use and possession offenses make up a significant number of felony drug convictions in Colorado, and are ripe for reclassification to

misdemeanor status.

In addition to slowing the growth of drug offenders taking up \$28,000-a-year prison beds, reclassifying these drug offenses would also slow the growth of the drug felon underclass created by mass incarceration. A felony conviction makes it very difficult for a person to find housing and work after completing a sentence.

Lawmakers may also want to consider spending even a fraction of the money on treatment as we do on incarceration.

The RAND Corporation study "Controlling Cocaine: Supply Versus Demand Programs" concludes each dollar spent on treatment reduces the cost of crime and lost productivity by \$7.46. By contrast, enforcement (arrest, seizure and incarceration) returns just 52 cents.

The RAND researchers can be off the mark by half and the result remains that treatment for drug-addicted offenders who commit other crimes to support a habit is more cost-effective strategy than a prison bed.

Whatever the case, the time has clearly come for Colorado to decide whether long sentences and using thousands of the criminal justice system's most valuable, and most scarce, assets - prison beds - is really the best way to deal with the drug issue.

Besides court commitments, an astonishing 2,300 people returned to prison in 2004 on technical parole revocations, accounting for all that year's prison population growth and then some.

Getting to fewer technical revocations is hugely important to getting a handle on prison spending since as the prison population grows, so will the mandatory parole population and, if nothing changes, the number of revocations.

Colorado also has discretionary parole. In 2005, only 61 inmates granted discretionary parole were actually released on their parole eligibility date, while more than 1,400 (or a year's worth of prison growth) were granted parole but then held until their mandatory release date. More than 8,400 applicants were deferred to future hearings. It is well within the legislature's authority to modify the parole board's discretion with regard to certain offenders or for some types of revocations, and to change parole eligibility dates. Those are legislative options that the Joint Budget Committee staff has already suggested.

As Donner notes, simply improving outcomes in parole can have a significant impact on prison growth: "The difference between \$387 million in new prison construction and none is 100 \[people\] per month."

In other words, getting to the point where 100 people a month are not sent back to prison, while ambitious, is a definable and worthwhile goal.

For instance, we can and should differentiate between relatively minor revocation infractions such as failing a drug test or not being able (as opposed to not wanting) to pay restitution, and a serious violation such as harassing the victim of the original crime.

This clearly means putting more resources into transitional services, as it is very difficult for people on parole to find housing and employment.

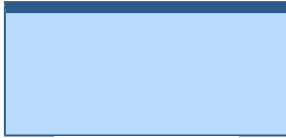
Parole costs less than \$4,000 per offender, while community corrections are a little over \$6,000. Compare that to \$28,000 for a state prison bed, and every offender who goes from prison to working and paying taxes is a net gain for the rest of us.

For lawmakers, the fear of being labeled "soft on crime" might make new spending of hundreds of millions of other people's dollars preferable to actually dealing with the ever-growing prison population.

However, this is not about being soft on anything, but rather about a willingness to take a hard look at huge problem that has been largely ignored for years.

There may also be any number of Colorado taxpayers who are just fine with a prison system crammed full of drug offenders, other non-violent offenders serving long sentences, and potential parolees.

But in the near future they might have to decide how much their taxes will go up, or what state functions they are willing to give up, in order to keep it this way.



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