

Prison Population Management Interim Study Committee

Members of the Committee

Representative Leslie Herod, Chair
Senator Julie Gonzales, Vice-Chair

Senator Robert Rodriguez
Senator Jerry Sonnenberg

Representative Serena Gonzales-Gutierrez
Representative Rod Pelton

Christie Donner, Executive Director, Colorado Criminal Justice Reform Coalition
Michael Dougherty, District Attorney, 20th Judicial District
Tristan Gorman, Colorado Criminal Defense Bar
Kristen Hilkey, Chairperson, Colorado State Board of Parole
Kazi Houston, Legal Director, Rocky Mountain Victim Law Center
Jagruti Shah, Director of Criminal Justice Services, Department of Human Services
Glenn Tapia, Director of Probation Services, Colorado Judicial Branch
Joe Thome, Director, Division of Criminal Justice, Department of Public Safety
Dean Williams, Executive Director, Department of Corrections

Legislative Council Staff

Bo Pogue, Senior Research Analyst
Juliann Jenson, Research Analyst
Greg Sobetski, Principal Economist
Chris Creighton, Senior Fiscal Analyst

Office of Legislative Legal Services

Michael Dohr, Managing Senior Attorney
Jacob Baus, Staff Attorney

November 2019

Prison Population Management Interim Study Committee

Committee Charge

Pursuant to Interim Committee Request Letter 2019-10, the Prison Population Management Interim Study Committee is charged with studying or monitoring:

- strategies to safely reduce the prison population and decrease recidivism; and
- prison population reform legislation passed by the General Assembly.

Committee Activities

During the 2019 interim, the Prison Population Management Interim Study Committee held five meetings at the State Capitol. The committee also conducted a tour of select correctional facilities. The following subsections discuss the committee's activities during the 2019 interim.

Prison population forecasts. The Division of Criminal Justice (DCJ) within the Department of Public Safety, and Legislative Council Staff are both charged with forecasting the state's prison population. The DCJ prepares two forecasts, one in the winter, and one in the summer that adjusts the previous winter forecast. Legislative Council Staff prepares a forecast each December and presents it to the General Assembly. Representatives of both entities provided overviews of their respective forecasts. The committee discussed certain factors that drive trends in the prison population, such as criminal filings, changes in law, parole and probation revocations, actions by the State Board of Parole, and programming for offenders.

Bill C requires a criminal justice system flow, or operational processes, study and incorporates elements of these forecast discussions, such as references to the difficulties of tracking revocations and communication issues between certain agencies.

Recidivism. The committee heard from representatives of various agencies on the issue of recidivism. The committee recognized that Colorado's recidivism rate is higher in comparison to the nationwide average, and discussed factors driving the recidivism rate, such as the lack of programming and reentry services for offenders. A reoccurring theme, visited during several of the meeting panels, was the impact of behavioral health and substance abuse issues on recidivism, and the need for programming to address these issues. With a recent spike in the women offender population, it was noted that these programming needs are particularly acute for women offenders.

Denver private community corrections contract nonrenewal. In August, the Denver City Council voted to not renew contracts with private providers of community corrections services. This action placed into doubt the future of the offenders receiving these services. At two of the meetings, the committee heard from representatives of both state and Denver agencies on the issues associated with

the city council vote. Discussions centered around options for placing the offenders served by the contract providers, and the ability of other agencies and community corrections providers to accommodate this population. The committee also discussed the decision's potential impact on state agencies such as the Department of Corrections.

Juvenile justice. Representatives of the American Civil Liberties Union and the First Judicial District initiated a discussion on the use of direct file for juveniles. Direct file allows a prosecutor to file charges against a juvenile directly in adult criminal court. The committee heard testimony centering around the idea that, for some, cognitive abilities are not fully matured until years after reaching the age of majority. These discussions led to the drafting of Bill A, which allows a district court to consider transferring the case of a young adult between the ages of 18 and 25 who has been convicted of certain crimes to juvenile court.

Use of private prisons. Of the 25 prisons housing state-level offenders in Colorado, three are privately owned and managed. The differences between private and public prisons wove itself into numerous committee discussions, including costs, rehabilitation programming offered, the type of inmates housed, recidivism rates, and the level of security.

The state has relied on private prisons to manage an overflow of inmates since the 1990s. In conjunction, the committee explored ways in which to better use the vacant Centennial South Campus of the Centennial Correctional Facility (also known as CSP II). Senate Bill 19-259 already allows for the use of this campus to house offenders should the male prison vacant bed rate dip below one percent for two consecutive months. Bill B further expands the use of this campus for close-custody inmates regardless of the vacant bed rate, while requiring the removal of one offender from a private facility for each one housed at CSP II.

Facilities tour. On September 30 and October 1, 2019, members of the Prison Population Management Interim Study Committee visited correctional facilities in the Canon City area, Buena Vista, Pueblo, and Olney Springs. The tour visited the following facilities: Buena Vista Correctional Complex, Fremont Correctional Facility, the Centennial Correctional Facility, La Vista Women's Correctional Facility, and Crowley County Correctional Facility. Committee members learned first-hand about the kinds of programs and services offered at each facility, and also had the opportunity to talk with offenders. At the Crowley County facility, a private facility, the tour was joined by commissioners from Bent and Crowley Counties. The commissioners discussed the impact of the prison on their communities in terms of jobs and the tax base.

Committee Recommendations

As a result of committee discussion and deliberation, the Prison Population Management Interim Study Committee recommends the following three bills for consideration in the 2020 legislative session. The committee also approved sending one letter to the Department of Corrections (DOC), pursuant to Senate Bill 19-259, regarding managing the prison population.

Bill A - Young Adult Criminal Justice Reforms. Bill A enacts measures to improve outcomes for adults between the ages of 18 and 25 in the criminal justice system, as outlined below.

Transfers to juvenile court. Bill A creates a new court proceeding in which a district court may consider transferring the case of a young adult convicted of a class 3, 4, 5, or 6 felony to juvenile court if the court determines that the transfer is in the best interest of the public or the defendant.

Juveniles convicted as adult program. Under current law, the DOC operates a specialized program for inmates sentenced to an adult prison for an offense committed prior to the age of 18. This bill extends program eligibility to offenders convicted of an offense that occurred when they were young adults.

Deferred judgment, convictions, and probation violations. The bill allows a young adult with a deferred judgment who violates the condition of it to continue such judgment if determined beneficial by the court. The bill also allows a class 4, 5, or 6 nonviolent felony conviction for a young adult to be vacated and entered as a misdemeanor upon successful completion of a community-based sentence to probation or community corrections. Further, the bill prohibits a probation revocation hearing for technical probation violations committed by young adults.

Young adult sentencing. Bill A requires that nonviolent young adult offenders with no prior convictions be sentenced to probation. Further, the bill specifies that a court cannot sentence a young adult offender to more than 12 years for a single class 3, 4, 5, or 6 felony.

Bill B - Prison Population Reduction and Management. Bill B makes the following changes with regard to prison population management:

CSP II. Bill B allows DOC to use CSP II to house close custody inmates. However, one inmate must be removed from a private prison for each state inmate housed at this facility. This one-for-one exchange must happen until CSP II reaches full capacity.

Private prison use study. The bill requires DOC to study how to end the use of private prisons in Colorado by 2025. The study must analyze:

- the use of alternative facilities and programs;
- local government, community-based provider, and economic impacts;
- state-operated facilities and programs and the feasibility of the state obtaining private prison facilities; and
- best practices and programs for the reintegration of offenders and the resources needed to transition away from private prisons.

Earned time. Bill B authorizes DOC to more broadly apply earned time credits and allows it for inmates who have shown exemplary leadership through mentoring, community service, and distinguished actions. Earned time is a credit against an inmate's sentence for participation in or completion of programs or other productive activities.

Escape and absconding. Bill B eliminates new criminal charges for escape or attempted escape for offenders in community corrections or an intensive supervised parole program. The bill also creates a new absconding offense and differentiates it from escape.

Bill C - Criminal Justice System Operational Processes Study. Bill C requires the DOC to study how individuals proceed through the stages of the criminal justice system. The study must analyze the operational and technological systems and procedures used in criminal proceedings and correctional facilities; examine recommendations and best practices implemented in Colorado and other states to create more efficient operational and technological systems and procedures; review obstacles; and analyze the types of metrics and information collected and prepared by criminal justice agencies.

Committee Letter 1. The committee approved sending a letter to the DOC, pursuant to Senate Bill 19-259, which requires the DOC to consider input from the committee. The letter encourages DOC to pursue normalization efforts to reduce recidivism, address the needs of women, provide adequate mental health and substance abuse treatment, and allow for inmates to acquire monetary savings prior to release.