

Prison Budget: Sentencing Laws Drive State Spending

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Opinion Editorial

By **Mike Krause**

Back on June 3, Gov. Bill Ritter signed into law Senate Bill 228, repealing a longstanding statutory spending limitation (the Bird-Arveschoug cap) that held the annual increase in general fund spending in Colorado to 6 percent. But take a breath before anyone gets all teary-eyed - whether from joy or sorrow - because the majority Democrats in the Legislature will finally have the budgetary flexibility to spend as they see fit. Recent history shows that prison spending in Colorado, and the sentencing policies that drive that spending, has been constraining state spending for decades and will continue to do so into the near future.

In 1985, the Legislature simply doubled the maximum penalties in Colorado's presumptive sentencing range for all levels of felony crimes. (Note that in Colorado, simply being in possession of an amount of illegal drugs weighing less than an American nickel is a felony crime.)

The average sentence length quickly increased by two-thirds, and Colorado's inmate population more than doubled in the next five years. It has more than doubled again since.

In an often desperate effort to keep pace with the capacity demands of such unprecedented growth in the prison population, successive legislatures and governors have taken Colorado taxpayers on what can only be described as an extreme prison spending spree that has pushed corrections spending from less than 3 percent to nearly 9 percent of the general fund.

It is a simple formula, but a dramatic increase in spending for one item as a percentage of the state's general fund (prisons) necessarily means that other spending items (such as health care and higher education) have had to decrease as a percentage of general fund appropriation.

This year's Joint Budget Committee budget briefing notes that in the 18 years since Colorado lawmakers implemented the 6 percent spending limit, prison spending has grown "at a compound annual rate of 9.5 percent."

If prison spending had actually been held to the 6 percent growth, then last year's Department of Corrections operating budget would have been around \$430 million. Instead, it was nearly \$677 million.

So the current opportunity cost of Colorado's extreme prison spending spree is a quarter-billion dollars that could have been spent on health care and higher education.

At the same time that lawmakers were routinely busting spending limitations on prisons, they continued to enact numerous new laws, creating more sentencing enhancements, and even new crimes, perpetuating the need to spend more and more money, with an often less than clear public safety benefit.

In 1992, for one example, Colorado lawmakers surrendered their prerogative to write the state's criminal law and enacted the Uniform Controlled Substances Act, written by drug war bureaucrats in Washington, D.C., and which created both numerous new drug offenses and sentencing enhancements for those offenses.

According to the Department of Corrections, some 18 percent of Colorado's prison population now have a drug offense as their "most serious offense."

There are as many drug offenders in prison today as the entire prison population 25 years ago, when Colorado prisons

held around 3,500 inmates. Are Colorado's spending limitations at fault for the state's budget woes?

This year's budget increased prison spending by around 3 percent, and while this is considerably less than the more than 9 percent increase originally requested by Gov. Ritter, it is likely not nearly enough to allow the Department of Corrections to keep pace with the ever-growing prison population.

Despite a recent slowing trend, projections still estimate thousands more inmates by 2012, which in turn demands many more millions in new prison spending.

Spending doesn't drive the prison population, rather the prison population drives state spending. So regardless of what lawmakers do with the prison budget next session, inmates will keep showing up at the door.

The Legislature's ability to affect prison spending lies in its prerogative to write sentencing law and policy.

The fact that the Democrat majority had to take the ax to general fund spending items such as higher education and health care this year had little to do with the 6 percent spending limitation and everything to do with fiscally irresponsible prison spending.

Until such time as Colorado lawmakers find the will to make meaningful sentencing law reforms, this will continue to be the case.

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