



COLORADO CRIMINAL DEFENSE BAR

October 21, 2015

Honorable Rafael Espinoza, Council District 1
Sent via email to: Rafael.Espinoza@denvergov.org

Honorable Kevin Flynn, Council District 2
Sent via email to: kevin.flynn@denvergov.org

Honorable Paul Lopez, Council District 3
Sent via email to: paul.lopez@denvergov.org

Honorable Kendra Black, Council District 4
Sent via email to: kendra.black@denvergov.org

Honorable Mary Beth Susman, Council District 5
Sent via email to: Marybeth.susman@denvergov.org

Honorable Paul Kashmann, Council District 6
Sent via email to: paul.kashmann@denvergov.org

Honorable Jolon Clark, Council District 7
Sent via email to: jolon.clark@denvergov.org

Honorable Christopher Herndon, Council District 8
Sent to: Christopher.Herndon@denvergov.org

Honorable Albus Brooks, Council District 9
Sent via email to: albus.brooks@denvergov.org

Honorable Wayne New, Council District 10
Sent via email to: wayne.new@denvergov.org

Honorable Stacie Gilmore, Council District 11
Sent via email to: stacie.gilmore@denvergov.org

Honorable Robin Kneich, Council At-Large
Sent via email to: kniechatlarge@denvergov.org

Honorable Deborah Ortega, Council At-Large
Sent via email to: deborah.ortega@denvergov.org

Re: 2016 budget increase for Denver Sheriff's Department

Dear Council Members:

Please accept this letter on behalf of the ACLU-Colorado, Colorado Criminal Defense Bar, Colorado Criminal Defense Institute, Colorado Criminal Justice Reform Coalition, Colorado Latino Forum and the Drug Policy Alliance.

Prior to your vote on the 2016 budget, we wanted to share our perspective on the request for a \$24 million budget increase in the Sheriff's Department.

Several of us participated in then Mayor Hickenlooper's task force in 2004-2005 which was asked to assess the need for a new jail. While we acknowledged the decrepit nature of some portions of the Smith Road facility, we were critical of the lack of effort to reduce the jail population in lieu of, or certainly prior to, an analysis on the need to expand the jails. Central to the proponent's effort to secure voter approval of the massive bond measure was the insistence and promise from the Sheriff's Department that no new staff would be required because the new downtown jail would be so efficient. We strongly disputed the accuracy of this promise then and now taxpayers are being asked to underwrite a staffing issue that was largely foreseeable.

To a great extent, the number of staff is a function of the number of inmates. There are optimal staffing ratios, but like any ratio, one number can be increased or another decreased to reach the same goal. Any effort to "fix" the jail staffing ratios should first or, at the very least, simultaneously take direct action to reduce the jail population.

This is particularly true in what is characterized by many within the Sheriff's Department as a staffing crisis. We've been told the Sheriff's department is chronically about ten percent short of its authorized staff resources. Adding more authorized positions for the jail will not remedy the crisis if the department cannot fill the present vacancies absent some meaningful effort to simultaneously reduce the jail population. We are just reacting to the crisis of today and not developing and prioritizing more long-term solutions to reverse the tide of mass incarceration.

Other budgeting authorities have used the "power of the purse" to set a new course. In 1991, the Colorado General Assembly put a cap on the number of beds it would fund in the Division of Youth Corrections and provided significant resources to expand youth services in the community. The number of juveniles who were incarcerated steadily decreased and the cap has never been exceeded. In 2005, despite growth in the jail population, Mesa County Commissioners decided not to fund an expansion of its county jail and took steps to reduce the jail population through an evidence-based stakeholder process that significantly reduced the number of people held in jail pretrial. Mesa County Commissioners also chose to fund a community residential treatment program, the first and only county or municipality in Colorado to do so.

In Denver over 50% of the inmates in the jail are pretrial detainees who are unable to afford bond. Ironically, many of those held in jail before they are convicted will be sentenced to probation and released from custody after they are convicted. There can also be significant negative impact when someone is incarcerated pretrial, even for a few days, when that results in a loss of employment. This loss of income can easily cascade an individual or family into crisis.

The US Department of Justice issued a Statement of Interest in *Varden v. City of Clanton*, No. 2:15-cv-34-MHT-WC, a case about improper bail practices in the State of Alabama, stating

It is the position of the United States that, as courts have long recognized, any bail or bond schedule that mandates payment of pre-fixed amounts for different offenses in order to gain pretrial release, without any regard for indigence, not only violates the Fourteenth Amendment's Equal Protection Clause, but also constitutes bad public policy."

Denver continues to drag its feet and, at times, prohibit in the implementation of best practices that would reduce the jail population, including compliance with the statutory presumption for use of a summons in lieu of arrest for certain non-violent offenses. The City continues to disproportionately rely on monetary bail schedules, particularly for low risk offenders. What results is a jail that does not necessarily hold the most dangerous offenders but those individuals who simply cannot afford to post the bond required because they are poor.

We must not forget that African American and Latino/a inmates in the Denver jails are significantly and chronically overrepresented. According to the Census Bureau, Denver is 53% White, 10% African American and 31% Latino/a. Yet 2015 bookings into the jail system reflect a population that is 40% White, 25% African American and 34% Latino/a.

Despite the passage of a resolution by the Crime Prevention and Control Commission in 2009 that “condemns racial and gender disparity in the adult and juvenile criminal justice system in Denver”, no meaningful effort to address this disparity has occurred. This is intolerable.

There is also no consideration in the Sheriff’s budget request to improving and expanding access to programs and services for people in jail or policies that expand pre-arrest diversion for low-level offenses to prevent jail at the onset. Again, we see that only one side of the equation is considered in this dramatic budget increase.

Throughout the nation, public opinion is shifting dramatically in support of reversing mass incarceration and repairing the harm caused, particularly in communities of color. As reported in the New York Times today, Law Enforcement Leaders to Reduce Crime and Incarceration, a group of more than 130 police chiefs, prosecutors and sheriffs from around the country issued a report stating that “too many people are behind bars that don’t belong there,” and “[w]ith momentum for criminal justice reform accelerating, we want to leave no doubt where the law enforcement community stands.

http://www.nytimes.com/2015/10/21/us/police-leaders-join-call-to-cut-prison-rosters.html?hp&action=click&pgtype=Homepage&module=second-column-region®ion=top-news&WT.nav=top-news&_r=0

We believe that a public budget is a moral document that is supposed to reflect the values and priorities of the community. We are dismayed that no consideration has been given to reducing the jail population as a strategy of addressing staffing ratios at the jails nor strengthening inmate programs that can reduce recidivism. We are also skeptical that that \$24 million budget increase accurately reflects the ultimate cost of addressing the staffing gap and systems improvement goals outlined. Consequently, for the undersigned organizations, this proposed \$24 million budget increase neither aligns with our values or our priorities.

It is our opinion that the City Council should not approve this \$24 million increase without several caveats: 1) that the Denver Sheriff’s Department provide you and the public its projections for future costs beyond the \$24 million currently requested to implement the consultant’s recommendations; and 2) that Council immediately create a committee that includes community representatives with experience in criminal justice reform that is tasked with making recommendations on how to reduce the jail population and strengthen inmate programs.

Thank you for your consideration. We look forward to the opportunity to testify at the public hearing on Monday.

Yours truly,



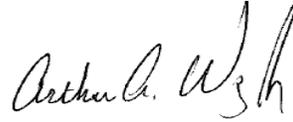
Christie Donner, Executive Director
Colorado Criminal Justice Reform Coalition



Lisa Calderon, Co-Chair
Colorado Latino Forum



Chris Decker, Board President
Colorado Criminal Defense Bar



Art Way, Colorado State Director
Drug Policy Alliance



Denise Maes, Policy Director
ACLU-Colorado



Maureen Cain, Policy Director
Colorado Criminal Defense Institute



Darren Cantor, Board President-Elect
Colorado Criminal Defense Bar