



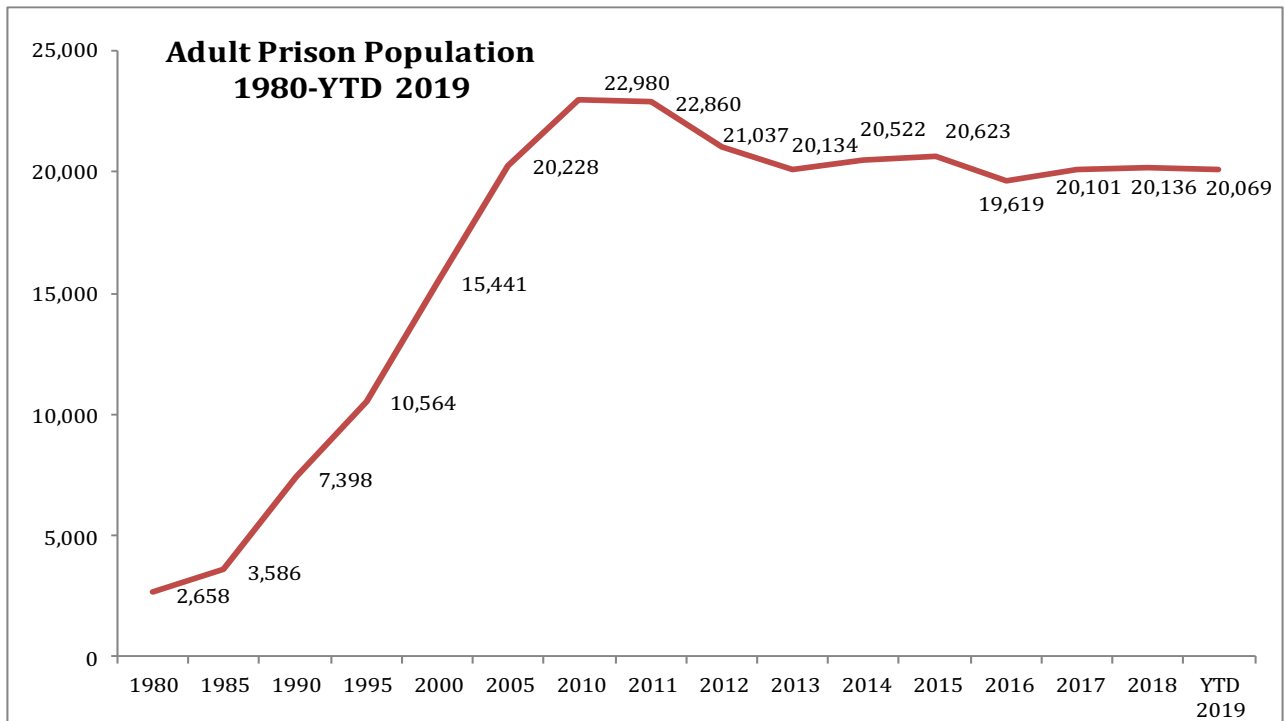
TO: Members of the General Assembly  
 FROM: Christie Donner, CCJRC Executive Director (303-956-9603), Terri Hurst, CCJRC Policy Coordinator (720-998-5677), Denise Maes, ACLU Policy Director (720-273-7543)  
 DATE: December 20, 2018

## Colorado Doesn't Need Another Prison

After decades of unprecedented growth, the Colorado prison population declined dramatically from 2010-2013 as a result of intentional efforts by legislators, criminal justice agencies, and the Colorado Commission on Criminal and Juvenile Justice. Colorado was not alone, as states across the country embarked on their own efforts to reign in burgeoning prison populations and budgets.

The common goal among states, including Colorado, was to improve success rates for people under community supervision, enact sensible sentencing reforms, and expand alternatives to incarceration, particularly for those struggling with substance abuse and mental health disorders.

Colorado's prison population began to increase again following the tragic murder of Department of Corrections Executive Director Tom Clements in March 2013, and it continued through 2015, when multiple efforts to improve success rates for people on parole started to kick in and helped reverse the trend. In the past few years, the prison population has been relatively flat.



Source: Department of Corrections Annual Report and Monthly Reports

## Department of Corrections (DOC) Vacancy Rate

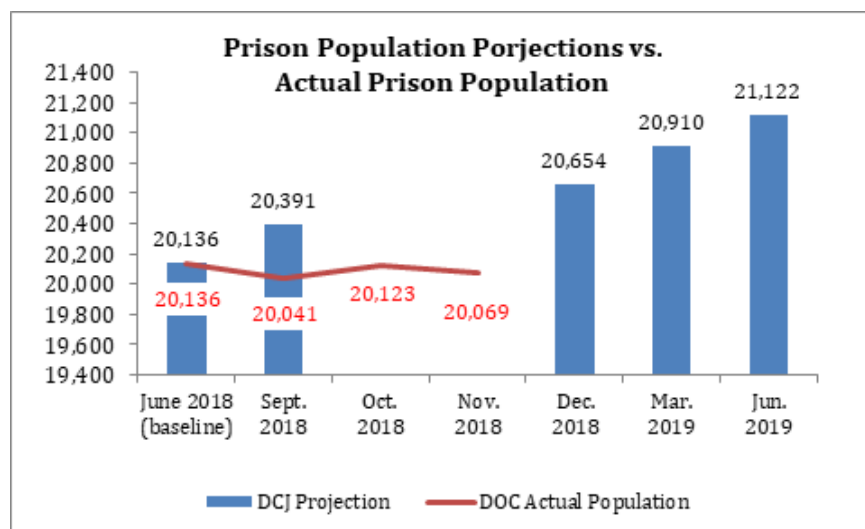
In the wake of a decline in the prison population, six prisons have closed in Colorado since 2009, leaving very little “extra” capacity should the prison population start to grow again. CCJRC and ACLU readily agree that maintaining a reasonable vacancy rate in DOC is a legitimate necessity for successful prison operations, programming, and the safety of both inmates and staff. DOC prefers to maintain a 2% vacancy rate, at a minimum.

As of November 2018, the vacancy rate for male prison beds (excluding empty beds in the Residential Treatment Program), was 1.2%. However, there are currently 240 beds at Centennial Correctional Facility that are reserved for the Residential Treatment Program, but the actual utilization has been between 150-160 beds on average throughout the fiscal year. This raises the question whether RTP needs to reserve 240 beds or whether the 80-90 unused beds should be available for general population. If you include the unused RTP beds at Centennial, the DOC vacancy rate for men is above 2%.

DOC would need to have approximately 360 beds available for men in order to have a 2% vacancy rate. In November, DOC reported having approximately 285 empty male beds, **a shortfall of only 75 beds**, even if you exclude the empty RTP beds at Centennial as discussed above. We highlight this not to be dismissive of the challenge for the DOC, but to emphasize that it would take a fairly minor decline in the men’s prison population to achieve a 2% vacancy rate. As discussed below, there are several ways the state could achieve this minimal reduction without exceeding its current budget.

## Colorado Prison Population Growth Projections Have Been Significantly Overestimated

During the 2018 legislative session, the General Assembly grappled with the issue of reopening a closed prison. One of the drivers of this debate was the prison population projection conducted by the Colorado Division of Criminal Justice (DCJ), which estimated the population would grow by approximately 1,000 inmates in FY18-19. However, these projections have not turned out to be reliable, as indicated by the graph below. In fact, the prison population has actually declined by an average of 13 people per month since the beginning of the fiscal year.



Source: Division of Criminal Justice Interim Prison Population Projection (July 2018); Department of Corrections Monthly Population Reports for June-November 2018

Despite this discrepancy, Governor Hickenlooper’s proposed FY19-20 budget includes nearly \$40 million for prison expansion, including the reopening of Colorado State Penitentiary II (CSP II) at a cost of \$27.8 million. An additional \$11 million was requested to remodel and repurpose the Denver Reception and Diagnostic Center (DRDC) and CSP II for the purposes of swapping the functions of both prisons. CCJRC and ACLU believe these options are neither fiscally prudent nor necessary to address prison capacity in our state.

**Prison Expansion Rejected in 2018 Legislative Session**

CSP II was built as a solitary confinement prison, and one tower was opened in 2010. Following a substantial reduction in the use of administrative segregation by former DOC Director Clements, CSP II was decommissioned by the General Assembly in 2012 via HB12-1337. During the 2018 legislative session, legislators rejected the reopening of CSP II three times: a DOC budget request, a floor amendment to the Long Bill, and SB18-274, a bill that would have recommissioned CSP II.

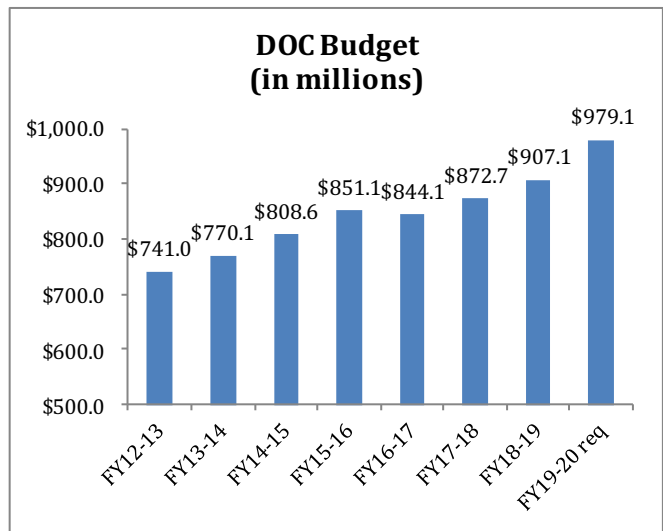
Rather, the General Assembly chose took a different and more proactive approach. The Joint Budget Committee set utilization targets for parole, community corrections, and ISP-I. HB18-1410, which unanimously passed in both chambers, aimed to help DOC manage the prison population when the vacancy rate drops below 2% through greater coordination with community corrections and the Colorado Board of Parole. The General Assembly also passed HB18-1251, which addresses numerous choke points that have prevented full utilization of community corrections. The JBC utilization targets, HB18-1410, and HB18-1251 are in early stages of implementation and have yet to achieve their maximum potential to help manage the prison population.

**DOC Budget**

The DOC budget has grown exponentially and is nearing \$1 billion for the first time in Colorado history.

It is anticipated that DOC will request an \$8 million supplemental for the current fiscal year, as stated in the Governor’s budget proposal.

This comes on the heels of a \$1 million supplemental request that was approved by the JBC in September to build a recreation yard and other improvements at CSP II.



Source: 2018 Appropriations History; FY19-20 Governor’s Budget

**Opportunities to Address Prison Capacity Without Opening a New Prison**

Instead of reopening a prison and supporting a \$1 billion DOC budget that results in a 50% recidivism rate, CCJRC and the ACLU-CO recommend that proactive steps be taken to manage the prison population rather than opening another prison.

The following is not an exhaustive list and intends to highlight actions the General Assembly and criminal justice agencies can take to safely reduce the prison population.

**Reduce the crime classification for simple drug possession from a felony to a misdemeanor.** Felony drug filings have more than doubled since 2012, with three-quarters of these cases charging simple drug possession, not distribution. This dramatic increase is one of the major drivers of the upward pressure on the prison population.

**Require approval from the Director of the Division of Adult Parole prior to a parole officer filing a complaint with the Parole Board requesting revocation for a technical violation of parole.** This will ensure all intermediate sanctions and community-based reentry services have been fully utilized or would be inappropriate. In FY18, over 2,600 people returned to prison due to a technical parole violation, an 8% increase over FY17. Technical parole violators constituted 27% of all prison admissions last year. *(DOC Monthly Population Report, DOC HB18-1410 Community Corrections Empty Bed Report)*

**Ensure full implementation of HB18-1410 (Prison Population Management Measures), HB18-1251 (Community Corrections Utilization) and the targets approved by the Joint Budget Committee for parole, ISP-I, and community corrections placement.** Currently, none of the targets approved by JBC have been met and, as of September 2018, there were still 262 empty beds in community corrections facilities that were funded to house DOC transition clients.

**Require approval from a majority of the entire Parole Board in order to deny parole to individuals who are assessed as low or very low risk.** In FY17, the Parole Board denied parole to almost 1,000 people assessed to be low or very low risk. *(Colorado Division of Criminal Justice; 'Analysis of Colorado State Board of Parole Decisions: FY 2017 Report; April 2018)*

**Address the growing crisis around the gap in access for sex offense treatment.** Per the DOC, as of November 30, 2018, there are 1,589 people in prison on a wait list to access a few hundred slots for sex offense treatment statewide. According to a 2016 state audit, less than one-third of the people on the wait list were high risk to sexually reoffend. Most of the people serving a determinate sentence for a sex offender will never be able to access treatment in prison but will continue to be denied parole until their Mandatory Release Date.