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January 7, 2013

The Honorable Carl Seel, Chair
Joint Legislative Audit Committee

The Honorable Rick Murphy, Vice Chair
Joint Legislative Audit Committee

Dear Representative Seel and Senator Murphy:

Our Office has recently completed a 24-month followup of the Department of Corrections—Prison Population Growth audit regarding the implementation status of the 8 audit recommendations (including sub-parts of the recommendations) presented in the performance audit report released in September 2010 (Auditor General Report No. 10-08). Six of these recommendations were directed to the Legislature, and 2 were directed to the Department. As the attached grid indicates:

- 5 recommendations have been implemented, including 3 legislative recommendations and the 2 department recommendations;
- 1 legislative recommendation has been partially implemented;
- 1 legislative recommendation has not been implemented; and
- 1 legislative recommendation is not yet applicable.

Unless otherwise directed by the Joint Legislative Audit Committee, this concludes our follow-up work on the Department's efforts to implement the recommendations from the September 2010 performance audit report.

Sincerely,

Dale Chapman, Director
Performance Audit Division

DC:sjs
Attachment

cc: Charles L. Ryan, Director
Department of Corrections

Department of Corrections—Prison Population Growth

Auditor General Report No. 10-08

24-Month Follow-Up Report

Recommendation

Status/Additional Explanation

Option 1—Expanding prison system to address prison population growth

1.1 The Legislature could continue to expand the prison system, either by constructing new prison facilities and/or contracting for more private beds. If the Legislature decides to expand the prison system, it should consider directing the Department of Corrections (Department) to further study and analyze the costs for the State to build and operate prison facilities compared to contracting with private prisons to determine which option would be more cost-effective while still ensuring public safety.

Partially implemented at 24 months

The Legislature enacted Laws 2012, Ch. 302, §27, which requires the Department to contract for up to 1,000 private prison beds, and Laws 2012, Ch. 295, §6, which authorizes the construction of 500 maximum security state prison beds. However, the Legislature has not directed the Department to further study the costs of building and operating private prison beds compared to public prison beds.

Option 2—Diverting more nonviolent, low-risk offenders or reducing the time they serve to address prison population growth

1.2 The Legislature could consider diverting more nonviolent, low-risk offenders from prison and/or reducing the time they serve—alternatives that may require changes to the State's sentencing laws. Specifically:

a. Similar to Arizona Revised Statutes (A.R.S.) §13-901.01, which requires nonviolent persons convicted of a first or second offense for the personal possession or use of drugs to be sentenced to probation and mandatory treatment, the Legislature could consider revising statute to expand diversion opportunities to other nonviolent, low-risk offenders, particularly those whose crimes are related to substance abuse. In order to divert more nonviolent, low-risk offenders from prison, the Legislature may need to consider revising some of the State's sentencing laws.;

Not implemented

Legislation expanding diversion opportunities for other nonviolent, low-risk offenders was not proposed during the 2011 or 2012 legislative sessions.

b. The Legislature could consider expanding early release options, such as reducing the time served requirement for nonviolent, low-risk offenders and establishing earned time credits. These option would also require changes to the State's sentencing laws;

Implemented at 6 months

Legislation expanding early release options for nonviolent, low-risk offenders was proposed during the 2011 and 2012 legislative sessions, but did not pass. Specifically, various bills proposed (1) creating medical parole release for inmates with incapacitating illnesses who do not pose a public safety threat, (2) reducing the time-served requirement for nonviolent offenders from 85 to 67 percent, and (3) expanding the number of days that the Department may release nonviolent offenders early from 90 to 180 days and authorizing the Department to release violent offenders up to 90 days early.

Recommendation

Status/Additional Explanation

c. If the Legislature expands diversion or early release options, it should also consider taking the following steps;

1. Further defining diversion and/or early release eligibility criteria for other nonviolent, low-risk offenders in statute, and/or;
2. Ensuring the use of valid and reliable risk assessment tools to determine offender eligibility for diversion and/or early release.

d. The Legislature could consider establishing a permanent sentencing commission to assist in reviewing and recommending changes to the State's sentencing laws. Other possible functions this commission could perform include determining eligibility criteria for diversion, recommending guidelines for determining appropriate candidates for alternative sanctions and monitoring reform results to ensure they are having the intended effect. If the Legislature establishes a sentencing commission, it should consider including representatives from all criminal justice system stakeholders.

Not yet applicable

See explanation for 1.2a and 1.2b.

Implemented at 6 months

Legislation establishing a sentencing commission was proposed in the 2011 and 2012 legislative sessions but did not pass.

Option 3—Expanding use of nonprison alternatives to slow or reverse prison population growth

1.3 The Legislature could consider using more nonprison alternatives for nonviolent, low-risk offenders. This could include:

- a. Expanding substance abuse treatment alternatives by expanding the use of drug courts and/or establishing additional substance abuse treatment alternatives. This might include providing additional counseling services, inpatient beds, and secure residential treatment beds;
- b. Expanding the use of home arrest with electronic monitoring;

Implemented at 6 months

Laws 2011, Ch. 33, would have expanded the use of county jails as an alternative to prison by requiring that offenders sentenced to the Department for 1 year or less (including DUI offenders) be committed to the custody of county jails unless the sentencing counties entered into agreements to reimburse the Department for the incarceration costs. However, this law was repealed by Laws 2012, Ch. 302, §14.

Recommendation

Status/Additional Explanation

- c. Establishing day reporting centers;
- d. These or other alternatives could be used in lieu of prison sentences or in conjunction with earlier release. The Legislature could consider directing the Department and/or the courts to further study nonprison alternatives and develop recommendations for expanding their use, which should include an evaluation of the costs of these alternatives. Additionally, the Legislature could direct the Department and the courts to monitor the cost and impact of any nonprison alternatives established. Depending on whether the Legislature provides funding for expanded nonprison alternatives and which alternatives are expanded, some statutes will need to be revised, such as the home arrest statute.

Option 4—Reducing revocations from parole violators

1.4 Expanding nonprison alternatives for parole violators would require the following actions:

- a. The Department should complete its study of potential options for expanding the use of nonprison alternatives for parole violators and present its findings to the Governor and Legislature for consideration. The Department should then expand its use of nonprison sanctions in accordance with the direction it receives from state policymakers.
- b. If nonprison alternatives or sanctions are implemented, the Department should incorporate the use of these additional sanctions in its community supervision policies and procedures.

Implemented in a different manner at 24 months

The Department reported that it completed a review of options for reducing recidivism related to technical violations of community supervision and was expanding the use of nonprison sanctions by reestablishing community corrections centers, which it has statutory authority to do. The Department opened a community corrections center in Pima County in December 2012 and plans to open a center in Maricopa County, which would potentially open in fiscal year 2014.

Implemented at 24 months