South Dakota Legislative Research Council

Issue Memorandum 97-27

CORRECTIONS COSTS: ISSUES AND DIFFICULTIES

Introduction

This issue memorandum is written with the intent of providing a look at how the cost of operating South Dakota's corrections facilities is sensitive to the number of inmates in the system. The approach is to consider both theoretical and practical aspects in approaching the defining how inmate numbers relate to corrections costs. A secondary goal is to show why a "fill in the blank" approach to fiscal notes on proposed legislation that would create new crimes, increase the penalties for existing crimes, or otherwise affect South Dakota's corrections facilities is not so easily constructed.

South Dakota faces the same financial problem as nearly every level of government throughout the nation. That problem is the ever-increasing costs related to the operation of corrections facilities. All governments seem be faced with the two mutually exclusive goals of (1) locking up all lawbreakers that the public thinks ought to be locked up; and (2) operating government programs within existing tax and other revenue sources. That mindset has led to a keen awareness that there are financial impacts associated with public policy relating to crimes and imprisonment, and the resulting tradeoffs between the public policy goal of "lock 'em up" and "do it within existing resources".

The Problem--Why It Is Not So Simple

Legislators and other officials wish to know the financial impact on the state related to any number of public policy decisions that may be considered. This is especially true of public policy decisions that relate to the sentence the Legislature may prescribe for various criminal convictions. The most straightforward approach would be to try to determine the amount of additional prisoner-days resulting from the Legislature's policy decision and multiply that number by the average daily (or annual) cost to incarcerate an individual. The most difficult (and most subjective) part of the equation to assess is the additional prisoner-days. For example, the 1997 Legislature increased the penalty for falsely reporting a bomb from a Class 1 misdemeanor to a Class 6 felony. A Class 1 misdemeanor calls for a maximum penalty of one year in the county jail and/or a one thousand dollar fine. A Class 6 felony calls for a maximum penalty of two years in the state penitentiary and/or a two

thousand dollar fine. The straightforward approach would be to look at a historical record (which is available) of the number of false bomb report convictions and multiply that number times the average cost to incarcerate an individual. Several difficulties come to mind in assessing the additional prisoner-days resulting from legislative action changing the penalties for various crimes.

1. The court has latitude in the imposition of sentence.
2. Prosecutors may offer plea bargains.
3. The sentence may be added to the back of an existing sentence.
4. Once sentenced, the inmate's actions while in prison may have something to do with the length of the prison stay.
5. The increased penalty may be a deterrent to criminal activity--maybe a prankster will think twice about calling in a bomb threat knowing about the possible prison term--or maybe not.

For the above mentioned reasons, and many others, it is not possible to definitively determine the number of additional prisoner-days associated with legislatively prescribed stiffer sentences.

The Approach To Costs

The analysis of cost of the care and custody of prisoners in South Dakota's corrections facilities may be approached using a few elementary cost concepts from economics. Several concepts are key to this analysis--two of them are average cost and marginal cost. The average cost is simply the total cost divided by the number of units produced (in this case the cost to provide for the care and custody of inmates divided by the number of inmates--usually in terms of daily or annual costs). The concept of marginal cost relates to the additional cost required to produce an additional unit. So long as production is efficient, the marginal cost to produce an additional unit will always be less than the marginal cost to produce the previous unit. Or in different terms, as additional units are produced, the average cost will decline. Two other concepts that are important are fixed costs and variable costs. In the economic sense, fixed costs are those that are incurred without regard to the number of units produced. Variable costs are those costs that are driven by the number of units produced. Another important consideration is the time frame to which the analysis applies. In the short run, a greater variety of costs may be considered as fixed costs, while in the long run all costs may be considered to be variable costs.

These cost concepts (assuming that the unit of production is the care and custody of one prisoner for one year) : average, marginal, fixed, and variable, as they relate to the problem at hand are defined as follows. Average cost is the total cost to operate a corrections facility divided by the average daily inmate population. Marginal cost is the increase in total cost to operate a corrections facility that is attributable to the care and custody of one additional inmate. Fixed costs are the costs to operate a corrections facility that do not vary with respect to the number of

inmates. Variable costs are the costs to operate a corrections facility that vary directly with respect to the number of inmates.

There are some practical considerations that warrant being taken into account that muddy the theoretical waters. First is the notion of marginal cost. A strong argument can be made that the marginal cost--the increase in the total cost of the corrections facility for the care and custody of one additional inmate for one year is zero. For example, if one new inmate is added to the Sioux Falls Penitentiary can additional costs be identified? Food and clothing may be cited. However with over one thousand inmates, the same number of eggs are likely to be scrambled for breakfast, the new inmate's prison clothes and bedding are likely to be taken out of existing inventory, no new guards are hired to provide security. Another fifty or one hundred inmates would be a different story, but marginal cost is defined in terms of one additional inmate. Second is the notion that capacity cannot always be increased in small increments. At some point, additional beds translate into a new facility- -as was the case with the women's prison in Pierre.

Additionally, it is difficult to draw a line between fixed and variable costs. For example, a prison will use electricity. But some of the electricity may be used for something like an inmate's electric shaver--which falls neatly into the variable cost category; and some of the electricity will be used to light certain areas of the prison walls--which falls neatly into the fixed cost category. Another factor that corrupts an attempt at analysis is the reality that corrections costs are affected by inflation, state salary policy, other laws that may be passed by the Legislature, court rulings and any number of other factors that can affect the cost of operating a corrections system that do not relate to the number of inmates.

A Look At Costs In South Dakota

The following table is taken from data provided by the Department of Corrections (DOC), as well as DOC's classification of fixed and variable costs. Given the previous discussion, there is an element of judgment by DOC in classifying the costs as being either fixed or variable. In this case it seems appropriate to acknowledge that DOC is best suited to define costs of institutions under DOC's control. The data in the table is largely self-explanatory--but there is still the underlying difficulty in explaining the causes for some of the changes in costs per inmate throughout DOC.

	AVG. DAILY COUNT	FIXED COSTS	VARIABLE COSTS	TOTAL COSTS	FIXED COST PER AVG. DAILY COUNT	VAR. COST PER AVG. DAILY COUNT
STATE PENITENTIARY						
FY1992	986	$ 8,124,433	$3,195,000	$11,319,433	$ 8,240	$ 3,240
FY1993	1,012	$ 8,300,770	$3,912,622	$12,213,392	$ 8,202	$ 3,866
FY1994	1,068	$10,327,376	$5,296,663	$15,624,039	$ 9,670	$ 4,959
FY1995	1,033	$ 9,929,277	$4,892,399	$14,821,675	$ 9,610	$ 4,735
FY1996	1,133	$ 9,732,401	$4,901,508	$14,633,908	$ 8,589	$ 4,326
FY1997	1,233	$ 9,992,202	$5,369,037	$15,361,239	$ 8,104	$ 4,354

	AVG. DAILY COUNT	FIXED COSTS	VARIABLE COSTS	TOTAL COSTS	FIXED COST PER AVG. DAILY COUNT	VAR. COST PER AVG. DAILY COUNT
SPRINGFIELD STATE PRISON						
FY1992	434	$ 4,703,743	$1,467,743	$ 6,171,486	$ 10,838	$ 3,382
FY1993	450	$ 4,620,659	$1,835,614	$ 6,456,273	$ 10,268	$ 4,079
FY1994	461	$ 4,757,984	$2,044,966	$ 6,802,950	$ 10,321	$ 4,436
FY1995	633	$ 5,474,042	$2,715,900	$ 8,189,942	$ 8,651	$ 4,292
FY1996	718	$ 5,182,056	$2,829,356	$ 8,011,413	$ 7,221	$ 3,943
FY1997	812	$ 5,199,604	$2,957,852	$ 8,157,456	$ 6,403	$ 3,643
PAROLE SERVICES						
FY1992	660	$ 1,353,916	$ 19,027	$ 1,372,943	$ 2,051	$ 29
FY1993	680	$ 1,421,412	$ 22,011	$ 1,443,423	$ 2,090	$ 32
FY1994	696	$ 1,566,076	$ 37,511	$ 1,603,587	$ 2,250	$ 54
FY1995	695	$ 1,483,100	$ 23,958	$ 1,507,058	$ 2,134	$ 34
FY1996	725	$ 1,414,129	$ 73,719	$ 1,487,848	$ 1,951	$ 102
FY1997	747	$ 1,349,375	$ 63,278	$ 1,412,653	$ 1,806	$ 85
COMMUNITY CORRECTIONS						
FY1993	52.0	$ -	$ 597,750	$ 597,750	$ -	$ 11,495
FY1994	75.0	$ 6,707	$ 745,511	$ 752,218	$ 89	$ 9,940
FY1995	89.7	$ 21,168	$ 977,086	$ 998,254	$ 236	$ 10,893
FY1996	56.3	$ 13,963	$ 818,750	$ 832,712	$ 248	$ 14,543
FY1997	76.0	$ 10,872	$ 466,083	$ 476,955	$ 143	$ 6,133
STATE TRAINING SCHOOL						
FY1992	103.0	$ 2,209,043	$ 245,551	$ 2,454,594	$ 21,447	$ 2,384
FY1993	105.2	$ 2,401,796	$ 270,763	$ 2,672,559	$ 22,831	$ 2,574
FY1994	105.2	$ 2,612,105	$ 281,697	$ 2,893,802	$ 24,830	$ 2,678
FY1995	105.4	$ 2,598,040	$ 273,001	$ 2,871,041	$ 24,649	$ 2,590
FY1996	105.1	$ 2,544,293	$ 322,658	$ 2,866,951	$ 24,208	$ 3,070
FY1997	105.0	$ 2,395,776	$ 291,471	$ 2,687,247	$ 22,817	$ 2,776
YOUTH FORESTRY CAMP						
FY1992	48.3	$ 1,068,092	$ 206,443	$ 1,274,535	$ 22,114	$ 4,274
FY1993	52.1	$ 1,184,345	$ 225,259	$ 1,409,604	$ 22,732	$ 4,324
FY1994	49.1	$ 1,157,835	$ 222,387	$ 1,380,222	$ 23,581	$ 4,529
FY1995	49.7	$ 1,241,636	$ 241,755	$ 1,483,391	$ 24,983	$ 4,864
FY1996	50.9	$ 1,147,087	$ 202,169	$ 1,349,256	$ 22,536	$ 3,972

	AVG. DAILY COUNT	FIXED COSTS	VARIABLE COSTS	TOTAL COSTS	FIXED COST PER AVG. DAILY COUNT	VAR. COST PER AVG. DAILY COUNT
LAMONT FEMALE WORK THERAPY						
FY1992	23.0	$ 220,780	$ 22,077	$ 242,857	$ 9,599	$ 960
FY1993	24.0	$ 249,988	$ 26,164	$ 276,152	$ 10,416	$ 1,090
FY1994	24.0	$ 306,747	$ 33,913	$ 340,659	$ 12,781	$ 1,413
FY1995	24.2	$ 373,012	$ 34,598	$ 407,610	$ 15,414	$ 1,430
FY1996	25.4	$ 378,100	$ 43,967	$ 422,067	$ 14,886	$ 1,731
FY1997	34.0	$ 514,424	$ 48,296	$ 562,719	$ 15,130	$ 1,420
JUVENILE COMMUNITY CORRECTIONS						
FY1997	735	$ 3,382,060	$1,256,329	$ 4,638,389	$ 4,601	$ 1,709
LIVING CENTER						
FY1997	50	$ 712,504	$ 120,402	$ 832,906	$ 14,137	$ 2,389
BOOT CAMP						
FY1997	101	$ 744,848	$ 146,196	$ 891,043	$ 7,375	$ 1,447
CUSTER YOUTH CORRECTIONS						
FY1997	203	$ 1,813,247	$ 376,657	$ 2,189,904	$ 8,915	$ 1,852

Looking At The Numbers

The data in the tables shows that for FY1997, the variable cost per inmate per year at the State Penitentiary and Springfield State Prison was $4,354 and $3,643, respectively. Likewise, variable cost per inmate per year is identified for the other institutions. The variable cost per inmate provides a fairly good idea what it will cost to house additional inmates. This type of reasoning does not take into account economies of scale that may exist--the notion that marginal cost decreases as additional inmates are housed. Using that type of logic, through a regression equation, the marginal cost to care for an inmate at the State Penitentiary and Springfield State Prison is currently $2,386 and $1,350 respectively.

Because of the changes in the corrections system, starting in FY1995, following the 1994 prison riot, data from FY1995, FY1996, and FY1997 were used to determine the regression equations. Three years does not provide a statistically valid sample, but the resulting numbers at least illustrate the point.

The Changing Face Of Corrections

There have been many changes in the state's corrections system, and

these changes make analysis across time difficult. South Dakota has recently constructed a women's prison in Pierre, and greatly changed the juvenile corrections system with the Brady Boot Camp and the Custer Youth Corrections program. Even the most elementary comparison of the Jameson facility and the old State Prison in Sioux Falls reveals that the Jamison facility uses resources far more efficiently to provide for the care and custody of inmates. In addition the demographics of the prison population are also changing These demographic changes with respect to age, sex, race, health, education, and a number of other factors all have impacts (maybe some positive) on prison costs.

One Other Issue

Some costs to government resulting from the prosecution of criminals are realized before the inmate is convicted. Those costs relate to the prosecutions that result from criminal activity.

South Dakota Codified Law §23A-40-7 requires the governing board of any county or municipality to provide legal counsel to anyone charged with a Class I misdemeanor or felony within their jurisdiction. If they cannot afford an attorney the court will appoint one to represent the defendant. The cost of such representation is initially borne by the county; but the judge may assess attorney costs against the defendant as a part of any sentence issued. A lien is created against any real or personal property owned by the defendant when no other monetary resources are available from them.

Minnehaha (second circuit) and Pennington (seventh circuit) are two counties which fund a county public defender's office where the county pays a full-time legal staff to provide for the defense of economically disadvantaged persons accused of crime. Lawrence and Butte Counties (eighth circuit) also share the expense of a full-time public defender office. The Public Defender must be licensed to practice law in South Dakota, be competent to counsel and defend a person charged with a crime, and have basic knowledge of, and experience in, criminal law. A five-member advisory committee appoints and dismisses the public defender.

In FY1996, South Dakota used public defenders in 9,548 cases, which is 38.6% of the total 24,747 cases tried in the state. Counties paid $5,216,756 for the services of public defenders. The average cost of each case represented by a public defender was $546 in FY1996.

The recent high profile cases of Donald Moeller and Robert LeRoy Anderson cost the counties over $800,000. McCook County, with a population of 5,700 and a budget of $50,000, spent more than $303,000 on Robert LeRoy Anderson's first trial. With costs of public defended trials skyrocketing, counties want help from the Legislature. Many argue that the constitutional right to a lawyer does not mean more than one, and the same can be said for expert witnesses who bill the county for their time and expenses. State law says a defendant getting court-appointed counsel can have

no more than three expert trial witnesses in each specialty. The statute is vague on the number of lawyers.

In some cases, the counties receive reimbursement for the cases tried in their courts, but the majority of the trial expenses burden their budgets. Two sources of reimbursement exist for counties in South Dakota: 1) the defendant may reimburse the county for the services provided for his defense ($625,190 in FY1996); and 2) four percent of the $19.00 liquidated cost receipts are deposited in the Court Appointed Attorney and Public Defender Payment Fund and returned to the counties on a percentage basis ($476,944 in FY1996). In FY1996, $1.1M was recovered by the counties for trial costs totaling $5.2M.

Summary

The ideal product of an issue memorandum such as this is a method which could be applied in all instances to analyze impacts resulting from changes in public policy with respect to the care and custody of South Dakota's inmates. The uncertainty as to the final result of those policy changes as well as the previously mentioned difficulty in analyzing corrections costs combine to make predictions as to fiscal impacts on the corrections system a difficult proposition, at best.

This issue memorandum was written by Dale Bertsch, Chief Analyst for Fiscal Research and Budget Analysis, and Annie Mertz, Senior Fiscal Analyst, for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.