

PRISON ALARM BELLS

**Five Years of Failure at the Department of Corrections –
*and What Washington Can do About It***

**Sen. Mike Padden
Sen. Keith Wagoner
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Sept. 15, 2021

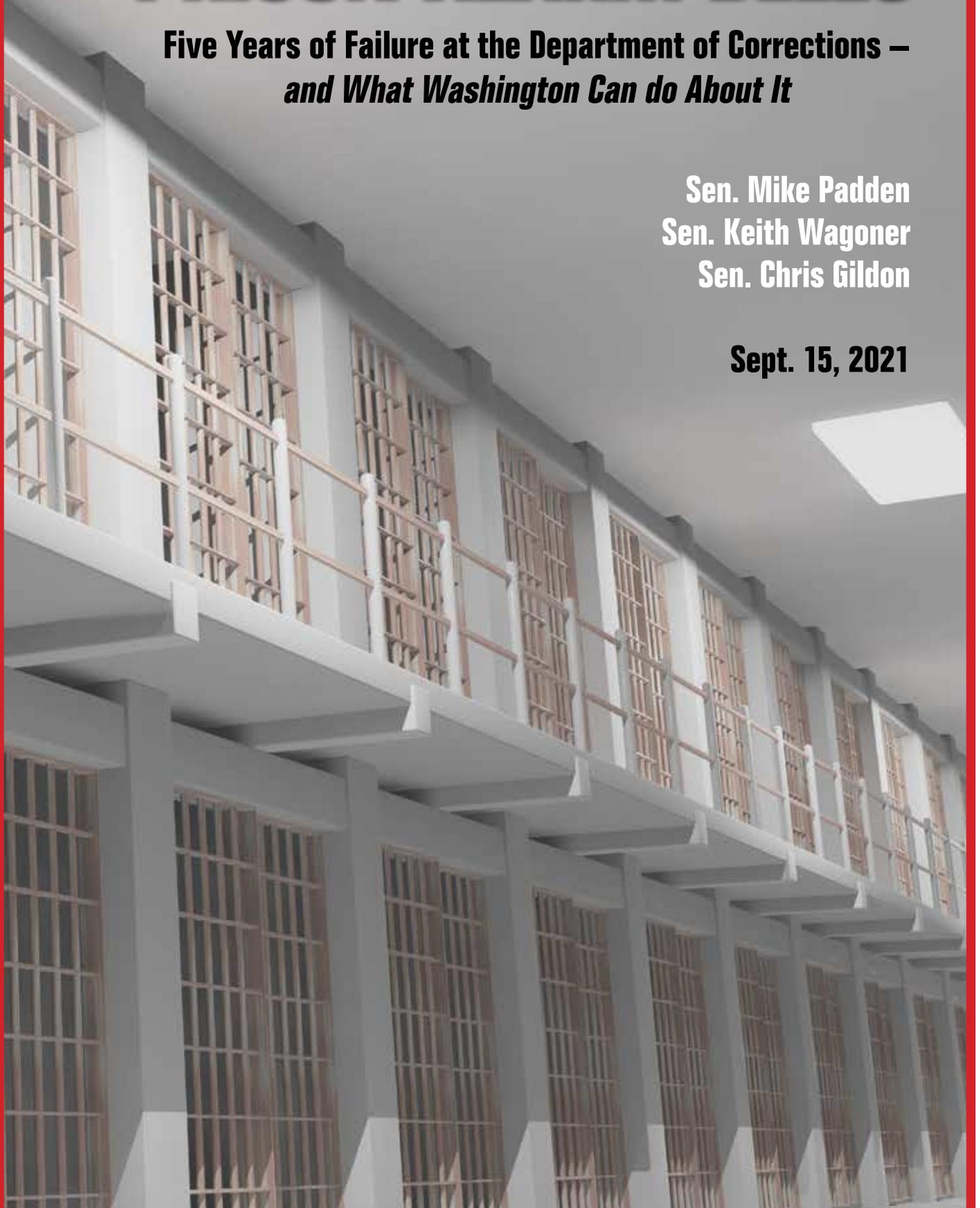


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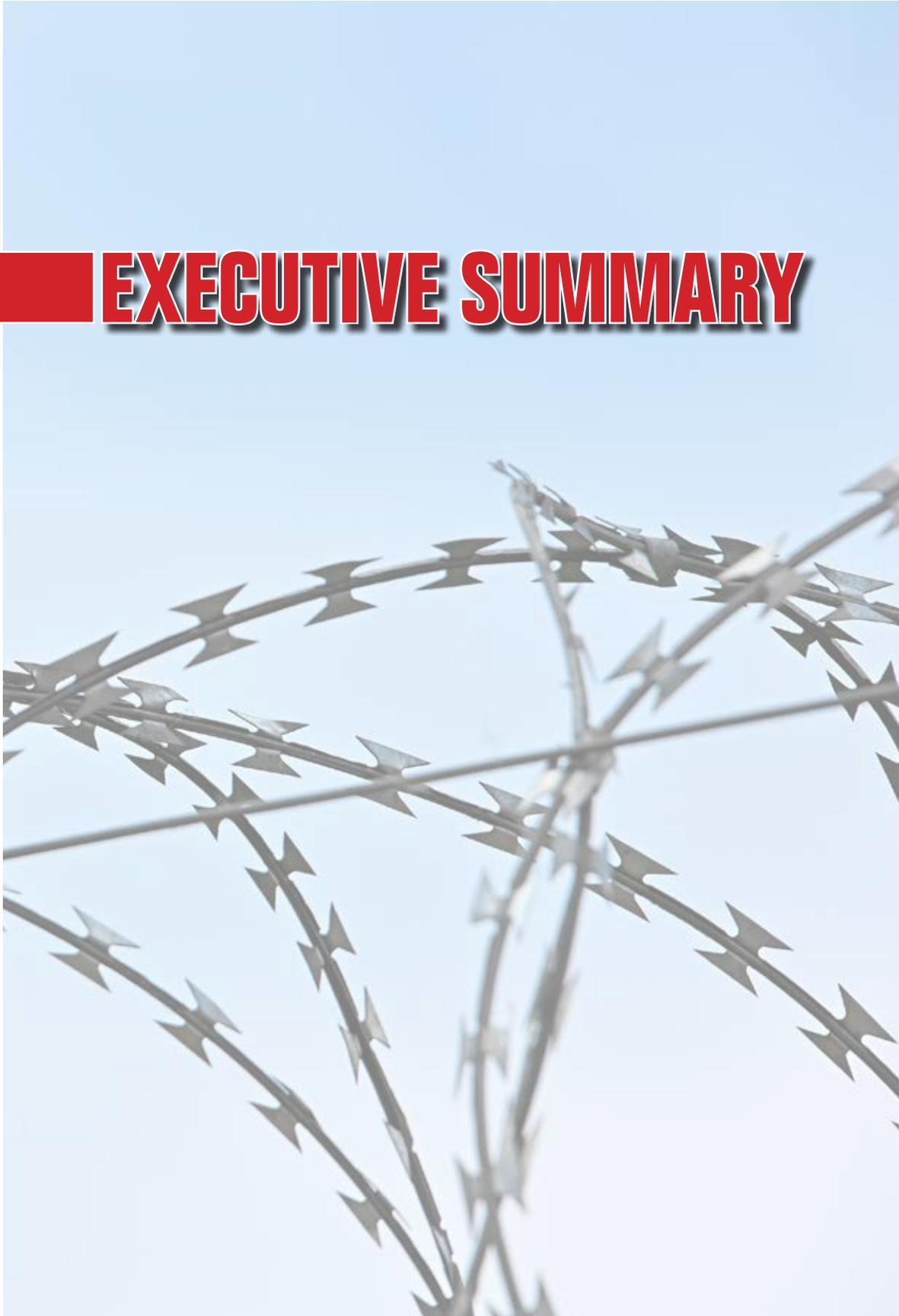
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EXECUTIVE SUMMARY



New restrictions on law enforcement imposed by the Washington Legislature during its 2021 session have created well-publicized problems for police and sheriffs' departments across the state. But this is only a part of the picture as majority lawmakers and the executive branch seek to implement a kinder, gentler approach throughout the state's criminal justice system.

The state Department of Corrections has become a focal point for new initiatives to reduce incarceration and return convicted felons to the streets sooner. This effort encompasses programs to release thousands of inmates before the end of their court-mandated sentences, as well as legislation to shorten the sentences the judicial system may impose. It also includes efforts to eliminate jail time altogether as what happened this year with the elimination of felony and most misdemeanor penalties for possession of hard drugs, in response to the Supreme Court's Blake ruling. This new direction creates new risks for the general public, the inmates in DOC's custody, and the front-line workers who maintain order in Washington prisons.

The central issue for the Department of Corrections -- as with law enforcement and the courts -- is the continuing failure to recognize that its core function is the protection of public safety.

Recent policies have emphasized the human services functions of the agency at the expense of its public safety mission. What is remarkable in the case of the Department of Corrections, however, is that this misplaced emphasis comes on the heels of one of the worst management failures in Washington state history, which had the same root cause.

Between 2002 and 2015, DOC was responsible for the unintentional early release of some 3,000 inmates convicted of violent and dangerous crimes. This problem, created by an error in computer coding, was compounded by the agency's failure to act for three years after it was notified of the issue. We still don't know exactly how many inmates were released, or how many committed new crimes while they should have been behind bars. But at least 29 offenders committed violent and heinous felonies, including vehicular homicide and murder.

Following an exhaustive investigation of the early release debacle, the Senate Law and Justice Committee released a report in 2016 that identified the central problem -- the failure to make public safety the agency's top priority.

PUBLIC SAFETY FAILURE

The committee's central recommendation was that DOC's public safety duty, already outlined in statute, be underscored with language making public safety its highest duty. This recommendation was never enacted, due to opposition from the governor's office.

This report, a five-year follow-up, describes how this continuing failure to prioritize public safety has contributed to ongoing management failures within the agency, and to ill-considered changes in direction dictated by the highest levels of management – the Legislature and the Executive Branch.

INTERNAL MANAGEMENT ISSUES

Serious management issues within DOC that have surfaced in the last five years include:

- A subsequent mass early-release incident in the Division of Community Corrections.
- Negligence in inmate medical care that resulted in multiple deaths at the Monroe Correctional Center.
- A negligent inmate-housing process that resulted in a brutal beating death.

While there have been some improvements to DOC process and public disclosure, these and other general management issues reflect the same management inattention to detail and disinterest in day-to-day operations that was demonstrated in the 2016 early-release case.

NEW POLICY DIRECTION AIMS TO REDUCE INCARCERATION

A second set of problems has been created at the highest levels of management -- the current legislative majority and the governor's office -- as they pursue a political goal of reduced incarceration.

The new direction has taken the form of statutory sentence-reduction schemes, including multiple efforts to weaken one of the most popular initiatives in the history of Washington state, 1993's "Three Strikes You're Out" – which passed with 75 percent of the vote. Another strategy to reduce incarceration has been to open the prison doors. The challenge for the present administration appears to be whether it can empty cells fast enough.

In 2018, the legislative majority created the Graduated Reentry Program, allowing the Department of Corrections to select inmates for early release. About 500 were released through the start of the COVID pandemic. Gov. Jay Inslee followed a few months later by ordering the release of more than 1,000 prisoners. This mass release was ordered despite ample facilities to segregate and treat infected inmates, and violated constitutional requirements allowing crime victims to be heard.

This year the legislative majority approved a massive expansion of the Graduated Reentry Program, with the goal of releasing another 3,000 prisoners. This comes on top of a temporary slowdown in prosecutions driven by COVID-related delays and shutdowns.

Today the Department of Corrections, at the direction of the Executive Branch, is doubling down on the current downturn in prison populations by proposing a mass closure and consolidation of prison housing units. This closure of 3,300 prison beds is touted as a means to save \$80 million per biennium. If enacted, this mass closure will force continuance of early release programs, lead to further demands for sentence reduction schemes, or assure overcrowding when prison populations rebound.

Such an artificially created crisis was precisely the result of the last round of prison closures. During the recession of 2009-2010, a similarly composed legislative majority ordered closure of 1,300 prison beds as a cost-cutting move. This inevitably led to overcrowding by 2018 and 2019, and was the impetus for creation of the early release program. By further reducing prison capacity, decisionmakers would create housing problems in the future, and additional pressure to reduce prison populations.

INCREASES PUBLIC SAFETY RISKS

This effort to shrink the prison system and return inmates to the streets sooner puts public safety at risk. In Washington state, about 31 percent of offenders commit new crimes within three years of release. The longer the sentence, the longer recidivism is delayed. Advocates have made outlandish claims about the selective nature and high success rate of these early release programs, but these claims misrepresent the data. Sufficient time has not yet elapsed to measure recidivism. Early indications are that new crimes committed by offenders granted early release match or exceed the state average.

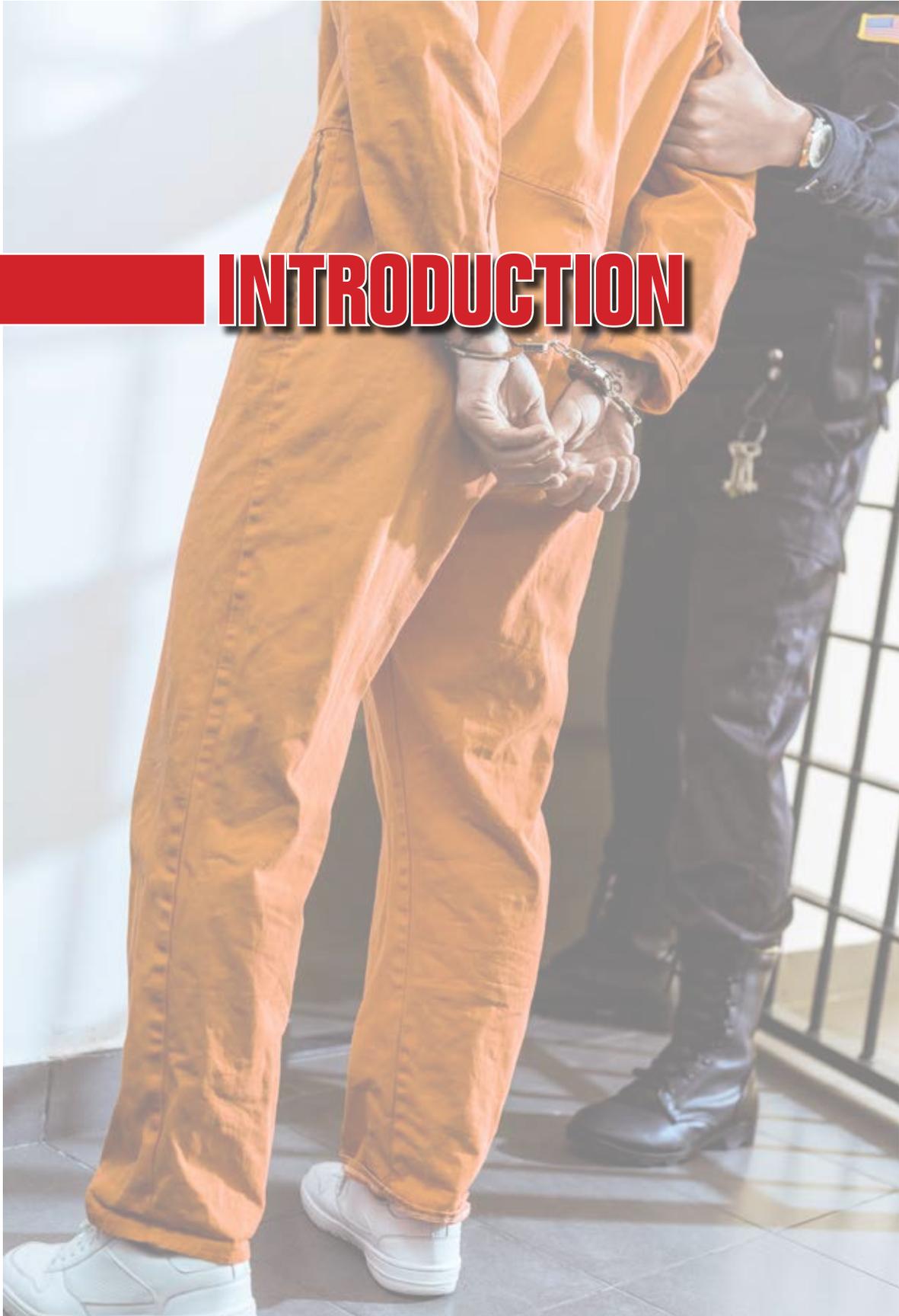
The current effort to reduce incarceration comes at a time when the state's population is growing and all categories of violent crime have seen double-digit rate increases over the last five years. The new direction for DOC compounds the problems created for law enforcement agencies this year by new restrictions on policing tactics, elimination of penalties for hard-drug possession, and a deliberate weakening of anti-crime laws.

This report reaffirms the central recommendation of 2016 – for a specific declaration in state law that public safety is the Department of Corrections' highest duty. It makes additional recommendations regarding DOC management procedures and the agency's new direction.

The central irony of the last five years at the Department of Corrections is that when the early releases of 2002-2015 were revealed, the case prompted apologies from elected officials for the violence and carnage the releases had created, and promises they would ensure it would never happen again. Today early releases are official state policy.



"I am committed to making sure this never happens again," declared Gov. Jay Inslee at the Jan. 7, 2016 Associated Press Legislative Preview, when asked about the early-release debacle. "I do want to get to the bottom of all the things we need to fix, not just some of them."



INTRODUCTION

In December 2015, the Washington Department of Corrections revealed one of the most appalling management failures in the history of the state. Over a period of 13 years, the state's prison-management agency released some 3,000 inmates before their sentences expired. Agency officials were aware of the error, yet delayed fixes to their computer software for years. The result was entirely predictable – more crimes, more violence, and at least two deaths.

The disclosure prompted abject apologies from DOC officials and the executive branch, multiple investigations from the governor's office and the Legislature, and promises from elected leaders that nothing like it would ever happen again. Yet five years later, the Department of Corrections remains one of the state's most troubled agencies. The central problem is the agency's continued lack of focus on its core public safety mission.

Since the early releases were disclosed, new problems at the Department of Corrections have surfaced on a regular basis, demonstrating the same pattern of management carelessness and inattention to detail, though there have been some improvements to agency processes and public disclosure. More worrisome is a new direction for DOC that has been charted by the highest levels of management -- the executive branch and the Legislature's majority party. The agency figures heavily in current politically-driven efforts to weaken law enforcement, reduce incarceration, and get convicted felons back onto the streets sooner. Majority lawmakers launched a formalized early-release program in 2018 and approved a massive expansion this year. Now the department, at the governor's direction, is using a temporary downturn in prison populations to justify permanent closures of prison facilities. Eventually this will lead to further overcrowding if the early release program is unable to empty cells fast enough, meaning more pressure for weaker laws and shorter sentences for felony offenders.

The low point was reached last year, at the peak of the COVID panic, when Gov. Jay Inslee chose to release more than 1,000 prisoners en masse, despite ample facilities to segregate and protect inmates from the spread of disease. These offenders predictably went on to commit new crimes, following and sometimes eclipsing state averages for recidivism. The main difference between the early releases of 2002-2015 and the governor's mass-release program was that the former was a mistake, and the latter was a deliberate policy of the executive branch.

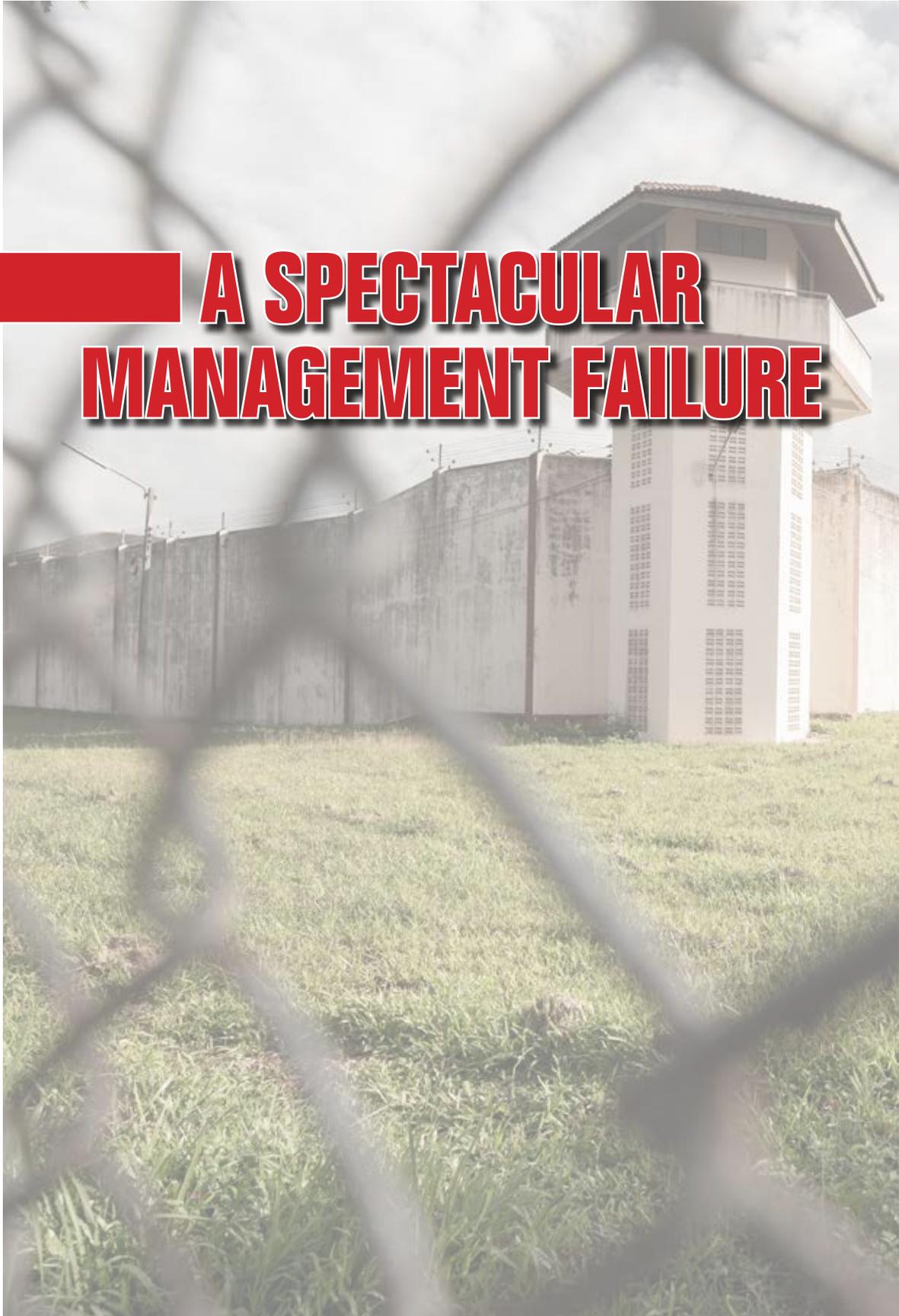
This troubling new direction for the Department of Corrections comes at a time when state population is growing and every category of violent crime is increasing at a double-digit rate. This effort to weaken one of the state's most vital criminal justice agencies may satisfy political goals, but it also burdens the state with more crime and more violence.

The developments of the last five years call attention to the never-enacted reforms recommended by the Senate Law and Justice Committee following its exhaustive 2016 investigation of the early-release debacle.¹ The committee called for the agency to reorient itself around its central public safety function. Unfortunately, reform proposals that might have addressed the problem were blocked by the governor's office during the 2017 session.² As a new secretary, Cheryl Strange, takes the reins at the Department of Corrections, the need for the agency to get its priorities straight is even clearer than it was in 2016.

This report aims to raise awareness of the agency's continuing problems, its troubling new direction and the cumulative effect of new legislation and new directives from the governor's office. It summarizes what has happened in the five years since the early release debacle was revealed, including subsequent developments in that case and other problems that have surfaced since that time. Recommendations are presented in the report's final section.

¹ Findings are detailed in [Majority Report, Investigation of Department of Corrections Early Release Scandal](#), Senate Law and Justice Committee, May 24, 2016. Details are drawn from this account.

² Seattle Times, "[Bill to improve DOC unlikely to pass; Inslee gets the blame.](#)" July 11, 2017.



**A SPECTACULAR
MANAGEMENT FAILURE**

On Dec. 22, 2015, Gov. Inslee held a news conference to reveal the most spectacular failure of state-agency management in recent memory. For 13 years, the agency had been miscalculating the sentences of inmates who had received sentence “enhancements” – that is, longer sentences – for crimes involving weapons and sexual violence. About 3,000 inmates were released early – an average of two months, and in some cases, as much as two years.

This mistake produced tragic results, as some offenders quickly committed new crimes at a time when they should have been in the state’s custody. The Department of Corrections never provided a full accounting of the new crimes committed by these improperly released inmates during the period they should have been incarcerated. Nor did DOC provide an exact number of affected inmates. At the time, the emphasis of the agency’s accounting work was to determine which inmates could be returned to custody for time left to serve.³ However, the partial accounting provided by DOC indicated that **at least 29 of these offenders went on to commit new crimes.**

They included some of the most heinous crimes on the books – among them, first-degree murder, vehicular homicide, first-degree assault, first-degree burglary, theft and possession of a stolen firearm.

In the first-degree murder case, 17-year-old Caesar Medina was shot to death at a Spokane tattoo parlor by Jeremiah Smith, who had been released 12 days earlier from the Washington Corrections Center in Shelton. His release came three months before his sentence expired. In the vehicular homicide case, Robert Terrance Jackson, released six months early from the Shelton prison, went on to kill girlfriend Lindsay Hill in a grisly drunken high-speed smash-up in Bellevue. Jackson was convicted in 2016 and Smith was convicted in 2018. Because the convictions were counted as “third strikes” under Washington’s “Three Strikes You’re Out” law, both are now serving life sentences without the possibility of parole.

The early releases exposed Washington state to lawsuits on the grounds of negligent supervision. **Since 2016, about \$10 million in tort claims have been paid out as a result of the early releases.** Case law is clear that the state has a duty to properly supervise prison inmates to protect public safety, because of the “dangerous propensities” of felony offenders. The payouts of taxpayer money to the families of crime victims are an acknowledgement that the agency **failed in its duty to protect public safety.** They are an indirect indication of the **human suffering caused by DOC mismanagement.**

Public safety mission ignored

The immediate cause of the problem was a computer-coding mistake made by DOC programmers in 2002. DOC relied on its central computer system, OMNI (short for Offender Management Network Information system), to calculate sentences. Unfortunately, the agency failed to check the



³ Case law establishes that the clock keeps ticking on an inmate’s sentence even after an improper release. Therefore, DOC’s accounting effort focused on those released in 2013 and later – those who could conceivably be returned to prison. For those released in 2012 and before, DOC’s accounting work was cursory. DOC’s analysis was incomplete for another reason – it considered only those inmates who had been convicted of additional crimes, and failed to consider arrests, charges and plea bargains.

results its computers were generating. This mistake was compounded in 2012, when DOC officials learned of the problem and did nothing to fix it for another three years. About a third of the early releases took place after DOC learned of the issue.

DOC became aware of the problem when a third party notified front-line employees that its sentence calculations in a single case were in error.⁴ Mid-level managers confirmed the mistake, blocked the early release, recognized agency computers were providing inaccurate results, and requested a software fix through internal channels. Yet the agency's IT department failed to act.

When the governor disclosed the case publicly in December 2015, he immediately announced an investigation. This probe, conducted by a law firm hired for the purpose, was flawed from the start. The governor's office set the parameters and fixed its sights on the middle managers directly involved. Although the final report provided useful information about agency processes, it concluded erroneously that a single employee was responsible for delaying the software fix. As a result of the report, he and several other mid-level employees were demoted or fired. Agency management was exonerated.⁵

Members of the Senate Law and Justice Committee quickly recognized the deficiencies in the governor's approach and launched a more thorough and wide-ranging investigation.⁶ Unlike the investigators working under contract to the governor, the committee considered the role played by the agency's upper management, including the Secretary of Corrections, who is a gubernatorial appointee. The committee also considered the role played by the governor's staff, which is required by law to adequately supervise the agencies under the governor's control. The committee came to a markedly different conclusion – agency management clearly bore ultimate responsibility.

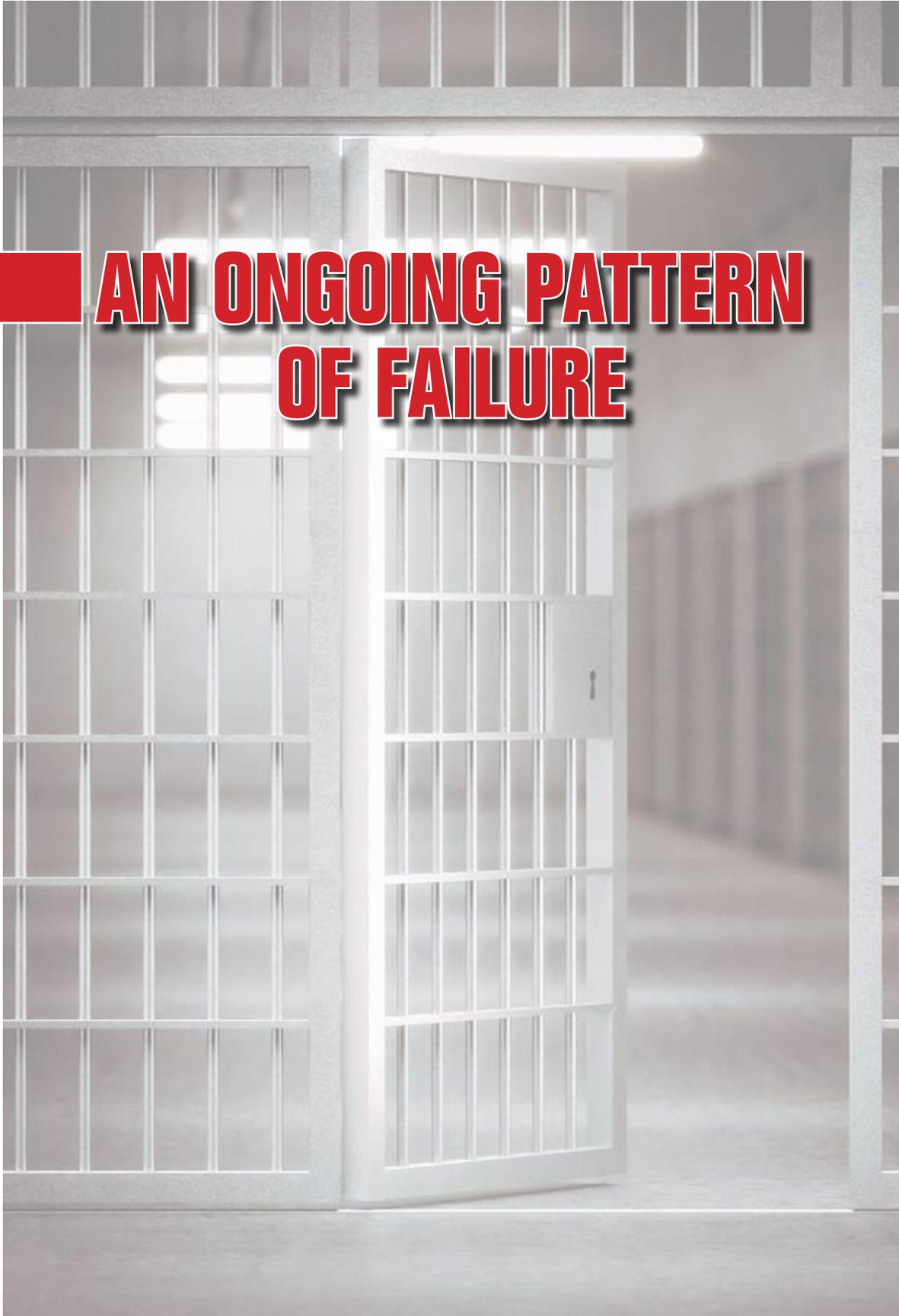
The committee found that the software fix was delayed when agency management diverted resources to develop a new computer system to predict inmate violence. In their zeal to develop cutting-edge technology, top-level managers failed to inquire about the computer projects they were pushing aside. The committee also learned that upper managers were informed of the single early-release case discovered in 2012, yet they failed to ask obvious questions, exhibited no follow-through, and displayed a remarkable lack of curiosity. The case demonstrated upper managers' disinterest in the day-to-day affairs of the agency and its core mission of protecting public safety.

The committee offered a series of recommendations, one of which remains of central relevance today. State law says explicitly that protection of public safety is a central mission of the Department of Corrections. The committee recommended that this be underscored with a declaration in statute that the protection of public safety is the agency's highest duty. This and other recommendations were presented to the Legislature in the form of Senate Bill 5294 in 2017. Although the bill passed the Senate, it was killed in the House on the final day of the session, at the request of the governor's office, when House leaders declined to bring it to the floor for a vote. Only a handful of reforms were implemented, some only partially.

⁴ DOC became aware of its error when Matt Mirante, a Federal Way truck driver, became suspicious about an early-release date for a violent felon who had nearly stabbed his son to death. He did what DOC did not – he worked out the sentence calculations with pencil and paper, and recognized that the scheduled release date was incorrect.

⁵ The governor's report concluded IT business unit manager David Dunnington was responsible for removing a "high priority" designation from the software fix. In fact, the designation was never removed. Instead, the software fix and other pending computer projects were shunted aside by the management directives to reallocate resources. Dunnington's demotion was overturned following a successful appeal to the state Personnel Resources Board.

⁶ During the course of the Senate investigation, the Senate Law and Justice Committee requested and obtained subpoena authority; outside counsel was hired to review 100,000 pages of documents and conduct interviews with 27 people; subpoenas were issued to 13 people to testify before the committee, under oath; and a total of eight-and-a-half hours of investigatory hearings were conducted in public session. All investigatory materials were made available in the committee's final 1,000-page report.

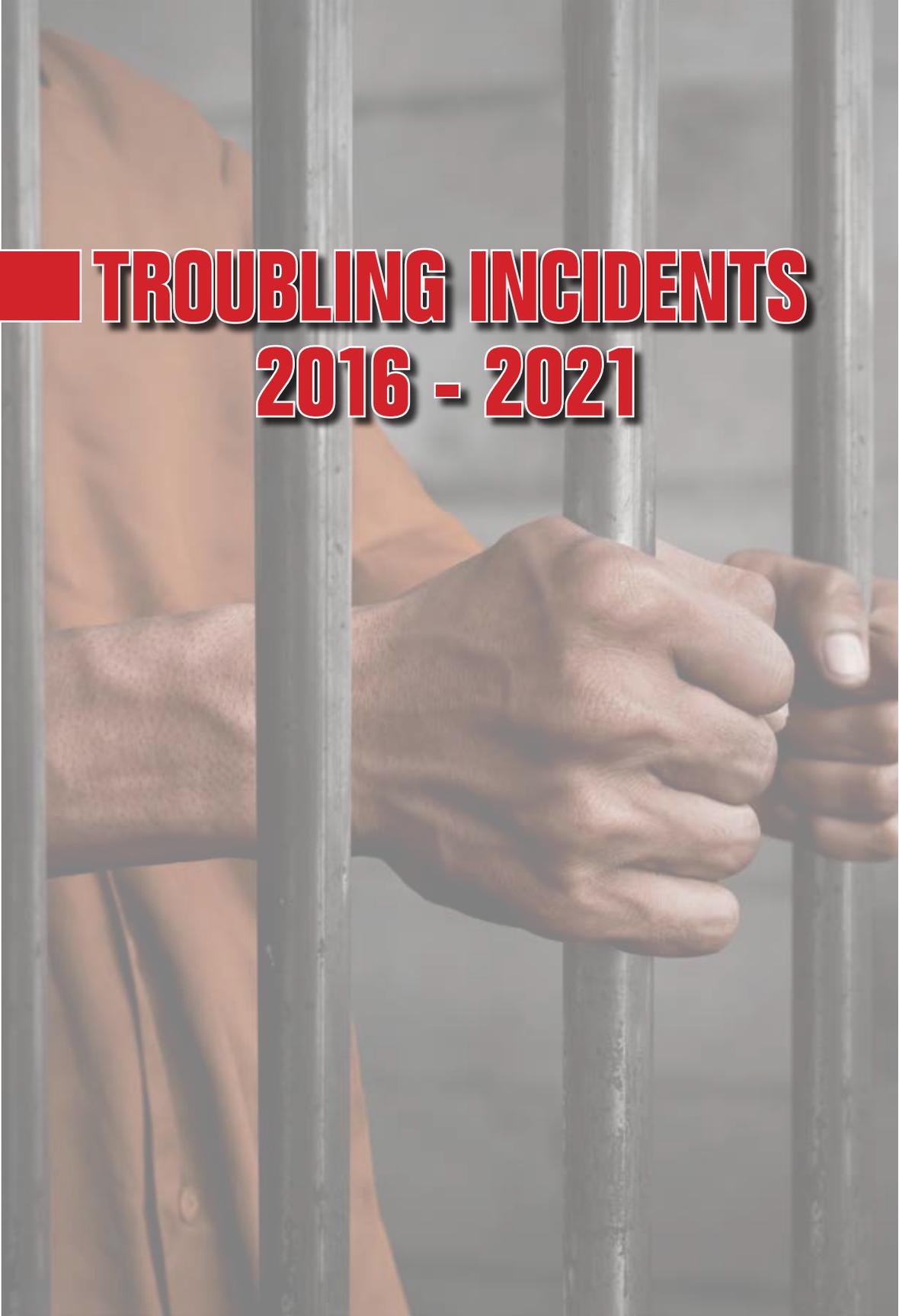


AN ONGOING PATTERN OF FAILURE

In 2016, Gov. Inslee and DOC officials vowed to ensure another case like the early releases would never happen again. Speaking with reporters at the Associated Press Legislative preview on Jan. 7, 2016, Inslee said, “I am committed to making sure this never happens again.” He added, “I do want to get to the bottom of all the things we need to fix, not just some of them.”

The record has been rather different. Incidents of Corrections mismanagement have surfaced on a regular basis during the five years since the Senate Law and Justice Committee issued its report. One involves an inadvertent prisoner release, similar to the prisoner release that occurred between 2002 and 2015. Other cases point to additional deficiencies in DOC management practices and a continuing lack of attention to core functions. In addition, a new class of problems has emerged for Corrections as a result of policy decisions made at the highest levels of government, including a deliberate mass release of prisoners and efforts to reduce criminal penalties and incarceration. These new issues point to an ongoing failure of understanding within the Executive Branch and Legislature regarding the DOC public-safety mission. **All the problems that have surfaced since 2016 may be attributed to a single general cause – the failure to recognize that the agency’s central duty is the protection of public safety.**

This five-year period since the early-release scandal became public knowledge coincides with the tenure of Corrections Secretary Stephen Sinclair. His predecessor, Dan Pacholke, resigned in March 2016 amid the furor over the early releases. The position was filled briefly by acting directors Richard Morgan and Jody Becker-Green until Sinclair’s appointment on April 25, 2016. Sinclair served almost exactly five years, resigning the position May 1, 2021. Public records uncovered by the news media indicate that the resignation was forced by the governor’s office. Many of the issues recounted in this report occurred under Sinclair’s watch.



**TRUUBLING INCIDENTS
2016 - 2021**

2018 / 2021 – Lawsuits from Disability Rights WA

- *Disability Rights Washington v. Inslee, et al., U.S. District Court for the Western District of Washington, cause No. 18-5071*
- *Does v. WA DOC, U.S. District Court for the Eastern District of Washington, cause No. 4:21-cv-5059-TOR*

In 2018, Disability Rights Washington filed a federal complaint charging that mentally ill inmates were improperly being forced into solitary confinement solely because of their mental-health treatment needs. About 70 medium and minimum-security inmates had been sent to solitary, with limited access to prison education services and other programs. The case raised concerns about DOC accommodations for persons with disabilities. The state settled the suit in 2019 by acknowledging solitary-confinement segregation of the mentally ill is a violation of inmates' civil rights, and by agreeing to create appropriate housing for mentally ill inmates. The Legislature followed with a \$5 million appropriation for a new housing unit at the Washington State Penitentiary in Walla Walla. The case remains under the supervision of the courts. This lawsuit and subsequent court action were an indication of a **high-level policy failure at DOC**. The agency knew it had a specific population cohort inadequately served based on its own medical diagnoses, and was forced to settle.

More recently, a group of transgender inmates filed suit in federal court. Their pleading documents pointed out administrative failures to ensure proper use of solitary confinement and provision of medical services. The judge in the case granted a temporary restraining order, prohibiting the Department from releasing records including personal information and gender identity. Both of these lawsuits demonstrated **agency management's inattention to front-line concerns**.

2018/2019 – Early releases/community supervision

In February 2019, the Department of Corrections disclosed a new problem with its sentence-calculation programming, affecting a different group of prisoners. This error affected inmates who had been released from prison but were returned to custody after they violated the terms of their community supervision. Two offenders were released early, while 10 were held too long, and the case triggered a review of 3,500 sentences, about 10 percent of the inmates in DOC custody. While DOC caught its own mistake this time, many in the press were critical of the fact that it took months to reveal the issue publicly.

2018 - 2020 – Hunger Strikes

Hunger strikes occurred at the Washington State Penitentiary and Clallam Bay Corrections Center in 2018, Coyote Ridge Corrections Center and Washington State Penitentiary in 2019 and the Washington State Penitentiary in 2020. Inmates protested due to changes in meal delivery and various lapses in quality and consistency. Inmates were wrongly denied hot oatmeal for breakfast. The Department appears to have resolved these issues moving forward.

2019 – Negligent medical care

The medical director at the Monroe Correctional Complex was fired in April 2019 after an internal DOC investigation found the medical care she had provided and supervised was a **contributing factor in three inmate deaths and three additional cases of negligence**. A scathing report from the new Corrections ombuds office⁷ detailed delays in treatment caused by an indifferent bureaucracy. The incident prompted reports of other delays for needed lifesaving treatments for other

⁷ Office of the Corrections Ombuds, [OCO Investigation of Delayed Cancer Diagnosis and Management](#), final report, Jan. 14, 2021.

inmates at prison facilities statewide, and lawmakers were forced to appropriate \$39 million for improved inmate medical programs this year.

In one of the Monroe cases, an inmate died of a festering abdominal wound from cancer surgery. Infirmary staff offered him only Tylenol for his excruciating pain. Medical staff noted his worsening condition, but supervisor Julia Barnett, hired despite a lack of qualifications, refused to transfer him to a hospital. The inmate filed 26 complaints about his treatment before he expired. The state settled a lawsuit in that case in June 2021 for \$3.25 million.

In another Monroe inmate death, a lawsuit for \$10 million has been filed by the family of a prisoner who was denied chemotherapy that might have stopped the advance of his cancer. In that case as well, the inmate filed written complaints, but officials took no action after noting that his grievances were not properly signed and dated and needed to be re-filed. Family members also tried to intervene but were rebuffed by prison officials.

This case demonstrated some improvement in DOC process. DOC disclosed the issue itself, and the report from the new ombuds office revealed information that might not otherwise have surfaced. However, better reporting cannot excuse the poor medical care inmates received at the Monroe prison. Nor does it explain why DOC chose to hire Bartlett despite the fact that she did not meet the minimum qualifications for the job.

2020 – Negligent inmate housing decisions

A murder of an inmate at the Airway Heights Corrections Center points to deficiencies in DOC inmate-housing decisions. A convicted child rapist was beaten to death by his cellmate, who was the brother of one of the rapist's victims. "He kept wanting to give me details about what had happened," explained cellmate Shane Goldsby, who delivered the fatal beating in full view of security cameras. Goldsby pleaded guilty to second-degree murder charges and was sentenced Aug. 4 to an additional 24 years in prison.

The placement violated DOC policies against placing inmates in "circumstances that would put staff or an offender in jeopardy." Prison officials said they were unaware of Goldsby's relationship to his cellmate's victim because they had different last names.

Goldsby said he attempted twice to object to the placement of the rapist in the same cell. But when he approached prison authorities, he said he was ordered out of the office; when he pressed a button in his cell to contact prison officials, they failed to respond. An investigation by the Washington State Patrol⁸ found no evidence that Goldsby had notified prison officials, and it concluded that DOC had adequately followed its own policies.

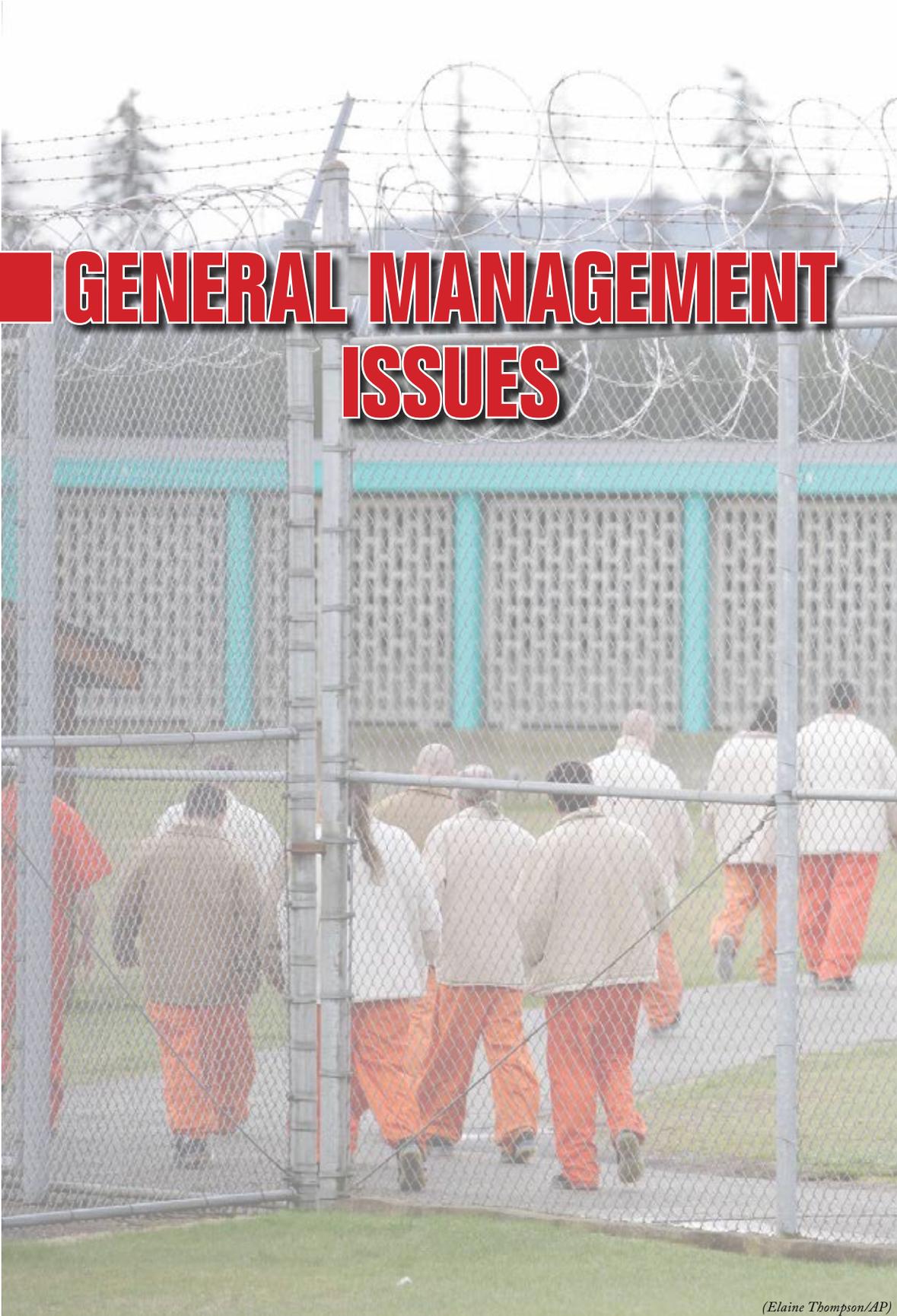
However, the report noted numerous problems, including training issues for nursing staff, a delayed call to external emergency medical services, and lack of follow-through regarding involved-staff trauma. Further investigation also has revealed Goldsby's custody determination was improper.

Under DOC sanction policy, Goldsby's involvement in a prior prison riot should have resulted in a serious infraction and prevented DOC staff from changing his custody designation from maximum custody to medium custody. Despite clear indicators that Goldsby had issues controlling his temper and behavior, the custody determination committee at DOC headquarters declined to issue an infraction for Goldsby and overrode his custody determination, changing it from maximum to medium -- presumably to increase his chances of obtaining early release via positive achievement or graduated reentry. Goldsby was not serving a lengthy sentence and would have been eligible for the new Graduated Reentry Program, described below.

⁸ Washington State Patrol, [Investigative Services Bureau, Investigative Report, Case No. 10-200013792](#), Shane Stephen Goldsby, June 21, 2020.

The result demonstrates inadequacy of DOC policies. State law creates a statutory duty to protect the safety of inmates.⁹ Prison officials said their screeners didn't catch the problem because the rapist's victim had a different last name. However, the WSP investigation also indicates that the victim's file and court documents mentioned Goldsby's minor sister and mother by name. The problem was that this vital information did not appear in Goldsby's file. Had DOC listed important victim considerations in his file, they might be seen by those making placement decisions. While this oversight is unconscionable carelessness, the difficulties encountered by front-line workers in updating records should be noted, given the archaic nature of DOC's central computer system (OMNI). In addition to the specific incidents and issues mentioned in this report, other concerns are raised by management trends and developments at the Department of Corrections.

⁹ RCW 72.09.010.



GENERAL MANAGEMENT ISSUES

(Elaine Thompson/AP)

Emphasis on Management Staffing, Not the Front Line

Already under the watch of Secretary Strange we are seeing a disturbing emphasis on headquarters staffing rather than on workers who provide front-line services. Even as DOC plans additional facility closures to further the political goals of the Inslee Administration and the legislative majority, thereby reducing staffing and cutting jobs on the front line, DOC is creating new executive positions at its administrative offices to assist the Strange transition, as outlined in a internal DOC memo dated June 7.¹⁰

Emphasis on Politically Correct Language

One of the more curious developments of the last five years has been the department's decision to use the term "incarcerated individual" to describe those in its custody. The term replaces "offender" and "inmate," and is another reflection of the new approach to Corrections.

This effort to use non-judgmental language was launched in 2016 by acting DOC Secretary Dick Morgan, who served in that position briefly between the Pacholke and Sinclair administrations. New terminology became a matter of formal DOC policy in 2019, when the agency began scrubbing the word "offender" from all Department regulations and policies. During the 2021 legislative session, multiple bills sponsored by the legislative majority sought to further change terms in statute to align with this new agency policy.

This new softer-language policy has had a detrimental effect on the agency's front-line functions. By June 2020, the Senate was aware of numerous reports that this kinder and gentler language was emboldening offenders to ignore orders from custody staff. It should be noted that every person in the department's custody is a convicted felon whose conduct has been examined and judged in court, in accordance with the law. The word game is a clear symbol of the new direction at Corrections, which puts human services ahead of the agency's public safety mission.

¹⁰ Cheryl Strange, Department of Corrections memo, "Interested Parties Secretary Organization," June 7, 2021.



**NEW PROBLEMS CREATED
BY ELECTED OFFICIALS,
POLICY GOALS**

(Ted S. Warren/AP)

Another set of challenges for the Department of Corrections has been created at the highest level of leadership – in the Executive Branch and the Legislature, under one-party control since 2018. The new direction they have charted for DOC undermines the central point of the never-enacted reforms of 2017 – that the central mission of DOC is the protection of public safety.

Reduced Sentences, Lighter Criminal Penalties

In the last four legislative sessions, Olympia legislative majority has pursued **an agenda of shorter sentences and reduced criminal penalties**. This effort is motivated by a political philosophy that holds incarceration is a reflection of societal failure rather than an indication of successful law enforcement and an efficient criminal justice system. While matters of political philosophy are a proper concern for the Legislature, this political crusade has had a tangible impact on DOC as political leaders have created overcrowded conditions in Washington correctional facilities, then used them to justify policy changes. Since 2018, legislation has been proposed and passed to reduce penalties for persistent offenders, formalize state-sanctioned early release programs, and make felony drug possession a toothless and nearly-unenforceable misdemeanor.

Sentencing Bills in Washington Legislature Negatively Impacting Public Safety, 2018-2021

Bill	Biennium	Effect
5476 (Dhingra)	2021	Eliminates felony drug possession penalties, makes misdemeanor arrest possible only on third offense.
5121 (Darneille)	2021	Expands Graduated Reentry Program to allow the early release of 3,000 offenders from total confinement.
5164 (Darneille)	2021	Weakens law re: 3-strikes persistent offenders by requiring resentencing of those whose most recent conviction was for Robbery 2.
5263 (Frockt)	2021	Amends felony bar rule to make it more likely that felons will be able to sue for injuries sustained during commission of a felony.
5226 (Salomon)	2021	Removes license suspension for failure to pay a traffic infraction.
1126 (Goodman) *Did not pass*	2021	Eliminates the requirement to toll a person’s term of community custody for any time the person is absent from supervision, and eliminates the separate tolling requirements and exceptions for different categories of criminal offenses.
1282/ 5285 (Simmons / Nguyen) *Did not pass*	2021	Increases earned time in prisons to 33%; allows earned time to accrue for firearms, deadly weapon, sexual motivation and impaired driving enhancements, and during mandatory minimum terms. Applies retroactively.
6164 (Dhingra)	2020	Gives a prosecutor discretion to seek re-sentencing.
2393 (Goodman)	2020	Positive Achievement time - community custody.
2417 (Davis)	2020	Removes tiered DOC sanction policy, resulting in fewer high level violations.
2231 (Pellicciotti)	2020	Narrows the crime of bail jumping in certain circumstances.
6180 (Darneille)	2020	Amends juvenile sex offender registration requirements for SSODA juvenile offenders.
6211 (Dhingra)	2020	Expands Drug Offender Sentencing Alternative to Robbery 2 and non-registration sex offenses.
5288 (Darneille)	19/20	Removes Robbery 2 as a 3 strikes persistent offender crime.

5488 (Darneille)	19/20	Codifies discretion to depart from sentencing guidelines for juvenile offenders convicted in adult court.
5605 (Nguyen)	2019	Allows marijuana misdemeanor convictions to be vacated from criminal record.
5290 (Darneille)	2019	Phases out youth detention for status offenses.
6160 (Kuderer)	2018	Amends auto-decline provisions so that fewer juvenile offenses will automatically have their case heard in adult court.
6550 (Darneille)	2018	Allows a prosecutor to file or divert any complaint within the jurisdiction of juvenile court which is supported by probable cause and not subject to mandatory diversion, except that the prosecutor must file certain crimes.

DOC's executive team, following the lead of the governor and the Legislature, appears to have embraced this agenda of shorter sentences and lighter criminal penalties. Last year's agency funding request, for example, offered a number of strategies to reduce sentences and put inmates on the streets sooner – with the goal of reducing prison population by 30 percent. Under DOC's proposal, those convicted of non-violent crime would see little to no prison time. In addition, DOC presented a litany of statistics to support the political argument that Washington is “overincarcerated” – even though Washington ranked 38th in the country for incarceration per capita, and inmate populations remained flat during the decade before the COVID epidemic while state population increased. Despite these facts, Gov. Inslee continued to advocate for reduced sentences and mandatory resentencing for serious and violent criminals through Proclamation 20-50 and eventually, SB 5121, which expanded eligibility for the state's Graduated Reentry Program, an early release program.

Graduated Reentry Program

The Graduated Reentry Program illustrates how the goal of emptying cells has superseded the protection of public safety. This formal early release program was launched by the current legislative majority shortly after it assumed control in 2018. Under this program, DOC selects inmates it judges least likely to reoffend, and allows them to serve up the final months of their sentences, up to six months, in work release programs, home detention or electronic home monitoring. About 500 offenders were released through the program prior to the COVID emergency. In 2021, the legislative majority approved a massive expansion of this program. SB 5121 substantially reduces the minimum amount of time an offender must serve behind bars before qualifying for early release. The change will allow an additional 3,000 felons to qualify.

During legislative debate in 2021, the program's harmful public safety impact was routinely misrepresented. Supporters declared the program a success because of a low recidivism rate. But this was a misuse of data, as advocates were comparing early results against the state's three-year recidivism average. States typically measure recidivism three years after release, because it takes time for an offender who returns to a life of crime to show up on law enforcement's radar screen. As a rule of thumb, recidivism is typically about 10 percent the first year and about one-third after the third year. Yet the new early release program was barely three years old at the time lawmakers debated the expansion, and no three-year statistics were available.

The Graduated Reentry Program makes the early release of convicted felons a top state priority.



From King-5 report on the arrest of Randall Taufette, one of 13 inmates whose sentences for felony drug possession were commuted by Gov. Jay Inslee after the state Supreme Court struck down felony drug possession statutes in State v. Blake. Two days after his release from prison April 15, Taufette led police on a high-speed auto chase through Thurston County neighborhoods at speeds approaching 120 mph. According to police, Taufette smiled and told them, “Governor Inslee let me out of prison early and I wanted to have some fun.”

Gov. Inslee’s Mass Release

At the peak of last year’s COVID epidemic, Gov. Inslee released prisoners at an even faster clip. With Proclamation 20-50, Inslee directed DOC to release another 1,016 inmates nearing their release dates. Inslee faced pressure for the mass release from inmates’-rights groups after outbreaks occurred at several prisons and work-release facilities. A lawsuit from Columbia Legal Services prompted an order from the state Supreme Court that the governor take “all necessary steps” to protect inmates from coronavirus. However, the court did not prescribe the steps it expected the governor to take. The state had options short of a general release, including expanded work release programs, portable facilities and the use of underutilized facilities such as the Maple Lane Corrections Center for isolation and quarantine.

The public safety risks inherent in this mass release of prisoners were every bit as great as in the unintentional early releases of 2002-2015. Not all figures are in, but it appears the early releases did boost crime. The selection process was little help. News media looked into the criminal records of many of those proposed for release and found many had extensive rap sheets and convictions for violent offenses ranging from sex crimes to violent threats with a gun.

Within a month of the releases, news reports indicated at least four of the inmates granted early release had committed new crimes, one involving a high-speed chase and another involving an assault on an elderly woman. The experience of the governor’s mass release program shows that even a selective effort cannot predict those who are likely to reoffend, and that the average rates of recidivism continue to apply.

Mass Release Increases Crime

The state’s three-year recidivism rate is **30.7 percent** – that is, 30.7 percent can be expected to be charged with a new crime within three years. according to 2017 data. Prisoners released under the governor’s program appear to be on track for the state average. A Department of Corrections analysis released in June 2021 indicated that of 422 prisoners who had their sentences commuted, 35 percent have been returned to confinement for community custody violations, 21.6 percent have active warrants for their arrest, and six have been jailed pending adjudication of a new felony charge. The report shows an aggregate failure rate (i.e., violation, new warrant, or return to confinement) of approximately 64 percent after just one year.¹¹

¹¹ Department of Corrections, June 17, 2021, “Spatial Distribution of COVID-19 Population Reduction.”

Additionally, DOC’s “Spatial Distribution of COVID-19 Population Reduction” report indicates that districts outside the Central Puget Sound area were disproportionately used for early releases under Proclamation 20-50, placing greater burdens on the state’s smaller communities.¹²

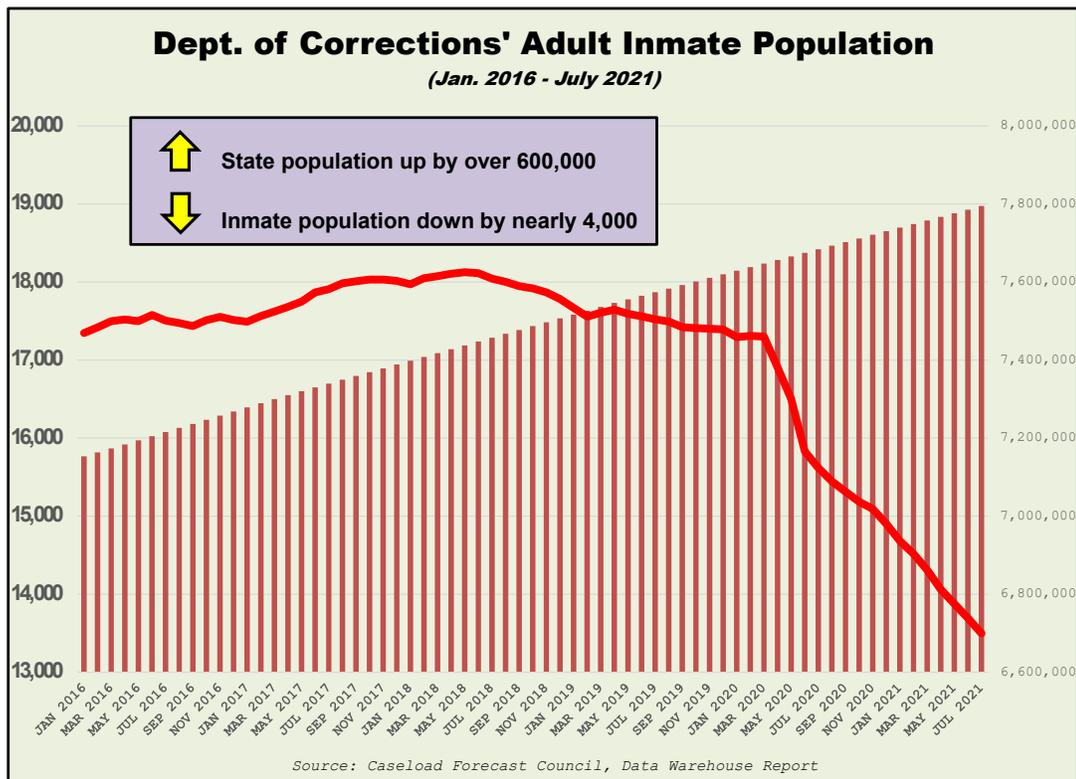
Another problem posed by the governor’s decision to release inmates en masse is that it violated the state constitution. Article 1, Section 35, known as the Crime Victims’ Bill of Rights, requires that crime victims and their survivors be notified of all relevant legal proceedings in their cases, and that they be given a chance to object when early release is considered. *This constitutional amendment was approved by 78 percent of Washington voters in 1989.*

The governor’s decision to release more than a thousand inmates at once offers further evidence that **DOC’s public safety mission has taken a back seat to efforts to empty cells and put convicted felons back on the streets.**

Closure of Prison Facilities and Prison Overcrowding

One of the chief justifications for weaker laws, shorter sentences and early release programs has been overcrowding in the state’s prison facilities. The governor’s mass-release program and the expansion of the Graduated Reentry Program make it unlikely that overcrowding will be a problem in the near future. In fact, falling prison populations have led the Department of Corrections under Secretary Strange to propose a new round of closures of prison facilities. But it should be noted that prison closures are not just a reaction to shorter sentences and early releases – they can be a driver. Additional closures raise the possibility that the state’s prisons will face a new round of overcrowding if it is unable to release prisoners fast enough.

Prison Counts Decline as State Population Rises



¹² Id.

Current average daily prison counts hover around 14,000 inmates, down about 3,000 inmates from 2016. This puts the prison system at approximately 75 to 77 percent of capacity. In 2018 and 2019, however, prior to COVID and the governor's mass release of prisoners, the state's prisons frequently were at or above 100 percent of capacity – in some cases, prisoners in overcrowded cells were required to sleep on floor mats. The overcrowding of 2018 was a leading argument for the Graduated Reentry Program.

The overcrowding of 2018 and 2019 was the direct result of decisions made by the Legislature in 2009 and 2010 to cut inmate housing by 1,300 beds, about 8 percent of capacity at the time. Prison closures were touted as a way to save money during a recession. Opponents correctly predicted that the decision would lead eventually to overcrowding and pressure for reduced sentences.

At the time, a legislative majority with similar goals touted prison closures as a way to save money during a recession. Prison facilities closed permanently during this episode were McNeil Island Corrections Center, Pine Lodge Corrections Center in Medical Lake, and Ahtanum View Corrections Center in Yakima. During the same period, the Juvenile Rehabilitation Administration closed its 200-bed Maple Lane Youth Detention Center and control reverted to the Department of Corrections in 2013. Although DOC uses the facility for its central pharmacy, the housing units have never been reopened – even amid the overcrowding of 2018 and 2019, or the effort in 2020 to protect prisoners from the spread of COVID.

One of the first acts of new secretary Cheryl Strange was a proposal for a new round of aggressive prison closures and housing unit consolidations – reducing capacity a total 3,300 beds.¹³ The closures are expected to save \$80 million. This deliberate effort to reduce prison capacity comes as the state's population and crime rates are on the rise, and points up the challenge the state will face releasing prisoners fast enough to prevent a new round of overcrowding.

The closure of prison facilities has been a longtime goal of successive gubernatorial administrations. In 2009, the Legislature funded a feasibility study regarding prison closure options. The feasibility study lays out multiple closure scenarios, providing a blueprint for current and future closures. The 2009 study appears to inform the recently released unit closure plan.¹⁴

The prison-capacity issue presents a classic legislative chicken-and-egg question. Which came first? The need to weaken anti-crime sentencing in order to reduce prison populations? Or the need to reduce prison capacity because of weaker sentencing laws? This legislative chicken-and-egg argument isn't as important as the fact that neither goal aligns with the goal of protecting public safety.

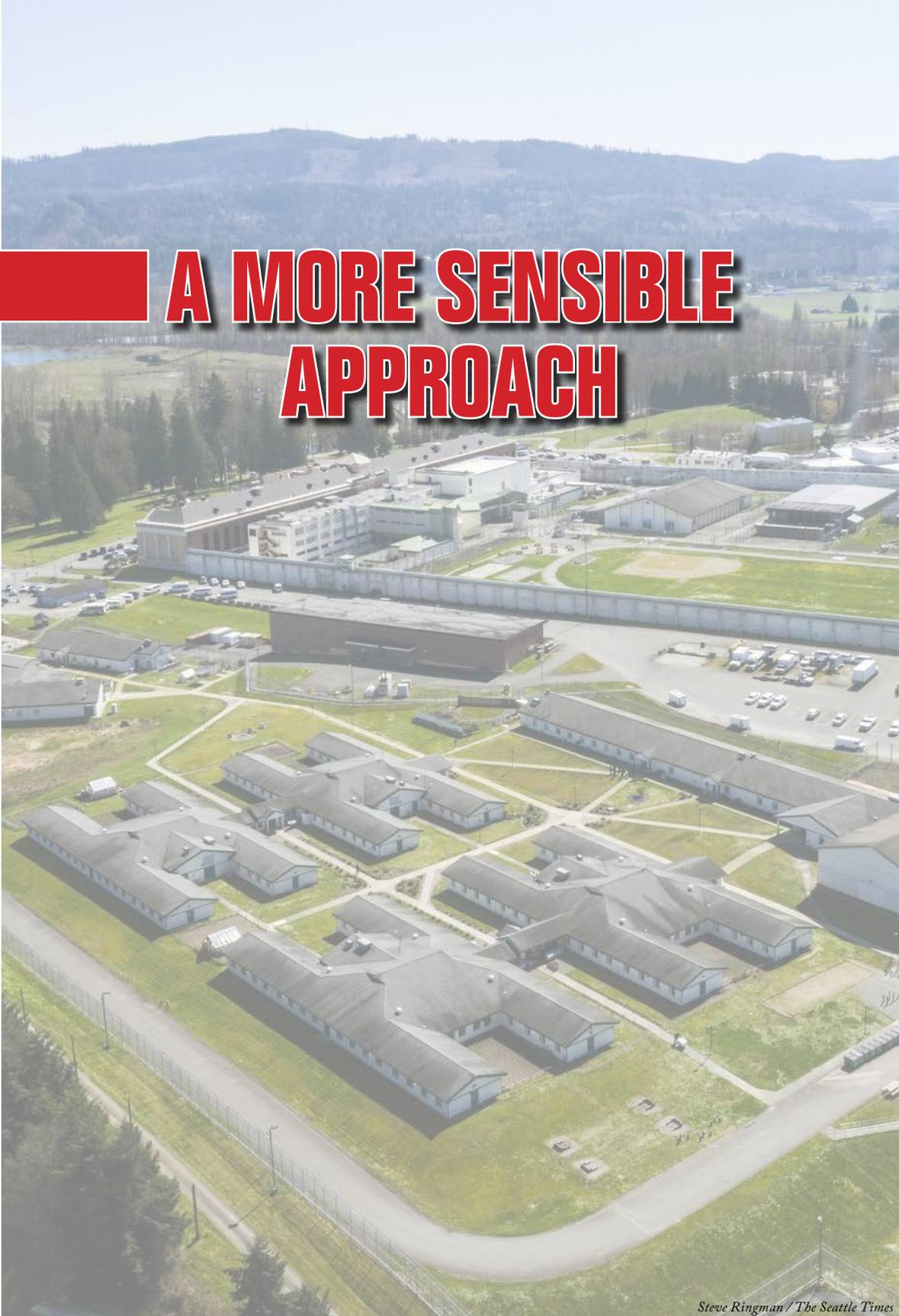
¹³ Cheryl Strange, Department of Corrections memo, "Prison Bed and Unit Closure Update." July 12, 2021.

¹⁴ Feasibility Study for the Closure of State Institutional Facilities, Christopher Murray & Associates, Nov. 1, 2009.

Violent Crime on the Rise in Washington state

Source: Administrative Office of the Courts

	2000	2010	2015	2016	2017	2018	2019	2020	1 Yr. Change (19-20)	5 Yr. Change (15-20)
Violent Crimes	21,485	20,599	16,311	19,150	20,677	22,445	22,348	22,949	2.7%	40.7%
- Murder	196	154	166	177	202	220	201	302	50.2%	81.9%
- Rape	2,659	2,499	1,702	2,223	2,499	2,852	2,879	2,376	-17.5%	39.6%
- Robbery	5,739	5,876	4,392	4,987	5,002	5,476	5,235	5,261	0.5%	19.8%
- Aggravated Assault	12,891	12,070	10,051	11,763	12,974	13,897	14,033	15,010	7.0%	49.3%
Property Crimes										
- Motor Vehicle Theft	34,404	25,282	21,065	28,336	27,571	27,269	24,427	27,786	13.8%	31.9%
- Burglary	52,422	54,421	39,688	42,553	40,694	38,558	35,536	41,638	17.2%	4.9%
- Larceny/Theft	187,964	166,485	139,002	158,272	160,463	156,738	151,794	152,092	0.2%	9.4%
- Destruction of Property	Not Compiled	Not Compiled	53,618	62,660	66,030	64,143	61,421	69,006	12.3%	28.7%
- Fraud	Not Compiled	Not Compiled	18,079	19,876	23,473	24,041	24,919	59,134	137.3%	227.1%
Other Crimes										
- Human Trafficking	Not Compiled	Not Compiled	23	18	30	45	56	85	51.8%	269.6%
- Violation No Contact/Protection Order	12,110	11,840	13,003	14,442	15,556	16,885	16,909	18,002	6.5%	38.4%
- Drug/Narcotic Violations	Not Compiled	Not Compiled	14,344	17,458	18,951	20,514	20,578	15,917	-22.7%	11.0%
- Weapon Law Violations	Not Compiled	Not Compiled	4,411	4,969	5,518	5,756	5,650	5,811	2.8%	31.7%
- Assault of Law Enforcement Officer	1,220	1,019	1,228	1,519	1,643	1,688	1,927	2,047	6.2%	66.7%



A MORE SENSIBLE APPROACH

Steve Ringman / The Seattle Times

We can draw two primary conclusions from the record of the last five years:

Management problems at the Department of Corrections continue to be an issue. Attention to detail and the day-to-day operations of the agency remain the key to ensuring the department meets its public safety obligations.

The new direction for the Department of Corrections signaled by the governor and the Legislature's majority party runs contrary to the central lesson of 2016 – that the primary duty of the Department of Corrections is the protection of public safety.

In this section, we will discuss the reform proposals that were prompted by the 2015-16 early release scandal, and identify the ones that need still to be enacted. We also present new recommendations in light of more recent developments.

DOC scorecard: 2016 reform recommendations and how they fared		
<input checked="" type="checkbox"/> Designate public safety as DOC's highest priority in state law	<input checked="" type="checkbox"/> Clarify personal-relationship policies in governor's office.	<input checked="" type="checkbox"/> Restructure information technology governance at DOC.
<input checked="" type="checkbox"/> Establish a Corrections ombuds office independent of DOC and the governor's office. (Partial completion)	<input checked="" type="checkbox"/> Simplify Washington's sentencing code in a manner that does not reduce punishment or compromise public safety.	<input checked="" type="checkbox"/> Require a report to Legislature of IT maintenance backlogs, develop a plan to address them, and make annual reports on progress.
<input checked="" type="checkbox"/> Enhance protections for DOC whistleblowers	<input checked="" type="checkbox"/> Investigate the Advance Corrections/STRONG-R Project.	<input checked="" type="checkbox"/> Review the staffing of the IT and Records departments at DOC.
<input checked="" type="checkbox"/> Require that the governor put systems in place to directly monitor agency performance.	<input checked="" type="checkbox"/> Require a DOC-wide hand calculation in the event of any future computer error that results in early releases.	<input checked="" type="checkbox"/> Review whether additional actions may be possible against former Corrections Secretary Bernie Warner.

Reform proposals of 2016

The Senate proposals of 2016 were included in the Senate Law and Justice Committee report and were drafted in bill form in SB 5294 in 2017. Here is where those recommendations stand today.

1. Designate public safety as DOC's highest statutory duty.

This was the overarching recommendation of the Senate Law and Justice Committee, and the one that remains of greatest relevance today. The committee investigation revealed that DOC upper management put its priorities elsewhere – on the development of a cutting-edge computer system to predict inmate violence. This was the reason upper managers failed to inquire about the computer projects they pushed aside. The committee also found upper managers had numerous channels through which they might have become aware of the dangerous implications of the computer problem the front-line staff had uncovered. Their failure to ask obvious questions demonstrated a remarkable lack of curiosity about the day-to-day work of the agency.

To focus the agency on its core function, the committee recommended a statement be placed in statute establishing that protection of public safety as the agency's highest duty. This was included in a provision of the never-enacted DOC reform bill of 2017, SB 5294.

The failures of DOC management in the subsequent five years demonstrate a lack of focus on the duty of protecting public safety. So do current efforts at the executive and legislative levels to weaken criminal sentencing, release inmates sooner and restrict capacity of Washington's penal institutions.

Status: Not implemented.

2. Establish a Corrections ombuds independent of DOC and the governor's office.

The key point of this Senate Law and Justice Committee recommendation was to create an office through which Department of Corrections employees could communicate concerns about management practices without fear of retaliation. The idea was that the ombudsperson should not be beholden to DOC management or to the governor's office, and should be free to intervene when intervention is warranted. Although an ombuds office eventually was established, it is not an independent office, nor is it responsive to the needs of DOC workers.

In 2016, Sen. Mark Miloscia, R-Federal Way, introduced legislation that would have created an ombuds office to serve employees, inmates and inmate families. This proposal did not pass. In 2017, the proposal was contained in the DOC reform bill, SB 5294, sponsored by Sen. Mike Padden, R-Spokane Valley. When separate ombuds legislation was reintroduced for consideration in the 2018 session, due to objections from DOC and the Governor's office, DOC workers were stripped from the bill, granting access only to inmates and inmate families. This new proposal was introduced in the Senate by Miloscia and was passed in the form of companion legislation in the House, HB 1889, sponsored by Rep. Eric Pettigrew, D-Seattle. Another important change was that this new office was placed under the control of the governor's office, which prevents independence.

Recent history demonstrates problems with this arrangement. Had the ombuds office been in existence between 2012 and 2015, at the time DOC management was delaying fixes to computer software to fix the early-release issue, the office could not have provided a conduit for employees to raise concern about the inaction of their managers. Nor is it likely that the ombuds office as presently constituted could have made a useful contribution during the investigation of the early releases, as a broad and comprehensive inquiry did not align with the interests of the governor's office.

However, the ombuds office has been able to make a useful contribution when the interests of inmate families and inmates do not conflict with the governor's goals. One example is its report on DOC's negligent medical practices at the Monroe penitentiary, which brought several facts to light that had not yet appeared in public records. The office as constituted suffers from serious limitations, yet has managed to do salutary work, and we count this recommendation as partially implemented.

Status: Partially implemented.



Sen. Steve O'Ban, R-Pierce County (left), and Sen. Mike Padden, R-Spokane Valley, present the report of the Senate Law and Justice Committee investigation into the DOC early-release debacle, at an Olympia news conference May 25, 2016.

Legislative photo

3. Enhance protections for DOC “whistleblowers.”

The Senate Law and Justice Committee in 2016 found that a strong hierarchical bureaucracy exists at the Department of Corrections with few opportunities for front-line employees to communicate concerns to upper management. In addition, the committee learned of a number of cases in which employees were punished for “speaking up.” The committee recommended stronger protections should be enacted for workers who raise concerns about DOC practices and decisions that jeopardize public safety.

Several bills were introduced to implement whistleblower protections, but all were blocked by the legislative majority. They include the general reform bill, SB 5294 (2017), SB 5952 (2017) and SB 6298 (2020), sponsored by Sen. Mike Padden, R-Spokane Valley; and SB 5322 (2020), sponsored by Sen. Steve O’Ban, R-Tacoma.

Status: Not implemented.

4. Mandate that the governor put systems in place to directly monitor critical agency performance.

The 2016 recommendations noted that the governor’s office has a clear constitutional and statutory duty to supervise state agencies. This duty extends beyond the appointment of agency managers. Yet current law is largely silent as to supervisory procedures. Processes should be designed to continuously monitor a secretary’s performance, ensuring that a pattern of poor management can be identified by the governor’s staff, and that it can be acted upon promptly. We note that Secretary Strange has stated she intends to work closely with the governor’s office, which will help the executive branch carry out its supervisory responsibilities. But supervisory processes should be institutionalized and documented, and records should be made available to the public via public-record requests.

Status: Not implemented.

5. Clarify through policy how personal relationships within the executive branch should be managed to avoid conflicts of interest.

One of the concerns identified in the Senate Law and Justice Committee early-release investigation was that a close personal relationship existed between Corrections Secretary Bernie Warner and the official of the governor’s office responsible for overseeing the performance of his agency. Although personal relationships between staff cannot be categorically prohibited, there is special concern when staff of the governor’s office form personal, and especially romantic, relationships with heads of departments. To avoid obvious conflicts of interest in those circumstances, the committee recommended law and policy should be clarified, by requiring that the governor should be notified of such relationships, and that in those cases, the agency director should report directly to the governor.

Status: Not implemented.

6. Simplify Washington’s sentencing code in a manner that does not reduce punishment or compromise public safety.

During the Senate Law and Justice Committee’s 2016 investigation of the early-release issue, multiple witnesses indicated that the complexity of the sentencing structure in Washington directly led to confusion about the urgency of the software fix. The committee recommended that the

Legislature undertake a multi-year process to evaluate the sentencing code and provide a simpler sentencing system, without reducing sentence length and thereby compromising public safety.

Over the last five years, sentencing calculations have actually become more complicated, as the result of recent court cases and bills that mandate resentencing. Meanwhile, the Sentencing Guidelines Commission is currently studying possible revisions to the state's sentencing grid. Current commission discussions raise the ominous prospect of sentence reductions. The danger foreseen by the Senate Law and Justice Committee in 2016 appears nearer reality.

Status: Incomplete.

7. Investigate the Advance Corrections/ STRONG-R project.

The Advance Corrections/ Strong-R project was the cutting-edge computer system for which Corrections reallocated resources. This was the project that caused delays to the faulty software that miscalculated sentences between 2002 and 2015. The Senate Law and Justice Committee noted in 2016 that the new system to predict inmate violence was a worthy goal, but recommended an audit by the Joint Legislative Audit and Review Committee to determine whether the project had been managed effectively. Although this recommendation was never implemented, the Strong-R project is no longer relevant because it has been superseded by new approaches. (DOC uses a dynamic assessment approach to predict inmate violence, rather than the static approach utilized by STRONG-R.)

Status: Not implemented.

8. Require a DOC-wide hand calculation in the event of any future computer error that results in early prisoner releases.

During the 2016 investigation, many witnesses testified that a hand calculation of all prisoner sentences would have stopped the early releases of 2002-2015. DOC immediately began hand-calculating sentences when the extent of the early releases became known, and did the same two years later when the subsequent community-corrections early-release issue was recognized.

Status: Implemented.

9. Restructure information-technology governance at DOC.

The agency's decision to delay pending software fixes for the sake of a single computer project raised concerns for the Senate Law and Justice Committee regarding allocation of resources. There has been some improvement to agency processes in this area. IT priorities are now carefully prioritized as the agency prepares its annual budget request. In addition, IT priorities are considered as part of the agency's 10-year capital plan.

Status: Implemented.

10. Require an annual report to the Legislature and a plan to address DOC's IT maintenance backlog.

The Senate Law and Justice Committee recommended that the Legislature should be informed of any remaining maintenance backlog defects or enhancements in DOC's offender-tracking system and a timeline for their resolution. DOC now provides maintenance backlog reports through its 10-year capital plan reports and its annual budget requests to the Legislature.

One conclusion that can be drawn from these reports is that the agency's aging OMNI system is in urgent need of replacement. OMNI "Offender Management Network Information System" tracks offender information such as crime committed, expected release date, violations, sanctions, protective status, etc. However, OMNI was designed over 10 years ago; it is unable to accommodate new information inputs such as tolling and changes to earned time. Rather than replace the current computer system, however, the legislative majority prefers to advocate alternate approaches that do not address the problem. These include reduced sentences, expansion of early-release programs, and greater good-time credit. These reports demonstrate the need to upgrade DOC computer systems to provide a modern, adaptable and scalable offender management network information system.

Status: Implemented, but new needs identified.

11. Review the staffing of the IT and Records departments at DOC.

Former Secretary of Corrections Dan Pacholke, who headed DOC when the early-release scandal was announced publicly, recommended a study of staffing levels of these key departments and whether they are adequately funded and staffed. Although the department completed a review of staffing models, the committee noted that further analysis of overtime and transport costs was needed.

Status: Partially implemented.

12. Review whether additional actions may be possible against former Corrections Secretary Bernie Warner.

Although Mr. Warner was no longer in the employment of the state at the time of the Senate Law and Justice Committee investigation, the committee concluded that his gross management warranted additional scrutiny and action. The committee urged the governor to consider administrative options, such as a letter of reprimand for his personnel file. No action ever was taken and it appears Mr. Warner has no intention of returning to Washington state.

Status: Not implemented.

DOC recommendations: Reforms for 2021 to put DOC on right track

- Designate public safety as DOC's highest priority in state law.
- Simplify Washington's sentencing code in a manner that does not reduce punishment or compromise public safety.
- Proposals to reduce prison capacity should be put on hold.
- Reinstate felony drug possession statutes in response to State v. Blake.
- Curtail further expansion of the Graduated Reentry Program, pending study of recidivism rates.
- Replace central computer system (OMNI) with a modern, more capable system.
- Immediately implement electronic medical health records.
- Install body scanners in each facility systemwide.
- Review crime victim notification procedures to ensure compliance with constitutional law.
- Conduct an assessment of overtime and transportation costs associated with off-site medical procedures.
- Incorporate more accessible tele-health systems.
- Reduce cost of inmate telephone calls and increase transparency of provider contract negotiations.
- Allow DOC employees to utilize the Office of Corrections Ombuds, and make office independent.
- Emphasize victim impact programming.
- Provide state funding support for local courts.

2021 RECOMMENDATIONS

1. Designate public safety as DOC's highest statutory duty.

This recommendation, a repeat from 2016, aims to resolve the current confusion about the mission of the Department of Corrections. The failure to enact this proposal when it was put to the Legislature in 2017 is reflected in the department's new direction, and in efforts by the legislative majority to reduce incarceration generally. Specific efforts that undermine public safety include the department's new initiative to close 3,300 prison beds, early release programs, mass-release programs, and legislative efforts to reduce criminal sentencing.

The central function of the Department of Corrections is to house convicted felons while they serve out their sentences. This removes offenders from the streets and delays the recidivism that is inevitable upon their release. About 31 percent of them commit new crimes within three years, according to DOC analyses. By returning inmates to the streets sooner, DOC creates additional public safety risks, as was clearly demonstrated by the unintentional early releases of 2002-2015. At present, there is no reason to believe recidivism as a result of the state's intentional early releases is any lower.

State law already establishes that protection of public safety is one of several missions of the Department of Corrections. RCW 72.09.010 describes the mission with these words:

"The system should ensure the public safety. The system should be designed and managed to provide the maximum feasible safety for the persons and property of the general public, the staff and the inmates."

The statute lists several other complementary duties for the department, including the "denial of liberty" to offenders for violating the laws of Washington, and that it should be "accountable to the people of the state."

Most notable in light of DOC's current direction, the statute does not establish a goal of rehabilitation and swift return to the general population. However, some confusion may have been created by other objectives listed in the statute, intended rather differently. These include requirements that

the system “provide opportunities for self-improvement,” and that privileges for inmates should be linked to good behavior.

This confusion can be ended with a modest change to existing law establishing that public safety is the paramount duty of the Department of Corrections. Senate Bill 5294, the never-passed reform bill of 2017, would have revised the law to read, “The highest duty of the department and the secretary [of corrections] is to ensure the public safety.” We recommend the Legislature enact this long-delayed statutory change.

2. Simplify Washington’s sentencing code in a manner that does not reduce punishment or compromise public safety.

This recommendation, another holdover from 2016, is as relevant today as it was five years ago – but for a different reason. In 2016, the Senate Law and Justice Committee concluded that the complexity of sentence calculations was a contributing factor to the unintentional early releases of 2002-2015. Today the Sentencing Guidelines Commission is considering revisions to state sentencing procedures – and as the committee feared, sentence reductions are on the table. Shorter sentences have a detrimental impact on public safety, because they reduce the period of incarceration and return offenders to their communities sooner. We recommend that the Sentencing Guidelines Commission continue its work on sentence simplification, but underscore the objection to proposals that require the reduction of sentences.

3. Proposals to reduce prison capacity should be put on hold.

The current proposal from the Department of Corrections to reduce prison capacity by 3,300 beds presents numerous problems. One is that reduced prison capacity will drive additional efforts to reduce criminal sentences and release inmates early. This was demonstrated by the prison closures of 2009-2010 that reduced capacity by 1,300 beds, and led to overcrowded conditions in Washington prisons by 2018 and 2019. This overcrowding led directly to the early-release legislation of 2018 and the public safety concerns Washington faces today. Further capacity reductions will force the state to continue programs to empty prison cells and return convicted felons to the streets sooner.

Another problem is created by the current resurgence of COVID-19. The prison system is now at 75-77 percent of capacity, due primarily to the Graduated Reentry Program, Gov. Jay Inslee’s one-time mass release of prisoners in 2020, and a temporary slowdown in prosecutions during the COVID pandemic. During a surge in COVID, this extra space provides the Department of Corrections assurance that it will have ample space to house the state’s prison population, while maintaining distancing requirements. Cutting prison beds in a time of COVID increases the risks the danger that another mass-release executive order could be issued.

DOC maintains its proposal will save \$80 million, and that it is driven by reduced funding from the Legislature. Therefore, we recommend that the Legislature provide all funding necessary to maintain current capacity and protect inmates from harm. Legislative consideration of prison-capacity reduction be put on hold at least until the COVID emergency declaration is lifted. This would allow the Legislature to fully consider the public-safety consequences of large-scale prison releases.

4. Reinstate felony drug possession statutes in response to State v. Blake.

The Washington Supreme Court’s ruling striking down the state’s felony drug possession statute as unconstitutional left the door open for high-level drug dealers to skirt the criminal justice system and invalidated numerous convictions. While legislation enacted this year sought to address the

constitutional concerns, the bill went beyond the constitutional question and reduced the offense from a felony to a misdemeanor. We recommend the Legislature pass legislation that, at minimum, restores the status of the offense to a felony.

5. Curtail further expansion of the state's Graduated Reentry Program, pending study of recidivism rates.

The state's policy to promote the early release of felons has done little to reduce recidivism rates and is antithetical to public safety. Continuing this policy while the state's population and crime rate grows will exacerbate the criminal justice system in the years to come. The state and DOC should instead focus on programming and alternative training mechanisms that sufficiently prepares offenders to reassimilate into society.

This year the Legislature approved the expansion of this program to release an additional 3,000 inmates. The Legislature should be permitted the time to evaluate the impacts of these early releases, particularly claims of lower recidivism rates, before additional inmates are released.

We recommend further releases be suspended until completion of a study that provides analysis of the recidivism rates of those subject to early release under the Graduated Reentry Program and Gov. Inslee's mass release of 2020. The study also should evaluate the effectiveness of the supervision the program provides, and impact on caseloads of community corrections officers. If recidivism rates for those released under the 2020 plan are higher than the state's average, then expansion should be reversed.

6. Replace the Offender Management Network Information (OMNI) computer system with a modern, more capable system.

DOC's primary computer system, introduced in 1999, was a factor in the 2002-2015 early release debacle – improper programming resulted in inaccurate sentence calculations. While this was a matter of human error, the mistake was difficult to catch, and ultimately DOC was forced to calculate sentences by hand as a backstop against inaccurate results. Subsequent problems, such as the Airway Heights inmate housing case, have called attention to OMNI's lack of capabilities and the difficulty of upgrading the system. This antiquated system now is in need of replacement. The new system should be capable of tracking tolling for violations, earned release-date information, risk group, family members, job skills and progress toward rehabilitation, and needs to be adaptable to new functions as needs arise.

The system has been plagued with issues since its introduction. Developed under a \$58 million with IBM, the system had major bugs upon introduction, and required \$14 million in upgrades in 2006. Further development work is throwing good money after bad. Two bills introduced in the 2021 session by Sen. Perry Dozier, R-Waitsburg (SB 5301 and SB 5437) would have launched work on a replacement system, but neither bill received a hearing. We recommend passage of these bills.

OMNI's 2016 flaw:

	Correct (Statutory)	Incorrect (OBTS)
Base Sentence	50 months = 1490 days	1490
County Jail	138	138
Earned Good Time in Jail	69	69
Maximum Good Time in Prison	$(1490 * 1/3) - 69 = 427.66$	$(1490 - 69) * 1/3 = 473.66$
Balance of Sentence in Prison	$1490 - (138 + 69) = 1283$	$1490 - (138 + 69) = 1283$
Early Release Date	$1283 - 427.66 = 855.34$	$1283 - 473.66 = 809.34$
Earned Good Time %	$(69 + 427.6) / 1490 = 33\%$	$(69 + 473.6) / 1490 = 36\%$

Source: Blackstone-Westinghouse Report

7. Immediately implement electronic medical health records.

The lack of electronic health records (EHR) at DOC severely hampers consistency and quality of care, as was demonstrated by the negligent medical care at the Monroe Correctional Center. The lack of electronic medical health records makes central oversight difficult, and leads to communication failures and treatment lapses. It also impairs coordination with other agencies, such as the Department of Health and the Health Care Authority. The Monroe case has heightened legislative interest in DOC medical programs. In 2020, the Legislature passed SB 6063, sponsored by Sen. Keith Wagoner, R-Monroe, which mandates minimum job qualifications for prison medical directors, and requires DOC to work with HCA in developing uniform standards of care. Electronic medical records are a component. DOC completed an electronic medical records feasibility study in 2013 and recently launched a “request for information” (RFI) process. We recommend the Legislature and DOC promote further development of this new system.

8. Install body scanners in each facility systemwide.

Contraband is one of the leading risks to the safety of inmates and custody staff. A body-scanner pilot project at the Washington Correctional Center in Shelton has demonstrated that body scanners are extremely effective at reducing the introduction of contraband into prison facilities. In addition, these scanners reduce the need for embarrassing and dehumanizing strip and body cavity searches. Adoption of body scanners at all state institutions would reduce the likelihood of harm of inmates and staff. Legislation mandating full-body scanners was introduced by Sen. Keith Wagoner in 2020 (SB 6064), and was ultimately included in the operating budget. Unfortunately, the proviso was vetoed by the governor as part of the covid reaction. We recommend enactment.

9. Review crime victim notification procedures to ensure compliance with constitutional law.

Gov. Jay Inslee’s mass prisoner release of 2020 was a clear violation of the state constitution’s requirements regarding the notification of crime victims. Article 1, Section 35, the “Crime Victims’ Bill of Rights,” guarantees crime victims a meaningful role in criminal justice proceedings according them dignity and respect. Constitutional requirements include notification to crime victims

when the release of a convicted felon is considered, and an opportunity for crime victims to make a statement during release proceedings. We recommend DOC review crime-victim notification procedures, and report to the Legislature on changes that may be required to ensure future compliance with constitutional law. DOC's report to the Legislature should include recommendations for improvements to crime-victim notification processes, including expansion of the crime victim notification program.

10. Conduct an assessment of overtime and transportation costs associated with off-site medical procedures.

Overtime costs associated with medical transportation run high, and high overtime pay for front-line staff creates a disincentive for employees to seek promotion and advancement. We recommend DOC consider alternatives that reduce the need for overtime pay, including relocation of prisoners serving time in remote facilities when substantial offsite medical care is required, with report to Legislature.

11. Incorporate more accessible telehealth systems.

A growing number of inmates have unresolved behavioral health issues. Inmate access to telehealth services should be expanded, including mental health services. We recommend DOC examine other states' use of telehealth programs to manage offender behavior and address concerns of individual risk groups, with report to Legislature about further actions required.

12. Reduce cost of inmate telephone calls and increase transparency of provider contract negotiations.

During the COVID pandemic, DOC limited in-person visitation and waived certain fees for inmate telephone calls. Studies show that increased access to phone time and family contact can improve inmate behavioral compliance and improve chances of successful reentry outcomes. Recently DOC undertook a contract assessment and initiated contract negotiations with providers to reduce costs. We recommend DOC explore stricter contracting standards with the goal of expanding inmate phone contact with their families.

13. Allow DOC employees to utilize the Office of Corrections Ombuds, and make office independent.

In 2016, the Senate Law and Justice Committee found that one of the major issues in the early release debacle was that front-line employees had no formal conduit through which they might raise concerns about DOC management practices – and that the agency had a history of retaliation against workers who raised concern outside official channels. The need remains for a formal mechanism that allows employees to raise concerns about emerging problems without fear of retaliation. During the course of the 2016 investigation, the Senate Law and Justice Committee solicited comments from DOC employees and received numerous communications about management lapses. Since 2016, committee members and staff have received numerous reports of agency failures. We recommend the reconfiguration of the Office of Corrections Ombuds as a conduit for employees as well as inmates and their families, and that it be established as an independent office beyond the control of DOC or the Executive Branch, in line with original proposals.

14. Emphasize victim impact programming.

Recent changes grant access to DOC educational programming to inmates serving sentences of life without parole and offenders convicted of serious, violent and sexual crimes. We recommend a statement of remorse from these offenders before they are eligible to participate.

15. Provide state funding support for local courts.

COVID-related shutdowns are continuing to have an effect on the pace of prosecutions, delaying trials and leading to protracted plea bargaining. This has been a factor in the recent temporary downturn in prison populations. While public defense costs are the biggest issue, we recommend the Legislature find a mechanism to provide financial assistance for clearing up the backlog that does not favor prosecutors or public defenders.

PRISON ALARM BELLS

**Five Years of Failure at the Department of Corrections –
*and What Washington Can do About It***

**Sen. Mike Padden
Sen. Keith Wagoner
Sen. Chris Gildon**

Sept. 15, 2021