

**Op-ed**  
**January 22, 2018**

## **TJ Donovan: If You Build it, You Gotta Fill It**

The Governor's administration has proposed a new 925 bed prison campus at a cost of more than \$140 million dollars. Before we move forward with such a significant undertaking, Vermonters should ask some tough questions about whether there is a better way to address the need for correctional facilities in the State of Vermont.

2,681 – that was the number of inmates the Council of State Governments projected Vermont would incarcerate by the year 2018.<sup>1</sup> There are approximately 1,700 incarcerated presently; roughly 1000 people less than projected. The story of how the State of Vermont incarcerated fewer people while maintaining one of the safest states in the nation is a story of political courage and smart-on-crime approaches. The courage started with the hard work of many in State Government and our partners around the state who declared a “War on Recidivism.” The smart-on-crime approach pushed the criminal justice system to divert nonviolent offenders, to rely on science, to adopt restorative justice principals, and to use public health strategies in our public safety system. As a result, use of diversion is at an all-time high throughout our state and all counties have alternative justice programs and use evidence-based risk assessments.

This story of success and declining incarceration, while maintaining a low crime rate, should raise questions about the recent proposal to build a 925-bed campus in Franklin County. While our correctional facilities are old and we send 250 inmates out of state, building such a large facility seems out of scale with the Vermont justice system and conflicts with our successful efforts to decrease incarceration. The Department of Correction's (DOC) data shows a consistent decline in the number of incarcerated people as a direct result of the efforts to reform our criminal justice system. Most dramatically, DOC cites that since 2009, our out of state incarcerated population has decreased from 729 to 266 just last year.<sup>2</sup> The thing with jail is: if you build it, you gotta fill it.

And before we fill it, we should ask whether we need such a large project and what alternatives, are being explored. It appears the only growth in the prison population is among people with mental illness and the elderly, and these people are a fraction of 900<sup>3</sup>. While we desperately need an in-patient mental health facility with enough capacity, before building we should consider compassionate release programs for elderly inmates who no longer pose a risk of public safety.

Housing is often the barrier for release and successful reentry for prisoners. Countless inmates are currently eligible for release, but held past their minimum sentence for lack of housing.

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<sup>1</sup> <http://doc.vermont.gov/about/reports/act-60-facility-study-report/view> page 5

<sup>2</sup> <http://doc.vermont.gov/about/reports/act-60-facility-study-report/view> page 5

<sup>3</sup> <http://doc.vermont.gov/about/reports/act-60-facility-study-report/view> page 8

Before spending money on a new facility, we should invest in transitional housing for inmates upon their release. Transitional housing programs like the Dismas House have a proven track record of success- a record of helping inmates peacefully reintegrate into our community. Transitional housing is important because the vast majority of inmates will be released back into our community. We should prepare for our collective success. Housing is the cornerstone of that success.

Our pretrial detainee population is part of the equation. We have anywhere from 350 to 400 detainees who are held pre-trial in Vermont. While some face serious charges and are rightly held without bail because of the risk to public safety, too many are held because they are poor and can't post bail. Our cash bail system is based on the risk of nonappearance, not risk to public safety. When money is an issue, Vermonters held in jail for low level offenses may plead guilty in exchange for a sentence of time served. That plea and criminal conviction can severely limit one's ability to obtain housing, higher education, and employment. This increases recidivism rates and threats to our public safety. That is why we need bail reform. We need a system that doesn't judge you on your ability to pay to get out of jail, but judges your risk to our community's safety. By passing bail reform legislation, we can reduce our detainee population and enhance our public safety.

We continue to fight and make progress against opiate addiction. Progress in this endeavor is predicated on enforcement, intervention, treatment and prevention. Many addicts end up in the criminal justice system because of their addiction: they deal or steal only to feed their habit. Many of these are not violent offenders and we would be better served if they are effectively treated in the community with appropriate treatment. Efforts at prevention would stop the next generation from ever getting started and possibly having contact with the justice system.

Finally, we should question the funding of this project. Incarcerating a person is the sole responsibility of government. The paperwork for every criminal charge in our state reads "against the peace and dignity of the State of Vermont." Why abdicate our responsibility to our state and our citizens to an out-of-state corporation? Why enter into a landlord/tenant relationship with a private prison company? Why send Vermont tax dollars out of state for 25 years and possibly incur debt? Is the lease based on the square footage, or the number of beds? Why hire out-of-state consultants to design this facility? Can no one in Vermont do this work?

These questions, along with others, should be asked and answered. While there is a cost to maintaining and refurbishing our existing facilities, before we commit to the proposed 10-year plan, we should ask whether it is possible that the number of incarcerated people will continue to decline, just as it has in the past decade, in the 10 years ahead? Is it possible the principles of restorative justice will be used by community justice providers involving citizens throughout our state as a real alternative to our current system? Is it possible to achieve bail reform and create a fairer, more just system? Is it possible that an increase in transitional housing will lower our prison population? Is it possible we will be successful in preventing the growth of opiate addiction? The answer to all these questions is yes. That means fewer people incarcerated and enhanced public safety. Paying rent to an out-of-state corporation doesn't address any of these issues. Vermonters should be asking questions about this proposal.

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*Disclosure: Attorney General T.J. Donovan is a former board member of the Burlington Dismas House*