

Getting smarter on prison sentences

By Jim Nowlan

The U.S. has 5 percent of the world's population and 25 percent of its prison inmates, according to Mary Ann Dyar, executive director of an Illinois prison diversion program.

We need to get smarter on whom we send to prison and for how long.

"I probably sent away a thousand or more people for drug crimes," recalls former federal judge Mike McCuskey of his 16 years on the U.S. court bench in central Illinois. In effect, he filled up a federal prison.

I had dinner recently with old friend McCuskey, now retired from the federal bench and back serving as a state circuit court judge in Peoria.

McCuskey is highly critical of the federal "mandatory minimum" sentences that take away the discretion of judges to fit the sentence to the crime.

"The system of mandatory minimum sentences was set up in 1984 to be draconian," says McCuskey. "The theory was that if we punish them severely, they won't do it (deal drugs)."

This has been proved wrong by experience, the judge adds. "If we take a minor drug dealer off the street corner, he is replaced the next day."

Since 1980, federal prison inmate numbers have gone up 700 percent, to 215,000, about half of whom are in prison for drug-related crimes.

"We are filling up prisons with long-term inmates at \$38,000 per year, McCuskey observes.

For 150 years, Illinois had no federal prisons, says McCuskey. “Now we have filled up prisons in South Pekin and Greenville and soon we’ll be filling up a new one in Thomson.”

“The system is broken,” McCuskey says, and the mandatory minimum sentences are largely to blame.

“The federal courts were not invented to give sentences two to three times higher than in state courts.”

“For example, if you’re convicted of three, even small, drug distributions, you’re sentenced to life imprisonment under the mandatory minimum guidelines, and the judge is not allowed to impose a sentence below that.”

McCuskey is strongly opposed to legalizing drugs, yet he thinks that putting away minor offenders for long sentences has proved costly to taxpayers and ineffective.

Judge McCuskey will appreciate a relatively new program in Illinois that diverts some non-violent offenders from prison and into 18-24 month programs of intensive counseling combined with substance abuse treatment and rigorous monitoring by judges and probation officers.

Adult Redeploy Illinois (ARI) provides financial assistance to local justice systems that promise to divert at least 25 percent of their prison eligible, convicted population into community-based treatment programs.

Initiated in 2009, ARI has diverted from prison more than 2,000 felons, many with underlying addictions and mental illness.

Based on a successful program in Illinois for juvenile offenders, ARI supports 18 local judicial system sites throughout the state.

Frequently the state grants are to “problem solving courts” such as drug and mental health courts. These courts provide non-adversarial settings in which, around at table, the judge, prosecutor, probation officer and social service providers develop a case plan for the offender.

The offender is given the option of going to prison or entering the program, which will require cognitive behavioral therapy; drug treatment, sometimes including medication-assisted treatment; regular drug testing, and frequent visits to court for monitoring of progress.

The program is tough and sometimes an offender’s lawyer will suggest that a year’s sentence in prison (out in six months) would be easier than two years of testing and court surveillance.

“Adult Redeploy Illinois is not a get out of jail free card,” emphasizes Mary Ann Dyar, who directs ARI.

According to Dyar, only 320 of the 2,087 in the program have thus far been terminated before completion.

ARI costs about \$4,400 per year per offender versus \$21,500 in a state prison.

Successful completion of the program often includes a graduation ceremony in the courtroom, complete with high fives all around and not a dry eye in the place, according to Dyar.

“Absolutely,” declares McCuskey, when asked if he would have used such a program when on the federal bench.

Adult Redeploy Illinois should be expanded from its 18 test sites to blanket the whole state, and the feds should devise such a program. We can’t afford not to do so.