

# Minutes of the Joint Legislative Oversight Committee

## January 28, 2020

### Room EW42, Capitol, Boise, Idaho



Cochair Senator Mark Harris called the meeting to order at 4:00 p.m. He recognized Representative Rubel as a new member and cochair. Representative Rubel said she was looking forward to being part of the committee and its important work. Attending the meeting were Senators Dan Johnson, Michelle Stennett, Cherie Buckner-Webb, Representatives Ilana Rubel (cochair), Caroline Nilsson Troy, Paul Amador, and Elaine Smith. Also present were Rakesh Mohan, director and other staff from the Office of Performance Evaluations (OPE). Audience members included the following:

President Pro Tem Brent Hill and Senator David Nelson  
Representative Randy Armstrong  
Jared Larsen, Criminal Justice Policy Advisor, Office of the Governor  
Josh Tewalt, Director, Department of Correction  
Adam Jarvis, Analyst, Division of Financial Management

### Approval of minutes from March 28, 2019

**Representative Smith moved to approve the minutes from March 28, 2019. Senator Buckner-Webb seconded the motion, and it passed by voice vote.**

### Report release: *Managing Correctional Capacity*

Rakesh said he was excited to release the report. He said the committee would be hearing from evaluators Lance McCleve, Susie Bergeron, Casey Petti, and consultant Bob Thomas. Jim Brock, consultant, worked on the report but would not joining the presentation. Rakesh said the office had a wonderful working experience with the department and the Governor's office. The two offices helped OPE understand the issues and get the right information. He said the report was an update of the 2010 report, *Operational Efficiencies in Idaho's Prison System*. The 2020 report also addressed other issues, primarily inmate capacity. Recommendations were for the department, but for the recommendations to work, they required active engagement of policymakers. The Governor's response and the director's response were in the back of the report.

Cochair Harris asked for a motion to accept the report.

**Senator Buckner-Webb moved to accept the report *Managing Correctional Capacity*. Senator Stennett seconded the motion, and it passed by voice vote.**

Lance McCleve, principal evaluator, spoke to the 18 percent growth of inmate population in the past three years. He said it was significantly different than growth historically. The reasons behind the growth trend were not completely known.

Representative Troy asked why the inmate population dropped about the time of the JRI. Lance said the therapeutic community program closed and inmates were paroled. Representative Troy asked whether the recidivism rate had increased. Lance said the recidivism rate may not have

increased. Instead, he said growth may have been caused by a clear, upward trend in parole revocations and a decrease in inmate releases since 2016.

Lance said the department used a two-year forecast, which was good short term. But the department needed long-term projections too. He emphasized that the shortage of housing capacity required solutions that would take time to implement.

Lance said long-term forecasting served as a benchmark to understand growth and encourage discussion. Any sudden deviations usually occurred from policy adjustments. He recommended the department develop long-term forecasts of the inmate population.

Senator Stennett asked whether pay rates were high enough to keep staff in their positions. Lance said the team did not study pay, but Bob would address staffing issues later in the presentation. Senator Stennett asked about the department's ability to get inmates their needed educational requirements for timely parole. Lance said he did not see anything alarming in terms of programmatic thresholds for inmates who were still in custody. The pattern of parole violations did not follow the pattern of parole revocations, which did not look like an inmate behavior change but rather a policy or practice change. Something was happening that was distinct and should be investigated.

Casey Petti, evaluator, talked about what had changed in the prison system in the past 10 years. The department increased capacity of 203 bunks across nine prisons. Some of the increase was done by increasing the number of inmates within rooms, which may have caused overcrowding. In 2008, a study found 26 of 53 housing units were overcrowded. Today, 36 housing units were potentially overcrowded. When facilities were overcrowded, inmates and staff safety were at risk, wear and tear was increased, and inmates had less access to educational and programming services.

Casey said that 27 of 53 housing units do not have continuous observation. A lack of continuous observation was a safety issue. Older facilities typically were not designed for continuous observation.

Senator Stennett asked how a layout would look for continuous observation. Casey said a continuous observation layout allowed security staff to see movements of inmates in common areas. The department had installed cameras to increase continuous observation in poorly laid out facilities, but having correctional officers watch a camera continuously through a shift presented challenges in focus and response.

Casey said the maintenance backlog for facilities was \$18 million more today than in 2010, an increase of 45%. In addition, the 2010 amount covered all projects. Today's cost only calculated projects of \$100,000 or more.

Representative Amador asked whether the department had requested for the backlog to be funded. Casey said each facility did its own routine maintenance. Larger maintenance items went through the Division of Public Works. Each year the department gives a list of maintenance projects to Public Works, and Public Works decides which repairs to address.

Casey said the department had spent \$37 million in maintenance over the past 10 years. The cost to keep facility maintenance up-to-date was snowballing, and the department lacked tools to track needed repairs. In 2006, a contractor, VFA, documented all repairs and left the department with software for tracking. In 2011, the software expired, and the department

stopped tracking repairs. Casey recommended the department work with facility management organizations to conduct a facility condition assessment of prisons.

Susie Bergeron, evaluator, spoke about housing inmates in several different settings. In fiscal year 2019 the department housed 592 inmates in county jails. In 2018 the department entered an emergency contract with Texas to house 602 inmates. Inmates were in a facility in Eagle Pass. She said jails and prison had fundamental differences. Jails offered minimal services to inmates. The department offered services for reentry into the community.

Susie said the level of department control differed by settings. The department sent contract monitors to Eagle Pass every week. Department staff visited county jails at least once a year. However, no level of monitoring gave the department as much control as it had in its own system. For example, four disturbances occurred shortly after moves to Texas prisons. Texas had high off-site medical expenses. Texas also had programming interruptions because of high student absenteeism and a lack of instructor training.

Susie said the Correctional Center, the newest and most efficient prison had the lowest cost to house inmates at \$65 per inmate day. The Yard was the most expensive medium security prison at \$82 per day. She said she had used the Yard to compare costs to Eagle Pass and county jail placements because the department filled the least expensive prison first and the most expensive prison last.

The Yard was the same cost as Eagle Pass. County jails were significantly more expensive at \$95 a day. This cost includes per diem charges paid to county jails, direct medical costs, and programming that inmates would eventually receive.

Representative Rubel asked whether the costs for Eagle Pass included transportation. Susie said the number included per diem charge per inmate, medical at \$6 per day, transportation, and the cost of contract monitors.

Representative Troy asked about cost and services at county jails. Susie said \$95 represented the cost if inmates were receiving educational services in jail. She allocated costs because inmates do not, in many cases, receive educational services in jails. For a fair comparison, costs were distributed evenly. She said that \$75 housed and provided security in jails. Inmates were not getting the extra services they would in department prisons.

Susie said she projected that costs to construct a new prison would save the state money. Costs over the life of the prison would offset the cost of constructing a new prison. The state could benefit from a minimum security prison for men. Today, 1,000 male inmates were classified as minimum security but housed in higher cost medium security prisons. The state could also benefit from a medium security prison for women. The Pocatello Women's Prison design was not efficient and required high staffing needs. Additional cost savings would be realized if a new prison were built in the Treasure Valley instead of Pocatello, thus reducing east-west transportation for female inmates. Relocation would also place more female inmates closer to their children.

Representative Rubel asked if a work center would substitute for incarceration and reduce costs. Susie said she did not look at those options. She said the state could likely find better, innovative ways to enter inmates back into the community.

Representative Smith asked what percentage of female inmates from the Treasure Valley were housed in the Pocatello Women's Prison. Susie said department staff had shared concerns about

travel. She did not have the percentage and would get that information to her. Susie said her cost analysis was not a recommendation to build new prisons but rather showed an economically viable option.

Bob Thomas, consultant, said a staffing model would help the department determine the number of staff needed to fill crucial posts. The department used roster management to allocate and schedule staff according to the number of staff available. The department was trying to acquire a relief management tool. The relief factor calculated the number of staff needed to accommodate leave.

Bob said the department had a good management presence with staff in their workplace. The department also followed best practices identifying mandatory posts and essential posts. The department needed a staffing analysis and model. A staffing analysis and model would benefit policymakers in understanding what should have taken place as opposed to what did take place.

Bob recommended an independent staffing analysis be done that included a staffing model. The department should work with professional correction organizations to develop the model. Having the analysis conducted by outside organizations would lend credibility to the analysis and outside professionals can offer a fresh set of eyes to issues the department may not see.

Information in the report indicated a need for the department to improve its operations and capacity planning. Each recommendation was important by itself, but when implemented together, the recommendations could put the department on a path to a strong, effective strategic planning process. He recommended the department develop and maintain a system-wide master plan that drew upon all findings and recommendations in the report. He closed by thanking the department for its help during the evaluation.

Representative Troy asked if a parole study would be worth pursuing. Lance said changes had occurred in the parole process. Given inmate population growth, release patterns would be worth a deeper look.

Cochair Harris asked Jared Larsen, criminal justice policy advisor, Office of the Governor, to address the committee. Mr. Larsen thanked OPE for a comprehensive look at correctional capacity. The governor saw capacity as a two-fold issue: reduce demand for beds and increase capacity. To increase capacity, the Governor was committed to community reentry center in every region of the state to provide the best possible way to reintegrate individuals.

Mr. Larsen said the Governor planned to reduce demand with several pieces of legislation:

Partnering with Representative Doug Ricks on HB 373 to expand training and work opportunities for inmates in state custody.

Partnering with Senator Patti Anne Lodge on SB 1232 to create inmate savings accounts for re-entry so when inmates leave prison, they start their life back in society with a leg up rather than with nothing.

A community intervention and connection stations program would offer services to 2,000 parolees at highest risk of reoffending, to help them succeed and provide them services such as substance abuse treatment, drug testing, and transitional housing.

Partnering with Representative Caroline Troy, to bring together a criminal justice integrated data system across state and local governments, aggregated together in a

legally protected place, to know more about the effects of long sentencing, mandatory minimum sentencing, long periods of probation and parole, and other issues.

Cochair Harris called on Josh Tewalt, director of the Department of Correction, to address the committee. Mr. Tewalt thanked OPE staff and consultants for their thorough and professional assessment of complex, challenging issues. Under the new governor, two new members of the board, and his appointment as the new director, they were working to tackle issues and understand solutions. Conditions had been around for a while with a layer of complexities impacted by some recent policy changes. Questions were geared toward changes in programming and how they affected release, how justice reinvestment affected the balance between sanctions and revocations, and policy changes to remove some of that sanction piece.

Mr. Tewalt said he supported the recommendation for master planning to strengthen the ability to forecast and assess facilities. He said that the Board of Correction's approach to immediate challenges were to increase out-of-state placement, make minor bed adjustments to provide immediate relief to partners, and realign community reentry centers. He said from a long-term approach, they were looking at the right kind of capacity for future needs. Times of building huge correctional facilities were nearing an end. The opportunity before the state was to remove outdated facilities and replace them with efficient facilities.

Senator Johnson said he understood the complicated challenges with older facilities. However, his primary concern was the availability of cognitive behavior programming. He was concerned with putting people in county jails or sending them out of state without contractually required programming. At some point, these people must go into the department system to get the required programs. Department decisions were impacting the terms of individuals. Where was the justice? Did the new contract contain those programs?

Mr. Tewalt said the contract will mandate full programming with a premium on different types of vocational training geared toward meaning employment opportunities. Senator Johnson congratulated the director on a positive approach.

Representative Rubel asked what had happened in 2016 to cause a spike in inmate population.

Mr. Tewalt said complexities contributed to the spike in population. Initially the finger was pointed at JRI. But the department also acknowledged that programming opportunities were too complex and ineffective, and outcomes were not very good. In one year, the department facilitated 12,000 moves for programming. Programming was somewhere you went, not something you did.

Mr. Tewalt said the department had a separate process that made sure it was using evidence-based programs throughout the system. Before this process, the Parole Commission made release contingent on certain programs. When those programs went away, a large group of people were parole eligible once they completed a base program instead of the longer therapeutic community program. As a result, a significant number of releases occurred in a short amount of time. At the same time, JRI changed the way the department handled people in the community. Instead of a typical violation and revocation process, the state had 90-day and 180-day sanctions. Often people would go through both before revocation was considered. The department released lot of people and increased their time on the liberty with the timed sanctions but saw them come back once they eclipsed the time of the sanctions. Over the past year, there has been a reduction in releases and a higher percentage of parole violations. The department has the Governor's support on recommendations that will move the needle on the number of revocations.

Representative Troy commended Mr. Tewalt and his team. She said she had visited the Orofino and Cottonwood facilities. Staff were doing amazing things.

**Representative Troy moved to conduct a one-year follow up on recommendations. Senator Buckner-Webb seconded the motion, and it passed by voice vote.**

Senator Johnson asked if the OPE director could review upcoming studies and when they will be released.

### **Other committee business**

Rakesh said the office would be briefing Senate and House Judiciary and Rules on the capacity report tomorrow at 1:30 pm. In a week, the office would release a report on chained CPI and a follow-up on Residential Care. A report on county revenues would be released the end of February. And soon thereafter, a report on child neglect. The last report, what the state can do to facilitate retirement, was behind schedule. The office had experienced changes this past year: three staff had left and three staff had babies. Things were moving slow, but Rakesh said the office would do its best to get the retirement report done during session.

*The meeting adjourned at 5:38 p.m.*