

MINUTES
CRIMINAL JUSTICE REINVESTMENT INTERIM COMMITTEE
October 30, 2013
9:00 a.m. to 3:30 p.m.
Room EW42, Capitol Building
Boise, Idaho

Co-chair Representative Rich Wills called the meeting to order at 9:00 a.m. and a silent roll call was taken. Members present were: **Co-chair Senator Patti Anne Lodge**, Senators Russell Fulcher, Jim Rice, Jim Guthrie, Les Bock; Representatives James Holtzclaw, Luke Malek, Grant Burgoyne; and ad hoc member Representative Shirley Ringo; Representative Bateman was absent and excused. Staff members present were Brooke Brouman, Richard Burns and Jackie Gunn.

Others in attendance included: Patti Tobias, Judge Barry Wood and Norma Jaeger, Idaho Supreme Court; Holly Koole, Idaho Prosecuting Attorneys Association; Jan Bennetts, Ada County Prosecutor's Office; DeLanie Valentine, Easter Seals, Goodwill; Mark Kubinski, Idaho Department of Correction/AG; Henry Atencio, Kevin Kempf, John Carroll, Dennis Cochens and Matt Gambill, IDOC; Chris Sanders, Brian Hippe Lynn Jones, Mike Moser, Hallie McMullen and Jon McDaniel, Ada County Sheriff's Office; Dan Hall, Idaho Chiefs of Police Association; Joe Blume and Sharon Harrigfeld, IDJC; Sandee Meyer and Jenni Jordan, IPAA; Norm Langerak, Pardons and Parole Commission; Dave and Lindy High; Kelly Miller and Rebecca Lovelace, Idaho Coalition Against Sexual and Domestic Violence; Michael Bartlett, Idaho Association of Criminal Defense Lawyers; Melissa Moody, Judiciary; Kelly Jennings, Ada County Mental Health Court; Jim Seward, General Counsel for South Dakota; Sheriff Kevin Thom, Pennington County, South Dakota; South Dakota State Senator Craig Tieszen; Greg Sattizahn, State Court Administrator, South Dakota Supreme Court; and Dustin Johnson, Chief of Staff to South Dakota Governor Dennis Daugaard.

NOTE: Copies of the presentations, reference materials and handouts are on file at the Legislative Services Office and are posted online at:
<http://legislature.idaho.gov/sessioninfo/2013/interim/criminaljustice.htm>.

Representative Malek moved to approve the committee's minutes from the June 18, 2013, meeting. The motion was seconded by **Senator Guthrie** and passed unanimously.

Dr. Edward J. Latessa, Director of the School of Criminal Justice, University of Cincinnati, discussed his PowerPoint presentation *What Works and What Doesn't in Reducing Recidivism: Some Lessons I Have Learned from Evaluating Correctional Programs*. **Dr. Latessa's** complete presentation is available at:
http://legislature.idaho.gov/sessioninfo/2013/interim/criminaljustice1030_latessa.pdf.

Dr. Latessa discussed the lessons he has learned over the course of his work. He began by describing programs that, in his experience, evaluation and observation, do

not work in reducing recidivism. He suggested that structure in programs is important, including detailed descriptions of what the programs target and how the programs are to be delivered.

Dr. Latessa stated that the second lesson is that punishment alone is not effective in reducing recidivism. The third lesson is that anything needing fixed starts with assessment, which will help guide who and what to target with limited resources. The best methods for assessing offenders include examining dynamic and static risk factors. He noted that Idaho engages in this type of assessment using the LSI.

Dr. Latessa stated that the fourth lesson is to focus on the people likely to recidivate, which is the essence of the “risk principle.” The fifth lesson is that failure can be caused by providing intensive programs to the wrong offenders. The risk principle indicates that if you put low-risk offenders in intensive intervention programs, their failure rate usually increases. The two reasons for this are: (1) low risk offenders are mingled with high-risk offenders; and (2) a disruption of what makes these offenders low risk – disruptions in jobs, families, support network, etc.

Dr. Latessa described lesson six – sometimes failure is caused by not providing enough treatment. He noted that studies show the longer a person is in treatment, the greater the effects, but effects diminish if treatment goes on too long. He discussed the rules of thumb: (1) moderate risk offenders need approximately 100 hours of evidence-based programming that addresses specific offender risk factors; and (2) high-risk offenders need approximately 200 hours of programming.

In lesson number seven, **Dr. Latessa** observed that everyone thinks they are an expert in criminal behavior. He noted that training can give a narrow perspective of criminal behavior. He then discussed the eight major risk/need factors.

Dr. Latessa explained lesson eight – offenders are not usually higher risk because they have a risk factor; rather, they have multiple risk factors. Programs need to be designed accordingly. He continued with lesson nine, which is doing things well makes a difference. Studies show that competent staff and better implementation mean less reoffending. He opined that Idaho will need to invest in its staff, initial and ongoing training, hiring process, quality assurance and supervision. He stated that lesson ten is that offender behavior can change if it is done about the right way. To this end, he emphasized the importance of social learning. He stated that the most effective programs are behavioral, which focus on current risk factors, are action-oriented, and include a social learning model with cognitive behavioral treatment.

Dr. Latessa described the Effective Practices in Correctional Supervision (EPICS) model currently being tested and used to train probation and parole officers. The model is being used in Oregon, Montana, Washington, North Dakota and South Dakota, as well as in other states. **Dr. Latessa** showed a short video clip of a probation officer meeting with an offender using techniques learned from the model.

Senator Guthrie noted that the major risk/need factors do not include a work component. **Dr. Latessa** responded that the big four risk factors will drive the work component. If offenders' attitudes about work change, then their work success is more likely to change.

Senator Bock asked how other states dealt with the up-front expenses of such things as training for officers and treatment programs. **Dr. Latessa** stated that some states made an investment in providing officers with skills. He emphasized the importance of building programs that can be sustained over time. For example, with the EPICS model, officers are trained and once they have demonstrated skill, they can be trained as trainers. Oregon now has its own trainers and do not need to bring anyone in the state for training purposes. In sum, **Dr. Latessa** stated that priority one is to quit doing things that do not work, which will save money that can be reinvested into things that do work, such as training.

Senator Bock asked what a community corrections act state is. **Dr. Latessa** responded that these are states that statutorily created community corrections agencies set up by counties or judicial districts and any offender within the jurisdiction of the county or judicial district is the responsibility of that community corrections agency. The state provides funding to support the agencies.

Referencing EPICS, **Representative Burgoyne** asked if there has been a noticeable increase in job satisfaction and career longevity among probation and parole officers. **Dr. Latessa** stated that employment as a probation and parole officer is generally a career track that is chosen, but he does not know about the effect on longevity. He thinks it has increased job satisfaction for those officers who do it well.

Senator Rice asked about the difference in effectiveness between states that use community corrections act models and states where counties handle probation and the state handles parole. **Dr. Latessa** stated that, anecdotally, the effectiveness is seen in several ways; for example, the lower incarceration rates in Minnesota, Oregon and Iowa, which he considers models of community corrections. There can be good county-based probation departments, but it is much more difficult when 80 entities each operate the way they want.

Co-chair Senator Lodge expressed concern for the lack of access to community programs and asked for research-based suggestions on making the best of the available community resources. **Dr. Latessa** noted that Idaho is geographically large and some areas do not have many programs. An EPICS model would provide probation and parole officers with tools.

An audience member asked, in regards to resource management, whether there has been any effort to identify offenders who are beyond hope. **Dr. Latessa** responded that there is a small but persistent population of offenders who are psychopathic or who have antisocial personality disorders. There are currently studies in this area.

Co-chair Representative Wills asked how to reduce the number of probation and parole revocations and still protect society. **Dr. Latessa** responded that there have not been many studies on the question of whether revocations increase public safety. He stated that the problem can be taken care of through policy, such as risk assessments, and through ensuring that probation and parole officers have tools to continue to work with people.

Co-chair Senator Lodge expressed her concern about recidivism and asked how Idaho can focus its limited resources to make the biggest impact on offenders' successful reentry into the community. **Dr. Latessa** stated that too often offenders come out of prison with unrealistic expectations. It is essential to examine the reentry process. Offenders need to rehearse the realistic situations they will likely encounter. He suggested examining the model of supervision, the dosage of treatment when released and officers' skills. He stated that there are stronger effects from community-based programs than from institutional programs.

Co-chair Representative Wills introduced **Mr. Marc Pelka, CSG Program Director**, who provided a digital presentation entitled *Detailed Analysis of Idaho's Criminal Justice System*, available online at:
http://legislature.idaho.gov/sessioninfo/2013/interim/criminaljustice1030_pelka.pdf.

After chronicling the efforts of the interim committee, the working group and the CSG team, **Mr. Pelka** restated that Idaho's incarceration rate is higher than many states with similar crime rates. His presentation explores the following:

- A revolving door of recidivism from supervision and diversion programs is costly and ineffective;
- Rates of recidivism could be lowered by increasing the use of best practices; and
- Sanctions for revocations are long and costly and not tailored for supervision violation behavior.

Representative Ringo commented that the data presented did not indicate whether drug offenses have increased in recent years. **Mr. Pelka** responded that the crime data do not include drug-related measures. He noted that drug-related arrests were up 17% from 2008 to 2012.

Mr. Pelka closed his remarks by reviewing the proposed timeline moving forward.

Co-chair Representative Wills asked **Mr. Pelka** if the proposed timeline can be met. **Mr. Pelka** responded in the affirmative. His team is confident with the analysis completed to date and is on pace with the committee's timeline. He explained that his team plans to visit with committee members and key agencies to assess reactions to data already collected and to respond to additional work requests.

Co-chair Representative Wills commented that he was surprised to learn that two-thirds of the prison population is revocation and rider-related. He expressed his appreciation to **Mr. Pelka** and the CSG analysts.

Senator Guthrie asked if **Mr. Pelka's** recommendation is to spend more financial resources on the rider program and probation-related areas and less inside the prisons. **Mr. Pelka** responded that less can be spent on prisons and corrections if there are better outcomes from supervision. He stated that there is a real need to boost the dosage of community programming and supervision.

Representative Ringo observed that with an investment in community supervision programs there would be a double investment initially because there would not be an immediate prison population reduction. **Mr. Pelka** stated that, in large part, 41% of prison beds are used by revocations because of people coming in the door and because of how long they are staying. If outcomes from supervision can be improved, then less will be spent on the back end.

Representative Burgoyne commented that it appears from the information presented that by changing statutes related to sentencing to gain efficiencies and to employ a different philosophy about sentencing, that the state might see some savings so that there is not the double investment problem. He also discussed the issue of reclassifying misdemeanor-type crimes to infraction-type crimes, which might help avoid the problem of maintaining the old system at relatively high cost, compared with the effects of making a new investment to achieve savings. **Mr. Pelka** responded that his team welcomes the committee's policy advice.

Senator Fulcher referenced **Mr. Pelka's** slides 33-36 relating to the wide variation in the lengths of incarceration and the lengthy discretionary parole release periods and asked **Mr. Pelka** if there is anything that stands out regarding facilities employing private operators versus state operators. **Mr. Pelka** stated that CSG operates at the policy level. He stated that justice reinvestment studies units entering into systems and how those units are completing prison terms and supervision. He stated that the cost per unit is not studied.

Co-chair Representative Wills thanked **Mr. Pelka** and his team for their continuing work that is providing the committee with the beginning of a road map.

Co-chair Representative Wills welcomed the South Dakota panel. **Mr. Dustin Johnson, Chief of Staff to Governor Dennis Daugaard**, served as moderator and introduced the panel members: **Mr. Jim Seward, General Counsel for South Dakota**; **Sheriff Kevin Thom, Pennington County, South Dakota**; **State Senator Craig Tieszen**; and **Mr. Greg Sattizahn, State Court Administrator, South Dakota Supreme Court**. **Mr. Johnson** thanked the interim committee members and noted that while South Dakota went through its justice reinvestment process, much was learned from Idaho's system.

Mr. Seward explained that in June 2012, he attended a meeting in Denver where he learned from efforts in other states. In 1977, South Dakota had 13 women in prison but confined in Nebraska. In 2011, South Dakota's single women's prison facility was busting at the seams. This is what initiated the justice reinvestment discussion in South

Dakota. **Mr. Johnson** stated that the projected cost for a new women's facility was \$40 million. Something had to be done.

Mr. Seward stated that 81% of South Dakota's new prison admits for 2012 were nonviolent felons. Sixty percent of South Dakota's standing population was nonviolent felons. South Dakota's incarceration rate was leading the region. From 1977 to 2011, South Dakota incarcerated 76 people per 100,000 and that grew to 426 people. The budget grew from \$21 million in the 1990s to \$100 million. There were a lot of other reasons to undertake justice reinvestment reform, but it was the money that brought them to the table.

Mr. Sattizahn explained he first became involved with the data analysis part in response to an agency-level request. He was asked hard questions that his agency had never asked itself. Most surprising to him was the data that showed probation numbers had been declining over the last ten years. Everyone thought the opposite. It took the technical assistance to start looking at what was being done and what could be done differently. In South Dakota, probation is under the court system – the court supervises the court service officers and provides their training across the state. In talking to people on the ground, it became clear that probation officers spent more time and effort with the low-risk offenders than with the high-risk offenders. Resources were being focused on people who did not need them as much. He also noted that South Dakota's drug courts had inconsistent policies regarding eligibility.

Sheriff Thom stated the importance of stakeholder meetings early in the process.

Senator Tieszen stated that he wanted to get involved because of his career in law enforcement. When he went to community meetings, he asked for input regarding public safety improvement. He stated the public was supportive of alternative options rather than building another prison facility. **Mr. Johnson** followed up, stating there were two conversation starters they used repeatedly. He encouraged the panel members to discuss "the cost of doing nothing" and "the big picture goals."

Mr. Seward discussed the cost of doing nothing. The ten-year projection was that the prison population would grow by 25%, with an associated cost of \$225 million. South Dakota's budget is similar in size to Idaho's budget.

Mr. Johnson discussed South Dakota's three goals:

1. Increase public safety;
2. Hold offenders more accountable; and
3. Be more efficient with taxpayers' resources.

Sheriff Thom responded that the chiefs and sheriffs wanted to make sure the process was not going to be soft on crime. Although there was skepticism initially, the chiefs' and sheriffs' associations endorsed the system after assessing the data. He shared that between 2000 and 2010, the U.S. imprisonment rate went up 1.6%, and in South Dakota it went up 18%. At the same time, the crime rate in the U.S. went down 18%

and South Dakota's went down 9%. South Dakota incarcerated at ten times the national rate and got half the results.

Senator Tieszen said he assured legislators that offenders would be held more accountable through having probation and parole officers more available and having swift-and-certain sanctions. He commented that a powerful argument that resonated with legislators was the notion of changing lives. Rather than focusing on punishment, focus on turning offenders into productive taxpaying citizens.

Mr. Sattizahn stated that the judges were initially concerned about any attempt to limit judicial discretion in sentencing. In addition, rural county judges were frustrated with the lack of resources for community treatment. Probation and parole officers were concerned about the day-to-day impact on their jobs.

Mr. Johnson stated that with justice reinvestment, you stop doing what does not work, which frees up long-term dollars to invest in what does work. He stated that savings come from focusing resources on violent and career criminals.

Mr. Seward stated that the South Dakota drug laws were standard across the board. No matter what the situation, the penalty was a ten-year sentence. First-time offenders were being sent to prison. The judges would try probation, but they did not have the resources or the swift-and-certain sanctions. The legislature increased some penalties and reduced others. Seventy percent of South Dakota's standing population was in for possession or using, versus 30% for distribution. They were locking up the nonviolent users because they did not know what else to do with them. **Mr. Johnson** commented that this is where justice reinvestment comes in – punish the dealers and manufacturers more but punish the users in a way that is more focused on treatment. This method is proven to have better outcomes and thereby saves money.

Mr. Seward noted that step two was to strengthen supervision and accountability. He discussed earned discharge on probation and parole. For every 30 days an offender is totally compliant on parole, they earn 30 days off the back end. He stated that in the first four months, they are seeing amazing results with parolees. **Mr. Seward** stated that after three months, 92% of the parolees who are qualified to earn the 30 days have earned the 30 days. Two hundred and ten thousand days have been removed from the parole system after three months.

Mr. Seward referenced the *Public Safety Performance Project: South Dakota's 2013 Criminal Justice Initiative* brief completed by the Pew Charitable Trust, stating that on page seven of the brief there is a long list of things South Dakota did to strengthen offender supervision and accountability. He pointed out the statutory requirement to use evidence-based practices in all treatments. The Pew brief is available online at: http://legislature.idaho.gov/sessioninfo/2013/interim/criminaljustice1030_pew.pdf.

Sheriff Thom recounted the theory that as the state prison population goes down, there will likewise be a reduction in the county jail population. He is taking the "trust but verify"

approach. He stated that there were a number of things done to help the counties. One example was the elimination of preliminary hearings for Class 1 misdemeanors, which, in two counties alone, realized a net savings of \$75,000 a year.

Mr. Seward stated that the working group reviewed the data and assessed systems, policies and what other states were doing. Once the working group members were comfortable with the policy being suggested, they began drafting legislation.

Senator Tieszen stated that legislative leadership was engaged from the beginning of the process and there was a strong effort to keep everyone up to speed. Ninety percent of the work convincing the legislature to vote for the bill was done before the session started. The bill passed in the Senate 33-2, and in the House 63-7.

Mr. Sattizahn discussed implementation issues and recalled that when the bill passed in February, the judges had to be educated about the numerous changes made by the bill.

Mr. Seward noted that the day after the bill passed, the stakeholders developed internal work groups for each major policy area. Where needed, they hired outside experts for assistance, the funding for which was provided in the bill. The working group developed a progress table that is updated and submitted to the governor each month. He stated that South Dakota statutorily created an oversight counsel that will sunset in five years. All branches of government are represented on the counsel. The counsel is required to review implementation and to make sure that performance and outcome measures are followed. He added that the bill requires that a ten-year fiscal impact note be attached to any bill or ballot measure that will increase state prison or county jail populations.

Mr. Johnson encouraged the committee to look at the website www.rightoncrime.com.

Co-chair Representative Wills thanked the panel members for their detailed presentation and opened the floor for questions.

Senator Guthrie observed that while programs are being added, the existing programs that do not work are not being cut. He asked for more discussion on how South Dakota eliminated ineffective programs. **Mr. Johnson** stated that he used the ten-year projection to bring stakeholders to the table. The projection confirmed that \$212 million was needed for new prisons and related operation costs. Any proposal to hold cost below \$212 million was a cost savings. **Mr. Seward** stated that by investing upfront in new programs, the growth curve in the prison system can be bent, which provides relief to the taxpayers. He stated that it is the role of the oversight counsel to determine which programs to cut. After two or three years, South Dakota should be in a position to make those determinations based on research conducted with technical assistance.

Co-chair Representative Wills suggested that the committee members review the South Dakota bill (SB70). **Mr. Seward** offered to send the bill's table of contents to the committee.

Representative Malek asked about the amount of discretion afforded to judges and probation officers when implementing swift-and-certain sanctions. **Mr. Sattizahn** responded that it is a tiered approach based on offender risk level and the conduct that constitutes the violation. There is discretion for probation officers, which in turn requires trained officers. He commented that incentives are much more important than sanctions.

Representative Malek asked if all mandatory minimums were eliminated. **Mr. Seward** responded that all mandatory minimums were kept in place.

Co-chair Senator Lodge asked about opposition to the bill during the legislative session. **Mr. Johnson** stated that most of the opposition to the bill was caused by a misunderstanding. He emphasized the importance of being attentive to stakeholders.

Mr. Seward stated that various national organizations will help write op-ed articles. He recalled that they solicited certain groups to submit op-ed articles at key moments during the legislative process. He explained that he also created a binder full of one-page, topic-driven summaries of various aspects of SB70 to help field questions and concerns about the bill.

Senator Guthrie asked what the indicator is for success. **Senator Tieszen** responded that there will be an emphasis on recidivism rates, which must go down. Also, the court docket will be an indicator – whether offenders are sent to programs versus sent to prison. **Mr. Seward** stated that if the outcomes do not come, they will have to change the plan.

Co-chair Senator Lodge asked if panel members had any interaction with county commissioners. **Mr. Johnson** stated he has had monthly conversations with county officials. He stated that the concern from counties was about cost-shifting. South Dakota set aside about \$1 million for an increase in felony probationers. **Sheriff Thom** reiterated that the cost of doing nothing was too great for the counties to ignore. He suggested taking political agendas out of the discussion and keeping it data-driven.

Co-chair Senator Lodge asked what the companion appropriation bill was to SB70. **Mr. Johnson** responded that there were three different appropriation bills: (1) there was a bill that revised the current year's budget; (2) there was the omnibus bill; and (3) the prospective bill.

Representative Burgoyne commented that when data is quantified, it takes preconceptions out of the room or helps deal with incorrect or incomplete preconceptions. He asked the panel if there are other programmatic areas where this approach can be utilized. **Mr. Sattizahn** responded that he hopes using data this way can be built in to all of the court's programs. For example, he hopes the data-driven approach can be applied to the juvenile detention alternatives initiative in South Dakota. He concluded that the process learned is more important than the bill enacted.

Co-chair Representative Wills introduced **Mr. David High**. **Mr. High** explained that he has a son in prison due to a drug addiction. He opined that Idaho could save money and get better results by using parole more and incarceration less. He stated that parole officers are dedicated but overworked. He noted that his son had a hard time getting face time with his parole officer. He stated that there is currently a vague standard in granting parole and emphasized the need to provide the parole board with clear direction.

Co-chair Representative Wills noted that Idaho has met many obligations. He opined that parole and probation is an area where Idaho can get huge results without spending a lot of money.

Representative Burgoyne cautioned that the process will need to be actively managed through the years, both at the technical agency level and at the legislative level. He stated that there will be unintended consequences requiring adjustments.

Representative Malek stated that he was intrigued by the 24/7 program and the swift-and-certain sanctions that came out of South Dakota.

Representative Ringo asked **Mr. Pelka** to comment on prison data identified as a “one-day snapshot” compared with “an average over a period of time.” **Mr. Pelka** clarified that the data collected from all the agencies is based upon multiple snapshots over five years.

Co-chair Representative Wills stated that committee members will be contacted with the date for the next meeting. He adjourned the meeting at 3:30 p.m.