

MINUTES
JOINT MEETING
SENATE JUDICIARY & RULES COMMITTEE
HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Wednesday, February 12, 2014

TIME: 1:30 P.M.

PLACE: Lincoln Auditorium

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

Chairman Wills, Vice Chairman Luker, Representative(s) Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline and Ringo

ABSENT/ EXCUSED: Vice Chairman Luker, Representative(s) Nielsen, Bolz, Perry, Sims, Dayley, Horman, Malek, Trujillo, McDonald, Burgoyne, Meline and Ringo

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting to order at 1:34 p.m.

S 1331 **Relating to Justice Reinvestment - Chairman Lodge** stated this is an informational meeting. The Committee will not be taking a vote on the legislation. This bill is a work in progress and testimony will be taken on the legislation. **Representative Wills** explained that the working group has spent months with all parties invested in this legislation along with the Council of State Governments (CSG), who extrapolated the data. Analysis of the data pointed to some major changes that Idaho needs to make in the justice system. Two items that were of major concern when the project initially began were: 1) the safety of the public; and 2) taking low-risk individuals out of the justice system and placing them in probation and parole or in local community programs where they can receive help to gain the desire and skill-sets to get back to their communities as a taxpayer.

The objective was to reduce recidivism and its high cost. If nothing changes in the justice system, in two years, Idaho will have to build another prison at a cost of \$235 million. The Justice Reinvestment legislation will allow the State to save as much as \$288 million. This is the first step in a five year process.

PRESENTATION: Justice Reinvestment - Marc Pelka,, (Council of State Governments) CSG, Program Director, explained that in April 2013 the CSG Team met with stakeholders, policy makers and state leaders concerning the States interest in Justice Reinvestment. Justice Reinvestment reflects the CSG's Justice Center. The Justice Center is an organization that is non-partisan and non-profit, which grew out of state policymakers awareness of the growing complexity of criminal justice issues across the country. As a result of the members of CSG, the Justice Center was created to provide a range of technical assistance on projects ranging from mental health, substance use issues, youth, law enforcement, re-entry from jail and prison, and justice reinvestment. Justice Reinvestment is the most intensive type of technical assistance that is provided by CSG. Beginning in June, the main criteria for Justice Reinvestment was met, which was a consensus across leadership of all branches of state government. The State's project was launched when the Governor, Chief Justice and legislative leaders all commissioned a study that was an intensive review of data analysis. Tens of thousands of records were analyzed

from across the State's criminal justice system starting from the crime and arrest, sentencing, probation and parole, jail, prison, parole decision making, release and recidivism. The State agencies and local government provided the range of data and CSG engaged in an intensive review and matched what the analysis revealed with first-hand perspective from criminal justice practitioners and other leaders from around the State. There were a number of focus groups that convened along with on-line surveys, phone calls, meetings, and trips around the State to learn about the data that was being analyzed and the analysis lined up with first-hand experiences. Tying all of this together were two oversight groups that Idaho created. A Legislative Interim Committee of 11 members that met on four occasions to review analysis and receive a report last month from CSG (attachment 1). As well as a 30 plus member Working Committee Group of cross disciplines across the organization to provide feedback.

CSG was brought to Idaho because policymakers and state leaders recognized the growing cost of corrections. They realized the cost of corrections was the second fastest growing budget item for states. It is a very difficult problem to analyze. Interest in these issues does not end with cost, but with recidivism and public safety. The main metrics that CSG looks at when they look at the overall goals of the project is growth in spending on corrections, and how those costs can be contained with the Justice Reinvestment process. How to invert growth that is projected in prison populations and how states can drive down the rates of recidivism. CSG has worked with 18 other states on this same issue. States own the project, CSG is only the technical assistance provider which presents the analysis and receives direction from the Working Group to reach a consensus in the final report that is presented on the issues.

Idaho has the eighth highest incarceration rate in the country. When they look at the states that are also high in that list many of them are the deep south states. CSG looked at different populations coming into the State's system, how long they are staying, and who is coming back. They looked at recent trends involving prison populations and saw that the State experienced the second fastest rate of growth in the country on corrections. CSG analyzed where the State is projected to grow on these issues and saw a 16 percent projected increase between 2015 and 2019. Working with the Department of Corrections, they put into the report a cost of accommodating the growth at \$288 million. Sharing this information with sState leaders, they know that building more prisons for that capacity to address these population pressures will do nothing to reduce recidivism in the State. This information led CSG to the biggest challenges identified in the State which were:

1. Revolving door of recidivism. When CSG looked at the State's felony sentencing disposition, they saw a very large share going to a non-prison terms. These terms are placed in a "Rider" program (retain jurisdiction option) which are followed by a term of probation, if the individuals complete the prison program. Unfortunately, 30 percent of the felons initially diverted to those options are re-offending and wind up inside the prison system within three years. Idaho is a low crime State and has the third lowest index crime rate in the country but the States recidivism rate is higher than the national average. The numbers reveal that 53 percent of individuals released from prison will return within three years. When CSG looks at the same measure for individuals placed on the front-end diversions they are not completing those programs successfully and are going to prison. These are not the goals of the courts, which determine, based on specific issues of these cases, that the individuals would be ready for supervision or a Rider program.
2. Idaho has an inefficient use of prison space. 41 percent of people in prison are individuals who are revoked from a term of probation and parole supervision. 25 percent of people in prison are either participating in a Rider program or

have gone into a Rider and failed, becoming part of the prison population. In comparison with states across the country, they have not found another with this type of composition in the prison population. They looked at how long offenders entering into prison are serving for various sentences. Looking at the length of stay for property and drug offenses, compared with the national length of stay on average, they saw that Idaho is almost two times the national average for these offenses. Also, a larger share of our prison population is comprised of individuals sentenced to prison for property and drug offenses. If the State could improve the outcomes for probation and parole supervision and the outcomes for the diversion programs, then it could prioritize use of prison space for individuals with non-violent offenses. It would address the growth in spending for corrections and generate resources that can be moved into the areas of the system, which are in need of policy and funding to achieve the goals that are being sought by the front end of the system in the sentencing decisions.

3. Insufficient oversight to track Idaho's recidivism-reduction efforts. Idaho is looked at by a number of states in a positive light for what it provides to the front end of the corrections system but risk and need information assessment must be created for its population. The offender population can be navigated through a range of programs such as community based through the SUDS Program, or in prison through the Rider program, or prison based programs. Looking at Idaho's overall systems, from a systems view, there is an opportunity for greater oversight to make sure that those risk-assessments are producing validated results. Assuring that there is sufficient data and IT capacity to assess and ensure that the goals of the State's programs for recidivism reduction are being met.

In the months that followed, CSG worked with the Working Group Oversight Committee in one- on-one meetings including stake holders in the State's system to find a consensus point. There is no boiler plate for Justice Reinvestment because it reflects the challenges facing each state individually. There must be consensus found for the issues of recidivism, increased public safety, and reigning in the growth of spending. There are 13 policies listed in the Policy Framework Report (attachment 1) that have been grouped into three strategies.

1. Strengthen supervision and diversion programs to reduce recidivism. This will reveal a number of areas involving the way offenders are sanctioned while they are on probation and parole supervision. In statute, it allows for probation and parole officers to use administrative responses to apply "swift and certain" responses to violations, as opposed to allowing the offenses to stack up, or relying on reappearing before a court to get approval to issue that response. The analysis shows that, in terms of offender behavior change, the best impact occurs when there is swift, certain, and consistent action tied to the underlying violation.
2. Increasing community-based treatment funding. Moving this action further upstream so that behaviors and needs will not escalate to the point at which decisions are made to place someone back in prison. Training the workforce and providing funding to make sure probation and parole officers are equipped to reduce recidivism in the State. Form a victim-restitution group to look at the intersections between community based supervision and victim restitution; addressing the interrelationship between supervision and legal financial obligations.
3. Prioritize prison space for people sentenced for violent offenses. Provide more information up-front for judges making decisions regarding sentencing options and how best to respond to violations of parole with swift and

certain sanctions at the community level; to form a seamless continuum of responses to make it clear to people on parole supervision that they will be held accountable for the violations they commit while on supervision. For individuals whose behaviors or risks have risen beyond a community based response the decision must be reached swiftly that they are no longer eligible to remain on parole and must be revoked. The policy includes a determinate period of confinement for people who are not convicted of a new offense but have violated their condition of supervision and it is clear up front how long they will serve if they do not comply with their conditions. Individuals will be forced to go back on supervision to comply with those conditions to demonstrate ability to improve outcomes.

Rider program and the probation and prison term. When CSG looked at recidivism rates they saw a variation based on risk-level and the type of sentences that individuals receive. If the goal is to reduce recidivism by the greatest degree, the sentence will vary based on whether the person is placed onto probation, Rider option, or into prison term. Providing courts with that information, on the front end of the system, will ensure that current information is made available to decision makers in the system.

Length of stay of people sentenced to prison for property and drug offenses. CSG sought advice from the members of the Working Group and from justice system individuals around the State on how to address this challenge. CSG comes into states and provides base-lines and comparisons in many different ways. Sharing experience of what has worked in other states across the country. The drivers of growth of spending in the system and the length of stay for those sentenced for property and drug offenses consumes a great share of tax dollars. This limits the State's ability to use those resources for when those individuals transfer to the community onto supervision. In the report, it addresses spending issue and how to structure the parole system to prioritize people sentenced for violent offenses. It creates a window of time between the 100 percent of the fixed term and 150 percent of the fixed term, in which someone will complete the programming inside the prison, get themselves ready and then be paroled to return to the community. Probation and parole must be better funded, better equipped, and have better workforces in order to manage behavior and reduce recidivism. The place to have the risk driven down to the greatest degree is by affording programs and treatment to change offender behavior, to address the risk and needs, and to hold offenders accountable to sanctions. Prisons work the best when they imprison offenders who have committed the most harm to the community; these are the individuals to incapacitate. When it comes to changing offender behavior to reduce recidivism there must be an effective probation and parole system with programming to address the criminogenic needs.

Oversight is where you make sure you are getting the best bang for the buck in terms of funding for recidivism reduction programs and assessments. Make sure the risk assessments are validated routinely under a policy regarding that procedure. Providing accurate risk assessments on the types of offenders coming into the system to assure that decision makers are receiving the most accurate information possible.

On the programming end make sure that the money is spent on programs that are working and not just auditing but evaluating the programs for their impact on recidivism. CSG has seen states across the country using programs that are reducing recidivism or having no impact on recidivism and in some cases actually increasing recidivism.

Justice Reinvestment is a process that states compete for and do not pay an expense on. In terms of cost of this grant, there is no cost to states but there is a personnel cost in terms of working with CSG. Policymakers must understand the importance of data and IT capacity to make sure that your programs are working and systems are producing the outcomes the State is seeking.

The 13 policies within the 3 strategies (attachment 1) are CSG's best attempt, in the report, to reflect the intensive data analysis that has been completed, oversight they have been given and the input they have gotten from across the criminal justice system to contain the cost of corrections. On the line curve in the report (attachment 1) it averts the \$288 million projected to address the growth in the system. It bends the curve on the prison population projection, but does not decrease the size of the State's prison population. This reflects CSG's work with Idaho in looking at the data system to find consensus, and it appears in the report of policies that increase public safety, contain the cost of corrections, and drive down recidivism in the State. The key part to the report is the recommended reinvestment, on page 6, which reflects details of the reinvestments over a five year period. Some of those investments are probation and parole officer training, increase in the workforce for supervision of probation and parole, and community based programming and treatment. The combined cost of providing those investments is \$33 million over the 5 year period. This will accomplish the goal of averting the correction growth, reducing spending on corrections, and reinvesting into areas to increase public safety.

Senator Lakey asked how CSG arrived at the \$288 million number. **Mr. Pelka** explained in consultation with the Department of Correction forecast committee for their prison population projection. This contains a number of estimates regarding growth in the system including admissions to prison, length of stay in prison, releases, and recidivism. CSG modeled the impacts of these policies in the framework as conservatively as possible, reflecting no impact until the beginning of January 2015. Assuming a prospective impact for these categories to track the inputs below on that projection. Cost was based on marginal cost, based on number of people, cost of incarceration on a per diem basis, beds used and also the cost of a prison averted.

Senator Lakey asked for clarification in the costs involved in corrections. The CSG Justice Reinvestment Report shows that Idaho has one of the highest incarceration rates; but one of the lowest crime rates. How do you respond to having a low crime rate because the bad guys are in jail? **Mr. Pelka** answered CSG plotted on an x y axis the State's incarceration and crime rates comparing them with a number of states, including the Dakotas, New York, and New Jersey. These states also share a low crime rate, but have a lower incarceration rate. CSG findings across the country show a number of states which had similar trends with overall static numbers regarding incarceration and crime rates, but finding no clear relationship. States have seen reductions over the last ten years in prison populations along with increases in crime rates. There seems to be no direct relationship in what the data shows regarding those two factors. Although Idaho has the third lowest crime rate in the country the State has a higher than average recidivism rate. The probation and parole policies for diversion are not addressing the recidivism rate. CSG in conjunction with policymakers has worked out how to achieve a greater return on investment for Idaho's criminal justice system investment. Targeting a 15 percent reduction in recidivism over the next five year period is the major goal for the States system.

Senator Lakey questioned the outcomes from other states that have implemented CSG's suggested changes. **Mr. Pelka** replied this was a question they got early on from Chief of Police Hall of the Working Group. CSG gave Chief Hall a breakdown of all states that have enacted Justice Reinvestment Policies as they have tracked a window of time for those states to determine the impact on crime rates. Every state of this group, except for one, has seen a reduction in crime rates and many saw double digit reduction in the rate. The one exception is New Hampshire. CSG looked at probation and parole recidivism rates and saw they remained flat or went down in that state.

Senator Hagerdorn asked do you have a metric for victim satisfaction. **Mr. Pelka** answered a member of Idaho's Parole Commission, Lisa Bowstaff, is developing a metric for victim satisfaction across the State. In conjunction with that metric will be implementation of a victim needs assessment to look at the capacity of services to meet the need that exists. This is a level of metric that CSG would like to have in all the states. Pennsylvania has put money into a victim satisfaction survey. The collection of victim restitution has shifted in the way they analyze the system based on the feedback and that led to the victim restitution policies you see in the framework of the report. There is a very diverse victim advocate constituency in this State and others.

TESTIMONY:

Bryan Taylor - Canyon County Prosecuting Attorney, stated in reviewing the legislation their agency agrees with adding funds to probation and parole for treatment focused programs and collection of restitution for victims. Their statistics reveal that 84 percent of all offenders that process through the criminal justice system do not go to prison. Individuals who violate parole and probation end up back in the system; needing true treatment and a need for the resources. Canyon County prosecuting Attorneys disagree with presumptive parole, the probation and parole matrix, the presumptive termination of parole and probation, and the underlying premise that requires decisions to be based upon the imprecise classification of violent and nonviolent offenders. In the legislation, there is terminology in regards to violent offenders listed in Idaho Code §1925-20, Section 9-20-219, Subsection 7 C, page 13 and 14. In the list there are numerous felonies that are not constituted as violent offenses under that category such as: stalking, no contact order violations, aggravated DUIs, domestic violence, injury to children, attempted strangulation, threatening judges and elected officials, as well as numerous others. Their agency believes to put this imprecise classification in this legislation exposes the State to great jeopardy of public safety. Do you want to risk public safety to save money.

Senator Davis asked for clarification of what is missing in the list of violent crimes on page 13 and 14. **Mr. Taylor** answered there are numerous crimes in the list that the attorneys deal with that should be looked at because they constitute as violent felonies, especially domestic violence. Changing the sentence times exposes the State to placing public safety in jeopardy. **Senator Davis** asked is the matrix as an issue. The matrix is not addressed in the legislation but would be promulgated as a result of the passage of the legislation. **Mr. Taylor** replied that the State should be careful of creating a box that every crime can fit into, because each case is its own unique case. Individuals that may come in on a nonviolent crime today may have a lengthy criminal history of all violent offenses. **Senator Davis** stated the State must move forward on this legislation. Does the Canyon County Prosecuting Attorney have a solution? **Mr. Taylor** responded the attorney's primary concern regards the legislation's presumptive probation and the termination. If the offender meets the standards of the matrix, then their probation is automatically terminated. Cases become fluid and you cannot put them in a matrix box. **Mr. Taylor** stated that they would provide proposed language to alleviate their concerns.

Senator Werk asked do the attorneys believe the outcome of enacting this legislation would make Idaho less safe. Although, similar legislation has been adopted in other states and has made those states safer. Is there anything that is special about Idaho that would make us counter to the trend that is seen elsewhere in the country? **Mr. Taylor** answered that focusing on and reinvesting into the correction system and treatment is absolutely necessary. The legislation does not address as much of the treatment component in the term corrections as is needed. If the offender gets placed on probation and is successful or goes to prison and gets released it is giving the criminal the benefit of the doubt versus keeping the victims and the public safe. Once the offender meets the threshold they are released versus truly getting the treatment that is need.

Senator Bock asked what do you think is broken in our correction system that contributes to Idaho being the eighth highest incarceration rate in the nation. **Mr. Taylor** answered the correction system falls apart in the treatment component for these individuals, it is not strong enough in Idaho. Allocate more resources to the treatment component. This legislation has much to be commended in dealing with the correction system and the attorneys are excited to see that the State will be allocating more resources to the Department of Corrections and Bureau of Probation and Parole. These agencies are overwhelmed and overworked and do not have the ability to properly supervise the massive case loads. The offenders start falling through the cracks and they do not get the necessary treatment or supervision resulting in probation violations which place them back in prison.

David High stated his son has been in the prison system three times and they have seen the prison system from a different point of view. The very important conceptual change in the bill is that officers will be given the tools they need to address the parolees. The ability to apply sanctions for violations that are timely and proportional to the violation will greatly reduce recidivism.

Grant Lobes, Twin Falls County Prosecuting Attorney, stated the positive aspects of the bill are improving the probation and parole system. Better treatment, monitoring, and follow-up once offenders are released and better programs in the prison, along with monitoring and assuring payment to victims. Idaho has a Rider program which was specifically designed to be an alternative to prison. The CSG's data combines the Rider program and prison population in their numbers. If they subtracted 25 percent from the prison total, Idaho would not be eighth in the country. No other state has a Rider program.

What is non-violent. Not defined by the current offense of the offender, but by the offender. The Idaho system is designed to treat the individual as an individual and not treat everyone convicted of a particular crime. Their attorneys believe this is dangerous legislation as written. It erodes the ability of the judges to analyze cases on a case by case basis and along with the parole board. When you are required to release an offender at 100 percent or 150 percent of their determinant sentence that increases the chances of recidivism because these individuals may not have completed their programs. It does not take victim rights into account and it is overly generous to criminals.

Senator Davis stated in the presumptive parole language of the legislation, perhaps one of the requirements should be to require that the prisoners' programming must be completed before parole. **Mr. Lobes** responded if you guarantee a criminal soft treatment when he doesn't deserve it and take away from the system the ability of the judge and parole commission to deal with each offender individually based on the crime, you have dangerously diluted the system. Adding language that would require prisoners to complete their assigned programming before release would be a step in the right direction. The goal is to have offenders come out of the system as better people rather than just people who behaved for a short period of time knowing that if they did so they would be released.

Senator Vick said one of the complaints that he has heard offenders voice is that they cannot get to the treatment. What is the solution to help these individuals? **Mr. Lobes** answered that the State should make sure that the treatment is available. The problem in our State is that the treatment is not available or not effective. Currently there are problems with probation, parole, treatment and the opportunities that individuals who are in incarcerated are receiving. Before we fix them you are asking us to move to a system that mandates reduction in probation supervision and early release from prison. You are going to release offenders earlier into a system that is not effective.

Geoffrey Talmon - Idaho Freedom Foundation, and **Mark Henry**, Roman Catholic Diocese of Boise, Office of Prison Ministry, spoke in favor of the legislation. They both spoke to the subjects of violent versus non-violent classification and validation for risk assessment. Moral rehabilitation and reducing the barriers such as overdue financial obligations.

NOTE: The presence of a quorum is required in order for a committee to act legally and officially. Due to a lack thereof, the members present listened to testimony from: **Mark Renick**, IMSI Hope Community Phase II; **Michael Kane**, Idaho Sheriffs Association; **Greg Bower**, Ada County Prosecuting Attorney; **Monica Hopkins**, ACLU; and **Judge Mike Wetherell**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 3:43 p.m.

Senator Lodge
Chair

Carol Deis
Secretary