

MINUTES
Approved by the Committee
Criminal Justice Reinvestment Oversight Committee
Tuesday, July 10, 2018
9:00 A.M.
Room WW54
Boise, Idaho

Co-chair Lynn Luker called the meeting to order at 9:00 a.m.; a silent roll call was taken. Committee members in attendance: Co-chair Senator Patti Anne Lodge and Co-chair Representative Lynn Luker; Senators Jeff Agenbroad and Mark Nye; and Representatives James Holtzclaw, Bryan Zollinger, John McCrostie, and Melissa Wintrow. Absent and excused: Senators Jim Rice and Cherie Buckner-Webb. Legislative Services Office (LSO) staff present: Ryan Bush, Jared Hoskins, and Ana Lara.

Other attendees: Barry Wood and Jason Spillman - Idaho Supreme Court; Carlie Foster and Jason Kreizenbeck - Lobby Idaho; Jarod Cash - Idaho Commission on Pardons and Parole; Henry Atencio - Idaho Dept. of Correction; Betsy Russell - Idaho Press; Kathy Griesmyer - ACLU; Jesse Taylor and Rich Hahn - GEO Group; Joe Andreoli and Paul Jagosh - Fraternal Order of Police; Alejandra Cerna - Idaho Center for Fiscal Policy; Grant Loeb - Twin Falls County Prosecutor; Paul Riggins - Idaho Association Criminal Defense Lawyers; Tom Arkoosh - Arkoosh Law; and Rachel Hamilton - Elmore County Police Department.

Co-chair Luker summarized the committee's agenda and noted Idaho Dept. of Correction's (IDOC) request for a new prison. Co-chair Lodge emphasized that the committee was looking for an "Idaho solution." After having done some reading regarding what other states are doing to address the criminal justice system in their respective states, she believed that, in comparison, Idaho was ahead in many ways.

Co-chair Luker called for the approval of the June 18, 2018, minutes. **Senator Agenbroad made a motion to approve the June 18, 2018, minutes with one correction. The name for Mr. David Birch was misspelled in the second paragraph on page 1. Representative Wintrow seconded the motion. The motion passed by voice vote.**

Drugs and their Impact Presentation - Mr. Bryan Taylor, Idaho Prosecuting Attorneys Association

Mr. Taylor began his [presentation](#) by listing five areas that drugs impact in society: public safety, public health, environment, employment, and youth.

Mr. Taylor stated that people are not incarcerated for a first-offense possession of a controlled substance (PCS). He briefly summarized the path to prison for someone convicted of PCS in Canyon County. He suggested that, in general, it wasn't until about the fifth felony PCS charge that a court would sentence someone to prison. He stated that most people were assigned probation and/or drug court for their first few felony PCS charges. He expressed interest in reviewing the prior criminal history for people incarcerated in prison solely on PCS charges.

He suggested that 70% to 80% of Canyon County cases stemmed from alcohol and drugs, including most domestic violence cases as well as theft and burglary cases.

Public Health, Environment, Employment, and Youth

Mr. Taylor explained that in Canyon County, there has been a massive increase in deaths from the result of drug overdoses, specifically related to opioid use. There has also been an increase in hospitalizations with respect to marijuana. Mr. Taylor stated that drugs created environmental impacts to communities, specifically the improper disposal of pills. He emphasized that employers are facing issues in the areas of litigation, safety, productivity, etc. due to drug use. He stated that

the accessibility of drugs and pharmaceuticals has caused a significant increase in juvenile drug cases, injuries, and drug overdoses.

Dealer Impacts

Mr. Taylor informed the committee that Canyon County was labeled as a high intensity drug trafficking area by the federal government, especially given its geographic area. He estimated that a drug user in Canyon County impacts a minimum of three citizens (spouse, employer, child, etc.). When users become addicted, their impact to citizens significantly increases. He explained that one gram of heroin, split among 10 users, could potentially impact 40 citizens. He stated that prosecutors were strongly opposed to modifying the mandatory drug minimums because they believe it works as a deterrent for drug dealers. He emphasized that the education system and the health and welfare system are also being impacted by drug use.

Mr. Taylor stated that some drug dealers and conspirators divulged that they sell larger quantities in Idaho's neighboring states instead due to the Idaho's mandatory drug minimums. He informed the committee that Idaho ranks 33rd in the country for illicit drug usage.

Discussion

Representative Holtzclaw inquired whether any jail time is sentenced to someone convicted of first and second felony PCS charges. Mr. Taylor responded that in Canyon County, due to lack of jail space, someone will receive probation with a suspended two-year prison sentence without having served any county jail time for a first time felony PCS offense. Representative Holtzclaw asked at what point a person is directed to treatment services. Mr. Taylor responded that a person is directed to treatment services after the first conviction, but unfortunately many people relapse.

Representative McCrostie asked whether counties have the resources (e.g., treatment providers and probation officers) to address drug usage. Mr. Taylor responded that there are not enough treatment providers in Canyon County. He suggested that people with addiction issues need intense supervision.

Representative Wintrow observed that jail time did not seem to be a deterrent for individuals battling addiction. She asked if Mr. Taylor would support identifying resources that would assist people battling with addiction to prevent further crimes (e.g., burglary). Mr. Taylor voiced his support for identifying resources to address addiction.

Representative Luker asked whether counties were able to trace drug supply lines. Mr. Taylor responded that they were able to some of the time.

Mr. Joe Andreoli, President of the Treasure Valley Lodge of the Fraternal Order of Police

Mr. Andreoli stated that he currently works for the FBI investigating narcotics and firearm cases as it relates to gangs. He cautioned the committee against pursuing the actions taken by neighboring states in modifying the mandatory drug minimums. He suggested that states that have modified the mandatory drug minimums did so at the risk of their communities. He said that making modifications could potentially save the state money, but would be detrimental to other areas of the state. He referenced his time as an undercover detective and relayed his experience that mandatory drug minimums worked as deterrent for some drug dealers.

He stated that a small percentage of people were incarcerated due to drug trafficking crimes. He suggested that many people were incarcerated for crimes directly and indirectly related to other drug crimes (i.e., gang crimes, property crimes, etc.).

Mr. Brian Holland, Fraternal Order of Police

Mr. Holland relayed his experience working with reformed gang members. He emphasized that the state's statutes have worked as a deterrent for gang activity and narcotics crimes.

Representative Wintrow inquired about which laws he was advocating to remain the same. Mr. Holland responded that Idaho's laws regarding narcotics and gang activity were vital to the work law enforcement performs.

Idaho Supreme Court Presentation - Administrative Director Sara Thomas, Idaho Supreme Court

Ms. Thomas began her [presentation](#) by describing the Felony Sentencing Working Group, a group of judges who review common issues regarding felony sentencing in Idaho.

Idaho Supreme Court's Felony Sentencing Working Group

She referenced Section 19-2521, Idaho Code, in explaining the criteria in making the decision whether to execute a sentence or suspend a sentence. She agreed with Mr. Taylor's comments that judges do not typically sentence people to prison for first drug offenses unless it is a mandatory minimum crime. She explained that people in prison for drug crimes have usually had various periods of probation and had potentially served a rider or participated in drug court.

Ms. Thomas referenced the four sentencing objectives, specifically the primary objective of protecting society and achieving any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case. She referred to Section 19-2521, Idaho Code, specifically the criteria for courts to consider in sentencing. She informed the committee that the criteria had been adopted in 1977 and had not been updated since then. She explained that the workgroup is reviewing the criteria, especially given the new information available regarding effective sentencing. She suggested that some of the criteria guided the courts to imprisoning addicts. She noted that relapse was a part of recovery and it was likely for addicts to commit another crime. She added that because some communities do not offer treatment services, sometimes prison is the best option as it is the only place for them to receive treatment. She added that, currently, Idaho does not have treatment funding for people on misdemeanor probation.

Given the research from the last few decades, the workgroup is reviewing whether:

- Judges are receiving the right information to make sentencing decisions;
- The sentencing criteria in Section 19-2521, Idaho Code and the four sentencing objectives still provide the appropriate guidance for judges making sentencing decisions; and
- Judges are missing relevant information or are prevented from applying effective sentencing practices.

She explained that they were surveying judges about their experiences and researching effective sentencing practices in other states. She stated that the court's goal for the next legislative session was to provide the Legislature with quality information, and possibly propose legislation, to improve sentencing in Idaho.

Threshold Crimes in Idaho

Ms. Thomas explained that some crimes are felonies regardless of the property, amount, or value in question (e.g., burglary). She further explained that crimes can be separated into felonies and misdemeanors and/or have different sentencing options depending on a variety of factors. Ms. Thomas provided a list of examples on slides 9-11. With respect to drug crimes, Ms. Thomas explained that there are no thresholds for possession of any amounts of heroine, methamphetamine, and cocaine; any testable amount is a felony. There are mandatory minimum sentences for trafficking marijuana, methamphetamine, heroin, and cocaine; the sentences vary depending on the amount possessed.

Ms. Thomas referred to slide 13 and explained that if the Legislature decided to reduce certain drug possession cases from felonies to misdemeanors, then 3,000 cases would be moved out of district courts and into magistrate courts yearly. She stated that this modification would necessitate additional resources being added to the magistrate courts. In addition, the people in these cases would no longer be under the purview of the felony state provided supervision; they would be under county supervision to the extent the counties can collect fees. She emphasized that with

respect to misdemeanor probation at the county level, the statute states that counties only need to provide supervision to the extent they are able to collect fees. Ms. Thomas said that if the county does not have a strong supervision system, judges will use jail as their only alternative and the local jail populations will increase.

Ms. Thomas clarified that the number of convictions on slide 13 only included principals in the crime and did not include conspiracy to commit crimes or accessory; the numbers are not reflective of every case involving drugs in Idaho. Ms. Thomas also explained that in some cases, for certain reasons, a sentence can be expanded (sentencing enhancement), potentially up to a life sentence. Sentence enhancements are essentially facts or circumstances in the crime that make the crime worse or more dangerous than then allow a judge to increase the sentence. For example, after a habitual offender is convicted of a third felony, a judge's option of sentencing in any felony can expand up to life in prison.

Idaho's Problem Solving Courts

Ms. Thomas stated that problem solving courts (PSC) utilize evidence-based principles for interventions with high-risk and high-need offenders in the community. She explained that effective practices provide both treatment and intensive supervision at the correct dosages for the specific needs of each individual offender. The PSC's target population is moderate to high-risk to recidivate as identified through an objective criminogenic risk assessment tool (LSIR). She further explained that each PSC has its own eligibility criteria based on specific population needs, but all follow the core drug court model.

The teams in the PSCs meet weekly to staff cases so probation officers, treatment providers, attorneys, law enforcement, and other stakeholders can share real time information with judges. Based on whether the participant's behavior was positive or negative, the judge may impose an incentive or a sanction in a weekly review hearing. Participants receive treatment, sanctions and rewards, and are required to seek and obtain employment and give back to the community through service and paying fines and fees.

Ms. Thomas stated that the ultimate goal was for stakeholders to work together to hold participants accountable while working toward the ultimate goal of changing how people think and act. If people are unsuccessful, they can face sanctions and ultimately termination from the court. If they are successful, based on individual circumstances, participants may see a reduced or dismissed charge.

Ms. Thomas explained that, in order to progress, most PSCs have at least four phases which consist of demonstrable achievements in order to progress. As participants progress through each phase, the requirements lessen. While each phase has certain timeframe expectations, most programs takes at least 12 months; the program length will differ depending on the type of court.

PSCs are a proven criminal justice intervention; hundreds of studies support their efficacy. According to the 2014 Evaluation of Idaho's Drug Courts, the recidivism/program failure rate for drug courts was 39% compared to 54% for felony probations and 51% for the rider population. Ms. Thomas informed the committee that the courts plan to perform new evaluations. She mentioned that the courts are in a quality assurance program with Idaho felony drug courts and PSCs. They are in the process of creating a new mechanism and method to evaluate courts to ensure fidelity to the models. Ms. Thomas stated that most PSCs are felony drug courts, but there are several different types of courts as listed on slide 21.

Ms. Thomas referred to slide 22 and suggested that PSCs require additional resources and activities that do not typically exist in most cases. She explained that judges, staff, and other stakeholders have more involvement in the cases given that they meet on a weekly basis. They often have to work nontraditional hours to accommodate for participants' work schedules. Since the participants are high-risk offenders, they require intensive supervision and treatment as well as weekly drug testing.

A PSC gap analysis performed in 2016 identified approximately 342 felony offenders that were likely candidates for PSCs based on eligibility criteria and other relevant factors, but were not placed in one of Idaho's PSCs. The courts found that they had limited human resources:

- 36% reported that they had limited availability of probation staff;
- 25% reported limited availability of treatment; and
- 24% reported limited availability of prosecutors.

The courts also found that they had insufficient funding for treatment and services:

- 39% reported limited drug testing resources;
- 27% reported limited treatment resources; and
- 30% reported limited recovery support services.

Ms. Thomas stated that Idaho's courts and partners continue to strive to meet the needs of offenders in the community with the resources available. She emphasized that PSCs stand ready to serve the citizens of Idaho by providing accountability and treatment for high-risk and high-need offenders in a setting that is proven to reduce recidivism and make our communities safer.

Discussion

Representative Wintrow asked at what point does an individual get assessed for the first time. She suggested that if people could be assessed at an earlier time, they could identify issues and provide people with the appropriate services early on. Ms. Thomas responded that there was no single answer to her question. She stated that the workgroup was reviewing Section 19-2524, Idaho Code, that provides for substance use disorder evaluations prior to sentencing. She explained the workgroup was looking at how evaluations are performed, when they are performed, and if they contain the information needed. At this time they are required to use a single evaluation tool (GAIN assessment) and questions have been made about whether it is the appropriate tool for everyone.

Ms. Thomas referenced her prior work as a public defender and advocated for placing social workers in public defender offices as other states have done. She explained that it would allow for defendants to have attorney-client privilege and to be honest about their problems so they can begin treatment prior to sentencing. She added that studies show that public defender offices with in-house social workers have much better outcomes; defendants are less likely to go to prison and more likely to stay employed.

Representative McCrostie inquired about what treatment or resources were available for lower-risk, low-need offenders. Mr. Scott Ronan, state coordinator for PSCs in Idaho, responded that there are other programs designated for low-risk, high needs offenders, but they have not been researched enough and have not been implemented everywhere. He suggested that it would be beneficial to have research done on Idaho specific programs in an effort to obtain information concerning what programs are most effective.

Representative Wintrow asked what programs were working and whether anyone could serve as a substance abuse treatment provider in Idaho. Mr. Ronan responded that anyone could be a substance abuse treatment provider in Idaho, but the state agencies that provide state dollars for treatment services work with a contract manager to ensure that quality assurances are in place, that the billing is done appropriately, etc. He added that there is a Dept. of Health and Welfare facility approval process for a business to begin working in the community, and the business would have to contract with the management services contractor in order to access state dollars.

Senator Agenbroad asked what accountability the state had in place for treatment service providers and the offenders. Mr. Ronan responded that, based on the model of PSCs, the courts are informed by the multidisciplinary teams on a weekly basis whether or not someone is complying; the judge can hold participants accountable in real-time. In other criminal justice areas, it is up to probation officers to monitor treatment compliance and attendance. He explained that the contract itself has

some provisions about quality assurance that are much broader. He suggested that there have been some discussions to ensure high-quality treatment.

Co-chair Luker inquired whether there are areas where continuity can be improved between misdemeanor probation and felony probation in terms of quality output and consistency. Ms. Thomas suggested that it might be helpful to present the committee with information at a later date regarding the differences between misdemeanor probation and felony probation and under what circumstances both entities would work together.

Co-chair Lodge asked when the workgroup's suggestions regarding sentencing would be available. Ms. Thomas responded that the workgroup would first present its recommendations at the administrative conference in October, but suggested that she could provide some general information to the cochairs before then.

Co-chair Lodge asked Ms. Thomas to describe pretrial services. Ms. Thomas explained that when someone is released before being convicted, the person is typically given a bond, and a judge places some conditions upon release. At this time, there is nothing in Idaho Code that requires supervision to ensure that the person released on bond is following the conditions. Some counties have created pretrial service programs, which are similar to probation, although not quite as intense. This allows for a judge to obtain feedback and real-time information regarding whether conditions are being met. She added that this program does not exist in Idaho statute and there is no funding mechanism. Counties can create the program if they wish to and impose a pretrial fee.

The committee recessed for break at 10:45 a.m.

The committee reconvened from break at 10:51 a.m.

Idaho Commission of Pardons and Parole Update - Executive Director Sandy Jones

Director Jones began her [presentation](#) by voicing her intent to highlight the difference between the parole process and the parole violation/revocation process and what changes had been made to the process after Senate Bills 1357 and 1113 became law. She explained that slide 2 showed the parole revocation process prior to S1357 (justice reinvestment). She explained that when the parole commission receives a report of violation by a parole officer, the commission either:

- Initiates a parole revocation hearing to determine whether or not to revoke parole; or
- Sends the parolee to a treatment program (e.g., CAPP).

She explained that if the parole commission determined that noncompliance was due to addiction, they would send the parolee to a drug treatment program until completion. She explained that, in hindsight, there were some questions regarding the program length and whether they were the appropriate programs for the parolees. She added that some of the programs took 12 to 18 months to complete, which meant that parolees were in custody for sometimes as long as they would have been if their parole would have been revoked.

Director Jones referred to [slides 3-5](#) that listed the requirements for the parole commission prior to the implementation of S1357. She added that some of the requirements were part of the commission's current practice.

She suggested that as a result of S1357 implementation, changes were made to the parole decision-making that had to do with using evidence-based decision-making models. She opined that S1357 did not change the practice of how commissioners make decisions. She explained that it was already common practice for commissioners to review many factors for justice in their decision-making. She clarified that Idaho offered discretionary parole based on variety of items that factor into a commissioner's discretionary decision-making.

Director Jones referred to an example of a parole guideline document on slide 7 and explained that it quantified the information the commission was reviewing and identified how the decision

was made in a more clear, transparent manner. In 2017, the commission conformed with the guideline recommendation 65% of the time. The majority of nonconformance was in cases where the guideline score would support denial, and the commission elected to grant the offender a tentative parole date. She explained that this was because the guideline was measured early in the process by a parole hearing officer before the completion of some programming or before disciplinary behavior was corrected.

Director Jones referred to slide 8 and stated that S1357 required that the commission and IDOC report jointly to the Legislature and the Governor annually, at which point they describe the percentage of drug and property offenders paroled before serving 150% of their determinate sentences and the most common reason for why drug and property offenders' release was either delayed or denied. She explained that the commission and IDOC have been asked to promulgate rules ensuring that risk assessments are used in determining suitability for parole and whether or not it would be suitable to allow someone to complete their programming in the community as a requirement of supervision. She stated that it has not been the practice for the parole commission to allow people to complete their programming in the community. She explained that releasing inmates with high-risk and high-needs prior to completing their programming seems like an undue risk for the commission. She also noted that probation and parole is too understaffed to ensure that a parolee released in the community meets with a parole officer on the first day and with treatment services on either the second or third day of parole. She added that IDOC was working on a new reentry program to address this issue, but at this time the commission did not feel comfortable allowing parolees to finish programming in the community.

Director Jones stated that justice reinvestment limited the time that a parole violator could serve. She explained that, unless the parolees had new felony convictions or violent misdemeanor convictions, they were subject to short-term stays of incarceration. She further explained that the "up to" 90 or 180 days of incarceration for violations were based on risk. She voiced the commission's concerns at the time regarding the set timeframes of incarceration for violations in Idaho Code and noted that the number of absconsions increased considerably. During the course of 2016, 604 offenders were given a sanction of 90 days and served an average of 62 days given the time credited for good behavior. In the same time period, 574 offenders were given a sanction of 180 days with an average of 155 days served given the time credited for good behavior. She added that 101 offenders, or 10% of offenders receiving sanctions, went through both 90- and 180-day sanctions and moved on to revocation in 2016.

Director Jones stated that in 2017, the 90- and 180-day sanctions for parole violators not incarcerated on new felony or violent misdemeanor offenses were removed from Idaho's statutes due to safety concerns. Due to the removal of these automated sanctions, the work for the commissioners increased. In an effort to manage the workload, the commission received two additional commissioner positions. The commission implemented two-member, rather than three-member, panels of commissioners who were authorized to meet and make decisions regarding the disposition of parole violators.

S1113 removed the requirement for IDOC and the Parole Commission to submit a report to the Legislature describing the percentage of offenders serving drug and property conviction sentence who were released prior to serving 150% of their fixed sentence. The agencies were now only required to report statistics for the most common reasons for delay or denial of release to parole.

Parole Violation Diversion Process

Keeping the goal and intent of S1357 in mind, the parole violation diversion process was developed in an attempt to divert those who are not viewed as the most violent or greatest-risk parolees from prison. Director Jones explained that cases are reviewed internally by commission staff. The parolees deemed appropriate for this process are scheduled for a diversion review within two weeks. The two-member commissioner panel administratively reviews parole violation reports, recommendations

from parole hearing officers and parole officers, etc. and determines whether an offender may remain on parole and what additional conditions to put into place for the individual. A list of some of the factors taken into consideration are found on [slide 13](#).

Director Jones explained that the commission's options for parole violators are limited. She explained that with the assistance of IDOC, they've attempted to be creative in identifying resources that would reduce the barriers to success for parolees, while still holding them accountable for their actions. Some of the diversionary options include:

- Serving a limited period of time in jail;
- Serving a limited period of time in prison and engaging in target specific programming;
- Acceptance into a PSC for those who committed a new non-violent offense;
- Serving a limited period of time in a community reentry center in attempt to preserve any protective factors in place (e.g., employment);
- Assessments and participation in community based therapeutic programs; and
- Release and reinstatement.

She explained that, at times, the commission panel may not agree with the recommendation for diversion for some parole violators. The two-commissioner panel can, and does, refer some parole violators who they consider higher-risk to the full commission for revocation.

Director Jones provided a snapshot on slide 16 of where offenders are directed for diversions; the majority of them are sent to prison. She stated that, of the offenders presented for diversion, 35% of them are reinstated after jail and 15% of them are sent to revocation. She noted the small amount of offenders that are placed in PSCs for diversion and referred to Ms. Thomas's presentation as an explanation for the small number.

She referred to [slide 17](#) which provided a historical view for years 2013-2018 and noted the differing amounts and combinations of revocation, sanctions, diversion, etc. throughout the years. The next slide illustrated the types of violations that occurred in 2014-2017. She noted the high number of new felony convictions, new felony charges, and absconsion. She explained that technical violations account for a small number of parole violations and suggested that this type of violation is the most manageable in the community. She stated that offenders spend an average of 5.5 months in custody from the point of arrest to revocation. She emphasized that since over 60% of offenders return to custody for new felonies, the commission has time to adjudicate the cases for the parole violations. She explained that efforts are made to prioritize cases that are easiest to resolve and manage. She noted that offenders spend 2.5 months in custody from the point of arrest to the diversion hearing.

Continued Challenges

Director Jones stated that there is a lack of options other than prison for certain people on parole. There is a perception among parolees that they receive endless opportunities on parole and this can create challenges for parole officers who are attempting to enforce compliance. A commission's part-time capacity creates limitations with respect to workload management even with the two additional commissioners. She noted that between the months of August and May of 2018, 59% of parole violators returned with new criminal offenses.

Potential Solutions

Director Jones suggested additional community reentry beds with expanded admission criteria that would make it more acceptable for placement of parole violators or new parolees. She also suggested the addition of residential treatment/reentry options for substance abuse, other than prison, such as sanction centers. She noted the need for adequate and secure mental health facilities and community treatment options. She proposed expanding PSC capacity for supervision of parolees.

Director Jones emphasized that the commission was running out of options that would still provide for public safety. She relayed the commission's concern regarding the public perception that more

offenders should be released due to the prison's high population. The commission believes it should make a case by case determination based on the person before it and determine whether the individual's level of risk is manageable in the community. She explained that low-risk people are generally not in prison and term inmates and parolees are generally high-risk and high-need. The high-risk, high-needs population is also more difficult to grant parole and more likely to violate.

Discussion

Representative Wintrow asked for a list of treatment centers in the state. She also inquired about the reentry centers' populations, treatment providers by region, the gap analysis, and what resources are needed to address the gaps.

Co-chair Luker asked to what extent the parole commission examines the availability of supervision resources when evaluating a person's parole release. Director Jones responded that the availability of supervision resources in a community is a significant factor for determining a manageable risk in the community.

Community Reentry Centers, Mental Health, and Out of State Placement - Director Henry Atencio, IDOC

Director Atencio began his [presentation](#) by explaining that the data on slide 2 somewhat contradicted the information that Mr. Taylor presented earlier to the committee. He stated that 52% of offenders serving a term sentence were incarcerated for a nonviolent crime (e.g., drug crime, property crime, and alcohol). In 2018, IDOC received 1,133 new term offenders; 70% of the newly incarcerated term population (termers) were in prison for non-violent crimes. He stated that 1,245 termers were incarcerated for drug crimes. He added that 639 (51.3%) of these termers were in prison for a first drug offense.

Director Atencio commented that he had communicated briefly with IDOC's principle researcher regarding the discrepancy between Mr. Taylor's presentation and IDOC's data. He stated that of the 1,245 incarcerated drug offenders on term status, 40% had no prior felony crimes in Idaho that would have previously placed them under the supervision of IDOC. He explained that some termers may fit into a category described earlier by Mr. Taylor in that the offender may have been on probation, participated rider, or failed probation, but then went to IDOC as a termer. They did not, however, have an additional felony conviction in the community. He stated that nearly half (48%) of first time drug offenders were convicted of possession, 35% for delivery, and 15% for drug trafficking. He added that of the 1,245 drug offenders on term status, 60% of drug trafficking termers, 40% of delivery termers, and 33% of possession termers had no prior crimes, including prior drug offenses. He emphasized that IDOC's database only had information for prior convictions committed in Idaho.

Community Reentry Centers

Director Atencio stated that IDOC had four community reentry centers (CRC). The East Boise CRC is the only CRC with a 124-bed capacity. The facility has 14 staff members including one manager, eight uniformed security staff, and five administrative and programming staff. The average monthly gross salary per offender was \$1,902. He noted that efforts were being made to find better employment opportunities for the female population outside of the restaurant and hotel hospitality industries.

The Nampa CRC has a 115-bed capacity and 14 staff members with the same staffing model as East Boise CRC. The monthly gross salary per offender is \$3,106. The Idaho Falls CRC has a 112-bed capacity and 14 staff members with the same staffing model as the other CRCs. The average monthly gross salary per offender is \$2,543. The Treasure Valley CRC is located in Boise with a 108 bed capacity. The facility has 14 staff members with the same staffing model as the other CRCs. The average monthly gross salary per offender was \$2,144. He commented that many of the CRCs have living units similar to dormitories.

Director Atencio stated that treatment options are limited at a CRC since the majority of the offenders housed there are transitioning to the community in the near future either on parole or completing their full term. He explained that most offenders that arrive at a CRC have already received the majority of their programming in the larger institutions. The programming options are: Thinking for a Change, Cognitive Behavioral Intervention for Substance Abuse, as well as pre-release classes that focus on teaching the offenders life skills like building a resume, budgeting, etc.

Director Atencio presented the CRC placement eligibility matrix and explained that case managers manage the process for requests made for CRC placement. He listed some of the relevant factors that are reviewed when considering placement at a CRC:

- No pending felony charges;
- No sex related offenses;
- No history of escape;
- Release eligibility within 18 months; and
- Positive institutional behavior.

At this time, there are 950 minimum custody level inmates that are eligible for placement in a CRC. He stated that IDOC received funding for a fifth CRC in the Twin Falls area and is currently determining the best placement for the facility. He estimated that the facility would be available for placement in 12 to 18 months.

The vast majority (95.2%) of the CRC population was incarcerated for non-violent crimes. He emphasized the very small number of offenders housed in a CRC for violent crimes like manslaughter, aggravated battery or assault, illegal possession of a weapon, etc.

Out-of-State Placement

Director Atencio stated that IDOC currently had offenders housed at the Karnes Facility; the new contract would place the offenders at the Eagle Pass Facility. He provided some of the criteria included in the contract for inmate placement out of state:

- No mental or health care issues;
- No record of institutional violence; and
- At least three years before parole eligible date or full term release date.

He explained that only inmates whose diagnosed condition is controlled and stable on medication or through chronic clinic management can be considered for out-of-state placement. He noted that the programming and activities offered in both out-of-state facilities were similar. Regarding inmates with mental health issues, the diagnosis has to be controlled with psychotropic medication and contact with a psychiatric care provider no more than once every 90 days. He explained that any record of institutional violence involving the use of a deadly weapon or a record of escape or attempted escape from a secure facility would exempt the inmate from being placed in a facility out of state. He commented that inmates sent to an out-of-state facility are typically two or more years from their parole eligibility date. He stated IDOC's commitment to return inmates to Idaho in order for them to complete required substance abuse treatment or sex offender treatment prior to their parole eligibility date. He clarified that the process was the same for offenders housed in Idaho; the offender would be offered various programs to reduce idleness, but would not be scheduled to attend mandatory substance abuse or sex offender treatment until just prior to their parole eligibility date. Director Atencio noted that most (71%) of the inmates placed in the out-of-state facility are incarcerated for violent crimes.

Mental Health Services

Director Atencio referenced the \$5.6 million allocated in the FY18 Dept. of Health & Welfare (DHW) budget for mental health treatment for probationers and parolees. He reminded the committee that up until that point, there was no dedicated funding source for mental health treatment for this

population. He commented that a fair amount of this population has a dual diagnosis (e.g., drug addiction and mental health issue). He explained that the DHW developed a process to manage and provide funding in the communities across the state. DHW partnered with federally qualified health centers, but there are some gaps in some of the rural areas in the state as noted on [slide 16](#).

He listed some of the treatment services provided: medication management, individual psychotherapy, and group psychotherapy. He stated that IDOC did not have access to the funding until January 2018; he attributed the delay to the time it took to put the contracts in place for DHW and the health centers. He noted that as of June 25, 2018, 493 offenders have been referred for treatment. He informed the committee that some of the providers have stated that they do not have the capacity for more referrals and have asked IDOC to reduce their referrals. He has instructed IDOC staff to continue making referrals with the hope that providers will adjust their business model. He expressed concern regarding some of the gap services across the state and emphasized the vulnerability of this population.

Discussion

Co-chair Lodge asked if the discrepancy between Mr. Taylor's presentation and Director Atencio's presentation with respect to incarceration for first-time drug felony convictions was due to plea agreements. Director Atencio responded that he was unsure whether plea agreements were a factor; IDOC's database did not track plea agreements. He concurred with Co-chair Lodge's comments regarding the need to reconcile the variance between both presentations. He's asked his research staff to examine the population more closely to ensure their information is accurate.

Co-chair Luker asked Ms. Thomas whether IDOC had access to pre-sentence investigation reports (PSI). Ms. Thomas responded that upon a person's conviction, a copy of the person's PSI is sent to IDOC. She explained that IDOC's database may not have information regarding criminal charges or dismissed charges as they do with criminal convictions. Ms. Thomas voiced her desire to perform an analysis with information gathered from PSIs. In order to obtain an adequate dataset without skewed numbers, based on the prison population in IDOC, a random sample of 361 cases would need to be reviewed. The analysis would include reviewing information from the entire criminal file including PSIs, criminal history, etc. She lamented that the court did not have the resources or funding available to have the analysis done. She has contemplated contacting Boise State University to see if they would be interested in performing the analysis, but was unsure about how the court would secure funding for the project.

Senator Nye asked for an approximate number of people with mental health prescriptions that are currently incarcerated in IDOC facilities. Director Atencio did not have the information readily available, but would provide it at a later date.

Senator Nye asked the Chair to allow Mr. Hoskins to speak to a Pew Trust study regarding the effectiveness of incarceration. Mr. Hoskins referenced a Pew Trust report that some states have used to support criminal justice reform efforts. The report found no statistically significant relationship between imprisonment and drug use in the community. The conclusion of the study suggested there is no correlation between incarceration rates and how incarceration affects drug use, drug arrests, or overdose deaths. Director Atencio expressed interest in reviewing the Pew Trust study with his staff, specifically in the context of the conditions in Idaho. He opined that a sound correctional system was a balance between accountability and treatment.

Co-chair Luker asked if there is any regulation regarding the number of referrals made from IDOC on behalf of probationers and parolees to health treatment providers. Director Atencio responded that treatment providers have attempted to regulate the number of incoming referrals and IDOC has agreed to do so to some extent. He opined that it would be beneficial for treatment providers to hire additional staff to accommodate the number of referrals. He voiced his concern regarding the gaps in the treatment provider network in some rural areas across the state.

Co-chair Lodge inquired about the timeframe for establishing a CRC - specifically the CRC in Twin Falls. Director Atencio explained that IDOC is working on the Division of Purchasing and Division of Public Works to submit a request for proposal and are making efforts to see what is available in the community currently. He further explained that the timeframe he referenced earlier would be to build a CRC, but they are reviewing the area to see if there is a vacant building that they can develop into a facility.

Co-chair Luker referenced Director Atencio's earlier comments regarding the potential 900 inmates that could benefit from CRCs and inquired as to why the Board of Correction requested only one additional CRC. Director Atencio explained that when IDOC and the board reviewed IDOC's current system and the state's prison population projections for the next few years, it became apparent that there was a need for an additional high-capacity institution to provide the flexibility needed for the various high-risk level categories of inmates that would not qualify to be housed in a CRC. The institution would encompass a mental health wing and additional medical beds, both of which would not be able to be housed in a CRC. He emphasized that IDOC and the board took a comprehensive approach in their recommendation.

Approaches Taken by Utah, Texas and Congress - Ryan Bush, Legislative Research Analyst - LSO

Co-chair Luker asked Mr. Bush to provide a brief overview regarding criminal justice reinvestment approaches in Utah and Texas, as well as at the federal level in Congress.

Utah

Mr. Bush explained that Utah took a wide-ranging approach in 2015 and reclassified drug possession for first and second offenses. The first and second drug possession offenses were reduced from a felony to a misdemeanor; third and subsequent offenses remained a felony. Utah also reclassified a number of misdemeanors to citations, mainly traffic and boating offenses. He explained that Utah reformed its community supervision reentry and treatment services, as well as its probation and parole systems. He informed the committee that the co-chairs had requested Mr. Bush and Mr. Hoskins provide some additional details regarding some of the treatment and reentry changes made in Utah at the meeting in August. Mr. Bush listed some examples of changes made in Utah:

- Defined criminal risk factors to be considered in administering treatment;
- Established goals and outcome measurements for treatment programs; and
- Established sanctions and incentives for its probation and parole system.

Texas

Mr. Bush explained that Texas had introduced initiatives gradually throughout the 1990s and early 2000s. Its main initiative took place in 2007 when it significantly increased in-prison and out-patient treatment services. Texas added 4,500 beds and 5,200 program slots to its facilities. This cost the state \$241 million, but saved the state an estimated \$444 million.

Federal

Mr. Bush referenced three legislative bills in Congress that were currently in various stages of the legislative process. The Sentencing Reform and Correction Act focuses on reducing penalties for nonviolent drug offenders and eliminates the three-strikes life sentence for nonviolent drug offenders. It enhances the penalties for violent drug offenders. The bill also allows for additional judicial discretion below the mandatory minimum for some firearm offenses. The bill requests that the Bureau of Prisons classify all inmates according to their recidivism rate and that inmates be assigned to recidivism programs based on the assessment.

The First Step Act requests the Dept. of Justice to establish a system to classify recidivism risk among the inmates. It incentivizes participation in recidivism reduction programs, allows for more home confinement for lower-risk inmates and also allowed for reentry inmates to obtain identification (e.g., state ID). The legislation also asks the Bureau of Prisons to report on its capacity to treat

opioid addiction through evidence-based practices. It also establishes pilot programs for certain inmates to participate in youth mentorship programs as well as animal rehabilitation programs for abused animals that are looking for new homes.

The Safe Justice Act provides more probation for lower-level offenders. It encourages states to establish more PSCs. It also targets the mandatory minimum sentences for major drug traffickers rather than the low-level offenders. It reduces the maximum sentence from life to 25 years for repeat nonviolent drug offenders. The legislation allows for compassionate release for patients who are extremely elderly or terminally ill. It expands the earned time inmates can receive when filing an individual case plan.

Mr. Bush noted that the Utah Pew Trust article lists many populations and cost reductions estimations. He stated that the article was accurate, but emphasized that the long term implications are simply not known yet.

Committee Discussion

Co-chair Luker stated that the Dept. of Health and Welfare would be presenting at the next meeting. He expressed an interest in learning more about the CAPP facility (treatment program) and the statistics on the efficacy of the program. Mr. Bush referred to the committee's earlier interest in what programs the Dept. of Education has for at-risk youth. He informed the committee that Mr. Matt McCarter from the Dept. of Education is available for the meeting in August to provide details regarding the programs to the committee.

Representative Wintrow expressed interest in delving into some of the root causes that lead to criminal behavior. She explained that educational initiatives (e.g., home visiting and preschool) were one of the recommendations from multidisciplinary teams in other states. She emphasized that the state has an interest in investing in other programs, specifically evidenced-based programs.

Co-chair Luker asked the committee members to refer any agenda items to LSO staff.

The committee adjourned at 12:31 p.m.