

**MINUTES**  
(Subject to Approval by the Committee)  
**Criminal Justice Reinvestment Oversight Committee**  
**Friday, October 26, 2018**  
**9:00 A.M.**  
**Room WW54**  
**Boise, Idaho**

Co-chair Lodge called the meeting to order at 9:03 a.m.; a silent roll call was taken.

Committee members in attendance: Co-chair Representative Lynn Luker and Co-chair Patti Anne Lodge; Representatives James Holtzclaw, Bryan Zollinger, John McCrostie, and Melissa Wintrow; Senators Jim Rice, Jeff Agenbroad, Cherie Buckner-Webb, and Mark Nye. Legislative Services Office (LSO) staff present: Ryan Bush, Jared Hoskins, and Ana Lara.

Other attendees: Sara Thomas and Judge Barry Wood - Idaho Supreme Court; Sandy Jones and Jarod Cash - Idaho Commission on Pardons and Parole; Lindsay Atkinson - Idaho Freedom Foundation; Ingrid Andrulis and Kathy Griesmyer - ACLU; Janeene White, Ashley Dowell, and Sean Falconer - Idaho Department of Correction; and Gabe Osterhout - Idaho Policy Institute.

Note: presentations and handouts provided by the presenters/speakers are posted on the Idaho Legislature website: [www.legislature.idaho.gov](http://www.legislature.idaho.gov); and copies of those items are on file at the Legislative Services Office located in the State Capitol.

### **Opening remarks**

Co-chair Lodge began by commenting on the great information that the committee had received throughout the previous months and believed that they were close to forming some suggestions for the Legislature to consider for the next legislative session. Co-chair Luker expressed gratitude to the committee and stakeholders for their participation. He concurred with Co-chair Lodge's comments regarding the information they had received and believed it was time to move forward with some recommendations.

### **Presentation on the scope, intent, and substance of the Court's position on sentencing and trends in felony filings - Sara Thomas, Administrative Director of the Courts, Idaho Supreme Court (ISC)**

Ms. Thomas began her [presentation](#) by providing some general concepts on how sentencing occurs in Idaho. She explained that the power to define crimes and prescribe possible penalties belongs to the Legislature. However, the actual sentencing of the offender is a constitutional requirement and responsibility of the judiciary. She referred to Section 19-2521, Idaho Code, that shows a legislative sentencing scheme in which the sentence imposed is determined by the sentencing judge's discretion, except for crimes that have mandatory minimums.

Ms. Thomas stated that once a defendant's guilt has been established, the trial judge is under a duty to tailor the sentencing to the individual defendant. She said that some of the sentencing information taken into account is:

- Legal criteria;
- Pre-sentence investigation reports (PSIs);
- Assessments for substance abuse disorders; and
- Mental health issues.

Ms. Thomas noted that at the last meeting, the prosecutors informed the committee that judges are making the right decisions regarding sentencing; judges look at individuals and make decisions based on the totality of circumstances. She added that Director Atencio had sent a letter to the Idaho

Judiciary on September 26, 2018, to clear up some statements that had been made to the media. He stated his belief that Idaho judges make the right decisions regarding sentencing decisions.

### Felony sentencing project

Ms. Thomas stated that the felony sentencing project began in July 2017. A working group was created due to concerns regarding delays in felony sentencing and to determine whether the assessments received were sufficient. The felony sentencing committee is tasked with providing recommendations to the ISC in relation to felony sentencing policy and issues. The working group's process is outlined on [slide 6](#). She explained that the overall objective is to increase transparency and public safety. They also want to implement specific improvements to the sentencing process to promote more timely and more informed sentencing. Some of their goals are to:

- Incorporate sentencing principles from Idaho case law and evidence-based, risk-reduction sentencing practices into Idaho statutes;
- Improve efficiency & consistency in processes used to assess and evaluate defendants for substance use disorder & mental health needs;
- Improve quality of substance use disorder and mental health evaluations; and
- Clarify the requirement that judges consider mental health at sentencing.

### Felony sentencing project: scope

The felony sentencing project scope consists of reviewing statutory framework, the PSI process and Idaho Criminal Rule 32, process improvement, and screening and assessment tools. She explained that [slide 9](#) provides a list of their long-term goals for 2018 and 2019; the ISC is, at this time, presenting draft proposed revisions to Section 19-2521, Idaho Code.

### Proposed changes to Section 19-2521, Idaho Code

Ms. Thomas directed the committee to the draft containing a new proposed Section 19-2521, Idaho Code. She informed the committee that the felony sentencing project began before the discussions regarding prison population and clarified that it was never intended to address the question of how to send fewer people to prison. She emphasized that Idaho judges are sending the right people to prison. The draft was not intended to imply that changes to Section 19-2521, Idaho Code, would control or reduce the prison population. The draft's intent is to incorporate sentencing principles from Idaho case law and provide an emphasis on favoring a community-based sentence.

### Mandatory minimum sentences

Ms. Thomas commented that she had been asked several times, including by both co-chairs, the position of the judiciary regarding mandatory minimum sentences. She referenced her earlier comments by restating that the power to define crimes and prescribe penalties belongs to the legislative department whereas the authority to sentence offenders who have been found guilty of those crimes lies with the judiciary. In Idaho, the Legislature has a constitutional provision for which it can provide mandatory minimum sentences for any crimes; the constitutional amendment provides a narrow exception for the Legislature to exercise powers traditionally granted to the judicial branch. She emphasized that it was not her position to tell the Legislature what the policy in Idaho should be. She informed the committee of the impact that mandatory minimum sentences have on the courts:

- A major component of discretion in sentencing decisions is effectively transferred to the prosecutor based upon his or her charging decision;
- Sentencing is not individualized, but rather serves different goals; and
- Judges have expressed concerns about not being able to do justice in individual cases and address anomalies that invariably arise.

Ms. Thomas stated that, should the legislature choose to repeal mandatory minimum sentences and return to the more traditional policy of allowing judges to exercise discretion and craft an

individualized sentence based upon the unique characteristics of the offender and facts of the case, the ISC believes that judges have the education and skill to continue to impose the right sentences.

#### Additional initiatives

Ms. Thomas informed the committee that one of the additional initiatives that the courts have been working on is pretrial in Idaho. She informed the committee that national research indicates that a person detained until his or her case is disposed is over three times as likely to go to prison than a person released prior to the disposition. In addition, the prison sentence imposed is over two times longer for those who were not released pretrial. Although the disparity appears at all risk levels, it's acute for those who are low-risk. She noted that for low-risk individuals who are detained before disposition of their case are 3.76 times more likely to go to prison. The court recognized that the pretrial system has an impact on prison population and prison sentencing outcomes. In April 2019, the courts will hold a pretrial summit; teams from each of the judicial districts will consist of judges, legislators, and county commissioners who will come together to discuss pretrial in Idaho.

Ms. Thomas noted that in the budget process this past year, one judicial district court asked to be removed from problem-solving court coordination; they didn't want to participate or pay for the process anymore. She stated that the courts' budget is due November 1. She commented that the courts will ask that the court assistance officers, who are currently funded by the drug court fund, be moved to the general fund; this would free up \$500 thousand that could then be used for direct services for problem-solving courts and family court services.

#### Discussion

Co-chair Luker asked if the courts had been able to sort out the felony filings to see what case types are being filed at an increasing percentage. Ms. Thomas responded that she would forward the information for review. Co-chair Luker asked if the court had developed a pronouncement regarding the need for findings on the different elements used to evaluate a particular sentence. Ms. Thomas responded that in *State v. Stover*, the court found that there did not need to be factual findings made by the district courts that are specific to sentencing; a district judge can impose a sentence without articulating the basis for the sentence. She noted that it's extremely rare for a judge to not articulate the basis for a sentence; this is done, in part, for review. Co-chair Luker asked, in coordinating mandatory minimums in Section 19-2521, Idaho Code, whether an exception should be provided in Subsection (1)(b) for mandatory minimums so they are not repealed by subsequent legislation that fails to mention them. Ms. Thomas agreed that if the draft developed into legislation, it should state "unless otherwise provided by law."

Senator Rice suggested exercising caution when using correlations to determine what should or shouldn't be done regarding pretrial release. He explained that the likelihood of being sent to prison being higher if people are not released pretrial doesn't necessarily mean that they should have been released. **Senator Nye made a motion to support the proposed statutory changes in Section 19-2521, Idaho Code, as presented by the judiciary. Representative Wintrow seconded the motion.** Senator Agenbroad agreed with the conception of the draft, but expressed a desire to see changes in a red-lined format to understand what changes would take place. Senator Rice expressed minor concerns about language necessary to ensure that the draft does not supersede mandatory minimums that currently exist, some of which are tied to federal funding. **Senator Rice made a substitute motion that the committee recommend the concept, subject to some adjustments needed to place the language into an appropriate form including the additional language needed to ensure that it does not supersede any of the existing mandatory minimums. Representative McCrostie seconded the motion. Senator Nye withdrew his original motion. The motion carried by voice vote.**

Ms. Thomas clarified that the work the court is doing regarding pretrial is not similar to what has been done in New Mexico or New Jersey. They are focused on how to better ensure that the correct people are released on pretrial. She emphasized the importance of ensuring that those who are

released on pretrial have the right amount of supervision to maintain protective factors that reduce incarceration (e.g., stable housing, employment, continued family connection).

### **Presentation on recidivism, population forecast, and mandatory minimums - Janeena White, Ashley Dowell, and Sean Falconer - Idaho Dept. of Correction (IDOC)**

Ms. White, evaluations and compliance supervising officer for IDOC, began her [presentation](#) by informing the committee that the presentation would include population trends and the elements that went into the forecast methodology. She proceeded to slide 1 and noted that the recidivism rates for the male reentry centers are significantly lower than releases from the other male facilities; this is true for the female reentry center as well. She noted that as shown on slide 2, IDOC experienced flat growth from 2012 to July 2015 when there was a dramatic decrease. She attributed this decrease to a change in programming (e.g., elimination of Therapeutic Community programming); this enabled those who had not been eligible for release to now complete different programming for release. Since then, she said, IDOC has experienced record-high population growth, reaching 8,710 inmates in September 2018.

Ms. White noted that the term population has experienced the most growth, followed by the parole violator population with minimal growth, and lastly the rider population with gradual growth as well. She commented that the growth of the total supervised population increased by an average of two percent annually until January 2016; currently, growth is averaging four percent. She stated that compared to Idaho's population:

- The incarceration rate is currently 5.2 per 1,000 Idaho residents, similar to the rate in July 2012;
- The community population has increased to 9.2 per 1,000 residents, up from the rate of 8.2;
- The total supervised population has increased from 13.3 to 14.4 per 1,000 residents; and
- Although Idaho's population has been growing, the supervised population is outpacing this growth.

Ms. White proceeded to slide 8 and stated that most of the growth has been in the area of probation and parole. She noted that, currently, IDOC has 71 more admissions than releases per month in probation and parole. She emphasized that a higher portion (42.7%) of probation releases are revoked or failed probation (slide 10). She directed the committee to slide 13 and commented that, presently, IDOC is experiencing 35 more term admissions than term releases per month. She proceeded to slide 18 and stated that the rate remains higher than previous years and more are revoking to term than during the 90/180-day sanction process. She noted that the parole revocation rate of 56% is higher than any year since 2010. Ms. White stated that IDOC has an in-state bed capacity of 7,700 (including in-state contract beds) and currently, the population is 910 above capacity. She stated that even with an increase of 35 individuals per month to term, including an expected 1,584 riders, IDOC would still be 2,670 over capacity by 2022.

### Discussion

Senator Agenbrood asked why the recidivism rate is lower for the reentry centers compared to the other facilities. Ms. White responded that, generally, women recidivate at a lower rate than men do. She also noted that the inmates in the reentry facilities are employed, which might be the reason they do better.

Senator Rice requested information regarding the inmates who had originally been assigned Therapeutic Community (TC) programming, completed different programming, and were released, in order to get a better idea about what contribution they have played in the recidivism rates. Ms. Ashley Dowell, chief of prisons for IDOC, explained that one of the elements that contributed to the decision to eliminate the TC program was that inmates who participated in the program were high-risk in terms of substance abuse treatment and experienced a higher rate of recidivism compared to others inmates who completed different high-risk substance abuse treatment programming. She added that another factor was that many inmates did not wish to complete the TC program due to the confrontational nature of the program. She further explained that many of

the inmates who contributed to the dip in the IDOC population in 2016 already had a tentative parole date contingent on completion of the TC program and chose not to complete the program. However, when the TC program was eliminated, the inmates completed different programming and were able to be released. She also noted that, due to the length of the program, there was a backlog of inmates awaiting to enter the program. Senator Rice concurred that the dip in prison population was somewhat artificial and was not representative of what actually occurred.

Co-chair Luker asked whether more data or time is needed to better determine what the IDOC prison population needs will be in the future. He noted Representative McCrostie's comments about the term population only now reaching the previous high term population from 2013, and the gradual increases in the rider population and parole violator population. Ms. White responded that the trends are not showing a decrease and the total probation violation population is larger. Ms. White advanced to slide 9 and stated that probation violation rate is 181 per 1,000 probationers, which is comparable to 2013, but the population itself is larger, resulting in many more people going to prison. Ms. White advanced to slide 18 and noted that the parole violation rate remains higher than previous years and more are revoking to term than during the 90/180-day sanction process. She emphasized again that the population itself is larger which means more people are returning to prison.

Ms. Dowell pointed out that the current incarceration rate is similar to the rate of incarceration in 2012. She noted, however, that the community population and total supervised population is increasing. Co-chair Luker asked whether reentry centers or sanction centers would be more appropriate than a facility with long-term beds. Ms. Dowell informed the committee that reentry centers have a very specific criteria for placement (e.g., custody level, type of crime), and while they offer great opportunities, they won't fix the entire problem for the population growth. She reminded the committee that there are 700 inmates out of state and the pool of people eligible for reentry centers decreases. Co-chair Luker stated that while there is population growth, crime rates have decreased and he wondered whether IDOC is experiencing a bubble in its population.

Senator Rice asked how much of parole violator population is related to the adequacy of drug treatment in the community and adequacy of community supervision, and whether violations were more likely to be drug offenses or other offenses. Mr. David Birch, chief of probation and parole for IDOC, responded that there is quite a bit of substance use disorder treatment that is available in the community throughout the state. He stated that one of their biggest struggles is keeping people engaged in treatment. Regarding the adequacy of supervision, there are resource challenges given that the community population has grown which means that caseloads have also grown. He commented that the quality of supervision provided will contribute to keeping people engaged in the positive, pro-social things they should be doing, including treatment. He stated that if they properly resource community supervision and decrease caseloads, it would provide probation and parole officers more opportunities to spend time with offenders they are supervising. Senator Rice asked if it would be accurate to say that more probation and parole officers are needed to ensure that offenders remain engaged in their treatment to reduce recidivism. Mr. Birch responded in the affirmative.

Co-chair Lodge asked how many more probation and parole officers are needed to make the program first-class. Mr. Birch responded that in their budget request, they asked for an additional 30 probation and parole officers. Co-chair Lodge asked how long it would take for the additional probation and parole officers to complete training. Mr. Birch responded that it would take some time to hire that many individuals and the training process takes approximately a year to complete. He clarified that during the twelve months, the probation and parole officers would supervise a reduced caseload, and, as they demonstrate proficiency in their skill set, the number of cases that they supervise will increase.

Representative Wintrow asked what role social work can play in providing a helping hand to probation and parole officers. She also inquired about the training curriculum for probation and parole officers. Mr. Birch responded that they are operating a pilot program in district four under a federal grant and had hired six reentry specialists to work along case managers for 60 days prior to release and with probation and parole officers for 60 days after release. He explained that the goal of reentry specialists is to supplement the work of case managers and probation and parole officers in an effort to make the transition process as smooth as possible. Representative Wintrow asked if the pilot program proves successful, would IDOC submit a budget request increase to retain and expand the program. Mr. Birch responded that it would be considered depending on pilot program outcome measurements.

Co-chair Luker inquired about the grant time frame. He also asked what kind of caseload would be assigned to the reentry specialists. Mr. Birch responded that the grant is for three years and IDOC is currently one year into the grant. He explained that they are reviewing their high-risk and moderate-risk populations as well as the sex offender population. He didn't have his data with him regarding the caseloads, but believed that each caseload would consist of 60 offenders.

Representative Holtzclaw asked how many times a parolee could fail a drug test before they violate their parole. Mr. Birch responded that their goal is to supervise an individual in the community for as long as it is safe to do so. He explained that each individual's personal circumstances would be examined (e.g., treatment engagement, UA history); if all the options in the community have been exhausted and it's no longer safe to manage them in the community, then they look at incarceration for next steps.

Senator Rice commented that, due to the nature of the probation and parole officer position, there is always an issue with retention and a percentage of those positions will go unfilled. **Senator Rice made a motion to recommend to the Joint Finance-Appropriations Committee that IDOC's request for an additional 30 probation and parole officer positions be approved. Representative Holtzclaw seconded the motion.**

Co-chair Luker concurred and supported Senator Rice's motion. He noted that the Legislature had not reinvested much into criminal justice and therefore lacked real data to use as a basis for future decisions. He suggested that probation and parole officers should also be given a pay raise, especially since many are often recruited by counties or other states that offer higher pay.

**The motion passed by voice vote.**

Representative McCrostie asked about the difference between a failed probationer and a revoked probationer. Ms. White explained that a revoked probationer will have his or her sentence imposed and become a termier; someone who has failed probation may participate in a rider program and be released on probation again upon successful completion.

Representative Wintrow inquired about the primary reasons why probation and parole is revoked. Ms. White responded that half of the parole violator population have committed new crimes. She added that only thirteen percent of the crimes are considered violent crimes; most of the crimes are absconding, drug crimes, or property crimes.

Representative Holtzclaw inquired about the cost to house inmates in Texas. Ms. Dowell responded that the cost was about the same as in Idaho, but medical costs outside the facility as well as transportation costs are fairly substantial.

The committee recessed for a break at 10:50 a.m.

The committee reconvened at 11:07 a.m.

Mandatory minimums - Sean Falconer, IDOC

Mr. Falconer, principal research analyst for IDOC, began his [presentation](#) by providing a brief background regarding the drug trafficking tiers. He stated that there are five drug types traffickers can fall into: marijuana, immediate pre-cursors to methamphetamine, methamphetamine, and heroin. The mandatory minimums are listed on [slide 2](#).

Mr. Falconer stated that as of October 1, 2018, IDOC housed 375 offenders with active drug trafficking convictions as their instant offense. He explained that an instant offense is the crime with the longest out sentence. The majority (70%) of these offenders are either minimum or medium custody. He noted that the vast majority of drug trafficking occurs in Canyon County and Ada County; over 70% of drug trafficking convictions come from only four counties. He informed the committee that 63.7% of drug traffickers are Caucasian, 24.5% are Hispanic, and 11.7% are from other races. He stated that the overwhelming majority (85.9%) of drug traffickers are male.

Mr. Falconer said that 42% of drug trafficking inmates incarcerated in IDOC facilities have no other crimes (prior criminal record) in Idaho. He emphasized that this did not mean that they do not have a record in other states, misdemeanor or juvenile crimes in Idaho, or even felonies that have been dismissed in Idaho. He commented that 17% of drug trafficking inmates have a violent criminal record. He directed the committee to slide 7 and stated that of those who have received and completed a drug trafficking mandatory minimum since 1990, approximately 22% recidivate or return to incarceration (within Idaho). He explained that most drug trafficking offenders come from out of state and many parole to their home state. He clarified that the recidivism number may be deceptively low because they do not have the recidivism data from other states.

Mr. Falconer stated that the vast majority (91.5%) of drug trafficking offenders in Idaho are first-time drug traffickers and have no previous trafficking charges in Idaho, but may have other prior crimes. He explained that 30.6% of the 91.5% first-time traffickers had felony drug charges, such as possession of a controlled substance or delivery. He informed the committee that 83.5% of drug traffickers are currently serving time for the determinate or mandatory minimum portion of their crime; the median sentence length is 3.4 years. He stated that of 375 drug trafficking offenders currently incarcerated, IDOC has pre-sentence investigations for about 276 offenders. He commented that the most common drug to traffic is methamphetamine (49%), followed by heroin. He noted that, according to the pre-sentence investigations, most offenders have a small amount of drugs in their possession (i.e., tier 1 levels).

### Discussion

Co-chair Lodge inquired about the location of Idaho's drug corridor. Mr. Falconer responded that there seems to be quite a bit of transportation of drugs from either Seattle or Portland into the Treasure Valley on its way to Salt Lake City.

Representative Wintrow inquired about decision-making for how charges are chosen. Mr. Falconer responded that he was unsure and that the question might be better directed to the judiciary. He offered to review pre-sentence investigation reports to better understand when a mandatory minimum charge is chosen versus a charge for possession with intent to deliver.

Senator Rice suggested that the Legislature could consider developing a concept that, upon a finding at sentencing that good cause exists, the court may reduce a level one drug trafficking offense below the mandatory minimum or deviate down one level for level two and three drug trafficking offenses. He opined that, as a former prosecutor, sometimes too much power is given to prosecutors when judges are not given any discretion at the time of sentencing. Co-chair Luker suggested that this concept could be developed within the legislation presented last year that had some discretion built in.

**Senator Rice made a motion to recommend to the germane committee the consideration of drafting legislation that states that, upon criteria to be determined by the committee, there be**

**changes that allow courts to deviate from the mandatory minimums on some basis as determined by the germane committee. Senator Nye seconded the motion. The motion carried by voice vote.**

**Presentation on LSO's research on JRI savings and investments, statewide funding of criminal justice, and lawsuits based on good time/earned time policies in other states - Jared Hoskins and Ryan Bush, LSO**

Mr. Hoskins, principal analyst for the Budget and Policy Analysis Division, directed the committee to a [handout](#) and explained that he had compiled some information regarding: the investments made and costs averted through the passage of 2014 Senate Bill 1357, comprehensive summary of S1357 as well as the changes made to it by S1113 (2017), and the statewide picture of criminal justice spending.

Mr. Hoskins directed the committee to the first page of the handout and stated that it was meant to address the investments made and the costs expected to be avoided through the passage of S1357. The statement of purpose from the original bill stated that up to \$288 million in savings could be realized and that \$33 million could be reinvested to reduce recidivism. He suggested that the committee should think of savings more in terms of cost aversion or cost avoidance; in the context of a state budget, savings suggests that existing appropriations will experience ongoing base reductions or reversions on an ongoing basis. On the other hand, averted costs suggests that hypothetical increases to existing appropriations could be avoided due to some application of some treatment. He stated that it was important to look at the potential cost-avoidance as cumulative as opposed to one-time or ongoing. He explained that, in 2014, it was never anticipated that IDOC would avoid more than its annual appropriation in any given single year in costs, let alone for multiple years. He explained that it was anticipated that year-over-year cumulative averted costs would be \$288 million over a particular amount of time. He noted that, in the revised plan, there was a downward adjustment in the estimated avoided costs to \$157 million, but it still maintained the \$33 million in reinvestment.

Mr. Hoskins directed the committee to the table on page 1 and explained that it compared the various inmate projections over time and the associated onetime averted costs during Fiscal Year 2020 when compared to the original forecast in 2014. He explained that in comparison, the anticipated \$22.9 million cost avoidance in 2020 has been reduced to \$10.5 million. He noted that the state had reinvested \$43.5 million instead of the \$33 million it had originally anticipated. He clarified that the state has avoided fewer costs, but reinvested more than originally expected and anticipated. He noted that the committee had not delved much into the legislative changes that, in effect, repealed justice reinvestment and had a significant fiscal impact.

Mr. Hoskins directed the committee to page 2 and explained that there are two operative sections (sections 12 and 17 of S1357) that are aimed directly at reducing inmate population. He stated that these two operative sections are defining characteristics of JRI statutes nationwide. He explained that sections 12 and 17 mandated that IDOC provide inmates access to programming so that they are parole eligible by the time their fixed term is expired. It also required IDOC to focus prison space on the most violent or greatest-risk inmates by promulgating rules that reduce the time spent beyond the fixed portion of a particular sentence for drug or property crimes. He stated that section 17 capped the amount of incarceration time that could be imposed by the Commission of Pardons and Parole for parole violations. He explained that both sections were repealed by sections 4 and 5 of S1113 (2017) and, in effect, removed the JRI attributes from Idaho Code. He reminded the committee that when S1113 was proposed, an annual ongoing fiscal impact of approximately \$7 million was expected and requested by IDOC the following year in its budget request for county and out-of-state placement. He stated that after the intermediate sanctions were removed, the time a person would spend incarcerated for a parole violation essentially doubled. He clarified that while no single factor could be faulted for why some averted costs were not realized, the removal of intermediate sanctions had an impact.

Mr. Hoskins proceeded to the table on page 3 that depicts the statewide funding of criminal justice. He emphasized that the table was not all-inclusive due to lack of access to local law enforcement budgets. He suggested that the table shows a conservative underestimate of what is being spent statewide on criminal justice. He explained that, statewide, there has been a 31.1% increase in spending on criminal justice in the last five years. He also noted that state agencies had seen a 32.1% increase in spending on criminal justice in the last five years.

### Discussion

Co-chair Luker asked if the appropriations included items that were not part of JRI. Mr. Hoskins responded that the appropriations listed were agency budgets that included operational costs, personnel costs, etc. outside the parameters of JRI. He noted that the whole statewide budget had increased 28% throughout that entire time. Co-chair Luker referred to page 1 of the handout and asked if any comparisons had been done to recidivism rates to see how they compare to the rates in 2014. Mr. Hoskins did not readily have that information available.

Senator Rice suggested it was unfair to assess JRI based on some of the information presented (e.g., recidivism rate) because it had not been implemented in the manner needed to provide accurate data on whether it was beneficial or not. He noted that, for example, the Legislature had not increased the number of probation and parole officers to provide the level of supervision needed and programming had not been expanded to the level needed either. Mr. Hoskins provided a brief overview of how the \$43.5 million was expended:

- \$17.4 million on new staff;
- \$12.5 million on substance abuse disorder services;
- \$1.8 million for the expansion of problem-solving courts;
- \$700 thousand for training;
- \$11 million on treatment.

He noted that the additional probation and parole officers was never a part of the JRI plan; it was a budget request that was introduced subsequently. He clarified that his comments were not meant to imply that the number of probation and parole officers had no effect on the success or failure of JRI. Co-chair Lodge requested the data regarding the funds expended on JRI.

Representative McCrostie asked if the state had spent \$43.5 million to only save \$10.5 million. Mr. Hoskins responded in the affirmative. Mr. Hoskins explained that the \$288 million figure was purely based on inmate population and the average per diem cost of housing inmates.

Representative Wintrow asked whether it was feasible for the Legislature to avert a substantial cost if the sentencing factor goes unaddressed. Mr. Hoskins referred to the operative sections in S1357 and reminded the committee that they were the characteristic qualities of a JRI statute. He referenced a CSG diagram that showed that in order to produce reduced recidivism, states should constrain prison inmate growth, generate savings, and reinvest the savings. He stated that sentencing reform would meet the test of the first element of JRI in constraining prison inmate population.

### Good time/earned time policies in other states - Ryan Bush, LSO

Mr. Bush, principal legislative drafting attorney for LSO, was asked to present good time/earned time policies in other states and, more specifically, information regarding any lawsuits related to those policies. He explained that it was difficult to find data and quantify it given that so many of the decisions are made internally by corrections departments in other states. He stated that Westlaw found a total of 4,200 cases that had been filed based on good time policies for any state that had a good time policy at any time; about 1,300 federal cases and 2,900 state cases. In neighboring states, there have been:

- 29 good time cases in Nevada;
- 6 good time cases in Wyoming;

- 96 good time cases in Oregon;
- 77 good time cases in Colorado; and
- 101 good time cases in Washington.

He noted that Montana, like Idaho, does not have a good time policy.

Mr. Bush stated that in 2016, the Fifth Circuit Court of Appeals found that prisoners do have a very limited due process right to have their good time credits calculated retroactively from the date of their sentencing. He informed the committee that two separate class action cases were filed in both state and federal court in Colorado recently. He explained that in both cases, the prisoners were contesting the calculation of their good time credits and felt that they had been held too long on their sentence based on their good time credits. He noted that in both cases, the courts ruled in favor of the state.

Mr. Bush stated that the National Conference of State Legislatures (NCSL) found ten state statutes that specifically address prisoners who lose their good time credits. He explained that of the ten statutes, only two discuss the process for the forfeiture of these credits. He stated that Kentucky states that an inmate can lose credits for a malicious, harassing, or factually frivolous lawsuit action brought by the inmate; Oklahoma has a vague provision stating that inmates require due process prior to the loss of any learned credit.

### **Committee Discussion**

Co-chair Lodge called for the approval of the September 17, 2018, minutes. **Senator Nye made a motion to approve the September 17, 2018, minutes. Representative Wintrow seconded the motion. The motion carried by voice vote.**

Co-chair Luker directed the committee to Section 67-0456, Idaho Code, which was enacted in 2014 along with JRI. He referred to the last subsection and noted that the committee is set to expire in 2019. He suggested that, given the various issues and concerns raised, the committee be extended to oversee the issues raised. **Co-chair Luker made a motion to recommend to the Legislature the extension of the Criminal Justice Reinvestment Oversight Committee for four years. Senator Rice seconded the motion. The motion carried by voice vote.**

Co-chair Lodge asked the committee members for feedback regarding what they would like to see in the committee's final report.

Senator Rice commented that mental health treatment plays a substantial role in recidivism and new offenses, and that he believes that focus should be placed on the role of mental health and how it can be better addressed.

Representative Wintrow suggested that beds allocated in prison for inmates with severe mental health could be better served if placed in other community services. She also suggested looking at ways to remodel or expand facilities to accommodate the population without having to build a new prison.

Co-chair Luker reminded the committee that the Dept. of Health and Welfare had received an appropriation, which is just now being implemented, and the Dept. of Correction had also set aside some substance use disorder (SUD) funding. He stated that these two items were appropriate examples of what the committee could continue to oversee. He noted that while additional funds may be requested by these two departments, the committee won't readily know how much is needed until they receive more data on the appropriated funds.

Senator Rice suggested that the committee is dealing with a dynamic situation - not a static one. He emphasized the importance for tracking data, reviewing the implementation of policies and programs, and making adjustments as needed. He noted mental health has been ongoing concern for years, especially in the context of the prison population.

Representative Wintrow emphasized the need for reinvestment and referred back to Mr. Matt McCarter's presentation on behalf of the Dept. of Education. She suggested examining methods to prevent people from entering the criminal justice system and ways to create environments, programs, and support families. She noted that national research has found that early intervention is the most effective.

Co-chair Lodge stated that the red-line version of Section 19-2521, Idaho Code, and minutes for the committee meeting would be e-mailed to the committee members, and asked that the committee members provide their approval or feedback via e-mail as well.

Co-chair Luker stated that while the committee did not presently have the data needed to make a recommendation on IDOC's request for a new prison, he felt that the committee should support the reentry center in northern Idaho and the expansion of the facility in St. Anthony. **Co-chair Luker made a motion to support the expansion of the St. Anthony's facility and the new reentry center in northern Idaho. Senator Rice seconded the motion. The motion carried by voice vote.**

Representative Wintrow suggested reviewing the threshold for some crimes and including this topic in the committee's final report.

Co-chair Lodge commented that the U.S. Attorney had suggested that the Legislature review the level of THC in marijuana and the potency of fentanyl. Co-chair Luker suggested that this concern could be forwarded to the germane committees for further study.

The committee meeting adjourned at 12:18 p.m.