

A large glass hourglass with red sand is the central visual element. The sand is flowing from the top bulb to the bottom bulb. The background is a blurred image of a newspaper.

TIMELY RELEASE REPORT 2018

Report to Idaho Legislature

**Joint report between the Idaho Department of Correction and the
Idaho Commission of Pardons and Parole**



February 1, 2018



Executive Summary

In March 2014, Idaho Governor C.L. “Butch” Otter signed into law Senate Bill 1357, also known as Justice Reinvestment Initiative (JRI), to help address three major challenges facing Idaho’s criminal justice system: a revolving door of recidivism from supervision and diversion programs, inefficient use of prison space, and insufficient oversight of recidivism-reduction investments. This initiative seeks to strengthen supervision practices, focus resources on the most violent or highest-risk individuals, and adds new reporting requirements to monitor outcomes.

Idaho Code §20-223, Section 11, stated the following:

18 (11) By February 1, 2015, and by February 1 of each year thereafter, the
19 department of correction and the commission shall submit a report to the leg-
20 islature and governor that describes the percentage of people sentenced to
21 a term in prison for a property or drug offense conviction who are released
22 before serving one hundred fifty percent (150%) of the fixed portion of the
23 sentence, and that documents the most common reasons for people whose re-
24 lease was delayed or denied.

Among these new reporting requirements is an annual joint report to the legislature and governor from the Idaho Department of Correction (IDOC) and the Idaho Commission of Pardons and Parole (ICPP) describing the percentage of people sentenced to a term in prison for a property or drug offense conviction who are released before serving one hundred fifty percent (150%) of the fixed portion of the sentence, and documents the most common reasons for people whose release was delayed or denied.

Senate Bill 1113, effective July 1, 2017, amended Idaho Code §20-223, Section 11.

“By February 1, 2015, and by February 1 of each year thereafter, the department of correction and commission shall submit a report to the legislature and governor that describes the most common reason for delay or denial of release, including statistical data supporting the conclusions of the report.”

Although the 150 percent benchmark is no longer included within the legislation, IDOC and ICPP continue to use this marker to enable consistent comparisons of parole release delays over time.

Highlights

A total of 921 individuals under IDOC jurisdiction serving time in prison on a property or drug conviction were released to parole between January 1, 2017 and December 31, 2017.

🕒 **86.8%** (N = 799) were released **before** 150 percent of the fixed portion of their term sentence.

🕒 **13.2%** (N = 122) were released **after** 150 percent of the fixed portion of their term sentence.

Primary Delay Reasons

➡ 44.3% (N = 54) of delays were a result of credit for time served, including parole eligible on arrival or parole eligible within six months of arrival.

➡ 23.8% (N = 29) were based on having been previously denied parole.

➡ 21.3% (N = 26) were a direct result of their own actions, including institutional behavior and disciplinary offense reports (DORs).

➡ 9.8% (N = 12) of delays were caused due to programming, including refusal to program, failure to program, and other programming challenges.

➡ 0.8% (N = 1) was a result of new charges.

Background



Statutory Requirement

At the height of an increasing prison population, the State of Idaho sought assistance from the Council for State Government (CSG) Justice Center to develop and enact policy changes through a data-driven approach aimed at reducing correction spending and increasing public safety.

Between October 2013 and January 2014, CSG Justice Center experts analyzed Idaho's criminal justice data and worked with Idaho state leaders and key stakeholders across the criminal justice system to identify core needs.

In March 2014, Idaho Governor C.L. "Butch" Otter signed into law Senate Bill 1357. This law is based on a policy framework presented in a January 2014 CSG Justice Center report, bottom right.

"Policy Option 2(D): Reserve prison space for individuals convicted of violent offenses by regulating the percent of time above the minimum sentence that people convicted of nonviolent offenses may serve".

-CSG Justice Center

Initial analyses conducted by CSG Justice Center using 2012 data found that "people released from prison to parole for the first time had served 207 percent of the fixed portion of their sentence".

In March 2015, it was determined a revised methodology should be used and as a result, an improved dataset was analyzed. The new calculation

revealed first-time parole releases from prison were serving closer to 145 percent of the fixed portion of their sentence, median of 120 percent, much lower than previously calculated. However, the revision did not alter the original intent of the policy framework.

The initiative continues working toward reserving prison space for individuals convicted of violent offenses and those at highest-risk of reoffending.



Justice Reinvestment in Idaho:

Analyses & Policy Framework Overview

IDAHO'S CRIME RATE IS AMONG THE LOWEST in the nation. Recidivism in the state, however, is increasing, and adults sentenced to prison for nonviolent crimes do twice as much time as adults sentenced to prison for nonviolent crimes in other states.¹ In 2012, Idaho's incarceration rate was the eighth highest in the country.²

Since 2008, the state's prison population has increased by 10 percent and is projected to increase another 16 percent over the next five years, from 8,076 people in FY2014 to 9,408 people by FY2019. Increasing the capacity of the prison system to absorb the growth over that time period will cost Idaho an estimated \$288 million in operating and construction costs.³ Frustrated by rising corrections spending and a high rate of recidivism, policymakers came together to identify a more effective path forward.

In June 2013, Idaho Governor C.L. "Butch" Otter, Chief Justice Roger Burdick, legislative leaders from both parties, and other state policymakers requested technical assistance from the Council of State Governments Justice Center (CSG Justice Center) to employ a data-driven "justice reinvestment" approach to develop a statewide policy framework that would decrease spending on corrections and reinvest savings in strategies to reduce recidivism and increase public safety. Assistance provided by the CSG Justice Center was made possible in partnership with The Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance.

Senate Concurrent Resolution 128, enacted in March 2013, established a bipartisan Interim Legislative Committee to study Idaho's criminal justice system using the justice reinvestment approach. State leaders also established the interbranch Justice Reinvestment Working Group, which is made up of state lawmakers, corrections and court officials, and other stakeholders in the criminal justice system. Both groups were co-chaired by Senator Patti Anne Lodge (R-District 11) and Representative Richard Willis (R-District 23). The groups reviewed analyses that the CSG Justice Center conducted and discussed policy options to increase public safety and avert growth in the prison population.

In preparing its analyses, the CSG Justice Center reviewed vast amounts of data, drawing on information systems maintained by the Idaho Department of Corrections (IDOC), Idaho Commission of Pardons and Parole (Parole Commission), Idaho Supreme Court, Idaho State Police, and others.⁴ In total, the CSG Justice Center analyzed over 570,000 individual records across these information systems.

In addition to these quantitative analyses, the CSG Justice Center convened focus groups and meetings with prosecutors, sheriffs, victim advocates, district judges, police chiefs, and others. Between June 2013 and January 2014, the CSG Justice Center conducted more than 100 in-person meetings with nearly 250 individuals. Ultimately, the CSG Justice Center helped state leaders identify three challenges contributing to Idaho's prison growth.

1. The Council of State Governments Justice Center (CSG Justice Center) categorized crimes in Idaho for analysis purposes based on Idaho Department of Corrections (IDOC) data describing each offender's most serious offense for the current sentence. Analyses on "violent crimes" include assault/battery, sex crimes, crimes against children, rape, murder, manslaughter, kidnapping, terrorism, robbery, aggravated arson, cruelty to animals, and other person crimes. "Nonviolent crimes" include all other offenses.

2. U.S. Department of Justice, Bureau of Justice Statistics, "Prisoners in 2012," (Washington, DC: U.S. Department of Justice, 2013).

3. Email correspondence and analysis between IDOC and CSG Justice Center, November-December 2013. The "cost of doing nothing" is based on IDOC's forecasted prison population through FY2019, the IDOC FY2012 operational costs per day, and estimated construction costs to accommodate the population forecast.

4. In this phase of justice reinvestment, CSG Justice Center staff were unable to match case-level criminal justice data with state mental health data.

Methodology

Unified Sentencing Act

Idaho Code §19-2513 eliminated credit for good behavior in prison and created a two-part sentencing structure, fixed and indeterminate.

To aid in the understanding of the 150 percent calculation utilized in this report, it is important to understand the current sentencing structure in Idaho.

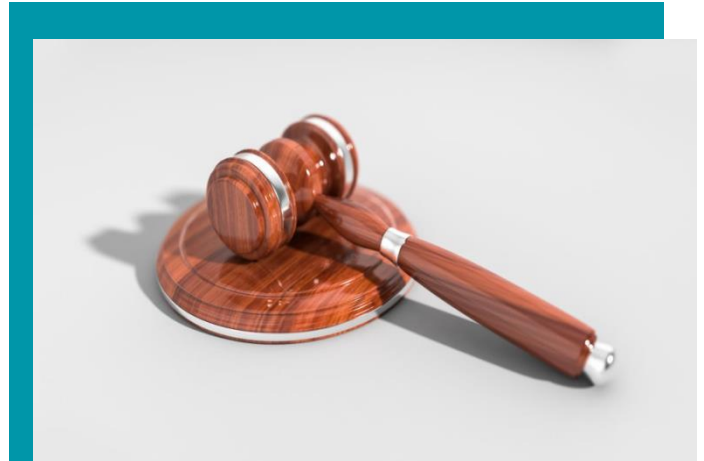
In 1986, the legislature passed the Unified Sentencing Act. Idaho Code §19-2513 eliminated credit for good behavior in prison and created a two-part sentencing structure, fixed and indeterminate. The fixed portion of the sentence ensures an individual serves a defined length of time in prison without eligibility for parole. The indeterminate portion of the sentence, in contrast, can consist of a varied length of time in which the release date can be uncertain. The ICPP holds hearings that determine when, during the range of the sentence, the individual will be eligible for parole and has full discretion regarding parole release decisions.

Idaho's criminal statutes typically provide a penalty for each crime and the judge has full discretion to set the minimum, or fixed, portion.

The first parole eligible date takes into consideration the fixed sentence or, at times, several sentences running concurrently or consecutively, minus any credit for time served.

"There are about a dozen crimes – primarily violent offenses, drug trafficking, and sexual abuse of children – for which the legislature has set mandatory minimum prison terms. This means the sentencing judge cannot give a fixed term below the mandatory minimum set in statute for these offenses".

-CSG Justice Center



Roles in the Process

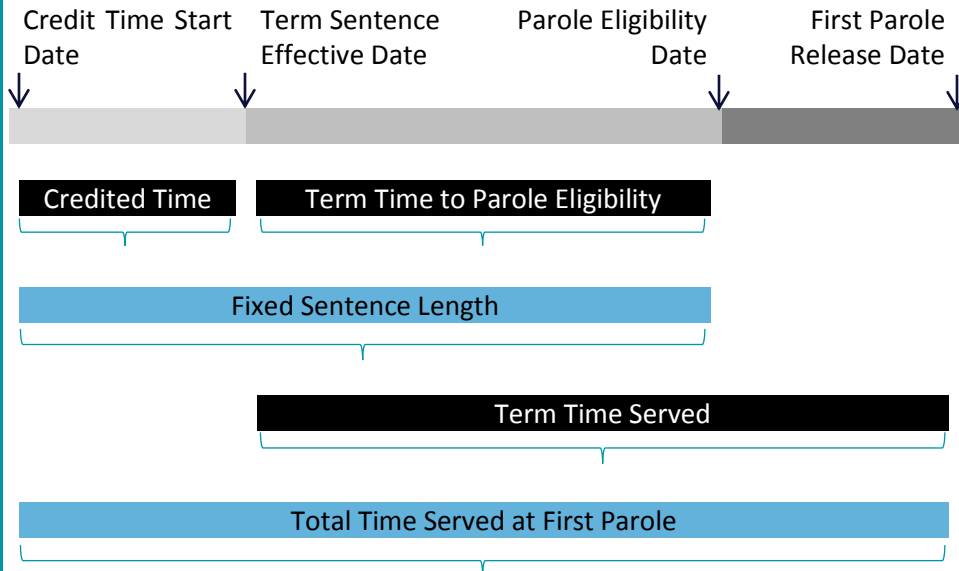
Three separate entities are responsible for the processes by which people convicted of a felony offense enter prison, are housed and treated while in prison, and are released from prison. These entities include the Idaho Supreme Court, Idaho Department of Correction, and the Idaho Commission of Pardons and Parole.

Five major steps occur during this process; 1) a felony crime is committed, 2) the individual charged with a felony crime is sentenced by the courts, 3) if convicted, the individual is incarcerated in prison under the jurisdiction of the Idaho Department of Correction, 4) the individual goes before the Idaho Commission of Pardons and Parole once parole eligible, and 5) if granted parole, the individual is released to parole to serve the remainder of their sentence in the community.



150 Percent Calculation

Elements of each individual's sentence are used to calculate the total time served at first parole.



Note: Black indicates known data element. Light blue indicates unknown or calculated element.

The credited time is the fixed sentence length subtracted by the term time to parole eligibility. The total time served at first parole is the addition of the credited time and the term time served. See illustration, above.

Several variables, as listed below, are utilized to calculate and determine whether an individual serving time in prison on a property or drug conviction has served over 150 percent of their fixed sentence length.

- ▲ **Sentence Effective Date:** The date an individual's sentence goes into effect in the eyes of the court.
- ▲ **Parole Eligibility Date:** The earliest date a person can be released from prison to parole in the community, taking into consideration any consecutive sentences, concurrent sentences, or sentence enhancements.
- ▲ **First Parole Release Date:** The date an individual is released from prison to the community on parole for the first time after serving time on a sentence.
- ▲ **Credit for Time Served.** Time spent either in county jail or previously incarcerated to a prison term. Previous incarceration to a prison term can include serving time on a retained jurisdiction, also known as a Rider.

Each person's fixed sentence length is then multiplied by 1.5 to determine the period required to reach 150 percent of the fixed sentence. An example of the 150 percent calculation is provided, right.

150 percent calculation example

IDOC and ICPP calculate 150 percent of the fixed portion the sentence as the total time served at first parole release divided by the fixed sentence length.

As an example, the 150 percent calculation for two years equals three years.

$$730 \text{ days} \times 1.5 = 1,095 \text{ days}$$

Any time spent over 1,095 days (three years) on a two year sentence is considered *past* 150 percent of the person's fixed term sentence length.

If released prior to 1,095 days, person is considered released *prior* to 150 percent of their fixed sentence length.



$$\frac{\text{Total Time Served at First Parole Release}}{\text{Fixed Sentence Length}}$$

Compiling Data

Over the course of the year, IDOC retrieved records for all people sentenced to a term in prison for a property or drug offense conviction who were released to parole for the first time between January 1 and December 31, 2017.

The percentage of people serving below or above one hundred fifty percent (150%) of the fixed portion of the sentence was calculated and the most common reasons for individuals whose release was delayed or denied were documented.

Throughout the year, ICPP compiled all decisions made within the parole hearings. The IDOC file containing records released past 150 percent of their fixed sentence length and the ICPP file containing all parole hearings for the year were then merged to aid in the documentation and determine the most common reasons for delay or denial of parole release. IDOC documented reasons for parole release delays for those who were not past 150 percent at the time of their parole hearing but were past 150 percent at the time of release.

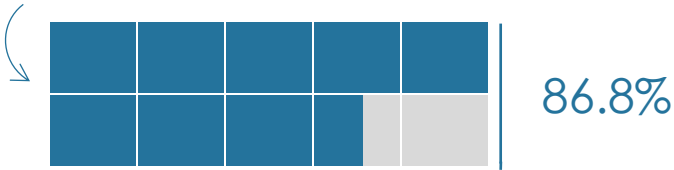
The factor that occurred first, or prior to any other factors, was documented as the most influential reason for delay. The findings are discussed in this report.

Findings

Between January 1, 2017 and December 31, 2017, 921 people sentenced to a term in prison for a property or drug offense conviction were released to parole for the first time. The vast majority (86.8%, N = 799) were released at or prior to serving 150 percent of the fixed portion of their sentence. The percentage released past 150 percent of the fixed portion of their sentence has decreased significantly when compared to prior years.

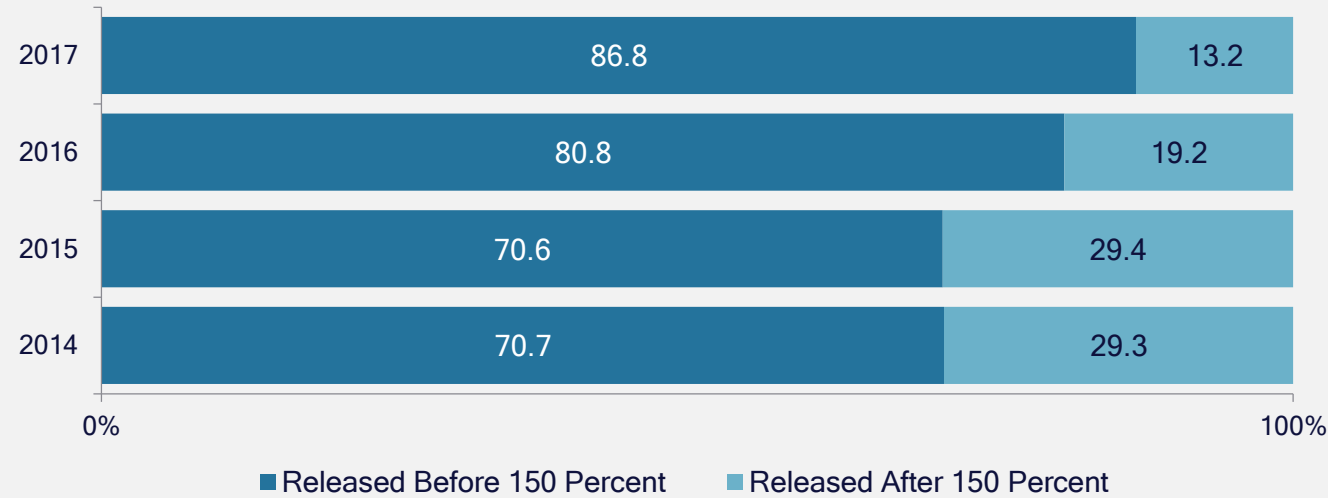
- ➡ 86.8% (N = 799) released **before** 150 percent
- ➡ 13.2% (N = 122) released **after** 150 percent

Nearly 9 out of every 10 individuals sentenced to a term in prison for a property or drug offense conviction are released to parole for the first time *at or prior* to serving 150 percent of their fixed sentence.

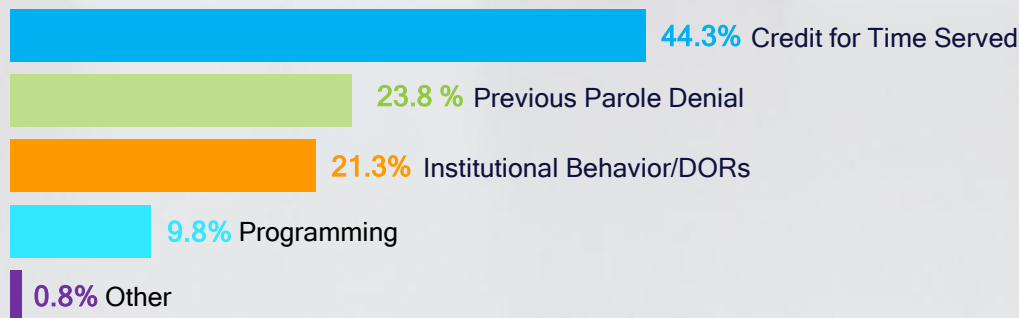


Idaho continues the trend of positive growth in the timely release of first-time parole releases from prison for property and drug offenses.

Three years post Justice Reinvestment Initiative implementation, people sentenced to a term in prison for a property and drug offense conviction released at or prior to 150 percent of their fixed sentence significantly increased from 2014 (70.7%) to 2017 (86.8%).



Reasons for Parole Delay

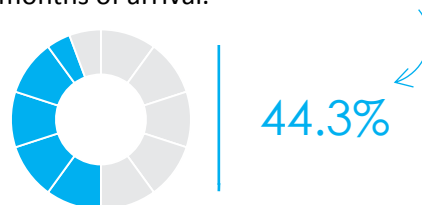


The most common reasons for parole delay of the 122 people sentenced to a term in prison for a property or drug offense conviction released past 150 percent of their fixed sentence are provided in Table 1 and described below.

Those serving time for a property of drug offense conviction released to parole past 150 percent of their fixed sentence had an average fixed sentence length of 1.5 years (median 1.2 years). In addition, these individuals spent an average of 1.8 years (median 1.4 years) past their first parole eligible date in prison.

Credit for Time Served

Approximately 4 out of every 10 were delayed release to parole as a result of credit for time served – either parole eligible upon arrival or parole eligible within six months of arrival.



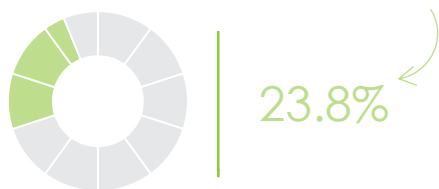
Credit for time served – parole eligible upon arrival or parole eligible within six months of arrival (44.3%, N=54) remained the most prevalent cause for those held past 150 percent of their fixed sentence. There was not a statistically significant difference in the percentage of credit for time served compared to 2016.

Those eligible upon arrival or within six months of arrival stayed an average of 1.2 years (median 0.8 years) past their parole eligibility date. The total time spent incarcerated, including credit for time served was 2.1 years (median 1.8 years).

Table 1. Reasons for Parole Delay	N	%
Credit for Time Served – parole eligible upon arrival or parole eligible within six months of arrival	54	44.3
Previously Denied Parole	29	23.8
Offender Actions – Institutional Behavior/DORs	26	21.3
Programming	12	9.8
Other	1	0.8
Total	122	100.0

Previous Parole Denial

Roughly **2 out of every 10** were delayed release to parole due to previous parole denial.



The second leading source for parole delay (23.8%, N=29) was related to previous denial of parole. Previous parole denials were due to risk of re-offense, public safety, prior criminal history, or failure to have an acceptable parole plan.

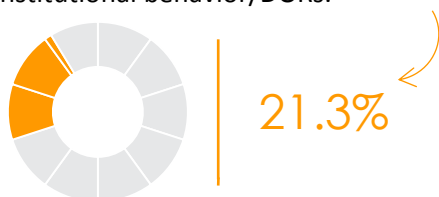
Additionally, there were instances where the commission requested the individual be seen in person at the next hearing, required a mental health examination or risk assessment before making a decision, or passed the individual to their full-term release date. There was not a statistically significant difference in the percentage of previously denied parole delays compared to 2016.

The ICPP holds hearings that determine when, during the range of the sentence, the individual will be eligible for parole and has full discretion regarding parole release decisions.

Those previously denied parole stayed an average of 1.9 years (median 1.7 years) past their parole eligibility date. The total time spent incarcerated, including credit for time served was 3.9 years (median 3.6 years).

Institutional Behavior/DORs

Approximately **2 out of every 10** were delayed release to parole as a result of the individual's own actions – institutional behavior/DORs.



The third most common reason for parole delay (21.3%, N=26) was due to the individual's own actions, including institutional behavior and/or disciplinary offense reports (DORs). Examples include receiving several

DORs (including Class A, or most serious), positive urinalysis tests, possible gang affiliation, and in one instance the person refused to parole. One individual was voided their tentative parole date due to 76 DORs.

Individuals delayed parole release as a result of own actions spent an average of 2.2 years (median 1.8 years) past their parole eligibility date. Offenders spent an average of 4.4 years (median 3.9 years) incarcerated when credit for time served is included.

Programming

Nearly **1 out of every 10** were delayed release to parole as a result of programming.



The fourth most common reason for parole delay (9.8%, N=12) was due to programming. Reasons for delay were due to programming failure, programming refusal, and low educational proficiency to program such as low TABE, or Spanish-based programming needed. On one occasion, the delay was caused by a transfer after classes started. There was not a statistically significant difference in the percentage of programming delays compared to 2016.

Those whose release was delayed due to programming were held an average of 3.4 years (median 3.4 years) past parole eligibility. When including credit for time served, they spent an average of 5.2 years (median 5.3 years) incarcerated in some capacity.

It is important to note that major programmatic changes occurred within IDOC near the end of 2015 and beginning of 2016. These changes helped eliminate the requirement for people serving time in prison to complete the Therapeutic Community (TC) or other program "pathway" prior to being granted parole.

As a result of the overhaul to IDOC programming, five new core programs were implemented; 1) University of Cincinnati Substance Abuse, 2) Thinking for a Change, 3) University of Cincinnati Treatment for Sexual Offending, 4) Aggression Replacement Training, and 5) University of Cincinnati Advance Practice. Moderate-high and high-risk sex offenders are required to take the Clinical Sexual Offending Treatment program.

These new programs are intended to prioritize programming and resources for individuals that are most likely to reoffend and focus programming based on risk (higher-risk receiving higher intensity interventions).

Staff members across the state have been trained in the five core programs which are now available in all facilities, reducing the need for transfers. By providing increased opportunities for people serving time in prison on a felony conviction to complete their program requirements prior to their parole hearing, IDOC is ensuring they are better prepared for release to the community.

Additionally, IDOC conducted further training for staff members to, in turn, also become trainers. This will help sustain IDOC's training efforts and program improvements.

Other Delay Reasons

Less than 1 out of every 10 were delayed release to parole due to other reasons not accounted for in previous categories of this report.



The delayed release to parole for this individual was due to new charges. There was not a statistically significant difference in the percentage other delay reasons when compared to 2016.

The person delayed release due to new charges was held 1.7 years past parole eligibility. When including credit for time served, the offender spent 4.7 years incarcerated prior to parole release.

Conclusion

The percent of people serving time in prison for a property or drug offense conviction and released past 150 percent of their fixed sentence significantly decreased between 2016 (19.2%) and 2017 (13.2%).

The changes adopted by the Idaho Department of Correction and the Idaho Commission of Pardons and Parole to focus on the timely release of people serving time in prison on a property or drug offense conviction continue to have an effect on the Idaho's incarcerated

population. The chart below displays the number of individuals incarcerated on a property or drug offense past parole eligibility compared to the number who were incarcerated and past parole eligibility in years 2014, 2015, and 2016. As indicated, there were fewer people past parole eligibility in prison on January 1, 2017 (N = 1,172) than on January 1, 2014 (N= 1,204) for a property, drug, and alcohol offense.

Although the Idaho Department of Correction is currently facing an increasing incarcerated prison population, the number of people incarcerated on property and drug offenses past parole eligibility has declined slightly when compared to previous years. When compared to 2016, the combined number of incarcerated property, drug, and alcohol offenders in Idaho prisons past their parole eligibility has decreased by 2.7 percent.

Those incarcerated on a property offense past parole eligibility has declined 2.9 percent. Those incarcerated on a drug offense past their parole eligibility has remained the same from the prior year. People incarcerated on an alcohol offense past their parole eligibility has dropped by 12.4 percent.



The Idaho Department of Correction and Idaho Commission of Pardons and Parole continue working toward a streamlined, automated process that will enable standardized documentation of the reasons for delay or denial of first time parole release of people serving property or drug offense convictions.

QUESTIONS REGARDING THIS REPORT CAN BE DIRECTED TO EITHER AGENCY:

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