



Montana Department of Corrections

2017 Report to the
Criminal Justice
Oversight Council



Montana Department of Corrections

Director's Office

Steve Bullock, Governor
Reginald D. Michael, Director

Dear Members of the Criminal Justice Oversight Council:

As Chairman of the Council, I want to congratulate you on your appointment to this important advisory body. As we begin to implement and evaluate criminal justice reform in Montana and work to improve the entire system, the Department of Corrections will provide the resources necessary to support in our efforts.

This is an exciting time to be involved in corrections in Montana. The criminal justice reform initiatives underway in Montana are the result of bipartisan leadership, from Governor Steve Bullock, the Commission on Sentencing and members of the 2017 Section D Budget Subcommittee. Sen. Cynthia Wolken sponsored much of the justice reinvestment legislation. Rep. Nate McConnell also sponsored significant reforms to the criminal code and former Sen. Kris Hansen was instrumental in identifying feasible reform measures.

With continuing bipartisan support and technical assistance from the Council of State Governments during Phase II of Montana's Justice Reinvestment Initiative, we can look forward to successful implementation of broad reforms that increase community safety and improve the resources for justice-involved individuals.

We appreciate your willingness to dedicate your time and professional perspectives to the important work ahead of us. As well as evaluating the success of the measures already passed, the Council has the ability to suggest additional initiatives to reduce the growth in Montana's offender population. The diverse experience and insight each member brings to the table are especially important in this regard.

Thank you for your respective contributions to public safety in Montana and for your willingness to serve as a member of the new Council. I look forward to working with you.

Sincerely,

Reginald D. Michael
Director

5 South Last Chance Gulch
PO Box 201301
Helena, MT 59620-1301

Phone: (406) 444-3930
Fax: (406) 444-4920
www.cor.mt.gov

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Introduction

The 2017 Montana Legislature passed comprehensive criminal justice reform known as Montana's Justice Reinvestment Initiative. The bill package focused on "front loading" resources for justice-involved individuals in the early stages of the justice system in an effort to reduce the growing costs of incarceration.

Senate Bill 59, a key piece of legislation within the Justice Reinvestment Initiative (JRI) package, outlines an infrastructure to:

- determine the impacts of reform measures
- assure that the practices adopted are proven to reduce criminal behaviors
- create a Criminal Justice Oversight Council (CJOC)
- require that the Department of Corrections submit an annual report to the Council by August 15 of each year

This document serves as the department's initial annual report. In addition to a review of the quantitative and qualitative reviews that produced the JRI legislation and resulting reform bills, this report includes:

- an overview of the CJOC responsibilities
- the impact of legislation related to recommendations from the Commission on Sentencing established in Chapter 343, Laws of 2015
- the extent to which the Department of Corrections (DOC) has established and met implementation goals and projections concerning the prison population, recidivism rate and other key public safety metrics
- results of initial and ongoing program evaluations that DOC is required to conduct, including any identified program deficiencies and DOC's plan to correct these deficiencies

The Criminal Justice Oversight Council is a multidisciplinary team charged with:

- reviewing the recommendations of the Commission on Sentencing established in Chapter 343, Laws of 2015
- analyzing data collected by agencies and entities charged with implementing the recommendations of the Commission on Sentencing and that are collecting data during the implementation and management of specific recommendations
- assessing outcomes from recommendations established by the Commission on Sentencing and corresponding criminal justice reforms
- requesting, receiving and reviewing data and reports on performance outcome data relating to criminal justice reform

Additionally, the council must examine the feasibility of creating and maintaining a public portal through which criminal justice data can be accessed, including data on court case filings, correctional populations, and historical legacy data sets. Senate Bill 59 outlines numerous opportunities for data analysis. The Department of Corrections will assist in supplying the requested information, as well as in identifying barriers to data sharing and potential solutions.

The Council must submit by September 1 of each even-numbered year, a biennial report to the Governor and Montana Legislature that includes:

- a summary of council activities and narrative on establishing data collection and uniformity standards
- savings from criminal justice reforms and recommendations for reinvestment
- descriptions of performance measures and outcomes related to criminal justice reforms

A Look Back – Data Analysis and Recommendations

In 2015, Montana state leaders established the Commission on Sentencing, a bipartisan and interagency group of policy makers and criminal justice professionals. Led by Senators Kris Hansen and Cynthia Wolken, the Commission analyzed the state’s justice system and developed recommendations for improvement. The Council of State Governments (CSG) Justice Center assisted in this undertaking.

Governor Steve Bullock, Chief Justice Mike McGrath, Attorney General Tim Fox, Speaker Austen Knudsen, Senate President Debby Barrett, House Minority Leader Chuck Hunter, Senate Minority Leader Jon Sesso, and Department of Corrections Director Mike Batista jointly asked CSG to assist the Commission.

CSG spent many months reviewing state data, conducting focus groups and identifying specific evidence-based practices that could be implemented in Montana to target the rapid growth in the prison population. CSG identified a number of system challenges, including:

Criminal Justice Population Growth

- Between CY 2013 and 2016, district court case filings increased from 9,017 to 11,774 – a 30.6% increase – mostly driven by increases in felony drug possession filings. For the first six months of 2017, the number of case filings is already at 6,222 and is expected to top 12,700 by year end.
- Statewide arrest rates by local law enforcement increased 12 percent between 2009 and 2015; increases in arrests were driven by steep increases in parole violations, probation violations, and especially failures to appear.
- Montana’s prison population was projected to increase 14 percent by FY2023.
- Montana’s supervised population was projected to increase 15 percent by the same year.
- This growth in the number of people supervised by the Department of Corrections would require at least \$51 million in taxpayer funds to build new prison facilities and increase the number of staff who supervise offenders.
- The time it takes for a case in District Court to reach disposition from various stages increased 18 percent from 2012 to 2015.

High Return Rates

- In 2016, prison admissions were comprised largely (74 percent) of individuals who had failed on community supervision.

Rise in Substance Abuse

- Between 2009 and 2015, drug-related arrests increased 62% and in 2015 accounted for 18% of all arrests.

The Commission on Sentencing outlined key policy initiatives to address the challenges identified within the criminal justice system.

- To avert growth in the offender population, the Commission recommended professionalizing the Board of Pardons and Parole and focusing supervision resources on high-risk individuals.
- The Commission recommended public policy to improve access to behavioral health professionals and evidence-based programming to increase public safety and improve community supervision outcomes.
- To reduce pressures on county jail populations, the Commission crafted bills to focus efforts on pretrial services, to expedite presentence investigations and to reform the criminal code with the goal of allocating resources to those individuals who pose the greatest threat to public safety.

The Commission on Sentencing's legislative package was designed to divert individuals who do not pose a significant threat to public safety from secure prison beds, circumventing the need to build new prison capacity. The expectation is that, by focusing resources upon those entering the criminal justice system and reinvesting the resulting savings on services for entry-level offenders, Montana will decrease future growth in the criminal justice system population and decrease crime statewide.

Review of Major Legislation

Bill Number: House Bill 133

Sponsor: Rep. Nate McConnell, (D) Missoula

Goal: Incarcerate those who pose the greatest risk to public safety and reserve limited criminal justice resources

Effective: July 1, 2017

This bill is a significant overhaul to Montana's criminal code and is designed to use criminal justice resources more effectively:

- Creates a tiered sentencing structure for several property offenses, such as theft, forgery, identity theft and issuing a bad check.
- Revises penalties for certain drug offenses and provides a lesser penalty for sharing drugs as compared to selling drugs.
- Revises the offense of criminal endangerment so that high blood alcohol concentration alone is not sufficient to support the charge.
- Revises the persistent felony offender charge from a broad application of second felony to an offender who has previously been convicted of two separate felonies and who is being sentenced for a third felony committed on a different occasion. At least one of the three felonies must be a sexual or violent offense.

Bill Number: Senate Bill 45

Sponsor: Senator Margie MacDonald, (D) Billings

Goal: To increase access to alternative courts

Effective: October 1, 2017

- Revises the drug treatment court structure to empower the court in decision-making.
- Allows violent offenders to participate in mental health and drug treatment courts.

Bill Number: Senate Bill 59

Sponsor: Senator Cynthia Wolken, (D) Missoula

Goal: To direct the creation of a pretrial supervision program and prosecution diversion program and to set up interagency oversight for criminal justice reform

Effective: May 17, 2017

- Creates a Criminal Justice Oversight Council (CJOC) to monitor the effects of the criminal justice reform package with assistance from the Council of State Governments.
- Codifies the Montana Incentives and Interventions Grid (MIIG).
- Requires the DOC quality assurance unit to measure program effectiveness and adherence to evidence-based standards.

Effective: July 1, 2017

- Requires the Office of the Court Administrator to develop a pretrial supervision program for felony defendants including a risk assessment.
- Requires the Montana Board of Crime Control to develop a prosecution diversion grant program.

Bill Number: Senate Bill 60

Sponsor: Senator Cynthia Wolken, (D) Missoula

Goal: To reduce the number of jail beds for those awaiting trial and overall backlog

Effective: October 1, 2017

- Creates a 30-day limit for completion for most presentence investigation (PSI) reports, requires that risk and needs assessments be included, and creates a PSI team.
- Requires the DOC to regularly validate the risk and needs assessment tool.

Bill Number: Senate Bill 62

Sponsor: Sen. Cynthia Wolken, (D) Missoula

Goal: To increase treatment opportunities, especially in rural areas

Effective: October 1, 2017

- Provides for the creation of licensed peer support specialists to assist those recovering from mental health and chemical dependency issues.
- A behavioral health peer support specialist must have been diagnosed by a mental health professional as having a mental health disorder, have received the appropriate treatment and be in recovery.

Bill Number: Senate Bill 63

Sponsor: Sen. Cynthia Wolken, (D) Missoula

Goal: Reduce the number of individuals under supervision for lengthy terms who are compliant and respond to violations in a clear and predicable manner

Effective: May 19, 2017

- Codifies the MIIG and requires that the DOC exhaust and document violation responses before initiating the revocation process.
- Defines a compliance violation; e.g., a violation of the conditions of supervision is not a new criminal offense.
- Revises the process to revoke a deferred or suspended sentence.
 - DOC must show responses under the incentives & interventions grid have been exhausted and are documented in the offender's file.
- Allows for earlier termination from community supervision.
 - A prosecutor, defendant or probation & parole officer (PO) may file petition to terminate the time remaining on a sentence.
 - Defendant must have demonstrated compliance with supervision requirements.
 - For a deferred sentenced – has served 2 years or one-half of the sentence, whichever is less.
 - For a suspended sentence – has served 3 years or two-thirds of the sentence, whichever is less and has been granted a 'conditional release from supervision' and demonstrated compliance for 12 months.
 - A PO shall recommend 'conditional release from supervision' when a probationer follows the conditions of supervision when a low risk offender has served 9 months; medium risk has served 12 months; moderate risk has served 18 months and high risk has served 24 months.

Bill Number: Senate Bill 64

Sponsor: Sen. Cynthia Wolken, (D) Missoula

Goal: Create a professional Board of Pardons and Parole, a more predictable and consistent parole process and respond to violations in a clear and predictable manner

Effective: July 1, 2017

- The Board is comprised of five full-time members.
- Outlined rules to establish parole guidelines that will structure and guide parole release decisions and the imposition of release conditions.
- Revises arrest and initial hearing after arrest processes.
 - A PO may authorize a detention center to hold a parolee without bail for 72 hours, after which the officer shall either authorize the detention center to release the parolee, initiate an intervention hearing or initiate the revocation process with an initial hearing.
 - The initial (on-site) hearing must be conducted within 5 days after arrest and upon determination of probable cause, an officer must determine whether to

initiate an informal (intervention) hearing or to hold the parolee for the final decision of the Board.

- If the violation(s) are established to be compliance violations and the Board has determined that the MIIG has been exhausted, the Board may continue the parole without a change in conditions or they may modify or add terms and conditions which may include up to 9 months in a secure facility or community corrections program.
- If the violations are determined not to be compliance violations the Board may revoke parole.

Bill Number: Senate Bill 65

Sponsor: Sen. Cynthia Wolken, (D) Missoula

Goal: Increase access to housing

Effective: October 1, 2017

- The MBCC shall develop a supportive housing grant program.
- In cases in which inmates have been granted parole but are not approved for parole because they are unable to secure suitable living arrangements, the department may provide rental vouchers not to exceed 3 months if the assistance will result in an approved parole plan.
- DOC will maintain data on the number of individuals discharged from adult correction services into a homeless shelter or homeless situation.

Bill Number: Senate Bill 67

Sponsor: Sen. Cynthia Wolken, (D) Missoula

Goal: Ensure domestic violence treatment programs are evidence-based

Effective: October 1, 2017

- The MBCC shall adopt statewide offender intervention program standards to ensure that counseling and other services organized under the Domestic Violence Intervention Program are evidence-informed and designed to reduce the risk of future violent behavior.

Bill Number: Senate Joint Resolution No. 3

Sponsor: Sen. Cynthia Wolken, (D) Missoula

Goal: Identify ways to increase access to tribal resources

- Provides that the Senate and the House of Representatives request a study during the legislative interim to explore increasing access to tribal resources for tribal members who are in the Montana criminal justice system.

Department of Corrections Implementation

In the four months since the conclusion of the 2017 Legislative Session, the DOC has been aggressively pursuing implementation of bills and working with the Council of State Governments to identify efficient and effective solutions.

In June 2017, we asked CSG to return to Montana to provide Justice Reinvestment Phase II technical assistance over the course of the next two years as we implement the reform measures. In July 2017, CSG granted the request for Phase II assistance requested by Governor Steve Bullock, Chief Justice Mike McGrath, Speaker Austen Knudsen, Senate President Scott Sales, House Minority Leader Jenny Eck, Senate Minority Leader Jon Sesso, Attorney General Tim Fox, and DOC Interim Director Loraine Wodnik.

DOC has collaborated extensively with CSG since the conclusion of the 2017 Legislative Session and is actively working with the Phase II technical assistance team. Project managers within the DOC and CSG hold weekly progress meetings and individual project managers also meet regularly with technical assistance team members.

Progress on specific reform measures includes:

Professionalization of the Board of Pardons and Parole

The Department's Office of Human Resources assisted the Governor's Office in the appointment of five full-time members of the Board. The Department provided guidelines for the selection and recruitment of Board members, conducted desk audits to identify how many support staff would be required to assist the full-time body, met with Board support staff to guide them through the reorganization process, developed and implemented training in conjunction with CSG to introduce the full-time Board members to the system and processes and continues to provide support as the Board adjusts to new roles and responsibilities.

Montana Incentives and Interventions Grid (MIIG)

The Probation and Parole Division is meeting regularly with a small group of leaders representing probation and parole supervision from across Montana to ensure that solutions are consistent and workable across varying communities. The Division has been focused on identifying models from other states to ensure the Montana Intervention and Incentives Grid (MIIG) is based upon solid research and best practices. We have identified elements to be included from other agencies and are working to enhance the model that was previously adopted.

In the coming weeks, the Probation and Parole Division will review and subsequently revise the violations that place individuals on community supervision and facility placement, and identify violations applicable to special populations. The Division will also identify regional access to intervention and sanction tools to determine if additional resources are needed for full implementation of the MIIG.

30-Day Presentence Investigation (PSI) Report

The DOC is making a substantial effort to meet a legislatively mandated 30-day timeline for a PSI report, including the use of a validated risk and needs assessment. Staff have identified which validated risk and needs assessment will be used and at which point during the PSI process.

In the coming weeks, the Probation and Parole Division will evaluate internal notification processes and PSI scheduling to reduce inefficiencies and ensure timely scheduling of PSI interviews. The Division is outlining court notification processes and timelines for situations when an extension request may be necessary. While internal efficiencies are realized and paperwork provided to the courts is streamlined where possible, we are developing a plan for how existing staff will coordinate to meet the October 1 implementation date.

Evidence-based Programming

The Quality Assurance Office (QOA) has begun discussions with program providers and agency leaders to determine the most appropriate facility to identify evidence-based programming and to determine efficient methods of auditing. In the coming weeks, QAO will meet with facility staff to discuss implementation of DOC-endorsed programming with preexisting metrics to determine delivery in line with curriculum expectations. As the DOC identifies models suited for agency-wide implementation, we will assess contractual agreements with community providers to ensure that similar expectations are realized with external partners.

The Department has also assisted the State Tribal Relations Interim Committee with its study of the resources available for tribal members in the criminal justice system as outlined by SJ3.

As we advance in our implementation of justice reform legislation, DOC will use JRI Phase II implementation grant assistance. A steering committee for grant allocation including Senator Cynthia Wolken, Court Administrator Beth McLaughlin, DOC Deputy Director Loraine Wodnik and Government Relations Director Adrienne Cotton have discussed agency needs and determined priorities for the \$500,000 available. Priorities include:

- A JRI Coordinator to assist with ensuring interagency efforts are coordinated, to liaison with CSG, to assist with risk and needs assessment implementation and to assist with organization and facilitation of the Criminal Justice Oversight Council.
- Information technology development contracts to automate parole guidelines, provide for automatic integration of the MIIG, create avenues for stakeholder access into the Offender Management Information System, and to create dashboards highlighting public information related to JRI implementation.
- Development of quality assurance tools including training staff on delivery of evidence-based programs that are agency-endorsed and auditing of those programs.

