

Montana Justice Reinvestment Initiative Policy Options

Key Challenges

- 1. Growing Impact of Substance Use.** Drug use presents a growing challenge for Montana's criminal justice system. Between 2009 and 2015, there was a 62 percent increase in arrests for drug offenses. Stakeholders report drug use and insufficient treatment as being leading causes of violations and revocations.
- 2. High Rates of Recidivism.** The primary driver of costs and growth in Montana's criminal justice system, including the growth in arrests, alternative facility admissions, and prison admissions, is people who are cycling back for technical violations or new crimes.
- 3. Rising Cost of Prisons and Jails.** Prisons and jails in Montana are at capacity. The statewide jail population has risen 67 percent between 2011 and 2013. Unless the state acts, the prison population is projected to continue to increase 17 percent by 2025, requiring tens, if not hundreds, of millions of dollars in new spending.

Goals

- A. Avert spending associated with growth in prison and jail populations.
- B. Make the pretrial decision-making process more informed and effective in order to increase public safety.
- C. Improve access to and the quality of treatment and programs funded by taxpayers to reduce recidivism.
- D. Reinvest in strategies to hold offenders accountable and increase public safety.
- E. Modernize the parole process.
- F. Ensure the sustainability of data-driven policies and evidence-based practices.
- G. Improve services and resources for victims of crime.

Policy Options

- 1. Establish the use of pretrial risk assessment tools and supervision.**

Provide state funding for a match grant program for counties to incentivize the adoption of a pretrial risk assessment tool for felony defendants and a dangerousness/lethality assessment for people charged with domestic violence offenses. Provide technical assistance to help grantees implement pretrial services programs. Expand the Department of Corrections' supervision capacity so that they can provide pretrial supervision when the court orders it for higher-risk felony defendants who make bail or are otherwise released from jail pending trial.

Revise MCA 46-9-109 to incorporate risk assessments and remove factors that are less predictive, but potentially discriminatory, from the list of factors judges can consider when deciding whether to release or detain people in jail pretrial.

Repeal MCA 46-9-203, which requires judges to report suspected drug users or addicts to the prosecution pretrial, and prevents pretrial release unless the report is made.

Revise MCA 46-9-302 so that judges will no longer be encouraged by statute to create bail schedules based on offense. Revise the “Recommended Bond Schedule” publication by the Supreme Court of Montana to exclude suggested bond amounts by offense, which discourage judges’ individualized determinations of bond.

Revise MCA 53-1-203 to provide authority and resources to the Department of Corrections to supervise higher-risk pretrial defendants for counties that are using a pretrial risk assessment tool authorized by the state. Provide authority for other counties to operate pretrial assessment and supervision programs of their own.

2. Revamp the presentence investigation report so that it is less time-intensive and more structured and objective and encourages the use of evidence-based practices in sentencing.

Revise MCA 46-18-111 to allow probation and parole officers to prepare presentence investigation reports (PSI) in felony cases prior to a guilty plea. Require the preparation of a PSI within 10 working days of a guilty plea or verdict, except in cases where a PSI requires a psychosexual evaluation.

Provide funding to the Department of Corrections to hire additional probation and parole officers to enable timely preparation of PSIs in all judicial districts.

Revise MCA 47-18-112 to streamline PSI requirements, exclude sentencing recommendations, and add risk assessment information to the reports to identify who will most likely benefit from supervision and treatment.

3. Eliminate mandatory minimum jail sentences for second offense driving with a suspended license and third offense petty theft.

Two Montana statutes create a mandatory minimum sentence for a nonviolent offender and may contribute to increased time served in county jails: second offense driving while suspended under MCA 61-5-212 and third offense theft under MCA 45-6-301. The current Missoula Municipal and Justice Court judges support eliminating the required minimum sentences and instead providing judges with the discretion to impose an appropriate sentence, taking into account the nature of the crime and any mitigating circumstances.¹

¹ Missoula County Jail Diversion Master Plan (April 2016), pp. 86-89.

4. Reclassify traffic offenses, other than driving under the influence, as civil or citation-only offenses.

Revise MCA 46-6-310 to require the use of citations, or notices to appear, in place of arrest for traffic offenses. Citations allow an officer to release someone without the need for transport to the police station, formal booking, fingerprinting, and pretrial release decisions and offer law enforcement agencies a tool for potentially increasing efficiency, reducing costs, and prioritizing jail resources for more serious offenders.² Driving under the influence offenses would be excluded from this change.

5. Support the creation and expansion of deferred prosecution programs.

Provide state resources to advance the development and expansion of deferred prosecution programs (pursuant to MCA 46-16-130) and general diversion programs to encourage early resolution of cases. County attorneys could use funds to hire a coordinator and partner with a community treatment provider to support people with behavioral health issues.

6. Expand eligibility criteria for problem-solving courts.

The statute governing drug treatment court structure, MCA 46-1-1104, strictly prohibits the participation of people convicted of a sexual or violent offense as defined in MCA 46-23-502. Most people convicted of such crimes should be ineligible for drug treatment court, but there should be some flexibility to admit, for example, someone convicted of a robbery or an assault whose conduct is directly related to an addiction issue, with the approval of the prosecution, the defense, and the court.

7. Focus prison and community corrections space on those who are most likely to reoffend.

Adopt guidelines to structure the Department of Corrections' placement decisions for people with "DOC commit" sentences—sentences that refer people to the Department of Corrections for placement in prison, on supervision, or in a community corrections program. Ensure that the guidelines direct the Department of Corrections on how to weigh a person's risk level, as determined by a validated risk assessment tool, and that the department's decisions are aligned with evidence-based practices. A structured decision-making process that incorporates risk assessment information assists the Department of Corrections in making more consistent placement decisions and prioritizing prison and community corrections resources, such as treatment centers and prerelease centers (also called reentry centers), for people who pose the greatest risk of recidivism.

² "Citation in Lieu of Arrest," International Association of Chiefs of Police (April 2016).

8. Require prerelease centers to deliver more intensive evidence-based programs and treatment within a shorter time period to reduce recidivism and serve more people.

Re-establish prerelease centers as “reentry centers” to underscore that the purpose of these centers is to facilitate the successful transition and reintegration of people into the community.

Limit length of stay in reentry centers to three months and require the centers to deliver more hours per day of evidence-based treatment and programs to intensify treatment dosage for participants and reduce recidivism. By decreasing length of stay to three months, reentry centers could potentially serve more than double the number of people each year.

Improve treatment and program capacity at reentry centers by increasing the reimbursement rate per person per day and incentivize reentry centers to enroll high-risk people by providing a higher per diem for high-risk individuals, based on DOC’s risk assessment. In order for reentry centers to receive increased funding per day, require them to work with the Department of Corrections and external experts to review and upgrade their model and program curricula to ensure they adhere to evidence-based practices and meet established outcomes such as a successful completion rate.

Revise MCA 53-30-313 to limit the ability of community corrections boards to screen and reject people on behalf of reentry centers, except people with a felony violent or sexual offense in their criminal history.

9. Maximize recidivism reduction by restructuring treatment facilities and focusing on higher-risk people.

Make treatment available to more people per year by reducing length of stay in treatment facilities. Require treatment facilities to intensify treatment dosage for participants by delivering more hours per day of evidence-based treatment and programs. To improve capacity at treatment facilities, increase the reimbursement rate per person per day that the facilities would receive.

In order for treatment facilities to receive increased funding per day, require restructured programs to work with the Department of Corrections and external experts to review and upgrade the treatment curricula they use to ensure they adhere to evidence-based practices and meet established outcomes such as a successful completion rate.

10. Fund access to behavioral health treatment and programs to reduce recidivism for people on community supervision.

Appropriate funds and leverage Medicaid to provide access to programs and behavioral health treatment designed to reduce recidivism to people on supervision with a high need for treatment and a high likelihood of reoffending. Use value-based incentives to leverage Medicaid and compensate providers for the more expensive cost of care for people in the criminal justice system. Modify the State Plan Amendment to allow Medicaid payments for certified peer specialists if it is not currently allowed.

Expand access to treatment in rural areas by funding telehealth and building on Montana State University's rural healthcare workforce initiatives to include the full range of behavioral health practitioners, including certified peer support specialists, community engagement specialists, licensed substance use counselors, psychiatric nurses, and psychiatrists.

11. Focus supervision resources on people who are most likely to reoffend.

To prioritize probation resources, require probation and parole officers to notify the court when a probationer is in compliance with the conditions of supervision, according to a schedule based on the risk and needs of each individual, as follows: when a low-risk person has served 9 months, a moderate-risk person has served 18 months, and a high-risk person has served 2 years. The notification should be provided to the victim, the county attorney, the probationer, and defense counsel. Unless there is objection and a request for a hearing from the county attorney on behalf of the victim, or the court requires a hearing, the remaining portion of the deferred or suspended sentence would be terminated 30 days after the notification. Amend MCA 46-18-208 to reflect this approach.

12. Explore increasing access to tribal resources for tribal members who are in the state criminal justice system.

Create an interim legislative committee to explore the following: how the state could transfer enrolled tribal members on supervision from state or county custody to tribal custody; allowing tribal members to fulfill conditions of court-ordered programming by participating in programs offered by tribes and/or tribal organizations; and creating a grant to enable the Office of the State Public Defender to enlist tribal defense attorneys in place of an appointed public defender for tribal members.

13. Modernize the parole board and the parole decision-making process to ensure that the board's decisions are informed, consistent, and sustainable.

Require the parole board to create structured parole guidelines that are based on research and evidence-based practices. These guidelines would mandate that the board consider a person's risk level (as determined by the Montana Offender Reentry Risk Assessment tool), successful participation in risk-reduction programs, institutional behavior, and offense severity. Structured guidelines would help the

parole board make more consistent and efficient parole decisions, with the goal of improving the outcomes for people released from prison and maintaining prison space for those who pose the greatest risk to public safety.

Shorten the maximum deferral period from the point of parole denial or deferral to the next hearing or review from six years to one year for drug and property offenses, and other non-violent offenses.

Designate the Board of Pardons and Parole to be a professional board with three full-time, paid board members. The current board is a citizens' board, and its seven members are volunteers who receive a stipend for each day that they conduct board business. Full-time, paid decision-makers would have an increased opportunity for training and skill development that would enable them to make more consistently informed decisions.

14. Limit the term of incarceration for technical violations of conditions of probation and parole.

Limit the time that people revoked on a technical violation spend in prison prior to being released. Allow people revoked on a technical violation to be sanctioned in jails and alternative facilities, funded by the state, in lieu of prison. Limiting the term of incarceration for technical violations can enable probation and parole officers to administer more proportional and effective consequences.

15. Improve access to housing for people reentering the community.

Require the Montana Department of Corrections to prioritize identifying housing for people who are eligible for parole yet do not have approved home plans. Hire personnel to connect people in prison with reentry resources to find housing. Assist in identifying housing for people who are eligible for parole can reduce delays in obtaining parole.

16. Expand eligibility for crime victim compensation benefits.

Expand the statutory definition of "victim," increase the minimum compensation allowed for funerals and burials, and create a compensation benefit for crime scene cleanup.

Restitution is a condition of a sentence that is meant to quantify loss experienced by victims. However, the process for receiving restitution is lengthy and does not address the immediate health and safety needs of victims in the aftermath of a crime. Montana's crime victim compensation program can more promptly meet the needs of a greater number of victims by expanding certain benefits and the statutory definition of "victim."

17. Improve the quality of and access to batterer's intervention programs.

Create a state funding source for batterers' intervention programming (BIP), increase the number of providers available throughout the state to provide BIP services, and create state standards to ensure quality and consistency of programming.

Quality BIP is not consistently available statewide. Anger management courses may be ordered by courts as a stopgap to replace BIP, yet anger management is not a viable substitute and does not address the underlying issues contributing to an individual's history of domestic violence.

Oversight, Quality Improvement, and Improving Standards

18. Create a centralized, interagency oversight body to guide and track the implementation of justice reinvestment legislation.

Establish a three-branch, interagency committee to oversee the successful implementation of justice reinvestment policies in the years following enactment of the legislation. Require the committee to review annual impact reports from the Montana Department of Corrections and ensure the sustained reinvestment of savings generated from the implementation of JRI.

19. Require the Department of Corrections to report annual data on the impact of implementing justice reinvestment legislation.

Mandate that the Montana Department of Corrections produce an annual report on the impact of the state's justice reinvestment legislation, including the extent to which the department has met implementation goals and projections concerning the prison population, statewide recidivism rate, other key public safety metrics. Communicate additional fiscal needs to the legislature based on the reports.

20. Require the Department of Corrections to regularly validate its risk assessment tool.

Ensure that Montana's risk assessment tool is accurately applied to the state's population over time and that the tool is predictive across race, ethnic, and gender groups, and in particular, for tribal communities.

Ensure that risk and needs assessments drive the Department of Corrections' supervision practices by integrating assessment results into supervision contact standards and case planning. Focus supervision resources on individuals with the highest risk of reoffending and vary the intensity and type of available services, contacts, and programming based on an individual's overall risk to recidivate.

21. Require the Department of Corrections staff to receive ongoing training in risk assessment and evidence-based practices.

Mandate regular training for all probation and parole officers on risk assessment and evidence-based practices, above and beyond the standard training currently offered. Integrate training on evidence-based practices into the training curriculum for new officers and include training requirements within performance reviews to promote and incentivize the use of evidence-based practices. Provide funding to the Department of Corrections to deliver ongoing trainings to staff.

22. Establish program standards and authorize the quality assurance unit within the Department of Corrections to evaluate state-funded programs and enforce program standards.

Authorize the Department of Corrections' existing quality assurance unit to adopt a validated program evaluation tool, evaluate state-funded programs, and enforce standards to ensure programs are using best practices for reducing recidivism, including targeting highest-risk individuals, adhering to evidence-based or research-driven practices, and integrating opportunities for ongoing quality assurance and evaluation. Develop a team of trained staff within the unit to oversee and sustain regular evaluations of programs and quality assurance. Require the unit work jointly with the Department of Public Health and Human Services to develop standards for the quality assurance of clinical activities.

Mandate regular evaluations of programs across the state and amend provider contracts to include minimum program standards, eligibility criteria for program entry, and program dosage requirements in accordance with the latest research on best practices.

23. Require that the Department of Corrections' probation and parole interventions and incentives grid follow evidence-based practices.

Require that the Department of Corrections' interventions and incentives grid follow evidence-based practices and direct probation and parole officers to utilize risk-based graduated interventions in order to increase compliance and reduce revocations among people on probation and parole supervision. Require the Department of Corrections to review the grid every five years for adherence to evidence-based practices and to ensure consistency in the use of sanctions and incentives by probation and parole officers across the state.

For the commission's consideration for further analysis:

24. Enable the Department of Corrections to effectively manage and collect legal financial obligations, even beyond a supervision term.

Enable the Department of Corrections to collect legal financial obligation balances beyond the end of a sentence.

25. Remove barriers to securing employment for people on supervision.

Change restrictions barring people with criminal backgrounds from obtaining licensing and certification for certain jobs and professions. Create more accessible processes that allow for the case-by-case consideration and approval for people who demonstrate rehabilitation.