

SENATE BILL NO. 59

INTRODUCED BY C. WOLKEN

BY REQUEST OF THE COMMISSION ON SENTENCING

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRIMINAL JUSTICE LAWS; REQUIRING
6 THE BOARD OF CRIME CONTROL TO CREATE A PRETRIAL GRANT PROGRAM; REQUIRING THE BOARD
7 OF CRIME CONTROL TO CREATE A PROSECUTION DIVERSION GRANT PROGRAM; GRANTING THE
8 BOARD RULEMAKING AUTHORITY TO ADMINISTER THE PROGRAMS; ALLOWING A COURT TO USE
9 INFORMATION FROM A PRETRIAL RISK ASSESSMENT TOOL WHEN DETERMINING WHETHER A
10 DEFENDANT SHOULD BE RELEASED OR DETAINED; CREATING AN OVERSIGHT COUNCIL TO MONITOR
11 AND REPORT ON THE EFFECTS OF CRIMINAL JUSTICE LEGISLATION; REQUIRING THE QUALITY
12 ASSURANCE UNIT OF THE DEPARTMENT OF CORRECTIONS TO ADOPT AN EVALUATION TOOL AND
13 CONDUCT PROGRAM EVALUATIONS; REQUIRING THE DEPARTMENT TO ADOPT AND MAINTAIN AN
14 INCENTIVES AND INTERVENTIONS GRID TO GUIDE COMMUNITY SUPERVISION OF OFFENDERS;
15 ELIMINATING THE REQUIREMENT THAT A JUDGE OR JUSTICE OF THE PEACE REPORT DRUG USERS
16 TO THE COUNTY ATTORNEY; PROVIDING AN APPROPRIATION; AMENDING SECTION 46-9-109, MCA;
17 AND REPEALING SECTION 46-9-203, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING
18 EFFECTIVE DATES AND A TERMINATION DATE."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
21

22 NEW SECTION. **Section 1. Pretrial program -- rulemaking.** (1) Within the limits of available funds,
23 the board of crime control shall develop and administer a pretrial grant program to encourage local adoption of:
24 (a) a validated pretrial risk assessment tool; and
25 (b) a dangerousness or lethality assessment for individuals charged with an offense of partner or family
26 member assault.
27 (2) Grant funds may be used for pretrial services staff, to obtain assessment instruments, and to provide
28 supervision of pretrial defendants. A county or a nonprofit organization contracting with a county to provide the
29 pretrial services may be eligible for a grant.
30 (3) In administering the pretrial program, the board shall:

- 1 (a) identify priorities for funding services, activities, and criteria for the receipt of program funds;
- 2 (b) monitor the expenditure of funds by organizations receiving funds under this section;
- 3 (c) evaluate the effectiveness of services and activities under this section; and
- 4 (d) adopt rules necessary to implement this section.

5 (4) (a) Grants available under subsection (1) consist of state appropriations and federal funds received
 6 by the board for the purposes of administering the pretrial program or any funds received pursuant to subsection
 7 (4)(b).

8 (b) The board may accept gifts, grants, and donations from other public or private sources, which must
 9 be used within the scope of this section.

10
 11 **NEW SECTION. Section 2. Prosecution diversion program -- rulemaking.** (1) Within the limits of
 12 available funds, the board of crime control shall develop and administer a prosecution diversion grant program
 13 to encourage local adoption of prosecution diversion programs under 46-16-130.

14 (2) Grant funds may be used for staff, to provide supervision, or to contract for program services for
 15 defendants in the program. A county attorney or a nonprofit organization contracting with a county attorney may
 16 be eligible for a grant.

17 (3) In administering the prosecution diversion program, the board shall:

- 18 (a) identify priorities for funding services, activities, and criteria for the receipt of program funds;
- 19 (b) monitor the expenditure of funds by organizations receiving funds under this section;
- 20 (c) evaluate the effectiveness of services and activities under this section; and
- 21 (d) adopt rules necessary to implement this section.

22 (4) (a) Grants available under subsection (1) consist of state appropriations and federal funds received
 23 by the board for the purposes of administering the prosecution diversion program or any funds received pursuant
 24 to subsection (4)(b).

25 (b) The board may accept gifts, grants, and donations from other public or private sources, which must
 26 be used within the scope of this section.

27
 28 **NEW SECTION. SECTION 3. MONTANA CRIMINAL JUSTICE OVERSIGHT COUNCIL -- DUTIES -- MEMBERSHIP. (1)**
 29 **THERE IS A MONTANA CRIMINAL JUSTICE OVERSIGHT COUNCIL. THE COUNCIL CONSISTS OF 12 MEMBERS AS FOLLOWS:**
 30 **(A) ONE MEMBER OF THE HOUSE OF REPRESENTATIVES SELECTED BY THE SPEAKER OF THE HOUSE AND ONE**



1 MEMBER OF THE SENATE SELECTED BY THE PRESIDENT OF THE SENATE. THE LEGISLATIVE MEMBERS MUST BE SELECTED
2 IN CONSULTATION WITH THE MINORITY LEADERS AND MAY NOT BE OF THE SAME POLITICAL PARTY.

3 (B) ONE MEMBER SELECTED BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT;
4 (C) THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS OR THE DIRECTOR'S DESIGNEE;
5 (D) AN EMPLOYEE OF THE DEPARTMENT OF CORRECTIONS SELECTED BY THE DIRECTOR WHO HAS EXPERTISE IN
6 DATA COLLECTION AND REPORTING;

7 (E) ONE MEMBER SELECTED BY THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
8 WHO HAS EXPERTISE IN BEHAVIORAL HEALTH TREATMENT SERVICES;

9 (F) THE EXECUTIVE DIRECTOR OF THE BOARD OF CRIME CONTROL OR THE DIRECTOR'S DESIGNEE;
10 (G) A COUNTY SHERIFF APPOINTED BY THE ATTORNEY GENERAL; AND
11 (H) THE FOLLOWING INDIVIDUALS APPOINTED BY THE GOVERNOR:

12 (I) A MEMBER OF A STATE-RECOGNIZED OR FEDERALLY RECOGNIZED INDIAN TRIBE LOCATED WITHIN THE
13 BOUNDARIES OF THE STATE OF MONTANA WHO HAS EXPERTISE IN CRIMINAL JUSTICE;

14 (II) ONE MEMBER OF THE BOARD OF PARDONS AND PAROLE;
15 (III) ONE REPRESENTATIVE OF CRIME VICTIMS; AND
16 (IV) ONE REPRESENTATIVE OF A COMMUNITY CORRECTIONS FACILITY, TREATMENT FACILITY, OR PRERELEASE
17 CENTER.

18 (2) THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS OR THE DIRECTOR'S DESIGNEE SHALL SERVE AS
19 PRESIDING OFFICER.

20 (3) THE COUNCIL SHALL:

21 (A) REVIEW THE RECOMMENDATIONS OF THE COMMISSION ON SENTENCING ESTABLISHED IN CHAPTER 343, LAWS
22 OF 2015, AND OVERSEE IMPLEMENTATION OF AND COMPLIANCE WITH ANY LEGISLATION RESULTING FROM THOSE
23 RECOMMENDATIONS;

24 (B) RECEIVE AND ANALYZE DATA COLLECTED BY AGENCIES AND ENTITIES CHARGED WITH IMPLEMENTING THE
25 RECOMMENDATIONS OF THE COMMISSION ON SENTENCING AND THAT ARE COLLECTING DATA DURING THE IMPLEMENTATION
26 AND MANAGEMENT OF SPECIFIC RECOMMENDATIONS;

27 (C) ASSESS OUTCOMES FROM THE RECOMMENDATIONS THE COMMISSION ON SENTENCING HAS MADE AND
28 CORRESPONDING CRIMINAL JUSTICE REFORMS;

29 (D) REQUEST, RECEIVE, AND REVIEW DATA AND REPORT ON PERFORMANCE OUTCOME DATA RELATING TO
30 CRIMINAL JUSTICE REFORM; AND

- 1 (E) RECEIVE REPORTS REQUIRED BY [SECTION 4] TO BE PRODUCED BY THE DEPARTMENT OF CORRECTIONS.
- 2 (4) THE COUNCIL SHALL SUBMIT BY SEPTEMBER 1 OF EACH EVEN-NUMBERED YEAR A BIENNIAL REPORT TO THE
3 GOVERNOR AND LEGISLATURE, AS PROVIDED IN 5-11-210. THE REPORT MUST INCLUDE:
- 4 (A) A DESCRIPTION OF THE COUNCIL'S PROCEEDINGS SINCE THE PREVIOUS REPORT;
- 5 (B) A SUMMARY OF SAVINGS FROM CRIMINAL JUSTICE REFORMS AND RECOMMENDATIONS FOR HOW THE SAVINGS
6 SHOULD BE REINVESTED TO REDUCE RECIDIVISM; AND
- 7 (C) A DESCRIPTION OF PERFORMANCE MEASURES AND OUTCOMES RELATED TO CRIMINAL JUSTICE REFORMS.
- 8 (5) THE COUNCIL MAY APPOINT A WORKING GROUP TO TRACK IMPLEMENTATION, EVALUATE COMPLIANCE WITH
9 ANY LEGISLATION RESULTING FROM CRIMINAL JUSTICE REFORMS, AND PERFORM OTHER DETAILED ANALYSIS AS DIRECTED
10 BY THE COUNCIL. IF APPOINTED, THE WORKING GROUP SHALL MEET REGULARLY AND REPORT TO THE COUNCIL AS THE
11 COUNCIL REQUIRES. THE WORKING GROUP MAY INCLUDE REPRESENTATIVES OF CRIMINAL JUSTICE AGENCIES AND KEY
12 CONSTITUENCIES THAT ARE NOT MEMBERS OF THE COUNCIL.
- 13 (6) THE COUNCIL MAY REQUEST LEGISLATION TO ENACT CHANGES TO THE STATE'S CRIMINAL JUSTICE SYSTEM
14 THAT THE COUNCIL FINDS NECESSARY.
- 15 (7) THE JUDICIAL BRANCH, THE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT OF PUBLIC HEALTH AND
16 HUMAN SERVICES, THE BOARD OF PARDONS AND PAROLE, AND THE LEGISLATIVE SERVICES AND FISCAL DIVISIONS SHALL
17 PROVIDE DATA AND INFORMATION AS REQUESTED BY THE COUNCIL.
- 18 (8) APPOINTMENTS MADE UNDER SUBSECTION (1) MUST BE MADE WITHIN 60 DAYS AFTER [THE EFFECTIVE DATE
19 OF THIS SECTION]. A VACANCY ON THE COUNCIL MUST BE FILLED IN THE MANNER OF THE ORIGINAL APPOINTMENT.
- 20 (9) COUNCIL MEMBERS MUST BE REIMBURSED FOR TRAVEL EXPENSES AS PROVIDED IN 2-18-501 THROUGH
21 2-18-503. MEMBERS OF THE COUNCIL WHO ARE FULL-TIME SALARIED OFFICERS OR EMPLOYEES OF THIS STATE OR ANY
22 POLITICAL SUBDIVISION ARE ENTITLED TO THEIR REGULAR COMPENSATION. LEGISLATIVE MEMBERS MUST BE
23 COMPENSATED AS PROVIDED IN 5-2-302.
- 24 (10) THE COUNCIL SHALL REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE AND THE LEGISLATIVE FINANCE
25 COMMITTEE AS REQUESTED.
- 26
- 27 **NEW SECTION. SECTION 4. DEPARTMENT OF CORRECTIONS TO REPORT ON CRIMINAL JUSTICE REINVESTMENT**
28 **LEGISLATION IMPACTS.** IN ADDITION TO ANY DATA OR REPORTS REQUIRED BY THE MONTANA CRIMINAL JUSTICE OVERSIGHT
29 COUNCIL PURSUANT TO [SECTION 3], THE DEPARTMENT OF CORRECTIONS SHALL:
- 30 (1) SUBMIT AN ANNUAL REPORT TO THE MONTANA CRIMINAL JUSTICE OVERSIGHT COUNCIL BY AUGUST 15 OF

1 EACH YEAR. THE REPORT MUST INCLUDE THE IMPACT OF ANY LEGISLATION RELATED TO RECOMMENDATIONS FROM THE
 2 COMMISSION ON SENTENCING ESTABLISHED IN CHAPTER 343, LAWS OF 2015, AND THE EXTENT TO WHICH THE
 3 DEPARTMENT HAS ESTABLISHED AND MET IMPLEMENTATION GOALS AND PROJECTIONS CONCERNING THE PRISON
 4 POPULATION, RECIDIVISM RATE, AND OTHER KEY PUBLIC SAFETY METRICS.

5 (2) REPORT TO THE LEGISLATURE BY JANUARY 1 OF EACH YEAR ON THE AMOUNT OF SAVINGS GENERATED AND
 6 ON THE PRISON POPULATION IMPACT UNDER ANY LEGISLATION RESULTING FROM THE RECOMMENDATIONS OF THE
 7 COMMISSION ON SENTENCING ESTABLISHED IN CHAPTER 343, LAWS OF 2015, FOR THE PURPOSE OF TRACKING THE
 8 PROGRESS TOWARD MEETING THE IMPACT ESTIMATES AND GOALS OF THE LEGISLATION.

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 10 **NEW SECTION. SECTION 5. SUPERVISION RESPONSES GRID.** (1) THE DEPARTMENT SHALL REVISE, MAINTAIN,
 11 AND FULLY IMPLEMENT THE POLICY KNOWN AS THE MONTANA INCENTIVES AND INTERVENTIONS GRID. THE GRID MUST
 12 GUIDE RESPONSES TO NEGATIVE AND POSITIVE BEHAVIOR BY PEOPLE UNDER SUPERVISION BY THE DEPARTMENT,
 13 INCLUDING RESPONSES TO VIOLATIONS OF SUPERVISION CONDITIONS IN A SWIFT, CERTAIN, AND PROPORTIONAL MANNER.
 14 THE GRID MUST INCLUDE GUIDANCE AND PROCEDURES TO DETERMINE WHEN AND HOW TO:

15 (A) REQUEST A WARRANT OR ARREST WITHOUT A WARRANT;
 16 (B) USE A 72-HOUR DETENTION;
 17 (C) INITIATE AN INTERVENTION HEARING;
 18 (D) SEEK DEPARTMENTAL APPROVAL TO USE UP TO 90-DAY INTERVENTIONS; AND
 19 (E) EXHAUST APPROPRIATE GRADUATED VIOLATION RESPONSES BEFORE INITIATING THE REVOCATION PROCESS.

20 (2) THE DEPARTMENT SHALL:
 21 (A) PROVIDE INFORMATION AND TRAINING ON THE GRID FOR PROBATION AND PAROLE OFFICERS AND
 22 SUPERVISORS AND FOR MEMBERS AND STAFF OF THE BOARD OF PARDONS AND PAROLE; AND
 23 (B) OFFER INFORMATION AND TRAINING ON THE GRID TO DISTRICT COURT JUDGES, PROSECUTION AND DEFENSE
 24 ATTORNEYS, LAW ENFORCEMENT PERSONNEL, AND COUNTY DETENTION CENTER PERSONNEL.

25 (3) THE DEPARTMENT SHALL REVIEW THE GRID EVERY 5 YEARS TO ENSURE IT ADHERES TO EVIDENCE-BASED
 26 PRACTICES AND THAT THE USE OF SANCTIONS AND INCENTIVES BY PROBATION AND PAROLE OFFICERS IS CONSISTENT
 27 ACROSS THE STATE.

28
 29 **NEW SECTION. SECTION 6. QUALITY ASSURANCE UNIT -- PROGRAM STANDARDS -- EVALUATION --**
 30 **COOPERATION WITH DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES.** (1) THERE IS A QUALITY ASSURANCE UNIT

1 IN THE DEPARTMENT OF CORRECTIONS.

2 (2) IN ADDITION TO DUTIES ASSIGNED TO IT BY THE DEPARTMENT DIRECTOR OR OTHERWISE REQUIRED BY LAW,

3 THE UNIT SHALL:

4 (A) ADOPT A PROGRAM EVALUATION TOOL THAT ENSURES ADHERENCE TO EVIDENCE-BASED PRACTICES;

5 (B) CONDUCT EVALUATIONS OF PROGRAMS TO REDUCE RECIDIVISM THAT ARE FUNDED BY THE STATE; AND

6 (C) ENFORCE STANDARDS TO ENSURE PROGRAMS ARE USING BEST PRACTICES FOR REDUCING RECIDIVISM,

7 INCLUDING TARGETING HIGHEST-RISK INDIVIDUALS, ADHERING TO EVIDENCE-BASED OR RESEARCH-DRIVEN PRACTICES,

8 AND INTEGRATING OPPORTUNITIES FOR ONGOING QUALITY ASSURANCE AND EVALUATION.

9 (3) SUBJECT TO THE AVAILABILITY OF FUNDING, THE DEPARTMENT MAY CONTRACT WITH AN INDEPENDENT

10 CONTRACTOR OR ACADEMIC INSTITUTION TO COMPLETE EVALUATIONS.

11 (4) THE UNIT SHALL WORK JOINTLY WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO

12 DEVELOP STANDARDS FOR THE QUALITY ASSURANCE IN BEHAVIORAL HEALTH OR OTHER CLINICAL PROGRAMS.

13 (5) THE UNIT SHALL CONDUCT REGULAR EVALUATIONS OF PROGRAMS OPERATED BY THE DEPARTMENT OR UNDER

14 A CONTRACT WITH THE DEPARTMENT.

15 (6) AFTER [THE EFFECTIVE DATE OF THIS SECTION], THE DEPARTMENT SHALL ENSURE CONTRACTS SIGNED OR

16 RENEWED WITH PROVIDERS INCLUDE MINIMUM PROGRAM STANDARDS, ELIGIBILITY CRITERIA FOR PROGRAM ENTRY, AND

17 PROGRAM DOSAGE REQUIREMENTS THAT CONFORM WITH THE LATEST RESEARCH AVAILABLE ON BEST PRACTICES.

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19 **Section 7.** Section 46-9-109, MCA, is amended to read:

20 **"46-9-109. Release or detention hearing.** (1) The release or detention of the defendant must be

21 determined immediately upon the defendant's initial appearance.

22 (2) In determining whether the defendant should be released or detained, the court may use a validated

23 pretrial risk assessment tool and shall take into account the available information concerning:

24 (a) the nature and circumstances of the offense charged, including whether the offense involved the use

25 of force or violence;

26 (b) the weight of the evidence against the defendant;

27 (c) the history and characteristics of the defendant, including:

28 (i) the defendant's character, physical and mental condition, family ties, employment, financial resources,

29 length of residence in the community, community ties, past conduct, history relating to alcohol or drug abuse,

30 criminal history, and record concerning the appearance at court proceedings; and

1 (ii) whether at the time of the current arrest or offense, the defendant was on probation, on parole, or on
2 other release pending trial, sentencing, appeal, or completion of sentencing for an offense;

3 (d) the nature and seriousness of the danger to any person or the community that would be posed by
4 the defendant's release; and

5 (e) the property available as collateral for the defendant's release to determine if it will reasonably ensure
6 the appearance of the defendant as required.

7 (3) Upon the motion of any party or the court, a hearing may be held to determine whether bail is
8 established in the appropriate amount or whether any other condition or restriction upon the defendant's release
9 will reasonably ensure the appearance of the defendant and the safety of any person or the community."
10

11 NEW SECTION. Section 8. Repealer. The following section of the Montana Code Annotated is
12 repealed:

13 46-9-203. Report to county attorney concerning drug users.
14

15 ~~NEW SECTION. Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified
16 as an integral part of Title 44, chapter 4, part 3, and the provisions of Title 44, chapter 4, part 3, apply to [sections
17 1 and 2].~~
18

19 NEW SECTION. SECTION 9. APPROPRIATION. THERE IS APPROPRIATED \$28,000 FROM THE GENERAL FUND
20 TO THE DEPARTMENT OF CORRECTIONS FOR THE BIENNIUM BEGINNING JULY 1, 2017, FOR THE PURPOSES OF FUNDING
21 THE COUNCIL AS PROVIDED IN [SECTION 3].
22

23 NEW SECTION. SECTION 10. NOTIFICATION TO TRIBAL GOVERNMENTS. THE SECRETARY OF STATE SHALL
24 SEND A COPY OF [THIS ACT] TO EACH TRIBAL GOVERNMENT LOCATED ON THE SEVEN MONTANA RESERVATIONS AND TO
25 THE LITTLE SHELL CHIPPEWA TRIBE.
26

27 NEW SECTION. SECTION 11. CODIFICATION INSTRUCTION. (1) [SECTIONS 1 AND 2] ARE INTENDED TO BE
28 CODIFIED AS AN INTEGRAL PART OF TITLE 44, CHAPTER 4, PART 3, AND THE PROVISIONS OF TITLE 44, CHAPTER 4, PART
29 3, APPLY TO [SECTIONS 1 AND 2].
30

(2) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 46, CHAPTER 23, PART 10, AND

1 THE PROVISIONS OF TITLE 46, CHAPTER 23, PART 10, APPLY TO [SECTION 5].

2 (3) [SECTION 6] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 53, CHAPTER 1, PART 2, AND THE
3 PROVISIONS OF TITLE 53, CHAPTER 1, PART 2, APPLY TO [SECTION 6].

4
5 COORDINATION SECTION. SECTION 12. COORDINATION INSTRUCTION. IF BOTH SENATE BILL NO. 63 AND
6 [THIS ACT] ARE PASSED AND APPROVED AND IF SENATE BILL NO. 63 CONTAINS A SECTION AMENDING 53-1-203, THEN THE
7 SECTION AMENDING 53-1-203 IS VOID AND ANY REFERENCES IN SENATE BILL NO. 63 TO THE "INCENTIVES AND
8 INTERVENTIONS GRID ADOPTED UNDER 53-1-203" MUST BE CHANGED TO THE "INCENTIVES AND INTERVENTIONS GRID
9 ADOPTED UNDER [SECTION 5 OF SENATE BILL NO. 59].

10
11 NEW SECTION. SECTION 13. CONTINGENT VOIDNESS. (1) PURSUANT TO JOINT RULE 40-65, IF [THIS ACT]
12 DOES NOT INCLUDE AN APPROPRIATION PRIOR TO BEING TRANSMITTED TO THE GOVERNOR, THEN [SECTION 3 AND SECTION
13 4(1)] ARE VOID.

14 (2) IF THE APPROPRIATION IN [SECTION 9] IS VETOED, THEN [SECTION 3 AND SECTION 4(1)] ARE VOID.

15
16 NEW SECTION. SECTION 14. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3), [THIS
17 ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

18 (2) [SECTIONS 1, 2, 7, AND 8] ARE EFFECTIVE OCTOBER 1, 2017.

19 (3) [SECTION 9] IS EFFECTIVE JULY 1, 2017.

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21 NEW SECTION. SECTION 15. TERMINATION. [SECTIONS 3 AND 4] TERMINATE JUNE 30, 2019.

22 - END -