

January 2018

Law and Justice Interim Committee  
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# IMPLEMENTATION OF CRIMINAL JUSTICE SYSTEM LEGISLATION

## BACKGROUND

The 2017 Legislature enacted numerous bills that revised the criminal justice system laws. Given the broad reach of the revisions, the commitment of state general fund money to implement several of the new programs, and several provisions in the bills that require specific reports or oversight, members of the Law and Justice Interim Committee (LJIC) indicated a strong interest in monitoring the implementation and results of the legislation during the 2017-2018 interim. Similar reports have been or will be provided to the LJIC as the interim continues and as additional changes are made or effects become known. These reports do not replace any required agency reports or requested updates. Instead, they are tools to provide background to LJIC members in preparation for updates from agency or branch staff during LJIC meetings.

## BEHAVIORAL HEALTH PEER SUPPORT SPECIALISTS

Senate Bill 62, a Commission on Sentencing bill enacted by the 2017 Legislature, required the Board of Behavioral Health to create a certification process for behavioral health peer support specialists. A peer support specialist has personal experience with a behavioral health disorder and uses that experience to offer mentoring, guidance, and advocacy to individuals who also have a behavioral health disorder. The term “behavioral health disorder” includes either a chemical dependency issue or a mental health disorder, or both.

The Board of Behavioral Health is administratively attached to the Department of Labor and Industry. The board issued draft rules in late October 2017 and held a hearing to gather public comment on the rules in early November. The board considered the comments at a late November meeting, but has not yet issued a final notice of adoption for the rules.

## JUDICIAL BRANCH

The Office of Court Administrator (OCA) and an advisory committee created by the Supreme Court continue their work to implement a pretrial risk assessment pilot project created by the 2017 Legislature, including selecting a risk assessment tool and signing interagency agreements with five pilot locations. The five counties selected by the Supreme Court to test the use of a risk assessment on pretrial defendants in county detention centers are Butte-Silver Bow, Lewis and Clark, Missoula, Yellowstone, and Lake. The risk assessment tool will be implemented on a rolling basis during February, with Lewis and Clark being the first county to implement the risk assessment tool. The other counties will be added at the pace of one every two weeks until all five pilots are using the risk assessment tool.

After the recent budget cuts, the appropriation to fund the pilot for the biennium is approximately \$1.5 million. Of that, the OCA will use

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\$552,000 of the funds for an automated case management system, to install and equip terminals that allow staff to access criminal justice information or criminal history activity, and to hire one full-time and two part-time employees. These employees will complete the risk assessments for each defendant and provide IT support, training, and other technical assistance to the pilot counties. They will also collect data for evaluation of the program. Those staff will work out of the central office in Helena, including during weekends, to assess individuals who are arrested over a weekend to ensure the risk assessment information can be provided at Sunday through Friday court appearances. Two part-time, temporary employees are also working as pretrial program staff. Those program staff assisted with finding an assessment tool and continue to coordinate committee meetings, to work with consults to manage the implementation plan, to develop a decision-making process for the risk assessment tool, and to help implement the tool in the pilot counties.

The counties will receive the rest of the pilot funding (approximately \$840,000) to use to provide services to defendants who are released to the community by a judge. Each of the pilot counties will receive \$75,000 with the remainder of the funds divided between the counties based on the number of arrests in each county.

The OCA and the committee will require each participating county to use a court appearance reminder system provided by the OCA to remind the defendant of upcoming court appearances. The counties must also use a case management system to ensure that services provided are coordinated. Beyond those two requirements, the counties are free to decide what other types of services can be provided to defendants who are released pending resolution of a charge. The OCA has a contract with a web-based case management system that will provide those two services to the five pilot counties and will also automate the risk assessment completed for each defendant.

In addition to setting up the parameters of the pilot program, the OCA and the committee have chosen seven performance measures to help the OCA evaluate the program's effectiveness, including the number of defendants covered during the pilot program, release and detention rates, length of detention and time to release, as well as rates of defendants who appear in court and are law abiding during release. Each performance measure requires counties to collect specific data, such as demographic data for defendants, information on the criminal charges against and risk of each defendant, reasons for detention, and release conditions assigned by the court.

## DEPARTMENT OF CORRECTIONS

The Department of Corrections (DOC) continues to implement programs and adjust agency operations to meet criminal justice system changes required in 2017. In particular, the DOC is working to reduce the number of offenders in the custody of the department that are currently housed in county jails. A provision in House Bill 2 required the DOC to lower the number of offenders to 250 by January 1, 2018. If the DOC fails to meet that number, it is prohibited from using \$1,000,000 in contingent funding provided in HB 2 for FY 2018. Another HB 2 provision requires the department to maintain the 250-offender cap and to certify that it is using an incentives and intervention grid to supervise offenders in the community, as well as using the least restrictive and most appropriate sanctions to manage offenders. If those targets are met, the DOC may use the \$1,000,000 in contingent funding for FY 2019.

The DOC is currently revising its sanctions grid with a work group and assistance from the Council of State Governments Justice Center (CSG). Based on a grid used in Idaho, the DOC's grid will guide probation and parole officers in their responses to offenders' positive or negative behaviors while in the community on supervision. After developing policy

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and procedures to guide use of the grid and a training module, the DOC will roll out the new grid to several regional probation and parole offices before a full statewide implementation. Until then, the DOC will continue to use the sanctions grid it developed prior to 2017.

As of October 1, 2017, the DOC is required to provide most presentence investigation (PSI) reports to courts within 30 days of a guilty plea, verdict, or finding. Exceptions to the timeline exist when additional mental health or psychosexual evaluations are required or when time is needed to obtain additional victim input. The department created a PSI team of six staff, though some probation and parole officers continue to write PSIs to ensure the statutory deadline is met.

Training is being provided to judges and county attorneys on both the sanctions grid and the risk and needs assessment information that probation and parole officers are now including in the PSI reports.

The Board of Crime Control, which was transferred from the Department of Justice to the DOC at the start of January, issued a request for proposals for supportive housing programs for offenders reentering the community from prison. Senate Bill 65 authorized the board to create a supportive housing grant program. A city or town, county, or tribal government may apply and must use funds to provide case management or placement assistance, engage landlords, hire housing specialists, or establish risk-mitigation accounts to reimburse landlords for tenant damage or expenses. Recipients must also submit data related to performance measures designed to track the effectiveness of the programs. The grant funding expires in June 2019.

The board and CSG staff also are developing statewide standards for domestic violence intervention programs. The programs are required for offenders convicted of certain crimes, such as partner or family member assault, strangulation of a partner or family member, or violation of a court order of protections.

In addition, board and DOC staff continue to seek funding opportunities to create and support prosecution diversion programs. Senate Bill 59 gave the board authority to establish a prosecution diversion grant program, but the program was not funded by a state appropriation.

Finally, the DOC is working with the Criminal Justice Oversight Council to establish baseline data metrics to use for measuring the results of any of the recent or future criminal justice system changes, as well as to consider how system-wide data tracking could be done, which are two duties placed on the oversight council by Senate Bill 59.

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## OFFICE OF THE STATE PUBLIC DEFENDER

The Office of the State Public Defender (OPD) continues to adjust its practices and administrative structure to meet the requirements of several bills enacted in 2017. As of January 2018, the final three of four division administrators have been hired by the interim director. Previously, the chief public defender, chief appellate defender, and conflict coordinator reported to a citizen commission, and the central services coordinator reported to the chief public defender. After the 2017 revisions in House Bill 77, all four are division administrators who report directly to the OPD director. The OPD director will be hired by the director of the Department of Administration as required by HB 77. The four division administrators are:

- Peter Ohman, Public Defender Division Administrator;
- Chad Wright, Appellate Defender Division Administrator;
- Carleen Green, Central Services Division Administrator; and
- Daniel Miller, Conflict Defender Division Administrator.

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