

# **Agency Oversight: Implementation and Results of Criminal Justice System Changes**

*Fall 2017 Update on Legislation and Initial Implementation*

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## Background

### *How Did We Get Here?*

The 2017 Legislature enacted numerous bills that revised the criminal justice system laws. Those bills amended crimes, sentences and sentencing procedures, the structure of the parole board and its decision-making process, when and how an offender in the community under supervision may be sanctioned, rewarded, or returned to prison, required certain corrections programs to be evidence-based and evaluated, and created several grant programs to support criminal justice programs from arrest to release. Several bills also revised the structure, duties, and work processes for the Office of the State Public Defender (OPD)

The main changes were suggested by two study entities created by the 2015 Legislature: The Commission on Sentencing (Commission) and the Task Force on Public Defender Operations (Task Force). Both entities were composed of legislators and system stakeholders. The Commission was tasked with a broad review of the state's criminal justice system and worked with the Council of State Governments Justice Center in a data-driven justice reinvestment process. The Task Force had a more specific mandate: study the operations of the OPD to develop a long-term organizational plan that would allow the office to provide effective assistance of counsel to indigent defendants. Both entities met during the 2015 - 2016 interim and proposed multiple bills for the 2017 Legislature to consider.

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. The Legislative Finance Committee (LFC) is also required to perform some oversight, and its members are interested in monitoring the impacts, as well.

### *Report Purpose and Organization*

This report summarizes the legislation recommended by the Commission and the Task Force in two tables that can be found on pages 2 through 6. Then, on page 7 the report contains recent updates on the implementation and effects of that legislation. Given that multiple agencies and the Judicial Branch are affected by the changes, the updates are organized by agency or branch.

Similar reports will be provided to the LJIC as the interim continues and additional changes are made or effects become known. These reports will not replace any required agency reports or requested updates. They are meant as tools to provide initial background to LJIC members in preparation for updates from agency or branch staff during future LJIC meetings.

#### Summary of Enacted Legislation

The Commission proposed 11 bills and one study resolution to the 2017 Legislature. Of those 12, nine were enacted.<sup>1</sup>

The Task Force proposed 8 bills to the 2017 Legislature. Of those 8 bills, five were enacted.

The following tables list the successful bills requested by the Commission and by the Task Force. They also describe key programs or changes enacted in those bills and list the agencies charged with implementing the programs or affected by changes. The tables include any legislative committees required to receive reports on the changes.

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<sup>1</sup> The Commission also made a recommendation to revise eligibility for treatment courts to include certain violent offenders. Because a committee organized by the court was already making recommendations related to treatment courts, the Commission voted to support the court's draft bill instead of pursuing its own. Senate Bill No. 45 was sponsored by Commission member Senator Margie MacDonald. Despite the close ties to the Commission's work it is not included in the table or in legislative lists of Commission bills.

*Commission on Sentencing Legislation*

<b>Bill #</b>	<b>Description of Main Provisions</b>	<b>Agencies/Entities Involved</b>
SB 59	<ul style="list-style-type: none"> <li>✓ Establishes pretrial risk assessment and deferred prosecution grant programs and allows courts to use pretrial risk assessment information</li> <li>✓ Creates an oversight council to monitor and report on criminal justice legislation to the LJIC and LFC as requested</li> <li>✓ Requires the DOC's Quality Assurance Unit to adopt an evaluation tool to use to conduct program evaluations and to report results to the LJIC</li> <li>✓ Creates reporting requirements for the Department of Corrections (DOC) to the council and LFC on justice reinvestment impacts</li> <li>✓ Requires DOC to ensure contracts contain evidence-based standards and offender eligibility provisions</li> <li>✓ Requires DOC to develop and maintain a list of evidence-based treatment programs</li> <li>✓ Requires DOC to adopt an incentives and interventions grid to use for community supervision and to review the grid regularly</li> </ul>	<ul style="list-style-type: none"> <li>✓ Judicial Branch</li> <li>✓ DOC</li> <li>✓ Board of Crime Control</li> <li>✓ LJIC</li> <li>✓ Leg. Finance Committee</li> </ul>
SB 60	<ul style="list-style-type: none"> <li>✓ Creates a 30-day deadline for completing PSIs</li> <li>✓ Requires training and evaluations for corrections employees on risk assessment and evidence-based practices</li> <li>✓ Requires DOC to use risk and needs assessments to drive supervision and correctional practices and to validate its risk assessment tool</li> <li>✓ Allows DOC to create a PSI unit including employees who have specific training and expertise but who are not probation and parole officers</li> </ul>	<ul style="list-style-type: none"> <li>✓ DOC</li> <li>✓ Judicial Branch</li> </ul>
SB 62	<ul style="list-style-type: none"> <li>✓ Creates a certification process for behavioral health peer support specialists</li> </ul>	<ul style="list-style-type: none"> <li>✓ Board of Behavioral Health</li> </ul>

Bill #	Description of Main Provisions	Agencies/Entities Involved
SB 63	<ul style="list-style-type: none"> <li>✓ Revises revocation process used for probationers and defendants receiving a deferred or suspended sentence to ensure the incentives and interventions grid is used to guide responses to compliance violations</li> <li>✓ Requires DOC to adopt an incentives and interventions grid to use for community supervision</li> <li>✓ Requires DOC to exhaust and document grid options used before initiating the revocation process</li> </ul>	<ul style="list-style-type: none"> <li>✓ Judicial Branch</li> <li>✓ DOC</li> </ul>
SB 64	<ul style="list-style-type: none"> <li>✓ Revises the board's size and structure to make it a five-member, full-time board</li> <li>✓ Requires the board to adopt structured parole guidelines and provide training</li> <li>✓ Revises supervision and revocation processes to parallel those created in SB 65</li> </ul>	<ul style="list-style-type: none"> <li>✓ Board of Pardons and Parole</li> <li>✓ LJIC</li> </ul>
SB 65	<ul style="list-style-type: none"> <li>✓ Creates a housing policy for the state</li> <li>✓ Establishes a supportive housing grant program</li> <li>✓ Allows DOC to offer rental vouchers to certain offenders</li> <li>✓ Requires DOC to keep data on offenders discharged into a homeless shelter or homeless situation</li> </ul>	<ul style="list-style-type: none"> <li>✓ DOC</li> <li>✓ Board of Crime Control</li> </ul>
SB 67	<ul style="list-style-type: none"> <li>✓ Requires Board of Crime Control to adopt statewide standards for services offered through the offender intervention program</li> <li>✓ Allows grant funding to be used to develop and implement standards</li> </ul>	<ul style="list-style-type: none"> <li>✓ Judicial Branch</li> <li>✓ Board of Crime Control</li> </ul>
HB 133	<ul style="list-style-type: none"> <li>✓ Revises criminal sentencing laws, including drug sentences, drug education courses, the persistent felony offender designation, theft and related offenses, certain mandatory minimums, criminal history record information, and other sentencing laws.</li> </ul>	
SJ 3	<ul style="list-style-type: none"> <li>✓ Requests that an interim committee explore increasing access to tribal resources for tribal members who are in the state's criminal justice system.</li> </ul>	<ul style="list-style-type: none"> <li>✓ Assigned to the State-Tribal Relations Interim Committee</li> </ul>

*Task Force on State Public Defender Operations Legislation*

<b>Bill #</b>	<b>Description of Main Provisions</b>	<b>Agencies/Entities Involved</b>
HB 59	<ul style="list-style-type: none"> <li>✓ Limits when a court may appoint a public defender for a putative father in abuse and neglect proceedings unless the putative father is successfully served notice of a petition or the father makes a written request to the court</li> </ul>	<ul style="list-style-type: none"> <li>✓ Office of State Public Defender (OPD)</li> <li>✓ Judicial Branch</li> </ul>
HB 62	<ul style="list-style-type: none"> <li>✓ Requires the Department of Revenue to work with OPD to collect court-imposed costs for public defender services</li> <li>✓ Requires the Office of Court Administrator (OCA) to prepare a monthly report of court-imposed costs to the OPD</li> <li>✓ Requires OPD to notify the Department of Revenue of unpaid costs and information related to the defendant</li> <li>✓ Requires the Department of Revenue to collect costs and deposit collections in the state general fund</li> <li>✓ Requires the three agencies to work collectively on a reporting format and procedure</li> </ul>	<ul style="list-style-type: none"> <li>✓ OPD</li> <li>✓ Judicial Branch</li> <li>✓ Department of Revenues</li> </ul>
HB 65	<ul style="list-style-type: none"> <li>✓ Eliminates a requirement for the chief appellate defender to confer with the chief public defender on budgetary issues</li> </ul>	<ul style="list-style-type: none"> <li>✓ OPD</li> </ul>
HB 77	<ul style="list-style-type: none"> <li>✓ Revises the governance structure of the OPD</li> <li>✓ Provides for an OPD director that is hired by the director of the Department of Administration and eliminates the Public Defender Commission</li> <li>✓ Renames the chief public defender, chief appellate defender, and conflict coordinator positions to be division administrators</li> <li>✓ Creates a centralized services division</li> <li>✓ Revises how contracts for legal representation of individuals may be awarded to eliminate fixed-fee contracts</li> <li>✓ Requires a report containing specific information to be provided to the governor, legislature, and the LJIC</li> </ul>	<ul style="list-style-type: none"> <li>✓ OPD</li> <li>✓ LJIC</li> </ul>

Bill #	Description of Main Provisions	Agencies/Entities Involved
HB 89	<ul style="list-style-type: none"> <li>✓ Creates a holistic defense pilot project in OPD to be established in at least four public defender offices</li> <li>✓ Requires the OPD to establish performance criteria, collect data to assess the outcomes, and perform a community assessment in each community selected for the project</li> <li>✓ Requires OPD to report to LJIC each interim on the project status, evaluation plan, and measurable outcomes</li> </ul>	<ul style="list-style-type: none"> <li>✓ OPD</li> <li>✓ LJIC</li> </ul>

## Judicial Branch

The Judicial Branch was affected directly and indirectly by several of the criminal justice bills. Specifically, the Office of Court Administrator (OCA) is required to develop and administer a pretrial program by SB 59. The OCA was appropriated \$780,000 for each fiscal year for the program. Funds may be used by OCA to develop, implement, and administer the program. They may also be allocated to counties or nonprofit organizations that contract with counties for pretrial programs to obtain staff, assessment instruments, and provide supervision of defendants.

The pretrial program requirement and appropriation became effective July 1. On July 6, the Montana Supreme Court appointed a permanent advisory council to provide guidance to the OCA as required by SB 59. The advisory council includes a district court judge, a justice of the peace, a county attorney, the executive director of the OPD, a sheriff, and a public member. It also includes two legislators: Sen. Cynthia Wolken (D-Missoula) and Rep. Jimmy Patelis (R-Billings). Both Sen. Wolken and Rep. Patelis also serve on the Criminal Justice Oversight Council created to provide oversight into the implementation of the Commission on Sentencing bills. The advisory council met for the first time on Sept. 12 and updates on its work will be provided by the OCA during the Sept. 21 LJIC meeting.

SB 67, which required the Board of Crime Control to adopt statewide standards for offender intervention programs, also made courts eligible to access grant funds from the domestic violence intervention account to implement programs that meet those standards. Offender intervention programs include assessments and counseling assigned to offenders convicted of partner or family member assault or a violation of an order of protection.

In addition to the Commission bills, a Task Force bill required the OCA to work with the OPD and the Department of Revenue to create a common reporting form and process to provide information to the OPD and department about offenders who owe court-assigned costs for legal representation.

Other provisions from 2017 criminal justice bills that affected the Judicial Branch are:

- a requirement for DOC probation and parole officers to complete a PSI report within 30 days of a conviction or guilty plea; and
- a requirement that the DOC probation and parole officers exhaust and document sanctions used to encourage offender compliance with community supervision conditions before filing a petition to revoke an offender's probation for violations of the conditions.

## Department of Corrections

The DOC was greatly affected by the 2017 criminal justice system legislation. As of the fall of 2017, the DOC is working to revise many existing processes and programs to meet the requirements of the legislation, which include:

- creating a PSI unit to ensure the department meets the 30-day deadline to complete PSI reports;
- ensuring probation and parole officers exhaust and document sanctions used for community supervision compliance violations;
- revising the Montana Incentives and Interventions Grid (MIIG) for community supervision sanctions and rewards;
- collecting data on offenders released into a homeless situation;
- adopting program evaluation tools to measure how closely correctional programs meet the principles of effective interventions for offenders;
- conducting regular evaluations of Department or contractor programs; and
- developing and maintaining a list of evidence-based curriculums.

In addition, SB 65 allowed the DOC to offer rental vouchers to an offender whose parole plan was not approved by the department due to the offender's inability to secure suitable living arrangements. The vouchers are limited to 3 months of rental assistance and must be provided in conjunction with other reentry services such as treatment, education, or employment programs. However, this program was not funded with an appropriation nor is it a requirement on the department.

SB 59 created an oversight council to monitor the ongoing implementation of the Commission bills and to review several data collection topics. That 15-member council includes four legislators, three of whom serve on the LJIC: Sen. Swandal, Rep. Patelis, and Rep. Lynch. The other legislator is Sen. Wolken, who carried the bill creating the Commission and most of the resulting legislation. Other members include the director of the DOC, Reginald Michael (who serves as the council's presiding officer), two DOC staff members, a member selected by the chief justice, a staff member from the Montana Department of Public Health and Human Services, a county sheriff, and five members selected by the governor. Of those five, Majel Russel (who represents Montana's Indian tribes) was a member of the Commission and another, Annette Carter, is a newly appointed member of the BOPP. The final three members are a representative of crime victims and two representatives of community corrections providers.

The oversight council will meet during the interim and will report to the LJIC as requested. Several of the agency updates during the September LJIC meeting will cover similar topics to those discussed at the council's first meeting, which was Sept. 6.

## Office of the State Public Defender

The OPD was another agency greatly affected by criminal justice legislation in 2017, including a major restructure of the organization. When the statewide public defender system and the OPD were created in 2005, the enacting legislation required it to be headed by a commission. The 11 commissioners were volunteers appointed by the governor. The commission was responsible for hiring three co-equal heads of separate divisions: a chief public defender, a chief appellate defender, and a conflict coordinator.

In 2017, House Bill No. 77 eliminated the governing commission in favor of a director hired by the director of the Department of Administration. It also restructured the office's chain of command by eliminating the Chief Public Defender, Chief Appellate Defender, and Conflict Coordinator positions and creating a head of a central services division. Previously, those positions had reported to the commission, except for the central services division, which reported to the Chief Public Defender. After HB 77, the OPD director will appoint division administrators for each of the divisions, including the Public Defender Division, the Appellate Defender Division, the Conflict Defender Division, and the Central Services Division.

As of early September 2017, several changes are in process. First, Harry Freebourn, who had previously served as the office's administrative director before he retired, was appointed to serve as the interim director until a permanent director is hired. In early August, job descriptions for the administrators of the public defender and appellate defender divisions were posted, and the interim director began an interview and hiring process to fill the positions. Peter Ohman, the OPD's training coordinator and a member of the Commission on Sentencing, was selected as the public defender division administrator. The conflict defender and central services administrators will be hired using a similar process in the fall.

## Board of Crime Control (BOCC)

The 2017 Legislature created two new grant programs that were assigned to the BOCC to administer and also required the board to create statewide standards for existing offender intervention programs. SB 59 created a prosecution diversion grant program, and SB 65 created a supportive housing program. Both bills contained language limiting the BOCC to developing and maintaining the programs "within the limits of available funds."

The Legislature appropriated \$200,000 for each fiscal year of the biennium to the BOCC for the housing program. The prosecution diversion program didn't receive funding through legislative appropriations, so the BOCC will not begin to develop that program unless and until it receives grant funding or funding from other sources.

The BOCC will update the LJIC at a future meeting, likely in November 2017.

## Board of Pardons and Parole (BOPP)

The BOPP was another agency whose structure and operations were affected by the criminal justice changes in 2017. SB 64 transformed it from a seven-member volunteer board to a five-member fulltime board. The bill also required the BOPP to revise its decisionmaking process by adopting structured parole guidelines in its administrative rules. The guidelines must include certain factors for the board to consider about an offender when making release decisions and setting supervision conditions. The factors are ranked in order of decreasing importance, including a risk and needs level as determined by a validated assessment, the offender's participation in certain programs and/or treatment, the offender's behavior in the institutional setting, and the severity of the offense or offenses for which the offender is imprisoned.

The five new members are:

- Scott Cruse, a former FBI agent who also serves as the board's presiding officer;
- Annette Carter, who previously worked in the DOC as the reentry program manager;
- Renee Bauer, who led a nonprofit that helps former inmates acquire job skills and who has served as the executive director of the Helena Business Improvement District;
- Kristina Lucero, who was an assistant public defender in Missoula as well as a tribal prosecutor for the Confederated Salish and Kootenai Tribes; and
- Darren Bell, formerly a U.S. marshal with the U.S. DOJ and also previously Billings police chief.

Four members are currently working at the BOPP and Mr. Bell will start in October.

The BOPP members received training about their new positions, and also held hearings in August for the first time in its new configuration. All hearings, except those held at the Montana State Hospital, are conducted via videoconference technology. In addition to working to ensure risk and needs assessments are used and parole guidelines are developed as required in SB 64, the members are also reviewing the board's duties and processes to see what revisions, if any, should be made.