Justice Reinvestment in Montana

Report to the Montana Commission on Sentencing

JANUARY 2017

Overview

Montana's prisons are over capacity. The prison population increased 11 percent between FY2008 and FY2015 and is projected to continue to grow 13 percent by FY2023, requiring at least $51 million in new spending.[1] Additionally, the statewide jail population rose 69 percent between 2011 and 2013 and many jails are over capacity.[2] To address these concerns, state leaders and key stakeholders have worked together to develop policies that will ease capacity issues by focusing prison space and supervision resources on people who are most likely to reoffend, and reduce recidivism by improving access to treatment. By adopting these proposed policies, the state will avert at least $69 million in spending on contract beds and supervision staff and hundreds of millions more that would have been necessary to build new correctional facilities between FY2018 and FY2023 and will be able to reinvest those savings in strategies designed to reduce recidivism and increase public safety.

Commission on Sentencing

In June 2015, Governor Steve Bullock, Chief Justice Mike McGrath, Attorney General Tim Fox, Senate President Debby Barrett, Speaker of the House Austin Knudsen, House Minority Leader and Legislative Council President Chuck Hunter, Senate Minority Leader Jon Sesso, and Montana Department of Corrections (DOC) Director Mike Batista requested intensive technical assistance from The Council of State Governments (CSG) Justice Center with support from The Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance to use a justice reinvestment approach in the state.

The Montana legislature enacted Bill 224 in April 2015 to establish the state's bipartisan, interbranch Commission on Sentencing to study the state's criminal justice system. The 15-member commission, which includes state lawmakers, judiciary members, corrections officials, county and defense attorneys, and local law enforcement executives, met six times between September 2015 and October 2016 to review analyses and discuss policy options.

Commission Members

Chair
Cynthia Wolken, State Senator
Vice Chair
Kristin Hansen, State Senator

Members
Mike Batista, Director, Department of Corrections
Derek Gibbs, Licensed Addiction Counselor
Ingrid Gustafson, District Court Judge
Dan Guzynski, Assistant Attorney General
Jennie Hansen, Eastern Bureau Chief, Probation and Parole Division, Department of Corrections
Roxanne Klingensmith, Archdeacon/Deacon with Episcopal Diocese of Montana
Margaret Macdonald, State Representative
Matthew Monforton, State Representative
LeAnn Montes, Tribal Attorney for Chippewa Cree Tribe
Peter Ohman, Office of the State Public Defender
Mary Ann Ries, Pondera County Attorney
Majel Russell, Criminal Defense Attorney
Donna Whitt, Toole County Sheriff

JUSTICE CENTER
The Council of State Governments

Data Collection

An extensive amount of data was provided to the CSG Justice Center by the Montana Department of Justice, the Montana Supreme Court, and the Montana Department of Corrections. In total, more than 600,000 individual data records spanning 10 years were analyzed across these databases, including supervision, prison, and alternative facilities population trends and length of time served in prison and on supervision.

Nearly 200 in-person meetings and conference calls with county attorneys, judges, public defenders, law enforcement officials, probation and parole officers, behavioral health service providers, victims and their advocates, families and advocates of people in the criminal justice system, local officials, and others helped provide context for the data.

Summary of Challenges and Findings

Through its comprehensive review of state data, the Commission on Sentencing identified three key challenges and related findings.

KEY CHALLENGES

1. **Prison and jail population growth.** Prisons in Montana are currently at capacity, and the statewide jail population has risen to the point that many jails are now over capacity. Unless the state acts, the prison population is projected to increase 13 percent by FY2023, requiring at least $51 million in new spending.

2. **High recidivism.** The primary driver of increases in arrests, admissions to alternative facilities, and prison admissions is the large number of people who have been revoked from supervision for technical violations or new crimes.

3. **Growing impact of substance use.** Drug use presents a growing challenge for the state's criminal justice system, as evidenced by a significant increase in arrests for drug offenses, especially among people on probation and parole supervision.

KEY FINDINGS

- **Total arrests have increased in recent years.** Between FY2009 and FY2015, total arrests in Montana increased 12 percent, mainly due to an increase in drug-related arrests and arrests involving revocations, violations, and failure to appear (FTAs).[3]

- **Drug-related arrests have increased dramatically.** Between FY2009 and FY2015, total drug arrests went up 62 percent in Montana and accounted for 53 percent of the increase in total arrests. Felony drug arrests increased 100 percent and misdemeanor drug arrests increased 47 percent over the same time period.[4]

- **The number of arrests involving revocations, violations, and FTAs have increased significantly.** Arrests for revocations, violations, and FTAs increased 65 percent, from 2,720 to 4,484, between FY2009 and FY2015 and accounted for 45 percent of the increase in total arrests.[5]

- **District court case filings have risen sharply in recent years.** In FY2011, Montana had 7,249 cases involving felony offenses in the district court; by FY2014, this number had increased 29 percent, to 9,339 cases.[6] Almost half of this increase is the result of a rise in felony drug possession cases.[7]

- **The time it takes for a case in district court to reach disposition has increased significantly.** The time between a guilty plea and a disposition in Montana increased 60 percent between FY2012 and FY2015, from 77 days to 123 days, which may have contributed to longer lengths of stay in jails.[8]

- **The state's jail population has increased significantly.** Montana's statewide jail population rose 67 percent between 2011 and 2013.[9] In addition, the average length of stay in Montana jails was 21 days as compared to the regional average of 18 days.[10]

- **Montana's prison population has increased, as has corrections spending.** The state's total prison population increased 11 percent between FY2008 and FY2016, from 2,373 to 2,605 people.[11] Total general fund expenditures on corrections increased 16 percent between FY2008 and FY2015, from $157 million to $182 million.[12]

- **Montana's prison population slightly exceeds the capacity of the state's facilities, and is projected to continue to grow.** As of the end of FY2016, Montana's prison population exceeds the state's facilities' capacity of 2,573 people by 1 percent and is projected to increase to 2,981 people by FY2023, reaching 116 percent of capacity.[13]

- **The number of people in alternative facilities has increased significantly in recent years.** The number of people in alternative facilities—residential facilities that include prerelease centers, substance use treatment facilities, boot camps, and revocation centers—increased by 10 percent between FY2008 and FY2016.[14]

- **Revocations account for the majority of prison admissions in Montana.** In FY2015, the number of people revoked to prison from supervision or alternative facilities for a violation accounted for 74 percent of prison admissions.[15]

- **Admissions to prison from alternative facilities have increased sharply in recent years.** The number of people admitted to prison from alternative facilities increased 73 percent between FY2009 and FY2015.[16]

- **Montana's supervision population is projected to grow.** The state's community supervision population, which includes people on probation, parole, and conditional release, is projected to grow 18 percent between FY2016 and FY2023, from 9,021 to 10,635 people.[17]

- **People are on probation for lengthy periods of time in Montana.** Among people who successfully completed probation supervision in 2015, approximately 60 percent had served more than three years on probation, and 31 percent had served more than five years on probation.[18]

- **Native Americans are disproportionately represented in Montana's criminal justice system.** In FY2014, Native Americans accounted for 7 percent of the state's general population but constituted 17 percent of the total adult correctional facility population.[19] Native Americans also accounted for 19 percent of total arrests in FY2015, and these arrests were driven by FTAs and supervision violations.[20]

- **The time between parole eligibility and parole release has increased sharply in recent years.** The time that it takes between initial parole eligibility and parole release has more than tripled since 2000, from approximately 8 months to 26 months. In FY2014, 36 percent of parole releases were delayed due to incomplete programming.[21]

Summary of Policy Options and Impacts

The policy options listed below are designed to achieve the following goals:

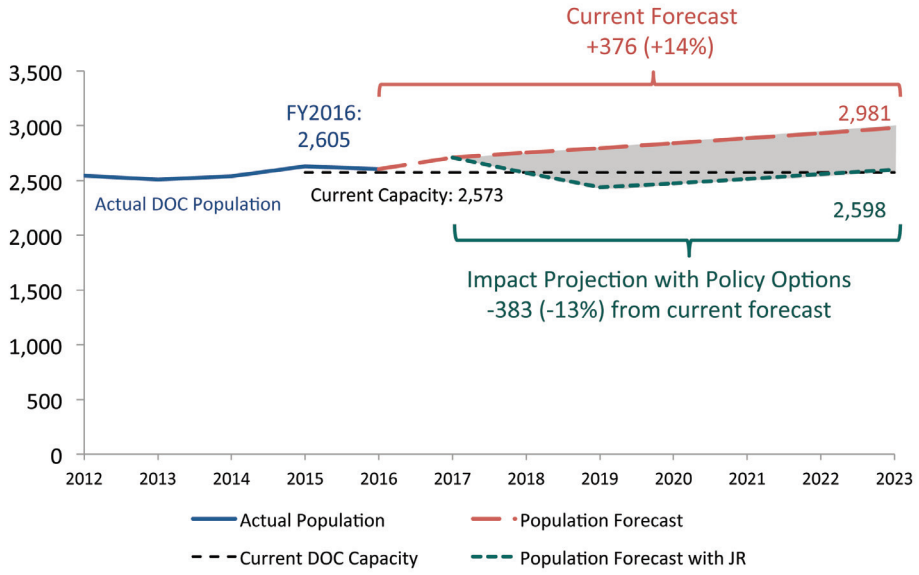
- Avert growth in prison and jail populations.
- Increase public safety and reduce recidivism by expanding the reach and improving the efficacy of programs focused on reducing recidivism.
- Provide counties with tools to reduce population pressures on jails throughout the state.

Icons appear in the policy options section of this report to indicate how the options relate to these goals.

POLICY OPTIONS

1. Establish the use of pretrial risk assessment and supervision.
2. Revamp the presentence investigation report so that it is more structured and objective, encourages the use of evidence-based practices in sentencing, and is produced in a timely fashion.
3. Eliminate mandatory minimum jail sentences for first offense driving with a suspended license and third offense petty theft.
4. Reclassify traffic offenses, other than driving under the influence, as civil or citation-only offenses.
5. Create new or expand existing diversion programs.
6. Expand eligibility criteria for drug courts.
7. Establish guidelines that account for individual risk and needs information in making placement decisions for people sentenced to DOC commit.
8. Adopt evidence-based standards and require state-issued licenses for treatment facilities serving people in the criminal justice system.
9. Fund access to behavioral health treatment and programs for people on community supervision.
10. Focus probation resources on people who are most likely to reoffend.
11. Explore increasing access to tribal resources for Native Americans who are in the state criminal justice system.
12. Modernize the parole board and the parole decision-making process to ensure that the board's decisions are informed and consistent.
13. Limit the term of incarceration for technical violations of conditions of probation and parole.
14. Increase housing options for people returning to the community after incarceration.
15. Expand eligibility criteria for crime victim compensation benefits.
16. Improve the quality of and access to batterer's intervention programs.
17. Provide oversight to improve the quality of programs and practices.

FIGURE 1. PROJECTED IMPACT OF POLICY OPTIONS ON DOC PRISON POPULATION



PROJECTED IMPACT

As a package, the policies described in this report are projected to avert significant costs and projected growth in Montana's state prison, supervision, and jail populations between FY2018 and FY2023. The effective implementation of the policy framework will prevent projected growth in the state prison and supervision populations and help the state avert at least $59 million in contract bed costs, $11 million in costs to hire additional supervision officers, and potentially hundreds of millions of dollars in construction and operations costs for building new correctional facilities. While the prison population is currently projected to reach 2,981 people by 2023, this policy framework is projected to reduce the forecasted growth by 383 people between FY2018 and FY2023 and bring the state prison population below facility capacity. (See Figure 1)

Montana's community supervision population is projected to grow 18 percent between FY2018 and FY2023 in part because of lengthy probation terms. If the policies described in this report are implemented, however, Montana is projected to reduce the forecasted growth in the supervision population by 2,639 people and help the state avert $11 million in costs to hire additional supervision officers. With the enactment of several key policies involving pretrial and sentencing procedures, Montana will also be able to reduce jail populations and reduce related costs to county governments.

TOTAL COST IMPACT ESTIMATES are generated by calculating contract costs that would be averted by averting growth in the prison population. Averted costs were calculated using DOC's contracted prison bed cost per day of $78.79. This calculation assumes that if the prison population were to grow from the current (FY2016) average daily population, DOC would contract with private facilities to accommodate the population growth, given that DOC prison facilities are over capacity. By averting this growth, DOC would avoid these costs.

CSG Justice Center's impact analysis is based on DOC FY2018–2023 projected prison population data.

REINVESTMENTS

To achieve the projected outcomes and effectively reduce prison, supervision, and jail populations while reducing recidivism, Montana must reinvest a portion of the expected savings achieved by averting prison and supervised population growth—a minimum of $69 million and up to hundreds of millions of dollars through FY2023. Cost savings and proposed levels of reinvestment are based on projected impacts to the prison population as calculated by the CSG Justice Center, in consultation with the DOC, in comparison to the DOC population forecast. (See Figure 2)

FIGURE 2. SUMMARY OF AVERTED COSTS AND REINVESTMENTS FOR JUSTICE REINVESTMENT POLICY FRAMEWORK

	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	Total
Prison costs averted	$5,377,811	$10,353,006	$10,525,556	$10,698,106	$10,841,898	$11,014,448	$58,810,826
Supervision costs averted	$255,646	$1,210,559	$1,650,421	$2,101,561	$2,562,099	$3,033,917	$10,814,203
Total operating costs averted and saved	**$5,633,457**	**$11,563,565**	**$12,175,977**	**$12,799,667**	**$13,403,997**	**$14,048,365**	**$69,625,029**
Pretrial Grants	$25,000	$425,000	$425,000	$425,000	$425,000	$425,000	$2,150,000
Presentence Investigation Unit	—	$360,000	$360,000	$360,000	$360,000	$360,000	$1,800,000
Diversion Grants	$25,000	$200,000	$200,000	$200,000	$200,000	$200,000	$1,025,000
Behavioral Health Treatment	$600,000	$900,000	$1,680,000	$1,680,000	$1,680,000	$1,680,000	$8,220,000
Professional Parole Board	—	$350,624	$350,624	$350,624	$350,624	$350,624	$1,753,120
Housing Grants	$50,000	$325,000	$325,000	$325,000	$325,000	$325,000	$1,675,000
Victim Compensation	$251,500	$251,500	$251,500	$251,500	$251,500	$251,500	$1,509,000
Domestic Violence Supervision and Batterers' Intervention Programs	$125,000	$250,000	$250,000	$250,000	$250,000	$250,000	$1,375,000
Quality Improvement and Oversight	$318,325	$313,651	$313,651	$333,651	$313,651	$383,651	$1,976,580
Total Reinvestments	**$1,394,825**	**$3,375,775**	**$4,155,775**	**$4,175,775**	**$4,155,775**	**$4,225,775**	**$21,483,700**

Policy Options

POLICY OPTION 1:

Establish the use of pretrial risk assessment and supervision.

Provide tools to reduce pressure on jails

Increase public safety and reduce recidivism

Montana's jail population rose 67 percent between 2011 and 2013, and in 2013 Montana had the highest jail incarceration rate among its neighboring states, with 360 people in jail per every 100,000 residents.[22] Local criminal justice stakeholders, including sheriffs, judges, and county attorneys, identify the pretrial population as a significant component of jail populations. Between FY2009 and FY2015, arrests for FTA increased 189 percent, likely contributing to the growth in the jail population.[23]

Most counties in Montana do not conduct a pretrial risk assessment. As a result, many judges' decisions to detain or release people pretrial are not based on a defendant's pretrial risk assessment results.

This policy option provides state funding to create a match grant program that will incentivize counties to adopt a pretrial risk assessment tool for pretrial defendants and a dangerousness and/or lethality assessment for people charged with domestic violence offenses, and to provide monitoring and supervision of higher-risk pretrial defendants.

Conducting pretrial risk assessments enables counties to release low-risk defendants who do not need to be detained. Providing pretrial supervision allows counties to supervise high-risk defendants and connect them to treatment and programs. Requiring a dangerousness and/or lethality assessment for people charged with domestic violence offenses gives judges the information they need to mandate supervision of high-risk domestic violence defendants upon their release. By helping counties adopt a pretrial risk assessment tool and provide pretrial supervision, the state will improve public safety and aid counties in averting spending associated with growth in jail populations.

POLICY OPTION 2:

Revamp the presentence investigation report so that it is more structured and objective, encourages the use of evidence-based practices in sentencing, and is produced in a timely fashion.

Provide tools to reduce pressure on jails

Increase public safety and reduce recidivism

Between FY2011 and FY2014, case filings involving felonies in district court increased 29 percent, from 7,249 to 9,339 filings per year.[24] Due to this increase, between 2012 and 2015, the average time for a case in district court to reach disposition grew 18 percent, from 181 to 213 days.[25] The time it took for a case to reach disposition after a guilty plea increased 60 percent, from 77 days to 123 days, which means that people who plead guilty likely spend an average of four months in jail awaiting sentencing.[26] Judges and probation and parole officers report that the lengthy presentence investigation (PSI) process is a key reason for these delays. The PSI is conducted by probation and parole officers and may involve interviewing the defendant, reviewing the defendant's criminal history, interviewing victims, making program and treatment referrals, and writing a PSI report. Conducting a PSI, therefore, may take a considerable amount of time.

This policy option requires that PSI reports include risk assessment information to help judges identify people who will likely benefit most from supervision and treatment in lieu of incarceration. Further, probation and parole officers will be allowed to prepare PSI reports in felony cases prior to a guilty plea, and will be required to submit a PSI report within 30 working days of a guilty plea or verdict, except in cases that require a psychosexual evaluation. To enable

timely preparation of PSI reports in all judicial districts, this policy option requires the state to hire additional probation and parole officers.

By allowing probation and parole officers to begin the presentence investigation process prior to a guilty plea or finding, and by expanding capacity and requiring officers to complete PSI reports in a shorter time frame, significant population pressures on county jails and the courts will be alleviated by reducing the time it takes for a case to reach disposition programs.

POLICY OPTION 3:

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

Provide tools to reduce pressure on jails

Montana's jail population has increased dramatically in recent years. Local criminal justice stakeholders in Missoula, including the sheriff, county attorney, and state legislators, have identified mandatory minimum sentences for two nonviolent offenses that may be contributing to the state's growing jail population: first offense driving with a suspended license and third offense petty theft.[27]

This policy option eliminates the required minimum jail sentences of one day for first offense driving with a suspended license and 30 days for third offense petty theft, instead providing judges with the discretion to impose an appropriate sentence, which may still include jail time, taking into account the nature of the crime and any mitigating circumstances.

By eliminating mandatory minimum jail sentences for these nonviolent offenses, Montana has an opportunity to significantly ease population pressures on jails statewide, many of which are over capacity.

POLICY OPTION 4:

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

Provide tools to reduce pressure on jails

This policy option requires the use of citations in place of arrests for most traffic offenses. Issuing a citation enables an officer to release someone without the need for transport to the police station, formal booking, fingerprinting, and pretrial release decisions. The use of citations for these offenses will increase efficiency, reduce costs, and prioritize limited jail resources for people charged with or convicted for more serious offenses.[28] Driving under the influence, which is a more significant offense, will be excluded from this change.

POLICY OPTION 5:

Create new or expand existing diversion programs.

Provide tools to reduce pressure on jails

Avert prison population growth

Substance use presents a growing challenge for Montana's criminal justice system. Total arrests in Montana have increased significantly in recent years, growing 12 percent between FY2009 and FY2015, from 26,934 to 30,890 arrests.[29] This growth has been driven in large part by an increase in arrests for drug offenses, which went up 62 percent between FY2009 and FY2015, from 3,445 to 5,569 arrests.[30] Felony drug arrests increased 100 percent over the same period, from 911 to 1,834.[31] Law enforcement, probation, and parole officers report that drug use and insufficient treatment available in the community are leading causes of probation and parole violations and revocations throughout the state.

This policy option establishes a grant program to advance the development and expansion of diversion programs, including deferred prosecution programs.

Diversion programs allow local criminal justice stakeholders, such as county attorneys, to connect people who have substance use or mental health issues to treatment and programs and encourage early resolution of cases. Local stakeholders may use funds provided by this program to hire a coordinator and partner with a community treatment provider to support people with behavioral health issues.

By diverting people to high-quality treatment and programs, the state can also avoid spending associated with prosecuting, processing, incarcerating, and supervising people who would benefit most from participating in behavioral health treatment and programs in lieu of incarceration.

POLICY OPTION 6:

Expand eligibility criteria for drug courts.

Increase public safety and reduce recidivism

Drug courts are court-supervised programs that use treatment and accountability to address people's substance use problems as an alternative to incarceration. Montana currently prohibits people convicted of a sex or violent offense from participating in drug treatment court.

This policy option allows certain people who have been convicted of a less serious violent offense or sex offense, whose criminal conduct is directly related to a substance use disorder, to participate in a drug court with the approval of the prosecution, the defense, and the court.

POLICY OPTION 7:

Establish guidelines that account for individual risk and needs information in making placement decisions for people sentenced to DOC commit.

Avert prison population growth

Increase public safety and reduce recidivism

Judges in Montana have the option to sentence people convicted of felonies to "DOC commit," which gives DOC the discretion to determine whether people should be placed in prison, alternative facilities, or on probation supervision. In 2014, 30 percent of males and 17 percent of females convicted of felonies were sentenced to DOC commit.[32] DOC does not use the results of a validated risk and needs assessment tool when determining the most appropriate placement for people sentenced to DOC commit. As a result, they may not receive the placement that will be the most effective at reducing recidivism based on their risk and needs.

This policy requires DOC to adopt guidelines to structure its placement decisions for people sentenced to DOC commit. The guidelines will direct DOC on how to weigh an individual's risk level and needs, as determined by a validated risk assessment tool, and will ensure that the department's decisions are aligned with evidence-based practices.

A structured decision-making process that incorporates risk assessment information will assist DOC in making more consistent placement decisions and prioritizing resources for people who have the greatest risk of recidivism. To learn more about the research behind risk and needs assessments and why focusing supervision and treatment resources on high-risk people is critical, see the CSG publication "In Brief: Understanding Risk and Needs Assessment."

POLICY OPTION 8:

Adopt evidence-based standards and require state-issued licenses for treatment facilities serving people in the criminal justice system.

Increase public safety and reduce recidivism

There are seven privately contracted residential alcohol and drug treatment facilities for the criminal justice population in Montana. In FY2015, the total average daily population in these facilities was 829.[33] Montana does not require that the programs administered in these facilities meet best practice standards in program structure, curriculum, duration, or intensity, which results in a wide variance in both quality and dosage among these facilities.

This policy option requires treatment facilities to deliver evidence-based treatment and programs and become licensed health care facilities under the Department of Public Health and Human Services. To improve the effectiveness and quality of treatment at these facilities and thereby improve their ability to help reduce recidivism, the state will adopt specialized standards that require treatment facilities to employ evidence-based practices for criminal justice populations.

Behavioral health treatment programs for criminal justice populations are most effective when they follow evidence-based practices, such as assessing for risk and needs, utilizing skills training, and addressing a person's motivation to change. Requiring treatment facilities to be licensed by the state and establishing program standards could help ensure that these facilities are implementing and utilizing practices that would be more effective in reducing recidivism.

POLICY OPTION 9:

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

Increase public safety and reduce recidivism

In Montana, people on community supervision are primarily responsible for paying out-of-pocket to participate in behavioral health treatment and programs, which they often cannot afford to do. Stakeholders report that people—especially those who live in rural areas—have difficulty accessing behavioral health treatment and programs due to the lack of capacity and providers.

This policy option appropriates state funds and leverages additional federal Medicaid dollars to increase the availability of and reduce barriers to accessing community-based behavioral health treatment and programs to people on supervision with a high need for treatment and a high likelihood of reoffending. Incentive payments to providers based on quality of care will be used to leverage federal Medicaid funding and compensate behavioral health care providers for the high cost of caring for people on community supervision.

To improve rural access to treatment, this policy option calls for funding rural health care workforce development by building on Montana State University's rural initiatives to incentivize behavioral health practitioners—including certified peer support specialists, community engagement specialists, licensed substance use counselors, psychiatric nurses, and psychiatrists—who are willing to work with criminal justice populations in rural areas.

Untreated mental illnesses and substance use disorders contribute significantly to people's ongoing involvement in the criminal justice system. Research suggests that supervision combined with treatment is more effective at reducing recidivism for people with mental illnesses and substance use disorders than supervision alone.[34] By increasing access to community-based treatment services and programs, the state can help reduce recidivism by maintaining continuity of care as people transition from treatment while incarcerated to community-based treatment.

POLICY OPTION 10:

Focus probation resources on people who are most likely to reoffend.

Increase public safety and reduce recidivism

Probation sentences in Montana are lengthy.[35] Among the people whose probation terms ended successfully in FY2015, more than 60 percent had served more than three years on supervision, and 30 percent had served more than five years.[36]

This policy option prioritizes probation resources for people who are most likely to reoffend by requiring probation and parole officers to notify the court to request that a person on supervision who has complied with the conditions of his or her supervision be conditionally discharged.[37] This notification will occur according to a schedule based on the assessed risk and needs of each individual: after a person assessed as being at a low risk of reoffending has served 9 months, a moderate-risk person has served 18 months, and a high-risk person has served 24 months. The notification will be provided to the victim, if any, the county attorney, the probationer, and defense counsel. Unless there is an objection and a request for a hearing from the county attorney on behalf of the victim, or the court requires a hearing, the person will be conditionally discharged 30 days after the notification.

By allowing for discharge from probation within a relatively short period of time for people assessed as being at a low and medium risk of reoffending who are compliant with the conditions of their supervision, this policy option enables probation and parole officers to focus resources on people during the first two years of supervision—the time when recidivism is most likely. Judges determining the length of supervision terms based on risk level enables probation and parole officers to prioritize their time for people at the highest risk of reoffending.

POLICY OPTION 11:

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

Increase public safety and reduce recidivism

Native Americans are disproportionately represented in Montana's criminal justice system. In FY2014 and FY2015, Native Americans accounted for 7 percent of the state's general population. In FY2014, Native Americans made up 17 percent of the total adult correctional facility population in Montana, and in FY2015, they accounted for 27 percent of all arrests for FTA and supervision violations.[38] Native Americans face particular challenges within the criminal justice system, including difficulty accessing state programs and meeting with supervision officers as a result of the prohibitive physical distance between the officers and reservations.

This policy option creates an interim legislative committee, or asks an existing legislative interim committee, to explore the following issues:

- Transferring Native Americans on supervision who are tribal members from state or county custody to tribal custody;
- Allowing tribal members to fulfill conditions of court-ordered programming by participating in programs offered by tribal organizations; and
- Creating a grant to enable the Office of the State Public Defender to enlist tribal defense attorneys in place of appointed public defenders for tribal members.

By tasking a committee to study these issues, the state acknowledges the importance of addressing challenges that are specific to Native Americans in the state criminal justice system, and gives time and resources to a legislative committee to identify and forward policy recommendations for the legislature's consideration.

POLICY OPTION 12:

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

Avert prison population growth

In Montana, the time between initial parole eligibility and parole release has more than tripled between 2000 and 2013, from 8 months to 26 months.[39] Montana's seven-member, part-time volunteer citizen Board of Pardons and Parole operates without structured guidelines and does not use risk and needs assessment results to inform release or revocation decisions. The board travels across the state in two- to three-member panels to hold release and revocation hearings. This approach results in inconsistencies in decision making and a slow process.

This policy option requires the parole board to create structured parole guidelines that are based on research and evidence-based practices. These guidelines will mandate that when making a release decision, the parole board consider a person's risk level (as determined by the Montana Offender Reentry Risk Assessment tool, MORRA, which is utilized by DOC), successful participation in risk-reduction programs, institutional behavior, and the seriousness of the offense. The maximum deferral period from the point of parole denial or review will also be shortened from six years to one year for people who have committed all types of drug and property offenses and other nonviolent offenses. In addition, this policy option requires the parole board to be a professional board with three full-time, paid board members.

Establishing a full-time, paid parole board will increase opportunities for training and skill development that will enable the board to make more informed, 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.

POLICY OPTION 13:

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

Avert prison population growth

Provide tools to reduce pressure on jails

Increase public safety and reduce recidivism

Parolees and probationers who are revoked to prison for violating conditions of their supervision spend an average of 15 months and 23 months in prison, respectively, prior to being released.[40]

This policy option allows DOC hearings officers to impose up to 30-day sanctions, or up to 90-day sanctions with department approval, for probation and parole compliance violations without resorting to a petition to the court or the parole board. This option limits imprisonment for compliance violations to ninth months once the appropriate violation responses under DOC's incentives and interventions grid have been exhausted. This option also allows these people to be sanctioned in jails and alternative facilities, funded by the state, in lieu of prison.

Limiting the term of incarceration for people who violate conditions of their supervision but were not charged with new crimes can ensure more appropriate and effective consequences for these people. Responses that are proportional to the seriousness of the violations can improve the supervisee's perception that responses are fair and objective, which can in turn deter future unwanted behaviors.[41]

POLICY OPTION 14:

Increase housing options for people returning to the community after incarceration.

Increase public safety and reduce recidivism

In focus groups, people in the criminal justice system and community advocates noted that obtaining and maintaining housing is a significant barrier for people returning to the community after incarceration.

This policy option establishes two grant programs to advance local efforts to remove barriers to housing for people returning to the community after incarceration. This option creates a supportive housing grant program (based on the Frequent User Systems Engagement, or FUSE, program) for cities, counties, and tribes to provide case management and housing placement for people who are difficult to house. "Hard to house" people are those who have barriers to housing or risk losing housing for reasons beyond affordability, including having a disability, a large family, or a criminal history.

This policy option also establishes a landlord grant program to help cities, counties, and tribes hire a housing specialist to support landlord engagement activities, and creates risk mitigation funds to reimburse landlords for tenant-related property damages or expenses incurred as a result of renting to a "hard-to-house" person, including someone with a criminal record.

These types of housing programs have seen great success in cities across the country such as Denver, CO; Orlando, FL; Seattle, WA; and Portland, OR.[42]

POLICY OPTION 15:

Expand eligibility criteria for crime victim compensation benefits.

Increase public safety and reduce recidivism

The crime victim compensation program in Montana provides financial assistance to victims for expenses such as medical and dental treatment, wage loss, prescription coverage, mental health treatment, grief counseling, and funeral expenses. Unlike victim compensation programs in 35 other states in the country, however, this program does not compensate victims for crime scene cleanup.[43] In Montana, victims and secondary victims are eligible to receive all available compensation; however, the definition of a secondary victim in the state is currently limited to the spouse, parent, child, or sibling of a victim who is killed as a result of a crime.

This policy option raises the minimum victims' compensation allowed for funerals and burials from $3,500 to $7,000, and creates a compensation benefit for crime scene cleanup. In addition, the compensation limit for mental health benefits for secondary victims will be increased. This policy option also expands the statutory definition of secondary victim to include anyone related by blood or affinity to the primary victim, people cohabitating with the primary victim, people in current or past dating or marital relationships with the primary victim, and witnesses.

Montana's crime victim compensation program can meet the needs of a greater number of victims by expanding certain benefits and providing them to a broader group of secondary victims.

POLICY OPTION 16:

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

Increase public safety and reduce recidivism

Batterer's intervention programs (BIPs) are court-mandated programs for people convicted of domestic violence offenses. These programs are not funded by the state, however, which means participants are required to pay out-of-pocket to attend. BIPs are not available in certain regions and the quality of these programs is not consistent across the state. The courts may order anger management courses as a stopgap to replace BIPs, but anger management is not a viable substitute and does not address the underlying issues contributing to a person's history of domestic violence.[44] Further, supervision of people who have committed misdemeanor domestic violence offenses is currently available in only three counties in Montana.

This policy option provides state funding for BIPs and creates state standards to ensure quality and consistency of programming. This policy option also increases the state resources available to counties to provide supervision to people who have committed misdemeanor domestic violence offenses.

Increasing the number and quality of BIPs ensures that people convicted of domestic violence offenses receive the programming that addresses their needs. Supervision of people convicted of domestic violence offenses has been shown to be successful in reducing recidivism in other states such as Rhode Island and Ohio.[45] In Ohio, one study found that sentences to probation significantly reduced rearrest for domestic violence as compared with less restrictive sentences such as fines or suspended sentences without probation.[46]

POLICY OPTION 17:

Provide oversight to improve the quality of programs and practices.

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

In 2015, Senate Bill 224 created the Commission on Sentencing to conduct a comprehensive examination of Montana's criminal justice system. The legislature tasked the commission with investigating factors contributing to recidivism and identifying strategies to reduce the prison population. After June 2017, the commission will be disbanded, and without an entity to oversee the implementation of justice reinvestment legislation, the state may encounter challenges in successfully implementing legislation.

This policy option establishes an interbranch, interagency committee to oversee the successful implementation of justice reinvestment policies in the years following enactment of the legislation. The committee will be required to review annual impact reports from the DOC and to ensure the sustained reinvestment of savings generated from the implementation of the justice reinvestment legislation.

An interagency oversight body will ensure that the enacted legislation achieves the anticipated impact by monitoring implementation efforts and requiring the development of outcome measures and regular reporting from all agencies and stakeholders involved.

B. Require DOC to report annual data on the impact of the justice reinvestment legislation.

In order to ensure that justice reinvestment legislation is meeting the goals set forth by the commission, Montana must establish a means of monitoring and reporting outcomes.

This policy option requires DOC to 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, and other key public safety metrics. DOC will also be required to communicate additional fiscal needs to the legislature based on these reports.

By requiring DOC to report annually on the impact of legislation, the interagency oversight committee will receive substantive and measurable data to track and guide the implementation of legislation.

C. Require DOC to regularly validate its risk assessment tool.

DOC uses MORRA and the Women's Risk Needs Assessment (WRNA) to estimate a person's likelihood of reoffending. Neither of these tools has been validated to ensure their predictive accuracy with Montana's criminal justice population.

This policy requires DOC to validate the MORRA and WRNA, ensuring that the tools are accurately applied to the state's population over time and that the tools are predictive across racial, ethnic, and gender groups, and in particular, for tribal communities. Furthermore, DOC will be required to integrate assessment results into supervision contact standards and case planning; focus supervision resources on people who are at the highest risk of reoffending; and determine required programming and services based on someone's risk of reoffending.

The validation of a risk and needs assessment tool ensures the accuracy of the instrument's categorization of people according to risk level and ensures accuracy across racial groups and by gender. Validated tools enable DOC to use risk assessment results to make informed placement and case planning decisions.

D. Require DOC staff to receive ongoing training in risk assessment and evidence-based practices.

DOC does not currently require ongoing training on evidence-based practices and the use of risk assessment tools.

This policy mandates and funds regular training for all probation and parole officers on risk assessment and evidence-based practices. Training on evidence-based practices will be integrated into the training curriculum for new officers, and training requirements will be included within performance reviews to promote and incentivize the use of evidence-based practices.

Ongoing training ensures that probation and parole officers possess the knowledge and skills necessary to score the MORRA and WRNA accurately and use the assessment results to consistently and effectively inform decisions about case planning.

E. Establish program standards and authorize the quality-assurance unit within DOC to evaluate state-funded programs and enforce program standards.

Program fidelity is defined as how closely a program aligns with best practice standards. Higher program fidelity yields increased recidivism reduction. Currently, Montana has no structured criteria for program integrity, so programs vary widely in quality across the state and between agencies.

This policy option authorizes DOC's existing quality-assurance unit to adopt a validated program evaluation tool, evaluate state-funded programs, and enforce standards to ensure that programs are using best practices for reducing recidivism, including targeting high-risk people, adhering to evidence-based or research-driven practices, and integrating opportunities for ongoing quality assurance and evaluation.

This policy option calls for the addition of staff to the quality-assurance unit to oversee regular evaluations of programs and ensure quality assurance of state-funded programs in treatment facilities, prerelease centers, and prison. These staff will be required to work jointly with the Department of Public Health and Human Services to develop standards for the quality assurance of clinical activities. This policy also mandates regular evaluations of programs across the state and amends 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.

Implementing and enforcing program standards will enable DOC to ensure program integrity and quality assurance. Regular evaluations of programs will allow the state to determine how well programs meet the known principles of effective intervention and how closely they align with evidence-based practices in order to achieve the best recidivism-reduction results in participants.

F. Require that DOC's probation and parole interventions and incentives grid guide officers to follow evidence-based practices.

Current Montana statute does not require DOC's parole and probation interventions grid to guide officers to follow evidence-based practices.

This policy option requires that the interventions and incentives grid guide probation and parole officers to follow evidence-based practices and direct them to utilize graduated interventions in order to increase compliance and reduce revocations among people on probation and parole supervision. DOC will also be required 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.

Requiring DOC's grid to follow evidence-based practices and be reviewed every five years ensures sustainability in parole and probation officers' ability to provide effective sanctions and incentives to promote compliance on supervision.

Additional Policy Options

On October 19, 2016, the Commission on Sentencing voted to forward every policy option in this framework, with the exception of policy option 7, as commission bills to the legislature. The commission voted to table, or take no action, on a policy option that was proposed to require prerelease centers to deliver more intensive evidence-based programming and treatment within a shorter period of time. In addition, the Commission on Sentencing established a subcommittee to conduct a review of the state's sentencing laws and practices and voted to forward the following additional policies as bills to the legislature:

- Eliminate the persistent felony offender sentencing enhancement.
- Revise penalties for certain drug offenses including:
  - Eliminate mandatory minimums for drug offenses.
  - Eliminate the life sentence option for drug offenses.[47]
  - Provide a lesser penalty for sharing drugs as compared to selling drugs.
  - Reclassify a felony second and subsequent offense for criminal possession of marijuana as a misdemeanor.
  - Allow treatment court as a sentencing option for felony driving under the influence offenses.
- Create a tiered sentencing structure for a number of property offenses, such as theft, forgery, identity theft, and issuing a bad check.
- Repeal statutory requirements for the completion of drug information courses or drug education courses for people convicted of a driving under the influence offense, giving judges discretion to order completion of such courses based on a chemical dependency assessment.
- Revise statute so that a high blood alcohol content alone is not sufficient to support a criminal endangerment charge.
- Remove judicial discretion to exempt people convicted of sex crimes involving victims age 12 and under from receiving the 25-year mandatory minimum if the exception is based solely on a psychosexual evaluation.

ENDNOTES

1. DOC, "Adult Population Summary Actual—FY2008 to 2014; Projected FY2015 to 2025" (Helena, MT: DOC, 2015); email communication with DOC on September 16, 2016; CSG Justice Center analysis based on projections from DOC.
2. Bureau of Justice Statistics, "Census of Jails: Populations Changes, 1999–2013" (Washington, DC: USDOJ, 2015). This BJS publication provides state jail population data for the following years: 1999, 2006, 2011, and 2013; All years in this report are calendar years unless otherwise indicated.
3. CSG Justice Center analysis of Montana Department of Justice arrests data, FY2009–FY2015.
4. *Ibid.*
5. *Ibid.*
6. CSG Justice Center analysis of Montana Supreme Court District Court case filings and dispositions data, 2005–2014. Cases include new offenses and "re-openings." The Montana Supreme Court publishes court data for each calendar year. The data provided are the latest data that were available to the CSG Justice Center at the time of this report's publication.
7. CSG Justice Center analysis of Montana Supreme Court District Court case filings and dispositions data, 2005–2014.
8. *Ibid.*
9. Bureau of Justice Statistics, "Census of Jails: Populations Changes, 1999–2013" (Washington, DC: USDOJ, 2015). This BJS publication provides state jail population data for the following years: 1999, 2006, 2011, and 2013.
10. Bureau of Justice Statistics, "Census of Jails: Populations Changes, 1999–2013" (Washington, DC: USDOJ, 2015). States in the region include Colorado, Idaho, Minnesota, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.
11. DOC, "Adult Population Summary Actual—FY2008 to 2014; Projected FY2015 to 2025" (Helena, MT: DOC, 2015); email communication with DOC on September 16, 2016.
12. DOC, "Montana Department of Corrections 2011 Biennial Report" (Helena, MT: DOC, 2011); DOC, "Montana Department of Corrections 2015 Biennial Report" (Helena, MT: DOC, 2015).
13. DOC, "Adult Population Summary Actual—FY2008 to 2014; Projected FY2015 to 2025" (Helena, MT: DOC, 2015); email communication with DOC on September 16, 2016;
14. DOC, "Montana Department of Corrections 2009 Biennial Report" (Helena, MT: DOC, 2009); email communication with DOC on September 16, 2016.
15. CSG Justice Center analysis of Montana Department of Corrections Admissions Data, FY2015.
16. *Ibid.*
17. DOC, "Adult Population Summary Actual—FY2008 to 2014; Projected FY2015 to 2025" (Helena, MT: DOC, 2015); email communication with DOC on September 16, 2016; Conditional release is a form of supervision, like probation supervision, for people who have been sentenced a DOC commit. People on conditional release are under the jurisdiction of DOC rather than the court or the parole board.
18. CSG Justice Center analysis of CSG Justice Center analysis of DOC releases data, FY2015.
19. DOC, "Montana Department of Corrections 2015 Biennial Report" (Helena, MT: DOC, 2015).
20. CSG Justice Center analysis of Montana Department of Justice arrests data, FY2009–FY2015.
21. Montana Board of Pardons and Parole, "Biennial Report January 2015."
22. Bureau of Justice Statistics, "Census of Jails: Populations Changes, 1999–2013" (Washington, DC: USDOJ, 2015). The 2013 jail incarceration rates of neighboring states were as follows: Colorado (290), Idaho (280), Minnesota (150), Nebraska (240), North Dakota (220), South Dakota (260), Utah (350), and Wyoming (320).
23. CSG Justice Center analysis of Montana Department of Justice arrests data, FY2009–FY2015.
24. CSG Justice Center analysis of Montana District Court case filings and dispositions data, 2005-2014.
25. *Ibid.*
26. *Ibid.*
27. Cynthia Wolken, Missoula County Jail Diversion Master Plan (Missoula, MT: Montana State Legislature, 2016).
28. International Association of Chiefs of Police "Citation in Lieu of Arrest," (Alexandria, VA: April 2016), http://www.theiacp.org/Portals/0/documents/pdfs/IACP Citation Final Report 2016.pdf.
29. CSG Justice Center analysis of Montana Department of Justice arrests data, FY2009-2015.
30. *Ibid.*
31. *Ibid.*
32. DOC, "Montana Department of Corrections 2015 Biennial Report" (Helena, MT: DOC, 2015).
33. DOC, "Adult Population Summary Actual—FY2008 to 2014; Projected FY2015 to 2025" (Helena, MT: DOC, 2015); DOC, "Adult Population Summary Actual—FY2015 to 2015; Projected FY2016 to 2025" (Helena, MT: DOC, 2015).

34. National Institute on Drug Abuse, Principles of Drug Addiction Treatment (2009).

35. CSG Justice Center analysis of Montana Department of Corrections admissions & offense history data, FY2012; A person's likelihood of recidivating diminishes significantly over time. In Montana, among a cohort of people who started their probation terms in FY2012 and were resentenced within three years, 47 percent were resentenced in the first year, and 80 percent were resentenced within two years.

36. CSG Justice Center analysis of DOC releases data, FY2015.

37. People who are conditionally discharged are no longer on supervision, but can be placed back onto supervision for the duration of the original probation sentence.

38. DOC, "Montana Department of Corrections 2015 Biennial Report" (Helena, MT: DOC, 2015); CSG Justice Center analysis of Montana Department of Justice arrest data, FY2009–2015.

39. DOC, Montana Board of Pardons and Parole, "Biennial Report January 2015" (Deer Lodge, MT: DOC, 2015).

40. CSG Justice Center analysis of DOC releases data, FY2015.

41. Faye Taxman, David Soule, and Adam Gelb, "Graduated Sanctions: Stepping into Accountable Systems and Offenders," Prison Journal, 1999, 79(2): 182–205.

42. FUSE Resource Center, "The Source for Housing Solutions," accessed October 20, 2016; http://www.csh.org/fuse.

43. CSG Justice Center analysis of a 2016 collaborative compensation project with Victims of Crime Training and Technical Assistance Center and the Office for Victims of Crime.

44. Andrew Klein, Practical Implications of Current Domestic Violence Research for Probation Officers and Administrators (Minneapolis, MN: Advocates for Human Potential, March, 2015).

45. Andrew Klein, Douglas Wilson, Anne Crowe, and Matthew DeMichele, An Evaluation of Rhode Island's Specialized Supervision of Domestic Violence Probationers (Cambridge, MA: BOTEC Analysis Corporation and American Probation and Parole Association, 2005).

46. Lois Ventura and Gabrielle Davis, "Domestic Violence: Court Case Conviction and Recidivism," Violence Against Women 11(2) (February 2005): 255-277, NCJ 208869.

47. Under proposed legislation, the only way a person could receive a life sentence for a drug offense is for the sale by an adult to a minor in a second or subsequent offense.

This project was supported by Grant No. 2013-ZB-BX-K002 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice. To learn more about the Bureau of Justice Assistance, please visit bja.gov.

Research and analysis described in this report has been funded in part by The Pew Charitable Trusts public safety performance project. Launched in 2006 as a project of the Pew Center on the States, the public safety performance project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable, and control corrections costs. To learn more about the project, please visit pewtrusts.org/publicsafety.

The Council of State Governments (CSG) Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. The CSG Justice Center provides practical, nonpartisan advice and evidence-based, consensus-driven strategies to increase public safety and strengthen communities. Points of view, recommendations, or findings stated in this document are those of the authors and do not necessarily reflect the official position or policies of The Pew Charitable Trusts, The Council of State Governments Justice Center, or The Council of State Governments' members.

For additional information about Justice Reinvestment in Montana, please visit csgjusticecenter.org/jr/mt.

Project Contacts:

Karen Chung
Senior Policy Analyst
kchung@csg.org