

## Montana LWV Criminal Justice Study

### Summary of Montana Justice Reinvestment Program and Implementation 2017-2019

*The 2015 Montana Legislative Session included bipartisan agreement that the Criminal Justice System needed attention before the problem of overcrowding grew more serious. The Justice Reinvestment Program hoped to re-allocate existing funding to better address the Sentencing Process in order to reduce Jail and Prison occupancy. The following is a summary of over 100 pages of documents relevant to recent Criminal Justice system updates.*

**The Justice Reinvestment Program In Montana** refers to the proposal, enactment, and implementation of legislation developed in 2015-2016 and enacted in 2017 and 2019, with the goal of reserving prison space for people who pose the greatest risk to public safety. Reportedly, 15% of the prison population are hard core. 85% can be helped with treatment programs.

**Montana Commission on Sentencing (MCS)** was established by the 2015 Montana Legislature, had 15 members including elected officials and criminal justice system stakeholders. (One of the 15 is now a Bozeman League member.) The Commission did its investigation and is now disbanded. They received assistance from The Council of State Governments (CSG) Justice Center, The Pew Charitable Trust and the U.S. Department of Justice's Bureau of Justice Assistance.

Their investigation included interviews with over 200 criminal justice stakeholders across the state, and examined data collected from all relevant Montana Agencies. They suggested the following ideas for reducing jail (County responsibility) and prison populations (State responsibility).

#### **MCS 2016 Report Summary:**

- Prison space and supervision resources need to focus on people who are most likely to reoffend
- For those less likely to reoffend, diversion treatment is prioritized.
- Drug offenses continue to increase, especially among people on probation and parole.

### **Existing Conditions, Statistics, and Suggestions for Improvement**

#### **Drug Issues**

- Over a 6-year period, 2009-2015, Montana felony drug arrests increased 100 percent. Roughly 1,000 people per year are arrested in Montana on drug charges; about 2/3 of those arrests are misdemeanors and 1/3 are felony arrests.
- Because of the large number of drug and alcohol arrests, county jails have a much worse over-crowding problem than do State prisons. Many of the drug and alcohol cases are sent to Drug Court treatment programs rather than to prison.

- Drug courts are city, municipal, justice courts. They use mandatory and frequent drug testing, 12-step meetings, sanctions, and incentives. Court monitoring/oversight distinguishes them from some other programs as it holds the threat of incarceration over participants if they fail to comply with program requirements.

### **Violations and Sentencing Time frames**

- In FY2015, seventy-four percent of prison admissions were for parole or probation violations
- The average time between a **guilty** plea and a disposition in Montana is four months in jail. That time might be reduced by conducting investigations and assessments earlier in the process.
- **Not guilty** pleas result in shorter stays making the average jail stay 21 days as compared to the regional average of 18 days.
- Legislative proposals included eliminating mandatory minimums for drug offenses; reducing the penalty for sharing drugs as compared to selling drugs; reducing penalties for marijuana use: and increase the penalty for sex crimes involving children.
- (Sexual Assault in Montana is ONLY a MISDEMEANOR with a 6 month maximum sentence.

Under current law, an offender can sexually assault someone 3 times and serve no more than 5 1/2 years in jail total. Depending on the circumstances, or plea deal, they may also not have to register as a sexual offender.) – from another source

### **Prison Costs and Statistics**

- Contracted prison bed cost per day is \$78.79.
- While the Montana prison population is currently projected to reach 2,981 people by 2023, the new 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.
- The high rate of Native American arrests are often related to Failure to Appear (FTA) and Supervision violations. Montana's high jail incarceration rate compared to neighboring states, is largely attributed to FTA numbers. Difficulty accessing state programs and meeting with supervision officers is often a result of the prohibitive physical distance between the resources and reservations.
- It was suggested that minimum victims' compensation be increased for funerals and burials from \$3,500 to \$7,000; add compensation benefit for crime scene cleanup. Increase mental health benefits for secondary victims; expand 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.
- Compared to other States Montana underfunds intervention for domestic violence.

### **Parole and Probation**

- By 2023, an estimated 10,600 people in Montana will be on probation, parole, and conditional release –that is roughly 1,000-2,000 people in each major Montana community. These provisional statuses typically last for 3-5 years but can last much longer. Management of these folks will require increased staffing and improved treatment and evaluation processes.
- Montana currently has seven privately contracted residential alcohol and drug treatment facilities for the criminal justice population. Prior to the legislation no requirements existed for evidence-based treatment or licensing. No evidence has been provided to demonstrate the effectiveness of these programs. Both licensing and evidence-based practices will be implemented.
- Prior to the legislation, Montana had a seven-member, part-time volunteer citizen Board of Pardons and Parole, which operated without structured guidelines and did not use risk and needs assessment results to inform release or revocation decisions. The board traveled across the state in two- to three-member panels to hold release and revocation hearings. This resulted in inconsistencies in decision making and a slow process. As of 2013 it took about two years from initial parole eligibility to release on parole. As of 2019 a new 5-member board of Parole professionals is now in place.
- It has been suggested that housing specialists be hired, and risk mitigation funds be allocated, to support landlord willingness to rent to a “hard-to-house” person, including someone with a criminal record. The supportive housing grant program wasn’t funded by the 2019 Legislature, but the housing vouchers offered through DOC were.

#### **Steps Taken to Carry Out Recommendations:**

- The state made an upfront investment of \$3 million to hire additional probation and parole officers in FY2017 and FY2018; establish grant programs for local governments to create pretrial services programs, diversion programs, and supportive housing programs; adopt quality assurance measures; and professionalize the parole board.
- The Board of Pardons and Parole, the Board of Crime Control, and the judiciary engaged in administrative rulemaking to establish procedures for implementing the new legislation.
- The State Legislature Law and Justice Interim Committee (LJIC) and The Legislative Finance Committee (LFC) have followed the implementation and results of the new legislation.

#### **Support for offenders when leaving the prison system so that they can succeed at meeting supervision, parole and probation requirements and move on with their lives**

- Some housing vouchers are available from DOC
- Parole and Probation processes have been or are being streamlined and improved.
- Medicaid expansion may or may not cover extension of mental health and other services to offenders.

- Those who complete Drug Court programs must have a job or be enrolled in school.

**Structural changes to Montana's criminal justice system that affect public defenders, parole and probation officers, or the Board of Crime Control.**

- The new legislation tries to streamline criteria for parole decisions and has raised the qualifications of those serving on the Parole Board.
- An Interim Legislative Committee studied the possibility that Tribal members on supervision be transferred 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. Outcome uncertain.

**Two groups proposed Criminal Justice Bills in the 2017 Legislature.**

The **Office of the State Public Defender (OPD)** proposed 8 bills concerning the organization, funding, and staffing of County public defender services. Five of their proposed bills were enacted.

The **Montana Commission on Sentencing (MSC)**, proposed 11 bills and one study resolution. Of those twelve, nine were enacted, including the study resolution.

The Department of Corrections (DOC) and an interbranch, interagency committee will track progress on the relevant bills that passed during the 2017 legislative session.

**2017 Enacted Bills that related to Mental health and drug/alcohol substance abuse:**

SB 62 requires certification process for behavioral health peer support specialists

HB 133 provides for drug education courses.

**2017 Enacted Bills related to programs to either keep people out of jail or help them stay out of jail:**

SB 63 requires use of an incentives and interventions grid for making parole and probation decisions.

SB 64 Revises the size and structure of the State Parole Board to a five-member, full-time board with structured parole guidelines.

SB 65 Facilitates housing for released inmates including offer rental vouchers. Requires DOC to keep data on offenders discharged into a homeless shelter or homeless situation. Funding was not appropriated.

**2017 Other Enacted Bills relevant to Justice Reinvestment**

SJ3 Requested that an interim committee explore increasing access to tribal resources for tribal members who are in the state's criminal justice system.

SB 59 Sets up oversight of implementation of the changes.

SB 60 requires training for Corrections employees

HB 133 Revises sentencing laws, provides for drug education courses, the persistent felony offender designation, theft and related offenses, certain mandatory minimums, criminal history record information, and other sentencing laws.

**The Montana Supreme Court commissioned a study of the success of Drug Courts in Montana that was released in 2019.**

<https://courts.mt.gov/portals/189/drugcourt/report/2019drugcourt-report.pdf>

– a 2019 report by the Montana Supreme Court on the successes of Drug Courts

Summary of highlights from this report:

Approximately 400 people per year are processed through Montana drug courts. Self-help meetings continue to be a long-term strategy for remaining clean and sober. Mental health treatment, trauma and family therapy, job skills training, and other life-skill enhancement services are available.

Some stay in the program more than a year. A large number are Veterans who may have access to additional resources. Those who enter Drug Court, on average, have a history of 1.7 felony arrests and nearly 6.3 misdemeanors arrests per person.

During the most recent 4 years the graduation rate from Drug Court programs was 57.6%. The rate is higher for adults than for juveniles. – similar to national rates of success in similar programs. Graduates are required to be employed or in an educational program.

28.5% of those processed through drug court were later convicted of felonies and/or misdemeanors within the three-year period following their admission – mostly misdemeanors. Only 11.5% of program graduates were subsequently convicted of felonies and/or misdemeanors – mostly misdemeanors

Among the 73 juveniles discharged from drug court in the past 48 months, only 1 participant had a high school diploma or GED at the time of admission; that number increased to 11 by the time of discharge from drug court.

The 2018 drug of choice for adult drug court participants continued to be alcohol (46.3%) followed by methamphetamine (28.9%) and marijuana (14.7%). Choice of meth increased by 31% from the 2017 rate. The rate of use of OxyContin is also significant and increasing. For juveniles, marijuana (72.3%) is the drug of choice.

For the period May 2008 through October 2018, 224 participants or their spouses or significant others were pregnant while in drug court. Among those babies born during this period, 13 (8.5%) were born drug affected, typically requiring substantial and costly health care.

During a 2-year period 128 children were impacted in cases landing in drug court. 31.4% of cases involved a new substantiated child abuse and neglect report within 3 years after admission.

### **2019 Enacted Bills related to Mental health and drug/alcohol substance abuse:**

HB 654 Revises laws for funding of treatment courts. Requires sellers of opioids to be licensed. Creates a treatment court support special revenue account for license fee proceeds. Allows the Court Administrator to administer the account to expand and extend treatment court capacity and quality.

SB 85 Revises process to refer veterans to treatment court.

HB 362 Revises the requirements of the 24/7 sobriety and drug monitoring program to remove the requirement for a pilot program and to allow discretion on the frequency and type of testing methods. Mental Illness or Incapacity

HB 660 Creates mobile crisis unit grant program administered by the Department of Public Health and Human Services.

SB 30 Allows peer support services to be reimbursed under Medicaid.

HB 684 Implements provisions of HB 2, Section D, subcommittee on justice system. Creates special revenue accounts for pretrial diversion program and legislative committees and activities. Creates a public safety officer standards and training bureau in the Department of Justice. Removes the administrative attachment of the Public Safety Officer Standards and Training Council to the Department of Justice.

### **2019 Enacted Bills related to programs to either keep people out of jail or help them stay out of jail**

HB 369 Creates a Criminal Justice Oversight Council. Eliminates the Multiagency Reentry Task Force.

HB 463 Revises laws on supervision of certain probationers or defendants serving a deferred or suspended sentence. Revises laws related to termination of a deferred or suspended sentence. Revises procedures related to conditional discharge of supervision.

HB 763 Provides a state policy on restrictive housing. Creates requirements for restrictive housing units. Creates specific requirements for youth facilities. Requires step-down programs. Requires notification when an offender is released to the community directly from restrictive housing.

SB 36 Provides exceptions to mandatory inmate savings.

HB 217 Removes suspension of a driver's license as a sentencing option for nonpayment of fines, fees, or restitution. Allows a person whose license has been suspended to be reinstated

### **2019 Other Bills**

HB 117 Revises laws related to eligibility for public defender services. Allows the public defender to file a motion to rescind appointment for failure to provide financial documentation.

SB 3 Revises laws related to interim oversight of the office of public defender to clarify that the Law and Justice Interim Committee has oversight authority.