Montana Commission on Sentencing: Applying Justice Reinvestment

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The Council of State Governments Justice Center

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Presentation Overview

Justice Reinvestment

- Justice Reinvestment Process
- State Experiences with Justice Reinvestment

Criminal Justice Trends in Montana

- Key Challenges in Montana
- Questions for Commission on Sentencing
The Council of State Governments Justice Center

- National nonprofit, nonpartisan membership association of state government officials
- Engages members of all three branches of state government
- Justice Center provides practical, nonpartisan advice informed by the best available evidence
Justice Reinvestment

*a data-driven approach to reduce corrections spending and reinvest savings in strategies that can decrease recidivism and increase public safety.*
SB 224 created Montana Commission on Sentencing with a mandate for empirical study and evidence-based practices.

Created an interbranch commission of criminal justice system stakeholders to (among other things):

- “identify strategies to **safely reduce incarceration** in state prisons and to promote **evidence-based diversion** programs and other effective alternatives to incarceration”
- “**balance sentencing practices and policies with budget constraints**”
- report recommendations, including data analysis, to 65th legislature (December 2016)
State leaders requested assistance to conduct a comprehensive analysis of Montana’s criminal justice system.
## Key characteristics about the justice reinvestment process

<table>
<thead>
<tr>
<th>Intensity of the approach</th>
<th>Comprehensive data analyses</th>
<th>Extensive stakeholder engagement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broad scope of policy options</td>
<td>Consensus reflected in policy packages</td>
<td>Reinvestment and improving current spending</td>
</tr>
<tr>
<td>Focus on improving public safety</td>
<td>Hold offenders accountable</td>
<td>Direct resources toward greatest recidivism reduction</td>
</tr>
</tbody>
</table>

*Source: Council of State Governments Justice Center*
Justice reinvestment project partners enable two phases of technical assistance to states.

**Phase I**  
6–9 months

1. Analyze Data
2. Engage System Stakeholders
3. Develop Policy Options & Estimate Impacts

**Phase II**  
12–24 months

4. Implement New Policies
5. Target Reinvestment Strategies & Monitor Key Measures
Justice reinvestment data requests are comprehensive.

<table>
<thead>
<tr>
<th>Case-Level Data</th>
<th>Typical Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Criminal Court Filings and Dispositions</td>
<td>Administrative Office of Courts or Sentencing Commission</td>
</tr>
<tr>
<td>2. Jail Data</td>
<td>Jail Authority or Sheriffs’ Departments</td>
</tr>
<tr>
<td>3. Problem-Solving Court Data</td>
<td>Administrative Office of Courts</td>
</tr>
<tr>
<td>4. Probation and Other Community Corrections Data</td>
<td>Probation Department/Community Corrections Agencies – Local, County or State</td>
</tr>
<tr>
<td>5. Prison Data</td>
<td>Department of Corrections</td>
</tr>
<tr>
<td>6. Parole Data</td>
<td>Department of Corrections</td>
</tr>
<tr>
<td>7. Parole Board Hearing/Decision Data</td>
<td>Parole Board</td>
</tr>
<tr>
<td>8. Criminal History Data</td>
<td>State Police (as requested for specific cohorts)</td>
</tr>
<tr>
<td>9. Behavioral Health Data on Criminal Justice Population in Community</td>
<td>Department of Corrections/Department of Health</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Aggregate Data / Summary Reports</th>
<th>Typical Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Crime and Arrest Data</td>
<td>State Police or FBI</td>
</tr>
<tr>
<td>2. Criminal Justice Population Forecasts</td>
<td>Department of Corrections or SAC</td>
</tr>
<tr>
<td>3. Recidivism Studies</td>
<td>Department of Corrections or SAC</td>
</tr>
<tr>
<td>4. Budget/Spending/Cost Data</td>
<td>Legislative Budget Office/Criminal Justice Agencies</td>
</tr>
</tbody>
</table>
The process will complement data analysis with input from stakeholder groups and interested parties.
Along with comprehensive data analysis, justice reinvestment involves extensive statutory and policy review.

<table>
<thead>
<tr>
<th>Pretrial</th>
<th>Typical bail statutes, no indication of supervisory authority</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Felony Classes</strong></td>
<td>No uniform classification in spite of Model Penal Code roots</td>
</tr>
<tr>
<td><strong>Notable Offenses</strong></td>
<td>Property offense &lt; $1500 = six months max; property offense &gt; $1500 = 10 years max burglary of a building v. dwelling is unclear; statute uses “occupied structure” Robbery (2–40) is undifferentiated, has no “aggravated” version</td>
</tr>
</tbody>
</table>
| **Felony Probation**             | > 3 years for deferred imposition  
                                  | > Maximum sentence for suspended execution |
| **Mandatory Minimums**           | No deferred or suspended for first 2 years for 11 violent offenses |
| **Habitual/Extended Terms**      | Persistent offender, two strikes if less than 5 years have elapsed |
| **Time Served Requirement**      | Parole eligibility after ¼ of prison sentence; good time pre-1997 |
| **Parole Decision making**       | § 46-23-201, amended in 1989 to eliminate liberty interest in parole |
| **Notable Statutes**             | § 46-18-201 Sentences that may be imposed  
                                  | § 46-18-202 judicial denial of parole eligibility  
                                  | § 46-18-225 criteria and alternatives for sentencing nonviolent offenders  
                                  | § 46-18-901 Sentence Review Division  
                                  | § 46-23-1011 requires probation officer caseload balancing, ‘one on, one off’ |
Bipartisan, interbranch state leaders provide support at the project launch and at key points during the process.

**Alabama Launches Justice Reinvestment Initiative**  
*June 10, 2014*

*Montgomery, AL* — Alabama’s state prisons are America’s most crowded, currently operating at approximately 190 percent of capacity. The state has the third-highest incarceration rate in the country and a corrections budget that has increased from $309 million to $460 million over the past decade.

**Washington Lawmakers, Judicial Leaders Endorse Proposal for Justice System Reform**  
*January 14, 2015*

*Olympia, WA* — A bipartisan group of state leaders accepted a justice reinvestment policy framework for the state’s criminal justice and corrections systems on Jan. 14, capping a year of interbranch research and cooperation.

Examples of Justice Reinvestment Publications and Reports

Overview Publication
Introductory report released at project launch to provide big-picture overview of system trends

Working Group Presentations
Interim reports illustrating data and policy analysis and stakeholder input

Final Report
Comprehensive report summarizing analysis and presenting policies, impacts, and reinvestments
Proposed project timeline would entail intensive work in 2016 leading into the 65th legislative session.

- **2015**
  - Sep
  - Oct
  - Nov
  - Dec

- **2016**
  - Jan
  - Feb
  - Mar
  - Apr
  - May
  - Jun
  - Jul
  - Aug
  - Sep
  - Oct
  - Nov
  - Dec

- **2017**
  - Jan
  - Feb
  - Mar
  - Apr
  - May
  - Jun
  - Jul
  - Aug
  - Sep
  - Oct
  - Nov
  - Dec

- **Council of State Governments Justice Center**

- **Commission on Sentencing (CoS) Meeting**
- **Project Launch**
- **CoS/JR Meeting #1**
- **CoS/JR Meeting #2**
- **CoS/JR Meeting #3**
- **CoS/JR Meeting #4**

- **Dec. 15 Commission on Sentencing Deadline / Policy Rollout and Bill Introduction**

- **Initial and Detailed Data Analysis**
- **Policy Option Development**
- **Impact Analysis**

- **Stakeholder Engagement**
- **Bill Drafting**
- **Provide Info to Policymakers and Media and Keep Stakeholders Involved**
Twenty-one states have used a justice reinvestment approach with the CSG Justice Center.
State policymakers are using the justice reinvestment approach to tackle a broader range of strategies and policies.

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Fund more treatment programs</td>
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<tr>
<td>Reduce revocations to prison and jail</td>
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<tr>
<td>Focus on statewide recidivism reduction</td>
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<tr>
<td>Improve supervision quality</td>
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<tr>
<td>Realign sentencing and parole policies</td>
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<tr>
<td>Structure supervision sanctions based on risk</td>
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<tr>
<td>Better targeting for treatment programs</td>
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<td>Improve restitution collection</td>
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<td>Craft win-wins for state and counties</td>
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<tr>
<td>Improve pretrial assessment &amp; supervision</td>
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<td></td>
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<tr>
<td>Redesign programs and training strategies</td>
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<td></td>
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<tr>
<td>Assess/validate risk assessment practices</td>
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<td></td>
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<tr>
<td>Support data-driven law enforcement strategies</td>
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<td></td>
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<tr>
<td>Integrate evidence-based practices in treatment programs</td>
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</tbody>
</table>
Idaho’s legislation tailors sanctions for supervision violations, structures parole, and tracks recidivism-reduction strategies to ensure impact.
Alabama’s JR process yielded policies to establish parole guidelines and increase supervision for those leaving prison.
Impacts of North Carolina’s justice reinvestment policies have exceeded projections.

- $560m averted costs and savings by FY2017
- 10 prisons closed since 2011
- 175 new probation officers in FY2014 & FY2015
- 11% drop in crime between 2011-2013
(1) **New Framework:** American Law Institute Model Penal Code—comprehensive sentencing sections

(2) **Old Debate:** “Determinate v. indeterminate”

(3) **New Debate:** “[T]he idea of sentencing defendants based on risk factors may help to reduce the prison population, but in certain circumstances it may run the risk of imposing drastically different punishments for the same crimes.” [AG Holder]

(4) **New Research:** on components and scoring of criminal history

(5) **Old and New Case Law:** developments on topics such as right to a jury, “inherent” judicial authority to sanction, due process for sanctions and for financial obligations, sentencing based on risk factors, etc.

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1. **Authorized Dispositions of Offenders**
   - Deferred Prosecution
   - Deferred Adjudication
   - Probation
   - Economic Sanctions
   - Collateral Consequences

2. **Authority of Sentencing Commission**

3. **Sentencing Guidelines**

4. **Authority of the Court in Sentencing**

5. **Research and Evaluation**

6. **Prison Release and Postrelease Supervision**
Presentation Overview

Justice Reinvestment

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- State Experiences with Justice Reinvestment

Criminal Justice Trends in Montana

- Key Challenges in Montana
- Questions for Commission on Sentencing
Montana had the 29th highest incarceration rate in 2013.

Source: Bureau of Justice Statistics, Prisoners in 2013.
Montana is among states with prison population percentage increases exceeding the national average growth of 6 percent.

Source: BJS, Prisoners reports  http://www.bjs.gov/index.cfm?ty=pbse&sid=40
Montana’s population is growing steadily and is concentrated in a few counties.

- 59% of the state population lived in the six largest counties, each with over 50,000 residents (Yellowstone, Missoula, Gallatin, Flathead, Cascade, Lewis and Clark).
- 47 of Montana’s 56 counties have fewer than 20,000 residents.

Source: US Census Bureau
Montana’s eastern border is on the oil patch, the fastest growing area of the country.
Crime rates are lower than the U.S. total and generally follow national trends, but violent crime increased in the late 1990s.

**Property Crime Rates**
- Index Crimes per 100,000 Population, 1960–2013

**Violent Crime Rates**

<table>
<thead>
<tr>
<th>Year</th>
<th>Property Crime Rates</th>
<th>Violent Crime Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1962</td>
<td>1,985</td>
<td>161</td>
</tr>
<tr>
<td>1965</td>
<td>1,726</td>
<td>67</td>
</tr>
<tr>
<td>1968</td>
<td>2,557</td>
<td>241</td>
</tr>
<tr>
<td>1971</td>
<td>2,731</td>
<td>368</td>
</tr>
</tbody>
</table>

**Change in Crime Rates since 1990**
- **Property Crime**
  - U.S. Total: -46%
  - Montana: -41%
- **Violent Crime**
  - U.S. Total: -50%
  - Montana: +51%

Felony case filings are up sharply in the last six years following a period of decline.

Source: Montana District Court Case Filings and Dispositions, 2005-2014.
Steady growth is projected for correctional populations.

**Male and Female Prisons**
- Actual Prison Population: 2,373, +7%
- Projected Growth: 2,537, +11%
- Capacity: 2,573

**Prison Alternatives and Prerelease/Transitional Living**
- Actual Alternative Population: 1,605
- Projected Growth: 2,009, +25%
- Capacity: 1,932

**Probation, Parole, and Specialized Supervision**
- Actual Supervision Population: 8,884, -5%
- Projected Growth: 9,688, +15%
- Capacity: 8,396

Prison population is projected to be at 109% of capacity at the end of FY2019.

Source: Department of Corrections Population Projection, Version 13F - 8/19/2013
General fund corrections spending has increased 39 percent since 2006.

Source: Montana Department of Corrections 2011, 2013, 2015 Biennial Reports.
Admissions to adult facilities have outpaced releases.

Time served before parole release has grown by 16 percent since 2010.

In 2014, parole was granted in 42% of initial parole appearances. At reappearance hearings, 75% were granted parole.

The majority of all prison intakes have been for revocations since 1998.

In FY2013, 85 percent of all prison intakes were for revocations from community supervision and other alternative placements, rather than new court commitments.

Three-quarters of the correctional population is in community corrections, mostly on probation or parole.

Montana sentencing law allows for several permutations in sentence type, and the DOC has notable discretion.

Montana has numerous state and contract correctional programs and facilities, and anecdotally, moves people around a lot.

An assessment of providers and programs can help determine whether they are effective in reducing recidivism.
The Justice Center can conduct some quality assessments in the process.

<table>
<thead>
<tr>
<th><strong>WHO</strong></th>
<th><strong>WHAT</strong></th>
<th><strong>HOW WELL</strong></th>
</tr>
</thead>
</table>
| **Data Analysis** | • Case-level risk/need data for MDOC offenders  
• Parole releases | • Program cost  
• Program dosage | • Recidivism rates for program participants |
| **Direct Observation** | • Admissions process  
• Risk assessments and reassessments | • In-prison programs  
• Community-based programs | • In-prison programs  
• Community-based programs |
| **Outreach & Interviews** | • Assessment staff  
• Probation and Parole Officers | • CSG expert review of program curricula  
• Program facilitators, participants, and facility management staff | • Program staff  
• MDOC research staff |
| **Qualitative Review** | • Parole hearing case files | • Program curricula | • Program assessment results  
• Current QA process |
Key Criminal Justice Challenges in Montana

- Montana’s prison population has grown and is projected to grow to 109% of capacity at the end of FY2019.

- Felony case filings have increased sharply in recent years, and although Montana’s crime rates have decreased, the violent crime rate has increased over the long run.

- Length of stay in prison has increased significantly in recent years.

- Revocations for technical violations are a big driver of prison admissions.

- There are numerous state and contract programs and providers, and the state can benefit from an assessment of how effective they are in reducing recidivism.

- The sentencing system has unique features, and effects, that have not been systematically examined in two decades.
Key Questions for Commission on Sentencing

- Key priorities for the Commission on Sentencing?
  - Goals
  - Areas for analysis
  - Stakeholders

- Potential topics to cover in future presentations?
  - “What works” to reduce recidivism
  - JR experiences in other states
  - Other state sentencing policies and systems

- Questions about justice reinvestment?
Proposed project timeline would entail intensive work in 2016 leading into the 65th legislative session.
Thank You

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