POLICY OPTIONS FOR IMPROVING PUBLIC SAFETY, HOLDING OFFENDERS ACCOUNTABLE, AND CONTAINING CORRECTIONS COSTS IN MONTANA

Report to the Montana Governor's Office and Department of Corrections

November 2014

Background

The Montana Department of Corrections (MDOC), in coordination with the Montana governor's office, requested assistance from the National Governors Association Center for Best Practices (NGA Center) and the Pew Charitable Trusts (Pew) to assess drivers of the state's prison population and to identify potential policy options for improving public safety, holding offenders accountable, and containing corrections costs.

In July and August of 2014, an analysis of MDOC data was conducted to identify factors related to the recent growth in Montana's prison population. The NGA Center and Pew, with assistance from the Michigan Council on Crime and Delinquency's Center for Justice Innovation, reviewed Montana's corrections policies and practices and met with MDOC leadership, the governor's office, and a wide range of stakeholders from across the state including the judiciary, prosecutors, public defenders, sheriffs, and advocacy groups.

This report summarizes the results of the data analysis and provides policy options for consideration. The options presented reflect best practices and the latest research in corrections policy. Further, they are informed by stakeholder recommendations made to the MDOC and governor's office during a policy workshop that the NGA Center convened on August 26, 2014.¹

Key Findings: Prison Population Drivers

Three general policy areas were considered in assessing drivers of Montana's prison population:

- **Admissions**: How many people are admitted to prison and what policies and practices affect admission rates?
- **Length of stay**: How long are offenders staying in prison, and what policies and practices affect release decisions and time served?
- **Re-entry**: How many inmates are released from prison, and what are the policies and practices that inform reentry approaches, post-release supervision, and community engagement?

Those three factors—the number of individuals admitted to prison, the length of time they stay, and the number of inmates released from prison—are key determinants of the size of a state's prison population. Between 1998 and 2013, Montana's prison population grew 32 percent to 2,597. That increase was

¹ In summary, stakeholder recommendations include: 1) Reduce recidivism by strengthening partnerships with local leadership and intervening as early as possible after offenders become involved in the justice system; 2) Focus supervision and treatment resources on offenders at highest risk for recidivism; 3) Fill the gap between residential programs and supervision-only by increasing mental health and chemical dependency services; 4) Build support for reform efforts by educating the legislature on the costs and benefits of policy options, and by increasing communication with stakeholders and the public about the role community corrections plays in enhancing public safety; 5) Strengthen community supervision by hiring more probation/parole officers, training probation/parole officers in risk assessment and management, reducing probation/parole officers' caseloads, and making the MDOC commit process more transparent; 6) Implement risk assessments consistently across the justice system and use assessment information for case planning.

largely driven by more admissions to prison and longer length of stays.² Since 1998, admissions to prison increased 15 percent and the average length of stay increased 20 percent. As the prison population has grown, so has the population of offenders in alternative-to-prison programs. Admissions to those programs have increased 190 percent since 1998 and, since 2003, the average length of stay increased 19 percent.

While more offenders are being admitted to the corrections system and staying longer, fewer are being discharged. Most cycle back through. Eighty-five percent of prison intakes and 67 percent of intakes to alterative-to-prison programs arrived from a previous criminal justice placement.

As a result, the total corrections population in Montana—including probation, prison, and parole—has grown 48 percent over the last 15 years. In 1998, the state managed an offender population of 11,898; by 2013, it managed a population of 17,603. If current trends continue, analysis by the Montana Department of Corrections (MDOC) indicates that the state's prison population will exceed existing capacity as early as November 2015.³

In summary, findings of the data analysis include the following:

- The current prison population is growing: Since 1998, both the number of those admitted to prison and the total number of prisoners have grown: intakes increased by 15 percent, and the prison population grew 32 percent.
- Offenders are spending more time behind bars: On average, prison inmates are staying in prison longer across all intake types, including revocations and new court commitments. In 2013, the average length of stay increased to 24 months, up from 20 months in 1998, with new court commitments serving the longest time at 54 months.
- The prison population is largely comprised of individuals who are low-risk for reoffending: The number of low-risk offenders in prison has increased by 133 percent, from 602 in 1998 to 1,403 in 2013, while the number of high-risk offenders dropped by 37 percent, from 554 in 1998 to 350 in 2013.4
- Revocations to prison from community supervision and other alternative placements are strongly contributing to growth in the prison population: Since 1998, the majority of all prison intakes have been for revocations—85 percent in 2013—rather than new court commitments. In recent years, the largest proportion of revocations has been for failure under an alternative placement to prison. Since 1998, there has been a 174 percent increase in the number of intakes to prison resulting from a violation under alternative placement.
- A growing number of parole revocations are for technical violations: Since 1998, revocations from parole for technical violations are up significantly. Further, the average length of supervision has declined 43 percent since 2003, with most revocations occurring within the first 12 months an offender is on parole.

²Although there has been a slight increase in the violent crime rate (33 percent) between 1998 and 2013, the state's property crime rate declined 38 percent. Based on the analysis, the changes in crime rates are not driving the prison population increase.

³ Interview with Director Mike Batista (July 30, 2014).

⁵ Montana DOC provided movement-based data for intakes. An individual could move into, or be an intake, to a criminal justice system component multiple times within one year. This applies to the prison, alternatives to prison, and probation intake data.

- A larger percentage of terminations from probation supervision are revocations: An increasing proportion of terminations from probation supervision are revocations, reaching 40 percent of all probation exits in 2013, compared to 23 percent in 1998. A large proportion of revocations occur within the first year of supervision, but a sizeable proportion occur after more than 37 months on supervision regardless of offense type.
- Intakes to prison alternatives, as well as the total population in prison alternatives, has increased dramatically: Between 1998 and 2013, intakes to prison alternatives almost tripled (from 836 to 2,426), and the total size of the alternative-to-prison population increased 276 percent (from 547 to 2,054).
- The vast majority of those who returned to prison within three years returned for a technical violation: The vast majority of those who returned to prison within three years (89 percent of those in the 2010 cohort) returned for a technical revocation, rather than a new crime.

Policy Options

To avoid running out of prison beds by November 2015, the MDOC and governor's office are considering options (policies, practices, programs) that can reduce or reverse recent population growth. Among the most important levers available to the MDOC is the wide discretion it has over offender placement. The Montana criminal justice system is unique among the states in that judges have the option to sentence an offender to the MDOC ("MDOC commits"). If an offender is sentenced to the MDOC, corrections professionals make the final placement decision, including transfer to a community corrections program or, after further assessment, to prison. In 2013, the MDOC retained placement discretion over 79 percent of intakes, while only 21 percent of intakes arrived with a prison sentence.

Because of the executive branch's unique authority over Montana's correctional system, the proposed options focus primarily on executive actions for improving policy and practice. These options are informed by the data analysis and driven by three primary objectives: improve public safety, hold offenders accountable, and control corrections costs. Further, they seek to promote the governor's vision of creating more efficient and effective state government as well as MDOC's established priorities for the agency, which include:⁶

- Review the system and analytics that are driving the prison population and find cost efficiencies;
- Improve recidivism rates and prisoner reentry outcomes;
- Redesign the agency to make certain it is "aligned for success," meaning in-step with evidence-based and national best practices;
- Move the agency into data-driven decision making, not "simply understanding it's a good idea";
- Determine improved processes for assessment, offender placement, and revocation;
- Determine if the department's decisions on length of stay in programs and prisons achieves desired outcomes;
- Work with the parole board to establish more uniformity and predictability in their decisions;
- Analyze the residential resources that the department funds—but which can reject or accept MDOC placements—and determine their efficacy and cost effectiveness; and
- Reduce the number of offenders being held in jail (which are up from 178 to 278 in the past year).

Page 3 of 10

⁶ Interview with Director Batista and the governor's staff (July 31, 2014).

The options also take into consideration discussions that the NGA Center, Pew, and MCCD have had with executive leadership at MDOC and, where appropriate, they incorporate recommendations that stakeholders identified during the policy workshop on August 26. (See footnote 1.)

The options can help Montana expand evidence-based practices across the corrections system and integrate a risk-reduction approach in offender reentry. By adopting principles of evidence-based practices and targeting individuals at highest risk for reoffending, Montana can most effectively reduce recidivism while delivering the highest return on taxpayer resources. The MDOC has stated its commitment to several principles of evidence-based practices, including:

- Assess actuarial risk and needs Develop and maintain a complete system for the use of reliable and validated actuarial risk and needs of returning offenders.
- *Target Interventions* Prison and community-based supervision and treatment resources should be focused on higher risk individuals; interventions must target criminogenic needs; and programming should be responsive to individual learning styles, gender, and culture;
- *Measure Relevant Processes/Practices* A formal and valid mechanism for measuring outcomes is the foundation of evidence-based practice; and
- Provide Measurement Feedback Once a mechanism for performance measurement and outcome evaluation is in place, the information must be used to inform policies and programming.

Ultimately, the policy options presented can help Montana recreate its corrections system so that it is simpler, understandable, accountable, predictable, and aligned for success. Those options include:

- **Option 1:** Develop a blueprint for integrating evidence-based principles across the corrections system.
- Option 2: Develop a case logic model for mapping out key decision points in the offender reentry process.
- Option 3: Revitalize and fully adopt the Montana Offender Reentry Framework.
- Option 4: Assess existing programs and practices to determine their effectiveness.
- **Option 5:** Develop and implement graduated sanctions and interventions for probationers/parolees.
- Option 6: Evaluate and consider possible changes to how the state deals with drug-addicted offenders.

$\underline{\text{Option 1}}$: Develop a blueprint for integrating evidence-based principles across the corrections system.

To successfully integrate an evidence-based paradigm across its corrections system, Montana should consider developing a System Blueprint to guide its efforts. (See Attachment 1 for an example.) This would help ensure planning is intentional and strategic by clearly articulating a set of values, principles (such as risk-reduction), target outcomes, and expectations about organizational performance. The Blueprint would specify work processes and the logic behind them for achieving organizational goals.

⁷ M. Clement, M. Schwarzfeld, M. Thompson, "The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime, and Corrections Spending," The Council of State Governments Justice Center, January 2011. Also see Implementing Evidence-Based Policy and Practice in Community Corrections, 2nd ed. Washington, DC: National Institute of Corrections, October 2009.

Additionally, it would identify internal and external resources that can help support the organization in achieving performance objectives (such as technology, facilities, budget, staffing, training, and communications).

With a System Blueprint in place, justice partners and collaborators will have the information they need to implement evidence-based approaches throughout the system and build an infrastructure to monitor, evaluate, and report the results. A blueprint can also support wider use of validated risk-need assessment and case planning throughout the probation, prison, and parole systems by ensuring the purpose and benefits of those tools are clearly understood.

Developing the System Blueprint will require the full engagement of top management teams from each of the key entities responsible for probation, prison operations, parole, research and planning, information technology and policy, and performance determination and monitoring.

Option 2: Develop a case logic model for mapping out key decision points in the offender reentry process.

Using the System Blueprint as a guide, the MDOC should consider developing a Risk/Needs Assessment and Case Management Logic Model ("Case Logic Model") to chart out key decision points in the prisoner reentry process. The Case Logic Model could be organized according to the offender reentry framework that the MDOC adopted in 2012, the Montana Offender Reentry Plan (MT-ORP) Framework. (See Option 3 below.) The MT-ORP Framework includes three phases: 1) Getting Ready (institutional risk/need assessment, case planning and programming in prison); 2) Going Home (predictive community risk/need assessment and pre-release case planning); and 3) Staying Home (community-based supervision and treatment delivery). For each phase, the Case Logic Model would identify which decision points are interconnected, and it would help ensure the flow of accurate, objective information into and out of those decisions points. (See Attachment No. 2 for an example of a Case Logic Model.)

The Case Logic Model can be an important tool in coordinating the work of justice partners and collaborators by providing greater clarity around the case management process. Further, it can be used to track performance outcomes and ensure accountability. Developing the Case Logic Model will require the full engagement of the middle management operations teams responsible for probation, prison operations, and parole.

Option 3: Revitalize and fully adopt the Montana Offender Reentry (MT-OR) Framework.

Montana has worked for several years at improving release decisions and the conditions of release through reforms to their prisoner reentry policies, practices, and programs. Like many jurisdictions over the past decade, the intention has been to reduce offender recidivism.

In 2012 under a grant from the Public Welfare Foundation, Montana used the Strategic Planning for Prisoner Reentry (SPPR) Framework as a model for developing the MT-OR Framework. (See Attachment No. 3 for the Final Report.) The SPPR Framework—developed by the Director of the Center for Justice Innovation, Dennis Schrantz, and the National Reentry Resource Center—provides state agencies and local partners with the tools to move from planning to implementation. It underscores three overarching policy and practice considerations that must be in place to change returning citizens' behavior: 1) transition accountability planning, 2) case management, and 3) evidence-based practices. Further, it outlines the seven primary decision points that comprise the reentry process.⁸

⁸ The Framework was built on approaches for reentry improvement developed by the National Prisoner Reentry Council, as outlined in its *Reentry Policy Council Report*, and the National Institute of Corrections through its *Transition from Prison to Community Model*. See Reentry Policy Council, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return*

According to discussions with senior MDOC leadership, the MT-OR Framework was not implemented due to lack of follow through. The department should consider revitalizing the MT-OR Framework, as it would provide a practical guide for establishing and meeting policy goals and operational expectations specified in the System Blueprint.

Option 4: Assess existing programs and practices to determine their effectiveness.

The MDOC and governor's office could consider initiating an assessment process across the corrections system to determine whether funded programs are evidence-based and having their intended effect. Currently, many programs that receive funding from MDOC to support offender reentry have not been assessed, and it is not clear how effective they are at reducing offender recidivism.

Researchers have identified a need to strengthen the link between research-based evidence of what works and what gets implemented in practice—especially on the issue of recidivism reduction.⁹ This is often the case with contracted programs over which funding agencies may have little control in terms of design. Clearer guidance is needed in the field on how to implement research findings and how to successfully replicate well-performing programs in prisons and parole agencies and their affiliated human service delivery partners in the community.¹⁰ Without additional tools, resources and guidance to support effective implementation, major statewide reductions in recidivism will continue to fall well short of state and national goals. Table 1 provides examples of

The Montana Offender Reentry Framework

PHASE 1: GETTING READY

- 1. Assessment And Classification
 - 1.1. Development of Intake Procedures
- 2. Returning Citizen Behavior And Programming
 - 2.1. Development of Programming Plan
 - 2.2. Physical Health Care
 - 2.3. Mental Health Care
 - 2.4. Substance Abuse Treatment
 - 2.5. Children & Family Support
 - 2.6. Behaviors & Attitudes
 - 2.7. Education
 - 2.8. Technical Training
 - 2.9. Work Experience

PHASE 2: GOING HOME

- 3. Returning Citizen Release Preparation
 - 3.1. Development of Parole & Reentry Plan (TAP2)
 - 3.2. Housing
 - 3.3. Continuity of Care Planning
 - 3.4. Working with Potential Employers
 - 3.5. Employment Upon Release
 - 3.6. Identification and Benefits
 - 3.7. Release Preparation for Families
 - 3.8. Release Preparation for Victims
- 4. Release Decision Making
 - 4.1. Advising the Releasing Authority
 - 4.2. Release Decision

PHASE 3: STAYING HOME

- 5. Supervision And Services
 - 5.1. Design of Supervision & Treatment Strategy (TAP3)
 - 5.2. Implementation of Supervision & Treatment Strategy
 - 5.3. Maintaining Continuity of Care and Housing
 - 5.4. Job Development and Supportive Employment
- 6. Revocation Decision Making
 - 6.1. Graduated Responses
- 7. Discharge And Aftercare
 - 7.1. Development of Discharge/Aftercare Plan (TAP4)

a variety of available tools, handbooks, and other resources that Montana can use to determine what

of Prisoners to the Community, New York: Council of State Governments, January 2005, and see Peggy Burke, TPC Reentry Handbook: Implementing the NIC Transition from Prison to the Community Model, Washington D.C.: U.S. Department of Justice, National Institute of Corrections, August 2008.

⁹ See D. L. Fixsen, et al., *Implementation Research: A Synthesis of the Literature*, Tampa, FL, University of South Florida, Louis de la Parte Florida Mental Health Institute (2005), and Stephen M. Haas (Ed.), et al, *Justice Research and Policy; Toward Evidence-Based Decision Making in Community Corrections: Research and Strategies for Successful Implementation 15, No. 1 (2013).*

¹⁰ Thomas E. Feucht and Christopher A. Innes, "Creating Research Evidence: Work to Enhance the Capacity of Justice Agencies for Generating Evidence," in *Contemporary Issues in Criminal Justice Policy*, eds. Natasha Frost, Joshua Freilich, and Todd Clear, 7 - 16. (Belmont, CA: Wadsworth, 2009).

works to reduce offender recidivism. Two of these from the University of Cincinnati are highlighted due to their focus on program assessments. Montana could consider engaging an outside partner to help evaluate their community corrections programming. For example, the Pew-MacArthur Results First Initiative assists states in identifying and investing in evidence-based programs that result in positive outcomes and high returns on taxpayer dollars.

Table 1: Resources to Guide the Implementation of Evidence Based Principles and Practices

Source	Tools, Handbooks, and Other Resources
George Mason University, Center for Advancing Correctional Excellence	• The CJ-TRAK Knowledge Translation Tool Suite including (1) The RNR (Risk-Need-Responsivity) Simulation Tool; (2) SOARING - Skills for Offender Assessment and Responsivity in New Goals; (3) The Evidence Mapping Tool (2013)
Center for Effective Public Policy (CEPP)	 Increasing Public Safety through Successful Offender Reentry: Evidence-based and Emerging Practices in Corrections(CEPP, 2007) Effective Practice Coaching Packet Series¹¹
Council of State Governments Justice Center	 Recidivism Reduction Checklists for: Executive and Legislative Policymakers; State Corrections Administrators; and State Reentry Coordinators¹² A Ten-Step Guide to Transforming Probation Departments to Reduce Recidivism¹³
National Implementation Research Network	 Active Implementation Hub; Implementation Training Resources; Implementation Stages Action Plan¹⁴ and Implementation Drivers: Assessing Best Practices¹⁵
National Institute of Corrections	 The TPC Reentry Handbook: Implementing the NIC TPC Model¹⁶ The TPC Case Management Handbook¹⁷ Tools of the Trade: A Guide to Incorporating Science into Practice¹⁸ Evidence Based Practice Skills Assessment in Criminal Justice Organizations¹⁹
University of Cincinnati Corrections Institute	 The Effective Practices in Community Supervision (EPICS) Model²⁰ The Evidence Based Correctional Program Checklist (CPC) The Correctional Program Assessment Inventory-2010 (CPAI-2010)
Urban Institute	 Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes²¹ Candidate Outcome Indicators: Prisoner Reentry Program²²

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¹¹ Center for Effective Public Policy, Effective Practice Coaching Packet Series (Washington, D.C.: BJA, 2010).

¹² "Recidivism Reduction Checklists," The Council of State Governments Justice Center, The National Reentry Resource Center, accessed August 1, 2013, http://csgjusticecenter.org/reentry/reentry-checklists/

¹³ Council of State Governments Justice Center, <u>A Ten-Step Guide to Transforming Probation Departments to Reduce Recidivism</u>, Council of State Governments Justice Center, New York (2011).

¹⁴ NIRN, *Implementation Stages Action Plan* (Chapel Hill, NC: NIRN, 2013), http://implementation.fpg.unc.edu.

¹⁵ The National Implementation Research Network (NIRN), *Implementation Drivers: Assessing Best Practices* (Chapel Hill, NC: NIRN, 2013), www.implementation.fpg.unc.edu.

¹⁶ National Institute of Corrections, *TPC Reentry Handbook: Implementing the NIC Transition from Prison to the Community Model* (Washington, D.C.: National Institute of Corrections, 2008).

¹⁷ National Institute of Corrections, TPC Case Management Handbook (Washington, D.C.: 2010).

¹⁸ National Institute of Corrections, *Tools of the Trade: A Guide to Incorporating Science into Practice* (Washington, D.C.: 2004).

¹⁹ National Institute of Corrections, *Evidence Based Practice Skills (EBPS) Assessment in Criminal Justice Organizations* (Washington, D.C: 2010).

²⁰ The University of Cincinnati Corrections Institute (UCCI), http://www.uc.edu/corrections/services/trainings.html

²¹ The Urban Institute, Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes (Washington, D.C.: Urban Institute, December 2008).

²² The Urban Institute, Candidate Outcome Indicators: Prisoner Reentry Program (Washington, D.C.: Urban Institute, 2013).

Option 5: Develop and implement graduated sanctions and interventions for probationers/parolees.

The MDOC and supervision agencies should consider developing and implementing "graduated sanctions and incentives" for probationers/parolees. In a system driven by risk reduction such as Montana is pursuing, graduated sanctions and incentives are key to giving supervising officers the range of options they need to modify probationer and parolee behavior. Community supervision staff will take offenders' risk level into account when determining responses to behavior that may be positive (using incentives) or negative (using sanctions). Research shows that it is important to match responses to behavior, and that not doing so can potentially increase aberrant behavior.²³

Corrections and supervision agencies should have a well-developed, documented policy to guide staff in responding to offender behavior. Further, the graduated sanctions and incentives adopted should be understood and supported by the full range of relevant stakeholders, including judges, prosecutors, and defense attorneys.

According to the highly acclaimed <u>Ten Step Guide for Transforming Probation Departments to Reduce</u> Recidivism:²⁴

Incentives and graduated sanctions give probation officers a range of responses to probationers' behavior that helps build accountability and discourage recidivism. They also help ensure that each officer responds to violations with a level of swiftness and severity that is directly related to the probationer's risk level and the condition of supervision that has been violated...Standardizing responses provides a measure of fairness while giving officers necessary flexibility.

This guide includes the Travis County, Texas "Violation Response Table," which exemplifies how a department can determine the different levels of graduated sanctions that would be appropriate depending on the type of infraction (see Attachment No. 4). The guide recommends a four point process that Montana could use to develop and implement graduated sanctions and interventions.²⁵ This includes:

- Work with judges, prosecutors, and other stakeholders to develop a range of supported options
 and new procedures for employing incentives and graduated sanctions that are tailored to
 probationers' level of criminogenic risk and identified need;
- Issue a comprehensive report that details the transparent procedures to be followed;
- Train officers to ensure the procedures are carried out fairly and in swift response to a violation; and
- Emphasize the use of incentives rather than relying exclusively on punitive sanctions.

Option 6: Evaluate and consider possible changes to how the state deals with drug-addicted offenders.

A significant portion of Montana's prison population is made up of drug offenders. In 2013, 26 percent of intakes with a prison sentence and 39 percent of intakes under the DOC commit process were for drug and property offenses; 23 percent of the prison population was made up of drug offenders.

²³ E. Latessa, et al., *Follow-up Evaluation of Ohio's Community Based Correctional Facility and Halfway House Programs—Outcome Study* (Cincinnati: University of Cincinnati Center for Criminal Justice Research, February 2010); Christopher Lowenkamp and Ed Latessa, "Increasing the Effectiveness of Correctional Programming Through the Risk Principle: Identifying Offenders for Residential Placement," *Criminology and Public Policy* 4(2) (2005): 263–90.

²⁴ Council of State Governments Justice Center, A Ten-Step Guide to Transforming Probation Departments to Reduce Recidivism, Council of State Governments Justice Center, New York (2011).
²⁵ Ibid.

Montana could consider more widely adopting community-based prison alternatives for lower-level drug offenders. That approach could allow the state to safely reduce its prison population and target its correctional resource to greatest effect. For example, the state could institute presumptive probation for first- and second-time offenders who do not have a prior violent, sex, or trafficking offense. Additionally, the state could create targeted punishments for higher-level possession and sales offenses. Montana's current drug offenses statutes do not differentiate between offender conduct that is driven by addiction and conduct that is driven by financial gain. By establishing a weight-based, tiered system for those offenses, the state could align sentence ranges with the seriousness of the offense.

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