



AN ACT GENERALLY REVISING CRIMINAL JUSTICE LAWS; REQUIRING THE OFFICE OF COURT ADMINISTRATOR TO CREATE A PRETRIAL PROGRAM; REQUIRING THE BOARD OF CRIME CONTROL TO CREATE A PROSECUTION DIVERSION GRANT PROGRAM; GRANTING THE BOARD RULEMAKING AUTHORITY TO ADMINISTER THE PROSECUTION DIVERSION PROGRAM; ALLOWING A COURT TO USE INFORMATION FROM A PRETRIAL RISK ASSESSMENT TOOL WHEN DETERMINING WHETHER A DEFENDANT SHOULD BE RELEASED OR DETAINED; CREATING AN OVERSIGHT COUNCIL TO MONITOR AND REPORT ON THE EFFECTS OF CRIMINAL JUSTICE LEGISLATION; REQUIRING THE QUALITY ASSURANCE UNIT OF THE DEPARTMENT OF CORRECTIONS TO ADOPT AN EVALUATION TOOL AND CONDUCT PROGRAM EVALUATIONS; REQUIRING THE DEPARTMENT TO ADOPT AND MAINTAIN AN INCENTIVES AND INTERVENTIONS GRID TO GUIDE COMMUNITY SUPERVISION OF OFFENDERS; REQUIRING THE COLLECTION OF CERTAIN DATA AND THE PROVISION OF CERTAIN REPORTS; ELIMINATING THE REQUIREMENT THAT A JUDGE OR JUSTICE OF THE PEACE REPORT DRUG USERS TO THE COUNTY ATTORNEY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 3-1-702 AND 46-9-109, MCA; REPEALING SECTION 46-9-203, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Pretrial program -- rulemaking.** (1) Within the limits of available funds, the office of court administrator shall develop and administer a pretrial program for felony defendants that includes the use of:

- (a) a validated pretrial risk assessment tool; and
  - (b) a dangerousness or lethality assessment for individuals charged with an offense of partner or family member assault.
- (2) The office of court administrator may use program funds to:
- (a) develop, implement, and administer the pretrial program; and
  - (b) make allocations to counties or nonprofit organizations contracting with a county to provide pretrial

services.

(3) Allocated funds may be used for pretrial services staff, to obtain assessment instruments, and to provide supervision of pretrial felony defendants.

(4) In administering the pretrial program, the office shall:

(a) identify priorities for funding services and activities and the criteria for the allocation of program funds, including that courts accepting funds must use a validated risk assessment tool to assign release conditions and determine placement options;

(b) monitor the expenditure of funds by counties and organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities under this section;

(d) establish an advisory council that includes local and district court judges and other stakeholders to provide guidance to the office; and

(e) develop policies and procedures necessary to implement this section, subject to approval of the supreme court.

(5) (a) Funds available under subsection (1) consist of state appropriations and federal funds received by the office for the purposes of administering the pretrial program or any funds received pursuant to subsection (5)(b).

(b) The office may accept gifts, grants, and donations from other public or private sources, which must be used within the scope of this section.

**Section 2. Prosecution diversion program -- rulemaking.** (1) Within the limits of available funds, the board of crime control shall develop and administer a prosecution diversion grant program to encourage local adoption of prosecution diversion programs under 46-16-130.

(2) Grant funds may be used for staff, to provide supervision, or to contract for program services for defendants in the program. A county attorney or a nonprofit organization contracting with a county attorney may be eligible for a grant.

(3) In administering the prosecution diversion program, the board shall:

(a) identify priorities for funding services, activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities under this section; and

(d) adopt rules necessary to implement this section.

(4) (a) Grants available under subsection (1) consist of state appropriations and federal funds received by the board for the purposes of administering the prosecution diversion program or any funds received pursuant to subsection (4)(b).

(b) The board may accept gifts, grants, and donations from other public or private sources, which must be used within the scope of this section.

**Section 3. Montana criminal justice oversight council -- duties -- membership.** (1) There is a Montana criminal justice oversight council. The council consists of 15 members as follows:

(a) (i) two members of the house of representatives, one selected by the speaker of the house and one by the house minority leader; and

(ii) two members of the senate, one selected by the president of the senate and one selected by the senate minority leader;

(b) one member selected by the chief justice of the Montana supreme court;

(c) the director of the department of corrections or the director's designee;

(d) an employee of the department of corrections selected by the director who has expertise in data collection and reporting;

(e) one member selected by the director of the department of public health and human services who has expertise in behavioral health treatment services;

(f) the executive director of the board of crime control or the director's designee;

(g) a county sheriff appointed by the attorney general; and

(h) the following individuals appointed by the governor:

(i) a member of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana who has expertise in criminal justice;

(ii) one member of the board of pardons and parole;

(iii) one representative of crime victims; and

(iv) two representatives of community corrections providers, one of whom must represent a treatment facility and one of whom must represent a prerelease center.

(2) The director of the department of corrections or the director's designee shall serve as presiding

officer.

(3) The council shall:

(a) review the recommendations of the commission on sentencing established in Chapter 343, Laws of 2015;

(b) receive and analyze data collected by agencies and entities charged with implementing the recommendations of the commission on sentencing and that are collecting data during the implementation and management of specific recommendations, including data related to the programs established in [sections 1 and 2];

(c) assess outcomes from the recommendations the commission on sentencing has made and corresponding criminal justice reforms;

(d) request, receive, and review data and report on performance outcome data relating to criminal justice reform; and

(e) receive reports required by [section 4] to be produced by the department of corrections.

(4) Data evaluation performed by the council must:

(a) assess the current electronic records utilized by criminal justice agencies;

(b) review and list all variables collected in each agency's information management system;

(c) establish a baseline for historical data comparisons;

(d) determine whether data is linked to specific offenders through a unique identifying factor;

(e) review archival data and agencies' data retention policies;

(f) determine whether presentence investigation reports are completed electronically in the department of corrections' case management system within established statutory timelines;

(g) review any established data protocols for pretrial services;

(h) assess if the data collected or recommended to be collected on offenders and programs will provide criminal justice agencies, the legislature, and the public adequate information to determine whether correctional programs produce standardized outcomes across the state and are an efficient use of state resources; and

(i) review and suggest improvements for behavioral health screening instruments and other screening instruments as needed to ensure the integrity of data that is captured in criminal justice agencies' information management systems.

(5) The council shall examine the feasibility of creating and maintaining a public portal through which

criminal justice data can be accessed, including data on court case filings, correctional populations, and historical and legacy data sets.

(6) The council shall submit by September 1 of each even-numbered year a biennial report to the governor and legislature, as provided in 5-11-210. The report must include:

- (a) a description of the council's proceedings since the previous report;
- (b) a summary of savings from criminal justice reforms and recommendations for how the savings should be reinvested to reduce recidivism;
- (c) a description of performance measures and outcomes related to criminal justice reforms; and
- (d) a narrative of the council's progress on establishing data collection and uniformity standards and any changes that have been implemented as a result of the council's work.

(7) The council may appoint a working group to track any legislation resulting from criminal justice reforms and to perform other detailed analysis as directed by the council. If appointed, the working group shall meet regularly and report to the council as the council requires. The working group may include representatives of criminal justice agencies and key constituencies that are not members of the council.

(8) The council may request legislation to enact changes to the state's criminal justice system that the council finds necessary.

(9) The judicial branch, the department of corrections, the department of public health and human services, the board of pardons and parole, and the legislative services and fiscal divisions shall provide data and information as requested by the council.

(10) Appointments made under subsection (1) must be made within 60 days after [the effective date of this section]. A vacancy on the council must be filled in the manner of the original appointment.

(11) Council members must be reimbursed for travel expenses as provided in 2-18-501 through 2-18-503. Members of the council who are full-time salaried officers or employees of this state or any political subdivision are entitled to their regular compensation. Legislative members must be compensated as provided in 5-2-302.

(12) The council shall report to the law and justice interim committee and the legislative finance committee as requested.

**Section 4. Department of corrections to report on criminal justice reinvestment legislation impacts.** In addition to any data or reports required by the Montana criminal justice oversight council pursuant

to [section 3], the department of corrections shall:

(1) submit an annual report to the Montana criminal justice oversight council by August 15 of each year.

The report must include:

(a) the impact of any legislation related to recommendations from the commission on sentencing established in Chapter 343, Laws of 2015;

(b) the extent to which the department has established and met implementation goals and projections concerning the prison population, recidivism rate, and other key public safety metrics; and

(c) the results of initial and ongoing program evaluations that the department is required by [section 6] to conduct, including any identified program deficiencies and the department's plan to correct those deficiencies.

(2) report to the legislature by January 1 of each year on the amount of savings generated and on the prison population impact under any legislation resulting from the recommendations of the commission on sentencing established in Chapter 343, Laws of 2015, for the purpose of tracking the progress toward meeting the impact estimates and goals of the legislation.

**Section 5. Supervision responses grid -- report.** (1) The department shall revise, maintain, and fully implement the policy known as the Montana incentives and interventions grid. The grid must guide responses to negative and positive behavior by people under supervision by the department, including responses to violations of supervision conditions in a swift, certain, and proportional manner. The grid must include guidance and procedures to determine when and how to:

(a) request a warrant or arrest without a warrant;

(b) use a 72-hour detention;

(c) initiate an intervention hearing;

(d) seek departmental approval to use up to 90-day interventions; and

(e) exhaust and document appropriate graduated violation responses before initiating the revocation process.

(2) The grid must recommend the least restrictive placement for offenders based on the result of a validated risk and needs assessment. Placement decisions must be documented in the offender's file and must indicate any other less secure sanction options considered by the probation and parole officer before utilizing a higher level of custody.

(3) The department shall:

(a) provide information and training on the grid for probation and parole officers and supervisors and for members and staff of the board of pardons and parole;

(b) offer information and training on the grid to district court judges, prosecution and defense attorneys, law enforcement personnel, county detention center personnel, contracted service providers, and other interested personnel;

(c) review the grid every 5 years to ensure that it adheres to evidence-based practices and that the use of sanctions and incentives by probation and parole officers is consistent across the state;

(d) ensure that the guidance and procedures established in the grid consider community safety and the needs of the victim and offender;

(e) collect data relating to placement decisions based on the grid; and

(f) aggregate collected data and provide a report to the law and justice interim committee each biennium.

**Section 6. Quality assurance unit -- program standards -- evaluation -- cooperation with department of public health and human services -- report.** (1) There is a quality assurance unit in the department of corrections.

(2) In addition to duties assigned to it by the department director or otherwise required by law, the unit shall:

(a) adopt an evidence-based program evaluation tool that measures how closely correctional programs meet the known principles of effective intervention. The tool must measure program content and capacity to ensure the delivery of effective interventions for offenders.

(b) conduct evaluations of programs to reduce recidivism that are funded by the state; and

(c) enforce standards to ensure that programs are using best practices for reducing recidivism, including targeting highest-risk individuals, adhering to evidence-based or research-driven practices, and integrating opportunities for ongoing quality assurance and evaluation.

(3) Subject to the availability of funding, the department may contract with an independent contractor or academic institution to complete evaluations.

(4) The unit shall work jointly with the department of public health and human services to develop standards for quality assurance in behavioral health programs or other clinical programs.

(5) The unit shall conduct regular evaluations of programs operated by the department or under a contract with the department.

(6) The department shall:

(a) develop and maintain a list of evidence-based treatment curriculums to be utilized in programs operated by or under contract with the department with priority being placed on adopting treatment curriculums that are in the public domain and evidence-based; and

(b) report the results of all initial and ongoing program evaluations to the law and justice interim committee each interim, including any identified program deficiencies and the department's plan to correct those deficiencies.

(7) After [the effective date of this section], the department shall ensure that contracts signed or renewed with providers contain:

(a) minimum program standards that adhere to the evidence-based program evaluation tool adopted as required in subsection (2);

(b) offender eligibility criteria for program entry with the contractor; and

(c) program dosage requirements that conform to evidence-based practices.

**Section 7.** Section 3-1-702, MCA, is amended to read:

**"3-1-702. Duties.** The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded district court program;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature on request;

(3) report annually to the law and justice interim committee and at the beginning of each regular legislative session report to the house appropriations subcommittee that considers general government on the status of development and procurement of information technology within the judicial branch, including any changes in the judicial branch information technology strategic plan and any problems encountered in deploying appropriate information technology within the judicial branch. The court administrator shall, to the extent possible, provide that current and future applications are coordinated and compatible with the standards and goals of the



executive branch as expressed in the state strategic information technology plan provided for in 2-17-521.

- (4) recommend to the supreme court improvements in the judiciary;
- (5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;
- (6) administer state funding for district courts, as provided in chapter 5, part 9;
- (7) administer and report on the child abuse court diversion pilot project provided in 41-3-305;
- (8) administer the pretrial program provided for in [section 1];
- ~~(8)~~(9) administer the judicial branch personnel plan; and
- ~~(9)~~(10) perform other duties that the supreme court may assign. (Subsection (7) terminates June 30, 2017--sec. 7, Ch. 376, L. 2015.)"

**Section 8.** Section 46-9-109, MCA, is amended to read:

**"46-9-109. Release or detention hearing.** (1) The release or detention of the defendant must be determined immediately upon the defendant's initial appearance.

(2) In determining whether the defendant should be released or detained, the court may use a validated pretrial risk assessment tool and shall take into account the available information concerning:

(a) the nature and circumstances of the offense charged, including whether the offense involved the use of force or violence;

~~(b) the weight of the evidence against the defendant;~~

~~(c)~~(b) the history and characteristics of the defendant, including:

(i) the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to alcohol or drug abuse, criminal history, and record concerning the appearance at court proceedings; and

(ii) whether at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentencing for an offense;

~~(d)~~(c) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; and

~~(e)~~(d) the property available as collateral for the defendant's release to determine if it will reasonably ensure the appearance of the defendant as required.

(3) Upon the motion of any party or the court, a hearing may be held to determine whether bail is

established in the appropriate amount or whether any other condition or restriction upon the defendant's release will reasonably ensure the appearance of the defendant and the safety of any person or the community."

**Section 9. Repealer.** The following section of the Montana Code Annotated is repealed:

46-9-203. Report to county attorney concerning drug users.

**Section 10. Appropriation.** There is appropriated \$28,000 from the general fund to the department of corrections for the biennium beginning July 1, 2017, for the purposes of funding the council as provided in [section 3].

**Section 11. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 12. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 3, chapter 1, part 7, and the provisions of Title 3, chapter 1, part 7, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 44, chapter 4, part 3, and the provisions of Title 44, chapter 4, part 3, apply to [section 2].

(3) [Section 5] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply to [section 5].

(4) [Section 6] is intended to be codified as an integral part of Title 53, chapter 1, part 2, and the provisions of Title 53, chapter 1, part 2, apply to [section 6].

**Section 13. Coordination instruction.** If both Senate Bill No. 63 and [this act] are passed and approved and if Senate Bill No. 63 contains a section amending 53-1-203, then the section amending 53-1-203 is void and any references in Senate Bill No. 63 to the "incentives and interventions grid adopted under 53-1-203" must be changed to the "incentives and interventions grid adopted under [section 5 of Senate Bill No. 59].

**Section 14. Contingent voidness.** (1) Pursuant to Joint Rule 40-65, if [this act] does not include an appropriation for the purposes of funding [section 3] prior to being transmitted to the governor, then [section 3

and section 4(1)] are void.

(2) If the appropriation in [section 10] is vetoed, then [section 3 and section 4(1)] are void.

(3) If House Bill No. 2 is passed and approved and if it does not include funding for the pretrial program established in [section 1], then [sections 1, 7, and 8] are void.

**Section 15. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 1, 2, 7, 8, and 10] are effective July 1, 2017.

**Section 16. Termination.** [Sections 3 and 4] terminate June 30, 2019.

- END -

I hereby certify that the within bill,  
SB 0059, originated in the Senate.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2017.

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Secretary of the Senate

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2017.

SENATE BILL NO. 59

INTRODUCED BY C. WOLKEN

BY REQUEST OF THE COMMISSION ON SENTENCING

AN ACT GENERALLY REVISING CRIMINAL JUSTICE LAWS; REQUIRING THE OFFICE OF COURT ADMINISTRATOR TO CREATE A PRETRIAL PROGRAM; REQUIRING THE BOARD OF CRIME CONTROL TO CREATE A PROSECUTION DIVERSION GRANT PROGRAM; GRANTING THE BOARD RULEMAKING AUTHORITY TO ADMINISTER THE PROSECUTION DIVERSION PROGRAM; ALLOWING A COURT TO USE INFORMATION FROM A PRETRIAL RISK ASSESSMENT TOOL WHEN DETERMINING WHETHER A DEFENDANT SHOULD BE RELEASED OR DETAINED; CREATING AN OVERSIGHT COUNCIL TO MONITOR AND REPORT ON THE EFFECTS OF CRIMINAL JUSTICE LEGISLATION; REQUIRING THE QUALITY ASSURANCE UNIT OF THE DEPARTMENT OF CORRECTIONS TO ADOPT AN EVALUATION TOOL AND CONDUCT PROGRAM EVALUATIONS; REQUIRING THE DEPARTMENT TO ADOPT AND MAINTAIN AN INCENTIVES AND INTERVENTIONS GRID TO GUIDE COMMUNITY SUPERVISION OF OFFENDERS; REQUIRING THE COLLECTION OF CERTAIN DATA AND THE PROVISION OF CERTAIN REPORTS; ELIMINATING THE REQUIREMENT THAT A JUDGE OR JUSTICE OF THE PEACE REPORT DRUG USERS TO THE COUNTY ATTORNEY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 3-1-702 AND 46-9-109, MCA; REPEALING SECTION 46-9-203, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.