

## **SJ 3: Study the Board of Pardons and Parole**

Background Paper: The 1990 Criminal Justice and Corrections Advisory Council

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for the Law and Justice Interim Committee  
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### Background

During testimony at its December 2013 meeting, the Law and Justice Interim Committee (LJIC) heard about recommendations made in 1990 by the Criminal Justice and Corrections Advisory Council (CJCAC). The committee requested more information about the CJCAC and its recommendations, which this paper attempts to provide.

The full CJCAC report is available online at the LJIC website, [www.leg.mt.gov/ljic](http://www.leg.mt.gov/ljic), along with other meeting materials for the LJIC February 2014 meeting.

### History of the Criminal Justice and Corrections Advisory Council

Governor Stan Stephens established the CJCAC in September 1989 by Executive Order 17-89. Operating in an environment of concern over rising prison populations and correctional costs, the CJCAC's task was broad:

- develop a comprehensive plan for female offenders;
- develop statistical data on sentencing statutes and practices;
- study the impact of legislation enacted in 1989 by the 51st Montana Legislature;
- determine if sentencing and corrections laws should be recodified;
- examine current practices related to parole and release of offenders;
- examine ways to address overcrowding in male correctional facilities; and
- provide alternatives to address overcrowding in male and female prisons.<sup>1</sup>

The CJCAC was composed of 16 members and 2 ex-officio members, including 5 state legislators, a district court judge, a tribal court judge, a county commissioner, a county attorney, a public defender, a sheriff, prerelease center administrators, the deputy director of the Department of Institutions, a representative from the Montana Board of Crime Control, and other public members. Senator Tom Beck from Deer Lodge served as chairman.

The CJCAC formed three subcommittees. The topics addressed by those subcommittees were housing and program needs for female offenders, prison

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<sup>1</sup>Criminal Justice and Corrections Advisory Council, "Report to the Governor," July 1990, p. 1, available from:  
<http://www.leg.mt.gov/content/Committees/Interim/2013-2014/Law-and-Justice/Meetings/February-2014/Exhibits/criminal-justice-rep-to-gov-1990.pdf>, last accessed Jan. 7, 2014. [cited as CJCAC report]

overcrowding, and sentencing and release issues. The CJCAC disbanded in July 1990 after meeting 8 times as a full Council and issuing a report of its work and recommendations to the governor.

### Recommendations Overview

The CJCAC made 17 recommendations in its final report. Those recommendations range across many areas of criminal justice and corrections policy, from establishing a legislative oversight committee for corrections policy to constructing new prison and prerelease facilities to providing additional sentencing and sanctions options for judges and corrections staff. Of these recommendations, 10 dealt with the staffing and authority of the Board of Pardons (Board) or the parole process in general, including the Department of Institutions' role in providing offenders assistance before parole hearings or supervising offenders who were on parole. (At the time the CJCAC was formed, the Board was known as the Board of Pardons and the Department of Corrections as the Department of Institutions.)

A list of all 17 recommendations is included in Appendix A on page 8; a brief discussion of the parole-related recommendations starts below. A response from the Board to the parole-related recommendations is in Appendix C on page 12.

### Parole-Related Recommendations

**Recommendation #3:** Increase numbers of probation and parole field staff by a minimum of four officers.

The Subcommittee on Sentencing and Release made this recommendation because the number of offenders on probation or parole who required supervision by the Department of Institutions was increasing at a rate greater than that of the prison population. Besides recommending an additional four probation and parole officers, the subcommittee also recommended providing for additional support staff.

*Current Information:* Probation and parole officers are part of the Department of Corrections (DOC), which is responsible for the supervision of parolees. As of July 2012, the DOC had 122 FTE regular probation and parole officers. In addition, 13.5 FTE are Institutional Probation and Parole Officers who work in state institutions and regional facilities and 13 officers are responsible for supervising offenders assigned to alternative supervision programs.<sup>2</sup>

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<sup>2</sup>2013 Community Corrections "Rainbow Book", Montana Department of Corrections, Jan. 2013, p. 10, available from: <http://www.cor.mt.gov/content/Commcor/2013RainbowBook.pdf>, last accessed Jan. 8, 2014. [cited as 2013 Rainbow Book]

**Recommendation # 4:** Increase staff for the Board, including an additional hearings officer, a parole programmer, and a secretary.

The Subcommittee on Sentencing and Release made this recommendation because Board staff numbers had not been increased to keep pace with the increase in the prison population.

*Current Information:* The 2003 Legislature enacted HB 211, which revised the makeup of the Board. The bill removed the authority of the Board to appoint hearings officers and required hearing panels of two or three Board members to conduct parole hearings, which is the current Board practice. Most hearings are conducted by two members. A third member reviews the case only if the two panel members do not concur on a recommendation. Hearings held at the Montana State Prison in Deer Lodge generally have three members. Currently, the Board has 10 full-time staff and 7 citizen Board members.

**Recommendation #5:** Authorize 2.0 FTE for targeted case managers for the Department of Institutions.

The Subcommittee on Prison Overcrowding made this recommendation because one-half of the prison population consisted of offenders who either were eligible for parole but had waived their right to a parole hearing or had been denied parole and whose cases were reviewed annually by the Board. The targeted case managers would work with offenders to prepare parole plans and schedule treatment and parole hearings.

*Current Information:* The DOC currently has 21 case managers at adult facilities throughout the state. There are 12 case managers at Montana State Prison, 3 at the Montana Women's Prison, 4 at Crossroads Correctional Center in Shelby, and 1 each at the Dawson County and Cascade County Regional Prisons.<sup>3</sup>

**Recommendation #8:** Expand prerelease centers for men and women from five facilities with a combined capacity of 132 beds and add two FTE chemical dependency counselors to the staff of each pre-release center.

The Subcommittee on Prison Overcrowding made this recommendation because low-security inmates made up the bulk of the offenders in the correctional system and this number was expected to grow. Also, prison counseling resources were limited, resulting in increased lengths of stays for offenders. At the time, the state had 5 prerelease centers with a capacity of 132 beds. Specifically, the recommendation called for:

- creation of an additional 25-30 bed prerelease center for men;
- creation of an additional 12-15 bed prerelease center for women;

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<sup>3</sup>E-mailed correspondence with DOC staff.

- expanding existing prerelease centers for men by 5 beds in Billings, 10 in Butte, 10 in Great Falls, and by 2 beds in the Billing's women's prerelease center; and
- the addition of two FTE certified chemical dependency counselors in each prerelease center or sufficient contractors to provide the services.

*Current Information:*<sup>4</sup> Currently, the DOC contracts to provide six prerelease centers (PRC). The combined capacity of the PRCs is 818 beds, of which 640 are for men and 178 are for women. The PRCs are located in Billings, Butte, Bozeman, Great Falls, Helena, and Missoula. In 2007, the Legislature authorized DOC to spend nearly \$1.2 million to establish a PRC in NW Montana. DOC awarded a contract to build and operate the Kalispell PRC to the Community, Counseling, and Correctional Services, Inc. (CCCS), which also operates prereleases in Butte and Bozeman. Local property owners opposed the proposed location of the center, so it was not built. Funds for the Kalispell PRC were returned to the general fund. Another effort to establish a PRC in Columbia Falls was also unsuccessful.<sup>5</sup>

**Recommendation #9:** Allow selected prerelease inmates to be placed on house arrest supervision for the final 2 months of their prison terms.

The Subcommittee on Prison Overcrowding made this recommendation because it felt certain offenders who successfully completed all prerelease program goals would be better served by release to house arrest and extending the stay of those inmates would tie up resources that could be used for other offenders. A released offender would still be under the supervision of the center but would not live there. The plan would provide a supervised transition of the offender to the community and free up space for other offenders at the center.

*Current Information:*<sup>6</sup> DOC has a Transitional Living Program for offenders who have finished the residential portion of prerelease programming. The offenders in the program live in an approved residence, report daily to the prerelease center, complete a 24-hour itinerary, and are monitored by prerelease staff. Pre-release centers also use the Enhanced Supervision Program (ESP), which requires breath and urine tests at the prerelease center and weekly meetings with DOC probation and parole officers.

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<sup>4</sup>2013 Rainbow Book, p. 27-31.

<sup>5</sup>2011 Community Corrections "Rainbow Book", Montana Department of Corrections, Jan. 2011, p.28, available from: <http://www.cor.mt.gov/content/Commcor/2011RainbowBook.pdf>, last accessed Jan. 8, 2014, and e-mailed correspondence with DOC staff.

<sup>6</sup>2013 Rainbow Book, p. 31.

**Recommendation # 10:** Fund and develop a range of graduated, community-based sanctions to serve as alternatives to incarceration for violations of conditions of parole or probation.

The Subcommittee on Prison Overcrowding made this recommendation because for the 3 years before the CJCAC met, nearly 50% of prison admissions were because of probation or parole revocations. The subcommittee recommended a greater range of graduated sanctions be developed, including but not limited to increased contact with probation and parole officers, community service, curfew or house arrest, additional required counseling or treatment, electronic monitoring, and jail detention.

*Current Information:*<sup>7</sup> The Board and DOC staff have several options for alternative sanctions for probation and parole violators, including the Intensive Supervision Program (ISP) and the Enhanced Supervision Program (ESP), day reporting, the Treatment Accountability Program, electronic monitoring options, and assigning offenders to various treatment groups. A full list of these alternative sanctions can be found in Appendix B on page 10. Offenders who violate parole or probation conditions can also be sent to assessment and sanction centers located in Missoula, Anaconda, or Billings for a short time in lieu of sending the offender to prison. The actual location where an offender is sent will depend on if the offender is male or female and if the person violated probation or parole conditions.

**Recommendation #11:** Authorize up to 30 days/month of good time to parolees.

The Subcommittee on Prison Overcrowding recommended reinstating good time for parolees because, at the time, one-half of the prison population was parole eligible. At that time, inmates received good time in prison. For some prisoners, their sentences would expire sooner if they stayed in prison than if they sought and were released on parole. Also, parole officers' caseloads were above the recommended level, making shortening parole for well-behaved offenders an option for reducing high caseloads and relieving prison overcrowding. The recommended grant was up to 30 days/month, as governed by rules adopted by the Department of Institutions.

*Current Information:*<sup>8</sup> Good time credit was eliminated for parole purposes by the 1995 Legislature in House Bill No. 356. The same bill also eliminated good time credit to reduce the sentence. That portion of the bill had a delayed effective date of January 31, 1997. Offenders who committed offenses after that date are

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<sup>7</sup>2013 Rainbow Book, p 8-9.

<sup>8</sup>Susan Byorth Fox, "Policies on Good Time and the Effects of Sentencing Practices: History and Survey Results," *Correctional Standards and Oversight Committee, Legislative Services Division*, May 1998, available from: [http://leg.mt.gov/css/publications/research/past\\_interim/cor\\_rpt3.asp](http://leg.mt.gov/css/publications/research/past_interim/cor_rpt3.asp), last accessed Jan. 8, 2014; and e-mailed correspondence with Board staff.

ineligible to accrue good time credits. For offenders who committed crimes before that date, there are various rates of good time credits that can be accrued while incarcerated or on parole. Those rates depend on the good time laws in effect at the time the offender committed the crime.

**Recommendation #13:** Fund and establish an Intensive Supervision Program (ISP) in Great Falls to be used as a diversion for offenders sentenced to prison and as an intermediate sanction for probation and parole violators.

The Subcommittee on Prison Overcrowding made this recommendation because it felt there was a lack of sentencing options other than incarceration. At the time, the only ISP was in Missoula. The subcommittee recommended that the capacity of the ISP expansion be 25 offenders and that the sentencing option could be used to divert offenders otherwise sentenced to prison or as an intermediate sanction for probation and parole violators.

*Current Information:* ISP is available as a supervision option in six areas: Missoula, Bozeman, Butte, Great Falls, Billings, and Kalispell. See Appendix B on page 10 for other intermediate sanction options.

**Recommendation #16:** Establish an additional level of probation and parole supervision called "extended supervision" in Missoula, Helena, Butte, Great Falls, and Billings.

The Subcommittee on Prison Overcrowding made this recommendation to attempt to reduce recidivism, to provide additional programming to probationers or parolees, and to give the Board additional options when it made parole decisions. Offenders in "extended supervision" would be required to report face-to-face and via the telephone to probation and parole officers weekly. The offenders could also be subject to curfew and electronic monitoring requirements as determined by the Board or a regional supervisor for the Department of Institutions. Generally, the subcommittee recommended that an offender not be placed in this level of supervision for more than 6 months.

*Current Information:* ISP, the ISP Sanction Program, and ESP are options available to DOC staff when supervising offenders. ISP increases DOC supervision for community-based offenders and uses electronic monitoring as a component. ISP is used in six communities: Missoula, Bozeman, Butte, Great Falls, Billings, and Kalispell. The ISP Sanction Program and ESP are available in Missoula, Helena, Bozeman, Butte, Great Falls, and Billings. The ISP Sanction Program is similar to ISP but includes a treatment component. ESP requires breath and urine tests at a prerelease center and weekly meetings with DOC probation and parole officers. These supervision programs are described further in Appendix B on page 10.

**Recommendation #17:** Make multiple changes related to the Board and/or the parole process.

The Subcommittee on Prison Overcrowding made a series of recommendations that were grouped by the CJCAC as "Parole Issues". The recommendations included that:

- the Board seek technical assistance from the National Institute of Corrections to review its parole practices and criteria;
- the Legislature should place a statutory cap on prison populations after reviewing similar methods in use in other states;
- the Board and the Department of Institutions issue a statement recommending that parole-eligible offenders who required treatment could be paroled to parole plans that included treatment in community-based programs; and
- the Board and the Department of Institutions issue a formal agreement of the conditions under which the Supervised Release Program could be used as an alternative to incarceration.

*Current Information.*<sup>9</sup> The Board sought and obtained technical assistance from the National Institute of Corrections. Using grant-based funding, the Board received professional consultation about topics including parole release criteria, the parole revocation process, and risk assessments. The current risk assessment tool used by the Board was spurred, in part, by these post-CJCAC consultations in the early and mid-1990s.

Although other states' methods of capping prison populations were studied, the Legislature has not adopted a statutory prison population cap.

Community-based treatment programs and community-supervision are all incorporated in DOC policies to supervise offenders and parolees. A list of current specialized approaches is available in Appendix B on page 10.

Supervised release was a program for certain offenders who had served at least one-half the required time to be parole eligible and were within 24 months of being parole eligible. The program was to recognize education, treatment, and work progress. An offender needed Board approval to be accepted to the program and the offender also needed a willing sponsor and a probation and parole officer to supervise the offender during the time on release. The Department of Institutions would screen offenders for suitability before the Board considered approving the request. At the time, many offenders applying for supervised release were considered "high risk" and were high-profile violent offenders, and the Board "viewed supervised release as an extraordinary privilege" for those offenders that had good conduct and progress in prison, as

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<sup>9</sup>Information in this section relies heavily upon e-mailed correspondence with Board staff.

well as a good parole plan. The statute enacting the supervised release program was repealed by the Legislature in 1997. Statistics regarding the number of offenders granted supervised release can be found in information provided by the Board in Appendix C, which is on page 12.



## Appendix A: Complete List of CJCAC Recommendations

Recommendations with an asterisk (\*) are parole-specific recommendations discussed in more detail in this paper.

1. Form a corrections oversight committee of the House and Senate Judiciary committees to review bills that create or define criminal offenses and/or change sentencing options.
2. Create a Task Force on Sentencing, Treatment, and Release whose members would represent all three branches of government and would make recommendations to the Legislature about probation, parole, law enforcement, prison staffing, etc.
3. \*Increase numbers of probation and parole field service officers by a minimum of four officers.
4. \*Increase staff for the Board, including an additional hearings officer and preparole programmer.
5. \*Authorize 2.0 FTE for targeted case managers for the Department of Institutions.
6. Encourage Montana communities to establish local house arrest and community service programs as alternatives to prison for certain nonviolent offenders.
7. Construct three additional units at the Montana State Prison, including a 120-bed treatment unit for special needs inmates, a 96-bed high-security unit, and a 96-bed low-security unit.
8. \*Expand prerelease centers for men and women from 5 facilities with a combined capacity of 132 beds and add 2 FTE chemical dependency counselors to the staff of each prerelease center.
9. \*Allow selected prerelease inmates to be placed on house arrest supervision for the final 2 months of their prison terms.
10. \*Fund and develop a range of graduated, community-based sanctions to serve as alternatives to incarceration for violations of conditions of parole or probation.
11. \*Authorize up to 30 days/month of good time to parolees.
12. Allow offenders to be sentenced to a correctional authority instead of a specific institution.

13. \*Fund and establish an Intensive Supervision Program in Great Falls to be used as a diversion for offenders sentenced to prison and as an intermediate sanction for probation and parole violators.
14. Provide contingency funding to allow the Department of Institution to address intermediate housing and program needs for female offenders.
15. Construct a separate facility for housing female offenders.
16. \*Establish an additional level of probation and parole supervision called "extended supervision" in Missoula, Helena, Butte, Great Falls, and Billings.
17. \*Make multiple changes related to the Board and/or the parole process including that:
  - a. the Board should seek assistance to review parole practices and criteria;
  - b. the Legislature should place a cap on prison populations;
  - c. the Board and the Department of Institutions should issue a formal statement recommending that parole-eligible inmates who require treatment may be paroled to plans that incorporate treatment in licensed, community-based programs; and
  - d. the Board and the Department of Institutions should issue an agreement that lists the conditions under which the Supervised Release Program can be an alternative to incarceration.

## Appendix B: Specialized Approaches for DOC Community-Based Supervision of Offenders

Source: 2013 Rainbow Book, p. 8-9.

### **Intensive Supervision Program (ISP)**

- Provides increased supervision of offenders in the community, including drug and alcohol monitoring
- Uses electronic monitoring, including GPS technology, to help hold offenders accountable
- Increases emphasis on offender accountability, including employment and treatment options where necessary

Locations: Missoula, Bozeman, Butte, Great Falls, Billings, and Kalispell

### **ISP Sanction Program**

- Provides an alternative sanction P&P officers use to help change offenders' behavior and keep them in the community
- Similar supervision levels as regular ISP
- Has a treatment component

Locations: Missoula, Helena, Bozeman, Butte, Great Falls, and Billings

### **Enhanced Supervision Program (ESP)**

- An alternative sanction P&P officers use to help change offenders' behavior and keep them in the community
- Increased drug and alcohol testing
- Contracted with PRCs for treatment/accountability services

Locations: Missoula, Helena, Bozeman, Butte, Great Falls, and Billings

### **Treatment Accountability Program (TAP)**

- An alternative sanction P&P officers use to help change offenders' behavior and keep them in the community:
  - ▶ Similar to ISP sanction program with increased supervision
  - ▶ Increased drug and alcohol testing
  - ▶ Treatment groups

Locations: Helena, Glendive, and Polson

### **Day Reporting**

- An alternative sanction P&P officers use to help change offenders' behavior and keep them in the community
- Increased supervision, drug and alcohol testing

Locations: Kalispell, Polson, Glendive, and Sidney

### **Electronic Monitoring**

- House arrest:
  - ▶ Bracelet used to ensure offender stays on schedule
  - ▶ Used mainly in ISP and ISP sanction programs

- GPS:
  - ▶ Passive GPS
  - ▶ Mandated for level 3 sexual offenders
  - ▶ Used in ISP and ISP sanction programs
  - ▶ Used for other high-risk offenders
- SCRAM:
  - ▶ Electronic alcohol monitoring device
  - ▶ Used mainly for DUI offenders
- Interlock:
  - ▶ Electronic alcohol monitor attached to the ignition system of a vehicle
  - ▶ Used mainly for DUI offenders who are allowed to drive

### **Offender Groups and Treatment**

- Cognitive Principles & Restructuring
- Sexual offender groups
- Drug and alcohol groups
- Booter (graduates of Treasure State Correctional Training Center)

Appendix C: Board Response to the Law and Justice Interim Committee

**Response to the Law and Justice Interim Committee: SJ3: Study of the Board of Pardons and Parole Regarding the recommendations made by the Criminal Justice and Corrections Advisory Council 1990**

**February 13, 2014**

**Recommendation #3:** Increase numbers of Probation and Parole field staff by a minimum of (4).

**Response:** Probation and Parole officers are currently under the Department of Corrections, not the Board of Pardons and Parole.

**Recommendation # 4:** Increase staff for the Board, including an additional hearings officer, a pre-parole programmer, and a secretary.

The Subcommittee on Sentencing and Release made this recommendation to hire more staff because Board staff numbers had not been increased to keep pace with the increase in the prison population.

**Response:** The Board had (4) staff members in 1990 and that had not changed since 1976. The Board was given another FTE in FY93 as a result of this study. The Legislature later approved FTE Analyst positions in Billings and Great Falls. We currently have (10) full time staff to cover all facilities in Montana in the following locations: (8) staff work out of Board's main office in the Deer Lodge; (1) Parole Analyst works in the Billings Satellite office and covers Montana Womens Prison (MWP), Passages, Alternatives, Dawson County Correction Center (DCCF), Warm Springs Addiction Treatment and Change East (WATCH East), Elkhorn Treatment Center, and Pine Hills (juveniles) in Miles City; (1) Parole Analyst works in the Great Falls Satellite office and covers Great Falls Regional Prison (GFRP), Great Falls Transition Center (GFTC) and Crossroads Correctional Center (CCC). The staff in Deer Lodge include (1) Director, (1) Senior Parole Analyst, (2) Parole Analysts and (4) secretaries and covers Montana State Prison (MSP), Sanction, Treatment, Assessment, Revocation, or Transition (START), WATCH West, Lewistown Infirmary, Montana Developmental Center (MDC), Montana State Hospital (MSH), Butte Pre-Release, Bozeman Pre-Release, Helena Pre-Release, Missoula Pre-Release, and other community-based treatment programs. We have had no new FTE's since 2007.

At that same time, the Subcommittee on Overcrowding was concerned about inmates on waiver status. The Board recognized for some time that the number of inmates on waiver status was a serious concern. That concern was a catalyst in the Board's request for a pre-parole program during the 1988-89 Advisory Council. In 1989, when an inmate waived his hearing, it could be for an indefinite period of time. Over a

several month period of time after the committee report, the Board conducted special parole Board sessions for the over 300 inmates that had been on waiver status for over six months. The Board subsequently amended the ARM accordingly. The current rule (ARM 20-25-305(4)) states the following: An offender who waives his/her parole hearing will have a mandatory parole hearing within six months unless an extended period is necessary as determined by facility staff and approved by board staff, for a period not to exceed one year. The hearing month will be automatically set and the offender will come before a regularly scheduled hearing panel, unless the offender requests a hearing prior to this date and provides at least 30 days written notice to the board. The board, through its staff, will review all waivers for legitimacy and may accept or reject any waiver. An offender may voluntarily waive two consecutive parole hearings for up to 12 months each time.

As part of the response to CJCAC, the Board proposed a Pre-Parole Process, which is still implemented today. The proposal was designed to better prepare the inmate for his or her parole hearing. Today we continue to participate in the initial classification system at MSP to help offenders better understand treatment/education programs combined with expected conduct the Board will likely be requiring in order to increase chances for parole consideration. The Board conducts pre-parole schools monthly at each prison facility. Pre-Parole school is a program facilitated by board staff with assistance from IPPO staff to educate parole eligible offenders with the parole process. DOC Case Managers and IPPOs work with offenders on a daily basis to help them prepare for release. Recent Reentry initiatives, procedures, and new assessments are the latest and ongoing means by which both DOC and BOPP are helping offenders prepare for and succeed in the community. \*\* Program Teams ( initial classifications) were utilized at MWP until 2013 when the process was eliminated.

\*\*Board staff participated in Program Team meetings that were previously held to recommend treatment programming for female inmates at Montana Women's Prison (MWP) similar to what we do at MSP. This process was eliminated at MWP in late 2013 by Warden Daly. Currently at MWP, the Board staff is not involved in initial programming recommendations. It is our information that all programs are inmate selected only, with the purpose of increasing offender accountability.

**Recommendation #5:** Authorize 2.0 FTE for targeted case managers for the Department of Institutions.

The Subcommittee on Prison Overcrowding made this recommendation because one-half of the prison population consisted of offenders who were eligible for parole but had waived their right to a parole hearing or who were denied parole and whose case is reviewed by the Board annually. Also, many offenders became parole eligible within (1) year of incarceration. The case managers would work with offenders to prepare parole plans and schedule treatment and parole hearings.

Current Information: Targeted Case Mangers evolved into Institutional Probation & Parole Officers (IPPOs) and these are Department of Correction's positions. There are currently 13.5 IPPO positions with DOC. In addition to probation and parole officers throughout the state, the DOC has institutional probation and parole officers at Montana State Prison (MSP), Women's Prison (MWP); Passages Great Falls Regional Prison; Dawson County Correctional Facility; START; WATCH; Crossroads Correctional Center (CCC). Institutional Probation & Parole Officers are instrumental in assisting offenders in the institutional screening process, developing parole/release plans, processing parole paperwork for parole release and furloughs, tracking offender progress toward requirements imposed by the District Court, DOC, and/or BOPP, and evaluating and aiding offenders who request placement in a community-based program after being incarcerated.

**Recommendation # 8:** Expand pre-release centers for men and women from (5) facilities with a combined capacity of 132 beds and add 2 FTE chemical dependency counselors to the staff of each pre-release center.

DOC should have the most up-to-date information regarding the current status on the mission to establish a NW Pre-Release Center.

**Response:** The Board continues to support offenders transitioning through a Prerelease Center (PRC) prior to parole. A majority of offenders coming out of prison do not have a residence, employment or any available resources in order to readjust back into a community. Pre-Release Centers afford offenders with the opportunity to work, attend treatment and reside in the community in order to establish employment and residence prior to parole. Many offenders nearing the completion of their prison term will leave the prison with minimal job skills and/or life skills. The Board almost always paroles offenders who have been endorsed by the Board to transfer to PRC and has successfully complete the program. Pre-Release Centers are community based programs that allow an offender the opportunity to place themselves in the most favorable situation to be a successful law abiding citizen and demonstrate to the Board that they are no longer a detriment to themselves and society. Offenders can get set up with residence and employment while at Pre-Release which are requirements for return to the community.

**Recommendation #9:** Allow selected pre-release inmates to be on house arrest supervision.

**Response:** House Arrest, in a similar form, is still utilized by PRC, DOC, and the Board today but without electronic monitoring. It might have a different name such as Transitional Living (TL) or Alternative Reporting Component (ARC). A PRC center will contact the Board for authorization to place a resident in those live-out programs if the resident falls under the jurisdiction of the Board. For the last 60 days of the PRC term, and after the offender has been granted a parole, the offender can have their own

residence outside of the PRC with daily checks in at the Pre-Release Center. This allows time parole paperwork to be processed through BOPP and DOC or if the offender will discharge their sentence from the live-out component of PRC.

In addition, there are statutes that do continue to make Home Arrest an option today, however they would not have any bearing on the Board of Pardons and Parole. 46-18-1002. Home arrest -- petition -- agreement. (1) An offender may petition a sentencing court for an order directing that all or a portion of a sentence of imprisonment be served under conditions of home arrest. The term of home arrest may not exceed 6 months. Petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of the offender's sentence.

(2) The petition must include:

(a) either a statement by the department of corrections that it has a monitoring device available for its use on the offender or information from the offender as to a private company that can and will implement the home arrest, along with the name and credentials of the company and the type of monitoring device to be used;

(b) the place of any employment of the offender and the name of the offender's supervisor;

(c) if the offender has been accepted into one, a plan for participation in an educational, treatment, or training program;

(d) the source and amount of any income of the offender; and

(e) the address at which the home arrest will occur and a list of any other persons who will reside at that address during all or part of the home arrest, their ages, and their relationship to the offender.

(3) The sentencing judge shall refer the petition to the supervising authority. The supervising authority shall review the petition and accept or reject the offender for home arrest. If the offender is rejected, the sentencing judge shall dismiss the petition. If the offender is accepted, the sentencing judge may conduct a hearing on the petition and grant or deny the petition. An order for home arrest must incorporate the home arrest plan, with any modifications by the court, and require compliance with the plan. The clerk of court shall give the county attorney a copy of the order.

(4) A home arrestee is subject to the decisions and applicable rules of the supervising authority during the period of supervision.

(5) The offender shall file with the court the written and notarized consent to the home arrest signed by each adult who will reside with the offender during all or part of the home arrest. History: En. Sec. 2, Ch. 105, L. 1991; amd. Sec. 3, Ch. 322, L. 1997.

46-18-1004. Home arrest -- ineligibility. A person being held under a detainer, warrant, or process issued by some other jurisdiction is not eligible for home arrest. A person convicted of a violent felony offense is not eligible for home arrest. However, this section does not prevent the use of a monitoring device as a part of an intensive supervision program or other program of the department of corrections. History: En. Sec. 4, Ch. 105, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 219, Ch. 546, L. 1995.



**Recommendation # 10:** Fund and develop a range of graduated, community-based sanctions to serve as alternatives to incarceration for violations of conditions of parole or probation.

The Subcommittee on Prison Overcrowding made this recommendation because for the three years before the CJCAC met, nearly 50% of prison admissions were because of probation or parole revocations. The subcommittee recommended a greater range of graduated sanctions be developed including but not limited to increased contact with probation and parole officers, community service, curfew or house arrest, additional required counseling or treatment, electronic monitoring, and jail detention

**Response:** Since this 1990 report, the Department of Corrections implemented Intervention hearings as a way to sanction parolees informally in a graduated sequence. Please refer to ACCD Policy 140-2 Preliminary On-Site Hearings, pages 2 & 3. This policy gives a very good explanation of Intermediate Sanctions that can and are utilized. On page 2 it state, "Intermediate Sanction's will be explored in every parole revocation." PO's are following that directive. Offenders most often have more than one intervention hearing and sanction opportunity prior to a Report of Violation report being written. There is a very good reference that lists all the sanctions options available to a PO for a parolee that is attached to that policy. [DOC form 140-1 (J)] Both the policy and form can be located on the DOC website.

It is important to note that some technical violations are more severe than others. For example, a technical violation for a sex offender being in a park where children congregate would be a more severe violation than a theft offender not telling his PO he was fired from a job. Some violations are technical in nature but are also criminal offenses. Using illegal drugs are considered technical violations but it is against the law to consume/possess illegal drugs. PO's and the Board staff do an excellent job in scrutinizing those violations and giving appropriate sanctions and placements to keep the public safe and the offender in the community when they present no risk to self or others. If probable cause has been determined that the parolee has violated the terms of their parole, parolees are sent to START (men) and ASCR at Passages (women) unless they have been charged or convicted with a new felony crime; or there are special circumstances where it is felt that MSP/MWP is the more appropriate placement. (DPHHS is consulted for placement on parole violators under their jurisdiction). Once at these facilities, they are again looked at for possible placements in the community.

**Recommendation #11:** Authorize up to 30 days/month of good time to parolee.

Response: Good time was eliminated in \*1995 for Parole purposes (per amendments to 1995 MCA 46-23-201) and in \*\*1997 for discharge. Per MCA 46-23-201 (1993), whenever population exceeds capacity for (30) consecutive days, the board shall consider male or female prisoners eligible for parole 120 days prior to the eligibility dates (This was eliminated along with good time for parole eligibility per 1995 MCA 46-23-201). By 1993, before significant changes were made, the maximum amounts of

good time that could be awarded were limited in statute by classification of the inmate, enrollment in education, or self-improvement. Good time continued during parole, but did not apply to probation. Good time credits could be forfeited for escape or violation of rules and were able to be restored for subsequent good behavior. An additional 180 days of good time credits could be granted toward parole eligibility or to discharge if the design capacity of the men's or women's prison was exceeded. Good time was completely eliminated for crimes committed on or after January 31, 1997. According to Policies on Good Time and the Effect on sentencing Practices: History and Survey Results "In the past, statutory provisions and administrative practices made calculation of good time complicated. In addition, lack of computer automation practices forced good time calculations to be figured by hand, which contributes to the overall uncertainty as good time accrual information is not readily available."

\*For offenses committed on or after April 12, 1995, through those committed on January 30, 1997, offenders must serve one-fourth of their sentence before they are eligible for parole. An offender on a life sentence must serve 30 years prior to reaching parole eligibility. Good time is earned at a day-for-day rate by inmates in an adult correctional facility or while on parole and applies to a reduction in the sentence for purposes of calculating the date of discharge. Allocation of good time will apply in a situation involving the revocation of probation for a crime committed before January 31, 1997.

\*\*For offenses committed on or after January 31, 1997, an offender must serve one-fourth of the sentence prior to achieving parole eligibility and there is no good time earned toward a discharge date. An offender incarcerated on a life sentence must serve at least 30 years prior to achieving parole eligibility.

Susan Byorth Fox, "Policies on Good Time and the Effects of Sentencing Practices: History and Survey

Results," Correctional Standards and Oversight Committee, Legislative Services Division, May 1998, available

from: [http://leg.mt.gov/css/publications/research/past\\_interim/cor\\_rpt3.asp](http://leg.mt.gov/css/publications/research/past_interim/cor_rpt3.asp), last accessed Jan. 8, 2014.

Based on the Advisory Council on Corrections and Criminal Justice Policy (Council) recommendations in 1995, the DOC requested the bill for the purpose of "implementing truth in sentencing by making the time a prisoner will actually serve more apparent". (By implementing "truth in sentencing" and eliminating good time it made time a prisoner will actually serve more apparent to everyone including victims, inmates, Judges, attorneys, law enforcement officials, Corrections staff and all Montana citizens.) The bill, House Bill No. 356, sponsored by Representative Bill Boharski, was passed into law (Ch. 372, L. 1995). Certain provisions of the bill had a delayed effective date. The bill abolished the designation of dangerous or non-dangerous offender for the purposes of parole, effective April 12, 1995, virtually the same as was recommended by the Council, but the bill went further and eliminated good time credits altogether, with a delayed effective date of January 31, 1997.

**Recommendation #13:** Fund and establish and Intensive Supervision Program (ISP) in Great Falls to be used as a diversion for offenders sentenced to prison and as an

Intermediate sanction for probation and parole violators.

**Response:** When ISP was first implemented, an offender with a term sentence could be taken back to court to get the sentence changed to ISP, if it was felt they were appropriate for that program. At that time, ISP had "call centers" in Billings and Great Falls that would randomly call offenders in their homes and give alerts to PO's to check on. ISP has undergone numerous changes in the programming, but it has always been utilized by the Board for offenders who were appropriate for that level of supervision. ISP is currently available in Billings, Missoula, Great Falls, Kalispell, Butte, and Bozeman and is a six month program. The Board can also recommend ISP be used as a sanction via an Intervention Hearings.

**Recommendation #16:** Establish an additional level of probation and parole supervision called "extended supervision" in Missoula, Helena, Butte, Great Falls, and Billings.

**Response:** Extended Supervision was implemented by Probation and Parole in the 90's. Prior to this time, the offenders were assigned three levels of supervision (based on a risk/needs matrix) which was the basis of frequency of contacts between PO's and offenders. For example, on minimum level the offender had to report to PO once every 3 months; medium (report once a month) and maximum (report every two weeks). Extended Supervision mandated weekly appointments and more frequently collateral contacts at home and with employers. This has changed somewhat over time but today, some P&P Offices today have "Day Reporting" which can be utilized as a high level of supervision for offenders coming out of facilities or as a sanction for violations. The Department of Corrections currently has an Enhanced Supervision Program, which is also a high level of supervision used as sanction. This program includes frequent drug/ alcohol testing and contacts with P&P officers.

**Recommendation #17:** Changes related to the Board and/or parole process.

Technical Assistance:

**Response:** Following the CJACAC's report, the Board sought technical assistance for the National Institute of Corrections through several grants. The Board had consultations with professionals in regards to release criteria, revocations, and risk assessments. These led about to the parole considerations and criteria listed in current statute and administrative rules, as well as development of our current risk assessment. (see report on Risk-Assessment Overview)

Legislative cap on prison populations:

**Response:** See above discussion on prison populations and BOPP participation. The Board has no control over statutory caps of prison population however, in the technical assistance mentioned above, the methods of several other states was reviewed

Community-based programs:

**Response:** With the exception of Sex Offender Treatment, the Board of Pardons and Parole has consistently allowed offenders who require treatment to complete the necessary treatment in a DOC community-based program as opposed to prison if appropriate.

Formal Agreement on Supervised Release Programs:

**Response:** (MCA 46-23-405) is currently a mute issue as it was eliminated by the 1997 Legislature. It was a program that recognized education, treatment training and work progress for those inmates that were not designated ineligible. Inmates must have served at least one-half of the time required to be parole eligible and not be more than 24 months before parole eligible date. The DOI used a grid to screen inmates and it was somewhat restrictive and difficult to pass. The inmate had to make a request the program and needed Board approval. A PO and a sponsor were responsible for supervising the activities of the prisoner during release. Some long term inmates could qualify for a Work Furlough which was replaced by the Supervised Release program. In the ten years prior to 1989, approximately 130 offenders applied and approximately 50 were granted supervised release. In 1989 six cases were referred to the Board and only 50% were approved for participation. Many of these offenders were high risk, high profile violent offenders that were serving long sentences. This often made approval difficult. The Board viewed supervised release as an extraordinary privilege and inmates that were approved had to have excellent progress and conduct within the institution, coupled with a good release plan.