



A REPORT
TO THE
MONTANA
LEGISLATURE

PERFORMANCE AUDIT

Administration of Montana's Drug Courts

Judicial Branch

JANUARY 2015

LEGISLATIVE AUDIT
DIVISION

13P-08

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PERFORMANCE AUDITS

Performance audits conducted by the Legislative Audit Division are designed to assess state government operations. From the audit work, a determination is made as to whether agencies and programs are accomplishing their purposes, and whether they can do so with greater efficiency and economy.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Members of the performance audit staff hold degrees in disciplines appropriate to the audit process.

Performance audits are performed at the request of the Legislative Audit Committee which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

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January 2015

The Legislative Audit Committee
of the Montana State Legislature:

This is our performance audit of the Administration of Montana's Drug Courts. Drug courts operate within the state's district courts and courts of limited jurisdiction and are organizationally part of the Judicial Branch (branch).

This report provides the Legislature information about the management and operation of drug courts. The report includes recommendations to the Montana Supreme Court, which is the governing body of the branch. Recommendations address compliance with state law, adherence to best practices for drug courts, and system-wide planning and support. Also included are issues for legislative consideration. The Montana Supreme Court's written response to the audit recommendations is included at the end of the report.

We considered the branch's nonconcurring response to Recommendation #5A, and maintain our position as reported. As indicated on page 31 of the report, lack of a uniform electronic case management system negatively impacts the ability of the branch to effectively gather drug court participant information in order to evaluate participant outcomes and analyze overall system benefits.

We wish to express our appreciation to the Chief Justice and branch personnel, and especially the drug court judges and staff for their cooperation and assistance during the audit.

Respectfully submitted,

/s/ Tori Hunthausen

Tori Hunthausen, CPA
Legislative Auditor

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ELECTED, APPOINTED, AND ADMINISTRATIVE OFFICIALS

			<u>Term Expires</u>
Supreme Court	Mike McGrath	Chief Justice	2016
	Beth Baker	Justice	2018
	Patricia Cotter	Justice	2016
	Laurie McKinnon	Justice	2020
	Jim Rice	Justice	2014
	James Shea	Justice	2016
	Michael Wheat	Justice	2014
District Court Council	Mike McGrath, Chief Justice, Montana Supreme Court		
	Robert Deschamps, District Court Judge, 4th Judicial District		
	Greg R. Todd, District Court Judge, 13th Judicial District		
	Jon Oldenburg, District Court Judge, 10th Judicial District		
	Dirk Sandefur, District Court Judge, 8th Judicial District		
	Glen Welch, Juvenile Probation Officer, 4th Judicial District		
	Lori Maloney, District Court Clerk, 2nd Judicial District		
	Glenda Travitz, Court Reporter, 21st Judicial District		
	Jim Reno, County Commissioner, Yellowstone County		
Appointed Officials	Beth McLaughlin, Court Administrator		


 MONTANA LEGISLATIVE AUDIT DIVISION

 PERFORMANCE AUDIT
 Administration of Montana's Drug Courts
 Judicial Branch

JANUARY 2015

13P-08

REPORT SUMMARY

Although national data and our observations of drug courts in Montana reveal positive outcomes, the Judicial Branch lacks accurate performance data to support expenditures. The branch also needs to improve programmatic oversight, evaluation, and training systems to support the individual courts.

Context

Drug courts have operated in the United States for more than 20 years. A drug court is a specialized court docket that targets criminal, child abuse and neglect, or juvenile cases involving people who have drug addiction and dependency problems. The purpose of a drug court is to achieve a reduction in recidivism and substance abuse, and to increase the participants' likelihood of successful rehabilitation through early, continuous, and intense judicial oversight; substance abuse treatment; mandatory periodic drug testing; use of appropriate sanctions and incentives; and other community-based rehabilitation services. Participants remain in the community—working, going to school, taking care of family, and fulfilling community service obligations.

Montana's first drug court began operating in Missoula in 1996, and there are now 26 drug courts operating statewide at the district and limited jurisdiction level. This audit focused primarily on district courts with some limited work in courts of limited jurisdiction.

Results

Audit work identified weaknesses with Judicial Branch (branch) oversight, assistance, evaluation of drug courts, and training of drug court staff.

Audit recommendations to the Supreme Court include:

- ◆ Ensure courts comply with statutory requirements that prohibit drug court participation by individuals convicted of a violent offense.
- ◆ Work with the district court judges to determine whether changes in statutory eligibility requirements relative to violent offender eligibility in non-federally funded drug courts should be brought forward for legislative consideration.
- ◆ Ensure courts comply with statutory provisions for assessing drug court participant fees.
- ◆ Ensure individual drug court case files contain documentation to support consideration of ability to pay fees and indigency decisions.
- ◆ Ensure courts comply with state law by having a formal Memorandum of Understanding between drug courts and treatment providers.
- ◆ Adopt a system-wide approach to training drug court personnel, including developing formal training plans; ensures timely training; and expands training opportunities through web-based training.

- ◆ Strengthen drug court case management by prioritizing delivery of an automated case management system for district level drug courts currently using paper files; and developing a strategic plan to implement an integrated, web-based, drug court specific case management system for all district level drug courts.
- ◆ Strengthen validity of recidivism data collected from drug courts by ensuring staff apply a consistent definition of recidivism relative to drug courts; provide routine staff training for data collection; and assessing the accuracy of the data collected.
- ◆ Establish a drug court council to provide system-wide planning and policy direction for drug courts.
- ◆ Develop a long-term planning strategy for drug courts that establishes operational and funding priorities.
- ◆ Improve its processes for providing programmatic and administrative assistance to drug courts by redefining the role of the statewide drug court coordinator; developing administrative reference material for drug court staff; and providing an ongoing administrative training component for drug court coordinators.

Audit work also identified areas for legislative consideration with the following conclusions:

- ◆ Detailed cost compilation for all drug courts is not currently possible as the branch does not collect comprehensive drug court cost data. In addition, there is no mechanism in place for reporting complete financial data to the legislature.
- ◆ There will be continued fiscal pressure to fund drug courts with state general funds as federal grants expire or as amounts are reduced. Planning for financial sustainability of drug courts is currently done on a short-term basis.

Recommendation Concurrence	
Concur	8
Partially Concur	1
Do Not Concur	1
Source: Agency audit response included in final report.	

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Chapter I – Introduction

Introduction

The Legislative Audit Committee prioritized a performance audit of Montana's drug courts (drug courts). The committee was interested in the subject due to the growing prevalence of drug courts both nationwide and in the state. A drug court is a specialized or problem solving court-based program that targets criminal offenders and parents with pending child welfare cases, who have alcohol and drug addiction and dependency problems. Drug courts follow a fundamentally different process than traditional justice system case processing. Drug courts are judicially supervised and offer a means of providing program participants addiction and treatment services, while under close supervision by a team of criminal justice and law enforcement professionals. Offenders processed through a drug court are typically enrolled in the program for 12 to 18 months, depending on individual progress and the type of drug court.

Audit Scope

Audit scope focused primarily on drug courts operated within district courts. We conducted limited audit work relative to drug courts that operate in courts of limited jurisdiction. Although some of these courts are appropriated state general fund moneys, most are not, and rely on local-level funding sources. We included judges and staff from courts of limited jurisdiction in surveys we distributed, and visited a smaller sample of drug courts operated at this court level. We excluded Tribal Courts from audit scope. In order to examine the operations of the different types of drug courts that currently operate in the state, we included adult, family, co-occurring, veterans, juvenile, and driving under the influence (DUI), and driving while intoxicated (DWI) courts in our audit work. All are referred to as drug courts in the remainder of the report.

Our audit focused primarily on drug court operations during fiscal year 2013 and included reviewing records for individuals that participated in drug courts during that time frame. We also examined select records and reports that dated back or were issued prior to 2013.

Audit Objectives and Methodologies

The following objectives formed the basis of this audit:

1. Determine if there are mechanisms in place to ensure drug courts apply established best practices for drug courts, as well as comply with state law.
2. Determine if drug court system has an effective process for evaluating participant outcomes and analyzing overall system benefits.

3. Determine if there is a long-term plan that accounts for expansion of drug courts in Montana and continued financial sustainability.
4. Determine the system-wide costs of drug courts, and whether there is a mechanism in place for reporting these costs to the legislature and other stakeholders.

Audit staff conducted the following methodologies in order to address audit objectives:

- ◆ Visited 11 drug courts.
- ◆ Distributed a survey to all district, municipal, city, and justice court judges (including judges that operate drug courts and those that do not) and all drug court coordinators, compiled results, and analyzed trends.
- ◆ Conducted interviews with drug court team members including judges, court coordinators, representatives from county attorneys' offices, defense attorneys, treatment providers, probation and parole officers, and law enforcement representatives.
- ◆ Representatives from other involved entities were also interviewed including Judicial Branch (branch) management and administrative staff, and Department of Transportation staff involved with federal safety grants for DUI courts.
- ◆ Reviewed national drug court standards and best practices and interviewed nationally recognized experts in the operation and management of drug courts.
- ◆ Contacted representatives from a sample of other states that operate drug courts and gathered comparative information.
- ◆ Observed drug court staffing meetings and court proceedings including introductory sessions, progress hearings, and graduations.
- ◆ Reviewed and assessed documentation maintained by drug courts including the case files for a sample of 61 drug court participants.
- ◆ Examined statistics maintained by the individual drug courts and branch including performance metrics.
- ◆ Reviewed applicable statutes, administrative rules, branch policy, and court level policies, and assessed drug court adherence to these requirements.
- ◆ Examined documents and information relative to federal grants available for drug courts including grant requirements.
- ◆ Reviewed information published by the U.S. Department of Justice, Bureau of Justice Assistance relative to management and operation of drug courts, and used this in assessing Montana's drug court operations.
- ◆ Examined professional literature compiled by national organizations relative to drug court operations.

Montana's Judicial Branch

The branch is comprised of the Supreme Court, 56 district courts, and 151 courts of limited jurisdiction. The courts of limited jurisdiction include justice courts, city courts, and municipal courts. District courts are funded at the state level while courts of limited jurisdiction are funded and maintained at the county and city level. Other courts that are part of the branch include the Water Court and Workers' Compensation Court.

System-wide governance and the policy-setting function of the branch rests primarily with the Montana Supreme Court. The Montana Constitution states the Supreme Court has general supervisory control over all other courts in Montana and may make rules governing appellate procedure, practice, and procedure for all other courts.

In 2001, the state assumed the funding of district courts. The District Court Council (council) was statutorily created during state assumption of district court funding. The council includes the Chief Justice of the Supreme Court and four district court judges. Nonvoting members appointed by the Supreme Court include a chief juvenile probation officer, clerk of the district court, county commissioner, and court reporter. The council is responsible for developing and adopting policies and procedures, subject to review by the Supreme Court, to administer the state funding of district courts.

Individual court-specific governance is the responsibility of the district, justice, city, or municipal judge of the court over which they preside. This includes but is not limited to administrative matters such as court staffing, finances, and records management.

There is an Office of the Court Administrator (OCA), and the Supreme Court appoints a court administrator to serve as the administrative officer of the court. The court administrator and staff are responsible for day-to-day administrative operations of the Supreme Court, including some administrative matters regarding District courts and courts of limited jurisdiction. These functions include preparing and presenting judicial budget requests to the legislature, collecting and reporting data related to court business, administering the branch personnel plan, reporting on the status of development and procurement of information technology within the branch, and recommending to the Supreme Court improvements in the judiciary.

Overview of Drug Courts

Drug courts have operated in the United States for more than 20 years. A drug court is a specialized court that targets criminal, child abuse and neglect, or juvenile cases involving people who have drug addiction and dependency problems. The purposes of a drug court are to achieve a reduction in recidivism and substance abuse, and to increase

the participants' likelihood of successful rehabilitation through early, continuous, and intense judicial oversight; substance abuse treatment; mandatory periodic drug testing; use of appropriate sanctions and incentives; and other community-based rehabilitation services. Other courts are called problem-solving courts and apply the drug court model to offender populations whose repeat criminal activity is driven by an underlying issue other than substance abuse, such as mental illness. Although commonly referred to as a "drug court," these are not new or separate courts but are special dockets of existing courts. A docket is simply a record of the proceedings of a court. Examples of dockets are criminal docket, civil docket, youth court docket, or drug court docket. Drug courts and problem-solving courts are different ways of handling criminal, family, or juvenile cases as alternatives to incarceration or adjudication.

Offenders participating in drug or problem-solving courts are not incarcerated, and these courts offer community-based treatment, probation, and judicial oversight. Individuals remain in the community working, going to school, taking care of family, and fulfilling community service obligations.

Drug Court Operational Model

Drug court programs share several general characteristics but vary in their specific policies and procedures because of, among other things, differences in local jurisdictions and criminal justice system practices. In general, judges preside over drug court proceedings, which are called status hearings; monitor offenders' progress with mandatory drug testing; and prescribe sanctions and incentives as appropriate in collaboration with prosecutors, defense attorneys, treatment providers, and others. Practices for determining defendants' eligibility for drug court participation vary but typically involve screening defendants for their criminal history, current case information, and their substance use. Drug court participants range from nonviolent offenders charged with drug-related offenses who have substance addictions, to relatively medium risk defendants with extensive criminal histories who failed prior substance abuse treatment experiences.

Participant referrals to drug courts are made from a variety of sources—defense attorneys, prosecuting attorneys, treatment providers, judges, or law enforcement officials. Depending on the type of drug court and the court's policies, potential participants can be at any stage in the criminal justice process—either deferred prosecution (diversion) or post-adjudication (post conviction). Target participants are those considered "high risk, high need." This means the individual is a high risk for criminal recidivism or failure in less intensive rehabilitative settings and has a high need for substance abuse treatment. Participation in drug court is voluntary and participants sign a contract that outlines the conditions of their participation, as well as the outcomes if they graduate, and consequences of not completing the program.

In drug courts, a team consisting of a judge, prosecuting attorney, public defender, court coordinator or case manager, treatment providers, law enforcement officer, and a probation officer work together to review participants' progress and compliance with program requirements. These courts provide access to a continuum of alcohol, drug, and related treatment and rehabilitative services. As part of the program, participants undergo a chemical dependency assessment to determine the level of treatment required. The programs require participants to attend outpatient treatment and submit to frequent random drug and alcohol testing, with new participants often attending treatment sessions multiple times per week. Participants are also required to appear before drug court judges on a regular basis, with decreasing frequency as they successfully progress in the program. In addition, programs provide referrals for ancillary services, such as job training, employment assistance, and transitional housing. Most drug court programs are 12 to 18 months in duration. Based on the participant's performance, the judge may impose a range of consequences including incentives for positive progress or punitive sanctions. Participants work their way through the drug court's phases and graduate upon completion of the program requirements. Those who do not graduate return to the court of jurisdiction over their cases.

The effects on a drug court participant's criminal case and record depend on the point in the judicial process at which the participant entered the drug court. In a diversion model, the courts defer prosecution of the participant's case if he or she agrees to participate in the drug court program. Defendants who complete the treatment program are not prosecuted further and their charges are dismissed. Failure to complete the program results in prosecution for the original offense. In contrast, defendants participating in a post-adjudication drug court program plead guilty to the charge(s) and their sentences are suspended or deferred. Upon successful completion of the program, sentences are discharged and in some cases, records are expunged. Offenders who do not comply with program requirements violate their deferred or suspended sentence and can be terminated from the program.

Standards and Best Practices

Drug courts vary somewhat in terms of their structure, scope, and target populations, but they all share three primary goals:

1. Reduced recidivism rates.
2. Reduced substance use among participants.
3. Rehabilitation of participants.

These goals are a part of the core organizational structure and attributes of the federal drug court model. This model includes agreed upon key components. These components were established based on evidence-based research and evolved into

standards. They are known as “Defining Drug Courts: The Key Components of Drug Treatment Courts.” The key components are recognized and endorsed by the U.S. Department of Justice, Bureau of Justice Assistance (Drug Courts Program Office) and were developed in collaboration with the National Association of Drug Court Professionals (NADCP). These components have been adapted for the various types of drug courts (DUI, veterans, family, mental health, etc.) and are further discussed in Chapter III of this report. While these components provide the core framework for all types of drug courts, the NADCP developed best practice standards for adult drug courts in late 2013.

Montana’s Drug Courts

Montana’s first drug court began operating in Missoula in 1996. There are now 26 drug courts operating statewide at both the district court level and in courts of limited jurisdiction. Montana’s Tribal Courts also operate an additional five drug courts. Court officials operate a number of different drug or problem-solving courts within the state including:

- ◆ **Adult Drug Courts:** Provide an alternative to traditional criminal justice prosecution for nonviolent drug-related offenses. These courts focus on adult criminal cases where crimes are motivated by addiction.
- ◆ **Family Drug Courts:** Work with parents at risk of losing or who have temporarily lost custody of their children due to substance abuse. Individuals in these courts have pending dependency and neglect cases. The goals are to protect children and reunite families by providing substance-abusing parents treatment and access to services.
- ◆ **Co-occurring or Mental Health Court:** A type of problem-solving court that combines judicial supervision with community mental health treatment and other support services. These courts work with individuals with mental illnesses who are in the criminal justice system.
- ◆ **Veterans’ Courts:** A hybrid of drug and mental health courts that use the drug court model to serve veterans struggling with addiction, mental illness and/or co-occurring disorders who have committed crimes.
- ◆ **Juvenile Courts:** Juvenile delinquency cases where crimes are motivated by addiction. Juvenile drug court programs provide judicial and community supervision of juveniles involved in substance abuse.
- ◆ **Driving Under the Influence/Driving While Intoxicated:** Courts that use the drug court model for individuals charged with second or subsequent offense in order to reduce the occurrence of repeat impaired driving. The goal is to keep the public safe from impaired drivers.

Table 1 (see page 7) lists drug courts operating in Montana during fiscal year 2014.

Table 1
Montana's Drug Courts
 Fiscal Year 2014

Court Name	Area Served	Type of Court	Year Started
Adult Drug Courts			
1st Judicial District Treatment Court	Lewis & Clark County	District	2011
7th Judicial District Adult Drug Court	Dawson, McCone, Prairie, Richland, Wibaux counties	District	2007
8th Judicial District Adult Drug Treatment Court	Cascade County	District	2005
9th Judicial District Drug Treatment Court	Glacier, Teton, Toole, Pondera counties	District	2009
13th Judicial District Adult Drug Court	Yellowstone County	District	2011
Gallatin County Treatment Court	Gallatin County	District	1999
Custer County Adult Treatment Court	Custer County	District	2004
Billings Adult Misdemeanor Court	City of Billings	Municipal	2005
Mineral County Adult Treatment Court	Mineral County	Justice	2006
Chippewa-Cree Adult Drug Court	Rocky Boy's Reservation	Tribal	No Info.
Northern Cheyenne Adult Drug Court	Northern Cheyenne Reservation	Tribal	No Info.
Family Drug Courts			
Yellowstone County Family Drug Treatment Court	Yellowstone County	District	2001
Butte-Silver Bow Family Drug Court	Butte-Silver Bow County	District	2004
Missoula County Family Treatment Court	Missoula County	District	2008
Fort Peck Family Drug Court	Fort Peck Reservation	Tribal	2012
Co-Occurring Courts			
Billings Co-Occurring Court	City of Billings	Municipal	2012
Missoula County Co-Occurring Court	Missoula County	District	2004
Veterans' Courts			
Missoula Veterans Treatment Court	Missoula County	District	2011
Yellowstone County Veterans Treatment Court	Yellowstone County	District	2011
8th Judicial District Veterans Court	Cascade County	District	2013
Juvenile Drug Courts			
4th Judicial District Youth Drug Court	Missoula County	District	1996
7th Judicial District Youth Treatment Court	Dawson, McCone, Prairie, Richland, Wibaux counties	District	2006
8th Judicial District Juvenile Drug Treatment Court	Cascade County	District	2006
Crow Juvenile Drug Court	Crow Reservation	Tribal	2002
DUI/DWI Courts			
7th Judicial District DUI Court	Dawson, McCone, Prairie, Richland, Wibaux counties	District	2010
13th Judicial District DUI Court	Yellowstone County	District	2011
Kalispell DUI Court *	Kalispell	Municipal	2009
Mineral County Adult Treatment Court *	Superior	Justice	2011
Butte-Silver Bow County DUI Court	Butte-Silver Bow County	Justice	2010
Hill County Drug/DUI Court	Hill County	Justice/ Municipal	2012
Fort Peck Assiniboine and Sioux DUI Court	Fort Peck Reservation	Tribal	2010
* No longer funded as of FY14			

Source: Compiled by the Legislative Audit Division from Judicial Branch records.

State Law Relating to Drug Courts

The Montana Legislature enacted the Drug Offender Accountability and Treatment Act in 2005. In 2007, the legislature enacted the Mental Health Treatment Court Act. Both acts contain a provision that each judicial district or court of limited jurisdiction may establish a drug court. The two acts are similar and provide the general framework of drug courts including court structure, treatment and support services, drug testing, and funding.

Montana statutes require treatment-based drug court programs follow therapeutic principles and include an assessment based upon objective medical diagnostic criteria, a continuum of care, and use of professional substance abuse treatment providers. Statutes are generally patterned after the key components, recognized by the Drug Courts Program Office of the U.S. Department of Justice.

Daily Management and Operations of Drug Courts

In a typical Montana drug court, the judge and drug court coordinator are involved in many of the behind the scenes administrative aspects of drug court operations. The drug court team meets prior to each court session, typically weekly. Other team members, usually attending and involved, include a prosecuting attorney, defense attorney(s), probation officer, law enforcement, treatment providers, and case manager.

During drug court sessions, the entire drug court team is typically present. Each participant comes before the judge to discuss general progress, specific progress on goals they must meet, issues they are dealing with, and successes. Judges and team members work to establish a level of trust and openness with each participant. Success in meeting goals or progressing through the court program can be rewarded, and lack of progress will typically involve sanctions. While the team meets as a group prior to and during court sessions, each team member is involved with drug court participants on an individual basis. Frequency of contact depends on the role of the drug court team member and needs of the individual participant.

Drug Court Participation Data

The number of individuals participating in the state's drug courts has increased each year, and the number of drug courts increased. Each court typically works with 10 to 25 participants, and the term of the court's jurisdiction for an individual is typically 12 to 18 months. According to information compiled by the branch, for the 53-month period of May 2008 through September 2012, participant data is as follows:

- ◆ 1,304 participants entered Montana drug courts
- ◆ 350 participants remain active in the drug courts

- ◆ 954 individuals were discharged, of which:
 - ◇ 442 (46.3 percent) graduated
 - ◇ 366 (38.4 percent) either terminated or absconded from the program
 - ◇ 146 (15.3 percent) had a neutral disposition including transfer to another district, discharge for other reasons, death, or voluntary withdrawal from program, or court lost jurisdiction

Funding Drug Courts

The majority of drug courts operating in Montana began court operations using federal funds that are available through a variety of grant programs. The primary grants include:

- ◆ U.S. Department of Justice, Bureau of Justice Assistance
- ◆ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration
- ◆ U.S. Department of Transportation, National Highway Traffic Safety Administration

Federal funds are a primary funding source for drug courts, mostly during start up and implementation phases. DUI/DWI courts are funded primarily with federal grants. Funding of drug courts with state general fund moneys began in fiscal year 2008. At that time, the legislature appropriated \$598,000 to support drug courts. Since the first appropriation, state expenditures for drug courts have increased. In fiscal year 2014, fourteen drug courts were authorized a total of \$963,000 in state general fund appropriations. General fund monies support mostly district courts, but one municipal court also received state funding in fiscal year 2014.

Other sources of funding for courts include local governments, area drug task forces, participant fees, private organizations, and donations. In one court, court personnel reported the judge donated over \$2,500 of personal funds to the court. Table 2 (see page 10) shows the primary funding sources for Montana's drug courts.

Table 2
Montana Drug Court Funding
 State or Federal Fiscal Year 2013

Court	Court Type	Court Jurisdiction Level	Primary Funding Sources	Total
1st Judicial District	Adult	District	OCA-Federal	\$161,910
2nd Judicial District	Family	District	OCA-General Fund	77,417
4th Judicial District	Veterans	District	Local	unknown
	Co-Occurring	District, Municipal	OCA-General Fund	52,948
	Juvenile	District	OCA-General Fund	51,536
	Family	District	OCA-General Fund	31,041
7th Judicial District	DUI	District	MDT - Federal Fund	104,888
	Juvenile	District	OCA-General Fund, OCA-Board of Crime Control	77,348
	Adult	District	OCA-Federal	51,891
8th Judicial District	Adult	District	OCA-General Fund	72,916
	Juvenile	District	OCA-General Fund	64,416
9th Judicial District	Adult	District	OCA-General Fund, OCA-Federal	122,995
13th Judicial District	DUI	District	MDT - Federal Fund	258,260
	Veterans	District	OCA-Federal	237,439
	Adult	District	OCA-Federal	106,976
	Family	District	OCA-General Fund	70,119
16th Judicial District	Adult	District	OCA-General Fund	63,968
Gallatin County/18th Judicial District	Adult	District	OCA-General Fund	53,408
City of Billings	Co-Occurring	Municipal	Direct Federal	unknown
	Adult	Municipal	OCA-General Fund	87,908
City of Kalispell	DUI	Municipal	MDT - Federal Fund	130,462
Butte-Silver Bow County	DUI	Justice	Direct Federal, Local	153,709
Hill County	DUI	Justice, Municipal	MDT - Federal Fund	68,000
Mineral County	DUI	Justice	MDT - Federal Fund	78,000
	Adult	Justice	Local, OCA-General Fund	unknown
Total				\$2,177,555

Source: Compiled by the Legislative Audit Division from Judicial Branch, Office of the Court Administrator (OCA), and Department of Transportation (MDT) records.

Notes: Table does not include the 8th Judicial District Veterans' Court, which started in FY14, and the Tribal Courts.

Besides the direct appropriations to drug courts, other state agencies provide financial support for the courts. Staff from other agencies participate on drug courts because the duties of their positions require it. Staff includes probation and parole officers from the Department of Corrections, public defenders from the Office of the Public Defender, caseworkers from the Department of Public Health and Human Services, and state troopers from the Highway Patrol. In addition, local government agencies provide financial support for drug courts as prosecuting attorneys along with local

law enforcement officers have responsibilities relative to drug courts. Some courts have volunteers who assist with court operations and mentor participants.

Report Contents

The remainder of the report addresses audit findings, conclusions, and recommendations in the following areas:

- ◆ Chapter II discusses compliance with state law specific to drug courts.
- ◆ Chapter III examines adherence to best practices for drug courts.
- ◆ Chapter IV discusses system-wide planning and support.
- ◆ Chapter V presents issues for legislative consideration.

Chapter II – Compliance with State Law

State Law Specific to Drug Courts

The Montana Legislature passed the Drug Offender Accountability and Treatment Act in 2005 and the Mental Health Treatment Court Act in 2007. The two acts are similar in nature and were patterned on model legislation that addressed administrative components of operating drug courts and court funding. The Drug Offender Accountability and Treatment Act is found in Title 46, Chapter 1, Part 11, and the Mental Health Treatment Court Act is in Part 12. The acts cover the following broad topics:

- ◆ Court structure
- ◆ Treatment and support services
- ◆ Drug testing
- ◆ Funding

Each of these areas of law contains specific requirements with respect to establishing and operating a drug court.

Audit Findings

One of our audit objectives was to determine if there are mechanisms in place to ensure Montana's drug courts comply with state law. Audit work revealed drug courts generally comply with the statutory provisions contained within the Drug Offender Accountability and Treatment Act and the Mental Health Treatment Court Act. Court management and staff have worked to incorporate statutory directives into their individual operations. Audit work also revealed compliance could be improved in three areas. This chapter discusses audit findings and recommendations related to the following areas:

- ◆ Participation by Sexual or Violent Offenders
- ◆ Drug Court Participant Fees
- ◆ Memo of Understanding or Agreement with Treatment Providers

Drug Court Participation by Sexual or Violent Offenders

Current or prior criminal offenses may disqualify candidates from participation in a drug court. Section 46-1-1104(8), MCA, states the provisions of the Drug Offender Accountability and Treatment Act do not apply to drug offenders who have been convicted of a sexual or violent offense, as defined in §46-23-502, MCA. This includes definitions of sexual or violent offenses. Examples of violent offenses include deliberate homicide, aggravated assault, partner/family member assault (third

or subsequent offense), assault with a weapon, robbery, arson, and operation of an unlawful clandestine lab. Some examples of sexual offenses include sexual intercourse without consent, prostitution, aggravated promotion of prostitution, and sexual abuse of children. The Mental Health Treatment Court Act contains similar restrictions to participation. Federal grants also contain similar restrictions with respect to individuals who are eligible to participate in a drug court.

During the audit, we examined drug court compliance with these statutory provisions. While statutes do not allow sexual and violent offenders to participate in drug courts, audit work revealed instances of convicted violent offenders participating. Specific examples include:

- ◆ Audit interviews with drug court judges and team members from a sample of visits to 11 courts revealed that while none of the courts allowed sexual offenders to participate in drug courts, some did allow certain violent offenders.
- ◆ In a survey we distributed to drug court coordinators, 40 percent of respondents (6 of 15) indicated they had drug court participants who had to register as a sexual or violent offender.
- ◆ Twenty-one percent (4 of 19) of courts represented in the survey responded their court did not require an official criminal history background check (NCIC/CJIN) as part of the screening process.
- ◆ The survey asked judges and drug court coordinators to indicate which criminal convictions would make an applicant ineligible for drug courts within their jurisdiction. The response was:
 - ◇ Prior violent misdemeanor convictions – 21 percent of courts responding (4 of 19)
 - ◇ Prior violent felony convictions – 58 percent of courts responding (11 of 19)
 - ◇ Prior sexual offenses – 100 percent courts responding (19 of 19)
- ◆ We examined the records of a sample of 61 individuals who participated in a drug court during fiscal year 2013 and compared these individuals to Montana Department of Justice, Sexual and Violent Offender Registry. We found one drug court participant was listed on the registry, and this person was convicted of a violent offense (armed robbery).

As a result, there is noncompliance with state law that expressly prohibits individuals who have been convicted of a violent offense from participating in drug court. Since the conditions of federal grants also prohibit convicted violent offenders from participating in drug courts, there is a potential that drug courts could jeopardize their federal funds.

It appears a number of issues are contributing to noncompliance with state law. During visits to courts, we found some drug court team members were not aware of

statutes that prohibit persons convicted of sexual or violent offenses from participating in a drug court. This situation has likely been impacted by staff turnover. In addition, there is a lack of documentation indicating whether a criminal background check was completed. We reviewed a sample of drug court applicant and participant files. Whether a criminal background check was done as part of screening process and what the results were was not well documented. Also of note is the lack of a defined process for checking criminal history, including designating who is responsible, what source of criminal history records will be used to conduct the check, and how the criminal records check should be documented. Applicant screening is conducted by any combination of the drug court judge, drug court coordinator, prosecuting attorney, law enforcement officer, or probation/parole officer. The defense attorney and treatment providers also have a role in eligibility screening. Depending on the particular court, not all team members have access to criminal history records. In addition, the branch does not have a system-wide policy or procedure that defines a criminal history records check and associated requirements specific to drug courts.

Criminal History Disqualification is an Evolving Issue

During our discussions with judges that operate drug courts, all but one of the judges indicated that statute should reflect recent nationally recognized best practices by allowing judicial discretion in accepting certain violent offenders that fall into the high risk/high need model used by drug courts. Judges commented they currently have a means of working around the statutory prohibition on violent offenders by reducing the original violent offense to a lesser offense in order to allow the person to enter a drug court program. However, they also commented the risk of this action is, should the individual re-offend in the future, their criminal record will not reflect the original charged offense.

States that surround Montana, including Idaho, Wyoming, and North Dakota, have also traditionally restricted sexual and violent offenders from treatment courts. The Idaho legislature recently amended the drug court act to allow some veterans that have committed violent offenses to participate in treatment courts. This is done on a case-by-case basis with the prosecutor and judge making the final decision. Wyoming drug courts are allowed to take violent offenders (mostly domestic violence offenders) on a case-by-case basis. North Dakota's drug courts have accepted violent offenders on a case-by-case basis. States that allow violent offenders have a statutory provision that violent offenders can participate in nonfederally funded drug courts only. The juvenile drug courts do not accept any sexual or violent offenders.

Disqualifying individuals based on criminal history is an evolving issue nationwide. According to the National Association of Drug Court Professionals (NADCP), mixed

outcomes have been reported for violent offenders in drug courts. While several studies found that participants who were charged with violent crimes or had histories of violence performed as well or better than nonviolent participants in drug courts, two meta-analyses reported significantly smaller effects for drug courts that admitted violent offenders. NADCP states the most likely explanation for this discrepancy is that some of the drug courts might not have provided adequate services to meet the need and risk levels of violent offenders. NADCP states if adequate treatment and supervision are available, there is no empirical justification for routinely excluding violent offenders from participation in drug courts. The issue of disqualifying violent offenders from participating in drug courts has not been definitively settled on a national level. The ongoing change in this area does not include sexual offenders. This is due to issues with safety of fellow drug court participants and the effects on group dynamics of having a sexual offender in the group.

Montana's Legal Prohibition

Montana state law currently includes a prohibition on allowing individuals convicted of certain violent or sexual offenses from participating in a drug court. The Montana Supreme Court should exercise its supervisory control over other courts and their drug court dockets, and ensure drug courts adhere to state law. Procedures should be developed to clarify which drug court team members are responsible for reviewing criminal history records as part of participant screening and address how the criminal history records screening process should be performed and results documented. Periodic training on drug court eligibility screening would be beneficial for drug court team members. Finally, given the feedback provided by drug court judges relative to the current statutory restriction preventing violent offenders from participating in nonfederally funded drug courts, the Montana Supreme Court should consider this matter and assess whether statutory change should be pursued.

RECOMMENDATION #1

We recommend the Montana Supreme Court:

- A. *Ensure courts comply with statutory requirements that prohibit drug court participation by individuals convicted of violent offenses.*
 - B. *Work with the district court judges to determine whether changes in statutory eligibility requirements relative to violent offender eligibility in nonfederally funded drug courts should be brought forward for legislative consideration.*
-

Drug Court Participant Fees

According to the National Drug Court Institute (NDCI), participant fees are one way drug court programs create an institutionalized, sustainable source of program funding. Fees must be proportional to a participant's ability to pay and should not create a barrier to success or a disincentive to participate in the program. Equally important, this fee strategy enhances participant engagement, promotes the belief that the program is valuable, and allows participants to invest in their own change process. NDCI's research finds programs that require participants to pay fees showed an 18 percent reduction in recidivism. These drug court programs also had 208 percent higher cost savings than programs that did not assess fees. Cost savings result from changed participant behavior and less time spent in the criminal justice system in future years.

When Montana's legislature enacted the Drug Offender Accountability and Treatment Act, it included a fee provision. Section 46-1-1104(9), MCA, states, "Each drug offender shall contribute to the cost of substance abuse treatment in accordance with 46-1-1112(2)." Section 46-1-1112(2), MCA, states, "A drug offender shall pay the total cost or a reasonable portion of the cost to participate. The costs paid by a drug offender may not exceed \$300 per month. The costs assessed must be compensatory and not punitive in nature and must take into account the drug offender's ability to pay. Upon a showing of indigency, the drug treatment court may reduce or waive costs..." The Mental Health Treatment Court Act contains similar provisions.

States that surround Montana, including Idaho, Wyoming, and North Dakota, also charge participant fees, and the fees are statutorily required. Typically, participants in these states pay between \$30 and \$55 per month in fees. Participant fees are maintained within the local court and are used to pay for treatment services, chemical testing, and other program costs. In Wyoming, the judge has authority to waive fees as an incentive but cannot eliminate them totally. The legislature in North Dakota sets the participant fee amount.

Courts Vary in Assessing Fees

During the audit, we examined the issue of participant fees. Each drug court establishes whether participants will be assessed a fee, the amount, frequency of payment, process for collecting, and how fees will be used. For those drug courts that charge individuals a fee to participate, fees vary from \$5 per week, to \$30 per week, to \$30 per month. DUI/DWI courts typically charge higher fees. Participant fees are used to defray program costs. Surveyed courts indicated fees are used in the following manner:

- ◆ Drug testing (64 percent)
- ◆ Other (incentives, sanctions, emergency personal needs, etc.) (55 percent)

- ◆ Participant incentives (45 percent)
- ◆ Chemical dependency treatment (27 percent)
- ◆ Chemical dependency assessments (18 percent)
- ◆ Wrap-around services/life skills (18 percent)
- ◆ Administrative costs (i.e. staff, office supplies, etc.) (9 percent)

Courts may also require participants to pay for chemical testing such as urinalysis, hair follicle testing, and/or Breathalyzer tests. Drug courts that assess fees typically require participants to pay fees in full as one of the conditions that must be met in order to graduate. The courts have the ability to exercise considerable influence with participants as they are under court supervision. These fees are court ordered, just like sanctions, but are not considered a sanction. Montana drug courts collected a combined total of about \$20,000 in participant fees in fiscal year 2013.

Not All Drug Courts Require Fees

During the audit, we found not all drug courts require participants to contribute to the cost of substance abuse treatment and the program in general. Seven of 19 courts surveyed (37 percent) do not charge participant fees. Management and staff in two courts indicated they made a global decision that all current and future court participants were indigent and fees would not be assessed. Of those drug courts that do not collect fees, the general reasons given were:

- ◆ Participants are indigent and/or below the poverty level.
- ◆ Participants pay for urinalysis tests only.
- ◆ The court is either a family drug court or not a criminal court.

In addition, audit work revealed that consideration of a participant's ability to pay was not well documented in drug court case files. In some courts, files either lacked documentation of this decision or lacked supporting detail.

Correlation Between Fees and Successful Completion

As previously mentioned, NDCI research clearly demonstrates the positive and negative outcomes of participant fees. In addition, drug courts may not be fully complying with statutory provisions that require participants to pay a "reasonable portion of the cost to participate." The level of compliance with statute is debatable, especially given universal decisions that all of a drug court's participants are indigent. Statutes also state "upon a showing of indigency," yet courts lacked documentation that demonstrated consideration of ability to pay. Lastly, fees are a source of funding for drug courts and courts that do not assess them must find other means to fund program costs that could have been defrayed, in part, by participant fees.

The variation in whether drug courts assess participants a fee as specified in statute occurs for a number of reasons. Some of the individuals involved with operating Montana's drug courts may not be fully aware of research that shows the positive outcomes attributable to requiring individuals pay a fee to participate. In other drug courts, there is a wide range of opinion regarding whether fees should be assessed and whether participants have the financial means to pay fees or not. There is also a general aversion by some court members to charging fees. In addition, there is currently a lack of system-wide guidance that addresses drug court participant fees and provides general guidance for determining indigency, income thresholds, fee waivers, and documenting the ability-to-pay decision.

Statute requires fees be paid by drug court participants and can only be waived or reduced upon a showing of indigency. In addition, research is clear that when participant fees are required there is a benefit to the programs, participants, and society. The Montana Supreme Court should exercise its supervisory control over other courts and ensure drug courts adhere to state law on the issue of participant fees, including documentation to support consideration of ability to pay. An educational component relative to the evidence-based research showing a correlation between participant fees and positive outcomes could be beneficial to drug courts.

RECOMMENDATION #2

We recommend the Montana Supreme Court:

- A. *Ensure courts comply with statutory provisions for assessing drug court participant fees.*
 - B. *Ensure individual drug court case files contain documentation to support consideration of ability to pay and indigency decisions.*
-

Formal Memo of Understanding With Treatment Providers

The Drug Offender Accountability and Treatment Act and the Mental Health Treatment Court Act provide the legal framework for drug courts. One of the areas the acts address is the use of treatment providers. Statutes state the court shall determine which treatment programs are authorized to provide the recommended treatment to drug offenders. Section 46-1-1110(5), MCA, requires the relationship between the treatment program and the court must be governed by a Memorandum of Understanding (MOU), which must include the timely reporting of the drug offender's progress to the drug treatment court. Section 46-1-1103(8), MCA, defines a MOU as a written document setting forth an agreed-upon procedure. Treatment providers

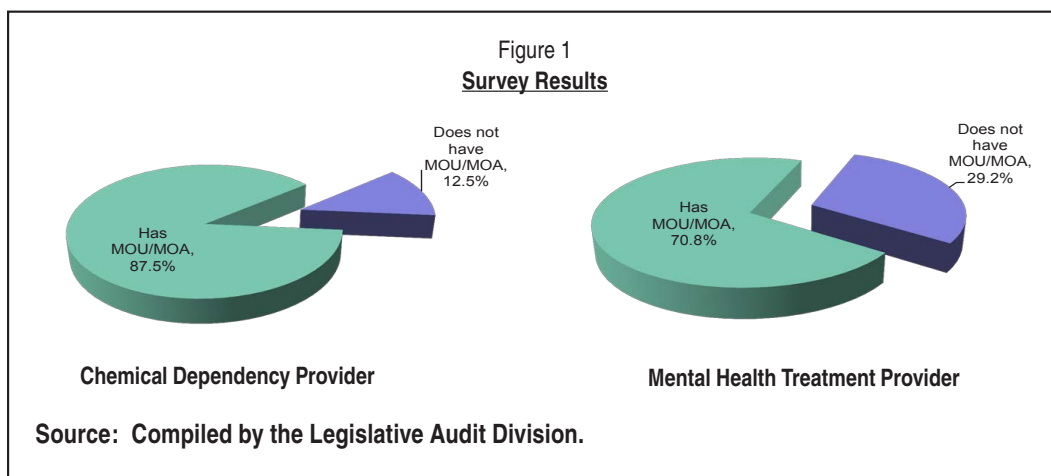
typically involve substance abuse or mental health services and are a key element of drug courts. The Mental Health Treatment Court Act contains similar provisions in §46-1-1211(5), MCA.

The provision of treatment services is crucial to the effectiveness of a drug court program and to the success of individual drug court participants. Recognizing the importance of these services, the U.S. Department of Justice, Bureau of Justice Assistance in collaboration with the National Association of Drug Court Professionals addressed treatment services as part of The Key Components for Drug Courts. One of the key components that specifically addresses treatment services is:

Key Component #4 - Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services. Specifically, the therapeutic team should maintain frequent, regular communication to provide timely reporting of a participant's progress and to ensure that responses to compliance and noncompliance are swift and coordinated. Procedures for reporting progress should be clearly defined in the drug court's operating documents.

Courts Do Not Have Required MOU

During the audit, we examined compliance with the statutory provisions relative to use of treatment providers and establishment of MOUs or contracts with treatment providers. Audit work revealed while some of the courts comply with this statute, others do not, and there is room for improvement. We found there was no formal MOU, Memorandum of Agreement, or contract with the treatment providers in all drug courts. In addition, survey results of 19 coordinators responsible for working with 24 different courts revealed the following:



The section of statute addressing treatment providers also requires the MOU to address timely reporting of the drug offender's progress to the drug treatment court. Audit

work revealed several courts struggle to get treatment case updates entered into their case management systems:

- ◆ In one court, the provider was relatively new and had just received login passwords in order to access the system and enter data.
- ◆ In another court, the treatment provider had adopted new business practices that reduced services and administrative support to the court. The court was in discussions with the treatment provider to execute the required case management updates. This court did not have contract language that stipulated the case management update requirements.
- ◆ In another court, a recently hired treatment court coordinator had inherited a badly managed case management file system. The coordinator's predecessor had not held the treatment provider to any kind of standard for providing case management updates. As a result, our participant case file review revealed that almost all case files were incomplete for this court.

Lack of Formal Agreements Negatively Impacts Operations

The lack of a formal MOU or contract with treatment providers is contrary to state law. However, another issue is how this affects drug court operations. Without formal agreements with treatment providers, court management and staff lack the tools needed to ensure they receive the services they are paying for. Further, treatment providers lack clear direction as to expectations of the drug court. In several instances, we noted issues with the amount of information treatment providers give to drug court teams regarding participant progress. The extent to which some of these treatment entities provided the progress information was not consistent. Our observations of drug courts showed all of the treatment entities provided progress information verbally to the treatment team during staffing meetings immediately prior to court sessions but not all of them were entering progress information in the automated case management system, or providing notes to the court coordinators on a consistent and timely basis. Additionally, in some cases, the lack of formal agreements led to negative issues regarding the level of service the treatment entity was providing or the consistency of treatment provided. For example, the treatment provider for one drug court dramatically reduced the level of services being provided to the court. Without a formal agreement, the court has limited means to get the level of treatment services needed to meet the drug court's needs and address any other administrative or operational shortcomings.

Each of the individual drug courts is responsible for developing its program, including general operations and administrative processes and procedures. This can present courts with some challenges as they are faced with developing an entire program from the ground up. While the branch has general policy addressing contracts, drug court staff were not always aware of its existence. In addition, we observed no training or review process to help ensure drug courts adhere to statutory requirements relative to

establishing formal agreements with treatment providers. During our interviews with drug court management and staff, they indicated although they asked for assistance from branch staff, branch staff did not respond, or were less than helpful. Montana's drug courts could benefit from centralized assistance in this regard. This could include development of guidance documents, template MOUs, boilerplate language, or a repository of example documents.

State law requires that the relationship between the treatment program and the court must be governed by a MOU, which must include the timely reporting of the drug offender's progress to the drug court. The Montana Supreme Court should exercise its general supervisory control over other courts and their drug court docket and ensure drug courts comply with state law.

RECOMMENDATION #3

We recommend the Montana Supreme Court ensure courts comply with state law by having formal Memorandum of Understanding between drug courts and treatment providers.

Chapter III – Best Practices for Drug Courts

Best Practice Standards

There are nationally accepted best practice standards for Montana Drug Court (drug courts). The U.S. Department of Justice, Bureau of Justice Assistance (BJA), Drug Courts Program Office in collaboration with the National Association of Drug Court Professionals (NADCP) developed a model of standards for drug court operations. These standards are recognized and endorsed by U.S. Department of Justice and NADCP. These standards have been adapted for the various types of treatment courts (DUI, veterans, family, mental health, etc.) and were developed using evidence-based practices, which set forth ten key elements or components of successful drug courts. The components establish the framework by which drug courts should operate within, providing an outline of drug court philosophy and requirements. Drug courts nationwide adhere to these standards. The standards are referred to as the “Ten Key Components of Drug Courts” and the following figure shows the components.

Figure 2
Ten Key Components of Drug Courts

- 1 Drug court programs integrate alcohol and other drug treatment services with justice system case processing.
- 2 Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- 3 Eligible participants are identified early and promptly placed in the drug court program.
- 4 Drug court programs provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- 5 Abstinence is monitored by frequent testing for alcohol and other drugs.
- 6 A coordinated strategy governs drug court program responses to participants' compliance.
- 7 Ongoing judicial interaction with each drug court program participant is essential.
- 8 Monitoring and evaluation measure the achievement of program goals and gauge program effectiveness.
- 9 Continuing interdisciplinary education promotes effective drug court program planning, implementation, and operations.
- 10 Forging partnerships among drug court programs, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

Source: Compiled by the Legislative Audit Division from U.S. Department of Justice, Bureau of Justice Assistance records.

The components are designed to promote drug court effectiveness and improve outcomes for individuals and the court as a whole. Research confirms drug court success depends largely on how faithfully courts adhere to the “Ten Key Components.” Drug courts that do not fully follow individual components, or drop components of the model, have lower graduation rates, higher criminal recidivism, and lower cost savings. According to NADCP, failing to apply the “Ten Key Components” has been shown to reduce the effectiveness and cost-effectiveness of drug courts by as much as one-half. There is a substantial amount of evidence that demonstrates if drug courts do not follow the key components, there is a higher level of risk the court will not succeed. The NADCP developed Adult Drug Court Best Practice Standards, Volume I in 2013. These best practice standards supplement the Ten Key Components and will provide future guidance for Montana’s adult drug courts.

Audit Findings

One of our audit objectives was to determine if there are mechanisms in place to ensure Montana’s drug courts apply established best practices (i.e. key components) for drug courts. In addition, a related audit objective was to determine if Montana’s drug court system has an effective process for evaluating participant outcomes and analyzing overall system benefits. Both of these audit objectives examine adherence by Montana’s drug courts to the ten key components—which are considered best practice standards. Audit work focused on assessing best practices for drug courts; mechanisms currently used by the Judicial Branch (branch) to ensure drug courts apply established best practices; and individual court adherence with the key components, including participant outcomes and overall system benefits.

Audit work revealed drug courts generally adhere to the drug court model endorsed by the U.S. Department of Justice and accepted standards for drug court operation. For those courts we examined during the audit, we found adherence to eight of ten key components. Improvements could be made relative to continuing interdisciplinary education, and monitoring and evaluation to measure program achievement. This chapter discusses audit findings, conclusions, and recommendations related to the following areas:

- ◆ Continuing interdisciplinary education for drug court staff.
- ◆ Case management systems used to record participant data.
- ◆ Validity of recidivism data for drug courts.
- ◆ Monitoring and evaluation of achieving goals and gauging program effectiveness.

Continuing Interdisciplinary Education for Drug Court Staff

Key Component #9 addresses training and professional development. This component states,

“Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.”

According to the U.S. Department of Justice, BJA along with NADCP, periodic education and training ensure the drug court’s goals and objectives, as well as policies and procedures, are understood. Both these organizations state all drug court staff should be involved in education and training.

The BJA along with NADCP developed performance benchmarks relative to the key component on training and professional development. The benchmarks provide additional guidance to help drug courts adhere to key components. Performance benchmarks for training include:

- ◆ Key personnel have attained a specific level of basic education, as defined in staff training requirements and in written operating procedures. Operating procedures should also define requirements for the continuing education of each drug court staff member.
- ◆ Attendance at education and training sessions by all drug court personnel is essential.
- ◆ Continuing education institutionalizes the drug court and moves it beyond its initial identification with the key staff that may have founded the program and nurtured its development.
- ◆ Develop an education syllabus and curriculum describing the drug court’s goals, objectives, policies, and procedures.

The branch acknowledged the importance of continuing professional education for drug court staff. The branch created a staff position responsible, in part, to provide support and manage projects for Montana’s drug courts including developing and coordinating training programs for drug court personnel.

Current Training Opportunities

Currently, when drug courts are funded with federal grants, a training component for staff is required as a condition of the grant. The grant typically includes an allocation to provide funding for training. For those drug courts that are funded with state general fund moneys, training opportunities are more limited. The branch organizes and provides some training opportunities for drug court teams. The Montana Drug Court Conference is held every two years, and the branch has brought in some nationally

recognized experts to provide training sessions. In addition, BJA provides “Operational Tune-up Sessions” that are held a couple of times per year and are court-type specific (i.e. juvenile court, family court). These tune-up sessions are held in various locations in Montana.

Additional Training Opportunities Needed

During the audit, we examined the issue of training for drug court teams. We discussed training with drug court judges, coordinators, and other team members and included training-related questions on the survey we distributed statewide to drug courts. Audit work showed improvements are needed to ensure continuous training occurs and that all team members receive training. Specifically, improvements to training are needed in the following areas:

- ◆ Judges who have recently established or are implementing drug courts.
- ◆ Timely training for drug court members who are new to the team, especially court coordinators.
- ◆ Roles of individual team members, including law enforcement and probation officers.
- ◆ Drug court model, ten key components, and the concept of incentives and sanctions.
- ◆ Administrative aspects of drug court operations.

Our survey to drug courts yielded the following information relative to training. Fifty-four percent of judges who manage a drug court and 47 percent of drug court coordinators responding to the survey indicated their court needed additional support with drug court team training. All the survey respondents (judges and coordinators) ranked the training that is provided as positive or mostly positive. All 11 courts we visited indicated the need for more training, especially as team membership changes and members rotate on or off the team.

Lack of Training Impacts Team Effectiveness

Without a systematic approach to training, it is difficult for the branch to adhere to the key component of continuing interdisciplinary education. This can negatively affect the court’s overall effectiveness and inhibit successful completion of the drug court program by individual participants. According to data published by NPC Research, drug courts that provided formal training for all new team members had a 57 percent greater reduction in recidivism of participants. In addition, drug courts that received training prior to implementation had a 238 percent increase in cost savings.

There are two primary causes affecting branch development of a system of continuing training and professional development opportunities for drug court judges, coordinators,

and team members. First, the branch has not developed a system-wide approach to training drug court personal. No comprehensive training plan exists which identifies core-training components that will be provided. No education syllabus or curriculum exists for the courts as required by the key components. Additionally, there is limited tracking of training needs on a person-by-person basis. Central office staff is not always aware of what training drug court members have attended, and court staff is not always aware of available training opportunities. Tracking individual training is aggravated by the fact that communication between the courts and the central office regarding drug court team member turnover does not always occur or is not timely. In addition, while the branch offers some scheduled training (State Drug Court Conference and the Operational Tune-up) currently, there are no training opportunities that can be offered real-time, such as on-line training, web-based training, DVDs, in-house developed training, or pre-established court-mentoring programs. The branch has no established system to ensure that newly hired court coordinators are trained.

In addition, the branch's approach to funding training of drug court personnel is individual courts are largely left to secure funding. Some courts train as they secure resources from federal grants or other sources but there is no qualifying funding standard for court training. Branch management indicates the lack of training for drug court staff is a resource availability issue. Management states there are limited funds for training in general, and no general fund appropriations for out-of-state training. However, there is a mechanism in place for securing resources through carry forward funding of unexpended appropriations if the branch elects to prioritize training of drug court staff. Drug courts funded via federal grants have funds earmarked specifically for training. For drug courts that receive a general fund appropriation, the branch policy specifies the drug court can use these funds for in-state training but cannot use general funds to attend out-of-state training.

Training Opportunities Exist

U.S. Department of Justice, BJA offers grant funding including statewide grants that are available to improve, enhance, or expand drug court services statewide through activities such as training and/or technical assistance programs for drug court teams. This could provide a potential source of funding should the branch choose to pursue it. In addition, BJA makes a wide range of technical services available, free of charge, to members of the criminal justice community. Services are available to BJA grantees as well as to any other agency or practitioner in the courts, corrections, law enforcement, or crime prevention field. These services are provided by American University under a cooperative agreement with BJA and include training workshops for agency staff, on both an individual state basis as well as regionally. This may provide an additional source of training opportunities for Montana's drug courts. A number of professional

organizations and groups associated with drug courts provide web-based training sources that could be useful to Montana's drug courts.

Comprehensive Training Approach Needed

With the expansion of drug courts throughout Montana, it is critical to ensure standards for drug court implementation and operations are effectively disseminated to the field. It is also critical for the 26 courts currently in operation, along with those in the planning and implementation phases, to be fully trained and operating in accordance with the long-standing, strict standards designed for drug courts to achieve optimal outcomes. Given the critical nature of training to success of the drug court model, drug courts could benefit from a more organized, comprehensive approach to ensuring training is provided to all judges and staff and done in a timely manner. In addition, ready access to online training such as webinars would assist with ensuring training is timely and cost effective.

RECOMMENDATION #4

We recommend the Montana Supreme Court adopt a system-wide approach to training drug court personnel that includes:

- A. *Developing a formal, comprehensive training plan that identifies core training components to be provided, training sources, and frequency.*
 - B. *Monitoring drug court staff membership to identify new staff members and ensure timely training is provided.*
 - C. *Developing a web-based training component to expand existing training opportunities.*
-

Monitoring and Evaluation

One of the key components advocated by the U.S. Department of Justice for drug court programs is monitoring and evaluation. The building blocks of developing a robust system of program performance measurement involve recording drug court participant data for each court, taking steps to ensure consistent and accurate data collection from the drug courts, and using the data to monitor and evaluate program outcomes and goal achievement. The remainder of this chapter discusses audit findings relative to these three areas.

Drug Courts Lack Integrated Case Management to Record Participant Data

During the audit, we examined the issue of case management processes used by Montana's drug courts. We discussed records management with drug court judges, coordinators, and other team members and included records-related questions on the survey we distributed statewide to drug courts. In addition, we reviewed a sample of case files and records for 61 drug court participants. Audit work revealed an integrated management information system does not currently exist for case management of drug courts. Drug courts use a variety of management information systems, including drug court specific software available from a vendor, custom-developed software unique to an individual court, and freeware. Not only do courts use different electronic case management systems, the current architecture of these case management systems has each court operating a stand-alone database. Some drug courts do not have an electronic case management system and use paper-based files. Respondents to the survey we distributed to drug court coordinators indicated 73 percent (16 courts) have a computerized case management system to track participant progress and 27 percent (6 courts) do not. Seven of the courts that had a computerized case management system used free software that was not web-based and allows single user access only.

Because each court uses different case management systems, the branch had to develop a means of collecting general drug court information and performance metrics. It developed a database system called InfoPath that each court uses to report drug court participant data centrally, to the Office of the Court Administrator. Central office staff can then run queries on system data. During our visits to courts, staff was frustrated by the amount of time it takes to input data onto InfoPath and the duplicative nature of this requirement. They viewed the InfoPath part of data collection as one-way and stated the court received no information in return. In general, staff were uncertain how and if this data was used, and relevance. Many staff indicated this data entry was a lower priority item for them due to the other responsibilities required of the drug court administrator position.

During the audit, we examined a random sample of 61 participant files from six different courts. Our analysis found those courts that utilized a software program specifically designed for drug courts had files that are more complete. Those courts that used paper files were not nearly as complete. Those courts that used a web-based case management, with full access by all court team members, generally had more complete files and were able to obtain key items, such as alcohol or drug testing results, in a more timely manner.

Enterprise Case Management Improves Drug Court Success

The National Drug Court Institute (NDCI) publishes information relative to sound case management practices in the drug court setting and states documentation is an indelible part of case management. Given the sheer volume of required information, the development and consistent use of a Management Information System (MIS) is essential. NDCI states a drug court program will not endure over time without a well-developed MIS. A well-conceived MIS is a vital tool for professional case management. It allows for the recording, tracking, and reporting of information in an accurate, comprehensive, and timely manner. According to research published by NDCI, drug courts that collect this data and then use it as a basis for program change had 105 percent greater reductions in recidivism. Additionally, using data from program management information systems to track progress and make program modifications correlates strongly with cost savings, resulting in 131 percent higher cost savings.

The National Center for State Courts (NCSC) with support of the U.S. Department of Justice developed a technical assistance initiative relative to the development, refinement, and institutionalization of states' drug court programs. NCSC advocates development of statewide drug court case management systems. NCSC states standardized statewide case management systems can assist in the measurement of drug court performance. Performance measurement is central to the task of defending and managing drug courts. A statewide case management system can provide state administrators and managers the ability to report key metrics and draw conclusions about the efficacy and efficiency of particular programs.

Other surrounding states, including Washington, Wyoming, and Idaho, have installed web-based drug court case management systems. Idaho officials stated the case management system used by the state's drug and mental health courts promotes information sharing among team members, with the judiciary, and other entities. Data is used as part of the state's evaluation strategy for drug courts and in the statewide substance abuse evaluation plan. The system is statutorily required for the drug and mental health courts.

Impacts to Effectiveness and Efficiency

Drug courts that have paper-based systems have a difficult time compiling comprehensive files because each team member has data they collect or report on individually. In addition, it is problematic for team members to have access to paper files as only one person at a time can work with them. Research shows negative impacts to drug courts that lack electronic management information systems. According to data published by NPC Research, the group's research on best practices of drug courts

nationwide demonstrates those drug courts that used paper files rather than electronic case management systems had 65 percent less savings.

On an individual drug court basis, the lack of complete case files and exchange of information between team members on a timely basis can negatively affect the court's success with individual participants and outcomes of the court as a whole. It affects the court's ability to manage its daily operations and assess progress in meeting the court's operational and administrative goals. Those courts with automated systems that allow data input from all the team members, particularly the treatment providers, give the judges the necessary information they need in a timely manner.

In addition, there are impacts from a system-wide perspective caused by the lack of a uniform electronic case management system. Because each drug court has its own unique case management system, collecting system-wide data is problematic and a time-consuming process. It negatively impacts the ability of the branch to effectively gather drug court participant information in order to evaluate participant outcomes and analyze overall system benefits.

Judicial Branch Should Strengthen Drug Court Case Management

The current situation arose from the fact that each drug court is allowed to determine what case management system it wants to use, provided the court finds funds on its own to secure any electronic case management system or software. It is a grass-roots approach marked by local courts determining their own data collection and evaluation needs. There is no system-wide planning, direction, or prioritization for drug court case management. Branch management indicates a comprehensive, web-based case management system for drug courts is currently a lower priority item for the branch. There are higher-level Information Technology-related priorities for the courts as a whole, as well as funding constraints. Current focus is on the FullCourt System used by all district courts and courts of limited jurisdiction, and the branch plans to seek funding from the 2015 Legislature to migrate FullCourt to a modern architecture. FullCourt is not used by drug courts although it does have a drug court module.

However, strategic planning for addressing drug court management information needs is currently limited. The branch Information Technology Strategic Plan for fiscal years 2013-2015 has little mention of information needs or plans for drug courts. The number of drug courts within the state has grown to the point where the branch should develop a strategic approach to addressing the drug courts' management information needs. The plan should consider system efficiency and effectiveness, which would be best addressed by implementing an integrated web-based case management system

that would be used by all drug courts. Research has clearly established using data from program management information systems to track progress and make program modifications correlates strongly with improved outcomes. Drug courts that collect data and then use it as a basis for program change had 105 percent greater reductions in recidivism and 131 percent higher cost savings due to reduced criminal justice system costs.

RECOMMENDATION #5

We recommend the Montana Supreme Court strengthen its drug court case management by:

- A. Prioritizing securing resources to obtain a case management system for the district-level drug courts that currently rely on paper records.*
 - B. Developing a strategic plan to implement a drug court specific, integrated, web-based case management system for district court level drug courts.*
 - C. Assessing the possibility of integrating drug court case management needs into the FullCourt System.*
-

Recidivism Data Not Consistently Reliable

While the branch has strived to develop a standardized process to collect data from the drug courts, we found improvements are needed. During our audit, we identified an issue with the reliability of recidivism (re-arrest) data that is reported by individual courts to the branch, Office of the Court Administrator (OCA). The branch compiles this information for reporting purposes including distribution to the legislature.

Monitoring for recidivism by drug court participants is a critical element of measuring drug court success. We found wide variation in the extent of monitoring that is done. We identified instances where drug courts simply fail to provide requested recidivism data. For example, staff in two different courts stated they did not check for recidivism of drug court participants. All staff commented about the time-consuming nature of this task indicating they tried to devote time to check each participant's re-arrest records. Staff stated they did not always have time to complete the check or be as thorough as they would like to be. Drug court staff indicated on average, it takes a full day or more to review InfoPath and conduct the recidivism checks.

Drug court staff also discussed some records cross-match issues and resulting challenges they encounter. The re-arrest data for individuals is pulled from FullCourt System

using the person's name and date of birth. To validate the data, the report is sent to each drug court coordinator, via InfoPath, who is asked to review each record and validate that the re-arrest record is for the correct individual. The branch created this validation process because there could be an individual with the same name and date of birth who have court offenses in the FullCourt System but never participated in drug court. The name query system that is currently used causes many false record matches. For example, when InfoPath generates a record for "John Smith," the system could include hundreds of lines of data for anyone in the FullCourt System with a name that includes "John" and "Smith." A coordinator has to figure out which one (if any) was a drug court participant by looking at the primary offenses and then searching for offenses that might qualify as recidivism. Branch staff recently added another field—a state ID or driver's license number—to the records cross-check to reduce the number of false matches. Drug court staff indicate the records cross-check still generates a high volume of false matches.

The other area drug court staff members commented on is the subjective nature regarding what constitutes recidivism. The records match data in InfoPath will contain each case and the coordinator must not only determine if it is a drug court participant but whether it is recidivism.

Staff stated there is no clear guidance on what constitutes recidivism. Individual coordinators are left to define this and it affects consistency of this data. For example, one coordinator commented each case is different and dependent on the drug court participant's original offenses, punishment, court order, etc. The InfoPath recidivism records match will generate many status offenses, traffic offenses, and other minor charges that in this individual's opinion do not qualify as recidivism.

While the majority of drug court staff desired accurate recidivism data, due to time limitations and other issues, they believed accuracy needed to be improved. Overall, drug court staff commented there needs to be a better way to check for recidivism to improve accuracy and reduce the amount of time staff spent manually checking records. In addition, there are some issues with recording data for participants who exit (either graduate or are discharged from the program prior to graduation) and subsequently re-enter the drug court. Staff was not certain how these records should be input into InfoPath and whether this impacts data compilation and the recidivism cross match.

The collection tool the branch uses to collect recidivism data from drug courts uses all offenses, misdemeanor and felony. Section 46-1-1103(9), MCA, of the Drug Offender Accountability and Treatment Act, defines recidivism as any arrest for a serious offense

that results in the filing of a charge and can carry a sentence of one or more years. The branch uses a more stringent definition of recidivism.

Recidivism Data is Key Performance Indicator

According to the Ten Key Components, data elements that should be collected to assist in management and monitoring of drug courts include:

- ◆ Rearrests during involvement in the drug court program and type of arrest(s).
- ◆ Number, length, and reasons for incarcerations, during and subsequent to involvement in the drug court program.

The U.S. Department of Justice, BJA, and NDCI stress the importance of reliable data. It is the reliability of the data collection that ultimately determines whether any conclusions can be drawn about the effectiveness of the program. While some missing or errant information can be tolerated when the sample of or population being analyzed is large, the drug court model typically does not have large numbers of participants. This means that a few errors or missing data can significantly distort the results.

Judicial Branch Needs to Improve Recidivism Data Validity

Audit work demonstrated questions with respect to the validity of data collected relative to recidivism by individuals that participate in Montana's drug courts. This issue impacts ability of the branch to demonstrate credible, reliable, and valid outcomes for individual drug courts and drug courts as a whole. The current process for collecting recidivism data relies on individual court staff to make subjective decisions as to whether or not an arrest constitutes recidivism. This is exacerbated by the lack of a clear definition of recidivism and what types of arrest will be considered a recidivism event. In addition, turnover in drug court coordinators impacts consistency of this determination, and coordinators have not received applicable training. Lastly, the amount of effort staff devotes to checking records for recidivism varies considerably due to the time-consuming nature of the current process, with some staff clearly stating they do not perform this check.

Recidivism is a key performance metric for drug courts. The branch needs to take steps to ensure consistency of interpretation and improve validity of recidivism data that is collected relative to drug courts.

RECOMMENDATION #6

We recommend the Montana Supreme Court strengthen validity of recidivism data collected from drug courts by:

- A. *Ensuring staff applies a consistent definition of recidivism as it relates to drug courts.*
 - B. *Providing routine training to staff on the methodology for collecting recidivism data.*
 - C. *Periodically assessing accuracy of collected data.*
-

Monitoring and Evaluation of Achieving Goals and Gauging Program Effectiveness

There are nationally recognized standards for drug courts, which require a comprehensive system of monitoring and evaluation. The design and operation of an effective drug court program result from thorough initial planning, clearly defined program goals, and inherent flexibility to make modifications as necessary. Key Component #8 addresses performance evaluation for drug courts and states:

“Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.”

According to the U.S. Department of Justice, BJA along with the NADCP coordinated management, monitoring, and evaluation systems are fundamental to the effective operation of a drug court.

In addition, research published by the National Drug Court Institute states the top ten practices drug courts can use to reduce recidivism include:

- ◆ Drug courts where internal review of the data and program statistics led to modifications in program operations had 105 percent greater reductions in recidivism.
- ◆ Drug courts that had evaluations conducted by independent evaluators and used them to make modifications in drug court operations had 85 percent greater reductions in recidivism than programs that did not use these results.

In addition, top ten practices shown to increase drug court cost savings include:

- ◆ Drug courts where internal review of the data and statistics led to modifications in program operations had 131 percent higher cost savings.

- ◆ Drug courts that had evaluations conducted by independent evaluators and used them to make modifications in drug court operations had a 100 percent greater costs savings as compared to courts that did not.

Research into drug court programs clearly demonstrates monitoring and evaluation of drug courts leads to reduced recidivism of drug court participants and increased cost savings. Cost savings are achieved through a reduction in criminal behavior and associated criminal justice system costs.

Monitoring and Evaluation is a Component of Federal Grants

The U.S. Department of Justice, BJA, requires performance measurement by drug courts that receive federal grants. There are established program goals and specific performance measures and data that are required to be compiled and reported by grantees. Failure to collect and provide this data can result in termination of the grant. BJA monitors grantee performance and makes future funding decisions based on court performance. In addition, Montana Department of Transportation (MDT) requires DUI courts funded with U.S. Department of Transportation, National Highway Traffic Safety Administration grants to establish goals and objectives as part of their grant application process and directs adherence and performance measurement of them through their contract execution requirements. MDT monitors grantee performance and adjusts funding based on drug court results.

Drug Court Performance Not Consistently Assessed

During the audit, we found the branch does not consistently assess performance of drug courts either individually, or on a system-wide basis, in accordance with nationally recognized standards. For drug courts that receive federal grants, performance monitoring and evaluation occurs since it is required as a condition of the grant. Once federal grants expire and drug courts are state funded, monitoring and evaluation no longer occur. For the 2015 biennium, 18 of 26 (69 percent) drug courts are state funded. For these 18 state funded drug courts, the branch does not have an established process to:

- ◆ Ensure drug courts are monitored to assess whether the court is meeting goals, objectives, and performance thresholds.
- ◆ Evaluate court program outcomes and effectiveness.
- ◆ Follow national standards and best practices.
- ◆ Receive an independent evaluation by an outside reviewer.

Audit work revealed the following main points:

- ◆ Process evaluations are only done during the period of time drug courts receive federal grant funding. Process evaluations appraise progress in meeting the courts' operational and administrative goals.

- ◆ Implementation evaluations assess the extent to which the drug court is reaching its long-term goals. Implementation evaluations are performed for federally funded courts only.
- ◆ Outcome evaluations are not required by or conducted by the branch. An outcome evaluation uses a comparison group that does not receive drug court services. We observed only one court that formalized an outcomes evaluation into a product.
- ◆ There is limited system-wide assessment of drug court performance including ensuring drug courts adhere to the key components.
- ◆ The branch has draft statewide goals or objectives for drug courts but these do not assess performance to determine attainment. Goals and objectives are set at the individual court level and most are self-evaluating performance within their resource constraints.
- ◆ The branch does not measure court performance or participant outcomes by examining comparison groups of nondrug court participants with program graduates at least six months after exiting a drug court program, as required by best practices and standards for drug courts.
- ◆ Some drug courts monitor recidivism (re-arrest) for 24 months after an individual no longer participates in a drug court while best practices require monitoring for 36 months and model legislation is five years.
- ◆ Data collected relative to monitoring individuals post-program is limited to recidivism. Other metrics which standards indicate should be collected and examined include monitoring drug or alcohol relapse, employment status, educational status, sobriety measures (i.e. attending self-help meetings such as Alcoholics Anonymous or Narcotics Anonymous), pregnancy and children, and payment of child support and other financial obligations.
- ◆ The branch does not centrally evaluate the quality of services provided to participants. This would typically be done via a questionnaire. A few courts do this individually but the majority do not.

Judicial Branch Involvement With Drug Courts

Audit work revealed the branch is not directly involved in monitoring drug court performance. However, from a central perspective, the branch does take steps to gather data and provide some level of technical assistance to courts. The branch uses a data collection tool (InfoPath) to gather data from individual drug courts. The majority of data is general in nature with the focus on participants while in program. Examples include employment status, drug of choice, length of stay in drug court, and drug court completion. Data relative to post-program status is limited to recidivism. Post-program data can be used to evaluate long-term effectiveness of drug courts. In addition, although the branch collects this data, it is not aggregated by court and shared with drug court judges and staff to be used for comparative or evaluative purposes.

The branch also assists individual drug courts by providing technical assistance visits by the statewide drug court coordinator. Several drug courts have requested and received these visits. In addition, branch staff indicates they plan to institute a new “peer review” program for Montana drug courts. The plans for this process will include putting together a team of volunteers composed of members of individual drug courts, mostly coordinators, who will visit other drug courts to conduct a two-day evaluation.

In 2009, the branch contracted for an independent statewide review of the 12 drug courts that received state general fund moneys during the 2009 biennium. The contractor examined current data collection and provided recommended improvements to address inconsistent data collection issues. In addition, the contractor recommended outcomes evaluations should be performed, as should a future large-scale cost benefit analysis. The branch has worked on improving data collection but did not implement the outcomes evaluations or cost-benefit analysis. There have been no other system-wide evaluations since the 2009 project.

Monitoring Performance is Important to Drug Court Teams

During the audit, we found that judges who operate drug courts are interested in assessing the court’s performance and general outcomes. During our field visits, we interviewed judges and drug court team members from 11 drug courts. All the judges we interviewed voiced strong support for a formal system of monitoring and evaluation. Ultimately, judges and the drug court teams want to know how well their courts are performing, what the long-term impacts and outcomes are, and how operations can be improved. Staff from some of the courts we visited said they have repeatedly asked the branch for independent evaluations but have not received them. Drug courts that are state funded do not have the funding to secure these outside evaluations on their own.

Lack of Monitoring Hampers Ability to Assess Long-term Success of Drug Courts

Without system-wide monitoring and evaluation, the branch cannot examine long-term effects of the program on individuals that participate in drug courts, such as: return to criminal activity, sobriety, changes in job skills and employment status, and changes in physical and mental health. The branch is not able to determine cost-benefit of drug courts and examine economic impact of program services, such: as reductions in court costs, including judicial, counsel, and investigative resources; reductions in costs related to law enforcement and corrections; reductions in health care utilization; or increased economic productivity.

The branch does not have an effective process for evaluating participant outcomes and analyzing overall system benefits for drug courts. The lack of a system-wide,

robust performance monitoring and evaluation system affects the ability of the branch to demonstrate tangible and reliable outcomes for individual drug courts and drug courts as a whole. While research at the national level generally demonstrates positive outcomes of drug courts, especially relative to adult courts, the branch is unable to definitively determine if Montana's drug courts demonstrate the same positive impacts.

Without accurate and consistent performance data from the courts, the branch cannot assess the benefit of the general fund moneys being spent on drug courts. The branch consistently uses national data regarding cost-benefit, cost savings, and costs avoided but they cannot show anything that approaches detail for the state of Montana. As a result, this significantly impacts the ability of the branch to determine cost-benefit of the courts and relationship between the state general fund expended on drug courts because it has not collected the appropriate data to do so. Without these measurements, the branch and the legislature are making funding decisions without knowing whether a given court is actually value-added.

Resource Constraints Effect Monitoring and Evaluative Efforts

Branch management indicates the reasons that performance monitoring and evaluation for the drug courts are not performed system-wide are resource driven. Management states they do not currently have the resources in terms of staff capabilities in-house to conduct this work. In addition, the lack of funding does not allow the branch to secure outside evaluation services to assess drug court performance and outcomes, adherence to best practices, or perform a cost-benefit analysis. However, there is a mechanism in place for securing resources through carry-forward funding of unexpended appropriations if the branch elects to prioritize establishing system-wide monitoring and evaluation for drug courts.

Performance Measurement in Drug Courts Provides Valuable Information

Monitoring and evaluation measure the achievement of program goals and gauge effectiveness. It is a crucial step in informed decision-making, not only at the individual court level but also system-wide. It is a drug court standard endorsed by the U.S. Department of Justice and by professional associations involved with drug courts nationwide. In addition, a number of other states have implemented a robust system of monitoring and evaluating drug court performance including Idaho, Minnesota, and New Mexico—most doing this evaluation at a statewide level. States use this information to ensure individual drug courts operate in keeping with the Ten Key Components and use the results to allocate funding to programs. Without a system of monitoring and evaluating drug courts, it is difficult to definitively determine whether courts are

producing desired outcomes and having a positive effect on reducing recidivism and substance abuse. Montana's drug court system does not have a comprehensive process for evaluating participant outcomes and analyzing overall system benefits. In addition, without system-wide evaluation, the state currently lacks a mechanism to ensure drug courts apply established best practices. As previously discussed in this chapter, the lack of a cohesive case management system for drug courts and issues with validity present added challenges to the branch in conducting system-wide monitoring and evaluation and accurate reporting to the legislature.

RECOMMENDATION #7

We recommend the Montana Supreme Court implement nationally recognized standards for drug courts that require a comprehensive system of monitoring and evaluation to ensure achievement of program goals and objectives and gauge program effectiveness.

Chapter IV – System-Wide Planning and Support

Introduction

Montana’s Drug Courts (drug courts), which offer state courts a different way to handle drug and alcohol addicted criminal defendants, juvenile offenders, and abuse and neglect cases, have grown rapidly both nationally and within Montana. There are now 31 drug courts operating in the state, including 18 in district courts, seven in courts of limited jurisdiction, one in a partnership of district and municipal court, and five in tribal courts.

While states generally realized positive benefits of drug courts, some states also recognized there had been little organized effort to expand the availability of drug courts. Efforts to date had been ad hoc and grass roots and these states have undertaken efforts to expand drug courts in a coordinated way. This has involved support from judicial and legislative leadership, developing long-term plans to expand drug courts, and establishing commissions or councils vested with the authority to coordinate the expansion of drug courts. States have realized that developing drug courts on such a wide scale is a significant operational challenge that requires planning and support.

Drug courts also expanded gradually, beginning at the local level with judicial interest in starting a drug court, and with support from local-level criminal justice and law enforcement agencies. Drug courts were started with federal funds secured through grant-writing efforts. The federal grants are of limited duration and are intended to provide drug courts with start-up and implementation funding. Federal grants are three to five years’ duration. As federal grants expire, other funding must be secured in order for the drug court to continue operations, typically state funding. The issue of drug courts continues to evolve, presenting not only financial considerations but operational considerations as well.

Strategic Approach to Drug Courts Needed

One of our audit objectives was to determine if there is a long-term plan that accounts for the expansion of drug courts in Montana and continued financial sustainability. Audit work presented in this chapter addresses this objective from the perspective of how the Judicial Branch (branch) manages operations associated with the expansion of drug courts and future planning efforts.

Audit work determined operation of drug courts would benefit from the Montana Supreme Court establishing mechanisms to shift from an operational approach to a

strategic approach. There are currently 26 drug courts operating in district courts and courts of limited jurisdiction. The associated operations, information management, funding, and personnel needs related to these courts have become a bigger issue to manage, with system-wide implications and needs. As discussed in previous chapters of this report, our audit work identified areas where drug court operations would benefit from enterprise-wide planning and direction. We identified noncompliance with state law pertaining to drug courts including a prohibition on allowing violent offenders to participate, requiring participants to pay a fee to the court, and lack of formal Memorandum of Understanding with treatment providers. In addition, audit work revealed courts are not following all components of national standards for drug courts including standards for education, and monitoring and evaluation to measure achievement of goals and gauge program effectiveness. Audit work also identified issues with validity of recidivism data collected and reported for drug court participants. Audit work determined drug courts use a variety of case management systems and there is no management information system standard. These issues are caused in part by the individualized approach currently used by drug courts, with each operating independently and autonomously with very little system-wide policy direction and support.

This chapter focuses on the need for system-wide planning and support, and discusses audit findings and recommendations related to the following areas:

- ◆ Enterprise-wide planning and administrative oversight
- ◆ Long-term planning
- ◆ Programmatic and administrative assistance

Enterprise-wide Planning and Administrative Oversight of Drug Courts

During the audit, we examined the process the branch uses to provide statewide level planning and management over drug courts within the state. The Montana Supreme Court has general supervisory control over the state's courts. In order to assist with managing the responsibilities of the branch, the Supreme Court establishes commissions and councils. The branch established a District Court Council, to develop and adopt policies and procedures, subject to review by the Supreme Court, to administer the state funding of district courts. While the branch has a central decision-making body with respect to district court operations, nothing similar exists for drug courts. To date, there has been no formally developed means of providing for a centralized, statewide effort to manage the growth of drug courts or exercise system-wide administration and oversight of drug courts within the state.

Lack of Oversight and Policy Direction Affects Drug Courts

The lack of oversight and policy direction specific to drug courts presents challenges as drug courts plan from an individual court perspective rather than a system-wide perspective—with impacts to funding and operations. Individual courts must secure funding in order to start and implement a drug court. As federal grants expire, the only way for a court to continue operating is to obtain state funding or for courts of limited jurisdiction, local funding. Given the short-term nature of federal grants for drug courts, it makes it difficult for courts to plan long-term due to funding uncertainty, and causes some level of drug courts competing against each other for limited state funding. In addition, the lack of enterprise level oversight and policy contributes to operational issues we identified during audit work at drug courts. For example, we found instances of courts not adhering to national standards for drug courts including training, and a system of monitoring and evaluation to measure program effectiveness. Full implementation of these national standards will require a centralized, concerted effort to plan for and implement these components for all drug courts. The lack of an enterprise level case management system for drug courts and discrepancies between drug courts in tracking recidivism and other outcome measures are other salient examples. These operational issues are due in part to the individualized and isolated nature by which drug courts currently operate with minimal system-wide policy direction and operational planning.

Other States Established Council for Drug Courts

During the audit, we contacted surrounding states to determine processes used to provide policy-level direction and general oversight to drug courts. Three of the four states use a council that provides self-governance, funding prioritization, professional development standards, and long-range planning for their drug treatment court system, discussed as follows:

- ♦ New Mexico's Supreme Court recognized the need for centralized operational and financial oversight of the state's growing number of drug court programs and issued an order in 2003 establishing the Drug Court Advisory Committee (DCAC) as a permanent committee. That order identified several of DCAC's responsibilities including creation of a set of uniform drug court standards for the state's programs. The order also directed DCAC to develop a five-year strategic plan, with annual updates, and address future drug court issues as they arise.
- ♦ The Idaho Drug Court Act requires the Idaho Supreme Court to establish a statewide Drug Court and Mental Health Court Coordinating Committee. The committee must develop an implementation plan, establish standards, oversee drug and mental health court programs, develop guidelines for courts, set funding priorities, provide technical assistance, develop procedure manuals, schedule training, design an evaluation strategy, and secure an automated management information system.

- ◆ North Dakota's Supreme Court established a Juvenile Drug Court Advisory Committee via administrative rule. The committee was established to serve as a mechanism for the development of policies and procedures regarding the establishment and operation of a statewide juvenile drug court program comprised of individual drug courts and to provide regular guidance and monitoring of the juvenile drug courts to ensure compliance with applicable laws, policies, and procedures. The committee is responsible for development of policies and procedures and for the regular review of the performance, administration, and management of the juvenile drug court program.

In addition to these three states, other states have established statewide councils or committees to provide oversight and direction to the states' drug courts as part of their effort to institute enterprise level administration, policy direction, and oversight of drug courts within the state. Model legislation developed by the National Drug Court Institute, with support of the U.S. Department of Justice, Bureau of Justice Assistance (BJA), addresses governance including establishing a state drug court advisory commission. The chief purpose of the commission is to provide a comprehensive strategy for the drug courts in the state.

Judicial Branch Focus is on District Court Assumption

The branch focus has been on the assumption of district court operations since the state assumed funding of district court operations in 2001. This has been a significant undertaking for the branch with considerable effort spent on developing a funding mechanism for the courts, addressing judicial caseload and workload issues, human resource management, equalizing pay for comparable positions, and general financial resource needs. In addition, addressing the information technology aspects of the state's district courts and courts of limited jurisdiction has been a pressing issue.

When the state assumed responsibility for district courts in 2001, there were a limited number of drug courts operating in the state. Since that time, drug courts have grown increasingly popular, as they have gained a reputation as an effective diversionary approach to traditional court case processing. As a result, by 2014, the total number of drug courts in the state has grown to 26 with 18 operating in district courts, seven in courts of limited jurisdiction, and one in a partnership of district and municipal court. District courts have benefited from the unified statewide level management approach. Drug courts could also benefit from an organized, strategic approach to managing the state's drug court program. An oversight committee could provide standardized operational policies, funding prioritization, professional development standards, and long-range planning for drug courts.

RECOMMENDATION #8

We recommend the Montana Supreme Court establish a drug court council to provide system-wide planning and policy direction for drug courts.

Long-Term Planning

During the audit, we examined the means by which the branch plans long-term for drug courts. Audit work shows current focus of the branch is on the short-term needs of drug courts that have federal grants that are expiring and will need another funding source, typically state general fund. Branch management will consider drug court funding needs as part of the Executive Planning Process for the upcoming biennium. Planning is done from one biennium to the next. There is currently no formal long-term planning for the state's drug courts. Long-term strategic planning for drug courts has not been a priority of the branch.

Impacts to Financial and Operational Stability

The lack of long-term planning for drug courts makes it difficult to plan for financial and operational stability for individual courts or system-wide. This is difficult for not only drug court staff but also has implications for participants. If federal grants expire or are not continued, and courts are not transitioned on to state or local level funding, the court would have to discontinue accepting new participants. This recently occurred with a municipal level DUI court. While a drug court may have an effective operation with committed involvement by team members and a full caseload, this is jeopardized by the lack of system-wide long-term planning.

Long-term financial planning for drug courts is challenging. Judges have the legal authority to individually establish drug courts. This presents challenges from both a court viability and financial planning perspective. There is a cycle of courts starting drug court dockets using federal grants that are of short duration and will expire, and a subsequent need to transition to state general fund support in order to continue operations. There are additional challenges to the long-term viability of drug courts. Montana Department of Transportation officials indicate the amount of federal grants available to DUI/DWI courts may be significantly reduced after fiscal year 2016. This could affect five DUI courts that currently receive these federal grant funds. There is also the potential that federal funding for treatment services administered through Department of Public Health and Human Services programs may be reduced in the near future. This loss of funds for treatment services would have major implications for

drug court operations in Montana. What is missing from the discussions and planning for drug courts is direct involvement by the Montana Supreme Court in the long-term planning for drug court operations. The Supreme Court has a clear constitutionally-provided supervisory role over all the courts in the state.

During interviews with drug court teams and via the survey distributed to drug court judges and coordinators, staff expressed concern about the lack of long-range planning, in particular as it relates to continued operations and funding. Pressing needs included long-term viability of courts, identifying additional funding sources, and a need for increased staffing levels and other resources. Judges and drug court staff generally raised issues with transitioning from federal grant funding to other fund sources, and how the branch as a whole ensures financial sustainability and viability of drug courts. As additional drug courts are started, more courts will be fighting for a smaller piece of general fund moneys. Management and staff from several drug courts commented they are currently serving more participants than they were originally funded for, and that current funding levels are hampering their ability to meet best practices and are reducing court effectiveness.

Other States Develop Long-range Plans for Drug Courts

Other states use a system-wide approach to administering drug courts and include formalized long-range strategic plans. New Mexico's Drug Court Advisory Committee is responsible for developing a strategic plan for the funding and growth of drug courts, with annual updates. The long-range plan must include a schedule of when federal funding will be sought and lost for the programs, and when the legislature will be asked to take over program funding. Some specific points included in the strategic plan are:

- ◆ Presenting a procedural path and financial plan for the growth of drug courts in New Mexico.
- ◆ Promoting growth of existing and new programs, while holding courts accountable to research-based best practices and treatment modalities.
- ◆ Recognizing the need for centralized operational and financial oversight of the state's programs.
- ◆ Researching into drug court best practices and evidence-based treatment, including procedures by which such research will help determine which programs should receive funding.
- ◆ Ensuring that supplemental funding only goes to programs that are operating in keeping with the Ten Key Components.

Idaho's Drug Court and Mental Health Court Coordinating Committee is tasked with producing a strategic plan for the legislature that will make access to treatment courts available to all eligible offenders and the resource plan to pay for that expansion. The leadership of Minnesota's Judicial Branch convened a multi-disciplinary, cross-branch Drug Court Initiative Advisory Committee to plan for and oversee implementation and funding distribution for state's drug courts. This allows the branch to plan long-term for drug courts.

Long-Term Planning Would Benefit Drug Courts

Drug courts have increased to the point where long-term planning is needed not only to ensure financial viability of courts but also to establish the operational framework to ensure drug courts successfully operate.

RECOMMENDATION #9

We recommend the Montana Supreme Court develop a long-term planning strategy for drug courts that establishes operational and funding priorities.

Programmatic and Administrative Assistance Provided to Drug Courts

During the audit, drug court judges and coordinators commented a key area for improvement is the need for programmatic and technical assistance from the branch (both the Supreme Court and the Office of the Court Administrator). Drug court management and staff expressed a need for additional support with the administrative and operational aspects of running drug court. This was the most commonly cited area where court management and staff stated assistance should be improved—both during our interviews and in surveys we distributed to drug court judges and staff.

Audit work revealed there are staff in district court level drug courts that are state employees that are not aware of branch procedures and administrative requirements. We identified operational shortcomings and a need for additional programmatic assistance from the branch in the following areas:

- ◆ Standard operating procedures for drug courts that would include sections common to all courts such as referrals, screening, case management requirements, forms, etc.
- ◆ Standard administrative operating procedures.
- ◆ Purchasing requirements and methods.

- ◆ Contracting in general.
- ◆ Statewide contracts including current contracts and securing others (alcohol and drug monitoring devices, urinalyses testing, case management system software).
- ◆ Identifying funding sources and assistance with grant proposals.
- ◆ Creation of drug court documents such as forms, screening documents, checklists, participant contracts, service contracts and MOU templates, confidentiality agreements, and authorizations for release of information.
- ◆ A repository of contract templates, forms, policies, checklists, and documents.
- ◆ Guidance on use of Pro Cards, including documentation requirements.
- ◆ Travel request processes.
- ◆ Financial aspects of operating a drug court, including budget and expense information.
- ◆ Fundraising, including allowable use of and managing donated funds.

Staff from several courts we visited indicated they had requested technical assistance visits from the statewide drug court coordinator but had not received them. Currently, communication between the branch central office and the courts is typically by group e-mails from the statewide coordinator to the drug court coordinators and monthly teleconferences. Financial Services Division staff has conducted visits to the courts in the past to provide financial-related assistance.

In addition to visits to drug courts, we distributed surveys to drug court judges and coordinators. The following table illustrates the results of our survey relative to identifying areas where judges and court coordinators believe their drug courts need additional support.

Table 3
Results of Survey

Areas Where Courts Need Support	Number of Judges	Number of Coordinators
Increasing staffing levels	54%	54%
Building/formalizing relationships with stakeholders and community partners	23%	33%
Creation of court documents (i.e. forms, applicant screening documents, checklists, polices, procedures, etc.)	15%	40%
Technical Assistance (case management systems, InfoPath, etc.)	8%	27%
Purchasing or contracting	8%	0%

Source: Compiled by the Legislative Audit Division.

Every drug court we visited indicated a need for support with document creation, technical assistance, and purchasing or contracting. The majority of visited courts desired assistance with building and formalizing relationships with stakeholders and community partners. Some of these issues have been raised in the past by drug court management and staff. For instance, during Bureau of Justice Assistance Operational Tune-up work sessions, staff discussed challenges the teams face. Some of the challenges cited during these work group sessions included unclear role and responsibilities of each drug court team member, a lack of forms, differences in guidelines, and no policy or procedure manual.

Other States and National Organizations Provide Program Assistance

Several surrounding states have taken steps to manage drug courts from a statewide basis rather than an individualized basis. As previously mentioned, Idaho established a Drug Court and Mental Health Court Coordinating Committee. Part of the committee's broad scope of responsibilities include providing programmatic and technical assistance to drug courts such as developing procedural manuals, providing technical assistance, and scheduling training opportunities. North Dakota's adult and juvenile drug courts receive technical assistance from agency personnel rather than a committee. It is a clearly defined duty and part of broader court oversight responsibilities. Both states identified a specific entity that is responsible for providing programmatic and technical assistance and established clearly defined duties.

Professional organizations and groups associated with drug courts also advocate for a defined entity to provide programmatic and technical assistance to courts. The National Drug Court Institute in affiliation with the National Association of Drug Court Professionals recommends a system-wide structural framework be established for drug courts. This includes establishing an entity responsible for providing assistance to drug courts including promoting training and technical assistance. The BJA-funded Adult Drug Court Technical Assistance Project offers a wide range of free and cost-share services to drug court and other problem-solving court programs to promote improved program effectiveness and long-term success.

Centrally Provided Program Assistance for Montana's Drug Courts

The branch established a process for providing programmatic and technical assistance to the state's drug courts. The branch currently has one full-time position assigned responsibility for assisting drug courts, a statewide drug court coordinator. The position description for the statewide coordinator indicates responsibility for performing "professional advanced level work by providing support and managing projects for

Montana’s drug courts.” Some assistance is also provided to individual drug courts relative to fiscal matters by the Financial Services Division staff of the branch.

Devoting resources to provide administrative and programmatic assistance to drug courts is challenging, especially given the number of drug courts existing today and the fact they are located throughout the state. However, comments made by staff from individual drug courts indicate a clear need for additional programmatic and technical support to the courts. A lot has changed with Montana’s drug court program and the number of courts has increased. This in part drives the demand for centrally provided assistance. The role of the statewide drug court coordinator was originally developed in 2008. Audit work revealed the role should be re-examined given changes in the state’s drug court program and responsibilities of the statewide coordinator should be better defined. The position description contains general-level description of duties with very few specifics. There are examples of work performed but the position description states they are “illustrative only.” In addition, the position description indicates work is performed under the supervision of the Court Services Director. This does not accurately reflect current reporting structure.

Impacts to Drug Courts

Ultimately, the lack of a clearly defined process for providing programmatic and administrative assistance to drug courts impacts effectiveness of drug court staff. Drug court coordinators stated they spend time “reinventing the wheel” and must often individually develop all the materials required to operate a drug court such as court policies, handbooks, forms, etc. Drug court staff expressed frustration with the time they spend trying to find reference documents and branch policy or procedures. They also stated there was some level of a lack of support and at times operated in isolation. As a result, they relied on contacting staff in other drug courts for assistance. This situation is even more difficult for newer court coordinators and in general, either for judges and staff working to establish a drug court, or during infancy stage of court operations.

RECOMMENDATION #10

We recommend the Montana Supreme Court improve its processes for providing programmatic and administrative assistance to drug courts by:

- A. *Redefining the role of the statewide drug court coordinator.*
 - B. *Developing reference materials, including a resource library of forms, checklists, contract templates, and other program materials.*
 - C. *Developing a resource manual addressing administrative aspects of drug court operations.*
 - D. *Providing an on-going training component for drug court coordinators relative to administrative responsibilities.*
-

Report Contents

The discussion of audit findings, conclusions, and recommendations presented to this point relate to action the Montana Supreme Court should implement to improve operations of Montana's drug courts. The remaining chapter of the report focuses on issues for legislative consideration.

Chapter V – Legislative Considerations

Introduction

One of our audit objectives was to determine the system-wide costs of Montana’s drug courts (drug courts) and if there is a mechanism in place for reporting this to the legislature and other stakeholders. This chapter discusses the results of our audit work relative to this audit objective. In addition, we present information that addresses drug courts from a global perspective reflecting on the growth of drug courts in the state, the court’s jurisdictional basis to implement drug courts, and the current approach used to fund drug courts, including long-term implications. Also included are national-level data on drug court outcomes and benefits and a recap of difficulties relative to comprehensive outcomes and benefits data for drug courts. This information addresses another of the audit objectives, which was to determine if there is a long-term plan that accounts for expansion of drug courts in Montana and continued financial sustainability.

System-wide Cost of Drug Courts

Audit work found the total costs to operate drug courts are unknown due to the diverse methodologies used to fund courts and track expenditures. Some costs are more readily determinable and others are not. Direct costs that are determinable are state general fund and federal funds where the Montana’s Judicial Branch (branch), Office of the Court Administrator is responsible for directly allocating the funds to various drug courts. Table 4 (see page 54) shows fiscal year 2013 expenditures for drug courts where OCA is responsible for allocating funding. The table presents a partial calculation of drug court expenses.

Table 4
**Drug Court Expenses as Recorded by Office of the Court
 Administrator**
 Fiscal Year 2013

Drug Court	Amount	Fund Sources
JD 1 Adult	\$54,166	Federal, Fees
JD2 Butte Family	86,176	General Fund
JD4 Youth	13,388	General Fund
JD4 Family	30,366	General Fund
JD4 Co-occurring	38,354	General Fund
JD7 Youth	64,765	Federal, General Fund, Fees
JD7 Adult	55,527	Federal, Fees
JD7 DUI	57,975	Federal, Fees
JD8 Adult	75,718	General Fund, Fees
JD8 Youth	65,370	General Fund
JD9 Adult	125,858	Federal, Fees
JD13 Family	71,908	General Fund, Donations
JD13 Adult	112,214	Federal, Fees, Donations
JD13 DUI	169,391	Federal
JD13 Veteran's	237,439	Federal
JD13 DUI/Veteran's	1,002	Donations
JD16 Adult	52,069	General Fund, Fees
JD18 Adult	76,487	General Fund
Billings Adult Misdemeanor	103,190	General Fund
Mineral Adult	41,225	General Fund
Statewide Coordinator	83,743	General Fund
Total	\$1,616,333	

Source: Compiled by the Legislative Audit Division from SABHRS.

Note: Table reflects direct drug court expenses and only those where funding is allocated through OCA.

There are a number of challenges to determining actual costs of drug court operations in part because there are so many funding sources, matching (in-kind) services provided, and costs born by other agencies or entities. Costs that are currently difficult to determine include:

- ◆ Federal grants awarded directly to individual drug courts operated within courts of limited jurisdiction.
- ◆ Salaries and benefits for drug court team members who provide services and are part of a match requirement to secure a federal grant. Salaries and

benefits are paid via a different branch fund, by another state agency, or by a local government.

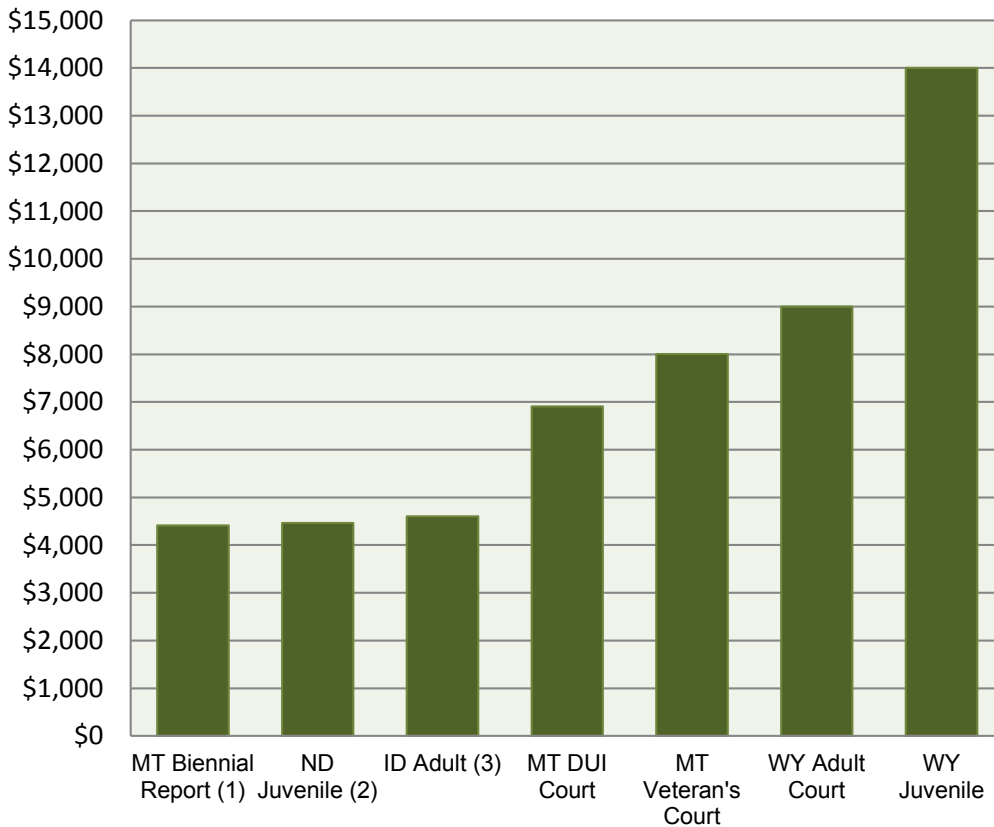
- ◆ Local government funding.
- ◆ Private donations.
- ◆ Services and funds provided by nonprofit entities and service organizations.
- ◆ Services provided by volunteers.
- ◆ Funds contributed by criminal justice groups such as driving while under the influence (DUI) or drug task forces.
- ◆ Fundraising events.

In addition, chemical dependency and mental health evaluations and treatment are key parts of the drug court program model and can be costly. These expenses can be paid for from a variety of sources. Sometimes these expenses are paid for directly through drug court funds used for contracted treatment providers. More common, however, is for other fund sources and programs to pay these costs, including other state agencies, federal agencies, local government, or private health insurance. For example, if a participant or their guardian has health insurance or if a participant is eligible for services from the Veteran's Administration, other entities pay the cost. Healthy Montana Kids and Medicaid would be other avenues that costs for chemical dependency and mental health evaluations and treatment are paid for, as are community mental health centers.

Reported Drug Court Expenses

The branch prepares a biennial report on Montana's drug courts that is distributed to the legislature and others. The report contains information on drug court performance (i.e. number of participants, number of graduates) and partial court expense information, reporting direct state general fund expenditures. It does not report court expenses paid via federal funds; court staff salaries paid from other branch funds or other state agencies; and operating expenses paid from other fund sources. In addition, the branch reports cost-per-participant. This cost is calculated using state general fund expended by the branch, so the actual cost-per-participant is underreported. It presents a partial picture of costs incurred in operating drug courts. During the audit, we compared the cost per participant as reported in the branch biennial report to grant proposals developed by the branch and to costs of surrounding states. Figure 3 (see page 56) illustrates the differences in cost per drug court participant.

Figure 3
Comparison of Reported Drug Court Costs
 On a Per Participant Basis



Source: Compiled by the Legislative Audit Division from Judicial Branch records and data from other states.

Notes: (1) Reported figure is state general fund only.
 (2) North Dakota reported figure does not include chemical dependency assessment and treatment, which is paid by another state agency.
 (3) Idaho reported figure is for treatment and chemical testing only.

In 2009, the branch contracted with the University of Montana to provide program evaluation services for the 12 drug courts that received state funding in the 2009 biennium. The overall goal of that work was to assess and improve the current data collection process to achieve accordance with national standards as set forth by the U.S. Department of Justice. A specific goal set for the contractor was to determine the feasibility of a statewide drug court cost-benefit study. One of the study conclusions was that a large-scale cost-benefit analysis was not feasible at this point for all drug courts. The contractor reported, “Currently the data necessary for a cost-benefit analysis consistent with national standards is not centralized at this time.” Comprehensive cost data was not collected, including cost data from other agencies involved with drug courts. Audit work shows this situation still exists today.

CONCLUSION

Detailed cost compilation is not currently possible, as the judicial branch does not collect comprehensive drug court cost data. In addition, there is no mechanism in place for reporting complete financial data to the legislature.

Planning for Continued Financial Sustainability

The majority of drug courts receive federal grants to implement the court. These grants are short-term, with a duration of three to five years, and as they expire, drug courts are faced with securing other funding sources. The next report section discusses financial considerations for the long-term financial sustainability of drug courts.

Growth of Montana's Drug Courts

There has been growth in the numbers and types of drug courts across court jurisdictional levels within the state. The first drug court was established in Montana in 1996 and was a district court-level juvenile drug court. In early 2008, there were ten drug courts operating in the state's district courts; and the courts of limited jurisdiction had two drug courts. By 2014, the total number of drug courts has grown to 26 with 18 operating in district courts, seven in courts of limited jurisdiction and one in a partnership of district and municipal court.

During the audit, we distributed a survey to all judges in the state. One of the questions related to gathering judges' opinions as to whether the number of drug courts should be expanded or not. Survey results show widespread judicial interest in establishing additional drug courts. We gathered the following responses:

- ◆ For those judges that currently operate a drug court, 85 percent (11 of 13) of respondents believe additional drug court types (i.e. adult, juvenile, veterans) are needed in their geographical area.
- ◆ Six of 13 (46 percent) judges who already operate a drug court indicated they were interested in starting another drug court.
- ◆ For those judges that do not currently operate a drug court, 53 percent (19 of 36) of respondents believe there is a need for a drug court or additional drug courts in their area, 19 percent (7 of 36) did not, and 28 percent (10 of 36) were not certain.
- ◆ Eleven of 34 judges (32 percent) who do not currently operate a drug court indicated they were interested in starting a drug court.

Results of our survey of judges in the state's district courts and courts of limited jurisdiction indicate a substantial level of interest in establishing additional drug courts. The majority of judges indicated support for drug courts. The number of drug courts operating in Montana has increased and will likely continue to grow. The decision to start a drug court rests with the judiciary and whether a judge is willing to manage a drug court docket.

Funding and Financial Sustainability

All district court level drug courts and most drug courts operated by courts of limited jurisdiction begin with federal funding available via any number of federal grants. Federal grants are designed to provide start-up funds and typically last for three years. Courts can apply for extension grants to continue federal funding for another one to two years. Once federal grants expire, if the drug courts want to continue operating, other funding streams must be secured. The branch seeks a general fund appropriation from the legislature to replace, or partially replace, federal funds. As more drug courts are started, there will be more demand for state general fund appropriation in order to provide continued funding as federal grants expire.

The legislature began funding Montana's drug treatment courts during the 2009 biennium. During the 2013 biennium, state general fund was appropriated to 13 drug courts, 11 at the district court level and two operated in courts of limited jurisdiction. For the 2015 biennium, the branch requested state general fund for five district court level drug courts that were funded with federal grants that were slated to expire in the 2015 biennium. The legislature authorized additional general fund appropriation authority for these expiring grants in the amount of \$272,400 for the biennium. The branch also requested additional general fund authority to supplement existing federal funding for six DUI courts that were funded by sub-grants awarded through the Montana Department of Transportation with highway safety funds. The legislature did not fund this request. For the 2015 biennium, this brings the total number of drug courts funded by the legislature to 18.

The branch anticipates federal grants will expire for one district court level drug court and one municipal level drug court during the 2017 biennium. The branch is requesting general fund authority to provide continued funding for these two drug courts. In addition, the branch is requesting general fund authority to annualize costs for three drug courts that the 2013 Legislature approved general fund authority to replace federal funds. The base included only a portion of the base year due to timing on when the federal grant expired. Anticipated combined amount of general fund authority requested is \$506,744 for the 2017 biennium. In addition, Montana Department of Transportation officials indicate the amount of federal grants that are

available to DUI/DWI courts will be reduced in fiscal years 2015 and 2016. They will be significantly reduced after fiscal year 2016. This could affect five DUI courts that currently receive these federal grant funds.

The branch has established a process of securing continued funding for drug courts after federal funds are no longer available. Biennial budget requests to the legislature have included general fund authority requests to continue operations of drug courts that were federally funded. To date, every drug court initially funded with federal grants that expired has been sustained with legislative general fund appropriation authority.

The Legislative Fiscal Division raised the issue of financial sustainability of drug courts in the analysis prepared for the 2015 biennium. Key issues were providing general fund support for drug courts funded with federal grants that expire. In addition, the division raised the issue of using state funds for costs that are the responsibility of a municipality for a drug court created by the municipality.

CONCLUSION

There will be continued fiscal pressure to fund drug courts with state general funds as federal grants expire or as amounts are reduced. Planning for financial sustainability of drug courts is currently done on a short-term basis.

National Drug Court Performance Data

With the expansion of drug courts nationwide since 1989, there is a great amount of national research relative to performance of drug courts. The U.S. Government Accountability Office (GAO) assessed performance data the U.S. Department of Justice collected in fiscal year 2010 and reviewed evaluations of 32 adult drug court programs and 11 cost-benefit studies issued from February 2004 through March 2011. In the evaluations GAO reviewed, drug court program participation was generally associated with lower recidivism. GAO's analysis of evaluations reporting recidivism data for 32 programs showed that adult drug court program participants were generally less likely to be rearrested than comparison group members drawn from criminal court, with differences in likelihood reported to be statistically significant for 18 of the programs. Cost-benefit analysis showed mixed results. Key GAO findings included:

- ◆ Across studies showing re-arrest differences; the percentages of adult drug court program participants re-arrested were lower than for comparison group members by 6 to 26 percentage points. Drug court participants who completed their program had re-arrest rates 12 to 58 percentage points below those of the comparison group.

- ◆ GAO's analysis of evaluations reporting relapse data for eight programs showed that adult drug court program participants were less likely than comparison group members to use drugs, based on drug tests or self-reported drug use, although the difference was not always significant.
- ◆ Of the studies assessing adult drug-court costs and benefits, the net benefit ranges from positive \$47,852 to negative \$7,108 per participant.

Net benefit is the monetary benefit of reduced recidivism accrued to society from the drug court program through reduced future victimization and justice system expenditures, less the net costs of the drug court—that is, the cost of the program less the cost of processing a case in criminal court. A negative net benefit value indicates that the costs of the drug court program outweigh its estimated benefits and that the program was not found to be cost beneficial. Eight of the studies reported positive net benefits and three of the 11 studies reported negative net benefits.

Montana Drug Court Performance Data

Performance data for drug courts provides a means of assessing overall program benefits and outcomes. The branch has taken steps to compile some performance data for drug courts. This data includes drug court program completion; graduation rate; length of stay in program; retention rate; recidivism (re-offense) while in program and 24 months after discharge; employment status; education status; sobriety; and, other measures.

However, our audit work identified needed improvements. As discussed in Chapter III, we made recommendations for the branch to improve the data collection methods used by the drug courts, improve validity of key performance metrics such as recidivism and post-program data, and establish system-wide monitoring and evaluation processes. It is crucial for the branch to work toward improving the validity and comprehensiveness of performance data for the state's drug courts. Long-term, other recommended performance metrics for drug courts include identifying and tracking a control group of nondrug court participants (usually probationers) which is used for comparison to drug court participant outcomes. This type of data allows comparison of outcomes of criminal offenders in drug courts against those who are not. The branch does not currently track comparison group data.

CONCLUSION

Without comprehensive and accurate performance measure indicators and drug court cost information, it is not possible to conduct a cost-benefit analysis of Montana's drug courts. Without this data, performance of Montana's drug courts cannot be contrasted against benchmarks or national-level data to assess court performance and adjust operations as needed.

Statutory Framework for Drug Courts

Model legislation for drug courts was developed under cooperative agreement between the U.S. Department of Justice, Bureau of Justice Assistance and the National Drug Court Institute. It serves as a model and provides useful information to judges, policy-makers, legislators, lawyers, criminal justice officials, and others, who endeavor to design, implement, modify or improve drug courts in their jurisdiction. The model state drug court legislation is the product of a series of focus groups that included drug court professionals and state legislators.

Model legislation includes language that addresses required data collection, program evaluation, and reporting requirements. The section on data collection lists specific data that drug courts should collect and maintain. For example:

- ◆ Prior criminal history,
- ◆ Instances of relapse occurring before, during, and after successful completion of drug court or after a drug offender's failed participation in drug court (measured at intervals of one, two and five years),
- ◆ Instances of recidivism occurring before, during, and after successful completion of drug court or after a drug offender's failed participation in drug court (measured at intervals of one, two and five years),
- ◆ Number of offenders screened for eligibility, the number of eligible drug offenders who were and were not admitted and their case dispositions, and
- ◆ Costs of operation and sources of funding.

Model legislation also requires a statewide report be provided annually to the state Supreme Court, legislature, and governor regarding the need for, and implementation of, the drug court act. The report should include a synopsis of such information or data necessary to determine the impact, utility and cost-effectiveness of its implementation and ongoing operation. The model legislation also requires evaluations shall be conducted of drug court operations and reviews performed to ensure drug courts comply with provisions in the drug court act.

Many states have used the model legislation as the framework for statutorily establishing drug courts. During the audit, we examined statutes for several other states to determine whether they contained any data collection, program evaluation, or reporting requirements. Audit work showed other states require this within the statutory framework of the drug court act. Idaho statute requires each district court of each county that has implemented a drug court program shall annually evaluate the program's effectiveness and provide a report to the Supreme Court. A report evaluating the effectiveness of drug courts in the state shall be submitted to the governor and the legislature by the first legislative day each year. Wyoming's Court Supervised Treatment Act contains specific information that must be collected by the drug courts and reported to the overseeing agency. Statute also requires the agency to establish standards consistent with the key components of drug courts defined by the U.S. Department of Justice. These components include monitoring and evaluation to measure achievement of program goals and gauge program effectiveness. New Mexico has similar provisions in statute and determines average drug court cost-per-participant day, contrasts the average drug court cost-per-participant day to cost per day of incarceration and cost per day of detention, and tracks recidivism rates three years post program.

Montana's Statutory Framework Differs

A comparison of Montana statute to that of surrounding states and to model legislation shows Montana's statutory framework does not require data collection, program evaluation, or reporting requirements. These parts form the framework of accountability and measurement of drug court program success. Currently, there are no mandates of accountability in statute.

Legislature Should Consider Statutory Revisions

Drug courts were statutorily authorized in 2005 with legislative passage of the Drug Offender Accountability and Treatment Act and in 2007 with the Mental Health Treatment Court Act. Drug courts have existed in the state since 1996 and statute for nearly a decade. Drug courts have expanded and now exist in many parts of the state. The monetary resources devoted to drug court operations continue to grow. The continuing existence of drug courts is dependent in part on measured success. Data collection through systematic and uniform reporting is crucial to transition drug courts into mainstream judicial processing. A standardized system of data collection and reporting will allow for improved and broader understanding of drug court operations and provide a mechanism for accountability with respect to public funds.

Although drug courts operations have grown and evolved, both drug court acts have remained essentially unchanged and contain no provisions for assessing and

reporting on performance of drug courts. The legislature should consider revising the Drug Offender Accountability and Treatment Act and the Mental Health Treatment Court Act to better align them with model legislation for drug courts and statutory provisions used by surrounding states that require data collection, program evaluation, and reporting requirements.

RECOMMENDATION #11

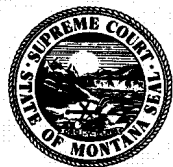
We recommend the Montana State Legislature consider enacting legislation that requires data collection, program evaluation, and reporting requirements as part of the Drug Offender Accountability and Treatment Act and the Mental Health Treatment Court Act.

JUDICIAL BRANCH

BRANCH RESPONSE

The Supreme Court of Montana
Office of the Court Administrator

Beth McLaughlin
Court Administrator



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January 19, 2015

Ms. Tori Hunthausen
Legislative Auditor
State Capital
Helena, MT 59601

RECEIVED

JAN 19 2015

LEGISLATIVE AUDIT DIV.

Dear Ms. Hunthausen:

Thank you for allowing the Supreme Court to respond to the drug court performance audit. We very much appreciate the professionalism of your staff. I understand this was a complicated and time-consuming audit and we greatly appreciate the work of both Ken McCormick and Lisa Blanford.

The following is the Supreme Court's response:

Recommendation #1:

We recommend the Montana Supreme Court:

- A. Ensure courts comply with statutory requirements that prohibit drug court participation by individuals convicted of a violent offense.
- B. Work with district court judges to determine whether changes in statutory eligibility requirements relative to violent offender eligibility in nonfederally funded drug courts should be brought forward for legislative consideration.

Supreme Court response:

- A. Concur. Adult treatment courts covered by the statute were notified that courts must adopt and refine screening procedures to ensure statutory requirements for participation are followed.

- B. Concur. Discussions about possible statutory changes will occur with long-range planning meetings in 2015. This is a complicated issue as higher need clients are appropriate in many cases but courts receiving federal dollars are prohibited from admitting them to the court. A bifurcated statute could be confusing but will be part of the long-range planning discussion.

Recommendation #2:

We recommend the Montana Supreme Court:

- A. Ensure courts comply with statutory requirements for assessing drug court participant fees.
- B. Ensure individual drug court case files contain documentation to support consideration of ability to pay and indigency decisions.

Supreme Court response:

- A. Concur. The majority of courts required to charge fees are complying with the requirement. The Supreme Court has reiterated to courts the need to comply with the statutory requirement regarding fees.
- B. We concur. The Supreme Court has notified courts that appropriate consideration of ability to pay should be recorded in the participant's file or in the court file as appropriate. In adult courts, where fees are required, a determination of indigency is most often made during the initial processing of the criminal charge and is contained within the court file.

Recommendation #3

We recommend the Montana Supreme Court ensure courts comply with state law by having a formal Memo of Understanding between drug courts and treatment providers.

Supreme Court response:

Concur. The Supreme Court has a comprehensive contract management process in place. Any court in which the Judicial Branch is paying for treatment in any capacity has a fully executed contract governing services, payments and other issues. Payments are not made unless a signed agreement is in place. The Supreme Court will certainly remind local government courts about the obligation to execute a contract but cannot interfere with city and county contracts. In addition, courts not covered by the statute and not directly paying for treatment through Judicial Branch dollars, will be reminded that MOUs, while not required, are recommended.

Recommendation #4:

We recommend the Montana Supreme Court adopt a system-wide approach to training drug court personnel that includes:

- A. Developing a formal, comprehensive training plan that identifies core training components to be provided, training sources and frequency.
- B. Monitoring drug court staff membership to identify new staff members and ensure timely training is provided.
- C. Developing a web-based training component to expand existing training opportunities.

Supreme Court response:

- A. Partially concur. The Court agrees with the substance of this recommendation. However, creating something of this nature would require significant funding not available to the Court. Court staff will work with drug court judges to develop a suggested training model for drug court staff. The Supreme Court has a 2015 funding proposal for judicial education, with part of the proposal earmarked for drug court training. If this proposal is funded, the Branch will have a greater ability to meet the recommendations.
- B. Partially concur. Again, the Court does not have funding available to create and provide comprehensive training. Court staff and local coordinators will create a template for new coordinator training, which can be deployed locally with local resources. Resources such as manuals, quarterly meetings with courts and finance staff, and extensive web-based training are already offered to courts throughout the state. The biennial drug court conference, which was previously held, is not scheduled because federal funding that supported the conference is not available.
- C. Partially concur. The Court does not have funding to develop a web-based training program. However, court staff will establish a page on the court's website with resources for drug courts, drug court staff members and other interested parties. Extensive resources are already available but not catalogued in one area.

Recommendation #5:

We recommend the Montana Supreme Court strengthen its drug court case management by:

- A. Prioritizing securing resources to obtain a case management system for the district-level drug courts that current rely on paper records.
- B. Developing a strategic plan to implement a drug court specific, integrated, web-based case management system for district court level drug courts.

- C. Assessing the possibility of integrating drug court case management needs in the Full Court system.

Supreme Court response:

- A. Do not concur. The Court agrees that drug courts would benefit from a comprehensive case management system. However, the current drug court funding is focused solely on court services to clients. The Court will not move any of the existing funding to fund a case management system as it would negatively impact courts. Instead, the Court will continue to work to strengthen both the modest in-house built system and free software provided through multi-state consortiums.
- B. Concur. Information technology decisions in the court are governed by the Supreme Court's Commission on Technology, which establishes the Judicial Branch's IT plan. The plan sets out the technology priorities for the Branch, which includes all courts throughout the state. The Commission has placed drug court case management as a need, which will be addressed after other more pressing IT issues including statewide deployment of e-filing and statewide deployment of the refreshed Full Court trial court case management system.
- C. Concur. Full Court, the case management system for all trial courts in Montana, is currently being deployed in a new version. Examining its usefulness for drug courts can occur after deployment of key processes.

Recommendation #6:

We recommend the Montana Supreme Court strengthen validity of recidivism data collected from drug courts by:

- A. Ensuring staff applies a consistent definition of recidivism as it relates to drug courts.
- B. Providing routine training to staff on the methodology for collecting recidivism data.
- C. Periodically assessing accuracy of collected data.

Supreme Court response:

- A. Concur. The Court uses a very broad definition of recidivism in its biennial reporting. Specifically, any charges, including traffic violations, are counted as recidivism. Providing training regarding the definition is crucial as collection is done at the local court level using the Full Court system.

- B. Concur. Collection of the 2015 report data is complete. When data is next collected in fall 2016, the Full Court system may allow for a better reporting method. Either way, training will be provided.
- C. Concur. Data is collected every two years. Advances in the Full Court system mentioned previously may allow for periodic assessment and review of the data.

Recommendation #7:

We recommend the Montana Supreme Court implement nationally recognized standards for drug courts that require a comprehensive system of monitoring and evaluation to ensure achievement of programs goals and objectives and gauge program effectiveness.

Supreme Court response:

Concur. The Court does not have enough funding to contract for a separate program evaluation for each court every year without dramatically decreasing the level of services directed to clients. Instead, the Branch is developing a peer review process built around the Adult Drug Court Best Practices Standards, which are the accepted standards for high-quality adult drug courts (recognizing other standards will apply to juvenile and family courts). The Center for Court Innovation has worked with Montana to develop the first national model for implementing peer review evaluations using the new standards. The first group of reviewers will be trained in February with initial evaluations of adult drug courts to follow.

Recommendation #8:

We recommend the Montana Supreme Court establish a drug court council to provide system-wide planning and policy direction for the drug courts.

Supreme Court response:

Concur. The Supreme Court will consider the best way to implement this recommendation after recommendation #9 is implemented.

Recommendation #9:

We recommend the Montana Supreme Court develop a long-term planning strategy for drug court that establishes operational and funding priorities.

Supreme Court response:

Concur. The Court has secured grant funding to hire a consultant specializing in long-range strategic planning to assist the Judicial Branch with this activity. The initial strategic planning will begin in June and concluded by fall 2015. Only a couple of meeting days are

needed but must be spread out over several months to accommodate the schedules of judges involved in treatment courts.

Recommendation #10:

We recommend the Montana Supreme improve its processes for providing programmatic and administrative assistance to drug courts by:

- A. Redefining the role of the statewide drug court coordinator.
- B. Developing reference materials including a resource library of forms, checklists, contract templates and other program materials.
- C. Developing a resource manual addressing administrative aspects of drug court operations
- D. Providing an on-going training component for drug court coordinators relative to administrative responsibilities.

Supreme Court response:

- A. Concur. The position description will be revised and updated.
- B. Concur. As mentioned in Recommendation 4, the Supreme Court will develop a drug court section on the webpage with up-to-date resources. Contracts for District Courts are already managed by the OCA directly and state contract templates may not be helpful to local courts. Extensive financial manuals are already available as well.
- C. Concur. Financial resource documentation and extensive administrative assistance already exists as does an outline for a manual for new coordinators. The draft manual will be finished.
- D. Concur. The Supreme Court currently provides administrative and financial training to coordinators and routine meetings to update staff but will evaluate the process again and make any necessary changes.

Recommendation #11:

We recommend the Montana State Legislature consider enacting legislation that requires data collection, program evaluation, and reporting requirements as part of the Drug Offender Accountability and Treatment Act and the Mental Health Treatment Court Act.

Supreme Court response:

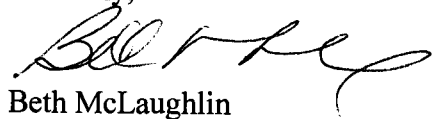
This recommendation is directed toward the Montana Legislature and thus, may not require a response. Individual drug courts have very lean budgets which support case management, drug testing, treatment and other necessary components for client success. It is important to be aware that any changes to the existing administrative requirements must be funded as the Supreme Court is not funded or staffed to comply with additional requirements without moving funding from necessary client services.

Finally, the report contains several conclusions for which we would like to offer comments. The Supreme Court does not collect cost data for local, state, private and non-profit organizations involved in drug court because of the complexity and expense associated with doing so. Nationally, drug courts are the most studied criminal justice intervention and have been proven to be highly cost-effective. A comprehensive Montana cost-benefit study would be quite costly; examples of similar studies done in other states are available and show the benefit of drug courts as a criminal justice intervention.

The Supreme Court will engage in long-range planning – as referenced under recommendation #9. The results of such planning will be shared with interested legislators and others. However, at the District Court level, the expansion of drug courts must be balanced with a significant workload for all case types, which will be a focus for the Judicial Branch in coming years.

Again, we appreciate the auditors' work and look forward to implementing the recommendations.

Sincerely,



Beth McLaughlin
Court Administrator

c: Chief Justice Mike McGrath