

LEGISLATIVE AUDIT DIVISION

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MEMORANDUM

TO: Legislative Audit Committee Members
FROM: William Soller, Performance Audit Manager
CC: Mike McGrath, Chief Justice, Montana Supreme Court
Beth McLaughlin, Court Administrator
DATE: September 2016
RE: Performance Audit Follow-up (16SP-19): Administration of Montana's Drug Courts (orig. 13P-08)
ATTACHMENTS: Original Performance Audit Summary

Introduction

In January 2015, we presented our performance audit of the *Administration of Montana's Drug Courts*. The audit included ten recommendations to the Montana Supreme Court and one recommendation to the Montana Legislature. Beginning in July 2016, we conducted follow-up work to assess the Supreme Court's progress in implementing the audit's recommendations. This memorandum summarizes the results of our follow-up work in addition to presenting background information on drug courts in Montana.

Overview

While it is generally accepted that participation in drug courts can lead to positive outcomes for people with drug addiction and dependency issues, our audit work identified the need for the Supreme Court to improve the oversight, evaluation, and training systems for drug courts in Montana. Audit work also asked the legislature to consider enacting legislation requiring more data collection and reporting related to drug court activities. Overall, the Supreme Court has made good progress toward implementing the audit's recommendations. Our performance audit contained ten recommendations to the Supreme Court and one recommendation to the Montana Legislature. Based on our follow-up work, the Supreme Court has implemented two recommendations, partially implemented two recommendations, with the remaining six recommendations being implemented. The one recommendation to the legislature has not been implemented, due to the fact that the legislature is not scheduled to convene until January 2017.

Background

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. 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 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. In Montana, the Supreme Court has general supervisory control over all other courts in Montana and may make rules governing practice and procedure for all other courts, including drug courts. Individual court-specific governance is the responsibility of the district, justice, city, or municipal judge of the court over which they preside. 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. 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 Judicial Branch, for the period of May 2008 through September 2012, 1,304 participants entered Montana drug courts.

Audit Follow-Up Results

Our performance audit report contained ten recommendations to the Supreme Court and one to the Montana Legislature. As part of follow-up work, we examined drug court program materials, reviewed an order related to the establishment of a drug treatment court advisory committee, and interviewed Supreme Court staff and District Court Judges to obtain their perspective on progress the Supreme Court has made to implement the audit recommendations. The following summarizes information relating to follow-up audit work and the implementation status of recommendations.

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.**

Implementation Status – Being Implemented

In response to the audit, the Supreme Court notified adult treatment courts covered by state law of their obligation to adopt screening procedures to ensure that statutory requirements for participation are followed. The Supreme Court subsequently implemented a Montana Best Practices and Standards Peer Review Process to assess the practices of Montana drug courts in relation to evidence-based national best practices and Montana-specific requirements, such as the participation prohibition of individuals convicted of a violent offense. In addition to reviewing the consistency and adherence of drug court practices with national standards, the peer review process also ensures compliance with Montana statutory requirements. As of August 2016, the Supreme Court has conducted 13 peer reviews of adult drug courts, with the expectation that the peer review process for adult drug courts will be completed by December of 2016. Other categories of drug courts—family and juvenile—will undergo a peer review process in 2017. As part of our follow-up work, we reviewed a completed peer review conducted by the Supreme Court and determined that the participation of individuals convicted of violent offenses is assessed as part of that review. As for working with district court judges on this issue, in May 2016 the Supreme Court

issued an order establishing a Drug Treatment Court Advisory Committee charged with the ongoing review of Montana drug court operations. This committee is comprised of seven district court judges. The Supreme Court is currently working with this committee on the issue of eligibility criteria for drug court participants and expects to bring forth legislation on this issue for consideration to the 2017 Legislature. As part of our follow-up work, we reviewed the order creating the committee issued by the Supreme Court and discussed the activities of the committee with several district court judges who confirmed that the committee is considering several items for legislative consideration, including the participation of violent offenders.

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.**

Implementation Status – Being Implemented

As with the prohibition of violent offenders in drug courts, in response to the audit, the Supreme Court notified drug courts in Montana of the statutory requirement to assess fees for drug court participants. The Supreme Court uses the Montana Best Practices and Standards Peer Review Process to ensure compliance on the part of drug courts regarding participant fees during all peer reviews, if applicable. These peer reviews consist of discussing drug court operations with local staff and reviewing drug court case files, including documentation to support a determination of indigency and the ability of a participant to pay for a portion of drug court program costs. To date, the Supreme Court has conducted 13 peer reviews of adult drug courts, with family and juvenile drug courts to be reviewed in 2017. As part of our follow-up work, we reviewed a completed peer review conducted by the Supreme Court and determined that the statutory provision related to drug court participant fees is assessed as part of that review.

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.

Implementation Status – Being Implemented

As with the prohibition of violent offenders in drug courts and the requirement to assess fees for drug court participants, the Supreme Court notified local drug court of the statutory requirement to have a formal Memorandum of Understanding (MOU) between drug courts and treatment providers. The Supreme Court uses the Montana Best Practices and Standards Peer Review Process to ensure compliance on the part of drug courts regarding this MOU requirement. As part of a centralized contracting process, the Supreme Court executed a contract with a treatment provider outlining expected services and payment. However, for local drug courts in which treatment provider services are paid for by another entity, such as a local jurisdiction, the Supreme Court assesses whether a contract or MOU is in place between the drug court and the treatment provider as part of the peer review process. To date, the Supreme Court has conducted 13 peer reviews of adult drug courts, with family and juvenile drug courts to be reviewed in 2017. As part of our follow-up work, we reviewed a completed peer review conducted by the Supreme Court and determined that the statutory provision related to having an MOU in place is assessed as part of that review.

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.**

Implementation Status – Partially Implemented

The Supreme Court's response to this recommendation varied. While on one hand they indicated they agree with the substance of the recommendation, on the other hand Supreme Court staff reported they have limited ability and resources to provide a system-wide approach to training local drug court personnel. As part of the follow-up process, staff frequently reported that they found this area challenging and did not completely understand how to address the recommendation. They spoke about how the Montana Drug Court Strategic Plan recently adopted by the Supreme Court includes a strategic issue related to the ongoing assessment and team training of drug courts related to evidence-based practice, which is addressed in part through the use of the peer review process discussed above. They also reported that drug court personnel attend a biennial Statewide Drug Court Conference, with nationally known experts providing the latest and best in drug treatment court practices. Supreme Court staff reported they have drafted a Drug Treatment Court Orientation Manual to orient local drug court coordinators and team members on a variety of topics, such as eligibility requirements, statutory requirements, best practice standards, the peer review process, and reporting requirements. They also reported they have expanded and augmented the content of the Supreme Court's website to include a variety of forms and manuals, including both Montana-specific information but also information regarding national training resources and opportunities. However, Supreme Court staff indicated they have neither the time or resources to develop a statewide approach or identify and monitor local drug court staff regarding training needs. They reported that the composition of local drug court teams is comprised of staff from local government, state government, and services providers, with the Supreme Court having no ability or authority to manage the training needs of local drug court staff. Supreme Court staff stressed that training for local drug court staff is the responsibility of local jurisdictions. They also reported there is a lot of training available at the national level for drug court programs; consequently, there is no need for a duplication of effort on the part of Montana to re-create available training opportunities. As part of our follow-up work, we also discussed drug court training with district court judges who oversee drug court programs in their jurisdictions to obtain their perspective regarding ongoing training for drug courts. While district court judges spoke highly of the biennial Statewide Drug Court Conference and other efforts taken by the Supreme Court, they generally thought there was more work to be done to provide ongoing training to local drug courts. They indicated this issue would be taken up by the newly created Drug Treatment Court Advisory Committee charged with the ongoing review of Montana drug court operations.

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 Full Court System.**

Implementation Status – Being Implemented

Supreme Court staff reported this recommendation represented the most costly and complicated issue raised by the audit. While the Supreme Court acknowledges that drug courts would benefit from a comprehensive case management system, as there are concerns over the accuracy and effectiveness of how data is currently collected, they do not plan to reallocate existing resources or request additional resources from the legislature, citing concerns over negatively impacting and reducing other core services. Rather, the Supreme Court intends to work to strengthen its current case management system and explore opportunities to move to the case management system used by trial courts in Montana. To this end, the Supreme Court established a drug court information technology workgroup to identify criteria for a more comprehensive case management system. This technology workgroup developed a “white paper” outlining the overall case management system needs for drug courts and presented several different options for a new case management system, including integrating drug court case management into the Full Court management system currently used by trial courts. According to Supreme Court staff, a new version of Full Court is being developed for deployment for trial courts in the state. However, this new version of Full Court must be deployed prior to implementing a system module which could be used for the management of drug courts. Supreme Court staff estimate the deployment of the new Full Court version will take between 18 and 36 months, during which time individual drug courts will continue to manage drug court cases in different ways, including both electronic and paper-based options. According to Supreme Court staff, using a module in the Full Court system is likely the strongest option for a case management system. However, no decisions have been made at this point and the technology workgroup is still actively meeting to discuss potential case management systems for drug courts in the state.

Regarding the ongoing development of a case management system, district court judges expressed concerns over how this process was moving forward, citing issues with transparency and a failure of the Supreme Court to consider system solutions currently being used at the local level. These concerns include reports that while the Supreme Court has established a technology workgroup to explore potential options, the efforts conducted by the workgroup favor the use of Full Court, with little consideration given to the time and resources local jurisdictions have expended to develop solutions which work well for them. District court judges reported that while the Supreme Court favors the Full Court alternative they have concerns over the fact that the deployment of the new version has been years in the making and there has not been a cost analysis conducted regarding the costs of Full Court for local jurisdictions. Overall, it appears that while the Supreme Court has made some earnest progress in this area, there is still much work to be done to come to an agreement on a drug court case management system to effectively manage drug court activities in the state.

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.**

Implementation Status – Being Implemented

One of the first tasks to be taken on by the newly formed Drug Treatment Court Advisory Committee established by the Supreme Court will be revisiting and redefining the current definition of recidivism. According to Supreme Court staff, the current definition of recidivism is likely too broad with some types of violations such as traffic offenses being counted for the purposes of reoffending. Supreme Court staff reported that the committee will also be discussing the timelines for tracking recidivism, meaning the

timeframe from the initial offense to relapse. Supreme Court staff characterized the issue as complicated with discussions to include what types of offenses constitute recidivism and if a circumstance of recidivism is triggered by an arrest or a conviction. Supreme Court staff expect that a new definition of recidivism will be implemented by the end of 2016 in time for the next biennial drug court performance report due in January 2017. Once a new definition is established, local drug court staff will be trained on the definition and how to collect recidivism data for reporting purposes. As for periodically assessing the accuracy of collected data, Supreme Court staff reported this is really tied to the ongoing work on the development of a case management system for drug courts. Until the development of a case management system has been resolved, local drug courts will continue make subjective decisions regarding what constitutes recidivism and make individual choices regarding the effort placed on validating recidivism data. As part of our follow-up work, we contacted district court judges to obtain their perspective regarding efforts taken by the Supreme Court to strengthen the validity of recidivism data collection from drug courts. District court judges reported that the Drug Treatment Court Advisory Committee is actively working to establish a standardized definition of recidivism for drug courts. They viewed this as a positive development which will lead to improvements in the way the success of drug courts is measured in the state.

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.

Implementation Status – Being Implemented

Over the course of the past two years, the Supreme Court has established and implemented the Montana Best Practices and Standards Peer Review Process to assess the practices of Montana drug courts in relation to evidence-based national standards and Montana-specific requirements. Presently, this peer review process reviews the consistency of adult drug courts in the state with adherence to national standards for the operation of adult drug courts. These standards are based on evidence-based evaluations conducted at the national level, including drug court practices to help participants enter long-term recovery and reduce the likelihood to reoffend. The peer review process in Montana consists of a self-survey for participating drug courts, followed by a visit by a peer review team guided by a peer review instrument. The peer review visit is summarized in a final report, with a request for a corrective action plan to address any identified deficiencies. Peer review visits generally consist of discussing drug court operations with local staff and participants, and reviewing local policies, procedures, and case files. According to Supreme Court staff, they trained 17 peer reviewers in February 2015 on how to conduct peer review visits and apply national standards and Montana-specific requirements to local drug operations. As of August 2016, the Supreme Court has conducted 13 peer reviews of adult drug courts, with the expectation that the peer review process for adult drug courts will be completed by December of 2016. Other categories of drug courts—family and juvenile—will undergo a peer review process in 2017. The Supreme Court envisions conducting a peer review of each drug court every 2-3 years. District court judges generally thought highly of the peer review process, indicating it was a positive and constructive process for local drug courts to go through to improve their operations. However, some district court judges questioned if the peer review process was truly an evaluation whereby drug court program goals and objectives are measured to assess program effectiveness. According to Supreme Court staff and a number of district court judges, drug court evaluations are very costly and such an evaluation of drug courts in Montana would be unreasonable. They generally indicated that there have been numerous national studies regarding the effectiveness of drug courts, indicating that if a drug court adheres to standards then the drug court will be effective. And while the peer review process may not lead to ongoing statistics regarding the operation of drug courts, if Montana drug courts can demonstrate adherence to these national standards then we can consider them effective.

RECOMMENDATION #8

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

Implementation Status – Implemented

In May of 2016, the Supreme Court issued an order establishing Drug Court Treatment Advisory Committee. Per the order, this committee is charged with: “(1) providing ongoing review and revision to drug court standards; (2) assuring communication and continuity in the operation of Montana drug treatment courts; (3) providing ongoing review and recommendations to the District Court Council and Supreme Court regarding statewide drug court funding, budget policy issues; (4) overseeing and updating the strategic plan; and (5) addressing future drug treatment court issues as they arise.” The committee consists of seven judges appointed from different treatment court types and each member serves three-year terms. The committee meet for the first time in August 2016. According to Supreme Court staff and district court judges we interviewed as part of the follow-up process, the committee is actively working on several topics, including a definition for recidivism, potential language regarding the participation of violent offenders in drug courts, and the ongoing review of a statewide strategic plan for the operation of drug courts.

RECOMMENDATION #9

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

Implementation Status – Implemented

In the fall of 2015, with the help of a national technical assistance provider, the Supreme Court commissioned a strategic planning initiative to establish a long-term planning strategy for the operation of drug courts in the state. This initiative resulted in the publication of the Drug Court Strategic plan, which outlines a roadmap for the future of drug treatment courts in the state. The strategic plan includes a list of issues, measureable goals, target dates for key actions, and responsible participants for each activity. For example, in the issue area of achieving evidence-based best practices, the goal of the strategic plan is that Montana drug courts will be reviewed at least every three years for their use of evidence-based practices, with drug court members attending the biennial statewide drug court conference. Key actions for this goal include the adoption of evidence-based practices and the implementation of a peer review process. Another issue outlined by the strategic plan involves developing a statewide plan to sustain and expand drug courts in the state, with a strategy to develop a funding plan and meet with legislators to discuss potential legislative action. The recently created Drug Court Treatment Advisory Committee is responsible for overseeing and updating the strategic plan. District court judges we interviewed as part of follow-up work spoke highly of the strategic planning process the Supreme Court initiated, indicating that it resulted in a good plan for the future for drug courts in the state.

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.

Implementation Status – Partially Implemented

According to Supreme Court staff, they found it very hard to address this recommendation, indicating the Supreme Court has always provided ongoing programmatic and administrative assistance to local drug courts. They reported the Supreme Court has historically made numerous administrative resources available on its website, including various templates, forms, and guides. Nonetheless, Supreme Court staff revised the position description for the statewide drug coordinator to make the duties of the position more specific and emphasizing more of a statewide management perspective. The Supreme Court has also expanded its website to include a variety of forms, manuals, and training materials. The Supreme Court is also in the process of drafting a Drug Treatment Court Orientation Manual to orient local drug court coordinators and team members on a variety of topics, such as eligibility requirements, statutory requirements, best practice standards, the peer review process, and reporting requirements. As for ongoing administrative training, Supreme Court staff reported they currently provide training to local drug court staff on a routine basis, as part of periodic meetings to update and review administrative or financial issues. Supreme Court staff expressed concerns that some states provide very prescriptive direction at a statewide level for the operation of local drug courts while other states provide little statewide direction. They described Montana as somewhere in the middle of those two extremes and stressed the need for flexibility for local jurisdictions to conduct drug court operations independently. In contrast, district court judges we interviewed as part of follow-up work indicated they understood that drug courts are administered to some degree in a decentralized way. However, they thought there was room for continued growth and increased support in regard to common administrative practices, such as contracting activities or grant-writing. They expressed concerns that the Supreme Court does not have much practical knowledge of the daily operation of drug courts, with district court judges spending too much of their time on administrative tasks which take time away from the bench. District court judges stressed that the Supreme Court has good staff, but questioned why those staff are not responsible for more administrative tasks to support local drug court operations.

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.

Implementation Status – Not Implemented

At the time of follow-up work, there has not been any specific action taken by the legislature on this recommendation, due to the fact that the legislature is not scheduled to convene until January 2017. However, there has been legislative interest in carrying a bill in the upcoming legislative session. Presently, the statutory framework for drug courts in Montana differs to that of surrounding states in that state law in Montana does not require data collection, program evaluation, or reporting requirements. As reported in the original audit, drug courts in Montana began in the state in 1996 and have since expanded to exist in many parts of the state to include 26 drug courts, with the monetary resources devoted to drug courts continuing to grow. The ongoing existence of drug courts is dependent in part on measured success. We continue to believe that a standardized system of data collection and reporting would allow for improved and broader understanding of drug court operations in the state and provide a mechanism for accountability with respect to public funds.