



**A REPORT
TO THE
MONTANA
LEGISLATURE**

**LEGISLATIVE AUDIT
DIVISION**

18ACT Hotline



***Accountability, Compliance,
and Transparency –
Reporting and Resolving
Allegations of Fraud, Waste,
and Abuse in Montana State
Government***

Fiscal Year 2018

SEPTEMBER 2018



LEGISLATIVE AUDIT COMMITTEE

REPRESENTATIVES

KIM ABBOTT

Kim.Abbott@mtleg.gov

DAN BARTEL

Danbartel2@gmail.com

RANDY BRODEHL

Randybrodehl57@gmail.com

TOM BURNETT, VICE CHAIR

Burnett.tom@gmail.com

VIRGINIA COURT

virginiacourt@yahoo.com

DENISE HAYMAN

Denise.Hayman@mtleg.gov

SENATORS

DEE BROWN

senatordee@yahoo.com

TERRY GAUTHIER

Mrmac570@me.com

BOB KEENAN

Bob.Keenan@mtleg.gov

MARGARET MACDONALD

MARGIE.MACDONALD@MTLEG.GOV

MARY McNALLY, CHAIR

McNally4MTLeg@gmail.com

GENE VUCKOVICH

Gene.Vuckovich@mtleg.gov

ACCOUNTABILITY, COMPLIANCE AND TRANSPARENCY HOTLINE

The Accountability, Compliance And Transparency (ACT) Hotline is a confidential, 24-hours-a-day, 365-days-per-year service that you can access from any location. Reports may be made on either an anonymous or named basis. The website is hosted by an independent third party not part of the state of Montana. You may report anonymously with confidence on this site if you choose. To assist in the investigation, those reporting potential fraud, waste or abuse in Montana state government are encouraged to identify themselves; however, anonymous reports will also be accepted and investigated.

- ◆ Report on line at <https://actmt.ethix360.com>
- ◆ E-mail LADHotline@mt.gov with a description of the allegation.
- ◆ Call the toll-free Fraud Hotline at 1-800-222-4446, or in Helena at 444-4446. This Hotline is available 24 hours a day, 7 days a week. A person is generally available to answer your call personally Monday-Friday from 7 a.m. to 2 p.m.
- ◆ Text2Tell. Text your concern to 704-430-3930. Your text will be routed through an independent third party to protect your anonymity. Your phone number is not recorded or provided to us. You will receive a confirmation text with directions on how to check the status of your report and communicate anonymously with our office.
- ◆ Send a written report to the following address:
LAD Fraud Hotline
Legislative Audit Division
PO Box 201705
Helena, MT 59620-1705

ACT TEAM

DEBORAH BUTLER
JENNIFER ERDAHL
HUNTER McCLURE
JEREMY VERHASSELT
KELLY ZWANG

AUDIT STAFF

JESSICA CURTIS	JOHN HARRINGTON
NICK HILL	KATIE MAJERUS
DIEDRA MURRAY	ALEXA O'DELL
DELSI OSMANSON	NOLAN PREESHL
AMBER ROBBINS	AMANDA SAYLER
WILL SOLLER	ALYSSA SORENSON
JAMES SUTCLIFFE	SHANDELL VANDONSEL

Reports can be found in electronic format at:
<http://leg.mt.gov/audit>

LEGISLATIVE AUDIT DIVISION

Angus Maciver, Legislative Auditor
Deborah F. Butler, Legal Counsel



Deputy Legislative Auditors
Cindy Jorgenson
Joe Murray

September 2018

The Legislative Audit Committee
of the Montana State Legislature:

This is our report summarizing hotline and referral activity for fiscal year 2018.

The Legislative Audit Act requires the legislative auditor to establish and maintain a toll-free number (hotline) for reporting fraud, waste, and abuse in state government. The Act further requires the Legislative Auditor to periodically report to the Legislative Audit Committee the use of the toll-free number, results of reviews, verifications, and referrals, and corrective actions taken by appropriate agencies. State agencies are also required to notify the Legislative Auditor upon discovery of any theft, actual or suspected, involving state money or property under that agency's control. We report the results of our Financial-Compliance, Information System, and Performance audits throughout the year and these reports can include the results of hotline calls and referral work.

This report provides the legislature a summary of all hotline and referral activity for fiscal year 2018 in one report. It includes work completed on submissions either during Financial-Compliance, Information System, or Performance audits, or independent of a scheduled audit. This report includes information on specific submissions and any referrals due to suspected criminal activity.

Respectfully submitted,

/s/ Angus Maciver

Angus Maciver
Legislative Auditor

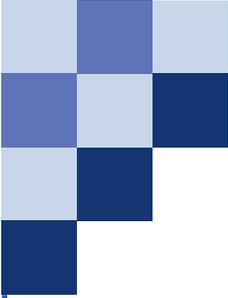
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HOTLINE ACT Hotline Legislative Audit Division

SEPTEMBER 2018

18ACT HOTLINE

REPORT SUMMARY

The Legislative Audit Division's Accountability, Compliance, and Transparency Hotline provides citizens and state employees a mechanism to report suspected fraud, waste, or abuse of state government resources. This report to the Legislative Audit Committee provides information on the use of the hotline; the results of the reviews, verifications, and referrals; and any corrective action taken by the agency that was the subject of the report. There were 51 submissions to the hotline of potential fraud, waste, or abuse and agencies reported 17 discoveries of theft or suspected theft in fiscal year 2018.

Context

This report summarizes activity submitted through the Legislative Audit Division's Accountability, Compliance, and Transparency (ACT) Hotline in fiscal year 2018. As required by statute, we describe information on the use of the hotline, the results of our reviews and verifications of the submissions, and any referrals to the attorney general during fiscal year 2018.

A toll-free number was established in Montana at the Legislative Audit Division in 1993 for citizens and state employees to report potential fraud, waste, abuse, or theft of state property and resources. Since 1993 the ways individuals can make a report have changed. Today a person can anonymously make a report using the toll-free number, e-mail, United States Postal Service, web-based form, or text message. A dedicated group of Legislative Audit staff, the ACT Team, review each submission, and assign the submission to a team member or other staff who then analyzes the submission to determine its veracity. In fiscal year 2018, approximately 197 staff hours were dedicated to working on hotline submissions outside of ongoing audits.

Agencies are also required to report the discovery of theft or suspected theft of state property. These are referred to as penal violations. While these are different from hotline submissions, they are also recorded in our case management system, reviewed, and assigned to staff if applicable. Agencies reported a total of 17 discoveries of theft or suspected theft in fiscal year 2018, which is substantially lower than the 35 reports received in fiscal year 2017.

Results

Hotline submissions are reports of potential fraud, waste, or abuse of state of Montana resources. Staff analyze the submissions to determine the veracity of the allegations.

Substantiated reports are those submissions where evidence was found by or provided to staff to support or prove the truth of the allegation. In an unsubstantiated report the allegation was not supported by evidence. An inconclusive investigation means that we could not come to a firm conclusion about the truth of the allegation. A no

jurisdiction designation means that we do not have authority over the subject matter of the allegation, such as a local or federal governmental issue. Or, in the alternative, the allegation was referred to another state agency hotline, such as the Department of Public Health and Human Services recipient fraud hotline, State Fund's fraud hotline, or the Medicaid Fraud Integrity Unit or Office of Consumer Protection at the Department of Justice.

In certain instances, the allegation is referred to the agency that is the subject of the submission for appropriate action. In these cases, the agency responds in writing to the inquiry and provides any corrective action taken. The table shows the number and types of submissions received in fiscal year 2018.

Hotline Reports for FY18

Substantiated reports	6
Unsubstantiated reports	11
Inconclusive investigation	9
Referred to agency	9
No jurisdiction	7
Reports still under investigation	9
Total	51

Source: Compiled by the Legislative Audit Division

For a complete copy of the report (18ACTHotline) or for further information, contact the Legislative Audit Division at 406-444-3122; e-mail to lad@mt.gov; or check the web site at

www.leg.mt.gov/audit

Report Fraud, Waste, and Abuse to the Legislative Auditor's FRAUD HOTLINE

Call toll-free 1-800-222-4446, or e-mail lad@mt.gov.

Chapter I – Introduction

Recent Hotline History

Section 5-13-311, MCA, requires the Legislative Auditor to establish and maintain a mechanism for citizens to report fraud, waste, or abuse in state government; review and maintain a record of all submissions; analyze and verify the information received; or refer the information for appropriate action to the agency that is or appears to be the subject of the call. The Legislative Audit Division (LAD) established a hotline in 1993 and citizens or state employees were able to submit a report through a toll-free number. Later a dedicated e-mail address and an anonymous online fillable form were made available. LAD recorded and managed the submissions to the hotline in a database.

In addition, §5-13-309, MCA, requires agency directors to report the discovery of any theft, actual or suspected, to LAD. These penal violations were also recorded and managed in the LAD database. This chapter provides background information on the importance of having an avenue to report allegations fraud, waste, and abuse in state government and a history of these efforts managed by LAD.

Accountability, Compliance, and Transparency (ACT) Hotline

A 2018 report from the Association of Certified Fraud Examiners point to the importance of organizations having tools in place that allow individuals to report potential misuse or fraudulent use of resources. For example, the 2018 report indicates organizations receive information from a variety of individuals regarding potential occupational fraud and over half these reports (53 percent) came from employees of the victim organization. This compares with 15 percent being identified by an organization's internal audit function. This illustrates the importance a tool like LAD's hotline can play in identifying fraud, waste, and abuse in Montana state government.

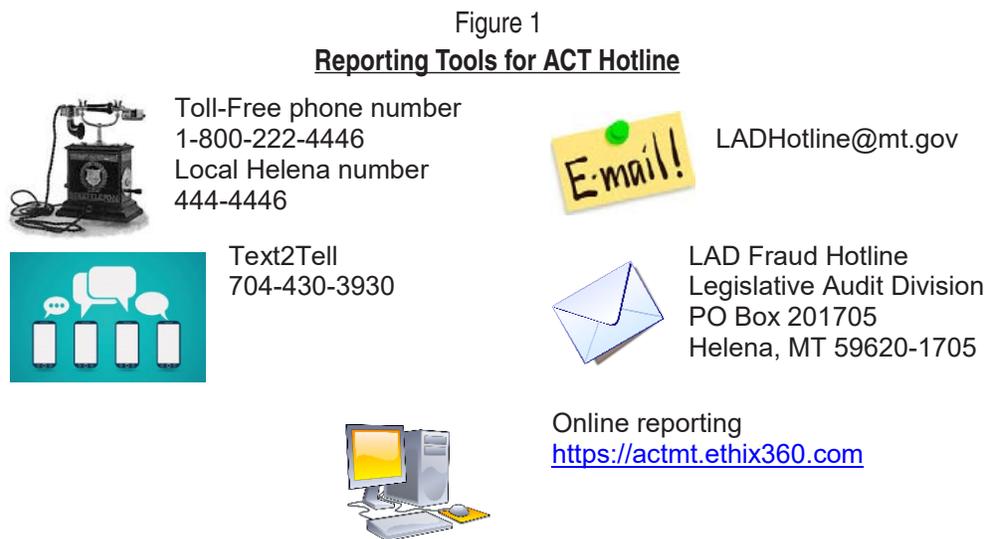
We believe it is important to provide a focused, proactive approach to responding to hotline submissions and reported penal violations. It is also imperative to effectively and efficiently analyze and determine the veracity of the suspected fraud, waste, abuse, or penal violations in state government. As a result, LAD has made some substantive changes to this process in the past year.

ACT Team Enhances Response to Reports of Suspected Fraud, Waste, and Abuse

The Accountability, Compliance, and Transparency (ACT) Team within LAD was created to address the responsibilities established by statutes and standards as well as

enhance the response to suspected fraud, waste, abuse, or penal violations found by or reported to LAD. The four-to six-member team is a diverse group, comprised of individuals with varying levels of experience and knowledge and includes representatives from the Financial-Compliance, Information Systems, and Performance teams. The ACT team is organized under, reports to, and is led by LAD legal counsel.

For the team to function more efficiently and track the submissions more effectively, LAD contracted with a vendor to provide a cloud-based case management system to replace the outdated database. This tool, which was implemented in March of 2018, is an effective and efficient platform to record, analyze, determine the veracity of, and resolve submissions to the hotline. The case management system also is the repository for penal violations reported to LAD and allows staff to analyze those reports as well. The case management system also provides analytics, trending, and benchmarking analysis. As illustrated by Figure 1 below, there are currently several ways a citizen or state employee can report a concern regarding alleged fraud, waste, or abuse in state government, including a toll-free phone number, e-mail, USPS, online reporting form, and text.



Source: Compiled by the Legislative Audit Division.

All reporting forms allow the reporter to remain anonymous and their information confidential. Additionally, §5-13-314, MCA, provides protection for employees of the state or authorized contractors from penalties, sanctions, retaliation, or restrictions in connection with their employment as a result of their disclosure of information to LAD or Legislative Audit Committee (LAC) as long as they have not violated state law.

When a hotline submission is received, the ACT Team reviews and classifies the allegations and they are entered in the case management system. The team then recommends which staff should be assigned to analyze and test the veracity of the submission. One or more of the ACT Team members may act as case managers, overseeing the work done by staff, or the case may be assigned directly to an ACT Team member.

Penal Violations and Criminal Referrals

As previously stated, state law requires agencies to report the discovery of any theft, actual or suspected, to LAD. A penal violation (PV) may also be discovered during an audit or reported through the hotline. The ACT Team also reviews and classifies these types of submissions and determines if there is a need to obtain additional information for use in an ongoing or subsequent audit, assign staff to analyze the submission, or refer the issue to the attorney general and the governor, as required by state law. If such a referral is made, the legislative auditor is required to furnish the attorney general with all information available relative to the violation. Chapter V of this report provides information regarding these criminal referrals for fiscal year 2018.

Report Contents

The remainder of the report presents the usage of the hotline; the results of the reviews, verifications, and referrals; and any corrective actions taken by the appropriate agencies.

- ◆ Chapter II provides statistics about the use and results of the hotline.
- ◆ Chapter III discusses substantiated hotline cases and corrective actions taken by the appropriate agency.
- ◆ Chapter IV presents select penal violations where staff obtained additional information or analyzed the submission.
- ◆ Chapter V presents the criminal referrals made to the attorney general during fiscal year 2018.

Chapter II – Statistics

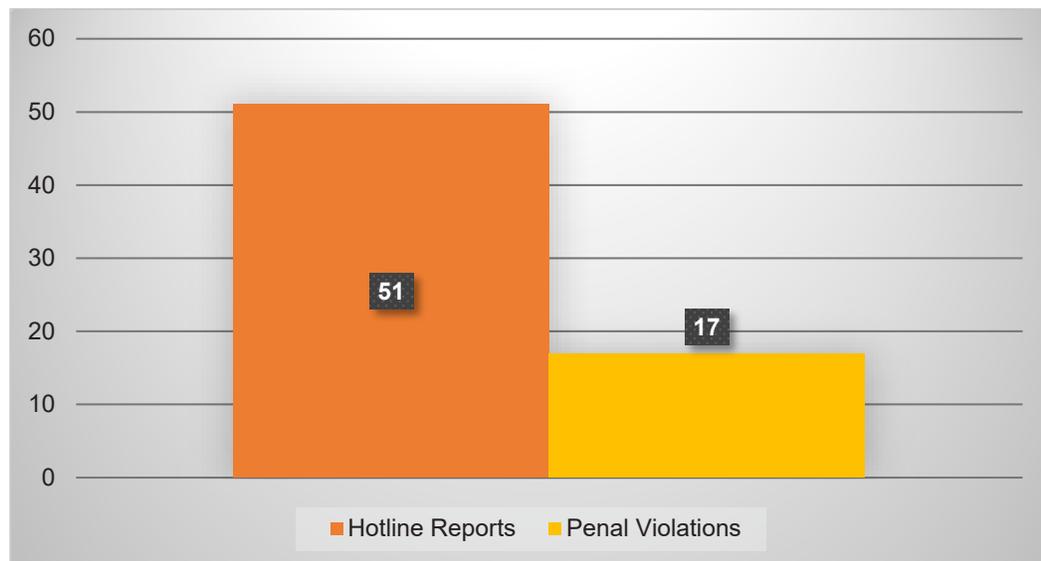
Introduction

The new ACT hotline case management database allows Legislative Audit Division (LAD) staff to store and track hotline and penal violation submissions.

Hotline reports are allegations of potential fraud, waste, or abuse of state resources. In fiscal year 2018 there were a total of 51 hotline reports. This is up from 31 reports in fiscal year 2107.

Penal violations (PV) are reports from agencies detailing the discovery of any theft, actual or suspected. Additionally, a PV may also be discovered during an audit or reported through the ACT hotline. In fiscal year 2018 there were 17 reported penal violations, approximately half of what was reported (35) in fiscal year 2017. The following figure illustrates the total hotline reports and PVs received by LAD in fiscal year 2018.

Figure 2
Total Submissions for FY18

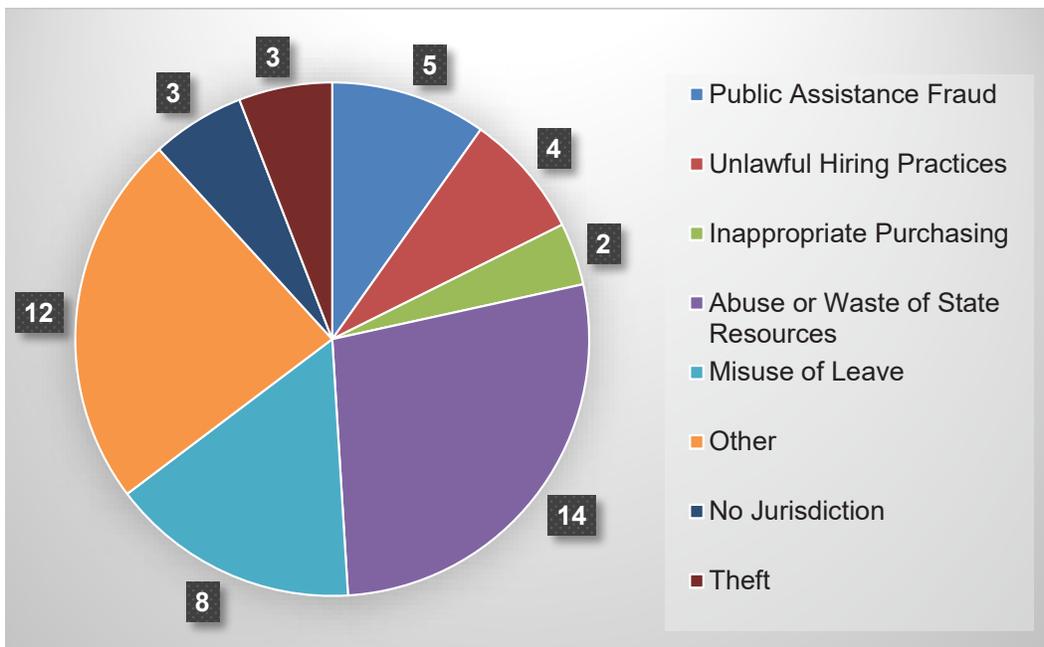


Source: Compiled by the Legislative Audit Division

Hotline

When a hotline report is received, LAD staff categorize the allegation based on the how the reporter describes the subject matter of the allegation. As the following figure shows, public assistance fraud is an allegation that a person receiving cash assistance for food or housing is misusing, is not qualified to receive, or is selling their benefit. These submissions are normally referred to the Department of Public Health and Human Services recipient fraud hotline. Abuse or waste of state resources include allegations such as spending funds on unnecessary or frivolous items or activities, unnecessary travel, and misusing state property, equipment, or vehicles. The reporter is referred to another state, local, or federal entity when LAD has no jurisdiction over the subject matter of the allegation. The other category includes allegations of employees not adhering to specific state laws, administrative rules, policies, or procedures. The following figure depicts statistical information about the types of the 51 hotline submissions received in fiscal year 2018.

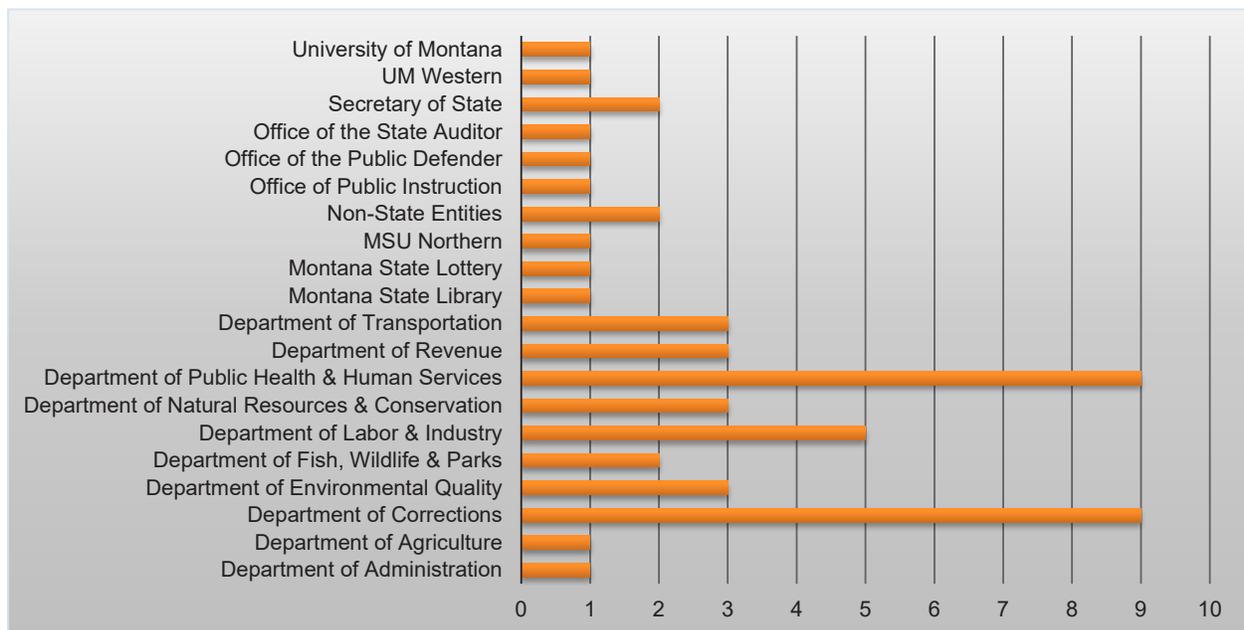
Figure 3
Type of Hotline Submissions for FY18



Source: Compiled by the Legislative Audit Division

LAD staff also assign the allegation to a state agency that is the subject of the submission. In fiscal year 2018, 19 agencies were the subject of hotline submissions: 9 each for the Department of Public Health and Human Services and the Department of Corrections, and 5 for the Department of Labor and Industry. By comparison, in fiscal year 2017, 14 agencies were the subject of hotline submissions. Seven for the Department of Corrections, 6 for the Department of Transportation, and 5 for the Department of Public Health and Human Services. The following figure shows the state agencies that were the subject of the submissions and the number of submissions attributed to each agency for fiscal year 2018.

Figure 4
Hotline Submissions by Agency for FY18

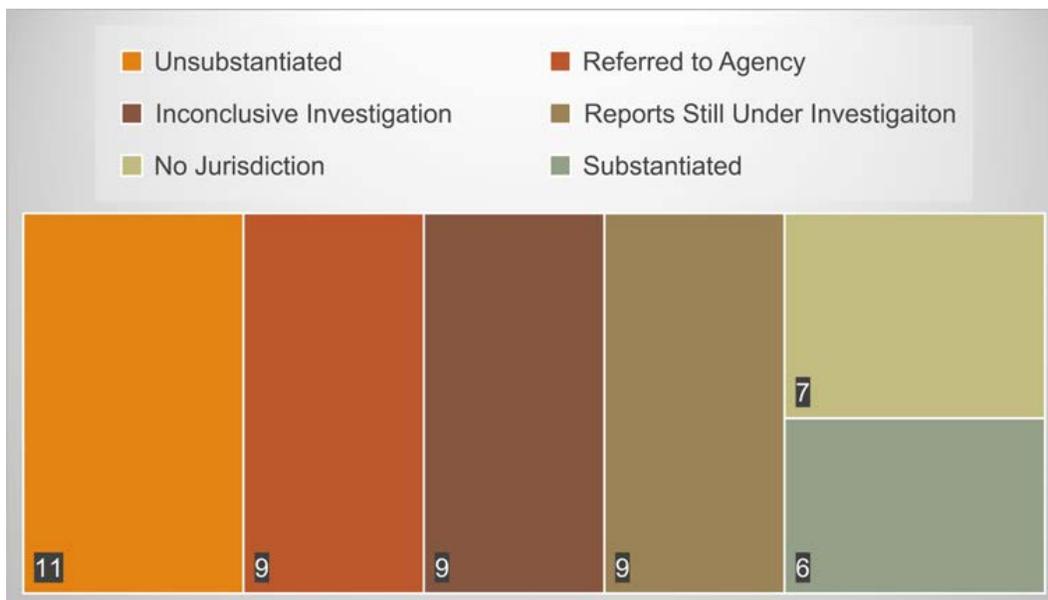


Source: Compiled by the Legislative Audit Division

After investigation by LAD staff, reports are categorized based on the evidence obtained and the ability of staff to corroborate the allegation. Substantiated reports are those submissions where evidence was found by or provided to staff to support or prove the truth of the allegation. In an unsubstantiated report, the allegation was not supported by evidence. An inconclusive investigation means that staff could not come to a firm conclusion about the truth of the allegations. A no jurisdiction designation means that we do not have authority over the subject matter of the allegation or the allegation was referred to another state agency hotline.

The referred to agency designation means the submission was referred to the agency that is the subject of the submission for appropriate action. In these cases, the agency responds in writing to the inquiry and provides any corrective action taken. The following figure depicts the type of resolution that resulted from the work staff completed for each of the submissions.

Figure 5
Hotline Resolutions for FY18



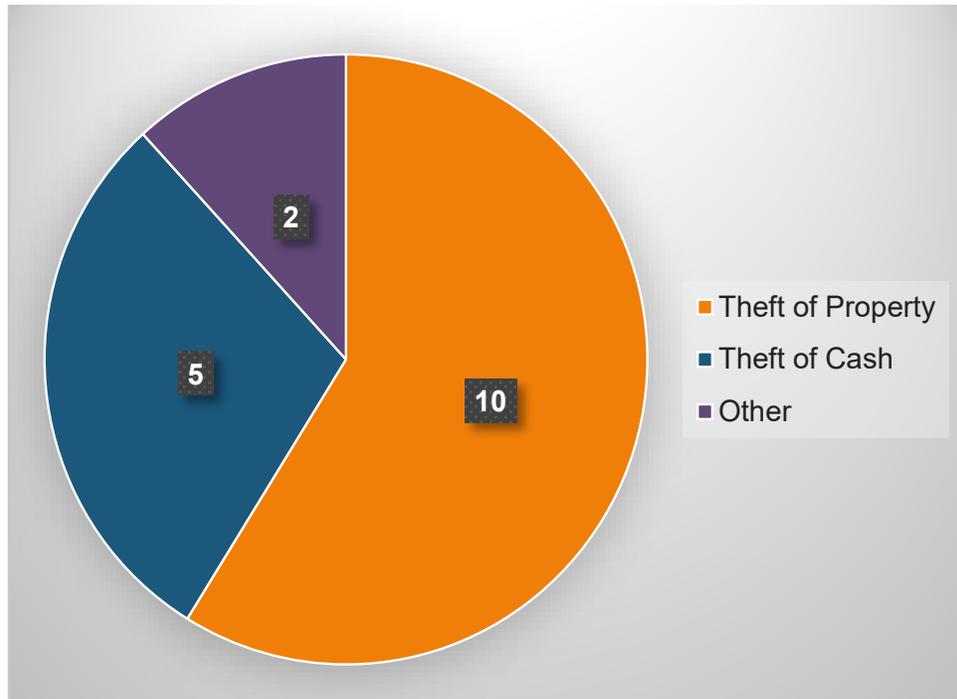
Source: Compiled by the Legislative Audit Division

Penal Violations

Penal violations (PV) are submissions from agencies to satisfy their statutory responsibility to report theft or suspected theft to the legislative auditor or may also be discovered during an audit or reported through the hotline. Thefts of property include computer equipment and tools.

The 2 Pv's in the other category were thefts that were not reported to law enforcement. In one case the property had very minimal value and in the second case the theft was not discovered for more than a decade. Figure 6 illustrates the types of PV received in fiscal year 2018.

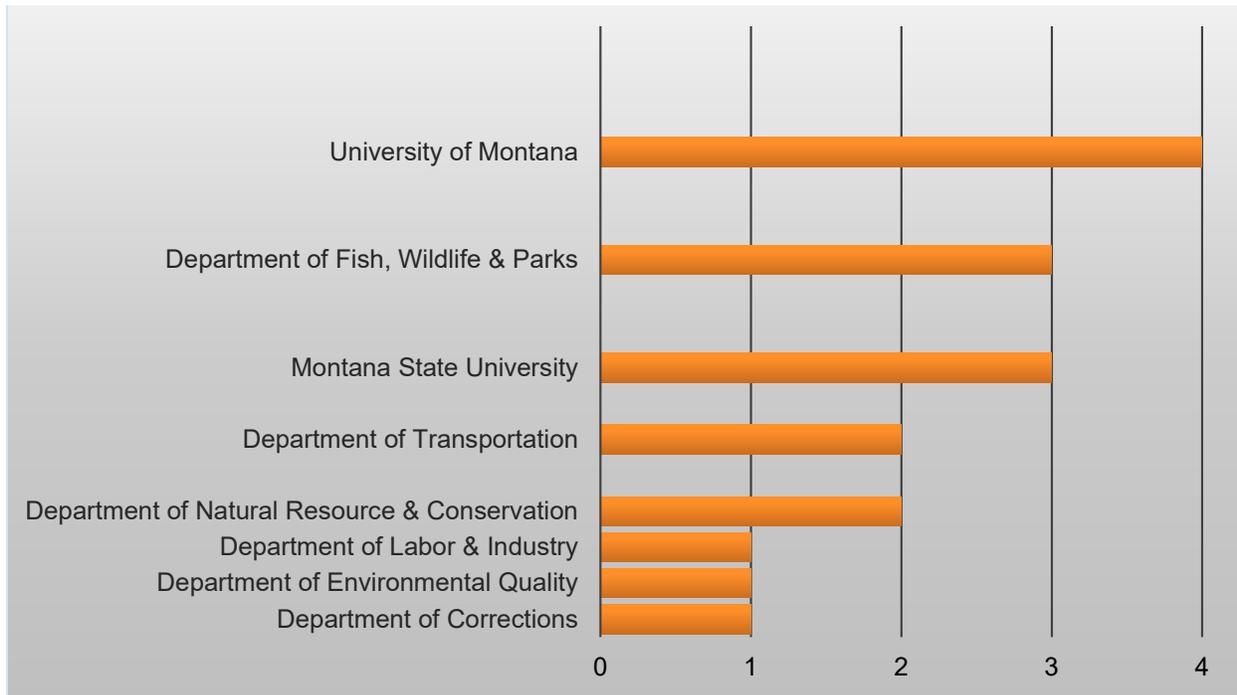
Figure 6
Types of Penal Violations in FY18



Source: Compiled by the Legislative Audit Division

In fiscal year 2018, 8 state agencies reported a total of 17 thefts of property or cash from their agency, with the universities and the Department of Fish, Wildlife, and Parks reporting nearly half (7) of the penal violations. By comparison in fiscal year 2017, there were 35 reported PV's. The universities reported the majority of the thefts (22) and the Department of Fish, Wildlife, and Parks reported 4 thefts. The following figure shows the state agencies that reported to LAD the discovery of any theft, actual or suspected, and thefts that were discovered through an audit or reported to the hotline for fiscal year 2018.

Figure 7
Penal Violation Submissions by Agency for FY18



Source: Compiled by the Legislative Audit Division

Chapter III–Substantiated Cases

Introduction

Reports to the hotline are confidential until the Legislative Auditor or other appropriate agency acts to verify the fraud, waste, or abuse reported and takes corrective action. The information concerning the subject of the complaint and the remedy, if any, then becomes public information, unless it is otherwise precluded by law from disclosure. The following are the substantiated cases reported to the Accountability, Transparency, and Compliance (ACT) hotline for fiscal year 2018. Substantiated reports are those submissions where evidence was found by or provided to staff to support or prove the truth of the allegation. In fiscal year 2018, Legislative Audit Division (LAD) staff substantiated a total of six hotline reports.

Office of Public Defender Paying Court Filing Fees Found to be Waste

During the representation of a client, an attorney with the Office of the Public Defender (OPD) may determine the substitution of the judge is in the best interest of their client. Statute requires the Motion for Substitution (motion) be filed within 10 calendar days after the defendant's arraignment. Additionally, a \$100 nonrefundable fee must be paid by OPD to the clerk of the district court in the applicable county within 30 days of receipt of the claim for substitution fee. In a hotline report, it was alleged, by a district judge, that OPD was wasting their finite resources on a process to obtain a different judge whom they perceived to be more favorable to their clients. LAD was provided five denied orders. All were denied on the basis that OPD had not met the statutory requirements set out above.

We substantiated two of the five denied orders as waste of state resources. One motion was filed within the 10-day substitution period, but the clerk did not receive payment within the 30 days. Additionally, one motion was filed outside the 10-day requirement. Based on our work, we believe these are anomalies and do not represent widespread waste on the part of OPD related to these types of motions. OPD made changes to its procedures to increase assurance these motions and payments are made on a timely basis.

Department of Labor and Industry Approved Sick Leave for Incarcerated Employee

This hotline submission alleged that a Department of Labor and Industry (DOLI) employee did not have enough annual or other appropriate leave to cover time incarcerated, so their supervisor entered sick leave on the time sheet in the employee's

absence. In analyzing this submission, we determined the use of sick leave for an incarcerated employee was contrary to state sick leave policy, and is abuse of a paid leave of absence. DOLI staff agreed sick leave should not have been charged and provided documentation it had been corrected.

Department of Corrections Employees Inappropriately Received Extra Pay

We received an allegation that a Department of Corrections (DOC) employee added members to a special security team without going through the proper process. The employee was also a member of this specialized team. In analyzing this hotline submission, we determined these team members receive an additional 50 cents per hour in pay, specialized training that takes them away from their primary duties, and special equipment. Because of the benefits provided, membership on these teams requires an application and competitive selection process.

The Division of Criminal Investigation Bureau of the Department of Justice (DOJ) advised that the DOC investigations unit conduct an internal investigation with the possibility of a referral to the local county attorney. Therefore, we referred this to the DOC investigations unit.

The investigation determined the employee had in fact added several members to the special security team without going through the required process. It was also determined these new members, collectively, received approximately \$2,500 in pay they were not entitled to, but had not received any additional equipment or training. During the investigation, the employee indicated they had been authorized to add the new members from a high-ranking official of DOC. This statement was not able to be verified because that official was no longer employed by DOC.

The employee was given a written warning and was removed from the team. The other employees were either removed from the team or voluntarily left the team and their pay increase was terminated. The DOC did not seek reimbursement from the team members for the additional amount of pay received as it was a minimal amount, and did not find them culpable.

Montana State Prison Employees and Family Members Allowed to Hunt in Violation of Policy

This hotline submission alleged that a Department of Corrections employee allowed other employees and their family members to archery hunt on a closed area of the Montana State Prison Ranch, commonly referred to as Ranch 2. Montana State

Prison (MSP) internal policy allows archery hunting on ranch property under certain circumstances and requires the land use rules to be followed, or the hunter could lose their hunting privileges and license. This policy prohibits hunting on Ranch 2, and restricts hunting on other areas of ranch property. The Montana Correctional Enterprises (MCE) ranch hunting access rules require employees to obtain permission from the MCE administrator to hunt on ranch property. Employees must also follow the rules set out in MSP policy when hunting on ranch property, including accessing the ranch by checking in and checking out at the MSP checkpoint.

We reviewed policies and interviewed MSP staff. Based on this work the allegations were substantiated. Employees and their family members were given permission to hunt on Ranch 2, which is prohibited. Further, on the days when those employees were hunting, they were doing so without the permission of the MCE administrator, and they gained access to the area through another road, not through the MSP checkpoint, as required.

Fish, Wildlife, and Parks Property Being Used for Personal Use

A hotline report was made alleging a Fish Wildlife and Parks (FWP) employee was using an FWP hangar to store personal property. This report was submitted to the DOJ Division of Criminal Investigation, forwarded to LAD, and analyzed by our staff. LAD staff substantiated this report as abuse through an on-site visit to the hangar. FWP staff were not able provide LAD staff access to the hangar, however staff did observe a private van parked next to the hangar. Audit staff gained access to the hangar on a second site visit and found a personal car top carrier present in the hangar and the personal van still parked next to the building. This was reported to FWP.

FWP followed up on this report and confirmed a car top carrier present in the hangar and had it removed by the employee. FWP also verified there were no additional personal property being stored in the facility, and the van would be moved. FWP discussed the appropriate use of state property with the employee, issued a formal letter outlining expectations for state property, and will conduct periodic inspections of the hangar over the next year. FWP indicated this situation will be noted in the employee's performance agreement/evaluation.

Personal Camper/Bus Parked on Montana Department of Transportation Property

In this hotline submission, an individual reported a camper/bus was parked on Montana Department of Transportation (MDT) property, and was using electricity

paid for by the state. MDT indicated there was a lease agreement in place, and the employee was part of a construction crew in the area. MDT has lease agreements with several employees and contractors at construction sites around the state.

LAD staff visited the site where the camper/bus was parked. Staff found the camper/bus was on MDT property, and was plugged into the shop. MDT staff indicated the lease agreement was for \$50 to park the camper/bus, but did not include electricity. MDT staff reviewed the case and identified several concerns. These included: the lease agreement was not completed and signed, the agreement did not address the circumstances, the amount being charged was not reasonable, the lease agreement was not treated as a taxable benefit, the agreement did not benefit MDT as intended, and MDT guidelines did not lead to consistent application of the rules. MDT took the following steps to address this issue:

- ◆ Notified the employee to vacate the premise.
- ◆ Developed a policy on when to allow lease agreements, and require better documentation.
- ◆ Developed a better lease agreement template.
- ◆ Reviewed all existing agreements.
- ◆ Reviewed all employees with a taxable benefit, such as a lease agreement, and ensured the agreement with each employee was updated.

LAD staff reviewed these steps, and determined they were sufficient to address this issue.

Chapter IV – Select Penal Violations

Introduction

State law requires that agencies report to the legislative auditor and the attorney general the discovery of theft, actual or suspected, of state money or property under the agency's control. These reports are entered into the Accountability, Compliance, and Transparency (ACT) case management system and Legislative Audit Division (LAD) staff analyze the submission to provide recommendations for necessary action that may include:

- ◆ Consideration of the information for future audits.
- ◆ Gathering further information during an ongoing or routine audit.
- ◆ Performing a separate investigation apart from a regular audit.
- ◆ Following up with the attorney general regarding any criminal charges.

The following penal violations were received from agencies and selected to be included in this report because of their impact to the state.

Montana State University E-mail Scam

Montana State University (MSU) reported an employee had responded to an e-mail scam. This employee purchased \$2,500 of gift cards as a result of this scam. The MSU report indicated an employee received an e-mail that appeared to come from their supervisor. The e-mail asked for the purchase of 25 \$100 iTunes gift cards. The e-mail then instructed the employee to send the codes from the back of the cards via e-mail. A subsequent e-mail requested 20 additional cards, but the employee did not purchase the additional cards. The report was also filed with the FBI Internet Crime Complaint Center and the University Police. The University Police responded and MSU Office of Audit Service determined the case was closed and no further action was necessary. MSU staff provided documentation of the complaint to the Internet Crime Complaint Center and the police report for review by LAD staff.

Montana State University Student Financial Aid Activity

An individual gained access to Montana State University's (MSU) information system through a phishing attack and changed two students' bank account numbers associated with their financial aid. This resulted in refunds of \$1,330 and \$2,166 being diverted from the students' bank accounts to the new bank accounts. A report was filed with the University Police by the students who did not receive their refunds. MSU then reported this incident to the Legislative Audit Division.

Audit staff worked with MSU staff to determine what actions were taken in response to this incident. MSU staff indicated they could not find any connections between the two students involved, and determined their credentials were stolen via a manual phishing attack. MSU issued a paper check to each student, ensuring they received prompt payment. Also, MSU alerted all students of the attack. MSU plans to send out e-mail notification when student bank profile information has been changed, and is reviewing the security awareness information and education on phishing to better inform students, staff, and faculty. To prevent this situation in the future, MSU staff are pursuing multi-factor authentication and are reviewing incident response procedures. It was determined by LAD staff that the university has taken appropriate steps to prevent further attacks.

Fish, Wildlife, and Parks Hatchery **Fish Food Fund Money Stolen**

A report was made regarding theft by a Fish, Wildlife, and Parks (FWP) employee of \$80 from a petty cash fund. The public at the Big Springs Hatchery in Lewistown pays to feed the hatchery fish by using a fish food dispenser, similar to a gumball machine. Hatchery staff removed the cash from the dispenser when it was full and placed the cash in a bowl in the office. Staff would use that money to refill the dispenser with fish food. The employee admitted to the theft and was disciplined. The incident was reported to the attorney general by FWP.

LAD staff followed up on the incident to determine what changes were made to FWP policy to prevent this issue in the future. FWP indicated they made minor changes to procedures related to the fish food dispensers. FWP employees are now required to empty the money out of the fish food dispensers once a month. Two employees are now responsible for collecting, counting, and logging the money. Each FWP hatchery is required to develop a log for tracking funds, including tracking signatures of those who handled the money, date it was counted, and the amount. Also, the money must be taken to the bank the same day and converted into a cashier's check.

Chapter V—Apparent Criminal Violation Referrals

Introduction

Section 5-13-304(4), MCA, requires our office report to the attorney general apparent violations of the penal statutes identified during audit work. During our audit entitled *Governance Practices for Information Technology Investments* (17DP-02) it came to our attention that two former state employees may have violated §2-2-201, MCA, which prohibits them from working for contractors they were directly involved with during their employment with the state. This law provides for a 6-month cooling-off period between termination of state employment and working for a state contractor. A violation of §2-2-201, MCA, provisions is a misdemeanor under §18-4-141(4), MCA, and could incur a fine of not less than \$500 or more than \$5,000. Additionally, the state of Montana may at its option declare any contract in violation of §2-2-201, MCA, void from the beginning of the contact.

Section 2-2-201, MCA, states that: “A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.” We provided the attorney general a letter detailing the allegation as well as documentation which showed the employees did not wait the requisite 6-month period the statute requires.

One employee terminated their employment in January 2018 and within the same month began working for a company with an ongoing contractual relationship with the state that began around 2012. Additionally, while employed with the state, this former employee was directly involved in the contractual relationship with this company.

The second employee terminated their employment with the state in December 2017 and within a month was working for a company with an ongoing contractual relationship with the state that began in 2015. As with the first employee, this person was also directly involved in the contractual relationship with the company during their employment with the state.

Investigation

The attorney general turned the investigation of the allegations over to the Department of Justice’s (DOJ) Division of Criminal investigation. The agent in charge of the investigation reviewed documentation provided by LAD staff, conducted interviews of the employees and department staff, prepared a case file, and presented the case file

to the Lewis and Clark County Attorney for consideration of criminal misdemeanor charges against the two individuals.

Conclusion

On June 26, 2018, the agent was informed by the Lewis and Clark County Attorney that he had decided not to file a criminal charge against either person because he did not "... believe a 12-person jury would unanimously agree beyond a reasonable doubt any law was violated." Based on our review of the agent's case file and conversations with the county attorney, a prosecution under the statute as currently written would require substantial resources where a guilty verdict is unlikely, and even if obtained, where the punishment would not serve as an effective deterrent to others.

Potential Legislative Changes

Based on the outcome of this referral and our discussions with DOJ and the Lewis and Clark County Attorney, the legislature could consider several different options for strengthening current state law relating to former employees working for state contractors. These changes could include the following:

- ◆ Clarifying statutory language and definitions to provide a more precise basis for assessing certain actions and relationships in the contracting and procurement processes.
- ◆ Extending the cooling off period from 6 months to one year. This would provide for a more meaningful break in service and would also address the difference between contracting law and the State Ethics Code, which currently references a one-year period.
- ◆ Strengthening the deterrent effect of the law by classifying the criminal violation as a felony, rather than a misdemeanor, and/or specifying a significant financial penalty.
- ◆ Mandating state contracts include specific acknowledgments or provisions relating to former state employees.