



A REPORT
TO THE
MONTANA
LEGISLATURE

PERFORMANCE AUDIT

Effectiveness of Contracted Community Corrections Programs in Reducing Recidivism

Department of Corrections

JUNE 2020

LEGISLATIVE AUDIT
DIVISION

18P-05

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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 conducted 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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June 2020

The Legislative Audit Committee
of the Montana State Legislature:

This is our performance audit of contracted community corrections programs around Montana managed by the Programs and Facilities Bureau within the Department of Corrections.

This report provides the Legislature information about the management of contracted community corrections programs and how offenders are placed in them. This report includes recommendations for improving how the department oversees and evaluates these programs. A written response from the department is included at the end of the report.

We wish to express our appreciation to Department of Corrections officials and staff and contractor personnel for their cooperation and assistance during the audit.

Respectfully submitted,

/s/ Angus Maciver

Angus Maciver
Legislative Auditor

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Department of Corrections	A-1
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Cynthia Wolken, Deputy Director

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MONTANA LEGISLATIVE AUDIT DIVISION

Effectiveness of Contracted Community Corrections Programs in Reducing Recidivism

MONTANA DEPARTMENT OF CORRECTIONS

BACKGROUND

The Department of Corrections entered into 12 contracts for community corrections programs between 2005 and 2010, many of which were 20-year contracts. These contracts were for assessment and sanction centers, treatment programs, and prerelease centers, which among them serve more than 1,600 offenders. These programs provide various services to offenders, such as treatment for substance use disorder, career and life skills, and other programming.

Agency:

Department of Corrections

Director:

Reginald Michael

Division:Programs and Facilities
Bureau**Division FTE:**

7.5

Division Budget:

\$52.9 million

Value of Community**Corrections Contracts:**

\$43.9 million in FY2019

We estimated the contracted community corrections programs reduced the risk of violations and return to jail by 14 percent. However, the Department of Corrections (department) does not use offender outcome data to evaluate whether these programs reduce recidivism. The department needs to better ensure community corrections programs are focused on offenders with the highest risk and clinical need to most effectively reduce recidivism. The department needs to improve how it manages these contracts. Among other issues, it has paid over \$400,000 for empty bed space and financing-related support at two methamphetamine treatment centers in the last two years.

KEY FINDINGS:

The department did not always follow state contracting policy or best practices for its community corrections contracts. As one example, the department did not maintain a written contract for one of the contracted programs for close to two years. Additionally, because of legislative and department changes to offender placement processes, the department paid for empty bed space at two methamphetamine treatment programs.

The department did not sufficiently evaluate the performance of its community corrections contractors. The department does not have clear standards for evaluating community corrections contractor performance. As a result, the department has continued contracts without evaluating contractor performance.

Lengthy contract terms for community corrections programs limit the ability of the department to make changes. Many of the contracts for community corrections have 20-year terms that allowed contractors to secure financing for facilities. While permitted in statute, these are much longer contracts than in other states, and much longer than most state contracts in Montana.

The department should use offender data to ensure offenders are matched to the appropriate community corrections services. The department does not sufficiently ensure community corrections services are focused on offenders with the highest risk and need. When services are not focused on the right offenders, the department may not be effectively reducing recidivism.

(continued on back)

For the full report or more information, contact the Legislative Audit Division.

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RECOMMENDATIONS:

In this report, we issued the following recommendations:

To the department: 7

To the legislature: 0

RECOMMENDATION #1 (PAGE 16):

Procurement, contracting, and grants management

The department should better follow state contracting policy and best practices in several areas, including maintaining written contracts, amending contracts in a timely manner, signing contracts last, providing public notice when expanding treatment contracts, and avoiding paying for empty bed space at community corrections programs.

Department response: **Partially Concur**

RECOMMENDATION #2 (PAGE 18):

Procurement, contracting, and grants management

The department should improve the monitoring of community corrections contracts by developing standards for following up on findings from quality assurance audits and for regularly evaluating the performance of community corrections contractors.

Department response: **Concur**

RECOMMENDATION #3 (PAGE 21):

Procurement, contracting, and grants management

The department should limit future community corrections contracts to seven years or fewer and should seek legislation to limit the terms of these contracts.

Department response: **Partially Concur**

RECOMMENDATION #4 (PAGE 33):

Management and operational effectiveness

The department should develop processes to ensure offender recidivism risk and clinical need drive decisions about placement in community corrections programs. The department should also collect data that will allow it to broadly ensure offenders are being matched to community corrections programs appropriately.

Department response: **Concur**

RECOMMENDATION #5 (PAGE 35):

Management and operational effectiveness

The department should standardize substance use disorder evaluations of offenders referred to community corrections programs.

Department response: **Partially Concur**

RECOMMENDATION #6 (PAGE 36):

Management and operational effectiveness

The department needs to ensure pre-authorizations for the conditional release of sexual and violent offenders are conducted within established timelines.

Department response: **Concur**

RECOMMENDATION #7 (PAGE 47):

Management and operational effectiveness

The department should measure the effectiveness of contracted community corrections programs based on offender outcome data.

Department response: **Partially Concur**

Chapter I – Introduction and Background

Introduction

Law enforcement and corrections professionals have long documented a strong tie between substance abuse and crime. Because of this, effective substance use disorder treatment and rehabilitative programs are important in reducing crime and maintaining public safety. In Montana, many of these services are provided by private nonprofit community corrections programs via contracts with the Department of Corrections (department). The department places offenders in community corrections programs throughout the state. These programs provide varying levels of treatment for substance use disorder and other rehabilitative programming.

Several legislators asked the Legislative Audit Committee for a performance audit of the department's contracted community corrections programs. The Legislative Audit Committee prioritized a performance audit based on this request. Overall, our audit found the department needs to improve some aspects of its offender placement and contract management processes. We also found the department needs to better measure the effectiveness of its contracted community corrections programs.

This chapter provides information about the contracted community corrections programs and how offenders are referred to them. It also includes information on the scope, objectives, and methodologies of the performance audit.

Types of Community Corrections Programs

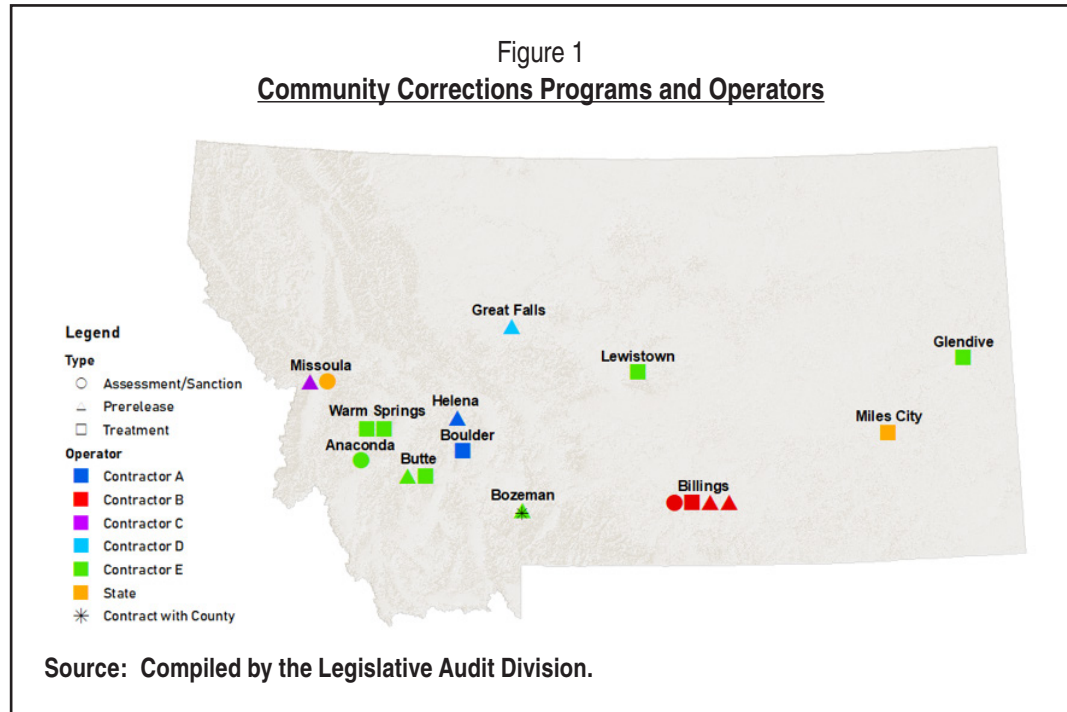
The Programs and Facilities Bureau (PFB) within the department manages contracts with five nonprofit organizations and one county for community corrections programs. The department also operates two community corrections programs. There are three types of community corrections programs in Montana: assessment/sanction centers, residential inpatient treatment centers, and prerelease centers (PRCs). The contracted community corrections programs are listed below:

1. **Assessment/Sanction Centers:** *Assessment/sanction centers assess the mental health and substance use disorder treatment needs and measure the criminogenic risk of offenders. Criminogenic risk relates to the individual's likelihood to re-offend. These centers assist the department in determining the appropriate placement of offenders who were committed to the department.*
 - ♦ Passages Assessment, Sanction, Revocation Center (ASRC) (Billings)
 - ♦ Sanction, Treatment, Assessment, Revocation, & Transition Center (START) (Anaconda)
2. **Treatment Centers:** *Treatment centers provide high-intensity residential substance use disorder treatment to specific offender populations. They offer*

rehabilitative and treatment programming to offenders using various methods and models, such as therapeutic communities.

- ♦ Connections Corrections Program (CCP) East (Butte)
 - ♦ Connections Corrections Program (CCP) West (Warm Springs)
 - ♦ Passages Alcohol and Drug Treatment (ADT) (Billings)
 - ♦ Elkhorn Treatment Center (Boulder)
 - ♦ NEXUS Methamphetamine Treatment Center (Lewistown)
 - ♦ Warm Springs Addictions Treatment and Change East (WATCH East) (Glendive)
 - ♦ Warm Springs Addictions Treatment and Change West (WATCH West) (Warm Springs)
3. **Prerelease Centers:** *Prereleases are transitional programs for offenders coming from a secure facility to the community. They are also sometimes used in lieu of prison to provide more structure for offenders who were not successful on community supervision. They offer varying levels of rehabilitative and substance use disorder treatment. Residents of prereleases are expected to find employment in the community.*
- ♦ Alpha House Prerelease (Billings)
 - ♦ Butte Prerelease
 - ♦ Gallatin County Re-entry Program (Bozeman)
 - ♦ Great Falls Prerelease
 - ♦ Helena Prerelease
 - ♦ Missoula Prerelease
 - ♦ Passages Prerelease (Billings)

In addition to the contracted community corrections programs, the department operates one assessment center, the Missoula Assessment & Sanction Center (MASC), and one treatment program, Pine Hills Correctional Facility in Miles City. Figure 1 (see page 3) shows where community corrections programs are located and whether they are contracted or operated by the department.



The department pays a per diem for offenders placed in the contracted programs. Each contract outlines the per diems paid by the department and an annual contract maximum. The annual maximum for some contracted programs includes specialized services, such as sanction and hold bed space, which are provided at different rates than regular bed space. The value of the contracts for these programs totaled around \$43.9 million in fiscal year 2019 (excluding MASC). Table 1 (see page 4) shows the fiscal year 2019 per diem rates or costs per day, contract maximums, and regular bed space for the community corrections programs. The contract maximums represent the cap on payments to contractors for programs. They do not reflect actual expenditures.

Table 1
Costs and Bed Space for Community Corrections Programs

Program Type	Program	FY19 Per Diem or Cost Per Day	FY19 Contract Maximum	FY19 Beds (excludes sanction/hold)
Treatment	Pine Hills	\$152.23	N/A (DOC Program)	22
	Elkhorn	\$135.99	\$2,248,977.00	42
	Nexus	\$128.23	\$3,877,235.00	82
	WATCH East	\$103.62	\$1,872,898.95	50
	CCP East	\$85.62	\$1,625,067.60	52
	Passages ADT	\$78.06	\$5,484,298.00	45
	CCP West	\$73.28	\$2,300,259.20	52
	WATCH West	\$63.39	\$1,874,125.35	115
Prerelease	Missoula PRC - female	\$82.36	\$3,179,738.00	20
	Passages PRC	\$77.15	\$5,484,298.00	74
	Gallatin Reentry PRC	\$72.38	\$969,112.00	34
	Helena PRC	\$64.49	\$2,756,463.75	99
	Missoula PRC- male	\$64.21	\$3,179,738.00	90
	Butte PRC - female	\$61.96	\$3,989,708.00	55
	Great Falls PRC - female	\$61.74	\$4,404,051.55	34
	Butte PRC - male	\$52.76	\$3,989,708.00	120
	Alpha House PRC	\$51.93	\$3,877,821.00	162
	Great Falls PRC - male	\$51.93	\$4,404,051.55	135
Assess/Sanc	START	\$101.86	\$5,315,203.00	138
	MASC	\$83.22	\$4,729,599 (contract with Missoula County, but DOC-staffed)	144
	Passages ASRC	\$78.06	\$5,484,298.00	50

Source: Compiled by the Legislative Audit Division from department records.

Offender's Sentence Dictates Who Decides Placement

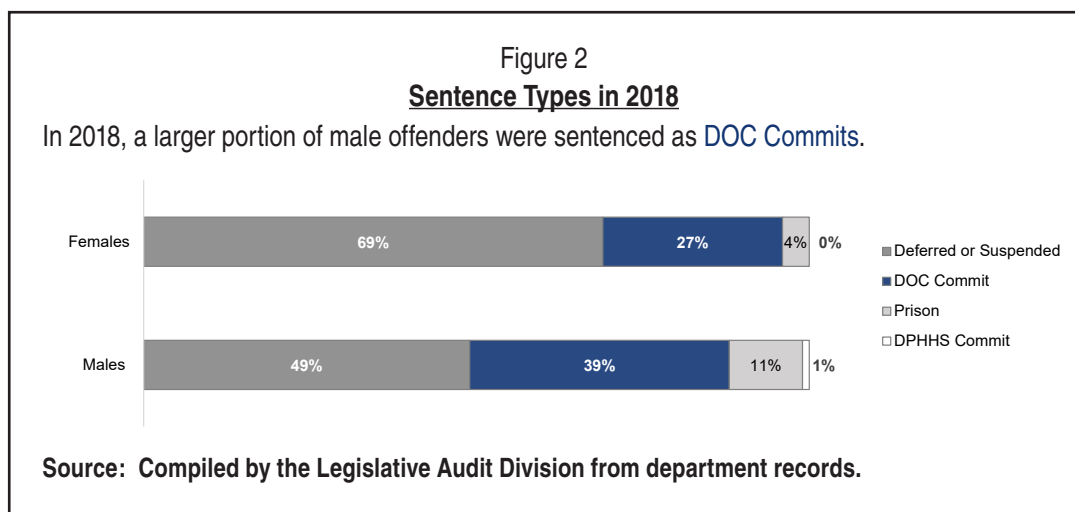
The entity that determines whether and when an offender can be placed in a community corrections program depends on the offender's sentence. In Montana, there are four sentence types:

- ♦ **Deferred or suspended sentence (i.e., probation):** A deferred or suspended sentence means the offender lives in the community but is supervised by the department. However, the court has jurisdiction over the offender and may revoke the sentence and impose a harsher one if the offender does not follow the conditions of their sentence. Recent legislation (Senate Bill 63 from the 2017 Legislative Session) allows judges to send probationers to a community

corrections program for up to nine months in response to a violation of the conditions of supervision.

- ♦ **DOC commitment sentence:** A Department of Corrections (DOC) commitment sentence is a type of sentence unique to Montana. It means the court placed the offender under the jurisdiction of the department, and the department determines the appropriate placement of the offender. These offenders are often referred to as DOC Commits. The department determines whether a DOC Commit is appropriate for a community placement, a placement in a community corrections program, or a prison placement.
- ♦ **MSP/MWP commitment sentence:** A MSP/MWP commitment sentence means the offender will go to prison at either Montana State Prison (males) or Montana Women's Prison (females). The Board of Pardons and Parole (BOPP) then determines when the offender is suitable for parole or transitional placement in a community corrections program. The BOPP also determines if parole should be revoked, and the offender returned to prison should the conditions of parole not be met.
- ♦ **DPHHS commitment sentence:** A Department of Public Health and Human Services (DPHHS) Commit sentence means the offender has been diagnosed with mental illness and is already in the Montana State Hospital or will be sent there.

Deferred or suspended sentences were most common in 2018, followed by DOC commitment sentences. There were over 17,000 offenders under department jurisdiction at the end of fiscal year 2018. A larger portion of male offenders were sentenced to the department as DOC Commits in 2018 compared to female offenders. The figure below shows the percentage of offenders in each sentence type:



Once an offender is referred to a treatment center or PRC, the program's screening committee determines whether to accept or deny the offender. Department policy guides this screening process. Once approved at a program, the offender is transferred

there when a bed becomes available. If an offender is denied at all programs, the referral source may consider other options. The offender may have to remain at an assessment center for further placement considerations, or the offender may have to remain in prison.

Audit Scope

Assessment centers, treatment centers, and PRCs serve slightly different purposes. For example, treatment centers provide high-intensity treatment programming for substance use disorder. PRCs provide varying levels of treatment depending on the offender's needs, and PRC residents are expected to find employment in the community. We included all three types of community corrections programs in our performance audit because they operate under similar contracts, are operated by some of the same contractors, and are managed by the same bureau within the department. The department contracts for specialized services in addition to regular beds at some of the contracted facilities. For example, some contractors also provide hold beds, sanction beds, and enhanced or transitional services. These are short-term services for offenders integrating back into the community from a facility or for offenders not in compliance with their supervision conditions. Our performance audit focused on the department's management of regular bed space within the contracted programs. We also focused on DOC Commits and the department's placement processes rather than decision-making by the BOPP or by the courts.

Our work involved reviewing the department's contract management files and processes. This work focused on the two most recent contract amendments and contract management activity for fiscal years 2016 through 2019. Our audit work also involved analyzing offender data and reviewing offender files. Our data analysis work focused on offenders who were released to Montana communities in calendar year 2016. The data included demographic information as well as information on recidivism events for these offenders between release to the community and September 2018. We also analyzed offender placement data between 2016 and 2018. Additionally, we reviewed screening materials for a sample of offenders placed in contracted programs. For this work, we focused on offenders placed in contracted programs in fiscal years 2017 and 2018.

Scope Limitation

Audit standards require us to clearly specify scope limitations within our report. Scope limitations include actions taken by the auditee that limit our ability to complete audit work punctually and rely on evidence provided. The Legislative Audit Division has legal access to personal health information through Title 5, Chapter 13, MCA, (Legislative Audit Act) and federal law (HIPAA). Despite this, the department denied access to

offender screening packets. These packets included personal health information from substance use disorder evaluations. Access to the packets was necessary to evaluate the offender placement process. We attempted to establish confidentiality agreements with the department in October 2018 and May 2019. The department did not establish agreements with us and denied our request for access to the packets. As a result, we subsequently requested and obtained the files directly from the contractors in November 2019. This lack of cooperation by the department impacted our ability to effectively conduct audit work and contributed to the untimely completion of our audit work. It also placed the contractors in the undesirable position of providing access to evidence the department was responsible for granting.

Audit Objectives and Methodologies

During audit assessment work, we identified three risk areas related to contract management, the offender placement process, and the evaluation of the effectiveness of the contracted programs. We developed the following three audit objectives to address the risks we identified during audit assessment work:

Objective 1: Does the department ensure the requirements of the contracts for community corrections programs are clearly defined, align with best practices, and are monitored to ensure they are met?

Objective 2: Does the department ensure offenders are placed in the appropriate contracted community corrections programs according to best practices and department policy?

Objective 3: Do contracted community corrections programs affect length of time in or return to the criminal justice system?

We completed the following work to address our audit objectives:

- ♦ Reviewed statute, administrative rules, and department policy and procedures.
- ♦ Reviewed professional guidance and best practices for community corrections programs from national organizations.
- ♦ Reviewed the contracts and documentation for the department's contract management and monitoring processes.
- ♦ Interviewed department staff regarding the department's management of the contracts and how it measures the effectiveness of the contracted programs.
- ♦ Toured each contracted facility and interviewed program administrators to learn about their programs and their experiences working with the department.

- ♦ Interviewed the contractors' professional trade association about its experiences working with the department.
- ♦ Observed a sample of screening committee meetings to understand how screening decisions are made.
- ♦ Conducted a focus group of residents at each contracted program to learn about residents' perceptions of each program's effectiveness.
- ♦ Visited the state-operated assessment center and the state-operated treatment program and interviewed program administrators to learn about the roles of these programs in the offender placement process.
- ♦ Identified five comparable states and interviewed corrections staff about their state's community corrections programs and reviewed other states for innovative approaches to contracted community corrections.
- ♦ Analyzed data on offender placements in the contracted programs between calendar years 2016 and 2018.
- ♦ Reviewed a sample of screening packets for placements in contracted programs in fiscal years 2017 and 2018.
- ♦ Reviewed a sample of pre-authorizations for conditional release for sexual and violent offenders.
- ♦ Analyzed offender data to assess the effectiveness of the contracted community corrections programs. We examined violations, reincarcerations to jail, and new offenses between release to the community in calendar year 2016 and September 2018.

Issue for Further Study

Our work with the department and its contractors identified one issue that may warrant further work. Interviews with contractors and department staff noted a concern with the ability for some contractors to refer offenders to their own programs. There are two contractors that operate both an assessment center and a treatment center or a PRC. Since offenders may be referred to treatment or a PRC from an assessment center, there were concerns that some contractors were over-referring to their own programs. As part of our audit work, we analyzed placements of offenders between 2016 and 2018 to a treatment center or PRC from each of the assessment centers. The data showed trends that may have suggested over-referral by contractors to their own programs. However, other factors could have explained some of these trends, such as changes in the department's placement of offenders in treatment and the portion of treatment and PRC beds provided by the contractors that operate assessment centers. A more in-depth analysis would be necessary to determine if all offender referrals were appropriate. The analysis could possibly require correctional and behavioral health professionals who could determine whether referrals and diagnoses were appropriate.

Report Contents

The remainder of this report details our findings, conclusions, and recommendations. It is organized into three additional chapters:

- ♦ Chapter II addresses contract management and monitoring by the department and opportunities for improvements in these areas.
- ♦ Chapter III explains the importance of more consistency and timeliness in certain parts of the offender placement process. It also discusses the need for the department to use data to ensure offenders are matched to the appropriate services.
- ♦ Chapter IV describes our data analysis work to evaluate the effectiveness of the contracted community corrections programs. It explains how the department should do more to measure the effectiveness of its community corrections programs.

Chapter II – Contract Management and Monitoring

Introduction

The Department of Corrections (department) established the current contracts for community corrections programs following the 2005 Legislative Session. The department has established 12 contracts with local providers, the value of which totaled approximately \$43.9 million in fiscal year 2019. These programs provide substance use disorder treatment and other rehabilitative services to offenders being supervised by the department.

For our first audit objective, we reviewed contracts and contract amendments the department maintains with community corrections providers. These included assessment and sanction centers, treatment centers, and prerelease centers (PRCs). As part of this work, we also reviewed department files and interviewed department and contractor staff to determine whether the department conducted appropriate contract management and monitoring activities. We reviewed documentation for required reporting by the contractors and obtained information on site visits by the department. This work focused on fiscal years 2016 through 2019. This chapter discusses our findings and includes three recommendations to the department related to contract management, contract monitoring, and contract length.

Contract History and Background

In the 2005 Legislative Session, the legislature increased the limit on contracts between the department and nonprofit Montana corporations for community corrections programs from 10 years to 20 years. Since then, the department established a total of 12 contracts with five separate nonprofit corporations for community corrections programs. Ten of the 12 are contracts for 20 years. Department and contractor staff indicated these contracts were put in place with 20-year terms to allow the contractors to secure financing for their facilities. The contractors own the facilities themselves, except for the Connections Corrections Program (CCP) West and the two Warm Springs Addictions Treatment and Change (WATCH) programs, which operate in state-owned buildings.

The Programs and Facilities Bureau (PFB) within the department manages the contracts for the community corrections programs. The contracts were put in place between 2005 and 2010, pre-dating many of the department staff currently involved in managing the contracts. The PFB experienced some significant changes during our audit, including being moved organizationally within the department and adding

staff. The PFB used to be within the Probation and Parole (P&P) Division. In October 2018, the bureau was moved from P&P and is now a separate bureau reporting directly to the deputy director. The department made this move to allow the PFB to focus more on the management of the community corrections contracts instead of on P&P functions. The department indicated staffing resources was the biggest challenge for the PFB in managing its community corrections programs. When our audit began, there were two PFB staff directly involved with managing the contracted community corrections programs. During our audit, the PFB hired another contract manager and a case manager and gained another team member. The PFB now has five staff directly involved with these contracted programs.

Decreased Communication With Contractors Has Impacted Contract Management

During our audit work, we found several issues related to how the department manages its community corrections contracts. As part of our work, we spoke with the contractors' professional trade association. We also visited each of the contracted community corrections facilities. During each visit, we toured the facility and spoke with program administrators. A common concern of the contractors was a decrease in collaboration and communication with the department. The contractors cited trainings and quarterly meetings in Helena that no longer occur. The contractors believe they went from being considered "valued partners" of the department to "vendors." They largely attributed this shift to policy changes and priorities implemented by previous department management. Some contractors believed the relationship between the department and the contractors seemed to be improving under current department administration, but not significantly and not to the level it was several years ago. Contractors also said the department's intended direction for community corrections, in general, was unclear. They desired greater buy-in from the department on the services they provide to offenders.

The contractors also perceived a decrease in communication from the department. Contractors indicated it was difficult to get responses from the department when they had questions, and responses were often untimely. Contractor staff indicated the department frequently misplaced reports they submitted. Additionally, contractors noted visits from the department's contract managers were infrequent. We believe without ongoing communication and coordination with contractors, it is not possible to effectively monitor contracts, assesses quality of services, or determine if all contract requirements are being met.

During our audit, the department aimed to increase communication with contractors. The department began conducting conference calls with contractors about every six

weeks. Some conference calls included program administrators, while others were more targeted and only included specific contractor staff. The contractors acknowledged these calls demonstrated an effort by the department to increase communication. However, some contractor staff believed these calls were of limited value. The department should continue to focus on improving communication with its community corrections contractors. Ongoing communication with contractors is the first step in improving its contract management and monitoring processes.

CONCLUSION

Over the last several years, there has been decreased communication and coordination between the department and its community corrections contractors. This reduced the department's ability to manage and monitor its community corrections contracts. The department is working on improving communication with its contractors.

State Contracting Policy and Best Practices Were Not Followed for the Community Corrections Contracts

While communication and coordination with contractors need to continue to improve, the department also needs to improve other areas of contract management. In reviewing the department's contracting practices, we identified areas where the department did not follow state contracting policy or contracting best practices. The following sections describe these areas.

The Department Paid More Than \$2 Million for Services at a Prerelease Without a Written Contract

One of the department's contracts is with a county, which subcontracts with a nonprofit organization to operate a prerelease center (PRC). This PRC has been operating without a written contract since September 2017. Since then, the program has been operating under an implied contract. "An implied contract is one the existence and terms of which are manifested by conduct," as defined in §28-2-103, MCA. That is, while there was no written agreement in place, the department continued to refer offenders, and the subcontractor continued to accept them. The department has paid approximately \$90,000 per month and has spent more than \$2 million for services within this program since the written contract expired. A new written contract was not in place as of the end of our audit work. While implied contracts are legally enforceable, it is best practice to have a written agreement in place when contracting for services. Absence of a written contract increases the risk for unclear expectations for services and difficulties in resolving disagreements. Some department staff indicated the reasons this program

went without a written contract were internal contract development and review delays. However, other department staff attributed the issue to reluctance on the part of the contractor to sign the contract. The contractor indicated the department was relatively unresponsive when questions were raised about the status of this contract.

Community Corrections Contract Amendments Were Not Timely and Were Signed Out of Order

In our contract review, we found the department signed several amendments well into the effective period of the amendments. We also found several instances of the department not being the last to sign the amendment. For example, one amendment for a treatment center covering fiscal years 2018 and 2019 was signed by the contractor on July 3, 2018, which was after fiscal year 2018 was complete. The department signed the same amendment on June 15, 2018. Eight of the 12 contracts (67 percent) we reviewed were signed last by the contractor and not the department. Department policy requires all requests for contract amendments to be submitted to its Contracts and Budget Bureau in advance of the effective date. State contracting policy also recommends the agency be the final signature on contracts. When the department is not the last to sign amendments, changes to the contract may be made without department review. The department indicated it revised its contract processes to make the department the last to sign amendments as of early 2019. Department staff indicated some of the recent amendments were not timely due to provider rate reductions from the 2017 Special Legislative Session and statutory requirements to add evidence-based programming requirements to the contracts. Additionally, there were delays in procuring special services with some of the contractors.

The Department Expanded a Treatment Contract Without Public Notice

The department expanded a treatment contract in violation of the Administrative Rules of Montana (ARM). Administrative rule requires the department to provide public notice when expanding by between 25 and 50 percent the capacity of treatment program contracts established through the competitive bidding process. The department expanded the contract capacity for a treatment program from 104 total beds in fiscal year 2018 to 138 beds (33 percent increase) for fiscal year 2019 without public notice. The annual contract maximum was also increased from \$3,015,922 to \$3,925,326.80. At the same time, the department decreased the contract capacity for another treatment program from 165 beds to 131 beds (21 percent decrease). This was essentially a transfer of beds from one treatment program to another, both of which operate out of a single facility. Department staff indicated this took place to meet the needs of the offender population, meaning the decrease in referrals to one program and the increase in referrals to the other. While there was no net change in

the number of offenders in the facility, the purpose of the public notice is to allow potential contractors who may be able to provide the same services an opportunity to express interest. In certain circumstances, public notice also allows the community to be aware and provide input when more offenders will be located nearby.

The Department Paid Two Treatment Programs Over \$400,000 for Empty Bed Space and Financing-Related Support to Meet Contract Requirements

The department paid around \$207,000 for empty bed space at one treatment center between March 2018 and February 2019, and around \$38,000 for empty bed space at another between September 2018 and December 2018. The department paid one of these treatment centers an additional \$189,000 to ensure the center maintained its required debt coverage for fiscal year 2018. Some contracts include: guaranteed payments by the department for 75 percent of the contracted bed space on a monthly basis; the amount necessary for the centers to maintain net income at 115 percent of the principal and interest payments of the bonds used to finance the programs, also referred to as debt coverage; and certain bond-related reserve fund payments. Placements in each of the two nine-month methamphetamine treatment programs decreased below the 75 percent threshold within the last two years. This resulted in the department paying for unused beds at both programs. When the department pays for empty bed space at treatment centers, it pays for services not received, which constitutes a waste of state resources. The contracts and associated bond indenture obligate the department for these types of payments. Additionally, some administrators of the contracted programs had concerns about the impact of large fluctuations in referrals on their ability to maintain services when costs rise. Referrals to the two nine-month treatment programs decreased because the department changed how it referred offenders to inpatient treatment based on legislative changes and to better align with national correctional best practices. The changes resulted in shorter treatment programs being used first, which temporarily reduced referrals to these longer treatment programs.

In our review of the department's management of the community corrections contracts, we identified instances where the department did not follow state contracting policy or best practices. Some of these were issues with the written contracts themselves, such as not amending contracts timely and signing contracts before the vendor did. Others were related to the department's actions managing the contracts. Examples included operating under an implied contract rather than a written one, not providing public notice when expanding a treatment contract, and paying for empty bed space at two treatment centers. The department should follow state contracting policy and contracting best practice to ensure it maintains enough oversight over contracts and to ensure it pays only for services it receives.

RECOMMENDATION #1

We recommend the Department of Corrections follow state contracting policy and best practices by:

- A. *Maintaining written contracts when obtaining and paying for community corrections services.*
 - B. *Amending community corrections contracts prior to the effective date and signing them after the contractor.*
 - C. *Providing public notice as required by administrative rule when expanding community corrections contracts.*
 - D. *Avoiding paying for empty bed space at community corrections programs.*
-

Community Corrections Contracts Are Not Sufficiently Monitored

In our review of the department's contract files, we found the department does not monitor the contracts according to department policy and procedure. It also does not evaluate contractor performance or consistently follow up on findings from department quality assurance audits with written corrective action plans. The following sections describe these issues in further detail.

The Department Should Consistently Address Findings From Quality Assurance Audits

The department's Quality Assurance Office conducts contract compliance audits on contracted community corrections programs every three years. These audits determine whether programs followed selected statutes and applicable contract provisions. PFB is responsible for enforcing corrective action on findings from these audits. We found PFB does not have standard timelines or expectations for following up on quality assurance audits. As part of our work, we reviewed the most recently completed quality assurance audit for each contracted community corrections program. We selected two findings from each audit report and reviewed corrective action plans to determine whether there was follow-up with the contractor. These findings were for various compliance issues, such as not submitting reports to the department timely or paying wages to workers that did not align with contract requirements. We found PFB did not follow up on all findings from the audits on PRCs. PFB did not address findings from the audits completed in August 2017 on two PRCs through written corrective action plans. If findings from quality assurance audits are not addressed through written corrective action, contract compliance issues may not be resolved in a timely manner or at all.

Community Corrections Contractors Are Not Evaluated for Satisfactory Performance

The department did not evaluate contractor performance as required in department procedure. These evaluations should be conducted either semiannually or annually. Contractor evaluations were not done partly because the department's definition of contractor performance was unclear. The department's annual contractor performance evaluation form evaluates contractors in several areas, such as quality of services provided. However, it is unclear to the department what activities or documentation demonstrate satisfactory performance. The department needs to develop standards for regularly evaluating the performance of community corrections contractors. Corrections agencies in other states we interviewed had clear standards for evaluating community corrections contractor performance. For example, Ohio uses performance-based standards in auditing and managing its contracted community corrections programs. Each area evaluated includes a list of the activities or documentation that constitute compliance.

We also found the department did not conduct site visits every six months, nor were site visits formally documented, as required by department procedure. Department staff indicated site visits were not conducted every six months due to staffing limitations. PFB had only one contract manager for several months for the time period reviewed for our audit. Corrections agencies in other states conducted more frequent site visits and more thorough performance evaluations of their community corrections contractors. Audit work did not include a comparison of staffing resources in states where more contract oversight is performed.

The department also did not evaluate contractor performance for contract amendments according to department policy. Department policy requires requests for contract amendments to include a contract justification form or annual evaluation of contractor performance. Instead of these, the department used quarterly reports and invoice tracking. Quarterly reporting can be used in lieu of annual evaluation for certain contract types, including leases and contracts with other governmental entities. However, the contracts for the community corrections programs do not fall under these contract types. Additionally, quarterly reports do not demonstrate contractor performance, include compliance history, or involve any formal testing.

The department did not evaluate contractor performance or conduct contract monitoring activities according to policy and procedure. If the standards for evaluating performance are not defined, the department is unable to justify continuing contracts by clearly demonstrating satisfactory performance by contractors. As a result, contractors may not be providing the level and quality of services expected by the state.

Department staff acknowledged PFB focused on case management in the past, rather than on contract management. That is, the department focused more on day-to-day operations related to individual offenders than on contract management. With more staff in PFB, the department indicated it intends to do more regular contract management and monitoring. The department estimated it would need additional staff to sufficiently monitor the performance of its community corrections contractors. However, developing standards and timelines for monitoring community correction contracts will help improve use of the department's current staffing resources.

RECOMMENDATION #2

We recommend the Department of Corrections improve the monitoring of community corrections contracts by:

- A. *Developing standard timelines and expectations for following up on findings from quality assurance audits, and*
 - B. *Developing standards for regularly evaluating the performance of community corrections contractors.*
-

Lengthy Contract Terms Limit the Ability of the Department to Make Changes to Community Corrections Programs

State procurement laws limit state contracts to seven years. However, the department has an exemption to this limit in §18-4-313, MCA. The contract term for many of the community corrections programs is 20 years. The department entered into the current contracts between 2005 and 2010. This means significant changes cannot be made to these contracts without contractor cooperation until 2025 to 2030. The department amends the contracts every two years to allow for changes to per-resident rates. However, making other, more substantial changes to the contracts is difficult and requires buy-in from the contractors. Various department staff indicated these lengthy contract terms limit the ability of the department to implement new policies or practices as substance abuse treatment best practices evolve. The lengthy contract terms also decrease the department's ability to make changes to the contracts it would like to make. For example, the department wanted to change the format of PRC contracts by referring to an operational manual instead of including specific procedural language in the contracts. Two contractors did not agree to the change, nor were they obligated to. There are now two different contract formats for PRCs, which resulted in discrepancies in the requirements for PRCs. For example, offenders must complete residential

programming within 180 days at five of the PRCs, unless justification is provided. However, the cap is 200 days at the two PRCs that did not agree to the contract format changes.

The reason for the 20-year contracts was to allow the contractors to secure financing to build their facilities. Of the seven bonds associated with community corrections contracts, three are paid off. The remaining four will be paid off by the end of calendar year 2026. The table below shows the contract terms and the maturity date of the bonds.

Table 2
Bonds in Community Corrections Contracts

Four contracted community corrections contracts have **outstanding bonds**.

Contract	Contract Term	Bond Maturity Date
Passages PRC, ADT, and ASRC	2007-2025	October 2025
Alpha House PRC	2005-2025	October 2017 (paid off)
Elkhorn	2007-2027	October 2026
Helena PRC	2005-2025	October 2020 (paid off July 2019)
START	2010-2030	N/A
CCP East & West	2010-2017 *extended through FY2019	N/A
Nexus	2007-2027	October 2026
WATCH East & West	2010-2017 *extended through FY2019	N/A
Butte PRC & Women's Transition Center	2005-2025	N/A
Gallatin County Reentry Program	2005-2017 operating without contract after 2017	N/A
Great Falls PRC	2005-2025	April 2021
Missoula PRC	2005-2025	October 2018 (paid off in FY18)

Source: Compiled by the Legislative Audit Division from department records.

In 2016, the Commission on Sentencing, an interbranch group of criminal justice stakeholders across Montana, considered legislation to revise the limit on contract terms for community corrections programs based on recommendations from the Council of State Governments (CSG). This legislation would have limited contracts to seven years, in line with most other state contracts, unless the contract funded construction bonds. However, legislation was never introduced during the 2017 Legislative Session due to resistance from some of the contractors to other provisions within the bill.

We found the department tries to make the best use of these 20-year contracts as its offender population changes and as gaps in services are identified. The contractors have also added or changed services to make the contracted programs viable as the needs of the department change. For example, participants from two different treatment programs were intermingled in a pilot program when referrals were going down at one treatment program and going up at another. The department also added more specialized services with some contractors, such as enhanced or transitional services, additional sanction/hold beds, and bed space for shorter treatment options.

The Model for Contracted Community Corrections Is Different in Other States

As part of our work, we learned about contracted community corrections programs in five other states: Colorado, Idaho, Nebraska, South Dakota, and Wyoming. These other states provide community corrections programs under different models. For example, in Colorado, the Division of Criminal Justice within the Department of Public Safety (Montana Department of Justice equivalent) oversees its community corrections contracts instead of the corrections agency. It was considered more neutral to have the public safety department oversee these contracts, rather than the corrections department or the judicial system. Additionally, some states do not contract directly with providers. Rather, some states contract with local community corrections boards that subcontract with providers for community corrections programs. This is done in Colorado and Wyoming. These states reported the community corrections boards were useful as another layer of oversight. This is unlike Montana, where most providers contract directly with the state.

We interviewed CSG staff about its work in Montana corrections. Staff indicated the biggest anomaly with Montana community corrections is the length of the contracts. None of the other states we contacted had 20-year contracts for community corrections programs. The longest contract term in the other states we interviewed was five years, in Idaho and Colorado. In Colorado, the contracts between the state and the local community corrections boards are for five years. However, the contracts between the boards and the providers vary based on the local procurement rules, ranging from one to five years. Some states, such as South Dakota and Wyoming, use annual or two-year contracts. Lengthy contracts can hinder the state's ability to make needed changes in community corrections. Department staff indicated the department will consider shorter contract lengths when the current ones expire.

Many of the department's contracts for community corrections programs are for 20 years. This contract length does not align with the seven-year standard contract term limit within state government. While state law currently permits 20-year contracts for

these services, the length of the contracts impedes the department's ability to make necessary changes to community corrections services. The contracts were originally put in place for 20 years to allow contractors to secure the financing for building the facilities through construction bonds. However, these bonds are close to being paid off. Therefore, the department should switch to shorter contract terms for these services once the current contracts expire.

RECOMMENDATION #3

We recommend the Department of Corrections:

- A. *Limit future community corrections contracts to seven years or fewer, and*
 - B. *Seek legislation to limit the terms of these contracts.*
-

Chapter III – Ensuring Appropriate Offender Placement

Introduction

Many offenders in the criminal justice system have behavioral health disorders, including mental illnesses, substance use disorders, or both. Because state corrections agencies operate with limited budgets, it is important behavioral health resources are allocated effectively. Our second audit objective examined the Department of Corrections' (department) processes for placing offenders in community corrections programs, many of which provide substance use disorder treatment. Overall, we found the department should make the offender evaluation process more consistent and ensure pre-authorizations are timely. The department also should use data to ensure offenders are matched to the appropriate services. This chapter discusses these findings and our audit work that led to them.

Placement of Offenders in Community Corrections Programs

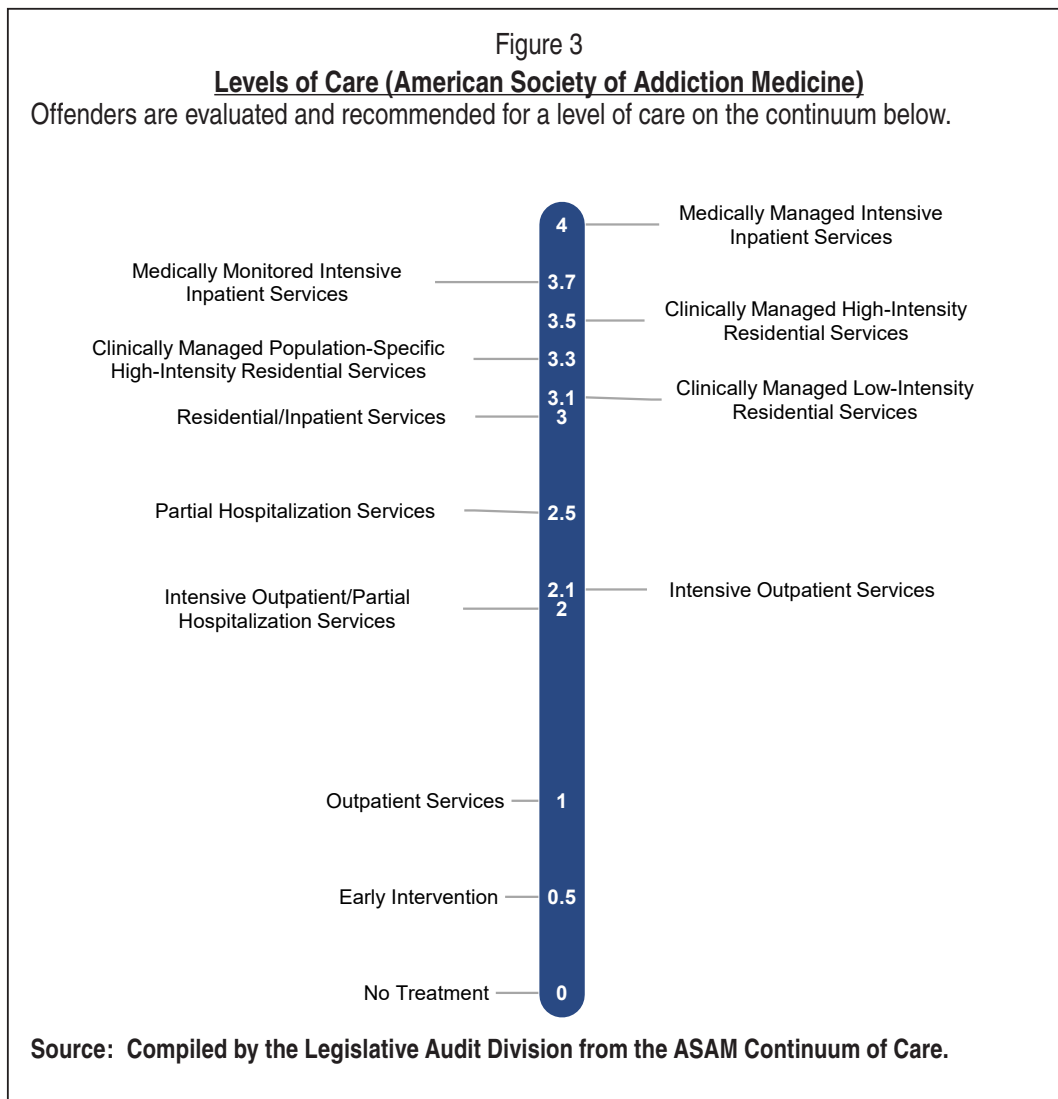
The department recently changed its approach to placing offenders in treatment centers. The department used to place offenders in treatment primarily based on drug type and the intensity of drug use. As part of the Justice Reinvestment Initiative and incorporating other changes from the 2017 Regular Legislative Session, the department modified its placement processes to better align with best practices. Research indicates better outcomes are obtained by matching offenders to the level and type of treatment or services that are appropriate based on their risk to public safety and their clinical needs. National correctional best practice is to focus correctional programming and treatment resources on offenders with the highest risk for recidivism. Treatment resources should be focused on offenders with the highest need.

Assessing Risk and Need

Department policy requires an assessment of recidivism risk for offenders under its supervision. The department defines recidivism as return to prison for any reason within three years of release from prison. The risk assessment categorizes an offender's overall recidivism risk by evaluating certain risk areas, such as criminal history, family and social support, and employment. Risk assessments are conducted by department staff or contract program staff, depending on where the offender is in the placement process and whether the offender already has a current assessment available. A risk assessment is considered current if it was completed in the past 12 months, and the offender has experienced no life-altering events, such as a divorce.

The department requires assessment of recidivism risk for all offenders. Some offenders may also be required to obtain substance use disorder (SUD) evaluation. The department relies on a SUD evaluation by a Licensed Addiction Counselor to determine the offender's level of need for treatment. Department staff indicated a SUD evaluation may be ordered based on an offender's risk assessment, when an offender has a long history of drug use or violations, or when an offender commits a new drug-related crime.

The result of a SUD evaluation is a recommended level of care or intensity of treatment. Evaluators base these recommendations on criteria from the American Society of Addiction Medicine (ASAM). The evaluator provides a level of care recommendation on a continuum ranging from 0 to 4, with 0 being no treatment and 4 being the highest level of care. The figure below shows the ASAM continuum of care, including the score associated with each level of care.



Each treatment program provides a certain level of care, depending on the intensity of treatment provided. Department staff indicated a program's level of care reflects the number of treatment hours provided per week and does not necessarily correlate with the length of the program. The department considers the contracted treatment programs as providing a 3.5 level of care, even though the programs vary in length. For example, one treatment program is 90 days, and another is nine months, but both are considered 3.5 programs by the department. The department considers Pine Hills, the state-run treatment program in Miles City, to be a 3.1 program. Prerelease centers (PRCs) do not have a program level of care designation, as the amount of required treatment programming varies by offender. The department now requires an offender to have a SUD evaluation recommending 3.5 care to be referred to the contracted treatment programs, except the felony driving under the influence (DUI) program, which is open to third and subsequent DUI offenders. A SUD evaluation is not required for an offender to be referred to a PRC.

The Screening Process

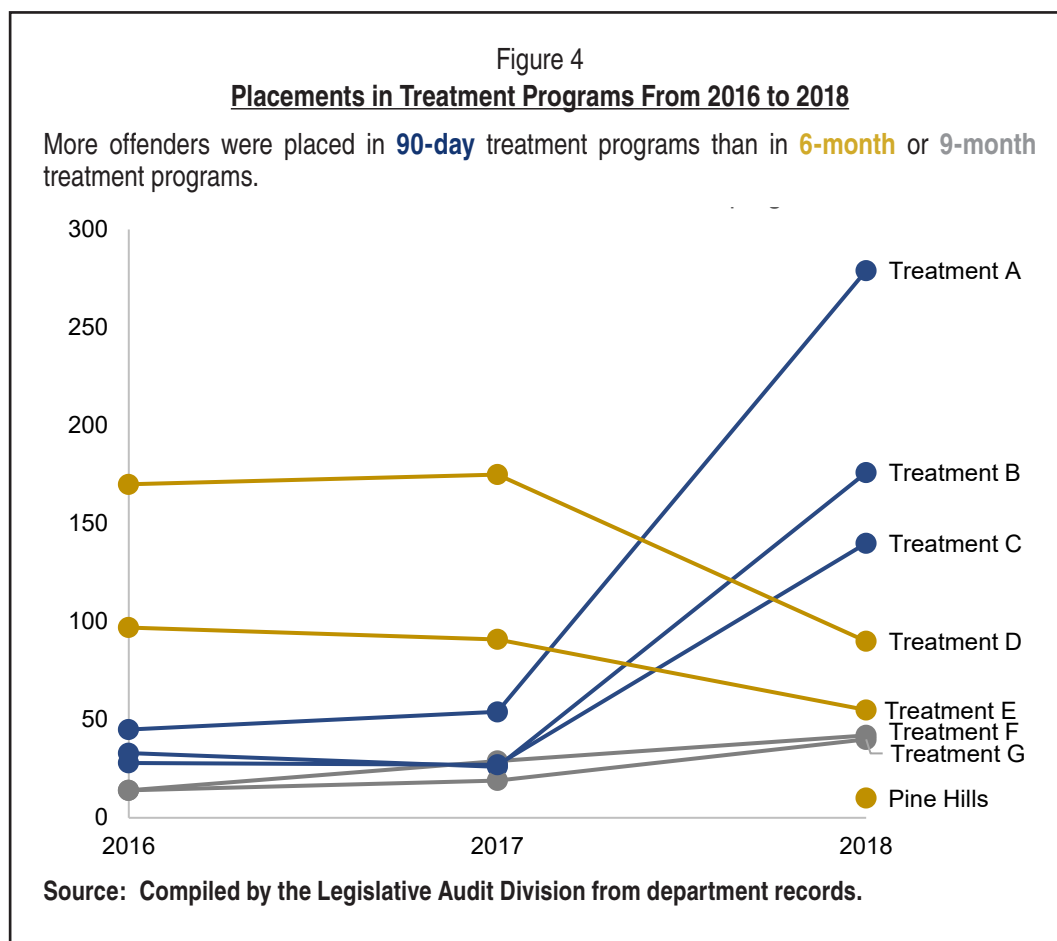
Once an offender is determined suitable for a community corrections program, the offender is referred to a program and screened. Department policy outlines this process. A screening packet is assembled for a referral by department staff or case managers at assessment centers. Two of the assessment centers are contracted and can refer offenders to their own treatment centers or PRCs. The screening packet includes application forms and other documents, such as the risk assessment and a SUD evaluation, if applicable. Offenders bound for PRC can choose to apply to a specific PRC first, and many choose based on family or employment factors. If denied at one PRC, the screening packet is automatically sent to another PRC in a rotation outlined in department policy. There is not a similar rotation for treatment centers.

Once the treatment center or PRC receives the screening packet, the program's screening committee screens the offender. The screening committees vary in size and makeup by program. However, they typically include representation from the program, the department, local law enforcement, and the public. The screening committee decides whether to accept or deny each offender. Department policy permits denial for several reasons, ranging from incomplete application materials to presenting an unacceptable level of risk for future criminal activity in the community. Three of the seven PRCs do not accept sex offenders. The contracted programs must report the results of each screening committee meeting to the department within three business days. Once approved at a program, the offender is transferred to the facility when a bed becomes available.

More Offenders Referred to Shorter Treatment Programs

To meet new statutory requirements, the department recently changed the way it places offenders in treatment centers. Several new laws associated with Montana's Justice Reinvestment Initiative require the least restrictive placement of offenders based on the results of a validated risk and needs assessment. In response, the department adopted policies and procedures encouraging the use of least restrictive treatment placements first, or a "build-up" in treatment. For example, if two programs are the same level of care, the department would likely opt to send the offender to the shorter program first. Department staff indicated least restrictive placement first makes sense from a clinical perspective and is fiscally responsible. A least restrictive placement first approach also aligns with the increase in value society has placed on serving individuals in the least restrictive environment.

We obtained data from the Offender Management Information System (OMIS) on the most recent placement of offenders in a community corrections program during calendar years 2016 through 2018. There were 6,358 offender placements in this time frame, which included placements in both state and contracted community corrections programs. We used the offender placement data to analyze placements in treatment programs from 2016 to 2018. We calculated the number of placements in treatment programs by year and looked for trends that might indicate changes in placement processes. Figure 4 (see page 27) shows these treatment placement trends.



Overall, the placement data reflected the department's change to a "least restrictive placement first" approach. That is, there were larger increases in placements in shorter treatment programs (blue lines) compared to placements in longer treatment programs (yellow and gray lines). Pine Hills, the state-run treatment program, is new and did not have any placements in the data before 2018.

Least Restrictive Placement First Has Had Unintended Consequences

Some of the changes in the offender placement processes had unintended consequences, including paying for empty bed space. The number of referrals to shorter treatment programs increased when the department incorporated its "least restrictive placement first" approach. Additionally, the shortest contracted treatment program increased from 60 to 90 days. This created a waiting list, causing offenders to have to wait longer for bed space in the shorter programs. These offenders wait in county jails, at Pine Hills in a department hold section, or in an assessment center at department expense.

One of the goals of the Justice Reinvestment Initiative was to reduce the number of convicted felons being held in county jails, and the department is financially incentivized to do this. To keep jail populations down, offenders are often transported to Pine Hills to wait for a bed. Administrators at Pine Hills indicated the wait for the shorter treatment programs increased to more than two months. Additionally, administrators at the state-run assessment center indicated it has a backlog of offenders partially due to having to wait for a bed to open in the shorter treatment programs. The cost per day per offender at Pine Hills is \$152.23. The department has not broken out the cost between treatment and hold beds at Pine Hills. However, \$152.23 per day is more than what the state pays for any contracted community treatment services, county jail holds, or holds at assessment centers. The rising need to send offenders to Pine Hills in Miles City to wait for space in treatment programs on the west side of the state increases transportation and holding costs for the department.

CONCLUSION

Statutory and department policy changes requiring offenders be placed in short-term (i.e., least restrictive) treatment programs before longer-term treatment has created inefficiencies. It has increased both offender wait time and department costs to house and transport offenders waiting for beds in short-term treatment programs.

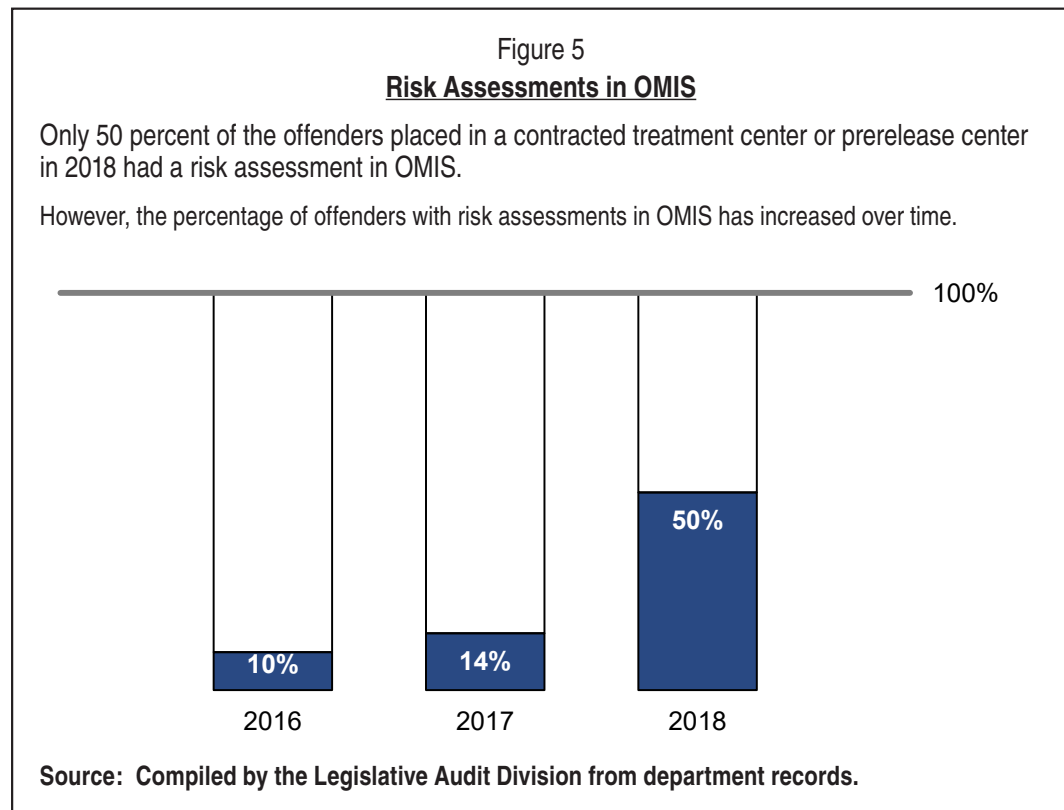
The Department Cannot Verify Community Corrections Services Are Focused on the Right Offenders

To reduce recidivism, the department should be focusing community corrections services on the right offenders. Best practice says the department should be matching offenders to services based on their recidivism risk and clinical needs. We used offender data to determine whether the department focused community corrections services on higher risk offenders. We also reviewed a sample of 40 screening packets, which contained the information the community corrections screening committees used to decide whether to approve or deny each offender. The following sections discuss this work and the limitations we encountered.

Many Offenders Were Missing Risk Assessment Information in OMIS

As part of our audit, we obtained data on the placements of offenders during 2016 through 2018 in community corrections programs. Of the 1,747 offenders placed in a contracted treatment center or PRC in 2018, 878 (50 percent) did not have a

risk assessment in OMIS. The figure below shows the percentage of placements in contracted treatment centers and PRCs with risk assessment information in OMIS over time.



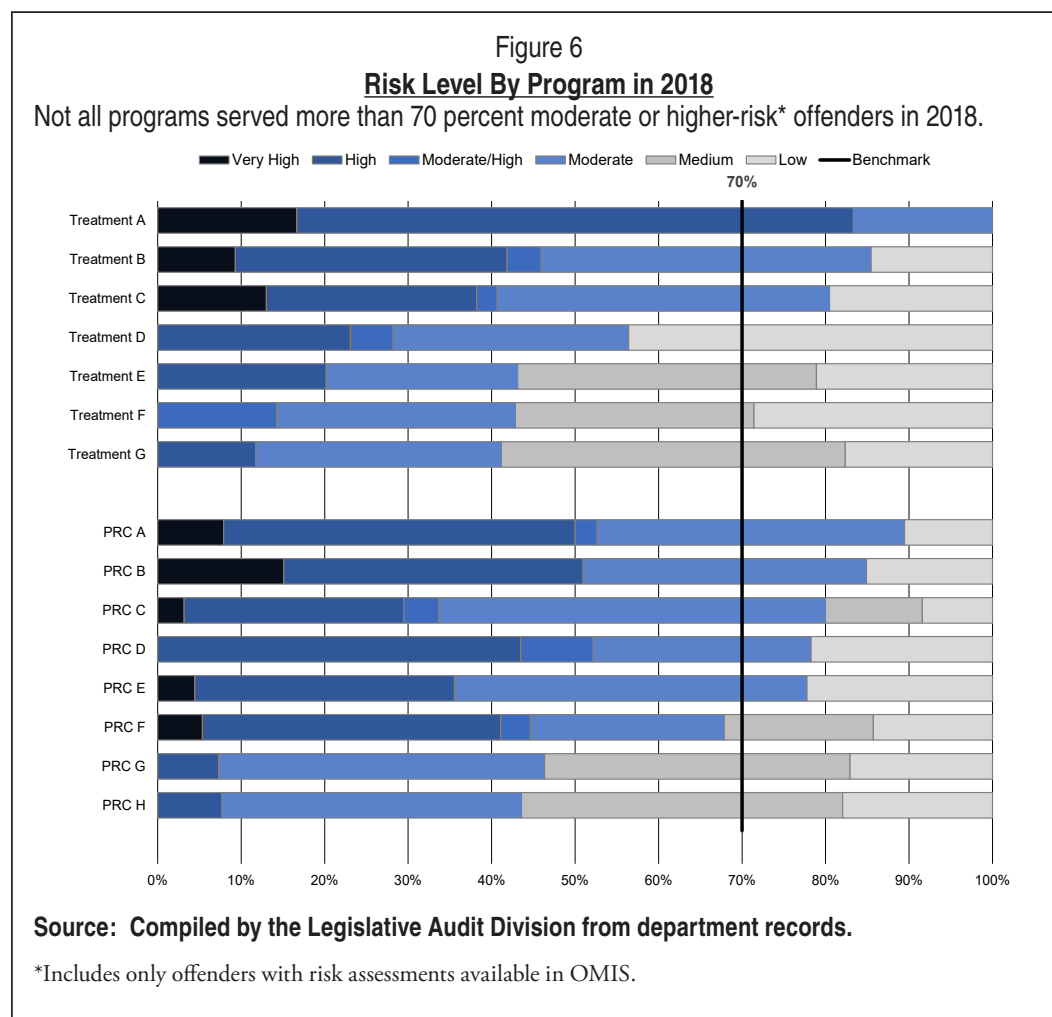
As the figure shows, while only half of offender placements in 2018 had risk assessments in OMIS, this was a significant improvement from 14 percent having risk assessments the previous year. Prior to 2018, the department was working on implementing the Justice Reinvestment Initiative, which is why there were so many missing risk assessments in OMIS in 2016 and 2017.

Department policy allows offenders not to have a current risk assessment in cases of acceptable extenuating circumstances, such as when the offender has absconded. However, we were unable to determine whether offenders met the criteria for acceptable extenuating circumstances. One of the reasons a significant percentage of risk assessments were missing is that contractors could not enter risk assessments into OMIS themselves. Our audit work found the department was manually entering over 1,000 risk assessments into OMIS. The contractors could not enter them directly into OMIS due to the cost of maintaining contractor access to an older version of OMIS as the department transitioned to a newer version. The department indicated it intends to allow contractors access to OMIS to enter risk assessments once the transition to the newer version of OMIS is complete.

We were limited in our ability to determine whether the department focuses community corrections services on offenders with the highest risk because of missing risk assessment data. Missing risk assessment data is an ongoing issue for the department. The work by the Council on State Governments (CSG) with the Montana Commission on Sentencing identified missing risk assessment data in 2016. The CSG recommended the department ensure assessments are conducted on every offender and to implement a quality assurance process for assessments.

Not All Programs Were Focused on Higher Risk Offenders

State corrections agencies should prioritize community-based programs for offenders with a moderate or high risk of reoffending. While many offenders were missing risk assessment information, we used the available risk assessment information from OMIS to assess this. We calculated the percentage of offenders in each risk level by program for placements in a contracted community corrections program in calendar year 2018. Correctional best practice indicates the percentage of moderate or high-risk offenders served by a program should be 70 percent or higher. The figure below shows the risk levels of offenders placed in a contracted program in 2018.



Based on available risk assessments, we found some programs appeared to serve mostly moderate or higher-risk offenders in 2018, but others did not. Four treatment centers and three PRCs had less than 70 percent offenders with moderate or higher recidivism risk.

Offender Risk Is Not Driving the Placement Process

In March 2016, the CSG told the Commission on Sentencing the department was not using risk assessments to drive placement decisions. The CSG recommended the department ensure risk and needs are used to determine placement and prioritize programming resources for individuals who are most likely to reoffend. With the level of missing risk assessment information in OMIS, the department still does not have the data to broadly examine this.

During our work, we sampled screening packets for 40 offenders who were referred, screened, and placed in contracted programs in fiscal years 2017 and 2018. Our sample included a mix of direct placements, placements from prison, and placements from assessment/sanction centers. The screening packets were mostly complete. However, risk assessments were often missing. Only 9 of the 40 packets (22.5 percent) contained a risk assessment. Contractors could view risk assessment information in OMIS when a risk assessment was not in the packet. However, many of the existing risk assessments in OMIS were outdated. There were 9 offenders in the sample for whom there was no risk assessment information in OMIS. It is unclear the extent to which risk level was considered when offenders were referred and screened. Because of this, it is evident that risk level is not driving the offender placement process.

The Department Does Not Have Electronic Data for Examining Offender Treatment Needs

In addition to recidivism risk, department staff or case managers at assessment centers should be matching offenders to services based on their clinical needs. An offender's clinical need for treatment is determined by a SUD evaluation, which are conducted by a Licensed Addiction Counselor. The results of SUD evaluations are not required to be entered into OMIS and are maintained as hard copy files. The department indicated it is considering moving toward electronic medical records at some point, which may include SUD evaluations. However, we were unable to determine whether placements in community corrections program in 2018 matched clinical needs using data from OMIS.

In our review of screening packets, offenders who were placed in treatment had SUD evaluations. Of the 29 SUD evaluations in our sample, 25 recommended a level of care in which the offender was ultimately placed. There were four offenders in our

sample whose level of care recommendations in the SUD evaluation did not match the program in which they were placed. For example, evaluators scored two offenders at 3.3 and 3.1 care, and recommended an inappropriate program based on those scores. Both were placed in a 3.5 program. This suggested some of the evaluators were not trained on the nature of treatment provided at community corrections programs. SUD evaluators would benefit from training on the nature of treatment provided at community corrections programs. Standardizing the SUD evaluation of offenders may also help alleviate this issue.

The Department Does Not Analyze Placement Data

The department does not analyze data on the placement of offenders based on risk and need. Best practices indicate corrections agencies should collect and analyze process and outcome data to make improvements to their frameworks for matching offenders with services. The department does not have the ability to conduct this type of broad data analysis because risk level data are not always available in OMIS, and SUD evaluation data are not tracked electronically. Rather, the department relies on its quality assurance processes, site visits, and its conditional release pre-authorization process to ensure offenders are matched to the appropriate services. Without complete risk and need information on offenders, we question the ability of department management to ensure community corrections services are being focused on the right offenders. Department staff acknowledged the importance of and desire for better data collection and evaluation of its community corrections placements. The department believes additional staff would be necessary to do so.

Other States Use Data to Assess Offender Placement

Other states collect and analyze data on offender placements based on risk and needs. These states are better able to analyze and report on whether offenders are matched to the appropriate services. For example, Colorado produces an annual report that breaks down the risk and needs of the community corrections population as well as the percentage of offenders who received the level of needed treatment. Idaho requires its corrections and public health departments to submit a joint report to the legislature to address the needs of moderate and high-risk offenders supervised in the community. This Idaho report discusses reasons for offenders who needed treatment but did not receive any. The report also shows the treatment level recommendations for offenders by risk level. These types of reports are not yet possible in Montana due to the absence of complete risk and need data.

The department does not have processes for collecting data on offender placements based on recidivism risk and clinical need for substance use disorder treatment. Because of this, the department cannot ensure at a broad level that offenders are

matched with the appropriate community corrections services. It currently relies on more manual processes, such as site visits, pre-authorizations, and quality assurance audits. While offenders are referred to certain community corrections programs based on their clinical need for treatment, recidivism risk is not used to help drive placement decisions. When offenders are not matched to services based on risk and need and when services are not focused on offenders with higher risk and need, the department may not be meeting its goal of reducing recidivism.

RECOMMENDATION #4

We recommend the Department of Corrections develop processes to:

- A. *Ensure offender recidivism risk and clinical need drive decisions about placement in community corrections programs.*
 - B. *Collect data that will allow the department to broadly ensure offenders are being matched to community corrections programs based on recidivism risk and clinical need.*
-

Substance Use Disorder Evaluations Are Not Conducted Consistently

The department uses SUD evaluations to determine the offenders' needs for treatment. SUD evaluations (if applicable) must be included in the screening packets when contracted programs determine whether to accept or deny an offender. As part of our work, we reviewed screening packets for 40 offenders who were referred, screened, and placed in contracted programs in fiscal years 2017 and 2018. We found SUD evaluations were included when they were required to be, and they were conducted by Licensed Addiction Counselors (LACs), as required by the department. However, the evaluations varied significantly. The SUD evaluations varied in length, in the level of information provided during screening, and in the tools used to assess the offender. For example, some were one-page summaries providing only scores from various diagnostic tools and limited information on the offender. Others were full evaluation reports of up to 20 pages. There were also evaluations in between these extremes. Some evaluators used one or two screening and assessment tools, while others used four or five.

In our interviews with contractors, they generally agreed screening packets contained the information needed to make an informed decision about an offender. However, some contractors indicated SUD evaluations in screening packets varied

significantly in quality. They believed this resulted in some inappropriate level-of-care recommendations. They attributed the varying quality of SUD evaluations to:

- ♦ Some evaluations cost less but are less extensive and detailed than other evaluations.
- ♦ Some evaluators lack experience with the criminal justice population.
- ♦ Some evaluators do not have a good understanding of what services each program provides.
- ♦ Some evaluators do not spend enough time with the offender and conduct little testing of the offender.
- ♦ There is no standard SUD evaluation tool or training.

The Substance Use Disorder Evaluation Process Is Not Standardized

Department policy requires evaluators to be properly licensed to conduct SUD evaluations, but there is no requirement for consistency in the evaluation process. There is no standard process or tool that is used, and the amount of information included when reporting the results of these evaluations differs. SUD evaluations are conducted by a variety of individuals. For example, SUD evaluations are conducted by:

- ♦ LACs employed by the department.
- ♦ A department-contracted LAC.
- ♦ The offender's own LAC, if the offender was getting treatment out in the community while on department supervision.
- ♦ LACs at an assessment center.

The department does not have policy on how SUD evaluations should be conducted or how much information should be included when referring offenders to treatment programs. As such, the SUD evaluation process is not standardized.

Other States Have Standardized Substance Use Disorder Evaluations

States must have a framework for matching offenders to the appropriate services. For this framework to work, states need to ensure their screening and assessment processes are applied consistently. Other states have standardized processes for evaluating the SUD treatment needs of offenders. For example, South Dakota and Wyoming use standardized tools for evaluating the treatment needs of offenders. Colorado uses a standardized worksheet to combine information from various assessment tools to determine which level of treatment is appropriate for an offender. Nebraska requires SUD providers who evaluate and work with offenders to register with the corrections

department. Nebraska uses this network of registered providers rather than SUD treatment community corrections programs. Registered providers must receive training and demonstrate competency in working with justice-involved individuals. Registered providers in Nebraska must also use standardized assessments and evaluations and enter results into the department's data system.

In discussing the potential for standardizing the SUD evaluation process, the department indicated it relies on the licensing standards set by the Montana Board of Behavioral Health. While we do not question the validity of the licensure of the evaluators or the diagnoses in SUD evaluations, standardizing SUD evaluation would ensure more consistent referral and screening of offenders. Standardizing the process would also introduce options for the department to collect data on the treatment needs of offenders in the future. This would allow the department to better ensure offenders are matched to the appropriate services to most effectively reduce recidivism.

RECOMMENDATION #5

We recommend the Department of Corrections require standardized substance use disorder evaluations on offenders referred to community corrections programs.

Pre-Authorization for Sexual and Violent Offenders Is Not Always Timely

Some offenders can apply for conditional release, which is early release to community supervision. Sexual and violent offenders must be pre-authorized by the department to be referred to a community corrections program prior to conditional release. The PFB chief or designee and the department director or designee review pre-authorizations requests for these offenders. Department policy requires review at the PFB level to occur within 15 business days of receiving the request and at the director level to be within 15 business days after PFB-level approval. Sexual and violent offenders wait at assessment centers while their pre-authorization requests are reviewed by the department.

During our work, we reviewed a judgmental sample of 50 pre-authorizations for conditional release for sexual and violent offenders between October 2018 and March 2019. We found that 13 of the requests we reviewed (26 percent) did not meet the time frames outlined in department policy. Most pre-authorizations (12) were untimely only at the PFB level. These had review times ranging from 16 to 37 business days.

When pre-authorizations are not timely, sexual and violent offenders must remain at an assessment center longer than necessary. This increases costs to the state at between \$80 and \$100 per day.

Department staff indicated delays in the pre-authorization review process happen when needed information is not accessible right away. For example, the request may be missing sentence calculations, mental health information, or victim-sensitive information. Several staff may be needed to compile the necessary information for these requests. Since the pre-authorization process is relatively new, the department indicated it continues to work on the process and keep staff trained on the required documents for these requests.

RECOMMENDATION #6

We recommend the Department of Corrections ensure pre-authorizations for the conditional release of sexual and violent offenders are conducted within the time frame outlined in department policy.

Chapter IV– Measuring the Effectiveness of Community Corrections Programs

Introduction

The mission of the Department of Corrections (department) is to enhance public safety, support the victims of crime, promote positive change in offender behavior, and reintegrate offenders into the community. Effective correctional programs improve outcomes, such as reducing time in and returns to the criminal justice system. With the strong tie between substance abuse and crime, effective substance use disorder (SUD) treatment and other rehabilitative programming in community corrections programs are important in achieving this. For our third audit objective, we assessed the effectiveness of contracted community corrections programs by conducting focus groups with residents and analyzing offender outcome data. We also assessed how the department evaluates the effectiveness of its contracted community corrections programs. This chapter discusses our findings and includes one recommendation to the department related to using offender outcome data to evaluate the effectiveness of these programs.

Residents Had Mixed Perceptions of the Effectiveness of Community Corrections Programs

As part of our audit work, we conducted focus groups of between five and ten residents at each of the contracted community corrections programs. Many participants had experience with more than one community corrections program in Montana. We asked focus group participants whether they thought the program they were in would help them avoid reoffending when they left. Each focus group also shared program-specific concerns and suggestions for improvement. For example, several prerelease centers (PRCs) focus groups desired cell phones and access to the internet for job searches. Some PRC focus groups indicated they were at the PRCs longer than expected. Treatment focus groups had other suggestions, such as better access to exercise and more courses on trade skills.

The perceived effectiveness of the community corrections programs varied by focus group. The consensus in focus groups at some programs was that the programming was helpful. A recurring theme we heard was the program was only helpful with the right mind-set and the willingness to change. Residents in these programs thought staff truly cared about their rehabilitation, and they reported the structure was beneficial. Many residents at the PRC focus groups said getting a job and saving money was more valuable than the programming provided at the PRC. There were also focus groups at other programs that generally did not believe the program was worthwhile. Other

focus groups believed that treatment program staff did not treat them with respect and were not qualified, and that the programming was not effective. Some also believed the program was too long and there was too much idle time.

The Contracted Community Corrections Programs Reduced Risk for Some Recidivism

In addition to offender focus groups, we analyzed offender data to assess the effectiveness of contracted community corrections programs. We used offender data from the department's Offender Management Information System (OMIS) to examine offender outcomes after release to the community. The data included 3,229 offenders released to a Montana community in calendar year 2016. Both releases to the community under department supervision and flat discharges (i.e., release from department supervision) were included in the data.

First, we used a statistical technique called propensity score matching to identify groups of offenders who were similar, on average, except whether they went to a treatment center or PRC prior to release to the community. Propensity score matching enabled us to account for the fact that the types of offenders who were referred to community corrections programs may have differed from the types of offenders who were not referred to these programs. In other words, it allowed us to minimize the effects of selection bias on the part of the department, contractors, or offenders themselves. If we did not use this method, any analysis of recidivism could be criticized as invalid because decisions about which offenders participate in community corrections programs are not made randomly. Propensity score matching created as close to experimental conditions for this analysis as was possible and, therefore, significantly increased the validity of the results.

In identifying similar groups of offenders, we accounted for the following offender characteristics:

- ◆ Gender
- ◆ Race
- ◆ Age
- ◆ Offense type
- ◆ Felony count
- ◆ Correctional status
- ◆ Recidivism risk level

Of the 3,229 offenders in the data, 988 (about 30 percent) were released to the community from a contracted treatment center or PRC. We referred to this group

as the treatment group. We identified a similar group of 988 offenders who were not released to the community in 2016 from a contracted treatment program. We referred to this group as the control group.

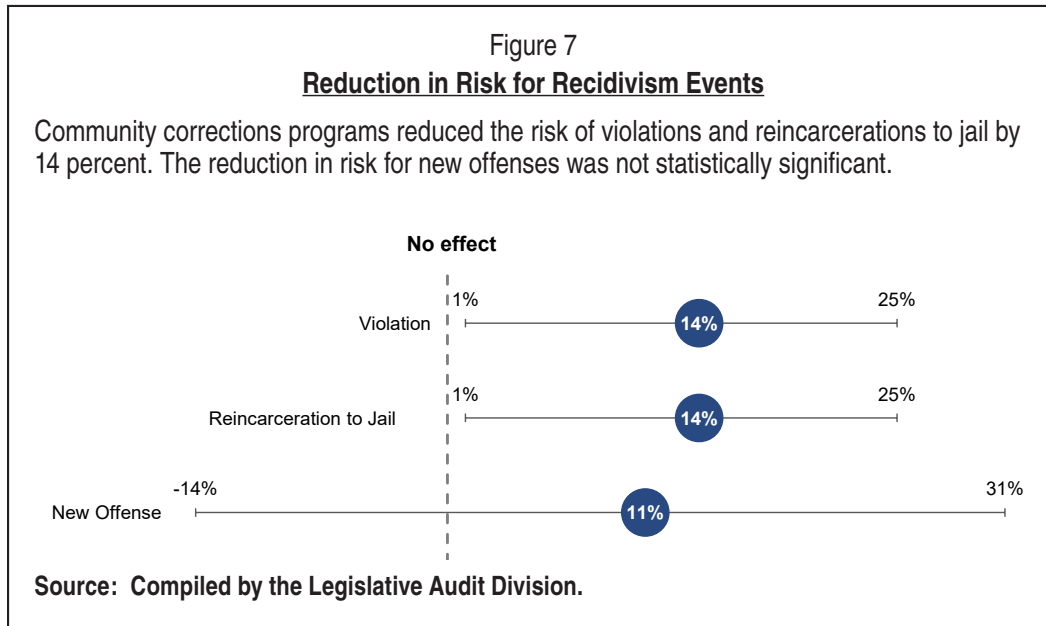
We then compared outcomes for offenders in the treatment group with outcomes for offenders in the control group between release to the community in 2016 and September 2018. The primary outcome the department tracks is recidivism, which it defines as return to prison in Montana for any reason within three years of release from prison. We chose not to define recidivism this way for our analysis since offenders placed in community corrections programs do not always go to prison first. Rather, we used three events to represent “recidivism,” or repetition of criminal or delinquent behavior. These were:

1. **Violation of the conditions of supervision:** Offenders in the community under department supervision are subject to the standards of supervision ordered by the court, the Board of Pardons and Parole, or the department. A violation of the conditions of supervision can result in sanctions or revocation of community supervision. Violations vary in severity. For example, some are less severe and are called compliance violations (i.e., technical violations), such as missing appointments with a probation and parole officer. More serious violations are noncompliance violations, such as a new criminal offense.
2. **Reincarceration to jail:** Offenders in the community may be rearrested for various reasons, such as for a new crime or for certain violations. In Montana, some offenders can be sent to an assessment/sanction center or to a 30-day sanction bed at a PRC in lieu of going to jail. We considered these movements, in addition to reincarcerations in official jail facilities, as reincarcerations to jail.
3. **New offense:** We defined a new offense as one that occurred after release to the community in 2016 that resulted in a conviction. New offenses included all types of offenses and were not necessarily new offenses that resulted in a prison sentence.

We then analyzed the data to determine whether the control and treatment groups differed significantly in the risk of a recidivism event after release to the community. We used a method called survival analysis to do this. Survival analysis considers the timing of an event of interest; in this case, an event of interest was a violation, a reincarceration to jail, or a new offense after release to the community. It is important to note that risk of an event is not the same as the probability of an event. For example, the probability of a violation is the likelihood of a violation occurring. However, the risk of violation considers the timing of the violation, or the relative rate of violations given how long offenders went without one. Our analysis estimated the risk of the three recidivism events for the control and treatment groups. We excluded flat discharges from our analyses on violations and reincarcerations to jail. Violations do not apply to

flat discharges and the department does not track reincarcerations to jail for offenders who are flat discharged unless the offender ends up on department supervision.

We found statistically significant evidence the contracted community corrections programs reduced the risk of violations and reincarcerations to jail by 14 percent. However, there was insufficient evidence they reduced the risk of a new offense. The figure below shows the estimated reduction in risk of recidivism events for those in the treatment group.



As the figure shows, we estimated a reduction in risk for violations and reincarcerations to jail of 14 percent, and these results were statistically significant. This meant that, after release to the community, there were significantly fewer offenders in the treatment group compared to the control group who committed a violation or were reincarcerated to jail. We estimated a reduction in risk for new offenses of 11 percent, but this result was not statistically significant. Our analysis showed evidence the community corrections programs reduced the risk for violations and reincarcerations to jail after release to the community. However, there was insufficient evidence they lowered the risk of a new offense. It is important to emphasize this did not mean community corrections programs did not reduce the risk for new offenses. Rather, our statistical model did not detect a reduction in risk, which could have been due to some of the limitations we encountered in the analysis.

Some of the limitations we encountered in our data analysis were:

- ♦ **Missing data:** A large percentage of offenders in the data were missing recidivism risk level. While we used the available risk assessment information

in our analysis, complete risk assessment on offenders would have allowed us to better identify offenders with similar recidivism risk.

- ♦ **Smaller sample size:** There were only around 200 offenders in the treatment and control groups that committed a new offense. A larger sample size or a longer time frame for the analysis may have shown there is a difference in the risk for new offense between the treatment and control groups.
- ♦ **Other offender characteristics:** There were other useful offender characteristics for which the data were either unreliable or unavailable. For example, SUD evaluation results would have been particularly useful in identifying offenders from both groups with similar treatment needs. However, this information is not captured electronically. Additionally, data on whether offenders continued receiving treatment services in the community after leaving the community corrections program would have been useful when looking at outcomes. However, this information is not tracked by the department. Other characteristics, such as offender marital status and employment status, are captured electronically but were determined to be too unreliable or time-sensitive to use in the analysis.

Context for Understanding Our Results

The range of results from studies on recidivism in other states is broad, making it difficult to interpret whether a 14 percent reduction in recidivism is large enough or worth the cost of the community corrections programs. Other states and correctional entities have studied the effectiveness of programs intended to reduce recidivism. These studies varied in the time frame reviewed, the intervention and offender population studied, the definition of recidivism, and the statistical approaches used. For example, many of these studies focused on substance abuse treatment programs for offenders in prison, while others focused on community-based or re-entry programs, such as work release programs. Recidivism was often defined as re-arrest or re-incarceration in these studies. Table 3 (see page 42) summarizes some of these studies and the estimated effectiveness or reductions in recidivism.

Table 3
Results of Recidivism Studies

Year	Source	Intervention Studied	Recidivism Measure	Estimated Effectiveness (Reduction in recidivism)
2002	Canada	Treatment in prison	Re-incarceration	13%
			Re-conviction	29%
			Technical violation	No significant difference
2007	New York	Re-entry services	Re-arrest	23%
			Re-conviction	23%
			Re-incarceration by parole violation	No significant difference
			Re-incarceration by new sentence	No significant difference
			Any re-incarceration	No significant difference
2019	California	Treatment in prison	Conviction of a crime within 3 years of release	No significant difference
2012	Michigan	Outpatient treatment	Return to prison	No significant difference
2016	Florida	Work release facilities	Arrest for a new crime	5%
			Arrest for a new felony	3%
			Conviction for a new felony	4%
2013	Virginia	Re-entry services	Re-arrest within 6 months	3%
			Re-arrest within 12 months	3%
2018	Washington State Institute for Public Policy	Treatment during incarceration	Various	14%
		Treatment in community		No significant difference
		Work release		4%
2000	Federal Bureau of Prisons	Treatment in prison	Males - Recidivism rate	16%
			Females - Recidivism rate	18%
2018	Council of Economic Advisors	Treatment in prison	Re-incarceration	17%
2013	Maryland	Re-entry services	Re-arrest	30%
			Re-arrest leading to a conviction	57%
			Re-arrest leading to incarceration	66%
2012	Colorado	Treatment in prison	Males - Recidivism rate	50%
			Females - Recidivism rate	19%
2004	Delaware	Treatment in prison	Re-arrest by 42 months	70%
			Re-arrest by 60 months	60%

Source: Compiled by the Legislative Audit Division.

The results from other studies were mixed. That is, some studies did not find statistically significant reductions in recidivism, while others estimated reductions of up to 70 percent. The results of our analysis fell within the range of results found in these other studies. We estimated a reduction in risk of violations and reincarcerations to jail by 14 percent, though this estimate had a relatively large margin of error.

Because of this and the lack of established benchmarks for expected reductions in recidivism, it is unclear whether Montana's community corrections programs are effective enough to result in cost savings or cost avoidance for the state. As such, the community corrections programs in Montana are worth more rigorous analysis by the department to determine the extent to which they are effective as a whole, as well as which particular programs or contractors are most effective.

CONCLUSION

Our analysis found the contracted community corrections programs reduced the risk of violations and reincarceration to jail by 14 percent. However, it is unclear whether this translates to cost savings to the state, given the \$43.9 million annual value of the contracts.

Community Corrections Contractors Assess the Effectiveness of Their Programs in Varying Ways

Contractors measure the effectiveness of their own programs in varying ways. Some programs track program completion rates or decreases in criminality scores, such as risk level, between coming to and leaving the program. Some programs consider other achievements, such as money saved, sober time, or successful employment. A couple programs follow up on offenders who have left their program. For example, one contracted program tracks offenders for up to ten years using OMIS. The contractor calculates the number of offenders who successfully completed the program who then completed department supervision, reoffended, or were revoked. Some contractors also obtained independent evaluations of their programs. For example, a consulting company evaluated the two nine-month methamphetamine treatment programs, one in 2015 and one in 2017. The University of Texas also evaluated Montana's felony DUI program in 2014.

The Department Is Evaluating Whether Programs Are Evidence-Based

The department recently made changes to how it evaluates its programs, including contracted community corrections programs. Some correctional programs and practices have been shown to be correlated with reductions in recidivism and are thus termed "evidence-based." There are varying definitions of recidivism, but they all refer to repetition of criminal or delinquent behavior. Many states have enacted laws requiring correctional programs and practices to be evidence-based. Montana is one of these states. The Legislature enacted Chapter 390 of the 2017 Regular Legislative

Session as part of the state's Justice Reinvestment Initiative. Among other provisions, the department is required to:

- ♦ Ensure correctional programming is evidence-based,
- ♦ Ensure contracts contain minimum standards for adhering to evidence-based programming requirements, and
- ♦ Adopt an evidence-based program evaluation tool.

The department is in the process of implementing these requirements. The department modified most of its community corrections contracts to include evidence-based programming requirements. In early 2019, department staff were trained on a program evaluation tool, the Correctional Program Checklist (CPC). The CPC quantifies where correctional programs are on the spectrum of evidence-based practices. The department is currently evaluating the contracted community corrections programs using the tool. This evaluation process is a good first step in ensuring community corrections programs are effective.

Other States Are Moving Toward Evaluating Effectiveness Based on Offender Outcomes

Effective correctional programs improve outcomes, such as reducing time in and returns to the criminal justice system. Research shows that matching offenders to correctional services based on risk and need improves outcomes. States must have a framework for appropriately matching offenders to community corrections services. For this framework to work, process and outcome data must be collected, analyzed, and used to improve programs. Some of the other states we talked to do not use outcomes to evaluate the effectiveness of contracted community corrections programs. That is, these states do not use outcome measures, such as success or recidivism rates, to evaluate effectiveness or to determine whether to continue community corrections contracts. However, other states are moving toward correlating the evaluation of correctional programs with positive outcomes, such as reductions in recidivism.

Some states we interviewed measure program-level outputs and outcomes to assess the effectiveness of community corrections programs. Colorado measures and reports on the average reduction in recidivism risk scores of offenders between intake and termination from community corrections programs. It also measures recidivism rates at the program- and facility-level. Colorado provides a public-facing dashboard displaying one- and two-year recidivism rates and other outcomes and outputs for community corrections programs and facilities. The state is also moving toward performance-based contracts for community corrections. Colorado plans to define program performance using a tool like the CPC and risk-informed outcomes. Pennsylvania is another state using performance-based contracting for community corrections. Pennsylvania

compares contractors to baseline recidivism rates at six-month intervals. Programs demonstrating recidivism rates above the baseline receive one warning. Afterward, contracts for programs with recidivism rates above the baseline may be terminated.

The contracts for community corrections programs in Montana include little incentive for contractors to improve outcomes. There are no financial or other incentives in the contracts when offenders avoid new offenses after completing a community corrections program. Similarly, there are no penalties to the contractors when offenders do reoffend. Many contractors expressed interest in the department providing more statistics and outcome measures related to their programs. However, some contractors did not think they should be held accountable for negative outcomes once offenders left their programs. These contractors noted it is difficult to know the cause when an offender is unsuccessful in the community. They believe it is difficult to determine if an offender was unsuccessful in the community due to a community corrections program or for other reasons. For example, a lack of supervision in the community by the department or a lack of treatment options available in the community could be the cause. Our analysis demonstrated it is possible to estimate the effectiveness of these programs. However, the department does not evaluate the effectiveness of these programs based on offender outcomes, which is further discussed in the next section.

The Department Does Not Assess Effectiveness Based on Outcomes

Using the CPC to evaluate programs is a good first step for the department to ensure community corrections programs are providing effective services to offenders. Some of the evaluation areas on the CPC include tracking recidivism and conducting evaluations comparing treatment outcomes with a control group. However, these are done by the contractors, not the department. The department should analyze offender outcome data to assess whether community corrections programs are effective. This should be done broadly and at the program-level. It is also useful to consider other program-level outputs, such as program completion rates or employment rates.

The department has not developed processes for assessing the effectiveness of community corrections program based on offender outcomes. This is not a new observation. A 2007 performance audit of chemical dependency and sex offender treatment programs (07P-08) noted there were no effectiveness goals or comparative recidivism information for community corrections programs. Additionally, the Council on State Governments (CSG) pointed out in its work with the Commission on Sentencing in March 2016 that the department's recidivism measures are broad. The CSG recommended the department be required to measure outcomes by providers and programs in addition to the outcomes of its placement decisions.

The department broadly tracks outcomes, such as recidivism and return rates. The department defines recidivism as return to prison in Montana for any reason within three years. It defines return rate as return to an adult community correctional facility or prison in Montana for any reason within three years. The department provided the statistics shown in Table 4 for fiscal year 2015 in its 2019 biennial report.

While these outcome measures are useful in assessing overall effectiveness, the department does not also measure outcomes to assess the effectiveness of community corrections programs. This should be done broadly and at the program-level.

Table 4
FY2015 Recidivism and Return Rates

	Males	Females
Prison Recidivism Rate	39%	24%
Returns to Any Correctional Facility:		
Within the First Year	57%	53%
Between 1 & 2 Years	32%	44%
Between 2 & 3 Years	11%	3%

Source: Compiled by the Legislative Audit Division from department reports.

Because the department does not measure outcomes to assess effectiveness, the department cannot demonstrate community corrections programs reduce recidivism. The department also does not know whether some programs are ineffective, or which programs are most effective in rehabilitating offenders. The department should analyze outcome data to assess whether correctional programs are effective. To do so, the department may need to capture more or better data. Department staff indicated that staffing challenges, limited resources, competing priorities, and data collection challenges have limited the department's ability to capture needed data and to measure outcomes for community corrections programs. Additionally, the department attributed some of the issue to its limited ability to make changes to existing contracts. As such, the department may need to wait until the current contracts expire to incorporate performance standards into community corrections contracts. In the meantime, the department can begin developing processes that measure the effectiveness of community corrections programs based on offender outcome data. Developing and implementing these processes may require a combination of additional staff and contracted services.

RECOMMENDATION #7

We recommend the Department of Corrections develop and implement processes to measure the effectiveness of contracted community corrections programs based on offender outcome data.

DEPARTMENT OF
CORRECTIONS

DEPARTMENT RESPONSE



Montana Department of Corrections

Director's Office

A-1

Steve Bullock, Governor
Reginald D. Michael, Director

May 27, 2020

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Legislative Audit Division
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RECEIVED
MAY 28 2020
LEGISLATIVE AUDIT DIV.

RE: Department of Corrections response to Legislative Audit Report 18P-05

Dear Mr. Maciver:

Thank you for the opportunity to respond to the performance audit report regarding the effectiveness of contracted community corrections programs in reducing recidivism. We have reviewed the recommendations contained in the report and our responses are as follows:

SCOPE LIMITATION:

The department recognizes its responsibilities under HIPAA regarding the protection of health information. The department respectfully holds that the Department of Corrections is not a "health plan," subject to review by a "health oversight agency." As such, the Legislative Audit Division (LAD) does not have legal authority to examine individuals' protected health information contained within offender screening packets without the individuals' consent. In the circumstance cited by the audit, the department proposed three appropriate solutions to the dilemma: 1) The department offered the LAD assistance in obtaining HIPAA-compliant written releases of information from offenders whose substance use disorder evaluations the LAD wished to review; 2) that the LAD seek a determination from the U.S. Secretary of Health and Human Services that federal law does not preempt the state laws upon which the LAD relies; or 3) that the LAD seek amendment of state laws to specify that the LAD has access to individuals' protected health information with the individuals' consent so long as the LAD agrees not to further disclose the information. These solutions were not accepted by the LAD. The department values the work of the LAD and makes every effort to cooperate within the confines of its legal authority.

RECOMMENDATION #1:

We recommend the Department of Corrections follow state contracting policy and best practices by:

- A. Maintaining written contracts when obtaining and paying for community corrections services.

- B. Amending community corrections contracts prior to the effective date and signing them after the contractor.
- C. Providing public notice as required by administrative rule when expanding community corrections contracts.
- D. Avoiding paying for empty bed space at community corrections programs.

Response:

We concur with Recommendations 1.A., 1.B., and 1.C. We do not concur with Recommendation 1.D. The department recognizes the importance of maintaining written contracts when obtaining and paying for community corrections services and strives to maintain this standard of procurement. In some cases, there are circumstances beyond the control of the department which warrant amendment of a contract after the effective date of the contract. Such a circumstance occurred during the 2017 Legislative Special Session, which resulted in rate decreases for all contracts for fiscal year 2018. Following the special session, the department amended contracts to reflect the decreased rate from the beginning of the fiscal year. The department revised the order of obtaining contract signatures in October, 2019 and now the department representative is the final signer. The department agrees with the recommendation regarding the provision of public notice as required by administrative rule for expansion of programs. The department does not agree that the issue cited in the audit report represents a violation of administrative rule requirements. The Connections Corrections West (CCP West) and WATCH West programs are co-located in the same DOC-owned building at Warm Springs, MT and operated by the same contractor. Due to population fluctuations resulting from a number of factors, the CCP West program experienced an increase in offender referrals and an increased wait-time for offender placement, while, during the same time period, the WATCH West program experienced a decrease in offender referrals, resulting in empty beds in that program. In order to more effectively manage the offender population, the department shifted 34 beds between the programs by amending both contracts. This did not result in an overall expansion of treatment beds in the location and so was not subject the administrative rule cited by the auditors. Finally, the department does not concur with the final component of this recommendation. As noted by the auditors, current contracts contain specific guarantees related to bed usage. In times of population fluctuation, the department works with contractors to best use the contracted capacity of programs as outlined by the current contract or through mutually agreed upon amendment to the contract. However, the department cannot unilaterally amend contract terms and must comply with the terms of the contracts in effect.

RECOMMENDATION #2:

We recommend the Department of Corrections improve the monitoring of community corrections contracts by:

- A. Developing standard timelines and expectations for following up on findings from quality assurance audits, and
- B. Developing standards for regularly evaluating the performance of community corrections contractors.

Response:

We concur. Prior to October 2018, one FTE was allocated for population management of over 1,700 offenders and monitoring of all of the contracts for the seventeen programs under the Programs and Facilities Bureau (PFB). Since that time, the department identified and prioritized the assignment of three additional FTE to PFB for contract and case management. While the staff resources of the PFB increased, so did the number of contracts and the overall responsibilities of the staff assigned to this bureau as new programs were implemented. The department intends to develop standard timelines and expectations for following up on quality assurance audits and evaluating community corrections contractor performance. At this time, the department intends to seek additional FTE through the EPP process for the Programs and Facilities Bureau (PFB) to aid in this endeavor and improve the department's ability to better manage these contracts, as the department has exhausted its internal resources for available staff.

RECOMMENDATION #3:

We recommend the Department of Corrections:

- A. Limit future community corrections contracts to seven years or fewer, and
- B. Seek legislation to limit the terms of these contracts.

Response:

We concur with Recommendation 3.A; we do not concur with Recommendation 3.B. The department recognizes the limitations and difficulties associated with twenty-year contracts and does not intend to enter into these contracts in the future. However, these extended contract terms were intentionally allowed by the 2005 Legislature through statutory change to allow for better financing of the infrastructure for these facilities. The bill, HB 313, passed overwhelmingly in both the House of Representatives and the Senate and was supported by government entities, the Montana Facility Finance Authority, and nonprofit agencies. At this time, the department does not intend to seek legislation to revise these statutes.

RECOMMENDATION #4:

We recommend the Department of Corrections develop processes to:

- A. Ensure offender recidivism risk and clinical need drive decisions about placement in community corrections programs.
- B. Collect data that will allow the department to broadly ensure offenders are being matched to community corrections programs based on recidivism risk and clinical need.

Response:

We concur. The department is revising its policies and procedures related to determining offender placement to ensure offender risk and clinical need drive placement decisions. The department has prioritized the development of a mechanism for collection of electronic data related to placement decisions in its offender management information system (OMIS).

RECOMMENDATION #5:

We recommend the Department of Corrections require standardized substance use disorder evaluations on offenders referred to community corrections programs.

Response:

We partially concur. The department is establishing a work group comprised of clinical professionals representing the department, our contracted partners, and community-based providers to identify, review, and recommend substance use disorder evaluation requirements to be used by all department and department-contracted clinicians for evaluations of the offender population. Once this group's recommendations have been finalized, the department will adopt policy and procedure to formalize appropriate requirements and provide the applicable training. This work has been prioritized by the department, but the timeframe for completion of this work will be impacted by staff resource limitations within the department. The department will continue to seek out technical assistance through grant opportunities for assistance with this important project. Finally, the department does not have the ability to make evaluation requirements for those clinicians not paid by the department or a department contractor, but will provide training to these clinicians on the offender placement options available within the corrections system. The department suggests standardization of evaluation processes among this population of clinicians is better managed by the Board of Behavioral Health.

RECOMMENDATION #6:

We recommend the Department of Corrections ensure pre-authorizations for the conditional release of sexual and violent offenders are conducted within the time frame outlined in department policy.

Response:

We concur. Internal controls will be implemented to ensure that pre-authorizations for the conditional release of sexual and violent offenders are completed in accordance with department procedure.

RECOMMENDATION #7:

We recommend the Department of Corrections develop and implement processes to measure the effectiveness of contracted community corrections programs based on offender outcome data.

Response:

We partially concur. Overall, the department recognizes the importance of evaluating the effectiveness of contracted community corrections programs. During the 2017 Legislative Session, Montana enacted nine bills brought forth by the Commission which significantly changed state and local practices throughout the criminal justice system. These bills touched on several topics, including pretrial diversion, presentence investigations, sentencing, the Board of

Pardons and Parole, and probation and parole revocation processes. Of note, Senate Bill 59 required the department's Quality Assurance Office (QAO) to:

1. Adopt an evidence-based program evaluation tool that measures how closely correctional programs meet the known principles of effective intervention;
2. Conduct evaluations of programs funded by the state and focused on reducing recidivism; and
3. Enforce standards to ensure that programs are using best practices for reducing recidivism, including targeting highest-risk individuals, adhering to evidence-based or research-driving practices, and integrating opportunities for ongoing quality assurance and evaluation.
4. Conduct regular evaluations of programs operated by the DOC or under contract with the DOC.

In addition, the department is required to develop and maintain a list of evidence-based treatment curriculums to be utilized in programs operated by or under contract with the department. Finally, the department shall ensure that all contracts signed or renewed contain provisions for adhering the program evaluation tool and standards.

The QAO established an evidence-based programming review committee to evaluate correctional programming for adherence to evidence-based programming criteria. The committee meets regularly and has approved seventeen programs that address offender risk of recidivism, with some programs approved for use at multiple locations. The QAO continues to work with divisions across the department, as well as with our contracted partners, on review of offender programming.

The department selected an evidence-based program evaluation tool for assessing the effectiveness of programs. The Correctional Program Checklist (CPC) and the CPC Group Assessment (CPC-GA) were developed by the University of Cincinnati Corrections Institute (UCCI) for assessing the content and capacity of correctional intervention programs. The QAO contracted with UCCI to train and certify sixteen staff members to perform CPC evaluations and twelve staff members to conduct CPC-GA reviews. To date, we have performed four CPC reviews on contracted community corrections programs. The QAO continues to develop a schedule for the initial review of the remaining contracted programs. A small work group has formed to develop procedures for CPC report handling and development and monitoring of corrective action plans. The first reviews are considered baseline scores and facilities can expect follow up-reviews over time. The department stands by this process as a key strategy for evaluation and continued improvement of Montana's correctional programs at reducing offender recidivism.

In complement to the measurement of program effectiveness using the CPC, the department will identify and establish performance measures based on individual-level data. The department will work with its contractors to regularly collect, analyze, and report on this data. Additionally, the department will use this information to provide feedback to staff and contractors and inform program and process changes. These processes will allow the department to monitor program data while the current and planned changes are in progress and in preparation for more formal and rigorous evaluation in the future. Overall, development of this system of program measurement is a long-term priority for the department that will hinge on staff resources for development and maintenance.

The department's partial concurrence relates specifically to the methodology used by the auditors for reviewing the effectiveness of contracted treatment and prerelease centers. The review considered offenders released from all facilities during calendar 2016 and compares those participating in a treatment or prerelease center with those who did not. The timeframe of the audit included offenders who entered programs before and during implementation of the changes resulting from the 2017 Legislative Session. Additionally, during this period several contracted facilities carried out significant curriculum changes in order to implement evidence-based programming. The results of the study presented do not take these factors into consideration.

The Department of Corrections thanks you for the efforts of the Legislative Audit Division staff and for collaborating with us during exit conference. We appreciate your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Reginald D. Michael". The signature is fluid and cursive, with the first name being the most prominent.

Reginald D. Michael
Director