



**A REPORT
TO THE
MONTANA
LEGISLATURE**

**LEGISLATIVE AUDIT
DIVISION**

20ACTHotline



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

Fiscal Year 2020

SEPTEMBER 2020



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ACCOUNTABILITY, COMPLIANCE, AND TRANSPARENCY HOTLINE

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

- ◆ Report online at <http://montanafraud.gov>
- ◆ E-mail LADHotline@mt.gov with a description of the allegation.
- ◆ Call the toll-free Fraud Hotline at **(800) 222-4446**, or in Helena at **(406) 444-4446**. This Hotline is available 24 hours a day, 7 days a week. A person is generally available to answer your call personally Monday-Friday from 7 a.m. to 2 p.m.
- ◆ Text2Tell. Text your concern to **(704) 430-3930**. Your text will be routed through an independent third party to protect your anonymity. Your phone number is not recorded or provided to us. You will receive a confirmation text with directions on how to check the status of your report and communicate anonymously with our office.

- ◆ Send a written report to the following address:

LAD Fraud Hotline
Legislative Audit Division
PO Box 201705
Helena, MT 59620-1705

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Reports can be found in electronic format at:

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September 2020

The Legislative Audit Committee
of the Montana State Legislature:

This is our report summarizing hotline and referral activity for fiscal year 2020.

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

This report provides the legislature a summary of all hotline and referral activity for fiscal year 2020 in one report. It includes work completed on submissions either during Financial-Compliance, Information System, or Performance audits or independent of a scheduled audit. This report includes information on specific submissions.

Respectfully submitted,

/s/ Angus Maciver

Angus Maciver
Legislative Auditor

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MONTANA LEGISLATIVE AUDIT DIVISION

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

State law requires the Legislative Auditor to establish and maintain a mechanism for citizens to report fraud, waste, or abuse in state government; review and maintain a record of all submissions; analyze and verify the information received; or refer the information for appropriate action to the agency that is or appears to be the subject of the call.

The Legislative Audit Division (LAD) established a hotline in 1993 and citizens or state employees were able to submit a report through a toll-free number.

Currently, there are several ways a member of the public or a state employee can report a concern regarding alleged fraud, waste, or abuse in state government, including a toll-free phone number, email, USPS, online reporting form, and text.

Hotline reports are allegations of potential fraud, waste, or abuse of state resources. In fiscal year 2020 there were a total of 74 hotline reports. This is 22 more than the 52 reports in fiscal year 2019, due largely because of an increase in reports where LAD had no jurisdiction over the allegations. Five of the 74 total reports were substantiated. For one submission, evidence was found by or provided to staff to support or prove the truth of the allegation. Three of the remaining 5, were substantiated by the agency when the allegations were referred to them. One agency reported a penal violation, but the facts of the submission were determined by LAD to be a substantiated hotline submission.

SUBSTANTIATED CASES:

The Department of Health and Human Services found an employee's use of state time and equipment to be waste. Employee found to be using state time to promote their personal business.

A Department of Labor and Industry's lack of documentation for the promotion of an employee was found to be waste. Hiring process was found to contain limited documentation of the recruitment and selection process.

The Department of Transportation found explicit material on employee's computer. Agency requires counseling for employee whose state computer contained an explicit image.

Behavioral issues resulted in supervisory counseling of Department of Revenue employee. Employee counseled for engaging in activities such as sleeping and surfing internet on their phone during work hours, leaving computer unlocked, and abusing time for lunch and breaks.

Helena College reported they disposed of a vehicle in violation of University of Montana and Helena College policies. Proper approval and written clearance not obtained prior to the disposal of a state-owned vehicle.

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

leg.mt.gov/lad

Room 160, State Capitol
PO Box 201705
Helena, Montana 59620
(406) 444-3122

The mission of the Legislative Audit Division is to increase public trust in state government by reporting timely and accurate information about agency operations, technology, and finances to the Legislature and the citizens of Montana.

To report fraud, waste, or abuse:

Online
www.Montanafraud.gov

Email
LADHotline@mt.gov

Call
(Statewide)
(800)-222-4446 or
(Helena)
(406)-444-4446

Text
(704) 430-3930

STATISTICS:

Hotline reports are allegations of potential fraud, waste, or abuse of state resources. In fiscal year 2020 there were a total of 74 hotline reports. This is 22 more than the 52 reports in fiscal year 2019.

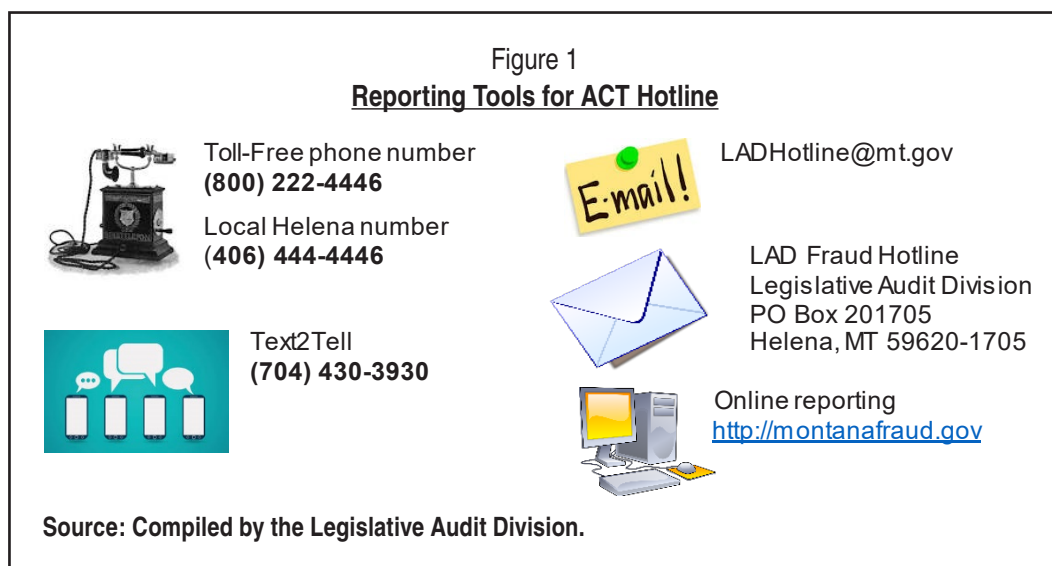
In fiscal year 2020, 21 agencies were the subject of hotline submissions. Seventeen agencies were the subject of hotline submissions in fiscal year 2019, and 20 in fiscal year 2018.

Penal violations (PV) are reports from agencies detailing the discovery of any theft, actual or suspected. In fiscal year 2020, 10 state agencies reported 25 PVs, five more than was reported (20) in fiscal year 2019 by 12 state agencies.

Chapter I – Introduction

Establishment of the Accountability, Compliance, and Transparency (ACT) Hotline

Section 5-13-311, MCA, requires the Legislative Auditor to establish and maintain a mechanism for citizens to report fraud, waste, or abuse in state government; review and maintain a record of all submissions; analyze and verify the information received; or refer the information for appropriate action to the agency that is or appears to be the subject of the call. The Legislative Audit Division (LAD) established a hotline in 1993 and citizens or state employees were able to submit a report through a toll-free number. Currently, there are several ways a member of the public or a state employee can report a concern regarding alleged fraud, waste, or abuse in state government, including a toll-free phone number, email, USPS, online reporting form, and text. LAD records and manages the submissions to the hotline in a database. These reporting mechanisms are illustrated in Figure 1.



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

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

ACT Hotline Increases Fraud Reporting

A 2020 report from the Association of Certified Fraud Examiners found that 43 percent of fraud schemes were detected by tips, and half of those came from the employees of the organization where the suspected fraud occurred. Organizations with reporting hotlines were more likely to detect fraud through tips than organizations without hotlines, 49 percent compared to 31 percent respectively. The LAD ACT Hotline plays an important role in identifying fraud, waste, and abuse in Montana state government.

LAD staff have been tracking submissions in a cloud-based case management system since 2018. The system has given us the structure needed to more effectively and efficiently record, analyze, determine the veracity, and resolve submissions to the hotline. The case management system also is the repository for penal violations reported to LAD and allows staff to analyze those submissions as well.

The Accountability, Compliance, and Transparency (ACT) Team is a group of dedicated LAD staff who provide leadership and management of the case management system and LAD's response to submissions. The ACT team and many other LAD staff, have dedicated 492.50 hours addressing the responsibilities established by statutes and standards to enhance the response to suspected fraud, waste, abuse, or penal violations found by or reported to LAD. This is up from 407 hours spent by staff in 2019.

Penal Violations and Criminal Referrals

As previously stated, state law requires agencies to report the discovery of any theft, actual or suspected, to LAD. A penal violation (PV) may also be discovered during an audit or reported through the hotline. The ACT Team reviews and classifies these types of submissions and determines if there is a need to obtain additional information for use in an ongoing or subsequent audit or assign staff to analyze the submission. If the submission is determined to be a PV, it is reported to the attorney general and governor, as required by state law. If such a referral is made, the legislative auditor is required to furnish the attorney general with all information available relative to the violation. There were no criminal referrals for fiscal year 2020.

Report Contents

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

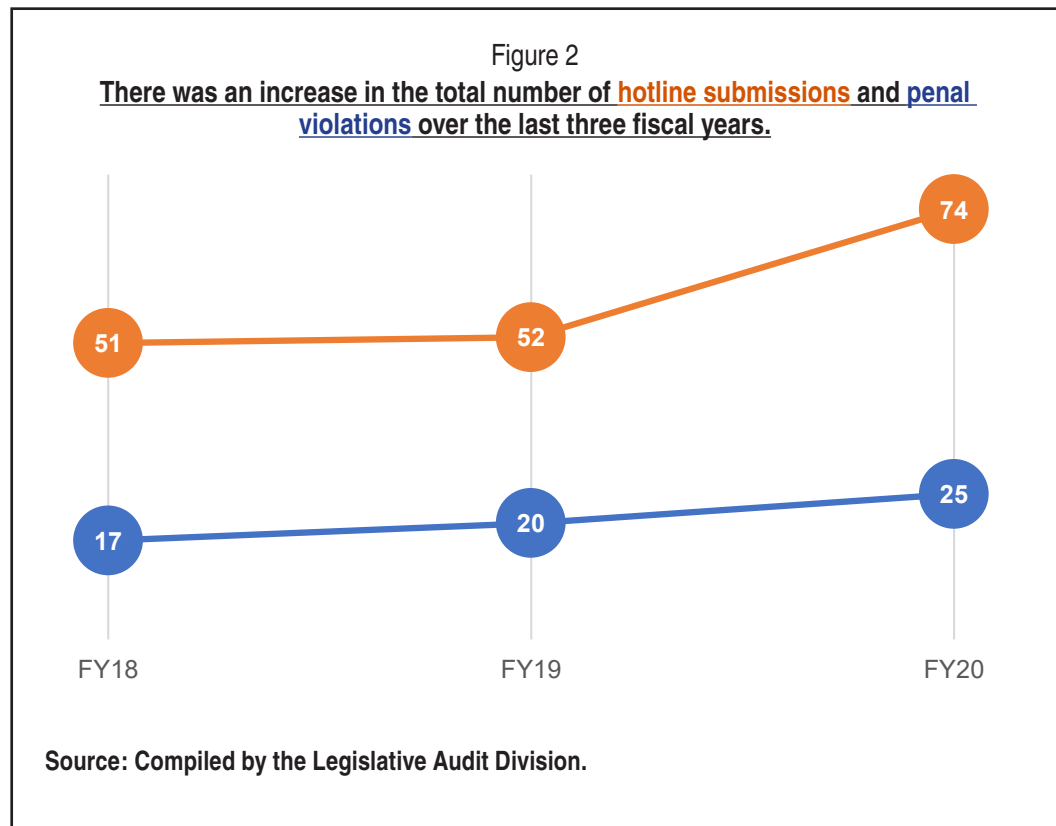
- ◆ Chapter II provides statistics about the use and results of the hotline and reported penal violations.
- ◆ Chapter III discusses substantiated hotline submissions, and cases where no fraud, waste, or abuse was found but resulted in notable findings.

Chapter II – Statistics

Introduction

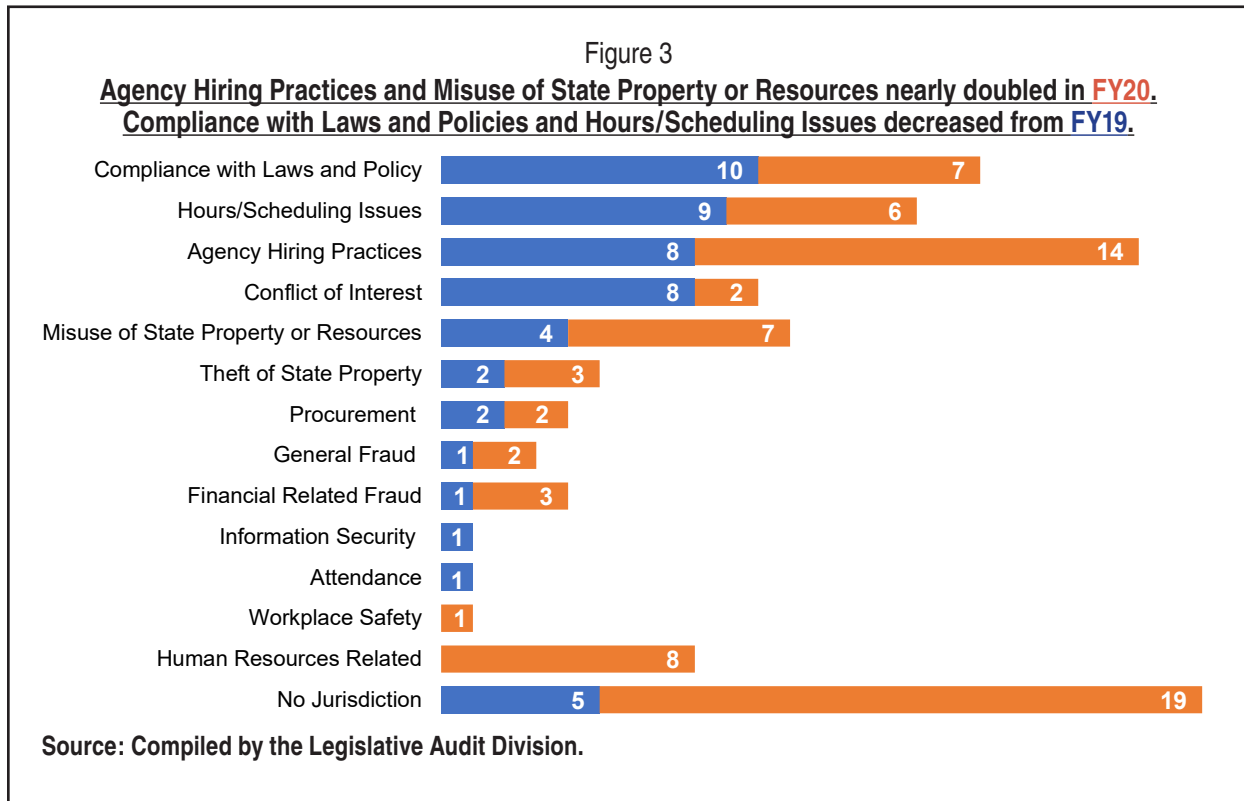
Hotline reports are allegations of potential fraud, waste, or abuse of state resources. In fiscal year (FY) 2020 there were a total of 74 hotline reports. This is 22 more than the 52 reports in FY 2019. Penal violations (PV) are reports from agencies detailing the discovery of any theft, actual or suspected. Additionally, a PV may also be discovered during an audit or reported through the ACT hotline. In FY 2020 there were 25 reported PVs, five more than were reported in FY 2019.

The following figure illustrates the total hotline reports and PVs received by LAD in the last three fiscal years.



Hotline Reports Increased in FY 2020

When a hotline submission is received, ACT Team members categorize the allegation based on the how the reporter describes the subject matter of the allegation. Figure 3 (see page 4) depicts statistical information about categories of the 74 hotline submissions received in FY 2020 as compared to the submissions for FY 2019.

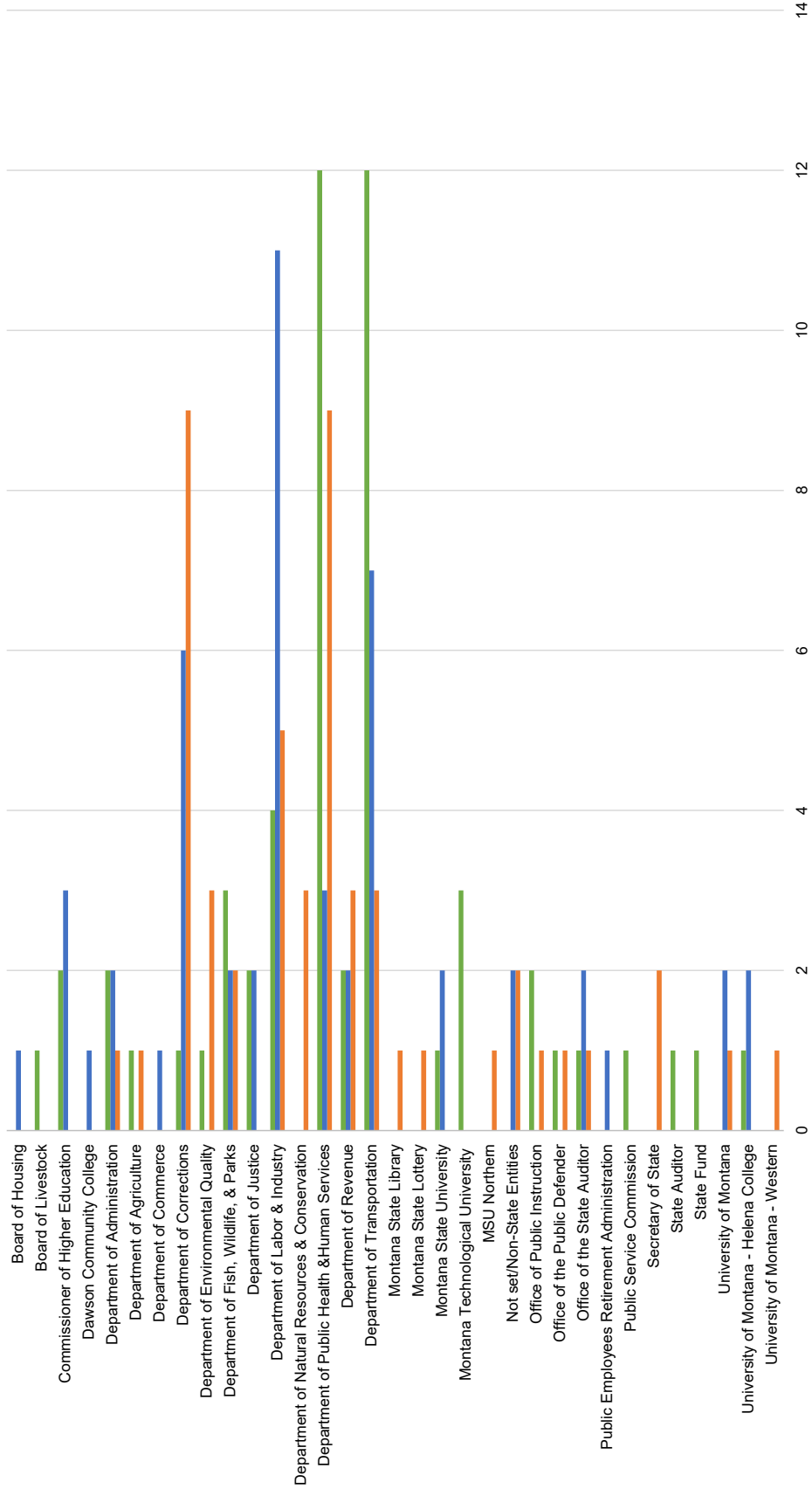


The substantial increase of hotline submissions between fiscal years 2019 and 2020 are largely because of an increase in submissions where LAD does not have jurisdiction over the subject matter of the allegations or there is another hotline more suitable to handle the allegation. A few of these allegations related to a private business or are not fraud, waste, or abuse of state property or resources. Most of the remainder of these submissions were referred by us to other hotlines run by state agencies. Examples of these hotlines are the Office of Consumer Protection, the Workers' Compensation Fraud Hotline at State Fund, and the Medicaid Recipient Fraud Hotline at the Department of Public Health and Human Services.

Once jurisdiction is established the submission is assigned, usually by the reporter, to the entity that is the subject of the submission. Figure 4 (see page 5) shows the entity that was the subject of the submission and the number of submissions attributed to each entity for the previous three fiscal years.

Figure 4

The number of entitles subject to hotline submissions stayed fairly consistent throughout FY18, FY19, and FY20, while the number of submissions per entity has been more volatile.



Source: Compiled by the Legislative Audit Division.

As expected, more submissions are attributed to the larger agencies. More interesting is the fact that some agencies' submissions have increased over time, some have decreased, and others have fluctuated over the three years depicted in Figure 4. Over time, we may have a better understanding of the reasons for the volatility of the number of submissions related to a specific agency.

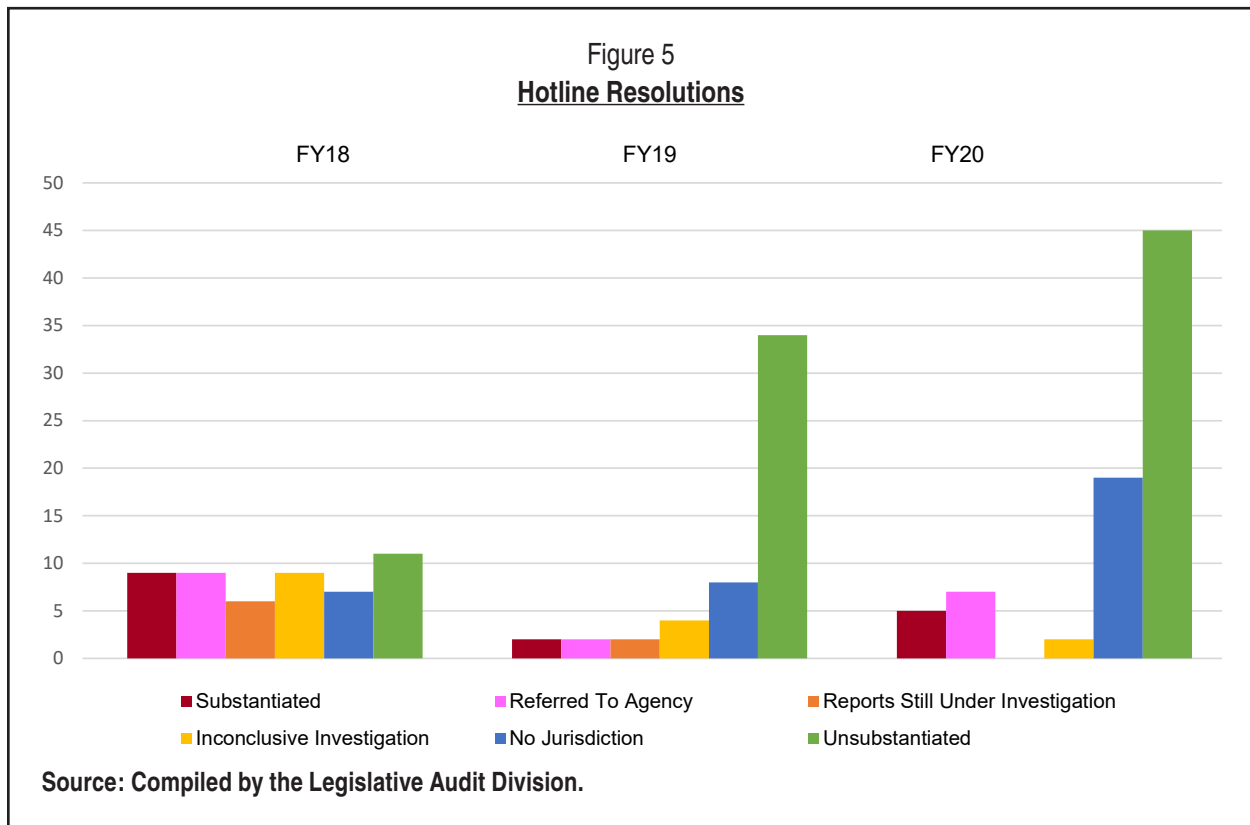
After determining which agency is the subject of the submission, the allegations are investigated by LAD staff or referred to the agency. The factors considered to retain an allegation are:

- ◆ Relates directly to high- or mid-level management or evidence of significant management involvement/collusion.
- ◆ Includes multiple related allegations (pattern or trend of activity indicating systemic issues).
- ◆ Relates to an agency with history of responding inadequately or in bad faith to allegations submitted to them.
- ◆ Relates to circumstances or issues that can be considered sensitive/high profile or that are attracting considerable legislative interest.
- ◆ Has credible evidence of actual or threatened retaliation by management.
- ◆ Includes accounting, financial reporting, internal control, or noncompliance issues that are potentially material, either quantitatively or qualitatively to schedules/statements or federal program administration.
- ◆ Has actual or suspected theft involving significant (more than \$1,500) losses of money or assets.

Factors considered to refer the submission to the agency are:

- ◆ Relates to an agency who has responded effectively and efficiently to previous allegations.
- ◆ Relates to an agency who maintains an effective internal audit team with appropriate expertise in responding to allegations of fraud, waste, or abuse.
- ◆ Relates to a human resource issue not affecting high- or mid-level management
- ◆ Is related to a supervisor/subordinate/co-worker conflict.
- ◆ Where actual or suspected theft involving trivial monetary amounts or minor equipment is involved.

The following figure depicts the type of resolution that resulted from the work completed for each of the submissions.

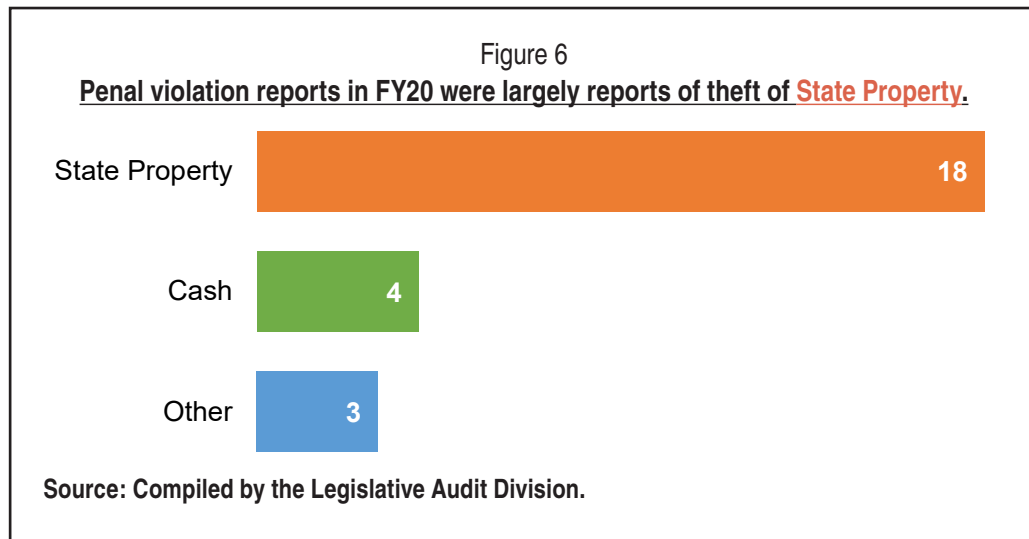


The resolutions depicted in Figure 5 are determined by LAD staff or are provided by the agency, along with any corrective action, in a written response to the referral. They are based on the evidence obtained and the ability of staff or the agency to corroborate the allegation.

- ◆ *Substantiated* submissions are those where evidence was found by or provided to staff to support the basis of the allegation.
- ◆ *Unsubstantiated* means the allegation was not supported by evidence.
- ◆ *Inconclusive investigation* means that staff or the agency could not come to a firm conclusion about the truth of the allegation.

Penal Violations Increased in FY 2020

Penal violations (PV) are submissions from agencies to satisfy their statutory responsibility to report theft or suspected theft to the Legislative Auditor. A PV may also be discovered during an audit or reported through the hotline. In FY 2020 there were a total of 25 PV reports; this is up from 20 reports in FY 2019. Figure 6 illustrates the types of PV reports received in FY 2020.



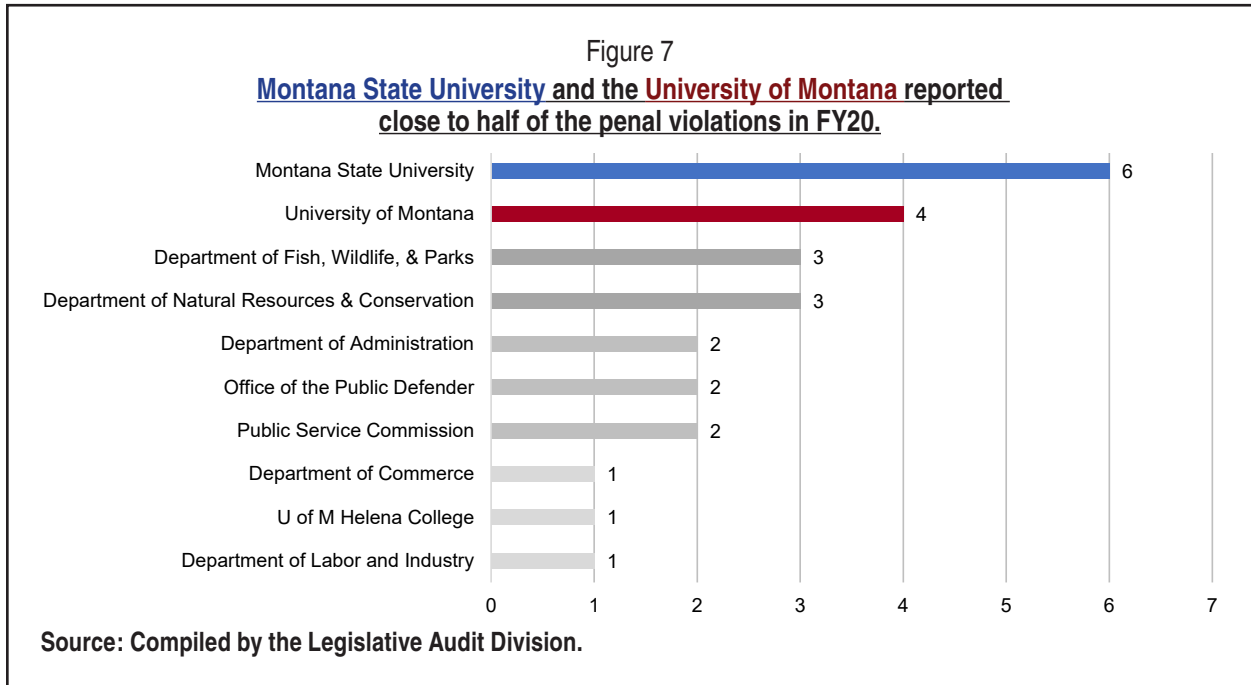
Theft of state property include a painting, signs, fuel, tools, high tech thermometers, soccer net, chairs, and a computer. A procard, a vault key, and a network access token were reported missing from an employee's office desk. The procard and network access token were deactivated. The vault key was not recovered but the vault lock was replaced.

Two of the 4 reported thefts of cash were because vendor's bank account or address information was accessed by an unknown person, was changed, and payment was sent based on the new information. In one case, nearly \$332,000 was recovered, for the other, only \$534 of nearly \$126,000 was recovered. Insurance covered approximately \$100,000 and the deductible was paid in part by Risk Management and Tort Defense (\$24,000) and the agency (\$1,000) where the theft occurred. One theft of cash report was an unauthorized refund of \$8,700 from a credit card terminal. This incident was reported to law enforcement and is still under investigation. The final report of missing cash was determined to be a mistake, not theft, due to a new point of sale system and accounting for gratuities.

The other category consisted of two reports of one employee's alleged misuse of their procard. The agency referred their suspicions to law enforcement for investigation. No theft charges were brought against the employee. However, the procard was

deactivated, the funds recovered, and the employee received time off without pay. The third case related to fraudulent shipping invoices presented but not paid by the agency.

For FY 2020, 10 agencies reported PVs as required by statute. Figure 7 depicts the agencies and the number of reports made by them.



Chapter III – Substantiated Cases and Notable Trends

Substantiated Cases

Reports to the hotline are confidential until the Legislative Auditor or other appropriate agency acts to verify the fraud, waste, or abuse reported and takes corrective action. The information concerning the subject of the complaint and the remedy, if any, becomes public information if the submission is substantiated, unless it is otherwise precluded by law from disclosure.

There was a total of five substantiated submissions in fiscal year (FY) 2020. In one submission, evidence was found by or provided to staff to support or prove the truth of the allegation. Four of the five substantiated submissions were substantiated by the agency when the allegations were referred to them. Finally, one agency reported a penal violation, but the facts of the submission were determined by us to be a substantiated hotline submission.

All substantiated reports were determined to be waste of state resources. Waste is defined as an unintentional, thoughtless, or careless expenditure; consumption, mismanagement, use, or squandering of government resources to the detriment or potential detriment of the state. The following section represents a synopsis of those substantiated cases.

The Department of Health and Human Services Found an Employee’s Use of State Time and Equipment to Be Waste

We received an allegation of a Department of Health and Human Services (DPHHS) employee using state time and resources to promote their personal business. This submission was referred to DPHHS to investigate and act to remedy any fraud, waste, or abuse as a result of the referral.

DPHHS found the following:

- ◆ Following a staff meeting to conduct state business, an employee provided staff at the meeting a flyer for a training class for their personal business.
- ◆ The employee subsequently sent an email from their state-issued computer using their state email to remind staff of the training advertised on the flyer.
- ◆ The investigation found waste of resources by the employee providing the personal business flyer and discussing the training after the staff meeting and by sending an email reminding staff of the training.

- ◆ The investigation found the employee did not print the flyers on a state copier or use any state resources to create the handout.

The employee involved in this investigation was given a corrective counseling letter and was reminded that the agency does not tolerate improper use of public time, facilities, equipment, supplies, personnel, or funds for private business purposes. The employee was also given a copy of the State Ethics Policy and DPHHS Employee Conduct Policy and was told that they must follow them. The employee committed to following the policies in the future. The bureau chief present at the meeting was provided the same material and reminded of the agency's policies. They were reminded they are responsible to see to it their staff followed the policies as well. Further, as a supervisor, they were directed to work with Human Resources to provide training on the State Ethics Policy to all staff within their bureau by the end of January 2020. This training was completed in mid-January 2020.

A Department of Labor and Industry's Lack of Documentation for the Promotion of an Employee Was Found to Be Waste

We received an allegation related to an internal promotion to a management position at the Department of Labor & Industry (department). The submission alleged the promotion was given without the department going through the appropriate competitive hiring process.

The Administrative Rules of Montana (ARMs) require a competitive process when recruiting internally to fill a permanent position. The ARMs further require documentation including:

- ◆ A defined process for measuring the applicant's suitability.
- ◆ Selection procedure and criteria used to evaluate qualifications.
- ◆ Names and titles of any persons who participated in the selection procedures.

We requested the hiring file related to the position from department human resource's staff. The documentation in the file contained very limited documentation of the recruitment and selection process. The documentation lacked evaluation criteria or notes, the names of the person participating in the selection procedures, and the processes or procedures used. The file contained applications for three applicants. However, nothing in the file documented why or how the hiring decision supported the applicant that was selected.

The department did not follow the required process set out in administrative rule to ensure a competitive selection of an employee in a management position. We determined this to be waste as the results of their actions are the mismanagement of government resources to the detriment or potential detriment of the state.

The Department of Transportation Found Explicit Material on Employee's Computer

We received an allegation about a Montana Department of Transportation (MDT) employee's misuse of state equipment. This submission was referred to MDT to investigate and act to remedy any fraud, waste, or abuse as a result of the referral.

MDT found the employee was misusing their state-owned computer and network to send explicit images via email to another MDT employee. At the time the submission was received, one of the employees, who was a seasonal employee, was no longer at MDT. A search of their email and browsing history could not be completed. MDT was able to obtain a snapshot of the other employee's mailbox and browsing history to search for the inappropriate material. MDT went through the emails in the snapshot and found a single explicit image from 2009. They also searched through the browsing history but did not find searches for explicit materials. MDT notified the appropriate management officials who documented the misuse of state equipment in the employee's personnel file and counseled the employee on proper standards of conduct and use of state equipment.

LAD was able to verify this investigation through interviews with MDT employees and found they had taken appropriate action to remedy the waste of government resources.

Behavioral Issues Resulted in Supervisory Counseling of Department of Revenue Employee

We received an allegation of a Department of Revenue (Revenue) employee napping at their desk, surfing the internet on their phone, leaving their state computer unlocked when they would leave their desk, and abusing time allowed for lunch and breaks. This submission was given to Revenue to investigate and remedy any fraud, waste, or abuse found. Revenue found the supervisor was aware of the complaints about this employee, had been counseling the employee, and had taken disciplinary steps to address the employee's behavior prior to the allegation being brought to our attention. Revenue will continue to monitor the employee's behavior and maintain documentation in their personnel file.

Helena College Reported They Disposed of a Vehicle in Violation of University of Montana and Helena College Policies

We received a letter from the Helena College indicating a vehicle owned by the college and used in its Trades Division was sold for scrap in violation of University of Montana and Helena College policies. The vehicle was inoperable and repair costs exceeded the book value. While selling the vehicle for scrap after removing parts for instructional aids may have been the best course of action, policies were not followed. Proper approval and written clearance was not obtained prior to the disposal. Helena College will work with University of Montana Internal Audit to improve inventory and asset management processes.

Notable Findings

In completing our work over FY 2020 hotline and PV submissions, and in reviewing submissions in previous years, we noted some troubling trends in the hiring practices at agencies. While these submissions are considered unsubstantiated and do not rise to the level of fraud, waste, or abuse, some decisions related to hiring appear to us to be unwise or imprudent. Agency staff did not fully consider the affect their decisions have on other employees, state resources, or government transparency. We believe these trends may affect work done by financial-compliance staff or be considered as potential performance or information systems audit topics and should be brought to the attention of the Legislative Audit Committee.

Over the past three fiscal years we have seen a steady increase in the number of allegations related to agency hiring practices. In FY 2018 there were 4, 8 in FY 2019, and 14 in FY 2020. All but one of the 26 submissions were unsubstantiated. The notable allegations questioned the hiring process of mostly high- or mid-level management positions where the reporter alleged:

- ◆ Hiring process was manipulated to hire a specific individual not the one most qualified.
- ◆ Temporary positions were filed with family members.
- ◆ Minimal documentation was retained to support hiring decisions while other relevant documentation was either not gathered or destroyed.
- ◆ Human Resource personnel were not part of the hiring process.
- ◆ Agency reorganized or changed position descriptions to place favored persons in new positions without a competitive process.

Even though these allegations were not found to be fraud, waste, or abuse, they are troubling. Hiring processes are intended to be an efficient and effective method to identify the specific needs of an agency, recruit from a pool of qualified individuals, and hire the most qualified candidate. Agencies need flexibility to make decisions about their workforce; however, those decisions should always be aboveboard, transparent, and fair. We believe a more detailed and comprehensive look at the state's recruitment and retention policies would better address these questions about agency hiring practices.